Court of King's Bench of Alberta

Citation: 993107 Alberta Ltd v Haynes, 2026 ABKB 89

Date: 20260210
Docket: 2503 13080
Registry: Edmonton

Between:

993107 Alberta Ltd. Operating as Super 8 Innisfail by Wyndham

Applicant

- and -

Dr. Janet Haynes

Respondent

- and -

Chair of the Alberta Human Rights Commission and Tribunal

Third Party

Reasons for Judgment
of the
Honourable Justice Michael J. Lema

I. Overview

[1] Should security for costs be posted by Dr. Haynes as a precondition of her judicial review of the Chief's decision (via delegate) upholding the Director's decision dismissing her human-rights complaint as having "no reasonable prospect of success"?

[2] Dr. Haynes' complaint alleges race-based discriminatory treatment at the Super 8 Innisfail in July 2022.

[3] An AHRC director screened out her complaint under subpara 21(1)(a)(iii) of the *Alberta Human Rights Act* ("no reasonable prospect of success").

[4] On a s 26 *AHRC* review requested by Dr. Haynes, the Chief of the Commission and Tribunals (via delegate) upheld that decision.

[5] Dr. Haynes then applied for judicial review of the latter decision.

[6] The hotel now seeks security for costs of the judicial review, a stay of the judicial review until any directed security is posted, and, if such is not posted, its dismissal.

[7] I find no security for costs is warranted here, as explained below.

II. Legislation

[8] Here is subpara 21(1)(a)(iii) *AHRA* under which Dr. Haynes' complaint was dismissed:

> If the Commission receives a complaint made in accordance with section 20 and the bylaws, the director may at any time
>
> > (a) dismiss the complaint, in whole or in part, if the director determines that the complaint or part of the complaint
> >
> > > (iii) has no reasonable prospect of success ….

[9] Here is s 26 *AHRC* (review provision):

> (1) The complainant may, not later than 30 days after receiving notice of dismissal of the complaint under section 21, by notice in writing to the Commission request a review of the director's decision by the Chief of the Commission and Tribunals.
>
> (2) The Commission shall serve a copy of a notice requesting a review referred to in subsection (1) on the person against whom the complaint was made.
>
> **(3) The Chief of the Commission and Tribunals shall**
>
> > **(a) review the record of the director's decision and decide whether**
> >
> > > **(i) the complaint should have been dismissed, or**
> >
> > (ii) the proposed settlement was fair and reasonable,
> >
> > as the case may be, and
>
> (b) forthwith serve notice of the decision of the Chief of the Commission and Tribunals on the complainant and the person against whom the complaint was made.
>
> (4) The Chief of the Commission and Tribunals may delegate the functions, powers and duties set out in subsection (3) to another member of the Commission.

[10] The Chief's or Chief's delegate's decision is "final and binding on the parties, subject to a party's right to judicial review of the decision" (s 35 *AHRC*), which right Dr. Haynes has invoked.

[11] Finally, here is the security-for-costs rule:

> 4.22 The Court may order a party to provide security for payment of a costs award if the Court considers it just and reasonable to do so, taking into account all of the following:
>
> > (a) whether it is likely the applicant for the order will be able to enforce an order or judgment against assets in Alberta;
> >
> > (b) the ability of the respondent to the application to pay the costs award;
> >
> > (c) the merits of the action in which the application is filed;
> >
> > (d) whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action; [and]
> >
> > (e) any other matter the Court considers appropriate.

III. Positions

[12] Super 8 contends that it has met the test set out in R 4.22, that Dr. Haynes is engaging in vexatious and unreasonable litigation with no reasonable chance of success, and that this application for security for costs should accordingly be granted.

[13] It seeks an order directing security for costs in the amount of $20,000 and, per R 4.23, an order that until security for costs is posted, Dr. Haynes not be permitted to take any further steps in the proceedings other than an appeal of any security-for-costs order.

[14] Dr. Haynes argues that ordering security for costs on a judicial review of a human rights complaint would undermine the public-interest role of the court and impede fairness and access to justice.

[15] Dr. Haynes contends in any event that the R 4.22 test is not met. She alleges that Super 8 has provided no evidence of her inability to pay any costs award and further that her JR application alleges material errors in law and procedural unfairness entitling her to due process. She seeks dismissal of the security-for-costs application.

[16] The other respondent on judicial review, the Chair of the Alberta Human Rights Commission and Tribunal, takes no position on this application.

[17] The role of the CAHRCT in judicial review is limited. In ***Way-Patenaude v Alberta (Human Rights Commission)***, 2020 ABQB 314, which also involved the CAHRCT (albeit a review of a director's decision and not the decision of the Alberta Human Rights Tribunal), Richardson J explained:

> … Jurisprudence directs that the decision maker on a judicial review should only provide the reviewing Court with an outline of the process involved in the body's

> decision making, the statutory framework that grounds the Chief Commissioner's exercise of discretion and the standard of review. (para 19)

[18] The Supreme Court of Canada has affirmed that the role of the administrative decision maker is explanatory when considering the record before the administrative decision maker and (as applicable) jurisdiction-focused: ***Ontario (Energy Board) v Ontario Power Generation Inc***, 2015 SCC 44 at para 42.

[19] Taking no position here is consistent with the CAHRCT's role.

IV. Availability of security for costs in judicial-review context

[20] A threshold question is whether security for costs is available on judicial review, especially in the context of a human rights claim.

[21] Dr. Haynes submitted that security for costs is inappropriate in principle, pointing to the constitutional status of judicial review and the paramountcy of fairness, access to justice, and the public-interest role of this Court.

[22] In support of this proposition, she first cited ***R v Caron***, 2011 SCC 5, for the proposition that constitutional and quasi-constitutional claims should not be barred by financial obstacles.

[23] However, as a criminal-law decision examining interim funding of an accused, ***Caron*** is not on point.

[24] Second, she cited ***Shodunke v Paladin Security Group Ltd***, 2025 AHRC 2 (CanLII), to show that an award for security for costs is exceptional and reserved for abusive conduct.

[25] ***Shodunke*** is a decision of the Alberta Human Rights Commission. It explains that costs are not awarded in human rights proceedings in the absence of improper conduct that was dishonest or significantly prejudicial. There is no mention of security for costs, only costs of AHRC proceedings.

[26] Dr. Haynes correctly notes that judicial review is constitutionally protected by s 96 of the *Constitution Act, 1867*. Legislators cannot completely shield administrative bodies from it: ***Canada (Minister of Citizenship and Immigration) v Vavilov,*** 2019 SCC 65 at para 24.

[27] That said, it is also well-established in Alberta law that "[a]ccess to justice does not equate to access to civil processes without fear of costs consequences": ***DataNet Information Systems, Inc v Belzil***, 2011 ABCA 40 at para 4, leave to appeal to SCC refused, 34196 (September 29, 2011).

[28] This Court has previously ordered security for costs on judicial review: see, for example, ***2248870 Alberta Ltd v Alberta Health Services***, 2024 ABKB 109 (Rickards J.) (para 65: "With respect to AHS it had applied for and received security for costs in this [judicial review] matter[,] and costs are awarded to AHS in the amount of the funds paid into court … as security for costs. …"

[29] And ***Act for Community Society v Edmonton (City)***, 2016 ABQB 516. The respondents to the judicial review -- the City of Edmonton, Rohit Communities Inc., and Landmark Communities Inc -- were granted $10,000 each in security for costs to be paid by ACT.

[30] And ***Warman v Law Society of Alberta***, 2015 ABQB 230, where Pentelechuk J. (as she then was) implicitly found security for costs available in a judicial review setting albeit declined to order any there:

> Both Respondents reside outside of Alberta, but I have no evidence on any of the factors outlined in Rule 4.22. The assertion by the Law Society's General Counsel, Regulation, that she "is *not aware* that [the Respondents] have any assets in Alberta" is inconclusive as to the ability of the Respondents to pay a costs award: … More importantly, the Respondents' application for judicial review raises issues not yet fully canvassed by the Courts. Adjudication on these issues will provide assistance to litigants in the complex world of administrative tribunals and disciplinary proceedings by regulatory bodies.
>
> In the circumstances, I decline to order security for costs. [paras 74 and 75]

[31] I find no obstacle in principle to an award of security for costs in judicial-review proceedings.

[32] In any case, if the judicial-review character of a proceeding or its human-rights focus are material factors themselves, they can be explored under R. 4.22(e) i.e. as "any other matter the Court considers appropriate."

V. Should security for costs be directed?

[33] Having found that security for costs is available in a judicial review, I next consider the R 4.22 factors (reproduced above).

[34] As applicant, Super 8 bears the onus of establishing, on a balance of probabilities, that the factors set out in R 4.22 weigh in its favour: ***Parker v Parker***, 2019 ABCA 114 (Greckol JA in chambers) (para 4).

[35] In such an application, the court balances the reasonable expectations and rights of the parties in search of a "just and reasonable" conclusion: ***Haymour v The Owners Condominium Plan No 802 2845***, 2016 ABCA 367 at para 8; ***Parker*** at para 4.

[36] I will now consider each listed R 4.22 factor.

A. whether it is likely the applicant for the order (Super 8) will be able to enforce an order or judgment against assets in Alberta

[37] Super 8 is not seeking a "merits" order or judgment against Dr. Haynes or at least none aiming at monetary relief, with its focus here limited to her ability (or otherwise) to pay any costs award made in favour of it (explored below).

[38] In any case, it did not offer any submissions on this prong of the test, starting (at para 32 of the Super 8 manager's October 13, 2025 affidavit) with the second (ability to pay costs award) prong (see below).

B. the ability of the respondent to the application (Dr. Haynes) to pay the costs award

[39] Super 8 alleges that Dr. Haynes lacks the ability to pay the costs award. In its affidavit and oral submissions, Super 8 cites a perceived inability to pay at check-in. It asserts Dr. Haynes did not have sufficient open credit on her credit card to cover the hotel bill and did not present an

alternative credit card. It also cites her self-represented status and notes that she has not had to incur significant (or any) legal costs in the complaint process.

[40] Dr. Haynes argues that she, in fact, presented multiple credit cards when trying to check in, none of which worked because she attempted to "tap-to-pay" with each card, and the amount to pay was too high for that method. She eventually realized that she had to insert her card, and the payment went through without a problem.

[41] The parties have conflicting views of whether Dr. Haynes was charged in advance for her four-nights booking i.e. when checking in. Per her, she was, acknowledging that, when she decided against staying, Super 8 refunded the payment. Per Super 8, only a pre-authorization was put through, which was cancelled when Dr. Haynes decided not to stay. (It appears that neither side has confirming records either way.)

[42] In any case, whether full-charge or pre-authorization only, Super 8 does not dispute that Dr. Haynes was able, after the initial "tapping" difficulties, to provide requisite credit.

[43] In these circumstances, the initial difficulties do not indicate limited credit for Dr. Haynes or otherwise mark her as a credit risk.

[44] Further, Dr. Haynes' status as a self-represented litigant is also not determinative or, in fact, relevant at all. I am not prepared to infer, from that status alone, an inability to meet a potential costs award or anything at all about Dr. Haynes' financial position. Super 8 did not explain its implicit theory that self-representation necessarily implies limited means.

[45] In the end, Super 8 provided no material evidence to cast a shadow on Dr. Haynes' ability to satisfy a costs award of $20,000 (i.e. the amount sought by it) or any other amount that might reasonably be expected as a costs award against her if the judicial review is unsuccessful. (And I note that Super 8 did not assert that solicitor-client, enhanced, or any other greater-than-Schedule-C costs were or might be warranted here i.e. assuming an unsuccessful JR.)

[46] I find that Super 8 failed to discharge its burden to show even a *prima facie* risk of non-payment of costs i.e. with no triggering of a practical burden on Dr. Haynes to provide financial disclosure answering (or attempting to answer) that risk or otherwise showing why security for costs should not be ordered: ***Jager Estate v Deadman***, 2019 ABCA 99 (Khullar JA as she then was) (paras 27, 32, and 33) and ***CNOOC Petroleum North America ULC v 801 Seventh Inc***, 2020 ABQB 224 (Dilts J.) (paras 7 and 8).

C. the merits of the action in which the application is filed

[47] In general, Alberta courts have held that R. 4.22(c) requires the Court to examine the action as a whole, which includes both the claim and the defence: see ***Parkland Industries Ltd v 897728 Alberta Ltd***, 2015 ABQB 10 at para 35; ***PM&C Specialist Contractors Inc v Horton CBI Limited***, 2015 ABQB 248 at para 23.

[48] More context for the action comes from the *AHRA* provision invoked by Dr. Haynes here, namely s 4 *AHRA* ("Discrimination re goods, services, accommodation, facilities"), which provides:

> No person shall

> (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
>
> (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public,
>
> because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.

[49] Super 8 argues that, from the beginning, this matter has been frivolous and vexatious, and the fact that the matter has been decided on two separate occasions by the Alberta Human Rights Commission shows the claim has little chance of success. It emphasizes that, on both the initial screening and review, the AHRC decision makers found no evidence of a link between any of the hotel actions complained about and Dr. Haynes' race or place of origin (i.e. the grounds of discrimination alleged by her).

[50] Dr. Haynes disagrees about lack of merit. She argues (among other things) that the AHRC decision makers ignored or overlooked evidence of differential treatment based on the asserted grounds or, alternatively, erred in implicitly making credibility findings against her i.e. in preferring Super 8's versions of various events without explaining their basis or bases for doing so.

[51] I find for Super 8 on one aspect, namely, the absence of any evidence that, whether Dr. Haynes was charged in full for her booking (i.e. on checking in) or give a credit-card pre-authorization only, she was treated differently than any other hotel guest or category of guests.

[52] Here I accept Super 8's evidence of the payment status of other guests at or around the time of Dr. Haynes' intended stay, namely, that those guests had pre-paid in full via online booking platforms, had done so on checking in, or gave pre-authorizations fully securing the hotel for all anticipated charges on checking in. Dr. Haynes provided no evidence of any differential treatment of her on this aspect, let alone any based on her personal characteristics.

[53] However, I also find that the AHRC decision makers failed to give due regard to Dr. Haynes' evidence or, alternatively, failed to explain why they preferred Super 8's evidence over hers, on various other aspects of her complaints, including some of differential treatment (and with no, or at least no apparent, non-discriminatory rationale for it) and others that, when viewed in light of any potential discrimination reflected by the first-noted aspects, may represent further instances of discrimination.

[54] Here I cite ***Moon v HMQ (Alberta – Justice and Solicitor General)***, 2020 AHRC 38 (Tribunal Chair M. Gottheil):

> In assessing whether there is a reasonable basis in the information to refer a complaint to a hearing, it is important to remember that the threshold is quite low. While the screening function does permit an assessment of the evidence, both in terms of quality and availability, **where, after such assessment, there remains a real question of credibility and the inferences that should be drawn from the evidence, the authority exercising the screening function should be extremely**

> **cautious in finally disposing of a complaint**. This is **particularly so in cases involving, for example, allegations of racial discrimination**. As the HRTO stated in *Grange* [*v Toronto (City)***,** 2014 HRTO 633], Tribunals have "long accepted that it is **often difficult to establish direct evidence given the subtle and nuanced ways in which racial discrimination manifests in our culture**." (para 43) (emphasis added)

[55] I am referring first to Dr. Haynes' evidence of calling the hotel, after making her online booking, to advise of a mobility limitation and to accordingly request a first-floor room, of speaking with the hotel manager about this, and being advised by him that that could and would be arranged. Per her, on or shortly after arrival, she was advised that the room booked for her was on the second floor, she asked the manager why that was so when he had assured her otherwise, and he replied that he remembered speaking with her but did not otherwise explain.

[56] Per Super 8, it may have been the manager or someone else who received that call. In any case, nothing was apparently noted about it e.g. in a "special requests" log or otherwise. In any case, with the hotel close to full around that time and, in any case, with things "always subject to change" (effectively Super 8's position), no promises would or could have been given, with at most a "we will try our best" response (if any) having been given to Dr Haynes.

[57] The AHRC decision makers emphasized that, in the end, Dr. Haynes was offered a first-floor room. However, they gave no or too little weight to Dr. Haynes' evidence on this aspect or, alternatively, did not explain adequately (or at all) why they preferred Super 8's.

[58] It may be that Super 8 advised Dr. Haynes that it could make no promises and that it would make "best efforts." However, that does not square with Dr. Haynes proceeding with her reservation i.e. attending at the hotel anticipating being able to stay on the first floor i.e. versus making other arrangements (i.e. at another hotel) to ensure a first-floor room or a higher-floor room with an elevator i.e. instead of gambling that a first-floor room would be available at the Super 8. And here Super 8 did not dispute that Dr. Haynes had a need or at least a preference for a first-floor room.

[59] Much of this evidence conflicts materially. If Dr. Haynes indeed made the follow-up call with the described requests, and if the hotel response was unconditionally positive, and given (as the evidence shows) that at least one first-floor room was available when she checked in, why was she booked on the second floor? And if it was the manager she spoke with and who (per her) acknowledged that he had done so, what did he understand her requests to be, and how did he respond to them? Even if he had said "best efforts", what efforts were exerted, if any?

[60] Super 8 argued that it would have been "insane" to book Dr. Haynes on the second floor if she had requested otherwise, if the request had been noted, and if it had been possible to accommodate her on the first floor.

[61] The point here is that, depending on how the conflicting evidence is analysed and credibility and reliability findings are made, it may turn out that this may have been exactly what happened here. In the (possible) absence of any plausible reason for the second-floor booking, one might reasonably infer that Dr. Haynes' personal characteristics played a role in that booking i.e. with her distinctive accent (which would have been apparently on the follow-up call) as a (possible) marker of difference.

[62] Further, Dr. Haynes gave evidence that, despite many obvious failed attempts to "tap" her payment, which prompted her to move away from the reception desk and try to contact her bank for assistance, the hotel manager did not suggest that she try inserting her card into the payment unit. Per her, things were different for the next party of guests arriving, whose representative also tried, unsuccessfully, to "tap" payment. With that guest, who Dr. Haynes noted was from a different racial group than her, the hotel manager offered assistance, namely, suggesting "card insertion" instead of tapping.

[63] Per Dr. Haynes, noting this interaction alerted or reminded her of the "insert" solution, which (when she returned to the desk) worked for her.

[64] Per her, this ("other cued; her not") was blatant differential treatment, accountable only by racial differences.

[65] Super 8 provided negligible, or no, evidence on this aspect.

[66] Before the Director, it argued that Dr. Haynes' account was implausible, noting that the manager would have quickly assisted anyone having "tapping" difficulties i.e. by advising or reminding the person to insert instead of "tap."

[67] However, this too calls for a credibility and reliability analysis. It may be that the "tap" episode did not unfold as Dr. Haynes swore. However, it is undisputed that she ended up having to call her bank or to try to do so i.e. was not immediately (or ever) cued by the manager to insert her card. And also that, once she inserted her card, payment (or pre-authorization) proceeded without a hitch i.e. she did not have any "credit" problems i.e. she in fact paid for her room or gave a satisfactory pre-authorization.

[68] It seems likely that Dr. Haynes was not cued and also that others were and that the difference would or at least could be attributable to racial differences.

[69] Further, concerning the first-floor room eventually shown to Dr. Haynes, her evidence is that the manager advised her three times that she should seek other accommodation i.e. at another hotel. Super 8's evidence did not dispute that evidence, seeking to justify that advice on the basis that, with Dr. Haynes having advised of a need for a quiet room, and with the room in question likely be unsatisfactory on that front (next to a busy doorway and with a family with young children booked in next door), the room was likely to be unsatisfactory for her.

[70] Per Dr. Haynes, the manager told her, as part of these discussions that, she should not call him with any complaints about the room. Per the manager, he told her that, with her being aware of the potential for noise, she should not call him with noise complaints.

[71] The question here is why the manager would suggest that Dr. Haynes should stay elsewhere. Presumably his job of finding a room for her and advising her of its potential problems ("likely to be noisy") was done i.e. it was up to her, advised of the potential problems, to advise whether she would take the room or not (effectively, "here's the room, for better or worse ... take it or leave it ... it's up to you.") Super 8 provided no rationale for why, in these circumstances, the manager would suggest that Dr. Haynes should stay elsewhere i.e. effectively make or at least suggest the choice for her.

[72] I acknowledge that, even on her account, the manager did not force her to leave.

[73] But the material question remains: why suggest that she leave?

[74] With no plausible explanation offered (i.e. beyond "I don't think you will like it", which was for her to decide), a rational inference may be discrimination, especially if coupled with findings of the same on either or both aspects reviewed above.

[75] The Chief's delegate took effectively the same view as the Director in finding no potential success for Dr. Haynes on any of these aspects.

[76] To the contrary, Dr. Haynes clearly has an arguable (at minimum) position on these issues.

D. whether an order to give security for payment of a costs award would unduly prejudice the respondent's ability to continue the action

[77] Dr. Haynes made no submissions on this point, nor did she provide any evidence from which I could infer such prejudice.

[78] Super 8's submissions were limited to noting Dr. Haynes' self-represented status ("has incurred no legal costs"), asserting that she has "knowingly prolong[ed] the proceeding to [create] extra legal costs for [Super 8]", and noting the rulings to date that her claim has no reasonable chance of success.

[79] With neither side addressing the potential undue prejudice of a security for costs award, I find this factor unengaged here.

E. any other matter the court considers appropriate

[80] Dr. Haynes did not point to any other factor here (i.e. to the extent not already addressed above).

[81] Super 8's submissions were limited to asserting that Dr. Haynes has "refused all reasonable offers of settlement" and also "refused to show deference to the dismissal decision "despite clear evidence that the complaint is groundless", that her "no merit" complaint has unnecessarily consumed AHRC resources, having been already dismissed twice, and is continuing to "abus[e] and misus[e] AHRC and the court process to satisfy [a] personal grievance unrelated to race or other protected grounds."

[82] The noted factors add nothing to Super 8's arguments reviewed above.

VI. Decision on security for costs

[83] Having considered and weighed the R 4.22 factors, I must now determine whether it is just and reasonable in the circumstances to grant the application for security for costs: ***Arraf v Royal View Surgical Centre Ltd***, 2024 ABKB 262 at para 28 citing ***Attila Dogan Construction v AMEC Americas Ltd***, 2011 ABQB 175 at paras 24–25.

[84] Whether or not to grant a cost award is, by the very nature of the wording of r 4.22, discretionary. As this Court has previously held, when it comes to security for costs, "[t]here are no absolutes": ***1251165 Alberta Ltd v Wells Fargo Equipment Company Ltd***, 2013 ABQB 533.

[85] After considering the factors in 4.22, I find that Super 8 has not met its burden to show that, on a balance of probabilities, the factors explored above are, viewed collectively, in its favour.

[86] In a nutshell, as explained above, Dr. Haynes has (at minimum) arguable positions on the merits in the upcoming judicial review, and Super 8 has not discharged its onus to show concerns, even *prima facie*, that Dr. Haynes may not be able to pay the reasonably anticipated costs of an unsuccessful judicial review.

[87] Accordingly, I dismiss Super 8's application for security for costs.

Heard on December 9th, 2025.
Dated at Edmonton, Alberta this February 10th, 2026.

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

Appearances:

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