

# ALBERTA COURT OF APPEAL DISMISSES PROPERTY TAX APPEAL: MUNICIPALITIES ARE NOT SECURED CREDITORS FOR TAXES ASSESSED ON PIPELINES, WELLS AND OTHER LINEAR PROPERTY

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The Alberta Court of Appeal has dismissed an appeal brought by three municipalities (the “**Municipalities**”) seeking status as secured creditors entitled to special priority for payment of linear property taxes.

In *Northern Sunrise County v Virginia Hills Oil Corp*, 2019 ABCA 61, the primary issue was whether the *Municipal Government Act* (“**MGA**”) grants to an Alberta municipality a special lien for linear property taxes, which lien ranks senior in priority to contractual security interests if the tax debtor is not bankrupt or subject to other insolvency proceedings.

## Background

In 2017, Virginia Hills and Dolomite Energy, two oil and gas companies with wells, pipelines and related equipment, were placed into receivership and later became bankrupt. The debtors’ secured creditors (the “**Secured Creditors**”) were owed more than the realized value of the debtors’ assets. The receiver applied for advice and direction regarding whether the linear property tax claims were secured or unsecured.

The Municipalities did not make submissions before the chambers justice and a final distribution order was granted in favour of the Secured Creditors. The Municipalities appealed the order arguing that linear property tax claims were secured claims due to the special lien afforded to Municipalities under section 348 of the MGA and were payable in priority to other secured creditors.

## Decision

Section 348 of the MGA is an ambiguous provision that does not specify whether the municipal property taxes secured by the special lien include linear or non-linear taxes or both. As a result, the Court undertook an exercise in statutory interpretation of section 348.

In dismissing the Municipalities’ appeal, the Court ruled that section 348 does not include linear property. The

Court made this decision after considering the taxation scheme of the MGA as a whole, including the remedies available to municipalities to collect taxes under the MGA.

The Court agreed with the receiver that difficulties would arise in applying a special lien to linear property due to uncertainty about the property to which the special lien would attach.

### **Implications**

This decision is of considerable importance to participants in the Alberta oil and gas industry, including receivers, trustees, municipalities and secured lenders. Administration of a number of cases had been delayed (in some cases for long periods of time) pending the release of this decision. All stakeholders will benefit from the clear finding that claims for linear property tax arrears are unsecured.

McMillan successfully represented The Bank of Nova Scotia, as agent for the senior lenders to Virginia Hills Oil Corp. which was a respondent in this appeal.

by Richard Jones, Adam Maerov and Preet Saini

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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