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FEDERAL COURT
COUR FÉDÉRALE
August 13, 2021
13 août 2021
Kathleen Harrill
CAL 1

Court File No.

FEDERAL COURT

BENGA MINING LIMITED

Applicant

– and –

THE MINISTER OF ENVIRONMENT AND CLIMATE CHANGE and THE ATTORNEY GENERAL OF CANADA

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED: August 13, 2021.

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TO: Minister of Environment and Climate Change
The Honourable Jonathan Wilkinson
c/o Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

AND TO: Attorney General of Canada
The Honourable David Lametti
284 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an application for judicial review in respect of two decisions regarding the Grassy Mountain Coal Project ("Project") communicated in the Minister of Environment and Climate Change Canada's ("Minister") Decision Statement issued on August 6, 2021 ("Decision Statement"):

1. Benga Mining Limited ("Benga") seeks judicial review of the Minister's decision, pursuant to s. 52(1) of the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52 ("*CEAA 2012*"), that the Project is likely to cause significant adverse environmental effects and to refer the Project to the Governor in Council ("Cabinet") pursuant to s. 52(2) of *CEAA 2012* (together, "Referral Decision").

2. Benga seeks judicial review of Cabinet's decision that the significant adverse effects of the Project are not justified in the circumstances pursuant to s. 52(4)(b) of *CEAA 2012* ("Cabinet Decision").

THE APPLICANT MAKES APPLICATION FOR:

1. An order:

   (a) quashing or setting aside the Minister's Referral Decision;

   (b) quashing or setting aside the Cabinet Decision;

   (c) referring the Minister's Referral Decision back to the Minister for reconsideration in accordance with the Court's directions; and

   (d) alternatively, if only the Cabinet Decision is quashed, referring the Cabinet Decision back to Cabinet for reconsideration in accordance with the Court's directions.

2. The Applicant's costs of this application; and

3. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

The Parties

4. The Applicant, Benga, is the proponent of the Project. It is a Canadian resource company incorporated pursuant to the laws of British Columbia, with offices in Blairmore and Calgary, Alberta. Benga is a wholly-owned subsidiary of Riversdale Resources Pty Ltd.

5. The Respondent, the Minister, is a statutory decision-maker with various powers and obligations under *CEAA 2012*, including the obligation, pursuant to s. 52, to decide, taking into account any mitigation measures he considers appropriate, whether a designated project is likely to cause significant adverse environmental effects as referred to in ss. 5(1) and 5(2) of *CEAA 2012.* The Minister issued the Decision Statement being challenged in this judicial review proceeding.

6. The Respondent, the Attorney General of Canada, is the Chief Legal Officer of the Federal Crown, with regulation and conduct of all litigation for and against the Federal Crown or any federal department, pursuant to the *Department of Justice Act*, RSC 1985, c J-2. The Attorney General of Canada has been named as a Respondent pursuant to Rule 303 of the *Federal Courts Rules*.

The Project

7. The Project is a proposed open-pit metallurgical coal mine in the Crowsnest Pass area of southwestern Alberta and is located on Treaty 7 lands. The maximum production capacity of the Project is 4.5 million tonnes of metallurgical (steelmaking) coal per year over a mine life of approximately 23 years. If it proceeds, the Project will create hundreds of jobs in the construction and operations phases and generate economic benefits for nearby Indigenous groups that have agreed to support or not oppose the Project.

8. Metallurgical coal is an essential component of the steelmaking process and is used across the world. However, there is currently a global shortage of metallurgical coal. Further, demand for metallurgical coal is projected to be maintained or to increase over the next two decades. There is no proven commercially or economically viable substitute for it in the steelmaking process.

The Assessment Process

9. To proceed, the Project requires both federal and provincial assessments and approvals.

10. Provincially, the Project requires an environmental impact assessment ("EIA") under Alberta's *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ("*EPEA*") and certain provincial approvals under the *Coal Conservation Act*, RSA 2000, c C-17; *EPEA*; *Water Act*, RSA 2000, c W-3; and *Public Lands Act*, RSA 2000, c P-40.

11. Federally, the Project requires an assessment under *CEAA 2012*. Following the assessment, the Minister must decide, pursuant to s. 52(1) of *CEAA 2012*, whether, taking into account any mitigation measures the Minister deems appropriate, the Minister considers the Project is likely to cause significant adverse environmental effects referred to in ss. 5(1) and (2). If so, the Minister must refer the Project to Cabinet to decide whether those effects are justified in the circumstances under s. 52(4). After Cabinet has made its decision, the Minister must issue a decision statement to Benga informing it of the Minister's and Cabinet's decisions. While *CEAA 2012* places a 24-month deadline to issue a decision statement that deadline may be initially extended by the Minister and, on recommendation by the Minister, subsequently extended by Cabinet.

12. If the Project is approved provincially and the Minister issues a favourable decision statement, it will then require federal permits and authorizations under the *Species at Risk Act*, SC 2002, c 29; the *Fisheries Act*, RSC 1985, c F-14; and the *Explosives Act*, RSC 1985, c E-17.

13. Benga submitted its Project proposal to regulators in August 2016 and spent nearly five years moving through the federal and provincial review processes.

14. On August 16, 2018, the Minister of Environment (Canada) and the Alberta Energy Regulator ("AER") announced a joint federal-provincial review process established by the *Agreement to Establish a Joint Review Panel for the Grassy Mountain Coal Project* dated July 9, 2018. The Joint Review Panel ("JRP") was tasked with discharging both federal and provincial environmental assessment responsibilities in keeping with its terms of reference.

15. The joint review process included: (i) the submission of regulatory materials by Benga, including various technical studies and assessments; (ii) various additional information requests

from the JRP and government agencies; (iii) Benga's responses to information requests; (iv) an on-site visit; (v) public comment periods; and (vi) a public hearing in which Benga and other hearing participants presented evidence, cross-examined other parties' witnesses, and presented argument. Over the course of the joint review process, Benga submitted 34 original or updated technical studies and assessments and its application materials exceeded 26,000 pages.

16. On June 25, 2020, following completion of the information request process and prior to the public hearing, the JRP advised Benga that after reviewing Benga's EIA report and addenda for the Project, it: (i) deemed the EIA report for the Project and additional information complete pursuant to s. 53 of *EPEA*, the AER's final terms of reference and the Canadian Environmental Assessment Agency's *Guidelines for the Preparation of an Environmental Impact Statement*; and (ii) determined that the information on the public registry was sufficient to proceed to a public hearing. The JRP further advised that it may require Benga to provide additional information at the public hearing.

17. The public hearing began on October 27, 2020, using electronic means and continued for 29 sitting days. It concluded on December 2, 2020. The hearing record closed on January 15, 2021.

18. Many parties participated in the hearing including Benga, various federal departments and agencies, Indigenous groups, municipal governments, industry organizations, non-governmental organizations, and individuals. In addition, there were groups, organizations, and individuals who engaged in the review process through written submissions but did not participate in the hearing.

19. The participation of Indigenous groups in the public hearing and review was limited because those communities had earlier entered into agreements with Benga that created economic interests in the Project, including employment opportunities. As a result of those agreements, the Indigenous groups concluded that Benga had addressed their concerns in relation to the Project and, on that basis, communicated to the JRP that they support the Project and/or do not oppose it proceeding. Indeed, Benga received support letters for the Project from all of the Treaty 7 First Nations including Piikani Nation ("Piikani"), the Blood Tribe and Kainai, Siksika Nation, Stoney Nakoda Nations ("Stoney Nakoda"), Tsuut'ina Nation, as well as the Métis Nation of Alberta, and the National Coalition of Chiefs.

20. Accordingly, the JRP and the federal departments and agencies that participated in the JRP review were aware that Indigenous groups had secured economic benefits of sufficient importance to openly support the Project, or to take no position on the Project, notwithstanding potential impacts on their Aboriginal and Treaty rights.

The JRP's Decision

21. In *Decision 2021 ABAER 010: Benga Mining Limited, Grassy Mountain Coal Project, Crowsnest Pass* ("JRP Report") dated June 17, 2021, the JRP, in its capacity as the AER, declined to approve the Project because, in its view, the significant adverse environmental effects on westslope cutthroat trout and surface water quality likely to be caused by the Project outweigh the low to moderate positive economic impacts of the Project. Therefore, the JRP, in its capacity as the AER, concluded that the Project is not in the public interest. In light of this decision, the JRP, in its federal capacity, expressly declined to complete an assessment of mitigation measures because without provincial approval the Project cannot proceed. In other words, the JRP did not complete the federal component of its review based on the decision it made on the provincial component of its review.

22. The JRP agreed that the Project would have an overall positive economic impact. However, the JRP did not complete an assessment of the effects of the Project on the socioeconomic conditions for specific Indigenous groups, nor did it request that Indigenous groups that openly support or do not oppose the Project provide further information on the positive economic benefits that the Project proceeding would have for their communities. However, the JRP inferred that the Indigenous groups potentially affected by the Project were of the view that the agreements adequately addressed any effects of the Project on their land use, cultural practices, and Aboriginal rights.

23. The Impact Assessment Agency of Canada ("Agency"), the successor to the Canadian Environmental Assessment Agency, issued a news release on June 17, 2021, advising that the Minister had received the JRP Report and, prior to making a decision on the Project, the Agency will: (i) consult with Indigenous groups on the JRP Report; and (ii) invite the public and Indigenous groups to comment on potential conditions relating to possible mitigation measures and follow-up

program requirements that Benga would need to fulfill if the Project is ultimately allowed to proceed ("Post-JRP Consultation").

Appeal of the JRP's Decision

24. Pursuant to s. 45(1) of the *Responsible Energy Development Act*, SA 2012, c R-17.3, Benga filed an application for permission to appeal the JRP's decision, in its capacity as the AER, to the Alberta Court of Appeal on July 16, 2021. In its application, Benga submits that the JRP, in its capacity as the AER, made several fundamental legal errors including, but not limited to, contravening procedural fairness and/or substantively erring by:

(a) telling Benga on June 25, 2020, that its EIA report and additional information provided were complete then later denying the Project on the basis that Benga's EIA report and additional information were incomplete, without requesting Benga to provide the information, as the JRP assured Benga it would do in its June 25, 2020, correspondence;

(b) failing to properly consider Alberta government policy in favour of coal development in the area as reflected in the *South Saskatchewan Regional Plan*, which it was required to do pursuant to Alberta legislation;

(c) ignoring relevant evidence from Benga, or misconstruing that evidence, regarding surface water quality, the westslope cutthroat trout and habitat, and Project economics and, as a result, improperly finding Benga's evidence and plans to be inadequately developed and potential benefits overstated;

(d) failing to consider the rules of evidence and principles on which they are grounded, including reliability concerns, and thereby improperly relying on layperson, non-expert and unfounded opinion evidence lacking any science-based support to unjustifiably dismiss or disregard Benga's expert evidence;

(e) usurping the executive's regulation-making role by finding that Alberta's *Mine Financial Security Program* was inadequate for Benga to rely on to address long-term water treatment costs; and

(f) failing to engage with, seek further information from, consult with or suggest consultation with, affected Indigenous groups when contemplating the rejection of the Project. As a result, the JRP, in its capacity as the AER, did not properly assess the impact of the rejection of the Project on Aboriginal rights and economic interests that accommodate potential impacts on those rights, notwithstanding that those Indigenous groups supported the Project and filed letters of support or no concern with the JRP.

25. The application for permission to appeal is set to be heard on September 30, 2021. Piikani and Stoney Nakoda, both of which have agreements with Benga to economically benefit from the Project, have also filed applications for permission to appeal the JRP's decision, set to be heard on the same date. Piikani and/or Stoney Nakoda argue that the JRP, in its capacity as the AER:

(a) failed to properly interpret, apply and assess the public interest as a result of its failure to seek information from and engage with Indigenous groups regarding how a rejection of the Project would impact their rights and interests;

(b) failed to consider and apply the honour of the Crown in its decision to decline to approve the Project without seeking additional information on economic and other benefits from Indigenous groups, notwithstanding that Indigenous groups did not oppose the Project and filed evidence with the JRP based on their overall position on the Project; and

(c) failed to meaningfully and adequately consult with or request that Her Majesty the Queen in right of Alberta consult with Indigenous groups once it had received and reviewed other information that could lead to a potential finding that the Project is not in the public interest.

Request for Abeyance

26. By letter dated June 26, 2021, Benga's legal counsel wrote to the Minister asking that he hold the issuance of a decision statement in abeyance until the Alberta Court of Appeal process had been completed. In its letter, Benga informed the Minister that continuing the *CEAA 2012* process would prejudice Benga and those Indigenous groups that would benefit from the Project

should its challenge at the Alberta Court of Appeal be successful. Benga undertook to provide the Minister with updates every three months regarding the status of the legal challenges.

27. By letter dated July 13, 2021, Piikani wrote to the Minister in support of Benga's request.

28. On July 6, 2021, Benga wrote to the Agency, in furtherance of its letter to the Minister dated June 26, 2021, reiterating that failure to hold the federal process in abeyance pending resolution of legal challenges to the AER's decision would seriously prejudice Benga and potentially those Indigenous groups that may, and many others who would, benefit from the Project should those challenges be successful.

29. Neither the Minister nor the Agency has responded to Benga's request for an abeyance.

The Decision Statement

30. On August 6, 2021, the Minister issued a Decision Statement under s. 54 of *CEAA 2012* to Benga concluding that the Project cannot proceed. The Minister determined that the Project is likely to cause significant adverse environmental effects as referred to in ss. 5(1) and 5(2) of *CEAA 2012*. In accordance with s. 52(2) of *CEAA 2012*, the Minister referred to Cabinet the matter of whether the significant adverse environmental effects were justified in the circumstances. Cabinet decided that the significant adverse environmental effects that the Project is likely to cause are not justified in the circumstances pursuant to s. 52(4)(b) of *CEAA 2012*.

31. Both the Minister's Referral Decision and the Cabinet Decision were issued without undertaking and/or completing adequate Post-JRP Consultation or considering and providing reasons in response to Benga's request that the decision statement be held in abeyance.

Grounds of Review

32. The Minister's Referral Decision was an unlawful, incorrect, unreasonable and/or unconstitutional exercise of ministerial discretion and should be quashed or set aside. Indeed, among other things, the Minister: (i) never responded to or addressed Benga's request to hold the decision statement in abeyance; (ii) failed to consider the fact that the JRP had not completed its federal mandate; and (iii) decided that he could better assess what is in the interests of Piikani, Stoney Nakoda, and other Indigenous groups supportive of the Project than the leadership of those

groups, by finding that potential impacts on those groups outweigh the benefits. The Minister reached this determination without consulting with or adequately consulting those groups on the economic benefits they would gain from the Project proceeding, in breach of the Federal Court's decision in *Ermineskin Cree Nation v. Canada* handed down on July 19, 2021, less than three weeks prior to the Decision Statement, confirming that the very same Minister unlawfully exercised statutory powers by failing to consult with Indigenous groups on economic benefits linked to Aboriginal rights.

33. In particular, the Minister's Referral Decision was based on the following errors, among others, which individually and/or together require that the Minister's Referral Decision be quashed or set aside:

(a) The Minister improperly failed to consider Benga's request to hold a decision statement in abeyance while the Alberta Court of Appeal considered the JRP's decision in its capacity as the AER. At the very least, the Minister was required to provide a reason for declining to do so, which he failed to do.

(b) The Minister improperly relied on a fundamentally flawed JRP Report to reach his decision. The JRP Report is a statutory prerequisite to the Minister's Referral Decision, and the Minister stated that he relied on the JRP Report to reach his Referral Decision. Accordingly, errors in the JRP Report mean that the Minister's decision must fall. Those errors include:

(i) denying Benga procedural fairness by finding that Benga submitted insufficient information on potential adverse environmental effects, mitigation measures and Project benefits after the JRP told Benga on June 25, 2020, that its information was complete and that if the JRP required additional information it would tell Benga;

(ii) ignoring relevant evidence from Benga, or misconstruing that evidence, regarding surface water quality, the westslope cutthroat trout and habitat, and Project economics, among other things;

(iii) failing to consider the rules of evidence and principles on which they are grounded, including reliability concerns, and thereby improperly relying on layperson, non-expert and unfounded opinion evidence lacking any science-based support to unjustifiably dismiss or disregard Benga's expert evidence; and

(iv) failing to engage with, seek further information from, consult with or suggest consultation with affected Indigenous groups when contemplating the rejection of the Project.

If the JRP Report is quashed or sent back for reconsideration, then the Minister's decision is invalidated. The JRP Report preceded the Minister's decision. If the JRP Report is quashed and the JRP issues a new report following a second assessment, the Minister must reconsider his decision based on the new facts from a new JRP assessment and report.

(c) The Minister unreasonably found that the Project is likely to cause significant adverse environmental effects. The JRP, in its federal capacity, did not provide a recommendation to the Minister regarding proposed mitigation measures as it did not assess the adequacy of mitigation measures in light of its decision that the Project cannot proceed under provincial legislation. Under s. 52(1) of *CEAA 2012*, the Minister must consider appropriate mitigation measures, the information for which comes from the JRP assessment. Here, the Minister did not have this information before him, which is required to reasonably determine whether the Project will result in adverse environmental effects.

(d) Prior to the Minister's Referral Decision, the Federal Crown failed to consult with, or inadequately consulted with, Indigenous groups, the public and Benga, in breach of s. 35 of the *Constitution Act, 1982*, and the principles of procedural fairness, legitimate expectations and natural justice.

Among other things, the Minister incorrectly or unreasonably issued the Referral Decision notwithstanding that the Federal Crown failed to consult or failed to

adequately consult Indigenous groups regarding the impacts that denying the Project would have on their economic rights, a clear "gap" in the JRP Report and assessment on which the Federal Crown was required to consult. Indeed, the Minister made this error notwithstanding the Piikani and Stoney Nakoda applications for permission to appeal to the Alberta Court of Appeal filed on July 16, 2021, and July 19, 2021, respectively, and the Federal Court's decision in *Ermineskin Cree Nation v. Canada* handed down on July 19, 2021.

(e) The Minister incorrectly or unreasonably found that the Project is likely to cause significant adverse environmental effects to the physical and cultural heritage and current use of land and resources for traditional purposes of the Kainai, Piikani and Siksika First Nations notwithstanding that those nations informed the JRP that they either support or do not oppose the Project on the basis that their respective agreements with Benga address their concerns.

(f) The Minister's reasons for the Referral Decision are inadequate.

(g) The Minister incorrectly or unreasonably relied on the proposed *Coal Mining Effluent Regulations* to find that the Project is likely to cause significant adverse environmental effects.

34. The Cabinet Decision was also unlawful, incorrect, unreasonable and/or unconstitutional and should be quashed or set aside. Cabinet repeated many of the same errors as the Minister, as well as independent and additional errors.

35. In particular, the Cabinet Decision was based on the following errors, among others, which individually and/or together require that the Cabinet Decision be quashed or set aside:

(a) Cabinet incorrectly or unreasonably relied on the Minister's fundamentally flawed Referral Decision. If the Referral Decision is quashed or set aside, the Cabinet Decision must also be quashed or set aside.

(b) Cabinet improperly relied on a fundamentally flawed JRP Report to reach its decision. The JRP Report is a statutory prerequisite to the Cabinet Decision, and

Cabinet relied on the JRP Report to reach the Cabinet Decision. Accordingly, errors in the JRP Report mean that the Cabinet Decision must fall. Those errors include:

(i) denying Benga procedural fairness by finding that Benga submitted insufficient information on potential adverse environmental effects, mitigation measures and Project benefits after the JRP told Benga on June 25, 2020, that its information was complete and that if the JRP required additional information it would tell Benga;

(ii) ignoring relevant evidence from Benga, or misconstruing that evidence, regarding surface water quality, the westslope cutthroat trout and habitat, and Project economics, among other things;

(iii) failing to consider the rules of evidence and principles on which they are grounded, including reliability concerns, and thereby improperly relying on layperson, non-expert and unfounded opinion evidence lacking any science-based support to unjustifiably dismiss or disregard Benga's expert evidence; and

(iv) failing to engage with, seek further information from, consult with or suggest consultation with affected Indigenous groups when contemplating the rejection of the Project;

If the JRP Report is quashed or sent back for reconsideration, then the Cabinet Decision is invalidated. The JRP Report preceded the Cabinet Decision. If the JRP Report is quashed and the JRP issues a new report following a second assessment, Cabinet must reconsider its decision based on the new facts from a new JRP assessment and report.

(c) Cabinet unreasonably found that the Project is likely to cause significant adverse environmental effects that are not justified in the circumstances. The JRP, in its federal capacity, did not provide a recommendation to the Minister regarding proposed mitigation measures as it did not assess the adequacy of mitigation measures in light of its decision that the Project cannot proceed under provincial

legislation. In considering whether significant adverse environmental effects are justified in the circumstances, Cabinet must consider appropriate mitigation measures, the information for which comes from the JRP assessment. Here, Cabinet did not have this information before it, which is required to reasonably determine whether the Project will result in adverse environmental effects that are not justified in the circumstances.

(d) Prior to the Cabinet Decision, the Federal Crown failed to consult with, or inadequately consulted with, Indigenous groups, Benga and the public, in breach of s. 35 of the *Constitution Act, 1982*, and the principles of procedural fairness, legitimate expectations and natural justice.

In particular, Cabinet incorrectly or unreasonably issued the Cabinet Decision notwithstanding that the Federal Crown failed to consult or inadequately consulted Indigenous groups regarding the impacts that denying the Project would have on their economic rights, a clear "gap" in the JRP Report and assessment on which the Federal Crown was required to consult. Cabinet made this error notwithstanding the Piikani and Stone Nakoda applications for permission to appeal to the Alberta Court of Appeal filed on July 16, 2021, and July 19, 2021, respectively, and the Federal Court's decision in *Ermineskin Cree Nation v. Canada* handed down on July 19, 2021, confirming a duty to consult on economic benefits linked to Aboriginal rights. The potential impacts of denying the Project on the economic rights of Indigenous groups is a factor that Cabinet must consider in determining whether adverse environmental effects of the Project are justified in the circumstances.

(e) Cabinet's reasons for the Cabinet Decision are inadequate.

36. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

37. One or more affidavits to be sworn;

38. *Decision 2021 ABAER 010: Benga Mining Limited, Grassy Mountain Coal Project, Crowsnest Pass*;

39. The Decision Statement;

40. The record(s) before the Minister and Cabinet in respect of the Project, the Referral Decision and the Cabinet Decision;

41. Sections 35 and 52 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982 c 11;

42. *Canadian Environmental Assessment Act*, 2012, SC 2012, c 19, s 52, and regulations thereunder;

43. *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, and regulations thereunder;

44. *Responsible Energy Development Act*, SA 2012, c R-17.3, and regulations thereunder;

45. Sections 18, 18.1, and 18.2, of the *Federal Courts Act*, RSC 1985, c F-7;

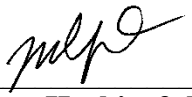
46. The *Federal Courts Rules*, SOR/98-106; and

47. Such further and other evidence and legislation as counsel may advise and this Honourable Court may permit.

REQUEST FOR MATERIAL IN THE POSSESSION OF TRIBUNAL:

Pursuant to Rules 317 and 318 of the *Federal Courts Rules*, the Applicant requests that the Minister and Cabinet send to the Applicant and to the Federal Court Registry certified copies of all the materials that were placed before and/or considered by the Minister and Cabinet in making the Referral Decision and the Cabinet Decision, respectively, or that are in the Minister's and/or Cabinet's possession and otherwise related to the Referral Decision and the Cabinet Decision, and are not in possession of the Applicant.

Dated at Calgary, Alberta this 13th day of August, 2021.



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