

Action No. 9904 00198

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF GRANDE PRAIRIE

BETWEEN:

WAYNE PENSON AND LAUREL PENSON  
Applicants

and

THE ENVIRONMENTAL APPEAL BOARD  
DAVID LLOYD AND TALISMAN ENERGY INC.  
Respondents

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RULING ON SPECIAL CHAMBERS APPLICATION OF THE HONOURABLE  
MR. JUSTICE J.S. MOORE  
-----

June 18, 1999

Grande Prairie, Alberta

Proceedings held in the Court of Queen's Bench of Alberta at  
the court house in Grande Prairie, Alberta

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The Honourable J.S. Moore	Court of Queen's Bench of Alberta
D. Carter, Q.C.	For the Applicant
Andrew C.L. Sims, Q.C.	For the Respondent The Environmental Appeal Board
Maureen A. Harquail, Ms.	For the Department of the Environment
Alan S. Harvie, Esq.	For the Respondent Talisman Energy Inc.

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THE COURT: I want to thank all counsel for their important submissions, and sometimes important submissions do take a lot of paper. These did, and I joked about it this morning (about the amount of paper) but it was relevant and important and well done.

In addition to the written submissions which came in long before today, the submissions of counsel today were very helpful. It is not a very long period of time in court for the submissions of four lawyers to be properly dealt with, and if my interruptions caused some problems I apologize. But I had to try in a hurry to get to the gist of the matter.

This is not an easy matter. It is a very interesting matter. These proceedings are on tape, so it is not a secret to anyone what my concerns were. Anybody can get a transcript of these proceedings by ordering it. So I am not going to go into "bunching" reasons right now. I

think the reasons are self-evident.

I am awarding certiorari, and that means that the matter of costs goes back for a hearing. I will find out from counsel what else I should say about that (whether should say it be held within a certain time limit, or things of that nature).

I want it to be in "bold" or "underlined" that I do not consider this hearing a test case. My decision today is based only on the fact situation that is in front of me today and the law that applies to that fact situation. I hope that no one takes from my granting of certiorari that the Board, in its ordinary day to day hearings, will do much differently from what the Board feels it should do. In other words, I respect the prohibitive clause.

However, there are times, there are days in each of our lives, mine included, the panel's, where something seems to go wrong for a particular fact situation. And that is what I conclude regarding this particular fact situation. The total denial of costs based upon the reasons given by the panel make it patently unreasonable. And that is the test.

This decision should not be considered a precedent decision for anything.

Do I say more than just sending it back? Do I say it should be heard this year, by October 15 or something? Do I have to do anything like that?

MR. CARTER:

I am not seeking any further

3

direction.

THE COURT: Time limits? Mr. Sims? What is usual?

MR. SIMS: Well customarily, I suppose, the Board would seek the party's advice as to whether they wanted an oral hearing or submissions.

THE COURT: That is no part of my job.

MR. SIMS: No. You said to go back for a hearing. I think that as long as your Lordship's reasons make it clear that the exchange of submissions would be sufficient. If that is acceptable to the parties or the Board thinks it is appropriate, that would be fine. This Board holds both oral and paper hearings regularly so --

THE COURT: Today you represent the Board, Mr. Sims, do you?

MR. SIMS: Yes.

THE COURT: Everybody is gathered here today. Although it is not part of my real job, I think my real job ended a couple of sentences ago - just because you are all here we could discuss how it might be. I could leave the room while you discuss that and let the tape recorder stop. I am just thinking of saving costs. Everyone is right here.

MR. CARTER: Let me say this. I think it is a matter that we can discuss amongst ourselves, so I am not requiring anything further from the court.

THE COURT: Okay.

MR. CARTER: And I am not insisting that the order direct an oral hearing before the Board. That is something we can discuss.

MR. SIMS: I think the Board is adequately equipped to deal with that, My Lord. The only other issue I would like to make clear, if you would assist the Board that way, is this: costs almost always have to be dealt with by the panel that heard the case, just like a judge. So if you would direct that it go back to the panel rather than the Board?

THE COURT: That is Mr. Sim's application. You have to respond to it.

MR. SIMS: I don't feel strongly either way. I think you can appreciate, My Lord, that if it were to be sent back to a different panel they don't have the texture of the hearing.

THE COURT: They would have to do a lot of extra work going through the --

MR. SIMS: And that is very difficult to do without seeing the demeanour of witnesses and appreciating the thrust and parry of the day.

THE COURT: Right.

MR. CARTER: Okay.

THE COURT: Ms. Harquail?

MS. HARQUAIL: I have nothing, sir.

MR. HARVIE: Nothing further, sir.

THE COURT: Nothing for you?

MR. SIMS: It is simply as long as those issues are actually left open, all that I worry about is that there not be a dispute about what your order is.

THE COURT: Okay.

MR. SIMS: And if it is open that it will go back to the Board to be set in front of a panel I would presume it will be the same panel, assuming they are all alive and well; although occasionally I have had Boards where they are not.

THE COURT: Oh, sure.

MR. CARTER: Maybe this will solve the problem. I will go on record as saying that I am not insisting directly that a different panel hear the matter. I will leave that up to the Board's decision administratively as to what members hear it, so I am not requiring any order from this court to direct a different panel. It could very well be the same panel. Is that good enough?

MR. SIMS: My friend is gracious in that. Thank you.

THE COURT: Okay. Nothing further?

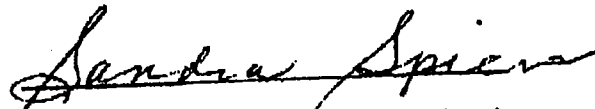
MR. CARTER: Thank you, sir.

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PROCEEDINGS CONCLUDED  
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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages, 1 through 5 inclusive, are a true and faithful transcript of the proceedings taken from tape recording to the best of my skill and ability.

Dated at the City of Grande Prairie, in the Province of Alberta, this 23 of June, A.D. 1999.

A handwritten signature in cursive script that reads "Sandra Spicer".

Sandra Spicer, C.S.R. (A.)

Official Court Reporter

Action No. 9904 00198

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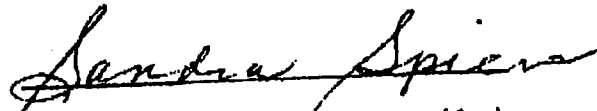
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I, the undersigned, hereby certify that the foregoing pages, 1 through 5 inclusive, are a true and faithful transcript of the proceedings taken from tape recording to the best of my skill and ability.

Dated at the City of Grande Prairie, in the Province of Alberta, this 23 of June, A.D. 1999.



Sandra Spicer, C.S.R.(A.)

Official Court Reporter

I hereby certify this to be a true copy  
of the original Order  
Dated this 18th day of June, 1999  
for Clerk of the Court

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF GRANDE PRAIRIE**

**IN THE MATTER OF A COST DECISION OF THE ALBERTA  
ENVIRONMENTAL APPEAL BOARD DATED OCTOBER 5, 1998  
WITH RESPECT TO APPEAL NO. 98-005-C**

Between:

**WAYNE PENSON and LAUREL PENSON**

**Applicant**

- AND -

**THE ENVIRONMENTAL APPEAL BOARD,  
DAVID LLOYD and TALISMAN ENERGY INC.**

**Respondents**

Before the Honourable Justice  
J.S. Moore, in Chambers Law Courts  
Building, in the City of Grande Prairie,  
in the Province of Alberta.

On Friday the 18<sup>th</sup> day of June, 1999.

**ORDER**


**UPON THE APPLICATION of Wayne Penson and Laurel Penson for an order setting  
aside the costs decision of the Respondent, Environmental Appeal Board (Alberta) dated October  
5, 1998 concerning Appeal No. 98-005-C;**


**AND UPON HAVING heard Counsel for the Applicant, Wayne Penson and Laurel  
Penson, Counsel for Talisman Energy Inc., Counsel for David Lloyd and Counsel for the  
Respondent, Environmental Appeal Board;**

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The costs decision of the Environmental Appeal Board dated October 5, 1998, concerning appeal No. 98-005-C, is hereby quashed and set aside.


Entered this 1 day of  
Dec, 1999.

"Pauline"  
S.C.Q.B.A. 

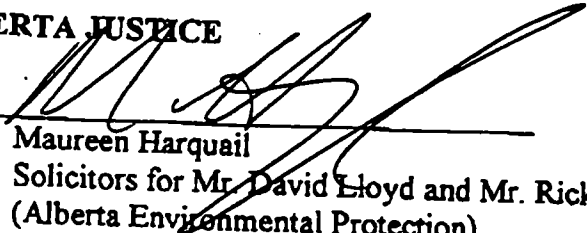
**W.A. SMITH**  
Clerk of the Court 

APPROVED AS TO FORM AND CONTENT;

**CARTER LOCK & HARRIGAN**

Per:   
Darryl Carter  
Solicitors for Wayne Penson and Laurel Penson

**ALBERTA JUSTICE**

Per:   
Maureen Harquail  
Solicitors for Mr. David Lloyd and Mr. Rick Ostertag  
(Alberta Environmental Protection)

**MACLEOD DIXON**

Per: \_\_\_\_\_  
Alan Harvie  
Solicitors for Talisman Energy Inc.

**ANDREW SIMS**

Per: \_\_\_\_\_  
Solicitor for the Environmental Appeal Board



IT IS HEREBY ORDERED AND ADJUDGED THAT:

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J.C.Q.B.A.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Clerk of the Court

APPROVED AS TO FORM AND CONTENT;

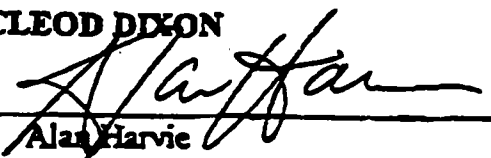
CARTER LOCK & HARRIGAN

Per: \_\_\_\_\_  
J. Darryl Carter  
Solicitors for Wayne Penson and Laurel Penson

ALBERTA JUSTICE

Per: \_\_\_\_\_  
Maureen Harquail  
Solicitors for Mr. David Lloyd and Mr. Rick Ostertag  
(Alberta Environmental Protection)

MACLEOD DIXON

Per:   
Alan Harvie  
Solicitors for Talisman Energy Inc.

ANDREW SIMS

Per: \_\_\_\_\_  
Solicitor for the Environmental Appeal Board

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Entered this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

**I.C.Q.B.A.**

\_\_\_\_\_  
Clerk of the Court

**APPROVED AS TO FORM AND CONTENT;**

**CARTER LOCK & HORRIGAN**

Per: \_\_\_\_\_  
J. Darryl Carter  
Solicitors for Wayne Penson and Laurel Penson

**ALBERTA JUSTICE**

Per: \_\_\_\_\_  
Maureen Harquail  
Solicitors for Mr. David Lloyd and Mr. Rick Ostertag  
(Alberta Environmental Protection)

**MACLEOD DIXON**

Per: \_\_\_\_\_  
Alan Harvie  
Solicitors for Talisman Energy Inc.

**ANDREW SIMS**

Per: \_\_\_\_\_  
Solicitor for the Environmental Appeal Board

No. 9904-0019

A.D. 1999

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**IN THE COURT OF QUEEN'S BENCH  
OF ALBERTA**

**JUDICIAL DISTRICT OF  
GRANDE PRAIRIE**

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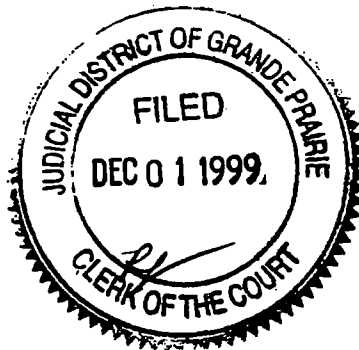
**IN THE MATTER OF A COST DECISION OF  
THE ALBERTA ENVIRONMENTAL APPEAL  
BOARD DATED OCTOBER 5, 1998 WITH  
RESPECT TO APPEAL NO. 98-005-C.**

**BETWEEN**

**WAYNE PENSON AND LAUREL PENSON**  
Applicant

- and -

**THE ALBERTA ENVIRONMENTAL  
APPAL BOARD, DAVID LLOYD and  
TALISMAN ENERGY INC.**  
Respondent



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**ORDER**

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**J. DARRYL CARTER, Q.C.**  
**CARTER LOCK & HARRIGAN**  
Barristers and Solicitors  
200 Whitby House  
9803 - 101 Avenue  
Grande Prairie, Alberta  
T8V 0X6  
Phone: (780) 532-8350

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File No.: 42140 JDC/lz

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**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF GRANDE PRAIRIE**

**IN THE MATTER OF A COST DECISION  
FOR A RULING FROM SPECIAL CHAMBERS APPLICATION OF  
THE HONOURABLE MR. JUSTICE J.S. MOORE.**

**WAYNE PENSON and LAUREL PENSON**

**Applicant**

**- AND -**

**THE ENVIRONMENTAL APPEAL BOARD,  
DAVID LLOYD and TALISMAN ENERGY INC.**

**Respondents**

*For Clerk of the Court*  
*Order*  
*June 19 1999*

By way of telephone conference with the Honourable Justice J.S. Moore, in the Law Courts Building, in the City of Grande Prairie, in the Province of Alberta.

On Thursday the 19<sup>th</sup> of August, 1999.

**ORDER**

UPON THE APPLICATION of Wayne Penson and Laurel Penson for an order determining responsibility for costs on a ruling of special chambers application of the Honourable Mr. Justice J.S. Moore heard on Friday, the 18<sup>th</sup> of June, 1999, concerning Appeal No. 98-005-C to the Environmental Appeal Board (Alberta);

AND UPON HAVING heard Counsel for the Applicant, Wayne Penson and Laurel Penson, Counsel for Talisman Energy Inc., Counsel for David Lloyd and Counsel for the Respondent, Environmental Appeal Board;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. Costs of the Special Chambers Application are awarded to Wayne Penson and Laurel Penson;
2. Costs are fixed in the sum of two thousand, four hundred (\$2,400.00) dollars plus any reasonable disbursements with respect to the Special Chambers Application; and
3. Costs are to be paid equally by Talisman Energy Inc and David Lloyd.

Entered this 1 day of  
December, 1999.

"Paul With Seal of Court"  
J.C.Q.B.A.

WA SMITH  
Clerk of the Court of Court

APPROVED AS TO FORM AND CONTENT;

**CARTER LOCK & HARRIGAN**

Per: [Signature]  
J. Darryl Carter  
Solicitors for Wayne Penson and Laurel Penson

**ALBERTA JUSTICE**

Per: [Signature]  
Maureen Harquail  
Solicitors for Mr. David Lloyd and Mr. Rick Ostertag  
(Alberta Environmental Protection)

**MACLEOD DIXON**

Per: [Signature]  
Alan Harvie  
Solicitors for Talisman Energy Inc.

**ANDREW SIMS**

Per: [Signature]  
Solicitor for the Environmental Appeal Board

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

1. **Costs of the Special Chambers Application are awarded to Wayne Penson and Laurel Penson;**
2. **Costs are fixed in the sum of two thousand, four hundred (\$2,400.00) dollars plus any reasonable disbursements with respect to the Special Chambers Application; and**
3. **Costs are to be paid equally by Talisman Energy Inc and David Lloyd.**

Entered this \_\_\_\_\_ day of  
\_\_\_\_\_, 1999.

J.C.Q.B.A.

\_\_\_\_\_  
Clerk of the Court

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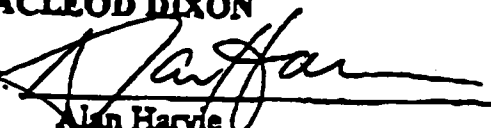
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