Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 164

Date: 20260305
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, Stresstech Engineering Inc, and Thurber Engineering Ltd

Third Party

Reasons for Decision
of the
Associate Chief Justice
D.B. Nixon

I. Introduction

[1] The underlying action involves a pipeline failure on July 15, 2015 (the "Pipeline Failure"). In its capacity as the Plaintiff, CNOOC Petroleum North America ULC ("CNOOC Canada") issued a Statement of Claim against several parties, including Sunstone Projects Ltd and Wood Group Canada, Inc (collectively, the "Wood Group") and ITP SA ("ITP").

[2] This is a complex litigation matter that I have been case managing for some years during which several applications have been filed by the parties. This decision involves applications from Wood Group seeking to compel responses to undertakings from CNOOC Canada concerning the questioning of its corporate representative Sean Noe on June 23 and 25, 2025.

II. Issue

[3] Is CNOOC Canada required to respond to any of the undertaking requests from Wood Group?

III. The Law

[4] I begin with a brief review of the principles undergirding disclosure. These are outlined in Part 5 of the *Alberta Rules of Court* ("*Rules*") as follows:

> 5.1(1) Within the context of rule 1.2, the purpose of this Part is
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> (a) to obtain evidence that will be relied on in the action,
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> (b) to narrow and define the issues between parties,
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> (c) to encourage early disclosure of facts and records,
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> (d) to facilitate evaluation of the parties' positions and, if possible, resolution of issues in dispute, and
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> (e) to discourage conduct that unnecessarily or improperly delays proceedings or unnecessarily increases the cost of them.
>
> (2) The Court may give directions or make any order necessary to achieve the purpose of this Part.

[5] As described by the Court of Appeal in ***McElhone v Indus School***, 2019 ABCA 97:

> [18] [...] The discovery provisions in Part 5 arise from the foundational principle that lawsuits should be decided on the merits. A party must disclose all relevant and material records and answer all relevant and material questions, whether helpful or unhelpful. [...]

[6] What is considered relevant or material is set out in *Rule* 5.2:

> 5.2(1) For the purposes of this Part, a question, record or information is relevant and material only if the answer to the question, or the record or information, could reasonably be expected
>
> (a) to significantly help determine one or more of the issues raised in the pleadings, or

> (b) to ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings.
>
> (2) The disclosure or production of a record under this Division is not, by reason of that fact alone, to be considered as an agreement or acknowledgment that the record is admissible or relevant and material.

[7] The pleadings are the starting point for determining relevance and materiality, along with the context and nature of the claim: ***Brookdale International v Crescent Point Energy***, 2023 ABKB 120 at para 17; ***Weatherill (Estate of) v Weatherill***, 2003 ABQB 69 at paras 16 and 17.

[8] *Rule* 5.25 sets out which questions must be answered, stating:

> 5.25(1) During questioning, a person is required to answer only
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> (a) relevant and material questions, and
>
> (b) questions in respect of which an objection is not upheld under subrule (2).
>
> (2) A party or a witness being questioned may object to an oral or written question during questioning but only for one or more of the following reasons:
>
> (a) privilege;
>
> (b) the question is not relevant and material;
>
> (c) the question is unreasonable or unnecessary;
>
> (d) any other ground recognized at law.
>
> (3) A corporate representative may object to an oral or written question during questioning on the basis that it would be unduly onerous for the corporate representative to inform himself or herself in the circumstances.

[9] Further, the permissible scope of discovery is important to consider. In summarising the case of ***Tolko Industries Ltd v RaiLink Ltd***, 2003 ABQB 349. Justice Horner in ***Brookdale International*** notes:

> [28] Justice Slatter considered the permissible scope of questions at discovery. One of the issues arose from questions relating to the pleadings. The format of the two questions in ***Tolko*** was "Provide whatever information Tolko has that relates to the [allegations in paragraph of the pleadings]." Justice Slatter held that the Plaintiff was justified in refusing to give these two undertakings because it was a single compendious question about all the detailed allegations in the specific paragraph of the pleadings, rather than a question of fact about particular allegations in the Statement of Claim: ***Tolko*** at paras 22, 26-28.

[10] Although there is caselaw which suggests that there are major distinctions between primary, secondary, and tertiary evidence, this is not determinative. Instead, the question for Part 5 of the *Rules* remains whether the records are relevant and material: ***Kaddoura v Hanson***, 2015 ABCA 154 at paras 14-15.

[11] Part 5 of the *Rules* also provides that discovery can be used for the purposes of gaining admissions, regardless of whether the questioning party may already know the answer to a

question: ***Kaddoura*** at para 16; ***Cabin Ridge Project Limited v Alberta***, 2025 ABCA 53 at para 25.

[12] Bearing these principles in mind, I turn to consider the requests for compelling responses to the refused undertakings.

IV. Analysis

[13] Many of the refused undertaking requests are similar in nature and the parties grouped them together in their submissions. I shall do the same in these reasons. Further, a few of the refused undertaking requests have since been resolved between the parties and as such I shall not address them in these reasons.

A. Undertakings 884 and 885

[14] Undertaking 884 asks CNOOC Canada to make inquiries of China Petroleum Pipeline Engineering Company, Ltd ("CPPCo") as to whether it provided the report at CNC00123563 to either CNOOC Limited or CNOOC Research Institute Ltd ("CNOOC Research Institute"). If the report was so provided, Wood Group asks for the relevant transmittal documents.

[15] In response, CNOOC Canada argues that it is not required to ask for this information of a third-party. It acknowledges that it has done so in the past, but asserts it is stopping this practice because it believes discovery must end and it is now time to prepare for the trial.

[16] In contrast, Wood Group argues that CNOOC Canada should be speaking to its contractor because it paid for the study at issue. According to the affidavit of Wood Group's corporate representative, CNOOC Canada also claims that cost from Wood Group. In the circumstances, Wood Group argues that it would be more efficient for CNOOC Canada to gather this information.

[17] Based on my review of the evidence and analysis of the law, I am of the view that Undertaking 884 was appropriately refused. I make this determination because I was provided with no evidence that CPPCo and the CNOOC affiliated entities described in greater detail below were under common control. This is distinct from the situation dealt with in my previous decision reported at ***CNOOC Petroleum North America ULC v ITP SA***, 2025 ABKB 360 [the ***CNOOC Affiliate Decision***].

[18] CNOOC Canada has acknowledge that it provided this sort of information in the past, however, based on the evidence I find that CPPCo is an arm's length third-party. In those circumstances, CNOOC Canada is not obligated to ask CPPCo for this information. While Wood Group is correct that it likely would be more efficient, there is no obligation for CNOOC Canada to acquiesce to the query in this instance.

[19] Undertaking 885 asks CNOOC Canada to make inquiries of CNOOC Limited and CNOOC Research Institute to ask them whether they received the report at CNC00123563. If either CNOOC Limited or CNOOC Research Institute did receive the report, CNOOC Canada is asked to inquire as to what use was made of it. In particular, they are asked as to whether there was any analysis concerning the polyurethane rigid ("PUR") pipeline or the pipe-in-pipe pipeline options. Wood Group requested any responses to those inquiries, as well as the name of the person providing the firsthand information.

[20] Without admitting the relevance and materiality of Undertaking 885, CNOOC Canada agreed to make the inquiries of CNOOC Limited and CNOOC Research Institute and to inform what use was made of the report. However, CNOOC Canada refuses to advance the request for "any analysis of whether to do a PUR pipeline or a pipe-in-pipe pipeline" on the premise that it is unclear and overly broad, and that the remainder of the request is not relevant or material.

[21] Wood Group argues that it is not overly broad because it speaks to what information CNOOC Limited and CNOOC Research Institute had when choosing the pipe-in-pipe pipeline.

[22] Based on my review of the evidence and analysis of the law, I am of the view that the balance of Undertaking 885 is appropriately refused. I make this determination because the request for any analysis is overly broad, and CNOOC Canada's acceptance to share what use was made of the report, if received, would provide the requested records on what information CNOOC Limited and CNOOC Research Institute had when choosing the pipe-in-pipe pipeline.

B. Undertakings 890-892

[23] Undertakings 890 to 892 generally asked CNOOC Canada to advise whether the various entities that worked on replacing the pipelines were competitive bids or sole sourced. Undertakings 891 and 892 go on to ask who made the selection and what criteria were used in making that selection, including whether other businesses were considered for the work.

[24] CNOOC Canada advised that these were competitive bids but refused the balance of the Undertaking Requests. It argued that the additional inquiries were not relevant or material to a damages assessment or mitigation efforts.

[25] In contrast, Wood Group argued that the inquiries were relevant to assess the reasonableness of mitigation efforts.

[26] Based on my review of the evidence and analysis of the law, I find that CNOOC Canada must respond to the balance of Undertakings 890-892. I make this determination because who made the selection, what criteria were used, and whether other businesses were considered for the work is relevant and material to the issue of whether the damages claimed by CNOOC Canada were reasonable.

C. Undertaking 893

[27] This Undertaking asks that the following inquiries be made:

> Make inquiries of CNOOC Limited regarding their information as to who within CNOOC Limited made the decision to use a pipe-in-pipe pipeline, by name; also advise what factors those individuals considered in making that decision, as well as whether anyone at the meeting of members of CNOOC Limited's senior management as discussed in response to Undertaking 481 disagreed with the decision. Also make inquiries regarding what information those individuals recall having about the viability of a PUR pipeline, and whether any of those individuals at the meeting believed or understood that a PUR pipeline was technologically feasible. Also advise as to whether those individuals understood that the consensus view amongst CNOOC North America and the individuals involved in recommending a replacement pipeline was that the PUR pipeline was technically feasible for the task. To the extent there are answers provided, advise as to the names of the individuals who are providing the firsthand information.

[28] CNOOC Canada argues that this information is not relevant or material to a damages assessment or mitigation efforts, and the efforts to locate the requested information are unduly onerous and not proportional. In contrast, Wood Group argues that it is relevant for mitigation.

[29] Based on my review of the evidence and analysis of the law, I find that Undertaking 893 needs to be responded to in part. CNOOC Canada is to make inquiries of CNOOC Limited regarding who made the decision as well as the roles of those individuals within the organization. I make this determination because I am of the view that the information sought is relevant to the mitigation efforts asserted by CNOOC Canada. However, the rest of the undertaking is appropriately refused as being overly broad and not relevant for the issue of damages.

D. Undertaking 896

[30] Undertaking 896 asks CNOOC Canada to advise, and inquire of CNOOC Limited, if necessary, about what steps were taken to prevent a conflict of interest with CNOOC Research Institute. I infer this question was posed because CNOOC Research Institute performed the front-end engineering design ("FEED") work on the replacement pipe-in-pipe pipeline.

[31] CNOOC Canada argues that this inquiry is not relevant or material. It also asserts that the inquiry is premised on the incorrect factual assumption that there was a conflict of interest between the two distinct, separate corporate entities.

[32] Wood Group argues that it is relevant to the mitigation efforts. Wood Group also asserts that since CNOOC Research Institute is an entity affiliated with both CNOOC Canada and CNOOC Limited, there is a natural conflict of interest.

[33] In addressing the refusal of CNOOC Canada to answer Undertaking 896, the ownership structure of the relevant CNOOC entities provides important context. CNOOC Canada is an indirect wholly owned subsidiary of CNOOC Limited, operating as CNOOC Limited's business unit in North American. China Ocean Oil Group Co, Ltd ("COOGC"), formerly named China National Offshore Oil Corporation, in turn controls CNOOC Limited and its subsidiaries. COOGC also wholly owns CNOOC Research Institute.

[34] Given this ownership structure, it is evident that there is common control of CNOOC Canada, CNOOC Limited, and CNOOC Research Institute. While there may not be a conflict of interest in fact, the potential for a conflict of interest is evident. I make this comment because the common control of all these entities means the transactions amongst them are, by definition, not at arm's length. The fact they are legally distinct entities, as I found in my decision reported at ***CNOOC Affiliate Decision*** at paras 26-28, does not change that the transactions are not at arm's length. As noted in that decision, the entities appear to be interrelated, and the potential of conflict of interest is relevant and material.

[35] In contrast to arm's length transactions, non-arm's length transactions generally warrant extra due diligence. The primary reason for the need for extra due diligence is the increased risk of conflicts of interest because of the potential for favorable or unfavorable terms, depending on the circumstances. That is why non-arm's length transactions are subject to greater scrutiny from, for example, regulatory bodies, tax authorities, and auditors: ***Swiss Bank Corp v MNR***, [1974] S.C.R. 1144, at p 1152; ***Canada v McLarty***, 2008 SCC 26 at para 43; ***Piikani Energy Corporation (Re)***, 2013 ABCA 293 at paras 20-30.

[36] Given the apparent common control of CNOOC Canada, CNOOC Limited, and CNOOC Research Institute, there is a potential conflict of interest unless those entities provide evidence

to the contrary. No such evidence has been provided. As such, Wood Group is not making an assumption of fact, but instead pointing to the potential of conflict of interest due to the ownership structure of the relevant CNOOC entities. This does not presuppose that there is a conflict or that the apparent non-arms length transactions are suspect. However, for the purposes of discovery, Wood Group need only demonstrate that the query is relevant and material for the issues in this case. I find that this question is relevant and material. That being the case, Wood Group is entitled to pursue this line of questioning.

[37] Based on my review of the evidence and analysis of the law, I am of the view that Undertaking 896 needs to be responded to by CNOOC Canada. I make this determination because there is no evidence that the potential conflict of interest within this corporate group, all of which is controlled by COOGC, was considered or addressed. For the purposes of discovery, this is a relevant and material question to ask. As a result, Undertaking 896 is relevant and material to the damages assessment because it touches on the mitigation issue.

E. Undertakings 899-901 and 904-906

[38] Undertakings 899-901 and 904-906 seek inquiries of either CNOOC Canada or CNOOC Limited as to why CNOOC Research Institute was awarded the contract for performing the FEED work on the replacement pipe-in-pipe pipeline. The Undertakings also inquire as to what knowledge the decisionmaker had about CNOOC Research Institute's expertise, the regulatory environment, and how the work compared to CH2M Hill, the company originally planned to take on this work, when this contract was awarded.

[39] CNOOC Canada argues that none of these undertaking requests are relevant or material to assess either damages or mitigation. In contrast, Wood Group argues this all goes directly to the question of the reasonableness of the mitigation efforts.

[40] Based on my review of the evidence and analysis of the law, I am of the view that Undertaking 899 must be answered. I make this determination because an enquiry to CNOOC Canada as to what factors were considered in making the selection to award the contract to CNOOC Research Institute is relevant and material in this context. This inquiry is a parallel to Undertakings 890-892 above, which I determined to be relevant and material.

[41] Based on my review of the evidence and analysis of the law, I am of the view that Undertaking 906 must be answered. I make this determination because this query involves non-arm's length parties, which generally warrant extra due diligence. Given that context, it is reasonable to ask CNOOC Canada to advise, and inquire of CNOOC Limited, as to whether the decisionmaker requested or conducted a review of their decision to select CNOOC Research Institute for this work. It also was reasonable to ask whether CNOOC Canada or CNOOC Limited had a third party conduct a review of this decision or scrutinize whether this was a reasonable decision. Such probing is relevant and material to the issues of mitigation and must be responded to by CNOOC Canada and CNOOC Limited, as appropriate.

[42] The other undertaking requests in this batch are appropriately refused and need not be responded to by CNOOC Canada or CNOOC Limited.

F. Undertakings 907-921

[43] For Undertakings 907 to 921 (excluding Undertaking 909 since it has been resolved), Wood Group asks that inquiries be made as to whether individuals at CNOOC Canada have the memory or information as to who made the decision to retain COOEC Canada Company Ltd

("COOEC Canada"), even if that information is not contained in records, and advise same, and then several follow-up questions in regard to the work COOEC Canada had done and the decisionmaker who retained COOEC Canada. COOEC Canada is the subsidiary of Offshore Oil Engineering Co, Ltd ("COOEC China") which is controlled by COOGC.

[44] As part of these asks, Undertaking 910 requests that inquiries be made of the decisionmaker and to advise what steps were taken to ensure that there was no conflict of interest in awarding the "Engineering, Procurement and Construction Management" services contract ("EPCM Contract") to COOEC Canada. I infer that this query was posed because the evidence indicates that the COOEC Canada business unit and CNOOC Canada are under common control. I also note that the follow-up Undertakings include queries: (i) as to whether COOEC Canada provided an estimate of costs or a budget before being awarded the EPCM Contract; (ii) as to whether COOEC Canada provided a construction timeline prior to being awarded the EPCM Contract; (iii) as to whether other EPCM companies were considered; and (iv) as to whether there was any review of the decision to award the sole source contract.

[45] CNOOC Canada points to the response to Undertaking 9 of Scott Scovill to emphasize that it has not been able to identify who the decisionmaker was who retained COOEC Canada. As such, it cannot respond to these follow-up questions.

[46] In contrast, Wood Group argues that these questions are relevant and material. That being the case, Wood Group asserts that CNOOC Canada should expend more effort to determine who made this decision.

[47] In addressing the refusal of CNOOC Canada to answer Undertakings 907 to 921, the ownership structure of the relevant COOEC entities provides important context. The relevant ownership structure and some additional context is as follows.

a. COOEC China is controlled by COOGC.

b. COOEC China is the parent company of COOEC Canada. The evidence indicates that COOEC Canada is the business operating centre in North America for COOEC China.

c. COOEC Canada was the general construction contractor for the pipe replacement project. Indeed, it was granted a sole source contract to complete the construction of the replacement pipelines.

[48] Given the above-mentioned ownership structure, it is evident that there is common control of CNOOC Canada, COOEC China, and COOEC Canada. While there may not be a conflict of interest in fact, the potential for there to be a conflict of interest is evident. As I mentioned above in a different context, the common control of all these entities means the transactions amongst them are, by definition, not at arm's length.

[49] I commented above concerning the need to be vigilant when common control exists. I reiterate, non-arm's length transactions generally warrant extra due diligence.

[50] While I acknowledge that no record has been located as to who the decision maker was concerning the choice to retain COOEC Canada, that does not end the inquiry in these circumstances. I make this determination because of the common control issue, which puts a different twist on the award of the EPCM Contract to COOEC Canada on a sole source basis. Given the common control of CNOOC Canada, COOEC China, and COOEC Canada, the

potential of a conflict of interest remains unless the subject entities provide evidence to the contrary. No such evidence has been provided. The question is therefore relevant and material for the purposes of discovery.

[51] Based on my review of the evidence and analysis of the law, I am of the view that Undertakings 907 and 908 need to be responded to by CNOOC Canada. The scope of that probe is to be focused on whether individuals within the non-arm's length group of CNOOC entities have any memory or information as to who made the decision to retain COOEC Canada. Given the magnitude of the EPCM Contract, despite the lack of any written records, it is reasonable to probe whether someone within the CNOOC corporate group had some knowledge or recollection of who made the decision to award it to COOEC Canada.

[52] If a decision maker is then identified via Undertakings 907 and/or 908, then CNOOC Canada is directed to respond to the follow-up undertaking requests. CNOOC Canada is not required to respond, however, to Undertaking Requests 914; 915; 918 and 920, for similar reasons as the 899-901; 904-906 batch above, as the knowledge of the decisionmaker and/or COOEC is not relevant or material.

G. Undertaking 865

[53] In previous questioning of Mr. Noe, in response to Undertaking Number 397, CNOOC Canada advised that it could not determine what policies and procedures it had in place for the pipelines at issue. Following the Pipeline Failure, however, CNOOC Canada advised the Alberta Energy Regulator ("AER"), in response to a request to produce all procedures utilised on the pipeline, about certain start-up procedures, shut-down procedures and procedures for temperature or pressure changes of the produced emulsion pipeline called the K1A (the "PE Pipeline")

[54] Undertaking 865 asks CNOOC Canada to determine and advise how it identified which procedures were utilised in respect of the PE Pipeline. The procedures of interest were those identified and then communicated to the AER.

[55] CNOOC Canada argues that this is not relevant or material. It apparently takes that position because there is no allegation that it misled the AER.

[56] In contrast, Wood Group argues that it is relevant and material because CNOOC Canada had previously identified documents. The problem is that CNOOC Canada now says it cannot identify (or locate) those documents.

[57] Based on my review of the evidence and analysis of the law, I am of the view that Undertaking 865 must be responded to by CNOOC Canada. I make this determination because the query is focused on the previous response to the AER, which suggested that CNOOC Canada had information responsive to the Undertaking 865. For some reason, the CNOOC Canada response appears to have shifted. There is no suggestion that the AER was misled, and the assertion that this is an allegation of misconduct is not relevant to the query posed by Wood Group. In my view, the inquiry is relevant and material to the claims at issue.

V. Conclusion

[58] In conclusion, based on the evidence before me and my analysis of the law, CNOOC Canada is required to respond to the Undertakings as I directed above. The other Undertakings do not need to be responded to because they were appropriately refused.

VI. Costs

[59] The parties may speak to costs if they cannot otherwise agree.

Heard on the 3rd day of February 2026.
Dated at the City of Calgary, Alberta this 5th day of March 2026.

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

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