

COURT FILE NUMBER

25-2332583  
25-2332610  
25-2335351

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PROCEEDINGS

IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
MANITOK ENERGY INC.

IN THE MATTER OS THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
RAIMONT ENERGY CORP.

IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF  
CORINTHIAN OIL CORP.

**DOCUMENT**

**BRIEF OF LAW**

**PARTY FILING THIS DOCUMENT**

**YANGARRA RESOURCES LTD.**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
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JUSTICE CHAMBERS APPLICATION

SET FOR WEDNESDAY, NOVEMBER 25, 2020 AT 9:00 A.M.

BEFORE THE HONOURABLE JUSTICE B.C. ROMAINE

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## **I. INTRODUCTION**

1. Yangarra provides this brief in reply to the positions that Orlen Upstream Canada Ltd. (“**Orlen**”) has taken in its brief served November 19, 2020. Yangarra repeats its previously outlined positions and continues to use the defined terms in its brief filed October 9, 2020.
2. Yangarra and Manitok are the only parties to the APA. The subject application asks this Court to provide interpretations and directions regarding the APA and the Approval and Vesting Order.
3. Orlen lacks the standing to participate in this application. Orlen’s application also seeks a *de facto* attachment order, without meeting any of the criteria required for same.
4. Orlen and Yangarra are parties to an existing, separate action being no. 1801-17233 (the “**Yangarra Action**”) with separate counsel, where the issues in dispute have been properly pleaded. There is no basis whatsoever for Orlen to seek to have an issue in the Yangarra Action determined in this proceeding.
5. Whatever outcome arises from the subject application, there is no prejudice to Orlen. If Yangarra is successful, there will be an order to that effect and Orlen can make use of that fact as it sees fit in the Yangarra Action. If the Receiver is successful, there will be an order to that effect and Orlen can make use of it as it sees fit in the Yangarra Action.

## **II. ORLEN LACKS STANDING TO PARTICIPATE IN THIS APPLICATION**

6. It is common ground that the APA is a contract between Manitok and Yangarra. This is clear on the APA’s face, where only two parties are listed, and on page 30 where there are only two signatories thereto.
7. Orlen was not originally served with the subject application, because it was not on the service list.
8. Orlen does not suggest that it is a creditor of Manitok’s, and was somehow wrongfully excluded from these actions. Likewise, Orlen has not sought to have the Approval and Vesting Order varied because Orlen failed to receive notice thereof.

9. Orlen has not named Manitok or the Receiver in the Yangarra Action. Yangarra, as previously discussed, brought a third party claim against Manitok in response to Orlen's counterclaim. Because of the within proceedings, Yangarra would have required leave permitting its third party claim to proceed against Manitok.
10. Yangarra subsequently determined, after some discussions with the Receiver's counsel, that it was more efficient to proceed in these proceedings and seek the advice, assistance and directions necessary to give full force and effect to the terms of the Approval and Vesting Order.
11. Orlen's relief has nothing to do with the Approval and Vesting Order or the APA. Orlen is seeking relief arising from other agreements, which have no impact or effect upon the APA and the Approval and Vesting Order, and are at issue in the Yangarra Action, not these actions.
12. If A and B are parties to a contract, and a dispute arises therefrom, while A and C are parties to a separate contract, and another dispute arises therefrom, B has no right to intercede in the dispute between A and C.
13. Orlen lacks the necessary privity of contract to participate in a dispute arising from the APA.
14. Gowling WLG (Canada) LLP is Yangarra's counsel in the Yangarra Action. McMillan LLP has not been retained with respect to the Yangarra-Orlen dispute. McMillan LLP was retained solely with respect to the issues between Yangarra and the Receiver.
15. Orlen has no basis for seeking a form of summary relief relating to the issues in the Yangarra Action in this application, or in these actions.

### **III. ORLEN IS SEEKING A *DE FACTO* ATTACHMENT ORDER**

16. As outlined, there is a dispute between Yangarra and Orlen resulting in the Yangarra Action, which Yangarra commenced via statement of claim filed on December 4, 2018. No questioning has occurred in the Yangarra Action.

17. It is woefully premature for any summary relief to be granted in the Yangarra Action. Had Orlen applied for such relief, Yangarra would have very likely cross-examined any affiants and provided responding evidence.
18. Of course, the underlying application in these actions has nothing to do with Orlen. This application arises from the Receiver's, on behalf of Manitok, contractual obligations to Yangarra. Orlen is not a party to the APA and has no contractual rights or duties thereunder.
19. Orlen is attempting to seize or freeze funds which, if this Court so finds, are contractually due and owing to Yangarra. This is an improper attempt to seize Yangarra's assets.
20. Seeking an order which seizes or freezes another party's assets prior to a judicial determination of the issues in dispute is an attachment order. It is relief prescribed for in section 17 of the *Civil Enforcement Act*, RSA 2000, c C-15. An attachment order requires leading evidence that Yangarra is acting in bad faith, is dealing with its property in a way that is inconsistent with meeting Yangarra's ordinary business needs and is likely to frustrate the potential enforcement of any judgment against it.
21. There is no such evidence here. Moreover, if Orlen were to seek an attachment order, it should be brought within the Yangarra Action.
22. Yangarra is entitled to whatever, if anything, the Court finds with Yangarra is owed with respect to the APA.
23. Orlen is entitled to whatever relief it ultimately obtains in the Yangarra Action. Orlen has no right to seek anticipatory or summary judgment within the current application.
24. Moreover, none of the typical urgency which exists in insolvency matters applies to the Yangarra Action. There are no facts warranting Orlen's end-run in these proceedings.

#### **IV. RELIEF**

25. Yangarra seeks:

- a) Orlen's application's dismissal;
- b) alternatively, if Orlen is found to have the requisite standing to participate in this application, an adjournment of the subject application so that Yangarra may cross-examine Mr. Padley and lead responding evidence;
- c) costs on an appropriate scale; and
- d) such further relief and counsel may advise.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> DAY OF NOVEMBER, 2020.**



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McMillan LLP

Per: Andrew E. Stead

Counsel for the respondent, Yangarra Resources Ltd.