

COURT FILE NUMBER 1801-16746

COURT COURT OF QUEEN'S BENCH OF ALBERTA

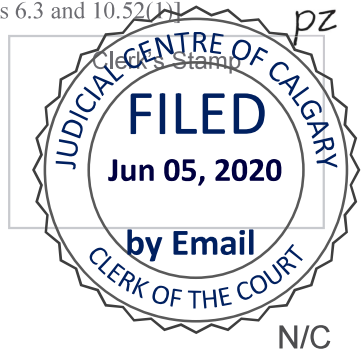
JUDICIAL CENTRE CALGARY

PLAINTIFFS 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 **APPLICATION OF THE DEFENDANT, HER  
MAJESTY THE QUEEN IN RIGHT OF  
ALBERTA**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT **Alberta Justice and Solicitor General  
Legal Services Division**  
1710, 639 – 5<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0M9  
Telephone: (403) 297-2001  
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**Attention: Melissa N. Burkett /  
Cynthia R. Hykaway**



N/C

*File No. LIT-10710*

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

- Date:** **Friday, July 17, 2020**
- Time:** 10:00 AM **Via Webex**
- Where:** ~~Calgary Courts Centre~~ **Calgary Masters Chambers (MC1) - Virtual Courtroom 55 (CCC QB)**
- Before:** Presiding Master in Chambers **To appear by telephone:**  
Dial in Number: 780-851-3573  
Access code: 962 778 718

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

**Remedy claimed or sought:**

1. An Order, pursuant to Rule 3.68 of the *Alberta Rules of Court*, striking out the Amended Statement of Claim as against the Defendant, Her Majesty the Queen in Right of Alberta (“**Alberta**”);
2. In the alternative, an Order, pursuant to Rule 7.2 and 7.3 of the *Alberta Rules of Court*, granting summary judgment dismissing all claims as against Alberta;
3. Costs of this Application and the within action; and
4. Such further and other relief as this Honourable Court deems appropriate.

**Grounds for making this application:**

5. In or around 2012, the Government of Canada (“**Canada**”) announced a new regulatory regime aimed at reducing carbon dioxide emissions resulting from the coal-fired generation of electricity throughout the country;
6. In or around 2014, the Plaintiff, Genesee Royalty Limited Partnership (“**Genesee LP**”) acquired a royalty interest in certain coal (the “**Coal**”) which is mined at the Genesee Coal Mine and which is used to fuel the Genesee 1, Genesee 2, and Genesee 3 units (the “**Genesee Power Plant**”) and generate coal-fired electricity in Alberta;
7. In 2015, the Government of Alberta introduced the Climate Leadership Plan (the “**CLP**”), a policy decision which included, among other things, a commitment to phase out pollution from coal-fired electricity generation by 2030;
8. In 2016, as part of the implementation of the CLP, Alberta entered into an Off-Coal Agreement with Capital Power (“**Capital Power**”) to phase out coal-fired emissions, including emissions from the Genesee Power Plant by December 31, 2030 (the “**Off-Coal Agreement**”). The Off-Coal Agreement includes an obligation to make certain transition payments to Capital Power;
9. In 2018, Canada amended the regulatory regime to accelerate the reduction of carbon dioxide emissions resulting from coal-fired generation of electricity to 2030;
10. In response to the CLP, the Off-Coal Agreement, and the amendment to the regulatory regime, the Plaintiffs brought this Action alleging that Alberta and Canada had “foiled” their “legitimate expectations” of a static regulatory regime, “unduly” interfered with their economic relations, and expropriated their property. The Plaintiffs seek damages in the amount of approximately \$190 million;
11. The Genesee Coal Mine continues to be operational and has not yet been shut down or decommissioned;
12. The Coal continues to be extracted from the Genesee Coal Mine and remains entirely dedicated to the generation of electricity in Alberta;

13. Genesee LP continues to hold ownership in the royalty interest and receive payment of royalties on account of the royalty interest;
14. Pursuant to Rules 3.68(1)(a) and 3.68(2)(b) of the *Alberta Rules of Court*, all or any part of the claim may be struck out if the pleading discloses no reasonable claim;
15. Pursuant to Rules 7.2 and 7.3(1)(b) of the *Alberta Rules of Court*, the Court may give judgment when admissions of fact are made in a pleading and a party may apply for summary judgment on the ground that there is no merit to a claim or part of it;

#### No Legitimate Expectations

16. The Plaintiffs allege that Altius Royalty Corporation (“**Altius**”), when purchasing the royalty interest in 2014 through Genesee LP, relied, among other things, upon statements and representations made by Alberta regarding the reliability and consistency of its environmental policies and its safe investment climate;
17. The Plaintiffs further allege that Altius had “legitimate expectations” that Alberta’s environmental policies would continue as enacted, that the Genesee Power Plant would generate electricity from coal until 2055, and that Alberta’s subsequent decision to phase out traditional coal-fired electrical generation by 2030 “caused the legitimate expectations of [Altius] to be foiled”;
18. Alberta did not make any statements or representations to any of the Plaintiffs as alleged or at all;
19. The claim as against Alberta is premature, improperly pled and fails to disclose a reasonable claim as, among other things:
  - a. There is no recognized cause of action for “foiling” of “legitimate expectations”; and
  - b. Any possible alleged claim of misrepresentation is improperly pled and fails to disclose a reasonable cause of action;
20. In any event, the claim has no merit and is defeated by admissions given by the Plaintiffs. 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”;

No Taking

21. The Plaintiffs allege that the CLP and the Off-Coal Agreement have resulted in a grave loss of value of Genesee LP's interests and benefits to itself;
22. The Plaintiffs further allege that Genesee LP has been deprived of rights of use and enjoyment of its property, that a taking of Genesee LP's property interests has occurred, and that the Coal has been sterilized and rendered of no value;
23. The claim as against Alberta is premature, improperly pled, fails to disclose a reasonable claim and is defeated by admissions given by the Plaintiffs, as among other things:
  - a. The claim for "taking" (or *de facto* expropriation) is premature; and
  - b. Further, and in the alternative, the claim does not satisfy the applicable test, lacks merit, and fails to disclose a reasonable cause of action;

No Undue Interference with Economic Relations

24. The Plaintiffs allege that Alberta's actions constitute undue interference with the economic relations of Genesee LP as "the Government of Alberta has in real and practical terms paid Capital Power, the only user of the coal in which Genesee LP has its royalty interest, to cease generating coal-fired electricity by 2030";
25. The claim as against Alberta is premature, improperly pled, fails to disclose a reasonable claim and is defeated by admissions given by the Plaintiffs, as among other things:
  - a. There is no recognized cause of action for undue interference with economic relations; and
  - b. Any possible alleged claim of intentional interference with economic relations is improperly pled and fails to disclose a reasonable cause of action;
26. The claims as against Alberta have no reasonable prospect of success and should be struck out;
27. Further, and in the alternative, it is possible to fairly resolve this dispute on a summary basis. There is no genuine issue requiring trial, there is no merit to the claims brought as against Alberta in the Amended Statement of Claim, and the claims as against Alberta should be summarily dismissed; and
28. Such further and other grounds as this Honourable Court deems appropriate.

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

29. The pleadings, filed;
30. Admissions given by the Plaintiffs in the Amended Statement of Claim, Responses to Demands for Particulars, and Reply to Notice to Admit Facts; and

31. Such further and other material as counsel may advise and this Honourable Court may permit.

**Applicable rules and legislation:**

32. Rules 1.2-1.4, 3.68, 6.3, and 7.2-7.4 of the Alberta *Rules of Court*.

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

33. N/A

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

34. Via WebEx before the presiding Master in Chambers.

**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 rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.