# Court of King's Bench of Alberta

**Citation: Athabasca Chipewyan First Nation v Alberta, 2026 ABKB 460**

**Date:** 20260812
**Docket:** 2513 00176
**Registry:** Ft. McMurray



Between:

**Athabasca Chipewyan First Nation**

Applicant

\- and -

**His Majesty the King in Right of Alberta as Represented by the Minister of Environment and Protected Areas and the Director of Environment and Protected Areas**

Respondent

\- and -

**Canadian Natural Resources Limited and Canadian Natural Upgrading Limited**

Third Party

\- and -

**Suncor Energy Inc. and Imperial Oil Limited**

Fourth Party

**Reasons for Decision**
**of the**
**Honourable Justice S.W. Davis**



## I. Introduction

[1] On October 3, 2024, the Director of Environment and Protected Areas (the "Director") issued a revised edition of the Mine Financial Security Program ("MFSP") Standard. The MFSP Standard was further updated, re-issued and published on the Government of Alberta Open Government website on December 13, 2024 (the "Decision").

[2] On April 1, 2025, the Athabasca Chipewyan First Nation ("ACFN") brought an Application for Judicial Review of the Decision (the "Application"). ACFN served His Majesty the King in Right of Alberta as represented by the Minister of Environment and Protected Areas and the Director of Environment and Protected Areas ("Alberta"). No other parties were served with the Application.

[3] Alberta seeks an order under Rules 3.15 and 3.68 of the Alberta Rules of Court striking the Application, arguing that ACFN has failed to serve all directly affected parties. Third parties Canadian Natural Resources Limited and Canadian Natural Upgrading Limited (together, "Canadian Natural"), Suncor Energy Inc. ("Suncor") and Imperial Oil Limited ("Imperial") (collectively, the "Third Parties") support Alberta's Application to strike, arguing they are directly affected parties requiring service of the Application.

[4] ACFN opposes the Application to strike.

[5] Pursuant to Rules 3.15 and 3.68, ACFN's Application for Judicial Review is struck.

## II. Background

[6] The MFSP is a liability management program created by the Alberta government under the *Environmental Protection and Enhancement Act* and managed by the Alberta Energy Regulator.

[7] The purpose of the MFSP is to hold oil sand and coal mine operators, referred to as Approval Holders, liable for the suspension, abandonment, remediation, and reclamation of coal and oil sands projects. It does so by collecting financial security from the Approval Holders. The MFSP Standard establishes how the amount of financial security owed by each Approval Holder is calculated.

[8] MFSP security for each Approval Holder is calculated annually and requires disclosure of MFSP asset and liability information as well as financial security deposit figures.

[9] All coal mine and oil sand mine Approval Holders are subject to the MFSP and the MFSP Standard. Four oil sand operators are Approval Holders: Canadian Natural Resources Limited, Canadian Natural Upgrading Limited, Suncor, and Imperial.

[10] Schedule 1 of the MFSP Standard specifically lists Approval Holders, namely the Third Parties, their Project Names, Approval Numbers, and the associated Base Security Deposit (“BSD”) amounts paid by each of them for the existing oil sands mines in Alberta.

[11] Between 2022 and 2024 the Director conducted a review of the MFSP. As part of the review, the Director engaged with industry, including the Third Parties, and Indigenous communities, including ACFN.

[12] As part of their engagement, the Third Parties provided the Director with confidential materials regarding oil sand mine operations.

[13] The Director issued a revised MFSP Standard on October 3, 2024. The MFSP Standard was further updated and reissued on December 13, 2024.

[14] On April 1, 2025, ACFN filed an Application for Judicial Review of the MFSP Standard.

[15] The Application seeks the following remedies:

1) A declaration that Alberta has breached its duty to consult and accommodate ACFN;

2) An order requiring the Director to engage in deep, meaningful and adequate consultation with ACFN regarding ACFN’s concerns, including the Fundamental Flaws listed at paragraph 29 of this Originating Application, and to amend the MFSP Standard within six months to address those concerns;

3) A declaration that the Crown is failing to diligently implement Treaty 8 by ignoring ACFN’s concerns about the infringement to its Treaty rights that will occur if the Respondents do not significantly reform the MFSP, and by failing to act diligently to prevent such a consequence;

4) A declaration that the Crown is in breach of its fiduciary duty toward ACFN by failing to collect enough financial security through the MFSP to ensure that oil sands mine sites within ACFN’s territories will be cleaned up, including by failing to address the Fundamental Flaws listed at paragraph 29 of this Originating Application;

5) A declaration that the Decision is unreasonable and *ultra vires* the authority of the Director;

6) An order requiring the Director to release to ACFN an independently verified estimate of total oil sands liabilities and supporting analysis;

7) An order requiring ACFN leave to seek further directions from the Court if ACFN is of the view that the Crown’s compliance with the above declarations and orders is inadequate;

8) An order granting the Applicant the costs of this Application; and

9) Such further and other relief as this Honourable Court may deem appropriate and just.

[16] The Fundamental Flaws referred to provide necessary context for the Application for Judicial Review as well as this Application to strike. ACFN claim the MFSP contains the following flaws:

1) Failure to require operators to post full security until six years before the end of mine life, when their assets risk losing value;
2) Requirement for operators to provide security beyond the Base Security Deposit only when mine operators are in financial distress and potentially unable to provide security;
3) Severe underestimation of operators' liability, caused in part by its lack of clear guidance for, and independent third-party verification of, MFSP estimates;
4) Lack of consideration of potential large-scale changes to the oil markets that could cause rapid industry-wide mine shutdowns; and
5) Failure to effectively incentivize progressive reclamation throughout mine life



## III. Analysis

### Does Rule 3.15 Apply to ACFN's Application for Judicial Review?

[17] ACFN argues that the Decision is properly classified as legislative, not administrative, and that legislative decisions do not require service on all individuals who may be affected by a review of the decision.

[18] The rule states:

> **3.15(1)** An originating application must be filed in the form of an originating application for judicial review if the originating applicant seeks from the court any one or more of the following remedies against a person or body whose decision, act or omission is subject to judicial review:
>
> (a) an order in the nature of mandamus, prohibition, certiorari, quo warranto or habeas corpus;
>
> (b) a declaration or injunction.
>
> **(2)** Subject to rule 3.16, an originating application for judicial review to set aside a decision or act of a person or body must be filed and served within 6 months after the date of the decision or act, and rule 13.5 does not apply to this time period.
>
> **(3)** An originating application for judicial review must be served on
>
> (a) the person or body in respect of whose act or omission a remedy is sought,
>
> (b) the Minister of Justice or the Attorney General for Canada, or both, as the circumstances require, and
>
> (c) every person or body directly affected by the application.
>
> **(4)** The Court may require an originating application for judicial review to be served on any person or body not otherwise required to be served.

> **(5)** An affidavit or other evidence to be used to support the originating application for judicial review, other than an originating application for an order in the nature of habeas corpus, must be filed and served on every other party one month or more before the date scheduled for hearing the application.



[19] Rule 3.15 draws no distinction between legislative and administrative decisions. Rather it requires a party seeking judicial review to serve the body from whom a remedy is sought, the applicable Minister of Justice(s), and every directly affected person or body.

[20] I accept, however, that the characterization of the impugned Decision informs the Application of 'directly affected.' A generally applicable policy will not, without more, make all regulated persons directly affected by a judicial review. The 'more' is present here: the Standard does not operate only at a sector-wide level. It identifies the specific Approval Holders, fixes project-specific financial consequences for them, and the pleaded relief seeks to alter those consequences.

[21] ACFN argue that Alberta and the Third Parties are not able to point to any Application for Judicial Review that was struck in relation to a legislative decision. However, it is equally true that no case has been provided where courts have limited or failed to apply 3.15 to a legislative decision.

[22] ACFN suggest that ***Mikisew Cree First Nation v Alberta***, 2024 ABKB 578 (***Mikisew***), supports their argument on this point. In ***Mikisew***, the Mikisew Cree First Nation and the Athabasca Chipewyan First Nation had filed an Originating Application for Judicial Review of a decision by the Minister of Indigenous Relations to terminate a review of the First Nations Consultation Regime without making any significant changes to it. The Alberta Crown unsuccessfully brought an Application to strike the Originating Application under Rule 3.15.

[23] While that case dealt with a decision that had characteristics of a legislative or general policy nature, the Court said the following on Rule 3.15:

> [128] Rules 3.15(2) and (3)(c) require that an originating application for judicial review seeking to set aside a decision must be filed and served on, among others, "every person or body *directly affected* by the application", within six months of the date of the decision (emphasis added). The Alberta Crown contends that a challenge to the termination of the Renewal Process required that the Nations' Originating application be served on the Indigenous groups and stakeholders who participated in that Process and none of them were served.
>
> [129] Compliance with Rule 3.15 is mandatory and the six-month time limit to both file and serve an originating application cannot be extended or varied: ***Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)***, 2023 ABCA 81 at para 6 (***Julien***). Failure to either file or serve within the limitation period is fatal; the proceeding may then be either struck or summarily dismissed: ***Tartal v Alberta (Human Rights Commission)***, 2023 ABKB 381 (***Tartal***) at paras 30-31.

[24] Similarly, ***Lehodey v Calgary (City)***, 2024 ABKB 668 dealt with a Judicial Review of a general rezoning bylaw. The decision did not concern an application to strike, but the court's focus was nonetheless on how service of every directly affected person or body under Rule 3.15 could be achieved in those circumstances. Rule 3.15 was clearly seen to apply in that case.

[25] The relevant question, then, is whether, given the nature and context of the Application, the Third Parties are directly affected by the decision, regardless of whether the Originating Application for Judicial Review concerns a legislative or administrative matter.

**Are the Third Parties Directly Affected by the Application?**

[26] How courts are to determine whether a party is directly affected for the purposes of Rule 3.15 has been considered on numerous occasions.

[27] In considering Rule 3.15, the normal rules of statutory interpretation apply. The Rule must be understood contextually and read in its grammatical and ordinary sense: ***Whitefish Lake First Nation #128 v Alberta (Minister of Environment and Protected Areas)***, 2025 ABKB 499 (***Whitefish ABKB***) at para 25; ***Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)***, 2023 ABCA 81 (***Julien***) at para 8.

[28] To determine whether a party is directly affected, courts must consider the particular facts, remedies sought, and potential outcomes in each case. Each determination will be highly fact specific: ***Julien*** at para 8; ***Tartal v Alberta (Human Rights Commission***, 2023 ABKB 381 (***Tartal***) at paras 63-67; ***Whitefish Lake First Nation #128 v Alberta (Minister of Environment and Protected Areas)***, 2026 ABCA 70 (***Whitefish ABCA***) at para 8.

[29] The factual context used to determine whether a party is directly affected is determined by the pleadings, which define the scope of the claim and set out the nature of the decision under review and of the remedy sought: ***Mikisew*** at paras 93, 131-132.

[30] A party that may experience an indirect effect is not directly affected: ***Kainaiwa/Blood Tribe v Alberta***, 2024 ABKB 401 (***Kainaiwa***) at para 76.

[31] Whether a party supports or opposes the review, or whether the review may have a potential positive or negative impact on them, does not change whether they are directly impacted and therefore must be served: ***Kainaiwa*** at paras 53-54; ***ENMAX Corporation v Alberta (Labour Relations Board)***, 2018 ABQB 431 (***ENMAX***) at para 18.

[32] Whether a party is directly affected under Rule 3.15 should not be interpreted restrictively: ***Whitefish ABKB*** at para 24; ***Whitefish ABCA*** at para 8.

[33] Participation in the original decision under review does not mean a party is directly affected: ***Steven v Alberta (Director of Human Rights Commission)***, 2022 ABCA 390 (***Steven***) at para 4; ***Mikisew*** at paras 128, 131; ***ENMAX*** at para 12. However, involvement in the original decision is a factor to consider in determining whether a party is directly affected: ***Julien*** at para 9; ***Hazkar Developments Inc v Cochrane (Town)***, 2019 ABQB 552 (***Hazkar***) at para 22.

[34] If a party was directly affected by the original decision, they will likely be directly affected by a review of that decision: ***ENMAX*** at para 12.

[35] Having either a direct legal, economic, or personal interest in the decision will often be sufficient to establish a party is directly affected. Merely possessing a potential commercial interest or having a general community interest in a decision is too remote to trigger Rule 3.15 service requirements: ***Kainaiwa*** at paras 64-65; ***ENMAX*** at para 9.

[36] A party that may be exposed to financial risk by a review of the original decision is directly affected and must be given notice under Rule 3.15, due to their financial interest in the outcome: ***Tartal*** at paras 66-67.

[37] Similarly, if existing contractual or economic interests could be effected by the Judicial Review, the party possessing those interests is entitled to be served: ***Kainaiwa*** at para 75.

[38] In ***Julien***, the Court of Appeal found that an employer is always directly affected in a workers' compensation judicial review, and explained why at paragraph 8:

> In the case of judicial review from a decision of the Appeals Commission, however, an employer is always "directly affected" simply by virtue of its financial interest in the outcome. <u>This is because the workers' compensation scheme is funded by employers through payment of premiums, meaning that an employee's entitlement to benefits may affect the premium an employer is charged</u>: ***Yuill v Alberta (Workers' Compensation Appeals Commission)***, 2016 ABQB 369 (***Yuill***) at paras 63-78. This alone is sufficient to require that an employer be served. (Emphasis added)

[39] Courts have found that where a judicial review is focused on the duty to consult owed by the Crown to a specific first nation, other parties are not directly affected by that review: ***Mikisew*** at paras 131-132; ***Whitefish ABKB*** at paras 39-42. However, just because a judicial review engages Indigenous and Treaty rights, it does not mean there will not be other directly affected parties: ***Kainaiwa*** at paras 71-78.

[40] The context of the Judicial Review Application demonstrates that ACFN seeks significant reform to the MFSP, which would include changes to the amount and timing of security paid by the Third Parties. They also seek an independently verified estimate of total oil sands liabilities <u>and supporting analysis</u> be released to them.

[41] The Third Parties were involved with the MFSP review process that led to the original decision ACFN is seeking review of.

[42] The Third Parties were directly affected by the original decision, as it established their current and ongoing financial obligations, as well as legal obligations to provide ongoing annual information to the Director.

[43] Their interest is neither a potential one, nor of a general nature. They have a direct economic and legal interest in the original decision and any review of it. They are specifically named in the MFSP Standard, and their specific financial obligations under that regime are set out within it.

[44] As in ***Julien***, the MFSP scheme is funded by security paid by the Approval Holders, meaning that a change in how the MFSP is calculated, supported, or applied would affect the security Approval Holders must pay. This financial interest means they are directly affected.

[45] ***Kainaiwa*** and ***Whitefish*** are distinguishable from the facts of this case. Those cases raised Indigenous and Treaty rights in the context of the one to one, nation to nation relationship between the Crown and the First Nation. Here the Treaty rights are potentially engaged, not merely by the relationship that exists between ACFN and Alberta, but also due to the relationship Alberta has established between itself and the Third Parties.

[46] The Third Parties are directly affected not merely because they participated in the review process, but because the pleaded relief, if granted, would change or place in issue the present legal and financial consequences of the Standard as it applies to them personally. The Application seeks mandatory reform of the MFSP Standard, alleges under-security in relation to

mine-reclamation liabilities, seeks disclosure of the liabilities analysis said to support the operators' obligations, and targets a Standard that expressly identifies the operators and their project-specific BSD figures. On these pleadings, the effect is immediate and individualized, not remote or merely precedential.

[47] For these reasons, I conclude the Third Parties are directly affected within the meaning of Rule 3.15.

[48] Following the hearing on this matter, the Alberta Court of Appeal released ***Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)***, 2026 ABCA 188 (***Bow Valley***). That case involved an appeal of the chambers justice's decision to strike the judicial review pursuant to Rule 3.15 for failing to serve Thunderstone Quarries, a third party whom the chambers justice found was directed affected by the judicial review.

[49] The Court of Appeal overturned the chambers decision to strike under Rule 3.15, finding that Thunderstone had a "potential future impact" which was too remote to find they were directly affected by the judicial review (at paras 64 and 72).

[50] The factual framework of ***Bow Valley*** is notably distinguishable from those before this court. Beginning at paragraph 65, the Court of Appeal outlines 10 distinct steps that would need to be completed before there would be any direct impact on Thunderstone. They further noted that even after that lengthy process, an environmental assessment does not approve or deny a project, and that the Designated Director, who's decision was the subject of the judicial review, does not have the authority to approve the final project (at paras 69 and 71).

[51] As noted above, the Director issues the MFSP Standard, which directly sets out the ongoing financial obligations of the Approval Holders. In the present case, the Decision is not many steps removed from any impact on the Third Parties, and the Director themselves hold the authority to impact them.

[52] Therefore, I find ***Bow Valley*** distinguishable on that point and find the Third Parties are directly affected.

**Must the Application for Judicial Review be Struck in its Entirety?**

[53] It is the position of ACFN that if the Court were to find the Third Parties were required to be served under Rule 3.15, portions of their Application can be severed and should not be struck.

[54] They argue that the Court should not adopt an unnecessarily broad approach to the Application of Rule 3.15, and that doing so is inconsistent with the principles governing the adjudication of Aboriginal and Treaty rights.

[55] More specifically, ACFN argue that the relief sought by their Application is primarily declaratory, not coercive, and as such will not impact the original decision itself or the interests of the Third Parties if granted.

[56] Further, in relation to declaratory relief #5, that the Decision was *ultra vires*, ACFN argue that claims of *ultra vires* are not bound by Rule 3.15, following ***Mammoet 13220-33 Street NE Limited v Edmonton (City)***, 2014 ABCA 229 (***Mammoet***).

[57] It is the position of Alberta and the Third Parties that the relief sought by the Originating Application is coercive in nature, particularly when read in the context of the entire pleadings, and therefore the Application must be struck in its entirety.

[58] As many courts have interpreted the meaning of "directly affected", so too many have comment on the harsh implications of the rule.

[59] Rule 3.15 is strict, harsh, and inflexible: ***Yaschuk v Emerson Electric Canada Ltd.***, 2025 ABCA 211 (***Yaschuk***) at para 6; ***Athabasca Chipewyan First Nation v Alberta (Minister of Energy)***, 2011 ABCA 29 (***Athabasca 2011***) at paras 27-28; ***Julien*** at para 13.

[60] Compliance with the rule is mandatory, and courts cannot extend or waive its requirements: ***Mikisew*** at para 129, citing ***Julien*** at para 6; ***Kainaiwa*** at para 12, citing ***EMAX*** at para 18.

[61] Non-compliance with the rule may result in summary dismissal or the originating application being struck: ***Tartal*** at paras 30-31.

[62] I do not accept ACFN's submission that any pleaded claim is severable from the impugned December 13, 2024 decision for Rule 3.15 purposes. Each declaration sought is framed by reference to the Director's issuance and content of the revised MFSP Standard, and each proposed order would either (a) require the Director to revisit that decision, (b) alter the legal and financial incidents of the Standard as it applies to the named Approval Holders, or (c) compel disclosure of information said to underpin the existing Standard and the liabilities assigned under it. None of the pleaded relief operates independently of the impugned decision.

[63] The relief sought in this case shares many similarities to that sought in ***Athabasca 2011***. In that case, ACFN sought judicial review of a decision to grant five leases to Shell Canada Ltd. and sought declaratory relief as follows:

> 1) A declaration that the Minister has a duty to consult and, if indicated, to accommodate the ACFN prior to the granting of the Challenged Tenures [...];
>
> 2) A declaration that the Minister breached the duty to consult the ACFN by failing to consult the ACFN, adequately or at all, prior to granting the Challenged Tenures;
>
> 3) A declaration that the Minister is under a continuing duty to consult the ACFN in respect of the Challenged Tenures [...];
>
> 4) An order quashing the Challenged Tenures;
>
> 5) In the alternative, an order suspending or staying the Challenged Tenures and prohibiting further steps being taken in respect of or in reliance on the Challenged Tenures until adequate consultation has occurred and an order of this Court to this effect has been made;
>
> 6) An order that any Party may apply to this Court for further directions, advice or orders in respect of the conduct of consultation in respect of the Challenged Tenures; [...]

[64] The Court of Appeal upheld the case management judge's decision to strike the application, other than the request for declaration that the Minister was under an ongoing duty to

consult with ACFN, due to ACFN's failure to comply with Rule 753.11, the predecessor to Rule 3.15.

[65] The court distinguished ACFN's application from other cases dealing with declaratory relief because it both dealt with challenges to specific administrative decisions and was outside of applicable limitation periods (see paras 21-22).

[66] The underlying circumstances and relief sought in this case are analogous. Though some of the relief sought in the Originating Application suggests ACFN seek only declaratory relief, all relief relates to the specific decision made by the Director and would amount to an attack to that decision.

[67] Even if that were not the case, the relief sought by ACFN is primarily coercive in nature, seeking orders and declarations that the Director engage in further consultations, diligently amend and reform the MFSP Standard, address the Fundamental Flaws, and release to ACFN information and analysis relating to oil sands liabilities.

[68] The Application is similarly not saved by the *ultra vires* claim. Where a body acts outside of its jurisdiction, the action is void, and therefore not subject to the limitation period under Rule 3.15: ***Mammoet*** at paras 20-24.

[69] This is distinguishable from claims that instead argue a decision is voidable, which remain subject to Rule 3.15: ***Mammoet*** at paras 25-29.

[70] Whether the policy merits of decisions or subordinate legislation are "necessary, wise, or effective in practice" are outside of a proper *vires* review: ***Auer v Auer***, 2024 SCC 36 (***Auer)*** at para 33. Further, as the Court of Appeal stated in ***Athabasca 2011*** at paragraph 20: "…relief which is cloaked as something other than a direct challenge to an administrative act or decision but which, in substance, has the same effect is caught by the six month limitation set out in the rule."

[71] ACFN's pleading uses the language of *ultra vires*, but in substance the challenge described in the Originating Application is that the Director's revised Standard is inadequate, under-secures liabilities, fails to account for market risk, and should be reworked after consultation. Those complaints go to the content, wisdom, and evidentiary foundation of the Standard, not to a pleaded absence of statutory authority in the Director to issue or revise the Standard at all. On the pleadings before me, the *ultra vires* label does not create a free-standing legality claim severable from the Decision under review.

[72] As such, ACFN's Application is subject to Rule 3.15 in its entirety.

[73] Because every pleaded claim and remedy is anchored to the impugned Decision and because the unserved Third Parties are directly affected by the grant of any of that relief, non-compliance with Rule 3.15 is fatal to the Originating Application as framed. I therefore strike the Application in its entirety rather than only in part.

Heard on the 23rd day of April, 2026.
**Dated** at the City of Ft. McMurray, Alberta this 12th day of August, 2026.

**S.W. Davis**
**J.C.K.B.A.**

**Appearances:**

Susanne Calabrese and Anna McIntosh
for the Applicant

Heather Campbell and Kate Whittleton
for the Respondent

Jennie Buchanan
for the Third Party

Michael Dixon
for the Fourth Party