



Form 10
[Rule 3.25]

COURT FILE NUMBER: 2301-16781
COURT: COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE: CALGARY
PLAINTIFF(S): DAVID HOPEWELL
DEFENDANT(S): CANACOL ENERGY LTD. and
CHARLES GAMBA
DOCUMENT: **STATEMENT OF CLAIM**
Class Proceedings Act

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF THE
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DOCUMENT

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NOTE TO THE DEFENDANT(S):

You are being sued. You are the defendants.

Go to the end of this document to see what you can do and when you must do it.

DEFINED TERMS

1. In addition to the terms defined in ss. 1(1) and 138.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, and elsewhere herein, the following capitalized terms used throughout this Statement of Claim have the meanings indicated below:

- (a) “**Canacol**” means the Defendant Canacol Energy Ltd., a Reporting and Responsible Issuer in Ontario, Canada;
- (b) “**Class**” means all persons, other than Excluded Persons, who acquired Canacol’s common shares during the Class Period and who held some or all of those common shares until after the release of at least one of the Public Corrective Disclosures;
- (c) “**Class Period**” means March 27, 2023 through October 19, 2023, inclusive;
- (d) “**Company**” or “**CNE**” means Canacol Energy Ltd;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (f) “**CJA**” means the *Courts of Justice Act* R.S.O 1990, c C.43, as amended;
- (g) “**EPM**” means Empresas Publicas de Medellin E.S.P;
- (h) “**Excluded Persons**” means any of the Defendants, their executives, family members and business partners during the Class Period, and any business entities in which any family member of the Individual Defendant had a controlling interest during the Class Period;
- (i) “**Impugned Documents**” means the documents and statements released on March 27, May 11, and August 10, 2023;
- (j) “**MD&A**” means Management’s Discussion and Analysis;
- (k) “**Medellin Project**” means Canacol’s underground natural gas pipeline project extending close to 300 km between the Company’s Jobo gas processing facility and the City of Medellin, Columbia;
- (l) “**OSA**” means the *Securities Act*, R.S.O. 1990 c. S.5, as amended;
- (m) “**Public Corrective Disclosures**” means the material facts released to the market on October 19, 2023;
- (n) “**SETCO**” means Shanghai Engineering and Technology Corp., an influential person to CNE; and

- (o) “SIC” means the Superintendency of Industry and Commerce, the competition regulator in Colombia.

CAUSES OF ACTION

2. The causes of action asserted by the Plaintiff in this proceeding are:

(a) Canacol Energy Ltd:

- (i) Common law secondary market negligent misrepresentations; and
- (ii) If leave is granted pursuant to s. 211.03 of the *ASA* is granted, statutory secondary market negligent misrepresentations.

(b) Charles Gamba:

- (i) Common law secondary market negligent misrepresentations; and
- (ii) If leave is granted pursuant to s. 211.03 of the *ASA* is granted, statutory secondary market misrepresentations.

RELIEF CLAIMED

3. The Plaintiff claims on his own behalf and on behalf of the members of the Class, subject to further disclosures, discovery and due diligence:

- (a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff for the Class advancing the causes of action identified herein;
- (b) an order granting leave to pursue the statutory cause of action set out in s. 211.03 of the *ASA*;
- (c) a declaration that the Impugned Documents released by the Defendants contained misrepresentations related to the Company’s business, operations and finances because the documents omitted material facts;

- (d) subject to common law and the *ASA*, damages in a sum to be determined, or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (e) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (f) prejudgment and post-judgment interest;
- (g) costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, the costs of administering the plan of distribution of the recovery in this action; and
- (h) such further and other relief that this Honourable Court deems just.

NATURE OF THIS ACTION

4. Canacol is a natural gas exploration and production company incorporated pursuant to the laws of Alberta with its headquarters in Calgary, Alberta and with operations focused in Colombia and other locations in South America.

5. Canacol is a reporting issuer for the purposes of Ontario securities laws and subject to the continuous disclosure requirements of the *ASA*. The Corporation's shares are traded on the Toronto Stock Exchange under the symbol CNE and several foreign stock exchanges.

6. On August 30, 2021, Canacol announced that the Medellin Project contract (being negotiated for over 1-year) with the government of central Columbia, EPM, was signed. Under the terms of the contract, Canacol would deliver natural gas to EPM in Medellin starting on December 1, 2024, with an initial minimum volume of approximately 21 million standard cubic feet per day ("**MMscfpd**") escalating to approximately 54 MMscfpd on

December 1, 2025, and remaining at this level until the sales contract expired on November 30, 2035 .

7. Market participants viewed this as a positive material fact, which was followed by a positive market impact and an increased share price and corresponding bullish equity research reports published from Canadian banks, such as Eight Capital and Scotiabank.

8. On October 24, 2022, Canacol announced that it had executed an agreement with SETCO to construct a 289 km long, 22 inch diameter, gas pipeline from its Jobo gas processing facility (“**Jobo Station**”) south to the city of Medellin, Colombia.

9. Thereafter, *and as recently as September 2023*, Canacol only reported additional bullish material facts about the Medellin Project. Canacol never reported or published any negative material facts about the Medellin Project, its relationship with EPM, its relationship with SETCO, being investigated by the SIC for conduct that may have breached competition laws that could delay the Medellin Project (or cancelling the Medellin contract with EPM), the or the negotiations and process of the required environmental license from Columbia.

10. However, on October 19, 2023, Canacol published a news release reporting that it was cancelling its contract with EPM and disclosed that:

(a) Canacol still had not received the necessary environmental license, which it had expected to receive by July 2023; and

(b) Canacol observed “a pattern of ever increasing legal, social, and security obstacles that have arisen in the past months.”

11. The negative market impact of this Public Corrective Disclosure caused the price of Canacol’s shares to diminish from \$10.23 down to \$6.75, or a drop of 34%, erasing over \$118 million in market capitalization.

12. The Plaintiff and putative Class suffered a foreseeable economic loss from the market impact of the Public Corrective Disclosure contradicting the material fact statements released within the Impugned Documents, as defined below.

THE PLAINTIFF

13. David Hopewell is an investor who resides in Ontario, Canada. After reading sections of Canacol's 2Q 2023 MD&A and articles online and relying upon the accuracy of this information, on June 21-22 and September 18 and 22, 2023, he purchased several thousand shares of Canacol and suffered a loss by holding those securities until after the Public Corrective Disclosure on October 19, 2023.

THE DEFENDANTS

14. Canacol's head office is located at 2000, 215 - 9th Avenue SW, Calgary, Alberta, T2P 1K3, Canada. It is an Alberta based company with natural gas exploration and production operations focused in Colombia and other locations in South America.

15. Canacol owns CNE Oil and Gas (the first or second largest extracting company in Colombia, which also owns Cornamusa, a conventional gas development corporation located in Colombia), and Geoproduction Oil and Gas Co. Canacol is one of the largest suppliers from exploration, production, and supply of natural gas in Colombia, with approximately 50% of the market share. Canacol is considered one of the largest natural gas exploration and production companies in Colombia.

16. Canacol is a reporting issuer for purposes of Ontario securities laws and subject to the continuous disclosure requirements of the *OSA* and Part XXIII.1.

17. As of January 17, 2023, there were approximately 150.5 million shares outstanding then those shares were consolidated to reduce that number to approximately 35 million shares.

18. Charles Gamba (“**Mr. Gamba**”) was the CEO and President of Canacol at all relevant times. He signed certifications accompanying each of the Company’s quarterly filings throughout the Class Period which stated that the financial statements and MD&A were fairly stated and did not contain any untrue statements of material fact, when in fact they did.

THE TOTAL MIX OF INFORMATION

19. On **August 26, 2019**, Canacol reported that it was in negotiations with EPM for a 10 year take-or-pay natural gas sales contract that would use a new pipeline to deliver natural gas to Medellin, Columbia.

20. On **August 30, 2021**, Canacol released a non-core document and held an investor conference call, whereby it stated that it had finalized the contract with EPM. The total mix of information to the market included:

- (a) “Under the terms of the contract, Canacol will deliver gas to EPM in Medellin starting on December 1, 2024 with an initial minimum volume of approximately 21 MMscfpd escalating to approximately 54 MMscfpd on December 1, 2025, and remaining at this level until the sales contract expires on November 30, 2035;” and
- (b) Canacol would likely to pursue a build, own, operate, and maintain (“**BOOM**”) type contract based on the bids received for the project by November 2021. Under the terms of a BOOM contract, Canacol will not participate in the project, nor have any capital commitments associated

with the project, with the exception of the costs for the environmental license, “consulta privias”, and purchase of right of way, the costs of which will be reimbursed to Canacol by the BOOM contractor. In exchange for the investment made by the BOOM contractor, Canacol will execute a long term transportation agreement.

21. During the conference call, Canacol added the following material facts: (a) it would cost approximately \$450 million to build the gas pipe between the Jobo Station and Medellin; and (b) the environmental license permit would be submitted to the National Environmental Permitting Authority in Columbia.

22. On **December 15, 2021**, Canacol reported that it would be reimbursed for the Jobo Station and Medellin pipeline expenditures (approximately \$25 million from inception to 2022 year end) if a BOOM contractor were selected.

23. On **March 17, 2022**, Canacol reported in its F/2021 MD&A that for the remainder of 2022, it would engage in the process of selecting a contractor for the new gas pipeline from Jobo Station to Medellin which would add 100 MMscfpd (with expansion potential up to 200 MMscfpd) of new gas sales to the interior of Columbia in late 2024, *resulting in Canacol being responsible for 30% (up to 40%) of Colombia’s domestic gas supply.* (Emphasis added).

24. Independently, it was also reported that Canacol’s subsidiary CNE opened the consultation process with the National Environmental Licensing Authority (Autoridad Nacional de Licencias Ambientales “ANLA”), which hired Genius Engineering Corp., a Panamanian corporation, to engage Soluciones Ambientales Sociales S.A.S.

25. On **May 6, 2022**, Canacol reported that the Medellin Pipeline Project was declared a Project of Strategic National Interest by the Government of Colombia, as of March 30, 2022. This meant that Colombian state entities that had influence or jurisdiction over matters that impacted the project would have to support its efficient management and timely completion. Canacol reported that this designation should drastically improve the timing of the delivery of items critical to the project, including the issuance of the environmental license.

26. On **October 24, 2022**, Canacol published a news release reporting that it had executed an agreement with SETCO, *an unknown company with no publicly available profile*, to construct a 289 kilometer long 22 inch diameter gas pipeline from the Jobo gas processing facility to the city of Medellin (i.e., *a project considered to be an official national project of importance*). Under the terms of the agreement, SETCO was to be responsible for paying 100% of the cost of building the pipeline and would own, operate, and maintain the pipeline.

27. Canacol also reported that it would not own or pay for any part of the costs associated with the pipeline project, including its construction or operation. The Corporation's sole commitment under the agreement was to be limited to the execution of a transportation agreement whereby Canacol was guaranteed a minimum volume of gas at fixed prices over a ten year period.

28. SETCO's role took on a material and influential role to Canacol and the Medellin Pipeline Project. Going forward, From this date forward, Canacol was obligated to make continuous disclosures to the market about its relationship with and knowledge of SETCO.

29. Canacol omitted to disclose any new material facts relating to:

- (a) The negotiations or status of the environmental license;

- (b) The status of and ongoing progress/relationship with SETCO and its role; or
- (c) The status of its ongoing relationship with EPM.

30. This non-core document accompanying statements contained misrepresentations in that it intentionally omitted material facts relating to (a) the negotiations or status of the environmental license (which were materially delayed); (b) the status of its ongoing progress/relationship with SETCO and its role; or (c) the status of its ongoing progress and relationship with EPM.

31. On **November 10, 2022**, Canacol updated the total mix of information to the market about the Medellin Project and announced that under the terms of the agreement, SETCO would be responsible for paying 100% of the cost of building the pipeline and would own, operate, and maintain the pipeline, *including the reimbursement of the costs incurred by Canacol to date* (approximately \$12 million). Canacol would allegedly not own or pay any part of the costs associated with the pipeline project, including its construction or operation. *The agreement was conditional on the project obtaining an environmental license from the Colombian government.*

32. Canacol announced that allegedly its sole commitment under the agreement was limited to the execution of a transportation agreement whereby Canacol would pay a fixed fee for a certain volume of gas over a certain period of time. The Corporation has executed two 12-year take-or-pay gas sales contracts for a total volume of 75 MMscfpd going to Medellin through the pipeline and was negotiating additional long-term take-or-pay gas sales contracts with customers in the interior of Columbia. *Canacol stated that the pipeline was scheduled to start operation in December 2024; and previously indicated that its environmental license was expected by July 2023.* (Emphasis added).

33. As such, Canacol created the total mix of information about the Medellin Project's success on SETCO and that SETCO would reimburse Canacol for past costs, going forward costs, and that the whole agreement was conditional on obtaining an environmental license from the Colombian government.

34. This core document and accompanying non-core document's statements contained misrepresentations by omitting material facts relating to (a) the negotiations or status of the environmental license; (b) the status of and ongoing progress/relationship with SETCO and its role; or (c) the status of and the ongoing progress/relationship with EPM.

35. On **March 27, 2023**, Canacol released its F/2022 MD&A and Annual Information Form and thereby updated the total mix of information to the market about the Medellin Project, announcing that it expected to have its environmental license in August of 2023. While Canacol also reported that it has previously experienced delays with obtaining licenses from the Colombian government, it omitted to disclose the material facts relating to the then pending environmental license for the Medellin Project besides for pushing the anticipated date *from July to August 2023*.

36. Canacol omitted to disclose any new material facts relating to:

- (a) The negotiations or status of the environmental license application, including that it had not even filed the application as of that time;
- (b) The status of and ongoing progress/relationship with SETCO and its role;
- (c) The status of and ongoing progress/relationship with EPM; or
- (d) Any pending government investigation or legal disputes relating to the Medellin Project or its contract with the EPM.

37. Mr. Gamba (Canacol's CEO) provided certifications that Canacol's 2Q 2023 MD&A and Financial Statements released on SEDAR, core documents, together with all of their incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the Medellin pipeline. These certifications became an integral part of the total mix of information about the Company's business, capital, finances, and the Medellin Project.

38. These core documents and accompanying non-core documents contained misrepresentations by omitting material facts relating to (a) the negotiations or status of the environmental license; (b) the status of and ongoing progress/relationship with SETCO and its role; and (c) the status of and the ongoing progress/relationship with EPM.

39. On or about **April 13, 2023**, Canacol subsequently released core documents, i.e., quarterly MD&A, negligently omitted that its Canacol and EPM's offices in Columbia were the target of an unannounced concurrent-joint inspection by the SIC, the Colombian competition authority, for possible breaches of competition laws relating to the Medellin Project contract that could result in the Medellin Project being halted or, worse, cancelled.

40. On **May 11, 2023**, Canacol released its 1Q 2023 MD&A and financial results and thereby updated the total mix of information to the market about the Medellin Project, *announcing that it was "progressing the new gas pipeline project from Jobo to Medellin..."*.

Canacol with Mr. Gamba also hosted an investor conference call.

41. CNE omitted to disclose any new material facts relating to:

- (a) The negotiations or status of the environmental license, which the application was not even applied for as of this time;
- (b) The status of and ongoing progress/relationship with SETCO and its role;
- (c) The status of and ongoing progress/relationship with EPM; or

- (d) Any pending government investigation or legal disputes relating to the Medellin Project or its contract with the EPM.

42. Mr. Gamba provided certifications that the 2Q 2023 MD&A and Financial Statements released on SEDAR, core documents, together with all of their incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the Medellin pipeline. These certifications became an integral part of the total mix of information about the Company's business, capital, finances, and the Medellin Project.

43. This core document and accompanying non-core document's statements contained misrepresentations by omitting material facts relating to (a) the negotiations or status of the environmental license; (b) the status of and ongoing progress/relationship with SETCO and its role; and (c) the status of and the ongoing progress/relationship with EPM.

44. On **July 18, 2023**, Canacol, through CNEMED S.A.S., filed its application (Environmental Impact Assessment or Study) for the environmental license identified as the Jobo Medellin Gasduct. On **August 8, 2023**, the ANLA responded to Canacol's July 18, 2023 submission advising it that despite Canacol's views, it was required to engage consultation approvals from the several First Nations ("Indigenous Affairs or Partiality) Omega, Carupia, Santiago, and Loma de Piedra.

45. On **August 10, 2023**, Canacol published its 2Q 2023 Financial Results. Therein and relevant to this class action, it reported (updated the total mix of information into the market):

- (a) For the remainder of 2023, Canacol is focused on the following objectives... progressing the new gas pipeline project from Jobo to Medellin which will add 100 MMcfpd of new gas sales to the interior of Columbia, allowing Canacol to increase gas sales to over 300 MMcfpd...
- (b) Canacol is subject to several risk factors including, but not limited to: ... delay or cancellation of the construction of the Medellin pipeline (but no additional material facts were disclosed).

46. Canacol and Mr. Gamba omitted to disclose any new material facts (such as adverse material facts relating to the status of the environmental license) relating to:

- (a) The negotiations or status of the environmental license;
- (b) The status of and ongoing progress/relationship with SETCO and its role;
- (c) The status of and ongoing progress/relationship with EPM; or
- (d) Any pending government investigation or legal disputes relating to the Medellin Project or its contract with the EPM.

47. Mr. Gamba provided certifications that the 2Q 2023 MD&A and Financial Statements released on SEDAR, core documents, together with all of its incorporated documents, constituted full, true, and plain disclosure of all the material facts relating to the Medellin pipeline. These certifications became an integral part of the total mix of information about Canacol's business, capital, finances, and the Medellin Project.

48. This core document and accompanying non-core document's statements contained misrepresentations by omitting material facts relating to (a) the negotiations or status of the environmental license; (b) the status of and ongoing progress/relationship with SETCO and its role; or (c) the status of and the ongoing progress/relationship with EPM.

49. On **August 17, 2023**, Canacol published its F/2022 Environmental, Social, and Governance Report and therein, as of that date, continued to identify the Jobo-Medellin Project as one of its "successful consultation processes."

THE PUBLIC CORRECTIVE STATEMENTS

50. On **October 19, 2023**, Canacol published a news release with a market impact causing the price of Canacol's shares to decrease from \$10.23 down to \$6.75, a drop of

approximately 34%, representing a one-day loss to Canacol shareholders of approximately \$118 million (e.g., 34 million shares dropping by \$3.48 per share):

- (a) Canacol still had not received the necessary environmental license, which it had previously expected to receive by July 2023;
- (b) Canacol observed “a pattern of ever increasing legal, social, and security obstacles;”
- (c) Canacol was cancelling its 11-year contract with EPM; and
- (d) Canacol could cancel its contract with SETCO without any penalty.

51. Market participants viewed this as a negative material fact and change, which was followed by a negative market impact reflected by a decreased share price and corresponding bearish equity research reports published from investment banks:

- (a) Eight Capital. “With the pipeline cancelled, CNE loses a significant growth catalyst... With the market’s focus on the Jobo-Medellin pipeline, we believe it was not paying attention to other avenues...”
- (b) Jefferies. “We believe that this removes CNE’s main growth opportunity over the next 3 years... and reduce our 2025-2026 EBITDA estimates by an average 25%... This is very disappointing...”

52. On **November 9, 2023**, Canacol released its Q3 2023 financial statements and MD&A, disclosing further negative material facts about the Medellin Project and the cancellation of the contract with EPM:

- (a) Canacol could not provide assurances that there would be no penalties on the termination of the Medellin gas sales contract; and

- (b) the cumulative costs associated with the Medellin Project totaling \$32.6 million was expensed as impairment.

REAL AND SUBSTANTIAL CONNECTION WITH ALBERTA

53. The Plaintiff pleads that this action has a real and substantial connection with Alberta and for the application of Alberta substantive and procedural laws on behalf of all Class Members because:

- (a) Canacol is a responsible issuer in Alberta, meaning that it must comply with the *ASA*'s continuous disclosure regime by, *inter alia*, distributing its core and non-core documents in Alberta by filing them on Sedar.com;
- (b) Canacol's common shares trade in Alberta and were purchased by the plaintiff in Ontario on the Toronto Stock Exchange;
- (c) The plaintiff resides in Ontario;
- (d) The plaintiff read and relied upon Canacol's disclosure documents sent from Alberta to Ontario and made the decision to purchase Canacol shares in Ontario;
- (e) The plaintiff suffered his loss in Ontario; and
- (f) The plaintiff chooses to bring this class action in Alberta.

RELEVANT LEGISLATION, PLACE OF TRIAL AND JURY TRIAL

54. The Plaintiff pleads and relies upon the *CJA*, the *CPA*, and the *ASA*.

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Lawyers for the Plaintiff

NOTICE TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in this document.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at ^{Calgary} Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

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