

In the Court of Appeal of Alberta

Citation: Canacol Energy Ltd (Re), 2026 ABCA 57

Date: 20260225

Docket: 2601-0007AC

Registry: 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,
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.

Between:

Macquarie Bank Ltd.

Applicant

- and -

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.

Respondents

Oral Reasons for Decision of
The Honourable Justice Anne Kirker

Application for Leave to Appeal

**Oral Reasons for Decision of
The Honourable Justice Anne Kirker**

[1] Macquarie Bank Ltd applies for leave to appeal the Second Amended and Restated Initial Order granted on December 11, 2025, in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36. Macquarie is the senior priority lender of the Canacol group of companies (collectively, Canacol) pursuant to a secured term loan. It is owed approximately \$40 million. Canacol was granted an initial order under the CCAA on November 18, 2025, due to a liquidity crisis. An amended and restated initial order was granted on November 28, 2025.

[2] The December 11, 2025 second amended and restated initial order (or SARIO) approved debtor-in-possession (or DIP) financing and granted the DIP lenders a priming charge ranking in priority to Macquarie's security against Canacol's assets, including assets located in Colombia.

[3] Canacol and the Monitor advised the court in advance of the application for the November 28, 2025 order (or ARIO) of the plan to carry out a DIP financing solicitation process on an expedited basis. Macquarie and Canacol's other lenders, including unsecured noteholders who at the start of the CCAA proceedings were owed approximately \$495 million and lenders under an unsecured line of credit owed \$200 million, were invited to participate in the DIP financing solicitation process. The sole compliant bid was received from an *ad hoc* group of unsecured noteholders. With the Monitor's support, Canacol then applied for the SARIO. The Monitor's view set out in its second report filed December 10, 2025, was that Canacol had a critical and immediate need for interim financing, without which, based on the cash flow forecast, they would be unable to maintain oil and gas production operations in Colombia and advance the restructuring process. The failure to obtain DIP financing would destroy any prospect of a successful restructuring and also materially impair Canacol's ability to sustain its supply of natural gas to the Colombian power grid, which would detrimentally affect creditors and stakeholders, including power generation utilities in Colombia.

[4] The DIP lenders confirmed at the December 10 hearing before the CCAA judge that they were not prepared to provide DIP financing subordinate to Macquarie's security. Counsel submitted that his clients were critical stakeholders in the proceeding, the evidence showed that there was no prejudice to Macquarie as a result of the proposed DIP financing and priming charge, and that their binding DIP financing commitment would ensure the company had "timely access to the liquidity necessary to address the immediate issues and then to see it through the completion of a successful restructuring outcome for the benefit of all stakeholders."

[5] Macquarie objected to the DIP financing and the DIP charge. They sought an adjournment of the application to address concerns arising from the compressed timing of the DIP financing solicitation and approval process and so that the evidence upon which Canacol relied could be properly tested, allowing for the application to proceed early in January 2026 on a better record.

Macquarie argued that Canacol had sufficient liquidity for this and that any reasonable interim DIP advances required could be protected by an appropriate order. Macquarie also argued that it would be materially prejudiced by the proposed DIP charge.

[6] The CCAA judge considered all the submissions he heard in relation to adjourning the application and decided to deny the request. He found the cash flow statements appended to the Monitor's second report showed a liquidity crisis in the absence of an injection of funds, creating what he described as a "hard stop" on January 10, 2026, when Canacol would more or less run out of cash. He was concerned that adjourning the application to the first week of January would leave insufficient time for the necessary United States court approval. He found it was "just too close". He was not satisfied it would be procedurally unfair to Macquarie to proceed without questioning the information presented by Canacol and the Monitor because Macquarie had had access to Canacol financial information and the opportunity to ask any clarifying questions it had between November 28 and December 10, 2025. He said he did not accept Macquarie's attempt to undermine the legitimacy of the latest cash flow statements and that he did accept both Canacol's and the Monitor's explanation that ongoing capital expenditure is an innate feature of the gas extraction industry.

[7] In approving the DIP financing and DIP charge, the CCAA judge considered the factors in section 11.2(4) of the CCAA and decided to exercise his discretion and approve the "DIP loan as presented, along with the charge under [subsection] (2)." He was satisfied that absent DIP financing, an actual liquidity crisis existed. Approving the DIP financing and priming charge would provide certainty and enhance the prospect of a viable compromise or arrangement being made. Canacol's management had the confidence of its major creditors other than Macquarie, whose loan was secured but small in comparison to the amounts owing to other lenders. In addressing whether Macquarie would be materially prejudiced by being subordinated to the DIP charge, the CCAA judge found that "[w]hatever valuation measure [was] used, Canacol [had] sufficient assets to satisfy all priming charges and Macquarie's loan facility and depending on which valuation scenario [was] accepted, maybe even some or all of the unsecured lenders...". He noted that no other obvious or better way to finance Canacol had been presented to the court.

[8] The SARIO has now been recognized in the United States and in Colombia. There was an advance of \$15 million in DIP financing on January 7, 2026. Canacol's application for the approval of a sale and investment solicitation process was approved on January 26, 2026, with letters of intent from interested parties due on March 9, 2026, and binding bids due by April 6, 2026. A second DIP financing advance will be made shortly.

[9] Macquarie seeks to appeal the SARIO on grounds it was denied procedural fairness because its request for an adjournment of the application brought on a compressed timeline was denied and because the CCAA judge erred in his assessment of "materially prejudiced" under section 11.2(4) of the CCAA.

[10] Rule 14.5(1)(f) of the *Alberta Rules of Court*, Alta Reg 124/2010 and section 13 of the *CCAA* require that Macquarie obtain leave to appeal. As summarized by Justice Strekaf in *Bellatrix Exploration Ltd v BP Energy Group ULC*, 2020 ABCA 178 at paras 16-17:

The test for leave to appeal in *CCAA* proceedings requires “serious and arguable grounds that are of real and significant interest to the parties”, which can be assessed by considering the following four factors (*Liberty Oil & Gas Ltd (Re)*, 2003 ABCA 158 at paras 15-16):

- (1) Whether the point on appeal is of significance to the practice;
- (2) Whether the point raised is of significance to the action itself;
- (3) Whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- (4) Whether the appeal will unduly hinder the progress of the action.

“An appellate court should exercise its power sparingly, when asked to intervene in *CCAA* proceedings”: *Duke Energy Marketing Limited Partnership v Blue Range Resource Corporation*, 1999 ABCA 255 at para 3 (*Blue Range 1999*).

[11] The points raised on appeal are of significance to Macquarie, but this must be balanced against the other factors.

[12] I disagree with Macquarie’s submission that the questions proposed to be raised are of significance to the practice. The law with respect to procedural fairness in this context is well established: *Wiebe v Weinrich Contracting Ltd*, 2020 ABCA 396 at paras 31, and 44-45. The adjournment decision here was highly fact dependent and a matter of discretion. With respect to the question of material prejudice, Macquarie argues that the meaning of the term is an unresolved issue of law that would benefit from clarification by a panel of this Court. That may be so, but the fundamental question arising from the assessment of whether Macquarie would be materially prejudiced in this case, is whether the finding that Canacol has sufficient assets to satisfy all priming charges and Macquarie’s debt is infected with palpable and overriding error. Again, this is a fact specific inquiry that will not significantly impact general insolvency practice.

[13] I also disagree with Macquarie’s assessment of the merits of its proposed grounds of appeal. If not rendered moot by the advance of funds, which stands in the way of fully reversing the court approval of the DIP financing and priming charge, the appeal has little chance of success given the deferential standard of review. Appellate courts are required to exercise particular caution before interfering with orders made by *CCAA* judges who have “broad discretion in order to fulfill their difficult role of continuously balancing conflicting and changing interests” in a process that is “constantly evolving.”: *Canada v Canada North Group Inc*, 2021 SCC 30 at para

22. “The fact that an appeal is only with leave indicates that Parliament intended that most decisions made by the CCAA judge ‘should be interfered with only in clear cases’”: *Canadian Overseas Petroleum Limited (Re)*, 2024 ABCA 190 at para 45, quoting *Luscar Ltd v Smoky River Coal Limited*, 1999 ABCA 179 at para 61. I am not satisfied this is such a case.

[14] Finally, I am not persuaded that an appeal, even if expedited, will not unduly hinder the progress of the restructuring. This factor goes to the root of the purpose of the CCAA and, along with the element of the merits of the proposed appeal, is ascribed more weight than the first and second parts of the leave to appeal test: see *Canadian Overseas* at para 49. As has been noted, orders under the CCAA “depend upon a careful and delicate balancing of a variety of interests and of problems” and an appeal “may well upset the balance, and delay or frustrate the process”: *Resurgence Asset Management LLC v Canadian Airlines Corporation*, 2000 ABCA 149 at para 42, quoting *Re Pacific National Lease Holding Corp* (1992), 15 CBR (3d) 265 (BC CA), 1992 CanLII 427. An appeal invites the potential for an event of default under the DIP loan agreement and will introduce disruptive uncertainty that is not in the interests of all creditors and stakeholders.

[15] Having carefully considered and weighed all the elements of the test, I conclude that Macquarie has not met the threshold for leave to appeal. I am therefore dismissing the application.

[16] I thank all counsel for their excellent written and oral submissions.

Application heard on February 18, 2026

Reasons filed at Calgary, Alberta
this 25th day of February, 2026

Kirker J.A.

Appearances:

R.J. Chadwick
J. Pasquariello
E.J. Axell
for the Applicant

C.P. Prophet
S.A. Gabor
K. Yurkovich
for the Respondents

J.L. Oliver
for the Interim Lenders

R.J. Sahni
K.J. Meyer
S. Kirkman (no appearance)
C.K. Brown
for the Monitor, KPMG Inc.