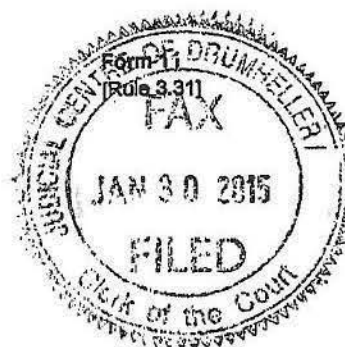


COURT FILE NUMBER 0702-00120
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE DRUMHELLER
PLAINTIFF JESSICA ERNST
DEFENDANTS ENCANA CORPORATION,
ENERGY RESOURCES
CONSERVATION BOARD, and
HER MAJESTY THE QUEEN IN
RIGHT OF ALBERTA
DOCUMENT STATEMENT OF DEFENCE
**PARTY FILING THIS
DOCUMENT** HER MAJESTY THE QUEEN
IN RIGHT OF ALBERTA
**ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT** ALBERTA JUSTICE
Civil Litigation
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Statement of facts relied on:

Introduction

1. The Defendant, Her Majesty the Queen in right of Alberta (the "Province"), states that each of the claims against the Province, contained in the in the Fresh Statement of Claim (the "Claim") filed on June 25, 2012, must fail.
2. The Province has insufficient information about, and hence takes no position respecting, the Plaintiff's claims against the Defendant, EnCana Corporation ("EnCana").

3. The action has been dismissed in its entirety with respect to the Defendant Energy Resources Conservation Board ("ERCB").

4. The Province denies every fact that the Plaintiff has stated in the Claim, and puts the Plaintiff to the strict proof of every such fact except the facts that the Province specifically admits in this statement of defence.

Admissions, Denials, and Responses

5. The Province admits the facts that the Plaintiff has stated at paragraphs 1, 2, 3 and 4 of the Claim.

6. With respect to paragraph 5 of the Claim, the Province admits the facts save and except for the fact that there is one clearly delineated aquifer known as the "Rosebud Aquifer". The Province states that there are likely a number of aquifers in the area of the Plaintiff's property and that supply of water to either her water well or to other water wells in the area may not necessarily be sourced by the same aquifer. Factors that might determine source of water include, but are not limited to, the depth of a well and the direction in flow of water within an aquifer.

7. The Province has insufficient information about, and hence takes no position respecting, the allegations contained within paragraphs 6 - 23 of the Claim.

8. The Province also has insufficient information about, and hence takes no position respecting, the allegations contained within paragraphs 24 – 58 of the Claim, which paragraphs have been struck by our Court of Appeal and are the subject to the Plaintiff's application to seek leave to appeal to the Supreme Court of Canada.

9. The Province agrees with the proposal set out in paragraph 89 of the Claim and agrees with the estimate that a trial will take more than 25 days, as set out in paragraph 90 of the Claim.

10. Respecting paragraphs 59 through 64 of the Claim, the Province admits that it has a statutory mandate, pursuant to the *Environmental Protection and Enhancement*

Act, RSA 2000, c. E-12 ("EPEA"), and the *Water Act*, RSA 2000, c. W-3 ("Water Act"), to support and promote the protection, enhancement and wise use of the environment and the conservation and management of water. In so doing, the Province has discretionary powers that include the power to investigate and take steps to compel third parties to take steps to ensure that the goals of these statutes are fulfilled. This legislation recognizes that the Province must also be mindful of competing interests such as the need for economic growth and prosperity, and also recognizes that this is a shared responsibility of all Albertans. The Province denies that it made any specific representations to the Plaintiff, other than to communicate the general role of the Province as mandated by these statutes. In carrying out these duties, the Province has a public duty to all Albertans, and does not owe a private duty to each Albertan as an individual, particularly if that private duty would conflict with the public duty.

11. The Province was not, at all material times, the regulator of coalbed methane ("CBM") drilling activities. The responsibility for this oversight rested with the ERCB. The Province did not provide initial approval for such drilling, nor did it provide ongoing monitoring of such drilling activity, as this was not part of its statutory mandate. The Province was responsible for any specific complaints that arose as to the potential effect of such activity on the environment. In this case, a specific complaint was made with respect to the presence of methane in the Plaintiff's residential water supply. The Province's role would be to investigate this complaint and ascertain whether it was reasonable to find a breach of the EPEA and, if so, what compliance orders, if any, could result and against whom. The involvement of the Province is a complaints driven process.

12. In response to the Plaintiff's claims of negligence as against the Province, the Province states that:

- (a) The Province does not owe any duty of care to the Plaintiff, whether under statute or common law; and,
- (b) In the alternative, if the Province owed any duty of care to the Plaintiff, whether under statute or common law, which the Province does not admit

but rather denies, then the Province did not breach any standard of care that applied to any such duty of care.

13. Respecting paragraphs 73 through 80 of the statement of claim, in so far as a combination of those paragraphs contain or contains any claim of tortious conduct, whether positive act, omission, or both, as against the Province, the Province denies any such claim as against it as alleged or at all.

14. The Province responded to the Plaintiff's complaint about potential contamination of her water supply in a timely fashion and in so doing conducted a reasonable investigation which included the collection and analysis of water samples by both employees of the Province and independent laboratories and scientists. In the end result, there was insufficient evidence to support enforcement action against EnCana or any other entity or person.

15. The Province responded to requests by the Plaintiff for information throughout its investigation and provided the Plaintiff an opportunity to provide input into the investigation.

16. The Province did, at all material times, exercise the discretion afforded to it under the EPEA and the Water Act in a reasonable and appropriate manner, and at all times in good faith.

Chronology of Key Events

17. In or around October 2004 the Plaintiff contacted the Province with respect to a general matter, suggesting that the Province should regulate coalbed methane ("CBM") exploration and its potential impact, but with no reference to any specific impact on her property. The Province's process with respect to general concerns was to forward them to a provincial expert who provided information and advice when warranted. Around the same time the Plaintiff had noise complaints about CBM activity which were made to, and addressed by, the ERCB without involvement by the Province.

18. In or around February 2005 the Province received a complaint from the Plaintiff with respect to potential contamination of her water well. At this point in time the

Province had a process to deal with public complaints related to personal well water. Specific concerns obligated a licensee (i.e. EnCana) to do an initial investigation. The licensee and complainant would attempt to resolve the issue as between them. The Province understood that at this point in time the Plaintiff was not asking the Province to intervene but was working with EnCana to address specific concerns. The Province provided contact information and made resources available if necessary.

19. In or around November 2005 the Province received further complaints from the Plaintiff and at this point the Province commenced its own investigation.

20. As part of this investigation, the Province initiated contact with the Plaintiff in or around March 2006 for the purposes of arranging the inspection of her water well and providing for temporary measures to ensure a supply of drinking water for the Plaintiff. Independent consultants and laboratories were retained by the Province to assist in this investigation. Sampling that had been conducted by an independent laboratory and further analyzed by another independent source determined that while methane levels were higher than expected, that this might reflect natural characteristics of the aquifer itself. The conclusion was reached that isotope values indicated that methane levels in water wells were not sourced from any of the EnCana deep gas and CBM wells that had been tested.

21. During its investigation, the Province worked with both the Plaintiff and EnCana to have all parties provide further information and input into the investigative process.

22. In or around April 2006, the Province and the Plaintiff exchanged correspondence for the purpose of re-sampling the Plaintiff's water supply from her well. The Province indicated to the Plaintiff that it was, and always had been, willing to work with her to arrange for sampling and to have her own expert included in this process. Again in May 2006, the Province attempted to obtain additional samples from the Plaintiff's water supply for further and different analyses. At this time the Province again invited suggestions from the Plaintiff as to this further testing.

23. By July 2006, the Plaintiff was making complaints to the Province about the method and manner of its investigation and the Province was fully responsive to these

complaints. At this time the Province reminded the Plaintiff that the Province wanted to do further testing and was still looking for the Plaintiff's confirmation of her approval of such further testing. The Province indicated to the Plaintiff that it was still prepared to work with her on issues such as sampling methodology, testing agency, with all costs to be paid by the Province.

24. Further, in or around July 2006, the Province advised the Plaintiff that no testing conducted to date of either the Plaintiff's water supply, or other water supplies in the Rosebud area, had concluded that CBM activity had impacted those water supplies. A report was released with respect to the Hamlet's water supply system and it was found to be in compliance of both the Provincial and Calgary Health Region requirements, and there was no evidence of any adverse health impact from CBM operations.

25. In or around October 2006 the Plaintiff was asking the Province to delay further testing of her water well, as her own consultants were not available and she wanted them present to observe the sampling.

26. In or around April 2007 the Plaintiff was still insisting on certain conditions being met prior to her consenting to further testing of her water supply. The Province was also advised by EnCana that the Plaintiff had not responded to its request to have access to the Plaintiff's property to conduct testing.

27. On or about June 1, 2007 the Province had made concrete plans for further testing of the Plaintiff's well. Sampling was eventually completed and the Province's data was provided to ARC for analysis. The Province provided its entire investigation file to ARC to facilitate this independent analysis and did not withhold any documentation as alleged by the Plaintiff. ARC concluded that findings could not be linked to CBM activity. ARC arrived at its own conclusions in this regard and said conclusions were not influenced by, nor directed by, input from the Province, in contradiction to allegations made by the Plaintiff in the Claim. Analytical results from ARC were provided by the Province to the Plaintiff.

28. Due to the findings and lack of evidence to support any further compliance actions by the Province towards EnCana or any other entity or person, the Province

concluded its investigation of the Plaintiff's water supply and closed its file in or around January 2008.

Matters that defeat the claims of the Plaintiff:

29. At all times relevant to the matters contained in the statement of claim, the Province acted reasonably, in good faith, and in accordance with applicable legislation and the common law.

30. No act or omission of the Province caused any contamination of the Plaintiff's water supply or any other contamination of her property.

31. At no time relevant to the matters contained in the statement of claim did the Province ever commit any act, or fail to act in any way, in contradiction to the law as provided for under the relevant legislation, the common law, or otherwise.

32. At all times relevant to the matters contained in the statement of claim, the Province properly exercised the discretion that was provided to it by common law, or otherwise.

33. The Province states that:

- (a) The Plaintiff has not suffered any loss or damage as alleged in the statement of claim or at all;
- (b) further, and in the alternative, if the Plaintiff has suffered any loss or damage as alleged in the statement of claim or at all, which the Province does not admit but rather denies, then no act or omission of the Province caused any such loss or damage;
- (c) further, and in the alternative, if the Plaintiff has suffered any loss or damage as alleged in the statement of claim or at all, which the Province does not admit but rather denies, then any such damage is the result of chemicals that naturally occur in the water source into which the Plaintiff drilled her water well, and were in no way a result of any acts or omissions on the part of the Province or any other entity or person;

- (d) further, and in alternative, if the Province caused any loss or damage as alleged in the statement of claim or at all, which the Province does not admit but rather denies, then acts or omissions of the Plaintiff, or another party or parties, contributed to any such loss or damage;
- (e) further, and in the alternative, if the Province caused any loss or damage as alleged in the statement of claim or at all, which the Province does not admit but rather denies, then the Plaintiff took no reasonable step to mitigate any such loss or damage; and
- (f) further, and in the alternative, if the Province caused any loss or damage as alleged in the statement of claim or at all, which the Province does not admit but rather denies, then any such loss or damage is excessive, too remote, or otherwise not recoverable from the Province.

34. Further, and in the alternative, if the Plaintiff did incur any loss or damages as alleged in the statement of claim, or at all, which the Province does not admit but rather denies, then any such loss or damages were caused solely or substantially contributed to by the negligence of EnCana, for which the Province is not liable.

35. The Province states that it has fulfilled the duties and obligations mandated by either or both of the EPEA and the Water Act.

36. The Province specifically denies the allegations of bad faith contained in paragraphs 73 through 80 of the Claim. The Province's employees conducted themselves in a professional manner and were cooperative and courteous in providing timely responses to requests, enquiries, and demands made by the Plaintiff. The resources provided by the Province in responding to the investigation of the Plaintiff's contamination complaint were ample and significant. The Province denies that its conduct in the matters alleged in the Claim support a claim for punitive, exemplary or aggravated damages.

37. To the extent that the Plaintiff has commenced an action for damages relating to the actions or omission of one or more of the persons identified under section 220 of the

EPEA or section 157 of the Water Act, the Province states that these sections bar the Plaintiff from commencing any such action against the Province, pursuant to s. 5(4) of the *Proceedings Against the Crown Act*, RSA 2000, c. P-25.

38. In addition to the statutes already identified above in this statement of defence, the Province also pleads, and relies on:

- (a) the *Proceedings Against the Crown Act*, RSA 2000, c P-25, as amended, including in particular sections 5 and 6;
- (b) the *Tort-feasors Act*, RSA 2000, c T-5, as amended, including in particular section 3;
- (c) the *Contributory Negligence Act*, RSA 2000, c C-27, as amended, including in particular sections 1 and 2;
- (d) any other relevant statute; and
- (e) any relevant regulation issued pursuant to any relevant statute.

Remedy sought:

39. The Province respectfully requests that this Honourable Court dismiss the Plaintiff's action as against it, with costs.