Court of King's Bench of Alberta

Citation: LAPP Corporation v Alberta, 2023 ABKB 566

Date: 20231011
Docket: 2303 10927
Registry: Edmonton

Between:

LAPP Corporation, in its capacity as Plan Administrator, and Trustee of the Pension Fund, of the Local Authorities Pension Plan; SFPP Corporation, in its capacity as Plan Administrator, and Trustee of the Pension Fund, of the Special Forces Pension Plan; and PSPP Corporation, in its capacity as Plan Administrator, and Trustee of the Pension Fund, of the Public Service Pension Plan

Applicants

- and -

His Majesty the King in right of Alberta and Alberta Investment Management Corporation

Respondents

Reasons for Judgment
of the
Honourable Justice M. J. Lema

I. Introduction

[1] Three Alberta public pension plans seek to add the Government of Alberta as a party to an arbitration between the plans and Alberta Investment Management Corporation over responsibility for asserted investment losses of approximately $1,333,500,000.

[2] Per the plans, Alberta is a party to the investment management agreements under which AIMCo received the pension funds. Alberta is a party because AIMCo is an "agent of the Crown" and can only act as such, and when AIMCo contracted with the pension plans to invest their funds, it did so as agent for Alberta, its principal. As a result, Alberta is necessarily a party to the arbitration over responsibility for the asserted losses.

[3] Per Alberta, AIMCo contracted in its own right, not as agent for Alberta or otherwise making Alberta a party to the contract.

[4] The arbitrator found for Alberta, finding he had no jurisdiction over Alberta in the arbitration proceedings.

[5] The plans applied under ss. 17(9) of the *Arbitration Act*, asking the Court to revisit and change that ruling in their favour.

[6] I find for the plans: by statute, AIMCo is only and always a Crown agent. Everything it does is as agent for Alberta, including making and performing the investment-management-services contracts here.

[7] As principal of AIMCo in a contractual sense, Alberta is necessarily a party to the contracts made by AIMCo in carrying out its statutory functions here.

[8] Accordingly, Alberta is a party to, and subject to, the contracts' arbitration provisions.

II. Application is *de novo*

[9] The nature of this application is reflected in ss. 17(9) of the *Arbitration Act*:

> If the arbitral tribunal rules on an objection as a preliminary question [here, whether Alberta is subject to the arbitration proceedings], a party may, within 30 days after receiving notice of the ruling, make an application to the court to decide the matter.

[10] The parties agree that such an application is a *de novo* hearing, per the comprehensive analysis of Bourque J. in ***Ong v Fedoruk***, 2022 ABQB 557 (paras 24-37).

III. Analysis

[11] The issue is whether, in contracting with the three pension plans (the Funds), AIMCo acted as agent for Alberta, creating a contract between the Funds and Alberta i.e. its principal. Or, whether AIMCo contracted exclusively in its own right, with itself as the contracting party i.e. despite its "agent of the Crown" status.

[12] I start by examining AIMCo's powers per its home statute.

A. AIMCo's powers

[13] AIMCo was created by the *Alberta Investment Management Corporation Act*, SA 20070, c A-26.5, per these sections:

> 2(1) A corporation to be known as the "Alberta Investment Management Corporation" is established.
>
> (2) The **purpose** of the Corporation is to **provide investment management services** in accordance with this Act and the regulations and **to carry out any other powers, duties and functions authorized under subsection (8).**
>
> (2.1) In providing investment management services to designated entities, the Corporation shall act in the best interests of the designated entities.
>
> (3) **The Corporation has the capacity and, subject to this Act and the regulations, the rights, powers and privileges of a natural person.**
>
> (4) The share capital of the Corporation consists of one share owned by the Crown.
>
> (5) The Corporation must maintain its head office and principal place of business in Alberta.
>
> (6) The fiscal year of the Corporation is April 1 to the following March 31.
>
> (7) The Auditor General is the auditor for the Corporation.
>
> (8) The Lieutenant Governor in Council may make **regulations**
>
> > **(a) expanding or clarifying the powers, duties or functions to be exercised or performed by the Corporation;**
> >
> > (b) imposing limits on the powers, duties or functions to be exercised or performed by the Corporation.
>
> 3(1) **The Corporation is for all purposes an agent of the Crown in right of Alberta and may exercise its powers and perform its duties and functions only as an agent of the Crown in right of Alberta.**
>
> **(2)** An action or other legal proceeding in respect of a right or obligation acquired or incurred by the Corporation **on behalf of the Crown in right of Alberta**, whether in the name of the Corporation or in the name of the Crown in right of Alberta, may be brought or taken by or against the Corporation in the name of the Corporation. [emphasis added]

[14] What are the "rights, powers and privileges of a natural person"? Subsection 2(3) of the *AIMCo Act* (above) says that AIMCo has such powers, subject to what the *Act* or regulations provide otherwise.

[15] Neither party pointed to any *AIMCo Act* provision limiting, or potentially limiting, *AIMCo*'s rights, powers or privileges (as authorized under ss 2(3) (above). (As discussed below, one provision of the *AIMCo Regulations* "expands or clarifies" its rights, powers or privileges.)

[16] Where natural-person powers are endowed (and not limited) but are not defined, what do they include?

[17] In ***Friedmann Equity Developments Inc v Final Note Ltd***, 2000 SCC 34, the Supreme Court of Canada confirmed they include the power to contract:

> … Subject to those exceptions set out by statute, **a corporation has the same powers and capacities as a natural person**: see, e.g., *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, s. 15(1); Ontario *Business Corporations Act*, s. 15. **The powers and capacities include the power to sue and be sued, and the power to contract**: see, e.g., K. P. McGuinness, *The Law and Practice of Canadian Business Corporations* (1999), at p. 204. I agree with Morden A.C.J.O. that since **a corporation has all of the capacities and powers of a natural person, especially in relation to the law of contract**, there is no principled basis upon which to treat corporations acting as agents for undisclosed principals differently than agents who are individuals. [para 34] [emphasis added]

[18] See also *Towards a Singular Concept of Legal Personality*, Michael Welters, (2014) 92-2 Cdn Bar Rev 417 (2014 CanLIIDocs 142):

> … the essential attributes of a corporation are state sanction and perpetual succession, and possibly a name. There are a number of other **attributes that are "tacitly annexed" to a corporation, including the capacity** to own property (perpetual succession would be meaningless without it), the ability to sue and be sued (a logical necessity for owning property, since something is property only to the extent that one can exclude others from it), and **to contract**. Such attributes are also found in section 17(1) of the BC *Interpretation Act*,34 and subsection 21(1) of the federal *Interpretation Act*.35 These sections appear to be a codification of the common law by describing the attributes that are tacitly annexed to a corporation. [p 425] [footnotes omitted] [emphasis added]

[19] For Alberta purposes, I find that a full or at least base-line catalogue of natural-person powers can be found in the *Interpretation Act* (Alberta):

> **16** Words in an enactment establishing or continuing a corporation
>
> (a) vest in the corporation **power**
>
> (i) to **sue in its corporate name,**
>
> (ii) to **contract and be contracted with** by its corporate name,
>
> (iii) to have a common seal and to alter or change it at pleasure,

> (iv) to have perpetual succession,
>
> (v) to **acquire and hold real property and personal property** for the purposes for which the corporation is established and to dispose of the real property or personal property at pleasure, and
>
> (vi) to regulate its own procedure and business; [and]
>
> (b) make the corporation **liable to be sued in its corporate name**; [omitting 16(c) to (e), which do not address natural-person powers]

[20] I believe it is beyond debate here that natural persons possess the noted powers and that, in endowing AIMCo with natural-person powers, the Legislature intended to bestow the noted powers on it.

[21] In any case, with ss 2(1) of the *Act* creating AIMCo as a corporation and no counter-indicators (as to lesser powers) in either the *Act* or the *AIMCo Regulation* (225/2007), s. 16 of the latter statute endowed AIMCo with the noted powers. (I note here that s. 6.1 of the *Regulation* provides a set of expanded powers e.g. holding assets in trust for others. I return to the *Regulation* later.)

[22] On the (or an) *Interpretation Act* endowing a statutory corporation with base-line powers, see ***Life Underwriters Association of Canada v. Provincial Association of Quebec Life Underwriters***, 1988 CanLII 9435 (FC), [1989] 1 FC 570 (Dube J.) – [affirmed by SCC [1992] 1 SCR 449 after initial reversal by FCA – 1990 CanLII 13065]

> **… a corporation created by special act has no powers other than those contained in the Act, except, of course, the inherent powers described in the Interpretation Act [there, of Canada]** and in particular under section 20, namely to sue and be sued, **to contract and be contracted with** and to acquire and hold personal property, as well as other powers not relevant here. Additional to these powers are those specifically provided for in the Canada Corporations Act, Part IV. [emphasis added]

[23] And ***One West Holdings Ltd v The Owners, Strata Plan LMS 2995***, 2021 BCSC 473 (Myers J.), where a special-purpose corporation's powers were found to include those conveyed to corporations generally under the BC *Interpretation Act*:

> The Strata correctly points out that the Supreme Court in *Crystal Square* relied in part on s. 2(2) of the *Strata Property Act* which gives a strata corporation the **powers of a natural person and there is no such provision in the *Condominium Act*.** However, as noted above, s. 20 of the *Condominium Act* allows a strata corporation to dispose of common property with a special resolution. Further, **s. 17(1)(b) of *Interpretation Act* provided (as does the current version) that a corporation may "contract and be contracted with in its corporate name"**. [s 95] emphasis added]

[24] By way of contrast, see ***Saskatchewan Government Insurance v Bury***, 1990 CanLII 2649 (SKCA), where the Court found that an express, and more limited, catalogue of natural-person powers in a special-purpose corporation's home statute precluded the endowment of full-

catalogue powers via the *Interpretation Act*: see p 14 ("It is sufficient to say …"). Unlike in that case, Alberta did not provide any catalogue of natural-person powers in the *AIMCo Act*, leaving the *Interpretation Act* catalogue to fill the gap.

[25] All to say: whether because it possesses "natural person powers" or because s. 16 of the *Interpretation Act* says so, or both, AIMCo had and has the power to contract, including to enter the investment-management-service contracts here.

[26] The central debate is over the *capacity* in which AIMCo so contracted: as agent for its (asserted) principal (Alberta) or on its own right, or possibly both?

B. Is AIMCo's power to contract exclusively as agent for Alberta?

1. Parties' positions

[27] The Funds argue that it is:

> AIMCo's conduct as agent [i.e. as agent of the Crown, per the *AIMCo Act*] *always binds HMK [i.e. Alberta] as principal*, including when it entered into the [investment-management service agreements i.e. IMAs]. [AIMCo brief, para 6(a)]

[28] The Funds' theory is that an agent of the Crown is necessarily an agent in the contractual sense of principal and agent. Applied here, that means every contract made by AIMCo with a third party is necessarily made on behalf of, and thus binding on, Alberta as principal:

> Everything AIMCo does, including entering into statutorily mandated contracts, making investment decisions, and assessing investment risk, it does on behalf of its principal, HMK [i.e. Alberta]. [AIMCo brief, para 15]
>
> … [AIMCo] does not have the capacity to act as principal, which is to say that it has no capacity to act solely on its own behalf. … [AIMCo brief, para 27]

[29] The Funds cited the following passage in *Government Liability -- Law and Practice*, Horsman and Morley (Aurora – Thomson Reuters – 2007 – looseleaf edition – updated 2022, release 3) (para 1.22):

> … In [a particular] sense**,** being an agent for the Crown is no different from any other principal-agent relationship in private law. A Crown agent, like the agent of any other natural person or corporation, may be able to exercise the principal's right to contract (and therefore bind the Crown to its contract) or its right over its property. …
>
> … The Crown will be liable for the acts of Crown agents in contract … when those agents purport to act on its behalf in a position of apparent authority, but not when they act "on their own behalf" [footnote to ***International Railway Co v Niagara Parks Commission***, [1941] AC 328 (PC)]

[30] Alberta effectively argues that AIMCo acted on "its own behalf" here i.e. in making the IMAs with the Funds on its own i.e. without also tying in Alberta as a party.

2. Can AIMCo act without involving Alberta?

[31] Which prompts this question: can AIMCo ever act "on its own behalf" in this sense?

[32] Recall ss. 3(1) of the *AIMCo Act*:

> The Corporation is **for all purposes an agent** of the Crown in right of Alberta and may exercise its powers and perform its duties and functions **only as an agent of the Crown in right of Alberta.**

[33] It is hard to see, given that provision, what scope AIMCo has for making any move or taking any step on its own i.e. that is not performed as an agent of the Crown.

[34] Interestingly, Alberta did not mention ss. 3(1) in its written brief.

3. Acting "on its own behalf" means, or can mean, dual liability with the Crown

[35] The ***International Railway*** decision does not actually stand for the proposition that, where the Crown agent acts "on its own behalf", the applicable Crown is not liable.

[36] Instead, it featured a type of Crown agent found liable in its own right on a contract, *albeit with the Crown (there, Ontario) liable as well*:

> On December 4, 1891 an agreement was entered into between the Commissioners for the Queen Victoria Niagara Falls Park who are therein expressed to be **acting "on their own behalf as well as on behalf of and with the approval of the Government of the Province of Ontario**" of the first part and three gentlemen who were the promoters of the railway the subject-matter of the agreement and are with the Company thereafter to be incorporated therein called the Company of the second part.
>
> It is to be observed **that the Appellant Company has not purported to sue the Commission as representing the Crown nor is the Appellant Company seeking to reach Crown property.** The action is in form against the Commission a corporation created by statute with express power to sue and be sued. **The action is based on a contract made by the Commission on its own behalf as well as on behalf and with the approval of the Government of the Province.** The contract in this form was confirmed by the Legislature (i.e., by the 1892 Act) and is declared to be "valid and binding on the parties thereto."
>
> In their Lordships' view the Commission entered into the 1891 agreement on the express terms that **it was to be liable for its fulfilment** and it is therefore unnecessary to consider further the more difficult question which would have arisen if the words "on its own behalf" had been omitted; for **there is nothing to prevent an agent from entering into a contract on the basis that he is himself to be liable to perform it *as well as his principal***. …[find page references --] [bold and italics emphasis added]

[37] In a later passage in *Government Liability* (cited above) (part of para 2:4 (p 2-9)), the authors state:

> While a corporate Crown agent *may* enter into contracts on behalf of the Crown, it may also act "on its own account."

[38] Here the authors cite ***International Railway*** (discussed above), plus four other cases: ***Langlois v Canadian Commercial Corp*** [1956] SCR 954 at 955-56; ***Northern Pipeline Agency v Perehinec***, [1983] 2 SCR 513; and ***British Columbia Power Corp v British Columbia (AG)*** (1962) 34 DLR (2d) 25 at 29, with a "passage cited with approval" reference to ***Skibinski v***

Community Living British Columbia (2010 BCSC 1500 at para 92 (revd on other grounds 2012 BCCA 17).

[39] The cited cases support the proposition that, in some circumstances, a Crown agent may be liable in its own right i.e. that the agent can be liable on the contract.

[40] They do not support the further proposition that the Crown agent can so contract without necessarily making the Crown a party as well.

[41] ***Langlois*** examined particular aspects of the agent's own exposure; it did not decide that the Crown there was not also liable.

[42] Same for ***Northern Pipeline Agency***, where suing the agent directly was permitted albeit without any finding that the agent was *exclusively l*iable:

> By section 4 of [the *Northern Pipeline Act*], it was enacted that:
>
> > There shall be **an agency of the Government of Canada** called the Northern Pipeline Agency over which the Minister [as from time to time designated by the Governor in Council] shall preside.
>
> . … The statute, in my view, accords to the respondent **an election to sue the Agency directly and alone, and without any obligation to include the Crown as a defendant in such action.**
>
> … Parliament has therein revealed its intention that **the statutory entity, the Agency, corporate in form or not, may enter into such an agreement in its own right and on its own behalf, albeit that it may be entered on behalf of the Crown as well. …**
>
> Where a fair construction of the enabling statute permits an agency to enter into a contract on its own behalf, **even if it may be on behalf of the Crown as well**, the agency, having entered the contract in its own name, may be sued in its own right in an action for breach of that contract. … the respondent (plaintiff), in commencing an action on this employment contract, is entitled to claim relief against the Agency itself. That is what the respondent has done in this case, and it is therefore **unnecessary to decide whether the respondent <u>might</u> have taken proceedings against the Crown itself, or the Agency and the Crown jointly,** in another forum. **Regardless of whom the respondent might have named as the parties to this action, the respondent has chosen to proceed against the Agency alone. In my view, so long as the party named is suable, the respondent is entitled to make this election**. [from pp 537-539] [emphasis added]

[43] In ***BC Power***, the focus was whether the Crown agent had Crown immunity from discovery, which does not illuminate our issues here. In any case, it does not support the notion of exclusive contractual liability for a Crown agent.

[44] ***Skibinski*** holds that a Crown agent can be exclusively liable. I find that it is either distinguishable or wrongly decided on this point.

[45] Here is the key excerpt from ***Skibinski***:

> In *Government Liability: Law and Practice* (Aurora, Ont.: Canada Law Book, looseleaf), Karen Horsman and Gareth Morley describe the ability of a corporate Crown agency to act on its own behalf (at p. 1A-5) (emphasis in original):
>
> > Just as a private agent is a distinct person from the agent's principal, a Crown agent is distinct from the Crown... While a corporate Crown agent *may* enter into contracts on behalf of the crown, it may also act "on its own account."
>
> The defence suggests, under s. 11(a)(ii) of the *Act*, CLBC is given the **authority to contract with persons <u>or</u> the government** to deliver or provide for the delivery of community living support. It further suggests **this ability to enter into agreements with the government indicates it contracts on its own behalf**, not on behalf of the government. The defence also suggests the pleadings and evidence indicate **contract negotiations took place between the plaintiff and CLBC without any involvement of the Crown.**
>
> I accept this statement of the law and agree with the submissions of the defendant. I find **the defendant was, at all material times, contracting on its own behalf and not on behalf of the Crown**. Therefore, the plaintiff's claim in contract against the Province of British Columbia as represented by the Ministry of Children and Family Development is dismissed. [paras 92-94]

[46] ***Skibinski*** is distinguishable in the following ways.

[47] First, while the authority there was an agent of BC, the agency provision did not include the extra dimension, present in the *AIMCo Act*, that the agent can exercise its powers and perform its duties and functions only as a Crown agent.

[48] Second, the statute in question (*Community Living Authority Act*, SBC 2004, c 60) expressly contemplated the agent acting on its own right (i.e. not as a Crown agent) in defined circumstances. Per the noted para 11(a):

> The authority must do all of the following:
>
> > (a) provide for the delivery in British Columbia of community living support identified by the minister and of administrative services
> >
> > > (i) using available resources through its own employees, or
> > >
> > > (ii) **by entering into agreements with the government or other persons** to deliver or provide for the delivery of that support;

[49] In view of the authority's option, when contracting for support delivery, of contracting with the government itself, the BC government obviously endowed the authority, when making such agreements, of doing so in its own right i.e. independently of the Crown.

[50] In the present case, Alberta did not point to anything similar in the *AIMCo Act*. In any case, nothing in that *Act* expressly or implicitly authorizes AIMCo to enter into investment-

management-service agreements on its own right i.e. making itself exclusively liable for them. Instead, AIMCo is an agent of the Crown "for all purposes" and can act only as a Crown agent.

[51] Third, if the BC authority had contracted for the identified services with the BC government itself, it necessarily would not have been acting as a Crown agent when making that contract. But those possibilities (contracts made in the authority's own right under para 11(a) with the outsiders or the government itself) would not undercut the Crown-agency character of its other activities i.e. with no "in own right" exception applying i.e. when pursuing its regular "agent" functions.

[52] To the extent ***Skibinski*** turns in whole or in part on the authority negotiating the contract in question without the involvement of the BC Crown, a principal's liability for agent-made contracts does not hinge on the former playing a role in negotiating the contracts.

[53] And, finally, to the extent ***Skibinski*** relied on the cited passage from *Government Liability*, as discussed above the authorities cited do not support the agent-exclusively-liable proposition.

[54] Other Canadian cases examining when a Crown agent might be liable in its own right i.e. exposing the agent to being sued itself i.e. not simply the Crown, have also found actual or potential *dual* liability i.e. with both the agent and the applicable (federal or provincial) Crown being liable.

[55] See, for example, ***Yeats v Central Mortgage & Housing Corp***, [1950] SCR 513, where a party's pursuit of the Crown agent was authorized against an implicit backdrop of parallel Crown liability i.e. without any finding that the agent bore exclusively liability for the obligation: "Here the appellants desire to have decided their claims against the [Crown agent] **(not the Crown)** at the same time as their claims against the other defendants."

[56] The above understanding of ***International Railway***, ***Northern Pipeline Agency***, and ***Yeats*** – i.e. as exploring agent liability against a backdrop of parallel Crown liability – squares with the analysis of these cases in *Liability of the Crown* (4th ed) – Hogg, Monahan & Wright (Carswell (2011) at pp 478 and 479.

[57] For a similar understanding of backdrop Crown liability, even where the agent (or non-agent Crown corporation) itself can be sued for an obligation, see ***Northeast Marine Services Ltd v Canada***, [1991] 1 FC (TD) 601 (MacKay J.):

> … Parliament has sought to ensure that Crown corporations may be sued in their own name and in the courts with jurisdiction in relation to the substance of any claim. In this case the Authority is suable in its own name by virtue of the Interpretation Act, R.S.C., 1985, c. I-21, sub-section 21(1). But even in the case of "agent corporation[s]" section 98 of the Financial Administration Act provides that **whether an obligation be incurred in the name of the Crown or in the name of the corporation, legal proceedings may be brought against the corporation in its name as if it were not an agent of the Crown**. Parliament having thus sought to ensure that even agent corporations are open to suit, it would be **inefficient to permit claims arising out of contract arrangements undertaken in the regular course of business by Crown corporations which are not agents of Her Majesty, to result in impleading Her Majesty as**

> **defendant**. That, it seems to me, is contrary to the general public interest in efficiency in the judicial process. [pp 613 and 614]

[58] And the *Report on the Liability of the Crown* (Ontario Law Reform Commission – 1989), which also takes the Crown's own liability in this Crown-agent context as a given:

> … if the [Crown] agent contracts personally, as well as on behalf of the principal, then the agent and principal are both liable. While there are no reported cases on point, there is little doubt that this rule would apply to an individual Crown servant who was sufficiently imprudent to bind herself as well as the Crown to perform the terms of a Crown contract. The rule of personal liability of an agent also applies to public bodies that are agents of the Crown. [footnote citing ***International Railway***, ***Yeats***, ***Langlois***, and ***Northern Pipeline Agency***.] [p 42]

[59] I recognize that the premise there was dual liability (principal and agent) in the first place. The point is that the focus here and in the extracts above is whether a Crown agent is *additionally liable* i.e. beyond the Crown's liability, with apparently no need to consider whether the agent being liable might *displace* the Crown's own liability i.e. where the authorities discussed above proceed (as discussed above) on a footing that the Crown is liable as well.

[60] This squares with the fundamental notion of an agent, acting within its agency authority when contracting, bringing its principal into a contract with the third party. Per *Liability of the Crown* (cited above):

> A contract within the power of a government representing the Crown will bind the Crown only if it is made by a servant or agent of the Crown who is **acting within the scope of his or her authority.**
>
> Under the general law of agency, the act of an agent will bind the principal if the act is within (1) the agent's **actual authority**, or (2) the agent's ostensible authority, or, perhaps, (3) the agent's usual authority. ...
>
> **Apart from statute**, the scope of a Crown servant's authority to bind the Crown by contract is determined by the general law of agency. ... [emphasis added] [footnotes omitted] [p 322]

[61] Applying that framework here, Alberta did not argue that AIMCo acted at any point outside the scope of its authority in making or performing the IMAs with the Funds. AIMCo's actual authority to perform those functions on behalf of the Crown flows from and is confirmed by ss 3(1) of the *AIMCo Act* (reproduced above) i.e. with AIMC being an agent of the Crown "**for all purposes**" and able to "exercise its powers and perform its duties and functions **only as an agent of the Crown**." Recourse to the general law of agency is unnecessary, with the *AIMCo Act* itself outlining the scope of AIMCo's authority to bind the Crown i.e. everything it does within its statutory mandate of providing investment services to client funds.

[62] Alberta did not point to any case where a Crown agent corporation was found to be *exclusively* liable on a contract made by it i.e. where any "acting on its own behalf" was found to make the agent liable but not also the Crown.

[63] Examples might be found where a Crown agent goes "off the rails" i.e. in pursuing activities beyond its statutory scope e.g. in the senses discussed in *Government Liability* (cited above) under "Scope of Agency" (title 2:6, pp 2-14 to 2-16).

[64] Again, Alberta did not argue that AIMCo had stepped outside any particular boundaries i.e. that AIMCo's particular actions or inactions in this case showed it was no longer acting as a Crown agent or otherwise that it was not acting on behalf of the Crown at all times.

[65] Instead, all agreed (expressly or implicitly) that AIMCo was doing what it was supposed to do i.e. provide investment-management services (even if, per the Funds, AIMCo breached its duty of care to them in doing so).

[66] Other examples of agent-exclusively-liable contracts might be employment or other administrative contracts made by Crown agents: see, for example, some of the cases cited in *Government Liability* on such employment contracts (title 2:4, p 2-10, footnote 5). Or ***Skibinski***, where the statute expressly contemplated the agent acting as a non-agent in certain circumstances.

[67] In contrast to such contracts, the contracts here feature AIMCo performing its central role i.e. in providing investment-management services. And Alberta did not point to any authorized-to-act-as-non-agent statutory provisions here.

[68] Effectively, given AIMCo's always-and-only-an-agent status, it is as if AIMCo had signed the IMAs not simply as "AIMCo" but "AIMCo in its capacity as an agent of the Crown for all purposes, which is only able to exercise its powers and perform its duties and functions as an agent of the Crown." That is, AIMCo necessarily signed the IMAs as a contractual agent for Alberta.

[69] Alberta produced no authority to support its position that AIMCo, a Crown agent "for all purposes", which can "exercise its powers and perform its duties and functions only as an agent of the Crown", somehow acted "in its own right" here, in the sense of making these agreements exclusively on AIMCo's own behalf i.e. not also on the Crown's behalf.

[70] In any case, Alberta did not explain how AIMCo could somehow escape its only-and-always-agent status i.e. to "act on its own" in the sense of making contracts binding only itself, not also the Crown.

[71] For the same conclusion (Crown is principal of agents of the Crown) in a different (bankruptcy priorities) context, see ***Manitoba Hydro v Dvorak***, 1980 CanLII 3049 (MBCA) (Monnin JA's judgment), where the claim of a Crown agent was regarded as the Crown's own claim and thus as warranting then-applicable special treatment under the *Bankruptcy Act*.

[72] Monnin JA approved and adopted the reasoning in ***Re Spartan Air Services Ltd***, (1960) 1 CBR (NS) 33 (Reg Cook) *affd* (1960) 1 CBR (NS) 149 (Smily J.) and ***Re Sure Brake & Muffler Ltd***, (1972) 17 CBR (NS) 103 (Ont) (Houlden J.) to the effect that "money owing as a result of a transaction with an agent may be claimed by the principal, and ... since the principal is the Crown, the Manitoba Telephone System [, an agent of the Crown,] was entitled to the priority given to the Crown's claim." [***Manitoba Hydro*** at p 729]

[73] In the same way, the IMAs made by AIMCo as Alberta's agent bind Alberta as AIMCo's principal.

[74] This conclusion is reinforced by s. 19 of the *AIMCo Act*:

> The Treasury Board may issue directives that must be followed by [AIMCo], the board, or both, in carrying out their powers and duties under this Act and the regulations.

[75] Whether actual or potential, Alberta's power here to steer AIMCo's exercise of its powers and duties squares with AIMCo's actions, including contractual, being attributed to Alberta.

C. Alberta's other arguments

1. Alberta as non-signatory

[76] Alberta argued that "HMK is not a signatory to the IMAs." But it did not cite any law requiring a principal to sign a contract signed or otherwise approved by its lawful agent acting as such and within the scope of its assigned duties.

[77] As discussed further below, we are not in the zone of "exceptions to privity" here. Alberta is a party to the IMAs as AIMCo's principal and, by definition, to its arbitration provisions.

2. Agreement not contemplating Alberta as a party

[78] It argued that the IMAs do not contemplate Alberta as a party. But that is not necessary when, by ss. 3(1) of the *AIMCo Act*, AIMCo is an agent of the Crown "for all purposes" and "may exercise its powers and perform its duties and functions only as an agent of the Crown" i.e. with AIMCo unable to do anything except as a Crown agent. Necessarily, when AIMCo made the contracts with the Funds, it did so as agent for Alberta. When it was performing its investment-management services, it was doing so as agent for Alberta.

[79] As stated above, Alberta, as AIMCo's principal, is a party, even if not expressly named.

3. Crown-agency status meaning more than simply Crown immunity

[80] Alberta argued that Crown agency status is endowed solely to provide associated Crown immunity. But Crown agency is more than that, as explained in *Liability of the Crown* (cited above):

> … it is common for a statute to provide that a public corporation is or is not "an agent of the Crown". The term Crown agent is not ideal, we admit, but it does have its merits. **The word "agent" captures the fact that the Crown corporation has a legal personality separate from the Crown, and that the corporation has the power to bind the Crown by contract**; and the word "Crown" captures the fact that a Crown corporation has a public mandate, raising the question whether it ought to be entitled to claim a Crown privilege or immunity. [p 462, part of footnote #4] [emphasis added]

[81] Alberta made AIMCo an agent of the Crown "for all purposes" i.e. whether to endow it with Crown immunity (or some aspect of it), make it a contractual agent, or otherwise.

4. Subsection 3(2) *AIMCo Act* presumes Crown rights and obligations

[82] Alberta invoked ss 3(2) of the *AIMCo Act*, emphasizing that it directs legal proceedings to be brought against AIMCo, not Alberta. But the central premise of ss. 3(2) is a "right or obligation acquired or incurred by [AIMCo] **on behalf of the Crown in right of Alberta**." Recall its wording:

> An action or other legal proceeding in respect of a **right or obligation acquired or incurred by the Corporation *on behalf of the Crown in right of Alberta***,

> whether in the name of the Corporation or in the name of the Crown in right of Alberta, may be brought or taken by or against the Corporation in the name of the Corporation. [bold and italics emphases added]

[83] Even if ss 3(2) allows legal proceedings against AIMCo to enforce such rights and obligations, they are the rights and obligations of Alberta.

[84] Per Alberta, with AIMCo having natural-person powers to contract and to sue and be sued, and with AIMCo contracting here in its own name, AIMCo was necessarily doing so on its own (exclusive) behalf i.e. not on behalf of Alberta.

[85] However, ss 3(2) expressly recognizes the phenomenon of AIMCo acquiring rights and incurring obligations on behalf of the Alberta Crown and that AIMCo may do so in the name of the Crown *or in its own name*. Accordingly, AIMCo contracting in its own name, as here, is not somehow a marker of AIMCo contracting in its own, and exclusive, right (assuming it could do so).

[86] Alberta did not acknowledge the (expressly-recognized-by-statute) phenomenon of AIMCo contracting on behalf of Alberta via a contract in AIMCo's own name. Per Alberta, because AIMCo contracted with the Funds in its own name, it did not do so on behalf of Alberta. As explained above, that does not follow.

[87] Nor did Alberta propose any mechanism or formula, where AIMCo contracts in its own name, for distinguishing between "for Alberta" and "on its own" contracts (possible per Alberta).

[88] With AIMCo having one core statutory purpose – "to provide investment management services in accordance with [the *AIMCo Act*] and the regulations", and with AIMCo pursuing that purpose here via the IMAs (albeit with a dispute over whether it acted negligently in providing such services), and with ss 3(2) expressly recognizing that AIMCo can contract "on behalf of Alberta" via contracts in AIMCo's own name, and with the contracts here in AIMCo's own name, and with Alberta not proposing any means of differentiating between "for Alberta" and "for AIMCo alone" contracts (if even possible) i.e. where AIMCo contracts in its own name, and (more fundamentally) with AIMCo a Crown agent "**for all purposes**" and able to exercise its powers and perform its duties and functions **only** as an agent of the Crown, Alberta failed to show any room for "independent" contracts here or, in any case, that the IMAs were such contracts here.

[89] In my view, Alberta did not need a counterpart provision to ss. 3(2), to address the circumstance of a right or obligation acquired or incurred by AIMCo *on its own behalf*, because of ss. 3(1) i.e. with AIMCo always and only a Crown agent i.e. AIMCo does not have, and by definition cannot have, its own (exclusive) rights and obligations.

5. Non-impact of s. 14.2 IMA (no third-party beneficiaries)

[90] Alberta seeks comfort from s. 14.2 of the IMAs:

> Subject to subsection 11.6 [relating to claims of personal liability against directors, officers and employees of the Parties], this Agreement is for the exclusive benefit of the Parties [defined earlier as AIMCo and the Fund in question]. Subject to subsection 11.6, the Parties do not intend, nor shall any Section of this Agreement be interpreted to create, any obligation to, or benefit from, any Person [defined earlier to include any government] other than a Party.

> Without limiting the generality of the foregoing, subject to subsection 11.6, No Person other than a Party shall have any remedy, claim, liability, reimbursement, cause of action or other right arising out of or in respect of this Agreement.

[91] Given AIMCo's exclusive statutory mandate to act for Alberta for all purposes and to operate only as a Crown agent, it is not open to AIMCo to somehow contract out of its representative status e.g. via such a clause, somehow step out of its agent-only role. Conversely, it is not reasonable to assume, in light of AIMCo's statutorily defined role, that the Funds were somehow agreeing that AIMCo could shed its agent-only role or waiving their rights against Alberta. Especially in view of the above authorities exploring a Crown's agent's potential direct liability *against a backdrop of parallel liability for the Crown itself* and of ss 3(2), where AIMCo can (and necessarily does) contract on behalf of Alberta even where AIMCo alone is named in, and signs, the contract.

[92] The only reasonable, and correct, reading of s. 14.2 is that it refers to outsiders i.e. persons beyond Alberta (AIMCo's principal), AIMCo (the agent), and the Fund in question.

6. AIMCo having "all necessary powers" no obstacle to Funds

[93] Alberta pointed to para 8.1(b) of the IMAs, where AIMCo represented it had "all necessary corporate power and capacity to enter into and perform its obligations." AIMCo so confirming did not somehow undercut its agent-only role.

7. Same for "Parties" focus of dispute-resolution terms

[94] The IMAs' dispute-resolution provisions focusing on "the Parties" is not an obstacle for the Funds here: as explained above, everything AIMCo agreed to in the contracts was on behalf of Alberta, including these provisions.

8. *Proceedings Against the Crown Act* arguments premature

[95] Alberta placed great weight on s. 3 of the *Proceedings Against the Crown Act*:

> Except as otherwise provided in this Act, nothing in this Act
>
> > (c) subjects the Crown to proceedings under this Act in respect of a cause of action that is enforceable against a corporation or other agency owned or controlled by the Crown ….

[96] Per Alberta, with ss 3(2) of the *AIMCo Act* authorizing proceedings directly against AIMCo, ss 3(2) *PACA* shuts the door to any proceedings against the Crown here.

[97] This may or may not be correct. But it is not relevant here.

[98] Our focus is whether, by virtue of AIMCo's agent-only status, Alberta is a party to the IMAs and thus the arbitration provisions in them.

[99] If Alberta is a party in this way and thus bound by the arbitration provision, one of the issues to be addressed in the arbitration is whether indeed the combined effect of the noted provisions is to shield Alberta from liability i.e. with AIMCo carrying full, and sole, responsibility (if any) for the asserted investment losses.

[100] There is no need to explore possible *PACA* defences for Alberta before first deciding whether Alberta is even potentially liable under the IMAs i.e. as a party to them by way of its principal-agent relationship with AIMCo, which is our task here.

[101] In other words, Alberta is getting ahead of the game in making *PACA* arguments at this stage.

9. No material distinction here between "commercial" and "government" agents

[102] Alberta tries to draw a distinction between "purely commercial principal/agency relationships" (as featured in some of the Funds' cases) and the government context where AIMCo is a Crown agent. I see no difference, with AIMCo being only and always an agent here via ss. 3(1) of the *AIMCo Act*.

10. Contracts here do not and cannot oust AIMCo's Crown-agent status

[103] Alberta argues that "whether the principal/agency relationship is one that would compel a principal to join the agent as a party to a contract by operation of law must depend on the express wording of the contract. Here HMK argues that the IMAs expressly provide otherwise." I disagree, for the reasons already stated. In a nutshell, the driving factor here is not the wording of the contract (nor could it be); rather, it is AIMCo's only-and-always-agent status per statute.

[104] As stated in ***Conseil des Ports Nationaux v Langelier*** [1969] SCR 60:

> … where a Crown agent is properly exercising its function as such, **its acts, being those of its** principal**, the Crown,** are to be dealt with on that basis. [p 70]

D. Alberta chose closest possible connection with AIMCo

[105] The federal and provincial governments have various ways of defining how and when a corporation or other entity is an agent of the Crown.

[106] Alberta chose the closest connection possible, making AIMCo an agent of the Crown **"for all purposes"**, stipulating that it "may exercise its powers and perform its duties and functions **only as an agent of the Crown** …", and not carving out any exceptions.

[107] Alberta could have followed the model, used by some other governmental investment entities, of expressly declaring them to not be agents of the Crown e.g.:

Canada Employment Insurance Financing Board Act, SC 2008, c 28, s 121

> 3(2) The Board **is not an agent** of Her Majesty in right of Canada.

Canada Pension Plan Investment Board Act, SC 1997, c 40

> **3 (1)** There is established a corporation to be known as the Canada Pension Plan Investment Board.
>
> **(2)** The Board is **not an agent** of Her Majesty.

Public Sector Pension Investment Board Act, SC 1999, c 34

> 3 (1) There is established a body corporate to be known as the Public Sector Pension Investment Board.
>
> (2) The Board is **not an agent** of Her Majesty.
>
> (3) Directors, officers, employees, and agents and mandataries, of the Board are not part of the federal public administration.

[108] Indeed, Alberta has declared many of its statutory entities not to be Crown agents e.g. the Alberta Energy Regulator (*Responsible Energy Development Act*, SA 2012, c R-17.3, s 4); Alberta Enterprise Corporation (*Alberta Enterprise Corporation Act*, SA 2008, c A-17.5, s 4); the Alberta Environmental Monitoring, Evaluation and Reporting Agency (*Protecting Alberta's Environment Act*, SA 2013 c P-26.8, ss 2(2); the Debtors' Assistance Board (*Debtors' Assistance Act*, RSA 2000 c D-6, ss 2(3)); and the Independent System Operator (*Electric Utilities Act*, SA 203, c E-5.1, ss 7(5));

[109] Alberta could have provided, in the *AIMCo Act*, that **some, but not all, of AIMCo's activities** are those of a Crown agent, as seen (for example) in:

Canada Infrastructure Bank Act, SC 2017, c 20, s 403

> **5 (1)** A corporation is established to be known as the Canada Infrastructure Bank.
>
> **(4)** The Bank is **not an agent** of Her Majesty in right of Canada, **except when**
>
> > **(a)** giving advice about investments in infrastructure projects to ministers of Her Majesty in right of Canada, to departments, boards, commissions and agencies of the Government of Canada and to Crown corporations as defined in subsection 83(1) of the *Financial Administration Act*;
> >
> > **(b)** collecting and disseminating data in accordance with paragraph 7(1)(g);
> >
> > **(c)** acting on behalf of the government of Canada in the provision of services or programs, and the delivery of financial assistance, specified in paragraph 18(h); and
> >
> > **(d)** carrying out any activity conducive to the carrying out of its purpose that the Governor in Council may, by order, specify.

Jobs, Growth and Long-term Prosperity Act, SC 2012, c 19

> 210 **Except as provided in this Division**, PPP Canada Inc., incorporated under the *Canada Business Corporations Act*, is **not an agent** of Her Majesty in right of Canada.
>
> 211 PPP Canada Inc. is an **agent** of Her Majesty in right of Canada **in relation to the following activities:**
>
> > (a) assessing public-private partnership opportunities for departments and Crown corporations in accordance with criteria established by the Treasury Board;

> (b) advising departments and Crown corporations on the implementation of public-private partnership projects;
>
> (c) acting as a source of expertise and advice for departments and Crown corporations on public-private partnership issues; and
>
> (d) conducting any activity specified in an order made under section 211.1.
>
> 211.1 The Governor in Council may, by order, **specify any activity in relation to which PPP Canada Inc. is an agent** of Her Majesty in right of Canada.
>
> 212 Her Majesty in right of Canada is **not liable for any obligation or liability incurred by PPP Canada Inc. in relation to any activity other than an activity referred to in section 211.**

Energy Corporation Act, SNL 2007, c E-11.01

> **3.** (1) There is established an energy corporation for the province.
>
> (5) **The corporation is an agent of the Crown.**
>
> (1) **Notwithstanding subsections 3(5)** …, where the corporation **enters into contracts and ancillary arrangements** relating to the Muskrat Falls Project, the corporation shall be considered to have **entered into those contracts and ancillary arrangements in its own capacity and not as an agent of the Crown, and the Crown shall not be liable as principal in contract,** tort or otherwise at law or equity **for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.**
>
> [Subsection 3.1(2) discussed further below.]

Hydro Corporation Act, 2007, SNL 2007, c H-17

> **3.** (1) The Newfoundland and Labrador Hydro-electric Corporation is continued as a corporation.
>
> (4) **The corporation is an agent of the Crown.**
>
> (8) Notwithstanding subsection (2), in all Acts of the Legislature, agreements, legal documents and instruments, the corporation may be referred to as "Newfoundland and Labrador Hydro".
>
> **3.1 Notwithstanding subsections 3(4) …, where the corporation enters into contracts and ancillary arrangements relating to the purchase of electrical energy, capacity and transmission services including contracts providing for direct cost reimbursement to the Muskrat Falls Project, the corporation shall be considered to have entered into those contracts and ancillary arrangements in its own capacity and not as an agent**

> **of the Crown, and the Crown shall not be liable as principal in contract, tort or otherwise at law or equity for the liabilities of the corporation created directly or indirectly by those contracts or arrangements.**

Canada Marine Act, SC 1998, c 10:

> **7 (1)** Subject to subsection (3), a port authority is **an agent of Her Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a).**
>
> (3) A port authority or a wholly-owned subsidiary of a port authority **may not borrow money as an agent** of Her Majesty in right of Canada.
>
> **28 (1)** A port authority is incorporated for the purpose of operating the port in respect of which its letters patent are issued and, for that purpose and for the purposes of this Act, has the powers of a natural person.
>
> (2) The power of a port authority to operate a port is limited to the power to engage in
>
> > **(a) port activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, to the extent that those activities are specified in the letters patent;** and
> >
> > **(b)** other activities that are deemed in the letters patent to be necessary to support port operations.

[Subsection 28(5) is discussed below.]

First Nations Fiscal and Statistical Management Act, SC 2005, c 9

> 18. (1) The Commission is an agent of Her Majesty **only for the approval of local revenue laws**.

Soldier Settlement Act, RSC 1927, c 188

> **4(1)** For the purposes of acquiring, holding, conveying and transferring and of agreeing to convey, acquire or transfer any of the property which he is by this Act authorized to acquire, hold, convey, transfer, agree to convey or agree to transfer, but for such purposes only **the Director of Soldier Settlement shall be a corporation sole and as such the agent of the Crown in the right of the Dominion of Canada, except as hereinafter provided.**
>
> **(5) Any land** vested in the Director of Soldier Settlement in respect of which an assessment has been duly made by a taxing authority at any time since the first day of January, 1933, **is hereby declared** for the purpose of recourse to the land itself for

> realization for taxes based upon such assessment and for such purpose only to be and from the said first day of January, 1933, **to have been held by the said Director of Soldier Settlement as such corporation sole and not as an agent of the Crown in the right of the Dominion of Canada.**

[110] It could have done the same thing via regulation e.g.:

Highway 104 Western Alignment Act, SNS 1995, c 4

> 5(1) There is hereby established a body corporate to be known as the Highway 104 Western Alignment Corporation.
>
> (2) The Corporation **is not an agent of Her Majesty in right of the Province for any purpose except a purpose designated by the regulations.** *1995, c. 4, s. 5.*

The Agri-Food Act, 2004, SS 2004, c A-15.21

> 11 An agency is **not an agent of the Crown in right of Saskatchewan unless the regulations constituting the agency expressly declare otherwise.**

Business Names Act, RSO 1990, c B.17

> 1.2(3) A person or entity that has entered into an agreement under subsection (2) for the provision of business filing services is **not an agent** of the Crown for any purpose, despite the *Crown Agency Act*, **unless a regulation provides otherwise**. 2017, c. 20, Sched. 6, s. 48.

[111] It could have left the "Crown agent or not" decision to be decided contract-by-contract e.g.:

Canada Marine Act, SC 1998, c 10

> 28(5) A port authority or wholly-owned subsidiary of a port authority that enters into a contract **other than as agent** of Her Majesty in right of Canada **shall do so in its own name**. **It shall expressly state in the contract that it is entering into the contract on its own behalf and not as agent of Her Majesty in right of Canada**. For greater certainty, the contracts to which this subsection applies include a contract for the borrowing of money.

Energy Corporation Act, SNL 2007, c E-11.01

> 3.1(2) Notwithstanding subsection (1) [corporation not acting as agent of the Crown with respect to certain contracts], **the corporation may execute contracts relating to the Muskrat Falls Project as an agent of the Crown where**
>
> > **(a) the Lieutenant-Governor in Council has approved the contract; and**

> **(b) the contract explicitly states that the corporation signs the contract as an agent of the Crown.**

New Brunswick Highway Corporation Act, SNB 1995, c N-5.11

> 6.2(1) Subject to subsection (2), a project company is **not an agent** of Her Majesty in right of the Province for any purpose.
>
> 6.2(2)The Corporation **may declare in an agreement with a project company that the project company is acting as an agent** of Her Majesty in right of the Province **for, and only for, the purpose or purposes set out in the agreement.**

Electricity Act, 1998, SO 1998, c 15, Sch A

> **72**(1) The Financial Corporation may establish a subsidiary in Ontario or elsewhere only with the approval of the Minister of Finance. 1998, c. 15, Sched. A, s. 72 (1).
>
> (2) A subsidiary of the Financial Corporation **may declare in writing** in any of its contracts, securities or instruments that it is **not acting as an agent** of Her Majesty **for the purposes of the contract, security or instrument**. 1998, c. 15, Sched. A, s. 72 (2).

[112] But Alberta chose none of these actual or potential distance-creating options.

E. Principal-agent a recognized exception to (or refinement of) privity of contract

[113] Alberta emphasizes the Supreme Court of Canada decision in ***Peace River Hydro Partners v Petrowest Corp***, 2022 SCC 41 and the absence of any discussion there, concerning when a third party might be bound by a contractual arbitration clause, of principals and agents.

[114] But that case concerned a receiver's exposure to such a clause, with the Supreme Court not having to consider other exceptions or pronounce on whether other third parties might be bound by such clauses.

[115] More helpful is the Manitoba Law Reform Commission's Report #80 (October 1993) entitled *Privity of Contract* (1993 CanLIIDocs 101), discussing principals and agents:

> Agency is often seen as an exception to the privity rule. An agency relationship is formed when one person, the principal, gives to another, the agent, the power or authority to enter contracts on his or her behalf with others (third parties). Where an agent acts within his or her scope of actual authority, a valid and enforceable contract is made between the principal and the third party. The agent has brought the two parties together in a direct contractual relationship. **In this typical situation, the exception to the privity rule is more theoretical than real. The principal is known to be the contracting party. The agent has declared his or her status as one who is acting for the principal**. Both contracting parties intended to contract with each other. [p 8] [emphasis added]

[116] Same here. Per ss 3(1) of the *AIMCo Act*, AIMCo's agent-of-Alberta status is declared for the world to see.

[117] And the operation of these basic contractual principles making Alberta a party to the IMAs, including their arbitration provisions, falls squarely within this reasoning of the Supreme Court of Canada majority in ***Peace River Hydro*** (cited above):

> ... The **interpretation of the term "party"** under arbitration legislation falls to be "**determined in accordance with the ordinary principles for construction of a contract**" (McEwan and Herbst, at § 2:28; Casey, at ch. 3.5.1). It is well established that **an entity connected with a signatory to a contract containing an arbitration agreement may become bound as a "party" by operation of law**. Such associated entities may include "subsidiaries, assignees, trustees and others claiming through or under the named party to the arbitration agreement" (McEwan and Herbst, at § 2:37 (emphasis added)). These entities, although non-signatories, "may have all of the rights and obligations under the arbitration agreement by operation of law" (Casey, at ch. 3.5.1). [para 105] [emphasis added]

[118] A principal-agent connection is as close, if not closer, than the noted third parties, and the "operating law" linking Alberta to the IMAs is that of agency, in particular the law governing agents of the Crown.

[119] By the operation of that body of law, invoked by Alberta's decision to make AIMCo an agent of the Crown "for all purposes" and empowered to act "only" as such an agent, Alberta became a party to the IMAs made by its agent on its behalf.

[120] Alberta itself seems to recognize this.

[121] Per a Mandates and Roles Document (pursuant to the *Alberta Public Agencies Governance Act*) signed by AIMCo and by the President of the Treasury Board (Minister of Finance) on September 14, 2017, which is a publicly available document:

> AIMCO is, by statute, "for all purposes an agent of the Crown in right of Alberta", which means
>
> - the **Government of Alberta ultimately has responsibility for all debts, liabilities, and obligations of AIMCo;** and
> - AIMCo is entitled to all legal immunities and any applicable rights and benefits of the Government of Alberta.

[122] The MRD states that it is:

> … not a contract, nor does it create or establish legal obligations. Rather, it describes and reflects the mandate of AIMCo, its relationship with the Minister and the Department [of Treasury Board and Finance], its governance and operational structure, and respective roles and responsibilities.

[123] My conclusion that Alberta is AIMCo's principal here and thus bound by the IMAs, including their arbitration provisions, is not based on the MRD in any way.

[124] I simply note that Alberta's self-description of its "[ultimate] responsibility" for AIMCo's obligations squares with its principal-of-AIMCo status in respect of the IMAs.

IV. Conclusion

[125] AIMCo is only and always a Crown agent.

[126] When it contracted with the Funds in the IMAs, it did so as agent on behalf of Alberta.

[127] As a result, Alberta is a party to those contracts, as AIMCo's principal.

[128] The Funds' arbitration notices tagging both AIMCo and Alberta were on target.

[129] The arbitration shall proceed with the Funds, AIMCo, and Alberta as necessary and proper parties.

[130] The Funds are entitled to costs of the application on a scale and at a quantum to be decided by me after receiving the Funds' costs submissions (maximum 3 pages excluding any attachments e.g. draft bills of costs), due by October 27, 2023 and Alberta's (same rules), due by November 10, 2023.

Heard on the 19th day of September, 2023.
Dated at Edmonton, Alberta this 11th day of October, 2023.

M. J. Lema
J.C.K.B.A.

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