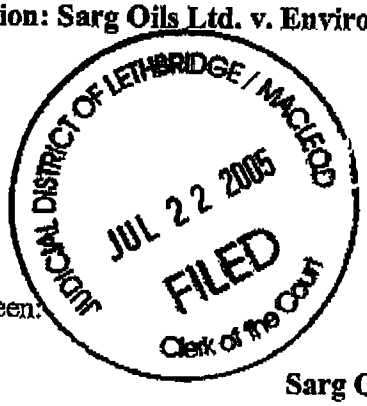
# Court of Queen's Bench of Alberta

**Citation: Sarg Oils Ltd. v. Environmental Appeal Board, 2005 ABQB 553**




**Date:**
**Docket:** 9706 00570
**Registry:** Lethbridge/Macleod

Between:

**Sarg Oils Ltd. And Sergius Mankow**

Applicants

- and -

**Environmental Appeal Board, The Director of Land Reclamation, The Minister of Environmental Protection and The Attorney General for the Province of Alberta**

Respondents

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**Memorandum of Judgment**
**of the**
**Honourable Mr. Justice J.H. Langston**

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[1] In 1985 Sarg Oils Ltd. (Sarg) purchased 16 oil wells which were nearing the end of their productive lives. After attempting to prolong production in six of the wells, Sarg, in 1988 sold its interests in all wells to Sundial Oil and Gas Ltd. (Sundial). These wells had previously been operated by at least ten separate resource companies. Before completing the sale Mr. Mankow, Sarg's owner, checked with the Energy Resources Conservation Board (ERCB) to ensure that Sundial was capable of taking a transfer of the well licenses. The ERCB confirmed Sundial's capacity. In order to complete the sale Sundial needed to register the transfer and assignments for the surface leases, well licenses and pipeline leases relating to the wells. All but the well licenses were successfully registered.

[2] Unknown to Sarg, Sundial intended to sell its interests to 3D Enterprises (3D) after Sundial, Petencow Resources Ltd. and 3D shared in the proceeds of the sale of all of the

equipment on the sites. Also unknown to Sarg was the fact that pursuant to the agreement between Sundial and 3D, the transfer of well licenses from Sundial to 3D was also submitted to the ERCB for approval. The ERCB was holding up the transfer from Sarg to Sundial because it could not transfer the licenses from Sundial to 3D because 3D did not meet the requirements of the *Oil and Gas Conservation Act.*

[3] By the spring of 1989 all equipment on the well sites had been removed by Sundial but the wells were not formally abandoned. Because 3D did not meet the ERCB requirements, it appears Sundial instructed the ERCB to not register the transfers relating to its purchase from Sarg. The result was that Sarg remained the licensee of record in relation to the now inoperable wells, even though it had purported to divest itself of all ownership and had transferred, to Sundial, all interest in the wells and sites including the petroleum and natural gas rights, pipeline licenses, leases, surface rights and all equipment on site.

[4] The regulation of oil wells is a complex matter which now falls under the jurisdiction of the Energy and Utilities Board (EUB), the successor to the ERCB. When oil wells become inoperative they must be "abandoned". This process involves decommissioning the well, sealing it off and dealing with subsurface and surface structures. The process can be expensive.

[5] In October of 1991, since Sarg was still the licensee of record, the ERCB ordered Sarg to abandon the wells before May 31, 1992. When Sarg failed to do so the ERCB, as it was entitled, had the work done and looked to Sarg for repayment of the costs in the amount of $226,000.00. Subsequently a Statement of Claim for that amount was issued in October of 1994.

[6] In addition to the requirements related to the abandonment of well sites there are environmental standards which must also be met. Alberta Environment concluded that the well sites had been inadequately cleaned up and on September 9, 1994, 16 Environmental Protection Orders were issued requiring Sarg and Mr. Mankow to undertake the necessary site cleanup.

[7] On September 19, 1994, Sarg and Mr. Mankow appealed these Orders by filing Notices of Objection with the Environmental Appeal Board (EAB). The grounds of objection were that Mr. Mankow was never an "operator" within the meaning of the Act; that neither Mr. Mankow nor Sarg carried out any activities on the sites as designated in the Act; that any activities on the sites were carried out by predecessors or successors of Sarg; that Sarg remained as the registered licensee only because of errors and omissions of the ERCB in relation to transfers of the licenses from Sarg to Sundial; and because Sarg disposed of all of its interests in the sites in 1988, it had no legal standing to undertake any activities on the sites.

[8] After making inquiries of the ERCB relating to the position advanced by Sarg and Mr. Mankow, the Environment Appeal Board, without oral hearings, on May 11, 1995, upheld the Environmental Protection Orders and dismissed the Notices of Objection.

[9] On July 13, 1995, Sarg and Mr. Mankow sought judicial review of the Environmental Appeal Board's decision. On March 29, 1996, Mr. Justice Lomas of the Court of Queen's Bench

concluded that there had been a denial of natural justice because of the failure to hold an oral hearing or to advise that no oral hearing would be held, thus allowing further representation by the parties.

[10] Justice Lomas directed the following:

> The Board decision is therefore quashed and the Notices of Objection are referred back to the Board for further consideration in accordance with this judgment. As the Board will now further consider the other matters raised by the Applicants and make its recommendations in respect thereof, I make no findings with respect to them.

[11] The hearing directed by Justice Lomas took place on November 5 and 6, 1996. On December 5, 1996, the Board sent its report and recommendations to the Minister, recommending that the Environmental Protection Orders be upheld. On December 16, 1996, the Minister of the Environment dismissed the Appeals, accepting the Board's recommendations.

[12] Sarg and Mr. Mankow had requested that the EAB obtain records from the ERCB in relation to the operating history of the wells and in relation to Sundial's dealings in relation to the transfer of interests. None of this information was sought or obtained by the EAB.

[13] Sarg and Mr. Mankow applied for judicial review of this second EAB ruling on May 12, 1997. However this review was adjourned pending resolution of the outstanding litigation relating to the costs of the abandonment activities undertaken by the ERCB on Sarg's behalf, that is the action for $226,000.00. In that action Sarg and Mr. Mankow contended that their obligation to pay was related to the fairness of the ERCB's determination that Sarg remained on record as the licensed operator. During the course of this action, in relation to the abandonment costs, and after the EAB had released its second decision, certain ERCB documents came to light which Sarg and Mr. Mankow contended supported their position that others should properly be classified as the operators of these wells and more specifically that Sundial was such an operator.

[14] The trial of the abandonment costs action began on March 16, 1998 before Mr. Justice Lutz who on September 23, 1998 dismissed the ERCB's claim and found that the process by which Sarg was left as licensee of record, in relation to these wells, was unfair. The subsequent Appeal by the ERCB to the Court of Appeal was allowed. The Court of Appeal found that the manner in which Sarg chose to deal with the issue undermined the integrity of the administrative system which was the foundation for the ERCB's jurisdiction. The Court concluded that this amounted to a collateral attack. The Court of Appeal held that Sarg had not made its fairness argument to the Board and therefore the Board did not have a chance to address those issues. In essence the procedure followed by Sarg meant that the Courts were also deprived of the benefit of the Board's views. Further, the direction taken by Sarg effectively allowed the Courts to usurp the Board's responsibilities. The Court of Appeal stated that the proper procedure for Sarg to follow was an Appeal to the Board followed by an application for judicial review.

[15] An application for leave to appeal to the Supreme Court of Canada was dismissed on March 20, 2003.

[16] The issue in relation to the costs of the well abandonments has been concluded and therefore the matter presently before this Court is the judicial review of the second EAB ruling which was issued on December 5, 1996, and accepted by the Minister of Environment on December 16, 1996, in relation to the 16 Environmental Protection Orders which were issued on September 9, 1994.

[17] On the Appeal before the Environmental Appeal Board Sarg and Mr. Mankow took the position that there was minimal activity on only some of the well sites and all interests in all well sites had been sold shortly after their acquisition. Counsel for the Appellants argued that while the Appellants may technically fall within the definition of operator, for some of the wells, they did not fall within that definition for all of the wells. They contended that Sundial did fall within the definition of operator and that, by any definition, Sundial was more truly the operator of these well sites. They argued that it was an improper exercise of discretion, in these circumstances, to target Sarg and Mr. Mankow with all of the reclamation costs associated with these well sites. Counsel for the Appellant pointed to the fact that a number of flare pits and salt water pits, associated with the battery sites, were never used by Sarg but they had been extensively used by predecessor operators.

[18] Mr. Mankow testified that he acquired the wells in 1986 from Bankeno Resources Ltd. (Bankeno). The wells were originally drilled in the early 1950's. According to Mr. Mankow he refurbished six of the wells and two of the battery sites and obtained limited production from those sites. He did not use the salt water pits nor the flare pits. The other sites were not producing and required only ground maintenance, that is, the cutting of weeds and grass. In essence Mr. Mankow spent $111,000.00 to gain $12,000.00 in revenue. He valued the well sites at approximately $370,000.00 at the time he sold his interests to Sundial. At the time of the sale to Sundial he made inquiries of the ERCB and determined that Sundial could hold well licenses. Mr. Mankow was first aware that the well licenses had not gone through in the spring of 1988. By 1989 he was aware that Sundial had done work on the well sites. Mr. Mankow testified that he checked with the ERCB in March of 1989 and was advised that the well licenses should have been transferred. A further check revealed that the ERCB had received the wrong fee from Sundial. In response Mr. Mankow sent in the proper fee. Later the ERCB attempted to return the fee but Mr. Mankow refused to accept it. Mr. Mankow testified that he never received any formal indication as to why the well license transfer had not been approved. He subsequently learned that there was a requirement for a "corporate introduction" before the license could be transferred. Mr. Mankow also learned that there was a subsequent transfer by Sundial to 3D Enterprises which was not a registered corporation. This apparently was one of the reasons that the well license transfer from Sarg to Sundial was refused.

[19] Mr. Mankow was aware that any transfer of license had to have the consent of the ERCB. The properties were sold to Sundial for $30,000.00, inclusive of all equipment on site.

[20] Mr. Mankow testified that a transfer of this type, in his experience, normally took two to three months to clear through the ERCB. It was clear at the time of the Appeal that Mr. Mankow knew that he was still listed on the records of the EUB as the licensee for the various sites.

[21] Eugene Harrison, the Inspector in this case, testified that he is employed with the Government of Alberta in the Land Reclamation Division of Environmental Protection. Mr. Harrison was the Inspector who issued the 16 Environmental Protection Orders. Mr. Harrison testified that his department's involvement with well sites occurs at a time when the sites are abandoned. His department oversees the surface reclamation which is required for each of those sites. Mr. Harrison described that in 1989 his department became involved after receiving complaints from land owners in the area. Upon examination it appeared that the sites were not active. Inquiries were made of the ERCB as to the ownership of the well sites and Sarg was identified as the operator or licensee listed with the ERCB. Environmental Protection would have deferred to the ERCB, at that point in time, since surface reclamation was not an issue at that time. It would appear that the nature of the initial complaints from area farmers related more to the issue of rental payments and lease payments. By 1991 the EUB was in the process of issuing orders to Sarg to abandon the wells, and this then prompted Mr. Harrison's department to become involved. By 1993 it was obvious that the wells were being decommissioned and this then prompted Mr. Harrison's department to inspect the sites for environmental concerns. It was obvious that the sites would not meet environmental standards. Mr. Harrison testified that in his discussions with Mr. Mankow, Mr. Mankow elaborated on the fact that he should not be seen as the license holder, because of the sale to Sundial. Although Mr. Harrison was aware of Mr. Mankow's allegations that other operators had undertaken activities on the site pursuant to the Agreement with Sundial, Mr. Harrison, as was his department's policy, relied on the EUB records to determine who should be held accountable for reclamation of the land. Those records showed Sarg and Mr. Mankow as the registered well licensees. Also called to testify was David Lloyd, another employee of the Environmental Protection Department, who testified that his department relies on the records from the EUB in order to determine responsibility for environmental cleanup. Mr. Lloyd testified as to the Orphan Well Program which was implemented in 1992 and he related that as a result of discussions with the industry it was determined that the licensed operator should bear the responsibility for environmental cleanup. This witness confirmed that these 16 EPO's were the first set of EPO's that were issued under the new Orphan Well Program. He confirmed that, while others may be looked to for some responsibility for well site cleanups, the departmental decision was to focus on those parties or individuals who were defined as the license holders by the EUB. It is clear that Mr. Harrison made no inquiries nor demands of Sundial or it's principles, in relation to the reclamation of these well sites. Mr. Harrison confirmed that they were aware that Sundial was the party who last owned the petroleum and natural gas rights in relation to these well sites. Despite this knowledge Sundial was never targeted as a potential party in terms of the reclamation actions. Mr. Harrison conceded that he did not take into consideration the fact that degradation resulting from the flare pits and the salt water pits had been caused entirely by operators who were predecessors of Sarg. While Mr. Mankow was included personally in the Environmental Protection Orders, because of the potential weakness of Sarg's financial position, no thought was given to including Sundial or it's principle in the reclamation proceedings. This witness

conceded that they might look farther back in the chain of ownership if there appeared to be a deliberate attempt to avoid financial responsibility for the environmental cleanup, specifically if they were aware of a bankrupt operator attempting to hand off his interests. In essence this witness' position was that they would seek redress only from the licensed party, as shown on the EUB records and any issues that would arise between vendor and purchaser would be sorted out between those parties in other forms of legal action.

[22] It is clear from the evidence given by both Mr. Harrison and Mr. Lloyd that although the definition of operator means any person who carries on or has carried on an activity on or in respect of specified land the position adopted by their department was that they would deal only with the licensed individual unless that person was merely a shell or was in bankruptcy. Their view was that this was the recognized practice of the industry and that to do otherwise would disrupt industry practice throughout the province. It would effectively disrupt enforcement procedures. Elaborating upon his evidence Mr. Harrison testified that the commonsense approach to environmental enforcement is that there's only one person who has the legal right to be on a particular piece of land and it is therefore only that person who has the responsibility with respect to those well sites.

[23] Also, called was Mr. David Sandmeyer. Mr. Sandmeyer has been involved with the Orphan Well Committee since its inception. He is a representative of the Canadian Association of Petroleum Producers. He expressed the view that the industry practice, with respect to the responsibility for surface reclamation, is that the licensee was the responsible party. This approach was accepted during the discussions in relation to the Orphan Well Program. The reason for this approach is that the licensee is the person who has the regulatory responsibility for compliance with all regulations of the Conservation Board and the licensee is the only person who has the legal right to enter onto the well site and conduct work at that location. He elaborated by testifying that commercial chaos would result if someone other than the current licensee was held responsible. He expressed the view, from the industry perspective, that the consequence of seeking others to be held responsible would do nothing other than result in a series of lawsuits to establish who was to bear all or a proportion of the responsibility. In his view this would be a significant problem from the industry's perspective. These witnesses expressed the view that while Sarg and Mr. Mankow found themselves in a difficult position that position was reached as the result of less than prudent business practices. To allow someone other than the licensee to be held responsible for reclamation efforts would disrupt the industry and would erode what is the standard industry practice. In essence when Mr. Mankow and Sarg purchased these sites they took on all of the responsibilities associated with those sites. Although there was a purported sale, that sale was not effective until such time as the new owners became licensees. Until that point Sarg and Mr. Mankow remained responsible for all of the properties that they had acquired and which had been registered in their names. Sarg and Mr. Mankow could have no position of clarity or certainty until such time as they had satisfied themselves that the transaction had been completed to the point where the new purchasers were registered with the EUB. Also called at the Appeal was John Nichol who, at the relevant time, was employed with the EUB and was involved in the process that dealt with the granting of well licenses. Mr. Nichol was familiar with the transfer between Sarg and Sundial. Mr. Nichol testified as to the

delay which had occurred in the transfer from Sarg to Sundial and indicated that Sundial did in fact have an operating code and that a transfer application between companies with an operating code was a fairly routine process. He added however that such a code did not guarantee a transfer. Mr. Nichol emphasized that it has always been the policy of the ERCB to "go after" the licensee of record.

[24] By Originating Notice the Applicants seek judicial review of the report and recommendations of the EAB and the Order of the Minister of Environmental Protection. Specifically the Applicants seek:

1. An Order setting aside the report and recommendations of the EAB dated December 5, 1996;

2. An Order setting aside the Order of the Minister of Environmental Protection dated December 16, 1996.

The Applicants argue:

1. The Environmental Appeal Board committed a jurisdictional error by fettering its discretion through the adoption of an inflexible and unauthorized policy;

2. The Environmental Appeal Board committed errors of jurisdiction by making unreasonable findings of fact and law with respect to matters outside the scope of its expertise;

3. The Environmental Appeal Board committed an error of jurisdiction through the unauthorized retroactive application of provisions of the Statute and Regulations;

4. The Environmental Appeal Board committed breaches of the rules of Natural Justice, including seeking and obtaining consultation and advise from other members of the standing multi-member board and/or legal counsel without allowing the applicant an opportunity to respond, disregarding Applicants' counsel's requests to broaden the scope of the inquiry so as to include additional parties, witnesses and information, some of which evidence has subsequently been made available to the Applicants.

5. The nature and structure of the Environmental Appeal board, its proceedings and its Report and Recommendations give rise to a reasonable apprehension of bias, having particular regard in this case to its relationship with and deference to the EUB, the nature and structure of the standing multi-member board, the fact that the Board is empowered only

to make a report and recommendations to the Minister (who is its employer).

6. The Report and Recommendations and Order are patently unreasonable because the environmental appeal Board and the Minister failed to take into account relevant considerations and improperly took into account extraneous considerations not authorized by Statute.

7. In the alternative, the Environmental Appeal Board committed an error of jurisdiction with respect to a preliminary or collateral fact in that the status of Sarg Oils Ltd. as licensee of record is currently the subject of litigation and not determinate.

[25] The Appellants wanted records from the ERCB to document its dealings with Sundial and to document the history of these 16 well sites, particularly the use of the salt water pits and documentation in relation to environmental incidents at the well sites. The Applicants also wanted Sundial and its principle Gordon Mitchell to be parties to the hearing. The EAB did not accede to the request to obtain the documents sought from the ERCB. The Applicants point to information obtained subsequent to the November 5 and 6, 1996, hearings before the EAB which relate to Notices of Suspension in relation to at least five of the wells which show Sundial as the "operator". The Applicants rely on the core reasoning of Justice Lutz in relation to the abandonment costs, wherein he found that the process by which Sarg was left as licensee of record was unfair.

[26] In rendering its decision the EAB traced the history of the previous hearing and appeal. It referred to the fact that the ERCB had not, previously, conducted a hearing concerning Sarg's request to transfer well licenses to another party.

[27] The EAB identified the issues as:

1. Were Sarg and Mankow operators under section 119 of the Act when the EPOs for the sixteen properties were issued in 1994?

2. If Sarg and Mankow were operators did the Inspector use reasonable judgment in deciding to issue the EPOs to them jointly? Was the Inspector correct and reasonable in not naming previous operators in the EPOs?

3. Should the Board, in reaching a decision, place any weight on the failure to affect a transfer of the well licenses from Sarg to Sundial when the properties were sold to the latter?

[28] The EAB summarized Mr. Mankow's evidence and it is clear from that summary that it was aware of the sale to Sundial, of Mr. Mankow's limited involvement in these various well

sites, of the difficulties encountered in transferring the licenses to Sundial, and of Mr. Mankow's position that the costs of reclamation should be spread among previous license holders.

[29] The EAB reviewed the evidence of Mr. Lloyd and Mr. Harrison and made reference to the fact that Mr. Mankow had told Mr. Harrison that he did not feel responsible for the reclamation since he no longer owned the properties. The EAB considered the evidence of Mr. Harrison and his view that despite Sarg's limited use of these well sites both Mr. Mankow and Sarg qualified as operators under Section 119 of the Act. The EAB also considered the evidence of Mr. Lloyd wherein he testified that Alberta Environmental Protection relies on the records of the EUB and this practice accords with industry views. The EAB noted that Mr. Lloyd's evidence disclosed that these EPOs were the first issued under the new Act and the Sarg case had triggered the policy of holding the last licensee of record responsible for reclamation. Also referred to was the evidence of Mr. Sandmeyer which indicated that the licensee on record is the party to look to for abandonment and reclamation costs.

[30] The EAB summarized the arguments of the parties. It reviewed the definition of "operator", it considered the history of the wells before Sarg came on the scene, it considered industry standards, it considered whether there were extenuating circumstances as they related to the transfer of the wells and it considered the purpose of the relevant statutes under which the EPOs were issued.

[31] The EAB considered the potential oppressiveness of naming both Sarg and Mr. Mankow as operators and concluded that given the broad definition of operator the decision of the Director, in issuing the EPOs, was not contrary to law.

[32] A review of the evidence and the reasons given by the Board demonstrate that it was alive to the issues raised by Sarg and Mr. Mankow and was, to some degree, sympathetic to the plight of both. However the Board was guided by its understanding of the evidence and its application of what it felt to be the applicable law.

[33] In essence the Applicants complain of procedural unfairness in relation to the hearing before the EAB and to an unfair exercise of the discretion by the EAB, the result of which saw Sarg and Mr. Mankow bear the full brunt of a reclamation process which will undoubtedly cost many hundreds of thousands of dollars.

[34] Counsel have devoted much time and effort to arguing what is the proper standard of review to be applied in this case. In my view the standard is one of patent unreasonableness. The EAB deals with a complicated and expansive industry which is regulated in order to ensure economic and environmental stability. The degree of expertise needed and exercised is beyond dispute and the decisions of the EAB need to be accorded great deference.

[35] The central focus of the Applicant's position is that the ERCB's determination that they remain licensees of record was both flawed and unfair. The position of the Respondents is that,

given the deference which should be accorded to the EAB, it's decision can be unfair but that does not equate to unreasonableness or irrationality.

[36] The Applicants' arguments culminate in reference to the decision of Justice Lutz in the Trial relating to the abandonment costs. They seek to bolster their position by reference to Justice Lutz findings of unfairness in relation to the manner in which the Applicants remained on record as the licensees. They also argue that they were unable to properly explore various avenues of potential evidence before the EAB.

[37] The Respondents counter by arguing that this position is as invalid now as it was at the time it was argued before Justice Lutz. They say that any such argument should have been addressed before the EAB. Indeed, they argue, this position was in fact put to the EAB who considered the issue and declined to give any relief.

[38] A review of the materials filed establishes that the Applicants did everything in their power to divest themselves of all interests in these well sites. They had every expectation that approval would be granted in the usual course of the ERCB's business. The Applicants appear to have been kept in the dark about any impediments to their proposed transfer of interests. All parties agree that the licensee of record must bear the responsibility for reclamation of the well sites and this flows from the fact that the licensee is on record and is, in fact, the only person who is entitled to enter upon these sites and conduct work thereon. This fact was confirmed in evidence before the Board by Mr. Harrison and Mr. Sandmeyer. Yet the facts before Board clearly established that Mr. Mankow believed that he had sold his interests and acted in accordance with that belief to the extent that he refrained from any involvement with the sites, believing he had no capacity to enter onto the land.

[39] The sad result in this case is a situation in which a sale was entered into with a rational belief that all was in order, in an environment where that belief was in accordance with industry practice. The consequence of acting on that belief was the constructive pillaging of property, over which supervision and control had been relinquished. Flowing from that same belief was an administrative mandate that, for the sake of efficiency, a penalty of hundreds of thousands of dollars was due and payable.

[40] One is left with a sense of bewilderment as to how the EAB's decision can accord with any sense of equity. While the Applicants, before the EAB, had legal representation, it is clear that there was a lack of comfort and confidence displayed by counsel acting on behalf of the Applicants. This is not to suggest any lack of qualifications on the part of counsel, it is merely a recognition of the specialized manner of appeals before the EAB. While counsel for the Applicants did request certain information and did compel the production of a witness, it is clear that the efforts of counsel were not particularly expansive, given the restraints under which she was working. Not the least of those restraints was a lack of background information within the possession of the ERCB. It is a convenient artifice to point to the fact of counsel's presence as being a full answer to the issue of whether the Applicants had a full opportunity to explore all relevant issues. The weakness in that position is a situation such as the one presented in this

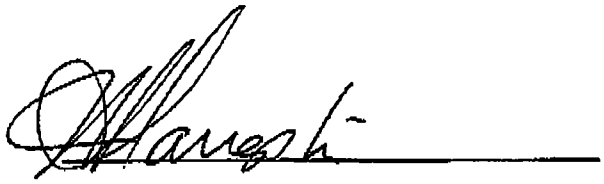
case, wherein, there are a number of unexplored issues which call for explanations. Only a sophist would turn a blind eye to the fact that information came forth before Justice Lutz which may be relevant to the Applicants' case. This approach defies logic. The proper forum for that information is the EAB. Had the concerns, which are now more clearly defined by the Applicants, been the subject of investigation before the EAB, it may have influenced the Board's decision. In any event the Applicants would have had the satisfaction of having their case decided on the basis of all relevant facts as explored by informed counsel.

[41] The unique factors surrounding the Applicants' case called for a more complete examination of the ERCB's conduct and failure to do so went to the very heart of the EAB's decision. Expertise is not defined as applying a myopic view to issues. Expertise has as it's root an adaptive exploration of all relevant circumstances.

[42] The Board, in my view, breached the rules of natural justice by failing to make adequate inquiries in relation to the Applicants' designation as licensees, in circumstances were there was clearly an issue to be investigated having regard to the potential consequences.

[43] Accordingly the report and recommendations of the EAB dated December 5, 1996, and the Order of the Minister of Environmental Protection dated December 16, 1996 are set aside. The matter is referred back to the EAB for a new hearing.

Heard on the 25th day of October, 2004.
**Dated** at Lethbridge, Alberta this 18th day of July, 2005.



**J.H. Langston**
**J.C.Q.B.A.**

**Appearances:**

F.G. Vaughn Marshall
Marshall Attorneys
for the Applicants

Ronald M. Kruhlak
McLennan Ross LLP
for the Respondents The Minister of Environment and
The Attorney General for the Province of Alberta

William McDonald
Alberta Justice, Civil Law Branch
for the Respondents The Director of Land Reclamation

Andrew C.L. Sims, Q.C.
for the Respondents The Environmental Appeal Board

**IN THE COURT OF QUEEN'S OF ALBERTA**
**JUDICIAL DISTRICT OF LETHBIDGE/MACLEOD**

Action No. 9706-00570

BETWEEN:

**SARG OILS LTD. AND SERGIUS MANKOW**

Applicants

- and -

**ENVIRONMENTAL APPEAL BOARD,**
**THE DIRECTOR OF LAND RECLAMATION,**
**THE MINISTER OF ENVIRONMENTAL PROTECTION AND**
**THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA**

Respondents

# ORDER

**Before the Honourable Justice**
**J. H. Langston, in Chambers,**
**Lethbridge, Alberta**

**On Wednesday, July 18, 2005**

UPON the application of SARG OILS LTD. and SERGIUS MANKOW for judicial review; AND UPON this matter having come before this Honourable Court for hearing and being heard in Lethbridge on October 25, 2004; AND UPON the Court reserving judgment and delivering its judgment on this day;

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. The application of SARG OILS LTD. and SERGIUS MANKOW is granted.

2. The recommendations of the Environmental Appeal Board dated December 5, 1996, shall be and are hereby quashed and set aside.

3. The Order of the Minister of Environmental Protection dated December 16, 1996, shall be and is hereby quashed and set aside.

4. The matter is referred back to the Environmental Appeal Board for a new hearing.

5. SARG OILS LTD. and SERGIUS MANKOW shall be, and are hereby awarded costs, which shall be spoken to.

6. This Order may be approved by fax and in counterpart

J. H. Langston, J.C.Q.B.A.

Entered September 20, 2005: FGVM

Entered this August 20, 2005.

Clerk of the Court

COURT OF QUEEN'S BENCH OF ALBERTA

**APPROVED AS BEING THE ORDER GIVEN**

**Environmental Appeal Board**
by its Counsel, on August ___, 2005.

_____consented to_____
Andrew C.L. Sims, Q.C.

**The Minister of Environmental Protection**
by its Counsel, on August ___, 2005.

McLennan Ross
Per:_____consented to_____
Ronald M. Kruhlak

**The Director of Land Reclamation**
by its Counsel, on August ___, 2005.

Alberta Justice, Civil Law Branch

Per:_____
William A. McDonald

3. The Order of the Minister of Environmental Protection dated December 16, 1996, shall be and is hereby quashed and set aside.

4. The matter is referred back to the Environmental Appeal Board for a new hearing.

5. SARG OILS LTD. and SERGIUS MANKOW shall be, and are hereby awarded costs, which shall be spoken to.

6. This Order may be approved by fax and in counterpart

J. H. Langston, J.C.Q.B.A.

Entered this August ___, 2005.

Clerk of the Court

APPROVED AS BEING THE ORDER GIVEN

**Environmental Appeal Board**
by its Counsel, on August ___, 2005.
consented to
Andrew C.L. Sims, Q.C.

**The Minister of Environmental Protection**
by its Counsel, on August ___, 2005.

McLennan Ross
Per: consented to
Ronald M. Kruhlak

**The Director of Land Reclamation**
by its Counsel, on August 7, 2005.
Alberta Justice, Civil Law Branch
Per:
William A. McDonald

**The Attorney General for the Province of Alberta**
by its Counsel, on ~~August~~ September 7, 2005.

Alberta Justice, Civil Law Branch

Per: _____
William A. McDonald

Action No:9706-00570 July 18, 2005

In the Court of Queen's Bench of Alberta
Judicial District of Lethbridge/Macleod

BETWEEN

SARG OILS LTD. and SERGIUS MANKOW
*Plaintiffs*

-and-

ENVIRONMENTAL APPEAL BOARD, THE DIRECTOR OF LAND RECLAMATION, THE MINISTER OF ENVIRONMENTAL PROTECTION AND THE ATTORNEY GENERAL FOR THE PROVINCE OF ALBERTA

*Defendants*

# Order

Langston, J., July 18, 2005

JUDICIAL DISTRICT OF LETHBRIDGE / MACLEOD
SEP 20 2005
FILED
Clerk of the Court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