

COURT OF APPEAL OF ALBERTA

Form AP-3
[Rule 14.53]

COURT OF APPEAL FILE NUMBER: 2401-0253AC

TRIAL COURT FILE NUMBER: 2401-02680

REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: ALBERTA PETROLEUM
MARKETING COMMISSION

STATUS ON APPEAL: APPLICANT
STATUS ON APPLICATION: APPLICANT

DEFENDANT/RESPONDENT: RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE
ENERGY SERVICES CORP.

STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT

DEFENDANT/RESPONDENT: ARENA INVESTORS LP

STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT

DEFENDANT/RESPONDENT: MONITOR FOR FTI CONSULTING CANADA INC.

STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT

DEFENDANT/RESPONDENT: MINISTER OF JUSTICE OF ALBERTA
STATUS ON APPEAL: RESPONDENT
STATUS ON APPLICATION: RESPONDENT

DOCUMENT: **AMENDED APPLICATION FOR PERMISSION TO
APPEAL OF THE ALBERTA PETROLEUM
MARKETING COMMISSION**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT: SHORES JARDINE LLP
Attention: William W. Shores, K.C. and
Kathleen Elhatton-Lake



#2250, 10104 – 103 Avenue
Edmonton, AB T5J 0H8
Phone: 780-448-9275
Fax: 780-423-0163
File No. 2352-00006
Email: bill@shoresjardine.com /
kathleen@shoresjardine.com

and

CONTACT INFORMATION OF ALL OTHER PARTIES:

McCarthy Tetrault LLP
Attention: Sean Collins, K.C. and
Pantelis Kyriakakis
scollins@mccarthy.ca / pkiriakakis@mccarthy.ca
Counsel for Razor Energy Corp., Razor Holdings GP Corp., and Blade Energy Services Corp.

Fasken Martineau DuMoulin LLP
Attention: Jessica Cameron
jcameron@fasken.com
Counsel for Arena Investors LP

Blake, Cassels & Graydon LLP
Attention: Kelly Bourassa
kelly.bourassa@blakes.com
Counsel to the court-appointed Monitor for
FTI Consulting Canada Inc.

Attorney General of Alberta
Alberta Justice
Attention: Adam Ollenberger
adam.ollenberger@gov.ab.ca
Counsel for the Minister of Justice of Alberta

Service List in Court of King's Bench
Action 2401-02680

NOTICE TO RESPONDENT(S):

RAZOR ENERGY CORP., RAZOR
HOLDINGS GP CORP., AND BLADE ENERGY
SERVICES CORP

WARNING

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

NOTICE TO RESPONDENT(S):

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

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

Date: ~~October 10, 2024~~ November 14, 2024
Time: 9:30am
Where: Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7
Before: Single judge of the court (Rule 14.37)

Nature of Application and Relief Sought:

1. The Applicant, Alberta Petroleum Marketing Commission ("APMC"), seeks permission to appeal, under section 13 and 14 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA"), a portion of the decision of Justice M.E. Burns in Chambers dated September 6, 2024.
2. The portion of the decision for which permission to appeal is sought is the Chamber Justice's determination in paragraph 28 of her decision that the February 28, 2024 initial order made by Justice Whitling (the "Initial Order") stayed the APMC's authority to direct Razor to physically deliver the Crown's royalty share of oil in kind in a subsequent time period where there was an underdelivery in the month before the Initial Order.

Grounds for making this application:

3. The Crown in right of Alberta ("Crown") owns the rights to minerals, including crude oil, in most of Alberta. This ownership gives the Crown complete control over the exploitation of the resource.
4. The Respondent, Razor Energy Corp. ("Razor"), was permitted under its petroleum leases with the Crown to extract the Crown's oil on the condition that it deliver to the Crown its royalty share in kind. Razor had and has a continuing and cumulative duty to deliver the Crown's royalty share in kind.
5. APMC is the Crown's agent for receiving and dealing with Alberta's crude oil royalty volumes delivered in kind. APMC derives authority from the *Petroleum Marketing Act*, RSA 2000, c. P-10 and a number of interrelated statutes and regulations.
6. Despite holding out that it would deliver the Crown's royalty share to APMC, Razor decided not to deliver the Crown's royalty share for January 2024, claiming that it was not required to do so because it had issued a notice of intention under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA").

7. On February 28, 2024, Razor converted its proposal proceedings under the BIA to proceedings under the CCAA.
8. On March 1, 2024, under section 12(1) of the *Petroleum Marketing Regulation*, AR 174/2006, APMC directed Razor to deliver, in kind, to APMC, as part of the February 2024 royalty deliveries, crude oil of an equal quantity and like quality to the January 2024 royalty volumes that were not delivered.
9. On March 6, 2024, APMC filed an application that sought orders *inter alia* that by virtue of section 11.1 of the CCAA, the stay in paragraph 15 of the Initial Order does not apply to APMC's direction. The direction does not seek to enforce a payment ordered by a regulatory body or a court but is a direction that the Crown's property be delivered to it.
10. APMC's application was heard in Chambers on April 10, 2024.
11. In a written decision issued on September 6, 2024, the Chambers Justice dismissed the APMC's application.
12. In doing so, she correctly determined that Razor never owned and was never entitled to own the Crown's royalty share of production and that neither the BIA nor the CCAA give Razor any ownership interest in the Crown's royalty share.
13. However, the Chambers Justice erred in determining that, despite the fact that the oil was wrongfully taken in January, and the Crown has title to any and all subsequent oil, subject to the terms of the leases, and even though the oil was held in a true trust, not a deemed trust, the CCAA allows and the Initial Order provides that all attempts at remedying the taken oil were stayed.
14. The Crown's proprietary right in crude oil lies in all the Crown's crude oil *in situ*. Where there is an underdelivery of the Crown's royalty share by a producer in one time period, the APMC is entitled to require as Crown agent that the underdelivery of the Crown's royalty share be made up in another time period under section 12 of the *Petroleum Marketing Regulation*. Section 12 simply enables the Crown to ensure physical delivery of its own crude oil from the continuing flowing stream extracted from Crown's resource. A section 12 direction is not the enforcement of a payment by the APMC and therefore cannot be affected by an order made under section 11.02 of the CCAA.
15. Until it is produced, the crude oil all belongs to the Crown; when the crude oil is produced that portion that is the Crown's royalty share continues to belong to the Crown, including any amount undelivered in a previous period. The producer, Razor, has a continuing and cumulative duty to deliver the Crown's royalty share in kind regardless of the period in which the production occurred.
16. This application raises serious and arguable grounds that are of real and significant interest to the parties with reference to the following factors:
 - a. the points on the proposed appeal are of significance to the practice as:

- i. there are no CCAA authorities on the issue of the right of the Crown to its royalty share *in rem* and the remedies available to the Crown to ensure that it receives the crude oil that belongs to it; and
 - ii. it will determine whether the CCAA countenances as part of its proceedings actions taken to wrongfully convert the property of the Crown while under BIA proceedings and on the eve of an application under the CCAA;
 - b. the proposed appeal is *prima facie* meritorious and are not frivolous as noted above;
 - c. the points on the proposed appeal are of significance to the action as it will determine whether Razor is required to deliver the Crown's royalty share for January to it while it is in CCAA proceedings; and
 - d. the proposed appeal will not unduly hinder the progress of the action as the APMC filed its application in the CCAA proceeding as quickly as reasonably possible and will pursue this application and any subsequent appeal with expedition.
17. Such other grounds as counsel may advise and this court may permit.

Material or evidence to be relied on:

- 18. Brief of the Alberta Marketing Petroleum Commission, to be filed. This application is being filed to preserve time under the CCAA.
- 19. The record before the Chambers Justice in the within matter being the record in Alberta Court of King's Bench Action #2401-02680.
- 20. Such further and other material as counsel may advise and this court may permit.

Applicable Acts, regulations and rules:

- 21. *Companies' Creditors Arrangement Act*, including but not limited to sections 11.1, 13 and 14;
- 22. *Judicature Act*, RSA 2000, c J-2;
- 23. *Constitution Act*, 1867 (UK), 30 & 31 Vict. c.3, s. 92(A), reprinted in RSC 1985, Appendix II, No. 5;
- 24. *Mines and Minerals Act*, RSA 2000, c. M-17, including but not limited to sections 11, 16, 33, 34, 35, 36, 44 and 86 and the *Petroleum Royalty Regulation, 2009*, AR 222/2008, section 3 and *Petroleum Royalty Regulations 2017*, AR 212/2016, s. 3;
- 25. *Petroleum Marketing Act*, RSA 2000, c. P-19, including but not limited to sections 8, 15, 19 and the *Petroleum Marketing Regulation*, AR 174/2006, sections 12 and 16;

26. *Alberta Rules of Court*, Alta Reg 124/2010; and

27. Such further and other Acts and regulations as counsel may advise and this court may permit.