

Court of King's Bench of Alberta

Citation: Mentzelopoulos v Alberta Health Services, 2026 ABKB 38

Date: 20260115
Docket: 2503 02991
Registry: Edmonton

Between:

Athana Mentzelopoulos

Plaintiff

- and -

**Alberta Health Services, His Majesty the King in right of Alberta as represented by
Adriana LaGrange in her capacity as Minister of Health**

Defendant

**Endorsement
of the
Honourable Justice Michael J. Lema**

[1] Further to the in-court case management meeting on August 19, 2025, here are my directions. [Directions originally provided via September 2, 2025 letter.]

[2] First, I agree with AHS and HMKA that the first orders of business are determining:

1. what AHS/HMKA records (documentary or otherwise) Ms. Mentzelopoulos has that, at first glance (per her employment contract or the law generally), she was not supposed to retain (original or copies) beyond her termination, whether for privilege or confidentiality reasons. (Based on the parties' submissions on August 19, I do not understand that Ms. Mentzelopoulos has or had original records i.e. she only had copies (physical or electronic) of original records always remaining with AHS or HMKA. If this is incorrect, please advise);

2. whether Ms. Mentzelopoulos acknowledges the privileged or confidential character of any of those records and that she should not have retained them or, in any case, cannot use them in this litigation and, if so, whether she has returned, destroyed or otherwise stepped away from those records to the satisfaction of AHS or HMKA, as applicable;

3. if not (i.e. to AHS's or HMKA's satisfaction), for any such records, what step(s) or further step(s) she is required to take to step away from those records; and

4. of the records remaining under paragraph 1, whether Ms. Mentzelopoulos has lawful reason(s) for continuing to possess such records and use them in the present litigation e.g. waiver or other loss of privilege or confidentiality, lawful reasons to retain and use still-privileged or still-confidential information (e.g. under any applicable whistle-blower laws or policies), or otherwise.

[3] As I understand it, AHS/HMKA are obliged to file their respective affidavits of records on or before September 3. Those affidavits will presumably (in part) reflect their respective positions on the records of each that are relevant and material to the lawsuit but are not disclosable on account of solicitor-client or other privilege.

[4] Incidentally, with AHS/HMKA having apparently known since June 25 (when Ms. Mentzelopoulos filed her affidavit of records) that she had the referred-to "thousands and thousands of pages" of additional AHS or HMKA records (i.e. beyond the original nine emails and attachments), with no detailed (or other) submissions from them about the state of their review of those documents (e.g. "We are only 25 per cent of the way through them") i.e. to support their request for an extension of the September 2 deadline for their affidavits of records, and counsel for AHS and (as I recall) HMKA advising they were working toward the September 3 deadline for their affidavits of records, I do not see any compelling reason to extend that deadline.

[5] Presumably delivery of those affidavits of records will answer, or at least go a long way towards answering, the question -- set by Yungwirth J. with a September 30 deadline -- of which records reflected in Ms. Mentzelopoulos's affidavit of records, originating with AHS or HMKA, are privileged in their eyes.

[6] To the extent that question is not fully answered by AHS's and HMKA's affidavits of records, Yungwirth J.'s order on this aspect remains in effect i.e. AHS and HMKA will have until September 30 at the latest (and (of course) they do not need to wait until then) to point to any other documents in Ms. Mentzelopoulos's affidavit of records that they see as privileged in favour of AHS or HMKA and thus unusable by her in this litigation i.e. beyond any already or to be identified in their affidavits of records.

[7] 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).)

[8] As for non-privileged but confidential records held by Ms. Mentzelopoulos or her counsel, and to the extent AHS's or HMKA's position on the useability of any such documents in this litigation is not reflected in one or both of their affidavits of records (e.g. a confidential document that AHS acknowledges is relevant and material and lawfully possessed and useable by Ms. Mentzelopoulos), I direct that the same deadline (September 30) apply i.e. for AHS or HMKA (or both) to advise which documents Ms. Mentzelopoulos has or had, post-termination, and whether or not included in her affidavit of records, that it or they maintain should not have been retained by her post-termination on account of confidentiality.

[9] On this point, my understanding is that Ms. Mentzelopoulos was questioned on the subject of any other AHS or HMKA records she has or had (i.e. beyond those reflected in her affidavit of records) on August 18 and that she gave one or more undertakings on that subject, and further (via Mr. Code) that she was (as of August 19) very close, or close, to being able to provide her undertaking responses, with a previously set deadline of September 3 applying.

[10] If correct, and if the undertaking response(s) on this ("any other records") aspect are accurate and comprehensive, AHS and HMKA will presumably thus know the full extent of AHS and HMKA records that Ms. Mentzelopoulos has or had post-termination i.e. they will be in possession of the necessary information to make whatever after-acquired-cause arguments they see as available, whether on the summary-judgment application itself or even on the proposed R. 6.8 questioning of the three non-government board members proposed to be questioned e.g. in the sense (possibly available – not deciding now) of asking those board members questions like "if you had known that Ms. Mentzelopoulos had [insert privileged-or-confidential-document-retention-related facts here], would you have [insert possible different approach to her termination]?"

[11] On this aspect, my principal reason for deciding that identifying the nature and scope of Ms. Mentzelopoulos's retention of AHS or HMKA (or both) records and whether all of some of that retention is justifiable need to be decided first is the possible relevance of these issues even on the Rule 6.8 front i.e. what I see as at-least-arguable (again, not deciding here) positions that AHS or HMKA or both may be able to ask the former board members questions along the lines of that imagined above i.e. the (possible) off-side retention of privileged or confidential records being a (potentially available) subject of cross-examination or at least examination by them i.e. on the subject of what happened at the meeting and what might have happened if different information had been available at the time.

[12] Of course, as I see it now (and again not ruling on this now), Ms. Mentzelopoulos may be able to re-examine those witnesses on these kinds of subjects e.g. along the lines "would you hold the same [e.g. possibly different view of justness of termination] if you were also aware of [insert further contextual facts e.g. that might justify such records retention]?"

[13] If the parties are not able to agree on the timing of the post-September 30 steps i.e. beyond the "within 4 weeks" step in para 39(c) of Ms. Mentzelopoulos's brief, I will set them after receiving each party's proposal (via letter – maximum 2 pages, due by September 30).

[14] I will make myself available to hear the application contemplated in para 39(d) of the plaintiff's brief and para 17(c) of HMKA's brief on the privilege and confidentiality points in dispute and will provide directions on briefing (including sequencing and deadlines) if the parties are unable to agree on same, with the same deadline and page limit above applying.

[15] Once the privilege and confidentiality issues have been determined, I will provide directions for the Rule 6.8 examinations (as necessary, seeking further input from the parties e.g. on available dates, etc.) and invite further submissions from the parties on the summary-judgment front before providing directions for the issues to be tackled, the appropriate sequencing of the issues, briefing, etc.

[16] I make no directions at this stage on the "recordings" aspect.

[17] On the subject of the injunction, my direction is that Dunlop J.'s directions continue to apply albeit with the added dimension, as proposed by Mr. Scott on August 19, that the only permitted use of disputed-privilege or disputed-confidential records for the time being is in the context of the steps outlined above i.e. to determine their character and permitted uses (if any) in this litigation.

[18] If the parties require further directions on any of these aspects, please let me know.

Heard on the August 19, 2025.

Dated at Edmonton, Alberta this January 15, 2026.

Directions originally provided to counsel via September 2, 2025 letter.

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

Appearances:

Brett Code, K.C., Amy Cooper, Maryna McTague and Dan Scott, K.C.
for the Plaintiff

Gulu Punia and Aaron Marchadour
for the Defendant, Alberta Health Services

Munaf Mohamed, K.C. and Mathieu LaFleche
For the Defendant, His Majesty the King in right of Alberta