

In the Court of Appeal of Alberta

Citation: AlphaBow Energy Ltd (Re), 2026 ABCA 35

Date: 20260209
Docket: 2501-0324AC
Registry: Calgary

**In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended
and in the Matter of the Compromise or Arrangement of AlphaBow Energy Ltd**

Between:

AlphaBow Energy Ltd

Applicant

- and -

Alberta Energy Regulator and the Orphan Well Association

Respondents

**Reasons for Decision of
The Honourable Justice Bernette Ho**

Application for Leave to Appeal

**Reasons for Decision of
The Honourable Justice Bernette Ho**

Introduction

[1] The applicant, AlphaBow Energy Ltd (“AlphaBow”), applies for leave to appeal the order of a chambers judge which dismissed its application for a stay of any request by the respondent, Alberta Energy Regulator (“AER”), for a security deposit as a condition of licence transfers.

Background

[2] In March 2023, the AER issued a reasonable care and measures order that required AlphaBow to post over \$15 million in security, representing 10% of its inactive licence liability (the “Initial Security Request”). After failing to comply with the order, AlphaBow’s licences and sites were suspended, and the Orphan Well Association was directed to provide reasonable care and measures of AlphaBow’s licences and sites.

[3] Thereafter, AlphaBow entered a court-ordered claims process under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA]. At the outset of the CCAA proceeding, an amended and restated initial order (“Initial Order”) imposed a stay against creditors and some regulatory actions. Both AlphaBow and the AER agree that the Initial Order stayed the Initial Security Request.

[4] Throughout the CCAA proceeding, a series of transactions were approved by the Court of King’s Bench transferring some of AlphaBow’s assets and environmental liabilities to other entities. On December 19, 2024, a reverse vesting order was approved (the “Reverse Vesting Order”), which included sales approval and vesting orders transferring AlphaBow’s assets to other entities, including 2628069 Alberta Ltd and 2628071 Alberta Ltd (collectively, the “069 and 071 Licence Transfers”), and a corporate transaction transferring all the common shares of AlphaBow to 2628071 Alberta Ltd pursuant to a subscription agreement (the “Subscription Agreement”). The completion of the 069 and 071 Licence Transfers is a condition of the Reverse Vesting Order.

[5] The 069 and 071 Licence Transfers were subject to the AER’s approval. Cascade Capture Ltd (“Cascade”) filed a licence transfer application as the nominee purchaser for the 069 and 071 Licence Transfers. In July 2025, and after approving other licence transfers without a security requirement, the AER conditionally approved the 069 and 071 Licence Transfers to Cascade, subject to the provision of over \$20 million in security from AlphaBow (the “Second Security Request”) and nearly \$5 million in security from Cascade. The amount of the Second Security Request represented 10% of AlphaBow’s then current inactive licence liability.

[6] AlphaBow was unable to satisfy the Second Security Request and Cascade pulled its licence transfer application for the 069 and 071 Licence Transfers.

[7] AlphaBow filed a request for regulatory review of the AER's decision to impose the Second Security Request as a condition of licence transfer. AlphaBow later filed an application with the Court of King's Bench seeking a declaration that any future request for security from AlphaBow by the AER would be stayed for so long as the *CCAA* proceedings were ongoing and that the failure to pay the Second Security Request could not be relied upon by the AER in considering whether to approve licence transfer applications related to AlphaBow assets. The chambers judge dismissed the application.

[8] The chambers judge found that the enforcement of the Second Security Request was an action by the AER in its capacity as a regulator, and not as a creditor, therefore it was not stayed under the Initial Order: *AlphaBow Energy Ltd (Re)*, 2025 ABKB 622 at para 27 [KB Decision]. The chambers judge also declined to exercise his discretion under subsection 11.1(3) of the *CCAA* to stay the Second Security Request or any future request because AlphaBow had not satisfied either statutory precondition to subsection 11.1(3): KB Decision at paras 37–39.

Test for Leave to Appeal

[9] The applicant seeks to appeal the KB Decision. Section 13 of the *CCAA* requires leave to appeal an order made under that statute: *CCAA*, s 13. For leave to appeal, an applicant must establish there are “serious and arguable grounds that are of real and significant interest to the parties”: *Re Liberty Oil & Gas Ltd*, 2003 ABCA 158 at para 15 [*Liberty*]; *BMO Nesbitt Inc v Bellatrix Exploration Ltd*, 2020 ABCA 264 at para 7 [*Bellatrix*].

[10] This requires consideration of four factors:

- (i) whether the point on appeal is of significance to the practice;
- (ii) whether the point raised is of significance to the action itself;
- (iii) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- (iv) whether the appeal will unduly hinder the progress of the action: *Liberty* at para 16; *Bellatrix* at para 7.

[11] In determining whether the test for leave has been met, appropriate weight must be ascribed to each of the above, though in most cases, the last two factors should be ascribed more weight: *Resurgence Asset Management LLC v Canadian Airlines Corp*, 2000 ABCA 149 at para 46. Assessment of these factors requires consideration of the standard of review that would govern the appeal, if leave were granted. That standard would require the appellant to point to an error on a

question of law, a palpable and overriding error in the findings of fact, or an error in the supervising chambers judge's exercise of discretion: *Resurgence Asset Management LLC v Canadian Airlines Corp*, 2000 ABCA 238 at para 42.

Analysis

[12] AlphaBow seeks leave to appeal the KB Decision on the grounds that:

- (i) The chambers judge erred in law in finding that the Second Security Request is not captured by the stay under the Initial Order;
- (ii) The chambers judge erred in law in interpreting and applying section 11.1(3) of the *CCAA*;
- (iii) The chambers judge erred in law in failing to conclude that the Second Security Request was a collateral attack on the Reverse Vesting Order; and
- (iv) The chambers judge erred in law in speculating that AlphaBow will fail post insolvency.

[13] Regarding the four factors listed above, I am satisfied the first two factors are met for at least some of these grounds. The interpretation of section 11.1(3) of the *CCAA* is arguably a question of significance to the practice, and I agree that whether the AER can enforce the Second Security Request against AlphaBow as a condition of its final licence transfers is a question of significance to this *CCAA* action.

[14] However, I am not satisfied the third and fourth factors have been met.

[15] Relative to the third factor, I am not satisfied the applicant has established the appeal is *prima facie* meritorious in considering whether the chambers judge arguably made an error of law or a palpable and overriding error in the findings of fact or exercises of discretion.

[16] The applicant has not identified a reviewable error in the chambers judge's interpretation of the law. The chambers judge's reasons indicate that he was alive to the relevant principles of statutory construction and adequately addressed the jurisprudence relevant to the interpretation and application of the statutory provisions at issue.

[17] The remaining questions on appeal relate to the chambers judge's discretionary decisions and fact finding, and the applicant has not satisfied me that its grounds of appeal are sufficiently meritorious. In determining whether to exercise his discretion under section 11.1(3) of the *CCAA*, the chambers judge did not make any palpable and overriding errors in principle or application. Nor were his factual findings unsubstantiated by the record.

[18] There was disagreement between the parties as to precisely how much deference the chambers judge's decisions ought to be given since he was not squarely a supervising judge, one who would be afforded significant deference in decision making: *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 53. In my view, the determination of that question would not have an impact on the outcome of this particular matter.

[19] On the fourth factor, whether the appeal will unduly hinder the progress of the action, AlphaBow acknowledged that the imposition of the Second Security Request halted progress of the *CCAA* action in the Court below, although they submit the appeal is necessary to move the action forward. In response, the AER submits an appeal would just further delay the *CCAA* process.

[20] I am satisfied that an appeal would hinder the progress of this action, particularly given my comments relative to the third factor.

[21] As a result, the applicant has not shown there are serious and arguable grounds of real and significant interest to the parties to base an appeal.

[22] I understand AlphaBow's position that the Second Security Request in effect undercut the Reverse Vesting Order and the approved transactions, and it would have been preferable for the AER to clarify its intended use of security enforcement to all parties involved at an earlier stage of the *CCAA* proceeding. That said, AlphaBow was clearly aware of the Initial Security Request that was stayed by the Initial Order, and the approved transactions were conditional on AER approval of licence transfers that, by operation of the governing regulations and directives, can include security conditions on both the transferor and transferee: *Oil and Gas Conservation Rules*, Alta Reg 151/1971, s 1.100 as it appeared on 19 December 2024; *Directive 088: Licensee Life-Cycle Management*, s 5. AlphaBow did not seek clarification from the AER on what, if any, security enforcement might be required to finalize the licence transfers in advance of the Reverse Vesting Order and associated orders being granted, nor did the AER identify the issue earlier in the *CCAA* proceedings when it had an opportunity to do so.

Conclusion

[23] The application for leave to appeal is dismissed.

Application heard on January 22, 2026

Reasons filed at Calgary, Alberta
this 9th day of February, 2026



Ho J.A.

Appearances:

K.R. Cameron

M.W. Selnes

S. Fiddes

for the Applicant AlphaBow Energy Ltd

J.W. Reid

D.R. Bailey

for the Respondent Alberta Energy Regulator

R. Zahara

E. Wilson

for the Respondent Orphan Well Association