

COURT FILE NUMBER 1701-11639
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF NATIONAL BANK OF CANADA
DEFENDANT SCOLLARD ENERGY LTD.



DOCUMENT **APPLICATION**
(Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Osler, Hoskin & Harcourt LLP
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Matter: 1182059

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: January 24, 2019
Time: 11:30 a.m.
Where: Calgary Courts Centre, 601 – 5th Street SW, Calgary, AB
Before Whom: The Honourable Madam Justice B.E.C. Romaine

Go to the end of this document to see what else you can do and when you must do it.

Orders Sought:

1. FTI Consulting Canada Inc. (the “**Receiver**”), in its capacity as receiver and manager of Scollard Energy Ltd. (the “**Debtor**”) is seeking an Order (the “**Discharge Order**”) substantially in the form attached hereto as **Schedule “A”**:
 - a. abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable today, and that further service of this Application other than to those listed on the Service List established in these proceedings is hereby dispensed with;
 - b. approving the Receiver’s Statement of Receipts and Disbursements as at January 2, 2019, as set out in the Fourth Report of the Receiver, dated January 14, 2019 (the “**Fourth Report**”);
 - c. directing and authorizing the Receiver to distribute all remaining funds apart from the Holdback (as defined below) to National Bank of Canada (“**National Bank**”);
 - d. directing and authorizing the Receiver to maintain a holdback of \$118,068 (the “**Holdback**”) to cover: (i) professional fees of the Receiver and its independent legal counsel, Osler, Hoskin & Harcourt LLP (“**Osler**”) to complete the administration of the Receivership; (ii) ongoing operating expenses as further described in the Fourth Report; (iii) non-linear 2017 taxes related to property which was subject to the Transactions (as that term is defined in the Fourth Report); and (iv) a trust claim asserted by the Canada Revenue Agency under subsection 222(3) of the *Excise Tax Act* in respect of unremitted GST/HST (collectively, the “**Holdback Expenses**”);
 - e. in the event any residual funds remain in the Holdback following payment of the Holdback Expenses, authorizing and directing the Receiver to distribute any such residual funds to National Bank;
 - f. declaring that Appendix “A” to the Fourth Report accurately sets out the amount of municipal taxes owing by the Debtor to the various municipalities set out in Appendix “A” to the Fourth Report, and that the only amounts payable to these

municipalities out of the Receivership estate is \$35,959.94 as shown in paragraph 36 of the Fourth Report;

- g. approving the Receiver's accounts and Osler's accounts, inclusive of accrual for the fees and disbursements of the Receiver and those of its legal counsel in connection with the completion of these proceedings, including costs of this Application, all as set out in the Fourth Report;
- h. approving the actions, conduct and activities of the Receiver as described in the Fourth Report and all other reports filed by the Receiver in these proceedings;
- i. declaring that the Receiver has duly and properly discharged its duties, responsibilities, and obligations as Receiver;
- j. upon the filing of the Receiver's Certificate attached at **Schedule "A"** to the Discharge Order (the "**Receiver's Certificate**"), discharging and releasing the Receiver from any and all further obligations as Receiver and any and all liability in respect of the discharge of the Receiver's duties as court-appointed receiver of the Debtor, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver;
- k. authorizing the Receiver to destroy the books and records of the Debtor that are not claimed by any of the current or former directors of the Debtor within 30 days of the Receiver providing notice of this Order by posting a copy of same on its website; and
- l. granting such further and other relief as counsel may request and this Honourable Court may deem just.

Grounds for making this application:

- 2. On September 1, 2017, the Receiver was appointed Receiver, without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate of the Debtor, including all proceeds thereof (the "**Receivership Order**").

3. The realization of the Property (as that term is defined in the Receivership Order) is complete. Apart from attending to minor administrative matters, including final payment of all Receivership costs and expenses, final distribution of remaining funds to National Bank, payment of non-linear 2017 taxes related to property which was subject to the Transactions, payment of a trust claim asserted by the Canada Revenue Agency in respect of unremitted GST/HST, and other minor administrative matters, the Receiver has performed its mandate as Receiver under the Receivership Order.
4. It is appropriate that the Receiver be discharged as Receiver of the Debtor upon filing of the Receiver's Certificate.
5. Such further and other grounds as counsel may recommend and this Honourable Court may permit.

Affidavit or other Evidence and Materials to be used in Support of this Application:

6. The Fourth Report of the Receiver, dated January 14, 2019;
7. Evidence and Reports of the Receiver previously filed in this Action; and
8. Such further and other evidence or materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

9. The *Alberta Rules of Court*, Alta Reg. 124/2010.

Applicable Acts and Regulations:

10. The *Bankruptcy and Insolvency Act*, RSC 1985, chap. B-3, as amended.
11. The *Judicature Act*, RSA 2000, c J-2, as amended.

Any Irregularity Complained of or Objection Relied On:

12. None.

How the Application is Proposed to be Heard or Considered:

13. In person before the Honourable Madam Justice B.E.C. Romaine on January 24, 2019 at 11:30 a.m.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

Schedule "A"

COURT FILE NUMBER 1701-11639 Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF NATIONAL BANK OF CANADA

DEFENDANT SCOLLARD ENERGY LTD.

DOCUMENT **ORDER**
(Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver)

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Osler, Hoskin & Harcourt LLP
Suite 2500, TransCanada Tower
450 – 1st Street SW
Calgary, Alberta T2P 5H1

Solicitors: Randal Van de Mosselaer
Phone: 403.260.7060
Fax: 403.260.7024
Email: RVandemosselaer@osler.com
Matter: 1182059

DATE ON WHICH ORDER WAS PRONOUNCED: January 24, 2019

LOCATION WHERE ORDER WAS PRONOUNCED: Calgary, Alberta

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Madam Justice
B.E.C. Romaine

UPON THE APPLICATION of FTI Consulting Canada Inc., in its capacity as receiver and manager (the "**Receiver**") of Scollard Energy Ltd. (the "**Debtor**"); **AND UPON** reviewing the Fourth Report of the Receiver, dated January 14, 2019 (the "**Fourth Report**") and other Reports previously filed by the Receiver in this Action; **AND UPON** hearing from counsel for the Receiver and counsel for any other interested party appearing at the hearing of the Application; **AND UPON** reviewing the Affidavit of Service of _____, sworn January ____, 2019;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

APPROVAL OF RECEIPTS, DISBURSEMENTS AND ACCOUNTS

2. The Receiver's accounts and the accounts of its independent counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), as set out in the Fourth Report, are hereby approved.
3. The Receiver's Statement of Receipts and Disbursements, as set out in the Fourth Report, is hereby approved.
4. The Receiver is directed and authorized to maintain a holdback of \$118,068 (the "**Holdback**") to cover: (i) professional fees of the Receiver and Osler to complete the administration of the Receivership; (ii) ongoing operating expenses as further described in the Fourth Report; (iii) non-linear 2017 taxes related to property which was subject to the Transactions (as that term is defined in the Fourth Report); and (iv) a trust claim asserted by the Canada Revenue Agency under subsection 222(3) of the *Excise Tax Act* in respect of unremitted GST/HST (collectively, the "**Holdback Expenses**");
5. The Receiver is authorized and directed to distribute all remaining funds apart from the Holdback to National Bank of Canada ("**National Bank**").
6. In the event any residual funds remain in the Holdback following payment of the Holdback Expenses, the Receiver is authorized and directed to distribute any such residual funds to National Bank.

PAYMENT OF MUNICIPAL TAXES

7. It is hereby declared that Appendix "A" to the Fourth Report accurately sets out the amount of municipal taxes owing by the Debtor to the various municipalities set out in Appendix "A" to the Fourth Report.

8. It is further declared that the only amounts payable to the municipalities set out in Appendix “A” to the Fourth Report by the Receiver out of the receivership estate is \$35,959.94, which amount is to be paid and distributed as follows:

a. To Lacombe County:	\$15,824.68
b. To County of Wetaskiwin:	\$8,081.33
c. To Yellowhead County:	\$325.35
d. To Clearwater County:	\$11,728.58

9. It is further declared that none of the other amounts set out in Appendix “A” to the Fourth Report other than as set out in paragraph 8 hereto are payable by the Receiver out of the receivership estate.

DISCHARGE OF THE RECEIVER

10. As of the date of the Fourth Report and based on the evidence before this Honourable Court:
- a. The Receiver has acted honestly and in good faith, and has dealt with the Property (as that term is defined in the Receivership Order of the Honourable Madam Justice Romaine, granted in these proceedings on September 1, 2017) in a commercially reasonable manner;
 - b. The actions and conduct of the Receiver are approved and the Receiver has satisfied all of its duties and obligations as receiver of the Property;
 - c. The Receiver shall not be liable for any act or omission pertaining to the discharge of the Receiver's duties as court-appointed receiver of the Property, save and except for any liability arising out of fraud or gross negligence or wilful misconduct on the part of the Receiver; and
 - d. Any and all claims against the Receiver arising from, relating to or in connection with the performance of the Receiver's duties and obligations as court-appointed receiver of the Property, save and except for claims based on fraud or gross

negligence or wilful misconduct on the part of the Receiver, shall be forever barred and extinguished.

11. No action or proceeding arising from, relating to, or in connection with the performance of the Receiver's duties and obligations in respect of the Property may be commenced or continued without the prior leave of this Honourable Court, on notice to the Receiver and on such terms as this Honourable Court may direct.
12. The Receiver is hereby authorized and permitted to deliver to the current or former directors of the Debtor at his/her own expense copies of any corporate record in the possession and control of the Receiver relating to the Debtor. In the event corporate records remain in the possession and control of the Receiver 30 days following the Receiver providing notice of this Order by posting a copy of same on its website, the Receiver is hereby authorized and directed to destroy or dispose of such records in whatever manner the Receiver deems appropriate.
13. Upon the filing of the Receiver's Certificate attached hereto as Schedule "A" confirming, among other things, that the Receiver has: (i) finalized payment of all Receivership costs and expenses as set out in the Fourth Report including, but not limited to, payment of the Holdback Expenses; (ii) distributed all remaining funds to National Bank; and (iii) completed all other minor administrative matters, the Receiver shall be absolutely and unconditionally discharged as Receiver of the Property and shall have no further duty, liability or obligation with respect to the Property, provided however, that notwithstanding its discharge, the Receiver shall:
 - a. remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership; and
 - b. shall continue to have the benefit of the provisions of this Order and all Orders granted in these proceedings, including all approvals, protections and stays of proceedings in favor of the Receiver in its capacity as Receiver.

MISCELLANEOUS

14. The Receiver has leave to reapply to this Honourable Court for such further advice and directions as may be necessary.
15. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
16. Service of this Order on any party not attending this application is hereby dispensed with.

J.C.Q.B.A.

Schedule "A"

COURT FILE NUMBER	1701-11639	Clerk's Stamp
COURT	COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY	
PLAINTIFF	NATIONAL BANK OF CANADA	
DEFENDANT	SCOLLARD ENERGY LTD.	
DOCUMENT	RECEIVER'S CERTIFICATE	
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Osler, Hoskin & Harcourt LLP Suite 2500, TransCanada Tower 450 – 1st Street SW Calgary, Alberta T2P 5H1	
	Solicitors:	Randal Van de Mosselaer
	Phone:	403.260.7060
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	Email:	RVandemosselaer@osler.com
	Matter:	1182059

This Receiver's Certificate is the certificate referred to in paragraph 13 of the Order (Approval of Accounts and Activities, Distribution of Remaining Funds, and Discharge of Receiver) of the Honourable Madam Justice Romaine, granted January 24, 2019 (the "Order").

Capitalized terms not otherwise defined herein shall have the meanings given to those terms in the Order.

FTI Consulting Canada Inc., solely in its capacity as Court-appointed receiver (the "Receiver") of the Property (as that term is defined in the Receivership Order) and not in its personal or corporate capacity, hereby certifies that:

1. All Receivership costs and expenses as set out in the Fourth Report including, but not limited to, the Holdback Expenses, have been paid.
2. All remaining amounts have been distributed to National Bank.
3. The administration of the receivership proceedings as described in the Fourth Report have been completed.

Dated this ____ day of _____, 2019.

**FTI Consulting Canada Inc., in its
capacity as Receiver of the undertakings,
property and assets of Scollard Energy
Ltd.**

NAME:

TITLE: