

Court of King's Bench of Alberta

Citation: McElgunn v Vermilion Energy Inc., 2026 ABKB 531

Date: 20260724
Docket: 2501 12167
Registry: Calgary

Between:

Julia M. McElgunn

Appellant

- and -

Vermilion Energy Inc.

Respondent

**Reasons for Decision
of the
Honourable Justice C.D. Simard**

I. Introduction

[1] On August 24, 2022 Vermilion Energy Inc. (**Vermilion** or the **Respondent**) terminated Julia McElgunn's (**Ms. McElgunn** or the **Appellant**) employment, without cause or reasonable notice. At the time, she was a Senior Geological Advisor and had worked at Vermilion for about nine years. Ms. McElgunn sued Vermilion for damages. The parties agreed to arbitrate that dispute, and entered into an arbitration agreement. They appointed Jim McCartney as their arbitrator (the **Arbitrator**). On July 31, 2024, he issued a partial arbitration award (the **Award**).

[2] Ms. McElgunn appealed one part of the Award to this Court: the Arbitrator's decision that she was not entitled to any damages in lieu of receiving certain grants of Vermilion shares under the Vermilion Incentive Plan. The parties argued the Appeal before me on January 23, 2026. On March 12, 2026, I issued my decision (reported as **McElgunn v Vermilion Energy Inc.**, 2026 ABKB 188) (the **Appeal Decision**). In the Appeal Decision, I found that the Arbitrator had made an error of law and that, correctly applying the law, Ms. McElgunn's

wrongful dismissal damages claim should have included compensation for her April 2023 Share Award.

[3] The parties were unable to agree on the proper quantification of Ms. McElgunn's damages for the shares she would have received had Vermilion fulfilled its obligation to provide her with the April 2023 Share Award (the **Shares**). They provided me with their written submissions on that issue on May 8 and 14, 2026. This is my decision on that issue.

[4] In this decision, I adopt the terms that I defined previously in the Appeal Decision.

II. Issue

[5] The only issue I am deciding is the quantification of the damages to which Ms. McElgunn is entitled for the Shares.

[6] For the reasons that follow, I have concluded that:

- (a) Ms. McElgunn is entitled to damages in the amount of \$184,389.57 (being the value of the Shares on the date they should have been issued to her, April 1, 2023); and
- (b) she is also entitled to pre-judgment interest on that amount, calculated from April 1, 2023.

III. Analysis

A. The Parties' Positions

[7] The parties agree that:

- (a) if Vermilion had fulfilled its obligations under the April 2023 Share Award, the Shares that Ms. McElgunn would have been entitled to receive would have been comprised of 10,757.85 Vermilion shares (after applying a 1.5 X performance-based "gross up");
- (b) the Shares would have vested on April 1, 2023; and
- (c) Vermilion's share price on April 1, 2023 was \$17.14;

[8] Vermilion's shares are publicly traded on the TSX. Therefore, there is accurate data regarding the share price on any given day. The evidence entered in the Arbitration proves that between April 1, 2023 and April 23, 2024, the lowest trading price for Vermilion shares was \$13.30, on February 5, 2024, and the highest price was \$21.60, on September 14, 2023. These are not opening or closing prices, but rather the lowest and highest mid-day trading prices. The share price was volatile and the daily trading volumes were consistently large.

[9] The only matter in dispute is the share price that should be used to calculate Ms. McElgunn's damages.

[10] Vermilion argues that I should use the \$17.14 share price on the April 1, 2023 vesting date. It says that this award would fully compensate Ms. McElgunn for what she lost, and that to award damages based on a higher share price would speculatively overcompensate her, since there is no evidence about her holding and trading practices regarding earlier Vermilion share awards.

[11] Ms. McElgunn says that the Shares should be valued using the highest trading price after the April 1, 2023 vesting date for which there is evidence. This was \$21.60, the trading price on September 11, 2023. She says this award would properly give her the benefit of the doubt as the wrongfully terminated employee, giving effect to the principle that where the employer's conduct deprived the employee of the choice of when to sell shares, the employer should bear the burden of that conduct. In the alternative, Ms. McElgunn submits that the average of the vesting price and the highest trading price (which would be \$20.11) would also be a fair award, in recognition of the fact that no one can now know when she would have sold her shares, and it is unlikely that she would have sold at the very peak of the market.

B. Analysis of the Issue

[12] The purpose of a damage award in lieu of reasonable notice of termination is to put the employee in the position they would have been in, had they continued to work through to the end of the notice period: *Matthews v Ocean Nutrition Canada Ltd*, 2020 SCC 26 at para 58. If Vermilion fulfilled its obligation, it would have, on April 1, 2023, put Ms. McElgunn in possession of the Shares, liquid assets with a fluctuating value. Ms. McElgunn would have been able to sell the Shares on April 1, 2023 for \$184,389.57, or she could have held them and sold them later, for as much as \$232,369.56, or for as little as \$143,079.41 (during the period for which there was share price evidence in the Arbitration).

[13] The only evidence Ms. McElgunn provided about the manner in which she held or sold the Vermilion shares that she had received in prior Share Awards were these statements in her sworn Arbitration evidence:

the [Share Award] shares would show up in an account set up by Vermilion and I could then trade the shares as I wanted ...

In general, I was not looking to have a long-term “hold” position in Vermilion and sold opportunistically to fund other investments or expenses.

[14] Vermilion points to additional evidence on this point from Ms. McElgunn's cross-examination. There, she confirmed that she had sold all her remaining Vermilion shares after she was terminated, but without any further elaboration. She did not recall what price she sold her shares for, and there was no evidence about when she sold them.

[15] Therefore, there is no detailed evidence about what practice Ms. McElgunn employed to hold or sell her Vermilion shares. The evidence that she sold “opportunistically” is bereft of any meaningful detail. All I can infer from that evidence is that Ms. McElgunn sold her Vermilion shares when she felt that doing so was appropriate or necessary to fund other investments or expenses. There is no evidence about any such investments or expenses on or after April 1, 2023. Therefore, it is impossible for me to infer whether she would have thought it beneficial to

sell on April 1, 2023 for \$17.14 per Share, on September 14, 2023 for \$21.60 per Share, on February 5, 2024 for \$13.30 per Share, or at some other time, for some other price.

[16] Ms. McElgunn's argument that she should receive the benefit of having her Shares valued at the highest trading price during the period for which there is pricing evidence is based on this Court's decision in ***Mothersele v Gulf Canada Resources Limited***, 2003 ABQB 2. There, the Defendant employer had wrongfully terminated the Plaintiff which prevented him from being able to exercise stock options during the one-year period in which he would otherwise have been able to do so. Nation J held at para 43 that:

It is impossible to determine exactly what date an employee would have chosen to exercise options, as the share price goes up and down. In the circumstances where it is the conduct of the Defendant which disallows the Plaintiff from exercising a choice as to when he exercises those options, and in fact he cannot exercise that choice at all, then in terms of evaluating the damage to the employee, the assessment of damages should be the highest share valuation between the date of the termination, and the date that the option would have expired, or in the case where it would not have expired during the period of reasonable notice, the expiry under the terms of the option contract.

[17] Ms. McElgunn also cited ***Hibberd v Hurricane Hydrocarbons***, 2006 ABQB 707. In that case, Phillips J considered Nation J's approach in ***Mothersele***, but declined to follow it, for the following reasons (at para 135):

The ***Mothersele*** approach may be appropriate where, as Nation J. noted, it is impossible to determine, or to fix, a date upon which the plaintiff would have exercised the options. In my view, however, where it is possible to come to a reasoned conclusion, based on the evidence, with respect to how the plaintiff would have disposed of the stock options, it is not necessary, and is somewhat unrealistic, to give the plaintiff the benefit of perfect timing with respect to the disposition of the shares over the period of the stock options.

[18] Phillips J instead followed the approach taken in two Ontario decisions, ***Poplack v Intermetco Ltd***, [1999] OJ No 555 (Gen Div) and ***Buchanan v Geotel Communications Corp***, [2002] O.N. No 2083 (SCJ), namely to assess damages for the wrongful termination of stock options based on what probably would have happened and what was reasonable in the circumstances but for the wrongful termination, in light of all the evidence. That approach is in accordance with the well-established rule that a defendant is only liable for the damages that are proven on the evidence to have been a "reasonably foreseeable" result of the defendant's wrongful act: ***Rankin (Rankin's Garage & Sales) v JJ***, 2018 SCC 19 at paras 22, 24.

[19] I find that the rule stated by Nation J in ***Mothersele*** is not applicable in the circumstances of this case. Vermilion's breach was to not provide the Shares to Ms. McElgunn on April 1, 2023. But for that breach, she would have had the Shares on April 1, 2023. However, Ms. McElgunn bore the onus of leading evidence to prove what she would have done with the Shares, had she received them at that time. There was nothing preventing her from introducing evidence on that point in the Arbitration, alongside the detailed evidence that was introduced

about the post-April 1, 2023 share prices. However, Ms. McElgunn did not enter any such evidence. Vermilion did nothing to prevent her from leading that type of evidence.

[20] As a result of this evidentiary gap, it would be completely speculative for me to make any finding that Ms. McElgunn would have employed any particular strategy and sold the Shares at any particular time, for any particular price.

[21] In these circumstances, there is no legal or equitable basis on which I could give Ms. McElgunn “the benefit of the doubt” or make Vermilion bear the consequences of her failing to satisfy her onus by leading evidence on this point.

[22] On the evidence before me, the only loss that Ms. McElgunn has proven that she suffered by not receiving the Shares was their value on April 1, 2023, namely \$184,389.57 [(7,171.9 Shares) X (1.5 performance factor) X (\$17.14 price per Share)]. That is the amount of damages to which Ms. McElgunn is entitled with respect to the April 2023 Share Award.

[23] The parties agree that Ms. McElgunn is entitled to pre-judgment interest on this damages award. That pre-judgment interest should be calculated from April 1, 2023, when her cause of action arose: *Judgment Interest Act*, RSA 2000, c J-1, section 2(1).

IV. Conclusion

[24] I award Ms. McElgunn damages regarding the April 2023 Share Award in the amount of \$184,389.57 and pre-judgment interest on that amount, calculated from April 1, 2023. The parties should prepare a draft Judgment for my signature. If there are any disputes about the form of the Judgment, they can submit their two proposed forms, with a brief written explanation of the differences and their respective rationale.

[25] All that remains to be decided in this Appeal is the matter of costs (both of the Appeal itself and this follow-up dispute on the quantification of damages). If the parties are unable to agree on costs in the next 30 days, they can each provide me with written submissions no longer than five pages, excluding attachments.

Written Submissions received on May 8 and 14, 2026.

Dated at the City of Calgary, Alberta this 24th day of July, 2026.

C.D. Simard
J.C.K.B.A.

Appearances:

Robert J. Stack, Wilson Laycraft
for the Appellant

Heather Treacy, K.C., DLA Piper
for the Respondent