

Technical Update

Fresh Case Law for Insolvency Professionals

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What We'll Cover

- Reverse vesting orders and CCAA plan sanction
- Discharge and the section 178 exceptions after Poonian
- Alberta oil and gas: the regulator's expanding role
- Secured creditor and enforcement issues
- What's coming: OSB reform and cases to watch

Why These Five Themes

- Courts are raising the evidentiary bar for extraordinary relief
- The s. 178 exceptions are being re-examined post-Poonian
- The AER and Alberta Energy continue to expand their reach
- Drafting and timing are driving priority outcomes

Cleo Energy Corp (Re), 2025 ABKB 621

- Feasby J. refused to approve an RVO in a receivership
- Receiver asserted licence-transfer costs and risks but did not substantiate them
- Purchaser preference alone does not establish necessity
- CCAA plans and BIA proposals give creditors rights the RVO skips
- Application dismissed without prejudice to a renewed record

What Cleo Means for Receivers and Monitors

- Build the evidentiary record before the application
- Quantify timing and cost estimates for licence transfers
- Address alternatives directly: why not a CCAA plan
- If retaining contracts, be prepared to cure monetary defaults

Henenghaixin Corp v. Long Run Exploration, 2025 ABCA

- RVO approved; \$44M constructive trust claim transferred to ResidualCo
- Objecting creditor argued for a prima facie preservation standard
- Court held balance of probabilities is the correct standard
- Mere assertion of a trust claim should not derail CCAA proceedings
- Court of Appeal dismissed leave

Invico v. Newgrange Energy, 2025 ABCA 392

- GOR described as intended to be an interest in land
- ABCA upheld that the GOR was a contractual claim only
- Royalty vested out to a residual trust with no funds
- Boilerplate intention language does not survive inconsistent drafting
- Grantor must hold the underlying interest at execution

Imperial Tobacco Canada Ltd., 2025 ONSC 1358

- Morawetz C.J. sanctioned the CCAA plans for the three tobacco companies
- About \$1 trillion in claims; unprecedented creditor consensus
- Heart & Stroke and Cancer Society opposed as social stakeholders
- Court's role is to sanction or reject, not to amend
- Business judgment of voting creditors should not be displaced

Takeaways: RVOs and Plan Sanction

- Purchaser preference is not enough to justify an RVO
- Evidence and alternatives analysis must be in the report
- Drafting precision matters; sloppy royalties can be vested out
- Courts defer to creditor business judgment on plan sanction

Discharge and s. 178 After Poonian

- Poonian (SCC 2024) reshaped the s. 178 analysis
- 2025 produced important follow-ons at the ABCA, ABKB, and SCC
- Impact: more nuanced discharge opposition and post-discharge collection

Piekut v. Canada (MNR), 2025 SCC 13

- s. 178(1)(g) protects student loan debt if filed within seven years
- Majority adopted the single-date approach
- Clock runs from the last date as a student, funded or not
- Karakatsanis J. dissent preferred a seven-clear-years test
- No separate court order required for s. 178(1)(g) to apply

Wild Rose Meats Inc v Andres, 2025 ABKB 487

- Creditor sought to have a \$3.6M default judgment survive discharge
- Three-part test: someone else's money, wrongful use, received as fiduciary
- Debtor acted through his corporation, not as personal fiduciary
- Default judgment did not amount to a finding of fiduciary breach
- s. 178(1) exceptions interpreted narrowly; doubt benefits the bankrupt

Henderson v Peerani, 2025 ABCA

- Post-Poonian application of s. 178(1)(e)
- Property obtained by fraud need not belong to the creditor
- Property need not pass directly to the bankrupt
- Detrimental reliance on the misrepresentation is enough
- Stay lifted to let the creditor pursue the claim

Takeaways: Discharge in Practice

- Student loan analysis turns on last date as a student, funded or not
- s. 178(1)(d) requires wrongful use of money held as fiduciary
- s. 178(1)(e) reaches third-party property flows post-Henderson
- Default judgments are starting points, not conclusive findings

Alberta Oil and Gas: the Regulator's Role

- AER and Alberta Energy continue to assert positions inside proceedings
- Two 2026 decisions reinforce regulator rights and the single-proceeding model
- Practical lesson: plan with the regulator, not around it

Re AlphaBow Energy, 2025 ABKB 622 / 2026 ABCA 35

- AlphaBow challenged AER security-deposit requirements on licence transfers
- Court of King's Bench upheld AER authority
- Court of Appeal dismissed leave to appeal
- Redwater-era regulator powers remain robust
- Licence-transfer costs and deposits must be modelled in sale economics

ABKB Royalty Arrears Decision (Jan. 26, 2026)

- Alberta Energy pursued solvent co-lessees for arrears owed by an insolvent operator
- Court held Alberta Energy must advance the pre-filing claim in the NOI first
- Reinforces the single-proceeding model
- May apply to other statutory regimes with joint liability
- AE's licence-transfer veto gives it privileged position inside proceedings

Takeaways: Oil and Gas Insolvencies

- Model AER licence-transfer costs and deposits from day one
- Regulator claims are real claims and run through the proceedings
- Single-proceeding model constrains third-party pursuit of co-obligors
- Engage the AER and Alberta Energy early

Secured Creditor and Enforcement Issues

- Drafting, timing, and procedural discipline drive outcomes
- Three cases: anti-deprivation, interest stops, and stay effect on lessors
- Each has immediate operational impact

ATB Financial v Mayfield Investments, 2025 ABKB 61

- USA forced share sale on receivership: 25% discount, 36-month interest-free terms
- Receiver sought to void the clause under the Chandos anti-deprivation rule
- Dunlop J.: triggering event was insolvency; effect was removal of value
- Shareholders' alternative-trigger argument failed; notice period had expired
- Clause struck; SISP-based sale of shares approved

Easy Legal Finance v Law Society of Alberta, 2025 ABCA 112

- Law Society argued the interest stops rule should apply in receivership
- Secured creditor owed over \$1.4M at 18% per year
- ABCA confirmed the rule does not apply to secured creditors in receivership
- Rule remains limited to unsecured creditors in bankruptcy
- SCC leave period lapsed without application

Walgre Transport (Re), 2025 ONSC 7143

- Lessor had issued BIA s. 244, PPSA, and termination notices before the stay
- All statutory notice periods expired pre-stay; leases terminated
- Kimmel J. permitted the lessor to take possession
- Stay preserves status quo at effective date; does not revive terminated rights
- Later designation of equipment as essential did not change the result

Takeaways: Enforcement Day-to-Day

- Review commercial contracts for insolvency-triggered clauses
- Interest continues to accrue in receivership for secured creditors
- Document the state of enforcement steps as at the stay date
- Timing discipline separates enforcement from write-off

What to Watch: OSB Regulatory Reform

- November 2025: OSB proposed changes to BIA General Rules and CCAA Regulations
- Aimed at modernizing the Canadian insolvency system
- Consultation closed; amendments not yet in force
- Will affect day-to-day practice for LITs and monitors

Cases to Watch

- Valeo Pharma (2025 QCCS 580): WEPPA and RVO employee transfers; QCCA leave granted
- AMF v Valeo Pharma: CCAA exemption from disclosure; QCCA decision pending
- Pride Logistics: securitization financier CCAA cost allocation; hearing Apr. 13-14
- Continued evolution of RVO use in BIA receiverships post-Peakhill and Cleo

Closing Thoughts

- Evidence, drafting, and timing are the through-line
- 2025-26 decisions have raised expectations across the board
- Invest in the record; engage regulators early; review documents with insolvency in mind
- Questions welcome