

November 5, 2025

SURFACE RIGHTS BOARD

IN THE MATTER OF THE *PETROLEUM AND NATURAL GAS ACT*,
R.S.B.C., C. 361 AS AMENDED

AND IN THE MATTER OF

THE NORTH EAST $\frac{1}{4}$ OF SECTION 22 TOWNSHIP 85 RANGE 14
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT;

THE NORTH WEST $\frac{1}{4}$ OF SECTION 22 TOWNSHIP 85 RANGE 14
WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT THE MOST
WESTERLY 25 METRES IN PARALLEL WIDTH THEREOF ("the Lands")

BETWEEN:

Samuel Wayne Roberts,
Shawn Milton Roberts and
Brenda Leslie Roberts

(APPLICANTS)

AND:

Whitecap Resources Inc.

(RESPONDENT)

BOARD ORDER

Heard: By written submissions
Submissions received from: Rick Williams, Barrister and Solicitor, for the
Respondent, dated September 3, 2025 and
September 22, 2025
Elvin Gowman, for the Applicants, dated September
12, 2025

INTRODUCTION AND ISSUE

[1] This is an application by the Respondent, Whitecap Resources Ltd. (Whitecap) for an order requiring the Applicants, Samuel, Shawn and Brenda Roberts (collectively the Roberts) to reimburse Whitecap \$10,000, representing a portion of its costs in defending the applications. Whitecap submits that the Roberts, through their representative, Elvin Gowman, unreasonably delayed proceeding with the applications in a timely manner and unreasonably lengthened the proceedings and process, thereby greatly increasing the costs incurred by Whitecap. The Roberts submit there was never an attempt to delay the proceedings, all requests for extensions were transparent and approved, their pursuits were well founded, that Whitecap's costs are of its own making, and that seeking costs at this time is reflective of Whitecap's belligerent attitude displayed over the years. They submit the application for costs should be denied.

[2] Section 170 of the *Petroleum and Natural Gas Act* (the *Act*) allows the Board to order a party to pay all or part of the actual costs incurred by another party. Rule 4.3 of the Board's Rules provides that the Board may consider the following factors in making an order for the payment of costs:

- a) the reasons for incurring costs;
- b) the contribution of counsel and experts retained;
- c) the conduct of a party in the proceeding;
- d) whether a party has unreasonably delayed or lengthened a proceeding;
- e) the degree of success in the outcome of the proceeding;
- f) the reasonableness of any costs incurred;
- g) any other factor the Board considers relevant.

[3] The issue is to determine whether the Board should order the Roberts to pay a portion of the Whitecap's costs incurred in the defense of these applications.

BACKGROUND

[4] The Roberts filed their applications pursuant to section 158 of the *Act* in December 2018. They claimed Whitecap operated oil and gas activities on land owned by the Roberts without proper tenure and claimed compensation for Whitecap's entry to and use of their land. The Board conducted a mediation in January 2019 and referred the applications to arbitration. The Board conducted a pre-arbitration conference in

February of 2019 scheduling the applications for written submission with the Roberts to file their submission by early June 2019. Whitecap's position was that it had proper tenure for its oil and gas operations and that no compensation was owed to the Roberts.

[5] In early May of 2019, Mr. Gowman requested an adjournment citing difficulty in gathering historical information required for the Roberts' submissions and the availability of Mr. Roberts. Whitecap did not object, and the Board granted the adjournment requesting a status report in a month's time. In early June of 2019, Mr. Gowman reported to the Board that they were continuing to work with the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) gathering materials and expected to receive those materials in the coming weeks. In late July 2019, the Board followed up with Mr. Gowman and was advised that some documents had been received but that there were "recovery challenges" with certain documents. The Board followed up again in October 2019 and Mr. Gowman indicated they had met with the Oil and Gas Commission (OGC) to seek clarification on a number of issues and that he intended to proceed despite the Supreme Court's decision in *Fell v. Bonavista* (2019 BCSC 255).

[6] The Court of Appeal rendered its decision in *Bonavista Energy Corporation v. Fell* (2020 BCCA 144) on May 21, 2020.

[7] In early July 2020, the Board asked Mr. Gowman for an update. On July 29, 2020, Mr. Gowman asked the Board to keep the files active pending next steps in *Fell v. Bonavista* which in his view presented overlapping issues. The Board noted it would bring the matter forward in three months.

[8] The Board did not follow up until September 2021 when it asked for an update. Mr. Gowman asked that the Board continue to keep the files open as he continued "to gather information from various sources related to this outstanding matter". The Board requested a status report by the end of 2021.

[9] In January 2022, Mr. Gowman again requested the Board keep the files open on the basis he was "seeking some clarification/information from the Commission" which he hoped would be resolved shortly.

[10] In October 2022 the Board followed up and in early November 2022 Mr. Gowman advised he had been waiting for a Court of Appeal Decision on a related matter. I understand this to be the *Bonavista v. Fell* decision rendered in May 2020.

[11] The Board followed up in August 2023 and again in October 2023. Mr. Gowman responded that the matter was "by no means resolved" and suggested that while the Court of Appeal's decision in *Bonavista* "brought some clarity" he was seeking additional information. He suggested Board assistance in resolving the issues would likely be required.

[12] In November 2023, the Board conducted a case conference. Mr. Gowman suggested the Board was not the appropriate forum in which to resolve the tenure issue and that he expected clarity by the end of the week on the tenure issue either from the BC Energy Regulator (BCER) or the appropriate government ministry. Whitecap asked that the applications be dismissed. The Board did not dismiss the applications but indicated it was not willing to keep the matters open indefinitely and ordered a status report with a “go forward plan” by the end of January 2024 if the Roberts intended to proceed.

[13] On January 31, 2024, at 9:31 am, Mr. Gowman reported he had met with an individual at BCER who was “investigating the tenure status”. The Board requested a status report by the end of March 2024.

[14] In early April 2024, Mr. Gowman again requested the files remain open as the matter of land tenure remained “under active investigation by the BC Energy Regulator’s Compliance and Enforcement section”.

[15] At the end of June 2024, the Board requested a status report, and in early July, Mr. Gowman advised that some progress had been made, the matter of land tenure remained open, and the Regulator’s investigation was “ongoing”. The Board requested a status report by the end of September 2024.

[16] In November 2024, having heard nothing from Mr. Gowman, Whitecap wrote to the Board requesting that Mr. Gowman provide an update. On November 14, 2024, counsel for Whitecap advised he had made inquiries with the BCER and been advised that: “the BCER’s enforcement team advised Mr. Gowman that it had completed its internal review and had not identified any non-compliances with the Acts or regs that the BCER enforces”. He repeated Whitecap’s request that the applications be dismissed. The Board sought Mr. Gowman’s response to the request to dismiss by December 18, 2024.

[17] On December 17, 2024, Mr. Gowman responded, without copying the Respondent, disputing the Roberts had ever filed a complaint with the Regulator’s Compliance and Enforcement section, and that it was only ever their intent to have the Regulator unravel the land tenure issues. Again, referencing *Fell v. Bonavista* Mr. Gowman requested the applications be scheduled for mediation in the new year. Mr. Gowman provided an undated email from an individual at the BCER indicating he “could not address the issue” and that he didn’t really understand the argument. The email references the concern about compensation not being paid by Whitecap, indicates the author had read *Fell v. Bonavista* many times, and that he had tried to understand the issues but did not want to spend any more time on the matter. The Board forwarded Mr. Gowman’s email to the Respondent.

[18] In early January 2025, counsel for Whitecap wrote to the Board indicating Whitecap saw no merit in further mediation as nothing had changed since the mediation

in January of 2019. He again requested the applications be dismissed. He provided a complete copy of the email from BCER referred to by Mr. Gowman showing it to be dated January 31, 2024 at 6:33 am.

[19] The Board determined that it would not dismiss the applications without providing the Roberts an opportunity to present their evidence in support of their view that Whitecap did not have appropriate tenure and once again scheduled the applications for a written submission arbitration. The parties provided their written submissions and on June 27, 2025, the Board rendered its decision dismissing the applications (*Roberts v. Whitecap Resources Inc.*, SRB Order 2038-1). The Board found that the Crown Grants in question were “very clearly made subject to the rights of way...now held by Whitecap”, the current Titles to the land displayed statutory rights of way in favour of Whitecap referencing the historical OIC’s granting the rights of way, and that Whitecap had tenure to conduct its oil and gas activities on the areas of land in dispute. The Board found there was “no basis” for the Roberts’ claim for compensation under section 158 of the *Act*.

ANALYSIS

[20] Given the above background and the factors the Board may consider in awarding costs, should the Board require the Roberts to pay a portion of the Respondent’s costs?

[21] The Respondent claims \$10,000 representing a small portion of the \$85,000 in legal fees incurred in defending these applications. It was entirely appropriate that Whitecap engage legal counsel as the issue of its tenure to the Roberts’ land is a legal issue. The contribution of counsel in these applications was appropriate and helpful to the Board’s ultimate resolution of the issue. In my view, the Roberts ought to have engaged legal counsel early on as well given their applications raised a legal issue. If they had, it is possible the Roberts could have re-assessed their view that compensation was owing for Whitecap’s use of their land early on in the process, saving everybody time and expense.

[22] Mr. Gowman submits the application for costs is reflective of Whitecap’s belligerent attitude to the Roberts over the years. No evidence is provided to support belligerence on the part of Whitecap. He submits that throughout the years the Roberts have been “subject to a campaign by Whitecap and its predecessors of misinformation to try and convince them the land presently occupied by Whitecap was excluded from their respective Certificates of Title and was not included in the original Crown grants”. The Board found the area occupied by Whitecap was not excluded from the Crown grants but that the Crown Grants were subject to an existing right of way in favour of a predecessor to Whitecap and now owned by Whitecap. Indeed, Whitecap’s statutory right of way is registered on the Titles to the land. If the Roberts had any concerns about Whitecap’s tenure to their land or did not believe what they were being told by Whitecap, they should have sought legal advice.

[23] While these applications were excessively delayed, I am reluctant to lay the blame for all of the delay at the feet of the Roberts and Mr. Gowman. Certainly, some delay can be attributed to the intervening Covid pandemic. Some of the delay can also be attributed to the Board's willingness to allow the Roberts more time to investigate instead of requiring them to proceed. It is unclear why the BCER thought it could resolve a tenure dispute, if that is indeed what they understood they were being asked to do. The Board could have taken a firmer hand on the conduct of these applications.

[24] Mr. Gowman submits there was never an attempt to delay proceedings and that all requests for extensions were transparent and approved accordingly. The initial requests for time to conduct research may not have been unreasonable, although from the evidence and submissions presented in the arbitration, it appears the Roberts never had an evidentiary basis for commencing the applications in the first place.

[25] As to later requests by Mr. Gowman to continue to keep the files open, I do not accept that they were transparent. I find that it was known to Mr. Gowman by the end of January 2024 that the BCER was not able to resolve the issues, yet he continued to advise the Board that their investigation was ongoing. On January 31, 2024, at 9:31 am, the very day BCER advised at 6:33 am that it could not resolve the issues, Mr. Gowman reported to the Board that an individual at BCER was investigating. He provided the same advice to the Board in April 2024. I find Mr. Gowman was not being forthright or transparent with the Board with his continued requests in 2024 that the applications remain open.

[26] In December 2024, in response to Whitecap's report that it had inquired with the BCER and learned the enforcement team had completed its review, Mr. Gowman advised the Board that the Roberts never filed a complaint with the BCER respecting non-compliance. Mr. Gowman's status report to the Board in April 2024, however, indicated the matter of land tenure remained "under active investigation by the BC Energy Regulator's Compliance and Enforcement section". Mr. Gowman continued to report to the Board that BCER was "actively investigating" following advice by personnel at BCER that he "didn't understand the issues" and that he lacked the expertise to deal with the matter.

[27] Mr. Gowman submits the Roberts' pursuits were well founded and yet those pursuits did not turn up any evidence ultimately submitted to the Board that would support their claim that Whitecap did not have appropriate tenure. The Board found the original Crown grants were "very clear" that they were subject to rights of way already granted for oil and gas activities. The documentary evidence before the Board clearly showed that Whitecap is the current holder of the rights of way that the original Crown Grants were subject to.

[28] The Roberts presented no evidence to support their belief that Whitecap did not have appropriate tenure to their land. The decision in *Fell v. Bonavista*, continually

mentioned by Mr. Gowman as being helpful was not applicable to the tenure issue in these applications.

[29] The Roberts' claim for compensation was also entirely unsupported. Reliance on historical legislation appearing to support compensation was unexplained and unsupported. Mr. Gowman, who is not a lawyer, attempted to present a legal basis for compensation that was not supported. Whitecap was able to provide legal authority clearly supporting the view that no compensation was owed.

[30] I make no comment on the reasonableness of the total legal expenses incurred by Whitecap as its claim is only for a small portion of the total legal fees paid.

CONCLUSION

[31] In all of the circumstances, I find it is reasonable to require the Roberts to pay a portion of Whitecap's costs. The claim that Whitecap did not have proper tenure to their land was completely unfounded and could have been resolved much earlier on with appropriate advice. Likewise, their claim for compensation was unfounded and unsupported. Mr. Gowman's repeated requests to delay the proceedings to conduct further research ultimately did not assist with resolution of the issues, and likely never would have given the clarity of the documents. While the requests to allow time for research may not have been unreasonable at first, and while some of the delay can be attributed to the intervening pandemic and to the Board not taking a firm hand, by January 2024 and beyond Mr. Gowman's requests were not just unreasonable but were also misleading given the communication received from the BCER. I find this conduct to be worthy of sanction. I am not prepared to allow the claim for \$10,000 but find requiring contribution of \$5,000 to Whitecap's costs to be appropriate.

[32] While I find, for the most part, it is Mr. Gowman's conduct that is worthy of sanction, the Board can only make an order to pay costs against a party. A party is responsible for the conduct of its representatives.

ORDER

[33] Samuel Roberts, Shawn Roberts and Brenda Roberts shall collectively pay \$5,000 to Whitecap Resources Inc. representing a portion of Whitecap's costs incurred in these proceedings.

DATED: November 5, 2025

FOR THE BOARD

Cheryl Vickers, Vice Chair