In the Court of Appeal of Alberta

Citation: Canacol Energy Ltd (Re), 2026 ABCA 369

Date: 20261123
Docket: 2601-0198AC;
2601-0202AC;
2601-0203AC;
2601-0207AC
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:

Docket: 2601-0198AC

Corex Energy SAS ESP, fka South 32 Energy SAS ESP

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

And Between:

Docket: 2601-0202AC

Surtigas S.A. E.S.P., Gases Del Caribe S.A. E.S.P. and Gases De La Guajira S.A. E.S.P.

Applicants

- 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

And between:

Docket: 2601-0203AC

Promigas S.A. E.S.P.

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

And between:

Docket: 2601-0207AC

Gases Del Oriente S.A. E.S.P.

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

And between:

Docket: 2601-0198AC

ACQUIOM AGENCY SERVICES LLC in its capacity as administrative agent and collateral agent for and on behalf of itself and the LENDERS PARTY TO THE THIRD AMENDED AND RESTATED CANACOL DIP LOAN COMMITMENT LETTER DATED AS OF APRIL 14, 2026, as amended

Non-Party Applicant

-and-

Corex Energy SAS ESP, fka South 32 Energy SAS ESP

Respondent

-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

Reasons for Decision of
The Honourable Justice Joshua B. Hawkes

Application for Permission to Appeal

Reasons for Decision of
The Honourable Justice Joshua B. Hawkes

Introduction

[1] Decisions under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*) frequently involve choosing the "least worst" alternative. This case is a stark example of that fact. Some of the potential grounds of appeal advanced by the applicants have arguable merit. Those grounds involve a provision that has not been substantively considered by this Court and was central to the decision below permitting the respondent Canacol Energy Ltd (Canacol) and its subsidiaries (the Canacol Group) to disclaim certain contracts. That disclaimer will cause hardship to the appellants and the customers that they serve in Colombia. Balanced against that is the evidence of the court-appointed Monitor, accepted by the *CCAA* justice, that without the disclaimer the Canacol Group would have insufficient funds to continue operations in the short term, which "would result in the cessation of supply of natural gas by the Applicants and material consequences on all of the Canacol Group's stakeholders and on Colombia's power grid reliability and generation output".[1] Those concerns were amplified in the face of potential appellate delay and consequential uncertainty. For the reasons that follow, I give greater weight to those concerns than to the arguable merit of the proposed grounds of appeal. As a result, permission to appeal is denied.

Background

[2] Canacol is a publicly traded international oil and gas company based in Calgary. The Canacol Group develops, produces, and sells natural gas in Colombia. The Canacol Group is insolvent. In November 2025, it was granted protection under the *CCAA*. In June 2026, the Court of King's Bench granted the Canacol Group permission to disclaim certain contracts that required it to supply natural gas to various counterparties.[2] The applicants, the counterparties to the disclaimed contracts, each apply for permission to appeal the *Disclaimer Decision* pursuant to section 13 of the *CCAA*. The Canacol Group opposes the applications.

[3] KPMG Inc (the Monitor) was appointed monitor of the Canacol Group on November 18, 2025, pursuant to the *CCAA*. In the proceedings below, it supported the Canacol Group's application to disclaim the agreements. The Monitor opposes the applications for permission to appeal the *Disclaimer Decision*.

[4] The non-party respondents (the DIP Lenders) provide debtor-in-possession financing to the Canacol Group and are involved in the sale and investment solicitation process (SISP), which

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[1] *Canacol Energy Ltd (Re)*, 2026 ABKB 467 at para 76 [*Disclaimer Decision*] [emphasis in original].

[2] *Ibid* at para 101.

the Monitor oversees. They apply to be added as respondents to the permission to appeal applications and any resulting appeal, or in the alternative, to be granted standing in the applications and any resulting appeal. The Monitor supports their application, while CoreX Energy SAS ESP (CoreX), one of the contractual counterparties, opposes it. The DIP Lenders oppose the applications for permission to appeal the *Disclaimer Decision*.

[5] In November 2025, the Canacol Group faced a liquidity crisis stemming from declining natural gas production and sought protection under the *CCAA*. On November 18, 2025, the Court of King's Bench granted an order under the *CCAA* that, among other things, imposed a stay of proceedings and appointed a monitor (the Initial Order).

[6] In May 2026, the Canacol Group applied to disclaim certain natural gas supply and transportation agreements pursuant to section 32 of the *CCAA*. The disclaimed agreements fall into three categories. First, the Canacol Group has several long-term agreements (Offtake Agreements) providing for natural gas supply to residential and small business consumers and large-load natural gas supply to commercial consumers. The applicants, other than Promigas SA ESP (Promigas), are counterparties to the Offtake Agreements. Second, the Canacol Group has agreements with Promigas relating to natural gas transportation via Promigas' pipeline system (Promigas Agreements), one of which is a trust agreement governing the allocation of revenue from gas transported through that system. Third, the Canacol Group has an operating services agreement with Canaven Transportes De Colombia SAS (Canaven) under which Canaven transports liquified natural gas (Canaven Agreement). Its purpose is to support some of the Offtake Agreements. Canaven neither participated in this proceeding nor in the proceeding below.

[7] The disclaimed agreements require the Canacol Group to meet natural gas supply obligations and impose financial penalties for non-delivery, delivery shortfalls, and early termination. Given the Canacol Group's inability to meet supply requirements, substantial contractual penalties accrued against it prior to the *Disclaimer Decision*.

[8] Due to declining production, the Canacol Group sought disclaimer to reduce deliveries and negotiate new pricing. It argued that disclaimer was necessary to support the SISP and for its overall restructuring, particularly given the accruing contractual penalties it faced. Several of the contractual counterparties, who are now the applicants in this matter, argued that the agreements were "derivatives agreements" that qualified as eligible financial contracts (EFCs) and were therefore exempt from disclaimer, pursuant to section 32(9) of the *CCAA*.

Relevant Legislation

[9] Canadian insolvency laws, including the *CCAA*, serve a variety of remedial purposes, including:

> providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.[3]

[10] One of the *CCAA*'s primary purposes is to avoid the calamitous economic and social effects of liquidation on employees and communities.[4]

[11] Eligible Financial Contracts (EFCs) cannot be disclaimed in *CCAA* proceedings.[5] Section 2 of the *Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act)*, SOR/2007-257 (*EFC Regulations*) specifies that certain types of financial agreements, including some derivatives agreements, constitute EFCs:

> **2** The following kinds of financial agreements are prescribed for the purpose of the definition ***eligible financial contract*** in subsection 2(1) of the *Companies' Creditors Arrangement Act*:
>
> (a) a derivatives agreement, whether settled by payment or delivery, that
>
> (i) trades on a futures or options exchange or board, or other regulated market, or
>
> (ii) is the subject of recurrent dealings in the derivatives markets or in the over-the-counter securities or commodities markets;
>
> (b) an agreement to
>
> (i) borrow or lend securities or commodities, including an agreement to transfer securities or commodities under which the borrower may repay the loan with other securities or commodities, cash or cash equivalents,
>
> (ii) clear or settle securities, futures, options or derivatives transactions, or
>
> (iii) act as a depository for securities;

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[3] *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 40 [*Callidus*] [citations omitted].

[4] *Ibid* at para 41; *Canadian Overseas Petroleum Limited (Re)*, 2024 ABCA 190 at para 17.

[5] *CCAA*, s 32(9).

(c) a repurchase, reverse repurchase or buy-sellback agreement with respect to securities or commodities;

(d) a margin loan in so far as it is in respect of a securities account or futures account maintained by a financial intermediary;

(e) any combination of agreements referred to in any of paragraphs (a) to (d);

(f) a master agreement in so far as it is in respect of an agreement referred to in any of paragraphs (a) to (e);

(g) a master agreement in so far as it is in respect of a master agreement referred to in paragraph (f);

(h) a guarantee of, or an indemnity or reimbursement obligation with respect to, the liabilities under an agreement referred to in any of paragraphs (a) to (g); and

(i) an agreement relating to financial collateral, including any form of security or security interest in collateral and a title transfer credit support agreement, with respect to an agreement referred to in any of paragraphs (a) to (h).

[12] Section 1 of the *EFC Regulations* defines derivatives agreement:

derivatives agreement means a financial agreement whose obligations are derived from, referenced to, or based on, one or more underlying reference items such as interest rates, indices, currencies, commodities, securities or other ownership interests, credit or guarantee obligations, debt securities, climatic variables, bandwidth, freight rates, emission rights, real property indices and inflation or other macroeconomic data and includes

(a) a contract for differences or a swap, including a total return swap, price return swap, default swap or basis swap;

(b) a futures agreement;

(c) a cap, collar, floor or spread;

(d) an option; and

(e) a spot or forward. (*contrat dérivé*)

The *Disclaimer Decision*

[13] The *CCAA* justice considered whether the agreements were exempt for disclaimer under the *CCAA*, which raised two questions:

> (1) Are the various agreements "derivatives agreements" within the meaning of *EFC Regulation* s 1? and
>
> (2) If any of the various agreements are "derivative agreements," do they satisfy any of the criteria in *EFC Regulation* s 2 such that they are "eligible financial contracts"?[6]

[14] The *CCAA* justice surveyed the relevant authorities governing EFCs and noted that most predate the *EFC Regulations*.[7] As observed by the *CCAA* justice, *Bellatrix Exploration Ltd, Re*, 2020 CarswellAlta 350, [2020] AJ No 329 (*Bellatrix QB*) is the only decision that has thoroughly considered the *EFC Regulations* since their promulgation.[8] This Court granted permission to appeal *Bellatrix QB* with respect to the proper interpretation of an EFC and a derivatives agreement under the *EFC Regulations*, but ultimately declined to decide the appeal as the issue had become moot.[9] Accordingly, the *CCAA* justice was left with *Bellatrix QB* as the principal authority on the interpretation of the *EFC Regulations*.

[15] The *CCAA* justice expressly rejected *Bellatrix QB*'s interpretive approach to section 2(a)(ii) of the *EFC Regulations*, which define certain types of derivatives agreements as EFCs.[10] However, this disagreement did not affect the ultimate decision, as he also concluded that the agreements were not derivatives agreements under section 1 of the *EFC Regulations*, which made the application of section 2(a)(ii) unnecessary.[11] He also recognized that he was bound by the interpretation of section 2(a)(ii) in *Bellatrix QB* by virtue of the principle of horizontal *stare decisis*.[12]

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[6] *Disclaimer Decision*, supra note 1 at para 28.

[7] *Disclaimer Decision*, supra note 1 at paras 29-34.

[8] *Disclaimer Decision*, supra note 1 at para 35.

[9] *Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, 2020 ABCA 178 [*Bellatrix Leave Decision*]; *Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, 2021 ABCA 148.

[10] *Disclaimer Decision*, supra note 1 at para 40.

[11] *Disclaimer Decision,* supra note 1 at paras 43-44.

[12] *Disclaimer Decision*, supra note 1 at para 43.

[16] The *CCAA* justice considered affidavit evidence describing the Colombian natural gas market, which informed his assessment of whether the agreements in question constitute EFCs.[13] He concluded that the Offtake Agreements lack a financial purpose distinct from the underlying supply obligation and accordingly found that they are not derivatives agreements pursuant to the *EFC Regulations*.[14] He also concluded that the Promigas Agreements and the Canaven Agreement are not EFCs.[15]

[17] The *CCAA* justice then assessed whether the Canacol Group should be permitted to disclaim the agreements. He considered the factors outlined in section 32(4) of the *CCAA*, including whether disclaimer would likely cause significant hardship to the contractual counterparties.[16] He concluded that disclaimer was appropriate and granted the disclaimer orders sought, subject to a revision requiring the Canacol Group to maintain existing pricing for counterparties serving regulated customers.[17] On July 13, 2026, the various disclaimer orders were filed. On September 25, 2026, the Initial Order was amended to extend the stay of proceedings to November 30, 2026.

Grounds of Appeal

[18] Each applicant proposes several grounds of appeal. The grounds of appeal raised by Surtigas SA ESP, Gases Del Caribe SA ESP, and Gases De La Guajira SA ESP (the Surtigas Group), CoreX, and Gases Del Oriente SA ESP (Gases Del Oriente) overlap to some extent. They argue that the *CCAA* justice committed the following errors:

a. Failed to apply horizontal *stare decisis* in relation to *Bellatrix QB* (CoreX and Gases Del Oriente);

b. Wrongly interpreted and applied the *EFC Regulations*, including by finding that derivatives agreements must be assessed within the market in which the contract exists (CoreX, Gases Del Oriente, and the Surtigas Group);

c. Alternatively, made findings of fact about the Colombian natural gas market in the absence of expert evidence and contrary to the evidence before him (CoreX and Gases Del Oriente); and

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[13] *Disclaimer Decision*, supra note 1 at paras 45-58.

[14] *Disclaimer Decision*, supra note 1 at paras 59-69.

[15] *Disclaimer Decision*, supra note 1 at paras 70-71.

[16] *Disclaimer Decision*, supra note 1 at paras 80-96.

[17] *Disclaimer Decision*, supra note 1 at para 101.

d. Incorrectly applied section 32(4) of the *CCAA* (CoreX and Gases Del Oriente).

[19] Promigas proposes five grounds of appeal, all of which are specific to its post-disclaimer negotiations with the Canacol Group. It argues that the *CCAA* justice made the following errors:

a. Wrongly ruled that, post-disclaimer, Canacol must negotiate a new contract with Promigas in good faith, notwithstanding the termination of the contractual relationship between the parties;

b. Relied on speculation that the Canacol Group would negotiate with Promigas to enter into commercially reasonable alternative agreements;

c. Incorrectly rejected the probability that the parties would be unable to agree on terms for replacement agreements, while also refusing to consider that the Canacol Group is no longer capable of executing new transportation agreements pursuant to Colombian law;

d. Failed to consider the deleterious effects to the Canacol Group and the Colombian public and the harm that would be caused by even a temporary shut-down of the Canacol Group's operations; and

e. Blamed Promigas for whatever public interest consequences would follow from the disclaimer, in the supposition that Promigas must agree to whatever terms the Canacol Group may offer Promigas.

Analysis

[20] This Court may grant permission to appeal a decision made pursuant to the *CCAA* where there are serious and arguable grounds that are of real and significant interest to the parties.[18] The Court will consider the following factors in assessing this question:

a. Whether the point on appeal is of significance to the practice;

b. Whether the point raised is of significance to the action itself;

c. Whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and

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[18] *Resurgence Asset Management LLC v Canadian Airlines Corporation*, 2000 ABCA 149 at para 6 [*Resurgence*]; *Bellatrix Leave Decision*, supra note 9 at para 16.

d. Whether the appeal will unduly hinder the progress of the action.[19]

[21] The last two factors will often be more important than the first two and therefore carry more weight.[20] The standard of review to be applied is a relevant consideration when assessing all four factors.[21] Discretionary decisions made by a *CCAA* justice are owed a high degree of deference; appellate intervention is warranted only where a *CCAA* justice errs in principle or unreasonably exercises their discretion.[22] A *CCAA* justice is "steeped in the intricacies of the *CCAA* proceedings", which are dynamic and time-sensitive.[23] Accordingly, a high degree of deference is owed to *CCAA* justices and leave to appeal should only be granted sparingly.[24]

[22] The applicants point out that, in this case, the *CCAA* justice was the fifth justice to oversee the Canacol Group's *CCAA* proceedings and argue that a less deferential approach to the *Disclaimer Decision* is therefore warranted. The respondents indicated in oral argument that the absence of a single supervising *CCAA* justice is a function of how the commercial list operates in Calgary. I am not satisfied that a less deferential approach is warranted in the circumstances. The justices involved in the *CCAA* proceedings below have collectively performed the role of a supervising *CCAA* justice. They have each had a thorough familiarity with the Monitor's reports and other updates regarding the Canacol Group. The underlying policy reasons for a deferential approach are still present.[25] Moreover, that permission to appeal is required under the *CCAA* "indicates that Parliament intended that most decisions made by the CCAA justice 'should be interfered with only in clear cases'".[26]

[23] The impact of an appeal on the *CCAA* proceedings is a significant factor. This is particularly so where the evidence indicates that a delay may have a potentially fatal effect on restructuring. For instance, in *Arrangement relatif à Nemaska Lithium inc*, Justice Marcotte was concerned about the wide-ranging potential impacts that an appeal would have on the proceedings:

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[19] *Bellatrix Leave Decision,* supra note 9 at para 16; *Resurgence*, supra note 18 at para 7.

[20] *Resurgence*, supra note 18 at para 46.

[21] *Resurgence*, supra note 18 at para 28.

[22] *Callidus*, supra note 3 at para 53.

[23] *Callidus*, supra note 3 at para 54.

[24] *Angus A2A GP Inc v Alvarez & Marsal Canada Inc*, 2025 ABCA 147 at para 25; *Duke Energy Marketing Limited Partnership v Blue Range Resource Corporation*, 1999 ABCA 255 at para 3.

[25] See also *Bellatrix Exploration Ltd (Re)*, 2021 ABCA 85 at para 10.

[26] *Canadian Overseas Petroleum Limited (Re)*, 2024 ABCA 190 at para 45, citing *Luscar Ltd v Smoky River Coal Limited*, 1999 ABCA 179 at para 61.

> This makes the leave to appeal a risky proposition that could turn into the potential "catastrophe" that the CCAA judge referred to in his reasons, one in which all stakeholders, including creditors, employees, suppliers, the Cree community and the local economies stand to lose. In such event, the rights being debated even if important may become theoretical.[27]

[24] As noted by Justice Watson in *Bellatrix Exploration Ltd (Re)*, 2021 ABCA 85 at para 8:

> In other words, the 'real world' context is something to consider and the criteria are not assessed in isolation from each other. On the other hand, a matter might be significant to the practice if there is an important matter of interpretation that genuinely and arguably arises in the context, especially if it is a matter that has been problematic or disputed within the practice for some time and needs clarification and such clarification can be provided promptly without damage to the ongoing CCAA proceedings and to the parties. That said, if the significance of the issue raised arises merely because an applicant has developed a creative interpretive theory as a flyer, the other circumstances of the matter would be engaged to justify a finding that the practice significance criterion was met. (emphasis added)

[25] Accordingly, the practical impact of an appeal on the *CCAA* proceedings is a highly relevant consideration.[28] For instance, an appeal's impact on future funding advances to a company under *CCAA* protection may weigh against permission to appeal being granted.[29]

[26] The Monitor opposes the applications for permission to appeal and argues that an appeal would unduly hinder the *CCAA* proceedings. It notes the Canacol Group's vital role in maintaining Colombia's grid reliability and power generation and the significant impacts that any interruption or disorderly shutdown of its operations would have. The Seventh Report of the Monitor (Seventh Report), which was before the *CCAA* justice, outlined the extensive penalties the Canacol Group potentially faced for delivery shortfalls and early termination. The Seventh Report indicated that, if the disclaimers were not granted, the Canacol Group would have had insufficient funds to continue operating. If that were to occur, the Seventh Report states that there would be material consequences on stakeholders and Colombia's power grid.

[27] The Monitor raises concerns relating to the impact of delay on the Canacol Group's financial status and cash flow. It notes that the Canacol Group's access to future advances from the DIP Lenders is conditional upon the recognition of the disclaimer orders by Colombian

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[27] 2020 QCCA 1488 at paras 41-42.

[28] See also *Southern Star Developments Ltd v Quest University Canada*, 2020 BCCA 364 at paras 28-33.

[29] *Canada v Temple City Housing Inc*, 2008 ABCA 1 at para 15.

authorities, and that recognition has been delayed pending these appeal proceedings. The Monitor refers to its most recent report, the Tenth Report, that includes a cash flow forecast dependent on future DIP advances. The Monitor argues that those advances, which are critical for the Canacol Group's operations and restructuring would be jeopardized by further delays caused by an appeal.

Conclusion

[28] Even if some of the grounds of appeal have arguable merit, the evidence regarding both the harm to the *CCAA* proceedings and the wider impact on Colombia tips the balance against granting permission on any of the proffered grounds. As a result, the application for permission to appeal is denied. It is therefore unnecessary to rule on the applications of the DIP lenders.

Application heard on October 21, 2026

Reasons filed at Calgary, Alberta
this 23rd day of November, 2026

Hawkes J.A.

Appearances:

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J.L. Oliver,
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for the DIP Lenders