

Court of King's Bench of Alberta

Citation: Mentzelopoulos v Alberta Health Services, 2025 ABKB 235

Date: 20250416
Docket: 2503-02991
Registry: Edmonton

Between:

Athana Mentzelopoulos

Plaintiff

- and -

**Alberta Health Services, His Majesty the King In Right of Alberta As Represented by
Adriana LaGrange In Her Capacity As Minister of Health**

Defendants

**Reasons for Decision
of the
Honourable Justice D.A. Yungwirth**

[1] In this action for wrongful dismissal, the Defendants have filed an emergency application for an interlocutory injunction. They seek a mandatory injunction requiring the Plaintiff to return and delete records that she received during the course of her employment, and requiring the Plaintiff to swear an Affidavit detailing what documents she took and to whom she distributed those documents. They seek a prohibitory injunction directing that the Plaintiff cease using or disclosing any of the documents that she took. Finally, they seek an order permitting them to question the Plaintiff under oath pursuant to Rule 6.8 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] This emergency application is being made against the backdrop of investigations by both the Auditor General of Alberta and the Royal Canadian Mounted Police (RCMP). During the course of its investigation, the Auditor General has exercised its authority pursuant to s 14.1 of the *Auditor General Act*, RSA 2000, c A-46, to request all records in the custody of the Plaintiff, that pertain to their investigation.

[3] A brief summary of the status of this matter and submissions follows.

[4] Ms. Mentzelopoulos, former CEO and President of Alberta Health Services (AHS) has sued AHS and the Province alleging wrongful dismissal. The lawsuit is in its early stages. AHS and the Province have each recently filed Amended Statements of Defence. Affidavits of Records have not yet been filed, and questioning has not yet commenced.

[5] On March 19, 2025, the Defendants discovered that on January 7, 2025, the day before she was terminated, Ms. Mentzelopoulos sent nine emails, including attachments, from her AHS email account to her personal email account. The Defendants allege the emails and attachments contain privileged and confidential information and business records obtained during the course of her employment, and that her actions were in breach of the terms of her employment agreement with AHS and her common law obligations.

[6] Of the nine emails and attachments, the Defendants claim solicitor-client privilege in relation to two emails and attachments. The Defendants submit that the owner of the privilege is obligated to protect the privilege. The Plaintiff and Defendants disagree on whether the documents for which solicitor-client privilege is claimed, are subject to solicitor-client privilege. This issue will have to be determined after the process for such determination has been addressed. The Plaintiff's Counsel has not read the nine emails and attachments and is therefore not able to address this issue.

[7] The Defendants submit that all of the emails and attachments are confidential, and that the Plaintiff did not have permission to have them. Though solicitor-client privilege is not being claimed in relation to seven of the emails, the Defendants object to the Plaintiff continuing to have or to use these confidential documents on the basis that harm may be caused to Alberta Health Services and to the Province.

[8] The first thing for this Court to address is the request for the Defendants to question the Plaintiff under Rule 6.8. Counsel for AHS submits that this should be done before the application can proceed. I agree.

[9] Rule 6.8 provides for questioning of witnesses:

6.8 A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person's evidence for use at the hearing of the application, and

- (a) rules 6.16 to 6.20 apply for the purposes of this rule, and
- (b) the transcript of the questioning must be filed by the questioning party.

[10] AHS and the Province submit that questioning under this Rule is the only way they can determine what documents Ms. Mentzelopoulos may have taken from AHS, and what she did with those documents. They note their duty to manage documents that are subject to solicitor-client privilege. They also note the importance of containing the confidential information.

[11] Counsel for Ms. Mentzelopoulos submits that the request for questioning under Rule 6.8 is a fishing expedition and that the Defendants simply want to determine what information she may have provided to the Auditor General of Alberta and to the RCMP.

[12] Feth J (as he then was) summarized the principles courts use to interpret Rule 6.8:

Rule 6.8 is similar to its predecessor, Rule 266. The rule finds its origins in a longstanding practice in Canadian and British civil courts allowing for the collection of evidence from individuals, including parties, who cannot or will not provide affidavit evidence for motions: *Dechant v Law Society of Alberta*, 2000 ABCA 265 at paras 12-14 [*Dechant*].

Numerous principles circumscribe the scope and manner of such questioning, including:

- a. The information sought must be relevant and material to the pending motion: *Dechant* at para 17; *Alberta Treasury Branches v Leahy*, 1999 ABQB 842 at paras 20-26 [*Leahy*]; *Robertson v Edmonton (City) Police Services (#6)*, 2003 ABQB 188 at para 13, aff'd 2003 ABCA 279; *AP v SP*, 2017 ABQB 672 at para 15;
- b. The questioning is not an examination for discovery and a fishing expedition is not permitted: *Leahy* at para 22;
- c. Parties adverse in interest can be examined: Rule 6.20(2); *Ferguson v Cairns* (1959), 21 DLR (2d) 659 at 662, [1959] 30 WWR 276 (Alta CA) [*Ferguson*];
- d. The questioning party usually conducts an examination-in-chief of the witness and cannot cross-examine, but unlike the predecessor rule, cross-examination is permitted of parties adverse in interest: *Dechant* at para 15; Rule 6.20(2); *Precision Drilling Canada Limited v Yangarra Resources Ltd*, 2013 ABQB 492 at paras 30, 37-38, 49, 54;
- e. The witness may also be questioned by any other party and may then be questioned again by the party who summoned the witness: Rule 6.20(1);
- f. All of the evidence obtained at the questioning is placed before the judge hearing the application and forms part of the case of the party who summoned the witness: *Dechant* at para 15; *Ferguson* at 662;
- g. To the extent a witness is directed to produce records for the questioning, the notice must identify the records sought with as much precision as is fair and feasible, much like a subpoena *duces tecum*, and the records must be relevant to the pending application: *Apotex Inc v Alberta* (1996), 182 AR 321, 38 Alta LR (3d) 153 at paras 38-39; *Leahy* at paras 24-26;

- h. The Court may regulate the questioning for abuse of process, including whether the application itself is an abuse of process: *Dechant* at para 14;
- i. The Court may order the witness to attend for questioning and to bring records to the questioning: Rule 6.38; and
- j. The Court may provide directions in advance of the questioning on the scope of permissible questions: *Dechant* at para 16.

(*Gow Estate (Re)*, 2021 ABQB 305 at paras 14-15)

[13] Allowing the Defendants to ask what documents Ms. Mentzelopoulos took, and who she shared this information with, is both relevant and material information for the application before the Court.

[14] The Rule 6.8 questioning of the Plaintiff may proceed and will be restricted to these two areas, but with two exceptions. The Defendants are not entitled to question the Plaintiff on what, if anything, the Plaintiff has provided to the Auditor General of Alberta or the RCMP or other law enforcement as part of any ongoing investigations. This will protect the integrity of those investigations.

[15] This direction strikes a balance between providing the Defendants with information they need to ensure any privileged and confidential information is protected while not interfering with the ongoing work of the Auditor General or the RCMP or other law enforcement. I note that Khullar J (as she then was) similarly set out a limited line of questioning that would be permitted in a Rule 6.8 questioning, in *AP v SP*, 2017 ABQB 672 at para 27. See also *Dechant v Law Society (Alberta)*, 2000 ABCA 265 at para 16.

[16] Questioning pursuant to Rule 6.8 must be in aid of an ongoing or pending application or motion. To that end, the applications for interlocutory injunctions are adjourned *sine die*, pending the completion of the Rule 6.8 questioning.

[17] During the period of the adjournment, clause 2 of the March 28, 2025 Consent Order of Dunlop J which prohibits the Plaintiff from “distributing, relying upon, or using for any purpose other than the within litigation, the emails sent to her personal email address from her AHS email address on January 7, 2025, or at any time thereafter, and the confidential information and business records contained therein” shall continue to apply with an exception. The Plaintiff may provide to the Auditor General of Alberta and the RCMP, any documents that have been requested from her pursuant to a request made before or after the date of this decision.

[18] Following the Rule 6.8 questioning of Ms. Mentzelopoulos, the parties shall return for a Rule 4.10 Case Conference before me. At that time, the following matters will be addressed:

- The scheduling and any required process steps for the applications for the interlocutory injunctions to proceed;
- Any issues related to the filing of the transcripts from the Rule 6.8 questioning will be addressed. The transcripts will not be filed until after the Rule 4.10 Case Conference;

- The process for determining whether solicitor-client privilege attaches to any of the documents in the Plaintiff's possession will be determined. In this regard, Counsel should exchange their proposals for process and provide them to the Court before the Rule 4.10 Case Conference;
- A litigation plan for this wrongful dismissal action will be finalized. In this regard, Counsel must exchange their proposed litigation plans and provide them to the Court before the Rule 4.10 Case Conference;
- The Court will hear submissions from Counsel on whether this action should be subject to formal case management.

Heard on the 11th day of April, 2025.

Dated at the City of Edmonton, Alberta this 16th day of April, 2025.

D.A. Yungwirth
J.C.K.B.A.

Appearances:

Dan Scott, KC
Seveny Scott
for the Plaintiff

Munaf Mohamed, KC
Mathieu Lafleche
Bennett Jones LLP
for the Defendant, His Majesty the King in Right of Alberta as represented by Adriana
LaGrange in her capacity as Minister of Health

Gulu Punia
Fasken Martineau DuMoulin LLP
for the Defendant, Alberta Health Services

Matthew Woodley
Reynolds Mirth Richards & Farmer LLP
for the Auditor General of Alberta