

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Karen I. Simonsen
Mr. Justice James G. Edmond

BETWEEN:

<i>QMC QUANTUM MINERALS CORP.</i>	)	<i>A. H. MacSkimming</i>
	)	<i>for the Appellant</i>
	)	
(Applicant) Appellant	)	<i>T. P. Sandulak</i>
	)	<i>for the Respondent</i>
- and -	)	
	)	<i>Appeal heard:</i>
<i>THE GOVERNMENT OF MANITOBA</i>	)	<i>November 19, 2025</i>
	)	
(Respondent) Respondent	)	<i>Judgment delivered:</i>
	)	<i>April 17, 2026</i>

CAMERON JA

Introduction

[1] This appeal concerns the authority of the Minister of Environment and Climate Change (the minister) of the respondent (Manitoba), under *The Provincial Parks Act*, CCSM c P20 [the *Parks Act*], including the minister’s delegates (i.e., the Parks Branch¹) (see *ibid*, s 30), to permit and regulate the use and occupation of land located in a provincial park that is subject to a

¹ “Parks Branch” refers to the branch described in the *Parks Act* as the “Parks and Natural Areas Branch of the Department of Sustainable Development”, and what is currently the Parks and Protected Spaces Division of the Department of Environment and Climate Change.

mining claim recorded in accordance with *The Mines and Minerals Act*, CCSM c M162 [the *Mines Act*].

[2] The applicant (QMC) maintains that the *Parks Act* does not authorize the regulation, through a provincial park permit or otherwise, of its occupation and use of land at its lithium exploration and development project at the site of mining claim MB3902 (the mining claim), a portion of which is located within the Nopiming Provincial Park (the Irgon mine site). It maintains that a one-year provincial park exploration permit issued to it in 2023 by the Parks Branch (the 2023 exploration permit), requiring the removal of QMC's equipment (the equipment) prior to its expiry (the removal condition), was issued without authority. It therefore contends that a subsequent equipment removal order (the removal order), issued pursuant to the MB, *Park Activities Regulation*, Man Reg 141/96 [the *Activities Regulation*], following its non-compliance, is invalid and should be quashed. QMC appeals the decision of the reviewing judge dismissing its claim for *certiorari*.

[3] Concurrently, QMC appeals the decision of the reviewing judge dismissing its application for *mandamus* compelling Manitoba to determine its 2024 mineral exploration permit application regarding the Irgon mine site (the 2024 exploration permit application).

[4] I am of the view that the reviewing judge did not err in finding that the decisions of the Parks Branch—to issue the removal order and not to issue a further mineral exploration permit until QMC complied with the removal condition—were reasonable; therefore, I would dismiss the appeal in this regard.

[5] QMC also sought declaratory relief under rule 14.05 of the MB, *King's Bench Rules*, Man Reg 553/88. The reviewing judge held that the requested relief addressed the same issues as the judicial review application and was procedurally improper. He determined that the relief as requested could only be pursued by way of an action, not an application. At the appeal hearing, QMC indicated that it did not intend to pursue its appeal of this ruling.

Background

[6] Although not necessarily continuously (due to various compliance concerns), since 2008, QMC has held successive one-year exploration permits for the mining claim. Those permits were issued by the Parks Branch. The 2023 exploration permit, effective from April 1, 2023 to March 31, 2024, contained several special conditions, including the removal condition.

[7] Despite ongoing disagreement regarding the removal of the equipment, as required pursuant to a permit issued in 2021, and an offence notice having been issued in January 2023 for failing to comply, QMC did not challenge the authority of the Parks Branch in issuing the 2023 exploration permit or raise any concerns about the removal condition at the time of its issuance.

[8] On February 14, 2024, QMC filed two provincial park permit applications to the permit office manager of the Director of Mines (Armstrong): one for the 2024 exploration permit application and one for road maintenance to the Irgon mine site (the road permit) (together, the 2024 permit applications). While QMC raised some argument regarding Manitoba's refusal to issue the road permit, the central issue involves the 2024 exploration permit application.

[9] On February 15, 2024, Armstrong advised QMC that, because the Irgon mine site was in a provincial park, a park permit was required and that his office did not administer such permits. He also referred QMC to the 2023 exploration permit issued by the Parks Branch.

[10] On February 21, 2024, QMC submitted the 2024 permit applications to the Parks Branch.

[11] On March 19, 2024, before the expiration of the 2023 exploration permit, the regional park specialist (Dean) emailed QMC to remind it of the removal condition. He advised that any future permit issued by the Parks Branch would authorize only the equipment necessary for specific exploration activities and would not permit equipment storage.

[12] As noted by the reviewing judge, the Parks Branch consistently required QMC to remove the equipment as was required by the 2023 exploration permit. An offence notice was issued on April 5, 2024, for non-compliance with the 2023 exploration permit. Despite this, the Parks Branch continued discussions with QMC regarding the 2024 permit applications between February 2024 and June 2024.

[13] On June 27, 2024, Sergeant Sitko of the Conservation Officer Service (Sitko) issued the removal order pursuant to section 33 of the *Activities Regulation*, made under the authority of the *Parks Act*. The removal order required QMC to obtain a permit from the Parks Branch before removing the equipment. It further advised that, if QMC failed to comply with the removal order, Manitoba would arrange for the removal of the equipment itself and recover all associated costs, including storage, from QMC.

[14] Discussions regarding the removal order and the 2024 permit applications were unsuccessful. On January 7, 2025, Dean advised QMC that the Parks Branch would not issue a permit while the removal order remained outstanding and that discussions could resume once the order had been satisfied.

[15] Further discussions led QMC to submit two additional road-repair permit applications in an effort to prevent Manitoba from removing the equipment. First, QMC provided a draft application to Dean on January 27, 2025. Dean advised that the application should specify that the purpose of the proposed roadwork was to facilitate the equipment's removal and that it should include a proposed completion date. In response, QMC submitted the second and final road-repair application on January 28, 2025. Dean rejected it on January 30, 2025, stating that the Parks Branch did not support either the proposed work or the timelines indicated for its completion. QMC does not challenge these decisions.

[16] On January 31, 2025, QMC filed the application for judicial review that is the subject of this appeal.

Decision of the Reviewing Judge

[17] The primary issue before the reviewing judge was the validity of the removal order. QMC argued that the Parks Branch lacked the legislative authority to issue the 2023 exploration permit and, as a result, the removal condition was invalid. It further argued that the Parks Branch did not have the authority to issue the removal order pursuant to the *Activities Regulation*.

[18] In his reasons, the reviewing judge examined the *Parks Act*; the MB, *Permits and Leases Regulation*, Man Reg 150/96 [the *Permits Regulation*], made under the authority of the *Parks Act*; the *Activities Regulation*; and the *Mines Act*. He concluded that the Parks Branch had statutory authority to regulate the Irgon mine site by way of permit. He found that, although the *Mines Act* grants certain rights to holders of mining claims, those rights are subject to limitations when the claim lies within a provincial park. Accordingly, the Parks Branch retained authority to regulate the use and occupation of such land, including the Irgon mine site. As well, the reviewing judge rejected QMC's submission that section 7(4) of the *Permits Regulation* vested exclusive authority to determine the 2024 exploration permit application in the Director of Mines.

[19] The reviewing judge also rejected QMC's argument that there was no legislative authority to issue the removal order. He did not accept QMC's position that the *Activities Regulation* was not intended to apply to mineral exploration or mining activities. Rather, he found that section 33(2) of the *Activities Regulation* authorized the removal order.

[20] In the result, the reviewing judge held that the decisions to issue and enforce the removal order and not to issue any new permits were reasonable.

Issues

[21] QMC maintains there are two legal issues. The first is whether the mining claim is an interest in land. The second is whether its "occupancy of the surface of the land governed by its mining claim arises under and accords with, the [*Parks Act*], as well as the [*Mines Act*]."

[22] The reviewing judge agreed with Manitoba that the issues were better framed as whether the decisions by the Parks Branch to enforce the removal order and not to issue any new permits were reasonable.

[23] On appeal, Manitoba submits that the issues are whether the reviewing judge erred when he found that Manitoba's decisions to issue the removal order and not to issue the 2024 exploration permit were reasonable. I agree with this description, but note that the reasonableness of the decision to issue the removal order depends on the determination of whether the Parks Branch reasonably interpreted its statutory authority to issue the 2023 exploration permit and the removal order.

Positions of the Parties

[24] QMC argues that its mining claim constitutes an interest in land that includes surface rights under section 74(1) of the *Mines Act*, permitting it to occupy the land to access minerals. It submits that the Parks Branch lacks the authority to restrict the exercise of these mineral access rights.

[25] QMC further submits that any authority the Parks Branch had under the *Parks Act* to regulate its use of surface land at the Irgon mine site ceased once the mining claim was recorded under Part 5 of the *Mines Act*. It maintains that, thereafter, the Parks Branch no longer had jurisdiction to regulate its use of the land.

[26] QMC also relies on section 7(4) of the *Permits Regulation*, which provides that applications concerning mineral rights within a provincial park must be submitted to the Director of Mines rather than to the Director of Parks.

[27] QMC further argues that the removal order made pursuant to section 33(2) of the *Activities Regulation* (which regulates abandoned vehicles and objects) is invalid because that provision is not intended to apply to industrial activities such as mining exploration.

[28] On a policy basis, QMC submits that consideration should be given to the fact that it has reached an agreement regarding its planned exploration and development of the Irgon mine site with a nearby First Nation, with whom it engaged in negotiations at the insistence of the Parks Branch. It further asserts that Manitoba failed to comply with its duty to consult the First Nation when it refused to issue the 2024 exploration permit. While consultation with the relevant First Nation is important and may have been required, in my view, neither the agreement nor any consultation efforts are determinative of the statutory interpretation issues before this Court, and they do not factor into my analysis.

[29] Manitoba acknowledges that the mining claim is an interest in land but maintains that, like all land within a provincial park, it remains subject to regulation under section 15 of the *Parks Act*.

[30] Manitoba argues that a purposive interpretation of the *Parks Act* and its relationship with the *Mines Act* supports the conclusion that the mining claim was subject to regulation by the Parks Branch pursuant to sections 147(1)(b) and 147(2) of the *Mines Act*, and that this authority extends to issuing the 2023 exploration permit and determining the 2024 exploration permit application.

[31] Next, Manitoba submits that section 7(4) of the *Permits Regulation* applies to the determination of mineral rights, as defined in the *Mines Act*, and

does not extend to regulating the use and occupation of land within a provincial park, including the regulation of mineral access rights.

[32] Finally, Manitoba maintains that section 33(2) of the *Activities Regulation* fully authorized the issuance of the removal order and that this authority was not limited in the manner QMC suggests.

Standard of Review

[33] Appellate consideration of a subordinate court’s review of an administrative decision involves the determination of whether the reviewing judge correctly chose and applied the standard of review (see *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 12 [*Horrocks*]; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 47 [*Agraira*]; *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at paras 43-44 [*Dr Q*]). These are questions of law, reviewable on the correctness standard (see *Ontario (Attorney General) v Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 at para 15; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 36; *Dr Q* at para 43). In practice, this Court must “[step] into the shoes’ of the lower court” and review the administrative decision without deference to the reviewing judge (*Horrocks* at para 10, quoting *Agraira* at para 46).

[34] QMC argues that the reviewing judge erred in law by applying the reasonableness standard in reviewing the Parks Branch’s authority to issue the 2023 exploration permit and its refusal to issue the 2024 permit applications. It further submits that, if the removal order depended on the validity of the 2023 exploration permit, it should be reviewed on the correctness standard. I disagree.

[35] In this case, the questions as to whether the Parks Branch had statutory authority to issue the 2023 exploration permit and the subsequent removal order turn on its interpretation of the enabling legislation and its exercise of discretion. These matters attract the reasonableness standard of review (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 65-68 [*Vavilov*]).

[36] In reviewing for reasonableness, this Court is not to re-weigh the evidence, second-guess the discretion of the decision maker or proceed with its own statutory interpretation of the legislation (see *Safe Food Matters Inc v Canada (Attorney General)*, 2022 FCA 19 at para 39). The decision maker is not required to mimic how the courts go about the interpretation of legislation (see *ibid* at para 40; *Vavilov* at para 120).

[37] The application of the reasonableness standard to an administrative decision maker's interpretation of its authority is explained in *Vavilov* at para 110:

[C]ertain questions relating to the scope of a decision maker's authority may support more than one interpretation, while other questions may support only one, depending upon the text by which the statutory grant of authority is made. What matters is whether, in the eyes of the reviewing court, the decision maker has properly justified its interpretation of the statute in light of the surrounding context.

[38] I also disagree with QMC's submission that determining whether authority to issue the 2023 or 2024 exploration permits lies solely with the Director of Mines under section 7(4) of the *Permits Regulation* raises a jurisdictional boundary issue requiring correctness review. As explained in

Vavilov, such questions arise only where one administrative body interprets its authority in a manner that conflicts with the jurisdiction of another, creating incompatible legal obligations.

[39] In the present case, there is no operational conflict. The Mines Branch² does not dispute that the Parks Branch has jurisdiction to issue exploration permits (including conditions attached thereto) regarding the use and occupation of land located within provincial parks.

Principles of Statutory Interpretation

[40] The overarching principle of statutory interpretation is the modern approach, which states that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 at para 21 (SCC)).

[41] Section 6 of *The Interpretation Act*, CCSM c I80 [the *Interpretation Act*], states that:

Rule of liberal interpretation

6 Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

Solution de droit

6 Les lois et les règlements sont censés apporter une solution de droit et s'interprètent de la manière la plus équitable et la plus large qui soit, compatible avec la réalisation de leur objet.

² “Mines Branch” refers to the Mines Branch of the Department of Economic Development, Investment, Trade and Natural Resources.

[42] An understanding of the Parks Branch’s authority to regulate mining claims in provincial parks requires an examination of the *Parks Act* and the *Mines Act*, including how the two statutes interact.

The Parks Act

[43] The preamble to the *Parks Act* states that:

[P]rovincial parks are special places that play an important role in the protection of natural lands and the quality of life of Manitobans;

...

[P]rovincial parks should be managed in a manner consistent with the principles of sustainable development so that representative examples of diverse natural and cultural heritage are conserved and appropriate economic opportunities are provided[.]

[L]es parcs provinciaux sont des endroits spéciaux qui jouent un rôle important dans la protection des terres naturelles et dans la qualité de vie des Manitobains;

...

[L]es parcs provinciaux ... devraient être gérés suivant le principe de développement durable de sorte à garantir la conservation de spécimens représentatifs de notre patrimoine naturel et culturel diversifié et à offrir des possibilités économiques appropriées[.]

[44] Section 4 of the *Parks Act* dedicates provincial parks “to the people of Manitoba and visitors to Manitoba” and underscores that they are to be “maintained for the benefit of future generations”.

[45] Section 5 sets out the purposes of provincial parks. It states:

Purposes of provincial parks

5 In accordance with park classifications and land use categories, the purposes of a

Rôle des parcs provinciaux

5 Le réseau de parcs provinciaux a notamment pour rôle, en conformité avec la classification des parcs et les

provincial park system include the following: catégories d'utilisation des terres :

- | | |
|---|---|
| (a) to conserve ecosystems and maintain biodiversity; | a) de conserver les écosystèmes et de maintenir la biodiversité; |
| (b) to preserve unique and representative natural, cultural and heritage resources; | b) de sauvegarder des ressources naturelles, culturelles et patrimoniales uniques et représentatives; |
| (c) to provide outdoor recreational and educational opportunities and experiences in a natural setting. | c) d'offrir des activités éducatives et de loisirs de plein air dans un milieu naturel. |

[46] The overarching authority to regulate land use and occupation within a provincial park is found in section 15 of the *Parks Act*. It states:

Use and occupation restricted 15 No person shall use or occupy Crown lands in a provincial park except under the authority of this Act or the regulations.	Restriction quant à l'utilisation et à l'occupation 15 Il est interdit d'utiliser et d'occuper des terres domaniales qui sont situées dans un parc provincial si ce n'est en conformité avec la présente loi et les règlements.
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[47] Similarly, section 17(1) of the *Parks Act* prohibits owners or occupiers from making changes in land use to provincial park lands except in accordance with the regulations. Section 8(1) of the *Activities Regulation* prohibits any activity that “damages or alters the land or significantly interferes with the environment in a provincial park, except under the authority of a permit issued by the minister.”

The *Mines Act*

[48] Section 2(1) of the *Mines Act* states:

Object and purpose of Act

2(1) The object and purpose of this Act is to provide for, encourage, promote and facilitate exploration, development and production of minerals and mineral product in Manitoba, consistent with the principles of sustainable development.

But et objets de la loi

2(1) La présente loi a pour objets et pour but de promouvoir, de favoriser et de faciliter l'exploration ainsi que la préparation et la production de minéraux et de substances minérales au Manitoba tout en respectant les principes de développement viable.

[49] Section 4 of the *Mines Act* provides the Mines Branch the authority to record or issue a mineral disposition, including the mining claim at issue. Section 1(1) defines a “claim” as follows:

Definitions

1(1) In this Act,

“**claim**” means a parcel of Crown mineral land, that is staked out, acquired or held as a claim for the purpose of mineral exploration and development under Part 5[.]

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

« **claim** » Parcelle d'un bien-fonds de minéraux domaniaux qui est jalonnée, acquise ou détenue à titre de claim à des fins de prospection et de préparation minière en vertu de la partie 5.

[50] Before a mining claim is recorded, section 61(1) of the *Mines Act* permits a licensee to explore for minerals on Crown land and may stake out and record a claim. However, section 61(1)(d) creates an exception: these activities are prohibited on designated park lands to the extent that they are restricted under the *Parks Act* or its regulations. It states:

Licensee may explore for minerals

61(1) A licensee may explore for minerals on, in or under Crown mineral land and may stake out and record a claim on Crown mineral land, other than

- (d) lands that are designated as a provincial park under *The Provincial Parks Act* or the regulations under that Act to the extent that exploration, staking out or recording a claim is prohibited or restricted by *The Provincial Parks Act* or the regulations under that Act[.]

Exploration par le titulaire d'un permis

61(1) Les titulaires de permis peuvent faire de l'exploration en vue de trouver des minéraux sur un bien-fonds de minéraux domaniaux ou dans celui-ci, y jalonner un claim et l'enregistrer, sauf si :

- d) le bien-fonds est désigné parc provincial en vertu de la *Loi sur les parcs provinciaux* ou ses règlements d'application dans la mesure où l'exploration, le jalonnement ou l'enregistrement d'un claim est interdit ou restreint par cette loi ou ses règlements d'application[.]

[51] QMC concedes that section 61(1) required it to obtain permits pursuant to the *Parks Act* before staking out and recording the mining claim. However, it disputes the Parks Branch's subsequent authority to regulate the mining claim.

[52] The rights of a claim holder under section 73(1) of the *Mines Act* include the "exclusive right to explore for and develop the Crown minerals . . . found in place on, in or under the lands covered by the claim."

[53] Section 74(1) defines the mineral access rights of a claim holder. It states:

Mineral access rights

74(1) *Subject to Part 9*, the holder of a claim may enter, use and occupy the *surface of the land* that is governed by the claim, for the purpose of prospecting or exploring for or developing, mining or producing minerals on, in or under the land, to the extent necessary for the purpose.

Droits de surface du titulaire du claim

74(1) *Sous réserve de la partie 9*, le titulaire d'un claim est aussi titulaire des droits de *surface* lui permettant d'utiliser et d'occuper le bien-fonds visé par le claim et d'y pénétrer en vue de la prospection, de l'exploration et de la préparation, de l'exploitation et de la production des minéraux qui s'y trouvent.

[emphasis added]

[54] Part 9 of the *Mines Act* is titled "Surface Rights Use of Lands". Under the subheading "Crown Land", section 147(1)(b) states:

Entry upon and use of reserved Crown land

147(1) Subject to subsection (2), a person may enter upon, for the purpose of exploring for, staking out and recording a claim or developing a quarry mineral disposition, Crown land that

(b) is within a provincial park, subject to obtaining a permit under *The Provincial Parks Act*[.]

Utilisation des terres domaniales réservées

147(1) Sous réserve du paragraphe (2), il est possible, à des fins d'exploration, de jalonement, d'enregistrement de claim ou de préparation d'aliénation de minéraux de carrière, d'entrer dans des terres domaniales qui sont, selon le cas :

b) situées dans un parc provincial, sous réserve de l'obtention d'un permis aux termes de la *Loi sur les parcs provinciaux*[.]

[55] Section 147(2) mandates that before entry upon land described in section 147(1), a person must obtain all approvals or authorizations required under the applicable statute and comply with their terms and conditions.

[56] Where the surface of Crown land that is subject to a mineral disposition (which includes a claim pursuant to the definition of a mineral disposition found in section 1(1) of the *Mines Act*) is also occupied by another, section 147(4) provides that the licensee (i.e., the holder of the claim) shall use the surface of the land in a manner the least injurious to the occupier and not cause undue interference with the use and enjoyment of the land.

The Parks Branch Has the Authority to Regulate Mining Claims Within Provincial Parks

The Plain Meaning of the Legislation

[57] In my view, the plain meaning of section 74(1) of the *Mines Act*, read together with the exception provided in section 147(1)(b) of Part 9, confirms that a claim holder may occupy and use the surface of land in a provincial park for mineral exploration and development only where the required authorizations under the *Parks Act* are obtained and only to the extent necessary for those activities.

[58] QMC contends that section 147 of the *Mines Act* applies only to prospecting and exploration activities undertaken before a claim is recorded, and not to already staked claims. It relies on the similarity in language between section 61(1), which governs the granting of claims, and section 147(1), noting that both refer to exploration, staking out or recording a claim. It submits that the use of the same descriptive language in both

sections is indicative of legislative intent that the exploration referred to in section 147 only applies to the extent that it is required to stake out or record a claim, and not to exploration post claim.

[59] As conceded by QMC at the appeal hearing, the term “exploration”, as it is defined in the *Mines Act*, is not limited to exploration only for the purpose of establishing a claim. Section 1(1) of the *Mines Act* defines exploration as follows:

Definitions

1(1) In this Act,

“**exploration**” means a search for minerals by prospecting, by geological, geophysical or geochemical surveys, by trenching, stripping, excavating or drilling or by any other method[.]

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

« **exploration** » Recherche de minéraux, notamment par la prospection, les études géologiques, géophysiques et géochimiques, l'excavation de tranchées, la découverte, l'excavation ou le forage.

[60] The included activities go beyond what is permitted for the exploration of minerals for the purpose of establishing a claim.

[61] QMC's interpretation would effectively remove the mining claim from provincial park regulation once a claim is recorded. This result is inconsistent with the plain meaning of the relevant statutory provisions and with the objectives of the *Parks Act*. Moreover, because section 61(1) of the *Mines Act* already governs pre-claim activities, QMC's reading would render sections 147(1) and 147(2) redundant.

The Plain Meaning of Legislation Is Not Displaced by Common Law

[62] QMC submits that the mining claim constitutes an interest in land granted pursuant to the *Mines Act* and that section 74(1) of that Act grants it a corresponding right of occupancy permitting it to place the equipment on the Irgon mine site. It further submits that this right of occupancy is distinct from the Parks Branch's authority to regulate how the equipment is used and the extent to which park land may be disturbed.

[63] QMC relies on *R v Tener*, 1985 CanLII 76 (SCC) [*Tener*], to argue that its mineral access rights under section 74(1) of the *Mines Act*—including the right to use the surface of the land—are inseparable from its mineral rights. On this reasoning, a parks permit cannot restrict the surface-use component of those rights while leaving the underlying mineral interest intact.

[64] Manitoba acknowledges that the mining claim constitutes an interest in land but argues that this interest does not confer an absolute right to occupy the land covered by it. It further submits that the scope of QMC's rights is defined by statute rather than by common law principles alone. I agree.

[65] Section 15 of the *Parks Act* provides the overarching authority to regulate the use or occupation of Crown lands within provincial parks without distinguishing between those concepts.

[66] One of the real concerns in this case is that QMC is simply using the Irgon mine site to store the equipment. As Manitoba argues, allowing QMC to leave the equipment on the site undermines the purpose of the *Parks Act* of preserving provincial park lands. As earlier stated, the mineral access rights

provided in section 74(1) of the *Mines Act* only permit both use and occupancy to the extent necessary for the purposes prescribed in that section.

[67] Finally, the authority of the Parks Branch to regulate mineral access rights by way of permit, including the removal condition in the 2023 exploration permit, is not inconsistent with *Tener* or the common law.

[68] In *Tener*, British Columbia’s legislative and policy changes resulted in the denial of a permit to carry out mining development on a pre-existing mining claim within an area subsequently designated as a provincial park. The denial was permanent. The issue before the Court was whether the nature of the denial constituted an executive action amounting to an expropriation requiring compensation.

[69] Justice Estey, writing for the majority, held that on the facts of that case, the permit denial constituted an acquisition of land by the Crown under British Columbia’s *Provincial Parks Act*, RSBC 1936, c 211, triggering compensation. Nothing in his reasons suggested that the province lacked authority to regulate mining activities within a provincial park. To the contrary, he expressly recognized that authority when he stated (*Tener* at para 49):

The merit of the “works” undertaken by the government of the province under the *Park Act* is not for assessment by anyone other than the provincial executive. So long as the action taken in the formation of the park conforms to the statute it is not a proper subject of judicial review or comment. This kind of legislative and executive action finds its counterpart in many community developments. Sometimes the action taken leads to a right to compensation and sometimes it does not. That question is to be resolved according to the applicable statutes adopted by the legislature.

[70] The present case does not involve expropriation. Further, the record does not support QMC's assertion that complying with the removal condition would require road repairs costing "tens of thousands of dollars". Manitoba's evidence, accepted by the reviewing judge, was that the equipment could be removed in winter when the access road was frozen without incurring additional repair costs.

The Plain Meaning and Purpose of Legislation Are Consistent with the Parks Act Classification Scheme

[71] QMC maintains that its position that the right to occupy the surface of the Irgon mine site is supported by a purposive interpretation of the *Parks Act* and its classification scheme. The Irgon mine site lies within an area classified as a "natural park" under section 7(2)(b) of the *Parks Act* (see MB, *Provincial Parks Designation Regulation*, Man Reg 37/97, Schedule "Nopiming Provincial Park"), which is intended to both preserve natural regions and to allow a range of recreational and resource-management activities. It is further classified pursuant to section 7(3)(c) of the *Parks Act* as being in the resource management category, the purpose of which is to "permit commercial resource development or extraction in a manner that does not compromise the main purpose of the park classification".

[72] QMC submits that the above classifications emphasize legislative intent aimed at the promotion of economic and resource development in provincial parks.

[73] While the Irgon mine site lies within a provincial park that permits certain resource-development activities, this classification does not displace the Parks Branch's authority to regulate land use and occupation within the

park. Development is allowed only to the extent that it does not compromise the preservation of the natural region. QMC's position is inconsistent with the plain language of both the *Parks Act* and the *Mines Act*, as well as with a purposive interpretation of the statutory framework governing the use and occupation of provincial park land for mining activities.

[74] The intent that economic development not be a central use and occupation of land in provincial parks is evidenced by the legislative history of the *Parks Act*.

[75] The *Parks Act* and the *Mines Act* were enacted close in time by the same government. The *Mines Act* was introduced in the Legislature on March 20, 1991, and received Royal Assent on July 25, 1991.³

[76] The *Parks Act* was introduced on May 27, 1993, and received Royal Assent on July 27, 1993.⁴

[77] At the Standing Committee on Public Utilities and Natural Resources reviewing the *Parks Act*, Hon Harry Enns (Hon Enns), the then Minister of Natural Resources, stated at 433:⁵

It is essentially because of this government's understanding of the historical and existing resource uses within our parks system that

³ See Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 35-2, vol 40, No 10 (20 March 1991) at 380 (Hon Harold Neufeld) online: <gov.mb.ca/legislature/hansard/hansard.html>; Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 35-2, vol 40, No 93 (25 July 1991) at 5413-14 (Hon Denis Rocan) online: <gov.mb.ca/legislature/hansard/hansard.html>, respectively. While the *Mines Act* has been amended since its enactment, none of the amendments negates the legislative intent expressed at the time of its original enactment.

⁴ See Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 35-3, vol 42, No 71 (27 May 1993) at 3438 (Hon Harry Enns) online: <gov.mb.ca/legislature/hansard/hansard.html>; Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 35-4, vol 42, No 110 (27 July 1993) at 6115-16 (Hon Denis Rocan) online: <gov.mb.ca/legislature/hansard/hansard.html>, respectively.

⁵ Manitoba, Legislative Assembly, *Standing Committee on Public Utilities and Natural Resources*, 35-4, vol 42, No 15 (26 July 1993) at 433 (Hon Harry Enns) online: <gov.mb.ca/legislature/hansard/hansard.html>.

I believe that the system of land use categories provides a mechanism for allowing resource uses, such as forestry and mining, that we have embodied into this legislation.

[78] Even though Hon Enns recognized the importance of resource development, the primary purposes listed at section 5 do not reflect such a purpose. Section 5 was initially drafted to include the pursuit of economic development. At the same committee meeting, Hon Enns moved to amend the proposed legislation to remove that provision. In doing so, he stated (*ibid* at 435):

Mr. Chairperson, I propose an amendment for Section 5. The amendment is being passed out. I just say again that throughout the hearings and presentations, you know, we were reminded that Manitoba stands alone in the country in the origin and the breadth of its system of provincial parks. I repeat that I have no hesitation in recognizing the historical value of the existing resource uses within our park system and have noted the focus of many of the presenters on Section 5 of the act, dealing with the purposes of our parks land, in particular 5(d).

I appreciate these concerns and understand that while economic development has been and will be part of our vast park land area for some time to come, it is not the primary purpose behind the establishment of our parks.

[emphasis added]

[79] He then moved to delete section 5(d) from the proposed legislation, and the amendment passed. Section 5 was subsequently enacted in its current form.

Section 7(4) of the Permits Regulation Does Not Limit the Authority of the Parks Branch to Issue an Exploration Permit

Positions of the Parties

[80] Section 7(1) of the *Permits Regulation* provides that no work or survey for the purpose of staking of land for mineral claiming may be undertaken unless a permit is obtained from the Minister of Parks. QMC argues that once such a permit is obtained, the Parks Branch no longer maintains the authority to issue a permit for its occupation of the mining claim. Rather, it maintains that section 7(4)(a) of the *Permits Regulation* vests the authority to regulate with the Director of Mines.

[81] Section 7(4) of the *Permits Regulation* states:

Application re mineral or surface rights

7(4) An application with respect to

- (a) the mineral rights underlying land in a provincial park; or
- (b) all or any part of the surface rights of a mining claim in a provincial park;

shall be made to the Director of Mines who shall submit the application to the Director of Parks for his or her recommendation before the application is granted or rejected.

Demandes relatives à des droits sur les minéraux

7(4) Les demandes relatives à des droits sur les minéraux sont présentées au directeur des Mines qui les soumet au directeur des Parcs pour obtenir une recommandation avant de les approuver ou de les rejeter, lorsque les demandes en question :

- a) visent les droits sur les minéraux d'un bien-fonds situé dans un parc provincial;
- b) visent, en tout ou partie, les droits de surface d'un claim minier situé dans un parc provincial.

[82] QMC relies on *CanadianOxy Chemicals Ltd v Canada (Attorney General)*, 1999 CanLII 680 (SCC), to argue that the phrase “with respect to” should be interpreted broadly, such that the term “mineral rights” in section 7(4)(a) encompasses all rights associated with a mineral claim, including mineral access rights.

[83] Manitoba submits that the *Permits Regulation* applies only to mineral and surface rights, not to mineral access rights which encompass the surface use of the land. It notes that these terms are defined in the *Mines Act* and argues that, because the *Permits Regulation* specifically references mining rights and the authority of the Director of Mines, those statutory definitions should govern its interpretation. Although Manitoba acknowledged during oral argument that mineral rights can include a bundle of rights encompassing mineral access rights, it maintains that section 7(4) of the *Permits Regulation* addresses applications concerning tenure, changes in tenure, or disputes involving tenure—matters governed by the Mines Branch. It argues that this provision does not displace the Parks Branch’s authority to regulate the use or occupation of land within a provincial park that is subject to a mining claim.

[84] Manitoba further submits that, regardless of whether an individual holds mineral, surface, or mineral access rights within a provincial park, the Parks Branch retains overarching authority under section 15 of the *Parks Act* to regulate the use or occupation of those lands.

[85] The reviewing judge concluded that section 7(4) of the *Permits Regulation* applies only to mineral and surface rights, as defined in the *Mines*

Act and not to the mineral access rights that QMC already possessed by virtue of the mining claim.

Analysis

[86] Before interpreting section 7(4) of the *Permits Regulation*, it is necessary to set out the relevant definitions in section 1(1) of the *Mines Act*.

Definitions

1(1) In this Act,

...

“mineral access rights” means, in respect of a lease or mineral disposition, the right to *enter, use and occupy the surface of land* to prospect or explore for or develop, mine and produce minerals, but does not include surface rights[.]

...

“mineral rights” means rights to produce minerals that are found on, in or under land, whether or not title to the minerals in the land is severed from title to the land[.]

...

“surface rights” means, in respect of a parcel of land, rights to enter, use and occupy the surface of the land for *purposes other than the exercise of mineral rights, but does not include mineral access rights*[.]

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi.

...

« droits d'accès aux minéraux » Dans le cas d'un bail ou d'une aliénation minière, *droits d'entrer sur la surface d'un bien-fonds, de l'utiliser et de l'occuper* dans le but de faire de la prospection ou de l'exploration, ou de préparer, d'exploiter et de produire des minéraux. La présente définition exclut les droits de surface.

...

« droits miniers » Droit de produire des minéraux d'un bien-fonds, que le titre de propriété des minéraux du bien-fonds soit distinct ou non du titre de propriété du bien-fonds.

...

« droits de surface » Droit d'entrer sur la surface d'un bien-fonds, de l'utiliser et de l'occuper *à des fins autres que l'exercice de droits miniers*. *Sont exclus de la présente*

définition les droits d'accès aux minéraux.

[emphasis added]

[87] Also see the definition of “surface rights” in section 1 of *The Surface Rights Act*, CCSM c S235, which excludes a right of entry on land required by an operator (as defined in that Act) “for the purpose of exploring for, developing, producing or transporting a mineral”.

[88] The *Permits Regulation* was made pursuant to the *Parks Act* and not the *Mines Act*. Nonetheless, it is helpful to note that section 33 of the *Interpretation Act* states:

Terms used in regulations

33 Terms used in a regulation have the same meaning as they have in the Act that authorizes the regulation.

Terminologie des règlements

33 Les termes des règlements s'entendent au sens de la loi habilitante.

[89] The *Parks Act* and the *Mines Act* operate in a related and coherent manner. As noted in Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto: LexisNexis, 2022), ss 13.04-13.05, 13.08, related legislation is presumed to be coherent (also see *Thibodeau v Air Canada*, 2014 SCC 67 at para 93; *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 at para 38). I would note that the *Permits Regulation* was enacted close in time to the *Mines Act* and should be interpreted in a coherent manner as well.

[90] The definitions in the *Mines Act* make clear that mineral rights and surface rights are distinct interests in land. Section 7(4) of the *Permits*

Regulation refers to each of those rights, but not mineral access rights. While mineral access rights may accompany mineral rights, the scope of any mineral access right varies depending on the nature of the mineral disposition⁶ or lease granted under the *Mines Act*. For example, the mineral access rights associated with a mineral production lease (see *ibid*, s 108) are broader than those attached to a mining claim (see *ibid*, s 74(1)).

[91] I agree with Manitoba that the purpose of section 7(4)(a) of the *Permits Regulation* is to address situations where, for example, a claim holder, such as QMC, requires additional rights or some form of change to the disposition it has been granted, or where a third party is seeking surface rights and there is the potential for a conflict with a mineral rights holder who wishes to assert their rights. Applications such as those would go to the Director of Mines and follow the process under the *Mines Act*, with the caveat that the Director of Parks may make recommendations in accordance with the principles found in the *Parks Act*.

[92] In my view, to interpret section 7(4)(a) of the *Permits Regulation* as granting absolute discretion to the Director of Mines to regulate, by way of application, all aspects of the use and occupation of a mining claim on land located within a provincial park would render section 147(2) of the *Mines Act* meaningless. Such an interpretation would result in an absurdity in that a regulation made pursuant to the *Parks Act* would relinquish the Parks Branch's authority, which is recognized in both the *Parks Act* and the *Mines Act*, to regulate the use and occupation of land within provincial parks. It would also be contrary to the purpose and intent of the *Parks Act*.

⁶ Section 1(1) of the *Mines Act* defines a "mineral disposition" as a claim, a mineral exploration licence or a quarry permit.

[93] I also agree that, regardless of how broadly mineral rights in section 7(4) may be interpreted, section 7(4)(a) of the *Permits Regulation* does not displace the Parks Branch's overarching authority under section 15 of the *Parks Act* to regulate the use and occupation of land within a provincial park.

[94] The regulatory authority granted to the Parks Branch concerning the removal and use of resources in provincial parks found in section 33(t) of the *Parks Act* reinforces the supremacy of that legislation. Section 33(t) states:

Ministerial regulations

33 The minister may, in respect of provincial parks, make regulations

(t) respecting the removal and use of resources in provincial parks and prescribing restrictions and conditions respecting the removal and use of resources that are in addition to the provisions of *The Forest Act*, *The Wildlife Act*, *The Mines and Minerals Act* and any other Act of the Legislature[.]

Règlements du ministre

33 Le ministre peut, par règlement, à l'égard des parcs provinciaux :

t) prendre des mesures concernant l'enlèvement et l'utilisation de ressources dans les parcs provinciaux et fixer des restrictions ainsi que des conditions concernant l'enlèvement et l'utilisation de ces ressources, lesquelles restrictions et conditions s'ajoutent à celles prévues par toute loi de l'Assemblée législative, notamment la *Loi sur les forêts*, la *Loi sur la conservation de la faune* et la *Loi sur les mines et les minéraux*[.]

[95] Further, section 27(7) of *The Crown Lands Act*, CCSM c C340, makes it an offence to use, occupy or leave any thing upon Crown land in a provincial park absent authority. It states:

Illegal occupation of Crown lands prohibited

27(7) Except in the exercise of a right or authorization given or a duty imposed by law, any person who

- (a) uses or occupies; or
- ...
- (c) brings or erects, and leaves, any building, structure or thing upon;

any Crown lands, including Crown lands in . . . a provincial park . . . or for any other similar purpose is guilty of an offence.

Occupation illicite de terres domaniales

27(7) Lorsque des biens-fonds sont des terres domaniales, y compris celles situées dans un district d'administration locale et celles réservées, ou assignées, à un champ public de tir, une zone de gestion de la faune, un parc ou une forêt provinciaux, ou à des fins semblables, commet une infraction quiconque pose les actes ci-après énumérés autrement que dans l'exercice d'un droit ou d'une autorisation conférés par la loi ou d'un devoir que celle-ci impose :

- a) utilise ou occupe ces biens-fonds;
- ...
- c) y apporte ou érige, et y laisse, des constructions ou des choses.

[96] Had the Legislature intended to remove the authority of the Parks Branch regarding the use and occupation of land where a mining claim exists within a provincial park, as argued by QMC, it would have done so expressly in the governing Acts, rather than requiring the involved exercise of statutory interpretation of a regulation to reach such a conclusion.

[97] The above interpretation aligns with the legislative history and purposes of the *Parks Act*, the *Mines Act*, the *Interpretation Act* and the principle of coherence. Together, these statutes establish a framework in which provincial parks are designated and managed “for the benefit of future

generations” (the *Parks Act*, s 4) consistent with the purposes set out in section 5 therein, while also accommodating mineral exploration and development in a manner “consistent with the principles of sustainable development” as set out in section 2(1) of the *Mines Act*.

[98] In reaching the above conclusion, I have considered the decision of this Court in *Springfield (Rural Municipality) v Manitoba (Provincial Municipal Assessor)*, 1991 CanLII 8203 (MBCA) [*Springfield*]. I am of the view that it should be distinguished. In that case, Huband JA, writing for this Court, declined to consider the statutory definition of “minerals” found in *The Sand and Gravel Act*, RSM 1987, c S15, *The Mines Act*, RSM 1987, c M160 and *The Mining Tax Act*, RSM 1987, c M195, in the context of taxation pursuant to *The Municipal Assessment Act*, RSM 1988, c M226 (see *Springfield* at paras 7-9, 29). He found that there was no legislative intent that those definitions be applied beyond the respective statutes in question. In the present case, the legislative history and cross-referencing of the *Mines Act* and the *Parks Act* demonstrate legislative intent that the relevant definitions in the *Mines Act* apply to the *Parks Act* and the *Permits Regulation*.

Authority to Issue the Removal Order

[99] QMC argues that the *Activities Regulation* is aimed at recreational activities like camping, campfires, and fireworks, and does not expressly reference activities such as mineral exploration, thereby evidencing that it was not intended to apply to such industrial activities. I disagree.

[100] I would mention that the *Activities Regulation* was enacted close in time to both the *Parks Act* and the *Mines Act*. Section 8(2) of the *Activities Regulation* lists several activities requiring a permit in a provincial park,

including those commonly associated with mineral exploration, such as road construction, excavation, blasting and tree clearing.

[101] Furthermore, section 8(2) of the *Activities Regulation* confirms that its listed activities do not limit the broader prohibition in section 8(1), which bars any activity that damages, alters or significantly interferes with the environment in a provincial park.

[102] Importantly, the concern here is the storage of the equipment. The removal order is governed by sections 33(1) and 33(2) of the *Activities Regulation*, which provide:

Abandoned vehicles and objects

33(1) In this section, “**abandoned**” means left standing at a location for more than 72 consecutive hours other than pursuant to

- (a) a licence, permit or other similar authorization; or
- (b) prior authorization of an officer.

33(2) If a vehicle, equipment, appliance, article or object

- (a) is abandoned;
- (b) remains in an area after the authorization to be in that area expires;

Véhicules et objets abandonnés

33(1) Dans le présent article, le terme « **abandonné** » s’entend d’un objet laissé à un endroit pendant plus de 72 heures consécutives, sauf si l’objet est laissé :

- a) soit aux termes d’une licence, d’un permis ou d’une autre autorisation semblable;
- b) soit avec l’autorisation préalable d’un agent.

33(2) Si un véhicule, du matériel, un appareil, un article ou un objet :

- a) soit est abandonné;
- b) soit demeure à un endroit après qu’il n’est plus autorisé à y être;

(c) is located in a prohibited area; or

c) soit est à un endroit interdit;

(d) is in a location from which, in the opinion of an officer, it should be removed;

d) soit est à un endroit d'où, de l'avis d'un agent, il devrait être enlevé,

an officer may

un agent peut :

(e) issue an order requiring the owner, operator or person in charge of the item to move it to a location determined by the officer and within a period of time determined by the officer; or

e) ordonner au propriétaire, au conducteur ou à la personne responsable de l'objet de le déplacer et de le mettre à l'endroit qu'il désigne dans le délai qu'il fixe;

(f) move and store the item or cause it to be moved and stored.

f) déplacer et entreposer l'objet ou le faire déplacer et entreposer.

[103] I agree with the reviewing judge that the above provisions determine the authority of the Parks Branch to have issued the removal order and to enforce it.

[104] QMC argues that it could not comply with the removal order because Manitoba refused its road maintenance applications filed in 2024. However, the reviewing judge accepted Sitko's assessment that the road, when frozen, was sufficiently passable for removal of the equipment and that Dean's reliance on that assessment in reaching his decision was reasonable. QMC has not shown that this finding was in error.

Conclusion and Decision

[105] The reviewing judge did not err when he identified reasonableness as the standard of review to be applied in reviewing the Parks Branch's

decisions. Further, the reviewing judge did not err in applying that standard. The Parks Branch reasonably interpreted its home statute and regulations and, accordingly, reasonably decided to issue the removal order and to refuse to issue the 2024 exploration permit in the absence of compliance with the removal condition in the 2023 exploration permit.

[106] In the result, I would dismiss the appeal, with costs.

_____ JA

I agree: _____ JA

I agree: _____ JA