

# In the Court of Appeal of Alberta

**Citation: CNOOC Petroleum North America ULC v Sunstone Projects Ltd, 2026 ABCA 44**

**Date:** 20260217

**Docket:** 2501-0198AC

2501-0374AC

**Registry:** Calgary

**Between:**

**CNOOC Petroleum North America ULC,  
China Ocean Oil Group Co. Ltd., CNOOC Limited,  
CNOOC Research Institute Ltd., Offshore Oil Engineering Co. Ltd.,  
COOEC Canada Co. Ltd. and CenerTech Canada Ltd.**

Respondents

- and -

**Sunstone Projects Ltd. and Wood Group Canada, Inc.**

Appellants

- and -

**ITP SA and Stresstech Engineering Inc.**

Not Parties to the Appeal

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**The Court:**

**The Honourable Justice Jolaine Antonio  
The Honourable Justice Anne Kirker  
The Honourable Justice Jane Fagnan**

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## **Memorandum of Judgment**

Appeal from the Order of  
The Honourable Associate Chief Justice D.B. Nixon  
Dated the 11th day of June, 2025  
Filed on the 16th day of July, 2025  
(2025 ABKB 360, Docket: 1701-07427)

Appeal from the Costs Order of  
The Honourable Associate Chief Justice D.B. Nixon  
Dated the 15th day of December, 2025  
(2025 ABKB 748, Docket: 1701-07427)

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## Memorandum of Judgment

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### The Court:

[1] In the underlying action, the respondent, CNOOC Petroleum North America ULC (“CNOOC NA”), alleges the appellants, Sunstone Projects Ltd and Wood Group Canada Inc, failed to properly design and oversee the construction of two pipelines. One of the pipelines failed in 2015. The litigation has been ongoing since 2017 and has been in case management for several years. The matter is scheduled for trial in October 2026.

[2] In late 2024, the appellants applied under rules 5.11 and 5.13 of the *Alberta Rules of Court*, Alta Reg 124/2010 for an order directing CNOOC NA and the other respondents to produce various records in the possession of the other respondents related to replacement of the two pipelines. The appellants also sought an order directing the other respondents to appoint corporate representatives for questioning. Each of the other respondents (collectively, the “CNOOC Affiliates”) are affiliated with CNOOC NA, but none are parties to the underlying action. The appellants submit that the CNOOC Affiliates were involved in making decisions regarding replacement of the pipelines and have records related to those decisions and that work.

[3] The case management judge denied the application: *CNOOC Petroleum North America ULC v ITP SA*, 2025 ABKB 360 [*Chambers Decision*]. He refused to order production of the records from CNOOC NA under rule 5.11, because he was not satisfied CNOOC NA had control over the records sought, or that there was any basis to “pierce (or lift) the corporate veil”: *Chambers Decision* at para 27. He also refused to order production from the CNOOC Affiliates under rule 5.13, as the records sought had not been sufficiently particularized. Questioning of the CNOOC Affiliates under rule 5.18 was denied because the case management judge was not satisfied those entities had a “near employee” relationship with CNOOC NA: *Chambers Decision* at para 38.

[4] The appellants take issue with the case management judge’s decision on grounds he misinterpreted the applicable rules and erred in applying them to the facts.

[5] Under rule 5.11(1)(a), the court may order a record produced if it is satisfied “a relevant and material record under the control of a party has been omitted from an affidavit of records”. The appellants argue the case management judge ought to have found that CNOOC NA had “control” over the records possessed by the CNOOC Affiliates, because CNOOC NA had contractual audit rights allowing it access to those records and there was operational integration between CNOOC NA and the CNOOC Affiliates.

[6] A party has “control” over a record held by a non-party where it has a legal right to access or get copies of it: *Elhert v Sailer*, 2023 ABCA 371 at para 26; *McAllister v Calgary (City)*, 2012 ABCA 346 at paras 6-8 [*McAllister*]. “The right to access records in the hands of a non-party might arise in a number of ways, including by contract, by statute, at common law or at equity”: *McAllister* at para 6. That a party may be able to request a record from a non-party because of an existing relationship between them is not enough. There must be a corresponding ability to enforce compliance with the request for the party to have “control” over the record: *McAllister* at para 7.

[7] The case management judge in this case was not satisfied control had been established. In his view, the contractually limited ability to request records for the purposes of an audit did not give CNOOC NA the right to access the records for the purposes of the litigation. On the evidence before him, the case management judge found this would grant “greater power and meaning” to the contractual audit rights “than that anticipated by the parties”: *Chambers Decision* at para 28. The case management judge’s interpretation of the contractual audit provisions is owed deference on appeal, absent palpable and overriding error: *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 at paras 28-29; *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at paras 43-55. As to the appellants’ argument that CNOOC NA had control over the records because it was part of a “closely integrated corporate group”, the case management judge was not convinced he could ignore that the CNOOC Affiliates are separate legal persons. He was not persuaded that CNOOC NA “actually controls any of the bodies corporate within the CNOOC Affiliated Entities”: *Chambers Decision* at para 26. This is a factual determination that also attracts deference. The appellants have not identified a palpable and overriding error in either regard.

[8] Under rule 5.13(1), the court may order a non-party to produce a record if it is under their control, there is reason to believe it is relevant and material, and they might be required to produce it at trial. Production under this rule is “related to specific documents” and is “not a form of discovery of a non-party”: *Esso Resources Canada Limited v Lloyd’s Underwriters & Companies*, 1990 ABCA 144 at para 13; see also *CNOOC Petroleum North America ULC v 801 Seventh Inc*, 2023 ABCA 97 at paras 27, 42 [*801 Seventh*]. The case management judge held the request for records was “overly broad” and not sufficiently particularized, amounting to “document discovery of” the non-party CNOOC Affiliates: *Chambers Decision* at para 33. The appellants disagree, arguing their “requests were tied to named entities, specific contracts, and discrete decisions about a specific project”. Again, no reviewable error has been identified. The case management judge reasonably concluded that the appellants’ requests for “all supporting documentation”, “all records identifying”, and “any records concerning” were not sufficiently specific in the circumstances.

[9] Under rule 5.18, a party may question “a person who has provided services for” a corporate party, subject to certain requirements. Generally speaking, the “person being examined must have some sort of connection with the corporate party akin to that of an employee or officer”: *801 Seventh* at para 32, citing *Hunka v Waiward Steel Fabricators Ltd*, 2011 ABCA 142 at para 21.

The appellant argues the requisite connection exists in this case, as the CNOOC Affiliates performed core project functions including engineering, procurement, construction, fabrication, and technical analysis. The case management judge did not agree. He considered that argument and the underlying evidence and concluded the appellants had “not demonstrated ... on the evidence presented that there is a ‘near employee’ relationship between CNOOC Canada and any one of the CNOOC Affiliated Entities”: *Chambers Decision* at para 38. The appellants have not identified any reviewable error.

[10] The appellants also take issue with the fact that the case management judge stated in his reasons that records not disclosed by CNOOC NA “within the currently ongoing discovery period” would “not be admissible during the trial proper” absent the court’s permission (*Chambers Decision* at para 42) without reflecting that statement in the resulting formal order. The case management judge did not err in this regard. His reasons reflected no more than what is set out in rule 5.16: “A party who ... does not disclose a relevant and material record ... may not afterwards use the record in evidence in the action unless the parties otherwise agree or the Court otherwise orders on the basis that there was a sufficient reason for the failure to disclose”. The case management judge did not need to reiterate this rule in his order.

[11] The appellants also appeal the costs awarded to three of the CNOOC Affiliates – Offshore Oil Engineering Co. Ltd., COOEC Canada Co. Ltd., and CenerTech Canada Ltd. The case management judge awarded each of the three entities their own set of costs for the application, at four times Column 5 of the Schedule C tariff, despite the fact that all three were represented by the same counsel: *CNOOC Petroleum North America ULC v ITP SA*, 2025 ABKB 748 [*Costs Decision*]. The appellants argue the case management judge failed to articulate the parameters governing his discretion, failed to apply core efficiency and proportionality principles, and improperly rewarded unnecessary duplication.

[12] However, citing *Barkwell v McDonald*, 2023 ABCA 87 at paras 57-58, leave to appeal to SCC dismissed, 40742 (2 November 2023), the case management judge properly recognized that the “overriding issue is proportionality”: *Costs Decision* at para 15. With proportionality and reasonableness in mind, he determined it was appropriate to award costs for each of the three CNOOC Affiliates, “because all three ... submitted their own responding briefs based on their specific circumstances”: *Costs Decision* at para 21. He was “not convinced that this was inefficient or a waste of resources, particularly considering the specific circumstances of each of the CNOOC Affiliated Entities being located in different geographic regions”: *Costs Decision* at para 21. He noted the appellants had brought their application against “these varied entities and they were entitled to respond as they thought appropriate”: *Costs Decision* at para 22. There is no basis for us to interfere with the case management judge’s exercise of discretion in this regard: *ATB Financial v Real Industries 333 Corp*, 2025 ABCA 354 at para 36; *McAllister v Calgary (City)*, 2021 ABCA 25 at paras 17-18.

[13] For these reasons, the appeals are dismissed.

Appeal heard on February 9, 2026

Memorandum filed at Calgary, Alberta  
this 17th day of February, 2026

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Authorized to sign for: Antonio J.A.

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Kirker J.A.

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Fagnan J.A.

**Appearances:**

J.E. Sharpe, KC (no appearance)

A.F. Sunter (no appearance)

R.L. Martz

S. Fader (no appearance)

for the Respondents CNOOC Petroleum North America ULC

F.P. Morrison (no appearance)

M.G. Smith (no appearance)

A. Gill

for the Respondents China Ocean Oil Group Co. Ltd., CNOOC Limited and CNOOC Research Institute Ltd.

C.A. Crang, KC

N.L. Leclerc (no appearance)

S. Climenhaga

for the Respondents Offshore Oil Engineering Co. Ltd., COOEC Canada Co. Ltd. and CenerTech Canada Ltd.

M. Mohamed, KC (no appearance)

M.D. Mysak

M.J. LaFleche (no appearance)

for the Appellants Sunstone Projects Ltd. and Wood Group Canada, Inc.