

In the Court of Appeal of Alberta

Citation: Law Society of Alberta v Billingsley, 2026 ABCA 268

Date: 20260814

Docket: 2601-0084AC

Registry: Calgary

Between:

Law Society of Alberta

Applicant

- and -

Ronald S. Billingsley

Respondent

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Application for Security for Costs

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The Honourable Justice Jane Fagnan**

[1] The applicant, Law Society of Alberta, applies under Rules 4.22 and 14.67 of the *Alberta Rules of Court*, Alta Reg 124/2010 for security for costs in the amount of \$10,500 in relation to an appeal filed by the respondent.

[2] The respondent practised as a lawyer in Alberta. As a result of a variety of difficulties he was experiencing, the Law Society obtained an *ex parte* Custodianship Order under the *Legal Profession Act*, RSA 2000, c L-8 appointing a Custodian of his former law practice. As authorized by that order, the Custodian seized his physical law practice including laptops, client files and all documents, and gained access to trust and general bank accounts.

[3] The Custodianship Order provides that the Custodian is not required to determine or render accounts on behalf of the respondent nor to set or collect fees or other amounts owing to the respondent. Further, it prohibits the respondent from contacting any clients except for the purposes of transferring their legal work or property to the Custodian or to another active member.

[4] The Law Society eventually sought an order under s 95(5)(c) of the *Legal Profession Act* approving a distribution of the funds remaining in the respondent's trust account. On that date, the respondent had in hand an unfiled application - for which he sought a fiat - requesting advance legal costs, an order for payment to him from the trust account of \$6,000 as legal fees he said are owed to him, and an order directing a five-day *viva voce* trial to which he wished to adjourn. The Law Society was agreeable to adjourning the respondent's application but argued its own application to disburse the remaining trust funds to the former clients ought to proceed, noting it had already been adjourned twice at the respondent's request.

[5] The chambers justice adjourned the respondent's applications. The Law Society's application to disburse the remaining trust funds to the former clients proceeded and was granted. The order directed the Custodian to hold back \$6,000 to determine whether one of the respondent's former clients was reimbursed directly by him and, if so, permitted the Custodian to move that amount to the respondent's general account. The Custodian was also directed to provide any personal data recovered from a USB to the respondent and to return any laptops that did not contain any client data.

[6] The respondent appeals that order, alleging the justice erred in:

- (a) failing to recuse herself based on a reasonable apprehension of bias;
- (b) issuing inconsistent rulings within the same hearing;
- (c) misapprehending, or failing to consider, evidence;
- (d) making factual findings in the face of conflicting evidence without a *viva voce* hearing.

[7] The Law Society seeks an order for security for costs. The test for granting security for costs is set out in Rule 4.22 of the *Alberta Rules of Court*, Alta Reg 124/2010:

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 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.

[8] The applicant bears the burden of establishing, on a balance of probabilities, that it is just and equitable to order security for costs having regard to the above criteria: *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2020 ABCA 36 at para 18, leave to appeal to ABCA refused, 2020 ABCA 254. A security for costs order is discretionary and balances the reasonable expectations of the parties with their rights to arrive at a just and reasonable outcome: *Parker v Parker*, 2019 ABCA 114 at para 4.

[9] The Law Society submits that such an order is warranted based on the respondent's representations of impecuniosity and his failure to pay an extant costs award, the weakness of his grounds of appeal, and an absence of undue prejudice.

[10] In the respondent's July 31, 2026 affidavit filed for this application, he deposed that his only income since December 2025 has been from AISH. However, he submits he has many rods in the fire or employment prospects on the immediate horizon and will have access to equity. He says he is taking steps to regain the ability to practice and therefore, will be highly motivated to reimburse the Law Society should they win the appeal as his right to practice would be contingent upon payment. He also submits s 15 equality rights based on socioeconomic status should be a recognized ground, arguing that his suspension robbed him of his career and earning capacity. He says the evidence demonstrates he is entitled to at least \$6,000. The respondent acknowledges the unpaid \$400 costs award against him and indicates he is willing to pay those costs in lieu of the security for costs sought by the Law Society.

[11] The respondent must be commended for any attempts to improve his prospects and his situation. However, the evidence of his current finances reflects limited means.

[12] With respect to the respondent's allegation of a reasonable apprehension of bias, the chambers justice raised at the outset the fact that she had previously worked for the Law Society, invited the respondent to raise any concerns during the hearing and he declined to do so. This ground of appeal has a low chance of success.

[13] Regarding inconsistent rulings within the same hearing, the respondent argues that the justice's ruling on the Law Society's application rendered his adjourned application moot. His unfiled application was adjourned at the start of the hearing. The respondent submitted during the hearing that he wished to try to re-create his billings through a trial and the justice considered this argument in reaching her determination with respect to distribution of the funds. This ground of appeal also has a low chance of success.

[14] The remaining grounds of appeal relate to the respondent's belief that the Law Society lost timesheets when they seized the materials in his law office and, as a result, he requires a trial with *viva voce* evidence so that he can call former clients to attempt to re-create his billings.

[15] The Custodian was able to determine that there was no shortfall in the respondent's trust account, that the trust account properly reconciled, and that 27 persons were owed funds from the trust account.

[16] The respondent took the position he performed legal work after the last known reconciliation, and those billings had not yet been entered into the accounting software the respondent used to track time and issue invoices due to the software malfunctioning. He submitted that he performed significant work from June 2024 to November 2024 even during a period while he was in Alberta Hospital in September of 2024 and then on a trip overseas from late October to late November 2024. He claims entitlement to around \$55,000 from his law practice (in addition to the \$6,000) and takes the position the funds in his trust account should not be disbursed to his former clients.

[17] The respondent says conflicting affidavits are at the heart of the appeal. He previously deposed: "Due to missing timesheets and lack of access to PC Law, precise time entries cannot presently be recreated". However, he says he has fresh evidence that the timesheets in question existed and furthermore potential evidence from former clients would support his position that he worked a significant amount of billable time from July 2024 to November 2024.

[18] One of the respondent's applications adjourned in chambers was for advance legal costs of approximately half the amount he claimed to be owed, which he said he intended to use to pay a legal advisor, a private investigator, costs relating to subpoenas and possibly questioning in anticipation of an eventual trial.

[19] Counsel for the Law Society emphasized during the chambers hearing that they could not verify any of the alleged billings with the current information available to them. The respondent's accounting software was not working during the material period. The Custodian reviewed all physical client files, prior reconciliations and other available accounting records, attempted to obtain access to the respondent's Gmail account, and discussed the purported legal work with certain of his clients, but was unable to verify the legal work the respondent claimed to have completed. The Custodian indicated he had no ability to ascertain the hourly rate the respondent

charged for his files, the length of time billed to each client, and whether invoices for the amounts he was seeking were ever issued.

[20] The chambers judge determined that a trial would not be productive or appropriate in the circumstances based on the information before her. She rejected the respondent's argument that the matter turned on credibility. She found it would be a hopeless endeavour to ask individuals to recall the period in question and exactly how many hours were billed, as no one could be expected to reliably know or remember how much time the respondent spent on certain tasks for each client. Based on the filed material, she was not convinced a trial would produce sufficient information to provide the foundation for an accurate and detailed bill. She told the respondent that the matter before her was distinct from any issue he might have with the Law Society based on alleged mismanagement of his files.

[21] The respondent's fundamental argument is that the chambers justice erred in determining that the application could be decided on the evidence before her. This determination was based on her assessment of the evidence in light of submissions during the hearing. The suggested fresh evidence does not address the difficulties identified by the chambers justice. As noted above, the Custodian is expressly not required under the Custodianship Order to determine or render accounts on behalf of the respondent nor to set or collect fees or other amounts owing to the respondent.

[22] The respondent has not identified an extricable question of law. Based on the material before the Court, this ground does not appear to have a reasonable prospect of success.

[23] The Law Society has met the criteria for an order for security for costs in some amount. However, any such order must not unduly prejudice the respondent's ability to continue the action.

[24] The Law Society seeks costs of \$10,500 based on Column 1 costs of the appeal and this application, plus the \$400 in outstanding costs ordered in the Court of King's Bench. The amount contemplates second counsel for the appeal and doubling of all costs due to the respondent's use of profanity and excessive emails. The respondent submits he could pay only the outstanding costs of \$400.

[25] While the respondent's failure to pay costs awarded below might be indicative of his ability to satisfy any costs award at the Court of Appeal, the Court of Appeal does not normally grant security for the payment of trial costs because it is not an "agency to ensure the collection of trial costs": *1159465 Alberta Ltd v Adwood Manufacturing Ltd*, 2010 ABCA 273 at para 10, quoting *Pivotal Capital Advisory Group Ltd v NorAmera BioEnergy Corporation*, 2008 ABCA 279 at para 10.

[26] Having regard to the respondent's financial circumstances, the lack of clarity regarding the need for second counsel, and the high degree of discretion which the panel would exercise in awarding costs, an order for security for costs is granted in the amount of \$3,025 (reflecting \$1,000

for this application and \$2,025 toward appeal costs) to be paid within four weeks of the date of filing of these Reasons.

[27] If costs are not paid within that time, the respondent's appeal will be deemed to have been abandoned pursuant to Rule 14.67(2).

[28] Rule 9.4(2)(c) is invoked. The Court will prepare the resulting order.

Application heard on August 6, 2026

Reasons filed at Calgary, Alberta
this 14th day of August, 2026

Fagnan J.A.

Appearances:

L. Bendkowski
for the Applicant

Respondent R.S. Billingsley