Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2026 ABKB 797

Date:
Docket: 1701 07427
Registry: Calgary

2026 ABKB 797 (CanLII)

Between:

CNOOC Petroleum North America ULC

Plaintiff
Applicant

- and -

Sunstone Projects Ltd. and Wood Group Canada, Inc.

Defendant
Respondent

- 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 the failure of one of two corridor pipelines constructed for the Plaintiff, CNOOC Petroleum North America ULC ("CNOOC") at its Long Lake facility near

Fort McMurray, Alberta. CNOOC alleges that deficiencies in the design, engineering, manufacture and construction of the pipelines caused the failure and that both pipelines were unfit for their intended service. It seeks to recover substantial losses from the Defendants Sunstone Projects Ltd. and Wood Group Canada, Inc. (collectively, "Sunstone") which provided engineering services for the project, and ITP SA, which supplied the pipe in pipe system for the corridor pipelines. The action involves complex and overlapping questions concerning pipeline design, construction, integrity, project execution, causation and the respective responsibilities of the project participants.

[2] The parties intend to rely upon extensive expert evidence addressing these issues. The exchange of expert reports has already generated several applications concerning the sequencing, scope and admissibility of that evidence.

[3] CNOOC served a rebuttal report prepared by Greg Lamberson dated July 21, 2026, followed by a surrebuttal report dated September 21, 2026. CNOOC now seeks to qualify him as an expert in project and construction management, specifically industry practices and expectations concerning:

> 1. allocation of roles and responsibilities among owners, design engineers, suppliers and construction contractors on multidisciplinary pipeline projects;
>
> 2. construction management/planning and contractor responsibilities and deliverables; and
>
> 3. project-participant deliverables to construction contractors and operations groups.

[4] In an earlier decision (2026 ABKB 582), the Case Management Justice held that the rebuttal report prepared by Mr. Lamberson was not improper rebuttal or impermissibly duplicative expert evidence. He expressly left the broader questions of Mr. Lamberson's qualification and the admissibility of his opinions under the framework established by ***R v Mohan***, [1994] 2 SCR 9, and ***White Burgess Langille Inman v Abbott and Haliburton Co***., 2015 SCC 23, for determination by the trial judge.

[5] Sunstone opposes the proposed qualification. They contend that, although the field of expertise advanced by CNOOC is framed in terms of project and construction management, the substance of Mr. Lamberson's opinions extends materially further, outside Mr. Lamberson's area of expertise.

[6] The issue now before the Court is whether CNOOC has established that Mr. Lamberson possesses the special or peculiar knowledge, acquired through study or experience, necessary to give the opinions contained in his reports and, if so, whether those opinions should nevertheless be excluded in the exercise of the Court's gatekeeping function. That inquiry requires the Court to examine the substance of the proposed evidence as set out in his rebuttal and surrebuttal reports, rather than the label attached to the proposed field of expertise, and to determine whether the opinions remain within the boundaries of Mr. Lamberson's demonstrated knowledge and experience.

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The *Mohan/White Burgess* Test

[7] The parties generally agree that the applicable legal framework governing this application is the one established in ***Mohan*** and subsequently clarified in ***White Burgess***. ***Mohan*** sets out four prerequisites to admissibility: (1) relevance; (2) necessity in assisting the trier of fact; (3) the absence of an applicable exclusionary rule; and (4) a properly qualified expert: ***Mohan*** at p 20 and ***White Burgess*** at para 19.

[8] In ***White Burgess***, the Supreme Court of Canada organizes the four ***Mohan*** requirements within a two-stage analysis comprising, first, threshold admissibility and, second, the trial judge's discretionary gatekeeping function: paras 23-24.

[9] At the first stage, the party tendering the evidence bears the burden of establishing the four ***Mohan*** requirements. Relevance at this stage means logical relevance, while necessity requires more than evidence that is merely helpful. The opinion must concern matters likely to fall outside the ordinary experience and knowledge of the trier of fact and provide assistance needed to understand or determine the issue: ***Mohan***, at pp 20-23; ***White Burgess***, at para 23.

[10] The necessity requirement reflects the limited role assigned to expert evidence. An expert may provide the trier of fact with a specialized inference that, because of the technical or specialized nature of the subject, the trier of fact is unable readily to formulate without assistance. Conversely, where the trier of fact can reach the necessary conclusions on the proven facts without expert assistance, the opinion is unnecessary: ***Mohan***, at pp 23-25.

[11] The necessity requirement guards against experts usurping the fact-finding function or transforming the proceeding into a contest between experts.

[12] The third ***Mohan*** requirement concerns legal admissibility. Evidence that is otherwise relevant and necessary remains inadmissible if it is caught by an independent exclusionary rule: ***Mohan***, at p 25.

[13] The final ***Mohan*** requirement relates to the proposed expert's qualifications. A properly qualified expert must possess special or peculiar knowledge acquired through study or experience concerning the matters upon which the expert proposes to testify: ***Mohan***, at p 25. ***White Burgess*** adds an important dimension to this qualification requirement. An expert has a duty to provide the court with fair, objective and non-partisan assistance, and an expert who is unable or unwilling to fulfil that duty is not properly qualified to perform the expert's role: ***White Burgess***, at paras 2, 10, 32, 46 and 53.

[14] Independence and impartiality therefore go to the question of admissibility rather than merely weight, although the threshold for exclusion on this basis is deliberately high: ***White Burgess***, at paras 34, 40, 45-50. Exclusion of expert opinion evidence at the threshold stage is therefore reserved for clear cases of unwillingness or inability to provide fair, objective and non-partisan evidence: ***White Burgess*** at para 49.

[15] Satisfaction of the four threshold requirements articulated in ***Mohan*** does not end the admissibility inquiry. At the second stage, the trial judge performs the gatekeeping function and must determine whether evidence that satisfies the threshold requirements is sufficiently beneficial to the trial process to justify its admission despite the potential harm associated with receiving it: ***White Burgess***, at paras 19, 22 and 24. This reflects ***Mohan's*** recognition that logically relevant evidence may nevertheless be excluded where its probative value is

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outweighed by prejudice, its consumption of time is disproportionate to its value, or its effect upon the trier of fact is disproportionate to its reliability: ***Mohan***, at pp 20-21.

[16] The two stages are related rather than entirely discrete. Considerations such as relevance, necessity, reliability and absence of bias operate on a sliding scale: each must first attain the basic level necessary to satisfy threshold admissibility, but each may continue to inform the second stage weighing: ***White Burgess*** at para 54. The overarching concern identified in both decisions is that expert evidence, although potentially important to the search for truth, carries distinctive risks because its technical character and the expert's credentials may cause the trier of fact to accord it greater weight than it deserves: ***Mohan***, at p 21; ***White Burgess***, at paras 1 and 17-18. Ultimately, the trial judge must be satisfied both that the proposed evidence crosses the threshold of admissibility, and that its potential assistance to the adjudicative process is not outweighed by the risks of admitting it.

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Position of the Parties

CNOOC

[17] CNOOC submits that Mr. Lamberson's rebuttal and surrebuttal reports should be admitted in their entirety. CNOOC frames the dispute as focussing on the requirements of necessity and whether Mr. Lamberson is properly qualified to give the proposed expert opinion evidence.

[18] According to CNOOC, Mr. Lamberson has significant expertise in project and construction management on complex pipeline projects, including expertise on industry practices concerning the allocation of responsibilities among owners, design engineers, suppliers and construction contractors. CNOOC submits that Mr. Lamberson does not offer professional engineering design opinions. Rather, he addresses construction management and project execution matters, including construction sequencing and documentation, RFIs, inspection and QA functions, and the respective roles of project participants. CNOOC says those matters are outside the ordinary knowledge and experience of the trier of fact and will assist the Court in determining the parties' respective responsibilities.

[19] CNOOC submits that Mr. Lamberson is qualified to give his opinions by his substantial practical experience rather than by any academic credentials he possesses. His report identifies almost 40 years of project and construction management experience, including approximately 35 buried-pipeline projects working for owners, engineering firms and construction contractors. CNOOC argues that his experience must be considered holistically and that inaccuracies identified in his CV concerning his degree do not affect the experience upon which his proposed opinions are based.

[20] CNOOC rejects the contention that to be properly qualified to give opinion evidence in this case, Mr. Lamberson requires Alberta-specific experience. Although he has not worked on a project physically located in Canada, Mr. Lamberson states that he has worked with Canadian owners and engineering companies and that the project and construction management practices he addresses are substantially consistent across jurisdictions. CNOOC accordingly submits that the absence of Alberta project experience does not disqualify him and, to the extent it affects the persuasiveness of his evidence, it is properly addressed through cross-examination and weight.

[21] CNOOC further submits that Mr. Lamberson is not opining on ultimate issues or interpreting the parties' contracts. His opinions proceed from factual assumptions supplied by counsel, including the assumption that Sunstone was the engineer of record, and address the industry practices and expectations that ordinarily accompany the assumed allocation of roles. It argues that contracts and scopes of work do not necessarily answer practical questions concerning matters such as construction sequencing, RFIs, inspection, QA and the implementation of technical requirements. Expert evidence concerning customary industry practices may therefore assist the Court without determining the parties' contractual obligations or whether any party ultimately breached any applicable standard of care.

[22] Finally, CNOOC submits that the discretionary gatekeeping balance favours admission. Mr. Lamberson's evidence responds to opinions already advanced by other experts concerning construction management and the allocation of responsibilities, including the rebuttal and surrebuttal evidence of Sunstone's own experts. CNOOC says the reports present little risk of prejudice or distortion in a judge-alone trial and that any concerns about the limits of Mr. Lamberson's expertise, the accuracy of his CV, his lack of Alberta or Canadian experience, or the factual assumptions underlying particular opinions can be tested in cross-examination and considered when assigning weight. On that basis, CNOOC submits that the reports satisfy the test for threshold admissibility and should be admitted, leaving the Court to determine their ultimate weight in light of the full evidentiary record.

Sunstone

[23] Sunstone opposes the qualification of Mr. Lamberson and submits that his proposed expert evidence should be excluded. It emphasizes the Court's gatekeeping responsibility in determining admissibility rather than admitting the evidence and leaving deficiencies exclusively to weight. Its principal objections concern whether Mr. Lamberson is properly qualified to give the opinions contained in his reports and, alternatively, whether those opinions are necessary to assist the Court.

[24] Sunstone submits that there is a disconnect between the qualification sought by CNOOC and the opinions Lamberson actually expresses. Although he is tendered as an expert in project and construction management, his rebuttal report addresses Sunstone's responsibilities as Engineer of Record and expresses opinions concerning Sunstone's engineering responsibilities and deliverables during the design and construction of the corridor pipelines. Sunstone argues that Mr. Lamberson is not an engineer and lacks the specialized education, licensing and professional experience necessary to opine on the standard of care or professional obligations of an engineering firm.

[25] Sunstone further submits that the responsibilities and deliverables attributed to Sunstone must arise either from the contracts governing the project or from the applicable professional standard of care. To the extent the responsibilities arise from the contracts, their interpretation and the determination of the legal obligations flowing from them are matters for the Court. To the extent they arise from the standard of care applicable to an engineering firm, the necessary opinion must come from an expert qualified to speak to engineering practice.

[26] Sunstone also raises Mr. Lamberson's lack of Canadian and Alberta experience as material to the question of whether he is qualified to give the opinions set out in his reports. Sunstone notes that Mr. Lamberson has never worked on a project physically located in Canada and has no practical experience with pipeline projects in Alberta. It submits that this is material

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because the Alberta pipeline industry operates within a jurisdiction-specific regulatory and professional framework. In support of its argument in this regard, Sunstone points to the fact that Mr. Lamberson was unable to identify the version of CSA Z662 applicable to the project and was unfamiliar with several aspects of the Alberta regulatory regime applicable to pipelines and integrity management. Sunstone argues that these deficiencies undermine Mr. Lamberson's ability to give reliable opinions on the industry practices and expectations applicable to this project.

[27] On the issue of qualification, Sunstone also raised issues with respect to Mr. Lamberson's stated qualifications. His CV incorrectly identified the date of his undergraduate degree as 1983 and described his education as being in "industrial engineering and technology," whereas the degree was granted in 1985 and his BSc degree was in Industrial Education and Technology.

[28] Sunstone submits that, while an error concerning the date of a degree could be inadvertent, the description of the degree raised a more substantial concern given Mr. Lamberson's claimed engineering-related expertise. Sunstone submits that this issue is relevant both to whether Mr. Lamberson has demonstrated the qualifications necessary for the opinions offered and to the Court's broader gatekeeping assessment of the reliability of his proposed expert evidence.

[29] Finally, Sunstone advances an alternative necessity argument. If Lamberson is not giving an admissible opinion concerning the professional standard applicable to Sunstone, it says that his remaining opinions largely concern the allocation of responsibility among the parties, the meaning of their contractual obligations, and who ultimately bore responsibility for particular aspects of the project. Those are matters the Court is capable of determining from the contracts and the factual evidence without expert assistance.

Analysis

[30] Opinion evidence is presumptively inadmissible. As the party tendering the evidence, CNOOC bears the burden of establishing that the applicable requirements for admissibility are satisfied.

[31] The core issue in this application is whether Mr. Lamberson possesses the necessary qualifications to give the opinion evidence set out in his rebuttal and surrebuttal reports. Associated with this issue is the reliability of the opinions offered by Mr. Lamberson. No issue has been raised with respect to the relevance of Mr. Lamberson's report and no exclusionary rules have been raised that would render Mr. Lamberson's opinion inadmissible assuming the evidence meets the requirements set out in ***Mohan***.

[32] Sunstone submits that Mr. Lamberson is not qualified to give many of the opinions in his reports because, despite lacking engineering credentials or experience, he purports to opine on standards, responsibilities and obligations applicable to an engineering firm. It also relies on his lack of Canadian pipeline experience. Alternatively, Sunstone submits that, once the opinions requiring engineering expertise are removed, the remaining matters can largely be determined from the contracts and factual record without expert assistance.

[33] CNOOC seeks to have Mr. Lamberson qualified as an expert in project and construction management, including industry practices concerning the allocation of responsibilities and deliverables among pipeline-project participants.

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[34] The bar to establish a properly qualified expert to satisfy the fourth branch of the ***Mohan*** test for threshold admissibility is not a high one. "The party calling the expert must simply demonstrate that the expert 'acquired special or peculiar knowledge through study or experience.'": ***R v Camara***, 2025 ONCJ 619 at para 28. The special or peculiar knowledge must, however, relate to the opinion the expert proposes to give. The Court must be satisfied that the expert's overall training and experience qualify them to give the proposed expert evidence: ***Camara*** at para 52.

[35] In this case, although the proposed areas of qualification focus on project and construction management, the substance of Mr. Lamberson's reports extends beyond those fields. He expresses numerous opinions about Sunstone's responsibilities and obligations as an engineering firm serving as the Engineer of Record.

[36] In his rebuttal report, Mr. Lamberson was asked to respond to a report authored by Mike Hylton. Mr. Hylton is a professional engineer and the Senior Project Manager & Integrity Consultant with Hylton Project Management Inc. in Calgary, Alberta. Mr. Lamberson was also asked to assume that Sunstone was the engineer of record on the corridor pipeline projects for the purpose of rendering his opinion.

[37] Whether Sunstone was in fact the Engineer of Record is a factual determination that the Court will make. However, by assuming that Sunstone occupied that role, Mr. Lamberson necessarily expresses opinions about the standards, deliverables and obligations expected of an engineering firm acting as Engineer of Record. The substance of his responses to Mr. Hylton likewise involves the standards expected of an engineering firm.

[38] The questions posed to Mr. Lamberson for the purpose of preparing his rebuttal report require expertise concerning the responsibilities of an engineer acting as Engineer of Record. He was expressly asked to opine on the following questions in his rebuttal report:

> Comment on sections 2.2.1.2, 3.2 and 3.5.1 of the Hylton Report regarding Sunstone's role and responsibilities as the Engineer of Record (EOR) on, among other things, the Corridor Pipelines component of the K1A Project (the Pipelines Project), vis a vis those of CPNA and other contractors on the Pipelines Project.
>
> Comment on sections 2.2.3.3 (starting on p. 20) and 3.4.1 of the Hylton Report regarding the parties' roles and responsibilities in determining suitable UHB ["upheaval buckling] mitigation measures for the Corridor Pipelines.
>
> Comment on section 2.2.3.3 (starting on p. 21) and 3.4.1 of Hylton Report regarding the RFI process on the Pipelines Project. As part of this question comment on the roles of the various parties in the RFI process during construction.
>
> Comment on sections 2.2.4.2 and 2.2.5 of the Hylton Report regarding the development of operating procedures and a PIMS [pipeline integrity management system] for the Corridor Pipelines. What was the expected role of an EOR, like Sunstone, if any, in the development of operating procedures and/or a PIMS and providing operations support and training to CPNA.

[39] In responding to these questions, Mr. Lamberson's opinions comment on the standard of care expected of an engineering firm in the role of Engineer of Record. Examples from his rebuttal report include the following:

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In my opinion, Sunstone, as EOR, had the ultimate responsibility for all aspects of the design and engineering of the Corridor Pipelines, including during the construction, commissioning and hand-over stages of the Pipeline Project (page 8, para 20).

As EOR, Sunstone's responsibilities included, in part:

> a. Developing and validating the BOD [basis of design];
>
> b. Performing or managing the required engineering analyses (including stress analysis, thermal expansion analysis and UHB assessment);
>
> c. Incorporating the geotechnical data into the design; and
>
> d. Issuing the IFC [issued for construction] drawings, specification and construction procedures and work package that cover the work scope (page 10, para 25).

While CPNA retained Thurber, Sunstone, as EOR, was responsible for reviewing and integrating that geotechnical information, together with the results of its own and its subcontractors' stress and stability analyses, into the design of the Corridor Pipelines. CPNA's contracting of a geotechnical consultant is not unusual for any owner, and in my opinion does not transfer any engineering or design responsibility to CPNA (page 11, para 28).

In short, in my opinion, I agree with Mr. Hylton that the ultimate technical responsibility for design, UHB assessment and construction sequence engineering on the Pipelines Project fell squarely with Sunstone. This allocation of responsibility is not unique to the Pipelines Project. It is the same execution model I have worked under on numerous pipeline projects throughout North America and internationally over the past forty years (page 11, para 31).

I agree with Mr. Hylton's statement that the decision to select and approve an installation methodology ultimately rested with Sunstone (page 12, para 33).

Further, I understand that one of the techniques that Sunstone used in its design to help address pipeline thermal movement and potential UHB was pre-stressing of the Corridor Pipelines during the construction process. Given that pre-stressing was an important part of its design, Sunstone should have provided detailed pre-stressing procedures to Surerus (page 15 para 43).

The EOR's technical responses should be fully documented, traceable, and consistent with the approved BOD, and incorporated into the project's as-built documentation. RFI responses often modify or clarify the engineering design, so they must be made by a qualified engineer. The EOR cannot delegate this responsibility to the owner or the construction contractor (page 18, para 56).

Consistent with my expectations of an EOR, Sunstone should have contributed substantially to supporting CPNA's operations group in their early operations of the Corridor Pipelines. In my opinion, the O&M [operations and maintenance] manual that Sunstone was asked to develop was to constitute the technical foundation that the owner's detailed operating procedures, including PIMS, would

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> be built upon. In my opinion the engineering input should have included, at a minimum, the pipeline's operating limits and design parameters; start-up, shutdown, and process control logic (including alarm and trip set points); the system's design basis and operating parameters; and a project-specific maintenance and inspection-frequency schedule that covered items such as valve greasing and stroking, ROW [right of way] patrols, surveys, and geotechnical monitoring (page 20, para 67).
>
> It was Sunstone's responsibility to properly design and engineer Corridor Pipelines regardless of schedule pressures, and to advise CPNA if its desired schedule was unachievable given Sunstone's engineering and design responsibilities (page 21, para 73).
>
> In my experience, a competent EOR should and often will push back on schedule pressure that may hinder the technical adequacy of their work (page 22, para 74).

[40] In his surrebuttal report, Mr. Lamberson also opined extensively on the standards and obligations of an engineering firm. Examples include:

> An engineering firm is responsible for the people working under its contract (page 6, para 15(b)).
>
> In my opinion, the removal of some (but not all) of Sunstone's construction planning budget through Change Order No. 0003 did not shift any of the design and engineering responsibilities on the Pipelines Project from Sunstone to CPNA or some other party. That is not consistent with industry practice or expectations (page 7, para 22).
>
> I do not agree with Mr. Bridgewater's [who is a professional engineer] opinion that it was "sufficient" for Sunstone to simply forward StressTech's recommendations to CPNA and to assume its design obligation was complete (page 8, para 24).
>
> The deliverable by which a screw-anchor requirement was to be communicated to the field was a Sunstone deliverable (an Anchoring Detail Drawing), prepared by Sunstone and issued by Sunstone to the construction contractor, Surerus (page 8, para 26(a)).
>
> In my opinion, CPNA's performance of the construction planning and construction management role did not relieve Sunstone of its responsibility to produce a fit-for-purpose, code compliant design for the Corridor Pipelines and to ensure that design was correctly carried into the field (page 14, para 42).

[41] While this is not an exhaustive list of Mr. Lamberson's opinions on the standards expected of an engineering firm, these examples demonstrate the extent to which he opines on engineering standards and the engineering firm's role and responsibilities. Although CNOOC characterizes Mr. Lamberson's expertise as project and construction management, the substance of these opinions addresses the standards, roles and responsibilities of an engineering firm on a pipeline project.

[42] An opinion does not become an engineering opinion merely because it concerns a document produced by an engineering firm or a process in which engineers participate. The

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dividing line is whether the opinion describes project-execution practices within Mr. Lamberson's experience or instead evaluates the adequacy of professional engineering work or prescribes the standard governing that work.

[43] Mr. Lamberson is not an engineer. While Mr. Lamberson claims in his reports to have a Bachelor of Science degree in Industrial Engineering and Technology, in cross examination he acknowledged that he had no such degree. His actual degree was a Bachelor of Science in Industrial Education and Technology. The reference to engineering did not form part of the degree he received, and the institution he attended did not offer the program identified in his report and CV.

[44] Mr. Lamberson does not hold an engineering degree, has never been licensed to practice as an engineer, and has never worked as an engineer. His professional experience is principally in project and construction management. Although he has worked extensively with engineers and engineering firms, CNOOC has not established that he has personally performed, supervised, approved or assumed professional responsibility for the engineering analyses and judgments about which he proposes to give opinion evidence.

[45] The absence of an engineering degree or professional designation is not determinative. Expertise may be acquired through experience as well as formal education. The question is whether Mr. Lamberson has demonstrated, through his education and actual work experience, specialized knowledge of the particular subjects on which he proposes to opine. His experience qualifies him to describe project and construction-management practices with which he has direct operational familiarity. CNOOC has not, however, established that his education and experience provide him with the specialized knowledge necessary to prescribe the professional responsibilities of an Engineer of Record, evaluate the adequacy of engineering analyses, determine code compliance or fitness for purpose, or state what professional engineering judgment required in the circumstances of this project.

[46] This case is similar in many respects to two cases referred to on behalf of Sunstone. In ***Brough v Yipp***, 2016 CarswellAlta 3546, the plaintiff contracted bacterial meningitis leading to a brain herniation that resulted in quadriplegia and ventilator dependency. The allegation was that if he had received appropriate medical care in a timely fashion, his outcome would have been improved.

[47] The Plaintiffs sought to qualify a forensic epidemiologist to give opinion evidence on scientific causation. At para 6 of the decision, the Court set out its reasons for refusing to qualify the doctor on three grounds:

> First, Dr. Freeman does not have a medical degree. His training is as a medical scientist. Second, the Court is not aware that Dr. Freeman ever practices in Canada, other than testifying in court cases. More importantly, he has never had a clinical practice. Indeed, he has no clinical license to do so.

[48] The reasoning in *Brough* is instructive in this case. Mr. Lamberson does not have an engineering degree. His training is in industrial education and technology, and his experience is in project management and consulting. He has never practised as an engineer and has no licence to do so. He has also never worked on a pipeline project, or any other type of project, in Alberta or elsewhere in Canada.

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[49] I do not regard Mr. Lamberson's lack of Canadian or Alberta project experience, standing alone, as disqualifying. Its significance lies in the fact that several of his proposed opinions concern the responsibilities of the Engineer of Record on an Alberta pipeline project, including matters potentially affected by the applicable regulatory and technical framework.

[50] His inability on the *voir dire* to demonstrate familiarity with material aspects of that regulatory framework reinforces the mismatch between his demonstrated expertise and those particular opinions.

[51] In ***Dulong v Merrill Lynch Canada Inc.***, (2006) 80 OR (3d) 378, 23 CPC (6th) 172, the plaintiff sued Merrill Lynch for stock market losses, alleging negligence, breach of contract, breach of fiduciary duty, and negligent misrepresentation. The plaintiff sought to qualify Mr. Malcolmson as an expert on, among other things, the standards and practices of the brokerage industry. Despite extensive securities-related experience, the Court refused to qualify Mr. Malcolmson as an expert.

[52] At para 24 of the decision, the Court outlined its many concerns with Mr. Malcolmson's qualification, including:

- No experience working for any brokerage firm in any capacity;
- No expertise relating to compliance, account supervision, account operations, account trading or other procedures;
- Having not passed any of the courses or examinations that would qualify him to work in the retail brokerage industry in Canada;
- His work as an international consultant had little to do with the retail brokerage industry; and
- A lack of evidence that he kept current with the standards and practices of the retail brokerage industry in Canada or Ontario or that he has been qualified to give expert evidence before.

[53] Many of the same concerns are present in this case. While Mr. Lamberson has worked for engineering companies in the past, he has not worked in the capacity of an engineer. He is not qualified to do so. He has not had the education that would allow him to practice as an engineer. He has limited to no knowledge of the standards and regulatory regime governing the construction of pipelines in Alberta and no experience working on pipeline projects anywhere in Canada.

[54] In refusing to qualify Mr. Malcolmson as an expert, the Court in ***Dulong***, at para 9 referred to the following passage from ***R v J (JL)***, [2000] 2 SCR 600 at page 613, where the Supreme Court of Canada said:

> [t]he Court has emphasized that the trial judge should take seriously the role of "gatekeeper". The admissibility of the expert evidence should be scrutinized as the time it is proffered, and not allowed too easy an entry on the basis that all the frailties could go at the end of the day to weight rather than admissibility.

[55] Neither decision establishes that formal professional credentials are invariably required, and I do not rely on them for that proposition. Their relevance is narrower. Substantial experience in an adjacent or overlapping field does not, without more, establish that a witness

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possesses the specialized knowledge required to give opinions belonging to another discipline. The qualification inquiry remains opinion-specific. In this case, CNOOC must demonstrate that Mr. Lamberson's actual education and experience equip him to give the particular opinions he advances concerning the professional responsibilities, engineering judgments and technical obligations of Sunstone as Engineer of Record. It has not done so.

[56] CNOOC submits that this case is more analogous to the situation in ***Canadian Natural Resources Limited v Wood Group Mustang (Canada) Inc (IMV Projects Inc)***, 2017 ABQB 106 in which an individual who did not hold a professional engineering designation was qualified to provide opinion evidence on heavy oil production facility design considerations, roles and responsibilities, process safety review, and engineering deliverables. In that case, however, the proposed expert was a trained power engineer.

[57] At paragraph 283 of the decision, the Court noted that "A power engineer's job is to operate what has been designed by engineers." Later, at paragraph 492, the Court set out the evidence of the expert that formed part of the basis for the finding of negligence:

> In making the finding of negligence, I have accepted the expert evidence of Mr. Averill, who was clear that he would expect the Operations group to know the maximum design envelope of the E Pipeline and would not expect them to operate in excess of that. He was also critical that more formal start up and operating documents had not been developed.

[58] The expert was a power engineer whose experience was focused on operations. The opinion on which the trial judge relied concerned operational issues. That is fundamentally different from the present case. Mr. Lamberson's reports extend beyond project and construction management into engineering standards and the roles and responsibilities of engineers. In this case the witness does not have expertise consistent with him rendering opinions on the standards applicable to Sunstone as an engineering firm.

[59] Given Mr. Lamberson's lack of education, training and experience in professional engineering, CNOOC has not established that he is qualified to opine on the professional engineering responsibilities of Sunstone as Engineer of Record, the adequacy of engineering analyses or design decisions, code compliance or fitness for purpose, or the professional engineering judgment required in the circumstances of this project. That conclusion does not mean that Mr. Lamberson lacks expertise in project and construction management. His considerable experience plainly provides him with specialized knowledge in those fields. The difficulty is that the opinions CNOOC seeks to tender do not remain within those boundaries. As the examples set out above demonstrate, his reports repeatedly move from project and construction-management matters into conclusions about what Sunstone, as Engineer of Record, was professionally or technically required to design, analyze, approve, provide or ensure. CNOOC has not established on a balance of probabilities that Mr. Lamberson possesses the specialized knowledge necessary to make those latter judgments.

[60] I have reviewed each substantive opinion to determine whether the appropriate response is instead to qualify Mr. Lamberson more narrowly in project and construction management and exclude only those portions of his reports that exceed those fields. **I** am not satisfied that this is practicable. The difficulty is not confined to isolated statements employing engineering terminology that could readily be severed or redacted. The reports repeatedly proceed from a premise concerning what Sunstone, as Engineer of Record, was professionally or technically

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required to do and use that premise to reach a further conclusion about allocation of responsibility, project execution, construction management or an asserted failure by a project participant. In those instances, the project-management conclusion depends upon an engineering premise that Mr. Lamberson has not been shown to be qualified to establish.

[61] Removing the express engineering conclusion while permitting the resulting project-management opinion would therefore not cure the problem. It would permit the same inadmissible premise to reach the Court indirectly. Nor am I satisfied that restricting Mr. Lamberson's oral testimony could adequately address opinions already formulated on that basis in his reports. Having reviewed the substantive opinions individually, I find that the engineering and project-management components are sufficiently intertwined and pervasive that a narrower qualification or selective redaction would not leave a coherent body of opinion evidence that reliably remains within his demonstrated expertise.

[62] Because CNOOC has not established threshold admissibility, it is unnecessary to proceed to the second-stage gatekeeping analysis. I nevertheless address that stage in the alternative because the matter was fully argued. The analysis that follows does not form part of my conclusion that CNOOC failed to demonstrate that Mr. Lamberson possesses the specialized knowledge required to give the opinions identified above. I instead consider whether, assuming that the threshold requirements were satisfied, the proposed evidence should nevertheless be excluded in the exercise of the Court's discretionary gatekeeping function. I conclude that it should.

[63] In my view, an expert's obligation to provide fair, objective, and non-partisan assistance extends to an expert providing clear, complete and forthright evidence with respect to their qualifications. The applicability of this obligation at the second stage of the gatekeeping analysis is described by the Supreme Court of Canada at para 24 of the ***White Burgess*** decision:

> At the second discretionary gatekeeping step, the judge balances the potential risks and benefits of admitting the evidence in order to decide whether the potential benefits justify the risks. The required balancing exercise has been described in various ways. In *Mohan*, Sopinka J. spoke of the "reliability versus effect factor" (p. 21), while in *J.-L.J.*, Binnie J. spoke about "relevance, reliability and necessity" being "measured against the counterweights of consumption of time, prejudice and confusion": para. 47. Doherty J.A. summed it up well in *Abbey* [*R v Abbey*, 2009 ONCA 624], stating that the "trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence": para. 76.

[64] Based on the evidence given by Mr. Lamberson on the qualification *voir dire*, I have material concerns about his candour concerning the nature and limits of his qualifications. Those concerns arise not from any single inaccuracy considered in isolation, but from the cumulative evidence addressed below.

[65] First, Mr. Lamberson inaccurately described his education in the materials provided to the Court. At para 16 of his rebuttal report, and in the CV forming part of his reports, he described himself as having a Bachelor of Science degree in Industrial Engineering and Technology from East Central University in Oklahoma. His evidence in cross-examination

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established that his degree was instead in Industrial Education and Technology. The distinction is material in this application because a significant part of the proposed evidence concerns engineering responsibilities and judgments and because his education forms part of the foundation upon which his qualification is advanced.

[66] CNOOC argued that Mr. Lamberson's reference to a degree in Engineering and Technology was merely an inadvertent slip and that it should have no bearing on the Court's assessment, particularly given that his opinions are based on his 40 years of experience in the pipeline industry rather than on his education. I disagree with CNOOC on this point. While I would not infer deliberate misrepresentation from the inaccurate description of the degree alone, my conclusion arises from the cumulative evidence given by Mr. Lamberson during the *voir dire*.

[67] During cross-examination, Mr. Lamberson was questioned extensively on a website he used for marketing purposes. The website described him as having "over 40 years' experience in the engineering, design, procurement, construction, start-up, and operations of energy projects worldwide, including full midstream services."

[68] Elsewhere, the website states: "I am an independent consultant with experience in all phases of the business, project, engineering, design, and construction management for upstream and midstream oil/gas products and energy-related facilities, including pipelines." It also claims "technical expertise" in engineering and construction.

[69] Under "Services," the website lists conceptual engineering and design, including hydraulics and line sizing, as well as project-specific engineering, procurement and construction specifications.

[70] In the section detailing Mr. Lamberson's experience as an expert, the website describes his retainer in this action as providing expert testimony regarding the quality of engineering, design, and construction services. The description on the website is not consistent with the stated areas of qualification that CNOOC has advanced.

[71] Considered together with the other evidence addressed below, I do not accept that the inaccurate reference to engineering when describing his degree was inadvertent. Mr. Lamberson markets himself as someone with expertise in engineering. His descriptions overstate the engineering component of his experience and obscure the important distinction between having worked alongside engineering functions and having been trained or qualified as an engineer. His description of himself as not being a "practicing engineer," while literally accurate, did not clearly disclose that he has never been an engineer. I find that Mr. Lamberson has not approached the role of expert with the degree of candour that is required.

[72] Mr. Lamberson was also not candid with the Court when he was asked about the accuracy of the areas of expertise he claims to have on his website. His evidence was that he had not updated the website in five or six years and that he did not use it anymore for marketing. That evidence is difficult to reconcile with the fact that the website disclosed his June 2024 retainer as an expert for CNOOC. The website must have been updated substantially more recently than his evidence suggested.

[73] A lack of candour at the qualification stage may have consequences extending beyond the expert's credibility or the weight ultimately assigned to the evidence. The qualification process requires the Court to determine whether the witness possesses the specialized knowledge and

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experience necessary to provide reliable assistance on the particular subject matter of the proposed opinion. As the Court emphasized at para 26 of ***Dulong***, substantial expertise in an adjacent field is insufficient if the witness lacks the particularized expertise required for the opinions actually advanced.

[74] Where an expert is not candid about the extent or limits of that expertise, overstates the relevance of prior experience or education, or seeks to characterize opinions falling outside that expertise as falling comfortably within it, the concern is not simply whether the expert is believable. It calls into question the reliability of the foundation upon which the opinions rest and the Court's ability to rely upon the expert to remain within the proper boundaries of the expert's expertise.

[75] I do not base my conclusion merely on the inaccurate description of Mr. Lamberson's degree. My concern arises from the cumulative effect of that description, the website's repeated attribution of engineering and technical expertise to him, its description of services involving engineering design, and his evidence concerning how recently the website had been updated. Taken together, those matters demonstrate that Mr. Lamberson presented the nature of his experience in a manner that did not maintain a clear distinction between managing or working alongside engineering functions and possessing the specialized engineering expertise necessary to make professional engineering judgments. That distinction is particularly important here because his reports repeatedly cross the same boundary.

[76] That concern assumes particular significance at the second, discretionary stage of the ***Mohan/White Burgess*** analysis. At that stage, the Court must determine whether the potential assistance and probative value of the evidence justify the risks associated with its admission. A material lack of candour concerning the nature or limits of an expert's qualifications may heighten those risks because it reduces the Court's confidence that the expert will reliably distinguish between matters supported by the expert's specialized knowledge and matters dependent upon assumptions, advocacy or expertise belonging to another discipline. This consideration is particularly significant here because the difficulty already identified in the reports is Mr. Lamberson's repeated movement between project and construction-management matters within his experience and professional engineering judgments that are not. The issue is therefore not simply one of credibility or the eventual weight of his opinions. It affects the reliability of the boundaries within which the proposed expert evidence would be received.

[77] In my view, that line has been crossed here. On the benefit side, Mr. Lamberson's lengthy experience in project and construction management could potentially assist the Court in understanding project execution, RFIs, construction documentation, coordination among project participants and the communication of project deliverables. Those are subjects capable of falling within his demonstrated experience.

[78] Against those benefits, however, I must consider the pervasive manner in which his reports move between those subjects and opinions concerning professional engineering responsibilities and judgments that he has not demonstrated the expertise to make. The concerns identified above about the manner in which he described the nature and limits of his engineering expertise further reduce my confidence that those boundaries can reliably be maintained through his evidence at trial. The fact that this is a judge-alone trial reduces the danger of undue prejudice, but it does not eliminate the risks of giving unwarranted authority to opinions outside the witness's expertise, confusing the proper boundaries between project-management and

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engineering evidence, or consuming substantial trial time attempting to disentangle those matters.

[79] I conclude that those risks outweigh the potential assistance offered by the evidence. Accordingly, even if I am wrong in concluding that the proposed opinions fail at the threshold qualification stage, I would exclude the rebuttal and surrebuttal evidence in the exercise of the Court's gatekeeping function.

Summary and Conclusion

[80] CNOOC seeks to qualify Mr. Lamberson as an expert in project and construction management and to admit his rebuttal and surrebuttal reports. Although the proposed qualification is framed in those terms, the reports extend materially beyond those fields. Mr. Lamberson repeatedly expresses opinions about the professional responsibilities of an Engineer of Record, the engineering analyses and judgments required on a pipeline project, and the technical documents and design deliverables that a competent engineering firm should produce.

[81] Mr. Lamberson is not an engineer. He does not hold an engineering degree, has never been licensed or worked as an engineer, and has never worked on a pipeline project in Alberta or elsewhere in Canada. His considerable experience in project and construction management has not been shown to provide him with the specialized engineering knowledge necessary to opine on the standards, obligations and professional judgment applicable to an engineering firm. CNOOC has therefore not established, on a balance of probabilities, that Mr. Lamberson is properly qualified to give the opinions contained in his reports.

[82] The deficiencies in Mr. Lamberson's qualification cannot be cured by excising isolated portions of the reports. Mr. Lamberson's opinions about engineering standards, obligations and alleged failures permeate both reports and cannot practicably be separated from any opinions that might otherwise fall within his project or construction management experience. The reports must therefore be excluded in their entirety because they do not satisfy the threshold qualification requirement under the ***Mohan/White Burgess*** framework.

[83] I reach the same result at the second stage of the gatekeeping analysis. The inaccurate description of Mr. Lamberson's degree, considered together with the manner in which he represented his engineering and technical expertise and his evidence concerning the currency of his website, gives rise to a material concern about his candour concerning the nature and limits of his expertise. That concern bears directly upon the reliability of opinions that repeatedly cross the boundary between project and construction management and professional engineering judgment. In the circumstances, I am not satisfied that cross-examination or the attribution of reduced weight would adequately address the risks created by admitting the evidence.

[84] For all these reasons, Mr. Lamberson will not be qualified as an expert, and his rebuttal and surrebuttal reports are excluded.

Heard on the 9th day of November 2026.
Dated at the City of Calgary, Alberta, this 10th day of November, 2026

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

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