

# Court of King's Bench of Alberta

**Citation: Montreal Trust Company of Canada v Astl, 2026 ABKB 255**

**Date:** 20260401  
**Docket:** 8901 10340  
**Registry:** Calgary

Between:

**953342 Alberta Ltd.**

Applicant

- and -

**Computershare Trust Company of Canada**

Respondent

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**Reasons for Decision  
of the  
Honourable Justice C.M. Jones**

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## **I. Introduction**

[1] Melvin Auten is a shareholder, director and officer of the Applicant, 953342 Alberta Ltd. The Applicant, a successor to the original mineral owner, Leonidis J. Auten (“LJA”), is the current owner of the mines and minerals relating to the Auten GRTs (defined below).

## **II. Background**

[2] I describe the Application in more detail below. In brief, the Applicant seeks an Order declaring five Gross Royalty Trusts (“GRTs”) partially terminated. Partial termination is sought in respect of the interests of holders of certain units in those GRTs. Those Unitholders are Unitholders who cannot be located by the Trustee and for whom a share of revenue paid to the GRTs has been accumulated (“Lost Contact Unitholders”).

[3] The Applicant claims a reversionary interest in the interests of the Lost Contact Unitholders and also seeks a redirection of undeliverable funds due to the Lost Contact Unitholders which are currently accruing with the Trustee.

[4] I have structured this decision in three main parts. First, I provide a brief history of Gross Royalty Trusts in Alberta generally, and in reference to the LJA lands, alongside a brief review of the *Trustee Act*. Then, I provide a review of the Application, including the Applicant’s

position that it is a contingent beneficiary pursuant to clause 22 of the Gross Royalty Trust Agreements, the Respondent's position that clause 22 provides the Applicant with no such contingent beneficial entitlement, and the submissions received from other Unitholders, the Attorney General of Alberta and others. Next, I provide my reasoning for concluding that the Applicant is not a beneficiary as contemplated in the *Trustee Act* and, as such, has no status to apply for a variation pursuant to s 67(2) of that *Act*. This section addresses two main assertions that the Applicant makes in support of its claim to be a beneficiary, explaining why clause 22 of the Gross Royalty Trust Agreement does not contain any reversionary mechanism as suggested by it, alongside an explanation as to why the doctrine of resulting trust does not apply in these circumstances to constitute it a contingent beneficiary. Finally, I address whether the interests arising under the Auten GRTs are indefeasibly vested such that this Court has no authority to approve a variation.

### A. History of GRTs

[5] GRTs are part of the historical development of the oil and gas business in Alberta and were conceived as a tool to enable owners of freehold mines and minerals to monetize their interests in those mines and minerals. An owner would enter into leases, then convey the royalty payable thereunder to a trustee in exchange for gross royalty units, which the owner could then sell. Thousands of GRTs were established, many dating back to the 1940s.

[6] GRTs, and the rights they confer upon interested parties, differ depending on their particular language. These differences have been considered in various decisions of this Court and of the Court of Appeal of Alberta.

[7] One of the seminal decisions relating to GRTs was *Montreal Trust Company of Canada v Astl*, 1999 ABQB 872, where Justice Mason succinctly described these arrangements and how they came to be established at paras 3 – 8:

[3] In the late 1940's and early 1950's, the oil and gas industry in Alberta was in a "frontier stage". Following the Leduc discovery in 1947, oil and gas companies actively began to lease freehold mineral lands in central Alberta. In 1949, the *Land Titles Act*, S.A. 1942 c. 205 was amended (SA 1949 c. 56) by the addition of the following new section immediately after Section 52:

52(a) The Registrar may refuse to accept for registration any instrument transferring, encumbering or otherwise disposing of an undivided fractional interest in a parcel of land containing mines and minerals, or any mineral, which is less than undivided 1/20<sup>th</sup> of the whole interest in mines or minerals, or in any mineral, contained in that parcel of land.

[4] In 1949 and following, various trust companies in Alberta set up large numbers of gross royalty trust agreements ("GRTs") (for example, in the early 1990's Security Trust Company had 206 producing GRTs and Central Guaranty had 843 producing GRTs). In some cases, independent land agents solicited mineral owners to enter into GRTs while in others mineral owners approached either a land agent or a representative of the trust company directly.

[5] Often the mineral owner would first enter into a petroleum and natural gas lease with an oil company. Typically the lease granted the oil company the right to win oil and natural gas from the lands, in return for which the oil company would pay to the mineral titleholder a royalty, usually 12½ percent of the value of the production of the oil and gas obtained pursuant to the terms of the lease. Then the mineral owner would establish a GRT under which the lessee oil companies paid the royalties due to the mineral owner to a trust company to hold in trust pursuant to the terms of the GRT. The trustees received the royalties at the behest of the mineral owner who, as the settlor of the trust, required the trust company to issue unit certificates of ownership in the royalty funds paid to it. Unit certificates issued by the trust companies pursuant to GRTs were traded by way of sale or exchange in street form through endorsement of the transfer on the reverse side of the certificate. This permitted the gift, sale, trade or transfer of the units by certificate which entitled the unit holders to share, according to their prorated number of units, in the royalties payable under the petroleum and natural gas lease.

[6] Freehold mineral owners generally set up GRTs to facilitate the distribution of oil and gas royalties to other persons by way of either sale, trade or gift. The GRTs enabled mineral owners to obtain an immediate cash payment through sale of all or some of their GRT certificates. By trading GRT certificates with their neighbors or others, mineral owners could potentially increase the opportunity of participating in successful oil and gas wells.

[7] The trust company typically filed a caveat against the mineral title to warn lessees and future owners of the mineral title that the royalty payable under the petroleum and natural gas lease was payable to the trust company in accordance with the terms of the GRT.

[8] The originator of this marketing scheme is not known, but the early agreements were kitchen-table types of agreements that were later refined and developed by the various trust companies who became involved. As the scheme expanded and prospered, the trust companies developed more sophisticated forms, particularly with respect to specifically creating an interest in the land that could sustain the registration of a caveat. This was a concern with respect to the early agreements.

## **B. The Auten GRTs**

[8] LJA owned mines and minerals in Alberta. In 1953, LJA entered into a number of GRTs, five of which (referred to hereinafter as the “Auten GRTs”) are the subject matter of the Application before me.

[9] Each of the Auten GRTs relates to specific lands in Alberta in respect of which LJA owned underlying mines and minerals. The specific freehold mines and mineral interests are described in an Affidavit of Melvin Auten, sworn February 22, 2024.

[10] In connection with each of the Auten GRTs, LJA entered into three main set of agreements. The first were leases (the “Leases”) of mines and minerals underlying the respective lands. Four of the Leases were with McColl-Frontenac Oil Company Limited and the fifth was with Imperial

Oil. In each Lease, LJA, as Lessor, leased “all Petroleum and Natural Gas and related Hydrocarbons” underlying the particular lands to the Lessee. The Lessee was obligated to pay the Lessor “a Gross Royalty of Twelve and one-half (12½%) Percent of all production from any well or wells that may be drilled upon the said lands, or any part thereof” (the “Royalty”).

[11] The second agreements (the “GRT Agreements”) created the Auten GRTs.

[12] The third agreements were styled Supplemental Agreements and are sometimes referred to as Patch Agreements. These were entered into much later.

### **1. The GRT Agreements**

[13] The recitals to the GRT Agreements indicate that LJA, as owner of the mines and minerals and Lessor under the Leases, wished to constitute Gross Royalty Certificates “to cover all the said Twelve and one-half (12½%) percentum gross royalty”. The Royalty was assigned to a trustee (the “Trustee”) and divided into gross royalty units (the “Gross Royalty Units”). Importantly, for purposes of this decision, the assignment of the Royalty to the Trustee was stated to be “forever”.

[14] Clause 3 of the GRT Agreements provided that royalty trust certificates (“Royalty Trust Certificates”) (initially referred to as Gross Royalty Certificates) were issued to LJA for the Gross Royalty Units. Under clause 10, the Trustee agreed to distribute moneys received in respect of the Royalty to holders of Royalty Trust Certificates (the “Unitholders”).

[15] Clause 6 provided that Royalty Trust Certificates could not entitle the Unitholder to less than 1/40<sup>th</sup> of one “full” Gross Royalty Unit. Royalty Trust Certificates could be transferred by Unitholders pursuant to clause 7. Clause 8 provided that a full Gross Royalty Unit entitled the Unitholder to 1% of proceeds of production, net of deductions. The Trustee was required under clause 13 to deduct its charges and expenses and taxes or other assessments before distributing net amounts to Unitholders.

[16] Under clause 20, the Trustee is empowered to apply to the Court for direction regarding the sale or other disposition of the trust property (Royalty and monies accruing in respect thereof), distribution of proceeds and partial or total termination of the Auten GRTs.

[17] Clause 22, which is critical to this Application and will be discussed in much more detail later in these Reasons, provides:

This Agreement may be terminated at any time on three months’ written notice to the Trustee by the Owner herein with the consent in writing of all of the holders of Royalty Trust Certificates outstanding hereunder; and likewise this Agreement may be terminated as to the Royalty and Gross Royalty Units in respect of some only of the said lands and Lease insofar as it affects or relates to such Royalty and Gross Royalty Units provided that such partial termination does not prejudicially affect the holders of any other Gross Royalty Units. Such partial termination may be effected at any time on three months’ written notice to the Trustee by the Owner herein with the consent in writing of all the holders of Royalty Trust Certificates issued and outstanding in respect of the Gross Royalty Units affected by such partial termination. In the event of such a partial termination the

Trustee's Annual Holding Fee or Charge shall be reduced in the proportion that the same is chargeable to the Gross Royalty Units so affected by such partial termination.

[18] Clause 25 provides that, should any Lease terminate and the mineral owner negotiate a new lease, the mineral owner covenants to ensure that a 12½% gross royalty will be payable to the mineral owner and assigned to the Trustee, thus preserving the rights of Unitholders to receive revenue under a new lease if negotiated. Clause 27 provides that the GRT Agreements enure to the benefit of and are binding upon the parties and the heirs, executors, administrators and assigns of the mineral owner and the successors and assigns of the Trustee.

## 2. The Supplemental (Patch) Agreements

[19] A supplemental agreement ("SA") was entered into for each of the GRT Agreements. Four are dated April 5, 1991, and one is dated November 6, 1991.

[20] Each SA was made between the then mineral owner and Central Guaranty Trust Company as Trustee. With the passage of time and the application of clause 27 of each GRT Agreement, ownership of mines and minerals underlying the respective lands had devolved upon persons other than LJA. Hereafter, I will refer to the mineral owner from time to time as the "Mineral Owner".

[21] The recitals to each SA provide important insights into the intention of the parties. Recitals C, D, E and F provide as follows:

The Mineral Owner has always intended and continues to intend to have the Mineral Rights be subject to the provision of the Royalty Trust Agreement.

The Mineral Owner has always intended and continues to intend to have the Royalty Trust Agreement operate *forever and to create an interest in land in favour of the Trustee*. [Emphasis added.]

As a result of recent judicial decisions from the courts of the Province of Alberta, there may be doubt with respect to the intention of the parties as presently stated or implied in the Royalty Trust Agreement and the parties wish to remove these doubts and any other ambiguities with respect to those intentions and to provide for certain other matters of mutual interest and concern.

The parties have agreed to execute this supplementary agreement for the purposes of removing doubts and ambiguities with respect to their original and continuing intention and providing each other with further assurance with respect to these matters.

[22] Clauses 1.1.5 and 1.1.6 provide definitions of Mineral Rights and Royalty Rights:

"Mineral Rights" means all estate, right, title, interest, claim and demand whatsoever (and all and every benefit that may or can be derived therefrom) of the Mineral Owner in and to the substances within, upon or under the Lands and in all substances produced and saved therefrom and includes all Royalty Rights.

"Royalty Rights" means that portion of the Mineral Rights reserved to the Mineral Owner being an undivided gross royalty in the percentage amount specified in the

Royalty Trust Agreement and includes any right pursuant to which any amount is or may become payable to the Mineral Owner in connection with that portion of the Mineral Rights.

[23] In clause 2.1, the successor Mineral Owners who signed the SAs acknowledge that they are bound by the provisions of the GRT Agreements as if they were original parties to them. Clause 2.2 reaffirms the Mineral Owner's divestiture of its interest in the Royalty and provides that:

The parties acknowledge that it was and remains their mutual understanding and continuing understanding and intention that, from and after the Effective Date and pursuant to the [GRT Agreement]:

2.2.1 the Royalty Rights were and continue to be settled upon the Trustee *forever* [emphasis added];

2.2.2 there was conveyed to or otherwise created in favour of the Trustee *forever, an unimpeachable interest in the Mineral Rights* supportable or capable of being represented by one or more caveats, encumbrances or other notifications contemplated by the *Land Titles Act* (Alberta) all of which were intended to run with the Mineral Rights and titles thereto. [emphasis added];

2.2.3 all dispositions, if any, of the Mineral Rights were and continue to be subject to the reservation, assurance, settlement and transfer of the Royalty Rights to the Trustee; and

2.2.4 all monies payable pursuant to the Royalty Rights were and are to be paid to the Trustee pursuant to the [GRT] Agreement.

[24] Clause 2.4 states:

Neither of the parties shall advance any claim or commence or maintain any action asserting or based upon facts, allegations or interpretations or circumstances contrary to the understandings, intentions and acknowledgements stated herein.

### **C. The Trustee Act**

[25] Since the Applicant relies on section 67 of the *Trustee Act*, SA 2022, c T-8.1, I set forth its relevant provisions here:

### **Variation and Termination of Trusts**

#### **Variations**

**67** (1) Subject to any terms in a trust instrument reserving the power to any person or persons to terminate or vary a trust, and except as provided in this section, a variation requires approval of the court.

(2) On application by a *trustee or beneficiary*, the court may approve a variation after taking into account the following factors:

(a) the nature of all interests and objects and the effect any proposed variation may have on those interests and objects;

- (b) the benefit or detriment to any person that may result from the court approving or declining to approve any proposed variation;
- (c) the intentions of the settlor, to the extent they can be ascertained;
- (d) any other factors the court considers relevant. [emphasis added]

(3) Subject to subsection (4), a trustee or beneficiary who makes an application under subsection (2) must have written consent to the application from all persons who are beneficially interested in the trust.

(4) On an application under subsection (2), the court may approve a variation despite that one or more of the following persons who are beneficially interested in the trust have not consented to the application:

...

- (c) a person who after reasonable inquiry cannot be located;

...

- (e) a person who has the capacity to consent to a variation but refuses to consent to the variation;

(6) The court may not approve a variation if the variation would reduce or remove any fixed indefeasible interest that has vested absolutely in a beneficiary.

### III. The Application

[26] The Applicant seeks, *inter alia*, the following relief:

An Order directing that the Gross Royalty Trusts (the “Trusts”) settled by the Leonidas J. Auten No. 2 to No. 6 Gross Royalty Trust Agreements are partially terminated as to the Royalty and units in the GRT (Gross Royalty Units) standing in the name of the following unit holders:

Doyal James McVicker

Elizabeth J. Auten, c/o Eunice I. Collins.

Ann Bueckert

Helen W. McVicker and Laura Ajtwros McVicker

[27] These are the Lost Contact Unitholders. (I was advised during the hearing on February 17, 2026 that a successor to Doyal James McVicker had been located, leaving only three Lost Contact Unitholders.) Pursuant to s 67(3) of the *Trustee Act*, partial termination of the Auten GRTs requires the consents of Unitholders. The Applicant asks the Court to approve a variation of the Auten GRTs by declaring them partially terminated in respect of the interests of Lost Contact Unitholders and to provide consents on behalf of the Lost Contact Unitholders and on behalf of certain other Unitholders who have been contacted but have not provided consents (the “Contact Unitholders”).

[28] The Applicant also seeks:

An Order declaring that such partial termination shall not prejudicially affect the holders of the remaining Gross Royalty Units for which Royalty Trust Certificates

shall remain issued and outstanding as shown in the Records of the Respondent as Trustee relating to the Leonidas J. Auten No. 2 to No. 6 Gross Royalty Trust Agreements and Supplementary Agreements.

An Order directing that the Respondent shall certify what amount of Non-deliverable funds have been paid into Court with respect to the said Trust Agreements and Supplementary Agreements, including interest earned thereon.

An Order directing that upon receipt of that certification the Clerk of the Court shall pay that amount of funds to the Applicant's lawyer Ronald J. Young Professional Corporation.

An Order that any portion of monies that may be payable henceforth pursuant to any Current or future petroleum and natural gas lease affecting the Lands described in the Gross Royalty Trust Agreements and Supplementary Agreements to the extent partially terminated as described in paragraph 1 hereof shall be paid to the Applicant 953342 Alberta Ltd. mineral owner, or to whom the mineral owner directs, and not held as non-deliverable funds.

[29] The Applicant seeks further direction with respect to service and other forms of relief either forestalling or preserving claims against various persons, but the pivotal request is for an Order terminating the interests of the Lost Contact Unitholders, directing cash accumulations in respect of those Lost Contact Unitholders to be paid to the Applicant, and directing that any future payments that would have accrued to Lost Contact Unitholders be paid to the Applicant.

[30] Both the Applicant and the Respondent filed numerous briefs, and a full list of the relevant materials filed is appended as Appendix A to this decision. I will discuss their arguments in the analysis below and will refer to the various briefs as they are defined in Appendix A.

[31] In anticipation of a hearing before me on the 27th of October 2025, I canvassed the parties as to whether either the Attorney General of Alberta or the Public Trustee of Alberta might have an interest in this case.

[32] As will be discussed below in further detail, the Applicant's request for relief is dismissed for several reasons, most notably that it has no status as a beneficiary to apply for relief. As such, it is premature to determine what should occur with the property related to the Lost Contact Unitholders should further efforts to contact them fail. However, the Court received numerous communications in response to that question which warrant a summary.

#### **A. McPherson's Letter**

[33] Ms. Karen MacPherson, a Unitholder, wrote to the Court in an undated letter asking the Court to grant partial termination of the GRTs and distribute the affected trust property to the remaining Unitholders *pro rata*. Ms. MacPherson contests the Applicant's characterization of clause 22 as providing a reversionary mechanism to the Mineral Owner and argues that the GRT Agreements are silent on what should occur with forfeited or cancelled Gross Royalty Units. She adds that the GRT Agreements are clear in that the assignment of the Royalty to the Trustee is "forever", and that a reversionary mechanism would be counter to the underlying purpose of the GRT Agreements. She argues that a *pro rata* distribution of the property to the remaining Unitholders preserves the purpose of the GRT Agreements.

### **B. Public Trustee’s Brief**

[34] The Court received a letter from the Public Trustee’s office on October 20, 2025, outlining its position. The Public Trustee takes no position on the partial termination of the GRTs and states that it has searched its databases and has not found any claim regarding the Lost Contact Unitholders that would require it to hold their property in trust. It is further asserted that section 5 of the *Public Trustee Act*, SA 2004, c P-44.1, authorizes the Public Trustee to consent to assume the role of trustee or administer property in a fiduciary capacity, but does not impose an obligation to do so. At this time, they expressly decline to consent to act as trustee on behalf of the Lost Contact Unitholders.

### **C. Attorney General’s Brief**

[35] The Court also received a brief dated January 28, 2026 from the Attorney General of Alberta, indicating their position that the Royalty Trust Certificates are securities pursuant to s 10 of the *Securities Transfer Act*, SA 2006, c S-4.5 (the “*STA*”), and as such are captured under s 1(s)(iv) of the *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5 (the “*UPPVA*”) as “intangible personal property”. They argue that this means that the Trustee of the GRTs is obligated under s 9 (2) of the *UPPVA* to pay, transfer, or deliver the property to the Minister of Finance upon receiving notice from the Minister, and that any Lost Contact Unitholders who are affected may subsequently submit an application to the Minister to claim the funds.

### **D. The Trustee’s Response**

[36] In response to the Attorney General’s submissions, the Trustee argued in the Fourth Respondent Brief that Royalty Trust Certificates do not meet the definition of security under s 10 of the *STA* as they are not “equity interests” in the property or enterprise of an issuer, and that Computershare is not an issuer of any equity interest in its own corporate enterprise. They also argue that the reference to “business trusts” at s 10 of the *STA* does not apply in this instance because the Auten GRTs are not business trusts, but rather passive trusts, and that the broad definition of security under that section was intended to regulate transactions within complex financial markets, which this is not.

### **E. The Applicant’s Brief and Reply**

[37] Similarly, the Court received briefs from the Applicant addressing both the Attorney General’s brief and Ms. MacPherson’s letter. The Applicant did not directly address whether the Royalty Trust Certificates are “security” and repeated its assertion (as explained in further detail below) that income held in trust on behalf of the Lost Contact Unitholders reverts back to the Mineral Owner “by the reversion mechanism in the trust instruments” upon partial termination. It also contested Ms. MacPherson’s claim that the GRT Agreements are silent on the forfeiture and cancellation of Gross Royalty Units, arguing that lost contact and disappearance by Unit Holders was an event expressly provided for by the Settlor in the “reversion mechanism specified at Clause 22”.

## **IV. Analysis**

[38] In my view, before I can assess the merits of the Applicant’s Application, I must determine whether I have jurisdiction to entertain it. I find that this requires me to consider two

threshold questions (the “Threshold Questions”). First, does the Applicant have status to bring this Application? Second, are the interests of the Unitholders in the GRTs vested indefeasibly?

[39] Depending on the resolution of the Threshold Questions, this Court may lack jurisdiction to proceed with the Application. It may be unnecessary and indeed improper to consider the Application of section 67 of the *Trustee Act* more broadly to the Applicant’s request for relief.

### **A. Clause 22 and Status of Mineral Owner**

[40] The first Threshold Question is whether the Applicant has status to advance this Application pursuant to s. 67(2) of the *Trustee Act*, which requires an applicant to be either a beneficiary or a trustee. The Applicant is not a trustee of the Auten GRTs and must therefore be a beneficiary or there is no basis upon which the Court can entertain its Application to vary the Auten GRTs by declaring a partial termination.

[41] As will be discussed in more detail below, the Applicant argues that clause 22 of the GRT Agreements gives it a reversionary interest in the trust property that constitutes it a beneficiary.

[42] This puts the Court in a difficult and somewhat circular position. If the Applicant is not a beneficiary of the Auten GRTs, I have no jurisdiction to hear its application and, therefore, to weigh in on the proper interpretation of clause 22. However, the Applicant’s argument that it is a beneficiary is predicated upon its interpretation of clause 22. Accordingly, I will examine clause 22 only to the limited extent necessary to respond to the Applicant’s argument.

#### **1. The Applicant’s Position**

[43] As previously noted, the Applicant filed numerous briefs in this matter. In each of those briefs, the Applicant takes the position that clause 22 of the GRT Agreements gives it, as successor Mineral Owner, the power to effect a partial termination of the Auten GRTs. It asserts that this right to terminate gives it the ability to re-acquire trust property, a reversionary interest that constitutes it a contingent beneficiary of the Auten GRTs. In the Third Applicant Brief, the Applicant contends that the GRT Agreements “granted to the Applicant as mineral Owner the power to terminate in whole or in part the Agreement as to Royalty and Gross Royalty Units, by which the Mineral Owner has a contingent beneficial interest”. On this basis, the Applicant argues that it has status to bring this Application.

[44] The Applicant asserts that the language of the GRT Agreements makes it clear that the original Mineral Owner, LJA, did not give up all interest in the Royalty and always intended to have a contingent interest in it. The Applicant contends that an unlocatable Unitholder’s interest in trust property is to be held for the successor Mineral Owner as a contingent beneficiary. It describes the intent and effect of clause 22 as follows in the Fourth Applicant Brief:

*The interests and objects of the trust instruments, at clause 22 thereof, are to empower the mineral Owner with interest in certain Royalty and Gross Royalty Units to vary the trusts by their termination with the object to resolve the disappearance of certain Unit Holders where, as a result of such disappearance, certain distributive trust property, the Royalty, accumulates and can no longer vest in possession with those Unit Holders. [Emphasis in original.]*

[45] The Applicant asserts in one of its briefs that:

The intentions of the Settlor are clearly ascertained. The beneficial interests of the Unit Holders in their Royalties and Gross Royalty Units are terminated on notice by the mineral Owner with the consent of the remaining gross royalty Unit Holders.

[46] The Applicant restates this position more succinctly as follows in its various briefs:

The Settlor's interest as Owner is the contingent reservation of the power to terminate in the circumstances, which extends to the successive Owner of the mineral rights.

[47] Prior to the parties' appearance before me on March 18, 2025, the Applicant filed another brief, repeating its assertion that clause 22 of the GRT Agreements gave it the right to receive trust property on termination of the GRTs "by contingent reservation to the Owner of such Royalty and Gross Royalty Units provided that such partial termination does not prejudicially affect the holders of any other Gross Royalty Units".

[48] The Applicant argues that:

The contingency has occurred. The lost contact Unit Holders have disappeared. With the power to terminate, on notice with consent, the Royalty with Gross Royalty Units vest in the Applicant as trust beneficiary.

[49] At paragraph 40 of the First Applicant Brief, the Applicant states:

The part of the royalties affected by the partial termination of the Royalty and Gross Royalty Units and some of the land and Leases settled by the Trust is claimed by reversion to the Applicant as Owner for impossibility of performance, that is, the payment of the Royalties which the Respondent as Trustee reports are Non-deliverable to Lost Contact Unitholders.

[50] The Applicant offers no support for the argument that there is a reversion to it as mineral owner for impossibility of performance. Nevertheless, it argues that a Unitholder who is no longer "extant" or in respect of whom there is no identified successor, no longer has an interest in the Auten GRTs, with the result that:

Non-deliverable Royalties, which have accumulated and would accumulate in the future as to Lost Contract Unitholders, have been contemplated by the original Owner as Settlor and by the original Trustee, and were not intended to accumulate with the Respondent as Trustee without distribution.

[51] In other words, the Applicant asserts that once it has effected a partial termination of the Gross Royalty Units pursuant to clause 22, it becomes entitled to the revenue that formerly accrued to those Gross Royalty Units and can require the Trustee to distribute that revenue to it.

[52] The Applicant goes on to argue that:

The right of a Unitholder to a percentage of the royalties received by the Trustee is a chose in action recognized by law but confers no present possession of a tangible object. The Unitholders do not have an interest in land.

[53] I note that Recital D and clause 2.5.1 of the SAs state that the conveyance of the Royalty confers an interest in land upon the Trustee.

[54] Interestingly, the Applicant does not argue that its reversionary interest arises because the Auten GRTs “fail”. Rather, it asserts in the Third Applicant Brief that, after it has exercised its right of partial termination, that portion of the Royalty is held for its benefit:

The mineral Owner assumes the contractual right to the Royalty by action at law. The Royalty, not distributable by the Trustee or received by the disappeared Gross Royalty Unitholder, is not a chose in possession vesting indefeasibly. It is a chose in action, a personal right to future distributable Royalties not reduced into possession, recoverable by the Unitholder or, in the circumstances, by the mineral Owner.

## 2. The Respondent’s Position

[55] The Respondent points out in the First Respondent Brief that the Applicant is not a Unitholder and so, *prima facie*, is not a beneficiary of the Auten GRTs. It notes that while clause 22 contemplates termination, it does not provide for a conveyance of any legal or beneficial interest in trust property to the Mineral Owner. Indeed, it asserts that nothing in the GRT Agreements provides for a reversion of property to the original Mineral Owner, as settlor, or to his successors, such as the Applicant. Rather, the Respondent argues that termination would result in merger of the legal and beneficial interests in the beneficiaries, being the Unitholders.

[56] With respect to the Applicant’s argument that the GRT Agreements and the SAs manifest an “intention” of *implied* reversion to the Mineral Owner, the Respondent argues that any implied right of reversion is insufficiently clear and would be contrary to the express, irrevocable conveyance to the beneficiaries “forever” manifested by the SAs.

[57] The Respondent points out that clause 4.1.1 of the SAs makes it clear that no interest in the Royalty was reserved to the Mineral Owner:

4.1.1 the Mineral Owner hereby transfers, assigns, grants, sets over and conveys unto the Trustee those of the Royalty Rights, if any, which are not already reserved, assured, settled upon or transferred to the Trustee at law or otherwise, pursuant to the Royalty Trust Agreement.

[58] Therefore, the Respondent asserts in the Second Respondent Brief that “If there was an implied reservation, hidden in clause 22 of the [GRT Agreements], it could not have continued past the execution of the Patch Agreements, as the conveyance in the Patch Agreements is clear.”

[59] The Respondent also disagrees with the Applicant’s assertion that clause 1.1.6 of the SAs gives rise to a right of reversion. That clause refers to “Royalty Rights” (property held under the GRT Agreements) as being reserved to the Mineral Owner. These Royalty Rights, originally reserved to the Mineral Owner under the leases were conveyed by the Mineral Owner to the Trustee “forever”.

[60] Finally, the Respondent asserts that there is a logical inconsistency in the Applicant’s argument that it has a contingent interest as a beneficiary of the Auten GRTs that will vest upon the happening of a future event, namely the consent of affected Unitholders. The Respondent

points out that the Applicant comes to Court precisely because it cannot obtain the consent of affected Unitholders. It asks the Court to approve the variation despite not having their consent. The Respondent argues that the Applicant cannot assert entitlement on the basis of an event (consent of the Unitholders) that must take place before its contingent interest vests and, at the same time, argue that the assistance of the Court is needed because that event can never occur.

### 3. Determination

[61] Before I begin to examine clause 22, I pause to reiterate that I do so at this point only for the limited purpose of determining whether the Applicant has status to bring this Application. A more fulsome interpretation of clause 22 will come, if at all, only later in these proceedings.

[62] In my view, the Applicant overstates its “power” to effect partial or total termination of the Auten GRTs. That power, if it exists at all, lies with the Unitholders, not the Applicant. Section 67(3) of the *Trustee Act* makes the consent of beneficiaries, in this case the Unitholders, a condition precedent to an Order terminating a trust. The consent of the settlor, in this case the Mineral Owner, is not required. That is logical because the Unitholders possess 100% of the beneficial interests in trust property. If there are Unitholders who cannot or will not consent, the Court, not the Mineral Owner, may supply that consent. Clause 22 confers upon the Mineral Owner only the “power” to give notice to the Trustee of a partial or complete termination of the GRT Agreement, accompanied by the consent of “all of the holders of Royalty Trust Certificates issued and outstanding.” If clause 22 truly conferred a power upon the Applicant to partially terminate the Auten GRTs, it would not be making this Application.

[63] Even if the Applicant, as Mineral Owner, has some power to terminate, I see nothing in clause 22 that purports to give it any reversionary right to Royalties or Gross Royalty Units. I agree with the Respondent that such a reversionary interest is antithetical to the language of the GRT Agreements and the SAs indicating that the divestiture of the Royalty was intended to be “forever”. The Royalty, assigned to the Trustee for the benefit of holders of Gross Royalty Units, was to remain trust property forever. The Trustee’s interest in the Royalty was unimpeachable. LJA conveyed his entire interest in the Royalty to the Trustee forever in exchange for Gross Royalty Units evidenced by Royalty Trust Certificates. He subsequently divested himself of those Gross Royalty Units and other people acquired them. How that occurred, whether by gift, sale or succession, does not matter.

[64] Accordingly, it would seem clear that LJA intended to and did irrevocably alienate to the Trustee whatever rights to the Royalty he had prior to the establishment of the GRT Agreements. I am unable to find support in the GRT Agreements and SAs for the Applicant’s assertion that the Mineral Owner, and its successors, were always intended to retain a contingent interest in the Royalty. To the contrary, the Applicant, as the successor Mineral Owner, claims a reversionary interest in that which its predecessor purported to alienate irrevocably.

[65] Similarly, I reject the Applicant’s claim that clause 22 was intended to confer upon the Mineral Owner the right of partial termination of Gross Royalty Units belonging to Lost Contact Unitholders and a concomitant reversionary interest in the property of the Auten GRTs left undisposed of in respect of Lost Contact Unitholders. As noted above, the Applicant argues in one of its briefs that the Settlor intended that, in circumstances where a Unitholder cannot be located, “the Owner of the mineral rights by right and act could realize a contingent beneficial interest in

the Royalty and the Gross Royalty Units in the event of a partial termination”. This assertion is completely unsupported by the language of the GRT Agreements and SAs. Nothing in the GRT Agreements makes a Unitholder’s interest under the Auten GRTs subject to a condition that the Unitholder continues to be alive and identifiable or has an identified successor. Nor does anything in the GRT Agreements purport to divest a Unitholder of its interest under the Auten GRTs if it cannot be found or has died without heirs.

[66] Following the hearing on March 18, 2025, I was concerned that the Applicant was misinterpreting the termination provisions in clause 22. Accordingly, on June 25, 2025, I emailed counsel for the Applicant noting the provisions of clause 22 and asking him to advise me “...which portion(s) of the lands which are currently subject to the Lease, and therefore which portion(s) of the current Lease, are to no longer be the subject of the Royalty and Gross Royalty Units, which, in your client’s submission, would thus be terminated.”

[67] In response, the Applicant filed the Fifth Applicant Brief, restating my question as follows:

What is the meaning intended by the use of the words “as to the Royalty and Gross Royalty Units in respect of some only of the said Land and Lease, in so far as it affects or relates to such Royalty and Gross Royalty Units...”.

[68] The Applicant then responded to its restated question as follows:

The partial termination provision at GRT Clause 22 addresses this circumstance. By the Gross Royalty Trust Agreements termination is limited to the beneficial mineral interests, the Royalty and Gross Royalty Units held by those disappeared Holders.

Some only of the said land and Lease, some of the beneficial interest derived from the minerals constituting the Trust Property settled by the original Owner (who retain the mineral legal title), reverts to the mineral Owner, when the power of partial termination is exercised.

The beneficial interest derived from all of the land and Lease, the Trust Property, continues to be subject the Gross Royalty Trust Agreements.

[69] The latter two paragraphs of this response would seem to conflict, but the Applicant then clarified and summarized its position as follows:

All of the lands encompassed in the Lease continue to be subject to the Gross Royalty Trust Agreements, as to the entire beneficial interest. None of the lands cease to be subject to the Lease.

...

None of the lands cease to be subject to the Lease. All royalties derived from production revenue from the land and Lease continues, a portion of which is payable to the Owner as contingent beneficiary.

It is the Royalty and Gross Royalty Units of the disappeared Holders which cease and terminate, not any part of the land and Lease.

[70] In the Third Respondent Brief, the Respondent contested the Applicant's assertion that partial termination leads to reversion of the interests to the Mineral Owner and took the position that partial termination under clause 22 merely would reduce the Royalty Interest from the initial 12.5% to some lesser percentage, provided that the affected Unitholders consented and the remaining Unitholders were not prejudiced.

[71] The Respondent added that clause 22 requires that Unitholders expressly consent to a partial termination of their interests and that this requirement gives them the power to direct how their terminated units are to be treated should they provide this consent. The Respondent claimed that this interpretation is supported by the proportionate reduction of the Trustee's Annual Holding fee or Charge in the event of partial termination.

[72] Similarly, the Respondent states that clause 22 is not silent on what happens to the non-deliverable funds owing to the Lost Contact Unitholders that are currently accruing with the Trustee. Rather, it states that since there is no provision for what happens in that case and the consent of the Unitholders is required for any partial termination, this means that the Unitholders must direct where the interests (and funds flowing from those interests) should go.

[73] Under the Respondent's interpretation, the Mineral Owner might be enriched by such a release of the Auten GRTs' claims to certain lands because the Royalty payable in respect of those lands would no longer be payable to the Trustee and would no longer form part of trust property. But it is not enriched as a beneficiary of the Auten GRTs. Rather, the Mineral Owner might start to receive cash flow, by way of royalty, from "released lands" that are no longer subject to the Auten GRTs.

[74] It will be clear from the above discussion that the proper interpretation of clause 22 is uncertain. Nevertheless, I conclude that the Applicant's interpretation is insupportable. It is by no means clear to me that clause 22 confers upon the Mineral Owner a unilateral power to terminate anything, whether the Royalty, Gross Royalty Units or the application of the Auten GRTs to certain lands. Further, even if there is such a right of termination, clause 22 says nothing about what happens to the interests of Unitholders if the Auten GRTs are partially or completely terminated. It is not clear if Gross Royalty Units can be terminated or extinguished with consent of Unitholders and, if so, what should happen to the share of Royalties to which those extinguished Gross Royalty Units were entitled. Certainly, clause 22 does not provide that the Mineral Owner becomes entitled to any Units in respect of which there has been a partial termination. Nor does it purport to confer upon the Mineral Owner any beneficial interest in the Royalty in that event.

[75] Accordingly, I conclude that clause 22 does not provide a reversionary right as argued by the Applicant and does not operate to constitute a Mineral Owner a beneficiary of the Auten GRTs. Therefore, I find that the Applicant is not a beneficiary of the Auten GRTs and, consequently, has no status under s. 67(2) of the *Trustee Act* to bring this Application.

[76] I note that the term "beneficiary" is not defined in the GRT Agreements. The only reference to that term in the *Trustee Act* is at s 65(a), which provides that "'beneficiary' and 'person' include an organization, a charitable trust and a non-charitable purpose trust". None of this is of assistance to the Applicant. It is clear that any definition of beneficiary would require a beneficial entitlement. In my view, there is no interpretation of clause 22 that would give the Applicant such an entitlement.

[77] At the hearing on February 17, 2026, the Applicant made submissions in respect of s 28 of the *Trustee Act*, which provides in part:

28(3) On application by a trustee or qualified beneficiary who shows that acting or declining to act is in the best interests of the objects of the trust, whether or not the beneficiaries consent, the court may make an order on terms and conditions the court considers appropriate

(a) allowing the trustee to act or to decline to act, whether or not the trustee may be in a situation that contravenes subsection (1) or (2), or

(b) excusing a trustee from liability for contravening subsection (1) or (2).

[78] Following considerable discussion at that hearing, my understanding of the Applicant's argument is that it is a qualified beneficiary by virtue of its alleged reversionary interest. The Applicant asserts that the notice of partial termination it provided to the Respondent is, in effect, a notice given by a qualified beneficiary as contemplated by s 28(3). The Applicant then argues that the provision of that notice removes the "qualification" and constitutes it a beneficiary of the Auten GRTs with a vested interest. The Applicant contends that the Respondent is "declining to act" in failing to recognize the Applicant's alleged right to effect a partial termination.

[79] In my view, this argument is premised on a fundamental misapprehension of the relevant provisions of the *Trustee Act*. The term "qualified beneficiary" is defined in s 1(1) of the *Trustee Act* as follows:

"qualified beneficiary", in respect of a trust, means a beneficiary who

- (i) has a vested beneficial interest in the trust property, or
- (ii) has delivered written notice to a trustee that the beneficiary wants to be a qualified beneficiary and has not delivered a written withdrawal of notice;

[80] I am not persuaded that delivery of a notice under s 28 of the *Trustee Act* would have the effect of elevating a contingent beneficial interest to a vested interest. But in any event, the definition of qualified beneficiary requires the party in question to be a beneficiary. Based on the foregoing analysis, I have found that the Applicant is not a beneficiary of the Auten GRTs. Therefore, even if its interpretation of s 28 of the *Trustee Act* is correct, it is of no assistance.

[81] At the February 17, 2026 hearing, the Applicant also made submissions in respect of s 1(i) of the *Trustee Act*:

"objects", in respect of the objects of a trust, means beneficiaries or purposes;

[82] The Applicant asserted that one of the "purposes" of the Auten GRTs is the partial termination thereof and that the Respondent must cooperate in effecting that object.

[83] Again, I am not persuaded by the Applicant's argument. As I indicated to counsel at the hearing, my view is that the reference to "purposes" in s 1(i) is directed at purpose trusts. Nevertheless, even if the Applicant's interpretation is correct, I see nothing in that definition that makes the Applicant a beneficiary of the Auten GRTs.

[84] My finding that clause 22 cannot be interpreted in such a way as to make the Mineral Owner a beneficiary of the Auten GRTs is sufficient for me to decide that the Applicant does not

have status to advance this Application. A more definitive interpretation of clause 22 is therefore beyond the scope of the matter before me.

### **B. Resulting Trust**

[85] Though not raised by the Applicant in argument, one might be tempted to conclude that a resulting trust arises in favour of the Applicant in respect of revenue accrued for the benefit of Lost Contact Unitholders. I review this possibility for the sake of completeness.

[86] In my view, the doctrine of resulting trust would not apply in this scenario. As noted by the Supreme Court of Canada in *Kerr v Baranow*, 2011 SCC 10 at para 16:

...it is widely accepted that the underlying notion of the resulting trust is that it is imposed “to return property to the person who gave it and is entitled to it beneficially, from someone else who has title to it. Thus, the beneficial interest ‘results’ (jumps back) to the true owner”: Oosterhoff, at p. 25. There is also widespread agreement that, traditionally, resulting trusts arose where there had been a gratuitous transfer or where the purposes set out by an express or implied trust failed to exhaust the trust property: *Waters*, at p. 21.

[87] Clause 2.5 of the SA states that:

The Mineral Owner acknowledges that, to his knowledge the Trustee has, pursuant to the Royalty Trust Agreement, given valuable, sufficient, adequate and full consideration for both:

2.5.1 the settlement of the Royalty Rights upon the Trustee forever, as referred to in paragraph 2.2.1; and

2.5.2 the transfer, assignment, grant, settlement and conveyance unto the Trustee of those Royalty Rights, if any, that are the subject of paragraph 4.1.1.

[88] LJA did not “give” the property as described in the passage above from *Kerr*. He received valuable consideration for it. There is no reason why he should continue to be beneficially entitled to it. The terms of these GRT Agreements and SAs are clear. LJA never intended to reacquire an interest in the Royalty. There was no gratuitous transfer of property to the Trustee.

[89] The Applicant may try to argue that this falls into the second category of the last sentence of *Kerr* para 16, in that the fact of Lost Contact Unitholders means the purposes set out by the express or implied trust (the Auten GRTs) failed to exhaust the trust property. I would not find this argument convincing, primarily because the express purpose of these trusts was to alienate the royalty interest in perpetuity until the property (producing substances) had literally been exhausted.

[90] In fact, the GRT Agreements and SAs do not limit this interest to the exhaustion of producing substances, but go beyond, stating that it is intended to apply forever, and that the covenant to reserve the interest should apply to all successors, heirs, etc. to any future leases.

[91] The fact that LJA received all of the Royalty Trust Certificates issued by the Trustee at the time of that conveyance had the effect of leaving him in almost exactly the same position economically as if he continued to own the Royalty, except that now he would be in a position to

sell portions of his indirect interest in the underlying cash flow stream represented by the Royalty interest by conveying Royalty Trust Certificates to interested purchasers.

[92] I note also clause 4.1.2 of the SAs, which states that:

The Mineral Owner hereby grants to the Trustee in *perpetuity* a charge upon the Mineral Rights in an amount equal to all moneys now and hereafter payable pursuant to the Royalty Rights [emphasis added]

[93] Clause 6.1 provides that:

The parties acknowledge and declare that both the Royalty Trust Agreement and this Agreement convey from the Mineral Owner to the Trustee, or otherwise create in the Trustee, an interest in land.

[94] These observations, taken together and in light of the Applicant's assertion at paragraph 19 of the Fourth Applicant Brief that the trusts established by the GRT Agreements have not terminated, undermines support for any resulting trust argument.

### **C. Vested Indefeasibly**

[95] The Second Threshold Question focuses on section 67(6) of the *Trustee Act*, which provides as follows:

The court may not approve a variation if the variation would reduce or remove any fixed indefeasible interest that has vested absolutely in a beneficiary.

[96] This Second Threshold Question therefore requires me to determine the nature of a Unitholder's interest in the Auten GRTs.

#### **1. The Parties' Positions**

[97] The Respondent argued in the First Respondent Brief that the interests of Unitholders under the GRT Agreements were fixed indefeasible interests that have vested absolutely and that the "*Trustee Act* expressly prevents those interests being taken away."

[98] In the Second Applicant Brief, the Applicant argued in response that:

The Trustee Act s. 67(6) indefeasible interest that has vested absolutely in a beneficiary is fixed in the Owner as to the Royalty and Gross Royalty Units when that interest cannot be transmitted to a unitholder or successor, a person who after reasonable inquiry cannot be located, s. 67(4). The Royalty and Gross Royalty Units thereupon vest in the Owner.

[99] In the Second Respondent Brief, the Respondent asserts that:

The beneficial interest of each Unitholder is fixed, not discretionary. Each trust unit is equivalent to 1% of hydrocarbon production from the lands. The certificates were created in equivalent shares by dividing the 12.5% gross royalty reserved under the initial lease into 12.5 units. Each beneficiary therefore has a defined entitlement to a specific portion of mineral production proceeds.

[100] The Respondent further argues that the nature of a unitholder's interest in a GRT has already been decided by the Courts of this Province. In *Scurry-Rainbow Oil Ltd v Galloway Estate*, 1994 ABCA 313, the Court of Appeal, in affirming the trial judge's findings, noted as follows at para 23:

As pointed out by the trial judge, while the enjoyment of this interest may be postponed, because of the nature of oil and gas, there is no postponement of the vesting of the interest itself.

[101] In the trial decision reported at *Scurry-Rainbow Oil Ltd v Galloway Estate*, [1993] 138 AR 321 (QB), the trial judge held at para 168:

While I agree that there may be some potential problems of interpretation arising from the royalty clause under the lease, that does not affect the main question before me, namely whether the royalty under the Trust Agreement is vested or contingent. For the reasons given above, I am satisfied it is a vested interest.

[102] In response, the Applicant argued in the Fourth Applicant Brief that:

The Royalty and Gross Royalty Unit cannot be a fixed indefeasible interest vested absolutely in the disappeared beneficiary for, as interests, they are terminable when the Owner exercises the contractual power of termination.

## 2. Case Law

[103] The concept of a "fixed indefeasible interest that has vested absolutely" was considered in *Boger Estate v Canada (TD)*, [1992] 1 FC 152. The Federal Court was tasked with determining whether a roll-over of farmland and depreciable property was properly assessed under s. 70(9) of the *Income Tax Act*, SC 1970-71-72, c 63.

[104] In *Boger*, the widow received a portion of the estate but sought a greater portion pursuant to Alberta dependents' relief legislation. The issue was what "vested indefeasibly in the child" meant in the circumstances and whether an order giving the widow an additional share meant that the property had not been vested indefeasibly in the children.

[105] ACJ Jerome began his analysis with a review at p 169 of dictionary definitions of the terms at issue, referencing *Black's Law Dictionary*, 5<sup>th</sup> Ed., as well as other legal and non-legal dictionaries:

***Vested interest.*** A present right or title to a thing, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future, as distinguished from a future right, which may never materialize or ripen into title, and it matters not how long or for what length of time the future possession or right of enjoyment may be postponed, if the present right exists to alienate and pass title.... It is not the uncertainty of enjoyment in the future, but the uncertainty of the right of enjoyment, which makes the difference between a "vested" and a "contingent" interest.

**Defeasible.** Subject to be defeated, annulled, revoked, or undone upon the happening of a future event or the performance of a condition subsequent, or a conditional limitation. Usually spoken of estates and interests in land. For instance, a mortgagee's estate is defeasible (liable to be defeated) by the mortgagor's equity of redemption.

**Indefeasible,** not to be made void.

[106] For comparison, I have taken the following definitions of these terms from the recent *Black's Law Dictionary, 12<sup>th</sup> Ed.*:

**Absolute interest.** (18c) An interest that is not subject to any condition.

**Contingent interest.** (18c) An interest that the holder may enjoy only upon the occurrence of a condition precedent. Cf. *vested interest*.

**Defeasible interest.** (18c) An interest that the holder may enjoy until the occurrence of a condition.

**Vested interest.** (18c) An interest for which the right to its enjoyment, either present or future, is not subject to the happening of a condition precedent. Cf. *contingent interest*.

**Indefeasible, adj.** (16c) (Of a claim or right) not vulnerable to being defeated, revoked, or lost <an indefeasible estate>.

**Defeasible, adj.** (16c) (Of an act, right, agreement, or position) capable of being annulled or avoided <defeasible deeds>.

[107] I note that the term “fixed” is not, by itself, defined in *Black's Law Dictionary*. While the text contains numerous references to fixed, they all refer to specific terms such as “fixed asset”, “fixed fee”, etc.

[108] After his brief review of the dictionary terms, ACJ Jerome considered their application in prior cases. At p 170, he cited *Dontigny Estate v The Queen*, [1974] 1 FC 418 (CA) at p 421, in which the Federal Court of Appeal considered the meaning of “vested indefeasibly” in the context of a deceased's will providing that the widow would inherit all of his property subject to the condition that if she remarried, all of his real estate would pass to his children or grandchildren. The Court in *Dontigny* held that the property was not “vested indefeasibly” in the widow, as it could be defeated or terminated in the event that she remarried.

[109] Continuing at p 171, ACJ Jerome stated that an “interest is vested if two requirements are satisfied: (i) the person(s) entitled to it must be ascertained; and (ii) it must be ready to take effect in possession forthwith, and be prevented from doing so only by the existence of some prior interest(s): [citations omitted]. A ‘contingent interest’ on the other hand, is one which will give no right of enjoyment unless or until a future event, called a condition precedent, occurs.”

[110] Speaking specifically to defeasibility, he commented at p 171 that “A vested interest is liable to be defeated or ‘defeasible’ if it is subject to a condition subsequent or determinable limitation. There is ample authority for the proposition that the condition or limitation must be contained in the grant.”

[111] ACJ Jerome concluded at p 172 that in that case, the property was unquestionably vested, as there was no condition precedent to be fulfilled before the gift could be effected; the children (persons entitled) were ascertained; and they were ready to take possession as there were no prior interests in existence. He also held that it was indefeasible as there was no condition subsequent in the will restricting the children's use of the property once they had it.

[112] It is useful to note that ACJ Jerome (at p 163) and both counsel relied on *Hillis v R*, [1983] 6 WWR 577 (FCA). The facts in *Hillis* were similar to *Boger*, in that they related to a spousal roll-over and the effect of an order under Saskatchewan's *Dependents' Relief Act*, RSS 1978, c D-25 that gave the widow additional estate property after the distribution of the estate property. The two sons in *Hillis* acquired a portion of the estate via provincial succession legislation. Afterwards, one of the sons executed a disclaimer of his interest in the estate, which resulted in the entire estate vesting in the widow pursuant to the *Dependents' Relief Act*. The minister sought to reassess the tax implications on the basis that it was not subject to the roll-over as it all went to the widow: *Boger* at p 164.

[113] *Hillis* and *Boger* are useful on this point as both courts concluded that the property interest had vested indefeasibly in the children, despite a subsequent order transferring the interest away from them. In other words, they stand for the proposition that even though a Court may order the alienation/transfer of property from the beneficiaries in certain conditions, these were not conditions subsequent, meaning that the interests were not defeasible.

[114] The issue of whether property was vested or contingent was also considered in *Bethel Estate (Re)*, 2015 NSSC 216, where an application was made subject to s 3 of Nova Scotia's *Variation of Trusts Act*, RSNS 1989, c 486, to wind up five trusts and distribute the balance among the beneficiaries. The applicants, five charitable trust beneficiaries, sought termination of the trusts and distribution of the property, while the respondent, the Bank of Nova Scotia Trust Company ("Scotia Trust Co"), did not consent and argued that the interests had not vested absolutely: *Bethel* at para 24. Scotia Trust Co. argued that the beneficiaries had a vested interest only in \$5,000 per year from each of the Charitable Trusts as specified in the will and did not have a vested interest in the capital of the trusts: *Bethel* at para 45.

[115] Essentially, Scotia Trust Co's argument was that, because the trusts were of indeterminate duration, the interests were not vested, meaning that the beneficiaries had a right only to the \$5,000 per year referenced in the will, and not to the capital or annual income: *Bethel* at para 49.

[116] The Court held at para 50 that "[w]ith respect, I am satisfied based on the language used to confer the trusts that they contemplate their eventual exhaustion, therefore the Charitable Trusts Beneficiaries' interests are vested. There is no contingency left for these beneficiaries to have to wait. The language is clear that these beneficiaries have a right to an equal share of the residue of the estate as it has been divided. It can be drawn by both income and capital and they have the right to their share until a point that those funds are exhausted. There are no further contingencies. There is nothing else that need happen for the Charitable Trust beneficiaries to be entitled."

[117] In *Da Costa v Da Costa* (1992), 7 OR (3d) 321 (CA), the issue was a husband's interest in the capital of the estate of a deceased as it related to equalization payments in divorce proceedings. In sum, the husband argued that he had an interest only in the income of the estate, not the capital,

as there was the potential for litigation upon the death of the deceased's grand-daughter (the husband was adopted, and Pennsylvania law had recently changed the status of adopted individuals as it related to entitlement to estates). The husband's argument was that he had only a contingent, not a vested, interest in the capital at that stage and, as such, the capital should be exempt from the divorce proceedings. The wife's position was that, due to the recent amendments, he was considered a child for purposes of sharing in the estate and would not be treated differently from the biological grandchildren.

[118] In *Da Costa*, the Ontario Court of Appeal cited *Brinkos v Brinkos* (1989), 69 OR (2d) 225, which cited MacKinnon LJ's summary of "vested" and "contingent" in *Re Legh's Settlement Trusts*, [1938] Ch 39 (CA) at p 52:

As I understand the rules of law upon such a problem, a future estate or interest is vested when there is a person who has immediate right to that interest upon the cessation of the present or previous interest. But a future interest is contingent if the person to whom it is limited remains uncertain until the cessation of the previous interest.

[119] The Ontario Court of Appeal then affirmed the trial judge's conclusion that the husband's interest in the income of the estate was a vested interest and was subject to the divorce proceedings, though his interest in the capital was contingent on surviving the other grandchildren.

### 3. Application

[120] The issue for determination in this case is whether, for purposes of the prohibition in s 67(6) of the *Trustee Act*, the Unitholders have a fixed indefeasible interest in the Auten GRTs that has vested absolutely. The following questions must be asked: (1) are the Unitholders ascertainable; (2) are the Unitholders able to take possession/have they taken possession (ie, there is no condition precedent, or the condition has been fulfilled); (3) is there a condition subsequent in the GRT Agreements that may defeat their interest and cause it to revert?

[121] For the following reasons, I conclude that the Unitholders hold a fixed indefeasible interest that has vested absolutely.

[122] First, the Unitholders are clearly ascertainable. In this case, the Trustee holds a clear registry of all the owners of the trust units, including specific proportions of ownership. There is no doubt as to who owns the units. While the Lost Contact Unitholders may not be reachable/located, it is clear who owns the Royalty Trust Certificates.

[123] I reject the assertion that the Lost Contact Unitholders are unascertainable. Even if these Lost Contact Unitholders have passed away and the registry has not been updated, the question of ownership becomes an estate issue. The original owner was clearly ascertained and the question becomes, who is the beneficiary entitled to this property? This is a matter of succession law, not of whether the property has vested. In my view, this is analogous to the subsequent transfers of property discussed in *Hillis* and *Boger*.

[124] Second, the issue of possession is relatively uncontroversial. The Unitholders have been in possession of the Royalty Trust Certificates since the initial grant. Ownership has been recorded by the Trustee in the registry, certificates have often been traded (or bequeathed) to others in the

years since, and these changes have been updated in the registry over time. This ability to trade and exchange these certificates (and the Trustee's recognition of these exchanges) supports the position that the Unitholders are in possession.

[125] Third, there do not appear to be any conditions subsequent that would cause the property to revert to the original Mineral Owner or a successor, such as the Applicant. In fact, the GRT Agreements and the SAs both make it clear that the original Mineral Owner intended to alienate his right to the 12½% of proceeds of production forever. This is supported by the words that it lasts "in perpetuity" and that he covenanted to reserve for the Trustee/Unitholders a 12½ % interest in the event (among others) that the leases were cancelled or voided.

[126] Further, the fact that a Mineral Owner may (in some unknown manner) reobtain certificates/part of the interest does not support the position that the Unitholder's interest is subject to a condition subsequent such that it is not indefeasibly vested. That situation would be similar to *Hillis* and *Boger*, where the property vested in the children, later was transferred away from them, but nevertheless was found to have vested.

[127] I am satisfied that the interests of Unitholders fall within the exclusionary provisions of section 67(6) of the *Trustee Act*.

## **V. Conclusions**

### **A. Status to Apply**

[128] The Applicant has failed to establish that it has the required status to make this Application. The Applicant is not a trustee and I find that it is not a beneficiary of the Auten GRTs. Its predecessor wholly divested himself of any interest in the Royalty, having unconditionally conveyed it to the Trustee forever.

[129] There is no provision in the GRT Agreements or the SAs that would suggest that a power of revocation, termination, or variation has been conferred upon LJA or the Applicant, as LJA's successor. The Applicant's "power" or "right" under clause 22 is nothing more than a right to notify the Trustee that affected Unitholders consent to a partial termination.

[130] At the hearing on February 17, 2026, the Applicant alluded to the possibility that the Auten GRTs were actually executory contracts rather than trusts. The Applicant's application to this Court was made pursuant to s 67 of the *Trustee Act*. There is no contract-based application before me and, accordingly, I decline to address it.

### **B. Interpretation of Clause 22**

[131] While I have not determined what the proper interpretation of clause 22 is, I find that it does not give rise to a reversionary interest in the Mineral Owner as asserted by the Applicant.

### **C. Vested indefeasibly**

[132] I find that the interests of Unitholders in the GRTs are fixed. They are defined by the entitlement conferred upon them through the combined operation of the GRT Agreements and the

Royalty Trust Certificates. They are freely tradable and devolve on the estates of deceased Unitholders. They cannot be cancelled.

[133] I find further that the interests of Unitholders are not contingent. There are no conditions precedent to the Unitholders acquiring vested interests represented by Royalty Trust Certificates. There are no conditions subsequent attached to the interests of Unitholders that would operate to divest them of their interests in the Auten GRTs.

[134] Accordingly, this Court is prohibited by s. 67(6) of the *Trustee Act* from approving a variation of the Auten GRTs in the absence of consent, and possibly even if consent were forthcoming.

[135] As noted in the Alberta Law Reform Institute Report entitled *A New Trustee Act for Alberta*, Final Report 109, January 2017 at paragraph 673:

The protection for indefeasible and vested interests seems sensible and appropriate to adopt. This additional feature also sets a brake on the court's ability to "override" a beneficiary's interest when the court is asked to approve on his or her behalf. Having a specific provision to this effect in trustee legislation would also alert other beneficiaries that there are limits to the effect of a variation.

## **VI. Decision**

[136] Two conclusions effectively dispose of the Applicant's request for relief. First, the Applicant has no status as a beneficiary to apply for relief in accordance with section 67(2) of the *Trustee Act*.

[137] Second, s 67(6) of the *Trustee Act* deprives this Court of jurisdiction to entertain the Applicant's request.

[138] Accordingly, the Application is dismissed. If the parties cannot agree on costs they are to submit written argument within thirty days of the date of this Decision, such submissions not to exceed ten pages in length.

Heard on the 17<sup>th</sup> day of February, 2026.

**Dated** at the City of Calgary, Alberta this 1<sup>st</sup> day of April, 2026.

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**C.M. Jones**  
**J.C.K.B.A.**

**Appearances:**

Ronald J. Young,  
for the Applicant

Derek Pontin  
for the Trustee

Melissa N. Burkett  
for the Attorney General

Emma Himsl

Donna Thachuk

Karen MacPherson

**APPENDIX A:**

1. Brief of 953342 Alberta Ltd., dated February 5, 2025 (“First Applicant Brief”)
2. Brief of Computer Share Trust Company of Canada, dated February 25, 2025 (“First Respondent Brief”).
3. Reply Brief of 953342 Alberta Ltd. dated March 7, 2025 (“Second Applicant Brief”)
4. Further Brief in Support of Application by 953342 Alberta Ltd., dated April 24, 2025 (“Third Applicant Brief”)
5. Brief of Computershare Trust Company of Canada, dated June 02, 2025 (“Second Respondent Brief”)
6. Reply Brief of 953342 Alberta Ltd., dated June 23, 2025 (“Fourth Applicant Brief”)
7. Reply Brief of 953342 Alberta Ltd. Re: Partial Termination, Limitation and Extent, dated July 03, 2025 (“Fifth Applicant Brief”)
8. Submissions of the Applicant 953342 Alberta Ltd. concerning notice to the Public Trustee, dated August 26, 2026 (“Sixth Applicant Brief”)
9. Reply Brief of Computershare Trust Company of Canada Re Partial Termination, Limitation and Extent, dated September 19, 2025 (“Third Respondent Brief”)
10. Letter from the Office of the Public Trustee of Alberta, dated October 20, 2025 (“Public Trustee’s Letter”)
11. Brief of the Attorney General of Alberta, dated January 28, 2026 (“AG Brief”)
12. Reply Brief of Computershare Trust Company of Canada, dated January 28, 2026 (“Fourth Respondent Brief”)
13. Brief of 953342 Alberta Ltd., dated February 03, 2026, RE Reply to AG’s Brief and Karen MacPherson Letter (“Seventh Applicant Brief”).
14. Undated Letter from Karen MacPherson
15. Affidavit of Donna Thachuk, dated February 04, 2026 (“Thachuk Affidavit”)
16. Applicant’s Closing Summary, dated February 17, 2026.