

The Cautious Embrace of RVOs: What Courts Now Expect

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Introduction

Reverse vesting orders (“RVOs”) have evolved from a creative restructuring tool used sparingly under the *Companies’ Creditors Arrangement Act* (“CCAA”) into a flexible instrument increasingly considered in receivership and other insolvency proceedings. The past two years have seen Canadian courts (particularly in British Columbia) grapple with whether, and in what circumstances, an RVO can be justified under the *Bankruptcy and Insolvency Act* (“BIA”).

While RVOs remain exceptional, 2024–2025 decisions have clarified both the jurisdictional basis and judicial parameters for their use in receiverships, signalling cautious but real acceptance of the mechanism where traditional asset sales would frustrate value preservation or fairness to creditors.

The Core Rationale Behind RVOs

Traditionally, a receiver realizes on assets through a sale process transferring property to a purchaser. However, this can be problematic where value resides not merely in assets, but in the debtor’s licences, contracts, or corporate shell.

An RVO inverts the typical structure: the debtor corporation’s shares are sold to the purchaser, and unwanted assets and liabilities are “vested out” into a residual corporation. This allows the purchaser to retain the corporate entity and its valuable attributes intact, avoiding the loss of tax or regulatory benefits that could otherwise reduce value and by extension recovery for creditors.

The Judicial Trend: RVOs in Receivership Proceedings

In *Harte Gold*, Penny J. distilled a four-part test for the approval of an RVO, anchored in s. 11 jurisdiction and informed by the s. 36(3) sale-approval factors. (para, 23, 36–37, 39). First, because RVOs are “unusual or extraordinary” rather than routine, the court must be satisfied that resort to an RVO is genuinely necessary in the circumstances, and not merely more convenient or purchaser-friendly. (para, 38, 70–76). Second, the RVO structure must produce an economic result at least as favourable as any other viable alternative, including a traditional asset sale with an AVO or a bankruptcy sale. (para, 38, 46–49, 65–67). Third, no stakeholder should be worse off under the RVO structure than they would have been under any other viable restructuring or realization alternative. (para, 38, 55–58, 65, 77). Fourth, the consideration being paid must reasonably reflect the importance and value of the licences, permits and other intangible assets preserved under the RVO, assessed through a proper sale or solicitation process and the *Soundair*/s. 36(3) lens of market exposure, process integrity and fairness. (para, 21, 38, 40–45, 66–69).

While RVOs are most often associated with CCAA restructurings aimed at preserving going-concern value or maintaining non-transferable assets, the past two years have seen courts apply the same principles in the receivership context.

The 2024 decision of [British Columbia v. Peakhill Capital Inc.](#) is particularly significant. The British Columbia Court of Appeal confirmed that courts supervising a receivership have jurisdiction under s. 243(1)(c) of the BIA to approve RVOs, holding that the power to “take any other action that the court considers advisable” encompasses vesting orders that are incidental or ancillary to a receiver’s mandate to liquidate assets for the benefit of creditors (para 22, 24–25). The Court stressed that the RVO in this case directly advanced the core objective of maximizing recovery, as the structure preserved approximately \$3.5 million that would otherwise have been lost to property transfer tax if the transaction proceeded through a conventional AVO (para 5, 11, 14(a)). The chambers judge found, and the Court of Appeal accepted, that the RVO produced an economic result at least as favourable as any viable alternative, and in fact created significantly more value for the secured creditors without prejudicing the rights of unsecured creditors, who were already out of the money (para 11, 14(b)). The only stakeholder adversely affected was the Province, but the Court held that its loss of property transfer tax did not constitute cognizable prejudice in circumstances where structuring share transactions to avoid property transfer tax is a legitimate and routine commercial practice outside insolvency, and where the transaction was undertaken primarily for the bona fide purpose of maximizing recovery for creditors (para 26, 30–31, 14(c)). In affirming the order, the Court emphasized that RVOs remain exceptional or extraordinary remedies, warranted only where they further the remedial purposes of insolvency legislation—particularly the protection and maximization of value for creditors and the efficient realization of assets (para 10, 24, 32).

In [MCAP Financial Corporation v. QRD \(Willoughby\) Holdings Inc.](#), Walker J. confirmed that RVOs may be granted in a receivership under the BIA, noting that although the structure originated in CCAA proceedings, it has now expanded into proposal and receivership contexts (para. 7). The Court reiterated that RVOs are not routine and may only be approved where extraordinary circumstances justify departing from the ordinary statutory liquidation process, supported by clear, evidence-based proof that the structure is fair, reasonable, and value maximizing (paras. 11–12). In assessing MNP’s application, the Court scrutinized the Harte Gold factors, finding that the sale process was reasonable, creditor consultation had occurred, and the consideration offered was fair once proper valuation evidence was provided (paras. 13–19, 31). Crucially, the RVO preserved significant value that would otherwise be lost in an asset sale, including avoiding approximately \$1.68 million in property transfer tax, enabling the purchaser to retain development permits, building permits, municipal agreements, and other project-critical intangible assets without delay or re-issuance risk, and potentially permitting the purchaser to retain tax loss attributes (paras. 15, 19–20, 24–29). These preserved elements translated into an increased purchase price of 842,000, which materially improved the recovery for CMSC, the next secured creditor, and would not have been available under the asset transaction approved in the original AVO (paras. 8, 29–31). On this evidentiary record, Walker J. concluded that the RVO maximized value for creditors, avoided costs and risks inherent in the AVO structure, and aligned with the remedial objectives of the BIA (paras. 31, 36–37).

Most recently in 2025, in [Cleo Energy Corp. \(Re\)](#), Justice Feasby confirmed that RVOs are legally permissible in a receivership under s. 243 of the *Bankruptcy and Insolvency Act*, though their approval requires strict evidentiary support (para. 1). The Receiver argued that the RVO structure was necessary to preserve the value inherent in Cleo’s operating oil-and-gas business, particularly its suite of Alberta Energy Regulator licences, petroleum and natural gas rights, operating documents, and regulatory attributes that would otherwise have to be transferred through a time-consuming Alberta Energy Regulator approval process (paras. 5–6). According to the Receiver, using an RVO would avoid the delays, uncertainty, and cost of licence transfers, prevent depletion of the estate’s remaining cash, and preserve attributes of Cleo that the Purchaser valued but could not obtain through a traditional AVO asset sale (paras. 6–7). These were the key forms of value the Receiver claimed would be lost without an RVO: (i) the ability to maintain operations seamlessly under existing licences; (ii) the preservation of Cleo’s corporate attributes that cannot be transferred as “assets”; and (iii) avoidance of regulatory friction that the Receiver asserted would materially erode creditor recoveries.

However, Justice Feasby held that none of these claimed advantages was supported by adequate evidence. The Receiver provided no quantification of the alleged delay, cost, or regulatory risk associated with Alberta Energy Regulator licence transfers, nor any explanation of what specific “attributes” of Cleo would be preserved or why those attributes had measurable value (paras. 7, 21–24). He stressed that while licence-transfer burdens can justify an RVO — and have done so in industries such as cannabis, mining, and oil and gas — the party seeking approval must establish that these burdens are *material*, not merely asserted (paras. 17, 19–20). He also

emphasized that an RVO cannot be justified by purchaser preference alone and must satisfy the four-part *Harte Gold* test: necessity, economic equivalence, no stakeholder prejudice, and consideration reflecting the value of preserved regulatory rights (paras. 11–12).

Because the Receiver failed to substantiate necessity, failed to demonstrate that stakeholders were not worse off under the proposed structure, and sought to retain Crown mineral leases while shedding cure-cost liabilities contrary to insolvency principles governing executory contracts (paras. 26–39), the Court dismissed the application. Importantly, Justice Feasby did so *without prejudice*, expressly allowing the Receiver to re-apply with proper evidentiary support – thereby affirming that RVOs are procedurally available, viable, and legally feasible in the receivership context even if the applicant in this case had not met the evidentiary threshold (para. 47).

Are RVOs in Receivership Different?

The functional rationale for RVOs is consistent across regimes: maximizing value where an asset sale would result in smaller recovery. However, as the cases above tell us, context matters.

Under the CCAA, RVOs are typically used to preserve going concerns or regulatory licenses essential to reorganization. In receivership, however, the focus shifts toward maximizing recovery for secured creditors, not restructuring ongoing operations.

Thus, RVOs in receivership are subject to a heightened threshold of necessity: the applicant must show, on the evidence, that the RVO structure preserves materially greater value for stakeholders than any reasonably available alternative. The focus is on comparative necessity, not absolute exclusivity. If other mechanisms exist but would produce meaningfully lower recoveries or impose disproportionate delay, cost, or regulatory friction, the RVO may still be justified. The *Peakhill* decision illustrates this stricter lens: the Court emphasized that approval will turn on whether the receiver has demonstrated, with specific evidence, that the RVO achieves a superior and fair economic outcome for creditors and that a conventional liquidation or vesting process would undermine realizable value or impose avoidable prejudice.

Policy Implications and the Road Ahead

The emergence of RVOs in the receivership context highlights the flexibility of Canadian insolvency law and the courts' willingness to adapt equitable remedies to complex commercial realities. However, the trend also raises policy questions:

- Should tax avoidance or deferral alone justify an RVO?
- Are RVOs compatible with the more limited remedial purpose of the *BIA* compared to the *CCAA*?
- To what extent should courts defer to receiver and creditor consensus in approving novel transaction structures?

Future cases may refine these limits, particularly as regulators and tax authorities challenge the use of RVOs to bypass transfer-related liabilities. Still, the 2024–2025 jurisprudence indicates that where necessity and fairness converge, courts will not hesitate to approve an RVO even in a receivership.

Conclusion

Reverse vesting orders have matured from restructuring exceptions into versatile tools for complex insolvency transactions. While their adoption in receiverships remains limited, recent appellate endorsement confirms that RVOs can be justified under the *BIA* in exceptional cases. The judicial message for 2025 is clear: RVOs are permissible, but never presumptive, and their approval depends on clear necessity, demonstrable fairness, and tangible value to creditors.

The information and comments herein are for the general information of the reader and are not intended as advice or

opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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