COURT FILE NO.:	2401-15969
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY

Clerk's Stamp

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC., A2A CAPITAL SERVICES CANADA INC., WINGHAM A2A DEVELOPMENTS INC., LAKE HURON SHORES A2A DEVELOPMENTS INC., and MEAFORD A2A DEVELOPMENTS INC.

APPLICANT	**ALVAREZ & MARSAL CANADA INC.**, in its capacity as Court-appointed Monitor of ANGUS A2A GP INC., ANGUS MANOR PARK A2A GP INC., ANGUS MANOR PARK A2A CAPITAL CORP., ANGUS MANOR PARK A2A DEVELOPMENTS INC., HILLS OF WINDRIDGE A2A GP INC., WINDRIDGE A2A DEVELOPMENTS, LLC, FOSSIL CREEK A2A GP INC., FOSSIL CREEK A2A DEVELOPMENTS, LLC, A2A DEVELOPMENTS INC., SERENE COUNTRY HOMES (CANADA) INC., A2A CAPITAL SERVICES CANADA INC., WINGHAM A2A DEVELOPMENTS INC., LAKE HURON SHORES A2A DEVELOPMENTS INC., and MEAFORD A2A DEVELOPMENTS INC.
DOCUMENT	**REPLY BENCH BRIEF OF THE MONITOR**

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TABLE OF CONTENTS

I. INTRODUCTION

A Relief Sought

1. The Monitor submits this Reply Brief to:

   (a) support its amended application filed June 15, 2026 (the "**Monitor's Application**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), seeking, among other things, to expand the Administration Charge and the Interim Lender's Charge (each as defined in the Amended and Restated Initial Order ("**ARIO**") pronounced by the Honourable Justice Simard on November 25, 2024) to attach to the Offshore Investors' undivided fractional interests ("**UFIs**") in the Lands, as defined in the Tenth Report of the Monitor dated May 19, 2026 (the "**Tenth Report**"), and to the Offshore Investors' interests in the proceeds of any sale of such Lands (the "**Proposed Charge Expansion**"); and

   (b) respond to certain *res judicata* arguments raised against the Proposed Charge Expansion set out in the written briefs filed by Bennett Jones LLP and by Miles Davison LLP on June 19, 2026 (respectively, the "**Bennett Jones Brief**" and the "**Miles Davison Brief**").

2. The narrow issue addressed in this Reply Brief is whether the Monitor's Application is *res judicata* or an abuse of process. This Reply Brief should be read in conjunction with the Monitor's Brief of Law filed May 20, 2026 (the "**Monitor's Brief**") and the Monitor's Supplemental Brief of Law filed June 15, 2026 (the "**Supplemental Brief**").

3. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Tenth Report, the ARIO, the Monitor's Brief and the Supplemental Brief.

B Overview

4. A complete response to any complaints that the Monitor's Application constitutes an impermissible attempt to relitigate issues that were previously determined by this Court can be found in the Transcript of the proceedings taken in the Court of King's Bench of Alberta on November 25, 2024, before the Honourable Justice Simard. Justice Simard's reasons for decision with respect to the Previous Charge Expansion Request (as defined in the Monitor's Brief), left open the possibility that the Offshore Investors may subsequently agree that the Administration Charge and Interim Lender's Charge should attach to their interests. In such circumstances, Justice Simard expressly

confirmed the Court had jurisdiction to grant the relief now sought in the Monitor's Application.[1] The Offshore Investors overwhelmingly support the Proposed Charge Expansion.[2]

5. Notwithstanding the foregoing, the fact that Justice Simard declined the Previous Charge Expansion Request advanced by the Monitor at an early stage of the within proceedings (the "**CCAA Proceedings**") does not render the Monitor's Application *res judicata* or an abuse of process. Letting the Court's prior decision stand in the face changed circumstances would undermine the administration of justice and the remedial objectives of the CCAA.

6. In the first instance, Justice Simard determined that he did not have ***statutory authority*** to grant the Previous Charge Expansion Request in the context of an incomplete evidentiary record because the UFIs were not the Debtor Companies' property. The Monitor subsequently discovered evidence, not available through the exercise of reasonable diligence in the first instance, that provided a ***contractual basis*** for the Court's statutory authority to grant the Previous Charge Expansion Request. Such evidence would have been practically conclusive of the matter had such information been available to the Monitor to present to Justice Simard. These circumstances warrant a departure from the typical rule against relitigation for the purpose of the Proposed Charged Expansion.

7. Even if the "new evidence exception" does not apply, it is appropriate in the circumstances for this Honourable Court to exercise its residual discretion not to enforce the doctrines of *res judicata* and abuse of process. In the context of real-time litigation, especially under Canada's statutory insolvency regime, where all the appropriate evidence could not have reasonably been marshalled in time, a plainly unjust result follows from the strict application of doctrines in favour of finality.

II. FACTS

8. The relevant facts to the Monitor's Application are described more fully in the Tenth Report, the First Supplement to the Tenth Report of the Monitor dated June 12, 2026, the Monitor's Brief and the Monitor's Supplemental Brief. This Reply Brief adopts and relies on such facts.

9. Nonetheless, the Monitor highlights the following key facts for the purpose of this Reply Brief.

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[1] Transcript of the Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta, November 25, 2024, before the Honourable Justice C Simard, Court File No. 2401-15969 [**November 25 Transcripts**] at 15:12-15, contained as Appendix "B" to the Tenth Report of the Monitor dated May 19, 2026 [**Tenth Report**].
[2] Tenth Report at paras 120-122.

A The Record Before Justice Simard was Incomplete

10. On November 14, 2024, on the application (the "**Initial Application**") of an *ad hoc* group of Canadian investors in various real estate and land investment projects (the "**Applicant Investors**"), this Court issued an initial order (the "**Initial Order**") which, among other things, commenced these CCAA Proceedings and appointed Alvarez & Marsal Canada Inc. as the Monitor with enhanced powers over the Debtor Companies (as defined in the Tenth Report).[3]

11. The Initial Order also extended the stay of proceeding to certain non-Debtor Companies, namely the following Canadian entities: Angus A2A Limited Partnership ("**Angus LP**"), Angus Manor Park A2A Limited Partnership ("**Angus Manor LP**"), Fossil Creek A2A Trust, Hills of Windridge A2A Trust, Fossil Creek A2A Limited Partnership ("**Fossil LP**") and Hills of Windridge A2A Limited Partnership ("**Windridge LP**" and collectively, the "**Affiliate Entities**").[4]

12. In support of the Initial Application, the Applicant Investors submitted various affidavits of individual Applicant Investors ("**Applicant Investor Affidavits**").[5] None of the Applicant Investors are Offshore Investors (as defined in the ARIO) and none of the individual Applicant Investors or any other individual Canadian Investor (as defined in the ARIO), were party to the Deeds of Covenant or the Special POAs (as those terms are defined in the Tenth Report).[6]

13. On November 18, 2024, the Monitor filed an application seeking an amended and restated initial order (the "**Comeback Application**").[7]

14. On November 15, 2024, prior to filing the Comeback Application, the Monitor, through its counsel, wrote to Carscallen LLP, then counsel to the Debtor Companies, enclosing an information request list (the "**Document Request Letter**") requesting delivery to the Monitor by the Debtor Companies of certain Requested Information (as defined in the ARIO) including, without limitation, details of all investor files and records, all agreements for the sale of UFIs in the Angus Manor Lands, the Fossil Creek Lands and the Windridge Lands (each as defined in the Tenth Report) and the Deeds of Covenant.[8]

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[3] Tenth Report at para 1.
[4] Tenth Report at para 6.
[5] The Applicant Investor Affidavits include the Affidavit of Paul Lauzon sworn November 12, 2024, the Affidavit of Michael Edwards sworn November 12, 2024, the Affidavit of Pat Wedlund sworn November 12, 2024, the Affidavit of Isabelle Brousseau sworn on November 8, 2024, and the Affidavit of Brian Richards sworn on November 12, 2024.
[6] Tenth Report at paras 41, 49, 60, 70, 78, 84 and 88.
[7] Tenth Report at para 9.
[8] First Report of the Monitor dated November 20, 2024 [**First Report**] at para 21(c) [**Monitor's Compendium of Evidence filed June 26, 2026 ("COE") Tab 1**].

15. On November 19, 2024, Carscallen LLP advised the Monitor that they had forwarded the Document Request Letter to the Debtor Companies. Also on November 19, 2024, the Monitor provided a copy of the Document Request Letter by email to Grayson Ambrose, a listed director for certain Debtor Companies.[9]

16. Notwithstanding that the Initial Order declared that all current and former directors and officers of the Debtor Companies (collectively, "**Management**") shall have no further power or authority to manage or direct the Debtor Companies,[10] on November 21, 2024, counsel to the Debtor Companies, presumably at the direction of Management, served an application returnable November 21, 2024, seeking, among other things, an order setting aside the Initial Order (the "**Set Aside Application**").[11]

17. In support of the Set Aside Application, the Debtor Companies filed an Affidavit of Grayson Ambrose sworn November 21, 2024 (the "**First Ambrose Affidavit**")[12] and an Affidavit of Allan Lind sworn November 21, 2024 (the "**First Lind Affidavit**").[13] Neither the First Ambrose Affidavit nor the First Lind Affidavit included as exhibits the Deeds of Covenant.

18. On November 25, 2024, the Honourable Justice Simard:[14]

    (a) granted the ARIO which extended the Stay Period up to and including December 18, 2024 for the limited purpose of allowing the Monitor the time to prepare the Third Report and ordered the Debtor Companies to provide the Requested Information;

    (b) adjourned the Set Aside Application; and

    (c) declined to grant the relief sought by the Monitor to grant the expansion of the Charges over the Offshore Investor's UFIs but confirmed that any interested Person (as defined in the ARIO) may apply to this Court on notice to any other party likely to be affected for an order to allocate the Charges amongst the various assets comprising the Property, or the costs of these proceedings among any parties who have benefitted from these CCAA proceedings.

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[9] First Report at paras 22-23 [**COE TAB 1**].
[10] Order of the Honourable Justice C Feasby, granted November 14, 2024, In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36, As Amened, And In the Matter of the Compromise or Arrangement of Angus A2A GP Inc et al, Court of King's Bench of Alberta Court File No 2401-15969 at para 28 [**Compendium of Evidence filed by Bennett Jones LLP on June 19, 2025 ("BJCOE") TAB G**]
[11] Tenth Report at para 10.
[12] Affidavit of Grayson Ambrose sworn November 21, 2024 [**COE TAB 2**].
[13] Affidavit of Allan Lind sworn November 21, 2024 [**COE TAB 3**].
[14] Tenth Report at paras 11-12.

19. The Monitor acknowledges that as of November 25, 2024, the date on which Justice Simard dismissed the Previous Charge Expansion Request, the Monitor was ***aware*** of the existence of the Deeds of Covenant with respect to the Projects (as defined in the Tenth Report) subject to these CCAA Proceedings. However, despite express requests for copies of all relevant contracts, the Monitor neither had copies of the Deeds of Covenant nor knowledge of their terms. Furthermore, the existence of the Special POAs was unknown on November 25, 2024, let alone their terms.

20. The facts are clear that the Deeds of Covenant were not in evidence on November 25, 2024 and the Monitor had exercised reasonable diligence to obtain delivery of such evidence from the Debtor Companies and Management.

B The Deeds of Covenant and Special POAs Provide a Contractual Basis for the Relief Sought

21. As further detailed at paragraphs 14 to 21 of the Monitor's Brief, contemporaneously with the purchase of their UFIs, the Offshore Investors entered into the Deeds of Covenants with, among others, the relevant Facilitator Debtor Company for each Project and delivered to such Project Facilitator (as defined in the Monitor's Brief) a Special POA.

22. Pursuant to the Deeds of Covenant and the POAs the Offshore Investors agreed that:

    (a) the Project Facilitators may advance funds to the holders of the UFIs in the Lands and, when such advances are made the Project Facilitators are entitled to receive repayment of those advances from any proceeds of the sale of the Lands in priority to any UFI Holders' (as defined in the Monitor's Brief), including the Offshore Investors', claim on their proportionate interest in such sale proceeds;[15]

    (b) the holders of the UFIs in the Lands agreed to indemnify and pay, and forever hold harmless the Project Facilitators, and their servants, from and against any and all demands, claims, actions, causes of action, losses, costs, expenses, liabilities and damages incurred by the Facilitator by reason of acts, omissions or alleged acts or omissions arising out of the activities of the Facilitator on behalf of the UFI Holders in furtherance of the interests of the UFI Holders;[16] and

    (c) the Project Facilitators have the power to deal in any way whatsoever with the Offshore Investors' Proprietary Interests (as defined in the Monitor's Brief), including to release any

[15] Tenth Report at paras 44, 52, 63, 80 and 87.
[16] Tenth Report at paras 43 ,51, 62, 72, 79 and 86.

and all possessory and proprietary rights as to the Lands or any part thereof as the Project Facilitators may deem necessary.[17]

C Debtor Companies Failure to Comply with Information Request

23. The Monitor's ignorance of the contractual rights of the Facilitators under the Deeds of Covenant and the Special POAs on the date on which Justice Simard delivered his decision with respect to the Previous Charge Expansion Request was a direct result of the acts and omissions of the Debtor Companies and Management.

24. This is not an instance where the Monitor failed to exercise reasonable diligence to procure the evidence on which it now relies, but rather this is an instance where the court-appointed Monitor was unable to discover information to which it was entitled as a result of the Debtor Companies and Management's unwillingness, or inability, to comply with the Initial Order, the Document Request Letter and the ARIO, as well as the Debtor Companies' dilatory record keeping.

25. The ARIO provided for the delivery of Requested Information by 4:00 pm on Friday, December 6, 2024.[18]

26. On December 4, 2024, the Monitor wrote to the Debtor Companies and legal counsel to express that the Monitor had serious concerns with the failure of the Debtor Companies and their management to provide, among other things, a complete investor list. Neither Management nor counsel to the Debtor Companies responded to the Monitor's December 4, 2024 request for the complete investor list until December 12, 2024, and the Offshore Investor contact list remains outstanding as of the date hereof.[19]

27. The Debtor Companies and Management did not provide the Monitor, or this Court, with a comprehensive response to the Requested Information until on or around December 13, 2024 when Miles Davison LLP served the Monitor with an unfiled copy of the Second Affidavit of Allan Lind sworn December 13, 2024, which affidavit contained an incomplete record of the Requested Information.[20]

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[17] Tenth Report at para 88.
[18] Order of the Honourable Justice C Simard, granted November 25, 2024, 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 Angus A2A GP Inc et al, Court of King's Bench of Alberta Court File No 2401-15969 [**"ARIO"**] at para 75 [**BJCOE TAB K**].
[19] Third Report of the Monitor dated December 13, 2024 [**Third Report**] at paras 22-28 [**BJCOE TAB L**].
[20] Second Affidavit of Allan Lind sworn December 13, 2024 [**BJCOE TAB M**].

28. On December 31, 2024, Allan Lind swore a third supplemental Affidavit in which he addressed the Disclosure Issues noted in the Third Report of the Monitor dated December 13, 2024 as follows:

> …even documents that should have been in the possession and power of the respondent entities have been difficult to locate or organize, and some of them simply do not exist.
>
> In Mr. Grayson's Affidavit of December 13, 2024, he discusses the financial challenges that the AMP project faced, and I described equivalent financial challenges that the Fossil Creek and Windridge projects encountered in my December 13, 2024 Affidavit.
>
> One impact of these financial challenges was that there were limited funds available to pay accountants, maintain offices, or continue software subscriptions that the companies had utilized. Documents ended up spread over multiple places held by different accountants or law firms that we had not maintained contact with. In some cases, financial statements simply were not prepared, as funds were tight and most of the entities involved did not have operations beyond holding assets.
>
> In addition, over the years a number of key personnel and advisers retired or moved on. For example, Bill Friedman, who had been the main lawyer advising on the Canadian side, retired, and he has not responded to my attempts to contact him. Tony Pereira, who was the main accountant for the Canadian entities, also retired and has not been available to assist in putting together information and documents. The managing director (Milton Bartlett) and chief financial officer (Warren Soo) of the Singapore office left and their staff left around the same time in 2018. When the Fort Worth, Texas office closed I was told that the office owners would not allow any company records to be recovered.[21]

29. The foregoing represents only one example of a significant body of evidence in these CCAA Proceedings which speaks to the Debtor Companies and Management's dilatory record keeping.[22]

III. ISSUES

30. The narrow issue addressed in this Reply Brief is whether the Monitor's Application is *res judicata* or an abuse of process.

31. The Monitor's Application is not *res judicata* or otherwise an abuse of process because:

(a) the overwhelming support of the Offshore Investors to the Proposed Charge Expansion is a complete response to complaints about relitigation;

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[21] Third Affidavit of Allan Lind sworn December 31, 2024 [**BJCOE TAB N**]; See also for example, Transcript of Questioning of Allan Lind, September 4, 2025, at 23:12-25 [**COE TAB 4**]

[22] See also *Angus A2A GP Inc (Re)*, 2025 ABKB 51 at para 43.

(b) the new evidence exception to the doctrine of *res judicata* exists in these circumstances; and

(c) a strict application of *res judicata* in these circumstances is inconsistent with the public policy objectives of the doctrine and the remedial objectives of the CCAA.

IV. LAW & ANALYSIS

A The Overwhelming Support of the Offshore Investors to the Proposed Charge Expansion is a Complete Response to Complaints about Relitigation

32. The circumstances surrounding the Monitor's Application are materially different from those before Justice Simard on the Comeback Application. The change in circumstances arising from new facts within the context of real-time litigation give this Court the requisite authority to grant the Proposed Charge Expansion.

33. Indeed, Justice Simard ruled that:

> I find that I do not have the power to extend the charges to the UFI owners (*sic*) properties, but I am not precluding anyone from arguing at any appropriate point in the future that if those parties have benefited from these proceedings, an application can be made to share costs with them.
>
> I am also not precluding the possibility that UFI owners may agree at some point to have their interests attached by the charges. Obviously we are at a very early stage of these proceedings potentially. And if they agree to do so, I would have the authority to make that order.[23]
>
> [Emphasis added]

34. At the time of the Previous Charge Expansion Request, the Monitor was unable to conduct sufficient outreach to the Offshore Investors with respect to these CCAA Proceedings and was unable to conduct outreach to specifically enquire whether the Offshore Investors were supportive of their interest being charged. This was not an oversight or a lack of diligence by the Monitor. On the contrary, former management for the Debtor Companies failed or refused to respond to express requests from the Monitor – initially made the day after the Initial Order was granted – for a complete list of the Offshore Investors that was necessary for the Monitor to conduct such outreach in the first place. Even today, the Monitor has yet to receive a complete list of the Offshore Investors.

35. Nevertheless, the Monitor has endeavoured to seek consent from the Offshore Investors in respect of the Proposed Charge Expansion. To the extent that the Monitor has been able to connect with

[23] November 25 Transcript at 15:7-15.

and receive responses from the Offshore Investors, the overwhelming majority support the Proposed Charge Expansion.

36. The Monitor's Application does not arise in a vacuum but rather in the context of real-time litigation and this Court retains the discretion to grant relief that is responsive to changes in circumstances in the course of the CCAA Proceedings. The consent of the Offshore Investors to the Proposed Charge Expansion is a material change in circumstances that warrants the granting of relief previously refused by this Court.

B The Monitor's Application is Not Impermissible Relitigation

(i) The Doctrines of Res Judicata and Abuse of Process by Relitigation

37. The doctrines of *res judicata* and abuse of process are related principles that govern the interplay between different judicial decision makers. The applicable rules and principles call for a judicial balance between finality, fairness, efficiency, and authority of judicial decisions.[24]

38. Issue estoppel is a branch of *res judicata* that *can* bar the relitigation of issues decided in court in another proceeding when the following elements are established:

(a) the issue must be the same as the one decided in the prior decision;

(b) the prior judicial decision must have been final; and

(c) the parties (or their privies) to both proceedings must be the same.[25]

39. Abuse of process is an adjunct doctrine that precludes relitigation in circumstances where the strict requirements of issue estoppel – typically the privity/mutuality requirement – are not met but allowing the litigation to proceed would violate principles of judicial economy, consistency, finality, and the integrity of the administration of justice.[26]

40. The law requires that litigants put forward their entire case once and should not be called upon a second time to answer the same claim because legal ingenuity has revealed a new or revised version of the case.[27]

41. But exceptions to the rule against relitigation may arise when: (i) the first proceeding is tainted by fraud or dishonesty; (ii) new evidence conclusively impeaches the original result; or (iii) fairness

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[24] *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 [***Toronto City***] at para 15.
[25] *Toronto City* at para 23.
[26] *Toronto City* at para 38.
[27] *Hill v Hill*, 2016 ABCA 49 [***Hill***] at para 27.

dictates that the original result should not be binding in the new context. In those circumstances, relitigation may be necessary to enhance, rather than impeach, the integrity of the judicial system.[28]

42. The latter two exceptions are relevant to the Monitor's Application.

(ii) The New Evidence Exception

43. The Alberta Court of Appeal has recognized fresh material evidence alone as an adequate basis to set aside a final judgment when there has been a fundamental miscarriage of justice.[29]

44. The "new evidence exception" to *res judicata* involves two elements:

(a) the new evidence must not have been discoverable with reasonable diligence before the issue was decided; and

(b) the new evidence must be so material that it would have changed the result.[30]

45. The burden is upon the party relying upon new evidence to establish what efforts were made to find the evidence relied upon in the first instance and exactly why the new evidence was not capable of being discovered or procured with the exercise of reasonable effort.[31]

46. Reasonable diligence is not intended to hold litigants to an unrealistic standard or bar them from raising an argument in a second proceeding they could not have reasonably been expected to raise in the prior proceeding.[32]

47. Fresh evidence must be incontrovertible and practically conclusive on the matter in the sense that the new evidence entirely changes the aspect of the case.[33]

48. It is not a question of whether the new evidence, alone or along with other evidence, might have had some impact on the outcome – the new evidence must be incontrovertible and must conclusively impeach the evidentiary foundation of the original result.[34]

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[28] *Toronto City* at para 52.
[29] *Hill* at para 44.
[30] *Hill* at para 30.
[31] *Grandview (Town) v Doering*, [1976] 2 S.C.R. 621 at 638; *Penny v Royal & Sun Alliance Insurance Co. of Canada*, [2006] O.J. No. 2858 (S.C.J.) at par. 79–80
[32] *Patrick Street Holdings Ltd v 11368 NL Inc.*, 2026 SCC 15 [***Patrick Street***] at para 76.
[33] *Hill* at para 55.
[34] *Hill* at para 41.

(iii) Public Policy Exception

49. Even when the criteria for issue estoppel are met, the court is still required to consider whether the doctrine should apply to the second proceeding by considering factors for and against its application. This decision is based on the exercise of the Court's residual discretion.[35]

50. When issue estoppel arises in the first instance from a court proceeding (as opposed to a tribunal proceeding), only the clearest of cases justify the doctrine of issue estoppel to be relaxed.[36]

51. Certain types of public policy considerations may be relevant to the question of whether a court should exercise its discretion not to apply the doctrine of issue estoppel; however, the public policy in question must be of substantial importance to override the public interest in the finality of litigation.[37]

52. The discretionary factors that may apply to prevent the doctrine of issue estoppel from operating in an unjust way are equally available to prevent the doctrine of abuse of process from achieving a similar undesirable result.[38]

53. There are many circumstances where the bar against relitigation, either through *res judicata* or abuse of process, can create unfairness. For example, if the stakes in the original proceeding were minor and the subsequent stakes are considerable, fairness dictates that the administration of justice is better served by permitting the second proceeding to continue than by insisting that finality should prevail. Similarly, an inadequate incentive to defend, the discovery of new evidence in appropriate circumstances, or a tainted original process may all overcome the interest in maintaining the finality of the original decision.[39]

(iv) The New Evidence Exception Applies to the Monitor's Application

54. Even if the legal tests for issue estoppel and abuse of process were satisfied in respect of the Monitor's Application, evidence not before Justice Simard impeaches the evidentiary foundation of the original decision such that the "new evidence exception" applies. In the circumstances, relitigation is appropriate and necessary to enhance the administration of justice.

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[35] *Danyluk v Ainsworth Technologies Inc*., 2001 SCC 44 [***Danyluk***] at para 33.
[36] *Danyluk* at para 62; *Apotex Inc v Merck & Co*, 2002 FCA 210 [***Apotex***] at para 48; *Procter & Gamble Pharmaceuticals Canada Inc v Canada (Minister of Health),* 2003 FCA 467 [***Procter & Gamble***] at paras 28-30.
[37] *Procter & Gamble* at para 30
[38] *Toronto City*, at para 53.
[39] *Toronto City*, at para 53.

55. Justice Simard concluded that ss 11.2 and 11.52 of the *CCAA* did not grant him the authority to charge the Offshore Investors' UFIs because those interests were not the property of the Debtor Companies. Yet he reached that decision without the benefit of a comprehensive record in respect of the Comeback Application.

56. The evidence not before the Court on the Comeback Application included the Deeds of Covenant and Special POAs. The express terms of the Deeds of Covenant and Special POAs grant to the Debtor Companies (in their capacities as a "Facilitator" under the relevant contracts) the authority to deal with the subject lands and retain a priority claim to the proceeds from any sale thereof. The combined effect of the Deeds of Covenant and Special Powers of Attorney creates by contract what amounts to a proprietary interest in the UFIs.

57. Such evidence, had it been available to Justice Simard on the Comeback Application, would have been practically conclusive of the Monitor's initial request to charge the Offshore Investors' UFIs because the contractual proprietary interests conveyed to the Debtor Companies would obviate Justice Simard's concerns that the *CCAA* did not give him jurisdiction to grant the relief sought.

58. The Monitor's inability to put the Deeds of Covenant and the Special POAs before the Court on the Comeback Application was not a failure of diligence but was rather a function of the circumstances in which the Monitor was appointed.

59. The Monitor was appointed on the application of an *ad hoc* group of Canadian investors (none of whom were parties to the contractual relationships between the Debtor Companies and the Offshore Investors). As a result, the *ad hoc* group of investors could not provide to the Monitor copies of the relevant contracts among the Debtor Companies and the Offshore Investors.

60. Management was unable or unwilling to cooperate with the Monitor's efforts to learn relevant facts and information in a timely manner leading up to the Comeback Application. Indeed, the Monitor explicitly requested copies of the Deeds of Covenant and other contracts between the Debtor Companies and the Offshore Investors on November 15, 2024 (i.e., before it filed the Comeback Application). The Monitor did not receive copies of the Deeds of Contract and other relevant contracts until ***after*** Justice Simard dismissed the Monitor's request for a charge over the interests of the Offshore Investors.

61. The Monitor took reasonable and appropriate steps to locate information that would have been practically conclusive of matters before Justice Simard at the Comeback Application. It is true that the Deeds of Covenant and Special POAs predate the *CCAA* Proceedings but that assertion ignores the reality that the Monitor cannot take appropriate steps when stakeholders withhold relevant evidence contrary to their obligations set out in the Interim Order.

62. The present circumstances fit within the new evidence exception to the typical rule against relitigation and there are compelling reasons not to apply the doctrines of issue estoppel and abuse of process to preclude the Monitor from seeking the Proposed Charge Expansion.

(v) The Public Policy Exception Applies to the Monitor's Application

63. In any event, this Court should exercise its discretion not to apply the doctrines of issue estoppel or abuse of process because strict application of such doctrines are inconsistent with the public policy principles of the doctrine of *res judicata* and the remedial purposes of the CCAA.

(a) The Monitor's Application does not Offend the Public Policy Principles of Res Judicata

64. The doctrine of *res judicata* is founded on two overarching principles of public policy:

(a) a litigant's interest in fairness; and

(b) society's interest in the conclusion of disputes and the finality of the judicial decision.[40]

65. Neither of these principles are engaged in these circumstances.

66. While, in many circumstances, it may be unreasonable and unjust to permit a claim to be litigated afresh between parties to a dispute where the claim has been finally decided in a prior proceeding, that is not the circumstance at play in this application. The parties who object to the Monitor's Application are not the parties whose rights and property would be impacted by the relief sought in the Monitor's Application.[41]

67. As further detailed in the Monitor's Brief and the Supplemental Report,[42] the Debtor Companies and Management retain no economic interest in the Projects or the Lands.

68. Conversely, the parties whose interests would be impacted by the alleged relitigation are broadly supportive of the relief sought in the Monitor's Application.

69. Furthermore, the Monitor's Application does not harm society's interest in the finality of a judicial decision and the Proposed Charge Expansion would not impeach the integrity of the judicial process.

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[40] *Patrick Street* at para 36.
[41] *Patrick Street* at para 37.
[42] Monitor's Brief of Law filed May 20, 2026 at para 76; Monitor's Supplemental Brief of Law filed June 15, 2026 at paras 29-30.

70. Proceedings which proceed under the CCAA involve real-time litigation which require the incremental exercise of judicial discretion.[43] Orders granted in CCAA proceedings are generally temporary or interim in nature as the restructuring process is constantly evolving.[44]

71. Given the real-time nature of CCAA proceedings, the objective of finality may at time be compromised in favour of the remedial objectives of the CCAA.

72. The expectation that a material change in circumstances or new evidence may arise requiring an order made earlier in a CCAA proceeding to be varied is evidenced by the inclusion of the following model language in the Alberta Template CCAA Initial Order:

> Any interested party (including the Debtor Companies and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

73. The practical reality that orders are made, and orders are varied as changing circumstances require, has been recognized by the Alberta Court of Appeal.[45] This acknowledgement reflects the dynamic and evolving nature of CCAA proceedings, where supervising judges exercise ongoing discretion to give effect to the remedial objectives of the CCAA.

(b) The Remedial Objective of the CCAA Supports an Exercise of this Court's Discretion Against Applying the Doctrine of Res Judicata

74. In addition to this Court's residual discretion to not apply the doctrines of res judicata, issue estoppel and abuse of process, this Court has also been granted broad discretion under the CCAA.

75. The discretionary authority under the CCAA is not boundless. This Court's discretion must be exercised in furtherance of the remedial objectives of the CCAA.[46]

76. The CCAA pursues a range of remedial objectives, including:

(a) providing for timely, efficient and impartial resolution of a debtor's insolvency;

(b) preserving and maximizing the value of the debtor's assets;

(c) ensuring fair and equitable treatment of the claims against a debtor;

(d) protecting the public interest; and

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[43] *Century Services Inc v Canada (Attorney General),* 2010 SCC 60 at para 58.
[44] *Canada v Canada North Group Inc.*, 2021 SCC 30 at para 22.
[45] *Resurgence Asset Management LLC v Canadian Airlines Corporation*, 2000 ABCA 149 at para 42.
[46] *9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10 [***Callidus***] at para 48.

(e) in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the debtor's business.[47]

77. In the current circumstances, a strict application of the doctrines of issue estoppel or abuse of process is inconsistent with the objectives of providing for timely, efficient and impartial resolution of a debtor's insolvency.

78. The remedial objective identified above would not be met if this Court declined to grant the Monitor's Application simply for the purpose of allowing finality to prevail in the context of the practical reality that insolvency proceedings, including these CCAA proceedings involve real-time litigation which requires a supervising Court to exercise its discretion to vary orders that would otherwise be final. If this Court were to allow finality to prevail in such circumstances, it would set a precedent that would jeopardize the timely and efficient resolution of debtors' insolvencies.

79. If this Court finds that the Monitor's Application constitutes impermissible relitigation, this Court should exercise its residual discretion and broad statutory discretion in these circumstances and decline the Debtor Companies and Management's insistence on a strict application of the doctrines of *res judicata* and issue estoppel.

V. CONCLUSION

80. Based on the foregoing and the arguments briefed in the Monitor's Brief and the Supplemental Brief, the Monitor respectfully requests that this Honourable Court grant the Charge Expansions Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of June, 2026.

Cassels Brock & Blackwell LLP

Per: Jeffrey Oliver

Jeffrey Oliver
Counsel for the Monitor

[47] *Callidus* at para 40.

VI. LIST OF AUTHORITIES

JURISPRUDENCE

Tab	Authority
1.	*Angus A2A GP Inc (Re)*, 2025 ABKB 51
2.	*Toronto (City) v CUPE, Local 79*, 2003 SCC 63
3.	*Hill v Hill*, 2016 ABCA 49
4.	*Grandview (Town) v Doering*, [1976] 2 S.C.R. 621
5.	*Penny v Royal & Sun Alliance Insurance Co. of Canada*, [2006] O.J. No. 2858
6.	*Patrick Street Holdings Ltd v 11368 NL Inc.*, 2026 SCC 15
7.	*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44
8.	*Apotex Inc v Merck & Co*, 2002 FCA 210
9.	*Procter & Gamble Pharmaceuticals Canada Inc v Canada (Minister of Health),* 2003 FCA 467
10.	*Century Services Inc v Canada (Attorney General),* 2010 SCC 60
11.	*Canada v Canada North Group Inc.*, 2021 SCC 30
12.	*Resurgence Asset Management LLC v Canadian Airlines Corporation*, 2000 ABCA 149
13.	*9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10

VII. COMPENDIUM OF EVIDENCE

Tab	Document
1.	First Report of the Monitor dated November 20, 2024
2.	Affidavit of Grayson Ambrose sworn November 21, 2024
3.	Affidavit of Allan Lind sworn November 21, 2024
4.	Transcript of Questioning of Allan Lind, September 4, 2025