

# Court of King's Bench of Alberta

**Citation: Theatre Network v CSIC Services, 2025 ABKB 111**

**Date:** 20250226  
**Docket:** 2103 17690  
**Registry:** Edmonton

Between:

**Theatre Network Society**

Plaintiff

- and -

**CSIC Services & Holding Ltd**

Defendant

---

**Reasons for Decision  
of the  
Honourable Justice Donald Lee**

---

## **Introduction**

[1] The Plaintiff Theatre Network Society [TN] say that it must complete construction on the South exterior wall of its Roxy Theatre but cannot do so without trespassing in some manner on the neighboring property owned by the Defendant CSIC Services [CSIC].

[2] As such, TN has made this Summary Judgement Application seeking an easement of necessity on CSIC's property to the extent necessary to complete construction of the South exterior wall of the Roxy Theatre. CSIC cross applies for Summary Dismissal of TN's Summary Judgement Application.

[3] TN is in the process of having the Roxy Theatre re-constructed as the previous Roxy Theatre had been destroyed by fire. Re-construction of the Roxy Theatre began in 2019 however there is work that must still be done to complete the South exterior wall of the Roxy Theatre that includes safely removing the formwork, preparing the concrete to receive waterproofing and insulation, and installing cladding to complete the building envelope.

[4] TN argues that it is not possible to perform the work necessary to complete the South exterior wall of the Roxy Theatre without direct access to TN's neighboring property as workers will need access to the adjacent property at grade level, at roof level, and the airspace above these areas.

[5] TN also submits that the incomplete state of construction of the South exterior wall of the Roxy Theatre poses significant hazards, including to the public at large especially those who attend theatre performances in the building, as well as to the property of both owners abutting the lot line, and to the occupants of adjacent buildings.

### Issue

[6] This Court must determine whether TN is entitled to an easement of necessity so that it is able to complete construction on the South exterior wall of the Roxy Theatre.

### The Law

[7] An easement of necessity requires that the easement must be necessary to use or access the property. If access without it is merely inconvenient, the easement will not be implied.

*Nelson v 1153696 Alberta Ltd.*, 2011 ABCA 203, at paras. 37 and 43

[8] Easements of necessity are those without which no enjoyment of the property at all would be possible.

*Nelson v 1153696 Alberta Ltd.*, supra, at para. 43

[9] Necessity is assessed at the time of the original grant. The necessity test has not been reduced to a requirement of "practical necessity" and remains the "strict test". Preference for a quicker and more convenient means of access by way of an easement is irrelevant. If there is another way of accessing the subject property, even via water access, an easement of necessity does not apply.

*Toronto-Dominion Bank v Wise*, 2016 ONCA 629, at paras. 20 to 21, 24 to 25 and 32

[10] The necessity must not be created by the party claiming the easement.

**Condominium Plan No. 7810477 (Owners) v Condominium Plan No. 7711723 (Owners)**, 1997 CanLII 14869 (AB KB), at para. 52, affirmed 1999 ABCA 282.

[11] The requirement in Alberta remains the strict necessity test which means that the landowner has "no other way" of accessing the locked land and that the land is "absolutely inaccessible or useless" in the absence of an implied right of way.

*Bairn Corporation v Gabert*, supra, at paras. 75 and 80

## Analysis

[12] TN submits that its inability to access the exterior south wall of the new building provides the basis for an easement of necessity. However, the test for an easement of necessity requires that the land for which an easement is sought is completely inaccessible without the easement. An easement of necessity will only be implied if there is no other way for reaching the lands. An inconvenience in reaching the land is not enough to imply an easement. In the present case, TN has access to its Lands from both the east via 124 Street and the west via the lane [**Moss Questioning, page 3, lines 19 to 25**]. Therefore, TN's inability to complete the south wall of the new building is not entirely due to lack of access to its Lands.

[13] Further, a party claiming a right of way by easement of necessity must not have created the necessity. In the present case, the easement of necessity sought by Theatre Network was created by TN as its Lands were completely vacant when it was designing the new building. It could have chosen a design that did not require access to the CSIC Lands. Instead, even though TN knew that it did not have consent to access the CSIC Lands prior to construction, it proceeded with construction of the new building with a design that would require access to CSIC Lands to complete the south wall.

[14] The new building on the TN Lands has been operating as a theatre for several years now so it cannot demonstrate that it is necessary to access the CSIC Lands for the "use and enjoyment" of its lands.

[15] TN also claims that it is incumbent on the Court to address the safety concerns in the circumstances by exercising its equitable jurisdiction to grant an easement, relying on a Group 2 Architecture report, dated August 4, 2021 (the "Ramsey Report") [**Ramsey Affidavit, Exhibit A**]. TN submits that the incomplete south wall of the new building poses serious safety concerns.

[16] Once again if there were safety concerns related to the incomplete south wall, TN and its architect elected to proceed with construction of the new building even though they knew that they did not have CSIC's consent to access the CSIC Lands to complete the south wall of the new building [**Moss Questioning, page 11, line 13 to page 12, line 17; Ramsey Questioning, page 12, line 8 to page 13, line 1 and page 16, lines 6 to 20**].

[17] The Ramsey Report is over two and a half years old. The south wall is still incomplete, and TN has been operating the new building as a theatre open to the public for several years. Further, safety concerns were not raised in the more recent report dated July 6, 2023, from the TN's engineer [**Elliot Affidavit, Exhibit A**] when TN's engineer inspected the new building in February 2023. She did not observe any cracking or movement of the new building [**Elliot Questioning, page 12, lines 1 to 10**].

[18] Important as well, TN has been granted occupancy of the new building by the City of Edmonton thru an occupancy certificate several years ago, so there should be no serious safety concerns with the theatre.

## Conclusion

[19] TN's situation is most unfortunate, but it is a result of a specific decisions they made when they had an empty lot and began reconstruction of the new Roxy Theatre. There has been no conduct or misconduct by CSIC in this matter that I am aware of that either mislead TN or that TN can now rely on.

[20] Indeed, the parties have tried diligently to resolve this matter on financially acceptable terms and indemnifications when CSIC did not have to do so. These settlement attempts failed after several months of attempted resolution by counsel on behalf of both parties. The fact that the property on the other side of the Roxy Theatre agreed to allow access is also irrelevant.

[21] There is no basis in common law or under any Alberta statute on which TN is entitled to an easement over the CSIC Lands, so its action is summarily dismissed and accordingly CSIC's application for Summary Dismissal is granted. Costs are awarded to CSIC on both the TN failed Summary Judgement Application, and CSIC's successful Cross Application for Summary Dismissal.

Heard on the 3<sup>rd</sup> day of February, 2025.

**Dated** at the City of Edmonton, Alberta this 26<sup>th</sup> day of February, 2025.

---

**Donald Lee**  
**J.C.K.B.A.**

**Appearances:**

Grayson Bateyko  
for the TN

Janice Agrios K.C.  
for the CSIC