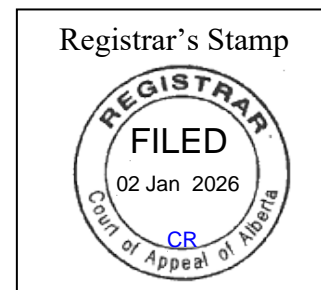


COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER 2601-0007AC

COURT FILE NUMBER 2501-18462

REGISTRY OFFICE CALGARY



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

AND IN THE MATTER OF A PLAN OF
COMPROMISE OR ARRANGEMENT
OF CANACOL ENERGY LTD.,
2654044 ALBERTA LTD., CANACOL
ENERGY ULC, 2498003 ALBERTA
ULC, CANTANA ENERGY GMBH,
CNE OIL & GAS, S.R.L, CANACOL
ENERGY COLOMBIA S.A.S., SHONA
HOLDING GMBH, CNE ENERGY
S.A.S., and CNE OIL & GAS S.A.S

APPLICANT **MACQUARIE BANK LTD.**

STATUS ON APPEAL APPELLANT

STATUS ON APPLICATION RESPONDENT

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ALBERTA LTD., CANACOL ENERGY
ULC, 2498003 ALBERTA ULC, CANTANA
ENERGY GMBH, CNE OIL & GAS, S.R.L,
CANACOL ENERGY COLOMBIA S.A.S.,
SHONA HOLDING GMBH, CNE ENERGY
S.A.S., AND CNE OIL & GAS S.A.S

STATUS ON APPEAL RESPONDENT

STATUS ON APPLICATION APPLICANT

DOCUMENT **APPLICATION BY MACQUARIE BANK LTD. FOR
PERMISSION TO APPEAL**

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Lawyers for the Board of Directors of Canacol Energy Ltd.

NOTICE TO RESPONDENTS:**WARNING**

If you do not come to Court on the date and time shown below either in person or by your lawyer, the Court may give the applicant what it wants in your absence. You will be bound by any order that the Court makes. If you intend to rely on other evidence or a memorandum in support of your position when the application is heard or considered, you must file and serve those documents in compliance with the Rules. (Rule 14.41 and 14.43)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: _____
 Time: _____
 Where: _____
 Before Whom: Single judge of the court (Rule 14.37)

I. NATURE OF APPLICATION AND RELIEF SOUGHT:

1. Macquarie Bank Ltd. (“**Macquarie**”) respectfully applies for permission to appeal the order of the Honourable Mr. Justice D. Mah dated December 11, 2025 pursuant to section 13 of the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and Rule 14.5(1)(f) of the *Alberta Rules of Court*, Alta. Reg. 124/2010.

II. GROUNDS FOR MAKING THIS APPLICATION:

2. Macquarie is the Canacol Group’s¹ (the “**Company**”) sole senior priority lender pursuant to a secured term loan for a maximum amount of \$75,000,000, with approximately \$40,000,000 outstanding.
3. The Company’s corporate structure consists of Canadian holding companies, while all material assets and collateral are located in Colombia. As security for the term loan,

¹ The Canacol Group is as follows: Canacol Energy Ltd. and its subsidiaries 2654044 Alberta Ltd., Canacol Energy ULC, 2498003 Alberta ULC, Cantana Energy GmbH, CNE Oil & Gas S.R.L, Canacol Energy Colombia S.A.S., Shona Holding GmbH, CNE Energy S.A.S., and CNE Oil & Gas S.A.S.

Macquarie specifically bargained for, and obtained, a first ranking security interest over all of the Company's Colombian assets.

4. The Company was granted protection under the CCAA by Initial Order of the Court of King's Bench of Alberta (the "**Court**") dated November 18, 2025, with effectively no notice to Macquarie. The Initial Order, among other things, appointed KPMG Inc. as monitor. The Company launched an interim financing ("**DIP**") solicitation process after its CCAA filing.
5. On December 10, 2025 the Company brought an application for an Order (the "**SARIO**"), among other things, seeking approval of a priming first priority \$67,000,000 interim financing facility (the "**DIP Facility**") from an undisclosed ad hoc group of junior unsecured noteholders holding approximately \$450,000,000 of \$500,000,000 in unsecured notes.
6. In connection with the DIP Facility, the Company sought a super-priority charge over all its present and after-acquired property, ranking ahead of Macquarie's existing secured interests, including the Company's Colombian assets.
7. The Company served its application record for the SARIO late on the evening of Friday, December 5, 2025. Macquarie delivered its responding evidence on Monday, December 8, 2025. Late on December 9, 2025 and contrary to the litigation schedule imposed by the Court, the Company unilaterally served two additional affidavits in reply. One of the reply affidavits was sworn on December 8, 2025, but the Company withheld it and only served it late on December 9, 2025, for a hearing scheduled on December 10, 2025. The Monitor did not serve its report in respect of the SARIO until after 9:00 p.m. EST on December 9, 2025.
8. The Monitor's report contained revised cash flows underpinning the Company's request for DIP financing. These updated projections showed that the Company was not in need of interim financing until January 2026. The cashflow projections included millions of dollars of long term capital expenditures in the form of exploration activities.
9. Macquarie requested, in writing, an adjournment of the application due to the fact that there were no cross examinations, no ability to file reply materials, the evidence before the Court was contested and there was material prejudice from proceeding with a contested DIP Facility seeking exceptional relief on December 10, 2025. Macquarie also objected to the DIP Facility on the merits as the amount and structure of the DIP cause material prejudice to Macquarie.
10. The Court itself expressed concern about the compressed timeline and suggested that the application be adjourned until January 2026 in order to best achieve a fair and robust adjudication and generate a "better record". Macquarie supported an adjournment, as the Company was not in need of interim financing until January 2026, and interim stability could have been achieved through balanced measures that would not unfairly prejudice Macquarie. The Company and Monitor did not support an adjournment. The Company and the Monitor raised a number of issues, which could have been properly addressed with an adjournment, including, a lack of Canadian court time, anticipated scheduling risks in the

U.S. and Colombia, and manufactured liquidity concerns (while acknowledging that current liquidity was sufficient). Any interim DIP advances needed by the Company, if any, could have been protected by an appropriate CCAA Order pending a hearing on a complete and proper record. The Company presented a narrative of impending “failure” that was not supported by, and was overstated in light of, the filed evidence and the actual circumstances.

11. Justice Mah denied the adjournment request. Given the significant factual and legal issues in dispute, Justice Mah ought to have relied on his initial judgment and ordered an adjournment. This was a fundamental procedural error that materially prejudiced the rights of Macquarie. Justice Mah proceeded on the mistaken belief that adjourning the DIP motion in its entirety could frustrate the objectives of the CCAA by potentially facilitating the “failure” of the Company. The Company already had a stay of proceedings and sufficient liquidity until January 2026. In these circumstances, Macquarie’s rights should have been balanced by granting an adjournment and allowing the motion to proceed on a “better record.” The DIP motion should have been adjourned to allow for a “better” record and a fair hearing on properly tested evidence.
12. Following the hearing of the Company’s application, on December 11, 2025, Justice Mah rendered oral reasons for order whereby he found that Macquarie would not face any procedural or substantial prejudice by the granting of the SARIO.
13. Respectfully, the application judge:
 - (a) erred by not adjourning the application until January 2026 as by not doing so, the Court:
 - (i) failed to take the necessary procedural fairness steps to properly balance the interests and rights of Macquarie and was unduly influenced by the Company’s generalized fears about the potential failure of the business, which fears were based solely on the Company’s assertions and not supported by the evidentiary record; and
 - (ii) deprived Macquarie of the ability to respond to or test the evidence of the Company that his Honour relied upon to determine that Macquarie would not suffer any “material prejudice” under section 11.2(4) of the CCAA. The materials that were filed by the Company on December 5, 2025 only included a statement that Macquarie would not suffer “material prejudice”, which was based solely on the unaudited book value of the Company’s assets. This was the only financial evidence advanced by the Company on December 5, 2025 in support of the priming charge. The Company provided no current valuations, binding investment or sale agreements, fairness opinions, or detailed financial analysis to substantiate this general assertion; and
 - (b) erred in assessing that Macquarie would not suffer “material prejudice” under section 11.2(4). The Court accepted the Company’s position that its asset value was sufficient to absorb the priming charges. In doing so, it relied on a resource report

submitted in an affidavit from a non-expert, served December 9, 2025, and based on valuations nearly a year old, as the best available evidence. There was no ability for Macquarie to file reply materials or to cross examine on a new factual area. In relying on that evidence, his Honour failed to explain what constituted “material prejudice” and did not refer to, or apply, any relevant case law supporting his conclusion. The Court was not in a position to properly balance Macquarie’s interests or provide a fair and reasonable hearing. This failure materially affected the rights of the Company’s only secured creditor, Macquarie.

14. The points in issue are of significance to insolvency law and deserving of appellate review. Procedural fairness is a fundamental principle in judicial proceedings, even in contexts defined by urgency under insolvency law, and the applicant is not aware of any appellate authority dealing with the interpretation of “material prejudice” for a comparable priming DIP facility with this structure, size, location of assets, and terms, and what constitutes “material prejudice” remains an unresolved issue of law.
15. The points in issue are of significance to the Company’s CCAA proceedings. The compressed timeline of a contested, unprecedented DIP motion has caused both procedural and material prejudice to Macquarie. The DIP Facility is extraordinary, especially given that the assets to be primed are situated in Colombia, necessitating recognition of the DIP Facility by the Colombian court.
16. The appeal is *prima facie* meritorious. There are serious and arguable grounds of appeal with respect to the errors made by the application judge below.
17. The appeal will not unduly hinder or delay the Company’s CCAA proceedings. The Court can provide protection for reasonable interim advances received while an appeal is ongoing.
18. Such further and other grounds as the applicant may advise and this Honourable Court may permit.

III. MATERIAL OR EVIDENCE TO BE RELIED ON:

19. The Transcription of Oral Reasons for Judgment of the Honourable Mr. Justice D. Mah dated December 11, 2025.
20. The Transcription of Proceedings before the Honourable Mr. Justice D. Mah on December 10, 2025.
21. The Second Amended and Restated Initial Order, granted December 11, 2025.
22. The application and evidentiary materials that were before the Honourable Mr. Justice D. Mah on December 10, 2025:
 - (a) Amended Application of Canacol Energy Ltd. *et al.* filed December 9, 2025;

- (b) Affidavit # 3 of Jason Bednar and the exhibits thereto, sworn December 5, 2025, filed December 8, 2025;
 - (c) Reply Affidavit of Jason Bednar and the exhibits thereto, sworn December 8, 2025, filed December 9, 2025;
 - (d) Affidavit of Jason Bednar # 4 and the exhibits thereto, sworn December 9, 2025, filed December 9, 2025;
 - (e) Affidavit of Charles Angus Pickard and the exhibits thereto, sworn December 8, 2025, filed December 9, 2025;
 - (f) Affidavit of Luis Guillermo Velez-Cabrera and the exhibits thereto, sworn December 8, 2025, filed December 9, 2025; and
 - (g) The Second Report of KPMG Inc., in its capacity as monitor of the Respondents, filed December 10, 2025.
23. Such further and other materials as the parties may advise and this Honourable Court may permit.

IV. APPLICABLE ACTS, REGULATIONS AND RULES:

- 24. Rules 1 and 14 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.
- 25. Sections 11.2(4), 13 and 14 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

V. HOW THE APPLICATION IS PROPOSED TO BE HEARD OR CONSIDERED:

- 26. By WebEx or in person, in accordance with the directions of the Court of Appeal.