

In the Court of Appeal of Alberta

Citation: Erikson National Energy Inc v British Columbia (Attorney General), 2026 ABCA 182

Date: 20260601

Docket: 2401-0345AC

Registry: Calgary

In the Matter of the *Bankruptcy and Insolvency Act*,
RSC 1985, c B-3, as amended

Between:

Erikson National Energy Inc.

Respondent
(Applicant)

- and -

The Attorney General of British Columbia

Appellant
(Respondent)

- and -

Grant Thornton Limited

Interested Party
(Receiver)

The Court:

**The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Jolaine Antonio
The Honourable Justice Alice Woolley**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Order by
The Honourable Justice B.E. Romaine
Dated the 6th day of December, 2024
Filed on the 6th day of December, 2024
(Docket:2401-13792)

**Memorandum of Judgment
Delivered from the Bench**

The Court:

[1] The Attorney General of British Columbia (AGBC) appeals an order granted on an emergency application brought on short notice on December 5, 2024, while Erikson National Energy Inc. was the subject of a proposal in proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3. Erikson owned a gas plant in remote northeastern British Columbia. The plant was not operating as Erikson’s natural gas leases had been cancelled for non-payment by the British Columbia Tenure and Resource Stewardship Branch of the British Columbia government (BC Tenure). Erikson had been using natural gas in its pipelines to maintain and heat the plant but had discovered two days earlier that it only had five days of natural gas left to avoid the equipment freezing, which could cause extensive damage to the facilities, significant safety risks and environmental damage. Attempts to work out a temporary emergency solution were not successful.

[2] The application was heard in Alberta Court of King’s Bench on an emergency basis on a Friday afternoon. The only affidavit material to which the chambers judge was referred in oral argument was filed by the applicant. AGBC’s counsel flagged a constitutional issue with respect to the chambers judge’s jurisdiction but noted that given the emergent timelines he was not able to provide authorities. He said AGBC did not want to stand in the way of a solution; it had no submissions to make regarding Erikson’s ability “to deal with this emergency or anything else”.

[3] The British Columbia Energy Regulator’s (BCER) position was that it could not direct Erikson to take gas that didn’t belong to it. BC Tenure’s position was that it was constrained by legislation from continuing the lease to allow Erikson to flow gas to the plant even on a temporary basis.

[4] After some discussion with counsel, the chambers judge granted an order but gave no reasons.

[5] The Order directed the BCER to issue an emergency measures order directing Erikson “to maintain its assets in a safe manner, including maintaining” its plant despite the cancelled lease. It declared that taking these measures would not constitute an offence under the *Energy Resource Activities Act*, SBC 2008, c 36 (ERAA). It granted Erikson, its employees, agents, directors, officers and shareholders relief from any penalties that might be issued under the ERAA or otherwise.

[6] The AGBC filed an appeal of the Order on December 13, 2024. To our knowledge, no party applied to vary or stay the Order, either in the court below or here.

[7] The BCER applied on May 5, 2025 to have a receiver appointed over the assets of Erikson, which order was granted. The assets have since been sold through the receivership process, and the receiver has been discharged.

[8] The AGBC is the only party participating in this appeal.

[9] Since Erikson no longer operates the facility, it is not obvious the Order could have any further practical effect. As a result, we asked the appellant to explain why the appeal is not moot.

[10] The appellant suggests that while BCER did issue direction in the spirit of the Order, it did not do so in the exact terms of the Order, raising a question of whether the Order is spent. It more forcefully submits the Order has an ongoing effect by preventing AGBC from investigating or prosecuting the taking of gas without a lease or taking excess gas. The nature of that potential prosecution has not been identified. The appellant further submits that, even if the matter is moot, it should be heard anyway because of the importance of the jurisdictional question and the potential precedential effect of the Order. It adds that, given the likelihood it will arise in emergent contexts, the question will evade review. It would be a good use of court resources to address it now.

[11] As was noted by the Supreme Court in the well-known case of *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 at 353, a matter is moot when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties.

[12] A court has discretion to hear a matter that is moot in appropriate circumstances. The factors considered include:

- the presence of an adversarial relationship;
- concerns relating to judicial economy;
- the importance of the question;
- whether the issue is “capable of repetition, yet evasive of review”;
- the court’s proper law-making function.

[13] Since BCER is not here, we decline to entertain any argument that suggests it has failed to comply with the Order.

[14] The appellant has been unable to explain how the Order could prevent an investigation or a prosecution if gas was taken without permission or more was taken than needed to maintain the assets. Nor has it satisfactorily explained how a reversal of the Order on appeal could affect the assessment of any actions Erikson took while the Order was in place.

[15] The appellant asks this Court to offer guidance on “how far the *Bankruptcy and Insolvency Act* can reach” in directing the exercise of provincial authority over natural resources, and in authorizing the taking of resources without compensation. We acknowledge these may be important issues. If they are to be analyzed, that analysis should occur in an adversarial context. That context is absent on appeal. Given the emergent timelines in the court below, the record is sparse and does not make up for the lack of a current adversarial context.

[16] In support of its argument about precedential effect, appellant’s counsel orally advises that another party is apparently seeking a similar order on the strength of the Order before us. If so, or if another such case arises, there will be a more appropriate forum in which to determine the legality of such an order. We are not satisfied the issues raised will be “evasive of review”.

[17] We are satisfied the appeal is moot and decline to exercise our discretion to hear the moot appeal. The appeal is dismissed.

Appeal heard on May 14, 2026

Memorandum filed at Calgary, Alberta
this 1st day of June, 2026

Strekaf J.A.

Antonio J.A.

Woolley J.A.

Appearances:

K.J. Meyer, KC
K.R. Cameron
L.R. Rollingson
for the Respondent

P.D. Ameerli, KC
K.P. Reh
for the Appellant