Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 784

Date: 20261104
Docket: 1701 07427
Registry: Calgary

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Between:

CNOOC Petroleum North America ULC

Plaintiff
Applicant

- and -

Sunstone Projects Ltd. and Wood Group Canada, Inc.

Defendants
Respondents

- and -

ITP SA

Defendant
(Not a party to the Application)

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

Introduction

[1] This action arises from a loss of containment in a pipeline project owned by the Plaintiff, CNOOC Petroleum North America ULC. The project was known as the K1A corridor pipelines at the Long Lake facility just outside Fort McMurray, Alberta. CNOOC alleges that deficiencies in the manufacture, design, and construction caused the pipeline failure and that the Defendants are liable for the resulting losses.

[2] All parties anticipate adducing significant expert testimony concerning, among other things, pipeline construction standards and practices and the standard of care required of the Defendants Sunstone Projects Ltd. and Wood Group Canada, Inc. ("Wood Group"), which provided engineering services on the pipeline construction project.

[3] The Plaintiff served a Rebuttal Report dated July 21, 2026, and a Surrebuttal Report dated September 21, 2026, both prepared by Greg Lamberson.

[4] While Mr. Lamberson's qualifications have yet to be tested or accepted by the Court, his reports state that he has a BSc in Industrial Engineering and Technology from East Central University in Oklahoma and an MBA with a focus on international business from the Robert Kennedy College. He describes himself as having almost 40 years of experience in project and construction management in the oil and gas and energy industries, with a particular focus on upstream and midstream projects and pipelines. He states that he has worked on approximately 35 buried-pipeline projects in a variety of jurisdictions and has held senior project and construction management roles on major international energy projects.

[5] His experience includes engineering and design coordination, construction planning and execution, commissioning and start-up, contract and project management, the development and implementation of scopes of work, the review and implementation of engineering documents, and the development and review of construction records. Mr. Lamberson states that his experience makes him knowledgeable with respect to standard industry project and construction management practices, including the respective roles and responsibilities of owners, engineering firms, specialty consultants and construction contractors. Although he has not personally worked on a project physically located in Canada, he identifies experience working with Canadian producers, owners and engineering companies and states that, in his experience, the relevant project and construction management practices are generally consistent across jurisdictions.

[6] In his Surrebuttal Report, Mr. Lamberson expressly states that he is "not a practicing engineer" and explains that the opinions in both his Rebuttal and Surrebuttal Reports are offered from a project and construction management perspective, reflecting industry practices and expectations, rather than from the perspective of a professional engineer providing technical engineering analysis. He specifically indicates, for example, that he does not purport to assess the adequacy of engineering analyses.

[7] Wood Group served a Notice of Objection to the Admissibility of Expert Report of Mr. Lamberson pursuant to Rule 5.36 on October 28, 2026, three weeks into the trial. The Notice of Objection claims that Mr. Lamberson advances opinions outside his area of expertise and opines on the ultimate issue in the action: whether Sunstone breached the standard of care expected of an engineer in the circumstances surrounding the construction of the K1A corridor pipelines.

[8] CNOOC seeks an order striking Wood Group's October 28 Notice of Objection on the basis that it did not comply with Rule 5.36, which provides that no objection to the admissibility

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of an expert's report is permitted at trial unless reasonable notice of the objection was given to the other party or the Court permits the objection to be made.

The Previous Application to Strike the Lamberson Reports

[9] Wood Group previously applied to strike the Lamberson reports, alleging contraventions of Rules 5.35 and 8.16. That application was dismissed by the Case Management Justice: ***CNOOC Petroleum North America ULC v ITP SA***, 2026 ABKB 582.

[10] In that application, Wood Group argued that the Lamberson Report introduced opinions concerning Wood Group's standard of care, an issue on which CNOOC bears the primary onus and which should therefore have been addressed in CNOOC's March 2026 primary expert reports. Wood Group characterized the report as impermissible case splitting. CNOOC responded that Mr. Lamberson was responding to an expert report served by ITP, which itself raised Wood Group's standard of care. CNOOC maintained that Rule 5.35 permits a rebuttal report to address new issues and that Mr. Lamberson was particularly suited to respond because of his expertise in project management, construction management and pipeline integrity.

[11] The Case Management Justice concluded that, when read together with ITP's report, the Lamberson Report appropriately responded to matters raised and that any new areas addressed were not beyond the permissible scope of rebuttal under Rule 5.35(2)(b). He held that Mr. Lamberson was entitled to respond to the issue of Wood Group's standard of care and rejected the contention that CNOOC was improperly splitting its case. He also held that there was no requirement that the rebuttal report be prepared by one of CNOOC's primary experts. The Court further observed that, even if the report had not been proper rebuttal, striking it would have been a severe remedy that was not justified by the circumstances.

[12] However, the Case Management Justice expressly limited the scope of his ruling. At para. 27, he stated that, as case-management justice dealing with a pre-trial application, he was not considering the broader admissibility of the expert reports under the framework established in ***R v Mohan***, [1994] 2 SCR 9 and refined in ***White Burgess Langille Inman v Abbott and Haliburton Co.***, 2015 SCC 23. He considered these broader admissibility questions to be matters more appropriately addressed by the trial judge in the ordinary course of the trial.

[13] The Case Management Justice also rejected Wood Group's alternative argument under Rule 8.16. Although Wood Group characterized Mr. Lamberson as CNOOC's fourth standard-of-care expert, the Case Management Justice found that Mr. Lamberson's expertise was distinct from that of CNOOC's other experts. He recognized that some overlap among experts was difficult to avoid in complex litigation of this nature and that the broad question of standard of care could encompass different subjects requiring different areas of expertise. He therefore concluded that the Lamberson Report did not constitute impermissibly duplicative expert evidence.

[14] In summary, the Case Management Justice determined that the Lamberson Report was a proper rebuttal report under Rule 5.35, was not impermissible case splitting, and did not offend Rule 8.16 merely because other CNOOC experts addressed aspects of Wood Group's standard of care. The decision did not determine whether Mr. Lamberson was qualified to express each of the opinions contained in his reports, whether those opinions fell within the scope of his demonstrated expertise, or whether particular opinions were otherwise admissible under the ***Mohan/White Burgess*** framework. Those questions were expressly left for me as the trial judge.

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CNOOC's Position

[15] For the purposes of this application, CNOOC submits that the Notice of Objection served by Wood Group on October 28, 2026, should be struck because it was not served within a reasonable time as required by Rule 5.36 of the *Alberta Rules of Court*. CNOOC emphasizes that the Notice was served during the third week of trial even though the Rebuttal and Surrebuttal Reports were served on July 21, 2026, and September 21, 2026, respectively.

[16] According to CNOOC, objections to expert reports should not first be raised at trial. The language and purpose of the Rule contemplate notice before trial, so that admissibility disputes can be identified and addressed without surprise, procedural unfairness or disruption to the trial. CNOOC relies principally on ***1469753 Alberta Ltd (Royal Services) v Luxen***, 2015 ABQB 282, together with ***Wade v Baxter***, 2001 ABQB 812, ***Stewart Estate v TAQA North Ltd.***, 2012 ABQB 87, and ***Ewashko v Hugo***, 2025 ABKB 489, in support of its argument.

[17] CNOOC argues that allowing an objection to be raised for the first time during trial would be procedurally unfair and contrary to the purpose of Rule 5.36. It emphasizes that substantial evidence has already been heard and that it organized and presented its case on the understanding that Mr. Lamberson's evidence would be received.

[18] CNOOC disputes Wood Group's contention that the basis for its objection arose only upon receipt of Mr. Lamberson's September 21, 2026 Surrebuttal Report. CNOOC submits that the July 21, 2026 Rebuttal Report contained seven paragraphs addressing Mr. Lamberson's qualifications as well as a detailed curriculum vitae, and that the nature and scope of his opinions were apparent at that time.

[19] CNOOC points out that Wood Group undertook a detailed review of the Rebuttal Report and, on July 31, 2026, brought an application seeking to strike it, or alternatively to remove opinions concerning the standard of care applicable to Wood Group. In that application, Wood Group specifically complained that Mr. Lamberson was offering standard-of-care opinions and opinions concerning the roles and responsibilities of the Engineer of Record. CNOOC therefore submits that Wood Group had the information necessary to formulate any qualification or admissibility objection well before trial.

[20] CNOOC acknowledges that the trial judge retains gatekeeping responsibility in relation to expert evidence but submits that this responsibility does not render Rule 5.36 ineffective. According to CNOOC, Rule 5.36 and the Court's gatekeeping function operate together: the Court ultimately determines admissibility, while the parties remain obliged to give timely notice of objections they intend to advance. Advance notice protects against surprise and trial by ambush and affords the proponent of an expert a meaningful opportunity to address an alleged deficiency, obtain alternative evidence if necessary, and avoid an adjournment.

[21] CNOOC argues that before the Court exercises its discretion to permit an objection for which reasonable notice was not given, the party seeking to object should provide a satisfactory explanation for the delay. CNOOC submits that Wood Group has not provided any explanation, let alone a satisfactory explanation, for its failure to give reasonable notice.

[22] Accordingly, CNOOC submits that permitting Wood Group to advance an objection formally raised for the first time during trial would undermine the procedural fairness and efficiency objectives of Rule 5.36.

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Wood Group's Position

[23] Wood Group submits that CNOOC's application should be dismissed because Rule 5.36 is a notice provision rather than a substantive rule of admissibility and because, in the circumstances, Wood Group provided reasonable notice of its objection. Wood Group disputes CNOOC's interpretation of Rule 5.36 as establishing an absolute requirement that a notice of objection be delivered before the commencement of trial. It emphasizes that the Rule itself prescribes no fixed notice period and instead requires "reasonable notice," while Rule 5.36(2)(b) expressly permits the Court to allow an objection notwithstanding the absence of reasonable notice.

[24] Wood Group submits that the material basis for its present objection arose from Mr. Lamberson's September 21, 2026 Surrebuttal Report rather than from his July 21, 2026 Rebuttal Report. According to Wood Group, the earlier report described Mr. Lamberson as possessing expertise concerning the "technical side of projects" and a "working knowledge of engineering practices," while his curriculum vitae also contained engineering-related descriptions. In the Surrebuttal Report, however, Mr. Lamberson expressly stated that he is not a practicing engineer and that his comments in both reports were made from a project and construction management standpoint, reflecting industry practices and expectations rather than a technical professional engineering perspective.

[25] Wood Group submits that this clarification materially affected the admissibility analysis because Mr. Lamberson's opinions had previously been characterized as addressing the standard of care applicable to Wood Group's engineering work. Wood Group consequently measures the timeliness of its objection from September 21 and notes that it served its Notice 36 days later, a period that it says corresponds to the time CNOOC took to object to Wood Group's rebuttal experts.

[26] Wood Group also disputes that its Notice caused the type of surprise or prejudice contemplated by Rule 5.36. First, it argues that CNOOC could not realistically have retained a replacement expert within the relevant period, even if Wood Group had objected immediately upon receiving the Surrebuttal Report. The complex case litigation plan contemplated service of surrebuttal reports very close to the start of trial.

[27] Second, Wood Group argues that the notice it provided was reasonable when served and that it was CNOOC's own decision to call Mr. Lamberson in early November rather than in February 2027 that allowed CNOOC to argue the notice was unreasonable. While Wood Group accepts that CNOOC is entitled to determine the order in which it presents its case, it submits that the resulting reduction in the period between its Notice of Objection and Mr. Lamberson's testimony resulted from CNOOC's subsequent scheduling decision rather than from any delay by Wood Group.

[28] Alternatively, Wood Group submits that even if it did not strictly comply with Rule 5.36, a procedural failure cannot require the trial judge to admit evidence from an unqualified expert or otherwise relieve the Court of its gatekeeping function. It argues that the Court remains obliged to address the substantive admissibility issues and will be best positioned to do so after hearing both parties' submissions at the qualification stage.

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Decision and Analysis

[29] The authorities relied on by both parties establish three consistent themes relating to the timing of objections to the admissibility of expert reports. First, generally speaking, an objection to the admissibility of an expert report should be raised in advance of the trial. Advance notice of objections to the admissibility of expert reports is necessary to give effect to the purposes of the Rule which include ensuring timely objections, preventing surprise and trial by ambush, avoiding unnecessary adjournments, and promoting procedural fairness: ***Luxen*** at para 59; ***Wang v Security National Insurance Company***, 2026 ABKB 559 at para 39.

[30] Second, Rule 5.36 does not provide a deadline for the service of a notice of objection to the admissibility of expert evidence, unlike some other jurisdictions such as British Columbia where the analogous rule requires service of a notice of objection at least 21 days before the scheduled start of trial. In Alberta, each objection must be examined individually, considering the factual circumstances, the nature of the expert evidence and whether the timing of the notice of objection causes significant prejudice to the party proposing to tender the expert evidence: see for example ***Ewashko*** at para 92, citing with approval ***Signalta Resources Ltd. v Dominion Exploration Ltd.***, 2007 ABQB 636 at paras 193-196.

[31] Whether reasonable notice was given under Rule 5.36 is a contextual determination. Relevant considerations may include when the objecting party knew or reasonably ought to have known the basis for the objection; whether and when that objection was communicated to the opposing party; the nature and complexity of the proposed expert evidence; the interval between notice, trial and the proposed expert's testimony; whether the timing impaired the opposing party's ability to respond; and any resulting prejudice to the fairness or orderly conduct of the trial. No single consideration is determinative.

[32] Third, non-compliance with Rule 5.36 does not displace the Court's ultimate control and discretion concerning the admission of expert evidence.

[33] Having considered the wording and purpose of Rule 5.36 and the manner in which the courts have interpreted and applied it, I dismiss CNOOC's application to strike the Notice of Objection. I conclude that Wood Group gave reasonable notice in the particular circumstances of this case. In the alternative, if the notice was not reasonable, I would exercise the discretion conferred by Rule 5.36(2)(b) to permit the objection to be made.

[34] My conclusion that reasonable notice was given rests principally on the history of Wood Group's pre-trial qualification challenge, the clarification on qualification provided by Mr. Lamberson's Surrebuttal Report, the timing of the formal Notice, and the absence of material procedural prejudice.

[35] It was clear as early as August 20, 2026, when the first application to strike Mr. Lamberson's report was determined, that issues relating to the admissibility of Mr. Lamberson's reports would be left to the trial judge. At paragraph 27 of the decision, the Case Management Justice said: "... I am not considering admissibility of these reports more broadly within the expert evidence framework established in ***R v Mohan***, 1994 CanLII 80 (SCC), [1994] 2 SCR 9 and refined in ***White Burgess Langille Inman v Abbott and Haliburton Co.***, 2015 SCC 23. As noted in *801 Seventh #1* at para 14, when dealing with a Rule 8.16(1) application, the four *Mohan* factors going to threshold admissibility are best addressed within the trial in the ordinary course of events."

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[36] The fourth *Mohan* factor requires a properly qualified expert. The party proffering the expert witness must establish that the witness possesses special or peculiar knowledge through study or experience concerning the particular matters on which the expert proposes to give an opinion. CNOOC was aware that the issue of Mr. Lamberson's qualification would be a live issue before the trial judge.

[37] Having said that, what matters most on this application is not that the Case Management Justice left this as an open issue for trial. It is that Wood Group expressly communicated that, if Mr. Lamberson's evidence proceeded, it intended to challenge his qualifications. During argument, counsel for Wood Group made the following submission during his reply argument:

> What is the implication of other *Mohan* factor qualifications? There are other qualifications that may be at issue. For example, Mr. Lamberson's qualification to give evidence at all as an expert. And we've alluded to it briefly but its not before you, Mr. Lamberson has never worked on a project in Canada. He opines on what the practice is in Siberia in parts of his report. And we certainly -- if Mr. Lamberson was permitted [to] carry on, would challenge those types of issues which are difficult to challenge at this juncture because Mr. Lamberson has not been tendered for cross-examination on qualifications which is a key component of some of these issues.

[38] Given the reservation of broader admissibility issues to the trial judge and, more importantly, Wood Group's express indication that it intended to challenge Mr. Lamberson's qualifications if his evidence proceeded, CNOOC knew before trial that Wood Group intended to advance a qualification objection. The August 14 submission did not particularize all of the grounds ultimately identified in the October 28 Notice, but it gave CNOOC advance notice that Mr. Lamberson's qualifications to give at least some of the proposed opinion evidence would be contested. That communication forms part of the context in assessing whether the subsequent formal notice was reasonable.

[39] Second, Mr. Lamberson's Rebuttal Report and Surrebuttal Report were, at best, ambiguous about his qualifications. Paragraph 12 of his Rebuttal Report refers to experience "in the project and construction management of engineering, design, planning, construction, and start up & commissioning of upstream and midstream oil, gas, and energy related facilities..." and at paragraph 13 he refers to work he did "addressing flow assurance (hydrates, wax, and temperature management), thermal insulation systems, high pressure/high temperature design, installation engineering, construction/installation, integrity management and inspection." At paragraph 14, Mr. Lamberson describes his area of expertise as including the "technical side of projects" and "working closely with engineering firms." At paragraph 15 he asserts that he has "extensive construction management and working knowledge of engineering practices."

[40] The ambiguity concerning Mr. Lamberson's qualifications appears to have led Wood Group to understand that he was a professional engineer. During the August 14, 2026 application before the Case Management Justice, counsel for Wood Group characterized Mr. Lamberson as opining on the standard of care expected of Wood Group in performing engineering services on the project (see transcript of proceedings August 14, 2026, page 5, lines 17-18; page 8, lines 9-11; and page 14, lines 1-4). Counsel also stated: "So, the subject matter that Mr. Lamberson, who is also an engineer, is being asked to comment on is what Sunstone's role and responsibility was as the engineer of record" (page 10, lines 4-6).

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[41] At the August 14, 2026 application, counsel for CNOOC made the following submission about Mr. Lamberson's qualifications:

> Mr. Lamberson is neither a pipeline engineer -- he doesn't design pipelines like Mr. Kormann. He is not a stress engineer like Mr. Hothi. He's not a -- he's not a technical engineering specialist. What Mr. Lamberson is is he's a project manager. His career has been for both owners and engineering companies and construction contractors, to manage those projects. (see transcript of proceedings August 14, 2026, page 25, lines 1-5).

[42] CNOOC's submission did not resolve the ambiguity regarding Mr. Lamberson's qualifications. Counsel distinguished Mr. Lamberson from a pipeline engineer, stress engineer and technical engineering specialist, and characterized his expertise as project management. On the record before me, however, that exchange did not clearly establish the nature or extent of any professional engineering qualifications he held or had previously held. The significance of the September 21 Surrebuttal Report is therefore that it established clearly for the first time that Mr. Lamberson was not an engineer, it expressly defined the perspective from which he purported to offer his opinions, and it disclaimed a technical professional engineering perspective.

[43] Mr. Lamberson's Surrebuttal Report materially clarified the basis on which Mr. Lamberson proposed to give his opinions and sharpened the qualification issue. At this point in the process, it was less than one month until trial, and under the existing complex case litigation plan, there was no remaining scheduled opportunity for either party to obtain and serve a new expert report before trial without further procedural relief. The circumstances here are therefore very different from ***Ewashko***, where the defendants possessed the expert reports for over six months but gave notice of their objection to the proposed expert's qualification only two days before trial. The circumstances here also differ fundamentally from those in ***Luxen*** where the objecting party did not serve any notice of objection, thereby catching the opposing party by surprise.

[44] I accept CNOOC's submission that, by the time Wood Group filed its application on July 31, 2026, challenging the substance of Mr. Lamberson's proposed opinions, it knew that some of those opinions concerned matters Wood Group characterized as relating to the engineering standard of care. However, the July application raised a different issue. It challenged the permissible scope and sequencing of rebuttal evidence under Rules 5.35 and 8.16. The present objection concerns whether Mr. Lamberson possesses the specialized knowledge necessary to express particular opinions. The September 21, 2026 clarification was material to that question because it expressly identified project and construction management, rather than technical professional engineering, as the perspective from which Mr. Lamberson offered his opinions.

[45] CNOOC was not taken by surprise or ambushed by the October 28 Notice. I am not satisfied that its timing caused material procedural prejudice sufficient to render the notice unreasonable. Before trial, and before Mr. Lamberson's Surrebuttal Report was due, CNOOC knew that Wood Group intended to challenge Mr. Lamberson's qualifications. As of September 21, 2026 there were no further opportunities under the complex case litigation plan to file additional expert material. The September 21 Surrebuttal Report then materially clarified the perspective from which Mr. Lamberson proposed to give his opinions, and Wood Group particularized its objection in writing approximately five weeks later. At the time the Notice was served, the operative trial schedule contemplated Mr. Lamberson testifying in February 2027,

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more than three months later and after a lengthy break in the trial. CNOOC was entitled to alter the order of its witnesses, but that subsequent scheduling decision does not retrospectively determine whether Wood Group's notice was reasonable when given. These circumstances weigh against a finding of material procedural prejudice.

[46] For all of these reasons, I am satisfied that, in the particular circumstances and context of this case, Wood Group gave reasonable notice of its objections to Mr. Lamberson's qualifications and scope of opinion.

[47] Even if I am incorrect and the notice was not reasonable, I would exercise the discretion conferred by Rule 5.36(2)(b) to permit the objection. In doing so, I do not regard the Court's gatekeeping responsibility as automatically overriding the notice requirement. That interpretation would deprive Rule 5.36 of meaningful effect. My conclusion instead rests on the combination of circumstances here: Wood Group expressed a qualification challenge before trial; the Case Management Justice expressly preserved the broader *Mohan* analysis for trial; the September Surrebuttal Report materially clarified the foundation for the present objection; the October Notice particularized the objection; and I have not found material procedural prejudice arising from its timing. In addition, the proposed evidence is sufficiently central that determining the permissible scope of Mr. Lamberson's opinions will materially assist the proper conduct of this lengthy, expert-intensive trial.

[48] Having dismissed the application to strike the Notice of Objection, the next step is to receive evidence and submissions concerning Mr. Lamberson's proposed qualifications. I will then determine the fields, if any, in which he is qualified to provide opinion evidence and whether particular opinions in the Rebuttal and Surrebuttal Reports fall within those fields and otherwise satisfy the applicable admissibility requirements.

Heard on the 3rd day of November 2026.
Dated at the City of Calgary, Alberta, this 4th day of November, 2026

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

Appearances:

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