Cross-examining receivers, monitors and trustees in Alberta insolvency proceedings: An exceptional remedy

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Court-appointed receivers, monitors and trustees play a central role in Canadian insolvency proceedings. As officers of the court, they are expected to act independently and impartially, and in accordance with their statutory and court-ordered duties. Given this role, a recurring question in Alberta insolvency practice is whether parties may cross-examine a court officer on the contents of a report.

There is a clear general principle in Alberta: receivers, monitors and trustees are not ordinarily subject to cross-examination on their reports, and any such examination is exceptional rather than routine. Courts retain discretion to permit questioning where circumstances warrant, but applicants must demonstrate a legitimate and compelling basis for doing so.

The general rule: Cross-examination is exceptional

Alberta courts have consistently recognized that receivers and monitors are officers of the court whose neutrality should be protected. As a result, they are not generally subject to questioning absent unusual or exceptional circumstances. In Coast Automotive Group Inc (Re), the Alberta Court of Appeal reaffirmed that parties seeking to examine a monitor must establish exceptional circumstances before further questioning will be permitted. The Court emphasized that officers of the court are entitled to protection from irrelevant or improper questioning and that their neutrality should not be compromised through unnecessary involvement in adversarial disputes.

This principle reflects the broader policy objective of ensuring that court officers can perform their duties without becoming embroiled in litigation between stakeholders or being subjected to fishing expeditions designed to support collateral claims.

Cross-examination of receivers

The leading Alberta authorities concerning receivers stress that examination rights are limited and must be tied to specific concerns about the receiver's conduct or reports.

In Re Big Sky Living Inc. (Bankrupt), the Court held that a party seeking to examine a receiver must provide cogent or compelling reasons and identify the particular conduct at issue. Mere dissatisfaction with a receiver's actions or generalized allegations will not suffice. The Court adopted the criteria in Re Ravelston Corp., recognizing that a court officer may be examined in unusual circumstances, particularly where the officer refuses to co-operate in clarifying a report or declines to provide reasonable explanations regarding matters contained in it.

Importantly, the Court observed that formal cross-examination is often unnecessary because clarification can frequently be achieved through less intrusive means, such as written questions, correspondence or informal discussions.

A similar approach was taken in *Edmonton Region Community Board v Aboriginal Partners & Youth Society*. There, the Court held that only legitimate questions directed at clarifying statements in a receiver's reports or explaining the receiver's conduct should be permitted. The Court expressly cautioned against allowing examinations to become fishing expeditions or mechanisms for disgruntled stakeholders to build claims against the receiver. However, it acknowledged that questions genuinely aimed at obtaining information related to statements made in a receiver's reports may be appropriate.

Accordingly, while examination of a receiver is possible, Alberta courts require a focused and demonstrably legitimate purpose before permitting it.

Trustees in bankruptcy: A slightly different framework

Trustees in bankruptcy stand in a somewhat different position because the *Bankruptcy and Insolvency Act* (BIA) expressly provides that a trustee's report constitutes evidence on an application for a bankrupt's discharge. Because trustee reports may significantly influence the outcome of a discharge hearing, courts have recognized circumstances in which examination may be appropriate.

In Klapstein, Re, the Court held that a bankrupt may seek to examine a trustee pursuant to s. 163(2) of the BIA where a serious dispute exists regarding the contents of the trustee's report. The Court acknowledged that such examinations may be justified when concerns have been raised in a timely and substantive manner. Nevertheless, the Court emphasized that examination remains a matter of judicial discretion and is not an automatic right.

Thus, although trustees may be more susceptible to examination than receivers or monitors due to the evidentiary status of their reports, the applicant must still establish a legitimate reason for the examination and persuade the court that it is necessary in the circumstances.

Conclusion

The Alberta authorities establish a consistent theme across receiverships and bankruptcies: court-appointed insolvency professionals are not ordinarily subject to cross-examination on their reports. Receivers, monitors and trustees are officers of the court whose neutrality and independence warrant protection. Consequently, parties seeking to examine them must demonstrate more than disagreement with a report or a desire for broad discovery.

Cross-examination may be permitted where there are specific and exceptional circumstances, such as a genuine need to clarify material contained in a report or to address a serious dispute supported by particularized concerns. However, fishing expeditions, collateral attacks and attempts to draw court officers into adversarial disputes will generally be rejected. The governing principle remains that examination is the exception, not the rule.

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