Court of King's Bench of Alberta

Citation: Mentzelopoulos v Alberta Health Services, 2026 ABKB 151

Date: 20260302
Docket: 2503 02991
Registry: Edmonton

Between:

Athana Mentzelopoulos

Plaintiff

- and -

Alberta Health Services and His Majesty the King in Right of Alberta as Represented by Adriana LaGrange in her Capacity as Minister of Health

Defendants

Case Management Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] This decision concerns the process for determining whether certain documents taken by the plaintiff shortly before her termination and included in her affidavit of records were privileged or confidential information of either defendant (i.e. when taken) and, if so, whether

they can nonetheless be used by her in this litigation, i.e. whether the already-defined process should be changed.

[2] In ***Mentzelopoulos v Alberta Health Services***, 2026 ABKB 38, I outlined the process for answering those questions (paras 6-8), including the defendants bringing the necessary application, which has not yet occurred.

[3] At a recent case-management meeting, the plaintiff sought confirmation of the earlier directions. The defendants questioned the soundness of the bring-application direction, suggested the plaintiffs were unjustifiably seeking to expand its scope, and proposed that the plaintiff's summary-judgment application should proceed before taking any further steps on the privilege-and-confidentiality front.

[4] I find that the existing process governs, that it sufficiently defines which records are to be addressed in the directed application, and that the existing sequence of steps (privilege and confidentiality issues resolved first) should be maintained, as explained below.

II. Analysis

A. Process directed

[5] The heart of the existing process was outlined in paragraph 6 of 2026 ABKB 38:

> Once September 30 arrives, or earlier (if AHS and HMKA identify any further privileged documents before then – and I can set any adjusted timetable, as needed), **I accept the steps proposed by Ms. Mentzelopoulos in para 39 of her brief** (expanded as discussed at the close of this paragraph) **i.e. for flushing out the dispute-over-privilege records** (i.e. from any acknowledged as such and as unusable by her) **and for determining which are originally privileged or not and, of the privileged records, whether privilege has been lost for some reasons or, in any case, the documents are nonetheless useable by Ms. Mentzelopoulos in this litigation**. (In terms of what AHS and HMKA are obliged to do by September 30, I accept the **steps proposed in paragraph 17(c) of HMKA's brief**, which I infer (or which, in any case, I direct) shall include the information required by the plaintiff's paragraphs 39(a) and (b).) [emphasis added]

[6] Here is the noted paragraph 39 from the plaintiff's brief (adopted process steps):

> As noted on July 11, the Plaintiff and the Defendants have very different positions on **whether any of the records in the Plaintiff's Affidavit of Records are subject to a solicitor-client privilege and/or that the Plaintiff is unable to either review, possess, or otherwise rely on records** from her employment with AHS in this litigation. Consequently, the consent order proposed by the Plaintiff provided for a **procedure for dealing with any records over which solicitor-client privileged is being asserted.** The procedure proposed aligns with current caselaw and the Court's practice:
>
> > (a) The Defendants shall, on or before September 30, 2025, provide a **list to the Plaintiff identifying any records from the**

> **Plaintiff's Affidavit of Records over which a claim of solicitor-client privilege is asserted.**
>
> (b) The list will identify the name of the Defendant(s) who asserts the solicitor-client privilege.
>
> (c) Within 4 weeks of the receipt of the Defendants' respective lists, the Plaintiff shall reply, providing **its response as to whether the record is subject to the type of privilege claimed, whether that privilege has been waived, and/or any other reason why, despite that claim of privilege, the record is producible by the Plaintiff.**
>
> (d) Assuming that some of the items in the list will then be agreed by the parties**, the Defendant(s) claiming the solicitor-client privilege will then file an application at their earliest convenience to address any remaining claims of privilege over the identified records.**
>
> (e) Any application filed will also address the two previously identified emails of January 7, 2025, over which a claim of solicitor-client privilege has been asserted by both Defendants.
>
> (f) **The party asserting solicitor-client privilege has the burden of proving, on balance by way of clear, cogent evidence, that party's assertion of that privilege.**
>
> (g) The Court will then be engaged to consider and determine any remaining issues arising from the claims to solicitor-client privilege made by the Defendants and the answers thereto provided by the Plaintiff. [emphasis added]

[7] Here is the noted paragraph 17(c) from HMK's brief (additional adopted process):

> September 30, 2025: The Defendants will file their amended applications (along with any additional supporting materials) seeking **relief associated with Ms. Mentzelopoulos' retention of records**, which will include any further amendments to the pleadings[.]

[8] As seen above, the process for determining the privileged-or-confideltial-in-favour-of-Alberta-or-AHS character (or otherwise) of the documents in question was grafted onto existing return-documents applications by the defendants (albeit requiring amendments), i.e. in light of the refence to para 17(c) of Alberta's brief.

B. Remedies for any wrongful retention of records

[9] Alberta and AHS argue that the remedy or remedies flowing from any determinations in the directed application should be addressed as part of the application.

[10] The plaintiff's focus is the central question of whether a given document is privileged or confidential in Alberta's or AHS's favour and, if it is (or was), whether privilege or confidentiality has been waived or, in any case, whether she can nonetheless use the document in this litigation.

[11] As I understand it, the plaintiff does not dispute that, if a given document is ruled to be privileged or confidential, no waiver is found, and she is not otherwise permitted to use it, she will have to return, destroy, or otherwise deal with the document as the defendants request.

[12] It may be that the defendants assert other remedies for any wrongful retention of records found.

[13] I am prepared to address those remedies (i.e. if any are engaged), and the plaintiff's position on them, as part of the application directed above.

C. Out-of-scope aspects

[14] In her February 11, 2026 letter, the plaintiff addressed other issues, such as whether documents described as privileged in Alberta's and AHS's affidavits of records are in fact privileged and whether certain documents not included in those affidavits should be added.

[15] The defendants objected to the perceived request to expand the scope of the directed application i.e. to embrace such additional aspects.

[16] Whether or not the plaintiff was seeking such expansion (and it is not clear that she was), the plaintiff's counsel acknowledged at the recent case-management meeting that the application as directed should proceed i.e. with the focus on the documents in the plaintiff's affidavit of records which either defendant perceives are privileged or confidential and which she sees as not privileged or confidential or as privilege- or confidentiality-waived or, in any case, as nonetheless useable by her in this litigation.

[17] Accordingly, the focus will remain on those documents.

D. "Typical approach"

[18] Alberta argued that:

> ... it is a rather novel proposition that a party that advances of claim of privilege would need to file a declaratory proceeding to obtain some sort of wide-ranging declaration on privilege. Typically the way [Alberta's counsel] has seen it is that [first] a party claims privilege over records. A party that dispute that [claim] files an application challenging the claim of privilege, and the reason it is done that way in ... all of the cases [Alberta's counsel] has dealt with is that the party that is challenging the privilege can then itemize what it says is not privileged as opposed to the party that claims the privilege.
>
> So the party challenging say "I think these documents are not properly privileged" Then the onus shifts to the party that is advancing the claim of privilege, and that party then has to establish that the documents were privileged.
>
> And you then have that [issue determined].

[19] That may be so.

[20] However, Alberta filed applications for the return of the contested documents.

[21] I then decided that those applications should address (among other issues) the privilege and confidentiality, waiver, and "nonetheless useable" issues, which were presumably all issues to be explored in Alberta's "return documents" applications in any case i.e. as the issues on which any obligation to return documents would turn.

[22] In any case, no party appealed any of the directions made in the September 2, 2025 ruling, let alone the mechanics for determining the noted questions.

E. State of proceedings

[23] With the plaintiff having filed her affidavit of records, the defendants having identified documents in it that they contend are privileged or confidential in their favour, and with the plaintiff having provided her position on those characterizations, plus on waiver and on "useable in any case", the next steps are those identified in the balance of the adopted para 39 of the plaintiff's brief, namely:

> (d) Assuming that some of the items in the list will then be agreed by the parties, the Defendant(s) claiming the solicitor-client privilege [or confidentiality] will then **file an application at their earliest convenience to address any remaining claims of privilege over the identified records.**
>
> (e) Any application filed **will also address the two previously identified emails** of January 7, 2025, over which a claim of solicitor-client privilege has been asserted by both Defendants.
>
> (f) **The party asserting solicitor-client privilege [or confidentiality] has the burden** of proving, on balance by way of clear, cogent evidence, that party's assertion of that privilege.
>
> (g) The Court will then be engaged to **consider and determine any remaining issues** arising from the claims to solicitor-client privilege [and confidentiality] made by the Defendants and the answers thereto provided by the Plaintiff. [emphasis added]

F. Defendants' suggested sequencing change

[24] Alberta suggested, and AHS concurred, that, instead of the directed application, the next step should be the plaintiff's summary-judgment application. Alberta's detailed proposal was as follows:

> Since the parties first attended case management, Ms. Mentzelopoulos has provided sworn evidence relating to the nature of the records that she took, along with what she did with them. That was part of the relief sought by HMTK in its original application. An interlocutory injunction is currently in place restraining Mr. Mentzelopoulos from using those records. Furthermore, with respect to the pending summary judgment application, at the time that application was served, Ms. Mentzelopoulos advised HMTK that the application was a "slam dunk". Given that context, HMTK proposes the following:
>
> > (a) The current **interim injunction will remain in place** with respect to the records retained by the Plaintiff from AHS.
> >
> > (b) The Defendants' **applications relating to the retained documents will be adjourned** to be resolved only if the matter is not disposed of by summary judgment.
> >
> > (c) In the meantime, **none of the records over which privilege has been alleged will be used by the Plaintiff**. Furthermore, the

> Defendants will not put any of the privileged documents to any of the witnesses Ms. Mentzelopoulos has sought to question in support of her application.
>
> (d) Since the interim injunction permits the Plaintiff to use records for this litigation, **if the Plaintiff seeks to have one of the retained records (over which privilege was not claimed) be put to a witness (or otherwise put on the Court record), she can do so, but the Defendants will be provided advance notice to consider whether a sealing order is required.**
>
> (e) To provide certainty surrounding Ms. Mentzelopoulos' choice of legal counsel, the Defendants will not raise the fact that any of the retained records over which either Defendant asserted privilege were retained or reviewed up to this point by counsel would be a basis to seek disqualification of counsel.
>
> (f) A full-day **summary judgment hearing would be set down** with the following pre-hearing steps:
>
> > (i) Rule 6.8 questioning of the three AHS directors requested by the Plaintiff and cross-examination of the Plaintiff, be completed 8 weeks before the hearing;
> >
> > (ii) Any responding materials (including responding affidavits and cross-applications for summary judgment by the Defendants, if any) filed and served 6 weeks before the hearing;
> >
> > (iii) Any cross-examination on responding affidavits, and any other Rule 6.8 examinations by the Defendants, completed at least 4 weeks before the hearing;
> >
> > (iv) Primary briefs would be filed and served at least 2 weeks before the hearing; [and]
> >
> > (v) Response briefs would be filed and served at least 1 week before the hearing.

[25] This proposed change in sequencing is the opposite of Alberta’s position in its earlier brief:

> These issues are intertwined. However, as previously noted by Justice Yungwirth (and as set out in her Order suggesting case management), the **first issue** that should be addressed is the question of **what remedies might flow from Ms. Mentzelopoulos' intentional decision to retain records** from her employment with AHS. **An adjudication of that pending issue is required first, as that will impact how the summary judgment application can proceed** (if it can proceed at all) **since it informs what allegations of after acquired cause are before the**

> **Court as well as what records might be before the Court (due to privilege concerns)**.
>
> ...
>
> ... the situation is now different from what was before Justice Yungwirth. **Ms.Mentzelopoulos is seeking a final adjudication of all her claims, against all parties, and so it will be necessary for the Court to adjudicate whether the entirety of the claim – including the merits of any defences – can be fairly decided on the record in a summary fashion**. By necessity, this will **require consideration of any after-acquired cause arguments that might be made along with all of the elements of Ms. Mentzelopoulos' various causes of action** (it must be recalled that as against HMTK, Ms. Mentzelopoulos asserts *intentional* torts). [paras 5 and 24] [emphasis added]

[26] Alberta did not demonstrate that the circumstances now are materially different, on the sequencing-related issues, such that the sequencing should change.

[27] Alberta tried to emphasize the plaintiff's apparent characterization of her SJ application as a "slam dunk" and what Alberta described as the application's narrow scope (namely, the alleged lack of dismissal authority).

[28] However, as reflected in the above excerpts, Alberta itself recognizes the inevitability of a wider-scope SJ application (e.g. having to address after-acquired-cause issues), as further suggested in the plaintiff's statement that the application (already amended twice) is likely to be amended again.

[29] Here I also note that the case-management direction including the directed "documents" application expressly provided that it proceed before any summary judgment application, with a view to ensuring that the documents in play be defined before any substantive applications necessarily or potentially turning on them are decided.

[30] As noted above, no party appealed any aspect of those case-management directions. And (as noted) Alberta did not demonstrate that that objective was no longer sensible.

[31] With no material change of circumstances shown by Alberta, I see no reason to change the sequencing.

[32] In any case, I note that Alberta advised that "[it] remains open to proceeding as originally envisioned."

[33] Incidentally, I note that, while AHS supported Alberta's proposed sequencing change, it did not offer any separate submissions on this aspect.

[34] All to say: I decline to accept Alberta's suggested new approach to sequencing.

III. Conclusion

[35] Alberta and AHS shall file the application directed on September 2, 2025 and addressing the remaining issues outlined in paras 39(d)-(g) of the plaintiff's brief.

[36] That application will be prepared, briefed, argued, and decided before any summary-judgment application is advanced.

[37] If further directions on timing or otherwise are needed, I invite the parties to contact me via joint letter.

Heard on February 17, 2026.
Dated at Edmonton, Alberta on March 2, 2026.

Michael J. Lema
J.C.K.B.A.

Appearances:

Brett Code, K.C.

Tingle Merrett LLP

and

Dan Scott, K.C.

Seveny Scott Lawyers

For the Plaintiff

Munaf Mohamed, K.C. and Mathieu J. LaFleche

Bennett Jones LLP

For the Defendant His Majesty the King in right of Alberta

Gulu Punia

Fasken Martineau DuMoulin LLP

For the Defendant Alberta Health Services