

In the Court of Appeal of Alberta

Citation: Piikani Nation v McMullen, 2026 ABCA 179

Date: 20260529

Docket: 2501-0269AC

Registry: Calgary

Trial Docket: 1001-10326

Between:

**Piikani Nation, Piikani Nation Chief and Council,
Piikani Oldman Hydro Limited Partnership, Chief Reg Crow Shoe,
Councilor Adam North Peigan, and Councilor Erwin Bastien**

Respondents

- and -

Dale McMullen

Applicant

Trial Docket: 1101-11127

And Between:

Dale McMullen

Respondent

- and -

Piikani Nation

Applicant

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

Application for Security for Costs

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The Honourable Justice Kevin Feehan**

[1] Piikani Nation *et al* apply for security for costs pending appeal from Dale McMullen, arising out of his appeal of Endorsement #33 of the case management judge for all Piikani Case Management Actions, as defined in Endorsement #1.

[2] Mr McMullen's notice of appeal alleges that another party to these actions, Liliana Kostic, improperly distributed a document, the Navigant Report, claimed to be privileged by the Piikani Nation, and the case management judge did not properly address that breach. The Navigant Report had been previously sealed by order of ACJ Rooke on July 12, 2014, and Ms Kostic had an outstanding *fiat* request to unseal the Navigant Report.

[3] The case management judge ordered that the electronic copy of that report received by the Court be placed on a USB device, put into a sealed envelope, and all other Court copies destroyed. He ordered that all copies of the report received by other recipients also be destroyed. The documentation provided to the Court by Ms Kostic, which included the report, could be resubmitted, with the report redacted. The case management judge indicated that Ms Kostic's *fiat* request to unseal the report would be addressed in due course. That application was heard in February 2026 and is currently under reserve.

[4] Mr McMullen has provided no written submissions in opposition to the security for costs application. In oral submissions, Mr McMullen spoke to the *United Nations Declaration on the Rights of Indigenous Peoples*, the history of the background litigation, and the economic and personal effect of the ongoing litigation on him, but he did not significantly address the necessary criteria for the current application.

[5] Mr McMullen acknowledged in prior proceedings that he is impecunious and is a judgment debtor in the amount of nearly \$300,000 for costs arising out of previous proceedings in this matter. Approximately \$220,000 is owed to the Piikani Nation. It does not appear that Mr McMullen has any exigible assets in Alberta, apart from his personal residence which has numerous registrations against it, including a mortgage and 12 writs of enforcement. A Personal Property Registry Search reveals that Mr McMullen is an individual debtor on 13 writs, five of which have been issued by the Piikani Nation.

[6] Rules 4.22 and 14.67 of the *Alberta Rules of Court* govern security for costs applications:

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;
- (e) any other matter the Court considers appropriate.

14.67(1) A single appeal judge may order a party to provide security for payment of a costs award pursuant to Part 4, Division 4.

(2) Where a party does not provide security as ordered, the appeal is deemed to have been abandoned and the other party is entitled to a costs award.

[7] The test for granting security for costs is set out in detail in **Poole v City Wide Towing and Recovery Service Ltd**, 2020 ABCA 102, paras 47-51, 62 CCEL (4th) 184; see also **Milot Law v Sittler**, 2024 ABCA 116, para 15. As set out in **Poole**, para 47, “[t]he applicant bears the burden of establishing, on a balance of probabilities, that it is just and equitable to order security for costs or that the respondent will be unable to pay costs that may be awarded”: **PricewaterhouseCoopers Inc v Perpetual Energy Inc**, 2020 ABCA 36, para 18, 75 CBR (6th) 179, leave to appeal refused, 2020 ABCA 254. This is a disjunctive test. See also **Henderson (Re)**, 2022 ABCA 43, para 8; **Skolney v Nisha**, 2018 ABCA 78, para 15, 10 RFL (8th) 34.

[8] A security for costs order is discretionary and balances the reasonable expectations of the parties with their rights in order to arrive at a just and reasonable outcome: **Parker v Parker**, 2019 ABCA 114, para 4, 89 Alta LR (6th) 104; see also **Banovich v Banovic**, 2025 ABCA 231, paras 5-7; **Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)**, 2026 ABCA 2.

[9] In an earlier security for costs order against Mr McMullen made January 22, 2026, he failed to pay security as requested and his appeal of an earlier endorsement order was struck.

[10] The above criteria set out in r 4.22 have been met by the Piikani Nation; it is not likely it will be able to enforce an order or judgment against Mr McMullen in Alberta, it does not appear that Mr McMullen has the ability to pay a costs award, and it does not appear Mr McMullen has merit to his appeal.

[11] The application of the Piikani Nation is granted. Security for costs is awarded in the amount of \$7,000 to be paid within four weeks of the date of filing of these Reasons. If costs are not paid

within that time, Mr McMullen's appeal will be deemed to be abandoned pursuant to r 14.67(2) of the *Rules of Court*.

[12] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on May 27, 2026

Reasons filed at Calgary, Alberta
this 29th day of May, 2026

Feehan J.A.

Appearances:

C.G. Jensen, KC (no appearance)
M. Albert
for the Respondents

Applicant D. McMullen