

Action No.: 2501-18462
E-File No.: CVK25CANACOL
Appeal No.: _____

IN THE COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE OF CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 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, et al

PROCEEDINGS

Calgary, Alberta
November 28, 2025

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1 Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

2

3

4 November 28, 2025

Morning Session

5

6 The Honourable Justice M.H. Bourque

Court of King's Bench of Alberta

7

8 C.P. Prophet

For 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.

9

10

11

12

13

14 S. Gabor

For 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.

15

16

17

18

19

20 G. Body

For Justice Canada, Canada Revenue Agency

21 R. Sahni

For KPMG Inc.

22 S. Durant

Court Clerk

23

24

25 **Decision**

26

27 THE COURT:

Good morning. So I am going to read my

28 Reasons in the matter of the application involving the Canacol group of companies.

29

30 The Canacol group of companies, and I will refer to them as the applicants, applied for
31 and obtained an initial order under the *Companies' Creditors Arrangement Act* from
32 Justice Johnston on Tuesday, November 18, 2025. The applicants appeared before me on
33 Wednesday, November 26th, for an Amended and Restated Initial Order extending the
34 stay to December 18, 2025.

35

36 For the reasons that follow, I have decided to grant the Amended and Restated Initial
37 Order as sought by the applicants which are all stakeholders, except Macquarie Bank Ltd.,
38 the asserted senior secured creditor supported.

39

40 The applicants are involved in the exploration, development, production, processing and
41 sale of natural gas in Columbia. The applicant's natural gas production is a critical fuel

1 source for Columbia's electrical grid with the majority of their gas sold to power
2 generators. I accept that the cessation of production would lead to the immediate removal
3 of a substantial share of dispatchable gas with material and severe consequences for
4 Columbia's grid reliability and generation outset. It literally might cause the lights to go
5 out in that country.

6
7 Although I was not provided with the transcripts of her Reasons, I have listened to the
8 recording of Justice Johnstone's reasons for granting the initial order. Justice Johnston
9 was satisfied that the applicants met the statutory preconditions namely that they are a
10 debtor company as defined in the CCAA, that the total claims against them exceed \$5
11 million and that Alberta was the proper forum for the CCAA proceedings. Her findings
12 were not challenged before me and I adopt her conclusions.

13
14 Justice Johnston granted the initial stay, because it would be consistent with a key
15 purpose of the CCAA by maintaining the status quo to allow the applicants breathing
16 room to deal with their liquidity crisis, consult with stakeholders and develop a viable
17 restructuring plan with a view to continue their operations for the benefit of stakeholders
18 while, at the same time, exploring any potential sales and solicitation process and
19 refinancing. She also extended the stay to non-applicants, including the directors and
20 officers, to ensure they could continue to provide governance and management of the
21 business. She also ordered that the stay apply to property controlled and administered by
22 the sucursales.

23
24 At the initial hearing, the applicant sought several charges including an administration
25 charge of \$1 million which Justice Johnston granted on the basis that the 1 million
26 appeared reasonably necessary during the initial period, given the substantial size of the
27 Canacol group, the complexity and multi-jurisdictional nature of the proceedings.
28 However, Justice Johnston declined to authorize the directors and officers'
29 indemnification charge. Although she found that a successful restructuring of the
30 appellants will only be possible with the continued participation of the directors and
31 officers, there was insufficient evidence before her to grant the charge on an initial basis.
32 In particular, she found that there was no evidence about existing policy coverage,
33 exemptions or, more generally, why existing coverage was insufficient. Justice Johnston
34 made clear that the applicants could file further evidence in anticipation of addressing the
35 directors's and officers' indemnification charge at the come back hearing. Lastly, Justice
36 Johnston authorized the payment to critical vendors for pre-filing amounts up to \$2
37 million. Although she expressed some concerns, Justice Johnston accepted the monitor's
38 representations regarding the critical nature of the pre-filing amounts and that the
39 payments could be made only in consultation with the monitor.

40
41 I now turn to address the issues before me. I will start with abridgement of service.

1
2 I am satisfied that it is appropriate to abridge service. I have noted Macquarie's counsel's
3 concerns about service, including that the first monitor's report was served on Monday,
4 and that the affidavit in support of the D & O charge was only provided on Tuesday, the
5 day before the come back application before me.
6

7 CCAA proceedings operate in real time and because of their nature, timelines, in
8 particular in between the initial come back applications, are very short, and that is the
9 reality that experienced professionals in the restructuring space operate in. I certainly had
10 the time to review and digest the information that was provided in the monitor's report
11 and the Hibbard affidavit in a short time frame, and I am satisfied that the short time
12 frame prejudiced no party, and that was evident from the complete submissions I heard
13 from all parties, including those from Macquarie.
14

15 With respect to the stay extension itself, I am satisfied that the circumstances warrant the
16 order and that the debtor has acted and continues to act in good faith and with due
17 diligence. In this regard, I am satisfied that the extension to December 18, 2025, is
18 appropriate. I echo Justice Johnstone's reasons in this regard that the stay is consistent
19 with a key purpose of the CCAA to maintaining the status quo to allow the applicants
20 breathing room to deal with their liquidity crisis, consult with stakeholders and develop a
21 liable restructuring plan with a view to continue their operations for the benefit of
22 stakeholders while at the same time exploring any potential sales and solicitation process
23 and refinancing.
24

25 I accept Mr. Bednar's evidence in his second affidavit affirmed November 22nd, 2025,
26 regarding the good faith and duly diligent work that he and the applicants have been
27 undertaking since the initial order was granted. Here I am referencing the activities
28 outlined in paragraph 7 of his affidavit, as well as the actions relating to the DIP selection
29 process and the recognition proceedings in the US and in Columbia. I also note the
30 monitor's representations in its first report that it is in support of the extension. Denying
31 the stay extension would have severe implication, including substantial dissipation of
32 value, substantial prejudice to creditors and stakeholders and devastating effects on the
33 Columbian populace.
34

35 Turning to the administration charge and indemnification charge.
36

37 Sections 11.51 and 11.52 authorize the Court to grant an administration charge and a
38 directors' and officers' indemnification charge in amounts the Court considers appropriate.
39 Those provisions also authorize the Court to order that the charges rank in priority over
40 the claim of any secured creditor. That authority is limited only by the requirement that
41 the secured creditors who are likely to be affected by the charge be given notice of the

1 potential that the Court may do so. For the reasons I have previously given regarding the
2 abridgement of service, I am satisfied that the statutory notice requirement has been met
3 in this case.

4
5 In *Canwest Publishing*, 2010 ONSC 22 at paragraph 54, the Court outlined a
6 non-exhaustive list of factors that courts might consider in determining both the
7 appropriateness of the charge in question and whether it ought to rank in priority over the
8 claims of secured creditors. Those factors include:

- 9
10 (a) the size and complexity of the businesses being restructured;
11
12 (b) the proposed role of the beneficiaries of the charge;
13
14 (c) whether there is an unwarranted duplication of roles;
15
16 (d) whether the quantum of the proposed charge appears to be fair and
17 reasonable;
18
19 (e) the position of the secured creditors likely to be affected by the
20 charge; and
21
22 (f) the position of the monitor.

23
24 Like any test that requires the consideration of a list of non-exhaustive factors, the factors
25 must be weighted appropriate, and generally no factor is necessarily determinative.

26
27 So with respect to the quantum of the administration charge, I accept the applicant's
28 submissions regarding its appropriateness, particularly owing to the financial, operational
29 and geographical complexities associated with this insolvency proceeding. This
30 proceeding is substantially different than a typical CCAA proceeding in this Court
31 involving a Canadian-based E&P Energy company where production, assets and
32 operations may be limited to two or three Western Canadian Provinces and subject to one
33 or two regulators, where the rules of engagement are well-known as compared to a
34 multi-jurisdictional insolvency where the operations are offshore and subject to the rules
35 of foreign regulators.

36
37 There does not appear to be any duplication of roles and, in any event, I am confident that
38 the monitor will ensure that resources are used appropriately. The amount requested
39 appears fair and reasonable, given the additional complexities involved. The monitor
40 supports the increased administration charge, and I have noted the monitor's
41 representations at paragraph 72 of the first report in that regard.

1
2 The more controversial issue in this case is whether the charge should rank ahead of the
3 claims of any secured creditor and except for Macquarie, all stakeholders and the monitor
4 support the application for the administration charge to rank in priority over the claim of
5 the secured creditors.

6
7 Although the monitor has not made a final determination regarding Macquarie's security,
8 for present purposes I will proceed on the basis that Macquarie is a secured creditor which
9 the applicants do not appear to contest. It does not appear to be contested and I am
10 proceeding on the basis that Canacol is indebted to Macquarie in the vicinity of \$40
11 million, including accrued interest, fees and other amounts. To be clear, I am not
12 determining the amount of the indebtedness, and it also does not appear to be contested
13 that Macquarie is very well secured.

14
15 In submissions, counsel for Macquarie indicated that Macquarie opposes any order that
16 would disturb its priority ranking and in that regard raise several concerns which I will
17 address. Counsel for Macquarie points out that in the initial order, the administration
18 charge was ranked junior to Macquarie and that the D&O indemnification charge was not
19 granted. Evidently, on the come back hearing, I am not bound by Justice Johnstone's
20 ruling and the fact that the administration charge was granted, and to be junior in priority
21 to Macquarie's claim is not surprising given the lack of notice of the initial application of
22 Macquarie. Macquarie now has notice and has had the opportunity to make submissions
23 and to raise its concerns.

24
25 Now, despite counsel's passionate submissions, I find that it is appropriate for the
26 administration charge and the directors' and officers' indemnification charge to rank in
27 priority ahead of Macquarie's claims. I accept Mr. Bednar's evidence regarding the book
28 values of the Canacol groups's assets and liabilities in his evidence that the asset have a
29 book value of nearly 1.3 billion versus slightly over 900 million in liabilities. I appreciate
30 that book values may not reflect the fair market value of the assets and that there is a risk
31 that their fair market value may be less than the 1.3 billion. That said, there is a \$400
32 million delta between those amounts, and the amount of Macquarie's secured
33 indebtedness is estimated to be 10 percent of that amount. That leaves a lot of room for
34 error and the possibility of a mismatch between the fair market value of the assets and the
35 book cost.

36
37 The fact that three separate group of ad hoc bond holders represented to the Court that
38 they are preparing to make binding bids to provide DIP financing of up to \$60 million
39 assuages any concerns I have regarding the possibility of a severe mismatch between the
40 fair market value and the book value of the applicant's assets.

1 Macquarie asserts that its potential prejudice totals \$11 and a half million consisting of
2 the administration charge, the directors' and officers' indemnification charge, payments
3 for pre-filing critical supplier charges and royalty and tax payments, amounts that
4 effectively would be made to rank ahead of Macquarie's security. Even if that ends up
5 being the case, it would require a significant error in the \$400 million delta and for a lot
6 of other things to go wrong before Macquarie would suffer any prejudice as a result of the
7 Court making the order that the administration charge and the D&O indemnification
8 charge rank in priority over Macquarie's claims. That risk, which I would characterize as
9 low, has to be balanced against the risks associated with not making the order, prioritizing
10 the administration charge and the D&O indemnification charge over Macquarie's security,
11 and I have no hesitation in concluding that the balance tips in favor of prioritizing the
12 administration charge and the D&O indemnification charge.

13
14 Macquarie also raised several concerns, many of which related to pre-filing events
15 regarding cash management and fund movements. They also raise concerns about
16 information that was provided in the DIP solicitation process that may be conflicting, and
17 in the cash flow statements. Even if I accepted these concerns, they would not tip the
18 balance in favor of maintaining Macquarie's security position ahead of the administration
19 charge and the D&O indemnification charge. So for these reasons, I order that the
20 administration charge be increased \$1.5 million, and that it rank in priority ahead of the
21 claims of the secured creditors.

22
23 Turning to the D&O indemnification charge.

24
25 In her decision granting the initial order, Justice Johnston declined to order the D&O
26 indemnification charge, and that was largely because she was not satisfied with the
27 evidence before her. Even if the application before me is *de novo*, it is important to note
28 that Justice Johnston did not decline the D&O indemnification charge as a matter of
29 principle, but rather because there was insufficient evidence before her. That deficiency
30 has been cured, and I have the benefit of Mr. Hibbard's affidavit. I am satisfied that the
31 D&O indemnification charge is appropriate in the circumstances and for the same reasons
32 I expressed earlier, that it rank ahead in priority over the claims of the secured creditor.

33
34 First, I accept that the continued participation and involvement of the existing directors
35 and officers is essential to this restructuring process given their expertise specific to the
36 applicant's Columbian operations, as well as the relationships with Columbian suppliers,
37 regulators and other key stakeholders.

38
39 I have reviewed the memorandum prepared by Mr. Rabinowitz and attached as an exhibit
40 to Mr. Hibbard's affidavit. I have also conducted a cursory review of the insurance
41 policies attached to Mr. Hibbard's affidavit. Having conducted that review, I am satisfied

1 that there is a sufficient evidentiary basis to conclude that the restriction in subsection
2 11.51(3) does not apply. That provision restricts me from granting the D&O
3 indemnification charge if I am satisfied that: (as read)

4
5 "The company could obtain adequate indemnification insurance for the
6 director or officer at a reasonable cost."
7

8 Upon reviewing the memorandum and the policies, it appears that the applicants have
9 acquired a complex portfolio of stacked insurance policies leading me to infer that no
10 further insurance policies can be obtained to address any coverage gaps pertaining to
11 D&O indemnification. Having reviewed the memorandum and the policies, I find that
12 there is a sufficient risk that the applicant's current D&O insurance may have coverage
13 gaps which warrants the granting of the D&O indemnification charge.
14

15 In ordering the D&O indemnification charge, I am giving significant weight to the risk
16 that the directors and officers would resign en masse if the D&O indemnification charge
17 were not granted in priority to the claims of the secured creditor. While the directors and
18 officers may have been satisfied to rely on indemnity agreements before the CCAA
19 finding, it is not surprising to me that they would insist on an indemnification charge
20 ranking in priority to ensure their continued participation and involvement which I accept
21 is critical to a hopefully successful restructuring of the applicants. So taking all these
22 considerations into account, I am satisfied that the D&O indemnification charge should be
23 granted and that the D&O indemnification charge rank in priority ahead of the claims of
24 the secured creditor.
25

26 I am going to deal with the critical vendors, ANH payments and taxation payments
27 together.
28

29 In the initial order, Justice Johnston authorized the payment of pre-filing amounts of up to
30 \$2 million owing for goods and services supplied to the applicants by critical vendors,
31 subject to the monitor's consent. Since that time, the applicants have identified additional
32 amounts falling under the critical vendors category and seek an order increasing the
33 authorized amount to \$5.5 million. Justice Johnston also ordered the payment of
34 pre-filing royalty payments to ANH for the month of September, 2025. It has now been
35 determined that royalty payments to ANH are also outstanding for October and that part
36 of November that precedes the initial order. The failure to make those payments could
37 jeopardize the applicant's E&P contracts with Columbian authorities. Similarly, the
38 applications seek an order permitting the payment of outstanding priority tax payments
39 payable by the Canacol group to Columbian taxation authorities as described in the
40 evidence, the nonpayment of which constitutes a criminal offence in Columbia.
41

1 The monitor supports these orders and will continue to provide oversight of their
2 payment. In my view, all these payments should be authorized as requested as failure to
3 make them would result in the material destruction of the applicant's profit-making
4 apparatus to the detriment of all stakeholders, including Macquarie.

5
6 Turning to dispensation with securities filings.

7
8 The applicants also seek an order dispensing with their securities filing requirements and
9 providing that their directors, officers, employees and the monitor be protected from
10 liability arising from that dispensation, and the monitor supports this order. I am satisfied
11 that this order ought to be granted. The order sought is pending the outcome of the TSX
12 delisting, meaning I am satisfied the financial information will continue to be publically
13 available through materials filed in these CCAA proceedings on the monitor's web site. I
14 would encourage the monitor to post the materials more expeditiously, that is upon
15 receipt of filed materials.

16
17 The applicants seek an order approving the monitor's pre-filing report and first report, as
18 well as its actions, conduct and activities. Again, despite the concerns raised in
19 submissions made by Macquarie's counsel, I am satisfied that the monitor has acted
20 honestly, in good faith and in accordance with its court-ordered and statutory duties prior
21 to and throughout the duration of the CCAA proceeding to date, and the order approving
22 its reports and activities is granted.

23
24 Macquarie's counsel provided the Court with a markup of the proposed amended and
25 restated initial order in which it seeks, in essence, the right to consent to various payments
26 including but not limited to payments moving from accounts in Columbia or the United
27 States of America to Canada, and payments made to critical suppliers. In the case of cash
28 movements to Canada, it seeks what it has defined as a transfer charge ranking ahead of
29 the administration charge and the directors' and officers' indemnification charge. I
30 decline to make those changes. Macquarie has no application before the Court seeking a
31 priority charge in respect of the cash movements from foreign accounts to Canada, but in
32 any event, Macquarie has no such consent rights under its existing security arrangements
33 and it would be inappropriate, in my view, to ameliorate Macquarie's rights at this
34 juncture. Moreover, the monitor is the court-appointed officer providing oversight. It is
35 the Court's eyes, ears and nose, and I see no need for a second layer of oversight.

36
37 So for all these reasons, the application is granted and this concludes my Reasons.

38
39 Now, I understand Mr. Gabor is going to deal with getting the order to me. I don't believe
40 I have a clean copy of the proposed amended and restated CCAA initial order to sign, but
41 I have reviewed the black line and the only change that would be required, I believe, is to

1 reflect that I reserved my decision on Wednesday so that the date on the face of the order
2 should be today's date, and paragraph 1 should also reflect that fact. So if you or Mr.
3 Prophet could make those charges and email it to the commercial coordinator, and feel
4 free to copy my assistant, Karin Chilton (phonetic), as well. I am in the office today and I
5 will sign it as soon as I get it. And, madam clerk, the applicants have leave to file it at the
6 counter, if they need to.

7

8 THE COURT CLERK: Thank you, Sir.

9

10 THE COURT: Okay. Okay.

11

12 MR. PROPHET: Thank you, Justice. Cliff Prophet for the
13 applicants. Mr. Gabor will make the arrangements concerning the order to get it to you
14 through the commercial coordinator.

15

16 THE COURT: Perfect.

17

18 MR. PROPHET: Thank you.

19

20 THE COURT: Okay. Thank you. All right. Adjourn court.

21

22 MR. GABOR: Justice Bourque, just for clarity, it's Sam Gabor.
23 Would you like an actual line in the order that said the decision was reserved.

24

25 THE COURT: You can put it in the --

26

27 MR. GABOR: (INDISCERNIBLE).

28

29 THE COURT: You can just stick it in the recitals, or
30 something.

31

32 MR. GABOR: Right, I'll say that the hearing was as of the prior
33 date and --

34

35 THE COURT: Yeah.

36

37 MR. GABOR: -- the decision was reserved.

38

39 THE COURT: Yeah.

40

41 MR. GABOR: Very good.

1
2 THE COURT:

You're good?

3
4 MR. GABOR:

Yes.

5
6 THE COURT:

Okay. Thank you.

7
8 _____

9
10 PROCEEDINGS CONCLUDED

11 _____

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1 **Certificate of Record**

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I, Susan Durant, certify that the recording herein is a record of oral evidence of proceedings held at the Court of King's Bench in courtroom 1103 at Calgary, Alberta, on the 28th day of November, 2025, and I was the court official in charge of the sound-recording machine during these proceedings.

1 **Certificate of Transcript**

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I, Deborah Jane Brower, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

Deborah Jane Brower, Transcriber.
Order Number: TDS-1098719
Dated: December 1, 2025