In the Court of Appeal of Alberta

Citation: Alberta Union of Provincial Employees v Christenson Equities Ltd, 2026 ABCA 357

Date: 20261106
Docket: 2603-0179AC
Registry: Edmonton

Between:

Alberta Union of Provincial Employees

Applicant

- and -

Christenson Equities Ltd., Christenson Communities Ltd., Devonshire Village Ltd., Devonshire Mews Ltd., Devonshire Manor Ltd., Royal Oak Dev. Lacombe Ltd., Citadal Mews Ltd., Bedford Village Ltd., Glastonbury Mews Ltd., Glastonbury Village Ltd., Christenson Village at Westmount Ltd., Timberstone Communities Ltd., Park Avenue at Creekside Ltd., Whitecourt Village Ltd., Christenson Developments Ltd., Westmount Security Corp., Timberstone Mews Security Corp., Southwoods Security Corp., Royal Oak Mortgage Security Services Inc., Glastonbury Security Corp., Devonshire Security Corp., Park Avenue Security Corp., Bedford Security Corp., Network Consulting Corporation, 585436 Alberta Ltd., and 1831993 Alberta Ltd.

Respondents

- and -

Ernst & Young Inc.,
in its capacity as Court-Appointed Monitor of the Respondents

Respondent

Reasons for Decision of
The Honourable Justice Jane Fagnan

Application for Permission to Appeal

Reasons for Decision of
The Honourable Justice Jane Fagnan

Introduction

[1] The Alberta Union of Provincial Employes (AUPE) applies for permission to appeal, pursuant to s 13 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*), an order preventing it from exercising any rights before the Alberta Labour Relations Board (Board) in relation to its certifications of Christenson facilities during the *CCAA* stay period.

Background

[2] On October 17, 2025, a group of related companies (the Christenson Group) was granted protection through an Initial Order under the *CCAA*. The order appointed a Monitor and granted an initial stay of proceedings. The *CCAA* proceedings focus on the sale of ten Christenson Group owned seniors-living communities in Alberta and the distribution of the resulting proceeds, principally to approximately 600 life lease interest holders.

[3] An Amended and Restated Initial Order was granted on October 27, 2025.

[4] Between November 2025 and March 2026, the court approved Sales and Investment Solicitation Processes (SISP) for the communities, claims procedures, meetings of life lease claimants, amendments to SISP timelines, additional critical supplier protections, and the extension of the stay to September 30, 2026. The court also approved the Christenson Group's amended plans of compromise and arrangement for the life lease claimants in each of the communities following votes of those claimants, approved related releases, and granted various ancillary orders.

[5] Also during that time, on February 24, 2026 the initial stay was extended over an AUPE application for certification of a bargaining unit of employees from Arch working at the Devonshire Community. That order was later vacated by consent without prejudice to the ability of a party to bring a further application to reinstate the stay.

[6] By June 2026, a successful bidder had been selected for nine of the communities.

[7] The sale of the tenth community, Whitecourt Village, was approved on June 25, 2026.

[8] Also on June 25, 2026, the Christenson Group applied under s 11.1(3) of the *CCAA* to extend the stay to AUPE labour proceedings before the Board concerning Arch, the Christenson Group, and Greg Christenson.

[9] Section 11.1(3) is an exception to the general removal under s 11.1(2) of "regulatory proceedings" from a court's authority to order a stay in *CCAA* proceedings:

> 11.1(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body [...]
>
> (3) On application […] the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion
>
> (a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and
>
> (b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

[10] The chambers justice was advised that one of the ten communities was unionized at the start of the *CCAA* proceedings. AUPE had taken steps to organize and become certified bargaining agent for certain units of employees at four other communities and had filed an application for a common employer declaration. The bulk of these organizational efforts had commenced during the insolvency process.

[11] The Monitor expressed concerns about the likely impact the labour proceedings would have on the sales process if no stay was granted: active and unresolved labour proceedings would potentially affect pricing, transaction certainty and stakeholder recoveries. The Monitor submitted a failure to complete the transaction with the successful bidder could result in a material erosion of value.

[12] The chambers justice noted there is limited relevant case law. He held that s 11.1(3) gives the court a very broad and nuanced discretion to look at the circumstances of each individual case. He found the evidence in terms of the possible impact if a stay was not granted was somewhat speculative and based on hearsay. He also stated he was guided by the Monitor's expressed concerns. The justice granted the stay, finding it would impact the union's rights in the most minimal way possible.

[13] The resulting order, filed on June 30, 2026, imposes a stay over labour proceedings brought by AUPE to the Board in respect of the Christenson Group, Arch Services Ltd, and Mr. Gregory Christenson and over all existing and future proceedings before the Board under Part 2, Divisions 5, 7, and 10 of the *Labour Relations Code*, RSA 2000, c L-1.

Proposed Appeal Grounds

[14] AUPE intends to argue on appeal that the chambers justice erred in extending the stay to labour proceedings by erroneously interpreting and applying s 11.1(3), failing to consider AUPE members' constitutionally guaranteed rights to participate in collective bargaining and unreasonably expanding the scope of the stay to include future proceedings before the Board.

Test

[15] The applicant must establish there are serious and arguable grounds of real and significant interest to the parties: ***Mudrick Capital Management LP v Lightstream Resources Ltd***, 2016 ABCA 401 at para 11. Four relevant factors have been identified in the case law:

(a) whether the issue on appeal is of significance to the practice;

(b) whether the issue on appeal is of significance to the action itself;

(c) whether the appeal is *prima facie* meritorious or "not frivolous"; and

(d) whether the appeal will unduly hinder the progress of the action.

Angus A2A GP Inc v Alvarez & Marsal Canada Inc, 2025 ABCA 147 at para 24.

[16] The applicable standard of review on appeal is relevant to the analysis. It is trite that *CCAA* proceedings are dynamic, real-time processes; a discretionary decision by a supervising judge steeped in *CCAA* proceedings attracts a high degree of deference: ***Weinrich Contracting Ltd v Wiebe***, 2022 ABCA 176 at para 22. Generally, for a court to grant leave to appeal in a *CCAA* proceeding, the judge must have acted unreasonably, erred in principle, or made a manifest error; the onus is on the applicant to identify an error of law or a palpable and overriding error of fact or in the exercise of discretion: ***BMO Nesbitt Burns Inc v Bellatrix Exploration Ltd***, 2020 ABCA 264 at para 8.

Analysis

Significance to the practice

[17] The general issues raised are of broad significance to both the *CCAA* and labour relations practice as they relate to the intersection between these two separate legal domains and their separate sets of protected rights. Given the paucity of Alberta appellate authority in this area, appellate guidance may be of significance to the practice. However, the particular circumstances of this case may diminish the precedential value of an appeal decision.

Significance to the action

[18] The applicant submits the stay bars Christenson Group employees from receiving the representation they voted for and thus affects their constitutionally protected right to participate in collective bargaining during the *CCAA* stay period.

[19] The respondents submit the decision merely delays, rather than precludes, the employees' exercise of their rights; while it is true they are presently restricted from bargaining current terms and conditions with their current employer, it will ultimately be advantageous for the employees to deal with a solvent purchaser rather than the current owner. While the respondents submit an appeal might eventually be moot, they do not argue it is presently moot.

[20] The chambers justice recognized the stay would have some impact on the applicant. The appeal has some significance to the party raising the issue and to the proceedings as a whole.

***Prima facie* meritorious or "not frivolous" grounds**

[21] On appeal, the applicant intends to argue the chambers justice erred in interpreting s 11.1(3) as not requiring a finding that a viable compromise is impossible before granting the stay, erroneously placed the onus on AUPE to prove why the stay should not be extended to labour proceedings, did not consider the members' constitutional collective bargaining rights, and erred in relying on speculative evidence.

[22] Further, the applicant will argue the stay is overbroad as it bars AUPE from initiating any substantial proceedings before the Board in relation to its certified Christenson Group employees, regardless of whether such proceedings would have an actual impact on the respondents or the *CCAA* process.

[23] The Christenson Group submits the grounds are frivolous, arguing the chambers justice had a very broad discretion in the circumstances and noting AUPE had put no evidence before the justice.

[24] The Monitor recognizes the chambers justice found the evidence before him to be weak, but submits he was entitled to take into account the Monitor's advice regarding risk to the sale process if the stay was not extended to existing and future labour proceedings.

[25] The *prima facie* meritorious standard is not onerous: ***Bellatrix Exploration Ltd v BP Canada Energy Group ULC***, 2020 ABCA 178 at para 28. The issues raised by the applicant are not frivolous. The standard is met in this case.

Undue hindrance to the progress of the action

[26] There are times when an order designed to achieve the purposes of the *CCAA* will conflict with provincial legislation: ***Canada v Canada North Group Inc***, 2021 SCC 30 at para 31. However, the applicant argues a court in the *CCAA* context should not "unduly inoculate the proceedings against the legitimate exercise of labour rights simply because the assertion of those rights poses an inconvenience" to the process, citing ***Romspen Investment Corporation v Courtice Auto Wreckers Limited***, 2017 ONCA 301 at para 37.

[27] The applicant submits the Court should not consider events arising after the June 25, 2026 order. Given the dynamic and quickly evolving nature of *CCAA* proceedings, such an approach would be artificial and would not permit effective consideration of this fourth factor.

[28] In its Seventh Report on July 24, 2026, the Monitor reported the successful bidder had raised concerns regarding the future operating costs of the communities on account of labour-related matters, and the purchase price had been reduced as a result as requested by the successful bidder. The reduction was not insignificant and effectively comes out of the pockets of the life lease claimants. The amended transaction nonetheless continued to provide materially greater value than any alternative proposal received through the SSIP.

[29] On July 31, 2026, the court extended the court approval deadline for the sale transaction to August 13, 2026 and the closing date to October 31, 2026. On August 13, 2026, the Court granted a sale approval and vesting order for the transaction with the successful bidder in respect of nine communities and extended the stay to December 31, 2026.

[30] The sale of Whitecourt Village (which had been approved on June 25, 2026) closed on October 2, 2026.

[31] The transaction approved by the sale and vesting order has not yet closed; it is subject to the approval of Assisted Living Alberta of the assignment of the designated supportive living licences. Distributions to the life lease claimants under the plans follow closing.

[32] The respondents say the purchaser has agreed in the Asset Purchase Agreement to take on all the employees, including non-union employees, and has also agreed to the terms of employment being frozen and to the purchaser becoming the successor employer. Once the pending transactions close, AUPE will deal with the new solvent owner and/or operator of the communities. They say the issues are likely to be moot by the time any appeal is heard; bargaining in the current environment would likely be an exercise in futility if Arch no longer employs the employees. Further, a successful appeal would set the parties back with further cost to the estate and lower recovery by the life lessors.

[33] The applicant objects to any reference to the Asset Purchase Agreement which is not in the application materials, does not involve Arch (the actual employer), and was approved after the

order being appealed. It argues there is no guarantee the new purchaser would have any obligation to recognize AUPE, in which case it would have to attempt to re-organize.

[34] The respondents also note the applicant may apply to vary or lift the stay on relatively short notice. Further, each stay extension application provides an opportunity for the applicant to put forward a basis - taking into account relevant developments - to exclude labour proceedings from the stay. To date, the applicant has not sought to revisit the stay in the court below.

[35] This case involves a large number of vulnerable stakeholders and their savings. The *CCAA* process appears to be progressing with a clear end in sight which will possibly arrive before an appeal could be heard. An appeal in the circumstances will, at a minimum, increase costs and further diminish recovery for the many vulnerable stakeholders. It could delay distribution to the stakeholders or imperil the sale process.

[36] This Court is not well situated to assess the impact of the anticipated asset purchase on the employees' rights. The employees' labour related rights are clearly delayed while the stay is in place. However, the applicant has had, and still has, the opportunity to revisit the terms of the stay in the lower court with the passage of time, and in particular if the Asset Purchase Agreement significantly impacts employees' rights or if the *CCAA* process does not proceed as anticipated by the Monitor. That court would be in a position to re-assess the stay and its terms with full knowledge of the entire record and all the relevant circumstances.

[37] An appeal is not the applicant's only recourse in the circumstances and would unduly hinder the progress of the action.

[38] While the proposed appeal raises issues of significance and is not frivolous, it would unduly hinder the progress of the action and the applicant has the ability to revisit the terms of the stay in the lower court. Therefore, the application for permission to appeal is dismissed.

Conclusion

[39] The application for permission to appeal is dismissed.

Application heard on October 28, 2026

Reasons filed at Edmonton, Alberta
this 6th day of November, 2026

Fagnan J.A.

Appearances:

P.G. Nugent (no appearance)
A.R. Cembrowski
D. Pollock
for the Applicant

D.R. Bieganek, KC
for the Respondents

J. Pawlyk
I. Belland
for the Respondent Ernst & Young Inc., in its capacity as Court-Appointed Monitor of the Respondents