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Kostic v Scott Venturo Rudakoff LLP, 2026 ABKB 626

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Court of King's Bench of Alberta

Citation: Kostic v Scott Venturo Rudakoff LLP, 2026 ABKB 626

Date: 20260909
Docket: 1901 06547
Registry: Calgary

Between:

Liliana Kostic

Plaintiff

- and -

Scott Venturo Rudakoff LLP, Domenic Venturo, Dan Horner, Katrina Edgerton-McCuthan aka Katrina Edgerton-McGhan

Defendants

Reasons for Case Management Decision of the Honourable Justice M.A. Marion

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I. Introduction

[1] This action is part of a larger set of actions (**Case Managed Actions**)[1] under my case management as case management justice (**CMJ**).

[2] These Reasons address:

(a) the application (**SFC Application**) of the defendants (collectively, **SVR**) for security for costs against the plaintiff, Liliana Kostic (**Kostic**);

(b) two applications of Kostic, filed September 14, 2021, and January 31, 2025 (**Cross-Application** and **2025 PICA Application**, respectively, or together, the **Kostic Applications**), for, among other things, an interim or advanced costs award (**Advanced Costs**) against SVR and/or the Alberta General of Alberta (**AGA**); and

(c) a December 19, 2025 Kostic fiat request (**December 2025 Fiat Request**) to file a proposed application (**Proposed Kostic-SVR Records Application**) for the production of records from AIG Insurance Company of Canada (**AIG**) and SVR in action 1901 06547 (**SVR Action**).

[1] As defined in Endorsement #4. These Reasons used the definitions set out in Endorsement #4 unless otherwise indicated.

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[3] For the reasons set out below, the SFC Application is granted in part and the Kostic Applications are dismissed. Further, the Proposed Kostic-SVR Records Application is not approved for filing.

II. Background

[4] Although this matter has not progressed very far in its almost 7 years, there is a lengthy history to the SVR Action that requires some explanation.

[5] On May 9, 2019, Kostic filed the statement of claim against Scott Venturo Rudakoff LLP and some of its lawyers or former lawyers, namely Dominic Venturo, Dan Horner and Katrina Edgerton-McCutchan aka Katrina Edgerton-McGhan (**KEM**). The claim alleges negligence, breach of professional obligations, and breach of fiduciary duty, as it relates to SVR's involvement in Kostic's defence of action number 0601-13018 (**0601 Action**). The statement of claim seeks damages in an unquantified amount for income loss, together with general, punitive and exemplary damages, interest and costs.

[6] On May 28, 2019, the defendants filed their statement of defence. They admit that SVR was retained by AIG on January 20, 2017, to assume the conduct of Kostic's defence to the 0601 Action and that SVR became Kostic's counsel of record on March 16, 2017. The defendants allege that, on May 12, 2017, SVR advised Kostic they were no longer retained on her behalf and, on May 26, 2017, SVR withdrew as Kostic's counsel of record.

[7] SVR's defence includes, among other things, that the SVR Action is frivolous and vexatious; the SVR Action was filed for tactical reasons with respect to another Case Managed Action in which AIG claimed against Kostic for the cancellation of Kostic's insurance coverage by AIG (action number 1701-06258 (**AIG Action**)); the statement of claim or portions of it should be struck under rule 3.68; the defendants were not negligent; the defendants acted within the scope of their retainer; Kostic suffered no damage as alleged, or Kostic caused or contributed to, and failed to mitigate any damage; the damages claimed are excessive and unforeseeable; and the claim is barred by the *Limitations Act*, RSA 2000, c L-12.

[8] On June 17, 2019, Kostic filed a reply to the statement of defence.

[9] In August and October 2019, affidavits of records of Kostic and the defendants were exchanged.

[10] On May 11, 2021, Kostic filed an application for summary judgment seeking, among other things, a minimum payment of $1,000,000 from SVR. This application was before Justice Jeffrey on May 21, 2021, and he directed the application to a case conference that was held on June 7, 2021. It appears that SVR raised at that conference that they wanted to seek security for costs and summary dismissal of the SVR Action, and that Kostic sought to file an application for advanced costs.

[11] On June 7, 2021, Justice Jeffrey granted a procedural order that contemplated the security for costs and advanced costs applications to be heard in December 2021, and summary determination applications to be heard in May 2022. None of this happened due to procedural applications and appeals.

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[12] On June 8, 2021, the defendants filed the SFC Application, supported by a June 3, 2021 affidavit of KEM (filed June 8, 2021) (**KEM Affidavit**).

[13] On June 24, 2021, Associate Chief Justice (**ACJ**) Rooke became CMJ of the SVR Action: ***Kostic v Scott Venturo Rudakoff LLP***, 2022 ABQB 188.[2]

[14] On September 2, 2021, Kostic conducted a questioning on the KEM Affidavit.[3]

[15] On September 14, 2021, Kostic filed the Cross-Application seeking an "Advanced Public Interests Costs Award" and other relief (including striking SVR's defence, staying the SFC Application, striking portions of the SFC Application and KEM Affidavit, judgment, amending the statement of claim, imposing sanctions on SVR for breaching orders, and permitting her to file supplemental material).

[16] In November 2021, Kostic sought and obtained leave to file, and then filed, another application seeking several grounds of relief, including adjourning the December 15, 2021 hearing of the SFC Application; extending deadlines; striking the SFC Application; ordering KEM to submit to further questioning; compelling KEM to answer questions refused or taken under advisement; compelling KEM to produce relevant and material records; directing that the Cross-Application proceed on December 15, 2021; and a declaration that KEM's evidence is binding on all of the Defendants.

[17] On December 15, 2021, the matter was before ACJ Rooke: ***2022 ABQB 188*** at paras 14-20. See also ***Kostic v Scott Venturo Rudakoff LLP***, 2022 ABCA 392 at paras 6-9.

[18] In January 2022, Kostic sought a fiat from ACJ Rooke to apply to bring an application for a further and better affidavit of records and to obtain production of records.

[19] On March 3, 2022, ACJ Rooke issued his reasons following the December 2021 hearing. He refused to strike or stay the SFC Application: ***2022 ABQB 188*** at para 37. He granted an order: directing KEM to answer certain questions and undertakings, but not others; restricting the filing of materials in the SVR Action by any party; limiting the scope of questions on the KEM Affidavit to those issues material to the SFC Application; and granting Kostic a short time to continue the questioning, all as per ***2022 ABQB 188*** at paras 48-51. ACJ Rooke also granted SVR costs against Kostic, which turned out to be $2,360.

[20] On April 4, 2022, Kostic appealed ***2022 ABQB 188***. On December 2, 2022, the appeal was denied: ***Kostic v Scott Venturo Rudakoff LLP***, 2022 ABCA 392. Kostic then applied for leave to reargue the appeal, which was denied on December 23, 2022, with enhanced costs of $27,000 payable by Kostic: ***Kostic v Scott Venturo Rudakoff LLP***, 2022 ABCA 423.

[21] Kostic sought leave to appeal to the Supreme Court of Canada and, on September 7, 2023, the new CMJ, Justice Graesser, stayed the SVR Action pending the Supreme Court of Canada's

[2] Given the numerous reported decisions in the Case Managed Actions, and the common parties across those actions, it is not possible to use traditional methods to meaningfully define cases for the purposes of these Reasons. Instead, for efficiency, I will simply refer to the numerical citation as the definition. For example, ***Kostic v Scott Venturo Rudakoff LLP***, 2022 ABQB 188 will be referred to as ***2022 ABQB 188***.

[3] September 2, 2021 transcript of questioning on the KEM Affidavit (**KEM Transcript**).

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decision. On December 14, 2023, the Supreme Court of Canada denied an application for leave to appeal ***2022 ABCA 423***, with costs[4] to SVR: ***Liliana Kostic v Scott Venturo Rudakoff LLP***, 2023 CanLII 118466 (SCC).

[22] It does not appear that Kostic ever completed any further KEM questioning as permitted by ACJ Rooke in the March 3, 2022 order.[5]

[23] In June 2024, CMJ Graesser held case management conferences (**CMCs**) in several Case Managed Actions. On July 8, 2024, CMJ Graesser confirmed his June 2024 directions with respect to the SVR Action:

> To confirm my directions at case management on June 11, 2024, the following are the next steps in the action:
>
> 1. Mr. Gilbert will provide Ms. Kostic with the materials, including briefs, regarding SVR's application for security for costs and for a stay of the action as a result of Ms Kostic's failure to pay costs awarded to SVR as ordered by ABKB, ABCA and the SCC;
>
> 2. Ms Kostic will provide her reply materials and her materials for her advance costs application against SVR by October 11, 2024;
>
> 3. There will be a case management meeting on October 24, 2024 at 10:00 am to discuss scheduling of the applications, including the timing for Mr. Gilbert's response brief to Ms Kostic's advance costs application.
>
> I expect the parties to use their best efforts to work within these deadlines.[6]

[24] On October 24, 2024, ACJ Graesser ordered:

> 1. The Defendants' reply brief, to the Plaintiff's security for costs rebuttal brief filed October 11, 2024, shall be submitted before December 31, 2024, if any is to be filed.
>
> 2. The Plaintiff shall file her application for advance costs along with any supporting affidavit for advance costs on or before January 31, 2025. Should the Plaintiff fail to file her application for advance costs before January 31, 2025, such application shall be deemed abandoned and shall not be refiled in this Action.
>
> 3. The Defendants shall submit any affidavit in response to the Plaintiff's affidavit in support of advance costs on or before February 28, 2025.

[4] I have been advised these costs were $1,575.97.
[5] Brief of the Defendants (filed August 8, 2024) (**SVR 2024 Brief**). No transcript of questioning was provided to the Court other than the KEM Transcript reflecting the questioning that was conducted on September 2, 2021.
[6] Endorsement #7, Schedule D (PDF p 29).

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4. The Plaintiff shall file her brief in support of her advance costs application on or before April 15, 2025.

5. The Defendants shall file a rebuttal brief to the Plaintiff's advance costs application on or before May 15, 2025.

6. The Plaintiff shall file a reply brief to the Defendants' advance costs rebuttal brief on or before May 30, 2025.

[25] In December 2024, I was appointed CMJ of the Case Managed Actions, including the SVR Action.

[26] On January 31, 2025, Kostic filed the 2025 PICA Application.

[27] On June 23, 2025, I held a CMC addressing the SVR Action, among others. It was clear that the parties had not followed all of CMJ Graesser's October 24, 2024 procedural order deadlines. At this CMC, Kostic raised, among other things, that SVR had not disclosed or produced relevant and material records.

[28] Upon review of the matter, it was clear that the 2025 PICA Application went well beyond what was reasonably contemplated by CMJ Graesser's October 24, 2024 order. Therefore, on July 22, 2025, I struck aspects of the relief sought under the 2025 PICA Application[7] (as well as various parties or proposed parties added to the style of cause), and only permitted some aspects of the application to proceed.

[29] On July 22, 2025, I also made these directions in Endorsement #13:

(a) given the passage of time since the SFC Application was filed, if SVR wishes to provide an update affidavit, it may file one **by August 15, 2025**;

(b) as it was clearly contemplated by Justice Graesser, and it will not unduly complicate matters, it makes sense for any SVR application to stay/strike the SVR Action (**Stay/Strike Application**) due to non-payment of costs, to proceed at the same time as the SFC Application/Cross-Application/2025 PICA Application. Therefore, to the extent not already granted SVR, any further fiat request process is dispensed with and SVR is formally granted leave to file a Stay/Strike Application. If it intends to do so, it will file that, together with any further supporting affidavit it may wish to file, **by August 15, 2025**;

[...]

(i) Kostic shall write to SVR's counsel, with a copy to my office, and advise of what further records in SVR's control, or undertaking responses, or court ordered production, that

[7] In particular, I struck relief seeking: (1) an order directing an investigation; (2) an advanced costs application for matters outside the ambit of the SVR Action; (3) inclusion of the Human Rights Tribunal and Chris Rowley as proposed intervenors; (4) certain joinder relief; and (5) including Janet Potts and Brian Jackson as "co-applicants" to the 2025 PICA Application: Endorsement #13 at para 26(d).

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she requests be provided, **by August 8, 2025**. This request shall not include requests for records or undertakings that have already been the subject of final judicial decisions. SVR shall respond to Kostic's request by **August 22, 2025** (either by providing the records or undertaking answers, identifying them in SVR's production, or providing the reasons why they have not been produced). Any relevant and material records reasonably and properly requested, and not produced, may result in an adverse inference drawn;

(j) the Respondents to the 2025 PICA Application shall file any affidavit they wish to file in response **by August 29, 2025**;

(k) Kostic may file an affidavit in response to any update affidavit filed by SVR in the SFC Application, or any affidavit in support of the Stay Application, by **August 29, 2025**;

(l) any questioning on affidavits with respect to the 2025 PICA Application, or on the update affidavit or any Stay Application affidavit, shall be completed by **October 3, 2025**;

(m) Kostic shall file her brief in support of her advanced costs applications on or before **October 17, 2025** (maximum 15 pages excluding legal authorities);

(n) SVR shall file any update brief for the SFC Application, and its brief in relation to the Stay Application (if filed), **by October 17, 2025**;

(o) any response briefs to the above briefs shall be filed **by October 31, 2025** (maximum 15 pages excluding legal authorities); and

(p) the parties are directed to contact the Court Coordinator to set the SFC Application, the Cross Application and the 2025 PICA Application to a full day special application before me at the earliest available date after October 31, 2025.

[30] On August 8, 2025, Kostic wrote to me, provided me with 2022 application materials, provided me an email setting out records she says SVR had not yet produced, and sought guidance on several matters. On August 14, 2025, SVR responded to the information requested in Kostic's August 8, 2025 correspondence.[8]

[8] January 16, 2026 updated SVR brief (**SVR 2026 Brief**) at Tab 1.

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[31] Although permitted to do so, SVR did not file the Stay/Strike Application and advised me in oral submissions that they were not advancing that application.

[32] On September 2, 2025, in Endorsement #34, I responded to Kostic's request for guidance on several matters related to the SVR Action.

[33] On October 7, 2025, in Endorsement #45, at Kostic's request, I granted an extension and amended deadlines for the filing of materials in relation to these applications. In Endorsement #45, I also granted Kostic permission to file an application to join the SVR Action and the AIG Action under rule 3.72, which I directed to be heard on May 20, 2026 (however, I have since dismissed the joinder application for failure to comply with the Court's directions: ***Kostic v AIG Insurance Company of Canada***, 2026 ABKB 390).

[34] On December 19, 2025, Kostic provided fiat requests, including for permission to file the Proposed Kostic-SVR Records Application. SVR responded on January 9, 2026, and Kostic provided her reply.

[35] In January 2026, the parties and AGA filed further briefs in relation to the SFC Application and/or the Cross-Application/2025 PICA Application.[9]

[36] I heard the SFC Application, the Cross-Application and the 2025 PICA Application on March 10, 2026 and reserved my decision.

III. Record

[37] The record on the SFC Application and the Kostic Applications includes:

(a) a May 6, 2021 Kostic affidavit (filed May 11, 2021) (**May 2021 Affidavit**);

(b) the KEM Affidavit and KEM Transcript[10];

(c) a September 14, 2021 Kostic affidavit (**September 2021 Affidavit**);

(d) a November 30, 2021 Kostic affidavit (**November 2021 Affidavit**);

(e) an October 11, 2024 Kostic affidavit (filed October 16, 2024) (**October 2024 Affidavit**);

(f) a January 31, 2025 Kostic affidavit (filed January 31, 2025) (**January 2025 Affidavit**); and

[9] These include a January 2, 2026 Kostic brief (**Kostic 2026 Brief**); the SVR 2026 Brief; and a January 16, 2026 AGA brief (**AGA Brief**). Earlier briefs which are also relied on include the SVR 2024 Brief; an October 17, 2024 Kostic brief (**Kostic 2024 Brief**); and a December 21, 2024 SVR reply brief.

[10] The KEM Transcript, together with its exhibits, does not appear to have been filed by Kostic as required: rule 6.7(b); ***McDonald v Sproule Management GP Limited***, 2023 ABKB 587 at paras 20-44. The KEM Transcript and its exhibits were made available to me for the purposes of the application. Kostic also did not file KEM's responses to undertakings, as required: ***McDonald*** at paras 33-44. Some, but not all, of the undertaking requests are described in Appendix "A" to ***2022 ABQB 188***. Kostic is directed to file the KEM Transcript (including exhibits and undertaking responses) in accordance with rule 6.7(b) and ***McDonald***.

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(g) a December 19, 2025 Kostic affidavit (**December 2025 Affidavit**), filed in both the SVR Action and the AIG Action.

[38] No questioning was conducted on any of the Kostic affidavits for the purposes of these applications.

[39] Although I permitted SVR to file an update affidavit given the passage of time since the SFC Application was filed, SVR did not file any further evidence.

[40] There is another affidavit of KEM, from 2023, on the court file. It is irregularly embedded within a package of documents SVR filed to provide to CMJ Graesser in August 2024, but it was never separately filed. I raised this affidavit with the parties as I had seen it on the court file. The parties agreed during oral submissions that I should not consider that affidavit as part of the record for the purposes of these applications. In accordance with that agreement, I did not rely on it.

[41] Kostic also referred to the April 30, 2019 affidavits of Daniel Horner and KEM filed in the AIG Action on April 30, 2019, and May 8, 2019, respectively. The KEM affidavit was already appended to the November 2021 Affidavit (without the exhibits). SVR did not object to the Court reviewing these affidavits. I have reviewed them.

[42] As CMJ of the Case Managed Actions, I am also aware of a sealed Form 13 of Kostic, under the *Civil Enforcement Regulation*, Alta Reg 276/1995, filed in the 0601 Action. I asked the parties if this should be reviewed by the Court. Kostic objected to it being reviewed, and SVR effectively left it to my discretion. Given that there was no application to unseal it or rely on it in the SVR Action for the purposes of these applications, it was not referenced in any application as something that would be relied on, and there was no agreement of the parties for it to be part of the record on these applications, I have decided it would be unfair to consider it for the purposes of these applications, and have not done so. This is a similar approach as taken by Justice Strekaf, with respect to the very same Form 13, in another security for costs application in the 0601 Action: ***Piikani Nation v Raymond James Ltd***, 2020 ABCA 41 at para 22.

IV. Issues

[43] Kostic's materials filed in respect of the SFC Application and the Kostic Applications raise numerous matters that were not part of the filed or approved applications and which are not before me. Non-exhaustively, this includes seeking to hold SVR in contempt for breach of orders and false affidavits of records, scheduling a summary trial, enforcing her indemnity and save/harmless rights, various declaratory relief, and seeking production of records.[11] The actual issues before me in these applications are:

(a) Should the SFC Application be granted?

(b) Should the Kostic Applications be granted?

[44] The issue with respect to the December 2025 Fiat Request is whether it should be granted and the Proposed Kostic-SVR Records Application should be permitted.

[11] Kostic 2024 Brief at para 39; Kostic 2026 Brief at para 11 and pp 17-18 (para 59).

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V. Analysis

A. Should the SFC Application be Granted?

1. Legal Framework

[45] Rule 4.22 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*) provides:

> 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 for the order 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.

[46] Rule 4.22 is discretionary: ***FJN v JK***, 2015 ABCA 353 at para 13; ***Hamill v Kudryk***, 2013 ABCA 37 at para 7, leave to appeal denied 2013 CanLII 26770 (SCC).

[47] It is well-established that a two-step process is, in effect, followed under rule 4.22. First, the rule 4.22 factors are considered and weighed, following which the Court must ask and decide whether it is just and reasonable to grant security for costs: ***Rajpaul Estate (Re)***, 2026 ABKB 257 at para 37; ***Hultink v Trafigura Canada Limited***, 2026 ABKB 149 at para 19; ***993107 Alberta Ltd v Haynes***, 2026 ABKB 89 at paras 34-35, 83 [***993107 Alberta***]; ***Carbone v Dawes***, 2025 ABKB 41 at paras 12-13 [***Carbone 2025***]; ***Arraf v Royal View Surgical Centre Ltd***, 2024 ABKB 262 at para 28; ***Carbone v Dawes***, 2023 ABKB 729 at para 104 [***Carbone 2023***]; ***Song v 2083878 Alberta Ltd***, 2023 ABKB 166 at para 53 aff'd 2024 ABCA 157; ***ET v Rocky Mountain Play Therapy Institute Inc***, 2017 ABQB 475; ***Attila Dogan Construction v AMEC Americas Limited***, 2011 ABQB 175 at paras 24-25; ***Emerex Oil and Gas Ltd v Drover***, 2016 ABQB 420 at paras 39, 61, 64, 66; ***Owners: Condominium Plan No 0125764 v Amber Equities Inc***, 2015 ABQB 235 at para 197 [***Amber Equities***].

[48] The applicant has the onus of establishing, on a balance of probabilities, that the rule 4.22 factors weigh in its favour: ***Davlyn Corporation Ltd v Latium Fleet Management Inc***, 2025 ABCA 219 at para 13, citing ***Poole v City Wide Towing and Recovery Services Ltd***, 2020 ABCA 102 at paras 47-51; ***Law Society of Alberta v Billingsley***, 2026 ABCA 268 at para 8 [***Billingsley***]; ***Lovig v Soost***, 2025 ABCA 260; ***993107 Alberta*** at para 34; ***Rajpaul Estate*** at para 38; ***Carbone 2023*** at para 103; ***Parker v Parker***, 2019 ABCA 114 at para 4; ***Aski Construction Ltd v Markos***, 2017 ABCA 341 at para 8; ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2020 ABCA

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36 at para 18; ***Fish Creek Finish Carpentry Ltd v Lindner***, 2020 ABCA 129 at para 31; ***Easy Loan Corporation v Base Mortgage and Investments Ltd***, 2020 ABQB 109 at para 23; ***Amber Equities*** at para 198.

[49] If the applicant satisfies this onus, the evidentiary or tactical burden shifts to the respondent to satisfy the court that it should not exercise its discretion to grant security for costs: ***PricewaterhouseCoopers Inc*** at para 18; ***Amber Equities*** at para 198; ***Rajpaul Estate*** at para 38; ***Easy Loan*** at para 23; ***Freeman v Kooiman***, 2019 ABQB 857 at para 51; ***Emerex Oil*** at para 64; ***Toronto-Dominion Bank v Suitel Canada Executive Suites***, 2011 ABQB 519 at para 31 [***Suitel***].

[50] Even where one party has the overall burden, a party that asserts a proposition has the onus to prove it: ***Braile v Calgary (Police Service)***, 2018 ABCA 109 at para 23; ***Freyberg v Fletcher Challenge Oil and Gas Inc***, 2005 ABCA 46 at para 75; ***Bank of Nova Scotia v Smiling Simba Learning Academy Inc***, 2025 ABKB 11 at para 40.

[51] There is no obligation for a respondent to file evidence in response to a security for costs application. However, if a respondent does not engage by providing responding evidence or meaningful explanations for matters raised in the application, it risks an order against it, especially because the respondent is the person that best knows their financial situation and whether there is a reason not to order security for costs: ***1199096 Alberta Inc v Imperial Oil Limited***, 2025 ABCA 108 at para 17; ***Amber Equities*** at para 23; ***Suitel*** at para 31; ***2020 ABCA 41*** at para 25; ***North American Polypropylene ULC v Williams Canada Propylene ULC***, 2018 ABQB 281 at paras 27-30; ***PM&C Specialist Contractors Inc v Horton CBI Limited***, 2017 ABQB 400 at paras 51-52; ***Stacey v Foy***, 2014 ABCA 420 at para 3; ***Autoweld Systems Limited v CRC-Evans Pipeline International, Inc***, 2011 ABCA 243 at paras 15-18 [***Autoweld Systems CA***]; ***Blazer Mechanical Plumbing & Heating LTD v Delnor Construction 2012 LTD***, 2024 ABKB 183 at paras 48-49; ***Attila Dogan*** at paras 13, 19; ***Freeman*** at para 54.

[52] Further, bald assertions may not be persuasive: ***Orubor v Borden Ladner Gervais LLP***, 2019 ABQB 328 at para 25 [***Orubor 2019***].

[53] To arrive at a just and reasonable outcome, the court balances numerous factors, including economic security, economic interests, the equities of the situation, the rights and reasonable expectations of the parties, the factors in foundational rule 1.2, and access to justice: ***Billingsley*** at para 8; ***Rajpaul Estate*** at para 38, citing ***Molsberry v 866565 Alberta Ltd***, 2020 ABCA 291 at para 8; ***Hultink*** at para 19; ***Stepanik v Timmons***, 2021 ABQB 287 at para 29; ***Parker*** at para 4; ***Aubin v Condominium Plan No 862 2917***, 2024 ABCA 201 at para 9; ***Lovig*** at para 7; ***Banovich v Banovic***, 2025 ABCA 231 at paras 5-7; ***Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)***, 2026 ABCA 2.

[54] However, access to justice does not equate to access to civil processes without fear of cost consequences: ***Hultink*** at para 19; ***Blazer Mechanical*** at para 49; ***Aubin*** at para 7; ***Parker*** at para 4; ***DataNet Information Systems Inc v Belzil***, 2011 ABCA 40 at para 4, leave to appeal denied 2011 CanLII 60760 (SCC).

2. Is a Security for Costs Award Just and Reasonable?

[55] I start by addressing Kostic's suggestion that the defendants other than KEM did not file any evidence and cannot rely on KEM's evidence because she is no longer employed at SVR and

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would not acknowledge her evidence is "binding" on all defendants. I reject that argument. The KEM Affidavit was filed by legal counsel to all defendants. It is evidence in the SFC Application. In the context of the SFC Application, it is irrelevant or immaterial whether other defendants acknowledge it as binding or not. It is evidence that the Court may consider: rules 6.11(a), (b).

a. Ability to Enforce an Order or Judgment

[56] I find that, on balance and on the record before me, it is unlikely that SVR will be able to enforce a costs award if it is successful at trial. There are several factors supporting this conclusion.

[57] First, SVR has already been unable to enforce significant cost awards *in respect of the very application it brought to obtain security for costs*. This is related to the drawn-out procedural wrangling about questioning, objections, undertakings and records, that twice went to the Court of Appeal and then to the Supreme Court of Canada. I understand the unpaid costs awards owed to SVR in the SVR Action are currently at least $29,360. In 2020, Kostic owed $92,000 to a court officer and its legal counsel in another Case Managed Action: ***2020 ABCA 41*** at para 2. In ***2022 ABQB 188*** at para 55, ACJ Rooke noted that "Kostic has a very poor record of ever paying costs...". The failure to recover past cost awards is some evidence of an inability to enforce a judgment: ***Parker*** at para 18(a).

[58] Second, at the time of the KEM Affidavit in 2021, there appears to have been over $150,000 in judgments against Kostic. This appears to have grown from 2020, when she was reported as having writs of execution against her for $114,510.86: ***2020 ABCA 41*** at para 21.

[59] Third, Kostic has granted at least some security over the proceeds of at least one of the Case Managed Actions, namely, action 0801-05039 against Piikani Nation (**0801 Action**): ***BridgePoint Financial Services Inc v William S Klym Professional Corporation***, 2026 ABKB 236 at para 69; ***2020 ABCA 41*** at para 24. The existence of security over assets is relevant to enforcement: ***Xpress Lube & Car Wash Ltd v Gill***, 2011 ABQB 457 at para 8.

[60] Fourth, in 2020, a security for costs award was granted against her by the Court of Appeal based on a finding that it was unlikely that the respondents would be able to recover their costs of the appeal: ***2020 ABCA 41*** at para 26.

[61] Fifth, Kostic has not provided much, if any, evidence about her exigible assets in Alberta. She has provided some limited evidence of her liabilities.[12] The absence of evidence of exigible assets in Alberta is a relevant consideration: ***Patton v Horse Racing Alberta***, 2019 ABCA 182 at para 14; ***North American Polypropylene*** at para 29, citing ***Autoweld Systems Limited v CRC-Evans Pipeline International, Inc***, 2011 ABQB 265 at paras 18-21, leave to appeal refused, ***Autoweld Systems CA***; ***Freeman*** at para 54.

[62] Sixth, as discussed further below, the overall tenor of Kostic's evidence is that she *acknowledges* she is impecunious.

[63] Finally, based on her overall approach to litigation, and specifically to matters relating to her finances, it is likely that Kostic will ignore or not pay a future cost award in the SVR Action, and will actively (or perhaps inadvertently) frustrate or delay enforcement. Evidence that costs can

[12] November 2021 Affidavit at para 117.

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only be recovered "with great difficulty" is a relevant consideration: ***Matty v Rammasoot***, 2013 ABCA 170 at para 17.

[64] In 2019, Kostic failed to provide a Form 13 to a court officer in respect of a costs award, and was held in contempt. Then, she failed to purge her contempt by providing a deficient Form 13 with conduct that was "intentional, or at least highly reckless or negligent": ***2020 ABCA 41*** at para 4. She even attempted to claim privilege over her financial information: ***2021 ABCA 31*** at para 20. CMJ Nation found that Kostic had not filled out the Form 13 "so as to comply with the intent of the law which is to put information in the hands of creditors so they are able to make an informed decision as to whether execution on a judgment is possible; nor had she made any attempt to pay the costs": ***2021 ABCA 31*** at para 21. Kostic then unsuccessfully appealed CMJ Nation's decision to the Court of Appeal (***2021 ABCA 31***) and then unsuccessfully sought leave to appeal to the Supreme Court of Canada (***Liliana Kostic v Bruce Alger, et al***, 2022 CanLII 689 (SCC)). Simple attempts to collect costs awards against Kostic led to almost two years of surely expensive litigation, for unknown benefit.

[65] Based on my knowledge of Kostic's approach to litigation since I became CMJ, there is nothing to indicate that it will be any different for SVR if it is successful in the SVR Action. Even in the context of these very applications, Kostic asserts that SVR "manufactured" its costs awards leading up to these applications, through unclean tactics and misleading the court.[13] This is a collateral attack on the costs decisions of ACJ Rooke and the Court of Appeal. As noted earlier, Kostic also ignored my directions and proceeded to claim relief that I struck and did not permit her to include in her application. These are recent examples, in the SVR Action, of Kostic's refusal to accept court decisions and to follow court instructions.

[66] In this context, there is a realistic prospect that SVR's costs of attempting to recover future costs awards outstrip the economic benefit of any future costs award, thus rendering any enforcement nugatory.

[67] On balance, I find SVR will unlikely be able to enforce a costs award if it is successful at trial. This factor supports security for costs.

b. Ability to Pay the Costs Award

[68] Rule 4.22(b) provides that the Court must consider the ability of Kostic "to pay the costs award". In my view, the reference to "the" includes a reference to the costs award that SVR seeks to have secured. Rounded, SVR's security for costs proposal is roughly between $150,00 and $245,000 for costs to end of trial.[14]

[69] In my view, the record before me, coupled with the parties' positions, supports a finding that Kostic does not presently have the ability to pay such a trial costs award. I point to three factors.

[13] Kostic 2024 Brief at para 70.

[14] In 2024, the security for costs award SVR sought included a larger lump sum option (up to about $480,000), but this was based on an assumption that several of the Case Managed Actions have a preliminary joint damages trial.

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[70] First, I agree with SVR that the fact that Kostic has not paid SVR its costs is some evidence of an inability (or unwillingness) to pay.

[71] Second, although there was some inconsistency in her materials at times,[15] the overall tenor and effect of Kostic's assertions is that she has effectively admitted she is impecunious.[16] That admission is relevant when considering rule 4.22(b), although I consider it with some caution knowing that such an admission could be strategic, namely to support an argument of undue prejudice/inability to continue an action under rule 4.22(d) or to support an application for advanced costs. The Court must be careful that admissions of impecuniosity are not used as a way to avoid engaging on the issue of a respondent's financial situation.

[72] Third, there is no evidence before me that Kostic has any material assets in Alberta that she could use to pay a costs award. As noted earlier, the absence of evidence of assets is a relevant factor. Contingent assets, such as Kostic's claims against Piikani Nation in the 0801 Action and her previous counsel, Jeffrey Thom (**Thom**)/Miller Thomson (in action 1501-11111 (**Kostic-Thom Action**)), or Kostic's claims to a right to indemnity against various parties, are not sufficiently certain, in terms of success or timing, to be used as reliable or compelling evidence of an ability to pay: ***2008570 Alberta Ltd v Cedar Peaks Mortgage Investments Inc***, 2020 ABCA 275 at para 12. Further, later in these Reasons I deny Kostic's request for an Advanced Costs award, so she will not have that funding available.

c. Merits of the SVR Action

[73] Determining the relative merits is not normally the real issue on a security for costs application: ***2022 ABCA 392*** at para 23.

[74] Further, the court's assessment of the merits will be less useful, rigorous and important if the application is brought early in the action versus later: ***Carbone 2025*** at para 13; ***Carbone 2023*** at para 106; ***2022 ABQB 188*** at paras 25(k), (l); ***Bechir v Gowling Lafleur Henderson LLP***, 2017 ABQB 214 at paras 13-15; ***Provalcid Inc v Graff***, 2014 ABQB 453 at paras 59, 97; ***Attila Dogan*** at para 17; ***Xpress Lube*** at para 11. This is because the record is usually not very robust in the early stages of an action when most security for costs applications are brought.

[75] The SVR Action is still in its early stages. Pleadings have closed and, to my knowledge, there has been some records disclosure but no Part 5 questioning for discovery. The progress of the SVR Action toward trial has been derailed by Kostic's summary judgment application, which has not yet been heard, and the elongated processes for the applications before me.

[76] On the other hand, between the parties, they have filed *many* hundreds of pages of materials with significant documentation. Obviously, the record before me will be different than the trial record, but most or many of the material records are likely before the Court now. In these unique circumstances, a more detailed review of the merits for security for costs purposes, is warranted.

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[15] For example, in the November 2021 Affidavit, Kostic refers to SVR causing "any" impecuniosity (para 238), which could imply impecuniosity was not admitted; in the September 2021 Affidavit, Kostic refers to "alleged impecuniosity" (p 17, para 3(o)).

[16] See, Kostic 2024 Brief at para 46; November 2021 Affidavit at para 66; January 2025 Affidavit at para 8.1; 2025 PICA Application at paras 32, 35, 42, 43(a), 49, 58.

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This may also have a collateral case-management benefit of helping the parties identify the real issues in dispute.

[77] The SVR Action statement of claim is 15 pages. In summary, the specific substance of Kostic's professional negligence, breach of fiduciary duty or other allegations in the SVR Action include that SVR:

(a) altered the terms of Kostic's insurance policy in the SVR retainer agreement, and attempted to force Kostic to sign it;

(b) acted in an undisclosed conflict of interest;

(c) made errors in pursuing Kostic's appeals in the 0601 Action;

(d) refused to disclose information to Kostic, including consent orders and communications with Piikani Nation's counsel;

(e) failed to take Kostic's instructions, only took instructions from AIG, acted in AIG's interests and not Kostic's interests, and assisted AIG in breaching its duty to defend;

(f) failed to advance claims or defences, or give advice about possible remedies, against Piikani Nation, Raymond James Ltd. (**RJL**), CIBC Trust Corporation (**CIBC Trust**) and CIBC World Markets Inc. (**CWM**);

(g) failed to provide, or recommend that Kostic seek, independent legal advice, in particular with respect to her rights against AIG; and

(h) failed to provide her file contents upon SVR's termination.

[78] In her submissions before me, Kostic raised more allegations, including that SVR attempted to have her disclose privileged information so that SVR could provide it to counsel for Piikani Nation, that SVR failed to take steps to correct a forged proof of claim in proceedings related to the Piikani Investment Corporation (**PIC**), and that SVR failed apply to strike the amended statement of claim in the 0601 Action.

[79] Kostic's alleged damages, construed liberally, can be summarized into five main categories: (1) aggravating her medical condition; (2) allowing the 0601 Action allegations to remain, which damaged her health, finances, reputation and income-earning capacity; (3) prejudicing and compromising her position in the 0601 Action; (4) prejudicing her claims or rights against other parties; and (5) causing the loss of her AIG insurance coverage.

[80] In ***2022 ABQB 188*** at para 40, ACJ Rooke noted numerous factors supporting his view, on much the same record, that Kostic's claim against SVR was "relatively weak". The Court of Appeal found that ACJ Rooke had not erred in evaluating the likelihood of success as weak as a factor in assessing security for costs. I do not recite ACJ Rooke's analysis but rather conduct my own.

[81] It is not my role, at this stage, to make final decisions or fact findings about the merits of Kostic's claims against SVR. My role is to weigh the merits, based on the record before me, in the

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context of whether to grant security for costs. However, as noted above, given the extensive record and argument about the asserted merits of the SVR Action that has been provided to the Court, I will briefly and specifically address the merits.

i. Alleged Altering of Insurance Policy

[82] The main allegation here appears to be that SVR's proposed retainer stated that SVR must discharge its obligations to Kostic while respecting "the right of AIG to control Ms. Kostic's defence".

[83] KEM's uncontradicted evidence on this point is that SVR's proposed retainer agreement was based on what AIG told SVR about the terms of the policy. SVR did not purport to alter the policy. The record does not disclose that the SVR proposed retainer was materially different than the policy, which provided AIG the right, in Kostic's name, to defend the 0601 Action and conduct settlement negotiations.

[84] Kostic did not sign the SVR retainer, and did not clearly accept SVR as her counsel. Before the SVR retainer was presented to her, she appears to have agreed to allow SVR to act for her on a "without prejudice" basis, pending a judicial determination about her right to select her own counsel.

ii. Undisclosed Conflict of Interest

[85] The record before me discloses that the plan or process to move the Kostic defence from Gabor Zinner (**Zinner**) to SVR started sometime in the fall of 2016. Kostic, with the assistance of Zinner, raised her concerns about SVR's conflicts. These concerns were responded to and SVR took steps to address them.[17] Accordingly, it appears Kostic knew about and raised several conflict issues before SVR was formally appointed by AIG.[18]

[86] SVR provided its view that it was not prevented from acting due to a conflict. It does not appear that Kostic took any formal steps to prevent SVR from acting on her behalf due to a conflict.

[87] Even assuming SVR did act in a conflict, the record is unclear about what damage, if any, was caused by SVR acting for Kostic in the 0601 Action while in an asserted conflict.

iii. Alleged Errors in Pursuing Appeals

[88] To preserve Kostic's rights, SVR filed several appeals on her behalf. SVR sought an extension of time deadlines in the appeals so it could get up to speed, with the consent of other parties, but Kostic disrupted that process by advising the Court of Appeal that SVR did not act on her behalf.

[89] On June 23, 2017, in the AIG Action, Justic Rawlins dismissed a June 15, 2017 application by Kostic seeking a declaration that the appeals filed contained "errors and that the errors must be corrected".

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[17] April 30, 2019 KEM affidavit (filed May 8, 2019) in the AIG Action (**2019 KEM Affidavit**) at paras 15(f), (g), 16-24, 32, attached as Exhibit 20 to the November 2021 Affidavit; October 2024 Affidavit at Exhibit F (PDF p 78).
[18] Kostic's Amended Counterclaim filed in the AIG Action at para 24.

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[90] Ultimately, Kostic pursued the appeals without SVR, and they were heard on their merits long after SVR was no longer involved, and when Kostic was represented by Zinner (as agent for Mr. Klym (**Klym**)), on all but one of those appeals: ***Piikani Nation v Kostic***, 2017 ABCA 350 and ***Piikani Nation v Kostic***, 2018 ABCA 234.

[91] SVR's involvement in the appeals was very limited. Kostic has not clearly articulated what SVR's errors were with respect to the appeals, or how its brief involvement in the handling of the appeals caused Kostic damages.

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iv. Failure to Disclose Information

[92] The record discloses that there likely were some communication between SVR and Piikani Nation's counsel, or others, that were not disclosed to Kostic.[19] However, the record does not indicate that, and Kostic has not articulated how, any non-disclosed communications caused Kostic damage.

v. Attempt to Force Disclosure of Privileged Information So it Could be Provided to Piikani Nation's Counsel

[93] These allegations appear to be based on SVR's request for Kostic's legal file from Zinner, and allegations by Piikani Nation that certain material in Zinner's file was tainted (due to Zinner's alleged conflict or because it included privileged material of Piikani Nation from Dale McMullen, or both).[20]

[94] The file records SVR requested do not appear to have ever been provided to them and SVR's position is that this limited its ability to take steps on Kostic's behalf.

[95] Kostic's suggestion that the request for the file was an improper attempt to get her privileged information, or that she refused to provide it because of the privileged material it contained, appears undermined by the fact that Zinner, on Kostic's behalf, provided a USB to SVR with at least some of the requested file contents on March 8, 2017. Kostic also pleads that she provided the "entire file material to KEM".[21] At least part of the problem appears to have been that Zinner had included trust conditions unacceptable to SVR based on Zinner's asserted solicitor lien for outstanding fees, not that Kostic refused to provide the material due to privilege concerns. Further, the correspondence indicates that AIG was not seeking the file material that Kostic refused to provide,[22] that AIG and Kostic reached an agreement to allow the transfer of the file to AIG while also protecting Kostic's right to first review file material for confidentiality,[23] and that Kostic nonetheless never did provide the file to SVR.[24]

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[19] May 2021 Affidavit at para 21; November 2021 Affidavit at para 182.
[20] March 31, 2017 letter from Piikani Nation's counsel: May 2021 Affidavit at Exhibit 1 (PDF p 99); 2019 KEM Affidavit at paras 30-31.
[21] Kostic's Reply to the Statement of Defence of the Defendants (filed June 17, 2019) in the SVR Action at para 9.
[22] March 8, 2017 email from Zinner to AIG: Exhibit 3 to the affidavit of Zinner dated March 14, 2017 (**Zinner Affidavit**) in action 1701-03598, which is part of Exhibit G to the KEM Affidavit; March 9, 2017 letter from SVR to Zinner: KEM Affidavit at Exhibit E; March 13, 2017 letter from Kostic to Zinner: Zinner Affidavit at Exhibit 6.
[23] KEM Affidavit at Exhibit I; KEM 2019 Affidavit at para 89.
[24] KEM Affidavit at paras 17-18.

[96] With respect to the allegation that SVR was acting so that it could provide Kostic's privileged information to Piikani Nation's counsel, the record discloses that SVR confirmed on April 5, 2017, that Piikani Nation's counsel had consented to SVR segregating purportedly tainted material, not that any file materials were going to be provided to Piikani Nation's counsel.[25]

vi. Failure to Correct Proof of Claim

[97] Kostic asserts that SVR "refused [her] instructions to correct a forged proof of claim in [her] name" filed by Thom. This appears to relate, at least in part, to Kostic's claim for damages and costs against PIC for its filing of the 0601 Action against Kostic which was later struck by ACJ Rooke in 2013. PIC was subject to proceedings under winding up and bankruptcy legislation.

[98] The proof of claim process was completed in 2014. Kostic's proof of claim for costs arising out of the dismissal of PIC's claim against her in the 0601 Action was included in that process and then compromised by Justice Graesser's approval of the PIC bankruptcy proposal in 2014. The approval of the PIC bankruptcy proposal was subject to *res judicata* before SVR was ever involved: ***Piikani Nation v McMullen***, 2025 ABKB 48 at para 107; ***Piikani Nation v Raymond James Ltd***, 2017 ABQB 81 at para 16. The Court of Appeal, in ***2018 ABCA 234*** at para 39, stated that Kostic is "unable to challenge the validity of the BIA Proposal, which was not appealed and was final".

[99] Even if Kostic had instructed SVR to take immediate action to correct something in the proof of claim process, it unclear what they would have been able to do so.

vii. Failure to Take Instructions to Extract Kostic from or Dismiss the 0601 Action

[100] As noted, SVR filed the appeals at Kostic's request.

[101] Kostic's claim appears to be that SVR did not follow her instructions to extract her from the 0601 Action quickly enough, but rather followed AIG's strategy to let the matter languish. There is some evidence that Kostic explained her views about the weakness of the 0601 Action and that steps should be taken to have her removed from the claim or to have it struck or dismissed. This was consistent with Kostic's long-held view about the 0601 Action. But, at the same time, the record discloses a reluctance by Kostic to recognize SVR as her counsel.

[102] Even if it is accepted that Kostic asked SVR to take steps to have her removed from the 0601 Action, or to have it struck or dismissed, the situational context was that SVR was just getting up to speed on a file with a lengthy and complex litigation history, with tight, court-imposed timelines. By February 2017, even without file material from Zinner, SVR already had 20, four-inch binders of material to review.[26] Zinner's office appears to have had 20 boxes of material that KEM expected would take weeks or months to review.[27] Not surprisingly, SVR had obtained a stay of the 0601 Action litigation plan on March 22, 2017, and had sought to do the same for the appeals. On the record before me, in the short time it was involved, it is unclear how SVR had

[25] KEM Affidavit at Exhibit K; March 31, 2017 letter from Piikani Nation's counsel: May 2021 Affidavit at Exhibit 1 (PDF p 99).
[26] KEM 2019 Affidavit at para 42.
[27] KEM 2019 Affidavit at para 48.

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sufficient time or information to properly consider litigation strategies requested by Kostic or otherwise.

[103] Further, even had SVR attempted to take immediate action, it is unclear that it could have implemented anything material in the short time it was involved.

[104] I reference several other matters.

[105] First, the statement of claim in the 0601 Action was filed in 2006, and the most serious allegations related to an alleged attempted SWIFT transfer were not struck until ACJ Rooke's April 7, 2014 order. However, as noted in other decisions, the amendments required by that order had still not been implemented by the time SVR became involved. It appears that disputes about the amendments had already crystallized before SVR became involved and ACJ Rooke had to intervene to provide a process to settle the amendments (in his June 22, 2016 order in the 0601 Action). Resolving these disputes was not a simple matter. Later events show that this was not completed until 2018 through a special application with briefs, heard by CMJ Nation (see: ***2025 ABKB 493*** at paras 27-30).

[106] Second, and in any event, there was little time for SVR to seek or obtain a fiat permitting Kostic to file an application to strike, or for summary dismissal of the claim against her. Later events have illustrated that those efforts would have been hopeless in any event because the 0601 Action is not amenable to summary determination (***2025 ABKB 493*** at paras 76-118; ***Piikani Nation v Raymond James Ltd***, 2023 ABKB 710).

[107] Third, there was very little time for SVR to realistically or practically engage in meaningful settlement discussions with Piikani Nation about the 0601 Action. Doing that would likely have needed to involve a detailed file review, and would have likely included other related Case Managed Actions in which SVR was not involved, including in particular the 0801 Action.

[108] Finally, the record does not disclose how any failure of SVR to take steps to extricate Kostic from the 0601 Action allegations, in the short time SVR was involved, caused Kostic damage.

[109] Kostic's position and evidence have been that the damage caused by the allegations in the 0601 Action had long been incurred before SVR's involvement. The statement of claim in the 0601 Action was filed in 2006 and, as noted immediately above, the most serious conspiracy and fraud allegations were not struck until 2014, with the claim still not being amended to remove those claims at the time SVR became involved. The record does not disclose how having the 0601 Action in hiatus for a few months while SVR became involved, after the allegations against Kostic had already been included in the 0601 Action for 11 years, caused material additional provable harm.

viii. Acting in AIG's Interests / Assisting AIG in Breaching its Duty to Defend

[110] The record before me discloses that SVR reported facts about what was transpiring with Kostic, as was its duty to do. This does not necessarily equate to SVR preferring AIG's interests over Kostic's interests, or assisting AIG in breaching its duty to defend Kostic. The allegations that AIG breached its duty to defend are hotly contested and the subject of the AIG Action.

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ix. Failing to Advance Claims or Defences Against Piikani Nation, RJL, CIBC Trust or CWM

[111] SVR's mandate or proposed retainer was to defend her in the 0601 Action, not to file claims against others outside the 0601 Action. In fact, in early 2017, Kostic had already used Zinner to seek a fiat, and Klym to file a separate action against CIBC Trust (which, as I have found in separate Reasons, was inconsistent with ACJ Rooke's February 5, 2013 order in the 0601 Action: ***Kostic v CIBC Trust Corporation***, 2026 ABKB 623.

[112] In any event, even assuming Kostic had instructed SVR to take steps against others, within or outside the 0601 Action, for the reasons set out above, it is unclear how SVR had time to do so during its involvement. Further, there was little time or information available to formulate a litigation strategy, give advice about other claims or defences which could be advanced to protect her positions, or to seek and obtain a fiat.

[113] Further, Kostic has not articulated how her rights were prejudiced by the lack of taking steps to advance claims or defences during the short time SVR was involved. Further, as noted in ***Piikani Nation v Raymond James Ltd***, 2026 ABKB 622, I have found that Kostic had no reasonable explanation for failing to advance claims for significant periods of time. It is speculative as to whether SVR would have been able to advance claims on her behalf even assuming it had time to try.

[114] Further, as noted in ***2026 ABKB 622***, Kostic's continued unreasonable delay in advancing claims, after SVR was no longer involved, may create material obstacles for Kostic's damages claim against SVR.

x. Failing to Recommend Independent Legal Advice

[115] In the proposed SVR retainer, AIG agreed to pay for Kostic's independent counsel, Klym, to continue providing her independent advice, in part due to his lengthy history of involvement in the disputes between Kostic and Piikani Nation and others, including the 0601 Action, the 0801 Action and the Kostic-Thom Action. Klym remained involved and available to Kostic during the time SVR was involved. SVR's retainer expressly provided that "Mr. Klym will remain counsel for and to" Kostic.

xi. Failure to Provide SVR File Contents

[116] On the record before me, it is unclear what file contents Kostic expected to receive but did not, after SVR ceased being involved, or how the lack of any such file contents prejudiced her position or caused her damages.

xii. Damages

[117] I provided some comments about damages above and those are not repeated. Some further comments follow.

[118] With respect to the allegation that SVR's conduct aggravated her medical condition, Kostic's evidence is that her medical condition had already been compromised and that she was

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disabled at the time SVR became involved. The record does not explain how anything SVR specifically did contributed to, or aggravated, her medical condition.

[119] With respect to the allegation that SVR prejudiced her position in the 0601 Action, the record does not disclose much evidence about how SVR's conduct in the 0601 Action prejudiced Kostic's position or caused her damage.

[120] With respect to the allegation that SVR caused the loss of Kostic's AIG insurance coverage, I note that, on January 9, 2026, AIG advised that it intended to drop its claim for recoupment of fees paid for Kostic's defence, thus reducing Kostic's potential damages significantly. Further, the record discloses that SVR reported to AIG, including by copying AIG on, or providing AIG copies of, SVR's correspondence with Kostic. There is no evidence SVR was involved with coverage related issues, and AIG had different coverage counsel engaged. Further, Kostic appears to greatly underplay or ignore her own conduct in AIG's decision to terminate her coverage. In any event, it appears that AIG made the decision to terminate Kostic's coverage, not SVR.

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xiii. Conclusion re Merits

[121] For the above reasons, I agree with ACJ Rooke's conclusion that Kostic's claim against SVR is relatively weak.

[122] Security for costs is often justified when claims having a modest or low prospect of success are coupled with concerns about a party's ability to pay: ***Carrigan v Withers***, 2026 ABCA 58 at para 27; ***Stephenson v Stephenson***, 2025 ABCA 255 at para 10; ***Aski Construction*** at para 8; ***Skolney v Nisha***, 2018 ABCA 78 at para 15. Further, security for costs is intended to protect defendants from weak claims and plaintiffs who have "nothing to lose" by making the claim: ***1251165 Alberta Ltd v Wells Fargo Equipment Company Ltd***, 2013 ABQB 533 at para 46.

[123] These principles are applicable here and support a security for costs order.

d. Undue Prejudice to Kostic's Ability to Continue the SVR Action

[124] The Court of Appeal discussed this element of rule 4.22 in ***Stoney v Trustees for the 1985 Sawridge Trust***, 2017 ABCA 437 at para 6:

> [6] Rule 4.22(d) requires consideration of whether a security for costs order "would unduly prejudice the respondent's ability to continue the action". This criterion is often central to the competing interests that arise in this type of application. On the one hand, the courts are always reluctant to deprive a litigant of his day in court, particularly because of economic hardship. On the other hand, respondents should not be subjected to continuous litigation where they have no prospect of recovering their costs. The presumption in civil procedure that the successful party is entitled to costs acts as an important control on the quantity and intensity of litigation, and that control is missing if the appellant is judgment proof.

[125] The burden is on Kostic to establish on a balance of probabilities that a security-for-costs order would jeopardize her ability to continue her claim because she has access to the information relevant to this issue: ***Amex Electrical Ltd v 726934 Alberta Ltd***, 2014 ABQB 66 at para 74(d)

(footnote 9), citing ***Keary Developments Ltd v Tarmac Construction***, [1995] 3 All ER 534, 540 (CA).

[126] SVR argues that there is no evidence that Kostic will be unduly prejudiced by an order to post security for costs. It points out that Kostic was able to post the $15,000 security ordered in ***2020 ABCA 41***, which is some evidence that Kostic has managed to find funds in the past despite her financial situation. Further, SVR argues that Kostic has "put forward no evidence of her assets or ability to pay" and therefore there can be no inference drawn that the action will be unduly prejudiced.

[127] I agree that Kostic did not provide any positive or detailed evidence about her assets. Other than generalized statements (noted below), she only gave much evidence about her income and some of her debts.

[128] However, I do not agree that there is *no evidence* of Kostic's ability or inability to pay, as implied by SVR. There is *some* evidence.

[129] Kostic claims she has been unable to earn a livelihood as a financial advisor since her termination by Piikani Nation in 2007[28] and that the Piikani Nation claim in the 0601 Action has had a "devastating impact on her life, including on her reputation, employability, health and finances".[29] Her evidence is that she is permanently disabled,[30] that she relies on disability payments,[31] and that her disability funds are her "only source of funds."[32] She repeatedly refers to her "significant financial hardship", lack of financial resources, and severe financial constraints. She deposes: "I have exhausted available remedies to obtain loans, from all available sources and have incurred at minimum five hundred thousand dollars in debt not including outstanding legal fees...".[33]

[130] As noted, this is some evidence of an inability to pay, and it was not tested through questioning. This is at least *some* evidence that Kostic may not be able to continue the SVR Action if she is ordered to pay security for costs.

[131] However, for the most part, Kostic's evidence consists of bald assertions or conclusory statements without any details or back up information. Bald, conclusory statements, in the absence of detailed facts and supporting evidence, may be given little or no weight: ***McDonald*** at para 96 (and cases cited therein). Further, the more detailed evidence that is before me is quite outdated, and was not updated in Kostic's more recent affidavits. In the circumstances, I give Kostic's evidence about her ability to pay and financial situation some, but not much, weight on the question of whether she would be unable to continue the SVR Action if security for costs is ordered.

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[28] Amended statement of claim in the 0801 Action at para 26.
[29] November 2021 Affidavit at Exhibit 17 (Factum in Court of Appeal File Number 2001-0119AC) at para 5 (PDF p 536).
[30] November 2021 Affidavit at para 223. A 2019 T4A issued by Canada Revenue Agency reflects Kostic received disability benefits in 2109: September 2021 Affidavit at Exhibit 6.
[31] November 2021 Affidavit at para 357
[32] November 2021 Affidavit at para 357.
[33] November 2021 Affidavit at para 117.

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[132] Further, and in any event, even if Kostic cannot pay the security demanded by SVR, there is insufficient sworn evidence that she would not be able to continue the SVR Action if some form of security for costs is ordered, which is an important factor: ***Parker*** at para 18(c). For example:

(a) Kostic references exhausting her remedies to get loans, but does not provide evidence as to whether there may be other sources of funding, for example from contingency agreements, family or friends.[34] It is generally required for a plaintiff to depose that it has no way of raising *any* money or other property which could be put up as security: ***Autoweld Systems CA*** at paras 16-18; ***Arraf*** at para 50; ***2008570 Alberta*** at paras 14-16; ***Blazer Mechanical*** at para 47;[35]

(b) Kostic states that she "cannot afford to post any large or perhaps even modest security for this action", which is ambiguous but implies there is an amount of security she can post;[36] and

(c) Kostic states that she lacks resources "sufficient to pursue [her] case", to "fund this litigation" (a reference to the SVR Action), or "to mount a proper defense" (a reference to the 0601 Action). These are generalized statements made to support her request for Advanced Costs. In any event, not having resources to fund her own solicitor-client costs in various Case Managed Actions in which she is involved does not necessarily mean she does not have resources available to her to post some security in the SVR Action.

[133] Clearly, a security for costs order would be a financial hurdle for Kostic. In my view, a security for costs award in the high-end lump sum sought by SVR would likely be "an insurmountable barrier to most litigants" and would likely end the action: ***Goldstick Estates (Re)***, 2019 ABCA 508 at para 45. But security for costs is not an all-or-nothing game where one-size-fits-all. There are no absolutes: ***993107 Alberta*** at para 84, citing ***1251165 Alberta Ltd***.

[134] The Court must tailor a security for costs order to the means of the parties and the nature of the issues: ***Goldstick Estates*** at para 46. There is insufficient evidence before me to suggest that every conceivable security for costs award, even one tailored to Kostic's circumstances and the SVR Action, would likely make it impossible for her to continue.

[135] In all the circumstances, without more detailed evidence about her financial situation, I am not prepared to find that Kostic will be unable to continue the SVR Action.

[136] Further, as noted above, the SVR Action is relatively weak. The loss of the ability to continue a case with little chance of success will not normally give rise to undue prejudice: ***Hasham v Kanji***, 2020 ABCA 283 at para 15.

[34] November 2021 Affidavit at para 117.
[35] These cases all involve corporate respondents, which have their own specific considerations, but I am not aware of any compelling reason not to apply it to other respondents.
[36] September 2021 Affidavit at para 44.

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e. Other Factors

[137] The parties raise a number of other factors which are addressed below.

i. Timing of SFC Application

[138] Kostic appears to argue the seemingly inconsistent positions that the SFC Application is both premature[37] and also, at the same time, was brought too late in the litigation.

[139] Kostic's prematurity argument is opaque. It appears perhaps based on several cases Kostic cites for the proposition that "security for costs cannot be sought while claims remain unresolved".[38] The cases she cites ("Fitzerald v The Co-operators General Insurance Company, 2014 ABCA 106";[39] "Glenmore v Western Canadian Properties, 2019 ABCA 253";[40] and "Renaud v The Mutual Fire Insurance Co of British Columbia, 2002 BCCA 378")[41] are simply fictitious citations for cases that do not appear to exist. No actual case law was provided that stands for this proposition or other propositions asserted by Kostic.

[140] The fact that Kostic included fictitious case citations in her *sworn affidavit* is particularly problematic and calls into question the reliability of her affidavit evidence generally: ***QM v RM***, 2025 ABKB 751 at paras 30-34. This lack of attention to detail and tendency to overstate is another reason I give her bald and conclusory statements in her affidavit less weight.

[141] In any event, Kostic's prematurity argument is rejected as unfounded. It would also lead to absurdity if adopted. Security for costs would have no purpose whatsoever if it could only be obtained *after* the claims were resolved.

[142] On the other hand, delay in bringing a security for costs application is a relevant consideration. An application for security for costs may be dismissed where it has not been brought promptly and there is a risk of resultant prejudice: ***The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation***, 2018 ABCA 232 at para 27 [***CPI Crown Properties***]; ***Aski Construction*** at para 9; ***Collins v Collins (Estate of)***, 2005 ABCA 41; ***Marathon Canada Limited v Enron Canada Corp***, 2008 ABCA 424 at para 4. This is particularly so where there is no explanation for the delay or the respondent has been allowed to carry on incurring expenses to move the action along, that will be thrown away: ***Orubor v Borden Ladner Gervais LLP***, 2022 ABQB 149 at para 31 [***Orubor 2022***]; ***CPI Crown Properties*** at para 27; ***Amex Electrical*** at para 74(g). Having said that, even established delay does not "invariably defeat the application": ***CPI Crown Properties*** at para 28.

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[37] September 2021 Affidavit at Exhibit 4 (p 18, para 3(p) (PDF p 53)).
[38] January 2025 Affidavit at para 50.
[39] There appears to be no such case. The citation for 2014 ABCA 106 is a criminal case having nothing to do with security for costs: ***R v TLG***, 2014 ABCA 106. There is a case with that name, ***Fitzgerald v The Co-operators Insurance Co***, 2003 NSSC 129, but it is not a security for costs case.
[40] The citation for 2019 ABCA 253 is to ***R v Hans***, 2019 ABCA 253, a criminal case having nothing to do with security for costs. I could not locate a case named "Glenmore v Western Canadian Properties".
[41] The citation for 2002 BCCA 378 is to ***Sindhar (Guardian of) v Brar***, 2002 BCCA 378, a personal injury settlement case having nothing to do with security for costs. I could not locate a case named "Renauld v The Mutual Fire Insurance Co of British Columbia".

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[143] In my view, the SFC Application was filed early in the life cycle of the SVR Action. After the initial close of pleadings, there appears to have been some records disclosure and then it does not appear much occurred in the SVR Action until Kostic filed her summary judgment application in 2021. There is no evidence Kostic, as a self-represented party, incurred significant legal costs during the period of delay, although she clearly spent time on her summary judgment application. SVR almost immediately took steps to seek security for costs when it became clear Kostic intended to move the matter forward. In these circumstances, I do not find that SVR unreasonably delayed the SFC Application and that, even if it did, that the delay warrants dismissal of the SFC Application in all the circumstances.

ii. Cause of Kostic's Impecuniosity

[144] "Any connection between the plaintiff's financial situation and the defendant's conduct is relevant, especially if the defendant's conduct is alleged to be the cause of the plaintiff's impecuniosity": ***Song*** at para 55, citing ***1251165 Alberta Ltd*** at para 43; ***Bechir*** at paras 28-29. However, as noted above, bald assertions to this effect are not especially persuasive: ***Orubor 2019*** at para 25. Further, security may be ordered even when the impecuniosity allegedly results from the defendant's conduct: ***Bechir*** at para 29, citing ***Geophysical Service Incorporated v Encana Corporation***, 2016 ABQB 49 at para 48.

[145] Kostic strenuously asserts that SVR is the cause of her impecuniosity. On the record before me, this is not a persuasive position. As noted earlier, Kostic's position and evidence have consistently been that she was already "financially destitute"[42] before SVR became involved.[43] As noted earlier, Kostic's claims that SVR caused or contributed to her financial damage, or that SVR caused the loss of her AIG insurance coverage (which likely contributed to her current financial situation), are weak and have not, on the record before me, been established on a balance of probabilities.

iii. Asserted Lack of SVR Costs Due to Insurance

[146] Kostic strenuously argues that security for costs is not appropriate or allowed because SVR is insured and has not and will not incur any costs. This argument is rejected.

[147] In ***Piikani Nation v Kostic***, 2018 ABCA 275, the Court of Appeal rejected a similar argument made by Kostic in the context of costs of an appeal. Kostic argued that some of the respondents were not entitled to costs because they had the ability to recover costs from third parties. The Court of Appeal rejected this argument, at para 13:

> [13] Ms. Kostic argues that some of the respondents are not entitled to costs, because they have an ability to recover their legal expenses from third parties. The ability of a party to recover legal expenses from others has no bearing on the entitlement to costs of these appeals: ***Armand v Carr***, 1927 CanLII 4 (SCC), [1927] SCR 348; ***Hill v Hill***, 2013 ABCA 13 at para. 12, 561 AR 50. The third parties

[42] See, as one example, Zinner's letter of January 4, 2017: May 2021 Affidavit at PDF p 115.
[43] On March 14, 2017, Zinner deposed that it was his understanding that the 0601 Action had "drained away" Kostic's savings: KEM Affidavit at Exhibit G.

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> actually funding the litigation may well be subrogated to the litigant for any costs that are recovered. No further argument on this issue is warranted.

[148] ***Armand***, cited by the Court of Appeal, was a case involving an insurer.

[149] Kostic argues that "case law establishes that a party covered by an insurance policy cannot seek security for costs to avoid its liability for breaches" and that "insurance coverage negates the need for security for costs as a means to evade liability". In this instance, the several cases she cited do exist, but do not stand for the stated propositions. They do not even reference security for costs.[44]

[150] Kostic's arguments are rejected as a basis to refuse security for costs.

iv. Asserted Failure to Produce Records

[151] Kostic argues that SVR has failed to produce or concealed records in the SVR Action. Her August 8, 2025 response to my direction in Endorsement #13 provided some specific requests, together with very general requests. SVR provided a detailed response to her request for records. Kostic has not conducted a questioning on SVR's affidavit of records. She did not continue her questioning of KEM that ACJ Rooke permitted. Kostic's December 2025 Fiat Request and the Proposed Kostic-SVR Records Application effectively duplicates and expands what was covered in the Endorsement #13 process at para 26(i). Kostic has not identified specific records or records categories that exist but have not been disclosed or produced.

[152] I am not satisfied that any failure to produce records, as Kostic asserts, is a basis to refuse security for costs. I address the December 2025 Fiat Request and Proposed Kostic-SVR Records Application later in these Reasons.

v. Public Interest

[153] Kostic argues that there is a public interest aspect to this litigation, which supports not only her request for public interest Advanced Costs, but also her request to reject security for costs.

[154] There is some support for the proposition that, where resolution of an action has importance to the "greater community" or the growth of the law, this may be a relevant factor in whether to grant security for costs: ***Bow Valley Engage Society*** at para 31; ***Amex Electric*** at paras 74(h) and 75(h); ***Provalcid*** at para 90; ***Emerex Oil*** at paras 82-85; ***Commercial Construction Supply Ltd v Ghost Riders Farm Inc***, 2016 ABQB 166 at para 24.

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[44] As a few examples, Kostic cited these cases to support her arguments, but none of them are security for costs cases or can reasonably be argued to stand for the propositions she asserts: ***Duncan v Law Society of Alberta***, 1991 ABCA 107; ***Law Society of Upper Canada v Ernst & Young***, 2002 CanLII 49625; ***Pope & Talbot (Re)***, 2011 BCSC 548; ***Ironside v The Queen***, 2013 TCC 339; ***Canadian Pacific Railway Company v Building Material, Construction and Fuel Truck Drivers Union, Local 213 of International Brotherhood of Teamsters***, 1975 CanLII 991 (BC CA); ***Cheung v Target Event Productions Ltd***, 2010 FCA 149 at para 28.

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[155] As elaborated on later in these Reasons, I find that the dispute between Kostic and SVR is fundamentally a private dispute. It does not have a particular importance to the greater community or the development of the law that warrants refusing security for costs.

vi. Other Litigation Conduct

[156] Both sides assert that the other side's litigation conduct is relevant.

[157] Kostic asserts numerous grounds of "egregious"[45] conduct or litigation misconduct against SVR, including failure to produce records (addressed above), false testimony, abuse of process, unclean hands, and "blatant manipulation of the judicial process".[46] She also asserts litigation misconduct against others.[47]

[158] Some of these allegations blend together with her other allegations that are already addressed above. Some of the allegations address SVR's conduct in the procedural applications in the SFC Application, which were decided by ACJ Rooke, the Court of Appeal and the Supreme Court of Canada. Those allegations constitute a collateral attack on final decisions. Kostic's other allegations are generalized statements that are not tied to any other particular conduct.

[159] I am not satisfied that SVR's litigation conduct warrants refusing security for costs.

[160] SVR points to Kostic's litigation conduct as a reason to support security for costs. I agree that Kostic's litigation conduct is relevant. I have already addressed this above in respect of the ability of SVR to enforce any cost award.

[161] Courts have accepted that security for costs may also be appropriate as a tool to curtail abusive litigation: ***Tican v Alamgir***, 2025 ABKB 517 at para 157; ***Belseck v Bond***, 2022 ABKB 845 at para 39, citing ***Jonsson v Lymer***, 2020 ABCA 167 at para 70; ***Rana v Rana***, 2022 ABQB 139. As noted by ACJ Nixon in ***Tican*** at para 157, this is also consistent with the broader approach by the Court that overzealous litigants should "put their money where their mouth is", citing ***Bonville v President's Choice Financial***, 2024 ABKB 483 at para 4.

[162] Kostic has been found to be a vexatious litigant by the Federal Court under section 40 of the *Federal Courts Act*, RSC 1985, c F-7: ***Canada (Attorney General) v Kostic***, 2025 FC 621. Although she has not been found by this Court to be vexatious, aspects of her litigation conduct are consistent with some of the recognized hallmarks of vexatious litigation: *Judicature Act*, RSA 2000, c J-2, s 23(2). In my view, Kostic's approach to litigation before this Court is a relevant factor.

[163] A review of my many recent and necessarily lengthy decisions in the Case Managed Actions involving Kostic illustrate this point. Kostic's relentless, piecemeal approach creates inefficiencies and consumes significant resources and time for all parties involved.

[164] Kostic frequently attempts to reargue, or seek leave to reargue, matters that have already been addressed. She frequently refuses to accept the finality of the Court's decisions and move on.

[45] Kostic 2026 Brief at para 54.
[46] Kostic 2026 Brief at para 52.
[47] Kostic 2026 Brief at paras 6(e), 6(f).

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She frequently seeks to advance hopeless positions, and litigates them vigorously. She frequently ignores or fails to follow the Court's directions. She frequently casts (often unjustified) aspersions against other parties and their counsel.

[165] I am not suggesting that Kostic's positions are always hopeless or frivolous (they are not), or that she always fails to follow directions (she does not, and she does often try to follow directions), or that the conduct of other parties to the Case Managed Actions is always unimpeachable. But Kostic's substantive positions are often obfuscated or distorted by her approach. She often fights with counsel or opposing parties about immaterial matters. She files materials that are excessively long, repetitive, disjointed, and often confusing or irrelevant. Her materials frequently make bald or conclusory assertions about case law or procedural events that have occurred in the past, that require significant work to review, and which quite often turn out to be inaccurate, misleading or based on misconceived notions. All of this takes significant time for opposing parties and the Court to untangle and get to the substance of matters. As a result, sometimes litigation steps that would normally take months, take years.

[166] As several Justices of the Court of Appeal and this Court have recognized (emphasis added):

> The presumption in civil procedure that the successful party is entitled to costs acts as an **important control on the quantity and intensity of litigation**, and that control is missing if the appellant is judgment proof.
>
> (See: ***Stoney*** at para 6 (Watson JA, Slatter JA, and Bielby JA); ***Lavoie v Lukiw***, 2025 ABCA 208 at para 9 (Friesen JA); ***Carrigan*** at para 34 (Antonio JA); ***Orubor 2022*** at para 14 (Devlin J); ***CPI Crown Properties*** at para 29 (Schutz JA))

[167] Kostic's litigation approach often has both quantity and intensity in the extreme, and she effectively admits she is impecunious. Without security for costs, as a self-represented party in the SVR Action, she effectively has "no skin in the game", which may encourage a "risk free" litigation strategy: ***Blazer Mechanical*** at para 51. This combination strongly supports security for costs in this case.

f. Conclusion re: Whether a Security for Costs Award is Just and Reasonable

[168] Upon considering all of the above, I find that a security for costs award is just and reasonable in the SVR Action. It can best balance the parties' economic security and interests, equities, rights and reasonable expectations, while furthering the factors in rule 1.2, providing a control on the quantity and intensity of litigation, and not unduly prejudicing Kostic's access to justice. Kostic has not discharged her burden to provide a reason that security for costs should not be granted.

3. If Security for Costs is Just and Reasonable, What is an Appropriate Security for Costs Order?

[169] A security for costs order should be tailored to the means of the parties, and the nature of the issues: ***Goldstick Estates (Re)*** at para 46.

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[170] Guidance for security for costs orders can be found in the *Rules* and jurisprudence. Rule 4.23 provides various components of the order the Court must include (unless otherwise ordered) including setting out the nature of the security and the timing for posting the security, staying other matters in the action, and providing consequences for failing to post the security in accordance with the order.

[171] In ***Goldstick Estates (Re)***, the Court of Appeal provided further helpful guidance at para 47:

> [47] Further, security for costs is primarily forward looking, and relates to the proposed new procedures. There is no absolute bar to ordering security that includes past costs, but that generally occurs when there has been a change of circumstances since those costs were incurred, or there is another special reason to include them: ***Beacon Hill Service (2000) Ltd v Esso Petroleum Canada***, 2000 ABCA 326, 281 AR 148; ***Manson Insulation Products Ltd v Crossroads C&I Distributors***, 2014 ABQB 634 at para. 13, 598 AR 46; [***Orubor***] at paras. 60-61. Security for costs is not, however, intended for use as a method for enforcing past costs awards: ***Sorrel 1985 Ltd Partnership v Sorrel Resources Ltd***, 1998 ABCA 103 at paras. 12-4, 219 AR 2; ***Freyburg v Fletcher Challenge Oil and Gas Inc***, 2003 ABCA 208 at para. 22, 330 AR 130; [***Skolney***] at para. 12. The same factors should be considered when imposing financial conditions precedent to procedural steps.

[172] Security for costs may be ordered as a lump sum or in instalments: ***Orubor 2022*** at para 44.

[173] As noted, SVR's security for costs proposal is roughly between $150,00 and $245,000. These amounts are calculated using column 4 of Schedule C of the *Rules* (based on Kostic's summary judgment claim to "at least $1,000,000") and various multipliers and inflationary factors. SVR suggests that payment of the cost awards in its favour should be required as a first instalment given the unique nature of this case, including because the cost awards are from the procedural steps in the very SFC Application at issue and are therefore not really "past" costs.

[174] I agree column 4 is appropriate and that a multiplier is appropriate to reflect the complexity of this matter, as one of several active interrelated Case Managed Actions, and having regard to Kostic's more time-consuming approach. However, I disagree that past costs should be included. I also find that the immediate lump sum SVR seeks would be unreasonable as it would be an "insurmountable barrier" that would "effectively foreclose the litigation": ***Goldstick Estate (Re)*** at para 45; ***Orubor 2022*** at para 44. In argument SVR acknowledged a staged approach might be appropriate.

[175] In my view, the first decision that Kostic must grapple with is whether she intends to proceed with her summary judgment application. This was filed before ACJ Rooke became case management judge and before there were restrictions on filing documents in the SVR Action. I note that the AIG Action, which also involves issues surrounding the termination of Kostic's AIG insurance coverage, has been held not appropriate for summary determination: ***AIG Insurance Co of Canada v Kostic***, 2023 ABKB 702. I briefly addressed the merits of Kostic's claim above and say no more about it because the summary judgment application is not before me.

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[176] Kostic is directed to advise the Court and SVR if she intends to proceed with the summary judgment application within two weeks of these Reasons. If she fails to do so, or if she advises that she abandons that application, the summary judgment application will be struck without costs. If she advises she intends to proceed, Kostic shall post $20,000 in security, by payment into court, within two months of these Reasons, failing which the summary judgment application will be struck. The SVR Action will be stayed until Kostic either posts the security, or the summary judgment application is struck.

[177] If Kostic's summary judgment application is struck, or upon a dismissal of the application after hearing by this Court, the SVR Action will be stayed again and Kostic will immediately be liable to post further security within two months of that date, in the amount of $30,000, failing which the SVR Action will be struck. This is to cover the pre-expert discovery portion of the SVR Action (supplemental affidavits of records and questioning under Part 5 of the *Rules*). I find $30,000 to be a reasonable estimate of Schedule C, column 4 costs, accounting for the likely duration of the questioning process, and related case management attendances, with an inflationary factor of 1.25 and with a 1.5X multiplier to reflect anticipated complexity. In my view, this best balances the parties' rights, provides accountability for litigation choices, and best allows the SVR Action to continue if that is what Kostic wants.

[178] Upon completion of the discovery process, either party has permission to bring the matter back before me (without the need for a fiat request), to address whether further security should be required for the expert report, trial preparation, and trial phases of the SVR Action. If either party seeks to bring an application to vary the security for costs order before that stage, they will have to provide a compliant fiat request to do so.

[179] If Kostic presents a compliant fiat request in the SVR Action for any other application under Endorsement #4 (at a time the SVR Action is not stayed), I will consider whether further security for costs should be required for any Approved Application, and I expect the parties to address that in their submissions. If necessary, the parties have leave to include an affidavit as part of any such fiat request or fiat response to address security for costs, which affidavits will be a maximum of 5 pages (with 50 pages of exhibits). Those affidavits will not count toward the page limits for the fiat request or the fiat response.

4. Conclusion re SFC Application

[180] I grant a security for costs order on the terms set out above.

B. Should the Kostic Applications be Granted?

1. Advanced Costs / PICA Relief

[181] Both the Cross-Application and the 2025 PICA Application seek Advanced Costs.

[182] In respect of Advanced Costs, the Cross-Application seeks approximately $200,000 in "Interim Advance Public Interest Costs" specific to the SVR Action (based on $55,295 for "security"; $25,000 for past costs incurred up to the December 2021 attendance before ACJ Rooke; and $120,000 for future costs for the trial of the SVR Action). It also seeks other relief related to a future offset for any overpaid advanced costs if Kostic recovers under indemnity/save harmless relief or the 0801 Action.

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[183] Kostic's fiat request for her proposed 2025 PICA Application went well beyond the ambit of the SVR Action.

[184] In Endorsement #13 at para 25, I stated:

> [25] The 2025 PICA Application goes well beyond the Cross Application and what was reasonably contemplated by Justice Graesser's October 24, 2024 order, and in my view contravenes the previous leave requirements. In any event, in my view it would unnecessarily complicate the hearing of the SFC Application and the Cross Application. Further, some of the relief in the 2025 PICA Application is sought again against SVR and others in Kostic and Ms. Pott's joint Fiat Request dated June 20, 2025 (Proposed Kostic/Potts PICA Application) and can and should be dealt with in that process.[48] Further, the 2025 PICA Application purports to seek intervention status on behalf of other persons, which is improper. No Fiat Request for intervention status has been received from any person wishing to intervene in the SVR Action. These aspects of the 2025 PICA Applications are improper and cannot proceed.

[185] Accordingly, in Endorsement #13 I struck the proposed relief seeking: (1) an order directing an investigation; (2) an advanced costs application for matters outside the ambit of the SVR Action; (3) inclusion of the Human Rights Tribunal and Chris Rowley as proposed intervenors; (4) certain joinder relief; and (5) including Janet Potts and Brian Jackson as "co-applicants" to the 2025 PICA Application: Endorsement #13 at para 26(d).

[186] Unfortunately, Kostic did not update the 2025 PICA Application to remove the relief that I expressly struck and did not permit to proceed. While that is, perhaps, understandable, Kostic egregiously went on to ignore my decision and wasted resources by continuing to argue, in the Kostic 2026 Brief, for the very relief that I did not permit and had struck. Later in these Reasons I seek further submissions from the parties about whether a penalty under rule 10.49 should be imposed against Kostic.

a. Positions of the Parties

[187] Kostic's position is that the Court has jurisdiction to grant Advanced Costs, under the *Judicature Act*, the *Rules*, common law or equity, that Advanced Costs are available her, and that she meets the applicable test set out in the jurisprudence.

[188] SVR's position is that Kostic references inapplicable legislation and *Rules*, and that she does not meet the requirements for Advanced Costs relief. The AGA's position is similar to SVR's position.

b. Assessment

[189] The *Rules* expressly provide for advanced costs in certain situations, namely with respect to litigation representatives (rule 2.17(2)), disclosure under Part 5 of the *Rules* (rule 5.3(2)(a); ***H2***

[48] The Fiat Request for the Proposed Kostic/Potts PICA Application was denied on September 24, 2025, due to the Fiat Request being non-compliant, it not being clear if notice had been provided to all parties, and the application being hopeless because there were significant ambiguities in the relief requested: Endorsement #40.

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Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd, 2024 ABKB 424 at para 60), and in family law matters under Part 12 of the *Rules* (rule 12.36). None of those are relevant or applicable to the Kostic Applications.

[190] However, the Supreme Court of Canada has recognized the inherent equitable jurisdiction to determine when and by whom costs are to be paid, including the discretion to grant interim or advance costs awards: ***British Columbia (Minister of Forests) v Okanagan Indian Band***, 2003 SCC 71 at paras 34-36 [***Okanagan***]; ***Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)***, 2007 SCC 2 at paras 34-44; ***Anderson v Alberta***, 2022 SCC 6 at paras 19-24.

[191] A court's inherent jurisdiction has been recognized in Alberta even where not expressly provided for under the *Rules*: ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2013 ABCA 226 at paras 17-18; ***Deans v Thachuk***, 2005 ABCA 368 at paras 17-23, leave for appeal refused in 2006 CanLII 11835 (SCC).

[192] In ***Okanagan***, the Supreme Court appeared to set out a test of general application for the exercise of jurisdiction to grant interim costs (para 36), with public interest or public law cases being a subcategory of cases of "special circumstances" for which interim costs may be appropriate (para 38).

[193] Alberta cases addressing interim costs since ***Okanagan*** appear to have been in the context of matters for which advanced costs are expressly available under the *Rules*, or are in the types of cases noted in ***Okanagan***: family, corporate, trust and asserted public interest matters. I have not been provided, and am not aware of, any Alberta superior court case that has applied the ***Okanagan*** test to purely private litigation. However, in ***1985 Sawridge Trust***, at para 18, interpreted ***Okanagan*** to apply to an adversarial situation where "an impecunious private party wants to sue another private party". In ***Stewart v Insurance Corporation of British Columbia***, 2014 ABQB 578, Master Schlosser contemplated the potential application of ***Okanagan*** to a claim for advanced payment of disbursements in a motor vehicle accident insurance matter.

[194] Other cases reference "public funding of private litigation", but those cases involved litigation involving government or administrative tribunals in some capacity: ***Wang v Alberta (Justice)***, 2018 ABCA 345 at paras 5-6; ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2018 ABCA 382 at paras 7-9; ***Said v Alberta (Workers' Compensation Board)***, 2018 ABCA 290 at paras 5-6. Those cases suggest that the applicant must show a "very meritorious case".

[195] In ***Koerner v Capital Health Authority***, 2011 ABCA 146, Watson JA addressed a situation somewhat analogous to this case. In that case, the self-represented plaintiff sued physicians and hospitals for various damages. In response to a security for costs application, the plaintiff argued that "if the Court should order security for costs, she would ask in counterpoint that the Court make an order of costs in her favour which would counteract the effect of that security order", invoking ***Okanagan***. The Court held that the plaintiff did not meet the ***Okanagan*** test. However, this was based on the Court, at para 16, "assuming (without deciding) that any such order should be considered or is available in circumstances like this".

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[196] Ultimately, in this case I do not need to decide the potential limit or boundaries of the Court's jurisdiction to award interim or advanced costs in a private litigation case like this one because, assuming advanced costs could potentially be available, Kostic has not discharged her burden to establish that an advanced costs order is appropriate under any potentially applicable test.

[197] As summarized in ***Deans***, at para 17, ***Okanagan*** set out the following criteria or considerations for an interim costs award:

> (a) the claimant must be impecunious to the extent that without such an order, the claimant would be deprived of the opportunity to proceed with the case;
>
> (b) the claimant must establish a *prima facie* case of sufficient merit to warrant pursuit; and
>
> (c) there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate.

[198] In the context public interest or public law cases, ***Okanagan*** set out the criteria that must be present, at para 40:

> 1. The party seeking interim costs genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial — in short, the litigation would be unable to proceed if the order were not made.
>
> 2. The claim to be adjudicated is *prima facie* meritorious; that is, the claim is at least of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means.
>
> 3. The issues raised transcend the individual interests of the particular litigant, are of public importance, and have not been resolved in previous cases.

[199] Assuming one or both of these tests apply, Kostic has not discharged her onus.

[200] First, as noted, Kostic has admitted her impecuniosity, but her *evidence* about it is comprised primarily of bare assertions or conclusory statements that I have not given much weight. In the context of her application for Advanced Costs, she has the onus. Kostic provided no details about her financial situation. Further, as noted, she did not provide sufficient evidence of her attempts to "explore all other possible funding options", including through fundraising campaigns, contingency fee agreements, or "any other available options": ***Little Sisters*** at para 40.

[201] Second, I have already found that Kostic has not established that she will not be able to continue the SVR Action, even with a security for costs order and no advanced costs. It follows that she has not established that she will be unable to proceed with the SVR Action without advanced costs. I have not found that the SVR Action will likely be "forfeited" without advanced costs.

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[202] Third, on the record before me, Kostic has not shown a *prima facie* case of sufficient merit, let alone one that meets the "very meritorious" standard if it is applicable. Therefore, even if Kostic is not able to continue the case, this result is not contrary to the interests of justice.

[203] I find these comments in ***Little Sisters***, at para 44, apposite:

> 44. A court awarding advance costs must be guided by the condition of necessity. For parties with unequal financial resources to face each other in court is a regular occurrence. People with limited means all too often find themselves discouraged from pursuing litigation because of the cost involved. Problems like this are troubling, but they do not normally trigger advance costs awards. We do not mean to minimize their unfairness. On the contrary, we believe they are sufficiently serious that this Court cannot purport to solve them all through the mechanism of advance costs awards. Courts should not seek on their own to bring an alternative and extensive legal aid system into being. That would amount to imprudent and inappropriate judicial overreach.

[204] Fourth, there are no special circumstances sufficient to satisfy the Court that this case is within the narrow class of cases where this extraordinary exercise of powers is appropriate. Without limitation to that finding, I find that, specifically, Kostic has not established any issues raised of public importance that transcend the individual interests of the particular litigants, that have not been resolved in previous cases. The SVR Action is purely private professional negligence litigation between lawyers and their client and/or potential client. In this regard, I agree with ACJ Rooke's observations in ***2022 ABQB 188*** at para 52 (footnote 23).

[205] Finally, I very briefly address Kostic's arguments relating to matters beyond the SVR Action, in particular her request for public funding to fund an investigation and related litigation into the alleged "misappropriation of over $150 million in Piikani Trust Funds". This relief was struck and not permitted to be part of the application, because it was hopeless. It is not before me. But, even if it were before me, and even assuming a court has jurisdiction in circumstances like this to direct the public or private funding of an investigation of a private person, entity, trust or First Nation's conduct (a matter I do not decide), Kostic would not be the appropriate person or entity to do that: ***2026 ABKB 622.***

[206] If there has been mishandling of Piikani Nation Trust funds as alleged by Kostic (also a matter I do not decide), it would seem to me that it is a matter properly addressed in the discretion of Piikani Nation, CIBC Trust as trustee or, perhaps, the Crown. It is not properly the subject of a Court-initiated or directed investigation at the behest of a private litigant with no direct interest in the outcome and who may act for their own personal, strategic, litigation or collateral purposes.

[207] The Kostic Applications seeking interim or Advanced Costs, or PICA relief, are dismissed.

2. Other Relief Sought in the Cross-Application

[208] I briefly address other relief sought in the Cross-Application:

(a) Kostic seeks to strike SVR's statement of defence. This was not addressed materially before me. To the extent that application is before me, it is dismissed. There is no basis to strike SVR's defence under rule 3.68;

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(b) Kostic sought to strike or stay the SFC Application. This was denied by ACJ Rooke in ***2022 ABQB 188*** at para 37. It is also now moot. To the extent that application is before me, that relief is dismissed;

(c) Kostic seeks "Judgment and Order be entered...". This is vague and unclear, and appears at best to be duplicative of Kostic's summary judgment application, which was adjourned long ago and is now subject to my security for costs order. This relief is denied;

(d) Kostic seeks to "set aside, vary or discharge an interlocutory order", but it is not clear to which order she refers, and this was not materially addressed before me. To the extent that application is before me, it is dismissed;

(e) Kostic seeks to amend her statement of claim to specifically plead breach of the professional code of conduct, or to "add further required joint tortfeasors based on the Piikani Removal Appeal Board July 7, 2021 Decision". This relief was not materially addressed before me. I am not aware that Kostic provided a proposed form of amended statement of claim, which is required for any such application. I adjourn that part of the relief sought, *sine die*. If Kostic seeks to proceed with that application in the future (or a similar new application), she will need to provide a fiat request;

(f) Kostic seeks "sanctions for breaching a sealing order dated May 16, 2017". This was not materially addressed before me, and, in any event, such allegations do not appear to be part of the statement of claim in the SVR Action. This aspect of the Cross-Application is adjourned *sine die*. If Kostic seeks to proceed with that application in the future (or a similar new application), she will need to provide a fiat request; and

(g) Kostic seeks a remedy allowing her to file supplemental materials, which is now moot as the applications have been heard.

[209] No further relief is granted in respect of the Cross-Application.

3. Conclusion

[210] The Cross-Application and the 2025 PICA Application are dismissed.

C. Should the December 2025 Fiat Request and Proposed Kostic-SVR Records Application be Permitted?

[211] The December 2025 Fiat Request was provided in conjunction with several fiat requests Kostic sought in the AIG Action. To be clear, these Reasons address only the part of the December 2025 Fiat Request as it relates to the SVR Action. The December 2025 Fiat Requests seeking to bring applications in the AIG Action, will be the subject of a separate decision in the future.

[212] As noted above, the Proposed Kostic-SVR Records Application duplicates and expands on the records Kostic sought from SVR pursuant to Endorsement #13 at para 26(i).

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[213] I do not approve the filing of the Proposed Kostic-SVR Records Application at this time, for several reasons.

[214] First, there was no Fiat Letter provided in respect of the Proposed Kostic-SVR Records Application. It is a non-compliant fiat request.

[215] Second, as it relates to seeking records from SVR, courts are not overly restrictive to disclosure requests at the interlocutory stage, however, disclosure obligations "are not designed to allow every stone, or every potential, possible, speculative or theoretical stone, to be turned over": ***Goold v Allen***, 2023 ABKB 66 at para 12; ***H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd***, 2024 ABKB 424 at paras 46, 53; ***CNOOC Petroleum North America ULC v 801 Seventh Inc***, 2026 ABKB 570 at para 13.

[216] A party seeking further and better disclosure will have to be able to explain or prove that the records they seek likely exist, are relevant and material, and the request is not a fishing expedition based on unrealistic or speculative premises: ***H2 Canmore*** at para 53. A fishing expedition has been described as "an inquiry that is without foundation other than conjecture or speculation", with other features including "dubious relevance, placing an onerous burden on the party examined and lack of demonstrated materiality": ***Edmonton (City) v Gosine***, 2020 ABQB 546 at para 36. On the other hand, the right to disclosure does not depend on the litigant proving "with certainty" that some relevant records exist, because the onus is on the other litigant to review its records and include them in their affidavit of records: ***Kaddoura v Hanson***, 2015 ABCA 154 at para 17.

[217] Kostic's proposed affidavit does not provide sufficient evidence of identified or identifiable records that likely exist, that are relevant and material, and that have not been disclosed or produced. She has not conducted a questioning on the affidavit of records of SVR. The request is overly broad and vague. The application is hopeless in this form and at this time.

[218] Third, as it relates to seeking records from AIG in the SVR Action, this is effectively a request for records from a non-party.

[219] Rule 5.13 is not to be used as a "fishing expedition" for third party documents or as non-party discovery: ***Inglis v Haight***, 2026 ABCA 221 at para 9; ***CNOOC Petroleum North America ULC v 801 Seventh Inc***, 2023 ABCA 97 at para 25 [***CNOOC v 801***] at para 27; ***Terrigno v Weal***, 2026 ABKB 409 at para 21.

[220] When considered together, Court of Appeal decisions confirm that rule 5.13 generally requires the applicant to show: (1) the record exists or is likely to exist; (2) the record is under the control of the non-party; (3) there is reason to believe the record is relevant and material; (4) the non-party might be required to produce the record at trial; (5) the record cannot be obtained from a party; and (6) it is appropriate to order the non-party to produce the record (which, in my view infuses, among other things, principles of proportionality): ***CNOOC v 801*** at paras 27, 42; ***CNOOC Petroleum North America ULC v Sunstone Projects Ltd***, 2026 ABCA 44 at para 8; ***Elhert v Sailer***, 2023 ABCA at para 23; ***LC v Office of the Child and Youth Advocate***, 2024 ABCA 104 at para 20; ***Terrigno v Butzner***, 2023 ABCA 124 at para 7; ***Esso Resources Canada Ltd v Stearns Catalytic Ltd***, 1989 CanLII 3423 (AB QB) at paras 25-26, aff'd ***Esso Resources Canada Ltd v Stearns Catalytic Ltd***, 1990 ABCA 144 at paras 12-13.

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[221] The proposed application to have AIG produce records in the SVR Action suffers from many of the same problems noted above as the relief sought against SVR. Further, it is premature. As noted, Kostic has not provided a targeted request for records from SVR and has not questioned on its affidavit of records. Kostic cannot possibly meet the requirement to show that it is unable to get records from SVR as the party to the SVR Action. This aspect of the Proposed Kostic-SVR Records Application is hopeless.

[222] Finally, and in any event, the SVR Action portion of the December 2025 Fiat Request is not approved because I have ordered Kostic to post security for costs in the SVR Action. The SVR Action is stayed pending compliance with the conditions of the security for costs order. I do not have the parties' submissions about whether security for costs may also appropriate for the Proposed Kosti-SVR Records Application.

[223] For all of the above reasons, the December 2025 Fiat Request seeking to file the Proposed Kostic-SVR Records Application is not approved.

[224] If Kostic wishes to bring fiat request for records production in the SVR Action in the future, she will have to ensure it is compliant with my directions. A fiat request can only be requested at the time the SVR Action is not stayed (i.e. she has posted required security). Kostic will have to address whether further security for costs should be awarded before the proposed application proceeds (as per my comments above). Further, because security for costs has been ordered in the SVR Action but not other Case Managed Actions, any fiat request to file an application in the SVR Action must not also include relief or fiats sought in other Case Managed Actions.

VI. Conclusion

[225] The SFC Application is granted on the terms noted above.

[226] The Kostic Applications are dismissed.

[227] The December 2025 Fiat Request seeking to file the Proposed Kostic-SVR Records Application is not granted.

[228] In the event the stay of the SVR Action is lifted because Kostic has posted security for costs, the parties are directed to schedule a CMC with me, within one month of that date, to discuss a procedural order for the summary judgment application or the discovery phase of the SVR Action (as the case may be).

[229] The parties are encouraged to resolve the costs of the SFC Application, the Kostic Applications and the December 2025 Fiat Request seeking to file the Proposed Kostic-SVR Records Application. If they cannot do so, I will consider submissions on costs and direct the following process. Within 4 weeks of these Reasons, each party shall provide me and the other parties a written cost submission setting out their costs position. These submissions will be a maximum of 4 pages in letter format, single spaced (excluding authorities, offers, proposed bills of costs, or summaries of proposed reasonable costs actually incurred). Within 6 weeks of these Reasons, each party shall file and serve on the opposing party and submit to my office any response submission to the other parties' cost submission, to a maximum of 3 pages in letter format, single spaced (excluding authorities).

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[230] I am considering a penalty under rule 10.49 because Kostic sought relief in her 2025 PICA Application that I had struck and did not permit her to pursue. The parties are invited to include submissions about that matter as part of their costs submissions (no additional pages).

[231] Counsel for SVR is directed to prepare the orders arising out of these Reasons. Approval of Kostic or her counsel is required.

Heard on March 10, 2026. December 2025 Fiat Request heard by written submissions.

Dated at the City of Calgary, Alberta this 9th day of September 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

John Gilbert
for the Defendants

Liliana Kostic
Self-represented Litigant

Justin Doll
for the Attorney General of Alberta

Kalen L. Lumsden
for AIG Insurance Company of Canada
(December 2025 Fiat Request)

Shane King
for Raymond James Ltd.
(December 2025 Fiat Request)

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