

In the Court of Appeal of Alberta

**Citation: Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer),
2026 ABCA 216**

Date: 20260629
Docket: 2603-0116AC
Registry: Edmonton

Between:

**Athabasca Chipewyan First Nation, Piikani Nation,
Siksika Nation and Blood Tribe**

Respondents

- and -

**Chief Electoral Officer of Alberta and
His Majesty the King in right of Alberta**

Respondents

- and -

Mitch Sylvestre

Applicant

**Reasons for Decision of
The Honourable Justice Alice Woolley**

Application for Stay Pending Appeal

**Reasons for Decision of
The Honourable Justice Alice Woolley**

Introduction

[1] On December 12, 2025, the appellant Mitch Sylvestre applied to the Chief Electoral Officer for an initiative petition under the *Citizen Initiative Act*, SA 2021, c C-13.2. The subject matter of his proposed petition was a constitutional referendum to ask Alberta voters, “Do you agree that the Province of Alberta should cease to be a part of Canada to become an independent state?”

[2] On December 22, 2025, the respondent Chief Electoral Officer notified the appellant his application met the requirements of the *Citizen Initiative Act* and published a notice of initiative petition. On January 2, 2026, the Chief Electoral Officer issued the initiative petition to the appellant and provided him with signature sheets. The appellant then had 120 days, until May 2, to collect 177,732 signatures, representing 10% of the total votes cast in the prior Alberta election.

[3] The respondents, the Athabasca Chipewyan First Nation, the Piikani Nation, the Siksika Nation and the Blood Tribe, applied for judicial review of the Chief Electoral Officer’s December 22 decision approving the petition application. They asserted various legal deficiencies with the decision, including that Alberta did not satisfy its duty to consult, which was engaged because the secession of Alberta would breach the respondents’ constitutionally protected aboriginal and treaty rights. The respondents also argued the *Citizen Initiative Act* is unconstitutional because it allows for binding referenda on unconstitutional questions. Given the constitutional issues raised, the respondents provided notice to His Majesty the King in right of Alberta, who participated in the judicial review hearing.

[4] On May 4, the appellant submitted the initiative petition to the Chief Electoral Officer, along with signature sheets that he says contain 301,620 signatures from qualified Alberta voters.

[5] In a decision dated May 13, the chambers judge allowed the respondents’ applications for judicial review and quashed the Chief Electoral Officer’s decision approving the petition application: *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 375 [*Chambers Decision*].

[6] On May 28, in what Premier Danielle Smith described as a response to the *Chambers Decision* and the public will – reflected, in part, in the signatures the appellant says were collected – Alberta directed that a non-binding referendum be held on October 19, 2026: OC 160/2026. The non-binding referendum will ask Alberta voters to choose whether Alberta should remain in Canada, or whether Alberta “should commence the legal process required under the Canadian

Constitution to hold a binding provincial referendum on whether or not Alberta should separate from Canada”.

[7] The appellant and Alberta have appealed the *Chambers Decision* to this Court, although as yet have filed only notices of appeal in support of their appeals.

[8] The appellant asks this Court to stay the *Chambers Decision* pending his appeal in order to permit the Chief Electoral Officer to complete the process set out in the *Citizen Initiative Act*. Under that process, the Chief Electoral Officer would verify that the signatures collected comply with the requirements of the legislation and are sufficient in number. If verification is successful, the Chief Electoral Officer would submit a copy of the proposal to the Minister of Justice and communicate the results of the petition to the public. The Minister would then refer the proposal to the Lieutenant Governor in Council for the purpose of a constitutional referendum in accordance with the *Referendum Act*, RSA 2000, c R-8.4: *Citizen Initiative Act*, ss 6, 10, 12, 16; *Designation and Transfer of Responsibility Regulation*, AR 107/2026, s 15(j).

[9] At the hearing of this application, the appellant emphasized that following this process does not ensure a referendum on his question prior to or as part of the referendum scheduled for October 19. But, if the signatures are verified and reported to the Minister, it would create political pressure for such a question to be asked.

[10] For the reasons that follow, I grant the appellant a partial stay to allow the Chief Electoral Officer to complete the verification process and report the results to the public. The *Chambers Decision* otherwise remains in effect. As such, if the Chief Electoral Officer determines the appellant’s initiative petition was successful under section 10 of the *Citizen Initiative Act*, he cannot yet “submit a copy of the proposal to the Minister” of Justice under section 12(1)(b), and the Minister cannot yet refer the proposal to the Lieutenant Governor in Council for the purpose of a constitutional referendum under section 16(1).

[11] The appellant has satisfied the test for a partial stay. A stay pending appeal may be ordered where an applicant establishes there is a “serious question” to be determined on appeal, he will suffer “irreparable harm” if the stay is not granted, and the “balance of convenience” favours granting the stay: *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 332-334, 347-349 [*RJR*]. The fundamental question is whether a stay is just and equitable in all the circumstances of the case: *Piikani Nation v McMullen*, 2020 ABCA 183 at para 15; *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25.

[12] On the preliminary record before me, the appellant has established serious questions regarding the *Chambers Decision* for determination by this Court.

[13] However, the appellant has only demonstrated “irreparable harm” with respect to practical problems that may arise from delaying the verification process. He has not established irreparable harm will result from a delay in a referendum on his proposed question, particularly given

Alberta's decision to conduct a referendum on October 19 exploring voter preferences on the central issue of importance to him, namely, Alberta's future in Canada.

[14] The balance of convenience favours granting a partial stay. Allowing the verification process to be completed causes no significant harm to the respondents while avoiding irreparable harm to the appellant. Conversely, a full stay risks the initiative petition proceeding to a referendum before determination of the appeal, potentially causing irreparable harm to the respondents. A full stay is also unnecessary given the absence of irreparable harm to the appellant from delaying the progress of his proposed question. Only a partial stay is just and equitable in all the circumstances.

[15] I further find that an expedited appeal hearing is not in the interests of justice.

The appellant may request a stay of the *Chambers Decision*

[16] The respondents submit the *Chambers Decision* cannot be stayed because a stay can only “freeze or stop certain *consequences* of the decision until the appeal is decided... [i]t is not designed to neutralize or reverse the decision itself pending the outcome of the appeal” [emphasis in original]: *Denis v Sauvageau*, 2022 ABCA 166 at para 15 [*Denis*]; *Carrigan v Withers*, 2026 ABCA 58 at para 12. In their view, the *Chambers Decision* did not require anything to be done and has no consequences that can be stayed.

[17] I reject the respondents' submission. The appellant is seeking to stay a consequence of the *Chambers Decision*, namely the cessation of the statutory process that would otherwise have unfolded after the appellant submitted the initiative petition and signature sheets to the Chief Electoral Officer. A stay may suspend that consequence, by allowing the statutory process to resume in whole or in part. In *Denis*, the appellant sought to stay both a finding of contempt and the sanction and costs part of the proceeding that followed from that finding. Chief Justice Khullar held the finding of contempt could not be stayed, but that the applicant could seek a stay of the sanction and costs hearing: *Denis* at para 16. Analogously, here, the appellant cannot seek a stay of the chambers judge's assessment of the Chief Electoral Officer's decision, but he can seek a stay to permit the resumption of the statutory process, the cessation of which was the consequence of that assessment.

To obtain a stay the appellant must show there is a serious question to be decided on appeal

[18] As mentioned, to obtain a stay pending appeal an appellant must ordinarily establish there is a serious question to be determined on appeal: *RJR* at 332-333, 347-349; *Denis* at para 17.

[19] The “serious question” standard imposes a low threshold, requiring an appellant to establish, on a preliminary basis, that the appeal is arguable; that is, that the appeal is “neither vexatious nor frivolous”. A prolonged examination of the merits is generally neither necessary nor desirable: *RJR* at 337-338; *Denis* at para 18; *Chamczuk v Whelehan*, 2022 ABCA 278 at para 7.

[20] In some circumstances, an appellant has a more onerous obligation to show the merits of their case before they can obtain interlocutory relief. In the context of injunctions (which are assessed against the same criteria as stays: *RJR* at 334), if one party seeks a mandatory injunction directing another party “to undertake a positive course of action”, the applicant must establish a strong *prima facie* case. A strong *prima facie* is one that is “very likely to succeed”: *R v Canadian Broadcasting Corp*, 2018 SCC 5 at paras 15, 17. Similarly, if the result of the application for a stay would “in effect amount to a final determination”, such that it would impose such hardship on the respondent “as to remove any potential benefit from proceeding” to appeal, a “more extensive review of the merits of the case must be undertaken”: *RJR* at 338-339; *Schwartz v HRM*, 2025 NSCA 14 at para 30.

[21] The Chief Electoral Officer and Athabasca Chipewyan First Nation rely on these exceptions to argue the appellant ought to be required to establish a strong *prima facie* case to obtain a stay.

[22] The Chief Electoral Officer submits that granting a stay to the appellant would be in effect to issue a mandatory injunction, compelling him to take steps to verify the signatures submitted by the appellant and, if the appellant has met the signature threshold, to communicate the results of the appellant’s petition to the Minister of Justice. He argues that the more stringent test applicable to granting a mandatory injunction ought to apply, and the appellant must thus establish he has a strong *prima facie* case rather than only that there is a serious question to be determined.

[23] I do not accept this characterization of the stay requested by the appellant. The results of a stay application, whether granted or refused, do not require any party to take a positive course of action: *LDS v SCA*, 2019 ABCA 312 at para 18. Even if a stay could be characterized as a mandatory injunction, it would not be properly so characterized here. The obligations identified by the Chief Electoral Officer arise from the *Citizen Initiative Act*. A stay would simply make those requirements operational; it would not itself impose those obligations on the Chief Electoral Officer.

[24] Athabasca Chipewyan First Nation also argue for an elevated merits test. They say a stay would permit a binding constitutional referendum on Alberta independence to occur in October, thereby granting the appellant the full benefit he seeks to achieve on appeal and denying the respondents the full benefit of their success below, all without an adjudication on the merits. In making this argument, Athabasca Chipewyan First Nation assert that the *Chambers Decision* found that proceeding with a referendum without consultation would be a breach of the Crown’s duty to consult.

[25] I also do not accept this characterization of the *Chambers Decision*. The chambers judge found a breach of the duty to consult but did so because of her finding that Alberta was required to implement the results of a referendum on secession, and because of the impact of secession on the respondents’ treaty rights. She held, “A requirement to implement secession without prior involvement of the Applicants has the potential to adversely affect Treaty rights” [emphasis

added]: *Chambers Decision* at paras 238, 239. In her analysis, it is secession, not the referendum process *per se*, that implicates treaty rights and gives rise to the duty to consult. This means that a decision by this Court upholding the *Chambers Decision*, and putting an end to any “requirement to implement secession”, even if rendered after additional steps are permitted to be taken in the referendum process, would still grant the respondents meaningful relief. A stay would not “in effect amount to a final determination” of the appeal: *RJR* at 338.

[26] Having said that, it is nonetheless correct that a full stay risks the question proposed in the initiative petition proceeding to a referendum before the appeal is determined. I agree with Athabasca Chipewyan First Nation and the other respondents, that such an outcome would create a potential risk of significant harm to their legal and constitutional interests, ones that may not be remediable should they succeed on appeal. Ordinarily, a clear expression by a clear majority of Alberta voters of their will to secede would be given weight, even if such an expression has no direct legal effect: *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 87, 92 [*Secession Reference*]. A successful referendum would create a political and practical risk of secession and, following the *Chambers Decision*, would endanger the respondents’ constitutionally protected aboriginal and treaty rights. That potential risk is relevant to my analysis; however, its relevance is for my assessment of whether the balance of convenience favours granting a stay to the appellant. It does not impose a more onerous obligation on the appellant to establish the merits of his appeal.

[27] As such, the appellant need only show his appeal raises a serious question to be decided.

The appellant has identified serious questions for determination on appeal

[28] The appellant has identified at least three serious questions to be determined on appeal.

[29] First, the appellant and Alberta argue the chambers judge erred in holding that “once the CEO issues a citizen led initiative petition, it sets in motion a sequence of mandatory statutory steps that bind the Government to implement the results of a referendum”: *Chambers Decision* at para 84. The *Chambers Decision* rests in significant part on this conclusion. As noted, it is the legally mandated pursuit of secession once an initiative petition and subsequent referendum succeed, that the chambers judge held affects the appellant’s treaty rights: *Chambers Decision* at paras 66, 84-85, 232, 234-236, 238-239.

[30] The chambers judge based this conclusion in part on section 4(1) of the *Referendum Act*. Section 4(1) says that, if a majority votes the same way on a question, the “result is binding”. She placed no weight on other parts of the *Referendum Act* that constrain implementation, because “the scope and practical effect of those constraints depend in significant measure on Alberta’s own interpretation of them, including whether Alberta treats them as real legal limits on implementation”: *Chambers Decision* at para 84.

[31] The appellant and Alberta argue the conclusion reached by the chambers judge is contrary to the language of the governing legislation. Specifically, the *Referendum Act* does not require the government to implement the results of a referendum where “doing so would contravene sections 1 to 35.1 of the *Constitution Act, 1982*”: *Referendum Act*, s 4(3). It says that nothing in a referendum “is to be construed as abrogating or derogating from the existing aboriginal and treaty rights of the aboriginal peoples of Canada that are recognized and affirmed by section 35 of the *Constitution Act, 1982*”: *Referendum Act*, s 8.11(3). While it describes the results of a referendum as “binding”, it qualifies “binding” as being “within the meaning of subsection (2)”, which directs the government to take “steps within the competence of the Government of Alberta that it considers necessary or advisable to implement the results of the referendum”: *Referendum Act*, ss 4(1)-(2). Moreover, the *Citizen Initiative Act* states that its provisions related to initiative petitions do not deprive the legislature and Crown of their rights, prerogatives, privileges and powers: *Citizen Initiative Act*, s 1(4). It permits the Minister to recommend “changes to the form or substance” of a proposed constitutional question to ensure it is “suitable to be put to the electors” and will result in a “clear expression” of their will: *Citizen Initiative Act*, s 16(1.1).

[32] Relatedly, Alberta challenges what it characterizes as the chambers judge’s assumption of a particular substantive outcome “with regard to Alberta’s interpretation of the statutory and constitutional constraints on implementation”.

[33] On a preliminary review of the legislative context, I am satisfied this ground of appeal is neither vexatious nor frivolous and raises a serious question to be determined on appeal.

[34] Second, the appellant and Alberta submit the chambers judge erred in determining the Chief Electoral Officer’s jurisdiction. Put simply, the Chief Electoral Officer ought not to be faulted for failing to assess the duty to consult when he did not have the authority to make that assessment. The argument is that the mandate conferred to the Chief Electoral Officer by statute, including his power to consider questions of law, does not encompass an assessment of the duty to consult: *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at paras 55-58. The chambers judge concluded the *Citizen Initiative Act* conferred the necessary jurisdiction on the Chief Electoral Officer because he is required by statute to identify which initiative proposals relate to the constitution: *Chambers Decision* at paras 177-182; *Citizen Initiative Act*, ss 1.1(2)(g), 2(2)(f).

[35] In substance, this ground of appeal asserts that the factual record before the chambers judge, and the provisions of the *Citizen Initiative Act*, do not justify her decision to equate an assessment of whether the *Act*’s technical requirements have been complied with to a power to determine questions of law broad enough to include the duty to consult.

[36] On a preliminary review of the legislative context and case law, I am satisfied this ground of appeal is neither vexatious nor frivolous and raises a serious question to be determined on appeal.

[37] Third, the appellant and Alberta submit the chambers judge erred by interpreting a transitional provision in the *Citizen Initiative Act* as not applying to an earlier application made by the appellant. Section 71.1(1) reads:

An application for the issuance of an initiative petition made before the coming into force of this section for which an initiative petition has not been issued under section 3(3)(a) as of the coming into force of this section is deemed to have never been made.

[38] Prior to the coming into force of the above provision, the appellant had applied for the issuance of an initiative petition concerning a similar question to the one he proposes now. The version of the *Citizen Initiative Act* in force at the time required proposals not to contravene sections 1 to 35.1 of the *Constitution Act, 1982*. A judge of the Court of King's Bench determined the previously proposed question did not comply with that requirement: *Chief Electoral Officer of Alberta v Sylvestre*, 2025 ABKB 712. As a consequence, the Chief Electoral Officer rejected the prior application.

[39] The chambers judge interpreted section 71.1(1) as allowing “only applications that are deemed never to have been made to be resubmitted”. She held the Chief Electoral Officer erroneously relied on section 71.1(1) to treat the prior application as never having been made so he could approve the appellant's current application. She interpreted section 71.1(1) as not applying to the prior application, because that application had been rejected and was not pending at the time section 71.1(1) came into force: *Chambers Decision* at paras 97-98, 113-115, 139-140, 151, 154-155. As a general matter of statutory interpretation, the chambers judge emphasized the role of context and purpose in statutory interpretation, even where “the words in the statute have a clear meaning”: *Chambers Decision* at paras 105-107.

[40] The appellant and Alberta submit the chambers judge erred in this conclusion by failing to give effect to the “grammatical and ordinary” meaning of the words “initiative petition has not been issued” [emphasis added] as they appear in section 71.1(1): *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21; *Piekut v Canada (National Revenue)*, 2025 SCC 13 at para 42; *Resler v Anglin*, 2026 SCC 23 at para 57. The essence of this ground of appeal is that the chambers judge's position, that whether a “petition has not been issued” depends on *the reason why* it was not issued – here, that it was rejected – contradicts the plain meaning of the statute, which includes no such precondition. “Has not been issued” means “has not been issued”, and at the time the appellant submitted his second proposal, an initiative petition on the first proposal had “not been issued”.

[41] The appellant and Alberta relatedly argue the chambers judge erred by imposing a prohibition on the resubmission of a rejected initiative proposal in “the absence of any statutory bar to reapplication”.

[42] On a preliminary review of the legislation and principles of statutory interpretation, I am also satisfied this ground of appeal is neither vexatious nor frivolous and raises a serious question to be determined on appeal.

[43] These three serious questions for determination on appeal would, if accepted by a panel of this Court, constitute significant reviewable errors in the *Chambers Decision* infusing all aspects of the chambers judge's reasons for quashing the Chief Electoral Officer's decision approving the petition application.

[44] It is important to note, however, that even if the appellant and Alberta can successfully impeach the analysis set out in the *Chambers Decision*, they may nonetheless fail to overturn the result of that decision. This Court could affirm the outcome of the *Chambers Decision* for different reasons. For example, because it was not necessary for her to do so given the rest of her analysis, the chambers judge did not consider the constitutionality of certain provisions of the *Citizen Initiative Act*, although that issue was raised and argued before her: *Chambers Decision* at paras 3, 26, 242-243. If, as the respondents sought in their applications for judicial review, a court declared the authorizing provisions of the *Citizen Initiative Act* to be unconstitutional, and therefore of no force or effect, the decision approving the petition application would have no ongoing legislative support. The appellant and Alberta's grounds of appeal do not speak directly to the constitutionality of the *Citizen Initiative Act*. That issue has not yet been determined.

[45] Legislation deploying the apparatus of the state for any citizen initiative petition that meets the legislation's technical filing requirements, no matter how facially unconstitutional, undemocratic, hateful or nonsensical the contents of that petition may be, is not obviously constitutional. For that reason, had the appellant been required to establish a strong *prima facie* case to obtain a stay, I am not satisfied he would have been able to do so. As previously explained, however, he need only establish a serious question to be determined on appeal, and I am satisfied that standard has been met.

The appellant has not shown irreparable harm from delay in his proposed question being advanced to a referendum

[46] At this stage of the analysis, I must assess whether the refusal to grant a stay could so adversely affect the appellant's interests that, if he were to succeed on appeal, the harm could not be remedied. Irreparable harm refers to the nature of the harm suffered rather than its magnitude. It is harm that either cannot be quantified in monetary terms or cannot be cured: *RJR* at 341, 348.

[47] The appellant has not established that a delay in his proposed question being advanced to a referendum will result in irreparable harm. In assessing the appellant's position on harm, I have considered the information contained in his affidavit, although I have given no evidentiary weight to assertions properly characterized as argument.

A successful appeal does not bring the administration of justice into disrepute

[48] The appellant submits a stay is necessary to prevent irreparable harm to the administration of justice. He submits the *Chambers Decision* is wrong and has caused harm by stopping his signed initiative petition advancing to a referendum. The decision's errors and its consequences bring "the administration of justice by the Court into disrepute".

[49] I do not accept this submission. Any alleged harm to the public interest is to be considered as part of the balance of convenience, not at this stage of the analysis: *RJR* at 341. In any event, and more importantly, this argument rests on a wholly erroneous characterization of what the proper administration of justice requires.

[50] It is possible a panel of this Court will find the chambers judge incorrectly interpreted the law or made other errors. It is also possible the *Citizen Initiative Act* will survive constitutional challenge. In that eventuality, the appellant would have been entitled to have his initiative petition advanced through the process towards a referendum sooner.

[51] None of that would bring the administration of justice into disrepute in the eyes of a reasonable observer. Judicial decisions of first impression are not often appealed but, when they are, it is not unusual for an appeal to be allowed. The ability of a party to successfully appeal shows the challenges of deciding legal disputes in the first instance, the inherent complexity of legal analysis, the ordinary humanity of judges, and the proper functioning of the safeguards and structure of the legal system. A successful appeal represents and reflects the proper administration of justice. It does not reveal its frailty.

A stay is not required to prevent irreparable harm to democracy

[52] The appellant also asserts irreparable harm will arise from the "frustration of a completed statutory democratic process" and the *Chambers Decision*'s substantive interference with "democratic participation". The result of the decision and its consequences will be the loss of confidence in the democratic process and the discouragement of future citizen participation.

[53] This submission mischaracterizes the role of a referendum in Canadian democracy and does not account for events that have taken place subsequent to the *Chambers Decision*.

[54] As explained by the Supreme Court, a referendum is neither constitutionally mandated nor prohibited. A referendum is a mechanism for public consultation, available when permitted by statute: *Haig v Canada (Chief Electoral Officer)*, [1993] 2 SCR 995 at 1030 [*Haig*]. Unlike the democratic rights enshrined in the *Charter*, a "referendum... is basically a consultative process, a device for the gathering of opinions", one which the legislature has no obligation to employ, except where it enacts legislation requiring such consultation: *Haig* at 1032. A referendum as a platform of expression is a matter of legislative policy, not of constitutional law: *Haig* at 1041.

[55] Further, assuming the appellant succeeds on appeal, he will not have been denied a referendum. His referendum is delayed while the contested legal issues related to that referendum are resolved. In the meantime, as previously explained, Premier Smith has responded to the signatures collected by the appellant, directing that a referendum be held in which Alberta voters will choose between one of two options:

Should Alberta remain a province of Canada, or should the Government of Alberta commence the legal process required under the Canadian Constitution to hold a binding provincial referendum on whether or not Alberta should separate from Canada?

Option 1: Alberta should remain a province in Canada.

Option 2: The Government of Alberta should commence the legal process required under the Canadian Constitution to hold a binding provincial referendum on whether or not Alberta should separate from Canada.

The efforts made by the appellant to collect signatures, and the support for a referendum such signatures reflect, have thus had an observable political consequence.

[56] Notably, under the *Citizen Initiative Act*, the Minister of Justice may recommend the Lieutenant Governor in Council change a referendum question “to ensure that... the question is... suitable to be put to the electors at a constitutional referendum”: *Citizen Initiative Act*, s 16(1.1)(b). Even if the appellant’s initiative petition had been verified and submitted to the Minister, he was not assured a referendum in the terms he has proposed.

[57] I thus reject the appellant’s submission that a stay is necessary to prevent harm to democracy or to his “democratic participation”.

The referendum scheduled for October 19 addresses and resolves any harm to the appellant

[58] The appellant objects to the suggestion that the October 19 referendum can fairly substitute for the question proposed in his initiative petition, canvassed for by volunteers and signed by thousands of Alberta voters. The proposed question is different and, unlike a question asked under the *Referendum Act*, is explicitly stated not to be binding.

[59] I appreciate the appellant’s frustration that a different question is being asked of Alberta voters. But, considered objectively, Alberta’s referendum addresses and resolves harm that may arise from the ongoing legal process and the resulting current inability for the appellant to advance his question through to a referendum.

[60] The question advanced by Alberta explores the fundamental question of importance to the appellant, namely, whether Alberta voters want Alberta to cease to be, or to remain, a province of Canada. Nothing in the record suggests that, if the majority chooses for Alberta to remain a province of Canada, they would have given a substantively different answer if asked instead whether “Alberta should cease to be a part of Canada”. And, if a majority chooses to commence the legal process to hold a binding referendum on whether Alberta should separate from Canada, a question akin to the appellant’s may well be put to voters.

[61] The scheduled referendum is not binding, and a constitutional referendum under the *Referendum Act* is; however, as noted previously, the word binding in the *Referendum Act* means the government will “take any steps within the competence of the Government of Alberta that it considers necessary or advisable to implement the results of the referendum”: *Referendum Act*, ss 4(1), 4(2). Further, an initiative petition does not derogate from the legislature’s rights and prerogatives: *Citizen Initiative Act*, s 1(4). As this case demonstrates, legislation permitting citizen initiatives and referenda can be amended by the legislature as it sees fit. In other words, the difference between a “binding” and “non-binding” referendum is less material than the words might suggest; the primary force of a successful referendum is the political pressure it exerts, not the legal power it holds. That political pressure, or weight, can arise from both non-binding and binding referenda.

[62] To the extent there is harm associated with delaying the appellant’s proposed question being advanced to a referendum, I am satisfied the referendum being conducted on October 19 addresses and resolves that harm.

The appellant has shown irreparable harm from ongoing delay in completion of the verification process under the *Citizen Initiative Act*

[63] Under the *Citizen Initiative Act*, once signature sheets are submitted to the Chief Electoral Officer, he has 21 days to verify they contain signatures of electors “equal to at least 10% of the total number of votes cast in the previous general election”. To be counted, a signature must be accompanied by personal information (name, address and phone number) of the person signing and of the individual who canvassed the signature; the signature must be witnessed by the canvasser; and, the canvasser must have confirmed the person signing was eligible to do so and had produced proof of identity and of their status as an elector. Verification will involve random statistical sampling with a 95% confidence level: *Citizen Initiative Act*, ss 4(3), 6(2), 6(4), 6(5), 10.

[64] If the initiative petition does not meet these requirements, the Chief Electoral Officer publishes a notice to the public to that effect; if it does, the Chief Electoral Officer publishes a notice to the public and, in the case of a constitutional referendum, submits a copy of the proposal to the Minister of Justice: *Citizen Initiative Act*, ss 11(1), 12(1).

[65] The appellant submitted his signature sheets to the Chief Electoral Officer on May 4. Because of a prior interim injunction and the *Chambers Decision*, no steps have been taken to verify the signatures he submitted.

[66] In my view, the appellant will suffer irreparable harm if the verification process does not take place until the final resolution of this legal dispute, particularly bearing in mind the possibility of an appeal to the Supreme Court, or the constitutional questions being remitted to the Court of King's Bench for further consideration.

[67] Accurate verification will become more difficult as time passes. People who signed the petition may move or die. They may change addresses or phone numbers. Trust and confidence in the security and integrity of the collected sheets will begin to erode. The issue of trust and confidence is particularly acute when, as here, the verification process has needed to be adjusted by Elections Alberta because of a public leak of electoral lists containing the personal information of Alberta voters.

[68] Delaying the verification process until the resolution of this dispute will cause harm to the appellant distinct from the delay in advancing his proposed question to a referendum of Alberta voters. It is a harm that cannot be quantified in monetary terms, cannot be cured, and which the scheduled October 19 referendum does not address.

The balance of convenience only favours a partial stay

[69] In deciding whether to grant a stay, a judge must assess "which of the two parties will suffer the greater harm from the granting or refusal of" the stay pending determination of the appeal. This connects logically and directly to the assessment of whether the appellant will suffer irreparable harm from refusing a stay, but requires a wider analytic lens, focusing also on the impact to the respondents if the stay is granted. The public interest may also be considered. The factors to consider in assessing the balance of convenience are numerous and vary from case to case: *RJR* at 342-343.

[70] As set out above, the appellant has not demonstrated irreparable harm from the delay in advancing his question to a referendum if he prevails on appeal.

[71] Conversely, the respondents face a significant likelihood of suffering irreparable harm if a full stay is granted now, and the appeal is later determined in their favour. A full stay creates the possibility that the signatures supporting the appellant's initiative petition are verified, the appellant's question is asked in a referendum, and the result is a clear expression by a clear majority in favour of secession. The democratic principle that weight should be given to a clear expression by a clear majority of their will to secede (*Secession Reference* at paras 87, 92) may be argued to apply even where the referendum ought not to have been conducted. In any event, a decision by this Court impugning the legal validity of a referendum that has already been conducted may not be able to reverse the forces of politics and the practical reality that follow a referendum. I cannot

assess the likelihood of these events unfolding in this particular way, but I am satisfied that the risk they would pose cannot be discounted; it is demonstrable even if contingent. In that event, the harm to the respondents would not be compensable in damages or otherwise curable.

[72] Taking the potential harm to the respondents into account in the unique circumstances of this case, I am satisfied that granting a full stay to the appellant would not be just and equitable. A delay in his question advancing to a referendum does not cause the appellant irreparable harm if his appeal succeeds, but there is a significant likelihood it would cause the respondents irreparable harm if his appeal fails.

[73] A different calculus applies in respect of the verification process. So long as the Chief Electoral Officer does not submit a copy of the proposal to the Minister of Justice under section 12(1)(b), the appellant's initiative petition will not advance to a referendum until the appeal is determined. The process of verifying whether the appellant obtained a sufficient number of signatures in compliance with the legislative requirements, and reporting those results to the public, does not, in and of itself, harm the respondents. Yet, as earlier explained, materially delaying the verification process causes practical problems and may undermine the integrity of that process and public confidence in its accuracy. It harms the appellant and is not in the public interest.

[74] As such, I am satisfied that the balance of convenience favours granting a partial stay to allow the verification process to take place, and the results of that process to be communicated to the public.

An expedited hearing is not appropriate

[75] In assessing the merits of the stay, I have also assessed whether the appeal ought to be heard by this Court on an expedited basis. Whether to grant an expedited hearing depends on a number of factors, including the harm to the parties arising from a delay in proceeding; the suitability of the matter for an expedited hearing; and, overall, whether it is in the interests of justice to expedite the appeal: *Firemaster Oilfield Services Ltd v Safety Boss (Canada) (1993) Ltd*, 1995 ABCA 268 at paras 10-11; *Pocklington Financial Corp v Alberta Treasury Branches*, 1998 ABCA 254 at para 13; *Balm v BHC Securities, Inc*, 2003 ABCA 284 at para 15; *Canada (Prime Minister) v Khadr*, 2010 FCA 245 at para 6; *Kostic v CIBC Trust Corporation*, 2018 ABCA 64 at paras 13, 16-17; *Prosper Petroleum Ltd v Her Majesty the Queen in Right of Alberta*, 2020 ABCA 85 at paras 34, 35; *SS & C Technologies Corp v The Bank of New York Mellon Corporation*, 2021 ONCA 913 at para 7.

[76] An expedited hearing is not appropriate in this case. It is not necessary to avoid harm to the appellant. The appellant has not indicated his readiness to proceed on an expedited basis; Alberta and the appellant have filed Notices of Appeal but have not filed transcripts or appeal records. The issues raised by the *Chambers Decision*, including the constitutionality of the *Citizen*

Initiative Act, are complicated, and will not be best served by being addressed on an expedited basis.

Conclusion

[77] The application for a stay is granted in part, allowing the Chief Electoral Officer only to fulfill his otherwise existing statutory obligation to complete the verification process contemplated by sections 10, 10.1 and 10.2 of the *Citizen Initiative Act*, and to report the results of the verification process to the public as contemplated by sections 11, 12(1)(c), and 12(2). This stay extends to allow the application of sections 13 and 13.2 of the *Citizen Initiative Act*.

Application heard on June 18, 2026

Reasons filed at Edmonton, Alberta
this 29th day of June, 2026

Woolley J.A.

Appearances:

K. Hille (no appearance)

J. Shields

for the Respondent Athabasca Chipewyan First Nation

A. Gray, KC

C.E. Hanert

for the Respondent Piikani Nation

M.L. Macaulay

K. Shupe

for the Respondent Siksika Nation

P. Reid

J. Tomimoto (no appearance)

for the Respondent Blood Tribe

M.J. Redman

for the Respondent Chief Electoral Officer of Alberta

N. Dobson (no appearance)

T. Isaac

N. Trofimuk

J. Keliher (no appearance)

for the Respondent His Majesty the King in right of Alberta

J.R.W. Rath

E. Chipiuk (no appearance)

for the Applicant