

In the Court of Appeal of Alberta

**Citation: Ranchland (Municipal District No 66) v Alberta Energy Regulator,
2026 ABCA 206**

Date: 20260623
Docket: 2501-0042AC
Registry: Calgary

Between:

Municipal District of Ranchland No. 66

Appellant

- and -

**Alberta Energy Regulator, Cabin Ridge Project Limited, Elan Coal Ltd., and Montem
Resources Alberta Operations Ltd.**

Respondents

- and -

**His Majesty the King in right of Alberta as represented by the Minister of Energy and
Minerals and Siksika Nation**

Intervenors

The Court:

**The Honourable Acting Chief Justice Dawn Pentelchuk
The Honourable Justice William T. de Wit
The Honourable Justice Kevin Feth**

Memorandum of Judgment

Appeal from the Decisions by
the Alberta Energy Regulator
Dated the 31st day of January, 2025

Memorandum of Judgment

The Court:

[1] This appeal was found to be moot and the Court declined to exercise its discretion to hear and decide the merits of the appeal. These are the reasons.

Background

[2] The appellant, Municipal District of Ranchland No 66 (“Ranchland”) appealed three decisions of the Alberta Energy Regulator (“AER”) dated January 31, 2025 (“Reconsideration Decisions”), which lifted the suspension of coal exploration program approvals (“CEPs”) previously granted to the three respondents, Cabin Ridge Project Limited, Elan Coal Ltd and Montem Resources Alberta Operations Ltd (the “Coal Exploration Companies”). The CEPs authorized coal exploration work within Ranchland and directed that reclamation work be completed by prescribed deadlines.

[3] Coal exploration in Alberta has been the subject of provincial government policy, and public debate, for decades. In 1976, the Alberta Government adopted *A Coal Development Policy for Alberta* (1976) (“Coal Policy”) which established four classifications of lands for coal exploration and development. Category 2 lands allow for “limited exploration” under “strict control. . . in which commercial development by surface mining will not normally be considered”.

[4] The CEPs were issued in 2020, during a short period when the Coal Policy was not in effect. The CEPs were later suspended from April 23, 2021, until January 31, 2025, by directions in Ministerial Orders.

[5] The suspensions were lifted by the Minister of Energy and Minerals, through a Ministerial Order, MO 003/2025, which directed the AER to “lift the suspensions of all approvals that were suspended under [prior] Ministerial Orders”, and “extend the expiry dates of approvals suspended . . . to account for the period of suspension”. A further direction was for the AER to “continue to apply the restrictions in place in respect of the exploration for and development of coal within categories of lands as described in [the Coal Policy] when evaluating coal applications...”.

[6] Ranchland asserted before the AER that the Minister did not have authority to direct the AER to extend the expiry dates in the CEPs for exploration and reclamation activities. Ranchland also contended that the AER was required to conduct a substantive review of the CEPs for compliance with the Coal Policy, including any restrictions imposed for Category 2 lands and local areas of high environmental sensitivity.

[7] The AER rejected those arguments in the Reconsideration Decisions, lifted its previous suspensions of the CEPs, and extended the expiry dates for both exploration and reclamation work. The Reconsideration Decisions did not engage with the requirements of the Coal Policy.

[8] Permission to appeal was granted on four questions: *Ranchland (Municipal District No 66) v Alberta Energy Regulator*, 2025 ABCA 105. Ranchland acknowledges that three of the questions are now moot. The remaining question is whether the AER erred by failing to apply the Coal Policy and specifically: a) the activities permitted under Category 2 lands; and b) the definition of “local areas of high environmental sensitivity” in the Coal Policy.

[9] Following the permission to appeal decision, His Majesty the King in Right of Alberta, as represented by the Minister (“Alberta”) and the Siksika Nation were granted intervenor status. The Coal Exploration Companies did not participate in the appeal.

[10] Shortly before the appeal was to be heard, the AER informed the Court that the Coal Exploration Companies had surrendered their coal leases for the lands covered by the CEPs. The appeal hearing was adjourned so that evidence and written submissions on the issue of mootness could be provided to the panel.

[11] Ranchland submitted that whether the AER erred by failing to apply the Coal Policy was not moot and that alternatively, the Court should exercise its discretion to determine the issue. While the timeframe for conducting exploration work under the CEPs has expired for Montem and Elan Coal, Cabin Ridge is authorized to conduct exploration work under its CEP until June 26, 2026, notwithstanding that its coal leases have been surrendered. Coal exploration activity does not require that a coal lease be in effect. Further, any of the Coal Exploration Companies could apply for a new coal lease in the future.

[12] Even if the appeal is moot, Ranchland contends that a live controversy remains because the AER, Alberta and Ranchland disagree about the binding nature of the Coal Policy. Ranchland submits the Coal Policy binds the AER because it has the force of law, or alternatively, the policy has been imposed on the AER by MO 003/2025, which directed the AER to “continue to apply the restrictions. . . within categories of lands as described in the” Coal Policy. Further, the Reconsideration Decisions suggest the AER is not bound by the Coal Policy. Guidance is necessary to establish the binding effect of the Coal Policy when the AER considers future applications for approvals, including any effort by the Coal Exploration Companies (or others) to renew exploration activities within lands affecting Ranchland’s interests. Ranchland asserts, without evidence, a “high likelihood” of future coal exploration applications affecting its municipal district.

[13] The AER denies the Reconsideration Decisions suggest the Coal Policy is not binding. It did not consider the Coal Policy because the limited nature of the issue being reconsidered – whether to lift the suspensions of the CEPs and extend the deadlines for exploration and reclamation work – did not engage the Policy. If Ranchland wanted to challenge the CEPs for compliance with the Coal Policy, that might have been possible through a regulatory appeal under section 30 of the *Alberta Energy Regulator Rules of Practice*, Alta Reg 99/2013. The AER could have received new information on a regulatory appeal: *Rules of Practice* at s 31.1.

[14] Alberta contends the Coal Policy does not have the force of law because guidelines and policy statements generally are not legally binding unless a functional and purposive approach to their nature “reveals that they are a form of law, akin to regulations”: *Johnson v Alberta (Director of Vital Statistics)*, 2008 ABCA 188 at para 17; *Bell Canada v Canadian Telephone Employees Association*, 2003 SCC 36 at para 37, [2003] 1 SCR 884. The Coal Policy is only binding on the AER to the extent the Minister adopts its terms by exercising authority under section 67 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 (*REDA*). Here, MO 003/2025 directed the AER to “apply the restrictions” in the Coal Policy “when evaluating coal applications”. The Reconsideration Decisions addressed amendments to the existing CEPs, not coal applications. The surrender of the coal leases eliminated any issue of public importance, and no persuasive reason remains for this Court to hear a moot appeal that might restrain the Minister in the future.

Analysis

[15] A court should generally decline to decide a case raising only a hypothetical or abstract question. In *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*], the Supreme Court of Canada established a two-part test for addressing mootness.

Mootness test

[16] First, a court must determine whether the “tangible and concrete dispute between the parties has disappeared and the issues have become academic”. The court should assess whether a “live controversy” exists, the resolution of which affects the rights of the parties. A live controversy that was present at the start of an action or an appeal may cease to exist if overtaken by subsequent events: *Borowski* at 353. When an appeal decision would no longer have any practical effect on the rights of the parties, or the practical relief sought is no longer available due to changes in either the factual or legal circumstances of the case, a live controversy may disappear: *CM v Alberta*, 2024 ABCA 136 at paras 21-22 [*CM*]. Challenges involving the legality of government action are not immune to mootness.

[17] Second, the court must determine whether the circumstances nonetheless warrant examining the legal issues raised by the case in the absence of a live controversy: *Borowski* at 353. In particular, the court should consider: a) the presence of an adversarial context, b) the concern for judicial economy, and c) the court’s sensitivity to the limited role of its proper law-making function: *Borowski* at 358-363; *CM* at para 34.

[18] In assessing the adversarial context, the court considers whether the issue has been “fully and vigorously argued” by both sides, and whether the parties have sufficiently presented the issue so that a court may fairly decide it: *BN v Alberta (Director of Child Welfare)*, 2004 ABCA 40 at para 14. An adversarial context “helps guarantee that issues are well and fully argued by parties who have a stake in the outcome. . . [T]his requirement may be satisfied if, despite the cessation of a live controversy, the necessary adversarial relationships will nevertheless prevail”: *Borowski* at 358-359.

[19] When considering judicial economy, a court may be more willing to hear cases where the resolution of the issue will have “some practical effect on the rights of the parties”, or where the legal issues raised are of a “recurring nature but brief duration”, such that a strict application of the mootness doctrine might evade judicial oversight: *Borowski* at 360; *CU v McGonigle*, 2003 ABCA 66 at paras 20-22. “Where an issue is likely to arise again in a future case, however, that may suggest it is not evasive of review”: *CM* at para 36.

[20] Finally, in considering the proper law-making function of the Court, caution must be exercised to avoid intruding into the legislative function by addressing policy questions that should first be the subject of legislation or governmental action: *Borowski* at 362-363.

The appeal is moot

[21] We find that no live controversy remains. The effect of the Reconsideration Decisions was to lift the suspensions of the CEPs, so that exploration activities could resume, and to extend the deadlines for the completion of the exploration and reclamation work to account for the period of suspension.

[22] The real controversy between the parties was the resumption of coal exploration, not the timing of reclamation work. However, the coal leases related to the CEPs have been surrendered to the Crown. Montem and Elan Coal are no longer permitted to engage in exploration activities under the CEPs, as the time has expired. Cabin Ridge is technically permitted to continue with exploration until June 26, 2026, but it represented to the AER, in writing, on December 30, 2025, that it had transferred the fee simple lands and surrendered the coal leases to Alberta, and “will not be conducting further exploration work”.

[23] Rushang Joshi, a former Coal Manager with the AER, deposes that after reviewing the circumstances of the surrenders and the reclamation work completed by the Coal Exploration Companies, he does “not know of any practical reason why any of [them] would carry out any exploration activities on any of the lands for which the CEPs were approved, now that. . . each surrendered to Alberta all of the coal leases for [the] lands” and reclamation work has been completed or partially completed. The Coal Exploration Companies’ decisions not to participate in this appeal are consistent with that conclusion.

[24] Ranchland has not identified any prejudice it will suffer if the Coal Exploration Companies’ reclamation work is completed within the amended timelines. Indeed, Montem completed its reclamation work in December 2025. Elan Coal and Cabin Ridge must complete their reclamation activities by April and June 2029 respectively, but both have represented to the AER that they expect to be completed by the end of 2026. Even if the deadlines for the reclamation work had not been extended through the Reconsideration Decisions, each of the Coal Exploration Companies could have applied for a miscellaneous lease to complete the work outside of the deadline. Nothing in the record suggests the extension to the deadlines will prejudice the AER’s ability to enforce compliance. As for the previous deadlines, Ranchland acknowledges that even

if those deadlines were not properly amended and remain effective, new deadlines for reclamation will need to be set. In short, restoring the previous deadlines has no practical effect.

[25] In our view, the specific question of whether the Coal Policy was binding on the AER when reconsidering the CEPs is moot because subsequent events have removed any concrete dispute between Ranchland and the Coal Exploration Companies about coal exploration on the lands. The controversial aspects of the CEPs have run their course.

The circumstances do not warrant hearing this moot appeal

[26] We have also concluded that our discretion to consider a moot question should not be exercised. No true adversarial context remains, judicial economy weighs against deciding the appeal, and “sensitive to [our] role as the adjudicative branch in our political framework”, pronouncing judgment in the absence of a dispute affecting the rights of the parties would be a departure from our traditional role within the constitutional framework: *Borowski* at 362-363.

[27] Whether the Coal Policy has the force of law is an abstract question. We are being asked to consider whether its requirements have legal effect generally and might therefore apply to all existing approvals in Alberta, even those granted outside the time when the Coal Policy was suspended. An unspecified range of amendments to existing CEPs might be affected, including administrative amendments. Ranchland’s request does not confine the proposed ruling to CEPs within its municipal district, which raises concerns about general statements of law being applied to unanticipated circumstances involving other regions of the province, other municipalities, and unidentified applicants and approval holders. The factual record does not adequately address those circumstances.

[28] We are also being asked to interpret the scope and meaning of “coal exploration applications” in MO 003/2025, including whether that language is intended to apply to existing approval holders and administrative changes to existing CEPs. Ranchland does not explain whether the inquiry would require a *de novo* review of every existing CEP for continuing substantive compliance with the Coal Policy.

[29] We are invited to undertake these inquiries without any live controversy or comprehensive factual matrix to consider the issues. No person is before us representing the perspectives and interests of the coal exploration and extraction industry. The AER has a limited role in making submissions because it is the decision maker: *Benga Mining Limited v Alberta Energy Regulator*, 2021 ABCA 363 at para 29. The Minister has intervened but largely confined his submissions to the *vires* of the Ministerial Order, noting that the balance of the appeal has “not been fully and vigorously argued”.

[30] A proper adversarial context is “a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by the parties who have a stake in the outcome”: *Borowski* at 358-359. That context is missing in this appeal.

[31] Ranchland also has not shown that scarce resources should be expended on a moot appeal. No evidence is provided of any need for judicial guidance about the legal effect of the Coal Policy. For example, nothing before us suggests industry confusion or the need for direction that cannot be provided by the AER in the first instance as the industry regulator. Importantly, we are being asked to address the question without the full benefit of the AER's specialized knowledge and expertise. Moreover, if other controversies are likely, Ranchland does not explain why the parties to those controversies would be unable to address the issue at that time.

[32] Ranchland contends the Reconsideration Decisions suggest the AER is not bound by the Coal Policy. In particular, Ranchland points to the following passage in each of the Decisions:

The AER has considered the concerns raised in the submissions with respect to the reinstatement of the 1976 Coal Policy. The 1976 Coal Policy is a policy document, which clearly identifies specific requirements for environmental protection, land reclamation, exploration and development rights, amongst others, are set out under several statutes and regulations, such as the *Coal Conservation Act*, the *Public Lands Act*, and the *Water Act*. As the approval holder, [Montem/Elan Coal/Cabin Ridge] is required to meet these various statutory requirements, as well as the conditions of its Approvals.

[33] Ranchland argues that by omitting any express statement that the Coal Policy is not just a policy statement but a binding law, the AER was suggesting that the Coal Policy does not have the force of law. We disagree. Silence does not reasonably invite that inference. Reading the Reconsideration Decisions holistically, the AER determined the legal effect of the Coal Policy did not need to be decided because lifting the suspensions of the CEPs and extending the deadlines did not engage the Policy. In this respect, “the decision[s] as written lack[] obvious precedential value” and the need to hear the appeal and grant a meaningful remedy on this issue is nugatory: *CM* at para 38.

[34] Moreover, the AER appears to have left the legal effect of the Coal Policy as a live issue. The Reconsideration Decisions state the “amended Approvals may themselves constitute appealable decisions, and parties may wish to file with the AER requests for regulatory appeal of the amended approvals”. The reference to a regulatory appeal was arguably raising the possibility of litigating the substantive impact of the Coal Policy, which suggests the AER did not decide its legal effect. Ranchland did not pursue a regulatory appeal in this case.

[35] The concern for judicial economy does not favour deciding this appeal. Waiting until such time as the AER may decide the legal nature of the Coal Policy is preferable.

[36] Lastly, deciding this appeal is not in keeping with this Court's traditional law-making function. The surrender of the coal leases not only removes the dispute with respect to these Reconsideration Decisions, but the lack of demonstrated exploration work on the lands under these CEPs, or other Category 2 lands, strips the appeal of any pressing public importance. Determining

the breadth and application of the Coal Policy, particularly against the long backdrop of its adoption, suspension, reinstatement and the Government's evolving coal practices and policies, requires a concrete legal dispute and factual context. Anything less may result in sweeping statements based on hypotheticals, which may well be "viewed as intruding into the role of the legislative branch": *Borowski* at 362.

Conclusion

[37] The dispute between the parties has become purely academic. The Coal Exploration Companies have not participated in this appeal, and a true adversarial context with full argument is lacking. The AER and the Minister are not substitutes for the real parties to the dispute. There is no underlying decision on the nature and effect of the Coal Policy by the AER, which renders any proposed appeal less of a review, and more a first instance decision without the benefit of the regulator's expertise. Proceeding in such circumstances would, at a minimum, require a strong and detailed factual foundation of public importance, but that too is lacking.

[38] The appeal is moot, and we decline to exercise our discretion to decide the appeal in a factual and adversarial vacuum.

[39] The appeal is dismissed.

Costs

[40] The AER submits that the unique and exceptional nature of this matter invites a costs award against Ranchland. The appeal should have been discontinued, or Ranchland should have consented to an order declaring the appeal moot; its failure to do so required the AER to file additional materials, including the Joshi affidavit, to attend at questioning on that affidavit, and to participate in a second appeal hearing. The AER submits that "Ranchland's diversion of AER resources – both monetary and staff time – to continue to deal with a moot appeal is contrary to the public interest and should be discouraged."

[41] We are not persuaded that the circumstances warrant an award of costs to the AER. Sections 45(8) and (9) of the *REDA* provide that the AER may be "represented by counsel and heard on the hearing of an appeal" and is otherwise immune from costs awards in respect of an appeal. While the *REDA* says nothing about the AER's ability to seek costs, awarding costs to the decision-maker for an appeal of its decision, which is otherwise authorized by statute, is not in keeping with the AER's neutral role as a passive respondent in appeal proceedings.

[42] In our view, no exceptional circumstances support a departure from the typical practice that decision-makers do not pay or receive costs. Ranchland's action in seeking to have the appeal heard on one ground concerning the Coal Policy, after conceding the other three grounds were moot, was apparently raised out of concerns about its interests and those of its residents. Nothing

before us suggests exceptional circumstances, such as abuse of process, litigation misconduct or bad faith, which might warrant deterrence through a costs award.

[43] The additional materials addressing mootness were directed by this panel to ensure a full and fair hearing of the issues given the surrender of the coal leases. The AER's engagement with the mootness issue is an expense arising in the normal course of its regulatory function and properly rests with it.

[44] The parties and intervenors shall bear their own costs.

Appeal heard on January 12 and May 26, 2026

Memorandum filed at Calgary, Alberta
this 23rd day of June, 2026

Authorized to sign for: Pentelechuk A/C.J.A.

de Wit J.A.

Feth J.A.

Appearances:

S.C. Fluker

R. Harrison (no appearance)
for the Appellant

P.D. Fitzpatrick

for the Respondent, Alberta Energy Regulator

S.R. Sutherland (no appearance)

for the Respondent, Elan Coal Ltd. and Cabin Ridge Project Limited

S. Parker (no appearance)

for the Respondent, Montem Resources Alberta Operations Ltd.

A.W. (Sandy) Carpenter

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J. Langlois (no appearance)

S.M. Alikhani (no appearance)

M. Pavlovic

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