JSS BARRISTERS
Jensen Shawa Solomon Duguid Hawkes LLP

RULES

Jensen Shawa Solomon Duguid Hawkes LLP is pleased to provide summaries of recent Court Decisions which consider the Alberta Rules of Court. Our website, **www.jssbarristers.ca**, also features a fully functional Rules database, giving users full search capabilities of all past summaries up to, and including, our latest release. The interface now improves the user experience through the ability to search and filter summaries by Rule, Judges and Applications Judges and keywords.

Below is a list of the Rules (and corresponding decisions which apply or interpret those Rules) that are addressed in the case summaries that follow.

1.5 (cont)	**1832067 ALBERTA LTD V DOWCAR METALS INC,** 2025 ABCA 264
2.10	**ODO V JOHN DOE #1,** 2025 ABKB 67
	CHIEF ELECTORAL OFFICER OF ALBERTA V SYLVESTRE, 2025 ABKB 476
	WHITEFISH LAKE FIRST NATION #128 V ALBERTA (MINISTER OF ENVIRONMENT AND PROTECTED AREAS), 2025 ABKB 499
	CHIEF ELECTORAL OFFICER OF ALBERTA V SYLVESTRE, 2025 ABKB 552
2.23	**ATB FINANCIAL V 1719091 ALBERTA LTD,** 2025 ABCA 291
2.28	**SINGH V GLAXOSMITHKLINE INC,** 2025 ABKB 136
3.2	**BROWN V ALBERTA,** 2025 ABKB 495
3.8	**YU V UNIVERSITY OF ALBERTA,** 2025 ABKB 408
3.15	**BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR),** 2025 ABKB 158
	GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD, 2025 ABKB 373
	YU V UNIVERSITY OF ALBERTA, 2025 ABKB 408
	WHITEFISH LAKE FIRST NATION #128 V ALBERTA (MINISTER OF ENVIRONMENT AND PROTECTED AREAS), 2025 ABKB 499
3.16	**GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD,** 2025 ABKB 373
3.22	**YU V UNIVERSITY OF ALBERTA,** 2025 ABKB 408
3.35	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
3.43	**PIIKANI NATION V RAYMOND JAMES LTD,** 2025 ABKB 493
3.63	**PIIKANI NATION V RAYMOND JAMES LTD,** 2025 ABKB 493
3.68	**JBRO HOLDINGS INC V DYNASTY POWER INC,** 2025 ABKB 426
	HAGEN V WORKERS' COMPENSATION BOARD OF ALBERTA, 2025 ABKB 429
	ROYAL BANK OF CANADA V SIMMER, 2025 ABKB 432

3.68 (cont)	**CHIEF ELECTORAL OFFICER OF ALBERTA V SYLVESTRE,** 2025 ABKB 476
	PIIKANI NATION V MCMULLEN, 2025 ABKB 481
	OUELLETTE V MAY, 2025 ABKB 529
	TUHARSKY V O'CHIESE FIRST NATION, 2025 ABCA 267
	MIKISEW CREE FIRST NATION V ALBERTA, 2025 ABCA 304
3.72	**ROBERGE V REVERA INC,** 2025 ABKB 416
	MIKISEW CREE FIRST NATION V ALBERTA, 2025 ABCA 304
4.14	**INGRAM V ALBERTA,** 2025 ABKB 420
	RK V GSG, 2025 ABKB 524
4.15	**RK V GSG,** 2025 ABKB 524
4.22	**BAINS V ADAM,** 2025 ABCA 235
	STEPHENSON V STEPHENSON, 2025 ABCA 255
4.24	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
	MACDONALD V MACDONALD, 2025 ABKB 502
	BROKOP V 1378882 ALBERTA LTD, 2025 ABKB 477
	ZAWAWI V NAIM, 2025 ABKB 534
4.29	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
	JH DRILLING INC V BARSI ENTERPRISES LTD, 2025 ABKB 456
	BROKOP V 1378882 ALBERTA LTD, 2025 ABKB 477
	MACDONALD V MACDONALD, 2025 ABKB 502
	ZAWAWI V NAIM, 2025 ABKB 534
	HABIB V HABIB, 2025 ABCA 268
	DROOG V HAMILTON, 2025 ABCA 302
4.31	**TREETER V PRUDHON,** 2025 ABKB 435
	MCG CONSTRUCTION LTD V SHAHNI HOLDINGS LTD, 2025 ABKB 496
	1199096 ALBERTA INC V IMPERIAL OIL LIMITED, 2025 ABCA
4.33	**KALLIS V SCHIFFNER,** 2025 ABKB 443
	TREETER V PRUDHON, 2025 ABKB 435
	PIIKANI NATION V RAYMOND JAMES LTD, 2025 ABKB 493

4.33 (cont)	**MCG CONSTRUCTION LTD V SHAHNI HOLDINGS LTD,** 2025 ABKB 496
	1832067 ALBERTA LTD V DOWCAR METALS INC, 2025 ABCA 264
	CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2025 ABCA 290
5.2	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 466
	PIIKANI NATION V RAYMOND JAMES LTD, 2025 ABKB 493
5.10	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 466
5.25	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 466
5.27	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 540
5.36	**EWASHKO V HUGO,** 2025 ABKB 489
6.8	**SALAMH V ALBERTA HEALTH SERVICES,** 2025 ABKB 383
	BUYE V FISHER, 2025 ABKB 501
6.14	**SABIR V GILL,** 2025 ABKB 402
	ROYAL BANK OF CANADA V SIMMER, 2025 ABKB 432
	KENSINGTON PARK CAPITAL V FRANJON EXCAVATING, 2025 ABKB 441
	EGGER V 1994426 ALBERTA LTD, 2025 ABKB 533
6.28	**ODO V JOHN DOE #1,** 2025 ABKB 67
6.35	**ODO V JOHN DOE #1,** 2025 ABKB 67
7.2	**RODRIGUES V FORT MCKAY STRATEGIC SERVICES LP,** 2025 ABKB 414
	MAST V MAST ESTATE, 2025 ABKB 484
7.3	**GRAHAM V GRAHAM,** 2025 ABKB 329
	RODRIGUES V FORT MCKAY STRATEGIC SERVICES LP, 2025 ABKB 414
	ROYAL BANK OF CANADA V SIMMER, 2025 ABKB 432
	MAST V MAST ESTATE, 2025 ABKB 484
	PIIKANI NATION V RAYMOND JAMES LTD, 2025 ABKB 493
	OUELLETTE V MAY, 2025 ABKB 529

9.2	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
9.4	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
	ECCLES V ECCLES, 2025 ABCA 259
	KABIR V COMPLAINTS DIRECTOR (COLLEGE OF REGISTERED NURSES OF ALBERTA), 2025 ABCA 269
	ZAWAWI V NAIM, 2025 ABCA 278
9.6	**TEMPO ALBERTA ELECTRICAL CONTRACTORS CO LTD V MAN-SHIELD (ALTA) CONSTRUCTION INC,** 2025 ABCA 282
9.8	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
9.12	**MACDONALD V MACDONALD,** 2025 ABKB 502
9.13	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
	STEWART V SAUER, 2025 ABCA 305
9.15	**WEINRICH CONTRACTING LTD V WEINRICH,** 2025 ABKB 523
9.16	**GRANDISON V KAZAKAWICH,** 2025 ABKB 322
10.2	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
	KMK v JJW, 2025 ABKB 415
	DISTINCT REAL ESTATE USA 2, LP V WAZONEK, 2025 ABKB 451
	YI V MM, 2025 ABKB 483
10.4	**SINGH V GLAXOSMITHKLINE INC,** 2025 ABKB 136
10.29	**UBAH V UBAH,** 2025 ABKB 300
	GRANDISON V KAZAKAWICH, 2025 ABKB 322
	KMK v JJW, 2025 ABKB 415
	RAWANCO INC V 617271 SASKATCHEWAN LTD, 2025 ABKB 437
	1010805 ALBERTA LTD V SUNDIAL GROWERS INC, 2025 ABKB 439
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2025 ABKB 467
	MEG ENERGY CORP V ALBERTA (MINISTER OF ENERGY), 2025 ABKB 479
	GRAHAM V GRAHAM, 2025 ABKB 482
	YI V MM, 2025 ABKB 483

10.29 (cont)	**PRING V MAILLOUX,** 2025 ABKB 486
	ZAWAWI V NAIM, 2025 ABKB 534
10.30	**UBAH V UBAH,** 2025 ABKB 300
	ZAWAWI V NAIM, 2025 ABKB 534
10.31	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
	UBAH V UBAH, 2025 ABKB 300
	GRANDISON V KAZAKAWICH, 2025 ABKB 322
	SINGH V GLAXOSMITHKLINE INC, 2025 ABKB 378
	ONE PROPERTIES HOLDINGS CORP V TURTLE BAY INVESTMENTS LTD, 2025 ABKB 411
	KMK v JJW, 2025 ABKB 415
	1010805 ALBERTA LTD V SUNDIAL GROWERS INC, 2025 ABKB 439
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2025 ABKB 467
	BROKOP V 1378882 ALBERTA LTD, 2025 ABKB 477
	MEG ENERGY CORP V ALBERTA (MINISTER OF ENERGY), 2025 ABKB 479
	GRAHAM V GRAHAM, 2025 ABKB 482
	YI V MM, 2025 ABKB 483
	ZAWAWI V NAIM, 2025 ABKB 534
10.33	**SINGH V GLAXOSMITHKLINE INC,** 2025 ABKB 136
	MURRAY V WINDSOR BRUNELLO LTD, 2025 ABKB 299
	UBAH V UBAH, 2025 ABKB 300
	GRANDISON V KAZAKAWICH, 2025 ABKB 322
	SINGH V GLAXOSMITHKLINE INC, 2025 ABKB 378
	JUST BIOFIBER CORP V JUST BIOFIBER STRUCTURAL SOLUTIONS CORP, 2025 ABKB 407
	ONE PROPERTIES HOLDINGS CORP V TURTLE BAY INVESTMENTS LTD, 2025 ABKB 411
	KMK v JJW, 2025 ABKB 415
	RAWANCO INC V 617271 SASKATCHEWAN LTD, 2025 ABKB 437

10.33 (cont)	**1010805 ALBERTA LTD V SUNDIAL GROWERS INC,** 2025 ABKB 439
	DISTINCT REAL ESTATE USA 2, LP V WAZONEK, 2025 ABKB 451
	JH DRILLING INC V BARSI ENTERPRISES LTD, 2025 ABKB 456
	BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR), 2025 ABKB 463
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2025 ABKB 467
	BROKOP V 1378882 ALBERTA LTD, 2025 ABKB 477
	MEG ENERGY CORP V ALBERTA (MINISTER OF ENERGY), 2025 ABKB 479
	GRAHAM V GRAHAM, 2025 ABKB 482
	YI V MM, 2025 ABKB 483
	PRING V MAILLOUX, 2025 ABKB 486
	ZAWAWI V NAIM, 2025 ABKB 534
	ESTATE OF ASHLEY COLIN CONSTANT, 2025 ABKB 549
	CALGARY CO-OPERATIVE ASSOCIATION LIMITED V FEDERATED CO-OPERATIVES LIMITED, 2025 ABCA 249
	HABIB V HABIB, 2025 ABCA 268
10.34	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
10.37	**JUST BIOFIBER CORP V JUST BIOFIBER STRUCTURAL SOLUTIONS CORP,** 2025 ABKB 407
10.41	**MURRAY V WINDSOR BRUNELLO LTD,** 2025 ABKB 299
10.44	**UHUEGBULEM V TIMPANO,** 2025 ABCA 287
	WANG V ALBERTA HEALTH SERVICES, 2025 ABCA 288
10.49	**CAMBARERI V CAMBARERI,** 2025 ABKB 396
10.50	**CAMBARERI V CAMBARERI,** 2025 ABKB 396
10.51	**CAMBARERI V CAMBARERI,** 2025 ABKB 396
10.52	**ALBERTA (ELECTION COMMISSIONER) V HAYMOUR,** 2025 ABKB 442
10.53	**CAMBARERI V CAMBARERI,** 2025 ABKB 396

10.53 (cont)	**ALBERTA (ELECTION COMMISSIONER) V HAYMOUR,** 2025 ABKB 442
11.17	**BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR),** 2025 ABKB 158
12.41	**CAMBARERI V CAMBARERI,** 2025 ABKB 396
12.68	**YI V MM,** 2025 ABKB 483
12.69	**YI V MM,** 2025 ABKB 483
13.5	**GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD,** 2025 ABKB 373
	PIIKANI NATION V RAYMOND JAMES LTD, 2025 ABKB 493
13.6	**BURKE V BURKE,** 2025 ABKB 498
	EGGER V 1994426 ALBERTA LTD, 2025 ABKB 533
13.7	**PIIKANI NATION V NORTH PEIGAN,** 2025 ABKB 508
13.18	**MANCHESTER ROSE GROUP INC V RUTHERFORD SENIORS DEVELOPMENT LTD,** 2025 ABKB 491
13.41	**SABIR V GILL,** 2025 ABKB 402
14.1	**ZORBAWON V SALES,** 2025 ABCA 286
14.5	**MD V ALBERTA (DIRECTOR OF CHILD AND FAMILY SERVICES),** 2025 ABCA 245
	MACE V MACE, 2025 ABCA 250
	ECCLES V ECCLES, 2025 ABCA 259
	KABIR V COMPLAINTS DIRECTOR (COLLEGE OF REGISTERED NURSES OF ALBERTA), 2025 ABCA 269
	THE TORONTO DOMINION BANK V MONK, 2025 ABCA 277
	UHUEGBULEM V TIMPANO, 2025 ABCA 287
	WANG V ALBERTA HEALTH SERVICES, 2025 ABCA 288
	STEWART V SAUER, 2025 ABCA 305
	JUST BIOFIBER CORP V JUST BIOFIBER STRUCTURAL SOLUTIONS CORP, 2025 ABCA 307
	SILLIPHANT V SILLIPHANT, 2025 ABCA 317
14.8	**YI V MM,** 2025 ABKB 483
	ECCLES V ECCLES, 2025 ABCA 259
	THE TORONTO DOMINION BANK V MONK, 2025 ABCA 277

14.8 (cont)	**ATB FINANCIAL V 1719091 ALBERTA LTD,** 2025 ABCA 291
14.14	**RAYMOND JAMES LTD V KOSTIC,** 2025 ABCA 296
14.24	**RAYMOND JAMES LTD V KOSTIC,** 2025 ABCA 296
14.26	**RAYMOND JAMES LTD V KOSTIC,** 2025 ABCA 296
14.37	**GOVERNORS OF THE UNIVERSITY OF CALGARY V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER),** 2025 ABCA 253
	ECCLES V ECCLES, 2025 ABCA 259
	REFERENCE RE IMPACT ASSESSMENT ACT (CANADA), 2025 ABCA 289
	ATB FINANCIAL V 1719091 ALBERTA LTD, 2025 ABCA 291
	OUELLETTE V MCCANN, 2025 ABCA 309
	SILLIPHANT V SILLIPHANT, 2025 ABCA 317
14.47	**THE TORONTO DOMINION BANK V MANAH,** 2025 ABCA 275
	RAYMOND JAMES LTD V KOSTIC, 2025 ABCA 296
	JE V KE, 2025 ABCA
14.48	**SCHEFFELMAIER V SCHEFFELMAIER,** 2025 ABCA 237
	ZAWAWI V NAIM, 2025 ABCA 278
	BANOVICH V BANOVIC, 2025 ABCA 281
	ZORBAWON V SALES, 2025 ABCA 286
14.51	**KABIR V COMPLAINTS DIRECTOR (COLLEGE OF REGISTERED NURSES OF ALBERTA),** 2025 ABCA 269
14.58	**GOVERNORS OF THE UNIVERSITY OF CALGARY V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER),** 2025 ABCA 253
	REFERENCE RE IMPACT ASSESSMENT ACT (CANADA), 2025 ABCA 289
	OUELLETTE V MCCANN, 2025 ABCA 309
	PIIKANI V MCMULLEN, 2025 ABCA 315
14.59	**HABIB V HABIB,** 2025 ABCA 268
	DROOG V HAMILTON, 2025 ABCA 302
14.64	**RAYMOND JAMES LTD V KOSTIC,** 2025 ABCA 296
14.65	**JE V KE,** 2025 ABCA

14.67	**BAINS V ADAM,** 2025 ABCA 235
	STEPHENSON V STEPHENSON, 2025 ABCA 255
14.68	**BANOVICH V BANOVIC,** 2025 ABCA 281
	SILLIPHANT V SILLIPHANT, 2025 ABCA 317
14.75	**TRS V JVS,** 2025 ABCA 313
14.88	**MILOT LAW V SITTLER,** 2025 ABCA 241
	CALGARY CO-OPERATIVE ASSOCIATION LIMITED V FEDERATED CO-OPERATIVES LIMITED, 2025 ABCA 249
	HABIB V HABIB, 2025 ABCA 268
	KABIR V COMPLAINTS DIRECTOR (COLLEGE OF REGISTERED NURSES OF ALBERTA), 2025 ABCA 269
	TEMPO ALBERTA ELECTRICAL CONTRACTORS CO LTD V MAN-SHIELD (ALTA) CONSTRUCTION INC, 2025 ABCA 282
	UHUEGBULEM V TIMPANO, 2025 ABCA 287
	DROOG V HAMILTON, 2025 ABCA 302

UHUEGBULEM V TIMPANO, 2025 ABCA 287

(FETH J)

Rules 1.1 (What These Rules Do), 1.2 (Purpose and Intention of These Rules), 10.44 (Appeal to Judge), 14.5 (Test for Permission to Appeal) and 14.88 (Cost Awards)

In this matter, the Applicant sought permission to appeal an Order of the Court of King's Bench dismissing an Appeal from an Assessment Officer's decision, which was heard pursuant to Rule 10.44. The Assessment Officer quantified the full indemnity costs payable for a previous Application in the amount of $19,394.81.

The Applicant requested permission to Appeal to the Alberta Court of Appeal pursuant to Rule 14.5(1)(i). The Court departed from the four-part test for permission to Appeal, found in the former Rule 14.5(1)(e), to better respect the exceptional nature of second Appeals and the objectives of the simplified, timely, and economical process for assessments of costs awards contemplated by Part 10 of the Rules.

Instead, the Court clarified that, under Rule 14.5(1)(i), where the Appeal sought is from an Appeal decision of an Assessment Officer's decision, the Court is required to consider whether: a) there is a question of general or public importance that warrants another Appeal; b) there is a reasonable chance of success on Appeal; and c) the delay will not unduly hinder the progress of a related proceeding or cause undue prejudice to the simplified, timely and economical process contemplated for the Assessment of costs awards.

Applying the test to the facts of the matter, the Court concluded that the Applicant failed to demonstrate a question of general or public importance, a reasonable chance of success, or that another Appeal would not unduly prejudice the streamlined process for assessing costs.

Permission to Appeal was denied.

In respect of Costs, the Court awarded $5,500 as a lump sum Costs Award to the Respondent, pursuant to Rule 14.88(1), finding the Applicant's Application to be entirely without merit and part of a pattern of unreasonable litigation conduct that unnecessarily complicated a minor dispute. The Applicant's self-represented status did not excuse his misuse of Court resources, and the Court emphasized that all litigants must act responsibly and cost-effectively, given that the foundational principles found in Rules 1.1(2) and 1.2 apply whether a litigant is self-represented or represented by a lawyer. For these reasons, the scale of the Costs for the Appeal remained the same as the scale that applied to the Order appealed from, pursuant to Rule 14.88(3).

ATB FINANCIAL V 1719091 ALBERTA LTD, 2025 ABCA 291

(FETH JA)

Rules 1.1 (What These Rules Do), 1.2 (Purpose and Intention of These Rules), 2.23 (Assistance Before the Court), 14.8 (Filing a Notice of Appeal) and 14.37 (Single Appeal Judges)

The Applicants, Michael David Coe ("Mr. Coe"), 1719091 Alberta Ltd, Clearwater Radiator Inc., and Edgewood Products Inc. (the "Corporate Applicants"), sought an extension of time to appeal an Order restricting the Applicants from initiating steps in the lower Court Action (the "Restricted Access Order"). Their Application failed.

Mr. Coe was the owner of the Corporate Applicants. 1719091 Alberta Ltd. fell into arrears on debt repayment. On August 9, 2022, ATB Financial commenced the Action below against the Applicants seeking to collect on the debt. The Applicants were noted in default on November 8, 2022. On December 16, 2022, the Court below granted ATB Financial a Consent Judgment against the Applicants in the amount of $1,464,241.94. The Consent Judgment was not appealed.

Attempts to repay the debt involved the use of "Organized Pseudolegal Commercial Argument" ("OPCA") strategies, which were rejected by the lender, ATB Financial.

On July 30, 2024, the Court of King's Bench concluded that the Applicants had engaged in litigation misconduct, finding that Mr. Coe was "a participant in a broader OPCA-based enterprise or endeavor with a financial basis and objective: to use pseudolaw non-law to get money, eliminate debt, and/or frustrate debt collection": *ATB Financial v 1719091 Alberta Ltd*, 2024 ABKB 461 at para 27 (the "Restricted Access Reasons").

As a preliminary matter, the Court noted that Mr. Coe brought the Applications in his personal capacity and on behalf of the Corporate Applicants. He was not a lawyer and therefore could not represent a corporation pursuant to the *Legal Profession Act*, RSA 2000, c L-8. However, Rule 2.23(4) gives the Court discretion to grant a right of audience to any agent who is not a lawyer, to speak on behalf of a corporation. Mr. Coe was therefore granted a "limited right of audience for these applications".

Pursuant to Rule 14.8(2)(a), a notice of appeal must be filed within one month after the date of the decision being appealed, unless an enactment provides otherwise or the nature of the appeal first requires permission to appeal. The Restricted Access Order was granted on July 30, 2024, so the Applicants were required to file a notice of appeal by August 30, 2024. However, the Application to extend the time to appeal was filed on July 14, 2025, more than ten months after the deadline.

Rule 14.37(2)(c) allows a single appeal Judge to extend the time to appeal, when the Applicants show, among other things, that the failure to appeal was by reason of some special circumstance which excuses or justifies the failure, and that the appeal would have a reasonable chance of success if allowed to proceed.

Mr. Coe claimed that his status as a self-represented litigant caused the delay. It was found that the Applicants were provided with "measured guidance" from the Court below to "consult with a lawyer … prior to seeking leave to take steps" in the Action. The Applicants had the benefit of legal counsel early in the Action, and did not assert an inability to access legal advice to pursue an Appeal. Moreover, the

Court noted that deadlines under the Rules apply equally to self-represented and represented litigants, citing Rules 1.1(2) and 1.2.

The Applicants failed to demonstrate a *bona fide* intention to appeal within the required timeframe or special circumstances excusing the delay. Their arguments lacked merit, including claims about "authentication symbols", alleged Charter and *Alberta Bill of Right*s violations, and procedural unfairness.

Ultimately, the Applicants did not show that their proposed appeal had a reasonable chance of success, and the interests of justice were not served by granting the Applicants an extension of time to appeal the Restricted Access Reasons.

RAYMOND JAMES LTD V KOSTIC, 2025 ABCA 296

(FRIESEN JA)

Rules 1.1 (Foundational Rules), 14.14 (Fast Track Appeals), 14.24 (Filing Factums - Fast Track Appeals), 14.26 (Format of Factums), 14.47 (Application to Restore an Appeal) and 14.64 (Failure to Meet Deadlines)

Ms. Kostic applied to restore an Appeal that had been struck for non-compliance with filing requirements. The Appeal arose after the Case Management Judge denied her leave to apply for indemnification. The Application was brought under the fast-track process in Rule 14.14.

Under Rules 14.24 and 14.26, the Appellant's factum was due July 9, 2025, but was rejected for exceeding the permitted length and formatting. Although an extension to July 16, 2025 was granted, the Appellant yet again filed a non-compliant 30-page factum without further leave. The Appeal was automatically struck on July 17, 2025, pursuant Rules 14.24(1)(a) and 14.64(b).

Ms. Kostic applied within the three-month period allowed by Rule 14.47 to restore the Appeal. The Court held that restoration is discretionary and depends on the interests of justice, including merit, reason for default, promptness, intention, and prejudice. The Appeal lacked arguable merit as the indemnification issue had already been deferred to trial and repeatedly addressed in earlier decisions.

Citing Rule 1.1(2), the Court held that lack of legal knowledge or technical issues did not excuse non-compliance; the Rules apply equally to all litigants. Despite her promptness and lack of prejudice to the Respondents, Ms. Kostic failed to provide an adequate explanation or show merit. The Application to restore the Appeal was dismissed.

JH DRILLING INC V BARSI ENTERPRISES LTD, 2025 ABKB 456

(HARRIS J)

Rules 1.2 (Purpose and Intention of These Rules), 4.29 (Costs Consequences of Formal Offer to Settle) and 10.33 (Court Considerations in Making Costs Award)

This decision addressed the Costs associated with a previous ruling in *JH Drilling Inc. v Barsi Enterprises Ltd.*, 2025 ABKB 288. The Action involved a breach of contract claim and a counterclaim for misrepresentation. The Plaintiff applied for Summary Judgment on the claim and for Summary Dismissal of the counterclaim. Justice Harris, as Case Management Justice, dismissed the Application and awarded costs to the Defendant. The parties were unable to agree on the quantum.

The Defendant sought enhanced costs of $15,000 on account of the Statement of Claim exceeding $4 million. It argued the Court had wide discretion to award costs greater than the $6,750 prescribed by Column 5 of Schedule C as that amount would be inadequate in the circumstances. The Defendant had incurred significant time to contend the Plaintiff's materials, which were voluminous and unclear and unnecessarily complicated the Application.

The Plaintiff argued that costs of $4,725 were reasonable because the claim was for $560,000, not $4 million, as the Plaintiff made an offer to settle, along with several "concessions" prior to the Application. Therefore, the costs should be based on Column 3 of Schedule C. Further, the Plaintiff argued that the matter was not nearly as complex as alleged by the Defendant.

Justice Harris emphasized that a quantum determination is inherently discretionary and must be based on the principles of reasonableness, balance, fairness, and equity. The non-exhaustive list of factors under Rule 10.33 guides the discretion. Harris J. reiterated that the Defendant was entitled to a costs award in accordance with the default rule of being the party substantially successful. The Court acknowledged that parties are required to negotiate and attempt to reach a resolution as per Rules 1.2(2) and 1.2(3). However, pursuant to Rule 4.29, there are consequences if a party makes a reasonable offer that is not accepted by another. To trigger the cost consequences under Rule 4.29, the party who advanced an offer must demonstrate that it beat the offer at trial or at an application.

In determining the claim amount, the Court noted that while the Plaintiff purported to have advanced a settlement offer and "concessions", it failed to beat them and was entirely unsuccessful on its Application. Harris J. determined that the Costs Award should be based on the amount pleaded in the Statement of Claim, which fell under Column 5.

Justice Harris considered the factors under Rule 10.33 to determine whether the Costs Award under Column 5 should be enhanced. The Court found that the Plaintiff's manner of presentation for the Application was highly inefficient and rendered the Application far more complex than necessary, which required the Defendant to incur a significant amount of time to respond. Given this and Rule 1.2, the Plaintiff's conduct attracted some form of enhanced costs. However, the Court declined to use the Defendant's proposed measure for enhanced costs as it did not present any evidence to support its claim that defending the Application required more than 70 hours of counsel time. Harris J. applied a multiplier of two and awarded double Column 5 costs in the amount of $13,500.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 466

(NIXON ACJ)

Rules 1.2 (Purpose and Intentions of These Rules), 5.2 (When Something is Relevant and Material), 5.10 (Subsequent Disclosure or Records) and 5.25 (Appropriate Questions and Objections)

Sunstone Projects Ltd. and Wood Group Canada, Inc. (collectively, the "Wood Group") and ITP SA ("ITP"), applied to compel CNOOC Petroleum North America ULC ("CNOOC") to answer undertakings related to causation, negligence, and evidence disclosure in a pipeline failure dispute. CNOOC contended that the undertaking requests were unduly onerous, irrelevant, or unfounded, asserting it had already satisfied its disclosure obligations. Wood Group and ITP argued that the requested undertakings were relevant and necessary to narrow the issues and prepare their defences.

Associate Chief Justice Nixon outlined the disclosure principles under Part 5 of the Rules, emphasizing that the purpose of Rule 5.1 is to ensure evidence is available for Trial, narrowing of issues, promotion of early and efficient disclosure, and unnecessary delays or costs are avoided. Nixon A.C.J. noted that these principles stemmed from the foundational notion that lawsuits should be decided on their merits. Accordingly, all relevant and material records must be produced, and all relevant and material questions answered, whether favourable or not.

Nixon A.C.J. reviewed Rule 5.2, explaining that relevance and materiality extend to information that could reasonably assist in determining issues in the pleadings, or lead to disclosure of such evidence. The Court noted that the pleadings and the context and nature of the claim guide this analysis, and Rule 5.25 outlines which questions must be answered. Nixon A.C.J. distinguished between discoverable facts, which define the case to be met, and discoverable evidence, which reveals how the case will be proven. The Court also clarified that broad, compendious questions addressing entire paragraphs of pleadings need not be answered, but specific factual questions about individual allegations must be.

Associate Chief Justice Nixon ordered that all but two undertakings in the Wood Group's Application be answered. CNOOC objected to Undertaking 26, which sought confirmation of a new custodial email review, custodian identities, and search terms used, arguing it constituted an unduly onerous fishing expedition. Wood Group contended it was a targeted inquiry due to gaps in prior disclosure, but Nixon A.C.J. found no evidence of missing relevant materials and upheld CNOOC's refusal, while emphasizing that Rule 5.10 requires ongoing disclosure of relevant information.

Undertaking 707 sought information on how the project was to be funded after a certain date, based on information suggesting that no additional funding existed. CNOOC argued the request rested on a faulty premise, noting the cited documents included only a draft supplemental funding request explaining expected cost overruns. The Court agreed, finding the inquiry based on an inaccurate assumption and ruling that Undertaking 707 need not be answered.

Regarding ITP's Application, Associate Chief Justice Nixon ordered that all but three of the undertakings be answered. Undertaking 771, which asked CNOOC to review its records for any indication of ITP's training deficiencies, was contested. ITP argued it was necessary for the negligence claim, but CNOOC refused, citing irrelevance, expert evidence suitability, and protection of legal strategy. The Court agreed,

ruling CNOOC need not respond as the request exceeded factual discovery and intruded on litigation strategy.

For Undertaking 779, a five-part question regarding pipeline operations in Muskeg, Nixon A.C.J. ordered that three components, which asked about how the Muskeg statements indicated safe operation, whether employees relied on them, and whether CNOOC received confirming information, did not need to be answered. CNOOC argued that the questions improperly sought legal strategy, and the Court agreed, finding them inappropriate, overly broad, and beyond a request for factual information.

Lastly, Undertaking 786 asked CNOOC to review records and advise whether it had any information suggesting that ITP's stress analyses of pipe-in-pipe components were incorrect, incomplete, or inaccurate, and to identify related records. ITP argued that the inquiry was necessary to understand the case it had to meet, while CNOOC contended it effectively sought an expert opinion, which was improper, not material, and irrelevant. The Court determined that CNOOC was justified in refusing to answer due to the use of the term "suggests" which required an opinion, going beyond factual information. Consequently, CNOOC was not required to answer Undertaking 786.

DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2025 ABKB 467

(ROMAINE J)

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

The Plaintiff, Dow Chemical Canada ULC ("Dow Chemical") applied for full indemnity Costs as follows: $81,209,968.31 for solicitor-and-own-client costs; $5,878,623.84 for experts and other disbursements; and $64,784,451.89 for experts outside of Canada. The Defendant, NOVA Chemicals Corporation ("NOVA") argued that Costs should be submitted to an Assessment Officer for a reasonableness determination.

This litigation was extremely complex and costly, and included a Trial spanning seven months. The Court of King's Bench found that NOVA deliberately breached its contractual duties, engaged in conversion, and committed gross negligence and wilful misconduct. On Appeal, NOVA's breaches and liability were affirmed, but the case was remanded to Trial to recalculate damages. Ultimately, Dow was awarded damages in the amount of $3.5 billion dollars.

Following Rules 10.29 and 10.31, Justice Romaine held that Dow was entitled to Costs for its successful claims and that a manipulation of column 5 of Schedule C of the Rules would not be appropriate in the circumstances. Instead, Romaine J. held that a lump sum Costs award was appropriate.

Further, the Court held that a reasonableness assessment was not required given Rule 1.2 but, regardless, Dow's costs were reasonable. Justice Romaine agreed with NOVA that since the liability for Costs was contractually based, the factors under Rule 10.33 did not apply to solicitor-and-own-client Costs. However, Rule 10.33 applies to the reasonableness rest. After applying factors (f) through (j) of Rule 10.33,

the Court held that NOVA's pattern of litigation conduct created unnecessary cost and delay that should factor into a Costs decision.

Dow provided the Court with a breakdown of its legal fees in a format that mirrored the one accepted by the Federal Court and the Federal Court of Appeal. NOVA objected, because the amounts claimed were unsubstantiated and did not include the details of what work was completed, or at what rate. Romaine J. held that the form of disclosure provided was appropriate and sufficient for litigation between sophisticated parties. The Court also held that Dow is entitled to its disbursements, costs associated with discovery, costs of online research, and costs of out of country counsel. Further, Justice Romaine held that travel expenses for out-of-town experts was recoverable. Romaine J. also held that costs incurred between the conclusion of the Trial and the date of the Decision were recoverable given the magnitude of the case and the likelihood of further hearings. The Court emphasized that the total Costs claimed were less than 4% of the total damages awarded and that Dow did not claim for recovery of legal services for in-house counsel.

PIIKANI NATION V MCMULLEN, 2025 ABKB 481

(MARION J)

Rules 1.2 (Purpose and Intention of these Rules), 1.4 (Procedural Orders), 1.5 (Rule Contravention, Non-Compliance and Irregularities) and 3.68 (Court Options to Deal with Significant Deficiencies)

This decision arose from a larger set of Actions case managed by Justice Marion. As Case Management Justice, Marion J. implemented a detailed Fiat request process to manage requests for Court relief. In that process, the parties required permission before they could bring an Application in the case managed Actions ("Fiat Requests").

During a Fiat Request by one of the parties, Justice Marion addressed the authority under the Rules for considering Fiat Requests in the case managed Actions. The purpose of the Fiat Request process was to pre-screen proposed Applications, in an attempt to ensure the case managed Actions could be "fairly and justly resolved in or by a Court process in a timely and cost-effective way", as contemplated by Rule 1.2. Justice Marion held that the Court's jurisdiction to implement this form of process is found in its inherent jurisdiction to control its own process, its inherent jurisdiction to manage Actions, and the Rules generally. The Court may decide not to exercise its discretion to grant a Fiat Request for many reasons, and based on a number of factors, including, among others, if the proposed Application has one or more of these characteristics:
(1) It is contrary to law: Rule 1.4(2)(b)(i);
(2) It seeks relief that the Court has no jurisdiction to grant: Rule 3.68(2)(a);
(3) It is or constitutes an abuse of process: Rules 1.4(2)(b)(ii), 3.68(2)(d);
(4) It is frivolous, irrelevant or improper (or is for an improper purpose): Rules 1.4(2)(b)(iii) and 3.68(2)(c);
(5) It is in contravention or non-compliance with a Rules, Court Order or direction: Rule 1.5(1)(b);
(6) It discloses no reasonable basis for a remedy or relief: Rule 3.68(2)(b); or
(7) It seeks to add claims that do not disclose a reasonable claim, or a "true, new, viable cause of action": Rule 3.68(2)(b).

PIIKANI NATION V RAYMOND JAMES LTD, 2025 ABKB 493

(MARION J)

Rules 1.2 (Purpose and Intention of these Rules), 3.43 (How to Make Claim Against Co-Defendant), 3.63 (Identifying Amendments to Pleadings), 4.33 (Dismissal for Long Delay), 5.2 (When Something is Relevant and Material), 7.3 (Summary Judgment) and 13.5 (Variation of Time Periods).

This Action was a part of a larger set of actions (the "Case Managed Actions") for which Justice Marion serves as the Case Management Justice ("CMJ"). All parties filing application in the Case Managed Actions were required to obtain the CMJ's permission through the Fiat Process. This Decision addressed numerous Fiat Requests in four related actions.

One of the Defendants, Liliana Kostic ("Ms. Kostic"), sought permission to apply to strike numerous paragraphs in an Amended Statement of Claim ("ASOC") of Piikani Nation ("Piikani"), arguing that unauthorized modifications, including corrected typos, meant Piikani failed to comply with Rule 3.63, which required all amendments to be identified. Justice Marion refused permission. Since Piikani previously sought the Court's approval to make amendments in 2018, Marion J. found Ms. Kostic's request to be an abusive attempt to relitigate the 2018 Court Order. The Court also noted that the request would cause unnecessary delay and expense, inconsistent with Rule 1.2.

Ms. Kostic also sought permission to file a Notice to Co-Defendant against Raymond James ("RJL") for contribution or indemnity. Because Rule 3.43 requires a notice claiming contribution to be filed and served within 20 days after the defendant files their statement of defence, and that window had passed, leave was required under Rule 13.5. The CMJ granted permission to for the leave Application, noting that factors such as the length and reason for the delay, potential prejudice, the merits of the claim, and the stage of the Action would need to be considered by the Judge hearing the Application within the Rule 13.5 framework.

Ms. Kostic further sought permission to apply for Summary Dismissal of all or part of an Action against her pursuant to Rule 7.3(1)(b) ("no merit"). Permission was refused. The Court found that it could not fairly resolve the matter summarily because issues such as fiduciary duty, contractual limitations, and concurrent personal liability raised genuine issues requiring a Trial, and pursuing a summary process would be disproportionate and inefficient under Rule 1.2. Marion J. remarked that it is far more expedient to move the matter to Trial.

Finally, for particulars, undertakings, interrogatories, and records, Marion J. allowed discovery-related Fiats but required strict discipline under Rule 5.2: requests must be confined to what was "relevant and material", supported by precise schedules identifying each outstanding undertaking/interrogatory and the response status, and proven by evidence-only Affidavits (not omnibus argument). Existing discovery/expert deadlines were vacated so the parties could propose a consolidated plan and address Trial setting, consistent with Rule 1.2.

The Court noted that substantially successful parties are entitled to Costs and confirmed specific cost entitlements for each Fiat Request. Justice Marion's decision applied various Rules, particularly emphasizing Rule 1.2 for efficiency and proportionality.

MCG CONSTRUCTION LTD V SHAHNI HOLDINGS LTD, 2025 ABKB 496

(LEMA J)

Rules 1.2 (Foundational Rules), 4.31 (Delay in Action) and 4.33 (Dismissal for Long Delay)

This was an Appeal of a decision of an Applications Judge who directed that MCG Construction Ltd.'s Application for Summary Judgment and Shahni Holdings Ltd.'s Application for Dismissal for Delay be heard together. Justice Lema found that the Applications Judge erred, and the Delay Application should proceed first.

The Court held that hearing the Delay Application first was consistent with the purpose of Rule 1.2, which is to ensure that matters are resolved fairly, justly, and in a timely and cost-effective manner. A successful Dismissal Application would end the Action, thus avoiding wasted time and the expense of preparing for the Summary Judgment Application. The Court emphasized this approach aligned with Rule 1.2(2)(b), which promotes the quickest and least expensive means of resolving a claim.

Justice Lema noted that Shahni had arguable positions under both Rules 4.31 and 4.33. Rule 4.31 allows a defendant to seek dismissal where significant prejudice arose from the delay, and Rule 4.33 requires dismissal where no significant advance has occurred within three years unless exceptions apply. The Court accepted that Shahni's arguments were not frivolous and that its claims of prejudice following the death of its principal warranted consideration.

The Court also clarified that the filing of an application to dismiss for delay did not automatically bar all further steps in the litigation under Rule 4.33. Rule 4.33(2)(b) expressly contemplates that subsequent steps or participation by the defendant may justify the continuation of an action. Accordingly, the Court rejected the interpretation that the mere filing of a delay application froze the proceeding.

The Appeal was allowed. The Court directed that Shahni's Delay Application proceed first as a stand-alone application. It also stayed further steps in the Summary Judgment Application until the delay issue was resolved, and awarded Shahni Schedule C costs.

GRAHAM V GRAHAM, 2025 ABKB 329

(NEUFELD J)

Rules 1.4 (Procedural Orders) and 7.3 (Summary Judgment)

This legal dispute centered around a longstanding familial disagreement regarding the rightful ownership of a ranch (the "Graham Ranch"). The Applicant, the Estate of William Graham, applied for Summary Dismissal of the Statement of Claim filed against it (the "Claim"). The Applicant argued that the Claim was statute barred pursuant to the *Limitations Act*, RSA 2000, c L-12. In the alternative, the Applicant sought dismissal on the basis that the Claim disclosed no reasonable cause of action or was an abuse of process.

The Respondent, the Estate of John Graham, filed the Claim the morning of a hearing to deal with the partition and sale of the Graham Ranch. The filing of Claim delayed the hearing, and the Respondent sought a Declaration that the descendants of John Graham were the sole owners of the Graham Ranch.

In determining the Application for Summary Dismissal, Justice Neufeld considered Rule 7.3(1). On summary dismissal applications, the Court must determine if it can decide the merits of the application on the current evidentiary record as per the framework set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd,* 2019 ABCA 49.

Applying this approach, Neufeld J. held that it is possible to resolve the dispute on a summary basis. The limitations issues were straightforward. The Claim was out of time and as such had no prospect for success at Trial. Despite this determination, the Court went on to consider if the Claim should be dismissed for other reasons.

Justice Neufeld determined that the Respondents failed to put their best foot forward when they advanced their proprietary estoppel claim. Specifically, Neufeld J. held that the Respondents faced evidentiary obstacles, for example a heavy reliance on hearsay evidence in establishing the first element of proprietary estoppel (a representation or assurance on the basis of which the claimant expects to enjoy a right or benefit over property) and that these obstacles would not be overcome at Trial. The Court also held that the Respondent's claim of unjust enrichment had no prospect for success and must be dismissed.

Finally, Justice Neufeld considered the Court's discretionary authority to set aside any process that is an abuse of process pursuant to Rule 1.42(b)(ii). The Applicants claimed that the filing of a Claim the morning of a hearing was an abuse of process. While Neufeld J. called this "desperate" the Court did not agree that it was an abuse of process.

Ultimately, the Claim was dismissed with costs awarded to the Applicant.

SABIR V GILL, 2025 ABKB 402

(JUGNAUTH J)

Rules 1.4 (Procedural Orders), 1.5 (Rule Contravention, Non-Compliance, and Irregularities), 6.14 (Appeal from Applications Judge's Judgment or Order) and 13.41 (Authority of Court Clerk)

The Application concerned an Appeal from the decision of an Applications Judge which granted an Order backdating the Respondent's Statement of Claim by one day to fit within the limitation period. The Appellant argued the Applications Judge erred because the Respondent had failed to meet the prerequisites of Rule 1.5 and had caused the Appellant irreparable harm. The Respondent took the position that the Court had inherent jurisdiction to make their decision and that the Appellant experienced no prejudice as a result.

As the Application was an Appeal from an Applications Judge pursuant to Rule 6.14, the Court noted that the Application would be heard *de novo*. Justice Jugnauth held that while Rule 1.5 can be used to cure issues of non-

compliance with requirements, the present case was not a situation where Rule 1.5 could be invoked. The Respondent did not seek to cure their non-compliance within reasonable time, and the effect of backdating the Statement of Claim was significantly prejudicial to the Appellant, as it deprived them of the right to claim statutory immunity. As such, Rule 1.5 could not appropriately justify the backdating of the Statement of Claim.

The Respondent argued that Rule 1.4 was applicable as it permits the Court to extend the time for doing anything in the proceeding unless specifically limited by the Rules. Jugnauth J. held that Rule 1.4 does not allow the Court to override the limitation periods provided by the *Limitations Act*, RSA 2000, c L-12 without express legislative permission to do so.

The Appeal was granted, and the Applications Judge's decision was overturned.

ROBERGE V REVERA INC, 2025 ABKB 416

(HOLLINS J)

Rules 1.4 (Procedural Orders) and 3.72 (Consolidation or Separation of Claims and Actions)

The Applicant, who was the representative Plaintiff in a proposed class action proceeding, applied for a stay of proceedings pending the outcome of two other similar and more advanced class actions. The proposed class action sought damages for alleged negligence in the operation of the McKenzie Towne Continuining Care Centre during the COVID-19 pandemic. The Respondents (the "Defendants") opposed the stay, arguing they would be prejudiced by delay.

Justice Hollins noted that the authority to grant a stay is found in Rules 1.4(2)(h), 3.72(1)(c) and 3.72(2). Hollins J. cited *Alberta v AUPE*, 1984 ABCA 130 for the test for a stay of a class action proceeding, which requires the Court to consider (1) whether the issues in the other actions are substantially similar; (2) whether denying the stay would be oppressive, vexatious, or abusive; and (3) whether granting the stay would cause injustice to the non-moving party. The purpose behind granting a stay is generally to maximize the efficient use of the Court and party resources.

Hollins J. found that the issues in the two other class action proceedings were substantially similar to those in this case, particularly regarding negligence and gross negligence. Although the Applicant's claim included additional causes of action, the statutory immunity under the *COVID-19 Related Measures Act*, SA 2021, c C-31.3 might limit the claims to gross negligence, aligning them with the other actions. Justice Hollins was also in agreement with the Applicant that the proceeding of this Action in parallel with the two other actions would be inefficient and unjust, as the outcomes of the trials in the other actions could significantly streamline or resolve the issues in this Action.

The Court further determined that it would not be unjust to the Defendants to grant the stay, as a stay would avoid duplicative proceedings. The Defendants did not demonstrate significant prejudice as they would not be required to await the completion of the individual trials of damages, just the findings on the common questions. Justice Hollins also noted that the Defendants had not actively pursued a timely

resolution of the case since 2021 when it was commenced. The Court granted the Application, imposing a stay on proceedings until a decision on the common issues in either of the other two class actions.

1832067 ALBERTA LTD V DOWCAR METALS INC, 2025 ABCA 264

(SLATTER, KIRKER, AND GROSSE JJA)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities) and 4.33 (Dismissal for Long Delay)

The Appellant applied for a determination of whether a possessory lien survived after the Court dismissed the related debt Action for long delay, pursuant to Rule 4.33.

The Appellant, AB Logistics, stored pipe for the Respondent, Dowcar Metals Inc. ("Dowcar"), at two leased storage facilities. A dispute arose when AB Logistics asserted a possessory lien over the pipe for unpaid storage fees. In 2015, AB Logistics commenced a debt Action and concurrently defended a Replevin Action brought by Dowcar seeking return of the pipe. Both Actions stalled after 2018.

In 2022, Dowcar successfully applied to dismiss the debt Action pursuant to Rule 4.33 and sought an Order for the release of the pipe. AB Logistics argued that the request for release amounted to post-delay participation sufficient to preclude dismissal under Rule 4.33(2)(b). It also submitted that the expiry of the limitation period did not extinguish the debt itself or its right to retain possession.

The Applications Judge rejected those arguments, and that decision was upheld by a Chambers Judge, who found that the dismissal of the debt Action also extinguished the possessory lien. AB Logistics appealed further, maintaining that Dowcar's request for release constituted strategic post-delay participation and that its lien survived as a defence, not a cause of action.

The Majority (Slatter and Kirker J.J.A.) dismissed the Appeal. The Court found that Dowcar's request did not significantly advance the Action or trigger Rule 4.33(2)(b). Post-delay procedural steps arising from, or collateral to, dismissal do not constitute material participation. The dismissal eliminated AB Logistics' pleaded claims for judgment on the debt, lien-based priority, and an Order for sale of the pipe. It also rendered continued possession unnecessary under a prior Order. The request for release was therefore a natural consequence of the dismissal—not conduct that could reasonably be viewed as waiving delay.

The Court also rejected AB Logistics' alternative argument that Dowcar's request amounted to an abuse of process. AB Logistics argued that seeking the return of the pipe through the debt Action was duplicative of relief sought in the Replevin Action and an improper attempt to avoid the consequences of Dowcar's delay in prosecuting that claim. The Court disagreed. The overlapping Actions had run in parallel since 2015, and while duplicative litigation may, in some cases, be abusive, the time for objection had long passed. The Court noted that a multiplicity of proceedings is not necessarily abusive, and referred to Rule 1.5(2) and the Supreme Court's guidance in *Saskatchewan (Environment) v Métis Nation–Saskatchewan*, 2025 SCC 4.

Appeal Justice Grosse dissented and would have allowed the Appeal and reinstated the lien, finding that Dowcar's use of the debt Action to obtain the release Order amounted to strategic participation. Grosse J.A. emphasized that procedural fairness does not permit a party to secure the benefits of an Action while simultaneously seeking its dismissal.

ODO V JOHN DOE #1, 2025 ABKB 67

(NIELSEN ACJ)

Rules 2.10 (Intervenor Status), 6.28 (Application of this Division) and 6.35 (Persons Having Standing at Application)

The Applicant, the Criminal Trial Lawyers' Association (the "CTLA"), applied to intervene in a Restricted Court Access Application (the "Application") brought by the Defendant police officers. The underlying Action stemmed from allegations by the Plaintiffs that the Defendants' negligence contributed to the wrongful death of Mathios Arkangelo after a fatal police shooting. The Defendants sought the Application after receiving online death threats and intended to assert confidential information privilege over the sources of those threats.

The CTLA asserted that intervenor status could be granted to them pursuant to either Rule 6.35(b) or Rule 2.10. Nielsen A.C.J. stated that Rule 6.35 was the governing provision, as it applied specifically to Restricted Court Access Applications brought under Rule 6.28, whereas Rule 2.10 dealt with interveners in an Action more broadly. The Court relied on the principle of *generalia specialibus non derogant* to confirm that the more specific Rule 6.35 prevails over the general discretion conferred by Rule 2.10 in this context.

Rule 6.35 involves a two-step analysis. First, the Court must characterize the subject matter of the proceedings. Second, it must determine what interest, if any, the proposed intervenor has in the proceeding. Rule 6.35 identifies two categories of persons who may be granted standing: those served with or given notice of the Application, and those who "claim to have an interest" in the proceeding. The CTLA fell under the latter category, requiring the Court to assess whether it had a sufficient interest under common law principles.

An "interest" under Rule 6.35 is assessed by considering whether the proposed intervenor will be specially affected by the outcome, and whether it brings special expertise or insight to the issues raised. Other relevant factors include whether the proposed intervenor's interest is already adequately represented by existing parties, whether intervention would cause delay or prejudice, and whether it would unduly broaden the proceeding or politicize the dispute.

The Court first characterized the Application as a narrow request to anonymize the names of four individual police officers. While the CTLA framed its interest as rooted in broader concerns about police accountability, the Court found that the Application itself did not raise issues of police accountability. The officers' institutional affiliation with the Edmonton Police Service was not being concealed, and the facts of the shooting would be adjudicated publicly in the underlying Action. As such, the Court found the anonymization request did not engage the broader public interest the CTLA sought to assert.

Secondly, the CTLA argued that it would be specially affected by the outcome because the Application could lead the Court to develop a novel framework with precedential impact on future cases involving police accountability. The Court rejected this argument, holding that the legal tests applicable to restricted Court access Orders and to claims of confidential informant privilege were already well-established in the jurisprudence. The Application did not require the creation of new law.

Lastly, while the CTLA's work had an important role in ensuring that police conduct themselves within the confines of the law, the Court found that it did not bring any fresh insight or specific expertise in the context of this Application. The parties were already represented by experienced counsel, and the media had been given notice and intended to participate, thereby ensuring robust representation of the open Court principle. The CTLA's proposed contribution risked duplicating existing arguments, complicating the issues, and causing unnecessary delay. Its suggested framework merely reiterated and blended existing legal tests without offering substantive value to the Court's analysis.

In conclusion, the Court denied the CTLA's Application to intervene pursuant to Rule 6.35.

CHIEF ELECTORAL OFFICER OF ALBERTA V SYLVESTRE, 2025 ABKB 476

(FEASBY J)

Rules 2.10 (Intervenor Status) and 3.68 (Court Options to Deal with Significant Deficiencies)

This was an Application by Mitch Sylvestre (the "Referendum Proponent") to strike a statutory Reference brought by the Chief Electoral Officer (the "CEO") under the *Citizen Initiative Act*, SA 2021, c C-13.2 (the "*CIA*"). The Court was asked to decide how the Rules apply in the Reference context and whether the CEO's Reference should be removed at the threshold stage.

The Court held that Rule 3.68 governs striking but must be adapted for a statutory Reference. The standard remains a high one. The moving party must show it is plain and obvious that the proceeding will fail or that it is frivolous, improper, or an abuse of process. Because a Reference is not ordinary, pleadings-based litigation, the analysis targeted the question referred rather than pleaded facts. The proper inquiries are whether the question stated is a legal question suitable for judicial determination, whether the answer is so clear that no hearing on the merits is required, and whether the Reference or the way it has been framed is an abuse of process.

Applying that framework, the Court found the CEO complied with the *CIA* by stating a legal question for the Court rather than pleading facts. The central question, of whether the constitutional referendum proposal contravened sections 1 to 35.1 of the *Constitution Act, 1982*, was a legal question within judicial competence. It was not plain and obvious that the proposal was constitutional. On the record, a full hearing was required. The prematurity and abuse arguments failed because the timing of a Reference was set by the statute and the Reference occurred at the Application stage by legislative design, not as a matter of executive preference.

Justice Feasby also addressed intervention under Rule 2.10. Although intervenors are uncommon in the Court of King's Bench, the Rule permits the Court to grant status and set terms for participation. Applying the Court of

Appeal criteria, Feasby J. focused on whether the proposed intervenor had a direct and significant interest or could offer a useful perspective or expertise that would assist the Court, while ensuring the proceeding remained efficient and would not expand unduly. The Court noted that evidence is not typically received on a Reference, but it may be permitted where it would assist, for example from First Nations on asserted Aboriginal and treaty rights.

The Court noted that the strike Application proceeded in a largely non adversarial posture. In such circumstances the Applicant bears a heightened burden to address potential contrary arguments because the Reference raised issues of broad public importance. On the adapted Rule 3.68 analysis, and given the statutory scheme that empowered and timed the Reference, the motion to strike was dismissed and the matter was permitted to proceed.

WHITEFISH LAKE FIRST NATION #128 V ALBERTA (MINISTER OF ENVIRONMENT AND PROTECTED AREAS), 2025 ABKB 499

(OVIATT J)

Rules 2.10 (Intervenor Status) and 3.15 (Originating Application for Judicial Review)

The Applicant sought to strike the Respondent's application for Judicial Review due to the fact that the Applicant was not served as a "directly affected" person or body as required by the Rules. In the alternative, the Applicant sought to be granted status as an intervenor to the Judicial Review.

The Respondent applied for Judicial Review with respect to a decision made by His Majesty the King in Right of Alberta for refusing to negotiate for the Respondent to access a certain area. The Applicant was a third-party First Nation that had a separate agreement for access to the area in question.

The Court considered Rule 3.15, which requires that an originating application for judicial review be served on every person or body directly affected by the application. Rule 3.15 is mandatory and applied strictly. In canvassing the meaning of "directly affected" under Rule 3.15, Justice Oviatt noted that relevant considerations often include contractual and economic relationships or ownership rights.

The Court held that while the Applicant would be directly affected if the Respondents were granted access to the lands in question due to their own contractual rights of access, this was not the issue being addressed in the Judicial Review. Rather, the Court was being called to review the decision of the Crown refusing to negotiate for the Respondent to access the lands. The decision of whether to negotiate did not affect the Applicant and as such there was no requirement for them to be served with the Judicial Review.

In considering the Applicant's alternative relief, the Court noted that the standard for determining whether a party is directly affected is lower than for granting standing - including standard as an intervenor under Rule 2.10. The Court noted that the Applicants did not meet any of the requisite criteria. For the same reasons that the Applicant was not directly affected by the Judicial Review, they would not be directly or significantly affected by the outcome of the proceedings and would not be

in a position to provide any special expertise of fresh perspectives on the matter.

As such, the Court dismissed the Applicant's application in its entirety. There was no requirement for the Applicant to be served with the Judicial Review and they were not entitled to intervener status.

CHIEF ELECTORAL OFFICER OF ALBERTA V SYLVESTRE, 2025 ABKB 552

(FEASBY J)

Rules 2.10 (Intervenor Status) and 6.8 (Questioning Witness Before Hearing)

Six parties sought to intervene in a referendum proposal regarding Alberta's independence. Five parties were First Nations groups who thought the result of the proceeding may affect their Aboriginal and Treaty Rights. The sixth proposed intervenor was a proponent of a revival referendum.

The Applicant opposed the First Nation intervenors on the basis that their rights were not affected by the referendum proposal and that the individual First Nations lacked blanket authority to represent Treaty 6 and Treaty 8. The Court held that whether the proposed intervenors were affected would have to be determined on the merits of a hearing and noted that no First Nation had come forward to oppose the Applications to intervene on behalf of Treaty 6 and Treaty 8.

Feasby J. considered Rule 2.10, which permits the Court to grant Intervenor status. Justice Feasby advised that Rule 2.10 must be read as permitting the Court the allow intervenors to file evidence where appropriate. Evidence from an intervenor in a public interest case is appropriate where it is relevant and material to the dispute, and not duplicative of evidence from other intervenors.

Justice Feasby ultimately permitted the Applications from the First Nations intervenors, holding that the case could not be decided without them. The Court noted that the intervenors would not cause delay or widen the dispute. The First Nations intervenors were encouraged, but not required, to communicate with one another to attempt to reduce any duplication of evidence. Each of the five intervenors were permitted to file Affidavit evidence of up to 50 pages with another 50 pages of Exhibits. The First Nations intervenors were also permitted to file transcript evidence pursuant to Rule 6.8.

In determining if the sixth intervenor should be permitted to intervene, the Court considered if he would have any special expertise, perspective, or information that would help resolve the Case. Ultimately, Justice Feasby denied the sixth intervenor the right to intervene on the basis that their arguments were premature.

SINGH V GLAXOSMITHKLINE INC, 2025 ABKB 136

(SIDNELL J)

Rules 2.28 (Change in Lawyer of Record or Self-Representation), 10.4 (Charging Order for Payment of Lawyer's Charges) and 10.33 (Court Considerations in Making Costs Award)

Counsel involved in a Class Action, related to the alleged negative impacts of the drug Paxil, applied to resolve the allocation of Legal Fees pursuant to Section 35(2) of the *Class Proceedings Act*, SA 2003, c C-16.5. The Class and the Defendant ultimately settled for $7,500,000. There were two counsel purporting to represent the Class from different firms. One had incurred $850,000 in legal expenses while the other had incurred $50,000 in legal expenses. Partway through the litigation, the Class Representative had changed counsel pursuant to Rule 2.28. Therefore, there was also prior counsel who had incurred $1,100,000 in legal expenses.

Prior counsel had previously applied before an Assessment Officer, pursuant to the Rules, to determine the quantum of disbursements to which the firm was entitled. The Assessment Officer determined that disbursements would be payable only upon the successful completion of the matter, as per the Contingency Fee Agreement.

The Class Representative alleged that former counsel for the Class had not advanced the case effectively. A third-party lawyer brought an Application seeking a portion of legal fees pursuant to Rule 10.4 on the basis of an agreement he had as a partner with one of the representing firms. The Court held that Rule 10.4 was not the appropriate method for addressing a contractual dispute. Justice Sidnell ultimately held that "contractual disputes between lawyers, partners and law firms should be dealt with in an action where the facts are pleaded and the applicable contractual relief is claimed".

Sidnell J. directed that a fair and reasonable outcome was apportionment of 61% of the Settlement Amount to the Class and 39% to the Lawyers for their Costs and Disbursements. The Court directed procedural steps to finalize the Costs analysis and the specific allocation between counsel.

The Court asked counsel to agree on costs but, in the event they could not do so, directed that written submissions include an analysis of Rule 10.33 and a draft Bill of Costs pursuant to Schedule C of the Rules.

BROWN V ALBERTA, 2025 ABKB 495

(YUNGWIRTH J)

Rule 3.2 (How to Start an Action)

This was a *Charter* application advanced by Originating Application, challenging Alberta's discontinuation of supervised consumption services in Red Deer and seeking declaratory and injunctive relief. The primary procedural question was whether the matter could be

determined summarily given the evidentiary record that had been filed.

The Court applied Rule 3.2, which requires an action to be commenced by statement of claim unless there is no substantial factual dispute. Justice Yungwirth confirmed that even where factual disputes are minimal, originating applications are subject to judicial management discretion on process and scope. Relying on recent authorities, Yungwirth J. noted that Alberta courts have effectively harmonized the originating application process with the summary judgment framework. The test set out in *Hryniak v Mauldin,* 2014 SCC 7 and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd,* 2019 ABCA 49, governs whether the record permits a fair, efficient, and proportionate disposition without a full trial, and this test applies to originating applications.

On the record before it, which included Briefs, Affidavits, and Questioning transcripts, the Court found that the parties had fully presented their positions and neither side objected to a final determination. The Court held that it was able to resolve the Charter application in a fair and proportionate manner through the Originating Application process rather than by directing the matter to proceed by Statement of Claim. The Court then decided the constitutional issues on the merits and dismissed the requested relief.

YU V UNIVERSITY OF ALBERTA, 2025 ABKB 408

(MAH J)

Rules 3.8 (Originating Applications and Associated Evidence), 3.15 (Originating Application for Judicial Review) and 3.22 (Evidence on Judicial Review)

The Applicant advanced an Application for Judicial Review of the Respondent's decision to dismiss the Applicant from a residency program at the University of Alberta.

The Applicant alleged that the decision was unreasonable and procedurally unfair.

In considering the Application for Judicial Review, the Court provided an overview of what materials the Rules require that a party file when initiating an application. Justice Mah noted that Rule 3.15 requires that an application must be filed as an Originating Application, and that the requirements for an Originating Application are set out in Rule 3.8: the Applicant must state their claim, the basis for it, the remedy sought, and identify the evidence relied upon in support of their application.

During the course of the steps leading up to the Application, the Applicant filed further supplemental briefs and materials without seeking leave of the Court to do so, as required by Civil Practice Note 1. While the Respondents noted that the Applicant was acting in non-compliance, they did not take any issue with the Court being provided with the additional material. Although Rule 3.8 provides that the Application must identify the evidence to be relied upon when it is initially filed, Rule 3.22 permits the Court to receive additional evidence at its discretion. As such, the Applicant's supplemental material was permitted to be considered as part of the Application.

BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR), 2025 ABKB 158

(HO J)

Rules 3.15 (Originating Application for Judicial Review) and 11.17 (Service on Lawyer of Record)

The Applicants were Bow Valley Engage Society and the Stoney Nakoda First Nations (Bearspaw, Chiniki and Goodstoney First Nations). The Applicants brought two applications for Judicial Review, heard together, that challenged a decision by the Designated Director under Section 42 of the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 ("*EPEA*"). That decision determined that the Three Sisters Mountain Village project in Canmore was a continuation of the tourism and recreation development previously approved. As such, the Designated Director lacked jurisdiction to require a new environmental impact assessment ("EIA"). The Applicants argued that the current development plans should be considered a "proposed activity" under Section 39(e) of the *EPEA* and therefore require an EIA.

Prior to considering the substantive question, Justice Ho considered the preliminary issue raised by Thunderstone Quarries Canmore Ltd. ("Thunderstone"), a landowner operating on the subject lands. Thunderstone sought to strike the Judicial Review for lack of service. Thunderstone argued such service was required because they are a "directly affected" person or body under Rule 3.15(3)(c) and the failure to serve is fatal to a Judicial Review. Justice Ho emphasized that the term "directly affected" under Rule 3.15(3) does not require that the effect be adverse and that there may be other relevant considerations such as "contractual and economic relationships or ownership." Ho J. agreed with Thunderstone, finding that they were "directly affected" because they owned significant portions of the land in question, had participated in satisfying conditions related to the development and could be directly impacted by any further stipulations or conditions arising from an EIA.

The Court disagreed with the Applicants' argument was service was in order by virtue of individuals within the Thunderstone organization being aware of the Judicial Review and the fact that the Respondent, Three Sisters Mountain Village Properties Ltd. ("TSMVP"), had previously made arguments that it was the only party directly affected by the development plans. Justice Ho denied the Applicants' argument that service on counsel for TSMVP should also be considered as service on the directors of Thunderstone, under Rule 11.17, because some of Thunderstone's directors are also directors of TSMVP. Ho J. emphasized that Rule 11.17 only permits commencement documents to be served on a party's lawyer of record, and there was no evidence that TSMVP's counsel was lawyer of record for Thunderstone.

Justice Ho concluded that Thunderstone was not properly served with the Originating Applications in accordance with the *Alberta Business Corporations Act*, RSA 2000, c B- 9 or Rule 3.15(3) and, as such, the Judicial Review must fail. The Applicants also argued that Rule 3.15(3)(c) infringes Section 96 of the *Constitution Act, 1867*, arguing that the Rule creates a hurdle when it is impossible for an Applicant to determine or verify all persons that are "directly affected." Ho J. disagreed, affirming that while Judicial Review cannot be wholly barred, Rule 3.15(3)(c) does not impose an impossible standard. The requirement on "directly affected" persons mean those with a personal and individual interest distinct from the general public. Justice Ho affirmed that the difficulty in distinguishing such persons does not render the Rule unconstitutional.

Despite dismissing the Application for Judicial Review on account of not serving Thunderstone, Ho J. still addressed the arguments advanced in the Judicial Review for completeness. Justice Ho found that the Designated Directors decision was reasonable, as the development plans were part of a unique project approved in 1992. The Court found that, given the history, scale, and long-term development of the project, it was open to the Designated Director to find that the development plans were part of a continuation, not a "proposed activity." Both Applications for Judicial Review were dismissed.

GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD, 2025 ABKB 373

(REED J)

Rules 3.15 (Originating Application for Judicial Review), 3.16 (Originating Application for Judicial Review: Habeas Corpus) and 13.5 (Variation of Time Periods)

The Applicants filed an Originating Application for Judicial Review of a Report and Recommendations ("Recommendations") issued by the Environmental Appeals Board ("Board"), and a subsequent Ministerial Order ("Order") issued by the Minister of Environment and Parks ("Minister"), which required the Applicants to reclaim a private groundwater well located on hotel property in the Town of Strathmore ("Town").

The well had previously been interconnected with the Town's municipal water supply and was ultimately designated a "problem water well". The Director of Regional Compliance cancelled the Applicants' licence under the *Water Act*, RSA 2000, c W-3, and ordered the well's reclamation.

The Applicants appealed the Director's decisions to the Board. During the appeal, the Board granted the Town intervenor status. The Board found the Town had a tangible interest in the matter, given its role in water supply to its residents and the enforcement of its related bylaws. The Applicants did not appeal the Board's decision to grant the Town intervenor status. The Board upheld the Director's decisions and issued Recommendations to the Minister, who accepted them with only a minor, immaterial variation.

The Applicants argued that the Recommendations and resulting Order were unreasonable, asserting the Board misapprehended evidence, considered irrelevant or inadmissible material, misinterpreted the Water Act, and failed to consider that the well had been disconnected from the Town's system since 2016.

The Director applied to strike the Originating Application as the Town was not served as a directly affected party, as required by Rule 3.15(3)(c). The Director argued the Town was directly affected by the outcome of the Judicial Review by virtue of supplying water to residents, enforcing local water bylaws, and participating as an intervenor before the Board.

The Applicants argued that the well was disconnected from the municipal system in 2016, rendering the Town's interest remote. They further argued that interpreting Rule 3.15(3)(c) broadly would improperly elevate the Town's interest above that of individual residents, who they asserted would be more directly impacted by any water safety concerns.

Justice Reed disagreed. Rule 3.15(3)(c) requires service on all persons or bodies directly affected by the Originating Application for Judicial Review. The words "directly affected" must be interpreted restrictively but contextually. Proof of a direct impact on legal rights is not required.

Further, the Court explained the distinction between standing and service: a party seeking intervenor status must demonstrate a potential adverse effect and apply to the Court, whereas service under Rule 3.15(3) is concerned with notice. Therefore, a party may be directly affected, and to service, without having to prove that its rights or interests will be adversely impacted.

Reed J. held that the Town's role as operator and regulator of the municipal water system demonstrated a tangible and ongoing interest in the Originating Application. Further, although intervenor status is not determinative, the Board's decision to applying the more stringent Pedersen test in determining that status supported a finding that the Town was directly affected for the purposes of Rule 3.15(3)(c).

The Originating Application was struck for non-compliance with Rule 3.15(3). In the alternative, Justice Reed also dismissed the Judicial Review on its merits.

GRANDISON V KAZAKAWICH, 2025 ABKB 322

(THOMPSON J)

Rules 3.35 (Judgment or Order by Agreement), 9.2 (Preparation of Judgments and Orders), 9.4 (Signing Judgments and Orders), 9.8 (Service of Judgments or Orders), 9.13 (Re-opening Case), 9.16 (By Whom Applications are to be Decided), 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 Plaintiff father applied for relief relating to child support payments, arrears and parenting arrangements. The Defendant mother responded with her own Application and cross-Application concerning child support enforcement and a proposed change to the children's school.

The parties had participated in Early Intervention Case Conferences ("EICCs"), where they reached agreements on parenting and their ongoing child support incomes. A procedural issue arose when the mother's counsel invoked Rule 9.4(2)(c) to submit draft Consent Orders to the EICC Justice without obtaining the father's approval, despite him being self-represented. Thompson J. found that, given the requirement of procedural fairness, Rule 9.4(2)(c) only applied to "pronounced" Judgments and not to Consent Orders resulting from negotiated agreements such as those reached in an EICC. Its improper use in this context denied the self-represented party the opportunity to confirm that agreed upon terms are reflected in the draft Consent Orders. Justice Thompson directed that going forward, Rule 9.4(2)(c) shall not be invoked against a self-represented party unless ordered by the Court.

Instead, when parties are self-represented, Rule 9.2(2)(b) applies to pronounced Judgments, and Rule 3.35 applies to Consent Orders, unless the Court orders otherwise. Lastly, pursuant to Rule 9.8, the party or

counsel who prepared the Judgment is obligated to serve a copy of the filed Order on all other parties, including self-represented individuals.

The Court also addressed the mother's attempt to rely on Rule 9.13(a) to vary the EICC child support agreement before it was entered as a Court Order. The Court clarified that Rule 9.13(a) is similarly restricted to pronounced Judgments or Orders and cannot be used to vary a negotiated agreement recorded in an EICC report. Further, Rule 9.16 requires an application pursuant to Rule 9.13 to be decided by the Judge who granted the original Judgment, unless the Court orders otherwise. Since an EICC Justice was disqualified from hearing any interlocutory Application or Trial in the same matter, Rule 9.13(a) could not apply to the EICC agreement.

Lastly, Thompson J. stated that Courts have considerable discretion in setting reasonable and proper Costs pursuant to Rules 10.29, 10.31 and 10.33. Although the successful party is presumptively entitled to Costs, for self-represented litigants, the ordinary objective of indemnification is not achieved as they do not incur legal fees. Thus, they generally should not receive Costs beyond disbursements unless policy justifications apply. Given the mixed success in both the father and mother's Applications, both parties were to bear their own costs.

HAGEN V WORKERS' COMPENSATION BOARD OF ALBERTA, 2025 ABKB 429

(MICHALYSHYN J)

Rule 3.68 (Significant Deficiencies in Claims)

This was an Application under Rule 3.68 by the Defendants, who sought to strike the Plaintiff's Amended Statement of Claim on the basis that it disclosed no reasonable cause of action. The Plaintiff was self-represented and had filed an extensive 252-paragraph Amended Statement of Claim naming 38 Defendants, including individuals associated with the Workers' Compensation Board of Alberta ("WCB"), physicians, chiropractors, and physiotherapists.

The Court held that the pleadings failed to disclose any reasonable claim, as contemplated in Rule 3.68(2)(b). Justice Michalyshyn emphasized that on a Rule 3.68 Application, only material facts, not bare assertions or speculation, are to be taken as true. The Court confirmed that pleadings must identify the "who, when, where, how and what" giving rise to each Defendant's liability, and cannot rely on conclusions or general accusations.

The Court found the Plaintiff's allegations to be largely bald assertions and legal conclusions lacking the necessary particulars of duty, breach, causation, or damages. Allegations of fraud, defamation, and conspiracy were also struck for want of the specific particulars required by law.

With respect to the WCB Defendants, the Court found it had no jurisdiction, pursuant to sections 17 and 21 of the *Workers' Compensation Act*, RSA 2000, c W-15, as the Board possesses exclusive statutory jurisdiction over such matters. The claims against the physician, physiotherapist, and chiropractor Defendants were also struck for failing to plead facts capable of establishing the elements of negligence or any other recognized cause of action.

The Court declined to permit further amendment, noting that the Plaintiff had already been

granted such an opportunity and had instead expanded the claim to an even more deficient pleading. Accordingly, all claims were struck under Rule 3.68, and the Court invited written submissions on costs.

ROYAL BANK OF CANADA V SIMMER, 2025 ABKB 432

(DEVLIN J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 6.14 (Appeal from Applications Judge's Judgment or Order) and 7.3 (Application and Decision)

The Plaintiff bank ("RBC") sued the Defendants (the "Simmers") for outstanding amounts on a credit facility due to alleged defaults. The Simmers defended the claim and filed a Counterclaim, claiming that earlier misconduct by RBC, specifically the 2018 payout of a business mortgage, caused them financial hardship that ultimately led to the loan being called in 2020. The Applications Judge dismissed RBC's Application for Summary Judgment and struck the Simmers' Counterclaim as being statute-barred. Both parties appealed.

On Appeal, Devlin J. affirmed the striking of the Simmers' Counterclaim pursuant to Rule 3.68(2)(b), finding it was plainly and obviously out of time. The Court held that the Simmers knew or ought to have known of both the alleged wrongful conduct and the resulting harm in January 2018, or shortly thereafter. Since the Counterclaim was filed February 2021, it fell outside the two-year limitation period pursuant to Section 3(1)(a) of the *Limitations Act,* RSA 2000, c L-12 (the "Act").

The Simmers argued that Section 6(2) of the Act should permit their late-filed Counterclaim because it was intimately connected with RBC's originating claim. However, the Court found that there was no link between the 2018 mortgage payout and the 2020 calling of the line of credit. These were separate transactions, and litigating the Counterclaim would require a new evidentiary record unrelated to RBC's Claim. As such, Section 6(2) was inapplicable.

Pursuant to Rule 6.14, the Court performed a *de novo* review of the dismissal of the Summary Dismissal Application, and applied a standard of correctness. Devlin J. emphasized the culture shift in Summary Judgment Applications pursuant to Rule 7.3, noting that Summary Judgment is appropriate where the record allows the Court to make a fair disposition without Trial.

Applying these principles, the Court found that the Simmers were in a long-running default on their loan obligations, even assuming the existence of any oral interest-only payment arrangement with RBC. The Simmers failed to make payments for over five years and did not produce credible evidence of any binding agreement for repayment forbearance. The Simmers' defence - namely that the default alleged by RBC did not exist or were the products of RBC's misconduct - lacked sufficient merit and failed to meet the evidentiary burden required to resist Summary Judgment.

In the result, the Simmers' Appeal against the limitations Decision was dismissed. RBC's appeal was allowed, and Summary Judgment was granted.

OUELLETTE V MAY, 2025 ABKB 529

(THOMPSON J)

Rules 3.68 (Significant Deficiencies in Claims) and 7.3 (Summary Judgment)

This was an Application by the Defendants and the Alberta Crown, seeking Summary Dismissal of the Plaintiff's Claim. The Claim raised allegations regarding the Defendants' conduct during a criminal Trial in which the Plaintiff, Ouellette, was defence counsel. Ouellette alleged multiple causes of action, including defamation, malicious prosecution, abuse of process, breach of statutory and common law duties, and unlawful interference with economic relations, all relating to the Crown's attempt to have him disqualified as counsel.

The Court considered whether the matter should be struck, pursuant to Rule 3.68, and whether it was suitable for Summary Dismissal, pursuant to Rule 7.3. An earlier Application under Rule 3.68 had struck only Charter claims, allowing non-Charter claims to proceed. The Court emphasized that an Application to strike under Rule 3.68 is based on pleadings alone and is not a determination on the merits. By contrast, the present Application under Rule 7.3 was based on a full evidentiary record, and the Court could assess whether there was any genuine issue requiring a Trial.

Applying Rule 7.3 and the test in *Weir-Jones*, the Court found that all of Ouellette's claims lacked merit. Alleged statutory duties were immunity provisions, not duties owed to Ouellette. No private duty of care was owed to him at common law. The Defendants' conduct fell within their public duties as Ministers of Justice and was protected by prosecutorial immunity. The elements of malicious prosecution, abuse of process, and unlawful interference with economic relations were not met. Absolute privilege provided a complete defence to the defamation allegations.

The Court held that there was no genuine issue requiring a Trial. The record was sufficient for a fair and just determination on a summary basis, and a Trial would not improve it. The Summary Dismissal Application was granted and Ouellette's Claim was dismissed in full.

TUHARSKY V O'CHIESE FIRST NATION, 2025 ABCA 267

(ANTONIO, DE WIT AND GROSSE JJA)

Rule 3.68 (Court Option to Deal with Significant Deficiencies)

The Respondent's Action alleged that certain statements made in a filed document were defamatory. The Appellants applied to strike the claim pursuant to Rule 3.68 for disclosing no viable cause of action. The Application was initially granted by an Applications Judge but reversed on appeal by a Justice. The Appellants appealed the Justice's decision.

The Respondent was the Appellants' general counsel. During Account Review proceedings, the Appellants filed a pleading with their

view that the Respondent had failed to act in the Appellants' best interests and breached their professional obligations. The Appellants took the position that these statements were protected by absolute privilege because they were made in the context of a judicial proceeding. The Justice held that it was not plain and obvious that the impugned statements were protected by absolute privilege.

The Court of Appeal noted that while the ultimate determination to strike a claim under Rule 3.68 is discretionary, the question of whether a pleading discloses a cause of action or whether absolute privilege applies is a question of law to be reviewed on the correctness standard. In the present case, the impugned statements were made in a judicial or quasi-judicial proceeding, and the consideration was whether the statements were incidental to the proceedings or in the process of furthering them. While the Justice considered other contextual factors, such as the content and purpose of the statements, the Court of Appeal held that these considerations were irrelevant. Once the determination was made that the statements were made on a privileged occasion, absolute privilege applied.

The Court of Appeal determined it was plain and obvious on the record that the statements were protected by absolute privilege and, as a result, the Respondent's claim did not disclose a viable cause of action. The Appeal was allowed, and the Action was dismissed pursuant to Rule 3.68.

MIKISEW CREE FIRST NATION V ALBERTA, 2025 ABCA 304

(HO, FAGNAN, FRIESEN JJA)

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

This was an Appeal by Alberta from a Chambers Judge's Decision dismissing its Application under Rule 3.68 to strike, or alternatively stay, the Statement of Claim (the "Claim") filed by the Mikisew Cree First Nation and Athabasca Chipewyan First Nation (collectively, the "Nations"). In the Claim, the Nations alleged that Alberta's framework for consulting Indigenous communities on oil sands development was unconstitutional. Alberta argued that the Claim disclosed no reasonable cause of action, sought improper declaratory relief amounting to a collateral attack on prior regulatory approvals, and constituted an abuse of process due to a related Judicial Review.

The Court of Appeal confirmed that whether a pleading discloses no reasonable claim, or constitutes an abuse of process, are both questions of law reviewable on a correctness standard, while the ultimate determination of the appropriate remedy is discretionary and should be reviewed with deference. Ultimately, the Court held that the Chambers Judge made no reviewable error.

In applying Rule 3.68, the Court emphasized that a pleading should only be struck if it is plain and obvious that it will fail, assuming the facts as pleaded are true. The Court noted that the Chambers Judge correctly applied a generous approach, recognizing that novel or developing claims should be allowed to proceed unless they are clearly untenable. Further, the Court endorsed the principle that striking a pleading for abuse of process is an exceptional remedy, particularly in the Aboriginal law context, where the Supreme Court

of Canada has cautioned against premature dismissal. Accordingly, the Court of Appeal found that it was not plain and obvious that the declaratory relief sought by the Nations was unavailable, nor that the Claim amounted to an abuse of process.

Regarding Alberta's concerns about duplicative proceedings and the potential for inconsistent outcomes between the Claim and the Judicial Review, the Court of Appeal found that this was insufficient to justify a stay under Rule 3.68. The Court further noted that such concerns could be addressed under Rule 3.72, which allows the Court of King's Bench to consolidate, coordinate, or stay actions to ensure efficient use of judicial resources.

In the result, the Court dismissed the Appeal, confirming that Alberta may still seek relief under Rule 3.72 in the Court of King's Bench if appropriate.

INGRAM V ALBERTA, 2025 ABKB 420

(FEASBY J)

Rule 4.14 (Authority of a Case Management Judge)

This was an Application to certify an additional class of corporations and business organizations ("Proposed Corporate Class") in the ongoing class proceeding in *Ingram v Alberta*, 2025 ABKB 420. The Court considered Rule 4.14 in the context of its authority to control proceedings and manage certification issues.

Justice Feasby found that the Plaintiffs' Proposed Corporate Class created a significant conflict of interest because the pleadings and submissions positioned small businesses as victims of the Chief Medical Officer's Health Orders while suggesting that large corporations benefitted from them. This framing meant that the Plaintiffs and their counsel could not fairly represent all members of the Proposed Corporate Class, as required by the *Class Proceedings Act*, SA 2003, c C-16.5.

Under Rule 4.14, which empowers a Case Management Judge to make any procedural Order necessary for the efficient and fair conduct of a proceeding, the Court exercised its discretion to adjourn the Certification Application. Justice Feasby held that an adjournment, rather than a refusal, was appropriate to allow the Plaintiffs to address the conflict and potentially reframe or restructure the class. He noted that Rule 4.14 supported this procedural intervention, consistent with the Court's inherent jurisdiction to manage proceedings.

The Court noted that the Plaintiffs could consider amending the pleadings, redefining the class (for example, limiting it to small corporations), appointing additional representative plaintiffs, or obtaining separate representation for different classes of corporations. The Application to certify the Proposed Corporate Class was adjourned *sine die* under Rule 4.14 to preserve fairness and efficiency in the ongoing class action.

RK V GSG, 2025 ABKB 524

(MAH J)

Rules 4.14 (Authority of Case Management Judge) and 4.15 (Case Management Judge Presiding at Summary Trial and Trial)

This Application was brought by the Plaintiff, RK, to terminate Case Management. The Defendants opposed. The case had been under the same Case Management Justice ("CMJ") for roughly two years.

The Court addressed whether Applications for final relief had to be heard by someone other than the CMJ. Rule 4.15 prohibits a CMJ from presiding over a Trial or Streamlined Trial without all parties' consent, but it does not require consent for other Applications that are not Trials or Trial-like. Read together with Rule 4.14(2), which presumptively assigns all Applications in the Action to the CMJ unless otherwise directed, Justice Mah concluded that Applications for final relief are not "Trial-like" and may be heard by the CMJ. The request to shift future final Applications to another Judge was rejected.

RK also alleged a reasonable apprehension of bias based on remarks made at a Case Management meeting. Applying the objective test, Mah J. noted that the impugned remarks were issue-focused guidance grounded in prior interlocutory rulings and that, consistent with Rule 4.15, the CMJ would not preside over the Trial. On that basis, there was no reasonable apprehension of bias.

RK further asserted unfairness from an unsolicited letter delivered to the Court by one counsel. The Court noted that its handling of the letter had been upheld on Appeal, reiterated that the letter was disregarded, and pointed to the protocol set for future communications. This did not justify terminating Case Management.

On whether Case Management remained necessary, Justice Mah found that continuity would promote efficiency and proportionality, given the history of interlocutory decisions, pending Summary Dismissal Applications, and the need for a Litigation Plan. The Court added that a Trial date could be set by Order once disclosure was complete, any Summary Dismissal Applications were decided, and Counsel agreed on a Litigation Plan.

The Application to terminate Case Management was dismissed.

BAINS V ADAM, 2025 ABCA 235

(HO JA)

Rules 4.22 (Considerations for Security for Costs Order) and 14.67 (Security for Costs)

This was a joint Application by three parties, each of whom had successfully defended personal injury Actions at Trial, seeking Security for Costs from the Appellant, Dr. Bains, in relation to his Appeal. After the underlying Actions were tried together and dismissed in 2023, Dr. Bains was ordered to pay over $440,000 in costs. The Applicants jointly brought the present Appli-

cation under Rules 14.67(1) and 4.22, seeking $76,905.48 in security for their anticipated Costs of responding to the Appeal.

At the outset, Dr. Bains objected to the Applicants proceeding jointly on the basis that it breached the Rules and infringed his *Charter* rights. He also argued that having to respond to a single joint Application by three parties was unfair and overwhelming. The Court dismissed this objection, holding that because the underlying Actions were tried together and the Appeal arose from a single Judgment, it was both efficient and procedurally fair to address the Security for Costs Application jointly.

Ho J.A. applied the five factors set out in Rule 4.22 to determine whether it would be just and reasonable to order Security for Costs: whether the Applicants would likely be able to enforce a Costs Award in Alberta, Dr. Bains' ability to pay it, the merits of the Appeal, whether ordering Security would unduly prejudice his ability to continue the Appeal, and any other relevant considerations. The burden was on the Applicants to establish that these factors weighed in favour of granting Security.

The Applicants argued that Dr. Bains was unlikely to satisfy any Costs award, citing his own statements that he had no income or assets, received AISH benefits, and did not intend to pay the Trial Costs. The Applicants also submitted that the Appeal lacked merit, noting that it raised questions of mixed fact and law subject to a deferential standard of review. Dr. Bains responded that he had offered to make conditional payments directly to the Applicants' insurers, had been able to pay a contempt fine at Trial, had already invested time and resources in preparing for the Appeal, and had obtained leave to Appeal on specific legal questions, which he argued should be taken as an indicator of arguable merit.

The Court declined to order Security for Costs. Appeal Justice Ho found that while Dr. Bains had expressed an unwillingness to pay, there was conflicting evidence regarding his actual ability to pay, and receiving AISH did not in itself demonstrate inability. The Court also accepted that the granting of permission to Appeal, though not determinative, was a relevant consideration in assessing the merits. On balance, the Court concluded that ordering security could unduly prejudice Dr. Bains' ability to proceed with the Appeal and that the Applicants had not met their burden under Rule 4.22.

The Application was dismissed.

STEPHENSON V STEPHENSON, 2025 ABCA 255

(PENTELECHUK JA)

Rules 4.22 (Considerations for Security for Costs Order) and 14.67 (Security for Costs)

This was a Security for Costs decision. The Appellant appealed an Order of a Chambers Judge setting aside a without notice interlocutory injunction that she obtained from a different Chambers Judge. The Applicants, as Respondents to the Appeal, sought Security for Costs against the Appellant for the Appeal. The Application was granted.

Pentelechuk J.A. emphasized that security for costs is a discretionary remedy. The test includes balancing the reasonable expectations and rights of the parties to come to a just and reasonable conclusion, informed by the considerations set out in Rule 4.22. The onus is on the applicant to prove the factors in Rule 4.22 weigh in their favour. If the application is not

made promptly and there is a risk of resulting prejudice, the Court has discretion to refuse to order security for costs. However, if there are doubts about a party's ability to pay costs and the appeal has limited chances of success, security for costs may be justified.

The Court disagreed with the Applicants' proposition that the Security for Costs test is disjunctive such that it may be granted if it is just and equitable to order security for costs or if the Appellant will be unable to pay costs that may be awarded. Pentelechuk J.A. emphasized that the authority for the disjunctive proposition, *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2020 ABCA 36, must be read in context and that the Court did not set out a disjunctive test of universal application. Therefore, Appeal Justice Pentelechuk applied the test as set out in Rule 4.22.

Pentelechuk J.A. considered the Appellant's ability to pay, the likelihood of enforcing a costs award, the merits of the Appeal, and any potential prejudice. The Court found that the Appellant had minimal or no assets in Alberta. The Appellant admitted financial vulnerability and had not paid a previous costs award. The Court was satisfied that even if the Appellant had the ability to pay a costs award, the collection of those costs would be prolonged and difficult.

Further, the Appeal faced challenges, particularly on the application of the interlocutory injunction test and the admissibility of new evidence. Although the Appellant claimed financial hardship, the Court found that she had demonstrated the ability to pursue the Appeal thus far and was not persuaded that an Order for Security for Costs would unduly prejudice her ability to do so. However, the Court found there was a delay in bringing this application which the Applicants failed to explain, and which weighed against an Order for Security for Costs.

Pentelechuk J.A. determined that a Security for Costs Order was appropriate but for a significantly reduced amount, limited to forward-looking costs and calculated at single Column 1 rates. The Appellant was directed to provide security for costs of the Appeal totaling $10,200 within 30 days of the decision, failing which, the Appeal would be deemed abandoned under Rule 14.67(2). The Application was granted.

MURRAY V WINDSOR BRUNELLO LTD, 2025 ABKB 299

(SIDNELL J)

Rules 4.24 (Formal Offers to Settle), 4.29 (Costs Consequences of Formal Offer to Settle), 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award), 10.34 (Court-Ordered Assessment of Costs) and 10.41 (Assessment Officer's Decision)

The Plaintiffs (the "Murrays") originally sought damages exceeding $1.65 million for defective sliding doors in their residence. At Trial, the Court found Windsor Brunello Ltd ("WBL") liable for approximately $914,946.59 plus interest, but dismissed the claims against the other defendants, Luxus Haus Imports Ltd. ("Luxus"), Sebastian Bade ("Bade"), and KAPO Fenster Und Turen GMBH ("KAPO") (the "Trial Decision"). The purpose of this Decision was to

address the allocation of Costs arising from the Trial Decision.

Justice Sidnell emphasized the costs regime under the Rules is intended to encourage settlement, promote efficiency, deter weak claims, and provide clarity in litigation. As required under Rule 10.31(1), Sidnell J. considered the factors set out in Rule 10.33 to determine Costs. Justice Sidnell noted that the Murrays were successful against WBL but not the other Defendants. Sidnell J. further explained that, while the Trial could have been more streamlined, the complex nature of the case, together with procedural inefficiencies that unnecessarily extended the proceedings, supported an award of higher Costs.

Both the Murrays and Luxus relied on their respective *Calderbank* offers in support of their claims for Costs. Justice Sidnell highlighted that the proper assessment of *Calderbank* offers was set out in *ILI's Painting Services Ltd v Homes by Bellia Inc*, 2020 ABQB 972 and *Kent v MacDonald,* 2020 ABQB 29. Sidnell J. noted that *Calderbank* offers should be assessed on whether the offer constituted a genuine compromise, provided a cost advantage, allowed adequate time for consideration, was unreasonably rejected, and whether the offering party ultimately fared better than if the offer had been accepted. While the Murrays' offer met most of these criteria, it was left open for only two and a half days. The short acceptance period was insufficient to justify double Costs. In contrast, Sidnell J. found that Luxus' offers, which were left open for 16 days and seven days respectively, were reasonable, unreasonably rejected, and allowed sufficient time for consideration, thereby justifying an award of double Costs for expenses incurred after the first offer.

Justice Sidnell held that Luxus was entirely successful and entitled to Costs on a single Column 4 of Schedule C, including reasonable disbursements and applicable taxes. Similarly, Sidnell J. determined that Bade, as a self-represented litigant, was entitled to Costs due to exceptional circumstances, including his participation in the litigation, mediation, Trial, and contribution to a settlement. Given that Bade did not incur legal fees, Sidnell J. awarded Costs at 25% of single Column 4 of Schedule C, plus reasonable disbursements and applicable taxes.

While acknowledging that *McAllister v Calgary*, 2021 ABCA 25, suggests successful plaintiffs are generally entitled to 30-40% of reasonable legal fees, the Court awarded the Murrays 35% of their reasonable Costs, plus full disbursements and applicable taxes, taking into account all relevant factors. Pursuant to Rule 10.34, Justice Sidnell directed that any disputes over the amounts be determined by an Assessment Officer, with the Murrays required to pay Luxus and Bade once the quantum was assessed.

The Murrays also sought a *Sanderson* Order requiring WBL to pay the costs of Luxus and Bade (the "Successful Defendants"). Justice Sidnell explained that a *Sanderson* Order is an exception to the general rule that a successful plaintiff recovers costs from an unsuccessful defendant and is then responsible for paying the costs of successful defendants. In assessing whether a *Sanderson* Order was warranted, Sidnell J. reviewed the established factors including whether it was reasonable for the plaintiff to join the successful defendants, whether it would be just to shift their costs to the unsuccessful defendant, and whether the unsuccessful defendant was wholly responsible for the action.

Justice Sidnell determined that it was reasonable for the Murrays to have joined the Successful Defendants given that the claims arose from the same alleged defects and damages. However, after considering WBL's partial blame of other parties, the absence of evidence that WBL caused the addition of the Successful Defendants, the commonality of the causes of action, and the relative ability of the parties to pay, the Court was not satisfied

that it would be just to require WBL to pay the Successful Defendants Costs. Accordingly, Justice Sidnell concluded that a *Sanderson* Order was not warranted.

BROKOP V 1378882 ALBERTA LTD, 2025 ABKB 477

(ROMAINE J)

Rule 4.24 (Formal Offers to Settle), 4.29 (Costs Consequences of Formal Offer to Settle), 10.31 (Court-ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Plaintiffs pursued a $2 million claim against the Estate of a deceased Defendant, alleging fraud and conspiracy. The Defendant's Estate argued that the claims were meritless, and the Court dismissed the Plaintiffs' claims, finding no recovery was possible. The Defendant's Estate sought Costs, citing the complexity of the case, the Plaintiffs' unsuccessful Applications, and the Plaintiffs' rejection of multiple settlement offers.

The Court concluded that, in this case, there was not sufficiently serious misconduct to award solicitor-client costs. However, the circumstances justified a lump sum award equal to a percentage of the Defendant's solicitor-client costs.

The Court considered the factors under Rule 10.33 and Rule 4.24, including the complexity of the case, the Plaintiffs' unsuccessful claims, and the rejected settlement offers. The Court took note of Rules 4.29(2) and (3), which provide that a Defendant is entitled to double its costs for steps taken in the Action after service of an offer to settle, if the claim that is subject to the offer is dismissed. However, the Court opted not to apply these Rules, finding that they do not apply if the Court makes a lump sum award, instead of assessed costs.

Given the circumstances of the case, the Court awarded 50% of the Defendant's legal fees as a lump sum, reflecting the Plaintiffs' rejection of reasonable settlement offers and the doubling provisions under Rule 4.29. The Court also directed the Defendant's Estate to provide a breakdown of costs for assessment if necessary.

MACDONALD V MACDONALD, 2025 ABKB 502

(LEMA J)

Rules 4.24 (Formal Offers to Settle), 4.29 (Costs Consequences of Formal Offer to Settle) and 9.12 (Correcting Mistakes or Errors)

This Costs Endorsement involved an application under Rule 9.12, in which the Court was asked to revisit its earlier "mixed success" costs decision arising from a streamlined family Trial.

The Defendant father submitted that the Court failed to account for his Formal Offer to Settle pursuant to Rule 4.24. The Defendant argued the outcome at Trial did not exceed the value of his Offer to Settle, thereby entitling him to double costs under Rule 4.29. He asserted that this oversight constituted a "slip" or "mistake" within the meaning of Rule 9.12, which empowers Courts to amend final Orders to correct clerical, technical, or drafting errors that do not reflect the Court's true intention.

Rule 9.12 typically requires a formal application; however, the Court may, on its own, correct a plain error where the Judgment does not reflect its intended result. The Rule is limited to technical or clerical corrections and does not allow a Court to revisit or re-try an issue. Substantive errors are a matter for the Court of Appeal.

Justice Lema found Rule 9.12 inapplicable. The earlier Costs Endorsement had already acknowledged the Defendant's reliance on his Settlement Offer, his claim for double Costs, and implicitly concluded that he had not bettered the Offer at Trial. Lema J. confirmed that Rule 9.12 is confined to clerical or drafting corrections, not to re-argument of substantive issues.

Turning to Rule 4.29 and whether double Costs should be awarded, Justice Lema confirmed that the onus rests on the party seeking Costs to demonstrate that the Trial result was "clearly" more favourable than the Offer.

The purpose of Rule 4.29 is to encourage parties to compromise. The primary factors for whether the rule has been triggered and (if so) how it ought to be applied are: (a) the timing of the offer; (b) the content of the offer; (c) the non-de-minimus character of the offer; and (d) the presence or absence of "special circumstances".

Justice Lema confirmed that in complex, multi-issue family matters, success must be assessed globally, rather than by parsing individual issues. In the streamlined Trial, Lema J. decided nine discrete issues touching on various aspects of spousal support, income imputation, child support, the value of the matrimonial home, and other outstanding property issues. While the Defendant fared better on the single issue of child support arrears at Trial, Lema J. was not satisfied that he had plainly achieved a better global result relative to his Settlement Offer.

Even if Rule 4.29 had applied, Justice Lema found "special circumstances" within Rule 4.29(4)(e) that justified withholding double Costs. The Defendant's lack of disclosure regarding his finances and his failure to file his 2023 tax return undermined the integrity of the proceedings and warranted denial of the punitive doubling remedy.

Accordingly, the Application to vary the earlier Costs Decision was dismissed. Each party continued to bear their own Costs.

ZAWAWI V NAIM, 2025 ABKB 534

(OVIATT J)

Rules 4.24 (Formal Offers to Settle), 4.29 (Costs Consequences of Formal Offer to Settle), 10.29 (General Rule for Payment of Litigation Costs), 10.30 (When Costs Award May Be Made), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Applicant sought $44,055 in Costs following a two-day Streamlined Trial, which included partial indemnification under Column 2 of Schedule C, full indemnity of disbursements, and double Costs for an alleged Formal Offer. The Respondent opposed any award of Costs, arguing that the Trial Decision was silent on Costs and had been appealed.

Justice Oviatt confirmed that the Court retains broad discretion to award Costs even when a Trial Judgment is silent, citing the presumption under Rule 10.29 that a successful party is entitled to Costs, and the authority under Rule 10.30(c) to award Costs after judgment. The Court also noted that an outstanding Appeal does not stay the finalization of Costs absent a Stay Order.

In assessing quantum, Justice Oviatt referred to Rule 10.31(1), observing that Costs are intended to provide partial, not full, indemnity. Applying the factors in Rule 10.33, the Court considered proportionality, the degree of success, importance of the issues, complexity, and the parties' conduct. Although the matter was high-conflict, it was not particularly complex.

The Applicant was self-represented at Trial, as such she was not entitled to full indemnification for her claimed legal expenses. Justice Oviatt held that routinely awarding Costs to selfrepresented litigants risks creating a disproportionate windfall. However, as the Applicant had counsel for certain pre-Trial steps, including preparation of the streamlined Trial Order, the Court found it appropriate to award a lump-sum of $1,500.

Finally, Justice Oviatt addressed the claim for double Costs pursuant to Rule 4.29. To engage the Rule, the Applicant was required to provide evidence of the contents of a valid Rule 4.24 Formal Offer that was less than the outcome at Trial. No such evidence was filed, and the purported offer appeared to relate to property division, which was not at issue in the Trial. Accordingly, the request for double Costs was dismissed.

HABIB V HABIB, 2025 ABCA 268

(FEEHAN, HAWKES AND SHANER JJA)

Rules 4.29 (Costs Consequences of Formal Offer to Settle), 10.33 (Court Considerations in Making Costs Award), 14.59 (Formal Offers to Settle) and 14.88 (Cost Awards)

This decision dealt with Costs from two appeals. The Appellants, Azmin and Shahin Habib, filed two appeals from interlocutory Orders concerning four jointly owned properties subject to joint venture agreements. The first Order directed the sale of properties in the

name of their son and Respondent, Alykhan Habib, with proceeds payable into Court. The second Order required 50% of the net sale proceeds from a property registered to Shahin Habib and her daughter to be paid into Court.

Both appeals were dismissed. The first appeal was moot, as the properties in the name of Alykhan Habib had been sold, the encumbrances discharged, and the monies paid into Court. The second appeal was upheld after deference was granted to the Chamber's Judge.

The matter returned before the Court for a determination on Costs.

On the first appeal, Alykhan Habib sought double costs pursuant to Rule 4.29, arguing that he bettered two *Calderbank* offers. On the second appeal, he sought enhanced costs for litigation misconduct pursuant to Rule 10.33. He calculated total costs at $36,120, including GST.

The Appellants argued that costs should be $4,000, reflecting the amount awarded by the Chambers Judge in the second Order under appeal.

The Court noted that Rule 14.88 governs costs on appeal but acknowledged that its application is difficult where the Chambers Judge awarded a lump sum. The Court rejected both parties' proposed figures, finding the Appellants' suggestion of $4,000 too low and Alykhan Habib's claim unjustified in part. Given the interrelated appeals, shared appeal record, and overlapping facta, the Court found that only a single attendance fee and one record preparation cost were appropriate. The Court further held that the claim for costs under Schedule C, Item 7(1), relating to the original King's Bench Application, must be determined by that Court itself.

Considering the factors in Rule 10.33, the *Calderbank* offers, the lump sum award below, and the efficiencies gained by combining attendances, the Court awarded $15,000 all-inclusive for both appeals.

DROOG V HAMILTON, 2025 ABCA 302

(CRIGHTON, KIRKER, DE WIT JJA)

Rules 4.29 (Costs Consequences of Formal Offer to Settle), 14.59 (Formal Offer to Settle) and 14.88 (Costs Award)

This was a Costs decision arising from an unsuccessful Appeal. The Court considered Rules 14.88(1) and 14.88(3). Specifically, that the successful party is typically entitled to its Costs, and that those Costs, unless otherwise ordered, shall be applied using the same scale that applies to the Order or Judgment appealed.

The Chambers Judge awarded Costs based on Column 4 of Schedule C of the Rules, with a 1.5 multiplier. The Respondents to the Appeal requested a Second Counsel Fee under item 20(b) of Schedule C and sought double Costs in accordance with Rules 4.29 and 14.59, because they had made a Formal Offer to Settle.

The Appellants agreed that the Respondents were entitled to Costs but disagreed that a Second Counsel Fee was appropriate. From the Appellants perspective, the issues on Appeal were not complex. Further, the Appellants disagreed that double costs were appropriate because the Formal Offer was a "nothing offer".

The Appellants also disagreed with the 1.5 multiplier, arguing that the issues on Appeal were more straightforward than those before the Court of King's Bench.

The Court disagreed with the Appellants, finding that the procedural history of the Case was complex and as such, the Court had asked second counsel to provide a summary of the facts. Therefore, in the circumstances, costs for a second counsel were reasonable.

Further, the Court determined that the Respondent's Formal Offer to Settle contained an "identifiable and sufficient compromise", and thus there was no principled basis to refuse double costs. The Respondents were awarded their requested relief.

TREETER V PRUDHON, 2025 ABKB 435

(APPLICATIONS JUDGE SUMMERS)

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

The matter dealt with an Application to dismiss an Action due to long delay, pursuant to Rule 4.33. On November 1, 2019, Lennart Werner Treeter filed its Statement of Claim (the "Claim") against the Defendants, James Prudhon, Iverson Trucking Ltd. and John Doe (collectively the "Defendants"). The Claim was served on Iversen Trucking Ltd. ("Iversen") on September 11, 2020, and on December 2, 2020, an Order dispensing with service upon James Prudhon was granted, following his death. The Statement of Defence was ultimately filed on behalf of Iversen on July 8, 2024. On October 29, 2024, the Defendants brought an Application which sought to dismiss the Action for delay pursuant to Rule 4.33, or alternatively Rule 4.31. Specifically, the Court was tasked with answering whether or not the filing of a Statement of Defence is a significant advance in an action.

The Defendants argued that the Action should be dismissed for delay under Rule 4.33, asserting that the filing of a boilerplate Statement of Defence did not significantly advance the Action. They relied on the decision in *Déjà vu Holdings Ltd v Securex Master Limited Partnership*, 2018 ABQB 597 ("*Déjà vu*"), to support their position. The Plaintiffs contended that the filing of the Statement of Defence constituted a significant advance of the Action, distinguishing *Déjà vu* and relying on *Ursa Ventures Ltd v Edmonton (City)*, 2016 ABCA 135, which emphasized a functional approach to determining whether a step significantly advances an action. Applications Judge Summers found that the finding in Déjà vu was distinguishable on the basis that it dealt with whether the filing of a Statement of Defence to Counterclaim constituted a significant advance of an action.

The Court concluded that the nature, value, importance and quality of the Statement of Defence was such that the pleading moved the Action forward in an essential way and consequently was a significant advance in the Action. The Application to dismiss for long delay was dismissed.

1199096 ALBERTA INC V IMPERIAL OIL LIMITED, 2025 ABCA 303

(FEEHAN, HAWKES, SHANER JJA)

Rule 4.31 (Application to Deal With Delay)

This was an Appeal of an Order upholding the dismissal of claims brought by 1199096 Alberta Inc. ("1199") against Imperial Oil Limited ("Imperial"), for inordinate and inexcusable delay, pursuant to Rule 4.31. MEC Operating Company ("MEC") sold land to 1199 that was previously owned by Imperial. Before the purchase, Imperial advised 1199 of potential contamination and that environmental assessments recommended remediation. After acquiring the land, 1199 was unable to sell due to environmental issues and ultimately lost it to foreclosure. As a result, 1199 commenced an Action against Imperial and MEC in 2009, alleging negligence in failing to fulfill statutory remediation obligations.

The matter did not progress to Trial for over 11 years, prompting Imperial to bring an Application under Rule 4.31 to dismiss the claim for inordinate delay in 2020. Applying the framework established in *Humphreys v Trebilcock*, 2017 ABCA 116, and *Transamerica Life Canada v Oakwood Associates Advisory Group*, 2019 ABCA 276, the Chambers Judge identified repeated delays caused by 1199. These included a 30-month wait to request questioning of Imperial's litigation representatives, an 11-month delay in rescheduling a cancelled questioning, and further delays of 8 and 14 months in responding to undertakings and following up on questioning a former employee.

The Chambers Judge found that Imperial acted promptly, complied with its obligations, and actively responded to 1199's requests, rejecting 1199's arguments that the delay was excusable or acquiesced to. The Chambers Judge noted that since the Action was framed in negligence, oral testimony, including expert opinion evidence on the standard of care at the time the land was purchased, would be required. Considering the passage of time, the Chambers Judge highlighted that witnesses might be unavailable or have fading memories, causing significant actual prejudice to Imperial. Finding no compelling reason to continue the case, the Chambers Judge granted Imperial's Application to dismiss the Action.

On Appeal, 1199 argued that the Chambers Judge mischaracterized the claim as negligence, leading to the conclusion that oral and expert evidence would be necessary, and that Imperial would suffer prejudice from the delay. Additionally, 1199 contended that the Chambers Judge overlooked relevant factors including the delays caused by MEC, the efficiency of the proceeding against both defendants together, and counsel's inaction as a professional courtesy.

The Court confirmed that Applications under Rule 4.31 are discretionary, and absent an error in principle or a clearly unreasonable exercise of discretion, an appellate court will defer to the Trial Judge. Similarly, the Court highlighted that whether there is significant prejudice is a question of fact and is reviewed for palpable and overriding error.

The Court upheld the Chambers Judge's finding that proceeding to Trial would cause significant prejudice to Imperial, as oral testimony was necessary to address allegations and evaluate documents, and that the passage of time would result in fading witness memories and the difficulty of obtaining expert opinion evidence. Additionally, the Court found that the Chambers Judge properly considered all relevant factors in evaluating the delay, and rejected 1199's professional courtesy argument, noting that the Rules provide tools to advance liti-

gation even if a defendant is uncooperative. Accordingly, the Court found no error in principle was identified, and since dismissal for inordinate delay is discretionary, the Chambers Judge's decision warranted deference. Further, the Court held that 1199's Application to admit fresh evidence was unnecessary, as oral testimony remained essential.

In the result, the Court dismissed the Appeal and the Application.

KALLIS V SCHIFFNER, 2025 ABKB 443

(THOMPSON J)

Rule 4.33 (Dismissal for Long Delay)

The Defendants sought dismissal of the Plaintiff's Action for long delay, pursuant to Rule 4.33. The Application was successful before an Applications Judge. The Plaintiff appealed that decision, arguing that the production of records in an Affidavit of Records was not a significant advance of the Action.

In considering whether the Action ought to be dismissed under Rule 4.33, the Court considered whether there was a period of at least three years without a significant advance in the Action. The last uncontroversial advance in the Action was the provision of the Affidavit of Records of the Third-Party Defendant in September of 2017. Although the Defendant's Affidavit of Records was also provided in September of 2017, in October of 2018 the Plaintiff requested that the Defendant's producible records be provided in electronic format, with those records being produced shortly thereafter.

The Plaintiff took the position that the Defendant's provision of their producible records was a significant advance in the Action and that, as such, dismissal of the Action would be inappropriate. The Defendant submitted that the production of the records was a mere procedural formality.

The Court noted that, although the records had been disclosed in the Defendant's Affidavit of Records, they had not been produced. The Court discussed that the Rule uses these two terms separately. Justice Thompson held that the production of records was a genuine and necessary step for the Plaintiff to assess the merits of its case and to prepare for further steps. Given the complex factual circumstances of the Action, a review of the records was essential in advancing the Action, and such a review required the documents to be produced rather than merely disclosed. The appeal was allowed, and the Defendant's Application for dismissal under Rule 4.33 was dismissed.

CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2025 ABCA 290

(PENTELECHUK, KIRKER AND FRIESEN JJA)

Rule 4.33 (Dismissal for Long Delay)

A fire broke out in March 2015 at a commercial building owned by Center Street Partnership. The construction was managed by Neura Platinum, with Over & Above Reno handling roofing.

Center Street sued the construction companies for negligence (the "Trades Action") and filed a claim against its insurer after coverage was denied (the "Coverage Action"). In April 2017, Center Street and the construction companies had agreed that the Coverage Action would proceed first, and if insurance covered the losses, the Trades Action would be dropped. In July 2021, Neura sought dismissal of the Trades Action for long delay under Rule 4.33(2), citing over three years of inactivity. An Applications Judge found that Rule 4.33(2) did not apply due to the linkage between the two Actions, but this decision was appealed.

The first thing the Court analyzed was whether a letter agreement between the parties constituted a standstill agreement. The Court held that it did not, as there was nothing in the text of the letter agreement that clearly indicated an intention by the parties to hold the Coverage Action in abeyance to avoid dismissal for delay. The Court stated that if parties wish to pause their litigation under Rule 4.33(5), the agreement must be clear and precise and not left to inference.

The Court then turned to the next question, to determine whether any advance in the Coverage Action significantly advanced the Trades Action. The Court emphasized that when dealing with an application to strike for long delay, the crucial question is not whether there is an inextricable link but simply whether the advance in an action moves the lawsuit forward in an essential way considering its nature, value, importance and quality.

The Appellants did not dispute the Chambers Judge's finding that there was an "inextricable link" between the Trades Action and the Coverage Action but argued she misapplied the functional analysis. They claimed the Actions involved different parties, issues, and documents, and that steps taken in the Coverage Action—specifically limited questioning in 2018—did not significantly advance the Trades Action, particularly as they were not parties to the Coverage Action, the implied undertaking rule was not waived, and a letter agreement barred using that evidence in the Trades Action.

The Respondents argued that the Coverage Action was potentially dispositive of the Trades Action and that resolving it first was consistent with both parties' expectations, as the Appellants had previously urged that the Coverage Action be heard first to avoid unnecessary litigation. The Respondents maintained that the two Actions should be viewed functionally, and any progress in the Coverage Action—regardless of whether the evidence could be used directly—significantly advanced the Trades Action by moving it closer to resolution or abandonment. The Court agreed with the Respondents, finding that while the Coverage Action was not formally a precondition to the Trades Action, its outcome could determine whether the Trades Action would proceed at all, making procedural steps in the Coverage Action significant for both. The Court emphasized the parties' shared understanding that the Coverage Action should proceed first and concluded that, in these unique circumstances, Rule 4.33(2) did not apply.

However, it cautioned that this reasoning applied only in limited cases where related actions are meant to proceed sequentially, not as a general workaround to mandatory dismissal rules.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 540

(NIXON ACJ)

Rule 5.27 (Continuing Duty to Disclose)

This Application arose in the context of complex litigation over a pipeline failure. CNOOC Petroleum North America ULC ("CNOOC"), the Plaintiff, had answered Undertakings about whether a pipeline integrity management program applied to the corridor pipelines in 2014-2015. Certain Defendants, Sunstone Projects Ltd and Wood Group Canada, Inc (collectively, the "Wood Group"), applied for a correcting Affidavit under Rule 5.27(2) after CNOOC later revised its Undertaking responses.

The Court set out the Rule 5.27 framework. A witness who has been questioned must correct any answer that was incorrect or misleading, or that becomes incorrect or misleading by Affidavit and serve it as soon as practicable. Endorsing the rationale in *Signalta Resources Limited v Canadian Natural Resources Limited*, 2021 ABQB 867, Nixon A.C.J. emphasized that the correcting Affidavit safeguarded sworn evidence, prevented trial ambush, and enabled cross-examination on why and how the evidence changed.

The Court then clarified what a compliant correcting Affidavit must contain. It need not catalogue every internal step, but it must provide enough substance to permit meaningful cross-examination. At a minimum, it should explain what changes have been made, what led to the correction, and how the change corrected the earlier evidence. A narrative of procedural back-and-forth, without those core explanations, is insufficient.

Applying these principles, Nixon A.C.J. held that CNOOC's correcting Affidavit did not meet Rule 5.27(2) for the amended responses to two Undertakings. The Affidavit largely recited the history of requests and responses and pointed to a document already in disclosure. However, it did not explain why the prior answers were wrong or misleading, why the newly cited document mattered now, or how the revisions corrected the record. By contrast, no correcting Affidavit was required for two other Undertakings because those answers were not amended.

In the end, the Court directed CNOOC to serve a new correcting Affidavit that satisfied Rule 5.27(2) by addressing what changed, what led to the change, and how the change corrected the evidence.

EWASHKO V HUGO, 2025 ABKB 489

(LEMA J)

Rule 5.36 (Objection to Expert's Report)

The parties entered into an agreement with respect to the quantum of damages in an Action for medical malpractice, which included interest to the date of that agreement. After the parties entered into the agreement, the Trial of the matter was adjourned for nearly three years before it resumed, and liability was ultimately determined. The Court was called upon to determine whether the Plaintiffs were entitled to further interest from the date of the agreement to the date of Judgment.

The Court considered which party was responsible for the Trial adjournment, and whether that was a relevant consideration with respect to interest. In reviewing the procedural history, Lema J. noted that the Trial was adjourned after the Defendants provided Notices of Objection to the Plaintiffs' expert witness under Rule 5.36 on the eve of Trial. The Defendants took the position that the adjournment was granted at the request of the Plaintiffs, and as such it was their responsibility. The Plaintiffs took the position that the adjournment was only requested due to the Defendants' failure to provide reasonable notice of their objection.

In reviewing Rule 5.36, the Court noted it requires a party to provide reasonable notice and, upon a further review of relevant caselaw, the Court outlined that the purpose of reasonable notice is to prevent surprise and unnecessary adjournments. As such, although the Plaintiffs themselves requested the adjournment, they were justified in doing so in light of the potential prejudice that could have occurred in losing the chance to address the late objection. Fundamentally, the adjournment was the responsibility of the Defendants, and the Plaintiffs were entitled to pre-judgment interest on the amounts for the time following the date of the agreement.

SALAMH V ALBERTA HEALTH SERVICES, 2025 ABKB 383

(SIMARD J)

Rule 6.8 (Questioning Witness Before Hearing)

The Plaintiffs attempted to certify the Action as a class proceeding. The parties were in the process of conducting questioning with respect to the Certification Application, and the Plaintiffs sought an Order from the Court compelling the questioning of certain individuals alleged to have knowledge of the underlying facts of the Action by virtue of their present or previous employment with the Defendant.

The Plaintiffs sought the questioning of these individuals to elicit evidence of the inner workings and mindset of the Defendant and their interactions with the Plaintiffs. In reviewing Rule 6.8, Justice Simard noted that the Rules allowed a party to question witnesses for the purpose of obtaining a transcript for use at an application. The Court went on to state that the evidence the Plaintiffs intended to elicit was

only relevant and material to the overall claims against the Defendant and did not have any relevance to the Certification Application.

Given that the evidence the Plaintiffs sought to gain was not necessary for the Application before the Court, the Plaintiffs' request to question the individuals was denied and the Application to compel questioning was dismissed.

BUYE V FISHER, 2025 ABKB 501

(BOURQUE J)

Rule 6.8 (Questioning Witness Before Hearing)

The Applicant, Colleen Buye, challenged various estate planning and financial transactions undertaken by her mother, Joyce Fisher, on the grounds of lack of capacity and undue influence. Rule 6.8 arose when the Respondents relied on the examination of non-parties, including Joyce's former and current counsel, as part of the Summary Trial record.

The Court noted that Horner J. had previously ordered a Summary-Trial litigation plan that specifically authorized examinations of non-parties under Rule 6.8. Accordingly, when Colleen's counsel objected to the Respondents' reliance on the transcript of questioning of Joyce's litigation counsel, the Court dismissed that objection. Justice Bourque held that Rule 6.8 examinations had been properly conducted pursuant to the litigation plan and that the resulting evidence was both relevant and material to the issues before the Court, particularly regarding Joyce's capacity to execute a January 10, 2023 Enduring Power of Attorney.

In admitting and relying upon the evidence of Joyce's counsel, the Court confirmed that Rule 6.8 permits the examination of non-parties when authorized by Order and when such evidence is necessary to resolve factual disputes efficiently within a Summary-Trial process.

KENSINGTON PARK CAPITAL V FRANJON EXCAVATING, 2025 ABKB 441

(HOLLINS J)

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

Kensington Park Capital Ltd. ("Kensington"), the tenant, filed a caveat claiming a right of first refusal ("ROFR") under its lease after Franjon Excavating & Trucking Ltd. (the "Landlord") accepted a third-party offer without notifying Kensington.

Under the lease, the Landlord was required to give Kensington the first opportunity to purchase if the property was offered for sale. While the property was initially listed at $1.7M and later reduced to $1.499M, the Landlord accepted a $1.4M third-party offer shortly after

Kensington had bid $1.2M, without providing Kensington the chance to match. The Applications Judge discharged the caveat, concluding that the Landlord had complied with the ROFR. Kensington appealed, arguing that the Landlord breached both the ROFR and its duty of good faith.

Hollins J. clarified that, under Rule 6.14(3), this was an Appeal on the record rather than a true *de novo* hearing. A *de novo* hearing, Hollins J. noted, would involve no deference to the prior decision and would not require a transcript. By contrast, Hollins J. stated that an Appeal on the record requires the Court to determine whether the prior decision was correct. As such, Justice Hollins emphasized that the Applications Judge's ruling is therefore presumed correct but remains subject to review for error.

In the result, the Court found that the Applications Judge erred in finding that the ROFR clause did not entitle Kensington to be notified of third-party offers and the opportunity to match them. Accordingly, the caveat would remain on title, subject to the parties' agreement or further order of the Court.

EGGER V 1994426 ALBERTA LTD, 2025 ABKB 533

(MCGUIRE J)

Rules 6.14 (Appeal from Applications Judge's Judgment or Order) and 13.6 (Pleadings: General Requirements)

This Appeal pursuant to Rule 6.14 arose from a Summary Judgment that awarded the Respondent, Mr. Egger, $588,000 (principal $300,000 plus interest) on a promissory note. The Appellant, Mr. Hanlon (through 1994426 Alberta Ltd.), re-argued his set-off theory and, for the first time on Appeal, invoked s. 4 of the Federal *Interest Act*, RSC 1985, c I-15.

On set off, the Court upheld the decision of the Applications Judge. The debt and payment history were proven on the record. The alleged later arrangement was that the parties would submit fraudulent CERCA rent subsidy materials and split the proceeds, which the Appellant said should be credited against the loan. The Court found no enforceable agreement to vary the promissory note, noted that any CERCA payments were related to a tenancy with Egger Developments Ltd. rather than the individual lender, and observed that the CERCA application was dated August 30, 2020, after the principal had already fallen due and after the borrower continued to make interest payments acknowledging default. In any event, courts will not enforce an illegal bargain, so the set off theory could not succeed. Summary Judgment was therefore appropriate on the case presented below.

The *Interest Act* point was raised for the first time on the morning of the Appeal hearing, after an overnight adjournment. The Court found that this violated Rule 13.6(3), which required a party to plead any enactment or illegality it intends to rely on, particularly where it may take the other side by surprise. The Court still allowed the Appellant's argument while noting that reliance at Trial would require proper pleadings and any amendment is for the Trial Judge to determine.

On the substance, the Court concluded that there was a potential issue arising from s. 4 of the *Interest Act*, with the post-default interest provisions warranting a Trial, including whether

s. 4 applied in a commercial context and how it affected the calculation of interest after default.

Since the Appellant raised a new arguable issue requiring further evidence, Justice McGuire concluded there was a triable issue. The Summary Judgment was therefore set aside only as it related to the calculation of post-default interest, and there was no arguable issue with respect to the $300,000 principal amount. Although the Appellant was partially successful, the Appeal would have been unnecessary had the Appellant's defence been properly pled from the outset before the Applications Judge. For this reason, the Court ordered that each party bear their own Costs.

RODRIGUES V FORT MCKAY STRATEGIC SERVICES LP, 2025 ABKB 414

(KISS J)

Rules 7.2 (Application for Judgment) and 7.3 (Summary Judgment)

The Plaintiff was allegedly terminated for cause after an incident involving a service truck (the "Truck") on a mine site road. The Plaintiff sought Summary Judgment for damages for wrongful dismissal and applied for Summary Dismissal of the Defendants' Counterclaim. The Defendants asserted just cause and counterclaimed for lost profits due to alleged damage to the Truck.

Both the Claim and the Counterclaim were fairly resolved on the record pursuant to Rules 7.2 and 7.3.

Pursuant to Rule 7.3(1), the Court may grant summary judgment or summary dismissal where a case can be fairly resolved on the existing record without a trial. Applying the summary judgment framework, Kiss J. found that the Plaintiff met the initial burden of demonstrating dismissal without notice or pay in lieu, which is typically sufficient in wrongful dismissal cases to shift the onus to the Defendants to prove their defences.

The Defendants raised two defences: just cause for dismissal and a failure by the Plaintiff to mitigate damages.

On the first defence, the Court found that the Defendants failed to prove just cause. The Plaintiff's actions did not constitute serious misconduct as driving through water was an accepted practice at the mine site and there was no specific policy prohibiting it. Further, the Defendants failed to follow their own progressive discipline before termination. Lastly, Kiss J. found that the Defendants' decision to terminate was clearly excessive and not a proportionate response.

On the mitigation defence, the Plaintiff's limited job search was reasonable in the circumstances, and the Defendants failed to present evidence that an extensive search would have resulted in comparable employment.

The Court then determined whether it was appropriate to summarily determine the Plaintiff's claim for damages. Justice Kiss found that this could be satisfied by determining the damages in lieu of reasonable notice. In respect of summarily dismissing the Counterclaim for alleged lost profits from damage the Truck, the Court found the Defendants failed to provide sufficient evidence of loss and summarily dismissed their Counterclaim pursuant to Rule 7.3.

MAST V MAST ESTATE, 2025 ABKB 484

(KISS J)

Rules 7.2 (Application for Judgment) and 7.3 (Application and Decision)

This matter involved an Estate dispute between five siblings following their father's death, where one sibling challenged the Executors' compliance with the Will.

The Application concerned two issues: (1) whether the Executors complied with a conditional bequest requiring them to pay $75,000 to each of their siblings within one year of death, which they attempted to satisfy by borrowing against land they owned and depositing $450,000 into their lawyer's trust account; and (2) whether farmland transferred inter vivos in 2017 was a valid gift or held in a Resulting Trust for the Estate.

Since the validity of the Will was no longer being challenged, the Applicant and Respondent submitted that the issues could be dealt with summarily pursuant to Rules 7.2 and 7.3 of the Rules, and Rule 64 of the Surrogate Rules.

Justice Kiss applied *Hryniak v Mauldin*, 2014 SCC 7, confirming that summary disposition is only appropriate where there is no genuine issue requiring a trial. There will be no genuine issue requiring a trial when the Court is able to reach a fair and just determination on the merits, as the process (1) allows the Judge to make the necessary findings of fact; (2) allows the Judge to apply the law to the facts; and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result.

On Issue 1, Justice Kiss found summary disposition appropriate. The facts were largely undisputed, there were no credibility concerns, and neither party suggested further evidence would be available at Trial. The issue was purely one of legal interpretation, whether paying the $450,000 into the Estate lawyer's trust account amounted to "paying" the beneficiaries within one year of death. Justice Kiss held it did not. The obligation was personal, and the condition could only be satisfied upon actual receipt.

On Issue 2, the Court found summary disposition inappropriate. The *inter vivos* transfers raised questions about donative intent and the presumption of a Resulting Trust. Under s. 11 of the *Alberta Evidence Act*, RSA 2000, c A-18, the Executors could not rely solely on their own testimony to prove that the transfers were intended as gifts. The only corroborating witness was the drafting solicitor, whose role created credibility and conflict concerns. Further, the Affidavits relied upon in the present matter were sworn roughly two years prior, when the central issue was the validity of the will itself. Given these evidentiary limits and the gaps in the record, viva voce testimony was required, and the matter was directed to Trial.

ECCLES V ECCLES, 2025 ABCA 259

(SHANER J)

Rules 9.4 (Signing Judgments and Orders), 14.5 (Appeals with Permission), 14.8 (Filing a Notice of Appeal) and 14.37 (Single Judge Appeals)

This was an Application by the Applicant, Kelly Eccles, for (1) permission to appeal a Procedural Order of a Case Management Judge of the Court of King's Bench, (2) an extension of time to bring that Application, (3) a stay pending appeal, and (4) an order appointing counsel for the parties' child.

The Procedural Order in question set various litigation deadlines for Applications and cross-Applications between the parties. As it was a pre-trial scheduling decision, permission to appeal was required, pursuant to Rule 14.5(1)(b). The Applicant filed her Application for permission outside the one-month period prescribed by Rules 14.8(2)(a)(iii) and (b), and therefore sought an extension under Rule 14.37(2)(c).

In explaining her delay, Ms. Eccles asserted that she was unaware of the terms of the Order because the Case Management Judge had invoked Rule 9.4(2)(c), which dispenses with the need for parties to approve the form of the order before filing. Justice Shaner held that this argument was not persuasive, as Ms. Eccles was present when the Order was pronounced and therefore knew its effect.

Justice Shaner dismissed the Application to extend time, finding no *bona fide* intention to appeal within the prescribed period, no compelling justification for the delay, and no reasonable prospect of success. The Order appealed from was purely procedural, attracting a deferential standard of review, and all deadlines it contained had already expired, rendering the Appeal moot.

Because the extension Application failed, permission to appeal under Rule 14.5(1)(b) was also refused. The Court held that the proposed Appeal raised no question of general importance or law, had no reasonable chance of success, and would not advance the litigation.

Finally, as all prior Applications were dismissed, the requests for a stay and for appointment of counsel for the child were not considered, and the Applications were dismissed in their entirety.

KABIR V COMPLAINTS DIRECTOR (COLLEGE OF REGISTERED NURSES OF ALBERTA), 2025 ABCA 269

(HO JA)

Rules 9.4 (Signing Judgments and Orders), 14.5 (Appeals Only with Permission), 14.51 (Applications without Oral Argument) and 14.88 (Cost Awards)

The self-represented Applicant, Mr. Kabir, sought permission to appeal a decision that dismissed his application for extension of time to file a Notice of Appeal (the "Decision").

Mr. Kabir was a registered nurse subject to proceedings before the College of Registered Nurses of Alberta. These proceedings involved the Complaints Director investigating the matter, which were then referred to a hearing before a Tribunal. Mr. Kabir applied to review the pre-hearing conduct of the Complaints Director; however, the application was stayed on the basis that Judicial Review was premature until the Tribunal concluded its hearing. Despite the stay, Mr. Kabir brought two further applications before the Tribunal concluded the hearing, relying on interim rulings that the Tribunal would not adjudicate the Complaints Director's pre-hearing conduct during the hearing. Both applications were dismissed as premature and collateral attacks on earlier Orders.

Mr. Kabir then applied to the Court of Appeal for an extension of time to appeal the most recent Order. That application was dismissed, resulting in the Decision which Mr. Kabir sought permission to appeal.

Pursuant to Rules 14.5(1)(a) and 14.5(2), permission to appeal a single Appellate Judge's decision may be granted if the applicant establishes that there is a serious question of general importance, a possible error of law, an unreasonable exercise of discretion, or a misapprehension of important facts. Further, such permission may only be granted if there is a compelling reason for the matter to be reargued before three Court of Appeal Judges.

In this case, the Application for permission to appeal was dismissed.

First, Mr. Kabir repeated arguments already considered and rejected by the lower courts. Second, Mr. Kabir did not engage with any authorities cited in the Decision, nor did he identify any issues or potential errors. Third, while Mr. Kabir raised some new arguments, none were found to have merit. For example, he argued that he was not given a chance to present oral argument on his application although he had consented to that application being decided in writing. Rule 14.51 expressly allows applications to be dealt with by a single Appeal Judge without oral argument. Lastly, the Applicant introduced constitutional arguments, asserting that he was deprived of his right to judicially review the pre-hearing conduct of the Complaints Director. However, Ho J.A. clarified that none of the past decisions addressed if Judicial Review was available, only when such an application may be brought.

Ultimately, Ho J.A. found that Mr. Kabir did not identify any serious question of general importance, error of law, unreasonable exercise of discretion, or misapprehension of important facts to warrant permission to appeal. As a result, the Application for permission to appeal was dismissed, with costs awarded to the Respondent pursuant to Rule 14.88. The Court prepared the resulting Order pursuant to Rule 9.4(2)(c).

ZAWAWI V NAIM, 2025 ABCA 278

(FAGNAN J)

Rules 9.4 (Signing Judgments and Orders) and 14.48 (Stay of Enforcement)

The Applicant applied for a Stay of enforcement pursuant to Rule 14.48, pending Appeal of a prior Decision permitting the Respondent to relocate the parties' two children from Edmonton, Alberta, to Surrey, British Columbia. The Court may order a Stay pending Appeal if the Applicant can prove that: 1) there is a serious question to be determined on Appeal, 2) the Applicant will suffer irreparable harm if the Stay is not granted and 3) the balance of convenience favours granting the Stay. The Court will also consider whether there are exceptional circumstances justifying a Stay. Lastly, in a parenting context, the test is modified to prioritize the best interests of the children.

On the first branch, the Court stated that the threshold for a serious question in this context is very low. The Applicant's Appeal grounds were arguable and related to the best interests of the children. Therefore, the threshold requirement was met.

On the second branch, Fagnan J. found that the Applicant failed to establish irreparable harm. The Applicant pleaded that by allowing the Respondent to move with the children it would uproot the children's school, community and support while limiting his parenting time. However, the Respondent had already found new employment, enrolled the children into a new school and found housing in Surrey. Moreover, there was no evidence that the children had particularly strong ties to the community in Edmonton, aside from the Applicant and his family. The Court also noted that the children had long been in the Respondent's primary care and benefitted from that stability. Further, the Applicant's own recent parenting arrangements, which included time spent in Calgary, undercut his argument that Edmonton provided necessary stability.

On the third branch, Fagnan J. held that the balance of convenience favoured the Respondent's position. The Respondent already took significant steps to relocate the children before the new school year, and the children were expecting the move. The Trial Judge also contemplated regular virtual contact and upcoming parenting time during the Christmas school break, reducing any immediate disruption to the Applicant's relationship with the children.

The Court concluded that although there was a serious issue for Appeal, the Applicant failed to establish irreparable harm or that the balance of convenience would favour his position. Further, no exceptional circumstances were present to justify a Stay.

In the result, the Application for a Stay pending Appeal was denied. The Court prepared the resulting Order pursuant to Rule 9.4(2)(c).

TEMPO ALBERTA ELECTRICAL CONTRACTORS CO LTD V MAN-SHIELD (ALTA) CONSTRUCTION INC, 2025 ABCA 282

(KRAUS J)

Rules 9.6 (Effective Date of Judgments and Orders), 14.88 (Cost Awards) and 14.90 (Sanctions)

This was the Appeal of a Chambers Judge's decision dismissing a contempt Application brought by Tempo Alberta Electrical Contractors Co. Ltd. ("Tempo") against Man-Shield (Alta) Construction Inc. ("Man-Shield"). The contempt Application arose from Man-Shield's failure to pay $678,407.88 into Court as directed by the Court of Appeal in earlier proceedings. The Chambers Judge accepted evidence that Man-Shield lacked sufficient liquid assets and found it had a reasonable excuse for non-compliance.

On Appeal, Tempo argued the Chambers Judge failed to consider relevant evidence, erred in finding a reasonable excuse, and erred in stating that whether a statutory trust existed under s. 22 of the *Builders' Lien Act* remained a live issue. The Court of Appeal held that the Chambers Judge had considered the evidence and made no palpable and overriding error in concluding Man-Shield had a reasonable excuse. However, the Court held that the Chambers Judge erred in suggesting the statutory trust was unresolved, as that issue had been decided in earlier appellate proceedings.

In doing so, the Court confirmed that, pursuant to Rule 9.6, an Order of the Court remains valid and effective until reversed or varied on Appeal, and Man-Shield was entitled to rely on the Applications Judge's earlier Order authorizing release of the funds. The Court also applied Rules 14.88 and 14.90, awarding costs of the Appeal to Man-Shield as the successful Respondent, except for the costs and disbursements related to its factum, which was filed late.

WEINRICH CONTRACTING LTD V WEINRICH, 2025 ABKB 523

(NIELSON J)

Rule 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

On November 2, 2017, the Plaintiffs sought and received two *ex parte* Orders against the Defendants. On December 5, 2017, the Defendants applied to Set Aside the Orders pursuant to Rule 9.15, which allows the Court to vary or discharge a Judgment or an Order that was made without notice. The Set Aside Application must be made within 20 days after the Applicant is served with the Judgment or Order. The Defendants were served with one of the Orders on November 10, 2017. The Defendants filed their Set Aside Application on December 5, 2017, 25 days later.

The Plaintiffs took issue with the late filing. The Defendants responded that the Rule is not a strict limitation period, and cited *Big Plans for Little Kids Ltd v Souster*, 2022 ABCA 384, where the Court of Appeal emphasized that, while Rule 9.15 expects prompt action, the Court retains discretion to extend time and may require an explanation only where there

is wilful or intentional delay. The Court was prepared to exercise its discretion to extend the deadline, noting that the Defendants acted promptly, just outside of the 20-day period. It could not be said there was any wilful or intentional delay by the Defendants. Given the timing of many parts of the Application, it was appropriate to extend the deadline in these circumstances and allow the Application to be heard on its merits.

STEWART V SAUER, 2025 ABCA 305

(FAGNAN JA)

Rules 9.15 (Setting Aside, Varying and Discharging Judgments and Orders) and 14.5 (Appeals Only with Permission)

The Applicant sought an extension of time to Appeal and permission to Appeal two Orders: one for retroactive child support from 2018-2024; and another for Costs following a Special Chambers hearing. The Applicant argued he was unaware of the hearing due to his lawyer's withdrawal and his time in rehabilitation. He also claimed he was misled and believed that all matters were stayed. The Respondent submitted that the Applicant had been properly served with notice of the hearing, but failed to engage with the proceedings until enforcement efforts began for child support and costs.

Justice Fagnan affirmed that Rule 14.5(1)(e) does not apply to an Appeal of a Costs Order if a related substantive decision is also being appealed. Therefore, permission to Appeal the Costs Order was not required. In determining whether to grant an extension of time to file Appeal materials, the Court considered the overall justice of the situation. This included considering the reason for delay, the likelihood of the Appeal proceeding, potential prejudice to the opposing party, and the merit of the Appeal. This also included examining whether the Applicant held a *bona fide* intention to Appeal within the original Appeal period, if there was a satisfactory explanation for the delay, whether granting an extension would cause undue prejudice, whether the Applicant accepted any benefits of the Judgment, and whether the Appeal had a reasonable prospect of success.

The Court found that the Applicant had formed a *bona fide* intention to Appeal the Orders within two weeks of being served with the Orders. However, the likelihood of success on Appeal was extremely low. The Applicant sought to overturn the Orders based solely on his absence at the hearing, as opposed to any errors with the Chambers Judge's decision. However, the Applicant failed to provide Affidavit evidence to support his claim that he was unaware of the hearing date, while the Respondent provided evidence that the Applicant was properly served with notice of the hearing by email and registered mail.

Fagnan J. also acknowledged that where a litigant wishes to take issue with an Order issued in their absence, they must apply to set aside, vary or discharge that Order under Rule 9.15 before an Appeal can be launched. An Application pursuant to Rule 9.15(1)(b) is usually heard by the Judge who issued the Order, as that Judge is best placed to consider the evidence and determine whether the Order should be set aside or varied as a result of the litigant's non-attendance at the hearing. However, the Applicant did not apply to set aside the Orders under Rule 9.15 and the Court found there were no exceptional circumstances that would

justify granting the Application to permit him to proceed with the Appeal.

Justice Fagnan determined that because the Applicant had been delinquent in paying support, disclosing his income, and paying outstanding costs, that granting permission to Appeal would result in further cost to the Respondent. Given this and the aforementioned reasons, Fagnan J. dismissed the Application to extend time to file the Notices of Appeal and granted the Respondent Costs.

KMK V JJW, 2025 ABKB 415

(JUGNAUTH J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Accounts), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

A father applied for costs after he successfully opposed an Application for relocation by his child's mother. The father sought indemnity of 50% of his actual legal fees in the amount of $10,987.50 or, alternatively, $8,500, in accordance with Schedule C of the Rules. The mother argued that each party should bear their own costs, or alternatively, that costs should be limited to $5,400, pursuant to Schedule C.

The Court awarded the father $8,500 in Costs, which was to be offset against the father's retroactive child support owed to the mother. Justice Jugnauth considered the Court's discretion in Costs Applications pursuant to Rule 10.31, as well as the factors set out in Rule 10.33. Specifically, Jugnauth J. held that the Application was of high importance to both parties but was not overly complex. The Court further found that both parties cooperated procedurally in setting and attending a streamlined trial and that neither party acted frivolously or engaged in misconduct. Justice Jugnauth mentioned that having information regarding the father's counsel's hourly rates, seniority, and experience, would have assisted the Court in making its costs determination.

Ultimately, Jugnauth J. held that the Court "retained the discretion to provide a higher or lower level of indemnification having regard to rules 10.2(1) and 10.33, the conduct of the litigation, and relevant factors outside the conduct of the litigation". The father was the successful party on the central issue of relocation and was therefore presumptively entitled to costs pursuant to Rule 10.29(1). Jugnauth J. largely accepted the father's draft Bill of Costs, which the Court determined represented a reasonable and proportional level of the father's actual costs.

DISTINCT REAL ESTATE USA 2, LP V WAZONEK, 2025 ABKB 451

(MARION J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account) and 10.33 (Court Consideration in Making Costs Award)

This was a Costs Decision resulting from an earlier Application and Cross-Application related to a multi-residential property in Memphis, Tennessee.

In their Application, the Plaintiffs advanced claims relating to the property and requested an Attachment Order against one of the Defendants. In response, the Defendants filed a Cross-Application challenging the Plaintiffs' standing, seeking dismissal of the Application, and requesting release of funds held in Court pursuant to an interim Attachment Order. Justice Marion heard both matters together, and struck several claims for lack of standing, dismissed the Attachment Order, and directed that the funds held in Court be released to counsel for the Defendants. As the Defendants were substantially successful, they sought Costs under Rules 10.2 and 10.33.

Applying the factors set out in Rule 10.33, Marion J. considered the result obtained, the importance and complexity of the issues, and the parties' conduct. The Defendants achieved substantial success on both the standing and Attachment Order issues. The Court found that the Plaintiffs' decision to commence proceedings in Alberta without proper Delaware limited partnership authorizations unnecessarily complicated and lengthened the matter. Although both parties contributed to some inefficiencies, the Plaintiffs' procedural missteps primarily increased costs and added confusion.

Justice Marion found the Application and Cross-Application to be legally and factually complex, engaging cross-border corporate and accounting issues. While noting that the Defendants' record-keeping was imperfect, Marion J. determined that their success on the principal issues justified a Costs award in their favour. In assessing quantum, the Court considered the reasonableness and proportionality requirements under Rule 10.2 alongside the factors in Rule 10.33.

Marion J. determined that Column 3 of Schedule C was the appropriate reference point, applying a 3X multiplier to reflect the complexity of several substantive issues, and a 25% inflationary adjustment consistent with recent authorities that account for inflation since the 2020 Schedule C amendment. Justice Marion noted that although costs typically fall within 40-50% of actual solicitor-client costs, that approach would yield a disproportionate result in this case.

After balancing the relevant factors, Justice Marion awarded the Defendants a lump-sum of $40,000, plus disbursements and GST.

YI V MM, 2025 ABKB 483

(EAMON J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award), 12.68 (Evidence), 12.69 (Appeal Memorandum) and 14.25 (Contents of Factums)

The Appellant, YI, appealed a Court of Justice decision for parenting and support. Justice Eamon heard and dismissed the appeal in *YI v MM*, 2025 ABKB 138. The Respondent, MM, sought Costs on a solicitor-client basis in the approximate amount of $12,500, or enhanced Costs, due to the conduct of YI, in the amount of $25,000.

Eamon J., in considering MM's Application, applied Rule 10.29 for the general proposition that the successful party is entitled to costs. Justice Eamon also noted, however, that solicitor-client costs are only awarded in rare and exceptional cases. Further, the Court considered its flexibility in making a costs determination pursuant to Rules 10.31 and 10.33. Specifically, Justice Eamon focused on the Application of Rule 10.31(1)(a).

When awarding costs, the Court must indemnify the winner without unreasonably discouraging court access. Justice Eamon relied on *Sunridge Nissan Inc v McRuler*, 2023 ABCA 128 when applying Rules 10.2 and 10.33. The Court is entitled to consider litigation misconduct and to sanction frivolous behaviour pursuant to Rule 10.33(2)(g).

Following a detailed analysis, Justice Eamon held that MM was entitled to Costs, but not on a solicitor-client basis. To award solicitor-client Costs, the Lawyer's Account must be assessed either by a Court or by an Assessment Officer. A cost-benefit analysis in this case did not favour proceeding with an Assessment.

According to Eamon J., the process of a Family Law appeal in the Court of King's Bench is similar to an appeal at the Court of Appeal given the application of Rules 12.68, 12.69 and 14.25. Therefore, after considering the application of Column 1 of Schedule C, as well as the steps required for the Appeal, MM was awarded $5,550. After applying relevant case law, Justice Eamon determined that enhanced Costs were warranted to deter litigation misconduct, thereby bringing MM's total Costs Award to $8,325. Lastly, Eamon J. determined that the Children's Counsel's Account should be paid in full by YI after a review by the Assessment Officer.

UBAH V UBAH, 2025 ABKB 300

(SIDNELL J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 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 following a Streamlined Trial where the Court found the Plaintiff had a valid marriage and was the successful party. The Plaintiff sought Costs in the amount of $10,637.84 and invited the Court to determine whether the Defendant had complied with prior costs and penalty Orders, relying on previous judicial findings that described the Defendant's pattern of abusive and vexatious litigation, submitting it caused her significant financial hardship. The Defendant opposed any Costs award, submitting that the Plaintiff had mislead the Court and that the Streamlined Trial only addressed a procedural matter within ongoing litigation. As an alternative, the Defendant argued that Costs should be limited to 5% and be awarded in the cause.

Justice Sidnell affirmed that under Rules 10.29, 10.30, and 10.33, costs are presumptively awarded to the successful party. Sidnell J. determined that the Plaintiff was entirely successful, that the issues were not complex, and that there were no exceptional factors to warrant any departure from the usual rule. The Court disagreed with the Defendant that Costs were premature or unwarranted due to the litigation being ongoing, as the Streamlined Trial resulted in a final determination of substantive issues, not merely procedural ones.

Sidnell J. declined to address the Plaintiff's request to enforce the prior outstanding costs and penalty Orders against the Defendant, finding that such matters were within the jurisdiction of the Case Management Justice. The Court also refused to consider non-compliant Affidavit exhibits filed by the Plaintiff that contained argument rather than evidence.

The Court awarded Costs to the Plaintiff in the amount of $6,075 under Column 1 of Schedule C. However, Justice Sidnell declined to award full or partial indemnity Costs, finding Schedule C to be appropriate given the nature and complexity of the proceeding. The Court assigned the Costs to Legal Aid Alberta pursuant to the Plaintiff's prior assignment of a Costs Order.

RAWANCO INC V 617271 SASKATCHEWAN LTD, 2025 ABKB 437

(KUBIK J)

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

The Applicant, Rawanco Inc. ("Rawanco"), brought an Application for Costs after succeeding in an Action against its landlord, 617271 Saskatchewan Ltd. The Applicant sought costs on a solicitor and own client basis or, alternatively, party and party costs in accordance with *McAllister v Calgary (City)*, 2021 ABCA 25.

Rawanco argued that enhanced Costs were justified because: (1) the lease entitled the

Landlord to recover solicitor-client costs upon the tenant's default, (2) the matter was complex, and (3) the Defendant engaged in bad faith litigation conduct.

The Respondent argued that no enhanced Costs should be awarded because: (1) bad faith conduct had already been considered without a finding of misconduct, (2) the parties had mixed success, as the Applicant's bad faith claim failed, and (3) solicitor-client and *McAllister* Costs were disproportionate to the complexity of the Action.

Justice Kubik rejected the claim for solicitor-client Costs, finding no contractual basis in the lease and no evidence of misconduct rising to the threshold of reprehensible, scandalous, or outrageous conduct.

Applying Rules 10.29, 10.31, and 10.33, Kubik J. held that the Applicant was the successful party on the central issue of liability for HVAC expenses, and the failed bad faith claim did not amount to "mixed success." While the Respondent's withdrawal of certain allegations increased costs and complicated the matter, the Action remained procedurally straightforward and akin to a Special Chambers Application.

The Applicant's solicitor and own client costs exceeded $132,000, while the Respondent's costs totaled approximately $16,500. Justice Kubic found that Schedule C, Column 1 Costs ($7,450) were insufficient, but that McAllister costs would be disproportionate. Justice Kubik instead awarded a lump sum of $20,000, reflecting the Applicant's success and the additional work required to address the withdrawn allegations.

1010805 ALBERTA LTD V SUNDIAL GROWERS INC, 2025 ABKB 439

(NIXON ACJ)

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

This was a Costs ruling following the dismissal of an appeal of an arbitration award. The Respondents were successful and sought Costs under Rules 10.29, 10.31, and 10.33.

The Court confirmed that pursuant to Rule 10.29(1), a successful party is presumptively entitled to costs payable forthwith, subject to the Court's discretion under Rule 10.31. Rule 10.31 allows the Court to order costs after considering the factors in Rule 10.33, including success, importance, complexity, conduct, and proportionality. However, the Court noted there is no presumptive level of indemnification, and it may assess costs with or without reference to Schedule C, using multipliers, proportions or fractions.

Applying those Rules, the Court found that Schedule C, Column 5, with Items 18–21, was appropriate given the nature of the appeal and the potential monetary implications, even though the Applicants had argued for Column 1. The Court declined to apply a multiplier, finding that the matter was not sufficiently complex to justify one.

Pursuant to Rule 10.31, and consistent with the usual presumption of joint and several liability, the Court awarded Costs jointly and severally against three of the four Applicants, excluding 1010805 Alberta Ltd due to its limited role.

MEG ENERGY CORP V ALBERTA (MINISTER OF ENERGY), 2025 ABKB 479

(EAMON 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 was a Costs Endorsement following the Judicial Review Decision in *MEG Energy Corp v Alberta (Minister of Energy)*, 2025 ABKB 479. The Respondent, Alberta, sought Costs after succeeding on nearly all issues. MEG Energy Corp ("MEG") argued that each party should bear its own Costs or that Costs should be apportioned, given MEG's limited success on one issue where the Court found a minor breach of procedural fairness.

Justice Eamon reviewed the principles governing Costs Awards, confirming that, pursuant to Rule 10.29, a successful party is presumptively entitled to Costs, subject to the Court's discretion under Rule 10.21. Justice Eamon noted that the Court may vary or apportion Costs in accordance with the factors in Rule 10.33(1) and (2), including the complexity of the matter, importance of the issues, conduct of the parties, and whether any steps were unnecessary or improper.

Eamon J. held that Alberta was substantially successful and entitled to Costs despite a minor, non-prejudicial breach of procedural fairness. Justice Eamon noted that MEG succeeded only on one discrete issue in the Judicial Review. The Court highlighted that MEG's successful argument was severable from the broader proceeding. Accordingly, Justice Eamon apportioned Costs 80% in Alberta's favour.

In quantifying Costs, Justice Eamon found that Schedule C, Column 1 was inadequate due to the complexity, high value, and technical nature of the dispute, the volume of records, and the importance of the issues. Applying Rules 10.31 and 10.33, Eamon J. determined that Schedule C, Column 5 at the Appeal Court scale, without a multiplier, was appropriate. Justice Eamon permitted fees for second counsel due to the complexity of the matter and the dual representation.

In the result, Justice Eamon awarded $28,485 in Costs, apportioned 80% to Alberta, and 20% to MEG, with disbursements and GST to be finalized between the parties.

GRAHAM V GRAHAM, 2025 ABKB 482

(NEUFELD 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 Applicants sought a determination of the appropriate costs to be awarded following a successful Summary Dismissal Application. The Applicants alleged that the Respondents' conduct unnecessarily complicated the matter and resulted in increased legal costs. As such, the Applicants sought full indemnity costs or, alternatively, substantial indemnity costs. The

Respondents argued that full indemnity costs were inappropriate in the circumstances and sought for costs to be held in abeyance pending appeal of the Summary Dismissal Application.

Justice Neufeld noted that Rule 10.29 sets out the general principle that a successful litigant is entitled to recover costs, and as such the only question was how those costs should be calculated. The Court then considered the factors noted in Rule 10.33 -- in particular, the procedural complexity of the matter, the quantum in dispute, and the complete success of the applicant. The Court went on to note that while the Respondents' conduct did complicate the dispute, it was not an abuse of process. The Respondents advanced significant and voluminous materials, which necessarily caused delay and additional costs, but this alone was not litigation misconduct. As such, Justice Neufeld held that full indemnity costs would not be appropriate.

While indemnity costs were not appropriate in this matter, the Court also recognized that the amounts which would be recoverable under Schedule C of the Rules would not adequately reflect the costs reasonably incurred by the Applicants in addressing the Respondents' claim. To reflect this, the Court directed that the Applicants be awarded with costs equal to 40% of reasonable fees and disbursements.

PRING V MAILLOUX, 2025 ABKB 486

(FRASER J)

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

This was an Application for costs following a Summary Trial regarding property division. The two main issues at Trial were the determination of Mr. Mailloux's income for child support purposes and the characterization and value of shares in G.M.X. Holdings Limited ("GMX"). Ms. Pring was successful on the issue of child support, while Mr. Mailloux was partially successful on the treatment of the GMX shares.

Rule 10.29 entitles the successful party to costs against the unsuccessful party, and Rule 10.33 lists factors for the Court to consider when making a costs award. Fraser J. identified the most important factors here as the degree of success of the parties, the importance of the issues and the complexity of the underlying Action.

On child support, Ms. Pring was the successful party as Mr. Mailloux's income was imputed at a higher amount than Mr. Mailloux proposed. Justice Fraser noted that Mr. Mailloux deliberately reduced his income to avoid paying child support despite having significant assets, which was described as an aggravating factor and conduct that could not be condoned. Conversely, Mr. Mailloux was successful in establishing that the GMX shares were exempt property, which effectively reduced the matrimonial property available for division.

The Court also found that the parties' approach to litigation was balanced. Both agreed to proceed by Summary Trial, which avoided what would otherwise have been a lengthy and costly proceeding likely requiring expert evidence. Although both parties made offers to settle, the Judgment ultimately awarded Ms. Pring less than her own offer and less than Mr. Mailloux's offers. Despite this, Fraser J. found that Ms. Pring did not unnecessarily delay

the Action given the amount at stake and the issues' complexity.

The Court concluded that each party achieved a similar level of success. Therefore, no costs were awarded to either party.

SINGH V GLAXOSMITHKLINE INC, 2025 ABKB 378

(SIDNELL J)

Rules 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

Following a prior Decision addressing the allocation of legal fees in a class action proceeding (the "Costs Decision"), several parties applied for Costs incurred in connection with that proceeding (referred to as the "Costs Application"). The parties seeking Costs included the Docken NSC Group ("Docken"), Guardian Law ("Guardian"), Merchant Law ("Merchant") and the Churko NSC Group ("Churko"). Each sought Costs against one or more other parties, in some cases on a joint and several basis.

The Court applied Rule 10.31(1), which requires that a costs award be guided by the factors listed in Rule 10.33. Justice Sidnell identified Rule 10.33(1)(a) (the result of the Action and the degree of success of each party), Rule 10.33(1)(b) (the amount claimed and recovered), Rule 10.33(1)(c) (the complexity of the Action), and Rule 10.33(1)(g) (any other relevant matter) as most applicable. While some parties were allocated a portion of the legal fees in the earlier Decision, success was limited and mixed. For example, the internal dispute between Churko and Docken remained unresolved and was not properly before the Court. Guardian was partially successful in being recognized as class counsel but was not successful in its claim for an increased allocation of fees.

Justice Sidnell also found that, while the Costs Application was not legally complex, it became unnecessarily protracted due to a series of procedural and evidentiary disputes. These included objections to Affidavits, failure to provide timely availability for scheduling, and late or ineffective attempts to rely on unfiled or unverified documents. These actions contributed to delays and lengthened the proceeding unnecessarily.

The Court also considered Rule 10.33(2). Under Rule 10.33(2)(a), Justice Sidnell found that several parties had taken steps that prolonged the proceeding without contributing meaningfully to its resolution. Under Rule 10.33(2)(f), the Court noted that counsel for Docken failed to comply with an Undertaking to file supporting evidence. Under Rule 10.33(2)(h), the Court declined to give any weight to formal settlement offers that were served only after the Costs Decision had been issued, finding them premature and ineffective.

Given the contentious nature of the Costs Application, the number of unnecessary or unsuccessful procedural steps taken, and the limited success achieved by all parties, the Court found that no party was entitled to Costs. All parties were directed to bear their own Costs and disbursements related to the Costs Application.

ONE PROPERTIES HOLDINGS CORP V TURTLE BAY INVESTMENTS LTD, 2025 ABKB 411

(MAH J)

Rules 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Applicants applied for Costs following a substantive decision in which they successfully struck two of three Notices to Arbitrate issued by the Respondents (the "Struck Notices"). The Struck Notices were based on arbitration clauses in two separate Unanimous Shareholder Agreements ("USAs"), while the third Notice, tied to an Option Agreement, was upheld.

The Applicants argued that they were successful and sought costs under Column 2 of Schedule C, along with disbursements. The Respondents contended that the outcome was mixed and that each party should bear their own costs.

Justice Mah reviewed Rules 10.31 and 10.33, emphasizing that while costs are discretionary, they should be awarded in accordance with principles of fairness, equity, and proportionality. Justice Mah affirmed the default Rule that the substantially successful party is presumptively entitled to costs and where success is mixed and neither party is substantially successful, the Court may decline to Award Costs.

Mah J. concluded that the Applicants were the substantially successful party. He found that the core issue, whether a majority shareholder's exercise of a share-purchase option extinguishes a minority shareholder's right to arbitrate oppression claims under a USA, was resolved entirely in the Applicants' favour. The proposed arbitrations under the USAs, which the Applicants avoided, were complex, high-stakes, and potentially damaging due to the nature of the allegations.

While the Respondents succeeded on two procedural issues related to the Option Agreement Arbitration, Justice Mah characterized those as "relatively minor" and insufficient to offset the Applicants' overall success.

Justice Mah rejected the Respondents' argument that Column 1 Costs were appropriate due to the declaratory nature of the relief sought. Exercising discretion pursuant to Rule 10.33, Mah J. accepted that Column 2 was justified based on the matter's complexity and significance. The Applicants were awarded Schedule C Column 2 Costs, plus disbursements as set out in their draft Bill of Costs.

JUST BIOFIBER CORP V JUST BIOFIBER STRUCTURAL SOLUTIONS CORP, 2025 ABKB 407

(LEMA J)

Rules 10.33 (Court Considerations in Making Cost Award) and 10.37 (Appointment for Assessment)

Following a Decision in which they were successful, the Respondents sought solicitor-client costs. Justice Lema awarded the Respondents full solicitor-client costs jointly and severally against two of the Applicants: Just Biofiber Corp. and Perkins Property Investments Ltd.

The Court applied Rule 10.33 and considered the conduct of the litigation. It found the Applicants made serious but unsubstantiated allegations of fraud, deceit, and criminality, failed to advance evidence on material points, and conducted the litigation in a manner that increased the Respondents' costs. The Court noted that Just Biofiber did not provide evidence from its principal on key transactions and reasonable expectations, resulting in unsupported claims. The Respondents' costs Brief also emphasized procedural abuse, reputational harm, and the lack of complexity or merit to the claims.

Lema J. found that Just Biofiber and Perkins Property had adequate opportunity to respond to the Costs Application but elected not to do so. In line with authorities cited by the Respondents, the absence of opposition, and the Applicants' misconduct, supported an award of full indemnity costs. The Respondents' requested amount of $329,586.32 was granted, subject to review by an Assessment Officer under Rule 10.37 if requested by either party.

BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR), 2025 ABKB 463

(HO J)

Rule 10.33 (Court Considerations in Making Costs Award)

This was a Costs decision arising from *Bow Valley Engage Society v Alberta (Environmental Protection and Enhancement Act, Designated Director)*, 2025 ABKB 158. The Court addressed Costs following the dismissal of two related Judicial Review Applications — one by Bow Valley Engage Society ("BVES") and the other by the Stoney Nakoda First Nations ("Stoney Nakoda"). Although the Applications were separate, the Court noted they raised similar issues and were heard concurrently, creating procedural efficiencies that were considered when assessing Costs.

Stoney Nakoda acknowledged that Three Sisters Mountain Village Properties Ltd. ("TSMVP"), and Thunderstone Quarries Canmore Ltd. ("Thunderstone") were all successful parties in the Judicial Review Application and that they were presumptively entitled to Costs.

The Court began by noting that when considering an award of Costs, courts are required to take into consideration the factors set out in Rule 10.33(1), including the result of the Action or degree of success of each party, the

amount claimed and the amount recovered, the importance of the issues, the complexity of the Action, and any other matter related to the question of reasonable and proper Costs that the Court considers appropriate.

The Court rejected BVES and the Stoney Nakoda's argument that their Judicial Reviews warranted reduced Costs due to their alleged public interest nature, given the parties were directly affected by the Judicial Review Application.

The Court awarded Costs to both Thunderstone and TSMVP, applying Column 5 of Schedule C without any multipliers, in recognition of the complexity of the Applications but also the efficiencies gained from overlapping issues. For Thunderstone, the Court declined to award second counsel fees due to the one-day hearing and the cooperative time limitations set by counsel. However, a 25% inflationary adjustment was granted, along with disbursements.

Unlike the case with Thunderstone, the steps that TSMVP took in each of the two Judicial Review Applications were not the same (TSMVP took more steps responding to BVES' Judicial Review Application than it did in responding to Stoney Nakoda's Judicial Review Application). To account for the fact that some, but not all of the steps taken in those two Actions overlapped, the Court granted Costs to TSMVP in each of the two Judicial Review Applications for the steps and disbursements as set out in its Bills of Costs, pursuant to Column 5 (with no multiplier). Second counsel fees were similarly not granted.

ESTATE OF ASHLEY COLIN CONSTANT, 2025 ABKB 549

(HOLLINS J)

Rule 10.33 (Court Considerations in Making Costs Award)

The Applicants were successful on an Application to declare the residue of Colin Constant's Will intestate, to be distributed to them under s. 34 of the *Wills and Succession Act*, SA 2010, c W-12.2. The Will listed the Respondent as the named Personal Representative, but did not name a residual beneficiary. The Respondent was unsuccessful in a Cross-Application to be declared the residual beneficiary of the Will.

At issue in this Application was the allocation of Costs. The Applicants sought recovery of 70% of solicitor-client costs, contending they were entitled to Costs for two Applications, their own and the Cross-Application, double-costs due to the rejection of their *Calderbank* Offer, and further costs as the Respondent engaged in litigation misconduct. The Respondent argued that each party should have their own Costs paid from the Estate, rather than from the unsuccessful party.

Justice Hollins rejected the argument that the Application and Cross-Application should be considered separately for the purpose of calculating Costs, noting that no additional briefs of affidavits were required and that both the Application's were argued together as a single issue, resulting in one decision. Hollins J. also dismissed the Applicants' claim of litigation misconduct by the Respondent, emphasizing that the Respondent had an arguable position and that losing a case does not amount to misconduct. Additionally, the Court noted that the Applicants' *Calderbank* Offer was an effective settlement, open for a reasonable period,

and included extra payment for the Respondent's legal fees, which the Applicants were not obliged to provide.

Justice Hollins confirmed that, under Rule 10.33(1)(a), the unsuccessful party will generally bear the costs of the successful party. However, citing *Re McCarthy Estate,* 2022 ABCA 131, Hollins J. noted that in rare circumstances, Costs may be paid by the Estate. Factors to consider include whether the Testator caused the litigation, whether the challenge was reasonable, any allegations of undue influence or lack of capacity, the parties' conduct, and any settlement offers.

Hollins J. observed that while the testator may have contributed to the litigation, courts recognize that it is ultimately the litigants who cause disputes. Justice Hollins found the Respondent's challenge was reasonable, but an effective settlement offer would have covered most fees. Considering these factors together, Justice Hollins concluded that the case did not meet the rare circumstances to justify costs being imposed on both parties, to be paid by the Estate.

The Court explained that, under Rule 10.33, the calculation of Costs requires consideration of the importance of the issues, the conduct of the parties, the complexity of the Action, and what the unsuccessful party can reasonably be expected to pay. Hollins J. stated that Costs are intended to partially, but not fully, indemnify the successful party, typically reflecting 40-50% of reasonable solicitor-client costs, guided by Schedule C and case law. Justice Hollins further noted that, since the hearing resolved all issues and the Respondent had no share of the Estate, a lower partial indemnity percentage was appropriate. Accordingly, Hollins J. awarded the Applicants $25,000, approximately 34% of their Costs, payable by the Respondent.

CALGARY CO-OPERATIVE ASSOCIATION LIMITED V FEDERATED CO-OPERATIVES LIMITED, 2025 ABCA 249

(SLATTER, ANTONIO AND FEEHAN JJA)

Rules 10.33 (Court Considerations in Making Costs Award) and 14.88 (Cost Awards)

Federated Co-operatives Limited ("Federated Co-operatives") appealed a portion of a Partial Summary Judgment in favour of Calgary Co-operatives Association Limited ("Calgary Co-op"), which was dismissed by the Court of Appeal in a separate but related decision (the "Partial Summary Judgment Appeal"). This decision was in respect of the Costs arising from the Partial Summary Judgment Appeal. The Parties agreed that Costs were payable to Calgary Co-op but could not agree on the amount.

Calgary Co-op sought 50% of its solicitor and client Appeal Costs or, alternatively, a lump sum amount of $90,000. Federated Co-operatives submitted that Rule 14.88(2) applied, and that there was no reason to deviate from the standard Appeal Costs set out in schedule C or, alternatively, that the percentage awarded at first instance should apply, which they calculated to be 28%. The Court rejected this argument, citing inconsistencies with previous arguments advanced by Federated Co-operatives, and actually found that percentage awarded at first instance was approximately 36.2%.

The Court found that the appropriate Costs Award for the Appeal was $90,000, inclusive of disbursements, plus GST. In arriving at its

conclusion, the Court stated that where a Trial Judge awards Costs in a lump sum, Rule 14.88 is difficult to apply, as an appropriate percentage of solicitor and client costs at Trial may not be appropriate on appeal. Further, the Court cited case law for the principle that Costs Awards based on a percentage of solicitor and client costs must be justified beyond merely asserting the quantum charged to or paid by the client. The Court also considered Rule 10.33, taking into consideration the scale of Costs awarded by the Trial Judge and the Costs award for the Appeal that would be generated by the strict application of Schedule C.

WANG V ALBERTA HEALTH SERVICES, 2025 ABCA 288

(WOOLLEY J)

Rules 10.44 (Appeal to Judge) and 14.5 (Appeals Only with Permission)

The Applicants, Xiaoli Lily Wang and Daiming Robert Li, sought permission to appeal the decision of a Chambers Judge granting the appeal of an Assessment Officer's certification of a bill of costs.

Permission to appeal was required because the decision at issue was a decision "of the Court of King's Bench sitting as an appeal court under rule… 10.44", pursuant to Rule 14.5(1)(i). Accordingly, the test considered, in part, the merits of the appeal and whether there was a reasonable chance of success on appeal.

The decision the Applicants sought to appeal granted the Applicants entitlement to information identifying the individuals who performed the legal work billed, and sufficient detail about the work performed. The Court found no merit in the proposed Appeal, emphasizing that the Applicants had already received the substantive relief they sought. It reiterated that appeals are from Orders, not the reasons for them, and found no basis to interfere with speculative concerns about judicial comments, as argued. Accordingly, the Application for permission to appeal was dismissed.

CAMBARERI V CAMBARERI, 2025 ABKB 396

(DARIO J)

Rules 10.49 (Penalty for Contravening Rules), 10.50 (Costs Imposed on Lawyer), 10.51 (Order to Appear), 10.53 (Punishment for Civil Contempt of Court) and 12.41 (Notice to Disclose Documents)

This matter involved an acrimonious family law dispute that had been ongoing for over ten years. The Plaintiff, formerly known as Grazia Cambareri ("Grace"), argued for, among other things, enforcement of costs and fines against the Defendant, Rocco Cambareri ("Rocco"), her former husband.

The Court found that as a direct result of Rocco's ongoing failure to disclose, Grace had to bring numerous Applications in an effort to secure financial disclosure. This was at a great financial and emotional expense. It also took a significant amount of Court time. The Court found that, where a party fails to disclose, the

requesting party has various options available to them.

Rule 12.41(7) allows the Court to grant any remedy it deems appropriate in addition to ordering the payor to pay Costs to the recipient to fully compensate the recipient for all costs incurred in the proceeding.

Rules 10.49 and 10.50 give the Court jurisdiction to require a party, lawyer or other person to pay a penalty to the Clerk of the Court if they contravene or fail to comply with the Rules, practice notes, or direction of the Court without adequate excuse.

Rules 10.51 and 10.53 deal with civil contempt. Where a person is declared to be in civil contempt, Rule 10.53(1) gives the Court discretion to order one or more of the listed penalties or sanctions, one of which is a fine. Rule 10.53(2) provides that the Court may also make a Costs Award against a person declared to be in civil contempt of Court.

Penalties issued under Rules 10.49 and 10.53 for contempt are not payable to the opposing party but are to be paid to the Clerk of the Court. They are directed at the public interest in the due administration of justice, not any private interest.

The Court found that it was appropriate to grant a declaration that the outstanding costs currently owing by Rocco pursuant to previous Court orders were $9,950 and those owing by Ms. Hearne, Rocco's girlfriend and a Third Party Defendant, to be $12,875.

The remaining issue was how to deal with historic Court-ordered fines that had accumulated to substantial sums. In a previous proceeding, the Court ultimately struck the Defendant's pleadings. It was found that the striking of pleadings was a very punitive sanction and, in light of this background, it was not appropriate to grant a declaration regarding the outstanding fines. The more appropriate forum to address Rocco and Ms. Hearne's behaviour during the litigation was in future Costs submissions.

ALBERTA (ELECTION COMMISSIONER) V HAYMOUR, 2025 ABKB 442

(MICHALYSHYN J)

Rules 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt of Court)

The Election Commissioner sought a civil contempt ruling against several Respondents for failing to attend interviews related to an investigation into alleged improper political contributions to the United Conservative Party, pursuant to Rule 10.52.

Despite efforts by the Commissioner's office to gather relevant evidence and issue formal Notices to Attend, the Respondents did not appear. Their counsel had previously stated that they would not participate further due to expected legislative changes through Bill 54 (the *Elections Statutes Amendment Act*).

The Court agreed with the Election Commissioner that Bill 54 did not change the Election Commissioner's essential power to summon any person to be interviewed by way of Notices to Attend, nor did it change the Election Com-

missioner's power to seek a ruling of contempt from the Court for non-compliance with a Notice to Attend.

There was no reasonable doubt that the Respondents intentionally breached their obligation to comply with the Notices to Attend. There was also a complete lack of sworn evidence from the Respondents to support a finding of any reasonable excuse. The Respondents were found in contempt for non-compliance with the Election Commissioner's Notices to Attend, with the remedy to be determined at a later date.

BURKE V BURKE, 2025 ABKB 498

(ARMSTRONG J)

Rule 13.6 (Pleadings: General Requirements)

The Plaintiff sued his brother, the Defendant, for defamation, alleging the Defendant made false statements about him to other family members. The Defendant shared excerpts of his diary alleging that the Plaintiff committed rape, was a pedophile, used drugs to incapacitate women to sexually assault them, and had sexually assaulted a cousin.

The Court found the statements defamatory as they would lower the Plaintiff's reputation in the eyes of a reasonable person, they clearly referred to the Plaintiff, and they were communicated to third parties.

The Defendant pleaded justification (truth) as his primary defence, which failed because the Defendant's evidence was found to be not credible. During Trial, the Defendant also attempted to raise other defences including responsible communication on a matter of public interest, consent, qualified privilege, and fair comment, none of which were included in his Statement of Defence. Rule 13.6(2) requires a Defendant to plead any matter that defeats or raises a defence to a claim. The Rule is based on the fundamental principle of natural justice that each party to an Action must have notice of the opposing party's case to be met and an opportunity to respond.

Justice Armstrong held that, giving the Statement of Defence a generous reading, there was enough pleaded to permit the Defendant to argue qualified privilege. However, that defence ultimately failed because the Defendant published the defamatory material to more individuals than necessary to protect his family, thereby exceeding the bounds of qualified privilege. In any event, Armstrong J. stated that the qualified privilege defence would be defeated by the presence of malice from the Defendant.

Justice Armstrong refused to allow the Defendant's unpleaded defences of responsible communication on a matter of public interest, consent, and fair comment. Nonetheless, for completeness, the Court considered them in the alternative and concluded that each would fail on the merits even if properly pleaded.

In the end, the Court held that the Defendant defamed the Plaintiff and had no valid defence. The Court awarded the Plaintiff $65,000 in damages, plus Costs.

PIIKANI NATION V NORTH PEIGAN, 2025 ABKB 508

(MARION J)

Rule 13.7 (Pleadings: Other Requirements)

This Application arose within a set of case managed Actions. Ms. Kostic sought permission to advance claims against Gowling WLG ("Gowling"), its lawyer Ms. Hanert, Jane Doe, and certain unspecified "others", including by filing a proposed Statement of Claim (the "Proposed Claim") either in a related Action or as a new Action. Justice Marion addressed the request under the existing case management Fiat process and with reference to the Rules.

Among other things, the Court refused leave for the filing of the Proposed Claim as a new Action because it failed to meet the requirements for an allegation of defamation, pursuant to Rule 13.7(f). The Rule requires strict particulars so that a Defendant can meet the case against it, and the Court can manage the proceeding. A compliant pleading must set out the impugned words with sufficient precision, attribute those words to the proposed Defendant, and specify the occasion of publication, including when, where, how, and to whom the words were communicated.

Marion J. found that the Proposed Claim did not identify any specific words said by Gowling or Ms. Hanert, did not set out the medium or occasion of publication, and did not provide dates or recipients. The record referenced social media posts and community updates apparently authored or published by others, which were not pleaded as publications by Gowling. The absence of particulars also prevented any preliminary assessment of privilege and publication. Many alleged statements arose within certain litigation steps and attracted absolute privilege. Further, communications within a solicitor-client relationship are typically confidential and not publications to a third party. On this basis, among others, leave to file was refused.

MANCHESTER ROSE GROUP INC V RUTHERFORD SENIORS DEVELOPMENT LTD, 2025 ABKB 491

(BROOKES J)

Rule 13.18 (Types of Affidavit)

Manchester, a senior care provider, applied for an interlocutory Injunction to restrain Rutherford, the owner of a seniors complex. Manchester alleged that Rutherford was restricting its access to the complex. Such access was required to provide healthcare services to residents. Leading up to the alleged restriction, the Parties had a long-standing contractual relationship, which Rutherford terminated for alleged breach before engaging another provider that shared a Director with Rutherford.

During the proceedings, Rutherford objected to Manchester's reliance on hearsay evidence contained in emails attached as an exhibit to an Affidavit. Manchester's Affidavits relied on personal knowledge, information, and belief.

Justice Brookes confirmed that Rule 13.18 expressly permits hearsay evidence in Interlocutory Applications if the source of the information and grounds for belief are identified. Brooks J. further clarified that where hearsay is adduced without identifying its source, the Court may still consider it, but the weight of the evidence may be diminished.

The emails at issue were admitted. Justice Brookes found the emails demonstrated the residents' concerns when they were told they had to stop using Manchester's services. Brookes J. determined that the Injunction would protect the residents from disruption and stress, which outweighed Rutherford's arguments regarding safety, operational clarity, and contractual freedom.

Applying the test for Injunctive relief from RJR-MacDonald, Justice Brookes found there was a serious issue to be tried, and irreparable harm to Manchester was a realistic outcome if relief was not granted. Further, Brookes J. held the balance of convenience overwhelmingly favoured Manchester and the residents of the complex. The Injunction was ultimately granted.

ZORBAWON V SALES, 2025 ABCA 286

(GROSSE JA)

Rules 14.1 (Definitions) and 14.48 (Stay Pending Appeal)

This was an Application to stay two Court of King's Bench Orders pending an anticipated Application for Leave to Appeal to the Supreme Court of Canada. The Applicant's Appeals to the Alberta Court of Appeal had been struck for failure to meet filing deadlines, and an Application to restore them was dismissed.

The Court noted that Applications to Stay enforcement of an Order pending Appeal are commonly brought under Rule 14.48. However, the Court held that Rule 14.48 is confined to Appeals to the Alberta Court of Appeal, as confirmed by Rule 14.1(1)(a), which defines "Appeal" for the purpose of Part 14. Because the underlying Appeals had been struck and no live Appeal was before the Court, Rule 14.48 did not apply.

Instead, Justice Grosse considered Section 65.1 of the *Supreme Court Act,* RSC 1985, c S-26, which authorizes either a Judge of the Supreme Court of Canada or a Judge of the Court appealed from to grant a Stay of proceedings pending a Leave Application. Under s. 65.1(2), a Stay may be granted before a Notice of Application for Leave is filed, but only where the party intends to apply for Leave and where delay would result in a miscarriage of justice. The Court emphasized that both elements must be supported by evidence.

Applying s. 65.1(2), Justice Grosse found the Applicant had not demonstrated a genuine intention to seek Leave, having filed no sworn evidence, providing no information about the questions on which he intended to seek leave, and offering no explanation for the delay, nor had he shown that any delay in obtaining a Stay would cause a miscarriage of justice. The Court further noted that the timing of the Leave Application was within the Applicant's control, undermining any claim of prejudice arising from delay.

The Court also observed that, even if s. 65.1 applied, the Applicant would still need to satisfy the tripartite test governing Stays pending Appeal: (a) a serious question to be determined, (b) irreparable harm, and (c) balance of

convenience. The Applicant failed to establish any arguable merit, irreparable harm, or new evidence supporting his allegations.

Accordingly, the Court held that neither Rule 14.48 nor s. 65.1 provided a basis for relief on the record before it, and dismissed the Stay Applications.

MD V ALBERTA (DIRECTOR OF CHILD AND FAMILY SERVICES), 2025 ABCA 245

(HO JA)

Rule 14.5 (Appeals Only With Permission)

In this decision, the Applicant sought to appeal an Order pronounced in April 2025 (the "April Order"). The April Order arose, in turn, from the Applicant's appeal of a February 2024 permanent Guardianship Order granted to the Respondent regarding her child (the "Appeal"). The Applicant was granted multiple extensions to order the necessary transcripts for the Appeal. The April Order granted a final extension to July 10, 2025, requiring the Applicant to provide an Affidavit and receipt confirming that the necessary transcripts for the Appeal were ordered. Otherwise, the Appeal would be automatically dismissed under paragraph 4 of the April Order.

The Court set out that, in order for the Applicant to obtain permission to appeal the April Order, she was required to meet the test under Rule 14.5(1)(b) because paragraphs 1 and 2 of the April Order related to decisions respecting adjournments, time periods or time limits. The test is substantively the same as the general test under Rule 14.5 where the Applicant must establish: (1) an important question of law or precedent, (2) a reasonable chance of success on appeal, and (3) that the delay will not unduly hinder the progress of the action or cause undue prejudice. Ho J.A. cited *Ozark Resources Ltd v TERIC Power Ltd*, 2020 ABCA 51 for the principle that decisions regarding adjournments and scheduling matters are primarily exercises of discretion and are reviewed on a highly deferential standard.

Given the highly deferential standard of review, the Court found the Applicant did not meet the test for permission to appeal in relation to paragraphs 1 and 2 of the April Order. Justice Ho acknowledged the Applicant's concerns over paragraph 4 and whether there is access to justice for Indigenous and self-represented litigants who are unable to afford transcript costs. The Court found, however, that it was premature to appeal this aspect of the April Order as the Appeal had not been dismissed yet and further developments from the next "speak-to" appearance in July could affect a potential appeal.

The Court noted that it was still possible for the Applicant to comply with the April Order by filing the required transcripts, which would allow her to pursue the Appeal. Ultimately, the Court dismissed the portion of the Application for permission to appeal in relation to paragraphs 1 and 2 of the April Order.

MACE V MACE, 2025 ABCA 250

(ANTONIO JA)

Rule 14.5 (Appeals Only with Permission)

On December 6, 2021, the Court below issued an Order for, among other things, the amount of monthly spousal support the Applicant owed the Respondent (the "December 2021 Order"). That Order further provided that the issue of spousal support could be brought forward for review in 2024 if there was a change of circumstances. In 2024, the Applicant applied to vary spousal support, which was dismissed by an Order in September 2024 (the "September 2024 Order").

In April 2025, the Applicant applied to the Court of Appeal for an extension of time to seek permission to appeal the December 2021 Order, for permission to appeal that Order, and for an extension of time to appeal the September 2024 Order. Those Applications were denied by Antonio J.A. in May 2025. The Applicant sought permission to appeal the May 2025 decision.

Rules 14.5(1)(a) and 14.5(2) provide that a decision of a single appellate Judge may be appealed only with permission of that Justice.

Permission to appeal the decision of a single appeal Judge is to be granted rarely. The Applicant must show "there is a compelling reason to require the applicant and the respondent to reargue and three judges of the Court of Appeal to decide an issue".

Citing prior case law, Appeal Justice Antonio noted that an important consideration is whether the Applicant has identified a serious issue justifying another level of review. Assessment of the seriousness of the issue involves consideration of a number of factors: the perceived strength of the argument; the importance of the issue to the parties; and the general importance of the issue within the larger legal system. Merely wanting to reargue the same matters is not sufficient.

Considering these factors, Antonio J.A. denied the Applicant's request for another level of review. He raised no serious or broadly significant legal issues, as his concerns were limited to findings of fact and credibility that were unique to the case and not of general importance. The evidence he relied on was not new and was available at the prior hearing, for which no transcript was filed. The Applicant also failed to show any intention to appeal during the allowable period or a special circumstance that excused the delay. The Court found no reviewable error or likelihood of success and concluded there was no reason to revisit the matter.

THE TORONTO DOMINION BANK V MONK, 2025 ABCA 277

(FRIESEN J)

Rules 14.5 (Appeals Only with Permission) and 14.8 (Filing a Notice of Appeal)

This matter arose from a foreclosure Action following missed mortgage payments. Ms. Monk was unsuccessful in her Appeal of the foreclosure Order from an Applications Judge, and subsequently applied to the Alberta Court of Appeal for an extension of time to file an Appeal. That Application was denied, and the Appeal was dismissed. She then returned before the Court seeking permission to Appeal pursuant to Rule 14.5.

On January 8, 2025, Applications Judge Summers granted an Order confirming sale and vesting title (the "Order") to Toronto-Dominion Bank ("TD") in the foreclosure Action. On March 31, 2025, a Chambers Justice dismissed Ms. Monk's Appeal of the Order. Pursuant to Rule 14.8(2)(a), a one-month deadline applied to file a Notice of Appeal. Ms. Monk filed on May 1, 2025, which was one day late.

On May 7, 2025, TD obtained a possession Order, which confirmed TD's right to retain possession of the property after Ms. Monk sought a Stay of the enforcement of the Order (the "Possession Order"). The Possession Order rendered the Appeal moot. However, Ms. Monk filed an Application seeking to proceed with the late-filed Appeal. Justice Friesen found that the one-day delay was minor and would ordinarily justify an extension, but denied the Application on June 13, 2025, since the matter was moot ("June 13 Decision").

On July 22, 2025, Ms. Monk sought leave to Appeal the June 13 Decision. Ms. Monk applied for leave to Appeal pursuant to Rule 14.5. Justice Friesen again found that the delay was minor and caused no prejudice. However, because the underlying Appeal remained moot and had no chance of success, permission to Appeal was denied.

Justice Friesen further held that the Application did not raise a serious question of general importance, a possible error of law, an unreasonable exercise of discretion, or a misapprehension of a material fact. The proposed Appeal focused on an immaterial factual issue of whether Ms. Monk voluntarily vacated the property or was evicted by the Edmonton Police Service. Accordingly, the Appeal was not permitted.

JUST BIOFIBER CORP V JUST BIOFIBER STRUCTURAL SOLUTIONS CORP, 2025 ABCA 307

(ANTONIO JA)

Rule 14.5 (Appeals Only with Permission)

This decision addressed an Application for permission to Appeal a Costs endorsement. The Applicants sued the Defendant for oppression, among other causes of action, and brought an Application for various forms of interlocutory relief. However, a Chambers Judge dismissed

the Application, finding that the Applicants had provided insufficient evidence. The Judge awarded solicitor-client costs against the Applicants in the maximum amount of $329,586.32, subject to assessment. The Judge directed that the parties make costs submissions. However, after approximately 5 months, the Applicants failed to file costs submissions, and the Judge issued the Costs Endorsement.

Justice Antonio emphasized that pursuant to Rule 14.5(1)(e), permission is required to Appeal a Costs Order. Costs Awards should not be set aside on Appeal unless the Judge below made an error in principle or the award is clearly wrong, as costs awards are discretionary and attract a high degree of deference. In order to grant permission to Appeal, the Applicant must demonstrate that (1) there is a credible and arguable case that merits the Court's consideration; (2) the issues raised are significant both to the parties and in general; (3) the proposed Costs appeal serves a practical purpose; and (4) pursuing the Costs Appeal will not result in undue delay to the proceedings.

The Applicants argued that Costs Awards in oppression actions require unique consideration given that such actions involve serious allegations that may or may not be substantiated. Therefore, awarding enhanced costs merely because serious allegations were not substantiated would have a chilling effect on oppression litigation. The Applicants claimed that enhanced costs in the context of oppression actions should require additional intentional misconduct separate from unfounded claims. The Applicants also argued that the Chambers Judge erred in awarding solicitor-client costs due partly to the absence of cost submissions.

Justice Antonio dismissed the Appellants' argument, finding that the Chambers Judge did not base the costs award on allegations that simply did not carry the day. Rather, the reasoning was grounded in the Applicants' "near-complete failure" to provide supporting evidence of the serious allegations. Further, the Court found that it was not evident that the Chambers Judge awarded enhanced costs *because* the Applicants did not make costs submissions. Antonio J. acknowledged that, even if the Chambers Judge's reference to the absence of cost submissions in the Costs Endorsement or the precedents cited within could be an arguable issue, it would depend sensitively on the facts of the case and the wording of the Costs Endorsement. Therefore, it was not an issue of general importance and did not merit the attention of an Appeal panel.

Lastly, the Appellants argued that the quantum of costs contributed to the importance of the Appeal for both parties and in general, citing case law for the proposition that an out of the ordinary costs award will ground an Appeal. Justice Antonio disagreed, affirming that the case law does not extend as far as an Applicant would hope and that the quantum of costs alone is not a reason to grant leave. Antonio J. was not satisfied that the proposed Appeal would be of public importance or engage arguable issues that merit consideration by an Appeal panel. The Application for permission was denied.

SILLIPHANT V SILLIPHANT, 2025 ABCA 317

(FAGNAN J)

Rules 14.5 (Appeals Only with Permission), 14.37 (Single Appeal Judges) and 14.68 (No Stay of Enforcement)

The Applicant applied for an extension of time to apply for permission to appeal under Rule 14.37, and for permission to appeal a consent Judgment under Rule 14.5 on the basis that they were not capable of consenting to Judgment at the time it was entered.

The Court reviewed the relevant case law and noted that the test for whether to grant an extension of time required the Applicant to demonstrate that there was a *bona fide* intention to appeal when the right existed, provide an explanation for the delay, and demonstrate that the Appeal has a reasonable chance of succeeding. In applying the test to the Applicant, Justice Fagnan noted that the Applicant was unable to demonstrate any intention to advance an Appeal during the applicable appeal period, and did not communicate an intention to appeal to the Respondent until a month after the appeal period had expired.

The Court went on to note that a consent Judgment can only be set aside in exceptional circumstances; such as when the Appeal raises an important question of law or precedent or when there is a risk of undue prejudice. The Applicant's position was largely centered around their assertion that they were unable to take necessary steps to advance an Appeal due to mental health issues. Although the Court recognized that there was no dispute that the Applicant had struggles with mental health in the past, they were unable to provide any evidence of incapacity at the relevant time periods, and rather the Court was provided with information that indicated the Applicant's mental heath had improved prior to the relevant time periods.

The Court ultimately dismissed the Application due to the Applicant's inability to establish that any of the necessary criteria had been met to permit an extension of time to apply for permission to appeal the consent Judgment.

GOVERNORS OF THE UNIVERSITY OF CALGARY V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER), 2025 ABCA 253

(HO JA)

Rules 14.37 (Single Appeal Judges) and 14.58 (Intervenor Status on Appeal)

The University of Calgary ("UofC") denied a *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 ("*FOIPPA*") request for documents related to two professors, citing section 4(1) of *FOIPPA*, which excludes teaching materials or employee research information from disclosure. The denial was challenged before the Alberta Information and Privacy Commissioner (the "Commissioner"), whose Adjudicator found that some records were

not excluded by section 4(1) and ordered their release (the "Adjudicator's Decision"). UofC then applied for Judicial Review of the Adjudicator's Decision, and the Chambers Judge ruled that the Adjudicator's interpretation and application of *FOIPPA* was unreasonably narrow and remitted the matter to a different Adjudicator for reconsideration (the "Chambers Decision").

The Commissioner filed an Appeal of the Chambers Decision. Universities Canada and the Joint Intervenors applied for intervenor status in the Appeal. Appeal Justice Ho confirmed that, pursuant to Rules 14.37(2)(e) and 14.58(1), a single Appeal Judge may grant permission to intervene, subject to any terms and conditions.

Applying the test for intervenor status set out in *VLM v Dominey Estate*, 2023 ABCA 26, Ho J.A. considered whether the intervenors had a particular interest in the Appeal, would be directly and significantly affected by its outcome, or could provide special expertise, perspective, or information to assist with resolution.

Ho J.A. noted that while a proposed intervenor need not satisfy both branches of the test, meeting only one does not automatically guarantee intervenor status. Ho J.A. considered additional factors, including whether the intervenor was necessary for a proper decision, offered unique expertise, had unprotected interests, or whether their involvement might have caused delay, prejudice, broadened the dispute, or politicized the Court. Pursuant to Rule 14.58(3), intervenors may not raise new issues without the Court's permission.

The Court found that both Universities Canada and the Joint Intervenors met the first branch of the test, as their members had a specific interest in, or would be significantly affected by, the outcome of the Appeal. Emphasizing that satisfying this branch was not determinative, Ho J.A. proceeded to assess the second.

Appeal Justice Ho, however, denied Universities Canada intervenor status, finding that its submissions were too similar to UofC's and lacked a new or useful perspective. Conversely, the Court recognized that the Joint Intervenors, comprised of faculty members, could provide a unique and relevant viewpoint, as employees may view access and privacy issues differently than their employers.

Despite noting that UofC had already addressed the Joint Intervenors' arguments for a broad interpretation of teaching materials and research information, Ho J.A. granted them permission to intervene on the role of "social activism" in research and an alternative approach to applying statutory exemptions. The Court imposed specific filing deadlines, page limits, and restrictions on oral submissions, and ordered the Joint Intervenors to rely on the current evidentiary record.

REFERENCE RE IMPACT ASSESSMENT ACT (CANADA), 2025 ABCA 289

(KIRKER J)

Rules 14.37 (Single Appeal Judge) and 14.58 (Intervenor Status on Appeal)

This decision addressed three contested Applications: two for permission to intervene; and one to supplement the record, arising from a Reference question regarding the constitutionality of the *Impact Assessment Act*, SC 2019, c 28, s 1 ("*IAA*"), as amended by the *Budget Implementation Act*, 2024, No 1, SC 2024, c 17, and the *Physical Activities Regulations*, SOR/2019-285. These amendments followed a Supreme Court of Canada decision declaring the original

"designated projects scheme" unconstitutional. Alberta contended that the *IAA* intruded on Provincial jurisdiction, while Canada maintained it was constitutional.

Two non-governmental organizations, Enserva and the MacDonald-Laurier Institute (the "Institute"), sought permission to intervene. Alberta did not oppose, but Canada argued that they lacked sufficient legal interest or unique perspective to assist the Court.

Kirker J. clarified that, pursuant to Rules 14.37(2)(e) and 14.58, a Judge may grant permission to intervene in a Reference and impose conditions to ensure the Court receives submissions that fully illuminate the issues. Kirker J. explained that intervenors are generally allowed where the proposed intervenor is particularly affected by the outcome or can provide special expertise or insight. Additional factors to consider include whether intervener's interests are adequately represented by the existing parties, and whether the intervention might cause delay or prejudice.

Enserva sought to provide submissions on how the amended *IAA* impacted the "boots on the ground" energy services, noting that its members' activities could qualify as "designated projects," constituting a direct and practical interest. Kirker J. found that Enserva offered unique, relevant expertise not fully addressed by other parties or intervenors. Accordingly, Kirker J. granted Enserva permission to intervene, allowing a factum and a time-limited oral argument, subject to the panel's discretion.

The Institute, an independent non-profit with expertise in constitutional governance and public policy, sought to address the constitutional and practical consequences of the amended *IAA*. Canada argued that the Institute's submissions were overly broad and duplicative. Justice Kirker agreed, noting that the relevant legal and constitutional issues were already being addressed by the Canadian Constitution Foundation and other intervenors. As such, Kirker J. dismissed the Institute's Application, but noted they may assist other intervenors if invited.

Lastly, Kirker J. considered Cold Lake First Nations' ("Cold Lake") Application to supplement the record. The Court highlighted that under Rule 14.58(3), intervenors generally must accept the record as it exists and may not introduce new evidence or raise new issues. While acknowledging that unique circumstances exist in the context of a Reference since there is no trial record, Kirker J. confirmed that the principle still applies.

Cold Lake sought to supplement the record with two Affidavits and a letter from several First Nations Chiefs regarding the Pathways Alliance project. Cold Lake argued that these materials would provide a distinct perspective on Alberta's environmental regulatory processes, land use planning, Crown consultation, and illustrate concerns with environmental review process and federal project designation under the *IAA*. Alberta opposed Cold Lake's Application, contending that the proposed evidence went beyond the Reference's scope.

While noting that Alberta could not artificially restrict legal arguments by limiting the record, Kirker J. confirmed that clear boundaries on the factual and legal issues raised in the Reference were required. Justice Kirker determined that the proposed evidence raised issues beyond the Reference's scope, included inadmissible hearsay and opinion material, and could cause collateral issues and delay. Accordingly, Kirker J. dismissed Cold Lake's Application to expand the record.

OUELLETTE V MCCANN, 2025 ABCA 309

(HO JA)

14.37 (Single Appeal Judges) and 14.58 (Intervenor Status on Appeal)

The Law Society of Alberta (the "LSA") sought to intervene in a partial Appeal and Cross-Appeal of the Court of King's Bench decision in *Ouellette v McCann,* 2025 ABKB 362. That case involved claims for negligence and defamation against Mr. McCann related to an LSA complaint he filed against a lawyer, Mr. Ouellette, which was held to be without merit. The Claim was Summarily Dismissed on the basis that Mr. McCann was entitled to absolute immunity (the "AJ Decision"). Mr. Oulette appealed the AJ Decision and was partially successful on Appeal (the "KB Decision"). The KB Decision reinstated the defamation claim, but not the negligence claim, and a new Trial was ordered.

Mr. McCann's Estate appealed the KB Decision that reinstated the defamation claim. Mr. Ouelette then cross-appealed the remainder of the KB Decision.

In determining the LSA's Application to intervene, the Court considered Rules 14.37(2)(e) and 14.58(1), which permit a single Justice to grant permission to intervene, subject to conditions. Pursuant to Rule 14.58(2) one of the factors a Court will consider upon an Application to intervene is whether the intervenor was granted permission to intervene in the court below.

Appeal Justice Ho held that the LSA had met the test and granted intervenor status. Ho J.A. determined that the LSA would be impacted by the outcome of the Appeal, and that they could provide a unique perspective that would assist the Court in resolving the Appeal. Further, the LSA had been granted permission to intervene in the lower courts, which was a fact which favoured granting the Application. The LSA was granted intervenor status to assist the Court in addressing both the Appeal and the Cross-Appeal.

THE TORONTO DOMINION BANK V MANAH, 2025 ABCA 275

(SLATTER JA)

Rule 14.47 (Application to Restore an Appeal)

The Applicant had previously filed two Appeals related to the foreclosure of their residence. Following the delivery of the Judgment resulting from those Appeals, the Applicant took issue with the fact that the delivered Judgment did not comply with authentication requirements that the Applicant asserted were necessary. The Applicant attempted to file an Application under Rule 14.47 to restore their Appeals.

The Case Management Office rejected the Applicant's materials and noted that Rule 14.47 was not applicable to the Applicant's Appeals. Rule 14.47 pertains to Appeals that had been struck, dismissed, or deemed abandoned. Given that the Applicant's Appeals had been heard and dismissed, they could not be restored. The Applicant then appealed the ruling of the Case Management Office.

The Court reviewed the Applicant's materials and determined that the Case Management Office had been correct in their determination.

The Applicant's Appeals could not be restored as they had been heard and adjudicated to finality on their merits.

JE V KE, 2025 ABCA 298

(WOOLLEY JA)

14.47 (Application to Restore an Appeal) and 14.65 (Restoring Appeals)

The Applicant mother sought to restore Appeals of two interim parenting Orders granted by the Case Management Judge in the Court below.

The Applicant filed a Notice to Appeal a July 24, 2024 Order (the "July 2024 Order") after the filing deadline. She did not apply to extend the time to appeal, and the Appeal was struck and deemed abandoned on January 3, 2025. She filed an Application to restore the Appeal nearly a year after the Order was granted, on July 14, 2025.

The Applicant then filed a Notice to Appeal for a subsequent December 13, 2024 Order (the "December 2024 Order") within time, but failed to file her factum on time, even after being granted a two-week extension of the filing deadline. The Appeal was struck but not yet deemed abandoned. The Applicant filed her Application to restore the Appeal of the December 2024 Order on July 11, 2025.

Rules 14.47 and 14.65(3) of the Rules require an Application to restore an Appeal be returnable no later than six months after being deemed abandoned, which in this case would have required an Application to be brought on or before July 3, 2025. The six months creates a "line-in-the-sand", after which the Court can presume prejudice to the Respondent if the Appeal is allowed to proceed. The Court noted that "it is not impossible for an appeal to be restored after six months has expired", but the Court will consider a number of factors on a stricter basis, including an explanation for the delay, lack of prejudice to the Respondent, and arguable merit. When an Appeal has been filed but a deadline for filing materials missed, resulting in the Appeal being struck, as was the case for the December 2024 Order, the Court considers similar factors.

The Court decided that the Appeal of the July 2024 Order should not be reinstated. The Respondent was presumed to be prejudiced by the delay, and the Applicant failed to overcome that presumption. Although the Applicant cited emotional distress, legal complexity, and being mostly self-represented as reasons for the delay, the Court found these insufficient to justify the length of the delay. Additionally, she did not point to specific legal or factual errors in the original decision, making her Appeal unlikely to succeed.

For the December 2024 Order, the Applicant acted promptly to restore the Appeal and provided some explanation for her delays. However, and again, the Appeal was unlikely to succeed. The Case Management Judge's findings, including the Applicant's contempt of prior Orders and parental alienation, were supported by evidence and entitled to deference. Because of the evolving circumstances of the child, and the need for the parties to move to Trial and away from a continuing series of interlocutory Orders, it was found that restoring the Applicant's Appeal would prejudice the Respondent and be inconsistent with the best interests of the child.

SCHEFFELMAIER V SCHEFFELMAIER, 2025 ABCA 237

(PENTELECHUK JA)

Rule 14.48 (Stay Pending Appeal)

The parties were in a lengthy marriage before separating in March 2020 and have since been embroiled in acrimonious divorce proceedings. The Applicant, Ms. Scheffelmaier, sought a Stay pending the Appeal of an Order. The Order changed exclusive possession of the matrimonial property from Ms. Scheffelmaier to the Respondent, Mr. Scheffelmaier, asked that she vacate the property, and permitted Mr. Scheffelmaier to sell the property without Ms. Scheffelmaier's consent.

A Stay could be ordered if Ms. Scheffelmaier satisfied the Court that: (i) there was a serious question to be determined on appeal, (ii) she would suffer irreparable harm if the Stay was not granted, and (iii) the balance of convenience favoured granting the Stay. The Court considered each factor.

Ms. Scheffelmaier argued that ordering her out of the home on two weeks notice was unreasonable and that she wished to keep the matrimonial home once the divorce proceedings concluded. She further alleged lack of procedural fairness and that the Chambers Judge erred by relying heavily on outdated pictures of the property. The Court found that that Ms. Scheffelmaier's Appeal raised legitimate issues and met the threshold for further consideration.

The Court explained that irreparable harm refers to harm that cannot be remedied by money, often because damages cannot be recovered. Ms. Scheffelmaier argued that being forced to leave the rural property she has lived on for 15 years, at age 64, caused such harm. The Court agreed that selling the property without her consent could cause irreparable harm due to her emotional attachment and the unlikely possibility of reacquiring it.

Finally, the balance of convenience also favoured Ms. Scheffelmaier. It was difficult to see how Mr. Scheffelmaier, having exclusive possession and the ability to sell the land, would address a looming foreclosure action in the most cost-effective way to the parties, as argued.

In the end, the Application for a Stay pending the determination of the Appeal was granted.

BANOVICH V BANOVIC, 2025 ABCA 281

(FAGNAN J)

Rules 14.48 (Stay Pending Appeal) and 14.68 (Effect of Filing Appeal)

This was an Application by a self-represented Applicant for a Stay of enforcement pending Appeal of a Summary Trial Decision on spousal support and property division. She sought the Stay pursuant to Rule 14.48, expressing concern that she would be unable to recover funds if they were distributed before her Appeal was heard.

The Court confirmed that, under Rule 14.68, filing an Appeal does not automatically Stay enforcement of the Decision. The Applicant therefore had to meet the tripartite test for a Stay pending Appeal. That is, she had to show: (1) a serious question to be determined; (2) irreparable harm if the Stay were not granted; and (3) a balance of convenience favouring the Applicant.

The Court found the Appeal raised a serious question regarding alleged errors in spousal support and property exemptions. On irreparable harm, Fagnan J. held that, while monetary losses are generally reparable, they may amount to irreparable harm if the Respondent lacks the means to repay funds after Appeal. The Respondent, who was retired with a fixed pension, had no other identified assets, and the amounts involved exceeded what an ordinary citizen could repay. The Court therefore accepted that irreparable harm would result if the funds were released.

On the balance of convenience, the Respondent claimed a need for funds and delay by the Applicant, but provided no Affidavit evidence to support those claims. Given the Applicant's financial position and the absence of urgency for distribution, the balance of convenience favoured granting the Stay.

The Court granted a partial Stay of enforcement under Rule 14.48, restraining distribution of $178,750 from trust funds that would otherwise have been payable to the Respondent under the Trial Judgment.

PIIKANI V MCMULLEN, 2025 ABCA 315

(DE WIT JA)

Rule 14.58 (Intervenor Status on Appeal)

This was an Application by The Advocates' Society (the "Society") for permission to intervene in a pending Appeal between Piikani Nation (and other co-Appellants) and Dale McMullen. The Piikani Nation was granted permission to Appeal a decision of a Court of King's Bench Chambers Judge that disqualified the law firm Gowling WLG from acting against the Respondent, Mr. McMullen. Under Rule 14.58, a single Appellate Judge may grant permission to intervene in an Appeal and impose conditions on the intervention.

The test for intervention is based on (1) whether the proposed intervenor has a particular interest in, or will be directly affected by, the outcome of the Appeal, and (2) whether the intervenor will provide some special expertise that will help resolve the Appeal.

The Society's intervenor Application centred around legal issues significant to the legal profession, particularly the solicitor-client relationship and the duty of loyalty to "near clients" in the corporate context. The Society, a professional organization for trial and appellate lawyers, argued it could offer valuable insights on the broader policy implications and practical consequences of the Chambers Judge's decision, given its expertise and history of involvement in similar matters.

Mr. McMullen made factual submissions of the history of litigation of the parties to this Appeal and his belief that the Society's lawyers would not solely represent the Society's interests, but

that they would attempt to assist their large law firms, among other complaints. The Court found these objections largely irrelevant to the legal criteria for granting intervenor status.

The Court found that the Society had an interest in the issues on Appeal and had expertise regarding those issues. The Society would be able to provide a broader perspective on the issues than the parties to the Appeal and its perspective and submissions would assist the Court in its determination of those issues. The Intervenor Application was granted.

TRS V JVS, 2025 ABCA 313

(KIRKER, GROSSE AND SHANER JA)

Rule 14.75 (Application to Dismiss an Appeal)

Following a two-day Streamlined family law Trial, the father appealed a decision of the Court of King's Bench which suspended enforcement of two previous Cost Orders against the Respondent mother. The dispute at arose from a proceeding involving the custody of a shared child following a 2018 divorce Judgment. The child was apprehended by Child and Family Services in Calgary following the father's arrest in October 2024.

In December 2024, the mother applied to obtain a Parenting Order for the child. The Trial Judge found that adequate notice was not given to the father. However, the Trial Judge made two interim rulings suspending the Costs Orders against the mother.

On Appeal, the father argued that it was procedurally unfair and legally incorrect for the Trial Judge to suspend the two Orders on his own motion, without allowing submissions from the parties. The father also sought to adduce new evidence concerning his judicial interim release and the mother's failure to pursue a jurisdictional ruling.

The Appeal Panel observed that the process was procedurally irregular, as the relief had not been formally requested, and the father was not afforded an opportunity to respond. However, the Panel found no resulting prejudice, as the substance of the mother's Application was affirmed. The Court reaffirmed that, pursuant to Rule 14.75(2), an Appeal may properly be dismissed despite an error of law or procedure where no substantial wrong or miscarriage of justice has occurred.

Ultimately, the Court of Appeal dismissed both the Appeal and the Appellant's Application to adduce fresh evidence, applying Rule 14.75(2) to uphold the decision despite procedural irregularities, and finding that no substantial wrong or miscarriage of justice had occurred.

MILOT LAW V SITTLER, 2025 ABCA 241

(KIRKER, FRIESEN AND SHANER JJA)

Rule 14.88 (Costs Award)

The Respondents, Heather and Sheldon Stiller (the "Stillers") brought an Appeal that was dismissed. The Applicants, Milot Law, cross-appealed and were successful. Milot Law then sought reimbursement of their legal costs in the amount of $33,000, representing 80% of their costs in dealing with the issue on Appeal, and 40% of their remaining costs for all other steps.

Milot Law provided the Court with a summary of their actual costs of $56,012.22 along with a draft Bill of Costs under Column 2 of Schedule C for $16,118.01. The Stillers argued that Costs should be awarded in accordance with Schedule C.

The Court held that more than Schedule C costs were appropriate. Milot Law was the successful party. A Cross-Appeal and related steps could have been avoided but for the conduct of the Stillers.

Costs were awarded to Milot Law in the amount of $25,000 which reflected Column 2 Costs and approximately 50% of the legal fees and disbursements otherwise incurred.