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RULES

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(PRICE J)

Rules 1.2 (Purpose and Intention of these Rules), 3.26 (Time for Service of Statement of Claim), 3.27 (Extension of Time for Service), 6.14 (Appeal from Application Judge's Judgment or Order) and 11.27 (Validating Service)

On March 16, 2019, Urban Square Holdings Ltd. ("Urban") sent its Statement of Claim ("Claim") to the Defendant, Del Fisher Insurance Inc ("Fisher"). The covering letter stated that the Claim was being provided for reference only and was not being formally served at that time ("Non-Formal Service"). Following the Non-Formal Service and failed resolution discussions, Urban sent its Affidavit of Records to Fisher on January 28, 2020. Fisher requested the documents from the Affidavit of Records on May 15, 2020. On January 21, 2021, Fisher requested a copy of the Affidavit of Service for the Claim. Urban was unable to locate it, and Fischer took the position that the Claim was a nullity because it was not served within time.

Urban applied for an Order validating service pursuant to Rule 11.27 or, in the alternative, an Order extending the time for service pursuant to Rule 3.27. Applications Judge Mason granted Urban's Application validating service ("Order"). Fischer appealed the Order.

The Court noted that Rule 6.14 governs Appeals from an Application Judge's decision, and that Rule 3.26 requires that a Statement of Claim be served within one year of filing. Justice Price agreed that service was not effected on the date of the Non-Formal Service, but that service was effected, at the very latest, when Fischer requested documents from the Affidavit of Records. At this point, Fischer knew it was engaged in the litigation process even if Urban continued to try to resolve the dispute in a timely and cost-effective way in accordance with Rule 1.2. The Court held that if it had not validated service, it would have granted Urban a one-month extension to file the Claim pursuant to Rule 3.27. In the result, Fischer's Appeal was dismissed.

ASTOLFI V STONE CREEK RESORTS INC, 2025 ABKB 139

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 4.1 (Responsibility of Parties to Manage Litigation), 4.2 (What a Responsibility Includes), 5.1 (Purpose of This Part), 5.3 (Modification or Waiver of This Part), 5.14 (Inspection and Copying of Records), 10.29 (General Rules for Payment of Litigation), 10.31 (Court Ordered Costs Award) and 10.52 (Declaration of Civil Contempt)

The Plaintiff sought a declaration, pursuant to Rule 10.52, that the Defendant was in Civil Contempt for not complying with a Court Order (the "Mason Order") to produce certain email records in their native electronic format. The Plaintiff also asked the Court for clarification on the Defendant's obligations pursuant to the Mason Order and/or Rule 5.14.

The issue previously before Applications Judge Mason was that some of the records produced by the Defendant were seemingly corrupted. The Mason Order directed the Plaintiff to request specific Records in their "original electronic format" and for the Defendant to provide those to the Plaintiff on a memory stick "in the form they exist in the Defendant's data base."

In its analysis of Rule 10.52 the Court noted that Civil Contempt has two goals, securing compliance with Court Orders and protecting the integrity of the administration of justice. Justice Marion relied on Rule 10.52(3) in support of the requirements of a finding of Contempt.

In applying the test for Civil Contempt, Marion J. first considered if the Mason Order clearly and unequivocally set out what the Defendant was to do, ultimately finding that the Order relied on Rule 5.14 and was clear.

Secondly, the Court considered if the Defendant had actual knowledge of the Mason Order, finding that they did.

Third, Justice Marion considered if the Defendant intentionally failed to comply with the Mason Order, finding at least partial non-compliance. The Plaintiff had been able to prove beyond a reasonable doubt that at least some of the USB records were not from the Defendant's database or systems.

Fourth, the Court considered if the noncompliance was conducted without a reasonable excuse. Marion J. found that the Defendant used a "sufficient degree of diligence" to locate the Records and had therefore met the burden of diligently trying to obey the Mason Order. Ultimately, the Court held that the facts of this case did not warrant a finding of contempt.

Justice Marion went on to consider the foundational Rule, 1.2, along with Rules 4.1, 4.2, and 5.1, and advised that typically production and discovery disputes should be resolved through cooperation and expeditious Applications to Applications Judges. Marion J. reminded the parties of their obligations to manage litigation and provide proper Disclosure, stating "contempt should not be the first response or a litigation tactic."

Fifth, the Court considered Rules 5.14(a) and 5.14(b) to decide if it should reconfirm and/or enforce the Mason Order. In considering the lens of proportionality pursuant to Rule 5.3, Marion J. dismissed the Plaintiff's Rule 5.14 Application. Ultimately, Justice Marion determined that the Plaintiff had the material information required and when balancing the suspicions of the Plaintiff against further delay and cost, the Court favoured moving this

matter to resolution or Trial expeditiously. With this in mind, Marion J. encouraged the parties to settle Costs pursuant to Rules 10.29 and 10.31 amongst themselves and return to Court only if they are unable to do so.

ANDERSON V HIS MAJESTY THE KING IN THE RIGHT OF ALBERTA, 2025 ABKB 167

(JERKE J)

Rules 1.2 (Purpose and Intention of these Rules), 1.4 (Procedural Orders), 1.7 (Interpreting these Rules), 4.14 (Authority of Case Management Judge), 5.1 (Purpose of This Part), 5.3 (Modification or Waiver of this Part), 5.4 (Appointment of Corporate Representatives), 5.6 (Form and Contents of Affidavit or Records), 5.8 (Producible Records for Which there is an Objection to Produce), 5.18 (Persons Providing Services to Corporation or Partnership) and 5.29 (Acknowledgment of Corporate Witness's Evidence)

The case involved a protracted legal dispute between the Beaver Lake Cree Nation ("BLCN") and Alberta and Canada (the "Defendants"). The primary issues in this Decision concerned the scope of discovery rights and obligations related to oral histories and Treaty rights. The BLCN sought to limit the questioning of its members and representatives by the Defendants, while Alberta and Canada sought broader discovery rights.

Justice Jerke, who was also the Case Management Judge, made a number of important findings regarding the breadth of discovery when Aboriginal peoples and groups are involved in litigation.

The scope of record disclosure is set out in Rule 5.6(1) of the Rules. Parties must disclose, in their affidavit of records, all records that are both relevant and material to the issues in the action, and that are or have been under the party's control.

Justice Jerke began by finding that oral histories are not producible for two reasons: (i) they are not "records;" and (ii) they are not under BLCN's control. Regarding the former, oral histories do not meet the generally accepted interpretation of "records" under Rule 5.6(1). They exist only in human memory and, in this case, had not yet been reduced to a recorded form. Further, oral histories as they exist in the minds of BLCN's members, are not in BLCN's "control" as per Rule 5.6(1). As such, BLCN could not legally compel its members to share their oral histories to satisfy Alberta's demands.

Even where records are producible under Rule 5.6(1), a party may be permitted to withhold the record by claiming privilege. Parties claiming privilege must still include a schedule of any privileged records, along with the grounds for the privilege claim: Rules 5.8(1), 5.8(4). Justice Jerke found that the records of oral histories which BLCN possessed were covered by litigation privilege. During the course of this litigation dating back to 2008, BLCN had collected numerous interviews from its members on a range of topics. Experts and legal counsel conducted these interviews, which were "for the purpose of informing expert reports," and the lawyers' interviews were conducted "for the purpose of identify[ing] potential witnesses for trial". These interviews fell within the scope of

litigation privilege, because they were prepared in direct contemplation of the present litigation.

Turning to the nature of BLCN "as a plaintiff" for the purposes of the Rules, Jerk J. found that the appropriate manner to characterize First Nations as parties in this context is to treat First Nations as functioning like a corporation, represented in discovery by a "corporate" representative to answer questions on the Nation's behalf. Rule 1.7(2) sets out that, where the Rules do not specifically address the circumstances at bar, they may be applied by analogy. Currently, there are no rules particular to the context in which a First Nation is a party. As such, Justice Jerke found that he was entitled to analogize the most appropriate use of the Rules.

Notwithstanding the conclusion on whether BLCN was obligated to produce oral history by way of disclosure, in the interest of fairness and in alignment with the purpose of discovery and the Rules in general, Justice Jerke opined that the Defendants must be permitted at least some discovery of BLCN's oral histories. That is, "Part 5 must be read in combination with [Rule] 1.2, which explains that the overarching purpose for the Rules in general is to 'provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way'". However, elders and other knowledge keepers should not be analogized as "service providers" under Rule 5.18(1) -- i.e., as "persons providing services to corporation or partnership". Rule 5.18 must be read restrictively in that regard. The Defendants did not satisfy the three requirements set out under Rule 5.18.

Rule 5.4 outlines the discovery process for corporations. Evidence given by a "corporate" representative, or in this case the BLCN representative, during the discovery stage is deemed to be evidence of "the corporation", here BLCN. A corporate representative is required to inform themself of all relevant and material records and information prior to discovery: Rule 5.4(2). However, BLCN, as a "corporation", was not entitled to the entire oral history as it exists organically amongst its members, nor did this obligation require BLCN's representative to recreate oral evidence. Accordingly, as BLCN's corporate representative only had the obligation to inform herself of BLCN's knowledge of relevant and material information. This included both reviewing physical records in BLCN's control and making inquiries of other employees or officers of BLCN (i.e., parties under BLCN's control such as the Chief, councillors, and other employees).

Further, Justice Jerke noted that there are several statutory discretionary provisions that grant the courts broad authority to ensure the purpose of the Rules and of discovery are adhered to in a manner that fits the Aboriginal and Treaty law context on which the Rules are silent.

First, Rule 5.1(2) permits the Court to "give directions or make any order necessary to achieve the purpose of [Part 5]". Similarly, Rule 5.3(1)(b) grants the Court discretion to "modify or waive any right or power under a [discovery-related rule] or make any order warranted in the circumstances if … the expense, delay, danger or difficulty in complying with a rule would be grossly disproportionate to the likely benefit". Rule 1.4 more broadly gives the Court authority to "make any order with respect to practice or procedure, or both" including giving consent, permission or approval for a party to take a certain action.

Second, case management judges, as Justice Jerke was in this Action, have even further discretion under Rule 4.14(1) of the Rules to "make an order to promote the fair and efficient resolution of the action by trial" and "make any procedural order that the judge considers necessary" in the circumstances.

Third, jurisprudence further supports a flexible use of procedural rules. For example, the Court of Appeal has specifically explained that the Rules are flexible: *Piikani Nation v Kostic*, 2018 ABCA 234.

Justice Jerke exercised his discretion under Rule 5.3(1)(b) to relax the discovery rules to avoid the danger of the Defendants not knowing the case they must meet. Here, he permits the Defendants to question four other specific individuals for discovery, in addition to BLCN's corporate representative (the "Key Individuals"), noting, however, that any evidence provided by the Key Individuals was not the evidence of BLCN unless BLCN's corporate representative adopted it, as per Rule 5.29.

Finally, Justice Jerke proposed the following process for determining when a member of a First Nation may be questioned for discovery:

> where a party becomes aware that a member of the community has personal or oral history knowledge relevant and material to specific issues in the litigation, the Court may exercise its discretion to permit that individual to be questioned for discovery to offer their part of the oral tradition, the oral history, the way of life of folks enjoying the collective rights given by the Treaty, and how their personal enjoyment of those rights has been impacted.

In accordance with Rule 5.29, the above answers can not be read in as evidence of the First Nation unless its corporate representative adopted some or all the evidence.

ARKANGELO V MCFEE, 2025 ABKB 67

(NIELSEN ACJ)

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

The Plaintiffs filed a Statement of Claim alleging the negligence by the Defendant police officers contributed to the wrongful death of Markios Arkagenlo. After the Edmonton Police Service ("EPS") received death threats against the Defendants, they applied for a Restricted Court Access Order ("Application"). The Criminal Trial Lawyers' Association ("CTLA") applied to intervene in the Application ("Intervention Application").

CTLA argued that it could be granted intervenor status under Rule 2.10, "Intervenor status", or Rule 6.35(b), "Persons having standing at Application". The Defendants argued that Rule 6.35 was the governing authority and opposed the Intervention Application on the basis that CTLA was not directly affected by the Application and CTLA did not provide a fresh perspective that would not already be represented by one of the parties.

The Court agreed with the Defendants, holding that Rule 6.35 was the appropriate authority when an interested party sought to intervene in a Rule 6.28 Application because it was specifically intended for those circumstances. Ultimately, Nielsen A.C.J. held that CTLA would not be affected by the outcome of the Application, nor would CTLA bring a fresh perspective to the Application. The Intervention Application was dismissed.

MLD V JM, 2025 ABKB 184

(LEMA J)

Rules 2.11 (Litigation Representative Required), 2.13 (Automatic Litigation Representatives), 2.14 (Self-Appointed Litigation Representatives), 2.15 (Court Appointment in Absence of Self-Appointment), and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

The dispute in this matter was over the capacity of the Defendant to make litigation decisions in a divorce and matrimonial property Action initiated by the Plaintiff.

The Yukon Public Guardian and Trustee ("YPGT") was appointed as the Defendant's guardian, following a previous determination of the Defendant's incapacity to manage his affairs, including legal matters, by the Yukon Supreme Court. The Alberta Court of King's Bench determined that the Defendant lacked capacity, and no Rule 2.11 litigation representative was needed. The Court went on to state that if a Rule 2.11 litigation-representative status was needed, Rules 2.13 and 2.14 did not apply but the YPGT was appointed as litigation representative under Rule 2.15. Lastly, the Court set aside the Noting in Default, with the consent of the Plaintiff and pursuant to Rule 9.15(3).

In coming to this conclusion, Lema J. found that the Plaintiff had not introduced any evidence showing that the Defendant's incapabilities had disappeared or eased since the two initial decisions by the Yukon Supreme Court. Further, the Court found that the Yukon Judgment should be taken at face value, including its applicability to litigation in Alberta.

Lema J. then directed her attention to whether, as a precondition of exercising that authority in Alberta, the YPGT needed to be confirmed or appointed as a "litigation representative" under Alberta Rules 2.11 to 2.15. The Defendant was over 18, was not a missing person or a represented adult under Alberta's *Adult Guardianship and Trusteeship Act* ("*AGTA*"), nor an estate. Thus, this left the Court to analyze the applicability of Rule 2.11(c). The Court stated that the common thread in Rules 2.11(a), (b), (d) and (e) is the absence of a representative, and similarly interpreted Rule 2.11(c) as aimed with addressing unrepresented persons lacking capacity. The Court noted that the *AGTA* definition of capacity is incorporated by reference, but the appointment of an *AGTA* guardian or other representative is not required or contemplated by Rule 2.11(c). Justice Lema concluded that the Rule 2.11 inquiry was unnecessary, because the YPGT was already authorized to represent the Defendant in litigation. Further, the Court determined that any policy concern of Rule 2.11 – ensuring that persons needing representation (children, missing persons, persons lacking capacity, etc.) are represented – were not engaged, as the Defendant had a representative.

In the alternative, if YPGT had to be confirmed or appointed as a litigation representative under Rule 2.11, the Court found that Rule 2.13 did not apply, with "enactment" being limited to statutes and regulations of Alberta and Canada (i.e. not extending to Yukon Territory) and that Rule 2.14 did not apply since the YPGT is not an individual "resident in Alberta". However, if Rule 2.11 applied to the matter, Rule 2.15 could be engaged by the Court. The Court noted that Rule 2.15 does not outline any criteria for appointing a litigation representative, but agreed that the factors identified by the YPGT were sufficient reasons for appointing it as litigation representative, specifically: the history and outcome of the Yukon court proceedings, the YPGT's familiarity with the Defendant's

personal and financial circumstances, the Office of the Public Guardian and Trustee in Alberta declining to be involved in the current proceedings, the apparent lack of willing or available family members or friends to serve as litigation representative, and the obvious conflict precluding the Plaintiff from being the Defendant's litigation representative.

AF V ALBERTA, 2025 ABKB 10

(GRAESSER J)

Rules 2.14 (Self-Appointed Litigation Representatives), 4.33 (Dismissal for Long Delay), and 10.47 (Liability for Litigation Representative for Costs)

The Defendants applied for dismissal of the Plaintiffs' Action due to long delay pursuant to Rule 4.33 (the "Application"). The Application was initially brought in March of 2020 and was adjourned *sine die* to allow the Plaintiffs to gather the relevant evidence to respond to the Applications. The Defendants revived the Application as no further evidence had been produced. The Plaintiffs did not oppose the Application and acknowledged that no steps had been taken to advance the Action in over nine years. The Action was dismissed.

The Defendants each sought Costs from the Plaintiffs as a consequence for the dismissal of the Action. The Plaintiffs argued that no Costs should be awarded in light of the nature of the claim and the age of the Plaintiffs at the time of commencement. The Action relates to allegations of sexual assault and battery, and the Plaintiffs were minor children at the time of commencement in 2007. The Plaintiffs were initially represented by their mother as Litigation Representative. Upon their mother's death, a subsequent Litigation Representative was appointed. The three Plaintiffs were each represented by the Litigation Representative until they came of age in 2011, 2013, and 2015, respectively.

The Court held that the Plaintiffs should not be held personally responsible for Costs that may have been incurred during the time that they were represented by a Litigation Representative. Rule 10.47(1) provides that a Litigation Representative is liable to pay any costs award against a Plaintiff, and Rule 2.14(2)(g) requires a Litigation Representative to acknowledge this liability. Justice Graesser further stated that any Costs Award against the Plaintiffs' mother would be moot given that she had passed away.

Justice Graesser concluded that the Litigation would be no more costly with a single Plaintiff than with multiple and as a result, Costs should not be attributable to the individual Plaintiffs until all Plaintiffs were of age. The Court ordered that the Plaintiffs were jointly and severally liable to the Defendants for costs based on Schedule C for all steps taken following the date that all Plaintiffs were of age.

BEHIELS V TIBU, 2025 ABKB 178

(WHITLING J)

Rules 3.5 (Transfer of Action) and 9.13 (Re-Opening Case)

This Decision arose from an Application by the Plaintiff by Counterclaim (who preferred to be called "Dr. Best") to re-open her previously dismissed motion to change the Trial venue from Edmonton to Calgary. The Court had dismissed her second change of venue Application on October 30, 2024 (the "Second Application"). Dr. Best argued that the Second Application was not properly decided because neither she nor her then-counsel submitted a June 4, 2024 Endorsement from Justice Loparco (the "Endorsement"), which authorized a *de novo* hearing of the venue issue and could arguably have affected the outcome.

Rule 3.5 permits the Court to transfer an Action to a different judicial centre if it is satisfied that it would be unreasonable to proceed in its current location, or upon request of the parties. Dr. Best initially applied under Rule 3.5 in December 2023 before Justice Lema, who dismissed the Application with detailed written reasons. That Decision was not appealed. Instead, Dr. Best sought to revisit the issue, and Justice Loparco, sitting as Case Management Judge, determined that the original Decision was not final for the purposes of issue estoppel and expressly permitted Dr. Best to bring a second venue Application *de novo*.

During the hearing of the Second Application, however, neither party provided the Court with a copy of the Endorsement. As a result, there was confusion regarding whether a *de novo* hearing had in fact been authorized. In oral reasons given on October 30, 2024, the Court dismissed the Second Application and noted that while it was not proceeding as a *de novo* review per se, it was placing significant weight on Justice Lema's earlier findings. Dr. Best argued that this approach was procedurally flawed, as it failed to heed Justice Loparco's direction for a full *de novo* reconsideration.

Justice Whitling rejected that submission and held that the Second Application was, in substance, conducted as a *de novo* hearing. Whitling J. clarified that there is no singular definition of a *de novo* hearing in Alberta law, and a judge may give considerable weight to earlier findings—particularly where detailed reasons have already been provided, and no compelling new evidence is submitted. Citing *Landry v Rocky View (County) Subdivision and Development Appeal Board,* 2025 ABCA 34, and other authorities, Whitling J. explained that the essence of a *de novo* hearing lies in hearing new evidence or argument, but it does not require the judge to disregard earlier decisions. On that basis, the Second Application hearing complied with the standard contemplated by the Endorsement.

Dr. Best also relied on Rule 9.13, which permits the Court to vary a Decision before a formal Order is entered, or to grant any further Order needed to provide an appropriate remedy. The Court noted that Rule 9.13 is discretionary and must be applied sparingly. Justice Whitling emphasized that reopening a pronounced Decision is not meant to give the unsuccessful party a second opportunity to present arguments or evidence that could have been raised earlier. The Court found that Dr. Best's position that she should be entitled to reargue the matter due to her former counsel's failure to present the Endorsement did not warrant reopening the Decision, especially given the long procedural history and the pattern of fragmented representation.

Accordingly, the Court dismissed Dr. Best's Application to reopen her second change of venue motion.

PERRY V ALBERTA (SENIORS, COMMUNITY AND SOCIAL SERVICES), 2025 ABKB 68

(NEILSON J)

Rules 3.15 (Originating Application for Judicial Review) and 3.16 (Originating Application for Judicial Review: Habeas Corpus)

The Applicants (the "Perrys") applied for Judicial Review of a decision by the Persons with Developmental Disabilities Appeal Panel (the "Appeal Panel") on the basis that it was unreasonable. The Respondent submitted that the Perry's Application should be dismissed because the Originating Application did not name or serve the Appeal Panel, in breach of Rules 3.15(2) and 3.15(3). Justice Neilson held that Rule 3.15 is a limitation period which is to be strictly interpreted. The Perrys unsuccessfully attempted to rely on Rule 3.16, which the Court held did not apply. Neilson J. found that the Originating Application was not served in accordance with the Rules and therefore ought to be struck, and that regardless, the Appeal Panel's determination was reasonable.

RUNKLE V CANADA (ATTORNEY GENERAL), 2025 ABCA 84

(KIRKER, FRIESEN AND SHANER JJA)

Rules 3.15 (Originating Application for Judicial Review) and 14.72 (Binding Precedents)

The Appellants were gun owners who received a standard form letter from the Registrar of Firearms notifying them that their firearms were classified as prohibited pursuant to regulatory amendments. The Appellants sought to refer the decision of the Registrar to the Alberta Court of Justice by way of reference pursuant to Section 74 of the *Firearms Act,* SC 1995, c 39. Section 74 permits the Alberta Court of Justice to review decisions where the Registrar "revokes a... registration certificate." The Attorney General of Canada challenged the jurisdiction of the Alberta Court of Justice to conduct the reference. Following a Summary Trial on the issue of jurisdiction, the Court held it did not have jurisdiction to conduct the reference (the "Decision").

The Appellants filed Originating Applications with the Court of King's Bench for a Judicial Review of the Decision pursuant to Rule 3.15. The Judicial Review Judge stayed the matter until the decision in *Canada (Attorney General) v Smykot*, 2023 ABCA 131 ("*Smykot*"), was released. In Smykot, the Alberta Court of Appeal concluded that the nullification of firearm registration certificates was achieved by the Order of Council, not by the Registrar, and therefore the Alberta Court of Justice did not have jurisdiction to hear references. Following the release of *Smykot*, the Judicial Review Judge held that the Court could not overrule *Smykot* and that to succeed, the Appellants needed to persuade the Court that there was a basis to distinguish the case. The Judicial Review Judge was not

persuaded that the factual circumstances provided a basis to distinguish *Smykot* and the Application for Judicial Review was dismissed.

On Appeal, the Appellants argued that the Judicial Review Judge erred in law. The Court noted that Rule 14.72 prevents Appellants from arguing that *Smykot* was wrongly decided and that they were confined to arguing that the material facts of their cases provided a basis for distinguishing *Smykot*. After considering the distinguishing facts, the Court found an insufficient basis to distinguish *Smykot* and dismissed the Appeal.

DUMAS V ALBERTA (ATTORNEY GENERAL), 2025 ABKB 141

(KRAUS J)

Rules 3.19 (Sending in Certified Record of Proceedings) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Applicant sought Judicial Review of the exercise of prosecutorial discretion to not proceed with charges against a police officer for aggravated assault. As part of the Judicial Review process, the Applicant was required to meet a preliminary threshold, showing abuse of process. The Applicant also sought leave of the Court to introduce new evidence and for the Crown to provide a better Certified Record of proceedings pursuant to Rule 3.19. The Respondent (the "Crown") brought a Cross-Application to strike or dismiss the Judicial Review for lack of evidence supporting the allegation of an abuse of process.

The matter involved a use of force incident that occurred when the Applicant was being arrested by a police officer, resulting in serious and life-threatening injuries. The Alberta Serious Incident Response Team ("ASIRT") investigated the incident and concluded that there were reasonable grounds to believe that the policer officer committed the offence of aggravated assault. Despite this conclusion, the Crown determined that there was no reasonable likelihood of conviction and did not prosecute the officer. The Applicant alleged that the decision to not prosecute in light of ASIRT's conclusions and the failure to provide reasons for this decision amounted to an abuse of process.

Justice Kraus reviewed the law surrounding prosecutorial discretion and abuse of process, and stated that it is not the role of the Court to second-guess the judgment of the Crown or to determine if their discretion was correctly exercised, and that failure to provide reasons for an exercise of that discretion does not make it improper.

The Court ultimately held that there was no evidence to support the allegation that the Crown's decision amounted to an abuse of process and noted that the Applicant's positions regarding internal favoritism and relationships between the police officer and the Crown were speculative and unsupported. As such the Crown's application to dismiss the Judicial Review was granted.

BASARABA V COLLEGE OF CHIROPRACTORS, 2025 ABKB 176

(WHITLING J)

Rule 3.19 (Sending in Certified Record of Proceedings)

This was an Application for Judicial Review. The Applicant, Dr. Basaraba, sought to set aside an interim suspension imposed by the College of Chiropractors of Alberta under Section 65 of the *Health Professions Act*. Although the Judicial Review raised various issues, Rule 3.19, which requires the filing of a certified record of proceedings, was directly engaged.

While the central issue was procedural fairness, Rule 3.19, which requires the filing of a certified record of proceedings in Judicial Review Applications, was also engaged. No certified record had been filed in accordance with Rule 3.19. Instead, the parties proceeded using affidavits originally submitted in support of a prior stay application. The Respondent acknowledged that everything that would have been included in the certified record was present in the affidavits.

The Court accepted this irregular approach but noted that Judicial Review is generally confined to the evidentiary record before the original decision-maker, citing *Northern Air Charters (PR) Inc v Alberta Health Services*, 2023 ABCA 114. The Court emphasized that while it was willing to proceed due to the parties' agreement and absence of objection, it remained reluctant to consider any extrinsic evidence not before the committee at the time of the impugned decision. The absence of a proper Rule 3.19 record did not, in and of itself, justify setting aside the decision, but it contributed to the procedural irregularities that framed the overall fairness concerns in the case.

The suspension was ultimately set aside due to the Respondent's failure to provide the Applicant with sufficient particulars of the allegations, which rendered his ability to respond effectively "wholly illusory."

CHARKHANDEH V COLLEGE OF DENTAL SURGEONS OF ALBERTA, 2025 ABCA 24

(FEEHAN JA)

Rules 3.23 (Stay of Decision) and 14.37 (Single Appeal Judges)

Dr. Charkhandeh, a dentist, applied for an Order that all publications by the College of Dental Surgeons (the "College") related to findings of unprofessional conduct against him be removed and for a stay of future publications pending Appeal. The College objected to the jurisdiction of a single Judge of the Court to make such orders.

Dr Charkhandeh argued that a single judge had jurisdiction pursuant to either Rule 3.23(1) or Rule 14.37(1), or both. Rule 14.37(1) provides that "a single appeal judge may hear and decide any application incidental to an appeal". Rule 3.23(1), however, is limited to a stay of a decision or act in an originating application for judicial review. Because this matter did not

begin by originating application and was not an appeal from judicial review, the sole question was whether this Application was incidental to Dr. Charkhandeh's appeal, pursuant to Rule 14.37(1).

In *AB v College of Physicians and Surgeons of Alberta*, 2021 ABCA 320 ("*AB*"), a single Judge of the Court granted an order that a decision of the College to publish a statement about the applicant in that case on its public website was inoperative and had no effect until the Court had heard and decided that applicant's appeal. There, the Court found on the jurisdictional issue that it was an "application incidental to an appeal". In *AlphaBow Energy Ltd v Alberta Energy Regulator*, 2023 ABCA 164 ("*Alphabow*"), however, the Court came to the opposite conclusion.

Feehan J.A. found that these two decisions could be reconciled on the facts. In *AlphaBow*, there were no formal appeals before the Court, and the Alberta Energy Regulator had still not determined AlphaBow's request for an internal regulatory appeal. Turning to the facts at hand, Justice Feehan relied on *AB* and found that the application to remove and prohibit further publication on the public website was incidental to the appeal of unprofessional conduct; therefore, it was found that single Judge of the Court had jurisdiction to make the order requested by Dr. Charkhandeh.

Ultimately, the Application was denied because Dr. Charkhanded did not meet the well-known tripartite test for a stay pending Appeal. The Court emphasized the public interest in transparency and the College's statutory mandate to publish disciplinary findings. The balance of convenience favored the College's decision to publish the findings.

OKEKE V OAKES, 2025 ABCA 52

(CRIGHTON, DE WIT AND FAGNAN JJA)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 7.3 (Summary Judgment) and 14.32 (Oral argument)

The Appellant was arrested at his rental unit for assault with a weapon and remained in custody for four months. Upon his release, he discovered that someone else was occupying his rental unit and that his personal belongings were missing. He sued the Calgary Police Service and several officers, his former landlord, and the Minister of Justice of Alberta, alleging wrongful dispossession and failure to secure his property. His claim was summarily dismissed against the Calgary Police Respondents under Rule 7.3 and was struck against the Minister and the landlord under Rule 3.68(2)(b). On appeal, he challenged these Decisions, arguing that they were unreasonable and contrary to natural law and common law principles.

The Court upheld the Summary Dismissal under Rule 7.3, which permits the Court to determine whether a case can be fairly resolved without a Trial or if there remains a genuine issue requiring adjudication. Applying the test established in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, the Chambers Justice found no genuine issue requiring a Trial. The Calgary Police Respondents presented uncontroverted evidence that they had not seized the Appel-

lant's belongings, and the Chambers Justice declined to infer otherwise. The Court found no reviewable error in this reasoning and affirmed that Summary Dismissal was appropriate.

With respect to the claims against the Minister and the landlord, the Court applied Rule 3.68(2)(b), which allows for pleadings to be struck if they disclose no reasonable claim. The Chambers Justice assumed the facts as pleaded to be true but found that the Appellant's allegations were speculative and unsupported by any specific assertions that the Minister or landlord had taken, retained, or disposed of his property. *Citing Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24, the Court reiterated that a claim must not be "plainly and obviously" incapable of success. Since the Appellant failed to establish a legal basis for his claims, the Court upheld the Decision to strike them.

Additionally, the Court determined that the Appeal should proceed in writing pursuant to Rule 14.32(2), which allows a single Judge to direct that an Appeal be decided without oral argument. The Appellant did not provide submissions contesting this direction, and the Court found it appropriate to proceed based on written materials.

Ultimately, the Court of Appeal dismissed the Appeal, finding no error in the Chamber Judge's application of the Rules. As a result, it did not need to address the Appellant's Application for advanced Costs and disclosure.

LAVOIE V LAVOIE, 2025 ABKB 79

(BROOKES J)

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

The Plaintiff commenced a civil action against her spouse and mother-in-law for civil conspiracy, harassment, intentional infliction of mental suffering, abuse of process, contempt of court, and perjury (the "Civil Action"). The Applicant brought an Application to strike the Civil Action under Rule 3.68(2)(b-d). In the alternative, the Applicants sought an order consolidating the Civil Action with a contentious divorce proceeding between the parties (the "Family Action") pursuant to Rule 3.72 or, in the further alternative, directing common discovery and case management for the two actions and that they be tried consecutively.

The Court considered Rule 3.68, citing the relevant legal principles as summarized by Justice Henderson in *Ruby v Mills*, 2019 ABQB 451 at paragraphs 33 to 36. The Court first considered whether the Plaintiff could pursue a tort of civil conspiracy, noting that Alberta's case law on this issue remains unsettled. However, the Court stressed that rejecting a claim in civil conspiracy in the family law context could enable alleged co-conspirators to act wrongfully without repercussions. Justice Brookes found that the Civil Claim sufficiently addressed the four essential elements of conspiracy, linking the Defendants' actions to their intended outcome and providing enough detail to inform the Defendants of their potential liability. The Court struck two paragraphs from the Civil Claim which did not further the conspiracy claim.

The Court then assessed the tort of harassment, concluding that even if the alleged facts were true, the behavior did not rise to the level

of tortious harassment. While any harassment is unacceptable, the conduct did not significantly undermine the Plaintiff's dignity, nor would it cause a reasonable person to fear for their safety or lead to emotional distress beyond what is typical in a contentious marital separation. As a result, the Court dismissed paragraphs 18-25 related to tortious harassment for failing to establish a valid cause of action.

The Court further considered the tort of intentional infliction of mental suffering, noting that a plaintiff must show conduct that is (a) flagrant and outrageous, (b) calculated to harm, and (c) which results in visible and provable illness. The Court struck paragraphs 26 and 27 of the Civil Claim, finding the facts did not meet the required standard and noting the overlap between tort and family law. The Court also reviewed claims of abuse of process, contempt of court, and perjury, dismissing all three on the grounds that it had no reasonable prospect of success.

Considering abuse of process, Justice Brooks indicated that since the civil conspiracy claim was still active, she could not determine that the remaining claim showed typical abuse of process requirements, opting not to strike the Civil Claim.

Justice Brookes also assessed the Applicants' position regarding consolidation under Rule 3.72. The Court noted that the Civil Claim and Family Claim involve common questions of law and fact. The Court emphasized that although the Family Action had advanced further, it was not significantly ahead, and much evidence relevant to the Civil Claim had likely been presented in the Family Action. As a result, the Court ordered that both claims proceed together, with common discovery and case management, to be tried together, either concurrently or consecutively, as the Trial Judge sees fit.

SAKAMOTO V CANADA (ATTORNEY GENERAL), 2025 ABKB 149

(DILTS J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Respondent initiated a Class Action against the governments of Canada and Alberta (the "Applicants"), alleging mishandling of the Covid-19 vaccination program. The Applicants sought to strike the Action under Rule 3.68, arguing the claims were bound to fail as they did not meet legal requirements.

The Court declined to permit the Applicants to bring a pre-certification Application to strike the Action, and ordered that the Application to Strike to be heard at or concurrently with the Certification Application.

Dilts J. noted that, in the context of class proceedings, the decision whether to hear an Application to Strike before the Certification Application is a discretionary one. The exercise of that discretion is to be guided by the public policy purposes underpinning class proceedings, namely, access to justice, behaviour modification, and judicial economy.

Justice Dilts found that hearing a pre-certification Application to Strike would not conserve resources or dispose of the entire Action against both Applicants. The Court emphasized the importance of judicial economy and the risk of duplicating efforts if the issues are addressed twice. The different but interconnected roles of Alberta and Canada in the vaccination program suggested that interre-

lated issues should be heard together. Dilts J. also noted the potential for delays if Appeals are pursued. Ultimately, the Court concluded that addressing the issues at the certification hearing would be more efficient and fair.

SAFORO V CANADA (ROYAL CANADIAN MOUNTED POLICE), 2025 ABCA 70

(SLATTER JA)

Rules 3.68 (Court Options to Deal with Significant Deficiencies) and 14.51 (Applications without Oral Argument)

The Applicant filed an Originating Application alleging a multitude of wrongs committed by the Defendant including, but not limited to, assaults, harassment, and hate crimes. In a previous Decision the Origination Application was struck pursuant to Rule 3.68 for being an abuse of process. The Applicant filed a Notice to Appeal the Decision ten days late and then applied for an extension of the time to appeal (the "Extension Hearing").

The day before the Extension Hearing the Applicant sought an adjournment. The Court denied the request because a suitable explanation was not provided, and a new date was not suggested. As such, the Court proceeded in accordance with Rule 14.51.

Slatter J.A. held that the Applicant failed to demonstrate that the conclusion of the lower Court was based on some reviewable error. As such, the Appeal had no reasonable chance of success and Slatter J.A. dismissed the Application.

CARBONE V DAWES, 2025 ABKB 40

(SILVER J)

Rule 4.14 (Authority of Case Management Judge)

The Plaintiff applied for the recusal of the Case Management Judge due to alleged reasonable apprehension of bias. The Plaintiff claimed that the conduct of opposing counsel, the progression of the case, and comments made by Justice Silver during proceedings, all suggested a lack of impartiality. Additionally, the Plaintiff argued that Justice Silver was disqualified from presiding as Case Management Judge because of breach of jurisdiction. Ultimately, the Plaintiff's Application for recusal based on reasonable apprehension of bias and breach of jurisdiction was dismissed.

The Court emphasised that in cases where reasonable apprehension of bias by a presiding judge is alleged, an objective test is used. A successful applicant must show that a reasonable and fully informed person looking at the circumstances realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the

decision maker, whether consciously or unconsciously, would not decide the case fairly.

Prior to conducting its analysis, the Court acknowledged that a case management judge's authority is broad, and that Rule 4.14 lists several areas of case management involvement, including directing necessary procedural orders and deciding pre-trial issues in the broader context of litigation plans, along with a judge's right to control the conduct of the proceedings before them in a just and proportionate manner. Further, a case management judge must provide a fair and impartial process to minimize the disadvantaged position of self-represented litigants, including early case management.

The Court concluded that the conduct of opposing counsel, namely correspondence to the Court, was not inappropriate, as it was brief, it was procedural, it was directed to case management issues, and it did not contain any argument requiring a substantive decision on the merits of the case. Moreover, the Court found that a reasonable and informed person would understand that a Judge receiving the correspondence would take the correspondence as simply one party's view and would know that a Case Management Judge controls the ultimate agenda of hearings. The Court also found that there was no bias with the progression of the case, as Silver J. actively took steps to protect the Plaintiff's rights and interest, including allowing the Plaintiff to review an improperly filed Affidavit, and by taking steps to ensure it was not part of the filed material of the Action. As it related to the comments made by Justice Silver during proceedings, the Court concluded that the comments were relevant, as they were made for the purpose of gaining a more complete understanding of the issues, and because questions from an appeal judge are usual, not contrary to the law.

Lastly, in respect of the Plaintiff's Application regarding breach of jurisdiction, the Court dismissed the Plaintiff's argument as flawed. Most notably, the Court found that, pursuant to Rule 4.14(2), case management judges are required to hear every application filed in an action unless the Chief Justice or judge or Rules direct otherwise. The Court also cited judicial economy, prematurity and judicial hierarchy as other grounds to dismiss the Plaintiff's Application regarding breach of jurisdiction.

CARBONE V DAWES, 2025 ABKB 41

(SILVER J)

Rules 4.22 (Consideration for Security for Costs Order) and 6.7 (Questioning on Affidavit in Support, Response and Reply to Application)

The Applicant appealed the decision of Application Judge Mason, dismissing its Application to compel answers to Undertakings and questions objected to during Questioning on the Affidavits of the Defendants filed in support of a Security for Costs Application under Rule 4.22.

The Defendants were questioned on two Affidavits: one by Elisha Marie Makar ("Makar Questioning") and the other by Sameer Suleman ("Suleman Questioning"). Applications Judge Mason dismissed the application concerning the Makar Questioning but partially granted the application for the Suleman Questioning, allowing a written response to one specific question.

Justice Silver reviewed Rule 6.7, which permits cross-examination on an affidavit, along with procedural Rules 6.16 to 6.20 that pertain to

that process. The Court held that the scope and intent of cross-examination on affidavits is more extensive than that of standard questioning. It further clarified that while cross-examination on an affidavit is not confined to the "four corners of the affidavit," it is not without limits and must pertain to the issues raised in the affidavit. Justice Silver emphasized that cross-examination regarding credibility is allowed, but it must still consist of reasonable questions related to the issues presented in the affidavit. Additionally, the Court noted that the individual swearing the affidavit must possess knowledge of the matters stated within it, particularly when the affidavit is executed by a corporate representative.

Justice Silver applied the foregoing legal principles to consider each question objected to and to the undertakings that were refused in the Makar Questioning and the Suleman Questioning. Justice Silver upheld the objections relating to the preparation of the Suleman and Makar Affidavits. Given the limited relevance of Suleman's second question and Makar's fourth question, along with concerns that further inquiries could involve privileged communications and preparatory matters, Silver J. ordered that these two questions be addressed through written interrogatories without any follow-up questions. Silver J. affirmed that Applications Judge Mason had exercised her discretion appropriately and that the Plaintiff, who had fully presented her Application, experienced no prejudice.

The Plaintiff had raised issues of procedural fairness of the hearing before Applications Judge Mason. According to the Plaintiff, the Applications Judge was not properly prepared for the hearing, did not give separate decisions for each objection, and was biased. However, Justice Silver determined that there was no evidence of bias from Applications Judge Mason, nor would a reasonable person, fully informed, find the hearing to be unfair. The Court noted that conducting the cross-examination of the affiants via an electronic platform did not violate procedural fairness, and a review of the transcripts indicated that it did not hinder the Plaintiff's ability to effectively cross-examine the affiants. Ultimately, the Court held that the Plaintiff did not demonstrate a genuine likelihood of bias and failed to prove that the hearing was procedurally unfair.

SPIESS V SPIESS, 2025 ABCA 3

(FEEHAN JA)

Rules 4.22 (Considerations for Security for Costs Order), 14.48 (Stay Pending Appeal), and 14.67 (Security for Costs)

This Decision addressed an Application for Stay Pending Appeal and a Cross-Application for Security for Costs. The Parties' Applications followed a Summary Trial that determined the division of matrimonial property, child support, and spousal support and ordered the release of funds held in trust to cover retroactive support payments. The Applicant filed a Notice of Appeal, arguing that the funds in trust would be difficult to recoup if paid out and that he would face financial hardship. The Respondent and Cross-Applicant sought Security for Costs, arguing that the Applicant had not voluntarily paid support and had the means to pay Security for Costs without it effecting his ability to appeal.

The Court acknowledged that Rule 14.48(b) provides that an application for a stay pending

appeal may be heard by a single judge. Feehan J.A. confirmed that the well-established tripartite test set out in *RJR-MacDonald Inc v Canada (AG)*, has been modified in family law cases to acknowledge the best interests of the child. The test includes determining (1) whether there is a serious issue to be argued on appeal that is neither frivolous or vexatious; (2) whether the child will suffer irreparable harm resulting from the granting or denial of the stay (in light of the best interests of the child); and (3) the balance of convenience by looking at the best interests of the child. The Court noted that the second and third parts of the test should be viewed holistically.

The Court referred to Rules 4.22 and 14.67 for the considerations for a security for costs order. The test for granting security for costs is disjunctive. Feehan J.A. stated that the applicant bears the burden, on a balance of probabilities, to establish that it is just and equitable to order security for costs or that the respondent will be unable to pay costs that may be awarded. To arrive at a just and reasonable outcome, a security for costs order is discretionary and balances the reasonable expectations of the parties with their rights.

Feehan J.A. dismissed the Application for a Stay Pending Appeal because the issues raised by the Applicant were primarily monetary and did not meet the family law modified tripartite test. The Applicant had to take steps to satisfy the retroactive and ongoing child and spousal support, even if the steps were inconvenient to him, such as working out of town or selling properties. Therefore, the Court held that the balance of convenience and interests of justice did not favour a Stay.

The Court granted the Cross-Application for Security for Costs because it was unlikely that the Respondent could enforce a Judgment against the Applicant's assets in Alberta and the Applicant has some ability to pay a reasonable amount for Security for Costs. Feehan J.A. acknowledged that the grounds of appeal may not be frivolous or vexatious but that they did not appear particularly strong at the current stage of litigation. The Court found that an Order for Security for Costs in a reasonable amount would not unduly prejudice the Applicant's ability to progress the Appeal and held it was just and equitable to grant the Order.

1199096 ALBERTA INC V IMPERIAL OIL LIMITED, 2025 ABCA 108

(ANTONIO JA)

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

Imperial Oil Limited ("Imperial") applied for Security for Costs against 1199096 Alberta Inc. ("1199") pursuant to Rules 4.22 and 14.67, submitting that 1199 was both unlikely and unable to pay a Costs Award and that 1199's Appeal of a dismissal finding in the Court below was of little merit.

Citing prior Court of Appeal jurisprudence, Antonio J.A. noted that the ordering of security for costs is discretionary and aims to balance the reasonable expectations of the parties with their rights in order to arrive at a just and reasonable outcome. The onus is on the applicant to establish the factors set out in Rule 4.22. Concerns regarding a party's ability to pay costs coupled with modest prospects of an appeal's success have been sufficient to justify granting an application for security for costs, as Imperial argued.

The Court found that Imperial demonstrated 1199's inability to pay the costs award, as 1199 failed to provide financial information or explain the unpaid costs from 2023. The Court noted that 1199's Appeal largely challenged findings of fact and exercises of discretion, which are subject to deferential standards of review. On these facts, the Court concluded that it was just and reasonable to grant Imperial's Application for Security for Costs.

KBH V DRH, 2025 ABKB 113

(MAH J)

Rules 4.24 (Formal Offers to Settle), 4.29 (Cost Consequences of Formal Offer to Settle) and 10.33 (Court Considerations in Making Costs Award)

In this Endorsement on Costs, the Court considered the applicable cost consequences under Rules 4.24, 4.29, and 10.33 following the Applicant father's successful shared parenting Application. The father sought enhanced Costs on the basis of a Calderbank Offer made prior to the commencement of the parenting Application. The Respondent mother conceded entitlement to Costs but disputed the amount, arguing that the Offer did not meet the requirements of a Formal Offer under Rule 4.24(2) and therefore could not attract the doubling provisions of Rule 4.29.

The Court acknowledged that only Formal Offers to Settle, compliant with Rule 4.24(2), may presumptively trigger the cost-doubling mechanism under Rule 4.29. However, citing *Bruen v University of Calgary*, 2019 ABCA 275, the Court noted that informal offers such as Calderbank offers remain relevant to the exercise of discretion on costs, even though they do not result in automatic doubling. In assessing the father's Calderbank offer, the Court found it was reasonable and should have been accepted in light of the eventual outcome. The Court emphasized that settlement should be encouraged, particularly in family law matters involving children, and awarded enhanced costs accordingly.

In exercising its discretion under Rule 10.33, the Court considered the outcome of the proceeding, the reasonableness of the parties' positions, and the parties' conduct, including the mother's counsel's initiative in correcting a factual error in the original decision. While the father sought $5,400 in Costs based on a doubled claim under Schedule C, the Court applied the reasoning from *HOOPP Realty Inc v Guarantee Company of North America*, 2019 ABQB 104, and found that a Notice of Application is not a commencement document, and Affidavit preparation is subsumed within Item 8(1).

The Court ultimately awarded the father an enhanced lump sum of $2,500 under Item 8(1), reflecting both the Calderbank Offer and other relevant considerations under Rule 10.33.

LY V RY, 2025 ABKB 12

(THOMPSON J)

Rules 4.29 (Costs Consequences of Formal Offer to Settle), 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)

This Decision addressed the Costs from a previous decision, LY v RY, 2024 ABKB 209. The dispute arose between the parents because of the mother's wrongful retention of their six children in Calgary, contrary to the *Convention on the Civil Aspects of International Child Abduction,* 1343 UNTS 89, Can TS 1983 No 35, 19 ILM 1501 ("Hague Convention"). The Applicant father successfully applied for the return of the six children to Texas.

The Applicant sought full indemnity costs including 100% of Canadian and U.S. legal fees, travel and accommodation expenses, or in the alternative, costs according to the Court's discretion. The Applicant also alleged misconduct by the Respondent. The Respondent requested that each party bear their own costs, arguing against full indemnity costs due to her financially disadvantaged position. The Respondent also alleged misconduct by the Applicant.

The starting point for awarding costs in a Hague Convention proceeding is Article 26. Justice Thompson noted that Canadian courts, consistent with the objectives of the Hague Convention and the policy objectives of the modern approach to costs, have held that the objectives of Article 26 include (i) to compensate the left behind parent for costs incurred in locating and recovering the abducted child, (ii) to sanction an abducting parent, and (iii) to deter other parents from abducting their children.

The Court noted that the amount of costs claimed, the steps taken, and the issues involved in a Hague Convention proceeding must be proportionate and reasonable and that the guardrails established in the Rules apply to achieve this objective. Thompson J. acknowledged that the Court has considerable discretion in setting reasonable and proper costs under Rules 10.29, 10.31 and 10.33, exercised judicially, on the facts of the case. The Court referred to Rule 10.29 for the principle that the successful party is presumptively entitled to costs and to Rules 10.31 and 10.33 for the framework used to assess and award costs, including the factors that may guide the Court's discretion. The Court also referred to Rule 10.2 for factors relevant in assessing solicitor fees.

Thompson J. noted that enhanced costs may be awarded where a party has engaged in misconduct and that such awards apply in family law matters. The Court referred to double costs rules and noted Rule 4.29 regarding a defendant offeror's entitlement to double costs for all steps taken in an action after service of a formal offer to settle, if the action is dismissed. Additionally, Thompson J. noted that liability for the costs of litigation does not depend on a party's ability to pay, however, it may be a relevant consideration to determine the amount of a costs award.

The Court awarded the Applicant 60% of his Canadian solicitor-client Costs, and a portion of the travel expenses related to returning the children to Texas. The Applicant was not entitled to Costs on a full indemnity basis or solicitor-client basis because of misconduct. Further, the significant imbalance between the parties, in power and means, warranted a Costs award that would achieve a more equitable result. The Court also noted that the Applicant and Respondent's misconduct offset each other

from any enhanced Costs. The Applicant's Settlement Offer was considered but the Court found It did not trigger the double costs rule. Lastly, the Court found that the Respondent's limited finances did not immunize her from costs liability; however, it considered in structuring a just and equitable costs award, including a payment plan.

SECAN ASSOCIATION INC V CANNAN, 2025 ABKB 38

(MICHALYSHYN J)

Rules 4.31 (Delay in an Action) and 4.33 (Dismissal for Long Delay)

The Defendants brought an Application to strike the Action for long delay, pursuant to Rule 4.33. The Plaintiffs had applied to compel responses to undertakings on February 28, 2023 (the "Undertakings Application"). The Applications Judge found that the Undertakings Application did not meet the test of a significant advance in the Action, and the Action was therefore dismissed. The Plaintiffs appealed. Michalyshyn J. found that the Applications Judge erred in striking the Action and granted the Appeal.

The Court held that, distinct from those cases in which parties are exploring steps toward a Judicial Dispute Resolution, case management or the like, the Undertakings Application was "a proceeding". As such, the Applications Judge erred in finding the Undertakings Application was not a significant advance in the Action.

The Court further found that an Affidavit providing a fuller response to the Defendants' undertakings, which was filed March 17, 2023, constituted a significant advance in the Action as it was necessary for the litigation to proceed.

Michalyshyn J. cited *Western Industrial Services Ltd v Brennan*, 2024 ABKB 50 ("*Western Industrial*") for the law around an "Applicant's participation" that might save the Action. Justice Michalyshyn also cited *Western Industrial* for the proposition that "[i]t is not necessary [under Rule 4.33(2)(b)] that such participation represent a 'significant advance', only that the requirements of R. 4.33(2)(b) are met". Applying the law set out in *Western Industrial*, Michalyshyn J. found that the Defendants' participation in the proceedings, including filing an Affidavit and consenting to adjournments, constituted engagement that warranted the Action continuing.

Michalyshyn J. concluded that the Defendants' actions indicated a willingness to engage in the Action, thus justifying its continuation.

RANGER V PRECISION GEOMATICS INC, 2025 ABKB 45

(KRAUS J)

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

The Plaintiffs appealed the Application Judge's decision dismissing the Defendant's Rule 4.31 Application for Delay. The Defendant had also applied for Summary Dismissal under Rule 7.3, but since the Action was dismissed for delay, the Applications Judge did not deal with that Application in detail.

In dismissing the Defendant's Action, Kraus J. examined the principles of Rule 4.31 as outlined in *Humphreys v Trebilcock*, 2017 ABCA 116, focusing on inordinate and inexcusable delay, considering the Action as a whole. Justice Kraus found that the delay was indeed inordinate, as the Plaintiff did not seriously contest this point, with most arguments aimed at justifying the delay. The Plaintiffs argued that personal circumstances hindered their ability to advance the case and claimed that the Defendant played a role in the delay and accepted it.

Justice Kraus acknowledged that 48 months of the delay could be attributed to the Defendant, but he also pointed out that the Defendant had signed Form 37, certifying that the case was ready for Trial and that Trial dates had been established. It took nearly 10 years from the service of the Statement of Claim to set the matter for Trial. Instead of moving forward, the Trial dates were canceled when the Plaintiff submitted their application under Rule 4.31 in November 2022. The Court deemed the delay excusable, noting that any delay following the Defendant's Application and any potential prejudice could not be blamed on the Plaintiff.

The Court evaluated whether the excusable delay caused any significant prejudice. It determined that the Defendant experienced no substantial prejudice, particularly since Form 37 was signed, and had this Application not been filed, the parties would have already proceeded to Trial. The Court acknowledged that this situation was one of the borderline cases concerning Rule 4.31, and such cases typically favor allowing the matter to advance to trial.

The Court briefly considered the Defendants Application under Rule 7.3, focusing on whether the Plaintiff raised on a balance of probabilities a genuine issue to be tried. The Court found that the Plaintiff had met this burden, as there were uncertainties surrounding the facts related to the subject release, which constituted a triable issue regarding the scope of that release. Consequently, the Court allowed the Appeal and dismissed the Defendant's Application under Rule 7.3.

TAKACS V INTERNATIONAL UNION OF OPERATING ENGINEERS, 2025 ABCA 6

(PENTELECHUK, DE WIT AND GROSSE JJA)

Rules 4.33 (Dismissal for Long Delay) and 8.5 (Trial Date: Scheduled by the Judge)

The Plaintiff appealed the Chamber Judge's Decision dismissing its claim for long delay pursuant to Rule 4.33.

Two years and 11 months after the Defendant filed its Affidavit of Records, the Plaintiff filed an Application to set the matter down for Trial, which was ultimately adjourned at the request of the Defendant due to the unavailability of legal counsel. At the next appearance, the Defendant argued that because the parties had yet to complete Alternative Dispute Resolution in accordance with Rule 8.5(1)(a) the matter could not be set for Trial. The Defendant also advised of their intention to bring a rule 4.33 Application, and as a result, the Court did not make a procedural Order to direct the matter to Trial. At the Chambers appearance addressing the 4.33 Application, the Chambers Judge found that the application of Rule 4.33 was mandatory and did not allow for the exercise of discretion. The Application for dismissal for long delay was granted.

On Appeal, the Plaintiff argued that the adjournment of the initial Application to set this matter to Trial should be considered in the context of Rule 4.33. Specifically, the Plaintiff argued that the Chambers Judge erred by failing to consider that the self-represented Plaintiff was not at fault for the initial adjournment and that had the initial Hearing to set the matter for Trial proceeded, a procedural Order likely would have been directed. The Court agreed, granting the Appeal and reinstating the Plaintiff's claim.

CABIN RIDGE PROJECT LIMITED V ALBERTA, 2025 ABCA 53

(KIRKER, FAGNAN AND SHANER JJA)

Rules 5.2 (When Something is Relevant and Material), 5.17 (People Who May be Questioned), 5.19 (Limit or Cancellation of Questioning), 5.21 (Appointment for Questioning), 5.25 (Appropriate Questions and Objections) and 6.38 (Requiring Attendance for Questioning)

The Appellant owned freehold and leasehold mineral rights in coal resources in Alberta and claimed that a series of ministerial decisions resulted in a constructive taking of its interests. The Appellant served Notices of Appointment to question the former Minister of Energy and former Minister of Environment and Parks to attend for Questioning. The Respondents applied pursuant to Rule 5.19 to set aside the Notices of Appointment, and the Appellants subsequently cross-applied under Rules 5.17, 5.21, and 6.38 for an Order compelling the former Ministers to attend for Questioning (the "Questioning Application").

At the Questioning Application, the Case Management Judge noted that that the test to determine whether a Minister or former Minister should be ordered to attend Questioning was set out in *Leeds v Alberta (Environment)*, 1989 ABCA 208 (the "*Leeds* Test"). The *Leeds*

Test requires the Applicant to establish that special circumstances exist and that the Minister or former Minister is the person informed to answer the questions to be posed. The Case Management Judge concluded that the Appellants had failed to demonstrate a special circumstance in relation to former Minister Savage and that there was no indication that former Minster Nixon played a meaningful role in the ministerial decisions.

On Appeal, the Court began by noting that the *Leeds* Test was formulated in the public interest, only allowing for Questioning that is relevant and material to the specific allegations in the litigation pursuant to Rules 5.2 and 5.25. The Court held that the Case Management Judge erred in finding that the *Leeds* Test had not been met for former Minister Savage as she had made the decisions, orders, and directions alleged to have resulted in constructive taking. There was a special relationship between her role, the work she did and the issues in the litigation. However, with respect to former Minister Nixon, the Case Management Judge did not err. As such, the Appeal was allowed in part and former Minister Savage was ordered to attend Questioning.

HABIB V HABIB, 2025 ABCA 59

(ANTONIO JA)

Rules 5.12 (Penalty for not Serving Affidavit of Records), 14.5 (Appeals Only with Permission), 14.37 (Single Appeal Judges), and 14.48 (Stay Pending Appeal)

The underlying proceeding related to the proceeds entitlement from the sale of four condominium properties between the Applicants, Mr. and Mrs. Habib, and the Respondents, their son and his wife. The Applicants sold two properties in 2023. In April 2024, the Respondents sought an Order for partition and sale of the remaining properties. Justice Marion adjourned the Application to allow for Affidavits and Questioning. The Applicants provided documents showing that the proceeds from the sale of two properties had been deposited into a bank account, but later filed a Cross-Application seeking documents related to the remaining properties, alleging rental income had not been properly shared.

In May 2024, Justice Price granted the partition and sale of the remaining properties, directing that the proceeds be paid into Court, which the Respondents complied with. The Applicants continued seeking further documents and relief, including for allegations of misrepresentations by the Respondents' counsel. This resulted in multiple hearings, including one before Justice Ashcroft in August 2024, who adjourned the Applicants' Application to a Special Chambers date. Justice Ashcroft also set a deadline for the Respondents to bring an Application regarding the outstanding Affidavits of Records, which was scheduled for morning Chambers in September. In September, Justice Devlin imposed penalties on the Applicants for their delay in providing Affidavits of Records pursuant to Rule 5.12 and ordered them to pay a portion of the proceeds from previously sold properties into Court for failing to comply with earlier Orders.

The Applicants appealed and sought a Stay of Justice Devlin's Order, as well as an extension of time to seek permission to appeal Justice Ashcroft's Order.

On the Application for permission to appeal Justice Ashcroft's order, Antonio J.A. noted that

permission was required to appeal any pre-trial Decision on adjournments or time limits pursuant to Rule 14.5(1)(b). As the Applicants did not file their Application on time, an extension of time under Rule 14.37(2)(c) was also required. This Rule requires the applicant to show a *bona fide* intention to appeal, provide an explanation for the delay, and demonstrate no serious prejudice. The Court found that the Applicants lacked a genuine intention to appeal, as their Notice of Appeal was filed weeks after the one for Justice Devlin's Order, seemingly to undermine it. The Court also found the Appeal lacked merit, as the scheduling of the Respondents' Application was proper. The Respondents' Application on Affidavits was straightforward, while the Applicants' Application was more complex and required a Special Application.

In considering the Stay Application, Appeal Justice Antonio referred to the need to demonstrate a serious question to be determined, irreparable harm if the Stay was denied, and that the balance of convenience favored granting the Stay. The Court found some aspects of the Appeal had arguable merit, but the Applicants failed to show irreparable harm. The proceeds from previously sold properties were only partially required to be paid into Court, while the full proceeds from the remaining properties were already there. As such, the Stay was denied.

TERRIGNO V PETZOLD, 2025 ABKB 127

(FARRINGTON J)

Rule 5.13 (Obtaining Records from Others)

The Plaintiff applied under Rule 5.13 for the production of third-party documents. This case involved allegations of defamation and harassment, with the Plaintiff suing an individual named Andrea Petzold and an unidentified party referred to as John Doe. The Court has already issued Judgment against Ms. Petzold, but the Plaintiff intended to continue the Action against the unnamed John Doe. Previously, the Plaintiff filed an Application before Applications Judge Farrington for disclosure from internet service providers and others that could help identify the John Doe mentioned in the Statement of Claim. Applications Judge Farrington approved an Order compelling the internet provider, Bluesky, PBLLC ("Bluesky"), to release certain direct messages. The Plaintiff received a favorable response from Bluesky and is now seeking the production of all direct messages from that account.

Applications Judge Farrington acknowledged that the request might appear extensive; however, if some of the materials are likely to be relevant and significant, the only option is to produce all of them unless a reliable screening process is in place. The Court referenced Rule 5.1 and cited *CNOOC Petroleum North America ULC v 801 Seventh Inc,* 2023 ABCA 97 to establish the appropriate criteria. The Plaintiff argued that the direct messages were relevant and met the requirements under Rule 5.13. Applications Judge Farrington determined that the threshold of Rule 5.13 was satisfied as there was evidence of social media communications indicating that the Bluesky handle played a role in the communications for which Judgment has been granted against Ms. Petzold. The records existed but could not be obtained from a party since the account holder had not yet been identified. The Court noted that while the specific role

and identity of the Bluesky handle remained unclear, ordering production could provide clarity on these matters. The Application was granted, and Bluesky was instructed to produce the direct messages within 45 days of the Order.

RK V GSG, 2025 ABKB 169

(MAH J)

Rules 5.16 (Undisclosed Records not to be Used Without Permission), 5.32 (When Information May be Used) and 5.33 (Confidentiality and Use of Information)

The dispute arose in the context of ongoing litigation involving business and personal conflicts, multiple lawsuits, and an unsuccessful criminal prosecution against the Applicant. The Applicant sought to have certain portions of the transcript from his own Questioning, along with related documents referenced by the Respondent, struck from the record, arguing they had not been previously disclosed in the Respondent's Affidavit of Records ("AOR"). In support of this request, the Applicant relied on Rule 5.16, which prohibits the late disclosure of relevant and material records not initially included in an AOR, and referred to Justice Mah's prior Decision that interpreted and applied this Rule in the proceedings. The Respondent contended that Justice Mah's case management order (the "Order"), which directed all Parties to submit further and better AORs, effectively permitted the inclusion of the disputed documents.

Justice Mah explained that the case management process aimed to finalize pleadings and evidentiary records for the upcoming Summary Dismissal Applications. The Order required all Parties to disclose records from multiple civil and criminal matters through updated AORs, to address previous deficiencies in disclosure. Justice Mah confirmed that the Order relieved the Parties of their obligations under Rules 5.32 and 5.33, which restrict the use of civil disclosure, to ensure fairness and prevent procedural surprises. Justice Mah noted that both the factual context and intent of the Parties supported the inclusion of additional documents from other matters, as they were deemed relevant to resolving the dispute.

Additionally, Justice Mah highlighted that the Applicant sought contradictory forms of relief in the same Notice of Application, namely, both an expansion and a reduction of the AOR, even though some of the documents he objected to had been requested in the Notice of Application.

Justice Mah emphasized that the prior ruling cited by the Applicant, which had interpreted Rule 5.16, was based on different facts and circumstances, particularly the absence of the Order at that time. It was noted that, had the Order been in effect, the previously excluded records might have been allowed. Justice Mah stated that since the Order required all Parties to submit new AORs, Rule 5.16 could not be invoked until the new AORs were provided, as no unfairness would arise unless a party later attempted to rely on a record not disclosed in the updated AOR.

As a result, Justice Mah denied the Applicant's request to strike the documents and Questioning from the record.

MCGRATH V ORIEUX, 2025 ABKB 48

(ROTHWELL J)

Rules 5.31 (Use of Transcript and Answers to Written Questions), 6.14 (Appeal from Applications Judge's Judgment or Order) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

This was an Appeal under Rule 6.14 from a Decision of an Applications Judge dismissing the Appellants' Application to amend their Amended Statement of Claim. The Applications Judge applied the test from *Douziech v Petra Corp.*, 2009 ABQB 437, and found that the proposed amendments amounted to the withdrawal of admissions made during Questioning. On Appeal, the Court found that the Applications Judge erred in characterizing the proposed amendments as admissions. The Court held that allegations in a Statement of Claim do not constitute admissions, and that the proposed amendments represented a change in litigation strategy, not a withdrawal of factual admissions.

The Court also considered the Respondents' objection to the admissibility of a transcript of the Appellants' own Questioning, filed in support of the Appeal. Relying on Rule 5.31, the Court ruled the transcript inadmissible, as parties may not use their own questioning transcripts in support of their own Application or proceeding.

The Respondents further argued that the Appellants were seeking to improperly vary a prior Consent Order. The Court found that the Appellants' request was not an attempt to vary the Consent Order but rather a new application to amend pleadings. In any event, the Court found that the Consent Order could be varied under Rule 9.15(4), if necessary, as it was procedural and interlocutory in nature, and variation would be justified.

The Court concluded that the proposed amendments were not hopeless, would not cause serious prejudice not compensable in costs, and were consistent with the general principles governing amendments to pleadings. The Appeal was allowed, the Decision of the Applications Judge was set aside, and the Appellants were permitted to file their further Amended Statement of Claim.

ALLRIDGE V THOMSON INTERNATIONAL INC, 2025 ABKB 97

(BURNS J)

Rules 5.33 (Confidentiality and Use of Information) and 6.11 (Evidence at Application Hearings)

This was an Application in a class action where the Plaintiff sought to rely on a transcript of a corporate representative's deposition taken in related U.S. litigation ("Peterson Transcript"). The Defendants objected to its use, citing the common law implied undertaking of confidentiality. The Court addressed the interplay of Rules 5.33 and 6.11.

With respect to Rule 5.33, the Court held that the Rule has codified and thereby supplanted the broader common law implied undertaking

of confidentiality in Alberta. Rule 5.33 applies only to information obtained under Division 1 of Part 5 of the Rules, such as questioning transcripts and affidavits of records within Alberta proceedings. It does not extend to materials generated in foreign proceedings. Since the Peterson Transcript was created in a U.S. proceeding and not under Alberta's discovery rules, it falls outside the scope of Rule 5.33. The Court confirmed that the implied undertaking does not apply, and no relief under Rule 5.33(1)(a) was necessary.

The Court also addressed Rule 6.11. Under Rule 6.11(1)(f), evidence from another action may be used in an application if advance notice is given and the Court grants permission. While the Court permitted the use of the Peterson Transcript in the present Application, it declined to make a blanket order for its use in all future applications. The Court emphasized that materiality and relevance must be assessed on a case-by-case basis.

In conclusion, the Court declared that the implied undertaking of confidentiality did not apply to the Peterson Transcript, no relief under Rule 5.33 was necessary, and permission to use the transcript under Rule 6.11 was limited to the current application only.

GREAT NORTH EQUIPMENT INC V PENNEY, 2025 ABKB 42

(LEMA J)

Rules 6.8 (Questioning Witness Before Hearing) and 10.33 (Court Considerations in Making Costs Award)

After successfully resisting the extension and expansion of a commercial injunction barring solicitation, competition, and disclosure of confidential information (the "Injunction"), one of the Respondents and certain witnesses sought 100% of their legal fees, plus disbursements and other costs.

The Court considered the Respondents' submissions and made the following findings:

> The issues in this Action were not inherently complex.
>
> While the Respondents alleged that they had to coordinate multiple parties and counsel, they did not point to case law anchoring enhanced costs on the need for such coordination.

The Court did not find any of the Applicant's allegations, on their own or collectively, as "reprehensible, scandalous, or outrageous conduct".

The Applicant's conduct was not akin to those of litigants who "maintain positions or bring applications that are patently indefensible – the likelihood they will succeed is very low" or raise no "serious issue of fact or law" or "[know their] position [is] untenable" or "hopeless … from the outset", or "patently hopeless".

It was inaccurate to say the Judgment made the Injunction baseless from the start.

Although the Applicant rejected the Respondents' Calderbank offer to discontinue the

Application on a without-costs basis, the offer was not open for a reasonable period, as allowing only three days for the Applicant to respond was unreasonable.

Based on the foregoing, Lema J. ruled that no full- or partial-indemnity costs were warranted, as on balance, the Respondents did not make out a case for enhanced costs on any of the claimed bases, individually or collectively.

BELLINGHAM ESTATE (RE), 2025 ABKB 172

(MAH J)

Rule 6.11 (Evidence at Application Hearings)

The Applicant sought to invalidate a Power of Attorney (the "POA Action") and a Will (the "Will Action") of her father, alleging mental incapacity and undue influence by the Respondent, who was named as the personal representative in these documents. In this Application, the Applicant argued for the admission of evidence from the POA Action into the Will Action (the "Application").

The Court ruled that the evidence from the POA Action was admitted for threshold admissibility and may be used in the two remaining Applications currently in the Will Action.

Mah J. first noted that the Surrogate Rules 2(1) and (2) allow the use of Rule 6.11(1)(f) to admit evidence from one Action into another, and judicial economy supports this approach. The two Actions involved the same parties, the same estate, and the same underlying issues, making the evidence relevant and material. Although the capacity thresholds for a POA and a Will differ, the factual observations and expert evidence remained relevant. Furthermore, concerns about privacy and discovery integrity were attenuated as the parties and issues were the same across both Actions. The Court noted that the evidence was only admitted for threshold admissibility; it was still up to counsel to further argue on its probative value, at a hearing or Trial.

LONSDALE V MORGUARD CORPORATION, 2025 ABKB 20

(HO J)

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

This was an Appeal brought by the Defendants from an oral Decision of an Applications Judge who had dismissed their Application for Summary Dismissal. The Appeal proceeded under Rule 6.14, which governs Appeals from Applications Judges and permits the matter to be heard on the record, with the possibility of admitting additional relevant and material

evidence. The Defendants sought to rely on a newly sworn Affidavit from a witness whose earlier unsworn statement had been rejected. The Court admitted the Affidavit but found it insufficient because it did not confirm the truth of its contents. The Court reiterated that an Appeal pursuant to Rule 6.14 must be decided on the basis of the record unless proper sworn evidence is provided. The Appeal was dismissed, and the summary dismissal was again denied on the basis that a genuine issue requiring trial remained.

HOMEOWNERS NOW INC V MCCOTTER, 2025 ABKB 120

(LABRENZ J)

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

The Appellant appealed the Decision of an Applications Judge dismissing its Summary Judgment Application. The Appellant sought damages for breach of a Deferred Purchase Agreement (the "Agreement") and partial Summary Judgment for unpaid rent. Under the Agreement, the Defendants occupied the residential property through a lease while retaining the option to purchase it by a specified closing date. The Defendants paid a non-refundable holding fee but ultimately chose not to proceed with the purchase. At issue before the Applications Judge was whether Section 40 of the *Law of Property Act*, RSA 2000, c L-7 (the "LPA"), which restricts a seller's ability to claim damages under an "agreement for sale", applied and raised a genuine issue for Trial.

On Appeal, Justice Labrenz determined the appropriate standard of review was correctness, noting that no additional evidence was submitted under Rule 6.14. Granting partial Summary Judgment under Rule 7.3, Justice Labrenz found that the Appellant was entitled to recover rental arrears, though the amount was re-calculated based on the available evidence.

Justice Labrenz concluded that the application of Section 40 of the LPA could be fairly and justly decided on the existing record. Labrenz J. also found that the Agreement did not constitute an "agreement for sale" under Section 40, as it did not involve financing, the holding fee did not create an equitable interest, and the rental payments were not credited toward the purchase price. As a result, Section 40 did not preclude the Appellant from claiming damages, and partial Summary Judgment was appropriately granted under Rule 7.3. The Appeal was allowed in part.

PICTURE BUTTE FEEDER COOPERATIVE (RE), 2025 ABKB 162

(MAH J)

Rules 6.28 (Application of this Division), 6.29 (Restricted Court Access Applications and Orders), 6.30 (When Restricted Court Access Application may be Filed), 6.31 (Timing of Application and Service), 6.32 (Notice to Media), 6.33 (Judge or Applications Judge Assigned to Application), 6.34 (Application to Seal or Unseal Court Files), 6.35 (Persons Having Standing at Application) and 6.36 (No Publication Pending Application)

A Government inspection report (the "Report") was placed before the Court to secure a Receivership Order in respect of a feeder cooperative. Two unnamed individuals applied for a Sealing Order to prevent public disclosure of the Report on the basis that, if it were publicly released, it would damage their reputation and standing in the community (the "Application"). The Court inferred from the Report that the two individuals benefited personally by engaging in improper or unethical practices while holding positions of influence at the feeder cooperative.

Justice Douglas noted that a Sealing Order for a particular document is a species of Restricted Court Access Order that is procedurally governed by Rules 6.28 - 6.36, which the parties had followed, including notifying the media. The Court applied the test for restricted access as set out in *Sherman Estate v Donovan*, 2021 SCC 25, to the facts of the case. In the end, the Application was dismissed, primarily because the two individuals were unable to establish an important public interest under the first part of the test.

401683 ALBERTA LTD V CO-OPERATORS GENERAL INSURANCE COMPANY, 2025 ABKB 28

(HARTIGAN J)

Rule 7.3 (Summary Judgment)

The Appellant appealed an Applications Judge's Decision dismissing their Application for Summary Judgment. The underlying claim involved allegations of professional negligence. The Appellant was the insurance broker for the Respondent.

The Respondent commenced the Action for claims of losses arising from the Appellant's denial of coverage for fire damage of a vacant rental property. The Respondent alleged that the Appellant failed to inform them of the consequences of not complying with certain inspection requirements. It was agreed that the insurer informed the Respondent of these consequences, but there was disagreement as to whether that information was passed on to the Respondent. The Parties discussed the Respondent's requirements, but not the consequences for non-compliance.

The Court held that the Appellants failed to provide sufficient evidence to establish that the consequences of non-compliance were com-

municated to the Respondent. The Appellant's best evidence was that it was the standard practice of a representative to provide this information, but the representative in question did not have an exact memory of doing so.

Justice Hartigan found that there was insufficient evidence before the Court to resolve the dispute summarily. The Appeal was dismissed.

NORTHERN LIGHTS (COUNTY) V WOOD CANADA LIMITED, 2025 ABKB 57

(APPLICATIONS JUDGE SUMMERS)

Rule 7.3 (Summary Judgment)

This Action, commenced in 2022, relates to a construction dispute. The issues between the County of Northern Light ("CNL") and Wood Canada Limited ("Wood") were resolved in Arbitration. Wood had contracted Aldea to provide design services for CNL. CNL brought an action against Wood and Aldea in 2022 alleging their design was not constructable. Aldea applied for Summary Dismissal pursuant to Rule 7.3 alleging that CNL ought to have known of the design issues in 2018 when construction commenced and difficulties were encountered.

The Court considered Sections 3(1)(a) and 3(1.1) of the *Limitations Act*, RSA 2000, c L-12, finding that for CNL to defeat Aldea's Application it need only succeed under either provision. Applications Judge Summers concluded that there is a general principal found within the jurisprudence that a Defendant may make representations to the Plaintiff that may bring about an extension to the Limitations period where there is reasonable reliance. In this case, CNL may have been reasonable to rely on the representations of Aldea in 2018. The Court held that CNL had done enough to show that there is merit to its position and a Trial is warranted. Aldea's Application was dismissed.

KHIRBESH V 2098981 ALBERTA LTD, 2025 ABKB 115

(BIRKETT J)

Rule 7.3 (Summary Judgment)

The Plaintiffs applied for Summary Judgment and Summary Dismissal of the Defendants' Counterclaim (the "Application"). There were four grounds for making the Application.

First, the Plaintiffs paid the Defendants $630,000 in contemplation of entering into an agreement for the purchase of shares in a daycare business (the "Shares") but were unable to reach an agreement on the terms of sale. Second, the Plaintiffs' payment was induced by fraudulent misrepresentations on the part of the individual Defendant. Third, the Defendants had been unjustly enriched. Fourth, if there was a share purchase agreement for the daycare business (the

"Agreement"), the Defendants repudiated the Agreement.

The Plaintiffs were granted Summary Judgment for the return of their payments and the Defendants' Counterclaim was dismissed.

Applying the principles from *Weir-Jones*, Birkett J. held that the Pleadings, Affidavit evidence, and Questioning transcripts supported the findings that the Defendants were unjustly enriched, and the Plaintiffs' expectation of ownership transfer was unmet. Birkett J. further held that the Defendants' failure to disclose material facts to the Plaintiffs constituted misrepresentation, justifying rescission of the Agreement. The Defendants' claim for estoppel by representation was rejected as they acted not solely based on the Plaintiffs' representations, but for their own gain. It was further found that the Plaintiffs were entitled to the return of their purchase price and rent payments, with pre-judgment interest and costs.

HORSWILL V GREY, 2025 ABKB 34

(REED J)

Rule 8.24 (Accidents and Mistakes)

The Plaintiff sought retroactive and ongoing child support, enforcement of a promissory note, and continuation of a Restraining Order (the "Application").

Justice Reed noted that the Plaintiff's claims for child support required further evidence, as the current record was insufficient to determine the parties' incomes and extraordinary expenses. However, it would be inappropriate, in the circumstances, when it had taken the parties years to reach this point in their litigation, to dismiss the Application and force the Plaintiff to re-file materials which clearly existed. Doing that would cause further delay in the proceeding.

Referring to Rule 8.24, which permits the Court to "proceed with the trial subject to the fact or record being proved as ordered by the Court," Justice Reed directed the parties to file further evidence and continue the Trial.

GOULD V GOULD, 2025 ABKB 62

(TESKEY J)

Rules 9.2 (Preparation of Judgments and Orders) and 9.5 (Entry of Judgments and Orders)

The Court considered correspondence from counsel to settle the terms of an Order following Judgment on child support. The Defendant raised concerns about the calculation of his income, arguing that his employment income was double-counted for 2022 and 2023 and that his actual income for 2023 was lower than the $114,000 estimate submitted by his counsel.

Justice Teskey emphasized that the purpose of a written Order is to formalize the Judgment

as pronounced, not to introduce new evidence or revisit the Decision. The Court confirmed that any alleged errors should be addressed through an Appeal, variation Application, or Trial, rather than through the settlement process.

In addressing the timeliness of filing the Order, the Court applied Rule 9.2(2), which sets clear deadlines for drafting, serving, and approving an Order within 10 days of pronouncement. Justice Teskey noted that the process in this case had significantly exceeded those timelines. Further, Rule 9.5(2) states that an Order cannot be entered more than three months after it is pronounced without the Court's permission, which requires a formal Application on notice. The Court referenced *Henderson Estate (Re)*, 2024 ABCA 141, affirming that these Rules are intended to prevent unnecessary delay and to ensure finality in litigation.

Given that more than three months had passed, the Court held that permission for late entry could not be granted without a proper Application supported by evidence. The Court reviewed the key considerations, including whether the delay resulted from laches, whether granting permission would serve the interests of justice, and whether procedural or costs consequences were warranted. The Plaintiff was directed to file an Affidavit addressing these factors, with the Defendant given 14 days to respond. A hearing was scheduled to determine whether the late filing should be permitted.

SAINA V SHEPANSKY, 2025 ABCA 74

(FETH JA)

Rules 9.4 (Signing Judgments and Order) and 14.48 (Stay Pending Appeal)

The Applicant, Nicolette Saina, applied to Stay the enforcement of a Chambers Judge Order pending Appeal. The Order directed her eviction from the home of her mother, Bernice MacRae, and permitted the Respondents, Roxanne Shepansky and Duke MacRae, pursuant to their authority under an Enduring Power of Attorney, to sell the home.

Bernice was 83 years old and had been living with Alzheimer's for many years. Until May 2024, she resided in her own house, until she was relocated to a long-term care facility. Ms. Saina opposed Bernice being placed in an extended care facility and wanted her returned to the house under Ms. Saina's care, where she could implement an experimental holistic protocol of naturopathic medicine.

An application to stay the enforcement of an order pending appeal may be brought pursuant to Rule 14.48. A stay may be granted if the applicant establishes (i) an arguable issue to be determined on appeal; (ii) that the applicant will suffer irreparable harm in the absence of the stay; and that (iii) the balance of convenience favours granting the stay. The Court analyzed these factors.

Ms. Saina demonstrated arguable issues for appeal. Her Appeal raised the concern that the Chambers Judge did not, among other things, properly consider all relevant factors in deciding to grant the eviction and sale Order. For instance, the Judge acknowledged that there was a funding deficit, and the house needed to be sold to cover Bernice's care, but did not address Ms. Sanina's evidence of a budget or her ability to fund care. Additionally, the Chambers Judge accepted that Bernice could not return home due to her advanced dementia,

but did not provide reasons for this conclusion or evaluate the best care option for her.

While Ms. Saina presented some evidence of potential care alternatives if Bernice were to stay in her home (mainly therapeutic benefits), the risk of irreparable harm if the house was sold was considered minimal, as Bernice's needs would have been met at the memory care facility. Ms. Saina also argued that selling the house contradicted Bernice's wishes expressed in a 2019 "Personal Directive", purporting that she wanted to stay in her home for the rest of her life; the Court of Appeal found this unconvincing and suspect. It was found that this factor must be weighed against the fact that the Respondents were the legitimate attorneys and agents, and Bernice's intentions would be frustrated if Ms. Saina effectively assumed those roles. The possibility of irreparable harm was further diminished by the fact that the Appeal was categorized as a fast-track appeal, and the Respondents' evidence was that the house required some repairs, which would take months to complete.

Turning to the balance of convenience, the Court began by noting that Bernice, who had been receiving care at a private facility for about nine months, was receiving quality care; there was insufficient evidence that she would benefit more from returning home. The Court was therefore hesitant to disrupt the *status quo* without compelling evidence. Financially, there was also no solid plan to cover Bernice's care costs, and the Respondents' evidence showed that Bernice's estate was running a deficit, relying on the sale of the house to cover costs. Therefore, the balance of convenience favored maintaining Bernice's current care at the facility and granting the stay would have likely disrupted her stable situation.

Ms. Saina's Appeal was dismissed.

WALKER V DONOVAN, 2025 ABCA 107

(PENTELECHUK JA)

Rules 9.4 (Signing Judgments and Orders), 9.5 (Entry of Judgments and Orders), 14.5 (Appeals Only with Permission) and 14.8 (Filing a Notice of Appeal)

In 2021, the Respondent successfully applied for retroactive and ongoing child support against the Applicant. The resulting Order was issued on December 23, 2021 (the "Order"). On December 15, 2023, the Applicant applied to vary to his parenting time, recalculation of his income, and a claim for spousal support, which was ultimately set for December 18, 2024 ("Application").

The time at the Application was ultimately spent addressing a conflict of interest regarding the Respondent's counsel and procedural issues arising from a Fiat on April 21, 2022, which permitted the late filing of the Order (the "Fiat Application"). The Applicant argued that the Fiat Application was granted without notice, contrary to Rule 9.5(2), and that he was never served with a copy of the Order. The Application was adjourned, and Costs were awarded against the Applicant ("Scheduling Order").

The Applicant sought permission to appeal the Scheduling Order. Pentelechuk J.A. noted that permission to appeal was required in the circumstances pursuant to Rule 14.5(1)(b). The Court held that while the Applicant should have been provided notice of the Fiat Application and with a copy of the Order, the appeal period starts from the date the Order was made

pursuant to Rule 14.8(1). The Court held that there was no prejudice to the Applicant from the granting of the Fiat Application and denied the Application for permission to Appeal. The Court invoked Rule 9.4(2)(c).

UHUEGBULEM V TIMPANO, 2025 ABCA 110

(ANTONIO JA)

Rules 9.4 (Signing Judgments and Orders) and 14.5 (Appeals Only with Permission)

The Applicants, who were the Respondent's landlords, sought permission to Appeal a Decision from the Court of King's Bench, an extension of time to file the Appeal, and a Stay of the Order pending Appeal.

In 2023, a dispute arose between the Parties, leading to an application to the Residential Tenancy Dispute Resolution Service ("RTDRS"). The RTDRS found the Applicants had issued an invalid rent increase notice and ordered them to pay a monetary amount, which included a rent rebate (the "RTDRS Order"). The Applicants appealed the rent rebate portion of the RTDRS Order to the Court of King's Bench. The Chambers Judge dismissed that appeal, awarding solicitor and own client costs against the Applicants. A Review Officer subsequently assessed and determined costs, and the Applicants' appeal of that assessment was also dismissed, with further costs awarded to the Respondent.

Antonio J.A. identified the four criteria required to receive an extension of time. First, a genuine intention to appeal while the right to do so existed and a special circumstance excusing the failure to file the appeal. Second, a valid explanation for the delay with no significant prejudice to the respondent. Third, the applicants must not have taken benefits from the Judgment being appealed, and lastly, the appeal has a reasonable chance of success. Antonio J.A. noted that these criteria are weighed together to determine whether granting the extension is in the interests of justice.

Antonio J.A. determined that the Appeal had no reasonable chance of success, as it was filed outside of the requisite 30-day appeal period, which cannot be extended or varied. The Applicants' argument that they were entitled to one level of appeal, including with respect to costs, was rejected. The notion of an entitlement to one level of appeal is merely an observation, not a rule. The *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, clearly states that a decision from the Court of King's Bench is final and not subject to further appeal. Since the issue of costs was part of the decision, it could not be appealed.

Additionally, Antonio J.A. stated that, even if the Application for permission to Appeal had been considered, it would have been denied. Because the Appeal involved costs of less than $25,000, permission to appeal was required pursuant to Rules 14.5(1)(e) and 14.5(1)(g). Appeal Justice Antonio explained that at minimum, the Applicant must show that the appeal had a reasonable chance of success, raised a question of public importance, and had practical utility. The Court held that it would not be in the interests of justice to permit the Appeal, it was hopeless, raised no question of public importance, and was only of interest to the immediate Parties.

Regarding the Stay Application, Antonio J.A. found there was no serious question to be tried. The Applicants did not identify how payment of the costs award would cause

irreparable harm not compensable in monetary damages.

As a result, the Court denied the Application for an extension of time, the Application for permission to Appeal, and the Application for a Stay pending Appeal.

O'REILLY V O'REILLY, 2025 ABKB 103

(MARION J)

Rules 9.6 (Effective Date of Judgments and Orders) and 10.4 (Charging Order for Payment of Lawyer's Charges)

The Parties sought various relief related to entitlement and priority to the property of the deceased Respondent. Among the relief sought, the Respondent's former legal counsel ("MacMillan") sought a Charging Order against any of the Respondent's property pursuant to Rule 10.4.

MacMillan was retained by the Respondent to address various legal matters and accumulated significant unpaid fees for services. Upon a review of MacMillan's accounts for services rendered, the Review Officer certified certain amounts due and owing to MacMillan. MacMillan argued that the services provided had the effect of preserving the Respondent's property; however, the Court noted that there was insufficient evidence to support that assertion. Justice Marion also found that MacMillan delayed seeking a Charging Order for years without explanation.

Due to the delay in seeking the Charging Order and the lack of evidence to establish a connection between the services provided by MacMillan and any preservation of the Respondent's property, the Court ultimately dismissed MacMillan's application for a Charging Order.

MILOT LAW V SITTLER, 2025 ABCA 72

(KIRKER, FRIESEN AND SHANER JJA)

Rule 9.13 (Re-Opening Case)

In this Appeal, the Court considered a Chambers Judge's refusal to vary an earlier Order pursuant to Rule 9.13.

The underlying matter arose in the context of bankruptcy proceedings in which Milot Law Professional Corporation, as a creditor and assignee under Section 38 of the *Bankruptcy and Insolvency Act*, disclosed certain client records obtained during a prior solicitor-client relationship with the bankrupts, Heather and Sheldon Sittler. The Chambers Judge found that none of the disclosed information breached solicitor-client privilege, with the exception of a single email sent by Milot Law on May 13, 2016,

which he determined did contain privileged legal advice.

Milot Law subsequently applied under Rule 9.13 to vary that finding and to admit new evidence, specifically an unredacted version of the email in question. The Chambers Judge declined to vary the Order or admit the unredacted version into evidence. On Appeal, the Court of Appeal found that the Chambers Judge erred in refusing to consider the new evidence under Rule 9.13. The Court held that the full context of the unredacted email string made it clear that the impugned portion did not contain legal advice and therefore was not protected by solicitor-client privilege.

In doing so, the Panel reaffirmed that Rule 9.13 permits the Court to vary an order at any time before it takes effect, particularly where the variation is necessary to correct a material factual error. In conclusion, the Appeal was dismissed, and the Cross-Appeal was allowed, eliminating the finding of a breach of privilege.

CHHENG V LOVATT, 2025 ABCA 55

(SLATTER, ANTONIO AND FEEHAN JJA)

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

This Appeal concerned the enforceability of a Consent Final Property Order (the "Order") in a family law dispute. The Parties were in a relationship from around 2011 to 2020.

The Order was granted after the Parties separated, stipulating that the Respondent would keep the matrimonial home but had to refinance it to remove the Appellant's debt exposure. If refinancing was not possible, the home was to be sold, with the Respondent keeping the proceeds. However, the Respondent could not refinance. The Appellant blocked the sale unless the net proceeds were to be held in trust for further litigation.

The Respondent cross-applied to hold the Appellant in contempt of the Order and sought approval to sell the home. The Chambers Judge did not find the Appellant in contempt but allowed the sale, with the proceeds going to the Respondent. On Appeal, the Appellant argued the Order was ineffective or unenforceable. He argued the terms of the matrimonial property division were unfair, and the proceeds of the matrimonial home should be held in trust pending further litigation.

Referring to Rule 9.15, regarding setting aside, varying and discharging judgments and orders, the Court of Appeal noted that while titled an "order", the Consent Final Property Order was actually a final Judgment of the Court below, and therefore subject to challenge on only very limited grounds. There was the theoretical possibility that the Appellant could appeal the Order, but he would have required permission to appeal under Rule 14.5(1)(d), because it was "a decision made on the consent of the parties". That permission and any resulting appeal had to be launched within one month of the date of pronouncement of the Judgment. With the deadline having passed, the prospect of appeal was spent.

The Court of Appeal wrote that there are very limited grounds for setting aside a Judgment of the Court below, particularly a consent Judgment. A person challenging a final consent Judgment must bring an action alleging

a serious defect in the Judgment, usually amounting to fraud or duress.

In conclusion, the Appellant failed to show any reviewable error in the decision of the Chambers Judge, and the Appeal was dismissed.

MCCORMACK V ALBERTA HEALTH SERVICES, 2025 ABCA 62

(FETH JA)

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

The Applicant obtained an *ex parte* Order for an extension of time to appeal the decision of an Applications Judge who declined to recuse himself from hearing Applications to Strike the Applicant's claims against several Defendants. The Defendants asserted that the Action was an abuse of process (the "Recusal Decision").

In advance of the Appeal hearing, the Respondents cross-applied to set aside the Order on the grounds that the extension was obtained without notice to them, they were denied the opportunity to be heard, and that an extension was not warranted. The hearing of the Appeal and the Cross-Application came before a Chambers Judge, who granted a Procedural Order adjourning the Applications and directing that they be heard concurrently by the Judge who granted the extension. He also granted permission for the parties to request a one-hour hearing for the Appeal and Cross-Application.

The Applicant thus sought permission to appeal the Procedural Order to the Court of Appeal, after which, the Respondents' Application to vary the *ex parte* Order pursuant to Rule 9.15 of the Rules was heard by the Judge who granted the extension. At that time, the Order extending the time to Appeal was set aside.

Pursuant to Rule 14.5(1)(b), permission of the Court of Appeal is required to commence an appeal of "any pre-trial decision respecting adjournments, time periods or time limits". To obtain permission to appeal, an applicant must show: (1) an important question of law or a precedent of importance to the practice; (2) a reasonable chance of success on appeal; and (3) that delay will not unduly hinder the progress of the action or cause undue prejudice to the parties, without any proportionate benefit.

The Court found that the Applicant failed to raise an important question of law or a question with precedential importance. The Chambers Judge's decision to adjourn the hearing was within his discretion and did not constitute a reviewable error. The Respondents' Application to vary the *ex parte* Order was filed within the required time, and the adjournment provided the Applicant with adequate preparation time. The proposed Appeal had no reasonable chance of success and was moot, as the Cross-Application and dismissal of the extension Application extinguished any appeal from the Recusal Decision. The Court further found that hearing a moot appeal would misuse judicial resources.

LAPP CORPORATION V ALBERTA, 2025 ABKB 33

(LEMA J)

Rules 10.2 (Payment of Lawyer's Services and Contents of Lawyers Account), 10.32 (Costs in Class Proceeding) and 10.33 (Court Considerations in Making Costs Award)

The Applicant was successful in adding the Respondent as a necessary party to Arbitration, and subsequently sought Costs pursuant to Section 17(9) of the *Arbitration Act*, RSA 2000, C A-43.

The Applicant argued that Costs should be payable on a partial-indemnity basis in the amount of $190,576.29, being one half of their legal costs plus disbursements. Alternatively, the Applicant sought Costs in accordance with Schedule C in the amount of $170,905.81, which included Column 5 Costs with a multiplier of five and using the "Appeals" scale. The Respondent argued that only Schedule C Costs under Column 5 with a 1.25 multiplier for inflation and reduced disbursements were appropriate in the amount of $27,512.37.

After citing applicable case law referring to the necessity to conducting a Rule 10.2(1), 10.32, and 10.33 analysis to determine the reasonableness of Costs, the Court agreed with the Respondents. In particular, the Court found that solicitor-client costs were not appropriate in the circumstances and the factors found in cases where a multiplier of five, such as complete success on a novel issue, were not present in the case at bar. In the result, the Applicant was awarded total Costs of $27,512.37.

GEOPHYSICAL SERVICE INCORPORATED V CANADIAN NATURAL RESOURCES LIMITED, 2025 ABKB 60

(PRICE 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-Order Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This was a Decision regarding Costs following the summary dismissal of Geophysical Service Incorporated's ("GSI") claim against Canadian Natural Resources Limited ("CNRL"). The Court confirmed that CNRL was the successful party and therefore entitled to costs under Rule 10.29. The central issue was the appropriate method of calculating costs, whether by reference to Schedule C or as a percentage of actual legal fees under the *McAllister* approach.

CNRL sought 75% indemnification of its legal fees, totalling $618,224.58, or alternatively enhanced Schedule C costs. GSI argued that costs should be limited to Schedule C and denied that CNRL was entitled to enhanced costs, raising objections based on the nature and conduct of the litigation. The Court held that the amount claimed supported costs under Column 5 of Schedule C, and that while GSI was entitled to advance its claims, its

persistence in allegations of fraud and misconduct, despite lack of supporting evidence, weighed in favour of enhanced costs under Rules 10.31 and 10.33.

The Court considered CNRL's Calderbank of January 26, 2022, which proposed discontinuance on a without-costs basis. The offer was found to be a genuine compromise and relevant under Rule 10.33(2)(h), though it did not automatically trigger double costs. The Court also reviewed the reasonableness of the legal fees under Rule 10.2 and accepted that the fees incurred were not disproportionate given the complexity and duration of the proceedings.

After analyzing both the Schedule C and *McAllister* approaches, the Court found that a multiplier of 4–5 would be appropriate if Schedule C were used, and that 60% of actual legal fees would be reasonable under the percentage-based approach. Ultimately, the Court awarded CNRL a lump sum of $405,000, inclusive of disbursements, as reasonable and proportionate under Rules 10.2, 10.29, 10.31, and 10.33.

AXIOM OIL AND GAS INC V TIDEWATER MIDSTREAM AND INFRASTRUCTURE LTD, 2025 ABKB 64

(HORNER J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account)10.29 (General Rule for Payment of Litigation Costs), 10.30 (When Costs Award May be Made), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Court heard submissions from the Parties on Costs arising from the Plaintiff's unsuccessful Application for a Mandatory Injunction. The Defendant sought full indemnity solicitor and client costs for opposing the Application. The Applicant took the position that full indemnity costs would be excessive and unreasonable.

The Defendant alleged that enhanced costs were appropriate due to allegations of bad faith conduct advanced by the Plaintiff. Justice Horner held that the allegations were not egregious enough to attract enhanced costs.

The Defendants also relied upon a previously issued Settlement Offer as being supportive of an enhanced costs award, but the Court did not find the Settlement Offer to be a genuine offer to compromise and did not attract enhanced costs.

The Court considered Rule 10.31 and the relevant jurisprudence set out in *McAllister* and awarded Costs totalling 50% of the fees billed by the Defendant in responding to the Application.

FODOR V CONCRETE EXPERTS LTD, 2025 ABKB 151

(NEUFELD J)

Rules 10.2 (Lawyers' Charges) and 10.32 (Cost in Class Proceeding)

The Court addressed Costs following an unsuccessful appeal by the Defendant, Concrete Experts Ltd., after a trial in which the Plaintiff, Barbara Fodor, was awarded damages for breach of contract. The Court affirmed that Costs are discretionary under Rule 10.2 and guided by principles set out in Rule 10.32, including partial indemnification and the reasonableness of costs claimed. The Court acknowledged that while party-party costs typically follow Schedule C, the Rules allow for other mechanisms such as lump sum awards or awards proportionate to reasonable legal fees. In light of Ms. Fodor's success at both Trial and on Appeal, and the fact that both parties were represented by counsel, the Court found a lump sum award appropriate. It ordered Costs in the amount of $3,000, inclusive of disbursements and interest, payable forthwith.

STURGEON LAKE CREE NATION V RATH AND COMPANY BARRISTERS AND SOLICITORS, 2025 ABCA 65

(CRIGHTON, PENTELECHUK AND WOLLEY JJA)

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)

The Appellant law firm appealed the Chambers Judge's Decision which found the contingency fee agreement (the "Agreement") between the Parties did not substantively comply with the specific requirements of Rule 10.7, rendering it unenforceable.

The Appellant argued that the Chambers Judge should have adopted a more flexible approach by assessing whether the non-compliance with the specific requirements of Rule 10.7 was merely technical rather than substantive when determining the validity of the Agreement. Further, the Appellant contended that if no prejudice arose from the non-compliance, the Agreement should be enforceable.

The Court rejected this argument, emphasizing that Rule 10.7 establishes strict, mandatory requirements for contingency fee agreements, and that any non-compliance renders an agreement unenforceable. The Court noted that under Rule 10.8, a lawyer who fails to meet these requirements is limited to fair and reasonable compensation in accordance with Rule 10.2. The Court reaffirmed that Rule 10.7 serves as a consumer protection measure, ensuring clarity and certainty of the rights and obligations of both the lawyer and the client.

Additionally, the Court clarified that compliance with Rule 10.7 is the lawyer's responsibility and cannot be excused by a lack of harm to the client and prejudice is only relevant when a lawyer fails to include a notice of the client's right to review an account, as required by Rule 10.7(8). Further, the Court took issue with a provision in the Agreement requiring the

Respondent to bear the costs of Arbitration or a Review Officer, finding that it discouraged challenges to the Agreement and undermined the Rule's protective purpose.

In the end, the Court held that the Chambers Judge committed no palpable and overriding error in determining that the Agreement was not substantively compliant with Rule 10.7 and was therefore unenforceable. The Appeal was dismissed.

BERTRAM FAMILY TRUST V FELESKY FLYNN LLP, 2025 ABCA 54

(FETH JA)

Rules 10.17 (Review Officer's Authority), 10.18 (Reference to Court), (Review Officer's Decision), 10.26 (Appeal to Judge), 10.27 (Decision of Judge), 10.44 (Appeal to Judge), 12.71 (Appeal from Decision of Court of King's Bench Sitting as Appeal Court) and 14.5 (Appeals Only with Permission)

The Applicants, involved in selling their manufacturing company, engaged the Respondent law firm for tax planning advice in 2017. The initial sale fell through, but the Applicants paid for the legal work. In 2021, they sought the same advice for a renewed sale attempt, resulting in a $750,000 final fee from the Respondent, which the Applicants contested as excessive. Pursuant to Rule 14.5, the Applicants sought permission from the Court of Appeal to appeal an Order of the Court of King's Bench affirming (with a small variation) the Review Officer's decision that established the reasonable legal fee payable to their lawyers for tax planning advice facilitating the sale of a business. The Order was made pursuant to Rule 10.26 and Rule 10.27.

At the heart of the Appeal was the determination of the correct test for appeals brought pursuant to Rule 14.5(1)(i), as that Rule was amended January 1, 2024, to add appeals from decisions under Rules 10.26 and 10.44. Both the Applicants and Respondent submitted that the test for permission to appeal under Rule 14.5(1)(i) asks whether: (i) there is an important question of law or precedent; (ii) there is a reasonable chance of success on appeal; and (iii) the delay will not unduly hinder the progress of the action or cause undue prejudice.

However, the Court noted that this test was developed when Rule 14.5(1)(i) dealt exclusively with permission to appeal from appeal decisions made pursuant to Rule 12.71 and the *Family Law Act*. The Court concluded that the nature of a Rule 12.71 appeal is different from an appeal under Rule 10.26, as unlike Rule 12.71(1), nothing in the Rules expressly limits permission to appeal a decision under Rule 10.26 (or Rule 10.44) to a question of law or jurisdiction. The Court noted that while the amendment to Rule 14.5(1)(i) clarified that permission to appeal is required, the applicable test for considering whether to grant permission is not prescribed in the Rules.

After reviewing the case law, the Court concluded that the conventional three-part test for permission to appeal under Rule 14.5(1) should be varied to account for the exceptional nature of second appeals, the absence of a strict requirement for a question of law or jurisdiction, and the objectives of the simplified, timely, and economical process for reviews contemplated by Part 10 of the Rules.

Feth J.A. noted that the ultimate inquiry is whether a second appeal serves the interests of justice. Accordingly, the test for permission to appeal under Rule 14.5(1)(i) from a Rule 10.26 appeal decision should consider whether: (i) there is a question of general or public importance that warrants another appeal; (ii) there is a reasonable chance of success on appeal; and (iii) the delay will not unduly hinder the progress of a related proceeding or cause undue prejudice to the simplified, timely and economical process contemplated for the review of a lawyer's charges.

Applying the test to the facts at hand, Feth J.A. determined that the magnitude of the final fee did not warrant a second appeal, as pursuant to Rule 10.9, the Review Officer found both the retainer agreement and lawyer's charges reasonable, and this finding was owed deference. Further, the Court found that the Review Officer did not exceed jurisdiction, as the retainer agreement clearly governed the 2021 work and allowed for a final fee adjustment, and the Applicants did not request that the retainer agreement be referred by the Review Officer to the Court of King's Bench for interpretation, pursuant to Rule 10.18. Appeal Justice Feth also found that the hearing was procedurally fair, with evidence properly tendered, as there is no requirement that the evidence must be sworn under Rule 10.17. The 2017 payments were not deducted as they pertained to a separate matter. The Court upheld the Review Officer's decision, finding no errors in principle or palpable and overriding errors, and the Applicants failed to demonstrate a reasonable chance of success on appeal.

TOAL V PODLUBNY, 2025 ABKB 174

(SILVER J)

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

This Costs decision arose out a half-day Family Special Chambers Application to enforce the mediated agreement between the Plaintiff and the Defendant. The Defendant denied that an agreement was reached. Justice Silver found that a clear and unequivocal decision was reached during the mediation. The Plaintiff was successful in enforcing the mediated agreement.

The Court considered the general principles related to Rules 10.29 and 10.33, outlining the factors for consideration in determining the reasonable and proper costs award, including whether enhanced costs or the use of multipliers are appropriates. The Court considered the factors specified in Rule 10.33(1), such as the outcome of the case, the significance of the issues at hand, and the complexity involved, to ascertain the appropriate costs award, while Rule 10.33(2) was utilized to assess the quantum of the costs award. Given the success of the Plaintiff, Silver J. held that she was entitled to costs as the successful party. Justice Silver highlighted that the Respondent's actions, which involved unnecessary litigation measures and a refusal to acknowledge the agreement, influenced the decision to award Costs. The Court applied a multiplier of 1.5 to the fees, resulting in a total award of $6,230.50.

DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2025 ABKB 9

(ROMAINE J)

Rule 10.30 (When Costs Award May be Made)

This case involved nearly a decade of extensive litigation between the Parties, with 18 written decisions, including complex Trial and remand proceedings. At issue was whether submissions on Costs could be addressed before a final Decision on the outstanding remanded issues.

Justice Romaine noted that, consistent with Rule 10(1)(c), there was no indication that Costs determinations should or could not be made prior to final Judgment on the remand issues. The Plaintiffs, Dow Chemical Canada ULC ("Dow"), proposed that the Court hear arguments on Costs issues and rule on those matters alongside its final reasons. The Defendants, Nova Chemicals Corporation ("Nova"), argued that Costs should be addressed only after the final Judgment, asserting that although Rule 10.30 permits costs to be considered at any time, this provision applies exclusively after the completion of Trial and issuance of a Trial Decision.

Romaine J. rejected Nova's argument, noting that its interpretation conflicted with decisions of the Court of Appeal. It is common practice to make costs submissions before all issues have been fully resolved. Further, Romaine J. emphasized that in complex and protracted litigation, it is essential for the trial judge, who is intimately familiar with the case, to determine costs. In response to Nova's suggestion that the Parties attempt to resolve Costs independently, Romaine J. stated that nothing prevented this from occurring, either before or after Costs submissions, although the history of the litigation suggested that such efforts may be unsuccessful.

While acknowledging that the pending retirement of a trial judge does not alter the application of the law on Costs, the Court found that the Trial Judge's retirement in July 2025 was a significant factor in determining the appropriate process for addressing Costs. As the Trial Judge, Romaine J. noted familiarity with the case and stressed the importance of determining Costs to ensure proper procedure and judicial economy.

Accordingly, the Parties were directed to address Costs between April 14 and May 2, 2025.

PET PLANET FRANCHISE CORP V 1676000 ALBERTA LTD, 2025 ABKB 134

(NEUFELD J)

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

The Plaintiff filed an Originating Application seeking injunctive relief against the Defendant companies (the "Injunction Application"). The Defendants also made an interim Application to Compel Undertakings (the "Undertakings Application"). The Defendants were not

successful on the Undertakings Application, and the Injunction Application was ultimately abandoned. The Defendants sought Costs of the Action.

The Defendants argued that the Court should award *McAllister* costs between 40-50%, claiming that the compensation in Schedule C of the Rules would not adequately cover their expenses in defending against the Injunction Application. The Defendants asserted that enhanced costs are warranted under Rule 10.33 due to the serious and complex nature of the Claim, which was not pursued efficiently and was ultimately abandoned. Conversely, the Plaintiff argued that the 50% discount in item 7(3) of Schedule C should apply, as the Injunction Application was neither frivolous nor vexatious. The Plaintiff also contended that neither party achieved relative success since the Injunction Application was abandoned.

The Court found that, since the Plaintiff commenced and subsequently withdrew the Action, the Defendant companies were deemed successful for costs purposes. However, Justice Neufeld clarified that this did not mean that the Defendants were entitled to recover costs related to the unsuccessful Undertakings Application.

Justice Neufeld highlighted that Rule 10.31(1)(b)(ii) allows the Court to grant lump-sum costs, which can be advantageous when the Court is confident that such an award would adequately compensate the parties without necessitating further disputes over detailed legal bills and expenses. Neufeld J. noted that the Defendants incurred substantial legal fees exceeding $275,000.99 to defend against the Plaintiff's abandoned Injunction Application, making this an appropriate situation for the Court to award a total of $75,000, representing just over 25% of the incurred fees and disbursements.

MARRAZZO V PARUBY, 2025 ABKB 171

(AKGUNGOR J)

Rules 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 11.21 (Service by Electronic Method)

The Parties were engaged in divorce proceedings. The main issue at the hearing was the division of matrimonial property. However, the Defendant also raised concerns regarding their knowledge of certain Court documents that were allegedly served on them. Justice Akgungor also considered how Costs ought to be awarded in the circumstances.

The Defendant failed to properly engage with the proceedings in a meaningful way. The Defendant failed to provide disclosure as required, failed to provide answers to undertakings, and failed to attend at Applications for which they were provided notice. The Court eventually held the Defendant in contempt as a result of their failure to participate in the Action. As a result of cited in contempt, the Defendant was accruing a daily fine until the contempt was purged.

The Plaintiff had served all Court Orders, including the Orders declaring the Defendant to be in contempt, via email. Despite having been served, the Defendant stated that they were not aware of the Orders that were served upon

them or their contents. Specifically, the Defendant claimed they were not aware that they were in contempt or that fines were accumulating. The Defendant did not dispute that they had received the emails containing the Orders, however they claimed that they "avoid emails like the plague" and had not read the contents of any emails from the Plaintiff's counsel.

Justice Akgungor held that Rule 11.21 permits the service of Court Orders via email, and that even if the Defendant were not aware of the contents of the documents they had been served with, they had still been served. The Defendant's failure to review documents properly served upon them did not vitiate the effect of those documents. The Court also noted that the Defendant's conduct made it difficult to believe that they were unaware of the contents of the Orders.

In assessing Costs, the Court considered the factors set out in Rule 10.33 and found that the Defendant's conduct and continued non-compliance with Court procedures and Orders supported an award of enhanced costs at 1.5 times the amount set out in Schedule C to the Rules.

PEDERSON V PEDERSON, 2025 ABKB 109

(GRAESSER J)

Rule 10.33 (Court Considerations in Making Costs Award)

This case involved a protracted and contentious divorce litigation between the parties. The litigation primarily concerned the division of property, spousal and child support, and parenting arrangements.

The Court denied the Defendant's request for enhanced Costs and awarded the Plaintiff Costs based on Column 1 of Schedule C. In so doing, Graesser J. considered the following factors under Rule 10.33:

> the result of the action and the degree of success of each party;
>
> the amount claimed and the amount recovered;
>
> the importance of the issues;
>
> the complexity of the action;
>
> the apportionment of liability;
>
> the conduct of a party that tended to shorten the Action;
>
> the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the Action;
>
> a party's denial of or refusal to admit anything that should have been admitted;
>
> whether any Application, proceeding or step in an Action was unnecessary, improper or a mistake;
>
> a contravention of or non-compliance with these Rules or an Order;
>
> whether a party has engaged in misconduct; and
>
> any offer of settlement made.

Justice Graesser found that although the Plaintiff did not succeed on all of his claims, he was the successful party on the most significant issues. The Plaintiff's formal Offer of Settlement on parenting was equaled, justifying costs recovery. Both parties contributed to the

litigation's complexity and duration, and the Defendant's conduct did not warrant enhanced costs. The Court emphasized the principle of proportionality and practicality in litigation, noting that the Plaintiff's detailed accounting pursuit was excessive but did not amount to misconduct.

F V Z, 2025 ABKB 129

(JONES J)

Rule 10.33 (Court Considerations in Making Costs Award)

The Court considered whether to award Costs under Rule 10.33 following the revocation of an Emergency Protection Order ("EPO"). The Respondent argued that Costs should be granted on a full indemnity or enhanced basis, alleging that the Claimant pursued the EPO for a collateral purpose and engaged in litigation misconduct. The Claimant opposed any cost award, emphasizing that the Court had made no findings of bad faith or frivolousness in the EPO hearing and that awarding Costs in such proceedings was rare.

Justice Jones analyzed the factors under Rule 10.33 to determine whether Costs were warranted. Under Rule 10.33(1)(c), the Court acknowledged the importance of the issues at stake in an EPO proceeding, given its purpose of preventing family violence and protecting vulnerable individuals. However, Justice Jones balanced this against the principle that awarding costs in such cases could deter victims from seeking protection.

The Respondent relied on several factors under Rule 10.33(2) to justify enhanced costs, including allegations that the Claimant unnecessarily lengthened the proceedings (Rules 10.33(2)(a) and (f)), presented evidence contradicted by video footage (Rule 10.33(2)(d)), and rejected reasonable settlement offers (Rule 10.33(2)(h)). While the Court acknowledged these arguments, it held that they did not outweigh the fundamental objectives of the *Protection Against Family Violence Act*, RSA 2000, c P-27. Specifically, the Court cautioned against awarding costs merely because an EPO interfered with a Respondent's parenting time, as this could create a chilling effect on future Applications.

Jones J. further examined whether the EPO was sought for a collateral purpose, referencing past cases where adverse costs were granted in the "clearest cases" of abuse of process. While the Claimant's credibility was questioned regarding certain aspects of her allegations, the Court found no definitive evidence of bad faith or vexatious intent. Given the high threshold for awarding costs in EPO matters, the Court declined to grant any Costs, reinforcing the principle that adverse cost awards should be reserved for exceptional cases where the legislative intent behind EPOs would not be undermined by the award.

HUDYE INC V ROSOWSKY, 2025 ABCA 51

(ANTONIO JA)

Rules 10.41 (Assessment Officer's Decision), 10.45 (Decision of the Judge) and 14.5 (Appeals only with Permission)

The Applicant sought permission to appeal a decision denying costs associated with expert witnesses. In the main Action, the decisions were silent as to costs, and the parties sought direction from the Court of Appeal. The Applicant was awarded taxable costs under column 5 (less 10%) for the Trial and the Appeal, plus reasonable disbursements (the "Costs Direction").

The Respondents filed an Appointment for Assessment of Costs, submitting the same Bill of Costs the Applicant had provided the Court of Appeal at the time of the Costs Direction. Before the Assessment Officer, the Applicant submitted an amended Bill of Costs, revised to include fees for expert witnesses which had been omitted from the initial Bill of Costs. The Assessment Officer granted the Applicant the amount requested in the amended Bill of Costs, but on appeal, the Court of King's Bench overturned the Assessment Officer's decision, agreeing with the Respondents' argument that the Assessment Officer exceeded his jurisdiction in awarding the expert fees, as "reasonable and proper costs" awarded by an Assessment Officer do not include expert fees "unless a court otherwise orders", pursuant to Rule 10.41(2)(e).

The Applicant sought permission to appeal the Court of King's Bench decision denying Costs associated with expert witnesses. Pursuant to Rule 14.5(1)(e), permission is required as the proposed Appeal only concerned Costs. To obtain permission, an applicant must establish all of the following: (i) identify a good, arguable case having enough merit to warrant scrutiny; (ii) the issues must be important, both to the parties and in general; (iii) the appeal must have some practical utility; and (iv) the court should consider the effect of a delay in proceedings caused by the appeal.

The Applicant did not dispute the applicability of Rule 10.41(2)(e) to the fees at issue. Rather, they submitted that the Chambers Judge failed to appreciate her discretion under Rule 10.45(1)(d) to order payment of expert fees, because a Judge hearing an appeal from an Assessment Officer may "make any other order the judge considers appropriate". The Court found that the role of the Chambers Judge was to implement the Court of Appeals' Costs Direction, not to exercise her own discretion afresh. Therefore, the question at the core of the Appeal was whether the Court of Appeal intended the costs and disbursements to be assessed to include the expert fees.

In denying the Application, the Court, among other things, found that the interpretation of a Costs Direction attracted deference, as the decision was one of fact or mixed fact and law, and neither had precedential value, nor was a question of general importance.

FRIESE V FRIESE, 2025 ABCA 66

(GROSSE JA)

Rules 12.71 (Appeal from Decision of Court of King's Bench Sitting as Appeal Court), 14.5 (Appeals Only with Permission) and 14.88 (Costs Awards)

The Applicant mother in a family law dispute sought permission to appeal a Court of King's Bench Decision (the "King's Bench Appeal Decision"), which was an appeal from a decision by the Alberta Court of Justice (the "Court of Justice Decision").

In the Court of Justice Decision, the Applicant mother was held in Contempt of Court and was barred from making submissions. The Respondent father agreed that the Court of Justice Decision was an error. Despite the parties' agreement, the Applicant mother appealed the Court of Justice Decision.

The appeal before the Court of King's Bench was successful in part and the parties were granted a new interim parenting Order. At the King's Bench Appeal Decision, the Respondent father sought costs on the basis that he had already consented to the appeal. The Applicant Mother was directed to pay $3,500 in costs to the father.

The Applicant mother then applied for permission to appeal the King's Bench Appeal Decision (the "Court of Appeal Decision"). At the Court of Appeal, the Applicant Mother argued that the King's Bench Appeal Decision failed to consider all the merits of her appeal, and that the ruling, particularly as to costs, was unjust. In response, the Court of Appeal cited Rules 14.5(1)(i) and 12.71 in support of the proper procedure: "A decision of the Court of King's Bench sitting as an appeal court for decisions under the *Family Law Act* may only be appealed to this Court on questions of law or jurisdiction, with permission".

The Court of Appeal ultimately found that the Applicant mother's Appeal did not raise an issue of law or jurisdiction and had no reasonable chance of success. Regarding the Applicant's concerns about the costs award in the King's Bench Appeal Decision, Justice Grosse held that permission to appeal a costs award is required pursuant to Rule 14.5(1)(e) and should be granted sparingly.

The Respondent, who was the successful party to the Court of Appeal Decision, requested $10,000 in solicitor and own client costs. Grosse J.A. held that solicitor and own client costs were not appropriate in the circumstances and referred to Rule 14.88(3) to support that costs in an appeal decision are usually awarded on the same scale as the Order or Judgment which is being appealed. The Court found that the King's Bench Appeal Decision awarded Costs pursuant to Column 1 of Schedule C, and as such the same was appropriate at the Court of Appeal. Grosse J.A. awarded $1,000 to the Respondent.

SWAN V PETERS, 2025 ABCA 60

(WATSON JA)

Rules 13.5 (Variation of Time Periods) and 14.9 (Appeals from Several Decisions)

Justice Watson provided oral reasons for this Decision. The Appellant/Applicant applied for an extension of time to appeal an Order dated July 12, 2024 (the "July Order"). The Applicant sought to attach the July Order to his existing Appeal of a subsequent Order made in the matter by the same Justice, dated October 21, 2024 (the "October Order"), by virtue of Rule 14.9 and the test from *Cairns v Cairns*, [1931] AJ No 76 (QL) (the "*Cairns* Test").

The Court acknowledged that Rule 14.9 does allow for multiple appeals, in a way, to be included within one Notice of Appeal and therefore within one appeal hearing. The Applicant argued that the *Cairns* test was met for the extension of time for the July Order to be included on its own merits, not simply as an element of the October Order Appeal. However, the Applicant argued that the July Order, in a sense, linked into the October Order such that they are one order, and that one is a continuation of the other.

Watson J.A. acknowledged that the matter, the parties, the children, and the overriding principle that the best interests of the children is the demanding consideration, are all the same, which informed both Orders. The question was whether the formality of the July Order needed to be reviewed in the October Order Appeal or whether it was a moot point if correct or not because of the existence of the October Order.

The Court considered the *Cairns* Test and found the case could likely be decided on the fourth factor, as to whether "there is a reasonable chance of success if allowed to proceed," of an appeal of the July Order. The Court found that the terms of the July Order became a non-issue once the October Order was made, because the October Order essentially adopted the July Order, as both are in relation to the best interests of the children, which constantly evolves.

Appeal Justice Watson found that the adoption of an earlier order is not the same thing as converting the earlier order into the present order and that Rule 14.9(c) supports that interpretation. The Court interpreted Rule 14.9(c) to say that parties may get a chance to include documents within a single Notice of Appeal, or include challenges within a single Notice of Appeal, which effectively merges the challenges into one matter, even if they involve the same topic, parties, or similar issues.

Watson J.A. determined that each order must be treated separately and that if the Court was to extend the time to allow the appeal of the July Order, on the basis that it was simply part of the later order, it would be contrary to the operation of the legal system and would *post-facto* blur what orders are. The Court concluded that the July Order did not need to be attached to the Appeal of the October Order and the Application was dismissed.

PIIKANI NATION V KOSTIC, 2025 ABCA 7

(ANTONIO JA)

Rule 14.5 (Appeals Only with Permission)

The Applicant sought permission to appeal a decision of a Case Management Judge who refused leave for an application for indemnification and defence costs against the Respondents.

The Parties to the Action were bound by an Access Restriction Order requiring all parties to apply for leave before any application could be heard on its merits. The Applicants relied upon Rule 14.5(1)(j) and *Tican v Alamgir*, 2023 ABCA 115, which held that an individual can be considered a "vexatious litigant" for the purposes of Rule 14.5(1)(j) if they are subject to a Court Order requiring the Court's permission to commence or continue proceedings.

Antonio J.A. held that not every access restriction order is a vexatious litigant order, and found that the restriction in question was imposed because of the complexity of the litigation, further noting that the restriction applied equally to all Parties rather than just the Applicant.

The Access Restriction Order on its own was not sufficient for the Court to find that the Applicant had been declared a "vexatious litigant" for the purposes of Rule 14.5(1)(j). The Applicant did not require permission to Appeal the decision of the Case Management Judge.

BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2025 ABCA 42

(FEEHAN JA)

Rule 14.5 (Appeals Only with Permission)

This was an Application for permission to appeal under Rule 14.5(1)(b). The Applicant, Claire Bonville, sought to challenge a Chambers Judge's Order staying her litigation against President's Choice Financial and requiring her to explain why she should not be ordered to post $10,000 as Security for Costs. The Chambers Judge subsequently ordered Security for Costs, and upon Ms. Bonville's failure to comply, struck her pleadings and granted Judgment on the Counterclaim. She did not appeal those later decisions.

The Court of Appeal held that, to obtain permission under Rule 14.5(1)(b), an applicant must raise an arguable point of significance to the practice or proceeding and demonstrate a reasonable chance of success. The Court found that Ms. Bonville's litigation was without legal foundation, her reliance on the *Consumer Protection Act* and associated regulation was misplaced, and her allegations had no legislative support. The Court concluded that the proposed appeal raised no arguable issues, was moot, and had no reasonable prospect of success.

The Application for permission to appeal was dismissed, and costs of $2,000 were awarded against Ms. Bonville.

UBAH V THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA APPEAL BOARD, 2025 ABCA 81

(ANTONIO JA)

Rules 14.5 (Appeals Only With Permission) and 14.36 (Case Management Officers)

The Applicant was found to have engaged in professional misconduct by the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") Disciplinary Committee. He appealed the decision to the APEGA Appeal Board (the "Board"), but the appeal was dismissed. The Applicant then sought to appeal the Board's orders and applied to rescind the Case Management Officer's direction requiring him to seek permission to appeal orders from the Board. Alternatively, the Applicant sought permission to appeal if leave was required.

The Applicant argued that he should not have been required to seek leave under Rule 14.5(1)(j), which applies when a prospective appellant "has been declared a vexatious litigant in the court appealed from". In this case, the "court appealed from" was the Board. Antonio J.A. rejected this argument, confirming that the vexatious litigant Order expressly mandated permission before any appeal could proceed. The Court deemed the Applicant's challenge to the Order's applicability a collateral attack on previous rulings and refused to entertain it.

The Applicant also contested a scheduling direction requiring both of his Applications to be heard together. However, the Court upheld the Case Management Officer's authority under Rule 14.36(1) to manage case scheduling. It found that the Applicant had ample notice and dismissed his claim of inadequate preparation time.

In assessing the request for permission to appeal, Antonio J.A. applied the test from *Christofi v Jeffrey V Kahane Professional Corporation*, 2022 ABCA 284. The test requires consideration of whether the appeal raises an important question of law or precedent, has a reasonable chance of success, or would be unduly hindered by delay. Antonio J.A. concluded that the Applicant's arguments merely raised factual disputes already resolved by the Board, lacked legal significance, and had no reasonable prospect of success. Finding no procedural unfairness, the Court denied permission to appeal and upheld the Case Management Officer's direction.

PIIKANI NATION V MCMULLEN, 2025 ABCA 114

(SHANER JA)

Rules 14.5 (Appeals Only with Permission), 14.47 (Application to Restore an Appeal) and 14.65 (Restoring Appeals)

The case involves a long-standing dispute between the Piikani Nation and Dale McMullen. At issue were breaches of Court Orders related to the management of complex legal proceedings. In this decision, Shaner J.A. considered Mr. McMullen's appeal of two 2024 decisions from Court of King's Bench, finding him in civil contempt, *Piikani Nation v McMullen*, 2024 ABKB

264 (the "Contempt Decision"), and a decision imposing sanctions on him for civil contempt, *Piikani Nation v McMullen,* 2024 ABKB 575 (the "Sanction Decision").

The Contempt Decision found Mr. McMullen in contempt for (i) failing to attend for cross-examination pursuant to a Court Order; and (ii) failing to turn over to counsel to the Nation privileged records which belonged to it, and using those records in certain affidavits. Numerous sanctions were then imposed on Mr. McMullen for his contempt in the Sanction Decision.

Mr. McMullen filed a Notice of Appeal relating to the Contempt Decision on June 13, 2024, outside the deadline for doing so. The appeal of the Contempt Decision was eventually deemed abandoned because Mr. McMullen missed multiple deadlines. On November 5, 2024, Mr. McMullen filed applications to restore the appeal and for permission to appeal, pursuant to Rules 14.47 and 14.65. Mr. McMullen also filed the appeal relating to the Sanction Decision, along with an application for permission to appeal, on November 1, 2024, within the time for doing so.

Shaner J.A. found that permission to appeal was not required in the circumstances. Permission was sought because in February of 2013, the Case Management Judge in the Court below made an Order restricting all parties to the various related proceedings from commencing or bringing any proceedings without leave. Under Rule 14.5(1)(j), permission is required for any appeal by a person who has been declared a "vexatious litigant" in the court appealed from. There was direction from the Case Management Officer that this Rule applied to the February 2013 Order.

Appeal Justice Shaner found that McMullen did not require permission to appeal because the February 2013 Order was not aimed at addressing vexatious conduct but at rather managing complex litigation. The Court of Appeal relied on a similar conclusion it reached in a recent decision regarding the Nation's action against Liliana Kostic: *Piikani Nation v Kostic*, 2025 ABCA 7. Ms. Kostic is subject to the same February 2013 Case Management Order as Mr. McMullen.

Mr. McMullen's Application to restore the Contempt Decision appeal was dismissed due to his failure to act promptly and provide a sufficient explanation for the delay. Shaner J.A. also found there was "no arguable merit," as Mr. McMullen's grounds were largely disagreements with factual findings and procedural issues that did not demonstrate any procedural unfairness.

Because Mr. McMullen filed his Notice of Appeal regarding the Sanctions Decision on time, and he did not require permission to appeal, he could appeal that decision as of right. As such, Shaner J.A. declined to comment further in respect of that appeal.

MCCORMACK V ALBERTA HEALTH SERVICES, 2025 ABCA 63

(SHANER JA)

Rules 14.8 (Filing a Notice of Appeal), 14.14 (Fast Track Appeals) and 14.64 (Failure to Meet Deadlines)

The Applicant applied to restore an Appeal that was struck and to extend time to file the Appeal. The Appeal concerned an Order on May 6, 2024, prohibiting the Applicant from communicating with the Court by email or telephone, except when represented by a lawyer, and prohibiting him from filing or submitting documents to the Court by email or electronic means.

The Notice of Appeal was filed October 11, 2024, beyond the one-month deadline pursuant to Rule 14.8(2). In response, the Court of Appeal's Case Management Officer ("CMO") wrote to the Applicant advising that the Notice of Appeal was filed out of time and that the matter had been classified as a fast-track Appeal pursuant to Rule 14.14. The CMO advised the Applicant that the deadline to file the Appeal record was November 12, 2024, but if the Applicant filed the Application to extend time by November 12, 2024, the deadline to file the Appeal record would be suspended.

The Applicant did not apply to extend the time to file an Appeal by November 12, 2024, and the Appeal was struck the following day pursuant to Rule 14.64(a). The Applicant subsequently filed an Application to restore the Appeal on January 31, 2025. Shaner J.A. found that the Applicant had moved diligently to restore the Appeal, but failed to provide a satisfactory explanation as to why he did not file an Application to extend time before November 12, 2024 and that the Appeal had no arguable merit. As such, the Applications were dismissed.

PATEL V ATB FINANCIAL, 2025 ABCA 83

(ANTONIO JA)

Rules 14.8 (Filing a Notice of Appeal) and 14.37 (Single Appeal Judges)

The Applicants sought an extension of time to appeal a substantive decision by the Court of King's Bench, which granted partial summary judgment against them. Pursuant to Rules 14.8(1) and (2), the appeal period had expired by the time the Applicants filed their Notice of Appeal. The subject of the Appeal was the Applicants' Application to extend time to appeal, pursuant to Rule 14.37(2)(c).

The Court found that the Applicants failed to satisfy the factors necessary to grant an extension of time to appeal. The Applicants did not provide evidence of a bona fide intention to appeal within the original timeframe or a sworn explanation for the delay. The long delay in filing the Application to extend time to appeal was unexplained by the Applicant, as no affidavit evidence was filed in support of their submissions. The proposed Appeal lacked a reasonable chance of success, as the Applicants did not provide any evidence that would suggest that a palpable and overriding error was committed by the Chambers Judge,

in respect of the Chambers Judge's factual findings. Further, the Court found that the Respondent would face prejudice if an extension were granted, as the factums may need to be amended, potentially occasioning further expense and possibly further delay.

Given this, the Application was denied, and the Respondent was awarded Costs on Column 5 without a multiplier.

JJ V AK, 2025 ABCA 113

(ANTONIO JA)

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

This Action relates to the determination of guardianship of a seven-year-old Indigenous child wherein five parties sought to intervene pursuant to Rules 14.37 and 14.58.

This matter commenced in Court of Justice where, following a five-day trial, Justice O'Gorman awarded guardianship of the then five-year-old child to the maternal uncle and aunt. That decision was appealed by the biological father to the Court of King's Bench where Justice Rickards dismissed the appeal. The father then sought permission to appeal and was granted permission by Justice de Wit.

In interpreting the test for permission to intervene, the Court cited Rules 14.37(2)(e) and 14.58(1) in support of the ability for a single Justice to grant permission to intervene and impose conditions on such intervention. Rule 14.58(3) was cited for the proposition that intervenors cannot raise novel issues unless permitted.

The Court analyzed the case law interpreting the various factors to be assessed in an Application to Intervene and then considered each proposed intervener on their merits. Antonio J.A. determined that while all the proposed Intervenors had satisfied the Court that they will be affected by the Appeal and that they had particular expertise relevant to some of the issues, not all of them had satisfied the Court of other relevant criteria.

Antonio J.A. determined that the Minister of Justice, the Director of Children and Family Services, Treaty 8 Urban Child and Family Services Society, and Kasohkowew Child Wellness Society were all permitted to intervene on the basis that their submissions would be helpful to the Court in its analysis.

Intervenor status was denied for both the First Nation communities where the biological parents were members on the basis that the Arguments they intended to make were duplicative of another Intervenor or not suitable for Intervenor status.

PRIMERICA INC V MOUKHAIBER, 2025 ABCA 86

(FAGNAN JA)

Rule 14.47 (Application to Restore an Appeal)

The Applicants sought an Order for finding the Respondent in Contempt of Court. It was largely dismissed. The Applicants filed a Civil Notice of Appeal of the contempt decision but asked the Case Management Officer ("CMO") to hold the appeal in abeyance pending the outcome of further applications. The CMO concluded it was premature to hold the appeal in abeyance as the Appeal Record was not due until January 2, 2025, but told the Applicants they could renew the request by December 2, 2024. Counsel did not properly diarize the file. Consequently, the Applicants failed to renew the request, missed a filing deadline, and the Appeal was struck on January 3, 2025. The Applicants sought to restore the Appeal, pursuant to Rule 14.47

The Court holistically considered the following factors: (a) arguable merit to the Appeal; (b) explanation for the defect or delay which caused the Appeal to be struck; (c) reasonable promptness in moving to cure the defect and have the Appeal restored to the list; (d) continuing intention to proceed with the Appeal; and (e) lack of prejudice to the Respondent, including length of the delay.

The Court concluded that the Appeal had merit, and that the mere slip or inadvertence by counsel ought not to prevent the restoration. Further, the Court found that counsel moved promptly to cure the defect and to have the Appeal restored, and that the Applicants intend to proceed with the Appeal. The Court did not consider the fact that the Applicants applied to suspend filing deadlines pending the outcome of further applications as indicative of the Applicants' intention not to proceed with the Appeal. Further, the Court concluded that there was no prejudice to the Respondent that would militate against restoring the Appeal.

Thus, the Appeal was restored.

YI V MM, 2025 ABKB 138

(EAMON J)

Rule 14.75 (Disposing of Appeals)

The Appellant appealed two decisions made at Trial in the Court of Justice. The Trial involved the parties' dispute over parenting arrangements, child support, and spousal support following their separation. The Appellant argued, among other things, that the support claims were not properly before the Court due to deficient pleadings and that the Trial Judge erred in granting relief that was not pleaded, alleging that the Trial Judge was biased and treated him unfairly.

Eamon J. emphasized that granting relief not pleaded is an error of law and can cause unfairness; however, express or implied consent can cure pleading defects where procedural fairness is otherwise maintained. The Respondent had filed a cross-claim but did not serve it on

the Appellant in time. There were two versions of the cross-claim: the court filed version (blue ink) which ticked only the child support box and the Respondent's version (black ink) which ticked both child and partner support. The Appellant claimed he was never served with the black ink version and was unaware of any support claims, however, an Order before the Trial referred the partner and child support claims to trial, both parties filed trial readiness forms which listed the claims, and the Appellant participated in proceedings dealing with the claims but did not object until late in the Trial.

The Court determined that although the original pleading was technically defective, the Trial Judge was correct in hearing and deciding the support claims at Trial because the Parties were aware of the issues well in advance of going to Trial and the Appellant and his counsel prepared for and responded to the support claims. Eamon J. found there was no procedural unfairness, and that the Appellant was not surprised or prejudiced. Further, any procedural defect was cured by the Appellant's conduct and implied consent.

Additionally, the Court acknowledged that the Trial Judge had the power to both extend time for service of pleadings and to amend pleadings unless there was a compelling reason not to. Although the Trial Judge did not formally amend the pleadings, the Trial Judge had accepted that the support claims were validly commenced.

The Trial Judge, while giving verbal reasons in concluding on the date that the Appellant had notice of the support claims, had misstated and reversed the black ink and blue ink copies of the cross-claims. Eamon J. found it was a harmless misstatement and that it did not affect the outcome because the Trial Judge had already acknowledged that the claims were formally before the Court during the Trial. Justice Eamon cited Rule 14.75(2), which allows an appellate court to dismiss an appeal despite a harmless error, so long as no substantial wrong or miscarriage of justice resulted, and the decision would have been the same notwithstanding the error.

The Court concluded that the claims were formally before the Trial Judge and that it was not an error of law to adjudicate them. Additionally, the record did not support the Appellant's allegations of bias and unfair treatment. Justice Eamon determined that none of the Appellant's grounds of appeal were substantiated and dismissed the Appeal.