Court of King's Bench of Alberta

Citation: CNOOC Petroleum North America ULC v ITP SA, 2024 ABKB 607

Date: 20241010
Docket: 1701 07427
Registry: Calgary

Between:

CNOOC Petroleum North America ULC

Plaintiff

- and -

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

Defendants

- and -

Surerus Pipeline Inc., Stresstech Engineering Inc., and Thurber Engineering Ltd.

Third Party Defendants

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

I. Introduction

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

[2] This is a complex litigation matter which I have been case managing for some years and several applications have been filed by the parties. The trial was set to begin September 6, 2025.

[3] The present application brought by Wood Group seeks to adjourn the trial scheduled for September 6, 2025 (the "**Adjournment Application**"). It seeks new dates and setting a revised complex case litigation plan for the rescheduled trial. ITP supports the Adjournment Application.

[4] CNOOC originally opposed altering the trial schedule. However, it now accepts that a delay must occur. Nevertheless, it opposes the options suggested by Wood Group and ITP. CNOOC now suggests that the trial can be rescheduled for early 2026.

[5] Surerus Pipeline Inc., Stresstech Engineering Inc. and Thurber Engineering Ltd. were not involved in this application.

II. Background

[6] Following the Consent Order on January 26, 2023, setting the trial date for September 6, 2025, a Complex Case Litigation Plan ("**CCLP**") was pronounced on March 15, 2023. The CCLP was in preparation for eight months of trial time, and it set out deadlines for the steps to be taken before the trial.

[7] Since that time there have been several applications regarding undertakings and disclosure. The most notable of these being a disclosure application brought by Wood Group, wherein I determined that two reports, the Nexen and Skystone Reports (collectively, the "**Reports**"), had to be disclosed: ***CNOOC Petroleum North America ULC v ITP SA***, 2023 ABKB 689 aff'd 2024 ABCA 139. After the Court of Appeal upheld this decision, the disclosure commenced. This has led to the disclosure of a significant number of new records in May 2024. Other applications for disclosure and further and better responses to undertakings have occurred.

[8] This background has led to the Adjournment Application. The Adjournment Application seeks to adjourn the current trial date, potentially set a new one, or declare it *sine die*. It also seeks to modify the CCLP deadlines to account for an adjournment.

III. Issues

[9] The issues I must determine in this application are as follows:

1. Should the trial date be adjourned?
2. If the current trial date is adjourned, how should the trial date be modified?

IV. Analysis

A. Alberta *Rules of Court*

[10] The Alberta *Rules of Court*, Alta Reg 124/2010 [***Rules***] outline their purpose in *Rule* 1.2. The narrative is as follows.

> **Purpose and intention of these rules**
>
> 1.2(1) The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.

[11] Also of use for our present purposes are the following *Rules*:

> **Responsibility of parties to manage litigation**
>
> 4.1 The parties are responsible for managing their dispute and for planning its resolution in a timely and cost-effective way.
>
> **What the responsibility includes**
>
> 4.2 The responsibility of the parties to manage their dispute and to plan its resolution requires the parties
>
> (a) to act in a manner that furthers the purpose and intention of these rules described in rule 1.2,
>
> (b) in an action categorized as a standard case, to respond in a substantive way and within a reasonable time to any proposal for the conduct of an action,
>
> (c) in an action categorized as a complex case, to meet or to adjust dates in a timely way in a complex case litigation plan,
>
> (d) when the complexity or the nature of an action requires it, to apply to the Court for direction, or request case management under rule 4.12, and
>
> (e) to consider and engage in one or more dispute resolution processes described in rule 4.16(1) unless the Court waives that requirement.
>
> **Categories of court action**
>
> 4.3(1) For the purpose of these rules, actions are categorized as
>
> (a) standard cases, or
>
> (b) complex cases.
>
> (2) In deciding whether an action should be categorized as a standard or complex case, the parties or the Court, as the case requires, must consider the following factors:
>
> (a) the amount of the claim, the number and nature of the claims, and the complexity of the action;
>
> (b) the number of parties;

(c) the number of documents involved;

(d) the number and complexity of issues and how important they are;

(e) how long questioning under Part 5 is likely to take;

(f) whether expert reports will be required and, if so, the time it will take to exchange reports and to question experts under Part 5;

(g) whether medical examinations and reports under Part 5, Division 3 will be required;

(h) any other matter that should be considered to meet the purpose and intention of the rules described in rule 1.2;

(i) whether a third party claim has been or is likely to be made.

(3) If, within 4 months after the date a statement of defence is filed, the parties do not agree on whether the action is a standard or complex case, and the Court does not otherwise order, the action is to be categorized as a standard case.

[...]

Complex case obligations

4.5(1) The parties to an action categorized as a complex case must, within 4 months after the date that the parties agree to the categorization or the Court determines that the action is a complex case,

(a) agree on a complex case litigation plan, and

(b) unless reasons are given in the plan not to do so,

(i) establish a date by which the real issues in dispute will be identified

(ii) agree on a protocol for the organization and production of records,

(iii) set a date by which disclosure of records will be completed under rule 5.5,

(iv) set a date by which questioning under Part 5 will be completed,

(v) set a date by which all experts' reports and rebuttal and surrebuttal expert reports will be served,

(vi) set a date by which reports of any health care professionals will be obtained, and

(vii) agree on an estimated date to apply for a trial date.

(2) When a complex case litigation plan or an amendment to the plan is agreed to, the plaintiff must file it and serve it on all parties.

Settling disputes about complex case litigation plans

4.6 If no agreement is reached on a complex case litigation plan within the period referred to in rule 4.5(1), or if the parties cannot agree on an adjustment to a date in the plan, the Court may

(a) establish or amend a complex case litigation plan for the action, or

(b) make a procedural order with respect to the action generally or to deal with particular issues or issues that may arise.

Monitoring and adjusting dates

4.7(1) The parties must monitor progress in their action and adjust the dates by which a stage or step in the action is expected to be completed if a party is added to the action or as circumstances require.

(2) On application, the Court may adjust or set dates by which a stage or a step in the action is expected to be completed.

B. Propositions of the Parties

1. Wood Group

[12] Due to the significant volume of additional records disclosed in May of 2024, Wood Group has asserted the need to re-question CNOOC witnesses. It has also asserted the need to prepare expert reports following the questionings. Consequently, Wood Group is of the view that the trial would need to be delayed by approximately a year from its initial date. It also provided several revised dates for the CCLP deadlines.

[13] However, instead of setting a new trial date, Wood Group suggests that the adjournment be *sine die*. The Wood Group advances the *sine die* adjournment suggestion in order to allow more flexibility so that the parties can address a number of matters, including: (i) potential interlocutory applications; (ii) service *ex juris* on third parties; (iii) the exchange of expert reports; and (iv) the time necessary to conduct mediation. It also proposes that a new trial date be scheduled after discovery is completed, and that the date be at the earliest mutually agreeable date.

[14] Wood Group further asserts that it would suffer grave prejudice if the trial were to remain on the current schedule. It indicates that an adjournment of at least a year would be required. It argues that any prejudice CNOOC would suffer is of its own doing.

2. ITP

[15] ITP supports the Adjournment Application, although it did not specifically request that the trial date be adjourned. The ITP suggested changes to the CCLP deadlines parallel those proposed by Wood Group. ITP suggested a trial date in October 2026 or sometime thereafter.

3. CNOOC

[16] CNOOC argued that a delay of approximately four months for the trial would be more than enough time to resolve the issues. It indicated that the trial could begin in January 2026. In support of this, CNOOC noted that it is no longer considering a business interruption claim, which had been an unsettled issue throughout the litigation.

[17] CNOOC also indicated that that CNOOC Limited and CNOOC Research Institute have retained local counsel. This is important procedural development because the Wood Group expressed concern about the practical challenges of serving those third parties in respect of this Action. In the view of CNOOC, the fact that CNOOC Limited and CNOOC Research Institute have retained counsel should resolve the potential service issues that Wood Group had alleged.

[18] CNOOC strongly opposes a *sine die* adjournment request. It asserts that this would leave the trial date up in the air and it would be a "non-starter". Concerning this point, it argues that Wood Group has not provided any evidence to justify such an adjournment request and that CNOOC would suffer severe prejudice if a lengthy adjournment were granted.

C. The Law

[19] To grant an adjournment is within a judge's discretion, but of course this discretion must be applied judicially. As stated in ***Barrette v The Queen***, [1977] 2 SCR 121 at 125:

> It is true that a decision on an application for adjournment is in the judge's discretion. It is, however, a judicial discretion so that his decision may be reviewed on appeal if it is based on reasons which are not well founded in law. This right of review is especially wide when the consequence of the exercise of discretion is that someone is deprived of his rights, whether in criminal or in civil proceedings. ...

[20] This quotation was recently cited with approval by Justice Sidnell in ***Baldock Estate v Abou Reslan***, 2023 ABKB 149, albeit in the context of a trial that had already commenced. Nevertheless, the principle still applies.

[21] ***Royal Bank of Canada v Place***, 2010 ABQB 733 at para 60, followed by ***Lameman v Alberta***, 2011 ABQB 40 at para 33, lays out the factors that courts can consider to balance the interests of the parties as well as the administration of justice in the orderly processing of civil trials. Those factors are as follows:

> 1. courts should make a just determination of the real matters in dispute, and they should decide cases on their merits;
>
> 2. the prejudice caused by granting or denying the adjournment;
>
> 3. the applicant's explanation for not being ready to proceed;
>
> 4. the length of the adjournment the applicant is seeking and the consequent disruption of the court's schedule;
>
> 5. the importance of effectively enforcing previous court orders;
>
> 6. the proper marshalling of evidence and prosecution of complex and multi-faceted actions;
>
> 7. whether there is a realistic expectation that the adjournment will accomplish its stated purpose;
>
> 8. the history of the proceedings, including other adjournments and delays, and at whose instance those adjournments and delays occurred;
>
> 9. where a party is seeking the adjournment to amend pleadings, how long counsel has known of the issue to which the amendment is aimed and whether counsel has had previous opportunities to amend;
>
> 10. whether the application is merely an attempt to delay the proceedings; and
>
> 11. the party who seeks the adjournment should not bear the consequences of its counsel's failures.

[22] Case management involves flexibility. Concerning this issue, the Court of Appeal in ***Piikani Nation v Kostic***, 2018 ABCA 234 at para 24 has commented as follows:

> Case management requires a strong element of flexibility, and a large portion of common sense. Litigation under case management is still governed by the Rules of Court. The Rules themselves are, to some extent, flexible, and allow for the variation of time limits, the amendment of documents, and the customizing of procedural requirements (see generally R. 1.4(2)(c) and (d), and 4.14). Complex litigation is often also governed by litigation plans and other protocols adopted by the case management judge. Such litigation plans and protocols create expectations in the parties, and in order to be effective they must not be disregarded. However, a rigid application of such protocols can become counterproductive. From time to time litigation plans must be amended. On occasion, the case management judge will allow or follow procedures not strictly contemplated by, and not strictly in accordance with, the litigation plan or the protocols. ...

[23] Similarly, in ***Brinton v Coish***, 2017 ABCA 334, the Court of Appeal highlighted that circumstances may change, and new information may arise. The following comments in ***Brinton*** at para 5 are instructive in this regard:

> Litigation schedules and orders setting time limits are designed to fulfil the overall objective of R. 1.2 in having litigation "fairly and justly resolved . . . in a timely and cost effective way". Plans and schedules must always be flexible enough to adapt to changed circumstances, new information, the unavailability of counsel and witnesses, and other circumstances that might arise. That is so whether the procedures are agreed to by counsel, or are contained in a consent or other order. Deadlines and other agreed procedures must not be ignored, but they must not be allowed to overcome the ultimate objective of deciding litigation on the merits. Depriving the trier of fact of relevant evidence is counterproductive.

D. Application of the Law to the Facts

1. Should the trial date be adjourned?

[24] Based on the evidence before me and my analysis of the law, I find an adjournment is appropriate in the circumstances. I make this determination because of the significant volume of additional records disclosed in May of 2024 by CNOOC.

[25] In the view of Wood Group, that additional disclosure requires it to re-question CNOOC witnesses. This determination is also supported by the concurrence between the parties that there will have to be an adjournment of the original trial date that is set for September 6, 2025.

2. If the current trial date is adjourned, how should the trial date be modified?

[26] The above determination requires me to decide the nature of the adjournment. That is, should that adjournment be on a *sine die* basis or to a date certain.

[27] Based on my review of the evidence and analysis of the law, I find that the suggestion by CNOOC for a four-month delay likely would not provide enough time for the defendants to question the witnesses involved and otherwise adequately prepare for the trial.

[28] That said, I recognise that an adjournment will prejudice the Plaintiff for reasons expressed in ***Humphreys v Trebilcock***, 2017 ABCA 116. The relevant comments are at para 130, and that narrative reads as follows:

> There is no doubt that the passage of time may impair a moving party's ability to defend its interests at the trial of an action. "Delay may compromise the fairness of a trial". The unavailability of crucial witnesses – death, impairment or disappearance – may diminish the strength of the moving party's case. The passage of time may also have impaired a prospective witness' ability to access stored data. A potential witness' mental health may have declined and place the person in a position where he or she no longer can retrieve material in a memory bank. Or a party may have lost exhibits. This may be attributable to disastrous fires or floods or mistakes made by movers or document managers. [footnotes omitted]

[29] Further, there is an interest in the administration of justice that litigation move forward at a reasonable and fair pace. That said, I need to balance the interests of all parties in this Action.

[30] In my quest to address my obligations concerning the Adjournment Application, I reviewed the evidence and the law. I considered the amount of time spent dealing with the disclosure application and its appeal. I note that the progression of the Action was stalled to resolve these issues. I further note that there were a significant number of records disclosed by CNOOC in May 2024.

[31] In my efforts to balance the interests of the parties, I find the prejudice to Wood Group and ITP if the adjournment were not granted for approximately a year would outweigh the prejudice to CNOOC of granting the adjournment. However, while I accept the CCLP as proposed by Wood Group, I do not accept their request to adjourn the trial date *sine die*. That would leave the trial date too open and uncertain.

[32] Although other circumstances may arise, setting a trial date would encourage the parties to work their best to meet the deadlines and ensure that the purposes outlined in *Rule* 1.2 are met. A set trial date would also better protect the interests of justice. That being the case, I find that setting a revised commencement date of Tuesday, October 13, 2026 would best meet these criteria.

V. Conclusion

[33] In conclusion, I turn to address the issues that were framed above. For the reasons outlined above, I find:

a. the current trial date of September 6, 2025 should be adjourned; and

b. the trial date should be reset to a new commencement date of Tuesday, October 13, 2026.

VI. Costs

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

Heard on the 13th day of September 2024.
Dated at the City of Calgary, Alberta this 10th day of October 2024.

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

Appearances:

Jeffrey Sharpe KC, Andrew Sunter and Susan Fader
for the Plaintiff CNOOC Petroleum North America ULC

Andrew Pozzobon and Taylor Kemp
for the Defendant ITP SA

Munaf Mohamed KC and Matthew Laflèche
for the Defendants Sunstone Projects Ltd. and Wood Group Canada, Inc.