



District of British Columbia  
Division No. 3 - Vancouver  
Court No. S-227894

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,  
S.B.C. 2002, c. 57, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF  
GREAT PANTHER MINING LIMITED

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:** Asahi Refining Canada Limited

**ON NOTICE TO:** Those parties set out in **Schedule "A"** attached hereof.

**TAKE NOTICE** that an application will be made by the applicant to the Honourable Mr. Justice Walker at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on October 21, 2022 at 10:00 a.m. for the orders set out in Part 1 below.

The Registry may contact the applicant as set out below to confirm the hearing information:

William E.J. Skelly  
Mail: MLT Aikins LLP, Suite 2600, 1066 W Hastings St., Vancouver, BC V6E 3X1  
Email: [wskelly@mltaikins.com](mailto:wskelly@mltaikins.com)  
Telephone: 604.608.4597

## **PART 1      ORDERS SOUGHT**

1. The Applicant, Asahi Refining Canada Limited (“**Asahi**”), seeks the following order:
  - a. An order substantially in the form attached hereto as **Schedule “B”** (the “**Zeena Affidavit Sealing Order**”), sealing the Second Affidavit of Zeena Cartwright made on October 21, 2022 (the “**Second Zeena Affidavit**”) and all exhibits thereto on the Court file, pending further order of the Court; and
  - b. such further and other relief as counsel may request, that this Honourable Court may deem just.

## **PART 2      FACTUAL BASIS**

### Introduction

1. This Notice of Application is submitted in connection with and further to Asahi’s Application Response dated October 21, 2022 (the “**Application Response**”) in respect of Great Panther Mining Limited’s (“**GPML**”) Notice of Application dated October 19, 2022 (the “**GPML Application**”).
2. On October 21, 2022, Asahi intends to file the Second Zeena Affidavit in the within proceedings (the “**CCAA Proceedings**”). The Second Zeena Affidavit is tendered in support of Asahi’s Application Response seeking, among other relief, to terminate the stay of proceedings granted by the Honourable Mr. Justice Walker on October 14, 2022 in the CCAA Proceedings to allow Asahi to file a bankruptcy petition with the Court for the purposes of petitioning GPML into bankruptcy.
3. The Second Zeena Affidavit, and the Exhibit “A” thereto, contain a memo from Peter Rawlins which contains commercially-sensitive and confidential information as it provides an analysis and critique of GPML’s financial model with respect to the business, operations, and finances of GPML including, but not limited to, copies of cash flow and financial models, and other operational information (collectively, the “**Confidential Information**”).

4. The public disclosure of the Confidential Information contained in the Second Zeena Affidavit is likely to cause prejudice to the stakeholders of GPML in the event that an extension to the stay of proceedings is granted under the GPML Application or if GPML is required to undergo any liquidation process or a sale and investment solicitation process in the future.

### **PART 3      LEGAL BASIS**

#### **The Zeena Affidavit Sealing Order is Appropriate**

1. Asahi seeks the Zeena Affidavit Sealing Order directing that the Second Zeena Affidavit, in its current, unredacted form, be placed under seal, with such affidavit to remain under seal pending further Order of the Court. The Zeena Affidavit Sealing Order is necessary to ensure the integrity of any sales or realization process with respect to GPML, or any or all of its assets (including any liquidation which might be conducted by a trustee in bankruptcy, receiver, or similar Court officer, if Asahi successfully obtains the relief sought under the Application Response).
2. This Court has jurisdiction to order that certain materials be filed under seal when:
  - a. court openness poses a serious risk to a "public interest", which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
  - b. such an order is necessary in order to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
  - c. as a matter of proportionality, the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

*Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, at para 53.

*Sherman Estate v Donovan*, 2021 SCC 25, at paras 38, 41 – 43.

3. The public disclosure of the Confidential Information, as described above, could affect any bids received pursuant to any other realization process in respect of GPML. The Confidential Information includes detailed information regarding GPML's financial and operational projections, and information which relates to the potential value of the Tucano Mine.
4. The sealing of the Second Zeena Affidavit is necessary in order to prevent serious risk to the commercial interests of the stakeholders of GPML, and no other person (other than GPML, which has already received all of the Confidential Information) has a reasonable expectation of accessing the Confidential Information.
5. Further, there is an important public interest in preserving: (i) the integrity of distressed sales processes generally and (ii) confidentiality with respect to the assessed value of assets to be sold pursuant to sales process within an insolvency proceeding. These interests apply to the Confidential Information set out in the Second Zeena Affidavit.
6. The request to seal the Second Zeena Affidavit until further Order of the Court is necessary as it is not currently possible to identify the period of time during which such information must be sealed, as such period will depend upon the details and results of the Response Application and any subsequent bankruptcy proceedings which may unfold.
7. As a matter of proportionality, in light of the period of time during which the Second Zeena Affidavit will be under seal, and particularly given that Asahi does not oppose the public filing of a redacted copy of the Second Zeena Affidavit, if the Court determines this is necessary, the salutary effects of the Zeena Affidavit Sealing Order outweigh its deleterious effects. Accordingly, Asahi submits that the Zeena Affidavit Sealing Order is necessary and appropriate in the circumstances.

#### **PART 4 MATERIAL TO BE RELIED ON**

1. This Notice of Application.
2. Second Affidavit of Zeena Cartwright, sworn on October 21, 2022.

3. Such further materials as may be filed with this Honourable Court.

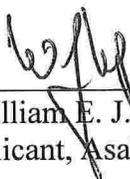
The applicant estimates that the application will take **15 minutes**.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by the Honourable Mr. Justice Walker.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application:

- (a) file an application response in Form 33;
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application; and
  - (ii) has not already been filed in the proceeding; and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: October 21, 2022

  
\_\_\_\_\_  
Signature of William E. J. Skelly  
Lawyer for applicant, Asahi Refining Canada Limited

***To be completed by the court only:***

Order made

in the terms requested in paragraphs ..... of Part 1  
of this notice of application

with the following variations and additional terms:

Date: .....

Signature of \_\_\_\_\_

Judge

Master

## Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

**SCHEDULE "A"**  
(to the Notice of Application)

**Service List**

<b>Name of Counsel</b>	<b>Party Represented</b>
David Bish (Torys LLP)	Counsel for the Directors of Great Panther Mining Limited
Lance Williams (McCarthy Tétrault LLP)	Counsel for Great Panther Mining Limited
Kibben Jackson and Rebecca Barclay Nguinambaye (Fasken Martineau DuMoulin LLP)	Counsel for the Monitor
William E.J. Skelly	Counsel for Asahi Refining Canada Limited



is hereby abridged and validated so that the Bankruptcy Petition is properly returnable on the Order Date, and further service on the Service List is hereby dispensed with.

**Sealing Documents**

2. Access to Sealed Items Permitted by:

a. Further Court Order.

**Items to be sealed:**

Document Name:	Date Filed:	Number of copies filed, including any extra copies for the judge.	Duration of Sealing Order:	Sought	Granted	
					Yes	No
<u>1. Entire File</u>						
<u>2. Specific Documents</u> a. Second Affidavit of Zeena Cartwright, sworn October 20, 2022	October 21, 2022	1	Until further Court Order	X		
<u>3. Clerks Notes</u>						
<u>4. Order</u>						

3. Endorsement of this Order by counsel appearing, other than counsel for Asahi, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

\_\_\_\_\_  
Signature of : William E.J. Skelly  
Lawyer for the Asahi Refining Canada Limited

BY THE COURT:

\_\_\_\_\_  
REGISTRAR

**APPENDIX "A"**  
(to the Sealing Order)

**List of Counsel**

<b>Name of Counsel</b>	<b>Party Represented</b>
David Bish (Torys LLP)	Counsel for the Directors of Great Panther Mining Limited
Lance Williams (McCarthy Tétrault LLP)	Counsel for Great Panther Mining Limited
Kibben Jackson and Rebecca Barclay Nguinambaye (Fasken Martineau DuMoulin LLP)	Counsel for the Monitor
William E.J. Skelly	Counsel for Asahi Refining Canada Limited