

Action No. 2501-18462
E-File Name: EVK25CANACOL
Appeal No. _____

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

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

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF
CANACOL ENERGY LTD., 2654044 ALBERTA LTD., CANACOL
ENERGY ULC, 2498003 ALBERTA ULC, et al

P R O C E E D I N G S

Edmonton, Alberta
December 11, 2025

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

2

3

4 December 11, 2025

Afternoon Session

5

6 The Honourable Justice D. Mah
7 (remote appearance)

Court of King's Bench of Alberta

8

9 C.P. Prophet (remote appearance)

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.

10

11

12

13

14

15 S. Gabor (remote appearance)

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.

16

17

18

19

20

21 K. Yurkovich (remote appearance)

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.

22

23

24

25

26

27 C. Brunet (remote appearance)

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.

28

29

30

31

32

33 E.S. Dushenski (remote appearance)

For Citibank, National Association

34 A.C. Maerov (remote appearance)

For Citibank, National Association

35 J. Levine (remote appearance)

For Citibank, National Association

36 J.L. Oliver (remote appearance)

For the Ad Hoc Committee of Senior
Noteholders

37

38 K.J. Bourassa (remote appearance)

For Agents on the Revolving Credit Facility

39 J. Willis (remote appearance)

For Agents on the Revolving Credit Facility

40 G.H. Finlayson (remote appearance)

For the Board of Directors of Canacol Energy
Ltd.

41

1	M. Cressatti (remote appearance)	For the Board of Directors of Canacol Energy Ltd.
2		
3	J. Pasquariello (remote appearance)	For Macquarie Bank Ltd.
4	E. Axell (remote appearance)	For Macquarie Bank Ltd.
5	R. Chadwick (remote appearance)	For Macquarie Bank Ltd.
6	R.I. Thornton (remote appearance)	For NG Energy
7	G.F. Body (remote appearance)	For Justice Canada, Canada Revenue Agency
8	R.S. Sahni (remote appearance)	For the Monitors, KPMG Inc.
9	K. Forbes (remote appearance)	For the Monitors, KPMG Inc.
10	K.J. Meyer (remote appearance)	For the Monitors, KPMG Inc.
11	E. Buhendwa	Court Clerk
12	Z. Wong	Court Clerk
13		

14

15 THE COURT: Good afternoon, everyone. I just want to cast my
16 eyes over the array here and make sure that everyone that should be here is here. So I see
17 Mr. Prophet, I see Ms. Meyer.

18

19 Okay, I am looking for someone from Mr. Pasquariello's firm. Oh I see Mr. Pasquariello
20 there. Okay, great.

21

22 Is there someone here from Cassels?

23

24 MR. PROPHET: Mr. Oliver's here, Sir.

25

26 THE COURT: Mr. Oliver, okay.

27

28 MR. PROPHET: Thank you.

29

30 THE COURT: That is great. All right, I think we are all here. So
31 I am going to start in a moment. I will just let you know that this will likely go on for about
32 20 minutes.

33

34 MS. MEYER: Justice Mah, it's Kelsey Meyer from Bennett
35 Jones on behalf of the Monitor.

36

37 THE COURT: Yes.

38

39 MS. MEYER: I did want to just give you an update with respect
40 to the US proceeding which was heard this morning.

41

1 THE COURT: Okay.

2

3 MS. MEYER: This morning, the US Bankruptcy Court heard
4 the motion for foreign recognition of these proceedings in the US and granted that motion,
5 there being no objections to it, and the Judge held particularly that Canada is the centre of
6 main interest for all of the debtor entities as part of his decision.

7

8 THE COURT: Thank you.

9

10 MS. MEYER: Thank you.

11

12 **Decision (Stay Extension and DIP Loan)**

13

14 THE COURT: Just give me a moment to set up. All right, this
15 decision comes after a rather spirited hearing before me yesterday concerning a stay
16 extension and approval of a DIP loan and charge under the *CCAA*.

17

18 The applicant is Canacol Group, an international group of companies engaged in oil and
19 gas exploration and production with a headquarters in Calgary, operations in Columbia and
20 financing through New York. Canacol Energy Ltd. and its associated companies comprise
21 Canacol Group. I will refer to the group as Canacol, the entities under *CCAA* protection in
22 these proceedings, throughout these reasons.

23

24 Canacol obtained an initial order from Justice Johnston on November 18th, 2025 and an
25 amended and restated initial order from Justice Bourque on November 8th, 2025. Under
26 the latter, the stay is set to expire on December 18th, 2025. Aside from stay extension to
27 February 6th, 2026, Canacol also seeks approval of a DIP loan in charge with respect to
28 proposed interim financing from what was called the ad hoc bond holder group.

29

30 This DIP facility contemplates DIP funding to a maximum of \$67 million US comprised
31 of an initial advance, referred to as tranche A, of \$15 million US and a subsequent advance,
32 tranche B, of \$30 million US. Tranche B contemplates renewal or replacement of certain
33 lapsing letters of credit up to \$20 million US. There is also a Tranche C which contemplates
34 new letters of credit up to \$2 million.

35

36 Any DIP loan order granted by this Court requires confirmation in the US Court and at
37 least with respect to Tranche B, recognition in Columbia. The date for the US application
38 in the Southern District of New York is December 18th, which date has already been
39 procured and I was just updated by Ms. Meyer that the motion for foreign recognition was
40 heard and granted this morning. Tranche A requires a commitment fee payable to the DIP
41 lender of 5 percent of the maximum commitment amount in any event.

1
2 Canacol's senior lender, Macquarie Bank, opposes the DIP loan part of the application on
3 several grounds: That the DIP solicitation process was unduly rushed and flawed given that
4 the priming charge, in its view, is contrary to Columbian law. Approval by the Alberta
5 Court would set a negative and far-reaching precedent with implications for international
6 comity. Approval would cause uncertainty in the *CCAA* proceedings. Approval would
7 prejudice Macquarie as senior secured lender and there is something better out there to help
8 Canacol in its current situation.

9
10 Macquarie asked for an adjournment of the application so that this -- something different
11 might be worked out, and also to ensure procedural fairness in this application because
12 materials were late breaking and Macquarie Bank has all kinds of factual questions which
13 it says needs to be answered. Macquarie, alternatively, opposes the DIP loan and charge
14 application on its merits. Macquarie is owed \$37.5 million more or less and is the first
15 position secured creditor.

16
17 The application for DIP loan approval was supported by the ad hoc committee of senior
18 noteholders, the proposed DIP lender, as well as Canacol's Board of Directors, and the RFC
19 lender. The ad hoc committee represents 75 percent of the senior unsecured noteholders
20 who, in aggregate, hold \$300 million in unsecured debt, while the other creditor is a
21 syndicate lender holding \$200 million in unsecured debt.

22
23 All of the application is supported by the Monitor, who of course is a Court appointed
24 officer, and who provided his rationale for support in its second report which was filed
25 with the Court. The application's proponent, Canacol, the Monitor, and the other parties
26 who appeared by counsel and supported the DIP loan, all oppose the adjournment. Counsel
27 for Canacol and the Monitor suggest that Macquarie is engaging in a campaign of
28 disruption motivated only by the desire to get paid before anyone else and soon.

29
30 The main question raised by Macquarie is what is the rush? And I need to give some
31 background to the question of how this rush has occurred. First, I should say that this Court
32 was satisfied in the person of Justice Johnston that the *CCAA* applied in Canacol's
33 circumstances, and that the initial order should be granted in the first place. Then Justice
34 Bourque ordered the stay extended to December 18th in a comeback hearing that gave rise
35 to the ARIO.

36
37 During the hearing before Justice Bourque, the DIP selection process was modified, that is
38 it was extended so that the approval application could be presented before me yesterday.
39 Due to the stay expiry on December 18th, Canacol had first proposed earlier dates in
40 December, December 16th of 17th, as the date for this application. As it turned out, there
41 was no available court time in either Edmonton or Calgary for the rest of the calendar year.

1 It was because another matter had fallen off yesterday's docket that the hearing date of
2 December 10th was offered and counsel for Canacol seized that date.

3
4 Given the short timeframe, filing deadlines for the application were required to be varied.
5 I directed that the applicant's materials be filed on December 5th and response materials
6 by December 8th. Counsel for the Monitor took it upon themselves but did advise me and
7 other parties that its material would be filed thereafter but before the hearing, in accordance
8 with its practice. Canacol also felt behooved to file a late reply affidavit and Amended
9 Notice of application.

10
11 When I read Macquarie's materials yesterday, I became concerned that the Court might
12 have put the parties in a difficult position because of unavailability of court time and short
13 filing deadlines. I tried to broker a solution of sorts by offering a date later in the first week
14 of January, at least for the DIP portion of the application. Macquarie's counsel was the only
15 taker for that suggestion. In the result, because I felt the adjournment request and the merits
16 of the DIP fund application were inextricable, I decided to hear both at the same time.

17
18 Now I should say that no one ever plans on having a liquidity crisis. I imagine that initiation
19 of *CCAA* proceedings is a last resort measure in the face of dire corporate fortunes that are
20 finally deemed by the company unlikely to change.

21
22 In any event, Justice Johnston saw fit to grant the initial order on November 18th and I did
23 not go behind that. Similarly, Justice Bourque saw fit to grant the amended and restated
24 initial order on November 28th, and I do not question that. It did result in the DIP
25 solicitation process following an extremely truncated timeline. Some of the questions that
26 faced me is whether the short length of the timeline is unfair to and prejudices Macquarie.

27
28 Argument in the application focussed primarily on the propriety of the DIP fund proposal,
29 particularly with respect to the priming charge. I did not hear much argument on the stay
30 extension itself, although DIP loan approval and stay extension go hand in glove. For
31 reasons that I hope become apparent, I am going to deal with the DIP fund application first
32 and then move to the stay extension, although intuitively it seems like it should go the other
33 way around. As I said, the adjournment application and consideration of the merits of the
34 DIP loan and charge request are dealt with together.

35
36 Canacol and the Monitor said that the main reason for the DIP loan is exigency. Canacol
37 contemplates a double track approach within this restructuring, a plan of arrangement, or a
38 sales and investment solicitation process, or some combination. It cannot proceed with
39 either normal operations in the meantime or restructuring efforts without injection of cash
40 flow from a DIP lender.

41

1 The Monitor provided an updated cashflow statement for the period November 30, 2025
2 to February 7th, 2026, which assumes the DIP loan prepared as of December 9th. Canacol
3 is schedule to run out of cash more or less as of January 10th, 2026. The Monitor also
4 provided a brief variance report at appendix G of the second report. I understood from
5 Monitor's counsel that the Monitor became involved only shortly before the initial order
6 itself and Canacol's financial state, from the Monitor's perspective, continues to evolve as
7 more information becomes known and events develop. I accept this explanation.

8
9 Canacol and the Monitor both say that without the DIP loan, the margin is virtually
10 eliminated. Therefore, Canacol's stands in danger of what has been described as an orderly
11 wind down in Columbia should the security be enforced, along with, as it was explained to
12 me, sudden supply disruption to customers, basically the Government of Columbia, and
13 subsequent disruption to the electrical grid and for energy end users in that country.

14
15 Canacol's counsel says in this case, the most important or at least controversial of the
16 statutory factors governing whether DIP funding should be approved under section 11.2(4)
17 is the existence or not of material prejudice to any creditor. In this case, Macquarie was the
18 only one before the Court alleging such prejudice.

19
20 Macquarie's objections, whether contextually as part of an adjournment application or in
21 opposition outright to the merits of the proposed DIP fund, are grouped as follows:
22 Procedural prejudice; substantive prejudice; the unlikelihood of Columbian approval;
23 uncertainty and disfunction within the *CCAA* process; and there is a better way to help
24 Canacol, we just have to find it.

25
26 So I will start with the procedural prejudice. It takes two forums. First, the rushed manner
27 in which the DIP solicitation process unfolded, not giving Macquarie enough time to
28 meaningfully respond with its own DIP plan. And second, the compacted timeframe for
29 Court approval of this DIP loan, which means that Macquarie has not had the opportunity
30 to meaningfully question the need for a priming charge for the DIP or the DIP at all.

31
32 Details of the DIP selection process were set out in the Monitor's first report which was
33 before Justice Bourque. During or as a result of that hearing, the deadline for responding
34 with a DIP funding proposal was extended to December 5th. The whole of the selection
35 process with updates is described at paragraphs 21 to 39 of the second report.

36
37 The Monitor gives an opinion that those parties interested in the process had access to the
38 same information and the same opportunity to generate a compliant proposal. I appreciate
39 that the process was truncated in terms of timeline. However, in the circumstances, there
40 is a limited universe from which a DIP lender might emerge. I suspect that the entire
41 universe was likely represented before the Court yesterday.

1
2 I am not satisfied that Macquarie was put to any disadvantage compared to any other person
3 interested in submitting a DIP fund proposal or with the interim lender who is now before
4 the Court. As the Monitor says, everyone had the same information, access to the data
5 room, and the same opportunity. The ad hoc committee submitted an acceptable compliant
6 proposal. Macquarie, after two cracks, did not.

7
8 With regard to the other form of procedural prejudice, I accept that there has been scant
9 time for testing the information put forward by the Monitor or questioning on affidavits.
10 Counsel differ about whether such questioning could have taken place. Here, I say the
11 Court must repose a certain degree of confidence in what the Monitor says as a Court
12 appointed officer. Macquarie may have questions. It could have and should have asked
13 those questions while the DIP selection process was underway. There was nothing
14 preventing Macquarie from asking questions between November 28th and December 10th
15 if it needed clarification about some of the financial information.

16
17 I accept what counsel say about the nature of *CCAA* proceedings, how opportunities open
18 and close and decisions must sometimes be made on the fly, as it were. This was described
19 by Canacol counsel as insolvency proceedings unfolding in real time. So there are times
20 when the Court must be called upon to choose between competing policy objectives.

21
22 One set of such objectives would be that which underlies the *CCAA*, that is avoiding the
23 social and economic cost of large corporate failure and allowing a large, distressed
24 company breathing space to emerge from financial distress with a reasonable plan
25 supervised by the Court.

26
27 The competing objective here are the procedural fairness concerns in that, as Macquarie
28 says, it does not have time to question the information presented by Canacol and the
29 Monitor which as a party in this litigation, it says it has a right to do in order to put a better
30 record before the Court for a decision.

31
32 I cannot do both here. The reason I cannot do both is because January 10th, 2026, according
33 to the most recent cash flow statement, represents a hard stop. If I adjourn to the latter part
34 of the first week of January, Canacol misses its December 18th date with the Court in the
35 SDNY. It seems unlikely that US Court approval could be achieved in 1 or 2 days after a
36 hearing by this Court during the latter part of the first week of January. It is just too close.

37
38 So what I need to consider is really what underlies Macquarie's concern about procedural
39 fairness and its desire to delay so that Macquarie can, for example, conduct questioning or
40 otherwise put the Monitor's figures to the test. I think the Monitor's counsel asked a fair
41 question when she said: (as read)

1
2 An adjournment to what end? What is the purpose of an adjournment?
3 What does Macquarie propose to achieve? Is it going to come up with
4 a better proposal? What is the real objective here?
5

6 Canacol's counsel pointed me to paragraph 62 of Mr. Picard's (phonetic) affidavit where
7 he says, I don't mind a defund if it second to Macquarie's security. The Monitor's counsel
8 pointed me to the November 24th, 2025 letter from Macquarie's counsel to Canacol's
9 counsel and the Monitor's counsel which, at the top of page 2, reiterates Macquarie's
10 position that any DIP funding should be secondary to its security.
11

12 Macquarie's counsel argued before me that an alternative structure which Macquarie would
13 accept is either having the DIP fund in a junior position or requiring the DIP loan to pay
14 out the Macquarie loan. The upshot of all of this is that Macquarie seeks to be paid out
15 right away and be done with Canacol. That is a completely understandable position. In
16 business and in litigation, the prime motivation is self-interest. There is nothing wrong with
17 that.
18

19 However, it is not compatible with the *CCAA* objective of fair treatment for all creditors
20 and stakeholders. Once the *CCAA* is invoked, as it has been here, broader interests come
21 into play. Even the interests of third parties, who may be residents of another country but
22 are end users of Canacol's output, they are part of the equation.
23

24 I have been told by counsel for the senior noteholders, who propose to be the DIP lender,
25 that his client will not accept a secondary position. That is also a reasonable position to
26 take and entirely consistent with what I say is the Supreme Court of Canada's view of
27 priming charges for DIP lenders, as expressed in the *Canada North* case where the Court
28 says they, being priming charges, are critical to encourage new investment in the company
29 as it undergoes reorganisation.
30

31 In that vein, here the DIP selection process was concluded. One DIP fund proposal was
32 acceptable to Canacol and the Monitor and is now presented. Neither of Macquarie
33 attempts at making a proposal were acceptable, nor compliant, and there is only one
34 proposal before the Court. Further, I do not accept Macquarie's attempt to undermine the
35 legitimacy of the latest cash flow rejection. I do accept both Canacol's and the Monitor's
36 explanation that ongoing capital expenditure is an innate feature of the gas extraction
37 industry.
38

39 Therefore, in my view, the slim margins shown in the latest cash flow statement are real
40 and show an actual liquidity crisis in the absence of an injunction of funds. Which leads
41 me to say that there is no procedural prejudice other than a desire to delay so as to take

1 Canacol to the brink so that Canacol, the Monitor, and the senior noteholders will change
2 their mind about having the DIP fund going second rather than first or paying out
3 Macquarie outright.

4
5 So this takes me to the question of substantive prejudice. The substantive prejudice argued
6 also takes two forms. The first is that Macquarie will lose its priority position to the DIP
7 lender. This is where the debate about valuation took place. After reading the transcript, I
8 saw that the same issue was argued before and decided by Justice Bourque on November
9 28th and was then relitigated before me.

10
11 Whatever valuation measure is used, Canacol has sufficient assets to satisfy all priming
12 charges and Macquarie's loan facility and depending on which valuation scenario is
13 accepted, maybe even some or all of the unsecured lenders at present. Further, I accept as
14 best evidence the reserve value found in Exhibit A to Mr. Bednar's December 8th, 2025
15 affidavit, even if only taking into account the value of proven reserves. But even the book
16 value or the proxy value of current bond price adequately covers Macquarie's position.

17
18 Further, Macquarie taking a subordinate position to the priming charge is the result of the
19 DIP lender agreeing to take on the risk of advancing additional and new funding to an
20 enterprise in distress. As I already said, that risk is undertaken for the expressed purpose
21 of advancing the public policy objectives under the *CCAA* and the price of that risk, as
22 recognised by the Supreme Court of Canada, and that price is the granting of the priming
23 charge.

24
25 Macquarie says that there is no risk to DIP lender in going second, but that is an argument
26 that cuts both ways. It is equally an argument against Macquarie maintaining first position.
27 That Macquarie does nothing extra to promote Canacol's reorganisation efforts, means that
28 it can and should occupy second position in the *CCAA* proceedings. I was given no reason
29 to do otherwise. I conclude therefore that there is no substantive prejudice in loss of priority
30 that accrues to Macquarie if the DIP loan and charge are approved.

31
32 The second form of substantial prejudice falls along the same line as Macquarie's argument
33 about the unlikelihood of Columbian approval of the priming charge for the DIP lender.
34 Macquarie says that it has rights under Columbian law. By approving the DIP loan in
35 charge, Macquarie says I would be stripping Macquarie of its rights to be paid out first or
36 to receive additional security which comes under Columbian law.

37
38 Further, given Mr. Valez's (phonetic) opinion, which is uncontradicted, the chances that a
39 priming charge for the second tranche of \$30 million is approved in Columbia, Macquarie
40 says, is virtually zero. I have read Mr. Valez's opinion. I agree with Canacol's counsel that
41 Mr. Valez does not say that outright. His discussion of Columbian insolvency law does

1 leave room for the possibility of a priming charge to a DIP lender.

2
3 Moreover, I agree that whether Macquarie's interpretation of Columbia law is correct or
4 not is not a proper question for this Court. In effect, although counsel for Macquarie and I
5 disagree on this point, I would be applying Columbian law because the reason I would be
6 denying approval of the DIP loan is because of Columbian law, and that is something I say
7 is strictly within the purview of the Columbian Court or authority to decide.

8
9 Further, I did not consider it improper or back door to get an order in Canada and then
10 apply for recognition in Columbia. In this case, Justice Johnston found that the *CCAA*
11 applies and that means all of the *CCAA*, including section 11.2. As for Macquarie's
12 argument that a priming charge for the DIP lender in a Canadian Court order would be
13 overreach in Columbia, that is a respectfully a decision for the Columbian Court or
14 authority to make. I further do not think that the making of such an order in Canada is so
15 outrageous and unprecedented that it would throw the international order, when it comes
16 to insolvency, into disarray. The order will either be recognised in Columbia or it will not.

17
18 So I will take a moment to formally deal with the adjournment request. Adjournments are
19 all about a balancing of rights. Taking a balance of convenience approach, I conclude that
20 the harm inherent in granting an adjournment outweighs any possible prejudice to
21 Macquarie. I also find that Macquarie will not incur any procedural or substantial prejudice
22 by the granting of the order for the DIP loan in charge. So therefore, I deny the
23 adjournment.

24
25 With regard to uncertainty and disfunction within the *CCAA* process, it is premised on
26 Macquarie fighting Canacol and the Monitor every step of the way, in every jurisdiction.
27 This much is revealed on the penultimate paragraph of Mr. Picard's affidavit wherein he
28 says: (as read)

29
30 Granting such relief would create significant uncertainty in the *CCAA*
31 proceedings, potentially delay the Canacol Group's restructuring
32 objective and force litigation in the United States and Columbia,
33 diverting focus and resources from the restructuring process to the
34 detriment of the company and all stakeholders including Macquarie.

35
36 Macquarie's counsel says in his November 21st, 2025 letter to Canacol's and the Monitor's
37 counsel at the top of page 2: (as read)

38
39 It would be extremely unfortunate, time consuming, and disruptive if
40 Macquarie is jammed and forced to argue about priming and related
41 matters at the come back motion.

1
2 This prediction has come true and it lends credence to Canacol's counsel's suggestion that
3 Macquarie seeks to act as a spanner in the works in the hope that it will get paid out and
4 fast.

5
6 I agree that a course of litigating hard in every jurisdiction is Macquarie's choice.
7 Macquarie also says that I should not succumb to the lurid scenario of Columbians groping
8 in the dark. Macquarie says the world will not necessarily come to an end. Macquarie says
9 the noteholders have -- or the subordinate creditors have \$500 million at risk, somehow
10 they will step up. Well as the counsel for the noteholders says, they've staked their ground,
11 I can't rely on them to come through if this DIP loan and charge application is not granted.

12
13 For the sake of Canada's international standing, I do not want to invite a scenario involving
14 Columbians without electricity. It is a matter of considering the interests of downstream
15 stakeholders, even if they live in another country. Approving the DIP loan in charge
16 introduces certainty, rather than diminishes it. It gives Canacol a lifeline until the end of an
17 extended stay period, so as to crystallise its reorganisation efforts. On the other hand,
18 having nothing in place would create uncertainty.

19
20 The last point is whether there is a better way and how to find it. There is no obvious better
21 way that presents itself. The only viable proposal before the Court comes from the
22 committee of senior noteholders. The only suggestion for the Court from Macquarie is that
23 Macquarie gets paid from the DIP loan or the DIP loan takes a subordinate position, but
24 that is not the proposal before the Court.

25
26 So in looking at the factors in section 11.2(4), I conclude that I should exercise discretion
27 to approve the DIP loan as presented, along with the charge under (2). From the evidence,
28 I infer that the company's management has the confidence of the majority of the creditors
29 at least in terms of dollar value, although I acknowledge that does not include Macquarie
30 whose loan amount is secured but relatively small in comparison to the unsecured creditors.
31 I am of the view that the DIP loan would enhance the prospect of a viable compromise or
32 arrangement being made in respect of the company, and that the nature and value of the
33 company's property justifies the loan.

34
35 I have spoken at length about prejudice, both procedural and substantive, and I conclude
36 that Macquarie would not be materially prejudiced as a result of the charge. Of course, the
37 Monitor supports the granting of the loan, as do the unsecured creditors holding \$5 million
38 in debt.

39
40 As for the commitment fees, yes, they are high. But the Monitor's counsel has explained
41 the circumstances and again, there is no acceptable alternative before the Court that will

1 provide relief to Canacol's liquidity problem at present other than this DIP loan, and so the
2 fees are by no means a dealbreaker. I therefore make the order granting the DIP loan and
3 charge as requested.
4

5 I move then to the stay extension. The reason I put the stay extension second is because
6 Macquarie questioned, maybe not in as many words, the good faith and due diligence of
7 Canacol in the DIP selection process and with regard to presenting the DIP application to
8 the Court. The statutory criteria for a stay extension are of course that it is appropriate in
9 the circumstances, and that the applicant has acted in good faith and with due diligence.
10

11 At the beginning of the decision, I discussed some of the background giving rise to the
12 need for a DIP loan. Those circumstances provide justification for extending the stay, that
13 is so that Canacol can continue on its path towards restructuring for the benefit of all
14 stakeholders. As I have disposed of Macquarie's main arguments with regard to possible
15 lack of good faith and due diligence, I find that the statutory criteria are met and I grant the
16 stay to February 6th, 2026.
17

18 Now I will move onto the ancillary relief, which I do not think is controversial. First, the
19 letters of credit are part of the DIP loan proposal. They accordingly are also approved if
20 specific approval is required. I will just note here again that it is new money being
21 advanced, in some cases, to replace expired letters of credit and would not constitute queue
22 jumping.
23

24 With regard to payments to critical vendors, I heard no real argument against payment and
25 as I said, it follows the granting of the DIP loan order. I accept the Monitor's
26 recommendations in that regard.
27

28 Finally, respecting approval of the Monitor's activities to date. Now that I have disposed
29 of Macquarie's objections, there is no impediment to approving the activities as described
30 in the Monitor's second report which are set out in, I say, a transparent and comprehensive
31 manner and I so approve those activities.
32

33 So what that leaves me with, Mr. Prophet, is a discussion of your forms of order and your
34 application for a sealing order.
35

36 Discussion

37

38 MR. PROPHET: Thank you. Thank you Justice. So the most up-
39 to-date form of the order that you have would've been provided to the Commercial
40 Coordinator at about 11 AM on Wednesday. That reflects some of the letter of credit
41 arrangements that were in discussion between the ad hoc Bondholder participants in the

1 DIP loan and representatives of the RCF Lending Group as probable providers of at least
2 an interim letter of credit at the time.

3
4 So that is the form of the order I would like to speak with you about. There is a slight tweak
5 to that order, but I can do that, if you will on the fly, it's in paragraph 30. So, if you have
6 that, that I think is really our best (INDISCERNIBLE).

7
8 THE COURT: Okay. Let me just bring it up.

9
10 MR. PROPHET: Mr. Barrick (phonetic) I believe of the
11 Commercial Coordinator's Office would have dealt with that through you.

12
13 THE COURT: Yes. Okay. That would have been sent
14 yesterday?

15
16 MR. PROPHET: It would have at -- it came from our office to the
17 Commercial Coordinator at 11 AM and again it was just reflective of some --

18
19 THE COURT: Okay. So at 11 AM, so I think I have the right
20 one. Let me try to identify it by -- there is some identifying numbers in the lower lefthand
21 corner, can I read those to you, Mr. Prophet?

22
23 MR. PROPHET: Possibly, let me just -- or the document itself or
24 the email?

25
26 THE COURT: The document itself.

27
28 MR. PROPHET: Yes, so you can do that.

29
30 THE COURT: Okay.

31
32 MR. PROPHET: The document itself -- are you in the Word
33 document or the PDF?

34
35 THE COURT: I am in the Word document.

36
37 MR. PROPHET: Very good.

38
39 THE COURT: So there is a little number in the bottom lefthand
40 corner.

41

- 1 MR. PROPHET: Yes.
2
- 3 THE COURT: 91710284/5.
4
- 5 MR. PROPHET: That is -- that is the correct -- that is the correct
6 number and that is the correct order with one change --
7
- 8 THE COURT: Okay.
9
- 10 MR. PROPHET: -- which I can take you to.
11
- 12 THE COURT: Okay.
13
- 14 MR. PROPHET: And I can just highlight the evolutionary
15 changes, but let's go to the one change that was made subsequent to that email, it's in
16 paragraph 34, it's semantic only, but it's worth looking it.
17
- 18 If you go to 34 --
19
- 20 THE COURT: Yes, I am there.
21
- 22 MR. PROPHET: So the words after the parenthetical in the second
23 last line of the 34, beginning: (as read)
24
- 25 Including without limitation as a result of any new parties joining as
26 lenders thereunder ...
27
- 28 THE COURT: Right.
29
- 30 MR. PROPHET: That should be moved into the brackets, to be
31 inserted after: (as read)
32
- 33 Amended and restated from time to time, including without limitation
34 as a result of any new parties joining as lenders thereunder, the
35 commitment letter.
36
- 37 THE COURT: Okay. So just --
38
- 39 MR. PROPHET: It's just a --
40
- 41 THE COURT: -- just moved the closed bracket -- just move the

1 closed bracket --

2

3 MR. PROPHET: Correct.

4

5 THE COURT: -- I can do that.

6

7 MR. PROPHET: Well move the -- in fact, move that phrase into
8 just before the defined term, so it would read --

9

10 THE COURT: Oh I see. Okay.

11

12 MR. PROPHET: (as read)

13

14 Amended and restated from time to time, including without limitation
15 as a result of any new parties joining as lenders thereunder, the defined
16 term commitment letter.

17

18 THE COURT: Okay. I think I can do that.

19

20 MR. PROPHET: I can -- Sir I can --

21

22 THE COURT: Or you can just send me one, yes.

23

24 MR. PROPHET: Why don't I just send you one and I'll copy the
25 parties, if that's okay with you.

26

27 THE COURT: Yes, that is --

28

29 MR. PROPHET: Cause I don't need -- shall I go through the
30 Commercial Coordinator? I'm happy to do that, of course.

31

32 THE COURT: Yes you can go through the Commercial
33 Coordinator.

34

35 MR. PROPHET: We will do that. Apart from that, there are no
36 changes to the order that was sent to you approximately 11 AM yesterday. It contains an
37 update from the SARJO form that was with our December 5 application, but you will have
38 looked at that. I'm happy to go through it with you --

39

40 THE COURT: You do not have to go through it with me.

41

1 MR. PROPHET: Very good.

2

3 THE COURT: Okay.

4

5 **Submissions by Mr. Prophet (Sealing Order)**

6

7 MR. PROPHET: Okay. Sir, on the sealing order, the most
8 convenient place to stop on that is my amended application on page 10. It's in paragraph
9 33. So, as your finding that --

10

11 THE COURT: Okay, I am there, yes.

12

13 MR. PROPHET: So what we are addressing by way of sealing are
14 two confidential appendices to the Monitor's 2nd Report. These contain the signature
15 blocks and commitment amounts for the participates in the ad hoc DIP lenders DIP
16 commitment. There's also a second confidential appendix if just an amendment to the DIP
17 loan commitment that arose, I believe over the weekend, it's a small technical amendment,
18 not much turns on it. It's in the -- I think it's in the Monitor's Report, the actual -- the
19 amendment, we can go to it, but I think everyone's at ad idem that it's an appropriate
20 amendment.

21

22 In any event, the rationale for the sealing has to make the *Sierra Club* and *Sherman Estate*
23 test that we're all familiar with in circumstances like this and that is that while the principle
24 of Court openness is an important value of our Courts, where the prejudice that may be
25 caused by observing the principle, at least in the immediate term outweighs the public
26 interest then in that, then sealing is appropriate. And an important commercial interest or
27 interests, has been often identified as a rationale to implement a sealing order in the sense
28 that the damage of such an important commercial interest is prejudice set out that in the
29 appropriate case will outweigh the public interest in open court proceedings.

30

31 The important commercial interest here is as follows: the -- it's twofold in essence. It is the
32 case and counsel for the ad hoc group of Bondholders can confirm this, that the participants
33 in the DIP loan do not know each of them what their commitments are. You Sir, do know,
34 the Monitor knows and the company obviously knows, but none of the individual
35 participants know what each other's commitment is. Part of the rationale for the that, as I
36 understand it, is to provide for more equitable, if you will, governance within the DIP loan
37 group.

38

39 And so, in order to preserve that balance and not provide for domination for the group by
40 one or the other of the participants, it is described by the ad hoc Bondholder Group as an
41 important commercial interest that none of the commitments be made public and none of

1 the names of the people providing those commitments.

2

3 Now, further on the later point, the people providing the commitments are significant
4 financial players, but their identity may influence the way that bonds currently trade and
5 so, it is the view of the ad hoc group of Bondholders and the Monitor supports this as does
6 the company, that disclosure of the identities of these DIP participants may have an
7 influence on continued trading in the market. Certainly it will be made public to the market
8 that a DIP loan with the terms that you've approved has been made, and so the market will
9 know that and that's relevant information, but speculation based on the identity of the
10 individuals in the DIP loan seems to be an unwarranted interference in the functioning of
11 the public market for these bonds that continue to trade.

12

13 So that -- I guess the evenness of that market is another reason, commercial interest that
14 would be prejudiced by disclosure. So on that basis --

15

16 THE COURT: Okay. Can I ask you this, sir -- Mr. Prophet.

17

18 MR. PROPHET: Yes.

19

20 THE COURT: What I haven't heard yet is some kind of
21 limitation on scope and duration.

22

23 MR. PROPHET: Yes, there is, yes. It's important. The limitation
24 sought is 1 year after the termination of the *CCAA* proceedings and of course, that's a
25 critical principle. And that length of time is chosen as a reasonable period of time after
26 which the business circumstances no matter what happens in these proceedings, pertaining
27 to the Canacol Group, will have stabilised to the point that it will be irrelevant to know
28 who participated by that time.

29

30 THE COURT: All right.

31

32 MR. PROPHET: Those are my submissions in support of the
33 sealing order. I did provide it, through the Commercial Coordinator to your office, I hope
34 it's got to you, the Monitor may have further submissions on that, I invite the Monitor's
35 counsel to address that if you wish, Sir.

36

37 THE COURT: Ms. Meyer, anything?

38

39 **Submissions by Ms. Meyer (Sealing Order)**

40

41 MS. MEYER: No, Justice Mah. Thank you. I will just mention

1 that the Monitor's understanding of this is set out at paragraphs 43 and 44 of the 2nd Report
2 and the Monitor is supportive of the sealing order sought.

3

4 THE COURT: All right.

5

6 MS. MEYER: Subject to any questions you may have.

7

8 THE COURT: No questions.

9

10 MR. PROPHET: I guess I should just -- sorry Sir.

11

12 THE COURT: Go ahead.

13

14 MR. PROPHET: I was just going to say I should end that the
15 Monitor and the finance people at the Monitor firm are aware of the identity of these people
16 and these are serious players and are -- their covenants are good in the Monitor's view.

17

18 THE COURT: Any other counsel wish to make submissions
19 with regard to the sealing order, the application for the sealing order? Yes, Mr.
20 Pasquariello?

21

22 **Submissions by Mr. Pasquariello (Sealing Order)**

23

24 MR. PASQUARIELLO: Now, I'm prepared to reply, Sir, if there are any
25 others that would make submissions in support, I just wanted to let you know that I will be
26 replying.

27

28 THE COURT: Okay. I do not think there is anyone else, Mr.
29 Pasquariello, so go ahead.

30

31 MR. PASQUARIELLO: Okay. Thank you. Sorry. So, Sir, as I mentioned
32 in my opposition, Macquarie is of the view that the identities and the holdings of the DIP
33 lenders should be disclosed to this Court.

34

35 Those parties are benefitting from the *CCAA* proceedings. They're benefitting now by way
36 of a court order charge in those proceedings, these proceedings are open and the
37 commercial interest that my friend described is not a general commercial interest. It's a
38 commercial interest as amongst that particular group and the governance of that group, as
39 compared to the disclosure in these proceedings and the stakeholders in this proceeding.

40

41 It would be, in my respectful submission, extremely prejudicial and unfair for Macquarie

1 not to even know who it is that the Court is approving to prime its position, which it has
2 now done by way of your order and not heard a substantive reason why not to do so.

3
4 Secondly, my friend is also seeking what he's described as a technical amendment to the
5 DIP that not much turns on it. And if that's in fact the case, I see no reason why that
6 amendment should not be made part of the record, so that the entire agreement that the
7 Court is approving is disclosed.

8
9 Again, in my respectful submission, fairness and balance, in respect of both of these issues
10 would result in disclosure and therefore, Your Honour, Macquarie would suggest that the
11 sealing order not be granted in respect of these two issues.

12
13 THE COURT: Can I ask you this, counsel? Does your client
14 currently know who the bondholders are? I mean not the specific individuals or the
15 subscribers to the DIP loan, but in general who they are? Is there someplace where you can
16 see a list?

17
18 MR. PASQUARIELLO: I don't think that's the case as unsecured holders,
19 Sir, but this is, in my respectful submission, completely different where the parties are now
20 being elevated to the position not as bondholders, but as DIP lenders in an approved order
21 by the *CCAA* Court, they're wearing a different hat in respect of their ask of you.

22
23 They are not wearing that hat and they're not asking that they be -- that the confidence be
24 provided in respect of them as bondholders, they're not all participating bondholders,
25 they're only some of the group in any event, and they are now DIP lenders not bondholders.
26 So, I would submit that that's a material difference, Sir.

27
28 THE COURT: Okay. And what do you say about the second
29 ground that counsel advanced and that was that there could be some effect on the market,
30 in general, just by knowing whose a player and who is not?

31
32 MR. PASQUARIELLO: I don't know if I'm following that, Sir, the bonds
33 don't trade on the basis of who a player is, the bonds trade on parties underlying view of
34 the enterprise value of the company, not who happens to own them. So, again, my friend
35 is giving evidence and I don't think he's an expert in bond trading, but in any event, I'll
36 reply as I did. I'm also not an expert, but since you've asked me, that's the reply. The burden
37 doesn't lie with us, it lies with the company, Sir.

38
39 THE COURT: Okay.

40
41 Any other counsel?

1
2 **Submissions by Mr. Prophet (Sealing Order) (Reply)**
3

4 MR. PROPHET: Sir, just brief reply on that. The amendment that
5 I referred to is Exhibit D to the Monitor's 2nd Report and it's just about clarifying the
6 effectiveness of the agreement. So there's no -- there's no issue about that.
7

8 My only point was the signature -- we address that just in the context of the request for a
9 sealing order, because the signature pages to this agreement are confidential appendix too,
10 so that's the only reason for mentioning it, but it is there and it is (INDISCERNIBLE).
11

12 THE COURT: Okay. Do you have any, Mr. Prophet, response
13 to your friend's point that this is really about the dealings of this group of investors as
14 among themselves, that there is not really a public interest, it is more of a private interest?
15

16 MR. PROPHET: I think there is a general interest here on both
17 supports or both grounds for the sealing order and the general interest in each -- in each
18 branch of the grounds is as follows.
19

20 The general interest and I'm not holding myself out as a bond trading expert, but it does
21 matter whose supporting the company. It doesn't matter -- maybe it doesn't matter who
22 holds the bonds, but the names of who've chosen to support the company, that matters. The
23 bonds keep trading now. So that is interesting information, the fact of the DIP is even
24 information that all that will have, but who, in particular, is supporting the company could
25 have an effect on future trading. That's my simple observation
26

27 If I was supporting it myself, that wouldn't have much of an effect, but I'm not one of the
28 signatory bondholders. That's all I'd say about that and it's a general interest to safeguard
29 market exchange on a level playing field in that sense.
30

31 So that's my first that it's not just a private, but a general commercial interest. My second
32 point about why the -- not knowing who has committed what within the bondholder DIP
33 participant group, why that's a general commercial interest, is to the extent that that
34 anonymity or the failure to know who else -- how much the other parties have in the bond
35 -- in the DIP group, facilitates the governance of that group and we're told that it does and
36 makes it more fair and more even. To the extent that that is the case, then that's a general
37 commercial interest because in future cases, it will be understood that you won't know
38 exactly who the dominant player is.
39

40 It's kind of another species of my general commercial interest in keeping confidential the
41 identity of the people who are now supporting the company. How much they're supporting

1 it and how much inter-say they're supporting it will tend to make these groups more easily
2 governed in the future if that's the expectation. So, I say those are the two general, not
3 private commercial interests.

4
5 I also just want to correct one thing. My friend said that the identities of these bondholder
6 participants in the DIP loan aren't before the Court, they're before you Justice, you know
7 exactly who they are and so there's no lack of transparency to this Court, none would ever
8 be attempted on that score. It's important that you know who they are and that the Monitor
9 provide you with comfort on that subject in terms of the bonafide Monitor has done as an
10 expert in finance.

11
12 So those are my comments in reply, Sir.

13
14 THE COURT: Okay.

15
16 MS. MEYER: Justice Mah?

17
18 THE COURT: Yes.

19
20 **Submissions by Ms. Meyer (Sealing Order) (Reply)**

21
22 MS. MEYER: Sorry, I didn't want to interrupt you, but I did
23 want to note that I do have a few other comments to add in reply, if I might.

24
25 THE COURT: Okay. Go ahead.

26
27 MS. MEYER: Thank you. My friend, Mr. Pasquariello has
28 indicated it would be -- as he said, extremely prejudicial and unfair for Macquarie not to
29 know the identities of the DIP lenders and the amounts of their commitments, but he hasn't
30 said why. And I'm not aware of any such prejudice nor is there any evidence of that.

31
32 The additional point I wanted to note is some case law that I think may be helpful. I agree
33 with Mr. Prophet's submissions that this is, as is always the case, governed by the *Sierra*
34 *Club* and *Sherman Estate v. Donovan* test. But more explicitly and I apologise, I don't have
35 these cases before you, but I can give you the cites, certainly in the *Sierra Club* and
36 *Sherman Estate* decision, the Supreme Court of Canada has explicitly recognised that a
37 party's legitimate commercial interest constitute an important public interest for purposes
38 of that test. That's in *Sierra Club* at paragraphs 55 and 60 to 61 and *Sherman Estate* at
39 paragraph 41. If you like I can give you those exact citations. It's *Sierra Club* is 2002 SCC
40 41, paragraphs 55 and 60 to 61. *Sherman Estate* is 2021 SCC 25 at paragraph 41.

41

1 Those cases also set out that an important commercial interest includes preserving
2 information that is intended to be confidential and where disclosure would frustrate the
3 promotion and protection of competition. That is in the *Dow Chemical Canada ULC v.*
4 *Nova Chemicals Corporation* decision of this Court 2015 ABQB 81 at paragraphs 50 to 51
5 and paragraph 54. And also *Lewis v. Uber Canada Inc.*, 2023 ONSC 5134. Also the *Dow*
6 *Chemical* case that I have just mentioned also says at paragraph 36 that whether a sealing
7 order should be granted is ultimately a matter of judicial discretion.

8
9 Now, of course, those cases that I've just mentioned or at least *Dow Chemical* once pre-
10 dates the *Sherman Estate* case, but specifically with respect to that there is a finding by this
11 Court that an important commercial interest includes preserving information that is
12 intended to be confidential and where disclosure would frustrate the promotion and
13 protection of competition. I think -- I submit that that case is perhaps helpful to this Court
14 with respect to considering whether a sealing order should be granted.

15
16 In that, I submit that the information that is sought to be sealed here, is important and
17 confidential financial information of the participants here and particularly considering the
18 influence that the disclosure of that information may have on trading of bonds, that that is
19 relevant to the consideration here.

20
21 As I mentioned at the outset, the Monitor is supportive of the sealing order request. Those
22 are my submissions, subject to any questions. Thank you.

23
24 THE COURT: All right. Thank you. Mr. Oliver?

25
26 **Submissions by Mr. Oliver (Sealing Order)**

27
28 MR. OLIVER: Thank you very much, Sir. On behalf of the
29 interim lender, I just wish to voice our support for the submissions of Mr. Prophet and Ms.
30 Meyer. From the interim lenders' perspective, this is commercially sensitive information.
31 It's disclosure would be highly prejudicial if it was made public at this time.

32
33 Of course, your job, Sir, is to balance a number of competing interests in considering this
34 issue. In that regard, I do wish to note as my friends have that both you and the Monitor
35 have seen the underlying information, the sealing that is requested is time limited and as
36 narrow as reasonably possible.

37
38 As a result we support the application for the limited time sealing order. Thank you.

39
40 THE COURT: Okay. Mr. Pasquariello, is there something else
41 you want to say?

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Submissions by Mr. Pasquariello (Sealing Order) (Reply)

MR. PASQUARIELLO: Yes with respect, Sir, I specifically indicated I was going to speak after others in support and I've had -- Ms. Meyer confirmed she had nothing further. Mr. Oliver didn't speak up. I've spoken and now my friends come forward, Ms. Meyer with case law, on top of it having said she had nothing to add and Mr. Prophet not referencing anything.

Sir, this continues the unfortunate procedure unfairness that has continued throughout. I just will leave it at that. It's just extremely disappointing, Sir.

THE COURT: All right. Well, that is why I came back to you at the end, counsel.

Submissions by Ms. Meyer (Sealing Order) (Reply)

MS. MEYER: Sir, if I might just say very briefly on behalf of the Monitor, my submissions just now are made in reply. I had no notice whatsoever that Mr. Pasquariello was going to oppose the Sealing Order application. If he did mention that yesterday during his submission, my apologies in that I missed it. But in any event, I do submit that it is proper for reply. Thank you.

MR. PASQUARIELLO: It was in our brief.

Decision (Sealing Order)

THE COURT: All right. Thanks counsel. The request for restricted access order or a sealing order does compromise the open courts principle and whether or not one should be granted is of course governed by the authority that counsel refers to which we all know about, that being the *Sierra Club* case decided by the Supreme Court of Canada and as modified in *Sherman Estate*. The applicant must show on a balance of probabilities that court openness presents a serious risk to an important interest, that the order is necessary to prevent the risk because alternative measures are not adequate and that as a matter of proportionality, the risk -- the benefits outweigh the negative effects.

In Alberta and I imagine elsewhere in Canada, commercial interest have been found to be an important interest deserving of protection, particularly in the context of Court supervised insolvency proceedings. The risk here as explained to me by counsel is really twofold. First that the proportion of ownership of the DIP participation, if know, would adversely affect the internal governance. Counsel for Macquarie, who objects to the granting of the sealing

1 order says, well that is a private matter among a group of people or entities and does not
2 concern anyone else.

3
4 I do see merit in Canacol's position because this *CCAA* proceeding is not concluded. I do
5 not know if there is going to be further applications for increased advances, I do not know
6 whether it will be the same or different DIP lender. The possibility is present that it is the
7 same lender and therefore it is important for the *CCAA* proceeding that the governance of
8 this Group operate in an appropriate fashion. So I recognise the risk there.

9
10 Secondly, with regard to the operation of the bond market, Macquarie objects to the sealing
11 order on the basis that that is simply a speculative concern, no one here is an expert in bond
12 trading, no one can say. I agree that no one here at least has identified themselves as an
13 expert in bond trading, certainly I am not, but I think I accept as a matter of logic and
14 common sense that with regard to this body of bonds, the identity of the owners and
15 proportion of ownership in this loan, could influence the market one way or another.

16
17 So, the conclusion I reach is that there is a important public interest here and that is sensitive
18 commercial information that could affect an ongoing *CCAA* proceeding or the operation of
19 the bond market itself.

20
21 I do not know and it was not suggested to me, how any sort of lesser measure might be put
22 in place to alleviate that risk apart from a sealing order. It is also part of my duty to make
23 sure that whatever means is imposed to safeguard this information, it is the least intrusive
24 as possible. So that is usually achieved through limitation in the period of time that the
25 order would be in effect.

26
27 So my conclusion here is that test in *Sierra Club* and *Sherman Estate* is met. That the means
28 that have been suggested are the least intrusive in that it is specific in time. I cannot think
29 of nor has it been proposed to me, that some other way is going to achieve what is sought
30 here and so I grant the sealing order.

31
32 Okay. Counsel, I see that my next group has arrived for my 2:00 matter. So I am going to
33 invite those counsel on the previous matter to leave if they wish and I am going to move
34 onto the other matter.

35
36
37 PROCEEDINGS CONCLUDED
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1 **Certificate of Record**

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I, Zoe Wong, certify that this record is the record made of the proceedings of the evidence in the proceedings in the Court of King’s Bench, held in courtroom 516, virtual courtroom 86, at Edmonton, Alberta, on the 11th day of December, 2025, and that I and Esther Budendwa, were the court officials in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

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I, Tanner Zaherie, 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.

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Order Number: TDS-1099676
Dated: December 15, 2025