Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 706

Date: 20261007
Docket: 1701 07427
Registry: Calgary

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Between:

CNOOC Petroleum North America ULC

Plaintiff

- and -

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

Defendants

- and -

Stresstech Engineering Inc.

Third Party

Reasons for Decision of the
Honourable Justice R.W. Armstrong

Introduction

[1] The Plaintiff, CNOOC Petroleum North America ULC ("CNOOC"), applies to compel the corporate representative of the Defendants Wood Group Canada, Inc. and Sunstone Projects Ltd. (collectively "Wood Group") to acknowledge that certain evidence given by current or

former Wood Group employees forms some of the information of the corporation under Rule 5.29 of the Alberta *Rules of Court*.

[2] The issue in this application is whether Wood Group's corporate representative improperly refused to acknowledge portions of that evidence as some of the information of the corporation.

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Rule 5.29

[3] Rule 5.29 establishes a procedure that permits discovery evidence from a corporate party's current or former employee to be read in at trial, thereby eliminating the need for that witness to testify. By permitting a corporate representative to acknowledge employee evidence as some of the information of the corporation, the Rule promotes efficiency.

[4] Rule 5.29 states:

> 5.29(1) The evidence given by a corporate witness during questioning may not be read in as evidence at trial unless a corporate representative of the corporation, under oath, acknowledges that the evidence forms some of the information of the corporation.
>
> (2) Subject to subrule (3), the corporate representative may refuse to acknowledge some or all of the evidence of the corporate witness and, if so, must state why, but is not entitled to refuse to acknowledge the corporate witness's information just because the corporate representative disbelieves or disagrees with it.
>
> (3) If the corporate representative disbelieves or disagrees with some or all of the evidence of a corporate witness, the corporate representative
>
> > (a) must acknowledge the evidence as information of the corporation unless it is inadmissible under the laws of evidence, and
> >
> > (b) may then qualify the acknowledgment with further evidence that is contrary to or inconsistent with the corporate witness's evidence if the further evidence is based on either or both of the following:
> >
> > (i) the corporate representative's personal knowledge;
> >
> > (ii) a record prepared by the corporate representative or provided to the corporate representative by a person having personal knowledge of the issue in question.

[5] Rule 5.29 is often described as a codification of the common law that predated the Rule. The decision in ***Esso Resources Canada Limited v Stearns Catalytic Ltd.***, 1992 CanLII 6247, 20 Alta LR (3d) 309 is therefore an appropriate place to start an analysis of the effect of Rule 5.29. At para 6, ***Stearns Catalytic*** confirms that the information of a corporation is the "totality of the knowledge and information of its servants, agents and employees."

[6] Because the information of a corporation includes information held by its employees, former employees, servants, and agents, a corporate representative presented with evidence given by such a person must generally acknowledge that evidence as some of the information of the

corporation. That obligation is subject to narrow exceptions that should arise infrequently: ***Stearns Catalytic*** at paras 6 and 8.

[7] A corporate representative's acknowledgment of evidence given by an employee, former employee, agent, or servant neither amounts to an admission binding the corporation nor establishes the truth of the evidence. It confirms only that the evidence forms part of the corporation's information and may therefore be used at trial in accordance with the *Rules of Court*. The corporation remains free to qualify, contradict, or explain it through other admissible evidence: ***Stearns Catalytic*** at para 9.

[8] Subsequent authorities confirm the approach in ***Stearns Catalytic***. In ***Edmonton v Lovat Tunnel Equipment***, 1999 ABQB 439, the Court held that information obtained by a corporate employee through discovery ordinarily becomes part of the corporation's information, even if it first came to the corporation's attention during the litigation. The Court further held that a corporation may qualify an acknowledgment but may not refuse acknowledgment on a blanket basis. Each disputed passage must be assessed individually, and any refusal must be explained. The Court also rejected the proposition that the chosen corporate representative's lack of personal knowledge justifies a refusal to acknowledge the evidence.

[9] In ***Holtslag v Alberta***, 2003 ABQB 1028 at para 27, the Court described acknowledgment as a procedural mechanism designed to permit the evidence of employees to be acknowledged by a corporate officer, thereby avoiding the need to ask the same questions repeatedly of the corporate representative. However, at para 27 the Court emphasized that the acknowledgment mechanism does not alter the ordinary law of evidence. Evidence acknowledged as some of the information of the corporation must still satisfy the ordinary requirements of admissibility before it can be used at trial.

[10] Before acknowledged evidence from an employee, former employee, agent, or servant may be read in at trial, it must still be relevant, within the employee's personal knowledge, and acquired in the ordinary course of the employee's service with the corporation: ***Holtslag*** at para 36. That inquiry is distinct from whether the corporate representative must acknowledge the evidence as some of the information of the corporation. Admissibility is ultimately for the trial judge to determine.

[11] The leading authority interpreting Rule 5.29 itself is ***AMEC Americas Ltd. v Attila Dogan Construction and Installation Co.***, 2015 ABQB 366. In that case, the corporation objected to acknowledging evidence from former employees on the grounds that it involved opinion, legal conclusions, expertise, hearsay, speculation, guesses, and incomplete answers. The Court recognized that Rule 5.29 was intended to codify the prior Alberta jurisprudence, under which employee evidence was required to be acknowledged in most circumstances. At para 24, the Court stated that evidence given by an employee or former employee will ordinarily be acknowledged as some of the information of the corporation unless the corporate representative gives a cogent or compelling reason for refusing, other than disbelief or disagreement.

[12] ***Attila Dogan*** also confirms that Rule 5.29 must be read alongside the long-standing principle that the admissibility of evidence is ordinarily for the trial judge to determine. The Court expressed concern about deciding questions of trial admissibility on a pre-trial application and concluded that such questions are generally best determined at trial, when the judge has the complete evidentiary context. Although Rule 5.29(3)(a) expressly refers to inadmissibility, a pre-trial judge should generally avoid deciding such issues unless the evidence is clearly

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inadmissible. On the facts before it, the Court ordered acknowledgment of all disputed evidence and left the admissibility objections for trial.

The Disputed Evidence

[13] The specific evidence that CNOOC seeks to have the Wood Group corporate representative acknowledge is identified in Appendix A to CNOOC's brief filed on September 28, 2026. The evidence consists of extracts from the questioning of Wood Group personnel and falls into three categories: (1) evidence concerning whether Sunstone was the "engineer of record" for the pipeline project, (2) evidence alleged to be speculative, and (3) evidence alleged to be opinion evidence.

[14] The first category consists of the "engineer of record" evidence. In the disputed passages, the witnesses agreed that Sunstone was the engineer of record, identified individuals as engineers of record, or described Sunstone's engineering responsibilities by reference to the engineer of record.

[15] The second category consists of passages alleged to be speculative. The disputed answers include phrases such as "I would imagine," "probably," "likely," or "I may have," or involve a witness attempting to reconstruct events from memory many years after the project.

[16] The final category concerns alleged opinion evidence about quality assurance or quality control functions.

The Position of the Parties

The Applicant

[17] CNOOC submits that Rule 5.29 requires acknowledgment of evidence from employees, former employees, agents, or servants except in rare and narrowly defined circumstances. It argues that the authorities contemplate refusal only infrequently, including where the witness did not understand the question, was not employed by or providing services to the corporation at the material time, or the corporate representative was not given the evidence in question.

[18] CNOOC further submits that Rule 5.29 is not concerned with whether the evidence is ultimately admissible, persuasive, or correct. Acknowledgment simply confirms that the evidence forms some of the information of the corporation and does not constitute a binding admission of fact. A corporation remains free to call contrary evidence, provide qualifications, and challenge the weight or admissibility of the evidence at trial.

[19] CNOOC argues that Wood Group's objections are, in substance, objections to admissibility rather than proper grounds for refusing acknowledgment. Wood Group has not adduced evidence that its representative disbelieves or disagrees with the witnesses' evidence, so CNOOC says Rule 5.29(3) is not engaged. Instead, Wood Group seeks pre-trial rulings that certain answers constitute opinion evidence, speculation, legal conclusions, or otherwise inadmissible evidence. CNOOC submits that this approach would improperly turn Rule 5.29 into a means of litigating evidentiary objections before trial.

[20] CNOOC submits that the "engineer of record" evidence should be acknowledged because the witnesses described their understanding of Sunstone's role on the project based on their personal experience and involvement. CNOOC emphasizes that no objection was raised when

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those questions were asked and that there was no indication that the witnesses were confused by the term. It submits that determining the legal significance or technical meaning of "engineer of record" would require findings that go to the merits of the action and should not be made at a Rule 5.29 application.

[21] Similarly, CNOOC argues that answers containing words such as "probably," "I imagine," or "I guess" are not automatically inadmissible. In many instances, the answers describe a witness's actual recollection, role, or understanding at the relevant time. Any argument that a particular answer amounts to speculation or opinion is, in CNOOC's submission, an admissibility issue that can be addressed if the evidence is tendered as a read in at trial.

[22] Finally, CNOOC relies on ***Attila Dogan*** for the proposition that courts should be reluctant to decide admissibility issues in advance of trial. It submits that the Court should require acknowledgment of the disputed evidence while preserving all admissibility objections for the trial judge at the read-in stage. In oral argument, CNOOC maintained that deciding whether the disputed passages constitute opinion, speculation, or other inadmissible evidence would risk prejudging evidentiary issues without the full context and could improperly constrain the trial judge's discretion. In its submission, the issue on this application is whether the challenged answers form some of the information of the corporation, not whether they will ultimately be admitted or relied on at trial.

The Respondent

[23] Wood Group submits that Rule 5.29 does not require a corporation to acknowledge material that is not truly "information of the corporation." It argues that the Rule identifies information properly attributable to the corporation through the knowledge of its employees and representatives; it does not compel acknowledgment of material that is speculative, inadmissible, opinion-based, or otherwise incapable of forming part of a proper evidentiary record. In Wood Group's submission, Rule 5.29 is a substantive evidentiary provision, not merely a rule of procedural convenience.

[24] Wood Group submits that Rule 5.29(2) permits a corporate representative to refuse acknowledgment if the representative gives a reason and the refusal is not based merely on disbelief or disagreement. Relying principally on ***Attila Dogan***, Wood Group argues that the question is whether there is a "cogent and compelling reason" to conclude that a particular extract is not properly corporate information. The Rule does not establish a closed list of permissible grounds for refusal. A refusal may be justified whenever the proposed extract does not reflect information acquired by an employee in the course of employment or otherwise fails to qualify as corporate information.

[25] The first category concerns references to Sunstone as the "engineer of record." Wood Group submits that the phrase is not a factual description but an undefined and contested term whose meaning depends on expert opinion. It argues that the experts in this litigation have attributed materially different meanings and responsibilities to the term. Because witnesses may testify to facts within their personal knowledge but not offer inadmissible opinion evidence, Wood Group says that statements identifying Sunstone as the engineer of record are opinion rather than corporate information.

[26] The second category concerns evidence Wood Group characterizes as speculation. Wood Group submits that information attributable to a corporation must arise from a witness's actual

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knowledge and recollection acquired during employment. Evidence expressed in terms such as "I imagine," "probably," "likely," or "I would have" is, in its submission, conjecture rather than fact. Wood Group therefore maintains that passages involving guesses about discussions, the preparation of documents, requests for information, or the actions of others are inadmissible and need not be acknowledged.

[27] Finally, Wood Group argues that inadmissibility may itself constitute a cogent and compelling reason for refusal. It submits that Rule 5.29(3)(a), which expressly refers to evidence inadmissible under the laws of evidence, recognizes inadmissibility as a legitimate basis for refusing acknowledgment. In oral argument, counsel emphasized that the Rule provides two distinct routes for refusal and that opinion, speculation, document interpretation, and matters outside a witness's personal knowledge cannot properly form part of the corporation's information. Although Wood Group acknowledges that the trial judge ultimately determines admissibility, it maintains that the Court may refuse to require acknowledgment where an extract is not corporate information in substance or is clearly inadmissible.

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Analysis

[28] The authorities interpreting Rule 5.29 and the common law that predated it may be synthesized into five principles.

[29] First, Rule 5.29 addresses the practical difficulty that arises because a corporation can speak only through a corporate representative, while relevant and material information may reside with its employees, former employees, agents, or servants. The information of a corporation comprises the totality of the knowledge and information of those persons. When a corporate representative reviews discovery evidence from an employee or former employee, that evidence will ordinarily become part of the corporation's information and should generally be acknowledged.

[30] Second, acknowledgment is intended to provide a practical and efficient litigation mechanism. By permitting a corporate representative to acknowledge employee evidence as some of the information of the corporation, the Rule avoids requiring parties to ask the corporate representative the same questions or call every employee as a witness merely to place the evidence before the Court.

[31] Third, an acknowledgment confirms only that the evidence constitutes some of the information of the corporation. It is not a binding admission of fact, does not require the corporation to accept the evidence as true, and does not prevent the corporation from leading contradictory or qualifying evidence at trial. A corporate representative may acknowledge information while identifying qualifications or contrary information.

[32] Fourth, refusals should arise infrequently. Acknowledgment is ordinarily expected; refusal is the exception. Proper grounds for refusal may include that the witness did not understand the question, the information was not acquired in the course of the witness's employment or service, the witness was not employed by or providing services to the corporation at the material time, or the corporate representative was not provided with the evidence. These are indicative of the types of refusals that will be accepted but they do not constitute an exhaustive list of permissible refusals.

[33] While refusals should arise infrequently, an applicant seeking to compel a corporate representative to acknowledge evidence under Rule 5.29 still bears the onus of establishing, on balance, that the evidence in question ought to be acknowledged.

[34] Fifth, not all acknowledged evidence will be admissible at trial. Read ins remain subject to the ordinary rules of evidence. The trial judge may exclude evidence that is hearsay, irrelevant, speculative, opinion-based, or otherwise inadmissible notwithstanding that it has been acknowledged under Rule 5.29. The trial judge also remains responsible for determining what weight, if any, should be given to the evidence.

[35] Taken as a whole, the authorities indicate that Rule 5.29 primarily concerns attribution, not admissibility. The initial question is whether a witness's evidence forms part of the corporation's information. Whether that evidence is admissible and what use or weight may be made of it are ordinarily matters for trial. The Rule addresses the former; the trial judge determines the latter if the read-ins are tendered.

[36] Applying these principles, I am satisfied that Wood Group's corporate representative must acknowledge the disputed evidence given by its current or former employees as some of the information of the corporation.

[37] Dealing first with the questions concerning whether Sunstone was the engineer of record on the pipeline project, I accept Wood Group's submission that this term may have different meanings depending on the context. Nevertheless, the fact that some current or former employees understood Sunstone to be the engineer of record is some of the information of the corporation and must be acknowledged.

[38] Acknowledgment does not prevent Wood Group from disputing at trial that Sunstone was the engineer of record, leading evidence about its understanding of that term, or arguing that the trial judge should reach a different conclusion.

[39] Wood Group argues that determining whether Sunstone was the "engineer of record" requires a legal determination. That may be so. The trial judge may be required to make that determination after hearing all the evidence, including any read-ins tendered by CNOOC. As a pre-trial judge, I must be cautious about deciding admissibility or precluding evidence without the full context available to the trial judge.

[40] Although there is significant controversy over whether Sunstone was the engineer of record, the fact that some Wood Group employees understood it to hold that role is some of Wood Group's information. It would be improper at this stage to prevent CNOOC from reading in that evidence, subject to the trial judge's determination of its admissibility.

[41] Wood Group's corporate representative must acknowledge the responses to questions 3, 12, 14, 21, and 22 identified in Appendix A to CNOOC's brief filed on September 28, 2026 as some of the information of Wood Group under Rule 5.29.

[42] Turning to the evidence that Wood Group characterizes as speculative, I am not satisfied that it falls within the infrequent circumstances that justify a corporate representative refusing to acknowledge the evidence as some of the information of the corporation.

[43] It is undisputed that the witnesses used qualifying words such as "I would imagine," "probably," "likely," and "may" when responding to certain questions. Such qualifications are not unusual when witnesses are trying to recall events that occurred many years earlier.

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[44] While such qualifications may affect the weight given to the evidence, the weight should be determined by the trial judge after considering all the evidence. It is not an exercise that a case management or pre-trial judge should undertake, even if that judge will ultimately preside over the trial.

[45] Put another way, the quality of evidence that may or may not eventually be adduced at trial should not generally be determined on a pre-trial application unless the evidence plainly could not constitute some of the information of the corporation. One example identified in the authorities is where a witness misunderstands the question. It is unnecessary on this application to attempt an exhaustive definition of all circumstances that may justify a refusal to acknowledge evidence. It is sufficient to say that refusals should remain exceptional and must be supported by a cogent reason that goes beyond mere disagreement with the witness's evidence.

[46] A pre-trial judge should be reluctant to preclude a read-in where there is some basis on which the trial judge might accept the evidence, including the witness's understanding of the corporate structure, knowledge of a general practice, or reference to a report, email, or other document. Concerns about reliability, accuracy, speculation, opinion, or weight will usually be better addressed when the trial judge considers the evidence in its full context.

[47] None of the evidence that Wood Group characterizes as speculative is incapable of constituting some of the information of the corporation. The trial judge may reject the evidence as speculative or give it little weight because of the qualifications in the answers. Where the trial judge could accept some or all of the evidence, however, the corporate representative must acknowledge it. Wood Group's corporate representative must therefore acknowledge the responses to questions 7, 9, 10, 15, 16, and 17 identified in Appendix A to CNOOC's brief filed on September 28, 2026 as some of the information of Wood Group under Rule 5.29.

[48] Items 4 and 11 in Appendix A to CNOOC's brief filed September 28, 2026 concern evidence that Wood Group characterizes as opinion evidence. At the hearing of the application, Wood Group conceded that item 4 was no longer in issue and agreed that its corporate representative would acknowledge it as some of the information of the corporation.

[49] Item 11 concerns a witness's role as construction support on the pipeline project. The question and answer at issue are:

> Q. And so was that a QA/QC [meaning quality assurance or quality control] role for the pre-stressing?
>
> A. Yeah. I guess you could call it that.

[50] The evidence in question does not amount to impermissible opinion evidence for the purposes of determining whether the corporation must acknowledge it as some of the information of the corporation. The answer concerns the employee's understanding of his responsibilities and the tasks he may have performed in that role. It is based on his personal knowledge and involvement.

[51] The trial judge may ultimately be required to determine the nature of the role. The employee's own understanding of his responsibilities, however, is not expert opinion merely because he described them using the terms "quality assurance" or "quality control."

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[52] The employee's understanding of his role therefore forms part of Wood Group's information and must be acknowledged. If Wood Group disagrees with the characterization, then it may call evidence and argue that the trial judge should reach a different conclusion.

Summary and Conclusion

[53] CNOOC has established, on balance, that the disputed evidence ought to be acknowledged as some of the information of the corporation as contemplated in Rule 5.29. Wood Group's corporate representative shall therefore acknowledge that the evidence identified in items 3, 4, 7, 9, 10, 11, 12, 14, 15, 16, 17, 21, and 22 of Appendix A to CNOOC's brief filed on September 28, 2026 forms some of the information of the corporation.

[54] CNOOC shall have its costs of the application. If the parties cannot agree on costs, they may seek a costs determination.

Heard on the 5th day of October, 2026.
Dated at the City of Calgary, Alberta this 7th day of October, 2026.

R.W. Armstrong
J.C.K.B.A.

Appearances:

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