

Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 90

Date: 20260210
Docket: 1701 07427
Registry: Calgary

Between:

CNOOC Petroleum North America ULC

Plaintiff

- and -

ITP SA, Sunstone Projects Ltd, and Wood Group Canada, Inc

Defendants

- and -

Surerus Pipeline Inc and Stresstech Engineering Inc and Thurber Engineering Ltd

Third Parties

**Ruling on Costs
of the
Associate Chief Justice
D.B. Nixon**

I. Introduction

[1] This is a ruling on costs following my decision in *CNOOC Petroleum North America ULC v ITP SA*, 2023 ABKB 689 [the *Privilege Application*] wherein I gave leave to the parties to speak to costs if they could not otherwise agree. The parties could not agree.

II. Background

[2] To understand the underlying application, reference must be made to another proceeding, *Association of Professional Engineers and Geoscientists of Alberta v Wood Group Canada Inc*, 2024 ABKB 603 [*APEGA Judicial Reviews*].

[3] CNOOC Petroleum North America ULC (“CNOOC”) and Wood Group Canada Inc (“Wood Group”) have largely agreed regarding the costs for the *Privilege Application*. However, there remains the issue of the cross examination of Marianne “Chuck” Davies, former general counsel for CNOOC.

[4] The affidavit of Ms. Davies was originally tendered in connection with Action 1901 18478. Wood Group cross-examined Ms. Davies’ on said affidavit, and it was relied on extensively by CNOOC and by CNOOC’s then corporate representative Mike Dlugan during the *Privilege Application*.

[5] Wood Group, although unsuccessful in the *APEGA Judicial Reviews* in seeking costs against CNOOC, reported at 2024 ABKB 638 [*APEGA Costs Decision*], argues that it is entitled to costs due to its success in the *Privilege Application*. CNOOC does not dispute that Wood Group was successful in the *Privilege Application*, but opposes Wood Group receiving costs for the cross-examination and transcripts of Ms. Davies, arguing that this is *res judicata* and double recovery for Wood Group.

III. Issue

[6] I must determine whether costs should be ordered in favour of Wood Group against CNOOC for the steps it took in cross-examining Ms. Davies in the APEGA matters.

IV. Analysis

A. The Law of Costs

[7] The framework for determining costs is set out in the *Alberta Rules of Court*, Alta Reg 124/2010 (the “*Rules*”). The default rule is that a successful party to an application is entitled to

an award of costs against the unsuccessful party payable forthwith, subject to the Court's general discretion under *Rule 10.31: Rules 10.29(1); McAllister v Calgary (City)*, 2021 ABCA 25 at paras 21-22.

[8] There are no particular constraints or rules relating to the application of these general rules. Determining costs fits within the broad discretion the Court has in making a costs award as per *Rules 10.31 and 10.33*. This discretion is of course subject to the need to act judicially on the facts of the case: *McAllister* at para 18.

[9] The primary purpose of a costs award is to partially indemnify the successful party for either defending a claim that proved unfounded or in pursuing a valid legal right: *McAllister* at para 33. Under *Rule 10.31(1)*, the trial judge holds considerable discretion in determining what constitutes reasonable and proper costs: *Barkwell v McDonald*, 2023 ABCA 87.

[10] The costs award need not be based on Schedule C, and Schedule C is not a mandated default method: *McAllister* at para 54. However, Schedule C does, in certain situations, have the “advantage of providing parties with greater certainty as to their exposure to costs, it is simple, efficient, and inexpensive to apply, and in many cases avoids the need for lengthy inquiries into and assessment of the appropriate level of costs”: *Barkwell* at para 53.

[11] The overriding issue is proportionality and reasonableness: *Barkwell* at paras 57 and 58.

B. Application of the Law to the Facts

[12] Wood Group argued that, despite the fact that Ms. Davies' original affidavit was tendered in relation to Action 1901 18478 for the judicial reviews, it was also relied on by CNOOC in relation to the *Privilege Application* as well as in an affidavit by CNOOC's then corporate representative. Wood Group has claimed that, due to CNOOC's reliance on the affidavit in response to the *Privilege Application*, the steps to cross-examine her were “necessarily an incidental component of addressing the substantive issue”. Wood Group also claims that in a letter sent by CNOOC's counsel while arguing the costs in the judicial reviews application, that the costs for the cross-examination of Ms. Davies should be recoverable in this action and not the other one.

[13] In contrast, CNOOC argues that this issue is *res judicata*. CNOOC further argues that there is no jurisprudence or support in the *Rules* for Wood Group's request in this case. CNOOC emphasises that Wood Group had already included the cross-examination of Ms. Davies in its costs requests for the *APEGA Costs Decision*. Wood Group was denied costs in that decision. Finally, CNOOC highlights the large difference between the costs award in this action as it would be under Schedule C Column 5 times four, as opposed to the Column 1 costs of the *APEGA Costs Decision*.

[14] Based on my review of the law and the facts, I am of the view that Wood Group should not be awarded the costs of the cross-examination of Ms. Davies.

[15] I do not accept CNOOC's argument that the costs argument as such is *res judicata*. Instead, I consider the fact that Wood Group had sought the costs for the cross-examination of Ms. Davies following the *APEGA Judicial Reviews*, and that it was dismissed (along with the rest of the costs sought by Wood Group against CNOOC) as a part of the factors informing my determination of whether the costs should be awarded.

[16] I also note that the costs under the *APEGA Costs Decision* were under Colum 1 of Schedule C, whereas the costs now being sought by Wood Group are in the regular multiplier agreed to by the parties in the main action 1701 07427, at Column 5 at a four times multiplier.

[17] Finally, I do not read the letter from CNOOC's counsel as stating that Wood Group should be receiving the costs in the *Privilege Application*. Instead, the letter states that *if* Wood Group was awarded costs for the *APEGA Judicial Review*, then those costs should be dealt with under the *Privilege Application*. As such, I do not find that letter determinative for an agreement that the steps to cross-examine Ms. Davies should be included in the *Privilege Application*.

[18] As per my discretion regarding costs determinations pursuant to the *Rules*, I do not find it appropriate to grant costs to Wood Group for the Ms. Davies cross-examination.

V. Conclusion

[19] Based on my review of the evidence and analysis of the law, I find that this was a case of mixed success for the parties and therefore each party shall bear their own costs. Given that determination, no costs will be ordered in favour of Wood Group against CNOOC for the steps it took in cross-examining Ms. Davies in the APEGA matters.

[20] I thank the parties for their submissions throughout.

Dated at the City of Calgary, Alberta this 10th day of February 2026.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Robert Martz
for the Plaintiff CNOOC Petroleum North America ULC

Mathieu LaFleche
for the Defendant Wood Group Canada Inc