In the Court of Appeal of Alberta

Citation: Hallwas v Alberta (Director of SafeRoads) 2026 ABCA 382

Date: 20261126
Docket: 2601-0260AC
Registry: Calgary

Between:

Kaitlyn Grace Hallwas

Respondent
(Applicant)

- and -

Director of SafeRoads Alberta

Applicant
(Respondent)

Reasons for Decision of
The Honourable Justice Joshua B. Hawkes

Application for Permission to Appeal

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Overview

[1] The Director of SafeRoads Alberta (the "Director") seeks permission to appeal a costs award made by a chambers justice arising from a judicial review.

[2] Permission to appeal is denied for the following reasons.

Facts

[3] The circumstances of this case are unusual. The chambers justice heard the judicial review application on December 2, 2025, and reserved his decision. On December 23, 2025, while the decision remained on reserve, counsel for the Director e-mailed the judicial assistant to the chambers justice referencing two decisions from the Court of King's Bench that were released after the hearing. In light of the upcoming holiday break and counsel's unavailability, counsel proceeded to make substantive submissions on these additional cases without leave to do so. Counsel asked for further directions regarding the procedure the court wished to follow regarding any further submissions or reply.

[4] The respondent, a self represented litigant, was copied on the e-mail. She responded that same afternoon objecting to further unsolicited submissions, expressing concern about the fairness of the process.

[5] The chambers justice responded by letter on the same date advising that he would not consider the additional submissions as they were made without leave when the case was on reserve. He advised that he would not entertain any further submissions on the substance of the judicial review, "apart from whether I should impose a cost sanction against the Director in relation to the subject matter of this correspondence. I may invite those submissions following the release of my decision".

[6] The chambers justice did not invite submissions on costs. A written decision addressing both the substance of the judicial review application and the imposition of costs on the Director was released on July 31, 2026.

[7] As this was a costs award in the amount of $1000, permission to appeal is required under both rules 14.5(1)(e) and 14.5(1)(g) of the *Alberta Rules of Court*, Alta Reg 124/2010.

The Test for Permission to Appeal Under Rule 14.5(1)

[8] The test for permission to appeal a costs award pursuant to rule 14.5(1)(e) is well settled. To succeed, an applicant must establish:

(a) a good, arguable case having sufficient merit to warrant scrutiny by a full panel of this Court;

(b) issues of importance, both to the parties and in general;

(c) the costs appeal has practical utility; and

(d) the costs appeal will cause no delay in proceedings.[1]

[9] The test is onerous; if the applicant does not establish all four criteria, the application will not succeed.[2]

[10] Costs awards are discretionary and are entitled to deference on appellate review as, absent an error in principle, they are reviewable on the standard of palpable and overriding error.[3] As such, permission to appeal costs orders should be granted sparingly. [4]

[11] The test for permission to appeal a decision under $25,000, pursuant to rule 14.5(1)(g), requires an applicant to demonstrate:

(a) a reasonable prospect of success on appeal having regard to the relevant standard of review; and

(b) an issue of law or jurisdiction of importance to the public.[5]

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[1] *Ali v Pakistan Canada Association of Edmonton, Alberta*, 2025 ABCA 28 at para 10 [*Ali*]; *Rock River Developments Ltd v Village of Nampa*, 2024 ABCA 42 at para 12 [*Rock River*]; *Brill v Brill*, 2017 ABCA 235 at paras 2-3.

[2] *Ali* at para 11; *Rock River* at para 13.

[3] *Akbar v Nielsen*, 2026 ABCA 95 at para 9; *Jackson v Canadian National Railway Company*, 2015 ABCA 89 at para 9.

[4] *Rock River* at para 14; *Bun v Seng*, 2015 ABCA 165 at para 4.

[5] *Rock River* at para 15; *Uhuegbulem v Timpano*, 2025 ABCA 110 at para 12; *Jackson v Cooper*, 2023 ABCA 299 at para 11.

Analysis

[12] The Director seeks permission to appeal on three questions:

(a) Was the costs award procedurally unfair?

(b) Did the Court below apply too low of a threshold for finding misconduct?

(c) Did the Court below consider irrelevant factors in making the costs award?

[13] The law is well settled that prior to making an award of costs, particularly where that award is based on a finding of misconduct, the parties must be given an opportunity to make submissions.[6] The absence of that opportunity in this case is a reviewable error.

[14] However, in this case, two factors weigh against granting permission to appeal.

[15] First, as noted, the law with respect to procedural fairness is settled. The same can be said for the principles regarding the scope of participation by the Director in the judicial review process. As this Court noted in *Sihota v Edmonton (City)*, there may be circumstances in which counsel for a tribunal may make submissions on the merits where there would otherwise be no proper adversarial context for the hearing.[7] That expanded role for tribunal counsel has been recognized in different contexts, including in judicial reviews arising from SafeRoads matters (see e.g. *Vatter v Alberta (Director of Saferoads)*.[8] As has been repeatedly noted, the application of well-established principles does not give rise to issues of importance to be settled by this Court. The applicants in this case have therefore failed to establish issues of importance in the meaning of rules 14.5(1)(e) and 14.5(1)(g).

[16] The second question upon which permission to appeal is sought relates to the threshold that should be applied in determining whether the Director should be subject to an award of costs. There are three difficulties with this question. First, the chambers justice's failure to provide the Director with an opportunity to respond to the potential imposition of a costs award would be a sufficient ground to overturn the costs order. As a result, any comments made by this Court regarding the threshold required for such an order would be *obiter*. Second, given the absence of submissions by counsel for the Director on the proposed costs award, the record is incomplete. While the decision under appeal refers to the submissions of the Director on costs, those references are to the original submissions of counsel for the Director filed before the hearing. As indicated

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[6] *Kotyk (Re)*, 2024 ABCA 233 at paras 16-19; *Akpan (Re)*, 2024 ABCA 232 at paras 21-24; *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 at paras 35–36.

[7] 2013 ABCA 125 at para 6.

[8] 2025 ABKB 339 at paras 1-5.

earlier, no submissions were sought or received by the chambers justice on the issue. For these reasons, this is a flawed record from which to give general guidance as to the threshold required to substantiate an order of costs. Third, while it is true that there is no specific guidance on the threshold for costs in this specific context, there are authorities establishing that the threshold for costs against a tribunal require more than a mistake.[9] These authorities frequently qualify reference to "misconduct" with the addition of other terms which may elevate the standard required.[10] These three difficulties explain why this case presents a poor opportunity to provide guidance on that question.

[17] The Director has not satisfied me that their costs appeal raises issues of importance or will have practical utility. As such, the Director has not established all criteria under rule 14.5(1)(e), nor have they satisfied the test under rule 14.5(1)(g). Therefore, the Director's application must fail.

Conclusion

[18] Permission to appeal is denied.

[19] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on October 21, 2026

Reasons filed at Calgary, Alberta
this 26th day of November, 2026

Hawkes J.A.

[9] *Borgel v Paintearth (Subdivision and Development Appeal Board)*, 2020 ABCA 321 at paras 47-48 [*Borgel*]; *Ecojustice Canada Society v Alberta (Minister of Environment)*, 2026 ABKB 306 at paras 35-42 [*Ecojustice*]; *Aheer v Alberta (Election Commissioner)*, 2022 ABQB 513 at paras 45-47 [*Aheer*].

[10] *Borgel* at paras 50-54; *Ecojustice* at para 69; *Aheer* at paras 50-52.

Appearances:

Respondent K.G. Hallwas

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for the Applicant