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EMM ENERGY INC V CANADIAN NATURAL RESOURCES LIMITED, 2025 ABKB 620

(SIMARD J)

Rules 1.2 (Purpose and Intention of These Rules), 4.31 (Application to Deal With Delay), 5.10 (Subsequent Disclosure of Records) and 5.11 (Order for Record to be Produced)

The Plaintiffs, EMM Energy Inc and Ener-T Corporation, alleged that the Defendant, Canadian Natural Resources Limited (“CNRL”), caused damage to an oil and gas producing zone in Alberta, for which it had an interest. The Plaintiffs commenced an Action in 2009, claiming that certain water injections were unauthorized and impaired their ability to recover oil and gas, seeking \$10 million in damages.

On January 3, 2023, Applications Judge Farrington issued an Endorsement, granting CNRL’s dismissal Application for long delay

under Rule 4.31. The Plaintiffs appealed, arguing that the delay was excusable because CNRL contributed significantly to it. One of the main issues was whether CNRL was entitled to wait until it had received a “complete document production” from the Plaintiffs before conducting its own Questioning for discovery.

Justice Simard found that while a party need not proceed with Questioning when the opposing side’s document production has clear, significant gaps, this principle has limits. Parties cannot insist on delaying Questioning until the

other side's production is perfectly complete, as neither the Rules nor case law support such a rigid standard. Civil litigants must strive to produce all relevant records promptly, but perfection is unrealistic; at some point, practical efficiency and the obligation to advance the litigation under Rule 1.2 outweigh demands for complete production.

Justice Simard noted that the Rules expressly and implicitly recognize that document production is often an ongoing, evolving process. For example: (i) Rule 5.10 requires parties who, after they have delivered their Affidavit of Records, find, create or obtain control of relevant and material records, to notify the other parties, provide copies and then serve a subsequent Affidavit of Records including the additional records before scheduling a Trial date; and (ii) Rule 5.11 allows parties to apply

to the court for a production order where they believe a relevant and material record has been omitted from an Affidavit of Records.

Here, CNRL was justified in postponing its Questioning of the Plaintiffs until October 2015, when it received most of the additional records it had sought. After that point, however, further delay based on incomplete production was no longer reasonable. CNRL was ready to question on March 17, 2016, but such Questioning did not actually take place until March 27, 2018, over two years later. There was no evidence before the Court explaining why. That two-year delay was found to be caused by CNRL. Additionally, CNRL failed to establish significant prejudice resulting from the delay, as the case primarily relied on documentary evidence rather than witness testimony. Therefore, the test for dismissal under Rule 4.31 was not met.

WARFORD V MAYUGBA, 2025 ABKB 649

(JERKE J)

[Rules 1.2 \(Purpose and Intention of These Rules\)](#), [8.1 \(Mode of Trial\)](#), [8.25 \(Use of Streamlined Trial\)](#) and [8.31 \(Evidence at a Streamlined Trial Shall be Entered by Affidavit\)](#)

The Plaintiff, Mr. Warford, and the Defendant, Ms. Mayugba, were adult interdependent partners who separated. They were directed to resolve their family property division dispute through a Streamlined Trial. After both parties closed their cases, Ms. Mayugba applied to re-open the case, arguing the Procedural Order was too restrictive and that new, credibility-related information arose during the late pre-trial Questioning. She claimed that she needed additional time for cross-examination and to introduce new evidence. Mr. Warford opposed this, emphasizing that re-opening a case is an "extraordinary step" that works against the finality of disputes.

The Court first situated the Application within the Streamlined Trial framework. Streamlined Trials pursuant to Rules 8.25 and 8.31 are considered full trials on the merits and are appropriate even if credibility is an issue or if cross-examination is needed.

The Court then articulated the test for reopening after the close of evidence but before Judgment. A Trial Judge must exercise discretion judicially when asked to reopen a case, guided by whether the interests of justice require the new material, with attention to three factors: 1) availability of the evidence prior to Trial, 2) purpose for which the evidence

is sought, and 3) whether the evidence would alter the judgment. Justice Jerke added Rule 1.2(1)-(2) to this list which in essence stipulates that claims are to be resolved fairly, justly, timely, and cost-effectively.

Applying these principles, the Court held that it was in the interests of justice to allow Ms. Mayugba to partially re-open her case because the Application addressed evidence directly related to Mr. Warford's credibility, a significant issue. In the interests of justice, the Court allowed a narrow reopening. Justice Jerke permitted Ms. Mayugba to adduce an

Affidavit authenticating and exhibiting specified portions of an audio recording and screenshots from a video, and to conduct an additional 20 minutes of in-court cross-examination of Mr. Warford.

Jerke J. found that Ms. Mayugba could have avoided this Application if she paid closer attention to preparation, which violated the principle of promoting timely and affordable access to justice. The Court ordered Ms. Mayugba to pay Mr. Warford's Costs of the Application, the briefs, and one half day of Trial time, payable after Trial in any event.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 728

(NIXON ACJ)

[Rules 1.2 \(Purpose and Intention of These Rules\)](#), [5.1 \(Purpose of Disclosure of Information\)](#), [5.4 \(Appointment of Corporate Representatives\)](#), [5.10 \(Subsequent Disclosure of Records\)](#) and [5.27 \(Continuing Duty to Disclose\)](#)

This Application arose in complex litigation concerning a 2015 pipeline failure. Sunstone Projects Ltd. and Wood Group Canada, Inc. (collectively, "Wood Group") brought an Application to remove CNOOC Petroleum North America ULC's ("CNOOC") corporate representative, Mr. Sean Noe ("Mr. Noe"). Wood Group also applied for directions governing how any CNOOC corporate representative must inform themselves for questioning moving forward. Additionally, Wood Group sought a further correcting Affidavit concerning CNOOC's evidence about the existence of a pipeline integrity management system ("PIMS").

Associate Chief Justice Nixon emphasized that discovery must be interpreted through the lens of Rules 1.2 and 5.1, which aim to ensure Actions are decided on their merits, that relevant and material evidence is available for Trial, and that disclosure proceeds efficiently and

proportionately, without unnecessary cost or delay.

In assessing the request to substitute Mr. Noe pursuant to Rule 5.4(6), the Court adopted the framework in *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd.*, 2024 ABKB 424, and reaffirmed that replacing a corporate representative constitutes an extraordinary remedy. Associate Chief Justice Nixon held that inefficiency or frustration in questioning is not, on its own, sufficient to justify judicial intervention, particularly where Wood Group proposed no alternative corporate representative and Mr. Noe remained available and capable of fulfilling the role.

The Court refused Wood Group's request for a further correcting Affidavit pursuant to Rule 5.27. The Court found that CNOOC had acknowledged its errors, sworn a correcting

Affidavit confirming that its investigation remained ongoing, and provided sufficient sworn evidence to permit meaningful cross-examination.

Although substitution was denied, the Court exercised its authority pursuant to Rule 5.4(4) to issue targeted directions to preserve the integrity of discovery. Nixon A.C.J. required Mr. Noe to inform himself of how undertaking responses were prepared, who participated in that process, what documents were reviewed, and what inquiries were made. Associate Chief

Justice Nixon also ordered Wood Group to provide advanced notice of the undertakings it intended to pursue at questioning. The Court further reaffirmed CNOOC's continuing disclosure obligations pursuant to Rule 5.10 and directed CNOOC to disclose forthwith any newly discovered relevant and material information arising from its ongoing investigation.

In the result, the Court allowed the Wood Group's Application in part, granting limited relief by issuing procedural directions and reaffirming ongoing disclosure obligations.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 748

(NIXON ACJ)

Rules 1.2 (Purpose and Intention of These Rules), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 14.32 (Oral Argument)

This is a Costs Decision arising from an underlying Decision in this Action. Associate Chief Justice Nixon noted that the Court has general discretion pursuant to Rules 10.31 and 10.33 to issue a Costs Award and that the default Rule pursuant to Rule 10.29(1) awards the successful party Costs.

The Court held that pursuant to Rule 10.31(1), the Trial Judge holds considerable discretion in determining what constitutes reasonable and proper Costs. CNOOC was the successful party in the underlying Decision, and thus, was entitled to Costs. Wood Group, the unsuccessful party, did not challenge this. Wood Group did disagree, however, with CNOOC that there should be multiple sets of Costs awarded.

CNOOC had several affiliated entities represented by the same firm and thus requested

separate Costs for each of the three parties. Wood Group relied on Rules 1.2(2)(b) and 14.32 in support of their argument that multiple Costs Awards were not appropriate.

Nixon A.C.J. disagreed with Wood Group, finding that Rule 14.32 was in no way instructive in this matter. The Court directed that the appropriate Costs Award was for each of the CNOOC affiliated entities to be awarded Costs at 4 times Column 5 of Schedule C. Associate Chief Justice Nixon determined this was appropriate given that each of the three CNOOC affiliated entities submitted their own responding Briefs based on their specific circumstances.

SHAKERI V CONDO CORPORATION PLAN NO. 0524360, 2025 ABCA 370

(PENLECHUK JA)

1.2 (Purpose and Intention of These Rules) and 14.5 (Appeal Only With Permission)

The Applicant applied for permission to Appeal a decision of Justice Pentelchuk dismissing his various Applications. The Applicant requested that a different Justice hear his Application, but the Case Management Officer advised that Rule 14.5(2) mandates that an Application seeking leave to Appeal must be heard by the Justice who made the original Order.

Pentelchuk J.A. ultimately dismissed the Application. The Applicant failed to identify any error in the decision of the Court, and thus there was no basis to grant permission to Appeal. Further, the issues to be heard on Appeal were now moot since the underlying dispute was heard in a Special Chambers Hearing.

The Court also considered if filing restrictions should be imposed on the Applicant. The Applicant had avoided paying \$3,700 in filing fees for five Appeals and six Applications by way of fee waivers. Justice Pentelchuk considered Rule 1.2, and the burden that the Applicants conduct has had on the Respondents and the Court. Pentelchuk J.A. granted an Order prohibiting the Applicant from bringing further Applications or Appeals in the Court of Appeal without first getting permission from the Court. The Court also held that the Applicant was no longer entitled to rely on a fee waiver without first obtaining a Fiat from the Case Management Officer.

AGI SURETRACK, LLC V OPISYSTEMS INC, 2025 ABKB 609

(REED J)

Rules 1.4 (Procedural Orders), 3.68 (Court Options to Deal with Significant Deficiencies) and 3.72 (Consolidation or Separation of Claims and Actions)

An Application was brought against OPISystems Inc. ("OPI") by AGI Suretrack, L.L.C. ("AGI") in Alberta (the "Alberta Action"). OPI applied to have the Alberta Action struck because it was duplicative of an Action in Kansas (the "Kansas Action"). The Court considered whether the Alberta Action should be dismissed or stayed, pursuant to Rules 3.68, 1.4, and/or 3.72.

Pursuant to Rule 3.68, the Court considered if there was a real and substantial connection with Alberta to provide Alberta with presumptive jurisdiction. Justice Reed held that OPI had the burden of demonstrating that Kansas was

the more appropriate forum. Reed J. considered the factors in *Van Breda v Village Resorts Ltd*, 2012 SCC 17, and ultimately confirmed that the claims in the Alberta Action arise by operation of Canadian law, against a Canadian Defendant and that Alberta has jurisdiction over the case.

Pursuant to Rules 1.4 and 3.72, the Court held that a Stay is a discretionary remedy and, in the context of a multiplicity of proceedings, the Court may consider whether the issues in the proceedings are substantially the same. According to Justice Reed, the Dismissal of an Action is an extraordinary remedy that should

only be exercised in the clearest of cases. Reed J. held that the Kansas Action and the Alberta Action were related, but not overlapping from a cause of action standpoint. The Court expressed concern about the Alberta Action proceeding prior to the Kansas Action being determined due to the risks of duplicative

discovery, and findings of fact in two jurisdictions. As such, Justice Reed directed that there be a Stay of the Alberta Action, with an exception that the Plaintiff is permitted to apply for pre-Trial Injunctive relief without leave of the Court.

ASB (RE), 2025 ABKB 614

(MARION J)

Rules 1.4 (Procedural Orders) and 3.2 (How to Start an Action)

The parents brought competing Applications under the *Adult Guardianship and Trusteeship Act*, SA 2008, c A-4.2 (“AGTA”) in respect of their now-adult child, who lacked capacity to make personal and financial decisions. Each sought appointment as sole guardian and trustee. The AGTA Applications were commenced on the prescribed forms under the AGTA Regulation, which Rule 3.2(1)(c) permits as a proper mode of proceeding.

Justice Marion addressed a threshold procedural question: whether to determine the guardianship and trusteeship Applications summarily or to direct a Trial or viva voce process. Although the AGTA and its Regulation do not constitute a complete procedural code for hearings, the Court held that the legislative scheme contemplates summary and expeditious determination in the ordinary case. At the same time, drawing on Section 101(1) of the AGTA Regulation and the Rules (including Rules 3.2(6) and 1.4(1)), the Court confirmed it retains discretion to require a Trial-like process where there is a substantial factual dispute that cannot fairly be resolved on Affidavit evidence.

To harmonize the AGTA process with the Rules, Marion J. adopted the Summary Judgment

framework for Originating Applications: the test set out in *Hryniak v Mauldin*, 2014 SCC 7 and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, adapted to the Originating Application context. The inquiry is whether it is possible to fairly resolve the dispute on a summary basis and whether the Court has sufficient confidence in the record to do so, recognizing that Originating Applications typically proceed without pleadings, discovery, or Questioning unless otherwise ordered. That procedural posture informs, but does not preclude, a fair summary disposition where the material facts are not genuinely in dispute and the evidentiary record is adequate.

Applying those principles, Justice Marion found no material factual disputes on the Affidavits before the Court. Both parties had ample opportunity to file evidence; Questioning could have been pursued but was not; and when offered an opportunity to seek leave to file additional evidence, one party declined. In these circumstances, the Court concluded it could fairly and confidently decide the AGTA Applications summarily, which was also the most timely and cost-effective path consistent with the Rules and AGTA’s objectives.

LEYNE V SAINT-CYR, 2025 ABKB 580

(BOURQUE J)

Rule 1.5 (Rule Contravention, Non-Compliance and Irregularities)

The parties were involved in matrimonial litigation and agreed to arbitrate their differences. The Arbitrator issued an Award on June 28, 2025, but did not deliver it to the parties until July 22, 2025. Both parties were unsatisfied with the Award. The arbitration agreement provided that either party could appeal the Award on the grounds of an error of law or a mixed question of law and fact.

Section 46(1) of the *Arbitration Act*, RSA 2000, c A-43 requires that an appeal must be “commenced” within 30 days of receipt of the award. The parties agreed that the deadline for filing an appeal of the Award was August 21, 2025. The Respondent filed her appeal on August 20, 2025, while the Applicant attempted to file a cross-appeal on August 21, 2025, but encountered issues with the Court’s electronic filing system. The Applicant argued that his cross-appeal was submitted within the limitation period, but was processed late due to administrative delays, and therefore sought a *nunc pro tunc* order to recognize the filing date as August 21, 2025. The Applicant relied on Rule

1.5, which can be used by the Court to cure irregularities in filing.

The Court found that the Applicant did everything necessary and within his power to file his appeal within the limitation period, distinguishing the case at bar from others. The Applicant was caught up in the “administrative machinery” of the Court. There was no suggestion in this case that there was any dereliction of duty on the part of the Court Clerks. Here, the difficulty was in the disconnect between submitting a document for filing and its subsequent processing by the Court; a document is considered to have been filed only when this latter step has been completed.

The Court rejected the argument that litigants should file documents earlier to account for processing delays, noting that such delays are unpredictable and outside litigants’ control. Further, requiring early filing would effectively shorten statutory limitation periods, contrary to legislative intent.

DE MEYER V PEDORA, 2025 ABKB 682

(HOLLINS J)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities) and 3.2 (How to Start an Action)

The case arises from a family law arbitration award. The Applicant sought to Appeal the award but filed incorrect documents. The clerk had crossed out the word “Originating” on the

title of the Originating Application provided by the Applicant and filled the document in the existing action number. The Respondent took the position that this error could not or

should not be cured. If this were the case, the Applicant would be out of time to file a new document, and their Appeal would be struck.

In exercising any curative power under Rule 1.5, Hollins J. emphasized that courts must not, in doing so, cause any irreparable damages to any party. Further, granting relief under Rule 1.5(1) must be in the overall interests of justice.

The Court contrasted situations where the wrong initiating document was used and held that not all defects could be cured. Where a party filed a document that was not a proper commencing document and it provided no notice of the grounds or substance of the proceeding, the defect was jurisdictional and could not be remedied under Rule 3.2, as doing so would have effectively extended a time limit contrary to Rule 1.5.

Justice Hollins noted that this was not a case, as was argued, of overriding a statute. This was due to the fact that the *Arbitration Act* only speaks to the time limit for appealing an award and does not specify the kind of document required to be filed to commence an appeal. Rule 3.2(5) states, where appeal proceeding are undertaken, but no procedure is provided in the statute, the appeal must be made by originating application. Between Rule 3.2(5) and Rule 1.5, it was clear that the Court had jurisdiction to relieve against the consequences of technical contraventions of the Rules, as opposed to statutes. Justice Hollins concluded that if not, the use of Rule 3.2(5) would be unimaginably narrow.

Hollins J. dismissed the Respondents cross-application to strike the Appeal, finding that the Court could cure the defect.

NEW STAR ENERGY LTD V LAM, 2025 ABCA 342

(PENLECHUK, KIRKER, WOOLLEY JJA)

[Rules 1.5 \(Rule Contravention, Non-Compliance and Irregularities\) and 3.2 \(How to Start an Action\)](#)

This was an Appeal from the dismissal of an Application seeking to have a Consent Judgment declared a nullity. The Appellant argued that the Consent Judgment had no foundation in law because no Action was properly commenced and because it was signed on behalf of the Appellant by a non-lawyer. The Court held that the issue was narrow and that, for the purposes of the Appeal, the Consent Judgment had to be treated as reflecting an agreed resolution of a dispute between the parties. The Court rejected reliance on older authorities treating procedural defects as

creating nullities, confirming that this approach no longer reflects the law.

The Court held that procedural irregularities in the commencement of proceedings do not render a judgment a nullity and may be cured where no irreparable prejudice arises, citing Rules 1.5(4) and 3.2(6). There was no evidence of prejudice flowing from the manner in which the Consent Judgment was filed. The Consent Judgment remained effective unless and until set aside.

DAM V RT, 2025 ABKB 695

(RENKE J)

Rules 2.9 (Class Proceedings Practice and Procedure), 4.12 (Request for Case Management) and 4.14 (Authority of Case Management Judge)

The decision concerned a carriage Application involving three overlapping proposed class actions under the *Class Proceedings Act*, SA 2003, c C-16.5. The purpose of the carriage Application was to determine which action respecting the same class and the same cause or causes of action should be permitted to proceed, thereby avoiding multiple duplicative proceedings.

Broadly, the Actions involved claims against Alberta for cultural loss suffered by Aboriginal children removed from their families and placed with non-Aboriginal foster or adoptive parents during the “Sixties Scoop” era. The claims also included allegations of physical, sexual, and emotional abuse in some Actions. The three Actions were defined as the DM Action, the RT Action, and the AH Action.

The authority to decide the carriage Application was drawn from, among other sources, Rules 2.9, 4.12(3), and 4.14(1)(c), (d), and (f). The Court identified numerous factors to be considered in deciding carriage applications, including the proposed representative plaintiff, the substance of the competing actions, the procedural history of each action, and counsel for each action.

The Court found that none of the Actions had progressed significantly since 2019; the proposed representative plaintiff factor weighed strongest in favour of the AH Action. All three actions took a similar approach to the cultural loss claim, so this factor did not distinguish them. However, their scope differed substantially. The DM Action was narrowly focused on cultural loss alone, the RT Action was extremely broad and subsumed cultural loss within many unrelated claims, and the AH Action occupied a middle ground by combining cultural loss with claims for physical, sexual, and emotional harm. Overall, the scope modestly weighed in favour of the AH Action.

The Court further found that although counsel to the DM Action had greater experience and resources than the other counsel involved, a conflict-of-interest finding was critical to that assessment. In the circumstances, it was found that the AH Action was best suited to advance the interests of the proposed class, balancing comprehensiveness and efficiency. The DM Action was stayed due to the conflict of interest issue, and the RT Action was stayed to the extent it overlapped with the AH Action.

BARWICK V WILLIAMSON, 2025 ABKB 593

(LEMA J)

Rules 2.11 (Litigation Representative Required), 2.15 (Court Appointment in Absence of Self-Appointment) and 6.4 (Applications Without Notice)

This Decision considered whether beneficiaries under a Will had standing to obtain an *ex parte* Mareva Order to preserve assets alleged to belong to the Estate, but transferred through *inter vivos* gifts shortly before the deceased's death.

Justice Lema affirmed that Rule 2.11(e) requires an Estate without a Grant of Probate, but with an interest in a claim, to act through a Litigation Representative, and Rule 2.15 requires a formal Application for the appointment of a Litigation Representative where one is required.

Although the beneficiaries amended their Statement of Claim to seek relief to pursue the Estate's claims, or alternatively the appointment of a Litigation Representative under Rule 2.15, they proceeded with the *ex parte* Mareva

Application without obtaining such an appointment. As a result, neither the pleadings nor the Mareva Order rested on proper standing.

Despite this, all subsequent filed documents named "Jane Doe" as Litigation Representative for the Estate. Justice Lema confirmed that merely naming a Litigation Representative in the style of cause, without judicial appointment, did not confer standing, and held that this deficiency alone required the Mareva Order to be set aside.

Finally, applying the duty of full and frank disclosure governing *ex parte* Applications under Rule 6.4, Justice Lema found that the beneficiaries failed to disclose material evidence, providing an additional basis to vacate the Order.

BEREZAN V CHIZAWSKY, 2025 ABKB 634

(MCLEOD J)

Rules 2.13 (Automatic Litigation Representatives), 2.14 (Self-Appointed Litigation Representatives), 2.15 (Court Appointment in Absence of Self-Appointment) and 4.34 (Stay of Proceedings on Transfer or Transmission of Interest)

The dispute arose out of a family property Action involving a ranching operation jointly associated with the deceased, Mr. Chizawsky, and his former adult interdependent partner, Ms. Berezan. After Mr. Chizawsky's sudden death, his adult daughter, Ms. Chizawsky, applied in Family Chambers to be designated as litigation representative and to obtain exclusive

possession of the home, ranch assets, and related restraining relief. Ms. Berezan sought a preservation Order for the ranch operation and assets, confirmation of her ownership of the home by right of survivorship, and a restraining Order against interference. The Court granted Ms. Berezan's application and dismissed Ms. Chizawsky's.

Justice McLeod held that Rule 4.34 stayed the family property Action and Counterclaim upon Mr. Chizawsky's death. Continuation required an appropriate litigation representative. Under Rule 2.13, the proper litigation representative is ordinarily the estate's personal representative, whose authority speaks from the time of death. The daughter did not establish standing under Rule 2.13 and her Affidavit did not meet the form and content required for a self-appointment under Rule 2.14. She also did not qualify for a Court appointment under Rule 2.15 because a probate process for named personal representatives was apparently underway, making a Court designation premature.

McLeod J. also noted Section 13(1) of the *Family Property Act*, which restricts distribution of estate property for six months absent consent of an adult interdependent partner. In the circumstances, immediate management and preservation were to proceed through proper estate representatives rather than through a beneficiary's unilateral control. This approach aligned with *Perrisini v Perrisini* (unreported), where a similar self-appointment was declined in urgent post-death circumstances.

In the result, the Court dismissed Ms. Chizawsky's Application.

ALBERTA HEALTH SERVICES V MCDONALD, 2025 ABCA 341

(STREKAF, WOOLLEY AND FRIESEN JJA)

Rules 2.23 (Assistance Before the Court), 3.45 (Form of Third-Party Claim), 3.68 (Court Options to Deal with Significant Deficiencies) and 7.3 (Summary Judgment)

The Appellants sued for damages said to flow from Alberta Health Services' ("AHS") pandemic enforcement that temporarily closed their fitness facility. The Appellants also brought an application to add the Crown as a third-party in their landlord's Action for unpaid rent against them (the "Rent Action"). AHS and the Crown moved to strike under Rule 3.68 for failure to disclose a reasonable cause of action, or in the alternative, for Summary Dismissal under Rule 7.3(1)(b) on the basis that there was insufficient evidence.

The Chambers Judge struck the claim under Rule 3.68(2)(b) for failing to disclose a reasonable cause of action and, alternatively, held the record permitted summary disposition because there was no genuine issue for trial. He also refused the third-party addition in the Rent Action under Rule 3.45(c)(i)-(ii), finding it was more than six months late.

The Appellants narrowed their Appeal to whether the Chambers Judge erred finding there was no bad faith on the part of AHS in summarily dismissing the claim against AHS pursuant to Rule 7.3(1)(b). Procedurally, the Court exercised its discretion under Rule 2.23(4) to grant non-lawyer Mr. McDonald a limited audience to speak on behalf of the corporate Appellant, Ape Parkour Inc.

The Court found no reviewable error and confirmed that AHS and its Executive Officers are statutorily insulated from liability for actions taken in good faith. The Court further held that the Appellants' claim amounted to an impermissible collateral attack on the Closure Order, which should have been challenged through the statutory appeal process under s 5 of the *Public Health Act*, RSA 2000, c P-37.

The Appeal was dismissed.

ODO V JOHN DOE #1, 2025 ABKB 608

(NIELSEN ACJ)

Rules 2.24 (Lawyer of Record), 10.29 (General Rule for Payment of Litigation Costs), | 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 13.18 (Types of Affidavit)

Following a fatal police shooting, Edmonton Police Service (“EPS”) received information from two confidential sources about death threats against involved officers. EPS asserted confidential informant privilege over those sources. In support of a Restricted Access Application, a police sergeant swore two Affidavits. The second Affidavit clarified and identified the sources of information contained in the first Affidavit. For instance, the second affidavit identified that the sergeant’s belief in the first Affidavit that certain information was protected by confidential informant privilege, was based, in part, on legal advice from EPS in-house counsel. During cross-examination, the sergeant confirmed his reliance on that advice.

The Applicants sought a declaration that the Respondents waived solicitor-client privilege by referencing the legal advice provided by EPS in-house counsel in the second Affidavit, arguing that it constituted a broad, voluntary waiver of solicitor-client privilege over the substance of that advice. In the alternative, that fairness required disclosure so that the Applicants could meaningfully test the confidential informant claim. The Applicants also claimed that counsel for EPS on the confidential informant issue must be disqualified and removed as counsel due to becoming a witness because of the alleged waiver of solicitor-client privilege. The Respondents acknowledged a limited waiver, restricted to identifying the source of the sergeant’s belief in the Affidavit, but denied any broader waiver over the substance of the legal advice.

Associate Chief Justice Nielsen noted that the onus was on the Applicants to establish that

there had been a broad waiver of the advice provided to the sergeant by EPS’ in-house counsel, but found that the Applicants failed to do so. The Court determined that there was no broad waiver of privilege, and that the references to the legal advice in the second Affidavit were limited to fulfilling the requirement pursuant to Rule 13.18(2) that statements of belief in Affidavits must be accompanied by disclosure of the source of the underlying information. The Court emphasized that the legal advice was not relied upon to substantiate the Defendant’s claims, distinguishing it from precedents where privilege was waived due to relying on legal advice to advance a claim. Accordingly, there was voluntary or implied waiver beyond the limited waiver acknowledged by the Respondents.

The Court agreed with the Respondents’ argument that EPS’s counsel could not be removed as counsel of record because he was not counsel of record as defined pursuant to Rule 2.24(1). Rather, he was in-house counsel with EPS and duty bound to protect confidential informant privilege. Nielsen A.C.J. saw no real objective likelihood that the counsel would be called as a witness merely because he was named as a source of legal advice in the second Affidavit. Therefore, disqualifying him would result in further inefficiencies and cause unnecessary delay.

The Application to pierce solicitor-client privilege and for an Order disqualifying and removing EPS’s counsel was dismissed. Pursuant to Rules 10.29, 10.31 and 10.33(1), the Court granted the Respondents Schedule “C” Costs, noting that the issues raised by the Applicants

neither advanced the litigation meaningfully toward Trial or even resolution of the Restricted

Court Access Application, but rather generated delay and consumed scant judicial resources.

GRECO V CALGARY (CITY), 2025 ABKB 629

(REED J)

Rules 3.2 (How to Start an Action), 3.15 (Originating Application for Judicial Review), 3.16 (Originating Application for Judicial Review: Habeas Corpus), 8.15 (Notice of Persons not Intended to be called as Witnesses), 10.29 (General Rule for Payment of Litigation Costs) and 13.5 (Variation of Time Periods)

This Action arose from a dispute between Christina Greco (“Greco”), the City of Calgary (the “City”) and several Calgary Stampede entities (collectively, the “Stampede Defendants”) concerning the City’s 2012 Development Direction that no development permit was required for the Stampede Defendants’ use of industrial lands adjacent to Greco’s residence (the “Development Direction”). Greco commenced the Action in 2014 by Statement of Claim seeking injunctive relief for nuisance and a declaration that the Stampede Defendants were required to obtain a development permit. The City and the Stampede Defendants argued that the declaratory relief was, in substance, an out of time Judicial Review that had been improperly commenced and was therefore procedurally barred.

Both Parties advanced adverse inference arguments based on the failure to call certain witnesses. Justice Reid explained that drawing an adverse inference is discretionary and depends on factors such as whether there was a legitimate explanation for the absence, whether the witness had material evidence, whether the witness was the best person to provide that evidence, and whether the witness was within the exclusive control of one party. Reid J. noted that the failure to file a Notice pursuant to Rule 8.15 is a relevant, but not

determinative, consideration and does not justify an automatic adverse inference. The Court declined to draw adverse inferences, finding that absent witnesses were not within exclusive control of one party or would not have provided material evidence.

The Court assessed the procedural validity of Greco’s claim against the City concerning the Development Direction. Reid J. noted that although Greco relied on Rule 3.2 to commence the Action, it was not applicable where the substance of the relief sought amounted to Judicial Review. Since the declaration sought challenged an administrative decision on permit requirements, Justice Reid found that it was improper to proceed by Statement of Claim and that the Action should have been commenced by an Originating Application for Judicial Review pursuant to Rule 3.15, which displaces the general commencement framework in Rule 3.2.

Reid J. further held that Rule 3.15 imposed a six-month limitation period for any Application challenging the Development Direction, expressly precludes the Court from varying that timeline pursuant to Rule 13.5, and was subject only to the narrow carve out in Rule 3.16. The Court found that Greco had notice of the Development Direction by August 2012 and that the six-month limitation period expired

well before the Action was commenced in 2014, rendering the proceeding an abuse of process.

In the end, the Court dismissed Greco's claims and applied Rule 10.29, holding that the City

and the Stampede Defendants, as the substantially successful parties, were presumptively entitled to Costs.

GH V ALBERTA (SENIORS, COMMUNITY AND SOCIAL SERVICES), ALBERTA (JUSTICE), 2025 ABKB 710

(DUNLOP J)

Rule 3.15 (Originating Application for Judicial Review)

The Applicant, GH, applied for a declaration that Alberta's disability benefits eligibility process violates the *Canadian Charter of Rights and Freedoms* (the "Charter"). GH also applied for an Order requiring Alberta to reassess his eligibility for disability benefits pursuant to the *Assured Income for the Severely Handicapped Act*, SA 2006, c A-45.1 ("AISH").

The Court held that GH did not meet the test to establish a breach of the Charter, and thus he was not entitled to a declaration or any other remedy. With respect to the second part of GH's Application, Justice Dunlop held that GH was not entitled to an Order requiring

reassessment of his eligibility for disability benefits because he did not properly apply for a judicial review.

Pursuant to Rule 3.15, an originating application for judicial review must be filed within six months of the decision. In response, GH argued that he was not seeking a judicial review, but rather, he was seeking a reconsideration of his eligibility for AISH as a remedy for breaches of the Charter. Thus, GH argued the six-month limitation in Rule 3.15 did not apply. Dunlop J. did not agree, finding that GH's Originating Application was, in substance, an Application for judicial review and was not brought in time.

26TH AVENUE RIVER HOLDING LIMITED PARTNERSHIP V WINSPIA CO LTD, 2025 ABCA 384

(ANTONIO, KIRKER AND SHANER JJA)

Rules 3.26 (Time for Service of Statement of Claim), 3.27 (Extension of Time for Service) and 14.5 (Appeals Only With Permission)

The Appellant sought to appeal a decision refusing to set aside two Orders extending the time for service of the Respondents' Statement of Claim. The Court asked the parties for submissions on whether permission to appeal

is required under Rule 14.5(1)(b), and if so whether permission should be granted.

The Court of Appeal found that Rule 14.5(1)(b) applied, and that permission to appeal was

required because the Appeal was in respect of a pre-trial decision to extend, and to uphold the extension of, the time limit for serving a Statement of Claim, pursuant to Rules 3.26 and 3.27. As permission to appeal was not sought in time, an extension of time to seek permission to appeal under Rule 14.37(2)(c) was also required.

To obtain permission to appeal under Rule 14.5(1)(b), an Applicant must establish: (1) a serious question of general importance; (2) a reasonable chance of success on appeal; and (3) that the appeal will not unduly hinder the progress of the action or cause undue prejudice, without any proportionate benefit. The Court found no serious question of general importance, no reasonable chance of success on appeal, and that the appeal may have delayed the underlying action. These factors weighed against granting an extension of time or permission to appeal.

The Court held that even if an extension of time and permission to appeal had been granted, the Appeal would have been dismissed because the Chambers Judge properly exercised her discretion. She correctly stated and applied the governing legal principles for extensions of time, reasonably accepted the Respondents' explanation for delayed service when consid-

ered alongside findings of no improper delay tactic and no prejudice to the Defendants, and was entitled to deference on Appeal.

The Judge did not err in referring to cross-examination evidence, as it was elicited by the Appellant, consistent with the original Affidavit evidence, and did not undermine disclosure obligations. Her finding of special or extraordinary circumstances justifying the second extension was not based merely on foreign service, but on a fact-specific assessment including the Respondents' diligence, reliance on uncontrollable third parties, uncertainty and lack of responsiveness in the service process, and absence of delay. The requirement that extraordinary circumstances arise solely from non-party conduct was met despite the Respondents' earlier choice to delay service, as extensions inherently address missed deadlines.

Finally, any technical non-compliance with the requirement to include the extension Order with service was excusable in the circumstances, since the documents had already been transmitted through an uncontrollable foreign authority and timely notice of the order was otherwise provided.

CONNECT FIRST V ELITE STORAGE NORTH EDMONTON LP, 2025 ABKB 718

(MARION J)

[Rules 3.30 \(Defendant's Options\)](#), [6.7 \(Questioning on Affidavit in Support, Response and Reply to Application\)](#) and [9.15 \(Setting Aside, Varying and Discharging Judgments and Orders\)](#)

The Applicant/Defendant (the "Applicant") sought amendment of a Consent Receivership Order (the "Order") that appointed Alberta Finance & Mortgage Corporation as a receiver (the "Receiver") to handle the assets of entities defined as "Debtor" in the Order (the "Application"). Specifically, the Applicant requested to

remove BCCQ Global Holdings Ltd. ("BCCQ"), where the Applicant owned 50% of voting shares (through his company), as a Debtor.

Although BCCQ was listed as a Debtor in the Order, it was in fact acting as a guarantor under an agreement after the guarantee company

had defaulted on the initial loan agreement (the “Forbearance Agreement”). For this reason, and because the Forbearance Agreement did not state that there should be security interests over BCCQ’s assets, the Applicant sought to amend the Order to remove BCCQ as a Debtor. The Receiver argued that the Applicant/Defendant was not authorized to bring the Application because of internal issues in BCCQ that was subject to arbitration, and that the Receiver had the discretion to add any party it considered a Debtor as evidenced by a blank space in the Order.

After a careful analysis of the case, Marion J. found that the Applicant, as co-owner and director of BCCQ, was an interested party in the matter and could seek an amendment. On the issue of the definition of a Debtor, the Court interpreted the provisions of the Forbearance Agreement, the surrounding circumstances, as well as the objective intentions of the parties when executing the agreement, to reject the Applicant’s position that the Order was only

intended to apply to the guarantee company as BCCQ did not grant security for the loan under the Forbearance Agreement. The Court reasoned that the Applicant’s position ignored material facts such as the significant amount owed to the Plaintiff, and that BCCQ was indebted to the Plaintiff as guarantor regardless of whether they granted security or not.

Nonetheless, Justice Marion held that while the Receiver had the discretion to include anyone on the blank space in the Order as a Debtor, it was to be exercised with caution and in good faith. The Court then found that per the Forbearance Agreement, the Plaintiff was required to provide BCCQ a notice of default (the “Notice”) before it sought the Order, and in failing to do so, breached the Forbearance Agreement. Further the court held that in the absence of evidence proving the Notice would be prejudicial to the Plaintiff’s business, the Order should be varied to exclude BCCQ as a Debtor and that the remainder of the Order be as is.

LIBERTY MORTGAGE SERVICES LTD V RIVER VALLEY DEVELOPMENT CORP, 2025 ABCA 346

(FEEHAN, FETH AND SHANER JJA)

Rules 3.30 (Defendant’s Options), 3.36 (Judgment in Default of Defence and Noting in Default), 3.37 (Application for Judgment Against Defendant Noted in Default), 3.38 (Judgment for Recovery of Property), 3.39 (Judgment for Debt or Liquidated Demand), 3.40 (Continuation of Action Following Judgment), 3.41 (When no Defence is Filed in Foreclosure Action) and 3.42 (Limitation on When Judgment or Noting in Default May Occur)

The Defendant/Appellant, River Valley Development Corp, appealed a decision dismissing its Application to set aside a Noting in Default. The Chambers Judge determined that the Appellant had no arguable Defence, and refused to set aside the Noting in Default, awarding the Plaintiff/Respondent Summary Judgment.

On Appeal, the Court carefully set out the distinction between a Noting in Default and a Default Judgment as set out in Rules 3.36 to 3.42. If a Defendant has failed to file a Defence or Demand for Notice pursuant to Rule 3.30, the Rules of Court provide two remedies. The first remedy is to apply for Judgment pursuant

to Rules 3.38 or 3.39. The second remedy is to note the Defendant in default pursuant to Rule 3.36(1)(b). Once a party has been Noted in Default, the noting party may apply for Judgment pursuant to rule 3.37(1)(a). The court can then take a variety of steps pursuant to Rule 3.37(3).

The Court held that the Chambers Judge had incorrectly conflated the tests for setting aside a Noting in Default and setting aside a Default Judgment. The Panel held that the proper procedure to be followed when there

are competing Applications for setting aside a Noting in Default and for Summary Judgment is for the court to first determine whether the Noting in Default should be set aside and if so, whether a Statement of Defence should be entered and any other steps in the litigation completed before the Summary Judgment Application proceeds. The Appeal was allowed due to the prejudice arising from the error of the Chambers Judge. The matter was returned to the Court of King's Bench to proceed in the proper order.

MCKAY V SOUTHERN ALBERTA COMMUNITY LIVING ASSOCIATION, 2025 ABKB 660

(NIXON ACJ)

[Rules 3.61 \(Request for Particulars\) and 3.68 \(Court Options to Deal With Significant Deficiencies\)](#)

The Defendants brought an Application for an Apparent Vexatious Application or Proceeding ("AVAP") review under Civil Practice Note 7 ("CPN7"). Nixon A.C.J. explained that CPN7 incorporates Rule 3.68 and establishes summary procedures for identifying proceedings that appear to be frivolous, vexatious, or an abuse of process. Associate Chief Justice Nixon noted that the Statement of Claim (the "Claim") advanced broad and unparticularized allegations, including defamation, fabrication and distribution of illegal documents, breach of contract, blacklisting, and physiological and financial harm. The Court also observed that the Claim sought excessive or impossible monetary relief.

Nixon A.C.J. found that the Claim, on its face, appeared frivolous, vexatious, or an abuse of process within the meaning of Rule 3.68. The Court emphasized that despite the Defendants' demand for particulars under Rule 3.61, the Plaintiff failed to provide any particulars or amend the Claim to address the deficiencies

raised. Associate Chief Justice Nixon further noted that the Action may constitute a retaliatory or collateral attack on an Originating Application filed by Southern Alberta Community Living Association and acknowledged that the Defendants' contended that the Claim was statute barred.

As a result, Associate Chief Justice Nixon issued an AVAP Notice (the "Notice") directing the next procedural steps. The Notice gave the Plaintiff 14 days to file a written submission addressing the identified deficiencies, including the factual basis for the alleged harms, the contractual terms and breach, the justification for the damages sought, the status of any privacy complaints, and explanations as to why the Claim was neither a collateral attack nor limitation barred.

Associate Chief Justice Nixon stated that if the Plaintiff did not respond to the Notice, the Court would determine whether the Claim should be struck in whole or in part under Rule 3.68. Further, the Defendants would have 7

days to reply to any response of the Plaintiff to the Notice before the Court issued its final decision. The Court also directed the Defen-

dants to prepare and serve an Interim Order to stay the Action pending completion of the CPN7 process.

BROWN V BROWN, 2025 ABCA 414

(DE WIT, FAGNAN AND FRIESEN JJA)

Rules 3.62 (Amending Pleading) and 3.65 (Permission of Court to Amendment Before or After Close of Pleadings)

The Plaintiff in a long-running divorce and matrimonial property Action obtained leave in morning Chambers to amend his claim to plead enforcement of a decades-old pre-nuptial agreement (despite a later alleged termination) and to claim occupation rent since separation. The Defendant appealed both amendments.

The Court noted that, once pleadings are closed, amendments require permission under rule 3.62(1)(b) and are governed by rule 3.65. From there, the Court emphasized the deferential standard on appeal: amendment rulings are discretionary, and intervention lies only for an extricable error of law, a palpable and overriding error of fact, or an unreasonable exercise of discretion. The Court affirmed that there is no fixed deadline for amendments, and they may be allowed even late in the proceeding where a low evidentiary threshold is met and none of the recognized bars apply, namely non-compensable prejudice, hopelessness, limitation-barred new party or cause, or bad faith.

Turning to Application, the Court agreed the Chambers Judge was entitled to find the

modest evidentiary threshold satisfied. On the pre-nuptial amendment, the record contained both the original agreement and the purported termination, together with sworn assertions that had already been canvassed in Questioning and that challenged the termination's validity. At the amendment stage, that was sufficient. Whether the termination would ultimately succeed was a Trial question, not a basis to label the amendment hopeless. As for occupation rent, Affidavit evidence of exclusive post-separation occupation and non-payment supplied the necessary minimal support for pleading the claim, which was a discretionary and fact-specific remedy best resolved at Trial.

Finally, addressing prejudice, the Court held that additional Questioning, scheduling adjustments, or even a longer Trial would be compensable in Costs and thus did not amount to non-compensable prejudice.

In the result, the Court found no reviewable error of the Chambers Judge's Decision and dismissed the Appeal.

CNOOC PETROLEUM ULC V 801 SEVENTH AVENUE INC, 2025 ABKB 537

(JEFFREY J)

Rules 3.65 (Permission of Court to Amendment Before or After Close of Pleadings),
13.6 (Pleadings: General Requirements) and 13.8 (Pleadings: Other Contents)

This decision arose in the context of a bifurcated Trial involving a commercial lease dispute between a Landlord and a Tenant. The first phase of the Trial (the “Liability Trial”) addressed liability issues, while the second phase (the “Damages Trial”) was set to address damages claims. Both the Landlord and Tenant sought to amend their pleadings before the Damages Trial.

Rule 13.6(2)(c) speaks to the requirements of a litigant’s pleadings. The purpose is so the party opposite may know just what is being claimed so it has a fair opportunity to respond. Rule 13.6(2)(c) says a pleading “must” contain “(iii) a statement of any interest claimed, including the basis for the interest, and the method of calculating the interest.”

Beginning with the Landlord’s proposed amendments, the Court found that Landlord’s prior “Further Particulars” were comprised of further details of the damages claim made in its Counterclaim. They were consistent with, and provided more detail to, the Landlord’s prior pleadings and particulars previously provided in response to the Tenant’s request for particulars. As such, the Landlord’s proposed amendments were largely allowed, except for two claims (“Additional Payments to Lenders” and “Loss of Value”), which were adjourned sine die as they could not be determined on the current record.

The Tenant, in turn, sought approval to claim damages for increased construction costs allegedly caused by the presence of asbestos. The Court rejected this position. The Liability

Trial focused primarily on whether the presence of asbestos and the Landlord’s response to it constituted a breach, and the Court expressly found that it did not. Because the Lease in question did not provide for such recovery, and because such a claim would contradict the Liability Trial findings, the Court found that the Tenant could not recover increased construction costs and refused to approve any amendment to plead such damages. The Tenant also sought leave to amend its pleadings to claim punitive damages based on three specific findings against the Landlord: (i) the imposition of an “asbestos management plan” without Tenant consultation or approval; (ii) failing to provide an architect’s opinion as required by the Lease; and (iii) misrepresenting the position of occupational health and safety authorities regarding asbestos.

The Court explained that punitive damages, while not dependent on a finding of bad faith, are exceptional and usually awarded in addition to compensatory damages. The Court noted that there is considerable case law outlining that claims of punitive damages must be pleaded before the close of the evidentiary portion of a trial. The principle underlying those decisions is that, like any other risk of Court punishment, a party should be able to know they face that risk in time to offer full answer and defence. The Court considered each proposed basis for punitive damages on its merits and found the first two to be hopeless. With respect to the third, the Court found that the denunciation of this behavior from the Liability Trial was a suitable and sufficient punishment.

MD V ALBERTA (DIRECTOR OF CHILD AND FAMILY SERVICES), 2025 ABKB 446

(DILTS J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 9.12 (Correcting Mistakes or Errors) and 9.13 (Re-Opening Case)

This Decision considered whether an Appeal from a Permanent Guardianship Order (“PGO”) should be dismissed for failure to perfect the Appeal, and whether the Court of King’s Bench had jurisdiction to entertain a Mistrial Application relating to proceedings in the Alberta Court of Justice.

Under s. 116 of the *Child, Youth and Family Enhancement Act*, RSA 2000, C-12, and ss. 5.4–5.5 of the *Court Rules and Forms Regulation*, Alta Reg 39/2002, an Appellant must order, pay for, file, and serve a transcript of the hearing under appeal within the prescribed time. Although MD obtained several extensions, she never ordered the transcripts.

Justice Dilts held that the transcript requirement is mandatory and cannot be satisfied by reliance on audio recordings. The Court further held that it lacked jurisdiction to compel the state to fund transcripts absent a properly brought Rowbotham Application on notice to the Attorney General, which MD repeatedly indicated she would bring but never did. Given the elapsed time, MD’s failure to take meaningful steps to perfect the Appeal, and the statutory priority placed on the child’s best

interests, stability, and the avoidance of undue delay, the Appeal was dismissed.

MD also applied for a declaration of mistrial in respect of the PGO hearing, relying on Rules 9.12 and 9.13 and the Court’s inherent jurisdiction. Justice Dilts held that Rule 9.12 is limited to correcting accidental slips or omissions and does not permit substantive reconsideration of a final Judgment. Rule 9.13 permits a Judgment to be varied or reopened only in narrow circumstances and does not authorize collateral relief where a complete statutory appeal regime applies. The Court held that the *Child, Youth and Family Enhancement Act* establishes a complete code for appellate review of PGOs, and that MD’s recourse was to pursue her Appeal, which she failed to perfect.

In addition to its inherent jurisdiction, Justice Dilts relied on Rule 3.68, which permits the Court to set aside or stay an Application where circumstances warrant and the Application constitutes an abuse of process. Justice Dilts found that MD’s Mistrial Application constituted a collateral attack on the PGO Decision and an abuse of process. Accordingly, the Mistrial Application was set aside.

OPABIN SAND AND GRAVEL INC V TSUU T'INA CONTRACTING LIMITED PARTNERSHIP, 2025 ABKB 623

(MANDZIUK J)

Rule 3.68 (Court Options to Deal With Significant Deficiencies)

The underlying dispute arose from the Springbank Off-Stream Reservoir (the "SR1 Project"), a provincial public works construction project in which Opabin Sand and Gravel Inc ("Opabin") supplied aggregate through a subcontracting chain ending with Vinci Geoinfrastructure Canada Limited ("Vinci") as general contractor.

After Opabin stopped receiving purchase orders, it filed a substantial claim under the *Public Works Act*, RSA 2000, c P-46 (the "PWA"), alleging losses based on representations of continued supply work (the "PWA Claim"). As a result, the Crown withheld Vinci's progress payments in an amount equal to the PWA Claim. Vinci advised Opabin that they were not a recognized claimant under the *PWA*, that the PWA Claim was out of time, and that the PWA Claim sought damages not permitted by the statute. Opabin then commenced an Action against Vinci and others in the Court of King's Bench (the "ABKB Claim"), alleging it relied on representations of further work and suffered resulting losses.

Vinci filed a Counterclaim which denied liability and alleged, abuse of process on the basis that Opabin used both the PWA Claim and the ABKB Claim to exert improper economic pressure, and conversion as Opabin's wrongful PWA Claim caused Vinci to be deprived of its progress payments. An Applications Judge struck the counterclaim under Rule 3.68(2)(b) for disclosing no reasonable cause of action. Vinci appealed, arguing that its pleadings satisfied the low threshold necessary to survive a striking application.

Justice Mandziuk's analysis centered on whether the Applications Judge correctly

applied Rule 3.68, reiterating that the threshold for striking a claim is extremely high, applying only where it is beyond doubt that the claim must fail. Mandziuk J. confirmed that on such applications, no evidence may be considered, and all material facts pleaded must be assumed true unless they are speculative, patently absurd, or incapable of proof. Justice Mandziuk highlighted that pleadings must be read generously, and where multiple interpretations exist, the Court must prefer the interpretation that supports the claim's viability. The Court also emphasized that deficiencies in detail or particulars are not grounds to strike, as the appropriate remedy is to order better particulars.

Applying these principles, Mandziuk J. held that the Applications Judge erred in striking Vinci's abuse of process claim. Vinci pleaded that the ABKB Claim was the legal process being misused and that it was filed to intensify financial pressure created by the PWA Claim. While acknowledging that settlement leverage alone is not improper, Justice Mandziuk noted that Vinci advanced a distinct, arguable theory that Opabin used litigation to reinforce economic pressure generated by the PWA process. Further, Mandziuk J. found that Vinci sufficiently identified the filing of the PWA Claim as the act outside the litigation said to be abusive and pleaded special damages, including investigation and financing costs. Given the mixed case law on several elements, Justice Mandziuk determined that none of the allegations could be deemed hopeless.

Mandziuk J. applied similar reasoning to the conversion claim. Although the Applications Judge held Vinci lacked a property interest in

the withheld progress payments, Mandziuk J. highlighted that Vinci pleaded a legal entitlement to those funds, and section 15 of the *PWA* characterizes them as due and payable to the contractor. Vinci further alleged that the filing of the PWA Claim foreseeably resulted in the withholding of these funds, amounting to a wrongful interference. Justice Mandziuk emphasized that even if novel, this theory was not doomed to fail at the pleadings stage.

In the end, the Court held that the Applications Judge applied Rule 3.68 too narrowly. As both the abuse of process and conversion claims were arguable on their face, Justice Mandziuk found that Vinci's Counterclaim should not have been struck. Consequently, the Appeal was allowed, and Vinci's Counterclaim was permitted with Costs in its favour.

MCDERMOTT V ZBRODOFF, 2025 ABKB 646

(NIXON ACJ)

Rules 3.68 (Court Options to Deal With Significant Deficiencies) and 13.7 (Pleadings: Other Requirements)

The Court issued an Apparent Vexatious Application or Proceeding Notice ("AVAP Notice") pursuant to Civil Practice Note 7 ("CPN7") and Rule 3.68. The Statement of Claim on its face appeared to the Court to be frivolous, vexatious, or otherwise an abuse of process. The Statement of Claim alleges defamation but does not properly plead particulars as required pursuant to Rule 13.7.

The Defendant argued that, per Rule 3.68(2), the Statement of Claim demonstrated no reasonable claim, represented a collateral attack on previous decisions, provided uncertain and impossible statements for the Defendant to respond to, and offended the *Defamation Act*, RSA 2000, c D-7 and the *Limitations Act*, RSA 2000, c L-12. The Defendant also sought that the Applicant be prohibited from filing any further Actions against the Defendant without first obtaining leave of the Court and a legal opinion.

Associate Chief Justice Nixon first considered if the Statement of Claim was frivolous and concluded that based on the Plaintiff's responses

to the AVAP Notice, the Statement of Claim was brought in bad faith and was vindictive.

Second, Nixon A.C.J. considered if the Statement of Claim was vexatious, and held that the Plaintiff used the litigation to raise grievances against anyone connected to the Defendant and to blame the Defendant for his life's circumstances.

Third, the Court considered if the Statement of Claim also appeared to be an abuse of process and concluded that it did. Associate Chief Justice Nixon refused to consider the limitations arguments advanced by the Defendant on the basis that the CPN7 process is not designed to consider evidence, but rather the defects of the pleading in question must be clear on its face.

The Court directed that the Statement of Claim be struck pursuant to Rule 3.68(1). Nixon A.C.J. also implemented a process for the parties to make written submissions regarding whether further intervention in the Plaintiff's litigation activities is appropriate.

CHRISTOFI (RE), 2025 ABKB 725

(NIXON ACJ)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

This proceeding involved an Application by Mike Christofi (“Christofi”), an active litigant, which named Associate Chief Justices Nixon and Nielsen as Respondents. The Application sought leave to bring an Application to remove a Court Restriction Order and have Nixon A.C.J. and Nielson A.C.J. removed from hearing another Action he had commenced. The existing Court Restriction Order prevented Christofi from commencing an Action, for which he had already filed a Statement of Claim.

Associate Chief Justice Nixon denied the Application, declining to grant Christofi leave to

bring his Application to remove the restrictions imposed against him. The Court then assessed whether Christofi was permitted to file the Statement of Claim pursuant to the Restriction Order’s criteria. Associate Chief Justice Nixon found that the Statement of Claim recited facts and issues already considered and therefore constituted an abuse of process.

The Court issued an Order striking the Statement of Claim pursuant to Rule 3.68.

BAINS V ADAM, 2025 ABCA 407

(SHANER JA)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 14.5 (Appeals Only with Permission) and 14.51 (Applications Without Oral Argument)

The Applicants, Dr. Jagdev Singh Bains, his wife, and their three children applied for permission to Appeal an Order restricting Court access and, if granted, a Stay pending Appeal. The Application proceeded in writing under Rule 14.51.

Since 2017, the Applicants have pursued multiple interrelated lawsuits arising from motor vehicle incidents, many of which the Court found duplicative or abusive. In 2021, a separate Action against opposing counsel and insurers was struck pursuant to Rule 3.68 as an abusive proceeding. The Chambers Judge further found that similar claims were advanced through family members as “litiga-

tion proxies”. In these circumstances, global Court access restrictions were imposed.

Rule 14.5(1)(j) requires a person declared a vexatious litigant to obtain leave before appealing, including to challenge the vexatious litigant Order itself. Applying the Rule 14.5 leave framework, the Court held the test was not met.

On the first branch, the Applicants did not raise an important question of law or precedent within the meaning of Rule 14.5. The Applicants argued that the Court access restriction violated their *Charter* rights. However, the Court stated that there is no constitutional right to pursue frivolous or vexatious litigation,

and the Order preserved access by allowing legitimate actions to commence by following a prescribed procedure. On the second branch, the Applicants did not demonstrate a reasonable prospect of success. The Chambers Judge had given detailed reasons for imposing restrictions based on a sustained pattern of abusive litigation, and the Applicants did not

meaningfully identify reversible error. On the third branch, Shaner J.A. found that granting leave to appeal would risk undue prejudice and delay by prolonging the Applicants' pattern of abusive litigation.

The Application for permission to Appeal was dismissed.

STH V VMM, 2025 ABKB 601

(MARION J)

Rules 4.10 (Assistance by the Court), 6.14 (Appeal From Applications Judge's Judgment or Order), 10.33 (Court Considerations in Making Costs Award), 12.2 (What Foundational Family Law Rules Apply to), 12.61 (Appeals From the Court of Justice Order to Court of King's Bench), 12.65 (Non-Compliance by Appellant) and 13.5 (Variation of Time Periods)

This was an Appeal under the *Family Law Act* in which the Appellant filed, but did not timely serve, a Notice of Appeal. The Court held that Part 12 of the Rules applies to Family Law Act appeals by virtue of Rule 12.2, and that Rule 12.61 requires both filing and service of the Notice of Appeal within one month. Failure to serve within that period meant the Appeal was not properly commenced.

The Court confirmed it had Jurisdiction under Rule 13.5 to extend the service deadline in Rule 12.61, as there is no express prohibition on extending that time. However, the Court found that although the Appellant had a *bona fide* intention to appeal, there was no adequate explanation for the late service. Self-representation, reliance on a family member, and misunderstanding of the Rules did not justify non-compliance.

The Court found serious prejudice arising from delay, particularly given the family law context, the nearly two-year lapse since the decision appealed from, and the Appellant's failure to comply with payment and support obligations in the absence of a stay. The Court also held that the proposed Appeal lacked a reasonably arguable chance of success, as the remaining ground concerned a finding of adult interdependent partnership, a question of mixed fact and law reviewed on a deferential standard, with no palpable and overriding error identified.

As the extension was denied, the Appeal was dismissed for non-compliance with Rule 12.61. Issues of a Stay or Security for Costs were moot. The Court directed that Costs be addressed under Rule 10.33, payable to the Respondent.

LJ RESOURCES CO LTD V INDEPTH ENERGY INC, 2025 ABKB 676

(JUGNAUTH J)

Rules 4.10 (Assistance by the Court), 4.31 (Application to Deal with Delay), 6.3 (Application Generally), 6.6 (Response and Reply to Application) and 6.11 (Evidence at Application Hearing)

The Defendants applied to admit Affidavit evidence (the “New Affidavit Evidence”) into the record for their Rule 4.31 Applications to dismiss the Plaintiff’s claim (the “Delay Applications”). The New Affidavit Evidence was filed and served after the completion of procedural deadlines which were set pursuant to an Order arising from a Rule 4.10 Case Conference (the “Procedural Order”).

The Defendants argued that the New Affidavit Evidence should be admissible because it was not reasonably discoverable prior to the deadlines set in the Procedural Order and was material to the issues to be determined on the Delay Applications. The Plaintiff argued that the New Affidavit Evidence was procedurally inadmissible because it was served ten months after the evidentiary record for the Delay Applications had closed and without advance notice to the Plaintiff nor leave of the Court. The Plaintiff also took the position that the New Affidavit Evidence was substantively inadmissible because it was not compliant with Civil Practise Note 1 or Rule 6.6(2).

In deciding if the New Affidavit Evidence should be admitted, the Court relied on the case of

Guillevin International Co v Barry, 2022 ABCA 144 which offered an interpretation of Rule 6.6.(2). According to Justice Jugnauth, the Delay Applications, given their potential impact, should be decided on the complete record. Jugnauth J. held that the New Affidavit Evidence dealt with issues prudent to the Delay Applications and its admissibility would be aligned with the foundational Rules that promote a fair and just determination.

The Court did not agree that the Procedural Order had the effect of freezing the record. Justice Jugnauth spoke to the wording in Civil Practise Note 1 which cites Rule 6.11. Specifically, that it permits Court discretion.

Further, according to Jugnauth J., Rules 6.3 and 6.6 seek to regulate the orderly exchange of information prior to an Application being heard, but there is nothing in the Rules that would prohibit the filing of further evidence. Thus, the Court permitted the New Affidavit Evidence to be admitted to the record in support of the Delay Applications.

NDEUGUEU V FOSTING, 2025 ABCA 380

(FAGNAN JA)

Rules 4.22 (Security for Costs), 14.5 (Permission to Appeal) and 14.88 (Costs on Applications)

This Decision considered whether leave should be granted to appeal a Security for Costs Order, and whether a Stay of enforcement pending appeal was available.

Justice Fagnan confirmed that Security for Costs Orders are discretionary, and permission to appeal those Orders will only be granted in rare circumstances. Under Rule 14.5, an Applicant must demonstrate a serious question of general importance and a reasonable chance of success on appeal, having regard to prejudice and delay. Orders for Security for Costs attract substantial deference and will not be interfered with absent an error of law, a misapprehension of material facts, or an unreasonable exercise of discretion.

In considering Security for Costs under rule 4.22, the Chambers judge had considered the

relevant factors, including the Applicant's financial circumstances, the Respondent's limited means, the weakness of the underlying claim, and the broader litigation context between the Parties. The Court of Appeal held that the Chambers Judge properly exercised discretion in ordering Security for Costs and in fixing the amount at half of what was sought.

Because the Applicant failed to demonstrate a reasonable chance of success on appeal, permission to appeal and the related Stay were refused.

Costs were awarded to the Respondent under Rule 14.88, payable on the same scale as was ordered by the Court of King's Bench in the lower decision.

PR CONSTRUCTION LTD V COLONY MANAGEMENT INC 2025 ABCA 411

(HO JA)

Rules 4.22 (Considerations for Security for Costs Order), 4.28 (Confidentiality of Formal Offer to Settle), 14.67 (Security for Costs), 14.88 (Cost Awards) and 14.90 (Sanctions)

This decision dealt with Applications seeking Security for Costs from one of the Respondents, Colony, in relation to the joint Appeal of a Trial Judgment brought by both Respondents, Colony and The Guarantee Company of North America ("GCNA").

The Court reviewed its authority to award Security for Costs under Rules 14.67(1) and the factors for consideration set out in Rule 4.22.

As a threshold issue, the Court concluded that it could order Security for Costs against Colony individually, even though Colony and GCNA were pursuing a joint Appeal with shared counsel. The wording of Rule 4.22 authorized the Court to order "a party" to pay Security for Costs where it is "just and reasonable" to do so. The Applicants raised concerns about Colony's ability to pay costs on Appeal, but not about

GCNA. Therefore, Justice Ho found it appropriate to consider Security for Costs against only Colony.

Applying the Rule 4.22 factors, the Court granted Security for Costs against Colony. Justice Ho determined that given Colony's lack of assets, the Applicants would be unlikely to be able to enforce a Costs award. Similarly, there was no evidence that Colony would be able to pay a Costs award. The Court found that no prejudice would result from granting the Application, including to GCNA. GCNA would not be frustrated in its Appeal because it could choose to provide funding to Colony for any Security of Costs Order granted.

The Applicants sought Security for Costs on the same level as the scale awarded at Trial pursuant to Rule 14.88(3). However, the Court

exercised its discretion to award a lower amount on two grounds. First, the Applicants were making Cross-Appeals that would increase the hearing time and complexity of the matter. Second, the amounts sought by the Applicants were excessive.

The Court mentioned that, in the course of its Applications, the Applicants had breached Rule 4.28 by disclosing a Formal Offer to Settle related to the Appeal, but not yet accepted, to the Court. In accordance with Rule 14.90(1), Justice Ho struck the Offer from the record and did not consider it in the calculation of Security for Costs.

The Court confirmed that if Colony failed to post security, its Appeal would be deemed abandoned in accordance with Rule 14.67(2).

SAWATZKY V SAWATZKY, 2025 ABKB 612

(OVIATT J)

[Rules 4.29 \(Costs Consequences of Formal Offer to Settle\)](#), [10.29 \(General Rule for Payment of Litigation Costs\)](#) and [10.33 \(Court Considerations in Making Costs Award\)](#)

The Application concerned conflicting positions on the appropriate Costs to be awarded following a Streamlined Trial. Both parties acknowledged that there was mixed success in the matter, but argued that they achieved greater success than the other party and as such were entitled to Costs.

The Court noted that the parties achieved mixed success, with the Plaintiff achieving clear success on several issues and mixed success occurring on the other issues. While Rule 10.29 provides that a successful party is entitled to Costs, Justice Oviatt noted that in family matters, success means 'substantial success' rather than 'absolute success', and that in determining substantial success the Court

must look to the relative significance of the issues rather than the total number of issues won. In this matter, Justice Oviatt noted that the Plaintiff had achieved a greater degree of overall success on the issues when their relative importance was considered.

Rule 10.33 sets out a number of factors for the Court to consider in determining how Costs should be awarded. In addition to the degree of success, the Court also considered the conduct of the parties. The Defendant argued that the Plaintiff had engaged in litigation misconduct in causing delay in the proceedings. The Court noted that the Plaintiff had caused some delay due to a lack of preparation for a case management conference and a failure to meet filing

deadlines, but that this behaviour did not rise to litigation misconduct.

The Defendant submitted that their attempts to resolve the dispute through settlement should be taken into consideration, and that they had made multiple settlement offers to the Plaintiff. However, the Court noted that the offers made were not Formal Offers pursuant to Rule 4.29 and there was no reason submitted by the

Defendant to suggest that the offers should impact any decision regarding Costs.

Ultimately, the Court determined that as the substantially successful party, the Plaintiff was entitled to Costs. With respect to the quantum of Costs, the Court considered the mixed degree of success and the delays caused by the Plaintiff, and awarded Costs equal to 50% of the amounts prescribed by Schedule C.

PR CONSTRUCTION LTD V COLONY MANAGEMENT INC, 2025 ABKB 664

(FRIESEN J)

[Rules 4.29 \(Costs Consequences of Formal Offer to Settle\)](#), [10.29 \(General Rule for Payment of Litigation Costs\)](#), [10.31 \(Court-Ordered Costs Award\)](#) and [10.33 \(Court Considerations in Making Costs Award\)](#)

This is a Costs decision following a lengthy and complex construction dispute that resulted in a 29-day Trial. PR Construction Ltd. (“PR Construction”) successfully obtained Judgment against Colony Management Inc. (“Colony”) and the Guarantee Company of North America (“GCNA”) for unpaid invoices and damages exceeding \$8 million. Colony was largely unsuccessful in its Counterclaim which alleged breach of contract and conspiracy between the owner of PR Construction and Colony’s former project manager, Kevin Lacroix, who later joined PR Construction. Additionally, a Third-Party Claim made by Lacroix and his numbered company (collectively, the “Lacroix Parties”) was dismissed.

All parties sought Costs. PR Construction and its owner, who was a Defendant by Counterclaim, sought solicitor-client Costs against Colony and GCNA jointly and severally, for both the main action and the Counterclaim, including a second counsel fee, citing the scope and complexity of the litigation. The Lacroix Parties also sought solicitor-client Costs against

Colony and GCNA at a rate of 75% of their legal fees, citing Colony and GCNA’s litigation conduct in making serious and ill-founded claims. Colony sought Column 5 Costs with a 2x multiplier against the Lacroix Parties, citing the complexity of the Action and alleged delays caused by the Lacroix Parties. Colony claimed it was substantially successful against the Lacroix Parties because their Third-Party Claim was dismissed and part of Colony’s Counterclaim against them was granted. GCNA claimed that the Trial Decision made it only liable to Colony for “tariff costs”, not solicitor-client Costs, and that it was not liable for any of the Lacroix Parties’ Costs because it was not a party to Colony’s Counterclaim.

Justice Friesen considered the general Costs principles pursuant to Rules 10.29, 10.31, and 10.33, emphasizing that Costs awards are discretionary and guided by proportionality, substantial success, and litigation conduct. The Court noted that solicitor-client Costs are rare and reserved for exceptional cases involving reprehensible or outrageous litigation conduct.

Friesen J. emphasized that enhanced Costs may be awarded depending on circumstance and are often based on the Trial Judge's "after-the-fact" assessment of the parties' litigation conduct, including litigation misconduct and unsubstantiated allegations of fraud. Where a party has been successful on both the initial claim and a Counterclaim, generally the costs of the Counterclaim should reflect the amount of increase in costs of the initial proceedings because of the Counterclaim.

In applying these principals, the Court determined that PR Construction was substantially successful on its claim and in defending the Counterclaim and that the Lacroix Parties were substantially successful in defending against Colony's allegations. Although Colony established some elements of its claim, its Counterclaim largely failed and added significantly to the duration and complexity of the Trial. Despite condemning Colony's litigation conduct and finding that it was wholly unsuccessful on its claims of fraud and conspiracy, the Court did not find solicitor-client Costs to be a reasonable or proportionate award, especially considering the sizable award that PR Construction already received as the successful claimant. Rather, when considering the overall damages awarded, Justice Friesen determined that a 2x multiplier based on Column 5 of Schedule C would be a reasonable and proportionate consequence for the questionable litigation conduct of Colony.

Justice Friesen noted that courts have the discretion to award second counsel costs and found it appropriate to do so based on the factors as set out in *Alberta Productions*

Corporation v Canada Lands Company CLC Limited, 2004 ABCA 25. Friesen J. also referred to Rule 4.29 because PR Construction disclosed that a formal offer to settle had been made to Colony, and claimed entitlement to double Costs on that basis. The Court noted that in order for double costs to be awarded pursuant to Rule 4.29, the formal offer to settle must represent a genuine compromise, and the judgment awarded must be equal to or greater than the formal offer, including interests and Costs. However, PR Construction conceded in a follow up letter that the double Costs rule was not engaged, as the post judgment interest that would have accumulated following the formal offer would not have resulted in a judgment exceeding the formal offer amount.

The Court found GCNA to be jointly and severally liable for any Costs payable to PR Construction and the Lacroix Parties because it joined forces with Colony early in the litigation process, working with the same law firm where both Colony and GCNA defended the claim and made allegations against the Lacroix Parties in the Counterclaim. Further, GCNA was not limited to the "tariff costs" as claimed because that sentence in the Trial Decision was directed-related to liability only, not litigation costs.

Justice Friesen awarded both PR Construction and the Lacroix Parties 2x Schedule C, Column 5 Costs as against Colony and GCNA, jointly, plus disbursements subject to certain exclusions. Lastly, the Court determined that the parties would bear their own costs in relation to the Lacroix Parties' Counterclaim, a Summary Trial Application, and a mid-trial Non-suit Application.

MRP V K-AP, 2025 ABKB 669

(EAMON J)

Rules 4.29 (Costs Consequences of Formal Offer to Settle), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The decision addressed the Costs following applications for mobility, parenting, access costs and child support which were heard on June 25, 2025. Prior to the Hearing, the Respondent formally conceded the mobility issues. The Applicant sought to impute the Respondent's income at \$70,000; however, Justice Eamon rejected this and made an Interim Order imputing income of \$31,200 to the Respondent, being minimum wage pending further disclosure and an expected inheritance.

"The Applicant argued that she was largely successful in the litigation and should therefore receive costs. She submitted that the Court should take into account the Respondent's litigation misconduct, including his failure to disclose financial information, his rejection of two settlement offers, and his unnecessary prolonging of the proceedings by not conceding the mobility issue until seven days before the Hearing.

The Applicant sought indemnification for 80% or alternatively 50% of her solicitor-client accounts and that the Respondent should be ordered to bear the accounts of the Children's Counsel. While the Respondent argued that each side should bear their own costs because of the mixed success in the outcome of the Hearing, and alternatively that he should be awarded Schedule C, Column 2 costs for his efforts to resolve the issues without a hearing, including by making a reasonable proposal in his informal pre-hearing settlement offer.

Justice Eamon acknowledged that pursuant to Rule 10.29, a successful party to an application is entitled to a costs award and that

Rule 10.31 provides the Court with wide discretion and flexibility in making a costs award. Eamon J. also referred to Rule 10.33 for the well-established considerations in making or quantifying a costs award. In applying these costs principles, the Court determined that the Applicant was substantially successful because she prevailed on the Mobility Application and should therefore receive costs of that Application. However, success on other issues, including parenting time and decision-making authority, was divided, and the Applicant was not substantially successful in her effort to impute income to the Respondent. Further, Justice Eamon noted that final orders for child support or significant imputation of income were not appropriate and should have awaited further disclosure.

The Court determined that the Respondent's alleged lack of financial disclosure or the late concession of the mobility issue did not constitute litigation misconduct because the evidence did not establish that the Respondent's actions unnecessarily lengthened the proceedings. Further, the Applicant also bore responsibility for proceeding to an expensive oral hearing when she was aware of the evidentiary gaps and did not seek any Court remedies. Justice Eamon found that Rule 4.29 for double costs consequences of a formal offer did not apply as the Applicant did not obtain an order that was more favourable than her settlement offers and because the oral hearing was deemed not necessary. There was no disproportionate conduct in the continuation of the litigation over minor parenting differences that would have warranted an adverse costs consequence

against the Respondent alone. Both parties contributed to the litigation's continuation.

The Court awarded the Applicant Schedule C costs of \$6,725 plus GST for steps leading to the Mobility Application. As success was divided for the oral Hearing, Eamon J. directed that each side should bear their own costs for the oral

Hearing. Consequently, the Court directed the Respondent to bear 90% of the accounts of the Child's Counsel and the Applicant 10% because the Applicant was successful on the mobility issue, but both were directed to bear their own costs of the oral Hearing. The Applicant was also awarded costs for this Costs Application.

TAM V FONG, 2025 ABKB 556

(HALL J)

Rule 4.31 (Application to Deal with Delay)

This Application concerned whether a long-running Class Action should be dismissed for delay under Rule 4.31. The Action, commenced in 2013, alleged that clients of a law firm were induced to invest in a fraudulent scheme. The Defendant law firm applied to dismiss the action for inordinate and inexcusable delay.

Justice Hall reviewed the procedural history in detail and emphasized that Rule 4.31 requires a contextual assessment of delay, including whether the delay is inordinate, inexcusable, and has caused significant prejudice, as well as whether the Applicant contributed to the delay. As Case Management Justice of the Action since 2014, Justice Hall considered the pace of the proceeding against the realities of a complex class action.

Justice Hall found that much of the delay arose from prolonged and contested document production and privilege issues involving the Law Society of Alberta, which consistently opposed

disclosure and was not a party to the Action. Although the privilege process took several years to resolve, Justice Hall held that this delay could not fairly be attributed to the Plaintiffs or their counsel. Steps toward certification proceeded, certification was ultimately granted, and questioning could not meaningfully occur until document production was complete.

Justice Hall concluded that, while the Action had taken a long time to reach readiness for Trial, the delay was neither inordinate nor inexcusable within the meaning of Rule 4.31. Scheduling difficulties, institutional delay, and third-party privilege disputes materially contributed to the timeline. Dismissing the action in those circumstances would be unjust.

The Application to dismiss under Rule 4.31 was denied. Costs of the Application were awarded to the Plaintiffs, and the Parties were directed to propose a schedule to move the matter to trial.

PETERS V COUNTRYSIDE MASONRY INC, 2025 ABKB 713

(DEVLIN J)

Rule 4.31 (Application to Deal with Delay)

This case was a *de novo* Appeal on a supplemented record by the Defendant of the Application Judge's Decision dismissing their Rule 4.31 Application for Delay.

The Action stemmed from masonry work completed in 2007 by the Defendant, through two of its employees, on the Plaintiffs' home. The Plaintiffs sued in 2016, alleging deficiencies with the masonry work. The Defendant filed a Rule 4.31 Application in 2024.

The Applications Judge held that the Action had been delayed but declined to find that the delay was inordinate. Part of the Applications Judge's reasoning included the higher number of steps taken in this Action relative to other similarly aged matters as well as the complicating effect of the COVID-19 pandemic.

Justice Devlin noted that, while inordinate delay analysis is case-specific, certain factors would always be relevant including the complexity of the case, the number of witnesses, the scope of documents, the number of experts, and the length of time elapsed since the events in question.

Devlin J. found that despite the passage of eight years, the Action was not close to Trial

and noted several factors for such. The Plaintiff who directed and paid for the work had passed away. Neither of the Defendant employees had been questioned and both were elderly, unwell and living in Thailand. Final expert reports had not been exchanged, and no Trial dates had been scheduled. The Plaintiffs had also retained new counsel in 2023.

Devlin J. overturned the Applications Judge's ruling, finding that there was inordinate delay and actual prejudice flowing from it. Justice Devlin emphasized that the state of readiness for Trial was unacceptable and opined that the Applications Judge's Decision was indicative of a culture of delay that had been normalized by the courts. Devlin J. also found that there was no satisfactory explanation as to why the Plaintiffs chose to move the matter so slowly, specifically noting the 'thin affidavits' filed by the Plaintiffs' former counsel for the Application and this Appeal. Justice Devlin further found that prejudice against the Defendant was proven by the Defendant employees' limited and diminishing abilities to recall relevant details.

Consequently, the Court allowed the Appeal and dismissed the Action for long delay.

RANGER V PRECISION GEOMATICS INC, 2025 ABCA 357

(HO, FAGNAN AND FRIESEN JJA)

Rules 4.31 (Application to Deal with Delay) and 7.3 (Summary Judgment)

This was an Appeal from a decision that reinstated a wrongful dismissal and oppression claim after it had been dismissed by an Applications Judge for delay. The Court of Appeal addressed dismissal under Rule 4.31 and summary dismissal under Rule 7.3.

The Applications Judge had dismissed the claim under Rule 4.31, finding the delay inordinate and inexcusable, with presumed prejudice that was not rebutted. The Chambers Judge allowed the appeal, finding the delay inordinate but excusable in the circumstances, including the plaintiff's personal and financial difficulties, the impact of the pandemic, and significant delay attributable to the defendant. The Chambers Judge also found that the defendant failed to demonstrate actual prejudice and that its filing of a Form 37 certificate of Trial readiness weighed against reliance on delay up to that point.

The Court of Appeal dismissed the Appeal, holding that the Chambers Judge committed no palpable and overriding error in exercising discretion under Rule 4.31. The Chambers Judge was entitled to consider the Plaintiff's explanations for delay, the Defendant's positive obligations to advance the litigation, and the absence of demonstrated prejudice. The Court confirmed that delay attributable to both parties may render otherwise inordinate delay excusable, and that steps indicating agreement that an action proceed, such as certifying Trial readiness, are relevant contextual factors. Given that dismissal under Rule 4.31 was not justified, there was no basis to interfere with the refusal to summarily dismiss the claim under Rule 7.3, and the matter was properly allowed to proceed to Trial.

1811133 ALBERTA INC V 1556204 ALBERTA LTD, 2025 ABCA 382

(STREKAF, PENTELECHUK, WOOLLEY JJA)

Rules 4.31 (Application to Deal With Delay) and 4.33 (Dismissal for Long Delay)

This was an Appeal from a Chambers Justice's dismissal of an Application to Strike an Action for delay under Rules 4.31 and 4.33. The underlying dispute arose from a failed real estate transaction in 2014. Trial dates were scheduled for February 2021 but were vacated during the COVID period after the parties entered into a binding Judicial Dispute Resolution ("JDR") agreement. The JDR proceeded to the point of exchanging briefs, will say statements, expert reports, and legal arguments, but it was

terminated and did not resolve the matter. The Chambers Justice found that the JDR process and the related loss of trial dates materially advanced the action and reset the three-year period under Rule 4.33, and that COVID related court scheduling delays could not be attributed to the Respondent.

On appeal, the Court held that the Chambers Justice made no palpable and overriding error in dismissing the Rule 4.33 Application. Apply-

ing a functional analysis, the Court concluded that the binding JDR process, including the exchange of detailed materials and positions, significantly advanced the action even though it did not result in resolution. The Court empha-

sized that Rule 4.33 is not a case management tool but is intended to remove Actions that have truly died, which was not the case here. The Appeal was dismissed.

TERRIGNO V BRISTOWE, 2025 ABKB 577

(GASTON J)

Rules 4.33 (Dismissal for Long Delay), 6.3 (Applications Generally), 11.3 (Agreement Between Parties), 11.20 (Service of Documents, other than Commencement Documents, in Alberta), 11.21 (Service by Electronic Method) and 11.22 (Recorded Mail Service)

The Defendant brought an Application pursuant to Rule 4.33 to dismiss the claim of the Plaintiff as against her for long delay. The Plaintiff brought a Cross-Application to question the Defendant on her Affidavit, which was granted. At the subsequent Hearing to deal with the Rule 4.33 Application, the Plaintiff levied concerns about questions that were refused during the cross-examination and undertaking responses which were not responded to.

The Plaintiff, however, failed to file and serve an Application in accordance with his requested relief in breach of Rule 6.3(3). The Court held that the Plaintiff had ample opportunity to file an Application or Cross-Application and had failed to do so, and thus his concerns were not properly before the Court.

Turning to the long delay Application, the Defendant argued that the last significant

advancement in the case occurred in February 2022 when an Application for Costs was heard. The Plaintiff argued that he served a Supplemental Affidavit of Records and Formal Offers in May, 2024, by leaving such documents in her mailbox. Justice Gaston observed that no Affidavit of Service was filed and there was no Substitutional Service Order permitting service to be conducted in this manner. As such, the Plaintiff's service of the Supplemental Affidavit or Records and the Formal Offer were not served in accordance with Rules 11.20 to 11.22. There was also no agreement regarding service in accordance with Rule 11.3.

Therefore, while service of an Affidavit of Records has been found to constitute a significant advancement, there was no proper service. Gaston J. therefore, granted the Defendant's Application and dismissed the Claim.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 615

(NIXON ACJ)

Rules 5.1 (Purpose of This Part), 5.2 (When Something is Relevant and Material) and 5.25 (Appropriate Questions and Objections)

The underlying action involved a pipeline failure. The Plaintiff, CNOOC Petroleum North America ULC brought an action against several parties (the “Defendants”). The Application before the Court of King’s Bench concerned refused undertakings.

The Associate Chief Justice reviewed the principles of disclosure under Rules 5.1, 5.2 and 5.25, emphasizing the need for relevance and materiality in discovery, with the pleadings acting as the starting point for determining relevance and materiality, along with the context and nature of the claim. The Court noted that discovery should be proportional and not unnecessarily burdensome, with a focus on narrowing issues and facilitating resolution. It would not be in the interests of the judicial system to permit endless and unlimited pre-Trial discovery.

In applying the law to the application, the Court found that Undertakings 21 and 22 were properly refused because Undertaking 21 referred to an undertaking (Undertaking 8) that was refused due to a lack of clarity over two years previously without follow-up and Undertaking 22 was a rewording of the same refused undertaking.

In respect of Undertaking 24, which was a request to advise which emails would have

been in some of the Defendants’ possession and control but not produced in the action was deemed improper as the emails referred to were not found within the data base of the Defendant questioning group. The Court further noted that the records were not properly in evidence before the Court for this application. The Court emphasized that parties ad a positive duty to update their Affidavits of Records without requiring specific direction from the Court.

The Court found Undertaking 26, 29 and 30 were proper. Undertaking 26 was relevant and material as it pertained to the qualifications and experience of a key individual involved in the pipeline project. Undertaking 29 was relevant and material as it was relevant to understanding the time and effort allocated by a key individual to the pipeline project. The information was material to the Plaintiff’s claim regarding the Defendants’ failure to provide qualified personnel. The Court determined that Undertaking 30 was reasonable and proportional, given evidence suggesting that the individual in question may still have access to relevant email records. The Court directed that the individual attempt to access the account and produce any relevant records, or confirm if access was no longer possible.

PT V ZWN, 2025 ABKB 716

(SIDNELL J)

Rules 5.2 (When Something is Relevant and Material), 5.31 (Use of Transcript and Answers to Written Questions) and 5.35 (Sequence of Exchange of Experts' Reports)

The aunt of a child, a non-parental guardian with limited powers, applied to increase her access time with the child. The father, the primary decision maker and guardian, cross-applied to terminate the aunt's access time and guardianship.

On evidentiary scope, the father sought to admit records from previous proceedings, pursuant to Section 87 of the *Family Law Act*, SA 2003, c F-4.5 ("FLA"). However, the Court ruled that Section 87 is a procedural gateway only: it does not displace the Rules of Court or the Judge's gatekeeping function. Consistent with Rule 5.2(1), evidence must be relevant, material, and not subject to an exclusionary rule. Applying that standard, Sidnell J. ruled that the records were inadmissible because they failed to meet these requirements.

The Father also sought to have Dr. Terry Singh qualified to provide expert evidence. The Court applied the *Mohan* factors and limited Dr. Singh's opinion to general effects of high-conflict relationships on children and rebuttal of the treating therapist's report. He was not permitted to opine on party-specific issues without proper foundation. Furthermore, pursuant to Rule 5.35, Sidnell J. did not permit Dr. Singh to refer

to notes during his testimony that had not been exchanged with the opposing party.

On transcript use, Rule 5.31 permits "read-ins" from an adverse party's Questioning or written answers. Pursuant to Rule 5.31(3), the party reading-in evidence of the adverse party is typically selected to address specific points. The Court reaffirmed that, subject to Rule 5.31(2), read-ins are considered the evidence of the party reading them in and are admissible only against the party questioned. Read-ins are presumed to be evidence, not admissions, unless the record clearly states otherwise. Read-in evidence may be contradicted or qualified by other evidence and weighed by the Trial Judge like any other evidence.

The father read in portions of the aunt's Questioning, but much of it was not tied to a specific issue. The Court nevertheless weighed the read-ins together with the full record, except where the transcript contained clear admissions.

Having applied these procedural and evidentiary rules, Sidnell J. found that it was in the best interest of the child to reduce the aunt's access time and granted the father's cross-application to terminate the aunt's guardianship.

QM V RM, 2025 ABKB 704

(MARION J)

Rules 5.16 (Undisclosed Records not to be Used Without Permission), 5.30 (Undertakings), 6.7 (Questioning on Affidavit in Support, Response and Reply to Application), 6.40 (Appointment of Court Expert), 6.41 (Instructions or Questions to Court Expert) and 6.43 (Costs of Court Expert)

This decision addressed an Application by a father (“Father”) to relocate his child (“Child”), decision-making and parenting for the Child, and Costs. The Child’s mother (“Mother”) opposed the relocation Application.

The Court began by addressing several evidentiary issues. The Mother asserted that evidence provided by an appointed court expert (“Expert”) should not be admitted. Justice Marion disagreed for several reasons, one being that the Expert was an independent court expert under Rule 6.40 and thus his expert reports were admissible in evidence pursuant to Rule 6.41(3)(c).

The Father sought to exclude evidence the Mother had relied on at the Hearing which was not raised until after the Father’s evidence. While Rule 5.16 prohibits reliance on records at trial not previously disclosed in accordance with the Rules, Justice Marion exercised discretion to allow the late-filed documents. Use of the records would not prejudice the Father and the Father had already had an adequate opportunity to address the issues raised in the documents.

The Father raised concerns that the Mother had used her undertaking responses provided in questioning under Rule 6.7 to enter unsworn evidence. The Court stated that records produced as part of undertaking answers should

be filed as part of the transcript where they form an integral part of a substantive factual answer to the question asked. However, records that are only produced in response to an undertaking request to produce records do not need to be filed. Since the records in the Mother’s undertaking responses were responsive to questions asking for documentation, they were part of the Mother’s questioning transcript. This did not prejudice the Father as he could have questioned on them or raised evidentiary concerns about them, but did not.

In assessing Costs, the Court had to determine how to apportion the costs of the Expert’s evidence. Under Rule 6.43, these Costs were subject to a presumption of equal sharing by the parties unless the Court ordered otherwise, in its discretion. In reviewing the relevant case law, Justice Marion listed various non-exhaustive factors for consideration.

The Court ordered equal sharing of the Expert’s report, including an update to reflect the relocation. Despite the Father being the reason for the update, the Mother was required to pay 50% of the update costs given her excessive communications and threats to the Expert. Justice Marion exercised discretion to require the Father to bear a greater proportion of the Expert’s preparation and testimony costs at Hearing since these related to his relocation.

**NATIONAL BANK OF CANADA V SUNTERRA FOOD CORPORATION,
2025 ABKB 606**

(LEMA J)

Rules 5.17 (People Who May be Questioned) and 6.8 (Questioning Witness Before Hearing)

This Application concerned whether senior executives of National Bank of Canada (“NBC”) and Compeer Financial (“Compeer”) could be compelled to attend examinations in advance of a scheduled claims hearing under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36. At issue was whether Sunterra was required to establish that these individuals were likely to have relevant and material evidence in accordance with Rule 5.17, or whether Rule 6.8 governed the process such that Sunterra could select and require the attendance of corporate representatives without first demonstrating relevance.

Justice Lema noted that ordinarily, Rule 5.17 requires a party seeking to examine a non-party witness to first establish that the witness is likely to have relevant and material evidence. However, the Court held that the Parties had intentionally departed from that requirement through a negotiated scheduling order (the “Scheduling Order”). The Scheduling Order created a specific category permitting Sunterra to select up to two NBC witnesses whose attendance at questioning depended only on their status as current or former NBC personnel and Sunterra’s selection, with no mechanism for NBC to object on relevance grounds or seek judicial review of the choice. Given the structure and timelines of the Scheduling Order, Justice Lema concluded that the Parties intended to bypass the Rule 5.17 relevance threshold for this limited category of witnesses. On that

basis, Lema J. held that Sunterra was entitled to examine NBC’s President without first demonstrating relevance.

With respect to Compeer, Lema J. highlighted that the Scheduling Order referenced Rule 6.8, which governs the questioning of corporate representatives. Justice Lema noted that this reference was procedural rather than substantive, meaning that Rule 6.8 addressed the mechanics of how the examinations would proceed, not whether Sunterra was required to first establish relevance. As with NBC, Lema J. determined that the Scheduling Order allowed Sunterra to select up to two Compeer executives for examination without a relevance review or objection process. Accordingly, Justice Lema found that Compeer was required to produce its CEO and Chief Risk Officer for questioning based solely on Sunterra’s selection.

Justice Lema concluded that by agreeing to a streamlined, disciplined pre-hearing examination framework in the Scheduling Order, both NBC and Compeer had effectively waived any protections under Rule 5.17 and any relevance-based objections under Rule 6.8. As a result, Lema J. granted Sunterra’s Application’s to require the executives to attend examinations and also allowed NBC’s separate Application to examine KPMG, whose role as auditor rendered its evidence relevant under the ordinary relevance standard.

NATIONAL BANK OF CANADA V SUNTERRA FOOD CORPORATION, 2025 ABKB 708

(LEMA J)

Rules 6.8 (Questioning Witness Before Hearing) and 6.16 (Contents of Notice of Appointment)

This decision addressed whether witnesses cross-examined on Affidavits and others examined pursuant to Rule 6.8 should be compelled to answer objected-to questions, provide taken-under-advisement-but-declined and refused undertakings and undergo further examinations on such answers and undertakings.

The case arose from a dispute between Sunterra Food Corporation (“Sunterra”) and Compeer Financial PCA (“Compeer”) regarding procedural steps and orders leading up to applications set in December for determining the nature and quantum of each creditor’s claim in Sunterra’s CCAA proceedings (the “December Applications”).

Pursuant to Procedural Orders, Sunterra cross-examined two Compeer affiants, with various questions objected to and undertaking requests either refused or taken under advisement and later declined. Sunterra also examined Compeer’s President and Chief Risk Officer pursuant to Rule 6.8, with neither providing an Affidavit; however, these examinations also included various objected-to questions and refused or later declined undertakings. As such, Sunterra applied for an Order to compel, seeking the requested information and to open the door to follow up examinations, as well as an Order to strike three Compeer Affidavits which were late according to the Procedural Orders. Compeer opposed, arguing that the Procedural Orders prevented any further procedural steps, including compelling answers or follow-up examinations.

Justice Lema analyzed the Procedural Orders, including its recent amendment, and determined that Sunterra with full knowledge of

outstanding objections and refused undertakings, agreed to the amended Procedural Order, affectively waiving any right to seek a compel order in relation to the examinations of the affiants. Lema J. found that the Order was intended to provide finality and certainty in the lead up to the December Applications and did not contemplate further examinations or undertakings.

The Court applied the same analysis to the Rule 6.8 witness examinations, determining that Sunterra elected to proceed under the procedural mechanics of Rule 6.8 without preserving any right to compel answers or undertakings. The Parties were divided on whether undertakings could be requested of Rule 6.8 witnesses, as the Rule is silent on the point. Compeer claimed it could not, citing caselaw that held undertakings could not be sought of Rule 6.8 witnesses. Lema J. agreed with Compeer, finding that Compeer and Sunterra agreed to the procedural mechanics (the technical rules) of Rule 6.8 for the examinations, including its associated Rules 6.16-6.20.

Sunterra did not point to any caselaw holding that Rule 6.8 witnesses were susceptible to undertaking requests nor any evidence that it had obliged either Rule 6.8 witness to bring any records to the appointment for questing as it could have done pursuant to Rule 6.16(1)(b), which the Court theorized could have made for more fruitful examinations. Further, Sunterra did not invoke Rule 6.16(3) for this Application which governs the resolution of disputes over mechanical aspects of Rule 6.8 examinations, including “any related matters”. Justice Lema concluded that the amended Procedural Order expressly adverted undertakings, signalling

that none could be pursued passed the date already set for undertaking responses which had passed.

The Court acknowledged fairness considerations that were raised by both Parties but emphasized the importance of adhering to agreed-upon procedural frameworks. Justice Lema also determined, consistent with the

above conclusions on the Procedural Orders, that the Compeer Affidavits ought to be struck because they were too late and not otherwise contemplated by the Procedural Orders. The Court held the Parties to the litigation plan they agreed to, struck the late-filed Affidavits and dismissed the compel-related relief.

RK V GSG, 2025 ABCA 50

(ANTONIO, GROSSE AND SHANER JJA)

[Rules 6.8 \(Questioning Witness Before Hearing\), 6.16 \(Contents of Notice of Appointment\) and 6.22 \(Obtaining Evidence Outside Alberta\)](#)

The Appellant sought to overturn two interlocutory decisions of the Case Management Judge (“CMJ”). One of the issues on Appeal was whether the CMJ erred in striking the questioning transcript of a non-party from the record for an upcoming Summary Dismissal Application.

The Appellant argued that the CMJ incorrectly applied Rule 6.22 and should have focused on Rule 6.8 instead. The Court of Appeal held that even if one sets Rule 6.22 to the side and looks only to Rule 6.8 as urged by the Appellant, the Appellant failed to comply with Rule 6.16(2) and the basics of fair procedure when he proceeded to question the non-party without notice to the Respondent. Although the Appellant’s

counsel conceded that notice to the Respondents should have been given, they contended that the CMJ’s assessment of proportionality between the error and remedy was unreasonable. The Appellant argued, among other things, that the Respondent could have independently questioned the witness. However, the Court of Appeal held that the CMJ’s choice of remedy was not unreasonable, and the fact that the Respondent could have conducted its own questioning was not determinative. Given the broad discretion afforded to case management, there was no basis to intervene.

In the result, the Appeal was dismissed, and costs were awarded to the Respondent.

BAINS V ADAM, 2025 ABCA 362

(HO JA)

Rules 6.8 (Questioning Witness Before Hearing), 9.4 (Signing Judgments and Orders) and 14.45 (Application to Admit New Evidence)

The Applicants sought permission to question 21 individuals and to adjourn their upcoming hearing for a separate application seeking permission to appeal and a stay of a decision imposing court access restrictions (the “Court Restriction Decision”). The Applicants contended that questioning was necessary to advance their Appeal of the Court Restriction Decision.

The Applicants claimed Appeal Justice Ho was biased and should be recused from all matters involving them. Ho J.A. reiterated that recusal is only required where an informed and objective observer would think it more likely than not that the matter could not be decided fairly, noting the strong presumption of judicial impartiality and the Applicants’ burden to rebut it. Ho J.A. emphasized that the Applicants’ dissatisfaction with prior procedural directions and unfounded allegations were insufficient to meet this threshold. Consequently, Appeal Justice Ho found no proper basis for recusal and denied the request.

Turning to the merits, Ho J.A. held that the Applicants’ renewed attempt to compel

questioning was improper, noting that they had previously issued appointments under Rule 6.8, which had been set aside in an earlier decision (the “PTA Questioning Decision”). The Court further noted that the PTA Questioning Decision also enjoined the Applicants’ from seeking further questioning without leave and found no basis to revisit or relitigate those determinations. Ho J.A. emphasized that a permission to appeal proceeding must be based on the existing record and that new evidence is generally inadmissible, referencing Rule 14.45, which limits the scope of the record on appeal. As the proposed questioning sought information that was neither relevant nor material to the Application for Permission to Appeal, the Court refused permission. Appeal Justice Ho also denied the adjournment request, which relied entirely on questioning being authorized.

In the result, the Application was dismissed with costs to the Respondents and Rule 9.4(2) (c) was invoked for the Court to prepare the resulting Order.

UTAH V ZELISKO, 2025 ABKB 582

(JUGNAUTH J)

Rules 6.14 (Appeal from Applications Judge’s Judgment or Order), 9.4 (Signing Judgments and Orders) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

This was an Appeal of an Applications Judge’s Decision to set aside a Noting in Default.

Mr. Utah, an Australian police informant whose identity was exposed in 2006, fled to Canada

and sought refugee protection in 2007. A Canadian Border Services Agency (“CBSA”) officer failed to assess his eligibility, enter his claim, or forward it for review, and likewise did not process his subsequent permanent residency applications. As a result, Mr. Utah could not access refugee benefits until a new CBSA officer assumed responsibility in 2015 and directed him to file a new refugee claim. Mr. Utah did so and was granted protected person status in 2017.

Mr. Utah commenced a Federal Court Action against the CBSA officer and the Attorney General of Canada for misfeasance in public office and *Charter* breaches. While the Defendants’ Application for Summary Judgment on limitations grounds was initially dismissed, the Federal Court of Appeal allowed the Appeal and granted Summary Judgment, finding the claim out of time (the “FCA Decision”). In September 2022, Mr. Utah filed a new Statement of Claim in the Alberta Court of King’s Bench seeking over \$37 million in damages and asserting that the two-year limitation period was suspended due to mental health related disability under Section 5 of the *Limitations Act*, RSA 2000, c L-12 (the “ABKB Claim”).

By October 13, 2023, Mr. Utah had served all Defendants and corresponded repeatedly with the Department of Justice (“DOJ”) counsel, who acknowledged service but did not respond to his inquiries regarding default or an extension to file a defence. After receiving no reply, Mr. Utah noted Canada in default under Rule 9.15(3) on November 14, 2023, and sought Default Judgment, which was rejected on procedural grounds. In December 2023, DOJ counsel apologized for the lack of communication, requested additional time to file a defence, and later applied to set aside the default when Mr. Utah refused consent. The Applications Judge granted Canada’s Application to set aside the Noting in Default, prompting this Appeal.

Before the Appeal was heard, Mr. Utah filed five additional Affidavits, raising the issue of whether new evidence could be admitted

under Rule 6.14(3). Jugnauth J. emphasized that although the threshold for relevance and materiality is low, additional evidence must still relate directly to the Noting in Default. Justice Jugnauth rejected four of the Affidavits as conclusory, argumentative, or irrelevant, admitting only one Affidavit from a physician concerning Mr. Utah’s mental health related disability. Despite admitting the physician’s affidavit this, Jugnauth J. held that it did not affect whether Canada had an arguable defence, a reasonable excuse or acted promptly.

On Appeal, Mr. Utah argued that the Applications Judge erred by relying on unsworn evidence, concluding Canada had an arguable defence without factual basis, and accepting that Canada had a reasonable excuse and acted promptly under Rule 9.15(2). Canada contended that the Applications Judge correctly applied the governing test, relying on affidavits, the FCA Decision, and the pleadings to establish arguable defences, a reasonable excuse, and timely action.

Justice Jugnauth reiterated that under Rule 9.15(3)(a), the Court retains broad discretion to set aside a noting in default. Jugnauth J. reviewed the applicable test outlined in *Palin v Duxbury*, 2010 ABQB 833, which requires the applicant demonstrate an arguable defence, no intention to default and a reasonable excuse for doing so, and prompt action to cure the default. Justice Jugnauth confirmed that even if one element is not satisfied, the Court may still grant relief where fairness warrants it.

The Court held that at this stage Canada needed to establish only arguable, not proven, defences. Justice Jugnauth determined that prior decisions and the pleadings provided sufficient evidentiary grounding for Canada’s limitation, *res judicata*, and collateral-attack defences. Jugnauth J. accepted that Canada clearly intended to defend and initially had a reasonable basis for delay. However, Justice Jugnauth concluded that Canada ultimately lacked any reasonable excuse for missing the extended deadline, as Mr. Utah had given

clear notice, followed up repeatedly, and as a self-represented litigant, owed no professional courtesy to warn of an impending default.

Nonetheless, Jugnauth J. found that Canada met the requirement of prompt action by attempting to file within the 20-day window under Rule 9.15(2), seeking consent to set aside the default, and acting promptly to correct filing issues. Consequently, Justice Jugnauth found it was open to the Applications Judge to set aside the default and extend time.

While Canada failed to satisfy a reasonable excuse, Justice Jugnauth exercised discretion under Rule 9.15(3) to uphold the Applications Judge's Decision to set aside the default. Jugnauth J. emphasized the absence of prejudice to Mr. Utah, the significant prejudice to Canada if barred from raising substantive defences, and the public interest in avoiding duplicative or inconsistent litigation. Accordingly, the Appeal was dismissed, and Rule 9.4(2)(c) was invoked for preparation of the resulting Order.

SCHICKEDANZ NORTH LTD V REAL ESTATE ASSISTANTS LTD, 2025 ABKB 648

(NIXON ACJ)

Rules 6.14 (Evidence on Appeal) and 7.3 (Summary Judgment)

This was an Appeal under Rule 6.14 from a Decision of an Applications Judge dismissing a landlord's Application for Summary Judgment seeking lost future rent following an alleged abandonment of a commercial lease.

The Appellant landlord sought Summary Judgment for damages arising from the unexpired term of the lease, asserting that the lease had not been surrendered and that it was entitled to contractual remedies for repudiation. The Respondents maintained that the lease was surrendered in October 2019 and that, in any event, the landlord failed to provide adequate and timely notice of its intention to seek prospective damages.

Associate Chief Justice Nixon held that the Appeal proceeded on a correctness standard

and that new evidence could be admitted on appeal if relevant and material, pursuant to Rule 6.14(3). Applying that standard, the Court admitted a new Affidavit, noting the threshold for admissibility on such appeals to be broad and permissive.

Turning to Rule 7.3, Associate Chief Justice Nixon found that narrow legal issues and largely uncontested evidentiary record supported a finding that the lease was likely not surrendered, and there remained a genuine issue requiring trial concerning adequate notice.

Because the adequacy and timeliness of notice raised a genuine issue requiring trial, Summary Judgment was not available, and the Appeal was dismissed.

CUBBON BUILDING CENTRE LTD V VRBANEK, 2025 ABKB 703

(HAYES-RICHARDS J)

Rule 6.14 (Appeal from Applications Judge’s Judgment or Order)

Cubbon Building Centre Ltd. (“Cubbon”) appealed the dismissal of its Application for Summary Judgment, in which it had alleged that a series of transactions between the Respondent spouses constituted a fraudulent conveyance (the “Dismissal”). The Respondent husband was a Judgment debtor of Cubbon (the “Debtor”).

The Debtor had transferred a commercial property to his spouse, which was sold, and the proceeds were used to purchase an Arizona property, registered in both Respondents’ names as joint tenants (the “Property”). After the Property was sold, the sale proceeds were directed to the spouse, who combined the funds with her own savings to purchase an Edmonton condominium, solely in her name.

On Appeal, Cubbon argued that the Applications Judge had improperly relied on counsel’s submissions as evidence and failed to draw adverse inferences from inconsistencies in the Respondents’ evidence. Cubbon sought an Order adding the Debtor to title of the Edmonton condominium or, alternatively, to have it declared subject to a resulting trust in favour of the Debtor. The Respondents maintained that the Debtor had no exigible interest in the Property or its proceeds, and that the transac-

tions were undertaken for estate planning and financial reasons, not to defeat creditors.

Justice Hayes-Richards confirmed that, under Rule 6.14, the Appeal required a de novo review of the issues based on the material before the Applications Judge. While acknowledging that Rule 6.14 permits new evidence on Appeal, Hayes-Richards J. noted that no new evidence was tendered. The Court agreed with the Applications Judge that a threshold issue arose with respect to whether the Debtor had any exigible interest in the Property or its proceeds, and that such a determination was dispositive of whether the Summary Judgment Application could succeed.

Justice Hayes-Richards found no reviewable error in the Dismissal, noting that the evidence supported the findings that the spouse had provided all funds for the purchase of the Property, paid all related expenses, and did not intend to gift any beneficial interest to the Debtor. The Court further held that the Applications Judge properly assessed the evidence, including any alleged inconsistencies, and that the transactions were motivated by legitimate estate planning objectives and financial necessity, rather than an intention to defeat the claims of creditors. The Appeal was dismissed.

DYTE V TOTAL POINT DEVELOPMENTS INC, 2025 ABKB 530

(DARIO J)

Rule 6.37 (Notice to Admit)

After purchasing two luxury homes (the “Properties”), the Plaintiffs discovered extensive water damage and defects. The Plaintiffs alleged that the Defendant negligently misrepresented the Properties’ condition and breached contractual obligations. They sought damages measured primarily by diminution in value. The Court found the Defendant liable for both negligent misrepresentation and breach of contract.

A procedural issue arose when the Plaintiffs filed a Notice to Admit Facts (the “Notice”) which included documentation for the Plaintiffs’ claim of over 1.2 million in alleged damages. The Plaintiff served it on the Defendant, but the Defendant did not reply. The Plaintiffs argued that pursuant to Rule 6.37(3), the Defendant’s lack of response meant that their claimed quantum of damages was deemed admitted. The Defendant did not apply

to withdraw any deemed admission or to set aside the Notice.

Even without such an Application, the Court exercised its discretion to set aside the Notice. Rule 6.37 is aimed at admissions of facts not truly in dispute; it is not a vehicle to secure admissions on contentious, mixed fact-and-law issues like damages quantification. The Court held the “only satisfactory way” to resolve quantum was through Trial evidence and found no non-compensable prejudice to the Plaintiffs because they had already provided evidence regarding repair costs and diminution of value.

The Court then assessed damages, selecting diminution in value (with consequential items) as the appropriate measure on these facts, while recognizing concurrent liability principles (tort/contract) and avoiding double recovery.

REDDY V SAROYA, 2025 ABCA 322

(HO, GROSSE AND HAWKES JJA)

Rules 6.45 (Reference to Referee), 6.46 (Referee’s Report), 10.51 (Order to Appear), 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt of Court)

The parties had been engaged in litigation since 2012 after being involved in real estate development projects in Alberta and the United States. The Appellant appealed an Order declaring him in civil contempt because he failed to provide adequate responses to several undertakings he was ordered to satisfy.

On several occasions the Appellant provided answers, and revised answers, along with

supporting documents. But the answers and documents were not presented in a well-organized fashion, and the Respondent continued to maintain that answers were missing or deficient. The Respondent filed several applications seeking orders for further and better answers, and to find the Appellant in contempt.

In September 2018, the Chambers Judge directed that a “referee report” be prepared

under Rules 6.45 and 6.46 to address the state of the Appellant's answers to undertakings. The Referee Report found 63 of the undertaking responses were either not responsive or not sufficient to permit a meaningful dialogue to test the answer.

The Respondent then filed an application to compel the Appellant to provide further and better answers to undertakings arising from the referee report, which then lead to the contempt proceedings under appeal after certain responses continued to be deficient.

The general procedure for civil contempt is set out in Rules 10.51-10.53. An applicant must prove beyond a reasonable doubt each of the following elements: (1) the order breached unequivocally states what must be done or not done; (2) the contemnor had actual knowledge of the order; and (3) the contemnor

intentionally did, or did not do, what the order unequivocally requires.

The Court upheld the majority of the contempt findings on the basis that the standard of review had not been met in those instances, but overturned findings for 10 undertakings. The Court further cautioned that contempt should not be routinely used to resolve disputes about the adequacy of answers to undertakings. Contempt is generally discouraged, and undertakings are often fulfilled on a reasonable or best-efforts basis, meaning a party may comply even if they cannot provide useful information. Disputes may arise from missing records rather than intentional non-compliance, making contempt an ill-suited remedy. The Court encouraged counsel to consider whether alternative remedies, such as proceeding to trial without the information or drawing adverse inferences, are adequate.

SIM V DUBEY, 2025 ABKB 651

(JUGNAUTH J)

[Rules 7.2 \(Application for Judgment\), 7.3 \(Summary Judgment\) and 13.18 \(Form and Contents of Affidavits and Exhibits\)](#)

This was an Appeal by vendors from the Decision of Justice McCorquodale refusing Summary Dismissal of the purchaser's claims for negligent and fraudulent misrepresentation arising from the sale of a condominium unit. Justice Jugnauth dismissed the Appeal, and left the misrepresentation claims to proceed to trial.

The Court noted that Applications for Summary Dismissal are governed by Rules 7.2 and 7.3 and applied the framework set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49. Justice McCorquodale summarily dismissed a claim for unjust enrichment, but

refused to summarily dismiss the negligent and fraudulent misrepresentation claims.

On appeal, the Court accepted that Justice McCorquodale correctly articulated the test for Summary Dismissal under Rules 7.2 and 7.3. The Court upheld the conclusion that there were genuine issues requiring a trial, including the vendors' state of knowledge about condominium fees and any special assessments, and whether the vendors' statements regarding special assessments were misleading, made recklessly, or made with knowledge.

The Court also addressed objections from the vendors to the purchaser's Affidavit evidence as

hearsay or speculative, noting the vendors reliance on Rule 13.18 and section 36 of the Court of *Justice Act*, RSA 2000, c C-30.5. It declined to interfere with Justice McCorquodale’s exercise

of discretion in admitting and weighing the evidence. The Appeal was dismissed, with Costs to the purchaser in accordance with Schedule C.

BRUNO V SAMSON CREE NATION, 2025 ABKB 561

(ROTHWELL J)

Rule 7.3 (Summary Judgment)

The Action was a certified class proceeding brought by members of the Samson Cree Nation (“Samson”) whose status and band membership were restored after the 1985 Indian Act amendments known as Bill C-31. The representative Plaintiff, Ms. Bruno, sought recovery tied to withheld per-capita distributions and related declaratory relief against Samson. Against that backdrop, the Case Management Justice heard competing Rule 7.3 Applications: Samson sought Summary Dismissal on limitations and laches, and the Plaintiffs sought partial summary judgment on selected common and subclass issues.

The Court applied the framework under *Weir Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49. Summary disposition is available only when the whole record allows a fair resolution with sufficient confidence. The moving party bears the initial burden to show no genuine issue for Trial. If met, the responding party must put its best foot forward.

The Court held that the Plaintiffs’ requested “declarations” were, in substance, remedial because they sought payment or restricted the use of funds. The narrow declaratory exception

under the *Limitations Act* applies only where a declaration provides practical utility without requiring further orders, which was not the case here. Tracing, as pleaded, was merely ancillary to remedial relief.

The Court concluded that the limitations issues could not be decided summarily. Live questions remained under the transitional regime, discoverability, the ultimate limitation, the minors’ suspension provision, and fraudulent concealment—each turning on factual disputes that required a trial record.

Samson’s laches defence also could not be resolved summarily. Delay alone was insufficient, and the evidence did not establish acquiescence or prejudice, especially in a fiduciary context with an incomplete summary record.

As a result, Samson’s application for summary dismissal was refused, and the Plaintiffs’ application for partial summary judgment was also dismissed. All remaining limitation issues, along with the trust and fiduciary claims, will proceed to the common issues trial.

KORNIYENKO V OTTENBREIT ET AL, 2025 ABKB 602

(MANDZIUK J)

Rules 7.3 (Summary Judgment) and 13.18 (Types of Affidavit)

The Applicant sued members of the Edmonton Police Service and others for alleged breaches of the *Charter* arising from a criminal investigation. A Rule 7.3 Summary Judgment Application was set for October 28, 2025. In advance of that hearing, the Applicant brought an Application to Strike portions of three responding Affidavits sworn by police officers as inadmissible, citing hearsay (including double hearsay), unqualified opinion, legal conclusions, and irrelevance. In the alternative, the Applicant asked that any impugned passages be given no weight at the merits hearing.

The Court emphasized that summary disposition requires assessing whether there is a genuine issue for Trial on the whole record, and that this assessment necessarily includes screening for inadmissible material while avoiding inefficient, piecemeal evidentiary rulings that could fragment the record.

On affidavit form and hearsay, Mandziuk J. applied Rule 13.18(3) flexibly in the Summary Judgment context. Although the text refers to affidavits “used in support of” a dispositive application, the Court treated both Applicants and Respondents under a pragmatic approach that permits hearsay where it would be admissible at trial, either under a traditional or principled exception, and where reliability can be addressed through weight. Corporate and institutional affiants may rely on records and information reasonably available to them. Justice Mandziuk noted that an affiant’s adop-

tion of a statement can render the content the affiant’s own evidence by operation of the admissions exception, with ultimate weight reserved for the merits judge.

On records, the Court recognized the common law business records exception. Police operational records prepared contemporaneously in the ordinary course are generally admissible if properly authenticated. The presence of multiple layers of hearsay inside such records tends to go to weight rather than baseline admissibility, but third-party narratives, speculative opinions, and irrelevant matter may still be ignored or given no weight at the merits stage.

On opinion evidence, the Court distinguished between impermissible legal conclusions and permissible explanations by witnesses with relevant expertise involved in the events. Litigants or actors with expertise who participated in the underlying events may give opinion evidence confined to what they did and why, without the formalities required for independent experts. Statements by police about their understanding of legal constraints were treated as going to state of mind and grounds for action rather than as binding legal opinions, with weight to be assessed later.

Applying these principles, the Court declined to strike the impugned passages in advance. Most objections were better addressed as questions of weight, reliability, and relevance at the Rule 7.3 hearing.

RIOUX V MATTHEWS, 2025 ABKB 686

(BROOKES J)

Rule 7.3 (Summary Judgment)

The Applicant sought summary dismissal of the Respondent's claim. The Application was initially heard by an Applications Judge, who granted the Application and dismissed the Respondent's claim. The Respondent then appealed the decision.

The matter concerns a motor vehicle accident. At the time of the accident, the Applicant was the owner of the vehicle in question and a passenger. The Respondent was also a passenger in the vehicle. A third individual was driving the vehicle (the "Driver"). The main issue in dispute was whether the Applicant had given the Driver permission to operate the vehicle. The Court canvassed the relevant caselaw and noted that previous decisions indicated the Applicant bore the onus of showing the Driver did not have permission to operate the vehicle; and if it was determined that the Driver did not have permission to operate the vehicle, the Applicant would not be liable for any damage or loss resulting from the Driver's operation of the vehicle.

Justice Brookes upheld the summary dismissal of the Respondent's claim under Rule 7.3, which permits the Court to determine whether a case can be fairly resolved without a Trial or if there remains a genuine issue requiring adjudication. Applying the test established in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, the Chambers Judge found

no genuine issue requiring a Trial. The record established that Driver was not given permission, either expressly or impliedly, to operate the Applicant's vehicle.

In looking to the facts of the matter, the Applicant, the Respondent, and the Driver were all taking part in a cross-country trip. The understanding between the individuals was that the Applicant would drive for the first half of the trip, and the Respondent would drive for the second half of the trip. The Driver was not expected to drive at all, as they did not have a valid driver's license. Half-way through the trip, the Applicant stopped the car and told the Respondent that the keys were available when they wanted to start driving. The Applicant then went to sleep in the backseat of the car. The Driver then began to operate the vehicle and promptly crashed the car. The evidence before the Court was clear and apparent that the Applicant did not consent to the Driver operating the vehicle, and in fact the plan had expressly excluded the Driver from operating the vehicle.

Given that the Driver was operating the vehicle without the Applicant's consent, the Applicant could not be found liable for the losses and damages that occurred as a result of the Driver's operation of the vehicle. As such, the Court ultimately held that summary dismissal was appropriate in the circumstances.

FORBES V LAGORE, 2025 ABKB 692

(BIRKETT AJ)

Rule 7.3 (Summary Judgment)

This Decision addressed Cross-Applications for Summary Judgment and Summary Dismissal arising from a family dispute over the repayment of three informal advances of funds totaling \$770,000. The Plaintiffs sought repayment of principal and interest on the basis that the advances were personal demand loans. The Defendant denied personal liability and asserted that all claims were statute-barred.

The Court identified two related issues:

- (1) whether each advance constituted a loan giving rise to personal liability; and
- (2) whether any such claims were barred by the two-year limitation period under Section 3(1)(a) of the *Limitations Act*, R.S.A. 2000, c.L-12.

Applications Judge Birkett emphasized that although liability and limitations were interrelated, each loan had to be assessed independently, both as to its characterization and discoverability.

Applying Rule 7.3 and the principles in *Hryniak* and *Weir-Jones*, the Court found that all issues could be resolved summarily. The evidentiary record was extensive, largely uncontested, and capable of supporting findings of material fact without credibility concerns.

On liability, the Court held that all three advances were personal loans, not gifts, investments, or compensation. However, none of the loans contained agreed repayment dates or enforceable interest terms. As a result, statutory prejudgment interest applied rather than the higher contractual rates claimed by the Plaintiffs.

The limitations analysis proved determinative for two of the three loans. Evidence of business failure, admissions of insolvency, tax-loss inquiries, and repeated informal demands established discoverability more than two years before the Statement of Claim was filed. Accordingly, those claims were statute-barred.

By contrast, the 2016 advance of \$20,000 was also a demand loan, but there was no evidence of refusal or knowledge of non-repayment until formal demand was made in 2019. The claim relating to that loan was therefore commenced within the limitation period and succeeded.

In the result, Summary Dismissal was granted in respect of the 2009 and 2012 loans as statute-barred, while Summary Judgment was granted for the Plaintiffs in relation to the 2016 loan, together with statutory prejudgment interest.

OWNERS OF CONDOMINIUM PLAN NO. 992 0689 V LIONS VILLAGE OF GREATER EDMONTON SOCIETY, 2025 ABKB 727

(YAMAUCHI J)

Rule 7.3 (Application and Decision)

This matter was in respect of an Appeal of a Summary Judgment Decision that concerned a dispute between a condominium corporation (the “Condo Corp”) and a registered society (the “Respondent”) over the payment of condominium contributions. An agreement was allegedly made between the parties in 2001, exempting the Respondent from paying contributions, but this agreement was never formalized in the bylaws. For over two decades, the parties operated independently, with the Respondent maintaining its own property and the Condo Corp not billing contributions. In 2018, the Condo Corp began demanding contributions, claiming over \$2 million in arrears.

The Court held that Summary Judgment was appropriate because the record allowed for a fair and just determination and revealed no genuine issue requiring a trial. The Court emphasized that condominium owners are entitled to rely on the certainty provided by the *Condominium Property Act*, and the bylaws, which mandate contributions based on unit factors.

The agreement allowing contributions to be assessed on a basis other than proportional unit allocation was invalid because the required formal steps to authorize such an arrangement were never taken, and long-standing adherence to the agreement could not cure that defect. Equitable doctrines such as laches or estoppel could not legitimize an invalid arrangement, as the statutory scheme emphasized certainty and predictable contribution assessments rather than case-by-case notions of fairness.

Although the Appeal was allowed and Summary Judgment granted, the Court recognized the practical unfairness arising from the parties’ long-standing conduct under the invalid arrangement. It noted that this concern did not defeat Summary Judgment but could potentially be addressed in a separate proceeding seeking remedial relief based on unfair or prejudicial conduct.

Issues relating to Costs were left open for future determination.

CALGARY CORE-MARK INC V DIRECT INTEGRATED TRANSPORTATION ULC, 2025 ABKB 738

(LABRENZ J)

Rule 7.3 (Summary Judgment)

The consignor (“Core-Mark”) appealed a Summary Judgment Decision that capped recovery against its carrier (“Direct Integrated”) at the *Bill of Lading Regulation’s* \$2/lb limit after a shipment was stolen. The carriage relation-

ship was governed by two written contracts, the Transportation Agreement (“TA”) and a separate Rate Agreement (“RA”), each containing insurance provisions. The dispute raised whether the statutory cap barred a parallel

contractual claim for breach of a covenant to insure under those agreements.

The Court affirmed that the matter was properly decided by Summary Judgment under Rule 7.3(1). Applying *Hryniak v Mauldin*, 2014 SCC 7 and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, Justice Labrenz held the record allowed the necessary fact-finding and application of the law in a proportionate way. There were no material factual disputes, both sides put their best case forward, and a fair, just determination could be made without Trial.

On the statutory framework, Labrenz J. clarified that the *Bill of Lading Regulation* imports conditions of carriage into every shipment, including the \$2/lb limit where no higher value is declared on the face of the bill of lading. That limit governs “loss or damage to goods”. It does not cap a separate contractual cause of Action. Thus, while the Regulation limited recovery for the cargo loss to \$38,894 (no declared value), it did not bar a claim for breach of a contractual covenant to insure.

Turning to the contracts, the Court interpreted the TA as containing a covenant to procure cargo insurance and to name the consignor as an additional insured. Even if the RA governed, its incorporated terms also required a minimum of \$250,000 in cargo insurance for the consignor’s benefit. The carrier breached that obligation. Because no value was declared or otherwise communicated, expectation damages for the covenant-to-insure breach were limited to the contractual minimum of \$250,000 (less the \$10,000 deductible evidenced on the policy), with any higher figure being too remote on these facts.

Accordingly, the Court varied the result of the Summary Judgment to reflect both regimes: statutory damages of \$38,894 under the Regulation for loss of the goods, plus \$250,000 for breach of the covenant to insure, less a \$10,000 deductible, for a total of \$278,894, with pre-judgment interest.

LC & EMP V ALBERTA (DIRECTOR OF CHILD WELFARE), 2025 ABKB 747

(NEILSON J)

Rule 7.3 (Summary Judgment)

The underlying Action was a certified Class Proceeding alleging that Alberta’s Director of Child Welfare (the “Director”) failed to prepare or file required care plans for children placed under Temporary Guardianship Orders (“TGOs”) between February 21, 2002 and November 1, 2004. This rendered some TGOs void and caused harm to child class members and their relatives.

The Plaintiffs applied for Summary Judgment pursuant to Rule 7.3 on several common issues,

alleging that the failure to prepare or file care plans and the continued custody of children after the TGOs became void constituted negligence and breaches of fiduciary duty. The Plaintiffs also sought findings that the Director owed duties to take remedial or legal action to safeguard the children’s legal interests and that the Defendant had no valid common limitations defences. The Defendant opposed the Application, arguing that the evidentiary record was inadequate and that the issues could not be fairly resolved without a Trial.

Neilson J. confirmed that, pursuant to Rule 7.3, Summary Judgment is only appropriate where the record permits a fair and just determination without a Trial. Justice Neilson reiterated that the parties were required to put their best foot forward and that the Plaintiffs bore the onus of proving all elements of their claims while demonstrating that the Defendant had no viable defence.

Applying Rule 7.3, the Court found the evidentiary record inadequate to resolve the common issues summarily. Neilson J. noted that the Plaintiffs had filed no Affidavit evidence from class members and relied largely on materials the Court held were inadmissible or of no evidentiary value. In contrast, Justice Neilson highlighted that the Defendant adduced detailed Affidavit evidence regarding the steps taken once the failure to file care plans was discovered.

Although the Director had admitted negligence in failing to file the required care plans, the Court held that the Plaintiffs failed to establish causation and proof of damages. Justice Neilson further held that an administrative failure to file a care plan did not constitute a breach of fiduciary duty, and that the Director did not owe duties to commence proceedings against itself or to safeguard the children's legal interests, which lay with the Public Trustee.

The Court concluded that the Plaintiffs had not shown that there was no defence to the remaining common issues. Justice Neilson therefore dismissed the Application for Summary Judgment and directed that the outstanding common issues proceed to Trial.

OTITI V HAR-PAR INVESTMENTS LTD, 2025 ABCA 379

(CRIGHTON, GROSSE, HAWKES JJA)

[Rule 7.3 \(Summary Judgment\)](#)

The Appellants sought to overturn a Chambers decision dismissing the Appeal of an Applications Judge's decision granting Summary Dismissal of the Appellant's Action. The Court noted that the Appellants did not show any reviewable error by the Chambers Judge. Rather, the Appellant's arguments seemed to be based upon their personal disagreement with the Chambers Judge's decision.

During the course of the Appeal, Appellants brought a new argument that had not been raised before the Chambers Judge. The Appellants argued that the Respondent failed to comply with Rule 7.3(2), which provides that an Application for Summary Judgment must be supported by an Affidavit demonstrating that the grounds for Summary Judgment had been met. Notwithstanding that this argument had

not been raised before the Chambers Judge, the Court held that the Appellants' position reflected a misunderstanding of Rule 7.3(2) rather than non-compliance on the part of the Respondent. Rule 7.3(2) permits an Applicant to either swear an Affidavit demonstrating that the requirements for Summary Dismissal have been met, or to establish those requirements through other evidence. The Chambers Judge was able to infer those requirements from the Affidavit filed by the Respondent, and was satisfied that the requirements were met.

The Court ultimately dismissed the Appeal due to the Appellants' failure to identify a reviewable error or to demonstrate that the Respondent had failed to comply with Rule 7.3(2).

BRANDT INDUSTRIES CANADA LTD V EVRAZ INC NA CANADA, 2025 ABKB 542

(SIDNELL J)

Rules 8.15 (Notice of Persons not Intended to be Called as Witnesses) and 13.6 (Pleadings: General Requirements)

he parties were engaged in a dispute regarding the interpretation and application of two Master Purchase Agreements (“MPAs”). The Plaintiff claimed that the MPAs were not fixed-price and sought damages for termination of contract as well as payment for outstanding invoices and interest.

The Defendant claimed that the MPAs were fixed-price and terminated the contract due to a material breach. The Defendant brought a Counterclaim for damages incurred.

In discussions regarding which witnesses were called, the Court observed that when a notice is served in accordance with Rule 8.15, and there is no objection from the recipient, no adverse interest can be drawn if such witness is not called.

One of the issues before the Court was whether the Defendant could rely on a repudiatory breach of the Plaintiff, when a repudiatory breach was not specifically pleaded in the Statement of Defence. Rule 13.6(3) requires that a pleading include a statement of any matter on which a party intends to rely that may take another party by surprise. Justice Sidnell held that a repudiatory breach is not a matter specified in Rule 13.6 as being one that may take another party by surprise and thus does not need to be specifically pleaded to be relied upon.

In conclusion, the Plaintiff was partially successful in its claim. Sidnell J. directed the parties to submit written costs submissions in accordance with Rule 10.33.

OKUNS V ALBERTA LABOUR RELATIONS BOARD, 2025 ABCA 327

(FEEHAN JA)

Rules 9.4 (Signing Judgments and Orders), 14.47 (Application to Restore an Appeal) and 14.65 (Restoring Appeals)

This was an Application to restore an Appeal to the record under Rules 14.47 and 14.65(1). The Applicant, a former bus driver, was dismissed following an incident with a minor passenger. The Canadian Union of Public Employees (Local 1505) (the “Union”) filed, then withdrew, a grievance on his behalf after concluding that video evidence undermined his case. The Applicant challenged the video’s authenticity and filed a duty of fair representation complaint with the

Alberta Labour Relations Board (the “ALRB”), which was dismissed for lack of merit. The Applicant’s subsequent Judicial Review Application was struck for repeated failures to meet filing deadlines, and the ensuing Appeal was deemed abandoned.

Under Rules 14.47 and 14.65, an Application to restore an Appeal that has been struck or deemed abandoned must be filed as soon as

reasonably possible, but in any event, no later than six months after being struck. Feehan J.A. reviewed the discretionary test for restoration, considering the Appeal's arguable merit, the explanation for delay, promptness in seeking restoration, intention to proceed, and prejudice to the respondent. Feehan J.A. highlighted that these factors are assessed together to determine whether restoration serves the interests of justice, noting that no factor is determinative, and restoration may still be denied even if all are satisfied. Appeal Justice Feehan emphasized that a higher threshold applies where an Appeal is deemed abandoned, requiring exceptional circumstances beyond the appellant's control. Feehan J. further noted that delay in bringing the Application is generally fatal, and prejudice to the respondent is presumed since finality of judgment is a legitimate expectation.

Applying these principles, the Court found that the Applicant failed to satisfy the requirements

for restoration. While the Applicant argued that flaws in the Union's representation and video evidence constituted merit, Feehan J.A. noted that both the Union and the ALRB previously concluded otherwise. The Applicant offered no satisfactory explanation for extensive delays, having waited 17 months after the Appeal was struck and 11 months after it was deemed abandoned before seeking restoration. Feehan J.A. noted that the Applicant's reasons, which included loss of counsel, self-representation, and health issues, did not excuse the lack of promptness.

Accordingly, prejudice to the Respondent was presumed, and the Application to restore the Appeal was dismissed. The Court pronounced judgment and invoked Rule 9.2(2)(c).

BARABASH V SILVERA FOR SENIORS, 2025 ABKB 553

(MARION J)

[Rules 9.8 \(Service of Judgments and Orders\)](#), [11.20 \(Service of Documents, other than Commencement Documents, in Alberta\)](#) and [11.27 \(Validating Service\)](#)

The Plaintiff, Mr. Bohdan Barabash ("Barabash"), was a tenant in subsidized public housing managed by Silvera for Seniors ("Silvera"). The Alberta Court of Justice ("COJ") granted an Order on July 25, 2025 terminating his tenancy and requiring vacant possession by September 2, 2025, with eviction on default. After the Order was filed in the Court of King's Bench, Silvera obtained an amended Order to clarify that it applied to Unit 21 and filed it on September 5, 2025, without prior notice to Barabash. A process server posted the amended Order on his door the same evening. Barabash applied to quash the amended Order

and to declare that his tenancy continued, or, in the alternative, for a stay pending appeal.

Barabash raised the service issue. Pursuant to Rule 9.8, the party who enters an Order in King's Bench must serve a copy on the other parties. Silvera effected service by posting the amended Order on the door, which was not a specified method under Rule 11.20. The Court nonetheless validated service pursuant to Rule 11.27 because the posting actually brought the Order to Barabash's attention. Even though Silvera did not formally file a Rule 11.27 Application, Marion J. found that the service issue was squarely before the Court, there was no prejudice in

deciding it, and Barabash admitted he found the posting on September 6, 2025. Consequently, service was effective and the amended Order took effect on September 6, 2025.

Therefore, Barabash's request for a declaration that the tenancy continued was dismissed. The Court nevertheless granted interim relief pending Appeal. Applying the tripartite test for a stay, it found a serious issue to be deter-

mined on Appeal, irreparable harm to Mr. Barabash if relief were denied given his age, health, and subsidized-housing circumstances, and a balance of convenience favouring preservation of the status quo. The Court stayed the amended Order and restrained Silvera from refusing Mr. Barabash access to Unit 21 on conditions that he promptly file, serve, and diligently prosecute his Appeal and comply with applicable tenancy legislation.

QM V RM, 2025 ABKB 751

(MARION J)

Rule 9.13 (Re-Opening Case)

The parties were engaged in proceedings related to their divorce and the parenting of their shared child. The Respondent sought an Order permitting them to relocate from Calgary, Alberta to Vancouver, British Columbia (the "Relocation Application"). The Court issued a decision permitting the relocation. After the decision regarding relocation was issued, the Applicant applied to re-open the Relocation Application pursuant to Rule 9.13 on the basis of information that came to light in the time between the hearing of the Relocation Application and the issuance of the decision.

The Applicant alleged that following the hearing of the Relocation Application, the Respondent experienced a material change in their employment opportunities in Vancouver. The Applicant took the position that a major consideration for the Court in granting the Order permitting relocation was the Respondent's anticipated

employment opportunities. The Applicant argued that this change in circumstances was significant enough that it warranted a re-opening of the Relocation Application.

After considering Rule 9.13 and the surrounding case law, the Court noted that the Rule should be used sparingly and should not be used as an avenue to advance new arguments that could have been advanced previously. While Justice Marion noted that there had been changes to the Respondent's employment opportunities, these changes would not have an impact on the overall decision, as the employment opportunities were not the only area of importance for the Court. Justice Marion held that the Applicant had not satisfied the Court that there was good reason to hear further evidence and modify its Order. As such, the Applicant had not satisfied the requirements of Rule 9.13 and the Application was dismissed.

TALLCREE FIRST NATION V RATH & COMPANY, 2025 ABCA 360

(ANTONIO, FAGNAN AND FRIESEN JJA)

Rules 9.13 (Re-Opening Cases) and 10.27 (Decision of Judge)

The Respondent, Rath & Company, entered into a contingency fee agreement (“CFA”) with the appellant, Tallcree First Nation, in relation to a claim against Canada for failure to provide benefits under Treaty 8. Tallcree commenced a review of the CFA. A Review Officer found the CFA to be reasonable. But that finding was overturned by a Chamber’s Justice on appeal in the Court below, who directed the Respondent to refund the difference of \$8,518,075 to “Tallcree”. The Respondent successfully brought an Application to amend or modify the reasons under Rule 9.13, to specify that the refund should be paid to Rath & Company, in trust for Tallcree.

On Appeal to the Court of Appeal, Tallcree contended, among other things, that the Chambers Justice lacked jurisdiction to consider the Application and that the excess fees should be returned directly to Tallcree, not the trust.

It was found that the lower Court’s Order anticipated that the correct recipient of the funds would be identified before the refund was issued. The Order specifically referred to Rule 10.27(2), which grants the Chamber’s Justice jurisdiction to order the return of excess funds if lawyer’s charges are reduced on appeal. This Rule also supported the Chambers Justice’s authority to address the issue under Rule 9.13, allowing modification of the Order or reasons to facilitate the refund. The Respondent was not introducing new evidence or rearguing the merits of the case, but was instead seeking to address an overlooked issue necessary to implement the original decision. The Chambers Justice had jurisdiction to resolve this matter, as outlined in Rule 10.27(2).

BROOKFIELD PLACE (CALGARY) LP V CRU JUICE INC (JUSU BARS), 2025 ABKB 711

(JUGNAUTH J)

Rules 9.15 (Setting Aside, Varying and Discharging Judgments and Orders) and 13.5 (Variation of Time Periods)

The Defendants applied to vary a Consent Order after their former counsel, without instructions, consented to Procedural Orders setting an Undertaking response deadline and stipulating that non-compliance would strike their defence and permit default. The Defendants were never told of the Orders or the deadline; once they learned of them, they promptly retained new counsel and sought to

extend the deadline and to pay the Plaintiff’s thrown-away Costs.

The Court treated the March 12, 2025, Consent Order as an Interlocutory Procedural Order, not a final one resolving the merits. Justice Jugnauth held that Interlocutory Consent Orders are governed by the Court’s discretionary power under the Rules and may be varied on

what is just in the circumstances, rather than only on contractual grounds. Applying Rule 9.15(4)(a) and (c), and informed by Rule 13.5, the Court found that the Defendants' late discovery of the Orders (caused by counsel's misconduct) was information discovered after the Order was made and that varying the deadline was just.

Jugnauth J. emphasized that enforcing the Consent Order to strike the Defence would be unequitable, as it would indirectly grant a contempt-style remedy that could not have been obtained directly because contempt requires proof the alleged contemnor had actual knowledge of the Order. Given the purely procedural

nature of the Consent Order, the promptness of the Defendants' Application, and the Rules' objective of resolving disputes on their merits, the Court varied the deadline from March 21, 2025 to October 3, 2025.

To address prejudice and uphold the proportionality objectives of the Rules, the Court ordered the Defendants to pay the Plaintiff's reasonable thrown-away Costs on a full indemnity, solicitor-and-client basis tied to the earlier Applications and Orders, and otherwise left each party to bear its own Costs on this variation Application.

LAVOIE V LUKIW, 2025 ABCA 377

(FEEHAN, WOOLLEY AND FETH JJA)

[Rules 9.15 \(Setting Aside, Varying and Discharging Judgments and Orders\)](#)
[and 9.16 \(By Whom Applications are to be Decided\)](#)

The Appellant appealed a Summary Judgment granted after he failed to attend the Application Hearing, arguing he did not receive proper notice.

The Court determined the Appeal was premature. Rule 9.15(1) allows an Applicant to request that a Judgment be set aside, varied, or discharged if it was made without notice or if the affected person failed to appear because of the insufficient notice. However, absent exceptional circumstances, Appeals are discouraged when an available remedy exists in the Court below.

Rule 9.16 directs that the Application under Rule 9.15 ordinarily be heard by the Judge who made the disputed Order, who is best positioned to assess the notice record and any fresh evidence. Although the twenty-day time limit set out in Rule 9.15(2) had expired, the Court below retained discretion to extend that time if appropriate.

The Appeal was dismissed.

CHISHOLM V NEBO, 2025 ABKB 638

(LITTLE J)

Rule 9.28 (Abandoned Goods)

The Appellant, a former occupant of a foreclosed property, left personal belongings in a house after a judicial sale process transferred ownership to the Respondents. The Respondents disposed of the remaining items, prompting the Appellant to file a claim alleging a breach of Rule 9.28 and the tort of conversion. The Appellant argued that Rule 9.28 creates a statutory scheme for Judgment holders to deal with abandoned goods left after Court ordered possession. While the Court agreed with this statement, it clarified that this was not the issue on appeal and that the issue was whether the obligation applies to the purchasers of property from a Judgment holder.

On Appeal, the Court found that Justice Putnam's first instance decision correctly

determined that Rule 9.28 imposed no obligation on the Respondents because they were not "judgment holder" as defined in the Rule. CIBC was the Judgment holder but was not a party to the action. The Court further found that Rule 9.28 clearly does not transfer the Judgment holder's obligations under Rule 9.28, and agreed with Justice Putman, that no other Alberta legislation imposes any obligation on the Respondents, to which he found none.

The Court concluded that imposing liability on purchasers in foreclosure sales for property left behind by former occupants would be unreasonable and contrary to the legislative framework, and dismissed the Appeal.

BANK OF MONTREAL V DIAO, 2025 ABCA 336

(HAWKES JA)

Rules 10.9 (Reasonableness of Retainer Agreements and Charges Subject to Review) and 14.5 (Appeals Only With Permission)

This Application was sought to restore an Appeal that was struck for failing to file an Appeal record within the time required under the Alberta *Rules of Court*.

In deciding whether to restore the Appeal, Justice Hawkes confirmed that the decision to restore an appeal is a discretionary one, which involves five factors: arguable merit, explanation for the delay, promptness in curing the defect, intention to proceed, and prejudice to the Respondent.

The Court noted that while the Applicant acted promptly, demonstrated an intention to proceed, and caused no prejudice, their explanation for the delay was insufficient, and the Appeal lacked arguable merit.

The Applicant's misunderstanding of the filing deadline was not credible given the extensive correspondence from the Respondent advising him of the deadlines.

Further, the Court was not persuaded that the grounds of appeal advanced had any chance of success because the Applicant's request for a "reasonableness" review of Costs, pursuant

to Rule 10.9, was premature. The Costs in question were still subject to assessment and Appeal in the Court of King's Bench, and any appeal to the Court of Appeal would require permission under rule 14.5(1)(e).

Lastly, the Court stated that restoring the Appeal was not in the interests of justice.

BROWN V ALBERTA, 2025 ABKB 720

(YUNGWIRTH J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This decision addressed Costs following the dismissal of an Application seeking declaratory and injunctive relief related to the closure of a supervised consumption site.

Alberta, as the successful party, sought Costs under Rule 10.29(1), calculated under Column 1 of Schedule C. The Applicant opposed Costs, arguing that the litigation was brought in the public interest, raised novel *Charter* issues, and warranted a departure from the default rule that a successful party is entitled to Costs.

Justice Yungwirth reaffirmed that while public interest litigation may justify a departure from the principle that Costs follow the event, there is no blanket exemption from Costs in *Charter* cases. In determining whether to depart from the default rule, the Court applied the discretionary criteria under Rule 10.33, together with the factors articulated in *Pauli v ACE INA Insurance Co*, 2004 ABCA 253, namely whether the Action:

- (a) was brought in the public interest
- (b) raised a novel point of law;
- (c) constituted a test case; and
- (d) engaged access to justice considerations.

Although the Application engaged a matter of public health importance, the Court found that the legal issues were not novel, did not constitute a test case, and were governed by settled *Charter* jurisprudence confirming that there is no constitutional right to state-funded health services. The Applicant knowingly assumed the litigation risk in advancing arguments contrary to established authority.

Balancing the public interest and access to justice factors against Alberta's success and the absence of novelty, Justice Yungwirth entered a modest Costs Award in favour of Alberta under Column 1 of Schedule C.

BARRETTE V WEVERS 2025 ABKB 723

(MAH J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Court ruled on Costs following the dismissal of the self-represented Plaintiff's claim.

Justice Mah confirmed that, as the successful party, the Defendants were presumptively entitled to Costs under Rule 10.29. The Court cited Rule 10.31 providing that Costs are discretionary and noted the factors to be considered in Rule 10.33.

Justice Mah addressed the Defendants in two groups (the "Group A Defendants" and "Group B Defendants"). For the Group A Defendants, the Court awarded Costs in accordance with the Court of Justice Tariff and Schedule C, including double Costs after they had provided *Calderbank* letters to the Plaintiff. Given the *Calderbank* letters, Justice Mah said that double Costs were appropriate to promote the objectives of deterring unwarranted litigation and encouraging reasonable settlement.

The Group B Defendants claimed \$54,094 in solicitor-client Costs on the basis that the Plaintiff had brought groundless allegations of fraud against them. Justice Mah confirmed that such allegations can attract solicitor-client Costs but awarded a lower sum of \$26,000 all-inclusive. The Court said that while the fraud allegations had no circumstantial plausibility, they did not reach the most egregious level of making intentionally false allegations. Further, the Costs award must be proportional and here, the Plaintiff's civil claim was for damages of only \$50,000. Finally, Justice Mah considered that the Plaintiff had not followed the Court's instructions regarding the form of Costs submissions.

Additionally, Justice Mah awarded \$2,000 to the Group A Defendants and \$1,000 to the Group B Defendants to account for the Plaintiff's reliance on fake authorities in his Brief.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 746

(NIXON ACJ)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This is a ruling on Costs following the previous decision *CNOOC Petroleum North America ULC v ITP SA, 2023 ABKB 689* (the "Undertakings Application"). The Undertakings Application arose from an Application by CNOOC Petroleum North America ULC ("CNOOC") against ITP SA ("ITP") to compel answers and undertakings following Questioning on an Affidavit

of Records. However, prior to the Undertakings Application, the scope of the requested undertaking responses narrowed after further responses were provided by ITP and others were abandoned by CNOOC. Both CNOOC and ITP argued they were substantially successful on the Undertakings Application and therefore entitled to Costs.

Pursuant to Rule 10.29(1), the Court acknowledged the default rule on Costs that a successful party is entitled to Costs, subject to the Court's general discretion under Rule 10.31. Associate Chief Justice Nixon acknowledged that this decision fit within the Court's broad discretion to make a Costs award pursuant to Rules 10.31 and 10.33, emphasizing that Trial Judges held considerable discretion in determining reasonable and proper Costs.

The Court determined that there was mixed success for both Parties because almost the

same number of undertaking requests were responded to by ITP as the amount that were dropped by CNOOC following the filing of the Undertakings Application and that some of the requested undertakings required the Court to assess solicitor-client and litigation privilege. Nixon A.C.J. acknowledged that Costs is not a simple quantitative assessment and that success for Costs does not mean success on all issues. Given the finding of mixed success, the Court ordered the parties to bear their own Costs.

BEREZAN V CHIZAWSKY, 2025 ABKB 756

(MCLEOD J)

[Rules 10.29 \(General Rule for Payment of Litigation Costs\), 10.31 \(When Costs May be Made\) and 10.33 \(Court Considerations in Making Costs Award\)](#)

This Decision addressed the appropriate quantum of Costs following two urgent Chambers Applications arising out of stayed family property litigation after the death of one party. In the underlying Applications, the Applicant was largely successful, including regaining possession of jointly owned property and defeating a Cross-Application.

Justice McLeod reaffirmed that Costs are discretionary under Rules 10.29, 10.31, and 10.33 and must be fixed judicially, having regard to the circumstances of the case. While solicitor-client or near solicitor-client Costs are reserved for rare and exceptional circumstances, elevated tariff Costs may be awarded where urgency or conduct justifies departure from the ordinary scale. Relevant considerations included the

degree of success, necessity and urgency of the Applications, and the conduct of the parties.

Applying those principles, Justice McLeod found the Applicant had little choice but to proceed urgently after being excluded from jointly owned property and to respond to an ultimately unsuccessful Cross-Application. Although the Respondent's unilateral conduct was criticized, it did not rise to the level warranting solicitor-client Costs. The Court also rejected the request that Costs be payable personally rather than from the Estate.

In the result, the Court awarded elevated Costs equal to three times the applicable tariff for a contested Chambers Application under Schedule C.

BURNS V ARAGON, 2025 ABKB 547

(LOPARCO J)

Rules 10.30 (When Costs Award May Be Paid), 10.33 (Court Considerations in Making Costs Award), 10.51 (Order to Appear), 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt of Court)

This was a decision arising from a long-running, high-conflict matrimonial property dispute.

With respect to Rule 10.31, the Court confirmed that costs remain discretionary and that, under Rule 10.31(5), costs may be awarded to self-represented litigants only in exceptional circumstances. The Court did not make an immediate costs award but expressly retained jurisdiction to do so if the parties were unable to agree. The Decision emphasized that the mere fact of self-representation does not entitle a party to costs, and that such awards require careful justification.

Rules 10.51, 10.52, and 10.53 were engaged in relation to the Defendant's repeated failure to comply with disclosure and undertaking orders, which resulted in a formal contempt finding

earlier in the proceedings. The Court reiterated that contempt is a serious remedy governed by Rules 10.51 to 10.53 and arises where a party knowingly disobeys a court order. The Defendant had refused to purge his contempt, asserting that disclosure obligations conflicted with alleged confidentiality agreements. The Court rejected this justification and held that the failure to comply wasted public resources, caused delay, and unfairly increased the opposing party's costs.

In summary, the Plaintiff was awarded an equal division of the matrimonial home proceeds and other divisible assets, noting that a Divorce Judgment would be provided to the parties by the Court in further correspondence.

O'REILLY V O'REILLY, 2025 ABKB 655

(MARION J)

Rules 10.30 (When Costs Award May be Made), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This was a Costs decision arising from O'Reilly v O'Reilly, 2025 ABKB 103. Because all the issues were intertwined, Justice Marion evaluated "substantial success" holistically rather than issue-by-issue. The central dispute concerned entitlement and priority to a deceased's property. Brenda Gail O'Reilly achieved priority to \$207,256.79 of the proceeds and was appointed

sole residuary beneficiary of the Estate, but she did not succeed on all claims, including her family-property application and her attempt to secure priority over creditors.

Justice Marion considered the entirety of the circumstances and the factors mandated by the Rules and noted the following, among other things:

(a) The hearing was important, financially, to all parties, but not in a way that materially separated it from most litigation; however, there were also legal issues relating the availability of a family property order, and priority between claimants and writ-holders that had potentially broad implications.

(b) The matter was reasonably complex, although much of the complexity was caused by the conduct of the deceased, not the parties. Counsel and parties reasonably addressed the intertwined issues, and were cooperative and reasonable in their approach to the matters at issue.

(c) Schedule C, Column 3 was the appropriate column, given the amounts that were *de facto* in dispute.

(d) Enhanced costs were not warranted based on party conduct, with the possible exception being one of the judgment creditor's (Jessica Lynn Hollingshead) failure to comply with an Attachment Order. Significant time and expense likely could have been avoided had she complied with the Attachment Order in the first instance.

(e) There were no settlement offers relevant to the determination of Costs.

Based on these factors, Justice Marion found that a lump sum cost award in favour of Ms. O'Reilly against Hollingshead in the amount of \$15,000 (inclusive of disbursements and other costs) plus GST was fair and appropriate.

HEINE V WORSFOLD, 2025 ABKB 650

(EAMON J)

Rules 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 14.59 (Formal Offers to Settle)

The substantive issue in this case was whether the parties' Award of adult interdependent partner support and division of family property, arising from Arbitration, was enforceable or should be set aside. The Court found the Award was final and binding, enforced the Award, dismissed the Application to set aside the Award, and settled the terms of the necessary King's Bench Judgment arising from the Award.

Given this, the Respondent sought Costs of the Applications, arguing that they were wholly successful and entitled to Costs on a solicitor-client basis or, in the alternative, party and party Costs, presenting options ranging from \$4,050 to about \$40,000, plus disbursements.

The Court reviewed the Costs framework, including Rules 10.31 and 10.33, the law on

party and party costs, litigation misconduct, and unfounded allegations of fraud made by the Applicant. The Court found that the Respondent was substantially successful and was presumptively entitled to Costs with no reason to deprive the Respondent of their Costs entitlement.

The Court rejected the Applicant's accusations of misconduct by the Respondent which revolved around the Applicant's inability to advance its allegation of fraud. As stated in a previous decision of the Court, the Applicant could not pursue allegations of fraud that could have been pursued in the Arbitration. The Court did not find the Applicant's other complaint about difficulty in scheduling a cross-examination of the Respondent, or the Respondent's expressing concerns about being

in the same room with the Applicant during a cross-examination, to disentitle the Respondent to Costs or warrant a Costs reduction, as there was obviously friction and mistrust between the parties and this one manifestation thereof did not rise to the level that should affect Costs in view of the overarching objectives of Costs.

The Respondent also argued that they made an offer to settle that mirrored the result obtained in Court and that the Court should award enhanced Costs on account of the offer. The Court emphasized that Courts have wide discretion in deciding what Costs consequences, if any, should follow a *Calderbank* offer and Rule 14.59, and that offers must be realis-

tic, reasonable and represent a *bona fide* compromise or other articulable reason for settlement. The Court was not satisfied on the submissions that the offer should be afforded Costs consequences because it was essentially an offer to “think again” and abandon the Applicant’s Application, without attaching Costs consequences to the offer.

Overall, the Court was satisfied that Costs in the range of \$10,000 was appropriate in the circumstances. It was based on a reasonable and proportionate amount for a routine Special Application for enforcement of an Arbitration Award with appropriate enhancements to reflect the factors in Rules 10.33.

REMINGTON DEVELOPMENT CORPORATION V CANADIAN PACIFIC RAILWAY COMPANY, 2025 ABCA 332

(WAKELING*, ANTONIO AND FETH JJA)

Rules 10.31 (Court-Ordered Costs Award), 10.41 (Assessment Officer’s Decision), 10.44 (Appeal to Judge) and 14.88 (Costs Awards)

The Parties requested direction with respect to cost consequences following the disposition of appeals reported at *Remington Development Corporation v Canadian Pacific Railway Company*, 2025 ABCA 244. Canadian Pacific Railway Company (“CPR”) and His Majesty the King in right of Alberta as represented by the Minister of Infrastructure and the Minister of Transportation (“Alberta”) were successful on their Appeal of the Trial Decision and Remington Development Corporation’s (“Remington’s”) Cross-Appeal for punitive damages. The Court of Appeal ordered a new Trial. CPR and Alberta were additionally successful in an application for a stay of the Trial Judgment and Costs Award pending the Appeal.

Pursuant to Rule 14.88(1), CPR and Alberta were prima facie entitled to costs as the successful

parties on the Appeal and Cross-Appeal. Rule 14.88(3) sets out the presumption that the scale of costs on appeal is the same scale of costs at trial. CPR and Alberta therefore requested that the Court award costs on the same basis as what Remington was awarded in the Trial Decision, 50% of the reasonable and proper fees incurred on appeal. Remington requested that the Appeal costs be addressed by the new trial Judge so that the entire litigation could be assessed to consider a global award of costs. Alternatively, Remington argued that the costs should be awarded in line with Schedule “C”.

The Court determined that there was no principled reason to depart from the default rule that CPR and Alberta are entitled to costs of the Appeal as the successful parties. The Court also

concluded that the costs of the Appeal should not wait to be awarded until after the re-trial, if any. Regarding the level of indemnification, the Court considered factors such as the complexity of the Appeal, the importance of the issues, and the magnitude of the Judgment. The Court determined it was appropriate to award costs at 50% of the reasonable and proper legal fees incurred by CPR and Alberta. The Court also noted that costs of the first Trial are to be addressed at the end of any re-trial.

Further, the Court reminded the Parties of Rules 10.31, 10.41 and 10.44 and that if the Parties could not agree on what legal fees were reasonable and proper, they could attend before an Assessment Officer for a direction or order. The Court also addressed certain

discrete issues raised by the Parties, providing guidance that: (1) the Costs Award included costs of the successful Stay Application and its related steps; (2) costs for CPR's new counsel to familiarize themselves with the case for the Appeal could be reasonable and proper fees; and lastly (3) Alberta's claim for fees of "external consulting legal counsel" as a disbursement was noted but not enough information was provided to depart from the general rule that legal services should be assessed as fees not disbursements. However, the Court noted that an Assessment Officer could make the necessary determinations, if required.

*Wakeling J.A. did not participate in the disposition on costs (as he retired).

INTACT INSURANCE COMPANY V 1063878 ALBERTA LTD, 2025 ABKB 656

(FRASER J)

Rule 10.33 (Court Considerations in Making Costs Award)

This Application was in respect of Costs. In this case, the Court found that the most important factors were the result of the action and the amount claimed, the conduct of the parties, the complexity of the action, and the offer to settle. The Court emphasized that costs awards are governed by Rule 10.33 of the Rules of Court, which provides a non-exhaustive list of factors to consider.

The Respondent was successful at both the Application and Appeal stages, and the Appellants were aware of the potential for significant costs awards if they were unsuccessful. The Court noted that the matter was not particularly complex, involving straightforward contractual interpretation. However, the Appellants pursued the case on principle despite the financial risks, and the Respondent incurred significant legal costs in doing so. The amount

of Applications Judge Birkett's actual award was relatively small, \$40,000. The Court found that the Appellants should have considered their legal costs as well as a possible award of costs against them before deciding to pursue an appeal, but failed to do so.

Both parties were criticized for failing to resolve the matter earlier, which would have reduced costs. The Respondent's offer to settle for \$170,000 was reasonable, but the Court declined to award double costs, as the Respondent could have mitigated their costs by cooperating with the Appellants during negotiations. Ultimately, when the Court weighed all the factors, it awarded the Respondent 60% of their reasonable legal costs as determined by an Assessment Officer and declined to award double costs if the Assessment Officer finds more than \$71,728 in costs.

OASIS FILTER INTERNATIONAL LTD V MANZ, 2025 ABKB 658

(JOHNSTON J)

Rule 10.33 (Court Considerations in Making Costs Awards)

This was a Costs decision arising from *Oasis Filter International Ltd v Manz*, 2025 ABKB 565, wherein the Court dismissed the Plaintiffs' Action, finding that leave to commence a derivative Action was required and the limitation period had expired.

The Defendants as the successful party, asks for Costs in the amount of \$530,010.57 based on a level of indemnity of 60% of their actual litigation costs. The Plaintiffs argued Schedule C Column 4 Costs should be awarded, while also acknowledging that double Costs from the date of a formal offer to settle were appropriate. The Plaintiffs accepted that \$268,391.07 in Costs were appropriate.

The Court began by reaffirming the general principle that a successful party is entitled to

Costs, subject to the Court's discretion, citing *McAllister v City of Calgary (City)*, 2021 ABCA 25.

The case was complex, involving allegations of breach of fiduciary duty, patent infringement, and patent validity. The evidentiary record was substantial, and both parties engaged in litigation conduct that unnecessarily prolonged the proceedings, including production disputes, among others. Although the Plaintiffs were ultimately unsuccessful, their claims were not frivolous and raised important issues. As a result, the Court awarded the Defendants Costs under Schedule C, Column 4, plus reasonable disbursements, with double costs after service of the Defendants' formal offer to settle.

LYMER V JONSSON, 2025 ABCA 423

(STREKAF, ANTONIO AND FETH JJA)

Rules 10.51 (Order to Appear), 10.52 (Declaration of Civil Contempt), 10.53 (Punishment for Civil Contempt of Court) and 14.5 (Appeals Only With Permission)

The Plaintiff appealed the Case Management Justice's decision dismissing their Application for a Stay of civil contempt sanction proceedings. This Appeal addressed the issue of whether the principle in *R v Jordan*, 2016 SCC 27 ("*Jordan*"), specifically the 30-month time limit for criminal cases to be brought to trial in a superior court, applied to civil contempt sanction proceedings.

The Plaintiff was an undischarged bankrupt, who had been held in civil contempt on Novem-

ber 6, 2014, pursuant to Rule 10.52, and was held to remain in contempt on February 14, 2017. A civil contempt sanction hearing was held in April 2018, but the resulting decision was then set aside on the basis that the Plaintiff had not received a full and fair hearing. Questioning for a new hearing was completed on March 21, 2023.

On June 28, 2023, the Plaintiff filed the Application for a Stay of the civil contempt sanction proceedings. The Plaintiff, relying on the *Jordan*

principle, alleged in-part that their right to be tried within a reasonable time pursuant to Section 11(b) of the *Charter of Rights and Freedoms* (the “*Charter*”). The Case Management Justice dismissed the Application, finding that the *Jordan* principle could not be invoked in support of the Plaintiff’s delay argument.

On Appeal, the Plaintiff argued that the Alberta Court of Appeal had previously set aside portions of contempt orders that conflict with mobility rights guaranteed by Section 6 of the *Charter*, and there was no principled reason why Section 11(b) of the *Charter* should not apply to civil contempt proceedings. The Defendant argued that Section 11(b) of the *Charter* does not apply to private disputes that do not

involve a state actor or where no party has been charged with an offence.

After reviewing relevant decisions from the Supreme Court of Canada, the Panel held that Section 11(b) of the *Charter* does not apply to civil contempt sanction proceedings, finding that constitutional duties should not be imposed on private parties involved in civil contempt proceedings not involving a state actor. The Court also held that the *Jordan* principle was not applicable to civil contempt sanction proceedings because, unlike in criminal proceedings, contemnors had the opportunity to purge their contempt and have their sanction waived or suspended pursuant to Rule 10.53. The Court dismissed the Plaintiff’s Appeal.

FULCHER V FULCHER, 2025 ABKB 731

(BOKENFOHR J)

Rule 10.52 (Declaration of Civil Contempt)

The parties were involved in divorce proceedings where spousal support and property division were in issue. The Applicant applied to find the Respondent in contempt for failing to disclose business records of the company he operated during the marriage. The Applicant argued that these business records were material to a decision on, and allocation of spousal support and property division.

On the authority of Rule 10.52, Bokenfohr J. held that there were three elements required to establish civil contempt: (i) that there was

a clear order given; (ii) that the party who breached the order had actual knowledge of it; and (iii) that the party intentionally failed to do what the order compelled. The Court held that the third element simply required disobedience itself and not an intent to disobey.

Justice Bokenfohr found that, as a Director, the Respondent had access to financial and other corporate records of the company when the disclosure was ordered, and in failing to produce these records, he violated the Court’s Order. This established the offence of contempt.

HEWKO V GORDICHUK, 2025 ABCA 348

(ANTONIO, FETH AND FRIESEN JJA)

Rule 10.52 (Civil Contempt)

This Appeal concerned the dismissal of an application seeking a declaration of civil contempt under Rule 10.52 and related relief arising from a property dispute between neighbours.

The Appellants applied in Chambers for a declaration that the Respondents were in civil contempt of a Restraining Order by entering onto the Appellants' property, and declaring the Respondents trespassers under the *Petty Trespass Act*, RSA 2000, c P-11. The Chambers Judge found that the Respondents had breached the Restraining Order by entering the Appellants' land but declined to proceed to a contempt hearing. Instead, the Chambers Judge warned the Respondents and issued a Permanent Injunction directing both parties not to interfere with each other's fencing and signage.

On Appeal, the Appellants argued that the Chambers Judge erred by relying on the Respondents' unsworn statements and by failing to find civil contempt. The Court of Appeal reaffirmed that civil contempt under Rule 10.52 requires proof beyond a reasonable doubt that the order was clear, the alleged contemnors had knowledge of it, they

intentionally breached it, and they had no reasonable excuse. Even where those elements are established, a finding of contempt remains discretionary and is an exceptional remedy of last resort.

The Court of Appeal held that the Chambers Judge did not commit a reviewable error in exercising discretion to admonish the Respondents rather than directing the matter to a full contempt hearing, particularly as this was the first alleged breach. However, the Court found there was no evidentiary basis to support the issuance of a permanent injunction restraining both parties from interfering with fencing and signage, as there was no evidence of intentional interference, and no such relief had been sought. That portion of the Order was struck.

The Court further held that the *Petty Trespass Act* did not contemplate declaratory relief, as it created quasi-criminal offences prosecutable in the Alberta Court of Justice.

The Appeal was allowed in part. The Decision to not proceed to a contempt hearing was upheld, but the Permanent Injunction was struck. Each party was ordered to bear their own costs.

SHIBLEY V SHIBLEY, 2025 ABKB 592

(BROOKES J)

Rule 12.48 (Availability of Application for Summary Judgment)

The Application arose from the separation of the Plaintiff and Defendant, and the child support obligations of the Defendant. The

Parties had previously entered into an agreement regarding the amount of child support that was to be paid by the Defendant based

on the information available at that time. The Plaintiff alleged that the information was incomplete or inaccurate and that additional support was warranted, and brought the Application seeking such a change. The Defendant took the position that the agreement was valid and ought to be enforced as written.

The Application was heard based solely on filed affidavit evidence and without any *vive voce* evidence. The intention of the Parties and the Court was that the resulting decision was to be the final determination of the dispute. The Court noted that case law indicated that a final order in a matter ought to be made following a trial, and that a final order is rarely to be made in chambers based solely on conflicting affidavits. It was further noted that granting a final

order in such a situation was akin to summary judgment, which is a remedy not typically permitted in most family law matters pursuant to Rule 12.48.

After considering the Rules and the relevant case law, Justice Brookes held that it is the responsibility of the hearing judge to ensure the proper process is followed. The Court held that in the circumstances, it was appropriate to make a final determination on the validity and enforceability of the agreement between the parties and that doing so would not be contrary to Rule 12.48. The agreement was found to be enforceable according to its terms and no changes were directed regarding the payment of child support by the Defendant.

KOMMINENI V GUGGILAM, 2025 ABKB 551

(SIDNELL J)

Rule 13.6 (Pleadings: General Requirements)

The Applicant sought to set aside a certificate of *lis pendens* registered against her residential property by the Respondent (the “CLP”). The CLP was registered with respect to a costs award granted following a parenting dispute between the parties which occurred in Ontario and which was reciprocally enforced in Alberta. The Applicant alleged that the Judgment that resulted in the costs award was obtained by fraud, and as such should be set aside. However, contrary to Rule 13.6(3)(d), the Applicant did not plead fraud in the Application.

Rule 13.6(3) sets out that pleadings must include a statement of any matter on which a party intends to rely that may take another party by surprise, including allegations of fraud.

Although the Applicant alleged in their submissions that the Respondent failed to be candid with the Ontario Courts during the initial dispute and that the judgment was obtained by fraud, this was not set out in her application materials nor her affidavit evidence.

In considering the Applicant’s materials and submissions and the fact the fraud was not specifically pled, Justice Sidnell ultimately held that the Applicant was not entitled to raise allegations of fraud in the Application. The Court further held that even if the Applicant were entitled to rely on allegations of fraud, they had failed to demonstrate that the underlying Judgment was obtained by fraud. The Application was dismissed.

ATB FINANCIAL V 1719091 ALBERTA LTD, 2025 ABCA 338

(FETH JA)

Rule 14.5 (Appeals Only With Permission)

The Applicants sought permission to appeal a prior decision that denied them extensions of time to appeal two earlier Court Orders: (1) a Restricted Access Order limiting their ability to initiate court proceedings without permission, and (2) a Receivership Order appointing a receiver over one of the corporate Applicants.

Mr. Coe owned the Applicant companies, which defaulted on a loan from ATB Financial secured by an industrial property. After obtaining a Consent Judgment, ATB proceeded with foreclosure. The Applicants attempted to avoid payment through “Organized Pseudolegal Commercial Argument” (OPCA) strategies, which were rejected.

This Application for permission to appeal to a three-member panel from a decision of a single Appeal Judge came before the Court pursuant to Rules 14.5(1)(a) and 14.5(2) of the Rules. Permission must be obtained from the same judge who made the decision that is to be appealed: Rule 14.5(2).

Permission to appeal a decision of a single judge of the Court of Appeal is granted only in rare instances. It is an “extraordinary exercise” of judicial authority, and the Applicants needed to demonstrate “compelling reason to require the applicant and respondent to reargue and three judges of the Court of Appeal to decide

an issue”. Permission will not be granted where the Applicants merely seek a rehearing of the same arguments that were previously rejected.

The Applicants did not address the required legal factors for obtaining permission to appeal, focusing instead on rearguing the merits of their proposed appeal grounds. They failed to engage with the key issues underlying the earlier refusal to grant extensions of time. This included their lack of special circumstances for significant delay and the resulting prejudice to ATB. Further, because the prior decision was discretionary, it was entitled to deference.

The Court rejected numerous arguments advanced by the Applicants, including that: the Court improperly relied on an unsworn receiver’s report (because receivers routinely provide unsworn reports, and the Receivership Order expressly authorized such reports to serve as evidence); that they were not properly served and did not consent to email service, with the Court finding that they were served under a valid substitutional service Order, which they never appealed; and that the Applicants presented no new evidence or serious issue warranting further review, merely repeating arguments previously rejected, including those with respect their arguments being labeled OPCA. Permission to appeal was therefore denied.

OKUNS V ALBERTA LABOUR RELATIONS BOARD, 2025 ABCA 365

(FEEHAN JA)

Rules 14.5 (Appeals Only With Permission), 14.16 (Filing the Appeal Record), 14.47 (Application to Restore an Appeal) and 14.65 (Restoring Appeals)

Pursuant to Rules 14.5(1)(a) and 14.5(2), the Applicant sought permission to appeal a previous decision decided by Feehan J.A. That Decision denied the Applicant's previous application to restore an appeal to the record pursuant to Rules 14.47 and 14.65(1), as his appeal was struck pursuant to Rule 14.64(a) for failing to file an Appeal Record within four months following the Notice of Appeal, contrary to Rule 14.16(3)(b). Pursuant to Rule 14.65(3)(a), the Applicant's appeal was later deemed abandoned for failing to take any steps in restoring the appeal within six months of its striking.

In the previous decision, Feehan J.A. determined that there was little merit to the Applicant's appeal. On this Application, the Applicant claimed that the earlier decision misapprehended facts, and that evidence demonstrating his diligent and good faith attempts to pursue the matter and comply with procedural requirements was overlooked. The Applicant claimed he suffered from an obstructive sleep disorder which reasonably contributed to his delay in bringing an application to restore the appeal. However, the Respondent claims that the Applicant did not identify a serious issue justifying another level

of review and that the Applicant only brought up the obstructive sleep disorder in oral argument and provided no medical evidence to support his claim.

The Court acknowledged that for an application to appeal a decision of a single Judge of the Court to a panel, an applicant must demonstrate that there is: a question of general importance, an unreasonable exercise of discretion, a potential error of law, or a misapprehension of important facts. At least one of the substantial criteria should be established, otherwise it would not be in the public interest to review the single Judge's decision.

Appeal Justice Feehan agreed with the Respondent's argument and found that the Applicant had not raised a question of general importance. The Applicant's concerns related to evidence in findings of fact that were unique to his file, and which were not of general importance to the larger legal system. The Court determined that there was no error of law in the previous decision, no unreasonable exercise of discretion, nor was there a misapprehension of important facts. The Application was dismissed.

WALCZAK V HENDRIX LAW, 2025 ABCA 398

(KIRKER JA)

Rule 14.5 (Permission to Appeal)

This Application sought permission to appeal an Order requiring the Applicant to post Security for Costs. The Order arose from the Applicants attempted Appeal connected to a completed foreclosure proceeding.

The Applicant invoked Rule 14.5 to challenge the Security for Costs Order, arguing that the single Appeal Judge erred in principle and improperly exercised discretion. The Court was therefore required to determine whether the Applicant had identified a reviewable error or raised an issue of sufficient public or legal importance to justify further appellate intervention.

Appeal Justice Kirker confirmed that permission to appeal a decision of a single appeal Judge is an extraordinary remedy. Under Rule 14.5, permission will only be granted where the applicant demonstrates a question of general importance, a possible error of law, an unreasonable exercise of discretion, or a misapprehension of material facts, together with a compelling public interest reason for further appellate review.

Applying that framework, the Court held that the Applicant had failed to meet the threshold. The Applicant largely re-argued issues arising from the Foreclosure Proceeding rather than identifying any reviewable error in the Security for Costs decision itself. Kirker J.A. emphasized that discretionary decisions are entitled to deference on appeal and that mere disagreement with the result, or a desire to re-litigate settled matters, is insufficient to justify another level of review.

Kirker J.A. further noted that the Applicant had not addressed the findings underpinning the Security for Costs Order, including the lack of merit in the Appeal, unpaid prior Cost Awards, and the absence of evidence that posting security would cause undue prejudice. The Application did not raise an issue of general importance and disclosed no compelling reason for the Court to intervene. The Application was dismissed.

ZORBAWON V SALES, 2025 ABCA 412

(GROSSE JA)

14.5 (Appeals Only With Permission)

The Applicant unsuccessfully applied to Stay two Orders of the Court before a single Justice of the Court of Appeal. The Applicant then sought permission to Appeal that decision to a three-Judge panel, and for an extension of time for the permission to appeal Application because of a missed deadline.

Per Rule 14.5(2), Grosse J.A. stated that the Application for permission to appeal a decision of a single Appeal Judge must be sought from that Judge. Justice Grosse also held that the Court has the discretion to extend the time to file an Appeal or Application for permission to appeal. In exercising this discretion, the Court is

guided by several factors, including the existence of a *bona fide* intention to appeal in time; whether some special circumstance exists to excuse or justify the failure to appeal; whether there is an explanation for the delay; whether the other side was not seriously prejudiced by the delay; and whether the Appeal would have a reasonable chance of success if allowed to proceed.

Other factors the Court identified included whether the proposed Appeal raised a serious issue, whether the decision was a product of a misunderstanding of the law or misapprehension of the evidence, and whether there were good reasons why a full panel of the Court should review the Order under appeal.

In reviewing the facts, the Court found that the Applicant had no special circumstance that justified his failure to meet the deadline, although Justice Grosse accepted that there was a *bona fide* intention to appeal the Stay decision and that the Respondent was not seriously prejudiced.

Further, Grosse J.A. held that the Application did not have a reasonable chance of success. In

taking this position, the Court held that permission to review a single judge's decision is rarely granted and is only granted when there exist compelling reasons to require the parties to re-argue before a three-judge panel. The Court also held that the Applicant was unable to identify any error or issue in the Stay decision that would necessitate a further review by a panel.

Justice Grosse also noted that the interests of justice were a fundamental consideration in determining whether a further level of review is required. Denying the Application for permission to appeal, Grosse J.A. found that the Applicant failed to show how allowing a further review of the Stay decision would further the interests of justice.

On the issue of extending timelines for filing, Justice Grosse clarified that, while a Stay of the Court of King's Bench Order would prevent enforcement of the Order pending proceedings in the Supreme Court of Canada, the Court had no power to extend timelines for making an Application to the Supreme Court of Canada. The Application to extend timelines was therefore also dismissed.

REMINGTON DEVELOPMENT CORPORATION V ENMAX POWER CORPORATION, 2025 ABCA 402

(FRIESEN JA)

Rule 14.11 (How to Start a Cross-Appeal)

ENMAX Power Corporation ("ENMAX") applied for permission to appeal a Court of King's Bench decision that varied the Land and Property Rights Tribunal's compensation award under Section 25 of the Surface Rights Act. The underlying dispute concerned transmission lines crossing part of Remington Development Corporation's downtown Calgary lands. The Tribunal awarded a lump sum under Section

25(1)(b) tied to the parcels subject to the right of entry orders, plus annual amounts under Sections 25(1)(c) and (d). The Court of King's Bench took a different approach, awarding a larger lump sum under Section 25(1)(b) based on delayed recovery of market value for the entire assembled lands, and found no additional compensation was payable under Sections 25(1)(c) or (d).

Remington argued that if leave to appeal was granted to ENMAX, the Court should also grant leave for Remington to cross-appeal on Sections 25(1)(c) and (d). The Court refused that request because a cross-appeal under Rule 14.11 is premised on the respondent contending that the decision under appeal “should be varied.”

The Court held that Remington was not seeking any variance to the decision as it stood, and

that Remington’s concerns could be addressed within the Appeal itself on the proper interpretation of Section 25 as a whole. As a result, leave was granted only on the statutory interpretation issue about the scope of Section 25(1)(b), and leave was denied for Remington’s proposed cross-appeal and for ENMAX’s proposed challenges to factual findings.

TENG V ALBERTA (SENIORS, COMMUNITY AND SOCIAL SERVICES), 2025 ABCA 349

(ANTONIO JA)

Rules 14.23 (Filing Factums - Standard Appeals) and 14.64 (Failure to Meet Deadlines)

The Applicant sought to restore their appeal, which had been struck pursuant to Rule 14.64 due to a failure to file a factum within the appropriate time. The appeal was initially brought regarding the dismissal of the Applicant’s application for Judicial Review of a decision of the Citizen’s Appeal Panel.

Following the commencement of the initial appeal, the Applicant’s factum was to be filed on June 25, 2025. The Applicant requested, and was granted, several extensions for time to file their factum. The Applicant did eventually submit a factum but upon review of the submission, the Case Management Office determined that the materials were not acceptable pursuant to Rule 14.23 and the Applicant’s appeal was struck pursuant to Rule 14.64.

The Court considered the relevant case law, and in applying the test for restoring an appeal, Antonio J.A. looked to whether there was an

explanation for the Appellant’s actions and to the merits of the proposed appeal. The Applicant had provided no reasonable explanation for the defect which resulted in their appeal being struck. The Appellants pointed to the fact that they were relying upon their daughter for assistance in the proceedings, and that their daughter was not a lawyer.

The Court did not find this fact to be a reasonable explanation. The Court also held that appeal itself did not have merit, as the Applicant’s position was largely that there were additional documents which had not been submitted to the Court in the initial application for judicial review. The Court was not convinced that the documents in question would satisfy the test for the admission of new evidence, as the documents could have been adduced earlier and were of little relevance to the issues. As such, the Applicant’s application to restore the appeal was dismissed.

BANOVICH V BANOVIC, 2025 ABCA 388

(FAGNAN JA)

Rules 14.27 (Filing Extracts of Key Evidence), 14.28 (Record Before the Court) and 14.90 (Striking Material for Non-Compliance)

Pursuant to Rule 14.90, the Applicant applied for an Order striking all but two of the 36 items from the Respondent's Extracts of Key Evidence ("EKE"). The Applicant argued that the materials were not before the Trial court, constituted new evidence, or were irrelevant to the Appeal.

The Court began with Rule 14.28(1), which makes all evidence and exhibits received by the court appealed from part of the appellate record. The Court defined "new evidence" as any information discovered after the Decision or not filed in the lower court. Applying these principles, the Court struck various tabs of evidence, including unfiled discovery transcripts and unsworn exhibit book materials because they were not part of the original record.

On relevance, the Applicant relied on Rule 14.27(1) to contend that the vast majority of the EKE documents were irrelevant and would prejudice the Panel. The Court declined to pre-screen for relevance, noting that the Appeal panel would be able to determine relevance at the hearing and to disregard any immaterial references in the EKE or the factum.

Although the Applicant was partially successful, elevated Costs were refused. The Court accepted that the self-represented Respondent, who has significant language challenges, was attempting in good faith to follow directions she understood from the Case Management Officer. In the circumstances, each party was to bear their own costs of the application.

INTER PIPELINE LTD V TEINE ENERGY LTD, 2025 ABCA 368

(HAWKES JA)

Rules 14.37 (Single Appeal Judges), 14.48 (Stay Pending Appeal) and 14.75 (Disposing of Appeals)

Inter Pipeline Ltd. ("IPL") brought an Application under Rule 14.48(b) for an Order staying the ongoing proceedings in the Court of King's Bench, pending its Appeal from an interlocutory Decision refusing to compel Teine Energy Ltd. ("Teine") to produce additional documents. The underlying proceedings arose from IPL's Originating Application for leave to Appeal an arbitration award, scheduled to be heard on November 13-14, 2025 (the "Leave Application"). In preparation for the Leave Application, IPL

sought a production of documents it characterized as critical. Justice Feasby dismissed the production request (the "Production Decision"), and IPL appealed, with the Appeal set for November 10, 2025.

IPL sought to adjourn the Leave Application until the Appeal of the Production Decision could be heard. Justice Ho refused the adjournment (the "Adjournment Decision"), and IPL did not Appeal that ruling. Instead, IPL sought a Stay of the Leave Application pending resolu-

tion of the Appeal of the Production Decision (the “Stay Application”).

IPL argued that Rule 14.48 granted the Court jurisdiction to stay proceedings pending appeal, even where those proceedings did not flow from the specific decision under appeal. IPL submitted that Rule 14.48(b), permits a single Appeal Judge to halt underlying proceedings, notwithstanding the absence of an Appeal from the Decision allowing those proceedings to continue.

Teine opposed the Stay Application, asserting that Rule 14.48 only allows the Court to stay the consequences of the decision actually under appeal. Since IPL did not Appeal the Adjournment Decision, Teine argued that the Stay Application constituted a collateral attack, and that IPL could not obtain a Stay without first seeking leave to Appeal the Adjournment Decision.

Justice Hawkes accepted Teine’s position and found that the Stay Application to be an impermissible collateral attack on the Adjournment Decision. Hawkes J.A. affirmed that Rule 14.48 authorizes a stay only of the effects of the decision under appeal. As the Appeal from the Production Decision concerned an interlocutory ruling with “nothing to stay,” Justice Hawkes determined that Rule 14.48 could not be used to halt unrelated proceedings.

The Court rejected IPL’s reliance on *Denis v Sauvageau*, 2022 ABCA 166, noting the proceedings

stayed in that case flowed directly from the Order being appealed, unlike the Leave Application, which did not arise from the Production Decision. Justice Hawkes also held that *Dow Chemical Canada ULC v Nova Chemicals Corporation*, 2023 ABCA 262, similarly did not support IPL’s argument, as the stay in that case was granted under Rules 14.37 and 14.75, not Rule 14.48. Justice Hawkes emphasized that Rule 14.48 does not confer jurisdiction to interfere with proceedings governed by a judge whose decision had not been appealed.

The Court further held that even if jurisdiction existed, a stay would not have been warranted. Hawkes J.A. reiterated that the Court of King’s Bench controls its own process and that appellate intervention in scheduling matters should only occur in exceptional circumstances. The Court noted that the Adjournment Decision was the result of Justice Ho exercising his discretion after hearing from both parties. Moreover, Teine had confirmed that if the Appeal of the Production Decision remained largely undecided by the conclusion of oral argument in the Leave Application, it would consent to pausing those proceedings and would not argue that IPL was barred from advancing any issues at a later date.

Considering Teine’s assurances and the deference owed to case management decisions of Trial Judges, Justice Hawkes concluded that no basis existed for intervention. Accordingly, the Stay Application was dismissed.

THE TORONTO DOMINION BANK V MANAH, 2025 ABCA 321

(WATSON, PENTELECHUK AND FAGNAN JJA)

Rule 14.47 (Application to Dismiss an Appeal)

The Respondents filed an appeal of an Order dated May 13, 2025, dismissing their application for an extension of time to appeal the Order

of an Applications Judge dated March 10, 2025 (“Sale Order”), which granted the sale of the property to the Applicant. The Applicant

applied to dismiss the Appeal on the basis that it was moot, pursuant to Rule 14.74(b).

In considering whether to dismiss the appeal pursuant to Rule 14.74(b), the Court of Appeal considered the relevant case law on mootness. In doing so, the Court stated that an appeal is moot if it will not have the effect of resolving some controversy which affects or may affect the rights of the parties. A live controversy may no longer exist when the question before the Court has been eliminated due to subsequent events, when the decision would no longer have any practical effect on the rights of the parties, or where the practical relief sought is no longer available due to changes in either the factual or legal circumstances of the case.

The Court concluded the Appeal was moot as there were binding Court Orders confirming

that the Respondents were indebted to the Applicant and that the Applicant was entitled to foreclosure remedies. Since the Sale Order, the property had been sold to a third-party purchaser for value. The relief ultimately sought—undoing the Sale Order—was no longer available due to the subsequent sale and could not be practically reversed. Given this, the Appeal could not have any practical effect on the rights of the parties.

The Court declined to exercise its residual discretion to hear the appeal, notwithstanding it was moot, citing the Respondents' Arguments as being devoid of merit and thus, not of public importance.

BASNETT V JACK (BASNETT), 2025 ABCA 420

(FEEHAN JA)

Rules 14.47 (Application to Restore an Appeal), 14.64 (Failure to Meet Deadlines) and 14.65 (Restoring Appeals)

This was a decision on an Application to restore an Appeal under Rules 14.47 and 14.65. The Appeal was struck pursuant to Rule 14.64 when the Appellant's counsel attempted to file the Appeal Record on the last day, but it was rejected and the deadline was missed.

The Court reviewed its authority to order that [an appeal be restored under Rule 14.65 and the requirements to restore an appeal under Rule 14.47.

Referencing the case law, Feehan J.A. cited the applicable factors for consideration: (a) arguable merit to the appeal; (b) an explanation for the defect or delay which caused the appeal to be taken off the list; (c) reasonable promptness in moving to cure the defect and have the appeal

restored to the list; (d) intention in time to proceed with the appeal; and (e) lack of prejudice to the Respondents, including the length of delay. The Court reiterated that the factors are non-determinative and the test is discretionary.

The Court restored the Appeal. Under factor (b), although the last-minute filing was a "critical error" by counsel, it acknowledged this constituted an "explanation for the...delay" sufficient to meet the test. Under factor (c), Justice Feehan found the Applicant moved promptly to cure the defect. Though it took 10 days after the rejection to file the Application, the Court found this was reasonable, especially given the intervening long weekend. Under factor (e), the short delay posed no significant prejudice to the Respondents.

HDO V MDF, 2025 ABCA 367

(FRIESEN JA)

Rule 14.48 (Stay Pending Appeal)

The Appellant mother, MDF, sought a Stay pending Appeal of an Order that directed the children of the parties be returned to Alberta. The Appellant violated a prior Court Order by taking the children to Ontario without notifying the Respondent, which prompted the Order directing the children's return. The Respondent father, HDO, opposed the Stay Application.

Per Rule 14.48, Justice Friesen considered the test for a Stay pending Appeal in a case involving children, which required considering (1) whether there was a serious question to be determined; (2) whether the children would suffer irreparable harm resulting from granting or denying the Stay, in light of the best interests of the child; and (3) the balance of convenience and best interests of the children.

The Appellant argued that enforcing the Order before the Appeal was heard would endanger her life and health, and violate her section 7 rights pursuant to the *Charter of Rights and Freedoms* because returning to Alberta would prevent her access to life-sustaining medication and therapies. The Appellant also argued that enforcing the Order would cause serious risk to the children, claiming that the Respondent had outstanding sexual assault charges involving the

children and that he had a history of breaching Protection Orders. Conversely, the Respondent argued that the Appellant had a history of breaching Court Orders and making unfounded allegations, and that her personal health was irrelevant. He argued that there was no serious issue to be tried and that the children would not suffer irreparable harm by returning to Alberta as they had no medical needs justifying their continued stay in Ontario. Rather, they were harmed by the lack of schooling, stability, and contact with their father.

Although the first threshold may have been met, the Court determined that the Stay Application failed when considering the children's best interests and the irreparable harm they would suffer. The balance of convenience did not favour granting the Order. Friesen J.A. concluded that there was no justification for the children to remain in Ontario, emphasizing the Appellant's ongoing non-compliance with parenting orders, lack of evidence of harm to the children if returned to Alberta and the instability that would be caused by maintaining the current arrangement. The Appellant's health and financial challenges did not outweigh the children's best interests. The Application was dismissed.

INGRAM V ALBERTA, 2025 ABCA 376

(WOOLLEY JA)

Rule 14.58 (Intervenor Status on Appeal)

The Applicant sought permission to intervene in an Appeal brought by His Majesty the King in

right of Alberta ("Alberta") pursuant to section 5(1) of the *Class Proceedings Act*, SA 2003, c C-16.5

(the “Second Action”). The certified class in the Second Action seeks to recover losses incurred as a result of Orders issued pursuant to the *Public Health Act*, RSA 2000, c P-37 (the “*Public Health Act*”) during the COVID-19 pandemic that were later determined to be ultra vires.

In 2024, the Applicant brought a separate Action against Alberta claiming damages pursuant to the *Public Health Act* (the “First Action”). Alberta brought an Application to summarily dismiss the First Action. The decision of the Summary Dismissal Application is currently pending.

The Applicant sought to intervene in the Second Action because the outcome could impact the First Action and, from his perspective, his ability to access justice. In determining

if the Applicant should be permitted to intervene in the Second Action, Justice Woolley considered Rule 14.58(1) which permits a single Judge to grant a person status to intervene in an Appeal. The Court took notice of the fact that the power to allow intervenors is discretionary and should be exercised sparingly.

Woolley J.A. held that intervenors involved in similar litigation are sometimes allowed to intervene and the Applicant met that criteria. However, the Court was not satisfied that the Applicant would provide some expertise or fresh perspective on the subject matter such that the intervenor would be helpful in resolving the Appeal. Thus, Justice Woolley dismissed the Application and did not permit the Applicant to intervene in the Second Action.

ATB FINANCIAL V REAL INDUSTRIES 333 CORP, 2025 ABCA 397

(HO, DE WIT AND FAGNAN JJA)

[Rule 14.88 \(Cost Awards\)](#)

The Appellants appealed a Summary Judgment decision. The Appellants were wholly unsuccessful in the Appeal. Following the dismissal of the Appeal, the Parties advanced conflicting positions as to how the Court should deal with the costs of the Appeal.

Prior to the hearing of the Appeal, the Appellants had provided security for costs of the Appeal. The Appellants were of the position that the security should be returned to them in its entirety and that no costs ought to be paid to the Respondent due to the fact that the decision resulting from the Appeal was silent on the issue of costs. The Respondent was of the

position that, as the successful party, they were entitled to costs of the Appeal.

The Court considered Rule 14.88(1), which provides that unless otherwise ordered, the successful party in any appeal is entitled to a cost award against the unsuccessful party. While the decision resulting from the Appeal did not expressly order costs, it did not expressly dispense with the need for costs either. The Court held that this silence merely evidenced the intention that Rule 14.88 apply to the matter. As such, the Court held that the Respondent was entitled to Costs of the Appeal.

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