

ALBERTA SECURITIES COMMISSION

ORAL RULING

Citation: Arbour Energy Inc., Re, 2009 ABASC 199

Date: 20090424

**Arbour Energy Inc., Dennis Morice, Heinz Weis, Arthur Wigmore, Milowe Brost,
The Institute For Financial Learning, Group of Companies Inc., Merendon Mining
Corporation Ltd. and Gary Sorenson**

Panel: Glenda A. Campbell, QC
Neil W. Murphy
Karen A. Prentice, QC

Appearing: Don Young and Deanna Steblyk
for Commission Staff

Chris Archer and John James
for Arbour Energy Inc. and Dennis
Morice

K. Edgerton-McGhan
for Heinz Weis

Patrick Sullivan (by telephone)
for Arthur Wigmore

Glenn Solomon
for Merendon Mining Corporation Ltd.
and Gary Sorenson

Date of Hearing: 24 April 2009

Date of Ruling: 24 April 2009

The following ruling and reasons have been prepared from excerpts of the transcript of the hearing of this application, which have been edited and approved by the chair of the panel for the purpose of providing a public record.

[1] On 24 February 2009 Mr. Archer, on application, asked this panel to facilitate the taking of "commission evidence" from the respondent Gary Sorenson in Honduras because Mr. Archer's clients (Arbour Energy Inc. and Dennis Morice) believe that Mr. Sorenson has relevant information and that it would be unfair to them if they were denied the ability to present that witness's evidence to the panel during the hearing that is now scheduled to begin in September of this year. Mr. Archer made this request because the Alberta Securities Commission (the "Commission") may not have the ability to compel or enforce the attendance of Mr. Sorenson, a resident of another country, as a witness at the hearing. Thus, as we understood it, Arbour Energy Inc. and Mr. Morice were seeking a means to have Mr. Sorenson testify in support of their case.

[2] Section 26 of the *Securities Act*, R.S.A. 2000, c. S-4 provides only for the Commission to apply to the Court of Queen's Bench for an order to obtain commission evidence. This provision does not provide for a respondent to make such an application. We therefore directed staff of the Commission ("Staff") to make the application for an order to obtain commission evidence on behalf of Arbour Energy Inc. and Mr. Morice in an attempt to facilitate their stated wish to call Mr. Sorenson as their witness at the hearing (the "24 February 2009 Order").

[3] We made clear to the parties our expectation was that Staff would simply make the application to the Court of Queen's Bench with any associated evidence and argument for the order being addressed by Mr. Archer as counsel for the respondents seeking to take the commission evidence of Mr. Sorenson. As we noted in the 24 February 2009 Order, we understand that these types of orders may be very difficult to obtain.

[4] We heard today that Staff made the application, as directed, to the Court of Queen's Bench for the taking of commission evidence of Mr. Sorenson. We were told that on 3 April 2009 the application was adjourned to permit Mr. Archer to file affidavit evidence and because Mr. Solomon had an objection of some sort that needed to be addressed.

[5] We understand that, on 17 April 2009, the Court of Queen's Bench dismissed the application for lack of evidence. Mr. Archer seeks to have this panel reissue the order directing Staff to reapply to the Court of Queen's Bench for an order to obtain the commission evidence from Mr. Sorenson because there was a miscommunication or other error made. Staff oppose the application on the basis that they complied with the 24 February 2009 Order and that our previous direction to the parties made it clear that it was Mr. Archer's responsibility to provide the evidence and argument he believed necessary to support the application. Staff emphasize that their role was merely to facilitate the process by bringing the application forward. Mr. Solomon also opposes the application on the basis that Staff fully complied with the 24 February 2009 Order and that the panel is now functus in relation to this matter.

[6] In our view our 24 February 2009 Order was clear. Staff were to make the application to the Court of Queen's Bench. Mr. Archer was responsible for bringing forward whatever evidence and argument he thought necessary to support what was effectively his clients'

application. The application was heard and denied by the Court of Queen's Bench. We agree with Staff and Mr. Solomon that the terms of the 24 February 2009 Order have been fulfilled by Staff. We decline to issue another order for the same relief. Mr. Archer's application is denied.

[7] That concludes our ruling on today's application.

24 April 2009

Approved:

"original signed by"

Glenda A. Campbell, QC