

**Wills, Trusts & Estates**

# Beneficiaries not liable for debts of a trust or trustee, Alberta Appeal Court rules

By **Ian Burns**

(April 1, 2022, 3:59 PM EDT) -- Alberta's top court has ruled a judge was wrong in ordering two First Nations to pay back money they had received as part of an overpayment on energy royalties, and a lawyer involved in the case is calling the decision an important clarification on trust law.

Chevron Canada had a partial interest in oil and gas produced from reserve lands in Alberta, and under the law First Nations are entitled to royalties from those lands through a statutory trust that is held by the federal government. For several years in the 1990s Chevron overpaid approximately \$10 million in royalties, and when the company didn't get those funds back it launched a legal challenge.

The trial judge granted Chevron judgment against Canada and each of the four defendant First Nations bands, requiring both to pay Chevron back their proportionate share of the overpayments and the bands to pay Canada (*Chevron Canada Resources v. Canada* 2019 ABQB 418). Canada has since repaid Chevron but two of the bands, the Samson Indian Band and the Louis Bull Indian Band, appealed the judgment.

And a unanimous Alberta Court of Appeal ruled that judgment should only have been given against Canada in its capacity as trustee of the bands' trusts (*Chevron Canada Resources v. Canada* 2022 ABCA 108, released March 23).

"Canada at all times acted as a trustee and only as a trustee. At common law and under statute, all the trust property is vested in the trustee. A trustee acts as a principal, not as an agent of the beneficiaries," the court wrote. "This same principle applies to a trustee who receives a payment under mistake. The mistaken payor must look to the trustee for a remedy, not the beneficiaries of the trust. It follows that, possibly subject to a few exceptions, the beneficiaries are not liable for the debts of the trust or the trustee."

For that reason, the claim made and judgment given against the bands was inappropriate, the court wrote.

"Where a claim is made against a trust, the proper defendant is the trustee. The beneficiaries of the trust are not proper defendants," the court wrote. "Judgment should only have been granted against Canada, in its capacity as trustee. For the same reasons that the judgments given to Chevron against the bands must be set aside, the judgments for indemnity that Canada obtained against the bands must also be set aside."



Emily MacKinnon, Osler

The unanimous decision was authored by Justices Frans Slatter, J.D. Bruce McDonald and Barbara Lea Veldhuis.

Emily MacKinnon of Osler, who represented Chevron, said the ruling was an important clarification on the law of trusts, specifically as it relates to questions of standing and how cases should be structured concerning incorrect payments.

"There was this question about whether a beneficiary of a trust can sue in the name of a trust, and there have been a couple of decisions around the periphery," she said. "This one tackled the point again in a different way, and the court upheld that in order to pursue underpayment or overpayment to a trust it is the trustee that is the proper plaintiff, not the beneficiary. And there are certain residual provisions if the trustee is refusing to act, then the beneficiary may be able to pursue a claim, but the general rule is the trustee has to sue on behalf of the trust."

Indigenous Services Canada spokesperson Megan MacLean said in an e-mail Ottawa is reviewing the decision and discussing next steps with the First Nations. Counsel for the two bands declined comment.

*If you have any information, story ideas or news tips for The Lawyer's Daily please contact Ian Burns at [Ian.Burns@lexisnexis.ca](mailto:Ian.Burns@lexisnexis.ca) or call 905-415-5906.*

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