# In the Court of Appeal of Alberta

**Citation: Dow Chemical Canada ULC v NOVA Chemicals Corporation, 2026 ABCA 50**

**Date:** 20260223
**Docket:** 2501-0128AC;
2501-0239AC
**Registry:** Calgary

2026 ABCA 50 (CanLII)

**Between:**

**Dow Chemical Canada ULC and Dow Europe GmbH**

Respondents

\- and -

**NOVA Chemicals Corporation**

Applicant

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**Reasons for Decision of**
**The Honourable Justice Jolaine Antonio**

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Application for Stay of Enforcement Pending Appeal

## Reasons for Decision of
## The Honourable Justice Jolaine Antonio

### Introduction

[1] The applicant, NOVA Chemicals Corporation ("NOVA"), applies for a stay of enforcement of the trial judge's decisions awarding the respondents, Dow Chemical Canada ULC and Dow Europe GmbH (collectively, "Dow"), $3.56 billion in damages and costs.

### Background

[2] After almost twenty years of complex litigation, Dow was awarded damages against NOVA for breach of contract and related torts, arising out of the parties' joint operation of an ethylene plant. An appeal of the first damages award was allowed in part, with certain issues remanded back to the trial judge: *Dow Chemical Canada ULC v NOVA Chemical Corporation*, 2020 ABCA 320 at para 168.

[3] The remanded issues, along with another outstanding phase of the initial trial, were tried and decided: *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2025 ABKB 217; *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2025 ABKB 343. Shortly thereafter, Dow was awarded costs, including solicitor and own client costs for certain phases of the litigation: *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2025 ABKB 467. I will refer to these judgments collectively as the Trial Decisions.

[4] NOVA has appealed the Trial Decisions, along with numerous procedural judgments that preceded them. It asks me to stay the enforcement of the Trial Decisions pending the determination of the outstanding appeals. The appeals are scheduled to be heard together on November 12, 2026.

[5] Prior to the hearing of the stay application, various issues arose regarding confidential information and restrictions on access to filed documents and court proceedings. Those issues remain unresolved, despite months of effort. As I have not yet been able to rule on what information will be subject to access restrictions, I have drafted these reasons to reveal little factual detail beyond that which is already publicly available. Counsel have suggested other approaches, such as providing them with a copy of my reasons and seeking their input on potential redactions before the reasons are published. I decline to adopt their suggestions. Among other reasons, I am not confident their suggestions would prove efficient or effective.

### Test for Stay Pending Appeal

[6] In deciding whether to stay enforcement of a judgment pending appeal, this Court must consider whether: (i) there is a serious question to be determined on appeal; (ii) the applicant will suffer irreparable harm if the stay is not granted; and (iii) the balance of convenience favours

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granting a stay: *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334, 1994 CanLII 117 [*RJR*].

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[7] The applicant argues there is an alternate path to granting a stay pending appeal: whether there are "exceptional circumstances" that make it "fit and just" to direct a stay. This Court cited this wording at least as far back as 1998: *Blacklaws v Morrow*, 1998 ABCA 119 at para 6. After the decision in *RJR* was released, there was some divergence of view as to whether *RJR* set out a non-discretionary test -- that is, if the applicant did not meet all three criteria, no stay could issue – or whether some discretion remained to grant a stay even if the criteria had not been met: *Canada (Attorney General) v Patterson*, 2005 FCA 204 at para 12; *O'Dea v Fredericton Non-Profit Housing Corporation Inc*, 2004 CanLII 4972 (NBCA) at para 13; *Alberta Treasury Branches v Ghermezian*, 2000 ABCA 61 at paras 21-22; *Harper v. Canada (Attorney General),* 2000 ABCA 288 at paras 5-6 . It is now evident that the three *RJR* criteria guide the "fundamental question" of whether, on a context-specific analysis, "the granting of an injunction is just and equitable in all of the circumstances of the case": *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25 [*Google*]. The ultimate focus of the inquiry is on a just and equitable outcome; it is possible that "exceptional circumstances" may lead to that outcome in the appropriate case, but their existence is neither a threshold requirement nor a stand-alone justification for granting a stay. Applicant's counsel was unable to provide a case in which this Court found exceptional circumstances and granted a stay.

**Analysis**

[8] The applicant submits there are serious issues to be determined on appeal. The threshold for this prong is low, requiring only that the appeal be neither frivolous nor vexatious: *RJR* at 337. Given the number of notices of appeal and the number of grounds they contain, the respondents concede this facet of the test.

[9] The second facet of the test for a stay is whether, absent a stay, the applicant will suffer irreparable harm from enforcement of the judgment. In Alberta, successful litigants are generally entitled to enjoy the fruits of the judgment they have obtained even if the matter is being appealed: *Alberta v. Bodner*, 2003 ABCA 102 at para 7. Courts are reluctant to grant stays of monetary judgments, since they are almost always reparable with another monetary order or judgment: *Barron v Warkentin*, 2005 ABCA 162 at para 3; *Kassian v Hill*, 2002 ABCA 140 para 6 [*Kassian*].

[10] Nonetheless, irreparable harm may be found in monetary cases where the denial of a stay "could so adversely affect the applicants' own interests that the harm could not be remedied [if the appeal is allowed]... 'Irreparable' refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other": *RJR* at p 341. Some sequelae of the payment of a monetary judgment, such as the need to liquidate assets to pay, can also be compensated with money and will not necessarily constitute irreparable harm: *Giesbrecht v Prpick*, 2024 ABCA 187 at para 21 [*Prpick*].

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[11] Other sequelae may contribute to a finding of irreparable harm. Examples may include interference with a going concern, impairment of customer relationships, irretrievable harm to the business, permanent market loss, permanent loss of natural resources, irrevocable reputational damage, or potential loss of employment: *RJR* at 341; *Edmonton Northlands v Edmonton Oilers Hockey Club* (1993), 147 AR 113 (KB) at paras 89, 92, 1993 CanLII 7234 (ABKB). Irreparable harm has been found, for example, where enforcement of a judgment would lead to the loss of specialized equipment that would be difficult to replace, due to its uniqueness rather than its cost: *Knelsen Sand & Gravel Ltd v Harco Enterprises Ltd,* 2021 ABCA 362 at paras 54-59.

[12] The applicant has not satisfied me it will suffer irreparable harm if a stay is not granted. Key portions of its evidence regarding the degree and kinds of harm it may suffer rest on an unsatisfactory foundation. Some of its arguments do not flow directly from the enforcement of the judgment, but from choices the applicant may make after enforcement. I do not find it appropriate to depart from the general rule that the payment of a monetary judgment will not give rise to irreparable harm.

[13] The applicant suggests the respondent may not be able to repay the judgment if the applicant is successful on appeal. Irreparable harm may be found if the applicant has established a reasonable prospect that the respondent will be unable or unwilling to repay the money: *Prpick,* at para 22. On the record before me, I do not see any reasonable prospect that the respondent will be unwilling or unable to repay. The applicant's concern about lost use of the funds if payment is made and later ordered returned is at least partially answered by the fact the court has discretion to award pre-judgment interest at a higher rate if it considers it just to do: *Judgment Interest Act*, SA 1984, c J-0.5, s 2(3); *Colborne Capital Corporation v 542775 Alberta Ltd*, 1999 ABCA 361 at paras 15, 21.

[14] The third facet of the test for a stay is whether the balance of convenience lies with the applicant. If a stay is not granted, NOVA will have to pay a sizeable judgment. If a stay is granted, Dow will be without the financial judgment it was awarded approximately ten months ago and would go without it for at least another nine months awaiting the scheduled appeals. The applicant has offered an alternative to immediate payment; the respondent argues that the proposed alternative is unsatisfactory. On the information I have, I am not persuaded the applicant's proposal is an appropriate alternative to enforcement of the judgment. In this private dispute and its commercial context, I do not find it appropriate to give weight to the applicant's argument regarding a type of public interest. Some of its arguments relating to the commercial context could cut either way. The applicant has not tipped the balance of convenience in its favour.

[15] Finally, the applicant asserts there are exceptional circumstances in this case that would justify staying enforcement even if the other facets of the test have not been established. As noted above, exceptional circumstances are, at best, one means of demonstrating it would be just and equitable to grant a stay.

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[16] The applicant alleges the trial judge made errors so egregious that they constitute exceptional circumstances warranting a stay. For this proposition, it relies on *Westminer Canada Ltd v Amirault* (1993), 125 NSR (2d) 171 (CA). I will first observe this case pre-dates *RJR*. It appears to apply a different approach to the merits of the appeal within the stay test, and it defines "exceptional circumstances" as an alternate path to relief if the primary three criteria have not been met. The alternate path does not appear in *RJR*; *Google* allows for a just and equitable result but does so without reference to "exceptional circumstances". Beyond the *Westminer* case, I have been provided with no authority for applying a second merits threshold beyond that already contemplated in the *RJR* test. Because it is rarely prudent for a single judge in chambers to comment on the merits of an appeal before the appeal is heard, I will simply say I have not been persuaded by the argument that the alleged errors alone warrant staying enforcement.

[17] The applicant further alleges the extraordinary and unprecedented amount at issue gives rise to an exceptional circumstance. It is undeniable that the amount at issue is high. But that amount must be placed in the context of the scale of the parties' businesses and the length of the period of operations giving rise to the judgment against the applicant. I do not wish to minimize the magnitude of the judgment, nor to suggest the impact of payment will be insignificant. However, I am bound by the Supreme Court's comment in *RJR* that "'[i]rreparable' refers to the nature of the harm suffered rather than its magnitude": at 341. I am not satisfied it would be consistent with *RJR* to categorize the magnitude of the judgment as an exceptional circumstance that supplants the established approach to staying enforcement of money judgments.

[18] In short, the applicant has not succeeded in establishing all three facets of the *RJR* test and has not persuaded me a stay is necessary in the interest of justice.

**Conclusion**

[19] The application for a stay of enforcement is denied.

Application heard on October 16, 2025

Reasons filed at Calgary, Alberta
this 23rd day of February, 2026

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Antonio J.A.

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**Appearances:**

B.C. Yorke-Slader, KC
E.B. Mellett, KC
R. Hofley (no appearance)
K. MacDonald
C.J. Mackey (no appearance)
D. Wahl (no appearance)
A.J. Williams (no appearance)
for the Respondents

K.E. Thomson
T. Gelbman
O.C. Dixon
M. Littlejohn (no appearance)
C. Sethi (no appearance)
F. Lalani
M. Howe
for the Applicant