

CANADA / JUDGMENT

Seabridge Gold Inc. v. British Columbia

2025 BCSC 558

COURT

Supreme Court of British Columbia

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2025 BCSC 558 Seabridge Gold Inc. v. British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Seabridge Gold Inc. v. British Columbia,

2025 BCSC 558

Date: 20250326

Docket: S194931

Registry: Vancouver

Between:

Seabridge Gold Inc.

Appellant

And

His Majesty the King in Right of the Province of British Columbia

Respondent

Before: The Honourable Justice Maisonville

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

September 16-20, 23-24, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 26, 2025

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introduction

- [1] This appeal concerns certain mining exploration tax credits incurred by the appellant, Seabridge Gold Inc. ("Seabridge"), disallowed by the respondent, His Majesty the King in Right of the Province of British Columbia, as represented by the Minister of National Revenue (the "Respondent").
- [2] Seabridge is a mineral exploration company that owns the Kerr-Sulphurets-Mitchell property (the "KSM property") in British Columbia. Seabridge incurred certain expenses respecting the KSM property it says were "incurred for the purpose of determining the existence, location, extent, or quality of a mineral resource in B.C.", and thus met the definition of a "qualified mining exploration expense" ("QMEE") and should have been allowed.
- [3] Seabridge takes the position that a unified textual, contextual, and purposive analysis of the QMEE provision reveals a legislative intent to incentivize growth in the mining industry by explorations for commercially viable ore bodies which at the same time acknowledges substantial risks and costs of that activity. In the course of the trial the parties used the terms "economically" and "commercially" largely interchangeably, and I do the same in the course of these reasons.
- [4] The Respondent, in reply, says that Seabridge relies on an interpretation of the phrase "for the purpose of determining the existence, location, extent, or quality of a mineral resource in British Columbia (the "purpose test") that is not supported by principles of statutory interpretation. The Respondent does not dispute that Seabridge's goal in incurring the disallowed expense was to gather information that will allow it to determine the economic viability of extracting gold in a manner that made financial sense. However, the Respondent says no economic viability findings exist in the purpose test--the fact they are incurred for

the determination of the reasonable prospects of economic extraction does not mean those expenses should or will attract favourable tax treatment. Nor has Seabridge shown entitlement to additional British Columbia mining exploration tax credits ("BCMETCs"), the Respondent argues, and thus Seabridge's appeal should be dismissed with costs.

- [5] By Notice of Confirmation on January 31, 2019, the Respondent, on behalf of the Minister of Finance, made a decision concerning a reassessment of Seabridge's expenses and confirmed the notice of reassessment issued to Seabridge, Seabridge Gold Inc., on November 10, 2016 in respect of its taxation years ending December 31, 2010 and December 31, 2011, disallowing Seabridge's claims for mining exploration tax credits under s. 25.1 of the BCITA. The matter comes before the court by way of appeal pursuant to s. 42(2) of the BCITA. It proceeded as a hearing with three witnesses. Rudi Fronk, the Chief Executive Officer of Seabridge for the last 25 years, who has a Bachelor's degree in Mining Engineering and a Master's degree in Mineral Economics from Columbia University, testified. Seabridge also called Garth Kirkham who was qualified as an expert in the field of mineral exploration and mining projects who provided a report. Mr. Kirkham has a Bachelor's Degree in Science in Geophysics and is a professional geoscientist. The Respondent called Joy Hartzler who was also qualified as an expert witness in the area of mineral exploration and mining in Canada. She is a senior mining advisor with Natural Resources Canada and produced a report.
- [6] The appeal concerns the reassessments under the BCITA for the fiscal periods ending December 31, 2010 and December 31, 2011 (the "Relevant Period") and concerns Seabridge's entitlement to the BCMETCs.
- [7] In order to be entitled to the BCMETCs, the expenses incurred by Seabridge during the relevant period must constitute QMEEs as defined in subsection 25.1(1) of the BCITA.
- [8] The issue before the court is whether the expenses in question were incurred for "the purpose of determining the existence, location, extent or quality of a mineral resource in B.C." and consequently are QMEEs.
- [9] The parties have helpfully prepared an Agreed Statement of Facts. I will refer to the document, the Agreed Statement of Facts, in more detail later on.
- [10] Seabridge is a Canadian corporation incorporated under the laws of Canada with corporate headquarters in in Toronto, Ontario. During the relevant times concerning this appeal, Seabridge was engaged in activities related to the acquisition and exploration of gold properties located in North America, including British Columbia. The properties also may contain other precious metals and base metals of economic interest.
- [11] Seabridge is publicly traded on the Toronto Stock exchange and the New York Stock Exchange. Seabridge, consequently, is governed by the applicable legislation and regulations to disclose information to the public in respect of its mineral projects in accordance with mining industry standards, legislation, and regulations.

- [12] Seabridge's disclosure obligations, in particular, with respect to mineral resources and mineral reserves are specified by National Instrument 43-101 (the "Standards of Disclosure for Mineral Projects") which incorporates the Canadian Institute of Mining, Metallurgy and Petroleum ("CIM") Definition Standards. This includes the CIM's definition of "Mineral Resource" and "Mineral Reserve" which, during the relevant period, were:

A Mineral Resource is a concentration of occurrence of diamonds, natural solid inorganic material, or natural fossilized organic material including base and precious metals, coal, and industrial minerals in or on the earth's crust in such form of quantity and of such a grade or quality that has reasonable prospects for economic extraction

A Mineral Reserve is the economically mineable part of a Measured or Indicated Mineral Resource demonstrated by at least a Preliminary Feasibility Study. This Study must include adequate information on mining, processing, metallurgical economic and other relevant factors that demonstrate, at the time of reporting, that economic extraction can be justified

- [13] The property in consideration in this appeal, the KSM property, is located approximately 950 kilometers northwest of Vancouver, British Columbia. The KSM property was acquired in 2001 and is held directly by Seabridge. It is one of the largest undeveloped gold mining projects in the world.
- [14] The KSM project is a complex undertaking because the geological mineral deposits on the KSM property (the "KSM Mineral Deposits") are numerous, large, located in challenging terrain, present multiple metals of economic interest, and could require large scale mining and mineral processing methods.
- [15] Exploration activities and studies undertaken for the purpose of determining the existence, location, extent and quality of the KSM Mineral Deposits, including whether there exists mineral resources and ultimately mineral reserves in the KSM Mineral Deposits, started in the 1930's and are ongoing.
- [16] The size of the geological deposits, and their different styles of mineralization, including ore-controlling structures and depth of the mineralization, have made the mineral resource and mineral reserve estimation process a long one that has required testing, evaluation, different supporting studies and then more testing, re-evaluation, and further interpretative studies which has, in turn, led to revised mineral resource and mineral reserve estimates.
- [17] During the Relevant Period, Seabridge incurred certain expenses it asserts were for the purpose of determining the existence, location, extent or quality of the KSM Mineral Deposits including whether, there exists mineral resources and ultimately mineral reserves in the KSM Mineral Deposits. The activities relating to these expenses are described in the paragraphs below (the names in brackets refer to the suppliers who performed the work).
- [18] First, Seabridge conducted field activities such as:

- a) Geotechnical drilling (Geotech Drilling Services Ltd. ["Geotech"]) and logging (Golder Associates Ltd. ["Golder"], Klohn Crippen Berger Ltd. ["Klohn"], BGC Engineering Inc. ["BGC"]);
 - b) Geological, geophysical, geotechnical and geochemical sampling, analyses, and interpretation of the KSM Mineral Deposits to detect potential metal-bearing rock and determine the rock characteristics (BGC, Klohn, Golder) and to determine environmental conditions (BGC, Klohn);
 - c) Geotechnical (Geotech, Golder, Thyssen Mining ["Thyssen"]), groundwater (BGC), and glacier studies (Klohn) to determine the location and cost of gaining access to the KSM Mineral Deposits;
 - d) Metallurgical testwork (G&T Metallurgical Services Ltd. ["G&T"]) to determine the metallurgical qualities of the KSM Mineral Deposits, including recovery rates (Bosche Ventures Ltd. ["Bosche"], Wardrop Engineering Inc. ["Wardrop"]); and
 - e) Lab testwork (G&T, Golder, Klohn, BGC).
- [19] Seabridge also collected additional preliminary economic data which informed the operational and capital cost estimates (Wardrop, Klohn, Thyssen, Moose Mountain Technical Services ["Moose"]). For example, these included processing cost estimates and environmental discharge commitments.
- [20] The technical information and economic data obtained was applied in the following studies which sought to determine whether all or any portion of the KSM mineral deposits had reasonable prospects for eventual economically viable extraction that could therefore be considered mineral resources and ultimately mineral reserves and, if so, their location, quality and extent:
- a) Mining (Moose), processing (Wardrop), tailings (Klohn) and infrastructure studies (McElhanney Consulting ["McElhanney"]) that were relied upon in making assumptions for the purposes of assessing whether all or any portion of the KSM Mineral Deposits had reasonable prospects for eventual economic extraction (Bosche, PSI Engineering Inc. ["PSI"]);
 - b) Mineral process studies (Wardrop) to assist in determining the mineral processing method and to determine the metal recoveries, concentrate grade, and levels of deleterious elements that were used to access expected smelter fees/penalties and the ability to market ore concentrate derived from the KSM Mineral Deposits;
 - c) Mining studies in respect of two mining methods for the KSM Mineral Deposits: open mining (Moose) and block cave mining (Golder);

- d) Mining studies in respect of contemplated mining methods and costs (Moose) for the KSM Mineral Deposits, mineral processing methods and costs in respect of ore derived from the KSM Mineral Deposits (Bosche, Wardrop), related metallurgical recoveries, and associated administrative costs;
 - e) Mining studies seeking to determine the size and shape of open pits, and studies in respect of the size and type of mining equipment (Moose) which documented the suitability of the inputs to the cut-off grade and resource model and supported the assessment of reasonable prospects of economic extraction from the KSM Mineral Deposits;
 - f) Studies seeking to determine the mining and economic requirements to support the mineral resource estimation process of the KSM Mineral Deposits - including road access studies (McElhanney, Moose), mine tunneling studies (Thyssen, Klohn) that assessed the cost of accessing the KSM Mineral Deposits (Moose) and managing water that must be diverted (BGC, Klohn), options for location of tailings management facilities and costs (Klohn), electrical power requirements, and costs for extracting and processing the mineral resources (W N Brazier Associates Inc. ["Brazier"]), base map preparation, geohazards and road access routes to support conceptual mine plans for the KSM Mineral Deposits (McElhanney);
 - g) Interpretative studies on the KSM Mineral Deposits that established technical and economic inputs to the mineral resource cut-off grades and to support reasonable prospects of eventual economic extraction from the KSM Mineral Deposits (Wardrop);
 - h) Infrastructure studies to determine whether the KSM Mineral Deposits presented reasonable prospects for eventual economic extraction (Thyssen, McElhanney, Moose); and
 - i) Economic studies assessing the commercial viability of the KSM Mineral Deposits (Wardrop).
- [21] Furthermore, the results obtained from the activities carried out and the reports made during the Relevant Period were consigned in another prefeasibility study entitled "2012 Preliminary Feasibility Study".
- [22] The activities carried out, as described above in paragraphs 16-19, resulted in Seabridge incurring the following expenses (the "Expenses") during the Relevant Period which the Respondent has denied as QMEEs:

Suppliers

2010

2011

W N Brazier Associates Inc.

\$89,520

\$105,170

Thyssen Mining

\$78,410

\$74,390

G&T Metallurgical Services Ltd.

\$30,009

Nil

Outback Promotions

Nil

\$2,577

Wardrop Engineering Inc.

\$705,612

\$510,927

Tetra Tech WEI Inc. (formerly Wardrop)

Nil

\$149,883

Moose Mountain Technical Services

\$484,758

\$561,741

Bosche Ventures Ltd.

\$127,669

\$260,753

Klohn Crippen Berger Ltd.

\$3,432,572

\$2,330,523

BGC Engineering Inc.

\$1,556,426

\$568,509

Golder Associates Ltd.

\$131,464

\$1,154,893

McElhanney Consulting

\$170,602

\$511,549

PSI Engineering Inc.

\$26,000

\$23,567

EBA Engineering Consultants Ltd.

\$1,958

\$18,794

Geotech Drilling Services Ltd.

\$1,754,453

\$872,460

ITASCA Consulting Group Inc.

Nil

\$21,366

\$8,589,453

\$7,167,102

[23] The Respondent denies that the expenses were incurred for the purpose of determining the existence, location, extent or quality of the KSM Mineral Deposits.

[24] The Respondent also denies that the activities were necessary to provide information to Seabridge to determine with increasing confidence the existence, location, extent or quality of the KSM mineral deposits, including whether there exists mineral resources and ultimately mineral reserves in the KSM Mineral Deposits.

Reassessments, objections, confirmation

[25] By notices of reassessment dated November 10, 2016, the Respondent reassessed Seabridge to reduce its BCMETCs by \$1,711,888.80 (being 20% of the \$8,589,452 of QMEEs) in its 2010 taxation year, and reduce its BCMETCs by \$1,433,421 (being 20% of the \$7,167,101 of QMEEs) in its 2011 taxation year (the "Reassessments").

[26] Seabridge objected to the Reassessments by notices of objection dated February 2, 2017.

[27] By notice of confirmation dated January 31, 2019, the Respondent confirmed the Reassessments. The notice of confirmation set out as follows:

As stated in our proposal letter dated January 7, 2019, it is our position that the above mentioned expenses incurred by the Company were not incurred to determine the existence, location, extent and quality of a mineral resource. The costs incurred with respect to the activities such as geological, geophysical, and geotechnical surveys related-as to whether the Company may extract the mineral resource in an economically viable method.

You have provided an expert report that states the prefeasibility activities, which were disallowed by the Canada Revenue Agency, were specifically described in the Canadian Institute Mining ("CIM") Exploration Best Practices Guidelines, and CIM Estimation of Mineral Resources and Mineral Reserves Best Practice Guidelines that are required for estimating a Mineral Resource. However, these guidelines from CIM do not have the force of law.

Based on our review of the facts and documents on file, it is our view that many of the activities of the prefeasibility study were commenced to assist the Company to determine the options and/or profitability of a mine development. Hence, expenditures in the amount of \$8,589,452 and \$7,167,101 incurred in taxation years 2010 and 2011, respectively, do not meet the definition of CEE under subsection 66.1(6) of the Act [or] QMEE under subsection 25.1(2) of the BCITA.

[28] The Respondent also notes that the CIM designates subcategories of the general definition of "Mineral Resources" to include "Inferred Mineral Resources", "Indicated Mineral Resources", and "Measured Mineral Resources". Further the CIM designates various subcategories of the general definition of "Mineral Reserve" to include "Probable Mineral Reserves" and "Proven Mineral Reserves".

[29] The Respondent admits that Seabridge incurred the expenses but denies that those activities were carried out for the purpose of determining the existence, location, extent, or quality of a mineral resource.

[30] The Respondent sets out the following in its reply to Seabridge's appeal:

11. In filing its income tax returns for the 2010 and 2011 taxation years, [Seabridge] identified that it had a permanent establishment only in Ontario and did not claim any BCMETCs.

12. Subsequent to filing its income tax returns for the 2010 and 2011 taxation years, [Seabridge] filed adjustment requests to include a permanent establishment in British Columbia, and claimed BCMETCs in the amounts of \$4,434,747 and \$4,119,141, respectively.
13. On June 6, 2011 and July 4, 2012, the [Respondent] initially assessed [Seabridge's] 2010 and 2011 taxation years, respectively, and accordingly issued notices on those dates.
- 14 On November 10, 2016, the [Respondent] reassessed [Seabridge's] 2010 and 2011 taxation years, and accordingly issued notices on that date, so as to:
 - a) for the 2010 taxation year, disallow BCMETCs of \$1,717,890 due to disallowed QMEEs of \$8,589,452, as set out in the attached Schedule "A"; and
 - b) for the 2011 taxation year, disallow BCMETCs of \$1,433,421 due to disallowed QMEEs of \$7,167,101, as set out in the attached Schedule "B".
- [31] The Respondent had made a number of assumptions of fact, including:
 17. []
 - e) [Seabridge's] stated business plan is to increase its gold ounces in the ground, but not to go into production on its own;
 - f) [Seabridge's] business plan is to either sell projects or participate in joint ventures towards production with major mining companies;
 - g) [Seabridge's] objective is to grow resource and reserve ownership per share;
 - h) [Seabridge's] risk-reducing strategy is to acquire North American deposits, expand them through exploration, move them to reserves through engineering, and sell them to, or enter into joint ventures with, established producers for mine construction and operation;
 - i) [Seabridge's] resource base of gold, copper and silver is one of the world's largest;
 - j) [Seabridge's] principal projects are located in Canada;
 - k) [Seabridge's] main projects are Courageous Lake in the Northwest Territories and the KSM project located near Stewart, British Columbia;
 - l) by December 31, 2014, the KSM project received provincial and federal environmental assessment approvals;
 - m) during the 2010 and 2011 taxation years, [Seabridge] hired various companies to help conduct a Pre-Feasibility Study ("PFS") as to the viability of the KSM project;
 - n) as part of the PFS, the companies conducted a variety of preliminary mine design and engineering and planning work, including work on open pit design, tailings facilities, road design and power supply options;

- o) during the 2010 and 2011 taxation years, [Seabridge] also hired companies to conduct exploration drilling on the Kerr, Sulphurets, Mitchell and Iron Cap deposits with respect to the KSM project;
- p) [Seabridge] also hired companies to conduct geotechnical drilling for the KSM project which was done to support mine design and mine planning activities;
- q) [Seabridge] also hired companies to perform metallurgical testing on the samples obtained from the KSM project;
- r) the [Minister] Disallowed QMEEs were not incurred for the purpose of determining the existence, location, extent or quality of a mineral resource;
- s) the [Minister] disallowed QMEES related to work that was economic in nature and performed to help [Seabridge] determine the future profitability of a potential mine;
- t) the [Minister] further disallowed QMEES related to ongoing business operation: issues and not grass-roots exploration activities;
- u) the [Minister also noted that] for the 2010 taxation year, [Seabridge] claimed a duplicate amount of \$30,009.

[32] Further, the Respondent takes the position that :

- v) [Seabridge] did not incur QMEEs of more than \$13,584,283 for the 2010 taxation year, and therefore, is not entitled to claim BCMETCs of more than \$2,716,857; and
- w) [Seabridge] did not incur QMEEs of more than \$13,428,602 for the 2011 taxation year, and therefore, is not entitled to claim BCMETCs of more than \$2,685,720.

ISSUE BEfore the court

[33] The issue before the court is whether the QMEEs were validly claimed as activities that were carried out for the purpose of determining the existence, location, extent, or quality of a mineral resource.

[34] To determine this issue, the Court must answer the following:

- a) What is the scope of the activities captured by the purpose test of s. 25.1 of the BCITA?
- b) Are the Disallowed Expenses within the scope of the purpose test and so are valid QMEEs?

[35] First it is necessary to review in detail the work and activities of Seabridge and review in detail the evidence including the opinion evidence of the expert witnesses in the field of mineral exploration and mining projects and industry definitions as that assists the court in determining the meaning of the activity within the confines of the legislation and existing caselaw.

legislation - the relevant provisions

[36] During the relevant years of 2010 and 2011, the term "qualified mining exploration expense" is as set out in s. 25.1(1) of the BCITA as follows:

Mining exploration tax credit

25.1(1) In this section:

[]

"qualified mining exploration expense of a taxpayer means any expense, other than an excluded expense, that is incurred

- (a) by the taxpayer,
- (b) after July 31, 1998,
- (c) for the purpose of determining the existence, location, extent or quality of a mineral resource in British Columbia, including
 - (i) such an expense incurred after February 28, 2015 for environmental studies or community consultations, including environmental studies or community consultations undertaken to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a mineral resource in British Columbia, and
 - (ii) any expense incurred in the course of
 - (A) prospecting,
 - (B) carrying out geological, geophysical or geochemical surveys,
 - (C) drilling by rotary, diamond, percussion or other methods, or
 - (D) trenching, digging test pits and preliminary sampling, and
 - (iii) and (iv) [Repealed 2017-12-52.]
- (d) in respect of goods or services acquired by the taxpayer that are all or substantially all provided in British Columbia,

to the extent that the expense is reasonable in the circumstances and is not an expense in relation to which a tax credit under this section has been claimed by another person.

[37] The parties agree that the paragraphs (a), (b), and (d) as well as the preamble and post-amble of the definition of the QMEE are satisfied.

[38] The debate, instead, concerns whether the Disallowed Expenses meet the purpose test of being incurred "for the purpose of determining the existence, location, extent, or quality of a mineral resource in B.C.", being the requirement under paragraph (c).

- [39] The Respondent's position is that Seabridge should not include expenses incurred to assess the commercial or economic value of a mineral resource. Accordingly, where the expenses are incurred for such a purpose, they are not QMEEs.
- [40] Seabridge 's position is that the purpose test should be interpreted to capture expenses incurred in respect of the full-range of multi-disciplinary activities undertaken in the exploration phase of the mining project.
- [41] Accordingly, the Court must determine the scope of conduct captured by the purpose test within s. 25.1 of the BCITA at the relevant time.

Principles of Statutory Interpretation

- [42] It is settled law that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament", known as the modern rule: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 23; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para 26. Tax legislation is no different: *Canada v. Alta Energy Luxembourg S.A.R.L.*, 2021 SCC 49 at para. 29 [Alta Energy]; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10 [Canada Trustco].
- [43] Justice Newbury set out the modern rule in *Pasquill v. British Columbia (Securities Commission)*, 2021 BCCA 424 at para. 35:
- [35] Both parties referred to and relied on the "modern rule" of statutory interpretation as formulated by Professor Sullivan in *Sullivan on the Construction of Statutes* (6th ed., 2014):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament ... [At 7.]

Professor Sullivan went on to state:

Even if the ordinary meaning is plain, courts must also take into account the full range of relevant contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.

and added that:

Most often ... ordinary meaning refers to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context -- in the words of Gonthier J., 'the natural meaning which appears when the provision is simply read through'. [At 28, 30.]

- [44] The plain meaning of the text is not in itself determinative, as even apparent clarity may be ambiguous when considered in its context: *La Presse inc. v. Quebec*, 2023 SCC 22 at para 23 [La Presse]. Where tax provisions are drafted with particularity and detail, courts place a greater emphasis on textual interpretation; by contrast, where more than one reasonable meaning can be ascribed to the words of the legislation, a lesser emphasis on the text will be afforded: *Canada Trustco* at para. 10.
- [45] The ordinary meaning rule presumes that the words in a statute should be given their ordinary meaning unless the alternative interpretation is plausible and there are sufficient reasons to justify departing from it: *Director of Civil Forfeiture v. Cunliffe*, 2025 BCSC 25 at para. 27.
- [46] It is an established principle of statutory interpretation that the French and English texts of legislation are equally authoritative: *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, 1993 CanLII 164 (S.C.C.) at 618. Where there are linguistic differences between the two versions, the common meaning between the two statutes is the one to be preferred. In situations where neither statute is ambiguous, or both are, the common meaning is normally the narrower version: *R. v. Daoust*, 2004 SCC 6 at para. 29.

Analysis

Proper Interpretation of the purpose test

- [47] In the following analysis, I have considered the legislative purpose of the QMEE provision separately from its text and context. However, I am cognizant that these are not watertight compartments but are in fact closely related and interdependent: *R. v. Wolfe*, 2024 SCC 34 at para. 33.
- [48] Again, the dispute centers on whether expenses that are directed towards determining the economic viability of a mineral resource in British Columbia are captured within the scope of the purpose test: Whether the expenses were incurred "for the purpose of determining the existence, location, extent or quality of a mineral resource in British Columbia": s. 25.1 of the BCITA.
- [49] While the relevant provision is under the BCITA, the section references provisions from the federal Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) [ITA], and imports the relevant interpretations pursuant to BCITA s.1(4) and s.1(5):
- (4) For the purposes of this Act, unless they are at variance with the definitions in this Act or in the regulations made under this Act, the definitions in the federal Act, and the definitions and interpretations made by federal regulations, apply.

[]

- (5) In any case of doubt, the provisions of this Act must be applied and interpreted in a manner consistent with similar provisions of the federal Act.
- [50] The parties' submission centred on the proper interpretation of the words "quality" and "mineral resource" in the purpose test. As detailed further in these reasons, Seabridge favours interpretations that include an economic component, while the Respondent offers narrower interpretations that omit an economic lens.

Mineral Resource

- [51] The term "mineral resource" is defined in s. 25.1(1) of the BCITA by reference to the definitions section in s. 248(1) of the ITA. It is common ground that the relevant provision is (a), "base or precious metal deposit".

mineral resource means

- (a) a base or precious metal deposit,
 - (b) a coal deposit,
 - (c) a bituminous sands deposit or oil shale deposit, or
 - (d) a mineral deposit in respect of which
 - (i) the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,
 - (ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin, lithium or sylvite, or
 - (iii) the principal mineral extracted is silica that is extracted from sandstone or quartzite;
- (matières minérales ressource minérale)

[Emphasis added.]

- [52] Unfortunately, the word "deposit" offers little clarity relative to "mineral resource". "Deposit" is not defined in the legislation, and the parties offered different interpretations. While it is common ground that it refers to a concentration of minerals, they differed on whether it had to be commercially viable.
- [53] The Respondent asserts there is nothing in the definition of a "mineral resource" that requires it to have reasonable prospects for eventual economically viable extraction. Instead, the Respondent urges the Court to adopt the definition of Ms. Hartzler, that a mineral resource is where the minerals have use or value and are in greater concentration than what is found normally in the earth.
- [54] Seabridge instead submits that deposit is best understood as a commercially viable orebody.

[55] Respectfully, I cannot agree with Seabridge's submission that it must be commercially viable. The record shows that deposits are often discovered that are not commercially viable but are still considered deposits. As the parties have both made clear, commercial viability depends on a complex array of factors, many of which are far removed from the mineral resource itself and vary significantly over time, such as technological changes or market conditions. In its ordinary use, it is clear that deposit means an accumulation of minerals, as defined in the Encyclopaedia Britannica, Inc. online edition, consulted March 20, 2025:

Mineral deposit, aggregate of a mineral in an unusually high concentration.

[56] The words of a statute are to be accorded their ordinary meaning, which is the understanding that spontaneously comes to mind when words are read in their immediate context: *Canadian National Railway Company v. British Columbia*, 2024 BCCA 309 at para. 89, citing *Pasquill* at para. 35. Seabridge's definition of a "commercially viable orebody" would make the term "deposit" a variable designation dependent on factors unrelated to the accumulation. This does not align with the ordinary meaning of "deposit", which more plainly reads to be an accumulation of minerals. This is a more static designation; the presence of the minerals does not change over time, though its viability as a mine may.

[57] I note that deposits, once identified, may be initially commercially unviable but revisited later as technology or market conditions change. When this was described by the experts' testimony, the word deposit was used to refer to the mineral resource both when it was viable and non-viable. For example, Ms. Hartzler explained in her report that exploration companies must raise more capital if they wish to continue exploring, and that "this becomes very hard without an exploration company's only selling feature, an economic deposit" [Emphasis added]. This can be contrasted with an exploration risk she identifies of "finding a too small deposit or nothing at all". If commercial viability was required for a mineral concentration to be considered a deposit, then the term "economic" would be redundant. Further, economic viability is assessed in part on elements only revealed later in the exploration process. The fact that deposit is used to refer to mineral accumulations even in the early stages of exploration when commercial viability is unknown indicates that such viability is not a necessary condition to be a deposit. In its plain and ordinary meaning, the word deposit is not a variable designation dependent on commercial viability. I, therefore, reject the Seabridge's interpretation.

[58] The Respondent's position more closely accords with the plain and ordinary meaning of "deposit". In Ms. Hartzler's interpretation, a deposit is defined as any location where minerals have a greater than normal concentration. However, what is absent from this definition is the question of degree. Without some minimum degree of concentration above the mean, the word "deposit" would be broadened significantly as even a de minimis increase in concentration above the average level would qualify as a "deposit", even though such a location would be of no interest for the purpose of exploration or mining.

- [59] It is a well-accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage: *British Columbia v. Philip Morris International, Inc.*, 2018 SCC 36 at para. 29, citing *R v. Proulx* 2000 SCC 5 at para. 28. Ms. Hartzler's interpretation would render the term "extent" to be effectively meaningless, as the determination of the "extent" of a mineral deposit would equate with a finding where deposit diminishes to the point the concentration is equivalent to its normal concentration in the ground. As the evidence from both Ms. Hartzler and Mr. Kirkman showed, this is not relevant for mining exploration; exploration is concerned with identifying minerals that may be exploited.
- [60] For the word "extent" to have any relevance, "deposit" must incorporate some minimum degree of concentration such that its extent has some relevance. On this point the French language version of the ITA is of assistance.
- [61] The French language version of the ITA, *Loi de l'impôt sur le revenu* (L.R.C. (1985), CH. 1 (5e suppl.)), provides in s. 248(1):

ressource minérale A le même sens que matières minérales. (mineral resource)

matières minérales

- a) Gisement de métaux communs ou précieux;
- b) gisement de charbon;
- c) gisement de sables bitumineux ou de schiste bitumineux;
- d) gisement minéral relativement auquel :
 - (i) le ministre des Ressources naturelles a certifié que le principal minéral extrait est un minéral industriel contenu dans un gisement non stratifié,
 - (ii) le principal minéral extrait est l'ammonite, le chlorure de calcium, le diamant, le gypse, l'halite, le kaolin, le lithium ou la sylvine,
 - (iii) le principal minéral extrait est la silice, qui est extraite du grès ou du quartzite. (mineral resource)

- [62] Both the English and French versions of the ITA are equally authoritative. The French version uses the word "gisement" for "deposit". "Gisement" refers to a mineral concentration significant enough to be considered for exploitation, as defined by the Office québécois de la langue française *Grand Dictionnaire Terminologique*[1]:

Disposition des couches de minéraux dans le sous-sol. Zone minéralisée assez importante pour qu'on puisse en envisager l'exploitation.

- [63] Other French language dictionaries likewise import a concept of exploitation in the definition of "gisement". The Dictionnaire Le Robert defines "gisement" as "masse importante de mineral".[2] The Larousse dictionary defines gisement, inter alia, as:[3]

Lieu où un matériel géologique donné s'est accumulé et que l'on peut exploiter en totalité ou en partie : Un gisement d'or. Gisement pétrolier.

- [64] The shared meaning rule for the interpretation of bilingual legislation dictates that the common meaning between the English and French legislative texts should be accepted: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 203. The French version of the statute, using the word gisement, is more specific than the English word for deposit. As contrasted between the Robert, Larousse and the Britannica, the French plain meaning from the dictionary is that it can be or has reasonable prospects of being exploited. As the shared meaning rule requires that the shared definition of the two terms be preferred, I find that that deposit refers to a mineral concentration significant enough to be considered for exploitation.
- [65] This does not mean that it must be commercially viable or exploitable. However, commercially viability is related to the definition as the deposit must be significant enough to be considered for exploitation. This reflects that what is considered a deposit is contextual, as consideration for exploitation depends on factors beyond simply a greater than normal concentration.

Quality

- [66] I turn now to "quality". Both parties acknowledged the word "quality", in isolation, is ambiguous and capable of more than one interpretation. In its dictionary definition, it can refer to a peculiar character, an inherent feature, degree of excellence, superiority of kind, a characteristic or feature, or even broadly how good or bad something is.
- [67] However, such ambiguity vanishes when "quality" is considered in the immediate context of s. 25.1 of the BCITA. The purpose test reads "for the purpose of determining the quality of a mineral resource in British Columbia". Where "quality" is used to indicate a discrete characteristic, such as colour or size, it is typically written as "a quality" in singular or "the qualities" in plural. By contrast, where it is being used to indicate degree of excellence or superiority, it is ordinarily used as an adjective ("this is a quality product"), or a noun without a plural ("the quality of the product").
- [68] Read in its grammatical and ordinary sense, in its immediate context, "the quality of mineral resource" can refer to either a singular characteristic or to the degree of excellence. As there is no singular physical characteristic which "the quality" could reasonably or obviously be referring to in the purpose test, interpreting "the quality" to mean a particular characteristic would introduce needless ambiguity into the statute. The legislature is presumed to use the clearest way of expressing its intention: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada, 2023), at § 8.02. If the

legislature intended to refer to a particular characteristic, it could have simply named that characteristic. As a result, "the quality" must be interpreted to mean the degree of excellence or superiority.

- [69] Quality does not expressly incorporate commercial, economic or market value concepts, nor does it exclude them. In certain contexts, quality may indicate commercial value; a "quality investment" would be ordinarily understood to mean an investment with good expected returns relative to its risk. In other contexts, it does not; a "quality knife" may ordinarily indicate good durability or sharpness, but not generally market value.
- [70] Indeed, "quality" is an inherently contextual term. In its ordinary sense, quality is used to indicate superiority or excellence, but these terms on their own provide little insight to the underlying meaning. Excellence can only be assessed relative to a purpose or objective; for a kitchen knife, that purpose is for chopping and slicing. For an investment, it is generating financial returns.
- [71] The purpose of a deposit, within the context of mining, is to be mined for minerals. Situated in this context, quality refers to those aspects of a deposit that affect its ability to be mined, such as its concentration, ease of access, by-products and ease it may be refined. In practice, these variables are indistinguishable from economic viability, as the more a deposit is fit for purpose - to be mined - the more economically viable the mine. As a result, the ambiguity of the word quality largely evaporates when considered within its entire context.
- [72] This interpretation of the word quality is supported by Ms. Hartzler's evidence. She indicates in her report:

With the new information, the company can rank their exploration targets and decide if they want to proceed with further in-depth exploration. An exploration target has been defined by the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) as "... a statement or estimate of the exploration potential of a mineral deposit in a defined geological setting where the statement or estimate, quoted as a range of tonnes and a range of grade or quality, relates to mineralisation for which there has been insufficient exploration to estimate Mineral Resources." Basically, a low-quality target would have a concentration of a desired commodity (usually referred to as the grade) where either the volume, concentration, and/or other characteristics cause the cost of mining to be more than the money received from the sale of the ore (i.e. not economical to mine). A high-quality target can be mined at a profit or at least a break-even point.

[]

The difference between a high-quality target and a low- quality target is not static, but relative to extraction, processing, and smelting technologies. Companies sometimes attempt to decrease their risk by revisiting old deposits or mines (referred to as brown field exploration) in hopes that new knowledge and technology will discover extra mineralization left behind. New mining technologies can also decrease the mining costs of a deposit, which can change a low- to mid-quality deposit into high-quality. In general, mining costs are the one item an exploration or

mining company can control as they depend on tangible costs (e.g. equipment, labour, taxes, remediation bonds, etc.). Whereas the price of a deposit's commodity is based on global market forces, usually (but not always) outside the reach of a single mining company.

[Emphasis added.]

- [73] Ms. Hartzler's report shows that the quality of a deposit is incorporates considerations of its economic viability, which in turn is a function of multiple factors including the costs of mining it. This accords to the ordinary and plain meaning of "quality" in the context of the purpose test, as a deposit is of interest for exploration because it may be profitably mined. It follows that a high-quality mineral resource, in terms of exploration, would be one with a greater likelihood it may be profitably mined. I find little basis in the language of the statute or its context to read quality to be a more narrowly circumscribed term than its plain and ordinary meaning would suggest.
- [74] As a result, I find that the word "quality" encapsulates the broad range of inputs that determine its degree of excellence or fitness for its purpose: to be mined. This includes factors such as operational costs, capital costs, grade of the mineral, accessibility, chemical composition, and environment risks. For example, an expense incurred to estimate the operational cost of mining would be captured by "quality" and would so be a valid QMEE. However, as noted below, this is subject to the locality restriction of being specific to "a mineral resource in British Columbia".
- [75] The Respondent submits that the ejusdem generis principle should be applied to narrow the scope of "quality" to refer to the physical characteristics of the mineral resource. This principle states that when a general term is preceded by a list of specific terms, it will normally be appropriate to limit the general term to the same genus of the preceding terms: *Singh v. Singh*, 2020 BCCA 21 at para. 136.
- [76] For the ejusdem generis principle to apply, three conditions must be met as set out in *Singh* at para. 137:
- a) the specific items in the list must belong to a single identifiable class;
 - b) this class must be narrower in scope than the general words that follow; and
 - c) the rule cannot be invoked if the specific class has nothing apart from those items to apply to.
- [77] The Respondent's position is that the terms "existence", "extent" and "location" are specific terms that belong to the identifiable class of physical characteristics. Further, the word "quality" is a general term that fully encapsulates the specific class of physical characteristics.
- [78] I disagree. The word "quality" is not being used as a general term that encapsulates the preceding terms. An example of such a general term is found only a few lines later in the s. 25.1 QMEE definition, "drilling by rotary, diamond, percussion or other methods". In this

phrase, "other methods" is clearly a general term that encompasses the drilling methods of rotary, diamond and percussion drilling. The omission of the word "other" before "quality", when used immediately after to indicate a general term, shows the legislature did not intend "quality" to be a general term.

- [79] Further, the Respondent's interpretation is at odds with the plain language of the state as described above. It reads "for the purpose of determining the quality of a mineral resource". As noted above, if "quality" was used to refer to discrete physical characteristics, it would read "a quality", "the qualities", or better, "other qualities". The plain language of the statute indicates the legislature did not intend to use as a general term referring to physical characteristics, but rather its degree of excellence or superiority of kind.
- [80] Lastly, as the Respondent acknowledges, these preceding terms are spatial characteristics, such as location and size, of the resource under review. It is not clear why the Respondent then indicates the specific class is physical characteristics, which include factors such as, in the words of the Respondent, "density, acid-producing properties, magnetic properties or concentration of the target mineral within the deposit". The leap from spatial to physical characteristics was not explained by the Respondent, and I do not find it persuasive that the use of spatial characteristics would be intended to limit a general term to physical ones.
- [81] The Respondent also submits that "quality" should not be interpreted to overlap with the word "value" due to the presumption of consistent expression. It is presumed that words are given the same meaning throughout a statute unless clearly indicated otherwise in the context: *Harrison Hydro Project Inc. v. British Columbia (Environmental Appeal Board)*, 2018 BCCA 44 at para. 113. The Respondent cites s.135(4) of the ITA, which describes the attributes of goods in the following context:

Allocation in proportion to patronage for a taxation year means an amount credited by a taxpayer to a customer of that year on terms that the customer is entitled to or will receive payment thereof, computed at a rate in relation to the quantity, quality or value of the goods or products acquired, marketed, handled, dealt in or sold, or services rendered by the taxpayer from, on behalf of or to the customer, whether as principal or as agent of the customer or otherwise, with appropriate differences in the rate for different classes, grades or qualities thereof, if []

[Emphasis added.]

- [82] The Respondent submits that if Parliament had intended for "quality" to mean the same thing as "value" in the allocation in proportion to patronage definition, it would not have included both terms as it would be redundant and superfluous. Therefore, quality must be interpreted to mean something other than value.
- [83] This submissions rests on the proposition that by accepting economic or commercial viability as a part of quality, it becomes identical to "value" in meaning. I do not agree with this proposition.

[84] The words "quality" and "value" may be closely related. In their plain and ordinary use, a high quality good is often the same as a high value good. This does not, however, mean that they are interchangeable terms. Value necessarily imports a consideration of the market context, as it asks how much something is worth; in other words, how much someone would pay for it. While "quality" may be closely related, as high quality generally translates to high value, the terms are not inter-changeable and high quality does not necessarily indicate high value. For example, the value of a mineral resource might depend forecasted global demand for the resource it produces because this indicates a high expected price. This would not be captured by the word "quality", which is limited to the resource itself, but is captured by "value", as it asks how much the mineral resource is worth. As a result, the underlying supposition of the Respondent's submission that the words are interchangeable must be rejected.

The Line Between Exploration and Development

[85] Both parties placed significant emphasis on the different stages of mining process. This is relevant as the legislature has drawn a distinction between mine development expenses and mine exploration expenses. A "Canadian development expense" is captured in the "excluded expense" definition of s. 25.1 of the BCITA:

"excluded expense" of a taxpayer for a taxation year means

- (a) a Canadian development expense within the meaning of section 66.2 (5)
- (b) an expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to a potential or actual extension of such a mine,

[]

[86] Relevant portions of the s. 66.2(5) of the ITA definition of "Canadian development expense" include:

- (c) any expense incurred by the taxpayer before November 17, 1978 for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities, including
 - (i) clearing, removing overburden and stripping, and
 - (ii) sinking a mine shaft, constructing an adit or other underground entry,

[]

[87] I note here that during the relevant period this definition, for expenses after November 17, 1978, was absent from s. 66.2(5) "Canadian development expense". Instead, it was captured under s. 66.1(6)(g) "Canadian exploration expense definition":

- (g) any expense incurred by the taxpayer after November 16, 1978 for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft or constructing an adit or other underground entry, []

[88] This provision was brought back into the s. 66.2(5) definition in 2013, reading as follows:

(c.2) any expense, or portion of any expense, that is not a Canadian exploration expense, incurred by the taxpayer after March 20, 2013 for the purpose of bringing a new mine in a mineral resource in Canada, other than a bituminous sands deposit or an oil shale deposit, into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft, constructing an adit or other underground entry or drilling a well for the extraction of lithium from brines, []

[89] While this fact that this provision was absent from the development expense definition for the relevant period was noted by the parties, its impact on the interpretation of this issue was not addressed. However, successive amendments to legislation can still be of assistance in revealing the direction the legislature is moving: see e.g. *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 63. In this case, the definition of para. (g), which was later identified as a category of development expenses, is of assistance in identifying how the legislature chose to characterize development expenses.

[90] It's inclusion, during the relevant period, under the ITA definition of exploration expenses does not detract from its assistance in interpreting development expense. The legislative history reveals that the legislature has intermittently treated exploration and development expenses together or separately depending on whether it sought to provide incentives to one, or both. For example, in the 1971 version of the ITA, s. 66(1) afforded a deduction for "Canadian exploration and development expenses". This deduction was split into the two categories of exploration and development in 1974 and granted the full deduction of 100% to the former and 30% to the latter. The inclusion of what is now a development expense under the exploration definition in the relevant period is, as a result, unsurprising and indicative of changing policy choices.

[91] The provision is still of assistance in clarifying how the legislature delineated between the stages of mining. The overall scheme of BCITA and ITA identifies three broad stages of a mine relevant to this matter:

- a) Mining exploration, which is described under the purpose test: "for the purpose of determining the existence, location, extent, or quality of a mineral resource in B.C.", and prior to the mine coming into reasonable commercial production by virtue of the "excluded expense" definition.

- b) Mine development captured by a different purpose test: "for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities" (the "Development Test").
- c) Mine operation, which is "any expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to be related to a potential or actual extension thereof."

[92] These stages are evident in the definition of Canadian exploration expense under s. 66.1(6) (f) of the ITA, which excludes development and operation expenses from exploration under (v) and (vi), respectively:

- (f) any expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well) for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including any expense incurred in the course of
 - (i) prospecting,
 - (ii) carrying out geological, geophysical or geochemical surveys,
 - (iii) drilling by rotary, diamond, percussion or other methods, or
 - (iv) trenching, digging test pits and preliminary sampling,but not including
 - (v) any Canadian development expense, or
 - (vi) any expense that may reasonably be considered to be related to a mine that has come into production in reasonable commercial quantities or to be related to a potential or actual extension thereof,

[93] There is no gap between the exploration and development phases of a mine. Canadian exploration and development expenses under the ITA were considered by the Federal Court in *Oro Del Norte S.A. v. Canada*, [1993] 1 CTC 245, 1993 CanLII 17066 (F.C.) [*Oro Del Norte*]. Prior to 1974, the deductions for exploration and development expenses were not separated, reading as "the write-off for expenditures on exploration and development". They were bifurcated in 1973 as the two separate categories that exist today. In *Oro Del Norte* at 256, the Court found that despite this bifurcation, the two provisions together continued to cover the full range of pre-production expenditures:

The distinction may have no effect upon a taxpayer's claim to include as Canadian exploration expenses all the preliminary expenses incurred until a decision is made to initiate a new mining project, and all development expenses of that project where a new mine is sought to be developed in a resource that has not earlier yielded production in reasonable commercial

quantities. Where, however, the expenses incurred may be reasonably considered to relate to a mine, or an extension thereof, that has come into production in reasonable commercial quantities, then preliminary expenses incurred in assessing the mineral resource may not be claimed as Canadian exploration expenses. []

[94] Both Ms. Hartzler and Mr. Kirkham provided extensive evidence on the lifecycle of a mine. In the evidence of Mr. Kirkham, the major milestones of mineral projects are as follows: greenfield exploration, deposit definition, resource estimation, reserve delineation, mining, closure and, finally, brownfield. Ms. Hartzler identified the follow steps under four broad categories. Exploration, covering area and target determination, resource definition, reserve definition; Development, covering mine planning, development and construction; Operation, covering extraction and processing of the ore. Finally, closure and reclamation of the mine.

[95] Ms. Hartzler's broad categories aligns to the stages evident in the BCITA and ITA. The Respondent heavily relies on Ms. Hartzler's inclusion of mine planning under the development stage to explain the Minister's rejection of the Disallowed Expenses. Ms. Hartzler identifies "mine planning" as follows:

While completing the exploration work and research for the reserve definition, the company will also be acquiring information related to mine planning. Social and environmental impacts assessments along with statutory permits from the municipal, provincial/territorial, and federal government for various sections of the process are required for mine development as these will include confirmation of ownership of the land and ultimately the ability to mine the deposits). After the mining and processing plans have been finalized, large equipment (processing plant equipment, plant electricity generators, drill rigs, diesel tanks, building structures, haul trucks, diggers/loaders, conveyor belts, etc.) are ordered. The size and bespoke nature of the equipment require long lead-times between the date of order and the date of delivery.

[96] The inclusion or exclusion of an expense under the QMEE definition is an exercise that must be grounded in the language of the statute itself, and the legislature elected to separate the categories of expenses by the purpose for which they were incurred. While Ms. Hartzler's evidence was of great assistance to the Court, "mine planning" expenses are not a category or term under the BCITA or ITA. The fact that Ms. Hartzler identified an expense as one related to "mine planning" does not mean it was or was not incurred "for the purpose of determining the existence, location, extent, or quality of a mineral resource in B.C.", nor is of persuasive value. The relevant question to be determined is the purpose of the expense, not the category into which that type of expense typically falls.

[97] For this same reason, Seabridge's delineation between exploration and development expenses as before and after the decision to build a mine is of little assistance. The legislature did not separate exploration and development expenses temporally or by stage; it separated them according to the purpose they were incurred. There is nothing in the statute that prevents a development expense from being incurred prior to the decision to build a

mine is made, and it is likewise possible for an exploration expense to be incurred after that decision has been made. For example, further efforts to determine the extent of a mineral resource are no less an exploration expense because development efforts are underway.

- [98] The legislature adopted a temporal delineation only for operating expenses, determined when the mine is producing in reasonable commercial quantities. Had the legislature intended the exploration and development definitions to likewise be delineated by a temporal marker tied to the stage of the mine's lifecycle, such as the decision to build a mine, it would have done so as it did with operating expenses. As a result, I cannot accept Seabridge's separation of exploration and development expenses as based on the decision to build a mine. The definition is based on the purpose for which it was incurred.
- [99] I note here that I do not need to examine the delineation between the purpose test and the Development Test. Nothing in these Reasons should be taken to indicate that the Disallowed Expenses would not be captured by the Development Test, nor that they would be; this issue is not before the court because during the relevant period the Development Test was absent from the "Canadian development expense" definition under s. 66.2(5) of the ITA.

The Purpose of the s. 25.1 QMEE Deduction

- [100] Tax benefits are generally conferred to promote purposes sought by the legislature related to specific activities, including promoting particular kinds of commercial activity: Canada Trustco at paras. 52-53. While I am aware that the conferral of tax benefits can serve a variety of independent and interlocking purposes (Canada Trustco at para. 53), both parties were aligned that the purpose of the QMEE deduction in s. 25.1 of the BCITA was to encourage and increase exploration activities. The reason for the particular treatment of exploration activities is the uniquely high-risk of exploration activities. For a deposit to become a successful mine, "the available statistics suggest that a success rating of less than a tenth of a percent is the norm and only in favourable circumstances will this rise above 1%", citing from Moon, Charles J., EDS, *Introduction to Mineral Exploration*, 2nd edition (Maine: Blackwell Publishing, 2006) (pages 14-15). This risk is exacerbated by the high-cost of exploration activities, which often require significant capital expenses by firms. As the Hansard record shows, the legislature identified the high-risk of exploration activities and sought to support it through the tax advantages under s. 25.1 of the BCITA.[4]
- [101] Each stage of the exploration process is aimed at reducing the risk that a deposit will not become a successful mine, or in other words, increasing the certainty that it can be a commercially viable mine. Mr. Kirkham's evidence was that many stages are required in order to advance the mineral project into a sustainable mining operation, where each stage is meant to increase understanding and decrease uncertainty and the risk of failure. He underscored that the process is not linear. With increased information that particularly derived from exploration activities, inter alia, the focus and goals of a mineral project may change, shift, and not ultimately result in what was initially contemplated.

- [102] This focus on risk, and providing tax incentives for risky exploration activities, explains the different tax treatment for exploration and development activities. Section 25.1 explicitly excludes development expenses from application pursuant to s. 25.1 of the BCITA, in reference to s. 66.2(5) of the ITA. As Mr. Kirkham explained, the purpose of exploration is to derisk a proposed project to the point that the decision to begin development of a mine can be made. Once a mine reaches the stage of development, the mineral resource has been derisked to the point where a mining firm is confident that it can be economically mined. As a result, the legislature excluded development expenses, associated with a much less risky endeavour, from the s. 25.1 benefit.
- [103] With this context in mind, a purposive interpretation of the purpose test favours an expansive definition that includes the concept of economic viability. The risk in a mining venture is that, ultimately, it will not discover a mineral resource that can be mined profitably. The evidence of both experts showed that this risk may manifest in a myriad of ways. It may be because of the physical characteristics of the mineral, such as a deposit that is determined to be too small or of low concentration; it may result from environmental factors, such as the discovery of an endangered species habitat may require costly mitigation measures; or it may be because of factors unrelated to the mineral resource itself, like a high cost of capital or low demand for the resource in question.
- [104] Accepting the Respondent's more limited interpretation of the purpose test does not align with the legislature's purpose as the risk associated with exploration activities is not confined to the immediate physical attributes of the ore itself. The legislature was concerned with the high degree of risk associated with exploration activities and sought to provide a corresponding benefit. There is little to indicate that the legislature was only concerned about the risk associated with only the physical properties of the mineral resource in question. Given the multifaceted nature of risk in mining exploration, it aligns with the legislature's purpose that the QMEE supports the broad array of multidisciplinary activities necessary to address the risk a mineral resource may not be ultimately economically viable to mine.

Locality Restriction

- [105] I agree with the Respondent that the targeted nature of the QMEE indicates the legislature's intention to exclude certain external factors from the purpose test. This is indicated in the language "of a mineral resource in British Columbia", which imports a locality restriction to the purpose test.
- [106] In my view, the language "a mineral resource in British Columbia" shows the intention of the legislature to restrict expenses to those incurred in relation to a specific mineral resource in British Columbia. As the Respondent and Seabridge have both noted, the cost of exploiting a mineral resource is dependent in part on external factors, like global mineral prices and the cost of capital. Expenses that are incurred to assess some generalized risk or cost to the industry or commodities, such as a report on new mining technology, are not

specific to "a mineral resource in British Columbia". Their impact on the determination of quality is incidental to their purpose as a generalized assessment.

- [107] What is required is a direct relationship to a mineral resource in British Columbia. Expenses that are specific to a mineral resource in British Columbia are captured as long as they otherwise satisfy the purpose test. For example, an expense incurred to assess the cost of extracting the ore from a specific mineral resource in British Columbia would likely be captured, while an expense incurred for the purpose of assessing extraction costs generally would not be.

Conclusion on Statutory Interpretation

- [108] The indicators of legislative meaning, the text, context and purpose, of the s.25.1 QMEE deduction show that the legislature intended to provide the deduction for the broad scope of multi-disciplinary activities that are undertaken in the exploration of a mineral resource in British Columbia.
- [109] I find that an interpretation of the word "quality" that includes economic viability is required by the text, context and purpose of the legislation. Therefore, mineral resource depends not only on the direct physical characteristics of the mineral resource, but also the broad range of factors that inform the economic viability of its extraction in British Columbia.
- [110] Thus expenses incurred for the purpose of determining of the economic viability of a mineral resource are captured under the "quality" term of the purpose test, subject to the limitation that the expenses must be specific to a mineral resource in British Columbia being explored. Put another way, they may not be expenses incurred to assist in the determination of the economic viability of mineral resources generally.
- [111] With this interpretation in mind, I will now consider whether the Disallowed Expenses are captured within the purposes test of s. 25.1 of the BCITA.

evidence at trial

- [112] For convenience, I reproduce here the summary table of the Disallowed Transactions as set out in the Agreed Statement of Facts:

Suppliers

2010

2011

W N Brazier Associates Inc.

\$89,520

\$105,170

Thyssen Mining

\$78,410

\$74,390

G&T Metallurgical Services Ltd.

\$30,009

Nil

Outback Promotions

Nil

\$2,577

Wardrop Engineering Inc.

\$705,612

\$510,927

Tetra Tech WEI Inc. (formerly Wardrop)

Nil

\$149,883

Moose Mountain Technical Services

\$484,758

\$561,741

Bosche Ventures Ltd.

\$127,669

\$260,753

Klohn Crippen Berger Ltd.

\$3,432,572

\$2,330,523

BGC Engineering Inc.

\$1,556,426

\$568,509

Golder Associates Ltd.

\$131,464

\$1,154,893

McElhanney Consulting

\$170,602

\$511,549

PSI Engineering Inc.

\$26,000

\$23,567

EBA Engineering Consultants Ltd.

\$1,958

\$18,794

Geotech Drilling Services Ltd.

\$1,754,453

\$872,460

ITASCA Consulting Group Inc.

Nil

\$21,366

\$8,589,453

\$7,167,102

[113] I reiterate that during the relevant period the definition of the ITA s. 66.2(5) "Canadian development expense" did not contain a provision that could reasonably capture the expenses. As a result, the sole issue for the court to decide is whether the Disallowed Expenses are captured within the purpose test. The scope of the Development Test, and whether the Disallowed Expenses would be captured by it, is not relevant to this issue.

Expenses Incurred and Disallowed

BGC Engineering Inc. ("BGC")

- [114] BGC provided engineering services related to the geotechnical stability of rocking pit walls used the information that gathered to provide open-pit slope design criteria for three proposed open pits. This included recommendations for the maximum pit slope angles and design parameters. Hydrogeological studies for each of the proposed pits were conducted and BGC also reviewed the proposed pit areas and surrounding terrain for potential geo-hazard. This was set out additionally in the Agreed Statement of Facts at paragraphs 18 to 20:
- [18] BGC provided engineering services related to studying the geotechnical stability of rock in pit walls and the studying of geohazards.
- [19] BGC used the rock core or other samples for mapping and laboratory testing and a general geotechnical analysis. The geotechnical analysis was required to determine the geotechnical nature of the rock analyzed.
- [20] BGC provided open pit slope design criteria for three proposed open pits, including recommendations for maximum overall pit slope angles and design parameters. BGC also conducted hydrogeological studies for each of the proposed pits and reviewed the proposed pit areas and surrounding terrain for potential geohazards (e.g., snow avalanche paths and potential landslides).
- [115] Mr. Rudi Fronk, Seabridge's CEO, gave evidence on the Disallowed Expenses. He testified that, as a consequence, the mineral resources estimated in respect of the gold went up. Mr. Fronk also explained that the information obtained by BGC enabled Seabridge to model conceptual open-pit mining in each of the zones to calculate estimated costs for mining methods that might be employed in each zone. This was then put it into block models to assist which would have assisted Seabridge delineating ore in waste.
- [116] I find that these expenses are captured within the purpose test. The evidence of Mr. Kirkham is that this information informs the mine operating and capital costs. As a result, it was incurred for the purpose of determining the quality of a mineral resource and is a valid QMEE.

Klohn Crippen Berger Ltd. ("Klohn")

- [117] In respect of the Klohn's expense, Mr. Fronk testified that Klohn provided engineering services related to studying water management control, mine waste management, and tailings impoundment control. This included a surface and underground water flow routes and rates, geotechnical analysis of drilling, as well the geotechnical analyses of the ground associated with water management and structures entailing management facilities as set out in the Agreed Statement of Facts at paras. 27 to 28:

[27] Klohn provided engineering services related to studying water management control, mine waste management, and tailings impoundment control. The work from Klohn included surface and underground water flow routes and rates, geotechnical analyses of drilling, and geotechnical analyses of ground associated with water management structures and tailings management facilities.

[28] Water management structures include surface diversion ditches, diversion tunnels, water storage dams and tailings seepage collection dams and tailings foundations in dams. The designs for all of these structures were used to calculate both operating and capital costs

[118] In direct examination, Mr. Fronk was asked the following and provided his response:

Q And does the information -- we were talking about capital and operating costs that would be derived from this work, does that information have an impact on Seabridge's understanding of the rock beneath the surface?

A Yeah, obviously, it does. So each of these disciplines is not a silo. These are professionals that share information that impact each other's work that they're doing. So Klohn Crippen will be working with the geotechnical drillers and also with the mine planners hand in hand that would impact their overall designs on pit designs, block caves designs and all that, so it is a very integrated process where all this information is needed, because without it you can't determine whether the project has the potential to be economically viable.

[119] The evidence shows that Klohn's work informed the estimates of the mines operating and capital costs. As a result, these activities were undertaken to inform the quality of the mineral resource, and so are captured within the purpose test.

Golder Associates Ltd. ("Golder") and ITASCA Consulting Group Inc. ("ITASCA")

[120] In the Agreed Statement of Facts, Golder provided mine engineering services in respect of underground mine analysis and design. In each case the blocks, values, and the geostatistical model were used as inputs to complex mine engineering underground design and scheduling software routines, in order to model and plan for block cave mining at the Iron Cap and Mitchell underground mines.

[121] ITASCA performed a third-party evaluation of the underground cave-mining aspects of the Mitchell Deposit prefeasibility study: "Pre-Feasibility Block Cave Mine Design -- Mitchell Deposit," by Golder. Ms. Hartzler agreed that these activities informed the mine's development, capital and operations cost.

[122] These expenses are captured within the purpose test. They were undertaken to better inform the operational and capital expenses of the ultimate mining venture. As a result, these activities were undertaken to inform the quality of the mineral resource, and so are captured within the purpose test.

Moose Mountain Technical Services ("Moose Mountain")

- [123] Moose Mountain provided mine engineering services related to detailed pit designs, and capital and mine operating cost estimates. The work included valuing each block in the geostatistical model for potential inclusion into resources or reserves. Open-pit mine cost, metal recovery formula interpretation, and geotechnical characteristics were input into a complex open-pit mine design software in order to determine from an operating cost point of view what blocks in the geostatistical model could potentially be of ore value.
- [124] Mr. Fronk testified that those were necessary for assessing the mining method which would be possible and they provided mine engineering services related to conceptual mind designs.
- [125] Mr. Fronk said that Moose Mountain created conceptual open-pit mine designs, Golder created conceptual underground mine designs, ITASCA provided third-party review of Golder's conceptual designs. Overall, Mr. Fronk testified that understanding the costs has an impact on Seabridge's understanding of the minerals in the ground because as technical drilling is done, assay data is collected for every geotechnical sample point. All of this is necessary to determine whether the project has the potential to be economically viable.
- [126] He testified that a "qualified person" works on these (QP Expert). A QP Expert is a term defined in National Instrument 43-101 as someone who can do that kind of work.
- [127] Mr. Fronk testified that the work by Moose Mountain, Golder, and ITASCA impacted on Seabridge's understanding of the ore and waste a question. At direct examination he stated:

Q So Moose Mountain, how would its work have been impacting that question of ore and waste?

A Well, again, when you have -- when you have an open pit shape, just because it's contained in an open pit doesn't mean it's all ore. You can mine a block there and you're going to do blast hole data as you're doing blast holes to basically loosen up the rock in a pit. You're going to assay that information and determine whether that is ore or waste. If it's above a certain grade or recoverable grade, that material will go to the mill. If it's below a certain grade, it doesn't make sense to send it to the mill because you can lose money on that processing cost. So you have to determine what is above grade, above a cutoff grade, and what is below a cutoff grade. And the cutoff grade is determined by economic viability. A cutoff grade takes into account the revenues you're going to get, which is the metal price times the recovery of the metals offsetting infrastructure costs and operating costs. And if you can't have your mines or your deposits cover your infrastructure costs or your operating costs, you don't have a viable project. And that's why all this work that we did over those years that the Crown disallowed is essential to determining the economic viability of this project.

[128] Ms. Hartzler agreed that these expenses were incurred to order to better estimate the operational and capital costs of the KSM property. As a result, these activities were undertaken to inform the quality of the mineral resource, and so are captured within the purpose test

Geotech Drilling Services Ltd. ("Geotech Drilling")

[129] Mr. Fronk also gave evidence with respect to Geotech Drilling. The Agreed Statement of Facts at para. 23 sets out that Geotech carried out geotechnical drilling at various sites within the KSM Property. More precisely, Geotech's drilling activities supplied the samples necessary for the metallurgical testing as well as for the carrying out of the work of the service providers who were addressing geotechnical, environmental, and mine engineering issues.

[130] He testified the work was necessary to get to the point where they collected data to develop not only cave shapes and pit shapes, but also to clearly determine whether the new zones, Iron Cap, that had been added to the project had a reasonable prospect of being economically extracted.

[131] Mr. Fronk testified that the information from Geotech and the information derived from the information had an impact on Seabridge's estimates of the resources or reserves because it allowed Seabridge to incorporate Iron Cap in the block cave at Mitchell into the mine plans and update the resources accordingly.

[132] These expenses are captured under the purpose test. The expenses were incurred for the purpose of determining the extent and location of the mineral resource, as well as the capital and operational expenses which informed its quality.

EBA Engineering Consultants Ltd. ("EBA"), McElhanney Consulting ("McElhanney"), Bosche Ventures Ltd. ("Bosche") PSI Engineering ("PSI"), Thyssen Mining ("Thyssen"), and W N Brazier Associates Inc. ("Brazier")

[133] Mr. Fronk testified to the services provided by the following companies.

[134] EBA and McElhanney Consulting provided services relating to the conceptual study of proposed winter access roads and other road access.

[135] Bosche's and PSI's services related to conceptual studies relating to tailings, delivery, and slurry pipeline systems. Ms. Hartzler asserts that these activities relate to the plan and cost of the route the deposit rock will take to get from the mine entrance to the processing facility.

[136] Thyssen's service related to conceptual tunnelling designs. Mrs. Hartzler opined these expenses informed the operational costs of mining the mineral resource, as the cost of constructing water diversion tunnels is necessary to avoid the costs associated with water pumping and treatment.

- [137] Brazier's services related to conceptual design for addressing electrical power requirements for KSM Project. Mrs. Hartzler asserted these expenses relate to the processing costs of the deposit.
- [138] Mr. Fronk testified all of those services were necessary for assessing, on a conceptual level, the viability operationally of the mines of each of the zones of the KSM Project. These services enabled Seabridge to estimate the ultimate costs of the KSM Project by contribution and impacted on Seabridge's resource estimates.
- [139] As a result, these activities were undertaken to inform the quality of the mineral resource, and so are captured within the purpose test.

Wardrop Engineering Inc. ("Wardrop") and Tetra Tech WEI Inc. (formerly Wardrop) ("Tetra Tech")

- [140] With respect Wardrop and Tetra Tech, Mr. Fronk testified that they provided engineering services for the design of a potential process plant. This design forms the process component, which used the inputs from the geology of the deposit, the metallurgical tests work, the mine production schedule, and environmental discharge commitments in order to design of a potential process plant. From there, an estimate can be made of the potential process capital and operating costs as well as unexpected recoveries. Those operating costs and recoveries were then inputted into each block in the geostatistical model prepared by the suppliers involved in the mine engineering work. It was for Moose Mountain to determine if the block had economic potential. Metallurgical results also were used as inputs to process the potential plant design as well as the capital and operating cost determinations, as noted in the Agreed Statement of Facts and the evidence of Mr. Fronk.
- [141] They also prepared the Kerr-Suplhurets-Mitchall (KSM) Prefeasibility Study (the "PFS"). All the various technical determinations as well as the engineering services were brought together by Wardrop and Tetra Tech as retained by Seabridge. Wardrop and Tetra Tech compiled the information obtained from other suppliers and from their own engineering services. To prepare the PFS, Wardrop and Tetra Tech were required to summarize other suppliers' work and arrive at conclusions and make recommendations for future exploration activities.
- [142] Mr. Fronk testified that the essence of Wardrop and Tetra Tech services was to enable Seabridge to better understand the resources of the KSM Project. He testified that without that function, the exploration project could not continue.
- [143] The Respondent submits that the overall purpose of the preparing a PFS is to demonstrate the economic viability of a project in order to marshal capital investment or partnership for the development of an eventual mine. I agree. Wardrop's work in compiling and assessing the information into a PFS, while perhaps essential to the Respondent's exploration efforts, was not incurred for the purpose of determining the location, existence, extent or quality of a mineral resource. Instead, it was incurred to compile and communicate those

determinations already arrived at.

- [144] However, the evidence indicates that part of these expenses were incurred to assess the capital and operating costs of the mineral resource in relation to a processing plant. The PFS and process plant expenses were not differentiated. It appears the activities attributed to Frank Grills in the invoice are related to the PFS, and John Huang's activities related to processing. To the extent the Wardrop expenses are related to the processing assessment, they are captured within the purpose test as they were incurred to inform the quality of the mineral resource.

Conclusion

- [145] I have considered s. 25.1 of the BCITA according to the modern rule of statutory interpretation, considering the text, context and purpose of the legislation.
- [146] An interpretation of the word "quality" that includes economic viability is required by the text, context and purpose of the legislation. Therefore, mineral resource depends not only on the direct physical characteristics of the mineral resource, but also the broad range of factors that inform the economic viability of its extraction. Thus expenses that assist in the determination of the economic viability of a mineral resource are captured under the "quality" term of the purpose test, subject to the limitation that the expenses must be specific to a mineral resource in British Columbia being explored.
- [147] I have also considered the Disallowed Expenses and found that they are valid QMEEs, with the exception of the Wardrop Expenses related to the preparation of the PFS.
- [148] For all the foregoing reasons, this appeal is allowed with respect the Disallowed Expenses save for the Wardrop expenses associated with the PFS.

Costs

- [149] Seabridge has been substantially successful in this appeal and is entitled to costs. If the issue of costs needs to be further addressed, arrangements should be made with trial scheduling to address costs within 60 days of the release of this judgment.

"Maisonville J."

- [1] Office québécois de la langue française, Grand dictionnaire terminologique, online, consulted March 20, 2025.
- [2] In the dictionary Le Robert, Dico en ligne, online, consulted March 20, 2025.
- [3] In the dictionary La Rousse, online consulted March 20, 2025.

- [4] Introduction of Bill-41 by the B.C. Minister of Finance, Hansard Debates, 1998 Legislative Session: 3rd Session, 36th Parliament, Volume 11, Number 9, Part 1, June 29, 1998; Second Reading of Bill-41, Hansard Debates, 1998 Legislative Session: 3rd Session, 36th Parliament, Volume 12, Number 5, July 23, 1998.
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