Court of King's Bench of Alberta

Citation: Sturgeon Lake Cree Nation v Alberta (Minister of Indigenous Relations), 2026 ABKB 569

Date: 20260813
Docket: 2503 20600
Registry: Edmonton

Between:

Sturgeon Lake Cree Nation

Applicant

O'Leary Digital Limited

Additional Applicant

- and -

His Majesty the King in Right of Alberta as Represented by the Minister of Indigenous Relations (Aboriginal Consultation Office), Minister of Environment and Protected Areas and Municipal District of Greenview No. 16

Respondents

Reasons for Decision
of the
Honourable Justice P. K. Johal

INTRODUCTION

[1] In April 2025, the Municipal District of Greenview ("Greenview") was granted a licence under the *Water Act*, RSA 2000, c W-3, permitting the diversion of 6 million cubic meters of

water from the Smoky River ("the Water Licence"). Sturgeon Lake Cree Nation ("SLCN") has Treaty 8 reserve lands near the Smoky River where they exercise their traditional Treaty and Aboriginal rights. They filed a judicial review application challenging the Water Licence on the basis that they were not adequately consulted before it was issued. SLCN served Greenview, as the Water Licence holder, and His Majesty the King in Right of Alberta as represented by the Minister of Indigenous Relations (Aboriginal Consultation Office) and the Minister of Environment and Protected Areas (collectively, "Alberta"), as the Water Licence grantor, with notice of their judicial review application.

[2] O'Leary Digital Limited ("ODL") is an Alberta corporation that intends to construct a $70 billion artificial intelligence data centre ("the AI Data Centre") and industrial park in the Greenview Industrial Gateway ("GIG"). The AI Data Centre will require a source of water for its cooling system. In March 2025, Greenview and ODL executed an agreement purporting to transfer both the Water Licence and certain GIG lands to ODL. As such, ODL claims a contractual interest in the Water Licence issued to Greenview.

[3] This is an application by ODL to strike SLCN's judicial review application on the basis that ODL, as a directly affected party, was not served within the timeframe prescribed by Rule 3.15 of the *Alberta Rules of Court*, Alta Reg 124/2010. In the alternative, ODL requests intervenor status or to be added as a respondent to the judicial review.

[4] Both Alberta and Greenview were also served with ODL's application to strike. Alberta takes no position, while Greenview supports ODL.

[5] For the reasons that follow, I dismiss ODL's application in its entirety.

BACKGROUND FACTS

[6] The GIG is comprised of 7,000 acres of provincial land in northwest Alberta. SLCN's Treaty lands are located within the GIG. In 2024, land within the GIG was transferred from Alberta to Greenview.

[7] In November 2024, 2664755 Alberta Ltd. was incorporated in Alberta. It adopted its current business name, ODL, on October 14, 2025.

[8] ODL's directors are Mr. Kevin O'Leary and Mr. Paul Palandjian (who also serves as ODL's Vice President). ODL's majority shareholder is O'Leary Productions Inc., which operates as O'Leary Ventures. Mr. O'Leary is the sole director and officer of O'Leary Productions/O'Leary Ventures.

[9] The following timeline is relevant to this application:

- **2023:** Greenview applies for a pre-consultation assessment for a *Water Act* licence that would permit the diversion of 24 million cubic metres of water from the Smoky River. Alberta determines such a licence would require Level 2 consultation with SLCN.

- **February 29, 2024**: A Preliminary Certificate is issued with respect to the 24 million cubic metre licence. SLCN is neither notified nor consulted.

- **November 15, 2024:** Greenview applies for a pre-consultation assessment under the *Water Act* for a reduced amount of water (6 million cubic metres). According to information submitted as an exhibit to Mr. Palandjian's affidavit, this was done in order to support the early development needs of the AI Data Centre project while the licence connected to the Preliminary Certificate made its way through the regulatory process. The Aboriginal Consultation Office ("ACO") determined that consultation with SLCN was not required.

- **November 20, 2024:** 2664755 Alberta Ltd. is incorporated.
- **November 21, 2024**: Alberta determines that the reduced water diversion amount does not engage the duty to consult and accommodate. SLCN is not advised of this decision.
- **December 3, 2024:** Mr. Palandjian writes to SLCN's Chief Sheldon Sunshine to introduce himself, announce the AI Data Centre project, express a commitment to community engagement, and request a meeting with SLCN. The letter is sent on letterhead belonging to O'Leary Ventures.
- **December 9, 2024:** Alberta, Greenview, and Mr. O'Leary issue a media release announcing the AI Data Centre project. The media release establishes that the GIG signed a letter of intent with O'Leary Ventures for the purchase and development of GIG lands. It also communicates that Mr. O'Leary and Mr. Palandjian, as the Chairman and CEO, respectively, of O'Leary Ventures selected this location because of its proximity to a number of required resources, including water.
- **December 12, 2024:** A news article viewed by SLCN describes the project, quotes Minister Nate Glubish, and refers to Mr. O'Leary and O'Leary Ventures.
- **January 13, 2025:** SLCN writes an open letter to Premier Smith, raises concerns, and asks for all documentation and consultation records relating to the Water Licence.
- **January 28, 2025:** Mr. Palandjian and Chief Sunshine meet to discuss the AI Data Centre project. According to ODL, Mr. Palandjian tells Chief Sunshine that Greenview applied for the Water Licence and that there is an agreement to transfer the Water Licence once it is issued. However, Chief Sunshine asserts that Mr. Palandjian indicated at this meeting that "they had no project." Chief Sunshine also indicates that Mr. Palandjian promised more information by the end of February 2025, but SLCN did not receive anything.
- **February 10, 2025:** Greenview formally applies for the Water Licence.
- **February 14, 2025**: Rick Wilson, the Minister of Indigenous Relations, replies to SLCN's open letter, indicating that no applications have been submitted and no water licences have been issued for the GIG. Minister Wilson also confirms that the Preliminary Certificate issued to Greenview in February 2024 does not create any entitlement to water.
- **March 25, 2025:** Greenview and 2664755 Alberta Ltd. execute a Purchase and Sale Agreement ("the PSA").
- **April 7, 2025:** The Water Licence is issued to Greenview.

- **April 9, 2025:** SLCN attends a meeting with Alberta Ministers and is advised that the AI Data Centre is a "non-project".
- **May 7, 2025:** SLCN appeals the Water Licence to the Environmental Appeal Board ("the EAB"). ODL (still operating as 2664755 Alberta Ltd.) does not participate in these proceedings and is not otherwise identified as an interested party.
- **May 22, 2025:** SLCN writes to Minister Sawhney, the Minister of Indigenous Relations, and expresses concern about "the without notice issuance of a *Water Act* licence to O'Leary but through the municipality."
- **August 18, 2025:** SLCN writes to Mr. Palandjian and asks for a copy of the PSA, as well as a copy of "all licences, preliminary certificates and agreements with or from the Municipality of Greenview and/or Alberta...For clarity, this information promised includes all licences that have been granted to Greenview with the intention of being used for your proposed project."
- **August 21, 2025:** Mr. Palandjian replies to SLCN's August 18, 2025 letter and refuses to disclose the PSA, on the basis of confidentiality. With respect to the second information request, he indicates that O'Leary has not made a final decision to proceed with the project and, as such, "no approvals, licences, or permits have been applied for by or issued to O'Leary at this time." This letter is sent on letterhead belonging to O'Leary Ventures.
- **August 25, 2025:** Chief Sunshine replies and raises Mr. Palandjian's earlier assertions that O'Leary Ventures had "multiple permits in place through Greenview." Chief Sunshine specifically requests disclosure of any permits obtained through Greenview before agreeing to another meeting.
- **October 1, 2025:** Mr. Palandjian replies to Chief Sunshine. The letter mentions impacts to water rights but does not reference the Water Licence. It is sent on letterhead belonging to O'Leary Ventures.
- **October 7, 2025:** SLCN files a judicial review application challenging both the issuance of the Water Licence and the ACO's determination that consultation with SLCN was not required. The application is served on Greenview and Alberta.
- **October 14, 2025:** 2664755 Alberta Ltd. changes its operating name to ODL.
- **December 10, 2025:** ODL's counsel writes to SLCN's counsel. SLCN learns that 2664755 Alberta Ltd. changed its name to ODL, Mr. O'Leary is now operating under ODL, and Mr. O'Leary and Mr. Palandjian are the directors and voting shareholders of ODL. According to SLCN, at all times prior to this date, all O'Leary representatives communicated with SLCN under the name O'Leary Ventures or O'Leary Group.
- **December 16, 2025:** ODL files this application to strike. According to SLCN, they learn for the first time that, pursuant to the PSA, ODL claims to be the ultimate beneficiary of the Water Licence.

- **January 23, 2026:** As a result of a disclosure order made by the EAB, SLCN receives a copy of Alberta's decision determining that the duty to consult and accommodate was not engaged by the Water Licence.
- **January 29, 2026:** Mr. Palandjian writes to Chief Sunshine. He references ODL, mentions the PSA and discloses the Water Licence.
- **April 2, 2026:** The EAB determines that SLCN was not directly or adversely affected by the issuance of the Water Licence. Further, during questioning, Mr. Palandjian acknowledges that ODL has not made a final decision about whether to proceed with the AI Data Centre project.
- **April 17, 2026:** The EAB issues reasons dismissing SLCN's appeal for lack of standing.
- **May 1, 2026:** The Certified Record of Proceedings for SLCN's judicial review application is produced. SLCN learns for the first time that O'Leary representatives met with Alberta and Greenview on January 27, 2025 to discuss the proposed water use in relation to the AI Data Centre project.
- **June 8, 2026:** ODL's application to strike is heard.

[10] In terms of the documentary evidence, ODL and Greenview take the position that the PSA establishes ODL's entitlement to acquire certain lands and rights from Greenview, including the Water Licence. Specifically:

- Recital R(iii) states that Greenview holds the Water Licence in trust for ODL,
- Section 4.4(a) requires Greenview to obtain the Water Licence for the purpose of servicing the AI Data Centre,
- Section 4.4(b)(i) states that Greenview pursues the Water Licence as ODL's agent and requires Greenview to use commercially reasonable efforts to transfer the Water Licence to ODL, and,
- Section 6.3(a) establishes that ODL's obligation to acquire the lands depends on the existence and transfer of the Water Licence. Further, Greenview must confirm that "all conditions necessary to transfer [the Water Licence] have been met at or prior to" the contractual closing date.

[11] It is also important to note that, between January 2025 and August 2025, SLCN repeatedly requested further disclosure about these terms of the PSA. No information was forthcoming. ODL did eventually provide a copy of the PSA in support of this application to strike, but it was heavily redacted. Only five pages of the 59-page agreement are legible, and, during questioning, Mr. Palandjian refused an undertaking to provide the entire, unredacted PSA. According to SLCN, this makes it impossible to determine when ODL's rights to the Water Licence crystallize. As a result, ODL's interest is too speculative to support a finding that they are directly affected by SLCN's challenge to the Water Licence.

[12] ODL submits that a water supply is essential to its AI Data Centre project and, under the PSA, ODL is entitled to the transfer of the Water Licence. If SLCN's judicial review application is successful and the Water Licence is set aside, ODL's ability to proceed with the project will be materially impaired. In other words, ODL has a direct contractual and financial interest in the

existence of the Water Licence and, as such, is directly affected by SLCN's application for judicial review. Greenview supports this position.

ISSUES

[13] SLCN raised certain evidentiary concerns. Those concerns must be addressed first, so that it is clear what evidence is relied upon when considering the remaining issues.

[14] The evidentiary and procedural issues that must be decided on this application are:

1. Should the Court rely on Greenview's written reply submissions?
2. Was ODL permitted to unilaterally redact the PSA?
3. What weight can be given to the PSA?
4. Are answers to undertakings sworn evidence?

[15] Once the evidentiary issues are decided, the remaining issues are:

5. Is ODL directly affected by SLCN's judicial review application?
6. Should ODL be granted intervenor status or added as a respondent to the judicial review?

WHAT EVIDENCE AND SUBMISSIONS CAN THE COURT RELY ON TO SUPPORT ODL'S APPLICATION TO STRIKE?

a) Greenview's Reply Submissions

[16] Because the application ran long, reply submissions were provided in writing rather than orally. In correspondence received after the reply submissions were submitted, SLCN suggested that the Court should disregard Greenview's reply because Greenview did not make full oral submissions in the first instance.

[17] Greenview is a party to the judicial review and the holder of the Water Licence. As such, they are entitled to participate fully in the application to strike. In any event, SLCN made full oral submissions, to which Greenview was entitled to reply.

[18] Part of Greenview's reply addressed an Alberta Court of Appeal decision released after the hearing that was directly relevant. Greenview's reply submissions were properly before the Court, and I have considered them in deciding this application.

b) The Redacted PSA and Mr. Palandjian's Answers to Undertakings

[19] SLCN submits that ODL improperly redacted the PSA. If they had wanted portions excluded, the proper procedure was to apply for a sealing order under Rules 6.28 to 6.36. Because they did not do this, the Court should either strike the PSA from the record or draw an adverse inference.

[20] ODL relies on ***Questor Technology Inc v Stagg***, 2022 ABQB 578 [***Questor***] for the proposition that parties may unilaterally redact information if it is privileged or irrelevant:

> [125] A party can redact portions of records that are privileged or otherwise not relevant: *Demb v Valhalla Group Ltd*, 2014 ABQB 554 at paras 60-61. The proper

> procedure is to disclose only the relevant portion of the document or disclose the entire document with a statement that the irrelevant portion, or the component that is not material, has been suppressed: *NWest Energy* at paras 31-32.

[21] ODL does not claim privilege over the PSA. Rather, they assert that they have produced the portions relevant to their application, and the rest is too commercially sensitive to disclose. The implication is that the redacted portions are irrelevant to their application to strike.

[22] A sealing order restricts the open court principle by preventing publication of or access to information contained in a court file. In ***Sherman Estate v Donovan***, 2021 SCC 25 at para 38 [***Sherman***], the Supreme Court of Canada set out the test that applies on an application for a discretionary restricted court access order:

> In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
>
> (1) court openness poses a serious risk to an important public interest;
>
> (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (citations omitted).

[23] It is ODL's position that, because they are not seeking to rely on the entirety of the PSA, the ***Sherman*** test does not apply. Further, the onus is on SLCN to bring an application to seek production of the full, unredacted PSA.

[24] In response, SLCN argues that the scope of any restricted court access order would be a consideration at the second step of the ***Sherman*** test. The onus is on ODL to prove that the PSA should be withheld from both the public and the adverse party (i.e., SLCN). If that onus is not discharged, then the Court could consider less restrictive options, such as filing redacted copies but permitting confidential viewing by the parties.

[25] Further, ***Questor*** dealt with redacted documents attached to an Affidavit of Records. According to SLCN, there is a difference between redacting records attached to an unfiled Affidavit of Records and redacting material that has been filed and is relied upon to dispose of an application. The former requires the adverse party to make an application for production, while the latter requires the party seeking redaction to make an application for restricted court access.

[26] In ***LC v Alberta***, 2016 ABQB 491 [***LC***], the Court made the following observations after a document was referenced in a filed affidavit, but the document itself was not produced:

> [36] A witness is rarely allowed to refer to part of an agreement or document in evidence, without actually producing the agreement or document. If there are contested portions of a document or agreement, the practice is to produce the

> agreement or document in an expurgated version, deleting privileged, confidential or irrelevant portions. Any issues concerning relevance, confidentiality or privilege can be determined by a judge looking at the whole of the document or agreement.
>
> [37] An opponent does not have to take the witnesses' word for what a document or agreement says or what is relevant in a document or agreement. Parties are entitled to see documents and agreements and determine for themselves what may be relevant to the issues and what interpretation should be placed on terms and conditions.

[27] In ***MBH v CKI***, 2023 ABKB 284 [***MBH***], the issues were whether a party can unilaterally redact a record that is disclosed in the context of questioning on an affidavit and, if so, whether the Court has the authority to compel full production of these redacted records. Justice Marion found that, pursuant to Rules 1.4 and 1.7 and the court's inherent jurisdiction, the Court has the authority to order the production of records that are disclosed through the affidavit process, rather than through the discovery process under Part 5: ***MBH*** at para 35. Further, absent agreement, a party may only unilaterally redact irrelevant information if it meets the following criteria:

> [43] For all these reasons, redactions should not be made lightly, and should not be made for strategic or tactical litigation purposes. Where practical, parties should discuss and attempt to reach agreement on specific redactions or the types of redactions. Otherwise, parties should only engage in redaction of non-privileged irrelevant information from otherwise relevant and material records where: (1) the redacted information is clearly irrelevant (that is, where there is no reasonable basis upon which an opposing party might assert it is relevant under the Rules); (2) as a matter of proportionality as contemplated by rule 1.2, the benefit of streamlining the production or protecting the irrelevant information (including the nature of the interest being protected by the redaction) outweighs the delay or costs which may be caused by the redaction process or the redaction itself; and (3) the redaction is sufficiently unconnected to the rest of the record so the redaction does not render the remaining record misleading or more difficult to understand.

[28] Finally, if there is a dispute about whether the information has been redacted improperly, "the appropriate approach is for the court to inspect the redactions at issue": ***MBH*** at para 36.

[29] There is clearly a dispute regarding whether the PSA has been redacted improperly. Thus, based on ***LC*** and ***MBH***, ODL should have requested that the Court review the PSA in its entirety and determine the relevance of the redacted portions. ODL's unilateral assertion of irrelevance is not conclusive of whether the redacted portions of the PSA are, in fact, irrelevant.

[30] A record is relevant and material if it can reasonably be expected to significantly assist in resolving issues raised in the pleadings or in identifying evidence for that purpose: ***Parks v McAvoy***, 2020 ABQB 675 at para 7. The issue raised in ODL's application is whether they are directly affected by SLCN's judicial review. ODL claims that they are directly affected because, by virtue of the PSA, they are contractually entitled to the Water Licence that is being challenged. In other words, the PSA is central to ODL's claim.

[31] The foundation of ODL's argument depends on the interpretation of their rights under the PSA. The modern approach to contractual interpretation requires individual contract provisions to be interpreted in light of the agreement as a whole. They cannot be examined in isolation. The words used in the contract must be given "their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": ***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53 at para 47 [***Sattva***]; see also ***Emond v Trillium Mutual Insurance Co***, 2026 SCC 3 at paras 43-45.

[32] In light of the obligation to interpret contracts as a whole, the entirety of the PSA is clearly relevant. It is the foundation of ODL's claim, and the proper interpretation of its terms requires access to the full document. However, a request for an order compelling full disclosure of the PSA has not been made. Rather, SLCN submits that the PSA should be struck or an adverse inference should be drawn against ODL.

[33] Rule 3.68(4)(a) permits the Court to "strike out all or part of an affidavit that contains frivolous, irrelevant or improper information." Whether to strike "the information in an affidavit or an exhibit is to be considered in the context of the litigation and the current issues before the Court": ***Green v Redlick***, 2023 ABKB 19 at para 47.

[34] An adverse inference is available "against a party that fails or refuses to bring forward evidence on a key point, upon considering various factors": ***Winslow v Thivierge***, 2026 ABKB 273 at para 85. Those factors are:

> • Whether there is a legitimate explanation for the failure to produce the document.
>
> • Whether the document contains material evidence.
>
> • Whether the document represents the only or best evidence on the issue in dispute.
>
> • Whether the document is within the "exclusive control" of the party, and is not "equally available to both parties" ...: see ***Stikeman Elliott LLP v 2083878 Alberta Ltd***, 2019 ABCA 274 at para 87 (Slatter JA in dissent); ***Greco v Calgary (City)***, 2025 ABKB 629 at paras 169-172.

[35] Although an adverse inference is discretionary, any refusal to draw one must be reasonable: ***Stikeman*** at para 88. Here, an adverse inference is unnecessary because the redactions already undermine ODL's ability to discharge their evidentiary burden.

[36] ODL insists on heavily redacting the PSA. In my view, they can rely on it at their own peril. As the applicant, ODL has the onus of providing evidence to establish that they are directly affected by the judicial review. The interpretation of the PSA is central to this determination. If they have not provided enough information for this Court to properly interpret the PSA in accordance with the modern approach to contract interpretation, they bear the consequence of that evidentiary deficiency.

[37] SLCN also takes issue with Mr. Palandjian's answers to undertakings. They contain statements that, according to SLCN, are self-serving and unsworn. As such, this Court should not rely upon them.

[38] In response, ODL points out that answers to undertakings form part of the questioning transcript and are, in fact, sworn evidence. They have provided conclusive case authority on this

point: ***McDonald v Sproule Management GP Limited***, 2023 ABKB 587 at para 41. As such, this is not a legal basis to disregard the evidence contained therein.

[39] However, the Court retains the ability to decide what weight to attribute to any individual piece of evidence. Mr. Palandjian's answers to undertakings will be considered in the overall weighing of the available facts.

[40] Thus, ODL is permitted to rely on both the redacted PSA and the answers to undertakings as evidence in this application to strike.

LEGAL PRINCIPLES: DIRECTLY AFFECTED

[41] Rules 3.15(2)-(3) provide that an originating application for judicial review must be filed and served on "every person or body directly affected by the application" within 6 months of the decision or act being reviewed:

> **Originating application for judicial review**
>
> **3.15(2)** Subject to rule 3.16 [*Originating application for judicial review: habeas corpus*], an originating application for judicial review to set aside a decision or act of a person or body must be filed and served within 6 months after the date of the decision or act, and rule 13.5 [*Variation of time periods*] does not apply to this time period.
>
> **(3)** An originating application for judicial review must be served on
>
> > (a) the person or body in respect of whose act or omission a remedy is sought,
> >
> > (b) the Minister of Justice or the Attorney General for Canada, or both, as the circumstances require, and
> >
> > (c) every person or body directly affected by the application.

[42] The filing and service requirements under Rule 3.15 are mandatory and must be strictly applied. Though it has been recognized that harsh consequences may flow from such a strict application, the Court has no discretion to vary or modify the timelines: ***Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)***, 2026 ABCA 188 at para 61 [***Bow Valley***]; ***Whitefish Lake First Nation #128 v Alberta (Minister of Environment and Protected Areas)***, 2025 ABKB 499 at paras 9-11, aff'd by 2026 ABCA 70 [***Whitefish Lake***]; ***Julien v Alberta (Appeals Commission for Alberta Workers' Compensation),*** 2023 ABCA 81 at para 13 [***Julien***]; ***Kainaiwa/Blood Tribe v Alberta***, 2024 ABKB 401 at paras 12-14 [***Kainaiwa***]; ***Enmax Corp v Alberta (Labour Relations Board),*** 2018 ABQB 431 at para 18 [***Enmax***]; ***Baker v Drouin***, 2017 ABQB 204 at paras 11-17.

[43] In other words, failure to meet the Rule 3.15 limitation period is a fatal defect that cannot be cured. Striking non-compliant applications reflect the principles of finality, certainty and efficiency: ***Tartal v Alberta (Human Rights Commission)***, 2023 ABKB 381 at paras 34-35, 51 [***Tartal***].

[44] When applying Rule 3.15(3)(c), the words "directly affected" must be given their ordinary meaning and are not subject to a restrictive interpretation: ***Bow Valley*** at para 62; ***Julien*** at para 8; ***Kainaiwa*** at para 42; ***Whitefish Lake*** at paras 24-25. Determining whether a person or body is "directly affected" is a highly fact dependent exercise: ***Bow Valley*** at para 62; ***Whitefish Lake*** at para 25. Further, a person or body claiming to be "directly affected" does not need to establish an adverse impact: ***Kainaiwa*** at paras 52-53; ***Whitefish Lake*** at para 16.

[45] Rights or interests that may support a finding that a person or body is "directly affected" for the purposes of Rule 3.15(3)(c) include: see ***Whitefish Lake*** at para 17:

- Property rights or ownership interests: ***Kainaiwa*** at para 53.
- Landowners whose use, enjoyment and property value would be implicated by the judicial review: ***Hazkar Developments Inc v Cochrane (Town)***, 2019 ABQB 552.
- Direct legal interests: ***Enmax***.
- In ***Enmax***, the determination of a group's employment status constituted a direct legal interest.
- Reputational or personal interests: ***Julien***; ***Tartal***; ***Kyambadde v Calgary Police Service***, 2024 ABKB 370.
- In ***Julien*** and ***Tartal***, there were allegations of discriminatory behaviour.
- In ***Kyambadde***, disciplinary proceedings engaged one of the party's professional reputation.
- A person or body entitled to appear before the original decision-maker: ***Enmax***.
- A person required to be served under the legislative scheme at issue: ***Douglas v NE2 Canada Inc et al***, 2025 ABKB 321.
- Contractual and economic relationship changes: ***Kainaiwa***.
- Direct financial interests: ***Julien***; ***Tartal***.
    - In ***Julien***, the Alberta Court of Appeal found that an employer who is a party in proceedings before the Workers' Compensation Appeals Committee is always directly affected by a subsequent judicial review. The risk of increased WCB premiums means that the employer has a direct financial interest in the outcome: ***Julien*** at para 8.
    - In ***Tartal***, Ms. Tartal alleged that a hockey association discriminated against her. If that complaint had merit, the hockey association might have to pay damages, which demonstrated the association's direct financial interest in the outcome of the judicial review: ***Tartal*** at para 67.

[46] However, it is clear that general community interests, potential commercial interests, remote interests, contingent interests or speculative interests do not qualify: ***Hazkar*** at para 45; ***Re Endowed Schools Act***, [1989] AC 477 (PC) at 483; ***Kainaiwa*** at paras 64-65; ***Bow Valley*** at paras 71-72.

[47] In Federal Court proceedings, "anyone directly affected by the matter in respect of which relief is sought" may apply for judicial review: ***Federal Courts Act***, RSC 1985, c F-7, s 18(1).

While not determinative, Alberta jurisprudence confirms that the Federal Court's interpretation of the phrase "directly affected" is "instructive" when considering the same phrase as it is used in Rule 3.15(3)(c): ***Kainaiwa*** at para 55; ***Whitefish Lake*** at para 21.

[48] Multiple Federal Court cases establish that potential commercial interests are insufficient to demonstrate that a person or body is "directly affected" by a judicial review: ***We Wai Kai First Nation v Canada (Minister of Fisheries, Oceans and the Canadian Coast Guard)***, 2023 FC 1259 at para 36, citing ***Laboratoires Servier v Apotex Inc***, 2007 FC 1210; ***Chinatown & Area Business Assn v Canada (Attorney General)***, 2019 FC 236 at para 70, citing ***Canwest Mediaworks Inc v Canada (Minister of Health)***, 2007 FC 752, aff'd by 2008 FCA 207. In ***Forest Ethics Advocacy Association v Canada (National Energy Board)***, 2013 FCA 236 [***Forest Ethics***], the Federal Court of Appeal considered whether Enbridge (the proponent of a pipeline project) and Valero (a company in a commercial relationship with Enbridge, who would benefit upon project approval) had direct interests that were impacted by a challenge to National Energy Board proceedings. Specifically, Enbridge had applied for NEB approval of its pipeline project: ***Forest Ethics*** at para 3. If approved, Valero would receive crude oil from western Canada. It would need to invest millions of dollars in order to upgrade its facilities and handle the increased supply. Valero also executed a transportation services agreement with Enbridge, which was contingent upon the project's approval: ***Forest Ethics*** at para 8.

[49] To decide the application, the Federal Court of Appeal interpreted Rule 303(1)(a) of the *Federal Courts Rules*, SOR/98-106. That rule requires an applicant to name "every person directly affected by the order sought in the application." To identify those who are directly affected, it must be considered "whether the relief sought in the application for judicial review will affect a party's legal rights, impose legal obligations upon it, or prejudicially affect it in some direct way": ***Forest Ethics*** at para 21.

[50] The Court determined that Enbridge, as the project proponent, would suffer direct prejudice if the judicial review were successful: ***Forest Ethics*** at para 24. However, Valero, as a company in a commercial relationship with the project proponent, had only a consequential or indirect financial interest in the judicial review: ***Forest Ethics*** at para 26:

> [26] Those in a commercial relationship with the proponent of a project who stand to gain from the approval of the project of course will suffer financially if the project is not approved. But that financial interest is merely consequential or indirect.

[51] In other words, the federal courts have repeatedly reached the conclusion that a person or body is not "directly affected" simply because they have a potential commercial interest in the outcome of the judicial review: ***Kainaiwa*** at para 64. Again, while the federal jurisprudence is "not directly analogous", it "seems reasonable that similar considerations would be relevant in assessing whether a party is directly affected by a decision" for the purposes of Rule 3.15(3)(c): ***Whitefish Lake*** at para 21; ***Kainaiwa*** at para 65.

[52] Recent Alberta caselaw is clear that remote, speculative or contingent interests also do not support a finding that a person or body is "directly affected" for the purposes of Rule 3.15. For example, in ***Whitefish Lake***, Whitefish Lake First Nation sought access to an area near Cold Lake that was owned by Alberta but controlled by Canada for military purposes. Canada could

grant access, but it required Alberta's consent. Alberta refused to discuss expanded access, and Whitefish Lake brought a judicial review application to compel Alberta to negotiate.

[53] Cold Lake First Nation had contractual access to the disputed area, as well as a contractual entitlement to be consulted if Canada contemplated providing access to other groups. However, Alberta's consent was a precondition to any expanded access decision made by Canada. Because Whitefish Lake was seeking an order that Alberta reconsider its refusal to negotiate, and Cold Lake's contractual rights were only triggered once Alberta negotiated and provided consent to expanded access, Cold Lake's interests were too remote to support a finding that they were directly affected by the outcome of the judicial review.

[54] Similarly, in ***Bow Valley***, the Stoney Nakoda First Nations challenged the Designated Director's refusal to consider whether an environmental impact assessment was warranted for certain proposed developments under two area structure plans. Stoney Nakoda served Three Sisters Mountain Village Properties, the proponent of the development, but not Thunderstone Quarries, a major landowner with significant development rights in one of the area structure plans.

[55] In chambers, Thunderstone successfully argued that it was "directly affected" by the judicial review of the Designated Director's decision and the applications were struck: ***Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)***, 2025 ABKB 158. However, the finding that Thunderstone was "directly affected" was reversed on appeal. The Alberta Court of Appeal went through the steps necessary to trigger an environmental impact assessment and concluded that any impact on Thunderstone "is too remote to 'directly affect' Thunderstone within the meaning of the rule": ***Bow Valley*** at para 64. Because there were several steps that would have to occur between the challenge to the Designated Director's decision and the potential impact to Thunderstone's rights as a landowner, its interests were too speculative to support a finding that it was "directly affected" by the outcome of the judicial review: ***Bow Valley*** at paras 71-72.

IS ODL DIRECTLY AFFECTED?

[56] It is undisputed that ODL was not served with SLCN's judicial review application. Thus, if ODL is a directly affected party within the meaning of Rule 3.15(3)(c), SLCN's application must be struck.

[57] In my view, ODL's claimed interests do not satisfy any of the "directly affected" categories reviewed above:

- *Property rights or ownership interests*: Greenview, not ODL, is the holder of the Water Licence. Though ODL claims certain ownership interests by virtue of the PSA, it is unclear whether those interests have vested. This is discussed further, below.

- *Landowners whose use, enjoyment and property value would be implicated by the judicial review:* SLCN's judicial review concerns the Water Licence, not GIG land ownership. Greenview, not ODL, owns the GIG lands in question. Though Greenview argues that the Water Licence is appurtenant to the land, the heavily redacted PSA does not permit a conclusion as to when the land, and the appurtenant Water Licence, will transfer to ODL.

- *Direct legal interests*: Unlike ***Enmax***, ODL's legal status is not implicated by SLCN's judicial review.
- *Reputational or personal interests*: Unlike ***Julien*** or ***Tartal***, there are no accusations of discriminatory behaviour. In fact, there is no suggestion from any party that the judicial review would impact ODL's reputation or image.
- *A person or body entitled to appear before the original decision-maker*: ODL did not submit the application for the Water Licence, nor did they participate in the EAB proceedings.
- *A person required to be served under the legislative scheme at issue*: There is no suggestion that ODL was entitled to service under a particular statute.
- *Contractual and economic relationship changes*: It is clear that ODL has a contractual relationship with Greenview. The heavily redacted PSA makes it uncertain whether that contract grants unrestricted rights to ODL which are capable of supporting a finding that they are "directly affected." This is discussed in more detail, below.
- *Direct financial interests*: Unlike ***Julien*** or ***Tartal***, there is no suggestion that ODL will have to pay anything, such as damages or increased premiums, if the judicial review is successful.

a) Trust Interest

[58] In its written submissions, ODL argues that it is directly affected because the PSA designates Greenview as ODL's agent and creates an arrangement whereby Greenview holds the Water Licence in trust for ODL. Pursuant to the trust, ODL is the beneficial owner of the Water Licence and is, therefore, directly affected by any challenge to it.

[59] The heading for section 4.4(b)(i) of the PSA does indicate that Greenview acts as ODL's agent, but I disagree that it creates a trust relationship between ODL and Greenview. An agency relationship does not automatically imply that a trust has been created: ***Edmonton Regional Airports Authority v Lynx Air Holdings Corporation***, 2025 ABCA 116 at para 26. Rather, to create a trust:

> …three elements must be present: (1) certainty of intent; (2) certainty of subject matter; and (3) certainty of object: *Air Canada v M & L Travel Ltd*, [1993] 3 SCR 787 (SCC) at para 23; *Okanagan Equestrian Society v North Okanagan (Regional District)*,2018 BCSC 800 (BCSC) at para 192. In order to find certainty of intention, there must be an imperative obligation to hold property on trust for the benefit of another: *BA Energy Inc, Re*, 2009 ABQB 647 (Alta QB) at para 14: ***Accel Canada Holdings Limited, Re***, 2020 ABQB 204 at para 41 [***Accel Canada***].

[60] Section 4.4(b)(i) indicates that Greenview will use "commercially reasonable efforts" to obtain the Water Licence and transfer it to ODL. It does not bind Greenview to transfer the Water Licence if it cannot be done using "commercially reasonable efforts." It contemplates an outright transfer of the Water Licence to ODL, but only if it can be accomplished in a "commercially reasonable" manner. In my view, section 4.4(b)(i) does not demonstrate "an imperative obligation to hold property on trust for the benefit of another": ***Accel Canada*** at para

41. Therefore, it does not create a trust interest capable of supporting a finding that ODL is directly affected by a challenge to the Water Licence.

[61] Recital R(iii) of the PSA also mentions a trust relationship. It indicates that Greenview holds the Water Licence “in trust” for ODL “until such time as the Water Approving Authority has consented to an assignment of such rights” to ODL. There is some uncertainty surrounding the weight that may be given to contract recitals during an interpretation exercise. Traditionally, unless there is an incorporation by reference, recitals do not constitute the operative part of a contract: see ***Guaranty Trust Co of Canada v Hetherington***, 1987 CarswellAlta 34 at para 102 (QB). Where not expressly incorporated, recitals “may only be referred to if the operative part of the agreement does not clearly disclose the intention of the parties”: ***Scurry-Rainbow Oil Ltd v Kasha***, 1996 ABCA 206 at para 44.

[62] Under this approach, it is clear that Recital R should not be considered. Because the PSA is so heavily redacted, it cannot be determined whether the recitals have been incorporated by reference. However, section 4.4(b)(i), which is an operative term, clearly discloses that there is no trust arrangement. Thus, consideration of Recital R(iii) is unnecessary.

[63] Under the modern approach to contractual interpretation, there is some indication that recitals form part of the surrounding circumstances of a contract. Therefore, express incorporation or ambiguity in the operative terms may not be required before recitals may be considered: ***Canada Wide Magazines Ltd v Columbian Publishers Ltd***, 1994 CarswellBC 1757 (SC).

[64] The Supreme Court of Canada is clear that contracts must be interpreted as a whole. Further, evidence of the surrounding circumstances should not be permitted to overwhelm the actual words of the contract, or to create an agreement where none otherwise exists: ***Sattva*** at para 57. Recital R is, at most, evidence of the PSA’s surrounding circumstances. It would be improper to rely on two isolated words in the recitals of a heavily redacted agreement in order to conclude that a trust is extant.

[65] In any event, a trust cannot be established with respect to property that does not exist at the time the trust is purportedly created: Donovan W.M. Waters, Mark R. Gillen and Lionel D. Smith, *Waters' Law of Trusts in Canada,* 5th ed (Toronto: Thomson Reuters Canada, 2021) at 5.III. The PSA, which ODL claims creates the trust, was executed in March 2025, but the Water Licence was not issued until April 2025. Therefore, it was impossible for the PSA to create a trust pertaining to the non-existent Water Licence.

[66] ODL has not proven that Greenview is holding the Water Licence in trust for them. This argument does not demonstrate that ODL is directly affected by SLCN’s challenge to the Water Licence.

b) Contingent Interest

[67] ODL asserts that, under the PSA, they are contractually entitled to receive the Water Licence from Greenview. Unfortunately, ODL submitted a version of the PSA that is heavily redacted, which makes it impossible to determine whether those contractual rights have crystallized. On the evidence provided, the only conclusion that can be drawn is that ODL’s contractual entitlement is contingent.

[68] For example, section 4.4(a)(i)(D) of the PSA requires Greenview to transfer the Interim Water Rights (as represented by the Water Licence) to ODL on the Phase One Closing Date.

There is no information about when that date will arrive. The phrase "Phase One Closing Date" is capitalized, which implies that it is a defined term within the PSA. However, the PSA's definitions section is redacted, which makes it impossible to determine the proper date with any certainty.

[69] If the Phase One Closing Date has not occurred, then Greenview's obligation to transfer the Water Licence has not yet been triggered. In other words, ODL's claimed contractual entitlement to receive the Water Licence remains contingent on the happening of some future event; namely, the passing of the Phase One Closing Date (whenever that may be).

[70] Similarly, section 4.4(c)(iii) of the PSA directs the parties to use commercially reasonable efforts to obtain sufficient evidence that the Water Licence <u>will be</u> transferrable to the Purchaser (i.e., ODL) in full at Closing. This language suggests that the transfer of the Water Licence is conditional and uncertain.

[71] Section 6.3(a) of the PSA indicates that ODL is not obligated to complete the Phase One transaction unless they receive "confirmation that all conditions necessary to transfer the [Water Licence] to the Purchaser have been met (the "Interim Water Rights Condition") at or prior to 5:00pm on the Interim Water Rights Condition Date."

[72] Again, the unredacted portions of the PSA do not permit a conclusion regarding when the Interim Water Rights Condition Date occurs. Thus, it is unclear whether ODL is even contractually obligated to complete the transaction. Further, this section clearly reveals that there are conditions attached to the Water Licence that must be satisfied before it can be transferred to ODL. Based on the available evidence, it is unclear what those conditions are or whether they have been satisfied.

[73] SLCN points out that ODL's contractual entitlement to the Water Licence is also conditional upon compliance with certain *Water Act* requirements. Under section 81, the transfer of an allocation of water under a licence requires an application to the Director, which is subject to the Director's discretion and includes a public review of the proposed transfer: see *Water Act*, ss 81(6), 82(1). This means that ODL's entitlement to the transfer of the allocation of water pursuant to the Water Licence is contingent upon the Director's discretionary approval of the application.

[74] In response, Greenview submits that the Water Licence is appurtenant to the land: *Water Act*, s 58. Thus, if the land is transferred, the Water Licence automatically goes with it. In this scenario, the only *Water Act* requirement is the provision of notice: see *Water Act*, s 80.

[75] Greenview is correct that the application procedure set out in section 81 of the *Water Act* only applies to the transfer of an allocation of water pursuant to the Water Licence. If the land to which the Water Licence is appurtenant is transferred, then section 80 applies, and the only requirement is notice.

[76] However, Greenview overlooks that, if the Water Licence vests in ODL because it is appurtenant to the land, then it must first be determined when ownership of the GIG lands vest in ODL. This, in turn, makes reviewing the entirety of the PSA even more important. However, once again, the PSA is so heavily redacted that it cannot be determined when the GIG lands and, as a result, when the appurtenant Water Licence, vests in ODL.

[77] There is other evidence suggesting that the GIG lands have not yet been transferred to ODL. For example, on August 18, 2025, Chief Sunshine wrote to Mr. Palandjian and specifically

asked him to prove GIG land ownership by providing a certificate of title. In Mr. Palandjian's August 21, 2025 reply email, he indicates that GIG lands <u>will be</u> acquired in the future. He does not provide a certificate of title.

[78] On January 29, 2026, Mr. Palandjian provided a letter to Chief Sunshine with multiple attachments. Among those attachments was "a description of the proposed project area, including current title ownership." However, that attachment merely provides the legal land descriptions for the area where the project will be located. It indicates that those parcels of land are either owned by Greenview or by Alberta, and that they "<u>will be converted</u> to privately-owned land or be subject to necessary land rights or dispositions for the benefit of the Project proponent prior to project use."

[79] This excerpt suggests that, even months after the deadline for service under Rule 3.15 had passed, ODL was still not the legal owner of the GIG lands in question. Importantly, no actual certificate of title showing ODL as the registered legal owner of the GIG lands has been produced. If it cannot be determined whether the GIG lands have vested in ODL, then it certainly cannot be determined whether the appurtenant Water Licence has vested in ODL. In other words, under the *Water Act*, the Water Licence can only be transferred from Greenview to ODL if: (1) the lands to which the Water Licence is appurtenant are transferred, or (2) a transfer application is approved by the Director. Based on the available evidence, neither of those triggering events has occurred.

[80] The record does not establish that ODL has a vested interest in the Water Licence, either contractually or through ownership of the appurtenant lands. In other words, ODL's asserted entitlement to the Water Licence remains contingent and uncertain. This type of interest does not support a finding that ODL is directly affected by SLCN's judicial review.

c) Speculative/Remote Interest

[81] In ***Bow Valley***, the Alberta Court of Appeal recently confirmed that speculative or remote interests are insufficient to establish that a person or body is "directly affected." In that case, to explain why Thunderstone's interests did not meet the standard, the Court stated:

> [71] There would be no potential impact on Thunderstone's land use until a regulator, based upon a completed process, issued a decision that altered the permission attached to the project. That would be the first instance at which Thunderstone would face any direct impact from the administrative decision maker on its land use.

[82] This case is similar. There is no potential impact on ODL until the unknown requirements of the PSA are satisfied, the *Water Act* requirements are satisfied, the Water Licence is successfully transferred to ODL, SLCN's judicial review is successful, and the Water Licence is quashed. To paraphrase ***Bow Valley,*** that would be the first instance at which ODL would face any direct impact from the judicial review on their interest in the Water Licence. This is simply too remote to support a finding that ODL is "directly affected."

[83] Interestingly, Greenview relies on this exact same ***Bow Valley*** paragraph to advance two arguments regarding why ODL's interests are not speculative or remote. First, because ODL has an interest in the very Water Licence that SLCN's judicial review seeks to quash. Second, because ODL's interest is detailed in the PSA. With respect, I disagree. ODL's interest is contingent, at best. Further, the agreement which purports to grant the interest is heavily

redacted. The Court is left to hypothesize when those contractual rights might crystallize. This is the very definition of an interest that is speculative or remote.

[84] SLCN cites ***Pure Canadian Entertainment LP v Alberta Gaming, Liquor and Cannabis Commission***, 2026 ABKB 370 [***Pure Canadian***] in support of its position that ODL's interests are too speculative or remote to support a finding that they are directly affected. In that case, the issuance of a casino licence was challenged, and the parent company of the licence holder argued that they were directly affected and should have been served. The Court concluded that the parent company was not directly affected because it was not the applicant for the licence, it was not the licence holder, and it had no substantive interest in the proceeding, other than as the licence holder's parent company: ***Pure Canadian*** at para 29. Similarly, ODL is neither the applicant for, nor the holder of, the Water Licence. It has no substantive interest in SLCN's judicial review, other than as a party who has a contractual relationship with the licence holder.

[85] Further, in ***Pure Canadian***, the Court reasoned that "a finding that a parent company is 'directly affected' by virtue of its ownership of a directly affected subsidiary would unduly expand the scope of r. 3.15(3)(c)": ***Pure Canadian*** at para 32. Similar reasoning applies here. A finding that a contractual relationship between the Water Licence holder and a third party makes that third party "directly affected" by a challenge to the Water Licence would expand the scope of Rule 3.15(3)(c) beyond its intended limits. To put it another way, a party is not directly affected merely because the judicial review may impose economic consequences, or because it has a contractual or corporate relationship with a party whose rights are directly engaged.

[86] Here, ODL is neither the licence applicant nor the licence holder. Their asserted interest arises only through their contractual relationship with Greenview and is engaged only if a series of preconditions are met. Any impact on ODL flowing from a successful judicial review is therefore too remote to make ODL "directly affected" within the meaning of Rule 3.15.

d) Commercial Interest

[87] ODL may have a potential commercial interest in the Water Licence being upheld. However, potential commercial interests are not enough: see ***Kainaiwa***; ***Forest Ethics***.

[88] This situation is analogous to ***Forest Ethics***. While I recognize that federal court jurisprudence is not directly applicable to the question before me, I agree with the comments in ***Kainaiwa*** that it is, nevertheless, instructive.

[89] In ***Forest Ethics***, the Federal Court of Appeal found that Enbridge, the project applicant, was directly affected. However, Valero, a company that was in a commercial relationship with Enbridge, was not. Though Valero stood to benefit financially from Enbridge's project, its interest was consequential or indirect. In other words, Valero's financial stake arising from its commercial relationship with Enbridge was not, by itself, sufficient to make it directly affected.

[90] Here, Greenview is directly affected because the judicial review challenges the Water Licence they hold. However, ODL, a company that is in a commercial relationship with Greenview, is not. Though ODL stands to benefit financially from a project that depends upon the existence of the Water Licence, that commercial interest is indirect.

[91] Further, ODL's commercial interest depends on a series of contingencies, including whether the project proceeds at all. In fact, as late as April 2026, when Mr. Palandjian was questioned on his affidavit, he stated that no final decision had been made to proceed with the

project. Thus, it seems that, even by ODL's own admission, their commercial interest is unconfirmed.

[92] Greenview argues that it is irrelevant whether a final decision has been made to go ahead with the project. Rather, the critical consideration is what rights ODL has and whether those rights will be impacted by SLCN's judicial review. However, this ignores the fact that ODL's entire argument for being "directly affected" is premised on its commercial interest and investment. They specifically say that their ability to develop the project will be compromised and their time and money investment will be lost.

[93] Further, regardless of whether ODL's interests are purely commercial in nature, I have already found that they are both contingent and speculative. Mr. Palandjian's ambiguous answers during the April 2026 questioning only adds to the speculation. Speculative, commercial interests are insufficient to support a finding that ODL is "directly affected."

[94] Finally, ODL argues that, because they are mentioned in SLCN's Originating Application, this proves that they are directly affected. However, it is clear that the references to ODL are meant to provide background and context only: ***Whitefish Lake***; ***Bow Valley***.

[95] In ***Kainaiwa***, the judicial review applicant's prior contact with a third party was one reason for finding that the third party was "directly affected." While it is true that there was prior contact between SLCN and Mr. Palandjian, ODL is a completely separate entity. And, when specifically asked about whether O'Leary Ventures had any interest in the licences held by Greenview, Mr. Palandjian was noncommittal. The evasive, prior contact with Mr. Palandjian is not enough to support a finding that ODL is "directly affected."

e) Insufficient Evidentiary Basis

[96] The point has been made throughout these reasons, but it bears repeating. Even if I was prepared to find that a potential contractual entitlement to receive the Water Licence from Greenview is enough to demonstrate that ODL is directly affected, ODL has not provided sufficient evidence to permit that conclusion.

[97] ODL unilaterally redacted the PSA and then urged me to rely on approximately ten isolated provisions in order to decide in their favour. This directly contradicts the Supreme Court's direction that contracts must be interpreted as a whole: see ***Sattva***. In other words, the evidentiary gap created by ODL's own redactions precludes a finding that it is directly affected within the meaning of Rule 3.15(3)(c).

f) Knowledge under Rule 3.15 and the Honour of the Crown

[98] All of the parties made lengthy submissions about the extent of SLCN's knowledge surrounding ODL's interest in the Water Licence and whether that knowledge is relevant for the purposes of determining if ODL is directly affected. SLCN also made submissions regarding constitutional principles and the Honour of the Crown. Because I have already determined that ODL has failed to prove that it is directly affected by SLCN's judicial review, strict conclusions on these issues are unnecessary. However, I do wish to make the following observations.

[99] ODL asserts that SLCN knew they were directly affected and chose not to attempt service. While SLCN suspected that Mr. O'Leary was involved in some way, it does not follow that they had knowledge of the underlying facts that was sufficient to permit a conclusion

regarding whether ODL was directly affected. In fact, at the time SLCN filed their judicial review, they did not even know that ODL existed.

[100] In his answers to undertakings, Mr. Palandjian indicates that he told Chief Sunshine at their January 2025 meeting that Greenview had applied for the Water Licence and had agreed to transfer it after it was granted (the answer does not indicate <u>who</u> Greenview agreed to transfer the Water Licence to). However, these January 2025 representations pre-date both the application for the Water Licence (February 2025) and the PSA (March 2025). It is unlikely that Mr. Palandjian discussed with Chief Sunshine matters that had not yet occurred.

[101] Chief Sunshine repeatedly asked for information about the AI Data Centre project, but it was not forthcoming. His requests for the PSA were refused, and it was never confirmed that any O'Leary representative was involved with the licences applied for or granted to Greenview. In August 2025, Mr. Palandjian specifically communicated that O'Leary did not hold any licences and, in both August 2025 and April 2026, Mr. Palandjian denied that a final decision to proceed with the AI Data Centre project had even been made.

[102] Every contact that SLCN had prior to the Rule 3.15 deadline was with Mr. Palandjian or O'Leary Ventures. Every media release that discussed the AI Data Centre referenced O'Leary Ventures. Every letter sent by Mr. Palandjian was on letterhead belonging to O'Leary Ventures. It is true that ODL existed. But, without cooperation from Mr. Palandjian or some other O'Leary representative, there was no information available to SLCN that would have permitted them to discover and serve ODL in its numbered form.

[103] In its reply submissions, Greenview submits that SLCN was required to take reasonable steps to ascertain all persons or bodies that were directly affected. Further, guidance from the Alberta Court of Appeal is clear that, if there is any doubt regarding whether someone is directly affected, then service should be completed: ***Julien*** at para 13. While I accept these as general propositions, SLCN clearly met that burden. They cannot be faulted for failing to serve a party that they did not know existed and whose representatives repeatedly denied having an interest in the matter. Further, this statement from the Court of Appeal was advice regarding prudent practice, not a pronouncement on the strict requirements of Rule 3.15: ***Pure Canadian*** at para 30.

[104] Greenview also asserts that imperfect service would have sufficed. Thus, even if SLCN did not know ODL existed, they could have served the O'Leary representatives that they knew about and then applied for an order validating the same.

[105] It is not an answer to say that SLCN could have served Mr. O'Leary or Mr. Palandjian or O'Leary Ventures. All of these are completely separate legal entities from ODL. None of them are parties to the PSA, which is what grounds the claim that ODL is directly affected. Though Mr. Palandjian and Mr. O'Leary are directors of ODL, serving them in order to effect service on an unknown numbered company would have been a complete guess.

[106] Further, it is debateable whether any of ODL's affiliates are even resident here. Mr. Palandjian appears to live in Florida. He swore his affidavit there and attended questioning virtually from there. O'Leary Ventures is an Ontario company, and there is no information about Mr. O'Leary's location. It is too onerous to expect SLCN to guess who they had to serve, attempt extra-provincial service, and then seek an order validating that service, when ODL would not

even confirm its alleged entitlement to the Water Licence. ODL cannot withhold basic information and then blame SLCN for failing to take additional procedural steps to discover it.

[107] Greenview also asserts that SLCN made no attempt to identify a contact or service address for ODL in the specific context of the judicial review. This is because, at the time SLCN filed its application for judicial review on October 7, 2025, ODL was not the name of any company that SLCN knew or could reasonably have identified. The company now known as ODL was then operating under its numbered corporate name, 2664755 Alberta Ltd., and did not adopt the ODL name until October 14, 2025, seven days after the judicial review was filed. It would be unreasonable to expect SLCN to guess that an unknown numbered company would later be renamed ODL and then assert an interest in the Water Licence.

[108] Finally, SLCN submits that Rule 3.15 must be interpreted with reference to the Honour of the Crown and the government's duty of diligent implementation of Treaty promises: ***Haida Nation v British Columbia (Minister of Forests)***, 2004 SCC 73 at para 16; ***Ontario (Attorney General) v Restoule***, 2024 SCC 27 at paras 254-263. Because the judicial review is the only remaining opportunity for SLCN to assert their constitutional and Treaty protected rights with respect to the Water Licence, an interpretation of Rule 3.15 that forecloses access to that forum raises constitutional concerns.

[109] Given that SLCN's judicial review will not be struck, it is unnecessary to decide these arguments. However, I agree that these issues raise valid and important constitutional concerns.

SHOULD ODL BE GRANTED INTERVENOR STATUS OR ADDED AS A RESPONDENT?

[110] In its application, ODL claimed the alternative relief of intervenor status or being added as a respondent.

a) Intervenor Status

[111] Intervenor status is discretionary decision governed by Rule 2.10:

> **Intervenor status**
>
> **2.10** On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

[112] Rule 2.10 involves a two-step test. First, the subject matter of the proceedings must be determined. Second, the proposed intervenor's interest in the subject matter must be determined, including whether the intervenor will be directly and significantly affected by the outcome, and whether the intervenor will provide some expertise or fresh perspective on the subject matter: ***Wilcox v Her Majesty the Queen in Right of Alberta***, 2019 ABCA 385 at paras 11-12. The following factors are relevant when considering the second step of the test:

> (a) Will the intervenor be directly affected by the outcome of the matter?
>
> (b) Is the presence of the intervenor necessary for the court to properly decide the matter?
>
> (c) Might the intervenor's interest in the proceedings not be fully protected by the parties?

(d) Will the intervenor's submission be useful and different or bring particular expertise to the subject matter of the appeal?

(e) Will the intervention unduly delay the proceedings?

(f) Will there possibly be prejudice to the parties if intervention is granted?

(g) Will intervention widen the /is between the parties?

(h) Will the intervention transform the court into a political arena?: ***Whitefish Lake*** at para 49; ***TransAlta Corporation v Alberta (Minister of Environment and Parks)***, 2023 ABKB 459 at para 8.

[113] The subject matter of the proceeding for which ODL requests intervenor status is a judicial review challenging the issuance of the Water Licence to Greenview. As previously discussed, ODL has only a contingent and speculative commercial interest in the outcome of the judicial review.

[114] In other words, it has already been determined that ODL is not directly affected by the judicial review. Further, ODL will not provide any expertise or fresh perspective on the subject matter. To the extent that the heavily redacted PSA is relevant to the judicial review, those arguments can be advanced by Greenview, the other party to the PSA.

[115] The specific factors also do not support granting ODL intervenor status. ODL's participation is unnecessary and would not assist the Court in assessing how the Water Licence affects SLCN's Treaty rights or consultation entitlement. There is also a substantial risk that ODL's involvement would complicate and delay the judicial review.

[116] I decline to grant ODL intervenor status.

b) Adding ODL as a Respondent

[117] Rule 3.75 governs the addition of a respondent to an action started by originating application:

Adding, removing or substituting parties to an originating application

3.75(1) In an action started by originating application no party or person may be added or substituted as a party to the action except in accordance with this rule.

(2) On application of a party or person, the Court may order that a person be added or substituted as a party to the action,

(a) in the case of a person to be added or substituted as an originating applicant, if consent of the person proposed to be added or substituted is filed with the application;

(b) in the case of an application to add or substitute a person as a respondent, or to remove or correct the name of a party, if the Court is satisfied the order should be made.

(3) The Court may not make an order under this rule if prejudice would result for a party that could not be remedied by a costs award, an adjournment or the imposition of terms.

[118] To be successful under Rule 3.75, ODL must demonstrate:

> (i) a sufficiently recognized legal interest in the outcome of the proceeding or that [their] substantive rights are directly affected;
>
> (ii) that it is just and convenient to grant party status, and
>
> (iii) that [their] interests will not be adequately protected unless [they are] permitted to participate as a party: ***Alberta (Attorney General) v Alberta (Court of Justice)***, 2026 ABKB 113 at para 75 [***Alberta (Court of Justice)***], citing ***McIver v Alberta (Ethics Commissioner)***, 2017 ABQB 695 at para 32.

[119] It has already been determined that ODL does not have a sufficient interest in the outcome of the judicial review, and certainly not one that is capable of supporting a finding that they are directly affected. It is neither just nor convenient to add ODL as a respondent, and any interest under the PSA that is potentially relevant to the judicial review is adequately protected by Greenview (the other contractual party).

[120] Being added as a respondent to the judicial review is the highest level of relief sought by ODL. If granted, ODL would become a party to the judicial review, with full participation rights: see ***Alberta (Court of Justice)*** at para 72.

[121] ODL has not provided any submissions regarding this high level of relief. As such, I decline to add ODL as a respondent to SLCN's judicial review.

CONCLUSION

[122] ODL's application to strike SLCN's judicial review is dismissed. ODL's connection to the Water Licence is both contingent and speculative, which cannot support a finding that they are directly affected by SLCN's judicial review application.

[123] ODL's alternative applications for intervenor status or to be added as a respondent are also dismissed.

[124] As the successful party, SLCN is presumptively entitled to costs. If the parties cannot agree on costs, they may provide written submissions of no more than five pages, not counting attachments, within 30 days of this decision.

Heard on the 8th day of June, 2026.
Dated at the City of Edmonton, Alberta this 13th day of August, 2026.

P. K. Johal
J.C.K.B.A.

Appearances:

Orlagh O'Kelly
Paul Daly
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