

**2023 01G 5978**  
**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR**  
**GENERAL DIVISION**

**BETWEEN:**

**SHOAL POINT ENERGY LTD.**

**PLAINTIFF**

**AND:**

**HIS MAJESTY IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

**DEFENDANT**

**DEFENCE**

1. The Defendant (“the **Province**”) neither admits nor denies the allegations contained in the Statement of Claim, except as specifically admitted or denied herein.
2. As to the Statement of Claim as a whole, the Province states that the limitation period for the commencement of this action as set out in the ***Limitations Act***, SNL 1995 c L-16.1 has expired. Therefore, the Plaintiff’s (alternatively referred to herein as “**SPE**”) claim is statute-barred and must be dismissed, with costs to the Province.
3. In the alternative, as to the Statement of Claim as a whole, the Province states that:
  - a. As noted *infra*, the Plaintiff failed to seek judicial review, or other judicial remedy, of the 04 November 2013 decision of the then-Minister of Natural Resources pertaining to the use of hydraulic fracturing for petroleum exploration.

- b. The Plaintiff's claim is speculative and remote as the Plaintiff did not have the necessary authorizations under provincial legislation to proceed with commercial development of an oil resource using hydraulic fracturing;
  - c. The Plaintiff's claim is speculative and remote as there is no reliable information about the amount of oil that may be available for commercial development; and
  - d. The Plaintiffs have failed to take reasonable steps to mitigate their damages by exploring other methods of petroleum extraction.
4. As to Paragraph 1 of the Statement of Claim, the Province denies that it committed the acts described therein and further denies that the Plaintiff is entitled to damages as claimed. The Province puts the Plaintiff to the strict proof thereof. The Province further states that the alleged "Exploration Lands" associated with Exploration License 1070 are situated beyond the jurisdiction of Newfoundland and Labrador, and therefore are beyond the authority of the Province to take or expropriate as the Plaintiff alleges.
5. As to the first sentence of Paragraph 2 of the Statement of Claim, the Province states that SPE's "license"—Exploration License 1070 ("EL 1070")—was issued by the Canada-Newfoundland Offshore Petroleum Board (the "Board"), and not the Province. As to the second sentence of Paragraph 2 of the Statement of Claim, the Province:

- a. States that SPE's estimates of between 177 and 908 million recoverable barrels of oil, and their alleged "best estimate" of 428 million recoverable barrels of oil are speculative, unproven, and remote, relying on a successive series of hypotheticals, none of which have occurred in fact; and
  - b. Disputes the accuracy of the estimates of the recoverable barrels of oil contained therein and puts the Plaintiff to the strict proof thereof.
6. The Province denies Paragraph 3 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
7. The Province can neither confirm nor deny Paragraph 4 of the Statement of Claim.
8. As to Paragraph 5 of the Statement of Claim, the Province admits only that on 04 November 2013, the then-Minister of Natural Resources announced that the Province would not be accepting applications for onshore to offshore petroleum exploration using hydraulic fracturing. The Province further states that this was a policy decision of government and, as a result, no duty of care arises as against the Province.
9. Further as to Paragraph 5 of the Statement of Claim, the Province further states that the Plaintiff did not seek judicial review of the Minister's decision, or seek any other judicial remedies in relation to the Minister's decision until the filing of the Statement of Claim.

10. The Province denies Paragraph 6 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
11. The Province admits Paragraph 7 of the Statement of Claim.
12. As to the first sentence of Paragraph 8 of the Statement of Claim, the Province acknowledges the statement as explanatory of the activities generally undertaken by the Plaintiff. As to the second sentence of Paragraph 8 of the Statement of Claim, the Province states that the area covered by EL 1070 is 103,040 hectares, (which is approximately 254,000 acres or 1,027 km<sup>2</sup>), but that the “rights” SPE held in relation to this area were rights to exploration only, and not rights to production. That is, SPE held no right to any commercial production whatsoever under EL 1070.
13. As to Paragraph 9 of the Statement of Claim, the Province states that the Board is responsible, on behalf of both the Province and Canada, for the regulation of petroleum-related activities in the Newfoundland and Labrador offshore area. However, the Province further states that any activities that occur within Provincial lands and waters are subject to licencing and regulation under Provincial statutes, including but not limited to the ***Environmental Protection Act***, SNL 2002 c E-14.2, the ***Lands Act***, SNL 1991 c 36, and ***the Petroleum and Natural Gas Act***, RSNL 1990 c P-10.
14. As to Paragraph 10 of the Statement of Claim, the Province states that the Board’s authority is derived from the ***Canada–Newfoundland and Labrador Atlantic Accord Implementation Act***, SC 1987, c. 3, the ***Canada-***

***Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act***, RSNL 1990 c C-2, and the ***Memorandum of Agreement between the Government of Canada and the Government of the Province on offshore petroleum resource management and revenue sharing dated February 11, 1985***, as amended.

15. The Province admits Paragraph 11 of the Statement of Claim.
16. As to Paragraph 12 of the Statement of Claim, the Province states that the Canadian Imperial Venture Corp. (“CIVC”) transferred its share in EL 1070 to SPE on 25 October, 2011.
17. The Province admits Paragraph 13 of the Statement of Claim, but repeats that the alleged “Exploration Lands” associated with EL 1070 are situated beyond the jurisdiction of Newfoundland and Labrador, and therefore, are beyond the authority of the Province to take or expropriate as the Plaintiff alleges.
18. The Province admits Paragraphs 14 through 16 of the Statement of Claim.
19. As to Paragraph 17 of the Statement of Claim, the Province states that the amount is accurate, but further states that the security deposit was in the form of a promissory note to the Board.
20. As to Paragraph 18 of the Statement of Claim, the Province denies that either CIVC or SPE obtained an onshore lease to commercially drill or produce on the area covered by EL 1070. The Province further states that CIVC never

possessed an onshore lease to drill a well, and SPE only ever possessed an onshore license to drill a stratigraphic test well.

21. The Province can neither confirm nor deny the first sentence of Paragraph 19 of the Statement of Claim. As to the second sentence of Paragraph 19, the Province states that EL 1070 does not distinguish between “shallow rights” and “deep rights” as those terms are used in the Statement of Claim.
22. As to Paragraph 20 of the Statement of Claim, the Province admits only that EL 1070 received 3 extensions to the Period I exploration window. These extensions were for a total of 18 months, being:
  - a. 12 month extension approved until January 15, 2007;
  - b. 60 day extension approved until March 17, 2008; and
  - c. 120 day extension approved until July 15, 2008.

The Province also admits that Period II operations was permitted by the Board in EL 1070.

23. The Province admits Paragraph 21 of the Statement of Claim.
24. The Province admits the first and third sentences of Paragraph 22 of the Statement of Claim. The Province can neither confirm nor deny the second sentence of Paragraph 22 of the Statement of Claim.
25. As to Paragraph 23 of the Statement of Claim, the Province admits that the Board did extend EL 1070 on the understanding that SPE was “diligently

pursuing” the 3K-39 well. However, by no later than December 2012, the Board had concerns about SPE’s “diligent pursuit”, as SPE’s operations on 3K-39Z had been suspended for over 5 months, and SPE was in arrears on a variety of operational and regulatory reporting requirements. At that time, the Board indicated that continued failure to meet these deliverables could result in a determination that SPE had failed to maintain a diligent pursuit, and reversion of land to the Crown.

26. The Province denies Paragraph 24 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
27. The Province admits Paragraph 25 of the Statement of Claim, but states that the “Approval to Drill a Well” in question was specifically for testing, rather than commercial production purposes.
28. As to Paragraph 26 of the Statement of Claim, the Province admits only that SPE suspended its operations on the 3K-39 well on 17 July 2012.
29. The Province generally admits Paragraph 27 of the Statement of Claim, but states that on 27 August, 2010, that material was provided to CIVC and not SPE. Further as to the within paragraph, the Province states that:
  - a. In its 27 August 2010 letter to CIVC, the Board indicated that very little data existed to evaluate the petroleum potential of the area in question, and that conventional core sample data was critical to evaluating the petroleum viability of the area in question; and

- b. In a letter to CIVC on 18 February 2011, the Board expressed its concern about the limited number of conventional core samples planned for the well, because such core samples are the only direct measurements which are not subject to interpretation.
30. The Province denies Paragraph 28 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
31. The Province denies Paragraph 29 of the Statement of Claim and states that the Application for Approval to Drill a Well (“ADW”) in question was actually made by Black Spruce Exploration Corporation, a partner of SPE, and further states that the ADW was made on 28 February 2013.
32. The Province denies Paragraph 30 of the Statement of Claim and puts the Plaintiff to the strict proof thereof. The Province states that the letter of the Board to SPE dated 18 December 2012 stated, *inter alia*, the following:
  - a. Principally expressed the Board’s concerns that SPE was not diligently pursuing work on 3K-39 and questions SPE’s commitment to diligent pursuit;
  - b. Indicated that the Board had not received any application from SPE to amend its Operations Authorization to permit hydraulic fracturing, nor the Application for ADW that would be required;



- c. Indicated that SPE was very close to the 31 December 2012 filing deadline to request renewal of its financial responsibility documentation, which the Board had yet to receive as of 18 December 2012,
  - d. Indicated that SPE had only provided its draft environmental assessment update to the Board on 10 December 2012, and that finalization of this step was a pre-requisite to the SPE's proposed hydraulic fracturing;
  - e. Indicated that SPE had failed to provide a number of reports and other data relating to its operations, and required production of same forthwith, indicating that no Operations Authorization would be granted to SPE until those overdue materials were received;
  - f. Indicated that failure to meet the Board's deadlines and expectations or otherwise failing to maintain a diligent pursuit could result in the expiry of EL 1070 and reversion of land to the Crown; and
  - g. Does not, whatsoever, permit SPE to "commence hydraulic fracturing operations" as SPE pleads in the within paragraph.
33. The Province can neither confirm nor deny the first sentence of Paragraph 31 of the Statement of Claim. The Province admits the second sentence of Paragraph 31 of the Statement of Claim.
34. The Province admits Paragraph 32 of the Statement of Claim.

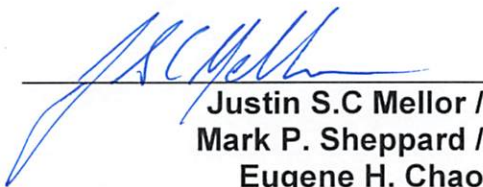
35. As to Paragraph 33 of the Statement of Claim, the Province repeats paragraph 8 herein.
36. As to Paragraph 34 of the Statement of Claim, the Province admits only that Morning Star Consultants LLC produced estimates (the "**Morning Star Report**") that SPE relies on for its pleading that there may be between 177 and 908 million recoverable barrels of oil, with an alleged "best estimate" of 428 million recoverable barrels of oil within the EL 1070 area. However, the Province disputes the accuracy of these numbers and puts the Plaintiff to the strict proof thereof.
37. As to Paragraph 35 of the Statement of Claim, the Province admits only that the Newfoundland and Labrador Hydraulic Fracturing Panel (the "**Panel**") was formed in October 2014 to review the socioeconomic and environmental implications of hydraulic fracturing in western Newfoundland, and provide recommendations on whether or not hydraulic fracturing should be used in western Newfoundland.
38. The Province admits the first sentence of Paragraph 36 of the Statement of Claim. As to the second sentence of Paragraph 36 of the Statement of Claim, the Province states that the report produced 85 supplementary recommendations, and a principal recommendation that the pause in hydraulic fracturing operations remain in place while the supplementary recommendations were implemented.
39. The Province generally admits the contents of Paragraph 37 of the Statement of Claim.

40. The Province denies Paragraph 38 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
41. The Province can neither confirm nor deny Paragraph 39 of the Statement of Claim.
42. The Province admits Paragraphs 40 and 41 of the Statement of Claim.
43. As to Paragraph 42 of the Statement of Claim, the Province admits only that on 20 August 2018, the Minister of Natural Resources advised SPE that Provincial officials were reviewing the Panel Report's 85 supplementary recommendations and a determination on future Call for Postings would be made after all factors had been considered.
44. As to Paragraph 43 of the Statement of Claim, the Province admits only that, as of the date of filing of this Defence, the pause in hydraulic fracturing operations in western Newfoundland remains in place.
45. The Province denies Paragraphs 44 through 46 of the Statement of Claim, and puts the Plaintiff to the strict proof thereof.
46. As to Paragraph 47 of the Statement of Claim, the Province denies that the Plaintiff are entitled to compensation as claimed and puts the Plaintiff to the strict proof thereof.
47. The Province denies Paragraph 48 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.

48. The Province denies the first sentence of Paragraph 49 of the Statement of Claim. As to the remainder of Paragraph 49, the Province states that SPE's pleadings concern the Board and not the Province.
49. The Province denies Paragraphs 50 through 52 of the Statement of Claim, and puts the Plaintiff to the strict proof thereof.
50. The Province denies Paragraph 53 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
51. The Province denies Paragraph 54 of the Statement of Claim and puts the Plaintiff to the strict proof thereof. The Province further states that the alleged "Exploration Lands" associated with EL 1070 are situated beyond the jurisdiction of Newfoundland and Labrador, and therefore, are beyond the authority of the Province to take or expropriate as the Plaintiff alleges.
52. The Province denies Paragraphs 55 and 56 of the Statement of Claim and puts the Plaintiff to the strict proof thereof.
53. As to Paragraphs 57 and 58 of the Statement of Claim, the Province denies that the Plaintiff is entitled to the relief sought and seeks the dismissal of this claim with costs awarded in its favour and any other relief this Court deems appropriate.
54. The Province relies on statute and common law including, but not limited to, the: the ***Canada–Newfoundland and Labrador Atlantic Accord Implementation Act***, SC 1987, c. 3, the ***Canada-Newfoundland and Labrador Atlantic Accord***

***Implementation Newfoundland and Labrador Act***, RSNL 1990 c C-2, the ***Environmental Protection Act***, SNL 2002 c E-14.2, the ***Lands Act***, SNL 1991 c 36, the ***Limitations Act***, SNL 1995 c L-16.1, the ***Memorandum of Agreement between the Government of Canada and the Government of the Province on offshore petroleum resource management and revenue sharing dated February 11, 1985***, as amended, the ***Oceans Act***, SC 1995, c. 31, and the ***Petroleum and Natural Gas Act***, RSNL 1990 c P-10.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador this 27<sup>th</sup> day of February, 2024.

  
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