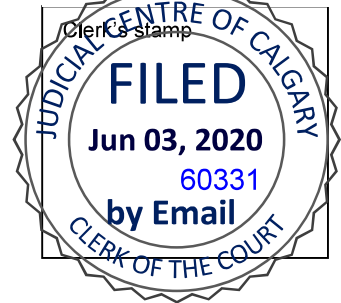


Form 27

Alberta Rules of Court,  
Rules 6.3 and 10.52(1)



COURT FILE NUMBER	1801-16746
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTFFS	ALTIUS ROYALTY CORPORATION GENESEE ROYALTY LIMITED PARTNERSHIP and GENESEE ROYALTY GP INC.
DEFENDANTS	HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and ATTORNEY GENERAL OF CANADA
DOCUMENT	<b>APPLICATION BY THE ATTORNEY GENERAL OF CANADA (DEFENDANT)</b>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	<b>ATTORNEY GENERAL OF CANADA</b> Department of Justice Canada National Litigation Sector Prairie Regional Office (Calgary) 601, 606 4 <sup>th</sup> Street SW Calgary, AB T2P 1T1 Fx: 403-299-3507  Shane Martin, Senior Counsel Tel: (403) 299-3506  Marianne Panenka, Counsel Tel: (403) 292-6021  Jordan Milne, Counsel Tel: (403) 299-8016  Sydney McHugh, Counsel Tel: (403) 299-3387  File No.: LEX-10359079

**NOTICE TO RESPONDENTS:**

Altius Royalty Corporation, Genesee Royalty Limited Partnership and Genesee Royalty GP Inc.

**This application is made against you. You are a Respondent.**

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

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

<b>Date:</b>	<u>TBD</u>
<b>Time:</b>	<u>10:00 am or so soon thereafter as counsel may be heard</u>
<b>Where:</b>	<u>Calgary Courts Centre</u>
<b>Before Whom:</b>	<u>Presiding Master in Chambers</u>

**Remedy claimed or sought:**

1. An order striking out the Amended Statement of Claim against the Attorney General of Canada.
2. Further, or in the alternative, an order summarily dismissing all of the claims against the Attorney General of Canada in this Action.
3. Costs of this Application and of this Action.
4. Such further and other remedies as this Honourable Court may deem just and appropriate.

**Grounds for making this application:**

5. In 2012, the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*, SOR/2012-167 (the “Regulations”) were published in the *Canada Gazette*, Part II. The Regulations establish a regime to reduce carbon dioxide emissions resulting from the coal-fired generation of electricity based on a performance standard of 420 tonnes of carbon dioxide per gigawatt hour (CO<sub>2</sub>/GWh) of electricity produced (the “Standard”).
6. Approximately 1.5 years later, the Plaintiffs acquired a significant royalty interest in certain coal that was and remains entirely dedicated to the generation of electricity in Alberta (the “Coal”).
7. The Plaintiffs contend that they had an “expectation” that the regulatory regime would remain static for the next four decades, thereby allowing them to receive a long-term royalty stream until 2055. However, Canada did not give any representations or statements to encourage this “expectation” and the public disclosure of the Plaintiffs’ parent company reveals that it:
  - a. knew its operations were subject to “extensive governmental regulations with respect to such matters as environmental protection...”;
  - b. recognized that “the enactment of new adverse regulations or regulatory requirements or more stringent enforcement of current regulations or regulatory requirements ... could have an adverse effect on the Corporation”; and
  - c. acknowledged that the regulatory regime was “expected to cause existing power plants to close down as, in the current environment, meeting the new regulations will be challenging”.

8. In 2016, the Government of Alberta (“Alberta”) entered into an off-coal agreement with the operator of the electricity generation plant (the “Plant”) to which the Coal was dedicated (the “Agreement”). Pursuant to the Agreement, coal-fired emissions were to be phased-out from the Plant by December 31, 2030.
9. In 2018, the Regulations were amended with the result that the Standard was required to be met no later than 2030 (the “Amendments”).
10. In response to the Agreement and the Amendments, the Plaintiffs commenced this Action alleging that Alberta and Canada had “foiled” their “legitimate expectations” of a static regulatory regime, “unduly” interfered with their economic relations and “taken” (or expropriated) their property. Damages in the approximate amount of \$190 million are claimed.
11. The claims asserted by the Plaintiffs against Canada are premature, improperly pled, fail to disclose reasonable causes of action and are defeated by admissions given by the Plaintiffs. In particular:
  - a. There is no recognized cause of action for “foiling” of “legitimate expectations” and in any event, the claim has no merit based on admissions given by the Plaintiffs;
  - b. There is no recognized cause of action for *undue* interference with economic relations. If the Plaintiffs intended to claim for *intentional* interference with economic relations, such claim is improperly pled and fails to disclose a reasonable cause of action;
  - c. The claim for “taking” (or *de facto* expropriation) does not satisfy the applicable test and therefore lacks merit and fails to disclose a reasonable cause of action. Further, and in any event, the claim is premature.
12. The claims against Canada have no reasonable prospect of success and should be struck out.
13. Further, or in the alternative, the claims against Canada lack merit and should be summarily dismissed.

**Material or evidence to be relied on:**

14. The pleadings, filed.
15. Admissions given by the Plaintiffs in the Amended Statement of Claim, Response to Demand for Particulars and Reply to Notice to Admit Facts.
16. Such further and other material or evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

17. Alberta Rules of Court, AR 124/2010, Rules 1.2-1.4, 3.68 and 7.2-7.4.

**Applicable Acts and regulations:**

18. *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*, SOR/2012-167.

19. *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*, SOR/2018-263.

**Any irregularity complained of or objection relied on:**

20. N/A

**How the application is proposed to be heard or considered:**

21. In person before the Presiding Master in Chambers.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**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 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 a reasonable time before the application is to be heard or considered.