

Clerk's Stamp

COURT FILE NUMBER 2401-02680
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

DOCUMENT **NOTICE OF CONSTITUTIONAL QUESTION**

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RESPONSE TO APPLICATION by Alberta Petroleum Marketing Commission under section 12 of the *Petroleum Marketing Regulation*, A.R. 174/2006 (the "**Regulation**") and sections 11, 16, 33, 34 and 35 of the *Mines and Minerals Act*, RSA 2000, c. M-17 (the "**Mines and Minerals Act**"), seeking the payment of certain January 2024 Royalty Minerals (as defined herein) in kind

Razor Energy Corp. ("**Razor Energy**"), Blade Energy Services Corp. ("**Blade**"), and Razor Holdings GP Corp. ("**Razor Holdings**", and collectively with Razor Energy and Blade, the "**Razor Parties**") intend to question whether an enactment of the Parliament of Canada (specifically, sections 11.02 and 37 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") and sections 67(2) and 69(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**")) or of the Legislature of Alberta (specifically, section 12 of the *Regulation* and sections 11, 16, 33, 34 and 35 of the *Mines and Minerals Act*) is the appropriate legislation applying

to or governing the matters and issued called into question by the application (the “**Application**”) by the Alberta Petroleum Marketing Commission (the “**APMC**”) returnable on April 10, 2024 within the CCAA Proceedings (as defined below).

THE MATERIAL FACTS GIVING RISE TO THE CONSTITUTIONAL QUESTION ARE:

I. INTRODUCTION

1. Each of the Razor Parties is an insolvent corporation, incorporated pursuant to the laws of the Province of Alberta.
2. APMC is a Crown corporation and the agent of the Crown in right of Alberta for the receipt of crude oil royalties.
3. On January 30, 2024 (the “**NOI Filing Date**”), each of the Razor Parties, and a related entity, filed Notices of Intention to Make a Proposal (the “**NOIs**”) under and pursuant to section 50.4 of the BIA (such proceedings, the “**NOI Proceedings**”). FTI Consulting Canada Inc. (“**FTI**”) was the proposal trustee in respect of the NOIs.
4. On February 28, 2024, the Honourable Justice Whitting granted an Initial Order with respect to the Razor Parties under the CCAA (the “**Initial Order**”). Among other things, the Initial Order:
 - (i) declared that the Razor Parties are companies to which the CCAA applies;
 - (ii) (i) declared that the NOI Proceedings are taken up and continued under the CCAA (such proceedings, the “**CCAA Proceedings**”), pursuant to section 11.6(a) of the CCAA;
(ii) declared that Division I of Part III of the BIA has no further application to the Razor Parties; (iii) terminated the NOI

Proceedings; and (iv) deemed the NOIs filed by the Razor Parties to be withdrawn; and,

(iii) stayed all proceedings, rights, and remedies, against or in respect of the Razor Entities and their business or property, except as otherwise set forth in the Initial Order (the “**Stay**”), for an initial ten day period (as may be amended or extended from time to time, the “**Stay Period**”).

5. On March 6, 2024, the Honourable Justice Burns granted an order (the “**Amended and Restated Initial Order**”) amending and restating the Initial Order. Among other things, the Amended and Restated Initial Order extended the Stay Period until and including March 29, 2024.
6. On March 25, 2024, the Honourable Justice Jones granted an order extending the Stay Period until and including May 3, 2024.

II. ROYALTY DISPUTE

7. Razor Energy is engaged in the business of petroleum and natural gas exploration and production.
8. Razor Energy holds certain agreements issued by the Minister of Energy and Minerals of Alberta, *inter alia*, permitting the production of conventional crude oil. Under the *Mines and Minerals Act* and the *Regulation*, a royalty is reserved to the Crown on crude oil recovered under such agreements.
9. In the ordinary course, Razor Energy is required by the *Regulation* to remit certain Crown royalties, to APMC, by way of delivery in kind.
10. Razor Energy did not remit the in-kind royalties, to APMC, for the month of January 2024 (the “**January 2024 Royalty Minerals**”). Razor Energy has and continues to remit “post-filing” royalty minerals

to APMC, in kind, with respect to all periods following the filing of the NOIs.

11. In response to a demand by APMC for the delivery of such January 2024 Royalty Minerals, the Razor Parties asserted that the obligations of Razor Energy in respect of same are, and at all material times have been, stayed pursuant to the automatic stay of proceedings under the BIA and the Stay granted within the CCAA Proceedings.
12. APMC filed the Application seeking, *inter alia*, to compel Razor Energy to deliver the January 2024 Royalty Minerals to APMC, in kind. APMC asserts that the Crown holds an ownership interest in the January 2024 Royalty Minerals which is not subject to the Stay.

THE FOLLOWING IS THE LEGAL BASIS FOR THE CONSTITUTIONAL QUESTION:

I. LEGISLATION

Applicable Provisions of the Mines and Minerals Act and the Regulation

13. Section 35 of the *Mines and Minerals Act* states, in pertinent part:

Crown as owner

35(1) The Crown in right of Alberta is the owner of its royalty share of the mineral at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown's title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee's share prior to or at the time of the disposal or transfer of title.

(2) If, at the place where the Crown's royalty share of a mineral is to be delivered to the Crown in right of Alberta, the Crown's royalty share of the mineral is commingled with the lessee's share of the mineral so that the Crown's royalty share cannot be identified, the Crown in right of Alberta is entitled to the quantity of the mineral of equivalent quality that is equal to the Crown's royalty share.

[...]

14. Sections 12 and 13 of the *Regulation* create the following enforcement provision and state, in pertinent part:

Direction to deliver royalty deficiency

12(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

- (a) in the month in which the direction is given,
- (b) in a particular subsequent month, or
- (c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction.

[...]

- (4) If a direction under subsection (1) is not complied with, then,

(a) to the extent that the quantity of crude oil delivered pursuant to the direction is less than the underdelivery balance or the aggregate of the underdelivery balances, as the case may be, specified in the direction, the Commission may, in a monthly statement, charge the operator *with the payment* to the Commission of an amount of money equal to, whichever of the following amounts is shown in the monthly statement,

- (i) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the delivery month or months in which the royalty oil was originally payable, or
- (ii) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the month or months in which the royalty oil should have been delivered in accordance with the direction,

[...]

(5) When an amount of money becomes owing to the Commission under subsection (4), the direction under subsection (1) ceases to apply.

Money in lieu of royalty deficiency

13(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, in a monthly statement sent to the operator of the battery, may charge the operator with the payment to the Commission of an amount of money calculated by multiplying the underdelivery balance by the Commission's field price for that underdelivery balance for that month. [...]

Applicable CCAA Provisions

15. Section 37(1) of the CCAA states:

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

16. Section 40 of the CCAA confirms that the CCAA is binding upon the Crown:

Act binding on Her Majesty

40 This Act is binding on Her Majesty in right of Canada or a province.

17. Section 11.02 of the CCAA provides for the issuance of stays of proceedings against debtor companies and states:

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Applicable BIA Provisions

18. Section 67(2) of the BIA is substantively identical to section 37(1) of the CCAA, and states:

Deemed trusts

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

19. Section 69(1) of the BIA provides for an automatic stay of proceedings upon the filing of an NOI and states, in pertinent part:

Stay of proceedings — notice of intention

69 (1) Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

II. APPLICATION OF THE LEGISLATION

20. The Razor Parties state that the appropriate legislation applying to or governing the matters and issues called into question by the Application is the CCAA, not the *Mines and Minerals Act* or the *Regulation*.

21. In particular, and without limiting the generality of the foregoing:

- (a) Section 37(1) of the CCAA provides that, subject to certain specified exceptions, deemed trusts in favour of the Crown are ineffective within proceedings under the CCAA and the BIA;
- (b) the enforcement mechanisms in favour of APMC under the *Mines and Minerals Act* and the *Regulation* create a deemed trust in favour of the Crown, not a true ownership interest in the royalty minerals. This statutory deemed trust is ineffective within the CCAA Proceedings and was ineffective within the

NOI Proceeds prior to the pronouncement of the Initial Order;
and,

- (c) the Stay was granted pursuant to section 11.02 of the CCAA, which is federal legislation, and applies to prevent the enforcement of all financial and payment obligations. APMC's claim in respect of the January 2024 Royalty Minerals is a monetary claim and is stayed by the Stay. Prior to the pronouncement of the Initial Order, such claim was stayed pursuant to section 69(1) of the BIA. To the extent there is any operative conflict between the CCAA (or the BIA) and the *Mines and Minerals Act* or the *Regulation*, the CCAA (or the BIA) prevails.

22. Based on the foregoing, the Razor Parties seek the dismissal of APMC's Application.
23. The Razor Parties will also rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

DATED this 26th day of March, 2024.

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