Court of King's Bench of Alberta

Citation: Coast Automotive Group Inc (Re), 2026 ABKB 366

Date:
Docket: 2503 13640
Registry: Edmonton

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
Coast Automotive Group Inc, Coast North Vancouver Auto Sales Inc,
Coast Auto Drayton Inc, and 2461765 Alberta Ltd.

And Between:

Coast Automotive Group Inc, Coast North Vancouver Auto Sales Inc,
Coast Auto Drayton Inc, 2461765 Alberta Ltd, Sundeep Cheema, Deepak Parmar,
Harjot Randhawa and Deerfoot Atria Partners Ltd

Cross-Applicants

- and -

BDO Canada Limited, in its Capacity as Court-Appointed Monitor
of the Coast Group and Bank of Montreal

Cross-Respondents

Reasons for Decision
of the
Honourable Justice Douglas R. Mah

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A. What this case is about

[1] This matter under the *Companies' Creditors Arrangement Act* proceeded as a full-day hearing on April 17, 2026 and consisted of:

- an application by the Monitor, BDO Canada Limited (BDO), for termination of the *CCAA* proceedings, approval of the Monitor's conduct, activities, decisions and Reports to date and other ancillary relief; and
- a cross-application by the Cross-Applicants for continuation of the *CCAA* proceedings, transferring control of the proceedings to the Cross-Applicants and appointing an alternate Monitor.

[2] The Cross-Applicants are comprised of the four corporate entities subject to the *CCAA* proceedings herein, three individuals connected to those entities, and a related corporate entity not subject to these proceedings. The aim of the cross-application is to enable the Cross-Applicants to prosecute and maintain a separate legal action against the initiating secured creditor, Bank of Montreal (BMO), as the only remaining asset in the *CCAA* estate for the benefit of whatever creditors remain.

[3] After the midday break on April 17, 2026, I resumed court and pronounced my rulings on what I thought were the uncontested parts of the Monitor's application and then heard argument on the cross-application. I reserved on the cross-application so that I could write this decision. In the meantime, the Cross-Applicants did not agree with the form of Order presented by the

Monitor's counsel for the uncontested portion, and I was obliged to convene a further hearing on April 27, 2026 to settle the Order.

[4] On April 27, 2026, it was agreed among counsel that I should, in the least, extend the stay under the *CCAA* until July 31, 2026 to enable the Monitor to attend to residual duties and for me to complete this decision.

[5] This decision deals with the entirety of the application and cross-application and whether the stay ordered to July 31, 2026 should be earlier terminated.

B. Factual Background & Litigation History

[6] Coast Automotive Group Inc (Coast Auto) is the parent company of the other three corporate entities in these proceedings. Coast North Vancouver Auto Sales Inc (Coast North Van) operated as a Stellantis dealership in North Vancouver, BC. Coast Auto Drayton Valley Inc (Coast Drayton Valley) operated as a Stellantis dealership in Drayton Valley, AB. 2461765 Alberta Ltd (246) owned the land in Drayton Valley on which Coast Drayton Valley operated its business. For convenience, I refer to the four companies collectively as Coast Auto Group.

[7] The individual Cross-Applicants are Sundeep Cheema, an Alberta businessman who owns 50% of Coast Auto and Deepak Parmar, another Alberta businessman, who owns 40% of Coast Auto. Harjot Randhawa describes himself as the President and "key decision-maker" of Coast Auto Group and a minority shareholder and director of one or more of the Coast Auto companies. The other corporate Cross-Applicant, Deerfoot Atria Partners Ltd (Deerfoot Atria), is half-owned by Mr. Cheema's holding company. He is also a director of Deerfoot Atria.

[8] At the time BMO initiated the *CCAA* proceedings in July 2025, Coast Auto Group owed, in aggregate, over $36 million to BMO. The Coast Auto Group constituent companies had each granted BMO security over their respective assets in support of the loans, including a land mortgage granted by 246 on the Coast Drayton Valley premises. There were also cross-guarantees given in favour of BMO by each of the Coast Auto Group entities. As well, Mr. Cheema and Mr. Parmar both gave unlimited personal guarantees to BMO for the indebtedness of 246, Coast Drayton Valley and Coast North Van. Deerfoot Atria also granted BMO an unlimited guarantee for the indebtedness of other three corporate entities.

[9] BMO had initially expressed concern regarding Coast Auto Group's prospects in 2024. At BMO's behest, Coast Auto Group retained BDO between August 28, 2024 and October 31, 2024 as an adviser on financial and strategic matters and to provide updates to BMO. As such, BDO gained insight into Coast Auto Group's financial status and challenges. In June 2025, BMO retained BDO to assist in assessing Coast Auto Group's financial standing and BMO's strategic options in that regard.

[10] In its pre-filing report filed July 10, 2025 BDO (now as Proposed Monitor) reported that Coast Auto Group was in a serious overdraft position as at June 7, 2025 to the tune of $13.3 million. The Proposed Monitor reported that back in September 2024, Coast Auto Group needed immediate recapitalization of $15-19 million in order to carry on. Otherwise, the businesses of Coast Auto Group were not sustainable. This prompted BMO to request that the necessary capital injection be made but Coast Auto Group's principals were unable to do so. During the ensuing forbearance period, BMO requested that Coast Auto Group provide additional security,

which was offered up, including a collateral mortgage of $20 million by Deerfoot Atria on a separate property.

[11] As of July 2025, BMO considered that Coast Auto Group had not lived up to the terms of the Forbearance Agreement and made its application to the Court, as a secured creditor, for an Initial Order (IO) under the *CCAA*.

[12] Notice of the July 16, 2025 application had been given by BMO to Coast Auto Group's then counsel, who did not appear. The transcript from that day has BMO's counsel indicating to the Court that, based on a discussion he'd had with counsel for Coast Auto Group, he thought that counsel would attend but, in any event, that counsel had said that the owners of Coast Auto Group were supportive of the application. In the result, the Court granted the IO with a stay to July 26, 2025, and approval of an administration charge, interim financing and associated charge, and appointment of BDO as Monitor.

[13] BMO applied for and was granted an Amended and Restated Initial Order (ARIO) on July 25, 2025 which extended the stay to October 19, 2025. Concurrently, the Court granted a Sales and Investment Solicitation Process (SISP) Order to enable the marketing and sale by the Monitor of Coast Auto Group's equity or its business and assets, including the two dealerships. This time Coast Auto Group's then counsel was in attendance, stated the clients did not oppose the application and only made submissions on peripheral points.

[14] Between that date and the date of the next Court appearance, Coast Auto Group and its component companies and the other Cross-Applicants now before the Court retained new counsel.

[15] That next appearance was on October 16, 2025, before me, for the Monitor's application for an Approval and Vesting Order (AVO) in respect of each of the dealership locations, and some ancillary relief, including approval of the Monitor's Reports to date and the activities, conduct and decisions of the Monitor set out therein. This latter request encompassed the Pre-Filing Report. There was also a stay extension sought to December 12, 2025.

[16] New counsel brought a different perspective to the file. At the hearing, counsel for Coast Auto Group and the other now Cross-Applicants requested an adjournment of the Monitor's application because his clients now wanted to mount an offensive against both BMO and the Monitor for wrongfully placing Coast Auto Group into *CCAA* proceedings. The proposed cause of action was described to me in somewhat vague terms at the time.

[17] This turn of events was, as I said during the hearing, a bit of a bolt out of the blue for the other participants. No affidavit in support was submitted and all I had were counsel's assertion of the clients' intentions. I was not prepared to adjourn the AVO applications because, first, the SISP timetable was well-known to all, and it was too late to seek an adjournment. Second, there was not enough substance to the proposed cause of action to permit me to derail a Court-supervised sales process. Third, I felt granting the AVOs would not prejudice the Cross-Applicants' position. They would be seeking damages in their proposed action, not the return of Coast Auto Group to their control, and the outcome of the AVOs would in part define the damages. Accordingly, I granted the AVOs as requested.

[18] However, I recognized that the Cross-Applicants had at least a theoretical cause of action against BMO and the Monitor. I expressed in my oral reasons that day that I felt by approving the conduct, activities, decisions and Reports of the Monitor to date (including those pre-filing), I

might be inadvertently providing the Monitor with an absolute defence to this as-yet commenced action. I did say that whether Court approval of a Court-appointed officer's activities and reports provides immunity to that officer in such a lawsuit is not a decided point and that I was not deciding it. I only said that such a legal outcome was possible and I was reluctant to eliminate a cause of action, even one in such an unformed state.

[19] Thus, I adjourned that portion of the application related to approval of the Monitor's Reports to date and the activities, conduct and decisions of the Monitor set out therein (including those pre-filing) *sine die* or until the next time the Monitor was before the Court. My direction to counsel for the Cross-Applicants was that they had to bring their action against BDO by that time, otherwise the *CCAA* proceeding (including Report approval) would take its normal course. The stay extension was granted.

[20] The Statement of Claim for what is now called the "Founders Claim" was issued on November 28, 2025. It claims $25 million in damages and contains extensive allegations against BMO with respect to breach of contract, bad faith, misrepresentation, defamation, improvident realization and slander of title. On the other hand, it does not name, makes no allegations of wrongdoing against nor claims relief in respect of BDO as Monitor or in its pre-filing capacity.

[21] The Monitor brought the current application initially on December 3, 2025 for this relief:

- termination of the *CCAA* proceedings and associated charges,
- discharge of BDO as Monitor, and granting Releases to the Monitor and its counsel;
- authorizing but not requiring the Monitor on behalf of some or all of the Coast Auto Group entities to make an assignment in bankruptcy, and giving BDO the option to be Trustee;
- approving the Proposed Monitor's pre-filing report and the Monitor's Reports to date and the conduct, activities and decisions reported therein.

[22] The Cross-Applicants opposed the Monitor's application and brought a cross-application on December 9, 2025 that seeks to vary the ARIO by:

- diminishing the Monitor's powers as contained in paras 22 & 23 of the ARIO;
- granting independent authority to the Cross-Applicants commence and prosecute the Founders Claim;
- empowering the Cross-Applicants to "have complete autonomy" to seek third-party litigation funding; and
- granting a priming charge in respect of that funding;

and to:

- continue this *CCAA* proceeding to enable prosecution of the Founders Claim;
- appointing an alternate Monitor in place of BDO; and

- adjourning the Monitor's application and the cross-application to permit questioning and further evidence and argument.

[23] On December 9, 2025 before Harris J, the stay period was extended to February 27, 2026, a final distribution to BMO was approved and the balance of both applications was adjourned to February 18, 2026 with a mini-litigation plan in place.

[24] Procedural steps and continued procedural skirmishing took place between December 9, 2025 and February 18, 2026, culminating with Harris J hearing procedural applications on the latter date and reserving. The stay was again extended to March 27, 2026.

[25] On March 10, 2026 Harris J released her Endorsement dismissing the Cross-Applicants' application to compel further questioning of Mr. Lonergan (the Monitor's representative) and granting the BMO's application for security for costs of $100,000 from certain non-*CCAA* parties behind the Founders Claim.

[26] A further application to extend the stay until April 19, 2026 was heard and granted on March 16, 2026.

[27] On April 15, 2026, the Coast Auto Group entities and the non-*CCAA* parties applied to the Court of Appeal for leave to appeal both aspects of Harris J's March 10, 2026 decision. Leave was denied on April 16, 2026: ***Coast Automotive Group Inc (Re),*** 2026 ABCA 123 (Feehan JA).

[28] I then heard the substantive Monitor's application (filed December 3, 2025) and the Cross-Application (filed December 9, 2025) on April 17, 2026 and April 27, 2026.

[29] That's a lot of litigation crammed into a short period.

C. The 'Uncontested' Part

[30] Since December 3, 2025 application was filed, the Monitor was behooved to file a Second Supplement to its Third Report on February 13, 2026 to support the stay extension request to March 27, 2026, a Fourth Report on March 16, 2026 to support the stay extension request to April 19, 2026 and a Fifth Report in support of the relief requested from me on April 17, 2026. The Fifth Report seeks a stay extension until the date of filing of the *CCAA* Termination Certificate (which could be earlier than July 31, 2026) and also asks that a declaration under ss 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Act* (*WEPPA*), in favour of the employees of Coast North Van and Coast Drayton Valley, be substituted for its original request for authority to assign the Coast Auto Group companies into bankruptcy. These additional Reports are now among those Reports (and the conduct, activities and decisions reported therein) for which the Monitor seeks approval.

[31] At the outset of the April 17, 2026 hearing (as confirmed in the transcript), Mr. Chimuk on behalf of the Cross-Applicants indicated support or at least no objection from his clients to the following forms of relief sought by the Monitor:

- the *WEPPA* declarations;
- the stay Extension to July 31, 2026;
- the granting of Releases to the Monitor and its counsel, provided they only applied to the Monitor *qua* Monitor and not BDO generally;

- approval of the Monitor's and its counsel's fees;
- approval of remaining distribution, if any; and
- discharge of BDO as Monitor.

[32] Mr. Chimuk stated that the Cross-Applicant's agreement to the discharge of BDO as Monitor was premised on a Replacement Monitor being appointed *per* the relief they are seeking in the cross-application.

[33] I will not repeat the oral reasons I gave on April 17, 2026 for the uncontested part (found in the transcript at p 37, line 22 to p 38, line 27) and need only indicate that I approved the following at the time:

- stay extension to July 31, 2026, subject to an earlier expiry date depending on how the cross-application is decided;
- the *WEPPA* declarations;
- upon noting the Founders action was aimed only at BMO and not the Monitor, the Monitor's Reports to date and the conduct, activities and decisions contained therein;
- the Releases; and
- the professional fees of the Monitor and its counsel, without the need of formal passing of accounts.

[34] I did not deal with final distribution as that had been previously done by Harris J. I did not specifically deal with the termination of the *CCAA* proceedings as that depends on how I decide the cross-application.

[35] As mentioned above, counsel subsequently disagreed on the wording of the Order for the uncontested part, so I reconvened the hearing on April 27, 2026 to discuss their differences. Mr. Chimuk's concern focused on legal protections for BDO and its counsel during the pre-IO period. He stated that his concessions on April 17, 2026 did not extend to immunizing anyone for the pre-IO period. The changes he wanted to the Monitor's counsel proposed form of Order were:

- specific mention in the Releases that they cover BDO and its counsel only in their respective capacities as Monitor or counsel to the Monitor *in the within CCAA proceedings*, arguing that the Releases as prepared are outside the scope of the *CCAA* and not rationally connected to the *CCAA* proceedings as required: ***Lydian International Limited (Re)***, 2020 ONSC 4006 at para 53;
- approval of the Monitor's Reports and the conduct, activities and decisions reported herein, should not include the Pre-Filing Report.

[36] The apparent rationale for these changes is that while Coast Auto Group and the Founders have chosen (thus far) to sue only BMO and have chosen not to sue BDO in its capacity as Monitor, they have never said they would not sue BDO other than as Monitor.

[37] Counsel for the Monitor disagreed with the changes, stating:

- the Order as presented reflects what was ordered by the Court on April 17, 2026;
- former counsel for Coast Auto Group was served with the Pre-Filing Report, and it was before the Court for the IO and ARIO applications, and while former counsel did not appear for the IO application, he did appear for the ARIO and had no adverse comments about the Pre-Filing Report;
- the Pre-Filing Report was the basis for the Court granting the IO;
- the same form of Order now objected to, with the same wording for the Release provisions and inclusion of the Pre-Filing Report, has been before the Court since October, with identical iterations in December and April, with the only difference in succeeding versions being additional Reports;
- current counsel did not raise any concerns about the form of Order at the April 17, 2026 hearing although afforded ample opportunity to do so. The one concern he has raised is already addressed in the form of Order as presented. He raised no issue about the Pre-Filing Report on April 17, 2026; and
- the ***Lydian*** case dealt with third-party releases for the directors, officers and senior lenders of the applicant company in recognition of their respective contributions to a compromise or arrangement under the *CCAA*, clearly a different situation from the present case.

[38] Counsel for BMO submitted:

- in the oral reasons I gave on April 17, 2026, the Pre-Filing Report was not deleted from the form of Order; and
- at the July 16, 2025 IO hearing, Burns J expressly endorsed BDO's positive role in attempting to financially rehabilitate Coast Auto Group.

[39] On the first of Mr. Chimuk's requested changes to the Order, I agree with the Monitor's counsel that it is redundant. The phrase "BDO Canada Limited" is a defined term in the first preamble to the Order and it means expressly "in its capacity as court-appointed Monitor" of the named entities and "not in its personal or corporate capacity". The Releases do not extend immunity any further. I do not know how it can be any clearer. If ***Lydian*** applies here, then the Releases as drafted are rationally connected. They reflect the *CCAA*'s very essence and only that.

[40] Nor do I accept the second change requested by counsel for the Coast Auto Group and the Founders. There are three reasons for this.

[41] First, the Pre-Filing Report was one of the Reports listed for approval in the Notice of Application from the very start in October 2025. That did not change in December 2025. The same form of Order including the Pre-Filing Report has been before Court and counsel for the Coast Auto Group/the Founders on three occasions: October, December and April. In my oral reasons, I granted the relief as requested. There was no discussion of a carve-out for the Pre-Filing Report by any counsel during submissions or in my reasons. Counsel cannot reargue a matter after an Order has been pronounced.

[42] Second, I am hard pressed not to approve the Pre-Filing Report (and the conduct, activities and decisions reported therein) after this Court on two previous occasions has viewed that Report favourably. Burns J in her July 16, 2025 IO ruling made the specific finding that BMO acted in good faith and worked hard to make the business sustainable, which on the evidence, could only have been achieved with BDO's effort in the pre-filing process. Then, Bourque J on July 25, 2025 in his ARIO ruling was statutorily required to apply the due diligence and good faith factors in s 11.02(3) of the *CCAA*. He heard submissions in that regard from BMO's counsel and must have accepted them because he granted the ARIO.

[43] Third, in the hearing before me for the AVOs on October 16, 2025 I was specific that allegations against BDO had to be brought before the next time the matter was in Court, or the Court would proceed in the normal course of approving the Reports. As stated, the Pre-Filing Report was always included as one of the Reports for which approval was sought. BDO was not and has not been sued in any capacity. The impediment to approval of the Reports, imposed by me, is now removed. Again, the issue of singling out the Pre-Filing Report from the rest of the Reports was raised for the first time after my Order approving the Reports was made. Coast Auto Group and the Founders had 7 months (between October 16, 2025 and April 17, 2026) to formulate allegations against BDO in whatever form. They have not done so, even now. They ask that I refrain from a standard approval process on the chance that they might come up with those allegations in future. It is not a tenable proposition that routine relief to which the Monitor is entitled should be held in abeyance indefinitely while Coast Auto Group and the Founders ponder possible theories of liability.

[44] Finally, I will reiterate that I do not know if Court approval of Court-appointed officer reports has the legal effect of immunizing the officer from liability. That theory, so far as I know, is not tested. I certainly have made no ruling in this case. It may be tested if the Coast Auto Group/the Founders so wish.

[45] Consequently, I approve the form of Order for the "uncontested" relief presented by counsel for the Monitor and reject the changes put forward by the Cross-Applicants.

D. Cross-Application Issues

[46] The Cross-Applicants (Coast Auto Group and the Founders) invoke the general power of the Court under s 11 of the *CCAA* and the stay extension power under s 11.02(2) to request an Order that provides:

- leave to commence the Founders Claim;
- continuation of the within *CCAA* proceedings, with ongoing carriage given to the Cross-Applicants;
- for the express purpose of allowing the Cross-Applicants to prosecute and realize upon the Founders Claim;
- which, in effect, confers debtor-in-possession (DIP) status on the Cross-Applicants in respect of the Founders Claim as the estate's sole remaining asset;
- permits the Cross-Applicants to seek DIP financing from a third-party litigation funding entity; and

- substitutes a person or entity to-be-named as Monitor in place of BDO.

[47] The Cross Applicants submit that:

- the requested Order follows the model adopted in ***9354-9186 Québec Inc v Callidus Capital Corp***, 2020 SCC 10 (***Callidus***);
- the Cross-Applicants have a "kernel of a plan" that will result in a reorganization, namely that remaining creditors of Coast Auto Group will be paid something from the proceeds of the litigation, and is thus consistent with the objectives and purpose of the *CCAA*;
- continuation of the *CCAA* proceedings is necessary to provide continued stay protection to Coast Auto Group while the Cross-Applicants pursue the Founders Claim, and, in particular, protection from bankruptcy at the hands of BMO;
- there is no other viable way to realize the Founders Claim, which is a valuable asset; in particular, a priming charge for the third-party litigation funding is crucial;
- BDO is now conflicted because it acted on BMO's behalf before and after the *CCAA* proceedings started and now cannot supervise litigation against BMO;

[48] In response, the Monitor submits that:

- there is no authority that permits the granting of the Order sought by the Cross-Applicants;
- the statutory purpose of the *CCAA* proceeding has been achieved, the assets liquidated and there is no business left to restructure;
- the *CCAA* cannot be used only as a mere shield to protect parties while they pursue litigation; and
- continuing the *CCAA* proceeding is costly and prejudices the secured creditor.

[49] BMO submits:

- the Founders Claim has no chance of success, for various reasons, including that the Founders released BMO in a negotiated Forbearance Agreement;
- the entire *CCAA* process thus far has been Court-supervised and each step Court-approved in building-block fashion; the Founders Claim is an impermissible collateral attack on unappealed *CCAA* Orders;
- terminating the *CCAA* proceedings does not prevent the Founders from suing – it only removes the protection of the stay.

[50] From these arguments, I have determined that these issues are relevant as a means of deciding the cross-application:

- Does the ***Callidus*** case provide an apt model for the Order requested in the cross-application?
- What statutory authority supports the requested relief?
- What is a "kernel of a plan" in *CCAA* jurisprudence and do the Cross-Applicants have one?
- How are the statutory objectives and purpose of the *CCAA* met by granting the cross-application relief?
- Is continuance of these *CCAA* proceedings the only viable way to pursue the Founders Claim, i.e. is the shield provided by the *CCAA* stay necessary?
- Who, if anyone, benefits from the Founders Claim?
- Does discussion of the merits of the Founders Claim have a role?
- Is BDO in a conflict such that it should be replaced as Monitor should the proceedings continue?

[51] As will be seen, these questions may overlap a bit.

E. Is *Callidus* a precedent?

[52] The Cross-Applicants rely on the SCC's decision primarily for the proposition that it is within the *CCAA*'s purview for a debtor company to retain, as an asset for the benefit of the estate, a damages action against its own senior secured creditor and for the debtor to secure third party litigation funding as an interim financing measure under s 11.2. There are some commonalities in that Coast Auto Group along with the other Founders have likewise sued BMO for basically orchestrating their downfall and also wants to continue that lawsuit under *CCAA* protection, while seeking interim financing from a third-party litigation funder.

[53] The main allegation in ***Callidus*** was that the secured lender (Callidus) induced the liquidity crisis of the debtor (Bluberi) by taking *de facto* control and purposely making bad business decisions, with the eventual objective of taking over Bluberi. Over Callidus' objection, Bluberi commenced debtor-driven *CCAA* proceedings, which led to a sale of Bluberi's assets to Callidus. The sale agreement expressly permitted Bluberi to retain its damages claim against Callidus for allegedly causing Bluberi's demise.

[54] Callidus made two attempts to buy the cause of action through the submission of a plan and failed. On the second occasion, Callidus purported to disclaim its security so it could vote as an unsecured creditor and carry the day. The *CCAA* Judge barred Callidus from the vote on the basis of improper motive and the plan failed a second time. The *CCAA* Judge did approve Bluberi's application for interim funding in the form of third-party litigation funding so that it could pursue the action for the benefit of the remaining unsecured creditors. The SCC upheld these outcomes.

[55] Here are the notable differences between this case and ***Callidus***:

- In ***Callidus***, the *CCAA* proceedings were led by the debtor. The allegations against Callidus were part of the record before the Court and taken into

consideration at the IO stage and when Callidus applied (unsuccessfully) to appoint a receiver during the *CCAA* proceedings: ***Arrangement relatif à 9354-9186 Québec inc (Bluberi Gaming Technologies In.) -and- Ernst & Young Inc***, 2018 QCCS 1040 (***Callidus QSSC***) at para 61.

- Bluberi actually had in hand a written proposal from a *bona fide* litigation funder, Bentham IMF Capital Limited, to fund the litigation: ***Callidus QCCS*** at para 19. The Court noted that Bentham and its counsel had vetted the cause of action before agreeing to funding: ***Callidus QCCS*** at para 60.
- The Monitor reported that Bentham was a reputable lender with a proven track-record in the field and that the litigation budget was realistic having regard to the nature of the case and anticipated appeals: ***Callidus QCCS*** at para 64. Thus, the Monitor supported the debtor's application and stated that the lawsuit was the only prospect that remained to allow any meaningful recovery for other creditors: ***Callidus QSSC*** at para 65.

[56] In this case:

- The *CCAA* proceedings are driven by BMO, the secured creditor, following the failure of a Forbearance Agreement. By contrast, it was the very allegations against Callidus that formed the impetus for the *CCAA* proceedings in ***Callidus*** which were, at least to some extent, accepted by the Court in the granting of the IO.
- Here, the allegations by Coast Auto Group and the Founders against BMO did not emerge at the IO stage but only much later, at the AVO approval stage. The allegations in this case did not form a basis for granting the IO. At the first two Court attendances, then counsel for Coast Group Auto took no issue with what had occurred between lender and debtor prior to the IO being granted.
- The Monitor opposes the Cross-Application relief as both improper and unauthorized by law.
- There is no evidence before the Court of an actual litigation funding proposal, a budget or any vetting by an independent third party.
- There is no realistic explanation of how BMO's $16 million shortfall would figure into either the conduct or the outcome of the lawsuit against itself.

[57] I will expand on some these points below. There are enough differences between this case and ***Callidus*** for me to conclude that it does not provide a precedent that compels me to grant the Cross-Applicants' relief.

F. What statutory authority supports the requested relief?

[58] Courts have long recognized that s 11 of the *CCAA* signals legislative endorsement of the broad reading of *CCAA* authority developed by the jurisprudence. On the plain wording of the

provision, the jurisdiction granted by s 11 is constrained only by restrictions set out in the *CCAA* itself, and the requirement that the order made be "appropriate in the circumstances": ***Century Services Inc v Canada (Attorney General),*** 2010 SCC 60, para 68, ***Callidus*** at para 67. While I am not aware specifically of any authority in Canada, one way or the another, that allows an Applicant in a *CCAA* proceeding to be replaced by someone else for the purpose of pursuing litigation against the original Applicant, the jurisdiction exists in theory.

[59] Having said that, there are specific statutory provisions governing the matter at hand. First of all, the whole purpose of the application is to extend the stay so that the Founders Claim may be advanced. Any request for stay extension means that s 11.02(3) applies, requiring me to be satisfied that the circumstances are appropriate and the applicant acts in good faith and with due diligence. I will return to these concepts later in these Reasons.

[60] The cross-application is couched in terms of a continuation of the current *CCAA* proceedings but asks for discharge of BDO as Monitor. If the application is granted, the question is: Who is the Monitor after that? Coast Auto Group and the Founders have not named anyone. No one has filed a Consent to Act as Monitor. Can there be a hiatus in the office? No authority was cited to me to that effect.

[61] Since Coast Auto Group and the Founders ask to be substituted as the Applicants and prime-movers of these proceedings going forward, in place of BMO, and for a completely different purpose, should the Court treat the cross-application as if it were an application for an IO? It makes sense to do so. Otherwise, the Court is putting nothing in place except the stay, and without appointing a specific person as Monitor in a position to report to the Court (s 11.7) or requiring a cash flow statement (s10(2)), could not be said to be exercising Court-supervision.

[62] If an existing Applicant asked for a stay Extension, the Court would want a Monitor in place for reporting purposes and a cash flow statement to ensure that ongoing expenses are met. It should be no different when someone seeks to replace the existing Applicant. Moreover, when there is a completely different purpose for supplanting the original Applicant (pursuing litigation against the original Applicant versus realizing on the debtor's assets through a SISP), the application to supplant should be treated as a completely new application under the *CCAA*.

[63] While theoretical jurisdiction exists, there are other statutory requirements, even if only implied, that must be met by the Cross-Applicants. First, they must present a Proposed Monitor who is willing to act and satisfy the Court that sufficient cash flow is on hand for the period of stay. What is a *CCAA* proceeding without either? Second, the Cross-Applicants must show that they have acted and do act with due diligence, which I'll discuss more in the next section.

G. Kernels and Germs

[64] The Cross-Applicants argued during the hearing that all they need to show is a "kernel of a plan" in order to succeed in the application.

[65] The word "kernel", I take it, is a metaphor for how developed and realistic a plan must be in order for the Court to be satisfied that it is worth pursuing, with the objectives of the *CCAA* in mind. The phrase does not appear frequently in Alberta jurisprudence. I found it in ***Re Canada North Group Inc***, 2017 ABQB 508 at para 35 where Hillier J says:

> In applying for an extension, the applicant must provide evidence of at least "a kernel of a plan" which will advance the *CCAA*

> objectives: ***North American Tungsten Corp, Re***, 2015 BCSC 1376, 2015 CarswellBC 2232 at para 26, citing ***Azure Dynamics Corp, Re***, 2012 BCSC 781, 91 CBR (5th) 310.

[66] The expression is popular in British Columbia *CCAA* jurisprudence where it appears many times. In the cases cited by Hillier J in ***Canada North***, the BC Supreme Court described a "kernel of a plan" as follows in ***Azure Dynamics*** at para 13 & ***North American Tungsten*** at para 26:

> … evidence of what it intends to do in order to demonstrate to the court and stakeholders that extending the proceedings will advance the purpose of the *CCAA*.

[67] In ***Azure Dynamics***, the Court at paras 16-22 noted the requisite level of evidence was met with proof of:

- "significant efforts … to obtain further financing,"
- "continuing discussions with potential parties who might be interested in either refinancing or recapitalization,"
- favourable comments from the Monitor on refinancing, recapitalization, or a sales process,
- interest generated by the debtor through canvassing the DIP market,
- two potential financing or strategic partners who saw value in the debtor's enterprise,
- another specific party who appeared at the application by counsel to express interest in either a sale or refinancing, and
- a proposed DIP lender, represented by counsel, prepared to lend money.

[68] In ***North American Tungsten***, the Court described the "kernel" evidence at para 14 in this way:

> The Company has been involved in extensive discussions with the Monitor and stakeholders to put in place a potential Sale and Investment Solicitation Process ("SISP"). To date the plan has involved re-focusing on surface mining and milling ore stockpiles rather than underground mining. Employees have been terminated. If the interim financing is obtained, the Company plans to continue operations at the mine until the end of October 2015, including management of environmental care. It plans to conduct an orderly wind down of underground mining activities, including a staged sale of equipment used in the underground work. It plans to reconfigure the mill facilities to facilitate tailings reprocessing so that it can use existing tailings stores as well as the surface extraction as a revenue source. It also plans to undertake limited expenditures on Cantung reclamation and Mactung environmental work with a view to increasing asset values. It hopes to seek court approval of a SISP in the next couple of weeks.

[69] Coast Auto Group and the other Founders cited ***Crystallex (Re),*** 2012 ONCA 404 for the proposition that DIP funding to pursue a claim as an asset is a doable thing under the *CCAA*. In ***Crystallex***, the claim in question was a $3.4 billion international arbitration claim against the Venezuelan government for damages caused by cancellation of mining contract. In obtaining approval, the applicant debtor presented a detailed DIP financing proposal that included a revised governance structure for the debtor company and specified interest and fees: ***Re Crystallex International Corporatio***n, 2012 ONSC 2125 at paras 23 & 24. There was no discussion of whether the "kernel" threshold had been met in this case. It would not have been necessary because a complete, detailed and robust plan was presented.

[70] In Alberta, the equivalent metaphoric expression in the *CCAA* context appears to be a "germ of a plan." In ***Canada North***, Hillier J uses "germ" interchangeably with "kernel." The word "germ" in this context appears numerous times throughout ***Alexis Paragon Limited Partnership (Re),*** 2014 ABQB 65 (see paras 19-27). The origin of the use of this word in the *CCAA* context in Alberta is attributed to Romaine J in ***Alberta Treasury Branches v Tallgrass Energy Corp***, 2013 ABQB 432, where she says at para 14:

> A key issue here is whether Tallgrass can establish that there is any reasonable possibility that it will be able to restructure its affairs. The burden placed on an applicant for an initial *CCAA* order in this regard is not a very onerous one, in that it is not necessary for an applicant company to have a fully-developed plan or the support of its secured creditors, although either or both are desirable and helpful. However, there must be some evidence of what Farley J. in ***Re Inducon Development Corp***, 1991 CarswellOnt 219 referred to as the outline of a plan, what he called the "germ of a plan": para 14. I would add a further gloss on that phrase: there should be a germ of a reasonable and realistic plan, particularly if there is opposition from the major stakeholders most at risk in the proposed restructuring. As noted in ***Inducon*** at para 13, the *CCAA* is remedial, not preventative, and it should not be the "last gasp of a dying company". Unfortunately, Tallgrass appears to be at that desperate stage.

[71] In these authorities, the phrase "germ of a plan" is always tied to the words "reasonable and realistic". In ***Delta 9 Cannabis Inc (Re),*** 2024 ABKB 657 at para 58, Marion J noted that a "a germ of a reasonable and realistic plan" is a "hurdle" for obtaining court protection under the *CCAA* that involves the taking of concrete steps.

[72] After reviewing these authorities, I conclude that regardless of the metaphoric term used, kernel or germ, the applicant must show, by evidence, the minimum substantive content underlying a real prospect of a reorganization, restructuring or other positive *CCAA* outcome, in order to justify continued *CCAA* protection. The threshold is not high, but it excludes speculative intent, mere hopes and aspirations and vague promises.

[73] I am not satisfied by this definition and on the evidence before me, that the Cross-Applicants have either a kernel or a germ of a plan within the meaning of caselaw. To be sure, they have issued a Statement of Claim against BMO and seem intent on suing. But there is no evidence before me of any canvassing or even contact with the third-party litigation funding

market, let alone a proposal from a *bona fide* litigation funder. As already stated, the evidence disclosed no budget, no independent third-party vetting of the cause of action, no discussion of costs or interest rates or how the funding will be managed. There is no Monitor's Report (indeed, no Monitor) to support the plan and, except for a vague reference to litigation proceeds being available at the end, no outline of the economic benefit for stakeholders other than the Cross-Applicants themselves. And what happens if the litigation is unsuccessful?

[74] What the Cross-Applicants have is a concept that rests on a Statement of Claim. That concept is to get some litigation funding so they can go after BMO. Despite having nearly 6 months October to April) to do so, they have not shown the Court any steps taken toward giving substance to the concept so as to justify a continued stay. This is in stark contrast to the successful proposal presented by the debtor in ***Calllidus QCCS***. It is the difference between a tangible strategy and wishful thinking. In the absence of taking any steps beyond issuing the Statement of Claim on November 28, 2025, I cannot say that the Cross-Applicants have shown the Court that they have done anything to constitute the requisite due diligence under s 11.02(3).

[75] Thus, they have not met one of the basic statutory criteria to justify continuance of the stay.

H. How are the objectives and purpose of the CCAA advanced?

[76] Appropriateness of an extension under the *CCAA* is assessed by inquiring into whether the Order sought advances the policy objectives underlying the *CCAA*. A stay should be terminated if the reorganization or other *CCAA* outcome, for which the proceeding was initiated, is completed. In a continuation case, if the Order sought realistically advances those objectives, a *CCAA* court has the discretion to grant it: ***Century Services*** at paras 15, 70 & 71.

[77] The *CCAA* generally prioritizes "avoiding the social and economic losses resulting from liquidation of an insolvent company": ***Century Services*** at para. 70. The SCC in ***Callidus*** at para 41 noted that, nonetheless, the *CCAA* is fundamentally insolvency legislation, and thus it also "has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress . . . and enhancement of the credit system generally." The Court further notes that in pursuit of those objectives, *CCAA* proceedings have evolved to permit outcomes that do not result in the emergence of the pre-filing debtor company in a restructured state but rather involve some form of liquidation of the debtor's assets under the auspices of the *CCAA* itself. This has become a common scenario in the insolvency industry in Canada and in the Courts across Canada.

[78] The Pre-Filing Report at para 32 states that the going-in purpose and objective of this *CCAA* proceeding was to take a "clear path towards a going-concern sale or investment in the Business through the SISP" and that this path (at para 33) was supported by Coast Auto Group itself. That is how all parties proceeded until the AVO application on October 16, 2025.

[79] With the AVO Orders having been granted, the transactions having closed and the proceeds distributed under law, the Monitor and BMO say the objective of this *CCAA* proceeding has been accomplished, the proceeding itself is spent and there is no rationale for the proceeding to continue. In particular, the Monitor argues there is no precedent for handing over carriage of a *CCAA* proceeding to a debtor group, after the business has been totally liquidated, so that the debtor group can sue the lender (the original party with carriage).

[80] The Cross-Applicants say that their lawsuit is intended to produce millions of dollars in realizable value for the creditors of the estate and therefore advances one of the prime objectives of the *CCAA*, which is to maximize recovery for the creditors.

[81] One asks, who are these creditors? The evidence discloses the following:

- BMO has a deficiency of $16 million;
- Foundation Auto Vancouver Limited holds an outstanding secured vendor take-back (VTB) loan of $4 million. 2524438 Alberta Ltd (252), a company controlled by Mr. Parmar and Mr. Cheema, is jointly liable along with Coast Auto Group for the VTB loan;
- There is approximately $7 million in unsecured related-party indebtedness, consisting of:
    - $2 million owed by Coast North Van to 252;
    - $2 million owed by Coast North Van to Deerfoot Atria;
    - $750,000 owed by Coast North Van to Parmar Corp, owned by Mr. Parmar; and
    - $300,000 owed by Coast Drayton Valley to 252.[1]

[82] Foundation Auto has shown no interest in the Founders Claim. Its counsel, who had attended the IO and ARIO hearings in a watching brief capacity, did not attend the cross-application hearings. Thus, the only creditors who have ostensibly shown interest in advancing the Founders Claim under the auspices of the *CCAA* are corporations related to Mr. Parmar or Mr. Cheema, one of which (Deerfoot Atria) is also a guarantor to BMO of the Coast Auto Group debt.

[83] Since BMO's shortfall remains a secured claim, I asked counsel for Coast Auto Group and the Founders exactly how proceeds from the Founders Claim, if ultimately successful to any extent, would be handled. I asked if the recovery would function as a setoff against the deficiency. I did not receive a clear answer about how the recovery would be treated.

[84] It seems to me that the intended object or outcome of the Founders Claim is circularity, in that any damages payable by BMO would go back to BMO as first-positioned secured creditor, thereby reducing the deficiency. It is a good offence is the best defence sort-of-thing.

[85] This case is a far different thing than ***Callidus*** where the ability of Bluberi to sue Callidus was a condition of the sale, the allegations against Callidus were accepted by the Court as more than mere assertions and the Monitor (the Court's "eyes and ears") was on board. Additionally in ***Callidus***, the residual claim of Callidus was unsecured and, relatively speaking, quite small such that other creditors stood to realistically receive some recovery if damages were payable by Callidus.

[86] The present case is also different from ***Crystallex*** where the asset sought to be financed (a $3.4 billion arbitration claim) was described by the Court of Appeal at para 4 as "the 'pot of gold' in the *CCAA* proceeding." Without meaning to opine on the merits, I have no means to put

[1] Other than the BMO shortfall, this information is found in the Affidavit of July 9, 2025 of Shehryar Syed, BMO Director, Special Accounts Management.

that label on the Founders Claim. Further, in ***Crystallex*** there were significant unsecured noteholders, separately represented by a Trustee, who had an interest in the arbitration and stood to benefit.

[87] I agree with counsel for the Monitor and BMO that the objective of this *CCAA* proceeding has been achieved, there is no business left to run, and the usefulness of this proceeding has been spent. Further, I am unconvinced that there is a legitimate *CCAA* objective to be advanced in continuing the proceeding and giving control of it to the debtors for the sole purpose of enabling them to prosecute the Founders Claim with *CCAA* protection.

[88] In both ***Callidus*** and ***Crystallex*** there were numerous other creditors with high value claims, not related to the debtors, interested and involved in the claim sought to be financed. Not so here, where the greatest benefit of the Founders Claim will be realized by the guarantors in fending off BMO's deficiency claim. Providing leverage to guarantors in their on-going debt battle with the lender is not a recognized objective under the *CCAA*.

I. Is continuance of the *CCAA* proceeding necessary to prosecute the Founders Claim?

[89] Once the *CCAA* proceeding is terminated, control of the debtor companies reverts to the officers and directors, free from further monitoring or Court-supervision. Coast Auto Group would be free to pursue any litigation it wishes. It would also be free to pursue third-party litigation funding on the contractual terms it saw fit.

[90] But Coast Auto Group and the Founders say this state of freedom and non-interference is not what they want. They fear that BMO will place Coast Auto Group into bankruptcy so that it can seize control of the Founders Claim and neutralize it.

[91] I suggested to their counsel that bankruptcy might actually be a good thing for them, as they could use s 38 of the *BIA* to acquire the Founders Claim for their sole benefit, such that they should consider assignment of Coast Auto Group into bankruptcy themselves. Their counsel did not think so. He reiterated concern that BMO could somehow use the bankruptcy to defeat the Founders Claim.

[92] If anything, ***Callidus*** provides somewhat of a cautionary tale in this regard. In that case, the secured lender (Callidus) was subject to a lawsuit for wrongfully inducing the insolvency of the *CCAA* debtor (Bluberi). The Court ultimately prevented Callidus from manipulating the Court-supervised insolvency process to defeat that claim. Thus, ***Callidus*** provides guidance about how a secured creditor in those circumstances should behave in insolvency proceedings before the Court, from which Coast Auto Group might take some solace.

[93] Further, I cannot predict or make assumptions about what BMO may do with respect to the Founders Claim, other than defend it. I should not continue to extend *CCAA* protection to exclude theoretical legal maneuvering. The function of the *CCAA* is not to simply act as a shield.

[94] As to the argument that only a CCAA proceeding can provide the benefit of a priming charge to the litigation funder, there are two possible responses. First, plaintiffs and their litigation funders are free to approach provincial superior courts for a prior determination of enforceability of their litigation funding agreements (LFAs) : ***Seedling Life Science Ventures LLC v Pfizer Canada Inc***, 2017 FC 826 at para 28 in which Bentham as litigation funder sought pre-approval of its LFA with the plaintiff in an intellectual property dispute in the Federal Court. Second, s 38(3) of the *BIA* provides what is tantamount to a priming charge for costs of litigation

where a creditor takes an action that the Trustee refuses, in that the "costs" of the action belong "exclusively" to the instituting creditor.

[95] Finally, the Monitor's counsel suggested that Coast Auto Group should start its own *CCAA* proceeding for the express purpose of prosecuting the Founders Claim if *CCAA* protection is so important to them.

[96] I conclude that it is not necessary to only prosecute the Founders Claim under the existing *CCAA* proceeding. As stated, the purpose of this creditor-driven proceeding (disposition of these businesses through a SISP) has been achieved. I agree with counsel for the Monitor that no restructuring or reorganization purpose remains.

[97] There are three paths by which Founders Claim may still be prosecuted:

- Once these *CCAA* proceedings are terminated and control of Coast Auto Group reverts to its principals;
- By Coast Auto Group and the Founders in a bankruptcy using s 38; or
- In a new *CCAA* proceeding, initiated by Coast Auto Group and its related-party creditors, for the express purpose of prosecution of the Founders Claim (if they convince the Court there is a legitimate CCAA purpose to a new proceeding).

J. Result

[98] For the above reasons, I grant the Monitor's application and I dismiss the cross-application.

[99] Having done so, it is not necessary for me to make findings on the three remaining questions in para 50 above. To be clear, I make no comment whatsoever on the merits of the Founders Claim.

[100] The Monitor is discharged and this *CCAA* proceeding and the within stay terminate on the date of filing of the Monitor's Termination Certificate. Given that ruling, there is no need to address whether BDO should be replaced as Monitor.

[101] I have deliberately refrained from making a ruling on the request by the Cross-Applicants for *nunc pro tunc* permission to issue the Founders Claim as I feel that issue should be determined within the Founders Claim litigation itself.

K. Costs

[102] If costs are sought in either the main application or the cross-application and are not agreed to, then counsel may make written submissions to me within 30 days of the date of this decision. The submissions should take the form of a letter not longer than 3 single-spaced pages (excluding exhibits and authorities) and supported by a draft Bill of Costs.

Heard on the 17th & 27th day of April, 2026.
Dated at the City of Edmonton, Alberta this 11th day of May, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

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