

COURT FILE NUMBER 2501-06120

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SUNTERRA FOOD CORPORATION,
TROCHU MEAT PROCESSORS LTD., SUNTERRA
QUALITY FOOD MARKETS INC., SUNTERRA FARMS
LTD., SUNWOLD FARMS LIMITED, SUNTERRA BEEF
LTD., LARIAGRA FARMS LTD., SUNTERRA FARM
ENTERPRISES LTD., and SUNTERRA ENTERPRISES
INC.

APPLICANT **NATIONAL BANK OF CANADA**

RESPONDENTS **SUNTERRA FOOD CORPORATION, TROCHU MEAT
PROCESSORS LTD., SUNTERRA QUALITY FOOD
MARKETS INC., SUNTERRA FARMS LTD., SUNWOLD
FARMS LIMITED, SUNTERRA BEEF LTD., LARIAGRA
FARMS LTD., SUNTERRA FARM ENTERPRISES LTD.,
SUNTERRA ENTERPRISES INC., RAY PRICE, DEBBIE
UFFELMAN and CRAIG THOMPSON**

DOCUMENT **BENCH BRIEF OF NATIONAL BANK OF CANADA**

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BENCH BRIEF OF NATIONAL BANK OF CANADA

**APPLICATION TO BE HEARD BY
THE HONOURABLE JUSTICE LEMA**

OCTOBER 15, 2025 at 10:00 a.m.

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I. INTRODUCTION

1. On October 15, 2025, the Court will be asked to consider separate requests made by:

- (a) National Bank of Canada ("**NBC**") to question a representative of KPMG as the auditor of the Sunterra Respondents'¹ financial statements (the "**Sunterra Auditor**");
- (b) the Sunterra Respondents to question the Chief Executive Officer and Vice-President, Special Loans of NBC;² and
- (c) the Sunterra Respondents to question the Chief Executive Officer and Chief Compliance Officer of Compeer.

2. Each of these requests has to be considered separately because each are subject to very different rules and principles:

- (a) NBC has already submitted a bench brief, in support of NBC's application, seeking to question the Sunterra Auditor.
- (b) This particular brief is submitted by NBC, in reply to the Sunterra Respondents' application, filed October 9, 2025 (the "**Application**"), to designate Mr. Laurent Ferreira, NBC's Chief Executive Officer (the "**NBC CEO**") and Mr. Alexandre Leblanc, NBC's Vice President, Special Loans (the "**VP, Special Loans**") as witnesses that may be compelled to be questioned by the Sunterra Respondents pursuant to the *Alberta Rules of Court*, Alta. Reg. 124/2010 ("**Rules of Court**"), Rules 5.17, 5.18, and 6.8.³

¹ Sunterra Farms Ltd. ("**Sunterra Canada**"), Sunwold Farms Limited ("**Sunwold Canada**"), Sunterra Food Corporation ("**Sunterra Food**"), Trochu Meat Processors Ltd. ("**Trochu Meat**"), Sunterra Quality Food Markets Inc. ("**Sunterra Markets**"), Sunterra Beef Ltd. ("**Sunterra Beef**"), Sunterra Enterprises Inc. ("**Sunterra Enterprises**"), Sunterra Farm Enterprises Ltd. ("**Sunterra Farm Enterprises**"), and Lariagra Farms Ltd. ("**Lariagra Canada**") (collectively the "**Canadian Sunterra Entities**" or the "**Sunterra Respondents**").

² On October 7, 2025, the Sunterra Respondents advised that they were withdrawing their request to question Mr. Nizar Araj, NBC's Chief Compliance Officer, Capital Markets (the "**NBC Capital Markets CCO**"), and were instead substituting a request to question the VP, Special Loans, as further described below.

³ The Sunterra Respondents' proposed order, attached as Schedule "B" to the Application, contemplates that the NBC CEO and VP, Special Loans would be declared as compellable witnesses under "Rule 5.17(1)(e) of the *Alberta Rules of Court*" (Application, Schedule "B", para. 2). However, Rule 5.17(1)(e) refers to questioning a person who is "an auditor or former auditor engaged by a party adverse in interest, but not an auditor or former auditor engaged solely for the purpose of the action". For the purposes of this Brief, we have assumed the relief sought is under Rule 5.17(1)(b) or (d), in accordance with the Sunterra Respondents' Brief of Law.

- (c) NBC has no submissions to make in respect of the Sunterra Respondents' request to question the Chief Executive Officer and Chief Compliance Officer of Compeer.

3. There are two separate claims processes underway, each of which is subject to different procedural orders. NBC's request to question the Sunterra Auditor, and the Sunterra Respondents' request to question NBC CEO and VP, Special Loans, are to be determined pursuant to the Consent Order (Scheduling) made in respect of the "**NBC v. Sunterra Claims**"⁴ (the "**NBC Scheduling Order**"). That Order is very different from the similarly titled Consent Order (Scheduling) that concerns the Compeer v. Sunterra Claims.

4. Despite (i) the request to question the VP, Special Loans having been made over a month after the deadline contemplated by the NBC Scheduling Order,⁵ and (ii) the Sunterra Respondents having gone beyond the NBC Scheduling Order's requirement that only two (2) additional witnesses may be identified (by identifying the VP, Special Loans as a third named witness), NBC does not oppose the request that it produce the VP, Special Loans. However, that non-opposition is conditional on ensuring that certain procedural matters are addressed so as to mitigate against the prejudice to NBC arising from such late request. Specifically, the NBC Scheduling Order contemplates that once the Sunterra parties have identified additional witnesses, "If the additional individuals are to file affidavits they are to do so by September 12, 2025".⁶ Due to the Sunterra Respondents' failure to adhere to the timelines and process under the NBC Scheduling Order, this requirement should be amended to enable the VP, Special Loans to file an affidavit prior to his questioning.

5. NBC opposes the request to question the NBC CEO, in its entirety. The NBC CEO does not fall within the scope of Rules 5.17 and 5.18, as contemplated by the NBC Scheduling Order,

⁴ NBC Scheduling Order, Schedule "A" at para. 1(i):

"**NBC v. Sunterra Claim**" means every claim NBC has against the Sunterra Parties, or any of them, for:

(i) contribution and indemnity arising out of or in any way connected to the Compeer v. NBC Claim; and
(ii) damages,

which claim shall exclude a claim for the NBC Indebtedness as set out in paragraph 2 of this Order;

⁵ Affidavit #5 of Raymond Pai, sworn October 10, 2025 ["**Pai #5**"], at Exhibit "D" (the request was made on October 7, 2025);

NBC Scheduling Order, Schedule "A" at para. 10:

"On or before September 5, 2025, the Sunterra Parties shall advise NBC of the names of any two additional individuals who are current or former NBC employees, officers or directors within the scope of Rules 5.17 and 5.18 associated with NBC (apart from the deponents of affidavits filed by NBC and Listed Witnesses) and associated with NBC (apart from the deponents of affidavits filed by NBC), if any, it wishes to question under Rule 6.6 if they subsequently file affidavits and Rule 6.8 if they do not file affidavits in relation to the Claim [...]."

⁶ NBC Scheduling Order, Schedule "A" at para. 10.

and the evidence is that the NBC CEO is not likely to have any relevant and material evidence in relation to this matter. In contrast to the general suppositions and assumptions relied upon by the Sunterra Respondents as the basis for their request, NBC has provided sworn evidence confirming that the NBC CEO has had no role in these proceedings or in the management and oversight of the Sunterra Respondents' credit file.

6. This brief will focus on the NBC Scheduling Order concerning the NBC v. Sunterra Claims and Rule 5.17(1)(b) and (d) which concerns the opposite party's officers and employees.

II. FACTS

A. The Claim

7. NBC's claim (the "**Claim**"),⁷ made pursuant to the NBC Scheduling Order, seeks relief against the Sunterra Respondents, and Ray Price, Debbie Uffelman, and Craig Thompson, for:

- (a) contribution and indemnity arising or in any way connected to the "Compeer v. NBC Claim" (as defined in the NBC Scheduling Order);⁸ and,
- (b) damages.

8. The Sunterra Respondents, and Ray Price, Debbie Uffelman, and Craig Thompson, submitted a Statement of Defence (the "**Statement of Defence**"), on September 5, 2025, in response to the Claim, in accordance with the NBC Scheduling Order.

B. Management of the Canadian Sunterra Entities' SAMU File

9. The management of the Canadian Sunterra Entities' accounts, with NBC, then CWB,⁹ was transferred to the Special Asset Management Unit ("**SAMU**") in September 2023, as a result of certain defaults committed by the Canadian Sunterra Entities under their respective loan and

⁷ As of October 10, 2025, the Claim has not yet been filed, due to timing issues related to the receipt of the filed copy of the NBC Scheduling Order. NBC and the Canadian Sunterra Entities will seek a fiat by consent to permit the filing of the Claim.

⁸ NBC Scheduling Order, Schedule "A" at para. 1(c):
"**Compeer v. NBC Claim**" means every claim Compeer has or may have against National Bank of Canada (as amalgamation successor to Canadian Western Bank) that is related to, arises from or is in anyway connected to Canadian Western Bank dishonoring cheques issued by Sunterra Farms Inc. or Sunwold Farms Limited in favour of the Sunterra US Entities.

⁹ On March 1, 2025, Canadian Western Bank ("**CWB**") and NBC amalgamated and continued under the name "National Bank of Canada". For clarity, references to NBC include, as and where appropriate, CWB.

security agreements with NBC.¹⁰ SAMU is the division within NBC that is responsible for managing borrowers who have breached covenants in their lending and other agreements with NBC.¹¹ At that time, the management of the Canadian Sunterra Entities' accounts was assigned to Rodney Randall, with oversight by Richard Dean Chan ("**Mr. Chan**").¹²

10. In February 2025, following the discovery of the alleged cheque kiting scheme which is the subject of the Claim, day to day conduct of the Canadian Sunterra Entities' file within SAMU was assigned to Raymond Pai ("**Mr. Pai**"), with oversight by Mr. Chan.¹³ At times, Mr. Chan has discussed the Canadian Sunterra Entities with his supervisor, the VP, Special Loans.¹⁴

11. However, day to day management and direct oversight of the Canadian Sunterra Entities by SAMU, has remained with Mr. Pai and Mr. Chan, and the file has not been escalated to the NBC CEO.¹⁵

12. Mr. Pai and Mr. Chan are scheduled to be questioned on their affidavits, in accordance with the NBC Scheduling Order, on October 16 and 17, 2025.

C. Initial Request for Additional NBC Witnesses

13. On September 5, 2025, counsel for the Canadian Sunterra Entities requested that NBC produce the NBC CEO and Mr. Nizar Araji, NBC's Chief Compliance Officer, Capital Markets (the "**NBC Capital Markets CCO**"), for questioning, pursuant to paragraph 10 of the NBC Scheduling Order.¹⁶ Counsel for the Canadian Sunterra Entities further requested that the NBC CEO and the NBC Capital Markets CCO be available, in person, for such questioning.¹⁷

14. NBC refused to produce the NBC CEO and the NBC Capital Markets CCO, for questioning, on the grounds that: (i) neither party has relevant and material information with respect to the matters in issue;¹⁸ and, (ii) NBC advised, as subsequently confirmed by sworn

¹⁰ Affidavit #1 of Richard Dean Chan, sworn August 29, 2025 ["**Chan #1**"], at paras. 2-3.

¹¹ Chan #1, at para. 2.

¹² Chan #1, at para. 2; Affidavit #2 of Richard Dean Chan, sworn September 29, 2025 ["**Chan #2**"], at para. 13(a).

¹³ Chan #2, at para. 13(d).

¹⁴ Chan #2, at para. 13(e), (f), and (h).

¹⁵ Chan #2, at para. 13(i).

¹⁶ Pai #5, at Exhibit "A".

¹⁷ Pai #5, at Exhibit "C".

¹⁸ Pai #5, at Exhibit "B".

evidence, that the NBC Capital Markets CCO is involved in the Capital Markets division, and has no involvement in these matters.¹⁹

15. With respect to the NBC CEO, he:

- (a) has not been involved in the management of the Canadian Sunterra Entities' accounts with NBC;²⁰
- (b) has not given any direction to any member of SAMU with respect to the same;²¹
- (c) did not have knowledge of the Sunterra Entities' SAMU file with NBC prior to enquiries being made of him, on September 9, 2025, following the receipt of the Canadian Sunterra Entities' request for his production as a witness;²² and,
- (d) will not be able to provide any evidence that is relevant and material to NBC's Claim, nor the efficient summary determination of the same directed by the Court.

16. With respect to the NBC Capital Markets CCO, he:

- (a) is the Chief Compliance Officer of NBC's Capital Markets division, and, as the Canadian Sunterra Entities' file does not involve NBC's Capital Markets Division, the Canadian Sunterra Entities' file does not fall within his responsibilities;²³ and,
- (b) did not have knowledge of the Sunterra Entities' SAMU file with NBC prior to enquiries being made of him, on September 9, 2025, following the receipt of the Canadian Sunterra Entities' request for his production as a witness.²⁴

17. Neither the NBC CEO, nor the NBC Capital Markets CCO, have been involved in the management of the Canadian Sunterra Entities' accounts within SAMU.²⁵

¹⁹ Pai #5, at Exhibit "E" and Chan #2, at para. 13(m).

²⁰ Chan #2, at para. 13(e), (i), (k).

²¹ Chan #2, at para. 13(e), (i), (k).

²² Chan #2, at para. 13(k).

²³ Chan #2, at para. 13(m).

²⁴ Chan #2, at para. 13(k).

²⁵ Chan #2, at para. 13(i), (k), (l).

18. Both the NBC CEO and the NBC Capital Markets CCO reside and work in Montreal, Quebec.²⁶

D. Further Requests for Witnesses

19. On October 7, 2025, well past the September 5, 2025 deadline in the NBC Scheduling Order, counsel for the Canadian Sunterra Entities retracted the Canadian Sunterra Entities' request that NBC produce the NBC Capital Markets CCO for questioning, and instead requested that NBC produce the NBC CEO and the VP, Special Loans.²⁷

20. On October 8, 2025, counsel for NBC replied to counsel for the Canadian Sunterra Entities, advising:

- (a) the request to produce the VP, Special Loans, was made outside of the parameters of the NBC Scheduling Order;
- (b) the request that NBC's witnesses appear, in person, for any questioning, rather than permitting them to appear virtually (as with all other witnesses), exacerbates the prejudice arising from any request that they be produced; and,
- (c) the request for the NBC CEO, to attend in person, or for any questioning at all, would be resisted by NBC.²⁸

21. Notwithstanding the foregoing, NBC agreed to produce the VP, Special Loans, for questioning, by the Canadian Sunterra Entities, on the following conditions:

- (a) that the VP, Special Loans be provided the opportunity to file an affidavit, as would have been permitted under the NBC Scheduling Order had the request to produce him as a witness been made within the timelines contemplated by that order;²⁹
- (b) that the questioning be held virtually; and,

²⁶ Chan #2, at para. 13(l).

²⁷ Pai #5, at Exhibit "D".

²⁸ Pai #5, at Exhibit "E".

²⁹ The NBC Scheduling Order, para. 10, provides that "if the additional individuals are to file affidavits they are to do so by September 12, 2025."

- (c) if the questioning is to be held in person, that the VP, Special Loans be questioned on October 22 or 23, 2025, in accordance with his availability.³⁰

22. On October 9, 2025, the Canadian Sunterra Entities: (i) filed the within Application; and, (ii) responded to NBC's offer to produce the VP, Special Loans, agreeing to examine the VP, Special Loans, but without responding to the additional conditions.³¹

III. ISSUES

23. The principal issue to be determined in the Application is whether it is appropriate to designate the NBC CEO as an additional witness, considering:

- (a) the terms of the NBC Scheduling Order pertaining to the Claim and its incorporation of Rule 5.17(1)(b) and (d).
- (b) the relevance and materiality of the NBC CEO's potential evidence; and,
- (c) the principles of fairness and proportionality.

IV. LAW

24. Rule 1.2 of the *Rules of Court* requires proportionate, timely, and cost-effective procedures by which claims may be justly decided on their merits:

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

...

1.2(4) The intention of these rules is that the Court, when exercising a discretion to grant a remedy or impose a sanction, will grant or impose a remedy or sanction proportional to the reason for granting or imposing it.

***Rules of Court*, Alta. Reg. 124/2010 [“*Rules of Court*”], R. 1.2(1) and (4) [Book of Authorities (“BOA”) TAB 3].**

25. Rule 5.2 expresses how information should be determined to be relevant and material:

5.2(1) For the purposes of this Part, a question, record or information is **relevant and material** only if the answer to the question, or the record or information, could reasonably be expected

³⁰ Pai #5, at Exhibit “D”.

³¹ Pai #5, at Exhibit “F”.

(a) to **significantly help determine** one or more of the issues **raised in the pleadings**, or

(b) to ascertain evidence that could reasonably be expected to **significantly help determine** one or more of the issues **raised in the pleadings**.

Rules of Court, R. 5.2(1) [emphasis added] [BOA TAB 3].

26. Rule 5.17(1)(b) and (d) permits the questioning of officers of a corporation and employees, about relevant and material records and information:

5.17(1) A party is entitled to ask the following persons questions under oath about relevant and material records and relevant and material information:

...

(b) if the party adverse in interest is a corporation,

(i) **one or more officers or former officers of the corporation who have or appear to have relevant and material information** that was acquired because they are or were officers of the corporation, and

(ii) the corporate representative;

...

(d) one or more other persons who are or were **employees** of the party adverse in interest **who have or appear to have relevant and material information** that was acquired because of the employment;

Rules of Court, R. 5.17(1)(b) and (d) [emphasis added] [BOA TAB 3].

27. Rule 6.8 governs questioning of witnesses, and states:

6.8 A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, and

(a) rules 6.16 to 6.20 apply for the purposes of this rule, and

(b) the transcript of the questioning must be filed by the questioning party.

Rules of Court, R. 6.8 [BOA TAB 3].

V. ARGUMENT

A. The Witnesses Must Fall Within the Scope of R. 5.17

28. Schedule A of the NBC Scheduling Order concerning the NBC v. Sunterra Claims specifically incorporates Rule 5.17 and 5.18 of the *Rules of Court*:

9. Each of the witnesses that are identified by a Party as being additional individuals falling **within the scope of Rules 5.17 and 5.18** pursuant to the process below shall be questioned pursuant to Rule 6.6 if they file affidavits and Rule 6.8 if they do not file affidavits, by the Parties who are adverse in interest.

10. **On or before September 5, 2025**, the Sunterra Parties shall advise NBC of the names of any two additional individuals **who are current or former NBC employees, officers or directors within the scope of Rules 5.17 and 5.18 associated with NBC** (apart from the deponents of affidavits filed by NBC and Listed Witnesses) and associated with NBC (apart from the deponents of affidavits filed by NBC), if any, it wishes to question under Rule 6.6 if they subsequently file affidavits and Rule 6.8 if they do not file affidavits in relation to the Claim. If the additional individuals are to file affidavits they are to do so by September 12, 2025.

...

13. Each deponent of an affidavit filed by NBC and **each individual who is identified by the Sunterra Parties as falling within the scope of Rules 5.17 and 5.18 as they relate to NBC** (collectively, the "NBC Witnesses") shall be made available for questioning by no later than October 24, 2025. Such questioning shall be limited to 3 days by the Sunterra Parties.

Consent Order (Scheduling), granted on July 24, 2025 at paras. 9-13 [emphasis added]
[“NBC Scheduling Order”].

29. While the NBC Scheduling Order permits the Canadian Sunterra Entities to identify the additional witnesses to question, such identification is expressly limited to persons who fall within the scope of Rule 5.17.³² The NBC Scheduling Order does not provide the Canadian Sunterra Entities with an unlimited, unilateral ability to choose any person to question.

30. Different parts of Rule 5.17 address a party’s ability to question the opposite party’s current and former officers [Rule 5.17(1)(b)], and the opposite party’s current and former employees [Rule 5.17(1)(d)]:

³² Rule 5.18, which applies to persons who provide services to a corporation but who are not current or former officers or employees, is not applicable to this application.

5.17(1) A party is entitled to ask the following persons questions under oath about relevant and material records and relevant and material information:

...

(b) if the party adverse in interest is a corporation,

(i) one or more officers or former officers of the corporation **who have or appear to have relevant and material information that was acquired because they are or were officers of the corporation**, and

(ii) the corporate representative;

...

(d) one or more other persons who are or were employees of the party adverse in interest **who have or appear to have relevant and material information that was acquired because of the employment**;

Rules of Court, at R. 5.17(1)(b), (d) [emphasis added] [BOA TAB 3].

B. It is Not Appropriate to Question the NBC CEO

31. When considering an application under Rule 5.17(1)(b) or (d), the Court must consider:

- (a) whether the topics of questioning meet the definition of “relevant and material”, under Rule 5.2; and,
- (b) if ordering the questioning will provide a means by which the Claim can be fairly and justly resolved, and is proportionate.

Rules of Court, RR. 1.2 and 5.2(1) [BOA TAB 3].

32. As further described below:

- (a) the NBC CEO’s evidence is neither relevant nor material to the Claim;
- (b) it is neither fair nor appropriate to question the NBC CEO; and,
- (c) ordering the questioning of the NBC CEO will not further the object and purpose of the Rules, nor the object of the NBC Scheduling Order as part of the restructuring process.

i. The NBC CEO's Evidence is Neither Relevant Nor Material

33. The limitations set out in Rule 5.2(1) regarding relevance and materiality are intended to narrow the scope of discovery, as discussed by the Court of Appeal of Alberta in its commentary on the predecessor rule, Rule 186.1 (now Rule 5.2(1)):

Oral examination for discovery is now confined to eliciting facts of primary relevance, that is, facts that are directly in issue, or of secondary relevance, that is, facts from which the existence of the primary facts may be directly inferred. Both primary and secondary relevance are determined by reference to the issues raised by the pleadings. Questions seeking information that could reasonably be expected to lead to facts or records of secondary relevance (that is, questions asking for information that is only of tertiary relevance) need no longer be answered.

In addition to being relevant within the meaning of Rule 186.1, information sought on discovery must be material, that is, be reasonably expected to “significantly” help determine one or more of the issues raised in the pleadings. The materiality of evidence refers to its pertinency or weight in relation to the issue it is adduced to prove: Black’s Law Dictionary, (6th ed. 1990). Facts or documents may be relevant within Rule 186.1, but, either alone or in combination with other evidence, be of no significant help to the examining party in proving or disproving a fact in issue. As Slatter J. observed in *Weatherill Estate v. Weatherill*, (2003) 337 A.R. 180 (Q.B.), 2003 ABQB 69 at para. 17, “... relevance is determined by the pleadings while materiality is more a matter of proof ...”. See also *Tolko Industries Ltd. v. Railink Ltd.* (2003), 14 Alta. L.R. (4th) 388, 2003 ABQB 349 at para. 6.

NAC Constructors Ltd. v. Alberta Capital Region Wastewater Commission, 2006 ABCA 246, at paras. 12-13 [emphasis added] [BOA TAB 7].

34. Furthering the objective of the Rules and this narrowed scope of pre-trial discovery from what is “relevant” to what is “relevant and material”, a case management judge has jurisdiction to reject requests to question witnesses which are speculative, or where the expense is disproportionate to the potential benefits:

[13] As noted in *Patel v Patel*, 2011 ABQB 662 at para 38, the foundational Rules deal with fairness, justice, efficiency, economy and proportionality. As a result, the Court noted at para 43 that:

[p]ermitting a party to avail him or herself of every step contemplated by the rules where there is no likelihood that the outcome of such steps will ultimately assist in resolving the matters, or where the potential benefits are disproportional to the efficiency and expense involved, is contrary to the purpose and intent of the rules.

...

[16] During questioning, a person is only required to answer relevant and material questions. **A question is relevant and material only if the answer to that question could reasonably be expected** either:

a) to **significantly help determine one or more of the issues raised in the pleadings**, or

b) to **ascertain evidence that could reasonably be expected to significantly help determine one or more of the issues raised in the pleadings**: Rules 5.2(1) and Rule 5.25 (1)(a).

[17] Relevance is primarily determined with reference to the pleadings, while materiality relates to whether the information can help prove a fact in issue: *Dow Chemical Canada Inc v Nova Chemicals Corp*, 2014 ABCA 244 at para 17.

[18] As noted at paras 19 and 21 of *Dow Chemical*, a case management judge **is entitled to reject** lines of pre-trial discovery that are **unrealistic, speculative or without any air of reality, or where the expense involved is disproportionate** to the likely benefits that will result. **The same reasoning applies to requests to question witnesses generally.**

Pembina Pipeline Corporation v Coney, 2019 ABQB 699, at paras. 13, 16-18 [emphasis added] [BOA TAB 8];
Dow Chemical Canada ULC v. Nova Chemicals Corporation, 2014 ABCA 244, at para. 21 [BOA TAB 6].

35. While the term “officer” has been given a broad reading in the context of Rule 5.17 (and its predecessor rule, Rule 200(1)), the test to determine whether a person, including an officer, falls within the scope of Rule 5.17, and should be questioned, remains whether they are able to give relevant and material evidence according to the object and purpose of the rules for discovery of discovery:

Because **the object of the Rule is to force pre-trial disclosure** of vital information which is not privileged, the limiting factor in the Rule - that the person to be examined have some connection with the party as officer or employee - should be given a wide application. As was said by O’Halloran, J. in *Bell v. Klein* (No. 3), **the test**:

... seems to be whether the person sought to be examined can be regarded as an officer or servant in any permissible sense **if he is the one person connected with the company best informed of matters which may define and narrow the issues between the parties at the trial.**

Cana Construction Co. Ltd. v. Calgary Centre for Performing Arts, 1986 ABCA 175, at para. 8 [emphasis added] [BOA TAB 5].

36. The Canadian Sunterra Entities have provided no evidence for their claim that the NBC CEO’s evidence would be material or relevant to the issues at hand, except for the personal belief of Arthur Price, based on his personal experience:

"I am and have in the past been a corporate officer of various entities, including but not limited to Husky Oil Ltd., and therefore have personal knowledge with respect to the obligations, roles, and responsibilities of corporate officers. I therefore verily believe, based on my experience, that the NBC Officers would have personal knowledge with respect to the following matters...

I therefore verily believe that the NBC Officers would have, or ought to have, personal knowledge concerning the above issues and would have relevant and material knowledge related to this action."³³

37. To the contrary, the evidence is that:

- (a) the NBC CEO has had no personal involvement, or direct contact, with the Canadian Sunterra Entities, Ray Price, Debbie Uffelman, or Craig Thompson;
- (b) the NBC CEO has had no direct contact with the members of SAMU responsible for the management of the Canadian Sunterra Entities' accounts, including Mr. Pai and Mr. Chan, with respect to the Canadian Sunterra Entities' accounts;
- (c) the NBC CEO did not provide any employee of NBC with instructions or oversee their work, with respect to the Canadian Sunterra Entities or their accounts; and,
- (d) the VP, Special Loans is better suited to provide material and relevant evidence to the issues at hand.³⁴

38. Further, any potential evidence given by the NBC CEO will be neither relevant nor material to the Claim, as:

- (a) the Claim, to be determined pursuant to the NBC Scheduling Order, does not include any counter-claim made by the Canadian Sunterra Entities, as such claims are explicitly excluded from the Consent Order;³⁵
- (b) the Canadian Sunterra Entities have not pled, in their Statement of Defence, any particular ground for which the NBC CEO may be "reasonably expected to significantly help determine" and which cannot be resolved by questioning the VP,

³³ Affidavit of Arthur Price, sworn October 8, 2025, at paras. 4-5.

³⁴ Chan #2, at para. 13(e), (i), (k).

³⁵ NBC Scheduling Order, at para. 3.

Special Loans, who has actual knowledge and oversight of the relevant matters;
and,

- (c) the NBC CEO has no specific or particular knowledge regarding the Canadian Sunterra Entities, or NBC's Claim.

ii. Questioning the NBC CEO is Neither Fair Nor Appropriate

39. It is neither fair nor appropriate that Sunterra be permitted to question the NBC CEO, as:

- (a) first, there is no applicable statutory duty for the NBC CEO to have specific knowledge of the evidence the Canadian Sunterra Entities has alleged to be relevant; and,
- (b) second, the NBC CEO is not the appropriate witness in the circumstances.

There is no statutory duty requiring the NBC CEO have knowledge of the Claim

40. The Canadian Sunterra Entities allege there is a statutory duty, under s. 122 of the Alberta *Business Corporations Act*, RSA 2000, c B-9 (the "**Alberta BCA**"), that the NBC CEO must remain informed of, among other things, the following:

"(a) internal decision-making policies relating to fraud and specifically, such allegations as they related to the [Canadian] Sunterra Entities and the matters in this claims process;

(b) the ability of the NBC Officers to opine on approvals and policies with respect to NBC's regulatory obligations;

(c) internal policies concerning the use and approval of cheques;

(d) the internal reporting structure within NBC;

(e) potential material liabilities;

(f) breaking of regulations;

(g) policies and rules respecting the interactions between NBC and other banks, specifically those that apply to retractions involving exchange banks and international banks;

(h) policies and rules relating to clearing house rules; and,

(i) oversight of NBC regarding issues raised between NBC and [the Canadian Sunterra Entities] in these proceedings”³⁶

(the “**Alleged Relevant Information**”).

41. The Canadian Sunterra Entities have not identified, with reference to either the Claim or the Statement of Defence, the relevance or materiality of any of the Alleged Relevant Information, nor which issue(s) the Alleged Relevant Information is expected to help determine. The Application cannot succeed without the Canadian Sunterra Entities satisfying this burden.³⁷

42. No evidence has been given to support the assertion that the NBC CEO has a statutory duty to be aware of the Alleged Relevant Information.

43. NBC is a Schedule I bank, regulated under the *Bank Act*, SC 1991, c 46 (the “**Bank Act**”), and is not subject to the Alberta BCA.³⁸

44. The Bank Act nevertheless has equivalent provisions to section 122 of the Alberta BCA in section 158, which states:

158 (1) Every director and officer of a bank in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer shall

(a) act honestly and in good faith with a view to the best interests of the bank; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

...

158 (3) No provision in any contract, in any resolution or in the by-laws of a bank relieves any director, officer or employee of the bank from the duty to act in accordance with this Act and the regulations or relieves a director, officer or employee from liability for a breach thereof.

***Bank Act*, SC 1991, c 46, s. 158(1) and (3) [BOA TAB 1].**

³⁶ Affidavit of Arthur Price, sworn October 8, 2025, at para. 4.

³⁷ *Pembina Pipeline Corporation v Coney*, 2019 ABQB 699; *NAC Constructors Ltd. v. Alberta Capital Region Wastewater Commission*, 2006 ABCA 246; R. 5.2(1).

³⁸ The Alberta BCA defines “corporation” as “a body corporate incorporated or continued under this Act and not discontinued under this Act” (s. 1(l)). NBC, as a Schedule I bank under the *Bank Act*, is not incorporated under the Alberta BCA.

45. The statutory duty applicable to officers of NBC is to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”

46. It is reasonable, in the circumstances, for the most senior officer of a bank, to delegate certain duties and responsibilities, while still meeting the duty of care of a reasonably prudent person.

47. There is no evidence that the NBC CEO has any specific knowledge of the Alleged Relevant Information, or that any such knowledge, to the extent it exists, would “significantly help” determine any of the issues in dispute in the pleadings filed in respect of the Claim.

The NBC CEO is not the appropriate witness

48. The appropriateness of questioning an officer or employee of a corporation includes a consideration of whether that person is “best informed of matters which may define and narrow the issues between the parties at the trial.”

Cana Construction Co. Ltd. v. Calgary Centre for Performing Arts, 1986 ABCA 175, at para. 8 [BOA TAB 5].

49. In this case, the responsibility for managing the Canadian Sunterra Entities’ SAMU file was delegated to SAMU, and, in particular, Mr. Chan and Mr. Pai, with oversight by the VP, Special Loans.

50. Mr. Chan and Mr. Pai are scheduled for questioning, with respect to their specific knowledge of the Claim, and the events pertaining thereto, including their knowledge of the Alleged Relevant Information.

51. As described above, NBC has additionally offered to produce the VP, Special Loans, for questioning.

52. Based on the existing evidence, any of Mr. Chan, Mr. Pai, or the VP, Special Loans, have more specific knowledge, which may be relevant and material to the Claim, than the NBC CEO, who has no specific knowledge, whatsoever.

53. Nor is it appropriate to order the questioning of the NBC CEO when there is no evidentiary gap faced by the Canadian Sunterra Entities without the evidence of the NBC CEO, as NBC has agreed to produce an alternative management witness (the VP, Special Loans) to be questioned,

and any questioning of the NBC CEO, in addition to the VP, Special Loans, would be, at best, a duplication of evidence.

iii. Ordering the Questioning of the NBC CEO is Not Efficient, Timely, or Proportionate

54. The object of the Rules, in particular the narrowing of the scope of pre-trial discovery to what is “relevant and material”, is to:

...control abuses and to limit the costs of litigation, while still allowing an appropriate degree of pre-trial discovery.

Weatherill (Estate of) v. Weatherill, 2003 ABQB 69, at para. 11 [BOA TAB 9].

55. The purpose of the NBC Scheduling Order is to determine NBC's Claim, within these proceedings, in an efficient and timely manner, as part of the restructuring process.

56. A pragmatic approach to discovery has been advocated, particularly with respect to the object of the Rules regarding limiting the costs of litigation. However, a pragmatic approach does not require the disclosure of non-material, non-relevant documents or witnesses:

[12] In my view the courts should take a pragmatic view of the scope of discovery. **Too formalistic an application of the Rule serves to increase the costs of litigation, rather than decreasing them.** This case is a good example. The cost of photocopying the disputed will would have been a few dollars. Instead of that, **the parties have spent thousands of dollars arguing** about whether the document is producible. This was **not the result intended by the amendment to the Rule.**

[13] The pragmatic counsel who is called upon to produce a document which is arguably irrelevant, or at least not materially relevant, will analyze the situation as follows. First of all, the document cannot help or hurt counsel's client. If the document can help or hurt, then it is material. If the document is truly harmless, the pragmatic counsel will produce it rather than fight over it.

[14] The pragmatic counsel **might nevertheless decline to produce such harmless documents** for a number of reasons:

(a) Floodgates. Counsel may be concerned that the request for one or a few documents is merely a precursor to a flood of similar requests. At some point the floodgates must be closed. Controlling excessive demands for documents was one purpose of the new Rule.

(b) Confidentiality. Harmless documents may be confidential. The confidentiality in question may be personal, or it may relate to

business secrets. While confidentiality is not a bar to discoverability, it may be a factor that prompts the pragmatic counsel to decline to produce a record which is not materially relevant, but which could easily and cheaply be produced.

(c) Expense. There may be harmless documents that will be very expensive to collect and obtain. This may be because the document is filed in a way that makes it difficult to access, or it may be in the control of a third party who demands a fee, or for other reasons. In these instances the pragmatic counsel might decline to incur the expense of producing what appears to be a marginally relevant document.

I do not suggest that the Rule over the discoverability of a document should be determined by the expediency of the day. Parties are not required to produce the documents that are not material and relevant, and they should be entitled to refuse to produce if they so choose. However, the above factors can be explored by the Court in trying to understand why production of a particular document is resisted. If the records being requested are modest in number, they are not confidential, and they are not expensive to obtain, then why is the litigant fighting so hard to avoid production, given that the documents are by definition supposedly harmless? Is the production of the document within the mischief the 1999 amendments were designed to prevent? These are factors that can certainly be taken into consideration when costs are considered.

Weatherill (Estate of) v. Weatherill, 2003 ABQB 69, at paras. 13-14 [emphasis added] [BOA TAB 9]; *Brookdale International v Crescent Point Energy*, 2023 ABKB 120, at para. 39 [BOA TAB 4].

57. The questioning of the NBC CEO, and in particular the requirement that the questioning occur in person, is not proportionate, efficient, or timely, for the following reasons:

- (a) **Proportionality:** Requiring the NBC CEO, who resides in Quebec, and whose primary place of work is located in Montreal, Quebec, to attend questioning, in person, in Calgary, Alberta, is not a proportionate resolution in the circumstances, nor is it timely or cost-effective, particularly because the NBC CEO is unlikely to have any evidence that: (i) is not duplicative of other witnesses; and (ii) relates to the Claim.
- (b) **Efficiency:** NBC has offered an alternative witness, the VP, Special Loans, who is better placed to provide evidence that is relevant and material to the Claim.
- (c) **Timing:** NBC's offer to produce the VP, Special Loans included available dates within the timeframes set out in the NBC Scheduling Order. Scheduling the NBC CEO, who resides out of province and whose schedule, as a result of his position,

would be difficult to coordinate, for an in-person questioning, is unlikely to be able to occur within the timeframes required under the NBC Scheduling Order.

VI. CONCLUSION

58. NBC respectfully requests that this Honourable Court dismiss Sunterra's Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th DAY OF OCTOBER, 2025

A handwritten signature in dark ink, appearing to read 'NStewart', is written above a horizontal line.

Sean Collins, KC / Sean Smyth, KC /
Pantelis Kyriakakis / Nathan Stewart /
Samantha Arbor
Counsel to National Bank of Canada

VII. LIST OF AUTHORITIES

Statutes

1. *Bank Act*, S.C. 1991, c. 46, at section 158(1) and (3);
2. *Companies Creditors' Arrangement Act*, RSC 1985, c C-36, at section 11;
3. *Rules of Court*, Alta. Reg. 124/2010, at Rules 1.2(1) and (4), 5.2(1), 5.17(1)(b) and (d), and 6.8;

Case Law

4. *Brookdale International v. Crescent Point Energy*, 2023 ABKB 120;
5. *Cana Construction Co. Ltd. V. Calgary Centre for Performing Arts*, 1986 ABCA 175;
6. *Dow Chemicals Canada ULC v. Nova Chemicals Corporation*, 2014 ABCA 244;
7. *NAC Constructors Ltd. v. Alberta Capital Region Wastewater Commission*, 2006 ABCA 246;
8. *Pembina Pipeline Corporation v. Coney*, 2019 ABQB 699; and,
9. *Weatherill (Estate of) v. Weatherill*, 2003 ABQB 69.