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<p><b>Canada Energy Law Service (Alberta)</b> <b>Allan E. Ingelson</b> <b>2024-2 December</b></p>
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This release features updates to the case law and commentary in Chapters 2 (Energy Resources Conservation (ERCB): Background and General Issues), 3 (Oil and Gas), and 6 (Practice and Procedure).

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## Highlights:

- **§ 2:54—Environmental Regulation by the AER—Specific Environmental Regulations and Guidelines—Water and Air Pollution—Including Flaring**—The Alberta Energy Regulator (AER) fined Tallahassee Exploration Inc (Tallahassee) due to its failure to satisfy the company’s hydrocarbon fugitive emissions reporting requirements for 2021. The Alberta *Methane Emission Reduction Regulation* (MERR) requires companies to submit annual methane emission reports for each facility. The AER determined Tallahassee contravened the MERR by failing to submit methane emission reports and conduct fugitive emission surveys at its facilities for the 2021 reporting period. Further, the AER concluded that Tallahassee contravened the *Environmental Protection and Enhancement Act* by providing false or misleading information by resubmitting information from the 2020 reporting period and representing it as data for the 2021 reporting period. The company was ordered to pay \$191,885.
- **§ 2:8—Provincial Jurisdiction Over Natural Resources**—In *Altius Royalty Corporation v. Alberta*, , 2024 ABCA 105, the ABCA considered the test for constructive expropriation articulated by the SCC in *Canadian Pacific Railway Co. v Vancouver (City)* and *Annapolis Group Inc v Halifax Regional Municipality*, that requires both the acquisition of a beneficial interest in the property or flowing from it, and secondly removal of all reasonable uses of the property. Consistent with the federal emissions reduction regulations, as part of Alberta’s Climate Leadership Plan to phase out coal-fired electricity generation, the Alberta Government entered into an Off-Coal Agreement with owners of the Genesee power plant. The owners agreed to end power plant emissions by 2030 and the provincial government agreed to make transition payments to the plant owners. However, in 2018, the appellants, that hold a royalty interest in the Genesee coal mine, filed a claim against the governments of Alberta and Canada, alleging the federal and provincial government respondents had constructively expropriated their royalty interest without compensation. The ABCA ruled that for a regulatory action to constitute a constructive appropriation, that interest must be proprietary. The court ruled that the private transition agreement between the Alberta government and the owners of coal-fired electricity generating plants did not remove property rights from the owners, and the government did not receive an advantage flowing from the appellant’s property. Any public benefit from the agreement did not satisfy the requirement that the Crown must acquire an advantage resulting from its actions.