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COURT OF APPEAL OF ALBERTA

REGISTRAR FILED 07 Oct 2026 MRA Court of Appeal of Alberta

COURT OF APPEAL FILE NUMBER:	2601 0202AC 2601-0198AC 2601-0207AC
TRIAL COURT FILE NUMBER:	2501-18462
REGISTRY OFFICE:	CALGARY

FIAT

Let the within Memorandum
be filed despite non-compliance with
the following Rules / Practice Directions:
Rule 14.54(b)(i)

J Baptiste

Laurie Baptiste
Case Management Officer
Dated: October 7, 2026

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CANACOL ENERGY LTD., 2654044 ALBERTA LTD., CANACOL ENERGY ULC, 2498003 ALBERTA ULC, CANTANA ENERGY GMBH, CNE OIL & GAS S.R.L, CANACOL ENERGY COLOMBIA S.A.S., SHONA HOLDING GMBH, CNE ENERGY S.A.S., and CNE OIL & GAS S.A.S

APPLICANTS:	SURTIGAS S.A. E.S.P., GASES DEL CARIBE S.A. E.S.P. and GASES DE LA GUAJIRA S.A. E.S.P. COREX ENERGY S.A.S. E.S.P., fka SOUTH 32 ENERGY SAS ESP GASES DEL ORIENTE S.A. E.S.P.
STATUS ON APPEAL:	APPELLANTS
STATUS ON APPLICATION:	APPLICANTS
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PART 1 – OVERVIEW

1. In connection with proceedings of Canacol Energy Ltd. and certain of its Canadian, Colombian, Swiss and Panamanian subsidiaries (collectively and individually, "**Canacol**") under the *Companies Creditors' Arrangement Act* (the "**CCAA**" and "**Proceedings**"), the Honourable Justice Feasby of the Court of King's Bench of Alberta (the "**Court**") pronounced orders on June 24, 2026 (the "**Disclaimer Orders**") with reasons (the "**Reasons**"), *inter alia*, approving the disclaimer, resiliation and termination of certain long term natural gas supply agreements and transportation and trust agreements to which certain Canacol entities are party.[1]

2. In three applications (collectively, the "**Applications**") filed by (a) Surtigas S.A. E.S.P. ("**Surtigas**"), Gases del Caribe S.A. E.S.P. ("**Caribe**") and Gases de la Guajira S.A. E.S.P. ("**Guajira**", and together, the "**SCG Group**"), (b) CoreX Energy SAS ESP ("**CoreX**"), and (c) Gases del Oriente S.A. E.S.P. ("**GOC**", and each an "**Applicant**"), they seek leave to appeal the Disclaimer Orders and Reasons arguing, *inter alia*, that Feasby J erred in his interpretation of the *Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act)*[2] (the "**EFC Regulation**") and his exercise of discretion under s. 32(4) CCAA.

3. Canacol opposes the Applications. The proposed appeals have no merit. The Applicants fail to satisfy the four-part test for leave under s. 13 CCAA and the Applications should be dismissed with costs. Canacol also relies on and adopts the facts set out in in the Memorandum of Argument of KPMG Inc., as monitor in the Proceedings (the "**Monitor**").

PART 2 – BACKGROUND AND FACTS

4. Canacol explores for, develops, produces and sells natural gas in Colombia. In 2025, declining production and unsuccessful exploration efforts created liquidity constraints. Canacol obtained CCAA protection under an initial order on November 18, 2025 (the "**Initial Order**").[3]

5. Certain lenders (the "**DIP Lenders**") provided interim financing to Canacol (the "**DIP**")

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[1] *Canacol Energy Ltd (Re)*, 2026 ABKB 467 [**Reasons**] [Tab 1].
[2] *Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act)*, SOR/2007-257 [**EFC Regulation**] [Tab 2].
[3] Affidavit #9 of Bednar [**Bednar Affidavit 9**] dated April 26, 2026, paras 6, 9 & 10, Tab 1, Compendium of Records of Canacol [**Canacol Compendium**].

under a commitment letter dated December 5, 2025 (amended and restated to date, the "**DIP Agreement**").[4] The DIP is critical to continued operations and the ongoing sale and investment solicitation process (the "**SISP**").[5]

6. The Superintendency of Companies of Colombia (the "**Superintendency**") recognized the Proceedings as the foreign main proceeding, the Monitor as the Foreign Representative, the Initial Order, and the order approving the SISP.[6]

7. Canacol sells natural gas to the Applicants under long-term offtake agreements (each an "**Offtake Agreement**"), who in turn supply residential, commercial and industrial end users in Colombia.[7] The Offtake Agreements are fixed-price, "take-or-pay" contracts under which Canacol must deliver specified maximum daily quantities of natural gas for onward distribution, and the Applicants must pay between 95% and 100% of such maximum. The prices are denominated in US dollars, based on British thermal units of natural gas, and are adjusted annually as against agreed price indexes reflecting inflation.[8]

8. Colombia law classifies the Offtake Agreements based on the downstream demand served as (a) "**Consumer Offtake Agreements**", serving residential and small business demand in the regulated, "essential market" and subject to a tariff pricing framework established by the Colombian Energy and Gas Regulatory Commission ("**CREG**"), (b) "**Commercial Offtake Agreements**", serving large-load commercial end-users in the unregulated, "non-essential market", and (c) "**Dual Category Offtake Agreements**", serving both the essential and non-essential markets.[9] Canacol has Consumer Offtake Agreements with Surtigas, Guajira, Caribe and GOC, and Commercial Offtake Agreements with Surtigas, Caribe, GOC and CoreX.[10]

9. Canacol's production has declined during the Proceedings because of reservoir depletion,

[4] Bednar Affidavit 9, para 7.
[5] Bednar Affidavit 9, paras 7–8.
[6] 6th Report of the Monitor dated April 16, 2026, paras 21–23, Tab 2, Canacol Compendium.
[7] Memorandum of Argument of Surtigas, Caribe & Guajira [**SCG Memorandum**], para 3; Memorandum of Argument of GOC [**GOC Memorandum**], para 3.
[8] Reply Affidavit of Bednar dated May 16, 2026 [**Reply Affidavit**], paras 21–22, Tab 3, Canacol Compendium; Bednar Affidavit 9, paras 21–22.
[9] Bednar Affidavit 9, 20.
[10] Bednar Affidavit 9, paras 5(b) & 20.

an exploration well that did not achieve anticipated output, timing delays in securing drilling and workover rigs, and wells producing below baseline. This has reduced cash flow, available natural gas volumes, customer prepayments, and projected revenues and cash receipts,[11] and left Canacol unable to satisfy its delivery requirements in breach of the Offtake Agreements.[12] These breaches have triggered accruing monthly penalties, and entitle the Applicants to terminate, and impose termination penalties.[13] Production cannot be increased without significant additional capital for exploration and development. Such capital is unavailable under the DIP Agreement or outside a restructuring under the SISP. As of June 30, 2026, the estimated monthly and termination penalties were $380.4 million under the Commercial Offtake Agreements and $166.1 million under the Consumer Offtake Agreements.[14]

10. Phase 2 bidders under the SISP are seriously concerned about delivery requirements that Canacol's production cannot satisfy, the associated compensation exposure, and the fact that pricing under the Commercial Offtake Agreements is materially below market. These concerns create a real and substantial risk that a going-concern transaction cannot be completed unless the Offtake Agreements are renegotiated or disclaimed.[15] Further, since new DIP advances are conditioned on such disclaimer or renegotiation on acceptable terms, in absence of the disclaimers, Canacol cannot continue operating or advance the SISP.[16]

11. Attempts to amend the Offtake Agreements did not produce agreed compromises and Canacol thus sought the Disclaimer Orders to preserve access to DIP funding and advance the SISP. If the Disclaimer Orders are overturned on appeal, it is likely that the SISP will fail, Canacol will cease operations and its assets will be liquidated piece-meal, leading to the disruption of natural gas supply that the Applicants claim to want to avoid.[17]

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[11] Bednar Affidavit 9 paras 9–13; 7th Report of the Monitor dated April 30, 2026 [**7th Report**], paras 41–43, Tab 4, Canacol Compendium.
[12] Bednar Affidavit 9, paras 23–25; 7th Report, paras 43, 48–49.
[13] Bednar Affidavit 9, paras 28–33.
[14] Bednar Affidavit 9, para 50.
[15] Reply Affidavit, paras 10–15; Reply Bench Brief, dated May 20, 2026, [**Reply Brief**] paras 15, 46–47, Tab 5, Canacol Compendium.
[16] Reply Brief, para 47; Bednar Affidavit 9, paras 56–60.
[17] Reply Affidavit, para 9.

PART 3 – LAW AND ARGUMENT

A. TEST FOR GRANTING LEAVE UNDER S. 13 OF THE *CCAA*

12. Leave under s. 13 is discretionary,[18] granted sparingly, and exercised flexibly and contextually.[19] The Applicants must show serious and arguable grounds that are of real and significant interest to the parties. This is assessed by considering the following four factors, the weighing of which is dependent on circumstances: (1) the point on appeal is of significance to the practice; (2) the point is of significance to the action itself; (3) the appeal is *prima facie* meritorious; and (4) whether the appeal will unduly hinder the progress of the action.[20] Factor (3) considers whether the order under attack appears contrary to law, amounts to an abuse of judicial power, or involves an obvious error causing prejudice for which there is no remedy.[21]

13. Appellate courts are highly deferential to discretionary decisions of chambers judges, and will only interfere if the judge erred in principle, exercised discretion in a highly unreasonable manner, or made a manifest error.[22] CCAA restructurings are dynamic and time sensitive. It is inappropriate to consider the chambers judge's exercise of discretion in isolation from other exercises because the judge is balancing the interests of various stakeholders in dynamic situations, and delay can be counter-productive to success.[23]

14. Questions of law are reviewed for correctness,[24] findings of fact for palpable and overriding error,[25] and mixed questions of fact and law for palpable and overriding error unless an extricable legal error is identified.[26] Courts exercise caution in identifying extricable questions of law, and

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[18] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, ss 13 and 14 [**CCAA**] [Tab 3].
[19] *Business Development Bank of Canada v Pine Tree Resorts Inc*, 2013 ONCA 282, para 29 [***Pine Tree***] [Tab 4].
[20] *Bellatrix Exploration Ltd (Re)*, 2021 ABCA 85, para 9 [***Bellatrix ACA***] [Tab 5]; *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66, paras 17–18 [***Athabasca***] [Tab 6].
[21] *Pine Tree*, para 31 [Tab 4].
[22] *Bellatrix ACA*, para 9 [Tab 5]; *Trican Well Service Ltd v Delphi Energy Corp*, 2020 ABCA 363, paras 10–11 [***Trican***] [Tab 7]; *Canada v Canada North Group Inc.*, 2021 SCC 30, para 22 [***Canada North***] [Tab 8]; *Laurentian University of Sudbury (Re)*, 2021 ONCA 199, paras 20-22 [Tab 9].
[23] *Trican*, para 11 [Tab 7]; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 (CanLII), [2020] 1 SCR 521, paras 53-54.[***Callidus***] [Tab 10].
[24] *Housen v Nikolaisen*, 2002 SCC 33, para 8 [***Housen***] [Tab 11].
[25] *Housen*, para 10.
[26] *Housen*, paras 36–37.

the circumstances for doing so are considered rare.[27]

B. THE DISCLAIMER OF AGREEMENTS UNDER S. 32 OF THE CCAA

15. Under s. 32(1), a debtor company may, with the monitor's approval, give notice disclaiming or resiliating an agreement. A counterparty has 15 days to seek an order prohibiting disclaimer.[28] If the monitor does not approve the disclaimer, the debtor may apply for a court-ordered disclaimer.[29] In determining whether to approve a disclaimer, the Court is directed to consider a non-exhaustive list of three factors set out in s. 32(4).

16. Under s. 32(9)(a), s. 32 does not apply to an eligible financial contract ("**EFC**").[30] EFCs are defined by regulation (the "**EFC Regulation**").[31] S. 32(9)(a), s. 11.3(2)(b) (excluding EFCs from forced assignments), s. 34(7)(a) (permitting counterparties to terminate EFCs), and s. 34(7)(b) (permitting set-off by counterparties under EFCs), form a statutory safe harbour for EFCs (the "**EFC Exceptions**").[32]

C. THE PROPOSED APPEALS ARE NOT *PRIMA FACIE* MERITORIOUS

I. The Offtake Agreements are not EFCs

(a) EFC Framework

17. Parliament enacted the EFC Exceptions to address the unique risks to counterparties to derivatives transactions and the derivatives market generally. Derivatives are investment products whose obligations are based on the performance of underlying assets such as stocks, bonds, commodities, currencies or other indices, and allow parties to manage their market exposure and risks. Financial markets are volatile, prices can change significantly in hours, and a counterparty to a CCAA debtor can face heavy losses unless it can terminate derivatives promptly, crystallize its market position and re-hedge its exposure. The EFC Exceptions made Canada's laws consistent

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[27] *Housen*, para 32 [Tab 11]; *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, paras 53-55 [***Sattva***] [Tab 12].
[28] CCAA, s 32 [Tab 3]; In the instant case, Feasby J ruled that Canacol could seek an Order directly providing for disclaimer without employing the notice and response mechanism established under ss. 32(1), (2) & (3).
[29] CCAA, s 32(3).
[30] CCAA, s 32(9)(a).
[31] EFC Regulation.
[32] CCAA, ss 32(9)(a), 11.3(2)(b), 34(7)(a), & 34(7)(b) [Tab 3].

with global practice and were intended to maintain access to derivatives markets.[33]

18. Canadian judicial decisions note that the EFC Exceptions protect non-defaulting counterparties from ongoing exposure to markets and reduce systemic risk in Canadian and global financial markets. If a non-defaulting counterparty cannot immediately terminate its EFCs with a CCAA debtor, this may trigger defaults by the counterparty under its EFCs with third parties, put the counterparty's solvency at risk, and lead in some circumstances to systemic risk.[34] The EFC Exceptions (a) prevent CCAA debtors from selectively repudiating EFCs where they are in the money, while preserving EFCs where they are out of the money (referred to as "cherry picking"); (b) prevent CCAA debtors from disclaiming EFCs; and (c) permit the non-defaulting counterparties to terminate their EFCs with the debtor and determine the net amounts owing based on the difference between current market prices and the contract price (marking to market). This allows the counterparty to re-hedge its position, prevents cherry picking and avoids excessive and unmanageable risk. The availability of credit from risk management companies and financial institutions is also dependent on their ability to net transactions.[35]

19. The EFC analysis has two stages, informed by both statutory and contractual rules of interpretation:

(a) first, the key threshold question is whether the agreement is a "derivatives agreement", defined in s. 1 of the EFC Regulation as "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";[36] and

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[33] *Eligible Financial Contracts in Canadian Insolvency Regimes*, First Annual Lloyd Houlden Fellowship, Kelly J. Bourassa, October 1, 2006, pp 1-6 [Tab 13].
[34] *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 809, para 37, referring to the Insolvency Institute of Canada Report of the Task Force on Derivatives dated September 25, 2013, pp 2 & 3 [Tab 14].
[35] *Enron Capital & Trade Resources Canada v Blue Range Resources*, 2000 ABCA 239 [***Blue Range***], paras 27–30 [Tab 15].
[36] EFC Regulation, s 1.

(b) the second question is whether that derivatives agreement qualifies as an EFC under s. 2(a) of the EFC Regulation ((i) it trades on a futures or options exchange or board, or other regulated market, or (ii) is the subject of recurrent dealings in the derivatives market or in the over-the-counter securities or commodities markets).[37]

20. While the CCAA is generally broadly interpreted to achieve its remedial objectives,[38] the EFC Exceptions are given a narrow construction to avoid undermining those objectives.[39] Contracts are interpreted as a whole, and words are given their ordinary and grammatical meaning, consistent with the surrounding circumstances that were objectively known, or reasonably ought to have been, by both parties at the time of contracting. This includes reviewing: (1) the genesis, aim or purpose of the contract, (2) the nature of the relationship created by the contract, and (3) the nature or custom of the market or industry where the contract was executed.[40]

(b) The Offtake Agreements are not derivatives agreements

21. EFC case law has considered whether long term natural gas supply contracts qualify as derivatives agreements and EFCs. The challenge has been distinguishing between long term commercial supply contracts and derivatives contracts that are substantively financial risk management products. A broad interpretation of the EFC term, capturing supply contracts, would undermine the remedial purpose of the CCAA without advancing the EFC Exceptions' protective purposes. Since there is no bright line test for a derivatives agreement, the contract must be analysed as a whole to determine its substantive effect,[41] including whether (a) the contract has a financial purpose independent of the delivery of a commodity; (b) the commodity is fungible and trades on an underlying market with sufficient trading volume to ensure convergence to a competitive equilibrium price; and (c) the contract has provisions regarded as hallmarks of a

[37] EFC Regulation, s 2(a)
[38] Reasons, para 24, citing *Montréal (City) v Deloitte Restructuring Inc*, 2021 SCC 53, para 113 ;*Century Services Inc v Canada* (AG), 2010 SCC 60, paras 15, 19, & 70 [***Century Services***] [Tab 16].
[39] *Blue Range*, para 39; *Bellatrix Exploration Ltd (Re)*, 2020 CarswellAlta 350, para 107 [***Bellatrix QB***] [Tab 17].
[40] *Sattva*, paras 47-48 & 58.; *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157, paras 81–83 [Tab 18].
[41] *Re Calpine Canada Energy Limited*, 2006 ABQB 153, paras 18 & 24 [***Calpine***] [Tab 19].

derivatives agreement, or there is evidence that it functions as a risk management product.[42]

22. Courts first examine whether a natural gas supply agreement has a financial purpose independent of the physical supply of gas. In a decision of the Alberta Court of Appeal ("***Blue Range***") reviewing the EFC Exceptions in place prior to the EFC Regulation, Fruman JA stated that a derivatives agreement serves an important financial purpose unrelated to physical or financial settlement, and is a risk management tool commonly known as a hedge.[43]

23. In *Re Bellatrix Exploration Ltd.* ("***Bellatrix QB***"), decided after the EFC Regulations were enacted, Jones J agreed with Fruman JA in holding that a financial agreement must serve an important financial purpose.[44] Relying on surrounding circumstances, he found that although the subject contract was not a hedge, it was a financial agreement because (a) it permitted the company to achieve price diversification by pricing natural gas based on downstream exchanges outside of Alberta, and (b) combined with the company's hedging contracts, it was part of the company's overall financial risk management program.[45] His analysis was based on the purpose and scheme of the CCAA, the wording of the EFC Regulation, the cases considering those provisions and their predecessors, and the terms, operation and surrounding circumstances of the contract.[46] Hence, for a contract to have a financial purpose, it must either hedge financial exposure, or provide financial protection in tandem with a hedge program within a financial risk management structure.[47]

24. Courts consider certain clauses to be hallmarks of EFCs, although their *pro forma* inclusion does not automatically characterize a contract as an EFC:[48]

(a) Fruman JA wrote that the commodities subject to the contracts must be fungible in nature and subject to a volatile underlying market with sufficient trading volume to ensure convergence to a competitive equilibrium price. This allows the contract to

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[42] *Supra* notes 43, 45 & 49.
[43] *Blue Range*, paras 18 & 45. This formulation was adopted by Weiller JA in *Re Androscoggin Energy LLC*, 2005 CanLII 3581, para 15 [***Androscoggin***] [Tab 20].
[44] *Bellatrix QB*, paras 121 & 123.
[45] *Bellatrix QB*, paras 25–61, 63–65, 110, 127–133.
[46] *Bellatrix QB*, para 183.
[47] *Bellatrix QB*, paras 125, 127, 129–130.
[48] *Androscoggin*, para 15; *Calpine*, paras 18–19; *Bellatrix QB*, para 202.

be marked to market by comparing its contract price to the market price.[49] Non-defaulting parties must be able to crystallize their losses by early termination and re-hedge their positions by entering into new contracts.[50]

(b) Weiller JA wrote that the hallmarks include terms enabling the non-defaulting counterparty to manage commodity price risk by terminating the contract, offsetting or netting its obligations under one or more transactions to determine the net value of the commodity yet to be delivered in the future, and to re-hedge its position. Without these terms, the contract could not be characterized as an EFC.[51]

(c) Romaine J wrote that the importance of terms marking the contract to market, and permitting offsetting and netting, to determining if the contract was an EFC could not be overemphasized, although she noted that she was not suggesting such provisions are necessary in every case, or that their inclusion results in the contract *a priori* being an EFC.[52]

(d) Jones J wrote that netting out and setoff terms are strong indications that financial risk management is a key component and objective of a contract.[53]

25. Based on the evidence before him, Feasby J determined that the Offtake Agreements lack key hallmarks of EFCs. He found that the Consumer Offtake Agreements did not have a financial purpose distinct from the underlying supply obligations, based on the characteristics of the Colombian natural gas market[54] given that: (a) they have fixed prices, adjusted by a fixed percentage of a US price index: (b) they lack financial settlement mechanisms: (c) they do not transfer or hedge financial risks because they do not transfer exposure to market price movements or allow either party to profit or lose from changes in the market; (d) the compensation mechanisms for non-delivery and early termination do not mark to market;[55] (e) their billing dispute and setoff

[49] *Blue Range*, paras 43-45.
[50] *Blue Range*, paras 53.
[51] *Androscoggin*, para 15.
[52] *Calpine*, paras 18–19.
[53] *Bellatrix QB*, para 202.
[54] Reasons, para 63.
[55] Reasons, paras 59–60.

rights are indicia of mere supply agreements;[56] and (f) their evidence showed that price increases were passed through to end-users pursuant to the terms of CREG's tariff, and hence the Applicants thereunder were not exposed to market pricing –their customers were.[57]

26. Feasby J found that the Commercial Offtake Agreements had similar features, except that their end-users are large industrial entities in the unregulated market.[58] He found no hallmarks of derivatives agreements: (a) pricing was fixed but not indexed or referable to market prices; (b) penalties for shortalls in deliveries and early termination are calculated by reference to contract price, and not mark to market;[59] and (c) nothing about the contracts indicates that they have a purpose other than the physical supply of natural gas.[60] He did not accept *ex post facto* claims by some affiants that their Commercial Offtake Agreements formed part of their financial risk management strategy, which is consistent with the requirement that surrounding circumstances be objectively known or knowable to both parties at the time of contracting.[61]

27. Feasby J's conclusion that the Offtake Agreements lacked hallmarks of EFCs was well grounded for the reasons set out below:

(a) the Offtake Agreements (i) do not mark the agreements to market as against a market index or benchmark price, either periodically or at termination, (ii) do not contain insolvency termination clauses, (iii) are tied to physical delivery volumes rather than differences between market benchmarks and contract prices, (iv) contain no master agreement and confirmation structure, where multiple transactions hedging market prices over periods of time are entered into, with provisions for close-out netting and determination of the replacement cost or market value to arrive at single liquidated sums;[62]

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[56] Reasons, paras 61.
[57] Reasons, para 62.
[58] Reasons, para 65.
[59] Reasons, para 66.
[60] Reasons, para 67.
[61] Reasons, paras 37 & 68; *supra* note 40.
[62] Copies of the Offtake Agreements are attached First Supplementary Confidential Affidavit of Jason Bednar, affirmed April 29, 2026, & Second Supplementary Confidential Affidavit of Jason Bednar affirmed May 1, 2026,

(b) the Offtake Agreements' penalty clauses calculate the damages upon early termination based on an arithmetic formula tied to contract price and undelivered volumes rather than by marking the agreement to market; [63]

(c) no evidence was before Feasby J that the Offtake Agreements are or can be re-hedged, and given the constrained nature of the market for natural gas in Colombia, there does not appear to be sufficient liquidity or availability in the market to permit parties to re-hedge; [64]

(d) none of the Offtake Agreements contain options to elect financial settlement *in lieu* of physical delivery;[65] and

(e) the Applicants provided no evidence of that the Offtake Agreements (i) exposed the Applicants to the market volatility risks that the EFC Exceptions were designed to address, (ii) were recorded in their financial books and records as derivatives for accounting purposes, or (iii) functioned as risk management products in the Colombian market.

28. The SCG Group asserts that courts are directed to anchor their statutory interpretation in the text, that under the EFC Regulation, a financial agreement is one where a party intended to achieve an important financial purpose, and that protection from market price fluctuations provided by fixed pricing is such a financial purpose. They misconstrue the authority they rely on, which stated that (a) the text of a statute is considered in light of its context and object, with the text remaining the anchor because it specifies the means to serve the legislative purposes, and may disclose qualifications to the primary purpose, and (b) the goal of interpretation is to find harmony between the text and the intended objective. [66] Since the EFC Regulation does not define "financial agreement", the term must be interpreted in light of the purpose of CCAA and EFC

Tabs 1 & 2 of Confidential Compendium of Canacol, which are sealed pursuant to an Order of Feasby J dated July 13, 2026.

[63] Bednar Affidavit 9, paras 31–33.

[64] Reasons, paras 49–51.

[65] Bednar Affidavit 9, para 22.

[66] *Québec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43, para 24 [Tab 21].

Regulation and the EFC decisions, including on the predecessor legislation. Since the EFC Exceptions were intended to address unique risks posed to hedging products which act as financial risk management tools, and were limited exceptions to general powers in the CCAA enabling the restructuring of businesses and debtor companies, the interpretation of "financial agreement" should be limited to such products. It should certainly not encompass, without more, any long term supply agreement that through fixed pricing gives the buyer price certainty.

29. Feasby J's conclusions applied the EFC Regulation, the CCAA and the jurisprudence to the terms of the Offtake Agreements, the surrounding circumstances and the evidentiary record. The interpretation of contracts is a question of mixed fact and law, and Feasby J's decision is entitled to deference absent a palpable and over-riding error.[67] The Applicants identified no extricable errors in principle or palpable and overriding errors.

(c) Horizontal Stare Decisis

30. The Applicants' assertion that Feasby J erred in not following horizontal *stare decisis* is based on a misunderstanding of *Bellatrix QB*. Jones J followed the two-stage analysis, first determining that the subject contract was a "derivatives agreement" because surrounding circumstances evidenced it being part of the company's financial risk management system. He then proceeded in the second stage to determine that the contract qualified as an EFC under s. 2(a) of the EFC Regulation. Feasby J disagreed with Jones J's second stage interpretation of s. 2(a). Specifically, Jones J interpreted s. 2(a) as requiring recurrent dealings in the ***underlying commodity***, whereas Feasby believed that s. 2(a) required that the ***derivatives agreement*** to be subject to recurrent dealings. Feasby J noted the differences in their interpretations, acknowledged the principle of *stare decisis*, but then stated he was not deciding on those grounds. Instead, he decided on the basis that the Offtake Agreements were not derivatives agreements (ie, they were not financial agreements) for the purposes of s. 1 of the EFC Regulation, which is the first stage of the analysis. Since his decision was not based on his interpretation of s. 2(a), that interpretation was *obiter*, and the principle of horizontal *stare decisis* has no application and cannot form a basis

[67] *Sattva*, paras 53-55; *Housen*, paras 36–37.

for appellate intervention.[68]

31. Furthermore, the Offtake Agreements are fundamentally different than the contract reviewed in *Bellatrix QB* which had index-based pricing referenced to downstream North American spot markets, NYMEX-referenced mark-to-market close-out and netting mechanisms, an express EFC designation clause, and a contemporaneous press release linking the contract to the company's hedging program.[69] The principle of *stare decisis* is intended to ensure the stability of decisions relating to questions of law, and therefore does not apply where the prior decision is based on the interpretation of a very different contract and is distinguishable on the facts.[70]

32. The SCG Group incorrectly states that the requirement that a market for a commodity be liquid and volatile was based on the pre-2005 EFC Exceptions.[71] Fruman JA derived this requirement from the nature of the commodities derivatives market. The pre-2005 Exceptions did not define commodities. Fruman JA's requirements as to the fungibility of a commodity and the nature of the market were based on the context of the CCAA, and the industry and academic commentary on the nature of derivatives markets referred to in her decision.[72]

33. CoreX likewise overreads *Bellatrix QB*. Jones J only stated that physical settlement does not, *a priori*, disqualify an agreement from EFC status; he did not state that every physically settled natural gas contract is an EFC or immune from disclaimer.[73]

(d) Assessment of relevant market context under s. 1 of the EFC Regulation

34. The Applicants' objection to Feasby J considering the Colombian market has no *prima facie* merit. Their objection to Feasby J considering the Colombian market is inconsistent with the contextual EFC enquiry. Feasby J held that whether a contract has a financial purpose significantly depends on what can be accomplished through the contract, which in turn is controlled by the

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[68] *Callidus*, para 81; *United Nurses of Alberta v Alberta Health Services*, 2019 ABQB 255, para 50 [Tab 22], affirmed by *United Nurses of Alberta v Alberta Health Services*, 2021 ABCA 194.
[69] *Bellatrix QB*, paras 25–66.
[70] *R v Sullivan*, 2022 SCC 19, paras 53, 75, 86 [Tab 23].
[71] SCG Memorandum, para 20; *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as it appeared between 2005-09-28 and 2007-06-21, ss 11.1(1)-(3) [Tab 24].
[72] *Blue Range*, paras 41, 44 & 45.
[73] *Bellatrix QB*, para 124.

relevant market.[74]

35. S. 1 of the EFC Regulation refers to obligations derived from reference items such as interest rates, indices, currencies, commodities and securities. Read together with s. 2, such obligations are based on exchange traded or over-the-counter markets.[75] This takes the analysis directly to the relevant market, which is Colombia.[76]

36. Further, as discussed at paragraph 20 above, the nature or custom of the market or industry where a contract operates forms part of the surrounding circumstances.[77] The Offtake Agreements are performed in, and governed by the laws of, Colombia, making the characteristics of the Colombian natural gas market central. *Blue Range* and *Bellatrix QB* similarly examined the North American market in which the relevant agreements operated.[78]

(d) Evidence of the Colombian Market

37. The Applicants submit that Feasby J required expert evidence or disregarded their lay evidence. Neither contention identifies a reviewable error.

38. S. 32(9) is an exception to the general power in s. 32 to disclaim contracts. Where a party invokes a statutory exception, it bears the onus of establishing that it can rely on that exception.[79] The burden was on the Applicants to provide evidence on the Colombian derivatives market and that the Offtake Agreements functioned as derivatives. If they believed expert evidence was necessary for Feasby J to make his decision, they ought to have provided it.

39. Feasby's findings on the factual characteristics of the Colombian natural gas market were based on the lay affidavit evidence of the Applicants and other parties, including Canacol's evidence that the Offtake Agreements were not EFCs. These findings included:

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[74] Reasons paras 45-47.
[75] Similarly, ss. 2(a)(i) and (ii) of the EFC Regulation refers to trading on futures, options exchanges or boards or other regulates markets, or trading in derivatives, over-the-counter securities or commodities markets.
[76] Reasons, para 47.
[77] *Supra* note 40.
[78] *Blue Range*, paras 19, 22–26, 45–46 & 54; *Bellatrix QB*, paras 52–55, 63–65, 66–70.
[79] *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 (CanLII), paras 77-79, 89, 133, 139 & 156 [Tab 25].

(a) there was "scant evidence of an active natural gas derivatives market in Colombia", suggesting that the Offtake Agreements lacked a financial purpose distinct from the underlying physical supply obligation, and hence were not EFCs;[80]

(b) in the regulated market, annual fixed pricing did not hedge the counterparties against market price because price increases were passed through to end users under the tariff; [81]

(c) the secondary market in Colombia was too small to supply the contracted volumes, making exposure to that market theoretical rather than a risk that these agreements could realistically hedge against;[82] and

(d) long-term supply agreements in Colombia provide supply certainty, with fixed pricing being a practical necessity in absence of what Fruman JA in *Blue Range* called a "liquid and volatile market" that permits consistent price discovery and thus a genuine market price for the commodity. [83]

40. A judge is presumed to have considered the whole record and need not discuss every item of evidence. An omission becomes material only if it supports a reasoned belief that the judge forgot, ignored or misconceived evidence in a way that affected the result. [84] The Applicants show neither that error nor a palpable and overriding error in the findings concerning the Colombian market or the agreements.

II. Section 32(4) of the CCAA

41. Both GOC and CoreX seek leave to appeal arguing that Feasby J erred in weighing the factors set out in s. 32(4). Both invite this Court to reweigh the evidence considered in his discretionary decision. Their arguments include the same three misconceptions that: (a) proof of

[80] Reasons, para 55 .
[81] Reasons, para 56.
[82] Reasons, para 57.
[83] Reasons, para 58, citing *Blue Range*, para 46.
[84] *Van de Perre v Edwards*, 2001 SCC 60, paras 10 & 15 [***Van de Pere***] [Tab 26]; *Housen*, para 72; *Salomon v Matte-Thompson*, 2019 SCC 14, para 111 [Tab 27].

the loss of a bargain is proof of "significant financial hardship"; (b) the s. 32(4) factors are to be applied in isolation rather than weighed holistically; and (c) the primary consideration under s. 32(4) should be the performance of their contracts, rather than liquidation of Canacol if the disclaimers are refused. Properly construed, s. 32(4) answers each of these grounds, and none of their arguments are *prima facie* meritorious.

42. The court is directed under s. 32(4) to consider, *inter alia*, whether: (a) the monitor approved the disclaimer, (b) the disclaimer would enhance the prospects of a viable compromise or arrangement, and (c) the disclaimer would "likely cause significant financial hardship to **a party to the agreement**". The factors are neither exhaustive nor have prescribed priority. The ultimate question is whether disclaimer is "fair, appropriate and reasonable after balancing competing interests and prejudice to the parties.[85]

43. Each word of s. 32(4)(c) has a meaning. The hardship must be "significant", it must be "financial", it must be "likely" to be caused by the disclaimer, and it must be suffered by "a party to the agreement". The onus on an objecting counterparty is high and evidence-based: there must be specific evidence of significant financial hardship; mere loss or damage is insufficient; and the significant financial hardship must likely be caused by the disclaimer. The test is subjective and turns on the individual characteristics and financial circumstances of the counterparty.[86]

44. S. 32(4) must be read in conjunction with s. 32(7). S. 32(7) converts a loss arising from disclaimer into a provable claim. Because loss of the contractual bargain is inherent in disclaimer, treating every loss as "significant financial hardship" would defeat the statutory power.[87]

45. The CCAA's remedial purposes, and the court's broad discretion under s. 11 informs the balancing of interests under s. 32(4).[88] Where the choice is between disclaiming a contract at a

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[85] CCAA, s 32(4) [Tab 3]; *Laurentian University of Sudbury*, 2021 ONSC 3272, para 44 [***Laurentian***] [Tab 28]; *LoyaltyOne, Co (Re)*, 2024 ONSC 3866, para 50 [Tab 29]; *Quest University Canada (Re)*, 2020 BCSC 1883, paras 96, 111–113 [***Quest University***] [Tab 30].

[86] *Laurentian*, paras 46(c)–(d) [Tab 28], citing *Target Canada Co, Re*, 2015 ONSC 1028, para 26; *Timminco Limited, Re*, 2012 ONSC 4471, para 60 [Tab 31].

[87] *CCAA*, s 32(7); *Ehattesaht Holdings Ltd v Coulson Forest Products et al*, 2006 BCSC 1810, para 13 [Tab 32]; *Bellatrix Exploration Ltd (Re)*, 2020 ABQB 809, para 39 [Tab 33].

[88] *Montréal (City) v Deloitte Restructuring Inc*, 2021 SCC 53, paras 113 & 115 [Tab 33]; *Century Services*, para 70.

cost to the counterparty and declining to disclaim at the cost of the debtor's restructuring, upholding the disclaimer is appropriate.[89]

(a) GOC

46. GOC says Feasby J overlooked its "uncontested" evidence of a 30–35% increase in supply costs, monthly operating cost overruns of US$10–12 million, and alternative supply costing 175–180% more than contracted rates.[90] It also complains that there is no evidence quantifying the benefit of disclaiming the GOC Agreements.[91]

47. Uncontested evidence is not evidence that meets the statutory threshold under s. 32(4) – it must still prove the required fact, being significant financial hardship to a party to the agreement. GOC's monetary figures measure the cost of replacing a favourable bargain and thus are a measure of its provable claim under s. 32(7), not proof of significant financial hardship. GOC tendered no audited financial statements, cash-flow forecasts, liquidity or solvency analysis, or evidence that it would become insolvent if the disclaimer was granted. Courts have found that even evidence of a counterparty's likely or inevitable insolvency may not outweigh the benefits derived from a successful restructuring.[92]

48. Feasby J was not obliged to address in the Reasons every piece of evidence presented to him.[93] He in fact considered GOC's evidence in writing: "**Much** of the evidence of the Respondents concerning the Consumer Offtake Agreements and Dual Category Agreements concerned harm to Colombian vulnerable residential and small business consumers".[94]

49. Concurrently, the majority of GOC's asserted hardship was, by its own framing, end-user hardship: continuity of an essential public service and consequences to residential users. Those matters are not "significant financial hardship" to GOC itself "as a party to the agreement", and

[89] *Laurentian*, paras 75-79. [Tab 28].
[90] GOC Memorandum, para 26.
[91] GOC Memorandum, para 19.
[92] *Laurentian* , paras 75-79.
[93] *Supra*, note 84.
[94] Reasons, para 80 [Tab 1].

GOC cannot fault Feasby J for focussing on GOC's own position.

50. Feasby J found that (a) any hardship suffered by GOC and end-users was outweighed by evidence favouring the disclaimers, and (b) the root cause of Canacol's insolvency was declining production, resulting in it being unable to meet its delivery obligations, which in turn triggered the accrual of penalties under the Offtake Agreements for non-delivery. He accepted that Canacol cannot address its declining production without obtaining new investment in a restructuring, and that restructuring cannot happen without the disclaimer or renegotiation of the Offtake Agreements.[95] He also accepted that liquidation would not preserve performance of GOC's Offtake Agreements; it would produce the supply disruption GOC said it sought to avoid.[96] Feasby J concluded that hardship to consumer end-users would be mitigated because (i) Canacol committed to maintaining regulated pricing, and (ii) the regulatory regime prioritises essential demand. [97]

51. S. 32(4)(b) does not require contract-by-contract quantification of Canacol's loss. The consideration is whether the disclaimer would enhance the prospects of a viable restructuring. [98] The Monitor supported the relief and the court accepted Canacol's expectation, based on SISP bidder feedback, that absent renegotiation or disclaimer there was a real and substantial risk of no going-concern transaction.[99] Feasby J found the disclaimer would enhance the prospects of a viable restructuring. His findings and evidentiary weighing are discretionary, reasonable and entitled to deference.

(d) CoreX

52. CoreX alleges that (a) Feasby J failed to review alleged deficiencies set out in the 7th Report under s. 32(4)(a), (b) the disclaimer application was brought for an improper purpose at the behest of the DIP Lenders, and (c) its end-user, Cerro Matoso SA could suffer potential damage of

[95] Reasons, para 79 [Tab 1].
[96] Reasons, paras 86–87 [Tab 1]; Reply Bench Brief, dated May 29, 2026, para 10, Tab 6, Canacol Compendium.
[97] Reasons, paras 82–83 [Tab 1].
[98] *Laurentian*, paras 44– 45[Tab 28].
[99] Reasons, para 22 & 78 [Tab 1].

US$300–400 million.

53. The Monitor approved the disclaimers because they would enhance the prospects of a viable compromise or arrangement and its position remained unchanged in its supplemental reporting. Courts accord significant weight and deference to the recommendations of monitors.[100] The Monitor's recommendations and CoreX's objections were before Feasby J. He was not required to reproduce each objection or explain separately why every criticism did not alter the Monitor's conclusion.[101] Finally, the report of the Monitor is only one factor to consider under s.32(4); a debtor can seek a disclaimer order even if a monitor does not approve it.[102] As such, CoreX's arguments do not establish a reasoned belief that Feasby J forgot, ignored or misconceived evidence in any way that affected his decision.

54. The improper purpose allegation against the DIP Lenders is unsupported and speculative. The purpose of the disclaimers is documented throughout the record: renegotiation or disclaimer is a condition precedent to further DIP advances without which Canacol cannot operate or complete the SISP. The condition was included because, based on the feedback of the Phase 2 bidders, Canacol cannot complete a transaction under the SISP without obtaining the disclaimer orders.[103] A lender condition directed at a debtor's viability is a valid restructuring purpose, squarely within the CCAA's remedial objectives.[104] In a leading case on interim financing, the Supreme Court of Canada recognized that requirements imposed by interim lenders are governed by their commercial imperatives, and the approval of such requirements can be necessary and appropriate. The Court was unwilling to assume such lenders would waive their requirements in absence of supporting evidence.[105] Further, CoreX provided no evidence to support its allegation that the DIP Lenders control Canacol or the Proceedings.

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[100] *CCAA*, s 11 [Tab 3]; *Callidus*, para 52 [***Callidus***] [Tab 10]; *Laurentian*, para 39 [Tab 28]; *Nortel Networks Corp (Re)*, 2018 ONSC 6257, para 27 [***Nortel***] [Tab 34]; *Aralez Pharmaceuticals Inc, Re*, 2018 ONSC 6980, para 36 [***Aralez***] [Tab 35]; *Aveos Fleet Performance Inc*, 2012 QCCS 4074, para 50(f) [***Aveos***] [Tab 36]; *Quest University*, paras 103–104 [Tab 30].

[101] *Nortel*, para 27; *Aralez*, para 36; *Aveos*, para 50(f); *Laurentian*, para 39; *Quest University*, paras 103–104; *Van de Perre*, para 10 [Tab 25]; *Housen*, para 72 [Tab 11].

[102] *CCAA* s 32(3) [Tab 3].

[103] *Reasons*, para 78; Reply Affidavit, para 14; Reply Bench Brief, para 47.

[104] *Callidus*, paras 46–49.

[105] *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6, para 59 [Tab 37].

55. CoreX relies on downstream hardship rather than hardship to itself as "a party to the agreement". The US$300–400 million figure concerns Cerro Matoso, not CoreX. CoreX is part of a multinational group active in 55 countries with close to US$2 billion in investments; its primary revenue derives from electricity commercialisation, not natural gas sales; and there is no evidence that CoreX or its electricity division would fail if its Offtake Agreement was disclaimed. Furthermore, Cerro Matoso is owned by the same multinational ownership group as CoreX.[106]

56. CoreX's evidence also contradicts the argument that the disclaimer will cause it financial harm which a liquidation of Canacol would not otherwise cause. Its affiant accepted on examination that if Canacol's business fails, CoreX could not obtain gas for Cerro Matoso at Canacol's current prices for 6–12 months and replacement gas would cost 3 to 4 times more. CoreX is thus in the same position if the disclaimer is granted or Canacol's restructuring fails - it will need to find alternative gas at higher prices. Furthermore, significant financial hardship would not "likely" be caused by the disclaimer as Canacol intends on supplying natural gas to CoreX, just at a higher price. [107]

57. CoreX's evidence wrongly assumes that Canacol would cease supplying gas after the disclaimer. Canacol's uncontradicted evidence fully rebuts this. Further, CoreX's macroeconomic evidence was speculative, unsupported by expert evidence, and focussed on downstream effects, not CoreX's financial condition. [108] Additionally, s. 32(4)(b) does not require Canacol to quantify its financial loss to establish that the disclaimer would enhance a viable restructuring.

58. Feasby J's reasoning on CoreX reflects a balancing of interests. Feasby J accepted that Cerro Matoso and those depending on it would suffer hardship if Canacol did not supply gas, but the same physical scarcity affects other industrial users.[109] Current production is insufficient to satisfy every contract, so fulfilling one customer's needs creates shortfalls for others. Refusing the disclaimer would not result in Canacol producing more gas. It would maintain penalties and

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[106] Reply Bench Brief, paras 65–68; Transcript of Questioning of Zamir Centanaro, dated May 18, 2026, p. 37, lines 1-7; p. 13 lines 2-9 – p. 21, lines 7-17, Tab 7, Canacol Compendium.
[107] Reasons, para 91.
[108] *CNOOC Petroleum North America ULC v 801 Seventh Inc*, 2021 ABQB 81, para 51 [Tab 38]; *Laurentian*, para 46(c).
[109] Reasons, para 90.

other liabilities attached to a continuing shortage. The Court described allocation as a zero-sum problem where sharing of hardship was inevitable. Permitting disclaimer removed the continuing contractual penalty structure, preserved incentives to maximize production, and allowed counterparties to negotiate for available supply on new terms. Refusing relief would have jeopardized funding under the DIP, the SISP and continued operations. Feasby J's fact-specific balancing is entitled to deference.[110]

D. IS THE POINT ON APPEAL SIGNIFICANT TO THE PRACTICE?

59. The Applicants argue that the proposed appeal is significant to the practice because it concerns the correct interpretation of s. 2(a) of the EFC Regulation, and whether the assessment of an agreement as a derivatives agreement must be in the context of the relevant market.

60. The Applicants argue that because Feasby J disagreed with Jones J's interpretation of s. 2(a) of the EFC Regulation in *Bellatrix QB*, there are now conflicting decisions on a point significant to the practice. However, as discussed above, Feasby J relies on his interpretation of s. 1 in reaching his decision, not on s. 2(a), and his interpretation of s. 1 was not inconsistent with that of Jones J.

61. The SCG Group cite this Court's granting leave to appeal *Bellatrix QB* because the interpretation of the terms "eligible financial contract", "derivatives agreement" and "financial agreement" was significant to the practice.[111] However, this Court later found that appeal to be moot because subsequent events meant it would no longer have the effect of resolving a controversy that affects or may affect the rights of the parties. It declined to exercise its discretion to proceed with a moot appeal on the basis that the question required a more fulsome record.[112] The disagreement between the Reasons and *Bellatrix QB* relate to s. 2(a), which Feasby J. did not rely on but did make *obiter* comments setting out his interpretation. The s. 2(a) issue is hence purely academic and does not call for appellate intervention.[113] He also disagreed with Jones J's inclusion in surrounding circumstances of subjective *ex post facto* evidence, but Feasby J's

[110] Reasons, paras 77–79, 87, 90–91.
[111] *Bellatrix Exploration Ltd (Re)*, 2020 ABCA 178, paras 22–24 [Tab 39].
[112] *Bellatrix Exploration Ltd (Re)*, 2021 ABCA 148, paras 8–14 [Tab 40].
[113] *Forget v Quebec (Attorney General)*, [1988] 2 SCR 90, para 69 [Tab 41].

approach is supported by appellate authority[114] and therefore does not violate horizontal *stare decisis*.

62. The question of whether an agreement must be assessed in the context of the relevant market is not novel. Contract interpretation has long required consideration of objective surrounding circumstances, including the market or industry in which an agreement operates, as has been made clear by decisions of the Supreme Court of Canada and this Court.[115] The examination in earlier EFC cases of the North American markets and in this case of the Colombia market changes the evidence, not the governing rule.

63. The Applicants also incorrectly claim that Feasby J's findings on evidence are of significance to the practice. They did not establish that Feasby J forgot, ignored or misconceived the evidence in a way that affected his conclusion, and in any event, they did not file any expert evidence on a Colombian derivatives market, and failed to establish a palpable and overriding error in his factual determinations.

64. The Applicants' remaining complaints concern evidentiary findings. The Applicants adduced no expert evidence establishing an active Colombian derivatives market and identify no palpable and overriding error.

65. The Applicants' arguments regarding Colombian law are not significant to the practice. Decisions have already been made in the lower Court in these proceedings finding that matters of Colombian law must be left to the Superintendency.[116] Feasby J's Reasons succinctly state that the disclaimer could be heard by the CCAA Court because the Proceedings are recognized as the centre of main interest and the foreign main proceedings are in Canada. It is a matter for the Colombian Superintendency to determine whether to recognize the Disclaimer Orders.

66. CoreX argues that its challenge to the Monitor's approval of the disclaimers is significant to the practice. It is trite law that the Monitor's report and recommendations are part of the s. 32(4)

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[114] *Supra* note 40.
[115] *Ibid.*
[116] Transcript of the December 11, 2025, Decision of Justice Mah, p. 10, lines 3-16 [Tab 42]; Transcript of the March 5, 2026 Proceedings and Decision of Justice Bourque page 5, line 35–page 7, line 4 [Tab 43]

analysis and should be accorded deference.[117]

67. Nor does it matter that Feasby J was not the case management judge. This Court has cautioned against gradations of deference based on that distinction because they create an unwieldy element of appellate analysis.[118] Feasby J's expertise is also notable.

68. CoreX and GOC have shown no error in principle, unreasonable exercise of discretion, or manifest error in findings of fact. There is no palpable or overriding error. Feasby J's exercise of discretion and evidential findings are not significant to the practice.

E. IS THE POINT ON APPEAL SIGNIFICANT TO THE PROCEEDING AND PARTIES?

69. Since most proposed appeals are important to the parties, this factor is given lesser weight.[119] CoreX incorrectly alleges that no evidence was presented by Canacol that its Offtake Agreement needed to be disclaimed. Yet the Bednar Affidavit 9 and Reply Affidavit provide extensive evidence that the Commercial Offtake Agreements, which include CoreX's Offtake Agreements, were not economically viable and were an impediment to a successful restructuring.[120] Further, this factor focuses on the significance of the appellate issues to the proceeding, not on the significance of the agreement. The Disclaimer Orders are important because they remove obstacles to continued DIP funding and the completion of a restructuring. While this explains the Applicants' interest, it also magnifies the prejudice of granting leave where no serious and arguable errors have been shown. Canacol cannot recover the time, liquidity or bidder confidence lost to an appeal. In a situation where production is insufficient to satisfy all contracted demand, appellate review would only preserve the penalty and delivery framework that Feasby J found incompatible with restructuring. This factor therefore does not independently justify leave and must be weighed with the weak merits and immediate hindrance of the Proceedings.

70. In the 10th Report, the Monitor confirms that the extension of the DIP's maturity date does

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[117] *Nortel*, para 27; *Aralez*, para 36, *Aveos*, para 50(f); *Laurentian*, para 39; *Quest University*, paras 103–104; *Van de Perre*, para 10; *Housen*, para 72.
[118] *Bellatrix Exploration Ltd (Re)*, 2021 ABCA 85, para 10.
[119] *Athabasca*, para 20; *Pine Tree*, para 30.
[120] Bednar Affidavit 9, paras 18–33, 50–51, 63–65; Reply Affidavit, paras 21–27, 31–35.

not assure additional advances. Absent waiver, future advances require acceptable amendments to the Offtake Agreements or final and effective Disclaimer Orders and final Colombian recognition.[121] The Monitor conditions its liquidity assessment of Canacol on it obtaining waivers from the DIP Lenders to permit further funding.[122] The Applicants cannot rely on projected liquidity to establish that an appeal can be accommodated while disregarding the conditions underlying that projection. Neither previous advances nor the DIP Lenders' interests as creditors establish that they will finance additional delay. Speculation on Canacol obtaining additional advances is not evidence.

F. WILL THE APPEAL UNDULY HINDER THE PROGRESS OF THE ACTION?

71. Canacol's liquidity issues are real and critical. If the Disclaimer Orders are not upheld, it is likely that Canacol will be unable to make draws under the DIP, complete a going concern transaction under the SISP, continue operations or avoid piece-meal liquidation. The delay hinders the progress of the Proceedings, puts at risk any restructuring and recapitalization under the SISP, could result in extraordinary prejudice to Canacol, and could cause the disruptions to the supply of natural gas that the Applicants claim to oppose.

72. CoreX's position in Colombia undermines its assertion that recognition can proceed concurrently with an appeal. CoreX and Cerro Matoso requested that no Colombian recognition proceeding be convened pending the determination of the Applications. GOC supported that request.[123] The Monitor, by contrast, sought a priority recognition hearing and identified disclaimer and recognition delays as a principal cause of delay under the SISP.[124] The Court should give little weight to an assurance of concurrent progress from a party asking the recognizing court not to proceed. Read together with the DIP funding conditions, these developments identify a concrete risk to financing and transaction implementation, not merely inconvenience. The Applicants cannot establish that further appellate delay would be harmless while they seek the deferral of such recognition during their appellate process. Granting leave would prolong uncertainty over the relief

[121] 10th Report of the Monitor dated September 21, 2026 [**10th Report**], para 79(c), Tab 8, Canacol Compendium.
[122] 10th Report, paras 83, 114 & 118(b).
[123] Memorandum of Argument of CoreX, para 28(b); 10th Report, paras 35 & 42.
[124] 10th Report, paras 58 & 88(b).

required to complete the restructuring, without there being available funding under the DIP that would be required to sustain that delay.

PART 4 – RELIEF SOUGHT

73. Canacol respectfully submit that permission to appeal be denied, with costs payable to Canacol forthwith and in any event of the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of October, 2026.

GOWLING WLG (CANADA) LLP



Per: Clifton Prophet, Sam Gabor, Tom Cumming
Counsel for the Respondents on Appeal
Canacol

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