

In the Court of Appeal of Alberta

Citation: Tailleux v McKiernan, 2026 ABCA 343

Date: 20261026

Docket: 2601-0179AC

Registry: Calgary

Between:

Vicki Cecelia Tailleux

Respondent

- and -

Martin Paul McKiernan

Applicant

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

Application for Permission to Appeal

**Reasons for Decision of
The Honourable Justice Jolaine Antonio**

[1] The applicant, Martin McKiernan, seeks permission under Rule 14.5(1)(a) of the *Alberta Rules of Court*, AR 124/2010 to appeal my decision in *Tailleur v McKiernan*, 2026 ABCA 324 [*Tailleur*], denying his application for an extension of time to serve his notice of appeal.

[2] The respondent, Vicki Tailleur, obtained a permanent restraining order against the applicant in 2019. Since then, the applicant has attempted to have the order overturned, revoked or varied on five different occasions. On the fifth attempt, the chambers judge echoed earlier decisions by finding the 2019 order was final. She prohibited the applicant from bringing any further applications regarding the underlying action. The applicant filed a notice of appeal but failed to serve it on the respondent in time. I denied his application for an extension of time because the appeal from the chambers judge's order was without merit and because allowing the appeal to proceed would not be in the interests of justice: *Tailleur* at paras 21-22.

[3] The applicant alleges I erred by considering the merits of the chambers judge's decision refusing to revoke the restraining order but omitting to consider the bar against bringing further applications. In his memorandum on this application, he wrote that he "accepts the finality of the 2019 order". Still, he argues, the question of finality is distinct from the question of whether further applications may be brought in relation to the restraining order. He seeks a determination of "whether there remains any lawful route, subject to appropriate leave and evidentiary safeguards" to have the final order reconsidered on new evidence. He asserts he does not seek "immediate alteration of the protective order".

[4] By structuring her order as she did, the chambers judge did not order two separate forms of relief. She found the 2019 order was permanent and final, and articulated that the effect of that finding was that no further applications could be brought. Given the applicant's history of persistence, articulating the latter point did not give rise to arguable error.

[5] I understand the applicant would like to have this Court define when, if ever, it may be possible to seek variation of a permanent and final order. However, given his apparent acceptance of the finality of the order he seeks to review, and his assertion that he does not at present seek to vary its terms, he is effectively seeking to have this Court decide a potentially nuanced issue without a live factual dispute. Courts generally decline to answer questions in such circumstances: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353, 57 DLR (4th) 231.

[6] The applicant has not alleged error in my conclusion that "given the repeated rulings of this Court and the Court of King's Bench upholding the 2019 Order and its permanency, it would not be in the interests of justice to permit the appeal to proceed": *Tailleur* at para 22.

[7] In this case, I am not persuaded there are compelling reasons why a panel of this Court should hear the proposed appeal. In particular, I am not satisfied the proposed appeal raises a material issue of law or a question of general importance, involves an unreasonable and determinative exercise of discretion, or rests on a reviewable error of fact: *Patel v ATB Financial*, 2025 ABCA 224 at para 2; *Ouellette et al v Law Society of Alberta*, 2021 ABCA 283 at paras 9, 14.

[8] It follows that permission to appeal is denied.

[9] As a housekeeping matter, I note the applicant sought leave to file some additional authorities after he had filed his memorandum of argument. Leave is granted. I reviewed those authorities before reaching this decision.

[10] Finally, the applicant has not indicated that he served the respondent with his materials on this application. Alongside both his applications before me, he has sought direction on how to effect service on the respondent without violating the terms of the restraining order. I did not require service and did not seek a response to this application from the respondent for two reasons. First, in light of my conclusion, the respondent has not been prejudiced by the inability to make submissions. My second reason is explained in *Tailleur* at para 18.

[11] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order or judgment.

Written submissions filed on October 19, 2026

Reasons filed at Calgary, Alberta
this 26th day of October, 2026

Antonio J.A.

Appearances:

Applicant M.P. McKiernan

Respondent V.C. Tailleir (no submissions)