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RULES

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(MAH J)

Rules 1.2 (Purpose and Intention of These Rules) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Defendant appealed an Applications Judge's dismissal of its Application to Strike the Plaintiff's Statement of Claim as an abuse of process, pursuant to Rule 3.68. The Defendant argued that binding authority prohibited duplicate proceedings for the same cause of action and that the King's Bench Action therefore had to be struck.

The Plaintiff first commenced a wrongful dismissal Claim in the Court of Justice. He later reassessed his damages and, with the

limitation period approaching, commenced the same claim in the Court of King's Bench. The Court of Justice Action was then discontinued approximately two weeks later. The Defendant was never required to defend both proceedings at the same time.

Justice Mah held that Rule 3.68 is discretionary and must be applied in light of Rule 1.2 and the goal of fair, just, and proportionate results. The authorities relied upon by the Defendant addressed cases of multiple prosecution, where two subsisting Actions were being advanced concurrently against the same Defendant. Justice Mah determined that those cases were distinguishable.

Here, although the two Actions briefly overlapped in time, the first was discontinued before the second was brought to the Defendant's attention, no steps were taken to advance either Action during the overlap, and the Defendant only ever had to respond to one proceeding. In those circumstances, no abuse of process was established.

The Appeal was dismissed. The Applications Judge had not failed to follow binding authority, and the Plaintiff was awarded costs of the Appeal in line with Schedule C.

EPCOR WATER SERVICES INC V LEDCOR INDUSTRIES INC, 2026 ABKB 109

(APPLICATIONS JUDGE WANKE)

Rules 1.2 (Purpose and Intention of These Rules), 3.37 (Application for Judgment Against Defendant Noted in Default) and 11.4 (Methods of Service in Alberta)

EPCOR Water Services Inc. ("EPCOR") alleged that construction activities by Ledcor entities caused cement-based material to block municipal sewer mains, leading to backups. EPCOR claimed $718,588.75 in damages for remediation and restoration, naming several Ledcor companies (collectively, the "Ledcor Group") and another contractor as Defendants.

Some of the Defendants were noted in default, prompting EPCOR to seek Default Judgment through a without notice Desk Application pursuant to Rule 3.37(1)(a). However, Applications Judge Wanke highlighted that Rule 3.37 does not guarantee Judgment upon default. Rather, the Court retains discretion to require notice and a hearing before granting Judgment. Here, the Court declined to grant Default Judgment and adjourned the Application, directing that any renewed Application be brought on notice to the Defendants.

The Court identified three main problems with the Application. First, EPCOR's pleadings did not set out a viable cause of action against each individual Ledcor Group entity but instead relied on a general allegation of collective responsibility. Second, there were deficiencies in how service was effected and documented, including lack of evidence confirming service to proper corporate addresses and unclear communications with defence counsel. Lastly, the Court took the position that the use of a without notice Application was inappropriate in this instance, given that the Defendants were sophisticated, some had counsel, and no prejudice would result from giving notice.

In the result, the Court declined to grant Default Judgment and required that any further Application proceed on notice.

TRAGGER V INTACT INSURANCE COMPANY, 2026 ABKB 112

(LEMA J)

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

This decision concerned costs following a prior decision in which the Plaintiffs, David Alexander Tragger and Hypocrite Productions Inc. ("Tragger"), successfully established insurance coverage under Section 534 of the *Insurance Act*, RSA 2000, c I-3, against the Defendants, Intact Insurance Company and Royal & Sun Alliance Insurance Company of Canada (collectively, the "Insurers").

Tragger sought solicitor-client costs on the basis that, as judgment creditors standing in the shoes of the insured, they were entitled to full indemnity. The Insurers argued that such principles were inapplicable and that no basis existed for enhanced costs.

Justice Lema distinguished the duty to defend from the duty to indemnify, noting that, despite Tragger's reliance on duty to defend jurisprudence, the proceeding concerned indemnity. The Court highlighted that, absent misconduct, there is no principled basis to award full-indemnity costs in indemnity disputes. Lema J. further emphasized that insurance contracts do not imply an obligation to fund the costs of enforcing coverage and that costs are not a remedy for breach of contract.

Applying Rules 10.29 and 10.31, the Court found that the Insurers conducted the litigation reasonably and efficiently, including proceeding by Agreed Statement of Facts and a streamlined hearing, and that no misconduct justified enhanced costs. Lema J. declined to make a determination on post-judgment interest, noting that such claims were not properly before the Court. Justice Lema also rejected the Plaintiffs' claim for "thrown-away" enforcement costs, holding that such costs fall outside the scope of the coverage proceeding and must be addressed in the underlying Action.

The Court awarded lump sum costs of $38,000, reflecting partial indemnity for the coverage proceeding.

BRYAN V PITURA, 2026 ABKB 120

(FEASBY J)

Rules 1.2 (Purpose and Intention of These Rules) and 1.4 (Procedural Orders)

The Applicant sought to schedule an Appeal of an interim child support order in advance of a Trial on the merits of the child support issue. The Applicant took the position that he had a right of appeal and that the Court must schedule the Appeal upon his Application. The Court disagreed on the basis that an Appeal would be an unnecessary waste of judicial resources.

The Trial on the child support issue was scheduled for May 28, 2026. The potential Appeal dates suggested by the Applicant were from

mid-April to mid-May of 2026. The Court set out that its primary responsibility in scheduling matters was to be a steward of the limited judicial resources, and that hearing an Appeal of an interim order a few weeks before the Trial of the matter would be a waste of court resources.

Justice Feasby outlined the Court's inherent jurisdiction to control its processes and noted that, while this inherent jurisdiction is subordinate to statutes such as the Judicature Act, that subordination only stands insofar as it does not constrain the Court's ability to fulfil its role. Justice Feasby referred to Rule 1.2, which provides that the purpose of the rules is to ensure claims are resolved in a timely and cost-effective manner, and requires that the parties must use publicly funded Court resources effectively.

Justice Feasby also referred to Rule 1.4, which empowers the Court to make any order necessary to implement and advance the purpose and intention of Rule 1.2. In reviewing the facts of the Appeal, the Court noted that the financial stakes of the Appeal were insignificant in light of the upcoming Trial of the issue. The Court held that justice was best served in this matter by denying the Application to schedule an Appeal.

RUMANCIK V HARDY, 2026 ABKB 131

(EAMON J)

Rules 1.2 (Purpose and Intention of These Rules), 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account), 10.31 (Court-ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This decision concerned costs arising from competing applications, including a second Summary Judgment Application (the "Second Application") brought by the Defendant, Michael Bates ("Bates"), and the Plaintiffs' Application to strike the Second Application as an abuse of process.

Bates represented a co-Defendant and published a Statement of Claim to the media, giving rise to the underlying defamation Action. Bates previously applied for Summary Judgment (the "First Application") primarily focused on the defence of qualified privilege, which was dismissed. Bates later brought the Second Application, relying on additional records that were not available at the time of the First Application. Justice Eamon held that, while the records were new, they did not address the basis of the dismissal of the First Application and did not justify the Second Application. The Plaintiffs were substantially successful.

The Plaintiffs sought solicitor-client costs or enhanced costs based on a *Calderbank* offer (the "Offer"). Eamon J. held that solicitor-client costs are reserved for rare and exceptional cases involving reprehensible conduct. While the Second Application failed, Justice Eamon found that it was not brought in bad faith and did not justify solicitor-client costs.

The Court confirmed that costs are discretionary and governed by Rules 10.29, 10.31, and 10.33. Justice Eamon emphasized proportionality and found that Schedule C was an appropriate starting point. Eamon J. declined to order an assessment of solicitor-client accounts, finding it would be disproportionate in the circumstances.

Justice Eamon found that the Plaintiffs' Offer was a reasonable and genuine compromise, provided a cost advantage, and was unreasonably rejected. As the Plaintiffs achieved a better result than the Offer, Eamon J. held that enhanced costs were warranted to promote settlement and efficiency.

The Court applied Schedule C and accepted a multiplier for certain steps taken after the Offer. In the result, Justice Eamon awarded costs to the Plaintiffs in the range of $22,500, inclusive of disbursements and GST, payable forthwith, subject to adjustment and approval of the final Order.

HULTINK V TRAFIGURA CANADA LIMITED, 2026 ABKB 149

(MALIK J)

Rules 1.2 (Purpose and Intention of These Rules) and 4.22 (Considerations for Security for Costs Order)

The Defendants appealed the Applications Judge's decision denying their Application for Security for Costs under Rule 4.22. On Appeal, the Court considered whether the Applications Judge erred in declining to order Security for Costs.

Justice Malik confirmed the two-step test to determine whether security should be ordered: first, the Court considers the factors set out in Rule 4.22(a)-(e) and, second, the Court determines whether it is just and reasonable to order the security that includes balancing a defendant's interest in recovering costs, with a plaintiff's access to justice. Malik J. emphasized that once a defendant establishes a basis for security pursuant to Rule 4.22, the evidentiary burden shifts to the plaintiff to show that the security should not be ordered.

The Court reviewed the Applications Judge's reasons for denying Security for Costs. Justice Malik agreed with the findings that the Plaintiff had no exigible assets in Alberta, that the merits of the Action were neutral, and that ordering security in the amount of $100,000 would unduly prejudice the Plaintiff in continuing the Action. However, Malik J. determined that the Applications Judge erred in accepting the Plaintiff's assertion that she could pay a future costs award when the Plaintiff's evidence was unsubstantiated and lacked sufficient financial disclosure. The Court emphasized that the bare assertion of ability to pay, without any supporting evidence of assets, liabilities, and available income, was insufficient to meet the Plaintiff's evidentiary burden in showing a security Order was not required.

Justice Malik determined that it was just and reasonable to order Security for Costs because of the absence of exigible assets in Alberta and the lack of reliable evidence that the Plaintiff could satisfy a costs award. The Court rejected the Plaintiff's argument that she did not have the means to provide security, noting that if she could pay a future costs award, which she asserted, then she should be able to provide a modest amount of security.

Malik J. granted the Appeal and ordered stepped Security for Costs in the amount of $20,000 to cover litigation costs up to trial. The Plaintiff was granted 90 days to provide the security. The Action was stayed until the Order for Security for Costs was complied with. However, if the Plaintiff failed to comply, the Action would be automatically dismissed.

YANGARRA RESOURCES LTD V ADVANCED UPSTREAM LTD, 2026 ABKB 158

(FEASBY J)

Rules 1.2 (Purpose and Intention of These 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 decision arising from an abandoned Mareva Injunction Application brought by the Applicant against the Respondent. The Applicant was concerned that a corporate transaction involving the Respondent would render the Respondent Judgment-proof in ongoing litigation. However, the Applicant withdrew the Application after receiving confirmation that the Respondent would remain a going concern. Both parties claimed they were successful for the Application and sought costs.

The Court acknowledged that pursuant to Rules 10.29 and 10.31, costs are presumptively awarded to the successful party, and that a costs award is discretionary. The issue was determining which party was the successful party. Justice Feasby determined that the Respondent was the successful party, noting that a withdrawal of an application by an applicant was almost always a victory for the respondent. Although it was emphasized that there may be exceptions to this general rule, the Court determined this case to not be exceptional. Feasby J. acknowledged that the Applicant aggressively pursued the Mareva Injunction, which it withdrew upon realizing that the apprehended harm did not exist. As such, the Applicant was not successful and should pay costs to the Respondent.

The Respondent sought solicitor-client costs or, alternatively, an award of enhanced costs to provide it with substantial indemnity given their success and the seriousness of the allegations. Justice Feasby emphasized that in determining an appropriate quantum of costs, the Court may consider various things, including the factors pursuant to Rule 10.33, and litigation conduct. Feasby J. also considered the foundational principles in Rule 1.2 requiring the parties to resolve disputes efficiently and communicate reasonably. The Court rejected the Respondent's argument for solicitor-client costs and found that both parties had contributed to the unnecessary escalation of the Application. The Applicant was aggressive in pursuing relief beyond what was reasonable in the circumstances, especially after learning of key details of the transaction. However, the Respondent also contributed to the Application being brought by refusing to provide timely and sufficient information that could have alleviated the Applicant's concerns at minimal cost.

The Court apportioned responsibility between the parties and determined that a partial indemnity was appropriate, given that while the allegations were ultimately not proven, they were not unreasonable or sufficiently egregious to warrant an elevated costs award. Justice Feasby awarded costs to the Respondent as the successful party, fixed at 50% of solicitor-client costs plus full reimbursement of disbursements.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 164

(NIXON ACJ)

Rules 1.2 (Purpose and Intention of These Rules), 5.2 (When Something is Relevant and Material) and 5.25 (Appropriate Questions and Objections)

A group of Defendants, collectively referred to as the "Wood Group", applied to compel the Plaintiff, CNOOC, to provide responses to undertakings. In making its determination, the Court considered the guidance provided in Rule 1.2 and what qualifies as relevant or material under Rule 5.2.

Associate Chief Justice Nixon noted that Rule 5.25 directs what questions must be answered. The Court also highlighted that Part 5 of the Rules provides that discovery can be used for the purposes of gaining admissions, regardless of whether the Questioning party may already know the answer.

The Court agreed that some undertakings were properly refused because there was no evidence supporting that the undertaking requested was relevant and material or because the request was overly broad.

CNOOC was directed to respond, or partially respond, to other undertakings which the Court considered to be relevant and material to one of the issues in the case.

MAIANI V C-JAZZ, 2026 ABKB 187

(FEASBY J)

Rules 1.2 (Purpose and Intention of these Rules), 6.37 (Notice to Admit) and 10.33 (Court Considerations in Making Costs Award)

The Plaintiff, a former executive director of the Calgary Jazz Festival, brought a defamation claim against the Defendants, who publicly blamed him for the cancellation of the 2010 Festival due to alleged financial mismanagement. Applying the test for defamation, Feasby J. found that the statements were defamatory and untrue.

The Defendants failed to attend Trial or engage with the proceedings and did not respond to a Notice to Admit Facts. The Court relied on Rule 6.37(3) to deem the facts stated in the Notice to Admit Facts admitted. These admissions included key facts that the Plaintiff regularly reported expenses to the board and that the Defendants made the impugned statements to media outlets knowing that they would be published.

On the issue of costs, Justice Feasby applied Rule 10.33, which requires the Court to consider litigation conduct, together with the foundational principles in Rules 1.2(1) and 1.2(2) requiring parties to facilitate the timely and cost-effective resolution of disputes and to communicate honestly and openly. Feasby J. found that the Defendants acted in bad faith throughout the proceedings, including refusing to facilitate service, failing to participate in the process, and ultimately not attending Trial after opposing pre-Trial steps. The Action took

nearly 14 years to reach Trial, and the delay was mostly attributable to the Defendants' failure to act in good faith. In these circumstances, the Court held that solicitor-client costs were warranted but awarded a lump sum of $50,000 to avoid further delay and expense associated with a formal assessment of costs.

SANDHU V SIRI GURU NANAK SIKH GURDWARA OF ALBERTA, 2026 ABKB 204

(APPLICATIONS JUDGE BIRKETT)

Rules 1.2 (Purpose and Intention of These Rules), 4.10 (Assistance by the Court), 4.31 (Application to Deal With Delay), 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)

This decision concerned costs following the dismissal of an Originating Application challenging the 2021 election of the Executive Committee of the Siri Guru Nanak Sikh Gurdwara of Alberta ("Gurdwara"), for long delay. The Applicants, who were disqualified from running in the election, alleged breaches of procedural fairness and oppressive conduct by the Gurdwara and its leadership. The Action was commenced urgently in April 2021, involved extensive early litigation, including voluminous Affidavits, 11 days of questioning, and multiple interlocutory steps, but was ultimately not pursued to a merits hearing. After prolonged inactivity, the Action became moot following the 2024 election, and was dismissed under Rule 4.31 for inordinate delay on April 17, 2025. The Court then reserved its decision on the quantum of costs.

Applications Judge Birkett held that the Gurdwara, as the successful party, was entitled to costs payable jointly and severally by the individual Applicants. Rejecting both Schedule C tariff costs and full solicitor-client indemnity, the Court awarded enhanced costs of $120,000 in fees (approximately 40-50% indemnity), plus disbursements and GST. The Court found that this level of costs appropriately reflected the complexity, intensity, and front-loaded nature of the litigation, while remaining proportionate. The Applicants' argument that the case raised important non-monetary governance issues militating against enhanced costs was rejected, particularly given that the matter was abandoned before adjudication on the merits.

Applying Rules 10.29, 10.31, and 10.33, the Court emphasized that proportionality, not full indemnification, is the governing principle for costs awards, with litigation conduct being a central consideration. Enhanced costs were justified because the Applicants initiated urgent, complex proceedings, sought injunctive relief, required intensive case management, and imposed substantial costs on a nonprofit organization, only to later abandon the litigation. The Court relied on appellate guidance that misconduct, unnecessary delay, and abandonment after extensive litigation may warrant costs exceeding Schedule C. Comparative jurisprudence involving disputes within nonprofit and religious organizations supported an elevated but not full indemnity award. The decision underscores that even non-monetary, governance-based claims will attract significant costs consequences where proceedings are pursued aggressively and then left unresolved.

HAMILTON V KOSC, 2026 ABKB 227

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 1.4 (Procedural Order), 1.7 (Interpreting These Rules), 6.9 (How the Court Considers Applications), 6.10 (Electronic Hearing), 8.10 (Order Presentation), 8.18 (Trial Conducted by Electronic Hearing), 13.18 (Types of Affidavit) and 14.73 (Procedural Powers)

This decision arose from competing Applications in advance of a scheduled civil jury-waived Trial involving serious allegations of defamation, online harassment, intentional infliction of mental suffering, and breach of privacy. The Plaintiffs were a Calgary lawyer and his professional corporation. The self-represented Defendant resided in Manitoba and allegedly published online statements accusing the Plaintiff of sexual assault when she was a minor. The Defendant applied to attend the entirety of the Alberta trial remotely from Manitoba, citing PTSD arising from the alleged abuse and financial hardship. Conversely, the Plaintiff sought permission for a proposed expert witness (a private investigator based in Montreal) to testify remotely. Each party opposed the other's request.

The Court undertook a detailed analysis under Rule 6.10, confirming that in-person trials remained the default, and that the party seeking an electronic or hybrid hearing bore the onus of showing that it was necessary, proportionate, and consistent with the fair and just resolution of the dispute under Rule 1.2. Justice Marion articulated a comprehensive, non-exhaustive framework for contested electronic hearing applications, emphasizing factors such as access to justice, credibility assessment, participant roles (with heightened expectations for parties vs. witnesses), hearing solemnity, logistical feasibility, and integrity of the evidentiary process. Applying these factors, Marion J. accepted that the Defendant's PTSD constituted a legitimate basis for accommodation and that CCTV testimony within the courthouse appropriately balanced her needs with concerns about credibility, logistics, and courtroom control. By contrast, the expert's proposed virtual testimony was rejected due to fairness and feasibility concerns, particularly the impracticality of conducting cross-examination through multiple technological platforms and the lack of compelling necessity beyond cost savings.

The Court granted the Defendant's Application in part, permitting her to participate in the trial by CCTV from another room within the Calgary courthouse, rather than remotely from out of province. This accommodation balanced her asserted medical needs with the Court's need to maintain control over the proceedings. The Plaintiff's Application was dismissed, and the proposed expert was required to testify in person. Costs of the Applications were deferred to the end of trial.

HUME V ALBERTA HEALTH SERVICES, 2026 ABKB 18

(YUNGWIRTH J)

Rule 2.10 (Intervenor Status)

The Plaintiff was a molecular geneticist and professor at the University of Alberta whose appointment was contingent on third-party funding. She sued Alberta Health Services ("AHS") and Alberta Precision Laboratories Ltd. ("APL"), alleging that, in relation to her clinical services, she had a separate legal relationship with AHS/APL as an employee, dependent contractor, or independent contractor. AHS/APL applied for Summary Dismissal, while the University was successful in striking AHS/APL's Third Party Claim on the basis that any employment-related issues with the University were governed by the Collective Agreement between the Governors of the University of Alberta and the Association of Academic Staff of the University of Alberta ("AASUA"). The Plaintiff appealed only the Summary Dismissal decision.

AASUA then applied for leave to intervene in the Appeal. AASUA is the exclusive bargaining agent for the University's academic staff and took the position that many academic clinicians hold dual roles: one as academic staff employees of the University under the Collective Agreement, and another in a separate legal relationship with third-party entities providing clinical services. AASUA argued that, if the Applications Judge's decision stood, it could wrongly imply that disputes arising from those third-party clinical roles fell within AASUA's representational obligations under the Collective Agreement.

In considering Rule 2.10, the Court reviewed whether AASUA had a particular interest in, or would be directly and significantly affected by, the outcome of the Appeal, and whether it could provide expertise, perspective, or information that would assist the Appeal Court. Justice Yungwirth held that both criteria were met. The Appeal could significantly affect AASUA's historic position that disputes arising from academic clinicians' clinical relationships with third parties fall outside the scope of the Collective Agreement. Further, AASUA could provide evidence and perspective about the Collective Agreement, its representational limits, the treatment of dual-role academic clinicians, and the history of how such arrangements had been handled. That information had not been fully or accurately presented by the parties, particularly since the University was no longer participating in the Appeal after the Third Party Claim was struck and that ruling was not appealed.

The Court also found there would be no undue delay, no material prejudice to the parties, and no widening of the lis. AASUA's proposed intervention was confined to the jurisdictional issue raised on the appeal and did not extend to the Plaintiff's underlying claim, if the Appeal succeeded. Accordingly, the Court granted AASUA leave to intervene in the Appeal, including leave to make oral and written submissions and file additional affidavit evidence relevant and material to the Appeal. AASUA was ordered to bear its own costs of the intervention Application, but the Court declined to grant it blanket protection from any future costs award on the Appeal.

REFERENCE RE CLEAN ELECTRICITY REGULATIONS (CANADA) 2026 ABCA 1

(FEEHAN JA)

Rules 2.10 (Intervenor Status), 14.37 (Single Appeal Judges) and 14.58 (Intervenor Status on Appeal)

In this decision, the Court considered Applications by four parties to intervene in the underlying Reference.

The Court confirmed that intervention is discretionarily permitted pursuant to Rules 2.10, 14.37(2), and 14.58(1). Justice Feehan reviewed the case law setting out the test and relevant considerations. The test required the Court to decide whether the intervenor would be specifically affected by the decision of the Court and/or if the presence of the party was necessary for the Court to properly decide the matter. The latter could be established where the intervener had some special expertise or insight to bring to bear on the issues facing the Court.

The Court granted three of the four Applicants intervenor status. These Applicants each had a special interest, particular expertise, and unique perspective on the matters raised in the Reference. The fourth Applicant, who was rejected as an intervenor, was a member-based organization of which the other three Applicants were members. As such, Feehan J.A. found it would not be useful, different, or necessary to allow the fourth Applicant intervenor status.

2114223 ALBERTA LTD V LOUGHEED, 2026 ABKB 78

(MAH J)

Rules 2.29 (Withdrawal of Lawyer of Record), 3.37 (Application for Default Judgment Against Defendant Noted in Default), 4.33 (Dismissal for Long Delay), 9.15 (Setting Aside, Varying and Discharging Judgments and Orders) and 10.53 (Punishment for Civil Contempt of Court)

The Plaintiffs appealed a decision of an Applications Judge dismissing the Action for long delay and setting aside Default Judgment pursuant to Rules 4.33 and 9.15, respectively.

The Plaintiffs commenced the Action on January 17, 2012. The Defendant attended Questioning for Discovery in October 2015, after which, counsel for Defendant withdrew from representation pursuant to Rule 2.29. The Defendant did not attend Questioning on October 1, 2020, after the Plaintiffs served a Notice of Appointment for Questioning on the Defendant's current home address. On March 1, 2021, the Statement of Defence was struck out, despite the Defendant not being held in contempt ("Striking Out Order"). On October 16, 2024, the Plaintiffs successfully applied for Default Judgment against the Defendant without notice pursuant to Rule 3.37. The Defendant purportedly learned about the Default Judgment on February 20, 2025, and retained counsel to file the subject Application.

On Appeal, the Court noted that the standard of review for an appeal of a decision of an Applications Judge was correctness. On the issue of long delay, Mah J. found in favour

of the Plaintiffs and held that the Applications Judge erred by treating the Striking Out Order as the last significant step in the Action and failing to account for the Default Judgment. Accordingly, Justice Mah found that three-year period for long delay under Rule 4.33 had not yet expired.

Regarding the second issue of setting aside Default Judgment, the Court applied the three-part common law test under Rule 9.15, namely whether the Applicant: (1) had an arguable defence; (2) had not deliberately let the Judgment go by default, and had some excuse for the Default Judgment; and (3) moved promptly to open the Default Judgment up after first learning about it. Justice Mah considered a variety of sub-issues including: the impact of a recent case, *Liberty Mortgage Services Ltd. v River Valley Development Corp*., 2025 ABCA 346; how the Striking Out Order, as a contempt remedy pursuant to Rule 10.53, was granted despite no finding of contempt; whether the Defendant had satisfied the three-part test; and whether setting aside the Applications Judge's Order to set aside the Default Judgment would have any practical meaning, given the Striking Out Order. Mah J. found in favour of the Defendant, in-part on the basis that the three-part test was satisfied and that the circumstances leading to the Striking Out Order worked against the Defendant.

The Court allowed the Appeal, in part. It overturned the dismissal of the Action for long delay under Rule 4.33, but confirmed the Order setting aside the Default Judgment under Rule 9.15. Justice Mah also permitted the Defendant to apply, within 45 days of this Appeal Decision, to set aside the Striking Out Order. If the Defendant would fail to do so, the Plaintiff could reapply for Default Judgment.

2526646 ALBERTA LTD V CONDOMINIUM CORPORATION NO 0313512, 2026 ABKB 146

(THOMPSON J)

Rules 3.2 (How to Start an Action) and 3.72 (Consolidation or Separation of Claims and Actions)

A condominium corporation brought an Originating Application for an Injunction against certain owners of the condominium ("Owners"), seeking, among other things, to enforce its bylaws (the "Injunction Action"). The Owners filed a Statement of Claim against the condominium corporation seeking to invalidate the bylaws ("Claim Action"). The Owners then brought this Cross-Application seeking to have the Injunction Action converted to a Statement of Claim Action and seeking to consolidate the converted Injunction Action with the Claim Action. The Cross-Application was granted.

First, the Court converted the Injunction Action into a Statement of Claim Action. In its analysis, the Court relied on Rule 3.2(2), which establishes that a Statement of Slaim must be used to start an Action unless one of the specified exceptions apply. The Court also noted its authority under Rule 3.2(6) to convert an Action commenced in one form to another form. Justice Thompson stated that Rule 3.2(6) applies in various situations, including where the Action was wrongly commenced by Originating Application or that the emerging issues in the dispute changed the character of the Action. Thompson J. also cited authorities for the requirement that matters commenced by Originating Application must be capable of summary determination. The summary process is not appropriate if live witnesses or discovery

are warranted, and may not be appropriate where evidence conflicts or credibility is an issue.

Applying these principles, the Court found the Injunction Action involved complex issues. Justice Thompson concluded the matter could not be resolved on summary determination and required full pleadings, disclosure, and trial procedures. The Court ordered that the Originating Application be converted to a Statement of Claim and the Injunction Action be continued as a Statement of Claim Action.

Next, the Court determined that the converted Injunction Action should be consolidated with the Claim Action. The Court confirmed its discretion to consolidate actions under Rule 3.72 for any reason, including that the actions have a common question or law or fact or arise out of the same circumstances. The overarching purpose of consolidation is to enhance the administration of justice. Justice Thompson reviewed the applicable non-exhaustive factors for consideration set out in *Mikisew Cree First Nation v Canada*, 1998 ABQB 675 ("Mikisew Factors"), including whether there are common claims, whether consolidation will save time and resources, and whether consolidation would cause prejudice.

Applying the Mikisew Factors, the Court held that consolidation was in the overall interests of justice. The converted Injunction Action and the Claim Action had common issues and arose from the same circumstances. The Court clarified that there was no absolute requirement that the two Actions for consolidation must have common parties or that all issues in the two Actions must be common. A "heavy overlap" was sufficient. Further, Justice Thompson found that the factors of efficiency, risk of inconsistent verdicts, and risk of prejudice all weighed in favour of consolidation. With no factor weighing against consolidation, the Court found in favour of the consolidation.

SHAKERI V CONDO CORPORATION PLAN NO. 0524360,

2026 ABKB 229 (MCLEOD J)

Rules 3.2 (How to Start an Action), 5.34 (Service of Expert's Report) and 6.17 (Payment of Allowance)

The Applicant brought a repeatedly amended Originating Application against the Respondents, a Condo Corporation, an associated company, Series Management Inc. ("SMI"), and a neighbouring unit owner, alleging wide-ranging misconduct in the administration and operation of the building. The claims included alleged oppression and non-compliance under Section 67 of the *Condominium Property Act*, RSA 2000, c C-22 ("*CPA*"), failure to provide records, pests, deficient maintenance, lack of security cameras, heat interference, improper governance and elections, licensing breaches, and tort-based allegations against the neighbour (assault, harassment, property damage). The Respondents applied for Summary Dismissal, relying heavily on prior procedural Orders, the inappropriateness of proceeding by Originating Application, and lack of evidence supporting improper conduct.

The Court applied the summary disposition framework and emphasized that Originating Applications must be capable of summary determination. On the condominium claims, Mcleod J. applied oppression and improper conduct principles found in Section 67 of the *CPA*, including considerations of whether conduct breached objectively reasonable expectations and rose to the level of oppression,

unfair prejudice, or unfair disregard. Mere disagreement with board decisions, maintenance priorities, or security measures was insufficient to establish improper conduct and procedural non-compliance without prejudice justified only declaratory relief. The Court also reinforced finality doctrines (*functus officio*/ abuse of process) to prevent re-litigation of issues already determined, and expert evidence admissibility requirements (noting Rule 5.34) to reject informal or deficient opinion evidence. Finally, McLeod J. confirmed that disputed tort-style neighbour claims and credibility contests cannot proceed by Originating Application and should not be converted where litigants repeatedly ignore procedural direction, underscoring the Court's discretion to dismiss rather than re-cast proceedings.

The Court then summarily dismissed the Application in its entirety, except for granting narrow declaratory relief that (1) the condo corporation failed to provide certain financial statements in a timely manner, and (2) failed to formally conduct an election at the 2023 Annual General Meeting. No damages or substantive remedies were awarded by the Court and claims against SMI were dismissed as barred by prior final Orders (and, in any event, were substantively unfounded). Claims against the neighbouring owner were also dismissed as improperly brought by Originating Application and unsuitable for summary determination, as they involved significant factual disputes and tort claims that should have proceeded (if at all) by Statement of Claim. Costs were reserved, with the condo corporation and other Respondents treated as substantially successful.

BRADEN EQUITIES INC V MILLAR, 2026 ABKB 22

(APPLICATIONS JUDGE WANKE)

Rules 3.3 (Determining the Appropriate Judicial Centre), 3.8 (Originating Applications and Associated Evidence), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 10.42 (Actions Within Court of Justice Jurisdiction)

The landlord applied to terminate a tenancy under the *Residential Tenancies Act*, SA 2004, c R-17.1 (the "*RTA*"). Although the *RTA* permits such an Application to be brought in the Court of King's Bench, once the Applicant chose to proceed in that Court, they were required to comply with its Rules. The Court found that it did not do so, citing improper service, commencement in the wrong judicial centre, evidentiary deficiencies and improper claims for fees and costs.

The Applicant purported to serve the Application by posting it to the rental premises. This was insufficient under the Rules which require personal service unless there is a substitutional service order.

The Applicant also improperly filed the matter in Edmonton rather than Red Deer. The Court held that Red Deer was the proper judicial centre because the rental property was located there, the responding tenant lived there, and, under Rule 3.3(2), the Applicant's relevant place of business was the one nearest to the events in issue. The Court emphasized the judicial centre rules ensure fairness, particularly in housing cases involving potentially vulnerable respondents.

Rule 3.8(2) confines affidavits to the affiant's personal knowledge or to evidence they could give at trial. The Applicant relied on evidence from an administrator about the condition of the premises based on information and records created by the site manager. The Court found that evidence to be inadmissible hearsay. It rejected the submission that the evidence was admissible under the business records exception, since the records were created specifically for the eviction process and were not routine records carrying the necessary indicia of reliability.

The Applicant sought $850 in costs but did not provide a Bill of Costs or invoices. The Applicant relied on a lease clause requiring the tenant to indemnify the owner for legal costs incurred in enforcing payment or recovering possession after default. However, the Court held that the clause fell short of the clear language required to support solicitor-and-own-client costs.

Rule 10.33(1)(b) requires the Court to consider proportionality when awarding costs. Pursuant to Rule 10.42, if a matter could have been heard in the Court of Justice, costs are generally limited to 75% of Column 1 of Schedule C. Rules 10.33(2)(e) and (f) allow the Court to vary or deny costs due to irregularities or contraventions to the Rules. Considering the Applicant's improper service, commencement in the wrong judicial centre, and reliance on inadmissible hearsay, the Court denied to award costs to the Applicant.

Under Rule 10.31(5), the Court may award costs to a self-represented litigant in appropriate circumstances. The Court ordered the Applicant to pay $250 in costs to the Respondent, to be offset against her August rent, for the inconvenience of requiring her to travel to the wrong jurisdiction in Edmonton instead of Red Deer on short notice with her young child.

The Court also rejected the Applicant's proposed consent Order, as it would permit termination of the lease and eviction without notice or a further Court application. Instead, it ordered payment of the outstanding base rent for July and August, less the $250 costs offset, and granted the landlord leave to reapply in the event of future defaults.

DUREGON V MRKLAS, 2026 ABKB 5

(JUGNAUTH J)

Rules 3.10 (Application of Part 4 and Part 5), 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 When Making Costs Award)

This was a costs decision following the dismissal of an application by two siblings to remove the Respondent, their sister, as agent and attorney for their mother pursuant to a personal directive.

The Applicants alleged elder abuse and mismanagement of their mother's care, and claimed parental alienation and improper visitation restrictions. The Respondent asserted her actions complied with the personal directive and their mother's best interests. The Respondent was successful and the Application was dismissed. As such, the Respondent sought costs on behalf of her mother.

Although unsuccessful in their Application, the Applicants argued they had reasonable

grounds to believe the Respondent was not acting in their mother's best interests and that the Application was worthwhile and necessary. The Applicants also pointed to divided success throughout the litigation to argue that each party should bear their own costs. The Respondent sought full indemnity costs and submitted a Bill of Costs for legal fees of $178,753.12. In the alternative, the Respondent sought enhanced costs with a 50-60% multiplier in an approximate range of $139,000-$149,000.

Justice Jugnauth confirmed that a successful party is presumptively entitled to costs pursuant to Rule 10.29. The Court concluded that the Respondent was the successful party and rejected the Applicant's argument of divided success, noting that interim orders obtained during litigation do not amount to meaningful success, especially where those steps were unnecessary or arose from the Applicants' own conduct.

Jugnauth J. then considered whether enhanced costs were appropriate pursuant to Rule 10.33 and the governing principles of proportionality. The Court emphasized that full indemnity costs were reserved for rare and exceptional circumstances involving reprehensible conduct. The Court found that although the Applicants' behaviour did not support full indemnity costs, their conduct warranted an elevated award because they brought unnecessary litigation, advanced serious allegations of elder abuse and misconduct, failed to adduce supporting evidence, and engaged in other blameworthy litigation conduct.

As such, the Court held that enhanced costs were justified to deter similar behaviour and restore, to the extent possible, the legal expenses the Respondent incurred which were expended from her mother's estate. The determine quantum of costs, Justice Jugnauth emphasized proportionality, which included reviewing the Respondent's full indemnity and Schedule C Bill of Costs and the items claimed. Despite Rule 3.10 providing that Part 5 questioning does not apply to an action commenced by originating application unless another Rule allows for it, the parties agree, or the Court orders, Justice Jugnauth exercised the Court's discretion to compensate the Respondent for steps taken in relation to disclosure and questioning.

The Court exercised its discretion to award lump sum costs to reflect the Respondent's complete success and to hold the Applicants accountable for unproven allegations of serious impropriety. Jugnauth J. applied an inflation multiplier and a litigation misconduct multiplier to award $60,000 for legal fees, plus disbursements, charges, and GST.

KINGDOM PROPERTIES LTD V ALBERTA (ENVIRONMENT AND PARKS), 2026 ABKB 105

(MCLEOD J)

Rule 3.15 (Originating Application for Judicial Review)

The Defendant applied to summarily dismiss an Application for Judicial Review because not all required parties were named and served within the six-month limitation period under the Rules. The underlying dispute arose from an administrative penalty issued by a regional compliance director (the "Director") under the Public Lands Act, RSA 2000, c P-40. After the penalty was appealed to the Public Lands Appeal Board ("PLAB"), the Board issued a

report recommending a reduced penalty, which the Minister ultimately adopted through a ministerial order. The Applicant sought Judicial Review of that decision but named and served only the Minister within the six-month period, not the PLAB or the Director.

The Court held that Rule 3.15 imposes strict and inflexible service requirements for Judicial Review Applications. Under Rule 3.15(a), an Applicant must serve the "person or body in respect of whose act or omission a remedy is sought", and under Rule 3.15(c), every person or body "directly affected" by the Application must also be served. Justice McLeod noted that the six-month deadline is mandatory and cannot be extended, and failure to serve a required party within that period is fatal to the Application regardless of prejudice or actual notice. The Court relied on authorities emphasizing the strict application of the Rule, which confirmed that Courts cannot extend the Rule 3.15 service timeline and that Applicants should err on the side of naming and serving any potentially required party.

Applying these principles, McLeod J. concluded that the PLAB fell within Rule 3.15(a). Although the Minister was the ultimate decision-maker, the statutory appeal scheme was bifurcated: the Board conducted the evidentiary hearing and issued the report that formed the basis of the Minister's decision. Because the Judicial Review grounds challenged aspects of the evidentiary assessment and reasoning reflected in the Board's report, the Board's acts and omissions could be subject to a remedy if the Application succeeded. The Court noted that the typical remedy on Judicial Review is to remit the matter to the original decision-maker for reconsideration, meaning the Board could potentially be required to rehear the appeal. Accordingly, PLAB was a body whose acts or omissions could be subject to a remedy and should have been served.

Because the failure to serve the Board was sufficient to dispose of the matter, the Court declined to decide whether the PLAB or the Director were also "directly affected" under Rule 3.15(c). McLeod J. also rejected the Applicant's argument that service on the Minister constituted effective service on the other administrative bodies. Unlike cases involving internal administrative divisions, the PLAB and the Director were separate statutory actors with distinct authority under the legislative scheme, and service on one did not constitute service on the others.

The Court therefore granted the Minister's Application for Summary Dismissal.

CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC, 2026 ABKB 127

(NIXON ACJ)

Rules 3.15 (Originating Application for Judicial Review), 3.62 (Amending Pleading), 3.65 (Permission of Court to Amendment Before or After Close of Pleadings), 3.67 (Close of Pleadings) and 3.68 (Court Options to Deal With Significant Deficiencies)

This decision concerned the determination of a threshold question regarding whether: (1) the Plaintiff and Defendant by Counterclaim (the "CNOOC Parties") needed to apply to amend their respective Statements of Defence to Counterclaim pursuant to Rule 3.15; or (2) the

CNOOC Parties were entitled to amend their respective Statements of Defence to Counterclaim as of right following the Defendants' (the "Landlord Parties") filing of an Amended Response to Request for Particulars, pursuant to Rule 3.62.

Associate Chief Justice Nixon held that the CNOOC Parties did not have the right to amend their Statements of Defence to Counterclaim pursuant to Rule 3.62. First, Nixon A.C.J. found that the requirements of Rule 3.67 were satisfied and that the Pleadings in the Action were therefore closed for the purposes of Rules 3.62 and 3.65. Second, Associate Chief Justice Nixon found that a Response to Request for Particulars did not constitute a 'Pleading' within the meaning of Rule 3.62. Finally, Nixon A.C.J. noted that it would be more economical and procedurally efficient for the CNOOC Parties to apply pursuant to Rule 3.65, rather than permitting amendments pursuant to Rule 3.62 and requiring the Landlord Parties to bring an Application to Strike or Reply to the amended Statement of Defences to Counterclaim pursuant to Rule 3.68.

In the result, the Court ruled that the CNOOC Parties were required to apply for leave to amend their respective Statements of Defence to Counterclaim in accordance with Rule 3.65.

PHILLIPS V EDMONTON (POLICE SERVICE), 2026 ABKB 140

(RENKE J)

Rules 3.15 (Originating Application for Judicial Review) and 3.22 (Evidence on Judicial Review)

The Applicants sought Judicial Review of the decision not to lay charges in relation to the death of a 13-year-old boy following a group altercation at an Edmonton LRT station. The Applicants alleged bias, procedural unfairness, and unreasonableness by the Edmonton Police Service and the Crown in deciding not to charge the man involved in the boy's death.

Justice Renke turned to Rule 3.22, which requires Judicial Review to proceed on the record before the decision maker, not on fresh evidence going to the merits of the underlying decision. The Court therefore refused to consider several Affidavits and recordings that had not been before the Police or the Crown when the decision was made, except where later material provided limited context for the information that had been considered at that time.

Justice Renke also held that Mr. Lucier, as the person who had not been charged and whose interests would be directly affected by any Order, should have been served pursuant to Rule 3.15. The Court observed that this failure would ordinarily have been fatal, but declined to dismiss the Application solely on that basis because no party had raised the issue.

The Application for Judicial Review was ultimately dismissed because the Applicants had not provided an evidentiary foundation warranting the Court's intervention.

BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR), 2026 ABCA 2

(FEEHAN JA)

Rules 3.15 (Originating Application for Judicial Review), 4.22 (Considerations for Security for Costs Order) and 14.67 (Security for Costs)

The two Applicants, Three Sisters Mountain Village Properties Ltd. ("Three Sisters") and Thunderstone Quarries Canmore Ltd. ("Thunderstone"), sought an Order pursuant to Rules 4.22 and 14.67 for Security for Costs for an upcoming Appeal by Bow Valley Engage Society ("Bow Valley").

The underlying Action involved an application by Bow Valley for Judicial Review of a decision pertaining to land development for a project east of Canmore. The Chambers Judge dismissed the application, finding that Bow Valley had failed to serve the application on Thunderstone, a directly affected party, contrary to Rule 3.15. The Chambers Judge issued an Order requiring Bow Valley to pay costs of the application to both Thunderstone and Three Sisters. Bow Valley paid Thunderstone's Bill of Costs, but an agreement had not been reached on Three Sisters' Bill of Costs. Bow Valley appealed the Chamber Judge's decision.

The Applicants sought an Order requiring Bow Valley to post Security for Costs for the upcoming Appeal within thirty days, failing which Bow Valley's Appeal should be struck pursuant to Rule 14.67.

Feehan J.A. considered the factors outlined in Rule 4.22 and the test for granting Security for Costs set out in *Poole v City Wide Towing and Recovery Service Ltd.*, 2020 ABCA 102. The test requires the applicant to establish, on a balance of probabilities, that the order for Security for Costs is just and equitable, and that the respondent would be unable to pay costs that may be awarded.

The Court found that the Applicants would be able to enforce a Costs award against Bow Valley, and that there was some merit to Bow Valley's Appeal. Feehan J.A. opined that, if the Application was granted, Bow Valley would have the difficult task of fundraising over $50,000 within thirty days for Security for Costs, failing which the Appeal would be struck. Pursuant to Rule 4.22(e), which allows other matters to be considered if appropriate, the Court noted Bow Valley's submissions regarding the short period to fundraise the requested Security for Costs before the scheduled Appeal as well as the legal and community importance of the raised issues.

Feehan J.A. held that, on balance, it was not just or equitable to order Security for Costs against Bow Valley. The Court thus dismissed the Applications.

WHITEFISH LAKE FIRST NATION #128 V ALBERTA (MINISTER OF ENVIRONMENT AND PROTECTED AREAS), 2026 ABCA 70

(ANTONIO, FRIESEN AND SHANER JJA)

Rule 3.15 (Originating Application for Judicial Review)

This Appeal concerned whether a First Nation was a person "directly affected" by a Judicial Review Application such that it had to be served under Rule 3.15(3)(c). The underlying Judicial Review was brought by Whitefish Lake First Nation #128 ("Whitefish") challenging Alberta's refusal to negotiate access to lands within the Cold Lake Air Weapons Range for the exercise of Treaty and Aboriginal rights. Cold Lake First Nations ("Cold Lake"), which already had limited access to the Alberta portion of the range under a prior agreement, argued that it was directly affected and that the Judicial Review should be struck because it had not been served.

The Court affirmed that Rule 3.15 requires a Judicial Review Application to be served on the decision-maker and every person or body "directly affected" by the Application. Whether a party is directly affected is a fact-specific inquiry that turns on the nature of the remedy sought and the potential legal effect of the proceeding. The Court held that the Chambers Judge correctly applied this framework and properly examined whether the Judicial Review would determine or affect the legal rights of Cold Lake.

On the record before the Chambers Judge, the Court agreed that Cold Lake was not directly affected. The Judicial Review concerned Alberta's refusal to negotiate with Whitefish regarding potential access to the lands and therefore focused on Whitefish's alleged rights and Alberta's decision. Although Cold Lake's access agreement was referenced as part of the factual background, the Judicial Review did not seek interpretation of that agreement or determination of Cold Lake's Treaty rights. The Court accepted the Chambers Judge's finding that the terms of third-party agreements, including Cold Lake's access arrangement, were not central to the issues raised by the Judicial Review.

The Court also rejected the argument that the concept of "directly affected" should be interpreted broadly whenever there is uncertainty. Relying on *Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2023 ABCA 81, the Court clarified that Julien did not expand the meaning of "directly affected". Rather, it confirmed that the phrase must be given its ordinary meaning and applied to the facts of each case, while recognizing that applicants should err on the side of service where doubt exists because of the strict consequences of Rule 3.15.

Because the Chambers Judge's conclusion that Cold Lake was not directly affected was a factual assessment entitled to deference and no reviewable error was shown, the Court dismissed the Appeal.

ENTERPRISE PROPERTIES LTD V FLAGSTAFF (COUNTY), 2026 ABKB 94

(REED J)

Rules 3.22 (Evidence on Judicial Review) and 10.29 (General Rule for Payment of Litigation Costs)

This decision concerned an Application for Judicial Review by the Applicant, Enterprise Properties Ltd. ("EPL"), challenging the vires of property tax bylaws and a municipal budget enacted by the Respondent, Flagstaff County ("Flagstaff"), under the *Municipal Government Act*, RSA 2000, c M-26 (the "*MGA*").

EPL argued that portions of the bylaws and budget were ultra vires to the extent they authorized the collection of property taxes for transfer to municipal reserve funds for use beyond the fiscal year. EPL also alleged that the scheme was discriminatory. Flagstaff contended that the *MGA* permits municipalities to collect property taxes and allocate a portion of those revenues to municipal reserve funds.

EPL sought to rely on an expert Affidavit in support of its Judicial Review Application. Reed J. confirmed that an Application for Judicial Review pursuant to Rule 3.22 is generally confined to the record before the decision-maker, subject to limited exceptions, including where additional evidence is required to establish bias, procedural unfairness not apparent on the record, provide background context, or address an inadequate record. Justice Reed held that none of the exceptions applied and found the Affidavit was inadmissible.

Justice Reed confirmed that the standard of review for the vires of subordinate legislation is reasonableness. Reed J. emphasized that municipal bylaws benefit from a presumption of validity and that the Court's role is not to assess policy merits, but whether the municipality adopted a reasonable interpretation of its enabling statute.

Reed J. rejected EPL's argument and held that the statutory scheme of the *MGA* reasonably contemplated both transfers to and from reserve funds as part of municipal budgeting. Justice Reed found EPL's interpretation unduly narrow and inconsistent with the text, context, and purpose of the *MGA*, including provisions requiring long-term financial planning. The Court also rejected the allegation of discrimination, holding that the *MGA* expressly permits different tax rates for different classes of property and that EPL was treated the same as other ratepayers within its class.

The Court held that Flagstaff's authority was apparent on the face of the *MGA*. However, if this was not the case, Reed J. found that Flagstaff's authority arose by necessary implication, as a statutory grant of power impliedly includes all the necessary powers required to exercise that power.

Accordingly, Justice Reed dismissed the Application. The Court held that Flagstaff, as the successful party, was presumptively entitled to costs pursuant to Rule 10.29, and directed the Parties to attempt to agree on quantum, with leave to provide submissions within 30 days if necessary.

UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 496 V STRIKE GROUP LIMITED PARTNERSHIP, 2026 ABCA 42

(STREKAF, WOOLEY AND FRIESEN JJA)

Rule 3.23 (Stay of Decision)

Strike Group Limited Partnership ("Strike") appealed a Chambers Judge's decision granting an Interlocutory Injunction that stayed the Alberta Labour Relation Board ("ALRB")'s ballot count for a vote (the "Vote") on the issue of whether employees of Strike in Crossfield could join a proposed bargaining unit of the Respondent, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local No. 496 ("Local 496").

The underlying issue, among others, was referred to the ALRB for resolution. The Vote was held and the ballots were sealed pending resolution of the parties' dispute. On March 30, 2022, the ALRB issued a decision without written reasons, ruling that Strike's Crossfield employees should be included in the proposed bargaining unit (the "ALRB Decision"). On April 21, 2022, the ALRB stayed the counting of the ballots pending issuance of the written reasons and upon consent of the parties. On February 24, 2025, the ALRB issued the written reasons for the ALRB Decision.

Local 496 filed applied to stay the ballot counting for the Vote pending Judicial Review of the ALRB Decision, which was denied by the ALRB on March 17, 2025. Local 496 then filed an Application for Interlocutory Injunction to stay the Vote's ballot count on March 19, 2025.

With respect to the Application for Interlocutory Injunction, the Chambers Judge found that the Court had the authority to issue a stay despite the decision of the ALRB to deny one, relying on *Siksika Health Services v Health Sciences Association of Alberta*, 2017 ABQB 683 and noting the Court's inherent jurisdiction under Rule 3.23. The Chambers Judge adopted the tri-partite *RJR-MacDonald* test for determining whether to grant a stay, which requires an applicant to demonstrate that: (1) there is a serious issue to be tried on Judicial Review; (2) the applicant would suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favours granting a stay. The Chambers Judge found that Local 496 satisfied the test, noting the inability of a revote to counteract potential prejudice, and the exceptional circumstances of the ALRB's long delay in issuing written reasons. However, part of the Chambers Judge's decision conflated Strike's submissions with the ALRB's Decision to refuse a stay (the "Conflation").

On Appeal, the Court noted that the Chamber Judge's decision was discretionary and entitled to deference, with intervention justified only for: an error of law or principle; palpable and overriding errors of fact; or unreasonable exercise of discretion. The Court held that the Chambers Judge did not err in applying the tri-partite test. The Panel also held that the Conflation did not impact the overall reasonableness of the Chamber Judge's decision.

The Court dismissed the Appeal, upholding the Interlocutory Injunction to stay the Vote's ballot count.

CASTRO ROSALES V ASFOUR, 2026 ABKB 59

(APPLICATIONS JUDGE SUMMERS)

Rule 3.27 (Extension of Time for Service)

The Plaintiff sought an Order granting an extension of time to serve her Statement of Claim upon the Respondent. The Applicant filed her Statement of Claim on September 20, 2024 and did not serve her claim within the appropriate time. In October 2025, the Plaintiff made an *ex parte* application to extend the time for service of the Statement of Claim on the basis that she had not been able to do so over the past year due to a no contact order that was in place between the parties. She also claimed that she could not give the Defendant notice of her Application for the same reason. The Court facilitated service of the Application on the Defendant, and the Application was heard with submissions by both parties.

The Plaintiff took the position that the no contact order constituted a "special or extraordinary circumstance", as contemplated by Rule 3.27(1)(c), and the circumstances justified the extension of time for service. Her position was that if she attempted to serve the Defendant, she ran the risk of breaching the no contact order.

The Court held that Rule 3.27 requires a causal connection between the special circumstances and the conduct of the Defendant or a third-party. In the present case, the delay in service was not attributable to the conduct of the Defendant and there was no third-party alleged to be responsible. It was also noted that the Plaintiff made no attempt to seek an exception to the no contact order. Had the Plaintiff sought an exception and been refused, it could be argued that the refusal was the conduct of a third-party. However, based on the Plaintiff's conduct (or lack thereof) the only impediment to her ability to serve the Defendant was her own inaction.

The Application for an Order permitting the extension of time for service was dismissed.

LEGER V CALGARY POLICE SERVICE, 2026 ABKB 216

(NIXON ACJ)

Rules 3.33 (Reply to Defence), 3.61 (Request for Particulars), 3.62 (Amending Appeal), 3.68 (Court Options to Deal With Significant Deficiencies), 4.5 (Complex Case Obligations), 5.6 (Form and Contents of Affidavit of Records), 5.7 (Producible Records) and 5.8 (Producible Records for Which There is an Objection to Produce)

The Plaintiff wrote a letter to the Court requesting the Court review and dismiss the Defendant's Statement of Defence on the basis that the Statement of Defence is vexatious and an abuse of power. The Court referred to Civil Practice Note 7, which sets out summary procedures pursuant to Rule 3.68.

Associate Chief Justice Nixon held that while Rule 3.68 can be applied to a Statement of

Defence, it is more commonly applied to commencement documents. Where there are defects in a Statement of Defence, other court processes, such as Rules 3.61, 3.33, or 3.62, may be more appropriate.

Nixon A.C.J. determined that the Statement of Defence was not, on its face, vexatious or an abuse of process. The Court provided general litigation direction to the Plaintiff by advising that her document entitled "Timeline of Events" is not evidence and referring her to Rules 5.6 to 5.8. Further, Associate Chief Justice Nixon acknowledged that the parties set a Litigation Plan pursuant to Rule 4.5(1) and encouraged continuation of the legal process in accordance with the Litigation Plan.

GHAOUI GROUP LLC V GLOBAL HEALTH IMPORTS CORPORATION, 2026 ABKB 63

(SMART J)

Rule 3.37 (Application for Judgment Against Defendant Noted in Default)

The Court considered an Application to set aside a Default Judgment and Partial Default Judgment (together, the "Judgments") that were granted *ex parte* under Rule 3.37 after the Defendants had been noted in default.

The Court confirmed the established test for setting aside a Default Judgment as follows: (a) whether the applicant had an arguable defence; (b) whether the default was not deliberate and there was some excuse for the default; and (c) whether the applicant moved promptly after learning of the judgment.

The Court cited case law for the principle that despite the test being "prescriptive", the decision to set aside a Default Judgment is discretionary and grounded in fairness.

Justice Smart found the test was met in relation to most portions of the Judgments. The Defendants had arguable defences, the default occurred inadvertently when the Statement of Claim was delivered to a "junk" email folder, and the Defendants had moved promptly to bring the Application once aware of the Judgments.

Justice Smart also acknowledged two other factors that supported the Court's exercise of discretion to set aside the Judgments. First, although Rule 3.37(1) allows a Plaintiff to apply for Default Judgment without notice, the present Application may have been one where it was appropriate to hear submissions from the Defendants. Reading Rule 3.37(1) together with Rule 3.37(3) (which lists what a Court may do on such an Application), Justice Smart held that the Court implicitly retains discretion to require notice where claims are unliquidated or there are material issues which could potentially be disputed.

Second, in their Application for the Judgments, the Plaintiff's counsel had not brought any possible defences to the Court's attention. Further, the Plaintiff's pleadings were fundamentally defective. Justice Smart stressed that on *ex parte* applications, counsel owes a duty to disclose all material facts. A failure to meet this duty may in itself justify setting aside a Judgment.

However, Justice Smart declined to set aside the Judgments as against one of the Defendants with respect to an aspect of the claim that was straightforward and undisputed. The Court therefore partially set aside the Judgments.

KLEIN V SUTTER, 2026 ABKB 102

(APPLICATIONS JUDGE WANKE)

Rule 3.37 (Application for Judgment Against Defendant Noted in Default)

The Plaintiffs sought Judgment against the Defendants after noting the Respondents in default. The Plaintiffs had entered into a contract with the Defendants for the sale of their home. The Respondents failed to close on the purchase and the Plaintiffs retained the Defendants' $10,000.00 deposit. The Plaintiffs were able to sell the home shortly after for $9,900.00 more than the original purchase price.

The Court dismissed the Plaintiffs' Application on the basis that any compensable damages experienced by the Plaintiffs were fully mitigated by the retained deposit and the increased sale price. Although the Plaintiffs were seeking Judgment in the amount of $93,190.15, the majority of the damages claimed were far too remote and were well outside the normal measure of damages.

In making the decision, Applications Judge Wanke made a point to address the Plaintiffs' conduct with reference to Rule 3.37. This Rule allows for parties to bring Applications seeking judgment assessments on a without notice basis, but in doing so they are required to provide full, frank, and fair disclosure of all material information. In the present case, the Plaintiffs neglected to advise the Court of the fact that the Plaintiffs had been able to sell their home, and that the sale price was greater than what was contracted for with the Defendants. The Court noted that the failure to abide by this obligation resulted in a delay of the decision being rendered.

2036576 ALBERTA LTD V DHINDSA, 2026 ABKB 180

(ANGOTTI J)

Rules 3.37 (Application for Judgment Against Defendant Noted in Default) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

The Plaintiff sued several Defendants involved in a residential infill project after a duplex was demolished because it was built too close to the property line. MR Engineering was one of the Defendants, although the scope of its role in the project was disputed. MR Engineering did not file a Statement of Defence after service, and the Plaintiff obtained Default Judgment under Rule 3.37. MR Engineering applied to set aside both the Noting in Default and the Judgment after its sole shareholder and director said he first learned of the Judgment on returning to Canada.

The Plaintiff argued that the Judgment under Rule 3.37 was more akin to Summary Judgment than Default Judgment because proof of the Claim was still required. Justice Angotti rejected that argument. The Court held that Judgment under Rule 3.37 remained a Default Judgment because it arose from the Defendant's failure to file a Defence, even though the Plaintiff

was still required to prove its Claim. The Court also held that, although MR Engineering's Application was poorly drafted, it did seek to set aside the Noting in Default as well as the Judgment because it asked for permission to file a Defence.

Applying Rule 9.15, the Court considered whether MR Engineering had an arguable defence, a reasonably excusable lack of intention to allow default, and whether it had moved promptly to set aside the Judgment. Justice Angotti held that MR Engineering had an arguable defence and had not deliberately allowed Judgment to go by default. Although Justice Angotti found that MR Engineering had not moved promptly to set aside the Judgment, there was a real possibility that MR Engineering might not be liable, or might only be partly liable, and any prejudice to the Plaintiff could be addressed through costs and strict terms.

Justice Angotti determined that relief was required in the circumstances and set aside the Noting in Default and the Default Judgment, subject to strict conditions, including delivery of an unfiled Statement of Defence and payment of costs within fixed timelines.

961945 ALBERTA LTD (SERVICEMASTER RESTORE OF EDMONTON) V MALFAR MECHANICAL, 2026 ABKB 179

(ANGOTTI J)

Rules 3.39 (Judgment for Debt or Liquidated Demand) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

The Defendant appealed an Applications Judge's decision declining to set aside a Default Judgment. The Defendants had been served with a Statement of Claim via registered mail but did not defend. After the Plaintiffs entered Default Judgment and served the Defendants with a Writ of Enforcement, the Defendants applied to set aside that Default Judgment.

The Court relied upon Rule 9.15, which permits the Court to set aside a default judgment in situation where it would be deemed just and appropriate to do so. In considering what would be just and appropriate in the circumstances, the parties agreed that the Court must apply a tri-partite test and the Defendant must show: (a) they have an arguable defence; (b) they did not deliberately let the judgment go by default and have some excuse for the default; and (c) after learning of the default judgment, they moved promptly to open it.

The Plaintiffs argued that none of the elements of the test had been met. The Defendants argued that they had a defence to the claim based on the lack of a contractor relationship between the parties and that some or all of the claims were brought outside of the applicable limitation period. Further, they argued that they had a reasonable excuse for failing to defend as they were in the midst of settlement discussions and were relying upon their insurer to handle the claim. Additionally, the Defendant claimed a mistaken understanding of the service requirements for the Plaintiff's claim.

Justice Angotti found that there was an arguable defence to the Action, and that the Defendants had moved promptly after becoming aware of the Default Judgment; but that they did not provide a reasonable excuse for the default. While the Defendants claimed that settlement discussions had occurred,

there was no evidence provided in support of this proposition. Further, the Defendants' submission that they held a mistaken belief regarding the service requirements reflected a deliberate decision not to defend rather than inadvertence.

Ultimately, the Court determined that in the circumstances, it would not be just and appropriate to set aside the Applications Judge's decision. The Appeal was dismissed.

ST ALBERT (CITY) V MELCOR DEVELOPMENTS LTD, 2026 ABKB 213

(APPLICATIONS JUDGE SUMMERS)

Rules 3.45 (Form of Third Party Claim), 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings) and 13.5 (Variation of Time Periods)

The Defendant, Melcor Developments Ltd ("Melcor"), applied to amend its Third Party Claim to add WSP Canada Inc. ("WSP") as a Third Party Defendant, pursuant to Rule 3.74, or alternatively to extend the time to file and serve its Third Party Claim against WSP, pursuant to Rules 3.45 and 13.5.

The Plaintiff commenced the Action in 2017 alleging deficiencies in subdivision design and construction, based on an engineering report completed in October 2013. The contract between the Plaintiff and Melcor extended the normal limitation period by an additional four years. Melcor and WSP each defended and advanced claims of contribution and indemnity against one another through a Notice of Claim against Co-Defendant. Although WSP was initially named as a Defendant, the Plaintiff later discontinued its claim against WSP as limitation-barred. Melcor then sought to add WSP as a Third Party Defendant for contribution or indemnity.

Applications Judge Summers considered Rule 3.74 and the test for amending pleadings set out in *Attila Dogan Construction & Installation Co Inc v AMEC Americas Limited*, 2014 ABCA 74, which permits amendments where supported by some evidence, provided they are not hopeless, do not cause prejudice not compensable in costs, do not add a party or cause of Action after expiry of a limitation period, and are not tainted by bad faith.

Melcor relied on Section 6 of the *Limitations Act*, RSA 2000, c L-12, arguing that the Third Party Claim was an added claim that could proceed despite expiry of the limitation period. Applications Judge Summers rejected this argument, finding the proposed amendment was limitation-barred and therefore hopeless.

Applications Judge Summers held that WSP could not have had the requisite knowledge of the added claim within the limitation period, as the underlying Action had not yet been commenced. The Court found that Section 6 did not apply and that allowing the amendment would improperly defeat WSP's limitation defence. Further, the Court found that, since WSP was not a party to the agreement between the Plaintiff and Melcor which extended limitation periods, Melcor bore the risk of the limitation period expiring. The alternative request to extend time pursuant to Rule 13.5 was dismissed as being academic.

Accordingly, the Court dismissed the Application with costs to WSP.

ARSOPI V ARVOS GMBH, 2026 ABCA 49

(HO, DE WIT, FAGNAN JJA)

Rules 3.46 (Third Party Defendant Becomes Party) and 3.71 (Separating Claims)

Orica sued ARVOS GmbH ("ARVOS") in Alberta for losses allegedly caused by defective industrial equipment supplied for an Alberta plant. The Respondent had subcontracted the manufacture of the equipment to the Appellant, Arsopi, under a contract governed by German law, containing a mandatory arbitration clause requiring disputes to be arbitrated in Germany.

Orica commenced a claim against ARVOS, and ARVOS commenced a third party claim against Arsopi seeking contribution and indemnity, including a claim under Section 3(1)(c) of Alberta's *Tort Feasors Act* (the "TFA Claim"). In the lower decision, Arsopi sought to stay or strike the third party claim under the International Commercial Arbitration Act ("ICAA").

The Chambers Judge stayed the contractual and tort claims but refused to stay the TFA Claim, holding it was effectively a claim between Orica and the Appellant and therefore outside the arbitration agreement. Arsopi appealed.

The Court of Appeal allowed the Appeal. It held that the Chambers Judge mischaracterized the TFA Claim. A contribution claim under Section 3(1)(c) of Alberta's Tort Feasors Act, the Court held, is a substantive right belonging to the Defendant tortfeasor (ARVOS), not a claim between the Plaintiff (Orica) and the third party (the Appellant).

The Court of Appeal held that, properly characterized, the TFA Claim was a dispute between the Respondent and the Appellant. The Court found the TFA Claim was "arising out of or in connection with" the subcontract because it depended on the contractual relationship and obligations between ARVOS and the Appellant. As a result, Justices Ho, de Wit and Fagnan found that the TFA Claim fell within the scope of the arbitration clause and ordered, further to Section 10 of the ICAA, that the entire third party claim be stayed, not struck.

SNIPER PRESSURE SERVICES LTD V NORTHBRIDGE GENERAL INSURANCE COMPANY, 2026 ABKB 194

(BECKER BROOKES J)

Rule 3.61 (Request for Particulars)

This Application was a request for particulars, pursuant to Rule 3.61. The Plaintiff owned a building that was insured by the Defendant. In the underlying Action, the Plaintiff sued the Defendant for amounts owing under the insurance policy following damage to the building. The request for particulars related to the amounts of the partial payments made to the Plaintiff and the alleged amounts the Defendant had failed to pay.

The Court confirmed that an Order for particulars is at the Court's discretion, having regard to what is fair and reasonable and whether the allegations are too vague to proceed without further detail.

The Defendant had not filed a substantive Affidavit with the Application for particulars. Referencing the applicable case law, Justice Becker Brookes explained that, in the absence of an Affidavit, the Defendant must show that the allegations in the Statement of Claim are so general and vague that the need for particulars is evident.

The Court held the standard was not met. The Statement of Claim set out specific values for the Plaintiff's losses, the amount of the Defendant's partial payment, and the amount claimed to be owing under the insurance policy. Despite the Plaintiff using rounded and estimated numbers, Justice Becker Brookes found this to be sufficiently clear and detailed to allow the Defendant to understand the case to meet and formulate a defence.

The Application was dismissed.

PEMBINA GAS SERVICES LTD V FOCUS CORPORATION, 2025 ABKB 745

(CARRUTHERS J)

Rules 3.62 (Amending Pleadings), 3.65 (Permission of Court to Amendment Before or After Close of Pleadings) and 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings)

The Applicant, Pembina Gas Services Ltd., sought two Orders permitting amendments to its pleadings pursuant to Rules 3.62(1)(b)(i) and 3.74(2)(a), as well as 3.62(1)(b)(ii) and 3.65(1). Specifically, the Applicant sought to amend the Statement of Claim to add Pembina Pipeline Corporation ("PPC"), a closely related corporate affiliate of the current Plaintiff, as a Plaintiff. The Applicant also requested permission to make other amendments to the Statement of Claim related to evidence discovered during the proceeding. PPC consented to the Application. The Respondent opposed the Application on the basis that it would be prejudiced by the amendments.

The Application was allowed subject to the following conditions: a) that the Applicants provide the Respondents with particulars regarding the respective Claims of the Plaintiffs within 45 days and b) that PPC be bound by the terms of the Settlement Agreements that the Applicant had entered into.

Justice Carruthers opined that there is a strong presumption in favour of allowing amendments unless the responding party demonstrates a compelling reason not to. Further, the Court held that the Respondents failed to prove that they would be prejudiced by the amendments and that any such prejudice established at Trial can be compensable by costs. The amendments were held to be necessary and desirable to ensure the effective enforcement of the Claims.

Further, Carruthers J. held that the proposed amendments were not barred by the *Limitations Act*, RSA 2000, c L-12, pursuant to Section 6 of that Act.

Justice Carruthers permitted the Application on the basis that the low evidentiary threshold for amendments was met.

NOVA OCULUS CANADA MANUFACTURING ULC V SATHER, 2025 ABKB 760

(MARION J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

A British Columbia corporation commenced an Action in Alberta to unwind certain agreements for the transfer and use of key business and intellectual property assets and to obtain related common law and equitable relief, including for breach of fiduciary duty. The Defendants applied under Rule 3.68 to strike all or part of the amended Statement of Claim, arguing that the Alberta Court of King's Bench lacked subject-matter jurisdiction as the relief sought fell within the exclusive jurisdiction of the British Columbia Supreme Court under British Columbia corporate legislation.

The Court set out the governing framework under Rule 3.68, emphasizing that a claim may be struck if the Court lacks jurisdiction. Adjudicative jurisdiction requires both territorial jurisdiction and subject-matter jurisdiction, and the existence of territorial jurisdiction cannot confer authority over matters outside the Court's subject-matter competence. Subject-matter jurisdiction turns on whether the Court has legal authority to adjudicate the dispute and grant the relief sought.

To determine subject-matter jurisdiction, Marion J. applied the "essential character" test, which requires a realistic assessment of the true nature of the claim and the practical result sought, rather than a formalistic reading of the pleadings. While Courts must guard against artful pleading designed to circumvent exclusive statutory regimes, genuine strategic choices by a plaintiff must be respected. The inquiry focuses on the claim actually advanced, not an alternative statutory remedy the responding party says should have been pursued.

Applying this approach, Justice Marion rejected the Defendants' characterization of the Action as a statutory claim that only a British Columbia Court could hear. The statutory provision relied upon by the Defendants created a specific remedy available to a corporation's stakeholders, not to the corporation itself, and the Plaintiff did not seek relief under that provision. The Court found no basis to reframe the claim as a statutory application merely because a statutory remedy might have been available to other parties.

The Court further held that, absent clear legislative language to the contrary, provincial Superior Courts retain inherent subject-matter jurisdiction to grant common law and equitable remedies, including rescission, even where the dispute involves a corporation incorporated in another province. No express or necessarily implied legislative intent ousting that jurisdiction was established.

Marion J. also rejected the argument that claims for breach of fiduciary duty owed by directors of a British Columbia corporation fall within the exclusive jurisdiction of British Columbia Courts. Fiduciary duties arise both under statute and at common law and equity, and the applicable legislation expressly preserves non-statutory liabilities. The statutory regime did not constitute a complete code that displaced the jurisdiction of other provincial superior courts.

Finally, the Court confirmed that it had territorial jurisdiction, noting that the defendants had attorned by actively litigating in Alberta and had not raised territorial jurisdiction or *forum conveniens*. In the absence of any basis to decline jurisdiction, the Court held that it had adjudicative jurisdiction over the Action.

The Application was dismissed.

SIKSIKA FAMILY SERVICES V PW, 2026 ABKB 1

(PRICE J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

A former foster parent ("PW") applied for access and private guardianship of two children who were removed from her care after her foster home licence was not renewed by Siksika Family Services (the "Director"). PW sought to compel the Director to prepare a home study report required for her private guardianship application. Justice T.K. Davis of the Alberta Court of Justice dismissed the Director's application to strike PW's access and private guardianship applications. The Director appealed Justice T.K. Davis's decision dismissing its application to strike.

The Court confirmed that since neither the Court of Justice Act nor its regulations provided a practice or procedure for dealing with applications to strike, the Court of Justice was entitled to apply the Alberta Rules of Court, more specifically the practice and procedure to strike applications under Rule 3.68.

The Court went on to confirm that under Rule 3.68(1), a Court may strike an application if it constitutes an abuse of process pursuant to Rule 3.68(2)(d). At common law, abuse of process has been described as proceedings "unfair to the point that they are contrary to the interest of justice".

The Director argued that PW's private guardianship application improperly duplicated or challenged prior administrative decisions, amounting to an abuse of process or collateral attack. However, the Court distinguished the caselaw relied upon by the Director from the case at hand because PW was not seeking to review the earlier decision and had introduced new evidence. Ultimately, the Court held that private guardianship decisions fall under the exclusive jurisdiction of the Court and had not been finally decided in the prior process, thus PW's application was neither an abuse of process nor a collateral attack.

BURRIS V DYCK, 2026 ABKB 3

(LEMA J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 4.31 (Application to Deal with Delay), 7.3 (Summary Judgment), 13.6 (Pleadings: General Requirements) and 13.7 (Pleadings: Other Requirements)

The parties, who were divorced, shared a child. After the child allegedly raised concerns about the Plaintiff's conduct with the grandmother, the allegations were reported to police and Child and Family Services. Both agencies determined that no further steps were required. The Plaintiff subsequently commenced an Action alleging libel, slander, defamation, intentional infliction of emotional harm, parental alienation, false allegations, breach of Court Orders, harassment, and restrictive gatekeeping.

The Defendants applied for Summary Judgment under Rule 7.3. In the alternative, the Defendants sought to strike the Statement of Claim pursuant to Rule 3.68(2)(b), or to dismiss the Action for inordinate delay under Rule 4.31.

The Court held that the Statement of Claim did not disclose a reasonable claim within the meaning of Rule 3.68. Justice Lema found that the Statement of Claim listed categories of alleged wrongdoing but failed to set out the material facts, as required by Rule 13.6. Lema J. emphasized that the Plaintiff was required to plead facts, not evidence, and noted that bald assertions could not support the causes of action advanced. Justice Lema further observed that the Plaintiff failed to plead particulars necessary to sustain a defamation claim, including the specific defamatory words, their publication, and resulting harm, contrary to Rule 13.7. The Court therefore struck the Statement of Claim pursuant to Rule 3.68.

Having reached that conclusion, Justice Lema stated that it was unnecessary to determine the alternative requests for Summary Judgment or dismissal for inordinate delay. The Court awarded Schedule C costs to the Defendants, and Lema J. seized himself of further Applications in the Action.

BURROWS V WYNNYK, 2026 ABKB 6

(SMART J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 5.2 (When Something is Relevant and Material) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

This decision addressed two procedural Applications in a civil Action arising from assault by a police officer during an arrest. Liability for the assault and vicarious liability of the Police Chief had already been resolved by consent, leaving issues such as punitive damages and whether Charter damages were available on the pleadings. The Plaintiff applied to compel production and use of the officer's *Gladue* report in civil discovery, and the defendants applied to strike the Claim for Charter damages.

On the *Gladue* report issue, the Court held the Plaintiff was effectively trying to revisit an earlier interlocutory ruling that found the report was not producible. The Application therefore had to meet Rule 9.15, which includes a 20-day deadline in Rule 9.15(2). Because it was filed late, with no extension request and no basis to waive the timeline, it failed procedurally. Justice Smart also found Rule 9.15(4) was not satisfied because the report was not shown to be newly discovered information on a proper evidentiary record and, in any event, it was available at the earlier hearing, making an appeal the appropriate remedy.

Justice Smart went on to address the substance of the report. Even though a *Gladue* report used at sentencing was not privileged under the Wigmore criteria once put before the Court, Smart J. concluded it should not be used in this civil proceeding for the purpose proposed. The Court held that allowing collateral use to increase civil exposure would undermine the *Gladue* regime and risk discouraging Indigenous participation. In any event, the report did not meet the "relevant and material" threshold in Rule 5.2. The report could not reasonably have been expected to significantly determine the outstanding issues.

On the Application to Strike, Smart J. applied Rule 3.68 to the pleadings, using the "plain and

obvious" test from *R v Imperial Tobacco Canada Ltd.,* 2011 SCC 42. The Court held that Charter damages are a public law remedy against the state, not individual actors. Justice Smart rejected the argument that *Police Act* vicarious liability for torts could be used to route *Charter* damages through the Police Chief, emphasizing the distinction between tort law and *Charter* remedies. Because the Plaintiff did not use the proper state entity, the Charter damages claim disclosed no reasonable prospect of success and was struck under Rule 3.68.

NELSON V WHITNEY, 2026 ABKB 24

(HARTIGAN J)

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

The Defendants appealed a decision of an Applications Judge that dismissed their Application to strike the Statement of Claim pursuant to Rule 3.68. The Statement of Claim alleged that the Defendants planting trees in their neighbouring property was an actionable nuisance as they obstructed the Plaintiff's views. Pursuant to Rule 6.14, the standard of review for such appeals is correctness.

Pursuant to Rule 3.68, the Court may strike all or part of a claim if it is "plain and obvious" that the pleading does not disclose a reasonable cause of action. The Court assumes the pleaded facts are true, however, unsupported or vague allegations, especially of fraud or bad faith, are not accepted without sufficient particulars. For novel claims, the Court considers the clarity of the pleadings and similar caselaw. In doing so, the Court balances the risk of unduly constraining the development of the common law by applying an overly stringent test with the need to prevent unnecessary trials where legal analysis can resolve whether a novel claim has any reasonable prospect of success.

Justice Hartigan assessed whether the claim of private nuisance was established in the Statement of Claim by applying a two part-test: whether the interference of an owner's use and enjoyment of their land is both substantial and unreasonable. The Plaintiffs argued that the loss of their view constituted a substantial interference. Hartigan J. analyzed various cases across multiple jurisdictions on the issues; however, Hartigan J. concluded that the overwhelming authority in Canada supported the proposition that a loss of view could not be the basis of a claim in private nuisance. The Court also held that the Statement of Claim did not represent a novel factual or legal framework to support it being a novel claim. As such, Justice Hartigan determined the Statement of Claim disclosed no reasonable cause of action. The Appeal was granted and the Statement of Claim was struck pursuant to Rule 3.68.

PIRI V GOOD SAMARITAN SOCIETY, 2026 ABKB 28

(NIXON ACJ)

Rule 3.68 (Court Options to Deal With Significant Deficiencies)

The Good Samaritan Society brought an Application pursuant to Rule 3.68 to have the Application brought by Piri reviewed for being, on its face, frivolous, vexatious, or otherwise an abuse of process.

Associate Chief Justice Nixon, upon review of the Originating Application and pursuant to Civil Practise Note 7, determined that the Application was on its face frivolous, vexatious, or an abuse of process.

Piri sought "justice", "compensation", "back pay", a mental capacity assessment for a former colleague, and an "unlocking" of her Locked-In Retirement Account on the basis that she was not properly terminated. The supporting Affidavit stated that the Plaintiff felt she was "sabotaged to be forced to quit".

The Court determined that the Application may be vexatious in that Piri was pursuing multiple proceedings in different forums hoping for a positive result, or an abuse of process because she was not following the established Appeal process.

ACJ Nixon directed that Piri be served with an Apparent Vexatious Application or Proceeding Notice and provided the steps by which Piri could respond and the consequences of not responding.

ZARATE V BANK OF NOVA SCOTIA, 2026 ABKB 37

(REED J)

Rules 3.68 (Court Options to Deal With Significant Deficiencies)

The Plaintiff commenced an Action in Alberta seeking approximately $17.5 million in damages arising from criminal proceedings in Nova Scotia, the seizure and sale of a vehicle, and the alleged cancellation of his passport. Certain Defendants requested review of the Amended Statement of Claim under Civil Practice Note 7 ("CPN7").

CPN7 sets out summary procedures, using Rule 3.68, for the Court to assess a claim, defence, action, application, or proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process.

Justice Reed found that, on its face, the Amended Statement of Claim appeared frivolous, vexatious, or an abuse of process, and held that this was one of the exceptional cases in which the CPN7 process should be used.

The Court identified multiple deficiencies, including apparent limitation issues, serious jurisdictional concerns, possible *res judicata* and collateral attack problems arising from related proceedings in other jurisdictions, failure to plead the essential elements of malicious prosecution, and claims that appeared to fall outside the Court's jurisdiction.

The Court issued an Apparent Vexatious Application or Proceeding Notice directing the Plaintiff to file written submissions addressing the identified concerns. The Action remained stayed pending receipt of those submissions, after which the Court would determine whether the Amended Statement of Claim should be struck out in whole or in part under Rule 3.68.

BURNS V OSUJI, 2026 ABKB 108

(FROESE J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 4.18 (Judicial Dispute Resolution Process), 4.19 (Documents Resulting from Judicial Dispute Resolution), 4.20 (Confidentiality and Use of Information), 6.14 (Appeal from Applications Judge's Judgment or Order) and 7.3 (Summary Judgment)

This was an Appeal of an Applications Judge's decision (the "Decision") which dismissed two Applications to Strike the Plaintiffs' Actions.

The underlying facts concerned the use by the Appellants' lawyers of a video allegedly depicting the Respondents engaged in intimate acts (the "Video") at an Early Intervention Case Conference ("EICC") held during divorce proceedings. Each Respondent commenced an Action against the Appellants arising from the use and dissemination of the Video during the EICC.

The Appellants filed two Applications to strike or summarily dismiss the Respondents' Actions pursuant to Rules 3.68 and 7.3, respectively. The Applications Judge dismissed the Applications to Strike and adjourned the Summary Dismissal Applications. The Appellants appealed the Decision, primarily on the basis that the Alberta Court of Appeal in *Tuharsky v O'Chiese First Nation*, 2025 ABCA 267 ("*Tuharsky*") had overturned the lower-court case relied upon by the Applications Judge.

On Appeal, the Appellants argued that the Respondents commenced the Actions in breach of Rule 4.20, as the Video was disclosed and used solely for the purposes of the EICC, a without prejudice Court Proceeding. The Appellants also argued that they were not liable to the Respondents because absolute privilege applied to the use of the Video, and they did not owe a broad duty to the Respondents under the adversarial model.

Froese J. held that the EICC process, being a Court-mandated conference, does not qualify as a Judicial Dispute Resolution process within the meaning of Rule 4.18. As a result, Rule 4.20, which governs the confidentiality of Judicial Dispute Resolution processes, does not to apply to the EICC process and, by extension, to the Appeal. Justice Froese, adopting the Court of Appeal's ruling in *Tuharsky* and, noting that the Video was shared in the context of the EICC proceeding, concluded that absolute privilege attached to the occasion. Accordingly, no further analysis of the content of the Video or the Appellants' motives was required. Froese J. also found that the Appellants did not owe a duty to the Respondents, partly on the basis that the Respondents did not provide any legislation or jurisprudence that imposed a broad duty of privacy or confidentiality on lawyers in relation to opposing parties with adverse interests to their clients.

As a result of the foregoing, the Court allowed the Appeal, overturned the Decision, and struck the Respondents' Actions in their entirety pursuant to Rule 3.68.

CROY V ALBERTA, 2026 ABKB 116

(MCLEOD J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies) and 7.3 (Summary Judgment)

The Defendant, Alberta, applied to strike or, alternatively, summarily dismiss the Plaintiffs' claims on the basis that they were bound to fail. In the Action, the Plaintiffs sought damages for Alberta's destruction of an alleged 'Sundown Cabin,' to which the Plaintiffs claimed Treaty and Indigenous rights.

The Court considered Rule 3.68(1), finding that Courts must strike a balance to avoid impeding legal development. Justice McLeod relied on the cases of *Hryniak v Mauldin*, 2014 SCC 7 and *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 in applying Rule 7.3(1)(b).

McLeod J. first considered Alberta's argument that the Plaintiffs did not have standing to make a claim because they attempted to advance Treaty Rights as individuals rather than as a collective. The Court held that the jurisprudence had not reached the conclusion that claims founded in communal rights could not be pursued by individuals, and refused to dismiss the claims on that basis.

Justice McLeod then considered Alberta's argument that the Application was a collateral attack or abuse of process because the Plaintiffs failed to challenge the Orders which required the Sundown Cabin to be removed. The Court did not find this argument persuasive and refused to dismiss the Action on that basis.

Alberta also advanced an argument that it had immunity pursuant to Section 59.22 of the *Public Lands Act*, RSA 2000, c P-40. The Court held that there was a lack of clarity surrounding the law on that issue and refused to dismiss the Plaintiffs' claim on that basis.

The Court also considered Alberta's arguments that the cabin in question was not a Sundown Cabin and determined that there were triable issues to be considered. McLeod J. ultimately dismissed Alberta's Application.

SCHARRER ESTATE (RE), 2026 ABKB 181

(JOHNSTON J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Applicant applied for advice and direction regarding the administration of his late mother's estate and a related trust established for the benefit of his dependent adult sister, Ingrid. Among various relief, the Applicant sought direction on whether a condominium formed part of the estate or the trust, as well as issues in relation to the adequacy of the trust, trustee matters, and costs. The Respondent opposed the Application and cross-applied to strike portions of the Applicant's Affidavit for being subject to settlement privilege.

Justice Johnston considered whether certain paragraphs in the Applicant's Affidavit should be struck pursuant to Rule 3.68(4) on the basis that they contained privileged communications exchanged in the course of settlement. The paragraphs referred to a meeting that occurred between the Applicant, the Respondent, and their respective counsel. The Respondent deposed that the meeting was for settlement discussions on the condominium issue, while the Applicant deposed that the purpose of the meeting was to address the agenda sent by the Respondent, which listed issues that were to be discussed in order for the Respondent to fulfill his responsibilities as the Limited Trustee of Ingrid.

Johnston J. emphasized that settlement privilege applied where a dispute existed or was contemplated, there was express or implied intention when making the communication that it not be disclosed, and the communication was made for the purpose of attempting settlement. The Court noted that there needs to be an element of some negotiation or compromise, even where a dispute exists, and that the party asserting the privilege has the onus of establishing those elements.

Johnston J. found that there was a dispute between the parties in relation to whether the condominium formed part of the trust, but that the Respondent failed to demonstrate that the communications at issue were made with the intention of being without prejudice or for the purpose of settlement. The email sent by the Respondent with the agenda for the meeting had no mention of settlement or "without prejudice" discussions. Justice Johnston agreed with the Applicant's argument that the purpose of the meeting was to address issues to allow the Respondent to fulfill his Limited Trustee responsibilities, which was made clear in his email. Despite counsel being present at the meeting, Johnston J. found that the meeting was not a settlement meeting. The Cross-Application to strike portions of the Applicant's Affidavit was dismissed.

FORT MCMURRAY AIRPORT AUTHORITY V 994552 NWT LTD, 2026 ABKB 228

(APPLICATIONS JUDGE SUMMERS)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 4.33 (Dismissal for Long Delay), 5.10 (Subsequent Disclosure of Records), 5.16 (Undisclosed Records Not to be Used Without Permission)

The Defendants applied to dismiss the Action pursuant to Rule 3.68 for significant deficiencies or, alternatively, for long delay pursuant to Rule 4.33.

The Action began on October 21, 2020, when the Plaintiff filed a Statement of Claim alleging that the Defendants had breached a lease. After Pleadings closed, the parties began Questioning pursuant to Part 5 of the Rules, and the Plaintiff provided responses to Undertakings. The Defendants maintained that the last significant step in the Action was the Questioning of the Defendants' president on May 16, 2022. The Plaintiff, however, argued that the last significant advance occurred on May 18, 2022, when counsel for the Defendants received answers to Undertakings along with the Plaintiff's Supplemental Affidavit of Records (the "SAOR"). The SAOR included 139 records that had not been previously disclosed (the "New Records").

The Defendants applied to strike the Plaintiffs' Pleadings pursuant to Rule 3.68, for failure to comply with Rule 5.10 disclosure requirements. In the alternative, the Defendants sought an Order prohibiting the Plaintiff from relying on the New Records pursuant to Rule 5.16, or an Order dismissing the Action for long delay pursuant to Rule 4.33.

Applications Judge Summers dismissed the Applications brought pursuant to Rules 3.68 and 5.10, finding that striking the Plaintiff's Pleadings would be a disproportionate remedy, even if there was failure to provide timely notice of the New Records. Applications Judge Summers also dismissed the Rule 5.16 Application on similar grounds, and consequently, dismissed the Rule 4.33 Application which was contingent on the success of the Rule 5.16 Application.

While the Defendants' Applications were dismissed in their entirety, Applications Judge Summers only awarded the Plaintiff half of Schedule C costs, citing the Plaintiff's delay in advancing the Action.

TERRIGNO V CELMAINIS, 2026 ABKB 139

(MALIK J)

Rule 3.72 (Consolidation or Separation of Claims and Actions)

This decision arose from two defamation Actions commenced by the Plaintiff against two different Defendants over separate social media publications. The Defendants applied to disqualify the Plaintiff's counsel of record, Mr. Denis and his firm, on the basis that Mr. Denis was likely to be a material witness, and also sought consolidation of the two Actions.

On the disqualification issue, the Court noted that a lawyer should not continue as counsel of record where the lawyer is likely to be called as

a material witness, and that the dual role would undermine the proper administration of justice. Applying the authorities on lawyer-witness conflicts, Justice Malik considered the likelihood that Mr. Denis would be called to testify, the significance of his evidence, whether the Application was brought in good faith, the prejudice to the Plaintiff if deprived of counsel of choice, and whether the conflict could be managed in some narrower way.

Malik J. found that Mr. Denis had direct, first-hand knowledge of events that were central to the Defendants' justification and fair comment defences. He also concluded that the Defendants' intention to call Mr. Denis as a witness was genuine, not speculative. The Court was not persuaded that the Application was tactical or brought in bad faith, and it was not satisfied that the Plaintiff would suffer meaningful prejudice, particularly because Mr. Denis and his firm could still assist in a non-advocate role. Justice Malik therefore concluded that a fair minded and reasonably informed member of the public would find that Mr. Denis could not act both as counsel of record and as a likely material witness in the same proceedings, and ordered that he and his firm be disqualified from acting as counsel of record.

On consolidation, the Court considered both Section 7 of the Defamation Act and Rule 3.72. Malik J. accepted that the two Actions overlapped in issues, evidence, and legal defences, but held that consolidation was not appropriate at that stage. One Action was already further along and had been directed to proceed by way of a Summary Judgment on liability, while the other had not yet reached the same procedural stage. In those circumstances, consolidation would risk delay rather than promote efficiency, and would not meaningfully reduce Trial time. The Court therefore dismissed the consolidation Application, while giving the Defendants leave to renew it later if consolidation became appropriate as the proceedings developed.

In the result, the Court granted the disqualification Application but dismissed the consolidation Application without prejudice to a later renewed application.

BILOUS V BILOUS, 2026 ABCA 67

(KIRKER, WOOLLEY AND FETH JJA)

Rules 4.10 (Assistance by the Court), 5.13 (Obtaining Records From Others), 5.17 (People Who May be Questioned), 5.18 (Person Providing Services to Corporation or Partnership), 9.4 (Signing Judgments and Orders), 12.41 (Notice to Disclose Documents) and 14.32 (Oral Argument)

This Appeal arose from long-running divorce and matrimonial property litigation between the parties, who married in 1990 and separated in 2015. Following separation, the Appellant undertook corporate restructuring, including transferring interests in matrimonial property corporations to a third party, Ms. Hloba, who was not formally a party to the Action. The Respondent alleged these transactions were designed to conceal income and dissipate matrimonial assets. After a lengthy procedural history, including prior unsuccessful appeals, attempts to obtain disclosure, written interrogatories, and repeated nonattendance by Ms. Hloba, the Chambers Judge granted an Order permitting the Respondent to question Ms. Hloba under Rule 5.18 to obtain information relevant to property division and support.

The Court of Appeal allowed the Appeal and set aside the July 21, 2025 Order permitting third party questioning. The Court held that the Chambers Judge erred in relying on Rule 5.18 to authorize questioning of Ms. Hloba in the circumstances. While the Appellant also raised procedural fairness and misconduct arguments, those grounds were expressly rejected as meritless. The Appeal succeeded solely on the misapplication of Rule 5.18. Importantly, the Court ordered no costs, leaving each party to bear their own appeal costs.

The Court emphasized that Rule 5.18 is a narrow exception permitting questioning of nonparties only where the Rule's three-part test is met: (1) relevant and material information cannot be obtained from officers or employees of an adverse corporate party; (2) it would be unfair to proceed without the questioning; and (3) the questioning would not cause undue hardship, expense, delay, or unfairness. The Court held that those criteria were not satisfied, rendering reliance on Rule 5.18 legally incorrect. However, the Court underscored that improper disclosure tactics carry consequences such as Trial Judges retaining alternative remedies, including drawing adverse inferences, invoking statutory disclosure provisions, and addressing alleged transfers under Section 10 of the *Matrimonial Property Act,* thereby reinforcing the ongoing duty of full and frank financial disclosure in family proceedings.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 101

(NIXON ACJ)

Rules 4.14 (Authority of Case Management Judge), 5.1 (Purpose of This Part), 5.17 (People Who May be Questioned) and 5.30 (Undertakings)

This Action centered on a pipeline failure. The Defendants, referred to as Wood Group, brought an Application to question Dean Kovacs ("Mr. Kovacs") after the close of Questioning, pursuant to a Complex Case Litigation Plan. Mr. Kovacs was the former chief inspector of the Plaintiff's Canadian gas operation, but not its corporate representative. Mr. Kovacs' evidence was provided in response to an Undertaking given during prior Questioning of the corporate representative.

Wood Group argued that they would have been permitted to question Mr. Kovacs pursuant to Rule 5.17, but had no way of knowing there was an issue worth Questioning him on until after receiving the Undertaking response. The Plaintiff argued that Rule 5.30(2) did not permit Questioning of someone other than the person who gave the Undertaking response.

The Court considered Rules 5.1(1), 5.17(1), and 5.30. The Court held that this was an appropriate circumstance in which to exercise discretion, pursuant to Rule 4.14(1). Associate Chief Justice Nixon held that Wood Group should be permitted to question Mr. Kovacs on the Undertaking response in the unique circumstances, but questioning shall be limited to only the Undertaking response.

CARRIGAN V WITHERS, 2026 ABCA 58

(ANTONIO JA)

Rules 4.22 (Considerations for Security for Costs Order), 14.5 (Appeals Only with Permission), 14.48 (Stay Pending Appeal) and 14.67 (Security for Costs)

The Applicant, Mr. Carrigan, applied for a Stay of Arbitration pending Appeal pursuant to Rule 14.48(b). The Respondents were the Arbitrator, Ms. Withers, and the Respondent of the Arbitration, Ms. Bosse. Ms. Bosse cross-applied for Security for Costs and opposed the Stay Application on the basis that the Court lacked jurisdiction to stay the Arbitration proceeding.

In January of 2024 Justice Johnston directed that Mr. Carrigan required leave of the Court or written consent of the parties prior to filing any further Applications related to the Arbitration. The Respondents did not suggest that this amounted to a vexatious litigant Order such that Rule 14.5(1)(j) would apply.

Mr. Carrigan argued that Section 30 of the *Arbitration Act*, RSA 2000, cA-43 provides the Court with supervisory authority over arbitrators. Antonio J.A. rejected this argument.

Appeal Justice Antonio considered whether the Court had jurisdiction pursuant to Rule 14.48, holding that Rule 14.48 only permits stays under appeal, not arbitration proceedings or awards. The Arbitrator's awards were not under appeal, and thus granting a Stay would amount to a collateral attack.

Upon considering the Security for Costs cross-Application, the Court considered Rule 14.67 and the factors set out at Rule 4.22. Antonio J.A. agreed with Ms. Bosse and awarded Security for Costs in the amount of $3,375. Security for Costs was appropriate in the circumstances given the Applicant's history of unpaid costs Orders and his financial inability to pay future costs.

995544 ALBERTA LTD V CENOVUS ENERGY INC., 2026 ABKB 19

(APPLICATIONS JUDGE FARRINGTON)

Rules 4.33 (Dismissal for Long Delay) and 10.33 (Court Considerations in Making Costs Award)

This decision addressed the disposition of costs arising from two interlocutory Applications brought by one of the two Defendants, Cenovus Energy Inc. ("Cenovus"). Cenovus applied to dismiss the Action for delay under Rule 4.33 and separately sought Security for Costs. The Plaintiff was successful in resisting both Applications, and the parties were unable to agree on costs.

The Plaintiff sought enhanced costs equivalent to 75% of its actual legal fees, relying on *McAllister v Calgary (City)*, 2021 ABCA 25. Cenovus argued that any costs award should be assessed under Schedule C and proposed a substantially lower amount.

Applications Judge Farrington considered the discretionary factors governing costs pursu-

ant to Rule 10.33, including the result of the applications, the applications' importance, the complexity of the issues, and the conduct of the parties. While noting that the Applications were potentially dispositive of the Action, the Court found that they were not complex and that neither party had engaged in misconduct or unnecessarily complicated the proceedings.

Applications Judge Farrington distinguished between costs awards that are made following a full determination of an action and those arising from isolated interlocutory applications. The Court held that enhanced costs are more appropriately assessed once the overall outcome of the litigation is known. Applications Judge Farrington highlighted that awarding enhanced costs at an interlocutory stage, where the merits of the Action had not yet been determined, risked an inequitable result if the Plaintiff is ultimately unsuccessful in the Action.

In the result, the Court declined to award immediate enhanced costs and instead ordered costs in the cause, such that the Plaintiff's entitlement to recover the costs of resisting the Applications was subject to the Plaintiff's ultimate success in the Action.

PIIKANI NATION V MCMULLEN, 2026 ABKB 35

(MARION J)

Rules 4.33 (Dismissal for Long Delay), 4.36 (Discontinuance of Claim), 5.33 (Confidentiality and Use of Information) and 11.27 (Validating Service)

This decision arose from a long-running, case-managed litigation involving Piikani Nation (the "Nation") and several Defendants, including Dale McMullen (the "1001 Action"), in which the Nation alleged breaches of legal and equitable duties regarding the Piikani Investment Corporation and Piikani Energy Corporation. Although the 1001 Action had been active for 15 years, it had not progressed beyond the early procedural stages due to extensive interlocutory applications and appeals. In 2025, the Nation filed a partial discontinuance against the remaining Defendants after earlier discontinuing against McMullen. The Defendants opposed the discontinuance and sought permission to apply to strike the 1001 Action for delay.

McMullen had previously been found in contempt of Court and was subject to "Restriction Decisions" that prevented him from filing new applications until he complied with Court Orders and paid outstanding costs. He also was no longer a party to the 1001 Action after the earlier discontinuance against him. The Court held that, for those reasons, McMullen could not pursue the proposed Application to set aside the later discontinuance.

Pursuant to Rule 4.36(1), a plaintiff may discontinue an action as of right before a trial date is set. The remaining Defendants argued that prior Case Management Orders directing the various Actions to be heard together effectively required leave before discontinuance. However, the Court rejected that submission and ruled that scheduling directions did not amount to the formal setting of a trial date. The Court also found no evidence that the Nation was "escaping by the side door" to avoid a decision on the merits. Since the claims would likely be statute-barred if the Nation tried to recommence them, there was no risk of the Nation abusively re-litigating the same issues. The discontinuance was therefore permitted.

The remaining Defendants also sought to strike the 1001 Action for long delay pursuant to Rule 4.33. The Court denied this request as moot since the discontinuance had already achieved the substantive result the Defendants sought (termination of the claim), and there was no remaining Action to strike. The Court further dismissed technical service objections relying on Rule 11.27, which permits validation of irregular service where the document likely came to the recipient's attention. Given that the Defendants were actively challenging the discontinuance, any service irregularity was immaterial and capable of validation.

Pursuant to Rule 4.36(4), the remaining Defendants were automatically entitled to a costs award for having defended against the now-discontinued claim. The Court ruled that the end of the 1001 Action did not prevent the Defendants from pursuing their separate indemnity Actions.

In the result, the Court denied permission to file both the proposed Application to set aside the discontinuance and the proposed delay Application. It directed a further Case Management Conference to determine the final costs of the 1001 Action and to set a path forward for the remaining Indemnity Actions. The Court also noted that materials produced in the discontinued Action may be used in related proceedings, subject to Rule 5.33 or relief from the implied undertaking rule where appropriate.

KALLIS V SCHIFFNER, 2026 ABCA 11

(CRIGHTON, FAGNAN AND GROSSE JJA)

Rule 4.33 (Dismissal for Long Delay)

This case concerned an Appeal from a Chambers Justice's decision allowing an appeal of an Applications Judge's Order dismissing an Action for long delay under Rule 4.33.

The Court of Appeal confirmed that the interpretation of Rule 4.33 is a question of law, reviewed for correctness, while the determination of whether an action has been "significantly advanced" is a contextual, fact-driven inquiry, entitled to deference absent palpable and overriding error. The Court endorsed a functional, rather than formulistic, approach. It emphasized that Rule 4.33 is intended to eliminate actions that have truly died, not to regulate efficient litigation conduct.

Applying this approach, the Chambers Justice did not err in finding that the provision of documents listed in an Affidavit of Records may, in appropriate circumstances, constitute a significant advance. Whether document production materially advances an Action depends on the nature, value, timing, and context of the step within the litigation as a whole. Here, the Chambers Justice reasonably concluded that the production meaningfully advanced the Action by increasing the parties' and the Court's ability to assess the merits.

The Court rejected the argument that document production can never amount to a significant advance under Rule 4.33. The Chambers Justice applied the correct legal framework and made no reviewable error.

The Appeal was dismissed.

MCLEOD V MCLEOD, 2026 ABCA 41

(KIRKER, FAGNAN AND GROSSE JJA)

Rule 4.33 (Dismissal for Long Delay)

The Appellants commenced an Action in 2013 against their son alleging unlawful transfer of equipment and seeking a Replevin Order or damages. The Action was dismissed under Rule 4.33 for failure to significantly advance the proceeding and an Appeal was brought further to the dismissal.

The only issue was whether a July 2019 letter from the Appellants' former counsel to the Respondent's counsel, sent to comply with a May 2019 Consent Order, constituted a significant advance. The letter provided records to the Registrar of Motor Vehicles and stated that counsel was seeking instructions regarding a Judicial Dispute Resolution ("JDR"). The Respondent did not dispute characterizing the Consent Order as a significant advance but rather the parties disagreed on whether the provisions of the documents in compliance with the Consent Order, significantly advanced the Action.

The Court upheld the decisions of the Applications Judge and Chambers Justice, to find that this step did not significantly advance the Action. The Court found that the documents provided were duplicative of records already exchanged years earlier, no new information was obtained, and no further steps (including the proposed JDR) were taken. Mere compliance with a Consent Order, even if mandated, the Court held, does not automatically qualify as a significant advance.

Applying the functional, qualitative test under Rule 4.33, the Court confirmed that the focus is on whether the step meaningfully, substantially, and significantly advanced the matter toward resolution or trial in a functional way, not on its procedural form. The Court finally held that the Chambers Justice's conclusion that the Action was not significantly advanced was entitled to deference, and no reviewable error was shown.

The Appeal was therefore dismissed.

TERRIGNO V BRISTOWE, 2026 ABCA 63

(STREKAF JA)

Rules 4.33 (Dismissal for Long Delay) and 14.5 (Appeals Only with Permission)

This case concerned two Applications for permission to appeal arising from a Rule 4.33 long delay proceeding in a defamation Action. The Plaintiff sought leave to appeal two decisions: first, the Chambers Justice's refusal to adjourn the long delay Application and, second, the administrative direction transferring the matter from an Applications Judge to Justice Chambers.

On the adjournment issue, the Court emphasized that a decision to grant an adjournment is discretionary and attracts substantial deference on appeal. Because permission to appeal

was required under Rule 14.5(1)(b), the Applicant had to show an important question of law or precedent, a reasonable chance of success, and that the interlocutory appeal would not unduly hinder the Action or cause undue prejudice without proportionate benefit.

Strekaf J.A. held those requirements were not met. The record showed that when the Applications Judge adjourned the long delay Application to permit Questioning, he expressly stated that the return date could address either any loose end issues or the merits of the Application. After Questioning, the Applicant did not file any application to compel answers to refused questions or undertakings. In those circumstances, the Chambers Justice did not err in refusing a further adjournment, and the proposed appeal raised no important question of law and had no reasonable chance of success.

On the transfer issue, the Court treated the direction moving the matter to Justice Chambers as an internal judicial assignment decision. Strekaf J.A. noted that the Court of King's Bench has inherent authority to control and manage its own proceedings, and that judicial assignments generally fall within the Chief Justice's administrative authority. The Applicant argued that the Applications Judge had become seized of the matter, but the Court rejected that submission. It held that the Applications Judge had not begun hearing the substance of the long delay Application and therefore was not seized of it merely because he had earlier scheduled a return date and contemplated that it might deal with either procedural matters or the merits. Even assuming such an administrative direction were appealable, it would attract considerable deference, and the Applicant had not shown any important question of law or any reasonable prospect of success.

Both Applications for permission to appeal were therefore dismissed.

DARLING V EWANCHUK, 2026 ABKB 128

(MANDZIUK J)

Rules 5.1 (Purpose of Part 5), 5.2 (When Something is Relevant and Material), 5.11 (Order for Record to be Produced), 5.30 (Undertakings) and 6.9 (How the Court Considers Applications)

In this Application, the Defendants sought an Order compelling the Plaintiff to answer certain undertakings taken under advisement at Questioning (the "Undertakings"), as well as production of unredacted copies of records that had been produced by the Plaintiffs in response to other undertakings (the "Redacted Records"). The Application proceeded by way of Desk Application, pursuant to Rule 6.9(1), with both parties providing Briefs.

The Court reviewed Rule 5.2, directing that parties answer questions and produce documents that are relevant and material, as well as the principles governing disclosure set out in Rule 5.1. Turning to Rule 5.30, Justice Mandziuk confirmed that a person being questioned who has a relevant and material record under their control must undertake to produce that record within a reasonable amount of time.

Justice Mandziuk briefly commented on the meaning and effect of undertakings taken "under advisement", as were the Undertakings here. The Court referenced case law which described an undertaking under advisement as substantially a refusal of an undertaking, with a connotation that counsel representing

the witness is not certain of the validity of the objection and will give it further thought.

Justice Mandziuk held that the undertakings were relevant and material and should be produced. The Plaintiff's health was at issue in the underlying personal injury Action and the undertakings were for medical records. The Plaintiff insisted that they could not locate the documents sought in the undertakings or they did not exist. The Court said that all reasonable efforts should be made to produce the documents. If they could not be found, the Court would have to address the non-disclosure through other means, such as adverse inferences, credibility findings, or Cost consequences.

As for the Redacted Records, the Court ordered production of unredacted copies pursuant to Rule 5.11. Justice Mandziuk referred to the applicable test for redactions: (1) that the redacted information is clearly irrelevant, (2) that the benefit of the redaction outweighs any costs caused by the redaction, and (3) that the redaction is sufficiently unconnected to the rest of the record so that the redaction does not render the record misleading or more difficult to understand. Applying the test, the Court held that the redacted information related to the purpose of hospital visits by the Plaintiff. Since the Plaintiff's health was in issue, the Defendants needed to know why the Plaintiff attended the hospital. The Application was therefore granted.

BAGLEY V ROGERS, 2026 ABKB 225

(FEASBY J)

Rules 5.2 (When Something is Relevant and Material) and 5.6 (Form and Contents of Affidavit of Records)

The Court considered an Application for production of the personnel file and disciplinary records (the "Requested Records") of the Defendant police officer (the "Officer").

The Defendants argued that the Requested Records were similar fact evidence and thus not producible. Justice Feasby rejected that argument, noting that, whether a record is similar fact evidence is a question of admissibility for Trial and has no bearing on whether the record is producible. The Court referred to Rule 5.6 for the requirement that records relevant and material to the Action be disclosed. Reviewing the applicable case law, Justice Feasby explained that a record that is producible under Rule 5.6 can also be inadmissible as similar fact evidence. The Court pointed to Rule 5.2(2) as confirmation that production of a record is not an agreement or acknowledgement that the record is admissible.

The Court declined to order production of the Requested Records on the grounds that the Defendants' counsel had not yet had an opportunity to review them. Justice Feasby concluded that counsel must determine if records are relevant and material before the Court will consider whether to order production. The Court ordered that counsel for the Defendants should review the Requested Records within 30 days to ascertain their relevance and materiality and produce the Requested Records forthwith, if they were relevant and material.

KOSTIC V THOM, 2026 ABKB 34

(MARION J)

Rules 5.3 (Modification or Waiver of this Part), 5.33 (Confidentiality and Use of Information), 6.28 (Application of this Division), 6.29 (Restricted Court Access Applications and Orders) and 6.32 (Notice to Media)

The Court considered an Application seeking a proposed Order (the "Proposed Order") to place privacy and confidentiality restrictions on the Applicant's medical records (the "Records") that were producible in a set of case managed actions (the "Actions").

The Proposed Order sought restrictions to limit the use of the Records to the Actions. The Court explained that, by default, Rule 5.33 restricts the use of information disclosed under Part 5 of the Rules, requiring it to be treated as confidential subject to narrow exceptions. However, Justice Marion acknowledged that where additional protection is required, Rule 5.3 implicitly allows the Court to grant confidentiality orders.

The Court applied the established test for Rule 5.3 by assessing whether the risk associated with disclosing the Records was grossly disproportionate to the merits associated with full disclosure of all relevant information to the parties. Since there was evidence of previous misuse of the Applicant's medical records by some parties to the Actions, Justice Marion found that the Applicant had established a compelling reason for a confidentiality order over and above the protection of Rule 5.33 and the corresponding common law rule.

The Proposed Order also sought a Restricted Court Access Order under Rules 6.28-6.29.

The Court applied the established test for Restricted Court Access Orders, namely that the Applicant must establish: (1) court openness poses a serious risk to an important public interest; (2) the Order sought is necessary to prevent this serious risk; and (3) the benefits of the Order outweigh its negative effects (the "Test").

The Test was met. Under branch (1) of the Test, Justice Marion referenced case law for the principle that it is in the public interest to protect information that cuts to a person's "biographical core", which included the Records. Branch (2) of the Test was made out because of the evidence that the Applicant's medical records had previously been misused. Under branch (3), the Court determined it was proportionate to grant the Restricted Court Access Order because making such information publicly available before Trial would cause potential harm to the Applicant and delay. Further, the Respondents had not indicated they would be prejudiced.

While the Applicant had not provided the notice to the media required by Rule 6.32, the Court said this did not prevent it from granting the Restrict Court Access Order provided the Order addressed and protected the media's interest.

Justice Marion granted a modified version of the Proposed Order, imposing privacy and confidentiality restrictions over the Records.

CNOOC PETROLEUM NORTH AMERICA ULC V SUNSTONE PROJECTS LTD, 2026 ABCA 44

(ANTONIO, KIRKER AND FAGNAN JJA)

Rules 5.11 (Order for Record to be Produced), 5.13 (Obtaining Records from Others) and 5.18 (Persons Providing Services to Corporation or Partnership)

The Appellants appealed a case management decision refusing to compel production of records related to replacement of two pipelines, and refusing to compel questioning of non-party entities. The non-parties were affiliated with CNOOC Petroleum North America ULC ("CNOOC") but were separate legal entities and not parties to the Action. They Appellants argued that CNOOC controlled records held by affiliated entities, that the non-party production requests were sufficiently particularized, and that the affiliates stood in a sufficiently close relationship to permit questioning pursuant to Rule 5.18.

The Court of Appeal dismissed the Appeal. With reference to Rule 5.11, the Court confirmed that "control" over a non-party's records requires a legal right to access or obtain them. Contractual audit rights and operational integration were not enough on the record before the Case Management Judge, and no palpable and overriding error was shown. Pursuant to Rule 5.13, the requests were overly broad and amounted to non-party discovery rather than targeted requests for specific records. Under Rule 5.18, the evidence did not establish the kind of near-employee relationship required to question the affiliated entities.

The Appeal was dismissed. The Court also declined to interfere with the related costs Order.

MUJAHID V MEHMOOD, 2026 ABKB 49

(LITTLE J)

Rule 5.13 (Obtaining Records from Others)

The Plaintiff, a political candidate, alleged that the Defendant defamed him by writing a letter to their political party and seeking a restraining Order against him, and that the Defendant conspired with others to have the Plaintiff removed as the party's candidate. The Defendant had obtained an ex parte restraining Order, which was later vacated and replaced with a no-contact Order before the Action was discontinued.

The Plaintiff sought and obtained from Applications Judge Park a Production Order requiring the Defendant to produce all communications with third parties to whom he sent the restraining Order. At the same Application, he sought an Order under Rule 5.13 compelling the United Conservative Association ("UCP") to produce records concerning the Plaintiff, including internal correspondence respecting the Plaintiff. Applications Judge Park dismissed this part of the Application.

The Plaintiff appealed.

On Appeal, Justice Little found that the Plaintiff failed to provide any concrete evidence that the requested record actually existed, relying instead on speculation. It rejected his argument that minimal evidence shifts the burden to others, emphasizing that Rule 5.13 does not allow "fishing expeditions" for third-party documents without first meeting strict criteria. Ultimately, the Court held that none of the required criteria were satisfied, the requested information was of limited relevance anyway, and Applications Judge Park made no error in denying the request.

Further, the Court rejected the argument that it shared responsibility for the Plaintiff's situation simply because it had issued an *ex parte* restraining Order that was later vacated. It held that such Orders are legitimately granted with safeguards, including mandatory review, and that the process did not make the Court complicit in any alleged abuse.

BAINS V ADAM, 2026 ABCA 89

(ANTONIO, KIRKER AND GROSSE JJA)

Rules 5.34 (Service of Expert's Report), 5.35 (Sequence of Exchange of Experts' Reports), 8.12 (Exclusion of Witnesses), 8.17 (Proving Facts) and 9.13 (Re-opening Case)

The Court of Appeal held that the Trial Judge did not err in its exclusion of expert reports and an Affidavit provided by the Appellant, nor in removing the Appellant from the courtroom during the cross-examination of his treating physician ("Dr. Z").

The Trial Judge properly denied admission of reports by Dr. Z as inadmissible expert evidence. The reports contained opinion evidence and therefore had to comply with the expert evidence requirements in Rules 5.34 and 5.35, including service of a resume and Form 25. The Appellant failed to comply with these requirements and with the deadline in a Case Management Order. The Court of Appeal rejected the Appellant's argument that the Respondents would not have been prejudiced by his failure to follow Rules 5.34 and 5.35 if Dr. Z was qualified as an expert. In reliance on the Appellants' representations that no expert evidence would be called, the Respondents had not obtained their own expert reports or conducted further independent medical examinations.

The Court of Appeal also upheld the Trial Judge's decision to deny the Appellant's request to enter several medical records by way of Affidavit. Under Rule 8.17, the default mode of proof at Trial is oral evidence and the Trial Judge did not err in requiring the Appellant to present his evidence from the witness box. Despite knowing the process for tendering exhibits during oral testimony, the Appellant failed to do so. The Trial Judge also did not err in refusing the Appellant's request to re-open the Trial under Rule 9.13 to admit the Affidavit. The Appellant had prior opportunities to introduce the evidence and there was no explanation for why he did not do so. Additionally, he had failed to make submissions on why Trial should be reopened when invited to do so.

Finally, the Court of Appeal upheld the Trial Judge's decision to remove the Appellant from the courtroom during cross-examination of Dr. Z, pursuant to Rule 8.12(3). Although exclusion of a party is exceptional, the Court of Appeal found it justifiable in the circumstances given the Appellant's repeated interruptions, use of profanity, and failure to comply with warnings.

AMINZADAH V CHOUKEIR, 2026 ABKB 103

(LEW J)

Rules 5.41 (Medical Examinations) and 5.44 (Conduct of Examination)

The Plaintiff appealed a term of an Applications Judge's Order requiring her to attend a Defence Medical Examination that also gave the Defendant's examining orthopaedic surgeon access to her Netcare and Connect Care records. The Plaintiff had already produced the medical records she and her counsel determined were relevant and material to the Action.

Justice Lew held that, while Rule 5.44(5) permits the Court to limit or curtail a medical examination, the production of relevant and material records remained part of the litigation process and was not for the Defence expert to control. Granting the Defence expert unrestricted access to the Plaintiff's digital medical records would improperly allow the expert, rather than the producing party, to determine relevance and materiality.

The Court held that the Plaintiff's privacy and dignity interests outweighed the physician's efficiency concerns. Although the physician raised legitimate concerns about access to radiological images and the completeness of the examination, those concerns could be addressed by narrower practical arrangements. The Appeal was allowed, and the Defence expert was denied access to the Plaintiff's digital medical records.

REID V AMRY FAMILY TRUST, 2026 ABKB 55

(THOMPSON J)

Rules 6.14 (Appeal From Applications Judge's Judgment or Order) and 7.3 (Application and Decision)

The Applicant alleged that an oral collateral agreement existed between himself and the Defendant. Applications Judge Prowse granted Summary Dismissal of the Applicant's claim pursuant to Rule 7.3(1)(b), finding no merit to the allegation that an oral collateral agreement existed.

The Applicant appealed the Applications Judge's decision pursuant to Rule 6.14, alleging a genuine issue for Trial. On Appeal, Justice Thompson noted that an Appeal from a decision of an Applications Judge is *de novo* pursuant to Rule 6.14(3). In this case, however, there was no new evidence filed by the parties.

In analyzing the prior decision, Thompson J. directed that Rule 7.3 should not be viewed in absolute terms, but in the context of there being "no real issue". Ultimately, the Appeal was upheld as the Court found that the Respondent had met its burden to establish no merit to the Applicant's claim and no genuine issue requiring a Trial.

2357596 ALBERTA LTD V ANTONIUK, 2026 ABKB 81

(AKGUNGOR J)

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

The Appellant appealed an Applications Judge's refusal to discharge a Caveat registered against a group of residential properties located in Edmonton's Glenora neighbourhood (the "Site"). The Caveat restricted the Site to low-density residential development, while the Site had been rezoned to permit higher-density residential development.

Justice Akgungor confirmed that, under Rule 6.14(3), an appeal from an Applications Judge proceeds on the record but may also be based on additional evidence that is relevant and material. The threshold for admitting such evidence is low. The Court admitted supplemental Affidavit evidence regarding planning instruments enacted after the Applications Judge's decision, as that evidence bore directly on the public interest analysis.

Applying the correctness standard, the Court held that the Applications Judge erred in finding no conflict between the Caveat and the Zoning Bylaw. It was impossible for new development on the Site to comply both with the Caveat's density restrictions and the minimum density requirements under the Bylaw.

The Court further held that discharge of the Caveat was in the public's interest, having regard to the current statutory planning framework and the Site's location within a primary corridor near future mass transit. The Appeal was allowed and the Caveat was discharged.

RAYNER V MIZIER, 2026 ABKB 160

(MARTIN J)

Rules 6.14 (Appeal from Applications Judge's Judgment or Order) and 7.3 (Summary Judgment)

Justice Martin dismissed the Appeal of a decision by Applications Judge Schlosser to grant the Respondent's Application for Summary Judgment in relation to a loan that the Appellant advanced to the Respondent.

The Court acknowledged that this was not a *de novo* Appeal since there was no new evidence before the Court pursuant to Rule 6.14(3). Therefore, the standard of review was correctness.

Justice Martin reviewed Rule 7.3(a), permitting Summary Judgment where there is no defence to a claim or part thereof, as well as Rule 6.11 dictating what evidence the Court may consider. The Court acknowledged that the burden was on the Applicant to prove the case was suitable for summary disposition.

The Court upheld the Applications Judge's decision to grant Summary Judgment for the Respondent's unjust enrichment claim. Justice Martin held that the Appellant was unjustly enriched because the bank draft was made out to him personally, he received the loan into his personal account, and he directed funds

toward personal expenditures, without paying the loan back.

Martin J. noted that the Respondent's brief had contended that Applications Judge Schlosser erred in finding that one of the issues raised in the Respondent's claim could not be determined summarily. The Court stated that under Rule 6.14, the scope of an Appeal is determined by the Notice of Appeal. The Respondent had not filed a Cross-Appeal and the issue raised by the Respondent was not within the scope of the Appellant's Notice of Appeal. Therefore, Justice Martin concluded that the Respondent could not raise this issue simply because the Appellant had filed an Appeal. Regardless, the Court held that Applications Judge Schlosser had correctly determined that the issue was not suitable for Summary Judgment.

KONG V CONDOMINIUM CORPORATION NO 0313339, 2026 ABCA 3

(GROSSE JA)

Rules 6.14 (Appeal from Applications Judge), 14.4 (Right to Appeal), 14.5 (Appeals Only with Permission) and 14.37 (Extension of Time to Appeal)

The Applicant sought an extension of time to appeal and, out of an abundance of caution, leave to appeal a Chambers Order that disposed of four Applications arising from three related Actions. The Notice of Appeal was filed approximately ten days late.

Ms. Kong alleged procedural unfairness. She argued that the Chambers Judge was biased, that the four Applications should have been heard separately rather than together, and that the absence of interpretation during opposing counsel's submissions impaired her ability to reply.

Grosse J.A. confirmed that an extension of time under Rule 14.37(2)(c) is discretionary. Applying the factors from *Cairns v Cairns,* 1931 CanLII 471 (ABCA) ("*Cairns*"), the Court considered whether there was a *bona fide* intention to appeal, whether the delay was explained and non-prejudicial, whether the applicant had taken the benefit of the Judgment, and whether the proposed appeals had a reasonable chance of success.

The first three factors favoured the Applicant. Ms. Kong demonstrated an intention to appeal within the appeal period, reasonably awaited the transcript before proceeding, caused no meaningful prejudice through the short delay, and took no benefit from the Order.

The key issue was the fourth *Cairns* factor: whether each proposed Appeal had a reasonable chance of success. Justice Grosse considered each proposed Appeal separately.

Two of the Appeals did not have a reasonable chance of success. First, Ms. Kong could not appeal a King's Bench Judge's Order to another King's Bench Judge, so that proposed Appeal could not succeed. Second, her proposed Appeal from the refusal to allow Questioning and Cross-Examination also had no reasonable chance of success. The Court also found that her allegation of bias was not supported by the record.

The other two proposed Appeals did raise arguable issues. One concerned an Order striking an earlier appeal. The Court held there was an arguable question whether that earlier appeal had already been withdrawn before it was struck, which could affect the related enhanced costs and filing restrictions. The

other concerned an Order striking the later Action. On that issue, the Court found an arguable question because the Chambers Judge did not address an Amended Statement of Claim that included later allegations not found in the earlier proceedings. The Court also held that the procedural fairness argument was stronger in relation to that part of the Order.

Turning to Rule 14.5, Grosse J.A. held that permission to appeal was not required. The litigation restrictions imposed by the May 21 Order did not constitute a vexatious litigant order, and the appeals permitted to proceed were not limited to costs-only appeals. The extension of time was therefore granted in part, and the permission Applications were dismissed as unnecessary.

PREZES V CANNAMM OTS LIMITED PARTNERSHIP, 2026 ABCA 75

(ANTONIO, FRIESEN, SHANER JJA)

Rules 6.14 (Appeal from Applications Judge's Judgment or Order), 9.4 (Signing Judgments and Orders) and 14.5 (Appeals only with Permission)

This was an Appeal from an Order of a Chambers Judge dismissing an Appeal from an Applications Judge's Order and allowing the Respondent's Cross-Application.

The Appellant obtained an *ex parte* Order directing the Respondent to provide a biological sample (the "Sample") for further testing, without notice to the Respondent. The Respondent advised that it no longer had the Sample, as it had already been sent for independent testing. The Applications Judge set aside the *ex parte* Order for lack of notice and dismissed the Appellant's subsequent Application for additional relief, finding no evidentiary basis (the "Dismissal").

The Appellant filed an Appeal of the Dismissal to the Court of King's Bench (the "Appeal"). The Respondent cross-applied to dismiss the Appeal as out of time pursuant to Rule 6.14(2). The Chambers Judge granted the Cross-Application and dismissed the Appeal, noting the absence of evidence explaining the delay and finding that the Appeal lacked merit.

The Appellant argued that the Appeal should not have been dismissed, attributing the delay to incorrect information provided by Registry staff regarding the filing deadline. The Court of Appeal highlighted that decisions to extend time to file an Appeal are discretionary and informed by factors including a bona fide intention to appeal while the right existed, justification for the delay, absence of prejudice to the Respondent, whether the Applicant benefited from the Judgment, and whether the Appeal had a reasonable prospect of success.

The Court held that the absence of merit in the Appeal was decisive, noting that extending time for a hopeless appeal serves no purpose and that appellate intervention requires a palpable and overriding error. The Court found no error in the Chambers Judge's conclusion that the Appeal had no reasonable prospect of success, as the Respondent did not possess the Sample and there was no evidentiary basis for the relief sought. The Court further noted that permission to Appeal may be required pursuant to Rule 14.5(1)(b) but declined to decide this issue as no submissions on that point were provided.

In the result, the Court dismissed the Appeal, awarded costs of $1,000 to the Respondent, and invoked Rule 9.4(2)(c) to prepare the resulting Order.

IYER V NAZIR, 2026 ABCA 92

(FRIESEN JA)

Rules 6.14 (Appeal From Applications Judge's Judgment or Order) and 14.5 (Appeals Only With Permission)

The Plaintiffs applied for permission to Appeal a Chambers Judge's decision not to Stay an Applications Judge's Security for Costs Order. Previously, an Applications Judge ordered that the Plaintiff's pay $29,127 as Security for Costs within 60 days (the "Original Order").

The Plaintiffs sought to appeal the Original Order but filed their Notice to Appeal outside of the 10-day deadline prescribed by Rule 6.14(2).

On November 25, 2025, a Chambers Judge heard the Plaintiff's Application to extend the time to Appeal the Original Order and stay the Security for Costs payment pending Appeal. The Chambers Judge awarded the Plaintiffs an extension of time to file their Notice of Appeal, but denied their Application for a Stay (the "Chambers Order").

The Plaintiffs now apply for permission to Appeal the Chambers Order pursuant to Rule 14.5(1)(h). Justice Friesen held that permission to Appeal would only be granted where the issue raised an important question of law or precedent, there was a reasonable chance of success on appeal, and the delay caused by the Appeal would not unduly hinder the progress of the Action or cause prejudice.

The Court held that the Plaintiffs did not point to any errors in the Chambers Judge's reasoning. The Plaintiffs failed to illustrate that their Appeal had any reasonable chance of success. As such, permission to appeal was denied.

RN CARDIUM OIL INC V LOYAL ENERGY (CANADA) OPERATING LTD, 2026 ABKB 239

(JEFFREY J)

Rules 6.25 (Preserving or Protecting Property or its Value) and 7.3 (Summary Judgment)

This decision arose from a dispute between joint venture partners in an oil and gas project, where the operator had suspended payments to the non-operator on the basis of federal sanctions laws. The non-operator commenced an Action for breach of contract and related claims, and the operator applied for Summary Dismissal pursuant to Rule 7.3. The non-operator opposed and cross-applied pursuant to Rule 6.25 seeking payment of disputed funds into Court pending Trial.

Justice Jeffrey applied the Summary Dismissal framework from Weir-Jones and held that the Action was suitable for summary determination. There were no material facts in dispute and the issues were limited to statutory, contractual, and constitutional interpretation, all

of which could be fairly resolved on the existing record. The Court confirmed that summary dismissal is appropriate where the moving party establishes there is no merit and no genuine issue requiring a trial, and the responding party fails to put its best foot forward to show otherwise. Jeffrey J. also emphasized that multiple causes of action do not preclude summary dismissal if they all depend on the same underlying issue and are not capable of being easily bifurcated.

With respect to the Cross-Application, the Court considered Rule 6.25. It confirmed that payment into Court is an extraordinary pre-trial remedy granted only in exceptional circumstances, typically to preserve funds where there is a live dispute and a demonstrated risk to those funds. Justice Jeffrey held that the Rule was not engaged because the underlying Action had been resolved summarily, the dispute concerned possession rather than ownership, and there was no evidentiary basis showing risk of dissipation.

Applying these principles, the Court granted the Summary Dismissal Application and dismissed the Action in its entirety. The Cross-Application for payment into Court was denied.

CAMROSE REGIONAL EXHIBITION AND AGRICULTURAL SOCIETY V CAMROSE (CITY), 2026 ABKB 40

(APPLICATIONS JUDGE SUMMERS)

Rule 7.3 (Summary Judgment)

The Defendant brought an Application seeking Summary Dismissal of the Plaintiff's Action. The Plaintiff managed certain lands that were used for hosting events, concerts, and tradeshows, as well as a private campground developed by the Plaintiff. The Plaintiff owned a portion of the lands, and leased a large portion of the lands from the Defendant. The campground managed and developed by the Plaintiffs was located on the portion of the lands that were leased from the Defendant. The Plaintiff began facing financial difficulties and as a solution, intended to sell the campground.

Pursuant to the lease between the parties, the Defendant had a right of first refusal to purchase the campground and initially advised that they would waive this right and facilitate the sale, as it would involve the purchaser of the campground to enter into a new lease with the Defendants. The Defendant advised of certain terms that would likely be incorporated into a new lease, including duration and price. Following this, the parties had informal conversations about the sale of the campground, but no contractual agreement was ever prepared nor were strict terms agreed to. The Plaintiffs eventually found an interested third-party purchaser. However, upon being made aware of this, the Defendant advised that they wanted to negotiate the terms of the lease with the third-party purchaser.

As a result of the terms being imposed by the Defendant, the sale of the campground did not close as planned. The Plaintiff commenced an Action against the Defendant alleging that the initial communications between the parties constituted a contract, and the Defendant's attempts to negotiate or impose new terms amounted to a breach of that contract, and a breach of the Defendants duty of good faith and honest performance.

The Defendants took the position that the communications did not amount to a contract because they were informal, without prejudice, and lacked the necessary certainty.

The Court held that there was no contract between the parties. In addition to the fact the initial communications between the parties were informal and without prejudice, the lease agreement included language that necessitated a written and executed agreement for any modifications of the terms. The Court held that there was no disagreement of the facts of the case, the disagreement was found in the consequences of those facts. As such, the Court determined that it could make a fair and just determination based on the record, and granted the Application for Summary Dismissal.

JH DRILLING INC V BARSI ENTERPRISES LTD, 2026 ABKB 48

(HARRIS J)

Rule 7.3 (Summary Judgment)

The Defendants applied for Summary Dismissal based on a binding settlement agreement. The Action arose from a long running contractual dispute. The Plaintiff had unsuccessfully applied for Summary Judgment, and costs were awarded against it. Following that decision, the parties engaged in settlement discussions by email. Although the Plaintiff initially confirmed acceptance of settlement terms, it later refused to sign the formal settlement agreement, prompting the Defendants to seek enforcement and Summary Dismissal.

The Court began by addressing whether a binding settlement agreement had been formed. It reaffirmed that settlement agreements are contracts governed by ordinary principles of offer, acceptance, and intention to create legal relations. Applying the modern, practical approach to contractual interpretation, Harris J. assessed the settlement communications objectively and in their commercial context to determine whether the parties agreed on all essential terms.

Justice Harris held that the email correspondence demonstrated a clear mutual intention to settle the dispute and discontinue the Action in full. The essential terms were found to be straightforward and complete. The Court rejected the Plaintiff's argument that additional liabilities had been implicitly assumed, emphasizing that attempted negotiations on those issues had been expressly rejected and were therefore not part of the agreement. A party's unilateral assumption about unresolved terms could not undermine an otherwise complete settlement.

Having found a binding settlement agreement, the Court turned to whether Summary Dismissal was appropriate under Rule 7.3. The Court applied the Summary Judgment framework from *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 and *Hryniak v Mauldin*, 2014 SCC 7, asking whether the record allowed the Court to make the necessary findings of fact, apply the law, and resolve the dispute fairly and proportionately without a Trial.

Harris J. concluded that enforcement of the settlement resolved the dispute in its entirety and left no genuine issue requiring a Trial. The existence and scope of the settlement could be determined on the written record, and no further factual inquiry was necessary. As a result, Summary Dismissal was granted and the Action was dismissed in accordance with the settlement terms.

DAKA HOLDINGS LTD V BOYLE (VILLAGE), 2026 ABKB 83

(WHITLING J)

Rule 7.3 (Summary Judgment)

This decision concerned Applications for Summary Dismissal based on limitations issues under the *Limitations Act,* RSA 2000, c L-12 (the "Limitations Act") and the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, arising from claims relating to an undiscovered historical landfill (the "Landfill") on an 80-acre parcel of land (the "Lands").

The Plaintiffs purchased the Lands in 2006 without knowledge of the Landfill. While the Plaintiffs were developing the Lands in 2019, they discovered the Landfill and halted development. The Plaintiffs filed a Statement of Claim on September 9, 2019, alleging that the Defendants, as former owners and operators of the Landfill and as the municipal authorities responsible for issuing permits, approvals, and tax assessments, failed to disclose the Landfill. The Defendants applied for Summary Dismissal, arguing that the claims were statute barred by the 10-year ultimate limitation period in Section 3(1)(b) of the Limitations Act.

Applying the test for summary adjudication pursuant to Rule 7.3 and the framework set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49, Justice Whitling held that the limitations issues could be determined summarily. The Court rejected the Plaintiffs' reliance on fraudulent concealment under Section 4 of the Limitations Act, finding no evidence that the Defendants knowingly or recklessly concealed the Landfill. At most, Whitling J. noted that the record disclosed an "honest blunder" or loss of historical knowledge, which did not meet the threshold for equitable fraud.

Justice Whitling also rejected the Plaintiffs' argument that the claims arose from a continuing course of conduct under Section 3(3)(a) of the Limitations Act. The alleged wrongful acts, including subdivision approval, permits, and related decisions, occurred prior to the limitation period and did not constitute ongoing actionable conduct.

The Court further found that certain causes of action pleaded, including breach of statutory duty, were not recognized as independent causes of actions in Canadian law, and that no claim for breach of the agreement between the parties had been properly pleaded. However, Whitling J. held that claims relating to municipal taxes paid within the limitation period raised a genuine issue for trial.

In the result, Whitling J. granted Summary Dismissal of the Plaintiffs' claims, except for the claim relating to recovery of municipal taxes, which was allowed to proceed.

WALCZAK V CANADIAN IMPERIAL BANK OF COMMERCE, 2026 ABCA 38

(KHULLAR, STREKAF AND HO JJA)

Rule 7.3 (Summary Judgment)

This was an Appeal of a Summary Judgment decision granted by the Chambers Judge pursuant to Rule 7.3(1)(b). The Chambers Judge had dismissed the Action on the grounds that the limitation period had passed. On Appeal, the Appellants argued that Summary Judgment should not have been granted because the Chambers Judge erred in interpreting and applying the law.

The Court of Appeal noted that the standard of review was reasonableness for the decision to grant Summary Judgment and correctness for the limitations issue. The Court of Appeal found that the Chambers Judge had correctly determined that the Action was limitations barred. Therefore, there was "no merit to [the] claim" pursuant to Rule 7.3(1)(b) and Summary Judgment was appropriate.

The Court of Appeal dismissed the Appeal.

GRAHAM V GRAHAM, 2026 ABCA 104

(STREKAF, FEEHAN AND HAWKES JJA)

Rule 7.3 (Summary Judgment)

The Appellants appealed the decision of a Chambers Judge granting Summary Dismissal of the Action.

In reviewing the decision, the Court of Appeal confirmed that the Chambers Judge had correctly identified the criteria for Summary Dismissal in Rule 7.3(1), namely that a claim may be summarily dismissed if it has no merit.

The Appellants argued the Chambers Judge erred in determining that the Action was barred by the limitation period. Applying the standard of review of palpable and overriding error, the Court of Appeal affirmed the Chambers Judge's determination that the claim was out of time.

Next, the Appellants submitted that the relief sought in the Action was declaratory, not remedial, and therefore the *Limitations Act*, RSA 2000, c L-12 did not apply. The relief sought was for a "Judgment and declaration" that the Appellants were the beneficial owners of certain lands. Surveying the applicable case law, the Court of Appeal agreed with the Chambers Judge that the remedy sought was coercive in nature, requiring a legal remedy. This ground of appeal was dismissed.

The Appellants also appealed the Chambers Judge's decision that their claims of proprietary estoppel and unjust enrichment were without merit and founded on hearsay. The Chambers Judge had addressed each of these claims despite finding they were out of time. Reviewing the Chambers Judge's assessment, the Court of Appeal held that the Chambers Judge recognized, properly described, and

analyzed the claims for proprietary estoppel and unjust enrichment, and concluded, based upon the facts, that they were unsubstantiated. Additionally, the Court of Appeal upheld the Chambers Judge's finding that much of the Appellants' evidence was inadmissible hearsay. This ground of appeal was dismissed.

Having found no grounds to overturn the decision, the Appeal was dismissed and the Chambers Judge's costs award upheld.

FORD V JIVRAJ, 2026 ABKB 123

(HARRIS J)

Rule 8.17 (Proving Facts)

The Plaintiff, Ford, applied to admit hearsay evidence at trial pursuant to Rule 8.17. Specifically, Ford sought to enter three records (the "Records") relating to one of the Defendants, Jivraj, on the basis that the principled exception to the hearsay rule applied.

The Records arose from a separate Action between Ford and Jivraj (the "RO Action") and consisted of: (i) an Affidavit sworn by Jivraj; (ii) portions of a transcript arising from the

Cross-Examination of Jivraj on that Affidavit; and (iii) Jivraj's answers to Undertakings given during that Cross-Examination (collectively, the "Records").

Justice Harris confirmed the test for the principled exception to the hearsay rule, specifically whether the evidence in question is necessary and sufficiently reliable. Ford argued that the Records were necessary because Jivraj was unlikely to attend trial to testify, and sufficiently reliable because Jivraj's statements were made under oath, were against his interest, and were internally consistent with his testimony in the RO Action.

Applying this test, the Court held that the Records were neither necessary nor sufficiently reliable. Harris J. found that necessity had not been established, as Ford had not attempted to subpoena Jivraj to testify at trial. On the issue of reliability, Justice Harris noted that Jivraj's credibility was in dispute in both the RO Action and the current Action, and that the other Defendants had no opportunity to cross-examine Jivraj on the Records.

Although the Application was dismissed, the Court granted an alternate remedy by permitting Ford to prepare a subpoena compelling Jivraj's attendance at trial.

TUDOR V ACCURATE SCREEN LTD, 2026 ABKB 237

(YAMAUCHI J)

Rule 8.25 (Use of Streamlined Trial)

This decision arose from a wrongful dismissal Action brought by an executive employee following his termination after approximately seven months of employment. The employer alleged just cause on the basis that the employee had misrepresented his academic qualifications, specifically by stating on his resume that he was completing an MBA when he was not enrolled in any such program, and that this misrepresentation became apparent through deficiencies in his work performance.

The matter proceeded by way of a Streamlined Trial pursuant to Rule 8.25, under a prior case management Order that limited the evidence and argument. The Court considered whether the streamlined process was appropriate despite some disputed facts and issues of credibility.

Justice Yamauchi interpreted Rule 8.25 as setting a different and more purposive threshold than the former Summary Trial Rules. The question is not simply whether the case can be decided on a streamlined record, but whether it is necessary to use a streamlined process to fairly and justly resolve the dispute. Yamauchi J. emphasized that Streamlined Trials are consistent with the proportionality and access to justice principles articulated in *Hryniak v Mauldin*, 2014 SCC 7, and are particularly suitable in wrongful dismissal cases. Importantly, Rule 8.25(3) expressly contemplates that issues of credibility or disputed facts do not, on their own, preclude a Streamlined Trial. The Court confirmed that it may make necessary findings of fact on the record where the evidentiary foundation is sufficient.

Applying these principles, the Court found that the streamlined process was appropriate and sufficient to resolve the key issues, including just cause and damages, notwithstanding factual disputes between the parties. The Court was able to assess credibility and make findings based on the agreed statement of facts, Affidavit evidence, and cross-examinations.

With respect to costs, having dismissed the Action, the Court awarded costs to the successful Defendant in accordance with the Rules.

BANOVICH V BANOVIC, 2026 ABCA 59

(STREKAF, FEEHAN AND GROSSE JJA)

Rules 9.2 (Preparation of Judgments and Orders), 14.18 (Contents of Appeal Record – Standard Appeals) and 14.45 (Application to Admit New Evidence)

This was an Appeal of a Summary Trial decision involving a matrimonial dispute.

The Appellant brought two Applications to adduce fresh evidence on Appeal. The first Application was dismissed on the basis that the proposed evidence did not satisfy the test for admission set out in *Palmer v the Queen,* [1980] 1 SCR 759. The second Application was denied

without consideration because it was not filed and served prior to the filing of the Appellant's Factum, contrary to Rule 14.45.

The Panel noted that no finalized Order containing the Summary Trial Judge's decision was filed prior to the Appeal being heard, contrary to Rules 9.2 and 14.18. At the Court's request, counsel for the Respondent provided a draft Order, and the Appellant subsequently delivered comments on the draft Order. While the Panel proceeded with the scheduled Appeal in this case, it directed the parties to finalize the Order and cautioned that failure to comply with Rules 9.2 and 14.18 may result in an appeal not being scheduled or being adjourned until a finalized order is filed.

The Court dismissed the Appeal, affirming the Summary Trial Judge's decision.

SLA V TJA, 2026 ABKB 16

(AKGUNGOR J)

Rules 9.4 (Signing Judgments and Orders) and 10.52 (Declaration of Civil Contempt)

This decision arose from cross-applications by the parties to vary parenting arrangements, along with the father's Application for a Declaration pursuant to Rule 10.52 that the mother was in civil contempt of the Order arising from the parties' divorce (the "Divorce Order").

Justice Akgungor noted that civil contempt requires proof beyond a reasonable doubt of an existing court order, notice of the order to the alleged contemnor, and an intentional breach without adequate excuse. Akgungor J. emphasized that contempt findings in family matters should be used sparingly and only as a last resort. The Court further highlighted that conduct occurring prior to the issuance of the Divorce Order could not ground a contempt finding, as the operative order must have been in effect at the time of the alleged breach.

The father relied on numerous alleged breaches related to exchange times, the right of first refusal, extra-curricular decision-making, and notice of his relocation. Justice Akgungor held that these concerns largely stemmed from ambiguities in the Divorce Order, reasonable differences in interpretation, and circumstances where the underlying purpose of the Divorce Order was not frustrated. The Court found that, since the terms of the Divorce Order lacked clarity in several key areas (particularly regarding exchange times, long-change parenting time, and the operation of the right of first refusal), the mother's conduct did not amount to intentional disobedience of the Divorce Order. Justice Akgungor therefore made no finding of contempt.

The Court directed that a revised parenting order (the "Revised Order") be prepared by the mother and chose not to invoke Rule 9.4(2)(c), provided that the father signs the Revised Order within ten days of receipt.

AKALU V ALBANO, 2026 ABCA 9

(GROSSE JA)

Rules 9.4 (Signing Judgments and Orders), 14.5 (Appeals Only With Permission) and 14.38 (Court of Appeal Panels)

The Applicant sought permission to appeal part of a Chambers Order that required her to pay an amount owing under an arbitration award to the Respondent. Permission to appeal was brought pursuant to Rule 14.5(1)(g) because the dispute did not exceed $25,000. The Applicant argued that the Chambers decision did not reflect the true result of the arbitration as it related to adjustments and costs found to be owing by her.

In granting permission, Grosse J.A. agreed with the Applicant that the Chambers decision ordering payment of the amount under appeal failed to consider a later supplemental arbitration award, which explained how success was allocated between the parties. In light of this, the Court of Appeal held that it was satisfied that the proposed appeal was significant to the Applicant and that there was an aspect of the case that justified granting permission to appeal. As such, and in addition to the fact that the Applicant was self-represented, Grosse J.A. held that it was in the interests of justice that the Applicant be permitted to proceed with her appeal to ensure that an omission on the part of the Respondent did not lead to an unjust result.

The Applicant also sought a stay of the Chambers decision pending appeal and permission to adduce new evidence. The Court noted that although the stay was clearly requested by the Applicant on the basis of financial hardship, the Respondent did not make arguments opposing the stay other than suggesting that no Stay Application had been made. As a result, the Court allowed a stay of the payment obligations pending the hearing of appeal in the matter.

Further, the Court found no evidence that the Respondent would suffer prejudice if the stay were granted compared to the harm likely to be suffered by the Applicant. Weighing the positions of the parties on a balance of convenience, the Court was satisfied, relying on an inference by the Chambers Judge that the Respondent ran successful businesses and held other significant assets, and that the Applicant would suffer hardship if the Respondent's Application for a retroactive recalculation of child support was granted, that a stay was appropriate. Grosse J.A. then invoked Rule 9.4(2)(c), which permits the Court clerk to sign a Judgment in certain circumstances, and ruled that the Court would prepare the resulting Order.

HRE V HS, 2026 ABCA 54

(KIRKER, FAGNAN, GROSSE JJA)

Rules 9.4 (Signing Judgments of Judgment or Order), 10.51 (Order to Appear), 10.52 (Declaration of Civil Contempt) and 14.88 (Cost Awards)

This was an Appeal from a Chambers Judge's Order dismissing an Application to hold the Respondent in civil contempt for alleged non-compliance with financial disclosure orders (the "Disclosure Orders"), as well as an associated Costs Award.

Applying the test in *Carey v Laiken*, 2015 SCC 17, and Rules 10.51 and 10.52, the Chambers Judge found that the first two elements were established — the order stated clearly and unequivocally what should be done, and the Respondent had actual knowledge of the Order. However, the Appellant failed to prove beyond a reasonable doubt that the Respondent intentionally breached the Disclosure Orders. The Chambers Judge further held that, even if all elements were met, discretion would be exercised to decline issuing a contempt declaration.

The Court of Appeal confirmed that contempt findings are discretionary and are reviewable on a reasonableness standard. The Court rejected the Appellant's argument that the alleged non-compliance was not "historical", noting the Disclosure Orders dated from 2021 to 2023 and the deadlines had expired. The Court concluded that the Chambers Judge properly considered the status of the Action, including that no further disclosure was sought, and the availability of alternative remedies such as adverse inferences in the appropriate forum.

The Court dismissed the Appellant's procedural fairness arguments, holding that the Chambers Judge was entitled to consider background submissions and the absence of cross-examination on Affidavits. The Court found no breach of fairness, emphasizing that Judges are not required to refer to each piece of evidence in their reasons and self-represented litigants are expected to familiarize themselves with applicable procedures. The Court also dismissed the Appeal of the Costs Award, finding no reviewable error in applying the default rule that costs follow the event.

In the result, the Court dismissed the Appeal. After hearing submissions on costs, the Court held that Rule 14.88 applied, such that the successful party was entitled to costs. Rule 9.4(2)(c) was invoked for the Court to prepare the resulting Order.

OUELLETTE V MCCANN ESTATE, 2026 ABCA 61

(SHANER JA)

Rules 9.4 (Signing Judgments and Orders), 14.4 (Right to Appeal) and 14.36 (Case Management Officers)

The Applicant and his son, Ouellette Jr., commenced an Action alleging damages arising from a complaint made by the Respondent to the Law Society of Alberta. The Action was summarily dismissed in its entirety by an Applications Judge.

The Applicant appealed that dismissal to the Court of King's Bench, but Ouellette Jr. was not named in the Notice of Appeal and did not take steps to be added as a party. The Chambers Judge allowed the Applicant's appeal in part, expressly confirming that Ouellette Jr.'s claims remained dismissed because he was not a party to the appeal. When the Respondent appealed to the Court of Appeal, the Applicant and Ouellette Jr. sought to add Ouellette Jr. as a Respondent and CrossAppellant. That request was denied by a Case Management Officer ("CMO"), prompting this Application for review.

Shaner J.A. dismissed the Application and confirmed the CMO's decision, refusing to add Ouellette Jr. as a Respondent or CrossAppellant to the Appeal. The Court held that Ouellette Jr. had no right to party status on the Appeal and that permitting him to be added would be procedurally improper and contrary to the Rules.

Appeal Justice Shaner held that only parties whose interests were adjudicated below may appeal, and Ouellette Jr. never appealed the Applications Judge's decision nor participated as a party in the appeal to the Court of King's Bench. As a result, there was no Order affecting his interests from which he could appeal. Granting him party status at this stage, the Court held, would effectively allow a direct appeal from an Applications Judge to the Court of Appeal, which is expressly prohibited by the Rules. Although the Court has authority to add parties under the Rules, Shaner J.A. found that Ouellette Jr. failed to demonstrate a legal interest in the Appeal or that it was just and convenient to add him. The Court therefore concluded that the Application was an impermissible attempt to circumvent proper appellate procedure and dismissed it accordingly.

WANG V LAW SOCIETY OF ALBERTA, 2026 ABCA 62

(PENTELECHUK, DE WIT AND WOOLLEY JJA)

Rule 9.4 (Signing Judgments and Orders)

This was an Appeal of a Chambers Justice's Order striking the Appellant's application for Judicial Review of a decision of the Law Society of Alberta (the "Law Society").

The Appellant filed a complaint about a lawyer with the Law Society more than five years after the underlying events were alleged to have occurred. Noting the significant delay,

the Law Society's Executive Director summarily dismissed the complaint pursuant to the *Legal Profession Act*, RSA 2000, c L-8, which was upheld by the Appeal Panel of the Law Society (the "Complaint Dismissal").

The Appellant then filed an Originating Application for Judicial Review of the Complaint Dismissal (the "Application"). The Law Society applied to strike the Application for failure to disclose a reasonable cause of action. The Chambers Justice held that the Appellant, as a complainant in professional disciplinary proceedings, lacked standing to seek Judicial Review of the merits of the Complaint Dismissal and the Application was struck.

The Court of Appeal held that the standard of review for whether a pleading discloses a cause of action is correctness, while the decision to strike is reviewed for reasonableness. Writing for the Court, de Wit J.A. held that a complainant in professional disciplinary proceedings is not a party to those proceedings and has limited rights. The Court confirmed that a complainant has no standing to seek Judicial Review of the merits of a regulator's decision, including a decision not to proceed with discipline.

The Court acknowledged that limited standing may arise where procedural fairness is at issue. However, de Wit J.A. found that the Application challenged only the merits of the Complaint Dismissal and did not raise allegations of procedural unfairness, and the record disclosed no basis for such a claim. The Court held that the Chambers Justice correctly applied the governing law and reasonably exercised discretion to strike the Application.

In the result, the Court dismissed the Appeal, directed that no costs were payable, and invoked Rule 9.4(2)(c) for the Court to prepare the resulting Order.

DM V TK, 2026 ABKB 245

(MALIK J)

Rules 9.12 (Correcting Mistakes or Errors) and 9.14 (Further or Other Order After Judgment or Order Entered)

The Court addressed an Application to amend or clarify a costs Order after the Respondent filed a consumer proposal under the *Bankruptcy and Insolvency Act*, proposing to pay only a fraction of the awarded costs. The Applicant sought the Court's discretion to issue an amended costs Order under: (i) Rule 9.12, which permits the correction of mistakes or errors in a Judgment or Order resulting from an accident, slip, or omission, and (ii) Rule 9.14, which allows the Court to provide any remedy a party is entitled to in relation to the Judgment or Order, provided that such relief does not require varying the original Judgment or Order. Specifically, the Applicant requested that the Order clarify that costs be characterized as "maintenance" under the *Maintenance Enforcement Act*, and therefore enforceable despite bankruptcy.

The Court held that it was not *functus officio* and that it retained jurisdiction under Rule 9.14 to apportion a costs award after Judgment, even where one party had entered bankruptcy proceedings, as long as doing so did not vary the original Order but clarified the nature of the costs. Relying on caselaw, the Court confirmed that costs related to support or maintenance may be identified post-Judgment because such

amounts fall within the exception in Section 178(1)(c) of the *Bankruptcy and Insolvency Act* and are not discharged in bankruptcy. The Court rejected the procedural objection that no formal Application had been filed, emphasizing efficiency and proportionality in family proceedings.

On the merits, the Court reviewed the underlying litigation and apportioned the costs based on the time and substance of the issues litigated. It found that approximately 60% of the proceedings concerned support and maintenance issues, including flight expenses and child-related financial obligations, while the remainder involved jurisdictional and parenting schedule matters. That 60% portion ($8,251.20) was therefore characterized as maintenance and ordered to remain payable under the existing instalment plan, notwithstanding the Respondent's consumer proposal.

KONG V CONDOMINIUM CORPORATION NO 0313339, 2026 ABCA 90

(GROSSE JA)

Rules 9.12 (Correcting Mistakes or Errors), 9.13 (Re-Opening Case) and 14.5 (Appeals Only with Permission)

This decision arose from an Application for permission to appeal to a panel of the Court of Appeal from a single-judge decision. That earlier decision concerned the Applicant's request to correct alleged factual and contextual errors in a prior ruling denying her Application for court-appointed counsel. The Applicant argued that the single Judge erred by addressing correction requests under Rule 9.12 rather than Rule 9.13, improperly imposed costs, and misapprehended important facts, amounting to continuing procedural unfairness.

The Court applied the interest of justice test governing Applications for permission to appeal from a single judge to a panel under Rule 14.5(1)(a). Grosse J.A. held that permission will be granted only where the Applicant demonstrates a question of general importance, a possible error of law, an unreasonable exercise of discretion, or a misapprehension of important facts. The Court found none were present. On the procedural issue, the Court held that Rule 9.13 could not apply because the relevant Order had already been entered, and in any event, application of Rule 9.13 would not have changed the outcome. With respect to costs, the Court reaffirmed that costs are discretionary, context-specific, and not avoided merely because relief is sought by correspondence rather than formal Application. Disagreement with findings or outcomes does not, without more, justify panel review.

Grosse J.A. dismissed the Application for permission to appeal. The had Applicant failed to identify any issue warranting review by a panel, including any error of law, unreasonable exercise of discretion, or misapprehension of material facts. The Court also rejected the Applicant's challenge to costs, finding no basis to interfere with the discretionary costs ruling. Each party was ordered to bear their own costs of the permission Application, as the Respondent did not seek costs.

BRANDT INDUSTRIES CANADA LTD V EVRAZ INC NA CANADA, 2025 ABKB 762

(SIDNELL J)

Rules 9.14 (Further or Other Order After Judgment or Order Entered), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Court allowed an Application brought pursuant to Rule 9.14, which allows for the granting of a further Order if doing so does not vary the original Judgment.

Finding that it was not the award that was being challenged but rather the entitlement to interest under the agreement in dispute, and noting that the Plaintiff/Defendant by Counterclaim did not properly invoice under the agreement, Sidnell J. held that the interest should be calculated in accordance with the *Judgment Interest Act*.

On the issue of costs, Sidnell J. applied Rules 10.31 and 10.33, and outlined the relevant factors for consideration, including the result of the action, degree of success, amount claimed, amount recovered, and complexity of the action. Rule 10.33(2) allows the Court to consider additional factors when awarding costs, including settlement offers. Justice Sidnell found that the settlement offer made to the Defendant/Plaintiff by Counterclaim was invalid because it was unclear, imprecise, and uncertain. Accordingly, the fact that it was not accepted was reasonable in the circumstances. The Court declined to award double costs to the Plaintiff/Defendant by Counterclaim.

Sidnell J. awarded costs under Column 5 of Schedule C and determined it was appropriate and proportionate to award the Plaintiff/Defendant by Counterclaim double the amount set out in Column 5.

STEINKEY V FIRST CAPITAL HOLDINGS (ALB) CORPORATION, 2026 ABKB 51

(LEMA J)

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

This was an Appeal of an Applications Judge's decision declining to set aside a Noting in Default.

The Plaintiff brought an occupiers' liability claim arising from injuries allegedly cause by a

wind-blown patio umbrella. Although the Statement of Claim was served in 2020, the Defendants failed to file a Statement of Defence despite repeated demands and were Noted in Default in December 2022. More than a year later, the Defendants applied to set aside the Noting in Default, arguing that communications were missed due to accidental email deletions by a third-party adjuster and asserting an arguable defence based on internal safety policies.

Justice Lema confirmed that Rule 9.15(3) confers a broad, discretionary power to permit a defence to be filed after a party has been noted in default where it is fair and just to do so. The Court reviewed competing appellate authorities concerning the applicable test to set aside a Noting in Default. It reviewed the traditional three-part test of an arguable defence, a

reasonable excuse, and a prompt application. Justice Lema also considered the more flexible "fair and just" analysis articulated in *Liberty Mortgage Services Ltd v River Valley Development Corp*, 2025 ABCA 346. Lema J. emphasized that the stricter test applicable to setting aside a Default Judgment, reflecting the finality of judgments, must not be conflated with the more discretionary approach for setting aside a Noting in Default, although similar factors may remain relevant.

The Court held that, under either framework, the Defendants failed to meet the requisite standard. In particular, the Defendants failed to establish an arguable defence, as the evidence demonstrated only the existence of umbrella safety policies, not that they were implemented or followed on the day of the incident. Further, Lema J. found that the alleged email deletions were inadequately explained and did not constitute a reasonable excuse, and that the Defendants failed to act promptly after learning of the Default, given the significant delay in bringing their Application.

Accordingly, Justice Lema found that it was neither fair nor just to set aside the Noting in Default and dismissed the Appeal.

GRECO V CALGARY (CITY), 2026 ABKB 153

(REED 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) and 10.33 (Court Considerations in Making Costs Award)

The Court ruled on costs following Judgment in favour of the Plaintiffs.

After reviewing prior authorities, Justice Reed confirmed that a costs assessment is a discretionary and contextual exercise. The Court emphasized that indemnity awards, such as those granted in *McAllister v Calgary (City)*, 2021 ABCA 25, are not the default and should not be presumed. Reed J. also noted that *Calderbank* offers do not automatically result in doubled or enhanced costs, identifying a number of factors relevant to their assessment.

Justice Reed addressed the Defendants in two groups, one being the Calgary Exhibition and Stampede Limited, Calgary Exhibition & Stampede, and Weadick Properties Ltd. (the "Stampede Defendants") and the other being the City of Calgary (the "City").

With respect to the Stampede Defendants, the Court awarded partial indemnity for 30% of their assessed solicitor-client costs (distinguished from solicitor-and-own client indemnity) from commencement of the Action to the date of their *Calderbank* offer. From that date forward, Justice Reed awarded double costs amounting to 60% of assessed solicitor-client costs, on the basis that said *Calderbank* offer was valid and effective.

In contrast, the Court awarded the City costs in accordance with Column 3 of Schedule C, plus disbursements and other charges. Justice Reed found that the City's costs in this Action were not comparable to those in *Lehodey v Calgary (City)*, 2025 ABKB 76, and further concluded that the City's *Calderbank* offer did not constitute a reasonable and genuine compromise.

The Court directed the parties to resolve all quantum issues in accordance with the decision, failing which costs were to be assessed by an Assessment Officer.

KITCHENHAM V KOSTER, 2026 ABKB 12

(NIXON CJ)

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 decision focused on the appropriate level of costs after Ms. Kitchenham succeeded in litigation involving two related Actions. While she sought full indemnity costs of about $28,500 (or alternatively Schedule C costs), Mr. Koster argued that costs should be limited to the later of the two Actions and exclude earlier steps, claiming those had effectively been resolved by a prior Consent Order and partial payment.

The Court emphasized that costs are discretionary and primarily intended to provide reasonable, partial indemnification to the successful party, with proportionality and reasonableness as guiding principles.

Applying these principles, the Court rejected Mr. Koster's argument that earlier litigation steps should be excluded, finding that the prior Consent Order only barred costs related to contempt proceedings, not the broader Actions.

After correcting errors in Ms. Kitchenham's draft Bill of Costs, the Court found that Schedule C costs would be slightly lower than her claimed legal fees. Using this benchmark, the Court exercised its discretion to award a lump sum of $25,000, holding that this amount was fair and reasonably reflected partial indemnification.

GNYRA V CONDOMINIUM CORPORATION NO. 0211811, 2026 ABKB 29

(FROESE 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 Appeal arose from a costs decision of an Applications Judge who awarded costs to the Respondent.

The Applications Judge found the Appellant engaged in improper conduct under Section 67 of the *Condominium Property Act*, and the Respondent was entitled to full indemnity costs. The Appellant argued that since there was no intentional misconduct, bad faith actions, or litigation misconduct, an award of full indemnity costs was not appropriate. The Appellant further argued that the Respondent had only achieved limited success in the underlying application and, as such, should not be entitled to costs pursuant to Schedule C.

The Respondent maintained that full indemnity costs were appropriate as a result of the Appellant's improper conduct; or, in the alternative, that partial indemnity costs above 50% of actual costs were appropriate.

In reviewing the Application, Justice Froese noted that as the successful party, the Respondent was entitled to their costs, but that there were a number of discretionary factors to consider in determining the quantum of those costs. The Court considered submissions from the parties on how costs should be considered in the context of condominium disputes, and how that context ought to impact the Court's decision. Froese J. noted that typically, full indemnity costs are awarded in circumstances where a party is guilty of positive misconduct, and, in the present case, the Appellant's improper conduct arose from a failure to act rather than an act in issue. As such, full indemnity costs were not appropriate in this situation.

However, the Court noted that while the Appellants did not take part in any positive misconduct, their failure to meaningfully engage with the Respondent necessitated the litigation. To reflect for the Appellant's conduct, the Court awarded costs at 50% of the Respondent's assessed legal fees.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 90

(NIXON ACJ)

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

The Wood Group sought costs against CNOOC. In doing so, it claimed costs arising from a cross-examination conducted in a separate but related action ("Action 1").

CNOOC argued that it was *res judicata* to allow recovery of costs in the present Action ("Action 2") for questioning on an Affidavit filed in another action. The Wood Group argued that CNOOC relied, in Action 2, on an Affidavit filed in Action 1, and that the cross-examination was incidental to Action 2. On that basis, the Wood Group submitted that costs should be recoverable.

Associate Chief Justice Nixon cited the Courts' general discretion under Rules 10.31 and 10.29(1). The Court held that there were no mandatory constraints or rules governing the exercise of its discretion under Rules 10.31 and 10.33, other than the requirement to "act judicially on the facts of the case".

While Nixon A.C.J. did not agree with CNOOC's argument that cross-examination costs were *res judicata*, the Court found that they should not be awarded. In making this determination, the Court considered that while costs of the cross-examination were sought in Action 1, they were not granted. The Court further considered that costs in Action 1 were proper under Column 1 of Schedule C, and that costs in Action 2 were proper under Column 5 with a multiplier of four.

THOMAS V HARRRIMAN, 2026 ABKB 106

(MCLEOD J)

Rule 10.29 (General Rule for Payment of Litigation Costs)

The Court considered an Application for costs in relation to an Originating Application for judicial listing and sale of a rural acreage (the "Lands"); a Cross-Application for partial sale of the Lands; and a series of Interlocutory Applications.

The Respondents were successful in their Cross-Application and in all Interlocutory Applications.

The Court relied on Rule 10.29 for the presumption that the successful litigant is entitled to costs. The Applicants argued that there was mixed success since they achieved their goal of terminating their co-ownership of the Lands. Justice McLeod rejected this characterization, finding that the Respondents were the successful party.

The Court found no grounds upon which to displace the Rule 10.29 presumption. While the Applicants had made a number of allegations of misconduct against the Respondents, Justice McLeod held these were not supported by the evidence.

Justice McLeod held that the Respondents should have costs pursuant to Column 4 of Schedule C. The Applicants had argued that since no monetary amount was claimed in the Originating Application, costs should be calculated pursuant to Column 1. The Court disagreed on two grounds. First, the issues between the parties were about a fairly significant sum of money, namely the value of the Lands or portion thereof to be sold which was over $1,000,000.

Second, Justice McLeod found that throughout the litigation, the Applicants unreasonably took positions that created additional litigation steps. This included litigation steps following a reasonable offer to purchase the Applicants' portion of the Lands. Additionally, the Applicants had made unfounded allegations of misconduct against the Applicants, in both this costs Application and other Interlocutory Applications. Justice McLeod said that while enhanced costs would arguably have been appropriate, they weren't being claimed, and therefore Schedule C costs were awarded.

BURNS V ARAGON, 2026 ABKB 119

(LOPARCO 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)

Following a nine-year family property dispute, the self-represented Plaintiff, who had been successful on most issues at Trial, sought more than $107,000 in costs and disbursements, including double costs based on rejected settlement offers. The Defendant, also self-represented, filed no response.

Justice Loparco confirmed that self-represented litigants are generally not entitled to costs, but

Rule 10.31(5) permits such an award in exceptional circumstances. The Court found those circumstances existed here. The litigation had been prolonged and complicated by the Defendant's repeated non-disclosure, evasiveness, non-compliance with Court Orders, missed questionings, and contempt. That conduct undermined settlement and efficiency and justified a costs award to the Plaintiff despite her self-represented status.

The Court declined to award double or enhanced costs under Schedule C. Instead, considering the Defendant's conduct, the Plaintiff's success, expert disbursements she had been forced to incur, and the rejected settlement offers, the Court awarded a lump sum of $32,100 for all costs and disbursements.

CONNECT FIRST AND SERVUS CREDIT UNION LTD V ELITE STORAGE NORTH EDMONTON LP, 2026 ABKB 132

(MARION 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 decision concerned the determination of costs following a successful Application arising out of broader receivership proceedings. In the underlying decision, one of the Defendants, Robert Cramers ("Cramers") successfully applied to remove BCCQ Global Holdings Ltd. ("BCCQ") from a Consent Receivership Order (the "Order") that had been obtained *ex parte* by Alberta Finance & Mortgage Corporation ("AFMC"). Justice Marion had directed the parties to attempt to agree on costs. When that failed, written submissions were invited for a judicial determination of the appropriate costs award.

Justice Marion emphasized that although costs are typically governed by Schedule C, this instant case warranted departure from that framework. The Application was a moderately complex commercial matter involving the variation of the *ex parte* Order with significant implications for corporate control and ongoing disputes between the parties. Critically, AFMC had breached its duty of full and frank disclosure when obtaining the Order, including failing to properly explain the contractual and factual context to the Court. The Court found that this misconduct materially affected the original decision and unnecessarily interfered with BCCQ's operations, thereby justifying enhanced costs. At the same time, the Court found that Cramers' unexplained delay in bringing the Application tempered the ultimate quantum awarded and must be accounted for.

Marion J. then held that the Defendant, Cramers was entitled to enhanced costs for the successful Application and awarded him $15,000 plus GST (together with disbursements) as a lump sum Cost Award, payable forthwith by AFMC. The Court also awarded $2,000 plus GST for the separate process of determining costs. While Cramers sought approximately 50% solicitor-client indemnification, and AFMC argued that column 1 of Schedule C should apply because the relief sought was declaratory, the Court selected a midpoint that reflected proportionality and fairness.

The Application was governed principally by Rules 10.29-10.33 of the Rules, which set out the discretionary factors for awarding costs,

including success, complexity, importance of the issues, proportionality, and party conduct. Justice Marion held that Schedule C alone was inadequate to reflect those factors in this case and relied on an appellate authority permitting lump sum or percentage-based costs where necessary to achieve a reasonable and proportionate result.

QM V RM, 2026 ABKB 185

(MARION J)

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

The Court addressed a costs decision arising from a relocation and parenting dispute in which the father was largely successful, including being granted permission for the child's relocation to Vancouver. After the main decision and a subsequent refusal to reopen the matter, the Court had directed the parties to make costs submissions covering the hearing, earlier proceedings, Arbitration costs, and related steps. The father filed detailed costs submissions seeking a substantial recovery, including enhanced costs based on alleged litigation misconduct by the mother. The mother did not provide any costs submissions despite being given multiple opportunities.

The Court reviewed the applicable principles governing costs in family relocation cases, emphasizing that while Schedule C often serves as a starting point, modern jurisprudence allows flexibility, including percentage-based or lump-sum awards where appropriate. The Court noted that costs in parenting and mobility cases must balance two competing considerations: discouraging unreasonable litigation conduct while avoiding outcomes that would unduly deplete resources needed for children's wellbeing.

On the evidence, the Court found that the relocation proceedings were highly complex, lengthy, and heavily contested, involving extensive Affidavits, expert evidence, and multiple Court attendances. It also found that the mother had engaged in significant litigation misconduct throughout the proceedings, including breaches of Court Orders, improper conduct toward the Court-appointed expert, unfounded allegations against the father, and other behaviour that increased the length and cost of the litigation. The father's conduct, by contrast, was generally reasonable during the relocation hearing.

The Court rejected the father's request to calculate costs primarily as a percentage of his actual legal fees, noting that his billing information was insufficiently detailed to assess reasonableness under solicitor-client standards. Instead, it relied on Schedule C as a more reliable framework, adjusted for inflation and enhanced where justified.

The Court awarded costs separately for different stages of the litigation, including Arbitration-related steps, pre-hearing Applications, the relocation hearing itself, and the mother's unsuccessful post-decision Application. It applied multipliers in certain instances due to misconduct and complexity, particularly in relation to the relocation hearing and post-decision litigation.

For the Arbitration proceedings, the Court awarded modest costs based on mixed success. For the pre-hearing steps, it applied

Schedule C with inflation adjustments and limited multipliers where justified, reflecting varying levels of success and conduct. For the relocation hearing itself, the Court found the father had substantial success and that enhanced costs were warranted due to the mother's litigation misconduct and the complexity of the matter, ultimately awarding approximately $87,728 for that phase.

The Court also awarded enhanced costs in relation to the mother's unsuccessful Application to reopen or vary the earlier decision. It found that the Application was not only unsuccessful, but also based on serious and unsubstantiated allegations, including claims of fraud against the father that were rejected. The Court also raised concerns about the reliability of the mother's materials, noting indicators of improper or undisclosed use of content generated through artificial intelligence ("AI"), including "hallucinated" case citations and misstatements of the prior decision.

The Court treated the use of AI in a non-compliant or misleading way as an aggravating factor, emphasizing that self-represented litigants are still required to ensure the accuracy of their materials and comply with applicable Court expectations. It further noted that, even aside from the AI issue, the Affidavit and submissions reflected a lack of care and contained inaccuracies that independently justified a costs sanction. The Court also considered the mother's failure to comply with the original decision shortly after it was issued as part of a broader pattern of non-compliance. Taken together, these factors led the Court to conclude that the Application warranted enhanced costs.

In total, the Court awarded the father approximately $105,495.34 inclusive of GST, plus disbursements, concluding that the award was proportionate and fair in light of partial indemnification principles, the mother's conduct, and the need to avoid undermining the child's best interests while still holding parties accountable for litigation behaviour.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 202

(NIXON ACJ)

Rules 10.29 (General rule for Payment of Litigation Costs) and 10.31 (Court-Ordered Costs Award)

The Court determined costs following its prior ruling adjourning the Trial and granting the parties leave to make submissions on costs in the absence of agreement (the "Adjournment Decision").

In the Adjournment Decision, one of the Defendants, Wood Group Canada, Inc. ("Wood Group"), applied to adjourn the Trial sine die in order to allow sufficient time to address a number of outstanding issues.

Nixon A.C.J. confirmed the Court's discretion to award costs pursuant to Rules 10.29 and 10.31, emphasizing that the governing considerations are proportionality and reasonableness.

The Plaintiff argued that Wood Group did not truly succeed, as the Trial date was adjourned to a fixed date rather than indefinitely, as applied for. The Plaintiff further submitted that, given the mixed success of the Application, each party should bear their own costs.

The Court rejected the Plaintiff's argument and awarded costs to Wood Group based on Column 5 of Schedule C, with a multiple of four, finding that their Application was substantively

successful. Associate Chief Justice Nixon also noted that Schedule C, Column 5 was the regular tariff employed and agreed to by the parties throughout the Action.

ROYAL BANK OF CANADA V SIMMER, 2026 ABKB 250

(DEVLIN J)

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

This costs decision followed a prior decision granting Summary Judgment in favour of the Plaintiff, Royal Bank of Canada ("RBC"), on defaulted credit facilities and dismissing the Defendants' Counterclaim.

RBC sought solicitor-client costs based on contractual indemnity provisions in the lending agreements, as well as contractual interest. The Court held that while such provisions support full indemnification, they did not oust the Court's discretion to award costs in a principled and proportionate manner. Justice Devlin emphasized that costs must reflect proportionality and the conduct of the parties.

Devlin J. found the Defendants' Counterclaim was meritless and time-barred, and it had significantly increased the complexity and cost of the litigation, while RBC's recordkeeping contributed to inefficiencies. Although RBC's legal accounts were generally reasonable, Justice Devlin found that the total costs claimed were disproportionate to the amounts in issue. Applying a discretionary reduction for proportionality and inefficiencies, the Court awarded reduced costs rather than full contractual indemnity.

Regarding the interest claimed, Justice Devlin held that the amounts claimed formed part of the contractual debt and were not subject to reduction. Devlin J. rejected the Defendants' argument that interest should be abated due to delay, holding that interest continued to accrue regardless of the litigation.

In the result, the Court awarded RBC reduced solicitor-client costs and granted the contractual interest claimed. No award of costs was granted for the Costs Application.

TERRIGNO V CELMAINIS, 2026 ABKB 205

(MALIK J)

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

This decision concerned the determination of costs following a prior decision in which Justice Malik allowed the Defendants' Application to disqualify the Plaintiff's counsel and dismissed the Defendants' Application for consolidation.

The parties acknowledged mixed success. However, Malik J. held that the Defendants

achieved substantial success, as the disqualification Application was the primary issue. The Court rejected the Plaintiff's argument of partial success and confirmed that costs need not be apportioned on an issue-by-issue basis.

Applying Rules 10.31 and 10.33, Malik J. emphasized that costs are discretionary and should reflect proportionality and partial indemnity. The Court found that actual costs claimed by the Defendants to be excessive for a half-day hearing, and instead assessed costs under Schedule C, Column 2, with a reduction to account for duplication.

Justice Malik declined to increase costs based on alleged litigation misconduct, finding insufficient evidence that either party caused delay or unnecessary proceedings. However, Malik J. found that the Plaintiff's abusive and offensive correspondence to opposing counsel warranted sanction. Although the Plaintiff was self-represented, the Court noted his legal training and prior judicial criticism of similar conduct and awarded enhanced costs to denounce the behaviour.

The Court declined to apply a multiplier, finding that the enhanced costs award sufficiently addressed the Plaintiff's conduct. The Court also found that the Plaintiff's informal settlement offers did not meet the requirements of valid *Calderbank* offers and did not affect costs.

In the result, the Court awarded each Defendant Schedule C costs, disbursements, and enhanced costs.

RK V GSG, 2026 ABKB 14

(MAH J)

Rule 10.33 (Court Considerations in Making Costs Award)

Following the Applicant's unsuccessful application for the termination of case management of the Action, the Court was asked to determine costs. The Applicant conceded that they ought to pay costs, but disagreed with certain specifics of the Respondents' positions on costs.

The underlying application was initially intended to proceed by way of oral hearing, but due to scheduling mishaps, the hearing did not proceed as planned and the parties agreed to provide the Court with written submissions instead. As such, no oral argument was heard. The Applicant was ultimately unsuccessful in their application, and the Respondents submitted proposed Bills of Costs, each of which sought costs pursuant to Item 8(1) of Schedule C, for an application requiring written briefs.

The Applicant took the position that costs pursuant to Item 8(1)(a) would not be appropriate in the present case as that item contemplates both a written brief being submitted and oral arguments taking place. As no oral argument occurred, the Applicant submitted that such costs ought not to be granted.

Justice Mah noted the inherently discretionary nature of costs awards and considered the factors outlined in Rule 10.33. The Court agreed with the Applicants that as no oral argument took place, it would be inappropriate to grant full costs under Item 8(1)(a), but that the Respondents were still entitled to some degree of costs recovery. Ultimately, it was held that each of the Respondents would be entitled to costs equal to 50% of the amount prescribed under Item 8(1)(a).

ASTOLFI V ALBERTA LABOUR RELATIONS BOARD, 2026 ABKB 45

(KUBIK J)

Rule 10.33 (Court Considerations in Making Costs Award)

The Applicant sought Judicial Review of a decision by the Alberta Labour Relations Board (the "ALRB Decision"). The ALRB Decision was the second appeal decision rendered by the Alberta Labour Relations Board regarding an Occupational Health and Safety Officer's dismissal of a disciplinary action complaint by the Applicant. The Court dismissed the Application for Judicial Review.

One of the two Respondents, Stoney Creek Resorts Inc. ("Stoney Creek"), sought costs of the Judicial Review on an enhanced basis in the range of Column 3 to Column 5 of Schedule C.

After review of the factors set out in Rule 10.33, Kubik J. found that the Judicial Review was a non-complex Action and that there was no delay from misconduct. Although the underlying matter had been before the Alberta Labour Relations Board numerous times previously, the Court noted an enhanced costs award was not appropriate in the absence of delay or misconduct.

Justice Kubik ordered costs payable to Stoney Creek, under Column 1 of Schedule C, plus disbursements incurred.

ELLIOTT V PIERCE, 2026 ABKB 144

(LITTLE J)

Rule 10.33 (Court Considerations in Making Costs Award)

The Court ordered costs in favour of the Defendant following the division of matrimonial property at Trial. The parties disagreed on the appropriate costs and made submissions on their respective positions.

The Defendant sought significant costs calculated as 80% indemnity costs. In making their submission, they relied on various factors set out in in Rule 10.33, including the degree of success and complexity of the Action. The Plaintiff argued that the Action was not complex and the parties achieved mixed success.

Justice Little did not respond to each of the points raised by the Defendant but instead focused on the overarching principle of proportionality in determining costs. Although the Defendant did accurately set out the various considerations for determining the quantum of cots, employing these considerations without any adjustment for proportionality would amount in the Defendant receiving more than $20,000 more than they had paid for the litigation.

As such, the Court awarded costs in an amount that was roughly half of what the Defendant had initially sought.

ASB (RE), 2026 ABKB 186

(MARION J)

Rules 10.33 (Court Considerations in Making Costs Award)

A mother sought determination of costs following a contested guardianship and trusteeship Application under the *Adult Guardianship and Trusteeship Act*, SA 2008, c A-42 (the "*AGTA*").

Justice Marion found that, as the successful party in the Application, the mother was presumptively entitled to costs. The parties were unable to agree on appropriate costs, and Marion J. directed the parties to provide further submissions on the interaction between Section 115 of the *AGTA*, the A*dult Guardianship and Trusteeship Regulation*, Alta Reg 219/2009, and the Rules of Court.

The Court held that Section 115 of the *AGTA* does not constitute a complete code for costs and does not displace the Court's discretion under the Rules. Justice Marion highlighted that, where a guardianship Application resembles contested civil litigation, general costs principles under the Rules apply, supplemented by the statutory considerations in the *AGTA*.

Applying Rule 10.33, Marion J. considered the importance of the issues, including the interests of the represented adult and the constitutional question raised, as well as the conduct of the parties. Justice Marion found that the father's conduct, including taking inconsistent positions, failing to provide evidence, and failing to comply with prior Orders, warranted increased costs.

The Court declined to award solicitor-client costs due to insufficient evidence of actual legal accounts. Justice Marion determined that Schedule C provided appropriate indemnity, and awarded costs based on Column 1 with a 25% inflation adjustment and a multiplier of two, excluding the portion of the Hearing related to the constitutional issue.

Accordingly, Marion J. awarded costs to the mother, inclusive of GST and disbursements, payable forthwith, and directed that each party bear their own costs for the costs determination hearing.

REMINGTON DEVELOPMENT CORPORATION V ENMAX POWER CORPORATION, 2026 ABKB 114

(SIMARD J)

Rule 10.41 (Assessment Officer's Decision)

This decision arose from cross-appeals to the Court of King's Bench from a compensation determination of the Land and Property Rights Tribunal under the *Surface Rights Act*, RSA 2000 c S-24 (the "*SRA*").

The only issue before the Court was costs. Unlike typical civil proceedings, the Court held that costs were governed not by the Rules, but by the specific statutory scheme in Section 26 of the *SRA*, which displaces the ordinary dis-

cretionary, party-and-party costs framework. Under Section 26(9)(a), where the operator appeals, costs are payable by the operator on a solicitor-and-client basis, regardless of the result (absent special circumstances). Under Section 26(9)(b)(i), where the landowner is successful on its appeal, costs are likewise payable on that basis.

Because both provisions were engaged, the Court was required to award the landowner its solicitor-and-client costs, and the Rules-based analysis (e.g., substantial success or proportionality) did not apply. Justice Simard noted, however, that the Rules may still inform the process for quantifying costs. The Court declined to refer the matter to an Assessment Officer given the complexity of the case and instead retained carriage for determining quantum.

REDDY V SAROYA, 2026 ABCA 20

(HO, GROSSE AND HAWKES JJA)

Rules 10.50 (Costs Imposed on Lawyer) and 14.25 (Contents of Factums)

This was a costs decision arising from the ruling in 2025 ABCA 322, where the Court granted an appeal in part and directed that the parties provide further submissions on costs. The focus was on the fact that the Appellant's counsel had filed a factum drafted by a contractor using generative artificial intelligence ("AI") that cited non-existent authorities.

In this decision, the Court considered whether the conduct of the Appellant's lead counsel in filing the factum containing fabricated authorities constituted serious misconduct pursuant to Rule 10.50, and whether costs should be awarded against the counsel personally. Pursuant to Rule 10.50, a Court may order costs against a lawyer personally if there is serious misconduct, but such Orders are reserved for exceptional circumstances. A mere error or mistake is insufficient; there has to be a marked departure from the standard of reasonable conduct or gross neglect that undermines the administration of justice.

The Court determined that counsel's conduct went beyond mere inadvertence. Counsel failed to follow Rule 14.25(1)(h), requiring factums to include a table of authorities with hyperlinks to, or copies or extracts of, authorities. Had this Rule been complied with, counsel would have immediately identified the fabricated cases. Rather, the factum contained multiple fabricated cases which opposing counsel had to investigate and address. Despite the issue being raised with Appellant's counsel, he failed to promptly and adequately respond, and later filed an amended factum which corrected the errors, but also improperly expanded on arguments. This resulted in further procedural steps and additional submissions from the Respondent.

The Court referred to the Notice to the Public and Legal Profession dated October 6, 2023, titled *Ensuring the Integrity of Court Submissions When Using Large Language Models*, which served to reinforce the integrity and credibility of legal proceedings in light of the increasing prevalence of the use of AI. The Court found that if Appellant's counsel had complied with this Notice and exercised caution, none of the above actions would have been necessary. The Court concluded that Appellant's counsel's conduct wasted judicial and party resources, misled the Court, and constituted a marked departure from reasonable standards.

The Court awarded costs personally against Appellant's counsel pursuant to Rule 10.50. Costs were awarded based on Column 5 of Schedule C, tailored to reflect the additional steps taken by the Respondent due to counsel's misconduct, in the amount of $17,550, plus GST.

QUESTOR TECHNOLOGY INC V STAGG, 2026 ABKB 47

(JEFFREY J)

Rule 10.53 (Punishment for Civil Contempt of Court)

The Respondents were found guilty of civil contempt in a previous decision for knowingly providing false evidence, knowingly withholding evidence, and knowingly misleading the Applicant and the Court. This Application was brought further to the provisions of Rule 10.53, seeking punishment for that civil contempt.

Jeffrey J. considered the parties' positions and relevant case law. The Applicant sought to strike the Respondents' pleadings, a large fine equivalent to all wasted legal fees and, if the Court wished, incarceration. The Respondents rejected all of the Applicant's requests, acknowledging that a lesser fine of $5,000 per incident (of which there were 9) would be appropriate.

On the suggestion of incarceration, the Court found that the contempt, though egregious, was not driven at defying the Court's authority. Rather, it was to gain personal advantage through deception. On this basis, the Court held that the punishment should be monetary loss, not loss of liberty.

In considering whether to strike the Respondents' pleadings, Justice Jeffrey analyzed four factors. First, the Court was not persuaded that the corporate Respondent should bear the burden for the civil contempt of its owners or agents in the absence of the corporation itself being found in contempt. Second, the Court held that the aim of punishments for civil contempt is not remedying harm caused by the contempt. Third, Jeffrey J. held that striking out the pleadings of the corporate Respondent would likely have adverse impacts on third parties. Finally, the Court held that striking a defence is effectively denying the party's opportunity to answer in Court a claim against it, and that the courts do not lightly deny audience to any party unless the requisite degree of defiance is met. In light of these factors, the Court refused to strike out the pleadings of the Respondents.

On the issue of imposing a fine, Jeffrey J. found that the individual contemnors were not responsible for the same number of incidents of contempt, although they participated in each. Further, the conduct was egregious and therefore deserving of a significant penalty. Therefore, the Court found each contemnor jointly and severally liable for a fine of $150,000, plus the Applicant's solicitor-client costs.

STEPHEN DAVID SMITH RRSP PLAN NUMBER 143059 V WALKER, 2026 ABKB 171

(APPLICATIONS JUDGE WANKE)

Rules 11.3 (Agreement Between Parties) and 11.27 (Validating Service)

The Applicants applied to validate service of a Statement of Claim, an Amended Claim and Statutory Notices that had been taped to a child's toy on the property. The Applicants relied on Rule 11.3, which allows service in accordance with a contractual agreement between the parties.

The Applicants relied on a mortgage clause which allowed notice to be given by "placing the same" on the land if it was unoccupied. The Court found that the clause was a boilerplate notice provision and did not constitute an agreement for service of legal process within the meaning of Rule 11.3. Properly interpreted, Rule 11.3 requires clear language demonstrating that the parties agreed to a mode of service intended to provide actual notice. The clause in question was found to undermine the purpose of service and could not displace the requirement for meaningful notice.

Pursuant to Rule 11.27, a Court may validate service if it is satisfied the method used brought or was likely to bring the document to the person's attention, or where service was evaded. The Court refused to validate service because there was no evidence that the respondent received actual notice or was evading service. The Applicants' Affidavit acknowledged that the Respondent's whereabouts were unknown and did not set out sufficient efforts to locate him. The Court emphasized that validation of service is not a substitute for substitutional service, and that where proper service cannot be effected, an Application for substitutional service is the appropriate remedy.

In the result, the Court declined to validate service because it undermined the practical and substantive purpose of service, which is to provide actual notice.

BANK OF NOVA SCOTIA V NGOIE-KADILA, 2026 ABKB 7

(APPLICATIONS JUDGE WANKE)

Rules 11.5 (Service of Individuals) and 11.28 (Substitutional Service)

The Plaintiff sough a Substitutional Service Order by way of Desk Application. Applications Judge Wanke dismissed the Application on the basis of Rule 11.5, which requires commencement documents to be personally served.

The Court held that the Plaintiff failed to establish that personal service was impractical pursuant to Rule 11.28, noting that the Action was for close to a million dollars and no attempt at personal service was effected.

Applications Judge Wanke cautioned that deficient Desk Applications such as this are contributing to significant backlog and it is incumbent on counsel to ensure that Desk Applications have proper evidentiary support. The Court directed the Plaintiff to bear its own costs for the Application.

DOROSHENKO V VILLANUEVA, 2026 ABCA 7

(LAPARCO JA)

Rules 12.70 (Powers of Court on Appeal) and 14.88 (Cost Awards)

The Appellant appealed a decision of a Chambers Judge who was sitting on an appeal from a trial decision of the Court of Justice in respect of parenting (the "Trial Decision"). The Chambers Judge had rejected the Appellant's grounds of appeal but went on to identify three additional grounds for overturning the Trial Decision not raised by the Appellant. Based on these new grounds, the Chambers Judge set aside the Trial Decision and substituted a new shared parenting arrangement.

The Court of Appeal held that the Chambers Judge erred in enumerating additional grounds without considering the Court's jurisdiction to raise a new issue or giving the parties an opportunity to make submissions. In any event, the Court of Appeal held that the standard for intervention was not met. Further, the Court of Appeal stated that the Chambers Judge had incorrectly concluded that the Court had no authority to send the matter back to trial for a new hearing, despite this authority being set out in Rule 12.70(d).

The Court of Appeal reinstated the Trial Decision and awarded costs to the Appellant pursuant to Rule 14.88.

LALONDE V WADDELL, 2026 ABCA 87

(FETH JA)

Rules 13.5 (Variation of Time Periods), 14.5 (Appeals Only with Permission) and 14.8 (Filing a Notice of Appeal)

The Applicant and Respondent were married and parties to a divorce and family property division Action (the "Family Property Action"). However, the Respondent passed away intestate during the Family Property Action, and the Applicant was appointed as the Personal Representative of his Estate. The Applicant commenced proceedings to recover property transferred to their sons (the "Estate Action"). However, a pre-trial Judge, by their own initiative, made two procedural Orders in relation to the Actions: (1) an Order in the Family Property Action which set out procedural timelines and directed that the Family Property Action be resolved before the Estate Action (the "Family Property Order"), and (2) an Order in the Estate Action which adjourned the Trial sine die, permitting the Family Property Action to be resolved first.

The Applicant appealed the Family Property Order. However, she did not seek permission to appeal within the applicable time limit pursuant to Rule 14.8 because her counsel incorrectly believed permission to appeal was not required. The Applicant subsequently applied for permission to appeal and to extend the time to seek permission to appeal pursuant to Rules 13.5 and 14.5(1)(b). The Court acknowledged that determining whether permission to appeal should be granted is generally determined first prior to determining whether to

extend the time to apply for permission to appeal.

Feth J.A. emphasized that Rule 14.5(1)(b) has been interpreted to broadly include scheduling and procedural orders that set out steps and deadlines; as such, permission to appeal is required for such Orders. The Court considered and applied the three-part test in determining whether to grant permission to appeal pursuant to Rule 14.5(1)(b). The Court found that the Applicant demonstrated the Appeal raised an important question of law in relation to the *Wills and Succession Act,* SA 2010, c W-12.2 and rights of a surviving spouse. Feth J.A. also noted that the Appeal raised procedural fairness concerns because the Family Property Order was issued without notice to the parties during a pre-trial conference for a separate Action. Appeal Justice Feth determined that the Appeal had a reasonable chance of success and that the delay caused by the Appeal would not unduly hinder the progress of the Family Property Action or prejudice the parties. Permission to appeal was granted.

In considering whether to grant an extension of time to apply for permission to appeal, the Court applied the test and factors set out in *Cairns v Cairns*, 1931 CanLII (AB CA). Feth J.A. determined that the Applicant had a bona fide intention to appeal within the timeline, given her timely filing of the Notice of Appeal and that the delay was caused by mistake. There was no significant prejudice to the Respondents or the Estate, and that the Appeal was prima facie meritorious. The Court used its discretion to extend the time limit.

The Applications for permission to appeal and an extension of time to seek permission to appeal were granted.

FUEHRER V DESMARAIS, 2026 ABCA 43

(GROSSE JA)

Rule 14.5 (Appeals Only With Permission)

This decision addressed an Application for permission to appeal an interlocutory procedural Order in a matter under the *Adult Guardianship and Trusteeship Act* (“*AGTA*”). The Application was dismissed.

The Applicant was subject to a guardianship and trusteeship Order, with her father acting as guardian and trustee, and sought to appeal a Chambers Judge’s Order that merely adjourned her application to terminate the guardianship, and which provided procedural directions for service and the filing of responding materials.

Because the Order was purely procedural and interlocutory, the Applicant was required to obtain leave to appeal under Rule 14.5(1)(b). In assessing whether leave should be granted, the Court applied the established factors: (i) whether the appeal raises an issue of general importance, (ii) whether it has a reasonable prospect of success, and (iii) whether permitting the interlocutory appeal would hinder the progress of the proceeding or cause undue prejudice without proportionate benefit. Grosse J.A. noted that Section 114 of the *AGTA* permits appeals to the Court of Appeal only on questions of law.

Grosse J.A. denied leave to appeal. The Applicant identified no question of law arising from the adjournment Order and did not demonstrate any issue of general importance or a basis to challenge the Chambers Judge’s procedural decision. Moreover, the underlying termination application had already been

heard on the merits in the Court of King's Bench, where the guardianship and trusteeship Order was continued. As a result, the proposed Appeal of the earlier adjournment Order become moot.

CANACOL ENERGY LTD (RE), 2026 ABCA 57

(KIRKER JA)

Rule 14.5 (Appeals Only With Permission)

This decision concerned an Application for leave to appeal an Order approving debtor-in-possession ("DIP") financing and a priming charge in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("*CCAA*"). The *CCAA* supervising Judge had granted a second amended and restated initial Order approving DIP financing that ranked ahead of the security of the Applicant, a senior secured lender. The lender sought leave to appeal, alleging procedural unfairness in the refusal to adjourn the DIP Application and error in the Judge's assessment of "material prejudice" under Section 11.2(4) of the *CCAA*.

Because appeals in *CCAA* proceedings require leave, the Court applied the leave test reflected in Rule 14.5(1)(f) and Section 13 of the *CCAA*. The governing framework required the Court to consider whether the proposed appeal raised issues significant to insolvency practice, whether the issues were significant to the proceeding itself, whether the appeal was *prima facie* meritorious, and whether allowing the appeal would unduly hinder the progress of the restructuring. Kirker J.A. also emphasized that appellate intervention in *CCAA* proceedings should be exercised sparingly because supervising Judges must exercise broad discretion to balance competing interests in a dynamic restructuring process.

Applying these principles, the Court held that leave should be refused. Although the issues were important to the Applicant lender, they were largely fact-specific and did not raise questions of broader significance to insolvency practice. The proposed grounds of appeal also lacked sufficient merit given the deferential standard of review applicable to discretionary *CCAA* decisions. The supervising Judge had considered the statutory factors in Section 11.2(4) and found that the debtor faced an imminent liquidity crisis and that the debtor's asset base was sufficient to satisfy the priming charge and the Applicant's secured debt. Kirker J.A. held that challenging those findings would require demonstrating a palpable and overriding error, which the Applicant had not established.

The Court further held that allowing the Appeal would risk undermining the restructuring process. The DIP financing had already been approved and partially advanced, and the restructuring process was proceeding on an expedited timeline. An appeal could introduce uncertainty, potentially trigger defaults under the DIP facility, and disrupt the restructuring process. Given the central objective of the *CCAA* to facilitate timely restructuring through flexible judicial supervision, the risk of delay and disruption weighed strongly against granting leave.

Balancing the leave factors, the Court concluded that the Applicant had not met the threshold for leave to appeal. The Application for leave was therefore dismissed.

AKBAR V NIELSEN, 2026 ABCA 95

(FAGNAN JA)

Rules 14.5 (Appeals Only with Permission), 14.54 (Failure to Meet Deadlines), and 14.65 (Restoring Appeals)

The Applicant appealed a Costs Award resulting from revocation of a Restraining Order. That Appeal was struck pursuant to Rule 14.54, as they failed to obtain permission to appeal within the applicable timelines. The Applicant then brought Applications seeking to restore the Appeal and for permission to appeal.

Justice Fagnan noted that, in considering an Application to restore an appeal under Rule 14.65, the Court must consider whether it would be in the interests of justice to restore the appeal, and whether there is merit to the appeal itself.

In addressing the question of whether it would be in the interests of justice to restore the Appeal, the Applicant submitted that their failure to properly seek permission was due to a lack of legal experience and a disability. While these points were not disputed, the issue of merit was still live.

The Court noted that Judges have wide discretion in granting costs awards, and while the Applicant believed the Court had acted unreasonably in awarding costs, they had not established that the Appeal would have any practical utility or address any issues of importance.

The Application was dismissed.

TUPECHKA V TUPECHKA, 2026 ABCA 103

(FAGNAN JA)

Rule 14.5 (Appeals Only with Permission)

The Applicant sought permission to appeal the refusal to have their matter heard as an urgent Application. The Applicant twice sought to have its contempt application heard on an urgent basis, and both requests were refused.

Upon the first request for the matter to be heard urgently, the Court advised the Applicant that the appropriate forum would be to follow the Court's newly implemented "Family Focused Protocol". The Applicant then made a second request for the matter to be heard urgently, and was once again denied. The Respondent also noted that they intended to apply for relocation and primary parenting. The Applicant then sought permission to appeal the Court's refusal to hear the matter urgently on the basis that their matter involved parenting issues that could not be reasonably delayed.

Fagnan J.A. noted that in considering whether to grant an application for permission to appeal, the Court must consider whether there is a reasonable chance of success in the appeal. In the present case, the Applicant would have to show that the Court had erred in its assess-

ment that an Application for contempt and an anticipated Cross-Application for relocation was not appropriate for a 20-minute hearing in Chambers. Appeal Justice Fagnan was of the view that there was no possibility that the Appeal could be successful.

Further, the Court noted there would be no benefit to be gained by an Appeal in this case in terms of advancing the matter. Proceeding by way of Appeal rather than through the Family Focused Protocol would only have the effect of further delaying the matter. All factors militated against the granting of permission. The Application for permission to appeal was dismissed.

LATRACE V WARKENTIN BUILDING MOVERS VIRDEN INC (WARKENTIN BUILDING MOVERS), 2026 ABCA 25

(SHANER JA)

Rules 14.23 (Filing Factums – Standard Appeals), 14.26 (Format of Factums), 14.27 (Filing Extracts of Key Evidence), 14.38 (Court of Appeal Panels), 14.45 (Application to Admit New Evidence) and 14.73 (Procedural Powers)

The Applicants applied to the Court to rescind the direction of a Case Management Officer ("CMO").

First, the Applicants sought to file a 60-page factum, significantly exceeding the 30-page limit pursuant to Rule 14.26(2)(a). Under Rule 14.73, a single Appeal Judge has the discretion to direct a deviation from the Rules with respect to the form or filing of documents, including the length of the factum and filing deadlines. Shaner J.A. confirmed the CMO's decision and held that the Applicants' factum could be no more than 35 pages. In doing so, the Court noted that extensions to factum page limits should be granted sparingly and only in exceptional circumstances. Complexity, a lengthy trial, a large record, numerous grounds of appeal, or lengthy reasons under appeal do not, on their own, justify an extension. The Court emphasized that factums must be concise and focused, and that an appeal is not an opportunity to re-argue the entire case.

The Applicants further requested permission to include their Trial briefs in their Appeal materials. The Court denied the request, citing Rule 14.27(1)(c), which prohibits the inclusion of trial briefs in a party's extracts of key evidence, as an appeal is not an opportunity to repeat the trial.

The Applicant also sought permission to file an Affidavit respecting costs at Trial. The Court held that, because costs had not been argued before the Trial Judge, the Affidavit was considered new evidence. Pursuant to Rule 14.45, a party seeking to adduce new evidence on appeal must bring an application before filing its factum and before the deadline for doing so. Pursuant to Rule 14.38(2)(b), such an application must be heard by a full Appeal Panel, not by a single Judge. Therefore, Shaner J.A. dismissed this request, while noting that the Applicants could still apply to the Appeal Panel to admit the Affidavit as new evidence.

Lastly, Shaner J.A., on consent, granted the Applicants' request to extend the deadline to file their factum.

SCHEFFELMAIER V SCHEFFELMAIER, 2026 ABCA 80

(FETH JA)

Rules 14.24 (Filing Factums – Fast Track Appeals), 14.38 (Court of Appeal Panels), 14.47 (Application to Restore an Appeal) and 14.90 (Sanctions)

This was an Application to restore a fast-track Appeal pursuant to Rule 14.47 and for permission to adduce fresh evidence at the hearing of the Appeal. The Appeal had been struck after the Applicant missed the deadline to file and serve her factum pursuant to Rule 14.24(1)(a). The Court confirmed that counsel for the Applicant was mistaken in his understanding that the filing of an amended Appeal Record resets the 20-day deadline in Rule 14.24(1)(a).

Feth J.A. applied the five-factor test for restoring an appeal under Rule 14.47: (a) arguable merit of the appeal; (b) the reason for the delay or defect that caused the appeal to be struck; (c) reasonable promptness in trying to cure the defect and restore the appeal; (d) the applicant's continuing intention to pursue the appeal; and (e) prejudice to the respondent. Citing the applicable authorities, the Court stated that none of the factors is determinative and the overarching question is whether restoring the Appeal is in the interests of justice.

The Court found the test was met. The Appeal raised arguable issues. Counsel's mistaken understanding of the deadline for the factum was a "mere slip or inadvertence" that did not weigh significantly against the Application. The Applicant acted with reasonable promptness in bringing the Application to restore the Appeal.

While it took 45 days to bring the Application, the Court found this was not unreasonable when viewed in context. Prejudice to the Respondent was minimal.

Appeal Justice Feth concluded that restoring the Appeal was also in the overall interests of justice. The Court rejected the Respondent's argument that the overall delay in prosecuting the Appeal and several procedural irregularities warranted dismissal of the Application.

The Court ordered the Appeal restored.

With respect to fresh evidence, the Court confirmed that such Applications were generally heard by a Panel under Rule 14.38(2). However, Feth J.A. acknowledged the long-standing practice of adjourning such Applications to be heard by the Panel hearing the merits of the Appeal. Since the Application to adduce fresh evidence involved consideration of the merits of the Appeal, it was efficient to hear both together.

The Court held that under Rule 14.90(a)(ii), the Applicant was not entitled to costs since her Affidavit and Memorandum were noncompliant. Further, her overall litigation conduct raised concerns. Instead, the Court ordered that the Respondent should have costs of the Application at $1,750.

CUBBON BUILDING CENTRE LTD V VRBANEK, 2026 ABCA 101

(FAGNAN JA)

Rules 14.24 (Filing Factums – Fast Track Appeals) and 14.65 (Restoring Appeals)

The Applicants applied to restore their Appeal, which had been struck for failing to file their factum within the prescribed timeframe for fast-track appeals under Rule 14.24(1)(a).

Fagnan J.A. confirmed the Court has discretion to restore an appeal on application pursuant to Rule 14.65. The Court must consider whether: (1) there is arguable merit to the appeal, (2) an explanation for the defect or delay, (3) reasonable promptness to curing the defect and have the appeal restored, (4) a timely intention to proceed with the appeal, and (5) lack of prejudice to the respondents. The Court noted that none of these factors are determinative and the Court must ask whether issuing a restoration Order is in the interests of justice.

Fagnan J.A. found that the Applicants met the requirements for restoration of the Appeal. The Applicants had filed all other Appeal materials within the required timelines and demonstrated an intention to proceed. Their reason for not filing the factum in time was because of an inadvertent mistake in thinking that the standard-appeal deadlines applied; however, the Court noted that counsel's mere slip or inadvertence does not generally prevent restoration. Additionally, the Applicants took prompt action to restore the Appeal, even attaching their proposed factum to the Application.

The Court rejected the Respondent's argument that the Appeal had no arguable merit, finding that the Appeal met the applicable low threshold. Fagnan J.A. noted that the Respondents took no position regarding prejudice and emphasized that the Respondents had not suffered any prejudice because they had not been required to take any additional steps. Further, the Applicants' writ of enforcement and certificates of *lis pendens* had already been discharged.

Appeal Justice Fagnan directed that the proposed factum be filed within two days of the decision and that all other deadlines for the Appeal would be determined by the Rules and directions from the Case Management Officer. The Application was granted.

SEJNOWSKI V POLISH HALL, 2026 ABCA 13

(FEEHAN JA)

Rule 14.36 (Case Management Officers)

The Applicant commenced an Action against the Polish Hall and Polish Canadian Society, alleging shortfalls related to governance and financial reporting requirements. The Action was stayed pursuant to the *Arbitration Act*, because the joint venture agreement contained a mandatory arbitration provision. The parties entered into an arbitration agreement and proceeded with arbitration. The Applicant sought leave to appeal the arbitration award to

the Court of King's Bench pursuant to Section 44 of the *Arbitration Act*, which requires a party to seek permission of the Court to appeal an arbitration award on a question of law. The Chambers Judge declined to grant permission to appeal on any of the proposed grounds.

The Applicant submitted a Notice of Appeal to the Court of Appeal, where a Case Management Officer advised the "Court of Appeal has no jurisdiction to hear this appeal, and your only option is to discontinue it." The Applicant instead applied to the Court of Appeal, requesting recission of the directions of a Case Management Officer instructing him to discontinue his Appeal.

The Court concluded that the Application was out of time, was brought without persuasive explanation for the delay, and was not accompanied by an application to extend time. As a result, the Court lacked authority or jurisdiction to hear the Application, and the determination of the Case Management Officer remained.

The Court also went on to determine the Application on its merits. The Court acknowledged that although Section 48 of the *Arbitration Act* contemplates a further appeal of a decision of a Court of King's Bench Judge made pursuant to Section 44, previous authority had consistently held that the denial of permission to appeal an arbitration award pursuant to Section 44(2) of the *Arbitration Act* is final, and is not a decision that can be appealed pursuant to Section 48.

The Court further determined that the Case Management Officer did not exceed the jurisdiction bestowed on her by Section 14 of the *Court of Appeal Act* and Rule 14.36(1). She was correct to inform the Applicant of caselaw that was fatal to his Appeal. In addition, the Court found that the Case Management Officer did not breach procedural fairness in her communication to Applicant. Rather, she provided a fair and reasonable option to discontinue the Appeal without incurring additional expense.

ALBERTA WILDERNESS ASSOCIATION V ALBERTA ENERGY REGULATOR, 2026 ABCA 82

(ANTONIO JA)

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

The Applicant applied for leave to intervene in an Appeal concerning an administrative decision for the approval of a mining operation. The Applicant was a First Nation and asserted that leave to intervene ought to be granted on the basis of its inherent, Aboriginal, and Treaty rights.

The Applicant submitted that the proposed project was located on lands that were on or near lands that the Applicant had traditionally used for cultural purposes, and that the proposed project would have an impact on it. The Respondent mining company was opposed to the Applicant being granted intervenor status and argued that allowing the Application would improperly expand the issues in dispute.

The Court considered Rule 14.58 and the applicable case law on the granting of intervenor status to First Nation Applicants, and noted that the Applicant could bring unique expertise to the analysis before the Court. While Antonio J.A. recognized that granting the Application could have the effect of expanding the issues in dispute, the risk of expansion could be mitigated through the imposition of conditions on the Applicant's involvement.

The Court granted the Applicant permission to intervene provided that its submissions be narrowed to specific issues, that thy would not adduce evidence or supplement the record, and that their involvement would be limited to written submissions rather than oral. However, the Court noted that permission to give oral submissions could be granted at a later date.

HDO V MDF, 2026 ABCA 45

(FRIESEN JA)

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

This was an Application to restore an Appeal and extend the time to file the Appeal Record pursuant to Rules 14.47 and 14.65. The Appeal in question was from a Chambers Order that found the Appellant mother had breached a parenting Order by moving the children to Ontario and required her to return the children to Alberta. As a result of the Appellant mother's breach, the Respondent father had not seen his children since 2024.

Friesen J.A. explained that the Court has discretion to restore an appeal. In exercising that discretion, the following factors are considered: arguable merit; explanation for the defect or delay; reasonable promptness in moving to cure the defect and have the appeal restored; timely intention to proceed with the appeal; and prejudice to the Respondent (including length of delay).

The Court of Appeal granted the Application and extended the Appellant's time to file the Appeal Record. Friesen J.A. accepted the Appellant's evidence that she was experiencing significant health challenges that may have contributed to confusion over the litigation deadlines and interfered with her ability to meet those deadlines. Further, the Court of Appeal observed that the Appellant had acted promptly to bring the Application resulting in minimal delay and prejudice.

However, Friesen J.A. cautioned the Appellant that the Court would be unlikely to exercise its discretion similarly in the future given the high stakes nature of the Appeal and ongoing prejudice to the Respondent of not having seen the children since 2024.

GATT V GATT, 2026 ABCA 31

(SHANER JA)

Rule 14.48 (Stay Pending Appeal)

Applying under Rule 14.48(b), the Applicant sought to Stay an Order requiring him to repay $250,000 withdrawn from a home equity line of credit pending Appeal.

Shaner J.A. confirmed that Rule 14.48 engaged the well established tripartite test for a stay pending appeal, which asked whether: (a) there was a serious issue on appeal; (b) there will be

irreparable harm caused if the stay is denied; and (c) the balance of convenience favoured the stay.

Although the serious issue threshold was conceded and met, the Application failed on the irreparable harm test, which the Court held was dispositive. Shaner J.A. emphasized that being required to pay money, without more, did not constitute irreparable harm, and that Courts are generally reluctant to stay monetary Orders.

The Applicant's claims that repayment would collapse his business, prevent payment of spousal support, trigger foreclosure, or lead to bankruptcy were found to be speculative and inadequately supported by evidence. Notably, there was insufficient disclosure about the company's financial condition, the use of the funds withdrawn, and the Applicant's other available assets. As a result, the Applicant failed to meet the Rule 14.48 requirement of demonstrating harm that was non-compensable or unavoidable.

The Stay Application under Rule 14.48 was therefore dismissed by the Court.

TERRIGNO V DEAR, 2026 ABCA 72

(HO JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant, Mr. Terrigno, sought a Stay pending Appeal pursuant to Rule 14.48(b).

In a separate but related Action, Mr. Terrigno filed a Statement of Claim alleging defamation (the "Defamation Action"). The present Action was against the Defendant's lawyer in the Defamation Action, alleging that the Defendant's lawyer, Mr. Dear, committed the tort of intrusion upon seclusion in the Defamation Action (the "Records Action").

Applications were filed in both the Defamation Action and the Records Action. Mr. Terrigno appealed one of the resulting endorsements in the Defamation Action, which directed that the Defendant could set their Summary Dismissal Application down for a hearing date (the "Stay Application").

The Court reviewed the factors for a stay: (1) whether there is a serious question to be determined; (2) whether the applicant will suffer irreparable harm if the stay is not granted; and (3) whether the balance of convenience favours granting the stay.

In analyzing the first factor, Ho J.A. found that the threshold was low and was met in this case by demonstrating that the Applicant was not frivolous or vexatious. The Court also found that the second and third factors were met because there was a sufficient probability that any benefit of Mr. Terrigno's Appeal will be lost if a stay was not granted.

The Court considered prejudice to Mr. Dear but found that it could be mitigated by the Appeal proceeding efficiently. Thus, the Stay Application was granted until the Appeal could be heard.

CHOW V RICHERT, 2026 ABCA 79

(FETH JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant father applied for a Stay of a parenting mobility Order that permitted the Respondent mother to relocate the parties' children from Cold Lake, Alberta to Edmonton, Alberta (the "Mobility Order").

Justice Feth adopted the tripartite-test for stay Applications set out in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311. Feth J.A. also confirmed that, in matters involving children, the application of this test is guided by the best interests of the children, and that parenting Orders are generally afforded a high degree of deference absent an error in principle.

Although the Applicant established a serious issue for determination, the Court found that the Applicant failed to satisfy the second element of the test, as the evidence did not establish irreparable harm if the Stay was denied. Justice Feth added that, even if irreparable harm had been established, the balance of convenience favoured rejecting the Stay, given that the parenting arrangement predating the Mobility Order was no longer viable.

The Court dismissed the Application and awarded costs to the Respondent.

AKINNAWONU V COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA, 2026 ABCA 81

(ANTONIO JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant psychiatrist applied for a Stay of Enforcement of a decision made by an officer of the Respondent pending the determination of his Appeal from the dismissal of his Application for Judicial Review.

The Applicant relied on Rule 14.48, which allows Applications to stay proceedings or the enforcement of a decision pending appeal. However, the Court clarified that Rule 14.48 is intended to address stays of decisions that are themselves under appeal before the Court of Appeal. It does not automatically grant jurisdiction to stay underlying administrative decisions that are not the direct subject of the appeal.

The Court found that the Applicant was effectively seeking to stay the same referral decision he had previously challenged and was repeating arguments already denied at multiple levels. Applying the three-part *RJR-Macdonald* test for a stay, Antonio J.A. concluded that a stay was not warranted. The Court emphasized that judicial intervention in ongoing administrative proceedings is generally discouraged, as it can add significant costs, cause delays, and waste judicial resources. Furthermore, the Court highlighted the public interest in allowing professional regulatory bodies to perform their legislated disciplinary functions without being disrupted by interlocutory challenges.

In the result, the Application was denied and the Respondent was awarded double costs.

FERCHOFF V CONDOMINIUM CORPORATION NO 1412788, 2026 ABCA 8

(CRIGHTON, KIRKER AND DE WIT JJA)

Rule 14.88 (Costs of Appeals)

This decision involved the costs of an unsuccessful appeal. While the Appellants did not dispute that the Respondents were entitled to costs under Rule 14.88, the parties were unable to agree on the appropriate scale of costs.

The Respondents argued for costs under Column 3 of Schedule C because the Appellants had sought damages of $350,000 in their Statement of Claim. The Appellants submitted that the Respondents were entitled to costs under Column 1 of Schedule C because the Application leading to the Order under appeal only sought declaratory and injunctive relief, not damages. The amount of money at issue in the Application was approximately $75,000.

The Court held that the appropriate scale for costs was Column 1 of Schedule C, on the basis that the claim for damages was not the subject of the appeal.

QUESTOR TECHNOLOGY INC V STAGG, 2026 ABCA 102

(STREKAF, FAGNAN AND SHANER JJA)

Rule 14.88 (Costs Awards)

The individual Defendants were declared to be in civil contempt, and they appealed that decision (the "First Appeal"). The Plaintiff also appealed the Court's decision not to find the corporate Defendant in contempt (the "Second Appeal"). Both Appeals were dismissed.

The Defendants argued that no costs should be awarded on the Appeals because competing Costs Awards would result in an offset. Alternatively, the Defendants argued that both Respondents in the First Appeal and the Second Appeal are entitled to costs pursuant to Rule 14.88(3).

The Plaintiff argued that they were entitled to solicitor and client costs with respect to both Appeals.

The Court held that it would not be appropriate to offset the Costs Awards because the corporate Defendant was only a party to one Appeal. The Court considered the circumstances leading up to the contempt finding and Rule 14.88 and awarded the Plaintiff its reasonable solicitor and client costs for the First Appeal. The Court held that it is generally reasonable to make the contemnor pay costs of contempt proceedings.

The Court also held that the corporate Defendant was entitled to its taxable costs under Column 5 of Schedule C of the Rules.

LES V NBM, 2026 ABCA 46

(ANTONIO JA)

Rule 14.90 (Sanctions)

The Applicant sought a Stay of an Order varying an interim parenting schedule pending the hearing of its appeal (the "Order") or, in the alternative, a Stay of the part of the Order that altered the parenting schedule between the parties.

Antonio J.A. noted that, when a child is involved, the test for a stay pending appeal changes such that the key consideration becomes whether the child will suffer irreparable harm.

Applying the test to the limited evidentiary record, Appeal Justice Antonio granted the Application in part. Specifically, the Court allowed the portion of the Order that provided an initial increase in the Respondent's parenting time to take effect, but stayed the other part of the Order that would have resulted in a further increase to the Respondent's parenting time.

The Court also declined to strike the Respondent's Memorandum of Argument or to impose a costs penalty pursuant to Rule 14.90, accepting the Respondent's explanation for the non-compliant formatting of the Memorandum of Argument.