Court of King's Bench of Alberta

Citation: EMM Energy Inc v Canadian Natural Resources Limited, 2025 ABKB 620

Date: 20251028
Docket: 0901 02460
Registry: Calgary

Between:

EMM Energy Inc and Ener-T Corporation

Plaintiffs/Appellants

- and -

Canadian Natural Resources Limited

Defendant/Respondent

Reasons for Decision
of the
Honourable Justice C.D. Simard

I. Overview

[1] In 2004, EMM Energy Inc and Ener-T Corporation (the **Plaintiffs**) started investing in interests in an oil and gas producing zone (the **Sparky K Formation**) located near Marwayne, in east central Alberta. They allege that Canadian Natural Resources Limited (**CNRL** or the **Defendant**) caused damage to the Sparky K Formation by injecting water into it, *via* an injection well (the **7-18 Well**). The Plaintiffs commenced this action in 2009.

[2] In the Statement of Claim, the Plaintiffs claim that CNRL's water injections were not authorized by the applicable regulator, now known as the Alberta Energy Regulator (**AER**), and that the injections damaged the Sparky K Formation which impaired their right to recover oil and gas. They seek damages of $10 million, or another amount to be proven at trial. CNRL alleges in its Statement of Defence that it has had active, valid authority to inject water into the Sparky K Formation since 1993, and that its injections have been compliant with that authority. Among other things, it says that the Sparky K Formation was mostly depleted by 2004, that the Plaintiffs should have known this, and that its water injection activities caused no damage.

[3] On December 15, 2022, Farrington AJ heard two applications:

(a) CNRL's application to dismiss the action for long delay, pursuant to Rule 4.31 of the Alberta *Rules of Court* (the ***Rules***); and

(b) the Plaintiffs' application to compel CNRL to attend alternative dispute resolution (ADR), and to allow them to amend their Statement of Claim.

[4] On January 3, 2023, Farrington AJ issued an Endorsement, granting CNRL's dismissal application (the **Dismissal Order**). He stated in the Endorsement that if it had been necessary for him to rule on the Plaintiffs' amendment application, he would have dismissed it (the **Amendment Decision**). Because he dismissed the Plaintiff's claim, he did not rule on their request to compel CNRL to attend ADR.

[5] On July 24, 2023, Farrington AJ heard the parties' submissions regarding the costs of the two applications. He awarded costs to CNRL, to be calculated at 3 times Column 5 in Schedule C of the *Rules*. However, he did not award CNRL the costs that it spent on its expert witnesses (the **Costs Order**).

[6] The Plaintiffs appealed the Dismissal Order, the Amendment Decision and the Costs Order. CNRL appealed the part of the Costs Order disallowing the recovery of its expert witness costs. I heard all four appeals concurrently, on September 11 and 12, 2025.

[7] For the reasons that follow:

(a) I allow the appeal of the Dismissal Order;

(b) I allow the appeal of Amendment Decision; and

(c) I allow the Plaintiffs' appeal of the Costs Order.

II. Issues

[8] The issues I must decide are:

(a) should I allow the Plaintiffs' appeal of the Dismissal Order;

(b) should I allow the Plaintiffs' appeal of the Amendment Decision; and

(c) should I allow the Plaintiffs' appeal of the Costs Order, or CNRL's partial appeal of the Costs Order?

III. Analysis

A. Standard of Review

[9] Neufeld J described the standard of review that applies in an appeal to this Court from an Applications Judge as follows:[1]

> Appeals of Applications Judge decisions are adjudicated on a standard of review of correctness. They are considered *de novo* hearings, in which new evidence may be tendered. That is not to say that the Applications Judge decision is to be ignored or discarded, especially when no new evidence is presented, and the decision below is issued with detailed reasons, as is the case here. The decision can and often will provide an appropriate framework of analysis for examining whether, based on the record, the Applications Judge was correct: *Boyko v Boyko*, ABQB 266 at para 5. The correctness review is undertaken with a view to determining whether the decision of the Applications Judge contains material misapprehensions of fact, errors of reasoning or outcomes that are clearly wrong: ***Canuck v Yangarra***, 2022 ABQB 145 at para 36.

[10] The parties both filed additional evidence on the dismissal application after Farrington AJ granted the Dismissal Order. CNRL also filed additional evidence regarding its expert costs after the date of the Costs Order.

B. Should I Allow the Plaintiffs' Appeal of the Dismissal Order?

1. The Applicable Law

[11] Rule 4.31 states:

> 4.31(1) If delay occurs in an action, on application the Court may
>
> (a) dismiss all or any part of a claim if the Court determines that the delay has resulted in significant prejudice to a party, or
>
> (b) make a procedural order or any other order provided for by these rules.
>
> (2) Where, in determining an application under this rule, the Court finds that the delay in an action is inordinate and inexcusable, that delay is presumed to have resulted in significant prejudice to the party that brought the application.
>
> (3) In determining whether to dismiss all or any part of a claim under this rule, or whether the delay is inordinate or inexcusable, the Court must consider whether the party that brought the application participated in or contributed to the delay.

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[1] ***Savanna Well Servicing Inc v Cleo Energy Corp***, 2023 ABKB 595 at para 2.

[12] In ***Humphreys v Trebilcock***, 2017 ABCA 116 (***Humphreys***), our Court of Appeal proposed six questions to be asked in assessing applications under section 4.31:

- has the non-moving party failed to advance the action to the point on the litigation spectrum that a litigant acting reasonably would have attained within the time frame under review?

- is the shortfall or differential of such a magnitude to qualify as inordinate?

- if the delay is inordinate, is there an explanation for the delay? If so, does this explanation justify the inordinate delay?

- if the delay is inordinate **and** inexcusable, has it been significantly prejudicial to the moving party to justify dismissal?

- if the moving party relies on the presumption of significant prejudice created in Rule 4.31(2), has the non-moving party rebutted the presumption?

- if the moving party has satisfied all the conditions under Rule 4.31 for dismissal, is there any compelling reason **not** to dismiss the action?

[13] The Court of Appeal revisited these issues in ***Transamerica Life Canada v Oakwood Associates Advisory Group Ltd***, 2019 ABCA 276. It noted that the six-step analysis set out in ***Humphreys*** might be helpful in some cases, but that it is not mandatory, and is sometimes difficult to apply. The Court re-emphasized that the basic test for dismissal for long delay is that set out in Rule 4.31:

> The objective of the exercise must be remembered. It is to determine whether the delay is inordinate, inexcusable, or otherwise, has caused significant prejudice to the defendant. Any particular class of proceedings will include some that proceed quickly, some that proceed slowly, and a great many in the middle. In determining the reasonable expectation of progress for the purpose of striking out an action for delay, regard must be had to all categories… In order to be struck, the action must generally fall within the slowest examples of that type of proceeding, and it must be so slow that the delay justifies striking out the claim. Further, even very short delays can be grounds for striking the action if significant prejudice has resulted. "Significant prejudice" remains the ultimate consideration.

[14] Despite the different formulations of the applicable test by the courts, the requirements set out in Rule 4.31 always govern, and necessitate that the following issues be considered:

- applicants in a delay application have the onus to prove, on a balance of probabilities, that the delay has resulted in significant prejudice;

- if an applicant establishes that the delay is inordinate and inexcusable, the delay is presumed to have resulted in significant prejudice;

- the respondent can attempt to rebut the presumption of significant prejudice;
- however, in the end, the decision whether to dismiss for delay remains within the Court's discretion.

2. The Decision Below

[15] Farrington AJ found the delay to be inordinate. He also concluded that it was inexcusable, for three reasons:

(a) CNRL did not cause any significant delays, other than taking three years to answer its undertakings;

(b) despite the Defendant causing that delay, and in the context of the overall delay, the Plaintiffs had the primary obligation to move the matter forward, if necessary by court application. They did not do so; and

(c) CNRL was entitled to wait until it had received complete document production from the Plaintiffs before conducting its own questioning for discovery.

[16] Farrington AJ also found that there was significant prejudice to CNRL, both because the presumption of significant prejudice arose, and also because the evidence established actual significant prejudice. Finally, he found that there was no compelling reason not to dismiss the action.

[17] For the reasons that follow, I agree that the delay in this case was inordinate, but I find that Farrington AJ erred in his other conclusions. The delay in this case was excusable, because it was significantly contributed to and caused by CNRL. CNRL has not suffered significant prejudice. The action should be allowed to continue.

3. Applying the Law to the Facts

a. Has There Been Inordinate Delay?

[18] Delay is "inordinate" where the differential between the norm and the actual progress in the subject action is "so large as to be unreasonable or unjustifiable."[2] The relevant time period is from the commencement of the action to the date on which the delay application was filed: ***Condominium Corporation 052 0580 (o/a The Tradition at Southbrook) v Carrington Holdings Ltd***, 2022 ABKB 623 at para 112. The Plaintiffs commenced this action on February 18, 2009. CNRL filed its dismissal application on March 13, 2022. Therefore, the period of delay was 13 years and one month.

[19] During this time period, the parties completed document discovery and questioning for discovery. The Plaintiffs filed the expert reports they intended to rely on at trial, but CNRL had not done so yet. The parties had not completed an ADR process that was a precondition to booking a trial date.

[2] ***Humphreys*** at para 120.

[20] The parties both acknowledge that there was inordinate delay, and I agree. Matters should be tried within 13 years, and not doing so in this case was inordinate delay.

b. Was the Delay Inexcusable?

i. The Law

[21] As noted by Mandziuk J in ***Carrington***:[3]

> If inordinate delay has been established, the Court must consider whether the “nonmoving party [has] provided an explanation for the delay that justifies its dilatory prosecution of its action”: .... If no credible excuse is given for the inordinate delay, the natural inference is that the inordinate delay is inexcusable ...

[22] Here, the Plaintiffs say that the inordinate delay is excusable because CNRL caused much of it.

[23] It is unquestionable that defendants, as well as plaintiffs, have an obligation to advance civil actions. The Court of Appeal in ***Transamerica*** (at paras 27 – 31) discussed the issue of defence delay extensively, holding that:

- the plaintiff has the primary obligation in moving an action forward, and the *Rules* give the plaintiff many tools to ensure that happens;
- it does not follow, however, that a defendant has no obligation with respect to the pace of litigation;
- there is a significant difference between a defendant “doing nothing” in the face of inactivity by the plaintiff, and the defendant failing to discharge its procedural obligations;
- the *Rules* expressly impose obligations on all parties to advance an action;
- examples of specific duties that the *Rules* impose on defendants include:
    - filing a statement of defence, presumptively within 20 days of service;
    - filing an affidavit of records within the fixed time period;
    - if the plaintiff indicates an intention to question, providing reasonable and realistic dates without delay, and without the plaintiff having to repeat the request;

[3]At para 133, citations omitted.

- o if a defendant undertakes during questioning to provide further information, doing so without further demand and within a reasonable time; and

- o responding in a timely way to correspondence from the plaintiff inquiring about or suggesting the procedure to be followed in resolving the claim; and

- it follows that, within limits, a defendant may be entitled to be recumbent in the face of plaintiff delay or inactivity. It does not follow that a defendant has no responsibility for the timely resolution of the dispute, or that the plaintiff cannot rely on the actions of the defendant as "excusing" delay.

ii. Chronology of the Litigation

[24] To decide if the delay in this case was inexcusable because CNRL contributed to that delay or for other reasons, it is necessary to examine in detail the parties' litigation steps. I have attached a summary of their litigation steps in **Appendix "A"** to this Decision.

iii. Delay that CNRL Caused or to Which it Contributed

<u>CNRL's Delay in Questioning the Plaintiffs</u>

[25] The Plaintiffs argues that CNRL unreasonably delayed in conducting its questioning for discovery. CNRL argues that it could not question the Plaintiffs until they had produced all their records. As noted above, Farrington AJ endorsed that position in making the Dismissal Order.

[26] The most relevant facts on this point are:

- the Plaintiffs commenced the action on February 18, 2009;

- the Plaintiffs delivered their Affidavit of Records on December 1, 2009;

- between February and August 2010, the Plaintiffs corresponded a number of times with CNRL, to obtain production of additional records that the Plaintiffs thought were relevant and material, but that CNRL had not produced. This resulted in CNRL agreeing in August 2010 to produce additional records, which it appears to have delivered in March 2011;

- the Plaintiffs questioned CNRL's corporate representative in August 2011 and almost immediately afterwards, asked to question four more CNRL employees;

- in December 2011, the parties agreed to the 2011 Litigation Plan, in which CNRL agreed to question the Plaintiffs by March 31, 2012. This did not happen;

- between October and December 2012, the Plaintiffs questioned three more CNRL employees and CNRL's second corporate representative;

- in January 2013, CNRL began writing to the Plaintiffs to ask for additional records that it thought were relevant and material, but that the Plaintiffs had not produced. It repeated these document requests a number of times over the next two and a half years, resulting in the Plaintiffs delivering additional records in October 2015. This included some but not all of the records that CNRL had been requesting;

- in December 2015, the parties agreed to the 2015 Litigation Plan, in which CNRL agreed to question the Plaintiffs by April 30, 2016;

- the parties agreed to hold bilateral questioning on March 16 and 17, 2016. On March 16, the Plaintiffs were going to question CNRL's corporate representative on previously-given undertakings, and on March 17, CNRL was going to question the Plaintiffs;

- when the Plaintiffs' counsel advised on March 16 that he was too ill to attend questioning, he offered to still have CNRL question the Plaintiffs on March 17, with another lawyer from his firm attending. This did not happen, although the evidence does not explain why; and

- CNRL first questioned the Plaintiffs on March 27 and 28, 2018.

[27] Why did CNRL not question the Plaintiffs until over nine years had passed from the start of the action? There were a number of distinct phases during this lengthy period:

- in the first four years, between January 2009 and January 2013, the Plaintiffs were relatively active in reviewing CNRL's records, following up to obtain additional records and then conducting questioning. However, the evidence suggests that CNRL did not even turn its mind to whether the Plaintiff's production was complete during these four years. It only started asking for additional records in January 2013. Notably, in December 2011, it had agreed in the 2011 Litigation Plan to conduct its questioning within the next three months. It voiced no concern at that time about needing more records before being able to question the Plaintiffs, nor did it make additional document production a condition of its agreement to conduct questioning;

- for the next two and half years, until October 2015, CNRL sought additional records from the Plaintiffs, and it did so relatively diligently. The evidence does not explain why the Plaintiffs took so long to produce these additional records (mostly well files);

- between December 2015 and March 2016, the parties both moved forward diligently to be able to question each other in March 2016, pursuant to the 2015 Litigation Plan; and

- for the next two years, from March 2016 to March 2018, CNRL did not question the Plaintiffs, despite having been prepared to do so on March 17, 2018.

[28] I will address each of these four phases in turn.

Phase One: January 2009 to January 2013

[29] CNRL's four year delay in beginning to request additional records, until January 2013, was not reasonable. This was over three years after the Plaintiffs had delivered their Affidavit of Records. During that time, the Plaintiffs had diligently conducted questioning of five CNRL employees.

[30] It is sometimes suggested that there is a rule, or at least a convention, that a defendant does not have to commence its own questioning until a plaintiff has completely finished its questioning. Nothing in the *Rules* says that. Even if that practice makes sense in some cases, overly doctrinal reliance on such a practice would encourage unnecessary delay. In many cases, the questioning of both parties is scheduled to occur consecutively, in a single block of time. That practice should generally be encouraged whenever it is appropriate. It has many benefits and efficiencies. All the lawyers and parties will prepare concurrently. Things that they learn in each others' questionings will be more meaningful to them if they are fully briefed on both sides of the case. Opportunities for potential settlement will arise more readily. Potential duplication of effort will be reduced, because lawyers and clients will not have to "re-learn" what happened in the other side's prior questioning when they prepare for their own. Discovery will be completed more quickly.

[31] In this case, it was unreasonable for CNRL to receive the Plaintiffs' Affidavit of Records in late 2009, then wait three years, during which the Plaintiffs substantially advanced their own questioning, before even turning its mind to whether the Plaintiffs had produced all the records that CNRL might want to question about. Had CNRL started asking the Plaintiffs for additional production at the same time the Plaintiffs did the reverse (in February 2010) I infer that the overall delay would have been shortened by as much as three years.

[32] CNRL is responsible for much of this delay.

Phase Two: January 2013 to October 2015

[33] I agree with CNRL that the Plaintiffs should have much more promptly produced the additional records that CNRL started requesting in January 2013. Taking two and a half years to do so was unreasonable, and the Plaintiffs are responsible for the delay between January 2013 and October 2015.

[34] During this two and a half year phase, it was reasonable for CNRL to delay conducting its questioning of the Plaintiffs. It had identified material records, that it was entitled to review before questioning the Plaintiffs.

[35] However, in argument CNRL referenced its ongoing document requests between 2013 and 2021, not just from January 2013 to October 2015. Also, as I noted above, Farrington AJ found that CNRL was entitled to wait until it had received complete document production from the Plaintiffs before conducting its own questioning for discovery. On this point, he stated:

> ... while it took the defendant many years to get to its questioning, the defendant made it clear from the outset that it was not intending to question until document production was complete. That is a position a defendant is normally entitled to take. A requirement for fulsome document production is a given in civil litigation.

[36] While parties should not be required to question an opposing party if there are obvious and substantial deficiencies in the latter's document production, this approach cannot be taken to too far, or to a maximalist extreme. A party cannot delay its own questioning until the other side's production is absolutely, perfectly complete. There is nothing in the *Rules* that would support such an approach, nor did the parties present me with any caselaw that would do so.[4] While all parties to civil litigation must be encouraged to promptly and as completely as possible meet their obligation to produce all relevant and material records in their control, the standard cannot be one of perfection. After a certain point, a doctrinal or dogmatic insistence on absolutely perfect and complete document production before commencing oral questioning must give way to a more practical approach, consistent with parties' obligations under foundational Rule 1.2, to facilitate the quickest means of resolving a claim at the least expense.

[37] The reality in almost all civil litigation is that, as the oral questionings progress and undertakings are requested and answered, the universe of produced records expands.

[38] In my view, the *Rules* recognize that reality, and promote a balanced and pragmatic approach to it. All parties unquestionably have a positive obligation to file an affidavit of records in which they voluntarily disclose all relevant and material records that are or have been in their control (Rule 5.6). However, no Rule states that a party can delay its questioning until absolutely every possibly relevant and material record has been disclosed and produced to it. On the contrary, the *Rules* expressly and implicitly recognize that document production is often an ongoing, evolving process. For example:

(a) Rule 5.10 requires parties who, after they have delivered their affidavit of records, find, create or obtain control of relevant and material records, to notify the other parties, provide copies and then serve a subsequent affidavit of records including the additional records before scheduling a trial date; and

(b) Rule 5.11 allows parties to apply to the court for a production order where they believe a relevant and material record has been omitted from an affidavit of records. That rule also allows cross-examination on affidavits of records which is a common approach where production is believed to be deficient.

[39] The ultimate "penalty" in the *Rules* for parties who do not disclose relevant and material records, is that they cannot admit those undisclosed records into evidence (Rule 5.16). The practice that is often followed is that parties will deliver initial affidavits of records, then deliver supplemental affidavits of records (often more than one) as they proceed through oral questioning, and final supplemental affidavits of records just prior to trial to ensure that all the records that have come out during the discovery process are available to be tendered in evidence at trial.

[40] Because there are two competing interests at play (the positive obligation to disclose and produce all relevant and material records, and the positive obligation to move litigation forward efficiently), it is both impossible and unnecessary to state any fixed rule of universal application

[4] The only authority that CNRL brought forward was ***Mamdani v Mamdani***, 2016 BCSC 1794. However, that is simply a trial level case in which the Court found that, on the specific circumstances before it, the defendants did not have to question the plaintiff until he provided a further and better affidavit of records. Gropper J did not purport to create or invoke any invariable rule that in all cases a party is entitled to delay questioning the opposing party until it has received all producible records.

on this point. It is enough to say that, in some cases, parties might reasonably require additional document production before they should be required to commence oral questioning, but in other cases that approach might be unreasonable. This determination will always be fact-specific.

[41] In this case, it was reasonable for CNRL to delay questioning the Plaintiffs between January 2013 and October 2015, when it finally received most of the additional records it had requested. However, it was not reasonable for CNRL to delay its questioning beyond that time as a result of incomplete document production by the Plaintiffs. In fact, the facts show that after October 2015, CNRL indeed took the practical approach that it was required: in December 2015 it agreed to question the Plaintiffs, and it was prepared to do so on March 17, 2016.

Phase Three: October 2015 to March 2016

[42] As I noted, the Plaintiffs delivered an additional box of documents to CNRL on October 8, 2015. It contained many, but not all, of the records CNRL had asked for. In November 2015, CNRL noted these omissions. However, soon after, CNRL indicated its willingness to question the Plaintiffs despite not having received all the additional records it wanted. In December 2015, it agreed to the 2015 Litigation Plan which set an April 30, 2016 deadline for its questioning. This was reasonable on CNRL's part: it had received substantial production and although that document production may not have been 100% complete, it was sufficient to proceed to questioning.

[43] Over the next few months after December 2015, CNRL continued to ask for additional documents, and the Plaintiffs provided an additional tranche of documents on March 3, 2016. It is clear from the emails exchanged at the time that the parties' plan for March 16 and 17, 2016, was that the Plaintiffs would question CNRL's officer on his undertakings on the first day, and CNRL would question the Plaintiffs on the second day.

[44] The delay during this period was not substantial. Both parties were working together to move the matter forward reasonably promptly. No one party was responsible for this delay.

Phase Four: March 2016 to March 2018

[45] When the Plaintiffs' counsel fell ill early on the morning of March 16, he proposed completing his questioning by written interrogatories, but he was still prepared to have another lawyer in his office attend on March 17, 2016 to allow CNRL's questioning of the Plaintiffs to proceed. That questioning did not occur, and there was no evidence before me explaining why.

[46] This questioning did not actually take place until March 27, 2018, over two years later. That two-year delay was caused by CNRL. It could have questioned the Plaintiffs on March 17, 2016, or it could have rescheduled that questioning. It did not, and the evidence establishes that it only did so two years later, after much prodding and many requests from the Plaintiffs.

CNRL's Delay in Answering its Undertakings

[47] I agree with Farrington AJ that CNRL was responsible delaying responding to the undertakings given by its second corporate representative. Those undertakings were given in oral questionings on December 19 and 20, 2012. CNRL advised the Plaintiffs on May 3, 2013 that it was compiling the undertaking responses and hoped to deliver them "shortly." Despite this, CNRL

only delivered the responses on January 29, 2016, a delay of almost three additional years. As noted in the chronology in **Appendix "A"** to this Decision, this delay was deliberate. CNRL's corporate representative explained the motivation for the delay as follows:

> I did not provide responses to undertakings from my Questioning on December 20, 2012 until January 29, 2016, because it appeared that the [Plaintiffs] would not be advancing their claim. I was uncertain whether the [Plaintiffs] would continue to pursue their Action as they had failed to respond to multiple requests from counsel for [CNRL] for further production, and instead remained silent for almost $2^{1/2}$ years.

[48] That is not a valid excuse. After it gave undertakings, CNRL had an obligation to answer them in a reasonable period of time, regardless of how the Plaintiffs were advancing the action. CNRL failed to do that, as a result of which it unreasonably caused addition delay of approximately two and a half years.

CNRL's Delay in Seeking Third Party Records

[49] During the discovery process, a dispute arose about the Sproule Reports. From the evidence tendered by the parties in the applications and appeals, I infer the following facts about these records.

[50] The Sproule Reports were year-end corporate reserve reports prepared by Sproule for EMM, apparently for the years 2007 and 2008. In them, Sproule reported on all of the oil and gas reserves owned by EMM, which included but was not limited to EMM's interests in the Sparky K Formation. Early in the litigation (presumably when EMM was still a party to the action and had the Sproule Reports in its possession), the Plaintiffs had produced portions of the Sproule Reports, but not complete copies.

[51] By the time CNRL requested production of complete copies in 2018 and after, EnerT did not have the Sproule Reports. They were in the possession of other parties, who were successors to EMM. The first successor was Skywest. In 2011, EnerT purchased EMM's interest in the Sparky K Formation and in this action, from Skywest. I infer that EnerT did not purchase all of the assets of EMM from Skywest, because there were further successors to Skywest: first Marquee, and then Prairie Provident. The evidence did not disclose the nature of the transactions (asset sale or share/corporate transactions) that resulted in this series of successor owners, nor exactly what assets outside the Sparky K Formation and the interest in this action came to be owned by those successors.

[52] The relevant history of CNRL's request for the Sproule Reports is:

- when CNRL questioned the Plaintiffs in March 2018, their corporate representative said he believed that successor owners might have the Sproule Reports. CNRL asked the Plaintiffs to undertake to request further information from Marquee;

- the Plaintiffs partially answered their undertakings promptly, on May 30, 2018, advising that they had requested the records from Marquee;

- in December 2018, the Plaintiffs provided drafts of their three expert reports. They provided final copies on January 16, 2019. In January 2019, CNRL advised that it would not conclude its own expert reports until it received the Plaintiffs' outstanding records, including the Sproule Reports, and that it might have to bring an application to compel third parties to produce the records the Plaintiffs had made insufficient efforts to obtain;

- in October 2019, CNRL asked the Plaintiffs for the entire Sproule Reports, after its expert advised it in August 2019 that he required them;

- the Plaintiffs made additional requests for the Sproule Reports to EMM, Marquee, Skywest, Prairie Provident and Sproule, but this did not succeed. The parties disagree about whether or not the Plaintiffs were obliged to make these third-party requests as a result of undertakings given by their corporate representative;

- CNRL persisted in demanding that the Plaintiffs must produce the additional records held by third parties, and it set a deadline for this production of December 31, 2020; and

- on January 13, 2021, CNRL filed an application to obtain records from third parties, including the complete Sproule Reports. The third parties delivered the complete Sproule Reports within two weeks of CNRL filing this application, without the application needing to be heard.

[53] CNRL is at least partially responsible for this delay. By March 2018, it knew with certainty that some of the records it wanted were in the possession of third parties who were beyond the control of itself and the Plaintiffs. It asked the Plaintiffs to request these records and the Plaintiffs did so, but without success. CNRL acknowledged in January 2019 that it might have to seek a third party production order to obtain these records. That proved to be true. Yet CNRL waited two years before making that application.

Delay in Responding to the Plaintiffs' Request to Agree to the 2017 Litigation Plan

[54] The Plaintiffs requested that the parties agree to a new litigation plan beginning on April 22, 2017 when they sent a draft of that plan. CNRL did not engage in this discussion at all until October 2, 2017 when it had to ask the Plaintiffs to send another copy of the draft. The Plaintiffs did so the same day and the parties agreed to the 2017 Litigation Plan on November 21, 2017.

[55] CNRL was responsible for the six-month delay, between April and October 2017, in advancing what became the 2017 Litigation Plan.

Conclusion on CNRL's Delays

[56] CNRL caused or contributed to serious and substantial delays in this action, by failing to take the steps it was obligated to take within a reasonable time.

iv. Conclusion on Whether the Delay was Inexcusable

[57] I summary, I find both parties contributed significantly to the delay in this action. I have summarized the most substantial of CNRL's delays above.

[58] There is no question that the Plaintiffs were also responsible for delay. I find that the Plaintiffs were responsible for the following substantial delays:

(a) between December 1, 2009 (the end of the parties' exchange of Affidavits of Records) and August 24, 2011 (when the Plaintiff began questioning for discovery); and

(b) between December 20, 2012 (when the Plaintiffs questioned CNRL's second corporate representative) and December 17, 2015 (when the parties filed the 2015 Litigation Plan). During this period, as I have noted, the Plaintiffs failed unreasonably to deliver the additional records CNRL was requesting.

[59] Some of the parties' respective delays overlapped each other. There were also delays that were beyond the parties' control. A notable example was when the Plaintiffs' counsel became ill on the eve of the questioning they had planned for March 16 and 17, 2016. This resulted in the Plaintiffs conducting further questioning by way of written interrogatories. Preparing those interrogatories and responding to them likely took far longer than it would have taken the parties to conduct oral questioning and answer undertakings arising in that oral questioning.

[60] While both parties were responsible for significant delay, it is also true that they generally worked cooperatively together to move this matter forward. This is not a case where one party was obstructive or recalcitrant. It is a case, however, where all the parties failed to do enough to move this matter to trial promptly, in keeping with their obligations under foundational rule 1.2.

[61] Considering the entire circumstances of delay in this case, I conclude that the overall delay in this action, while inordinate, was excusable.

c. Has CNRL Suffered Significant Prejudice?

[62] Because I have found the delay to be excusable, CNRL has the onus of proving that it has suffered significant prejudice as a result of the delay. For the following reasons, I find that CNRL has not satisfied this onus.

[63] CNRL argues that it has suffered significant prejudice because:

(a) the Plaintiffs allege of improper, unlawful and wrongful conduct by CNRL and it has been harmed by the length of time those allegations have been outstanding;

(b) the loss of witnesses;

(c) CNRL's potential inability to determine:

(i) internal CNRL practices and procedures regarding injection practices;

(ii) compliance with/understanding of approvals; and

(iii) whether the reservoir was overpressured in 2006.

[64] The allegations in this case are operational in nature: that CNRL's water injections into an oil and gas formation exceeded its authority to do so. These are not allegations of moral turpitude or dishonesty, the existence of which would cause serious damage to CNRL's standing in the community or in its industry.

[65] Regarding witnesses, CNRL's evidence is that two of its five anticipated witnesses are no longer employees, and the remaining three no longer work on the assets or facilities involved in this case. Also, four in-house counsel have been involved.

[66] This is not significant prejudice. I agree with the Plaintiffs' characterization of this case as largely a "documents" case. The Plaintiffs allege that CNRL injected water into the Sparky K Formation that it was not authorized to inject, because the water was not produced from that formation and because it exceeded the permitted injection volumes. They say these unauthorized injections overpressured the Sparky K Formation, impairing their ability to produce oil and gas, and causing them damages. CNRL's defence is that all its water injections were authorized, and that those injections did not impair the Sparky K Formation. CNRL also alleges that the Sparky K Formation's productive capacity had largely been depleted prior to the Plaintiffs acquiring their interests, which they should have known.

[67] There is no dispute that the relevant authorizations are in writing, as are the records about the volumes of water injected by CNRL. The Plaintiffs' experts have been able to create reports, which are in evidence and which I have reviewed, opining on the following questions, among others:

- whether CNRL's water injection into the Sparky K Formation complied with the authorizing license;
- whether CNRL's water injections impacted the producibility of the formation; and
- an economic evaluation of the Sparky K Formation.

[68] These expert reports were based on documentary data and none seem to have relied to any extent whatsoever on information provided by individuals.

[69] In questioning, CNRL gave these undertakings:

- to make inquiries and advise what steps CNRL made to familiarize itself with the details and conditions of [the water injection approval license] upon the transfer of the approval to the company; and
- to make inquiries and find out whether there was any correlation or a conscious decision by CNRL, in the November 1994 to August 1995 time period, to delay wrapping up disposal in the [17-8 Well] until it has secured the transfer of approval from the ERCB.

[70] In January 2016, CNRL responded to these undertakings, advising the Plaintiffs that it had "not found anyone who recalls these specifics." While these questions and answers are not in any way determinative, in my view they effectively demonstrate that the trial of this action will not turn on what individual witnesses remember about past events or communications.

[71] I am satisfied that the parties will be able to fully present their claims and defences at trial based on the documentary record, and the Court will effectively be able to decide the merits of those claims and defences.

[72] Because I have concluded that CNRL has not established significant prejudice, the test for dismissal is not met under Rule 4.31 and I allow the Plaintiff's appeal of the Dismissal Order. I do not need to consider my residual discretion not to dismiss the claim. That consideration would only arise if I had found that the test for dismissal had been satisfied.

C. Should I Allow the Plaintiffs' Appeal of the Amendment Decision?

1. Overview

[73] The Plaintiffs sought to make the following amendments to their Statement of Claim:[5]

- updating EnerT's status as the successor in interest to EMM (pursuant to a 2011 purchase and sale agreement, about two years after the action was started);
- changing the date when they allege the Plaintiffs invested in the Sparky K Formation, from "since 2004" to "during the period between 2004 and 2008";
- expanding their allegations about when and how CNRL injected water into the Sparky K Formation. The initial allegation in the Statement of Claim was that CNRL injected water *via* the 7-18 Well from an unknown date in 2006, until July 2008. The amended allegation is that it did so *via* the 7-18 Well from 1994 – 2001, *via* the 6-16 Well (into a different formation) from 2001 – 2006, and again *via* the 7-18 Well from 2006 - 2008;
- particularizing the previously general allegation that the injections were unauthorized by the ERCB/AER, by naming the specific regulatory injection approval;
- particularizing the previously general allegation that CNRL's water injections did not comply with that approval, by specifying the manner in which they did not comply: because CNRL injected water from outside the Sparky K Formation;
- adding new allegations that CNRL misreported some of its water injections, and that it retroactively amended its reporting in May 2007;

[5] I am only summarizing the most material amendments here. There were other amendments that I consider to be relatively minor, that I have not listed.

- adding particulars to the allegation about how and when CNRL notified the Plaintiffs of its water injection activities in 2008, and adding a new allegation that the manner in which CNRL did so was not compliant with its regulatory obligations; and

- adding further detail to the existing allegation that CNRL injected more water than it was permitted to inject, with specific reference to the regulatory injection approval and the application for that approval;

(collectively, the **Requested Amendments**).

[74] For the reasons set out below, I allow the Plaintiff's appeal of the Amendment Decision. The Plaintiffs are permitted to make the Requested Amendments.

2. The Applicable Law

[75] Because the pleadings are now closed, the Plaintiffs require the Court's permission to make the Requested Amendments (Rule 3.62(1)(b)). Requests to amend pleadings are usually allowed, no matter how late or careless, subject to four exceptions:[6]

- the amendment would cause serious prejudice to the opposing party, not compensable in costs;

- the requested amendment is hopeless;

- unless permitted by statute, the amendment seeks to add a new party or new cause of action after the expiry of a limitation period; or

- there is an element of bad faith associated with the failure to plead the amendment in the first instance.

3. The Decision Below

[76] As I noted, while Farrington AJ concluded that he did not have to rule on the Plaintiff's amendment application, he went on to state that if he had been required to do so, he would have dismissed it. He stated three reasons for this:

- expanding the date range of the allegations about injection activities from 2006 back to 1994 would cause serious prejudice to CNRL in an evidentiary sense, "particularly when it involves onsite water practices and procedures with real people carrying out real work on site";

- the expansion of the alleged date range of the injections had "elements of hopelessness" and raised remoteness issues, because it had elements of claiming

[6] ***Attila Dogan Construction & Installation Co v AMEC Americas Ltd***, 2014 ABCA 74 at para 25 (***Attila Dogan***).

pure economic loss for times significantly before the plaintiffs had an interest in the wells." On this point, he went on to say:

> remoteness is always an issue on these types of claims. It is also especially difficult to evaluate a case such as this one with a record about events that date back more than 20 years, particularly when the plaintiffs were presumably able to evaluate the state of the wells and their applicable files as at the times of purchase.

- there were limitations issues with the added claims, potentially engaging the ultimate 10-year limitation period under the *Limitations Act*. Farrington AJ found that the "pre-ownership claims" relating to the period before the Plaintiffs acquired their interests could not be added under section 6(2) of that statute, because they were not related to the "conduct, transaction or events" described in the Plaintiffs' original Statement of Claim.

[77] For the reasons that follow, I find that Farrington J erred in making the Amendment Decision.

4. The Parties' Positions

[78] CNRL's primary position before me that because Farrington J did not formally rule on the Amendment Application, there was nothing for the Plaintiffs to appeal. I disagree. The Plaintiffs included the Amendment Decision in their appeal, and since I have allowed their appeal of the Dismissal Application, I should also decide their appeal of the Amendment Decision. To not do so would leave a confusing path forward for the parties, and would also fail to utilize the parties' and the Court's resources efficiently.

[79] CNRL's alternative position is that the Amendment Decision was correct because the Requested Amendments are statute-barred under the *Limitations Act*, they would cause serious prejudice to CNRL, and they are hopeless because they constitute claims for damages to lands before the Plaintiffs had any interest in those lands. I will address each of these arguments in turn.

5. Applying the Law to the Facts

a. Are the Requested Amendments Statute-Barred?

[80] There are two reasons that the Requested Amendments are not-statute barred.

[81] First, the existing pleadings already contemplate allegations of CNRL injecting water long before the Plaintiffs acquired their interests in the Sparky K Formation in 2004.

[82] In its Statement of Claim filed on February 18, 2009, the Plaintiffs alleged that "CNRL commenced disposing of water by injection into the Sparky K Formation through the 7-18 Well in 2006 (the precise date of which is still unknown to the Plaintiffs)...". Arguably, that allegation does not go further back than the calendar year 2006, and the Plaintiffs may have only been

alleging that they did not know the precise day in 2006 when the injections started. Regardless, it is clear that they did not know when the injections began.

[83] However, CNRL greatly expanded the relevant date range of the water injections in its Statement of Defence filed on May 26, 2009. Among other things, it pleaded:[7]

> 6. CNRL states that production from the Plaintiffs' oil wells and production facility ... had sustained a dramatic decrease in production **prior to any injection of water by CNRL** at the ... 7-18 Well ...
>
> 7. CNRL further states that the oil production generally from the Sparky K Pool **has been on the decline since 2004** and has almost reached its full depletion mode. Production at the Sparky K Pool has not been negatively impacted by the injection of water by CNRL.
>
> 8. Further, at all material times, CNRL had the requisite statutory authority from the ERCB to dispose of water at 7-18 Well, **which authority has been active and valid since May 1993**, as well as a matter of public record. Further, **CNRL has always met the pressure criterion as required by the ERCB throughout the operational history of the 7-18 Well**.
>
> 9. Further, or in the alternative, CNRL did not use the 7-18 Well for water disposal **from August 31, 2001 until August 30, 2006** notwithstanding that its approval from the ERCB to use this well for water disposal remained valid and in effect. When CNRL reactivated the 7-18 Well on August 30, 2006, the Plaintiffs' Section 7 Wells had already demonstrated a significant decline in production.
>
> ...
>
> 11. CNRL further states that, in relation to Section 7, **the last reported production from any wells in this section prior to 2004 occurred in November 1988**, when production was ceased due to uneconomical oil production rates and high water production. In 2004, the Plaintiffs took over the wells in Section 7 and attempted to rework and recomplete previously abandoned wells that had been shut in **prior to 2004**. CNRL further states that the recovery of oil from the Sparky K Pool and particularly Section 7 at the current state of depletion is very risky and expensive. This recovery can be adversely affected by numerous factors. The Plaintiffs knew or should have known of the inherent risks of development in this area and the risks associated with drilling near the ERCB approved 7-18 Well.
>
> 12. CNRL further states that **prior to 2004, CNRL had injected approximately 970,000 m3 of water through the 7-18 Well**. The Plaintiffs began re-working and re-completing the Section 7 Wells in 2004.

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[7] Emphasis added by me.

> The Plaintiffs did not, however, raise any concerns with CNRL's water disposal through the 7-18 Well until 2008.

[84] I summarize the original pleadings on these points as follows.

[85] In the Statement of Claim, the Plaintiffs alleged that CNRL's injection of water into the Sparky K Formation caused damage to the oil and gas interests they acquired in 2004. They believed that the injections started in 2006 but were not sure. CNRL replied in its Statement of Defence by alleging that:

- CNRL had been authorized to inject water into the Sparky K Formation from *via* the 7-18 Well since May 1993, and its injections always complied with that valid authorization;
- prior to 2004 when the Plaintiffs acquired their interests in the Sparky K Formation, CNRL had already injected 970,000 m^3 into the Sparky K Formation *via* the 7-18 Well; and
- before the Plaintiffs became owners in 2004, production of oil from the Sparky K Formation last occurred in 1988, and the pool was largely depleted. The Plaintiffs should have known this before they developed their interests in and after 2004.

[86] Section 6(2) of the *Limitations Act* governs when claims can be added to existing proceedings after the expiry of a limitation period. It states:

> 6(1) Notwithstanding the expiration of the relevant limitation period, when a claim is added to a proceeding previously commenced, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection (2), (3) or (4) are satisfied.
>
> (2) When the added claim
>
> (a) is made by a defendant in the proceeding against a claimant in the proceeding, or
>
> (b) does not add or substitute a claimant or a defendant, or change the capacity in which a claimant sues or a defendant is sued,
>
> the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding.

[87] I find that section 6(2) is not even engaged in this situation, because the Requested Amendments do not add any "claims" to those already included in the Plaintiffs' original Statement of Claim.

[88] "Claims" are defined in section 1(a) of the *Limitations Act* as "a matter giving rise to a civil proceeding in which a claimant seeks a remedial order." Hughes J (as she then was)

comprehensively reviewed the caselaw discussing when a proposed pleading adds a "claim" in ***Canadian Natural Resources Ltd v Arcelormittal Tubular Products Roman SA***, 2012 ABQB 679 and summarized the governing principles as follows (at paras 397 – 402):

- "claims" is a broader concept than formal causes of action, and can include different and distinct events that give rise to different and distinct losses;
- merely particularizing or adding details about the parties, the factual background underlying the original claims, or the allegations raised in the original pleadings, may not be added "claims"; and
- amendments adding further particulars of damages, changing the quantum of damages or adding claims for new types of damages may not be added "claims," if they relate to the same series of events pleaded in the original pleading.

[89] The Requested Amendments do not add any "claims," because they do not add any new causes of action, any allegations about different or distinct events, any new theories of liability, any new types of damages, or any new amounts of damages. The Plaintiffs' original Statement of Claim alleged that CNRL damaged the Sparky K Formation by injecting water into it in a way that was not authorized by the regulator, and which thereby caused losses to the Plaintiffs because they could not recover the oil they expected to recover. The Requested Amendments do not change the substance of those allegations. They merely add detail about the events that were already alleged.

[90] Even I am wrong in concluding that the Requested Amendments do not add claims, I find that the added claims would not be statute-barred. Based on the reasoning I have set out in the preceding paragraph, the added claims in the Requested Amendments are all "related to the conduct, transaction or events described in the original pleading in the proceeding." They therefore satisfy the exemption in section 6(2) of the *Limitations Act*, and CNRL is not entitled to immunity from the added claims.

b. Would the Requested Amendments Cause Serious Prejudice to CNRL?

[91] I find that the Requested Amendments would not cause serious prejudice to CNRL.

[92] CNRL argues that it will suffer serious prejudice if the amendments are allowed, because it would be put in the "untenable position of attempting to determine, 30 years later, what the state of the lands were in 1994 and which, if any, of the many activities on the lands over the ensuing years caused the overpressuring and during which period." It also says that it may not be able to locate the individuals who were involved going back to 1994.

[93] I have already addressed the argument about witnesses, in my discussion of the Dismissal Order. This is not a case that will turn on what an individual did, said or believed, whether in 2008, 2006 or 1994. The Plaintiffs' allegations are narrow, and whether or not they can prove those allegations will depend on the documentary evidence about regulatory authority, water injections, oil production and recoverable reserves. There is no suggestion that any of those records are unavailable for the period before 2006.

[94] CNRL's argument that the Requested Amendments will force it to prove 30-year old facts is belied by its own pleadings. CNRL has already placed on itself the burden of proving the very same 30-year old (or older) facts raised in the Plaintiffs' Requested Amendments, because of how it has pleaded its defence. To prove the allegations it voluntarily chose to include in its own Statement of Defence, CNRL has placed upon itself the burden to introduce evidence about:

- its authority to inject water *via* the 7-18 Well, going back to May 1993;
- there being a "dramatic decrease in production" from the Sparky K Formation "prior to any injection of water by CNRL" (which necessarily entails going back to the very first date on which CNRL injected water);
- how CNRL "always met the pressure criterion as required by the ERCB throughout the operational history of the 7-18 Well" (again, proving this allegation necessitates going back to the very first date on which it injected water);
- the last reported production from any wells in this section being in November 1988, at which time production was "ceased due to uneconomical oil production rates and high water production"; and
- CNRL's injection of approximately 970,000 m^3 of water through the 7-18 Well prior to 2004 (again, proving this allegation necessitates going back to the very first date on which it injected water).

[95] By making these allegations, CNRL itself expanded back to May 1993 the relevant time period regarding water injection, and back to 1988 or even earlier the relevant time period regarding the producibility of oil and gas from the Sparky K Formation. The Plaintiffs were entitled to document discovery and oral discovery regarding the events that occurred in these expanded time periods. The Plaintiffs are essentially now seeking to amend their Statement of Claim to include the details about their existing allegations that they have learned by pushing on the door that CNRL voluntarily opened.

[96] CNRL wants to prove, among other things, that the Sparky K Formation was largely depleted in 1988, that the Plaintiffs should have known that before acquiring their interests and investing in the field in 2004, and that all the water CNRL injected did not harm the formation. CNRL will need to rely on evidence about the factual circumstances of the water injection, the state of the formation and the oil production for it to succeed in this defence. It is inconceivable how the Plaintiffs should somehow be prevented from having the chance to rely on all those same historical facts and records, to prove their own case that CNRL damaged the formation and caused them losses. That would be the effect of not allowing the Requested Amendments.

c. Are the Requested Amendments Hopeless?

[97] A proposed amendment can be found to be "hopeless" if it does not disclose a cause of action, or if it is so inconsistent with the evidential record that there is no chance it can succeed on its merits: ***Attila Dogan*** at para 27.

[98] The causes of action pleaded by the Plaintiffs in the Statement of Claim, to which the Requested Amendments do not add, are:

(a) negligence;

(b) trespass;

(c) nuisance;

(d) strict liability for the escape of a substance (a ***Rylands v Fletcher***-type claim); and

(e) wrongful interference with the Plaintiffs' economic relations.

[99] Essentially, CNRL argues that under each of these causes of action, a defendant cannot be liable to a plaintiff where the plaintiff only acquired the interest that it alleges to have been harmed, after the defendant carried out the impugned conduct. In other words, because the Plaintiffs only acquired their interests in the Sparky K Formation in 2004, CNRL cannot be liable to the Plaintiffs for anything they did prior to 2004.

[100] CNRL's argument would have more force if the facts of this case were that CNRL had fully and finally ceased injecting water into the Sparky K Formation, after which the Plaintiffs acquired their interests. However, those are not the facts. CNRL alleges in its own pleading that it recommenced injections through the 7-18 Well on August 30, 2006, after the Plaintiffs had acquired their interests.

[101] When CNRL recommenced injections in 2006, it did so with the knowledge of its prior injections from 1993 to 2004. That knowledge may have an impact on its liability under one or more of the causes of action pleaded by the Defendants. It may not, in which case the evidence about the pre-2006 injections (evidence that CNRL will already be entering, as I have explained above) will turn out to be no more than historical background or context. I am obviously not in a position to decide whether the Plaintiff's claims, or CNRL's defences, will ultimately succeed or fail. The trial judge will decide that, with the benefit of a complete evidentiary record. However, I am satisfied that based on the evidence before me, I cannot conclude that any of the Plaintiffs' causes of action are doomed to fail as a result of the Plaintiffs adding particulars about the historical water injections prior to 2004.

D. Should I Allow the Plaintiffs' Appeal of the Costs Order, or CNRL's Partial Appeal of the Costs Order?

[102] Because I have allowed the Plaintiffs' appeals of the Dismissal Order and the Amendment Decision, the Costs Order cannot stand. CNRL's success before Farrington AJ has been reversed.

[103] If the parties cannot agree on the costs of these appeals and the applications appealed from, they can provide me with written submissions on those issues, within 45 days of this decision. Those submissions shall be limited to 10 pages each, excluding attachments.

IV. Conclusion

[104] The Plaintiffs must file and serve their Amended Statement of Claim within 10 days of this decision. The Defendant must file and serve any responsive pleading within 45 days of being served with the Amended Statement of Claim.

[105] Because I have allowed the Plaintiffs' appeals of the Dismissal Order and the Amendment Decision, it is necessary to address the next steps to allow this matter to proceed to trial. I direct the parties to work together to come up with a Litigation Plan in the next 45 days, setting out the necessary steps, with deadlines, to move this matter to trial. They must include attendance at an ADR meeting or process. Whether or not they can reach agreement on this Litigation Plan, they must then attend a Rule 4.10 Case Conference to discuss trial readiness. Given my familiarity with this matter, I will seize myself of that Rule 4.10 Case Conference. The parties have leave to book it as soon as they have agreed on a Litigation Plan, or if they are unable to agree, as soon as that has been determined. In any event, they must book it within the next 60 days.

Heard on September 11 and 12, 2025.
Dated at the City of Calgary, Alberta this 28th day of October, 2025.

C.D. Simard
J.C.K.B.A.

Appearances:

Predrag Anic and Jason Irwin
for the Appellants/Plaintiffs EMM Energy Inc and Ener-T Corporation

G. Scott Watson and Shannon L. Kelley
for the Respondent/Defendant Canadian Natural Resources Limited

Appendix “A” – Litigation Chronology

February l8, 2009	• The Plaintiffs filed their Statement of Claim.
March 26, 2009	• The Defendant filed a Demand for Particulars.
May l, 2009	• The Plaintiffs filed a Reply to Demand for Particulars.
May 26, 2009	• The Defendant filed its Statement of Defence.
September 30, 2009	• The Defendant served its Affidavit of Records.
December l, 2009	• The Plaintiffs served their Affidavit of Records.
February 16, 2010	• The Plaintiffs wrote to request additional documents from the Defendant, listing 11 categories of documents they say they expected to see in the Defendants’ Affidavit of Records, including: well histories for the 7-18 Well and a second injection well (the **6-16 Well**); and a number of other technical well documents.
June 22, 2010	• The Plaintiffs wrote to say that the Defendant had not responded to the Plaintiffs’ February 16, 2010 letter, so they wanted to cross-examine on the Defendant’s Affidavit of Records, and they asked for cross-examination dates in August and September.
July 16, 2010	• The Defendant wrote to say that its corporate representative would be available to attend a cross-examination in August and parts of September.
August 16, 2010	• The Defendant wrote in response to the Plaintiff’s February 16, 2010 letter, to respond to each of the 11 numbered production requests. Among other things, the Defendant: agreed to produce a number of categories of records; agreed to review the well file for the 7-18 Well, and to produce the “relevant portions” of that well file; refused to produce any records regarding the 6-16 Well; and refused to produce other categories of records because they were irrelevant.
November 12, 2010	• The Plaintiffs wrote to ask to set questioning dates.
August 24, 2011	• The Plaintiffs questioned the Defendant's first corporate representative, Phil Laflair.

March 23, 2011	• The Defendant said that it produced additional records on this date and the Plaintiffs did not contest this. However, there is no evidence of what exact documents were included in this additional production.
August 31, 2011	• The Plaintiffs wrote, attaching a list of undertaking requests and seeking to set further questioning of four specific named CNRL employees because they believed that CNRL's corporate representative had little familiarity with the facts and could not answer questions. The Plaintiffs also asked CNRL to reconsider its objection to producing records re the 6-16 Well, with an explanation of why it said it was relevant.
October 13, 2011	• The Plaintiffs requested undertaking responses and asked for dates to question four other named CNRL employees.
November 4, 2011	• The Plaintiffs wrote to say that given that their requests to schedule follow-up questioning had gone nowhere, they were requesting that the parties agree to the attached draft Litigation Plan. The draft Litigation Plan listed deadlines to complete all questioning (by March 31, 2012), then completing an ADR process by April 15, 2012, then requesting a trial date by May 15, 2012. The Litigation Plan did not mention the exchange of expert reports.
November 11, 2011	• The Defendant wrote to suggest revisions to the draft Litigation Plan.
December 22, 2011	The Plaintiffs sent a proposed Litigation Plan to the Defendant, incorporating the changes suggested by the Defendant on November 11 (the **2011 Litigation Plan**). The parties confirmed during argument that they both agreed to this 2011 Litigation Plan, even though they did not file it. The 2011 Litigation Plan contained the following deadlines: • December 31, 2011, for CNRL to provide undertaking responses; • March 31, 2012, for the completion of initial questioning of all parties; • May 31, 2012, for all parties to provide undertaking responses; • July 31, 2012, for all parties to question on those undertaking responses; • October 15, 2012, for the completion of an ADR process; • November 30, 2012 for entry for trial. I note that the 2011 Litigation Plan did not mention the exchange of expert reports.
February 2, 2012	• The Plaintiffs wrote to ask for a signed copy of the 2011 Litigation Plan, for CNRL's undertaking responses and for dates on which it could question the other four CNRL employees.
February 12, 2012	• The Defendant provided answers to undertakings given by its first corporate representative Mr. Laflair.

October 18, 2012	• The Plaintiffs questioned Martin Douglas, CNRL's Regulatory Coordinator.
October 19, 2012	• The Plaintiffs questioned Blaise Wangler, an Assistant Foreman at CNRL.
November 30, 2012	• The Plaintiffs questioned Rory Stewart, an Exploitation Engineer at CNRL.
December 19 and 20, 2012	• The Plaintiffs questioned the Defendant's second corporate representative, Jerry Harvey.
January 3, 2013	• The Defendant wrote to request documents that were not contained in the Plaintiffs' Affidavit of Records, including: due diligence materials regarding the Plaintiffs' purchase of their interests; their purchase and sale agreement; any searches they conducted as purchasers; any geological or reservoir analysis they conducted; and "the well files for any wells that your clients claim have been affected by CNRL's injection activities."
March 11, 2013	• CNRL repeated the document request from its January 3, 2013 letter.
May 3, 2013	• CNRL repeated the document request from its January 3, 2013 and March 11, 2013 letters. It also said "We are currently compiling our client's undertaking responses and hope to have those to you shortly."
June 18, 2015	• The Plaintiffs wrote to request CNRL's answers to undertakings and to set further questioning dates.
July 9, 2015	• CNRL wrote to repeat its three document requests from January – May 2013, adding the following statement that was not in those three letters: "We had advised that we could not proceed with Questioning of your client until we had received this information. We did not receive any response from you."
October 7, 2015	• The Plaintiffs wrote to say that they had received from their clients a box of documents representing the documentation CNRL had requested, but that they also wanted to discuss next steps. They asked when they would receive CNRL's undertaking responses and asked to schedule CNRL's questioning of the Plaintiff. They also proposed scheduling some steps before the three-year anniversary of their questioning of Mr. Harvey (on December 19 and 20, 2012), being mindful of the three-year "drop dead" rule. They also proposed a second Litigation Plan.

October 8, 2015	• The Plaintiffs delivered a box of records to the Defendant, but it did not contain: purchase and sale documents; a due diligence file; or any geological analysis completed prior to the purchase. It did contain well files for three wells: the 105 Lloyd 15-7; 16A Lloyd 16-7; and 9D Lloyd 9-7.
November 2, 2015	• The Plaintiffs asked for undertaking responses and available dates to finish the questioning.
November 3, 2015	• CNRL confirmed that it received the box with the three well files, but noted that it did not contain the other materials it requested. It asked for confirmation that it would receive those materials before questioning.
November 3, 2015	• The Plaintiffs asked for a date by which they would receive CNRL's undertaking responses and suggested the end of November, to avoid the Plaintiffs bringing an application. The Plaintiffs offer they would agree to delay questioning until 2016, if CNRL would waive its right to apply to dismiss the action for delay.
November 6, 2015	• CNRL advised that its client would try to provide its undertaking responses back by December 15 and that CNRL agreed to waive its right to apply under Rule 4.33(1), but not 4.31. CNRL requested additional documentation and proposed that questioning be set for the following year.
November 25, 2015	• The Plaintiffs proposed a new Litigation Plan (the **2015 Litigation Plan**).
December 17, 2015	The parties filed the 2015 Litigation Plan, in which they agreed to the following deadlines: • January 31, 2016, for Mr. Harvey to provide undertaking responses; • March 31, 2016, for the Plaintiff to question on those undertaking responses; • April 30, 2016 for CNRL to question the Plaintiffs; • June 30, 2016, for the Plaintiffs to provide undertaking responses; • September 30, 2016 for CNRL to question on those undertaking responses; • November 30, 2016 for the exchange of initial expert reports; • January 15, 2017 for the exchange of rebuttal expert reports; • January 31, 2017 for entry for trial.
December 17, 2015	• The Plaintiffs advised that their client would be available for questioning on March 16 and 17, 2016 and that they looked forward to receiving CNRL's undertaking responses.
December 17, 2015	• CNRL replied that it looked forward to receiving the Plaintiffs' further documents.

January 15, 2016	• CNRL pointed out some missing well logs and said it was also awaiting receiving the other outstanding records.
January 16, 2016	• The Plaintiffs said they would ask for their clients for the documents.
January 29, 2016	• The Defendant provided Mr. Harvey's answers to undertakings, except for four undertakings that remained unanswered. Mr. Harvey explained that "I did not provide responses to undertakings from my Questioning on December 20, 2012 until January 29, 2016, because it appeared that the [Plaintiffs] would not be advancing their claim. I was uncertain whether the [Plaintiffs] would continue to pursue their Action as they had failed to respond to multiple requests from counsel for [CNRL] for further production, and instead remained silent for almost $2^{1/2}$ years."
March 1, 2016	• The Plaintiffs wrote to set the location for the anticipated March 16 and 17, 2016 questioning – and confirm that at that time, the Plaintiffs would question on CNRL's undertakings first, then CNRL would question the Plaintiffs.
March 3, 2016	• CNRL wrote to say that it was still waiting for the requested documents, and asking when they would arrive.
March 3, 2016	• The Plaintiffs said they would provide the additional documents that day or the next Monday at the latest.
March 3, 2016	• The Plaintiffs provided additional documentation – the well file for 15-7 well, the Purchase and Sale Agreement, and the six well logs that CNRL had requested.
March 4, 2016	• The Defendant provided answers to three of Mr. Harvey's four outstanding undertakings.
March 16, 2016	• The Plaintiffs' counsel fell ill and sent an email to CNRL very early on the morning of this first anticipated of questioning. Because he would be unable to conduct his questioning on Mr. Harvey's undertakings, he instead proposed that he do that by written interrogatories. He offered to have another lawyer attend the next day, March 17, if CNRL still wanted to proceed with the questioning of the Plaintiffs on the second day. The parties then agreed to complete the questioning of CNRL by written interrogatories. It appears that CNRL's questioning of the Plaintiffs, that was to have occurred on March 17, 2016, did not proceed and no plans were made to reschedule it promptly.
April 14, 2016	• CNRL received the first invoice from its expert witness, Petrel Robertson Consulting Ltd. The evidence does not disclose when CNRL first retained this expert, but it would have been sometime before this date.

August 23, 2016	• The Plaintiffs served 400 written interrogatories on the Defendant and requested that the parties amend the Litigation Plan.
October 5, 2016	• The Plaintiffs asked for CNRL's anticipated timing to answer the written interrogatories.
October 11, 2016	• CNRL wrote to say that they had finally gone through the written interrogatories and were dismayed by their quantity and repetitiveness.
October 11, 2016	• The Plaintiffs asked whether the Defendant was ready to question the Plaintiffs.
November 1, 2016	• CNRL provided an answer to Mr. Harvey's final outstanding undertaking.
November 8, 2016	• The Plaintiffs suggested that the Defendant schedule a date to question the Plaintiffs.
March 3, 2017	• The Plaintiffs asked when the Defendant would provide answers to the written interrogatories.
April 22, 2017	• The Plaintiffs proposed a new Litigation Plan (a draft of which they sent) and asked when the Defendant would provide answers to the written interrogatories.
May 16, 2017	• The Plaintiffs asked about the new Litigation Plan and again asked when the Defendant would provide answers to the written interrogatories.
May 24, 2017	• CNRL said it was following up with its client regarding the Plaintiffs' May 16 requests.
August 1, 2017	• The Plaintiffs asked about the new Litigation Plan and asked when the Defendant would provide answers to the written interrogatories.
August 1, 2017	• CNRL's counsel advised that they had received draft interrogatory responses from their client and were halfway through reviewing them.
September 13, 2017	• The Plaintiffs asked about the new Litigation Plan and asked when the Defendant will provide answers to Written Interrogatories.
September 15, 2017	• CNRL said they had reviewed their client's draft interrogatory responses and would meet to discuss with Mr. Harvey the next week.
October 2, 2017	• The Plaintiffs asked about the new Litigation Plan and asked when the Defendant would provide answers to Written Interrogatories
October 4, 2017	• CNRL said Mr. Harvey had requested some transcript review on a number of the interrogatories and that it was in progress. CNRL could

	not locate the proposed draft Litigation Plan, and asked for another copy.
October 4, 2017	• The Plaintiff re-sent the draft Litigation Plan originally sent on April 22, 2017.
October 30, 2017	• CNRL sent a revised Litigation Plan back to the Plaintiffs and advised they would answer the interrogatories by the end of November.
November 3, 2017	• The Plaintiffs revised some dates in the draft Litigation Plan.
November 3, 2017	• CNRL advised that it had no availability to question the Plaintiffs in February 2018, which explained their proposed deadline of March 2018 for that step in their comments on the draft Litigation Plan.
November 21, 2017	The Parties filed a new Litigation Plan (the **2017 Litigation Plan**), in which they agreed to the following deadlines: • November 30, 2017, for CNRL to provide responses to the written interrogatories; • March 31, 2018, for CNRL to question the Plaintiffs; • May 31, 2018, for the Plaintiffs to provide undertaking responses; • August 31, 2018, for CNRL to question on those undertaking responses; • December 31, 2018, for the exchange of initial expert reports; • February 28, 2019, for the exchange of rebuttal expert reports; and • March 30, 2019, for entry for trial.
November 30, 2017	• CNRL provided a partial set of answers to the written interrogatories, leaving over 40 unanswered. This response was 30 pages long.
December 4, 2017	• CNRL received the first invoice from its expert witness, Ken Schuldhaus. The evidence does not disclose when CNRL first retained this expert, but it would have been sometime before this date.
March 27 and 28, 2018	• CNRL questioned the Plaintiffs' corporate representative. In this discovery, CNRL requested undertakings including asking the Plaintiffs to seek documents from third parties like Marquee, Sproule, etc.
May 30, 2018	• The Plaintiffs wrote to Marquee seeking information that CNRL had asked them in undertakings to request from Marquee.
May 31, 2018	• The Plaintiffs provided partial answers to the undertakings given by their corporate representative.
June 12, 2018	• Marquee responded to the Plaintiffs, saying it had nothing to provide.
December 31, 2019	• The Plaintiffs provided drafts of two of their expert reports.

January 9, 2019	• CNRL said it could not finalize its expert reports without the remaining documents it had requested, and also requested further documentation related to undertakings. CNRL advised that it might have to bring an application to compel third parties to produce the records the Plaintiffs had made insufficient efforts to obtain.
January 16, 2019	• The Plaintiffs served final copies of their three expert reports.
January 21 and 25, 2019	• The Defendant provided answers to the remaining written interrogatories – this comprised 18 pages.
March 4, 2019	• The Plaintiffs provided partial supplemental answers to undertakings.
March 25, 2019	• CNRL received the first invoice from its expert witness, MPD Reservoir Engineers. The evidence does not disclose when CNRL first retained this expert, but it would have been sometime before this date.
August 2019	• CNRL's reservoir engineering expert advised CNRL that it needed the entire Sproule Reports, and also the well file for the 102/12-7 well.
October 2019	• CNRL's reservoir engineering expert advised CNRL again that it needed the full Sproule Reports.
October 9, 2019	• CNRL requested further information by way of undertakings from the Plaintiffs, including the well files for the AB/16-07 well and the 102/12-07 well, and the entire Sproule Reports. It noted that it had received the well file for the AA/16-7 well, but it also wanted the well file for the AB/16-7 event in that well. It also noted that it had received the well file for the AA/12-7 well, but it also wanted the well file for the 102/12-7 event in that well. It asked the Plaintiffs to ask Skywest for the entire Sproule Reports and if they did not have it, to ask Sproule.
October 17, 2019	• The Plaintiffs said they had asked their clients for the information CNRL requested on October 9.
January 7, 2020	• CNRL asked for the two well files and the entire Sproule reports previously requested on October 9, 2019 and said that they would need to conduct an examination on undertakings once the Plaintiffs' undertakings were complete.
April 16, 2020	• The Plaintiffs provided the final two requested well files and asked whether the Defendant was ready to complete questioning of the Plaintiffs so they could book an ADR, then a trial.
April 7, 2020	• CNRL asked for the "additional documents".

April 27, 2020	• The Defendant thanked the Plaintiffs for the additional information, but advised that it still needed the full Sproule reports. It asked the Plaintiffs to ask Skywest for those full reports, or alternatively, Sproule directly.
August 4, 2020	• The Plaintiffs requested the full Sproule Reports from Prairie Provident.
October 5, 2020	• Plaintiffs wrote to Sproule to request Sproule reports
October 6, 2020	• The Plaintiffs told CNRL that they had requested the Sproule reports from Prairie Provident on August 4 and from Sproule on October 5. The Plaintiffs requested that the parties schedule trial dates.
December 1, 2020	• CNRL asked for the Sproule Reports again and said that the Plaintiffs' obligations were to produce them, and that they had not done enough. CNRL required the Plaintiffs to make reasonable efforts to answer their undertakings, failing which CNRL would "bring an application to compel a proper response". CNRL demanded the Sproule Reports by December 30.
December 2, 2020	• The Plaintiffs said they did not have the Sproule Reports and could not produce what they did not have, so CNRL should make an application for those records, so the parties could complete questioning and set the matter down for trial.
January 13, 2021	• CNRL filed an application to obtain the Sproule Reports from Sproule and Prairie Provident.
January 25 - 27, 2021	• Sproule confirmed to CNRL that they had the full Sproule reports. Prairie Provident subsequently authorized their release. There were numerous emails between the parties, Sproule and Prairie Provident over these three days, as a result of which CNRL received the full Sproule reports.
May 13, 2021	• The Defendant questioned the Plaintiffs' representative on his undertakings. CNRL objected to any questions about that water injection before 2006. CNRL asked the Plaintiffs' corporate representative to undertake to produce two additional well files that were not previously requested.
May 21, 2021	• CNRL advised the Plaintiffs to file an amendment application if they wanted to include pleadings about water injections before 2006.
September 20, 2021	• The Plaintiffs provided answers to undertakings, including the two additional well files that were requested on May 13.

February 16, 2022	• CNRL wrote to the court to request dates for two or three week trials, and was advised that dates were available in Spring 2023.
February 17, 2022	• The Plaintiffs filed the Amendment Application.
March 31, 2022	• CNRL filed the Delay Application.