

In the Court of Appeal of Alberta

Citation: Northback Holdings Corporation v Alberta (Information and Privacy Commissioner), 2026 ABCA 256

Date: 20260729
Docket: 2501-0334AC
Registry: Calgary

Between:

Northback Holdings Corporation

Applicant

- and -

Office of the Information and Privacy Commissioner

Respondent

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

Application for Permission to Intervene

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[1] The applicant, the Canadian Taxpayers Federation (“CTF”), seeks permission to intervene in an appeal by Northback Holdings Corporation (“Northback”) of the decision in ***Northback Holdings Corporation v Alberta (Environment and Protected Areas)***, 2025 ABKB 617. The decision dismissed Northback’s application for an order of mandamus to compel the respondent, the Office of the Information and Privacy Commissioner (“OIPC”) to accelerate its review of two requests for information under the *Freedom of Information and Protection of Privacy Act*, SA 2000 c F-25 (the “Act”) about the denial of approval for Northback’s proposed coal project in southern Alberta.

[2] Northback has no position on the intervention application and OIPC opposes.

[3] Pursuant to rules 14.37(2)(e) and 14.58(1) of the *Alberta Rules of Court*, Alta Reg 124/2010, a single justice of this Court may grant permission to intervene and impose conditions for the intervention.

[4] Intervention may be granted where the applicant is either: a) “specially affected by the decision”, or b) “has some special expertise or insight bearing on the issues facing the court”. The purpose underlying an intervention “is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal”: ***R v Morgentaler***, 1993 CanLII 158 (SCC) at para 1, [1993] 1 SCR 462; ***JJ v AK***, 2025 ABCA 113 at para 13 [***JJ***].

[5] The CTF is a not-for-profit federal corporation that advocates for government accountability. “In furtherance of its mandate, the CTF engages in public interest litigation, public education campaigns and policy research, including extensive work on government transparency and freedom of information. The CTF has direct, substantial and ongoing experience with freedom-of-information regimes across Canada”, filing more than a thousand freedom-of-information requests throughout Canada annually (Memorandum of the CTF at para 2).

[6] The CTF asserts that the issues raised in this appeal about timely access to government information, and the role of the courts in addressing systemic delays, are of significant public interest. By way of intervention, it seeks to ensure that the interest of taxpayers and members of the public are represented.

[7] As set out in ***JJ*** at paragraph 14, various factors may be considered in determining whether intervention should be granted, including:

- 1) Will the intervenor be directly affected by the appeal;

- 2) Is the presence of the intervenor necessary for the court to properly decide the matter;
- 3) Might the intervenor's interest in the proceedings not be fully protected by the parties;
- 4) Will the intervenor's submission be useful and different or bring particular expertise to the subject matter of the appeal;
- 5) Will the intervention unduly delay the proceedings;
- 6) Will there possibly be prejudice to the parties if intervention is granted;
- 7) Will intervention widen the *lis* between the parties; and
- 8) Will the intervention transform the court into a political arena?

See e.g. *R v Vallentgoed*, 2016 ABCA 19 at para 5; *Styles v Canadian Association of Counsel to Employers*, 2016 ABCA 218 at para 15; *JH v Alberta (Minister of Justice and Solicitor General)*, 2019 ABCA 420 at para 4.

[8] Importantly, “intervenors cannot raise new issues”, and should generally not challenge findings of fact or take a position on the outcome of the appeal: *Reference Re Clean Electricity Regulations (Canada)*, 2026 ABCA 1; *JJ* at para 15. An “intervenor in an appellate court must take the case as [they] find it and cannot, to the prejudice of the parties, argue new issues which require the introduction of fresh evidence”: *Papaschase Indian Band (Descendants of) v Canada (Attorney General)*, 2005 ABCA 320 at para 3; *Jonsson v Lymer*, 2019 ABCA 113 at para 25.

[9] The parties to this appeal have not claimed any particular prejudice if intervention is granted, nor is there a risk of delay. This appeal is set to be heard on December 11, 2026, and the parties have filed their factums and extracts. Ample time is available before the hearing date for the filing of intervenor materials and any responses.

[10] The decision under appeal finds that fast-tracking a request for access to information would be detrimental to other files at the OPIC and creates an “equitable bar” to relief. The important issues in the appeal raised by the parties are the consequences of delay and the impact of “queue jumping” and whether a selective mandamus order adversely affects other participants, and if so, how. Northback has raised the quasi-constitutional nature of the relevant legislation in its written submissions on these issues but has not submitted any *Charter*-related arguments nor raised s 2(b) and freedom of expression specifically.

[11] The CTF has a systemic interest and particular expertise in the timely operation of freedom-of-information schemes both nationally and provincially. It also has a general interest in the broader implications this appeal could have on the integrity of those freedom-of-information schemes, beyond the submissions of either party to the appeal. OPIC further acknowledges that the CTF has a different perspective than the parties to the appeal, given its focus on the public interest.

[12] In the oral hearing of this application however, it became apparent that these are not the areas upon which the CTF seeks to intervene in this appeal. Rather, the CTF asks to present submissions on how the quasi-constitutional nature of the legislation is necessarily derived from the fundamental values and protections afforded under s 2(b) of the *Charter*. While the CTF does not propose to argue a breach of the right to freedom of expression in this matter, or argue a new error in the court below, it seeks to make submissions that the “right of access to government information . . . is grounded in the constitutional protection of access under s 2(b) of the *Charter* in appropriate circumstances”: Memorandum of the CTF at para 11. It states such submissions fall naturally within Northback’s quasi-constitutional arguments. The CTF will limit itself to arguing existing jurisprudence, presenting only legal argument rather than presenting new evidence.

[13] Considering all the submissions and materials before me, including those of OIPC opposing the application, I am not satisfied the CTF has met the test for intervention.

[14] First, I agree with the submissions of OPIC that Northback is well-represented in this appeal and did not raise any issue with respect to s 2(b) of the *Charter*, nor did OPIC in response. The submissions proposed by the CTF, whether limited to previous jurisprudence or not, would raise a new constitutional dimension to the appeal focusing on freedom of expression under the *Charter*. This Court’s view is that raising new issues on appeals should be largely avoided, as it “risks trespassing outside the frame of [appellate] jurisdiction”, as well as the principle of finality of litigation. “The rule particularly applies where a party seeks to raise a constitutional argument for the first time on appeal and in the absence of a contextual evidentiary foundation”: **Webber Academy Foundation v Alberta (Human Rights Commission)**, 2018 ABCA 207 at paras 47-48.

[15] Whether there is a sufficient record below in which to assess a new issue, was also of concern to the Court in **R v Mian**, 2014 SCC 54, [2014] 2 SCR 689 [**Mian**], including the potential prejudice this may cause to the parties. While the CTF otherwise relies on **Mian** to argue that its proposed constitutional submissions do not meet the definition of a new issue, that authority is not of assistance. **Mian** was concerned with new issues raised on the court’s own initiative, and balancing an appellate court’s role as an independent adjudicator with the need to ensure justice is done. That is not this case. Rather, the CTF has the onus to show it meets the test for intervention, including that its participation would not raise a new issue in the appeal or otherwise widen the *lis* between the parties.

[16] Further, the application for intervention by the CTF, confined as it is to a constitutional argument and the *Charter*, would not bring to bear any special expertise by the CTF. Nor would it seemingly offer any insight on the crux of the issues to be determined by this Court. To the extent that the CTF has pointed to caselaw in support of its argument that the right to access information is constitutionally grounded in s 2(b) of the *Charter*, the Supreme Court of Canada is quite clear in **Ontario (Public Safety and Security) v Criminal Lawyers’ Association**, 2010 SCC 23 at 5, [2010] 1 SCR 815:

Section 2(b) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of expression, but it does not guarantee access to all documents in government hands. Access to documents in government hands is constitutionally protected only where it is shown to be a necessary precondition of meaningful expression, does not encroach on protected privileges, and is compatible with the function of the institution concerned.

[17] As those limited circumstances do not exist in this case, there is a good reason why Northback did not raise s 2(b) of the *Charter*. Put more simply, the issue of access to information and s 2(b) has already been assessed by our highest court, which determined s 2(b) is only engaged in matters where access is “a necessary precondition of meaningful expression”. The records sought in this matter were simply not requested for that purpose.

[18] The application to intervene is denied.

Application heard on July 23, 2026

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

Feth J.A.

Appearances:

M.K. Ignasiak, KC (no appearance)
B. Harding
for the Appellant

G.S. Solomon, KC
R.M.L. Phillips
for the Respondent

D. Drover
for the Proposed Intervenor