



Decision to Issue a Declaration Naming  
David N. Matheson and Ronald P. Bourgeois  
Pursuant to Section 106 of the *Oil and Gas  
Conservation Act*

November 6, 2007

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2007-083: Decision to Issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois Pursuant to Section 106 of the *Oil and Gas Conservation Act*

November 6, 2007

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# ALBERTA ENERGY AND UTILITIES BOARD

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Calgary Alberta

## DECISION TO ISSUE A DECLARATION NAMING DAVID N. MATHESON AND RONALD P. BOURGEOIS PURSUANT TO SECTION 106 OF THE OIL AND GAS CONSERVATION ACT

Decision 2007-083  
Board-Initiated Proceeding No. 1460731

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### 1 DECISION

Having carefully considered all of the evidence, the Declaration Panel, appointed as a division of the Alberta Energy and Utilities Board (the Board), hereby issues a Declaration Naming David N. Matheson and Ronald P. Bourgeois as persons directly or indirectly in control of M. L. Cass Petroleum Corporation, subject to the terms and conditions set out in Appendix 4, pursuant to Section 106 of the *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 (*OGCA*).

### 2 INTRODUCTION

In 2000, 2001, 2003, 2004, 2005, and 2006, the Corporate Compliance Group (CCG) of the Board issued various documents relating to contraventions or failures of M. L. Cass Petroleum Corporation to comply with orders of the Board, as summarized in Appendix 2 (collectively, referred to as the Board Orders). The Board Orders were made under the *OGCA*, its regulations, and prior enactments.

By a submission dated March 2, 2006, the CCG recommended to the Board that it issue a declaration naming two individuals of M. L. Cass Petroleum Corporation, namely, David N. Matheson and Ronald P. Bourgeois, in accordance with Section 106 of the *OGCA* (the March 2, 2006, CCG Submission). The March 2, 2006, CCG Submission attached 121 documents that it obtained from its searches of Board records, the Alberta Corporate Registry, the World Wide Web, and the System for Electronic Document Analysis and Retrieval (SEDAR). A summary of these documents and their respective sources is in Appendix 3.

#### 2.1 History of the Proceeding under Section 106 of the *OGCA*

Two different divisions of the Board were appointed, namely, a Notice Panel and a Declaration Panel, to decide certain matters in the Section 106 Proceeding.

##### 2.1.1 The Notice Panel and the Notice Panel Proceeding

The first division of the Board, the Notice Panel, comprising Board Members A. J. Berg, P.Eng. (Presiding Member) and J. R. Nichol, P.Eng., and Acting Board Member R. J. Willard, P.Eng., determined the issue of whether to issue a Notice of Intention to Issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois, pursuant to Section 106 of the *OGCA*.

The Notice Panel reviewed the documents attached to the March 2, 2006, CCG Submission and found that these documents constituted *prima facie* evidence of the contraventions of M. L. Cass

Petroleum Corporation and of David N. Matheson and Ronald P. Bourgeois, being persons directly or indirectly in control of M. L. Cass Petroleum Corporation,

- at the time the contraventions or failures of M. L. Cass Petroleum Corporation Petroleum Corporation to comply with the Board Orders occurred, or
- at the time the outstanding debts of M. L. Cass Petroleum Corporation were incurred for suspension, abandonment, or reclamation costs in the amount of \$237 880.78 to the Board and in the amount of \$716 920.14 to the Board to the account of the Orphan Fund.

Based on these findings, the Notice Panel decided to issue the Joint Notice of Intention to Issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois under Section 106 of the *OGCA* on March 17, 2006. The March 2, 2006, CCG Submission was attached, as Attachment A, to the March 17, 2006, Joint Notice of Intention.

In accordance with Section 106 (2) of the *OGCA*, the March 17, 2006, Joint Notice of Intention, including attachments, was personally served on David N. Matheson. However, as personal service was attempted but was not affected on Ronald P. Bourgeois, the Board issued a separate Notice of Intention to Issue a Declaration Naming Ronald P. Bourgeois on April 28, 2006. The April 28, 2006, Separate Notice of Intention, including attachments, was substitutionally served on Ronald P. Bourgeois.

### **2.1.2 The Declaration Panel and the Declaration Panel Proceeding**

The second division of the Board, the Declaration Panel, comprising Board Members T. M. McGee (Presiding Member) and R. G. Lock, P.Eng., and Acting Board Member M. W. Edwards, was appointed to determine whether to issue a Declaration Naming David N. Matheson and Ronald P. Bourgeois Pursuant to Section 106 of the *OGCA*. A public hearing was held in Calgary, Alberta, from August 15 to August 16, 2007. Those who appeared before the Declaration Panel are listed in Appendix 1.

The public hearing had been originally scheduled for September 5, 2006. However, it was rescheduled several times based on adjournment requests received from the parties.

On August 30, 2007, counsel for the Declaration Panel received correspondence from counsel for Matheson and Bourgeois, pertaining to requests made by CCG regarding ownership of certain wells. As a result, the Declaration Panel considers the proceeding to be closed on August 30, 2007.

## **2.2 Initial Show Cause Submission by David N. Matheson and Ronald P. Bourgeois in Response to the Notice of Intention**

In response to the notification to show cause as set out in the March 17, 2006, Joint Notice of Intention and the April 28, 2006, Separate Notice of Intention, David N. Matheson and Ronald P. Bourgeois (Matheson and Bourgeois) filed a joint submission with the Board on June 15, 2006. Messrs. Matheson and Bourgeois jointly submitted that neither of them was directly or indirectly in control of M. L. Cass Petroleum Corporation when the relevant abandonment orders identified in the show cause notices occurred. Specifically, they had no control because M. L. Cass Petroleum Corporation was a widely held company and controlled by creditors. Further, they submitted that the company's direct liability to the Board for certain well abandonments occurred prior to the appointment of Matheson and Bourgeois to the company's board of

directors of on May 24, 2001. Therefore, a Section 106 Declaration was not warranted under the circumstances in their view. Alternatively, they submitted that the Board must direct its mind to appropriate terms and conditions in the issuance of any declaration under Section 106 (3) of the *OGCA*.

In their joint submission, Matheson and Bourgeois also requested that the Board decide on three procedural matters in connection with the proceeding, namely that

- 1) the Board approve a confidentiality request regarding certain financial information filed as Schedules A and B to the June 15, 2006 submission relating to a proposed settlement, pursuant to rule 12 of the *Alberta Energy and Utilities Board Rules of Practice*;<sup>1</sup>
- 2) the Board expedite a decision in respect of the proposed settlement filed with the June 16, 2006, submission;
- 3) if the Board rejects their proposed settlement, the Board convene an oral hearing, disclose a record of all written and oral communications made by the Board, including the CCG, with respect to them, and extend to them the full suite of procedural safeguards set out in their June 16, 2006, submission.

### 3 ISSUES

The Declaration Panel considers that the relevant issues in this “show cause” proceeding are as follows:

- 1) Is the issuance of a declaration pursuant to Section 106 of the *OGCA* unconstitutional because it violates certain sections of the *Canadian Charter of Rights and Freedoms*<sup>2</sup> (the *Charter of Rights*), and has a fair process been accorded to Matheson and Bourgeois under the principles of natural justice?
- 2) With respect to the issuance of a declaration pursuant to Section 106 of the *OGCA*, were Matheson and Bourgeois persons in control of M. L. Cass Petroleum Corporation
  - a) at the time the contraventions or failures of M. L. Cass Petroleum Corporation to comply with the Board Orders occurred, or
  - b) at the time the outstanding debts of M. L. Cass Petroleum Corporation for suspension, abandonment, or reclamation costs in the amount of \$237 880.78 to the Board and in the amount of \$716 920.14 to the Board to the account of the Orphan Fund were incurred?
- 3) If they were persons in control of M. L. Cass Petroleum Corporation, is it in the public interest to issue a declaration naming them under Section 106 of *OGCA*, and if so, what are the terms and conditions for such a declaration?

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<sup>1</sup> *Alberta Energy and Utilities Board Rules of Practice*, Alta. Reg. 101/2001.

<sup>2</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

## 4 THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS AND PROCEDURAL FAIRNESS

A Notice of Question of Constitutional Law dated October 12, 2006, was given by counsel for Matheson and Bourgeois under Section 12 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3, to the Province of Alberta and to the federal government.

The Attorney General of Alberta (the Alberta AG) filed a submission in response to this constitutional notice and presented argument in the proceeding. The federal government did not file any submissions with respect to the constitutional matters, nor did it attend the proceeding.

### 4.1 Views of Matheson and Bourgeois

In the October 12, 2006, Constitutional Law Notice, Matheson and Bourgeois argued that the manner in which the Board was proceeding under Section 106 of the *OGCA* and the potential penalty infringed on

- 2(d) of the *Charter of Rights*, which provides for “freedom of association,” and
- 11(d) of the *Charter of Rights*, which provides that “any person charged with an offense has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

As a result of these infringements and the application of Section 1 of the *Charter of Rights*, Matheson and Bourgeois sought a dismissal of the Section 106 Declaration and findings.

Similar to their submissions on Section 11 (d) of the *Charter of Rights*, Matheson and Bourgeois argued that the principles of natural justice afforded them certain procedural requirements, including the right to be heard by an impartial tribunal and the right to be presumed innocent until proven guilty beyond a reasonable doubt (i.e., the onus or standard of proof). In these circumstances, Matheson and Bourgeois submitted that the Board appeared to have prejudged the culpability of these individuals when it denied Java Petroleum Corporation (Java) a business associate code solely because Matheson was identified as a director of Java. Therefore, the appearance of the Board’s impartiality was diminished. They submitted that the hearing and the subsequent issuance of the declaration were a mere formality. Given that Matheson and Bourgeois considered that they had been charged with an offence, they are presumed innocent until proven guilty. As a result, they disputed that a simple finding on the balance of probabilities where livelihood was at stake was not acceptable.

In Matheson’s and Bourgeois’s view, the penalty under Section 106 of the *OGCA* was so severe that it could only be seen as in the nature of a penal consequence and thus attracted the application of Section 11 of the *Charter of Rights* for the reasons set forth in *R. v. Wigglesworth*.<sup>3</sup> They argued that the Supreme Court of Canada in *Wigglesworth* determined that the magnitude of the penalty was a determinant of an “offence” and they referred to the following quotation in *Wigglesworth* at pages 561 to 562:

This is not to say that if a person is charged with a private, domestic or disciplinary matter which is primarily intended to maintain discipline, integrity or to regulate conduct within a limited private sphere of activity, he or she can never possess the rights guaranteed under s. 11. Some of these matters may well fall within s. 11, not because they are the classic kind of matters intended to fall

<sup>3</sup> *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 (Wigglesworth).

within the section, but because they involve the imposition of true penal consequences. In my opinion, a true penal consequence which would attract the application of s. 11 is imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within the limited sphere of activity. It is more likely that the fines are purely an internal or private matter of discipline: *Royal Canadian Mounted Police Act*, s. 45.

Matheson and Bourgeois also addressed the three-part test set out in *Martineau v. MNR*<sup>4</sup> and cited by the CCG in its October 20, 2006, submission as being determinative of whether a given proceeding is penal or administrative in nature. The determination is based on (1) the objective of the act, (2) the purpose of the sanction, and (3) the process leading to the sanction.

With respect to the first branch of the *Martineau* test (namely, the objective of the *OGCA*), Matheson and Bourgeois submitted that the focus was on the nature of the proceedings, not on the fact that a given act could rise to either criminal or civil consequences. In these circumstances, Matheson and Bourgeois submitted, in contrast to the CCG, that

- it was unclear (and disputed) whether the Board's enabling legislation, the *OGCA*, was protective in nature, and
- there was no clear linkage between the *OGCA*'s objectives and Section 106 of the *OGCA*.

Finally, Matheson and Bourgeois argued that the Declaration Panel may not have the jurisdiction to impose penalties under Section 106 of the *OGCA* for what it determines to be the public good.

With respect to the second branch of the *Martineau* test (namely, the purpose of the sanction), Matheson and Bourgeois drew a distinction between a criminal law proceeding, where deterrence is a primary function, and a civil liability and disciplinary proceeding, where deterrence may have a secondary function. In support of this distinction, they referred to *Martineau* where Justice Fish said at paragraph 38:

Second, it is true that ascertained forfeiture is intended to produce a deterrent effect. This is completely understandable in a self-reporting system. Fraud must be discouraged and offences punished severely, for the system to be viable. However, actions in civil liability and disciplinary proceedings, which are also aimed at deterring potential offenders, nevertheless do not constitute criminal proceedings.

Given that deterrence was the primary objective of the Section 106 Declaration, as envisioned by the CCG in its final submission, Matheson and Bourgeois argued that the purpose of this proceeding was penal in nature.

With respect to the third branch of the *Martineau* test (namely, the process leading to the imposition of the sanction), Matheson and Bourgeois referred to the analysis of the process set out by Justice Fish in *Martineau* at paragraph 45:

This process thus has little in common with penal proceedings. No one is charged in the context of an ascertained forfeiture. No information is laid against anyone. No one is arrested. No one is summoned to appear before a court of criminal jurisdiction. No criminal record will result from the proceedings. At worst, once the administrative proceeding is complete and all appeals are exhausted, if the notice of ascertained forfeiture is upheld and the person liable to pay still refuses to do so, he or she risks being forced to pay by way of civil action.

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<sup>4</sup> *Martineau v. Minister of National Revenue (MNR)* [2004] 3 S.C.R. 737 (*Martineau*).

In contrast to the process described above, Matheson and Bourgeois submitted that the Section 106 proceeding was penal in nature because it involved

- a presentation by the CCG to a special panel of the Board of a formal staff submission signed by Board counsel;
- Matheson and Bourgeois being identified—named—in a publicly published Notice of Intention to Issue a Declaration;
- Matheson and Bourgeois then being compelled to “show cause,” a device used in the context of contempt of court proceedings, or to face an immediate penalty;
- a hearing expressly provided for under the statute and conducted under oath; and
- a record of the declaration being maintained on the Board’s records and embedded in its enforcement processes.

Further, Matheson and Bourgeois distinguished the Alberta Court of Appeal decision of *Barry v. Alberta Securities Commission*,<sup>5</sup> cited in the CCG’s October 20, 2006, submission. They argued that the disqualification and suspension of trading privileges by the Alberta Securities Commission was not analogous to a Section 106 Declaration. They submitted that in the case of disqualifications, there was fault found by the Alberta Securities Commission, which is expert in dealing with enforcement against traders who, if not suspended, would inflict harm on members of the public. In the case of a Section 106 Declaration, Matheson and Bourgeois submitted that they just happened to be directors and officers at the time that M. L. Cass Petroleum Corporation was insolvent, as opposed to having committed any wrongdoing or reprehensible act.

Having regard to the above, Matheson and Bourgeois submit that they had been “charged with an offence” within the contemplation of Section 11 of the *Charter of Rights*.

#### **4.2 Views of the CCG**

In its October 20, 2006, submission, the CCG had previously submitted that Section 11 of the *Charter of Rights* had no application in this proceeding, based on the legal principles set forth in the decisions of *Martineau* and *Barry* as set out above. Having regard to these decisions, the CCG submitted that in order for the enumerated protections of Section 11 of the *Charter of Rights* to apply, the individuals seeking the protection must be “a person charged with an offence” or subject to a penal proceeding. In this case, the CCG argued that Section 106 of the *OGCA* did not qualify as a penal proceeding or as a penal provision, given the wide mandate of the *OGCA*, as set out in Section 4, which clearly indicates that it is a scheme that emphasizes protection. As a result, the CCG submitted that Section 11 of the *Charter of Rights* was not applicable to Section 106 of the *OGCA* or the Section 106 Proceeding.

Given the seriousness of the Section 106 Proceeding and Board’s duty to extend certain procedural requirements under natural justice, the CCG argued that the CCG had taken extraordinary measures to ensure that this matter was treated with complete fairness and with complete separation from Board staff appearing before this Notice Panel and Declaration Panel.

In argument, the CCG adopted the submissions of the Alberta AG on constitutional matters.

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<sup>5</sup> *Barry v. Alberta Securities Commission*, 1986 CarswellAlta 490, 67 A.R. 222, 25 D.L.R. (4th) 730.

### 4.3 Views of the Alberta AG

The Alberta AG requested that the Declaration Panel reject Matheson's and Bourgeois's constitutional challenge to Section 106 of the *OGCA*.

The Alberta AG argued that Section 11 of the *Charter of Rights* had no application for a proceeding under Section 106 of the *OGCA*, as Matheson and Bourgeois were not "charged with an offence" within the meaning of Section 11 of the *Charter of Rights* and this proceeding did not threaten penal sanctions. In its December 6, 2006, submission, the Alberta AG relied on the decisions of *Wigglesworth*, *Holoboff v. Alberta (Securities Commission)*,<sup>6</sup> and *R. v. Doherty*<sup>7</sup> as authorities for these views.

In the Alberta AG's view, the current proceeding before the Declaration Panel was not by its nature a criminal proceeding. Rather, the Alberta AG argued that the Section 106 Proceeding was similar to a professional disciplinary proceeding that foresees regulatory sanctions that seek to regulate behaviour within a regulated activity. In oral argument, the Alberta AG highlighted *Holoboff*, where the Alberta Court of Appeal found that proceedings before the Alberta Securities Commission, which resulted in lifetime trading orders against two of the appellants and a ten-year ban against a third appellant, did not violate the appellants' rights under Section 11 of the *Charter of Rights*. In reaching this conclusion, the Alberta AG argued that the Alberta Court of Appeal in *Holoboff* found that the remedies imposed by the Alberta Securities Commission fell within the principles set forth by the Supreme Court of Canada in *Wigglesworth* in the following quotation:

There is also a fundamental distinction between proceedings undertaken to promote public order and welfare within a public sphere of activity and proceedings undertaken to determine fitness to obtain or maintain a licence. Where disqualifications are imposed as part of a scheme for regulating an activity in order to protect the public, disqualification proceedings are not the sort of "offence" proceedings to which s. 11 is applicable.

In its written submission, the Alberta AG noted that Section 101(1) of the *Business Corporations Act*, R.S.A. 2000, c. B-9, provided that the directors of a corporation "shall manage or supervise the management of the business and affairs of the corporation." As such, directors are normally best placed to ensure that the cost of abandoning a well falls on the licensee, approval holder, or working interest participant. In *Doherty*, the court found that a similar structure of regulatory compliance, where employers may be responsible for occupational health and safety compliance, did not contravene a person's presumption of innocence.

Further, the Alberta AG argued that Section 106 of the *OGCA* did not affect Matheson's and Bourgeois's freedom of association as protected by Section 2 (d) of the *Charter of the Rights*. In the Alberta AG's view, Section 106 of the *OGCA* affects persons who are "directly or indirectly in control of a licensee, approval holder or working interest participant" and empowers the Board to restrict the rights of other entities that they "directly or indirectly control." In applying Section 106 of the *OGCA*, focusing upon Matheson's and Bourgeois's control of a licensee, approval holder, applicant, transferor, or transferee named in Section 106(4)(a) through (e) of the *OGCA* and had nothing to do with their associations with others. The Alberta AG argued that Matheson and Bourgeois as sole proprietors would be restricted by the orders they were now resisting in

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<sup>6</sup> *Holoboff v. Alberta (Securities Commission)* 1991 CarswellAlta 553, 80 D.L.R. (4th) 603, 117 A.R. 17 (Holoboff).

<sup>7</sup> *R. v. Doherty* 1999 CarswellAlta 1267, 1999 ABPC 137, 257 A.R. 67 (Doherty).

exactly the same way the rights of corporate entities they controlled would be restricted. Further, the Alberta AG argued that freedom of association protects our right to associate rather than our right to engage in particular activities; we do not expand our right to engage in an activity just because we do so together with others.<sup>8</sup>

#### 4.4 Views of the Declaration Panel

Given that appropriate notice has been provided under Section 12 of the *Administrative Procedures and Jurisdiction Act*, the Declaration Panel has determined that it has jurisdiction to make a decision on the questions of constitutional law, namely the above-mentioned *Charter of Rights* arguments.

After carefully considering *Charter of Rights* arguments submitted by Matheson, Bourgeois, the CCG, and the Alberta AG, the Declaration Panel has determined that the issuance of the declaration pursuant to Section 106 of the *OGCA* does attract *Charter of Rights* scrutiny.

##### 4.4.1 “Show Cause” Proceeding

The Declaration Panel notes that EUB *Decision 2006-103*<sup>9</sup> summarizes the procedures followed by the Board in Section 106 Proceedings. In that decision, the panel wrote, at pages 11 to 12, that

... before a declaration is issued, the Board must give written notice to the affected person and afford that person the opportunity to show cause why the declaration should not be issued. As a result of this provision, Section 106 proceedings are show cause proceedings. Once the notice is given, the burden shifts on the person intended to be named to make submissions and file evidence that the declaration should not be issued and provide evidence in support of such submissions.

As Section 106 contemplates a show cause proceeding to ensure procedural fairness, the Board decided to establish two separate panels for such proceedings. As explained above, the role of the Notice panel is to determine whether a notice of the intention to name should be issued. The Notice panel considers documentary evidence and written submissions of CCG to determine if there is *prima facie* evidence of a licensee contravening or failing to comply with Board Orders or of a licensee owing a debt to the Board for suspension, abandonment, or reclamation costs and that the person intended to be named was a person directly or indirectly in control of the licensee at the time of the occurrences. If the Notice panel issues a notice, the *prima facie* evidence that was considered by the Notice panel is served on the person to be named with the notice, which informs the person to be named that he or she may make submissions and provide evidence within the timeframe specified and may request a hearing.

At this point, the Declaration panel is charged with the conduct of a show cause proceeding. Based on the submission of the person to be named, the Declaration panel determines whether a hearing is warranted. If the Declaration panel does not grant a hearing, it decides whether to issue a declaration, after considering the evidence before it from the parties and the factors set out in Section 106 of the *OGCA*. For these reasons, the Declaration panel is not limited to considering only the information contained in the notice. As described above, the Declaration panel considers all relevant information—the Notice, the information in Attachment A to the Notice, and any submissions of the person to be named or evidence filed. Therefore, the two panels of the Board were not established to separate the functions of prosecutor and judge, as submitted by Mr. Glover, but to ensure that the

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<sup>8</sup> *Canadian Egg Marketing Agency v. Richardson*, 1998 CarswellNWT 118, 166 D.L.R. (4th) 1, [1998] 3 S.C.R. 157, at paragraphs 111 to 113, Per Justices Iacobucci and Bastarache.

<sup>9</sup> *Decision 2006-103: Decision to Issue a Declaration Naming James W. Glover Pursuant to Section 106 of the Oil and Gas Conservation Act*.

person to be named has the opportunity to make his or her case as to whether a declaration should be issued before an impartial decision maker who had not previously considered any part of the matter to avoid a reasonable apprehension of bias on the part of the person to be named. In requesting information from CCG, a party to this proceeding, the Declaration panel was seeking information relevant to the issues properly before it and was not attempting to review the decision of the Notice panel to issue the Notice.

Having regard to the process set out above, the Notice Panel's preliminary decision to issue notices of intention to issue a Section 106 Declaration took the forms of "show cause" notices. By these notices, Matheson and Bourgeois were asked to provide specific evidence and related argument to show cause to the Board why a Section 106 Declaration should not be issued on the basis of *prima facie* evidence. In the Declaration Panel's view, this "show cause" process served a critical function. Specifically, it was used to assess if Matheson and Bourgeois were persons directly or indirectly in control of M. L. Petroleum Corporation, which the Notice Panel identified based on *prima facie* evidence, having contravened or failed to comply with the Board Orders, having outstanding debts to the Board, as well as having outstanding debts to the Board to the account of the Orphan Fund. Because of the CCG's role in the Board Orders and the March 2, 2006, CCG Submission, the CCG was treated by the Notice Panel and the Declaration Panel as an independent party. The Declaration Panel notes that the Notice Panel only had for its consideration the documentary evidence and written submissions from the CCG. There was no presentation made to the Notice Panel, as argued by Matheson and Bourgeois.

Given that Matheson and Bourgeois disputed that they were persons in control of M. L. Cass Petroleum Corporation, the Declaration Panel decided to hold a "show cause" proceeding by convening an oral hearing on the issue in dispute and afforded the interested parties an opportunity to present evidence, cross-examine witnesses, and submit argument.

The Declaration Panel has considered Matheson's and Bourgeois's allegation that the impartiality of this panel is diminished on the basis that the Board apparently prejudged the culpability of these individuals when the Board allegedly denied the issuance of a business associate code to Java solely because Matheson was identified as a director of Java. The Declaration Panel notes that the application for a business associate code was a separate application submitted by Java to the Board. The Declaration Panel emphasizes that it was not seized with the Java BA Code application. Rather, as previously noted in Section 2.3 of this decision, the Declaration Panel was only appointed to determine whether to issue a Declaration Naming Matheson and Bourgeois pursuant to Section 106 of the *OGCA*. As a result, any and all decisions regarding the Business Associate Code Application of Java were made by the Board, independently of the Section 106 Proceeding, in accordance with the Board's enabling legislation. In this case, no facts were disclosed by Matheson and Bourgeois in support of their allegation that would suggest that the Declaration Panel would not listen to the evidence presented to it and decide fairly on it. Therefore, the Declaration Panel finds that no case has been established by Matheson and Bourgeois that the Declaration Panel would not act fairly and impartially in the Section 106 Proceeding.

Having regard to the above, the Declaration Panel believes that a fair process has been accorded to Matheson and Bourgeois in accordance with the principles of natural justice.

#### 4.4.2 Section 2(d) of the Charter of Rights

Based on the arguments, the Declaration Panel finds that the issuance of a declaration pursuant to Section 106 of the *OGCA* does not violate Matheson's and Bourgeois's constitutional rights under Section 2(d) of the *Charter of Rights*. The Declaration Panel applied the analysis and principles set forth in *Canadian Egg Marketing Agency v. Richardson*. In that decision, the majority of the court concluded that only the "associational aspect" of an activity and not the activity itself are protected under Section 2(d) of the *Charter of Rights*. In the Declaration Panel's view, Section 106 of the *OGCA* does not prevent individuals from joining to form an association in pursuit of a common goal. Rather, it sets limits on a named individual when undertaking a particular activity that brings the person under the ambit of the Board. More specifically, the limitations set out in Section 106(3)(a) to (e) inclusive of the *OGCA* apply when the named person is in control of a corporation that engages in activity regulated by the Board.

#### 4.4.3 Section 11(d) of the Charter of Rights

The Declaration Panel finds that the legal principles set forth in *Holoboff* and *Wigglesworth* apply to the issues in question for the following reasons.

Section 106 of the *OGCA* is neither an offence provision nor a penal one with respect to individuals who may be named under this section. More specifically, the Declaration Panel is of the view that the wording in Section 106 of the *OGCA* makes it clear that the licensee, approval holder, or a working interest participant who has contravened an order of the Board or owes a debt to the Board are separate entities from prospective named individuals. Section 106 of the *OGCA* does not speak of a contravention being committed by the individuals who may be named. Also, the remedies available under Section 106 of the *OGCA* do not include incarceration or monetary fines. In contrast, the Declaration Panel notes that Sections 107 to 110 of the *OGCA* establish separate provisions for offences and penalties under the *OGCA*.

After considering the legislative history of Section 106 of the *OGCA*, namely, the excerpts of *Alberta Hansard* filed as exhibits in this proceeding by Matheson and Bourgeois<sup>10</sup> and the provisions of Section 106 of the *OGCA*, the Declaration Panel also finds that the purposes of Section 106 of the *OGCA* are to

- impose serious restrictions on companies' activities regulated by the Board in which such individuals occupy a position of control;
- ensure that compliant companies do not bear the costs associated with liability left by noncompliant companies;
- hold individuals with corporate authority accountable for actions that result in serious noncompliance or outstanding debt;
- ensure that industry liabilities are funded by industry rather than the public;
- protect landowners from inheriting ownerless, unused, and unreclaimed oil and gas sites;
- expedite the abandonment and reclamation of orphan sites; and

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<sup>10</sup> Matheson and Bourgeois referred to the legislative history of Section 106 of the *OGCA*, which was first introduced as part of *Bill 13, Energy Statutes Amendment Act, 2000*, by highlighting certain excerpts of *Alberta Hansard* dated March 20, 2000, and May 15, 2000, as evidence of the Alberta Legislature's intention for Section 106.

- increase public safety and environmental protection.

In particular, the Declaration Panel notes the following statement made by Mr. Hlady when he moved for second reading of *Bill 13*:<sup>11</sup>

The objective, Mr. Speaker, is responsible resource development by responsible corporations in Alberta.

In this case, the Declaration Panel considers that its use of the legislative history filed by Matheson and Bourgeois is relevant as it offers direct evidence of the Alberta Legislature's intent by the introduction of Section 106 to the *OGCA* in 2000.

Having regard to the above, the Declaration Panel believes that Section 106 of the *OGCA* protects all stakeholders (namely, the public, landowners, government, and industry) by regulating the future conduct and business with the Board of the named person regarding another applicant, licensee, or approval holder that the named person controls. Further, it seeks to avoid conduct in the future that resulted in the licensee or approval holder committing a contravention of an order of the Board and provide for closer scrutiny of that person's conduct when in control of a licensee or approval holder. Section 106 does not prohibit a named person from being in control of a licensee or an approval holder or that licensee conducting business regulated by the Board. However, its effect may place restrictions on the named person when conducting an activity regulated by the Board.

Therefore, the Declaration Panel finds that the issuance of a declaration pursuant to Section 106 of the *OGCA* is akin to a disqualification proceeding, where disqualifications are imposed as part of a scheme regulating an activity in order to protect the public (which are not the sort of "offence" proceedings to which Section 11 of the *Charter of Rights* are applicable). Having regard to the above, the Declaration Panel concludes that Section 11 of the *Charter of Rights* is not applicable to the Section 106 Proceeding.

## 5 THE ELEMENTS OF SECTION 106

Section 106 of the *OGCA* reads as follows:

### **Actions re principals**

**106(1)** Where a licensee, approval holder or working interest participant

- (a) contravenes or fails to comply with an order of the Board, or
- (b) has an outstanding debt to the Board, or to the Board to the account of the orphan fund, in respect of suspension, abandonment or reclamation costs,

and where the Board considers it in the public interest to do so, the Board may make a declaration setting out the nature of the contravention, failure to comply or debt and naming one or more directors, officers, agents or other persons who, in the Board's opinion, were directly or indirectly in control of the licensee, approval holder or working interest participant at the time of the contravention, failure to comply or failure to pay.

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<sup>11</sup> *Alberta Hansard* dated March 20, 2000, at page 510.

(2) The Board may not make a declaration under subsection (1) unless it first gives written notice of its intention to do so to the affected directors, officers, agents or other persons and gives them at least 10 days to show cause as to why the declaration should not be made.

(3) Where the Board makes a declaration under subsection (1), the Board may, subject to any terms and conditions it considers appropriate,

- (a) suspend any operations of a licensee or approval holder under this Act or a licensee under the *Pipeline Act*,
- (b) refuse to consider an application for an identification code, licence or approval from an applicant under this Act or the *Pipeline Act*,
- (c) refuse to consider an application to transfer a licence or approval under this Act or a licence under the *Pipeline Act*,
- (d) require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval or transfer to an applicant, transferor or transferee under this Act, or
- (e) require the submission of abandonment and reclamation deposits in an amount determined by the Board for any wells or facilities of any licensee or approval holder,

where the person named in the declaration is the licensee, approval holder, applicant, transferor or transferee referred to in clauses (a) to (e) or is a director, officer, agent or other person who, in the Board's opinion, is directly or indirectly in control of the licensee, approval holder, applicant, transferor or transferee referred to in clauses (a) to (e).

(4) This section applies in respect of a contravention, failure to comply or debt whether the contravention, failure to comply or debt arose before or after the coming into force of this section.

## 6 CONTROL

### 6.1 Views of Matheson and Bourgeois

Matheson and Bourgeois submitted that Section 106 of the *OGCA* allowed the Board to make a declaration against a defined set of individuals, in this case "directors and officers." Matheson and Bourgeois argued that Section 106 of the *OGCA* required that they were directly or indirectly in control of the licensee, approval holder or working interest participant at the time of the contravention, failure to comply or failure to pay.

In response to the CCG's October 27, 2006, submission that Matheson, Bourgeois, or both of them had been in a "position of authority," Matheson and Bourgeois argued that Section 106 of the *OGCA* did not speak of titular authority as congruent with "control." Instead, they submitted that the test for control under Section 106 of the *OGCA* was "the power to direct the business of a company and make decisions that will be complied with and acted upon by the company."<sup>12</sup>

Matheson and Bourgeois argued that they could not render any effective control over the business of M. L. Cass Petroleum Corporation at the relevant times because of the insolvency of

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<sup>12</sup> EUB Decision 2006-06: *Decision to Issue a Declaration Naming Richard Yu Pursuant to Section 106 of the Oil and Gas Conservation Act*, at page 7, citing *South Alberta Energy Corp., Greg Justice, 693040 Alberta Ltd. - Marc Dame, Review of Abandonment Costs Order No. ACO 98-1, EUB Decision 2000-51*.

the company and their minority shareholder positions. Further, Matheson and Bourgeois believed that shareholders were in control of a company when it was a going concern and that creditors were in control of a company in situations of insolvency (which they described as a company's inability to meet obligations as they became due or a company's assets were significantly less than its liabilities).

Matheson and Bourgeois submitted that William A. Work, a consultant with M. L. Cass Petroleum Corporation, was the only person that the CCG dealt with exclusively with during the period from 1999 to mid-2003. Bourgeois indicated that Work had been with M. L. Cass Petroleum Corporation from its inception, was responsible for managing its land assets (including industry farm outs), and reported to him, as a company officer. Bourgeois indicated in cross-examination that he believed that during his time with the company, M. L. Cass Petroleum Corporation, as a company holding Board licences, was in compliance with Board requirements to have an office and a contact person in Alberta—namely, Work—who could be contacted on Board matters.

Matheson indicated in cross-examination that in late 2001, Work was in communication with Jerry Skappak, a former contract field operator for M. L. Cass Petroleum Corporation, to ensure that there were no problems with the various well sites in the Sibbald area of eastern Alberta. Matheson said that with the exception of a leakage in one of the underground storage tanks that contaminated some land, which was brought to their attention by Alberta Environment in 2005, he was not aware of any problems with any of the other sites. In recent years, Matheson and Bourgeois confirmed in cross-examination that they recognized that there was a liability with the well sites, but they never requested or required that Work make annual inspections of the well sites. Further, Matheson and Bourgeois believed that insurance policies, including blowout insurance, were maintained by the company up to and including 2003. They believed these policies were discontinued after 2003 after the wells were abandoned.

### **6.1.1 Matheson**

Matheson indicated that he was a minority shareholder in M. L. Cass Petroleum Corporation, owning 2.6 per cent of the issued and outstanding shares in the company, and that he was currently the second largest secured creditor of M. L. Cass Petroleum Corporation in the approximate amount of \$380 000. Matheson also indicated that he was a director of M. L. Cass Petroleum Corporation as a result of a reappointment that occurred on May 24, 2001.

Based on the fact that he was a resident of Indonesia from June 1, 1999, to June 13, 2003, Matheson asserted that he was unable to make any operational decisions or exercise any control of M. L. Cass Petroleum Corporation. Matheson submitted that all but one of the abandonment orders, that gave rise to the Board invoice dated July 22, 2005, in the amount of \$935 207 took place while he was a resident of Indonesia.

In response to questioning by the Declaration Panel's counsel, Matheson clarified that although it was not a formal appointment, he was a nonpaid consultant to M. L. Cass Petroleum Corporation on the Pomalaa project in Indonesia from its inception in the third quarter of 1998 through to late-1999.

In cross-examination, Matheson indicated that while he was a resident of Indonesia he provided loans to M. L. Cass Petroleum Corporation, at the request of Work, on about six occasions from

the early part of 2000 to the early part of 2001 to run the company's office. Matheson stated that Work or Bourgeois would inform him that the M. L. Cass Petroleum Corporation needed small amounts, such as \$5000, to pay the monthly bills and he would wire transfer this money to the company's account. Matheson indicated that initially these loans provided were done informally and on an unsecured basis. However, Matheson stated that when it was required, Work would send him a detailed list of accounts payable that Work felt needed to be paid.

Subsequently, Matheson stated that he requested and received a formal debenture security as a result of a board of directors' meeting held in December 2001. Matheson advised that in January 2002 he sold a debenture to Java, which had been granted to him by M. L. Cass Petroleum Corporation to secure existing indebtedness in the amount of \$400 000 for working capital cash advances personally made by Matheson to the company for the previous three years. Matheson confirmed that he controlled Java, as it was a wholly owned company in January 2002.

Matheson stated that Bourgeois and he had considerable experience in reorganizing companies and financing new start-up companies. From July 2001 to June 2003, Matheson indicated that they prepared several plans of reorganization jointly with their advisers to achieve a settlement with two of the largest creditors of M. L. Cass Petroleum Corporation, which ultimately they were able to do.

On June 13, 2003, Matheson indicated that he returned to Calgary and commenced efforts to complete a plan of arrangement, which was intended to reach a settlement with creditors, including the Board, and bring M. L. Cass Petroleum Corporation to solvency. Prior to his return, Matheson confirmed in cross-examination that he had become aware of the abandonment orders but had believed that an adequate provision for the estimated amount of the abandonment liability had been booked in the company's accounts.

In October 2004, Matheson confirmed that as part of the M. L. Cass Petroleum Corporation's Plan of Reorganization, it sold its working interest in two undeveloped mineral leases in the Esther area of Alberta to Java, a company owned by Matheson, to settle \$440 000 in secured indebtedness owed to Java. During the period from 2003 to 2007, Matheson indicated that he was involved in eight settlement proposals that were provided or filed on behalf of M. L. Cass Petroleum Corporation with the Board or the CCG, but none of these settlement proposals was accepted.

In cross-examination, Matheson confirmed that several creditors had filed court motions and been awarded judgements, but no steps had been taken to enforce those judgements. Matheson also confirmed that no seizures of assets of M. L. Cass Petroleum Corporation had taken place through the process of liquidation or foreclosure or through the actions of any of its creditors.

### **6.1.2 Bourgeois**

Bourgeois indicated that he was a minority shareholder in M. L. Cass Petroleum Corporation, owning less than 1 per cent of the issued and outstanding voting shares in the company, and was a secured creditor of M. L. Cass Petroleum Corporation in the amount of \$25 000.<sup>13</sup>

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<sup>13</sup> Information Responses of Named Individuals dated November 10, 2006, at pages 1 and 5.

Bourgeois stated that in June 1998 he became a director and the president and of M. L. Cass Petroleum Corporation. Bourgeois indicated that prior to this date he had no affiliation or connection to the company. Bourgeois advised that when he joined M. L. Cass Petroleum Corporation, it was a widely held public company listed on the Toronto Stock Exchange (now the TSX), which had gone into financial distress. Bourgeois further advised that he joined M. L. Cass Petroleum Corporation in June 1998 and that there were three directors:

- two independent directors, who resided in Vancouver and who, in Bourgeois's opinion, were not knowledgeable about oil and gas matters, and
- one director, himself, whose role with the company as he described it was as a "caretaker" director, since he was not being paid and not living in Calgary.

Bourgeois confirmed in cross-examination that as a director his obligation to a publicly listed company was to get an annual audit, review the financial statements, and recommend those financial statements for approval to the board and the shareholders. Bourgeois confirmed in cross-examination that unlike other company directors, he was also an officer of the company and involved in its day-to-day operations. However, the other company directors were consulted as required.

In Bourgeois's view, M. L. Cass Petroleum Corporation was not a "going concern business," as it had minimal assets and no revenue. As a result, Bourgeois focused on finding projects for financing and restructuring M. L. Cass Petroleum Corporation, which had been approved by the Toronto Stock Exchange to operate in oil, gas, and energy businesses. From June 1998 to August 28, 2000, these projects included

- obtaining shareholder approval to build a power plant in Pomalaa, Sulawesi, Indonesia;
- raising \$450 000 in working capital for M. L. Cass Petroleum Corporation in May 2000; and
- obtaining shareholder approval for a reverse takeover of M. L. Cass Petroleum Corporation by Regal Petroleum Corporation Limited (Regal) in August 2000.

Bourgeois acknowledged in cross-examination that he sought out Matheson's opinion and assistance on various projects of M. L. Cass Petroleum Corporation at the encouragement of other company directors while Matheson was resident in Indonesia.

Bourgeois stated that on August 28, 2000, he ceased to be a director of M. L. Cass Petroleum Corporation, since he did not stand for re-election at the annual general meeting. However, Bourgeois stated that he remained as president of M. L. Cass Petroleum Corporation. Bourgeois stated that at the request of certain shareholders and directors of M. L. Cass Petroleum Corporation, he was reappointed as a director of M. L. Cass Petroleum Corporation on May 24, 2001.

In cross-examination, Bourgeois confirmed that he was aware that abandonments were required to be done because Work had told him this in 1998 or 1999, when they were reorganizing M. L. Cass Petroleum Corporation to ensure that adequate funding was in place for the Pomalaa transaction. Bourgeois stated the he was aware that M. L. Cass Petroleum Corporation had an obligation to the Board to reclaim these wells and these locations. However, Bourgeois added that he did not become aware of the abandonment orders dated September 28, 2000, and November 10, 2000, until they were brought to his attention by Matheson when he became a director of M. L. Cass Petroleum Corporation on May 24, 2001. Bourgeois indicated that prior to

this date he never saw any documentation that there were outstanding issues vis-à-vis M. L. Cass Petroleum Corporation's compliance with Board requirements, including notifications by the Board indicating that these abandonments needed to take place and that a notification with the abandonment order would be forthcoming if steps were not taken. Similarly, Bourgeois confirmed that he never saw any notifications of noncompliance issued by other government departments or agencies.

## 6.2 Views of the CCG

The CCG stated that Section 106 of the *OGCA* gave the Board the authority to issue a declaration naming persons (namely, directors, officers, agents, or other persons) in control of licensees, approval holders, or working interest participants that have failed to comply with Board orders or that have outstanding debts to the Board, or to the Board on the account of the Orphan Fund with respect to incurred suspension, abandonment, and reclamation costs. Once any declaration was issued, the Board could then impose certain sanctions pursuant to Section 106(3) of the *OGCA*. In the CCG's view, these sanctions effectively prevent any licensee or approval holder controlled by the individual or individuals from doing business routinely with the Board.

After reviewing the scope of Section 106 of the *OGCA* and the submissions filed in this proceeding, the CCG asserted that Matheson and Bourgeois were not disputing that there were contraventions and failures by M. L. Cass Petroleum Corporation to comply with the Board Orders or that there was an outstanding debt to the Board, or to the Board on the account of the Orphan Fund by M. L. Cass Petroleum Corporation. Rather, the CCG submitted that Matheson and Bourgeois disputed that they were directly or indirectly in control of M. L. Cass Petroleum Corporation, despite holding positions of authority,

- when the contravention and failures to comply with Board Orders occurred,
  - when the outstanding debt to the Board was incurred, or
  - when the outstanding debt to the Board on the account of the Orphan Fund was incurred,
- because of the company's insolvency and their positions as minority shareholders preventing them from rendering any effective control over the company.

In the CCG's view, this position was not supported by the facts revealed in the corporate records attached to the March 2, 2006, CCG Submission, the information requests made by the CCG to Matheson and Bourgeois, and the oral testimony of Matheson and Bourgeois at the hearing. Based on its November 17, 2006, submission, as evidenced in the charts attached to it as Appendix A and B, CCG asserted that

- Matheson, Bourgeois, or both of them had been in a position of authority (namely, as president and/or director) with M. L. Cass Petroleum Corporation, throughout the time period the Board Orders were issued, and
- the veracity of these charts was confirmed in the answers to the information requests.

It was, therefore, the CCG's view that the Declaration Panel could easily find that both of these individuals were directors and executives of M. L. Cass Petroleum Corporation when the Board Orders were issued by the Board, when the company failed to comply with the Board Orders, or when the company failed to pay the indebtedness set out in the Board Orders. Despite

Bourgeois's argument to the contrary, the CCG also submitted that the Declaration Panel could find as a fact that certain Board Orders were issued

- at times when Bourgeois was simply president of M. L. Cass Petroleum Corporation, and
- at times when Bourgeois was a director and president of M. L. Cass Petroleum Corporation.

The CCG emphasized that Matheson rejoined M. L. Cass Petroleum Corporation as a director before he returned to Canada and that his Canadian nonresidency must be seen in that light. CCG submitted that Matheson remained a director of M. L. Cass Petroleum Corporation during that time period in Indonesia. In argument, CCG submitted that Matheson remained embroiled and involved in the affairs of M. L. Cass Petroleum Corporation the entire time he was in Indonesia. He remained a "go-to" person within M. L. Cass Petroleum Corporation and a person whose advice was considered important in decisions. It was the view of CCG that, at the very least, it was open to the Declaration Panel to find that there was indirect control of M. L. Cass Petroleum Corporation throughout Matheson's tenure in Indonesia and certainly after the resumption of his status of director, after which he began to take direct steps in the direction of resuscitating the company.

In contrast to the views of Matheson and Bourgeois, the CCG did not believe that shareholders were in control of a company when it was a going concern and that creditors were in control of a company in situations of insolvency. Despite Matheson's and Bourgeois's position to the contrary, CCG submitted that there was no evidence of shareholder resolutions

- impinging on the authority of the company directors of M. L. Cass Petroleum Corporation;
- preventing directors, officers, and executives from taking actions with respect to the day-to-day operations of M. L. Cass Petroleum Corporation; or
- preventing Matheson and Bourgeois from ensuring that M. L. Cass Petroleum complied with the Board Orders or paid its debts to the Board.

Based on the evidence, the CCG submitted that M. L. Cass Petroleum Corporation was Bourgeois, Matheson, an absent director in British Columbia, Work, and an unnamed assistant who got paid now and again. Accordingly, the CCG argued that it could not be said in any real sense that the shareholders were in control or the directing mind of the company.

The CCG submitted that in situations of insolvency there were still decisions that could be made within a company as to how it was going to act regarding directions of the Board. For example, the CCG indicated that M. L. Cass Petroleum Corporation had about \$225 000 in its Licensee Liability Rating (LLR) account, which CCG submitted could only be used for reclamation and abandonment and could not be accessed by trustees in bankruptcy. Having regard to the abandonment liability of \$194 128.00, which had been audited by Price Waterhouse Coopers and booked by M. L. Cass Petroleum Corporation as of December 31, 2000,<sup>14</sup> and the amount in the LLR account, the CCG was uncertain why M. L. Cass Petroleum Corporation, as the licensee, did not do this abandonment and reclamation, as it appeared that there was enough money to do so.

Further, the CCG noted that none of the secured or unsecured creditors of M. L. Cass Petroleum Corporation took any steps to gain control of the company either by way of formal proceedings

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<sup>14</sup> See Exhibit 11 (IR Response dated November 10, 2006), at page 11, item c.

(namely, bankruptcy or receivership) or through the realization of its security. However, the CCG argued that if one accepted Matheson's and Bourgeois's position that M. L. Cass Petroleum Corporation was in fact in the control of its creditors, then they were in fact in control of the company through their positions as secured creditors. In this regard, the CCG noted that Matheson acknowledged that he was the second largest secured creditor of M. L. Cass Petroleum Corporation.

At the hearing, the CCG indicated that prior to enactment of Section 106 of the *OGCA* in 2000, it took a broad "shotgun approach" and named all directors and persons in control of a company as part of the liability chain. However, the CCG stated that with the enactment of Section 106 and clarification regarding the definition of control from Board decisions, it now examined *de facto* control and considered factors such as who was making day-to-day decisions for the company.

The CCG submitted that from the late 1990s forward, Matheson and Bourgeois were M. L. Cass Petroleum Corporation. It was the CCG's position that Matheson and Bourgeois were at the helm of the company when directions were made, such as to retain lawyers on behalf of the company and to sell assets. During this same period, Work was the only other person conducting any work or taking any steps on behalf of M. L. Cass Petroleum Corporation. The CCG submitted that Work's advice to the Board was consistently that he had no authority to make any decisions, that he had to report to Bourgeois and Matheson, and that his statements were not contradicted by the evidence of Matheson and Bourgeois. The CCG contended that it could find no evidence that any individuals other than Matheson and Bourgeois had that control. The CCG further submitted that it was not an answer to suggest that because the Declaration Panel did not name everyone involved, it should not just name these individuals.

The CCG contended that whether the Declaration Panel chose to find direct control or indirect control, there was little question that at the appropriate and critical times the Declaration Panel could find that one or both Matheson and Bourgeois as directors and as officers were directly involved in the business of M. L. Cass Petroleum Corporation.

### **6.3 Views of the Declaration Panel**

After carefully reviewing all of the evidence and submissions, the Declaration Panel finds that from July 24, 1993, to the commencement of this proceeding, M. L. Cass Petroleum Corporation has engaged in oil and gas exploration and production in Alberta and has made various applications to the Energy Resources Conservation Board (corporate predecessor to the Board) and to the Board under the various statutes and regulations administered by it. The Declaration Panel finds that M. L. Cass Petroleum Corporation was the licensee of the wells listed in Appendix 2 according to the records of the Board, as reiterated in Attachment A to the above-noted Notices of Intention.

The Declaration Panel notes that the March 2, 2006, CCG Submission indicates that M. L. Cass Petroleum Corporation is the current licensee of record of 25 wells with no associated facilities or pipelines. The Declaration Panel notes that M. L. Cass Petroleum Corporation has not addressed its outstanding debt to the Board, nor has it addressed its debt to the Board in the account of the Orphan Fund for abandonment costs incurred to abandon wells for which M.L. Cass Petroleum Corporation is the licensee. The Declaration Panel further notes that Matheson and Bourgeois acknowledge this outstanding debt owed by M. L. Cass Petroleum Corporation in their submission, direct evidence, and cross-examination. The Declaration Panel further notes

that Matheson and Bourgeois do not contest the amount of debt, the penalty attached to the debt, or the abandonment or cost orders issued.

The Declaration Panel is of the view that the abandonment costs incurred by the Board and the Orphan Well Association to abandon wells licensed to M. L. Cass Petroleum Corporation, as well as the 25 per cent penalty provided under legislation, represent an outstanding debt to the Board.

In addition, the Declaration Panel notes that

- M. L. Cass Petroleum Corporation was a widely public held company and was listed on the Toronto Stock Exchange (now the TSX) until a cease trading order was issued on September 14, 2000, due to its failure to meet the continued listing requirements of the exchange;
- M. L. Cass Petroleum Corporation was continued into Alberta from its home jurisdiction of British Columbia in September 1994; and
- M. L. Cass Petroleum Corporation appears to have been an active Alberta corporation as at March 2, 2006.

In determining whether a person is in control of a licensee, the Declaration Panel adopts the following test set out in Board *Decision 2000-51* and reiterated in Board *Decision 2002-53: Prince Resource Corporation, Richard Yu, Review of Abandonment Costs Order No. 2001-1* at page 11.

Real, effective and practical control over a company's business affairs...may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by the company. Each case must be reviewed on its own facts and circumstances in order to determine the entity effectively exercising this authority.

Based on its review of the corporate records attached to the March 2, 2006, CCG Submission, the information requests made by the CCG to Matheson and Bourgeois, and the oral testimony of Matheson and Bourgeois at the hearing, the Declaration Panel finds the following:

- During the time period of September 28, 2000, to February 7, 2006, which corresponds to the issuance of the first order (namely, AD 2000-446) through to the final order (namely, AD 2006-1A), Bourgeois held the position of President of M. L. Cass Petroleum Corporation. Fifteen of the Board Orders were issued in this time period.
- During the time period of June 8, 2001, to February 7, 2006, which corresponds to the date of issuance of the fifth order (namely, AD 2001-07) through to the final order (namely, AD 2006-1A), Bourgeois held the positions of President and Director of M. L. Cass Petroleum Corporation. Eleven of the Board Orders were issued in this time period.
- During the time period of June 8, 2001, to February 7, 2006, which corresponds to the issuance of fifth order (namely, AD 2001-07) through to the final order (namely, AD 2006-1A), Matheson held the position of Director with M. L. Cass Petroleum Corporation. Eleven of the Board Orders were issued in this time period.

In this proceeding, the onus was on Bourgeois and Matheson to establish that they were not directly or indirectly in control of M. L. Cass Petroleum Corporation

- when the contravention and failures to comply with Board Orders occurred,

- when the outstanding debt to the Board was incurred, or
  - when the outstanding debt to the Board on the account of the Orphan Fund was incurred,
- by persuading the Declaration Panel on a balance of probabilities that they did not have the power to direct the business of M. L. Cass Petroleum Corporation and make decisions that would be complied with and acted upon by the company in these circumstances. Based on the information before it, the Declaration Panel finds that this onus was not met by Matheson and Bourgeois.

The Declaration Panel finds that based on timeline information provided, both Matheson and Bourgeois were at times individually and collectively in direct or indirect control of M. L. Cass Petroleum Corporation at the times when the contraventions, failures to comply, and failures to pay the outstanding debt occurred. In reaching this conclusion, the Declaration Panel finds that the following types of evidence clearly indicate that Matheson and Bourgeois had the power to direct the business of M. L. Cass Petroleum Corporation and make decisions that would be complied with and acted upon by the company:

- organizational and decision-making structures that were in place;
- involvement in financial affairs;
- signing of certain commercial agreements; and
- involvement in the development new strategic alliances and business opportunities.

The Declaration Panel finds that Bourgeois's claim of being nothing more than a caretaker to M. L. Cass Petroleum Corporation lacks credibility, as Bourgeois has not submitted any third-party documentation in support of this claim or in support of his claim that other shareholders or creditors were or are in control of M. L. Cass Petroleum Corporation. Rather, the Declaration Panel finds based on the evidence that Bourgeois was a "key person" who was primarily responsible for directing the future growth, development, and strategic direction for this company and whose other responsibilities as a director or officer of the company included raising and obtaining the necessary financing for these projects, supervising company employees and consultants, arranging for an annual audit, reviewing the financial statements, and recommending board and shareholder approval of those financial statements.

According to the evidence, Bourgeois occupied the position of president from June 1998 to the commencement of this proceeding and Bourgeois was a director of the company from June 1998 to the commencement of the proceeding, with the exception of the period from August 28, 2000, to May 24, 2001. The Declaration Panel also finds it significant that Bourgeois, as president, executed contracts and co-signed cheques on behalf of M. L. Cass Petroleum Corporation at various times from June 1, 1999, to October 14, 2004, as evidenced by the documents attached as Schedule A to the March 2, 2006, CCG Submission. As a result, the Declaration Panel concludes that Bourgeois was appointed as a signing officer for M. L. Cass Petroleum Corporation, authorized and directed to execute contracts and co-sign cheques on its behalf. Having regard to these facts, the Declaration Panel finds that Bourgeois had the power to direct the business of M. L. Cass Petroleum Corporation and make decisions on its behalf to comply with Board Orders and to pay its outstanding debt to the Board regarding abandonment costs at the material times.

The Declaration Panel finds that although Matheson was resident in Indonesia from June 1, 1999, to June 13, 2003, the evidence shows that he was involved in the development of new

strategic alliances and business opportunities on behalf of M. L. Cass Petroleum Corporation. In this regard, the Declaration Panel notes that Matheson's involvement included acting as a company consultant on the Pomalaa project in Indonesia and meeting with the principals of Regal on M. L. Cass Petroleum Corporation's behalf in London, England. Further, Bourgeois identified that Matheson was also a "key person" whose advice he solicited and sought out on matters concerning M. L. Cass Petroleum Corporation while Matheson was in Indonesia. From the early part of 2000 forward, Matheson also became a lender to M. L. Cass Petroleum Corporation by providing it with working capital. On May 24, 2001, Matheson was appointed a director of M. L. Cass Petroleum Corporation. After his appointment, the Declaration Panel finds it significant that Matheson, as director, signed correspondence at various times starting from October 20, 2003, and co-signed financial statements on behalf of M. L. Cass Petroleum, as well as being noted as a company contact on the first-quarter report of the company dated March 31, 2002, as evidenced by the documents attached as Schedule A to the March 2, 2006, CCG Submission. As a result, the Declaration Panel concludes that Matheson was authorized by the company's directors to co-sign these financial statements and to write correspondence on its behalf.

From May 24, 2001, forward, the Declaration Panel finds that there was no meaningful change in employees, management, or the key players who had operated M. L. Cass Petroleum Corporation. Matheson and Bourgeois ran the company and were aided by Work. Matheson and Bourgeois were clear that Work had no managerial duties or responsibilities for the company and that the remaining company director was a nominal appointment so that a quorum could be achieved. Therefore, the Declaration Panel finds that Work and this remaining company director did not have any significant bearing on the business activities of M. L. Cass Petroleum Corporation in this period. Rather, the business of M. L. Cass Petroleum Corporation was a result of decisions of Matheson and Bourgeois. Further, the Declaration Panel finds that Matheson and Bourgeois remain the persons currently controlling the M. L. Cass Petroleum Corporation, which continues to be in noncompliance with Board Orders.

The Declaration Panel also finds it significant to note that none of the company's creditors at any time appointed any receiver and manager of M. L. Cass Petroleum Corporation under any security, petitioned the company into bankruptcy, took steps to enforce on court judgements against the company, or seized any company assets through the process of liquidation or foreclosure. Therefore, the Declaration Panel finds that M. L. Cass Petroleum Corporation was not under the control of its lenders at the relevant times, as submitted by Matheson and Bourgeois, and continued to operate under the direction of Matheson and Bourgeois.

Finally, the Declaration Panel is of the view that Matheson and Bourgeois, as persons in control, did not fully understand the obligations of a Board licensee and approval holder under all applicable provincial acts and regulations. The Declaration Panel finds that from May 24, 2001, Matheson's and Bourgeois's activities were devoted principally to the financial side of the business of M. L. Cass Petroleum Corporation. They continued to explore for opportunities to finance and restructure the company, including retaining legal counsel and trustee on behalf of the company to prepare a "plan of arrangement." However, the Declaration Panel finds that their attention to the operations side of the business significantly decreased in this period. In this regard, the Declaration Panel is particularly concerned that although Matheson and Bourgeois recognized that there was a liability regarding the well sites, they never requested or required that Work make annual inspections of the licensed well sites in recent years. The Declaration Panel is not satisfied that the provision of unpaid staff and consultants to M. L. Cass Petroleum

Corporation is appropriate or consistent with the practices followed by other oil and gas companies licensed by the Board in Alberta. The Declaration Panel emphasizes that M. L. Cass Petroleum Corporation as the licensee is ultimately the party responsible for the operations and any liabilities associated with any licences and approvals it holds. Therefore, the Declaration Panel is of the view that Board licensees, such as M. L. Cass Petroleum Corporation, cannot be permitted to disregard Board requirements. Matheson and Bourgeois, as persons in control of a Board licensee, must ensure regulatory compliance.

## **7 PUBLIC INTEREST**

### **7.1 Views of Matheson and Bourgeois**

#### **7.1.1 Public Interest**

At the hearing, Matheson and Bourgeois stated that there were other broad public interest factors that the Declaration Panel should consider, such as Matheson's and Bourgeois's efforts to step forward and prepare various settlement proposals to M. L. Cass Petroleum Corporation's creditors, including the Board, and the attempt to reorganize the M. L. Cass Petroleum Corporation.

Matheson and Bourgeois acknowledged that the penalty under Section 106 was serious and stated that it had already been imposed on Matheson and Bourgeois due to the Board's refusal to issue a business associate code to Java. In this case, Matheson submitted that he was forced to resign as a director and his position as president with Java was terminated. Furthermore, Matheson and Bourgeois stated that the stigma attached to the publication of the Board's notices on its Web site had already prevented Matheson and Bourgeois from pursuing their livelihoods as directors and officers of oil companies.

Matheson and Bourgeois stated that the full penalty under Section 106 in this case would send a message to industry to abandon ship as soon as possible because the Board will go after anyone still standing. Matheson and Bourgeois argued that the issuance of a declaration for a finite period was warranted because it recognized the efforts of Matheson and Bourgeois to restructure the affairs of M. L. Cass Petroleum Corporation and the damage that had already been suffered by Matheson and Bourgeois.

Matheson and Bourgeois submitted that the punishment imposed by the Declaration Panel should be no more than necessary to secure the desired conduct. Imposing a penalty more draconian than necessary would do no more than erode the Board's reputation as a fair and impartial regulator. Matheson and Bourgeois believed that if the Declaration Panel imposed a declaration with an indefinite term, it might serve as a negative signal to anybody involved in the oil and gas industry that had noncompliant abandonment issues. In their view, such a declaration would not be in the public interest.

Finally, with respect to appropriate "terms and conditions," the fourth element of Section 106(3) of the *OGCA*, Matheson and Bourgeois cited Board *Decision 2005-040: Declaration Pursuant to Section 106 of the Oil and Gas Conservation Act, Daniel Blair Grant* for the principle that the issuance of the declaration would be for an indefinite period "unless there is evidence before the Board to the contrary." Having regard to this decision, Matheson and Bourgeois argued that the

issuance of a declaration for a finite period was warranted because of the factors set out in the paragraphs above.

## 7.2 Views of the CCG

The CCG submitted that Matheson and Bourgeois equated the concept of public interest to the simple recovery of money and regarded the noncompliance of M. L. Cass Petroleum Corporation as a question of debt without any regard to the overarching responsibilities that go along with holding a mineral licence in this jurisdiction. The CCG submitted that Section 106 of the *OGCA* and the obligations of the Board related to more than the recovery of money. The CCG stated further that the public interest was not served by allowing individuals to control Board-licensed companies

- who allow those companies to have no virtual presence in the jurisdiction for years;
- who make no reasonable efforts to inspect or maintain the care and control of their various well properties;
- when they are ignorant or, at worst, oblivious to warnings, notices, and orders issued by the provincial regulator;
- who regard their only obligation in regard to abandonment to be ensuring an appropriate accounting treatment of the liability that that brings; or
- when they deem it acceptable policy to leave their abandonment responsibilities to the Orphan Fund,

which, the CCG argued, was what Matheson and Bourgeois did in this case.

The CCG submitted that as persons in control of M. L. Cass Petroleum Corporation, Matheson and Bourgeois made no reasonable efforts to inspect or maintain the care and custody of its wells or well properties. In the CCG's view, Matheson and Bourgeois were persons responsible for directing the care and custody and proper maintenance of the M. L. Cass Petroleum Corporation licensed wells and well properties. Furthermore, the CCG stated that the sites represented a threat to the public and environment and cited the contamination under a buried tank at the 7-25-28-1W4M location as an example. The CCG further submitted that Matheson and Bourgeois made no attempt to act upon warnings, notices, and orders issued by the provincial regulator. The CCG pointed out that Matheson and Bourgeois did not address the abandonment of the wells and site reclamation and left this to others, including working interest participants, the Board, and the Orphan Fund to complete. The CCG submitted that the abandonment and reclamation work resulted in an accrued debt of M. L. Cass Petroleum Corporation, which Matheson and Bourgeois left unaddressed. The CCG submitted that Matheson and Bourgeois regarded this matter as a question of debt without any regard to the overarching responsibilities that go along with holding a licence in this jurisdiction.

The CCG was of the view that it was in the public interest to ensure that Matheson and Bourgeois were not officers or directors of companies that routinely apply for licences at the Board. The CCG submitted that it believed that there was a risk that Matheson and Bourgeois may cause the same situation again. The CCG submitted that the public interest was served by issuing a declaration against Matheson and Bourgeois, as that would send a general message to industry, act as deterrence, and encourage compliance by other companies.

### 7.3 Views of the Declaration Panel

The Declaration Panel is of the opinion that the purpose of a Section 106 Declaration is to prevent a licensee or a person in control of a licensee from continuing to breach Board requirements and Board Orders and from incurring abandonment costs or incurring new breaches or additional debts, thereby safeguarding the public interest.

The Declaration Panel is also of the view that continued confidence in the Board regulatory scheme for oil and gas is best assured when licensees comply with Board requirements and Board Orders. Without compliance with Board requirements, the protection of the public and the environment may be jeopardized and the public interest may be at risk. Licensees should not be permitted to conduct noncompliant activities with impunity, as that would be contrary to the mandate of the Board to ensure the orderly and efficient development of energy resources. A licensee that cannot pay its debts to the Board or the Orphan Well Association or pay its security deposit should not be permitted to continue to operate.

In this case, the Declaration Panel finds that the essence of Matheson's and Bourgeois's argument is that because of M. L. Cass Petroleum Corporation's financial difficulties, Board requirements should not have been applied to M. L. Cass Petroleum Corporation. This argument is unacceptable to the Declaration Panel, as it is not in the public interest for the reasons stated above.

Based on these findings, the Declaration Panel issues a Declaration Naming Matheson and Bourgeois, pursuant to Section 106 of the *OGCA*, and imposes the restrictions set out in Appendix 4, as authorized by Subsection 106(3) of the *OGCA*.

The Declaration Panel notes the concern expressed by Matheson and Bourgeois about earning a livelihood as an officer and a director in the energy industry. A declaration made under Section 106 of the *OGCA* is to identify a person who has been in control of a company that has contravened or failed to comply with Board requirements and Board Orders to protect the safety of the public and the protection of the environment. The Board will take the declaration into account when making decisions about applications from or licences and approvals for such a company.

In naming a person under Section 106 of the *OGCA*, the Board is regulating that person's conduct and business with the Board in relation to a company that the named person controls, but not necessarily his employment with an energy company.

The Board's intent in developing restrictions is to avoid unnecessary restrictions on Matheson's and Bourgeois' ability to gain employment, while at the same time protecting the public interest. In this declaration, the Declaration Panel places limitations on the manner in which Matheson and Bourgeois conduct business with the Board. The declaration does not necessarily affect Matheson's and Bourgeois's ability to deal with third parties.

Relating to the question as to whether the declaration should be for a finite term, as proposed by Matheson and Bourgeois, the Declaration Panel notes that Section 106 of the *OGCA* does not limit the time that a declaration naming a person in control of a company is in force. The Declaration Panel is of the view that the intent of Section 106 of the *OGCA* is that a declaration should be issued for an indefinite period to ensure that the contraventions are addressed and to

prevent any future contraventions by a company controlled by the named person. The Declaration Panel is also of the view that if M. L. Cass Petroleum Corporation were to come into compliance or circumstances change, the named persons can ask the Board to review or rescind the order. Enforcement-related matters do not lapse just due to the passage of time.

The Declaration Panel has considered the submissions of Matheson and Bourgeois in support of their contention that the declaration should be for a specified finite term. However, the Declaration Panel finds that Matheson and Bourgeois did not present convincing evidence that circumstances exist to warrant the Declaration Panel issuing the declaration for a finite period. As a result, the Declaration Panel will issue the declaration for an indefinite period to

- 1) ensure that contraventions and debts of M. L. Cass Petroleum Corporation are addressed, and
- 2) prevent any future contraventions by any company controlled by Matheson and Bourgeois.

Accordingly, the Board orders that the declaration included as Appendix 4 be issued forthwith to Matheson and Bourgeois.

Dated in Calgary, Alberta, on November 6, 2007.

#### **ALBERTA ENERGY AND UTILITIES BOARD**

*<original signed by>*

T. M. McGee  
Presiding Member

*<original signed by>*

R. G. Lock, P.Eng.  
Board Member

*<original signed by>*

M. W. Edwards  
Acting Board Member

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**APPENDIX 1 HEARING PARTICIPANTS**

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**Principals and Representatives  
(Abbreviations used in report)****Witnesses**

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D. N. Matheson  
R. P. Bourgeois  
J. E. Lowe

D. N. Matheson, C.A.  
R. P. Bourgeois, C.A.

Alberta Energy and Utilities Board  
Enforcement Section of Corporate Compliance Group (CCG)  
J. R. McKee

V. Vogt

Attorney General of Alberta  
R. S. Wiltshire

Alberta Energy and Utilities Board staff  
T. Bews, Board Counsel  
M. Douglas, C.E.T.

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## APPENDIX 2 CONTRAVENTIONS OR FAILURES OF M. L. CASS PETROLEUM CORPORATION TO COMPLY WITH ORDERS OF THE BOARD

Date	Order No.	Subject of order	Surface location or unique well identifier	Licence No.
September 28, 2000	AD 2000-446	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	00/10-29-024-02W4/0	
September 28, 2000	AD 2000-447	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	00/11-22-025-02W4/0	
September 28, 2000	AD 2000-448	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	00/06-34-025-02W4/0	
November 10, 2000	AD 2000-497	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	100/03-05-031-02W4/0	
June 8, 2001	AD 2001-07	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	00/07-25-028-01W4	0139799
June 8, 2001	AD 2001-07		14-25-028-01W4 07-25-029-01W4	0160331 0139799
August 28, 2003	MISC 03006	Order with respect to unpaid security deposits of M. L. Cass Petroleum Corporation		
November 1, 2004	ACO 2004-2	Order with respect to abandonment costs owed by M. L. Cass Petroleum Corporation to the EUB in connection with Abandonment Orders No. AD 2000-446, AD 2000-447, AD 2000-448, AD 2000-497, and AD 2001-07		
December 2, 2004	ACO 2004-2A	Order with respect to costs owed to the EUB in connection with Abandonment Cost Order No. ACO 2004-2		
December 17, 2004	AD 2004-11	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	02/07-17-025-01W4/0	0087564

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December 17, 2004	AD 2004-12	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	08-17-025-01W4/0	0075484
April 19, 2005	AD 2005-4	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	08-09-027-01W4	0137243
June 7, 2005	AD 2005-5	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	08-10-028-01W4	0129193
October 25, 2005	AD 2005-11	Order respecting the abandonment of a well licensed to M. L. Cass Petroleum Corporation	14-02-028-01W4	0175958
May 30, 2005	ACO 2005-04	Order with respect to abandonment costs owed to the EUB in connection with Abandonment Orders No. AD 2000-446, AD 2000-447, AD 2000-448, and AD 2001-07		

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## **APPENDIX 3 SUMMARY OF DOCUMENTS ATTACHED TO THE MARCH 2, 2006, CCG SUBMISSION**

### **BOARD RECORDS**

- Board Orders
- Alberta Surface Lease dated August 6, 1993, for M. L. Cass Petroleum Corporation
- M. L. Cass Petroleum Corporation correspondence dated July 14, 1993, October 20, 2003, November 6, 2003, January 13, 2005, May 31, 2005, September 8, 2005, and January 5, 2006, addressed to either the Board or CCG
- Board or CCG correspondence dated July 26, 1995, May 1, 1996, July 29, 2004, and September 21, 2005, addressed to M. L. Cass Petroleum Corporation
- transfer of well licence applications of M. L. Cass Petroleum Corporation dated January 1, 1993, April 26, 1994, June 1, 1999, and December 1, 1999
- Acknowledgment—Abandonment Deposit Forfeiture dated October 19, 2000, by M. L. Cass Petroleum Corporation
- M. L. Cass Petroleum Corporation cheque dated January 25, 2001, and payable to the Provincial Treasurer of Alberta regarding lease rentals
- seven cheques of M. L. Cass Petroleum Corporation dated February 14, 2001, and payable to the Board in connection with abandonment deposits for 00/05-26-028-01W4/0 and 00/08-09-027-01W4/0 wells
- three pictures of 00/07-25-028-01W4/0 well taken by the Board during abandonment operations
- Environmental Report dated December 22, 2003, of Treeline Environmental Projects Corp. addressed to the CCG pertaining to 07-25-028-01W4
- correspondence of M. L. Cass Petroleum Corporation's legal counsel to the CCG pertaining to Board invoice dated July 29, 2004
- two transfers of M. L. Cass Petroleum Corporation Alberta Crown Petroleum and Natural Gas leases dated October 14, 2004
- Alberta Surface Lease Assignment dated April 2005

### **ALBERTA CORPORATE REGISTRY RECORDS**

- thirteen Alberta Corporate Registry historical searches of M. L. Cass Petroleum Corporation dated September 9, 1994, September 28, 2000, November 10, 2000, May 3, 2001, June 8, 2001, August 28, 2003, November 1, 2004, December 17, 2004, May 23, 2005, May 30, 2005, October 25, 2005, and January 10, 2006

### **WORLD WIDE WEB**

- one cease trading order dated June 11, 2002 pertaining to M. L. Cass Petroleum Corporation

**SEDAR**

- M. L. Cass Petroleum Corporation announcement July 22, 1998
- M. L. Cass Petroleum Corporation third-quarter business report to shareholders and unaudited consolidated financial statements dated September 30, 1998
- M. L. Cass Petroleum Corporation management circular dated May 20, 1999
- M. L. Cass Petroleum Corporation business agreement announcement dated May 9, 2000
- M. L. Cass Petroleum Corporation notice of annual and special meeting of shareholders to be held August 25, 2000
- M. L. Cass Petroleum Corporation second-quarter report dated June 30, 2001, regarding management discussion and analysis and unaudited consolidated financial statements
- Auditor's Report of PriceWaterhouseCoopers dated May 31, 2002, regarding its audit of M. L. Cass Petroleum Corporation's consolidated financial statements as at December 31, 2000, and December 31, 2001
- M. L. Cass Petroleum Corporation first-quarter report dated March 31, 2002, and unaudited consolidated financial statements

#### **APPENDIX 4 DECLARATION NAMING DAVID N. MATHESON AND RONALD P. BOURGEOIS PURSUANT TO SUBSECTION 106(3) OF THE OIL AND GAS CONSERVATION ACT**

For the reasons set out in the decision in this matter, the Board has determined that David N. Matheson and Ronald P. Bourgeois are persons in control, direct or indirect, of M. L. Cass Petroleum Corporation and that M. L. Cass Petroleum Corporation has contravened Board requirements and failed to comply with Board Orders while David N. Matheson and Ronald P. Bourgeois have been in control of this company. Therefore, the Board names David N. Matheson and Ronald P. Bourgeois under Section 106 of the *Oil and Gas Conservation Act (OGCA)* and places the following restrictions on each of them and M. L. Cass Petroleum Corporation:

- 1) David N. Matheson and/or Ronald P. Bourgeois and any company directly or indirectly controlled by David N. Matheson and/or Ronald P. Bourgeois must inform the Board that a Section 106 Declaration is in effect against David N. Matheson and Ronald P. Bourgeois and that he/they has direct or indirect control of the company applying to the Board for an identification code, licence, or approval or the transfer of a licence or approval under the *OGCA* or the *Pipeline Act*.
- 2) Neither David N. Matheson nor Ronald P. Bourgeois can act as an agent of a company as defined in the *OGCA* or the *Pipeline Act* for any company.
- 3) The EUB may refuse to consider any application from M. L. Cass Petroleum Corporation, David N. Matheson, Ronald P. Bourgeois, or any other company over which Matheson or Bourgeois has direct or indirect control for an identification code, licence, or approval or a transfer of a licence or approval under the *OGCA* or the *Pipeline Act*.
- 4) If the EUB were to consider an application from M. L. Cass Petroleum Corporation, David N. Matheson, Ronald P. Bourgeois, or any other company directly or indirectly controlled by David N. Matheson and/or Ronald P. Bourgeois, the Board may require the submission of abandonment and reclamation deposits in an amount determined by the Board prior to granting any licence, approval, or transfer to an applicant, transferor, or transferee under the *OGCA*.
- 5) David N. Matheson and Ronald P. Bourgeois must submit a sworn declaration by December 6, 2007, declaring that each is not in direct or indirect control of any company, other than M. L. Cass Petroleum Corporation, that is an applicant to the Board, a licensee, or an approval holder under the *OGCA* or the *Pipeline Act*, or if either is, a declaration stating the name of the company or companies and specifying the applications it has before the Board and the Board licences and approvals the company holds.
- 6) This declaration is in force at the date of this decision and will remain in force until M. L. Cass Petroleum Corporation has complied with the above-mentioned Board Orders, rectified its contraventions, and paid its debt owed to the Board and to the Board to the account of the Orphan Fund for abandonment costs or until the Board orders otherwise.

**Dated: November 6, 2007**