In the Court of Appeal of Alberta

Citation: College of Physicians and Surgeons of Alberta v Makis, 2026 ABCA 17

Date: 20260121
Docket: 2503-0164AC
Registry: Edmonton

Between:

College of Physicians and Surgeons of Alberta

Respondent

- and -

Viliam Makis
also known as William Makis

Applicant

Reasons for Decision of
The Honourable Justice Kevin Feehan

Applications for Permission to Appeal and Stay Pending Appeal

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I. Overview

[1] Viliam Makis applies for permission to appeal an interim interlocutory injunction restricting him from representing or implying he is a regulated member of the College of Physicians and Surgeons of Alberta, or licensed to practice medicine in Alberta, and from using titles, abbreviations, or initials, including "Doctor", "Dr", or oncologist, offering or providing health services to the public regarding cancer treatment amongst other things. He was given until September 7, 2025 to comply with those restrictions.

[2] On December 3, 2018, Mr Makis was declared a vexatious litigant: ***Makis v Alberta Health Services***, 2018 ABQB 976. On March 1, 2020, this Court set aside portions, but not all, of that vexatious litigant order: ***Makis v Alberta Health Services***, 2020 ABCA 168. As a result of his remaining subject to a vexatious litigant order, Mr Makis must obtain permission to appeal to this Court: *Alberta Rules of Court*, AR 124/2010, r 14.5(1)(j).

[3] Before this application was heard, the College of Physicians and Surgeons of Alberta had brought a further application before the Court of King's Bench to have Mr Makis held in civil contempt of the interim interlocutory injunction of August 15, 2025, returnable January 19, 2026. That date is to be adjourned by consent to special chambers or other urgent application date.

[4] If permission to appeal is granted, Mr Makis asks for a stay of the interim interlocutory injunction pending appeal. In oral submissions, he asked, if permission to appeal is not granted, for a stay pending determination of the College's permanent injunction and civil contempt applications in the Court of King's Bench.

II. Analysis

[5] Mr Makis seeks to appeal the interim interlocutory injunction of August 15, 2025 on two primary bases, first that his application for an adjournment of the application for a permanent injunction as requested by the College was dismissed, and second that the interim interlocutory injunction was granted without sufficient evidence to establish a strong *prima facie* case, irreparable harm, and that the balance of convenience favoured the College.

[6] This application can be determined on the basis that this matter should not have been the subject of an appeal, but instead a special chambers application in the Court of King's Bench, as directed by that Court. The entire purpose of the grant of an interim (for an intervening temporary time) interlocutory (until final resolution of the current controversy) application was merely to allow the parties to proceed quickly and efficiently to a special chambers application. That has not

occurred, and an appeal should not proceed before the mandated process in the Court of King's Bench has been determined.

a. The Adjournment Application

[7] The application brought by the College in the Court of King's Bench was for a permanent injunction. In chambers, Mr Makis asked for an adjournment so that it could be "reschedule[d] to a special chambers date to allow for a fuller and more comprehensive hearing", and "at the very least sent to special chambers where it can be tested on a full evidentiary record". On the adjournment application, the chambers judge agreed on several occasions that this matter should be heard in special chambers. He said the matter required "full argument with respect to the permanence of the injunction".

[8] Until a special chambers application could be scheduled, the chambers judge said there was "kind of a halfway point". Mr Makis should "get [his] special application to argue this fully"; the chambers judge was not prepared to entertain a permanent injunction, but "in the meantime" would grant an interim interlocutory injunction pending special chambers. The intent was that the interim interlocutory injunction should be for a short-defined period pending return before the Court of King's Bench for fulsome argument.

[9] The chambers judge said "I'm not granting an injunction with any permanence attached to it. It will be an interim interlocutory pending a full hearing of this".

b. The Injunction Application

[10] Again, in submissions for the permanent injunction, the chambers judge indicated he was only granting an interim interlocutory injunction for a very short, defined period of time to allow the parties to proceed to fulsome argument in special chambers in the Court of King's Bench. He said:

> My concern … is … we're still running on a skeleton here. We're still running on not full information. There needs to be a more thorough argument with respect to these because … there needs to be a full argument with respect to this.

The chambers judge said he did not have "a full understanding of exactly what Mr. Makis' role is, how he sees his role, how he sees it proceeding in the future".

[11] As a short-term compromise, he said "[b]ut, in the meantime, there needs to be some protection to the public", because on the limited information before him, it appeared Mr Makis was "arguably practicing medicine and holding himself out as being a physician, which he's prohibited from doing".

[12] The chambers judge concluded the information before him was "not sufficient at this moment for [him] to grant a permanent injunction." He said he was "not about to do that. That has to be the subject matter of a special application which I am directing the parties to do".

[13] The interim interlocutory injunction was intended to be very short-lived for the purpose of temporarily protecting the public pending the special chambers application.

[14] The chambers judge ordered "... and I'm actually directing the parties to book a special application to deal with this in a fuller sense." He said, "these can be made [for] a half a day", and concluded "this is an interim injunction. The matter will be heard in a more thorough sense at a special application".

III. Conclusion on the Forum

[15] This matter should not be before the Court of Appeal at this time. It was directed to go quickly to a special chambers application in the Court of King's Bench. The interim interlocutory injunction was intended only to cover that short, fixed and limited time to get to special chambers. The test for obtaining permission to appeal when the applicant is a vexatious litigant asks, among other factors, whether "an appeal [will] unduly burden the progress of the action": ***Rana v Rana***, 2022 ABCA 270, para 44; see also ***Thompson v Procrane Inc (Sterling Crane)***, 2016 ABCA 71, para 7. In this case, the hearing of the proposed appeal of this interim interlocutory order would unduly hinder the progress of this matter to the full hearing already directed by the Court of King's Bench. The parties must return to the Court of King's Bench and do as that Court directed, make fulsome arguments.

[16] Given that the College has now also brought a civil contempt application which is to be adjourned by consent to special chambers or an urgent application date, the parties should consider joining this injunction application with that application to be heard together at the earliest opportunity.

IV. Stay pending return to Court of King's Bench

[17] As indicated, during oral submissions, Mr Makis amended his request to seek a stay pending return of the injunction application to the Court of King's Bench.

[18] The well-known *tripartite* test for a stay is set out in ***RJR-MacDonald***, [1994] 1 SCR 311, 111 DLR (4th) 385, following ***Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd***, [1987] 1 SCR 110, 38 DLR (4th) 321. The applicant has the burden of showing that: (i) there is a serious question to be tried, an arguable issue that is not frivolous or vexatious; (ii) there will be irreparable harm if the stay is not granted; and (iii) the balance of convenience favours granting the stay.

[19] Quoting from ***American Cyanamid Co v Ethicon Ltd***, [1975] AC 396, 407, the Court in ***RJR-MacDonald*** said the first branch of the *tripartite* test would be met if "the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried": 335. It then said, 337:

> What then are the indicators of a "serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case.

[20] On that preliminary assessment of the case "a judge should not engage in an extensive review of the merits": 338. There are two exceptions to the warning against an extensive review of the merits, neither of which apply in the present case.

[21] As to proof of irreparable harm, the Court in ***RJR-MacDonald*** said, 341:

> At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
>
> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

[22] On the balance of convenience, the Court in ***RJR-MacDonald*** said the factors which must be considered are numerous and will vary in each individual case: 342. Quoting again from ***American Cyanamid***, 408, the Court said:

> [i]t would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

[23] The decision on this application turns on balance of convenience. Mr Makis says if a stay is not granted, he will suffer "reputational damage, income loss affecting family, and irreversible social media changes that cannot be compensated for by damages". He says the "balance favours [the grant of a stay]: *status quo* shows no immediate risk, while enforcement causes disproportionate harm ...".

[24] On the other hand, the College says:

> … [a]s Alberta's regulator of the practice of medicine, its role is to protect the public by ensuring that physicians practicing medicine in Alberta are qualified to do so. It does this through the registration and licensing of physicians.

[25] The College alleges that Mr Makis has not been licensed to practice medicine in Alberta since February 2019, is not currently licensed to practice elsewhere in Canada, and continues to hold himself out, directly or indirectly, as a medical doctor, physician, radiologist, nuclear medicine specialist, or oncologist.

[26] The College says there is a strong public interest in protecting the public from allowing individuals not licensed to practice medicine from doing so. It says the public interest favours not granting the stay.

V. Conclusion on the Stay

[27] The balance of convenience, and particularly the public interest component, favours not granting a stay pending return to the Court of King's Bench, which may be combined with the College's civil contempt application, and hearing in special chambers or other urgent application. That is just and equitable in all the circumstances of this case.

VI. Conclusion

[28] Mr Makis' applications for permission to appeal and stay pending return to the Court of King's Bench are dismissed.

Application heard on January 14, 2026

Reasons filed at Edmonton, Alberta
this 21st day of January, 2026

Feehan J.A.

Appearances:

M.D. Tiessen
for the Respondent

C.M. Christensen
for the Applicant