

In the Court of Appeal of Alberta

Citation: Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer), 2026 ABCA 287

Date: 20260904

Docket: 2603-0116AC;
2603-0143AC;
2603-0144AC

Registry: Edmonton

Docket: 2603-0116AC

Between:

Athabasca Chipewyan First Nation

Respondent

- and -

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

Respondents

- and -

Development Foundation of Treaty Six Confederacy

Applicant
(Proposed Intervenor)

Docket:2603-0143AC

and Between:

Piikani Nation, Siksika Nation and Blood Tribe

Respondents

- and -

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

Respondents

- and -

Development Foundation of Treaty Six Confederacy

Applicant
(Proposed Intervenor)

Docket:2603-0144AC

and Between:

Athabasca Chipewyan First Nation

Respondent

- and -

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

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- and -

Development Foundation of Treaty Six Confederacy

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**Reasons for Decision of
The Honourable Justice Kevin Feehan**

Applications for Leave to Intervene

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I. Overview

[1] Development Foundation of Treaty Six Confederacy applies for leave to intervene in three appeals scheduled to be heard together by the same panel: Appeal No 2603-0116, an appeal by Mitch Sylvestre in the action commenced by Athabasca Chipewyan First Nation; Appeal No 2603-0143, an appeal by Alberta in an action commenced by the Piikani Nation, Siksika Nation, and Blood Tribe; and Appeal No 2603-0144, an appeal by Alberta in the action commenced by Athabasca Chipewyan First Nation. There is a fourth related appeal, which may proceed together with these three appeals, in which the Treaty Six Confederacy has not applied for intervenor status: Appeal No 2603-0147, an appeal by Sturgeon Lake Cree Nation.

[2] The three appeals for which the intervenor application is made arise out of a decision of a chambers judge of May 13, 2026: *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABKB 375. In that decision, the chambers judge allowed applications for judicial review and quashed the Chief Electoral Officer's decision approving a petition application under the *Citizen Initiative Act*, SA 2021, c C-13.2, which petitioned for a constitutional referendum to ask Alberta voters, “do you agree that the Province of Alberta should cease to be part of Canada to become an independent state?”

[3] In a later decision of June 29, 2026 a single judge of this Court partially stayed the decision of the chambers judge to allow the Chief Electoral Officer to complete the verification process under the *Citizen Initiative Act*, and report the results to the public, but not allow the Chief Electoral Officer to “submit a copy of the proposal to the Minister” of Justice, and the Minister may not refer the proposal to the Lieutenant Governor-in-Council for the purpose of a constitutional referendum: *Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer)*, 2026 ABCA 216.

[4] The single judge of this Court also determined that the three appeals underlying these applications ought not to be heard on an expedited basis.

[5] As is well known, in the meantime on May 28, 2026 Alberta directed a non-binding referendum be held on October 19, 2026: OC 160 2026, which 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”.

II. The Law on Intervenor Status

[6] Interventions are discretionarily permitted pursuant to the *Alberta Rules of Court*, AR 124/2010, rr 2.10, 14.37(2), and 14.58(1):

2.10 On application, a Court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

...

14.37(2) ... a single appeal judge may ...

...

(e) grant permission to intervene,

...

14.58(1) In addition to persons having a right to intervene in law, a single appeal judge may grant status to a person to intervene in an appeal, subject to any terms and conditions and with the rights and privileges specified by the judge.

[7] One of the earliest tests for intervention, and the one still most material was set out in *R v Morgentaler*, [1993] SCR 462, 463:

The purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal.

See also, *Orphan Well Association v Grant Thornton Limited*, 2016 ABCA 238, para 10, 40 Alta LR (6th) 11; *Reference Re Clean Electricity Regulations (Canada)*, 2026 ABCA 1, para 9.

[8] In Alberta, there is a two-step approach to evaluating intervenor applications: first, to determine the subject matter or nature of the proceedings, and second, to identify the proposed intervenor's interests; will this intervenor be directly affected by the decision of the court and/or is the presence of the party necessary for the court to properly decide the matter: *Ahyasou v Alberta (Minister of Environmental Protection)*, 1998 ABQB 875, paras 4, 6, [1999] 6 WWR 20; *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320, para 5, 380 AR 301; *Reference Re Impact Assessment Act*, 2020 ABCA 94, para 11; *Orphan Well*, para 8; *Reference Re Clean Electricity Regulations*, para 10.

[9] In *Papaschase*, para 2, this Court said:

It may be fairly stated that, as a general principle, an intervention may be allowed where the proposed intervenor is specially affected by the decision facing the Court or the proposed intervenor has some special expertise or insight to bring to bear on the issues facing the court.

Additionally, “[t]he purpose of an intervention ... is to ensure that the Court receives submissions that fully illuminate the issues”: *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ABCA 349, para 28; *Reference Re Impact Assessment Act (Canada)*, 2025 ABCA 289, para 3; *Reference Re Clean Electricity Regulations*, para 11.

[10] Additional considerations include:

- (a) whether the presence of the intervenor is necessary for the Court to properly decide the matter;
- (b) whether the intervenor’s interest in the proceedings might not be fully protected by the parties;
- (c) whether the intervention will unduly delay the proceedings;
- (d) whether there would be possible prejudice to the parties if intervention is granted;
- (e) whether the intervention will widen the *lis* between the parties; and
- (f) whether the intervention will transform the court into a political arena.

IAA Reference 2020, para 12; *Pedersen v Alberta*, 2008 ABCA 192, para 3, 432 AR 219; *IAA Reference 2025*, para 3; *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2014 ABCA 340, para 8, 584 AR 255; *Styles v Canadian Association of Counsel to Employers*, 2016 ABCA 218, paras 14, 15, 44 Alta LR (6th) 205, citing *Stewart Estate (Re)*, 2014 ABCA 222, para 5, 577 AR 57; *UAlberta Pro-Life v Governors of the University of Alberta*, 2018 ABCA 350, paras 9, 10; *Wilcox v Her Majesty the Queen in right of Alberta*, 2019 ABCA 385, paras 12, 13; *Hamm v Canada (Attorney General)*, 2019 ABCA 389, paras 5, 6, 65 Admin LR (6th) 171; *AC and JF v Alberta*, 2020 ABCA 309, para 10, 471 CRR (2d) 86; *Reference Re Clean Electricity Regulations*, para 12.

[11] Generally, the standard for intervenor status is more relaxed in a constitutional case and at the appellate level: *Justice Centre for Constitutional Freedoms v Alberta*, 2021 ABCA 295, para 11; *Papaschase*, para 6; *Reference Re Clean Electricity Regulations*, para 13.

III. Treaty Six Confederacy’s Submissions

[12] Treaty Six Confederacy is comprised of 16 First Nations in central Alberta: Alexander First Nation; Alexis Nakota Sioux Nation; Beaver Lake Cree Nation; Cold Lake First Nations; Enoch Cree Nation; Ermineskin Cree Nation; Frog Lake First Nation; Whitefish Lake First Nation #128; Heart Lake First Nation; Kehewin Cree Nation; Louis Bull Tribe; Montana First Nation; O’Chiese First Nation; Paul First Nation; Samson Cree Nation; and Sunchild First Nation, each of which is

an adherent to Treaty No 6, 1876, and an “Aboriginal people”, within the meaning of s 35 of the *Constitution Act, 1982*, Schedule B to *Canada Act 1982 (UK)*, 1982, c 11.

[13] Treaty Six Confederacy seeks intervenor status to make the following submissions:

- (1) the chambers judge was correct in determining that the issuance of the proposal of Mr Sylvestre constitutes Crown conduct impacting Aboriginal and Treaty rights; and
- (2) the legislation governing citizen initiative petitions and referenda creates a pathway from petition to referendum and potential implementation, without establishing a procedure for the Crown to consult, in breach of the duty to consult.

It says it does not take a position on the ultimate outcome of the appeal.

[14] Treaty Six Confederacy says it will be directly and significantly affected by any decision of this Court, particularly as it determines whether governmental action that authorizes and advances a process capable of resulting in profound constitutional change triggers the duty to consult. It says the decision of this Court will be an important precedent on s 35 rights, the rights of Aboriginal peoples of Canada, and will have a direct and lasting impact on the Treaty No 6 First Nations in future government initiatives.

[15] Treaty Six Confederacy says its participation in the appeals is necessary to properly decide the issues before the Court because it has extensive experience and understanding of the Treaty No 6 relationship, the exercise of Treaty rights, and the practical effects of Crown processes on those rights. It says it has a unique perspective distinct from the parties to these appeals, addressing how the duty to consult operates in the context of the Treaty No 6 relationship.

[16] Treaty Six Confederacy also says its interests will not be fully protected by the other parties to these appeals, as the current parties are First Nations from Treaty Nos 7 and 8. The treaties contain important differences; particularly since Treaty No 6 extends over much of central Saskatchewan, adding an interprovincial dimension to the issues on appeal. There are currently no voices representing the interests and concerns of Treaty No 6 signatories. It says it is essential that the Court hear from the First Nations in central Alberta.

[17] Treaty Six Confederacy says its participation will be useful and of particular expertise as its mandate is to uphold and advance the spirit, intent, and implementation of Treaty No 6 on behalf of the signatories and it will provide a unique Treaty No 6-based perspective on these issues grounded in the historical and ongoing relationship between the Treaty No 6 First Nations and the Crown. It says its arguments will be distinct from those of other parties in that it will address the constitutional significance of protecting Treaty No 6 rights before government processes capable of affecting those rights become entrenched, founded in the collective experience, history, and interests of Treaty No 6 First Nations.

[18] It says given the current status of the combined appeals, its participation will not cause undue delay, is not prejudicial to the parties, nor will it widen the *lis* between the parties.

IV. Submissions of the Parties

[19] Athabasca Chipewyan First Nation, Siksika Nation, Blood Tribe, and Piikani Nation support the intervenor application of Treaty Six Confederacy. They did not make written submissions, but did appear at the hearing to address any questions arising.

[20] The Chief Electoral Officer of Alberta and Mitch Sylvestre take no position on the intervention application.

[21] Alberta opposes the intervenor application saying it does not satisfy the test for intervention and would not assist the Court. Relying upon *Ingram v Alberta*, 2025 ABCA 376, para 5, Alberta says the discretion to admit an intervenor should be “exercised sparingly”. It says these appeals are “not ... broad appeal[s] about the content of Treaty rights and the Crown-Treaty relationship; [they concern] the legal consequences of the [Chief Electoral Officer’s] decision, the interpretation of the statutory framework governing citizen initiatives and referenda, and whether that administrative step could trigger consultation at all”.

[22] Alberta says these appeals will “not decide any claim advanced by the Applicant or its member Nations, determine whether Alberta may lawfully take any future constitutional step, or define the scope of Treaty 6”. Alberta says this appeal is not a broad inquiry into the duty to consult. It also says there is nothing unique that Treaty No 6 First Nations can offer that cannot already be advanced by those First Nations from Treaty Nos 7 and 8.

[23] Alberta also says this intervention will be prejudicial to it, as it may invite factual, historical, and contextual assertions that are relevant to Treaty No 6, different from those considerations relevant to Treaty Nos 7 and 8. This expands the issues between the parties.

V. Analysis

[24] It is fair, reasonable, and just that Treaty Six Confederacy be granted intervenor status. It represents 16 signatories to Treaty No 6 covering central Alberta, and there are no other parties to these appeals representing signatories to Treaty No 6. As such, its participation in the appeals will be useful and different from the perspective of a non-party that has a special interest or particular expertise in s 35 of the *Constitution Act, 1982*, Treaty No 6, and the historical and cultural impacts engaged in the duty to consult.

[25] In the two-step approach to evaluating intervenor applications, the subject matter or nature of the proceedings as defined by the appellants is constitutional, based on s 35 of the *Constitution Act, 1982*, and the duty to consult First Nations. The standard for intervenor status is generally more relaxed in such cases. In addition, the Treaty Six Confederacy's interests will be directly

affected by the decision of this Court, and the presence of Treaty Six Confederacy is necessary for the Court to properly decide the appeals. It appears the interests of Treaty Six Confederacy might not otherwise be fully represented, as it relates directly to Treaty No 6, its intervention will not unduly delay the proceedings, will not prejudice the current parties to the appeals, will not widen the *lis* between the parties, and its participation will have no more political impact than the current matters raised in these appeals.

VI. Conclusion

[26] The intervention of Treaty Six Confederacy is allowed. Issues of factum length, filing date, length of oral submission, and other procedural terms and conditions are left to the case management officer. There is no costs award on this application.

Application heard on September 3, 2026

Reasons filed at Edmonton, Alberta
this 4th day of September, 2026

Feehan J.A.

Appearances:

J. R. W. Rath (no appearance)

E. Chipiuk (no appearance)
for M. Sylvestre

K. Hille (no appearance)

J. Shields
for the Athabasca Chipewyan First Nation

A. J. Gray, KC (no appearance)

C. E. Hanert
for the Piikani First Nation

M. Macaulay (no appearance)

K. Shupe
for the Siksika First Nation

P. Reid

J. Tomimoto (no appearance)
for the Blood Tribe

M. J. Redman

A. Reid
for the Chief Electoral Officer of Alberta

T. F. Isaac

N. Dobson (no appearance)

M. Barbero

N. Trofimuk

E. Cox (no appearance)

J. Keliher (no appearance)
for His Majesty the King in Right of Alberta

G. K. Epp (no appearance)

E. L. Pentland

I. Agovic (no appearance)
for the Proposed Intervenor