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

2.2	**DISTINCT REAL ESTATE USA 2 V WAZONEK,** 2025 ABKB 275
2.10	**ODO V JOHN DOE #1,** 2025 ABKB 240
	TWINN V ALBERTA (PUBLIC TRUSTEE), 2025 ABKB 276
2.11	**LLOYD ET AL V DE WALLE ET AL,** 2025 ABKB 290
2.15	**LLOYD ET AL V DE WALLE ET AL,** 2025 ABKB 290
2.21	**LLOYD ET AL V DE WALLE ET AL,** 2025 ABKB 290
2.23	**ABOU SHAABAN V LEE,** 2025 ABKB 371
	DIGIUSEPPE INTERIOR DESIGN LTD V ST ALBERT (CITY), 2025 ABCA 170
2.24	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
2.33	**OUELLETTE V DER,** 2025 ABCA 140
3.15	**SHODUNKE V ALBERTA,** 2025 ABKB 250
	DOUGLAS V NE2 CANADA INC, 2025 ABKB 321
	ENVIRONMENTAL DEFENCE CANADA INC V ALBERTA, 2025 ABCA 132
	YASCHUK V EMERSON ELECTRIC CANADA LTD, 2025 ABCA 211
3.26	**26TH AVENUE RIVER HOLDING LIMITED PARTNERSHIP V WINSPIA WINDOWS (CANADA) INC,** 2025 ABKB 243
	OSADCHUK V KIDD, 2025 ABCA 125
3.27	**26TH AVENUE RIVER HOLDING LIMITED PARTNERSHIP V WINSPIA WINDOWS (CANADA) INC,** 2025 ABKB 243
	OSADCHUK V KIDD, 2025 ABCA 125
3.61	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
3.62	**ARNSTON V ARNSTON,** 2025 ABKB 355
3.65	**ARNSTON V ARNSTON,** 2025 ABKB 355
3.68	**SHODUNKE V ALBERTA,** 2025 ABKB 250
	NAUBERT V TROTTER, 2025 ABKB 269
	DISTINCT REAL ESTATE USA 2 V WAZONEK, 2025 ABKB 275
	COOLIDGE V ROCKY VIEW COUNTY, 2025 ABKB 286

3.68 (cont)	**JH DRILLING INC V BARSI ENTERPRISES LTD,** 2025 ABKB 288
	SUNRIDGE MALL HOLDINGS INC V CALGARY (CITY), 2025 ABKB 289
	DOUGLAS V NE2 CANADA INC, 2025 ABKB 321
	REAGAN V BIRNIE-BROWNE, 2025 ABKB 380
	BAINS V ADAM, 2025 ABCA 167
	NORTHBACK HOLDINGS CORPORATION V ALBERTA ENERGY REGULATOR, 2025 ABCA 186
3.72	**NAUBERT V TROTTER,** 2025 ABKB 269
4.1	**PAUL V STEPHENSON (ESTATE),** 2025 ABKB 369
4.2	**ARNSTON V ARNSTON,** 2025 ABKB 355
4.10	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2025 ABKB 235
	WANG ET AL V ALBERTA HEALTH SERVICES, 2025 ABKB 328
	1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD, 2025 ABKB 351
	PAUL V STEPHENSON (ESTATE), 2025 ABKB 369
	OWEN V FLANK, 2025 ABCA 199
4.13	**PAUL V STEPHENSON (ESTATE),** 2025 ABKB 369
4.14	**PAUL V STEPHENSON (ESTATE),** 2025 ABKB 369
	REAGAN V BIRNIE-BROWNE, 2025 ABKB 380
	HABIB V HABIB, 2025 ABCA 216
4.15	**PAUL V STEPHENSON (ESTATE),** 2025 ABKB 369
4.16	**TAYLOR V HENDRIX,** 2025 ABKB 261
4.22	**ABOU SHAABAN V LEE,** 2025 ABKB 371
	LAW SOCIETY OF ALBERTA V BEAVER, 2025 ABCA 136
	OUELLETTE V DER, 2025 ABCA 140
	LAVOIE V LUKIW, 2025 ABCA 208
	BANOVICH V BANOVIC, 2025 ABCA 231
4.24	**RUMANCIK V HARDY,** 2025 ABKB 277
	LAURENCE V ROSS, 2025 ABKB 292

4.25	**RUMANCIK V HARDY,** 2025 ABKB 277
4.27	**RUMANCIK V HARDY,** 2025 ABKB 277
4.29	**RUMANCIK V HARDY,** 2025 ABKB 277
	LAURENCE V ROSS, 2025 ABKB 292
4.31	**PENTAGON STRUCTURES LTD V FIELD,** 2025 ABKB 218
	ARNSTON V ARNSTON, 2025 ABKB 355
	WESTJET V ELS MARKETING INC, 2025 ABCA 115
4.33	**ARNSTON V ARNSTON,** 2025 ABKB 355
	BARON REAL ESTATE INVESTMENTS LTD V TRI-ARROW INDUSTRIAL RECOVERY INC, 2025 ABKB 367
	ROUND HILL CONSULTING LTD V PARKVIEW CONSULTING, 2025 ABCA 195
	DROOG V HAMILTON, 2025 ABCA 228
4.36	**RUMANCIK V HARDY,** 2025 ABKB 277
5.1	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 220
5.2	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 220
	MO'ALLIM V GALLANT, 2025 ABKB 225
	HASIBULLAH V POTTER, 2025 ABCA 179
5.3	**HASIBULLAH V POTTER,** 2025 ABCA 179
5.5	**HASIBULLAH V POTTER,** 2025 ABCA 179
5.6	**HASIBULLAH V POTTER,** 2025 ABCA 179
5.11	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
	CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 360
5.13	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 360
5.17	**WIDNEY ESTATE (RE),** 2025 ABKB 311
	HASIBULLAH V POTTER, 2025 ABCA 179
5.18	**CNOOC PETROLEUM NORTH AMERICA ULC v ITP SA,** 2025 ABKB 265

5.18 (cont)	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 360
5.25	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2025 ABKB 220
5.33	**GIESBRECHT V PRPICK,** 2025 ABCA 222
6.3	**ONE PROPERTIES HOLDINGS CORP V TURTLE BAY INVESTMENTS LTD,** 2025 ABKB 313
	WALSH V WALSH, 2025 ABCA 205
6.8	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2025 ABKB 235
	WIDNEY ESTATE (RE), 2025 ABKB 311
	BAINS V ADAM, 2025 ABCA 167
	MENTZELOPOULOS V ALBERTA (MINISTER OF HEALTH), 2025 ABCA 200
6.14	**WILLIAMSON V 715057 ALBERTA LTD ET AL,** 2025 ABKB 257
	1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD, 2025 ABKB 351
	BARON REAL ESTATE INVESTMENTS LTD V TRI-ARROW INDUSTRIAL RECOVERY INC, 2025 ABKB 367
6.20	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2025 ABKB 235
6.35	**ODO V JOHN DOE #1,** 2025 ABKB 240
	ODO V JOHN DOE #1, 2025 ABKB 368
6.37	**MACSWEYN V HODGES,** 2025 ABKB 273
6.38	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2025 ABKB 235
7.3	**NEBOZUK V NORTHBRIDGE GENERAL INSURANCE COMPANY,** 2025 ABKB 197
	COOLIDGE V ROCKY VIEW COUNTY, 2025 ABKB 286
	JH DRILLING INC V BARSI ENTERPRISES LTD, 2025 ABKB 288
	SUNRIDGE MALL HOLDINGS INC V CALGARY (CITY), 2025 ABKB 289

7.3 (cont)	**PETTIGREW V LLEWELLYN,** 2025 ABKB 291
	1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD, 2025 ABKB 351
	CALGARY CO-OPERATIVE ASSOCIATION LIMITED V FEDERATED CO-OPERATIVES LIMITED, 2025 ABCA 142
	DOUGLAS HOMES LTD V RAINBOW FALLS DEVELOPMENT INC, 2025 ABCA 185
	NORTHBACK HOLDINGS CORPORATION V ALBERTA ENERGY REGULATOR, 2025 ABCA 186
8.7	**1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD,** 2025 ABKB 351
8.20	**AIRUEHIA V WORTON,** 2025 ABCA 190
8.25	**1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD,** 2025 ABKB 351
8.27	**1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD,** 2025 ABKB 351
8.28	**1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD,** 2025 ABKB 351
8.29	**1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD,** 2025 ABKB 351
9.4	**ZORBAWON V SALES,** 2025 ABCA 203
9.21	**CARBONE V WHIDDEN,** 2025 ABKB 340
9.25	**THE TORONTO DOMINION BANK V MANAH,** 2025 ABCA 201
10.2	**SALAME V CHIMAYT,** 2025 ABKB 205
	SOLIS V SFAKIANAKIS, 2025 ABKB 211
10.7	**SOLIS V SFAKIANAKIS,** 2025 ABKB 211
	MIKISEW CREE FIRST NATION V RATH & COMPANY, 2025 ABCA 127
10.8	**SOLIS V SFAKIANAKIS,** 2025 ABKB 211
10.10	**OSADCHUK V KIDD,** 2025 ABCA 125
10.14	**MIKISEW CREE FIRST NATION V RATH & COMPANY,** 2025 ABCA 127

10.18	**MIKISEW CREE FIRST NATION V RATH & COMPANY,** 2025 ABCA 127
10.29	**KOLLIAS V KOLLIAS,** 2025 ABKB 198
	SALAME V CHIMAYT, 2025 ABKB 205
	ODO V JOHN DOE #1, 2025 ABKB 240
	BANOVICH V BANOVIC, 2025 ABKB 280
	LAURENCE V ROSS, 2025 ABKB 292
	SSS V MDW, 2025 ABKB 297
	UHUEGBULEM V BALBI, 2025 ABKB 318
	MCGREGOR V WAWANESA MUTUAL INSURANCE COMPANY, 2025 ABKB 352
	MACDONALD V MACDONALD, 2025 ABKB 354
10.30	**MCGREGOR V WAWANESA MUTUAL INSURANCE COMPANY,** 2025 ABKB 352
10.31	**KOLLIAS V KOLLIAS,** 2025 ABKB 198
	SALAME V CHIMAYT, 2025 ABKB 205
	ODO V JOHN DOE #1, 2025 ABKB 240
	DOROSHENKO V VILLANUEVA, 2025 ABKB 245
	BANOVICH V BANOVIC, 2025 ABKB 280
	LAURENCE V ROSS, 2025 ABKB 292
	SSS V MDW, 2025 ABKB 297
	UHUEGBULEM V BALBI, 2025 ABKB 318
	WANG ET AL V ALBERTA HEALTH SERVICES, 2025 ABKB 328
	MCGREGOR V WAWANESA MUTUAL INSURANCE COMPANY, 2025 ABKB 352
	MACDONALD V MACDONALD, 2025 ABKB 354
	LYSZ V LYSZ, 2025 ABKB 361
	CHO V HARMONY CERAMIC DENTAL LABORATORY LTD, 2025 ABKB 365
10.33	**KOLLIAS V KOLLIAS,** 2025 ABKB 198
	SALAME V CHIMAYT, 2025 ABKB 205

10.33 (cont)	**ODO V JOHN DOE #1,** 2025 ABKB 240
	BANOVICH V BANOVIC, 2025 ABKB 280
	LAURENCE V ROSS, 2025 ABKB 292
	SSS V MDW, 2025 ABKB 297
	LAPPENBUSH V ROYAL, 2025 ABKB 312
	UHUEGBULEM V BALBI, 2025 ABKB 318
	BENNETT V NE2 CANADA INC, 2025 ABKB 327
	WANG ET AL V ALBERTA HEALTH SERVICES, 2025 ABKB 328
	MCGREGOR V WAWANESA MUTUAL INSURANCE COMPANY, 2025 ABKB 352
	MACDONALD V MACDONALD, 2025 ABKB 354
	LYSZ V LYSZ, 2025 ABKB 361
	CHO V HARMONY CERAMIC DENTAL LABORATORY LTD, 2025 ABKB 365
10.38	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
10.39	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
10.41	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
10.44	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
10.45	**WANG ET AL V ALBERTA HEALTH SERVICES,** 2025 ABKB 328
10.53	**MINER V COOKE,** 2025 ABCA 226
11.14	**ENVIRONMENTAL DEFENCE CANADA INC V ALBERTA,** 2025 ABCA 132
11.25	**OSADCHUK V KIDD,** 2025 ABCA 125
11.26	**OSADCHUK V KIDD,** 2025 ABCA 125
11.27	**OSADCHUK V KIDD,** 2025 ABCA 125
11.28	**OSADCHUK V KIDD,** 2025 ABCA 125
11.33	**OSADCHUK V KIDD,** 2025 ABCA 125
11.34	**OSADCHUK V KIDD,** 2025 ABCA 125
11.35	**OSADCHUK V KIDD,** 2025 ABCA 125
12.5	**NAUBERT V TROTTER,** 2025 ABKB 269
	ARNSTON V ARNSTON, 2025 ABKB 355

12.10	**DOROSHENKO V VILLANUEVA,** 2025 ABKB 245
12.36	**NAUBERT V TROTTER,** 2025 ABKB 269
13.5	**MIKISEW CREE FIRST NATION V RATH & COMPANY,** 2025 ABCA 127
13.6	**STACKARD (ESTATE) V 1256009 ALBERTA LTD,** 2025 ABCA 171
13.7	**OUELLETTE V MCCANN,** 2025 ABKB 362
13.13	**THE TORONTO DOMINION BANK V MANAH,** 2025 ABCA 201
13.15	**FROG LAKE FIRST NATION V 2250657 ALBERTA LTD,** 2025 ABKB 206
13.18	**JH DRILLING INC V BARSI ENTERPRISES LTD,** 2025 ABKB 288
	CARBONE V WHIDDEN, 2025 ABKB 340
14.5	**OSADCHUK V KIDD,** 2025 ABCA 125
	OUELLETTE V DER, 2025 ABCA 140
	ANGUS A2A GP INC V ALVAREZ & MARSAL CANADA INC, 2025 ABCA 147
	MCCORMACK V ALBERTA HEALTH SERVICES, 2025 ABCA 156
	PROSSER V WOODHOUSE, 2025 ABCA 159
	MACE V MACE, 2025 ABCA 192
	ZORBAWON V SALES, 2025 ABCA 203
	GIESBRECHT V PRPICK, 2025 ABCA 222
	DEBUT DEVELOPMENTS INCORPORATED V REDCLIFF (TOWN), 2025 ABCA 223
	PATEL V ATB FINANCIAL, 2025 ABCA 224
14.8	**PROSSER V WOODHOUSE,** 2025 ABCA 159
	MACE V MACE, 2025 ABCA 192
	OWEN V FLANK, 2025 ABCA 199
	THE TORONTO DOMINION BANK V MONK, 2025 ABCA 209
14.16	**ZORBAWON V SALES,** 2025 ABCA 203

14.17	**ZORBAWON V SALES,** 2025 ABCA 203
14.18	**OSADCHUK V KIDD,** 2025 ABCA 125
14.27	**OSADCHUK V KIDD,** 2025 ABCA 125
	THE TORONTO DOMINION BANK V MANAH, 2025 ABCA 201
14.28	**THE TORONTO DOMINION BANK V MANAH,** 2025 ABCA 201
14.37	**EDMONTON (CITY) V BOONSTRA,** 2025 ABCA 229
14.38	**LAVOIE V LUKIW,** 2025 ABCA 208
14.45	**BAINS V ADAM,** 2025 ABCA 167
	FAH V MTH, 2025 ABCA 180
	DAVLYN CORPORATION LTD V LATIUM FLEET MANAGEMENT INC, 2025 ABCA 219
14.47	**ANDREWS V CUNNINGHAM,** 2025 ABCA 169
	PAN V STANDARD (VILLAGE), 2025 ABCA 193
14.48	**MCDONAGH V KINGS,** 2025 ABCA 151
	ZHUROMSKY V CALGARY (CITY), 2025 ABCA 217
14.64	**ZORBAWON V SALES,** 2025 ABCA 203
14.65	**ANDREWS V CUNNINGHAM,** 2025 ABCA 169
14.67	**LAW SOCIETY OF ALBERTA V BEAVER,** 2025 ABCA 136
	OUELLETTE V DER, 2025 ABCA 140
	BANOVICH V BANOVIC, 2025 ABCA 231
14.70	**BAINS V ADAM,** 2025 ABCA 167
	DECOURCY V KORLAK, 2025 ABCA 189
14.74	**DECOURCY V KORLAK,** 2025 ABCA 189
14.81	**DIGIUSEPPE INTERIOR DESIGN LTD V ST ALBERT (CITY),** 2025 ABCA 170

PENTAGON STRUCTURES LTD V FIELD, 2025 ABKB 218

(APPLICATIONS JUDGE BIRKETT)

Rules 1.2 (Purpose and Intention of these Rules), 1.4 (Procedural Orders) and 4.31 (Delay in an Action)

This was an Application to dismiss an Action for delay pursuant to Rule 4.31. The Court granted the Application and dismissed the Plaintiff's claim.

The Plaintiff commenced an Action against the Defendants in 2010. The claim arose from alleged negligence in the design of a multi-sport arena. Although Affidavits of Records were exchanged, no questioning for discovery took place, and the litigation remained largely stagnant for over 13 years.

The Court found the delay from 2010 to 2023 was both inordinate and inexcusable. Under Rule 4.31(2), significant prejudice was presumed and not rebutted by the Plaintiff. Witness memory loss, unavailable documents, and lost records demonstrated litigation prejudice. The Court emphasized that the Foundational Rules, particularly Rules 1.2 and 1.4, require parties to advance the litigation efficiently and cooperatively; mere participation in procedural steps or consent to amendments does not bar a Defendant from later bringing a delay application.

Although the Plaintiff argued the Defendants' participation in procedural matters constituted acquiescence to delay, the Court, following *Royal Bank of Canada v Levy*, 2020 ABCA 338, held that minor participation does not waive the right to seek dismissal, especially when delay is incremental over many years.

Applying Rule 4.31, and recognizing no compelling reason to exercise discretion otherwise, the Court dismissed the Action with costs to the Defendants.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 220

(NIXON ACJ)

Rules 1.2 (Purpose and Intention of these Rules), 5.1 (Purpose of this Part), 5.2 (When Something is Relevant and Material) and 5.25 (Appropriate Questions and Objections)

This was an Application by the Defendant, Wood Group Canada Inc., for an Order compelling the Plaintiff to respond to Undertakings. The Plaintiff refused to respond to some Undertakings, stating they were irrelevant, immaterial, or overly onerous. Associate Chief Justice Nixon considered Rule 1.2 and held that all relevant and material questions must be answered whether helpful or not.

The Court went on to consider Rule 5.2, which defines what is considered relevant and material. Nixon ACJ also considered Rule 5.25, which describes which questions must be answered. Associate Chief Justice Nixon noted the distinction between facts and evidence. The Court found that facts which enable a party to know what the case is are discoverable, while evi-

dence which enables a party to know how the case will be proved is not.

The Plaintiffs were directed to answer questions which were relevant and material to the issues. Where the Court determined that the Defendants were on a "fishing expedition", the Plaintiffs were not directed to respond to those Undertakings.

TODD V BAYER INC, 2025 ABKB 314

(FEASBY J)

Rule 1.2 (Purpose and Intention of These Rules)

This was an Application for certification of a class proceeding alleging that Bayer Inc. failed to adequately warn users of its Mirena contraceptive device about the risk of device migration. Justice Feasby certified the Action but raised significant concerns regarding the routine pleading of punitive damages in class proceedings.

The Court invoked Rule 1.2, which requires the Rules to be interpreted in a manner that resolves claims in a just, fair, timely, and cost-effective way. Justice Feasby criticized the uncritical inclusion of punitive damages claims, noting that such pleadings often inflame litigation, entrench positions, discourage settlement, and undermine judicial economy, outcomes that are inconsistent with Rule 1.2.

Despite these concerns, the Court certified the punitive damages issues (Common Issues 11 and 15) on the basis that there was "some basis in fact" to support them, which satisfies the threshold for certification. The Court acknowledged the asymmetry of information, observing that Bayer Inc. may be the only party in possession of relevant internal records, and that refusing certification prematurely could unfairly prejudice the proposed class.

The Court ultimately certified the class action for the reasons set out in its Judgment.

1238900 ALBERTA LTD V POINTS WEST LIVING DRAYTON VALLEY LTD, 2025 ABKB 351

(REED J)

Rules 1.2 (Purpose and Intention of these Rules), 4.10 (Assistance by the Court), 6.14 (Appeal from Application Judge's Judgment or Order), 7.3 (Summary Judgment), 8.7 (Confirmation of Trial date), 8.25 (Use of Streamlined Trial), 8.27 (Dispute Over Mode of Trial), 8.28 (Preparing Record) and 8.29 (Scheduling of Streamlined Trials)

The Plaintiff and Defendant each brought Summary Judgment Applications pursuant to Rule 7.3 (individually, the "SJ Application" and, collectively, the "SJ Applications"). However,

before the SJ Applications were scheduled, the Plaintiff, at a Conference held pursuant to Rule 4.10, sought an Order that the SJ Applications be converted to a Streamlined Trial (the "Application"). The Defendant opposed the Application.

The Plaintiff's position was that it met the test for a Streamlined Trial under Rule 8.25(1) and that applying the principles and purpose of the Rules as set out in Rule 1.2, the Court should direct the SJ Applications to proceed by Streamlined Trial instead. The Defendant argued that the SJ Applications were the most expeditious manner to proceed and that it had no intention to abandon its SJ Application or appeal rights under Rule 6.14. Justice Reed noted that Rules 8.28 and 8.29 inform the steps required, or that may be required, to prepare the record and schedule a Streamlined Trial.

The Court held that this was not a situation where the parties disputed the mode of Trial pursuant to Rule 8.27, but rather a situation where one party to the competing SJ Applications sought to bypass that process in favour of a Streamlined Trial. After setting out the principles of statutory interpretation, Reed J. held that the relief sought by the Plaintiff was not contemplated by Rule 8.25 and therefore the Application must be dismissed. The Court went on to comment that even if it was incorrect about the interpretation of Rule 8.25, the Plaintiff did not meet the threshold necessity or proportionality requirements as the Action may well be resolved by the SJ Applications.

MCGREGOR V WAWANESA MUTUAL INSURANCE COMPANY, 2025 ABKB 352

(JOHNSTON J)

Rules 1.2 (Purpose and Intention of these Rules), 10.29 (General Rule for Payment of Litigation Costs), 10.30 (When a Costs Award May be Made), 10.31 (Court Ordered Costs Award) and 10.33 (Court Considerations for Making Costs Award)

This was a Costs Application following the dismissal of the Plaintiffs' Claim. The Defendant, as the successful party, sought costs under Column 4 of Schedule C or enhanced costs, while the Plaintiffs argued that Column 1 costs were appropriate.

The Court confirmed that under Rules 10.29(1), 10.30(1), and 10.31, a successful party is presumptively entitled to costs, subject to judicial discretion. Rule 10.33 outlines the considerations relevant to the exercise of that discretion. The Court acknowledged its obligation to consider all relevant factors under Rule 10.33, including the nature, importance, and complexity of the issues, the conduct of the parties, and the reasonableness of positions taken.

Johnston J. found that the matter was not complex, the evidence was limited, and the issue was focused on coverage under an insurance policy. Both parties conducted the litigation in a manner consistent with Rule 1.2, including the use of agreed facts, the consent to a Summary Trial, and the Plaintiffs' abandonment of some claims at the outset. While the Plaintiffs raised allegations of bad faith in their pleadings, the Court found these were not inflammatory in the insurance context and did not warrant enhanced costs.

Ultimately, the Court awarded the Defendant costs under Column 1 of Schedule C plus reasonable disbursements. No costs were awarded for the Costs Application itself due to the mixed success of the parties. Any unresolved issues regarding the Bill of Costs were left to a Review Officer.

PAUL V STEPHENSON (ESTATE), 2025 ABKB 369

(FEASBY J)

Rules 1.2 (Purpose and Intention of These Rules), 4.1 (Responsibility of Parties to Manage Litigation), 4.10 (Assistance by the Court), 4.13 (Appointment of Case Management Judge), 4.14 (Authority of Case Management Judge), and 4.15 (Case Management Judge Presiding at Streamlined Trial and Trial)

The Applicants, beneficiaries of the Estate of Kenneth Munro Stephenson (the "Estate"), sought to have two Applications, one for civil contempt and one to dispense with the passing of formal accounts, reassigned from the Case Management Justice to a different Judge. The Applicants argued that under Rule 4.15, their consent was required for the Case Management Justice to hear the Applications because they were akin to a Trial or Streamlined Trial, given their reliance on affidavits, written and oral submissions, and their final determinative nature. The Respondents contended that Rule 4.15 did not apply, and that reassignment would be inefficient, given the Case Management Justice's significant involvement.

Justice Feasby outlined the case management process, noting it begins with a Rule 4.10 Case Conference where a Chambers Justice determines the suitability of case management. If appropriate, a Case Management Justice is appointed under Rule 4.13 to promote fairness, efficiency, and timely resolution of disputes, consistent with the foundational principles of Rule 1.2. Further, Feasby J. highlighted that the Parties remain responsible under Rule 4.1 for managing disputes promptly and cost-effectively, regardless of whether any case management under Rules 4.10 or 4.13 is ongoing.

Feasby J. clarified that while Rule 4.15 prohibits a Case Management Justice from presiding over a Trial or Streamlined Trial without all Parties' consent, it must be read alongside Rule 4.14(2), which requires that the Case Management Justice hear all related Applications unless otherwise ordered. Justice Feasby noted that Rule 4.15 is a narrow exception to the general requirement of judicial continuity. Justice Feasby further explained that Rule 4.15 only applies to proceedings that are trial-like, meaning those involving oral testimony and credibility findings. Feasby J. emphasized that Applications based solely on written evidence do not meet this threshold.

Applying this interpretation, the Court held that neither Application engaged Rule 4.15. The civil contempt Application, proceeding on Affidavit evidence, was not trial-like. Similarly, the Application to dispense with the passing of accounts was not inherently trial-like. Feasby J. noted that under Surrogate Rule 113, such Applications can be dealt with informally or summarily unless directed to proceed to Trial or a trial-like hearing, and no such direction had been made.

The Applicants also raised concerns that the Case Management Justice had prejudged issues

or made inappropriate comments. Justice Feasby found these arguments irrelevant to the Rule 4.15 analysis, which only addresses whether consent of the Parties is required, not allegations of judicial bias. Feasby J. reiterated that any allegations of bias must be addressed through a proper recusal Application made directly to the Judge in question, not indirectly through a Rule 4.15 Application. Feasby J. deemed the Applicants' approach an improper attempt to seek recusal under the guise of a procedural objection.

In conclusion, the Court dismissed the Application, finding it was without merit and improper.

NAUBERT V TROTTER, 2025 ABKB 269

(WENKE J)

Rules 1.3 (General Authority of the Court to Provide Remedies), 3.68 (Court Options to Deal with Significant Deficiencies), 3.72 (Consolidation or Separation of Claims and Actions), 12.5 (Requirement that Parties be Spouses) and 12.36 (Advance Payment of Costs)

The Plaintiff and Defendant were in a relationship between 2015 and 2020. During this time, the Plaintiff stopped working due to health issues and received CPP disability benefits. The Defendant supported the Plaintiff financially, and they lived together in various rented and owned properties. After they separated, various disputes arose over the division of family property and partner support.

The Plaintiff applied to consolidate the Property Action and the Support Application. The Court noted that the two matters involved the same parties, arose from the relationship between the two, had some common facts and issues and were at similar procedural stages, which would not cause delay by joinder with the other. After considering Rule 3.72, the Court concluded that no party would be prejudiced by the two matters proceeding together. Both the administration of justice and the parties' finances would benefit since joinder would reduce duplication and promote efficiency and cost-effectiveness. Therefore, the Property Action and the Support Application were Ordered to be consolidated and tried at the same time.

The Plaintiff also applied for advance payment of costs in the Property Action in the amount of $50,000. The advance payment was to permit her "to properly advance the claim for family property division against the Defendant". The Court noted that Rule 12.36 allows it to make any order that it thinks fit for the advance payment of costs.

Wenke J. clarified that the tripartite test in *Okanagan Indian Band* applies to advance payments of costs in family law cases, outlined as follows: (1) the party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case; (2) the claim must be *prima facie* of sufficient merit to warrant pursuit; and (3) there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of powers is appropriate.

Justice Wenke reviewed the case law that established that family law matters are one type of special circumstances but noted that this

was not always the case. Typically, the special circumstances supporting advance payment of costs in family matters are the distribution of resources between the litigants and the obligation of support arising from their relationship. In respect of the second element, Justice Wenke noted that in family law cases, the sufficient merit test is presumptively satisfied. Because of the obligations of support and statutory presumptive equal division of family assets, a spouse seeking support or a property division will be presumptively successful, to some degree.

In applying the three-part test to the facts, the Court partially granted the Plaintiff's claim for advance payment of costs. While the Court found the Plaintiff's trust claim lacked merit, the unjust enrichment and family property claims had sufficient merit to warrant funding. The amount was limited to $8,000 due to the lack of a litigation plan and the need for proportionality. Interestingly, the Court commented that the quantification of advance payment of costs is aided if an applicant provides a litigation plan and a breakdown of costs to complete that plan.

The Court also noted that the assessment of security for costs is not confined to the claims made by an Applicant. A Court is entitled to consider claims supported by the record, as Rule 12.36 does not limit advance costs to specifically pleaded causes of action. The Court's jurisdiction to address causes of action revealed by the record is supported by Section 8 of the *Judicature Act* and foundational Rule 1.3.

Further, the Defendant's Application to strike the Property Action, pursuant to Rule 3.68, was dismissed, as the pleadings did not clearly disclose that the claim was statute-barred. The Court also dealt with a reference made during submissions to Rule 12.5(2). The Court found that since the proceedings were not brought under the *Divorce Act*, Rule 12.5(2) was inapplicable. Regardless of that point, the Defendant was a necessary party for resolving the property issues and therefore, properly a party to the present proceedings.

HABIB V HABIB, 2025 ABCA 216

(FEEHAN, HAWKES, SHANER JJA)

Rules 1.3 (General Authority of the Court to Provide Remedies) and 4.14 (Authority of Case Management Judge)

This was an Appeal from two interlocutory Orders granted in the course of ongoing litigation among family members regarding jointly owned properties. The Appellants, Azmin and Shahin Habib, challenged Orders requiring the sale of properties, the payment of net proceeds into Court, and a restriction on their ability to bring further Applications until compliance with prior Orders and payment of costs.

The Court found the first Appeal was moot, as the properties had already been sold and proceeds paid into Court. No practical remedy remained, and the Court declined to exercise discretion to hear the Appeal.

Regarding the second Appeal, the Appellants argued that the Chambers Judge granted relief not expressly sought. However, the Court held

that in the context of ongoing litigation and in light of the parties' submissions, the Chambers Judge was entitled to grant the relief under Rule 4.14(1). The Court emphasized that although the payment into Court and the bar on further Applications were not specifically requested in the Application materials, both matters had been discussed at length during the hearing and arose logically from the issues raised. The Chambers Judge's decision was also supported by the lack of accounting for sale proceeds, and the Appellants' repeated disregard for prior Court Orders.

The Court further noted that Rule 1.3 justified the Chambers Judge's approach, as the Orders made were necessary to provide a fair, timely, and cost-effective resolution of the issues before the Court, particularly given the Appellants' pattern of vexatious and obstructive litigation conduct.

Both Appeals were dismissed.

ARNSTON V ARNSTON, 2025 ABKB 355

(LEW J)

1.4 (Procedural Orders), 3.62 (Amending Pleading), 3.65 (Permission of Court to Amendment Before or After Close of Pleadings), 4.2 (What the Responsibility Includes), 4.31 (Application to Deal With Delay), 4.33 (Dismissal for Long Delay) and 12.5 (Requirement that Parties be Spouses)

The case involved a complex Matrimonial dispute between a couple married for almost 30 years, who owned farmland and cattle (the "Matrimonial Action"). In 2016 the parties entered into a Settlement Agreement (the "2016 Agreement") which had only been partially performed. The husband, Donald, applied for enforcement of the 2016 Agreement. Further, Donald applied to consolidate the Matrimonial Action and a separate Action involving the parties' children and the division of cattle (the "Cattle Action"). Donald also requested permission to amend his Statement of Defence and file a Counterclaim.

In considering Donald's Application to consolidate, the Court considered Rule 12.5, which states that spouses and former spouses are presumed to be the only parties to a Matrimonial Property Action except where another person is a necessary party for the division of property. Justice Lew interpreted this as contemplating the inclusion of third parties to a divorce matter. The 2016 Agreement dealt with property distributions to the children and thus, Lew J. held that it was appropriate for the children to be added to the Matrimonial Action by way of consolidation.

In considering Donald's Application to amend his Statement of Defence and file a Counterclaim, the Court considered Rules 3.62(1)(b)(ii), 3.65, and 1.4(2)(f). The Court held that Donald had two years from the date of the Divorce Judgement, which was dated August 1, 2024, to file a Counterclaim for division of matrimonial property. The applicable Limitation date was therefore August 1, 2026. Justice Lew ultimately allowed Donald's Application to amend his Statement of Defence and file a Counterclaim because it was not Limitations barred.

In response to Donald's Applications, the wife, Viva, cross-applied to dismiss Donald's Applications for long delay pursuant to Rules 4.31 and 4.33 of the Rules of Court. Justice Lew acknowledged that parties to litigation have an obligation to advance an Action pursuant to

Rule 4.2. Lew J. held that negotiation and entering into and honouring a settlement agreement significantly advanced the Action, in accordance with Rule 4.33. The Court determined that it was unreasonable to expect Donald to have taken further steps in the Action when the 2016 Agreement was meant to substantially resolve the issues between the parties. Therefore, Viva's Cross-Application for delay was dismissed.

REAGAN V BIRNIE-BROWNE, 2025 ABKB 380

(ACJ NIXON)

Rules 1.4 (Procedural Orders), 3.68 (Court Options to Deal with Significant Deficiencies) and 4.14 (Authority of Case Management Judge)

The law firm of Loberg Ector LLP, who was also named as a Defendant, submitted a letter to the Court requesting review under Civil Practice Note 7 ("CPN7") of Statements of Claim filed by the Plaintiff in numerous Court Actions. The other named Defendants included, among others, employees and/or partners of that law firm.

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

The Court found that each of the Plaintiff's claims appeared to be frivolous, vexatious or an abuse of process. In particular, the Statements of Claim appeared to make baseless claims that represented a collateral attack on the Defendants, stemming from the Court's determination under a prior Action and the ongoing enforcement under that Action.

The Court also noted that it had wide discretion under its inherent jurisdiction to grant procedural orders under Rules 1.4 and 4.14. Such orders may impose terms, time limits, or conditions on proceedings. These are limited in scope and are often referred to as "Limited Civil Restraint Orders".

The Court emphasized the importance of balancing the need to protect the judicial system from abuse with the Plaintiff's right to access the courts. The Court directed the Plaintiff to file written submissions addressing the allegations of vexatious litigation and explaining why his claims were not frivolous or duplicative.

SHODUNKE V ALBERTA, 2025 ABKB 250

(AKGUNGOR J)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities), 3.15 (Originating Application for Judicial Review) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Court considered an Application by the Income Support and Employment Program ("ISE") to strike Mr. Shodunke's claim challenging ISE's decision to deny him income support benefits for October 2021. Mr. Shodunke had applied for benefits but failed to provide complete financial information as required under the *Income and Employment Supports Act*, SA 2003, c I-0.5, including 30-day bank statements for all household members. Notably, he refused to submit his wife's financial records, taking the position that her income should not be relevant. As a result, the application was closed due to insufficient documentation.

Mr. Shodunke appealed that decision, but the Citizen's Appeal Panel (the "Panel") dismissed the appeal on May 19, 2023, finding that the Director acted reasonably in requesting spousal financial records, given that eligibility must be assessed at the household level. The Panel concluded that Mr. Shodunke had not provided sufficient documentation to determine his eligibility. Mr. Shodunke also filed a human rights complaint with the Alberta Human Rights Commission, which declined to accept the complaint. The Commission explained that the denial was based on neutral eligibility criteria and not discriminatory conduct. Subsequently, Mr. Shodunke filed a Statement of Claim, arguing that the request for spousal information was unreasonable and discriminatory, violating his rights under both the Canadian Charter of Rights and Freedoms and the *Alberta Human Rights Act.*

ISE applied to strike the claim pursuant to Rule 3.68. The Court emphasized that the threshold pursuant to Rule 3.68(2)(b)—that it must be plain and obvious the claim will fail—had been met. Justice Akgungor found that the claims under sections 7, 8, 12, and 15 of the Charter lacked material facts and merely asserted conclusions. Claims under the *Alberta Human Rights Act* were struck pursuant to Rule 3.68(2)(a) because the Court had no jurisdiction. Jurisdiction lied with the Human Rights Commission, which had already dismissed the complaint. Pursuing the same claim again in civil court amounted to an abuse of process, pursuant to Rule 3.68(2)(d). The Statement of Claim also sought remedies, including $5 million in damages and a perpetual injunction, that were either unavailable, excessive, or unsupported, and thus struck.

Although Mr. Shodunke's claim effectively challenged the Panel's decision, he had commenced his proceeding improperly by way of Statement of Claim. The Court held that such a claim must be commenced by way of Originating Application pursuant to Rule 3.15(1). While the Statement of Claim was filed within the six-month limitation period under Rule 3.15(2), Mr. Shodunke failed to serve the Minister of Justice, as required by Rule 3.15(3)(b). Akgungor J. reaffirmed that this service requirement is strict and mandatory, and failure to comply is fatal to the proceeding, regardless of whether the Minister would have participated.

Recognizing that the claim was effectively a Judicial Review filed in the wrong form, the Court considered Rule 1.5, which permits the curing of procedural irregularities where there is no irreparable harm and it is in the interests of justice. Finding no prejudice to the Defendants and recognizing that Mr. Shodunke had taken other steps consistent with Judicial Review, the Court converted the surviving

portions of the Statement of Claim into an Originating Application for Judicial Review. Nonetheless, the Application was ultimately dismissed due to non-compliance with the mandatory service requirement under Rule 3.15(3)(b).

The Court further concluded that even if the Originating Application had not been dismissed for procedural non-compliance, the decision under review would have been upheld as reasonable. The Panel had correctly interpreted the statutory definition of "cohabiting partner" and determined that Mr. Shodunke's financial interdependence with his wife required disclosure of her financial information. The Panel reasonably found that the documentation provided was insufficient, and the denial of benefits was justified under the governing legislation. Accordingly, the Court granted the Application to strike, dismissed the converted Originating Application, and concluded the matter.

MIKISEW CREE FIRST NATION V RATH & COMPANY, 2025 ABCA 127

(WATSON, HO AND HAWKES JJA)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities), 10.7 (Contingency Fee Agreement Requirements), 10.14 (Client-Obtained Appointment: Lawyer's Responsibility), 10.18 (Reference to Court) and 13.5 (Variation of Time Periods)

Mikisew Cree First Nation ("Mikisew") disputed the enforceability of two contingency fee agreements ("CFAs") with the law firm Rath & Company ("Rath"). Mikisew had filed for a review of the CFAs pursuant to Rule 10.14, and the Review Officer referred several issues related to their enforceability to the Court in accordance with Rule 10.18. Mikisew appealed a Chambers Judge's Decision finding the CFAs with Rath complied with procedural rules despite some minor irregularities. Mikisew contended that the Chambers Judge erred in concluding that the CFAs met the necessary legal requirements, and further erred in failing to find that their conditions had expired without being fulfilled.

The Chambers Judge acknowledged delays and gaps in the evidence regarding when the CFAs were signed and served. While service occurred months after execution and Rath provided no explanation for the delay, the Chambers Judge held that Mikisew eventually received the CFAs, and, as a sophisticated client, suffered no prejudice. As such, the Chambers Judge concluded the delay was a technical error and deemed the CFAs enforceable.

The Court of Appeal disagreed, emphasizing that Rule 10.7 imposes strict procedural requirements for CFAs, including the obligation pursuant to Rule 10.7(4) to serve the client with a signed CFA within 10 days of execution. The Court noted that service is essential to initiate the client's five-day "cooling off period" under Rule 10.7(5), which allows clients to terminate the agreement without incurring legal fees. The Court stressed that this procedural safeguard protects clients from entering into unfair agreements and provides certainty to lawyers.

The Court acknowledged that while minor, technical breaches of the rules governing CFAs may not always invalidate a CFA; however, substantive non-compliance does, regardless of whether any prejudice existed. The Court of Appeal found that the Chambers Judge erred in treating Rath's months-long delay in service

as a minor irregularity and focusing solely on the absence of prejudice to Mikisew. It held that non-compliance with Rule 10.7(4) cannot be excused merely because no harm occurred, as this would undermine the Rule's purpose and create legal uncertainty. The Court also noted the Chambers Judge failed to assess whether curing the breach was in the interests of justice, as required by Rule 1.5(4)(d), and that Rath never applied for an extension of time pursuant to Rule 13.5.

Given Rath's unexplained delay, the absence of clear notice to Mikisew of its termination rights, and the failure to comply with procedural formalities, the Court of Appeal concluded that the breach was substantive. As a result, the Appeal was allowed, and the CFAs were declared unenforceable.

THE TORONTO DOMINION BANK V MANAH, 2025 ABCA 201

(SLATTER, PENTELECHUK AND FETH JJA)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities), 9.25 (Order of Possession of Land), 13.13 (Requirements for all Filed Documents), 13.16 (Deviations from and Changes to Prescribed Forms), 14.27 (Filing Extracts of Key Evidence) and 14.28 (Record Before the Court)

This case stems from a foreclosure initiated by the Respondent, a bank, against the Appellants due to mortgage default. Following the expiration of the redemption period, the Respondent gained possession of the property through court orders and enforcement by a bailiff. The Appellants opposed the foreclosure, unlawfully re-entered the property after being evicted, and filed Applications contesting both the foreclosure proceedings and the enforcement measures, despite a court-issued Redemption Order and multiple Possession Orders.

The first Appeal stemmed from an Application filed by the Appellants in June 2024, alleging procedural irregularities, and demanding immediate return of the property and "proof of debt" in original "wet ink" format. The second Appeal related to a December 2024 Application in which the Appellants alleged unlawful enforcement, breaches of fundamental rights, and bad faith conduct. They sought return of the property, declarations of Charter violations, and damages. Both Applications were dismissed.

A key issue in both appeals was the Appellants' reliance on procedural arguments under the Rules, particularly regarding admissibility and format of evidence. The Court rejected their claims that procedural defects (such as missing rule numbers or deviations from prescribed forms) invalidated the documents. Under Rule 1.5, non-prejudicial irregularities can be cured. Rule 13.13(1) confirms that forms can be "modified as circumstances require", and Rule 13.16 allows deviation from prescribed forms if it does not mislead or alter substance.

Regarding the appeal record, the Appellants objected to the Respondent's Extracts of Key Evidence, arguing it contained "new evidence" contrary to Rule 14.27(1)(c). The Court found most of the materials proper under Rule 14.28, which includes trial court evidence and filings as part of the appeal record. The Court only struck documents not previously part of the record, such as claims filed in unrelated proceedings.

Further, the Appellants' claim that enforcement required a writ under the *Civil Enforcement Act* was rejected. Rule 9.25 allowed the Applications Judge to issue Possession Orders, and those Orders were validly enforced with bailiff and police assistance.

No reviewable error was found in either Order under appeal. The Court found no violation of procedural fairness, no breach of fundamental rights, and dismissed pseudolegal arguments regarding debt validation. It held that the Appellants' continued efforts to reclaim possession constituted impermissible collateral attacks on prior valid Orders. Both Appeals were dismissed with costs awarded to the respondent on a solicitor-client basis.

DISTINCT REAL ESTATE USA 2 V WAZONEK, 2025 ABKB 275

(MARION J)

Rules 2.2 (Actions by or Against Partners and Partnerships) and 3.68 (Court Options to Deal with Significant Deficiencies)

This case involves a dispute over the handling, sale, and use of funds of a multi-unit residential property in Memphis Tennessee, known as "Crane Manor." The property was acquired in 2021 by a Delaware limited partnership, Crane Manor US LP ("Crane"), however the project failed to proceed as planned. Allegations arose that one of the Defendants, who controlled the general partner of the limited partnership, sold the property without authorization and misappropriated the proceeds for personal use. The Plaintiffs alleged fraud, breach of fiduciary duty, and other misconduct.

This Decision results from an Application brought by the Plaintiffs for an order directing that Crane could bring the Action in its own name or through one of the other Applicants, and for an attachment order under the *Civil Enforcement Act*, RSA 2000, c C-15, as against one of the Defendants. The Defendants cross-applied for an order directing the Clerk of the Court to pay their counsel the money previously paid into Court pursuant to an interim without prejudice attachment order. The Defendants also sought the dismissal of the Plaintiff's Application, the setting aside of the Statement of Claim, and costs.

The Applicants argued that they should be allowed to bring claims on behalf of Crane due to the Defendant's control over its general partner, which they alleged prevented the partnership from pursuing claims. The Applicants relied on Rule 2.2(1) to establish that they had standing to pursue the Action in the name of Crane. Justice Marion emphasized that Rule 2.2(1) is a permissive Rule that permits an action to be brought by or against a partnership in the partnership's name, without listing each individual partner. However, the Rule does not determine who has the authority to initiate a claim on behalf of the partnership. The authority must come from someone legally entitled to act for the partnership. Rule 2.2(1) merely provides a mechanism for naming a partnership efficiently in litigation.

Marion J. determined that the Applicants did not have standing to bring an action in the name of Crane because Crane's "Agreement of Limited Partnership" vests the management of Crane, including the commencement of actions in its name, in its general partner. The Court found that the Applicants did not provide any authority to suggest that the Court should exercise jurisdiction to ignore, override or

amend the internal governance rules of Crane, a foreign limited partnership.

Justice Marion also determined that the Court did not have jurisdiction to authorize a derivative action on behalf of Crane for similar reasons. However, even if the Court did have jurisdiction to override the partnership agreements or permit a derivative action on behalf of Crane, Marion J. would decline to do so, finding that only a Delaware court, or the general partner, could approve such actions under Delaware law. Further, the Applicants failed to address standing issues or prove Delaware law, and the principles of judicial comity outweighed interfering with the internal governance of a foreign limited partnership.

The Court struck the claims filed in the name of or on behalf of Crane pursuant to Rule 3.68.

Marion J. did not strike the direct claims by Canadian Crane Manor LP ("Canadian Crane"), a significant limited partner of Crane, because some of the claims in the Statement of Claim gave rise to a "reasonable claim" and did not plainly or obviously fail to disclose a valid claim, as contemplated by Rule 3.68(2)(b). However, Justice Marion directed that the Applicants would have one month to correct their pleadings to seek court approval to commence the Action as a derivative action in the name of and on behalf of Canadian Crane.

The Court dismissed the Application for an Attachment Order and directed that the funds paid into Court be returned to the Defendant's legal counsel.

ODO V JOHN DOE #1, 2025 ABKB 240

(NIELSEN ACJ)

Rules 2.10 (Intervenor Status), 6.35 (Person Having Standing at Application), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Consideration in Making Costs Award)

In a prior hearing, the Criminal Trial Lawyers Association ("CTLA") sought to intervene in a Restricted Court Access Application in a case of alleged police negligence. Associate Chief Justice Nielsen denied that Application. The Defendant police officers then sought Costs against CTLA in the amount of $12,000 (approximately 50% of their solicitor-client costs).

Neilson ACJ referred to Rules 10.29 and 10.31 in support of the general Rule that broad discretion should be offered to the Court in a Costs decision. Associate Chief Justice Nielsen further relied on the factors set out in Rule 10.33 to be considered when issuing a Costs Award. The Court took judicial notice of the fact that the general legal principal in Alberta has been that intervenors will bear their own Costs, but that does not mean that intervenors are never liable for Costs. This general Rule serves to recognize the importance of public interest intervenors. Therefore, when the interest advanced is a private one, such as advancing a business interest, there is nothing preventing a proposed intervenor from bearing costs.

Nielsen ACJ therefore determined that the central issue was the characterisation of the prior Application. If the Court agreed that the Application was primarily private in nature, then the Court could find that this was an appropriate Case to award Costs.

Notably, the parties were unable to find reported cases dealing with Rule 6.35 and its interaction with Rule 2.10. Associate Chief Justice Neilson found the case of *Smyth v Edmonton (City) Police Service,* 2005 ABQB 652 to be of assistance, but not definitive against the backdrop of the new Rules of Court.

The Court ultimately held that the Application did not advance a private interest, as there was no financial or business benefit that CTLA could expect to flow from intervening. Further, Nielsen A.C.J. determined that the goal of the Application of CTLA was to act as a voice for vulnerable populations and "a significant costs award in this case may serve only as another barrier to that engagement". As a result, it was ordered that each party bear their own Costs of the Application.`

TWINN V ALBERTA (PUBLIC TRUSTEE), 2025 ABKB 276

(LITTLE J)

Rule 2.10 (Intervenor Status)

Sawridge First Nation ("SFN") applied for intervenor status in an upcoming Application. In 1982, SFN Chief Walter Twinn created a trust for "all members, present and future, of the Band" (the "1982 Trust"). Anticipating Bill C-32's restoration of status to Indian women who had lost it by marrying non-Indian men, SFN Chief Walter Twinn established a second trust in 1985 limiting beneficiaries to pre-Bill C-31 members (the "1985 Trust"), transferring the 1982 Trust's assets to it.

The Parties agreed that the 1985 Trust's beneficiary definition was discriminatory. The upcoming Application seeks to confirm if Trustees can distribute funds despite this. SFN applied for intervenor status to argue that distribution under the current, discriminatory definition, is contrary to public policy and should not be permitted. While the Trustees and other Parties did not oppose SFN's intervention, the Trustees sought to limit its scope.

Justice Little confirmed that under Rule 2.10, a Court may grant intervenor status and specify any terms and conditions. Citing *R v McKee,* 2023 ABKB 579, Little J. noted that intervenors are uncommon at the Trial level since they must remain focused and manageable, whereas Appellate Courts, working with a pre-established record, are better equipped to control the process, including the scope and length of intervenor submissions.

Applying the test for intervention from *Wilcox v Her Majesty the Queen in right of Alberta*, 2019 ABCA 385, Little J. considered whether SFN was directly affected, necessary for a proper decision, has interests otherwise not fully protected, can provide useful expertise, and whether their involvement might cause undue delay, prejudice to parties, broaden the dispute, or politicize the court.

Though the parties consented to SFN's intervention, Little J. reviewed these factors to set the appropriate scope of intervention. Little J. found that SFN represented potentially excluded members, unlike the Office of the Public Guardian or Catherine Twinn, and could provide distinct legal submissions without new evidence. Further, the Court noted that SFN's involvement, while causing some delay, was not undue given the case's complexity, and found there would be no prejudice or broadening of the dispute. Justice Little also determined that,

since the issue was one of trust law and not politics, intervention was appropriate within defined limits.

Little J. also emphasized that a relevant factor is whether a party had previously been granted intervenor status in earlier proceedings, noting SFN's consistent history of intervention at both the Court of Queen's Bench and the Court of Appeal.

Consequently, Little J. ordered that SFN be permitted to intervene on the conditions that it submit a written brief within the specified page limits and deadline, be allowed 60 minutes for oral argument, refrain from raising issues not raised by the parties, and bear its own costs.

LLOYD ET AL V DE WALLE ET AL, 2025 ABKB 290

(KUBIK J)

Rules 2.11 (Litigation Representative Required), 2.15 (Court Appointment in Absence of Self-Appointment) and 2.21 (Litigation Representative: Termination, Replacement, Terms and Conditions)

This case concerned ongoing litigation over the validity and termination of an Enduring Power of Attorney ("EPA") executed by the donor, Lloyd. Lloyd's agent under a Personal Directive ("PD"), McDonald, had been acting both as an "interested person" under the *Powers of Attorney Act*, RSA 2000, c P-20, and as Lloyd's litigation representative in proceedings related to his alleged incapacity and the administration of the EPA. Together with other parties, McDonald sought to terminate the EPA and address related financial and legal matters. The Court was asked to determine whether McDonald should be removed from her role as litigation representative and lose standing as an interested person, based on allegations of conflict of interest and failure to act in Lloyd's best interests.

Justice Kubik emphasized the fiduciary duties owed by litigation representatives under Rule 2.21, which authorizes the Court to remove or replace a litigation representative who fails to act in the best interests of the represented party. The Court also affirmed that the powers granted to McDonald under the PD were limited to personal, non-financial decisions, and did not extend to managing litigation related to the EPA or making legal admissions on Lloyd's behalf.

McDonald had refused to comply with a prior Court Order requiring Lloyd to undergo a Court-ordered capacity assessment. Acting in her capacity as agent under the PD, McDonald asserted that Lloyd had lost capacity and instructed Counsel to admit that fact in the proceedings. The Court found that this conduct was intended to compromise the pending Trial on Lloyd's capacity and to substitute her own view for an objective determination by the Court, effectively undermining the Court's role.

Kubik J. held that McDonald's conduct reflected a conflict between her personal interests and Lloyd's best interests, particularly as she stood to benefit under Lloyd's will and had taken steps inconsistent with her duties as a proposed executor. As a result, the Court terminated her roles both as an interested person under the *Powers of Attorney Act* and as litigation representative under Rule 2.21.

Since Lloyd could not proceed in litigation without a representative, the Court invoked Rule 2.11, which requires that individuals under a legal disability be represented by a litigation representative. The Court further directed that, under Rule 2.15, the opposing parties (who were adverse in interest) must now apply to appoint a new litigation representative for Lloyd.

ABOU SHAABAN V LEE, 2025 ABKB 371

(JOHNSTON J)

Rules 2.23 (Assistance Before the Court) and 4.22 (Considerations for Security for Costs Order)

The Defendants applied for Security for Costs under Rule 4.22 and section 254 of the *Business Corporations Act*, RSA 2000, c B-9 (ABCA), arguing that the Plaintiffs were unlikely to pay costs or satisfy judgments on account of unpaid costs, financial difficulties and failure to comply with undertakings. The Plaintiffs opposed, arguing that they were entitled to costs on account of the discontinuance of the Defendant's counterclaim. The Plaintiffs claimed they had evidence to support their allegations, but they failed to file materials or provide specific evidence.

Notwithstanding a previous Order that directed the corporate Plaintiff to be represented by counsel, Justice Johnston exercised discretion under Rule 2.23(4) to allow the Plaintiff, Ms. Abou Shaaban to respond to the Application for Security for Costs on behalf of both Plaintiffs.

The Court considered the factors set out under Rule 4.22 to determine if the Plaintiffs should be required to provide Security for Costs. The factors include considering the likelihood of enforcing a judgment in Alberta, the respondent's ability to pay costs, the merits of the Action, potential prejudice to the Respondent, and any other relevant circumstances. Section 254 of the ABCA applied only to the corporate Plaintiff, which requires an Applicant to show that "the body corporate will be unable to pay the costs of a successful party." Johnston J. acknowledged that an award of Security for Costs is discretionary and that the burden of proof rests with the Applicants on a balance of probabilities.

Justice Johnston found that the Applicants would be unlikely to be able to enforce a judgment against the Plaintiffs due to the Plaintiffs' failure to disclose financial information, pay outstanding cost orders, and the lack of evidence of assets in Alberta. The Plaintiffs also had an outstanding judgment against them and were previously ordered to post security for costs in another proceeding. Further, the Plaintiffs' claims appeared weak and unsupported by evidence and there was no evidence before the Court that requiring Security for Costs would cause undue prejudice to the Plaintiffs.

The Court determined that the corporate Plaintiff would be unable to pay a costs award in accordance with section 254, and that it was just to award Security for Costs under Rule 4.22. Johnston J. declined to award Costs for past steps but found it appropriate to award Security for Costs for all prospective steps up to and including Trial. The Court ordered the Plaintiffs to post $30,000 as Security for Costs within 45 days of this Decision.

DIGIUSEPPE INTERIOR DESIGN LTD V ST ALBERT (CITY), 2025 ABCA 170

(WATSON JA)

Rules 2.23 (Assistance Before the Court) and 14.81 (Service of Appeal Documents)

The Applicant sought a permit from the Development Office of St. Albert, which was denied. The Applicant then appealed that decision to the Respondent Board (the "Board"), who dismissed the appeal (the "Decision"). The Applicant then applied to the Court of Appeal for permission to appeal the Decision (the "Application"), and for an extension of time to make the Application, as it was not served on the Respondents within 30 days, as required by the *Municipal Government Act*, RSA 2000, c M-26 (the "Related Application").

Watson J.A. dismissed both the Application and the Related Application. In so doing, Justice Watson noted procedural irregularities in the Applications. Specifically, there was a defective style of cause in the Application notices, as neither identified the Respondents properly, and the defects could reflect a misunderstanding of the process and requirement for service under Rule 14.81.

The Court continued by noting that the bringing of Applications on behalf of a corporation is expected to be through legal counsel under the *Legal Profession Act*. However, Rule 2.23(4), which allows for Court discretion to permit individuals to "assist" other individuals, has now been interpreted to restore a discretion of the Court to permit an individual to make oral submissions on behalf of a corporation in Court.

The Court emphasised the gatekeeping role of the Court by clarifying that the enactment of Rule 2.23(4) does not mean that non-lawyers have an unlimited right to represent corporations. The presumption is still that corporations must be represented by lawyers. Rule 2.23(4) merely restores the discretion of judges to give a right of audience in court to non-lawyers connected to the corporation.

WANG ET AL V ALBERTA HEALTH SERVICES, 2025 ABKB 328

(LABRENZ J)

Rules 2.24 (Lawyer of Record), 3.61 (Requests for Particulars, Amendments to Pleadings and Close of Pleadings), 4.10 (Assistance by the Court), 5.11 (Order for Record to be Produced), 10.31 (Court Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award), 10.38 (Assessment Officers Authority), 10.39 (Reference to Court), 10.41 (Assessment Officer's Decision), 10.44 (Appeal from Assessment Officer's Decision) and 10.45 (Decision of the Judge)

This was an Appeal under Rule 10.44 from an Assessment Officer's Decision certifying a Bill of Costs submitted by the Respondent following an award of solicitor-and-own-client Costs. The Appellants argued they were denied procedural fairness because the Bill of Costs contained

insufficient disclosure, including redacted descriptions of work and the identification of legal personnel by initials only.

The Court considered Rule 2.24 and rejected the argument that only one lawyer of record meant only one person could be compensated. The Rule defines "lawyer of record" for procedural purposes and does not limit recovery for work done by others in the same firm. The Court confirmed that junior counsel, articling students, and legal staff may be included in the Bill of Costs if their roles are adequately disclosed.

The Appellants sought to invoke Rule 3.61 to compel particulars of the identities and work of those listed in the Bill of Costs, but the Court held that Rule 3.61 does not apply, as the Bill of Costs is not a pleading. Rule 5.11 was also raised in support of production of unredacted material, but the Court held that it was inapplicable, as there was no Affidavit of Records and the standard discovery regime did not govern cost assessments.

Following a direction from the Court of Appeal, the parties attended a Rule 4.10 case conference to determine how the Appeal should proceed. That conference resulted in a procedural order narrowing the issues on Appeal and limiting the scope of argument.

In assessing the Bill of Costs, the Court confirmed under Rule 10.31 that solicitor-and-own-client costs must still be "reasonable and proper." The Court emphasized that this standard requires sufficient disclosure to allow the opposing party to meaningfully test the reasonableness of claimed costs. Applying Rule 10.33, the Court considered the complexity of the litigation, the conduct of the parties, and the nature of the proceedings in concluding that the disclosure provided was inadequate.

The Court found that the Assessment Officer failed to exercise his discretion under Rule 10.38 to compel adequate particulars and failed to consider whether to refer the matter to the Court under Rule 10.39. While that referral power is discretionary, the failure to use it contributed to the procedural unfairness.

The Court held that the assessment conducted under Rule 10.41 was procedurally unfair. Although the Assessment Officer reviewed an unredacted version of the Bill of Costs, the Appellants were not afforded a fair opportunity to test the claims, undermining the integrity of the process.

Pursuant to Rule 10.45, the matter was remitted to a different Assessment Officer. The Respondent was ordered to provide a revised Bill of Costs disclosing the working titles, qualifications, and descriptions of legal work performed by each of the 32 individuals, with redactions limited to what is necessary to preserve legitimate privilege. Full names were not required.

OUELLETTE V DER, 2025 ABCA 140

(FRIESEN J)

Rules 2.23 (Assistance Before the Court), 4.22 (Considerations for Security for Costs Order), 14.5 (Appeals only with Permission) and 14.67 (Security for Costs for Appeals)

The Plaintiffs brought claims against two groups of Defendants, alleging solicitor negligence and improper conduct in defending a complaint to the Law Society of Alberta. In respect of the first claim, the Plaintiffs noted the Defendants in default, which was later set aside by an Applications Judge, who found that the Order was procedurally flawed. This decision was subsequently upheld by a Chambers Judge (the "Setting Aside Decision").

Regarding the second claim, the Defendants applied for Security for Costs against the Plaintiffs, which was granted. The Plaintiffs' appeal of the Security for Costs Order was dismissed for failure to prosecute. The Appeal was not restored, and the Security for Costs was not posted. Accordingly, the second claim was dismissed after the Plaintiffs failed to post Security for Costs as ordered by the Court (the "Dismissal Decision").

The Plaintiffs appealed both the Setting Aside Decision and the Dismissal Decision.

The Court noted that a single Appeal Judge may award Security for Costs in accordance with Rules 14.67(1) and 4.22. Rule 14.67 permits a single Appeal Judge to order a party to provide Security for Costs. Rule 4.22 provides that the Court may order a party to provide Security for Costs if the Court considers it just and reasonable to do so, considering all of the factors provided in Rule 4.22, which an Applicant must prove.

In respect of the Setting Aside Decision, the Court found that it was difficult to conceive of any argument or evidence that could displace the fact that the Noting in Default was improper because one of the Plaintiffs, while disbarred, purported to act for the other Plaintiff, contrary to section 106(1) of the Legal Profession Act, and Rule 2.23(3)(a). Therefore, the Court found that the merits of the Appeal were weak, and the decisions of the Applications Judge and the Chambers Judge were owed deference.

On the Dismissal Decision, the Court found that it was procedurally questionable for a litigant to fail to appeal the original orders dismissing the appeals for a failure to prosecute and ordering security for costs, and instead appeal the subsequent Order which dismissed the appeals after failure to post security as directed. By advancing their appeal in this way, Justice Friesen found that the Plaintiffs had avoided application of Rule 14.5(1)(h) and launched an improper collateral attack on unchallenged orders of the Court of King's Bench.

The Court found that the appeals were weak, the Plaintiffs were impecunious and there were no issues that would make it unjust or unreasonable to order payment of security for costs. The Court ordered that the Plaintiffs must each provide security for costs of the appeals in the amount of $48,850.00, which represented double the Column 5 Schedule C costs for each of the appeals.

DOUGLAS V NE2 CANADA INC, 2025 ABKB 321

(HOLLINS J)

Rules 3.15 (Originating Application for Judicial Review) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Plaintiffs, former employees of NE2 Canada Inc. ("NE2"), were awarded approximately $1 million by the Director of Employment Standards (the "Director") for wrongful termination. NE2 appealed this decision to the Alberta Labour Relations Board (the "Board"), which reduced the award. The Plaintiffs sought judicial review of the Board's decision but failed to name and serve the Director as a party within the required six-month period. Two questions arose in this matter: (1) was the Director a party "directly affected" by the Plaintiffs' application for Judicial Review, requiring service under Rule 3.15(3); and (2) did the Plaintiffs' failure to name and serve the Director within the six-month deadline render the Originating Notice of Application a nullity.

The Plaintiffs argued that they were not required to serve the Director because the Director was not "directly affected by the application". The Plaintiffs further argued that the requirement to name the Director as a party does not make the Director a party "directly affected by the Application" because: (1) the Director took no position on the judicial review; and (2) because it was a review of the Board's decision, not the Director's decision and so the latter was not directly affected by the outcome.

NE2 argued that the Director was a necessary party to the judicial review by operation of Section 96(2) of the *Employment Standards Code,* which states that the Director is a party to every appeal to the appeal body and to every proceeding resulting from an order or resulting from a decision of the appeal body.

The Court found that the Judicial Review was a proceeding resulting from a decision of the Board. Further, the Court stated that the caselaw is abundantly clear that, where service vis required by the Rules, the fact that the party to be served expresses no interest or intention to participate in the proceedings is irrelevant to compliance with the Rules. Justice Hollins found that that fact that the naming of the Director is mandated as a party to the judicial review makes the Director a party "directly affected". Though the Director may waive the right to participate or may not participate, this does not impact whether they are to be named, and consequently, if they must be served. The Court acknowledged that the Rule is harsh and inflexible but also recognized that the Court has no discretion in these circumstances. Therefore, failure to name the Director was fatal and the Application to Strike the Originating Notice of Application was granted.

ENVIRONMENTAL DEFENCE CANADA INC V ALBERTA, 2025 ABCA 132

(HAYES-RICHARDS J)

Rules 3.15 (Originating Application for Judicial Review) and 11.14 (Service on Statutory and Other Entities)

This case concerned the Judicial Review of a public inquiry. The inquiry, led by a Commissioner appointed under the *Public Inquiries Act*, RSA 2000, c P-39, concluded with a final report submitted to the Minister of Energy on July 30, 2021, and published on October 21, 2021 (the "Report"). The Respondents filed an Originating Application for Judicial Review of the Report on April 20, 2022, and served same on the Director of Civil Litigation at Alberta Justice on April 21, 2022. This was the last day of the six-month limitation period for service, pursuant to Rule 3.15(2).

The Court was tasked with answering whether service of the Originating Application on the Director of Civil Litigation was effective service on the Commissioner in his statutory capacity under the *Public Inquiries Act*. Given that the Originating Application for Judicial Review alleged that the Commissioner exceeded his jurisdiction under the Order in Council's terms of reference, Justice Hayes-Richards concluded that he was not to be served personally, but served as a statutory entity. However, the Commissioner, as a statutory entity, ceased to exist upon delivering the final Report on July 30, 2021. Neither the Commissioner personally nor the Commissioner statutorily had authority over whether or when the report would be issued; that authority rested solely with the Minister of Energy. The Court determined that after delivery of the Report to the Minister of Energy, it was the Crown or the Minister of Energy who had control over the statutory entity.

Therefore, service on the Director of Civil Litigation, who was authorized to accept service for the Crown, was sufficient pursuant to Rule 11.14(1)(a)(i).

YASCHUK V EMERSON ELECTRIC CANADA LTD, 2025 ABCA 211

(KHULLAR CJA, GROSSE, WOOLLEY JJA)

Rule 3.15 (Originating Application for Judicial Review)

The Appellant had filed a complaint with the Alberta Human Rights Commission against her former employer, which resulted in the Alberta Human Rights Tribunal upholding her complaint and awarding her damages. The Appellant disagreed with the damages and filed an Originating Application for Judicial Review of the Tribunal's decision (the "Judicial Review Application"). The Appellant properly served the Judicial Review Application on the Respondent and the Tribunal. However, she did not serve the Minister of Justice of Alberta in the six month period required under Rule 3.15(3). The Respondent successfully applied for the Judicial Review Application to be struck on the basis that the Minister was not served in accordance with the Rules. The Appellant appealed the Chamber Judge's Decision.

The Court affirmed that Rule 3.15 is strictly enforced, including the mandatory service requirements and six-month timeline. This stems from the Rule's exclusion of Rule 13.5, which otherwise allows for extensions, and because it aligns with the policy objective of maintaining timely and orderly judicial reviews.

The Appellant did not take issue with the strict enforcement of the time limits in Rule 3.15, rather she argued that the requirement under Rule 3.15(3)(b) to serve the Minister is an exception because of the additional wording "as circumstances require" and because, practically, the Minister rarely participated in judicial review applications. The Appellant also argued that since the Minister was ultimately served, more than a year late, but did not request a remedy for the late service or engage in the proceedings, that the Minister essentially waived the service requirement or the defect in service. Additionally, the Appellant contended that service on the Tribunal should suffice as service on the Minister.

The Court disagreed with the Appellant's arguments finding that Rule 3.15(3)(b) reflects Canada's division of powers by acknowledging that either the provincial or federal government, or both, may have an interest in a judicial review depending on the circumstances. Therefore, the relevant government offices must be served within the six-month deadline, which the Court held was the only reasonable interpretation of the Rule. The Court also dismissed the Appellant's argument that the late service on the Minister should be excused on account of the Minister not participating in the proceedings, citing that the Minister's role in judicial review is to oversee challenges to public authority decisions, and that the obligation to serve the Minister is not contingent on their participation. The Court did not consider whether waiver of service is permitted by Rule 3.15 because the Appellant acknowledged that the Minister had not expressly waived the service requirement or service defect.

The Court also dismissed the argument that service on the Tribunal suffices as service on the Minister because the Tribunal is an independent public agency, and its relationship with the Minister, either statutorily or contractually, is irrelevant. Ultimately, the Court noted that it would undermine the public oversight role of the Minister and create uncertainty for other parties involved if judicial review applications were allowed to proceed despite service defects. The Appeal was dismissed.

26TH AVENUE RIVER HOLDING LIMITED PARTNERSHIP V WINSPIA WINDOWS (CANADA) INC, 2025 ABKB 243

(ARCAND-KOOTENAY J)

Rules 3.26 (Time for Service of Statement of Claim) and 3.27 (Extension of Time for Service)

The Defendants sought to appeal the dismissal of their Application to set aside Orders, granted *ex parte*, which extended the Plaintiffs' time for service of a Statement of Claim (the "Appeal").

The Court considered relevant factors when exercising discretion to extend the time for service, pursuant to Rules 3.26. This included: (1) there should be some evidence showing attempts to serve; (2) ideally, there should be some explanation for why the Defendant has not been served; (3) the purpose of renewal cannot be to delay; and (4) there should be no prejudice arising to the Defendant.

Having considered and applied those factors, the Court found that the Plaintiffs met the low threshold under Rule 3.26. Specifically, there was evidence of attempts to serve, a reasonable explanation for the delay, no intent to delay, and no prejudice to the Defendants. The Court also noted that the Plaintiffs acted diligently and filed the Application before the one-year deadline.

Arcand-Kootenay J. noted that the threshold pursuant to Rule 3.27 is higher than that for Rule 3.26. Nonetheless, the Plaintiffs satisfied this higher threshold by demonstrating that they had made diligent efforts, the delay was beyond their control, and that there was no prejudice to the Defendants.

Having found that the Plaintiffs acted in good faith and diligently pursued service, Justice Arcand-Kootenay held that both Orders were justified, and dismissed the Appeal with costs.

OSADCHUK V KIDD, 2025 ABCA 125

(FEEHAN, DE WIT AND FETH JJA)

Rules 3.26 (Time for Service of Statement of Claim), 3.27 (Extension of Time for Service), 10.10 (Time Limitation on Reviewing Retainer Agreements and Charges), 11.25 (Real and Substantial Connection), 11.26 (Method of Service Outside Alberta), 11.27 (Validating Service), 11.28 (Substitutional Service), 11.33 (Definitions), 11.34 (Service in Contracting State), 11.35 (Default Judgment Under the Convention), 14.5 (Appeals Only with Permission), 14.18 (Contents of Appeal Record - Standard Appeals) and 14.27 (Filing Extracts of Key Evidence)

The Appellant, James Kidd ("Mr. Kidd") appealed a Chambers Judge's Decision that he had been successfully served with Darrell Osadchuk's ("Mr. Osadchuk") claim and an ex parte order before the time for service of the claims had expired (the "Appeal"). In the event Mr. Kidd succeeded, Mr. Osadchuk cross-appealed the Chambers Judge's Decision that substitutional service on February 18, 2020, and two additional attempts at service on July 10, 2020, were not effective (the "Cross Appeal").

Mr. Osadchuk filed an Amended Amended Statement of Claim on July 8, 2020, after an Applications Judge extended the deadline for service pursuant to Rule 3.26. On July 8, 2020, the commencement documents were sent to Mr. Kidd's Atlanta address via Canada Post Expresspost, and were deemed be served on July 9, 2020 pursuant to a Court Order, which was one day before the alleged expiry of the limitation period.

As a preliminary issue, Mr. Osadchuk argued that Mr. Kidd required permission for the Cross Appeal pursuant to Rule 14.5(1)(b) because it was a decision "respecting... time periods or time limits" and this includes time period and limits for service. The Court disagreed, holding that the Cross-Appeal was not of a decision in the nature contemplated by Rule 14.5(1)(b).

The Court noted that Rule 11.25(3) sets out a non-exhaustive list of factors which demonstrate a real and substantial connection. The Court also referred to and explained Rules 11.26, 11.33, 11.34, and 11.35 which support Applications for service *ex juris*. After canvass-

ing the Rules and the Hague Convention, the panel held that service can be affected in the United States via mail.

Mr. Kidd argued that not only did Mr. Osadchuk have to meet the requirements for service outside the jurisdiction but also had to meet the requirements for substitutional service pursuant to Rule 11.28. The Court disagreed, holding that service by mail under the Convention was an expressly mentioned route of service and substitutional service was not necessary.

The Appellant also argued that the deeming provision in the Application Judge's Order was a validating Order and, pursuant to Rule 11.27(1), was prohibited where service must be made in accordance with Division 8 of the Rules. The panel disagreed, finding that Rule 11.27 was not relevant to the analysis as the deeming provisions in the July 8, 2020 Order were operative prior to service being effected, not after.

Mr. Kidd further argued that the Applications Judge erred in deeming service to be affected on the date of mailing rather than on the date of receipt. The Court again disagreed, finding the Chamber's Judge decision was consistent with Rule 11.26(4) which states that service is affected on the date it is effective under the Hague Convention, which contains no provisions on the validity of service. The Hague Convention reinforces that validity of service abroad through postal channels depends on the law of the state of origin, and there was no impediment to an Alberta Court granting a one day following posting Order.

Finally, Mr. Kidd appealed the Chamber Judge's decision that Ministerial Order 27/2020, which temporarily suspended the period of time where any step was required to be taken in any proceeding for the COVID-19 pandemic, extended the date for service. The Court noted that in *O'Chiese First Nation v DLA Piper (Canada) LLP*, 2022 ABCA 240 ("*O'Chiese*"), the Court found that the Ministerial Order was intended to capture a time limit set out in Rule 10.10(2), treating it as a "limitations period". The Court held the same reasoning in *O'Chiese* was applicable to the extension that the Chambers Judge granted pursuant to Rules 3.26 and 3.27.

The Appeal was dismissed, and the Court did not determine the Cross Appeal in the result. In closing, the Court commented that the Appellant's submissions on Costs, included as appendices the written submissions from the Court below, should be avoided without permission from the Case Management Officer pursuant to Rules 14.18(2.1) and 14.27(1)(c).

COOLIDGE V ROCKY VIEW COUNTY, 2025 ABKB 286

(APPLICATIONS JUDGE MASON)

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

This was an Application by His Majesty the King ("HMK") to strike the Plaintiff's Claim under Rule 3.68(2)(b) or, alternatively, for summary dismissal pursuant to Rule 7.3, on the basis that section 42(7) of the *Highways Development Protection Act*, SA 2004, c H-8.5 ("HDPA"), barred actions against the Crown. The Plaintiff's action arose from a 2014 motorcycle accident in which he was rendered quadriplegic after striking a chevron sign that had fallen into a ditch and was not visible.

The Court dismissed the Application. Under Rule 3.68, the Court found that it was not plain

and obvious that the Plaintiff's Claim disclosed no reasonable cause of action. The pleadings alleged that HMK, having installed the chevron sign, failed to maintain it in a reasonable state of repair. The Court held that s 42(7)(a) of the HDPA does not insulate the Crown from liability where the issue is not the absence or presence of signage but rather its hazardous state of disrepair. Similarly, the defence under s 42(7)(b) was rejected because the sign had not been intentionally placed in the ditch and HMK acknowledged its ongoing maintenance duty under s 42(1)-(2).

Under Rule 7.3, the Court concluded that the legal issues were not sufficiently settled to permit summary dismissal. The evidentiary record raised live issues as to whether HMK met its maintenance obligations. The Court held the Application was not framed to address whether HMK discharged its duty to keep the sign in reasonable repair, and it would be unfair to decide that issue summarily on the narrow statutory ground advanced.

The Application was dismissed, and costs were awarded to the Plaintiff.

JH DRILLING INC V BARSI ENTERPRISES LTD, 2025 ABKB 288

(HARRIS J)

Rules 3.68 (Court Options to Deal With Significant Deficiencies), 7.3 (Summary Judgment) and 13.18 (Types of Affidavits)

The Plaintiff simultaneously applied for Summary Judgment of their claim against the Defendant, and to either summarily dismiss the Defendant's Counterclaim, or for the Counterclaim to be struck. The Action pertained to a dispute over a royalty agreement between the Parties whereby the Defendant gained the right to excavate lands owned by the Plaintiff and sell aggregate in exchange for royalty payments. The Defendant claimed the lands in question were exhausted and ceased operations.

The Plaintiff commenced the Action alleging unpaid royalties and that the Defendant had breached the royalty agreement. The Court reviewed the applicable case law for Summary Judgment and contractual interpretation. An important issue raised by the Defendants was the ambiguity of the contractual terms and definitions, and how those definitions pertained to the requirement on the Defendant to undertake further excavation if the lands were found to be exhausted. Justice Harris found that the breaches alleged by the Plaintiff were based on vague and ambiguous contractual terms, and that the Defendant had raised triable issues with respect to the economics of continued operations. Additionally, contrary to Rule 13.18(3), the Plaintiff had filed affidavits from a variety of individuals who were attesting to events that they had no direct involvement with and could not be said to contain their "personal knowledge".

With respect to the Defendant's Counterclaim, the Court noted that it was unclear if the Plaintiff was applying to strike the Defendant's pleading pursuant to Rule 3.68 for failing to include particulars of their claims of misrepresentation, or to have the Counterclaim summarily dismissed. Regardless, the Court determined that any deficiencies in the Defendant's Counterclaim could be easily rectified and that the Counterclaim raised triable issues.

As such, the Plaintiff's Application for Summary Judgment was dismissed, as was their Application to strike or dismiss the Defendant's Counterclaim.

SUNRIDGE MALL HOLDINGS INC V CALGARY (CITY),

2025 ABKB 289 (JOHNSTON J)

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

The Respondents applied, pursuant to Rules 3.68 and 7.3, to summarily dismiss or strike an Originating Application for Judicial Review filed by the Applicant. They argued that the Applicant filed and served the Originating Application outside of the timeframe prescribed by the *Municipal Government Act*, RSA 2000, c M-26 (the "Act"). The Respondent also opposed granting a fiat or backdating the filing date, arguing that the Court lacked discretion to extend the statutory deadline under the Act.

Johnston J. ordered that the Originating Application be struck as it was filed outside the 60-day limitation period prescribed by the Act. Relying on cases including Special Areas Board v ATCO Power Canada Ltd, 2018 ABQB 1035, which interpreted "date of decision" as the date notice is given, Johnston J. rejected the Applicant's argument that the limitation period should run from the date the decision was "deemed received".

The Court found no statutory authority under the Act to extend the limitation period or grant a fiat. In so doing, Justice Johnston commented that limitation periods are strict and cannot be varied without express legislative authority.

Johnston J. also declined to backdate the filing date, emphasizing that the email submission did not follow the urgent filing process. Justice Johnston noted that even if the filing date were backdated, the service requirement would still not have been met, as serving an unfiled copy would not constitute proper service.

BAINS V ADAM, 2025 ABCA 167

(WOOLLEY JA)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 6.8 (Questioning Witness Before Hearing), 14.45 (Application to Admit New Evidence) and 14.70 (No New Evidence Without Order)

The Court of King's Bench issued court access restrictions against the Respondents, Dr. Bains, Dr. Kaur, and their adult and minor children in a Decision released on January 27, 2025 (the "Court Restriction Decision"). The Respondents sought permission to Appeal the Court Restriction Decision and, in doing so, served 16 individuals with Notices of Appointment for Questioning under Rule 6.8 (the "Notices").

Justice Wooley confirmed that while Rule 6.8 permits the questioning of witnesses under oath to obtain transcripts for use in Applications, it must be confined to matters that are relevant, material, and not an abuse of process. Justice Wooley noted that a detailed review of the litigation history and the context of the Appeal was necessary to assess the propriety of the Respondents' Notices.

The underlying litigation arose from three motor vehicle accidents involving Dr. Bains in 2017, leading to prolonged proceedings involving numerous Motions, Appeals, and related

lawsuits, most of which were stayed, denied, or struck as abusive proceedings under Rule 3.68. After the claims were dismissed at Trial, Dr. Bains initiated additional Actions and filed criminal complaints against various participants, none of which advanced. The Court Restriction Decision was issued in response to Dr. Bains' ongoing vexatious conduct.

In seeking permission to Appeal, the Respondents argued that the restrictions were not justified in fact or law. Justice Wooley confirmed that the appropriate assessment involved determining whether the Appeal raises an important question of law or precedent, has a reasonable chance of success, and would not unduly delay the Action or cause prejudice. Justice Wooley affirmed that, under Rules 14.45 and 14.70, the analysis is confined to the record before the Chambers Judge and the broader litigation context, with new evidence permitted only by Application and in rare circumstances.

Justice Wooley found that the Respondents' proposed Questioning was unrelated to their Application for permission to Appeal. The individuals named lacked information relevant to whether the Appeal raised an important legal question, had a reasonable chance of success, or would cause undue delay or prejudice.

In the result, Justice Wooley held that the Notices were improper and constituted an abuse of process. All Notices were set aside, and the Respondents were prohibited from serving any further Notices of Appointment for Questioning in connection with the Appeal without prior Court approval.

NORTHBACK HOLDINGS CORPORATION V ALBERTA ENERGY REGULATOR, 2025 ABCA 186

(KHULLAR, FAGNAN AND SHANER JJA)

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

The Court of Appeal addressed whether Section 56 of the *Responsible Energy Development Act*, SA 2012, c R-17.3 ("REDA") constitutionally bars judicial review of decisions by the Alberta Energy Regulator ("AER") on questions of fact or mixed fact and law. The case arose out of the AER's refusal to approve the Grassy Mountain Coal Project, with the project proponent and two supporting First Nations seeking Judicial Review of that Decision. The Court upheld the Chambers Judge's ruling that Section 56 of REDA ousted judicial review jurisdiction in this context, despite arguments that Constitutional and Indigenous rights were implicated.

From a procedural standpoint, Khullar J.A., in dissent, noted that the tests under Rule 7.3 (Summary Dismissal) and Rule 3.68 (Strike) are distinct. On an Application for Summary Judgment under Rule 7.3, the test is whether, having regard to the record and the issues, it is possible to fairly resolve the case on a summary basis or whether there is a genuine issue requiring Trial. In contrast, on an Application to Strike a claim for lack of a reasonable claim, the test is whether, assuming the facts pled are true, it is "plain and obvious" that the claim cannot succeed.

Justice Khullar also reaffirmed the scope and operation of Rule 3.68(2)(a), which permits the Court to strike a claim for lack of jurisdiction. The Chambers Judge dismissed the Judicial Review Applications on that basis, holding that the privative clause in Section 56, coupled with an appeal mechanism under Section 45,

removed her authority to review the AER's findings. The Appellants challenged this ruling, asserting that the reasons were inadequate and that it was not "plain and obvious" that the Applications could not succeed. However, Khullar J.A. noted that Rule 3.68(2)(a) does not require the same "plain and obvious" standard used under Rule 3.68(2)(b) (Failure to Disclose a Reasonable Cause of Action) and that the absence of legal or factual analysis in the reasons was appropriate, given that the ruling turned solely on jurisdiction.

MENTZELOPOULOS V ALBERTA HEALTH SERVICES, 2025 ABKB 235

(YUNGWIRTH J)

Rules 4.10 (Assistance by the Court), 6.8 (Questioning Witness Before Hearing), 6.20 (Form of Questioning and Transcript) and 6.38 (Requiring Attendance for Questioning)

This was an Application brought by the Defendants for an interlocutory injunction in a wrongful dismissal action. The Defendants also sought permission to question the Plaintiff pursuant to Rule 6.8. The Court accepted that Rule 6.8 questioning was appropriate to determine what records the Plaintiff removed prior to her termination and to whom those records were distributed. In accordance with Rule 6.8, the Court held that Rules 6.16 to 6.20 applied, and that the questioning transcript must be filed by the questioning party.

Relying on Rule 6.38, the Court ordered the Plaintiff to attend questioning and confirmed the Court's authority to direct the production of records relevant to the pending Application. The scope of questioning was limited to two issues: what records the Plaintiff removed, and to whom those records were provided. The Court prohibited questioning about communications with the Auditor General or law enforcement to preserve the integrity of ongoing investigations.

The Court adjourned the Applications for interlocutory injunctions *sine die* pending questioning. The matter was directed to return before the Court for a Rule 4.10 Case Conference following questioning. The Court confirmed that transcripts would not be filed until after the Case Conference and directed that process for determining privilege, litigation planning, and potential case management would be addressed at that time.

OWEN V FLANK, 2025 ABCA 199

(FRIESEN J)

Rules 4.10 (Assistance by the Court) and 14.8 (Filing a Notice of Appeal)

This was an Application to extend the time to appeal an interim child support order. The Notice of Appeal was filed approximately ten months late, well beyond the one-month time limit set out under Rule 14.8(2)(a)(iii). The Applicant attributed the delay to her former

counsel's failure to inform her of appeal rights and to newly discovered evidence of alleged misrepresentations by the Respondent.

The Court found no evidence that the Applicant had formed a *bona fide* intention to appeal within the permitted time. The Court held that the appropriate remedy for the Applicant's concerns about disclosure was through the trial process or further proceedings in the Court of King's Bench, not through a late appeal of an interim Order. The Court emphasized that interim orders of this nature are entitled to deference and subject to reassessment at trial. The Court noted that the parties had been ordered to comply with a litigation plan, and Rule 4.10 conferences were already underway.

The Court found no reasonable prospect of success on appeal and dismissed the Application.

TAYLOR V HENDRIX, 2025 ABKB 261

(NIXON ACJ)

Rule 4.16 (Dispute Resolution Processes)

The Applicant sought an exemption from the mandatory Dispute Resolution Process pursuant to Rule 4.16. Associate Chief Justice Nixon considered the conditions which must be met, pursuant to Rule 4.16(2), for a Court to waive the requirement for parties to participate. The Plaintiff argued that the nature of the claim was not one that is likely to result in an agreement and that engaging in Dispute Resolution would be futile.

The Court ultimately held that the circumstances for a waiver of the Dispute Resolution Process were not met and that granting the Application was premature. Nixon A.C.J. was not satisfied that: (i) there had been a previous dispute resolution process; (ii) the nature of the claim was one that was unlikely to result in an agreement between the parties; (iii) there was a compelling reason why a dispute resolution process should not be attempted; (iv) engaging in a dispute resolution process would be futile; or (v) a Court decision was necessary or desirable.

The parties were instructed to exhaust the "normal procedures" as provided in the Rules, before one or both parties could seek a waiver pursuant to Rule 4.16(2).

LAW SOCIETY OF ALBERTA V BEAVER, 2025 ABCA 136

(SLATTER JA)

Rules 4.22 (Considerations for Security for Costs Order) and 14.67 (Security for Costs of an Appeal)

The Bank of Montreal ("BMO") assigned a debt to the Law Society of Alberta ("Law Society") against the Appellant (the "Assignment"). The Law Society successfully brought a Summary Judgment Application to collect the debt pursuant to the Assignment. The Appellant appealed, and the Law Society brought an Application for Security for Costs of the Appeal.

The Court noted that Security for Costs of an Appeal can be awarded under Rule 4.22 or 14.67. The Law Society argued that the Appellant would be unable to pay the Costs of the Appeal if unsuccessful, noting the Appellant had been disbarred for financial misconduct (the "Disbarment"). The Appellant acknowledged he did not presently have the ability to pay the Costs of the Appeal, nor provide Security for Costs. However, the Appellant argued that he had sought leave to Appeal the Disbarment to the Supreme Court of Canada and, if the Appeal was granted, he would be able to raise funds to post security. The Appellant also sought a Stay of the Appeal for three months.

Justice Fraser dismissed the Appellant's arguments and found that the test for Security for Costs was met, holding that the Appellant was required to post $13,000 with the Registrar by July 16, 2025, failing which the Appeal would be abandoned pursuant to Rule 14.67(2).

LAVOIE V LUKIW, 2025 ABCA 208

(FRIESEN JA)

Rules 4.22 (Considerations for Security for Costs Order) and 14.38 (Court of Appeal Panels)

The Application concerned whether the Respondent ought to be required to provide Security for Costs with respect to their Appeal of an Order granting Summary Judgment. The Applicant took the position that the Respondent had failed to pay any amount of the Judgment or Costs awarded, that the Respondent had no assets in Alberta, and that the Appeal had no merit. As such, Security for Costs should be required.

The Respondent took the position that Security for Costs would significantly prejudice their ability to proceed with the Appeal, and that the Appeal had merit on the basis of that the Applicant had failed to provide proper notice of the Application which resulted in the Order being appealed.

The Court considered the discretionary nature of Security for Costs orders under Rule 4.22 and balanced the Parties' rights and the expectations. When considering the relevant factors and the context of the situation, Justice Friesen noted that the Respondent's circumstances indicated that Security for Costs would prejudice their ability to continue the Appeal; the Respondent was unemployed, in debt, and without assets. Additionally, the Court noted that while there was little merit to the Appeal,

the timing of the Application suggested that it was being brought for the primary purpose of creating a financial barrier for the Respondent from continuing the Appeal.

As such, the Court dismissed the Application for Security for costs. Additionally, the Respondent had sought to admit new evidence in the proceedings during the Application, but Justice Friesen noted that such an application needed to be heard by the panel hearing the Appeal unless otherwise directed.

BANOVICH V BANOVIC, 2025 ABCA 231

(FEEHAN JA)

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

The Applicant husband applied for Security for Costs in the amount of $18,225 in an Appeal arising from a Summary Trial Decision regarding the division of matrimonial assets and spousal support. The Appellant wife alleges legal errors by the lower court in applying Sections 7(2)(c) of the Family Property Act, RSA 2000, c F-4.7 and 15.2 of the Divorce Act, RSC 1985, c 3 (2nd Supp).

The Applicant argued that he would be unable to enforce an Award of Costs against the Appellant and that her Appeal is likely to fail. The Appellant argued that her Appeal has merit and posting Security for Costs prior to accessing her share of the matrimonial assets would be a financial hardship that would unduly prejudice her ability to continue the Appeal.

After applying Rules 4.22 and 14.67, and the applicable case law, Feehan J.A. held that it would not be just and reasonable to permit the Application. The Applicant will be able to collect Costs of an Appeal from the Appellant if he is successful through trust funds held by counsel or the distribution of matrimonial property. Further, Feehan J.A. concluded that the Appellant's proposed grounds of Appeal do not appear to be frivolous or unmeritorious. As a result, the Security for Costs Application was Dismissed.

RUMANCIK V HARDY, 2025 ABKB 277

(EAMON J)

Rules 4.24 (Formal Offers to Settle), 4.25 (Acceptance of Formal Offer to Settle), 4.27 (Status of Formal Offer to Settle and Acceptance), 4.29 (Costs Consequences of Formal Offer to Settle) and 4.36 (Discontinuance of Claim)

The Plaintiffs, two Calgary Police Service employees, sued the Defendants, a civilian and his lawyer, for defamation (the "Defamation Action"). The Defendant, Hardy, and his lawyer, Bates, filed a Statement of Claim in a previous Action which contained allegations

of corruption, abuse of process, and serious police misconduct (the "Statement of Claim"). They then provided copies of the Statement of Claim to the media for publication. The previous Action was settled in 2023. The allegations contained in the Statement of Claim were never tried or determined by a Court. The publication of the Statement of Claim was the basis of the Defamation Action.

Hardy applied for Summary Judgement, dismissing the Defamation Action, because the underlying Action was settled. The Plaintiffs applied to strike that Application as an abuse of process, as Hardy had previously applied for Summary Judgement in 2019 and was unsuccessful.

Hardy argued that the Summary Judgement Application was not an abuse of process because it was founded on new evidence, being the Settlement of the underlying Action. On this issue, Justice Eamon held that the Summary Judgement Application was substantially different from the first, and thus was not an attempt to re-litigate the issues.

The Plaintiffs relied on Rule 4.27 to support their argument that acceptance of a Formal Offer to Settle is not an admission, and therefore the Summary Judgement Application was an abuse of process. On this alone, the Court did not find the Application to be abusive.

The Plaintiffs also argued that Hardy amending his Statement of Defence to include a general plea of truth (i.e., that his actions were not defamatory because the statements made in the Statement of Claim were true) was an abuse of process. Justice Eamon did not agree with this argument.

The Court considered Rules 4.24 and 4.25, which set out the requirements for Formal Offers to Settle and acceptance of such Offers. Eamon J. also considered Rule 4.29, which describes the Cost consequences of failing to accept a Formal Offer to Settle. In analysing these Rules, the Court found that the purpose of Rule 4.29 was to promote settlement and prevent needless litigation.

In determining the scope of the previous settlement, Justice Eamon considered the differences between the old Rules of Court and the current Rules. Rule 4.27(3), unlike old Rule 172, does not specifically provide that all proceedings with respect to matters specified in an acceptance are to be stayed. In reflecting on old rule 225(2) and current Rule 4.36(5), the Court held that "a settlement utilizing a discontinuance without costs precludes relitigating the same causes of action in subsequent actions". The Court held, however, that the Defamation Action was not a re-litigation of the previous Settlement. Similarly, Justice Eamon concluded that settlement did not give rise to issue estoppel, as that would go beyond the intention of Rule 4.29.

In conclusion, Justice Eamon found the Defamation Action to be separate and distinct from the prior Action, and dismissed both the Summary Judgement Application and the Cross-application alleging abuse of process.

LAURENCE V ROSS, 2025 ABKB 292

(LOPARCO J)

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

The decision addressed Costs in respect of an Application in the family law context, where the Defendant was ultimately successful.

The Plaintiff began by arguing that since the Defendant did not request costs in their FL-10 Claim form, the Defendant's *prima facie* entitlement to Costs had been displaced. The Court rejected this argument, noting that the Defendant did request costs in the conclusion of her brief of argument, and the Court invited the parties to provide submissions on costs.

In determining the appropriate Costs to be awarded, the Court considered various case law, along with Rules 4.24, 4.29, 10.29, 10.31, and 10.33. Justice Loparco found that Schedule C failed to provide an appropriate level of indemnity for Costs, as the Plaintiff engaged in litigation misconduct by attempting to mislead the Court and hindered proceedings by creating delay that was due to his own conduct, lack of preparation, and incomplete disclosure. Loparco J. also found that the Plaintiff engaged in coercive and controlling behaviour. Although much of it was pre-litigation, the Court provided authority to support that it can be considered in a determination of Costs where, in situations such as this, the conduct created an intolerable situation that prompted (in part) the litigation. Further still, the conduct continued throughout the litigation, increasing costs and duration.

Additionally, the Court considered the fact that the Defendant was entirely successful and put forward offers to settle, which were rejected. The Court rejected the Plaintiff's argument that that any costs ordered against them would impact his ability to see their child in Quebec and would fuel further litigation and hostility between the parties. In doing so, the Court noted that increased travel costs associated with parenting time had already been accounted for by way of a reduction in child support payments in the months when parenting time is exercised. Justice Loparco stated that the Plaintiff's financial state due to high debts cannot be considered in a costs award where the applicant was entirely successful. The Court ultimately awarded 80% of solicitor-client costs to the Defendant, totalling $39,371.78.

WESTJET V ELS MARKETING INC, 2025 ABCA 115

(ANTONIO, DE WIT AND FETH JJA)

Rule 4.31 (Application to Deal with Delay)

ELS Marketing Inc. ("ELS") appealed a Case Management Order dismissing its Counterclaim against WestJet for prejudicial delay after 13 years of litigation.

ELS argued the Case Management Judge erred in finding inordinate and inexcusable delay, or that ELS failed to rebut the presumption of significant prejudice. ELS also contended that WestJet's role in the delay was not adequately considered.

The Court of Appeal emphasized that a finding of delay is a question of fact. As such, a Case Management Judge's finding can only be overturned on appeal if there is a palpable and overriding error. Whether delay is inordinate and inexcusable is discretionary and given the Case Management Judge's detailed knowledge of the litigation process, they are best suited to assess the causes and consequences of delay.

The Court acknowledged that while failing to consider the Defendant's role in the delay is an error in principle, it clarified that the inadequacy of reasons does not automatically warrant an appeal, provided the reasons are reasonably intelligible to the parties and not subject to excessive scrutiny or taken out of context. Finally, the Court reaffirmed that under Rule 4.31, it has the authority to dismiss any claim or counterclaim where the plaintiff's delay has significantly prejudiced the defendant.

The Court of Appeal agreed with the Case Management Judge that ELS's 13-year delay was both inordinate and inexcusable. ELS was largely responsible for the delay. It failed to produce documents or prepare witnesses, was slow to amend, and was not Trial ready. The Court of Appeal rejected ELS's argument that the delay was justified by external events such as a prior appeal or COVID-19, noting these accounted for only a small part of the delay. The Court of Appeal also dismissed ELS's claim that WestJet contributed to the delay, affirming that WestJet had satisfied its procedural obligations.

Further, the Court of Appeal upheld the presumption of significant prejudice due to the delay, stating that a finding of actual prejudice is not required. The Case Management Judge correctly determined that key evidence had been compromised or made unavailable because of delay. Additionally, the Court of Appeal rejected ELS's argument for a litigation plan, highlighting that the case remained unready for Trial after 13 years, and that no procedural mechanism could restore lost evidence or faded witness memories.

As a result, the Appeal was dismissed.

BARON REAL ESTATE INVESTMENTS LTD V TRI-ARROW INDUSTRIAL RECOVERY INC, 2025 ABKB 367

(BROOKES J)

Rules 4.33 (Dismissal for Long Delay) and 6.14 (Appeal from Applications Judge's Judgment or Order)

The Defendants appealed an Applications Judge's decision dismissing their Application to dismiss the Action for long delay, pursuant to Rule 4.33 (the "Appeal").

The Plaintiff leased lands to the Defendants for a term of five years. The Defendants were in the business of hazardous and non-hazardous waste-disposal and treatment, as well as vacuum trucking services. The Plaintiff alleged that the Defendants caused damage to the leased lands, including contamination, and claimed damages as a result.

Following exchange of pleadings, the Plaintiff and Defendants exchanged Affidavits of Records ("AoR"). The final AoR was served on March 23, 2018. Questioning was scheduled for September 2020 but was adjourned at the request of Plaintiff's counsel. The Plaintiff served a Supplemental AoR ("SAoR") on March 22, 2021, which the Defendants acknowledged receipt of and stated they were reviewing. No steps took place following receipt of the SAoR and the Defendants filed their Application to dismiss for long delay on August 3, 2021 (the "Application"). The Applications Judge dismissed the Application on the basis that the SAoR significantly advanced the Action.

The Appeal proceeded on the record before the Applications Judge pursuant to Rule 6.14(3). The issue was whether the SAoR significantly advanced the Action. The Court held that at the time the SAoR was served, the central issues were the extent of the contamination and the cost to remediate. After considering the SAoR, the Court found the documents within did not assist in determining the central issues and therefore the SAoR did not significantly advance the Action. Accordingly, the Appeal was allowed, and Action was dismissed.

ROUND HILL CONSULTING LTD V PARKVIEW CONSULTING, 2025 ABCA 195

(SLATTER, STREKAF AND HO JJA)

Rule 4.33 (Dismissal for Long Delay)

The Appellant applied to dismiss the Respondents' Counterclaim for long delay under Rule 4.33, known as the "drop dead rule", arguing that nothing had been done for over three years to significantly advance the Counterclaim. They argued that the Counterclaim was a separate Action, and advances in the Claim were not advances in the Counterclaim.

A Chambers Judge struck out the Counterclaim for delay under Rule 4.33 but left the Claim intact. The Appellant appealed that decision.

Overturning the lower Court's finding, the Court of Appeal found that the Claim and Counterclaim were closely connected, arising from the same or related transactions, with

overlapping parties and pleadings. The Court wrote: "Rule 4.33, like its predecessor R. 244.1, requires consideration of whether there has been a significant advance in the action as a whole, rather than an advance in relation to the parties that have brought the application to dismiss for long delay".

The Counterclaim was not treated as an independent Action, as evidenced by shared case management and the lack of any application to sever the two Actions. The Court emphasized that the functional approach under Rule 4.33 requires examining whether steps taken in the claim significantly advanced the counterclaim in substance and effect, rather than focusing on formalistic distinctions.

The Counterclaim was not the type of claim that was intended to be dismissed by the drop dead rule.

DROOG V HAMILTON, 2025 ABCA 228

(CRIGHTON, KIRKER AND DE WIT JJA)

Rule 4.33 (Dismissal for Long Delay)

The Applicants applied to appeal a decision by a Chambers Judge to dismiss an appeal from the decision of an Applications Judge dismissing the Appellants' Action against the Respondents for long delay under Rule 4.33(2) (the "Appeal").

It was uncontroversial that by May 22, 2021, three years had passed without a significant advance in the Action. The Appellants argued that Section 22(2) of the Interpretation Act (the "Act") extended the three-year period under Rule 4.33 because May 22, 2021 fell on a Saturday, and their Affidavit of Records served on May 25, 2021, should be treated as timely. They also contended that the Respondents' alternative Application for Summary Dismissal constituted participation in the Action, justifying its continuation under Rule 4.33(2)(b).

The Court held that Section 22(2) of the Act did not extend the three-year period under Rule 4.33. Section 22(2) applies only when an enactment requires an act to be done at a specific office or place that is closed on the relevant day. The Appellants could have served their Affidavit of Records by email or fax on or before May 22, 2021, and Section 22(2) was therefore inapplicable.

The Court found that the Respondents' alternative Application for Summary Dismissal did not constitute participation in the Action such that continuation was justified. It further found that the Chambers Judge reasonably concluded that the foundational goals of the Rules were best served by dismissing the Action.

Finding no errors in principle or unreasonable exercise of discretion, the Chambers Judge's decision was upheld and the Appeal dismissed.

MO'ALLIM V GALLANT, 2025 ABKB 225

(BURNS J)

Rule 5.2 (When Something is Relevant and Material)

This was an Appeal of an Order compelling the Plaintiff to produce settlement documents from a prior action regarding a 2020 motor vehicle accident. The Plaintiff argued that the documents were privileged, while the Defendants maintained that they were relevant and material to damages in the litigation arising from a 2018 motor vehicle accident.

The Court emphasized that Rule 5.2 governs the standard for disclosure and production. Under Rule 5.2(1), information must be both relevant, meaning it could significantly help determine issues in the pleadings, and material, meaning it could significantly help prove a fact in issue. The Court held that relevance is determined by the pleadings, while materiality involves judgement about whether the information could meaningfully contribute to proving the case.

Although the Applications Judge had ordered production, the Appeal Justice found that the documents did not meet the threshold of Rule 5.2 at this stage. The Court held that settlement documents are generally protected by class settlement privilege, which can only be pierced when a public interest outweighs the interest in preserving settlement confidentiality. While prevention of double recovery may justify disclosure, the Court held that such concerns are premature unless and until a trial judge finds the Plaintiff's injuries indivisible across the two collisions.

The Appeal was allowed. The Production Order was set aside, and the documents were not to be produced unless and until the trial judge determined the injuries were indivisible.

HASIBULLAH V POTTER, 2025 ABCA 179

(SLATTER, ANTONIO AND HAWKES JJA)

Rules 5.2 (When Something is Relevant and Material), 5.3 (Modification or Waiver of this Part), 5.5 (When Affidavit of Records Must be Served), 5.6 (Form of Contents of Affidavit of Records) and 5.17 (People Who May be Questioned)

During Questioning related to a motor vehicle incident, it emerged that the Appellant, who was the Plaintiff in the Action, had been involved in a number of other motor vehicle incidents. The Appellant objected to answering questions about the other accidents. The Chambers Judge directed that some of the questions, and related undertakings, were relevant and material, which the Appellant appealed.

The Parties agreed that a party adverse in interest must produce records and answer all relevant and materials questions, and that the scope of disclosure in outlined in Rules 5.2, 5.5, 5.6 and 5.17. Further, Rule 5.3 provides

an overall discretion in the Court to prevent improper or grossly disproportionate Questioning.

After considering the objections to questions and undertakings, the Court found that questions and undertakings about prior accidents were relevant and material because the Appellant may have already been suffering from injuries at the time of the incident in issue. However, the questions about the Appellant's present living and economic circumstances were not relevant and were contrary to the rule against examining on credibility alone. As such, the Appeal was allowed in part, and the Appellant was ordered to answer the approved outstanding questions in writing.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 360

(NIXON ACJ)

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 Court considered whether to order the production of documents and Questioning of third parties under Rules 5.11, 5.13, and 5.18. One of the Defendants, Wood Group Canada Inc. ("Wood Group"), sought records from the Plaintiff, CNOOC Petroleum North America ULC ("CNOOC Canada") and its affiliated entities, arguing that these records were relevant and material to assessing the reasonableness of CNOOC Canada's claim for damages after a pipeline failure. Under Rule 5.11, Wood Group claimed CNOOC Canada controlled these records because of the close ties between the affiliated companies. The Court rejected this, finding no sufficient evidence that CNOOC Canada actually controlled the records or that the corporate veil should be pierced. Audit rights in contracts did not create control over records for discovery purposes.

Under Rule 5.13, which governs production of records from non-parties, the Court emphasized that Wood Group's request was overly broad and lacked sufficient particularization. The Application was seen as an inappropriate fishing expedition rather than a targeted request for known documents. The Court reiterated that Rule 5.13 should not be used to compel third-party discovery on vague or general claims about potential documents. The requested records needed to be more clearly identified, and the Application failed to meet that standard.

Regarding Rule 5.18, which allows questioning of persons providing services to a corporation when certain conditions are met, Associate Chief Justice Nixon found that the affiliated entities were not akin to near-employees of CNOOC Canada. Wood Group did not provide sufficient evidence that justified treating these entities as near-employees for discovery purposes. The Court concluded that granting the Application would lead to a disproportionate and unnecessary expansion of pre-Trial discovery, contrary to the principles of the Rules. All Applications under Rules 5.11, 5.13, and 5.18 were dismissed.

WIDNEY ESTATE (RE), 2025 ABKB 311

(LEMA J)

Rules 5.17 (Questions to Discover Relevant and Material Documents and Relevant and Material Information) and 6.8 (Questioning Witness Before Hearing)

This was an Application by beneficiaries seeking to compel questioning of a co-executor, Mr. Muench, in relation to three pending estate-related Applications. The Applicants relied on Rules 5.17 and 6.8, arguing that Mr. Muench, as a party adverse in interest, had not submitted an Affidavit and might possess relevant and material information.

The Court declined to grant the Application. It held that where one co-executor has provided Affidavit evidence on behalf of the estate, Rule 5.17 is not automatically engaged absent evidence that the co-executors were not acting unanimously, that the existing evidence was incomplete, or that the affiant was an unsuitable witness. No such evidence was present.

The Court applied the unanimity requirement under Section 37 of the *Estate Administration Act* and found no reason to believe that Mr. Muench possessed undisclosed information or had acted independently of the active co-executor, Ms. Tyler.

The Court also held that Rule 6.8 was not engaged, as Affidavits had already been submitted by the estate and the beneficiaries had not met the threshold to justify further questioning of Mr. Muench. The Applicants were granted leave to renew the Application following cross-examination of Ms. Tyler, should new evidence arise indicating a reasonable possibility that Mr. Muench held relevant and material undisclosed information.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2025 ABKB 265

(NIXON ACJ)

Rule 5.18 (Persons Providing Services to Corporation or Partnership)

CNOOC Petroleum North America ULC ("CNOOC") filed a claim against several defendants, including Sunstone Projects Ltd and Wood Group Canada, Inc. (collectively, the "Wood Group") and ITP SA ("ITP"). Two former defendants, Omnisens SA ("Omnisens") and Surerus Pipeline Inc ("Surerus") settled with CNOOC pursuant to Pierringer Agreements. Wood Group applied under Rule 5.18 for an Order directing that any evidence from the Questioning of Surerus and Omnisens be treated as if it were the evidence of CNOOC.

In this Decision, Nixon A.C.J. framed the issue as whether the Court should grant the Wood Group Application to question Omnisens and Surerus under Rule 5.18.

Wood Group claimed that Surerus and Omnisens were "service providers", akin to employees of CNOOC, and the Order sought was necessary for fairness and to ensure access to relevant and material evidence. Wood Group pointed out that absent the Pierringer Agreements, Wood Group would have had the right

to question Surerus and Omnisens and to read in that evidence at Trial.

The Court acknowledged that Rule 5.18 was added following Rule 5.17 to recognize the common law gloss that arose from the old wording of the Rules referring to persons who "were employed by the other party" not just "employees." Associate Chief Justice Nixon held that where it is shown that an individual has provided services to the corporation in a manner similar to traditional employment, they must still meet the high bar test for Rule 5.18, which requires demonstrating that "'a party cannot obtain relevant and material information' from the corporate representative."

The Court agreed with CNOOC that all elements of Rule 5.18 must be met. Nixon A.C.J. found that Wood Group failed to meet the elements of Rule 5.18, holding that Surerus and Omnisens did not have a relationship with CNOOC akin to a "near employee" and that the services they provided were not analogous to traditional employment relationships. The Court also found that Wood Group did not show that it was impossible to obtain the relevant and material information from CNOOC. Dissatisfaction of the record production is not enough on its own. Nixon A.C.J. emphasized that Rule 5.18 is a narrow exception not intended to displace the usual methods of record production or Questioning.

Associate Chief Justice Nixon further noted that pointing to potential prejudice or unfairness alone is not enough to permit the use of Rule 5.18, and that nevertheless, the Pierringer Agreements contained requirements to cooperate with CNOOC in providing requested records and to assist with Questioning. The Court, consequently, did not grant the Wood Group Application to question Omnisens and Surerus under Rule 5.18. The Application was dismissed.

GIESBRECHT V PRPICK, 2025 ABCA 222

(ANTONIO, HO AND FETH JJA)

Rules 5.33 (Confidentiality and Use of Information) and 14.5 (Appeals Only with Permission)

This was an Appeal from a Decision following a Trial where the Appellant was found liable for defamation and permanently enjoined from making similar statements in the future. The Appellant raised multiple grounds of appeal, including arguments under Rules 14.5 and 5.33.

The Appellant's submitted that the Trial Judge erred by proceeding with the Trial contrary to a prior Order setting specific Trial dates. Noting that neither party requested the Court to consider Rule 14.5(1)(b), the Court nonetheless addressed the issue on its merits. It held that trial scheduling remained within the Court's discretion and the prior Order did not preclude the Court from exercising its authority to manage its own process.

Rule 5.33 was engaged when the Appellant objected to the Respondents' attempt to rely on an email obtained in the discovery process of a related action, invoking the implied undertaking rule. The Trial Judge excluded the email and determined that no sanction was necessary. The Court of Appeal upheld this approach and found no reviewable error in the Trial Judge's treatment of the issue.

The Appeal was dismissed in all respects except with respect to the scope of an injunction. The

Court found the language in the original Judgment overly broad, particularly as it extended to commentary about the Town's administration generally. The injunction was narrowed to prohibit the Appellant from directly or indirectly stating, suggesting, or implying that the Respondents had acted in a corrupt or criminal manner. Costs were awarded to the Respondents under Schedule C, Column 1.

ONE PROPERTIES HOLDINGS CORP V TURTLE BAY INVESTMENTS LTD, 2025 ABKB 313

(MAH J)

Rule 6.3 (Applications Generally)

This case involved a dispute between a majority and a minority shareholder concerning the exercise of an option to purchase shares under a separate agreement (the "Option Agreement"). The minority shareholder, Mr. Eger, alleged shareholder oppression and sought arbitration under two Unanimous Shareholder Agreements (the "USAs"), while the majority shareholder argued that the Option Agreement superseded the USAs and nullified any right to arbitration. Central to the dispute were issues regarding the valuation of shares and access to relevant documents.

Mr. Eger argued the Option Agreement was invalid, relying on key principles established in the jurisprudence. He asserted the Option Agreement lacked two essential features. First, exclusivity and irrevocability, as it allowed for assignment and written amendments; and second, a defined time period, as it referred only to a "continuing option." In response, the Applicants submitted that Mr. Eger failed to properly comply with Rule 6.3(2), which requires an applicant to specify the relief sought and the grounds for it. They noted that this argument was raised for the first time in a Cross-Application Brief.

Justice Mah held that, while there may have been a procedural deficiency, it did not warrant dismissal of the argument. Since all submissions were made in writing and had been exchanged in advance, as contemplated in *Reeves v Grassi*, 2019 ABQB 416, Mah J. found that the Applicants had a fair opportunity to respond. Specifically, Mr. Eger's Cross-Application Brief was filed on January 31, 2025, and the Applicants' Reply on March 20, 2025. Any procedural concerns, Mah J. concluded, could be appropriately addressed through a Costs Order.

WALSH V WALSH, 2025 ABCA 205

(ANTONIO, HO AND FRIESEN JJA)

Rule 6.3 (Applications Generally)

Following the breakdown of a long-term marriage, the Parties separated in 2018 and divorced in June 2024. In 2022, a Consent Order directed that the matrimonial home be sold, with the proceeds held in trust pending either an agreement between the Parties or a further Order of the Court (the "Consent Order"). However, the sale did not occur, and disputes over the property persisted. As a result, the Parties were directed to attend morning chambers.

The Respondent applied to enforce the Consent Order (the "Enforcement Application"). Rather than responding within the prescribed timelines, the Appellant filed an *ex parte* Desk Application and obtained an Order granting her exclusive possession of the matrimonial home. That Order was subsequently vacated, and the Appellant then filed a Cross-Application seeking exclusive possession and the right to purchase the Respondent's interest in the property. In reply, the Respondent submitted an Affidavit seeking relief different from that originally requested in the Enforcement Application—specifically, an Order permitting him to buy out the Appellant's interest in the property. The Chambers Judge ultimately granted this relief under Section 15 of the *Law of Property Act,* RSA 2000, c L-7 (the "LPA") (the "Chambers Order").

The Appellant argued that the Chambers Judge erred in granting relief that was different from what was sought in the Enforcement Application. The Court rejected this argument, confirming that the purpose of Rule 6.3(2)(d), which requires an application to reference any provision of an enactment or rule being relied upon, is to ensure that a respondent has adequate notice of the basis for the application and a fair opportunity to respond.

The Court noted that the record clearly demonstrated the Appellant was aware that the Respondent was seeking different relief, and even addressed case law concerning such changes in oral submissions before the Chambers Judge. Although it would have been preferable for the Respondent to have expressly cited Section 15 of the LPA in the Enforcement Application, the Court held that the Appellant had adequate notice and a meaningful opportunity to respond. As such, the procedural irregularities did not amount to a reversible error.

Accordingly, the Appeal was dismissed.

MENTZELOPOULOS V ALBERTA (MINISTER OF HEALTH), 2025 ABCA 200

(WATSON, PENTELECHUK AND WOOLLEY JJA)

Rule 6.8 (Questioning Witness Before Hearing)

In this Appeal, Alberta Health Services ("AHS") and His Majesty the King in Right of Alberta ("Alberta") challenged portions of a Chambers Judge's Order. The dispute centred on the Respondent's transmission of certain documents, specifically, two emails and their attachments dated January 7, 2025, from her AHS email to her personal account shortly before her dismissal. AHS and Alberta asserted solicitor-client privilege over these materials.

The Appeal turned primarily on the scope and application of Rule 6.8, which governs questioning on Affidavits and related matters. The Appellants sought broader examination rights under Rule 6.8 to inquire into all records the Respondent may have shared with law enforcement or oversight bodies, including the Auditor General and RCMP.

The Court upheld the Chambers Judge's exercise of discretion to limit the scope of the Rule 6.8 questioning. The Chambers Judge had permitted questioning regarding what records the Respondent took from AHS and whether she disclosed the two allegedly privileged emails to external entities, but did not permit broader questioning into all other disclosures. The Court found no legal error or unreasonable exercise of discretion in that Decision.

The Court emphasized that rulings under Rule 6.8 are discretionary and interlocutory in nature. As such, while appellate intervention was unwarranted, the Chambers Judge retains jurisdiction to revisit the Order should there be a material change in circumstances.

Ultimately, the Appeal was allowed in part, with the Order amended to clarify that the Respondent remained bound by a prior consent Order enjoining use of the disputed documents, and to specify the scope of permissible questioning under Rule 6.8.

WILLIAMSON V 715057 ALBERTA LTD ET AL, 2025 ABKB 257

(KUBIK J)

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

The Application involved an Appeal of a decision from an Applications Judge. The Applications Judge granted summary dismissal of the Plaintiffs' claim against one of the Defendants, but dismissed the balance of the application, holding that the evidentiary record was insufficient and contained hearsay evidence.

The Plaintiffs' claim was for allegedly deficient work by the Defendants, and alleged misrepresentations by the Defendants. The Defendants appealed the Application Judge's decision on the basis that summary disposition was appropriate given that there was no contract between the Parties and there was no evidence that any completed work was inadequate or caused damage.

The Court noted that pursuant to Rule 6.14, an appeal of an Applications Judge's decision is a hearing on the record but may include additional evidence that is relevant and material. To that end, the Defendants provided additional Affidavit evidence that was not before the Applications Judge. The Court noted that the additional Affidavit evidence largely repeated the evidence that was previously given during the Questioning of the Defendant on their prior Affidavit.

After reviewing the record before the Applications Judge and the additional Affidavit evidence provided by the Defendants, Justice Kubik held that the Defendants had again failed to meet the standard for summary dismissal and found that there was conflicting evidence on the material facts pertaining to the identity of the contracting parties.

The Appeal was dismissed, and the Respondents were awarded costs based on Schedule C of the Rules.

ODO V JOHN DOE #1, 2025 ABKB 368

(NIELSEN ACJ)

Rule 6.35 (Persons Having Standing at Application)

The Applicant, Haruun Ali, sought standing in a proceeding regarding a Restricted Court Access Application filed by the Defendant police officers after the fatal shooting of Mathios Arkangelo. The Plaintiffs, under the *Fatal Accidents Act*, had alleged police negligence in Arkangelo's death. Mr. Ali was not a party to the underlying proceeding.

On October 22, 2024, an Interim Restricted Court Access Order (the "Interim Order") was issued, barring publication of identifying information about the involved officers. Mr. Ali was served with this Interim Order due to his social media activity attempting to identify the officers.

Mr. Ali argued that he was entitled to standing under Rule 6.35 of the Alberta *Rules of Court.* Specifically, he asserted that by being served the Interim Order he had been given notice of the Restricted Court Access Application. He argued this notice entitled him to standing pursuant to Rule 6.35(a). Alternatively, Mr. Ali agued he ought to be recognized by the Court under Rule 6.35(b) as his interests—namely, his right to freedom of expression—were directly affected by the Restricted Court Access Application.

The Court found that Rule 6.35(a) was not a bright line, nor did it allow anyone bound by "corollary orders to seek automatic standing to intervene in the broader application". The only persons given notice of the Restricted Court Access Application were the Plaintiffs and the media. Further, with respect to the Applicant's argument under Rule 6.35(b), the Court found that the restricted court access Application sought only to withhold and prevent publication of a "mere sliver of information", being the names of the officers. No Order was sought which prevented the media or any member of the public, including the Applicant, from commenting on the facts of the case or the issues at large.

MACSWEYN V HODGES, 2025 ABKB 273

(BERCOV J)

Rule 6.37 (Notice to Admit)

This case involved a dispute between former adult interdependent partners over property division and support following the breakdown of their long-term relationship. The Plaintiff advanced a claim for unjust enrichment, seeking a monetary equalization payment and, in the alternative, trust remedies or a *quantum meruit* award. She also claimed retroactive and ongoing partner support.

Among several contested property issues was the valuation of a company, Canon Lake Trucking Ltd. ("Canon"), which had been incorporated by the Defendant during the relationship. The Plaintiff had served a Notice to Admit on the Defendant concerning the value of Canon and other assets (the "Notice"). The Defendant failed to respond to the Notice, and it was admitted into evidence. The Notice stated that Canon should be valued at $197,000.

At Trial, the Plaintiff applied under Rule 6.37(6)(a) for permission to amend the Notice to Admit to assign a higher value to Canon (between $517,303 and $544,000), relying on post-separation asset sales, corporate bank balances, and financial statements. She argued that newly disclosed evidence warranted a revised valuation.

Justice Bercov reviewed the standard under Rule 6.37(6)(a), which permits amendment or withdrawal of admissions only with leave of the Court or consent of the parties. The Court emphasized that while Rule 6.37 provides a mechanism to streamline litigation by allowing certain facts to be admitted without formal proof, that efficiency must be balanced against the pursuit of truth.

Relying on *Dwyer v Fox,* 1996 ABCA 95, Bercov J. reiterated that an admission may be withdrawn where the truth of a fact can only be properly determined through evidence at Trial. However, in this case, the Court found that all the relevant financial information relied upon by the Plaintiff had been available at the time she prepared the Notice. Accordingly, the request to amend the Notice was denied, and Canon's value was fixed at $197,000 as originally stated.

NEBOZUK V NORTHBRIDGE GENERAL INSURANCE COMPANY, 2025 ABKB 197

(KRAUS J)

Rule 7.3 (Summary Judgment)

The Respondent commenced an Action against his insurer, Northbridge General Insurance Corporation ("Northbridge") for amounts that exceeded the minimum limits under his motor vehicle liability insurance. Northbridge applied for Summary Dismissal on the basis that the Respondent's claim was outside the limitation period. Northbridge's Summary Dismissal application was dismissed by an Applications Judge. Northbridge appealed.

The Respondent filed a tort claim arising out of a motor vehicle accident on July 31, 1998. Following settlement of the tort claim on October 31, 2017, the Respondent commenced the within Action against Northbridge on December 20, 2018.

The Respondent argued that the limitation period began on October 31, 2017, when the underlying tort action was settled, and that the 12-month limitation period in his policy endorsement was invalidated by the *Limitations Act*, and thus a 2-year limitation period applied.

Justice Kraus held that the Applications Judge correctly determined that the limitation period began on October 31, 2017, when the underlying tort action was settled, as that was when the Respondent knew or ought to have known that his claim exceeded the minimum insurance limits.

Kraus J. considered the Court of Appeal decision in *Shaver v Co-operators General Insurance Company*, 2011 ABCA 367 ("*Shaver*"), where the Court found that the contractual limitation period in a policy endorsement only began to run on discovery. That is, when the plaintiff learns of inadequate insurance, or of total claims exceeding minimum insurance limits, or both. The Court of Appeal in *Shaver* held that it may well take a long time until an injured person can find whether the total claims from the accident exceed the statutory minimum limits for motor vehicle liability insurance in Alberta.

In this matter, Justice Kraus found that the 12-month limitation period in the policy was invalidated by Section 7 of the *Limitations Act*, which provides that "an agreement that purports to provide for the reduction of a limitation period provided by this Act is not valid".

The limitation period began to run on October 31, 2017. The Respondent filed his Statement of Claim on December 20, 2018, within the 2-year limitation. Accordingly, Northbridge's Appeal was dismissed.

PETTIGREW V LLEWELLYN, 2025 ABKB 291

(THOMPSON J)

Rule 7.3 (Summary Judgment)

The Appellant, Dyan Pettigrew, appealed a Summary Dismissal decision. The Court considered whether Summary Dismissal of the Plaintiff's professional negligence and breach of contract claim was appropriate under Rule 7.3.

Ms. Pettigrew alleged that her former counsel failed to competently pursue an Attachment Order and Mareva Injunction, resulting in her inability to recover fully for losses from a house fire. The Applications Judge had summarily dismissed the claim. On Appeal, Justice Thompson conducted a *de novo* review and found that Mr. Llewellyn failed to meet the burden of proof required under Rule 7.3. The Court noted that Summary Dismissal is only appropriate where the moving party shows there is no merit to the claim and no genuine issue requiring a trial.

The Court analyzed the expert evidence provided on appeal to determine if Summary Dismissal could still be justified. The Court also considered Rule 6.14, which governs the admissibility of additional evidence on appeal. Justice Thompson admitted new expert evidence from both parties, finding that it might reasonably be expected to assist in determining whether there was a breach of the standard of care and

whether that breach caused loss to the plaintiff. The Court rejected arguments that deficiencies in the expert's qualifications should bar admissibility, noting that such concerns go to the weight of the evidence rather than its admissibility. With both sides presenting admissible but conflicting expert evidence, the Court concluded that the standard of care and whether it was breached could not be resolved on a summary basis. Thompson J. also noted that the Defendants' conduct, including delays and failure to gather evidence for the Attachment Order raised genuine issues requiring a trial.

Ultimately, the Court set aside the initial Summary Dismissal, holding that genuine issues remained regarding whether counsel was negligent and whether he caused Ms. Pettigrew's losses. Justice Thompson stressed that Rule 7.3 should not be used to short-circuit claims where material issues of fact remain in dispute or where a full trial record is needed for a fair determination.

CALGARY CO-OPERATIVE ASSOCIATION LIMITED V FEDERATED CO-OPERATIVES LIMITED, 2025 ABCA 142

(SLATTER, ANTONIO AND FEEHAN, JJA)

Rule 7.3 (Summary Judgment)

Federated Co-operatives ("Federated Co-op") appealed a partial Summary Judgment in favour of the Respondent Calgary Co-operative ("Calgary Co-op"). Calgary Co-op applied, pursuant to Rule 7.3, for Summary Judgment, claiming that Federated Co-op's new loyalty program was unfairly prejudicial to, and unfairly disregarded, its interests. In the result, the Chambers Judge awarded Calgary Co-op $35,351,440.12.

After considering the Chamber Judge's decision, including the Chamber Judge's application of the Summary Judgment test, the Chamber Judge's analysis of Calgary Co-op's reasonable expectations, and the Chamber Judge's application of the business judgment rule, Antonio J.A., for the majority, dismissed the Appeal. Conversely, Slatter J.A., dissenting, would have allowed the Appeal on the basis that Calgary Co-op did not meet the burden of proving oppression on a balance of probabilities.

DOUGLAS HOMES LTD V RAINBOW FALLS DEVELOPMENT INC, 2025 ABCA 185

(SLATTER, ANTONIO AND HAWKES JJA)

Rule 7.3 (Summary Judgment)

The parties developed a large parcel of land through the corporate Appellant, Rainbow Falls Development Inc. ("Rainbow"), beginning in 2003. Numerous parts of those lands were transferred to non-arms length parties at undervalue. The issues on this Appeal related primarily to the entitlement of the Respondents, minority shareholders of Rainbow, to share in the profits of those sales. They alleged that the Appellants, majority shareholders and related entities of Rainbow, engaged in, among other things, improper transactions. The Appellants applied for the summary dismissal of all or part of the Respondents' claims, primarily on the basis that the limitation period had expired before the Action was commenced.

The Action was commenced on December 20, 2018. Under Section 3(1)(a) of the *Limitations Act*, RSA 2000, c. L-12 (the "Act"), the Appellants were entitled to immunity from a claim if it was brought more than two years after the Respondents' underlying claim should have reasonably been discovered and warranted a proceeding. Thus, any claims that could reasonably have been discovered prior to December 2016 would be barred. In addition, the 10-year ultimate limitation period under the Act would bar any claims arising prior to December 2008. The Appeal was then assessed with respect to each parcel of land involved, with mixed results for the Appellants.

For the "Brownstone Block 3 and 6", monthly reports from Rainbow Falls clearly documented the transactions and sale prices in 2007 and 2008. The Court found that the Respondents, given their expertise, should have identified these transactions through reasonable diligence. Therefore, any claim of undervalue was discoverable at that time, and thus, summarily dismissed because it was statute-bared under the Act. A similar conclusion was reached for the "Phase 9 Residential Lots". The evidence for the "Cascades Project" showed that one of the Respondent's admitted during Cross-Examination that information about the sales of these lots, and the sale prices, were available to him in 2010, also making the claim time barred. Numerous other claims were not summarily dismissed, with the Court citing insufficient evidence to resolve these issues without a Trial.

AIRUEHIA V WORTON, 2025 ABCA 190

(KHULLAR, KIRKER AND SHANER JJA)

Rule 8.20 (Application for Dismissal at Close of Plaintiff's Case)

This Decision was an Appeal of the Trial Judge's Decision to grant a Non-Suit Application and dismiss the Plaintiff's Action. The Appellant took issue with the Trial Judge's Decision not to qualify her proposed expert and to grant the Non-Suit Application. She further argued that

the Trial Judge erred in refusing to allow certain medical records into evidence. As a result, the Appellant alleged there was a reasonable apprehension of bias which caused an unfair Trial. The Appellant also applied to admit new evidence.

Neilson J.A. emphasized that a non-suit application is granted if a plaintiff fails to present some evidence on the necessary elements that must be proven for the claim to succeed. In making the determination, the trial judge must assume the plaintiff's evidence is true but should not weigh the evidence or assess credibility. Appeal Justice Neilson found that the Trial Judge correctly granted the Non-Suit Application because the Appellant failed to show any error in the Trial Judge's analysis. The Appellant failed to provide some evidence on the essential elements of her claims.

The Court also upheld the Trial Judge's decision to exclude the Appellant's proposed expert because the expert lacked necessary qualifications, did not assess the Appellant, and relied on reports not in evidence. Regarding the alleged refusal by the Trial Judge to admit certain medical records into evidence, Neilson J.A. found that the Trial Judge did not rule that the medical records could not be entered as evidence. Rather, the Trial Judge appropriately restricted the use that could be made of some of the medical records referred to during the Appellant's testimony.

Neilson J.A. also found that there was no merit to the Appellant's allegations that there was a reasonable apprehension of bias and that it was an unfair Trial as the Trial Judge applied the legal principles correctly and fairly and there was no evidence to rebut the presumption of judicial impartiality. The Application to admit new evidence was also dismissed because the evidence was available at the time of Trial, and it would not have affected the outcome. The Appeal was dismissed.

ZORBAWON V SALES, 2025 ABCA 203

(SHANER JA)

Rules 9.4 (Signing Judgments and Orders), 14.5 (Appeals Only With Permission), 14.16 (Filing the Appeal Record), 14.17 (Filing the Appeal Record - Fast Track Appeals) and 14.64 (Failures to Meet Deadlines)

The Applicant filed two Appeals for two decisions arising from a family dispute (the "Appeals"). The Case Management Officer ("CMO") found that the Appeals were related and directed them to be heard together. The Applicant, however, failed to file the Joint Appeal Record by the deadline ordered by the CMO. The first Appeal was struck pursuant to Rules 14.17(1) and 14.64(a) and the second Appeal was struck in accordance with Rules 14.16(3) and 14.64(a). The Applicant sought to restore the Appeals, which Shaner J.A. dismissed as the Applicant failed to provide a satisfactory reason for the delay and the Appeals lacked merit (the "Decision").

The Applicant subsequently filed an Application to Appeal the Decision to a panel of the Court pursuant to Rules 14.5(1)(a) and 14.15(2) (the "Application"). After setting out the law, Shaner J.A. dismissed the Application, finding that it was not in the interests of justice for a panel of the Court to review the Decision and that the Applicant had not identified a question of general importance, a possible error law, or an unreasonable exercise of discretion.

CARBONE V WHIDDEN, 2025 ABKB 340

(JONES J)

Rules 9.21 (Application for New Judgment or Order) and 13.18 (Type of Affidavit)

The Applicant, Ms. Carbone, appealed an Order renewing a Judgment in favour of the Respondent pursuant to Rule 9.21 (the "New Judgment Order") and a Costs Order (the "Costs Order" and, collectively with the New Judgment Order, the "Orders"). Pending the outcome of the Appeals, Ms. Carbone sought a stay of the Orders (the "Stay Application").

Justice Jones noted that with respect to the New Judgment Order, the Applications Judge rejected the Applicant's argument that the Affidavit filed in support of the Rule 9.21 Application contravened Rule 13.18 because it was not sworn on the basis of personal knowledge. The Applications Judge accepted that affidavits based on information and belief were acceptable for Rule 9.21 Applications.

With respect to the three-part test for a stay, the Court found that the Applicant failed to establish a serious issue to be tried because the grounds of Appeal raised for the New Judgment Order did not have merit and because the Applications Judge was transparent and fair with respect to the Costs Order. Similarly, Jones J. found that the Applicant did not establish that she would suffer irreparable harm if the Stay Application was not granted because, in part, no evidence was filed to support this position. Finally, the Court held that the balance of convenience favoured the Respondents because, in part, denying the benefit of the Judgment that the Respondents received would be a denial of their right to access to justice. Thus, the Stay Application was dismissed.

SALAME V CHIMAYT, 2025 ABKB 205

(BIRKETT 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 Plaintiff alleged the Defendants engaged in professional negligence, breach of fiduciary duty, and conspiracy. The Defendants were successful in having the claim against them dismissed. Counsel for the Defendants sought full-indemnity Costs.

The Court found no merit to the Plaintiff's claims, noting that they were filed outside the limitation period. The Rules provide the Court with discretion to order Costs that depart from Schedule "C" costs. Specifically: Rule 10.29 provides that a successful party is entitled to a costs award against the unsuccessful party; Rule 10.31 allows the court to order one party to pay to another party, as a costs award, the reasonable and proper cost that a party incurred, or any amount that the court considers to be appropriate, including "an indemnity to a party for that party's lawyer's charges";

and Rule 10.33 sets out the factors the court may consider in making a costs award.

Justice Birkett cited jurisprudence for the proposition that proportionality is contemplated by Rules 10.2 and 10.33, which list the factors the Court may consider in "determining the reasonable amount a lawyer is to be paid" and in "making an award for costs by one party to another".

The Court emphasized that costs are not dependent on the plaintiff's ability to pay but are meant to indemnify the successful party. Having considered the unfounded nature of the Plaintiff's allegations, the lack of evidence, and the Plaintiff's rejection of a reasonable *Calderbank* offer, Birkett J. awarded full-indemnity Costs to the Defendants.

SOLIS V SFAKIANAKIS, 2025 ABKB 211

(MARION J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account), 10.7 (Contingency Fee Agreement Requirements) and 10.8 (Lawyer's Non-Compliance with Contingency Fee Agreement)

This matter came before the Court by way of Desk Application. Justice Marion was asked to determine whether a proposed settlement of $50,000 (the "Settlement"), negotiated by counsel for the Applicants, ought to be approved on the terms presented. The proposed Order sought approval for legal fees, disbursements, other associated costs, and applicable GST. The underlying claim arose from a motor vehicle accident in which the Applicant and a minor were struck by the Defendants' vehicle. In respect of the minor's claim, the Applicant entered into a contingency fee agreement ("Contingency Agreement") with legal counsel.

The Court was satisfied that the Settlement was in the best interests of both the Applicant and the minor, subject to the Court's assessment of the legal fees proposed to be paid to counsel. The Court considered the jurisprudence governing its supervisory role in approving settlements involving minors, particularly with respect to the reasonableness of legal fees claimed under a contingency arrangement.

Justice Marion confirmed that where a valid contingency fee agreement exists, it must comply with Rules 10.7 and 10.8. Where a lawyer fails to comply with Rule 10.7(1)–(4), (6), and (7), any contingency fee agreement is rendered unenforceable, and the lawyer is instead entitled only to fees determined in accordance with Rule 10.2, as if no contingency agreement had been entered into.

The Contingency Agreement in this case did not comply with the mandatory requirements of Rule 10.7. Specifically, the Contingency Agreement contemplated counsel receiving an amount from a costs award but failed to include the language mandated by Rule 10.7(2)(f)(iii) and (iv), as well as portions of the language required under Rule 10.7(2)(h)(i) and (ii). Consequently, the Contingency Agreement was deemed unenforceable.

Notwithstanding the unenforceability of the agreement, the Court acknowledged that it had discretion under Rule 10.2 to determine a reasonable fee. This may be a fee that aligns with the expectations of the parties as reflect-

ed in the contingency arrangement or may be calculated on a *quantum meruit* basis. In this instance, the Court reviewed the detailed time entries provided by counsel and recalculated the legal fees accordingly.

Justice Marion approved the Settlement, subject to amendments to the proposed form of Order with respect to the fees payable to counsel.

KOLLIAS V KOLLIAS, 2025 ABKB 198

(KUBIK J)

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

This was a Streamlined Trial decision in a divorce matter. The issues before the Court included the date of separation and division of family property. The Trial Judge, Justice Kubik, held that the husband was lacking in credibility. The wife was the successful party at Trial.

In making a Costs determination, Kubik J. considered Rules 10.29, 10.31, and 10.33. The Court focused on proportionality and on striking a balance between indemnity of the successful party and access to the Courts. The wife provided the Court with a Bill of Costs for $8,750 based on Schedule C of the Rules. She asked the Court for a total Costs Award of $15,000 to reflect enhanced Costs. Justice Kubik, having regard to all the factors in Rule 10.33 awarded the wife Costs in the amount of $13,500.

BANOVICH V BANOVIC, 2025 ABKB 280

(HARRIS 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 Summary Trial for division of matrimonial assets and spousal support, the parties made submissions on Costs. The Court canvassed Rules 10.29, 10.31, and 10.33, noting the fundamental principles that the successful party is generally entitled to costs and that the court has considerable discretion in awarding costs.

The Court disagreed with both parties' submissions on Costs, finding that there was mixed success and if there were no further factors to consider, the parties would have been ordered to bear their own Costs. However, throughout the proceedings, the Plaintiff did not comply with the Court's directions and attempted to relitigate the matter in the Costs submissions. As such, Justice Harris awarded Costs of $10,000 against the Plaintiff for her litigation misconduct throughout the proceedings.

SSS V MDW, 2025 ABKB 297

(MAH J)

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

Following a one-day Trial, the Applicants, a child's grandparents, obtained a Contact Order over the objections of the Respondents, the child's mother and guardian. As the successful party, the Applicants sought Costs.

The Court made note of Rules 10.29, 10.31, and 10.33, and the general principles that the successful party is presumptively entitled to Costs, the determination of Costs is inherently discretionary, and the consideration for a Costs award are set out in Rule 10.33. After considering the relevant factual circumstances, including that: (1) the mother was a single mother receiving social assistance; (2) the imposition of Costs on the mother would adversely affect her ability to provide for the child; and (3) Costs would further exacerbate the bad blood between the parties, Justice Mah concluded that the parties would bear their own Costs.

UHUEGBULEM V BALBI, 2025 ABKB 318

(MARION 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 Awards)

The Court was called to determine the appropriate Costs Award for the Action. The Plaintiff had initially brought the Action to remove the Defendant as the arbitrator under an arbitration agreement on the basis of a reasonable apprehension of bias. Following the commencement of the Action, the Defendant resigned as arbitrator. Given that the Action was now moot, the Court struck the Action in its entirety. The Parties could not agree on Costs following the striking of the Action.

The Plaintiff was of the view that they were the successful party given that the Defendant ultimately resigned as arbitrator, and as such were entitled to Costs. The Defendant took the position that their defence of the Action was necessary due to the serious nature of the allegations of bias, and noted that the Plaintiff unnecessarily prolonged the proceedings by failing to comply with Court Orders and rejecting reasonable offers to settle. As such, the Defendant argued that a Costs Award would be inappropriate notwithstanding their functional success.

Justice Marion noted that the Rules provide the Court with considerable discretion in setting reasonable and proper costs awards, and reviewed the relevant principles. The Court also noted that the Action had an additional consideration in that the Defendant was providing their services as an arbitrator, and that case law supported a view that arbitrators should

not be put at significant personal financial risk in carrying out their duties.

Ultimately, the Court reviewed the facts of the Action, including its relative complexity, importance, and the conduct of the Parties, and ordered the Parties to bear their own Costs.

MACDONALD V MACDONALD, 2025 ABKB 354

(LEMA J)

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

This was a Costs Decision following the outcome in a Streamlined Family Trial, involving a parenting and support dispute between two separated parents. The father claimed substantial success and an Award of double Costs, asserting that he bettered one or more formal offers. The mother argued there was mixed success so the Parties should bear their own Costs.

Justice Lema reviewed and applied the general costs framework under Rules 10.29, 10.31 and 10.33, which establish that a successful party is presumptively entitled to costs, but also grants the Court discretion to vary that presumption. Substantial success, not absolute success, is the applicable threshold, particularly in family law matters. However, in the family law context, determining which party achieved substantial success is inherently complex due to the multiple, evolving, and often intertwined issues involved. There is no simple set of rules for assessing success, it must be assessed on a case-by-case basis.

Lema J. emphasized that success must be assessed globally, taking into account both quantitative and qualitative factors including analyzing the success on various issues and their monetary value, the importance and complexity of the issues, and the alignment of the outcomes with the parties' Trial positions. To determine which Party had substantial success in this case, Justice Lema conducted an analysis issue by issue. The Court found that the father was successful on the impact of shared account deposits, the valuation of the matrimonial home, and the denial of credit for the mother's post-separation mortgage payments. The mother was successful on imputed income, unexplained deposits, and the treatment of tax-related interest and penalties. There were also other issues that were largely uncontested or resulted in true mixed success.

Justice Lema determined that the Trial resulted in mixed success and directed that each Party bear their own Costs, including the costs of the Costs submissions. Lema J. noted, however, that even if the father had substantial success, the Court would still direct that each Party bear their own costs because of the father's poor litigation conduct.

DOROSHENKO V VILLANUEVA, 2025 ABKB 245

(LOPARCO J)

Rules 10.31 (Court-Ordered Costs Award) and 12.70 (Powers of Court on Appeal)

The case involved an Appeal of a "Parenting Order" from the Court of Justice. The Appellant mother originally had primary parenting under an Interim Order from March 2022, while the father had weekend parenting time. The mother sought to maintain primary parenting. Both parties were self-represented litigants. In the Court below, the Trial Judge issued the Parenting Order granting the father primary parenting, with the mother having parenting time from Thursday after school to Saturday.

On appeal from the Court of Justice, pursuant to Rule 12.70(c), the Court of King's Bench has the power to make "any order that the Court of Justice could have made." Justice Loparco concluded that there was no error in finding that a shared parenting regime was in the best interests of the child. However, the Parenting Order did not reflect the statutory definition of shared parenting under Section 9 of the Alberta Child Support Guidelines, as it effectively granted the father primary parenting. This constituted a palpable and overriding error of mixed fact and law. The mother's Appeal was allowed.

The mother also sought costs, including the reimbursement of the cost of the transcript ordered for the Appeal in the amount of $1,430.97. Pursuant to Rule 10.31(5), self-represented litigants are presumptively not entitled to costs unless exceptional circumstances are shown. However, self-represented litigants may be entitled to recover disbursements and GST, as these are not fees spent on counsel. The Respondent father was therefore ordered to reimburse the cost of the transcript to the mother.

LYSZ V LYSZ, 2025 ABKB 361

(GILL J)

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

Both the Plaintiff wife and the Defendant husband in a divorce matter applied for Costs following a Trial Decision. The Plaintiff sought a range of $95,729.19 and $113,890.76, using Schedule C, plus seeking double Costs for certain appearances. The Defendant sought $45,750.

Gill J. noted that the Plaintiff was 100% successful on the issue necessitating Trial, which was related to the division of the Defendants pension. The Court considered the applicable Costs Rules, including Rules 10.31 and 10.33. In applying these Rules, the Court noted that most of the Trial centered on the pension issue. Further, the Plaintiff had made two Calderbank Offers to the Defendant prior to the Trial that were matched or bettered at Trial.

Both parties pointed to the pre-Trial conduct of the other, but the Court did not assign any weight to these arguments. Ultimately, Gill J.

held that Column 4 Costs were appropriate in the circumstances, with double Costs being awarded to the Plaintiff for several items. After reducing the Costs Award by 10% to account for the parties mixed success on several smaller issues at Trial, the Plaintiff was awarded $86,500 in Costs.

CHO V HARMONY CERAMIC DENTAL LABORATORY LTD, 2025 ABKB 365

(JEFFREY J)

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

In this case, the Court addressed an Application brought by the Plaintiff for advice and directions after repeated delays caused by the Defendants' failure to advance the Action. The parties had previously agreed, by way of a Consent Order, that Questioning would be completed and the Action would then transfer to the Alberta Court of Justice for Trial. The Plaintiff had completed Questioning in late 2024 and provided responses to Undertakings in January 2025. Despite the Plaintiff's repeated attempts since then to move the matter forward as agreed, the Defendants did not respond.

When the Plaintiff sought directions from the Court, the Defendants claimed, for the first time, that further Questioning was still needed because the Plaintiff's Undertaking responses were allegedly deficient and that staffing changes had delayed their file management. Justice Jeffrey noted that the Defendants had failed to communicate any of this in the months following the Plaintiff's responses, and found that the Plaintiff's expectation that Questioning had concluded was reasonable. The Court concluded that the Defendants' approach was contrary to the foundational Rules, the agreement between the parties, and the Consent Order, and found the delays to be deliberate or at least unjustified.

However, Jeffrey J. also held that Questioning could not technically be considered complete if there were legitimate follow-up questions on the Undertaking responses. Balancing these facts, the Court directed that the Defendants could serve any written follow-up questions within one week, with the Plaintiff to respond within thirty days and provide an attestation under oath. The Court further ordered that, regardless of whether any follow-up occurs, the parties must transfer the Action to the Court of Justice and set it for Trial in accordance with the Consent Order.

To address the wasted time and additional steps required, the Court stated its intention to award the Plaintiff enhanced Costs for the contested Application under Rules 10.31 to 10.33, subject to any further submissions from the Defendants. The Court directed that if Costs were awarded, they must be paid by the Defendants by a fixed deadline. If payment was not made, the matter would not transfer but would remain in the Court of King's Bench for a further hearing at which the Defendants would be required to show cause why their defence should not be struck.

LAPPENBUSH V ROYAL, 2025 ABKB 312

(LITTLE J)

Rule 10.33 (Court Considerations in Making Costs Award)

Following a Trial involving claims arising from the end of a common-law relationship, the Court was asked to determine Costs in light of the parties' partial successes and competing settlement offers. The Plaintiff was unsuccessful on her claim for retroactive child support, but succeeded in obtaining time-limited, declining partner support and a modest unequal division of family property. The Defendant, while successful in defending the child support issue, opposed the extent of the relief granted on the other claims. Both parties argued they were largely successful, and both referred to offers exchanged during the litigation as relevant to the issue of Costs.

Justice Little applied Rule 10.33, which outlines the factors to be considered in exercising discretion over costs. On the issue of success, the Court found that although the Plaintiff did not achieve the full extent of her claims, she was successful on two out of the three heads of relief—partner support and property division. The Court also noted that the child support claim, while ultimately unsuccessful, was not frivolous, given the nature and length of the parties' relationship.

In evaluating the amounts claimed and recovered, the Court observed that the Plaintiff had sought high-end guideline partner support but was awarded a lower amount, and her property claim resulted in only a portion of the estimated increase in value of the shared home. Despite this, Little J. found that the overall judgment exceeded the Defendant's best settlement offer. While the Defendant argued that his final offer came close to the after-tax value of the Judgment, the Court declined to adjust for tax given the lack of clear evidence. The Court also acknowledged that accepting the Defendant's last offer would have saved a significant amount of litigation time, but it did not find that the Plaintiff had acted unreasonably in rejecting it.

Justice Little considered the importance of the issues to both parties and noted that the matter was not unusually complex for a case involving common-law separation. The Court also found no conduct by either party that materially shortened or prolonged the proceedings.

In awarding Costs, the Court declined the Plaintiff's request for 75% of her legal fees. Instead, applying guidance from *McAllister v Calgary (City)*, 2021 ABCA 25, the Court awarded 40% of her actual legal fees, recognizing her partial success and the reasonableness of the last offer she declined. This resulted in a fee award of $13,300, plus $1,960 in disbursements.

BENNETT V NE2 CANADA INC, 2025 ABKB 327

(NEUFELD J)

Rule 10.33 (Court Considerations in Making Costs Award)

Neufeld J. considered the appropriate Costs Award following a series of interlocutory Applications in a broader commercial dispute between a group of oil brokers and their former employer. The brokers had applied to strike from the Court record Cross-Examination transcripts they claimed were improperly obtained and contained embarrassing personal information. That Application was dismissed, with the Court finding it lacked legal merit and was effectively an attempt to bypass the proper procedure for seeking a restricted court access Order. While the brokers had earlier obtained temporary injunctive relief preventing dissemination of the transcripts, that relief was ultimately set aside.

The employer then sought $288,902.25 in Costs, representing 50% of its solicitor-client fees incurred in defending the various Applications. The brokers opposed the claim, suggesting a lower lump sum based in part on an earlier, comparable Application where they had been awarded $81,000 in agreed Costs. Neufeld J. emphasized that while costs awards are discretionary, they must be informed by the factors set out in Rule 10.33, including the complexity of the issues, the conduct of the parties, and the importance of the matters in dispute. He rejected both Schedule C (even with a multiplier) and a percentage-based award of solicitor-client fees, noting they would be inappropriate in the circumstances. Schedule C Costs did not adequately reflect the scale and complexity of the litigation, while tying the award to a percentage of fees would invite further disputes over the reasonableness of legal accounts.

A key factor in the Court's reasoning was the nature of the legal representation. Neufeld J. observed that both parties were represented by "large law firms, with impressive credentials and experience", and noted that clients such as the brokers and the employer are aware that retaining such counsel "does not come cheap" when making litigation decisions. While this reality informs expectations around legal fees, it does not justify automatic recovery of those fees on a party-and-party basis. Ultimately, Neufeld J. awarded a lump sum of $150,000, which he described as a reasonable compromise reflecting the limited success of the brokers, the over-lawyering concerns raised by the structure of the employer's legal team, and the exclusion of Cross-Examination Costs the employer had sought to retain for future use.

MINER V COOKE, 2025 ABCA 226

(FEEHAN, HAWKES AND SHANER JJA)

Rule 10.53 (Punishment for Civil Contempt of Court)

In this Appeal, the Court considered two Orders by a Chambers Justice in Family Chambers: one finding the father, Mr. Cooke, in civil Contempt for refusing to comply with a parenting Order, and another dismissing his Application to vary parenting time and continuing the suspension of his parenting time. The Contempt and penalty phases were combined into a single summary hearing on a busy Chambers morning. The Court found that significant procedural safeguards required for Contempt proceedings under the Rules and established case law were not properly followed.

The underlying dispute stemmed from a Consent Order between the Parties, which established a parenting schedule that included the mother relocating with the children. The father failed to return the children to the mother on the agreed date, stating he would bring an emergency Application to vary the Order based on the children's wishes. When the mother filed an urgent Application, the Chambers Justice ordered that the children be returned to her care and suspended the father's parenting time pending further Order. The father's subsequent Contempt hearing and parenting variation Application were heard together.

On Appeal, the Court emphasized that Contempt is an exceptional remedy of last resort and requires strict procedural safeguards. One such safeguard is the general practice of bifurcating Contempt proceedings into two phases: first, a hearing to determine liability; then, if Contempt is found, a separate phase to determine penalty. This approach allows an alleged contemnor the opportunity to purge the contempt or take remedial steps before penalty is addressed. Rule 10.53(3) provides that if contempt is purged, the court may waive or suspend any penalty or sanction.

The Court found that this procedural protection was not observed. The father was unrepresented at the hearing and was not offered an adjournment to obtain counsel. The Chambers Justice combined the liability and penalty stages in one summary sitting and delivered brief reasons that did not show whether the necessary standard of proof - beyond a reasonable doubt - had been met. The Court held this was an error of law and procedure warranting appellate intervention.

The Court also found that the Chambers Justice erred in dismissing the father's parenting Application solely due to the same conduct underlying the Contempt finding. The record did not show that the children's best interests were properly considered as required under family law principles. The failure to weigh whether continuing to suspend the father's parenting time aligned with the best interests of the children was found to be a palpable and overriding error.

As a result, the Court allowed both Appeals. The Contempt finding and associated $5,000 penalty were set aside. The dismissal of the father's Application to vary parenting time was also set aside, and the father's Application could return to Family Chambers for proper determination with full consideration of the children's best interests.

STACKARD (ESTATE) V 1256009 ALBERTA LTD, 2025 ABCA 171

(PENTELECHUK, FEEHAN AND DE WIT JJA)

Rule 13.6 (Pleadings: General Requirements)

The Appellant appealed the decision of a Trial Judge which rejected their Application to amend the Statement of Claim filed in the Action. The proposed amendments set out allegations of instances where the Respondent had acted in breach of various Court Orders. The Trial Judge initially held that the proposed amendments did not set out a cause of action, and as such were not permitted.

The Court considered Rule 13.6(2)(a), which provides that a pleading in an action must state the facts upon which a party relies. The Court also provided a summary of caselaw, which set out that it is trite law that a statement of claim need not name the specific causes of actions that the Plaintiff is intending to raise; and that an amendment should be allowed if it is arguable even if it raises a doubtful plea.

It was ultimately held that while a statement of claim must disclose a cause of action, it does not need to specifically plead that cause of action. In the present case, while the proposed amendments were specifically related to the breach of court orders, they are arguably related to proper causes of action, such as a misappropriation of funds. As such, the Appeal was allowed and the proposed amendments were permitted.

OUELLETTE V MCCANN, 2025 ABKB 362

(CAMPBELL J)

Rule 13.7 (Pleadings: Other Requirements)

The case arose from a complaint made by the Respondent, a lawyer, to the Law Society of Alberta (the "LSA") alleging that the Appellant, also a lawyer, misappropriated $16,000 in trust funds. The Appellant appealed the decision of an Application Judge, asserting that he erred in concluding, among other things, that the Action was not a "defamation action".

Rules 13.7(b) and (e) require that allegations of defamation must be pleaded with particularity in a Statement of Claim. This is required so that the defendant will know the case they need to meet when they file their Statement of Defence.

The particulars of the material facts necessary to establish a cause of action in defamation were set out by the Supreme Court of Canada in *Grant v Torstar Corp*, 2009 SCC 61. A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (i) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (ii) that the words in fact referred to the plaintiff; and (iii) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

The Court found that although the Statement of Claim did not explicitly mention defamation, it adequately outlined the material facts necessary to support a defamation claim. Specifically, it alleged that the Respondent falsely told the LSA that the Appellant had misappropriated $16,000 in trust funds, including 22 allegedly false statements made during an LSA hearing. These statements could reasonably harm the Appellant's professional reputation.

The claim also included a request for damages typically associated with defamation, not negligence. The Court concluded that the Appellant pleaded sufficient facts to support a defamation cause of action against the Respondent, even though the word "defamation" was not specifically used.

The Appeal was allowed against the Application Judge's decision with regard to the allegations of defamation.

FROG LAKE FIRST NATION V 2250657 ALBERTA LTD, 2025 ABKB 206

(MAH J)

Rule 13.15 (When a Document is Filed)

This Application dealt with whether the Appeal of an Arbitration Award was commenced within the appropriate period. The Applicant argued the Appeal was commenced when it provided the Notice of Appeal, after close of business on the last day of the appeal period. The Respondent took the position that a document is not filed until it is stamped as "filed".

The Applicant sought to file the Notice of Appeal on the last day of the appeal period through the Court's digital filing system. Counsel for the Applicant explained why the document was not filed as expected, including that: Applicant's counsel was an out-of-province lawyer and was not entitled to make use of the digital filing system, the Court was closed for the holidays on the day the Applicant's counsel attempted to file the document, and the Applicant had neglected to include the correct forms.

Justice Mah considered that under Rule 13.15, a document is filed when the Court Clerk acknowledges it as such. In Alberta, this acknowledgment occurs when the document is stamped by the Court Clerk and noted as filed. The Court noted that the explanations provided by the Applicant did not accord with the filing procedures of the Clerks but would not necessarily be fatal to the timely commencement of the Appeal. However, Mah J. noted that the Applicant did not attempt to file the Notice of Appeal until after close of business on the last day of the appeal period.

The Court ultimately decided that the Notice of Appeal was not filed pursuant to Rule 13.15 in the requisite appeal period.

ANGUS A2A GP INC V ALVAREZ & MARSAL CANADA INC, 2025 ABCA 147

(HAWKES JA)

Rule 14.5 (Appeals Only with Permission)

The Applicants sought leave to appeal several *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") Orders from the Court of King's Bench (the "Decisions"), pursuant to Rule 14.5 (the "Application").

Hawkes J.A. noted that Rule 14.5(1)(b) requires the Applicant to demonstrate that: a) the proposed appeal raises a serious question of general importance; b) the appeal has a reasonable chance of success; and c) the resulting delay will not unduly hinder the progress of the action or cause undue prejudice to the parties.

The Court denied leave to appeal on all other grounds except for two: (1) whether the Canadian investors' use of the CCAA was proper, and (2) whether the entities within the A2A Group were subject to the CCAA.

The Court found that the case presented unique circumstances, including the use of the CCAA by equity investors, which warranted appellate review on specific issues. The Decisions were entitled to deference, particularly because of the broad discretion afforded under the CCAA. However, the questions of whether the use of CCAA was proper and whether certain entities were subject to CCAA raised significant legal issues of general importance to the practice. The remaining grounds for Appeal were dismissed as they lacked sufficient merit or broader significance beyond the case at hand.

MCCORMACK V ALBERTA HEALTH SERVICES, 2025 ABCA 156

(SHANER JA)

Rule 14.5 (Appeals Only with Permission)

The Applicant, McCormack, sought permission to appeal a prior Decision of Shaner J.A. dismissing his Applications to restore an appeal and to extend the time for filing it.

McCormack had filed a Notice of Appeal from a Decision of the Court of King's Bench outside the prescribed time and was instructed to promptly apply to extend the time for filing in order to prevent the appeal from being struck. However, McCormack failed to do so, missed the deadline, and the appeal was struck. Over two months later, McCormack applied to restore the appeal and extend the time for filing. Appeal Justice Shaner denied the Application, citing McCormack's failure to provide a valid explanation for the delay and the absence of any arguable merit in the appeal. McCormack subsequently applied for permission to appeal that Decision.

Shaner J.A. clarified that, pursuant to Rules 14.5(1)(a) and 14.5(2), McCormack was required to obtain permission to appeal. Shaner J.A. noted that such permission is granted only in rare circumstances, where there is a question

of general importance, an error of law, an unreasonable exercise of discretion, or a misapprehension of significant facts.

McCormack argued that Shaner J.A. had misapplied the factors set out in *Cairns v Cairns*, particularly regarding whether the delay was justified and whether the Appeal had merit. McCormack contended that his Application was timely but was rejected due to technical issues, and that Shaner J.A. misunderstood those facts when denying the Application. Shaner J.A. rejected this argument, confirming that the Application had not been filed in time and reiterating that no arguable merit had been demonstrated. Additionally, Shaner J.A. noted that most of McCormack's submissions were a repetition of arguments previously considered and rejected.

Ultimately, Shaner J.A. concluded that McCormack had not raised any legal error, issue of general importance, or compelling reason for further review. As a result, the Application for permission to appeal was dismissed.

PROSSER V WOODHOUSE, 2025 ABCA 159

(FEEHAN JA)

Rules 14.5 (Appeals Only with Permission), 14.8 (Filing a Notice of Appeal) and 14.44 (Application for Permission to Appeal)

The Applicant father applied to the Court of Appeal for, among other things, permission to appeal a Consent Order of a Case Management Judge in a high-conflict family law proceeding, as required under Rule 14.5(1)(d). The Case Management Judge determined that the three children of the Applicant and Respondent mother should resume counselling services and then set out a division of payment for those services.

The Applicant submitted that the Case Management Judge failed to consider key evidence, including the limited effectiveness of therapy, the preference for publicly provided counselling, and the financial impact on his other children.

The Court noted that the test for permission to appeal "is a stringent one". In the family law context, the overarching considering is the best interest of the children.

The Applicant filed his materials late, so he first required an extension of time to apply for permission to appeal by operation of Rules 14.44 and 14.8. On this front, it was found that the Applicant failed to demonstrate an intention to appeal within the prescribed time and provided insufficient justification for the delay. Feehan J.A. found that ignorance of procedural rules did not excuse the failure to meet deadlines, even for self-represented litigants.

As for the Applicant's permission to appeal the Consent Order, he also did not meet the required test. The Applicant raised no important question of law or precedent on his objection to the children receiving counselling services. His Appeal had no reasonable prospect of success and there were no exceptional circumstances justifying why he should be given permission to appeal a Judgment to which he consented. It was found to be in the best interests of the children to continue counselling services, given this high-conflict family situation.

MACE V MACE, 2025 ABCA 192

(ANTONIO JA)

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

The Applicant sought an Order granting an extension of time to appeal a decision of the Court of King's Bench, permission to appeal a binding judicial dispute resolution ("JDR") decision, and an extension of time to appeal the JDR decision.

Rule 14.8 provides a timeline for when the Applicant was required to file their Notice of Appeal. Notwithstanding this timeline, the Applicant did not attempt to file their Notice of Appeal until after the stipulated deadline. The Court noted that permission was required under Rule 14.5 to appeal the JDR decision given that the JDR process is a form of consent Order; and similarly, the Applicant waited more than three and a half years before attempting to appeal the JDR decision.

In reviewing the relevant caselaw, Antonio J.A. considered whether the Applicant had established a *bona fide* intention to appeal, provided an explanation for the delays, and whether the Appeal had a reasonable chance of success if allowed to proceed. Upon considering all of the relevant factors, the Court held that none of the factors favored the Applicant, and as such the Application was dismissed.

DEBUT DEVELOPMENTS INCORPORATED V REDCLIFF (TOWN), 2025 ABCA 223

(HO, ANTONIO AND FETH JJA)

Rule 14.5 (Appeals Only with Permission)

The Court of Appeal addressed the Trial Judge's decision to deny an adjournment sought under Rule 14.5. The Applicant, Debut Developments ("Debut"), a corporation without legal counsel, requested the adjournment shortly before Trial. The Trial Judge denied the request, emphasizing the age and history of the case, the prejudice that further delay would cause to the Respondents, and the corporation's continued failure to retain counsel despite prior opportunities and warnings.

The Court of Appeal considered Rule 14.5(1)(b), which provides that permission to appeal is required for "any pre-trial decision respecting adjournments, time periods or time limits." Debut was specifically advised of this Rule in a letter from the Court's Case Management Officer, which noted permission to appeal must be sought as soon as possible, and failure to do so in a timely manner may result in that aspect of the Appeal being dismissed. The Court of Appeal found that Debut failed to obtain such permission, and even if it had, the Trial Judge's exercise of discretion was grounded in appropriate legal principles and a fair process. Accordingly, the Court of Appeal rejected any claim of procedural unfairness or legal error in denying the adjournment.

The dismissal of Debut's action was upheld. Because the adjournment was denied and Debut remained unrepresented at Trial, the Trial Judge dismissed the action for want of

prosecution. The Court of Appeal confirmed that the Court of King's Bench has inherent jurisdiction to control its own process, including dismissing claims in such circumstances without requiring a formal summary judgment motion. The Appeal was dismissed entirely, and costs were awarded to the respondents under Schedule C, Column 1.

PATEL V ATB FINANCIAL, 2025 ABCA 224

(ANTONIO JA)

Rule 14.5 (Appeals Only With Permission)

The Applicants sought permission under Rule 14.5 to appeal a decision of a single appellate Justice who had earlier denied their Application to extend time to Appeal a prior Order. The Applicants argued that the decision involved errors and raised issues that deserved consideration by a full panel. The Court considered Rule 14.5 stating that permission to appeal will only be granted where the decision raises a question of general importance, rests on a material and reviewable legal issue, involves an unreasonable exercise of discretion with a meaningful effect, or is based on a palpable and overriding error of significant fact. Simply re-arguing previous points or alleging factual mistakes without evidence is insufficient.

Antonio J.A. found that the Applicants failed to meet the threshold for permission under Rule 14.5. The Applicants did not identify a question of general importance or a material error that would justify a panel review. Their submissions mostly repeated arguments from their initial application and did not point to any legal or factual error warranting intervention. Antonio J.A. noted that the Applicants had not satisfied the applicable legal criteria. The Court emphasized that Rule 14.5 is intended to limit unnecessary panel reviews, and that permission is not granted merely because an applicant disagrees with the outcome. The Application was denied, and costs were awarded against the Applicants.

THE TORONTO DOMINION BANK V MONK, 2025 ABCA 209

(FRIESEN JA)

Rule 14.8 (Filing a Notice of Appeal)

The Applicant sought an extension of time to file her Appeal (the "Application"), citing difficulties with the electronic filing system, health challenges, and visual impairments as reasons for the delay.

Friesen J.A. considered the criteria for granting an extension of time to appeal, including: a) the Applicant had a *bona fide* intention to appeal the decision while the right to appeal existed; b) the explanation given for the failure to appeal in time excuses or justifies the delay in filing; c) the other party has not been prejudiced by the delay to such a degree that it would be unjust to disturb the Judgment; d) the Applicant did not benefit from the Judgment under Appeal;

and e) the Appeal has a reasonable prospect of success.

Having considered these criteria, the Court then noted that, while the delay of one day was minor and could have been excused under certain circumstances, the Appeal had no reasonable prospect of success. The Decision under Appeal had already been set aside, rendering the Appeal moot. Moreover, the Redemption Order listing, which was the foundation of the underlying Action, was not appealed, and the time to do so had long passed.

Having concluded that it was not in the interests of justice to grant the extension, the Court denied the Application.

EDMONTON (CITY) V BOONSTRA, 2025 ABCA 229

(FETH JA)

Rule 14.37 (Single Appeal Judges)

The Applicant sought to strike the Respondent's Application for permission to appeal a decision of the Edmonton Subdivision and Development Appeal Board on the basis that the Notice of Application was not properly served in accordance with the *Municipal Government Act*.

The Respondent had initially named the wrong parties in its Notice of Application and failed to name to the Applicant, the City of Edmonton. The Case Management Office amended the Notice of Application, but notwithstanding this amendment, the Respondent had failed to serve the Notice of Application on all parties within the time prescribed.

The Respondent took the position that the late service of the Notice of Application did not result in any prejudice to the Applicant and requested that the Court cure the defective service by way of Order. The Court rejected the Respondent's position and held that the time periods prescribed by the *Municipal Government Act* are mandatory and not within the discretion of the Court to vary. The Respondent failed to properly effect service upon the Applicant and, as a result, the Respondent's Application for permission to appeal was struck pursuant to Rules 14.37(2)(b) and (c) for failure to comply with a mandatory rule.

FAH V MTH, 2025 ABCA 180

(FEEHAN, KIRKER AND HAWKES JJA)

Rule 14.45 (Application to Admit New Evidence)

The Appellant mother applied to adduce new evidence on her Appeal, pursuant to Rule 14.45. The new evidence she sought to adduce included a psychological report and details of her child's rejection from a mental health program, to support her claims.

The Court reviewed the test to admit new evidence on appeal, considering the following: (i) the evidence should generally not be admitted if it could have been adduced at trial; (ii) the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial; (iii) the evidence must be credible in the sense that it is reasonably capable of belief; and (iv) it must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

The mother attested that following a psychological report, the younger child was to attend a mental health program, but was rejected from that program as he did not meet the inclusion criteria, and he was waiting to get into a different program. She remained concerned that, in her opinion, it was "very likely that [the father] does not give [the younger child] his medication as prescribed". The Court found that much of this evidence was the same as that before the Chambers Judge. It spoke to the ongoing, high-conflict parenting situation between the parents, which as quoted by the Chambers Judge, was having "devastating consequences on their children".

None of the proposed new evidence was such that it would be expected to have affected the result in the Court below. The Chambers Judge considered the relief sought by the mother based on largely the same evidence then available. The new evidence Application was therefore dismissed.

DAVLYN CORPORATION LTD V LATIUM FLEET MANAGEMENT INC, 2025 ABCA 219

(FEEHAN, FAGNAN AND WOOLLEY JJA)

Rule 14.45 (Application to Admit New Evidence)

Latium Fleet Management ("Latium") appealed a Chambers Judge's Order that required it to pay $130,000 into Court as Pre-Judgment Security for Davlyn Corporation's ("Davlyn") outstanding contractual interest claim at a rate of 24% per annum. Although other parts of the Order stayed enforcement of Summary Judgment and required Security for Costs of Appeal, those aspects were not under Appeal. On Appeal, Davlyn also applied to introduce new evidence about Latium's later request for an extension to pay the funds into Court, arguing it demonstrated concerns about Latium's financial position.

The Court first addressed Davlyn's Application to adduce new evidence under Rule 14.45. The proposed new evidence was an Affidavit from Latium's director and a transcript showing the Chambers Judge had granted Latium more time to pay the ordered Security into Court.

The Court applied the test set out in *Palmer v The Queen*, [1980] 1 SCR 759: (1) the evidence could not, with due diligence, have been obtained earlier; (2) the evidence must be relevant to a decisive or potentially decisive issue; (3) the evidence must be credible; and (4) it must be capable of affecting the result if believed. While the Court found the Affidavit and transcript were relevant and credible and could not have been produced sooner, they did not meet the fourth criterion. The additional evidence did not address the key legal issue on Appeal, which was whether the Chambers Judge properly exercised jurisdiction to grant Pre-Judgment Security for an unproven claim. The Application to admit new evidence was therefore dismissed.

Turning to the Appeal, the Court found that the Chambers Judge had conflated principles for Security for Costs with the very different concept of ordering Security for a claim before Judgment is granted. The Chambers Judge had not addressed the established legal tests for Security for Judgment, which are recognized only in rare and exceptional circumstances, generally after Judgment and in circumstances similar to those for *Mareva* injunctions or attachment proceedings under the *Civil Enforcement Act*. The Court reviewed prior authorities, confirming that an Order requiring a party to secure a claim in advance of Judgment is extraordinary and requires a clear basis in law, which was not demonstrated here. There was no analysis that Davlyn's claim for contractual interest met the high threshold for preserving assets or preventing misuse of the court's process, and no statutory authority was identified to support Pre-Judgment Security for a contested interest claim.

As a result, the Court concluded that the Chambers Judge erred in principle by ordering Latium to pay $130,000 into Court for Pre-Judgment Security on interest that remained to be proved. The Appeal was allowed, the Order for Pre-Judgment Security was set aside, and the amount paid into Court for that purpose was ordered to be returned to Latium with any accrued interest.

ANDREWS V CUNNINGHAM, 2025 ABCA 169

(WATSON JA)

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

The Applicants applied to restore the Appeal pursuant to Rules 14.47 and 14.65. The Applicants argued that because the deadline was missed by only one day, the Appeal should be restored. One of the five Respondents to the Appeal objected, while the other Respondents did not reply. Watson J.A. granted the Application on the basis that a minimal delay is not a persuasive enough reason to strike the Appeal, especially when the Appeal was now ready to proceed.

PAN V STANDARD (VILLAGE), 2025 ABCA 193

(ANTONIO JA)

Rule 14.47 (Application to Restore an Appeal)

The Applicants sought an extension of time under Rule 14.47(b)(i) to apply to restore an Appeal that had been struck and later deemed abandoned. Rule 14.47(b)(i) requires that any Application to restore a standard appeal must be returnable no later than six months after the appeal was struck or deemed abandoned.

The Applicants filed their restoration Application well beyond that period, nearly a year and three months after the Appeal was deemed abandoned. The Court emphasized that such extensions of time are rare, and in this case the delay was extreme and unprecedented. The Applicants' explanations, including claims of harassment and personal health issues, were found insufficient to justify the significant departure from the strict timeline set out in the Rule.

The Court also noted that even if it had considered the Application to restore, it would have been denied. Antonio J.A. stressed that discretion to restore an appeal after it has been deemed abandoned should be exercised sparingly, as prejudice to the Respondent can be assumed in such circumstances. Ultimately, the extension of time was refused, and the Appeal remained abandoned.

MCDONAGH V KINGS, 2025 ABCA 151

(GROSSE JA)

Rule 14.48 (Stay Pending Appeal)

The Appellant applied for a Stay Pending Appeal under Rule 14.48, which allows a Judge to stay enforcement of a decision while an appeal is underway. The Appellant sought to stay a March 2025 Order requiring him to vacate the Respondents' land and remove his personal property. The Appellant also initially sought to stay an earlier December 2024 Order in a separate matter involving Lacombe County, but this part of the Application was dismissed early on, as the Order was not under Appeal and had already been extended by consent.

The Court analyzed the request under the three-part test in *RJR-MacDonald Inc v Canada (Attorney General)*: (1) a serious issue to be tried, (2) irreparable harm, and (3) balance of convenience. Grosse J.A. accepted that there was a serious issue to be tried, noting that the relationship between the Appellant and the Respondent might have legal implications—possibly a tenancy or contractual arrangement. However, the Court was not satisfied that irreparable harm had been demonstrated. Appeal Justice Grosse noted that while the Appellant did raise some concerns about losing sentimental and valuable property, much of it had already been dismantled or removed, and such loss could generally be compensated with damages.

On the balance of convenience, the Court found the Appellant had multiple opportunities to remove his property but failed to act decisively. The Court also emphasized that the Respondent was acting under pressure to comply with the County's Order, and interference through a stay could jeopardize that compliance. Grosse J.A. ultimately concluded that a stay was not just or equitable in the circumstances and dismissed the Application. The Court emphasized that Rule 14.48 relief must serve justice; and in this case, the complexity of underlying disputes and lack of practical remedies weighed against a stay being granted.

ZHUROMSKY V CALGARY (CITY), 2025 ABCA 217

(STREKAF JA)

Rule 14.48 (Stay Pending an Appeal)

The Applicant sought, and the Court granted, a Stay of a development permit (the "Development Permit") pursuant to Rule 14.48.

Citing *RJR MacDonald*, Strekaf J.A. stated that, to be granted a stay pending appeal, the Applicant must establish that: (1) there is a serious question to be determined on appeal; (2) the applicant will suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favours granting a stay.

Strekaf J.A. held that a stay pending an appeal is a discretionary remedy, and the fundamental question is whether a stay is just and equitable in all the circumstances of the case. It may be granted if exceptional circumstances exist.

With respect to the first part of the test, the Court noted that the threshold to establish a serious question to be determined on appeal is low. Strekaf J.A. held that the threshold was met as the Applicant had been granted permission to appeal.

The second part of the test requires that the applicant demonstrate they will suffer irreparable harm if a stay is not granted. Irreparable refers to the nature of the harm, not its magnitude. It is harm that cannot be quantified in monetary terms or cannot be cured. The Court noted that irreparable harm is generally demonstrated if benefit sought in the appeal would be permanently lost in the absence of a stay. Strekaf J.A. was satisfied that the Applicant had established he would suffer irreparable harm if the development proceeds and the Development Permit was ultimately set aside.

The final factor requires that the Court consider whether the balance of convenience favoured granting the stay. Having considered the parties' submissions, Strekaf J.A. was satisfied that the balance of convenience favoured the granting of the stay, and moreover that it was just and equitable to grant the stay pending Appeal.

DECOURCY V KORLAK, 2025 ABCA 189

(WATSON, PENTELECHUK AND SHANER JJA)

Rules 14.70 (No New Evidence Without Order) and 14.74 (Application to Dismiss an Appeal)

The Respondent sought to dismiss an Appeal pursuant to Rule 14.74. The Appeal arose from the Respondent's defamation Action against the Appellants. The Chambers Judge granted an interim injunction, requiring the Appellants to remove a Facebook page and to stop publishing statements alleging fraud against the Respondent. The Appellants asserted that the Chambers Judge erred in applying the tri-partite test for granting the injunction, as it was not the appropriate test for restraining allegedly defamatory publications.

Under Rule 14.74, the Court may dismiss all or part of an appeal if it is moot, frivolous, vexatious, without merit, improper, or if any part of the appeal constitutes an abuse of process. The Court confirmed that an appeal is moot where it would not resolve a controversy that affects, or could affect, the parties' rights. The Court found the Appeal was not moot, as the underlying defamation Action remained ongoing and, if the Appeal were allowed and the injunction set aside, the Appellants would no longer be subject to the Order's restrictions, directly affecting their rights.

The Court also found the Appeal was not frivolous, vexatious, improper, or an abuse of process. The Appellants sought to challenge what they alleged were legal errors. Although the Respondent felt aggrieved by the publications, the Court determined that the record did not establish any impropriety or misconduct by the Appellants in pursuing the Appeal.

The Court affirmed that an appeal is without merit only when it is hopeless or discloses no arguable basis. Further, the Court emphasized that dismissal under Rule 14.74(c) is a high threshold, which is not satisfied by mere weakness in the Appeal and found that the Respondent did not meet this standard.

Alternatively, the Respondent argued that any part of the Appellants' factum relying on the *Fraudulent Preferences Act*, RSA 2000, c F-24 (the "Act") should be struck pursuant to Rule 14.70, as the Act had not been pleaded or raised before the Chambers Judge. The Court rejected this argument, stating that the references to the Act did not seek to introduce new evidence, but rather recast defences already raised in response to the defamation claims before the Chambers Judge.

In the result, the Court dismissed the Respondent's Applications.