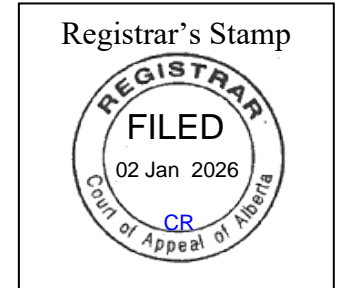


COURT OF APPEAL OF ALBERTA

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

RESPONDENT 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

STATUS ON APPEAL RESPONDENT

STATUS ON APPLICATION APPLICANT

DOCUMENT **MEMORANDUM OF MACQUARIE BANK LTD.
 (Application for Permission to Appeal)**

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I. FACTS

A. Overview

1. Macquarie Bank Ltd is the senior priority lender of the Canacol Group (the “**Company**”) pursuant to a secured term loan for a maximum amount of \$75,000,000. Macquarie is owed approximately \$40,000,000 and is the Company’s only secured lender. The Company’s corporate structure consists of Canadian holding companies, while all material assets and collateral are located in Colombia. Macquarie specifically bargained for, and obtained, a first ranking security interest over all of the Company’s Colombian assets.¹

2. On December 10, 2025 the Company brought an application for an Order (the “**SARIO**”), among other things, seeking approval of a first priority priming \$67,000,000 interim financing facility (the “**DIP Facility**”) from an undisclosed ad hoc group of junior unsecured noteholders holding approximately \$450,000,000 in unsecured notes. 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.²

3. The proposed global DIP is extraordinary in amount and structure: (i) it is approximately 175% of Macquarie’s pre-filing secured obligation; (ii) exceeds what is reasonably required for interim liquidity, including material long term capital expenditures; (iii) it provides no ongoing payments to Macquarie of any principal, interest or costs; (iv) it elevates letter-of-credit issuers’ unsecured claims into super-priority status, improperly priming Macquarie; (v) it presents cross-border enforceability risks, as Colombian law requires consent or meaningful protection to prime existing secured creditors, neither of which is present; and (vi) it imposes significant DIP fees earned on Court approval despite further advances being contingent on Colombian recognition.

4. The Company served its application record 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. The reply affidavit of Jason Bednar was affirmed on December 8, 2025 (“**Bednar Affidavit**”), but the Company withheld it and only

¹ Affidavit of Charles Angus Pickard sworn December 8, 2025 (“**Pickard Affidavit**”) at paras. 7, 9 and 12, Appeal Book, [TAB H].

² Pickard Affidavit at para. 51, Appeal Book, [TAB H].

served it late on December 9, 2025, for the hearing scheduled on December 10, 2025.

5. After 9 p.m. EST on December 9, 2025, the Monitor served its report on the service list, containing revised cash-flows underpinning the Company's request for DIP financing, which showed that the Company would not face a liquidity deficit until January 2026.³ Notably, these projections included millions of dollars of capital expenditures in the form of exploration activities, which could have been, and still could be, delayed. The Court and stakeholders had no ability to test the reply and other new evidence, nor could Macquarie file any reply materials. As a result, it was not possible to proceed in a fair manner for a contested motion on December 10.

6. Macquarie requested, in writing, an adjournment of the application due to there being no cross examinations, no ability to file reply materials, the evidence before the Court was contested and there was prejudice arising from the accelerated timeline for a contested DIP Facility seeking exceptional relief. Macquarie also objected to the DIP Facility on the merits as the amount and structure of the DIP cause material prejudice to Macquarie as the Company's sole secured creditor.

7. At the hearing, the Honourable Mr. Justice D. Mah immediately expressed concern about proceedings based on the timing and the late filed materials. Justice Mah made a "proposal", which should have instead been a direction to all counsel, suggesting a partial adjournment of the application relating to the DIP issue to the first week of January in order in to "best achieve a fair and robust adjudication" as it would allow all parties to deal with what the Court described as "stress".⁴ The Court recognized that by allowing an adjournment it would have provided for a new or continued DIP solicitation process or "the generation of a better record for the Court because Macquarie had talked about cross examinations and so forth or both".⁵ 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 potential concerns, which could have been properly addressed with an adjournment, including, lack of Canadian court time, anticipated scheduling risks in the U.S. and Colombia, and manufactured liquidity concerns (while acknowledging that current liquidity was

³ Affidavit of Jason Bednar affirmed December 5, 2025 ("**Bednar Affidavit**") at para. 53, Appeal Book, [**TAB E**]; Second Report of the Monitor at paras. 39, 79 to 87 and Appendix "F", Appeal Book, [**TAB J**].

⁴ Transcript of December 10, 2025 Hearing ("**Transcript**") at p. 2, lines 39 to 41, p. 3, lines 1 to 2 and 10 to 20, Appeal Book, [**TAB B**].

⁵ Transcript at p. 3, lines 32 to 37, Appeal Book, [**TAB B**].

sufficient).⁶ Any reasonable interim DIP advances needed, if any, could have been protected by an appropriate Order. The Company presented a narrative of impending business “failure” that was not supported by, and was overstated in light of, the filed evidence and the actual circumstances.

8. The Court mistakenly proceeded on the assumption, made from the outset and without any submissions from counsel, that the merits of the adjournment were inseparable from the merits of the DIP motion.⁷ This was incorrect. The adjournment could have been determined and granted independently, without requiring the Court to hear or decide the full DIP motion. Justice Mah proceeded to hear both the adjournment request and the application.

9. 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. Instead, 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.⁸ This was an error and parties’ rights in a CCAA proceeding cannot be trampled simply because a debtor asserts catastrophic consequences; such claims must be properly tested by the stakeholders and the Court. 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”. With respect, based on the record before the CCAA Court and given the factual and legal disputes on a contested DIP priming motion, the DIP motion should have been adjourned to allow for a “better” record and a fair hearing on properly tested evidence.

10. Notwithstanding the Company’s concession that material prejudice is the central consideration under section 11.2(4), Justice Mah found that the DIP Facility and charge would not materially prejudice Macquarie, but did so without referencing any case law or analyzing what constitutes “material prejudice.”⁹ He further failed to give proper weight to Macquarie’s expert

⁶ Transcript at p. 4, lines 7 to 40, p.5, lines 5 to 25 and 33 to 39, p. 6, lines 7 to 41, p.7, line 1, Appeal Book, [TAB B]

⁷ Transcript at p. 3, lines 5 to 8. [TAB B]

⁸ Transcript at p. 7, lines 32 to 34. [TAB B]

⁹ Reasons for Judgment., p.6, lines 15 to 18, p. 9, lines 29 to 30, and p. 11, lines 35 to 36. [TAB A]

evidence and made a value determination without proper factual support.¹⁰

11. Macquarie seeks permission to appeal from that decision on the basis that: (a) procedural fairness was denied to Macquarie by Justice Mah not granting an adjournment of the application for the SARIO; and (b) the Justice Mah erred in his assessment of “material prejudice” under section 11.2(4) of the CCAA.

B. Facts

12. On November 18, 2025 the Canacol Group obtained an ex parte Initial Order from Court of the King’s Bench of Alberta (the “**Court**”) and the DIP solicitation process was launched. Throughout this process, Macquarie objected to priming and urged the pursuit of a junior DIP.¹¹

13. In his December 5, 2025 affidavit, Jason Bednar stated that “no prejudice to Macquarie will result” from the proposed priming charge based solely on the unaudited book value of assets in the Company’s Interim Consolidated Financial Statements.¹² This was the only financial evidence filed by the Company on December 5, 2025 in support of the proposed priming charge. The Company provided no current valuations, binding investment or sale agreements, fairness opinions, or detailed financial analysis to substantiate this general assertion. There was no evidence the Company sought a junior DIP, nor any evidence the DIP Lender would not fund one.

14. Macquarie objected to this assertion, as subordinating Macquarie’s term loan by approximately \$70 million without its consent is inherently prejudicial and materially increases the risk of repayment. Macquarie also disputed the Company’s valuation, pointing to market indicators, including the unsecured notes trading at about 18 cents on the dollar, which signal that the Company’s enterprise value is materially below book value and, at minimum, uncertain.¹³ In addition, Macquarie provided expert evidence that establishes that under Colombian insolvency law, a first-priority security interest over previously encumbered assets requires the prior consent of the existing secured creditor. Absent consent, a Colombian court may only authorize priority for post-petition financing where the originally secured creditor receives “reasonable protection,” which in practice entails material value through repayment or substantial new security.¹⁴

¹⁰ Reasons for Judgment., p.9, lines 38 to 41 and p. 10, line 1.[**TAB A**]

¹¹ Pickard Affidavit at paras. 20, 22, 23 and 38, Appeal Book, [**TAB H**].

¹² Bednar Affidavit at para. 71, Appeal Book, [**TAB E**].

¹³ Pickard Affidavit at para. 56 and 58, Appeal Book, [**TAB H**].

¹⁴ Affidavit of Luis Guillermo Velez-Cabrera sworn December 8, 2025 at Exhibit B, paras. 39,40,62,66. [**TAB I**]

15. The litigation schedule did not provide a right of reply. Yet, late on December 9, 2025, the Company served two affidavits in reply, including the Bednar Affidavit in which Mr. Bednar provided new evidence intended to try to support his earlier assertion that no prejudice would result from the proposed priming charge. This included, among other things, a report on the Company’s resource reserve information for the year ending December 31, 2024 (the “**2024 Report**”).¹⁵

C. The Decision Below

16. Justice Mah grouped Macquarie’s objections, both as grounds for an adjournment and on the merits, into themes, two of which are relevant here: procedural and substantive prejudice.

17. One form of procedural prejudice was that the “compact timeframe” left Macquarie without a meaningful opportunity to test the need for any DIP or priming charge. The Court accepted that Macquarie had very limited time to scrutinize the Company’s and Monitor’s materials or conduct cross-examinations.¹⁶ Nevertheless, the Court relied on the Company’s submission that CCAA proceedings unfold “in real time” and often require decisions “on the fly.”¹⁷ The Court therefore framed the issue as a choice between competing objectives: providing the debtor with breathing room to avoid broader economic harm, and affording Macquarie procedural fairness.¹⁸ Justice Mah concluded that both could not be met because of the “exigency” asserted by the Company and the Monitor; an exigency premised on a liquidity deficit not projected until January 10, 2026, and partly attributed to exploratory capital expenditures the Court accepted as inherent to the industry despite no evidentiary foundation.¹⁹ This was an error.

18. The Court addressed substantive prejudice in two respects: the loss of Macquarie’s priority to the DIP lender, and the risk that a Colombian court would not recognize a priming charge that conflicts with Colombian law. On the first issue, the Court found no substantive prejudice, accepting the Company’s position that its asset value was sufficient to absorb the priming charges. In doing so, it relied on the 2024 Report submitted in an affidavit from a non-expert, served the night before the hearing, and based on valuations nearly a year old, as the best available evidence.²⁰ The Court did not provide Macquarie the opportunity to file reply materials or to cross examine

¹⁵ Affidavit of Jason Bednar affirmed on December 8, 2025 at para. 13 and Exhibit “A”, Appeal Book, [TAB F].

¹⁶ Reasons for Judgment of Mah J., p. 7, lines 8 to 9, Appeal Book, [TAB A].

¹⁷ Reasons for Judgment of Mah J., p. 7, lines 17 to 19, Appeal Book, [TAB A].

¹⁸ Reasons for Judgment of Mah J. p. 7 lines 22 to 30, Appeal Book, [TAB A].

¹⁹ Reasons for Judgment of Mah J., p. 5, line 36, p. 7 lines 32 to 33, p. 8, lines 35 to 37, Appeal Book, [TAB A].

²⁰ Reasons for Judgment of Mah J., p. 9, lines 11 to 16, Appeal Book, [TAB A].

on a new factual area in making an exceptional remedy. On the second issue, the Court held that whether a Canadian priming charge constitutes impermissible overreach in Colombia is a question exclusively for the Colombian courts.²¹ Justice Mah failed to consider the expert evidence submitted by Macquarie, which was fundamental given that materially all of the Company's assets are located in Colombia.

II. ISSUES

19. The issue to be determined is whether permission to appeal from the Justice Mah's order should be granted.

III. LAW AND ARGUMENT.

A. Test for Permission to Appeal

20. A party seeking permission to appeal must demonstrate that the appeal will raise "serious and arguable grounds that are of real and significant interest to the parties."²² A party will satisfy this test, if it can show that: (a) the point on appeal is of significance to the practice or the industry; (b) the point on appeal is of significance to the proceeding itself; (c) the appeal is *prima facie* meritorious (i.e., it is not frivolous); and (c) the appeal will not hinder the progress of the proceeding.²³ The proposed appeal satisfies each element of this test, as is discussed below.

B. The Point on Appeal Is Significant to the Practice

21. Macquarie is seeking permission to appeal on the basis of the following questions: (a) was procedural fairness denied to Macquarie by the Justice Mah not granting an adjournment of the hearing for the SARIO?; and (b) did the Justice Mah err in his assessment of "material prejudice" under section 11.2(4) of the CCAA?

22. Procedural Prejudice: The Supreme Court of Canada has affirmed that procedural fairness is a fundamental principle in judicial proceedings, even in contexts defined by urgency under insolvency law.²⁴ As this court held in *Wiebe v. Winebach*, procedural fairness cannot be ignored simply because insolvency proceedings unfold in "real time."²⁵ The flexibility of the Canadian

²¹ Reasons for Judgment of Mah J., p. 10, lines 11 to 14, Appeal Book, [TAB A].

²² *Duke Energy Marketing Limited Partnership v. Blue Range Resource Corporation*, [1999 ABCA 255](#) at para. 2, citing *Re Multitech Warehouse Direct* (1995), [32 Alta. L.R. \(3d\) 62 at 63 \(C.A.\)](#), BOA, [TAB 1.]

²³ *Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, [2020 ABCA 178](#) at para 16, BOA [TAB 2.]

²⁴ *Sun Indalex Finance, LLC v United Steelworkers*, [2013 SCC 6, \[2013\] 1 SCR 271](#) at paras 73-74 (per Deschamps J) and paras 275-276 (per LeBel J, dissenting, but not on whether the duty of procedural fairness applies to CCAA proceedings), BOA [TAB 3].

²⁵ *Wiebe v Weinrich Contracting Ltd.*, [2020 ABCA 396](#) at para. 44, BOA, [TAB 4] ("*Wiebe*").

insolvency regime does not justify abandoning foundational protections. Efficiency and speed are important considerations, but they cannot displace due process, respect for the interests of stakeholders and the very important consideration that justice must be seen to be done.²⁶

23. Macquarie requested an adjournment to address the late-served materials and the size, terms, and priming relief sought. The Court itself expressed concern that the compressed timeline placed the parties in a difficult position.²⁷ Notwithstanding this, and due to the “exigency” of the circumstances and the need to make decisions “on the fly” in CCAA proceedings, the adjournment was refused, and the application proceeded on its merits at the same time, depriving Macquarie of a meaningful opportunity to address the evidentiary and legal issues arising. The Company had sufficient liquidity until early January 2026 and potentially for a longer period of time if the millions of dollars of exploratory capital expenditures are delayed.

24. As this Court has recognized, although supervising judges are generally afforded a high degree of deference in CCAA proceedings, that deference gives way where procedural fairness is compromised and the rights of affected parties are prejudiced.²⁸ A denial of procedural fairness for a contested DIP facility, particularly one seeking unprecedented relief, carries significant implications for the integrity of interim financing in CCAA proceedings and risks undermining the confidence of secured creditors who rely on predictable and principled judicial oversight.

25. Material Prejudice: Material prejudice is the central consideration under section 11.2(4) of the CCAA in this case.²⁹ There is little by way of an express judicial elaboration on the definition of the words “material prejudice” in section 11.2(4). However, under section 11.2(4) of the CCAA, the assessment of “material prejudice” requires consideration of the extent to which existing creditors are being subordinated by a priority DIP charge.³⁰

26. Justice Mah’s only basis for finding that there was no “material prejudice” was that the Company had sufficient asset value to absorb the priming charges, based on evidence that Macquarie did not have the chance to test or respond to.³¹ In reaching this conclusion, Justice Mah did not explain what constituted “material prejudice” nor did Justice Mah apply any case law

²⁶ *Ibid*, citing J. P. Sarra, Rescue! The Companies’ Creditors Arrangement Act (2013), at pp. 139, BOA, [TAB 4].

²⁷ Reasons for Judgment, p. 5, lines 11 to 12, Appeal Book, [TAB A].

²⁸ *Wiebe* at para. 31, BOA, [TAB 4].

²⁹ Reasons for Judgment., p.6, lines 15 to 18, Appeal Book, [TAB A].

³⁰ *Tacora Resources Inc. (Re)*, 2023 ONSC 6126 at para. 108, BOA, [TAB 5]

³¹ Reasons for Judgment, p. 9, lines 11 to 16, Appeal Book, [TAB A].

supporting the view that a contested priming DIP facility of this magnitude, particularly one involving only Canadian holding companies whose secured assets are located in Colombia, would not result in “material prejudice” to the Company’s only secured creditor. The Company provided no authority in its bench brief where any Canadian court has approved a comparable DIP facility.

27. Given Justice Mah’s limited discussion on “material prejudice” and lack of any case law to support his decision, it’s clear that what constitutes “material prejudice” remains an unresolved issue of law. As this court has held, such an unresolved issue of law is necessarily of significance to the practice:

With respect to the factor of significance to the practice, the parties to this application have not advanced any case law demonstrating that the effect of the *Saskatchewan Builders’ Lien Act* provisions on the classification of creditors under the *CCAA* has been dealt with previously. An unresolved issue has to be of significance to the practice.³² [emphasis added]

C. The Point on Appeal Is Significant to the Proceeding

28. The Ontario Court of Appeal has recognized that this factor generally carries limited weight.³³ Macquarie submits that the issues on appeal are significant. It has been procedurally and materially prejudiced by the compressed litigation timeline of a contested and unprecedented DIP motion. The relief sought is extraordinary, particularly given that the assets the Company seeks to prime on a super-priority basis are in Colombia with materially different laws, hence the requirement that a substantial portion of the DIP Facility is conditioned on it being recognized there. The priming of Macquarie’s security remains a central issue to the Company’s restructuring.

D. The Appeal is *Prima Facie* Meritorious

29. The appeal is on two points of law, namely whether procedural fairness was denied to Macquarie and the interpretation of “material prejudice” under section 11.2(4) of the *CCAA*.

30. The proposed appeal is far from frivolous; it raises serious grounds for overturning the decision below. Justice Mah’s refusal to adjourn the matter to early January was an error as it deprived Macquarie of the ability to respond to or test the evidence of the Company that Justice Mah ultimately relied on to determine that Macquarie would not suffer any “material prejudice” under section 11.2(4). The Company sought and was granted an extraordinary order that may

³² *Re Kerr Interior Systems Ltd.*, [2008 ABCA 291](#) at para. 9, BOA, [TAB 6].

³³ *Nortel Networks Corporation (Re)*, [2016 ONCA 749](#) at para. 10, citing *Nortel Networks Corp., Re*, [2016 ONCA 332](#) at para 95, BOA, [TAB 7].

subordinate Macquarie's secured debt by approximately \$70 million, alter creditor priorities across jurisdictions in contravention of foreign law, and could materially affect Macquarie's recovery. Relief of this magnitude requires a complete evidentiary record and a fair opportunity to respond.

31. A court in considering interim financing must be wary of being rushed to make decisions in the face of "manufactured" urgency:

... the court must be vigilant to ensure that it is not rushed to a decision based on an illusory sense of urgency which is not supported by the evidence. ... The court must guard against deciding issues in the face of "manufactured" urgency, whether created by leverage from a stakeholder seeking certain relief or otherwise.³⁴

32. Justice Mah erred in rendering a decision in response to the "sky was falling" position created by the Company and the Monitor regarding an anticipated liquidity shortfall based on the updated cash-flow projections. Macquarie raised concerns at the hearing about the millions of dollars of exploratory capital expenditures embedded in those projections.³⁵ Justice Mah relied on the Monitor's assertions, stating that "a Court must repose a certain degree of confidence in what the Monitor says as a court-appointed officer". This reliance was misplaced in the circumstances as the Monitor had only become involved shortly before the Initial Order³⁶ whereas Macquarie has been engaged with the Company since 2024 and possessed materially deeper industry knowledge.

33. As a result, Justice Mah made a value and prejudice determination based on limited court time and based on an unproven and incomplete record despite accepting that Macquarie had very limited time to scrutinize the Company and Monitor's information or conduct any cross-examinations. In finding that Macquarie was not "materially" prejudiced, he granted significant priming relief with cross border implications that will have precedential value for interim financing in CCAA proceedings without applying any law to the analysis or any discussion of what "material prejudice" entails. Justice Mah did not properly consider Macquarie's right as the only secured creditor and there was no consideration of the fact that Macquarie was being primed by approximately 175%, which has been held to be a consideration required under section 11.2(4). Moreover, the structure, size, location of assets, and terms of the DIP Facility, which were taken as a "whole" was precedent setting for any CCAA court.

34. Given the "extraordinary" nature of DIP financing, Justice Mah ought to have balanced the

³⁴ *Re Great Basin Gold Ltd.*, [2012 BCSC 1459](#) at para. [182](#), BOA, [TAB 8].

³⁵ Transcript at p. 44, lines 30 to 41, p. 45, lines 1 to 13, Appeal Book, [TAB B].

³⁶ Reasons for Judgment, p. 6, lines 4 to 5, Appeal Book, [Tab A].

interests and protected the rights of a material secured creditor in the circumstances rather than rely on the “exigency” asserted by the Company and Monitor. The matter should have been adjourned until January to allow proper evidence to be put before the Court. Had a complete record and a full review of the law been available, it is respectfully submitted that the Court would have reached a different conclusion. In the alternative, Justice Mah should have followed Justice Blair’s decision in *Re Royal Oak Mines*, which established that DIP financing with super-priority status should be limited to what is reasonably necessary to meet the debtor company’s urgent needs; essentially to “keep the lights on” over a limited period of time.³⁷ This approach is consistent with the balance typically struck in CCAA proceedings, protecting both the debtor’s interests and the rights of a priority secured creditor until a Court can fully assess the factual and legal issues.

35. By not adjourning the application as Justice Mah originally suggested, Justice Mah denied Macquarie procedural fairness, which resulted in Justice Mah rendering a decision on a contested DIP matter without a proper record or the application of any law. As a result, Macquarie’s appeal has merit as it raises serious questions of law for the Alberta Court of Appeal to clarify.

E. The Appeal Will Not Unduly Hinder the Progress of the CCAA Proceeding

36. The appeal will not delay the proceedings as the Court can provide provided protection for reasonable interim advances received while an appeal is ongoing. Significant creditor rights should be protected and not be disregarded without having the opportunity for a fair hearing and a complete and proper record.

IV. RELIEF REQUESTED

37. Macquarie respectfully requests that it be granted permission to appeal the Order of the Honourable Justice D. Mah dated December 11, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of January, 2026.

Erik Apell

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³⁷ *Royal Oak Mines Inc., Re*, [6 C.B.R. \(4th\) 314](#) (ON SC) at para. 24, BOA, [TAB 9].

V. TABLE OF AUTHORITIES

TAB AUTHORITY

1. [*Duke Energy Marketing Limited Partnership v. Blue Range Resource Corporation*, 1999 ABCA 255](#) citing [*Re Multitech Warehouse Direct* \(1995\)](#), 32 Alta. L.R. (3d) 62 at 63 (C.A.)
2. [*Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, 2020 ABCA 178](#)
3. [*Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6, \[2013\] 1 SCR 271](#)
4. [*Wiebe v Weinrich Contracting Ltd.*, 2020 ABCA 396](#) citing J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2013).
5. [*Tacora Resources Inc. \(Re\)*, 2023 ONSC 6126](#)
6. [*Re Kerr Interior Systems Ltd.*, 2008 ABCA 291](#)
7. [*Nortel Networks Corporation \(Re\)*, 2016 ONCA 749](#) citing [*Nortel Networks Corp., Re*, 2016 ONCA 332](#)
8. [*Re Great Basin Gold Ltd.*, 2012 BCSC 1459](#)
9. [*Royal Oak Mines Inc., Re*, 6 C.B.R. \(4th\) 314 \(ON SC\)](#)