



No. S245481  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

**APPLICATION RESPONSE**

**Application Response of:** the voting members of the BC Tree Fruits Cooperative (the  
"Members")

THIS IS A RESPONSE TO the notice of application of Alvarez and Marsal Canada Inc. (the  
"Monitor") filed July 14, 2025.

The Application Respondents estimate that the application will take 30 minutes

**Part 1: ORDERS CONSENTED TO**

The Members consent to the granting of the orders set out in the following paragraphs of Part 1  
of the notice of application: NIL

**Part 2: ORDERS OPPOSED**

The Members oppose the granting of ALL the orders set out in of Part 1 of the notice of application.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Members take no position on the granting of the orders set out in the following paragraphs of  
Part 1 of the notice of application: NIL

**Part 4: FACTUAL BASIS**

1. One of the reasons for the insolvency of BC Tree Fruits Cooperative (“**BCTFC**”) and Growers Supply Company Limited (collectively, the “**Petitioners**”), was a reduction in the quantity of fruit shipped to BCTFC after several BCTFC members resigned their membership and/or shipped fruit to competitors.

Affidavit # 1 of Douglas Pankiw sworn August 11, 2024, para 7

Affidavit #4 of Amarjit Singh Lalli sworn July 15, 2025 (“**Lalli Affidavit #4**”), para 19

2. During the course of these CCAA proceedings, the Court has waived a requested special general meeting (“**SGM**”), and twice extended the requirement for an annual general meeting (“**AGM**”). The purported cost or distraction of these meetings appears to be the driving force behind the waiver and extensions.

Lalli Affidavit #4, para 12

3. The Members have previously put on the record that an AGM should be held.

Lalli Affidavit #4, para 13

4. One issue associated with holding an AGM is that 2024 audited financial statements have not been completed. The pre-filing fees of the Petitioners’ auditor, Grant Thornton LLP, were approved by this Court on March 5, 2025, to facilitate the completion of these audited financials. Despite this fact, and repeated enquiries from the Members, the audited financials have not yet been delivered.

Lalli Affidavit #4, paras 14-16

5. Because most of BCTFC’s assets have been, or are about to be sold, a distribution to Members is imminent. Unusually, as compared to most insolvencies, all of BCTFC’s creditors will be paid, and a significant amount of surplus money will be distributed according to the BCTFC rules (the “**Rules**”).

Lalli Affidavit #4, para 4 and Exhibit A

6. The Members do not feel that BCTFC’s former members (the “**Former Members**”), who in part caused the Petitioners’ insolvency, should be able to share in the surplus

distribution. The Members are within their rights to change the distribution provisions in the Rules.

Lalli Affidavit #4, paras 11, 18-19 and Exhibit A

7. Due to the lack of an AGM to address this issue, the Members have requisition the board of BCTFC to hold an SGM (the “**Requested SGM**”).

Lalli Affidavit #4, para 17

8. As noted by the Monitor in its notice of application, the Requested SGM was called properly.
9. Notwithstanding this, the Monitor now seeks, by its own Motion, for the court to intervene and stay the Requested SGM on the basis that Former Members should have a say in the process, even though the Rules do not give them any participation.
10. The former members are not entitled to vote at the Requested SGM.

Lalli Affidavit #4, para 11(c)(vii) and Exhibit A

## **Part 5: LEGAL BASIS**

### **Not a status quo issue**

11. The Monitor relies upon the inherent jurisdiction of the court to interfere with the Requested SGM.
12. The Monitor cites case law speaking to the purpose of a CCAA stay as protecting the “status quo” and preventing an “aggressive creditor” from gaining an advantage.
13. This law is inapplicable in these circumstances. This is not a “jostling amongst creditors”, nor are the Members seeking to use the CCAA stay to their advantage.
14. The Former Members have not been prevented from doing anything due to the CCAA proceedings. The Former Members do not have standing to participate in the Requested SGM. Nothing in these CCAA proceedings has affected that. The fact that BCTFC is in CCAA, and the case law cited by the monitor, are both immaterial to the facts at hand. There is no “status quo” that requires preserving.

15. The Monitor seeks to preserve rights that do not exist. The stay of proceedings and a postponement of the Requested SGM do not facilitate a “successful reorganization”.

**This is not an appropriate use of judicial discretion**

16. The court’s exercise of discretion is an extraordinary remedy that ought to be exercised sparingly.
17. When a court exercises jurisdiction, it is important that it only uses the amount of discretion that circumstances warrant.

Georgina R Jackson & Janis Sarra, “Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters” in Janis P Sarra, ed, *Annual Review of Insolvency Law 2007* (Toronto: Carswell, 2008)

18. It is important that the court, in exercising discretion, expressly sets out what facts the court is relying on, and what authority the court is relying on.
19. The Monitor’s application materials are silent as to why the discretion ought to be exercised in this case. There is no advantage that the Members have taken, or could have taken, in regard to BCTFC’s corporate matters during the CCAA.
20. There has been no prejudice to the Former Members.
21. Because the Former Members do not have vote on corporate activities, there is no reason to postpone the Requested SGM – doing so would use the CCAA to give the Former Members an improper advantage.


**Part 6: MATERIAL RELIED ON**

1. Affidavit # 1 of Douglas Pankiw sworn August 11, 2024.
2. Thirteenth Report of the Monitor, dated July 9, 2025.
3. Supplemental Thirteenth Report of the Monitor, dated July 11, 2025.
4. Affidavit #4 of Amarjit Singh Lalli sworn July 15, 2025.

5. Such further and other materials as counsel may advise and this Court will allow.

- ☒ The application respondent has filed in this proceeding a document that contains the application respondent's address for service.
- ☐ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: [insert address]

Dated: July 15, 2025

  
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Signature of Mary Buttery, K.C.  
Counsel for BC Tree Fruits Members