

# In the Court of Appeal of Alberta

**Citation: Remington Development Corporation v ENMAX Power Corporation, 2026 ABCA 142**

**Date:** 20260430  
**Docket:** 2601-0077AC  
**Registry:** Calgary

**Between:**

**Remington Development Corporation**

Respondent

- and -

**ENMAX Power Corporation**

Applicant

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**Reasons for Decision of  
The Honourable Justice Kevin Feehan**

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Application for Permission to Appeal Costs

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**I. Overview**

[1] ENMAX applies for permission to appeal a costs decision of a chambers judge dated February 19, 2026, 2026 ABKB 114, pursuant to r 14.5(1)(f) of the *Alberta Rules of Court*, AR 124/2010, and s 26(8) of the *Surface Rights Act*, RSA 2000, c S-24. If granted permission, ENMAX intends that the costs appeal will be heard concurrently with the substantive appeal on the chambers judge's interpretation of s 25(1)(b) of the *Act*: 2025 ABKB 526, granted permission to appeal on December 4, 2025: 2025 ABCA 402.

[2] The substantive decision of the chambers judge, under appeal, was itself given on appeals from a decision of the Land and Property Rights Tribunal: 2022 ABLPRT 1412. Both ENMAX, the operator, and Remington, the owner, appealed the Tribunal's decision.

[3] Permission to appeal the costs decision is granted and will be heard concurrently by the same panel at the same time as the substantive decision.

**II. Background**

[4] On September 15, 2025, the chambers judge issued the substantive decision on the merits of the appeals, ordering that ENMAX compensate Remington by making a one-time payment of \$11,078,123, under s 25(1)(b) of the *Act*, plus interest of \$794,715.98. ENMAX sought permission to appeal that decision to this Court, and permission to appeal was granted on December 4, 2025, on the single ground of the “[chambers] judge’s interpretation of s 25 [of the *Surface Rights Act*] including his finding that compensation under s 25(1)(b) was not restricted to the Subject Lands and included compensation for losses related to the delayed development of [the] entirety of the Interlinked Lands” as a question of statutory interpretation. Permission to appeal various fact findings made by the chambers judge was denied, and Remington's application to cross-appeal alleging that compensation was also owing under ss 25(1)(c) and (d) of the *Act* was also denied.

[5] The parties then appeared before the chambers judge on the matter of costs and the costs decision was rendered on February 19, 2026, providing that Remington was entitled to solicitor-client costs of both appeals before the chambers judge. The chambers judge invited the parties to rely upon his reasons for decision in determining whether they could reach agreement on actual quantum. The parties entered into an agreement to attempt to quantify costs with the following proviso:

Each party shall preserve all of its rights, benefits and privileges with respect to the appeal to the ABCA as it relates to costs. For example, we understand that

Remington will take the position of that, even if ENMAX is successful, it is still entitled to its costs of the court below. ENMAX takes a different position. In any event, both parties will be able to advocate whatever position they deem appropriate in that regard.

[6] As a result of the costs decision, and that agreement, the parties agreed that ENMAX paid solicitor-client costs to Remington of \$2,528,771.80, plus expert fees of \$544,203.74 on March 24, 2026.

### III. Leave to Appeal under the *Surface Rights Act*

[7] The relevant provisions of the *Act* are:

**26(1)** The operator or any respondent named in a compensation order may appeal a compensation order made under this Act to the Court of King's Bench as to the amount of compensation payable or the person to whom the compensation is payable or both.

...

(7) The Court

...

(d) shall make directions as to costs of the appeal in accordance with subsection (9).

(8) Any party may, with the permission of a judge of the Court of Appeal, appeal from the judgment of the Court of King's Bench to the Court of Appeal.

(8.1) On permission to appeal being granted, the appeal must proceed in accordance with the rules and practice of the Court of Appeal, except as to costs.

(9) The costs of an appeal under this section,

(a) when the appeal is by the operator, are payable by the operator on the basis of the lawyer's charges to the client regardless of the result of the appeal, unless the Court finds special circumstances to justify it to award costs on any other basis, or

(b) when the appeal is by the owner or occupant,

(i) if the appeal is successful, are payable by the operator on the basis of the lawyer's charges to the client, and

(ii) if the appeal is unsuccessful, are payable on the basis of any costs incurred in the proceeding determined under the *Alberta Rules of Court* to the party, if any, that the Court in its discretion may direct.

[8] The test for leave to appeal a matter under the *Surface Rights Act* was set out in *Ranger Oil Limited v Ferguson*, [1995] AJ No 760, para 6, adopted by *Imperial Oil Resources v 826167 Alberta Inc*, 2006 ABCA 62, para 2, 88 LCR 191:

... leave should be granted if one or more of the grounds of appeal raised has a reasonable prospect of success and that success would have a significant impact on the parties. Leave should also be granted where the appeal raises a question of law or procedure of importance to the operation of the Act.

[9] That test has been accepted by many decisions under the *Act*: *Canadian Natural Resources Limited v Bennett & Bennett Holdings Limited*, 2008 ABCA 440, para 5, 75 RPR (4th) 7, *EOG Resources Canada Inc v Lemay*, 2009 ABCA 183, para 3, 457 AR 185; *Enbridge Pipelines (Athabasca) Inc v Karpetz*, 2010 ABCA 185, para 16, 490 AR 166; *Sabo v AltaLink*, 2022 ABCA 233, para 7.

*i. Reasonable Prospect of Success*

[10] ENMAX says the costs appeal is intimately connected to the substantive appeal; whatever decision is made by the panel in the substantive appeal under s 25(1)(b) will specifically inform costs under ss 26(9)(a) and (b). This is particularly because s 26(9) provides in subsection (a) that the court may find “special circumstances to justify it to award costs” of an operator’s appeal on a basis other than payment by the operator of costs for the lawyer’s charges to the client. This Court outlined some criteria that may be included in the determination as to what comprises special circumstances in *Nissen v Calgary (City)*, 1983 ABCA 307, para 12, 29 Alta LR (2d) 345.

[11] Likewise, a determination as to whether Remington was wholly or substantially successful in its appeal in front of the chambers judge, will determine whether s 26(9)(b)(i) or (ii) applies, whether costs should be determined pursuant to the *Alberta Rules of Court* or otherwise what “in its discretion [the court] may direct”. ENMAX says if it is substantially successful, it has already paid the costs award to Remington, and it would be important to know if all or any of that would need to be repaid.

[12] ENMAX also says that generally, it would have been entitled to appeal the costs decision at the same time it appealed the substantive decision without further permission to appeal, if the costs decision had been issued with the substantive decision or before permission to appeal the substantive decision was granted, r 14.5(1)(e). The delayed timing of the costs decision should not affect its right to appeal the costs decision when it is so necessarily linked to the substantive decision.

[13] More specifically, ENMAX says the chambers judge varied the decision of the Land and Property Rights Tribunal in a novel and unconventional compensation analysis on the basis that this matter involved “extremely unique (indeed, entirely unprecedented) factual circumstances”. ENMAX says that was a product of a misunderstanding of the interpretation and application of the *Act*. That logic, relevant to the substantive decision, flows directly into the costs decision. A successful appeal decision on that submission would amount to a substantial reduction in costs.

[14] Finally, and apart from the link between the substantive and costs decisions, ENMAX says the chambers judge erred in the costs decision in finding that Remington was substantially successful in the appeals before the chambers judge. It says he failed to properly consider the proportionality and reasonableness of the costs award and failed to properly interpret the *Act* in awarding solicitor-client costs.

[15] Remington says the costs were appropriate because ENMAX had advanced an entirely new theory of damages and called extensive expert evidence in support of that new theory in the hearing before the chambers judge.

[16] Remington says it was clearly the successful party. It appealed seeking a higher compensation award, ENMAX appealed seeking a lower compensation award, and the chambers judge increased the amount of the compensation awarded by the Land and Property Rights Tribunal. It says it was successful on its own appeal and successfully defended ENMAX's appeal.

[17] On the submissions made on this application, it appears there is a reasonable prospect of success for the ENMAX costs appeal if it is successful on the substantive decision; it cannot be said the costs appeal is frivolous, vexatious, or unlikely to succeed.

*ii. Significant Impact on the Parties*

[18] The dollar figures themselves indicate a significant impact on the parties. Remington's counsel says it incurred costs on the hearing before the chambers judge of \$2,528,771.80, plus expert fees of \$544,203.74, in addition to the fees awarded by the Land and Property Rights Tribunal of \$1,051,150.67.

[19] Remington says even if ENMAX is successful on appeal, it will not be entitled to reimbursement for the costs of the appeals before the chambers judge “unless the court finds special circumstances to justify [an] costs award on any other basis [than] presumptive solicitor-client costs”. It says the chambers judge found no special circumstances, and no special circumstances exist which would warrant a different approach on appeal to this Court.

[20] ENMAX says as a party which regularly appears before the Land and Property Rights Tribunal, the proper interpretation of the cost provisions of the *Act*, are important not only on this matter, but on many matters on a go-forward basis.

[21] Overall, it appears that the result of the costs appeal, depending on determination of the substantive decision, will have a significant impact on these parties.

iii. Question of Law or Proceeding of Importance to the Operation of the Act

[22] As indicated above, ENMAX says the primary question before this Court on the substantive appeal is the interpretation of s 25(1)(b) of the *Act* and that interpretation will inform the interpretation of the costs provision, s 26(9)(a) and (b). It says these are questions of statutory interpretation and questions of law which will have a profound effect on parties under the *Surface Rights Act* and appearing before the Land and Property Rights Tribunal. Proper statutory interpretation of these provisions is important not only to these parties, but to the ongoing reliance upon these provisions in the *Act* by parties in the future.

[23] These cost provisions were intended as “a protection for landowners for what in substance amounts to an expropriation of surface rights from a landowner by an operator ... who has a right to exercise entry”: *Conocophillips Canada Resources Corp v Lemay*, 2009 ABQB 72, para 222, 453 AR 227. As this Court said in *Imperial Oil Resources*, para 2, and *Sabo*, para 7: “the underlying issues are of significant general importance to many landowners and utilities operating in Alberta”.

[24] Remington says even if ENMAX is granted permission to appeal the costs award, there will be no record upon which this Court can base a determination of quantum because the chambers judge did not make an assessment regarding quantum, but left that determination to the parties, which determination was concluded on the basis of the without prejudice agreement set out in paragraph 5 above. While this Court may not be able to set a specific quantum, its role in interpreting the provisions of the *Act*, as they relate together, will be informative for any assessment which may follow. It appears the costs appeal will address questions of law of importance in the interpretation of the *Act*, and therefore in the operation of the *Act*.

#### IV. Conclusion

[25] The application is granted. ENMAX is given permission to advance this costs appeal. The costs appeal shall be conjoined with the substantive appeal to be heard by the same panel at the same time.

Application heard on April 16, 2026

Reasons filed at Calgary, Alberta  
this 30th day of April, 2026

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Feehan J.A.

**Appearances:**

L.G. Vogeli, KC (no appearance)  
A.M. Stoicheff  
for the Respondent

D.W. McGrath, KC  
L.H.O. Olthafer (no appearance)  
T. Wagner  
for the Applicant