

File No. 1920
Board Order No. 1920-3

January 26, 2018

SURFACE RIGHTS BOARD

**IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, R.S.B.C., C. 361 AS AMENDED**

**AND IN THE MATTER OF
THE WEST ½ OF SECTION 8 TOWNSHIP 88 RANGE 17 WEST OF THE 6TH
MERIDIAN PEACE RIVER DISTRICT
(The “Lands”)**

BETWEEN:

**SHANE DARRELL FELL AND
PAMELA DAWN FELL**

(APPLICANTS)

AND:

BONAVISTA ENERGY CORPORATION

(RESPONDENT)

BOARD ORDER

Heard: By way of written submissions closing December 20, 2017
Appearances: Steven N. Carey, Barrister and Solicitor, for the Fells
Michael D. Tatchell, Barrister and Solicitor, for Bonavista Energy Corporation

INTRODUCTION

[1] This is a second application by the Respondent, Bonavista Energy Corporation (Bonavista), challenging the jurisdiction of the Board to hear an application brought by Shane and Pamela Fell under sections 158 and 163 of the *Petroleum and Natural Gas Act* (the *Act*). Bonavista submits the Fells cannot bring their claims within the provisions of the *Act* because, in its submission, the well site in respect of which the Fells claim Bonavista requires a right of entry is on Crown land, and neither Shane nor Pamela Fell is a “landowner” within the meaning of the *Act*. Bonavista submits that Crown land is beyond the jurisdiction of the Board.

[2] The Fells dispute that the wellsite area is Crown land. They say they are the owners of the land and that Bonavista operates the well site known as Imp Fina Rigel without a proper right of entry.

[3] Bonavista submits the Board does not have jurisdiction to resolve the threshold issue of who owns the land in question. It says “it is not the province of the SRB to make declarations of title where there is a conflict as to who is actually the owner of the land in question” but that these are “threshold issues for the Supreme Court”.

[4] In the alternative, Bonavista submits that if the Board decides it has jurisdiction to address the threshold issue, it should confirm it lacks jurisdiction to entertain the Fells’ application.

[5] The Fells submit the Board has jurisdiction to make a determination of ownership as between parties to an application, that the Board has jurisdiction to hear the Fells' application, and that any interpretation of rights must wait for a full hearing.

PRELIMINARY MATTER

[6] In the covering letter providing Bonavista's submissions on this jurisdictional challenge, counsel requested that the Board conduct a hearing to hear the parties' submissions and determine whether it has jurisdiction. I take this request to be for an oral hearing. Counsel does not provide any reasons in support of this request.

[7] The issues raised in this application are questions of law. The Board has been provided with evidence by way of Affidavit and there has been no request from any party to cross-examine any of the affiants, nor do I see the need for any such cross-examination. The evidence is not in dispute and there are no issues of credibility. The dispute involves interpretation of legislation and other documents about which both parties have provided written submissions.

[8] I do not see a need for an oral hearing but will proceed to hear the application by way of written submissions as originally contemplated when the process and dates for written submissions were established.

BACKGROUND

[9] The predecessor to Bonavista, Imperial Oil Limited (Imperial Oil), was granted rights to drill the Imp Fina Rigel well in 1962. At that time, the land in issue belonged to the Crown.

[10] In 1964, by Order in Council Number 725 (OIC 725), the Province of British Columbia granted Imperial Oil and its successors and assigns a right of way granting "the full, free and unencumbered right and privilege to enter, labour, and pass along, over and under the Crown lands shown outlined in red on Plans No. ..., C.G. 1130...on

file in the Land Registry Office, Kamloops B.C....for all purposes necessary or incidental to the operation of a pipeline”, on various terms.

[11] Plan CG 1130, the plan on file in the Land Title Office, shows the Imp Fina Rigel well site, a pipeline right of way and an access road on several parcels including the West ½ of Section 8 Township 88 Range 17 West of the 6th Meridian Peace River District (the Lands). The pipeline right of way and an area for the well site are outlined in red on Plan CG 1130. The access road is depicted with dotted lines that are not outlined in red. The wellsite area on the Lands is noted in the Book of Reference to the plan as 3.09 acres and the area for the pipeline right of way on the Lands is noted as 4.31 acres.

[12] Imperial Oil registered its right of way granted by OIC 725 in the Land Title Office on December 8, 1969 by Charge D15450.

[13] On June 13, 1991, the Crown granted the fee simple in the Lands to Joseph Andre Belanger subject to “a statutory right of way in favour of Imperial Oil Ltd. and Orbit Oil & Gas Ltd. registered in the Land Title Office under number D15450 and PC55797 including the right of the Grantor to continue or renew it”.

[14] Keith and Suzanne Dietz purchased the Lands in 1996.

[15] In 2011, the Crown consented to the assignment of the right of way from Imperial Oil to Dominion Oil Exploration Canada and then to Bonavista.

[16] In 2016, Mr. and Mrs. Fell purchased the Lands and became the owners registered in the Land Title Office. The charge in favour of Bonavista, registered as D15450, is noted on the title to the Lands.

[17] In their application to the Board, the Fells claim that Bonavista continues oil and gas activities on the Lands, namely the operation of the Imp Fina Rigel well, without a

surface lease, refuses to recognize their legal ownership of the Lands and “refuses to pay a right of entry, back rent, damages, or any costs associated with the prior and continued use of the site”.

[18] There are two parts to the Fell’s claim. The first part alleges Bonavista requires a right of entry and claims compensation including rent for the right of entry. The second part claims damages and costs associated with the prior and continued use of the site.

[19] In its first application challenging the Board’s jurisdiction to hear the Fells’ application, Bonavista submitted the Board did not have jurisdiction because the Fells had divested themselves of any interest through an assignment, the Fells were advancing the interests of the former landowners who do not qualify under the *Act* to bring an application, and the application offended the common law rules of champerty and maintenance. In that application, Bonavista did not dispute that the Fells are “landowners” as defined in the *Act*.

[20] The Board determined it had jurisdiction to hear the Fells’ application to the extent it was brought on their own behalf (*Fell v. Bonavista Energy Corporation*, Board Order 1920-1, March 9, 2017).

[21] Bonavista then brought an application to the Board seeking to have the Fells’ claims summarily dismissed as having no reasonable prospect of success pursuant to section 31(1)(f) of the *Administrative Tribunals Act*. In that application, Bonavista alleged, as it does now, that the area of the Lands on which the Imp Fina Rigel well, roadway and pipeline are located was granted as a right of way and easement as shown on Plan CG 1130 to Imperial Oil by way of OIC 725, that these rights run with the land and were transferred to Bonavista. Bonavista submitted the rights conveyed by OIC 725 were expressly excepted from the original Crown grant of the Lands and that the Fells’ title does not include the area shown on Plan CG 1130. Consequently, Bonavista submitted that it does not require a right of entry, the Fells do not own the

land covered by Plan CG 1130, and the Fells' application should be dismissed as having no reasonable prospect of success.

[22] In dismissing Bonavista's application (*Fell v. Bonavista Energy Corporation*, Board Order 1920-2, June 16, 2017), the Board said:

[21] It is clear that the original Crown grant of the Lands to Joseph Andre Belanger was subject to Imperial Oil's rights registered as charge D15450. It is also clear that the area covered by the rights granted by OIC 725 and registered against the title to the Lands includes the 3.09 acres used for the Imp Fina Rigel well. What those rights entail, however, is at issue in the Fell's application.

[22] Determining the extent of the rights granted by OIC 725 and what rights were exempted from the original Crown grant involves interpreting OIC 725, the original drilling authority, the Crown grant, the provisions of the *Land Act* in force at the time of the original Crown Grant, and the historical and current provisions of the *Petroleum and Natural Gas Act*. Both parties advance interpretive arguments in support of their respective positions as to whether Bonavista has an effective right of entry to the Lands to operate the Imp Fina Rigel well and access road, and whether compensation is or is not owing to the Fells. These arguments are complex. I am not satisfied that the relative merits of the parties' respective interpretations should not be considered by a hearing panel.

...

[25] It is not appropriate for me to analyze the relative merits of the arguments advanced by both parties as to the extent of the rights granted in OIC 725, the extent of the interest exempted by the Crown grant, and the consequent effect those rights and exempted interests have on the Fell's claims for compensation other than to say I am not satisfied that the Fell's arguments have no reasonable prospect of success or are bound to fail. Whether their arguments will ultimately succeed will be for the hearing panel to determine.

[23] Bonavista sought judicial review of Board Order 1920-2. In its petition for judicial review, Bonavista asserted that the Board has no jurisdiction over the Fells' claims on the basis that the land in issue remains Crown land. Adair, J. dismissed Bonavista's petition on the grounds that it was premature. She found that Bonavista had failed to make a clear and direct challenge to the Board's jurisdiction over the Fells' claims on the particular grounds put forth in the petition for judicial review of Order 1920-2. She

found the Board had never been asked, nor had the opportunity, to consider a challenge to its jurisdiction based on the grounds asserted in the petition, namely that the land over which Bonavista enjoys statutory rights-of-way remains Crown land and is beyond the jurisdiction of the Board.

[24] Bonavista challenges the Board's jurisdiction to hear the Fell's application in this application on the basis that the Fells are not "landowners" within the meaning of the *Act* and that the land in issue is Crown land beyond the jurisdiction of the Board. First, however, Bonavista challenges the Board's jurisdiction to even make these "threshold" determinations.

ISSUES

[25] Does the Board have jurisdiction to resolve the threshold issue of whether the Fell's are "landowners", which involves determining whether the OIC 725 land shown on Plan CG 1130 was expressly excepted and reserved from the Crown grant to Belanger?

[26] If so, was the OIC 725 land shown on Plan CG 1130 expressly excepted from the Crown grant to Belanger and are the Fell's "landowners" within the meaning of the *Act*?

[27] Does the Board have jurisdiction to hear the merits of the Fells' application?

ANALYSIS

Does the Board have jurisdiction to resolve the threshold issue of whether the Fell's are "landowners", which involves determining whether the OIC 725 land shown on Plan CG 1130 was expressly excepted and reserved from the Crown grant to Belanger?

[28] The issue Bonavista submits the Board does not have jurisdiction to address is the same issue raised in its earlier application to have the Fells' claim dismissed as having no reasonable prospect of success. Bonavista submitted in that application, as it does now, that title to the land covered by OIC 725 did not pass to Belanger with the original Crown grant and consequently did not pass to the Fells on their purchase of the Lands.

Bonavista argued then, and as it does now, that the land granted as a right-of-way by OIC 725 to Imperial Oil was expressly reserved from the Crown grant, and that consequently the Fells' application under the *Act* had no reasonable prospect of success.

[29] For the reasons quoted above, I dismissed that application. I said the issue was complex and that the relative merits should be determined by a hearing panel. Without assessing the relative merits of the parties' arguments, I was not satisfied that the Fells' argument that the rights registered against the Lands did not give Bonavista a right of entry to operate the Imp Fina Well was bound to fail.

[30] Bonavista now submits that the Board does not have the jurisdiction to resolve the issue raised in its previous application at all. For the reasons that follow, I find that the Board does have the jurisdiction to consider and determine the "threshold" issue raised by Bonavista. This issue is part of determining whether the land is land over which the Board has jurisdiction and whether the Fells are "landowners" within the meaning of the *Act*, and therefore entitled to bring the application.

[31] The Board, as an administrative tribunal established by legislation, has jurisdiction to interpret its enabling legislation, including to determine issues that go to its jurisdiction. Its determination of those issues is then subject to judicial review (*Dunsmuir v. New Brunswick*, 2008 SCC 9; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61).

[32] The Board is a specialized tribunal established under the *Act* to resolve certain types of disputes respecting access to "land", between "landowners", and persons who require a "right of entry", all defined terms, to that "land" for oil and gas activities, and to determine compensation and damages arising from a "right of entry". The *Act* provides definitions, including those just noted and others, which circumscribe the Board's jurisdiction. In order to exercise its jurisdiction, and indeed determine whether it has jurisdiction to resolve a claim, the Board must interpret the words of its enabling

legislation and determine whether the persons bringing claims are entitled to bring those claims, whether the land affected is land over which the Board has jurisdiction, and whether the remedies sought are within the scope of what the Board is authorized to provide.

[33] In this case, the Fells say they are “landowners”, within the meaning of the *Act*, and that Bonavista is engaged in oil and gas activities without the required “right of entry”, within the meaning of the *Act*. Bonavista says the Fells are not “landowners”, the land in issue is “Crown land”, and it does not need a “right of entry”. Whether the Fells are “landowners”, within the meaning of the *Act* and whether Bonavista requires a “right of entry” within the meaning of the *Act* are matters within the Board’s jurisdiction.

[34] In the circumstances of this case, determining these issues will be more complex than usual. As I said in Order 1920-2 determining these issues will involve interpreting OIC 725, the original drilling authority, the Crown grant, the various other documents referenced by the parties and the current and former provisions of the *Land Act* and *Petroleum and Natural Gas Act*. But the fact that a resolution of these issues will be more complex than usual and involve interpretation of documents not normally necessary to resolve threshold questions like whether an applicant is a “landowner” within the meaning of the *Act*, does not take the issues outside of the Board’s jurisdiction. In order to assess whether the Fells can bring an application under Parts 5 and 6 of the *Act*, the Board must have the jurisdiction to engage in this analysis and make the necessary determinations as to whether the Fells are indeed “landowners”, whether the land in issue is “Crown land”, and whether Bonavista requires a “right of entry”, all within the meaning of the *Act*.

[35] Bonavista submits that a declaration of title is not within the Board’s statutory power of decision. The Fells are not seeking a declaration of title. The Fells are saying they are the owners of land that is being used for an oil and gas activity without a right of entry and seek remedies from the Board. They say they have been unable to negotiate a surface lease with Bonavista. Bonavista says it has the requisite authority

to enter the Lands to conduct its oil and gas activity. Whether it does or does not, and whether the Fells are entitled to compensation or damages are matters within the Board's jurisdiction to determine.

Was the OIC 725 land shown on Plan CG 1130 expressly excepted from the Crown grant to Belanger and are the Fell's "landowners" within the meaning of the Act?

[36] It is well established that the words of an enactment must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. v. Zibbler, Siblin & Associates, Inc., et al* [1998] 1 SCR 27).

[37] The Board's mandate under the *Petroleum and Natural Gas Act* is to resolve, by mediation and arbitration, disputes between "landowners", as defined, and persons who require entry to "land", as defined, for oil and gas activities.

[38] In accordance with section 142 of the *Act*, persons may not enter, occupy or use "land" for oil and gas activities without either negotiating a surface lease with the "landowner" or obtaining an order of the Board.

[39] The definition of "land" is set out at section 141(1) as follows:

"land" means the surface of land other than restricted land or unoccupied Crown land;

[40] The definitions of "restricted land" and "unoccupied Crown land" are found at section 1 of the *Act* as follows:

"restricted land" means any of the following:

- (a) Crown land that is used or occupied by or on behalf of the government;
- (b) land granted by the government to a railway company under an Act that is used or occupied by or on behalf of the railway company;

(c) Crown land to which access is restricted or prohibited under another Act;

“unoccupied Crown land” means Crown land, other than restricted land,

(a) in respect of which there has been no disposition of an interest in the surface on the land under the Land Act, or

(b) that is subject to

(i) [2015-26-49]

(ii) a licence under section 39 of the Land Act under which a person is granted

(iii) non-intensive occupation or use of the land, or

(iv) occupation and use of an extensive area of Crown land for commercial recreational purposes.

[41] “Crown land” is also defined at section 1 as follows:

“Crown land” means ungranted Crown or public land that belongs to the government, whether or not any water flows over or covers it.

[42] Bonavista does not assert that the land in issue constitutes either restricted land or unoccupied Crown land. It says, however, that the land is “Crown land” as defined in the *Land Act*. The definition of “Crown land” in the *Land Act* is:

“Crown land”, ...means land, whether or not it is covered by water, or an interest in land, vested in the government.

[43] For the purpose of determining the Board’s jurisdiction, however, the definition of “Crown land” set out in the *Act*, is the definition that applies, not the definition in the *Land Act*.

[44] Division 5 of the *Act* deals with the Board’s jurisdiction to authorize entry to “land” for an oil and gas activity, subject to terms and conditions. Section 158 establishes who may make an application for a right of entry and the conditions upon which an application may be made as follows:

158 A person who requires a right of entry or the landowner may apply to the board for mediation and arbitration if the person and the landowner are unable to agree on the terms of a surface lease.

[45] The definition of “landowner” is set out at section 141(1) as follows:

“landowner” means the owner of land that is subject to a right of entry or a proposed right of entry.

[46] The term “owner” is also defined at section 141(1) as follows:

“owner”, in relation to land, means either of the following:

- (a) a person registered in the land title office as the registered owner of the land or as its purchaser under an agreement for sale;
- (b) a person to whom a disposition of the land has been issued under the *Land Act*,

but does not include the government;

[47] A “landowner”, therefore, includes the person registered in the land title office and the person to whom a disposition of Crown land has been made under the *Land Act*. The Board does not have jurisdiction over ungranted Crown land that belongs to the government, but does have jurisdiction over Crown land in respect of which there has been a disposition under the *Land Act* as well as land registered to a person other than the government in the land title office.

[48] The Fells are the persons registered in the Land Title office as the registered owners of the Lands. Bonavista says, however, that the Lands do not include the OIC 725 lands shown on Plan CG 1130 but that those lands are owned by the Crown and granted to Bonavista as a right of way in accordance with OIC 725. It is necessary, therefore, to determine whether the OIC 725 lands shown on Plan CG 1130 are owned by the Crown or whether ownership passed to Belanger with the Crown grant.

[49] The relevant provisions of the Crown grant dated June 1991 to Joseph Andre Belanger are reproduced below:

...in consideration of the sum of \$5,330.00 of lawful money of Canada now paid by the Grantee to the Grantor (the receipt of which the Grantor acknowledges), the Grantor grants to the Grantee, in fee simple, the parcel of land and premises situate in the Peace River Assessment Area in the Province of British Columbia, described as follows:

West half of Section 8, Township 88, Range 17, West of the Sixth Meridian, Peace River District

as shown on the official plan confirmed by the Surveyor General of the Province of British Columbia and coloured red on the annexed plan.

PROVIDED THAT the estate herein granted is subject to:

- (a)...
- (b) all subsisting grants to, or subsisting rights of any person made or acquired under the Mineral Tenure Act, Coal Act or Petroleum and Natural Gas Act or under any prior or subsequent enactment of the Province of British Columbia of like effect;
- (c) a statutory right-of-way in favour of Imperial Oil Ltd. and Orbit Oil & Gas Ltd. registered in the Land Title Office under number D15450 and PC55797 including the right of the Grantor to continue or renew it;

EXCEPTING AND RESERVING, nevertheless to the Crown, the rights, benefits privileges and obligations of the Grantor of the statutory right-of-way registered in the Land Title Office under No. D15450 and PC55797.

EXCEPTING AND RESERVING, nevertheless to the Grantor, its successors and assigns the exceptions and reservations of the interests, rights, privileges and titles referred to in section 47 of the Land Act.

[50] Bonavista submits the Crown grant expressly excepts the OIC 725 lands; the Fells submit it does not and that Bonavista is confusing reserved rights in the Crown grant with reservations of title. For the reasons that follow, I agree with the Fells that the Crown grant does not except the OIC 725 land from the grant of the fee simple interest in the Lands to Belanger.

[51] First, the “annexed plan” referred to in the Crown grant as showing the parcel granted in fee simple, shows the whole of the Lands inclusive of the area covered by Plan CG 1130, but with the exception of a roadway, coloured red. The roadway area is a brownish colour.

[52] Bonavista argues the colouring of the plan associated with the Crown grant is irrelevant to the validity of OIC 725 and its enforceability against the registered owner of the Lands at any given time. I agree that the colouring of the plan on the Crown grant is irrelevant to an interpretation of the rights granted by OIC 725, but it is entirely relevant to whether the OIC 725 land and in particular that area shown in Plan 1130 is exempted or excepted from the Crown grant. The Crown grant specifically confers the fee simple interest in the parcel shown in red on the annexed plan. The colouring on the plan annexed to the Crown grant shows the area covered by Plan CG 1130 in red. The land covered by Plan CG 1130 is therefore included in the Lands granted by the Crown grant. The road, designated in a colour other than red, does not pass to the grantee in accordance with either the terms of the Crown grant or (what is now) section 57 of the *Land Act*.

[53] Second, the first “excepting and reserving” clause in the Crown grant excepts and reserves to the Crown the “the rights, benefits privileges and obligations of the Grantor of the statutory right-of-way registered in the Land Title Office under No. D15450”, not the fee simple interest in Plan CG 1130. The fee simple estate in the Lands is subject to the statutory right-of-way registered against title as charge D15450. If the fee simple underlying title to the land covered by Plan CG 1130 were exempted, the description of the land being conveyed would expressly exempt Plan CG 1130. It does not.

[54] Section 40(4) of the *Land Act* contemplates that the land comprising the servient tenement to a right of way granted by the Crown can cease to become Crown land, while rights of the grantor are reserved. That section provides:

- 40 (4) An easement or right of way granted before or after May 1, 1970 may be continued or renewed by the minister for the period he or she believes proper, despite the Act or the *Land Title Act*, and even if the servient tenement has ceased to be Crown land.

[55] The rights of the Crown as grantor of a right of way to continue and renew a right of way continue even if the underlying title to the servient tenement ceases to be Crown land. The first “excepting and reserving” clause in the Crown grant reserves the “rights, benefits, privileges and obligations of the Grantor of the statutory right-of-way registered in the Land Title Office under No. D15450”, consistent with section 40(4) of the *Land Act*. It does not expressly reserve title to the land covered by the right of way.

[56] The second “excepting and reserving” clause excepts and reserves to the Crown “interests, rights, privileges and titles referred to in section 47 of the Land Act.” Section 47 of the *Land Act* in force at the time reserved various rights to the Crown to enter and use the land for various purposes, and provided that a disposition did not convey title to minerals, petroleum and gas found in or under the land, but did not apply to except the fee simple interest in a portion of the land unless that exception was made expressly. There is no such express exception in the language of the Crown grant to Belanger. (The whole of section 47 of the *Land Act* in force at the time of the Crown grant is reproduced at Appendix “A”.)

[57] I conclude that the “excepting and reserving” clauses do not expressly except and reserve to the Crown the fee simple interest in any portion of the Lands.

[58] Bonavista argues that section 23(2)(a) of the *Land Title Act* operates to expressly except the OIC 725 lands from the Crown grant to Belanger. Section 23(2)(a) of the *Land Title Act* is set out below:

- 23 (2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple

to the land described in the indefeasible title, subject to the following:

(a) the subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown

[59] Section 23(2)(a) of the *Land Title Act* makes a grant of indefeasible title subject to the “subsisting conditions, provisos, restrictions, exceptions and reservations...contained in the original grant or contained in any other grant or disposition from the Crown”, but as discussed above, the exceptions and reservations in the Crown grant to Belanger, do not expressly reserve title to the Crown in the OIC 725 lands. The Lands are conveyed in the Crown grant subject to the rights conveyed by OIC 725, which rights are registered against title as charge D15450. But there is a difference between conveying indefeasible title to the Lands subject to the right of way granted by OIC 725, and excepting title to the lands over which the right of way is granted from the grant of indefeasible title. The language of the Crown grant does the former and not the latter.

[60] Section 23(2)(a) operates to confirm that the OIC lands are in fact not excepted from title. Section 23(2)(a) says the indefeasible title is conclusive evidence “that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title, subject to” the subsisting conditions etc. (emphasis added). The land described in the indefeasible title is “THE WEST ½ OF SECTION 8 TOWNSHIP 88 RANGE 17 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT”. The land described in the indefeasible title is not the West ½ of Section 8 Township 88 Range 17 West of the 6th Meridian Peace River District, EXCEPT PLAN CG 1130. If the description of the Lands in the indefeasible title expressly excepted Plan CG 1130, then I would agree that the indefeasible title did not include an estate in fee simple to the land covered by Plan CG 1130, but only to those portions of the Lands other than those covered by Plan CG 1130. The description of the Lands in the original Crown grant and in the current indefeasible title naming the Fells as registered owner is the whole of the described ½ section, without any exceptions other than the road.

[61] I conclude that the original Crown grant did not except Plan CG 1130 from the grant of the fee simple interest to the Lands. It conveyed the fee simple interest in the whole of the Lands described subject to the rights granted by OIC 725 and registered by charge D15450.

[62] As the registered owners of the whole of the Lands described in the title, it follows that the Fells are “landowners”, and may bring the application under Division 5 and 6 of the *Act*. Whether Bonavista requires a “right of entry”, however, will depend on the rights conveyed by OIC 725. A determination of those rights should be left to the panel.

Does the Board have jurisdiction to hear the merits of the Fells’ application?

[63] I conclude the Board does have jurisdiction to hear the merits of the Fells’ application. The land in issue is “land” and is not “restricted crown land”, “unoccupied Crown land”, or “Crown land” within the meaning of the *Act*. The Fells are the registered owners of the Lands. There is no dispute that Bonavista operates the Imp Fina Rigel well on the Lands and that operation of the well is an “oil and gas activity” under the *Act*. The issue will be whether Bonavista already has the right to enter, occupy and use the Lands for its oil and gas activity by way of the rights granted by OIC 725 and charge D15450 registered against the title to the Lands or whether it needs a “right of entry”. The land is, therefore, subject to a proposed right of entry and the Fells are “landowners” within the meaning of the *Act*.

[64] The Board has jurisdiction to hear the Fells’ applications.

CONCLUSION

[65] The Board has jurisdiction to interpret the terms used in the *Act* in order to determine any threshold issues necessary to resolve an application. In the context of this case, the Board necessarily has the jurisdiction to resolve the issue raised by Bonavista’s defence to the Fell’s application, specifically the question of whether the

OIC 725 lands shown on Plan CG 1130 were expressly excepted and reserved from the Crown grant to Belanger. This is a threshold issue to determining whether the Fells are “landowners” within the meaning of the *Act*.

[66] I conclude that the lands shown on Plan CG 1130 were not expressly excepted from the Crown grant to Belanger. The Fells are the registered owners of the fee simple interest in the whole of the Lands as described in the title. Their fee simple interest in the whole of the Lands, inclusive of the area covered by Plan CG 1130 is subject to the rights conveyed by OIC 725 registered as charge D15450. What those rights entail, whether Bonavista requires a “right of entry”, and whether any compensation is owed to the Fells are matters within the jurisdiction of the Board and will be for the panel hearing the merits of the Fells’ application to determine.

[67] I determine only that the Fells are “landowners” within the meaning of the *Act* and that their application is within the jurisdiction of the Board.

ORDER

[68] The Respondent’s application is dismissed.

DATED: January 26, 2018

FOR THE BOARD



Cheryl Vickers, Chair

APPENDIX A

47. (1) A disposition of Crown land under this or another Act
- (a) excepts and reserves the following interests, rights, privileges and titles:
 - (i) a right in the Crown, or any person acting for it, to resume any part of the land which is deemed necessary by the Crown for making roads, canals, bridges or other public works, but not exceeding 1/20 part of the whole of the land, and no resumption may be made of any land on which a building has been erected, or which may be in use as a garden or otherwise;
 - (ii) a right in the Crown, or any person acting for it or under its authority, to enter any part of the land, and to raise and get out of it any minerals, precious or base, including coal, petroleum and any gas or gases, which may be found in, on or under the land, and to use and enjoy any and every part of the land, and of its easements and privileges, for the purpose of the raising and getting, and every other purpose connected with them, paying reasonable compensation for the raising, getting and use;
 - (iii) a right in any person authorized by the Crown to take and occupy water privileges and to have and enjoy the rights of carrying of water over, through or under any part of the land granted, as may be reasonably required for mining or agricultural purposes in the vicinity of the land, paying a reasonable compensation to the grantee, his successors and assigns; and
 - (iv) a right in any person authorized by the Crown to take from any part of the land granted, without compensation, gravel, sand, stone, lime, timber, or material which may be required in the construction, maintenance or repair of a road, ferry, bridge or other public work; and
 - (b) conveys no right, title or interest to minerals as defined in the *Mineral Act*, coal, petroleum as defined in the *Petroleum and Natural Gas Act*, or to gas, that may be found in or under the land; and
 - (c) conveys no right, interest or estate to highways, within the meaning of the Highway Act, existing over or through the land at the date of the disposition.

(2) Subsection (1) applies whether or not express words are used in the disposition, but is subject to subsection (3).

(3) A disposition of Crown land under another Act that expressly authorizes the disposition on terms different from those referred to in subsection (1) may be made on those terms, and in that case the disposition shall refer to the Act that authorizes the different terms and state the terms on which the disposition is made.

(4) A disposition of Crown land may, by express words, except or reserve to the Crown rights and privileges more extensive than those referred to in subsection (1).

(5) For all purposes, including section 23 of the Land Title Act, every disposition of Crown land shall be conclusively deemed to contain express words making the exceptions and reservations referred to in subsection (1) of this section, except to the extent that the disposition is made on different terms as authorized by subsection (3).

(6) The power given by subsection (4) to except and reserve rights and privileges includes a power to create a right of way, and where this is done

- (a) the Crown is, with respect to the right of way, a grantee,
- (b) the right of way shall be conclusively deemed to be necessary for the operation and maintenance of the Crown's undertaking; and
- (c) section 214 of the *Land Title Act* applies.