



Department of Justice  
Canada

Ministère de la Justice  
Canada

Prairie Region  
National Litigation Sector  
601, 606 - 4 Street SW  
Calgary AB T2P 1T1

Région des Prairies  
Secteur national du contentieux  
601, 606 - 4<sup>e</sup> rue SO  
Calgary AB T2P 1T1

Telephone/Téléphone: (403) 461-4977  
Facsimile/ Télécopieur: (403) 299.3507  
Email/Courriel: marianne.panenka@justice.gc.ca  
Our File/Notre dossier: 500177349

November 26, 2024

VIA ELECTRONIC MAIL  
[Laura.Cho@albertacourts.ca](mailto:Laura.Cho@albertacourts.ca)

Calgary Courts Centre  
601 5th Street SW  
Calgary AB T2P 5P7

Attention: The Honourable Justice Barbara E.C. Romaine

Re: **HEARING NOV 27, 2024 10:00 AM**  
**In the Matter of the Plan of Compromise or Arrangement of Razor Energy Corp.,  
Razor Energy Holdings GP Corp., and Blade Energy Services Corp.  
Court File Number 2401-02680**

---

1. Indian Oil and Gas Canada (IOGC) is the federal regulator for Oil and Gas resources on First Nations lands. In this matter IOGC collects oil royalty from Razor Energy et. al. (Razor) for the benefit of the Siksika First Nation (Siksika). Razor owes approximately \$65,370.65 in pre-filing debt and has continued to take oil from the Siksika without payment since these proceedings began, such that Razor's post-filing debt is now about \$53,028.51.

**IOGC raises two issues:**

- A) To clarify how Razor proposes to treat IOGC Contracts under the current proposal;
- B) To state that Razor should treat IOGC Contracts as Restricted Retained Contracts, by its own definition, and that Razor should pay for the oil it has taken from Siksika post-filing.

**A) Clarifying the current proposal:**

2. From our review and communication with Razor counsel, IOGC understands the following: Razor proposes to treat IOGC Contracts neither as Restricted Retained Contracts nor Retained Contracts but rather as "*Assumed Liabilities*", defined in the Subscription Agreement as "*f) all Liabilities owing by Razor Energy to IOGC that relate to the IOGC Contracts*"<sup>1</sup>. Under the current proposal, IOGC Contracts are not treated akin to either the Restricted Retained Contract

---

<sup>1</sup> Subscription Agreement as Exhibit "C" to Affidavit #11 of Doug Bailey sworn October 28, 2024, Article 1 Definitions and Principles of Interpretation, s.1.1.

nor the Retained Contract, as these two categories are described by the Monitor<sup>2</sup>. Razor and the Monitor should confirm our understanding that:

- i) The Assumed Liabilities for the IOGC contracts includes liability for both pre-and post-filing amounts due;
- ii) This liability will be retained by Razor under their new ownership after the close of CCAA proceedings such that the liabilities under the IOGC Contracts will NOT be subject to any stay of proceeding for enforcement to collect these amounts, or terminate contracts, should that become necessary.

**B) IOGC Contracts are Restricted Retained Contracts/ Razor should pay post-filing debt**

3. Despite the above proposal, IOGC's position is that:

i) Its Contracts should fall within the Restricted Retained Contracts group and receive full cure costs. Razor has defined the Restricted Retained Contracts as “*contracts that include provisions whereby the assignment of the rights and benefits explicitly requires the consent of the counterparty(ies)*”.<sup>3</sup> The IOGC Contracts cannot be assigned without the consent of IOGC and without meeting other regulatory requirements under the *Indian Oil and Gas Regulations*<sup>4</sup>. As such, they meet the definition fully. The Monitor appears to be of the view that **all** contracts that meet this definition will receive the same treatment,<sup>5</sup> but this is not accurate, since the IOGC Contracts, despite meeting the definition, have been excluded.

ii) Razor should pay for the oil it has taken from the Siksika lands post-filing (as a Regulatory Payment or other post-filing payment). Various regulators are being paid post-filing amounts<sup>6</sup> and IOGC is excluded. In response to Arena's arguments:

<sup>2</sup>Eighth Report to the Court of FTI Consulting Canada Inc., in its capacity as Monitor of Razor Energy Corp., Razor Holdings GP Corp., and Blade Energy Services Corp., dated November 6, 2024 (**Monitor's Report**) at para 77- 83.

<sup>3</sup> Monitor's Report at para 77

<sup>4</sup> *Indian Oil and Gas Regulations* SOR/2019-196, s.25 [TAB 1]

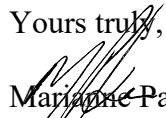
<sup>5</sup> Monitor's Report, at para 80: “*counsel has reviewed the Company's analysis of contracts requiring consent to assignment and has confirmed that the Transaction proposes that all counterparties to agreements requiring consent to assignment are proposed to be paid pre-filing monetary defaults. This treatment is consistent with what they would receive if the Company sought an order under section 11.3 in an asset sale transaction*”.

<sup>6</sup> Monitor's Report at paras. 44-45

- a) it is important to observe that IOGC’s situation is not akin to a “trade-like” supply that can be shut off unilaterally.<sup>7</sup> Due to the stay in effect, Siksika is forced to keep the well open and IOGC cannot stand by the well-head to demand cash on delivery. Razor requests this oil and is indeed taking it, and it is as such a “*Requested Post-Filing Amounts*” as defined by the Monitor<sup>8</sup>. The amount is not disputed. The Monitor recommends that these types of post-filing amounts be paid<sup>9</sup>.
- b) Arena suffers no actual prejudice as a result of the Siksika receiving payment for its oil post-filing, as this cash would not have been available to Arena in any event had Razor continued to pay its post-filing royalties and rents as it was expected to do in these CCAA proceedings.
- c) If necessary, this court can deem IOGC a critical supplier (retroactively) to satisfy the super-priority charge that Arena asserts is necessary. Extracting oil is no doubt a critical part of Razor’s operations.
- d) This court should consider the entirety of the interests and prejudices of the parties<sup>10</sup>. Siksika has been forced to keep the well open during these proceedings and Razor continues to take oil from the Siksika without paying for it. Section 11 of the CCAA allows this court to make any order it considers appropriate in the circumstances<sup>11</sup>. We submit that it is appropriate, in all the circumstances, for Siksika to receive its post-filing proceeds, and that it is not appropriate for Razor to take this money to pay Arena or anyone else.

Thank you for accepting these comments in submission of the position of IOGC.

Yours truly,

  
Marianne Panenka  
Counsel  
Prairie Region  
Department of Justice Canada  
MP/js

<sup>7</sup> Supplemental Brief of Law and Argument of Arena Investors LP dated November 21, 2024 (**Arena Brief**) at paras. 22-24

<sup>8</sup> Monitor’s Report at para. 85(a)

<sup>9</sup> Monitor’s report at paras. 88-89:” *at minimum the creditors should receive post-filing amounts in accordance with the Applicant’s books and records*”.

<sup>10</sup> See *Companies’ Creditors Arrangement Act*, R.S.C.1985, c.C-36 [CCAA] s. 36(3). See also *Doman Industries Ltd., Re*, 2004 BCSC 733, at para. 33 as cited in TAB 2 of the Arena Brief

<sup>11</sup> CCAA, s.11

# TAB 1

Current version: in force since Dec 15, 2022

Link to this version: <https://canlii.ca/t/55vbj>

Citation to this version: Indian Oil and Gas Act, RSC 1985, c I-7, <<https://canlii.ca/t/55vbj>> retrieved on 2024-11-26

Currency: This statute is current to 2024-10-30 according to the [Justice Laws Web Site](#)

+ Expand All

- + **SHORT TITLE** [1]
- + **INTERPRETATION AND APPLICATION** [2 - 3]
- + **ROYALTIES** [4]
- + **REGULATIONS** [4.1 - 4.3]
- + **GENERAL** [5 - 7]
- + **INSPECTION, AUDIT AND EXAMINATION** [8 - 13]
- + **SEARCH AND SEIZURE** [14]
- + **DELEGATION** [15]
- + **UNAUTHORIZED EXPLORATION AND EXPLOITATION** [16]
- + **OFFENCES AND PUNISHMENT** [17 - 20]
- + **ADMINISTRATIVE MONETARY PENALTIES** [21 - 28]
- + **REPORT TO PARLIAMENT** [28.1]
- + **TRANSITIONAL** [29]

## Indian Oil and Gas Act

### R.S.C., 1985, c. I-7

An Act respecting oil and gas in Indian lands

#### Short Title

#### Short title

**1** This Act may be cited as the *Indian Oil and Gas Act*.

1974-75-76, c. 15, s. 1.

#### Interpretation and Application

#### Definitions

**2 (1)** The following definitions apply in this Act.

**approval**, in relation to the council of a first nation, means approval evidenced by a written resolution of the council or, if the council has delegated its authority to any individual or corporation,

## **Approval of assignment**

**25 (1)** Any assignment of any of the rights or interests conferred by a contract must be approved by the Minister.

## **Meeting**

**(2)** Before the application for approval is submitted to the Minister, the assignee must meet with the council unless the council waives the meeting. The meeting must be face to face, unless the parties agree to another mode of meeting.

## **Expenses**

**(3)** Any expense relating to the request for, preparation for or attendance at a meeting must be borne by the party that incurs the expense.

## **Application for approval**

**(4)** The application for approval must be in the prescribed form and include a statement by the assignee that a meeting with the council took place or that the council waived the meeting. The application must be accompanied by the assignment approval application fee set out in Schedule 1.

## **Copy to council**

**(5)** The applicant must send the council a copy of the application for approval on or before the day on which the application is submitted to the Minister.

## **Refusal to approve**

**(6)** The Minister must not approve the assignment if

- (a)** it is conditional;
- (b)** it would result in more than five persons having a right or interest in the contract;
- (c)** it assigns an undivided right or interest in the contract that is less than 1%;
- (d)** it divides the oil and gas rights or interests conferred by the contract;
- (e)** the assignee is not eligible under [section 6](#);
- (f)** the assignment was not signed by the assignor and assignee; or
- (g)** the assignee fails to establish that they have the financial ability to fulfill the assignor's obligations under the Act with respect to remediation and reclamation.

## **Minister's decision**

**(7)** If the Minister approves the assignment and signs it, he or she must send a copy to the assignor and assignee and a notice of the approval to the council.

## **Effective date**

**(8)** The assignment takes effect on the day on which the Minister approves it unless it provides for a different effective day.

## **Liability**

**26 (1)** If the assignment is approved, the assignor and assignee are jointly and severally, or solidarily, liable for any obligation owing and any liability arising under the contract before the day on which the assignment is approved, even if the contract is subsequently assigned.