

Court of King's Bench of Alberta

Citation: Urie v ATCO Ltd, 2026 ABKB 486

Date: 20260702
Docket: 2401 12180
Registry: Calgary

Between:

Patricia Urie as Representative Plaintiff

Plaintiff

- and -

ATCO Ltd., operating under the firm name and style of Canadian Utilities Ltd., ATCO Energy Ltd. and ATCO Electric Ltd.

Defendants

**Reasons for Decision
of the
Honourable Justice M.H. Hollins**

[1] The Plaintiffs are the residents and businesses of the Town of Jasper who are claiming damages from the ATCO Defendants as a result of the interruption of electrical power following a wildfire in 2022.

[2] This class action has not yet been certified. ATCO wants its application for summary dismissal heard in advance of the certification. It says that doing so may obviate the entire action or, at a minimum, narrow the issues going forward. The Plaintiffs oppose the hearing of any portion of the summary dismissal application in advance of certification, although they have identified several issues which they agree could be properly heard along with the certification motion.

[3] ATCO has therefore filed this sequencing application to determine the order in which these matters will proceed.

[4] For the reasons below, certain of ATCO's preliminary issues will be heard and determined prior to the certification motion.

The Test for Sequencing

[5] The Plaintiff says that there is a rebuttable presumption that certification should proceed first. ATCO says that any such presumption has been supplanted by more recent case law, emphasizing the balancing of fairness and efficiency in class action proceedings. I agree with ATCO that no such legal presumption remains.

[6] In *British Columbia v The Jean Coutu Group (PJC) Inc*, the trial judge case managing the class action directed that all defence motions be heard with the certification motion. The Court of Appeal reversed that decision in respect of the two appellate Quebec defendants, holding that their motion challenging the BC courts' jurisdiction should be heard in advance of the certification motion; *Jean Coutu*, 2021 BCCA 219.

[7] Justice Butler, writing for a unanimous BCCA, rejected any presumption that a certification motion should be heard prior to other motions; *Jean Coutu* at para. 37. I also reference Martin, J (as she then was), whose approach to sequencing focused on the overarching objectives of class action litigation, namely, judicial economy, access to justice and accountability of wrongdoers; *Stewart v Enterprise Universal Inc*, 2010 ABQB 259.

[8] The Court in *Jean Coutu* set out the following considerations for a sequencing decision:

- (a) past delay by the plaintiff in proceeding to certification,
- (b) the possibility that pre-certification motions will unnecessarily or unfairly delay the certification hearing,
- (c) the extent to which a preliminary application may dispose of or narrow the issues in the litigation, or promote settlement thereof, which involves identifying the overlap of issues between certification and the proposed pre-certification motions, and
- (d) the possibility of unnecessary costs (whether of an unsuccessful pre-certification motion or of an unnecessary or broader-than-necessary certification motion).

Jean Coutu at para. 33.

[9] The court's responsibility is, at its most basic, to determine the most efficient and fair way of proceeding. I will address delay and possible delay first, following which I will look at the issues raised in ATCO's summary dismissal application.

Delay

[10] Any delay by the Plaintiffs in proceeding to certification is a nominal factor in this case. There has been some delay to this point, given that the Statement of Claim was filed almost 2 years ago. However, the Plaintiffs' Application for Certification has now been filed, along with Ms. Urie's supporting Affidavit. On the other hand, ATCO's motion for summary dismissal is also filed and ready to proceed.

Costs and Temporal Efficiencies

[11] Reducing unnecessary costs and maximizing efficiency requires that I consider the potential overlap between the issues for certification and the issues in the proposed summary dismissal motion. At most certification hearings, the bulk of the evidence (and the time spent) relates to s.5(1)(a) of the *Class Proceedings Act*, SA 2003, c.C-16.5, namely whether there is a

cause of action. Where those issues will likely overlap significantly with issues raised on pre-certification motions, there may be little or no efficiency in hearing them separately.

[12] The Plaintiffs' claims are primarily in negligence, alleging that ATCO breached its duty of care to the Jasper residents by, *inter alia*, failing to properly design, construct and operate the Interconnection Project – a single-circuit line constructed to deliver power to Jasper. The Plaintiffs allege that ATCO failed to properly assess the risks associated with possible forest fires and thus failed to adequately mitigate those risks.

[13] ATCO applies to summarily dismiss the Plaintiffs' claims as having no merit for the following reasons:

- (a) The Interconnection Project was approved by a number of provincial and federal government agencies, following consultation, impact assessments, written submissions, and an oral hearing before the Alberta Utilities Commission. ATCO argues that it was subject to - not in control of - these processes and was obligated to construct the line as directed. ATCO therefore characterizes the portions of the Plaintiffs' claim blaming it for the design and construction of the line as an impermissible collateral attack on those regulatory decisions;
- (b) The Plaintiff cannot recover pure economic losses such as living expenses or business interruption losses;
- (c) ATCO's contracts with the Plaintiff exclude these claims, as do certain provisions of the *Electric Utilities Act*, SA 2003, c.E-5.1 and its regulations;
- (d) The Plaintiff's claims are barred by operation of the *Limitations Act*, RSA 2000, c.L-12;
- (e) ATCO Ltd and ATCO Energy Ltd are improperly named. Further, ATCO Electric has no duty of care to guarantee electrical supply or prevent forest fires; and
- (f) There is no causal connection between ATCO and any damages suffered by the Plaintiff.

[14] Of these, the Plaintiff agrees that the first four issues – collateral attack, pure economic loss, exclusionary provisions and limitations - could be properly heard with the certification motion, although not before.

[15] I agree with the Plaintiff that some of the proposed arguments for summary dismissal are ill suited to preliminary determination: issues of negligence, causation and duty of care generally. These will likely involve a great deal of factual, and potentially conflicting, evidence. The preparation of Affidavits, the conduct of cross-examinations, and the drafting of legal arguments consolidating and presenting that evidence, is a long and expensive process.

[16] I also agree with ATCO that there are some issues that are primarily or almost exclusively legal in nature, the resolution of which will not require extensive or highly contested evidence.

[17] For example, if the contractual exclusions relied on by ATCO were found to be operable, they might, depending on the interpretation of their scope, be a full answer to the Plaintiff's claims. As another example, if the limitations defences raised were an answer to certain of the claims against ATCO, there would be fewer issues capable of certification. The doctrine

governing the recoverability of pure economic loss may narrow the scope of damages before certification. Even the arguments on collateral attack, if successful, would narrow and define the scope of ATCO's liability.

[18] While I appreciate the Plaintiffs' suggestion that these issues could be heard concurrently with the certification, respectfully, that would be counterintuitive to the efficiencies available to the certification process by deciding some of these discreet issues in advance.

[19] I considered ATCO's arguments concerning the existence and scope of its duty of care (paragraphs 30-34 of the Application for Summary Dismissal). However, these seem to be alternative iterations of other arguments that present more clearly or more narrowly.

[20] For example, an investigation of ATCO's role within the design and construction process result should provide a clear description of what ATCO was expected to do in the construction of the Interconnection Project. Whether it met those expectations will be a separate and more evidence-centred inquiry. Similarly, exclusionary clauses may eliminate or define ATCO's duty of care but determining whether ATCO breached whatever duty remains, if any, will require a broader examination of evidence.

[21] Defining ATCO's duty of care pre-certification provides efficiencies while preserving fairness for the parties. Determining whether ATCO in fact breached its duty of care - if it has a duty of care - does not offer the same benefits nor carry the same cost.

Conclusion - Issues to be Heard Before Certification

[22] Therefore, the following issues will be scheduled for hearing prior to certification:

- (a) the defence of collateral attack (in terms of defining what duty, if any, ATCO Electric had in the design and construction of the Interconnection Project but not – assuming any duty exists – whether ATCO breached that duty),
- (b) the recoverability of pure economic losses,
- (c) the applicable limitation periods, and
- (d) the interpretation of exclusionary clauses.

[23] I ask that counsel contact my office with an indication of how much time will be required for hearing, after which we can discuss scheduling and filing deadlines.

Heard at the City of Calgary, Alberta this 1st day of June, 2026

Dated at the City of Calgary, Alberta this 2nd of July, 2026.

M.H. Hollins
J.C.K.B.A.

Appearances:

David Tupper, KC and Randell Trombley
for the Applicants/Defendants, ATCO Ltd., ATCO Energy Ltd.
and ATCO Electric Ltd.

Mark Freeman and Adam Bordignon
For the Respondents/Plaintiffs, Patricia Urie
as Representative Plaintiff