# IN THE SUPREME COURT OF NOVA SCOTIA

**Citation:** Sable Offshore Energy Inc. v. Ameron International Corporation, 2008 NSSC 53

**Date:** 20080220
**Docket:** SH 220343
**Registry:** Halifax

**Between:**

**Sable Offshore Energy Inc**., as agent for and on behalf of the Working Interest Owners of the **Sable Offshore Energy Project, Exxonmobil Canada Properties, Shell Canada Limited, Imperial Oil Resources, Mosbacher Operating Ltd.**, and **Pengrowth Corporation; Exxonmobil Canada Properties** as operator of the **Sable Offshore Energy Project**

Plaintiffs

and

**Ameron International Corporation; Ameron (UK) Limited; Ameron B.V.; Allcolour Paint Limited; Amercoat Canada; Rubyco Ltd.; Danroh Inc.; Serious Business Inc.; Barrier Limited; Parker Brothers Contracting Limited; Rko Steel Limited; Cher ubini Metal Works Limited; Comstock Canada Ltd.; Adam Clark Company Ltd.; A.B. Mechanical Limited; A & G Crane Rentals Limited** carrying on business as **A & G Crane Limited; A.M.L. Painting Limited; Argo Protective Coatings Incorporated; Allsteel Coating Limited; Mills Painting & Sandblasting Limited**

Defendants

and

**Amec E & C Services Limited**, successor to Agra Monenco Inc., in their own right, **Kellogg Brown & Root**, a division of Haliburton Group Canada Inc. and **Amec Black & McDonald** Limited operating as BMS Offshore, successor to BMS Offshore Limited, in their own right and/or collectively operating as BBA, a joint venture

Third Parties

## D E C I S I O N

| | |
|---|---|
| **Judge:** | The Honourable Justice Suzanne M. Hood |
| **Heard:** | February 20, 2008 in Halifax, Nova Scotia |
| **Written Decision:** | February 22, 2008 *(Oral decision rendered on February 20, 2008)* |
| **Counsel:** | Robert G. Belliveau, Q.C., Christopher C. Robinson, Q.C. and Aiden J. Meade for Sable Offshore Energy Inc.<br>John P. Merrick, Q.C., Darlene A. Jamieson and William Mahody for Ameron B.V.<br>Ross H. Haynes, Q.C., W. Franco Tarulli for Adam Clark<br>Philip M. Chapman for Parker Brothers<br>W. Hugh Murphy for Allcolour, Amercoat Canada, Rubyco Ltd., Danroh Inc. and Serious Business |

**By the Court:**

[1] With respect to the application for the discoveries to be answered that were put forward by the Ameron defendants, *Rule 19.02* provides for Interrogatories. *Rule 19.02(2)* provides a limit on them and it states:

> 19.02(2) ... Unless the court otherwise orders to protect a party or person interrogated from annoyance, expense, embarrassment or oppression, the number of interrogatories or sets of interrogatories to be served is not limited.

There is a provision for limiting Interrogatories in certain circumstances. The Ameron defendants seek answers to the Interrogatories they provided to the plaintiffs. Approximately seventeen pages of Interrogatories are at Tab B of the brief submitted by Mr. Merrick. The only reasons that appear to be put forward by the plaintiffs for not answering are some issues of relevance but, substantially, their issue is that these Interrogatories are oppressive.

[2] Mr. Merrick says there are five characteristics of this case which are significant with respect to oppressiveness. Mr. Meade says that it really boils down to two: the complexity of the case and the extent of the documentation.

Mr. Merrick says he needs this information to properly prepare for discoveries and, as he put it, to level the playing field between the plaintiff and the Ameron defendants. Mr. Meade said in response that, because of the number of Interrogatories and their complexity, they should not be required to answer them. Also, he said they would be time consuming and very costly to answer. He says that the appropriate route to take is to go immediately to discoveries.

[3] I was referred to several cases. Principles were set out by Justice Goodfellow in the *Sherman v. Dalhousie College and University* 1996 CarswellNS 272 (S.C.) case including the following:

- that Interrogatories are not a substitute for oral discovery;
- they are narrower in scope;
- they are to obtain admissions of fact and a foundation for further examination.

He also pointed out that the fullest possible disclosure is the purpose of the Nova Scotia *Civil Procedure Rules* and that, in general, a second set of discoveries would not be allowed if the questions should have been in the first set.

[4] I was also referred to the decision of Justice Gruchy in *South West Shore Development Authority (formerly known as the Shelburne Park Development Association) v. Ocean Produce International Limited* (unreported S.H. Number 187898 (2002) where he made comments that the sheer numbers of Interrogatories could lead to a determination that they were oppressive. He also pointed out that they were to elicit basic facts and were not to be a substitute for oral discovery and that they should not require significant study to respond.

[5] In determining if the Interrogatories as a whole or individually are oppressive, I apply the following principles in this case. First, I must look at the circumstances of the case; secondly, I must consider the dual purposes of Interrogatories which are to elicit facts first for admissions and also to provide a foundation for further examination; thirdly, they are not a substitute for discovery; fourth, I must weigh the objectives of Interrogatories with the principles as set out in *Rule 1.03*; fifth, the overall objective of all the *Rules* is to provide the fullest possible disclosure; sixth, the Interrogatories must be succinct and clear questions and not complex and likely to require clarification; seventh, they are not to take the place of investigations, etc. to be done by experts; eighth, if they are imperative in form instead of questioning, it may mean they are not appropriate for

Interrogatories; ninth, if definitions are needed to preface the explanation and questions, that may mean they are too complex for Interrogatories; tenth; if counsel will be required to assist with the Interrogatories, it may mean they are too complex for Interrogatories; eleventh, if a narrative response is required, it means they are more suited to oral discovery; twelfth, if the question would not be put to a witness on oral discovery or at trial, it is likely not appropriate for Interrogatories.

[6] Generally, I can not say that all the questions are oppressive but overall the effect is. Because of the nature of the plaintiff and the nature of the project some Interrogatories however are appropriate to get facts but the questions must be succinct and not require a narrative. Requests for production are not appropriate in Interrogatories. The answer to an Interrogatory may lead to a request for production or a supplementary list of documents. Interrogatories that ask for a description of the manner in which something was done or the circumstances of something being done or decided are inappropriate. The same is true for requests for considerations and conclusions or requests for what knowledge a person had about something or what actions were done or steps taken. Catch-all questions are not appropriate. The plaintiff should not be required to help the defendants find documents in the Lists of Documents. If there is a problem with the database, that

is a problem everyone has. Interrogatories better answered by other defendants should be answered by them.

[7] Many Interrogatories, as has been noted, begin with the word “identify.” In my view, a better choice of words would be to limit and make a succinct and clear question to prefacing it with “who”, “what” or “when” rather than “identify” which, in light of the definition, makes it a very complex Interrogatory. If it cannot be done that way, that is an indication that it is not suitable for an Interrogatory. In the context of the many locations where paint failures are alleged to have occurred, in my view, it is inappropriate, in Interrogatories, to ask for the location of each specific failure.

[8] Some Interrogatories in parts are okay as far as the first question that is asked in that Interrogatory but further details should, in my view, be left to production or discovery.

[9] Overall, I conclude that the Interrogatory questions are oppressive; however, by making that determination, that does not prejudice the right of the defendant, Ameron, to re-state the questions in a proper form and have further Interrogatories.

I am not saying that no further Interrogatories from the Ameron defendants are permitted but they should be done with those guidelines in effect.

**COSTS**

[10] In light of the extent of the Interrogatories and the time that had to be spent reviewing them and making submissions to the court and the material that was provided to the court, it seems that the top end of the range is the very minimum that I think is appropriate in this case. In my discretion, I award costs in the amount of $2,000.00.

Hood, J.