

February 23, 2026

## AlphaBow Again Challenges AER Enforcement Related to Oil and Gas Closure Liabilities During Insolvency

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**Decisions Commented On:** *Re AlphaBow Energy Ltd.*, [2025 ABKB 622](#) (CanLII) (*AlphaBow ABKB*); *Re AlphaBow Energy Ltd.*, [2026 ABCA 35](#) (CanLII) (*AlphaBow ABCA*)

This post comments on two decisions relating to the ongoing insolvency process of AlphaBow Energy Ltd. (AlphaBow). AlphaBow brought challenges to the power of the Alberta Energy Regulator (AER) to require security deposits as a condition for transferring oil and gas licences from AlphaBow's inventory. AlphaBow was unsuccessful at King's Bench and then failed to get leave to appeal from the Court of Appeal.

This post provides some background to AlphaBow's insolvency, summarizes the two decisions, and concludes with commentary on what AlphaBow's ongoing insolvency process shows about oil and gas closure liability management and insolvency in Alberta.

### Background

This is my third ABlawg post on AlphaBow: see the 2022 post on the AER's enforcement action restricting AlphaBow's license eligibility [here](#) and the 2024 post on AlphaBow's regulatory appeal [here](#).

AlphaBow was created as a result of the complex Sequioa-Perpetual transactions in 2016-2018. From the time AlphaBow was created it had a closure liability problem, having too many non-producing oil and gas licenses compared to valuable oil and gas licenses. AlphaBow's financial problems grew until the AER started enforcement in [July 2022](#). (See [the second AlphaBow post](#) for a more detailed background on AlphaBow.)

In March 2023, the AER determined AlphaBow would need to post over \$15 million in financial security, representing 10% of their estimated inactive license liability. AlphaBow failed to post the security, and the AER suspended AlphaBow's licenses and directed the Orphan Well Association (OWA) to provide reasonable care and measures to AlphaBow's oil and gas sites (meaning the OWA is ensuring the sites do not leak, explode, or cause other problems). However, the OWA is not yet responsible for decommissioning and reclaiming AlphaBow's sites. The OWA is only supervising AlphaBow sites, until the sites are passed to a new owner or deemed orphans and transferred to the OWA inventory for decommissioning and reclamation.

AlphaBow started an insolvency process under the *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36 \(CCAA\)](#) in March 2024, and began selling off oil and gas sites and attempting to transfer the associated licenses – the license transfers required approval by the AER (*AlphaBow ABCA*, at para 4). One major transfer was structured as a reverse vesting order that would divide AlphaBow's assets between two new numbered corporations (2628069 Alberta Ltd and 2628071 Alberta Ltd, neither of which have any existing licenses with the AER, judging by the [AER Licensee Inventory workbook](#)), and then those corporations would be sold to Cascade Capture Ltd.

Reverse vesting orders are a strange and relatively new method for restructuring an insolvent business by moving the liability into one new corporation and retaining the valuable assets in the existing corporation, then selling the shares of the existing corporation to a buyer (see Victor Olusegun, “The Journey of Reverse Vesting Orders from “Extraordinary” to Ordinary: Is it Time for Parliamentary Intervention?”, (2024) 22 Annual Review of Insolvency Law, [2024 CanLIIDocs 3053](#)). Reverse Vesting Orders can allow insolvent companies to obtain some outcomes that would otherwise be blocked by the Supreme Court decision in *Orphan Well Association v Grant Thornton Ltd*, [2019 SCC 5](#) (see Candace Formosa, “Dampening the Effect of Redwater Through a Reverse vesting order”, (2021) 19 Annual Review of Insolvency Law, [2021 CanLIIDocs 13562](#)). While some insolvency professionals consider this approach useful, it presents a threat to the regulatory system for oil and gas closure liabilities. Alberta Courts have expressed some rational concern about the use of Reverse Vesting Orders for oil and gas corporations (see *Cleo Energy Corp (Re)*, [2025 ABKB 621](#) at paras 21-25).

The AER assessed the license transfers involved in AlphaBow's proposed reverse vesting order transaction, applying the AER's licensee capability assessment aimed at reducing the number of oil and gas liabilities being orphaned. The AER approved the transfer subject to AlphaBow posting \$20 million in security and Cascade Capture Ltd. posting nearly \$5 million in security (*AlphaBow ABKB*, at para 12). AlphaBow was unable to post the financial security required and Cascade Capture Ltd. withdrew the license transfer application in July 2025 (*AlphaBow ABKB*, at para 13). AlphaBow filed a regulatory appeal with the AER that appears to be ongoing, pending a mootness decision (see [Integrated Application Registry](#) Application no.1958911).

### ***Re AlphaBow Energy Ltd., 2025 ABKB 622***

AlphaBow then filed an application under the *CCAA* seeking two declarations. The first would prevent the AER from requesting security from AlphaBow so long as the *CCAA* proceedings were ongoing, and the second would prevent the AER from referring to AlphaBow's failure to post security for the prior attempted transfer when deciding whether to approve future license transfer applications from AlphaBow.

AlphaBow's application was heard at King's Bench by Justice Michel H. Bourque. The AER's submissions provided some details on the current state of AlphaBow's inventory:

The AER's affiant in this application explains that “AlphaBow was required to post security [in that amount] representing only 10% of its estimated inactive liability calculated applying regional liability estimates set out in Directive 011 of \$205,518,226”. The AER's affiant further explained that “following the proposed License Transfer Application and

Related Asset Transactions, AlphaBow will be left with over 3000 inactive wells, of which only 184 are economically viable if reactivated.” Regarding post-RVO AlphaBow, the AER affiant acknowledges the parties’ intention “to have the company re-emerge as a going concern. However, the income from the remaining licensed assets, if reactivated, would be markedly insufficient to meet AlphaBow’s ongoing environmental obligations. (*AlphaBow* ABKB at para 13)

AlphaBow advanced two arguments: first, that the AER’s requests for security violated the terms of the stay under the *CCAA* by attempting to enforce a payment the AER is owed as a creditor (at para 19); second, that even if the AER was acting as a regulator, the court should stay the request for security as permitted by the *CCAA* (at para 20).

Justice Bourque, relying on the Supreme Court decision in *Orphan Well Association v Grant Thornton Ltd*, quickly concluded the AER was acting in a legitimate regulatory capacity by enforcing public duties and not acting as a creditor (at paras 24-27).

Justice Bourque then considered whether the Court should stay the AER’s regulatory action as enabled by subsection 11.1(3) of the *CCAA*, which reads:

**11.1 (3)** On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, 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](#).

AlphaBow argued that its restructuring would be frustrated if security deposits were necessary for transfers, and that a stay of the AER’s regulatory actions would not be “contrary to the public interest, but rather will enhance it, through enabling the transfer applications to proceed, so that assets can be moved out of the OWA and resume production – creating jobs and providing for revenue to pay associated obligations” (at para 30).

Justice Bourque dismissed AlphaBow’s argument and rejected AlphaBow’s comparison to insolvency cases where the restructuring corporations had the potential to continue as profitable businesses after restructuring (at paras 32-35). Justice Bourque noted that AlphaBow’s situation was completely different:

[36] In AlphaBow’s case, the AER’s actions are not the result of an emergent issue or a possibly temporary liquidity crisis: AlphaBow is 19 months deep into insolvency and restructuring proceedings. Nor has the AER indicated any intent to cancel AlphaBow’s license to operate. Indeed, AlphaBow’s licenses and sites have been in the care of the OWA for over two years. In none of the cases cited by AlphaBow did the Court stay the Regulatory Exception beyond the initial 10-day period.

[37] In my view, staying the Regulatory Exception in this case benefits only the parties to the 069 and 071 Transactions and allows for the successful completion of the RVO Transaction, and presumably, AlphaBow's subsequent exit from the [CCAA](#) proceedings. While that result might technically qualify as a viable arrangement or compromise, it nonetheless leaves a post-CCAA AlphaBow with over 3,000 inactive wells, of which only 184 are economically viable if reactivated, the income of which "would be markedly insufficient to meet AlphaBow's ongoing environmental obligations".

[38] Even if the Regulatory Exception were stayed during the currency of these [CCAA](#) proceedings, upon exiting, AlphaBow will no longer benefit from a stay of proceedings, and, as AlphaBow's counsel acknowledged, it will have no money to satisfy the AER's security deposit requirements. Post-CCAA AlphaBow will fail. It will not resume production. It will not create any jobs. It will not generate any revenue to pay its associated end-of-life obligations. AlphaBow's remaining inactive wells will end up right back with the OWA.  
(*AlphaBow* ABKB, paras 36-38)

Justice Bourque determined that the requirements for a stay were not met and dismissed the application, noting that the requested relief of staying "any future security deposit request made by the AER" would have been inappropriate even if the statutory pre-conditions had been met (at para 39, emphasis in original).

### ***Re AlphaBow Energy Ltd, 2026 ABCA 35***

AlphaBow applied to the Court of Appeal for leave to appeal the lower court decision, as required by section 13 of the CCAA. The application was heard by Justice Bernette Ho. There are four factors for consideration on an application for leave to appeal in the insolvency context:

- (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 (*AlphaBow* ABCA, at para 10, citing *Lexxor Energy Inc. v. Richter, Allan & Taylor Inc.*, [2003 ABCA 158](#) (CanLII) at para 16 and *BMO Nesbitt Inc v Bellatrix Exploration Ltd*, [2020 ABCA 264](#) (CanLII) at para 7)

AlphaBow sought leave to appeal on four issues (*AlphaBow* ABCA, at para 12). Justice Ho found that the third factor was not met for any of the issues – AlphaBow had not identified a reviewable error in the interpretation of law, or a factual finding unsubstantiated by the record (at paras 15-17) and that for the fourth factor, the delay in the insolvency proceeding was not warranted (at para 20). Justice Ho dismissed the application for leave to appeal.

## Commentary

First, I reproduced paragraphs 36-38 of Justice Bourque’s King Bench decision in their entirety because they demonstrate a solid understanding of the financial realities of oil and gas closure liabilities. It is excellent to see the Alberta Court of King’s Bench fully grasp the closure liability problem while handling an oil and gas bankruptcy matter, and it is a welcome change from [some past decisions](#). The Court understood that there is no public benefit in keeping non-productive wells with a licensee whose oil and gas licenses lack the resource value to pay for their closure or associated land rent and taxes. The public does not benefit from a restructuring that only delays wells going to the OWA. Both the King’s Bench and Court of Appeal decisions properly uphold the basic principle from *Orphan Well Association v Grant Thornton Ltd*: “Bankruptcy is not a licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy” (at para 160). Insolvency law is not a golden ticket to escape the regulations that protect the public from oil and gas closure liabilities.

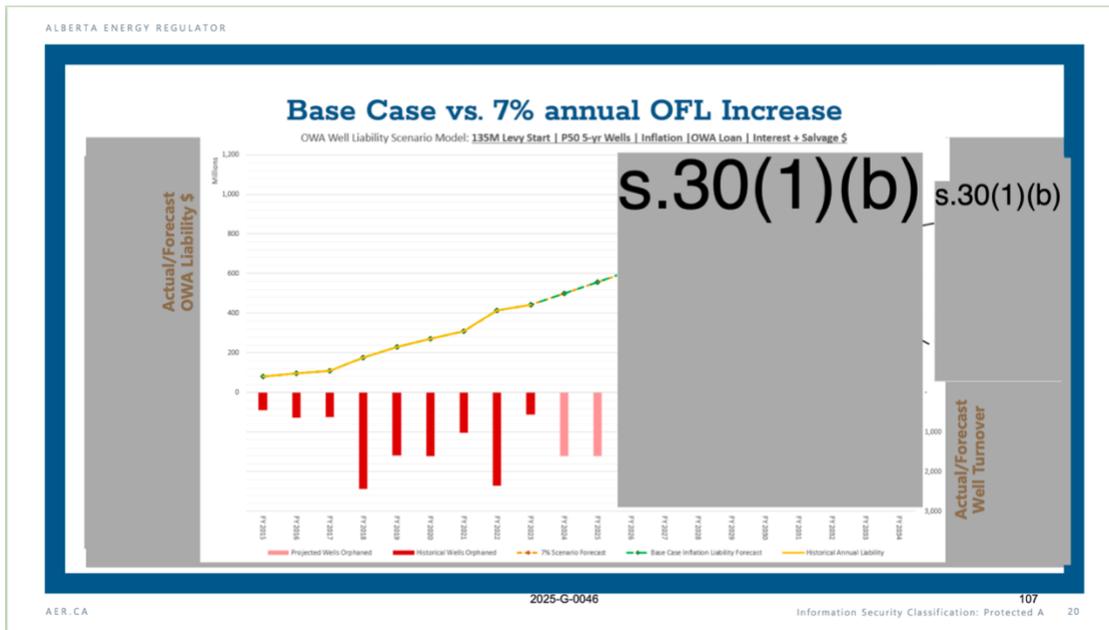
Second, although I agree with Justice Ho’s conclusions, like most leave to appeal decisions, the decision seems odd because the applicant appears to have been required to argue the merits of their case (under factor 3) at the hearing on leave to appeal ([a problem Shaun Fluker described in 2017](#)). Statutory requirements for justices to consider the merits of an issue when deciding whether to grant leave to appeal (or permission to appeal – as it is known in Alberta legislation) produces odd decisions.

On the topic of oil and gas closure liabilities, AlphaBow remains a test case for the AER’s application of their revised closure liability management system ([as I wrote in 2022](#)). So far AlphaBow’s insolvency process suggests three things about the AER’s closure liability management and insolvency.

First, the AER has so far enforced their new (although still incomplete) liability management system against AlphaBow, including effectively resisting AlphaBow’s legal challenge, without granting special exceptions. The AER’s previous practice of routinely granting special exceptions and negotiating special treatment for financially troubled licensees under the Licensee Liability Rating system was one reason the closure liability problem grew to be so massive by 2020. Unfortunately, there is other evidence that the AER is still granting special exceptions for license transfers in other cases involving unpaid municipal taxes (as we discussed [in this post](#) – see reporting on the issue [here](#) and [here](#)).

Second, it is an ongoing problem that the insolvency process for oil and gas licensees is so slow – AlphaBow’s insolvency has been dragging on for years, and the end is not in sight. [The Kikino Metis settlement is now also in litigation against AlphaBow](#) in an attempt to recover the years of unpaid land rent from either AlphaBow or (more likely) the provincial government through section 121 of the *Metis Settlements Act, RSA 2000, c M-14*. The delay in the insolvency process is causing problems that cause more litigation, which cause more delay. Instead of an efficient process it looks like a quagmire. The long insolvency process delays the closure of inactive sites and facilities and leaves landowners and local governments waiting years for the resolution of associated unpaid land rent and tax problems. The AER should consider their options for more direct involvement in the insolvency process.

Third, the huge background problem is the irrationally low orphan fund levy. The liability management system is backstopped by the orphan fund levy paid by solvent oil and gas licensees (and unfortunately, the public, through government loans with favourable terms). The problem is that the AER - or the Minister of Energy, [who the AER seems to think makes the final decision on the levy](#) - seem determined to keep the industry levy too low to fund any reasonable timeline for closure. At the current annual levy of \$144.45 million a year, the Orphan Well Association did not expect to clear their backlog of orphans until [between 2037 to 2040](#), and their inventory has continued to grow. The AER will set the 2026/2027 levy soon and the OWA’s annual reports (which the AER only sent me with redactions) suggest the annual orphan fund levy will be less than \$145 million. Without some major improvement, Alberta’s conventional orphan oil and gas site problem will outlast Alberta’s conventional oil and gas industry and fall to the public. The AER’s enforcement of license transfer restrictions against insolvent licensees cannot stop all licenses from being orphaned, and a working liability management system requires the AER to adequately fund the orphan program. I leave you with a graph of the expected future OWA well liability (not including facilities and pipelines) from an internal AER presentation given in August 2025. I obtained the graph using the *Access to Information Act*, [SA 2024, c A-1.4](#) – and despite the large redaction over the graph line, the y-axis shows the AER expects the OWA’s well liability to pass the \$1 billion mark between 2027 and 2035.



This post may be cited as: Drew Yewchuk, “AlphaBow Again Challenges AER Enforcement Related to Oil and Gas Closure Liabilities During Insolvency” (23 February 2026), online: ABlawg, [http://ablawg.ca/wp-content/uploads/2026/02/Blog\\_DY\\_AlphaBowInsolvency.pdf](http://ablawg.ca/wp-content/uploads/2026/02/Blog_DY_AlphaBowInsolvency.pdf)



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