

Action No.: 2001-03986  
E-File Name: CVK24BRAVIM  
Appeal No.: \_\_\_\_\_

IN THE COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

BETWEEN:

MARK BRAVI, Litigation Representative of the Infant Plaintiff DANTE RUPERT  
BRAVI and MARK BRAVI and HIS MAJESTY THE KING IN RIGHT OF  
ALBERTA

Plaintiffs

and

CAMERON BALLY, as Litigation Representative for THE ESTATE OF RYAN PETER  
DOEDEL, DECEASED, and ROCKY VIEW COUNTY

Defendants

and

INTACT INSURANCE

Third Party Defendant

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P R O C E E D I N G S

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Calgary, Alberta  
February 22, 2024

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Proceedings taken in the Court of King's Bench of Alberta, Courthouse, Calgary, Alberta

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February 22, 2024

Afternoon Session

Applications Judge Farrington

Court of King's Bench of Alberta

J.D. Allchurch

For M. Bravi, Litigation Representative of the  
Infant Plaintiff D. Bravi, M. Bravi, and His  
Majesty the King in Right of Alberta

N. Peermohamed

For Rocky View County

(No Appearance)

For C. Bally as Litigation Representative for  
The Estate of Ryan Peter Doedel, Deceased

(No Appearance)

For Intact Insurance

C. McGiverin

Court Clerk

---

THE COURT:

So we've got Mr. Peermohamed and Mr.

Allchurch.

MR. ALLCHURCH:

Good afternoon, Sir.

THE COURT:

What I usually like to do on these is have the  
applicant spend about an hour or so. That gives the respondent an hour or so to respond  
and then we can take stock of where we are about 4:00 and see what we need in terms of  
any further submissions.

Mr. Peermohamed? Good morning. Or afternoon, I guess.

### **Submissions by Mr. Peermohamed**

MR. PEERMOHAMED:

Afternoon, Sir. Your Honour, Nabeel  
Peermohamed, counsel for the defendant/applicant Rocky View County. My friend, Derek  
Allchurch, is counsel for the plaintiffs/respondents. We have Dan Downe, who's  
representing, I believe, the SEF 44 insurer, and my colleagues Mavy Mangat and Courtney  
Chrusch are just from my office observing.

This is our application for summary dismissal under Rule 7.3. We submit the claim against  
the County has no merit. Specifically, despite all the material before the Court, this case  
comes down to the simple question of whether the County is liable for not having a speed  
limit sign for westbound traffic on Township Road 242. We submit section 533 of the

1 *Municipal Government Act* immunizes the County from any liability for the presence or  
2 absence of any signage, and that's per *Steele* at tab 13 paragraph 166.

3  
4 Now, if you read the claim as a whole, you will see the base allegation is the County should  
5 have had a speed limit sign, and not having one up is what caused the accident. The  
6 plaintiff's relying on the report of John Morrall to say, at paragraph 21 of their brief, that  
7 the road now complies with the design guides because of a speed limit sign and various  
8 other signage. That's it. According to their expert, that's all the County needed to do in  
9 order to not be negligent. However, there is statutory immunity for any damages caused by  
10 the lack of signage. As a result, the plaintiffs' claim has no merit.

11  
12 There were signs in existence at the time of the accident, but not speed limit signs, and  
13 these were on the paved portion of the road going westbound and leading to the private  
14 driveway. There's three points that are important for the Court to consider: causation,  
15 section 533, and section 532. So first let's talk about causation.

16  
17 The police noted the vehicle was travelling at a high rate of speed. That's at the police  
18 report at Exhibit D to Steven Hulsman's affidavit. The driver went off the road to the right  
19 with no attempts to brake. That's Exhibit D, page 13. The questioning evidence of the  
20 plaintiff shows the accident was caused by driver error. That's at Exhibit G, pages 18 to 21  
21 and 27. Now, the signs that existed on the road at the time before the accident are on the  
22 map at Exhibit L. There was a stop sign, a "No Through Traffic" sign, and a "Texas gate"  
23 sign. So in any event, despite no requirement to have a speed limit sign and no liability for  
24 not having a speed limit sign, we submit having a speed limit sign would not have made a  
25 difference.

26  
27 The police noted the vehicle was travelling at a high rate of speed. The police would have  
28 known this was an unmarked rural road and would know that the speed limit was 80  
29 kilometres per hour. And if they indicated high rate of speed, the Court could take judicial  
30 notice they meant over 80 kilometres per hour. Mr. Doedel was speeding, and a sign would  
31 make no difference to avoid the accident. Now, the expert report of Timothy Leggett says  
32 the vehicle went straight and did not even attempt to turn. So even if the Court accepts the  
33 vehicle left the road at 75 kilometres per hour, which is what their expert says, the accident  
34 was caused by driver error. Mr. Doedel missed the turn completely.

35  
36 Let's now talk about the proper interpretation of section 533. Now, the plaintiffs say in their  
37 brief that the 2004 Ontario case of *Ouellette* - that's at tab 10 of their brief - they say that  
38 case informs the interpretation of the Alberta *MGA*, but that is not what was done in the  
39 2010 case of *Steele*, which is at our case -- our brief tab 13. At paragraph 166, the Court  
40 provided the exemption for the City's liability for not erecting a No Parking sign. So section  
41 533 is not to be interpreted as protecting the City if the sign causes injury. That's what my

friend says. We submit it is to protect the City from liability where the allegation is a lack of signage caused the injury. That is how the Court today should interpret section 533 to provide the County here immunity from liability for the plaintiffs' damages.

Now, my third and final point is the plaintiffs are alleging the road was in a state of disrepair to attract liability under section 532 of the *Municipal Government Act*. The gentle curve of the road is private property. That's uncontroverted. The County could not do anything about that. The County is not obligated to make a private driveway straighter. Now, the plaintiffs cite *Pyke v. Calgary*, 2023 ABCA 304. I have a copy for the Court.

THE COURT: Sure.

MR. PEERMOHAMED: This decision came out relatively recently, after briefs were exchanged and -- and filed. But both my friend and I will be relying on this case, and we think it's informative. It clearly clarifies the interpretation of section 532 and 533. So the Court of Appeal said at paragraph 46 --

THE COURT: 36?

MR. PEERMOHAMED: 46.

THE COURT: Okay, 46.

MR. PEERMOHAMED: 4-6.

THE COURT: Thank you.

MR. PEERMOHAMED: I've highlighted the relevant portion that I'm relying on. So at paragraph 46, while referencing cases like *Malmas*, 2007 ABQB 648, and *Steele* with an 'E', 2010 ABQB 327, the Court of Appeal says section 533(a) immunizes a municipality from lack of -- sorry. Section 533(a) immunizes a municipality from liability for lack of signage. The Court of Appeal in *Pyke* also distinguished *Housen* - that's the 2002 SCC 33 case, which the plaintiffs rely heavily on in their brief - because the protection of section 533 was not available to the municipality in *Housen*. And now at paragraph 47 of *Pyke*, the Court of Appeal says:

Section 533(a) operates to shield Alberta municipalities from liability for good faith decisions in relation to certain types of roadway infrastructure, including decisions about what to install and when, where, and how to install it.

1 So in today's case, there would be liability for the County if a sign they had installed had  
2 fallen over and then the fallen sign was the cause of Mr. Bravi's injuries. But that's not what  
3 happened here, so there's no liability on the County. There is no sign. No sign caused the  
4 injury. The allegation is a lack of signage caused the injury.

5  
6 *Pyke* also dismisses the analysis in *Ouelette* as inapplicable with respect to section 533,  
7 and we submit the Court should do the same here. Well that is something that my -- my  
8 friends rely on heavily. So in conclusion, we ask the plaintiffs' claims as against the County  
9 be dismissed because there is no merit to them in the face of the statutory immunities  
10 afforded the County by the *Municipal Government Act*. Subject to any questions, those are  
11 my submissions.

12  
13 THE COURT: Mr. Hulsman's cross-examination, I thought I  
14 understood it to say that there was a 50 kilometre per hour sign at the time of the accident.  
15 Do I have that wrong?

16  
17 MR. PEERMOHAMED: Well, he had to clarify. So he --

18  
19 THE COURT: Okay.

20  
21 MR. PEERMOHAMED: -- said he'll just need to clarify, and then if you  
22 look at undertaking number 5 --

23  
24 THE COURT: Okay, if you could tell me about that please?

25  
26 MR. PEERMOHAMED: Yeah. Undertaking number 5 says those two  
27 signs that are depicted in the expert report were put in December 2018 - so a few months  
28 after the accident.

29  
30 THE COURT: Those are the "after" signs then.

31  
32 MR. PEERMOHAMED: That's right.

33  
34 THE COURT: Okay.

35  
36 MR. PEERMOHAMED: That's right.

37  
38 THE COURT: And then my other question is there is some  
39 debate about is the speed limit 50 kilometres per hour or 80 kilometres per hour on this  
40 road?  
41

1 MR. PEERMOHAMED: On a rural unmarked road, the speed limit is  
2 understood as 80 kilometres per hour. And I believe that's from the Alberta Government  
3 site. In the urban centres it's -- it's 50 kilometres an hour if it's unmarked.  
4

5 THE COURT: Okay. Thank you.  
6

7 Mr. Allchurch?  
8

9 **Submissions by Mr. Allchurch**  
10

11 MR. ALLCHURCH: Thank you, Sir. My friend was very brief. Much  
12 appreciated. Sir, I'll -- I'll deal, I guess, primarily with these -- the issues that my friend  
13 talked about as far as section 532(1) of the *Municipal Government Act* and then section  
14 533(a) of the *Municipal Government Act*. Before that though, I just want to clarify that on  
15 -- on causation, we're relying on one thing my friend mentioned, which is Tim Leggett, the  
16 engineer, saying that the -- the vehicle left the road at 75 kilometres per hour. That's the  
17 only -- we don't -- unfortunately, Ryan Doedel died in this accident, so we don't have any  
18 information from him. So what we have is the engineer saying that the departure speed was  
19 75 kilometres per hour, which is below the -- the unposted speed limit of 80 kilometres per  
20 hour.  
21

22 The other thing is, as shown in my brief, at least as far as causation goes, this case is very  
23 similar to *Housen* in that the -- the expert evidence is that the -- the sharp corner coming  
24 up creates the hazard. This is John Morrall talking about human factors. So I wasn't going  
25 to spend a lot of time on causation because of the exit speed, which is below the speed limit  
26 and, I submit, very similar facts to *Housen*. I think though I do have to spend some time on  
27 both section 532 of -- of Alberta's *Municipal Government Act* and section 533(a).  
28

29 So let me go get into that, but there's a few key facts I'm glad to hear my -- my friend -- to  
30 me, there was some confusion as to whether the -- there was a posted speed limit. Under  
31 section 106 of the *Traffic Safety Act* in the absence of signs, the speed limit on a rural road  
32 is 80 kilometres per hour. So -- but interestingly, after the accident it was lowered to 50  
33 kilometres per hour, as my friend candidly conceded, in December 2018 because of this  
34 accident - this horrible accident - where Mr. Doedel was killed and Mr. Bravi was rendered  
35 a -- a -- a T10/L1 paraplegic. Fifty days after that, the 50 kilometre per hour signs were put  
36 in. So the speed is now 50 kilometres per hour.  
37

38 So as far as -- as -- that's important, Sir, because we submit that the post-motor vehicle  
39 accident changes to Township Road 242 are relevant because they show what Rocky View  
40 County should have done before the motor vehicle accident. So as my friend correctly  
41 pointed out, the key facts from John Morrall, our road design expert, and not coincidentally

1 the road design expert in the *Pyke* decision, was that Township Road 242 now would pass  
2 -- would pass a -- a -- a road safety audit. So it now complies with Alberta Transportation's  
3 road safety design guides. But he also says it didn't at -- at the time that the accident  
4 occurred.

5  
6 So the -- and -- and that's -- that's really for two reasons that he states, and this is from John  
7 Morrall's affidavit. He says that Township Road 242 cannot accommodate speeds of 80  
8 kilometres per hour because the geometry does not provide a safe stopping sight distance.  
9 So I just want to hand out, Sir -- and this -- this is from John Morrall's affidavit.

10  
11 THE COURT: Just a question --

12  
13 MR. ALLCHURCH: I -- I can tell you where it's from, but yeah, go  
14 ahead.

15  
16 THE COURT: Yes, just a question. Let's say you've got a gravel  
17 road in Kananaskis country, and nobody puts up a sign. Does that mean you get to drive  
18 80 kilometres per hour regardless because nobody put up a sign? Don't you have to keep  
19 the car on the road?

20  
21 MR. ALLCHURCH: Yes, and -- and I -- I don't think, Sir -- absolutely,  
22 and I don't -- this is certainly not a case where we're trying to say that Rocky View Country  
23 is 100 percent at fault. I think if you see in *Housen*, if you read through it, in that case they  
24 weighed the lack of signage and said, Well, in this case the municipality is 35 percent at  
25 fault. So we completely agree that the driver certainly has some high duties on a road like  
26 this. It's 10:40 at night when this happens, so it's dark out.

27  
28 There's no -- I'm not -- I'm not imputing any knowledge you have, Sir, of Springbank but  
29 believe me, there's no traffic -- there's no traffic lights out there. So certainly, this -- this is  
30 a situation we submit where the driver would bear the -- the lion's share of the liability, but  
31 we don't think that's -- we'd respectfully submit that doesn't mean that the County is  
32 completely not at fault, similar to in *Housen*.

33  
34 So Sir, I'm just passing you up --

35  
36 THE COURT: Sure. Thank you.

37  
38 MR. ALLCHURCH: This is just -- oh. This is just an excerpt from  
39 John Morrall's affidavit.

40  
41 THE COURT: Sure, thank you.

1  
2 MR. ALLCHURCH: This isn't a new document or anything. It's just  
3 -- specifically, it's from the affidavit of John Morrall. It's Exhibit B, tabs 5 and 6. And the  
4 first -- I'll just go through the photos. The first photo just shows the new -- the now posted  
5 speed limit sign. That sign is about 1.5 kilometres east of where the collision occurred. The  
6 bottom sign shows the -- you can see -- it's not a very good photo, but there's a posted speed  
7 limit sign now for eastbound traffic on Township Road 242.

8  
9 The next photo shows that there's a vertical crest, which is why you can't see that -- what  
10 my friend's described as -- as a gentle curve. You can't see it until you're -- you're close.  
11 The photo at the bottom shows these signs weren't there. That's -- that's admitted. But now,  
12 there's a 25 kilometre per hour advisory sign. There's a -- now there's a sharp left arrow  
13 signal. Now, and you can see in this -- it's better shown on the next photo, Sir. Now, there  
14 is two -- two left turn chevrons that are illuminated at night so you can see them when your  
15 headlights hit them.

16  
17 And now there is -- at the end, there's the checkboard sign with the sharp left corner, and  
18 now there's a flashing yellow light. It's solar powered, so it -- it warns -- and these -- these  
19 are all changes that laudably the Rocky View County made after the accident, but the  
20 reason they made them is important to what they should have done before the accident  
21 because what these new signs do is they warn drivers of the upcoming -- the accident itself,  
22 Sir, happened on the Township Road, so it's somewhat immaterial where the -- where this  
23 road actually goes. It goes on to Colpitts Ranch, but what it does is it warns motorists that  
24 this road's about to end and it's about to turn -- whether it's sharp or gently, I would submit  
25 under -- John Morrall says this corner can't be safely taken at more than 40 kilometres per  
26 hour.

27  
28 So it's incumbent upon Rocky View County to warn people of the dangerous state of this  
29 road. It's about to end, and it's about to be a corner that cannot be safely negotiated  
30 anywhere close to 80 kilometres per hour. So that's why these signs were installed, and the  
31 issue becomes more, Why weren't they installed before the accident? Sir, section 533(a) ...

32  
33 THE COURT: Yes.

34  
35 MR. ALLCHURCH: So, I just wanted to perhaps belabour the point  
36 on *Housen*, but the -- the cite that we're relying on in -- in *Housen* is paragraph 71. In -- in  
37 *Housen*, paragraph 71, which is on page 280:

38  
39 The trial judge concluded that, on a balance of probabilities, Mr.  
40 Nikolaisen would have reacted and possibly avoided an accident, if  
41 he had been given advance warning of the curve. However she also

1 found that the accident was partially caused by the conduct of Mr.  
 2 Nikolaisen, and apportioned fault accordingly, with 50 percent to Mr.  
 3 Nikolaisen and 35 percent to the Rural Municipality.

4  
 5 So I -- I think, Sir, that hopefully answers your question as to what we're seeking today.

6  
 7 THE COURT: Yes.

8  
 9 MR. ALLCHURCH: Now, *Housen* was applied as -- as my friend  
 10 referred to in the -- the case of *Pyke v. Calgary (City)*, and in *Pyke* I'd just like to refer you  
 11 to paragraph 13 of the -- of the trial decision. We'll also talk about the appeal decision, but  
 12 ... so in paragraph 13 of *Pyke*, the trial decision ... sorry, Sir, I'm just having --

13  
 14 THE COURT: That's okay.

15  
 16 MR. ALLCHURCH: -- trouble finding the trial decision. There it is.

17  
 18 THE COURT: It's okay.

19  
 20 MR. ALLCHURCH: This is at the end -- so on top of -- top of page 7:  
 21 (as read)

22  
 23 The duty to keep roads in a reasonable state of repair stated in *Housen*  
 24 does not necessarily require the original design or construction defect  
 25 to be corrected if it can be mitigated in other ways (example, signage  
 26 or changes in speed limit).

27  
 28 And Sir, that's exactly what happened here. This is a rural road. We certainly don't expect  
 29 Rocky View County to -- to change the road or pave it or -- or even -- even curve it, but  
 30 they at least have a duty to keep the road in a reasonable state of repair. It has to -- you  
 31 have to warn people that it's about to end. So that's the wording we take from *Housen* that  
 32 was applied in *Pyke*. Sir, there's really -- I guess there's two issues as to why this road  
 33 wasn't in a reasonable state of repair. It's the fact that the speed limit was 80, not 50. At 80  
 34 kilometres per hour, obviously motorists don't have nearly the same amount of time and  
 35 they're not warned of the impending hazard, and signage to warn motorists of the upcoming  
 36 sharp left turn.

37  
 38 So perhaps I've belaboured that enough, Sir. We submit that section 532 has been -- has  
 39 been breached. I think probably the -- the issue that the Court is more interested in is section  
 40 533(a), and -- and we concede as -- as referred to in the Court of Appeal in *Pyke* that unlike  
 41 in *Housen*, Justice Feasby must consider an additional defence, which is section 533(a) of

1 the *Municipal Government Act*. And he deals with this, Sir, at paragraph 104 of the trial  
2 decision, which is on page 21. He writes that *Municipal Government Act* section 533(a) as  
3 it is written extinguish the liability of municipalities at common law for providing unsafe  
4 road (sic), nor does it relieve municipalities from liability for failing to repair road  
5 infrastructure under -- under section 532.

6  
7 Sir, as you know, after we wrote our briefs the Alberta Court of Appeal released their  
8 decision in *Pyke*. It was released on October 24th --  
9

10 THE COURT: Right.

11  
12 MR. ALLCHURCH: -- 2023. The Court of Appeal dismissed the City  
13 of Calgary's appeal of Justice Feasby's decision, finding the City was liable in that situation,  
14 and what the Court of Appeal wrote -- and Sir, this is in -- in *Pyke* -- do you have the appeal  
15 -- do you have the appeal decision there?  
16

17 THE COURT: I do, yes.

18  
19 MR. ALLCHURCH: This is paragraph 45.

20  
21 THE COURT: 45? Okay. Yes.

22  
23 MR. ALLCHURCH: They say at 45:

24  
25 We do not accept the City's argument that section 533(a) provides  
26 blanket protection from liability in any case implicating barriers,  
27 medians, and curbs.  
28

29 And then at paragraph 50 they say: (as read)  
30

31 Having installed the barrier on the median separating the east and west  
32 bound traffic on Glenmore Trail, the City has (sic) a duty to keep that  
33 barrier in a state of reasonable repair.  
34

35 Above that Sir, on the same page, page 16, paragraph 47 I would submit properly describes  
36 section 533(a) as: (as read)  
37

38 operating to shield Alberta municipalities from liability for good faith  
39 decisions in relation to certain types of roadway infrastructure,  
40 including decisions about what to install and when, where, and how  
41 to install it.

1  
2 And for that proposition, they refer back to their own decision in *Southland Transportation*  
3 *v. Calgary (City)*. And I do have -- it's a bit confusing, Sir, because -- I'll pass it up to you.

4  
5 THE COURT: Sure.

6  
7 MR. ALLCHURCH: I've passed it to my friend, but he may not have  
8 had a chance to review. Just some history, Sir. That decision -- the *Southland*  
9 *Transportation v. Calgary (City)* is -- is actually just *Steele v. Burgos*. But this was -- there  
10 was a -- there was a summary dismissal application, which is what I'm about to discuss  
11 here, and then after that application was dismissed, the case went -- went to trial with  
12 Justice Jeffrey and is titled then *Steele v. Burgos*. So it's the same -- it's the same parties,  
13 but they weren't all parties to the appeal.

14  
15 So in *Southland Transportation*, the Alberta Court of Appeal raised the issue of whether  
16 municipalities will have immunity in all cases where there is an absence of signage. So  
17 more on point than the issue of whether a sign has fallen down, such as in *Ouellette*. In this  
18 case, they do dismiss the City's summary judgment application, and if you look at  
19 paragraph 19 of *Southland Transportation*, the Court says that: (as read)

20  
21 With respect, in our view the appellants raise genuine issues as to  
22 whether or not the City is entitled to immunity under section 533 in  
23 the circumstances of this case. It is not clear, or beyond question to  
24 us, that the immunity under section 533 arise (sic) in all cases where  
25 there is an absence of signage, if that absence is determined to arise  
26 from a failure to implement a policy decision, or otherwise is an  
27 operational decision or if the decision was made for ulterior purposes.

28  
29 So the import of that, Sir, is it does seem looking back it's broader than just what's described  
30 in *Pyke* as good faith or bad faith because I don't think -- I -- I don't think we can approve  
31 bad faith on part of Rocky View County in this case, but I would submit that the test is a  
32 little broader than just good faith or bad faith. It's -- it's -- in this case, the Court considered  
33 whether the absence of signage is -- arises from a failure to implement a policy decision.  
34 So the Court of Appeal, as they do raise that issue, dismiss the City of Calgary's summary  
35 dismissal application. The matter then proceeds to trial, and Justice Jeffrey has to deal with  
36 this direction from the Court to consider whether the absence of signage is a policy  
37 decision, an operational decision, does it -- is there a way that 533 may not apply?

38  
39 So then we proceed to *Steele v. Burgos*, and just -- the facts of *Steele v. Burgos* are  
40 somewhat important because the City in that case -- the -- the -- there's a child who runs  
41 out from a playground. He runs out between two parked Southland buses and is -- is struck

1 by a car and very badly -- very badly injured. So in that case, the -- the Southland buses  
2 are parked there. The City was supposed to have No Parking signs up but, for various  
3 reasons that I'll discuss, did not. So -- but interestingly in that case -- and this is paragraph  
4 73 of *Steele v. Burgos*. In that case, Justice Jeffrey makes note - as I'm asking you to do,  
5 Sir - to -- he considers the fact that the City did install No Parking signs after the accident.  
6

7 So again, to the extent that if you or my friend are concerned about the -- the relevance or  
8 the admissibility of the post-accident conduct, *Steele v. Burgos* stands for the proposition  
9 that it can at least be considered by the Court. It's not determinative, but it should be  
10 considered. Now in *Steele v. Burgos*, Sir -- and this is at paragraph 79. Do you have it there,  
11 Sir? It's -- it's -- it's our tab 15 --  
12

13 THE COURT: Okay, let me go to that.  
14

15 MR. ALLCHURCH: -- I think it might be in my friend's brief as well.  
16

17 THE COURT: Just a minute here.  
18

19 MR. ALLCHURCH: So -- so *Steele* and -- *Steele v. Burgos* is 2010  
20 ABQB 327. I'm referring to page 17 paragraph 79.  
21

22 THE COURT: Okay. Which tab in your authorities?  
23

24 MR. ALLCHURCH: I had it as tab 15 in my --  
25

26 THE COURT: Okay.  
27

28 MR. ALLCHURCH: -- brief, Sir.  
29

30 THE COURT: Yes, it's there.  
31

32 MR. ALLCHURCH: I'll just double check that. You have it there?  
33

34 THE COURT: Yes.  
35

36 MR. ALLCHURCH: Okay.  
37

38 THE COURT: And I'll find ...  
39

40 MR. ALLCHURCH: Okay.  
41

1 THE COURT:

Paragraph 79.

2  
3 MR. ALLCHURCH:

Right. 79 is just a description -- it -- there's quite

4 a lengthy discussion because, if you recall, under *Southland* the -- the Court of Appeal is  
5 giving, I would submit, some direction to Justice Jeffrey as to what he has to consider. So  
6 starting at paragraph 79, he -- he -- we get into an issue of whether playground signs -- or  
7 no -- or No Parking signs are traffic control devices. In this case, Sir, the -- all the signs  
8 installed by Rocky View County after, we concede that they're -- they're considered traffic  
9 control devices. So they fit within the wording of section 533(a). And specifically in -- in  
10 *Steele v. Burgos*, I draw your attention to 113 and 114.

11  
12 In 113, Justice Jeffrey has to consider the City's rationale for not installing the No Parking  
13 signs and finds the City's decision to be reasonable. So it's not just a -- a -- he doesn't just  
14 look at section 533(a) and say, Okay, it's -- it's not blanket immunity. There has to be some  
15 consideration as to why the City didn't install the No Parking signs. So in this case,  
16 comparing it to ours, it's not -- it's -- my friend has conceded that there aren't signs there,  
17 but we still have to look at why aren't there signs, or there has to at least be an explanation  
18 given to attract the immunity under section 533(a).

19  
20 So in this case, we -- we don't know why Rocky View County didn't install the signs after  
21 the motor vehicle accident. What Rocky View County has admitted is that they always  
22 follow the Alberta Transportation Highway Geometric Guides, and these are referred to in  
23 John Morrall's expert reports. And that's not a particularly dramatic admission, except that  
24 -- virtually every municipality in Alberta should be following the Alberta Transportation  
25 Highway Design Guides, but they didn't follow the Alberta Transportation Geometric  
26 Design Guides because what those guides say per -- per John Morrall is if you have a road  
27 that's -- first of all, if you have a road that's -- with -- with -- with this kind of not only a  
28 hill but then a sharp or gentle or -- it -- it ends at any rate - ends in a driveway - you have  
29 to warn -- you have to have a speed limit such that when drivers crest that hill, they have  
30 an opportunity to -- to -- to safely negotiate that turn.

31  
32 So the fact that Township Road 242 did not comply with the Alberta Transportation  
33 Highway Geometric Design Guides is evidence that it was not in a state of repair. That --  
34 not only that, but that Rocky View County, for some reason that we don't know, breached  
35 their duty. We don't know why they didn't do it until after. One of the things that -- that --  
36 that -- again, in my friend's brief and in the documents it's very clear -- and Rocky View  
37 County is -- is -- seems like a very laudable county in the sense that they have regular  
38 inspections of this road. They follow their own guidelines as to regular inspections, so you  
39 can't say that they didn't know about this. There's a grader going down there, you know,  
40 every 2 or 3 weeks. There's regular inspections as -- as mandated by their policy. And yet  
41 no one does anything until after the accident.

1  
2 It's a -- it's a clear hazard, and yet no one does anything, and then the actual fix is actually  
3 pretty simple. You lower the speed limit to 50. You put up a few signs. And this road goes  
4 from -- as per John Morrall, goes from unsafe to safe, goes from complying with Alberta  
5 Transportation's Geometric Highway Design Guides -- from not complying to complying.  
6 So that, we submit, is -- is -- in that case, the -- we don't know why, but we have enough  
7 here that it would be difficult, we would submit, just to grant summary dismissal without  
8 getting into more -- as Justice Jeffrey did in *Steele v. Burgos*, more as to why they didn't  
9 follow the Alberta Transportation Highway Design Guides before the accident. They did  
10 after. So we don't know now why. We may at trial.

11  
12 The last case I want to refer you to, Sir, is -- is the *Legare v. Acme* case. I believe this is  
13 tab 9 in our --

14  
15 THE COURT: Yes.

16  
17 MR. ALLCHURCH: -- in our brief. This is another decision from  
18 Justice Feasby. Fairly recent, Sir. It's a 2023 decision. I'll just check the dates on that. 2023  
19 ABKB 145. And in that case, Justice Feasby at paragraph 19 -- at paragraph 19, Justice  
20 Feasby writes: (as read)

21  
22 Like in *Housen*, the present case is one where the original  
23 infrastructure had a design defect and thus was in a state of disrepair.  
24 [Following through in that paragraph, he ends by saying] The Village  
25 did nothing to address sewer state's -- state of disrepair until after the  
26 incident when the sewer line was replaced with larger diameter pipe  
27 that met the required standard.

28  
29 So -- and then at paragraph 15, turning one page back Sir. I don't know if you're there.

30  
31 THE COURT: Okay, yes.

32  
33 MR. ALLCHURCH: What he says in paragraph 15 at the top is a broad  
34 interpretation of the exemption from liability in *Municipal Government Act* section 530 -  
35 which is the -- it's another one of the -- the exemption clauses. Not -- it's for -- it's for a  
36 system of inspection and repair, but similar to 533 in that it's another way for municipalities  
37 in Alberta to avoid liability. But he says that a broad interpretation of the exemption from  
38 liability in section 530 would render the imposition of liability in section 532 meaningless.  
39 So that's what we have, Sir, here is that -- I think it's virtually conceded that the highway  
40 is in a state of disrepair, only in the sense that the speed limit's too high and there's no  
41 warning for motorists of a sharp left -- or there is now, but there wasn't at the time. So at

1 the time of the accident, despite saying that they always follow but Rocky View County  
 2 did not follow the -- the Alberta Transportation Design Guides. Why? I guess we -- I guess  
 3 we have to go to trial and find -- find out. But I would submit, Sir, that Rocky View  
 4 County's application for summary dismissal should be dismissed.

5  
 6 THE COURT:

Okay. Thank you.

7  
 8 Mr. Peermohamed, any reply?  
 9

10 **Submissions by Mr. Peermohamed (Reply)**  
 11

12 MR. PEERMOHAMED: Yes, very briefly, Your Honour. So it's not  
 13 conceded that the road was in disrepair. We don't concede that. First, we have the straight  
 14 road, which is the County's road. The curve to the left is part of the driveway that's owned  
 15 by a private owner. That's not County property. We have no business putting up any signs,  
 16 chevron or solar powered or whatever, on their property. Now, the reason it was done is  
 17 because in the material, you'll see that it was done because the private owners told the  
 18 County about it -- told the County about what they should be doing and the County relented  
 19 and put that up at the private owner's request.  
 20

21 But the County has no business going onto private property without that prompting, and  
 22 certainly without that permission, and putting up signs that are now there. We don't need  
 23 to go to trial for that. We have that. My friend is confusing a state of repair with signage.  
 24 Signage does not dictate repair or disrepair, and that was clearly stated in *Pyke*. *Pyke*, the  
 25 Court of Appeal said that the disrepair was caused by the build up of the snow and debris  
 26 rendering that median useless, which launched traffic into the plaintiff. That's disrepair.  
 27 Something resulted in a public work falling into a state of disrepair. We don't have disrepair  
 28 here. We have a lack of signage, and the Court of Appeal in *Pyke* said a lack of signage is  
 29 not disrepair, and so 532 doesn't apply. They specifically distinguished *Housen* and *Steele*  
 30 and *Malmas* for that reason.  
 31

32 So those cases about lack of signage did not inform the analysis in *Pyke* of section 532.  
 33 That's paragraph 46 and 47 of the Court of Appeal decision in *Pyke*. You can't use *Housen*.  
 34 *Housen* was distinguished by the Court of Appeal panel in *Pyke*. 35 percent liability was  
 35 attributed to *Housen*, but *Pyke* said that was done because *Housen* -- the municipality did  
 36 not have the benefit of this defence - 533(a). So you can't attribute a *Housen* analysis to  
 37 Rocky View County in this case. And then the case of *Algoma* talks about subsequent  
 38 activities, subsequent remediation, and if the Court is going to use that against Rocky View  
 39 County, that would send a policy decision -- or a message to the public that we should  
 40 never remediate because it'll be used against us, and that's against public policy.  
 41

1 That's not what we want to send to the public. We're always in a state of trying to improve,  
2 but none of that improvement should be used against Rocky View County in this case  
3 because it wasn't a foreseeable hazard. There'd been no previous accidents, and that's clear  
4 in the evidence, the affidavit of Steven Hulsman and his cross-examination. Subject to any  
5 questions, those are my reply submissions.  
6

7 THE COURT: Something I would like to do before we wrap up  
8 is I'd like to walk through the provisions - I think it's the *Traffic Safety Act* - about the  
9 default 80 kilometres per hour. Can somebody walk me through that? I don't know if that's  
10 --

11  
12 MR. PEERMOHAMED: Yeah, I think my --

13  
14 THE COURT: -- you, Mr. Peermohamed --

15  
16 MR. PEERMOHAMED: I think Mr. Allchurch --

17  
18 THE COURT: -- or Mr. Allchurch.

19  
20 MR. PEERMOHAMED: -- said it's -- it's section 106 --

21  
22 THE COURT: Okay.

23  
24 MR. PEERMOHAMED: -- of the *Traffic Safety Act*.

25  
26 THE COURT: Let's have a look. I'd just like to see if there's  
27 anything that I need to --

28  
29 MR. ALLCHURCH: Yeah, and Sir I --

30  
31 THE COURT: -- know about that section.

32  
33 MR. ALLCHURCH: -- I -- I buried it in -- in tab 6. I put all the --

34  
35 THE COURT: Okay. Okay.

36  
37 MR. ALLCHURCH: -- statutes as I was confused too. I put the  
38 532/533, but at the back of tab 6 is section 106, which says 80 kilometres per hour is the  
39 maximum speed limit for a highway. Yeah.

40  
41 THE COURT: So it's 106 of the *Traffic Safety Act*?

1  
2 MR. ALLCHURCH: Yeah.  
3  
4 THE COURT: Just bear with me.  
5  
6 MR. ALLCHURCH: Yeah.  
7  
8 THE COURT: Okay, thank you for your submissions.  
9  
10 MR. ALLCHURCH: Sir, can we just --  
11  
12 THE COURT: Yes?  
13  
14 MR. ALLCHURCH: I just need to clear something up.  
15  
16 THE COURT: Sure.  
17  
18 MR. ALLCHURCH: And maybe --  
19  
20 THE COURT: Sure.  
21  
22 MR. ALLCHURCH: -- maybe the Court's satisfied. I had understood  
23 that -- no -- well, I -- I think it's conceded that the accident itself happened on Township -  
24 - or on Rocky View County property. I -- I had understood that the signs that were installed  
25 were on Rocky View County's right of way, not on the private driveway which is -- the --  
26 the -- the accident -- the -- the vehicle never got onto the private driveway, and all the signs  
27 that -- I'd understood all the signs were installed on -- on -- on the Township right of way,  
28 not on the Colpitts Ranch. Maybe, Sir, you're satisfied on that, but I just wanted to make  
29 sure that -- I'd understood that these signs weren't installed on private property.  
30  
31 THE COURT: Any comment, Mr. Peermohamed, on that?  
32  
33 MR. PEERMOHAMED: So everyone's saying -- all the experts are saying  
34 that the -- the -- the vehicle left the road tangentially to the curve. So it left off, and so the  
35 curve itself is private property. It's a private driveway. Now, whether or not the sign itself  
36 are installed (sic) on private property or not is not that clear. It's certainly not clear from  
37 the pictures, and I don't think it's clear from the material. The material says that the signs  
38 were installed at the request of the owners, who found out about this accident, and it was  
39 done subsequently. So those are the pictures that you have in front of you.  
40  
41 They are inside the barbed wire fence, but they're on the land, not necessarily the road.

1 They could be in the -- in the right of way.

2  
3 THE COURT: In the end, we don't have a survey that could tell  
4 us with certainty. Is that --

5  
6 MR. PEERMOHAMED: Not today.

7  
8 THE COURT: That's fair to say?

9 MR. PEERMOHAMED: Yeah.

10  
11 **Decision**

12  
13 THE COURT: Yes. Okay. Thank you, both of you, for your  
14 submissions. Very helpful as always. The briefs were well done and helpful. I'm in a  
15 position to give a decision. I reviewed the materials in advance. I considered the  
16 applicability of the cases. A lot of these cases, in my view, come down to the facts of  
17 individual cases, and I want to illustrate that a bit by walking through, for example, the  
18 *Southland* case briefly.

19  
20 Chambers judge at the beginning grants summary dismissal. The Court of Appeal reverses  
21 Justice Horner, and we have to remember it was a summary judgment case. It was pre-  
22 *Hryniak*, pre-*Weir-Jones*, pre-*Hannam*, and pre-the modern litigation climate as to how  
23 we're supposed to deal with summary judgment cases and determine issues summarily  
24 when we can and when they can be done with confidence based upon the record before the  
25 Court.

26  
27 And then when that case goes to trial, ultimately Justice Jeffrey appears to have found some  
28 potential issues but in the end exempts the City pursuant to the applicable section, 533(a)  
29 of the *Municipal Government Act*. In this particular case, we know there wasn't a posted  
30 50 kilometre per hour sign, and 80 kilometres per hour is certainly the maximum speed  
31 pursuant to the *Traffic Safety Act*, but in my view that doesn't necessarily mean that there's  
32 a right to drive 80 kilometres per hour on any rural road in Alberta with impunity. And this  
33 is the most unfortunate accident. The pictures were horrible. It's tragic.

34  
35 But in the end, I think it's clear to everyone that speed was an issue here. And the experts  
36 say that. When you look at the materials, common sense says that - simply going too fast.  
37 And what the action is really about is responsibility for that speed. Is there a right to drive  
38 80 kilometres per hour everywhere because the *Traffic Safety Act* makes that a maximum?  
39 No, I don't think so. When you look at the materials, look at the facts here, on its face - in  
40 my view - this doesn't appear to be a place where it was safe to drive 80 kilometres per  
41 hour.

1  
2 And then you get into some of the other issues such as the *Municipal Government Act* and  
3 the applicability that it may have on the facts before the Court. We've got a situation where  
4 signage meets the definition of a traffic control device. We've got a situation where the real  
5 complaint here -- and despite plaintiffs' counsel's eloquent articulation as to putting  
6 together the cases and going through them, in the end the argument amounts to not putting  
7 up a sign. It is not, in my view, a lack of maintenance issue. It's a signage issue. The  
8 *Municipal Government Act* expressly excludes liability for signage.  
9

10 There may be some extreme circumstances of bad faith and those sorts of things that might  
11 not apply, but we don't have any suggestion of that here or any evidence to suggest that  
12 there's an issue of merit for trial based upon that. I think the *Pyke* case supports the  
13 arguments of the defendant here on the applicability of section 533(a), and no question it's  
14 a tragic, tragic accident. But in the circumstances, in my view, the municipal district is  
15 entitled to summary dismissal. I think section 533(a) protects it. It can't put signage  
16 everywhere, and as argued by Mr. Peermohamed, there was no indication of any other  
17 incidents of accidents at this location.  
18

19 And I agree with Mr. Peermohamed's submission that it's a slippery slope when you resort  
20 too heavily to the subsequent changes made, and that's something I remember from I think  
21 it was 2nd year law school in evidence - it was a railway case - the extent to which  
22 alterations can be used to prove negligence in the first place. And there's very clearly a  
23 public policy argument that holding them against the party acts as a disincentive to fix  
24 things. And I think that's a real concern here, particularly with something that's responsible  
25 for the public good such as a municipality as in this case. In my view, the case for some  
26 apportioning of liability against the municipal district isn't there, and I dismiss the action  
27 summarily against the MD. So that's my disposition.  
28

29 MR. PEERMOHAMED: Thank you, Sir, for that. I wish I could pull it up.  
30 I just lost internet connection. I'd like to speak to costs.  
31

32 THE COURT: Yes.  
33

34 MR. PEERMOHAMED: I understand the Court is not the forum for an  
35 assessment. A formal offer was issued relatively early on in the litigation. Can I prepare a  
36 form of order - subject to your comments - that not only is the summary dismissal  
37 application granted for the County but also double costs for every step taken after the  
38 formal offer was served are payable to the County forthwith?  
39

40 THE COURT: I'd need to know the details of the formal order  
41 and determine the things like is it a genuine offer of compromise? When was it? I think

1 we'd have to of course get into all of that.

2

3 MR. PEERMOHAMED: In the meantime, can I --

4

5 THE COURT: Yes.

6

7 MR. PEERMOHAMED: -- prepare an order that simply says paragraph 1,  
8 The summary dismissal application of the County is granted with respect to the plaintiffs'  
9 claims against it, and any notice of claim against co-defendant is dismissed as well. All  
10 claims against the County is dismissed. And then paragraph 2, Costs may be spoken to at  
11 a later date.

12

13 THE COURT: Your application contemplated the dismissal of  
14 the cross-claims, didn't it? As drafted?

15

16 MR. PEERMOHAMED: I'm not entirely --

17

18 THE COURT: Did everybody know that that was on the table  
19 today?

20

21 MR. PEERMOHAMED: I do need to check.

22

23 THE COURT: Yes.

24

25 MR. PEERMOHAMED: I don't -- I don't have my -- I don't have my notice  
26 of application in front of me either.

27

28 THE COURT: Who made a cross-claim against your client?

29

30 MR. PEERMOHAMED: I think it's both. I think --

31

32 Mr. Allchurch, I don't know if you have your pleadings binder in front of you, but ...

33

34 THE COURT: Let's see.

35

36 MR. PEERMOHAMED: Yeah. My apologies, Your Honour.

37

38 THE COURT: That's okay. Let me see what I can ...

39

40 MR. ALLCHURCH: Sorry (INDISCERNIBLE) I don't -- I didn't  
41 bring the -- is it in the application?

1  
2 MR. PEERMOHAMED: It would be. Whoever was named as a  
3 respondent.  
4  
5 MR. ALLCHURCH: I didn't bring it, sorry.  
6  
7 MR. PEERMOHAMED: No, no, that's okay.  
8  
9 MR. ALLCHURCH: I just brought the briefs.  
10  
11 MR. PEERMOHAMED: Most -- most likely -- and maybe -- maybe the  
12 Court can double check.  
13  
14 THE COURT: The only party that could have is the Estate,  
15 right? The Estate of Ryan Doedel?  
16  
17 MR. PEERMOHAMED: That -- that's right. I think --  
18  
19 THE COURT: Yes.  
20  
21 MR. PEERMOHAMED: Yeah, because I don't believe the SEF 44 insurer  
22 has a -- is a third party - is not a claimant or a defendant. It certainly didn't bring a cross-  
23 claim against the County, so there might be a cross-claim with respect to the Estate. But I  
24 can -- I can -- I can double check that. You know, I think the form of order basically just  
25 says the respondents' - apostrophe - claims against the applicants are dismissed.  
26  
27 THE COURT: Do you have a copy of the application handy?  
28  
29 MR. PEERMOHAMED: That's what we've been looking for too.  
30  
31 THE COURT: Okay. Oh. Oh no, I might have it here.  
32  
33 MR. PEERMOHAMED: Okay.  
34  
35 THE COURT: I might have it here. I think I do, just bear with  
36 me. Yes, it says, Summarily dismissing all claims against the County. So I think that's --  
37  
38 MR. PEERMOHAMED: That's what my notice says.  
39  
40 THE COURT: Yes.  
41

- 1 MR. PEERMOHAMED: And I apologize. Does the -- are the respondents  
2 listed as just --  
3
- 4 THE COURT: Let's see.  
5
- 6 MR. PEERMOHAMED: -- the plaintiffs?  
7
- 8 THE COURT: Respondents are listed as just the plaintiffs.  
9
- 10 MR. PEERMOHAMED: Okay. So as a result of that and because the  
11 Estate chose not to participate in these proceedings, is it -- is it -- is it possible to get an  
12 order that says all claims against the County are dismissed?  
13
- 14 THE COURT: Well, let's do this. Why don't we break for 10  
15 minutes. I'll pull up a procedure card .  
16
- 17 MR. PEERMOHAMED: Okay.  
18
- 19 THE COURT: And I think that's the best way to do it.  
20
- 21 MR. ALLCHURCH: And -- and Sir, given your -- given your ruling, I  
22 don't have any problem with my friend's preparing an order that, you know, summary  
23 dismissal has been granted. I'm a little -- and perhaps this is why you need to break. I'm not  
24 quite sure what to do on -- on costs in the sense that --  
25
- 26 THE COURT: Yes.  
27
- 28 MR. ALLCHURCH: -- we would be seeking a *Bullock* or *Sanderson*  
29 order that even if we have to pay Rocky View County in the first instance, we'd be seeking  
30 to claim that over against Mr. Downe's client and also against the Estate of Ryan Doedel.  
31 Ultimately, as -- as your finding, ultimately they're at fault for this accident. So there is a -  
32 - a little bit more of the costs argument as far as -- and perhaps it doesn't directly involve  
33 Mr. -- Mr. Peermohamed and his client, but there is an issue as to who should pay their  
34 costs.  
35
- 36 THE COURT: It seems to me, subject to us sorting out this one  
37 issue, the order should be dismissed. The claim's dismissed.  
38
- 39 MR. ALLCHURCH: Yeah.  
40
- 41 THE COURT: And if the parties can't agree on costs, they may

1 make arrangements to speak to them. I think that's the best way to deal with that, and let's  
2 take a break.

3  
4 Madam clerk, if you could message - you're probably already doing that - to the  
5 Applications Judge assistant to please pull me a procedure card, and then maybe we'll  
6 reconvene about 3:10. Okay?

7  
8 MR. ALLCHURCH: Yes, Sir.

9  
10 THE COURT: Thanks everyone.

11  
12 (ADJOURNMENT)

13  
14 THE COURT: Okay. This is what I've got. First I want to test  
15 my interpretation skills. Some of it's easy. I can tell "law firm PL". That's Pipella Law. And  
16 that's for filing the statement of claim and affidavit and the litigation rep documents, all  
17 that, so easy to tell who PL is. And then there's a statement of defence on behalf of Ryan  
18 Doedel with Cameron Bally as litigation rep, and that one is said to be filed by "SL". Any  
19 help with who "SL" would be?

20  
21 MR. PEERMOHAMED: Oh, I don't know -- I don't -- oh, Sam Leung?

22  
23 MR. ALLCHURCH: Yeah.

24  
25 MR. PEERMOHAMED: Yeah.

26  
27 THE COURT: Ah, okay. So that's Intact?

28  
29 MR. PEERMOHAMED: Yeah, Intact. They don't go -- they don't have --

30  
31 THE COURT: Yes.

32  
33 MR. PEERMOHAMED: -- Intact LLP or anything --

34  
35 THE COURT: Yes.

36  
37 MR. PEERMOHAMED: -- so they go with their individual lawyers there.

38  
39 THE COURT: Okay. That makes sense. So that's Mr. Leung.  
40 And what we have are Mr. Leung issued a notice of claim against co-defendant against the  
41 other defendant, and vice versa Brownlee issued a notice of co-defendant against the other

1 side. Mr. Leung would have had notice of today's application.

2  
3 MR. PEERMOHAMED: He -- he would have had notice --

4  
5 THE COURT: Yes.

6  
7 MR. PEERMOHAMED: -- and I believe indicated to our office they are  
8 not participating in this, but I -- I do recognize that the Estate has not been named as a  
9 respondent formally on our -- on our notice of application. But I believe all parties were  
10 served. You saw Mr. Downe here as counsel for the SEF 44 third party ...

11  
12 THE COURT: I think the appropriate thing -- because everyone  
13 knew what was on the table today was the liability of MD of Rocky View, I think MD of  
14 Rocky View is no longer a defendant, and as such any notices to co-defendant either way  
15 are dismissed; yours, Mr. Peermohamed, against the Estate and the Estate's against yours.  
16 I think that's the appropriate way to handle it. I can't see a third-party notice. I don't think  
17 there was a third-party notice. I do see "order make third party", but that's a different kind  
18 of third party. That's the *Insurance Act* type third party, so that's not the third-party notice  
19 type of thing.

20  
21 MR. ALLCHURCH: And I think that was what Mr. Downe is -- is --  
22 he -- he issued the third-party notice.

23  
24 THE COURT: Yes.

25  
26 MR. ALLCHURCH: Yeah. Yeah.

27  
28 THE COURT: Yes. So I think we've got an order that says that,  
29 and I think the best way is if you can't agree on costs that you've got leave to set up a time  
30 to come and speak to them.

31  
32 MR. ALLCHURCH: And that's fine, Sir. I guess -- how are we dealing  
33 with -- like are the costs going to be payable by my client -- by -- by the plaintiffs, or are  
34 they going to be shared with Mr. Leung's client, the Estate of Ryan Doedel? That's I guess  
35 -- you know, maybe that's -- that's why I'm seeking a *Bullock*. I obviously want --

36  
37 THE COURT: Right.

38  
39 MR. ALLCHURCH: -- them to pay --

40  
41 THE COURT: Yes. I think anybody --

1  
2 MR. ALLCHURCH: -- the costs, but I think Mr. Peermohamed would  
3 say, Well, in the first instance we certainly did oppose this application.  
4  
5 THE COURT: I think anybody who you want to pay costs needs  
6 to be involved in that discussion.  
7  
8 MR. PEERMOHAMED: So I'll prepare a form of order for my friend's  
9 endorsement and then submit it to the Court. It'll say paragraph 1, The County's summary  
10 dismissal application is granted. All claims against the County are dismissed.  
11  
12 THE COURT: Right.  
13  
14 MR. PEERMOHAMED: And the County is no longer a defendant in this  
15 action, so its claim against the Estate is dismissed. And then if the parties can't agree on  
16 costs within 30 days, they can write to Your Honour --  
17  
18 THE COURT: Yes.  
19  
20 MR. PEERMOHAMED: -- and then we can go from there.  
21  
22 THE COURT: No, contact the Applications Judges' specials  
23 coordinator. I'd rather speak to them than do written arguments and all that.  
24  
25 MR. PEERMOHAMED: Okay.  
26  
27 THE COURT: I'd rather just speak to them.  
28  
29 MR. ALLCHURCH: Just for -- for efficiency's sake, Sir, do you want  
30 to set a date now? And then if -- if -- it might be that Mr. Peermohamed and I can agree on  
31 it, but if not, we could appear back in front of you.  
32  
33 THE COURT: Probably not because I --  
34  
35 MR. ALLCHURCH: Okay.  
36  
37 THE COURT: -- am not as good at scheduling as our scheduler  
38 is.  
39  
40 MR. ALLCHURCH: Okay.  
41

1 THE COURT: Okay? I think we're done. Here's your materials.

2 Thank you again for your submissions.

3

4 Thank you, madam clerk, for your assistance.

5

6 And that would be how you initiate the process and then probably what would happen is  
7 Applications Judge specials coordinator starts the process of scheduling, and then when  
8 she schedules, I usually ask her to have anybody who's seeking costs or seeking any relief  
9 just give a bill of costs or, in your case, you're asking that somebody else pay those costs,  
10 so you'd want --

11

12 MR. ALLCHURCH: Yeah.

13

14 THE COURT: -- to do a little piece on that. Yes. Just so  
15 everybody knows --

16

17 MR. ALLCHURCH: Okay.

18

19 THE COURT: -- who's going to show up and say what. Yes.  
20 Okay. Thanks everyone.

21

22 MR. ALLCHURCH: Thank you, Sir.

23

24 MR. PEERMOHAMED: Thank you, Sir.

25

26

27 PROCEEDINGS CONCLUDED

28

29

30

31

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41

**Certificate of Record**

I, Caitlyn McGiverin, certify that this recording is the record made of the evidence in the proceedings in the Court of King's Bench, held in courtroom 904, at Calgary, Alberta, on the 22nd day of February, 2024, and that I was the court official in charge of the sound-recording machine during the proceedings.

1 **Certificate of Transcript**

2  
3 I, Burgundy Howlett, certify that

4  
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best  
6 of my skill and ability and the foregoing pages are a complete and accurate transcript  
7 of the contents of the record, and

8  
9 (b) the Certificate of Record for these proceedings was included orally on the record and is  
10 transcribed in this transcript.

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16 TYPE A TRANSCRIPTION, Transcriber

17 Order Number: TDS-1054968

18 Dated: April 18, 2024  
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