In the Court of Appeal of Alberta

Citation: Mentzelopoulos v Alberta (Health), 2026 ABCA 378

Date: 20261125
Docket: 2603-0275AC
Registry: Edmonton

Between:

Athana Mentzelopoulos

Respondent

- and -

His Majesty the King in right of Alberta
as represented by Adriana Lagrange in her capacity as Minister of Health

Applicant

- and -

Alberta Health Services

Not a Party to the Application

Reasons for Decision of
The Honourable Justice Karan M. Shaner

Application for Stay Pending Appeal

Reasons for Decision of
The Honourable Justice Karan M. Shaner

Introduction

[1] The Applicant, His Majesty the King in right of Alberta (the Province) seeks a stay pending appeal of a chambers order compelling the Province to fill certain identified gaps in its production and to prepare, file, and serve an amended affidavit of records. ***Mentzelopoulos v Alberta Health Services***, 2026 ABKB 692.

Background

[2] The respondent was employed as the President and Chief Executive Officer of Alberta Health Services. In February 2025, she filed a statement of claim alleging she was wrongfully terminated from her employment.

[3] On September 3, 2025, the Province produced its affidavit of records. The respondent then applied to the case management judge for an order compelling further production of records, including those bearing on the issue of whether she was dismissed for just cause. During the application, the Province argued that its pleadings did not explicitly identify just cause as a reason for dismissing the respondent. It therefore maintained that the records the respondent sought related to that issue were irrelevant. The case management judge found the Province's pleadings had raised the issue of just cause for dismissal. In particular, the case management judge determined that since the pleadings indicated performance issues, the Province had implied an alternative just cause position.

[4] The case management judge pronounced an order compelling the Province to provide a further affidavit of records by November 2, 2026. The order also requires the Province to address identified gaps and deficiencies in its existing production, including producing items identified as attachments or referred to in records already produced, and to produce materials from meetings related to the respondent's termination. Alternatively, the Province may provide an explanation as to why they are not being produced, such as privilege or relevance.

[5] On October 23, 2026, the Province filed a notice of appeal with respect to the order. In summary, the grounds of appeal are: (1) the case management judge implied pleadings of just cause that the Province did not make and improperly expanded the scope of required production beyond the issues properly raised by the pleading; and (2) the case management judge significantly changed the legal test for producing records under the *Alberta Rules of Court*, Alta Reg 124/2010 [*Rules*], by, among other things, reversing the onus on a respondent facing an application for

further record production and forcing the Province to provide an affidavit of records identifying non-existent and irrelevant material.

[6] On the same day, the Province applied to the case management judge to stay the order. He denied the stay, finding the Province failed to show any defects in the production order analysis. He found there was no risk of irreparable harm: if any documents are deemed to have been wrongfully ordered, the respondent's counsel would return those documents with no prejudice to the Province. Lastly, the balance of convenience favored completing document production and allowing the litigation to advance. ***Mentzelopoulos v Alberta Health Services***, 2026 ABKB 759.

Discussion

[7] The test for a stay pending appeal is set out in ***RJR-MacDonald Inc v Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 334. The applicant must demonstrate each of the following:

(a) there is a serious question to be determined on appeal;
(b) the applicant will suffer irreparable harm if the stay is not granted; and
(c) the balance of convenience favours granting the stay.

[8] It is unnecessary in this case to address whether there is a serious question to be determined on appeal because the Province has failed to demonstrate a risk of irreparable harm in the absence of a stay. This is dispositive.

[9] "Irreparable harm is harm that can either not be quantified in monetary terms or cannot be cured". ***Kong v Condominium Corporation No 0313339***, 2026 ABCA 78 at para 11 [***Kong***]; see also ***Giesbrecht v Prpick***, 2024 ABCA 187 at para 17. The applicant must demonstrate irreparable harm with evidence that is clear and not speculative. ***Kong*** at para 11; ***Frederico v Cabral***, 2026 ABCA 251 at para 43; ***Avmax Aircraft Leasing Inc v Air X Charter Limited***, 2022 ABCA 252 at para 79; ***Modry v Alberta Health Services***, 2015 ABCA 265 at para 82.

[10] The Province relies on ***AB v College of Physicians and Surgeons of Alberta***, 2021 ABCA 320 [***AB***], and ***Prosper Petroleum Ltd v Her Majesty the Queen in Right of Alberta***, 2020 ABCA 85 at para 23 [***Prosper***], for the proposition that where an appeal will be rendered moot absent a stay, harm is (rebuttably) presumed. In ***AB***, Wakeling JA granted an order rendering the Registrar's decision to publish a statement about the applicant's disciplinary proceedings inoperative pending judicial review. He held that "denying relief would cause Dr. B. irreparable harm – it would harm his reputation and severely limit the value of a successful appeal". ***AB*** at para 55. In ***Prosper***, Strekaf JA granted a stay of a mandatory interim injunction directing Cabinet to make a decision on whether to authorize a project within 10 days. She accepted the applicant's argument that, if a stay was not granted, its appeal would be rendered nugatory because the decision was final and could not be undone.

[11] The potential harm identified in this case differs substantially from that identified in ***AB*** and ***Prosper***. In both of those cases, the nature of the potential harm – and why it would be *irreparable* – was obvious. In this case, the Province argues that producing the affidavit of records and, presumably, the records themselves would render its appeal moot because, once disclosed, the information cannot become "unknown".

[12] Preparing the further affidavit of production and addressing the gaps and deficiencies identified in the existing production, may be *irreversible* in that these cannot be undone, but it is a stretch to characterize it as "harm" and certainly, it is not irreparable. It will not render the appeal, if successful, nugatory. At most, compliance with the order will result in the identification and production of irrelevant documents.

[13] Notably, this Court previously rejected the same argument the Province now makes in ***Cybersurf Corp v Mercury Partners & Company Inc***, 2004 ABCA 265 [***Cybersurf***]:

> [13] Counsel for the appellants argues that he has shown irreparable harm here because the deadline for production is tomorrow, and obviously it would be months before the appeal could be heard. If the appeal were to succeed, it would be too late, and the horse would be out of the stable because the production would already have been given, he argues. But the problem with that argument is that it proves too much. That argument would suggest that any time that any kind of production or discovery or even answer to a subpoena occurs, it is too late thereafter to take back the information, and so there would be irreparable harm.
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> [14] But very often information which is given on discovery, or under a subpoena, or similar court document, is not sensitive, or does no harm to someone, or not much harm, or the harm is reparable, or the information is already known. Or would inevitably become known, e.g. by a subpoena for trial, which is relevant to R. 209. It is notorious, for example, that only one of the purposes of discovery is to learn what is not known. One of the major reasons is simply to dispense with more formal or costly proof at trial. I repeat that R. 209 is not a discovery rule.
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> [15] Therefore, I cannot accept the proposition that there is always irreparable harm from disclosure of any record or any information. Furthermore, it is plain here, and admitted by counsel for the respondent, that there is an implied undertaking against collateral use of the information so obtained. It may not remain implied. It is in the draft order which he tenders as the order by the Queen's Bench judge, and he proposes to include it in any such order. There are other safeguards about use and further disclosure of that information in the draft order.

See also ***Medical Laboratory Consultants Inc v Calgary Health Region***, 2006 ABCA 398 at para 9.

Disposition

[14] The application is dismissed.

Application heard on November 19, 2026

Reasons filed at Edmonton, Alberta
this 25th day of November, 2026

Shaner J.A.

Appearances:

B. Code, KC
D. Scott, KC (no appearance)
A.M. Cooper
M. McTague (no appearance)
for the Respondent

M. Mohamed, KC (no appearance)
M.J. LaFleche
for the Applicant