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	Agent for the Appellants		
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	Counsel for the Proposed Interveners, Donna Frances Dahm and Robert Pius Plowman		
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To:	**Sally Gomery** Agent for the Proposed Interveners, David Asper Centre for Constitutional Rights, University of Toronto Faculty of Law		
Company:	Norton Rose Fulbright Canada LLP	**City/Country:**	Ottawa, ON
Fax Number:	**(613) 230-5459**	**Phone Number:**	(613) 780-8604
Date:	October 15, 2015		
Re:	JENSEN re **SCC 36167** ***Ernst v. Alberta Energy Regulator***		
Total Pages:	4 (including cover)		
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Dear Counsel:

Please see attached letter in response to the Applications for leave to intervene of the British Columbia Civil Liberties Association and the David Asper Centre for Constitutional Rights, University of Toronto Faculty of Law.

JEFFREY W. BEEDELL

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VIA FAX

October 14, 2015

Roger Bilodeau, QC
Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Dear Sir:

Re: Jessica Ernst v. Alberta Energy Regulator
Response to Intervener Motions in SCC Court File No. 36167

We represent the Respondent, Alberta Energy Regulator ("AER"), in this appeal. We respectfully submit this letter as our response to the Applications of The British Columbia Civil Liberties Association ("BCCLA") and The David Asper Centre for Constitutional Rights, University of Toronto Faculty of Law ("Asper Centre") for leave to intervene in this appeal. We repeat and adopt our statements of the applicable law, as set out in our letter dated October 1, 2015, in response to the Applications to intervene in this Appeal brought by 1) Donna Francis Dahm ("Dahm") and Robert Plus Plowman ("Plowman"), and 2) The Canadian Civil Liberties Association ("CCLA").

The Respondent does not oppose the applications of the BCCLA or the Asper Centre (subject to the comments below). The BCCLA and the Asper Centre are not tied to the interests of any party to this appeal. The BCCLA has an obvious longstanding and respected history of advocating for the recognition and expansion of Charter rights, a sound history of appearing before this Honourable Court on such issues, and an undeniable track record of providing a useful and helpful perspective to the Court. The Asper Centre's history, while somewhat shorter, is equally deserving of respect.

The CCLA, the BCCLA and the Asper Centre all seem to take a highly similar position. Given that the Respondent must argue a number of issues in this Appeal, there is a real prospect that the Interveners will have more pages and time dedicated to the Charter remedies issue than the Respondent will.

Having regard to the need to ensure Interveners do not introduce new facts or enter the fray between the parties, it is noted that in paragraph 20 of its Memorandum of Argument the Asper Centre states:

> 20. The courts below recognized that the appellant's Charter claim makes out a valid cause of action.

The Court of Queen's Bench in this Action, 2013 ABQB 537 at paragraph 42, stated:

> To a certain extent, a claim for a Charter breach is based upon the establishment of a right and an infringement of it by the action of a government or government agency. That is what is

alleged here and, however novel the claim might be, I cannot say that it is doomed to fail or that the claim does not disclose a cause of action.

The Court of Appeal in this Action, 2014 ABCA 285 at paragraph 6, stated:

> [6] The Board argued that the Charter right of "freedom of expression" did not extend so far as to create a "right to an audience". It argued that the appellant's right to express her views was never impeded, and that it had no duty under the Charter to accommodate whatever form of expression the appellant chose. The chambers judge concluded, however, that the damages claim for breach of the Charter was not so unsustainable that it could be struck out summarily (reasons, paras. 31-43).

These are not findings that the "appellant's Charter claim makes out a valid cause of action", but only that the claim is not doomed to fail. Whether the "appellant's Charter claim makes out a valid cause of action" is an issue between the Appellant and the Respondent, as it has been at every level until now. The Interveners should have no place in addressing that pleadings issue.

The Respondent submits that the CCLA's, BCCLA's and Asper Centre's submissions should not be duplicative of any party's, or any other Intervener's, submissions, should not seek to introduce new facts or issues, and should be limited to 5 pages each. None of them should seek or be granted costs. Only once the Court has reviewed the Interveners' Factums should it be decided whether the Interveners should be granted leave to make oral representations, in which case those should be limited to 5 minutes. The Respondent seeks leave to submit a reply Factum to the Interveners' Factums not exceeding 10 pages.

Yours truly,

Jensen Shawa Solomon Duguid Hawkes LLP

as agent for

GLENN SOLOMON, Q.C.
GS:lj

cc: Murray Klippenstein & W. Cory Wanless, Counsel for the Appellant, Jessica Ernst
Christopher M. Rupar, Counsel for the Intervener, Attorney General of Canada
Graeme G. Mitchell, QC, Counsel for the Intervener, Attorney General for Saskatchewan
Jonathan G. Penner, Counsel for the Intervener, Attorney General of British Columbia
Robert Desroches & Carole Soucy, Counsel for the Intervener, Attorney General of Quebec
Avnish Nanda & Dev S. Nanda, Counsel for the Proposed Intervener, Donna Frances Dahm and Robert Pius Plowman
Stuart Svonkin, Brendan Brammal & Michael Bookman, Counsel for the Proposed Intervener, Canadian Civil Liberties Association
Ryan D.W. Dalziel & Emily C. Lapper, Counsel for the British Columbia Civil Liberties Association
Raj Anand, Cheryl Milne and Sally A. Gomery, Counsel for the Proposed Intervener, The David Asper Centre for Constitutional Rights