In the Court of Appeal of Alberta

Citation: Alixpartners Restructuring, Inc v Li, 2026 ABCA 269

Date: 20260814
Docket: 2601-0211AC
Registry: Calgary

Between:

Alixpartners Restructuring, Inc.
in its capacity as Court-Appointed Monitor of Alphabow Energy Ltd.

Respondent

- and -

Ben Li

Applicant

Reasons for Decision of
The Honourable Justice Jane Fagnan

Applications for Permission to Appeal and Stay of Enforcement

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Introduction

[1] The applicant applies for permission to appeal two Orders for Enhancement of Monitor's Powers and Stay Extension pronounced on June 26, 2026 and June 30, 2026, as well as a stay of enforcement of certain paragraphs. The Orders granted wide investigative powers to the Monitor following commencement of an active Calgary Police Service criminal investigation into the former director of Alphabow, and the Monitor's assertion that it would cooperate fully with the police.

Background

[2] On March 28, 2024, Alphabow Energy Ltd filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*). Those proceedings were subsequently continued under the *Companies Creditors' Arrangement Act*, RSC 1985, c C-36 (*CCAA*).

[3] The applicant acted as a director of Alphabow during part of the *CCAA* proceedings until his resignation effective June 15, 2026. Corporate counsel then withdrew from the record. The company was unable to complete remaining transactions.

[4] On June 25, 2026, the Monitor filed the Fourteenth Report of the Monitor, stating among other things that on June 16, 2026, the Monitor's legal counsel was contacted by legal counsel of a third party interested in the *CCAA* proceedings who made the Monitor aware of allegations that the applicant may have personally, or through an entity he controls, withdrawn funds from Alphabow's bank account and that the Calgary Police Service had been contacted. The Monitor concluded on a preliminary basis that approximately $9 million had been wrongfully withdrawn from the company's bank account, and the withdrawal of such amounts were consistently and deliberately concealed from the Monitor throughout the *CCAA* proceedings. The Report also indicated under the heading "3.3 Next Steps":

> 1. On June 22, 2026, the Monitor received notice that CPS was aware of the Allegations and *requested evidence to identify if a criminal offence has occurred. The Monitor intends* to provide the CPS with a copy of this Fourteenth Report and *to cooperate, in full, with its investigation*. [emphases added]

[5] The Monitor's application for enhanced powers was brought on short notice on June 26, 2026. The applicant's counsel objected to the inclusion of provisions enabling the Monitor to

compel the applicant to produce documents and submit to questioning on the basis that they would permit violation of his ss 7 and 8 *Charter* rights.

[6] The justice granted an order without certain provisions proposed by the Monitor. She adjourned the proceedings until June 30, 2026, indicating she would provide a decision regarding those provisions at that time.

[7] On June 30, 2026, the justice granted the June 30 Order containing the disputed provisions. In her brief oral reasons, she cited ***R v Jarvis***, 2002 SCC 73 and found the nature of the investigation did not have a predominant purpose of determining penal or criminal liability. She held the Monitor’s statement that it plans to cooperate with the police regarding any criminal investigation did not change the Monitor’s predominant purpose to pursue its mandate under the *CCAA*. She further held that while the Monitor intended to cooperate with the police investigation, that did not mean the police could or would use the information from the Monitor to prosecute the applicant without regard to his *Charter* rights. She determined the Monitor’s investigation should not be suppressed because of possible criminal charges and the possibility of a *Charter* violation on the part of the police. She opined that the responsibility lies with the police to ensure the act in accordance with the *Charter*. She further found the applicant’s concerns were addressed by s 5 of the *Canada Evidence Act* and s 13 of the *Charter*.

[8] On July 13, 2026, the Monitor served counsel for the applicant with a Notice of Appointment to attend Questioning on July 26, 2026 and a demand for provision of information and records relating to the allegations by July 27, 2026.

Proposed Grounds of Appeal

[9] The applicant wishes to appeal on the basis of procedural unfairness, alleging the matter proceeded on very short notice and incomplete information, counsel was precluded from making full submissions, the justice relied on case law without notice to the applicant, and she denied counsel the opportunity to provide written submissions.

[10] Regarding the substance of the Orders, the applicant alleges the justice erred in: finding the investigation in this case did not have a predominant purpose of determining penal or criminal liability, granting the Monitor enhanced investigative powers without sufficient protections of the applicant's constitutional rights, finding s 5 of the *Canada Evidence Act*, RSC 1985, c C-5 and s 13 of the *Charter* sufficiently protect the applicant's constitutional rights in the circumstances, and granting orders that were overbroad and exceeded the reasonable exercise of the court's jurisdiction.

Test

[11] The test for leave to appeal under s 13 of the *CCAA* is based on four criteria, to be assessed collectively: 1) whether the appeal is *prima facie* meritorious (i.e. not frivolous); 2) whether the

appeal will unduly hinder the progress of the action; 3) whether the point raised is of significance to the action itself; and 4) whether the point on appeal is significant to the practice: ***Coast Automotive Group Inc (Re)***, 2026 ABCA 123 at para 17; ***Bellatrix Exploration Ltd v BP Canada Energy Group ULC***, 2020 ABCA 178 at para 28.

[12] Leave to appeal under s 13 of the *CCAA* is discretionary and must be exercised sparingly: ***Coast Automotive*** at para 18. Intervention is justified only where the justice erred in principle or exercised discretion unreasonably: ***9354-9186 Québec inc v Callidus Capital Corp***, 2020 SCC 10 at paras 53-54.

Analysis

[13] The applicant raises a non-frivolous issue as to whether the chambers justice considered all the factors set out in para 94 of ***Jarvis*** with respect to predominant purpose. It is arguable that she did not address all the factors in her reasons.

[14] The chambers justice recognized ***Jarvis*** is distinguishable on its facts. Indeed, the ***Jarvis*** case involved different branches of a state agency with separate mandates. The Monitor is not part of any state agency. The chambers justice did not refer to case law regarding third parties enlisted as agents of law enforcement, an area of the law that continues to develop: see for example ***R v Pham***, 2025 BCCA 324, leave granted [2025] SCCA No 510 (QL).

[15] Further, unlike other types of third parties, the Monitor is an officer of the Court carrying out statutory duties under s 23 of the *CCAA*. In these particular circumstances, the Court was asked to authorize the Monitor to exercise broad investigative powers in circumstances where there is an active police investigation, the police had requested evidence of the Monitor to identify if a criminal offence has occurred, and the Monitor had expressed an intention to fully cooperate with the police investigation.

[16] A non-frivolous issue arises in these particular circumstances, being whether the chambers justice erred in failing to include provisions, or limit the scope of the Orders, so as to ensure the powers granted were not used in a manner that exceeded the Monitor's *CCAA* mandate and risked breaching the applicant's relevant *Charter* rights. This issue is of significance to the action and to the practice.

[17] The applicant also takes the position the Orders were overbroad and exceeded the reasonable exercise of the Court's jurisdiction. This Court has held that investigative activity is appropriate in furtherance of legitimate insolvency objectives: ***Angus A2A GP Inc v Alvarez & Marsal Canada Inc***, 2026 ABCA 156 at paras 79-81, 133. The scope of the powers granted, and the balancing of stakeholder interests are discretionary *CCAA* determinations reviewable for palpable and overriding error or error in principle: ***Resurgence Asset Management LLC v Canadian Airlines Corporation***, 2000 ABCA 149 at para 29.

[18] Generally, the challenge to the scope of the Orders concerns the exercise of discretion under ss 11 and 23 of the *CCAA* as well as the justice's finding regarding the predominant purpose of the investigation. The chambers justice's decision regarding the scope of the powers relates to her analysis regarding the implications of the communications between the police and the Monitor. Given that the applicant has framed his concerns relating to the powers granted only insofar as they affect him, the scope of powers issue is not of significance to the practice except as it might be affected by the first issue identified above.

[19] None of the alleged procedural irregularities raises an issue warranting appellate consideration. While one or more of the complaints may be arguable, the law in this area is well settled and the result would be very specific to these facts. The issue would be of little or no significance to the practice. The granting of permission in relation to the first issue will, in effect, remedy any procedural shortcomings which may have resulted in incomplete submissions before the chambers justice.

[20] The applicant submits the appeal will not unduly hinder or delay the *CCAA* proceedings as the appeal focuses solely on aspects of the Orders as they relate to the applicant. The applicant maintains that other than residual transactions, the Monitor's investigation is the final item remaining in the *CCAA* proceedings.

[21] The respondent cites ***North American Tungsten Corporation v Global Tungsten and Powders Corp***, 2015 BCCA 426 at paras 42, 44, arguing that granting leave will undermine restructuring efforts as the appeal will directly impede the Monitor's efforts to trace assets, evaluate recovery actions and complete the administration of the proceeding. The respondent notes the Monitor received information during the restructuring through the applicant and he is alleged to have knowledge relevant to the disappearance of substantial estate funds. The respondent further argues that delaying the investigation reasonably raises the risk of further asset dissipation, loss of records, fading memories and prejudice to stakeholders.

[22] It is clear the appeal will have some effect on the *CCAA* proceedings. However, it will not interfere with the Monitor's ability to investigate or obtain records and information from other persons and sources, nor will it impact the Monitor's ability to deal with the property of Alphabow or to close any transactions on behalf of Alphabow.

[23] The factors weigh in favour of granting the application with respect to the following general issue:

> Did the chambers justice err in failing to include provisions, or limit the scope of the Orders, so as to ensure the investigative powers granted to the Monitor by the Court were not used in a manner that exceeded the Monitor's *CCAA* mandate and risked breaching the applicant's relevant *Charter* rights?

[24] Of course, the panel hearing the appeal is not bound by this formulation of the issue.

Stay Pending Appeal

[25] The applicant requests a stay pending appeal. He must establish: 1) a serious question to be tried (or an arguable issue that is not frivolous or vexatious); 2) irreparable harm if the stay is not granted; and 3) the balance of convenience favours granting the stay: ***DGDP-BC Holdings Ltd v Third Eye Capital Corporation***, 2021 ABCA 304 at para 16, citing ***RJR-MacDonald Inc v Canada (Attorney General)***, 1994 CanLII 117, [1994] 1 SCR 311.

[26] There is a serious question to be tried. Given the nature of the issue, there is potential for irreparable harm if a stay pending appeal is not granted. The Monitor is not impeded in other aspects of its investigation. The balance of convenience favours granting the stay pending appeal.

[27] A stay pending appeal is granted in relation to paragraphs 5(m) of the June 26 Enhanced Powers Order and paragraphs 3, 5, 6, and 9 of the June 30 Enhanced Powers Order, but only as they relate to the applicant.

Conclusion

[28] The application for permission to appeal is granted in part. The application for a stay pending appeal is granted.

[29] Counsel are directed to contact the Case Management Officer at the earliest opportunity to establish a timetable for the appeal.

Applications heard on August 5, 2026

Reasons filed at Calgary, Alberta
this 14th day of August, 2026

Fagnan J.A.

Appearances:

J.L. Oliver (no appearance)
M.N. Burkett
D. Jorgenson
for the Respondent

I.D. McKay, KC
P.G. Chiswell (no appearance)
H. Ferg (no appearance)
J. Luu
for the Applicant