# Court of King's Bench of Alberta

**Citation: Association of Professional Engineers and Geoscientists of Alberta v Wood Group Canada Inc, 2024 ABKB 638**



**Date:** 20241101
**Docket:** 1901 11892
**Registry:** Calgary

Between:

**Barry Bauhuis**

Applicant

- and -

**The Association of Professional Engineers and Geoscientists of Alberta**

Respondent

**Docket:** 2001 03244

Between:

**Wood Group Canada Inc**

Applicant

- and –

**The Association of Professional Engineers and Geoscientists of Alberta**

Respondent

**Docket:** 1901 18478

Between:

**The Association of Professional Engineers and Geoscientists of Alberta**

Applicant

- and –

**Wood Group Canada Inc**

Respondent



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**Ruling on Costs**
**of the**
**Associate Chief Justice**
**D.B. Nixon**

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## I. Introduction

[1] This is a ruling on costs following my decision in ***Association of Professional Engineers and Geoscientists of Alberta v Wood Group Canada Inc***, 2023 ABKB 688 [***APEGA v Wood Group***] wherein I gave leave to the parties to speak to costs if they could not otherwise agree. The parties could not agree.

[2] I also address costs in an order concerning an application to compel by Justice Anderson in the docket numbers 2001 03244 and 1901 18478, issued on May 14, 2021. In that hearing Justice Anderson reserved costs to be determined by the Justice who heard the disclosure application (the "**Application to Compel**") by Wood Group.

[3] As a result, I am considering the costs question for both: (i) the Wood Group decision mentioned above (concerning the "**Underlying Application**"); and (ii) the decision made by Justice Anderson concerning the Application to Compel.

## II. Background

[4] The Underlying Application was brought by Wood Group Canada Inc ("**Wood Group**") in its effort to seek production and disclosure against the Association of Professional Engineers and Geoscientists of Alberta ("**APEGA**"). Wood Group was supported in the Underlying Application by Mr. Barry Bauhuis. APEGA was supported by the intervener CNOOC Petroleum North America ULC ("**CNOOC**").

[5] Mr. Bauhuis is a retired engineer and former employee of Wood Group's previous corporate structure. Although not a party to the Underlying Application, Mr. Bauhuis filed significant material and made submissions throughout the process.

[6] Both Wood Group and Mr. Bauhuis sought a judicial review of APEGA's investigation of them. Those judicial reviews involve Action No. 2001 03244 and Action No. 1901 11892, respectively. I released the judicial review decision in ***Bauhuis v Association of Professional Engineers and Geoscientists of Alberta***, 2024 ABKB 603.

[7] I dismissed the Underlying Application, finding that the issue was properly one of procedural fairness. As a result of that decision, APEGA was not obliged to produce the requested reports or to answer questions and produce materials arising from a March 10, 2020 questioning on the affidavit of Mr. Garth Jesperson. Mr. Jesperson was the designated representative of APEGA in its originating application for advice and direction.

[8] The Application to Compel was brought by Wood Group to compel answers and certain undertakings refused and questions objected to during the January 15, 2021 cross-examination on an Affidavit sworn by Ms. Marianne (Chuck) Davies. Ms. Davis had sworn her Affidavit on January 8, 2021.

[9] Justice Anderson issued her order concerning the Application to Compel on May 14, 2021, requiring Ms. Davies to answer some of the refused undertakings and objected to questions, while upholding most of the refusals and objections. Justice Anderson left the costs of the application before her to be determined by the Justice hearing the Underlying Application. Hence, this is the reason I am addressing the costs associated with the Application to Compel hearing.

## III. Issues

[10] I have reframed the issues in this hearing on costs by reference to the following questions.

a. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Wood Group?

b. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Mr. Bauhuis?

**c.** Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Wood Group or vice versa?

d. Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Mr. Bauhuis?

e. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Wood Group or vice versa?

f. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Mr. Bauhuis?

## IV. Positions of the Parties

[11] The parties are at odds with one another as to who is owed costs. If costs are owed, the parties are also at odds as to amount.

### A. APEGA

[12] APEGA seeks costs from Wood Group as well as Mr. Bauhuis for the Underlying Application. It requests an award of 50% of its solicitor and own client costs. APEGA claims $111,578.54 as its reasonably incurred fees and 50% of that amount would be $55,789.27.

[13] In the alternative, APEGA seeks Schedule C costs on a Column 5 basis against both Wood Group and Mr. Bauhuis for the Underlying Application. APEGA calculates that the Schedule C costs on a Column 5 basis to be $26,323.03, doubled to equal $52,646.06. It makes this claim because it had to respond to both Wood Group and Mr. Bauhuis.

[14] The reasoning for the Column 5 basis is because of the complexity of the matters at issue. APEGA asserts that the Column 5 approach is due to the Wood Group and CNOOC litigation in Action No. 1701 07427. Given the amounts being sought, APEGA asserts that Column 5 is invoked.

[15] APEGA was not involved in the Application to Compel.

### B. Wood Group

[16] Wood Group does not seek costs from APEGA. However, Wood Group argues that if costs are assessed against it in favour of APEGA, those costs should be based on Column 1 of Schedule C because the Underlying Application is interlocutory without a monetary sum.

[17] Wood Group also argues that the costs should be assessed only from March 3, 2023, which is the date APEGA filed its Brief. Wood Group advances this threshold date because it asserts that the Brief filed on March 3 shifted the focus of the argument from one of confidentiality, which was the subject of APEGA's Notice of Application, to that of procedural fairness, which was the issue that APEGA succeeded on in the Underlying Application.

[18] Concerning the privilege argument, Wood Group seeks costs from CNOOC for the Underlying Application based on Column 1 of Schedule C. In advancing this argument, Wood Group highlights that CNOOC lost on its privilege argument in ***CNOOC Petroleum North America ULC v ITP SA***, 2023 ABKB 689 [***CNOOC v ITP 2023***]. Wood Group argues that the CNOOC intervention was not successful because the privilege argument was not accepted, and that argument took up most of the complexity and difficulty of the hearing.

[19] Wood Group also seeks costs for the Application to Compel from CNOOC, arguing that it was ultimately successful in dismissing CNOOC's privilege arguments in ***CNOOC v ITP 2023*** and getting the reports disclosed. As such, Wood Group asserted that costs should be awarded to it as costs following the event.

### C. CNOOC

[20] CNOOC argues that it should be awarded costs for the Underlying Application from both Wood Group and Mr. Bauhuis because it was added not only as an intervener but as a respondent through a Consent Procedural Order issued by former ACJ Rooke on December 11, 2020. CNOOC submits that although it was not successful on an argument of privilege, it supported the APEGA arguments and ultimately the Underlying Application was dismissed. As such, it asserts

it contributed to the substantive success of APEGA in respect of the Underlying Application and should be awarded costs.

[21] As for the Application to Compel, CNOOC seeks costs from Wood Group and Mr. Bauhuis. It seeks these costs because it asserts it was largely successful with most of the objected to questions and refused undertakings being sustained. It takes this position because 74% of the questions objected to and refused undertakings were sustained in its favor.

[22] For both the Underlying Application and the Application to Compel, CNOOC seeks costs for all steps taken, in the amount of 40% to 50% of the actual costs incurred. In the alternative, regarding the Application to Compel, CNOOC seeks costs pursuant to Column 1 of Schedule C.

### D. Mr. Bauhuis

[23] Mr. Bauhuis does not seek costs from anyone. Further, he requests that no costs be awarded against him.

[24] Mr. Bauhuis advances this position on the premise that although he did participate in both the Underlying Application and the Application to Compel, he was not a proper party to either of those applications. Therefore, he asserts that it would not be appropriate for costs to be awarded against him when he was involved in this dispute as a non-party.

[25] Mr. Bauhuis argues that he is trapped in an untenable position because he is a retired engineer without the financial recourses of the other parties. While he has been trying to support the arguments advanced by Wood Group, he emphasizes that he does not have access to the information and material that is available the other participants in this litigation.

[26] In summary, he asks that no costs be awarded against him. If costs are assessed, he asks that they be based on Column 1 of Schedule C.

## V. Analysis

### A. The Law of Costs – Overview

[27] The framework for determining costs is set out in the Alberta *Rules of Court* (the "***Rules***"). The default rule is that a successful party to an application is entitled to an award of costs against the unsuccessful party payable forthwith, subject to the Court's general discretion under *Rule* 10.31: *Rules* 10.29(1); ***McAllister v Calgary (City)***, 2021 ABCA 25 at paras 21-22.

[28] There are no particular constraints or rules that apply to the application of these general rules. This decision fits within the broad discretion the Court has in making a costs award as per *Rules* 10.31 and 10.33. This discretion is of course subject to the need to act judicially on the facts of the case: ***McAllister*** at para 18.

[29] The primary purpose of a costs award is to partially indemnify the successful party for either defending a claim that proved unfounded or in pursuing a valid legal right: ***McAllister*** at para 33. Under *Rule* 10.31(1), the trial judge holds considerable discretion in determining what constitutes reasonable and proper costs: ***Barkwell v McDonald***, 2023 ABCA 87.

[30] The costs award need not be based on Schedule C, and Schedule C is not a mandated default method: ***McAllister*** at para 54. However, Schedule C does, in certain situations, have the "advantage of providing parties with greater certainty as to their exposure to costs, it is simple,

efficient, and inexpensive to apply, and in many cases avoids the need for lengthy inquiries into and assessment of the appropriate level of costs": ***Barkwell*** at para 53.

[31] The overriding issue is proportionality and reasonableness: ***Barkwell*** at paras 57 and 58.

[32] The general rule for interveners is that they neither receive nor pay costs: ***SM v Alberta (Child, Youth and Family Enhancement Act, Director)***, 2020 ABQB 558 at para 32. However, as noted in ***SM*** there are exceptional circumstances where costs will be awarded, such as whether the intervener presented a unique viewpoint; whether there is legislation that provides a special role for the intervener; the nature and extent of the intervener's interest and involvement in the proceeding; whether the intervener was successful on the merits; whether a party provoked the intervener's involvement; the terms of the order granting leave to intervene (whether the terms address the possibility of a costs award); and the extent to which the intervener acted like a party: ***SM*** at para 33.



### B. Application of the Law to the Facts

[33] First, I will deal with the Costs for the Underlying Application. The relevant issues are addressed in questions a, b, c, and d, below.

[34] Second, I will deal with the Costs for the Application to Compel. The relevant issues are addressed in questions e and f, below. As set out in Justice Anderson's order, the costs for the Application to Compel were to be determined at the hearing which is now before me.

#### a. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Wood Group?

[35] Wood Group sought disclosure of the reports and wanted to compel answers from Mr. Jesperson. That request was denied in the decision concerning the Underlying Application. APEGA was successful in defending its position. As a result, there is no dispute that Wood Group owes costs to APEGA.

[36] I do not find that there is a reason to only assess costs as running from March 3, 2023, when APEGA filed its Brief. Although it had also relied on arguments based on confidentiality and privilege, I find no indication to suggest that APEGA could only frame its arguments through that lens.

[37] Given that there was no monetary amount at issue and the nature of the Underlying Application, I find that Column 1 of Schedule C is the appropriate award of costs in favour of APEGA against Wood Group. Notwithstanding that there are several hundreds of millions of dollars at issue in the separate pipeline litigation, what was before me in the Underlying Application was an interlocutory application in the context of a judicial review. That being the case, the default scale is Column 1: ***Kissel v Rocky View (County)***, 2020 ABQB 570 at para 8.

#### b. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Mr. Bauhuis?

[38] I acknowledge that Mr. Bauhuis was not directly a party in the Underlying Application. However, he filed a significant amount of material, and went beyond simply supporting the Wood Group position.

[39] Under *Rule* 10.28 the definition of party "includes a person filing or participating in an application". As a result, I find that APEGA is entitled to costs against Mr. Bauhuis. In the

circumstances of this case, with no monetary amount at issue and in the context of an interlocutory application in a judicial review, I find that Column 1 of Schedule C is the appropriate award of costs in favour of APEGA against Mr. Bauhuis.

**c. Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Wood Group or vice versa?**

[40] CNOOC supported APEGA in having the Underlying Application dismissed. That said, the vast majority of the CNOOC argument was on the issue of privilege, which was not dealt with in the Underlying Application: see ***APEGA v Wood Group*** at paras 20 to 23. Given this context, I am of the view that this is a situation of mixed success. In these circumstances, no costs should be awarded for or against CNOOC for the Underlying Application.

**d. Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Mr. Bauhuis?**

[41] CNOOC has sought costs from Mr. Bauhuis in the Underlying Application for similar reasons as in its arguments for costs against Wood Group. Again, I find that because CNOOC was not successful on its privilege arguments and the situation of mixed success therein, there should not be any costs awarded to CNOOC against Mr. Bauhuis for the Underlying Application.

**e. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Wood Group or vice versa?**

[42] Concerning the Application to Compel, it was CNOOC that was largely successful in defending the objections and refusals before Justice Anderson. Justice Anderson upheld the vast majority of the objections and refusals by CNOOC before her. As a result, I find that CNOOC is entitled to those costs as against Wood Group based on Column 1 of Schedule C.

[43] I make this determination because Justice Anderson was clear in her order that costs were to be established based on the Application to Compel, and this application was separate from the 1701 Action that I had decided in ***CNOOC v ITP 2023***. As such, the fact that Wood Group was ultimately successful through a different approach in acquiring disclosure of the reports has no bearing on the success of CNOOC in the Application to Compel and entitlement to costs on that basis.

[44] Based on my finding that CNOOC was largely successful in defending against the Application to Compel and is entitled to costs, Wood Group is not entitled to costs against CNOOC for the Application to Compel.

**f. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Mr. Bauhuis?**

[45] For the Application to Compel, unlike the Underlying Application, I find that Mr. Bauhuis was not nearly as involved and it is most properly framed as a dispute between CNOOC and Wood Group regarding disclosure. As such, I do not find it appropriate to award costs in favour of CNOOC against Mr. Bauhuis for the Application to Compel as he was not a party to that application.

## VI. Conclusion

[46] Based on my review of the evidence and analysis of the law, I find as follows concerning the issues

a. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Wood Group? For the reasons outlined above, I find that Column 1 of Schedule C is the appropriate award of costs for APEGA against Wood Group.

b. Should an award of costs in respect of the Underlying Application be awarded in favour of APEGA against Mr. Bauhuis? For the reasons outlined above, I find that Column 1 of Schedule C is the appropriate award of costs for APEGA against Mr. Bauhuis.

c. Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Wood Group or vice versa? For the reasons outlined above, I find that no costs should be awarded to or against CNOOC for the Underlying Application.

d. Should an award of costs in respect of the Underlying Application be awarded in favour of CNOOC against Mr. Bauhuis? For the reasons outlined above, I find that no costs should be awarded to CNOOC against Mr. Bauhuis for the Underlying Application.

e. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Wood Group or vice versa? For the reasons outlined above, I find that Column 1 of Schedule C is the appropriate award of costs for CNOOC against Wood Group.

f. Should an award of costs in respect of the Application to Compel be awarded in favour of CNOOC against Mr. Bauhuis? For the reasons outlined above, I find that no costs should be awarded to or against Mr. Bauhuis for the Application to Compel.

[47] I thank the parties for their submissions throughout.

Heard on the 21st day of March 2024.
**Dated** at the City of Calgary, Alberta this 1st day of November 2024.

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

**Appearances:**

S. L. Hunka
for the Association of Professional Engineers and Geoscientists of Alberta

M. D. Mysak
for Wood Group Canada Inc

S. Mansfield, R. Reichelt
for CNOOC Petroleum North America

D. J. Schindelka
for Mr. Barry Bauhuis