

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL  
ARBITRATION RULES**

**BETWEEN:**

**LONE PINE RESOURCES INC.**

**Claimant**

**AND**

**THE GOVERNMENT OF CANADA**

**Respondent**

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**PARTIAL DISSENTING OPINION OF ARBITRATOR DAVID R. HAIGH K.C.**

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Date of dispatch to the Parties: 21 November 2022

1. I respectfully disagree with the majority's findings at ¶¶ 627 and following of the Award that the refusal of the Government of Québec to make provision for compensation for the revocation of the River Permit was not inherently unjust conduct.
2. While I accept the view of the majority of the Tribunal that Claimant may have become ambivalent about its argument concerning the Québec Government's failure to compensate it for the cancellation of its River Permit, my ultimate concern is with what occurred in the National Assembly and in the Government. The opposition parties had cornered the Government with their more absolutist objection to oil and gas exploration either on or under the St. Lawrence River. On this matter, the Government was not going to be out-bid in demonstrating its virtue and thus proposed the measure at issue in this arbitration.
3. The statement by Minister Normandeau that she did not believe the population would support compensation to oil and gas companies was undoubtedly a popular stance. I do not question Minister Normandeau's political instincts nor the fact that the legislation was passed unanimously. Clearly, nobody was going to oppose this bill; not one single member of the National Assembly voted against it. In my opinion, however, that political unanimity does not equate to fairness or the legitimate exercise of authority. The government did not implement the measure as part of a transparent and cohesive plan, based on proper analysis and considerations. Instead, the Minister simply announced her government's decision not to compensate the holders of the River Permit, clearly to great acclaim.
4. In my view this was an abusive exercise of authority and disregarded what, until then, had been properly pursued exploration activity and legitimately incurred expenditure. It is merely *post facto* rationalization to say that the costs incurred by Claimant were not directly spent on the permitted holdings under the river; in my view they were part of an inextricably logical and sequential geological exploration program leading to the ultimate exploitation of that holding.
5. When governments, even ones supported by the unanimous votes of the legislature, choose to end rights like exploration permits, they should have regard for what they have previously encouraged and allowed. I consider the decision taken by the National Assembly of Quebec to cancel the River Permit without compensation to have been callous and unjust and contrary to even the minimum standard of treatment that a party

such as Claimant was legitimately entitled to expect. Confiscating Claimant's investment without compensation in this case was without any proper basis, was unprincipled and simply politically expedient. Such abusive action should not be condoned.

[SIGNATURE]

Mr. David R. Haigh K.C.

Arbitrator