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RULES

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

1.1	**GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD,** 2026 ABCA 277
1.2	**DION V RASHID,** 2026 ABKB 492
	PRA GROUP CANADA INC V WYLIE, 2026 ABKB 512
	TERRIGNO V ROCKY VIEW COUNTY, 2026 ABKB 553
	ROBINSON V MARWOOD, 2026 ABKB 558
	WANG V SECURITY NATIONAL INSURANCE COMPANY, 2026 ABKB 559
	RK V GSG, 2026 ABKB 594
	BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON, 2026 ABKB 610
	PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 622
	KOSTIC V SCOTT VENTURO RUDAKOFF LLP, 2026 ABKB 626
	MCGRATH V MCGRATH, 2026 ABKB 684
	PATEL V PARIKH, 2026 ABCA 299
1.4	**PRA GROUP CANADA INC V WYLIE,** 2026 ABKB 512
	RK V GSG, 2026 ABKB 594
1.5	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
	BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON, 2026 ABKB 610
2.10	**STURGEON LAKE CREE NATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS),** 2026 ABKB 569

2.10 (cont)	**ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (CHIEF ELECTORAL OFFICER),** 2026 ABCA 287
2.23	**BUSINESS CARE CORP V EDMONTON (CITY),** 2026 ABCA 295
3.2	**ROBINSON V MARWOOD,** 2026 ABKB 558
3.8	**GOVERNORS OF THE UNIVERSITY OF ALBERTA V ALBERTA (MINISTER OF JUSTICE),** 2026 ABKB 562
3.14	**GOVERNORS OF THE UNIVERSITY OF ALBERTA V ALBERTA (MINISTER OF JUSTICE),** 2026 ABKB 562
3.15	**ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA,** 2026 ABKB 460
	STURGEON LAKE CREE NATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS), 2026 ABKB 569
	ATWOOD V MACEWAN UNIVERSITY, 2026 ABKB 643
3.17	**ATWOOD V MACEWAN UNIVERSITY,** 2026 ABKB 643
3.18	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 620
	METIS NATION OF ALBERTA ASSOCIATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS), 2026 ABKB 630
3.19	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 620
	METIS NATION OF ALBERTA ASSOCIATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS), 2026 ABKB 630
3.22	**HALLWAS V ALBERTA (DIRECTOR OF SAFEROADS),** 2026 ABKB 551
	PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 620
	PICKLE V UNIVERSITY OF LETHBRIDGE, 2026 ABKB 659
3.43	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622
3.57	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622
3.59	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622
3.61	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625
	ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (ENERGY REGULATOR), 2026 ABKB 628
3.62	**REGENCY INNOVATIONS INC V WEHBE,** 2026 ABKB 537
	PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 621
	KOSTIC V CIBC TRUST CORPORATION, 2026 ABKB 623

3.63	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622
3.64	**KOSTIC V CIBC TRUST CORPORATION,** 2026 ABKB 623
3.65	**REGENCY INNOVATIONS INC V WEHBE,** 2026 ABKB 537
3.67	**REGENCY INNOVATIONS INC V WEHBE,** 2026 ABKB 537 **KOSTIC V CIBC TRUST CORPORATION,** 2026 ABKB 623
3.68	**ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA,** 2026 ABKB 460 **GOVERNORS OF THE UNIVERSITY OF ALBERTA V ALBERTA (MINISTER OF JUSTICE),** 2026 ABKB 562 **STURGEON LAKE CREE NATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS),** 2026 ABKB 569 **SANCE CASTRO V LEGAL AID SOCIETY,** 2026 ABKB 588 **DYNAFLEX PIPE LTD V HOVE,** 2026 ABKB 602 **ALBERTA (MINISTER OF JUSTICE) V VIAL,** 2026 ABKB 618 **PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 621 **PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622 **KOSTIC V CIBC TRUST CORPORATION,** 2026 ABKB 623 **KOSTIC V SCOTT VENTURO RUDAKOFF LLP,** 2026 ABKB 626 **BIGNALL V CANADA (ATTORNEY GENERAL),** 2026 ABKB 668 **NOVA OCULUS CANADA MANUFACTURING ULC V SATHER,** 2026 ABCA 297
3.72	**KOSTIC V SCOTT VENTURO RUDAKOFF LLP,** 2026 ABKB 626
3.75	**STURGEON LAKE CREE NATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS),** 2026 ABKB 569
4.10	**BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON,** 2026 ABKB 610
4.11	**UBAH V UBAH,** 2026 ABCA 301
4.14	**RK V GSG,** 2026 ABKB 594 **ENMAX POWER CORPORATION V REMINGTON DEVELOPMENT CORPORATION,** 2026 ABKB 596 **PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622 **KOSTIC V CIBC TRUST CORPORATION,** 2026 ABKB 623

4.22	**RAJPAUL ESTATE (RE), 2**026 ABKB 546 **KOSTIC V SCOTT VENTURO RUDAKOFF LLP,** 2026 ABKB 626 **PIATRASHKA V KAZACHENKO,** 2026 ABKB 665 **LAW SOCIETY OF ALBERTA V BILLINGSLEY,** 2026 ABCA 268 **RUYGROK V RUYGROK,** 2026 ABCA 289 **EK V RO,** 2026 ABCA 293
4.23	**KOSTIC V SCOTT VENTURO RUDAKOFF LLP,** 2026 ABKB 626
4.24	**GRAUPNER V PEILL,** 2026 ABKB 593 **RK V GSG,** 2026 ABKB 647 **JONK V MERCIER,** 2026 ABKB 674
4.29	**YAKUBOW V EDMONTON GRANITE MEMORIALS LTD,** 2026 ABKB 613 **RK V GSG,** 2026 ABKB 647 **JONK V MERCIER,** 2026 ABKB 674
4.31	**DION V RASHID,** 2026 ABKB 492 **LENCUCHA V CENNON ESTATE,** 2026 ABKB 550 **LJ RESOURCES CO LTD V INDEPTH ENERGY INC,** 2026 ABKB 574 **BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON,** 2026 ABKB 610
4.33	**DION V RASHID,** 2026 ABKB 492 **LENCUCHA V CENNON ESTATE,** 2026 ABKB 550 **STUREK V FERNWOOD DEVELOPMENTS LTD,** 2026 ABKB 564 **BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON,** 2026 ABKB 610 **STARK V STARK,** 2026 ABKB 632 **BARON REAL ESTATE INVESTMENTS LTD V TRI-ARROW INDUSTRIAL RECOVERY INC,** 2026 ABCA 249 **2114223 ALBERTA LTD V LOUGHEED,** 2026 ABCA 291
4.34	**STARK V STARK,** 2026 ABKB 632
4.36	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 621

5.1	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625
5.2	**CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC,** 2026 ABKB 570
	MCGRATH V MCGRATH, 2026 ABKB 684
5.3	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2026 ABKB 502
5.5	**STUREK V FERNWOOD DEVELOPMENTS LTD,** 2026 ABKB 564
	CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC, 2026 ABKB 570
5.6	**STUREK V FERNWOOD DEVELOPMENTS LTD,** 2026 ABKB 564
	CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC, 2026 ABKB 570
5.10	**ENMAX POWER CORPORATION V REMINGTON DEVELOPMENT CORPORATION,** 2026 ABKB 596
5.11	**CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC,** 2026 ABKB 570
5.13	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625
	KOSTIC V SCOTT VENTURO RUDAKOFF LLP, 2026 ABKB 626
	MCGRATH V MCGRATH, 2026 ABKB 684
5.16	**ENMAX POWER CORPORATION V REMINGTON DEVELOPMENT CORPORATION,** 2026 ABKB 596
	RK V GSG, 2026 ABKB 647
5.17	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
5.18	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
5.22	**NOVA OCULUS CANADA MANUFACTURING ULC V SATHER,** 2026 ABKB 616
5.24	**NOVA OCULUS CANADA MANUFACTURING ULC V SATHER,** 2026 ABKB 616
5.25	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625

5.28	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
	NOVA OCULUS CANADA MANUFACTURING ULC V SATHER, 2026 ABKB 616
	PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 625
5.30	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625
5.31	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
5.35	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2026 ABKB 582
5.36	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
6.8	**MENTZELOPOULOS V ALBERTA HEALTH SERVICES,** 2026 ABKB 675
6.11	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
	KOSTIC V SCOTT VENTURO RUDAKOFF LLP, 2026 ABKB 626
6.14	**BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON,** 2026 ABKB 610
	ALBERTA (MINISTER OF JUSTICE) V VIAL, 2026 ABKB 618
	BOILEAU V NATURENER ENERGY CANADA INC, 2026 ABKB 627
	ST PIERRE ESTATE V BLACK ESTATE, 2026 ABKB 686
	FARM CREDIT CANADA V WIEBE, 2026 ABCA 235
6.15	**BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON,** 2026 ABKB 610
6.28	**METIS NATION OF ALBERTA ASSOCIATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS),** 2026 ABKB 630
6.37	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
	KEYES V KEYES, 2026 ABKB 661
6.40	**HOROBEC V TRAN,** 2026 ABKB 494
6.41	**HOROBEC V TRAN,** 2026 ABKB 494
6.42	**HOROBEC V TRAN,** 2026 ABKB 494

6.43	**HOROBEC V TRAN,** 2026 ABKB 494
7.3	**BOILEAU V NATURENER ENERGY CANADA INC,** 2026 ABKB 627
	ST PIERRE ESTATE V BLACK ESTATE, 2026 ABKB 686
8.8	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
8.16	**CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA,** 2026 ABKB 582
8.20	**RK V GSG,** 2026 ABKB 594
9.2	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
9.4	**SANCE CASTRO V LEGAL AID SOCIETY,** 2026 ABKB 588
	UBAH V UBAH, 2026 ABCA 301
9.6	**KOSTIC V CIBC TRUST CORPORATION,** 2026 ABKB 623
9.12	**JBRO HOLDINGS INC V DYNASTY POWER INC,** 2026 ABKB 505
	OFFREY V OFFREY, 2026 ABKB 660
9.13	**JBRO HOLDINGS INC V DYNASTY POWER INC,** 2026 ABKB 505
9.14	**JBRO HOLDINGS INC V DYNASTY POWER INC,** 2026 ABKB 505
	HOROBEC V TRAN, 2026 ABKB 598
	OFFREY V OFFREY, 2026 ABKB 660
9.15	**PRA GROUP CANADA INC V WYLIE,** 2026 ABKB 512
	ROBINSON V MARWOOD, 2026 ABKB 558
	RK V GSG, 2026 ABKB 594
	PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 621
	2114223 ALBERTA LTD V LOUGHEED, 2026 ABCA 291
9.19	**JACKSON V PIIKANI NATION,** 2026 ABKB 624
10.2	**SUNSTRUM ESTATE (RE),** 2026 ABKB 491
	GRAUPNER V PEILL, 2026 ABKB 593
10.29	**COAST AUTOMOTIVE GROUP INC (RE),** 2026 ABKB 490
	SUNSTRUM ESTATE (RE), 2026 ABKB 491

10.29 (cont)	**YEGPRO REALTY LTD V DHILLON,** 2026 ABKB 530
	CAMBARERI V CAMBARERI, 2026 ABKB 552
	GRAUPNER V PEILL, 2026 ABKB 593
	HOROBEC V TRAN, 2026 ABKB 598
	YAKUBOW V EDMONTON GRANITE MEMORIALS LTD, 2026 ABKB 613
	RK V GSG, 2026 ABKB 647
	ABDESSEMED V ECKENSVILLER, 2026 ABKB 651
10.30	**RK V GSG,** 2026 ABKB 647
10.31	**COAST AUTOMOTIVE GROUP INC (RE),** 2026 ABKB 490
	TERRIGNO V WEAL, 2026 ABKB 501
	YEGPRO REALTY LTD V DHILLON, 2026 ABKB 530
	CAMBARERI V CAMBARERI, 2026 ABKB 552
	GRAUPNER V PEILL, 2026 ABKB 593
	HOROBEC V TRAN, 2026 ABKB 598
	YAKUBOW V EDMONTON GRANITE MEMORIALS LTD, 2026 ABKB 613
	PACIFIC WEST SYSTEMS SUPPLY LTD V A & K TILES & DRYWALL LTD, 2026 ABKB 633
	RK V GSG, 2026 ABKB 647
10.33	**COAST AUTOMOTIVE GROUP INC (RE),** 2026 ABKB 490
	SUNSTRUM ESTATE (RE), 2026 ABKB 491
	TERRIGNO V WEAL, 2026 ABKB 501
	YEGPRO REALTY LTD V DHILLON, 2026 ABKB 530
	CAMBARERI V CAMBARERI, 2026 ABKB 552
	WANG V SECURITY NATIONAL INSURANCE COMPANY, 2026 ABKB 559
	BUYE V FISHER, 2026 ABKB 589
	GRAUPNER V PEILL, 2026 ABKB 593
	HOROBEC V TRAN, 2026 ABKB 598
	YAKUBOW V EDMONTON GRANITE MEMORIALS LTD, 2026 ABKB 613

10.33 (cont)	**PACIFIC WEST SYSTEMS SUPPLY LTD V A & K TILES & DRYWALL LTD,** 2026 ABKB 633
	KOEHLER V MISKEW, 2026 ABKB 634
	KATERYNYCH V POISSON, 2026 ABKB 635
	RK V GSG, 2026 ABKB 647
	ABDESSEMED V ECKENSVILLER, 2026 ABKB 651
	JONK V MERCIER, 2026 ABKB 674
	MURRAY V WINDSOR BRUNELLO LTD, 2026 ABCA 275
10.41	**COAST AUTOMOTIVE GROUP INC (RE),** 2026 ABKB 490
10.42	**YEGPRO REALTY LTD V DHILLON,** 2026 ABKB 530
10.49	**CAMBARERI V CAMBARERI,** 2026 ABKB 552
	WANG V SECURITY NATIONAL INSURANCE COMPANY, 2026 ABKB 559
	SANCE CASTRO V LEGAL AID SOCIETY, 2026 ABKB 588
	BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON, 2026 ABKB 610
	KOSTIC V SCOTT VENTURO RUDAKOFF LLP, 2026 ABKB 626
10.50	**SANCE CASTRO V LEGAL AID SOCIETY,** 2026 ABKB 588
10.51	**CAMBARERI V CAMBARERI,** 2026 ABKB 552
10.53	**CAMBARERI V CAMBARERI,** 2026 ABKB 552
11.25	**ST LAWRENCE V ARSENAULT,** 2026 ABKB 669
11.27	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 621
11.28	**MCCORMACK V ALBERTA (ATTORNEY GENERAL),** 2026 ABCA 272
12.36	**DUURSEMA V DUURSEMA,** 2026 ABKB 587
	PIATRASHKA V KAZACHENKO, 2026 ABKB 665
12.41	**CAMBARERI V CAMBARERI,** 2026 ABKB 552
12.71	**COURCHESNE V MAZUR,** 2026 ABCA 276
13.5	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 622
	FARM CREDIT CANADA V WIEBE, 2026 ABCA 235
13.6	**ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (ENERGY REGULATOR),** 2026 ABKB 628
13.7	**OKEKE V COYLE,** 2026 ABKB 475

13.7 (cont)	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 625
	ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (ENERGY REGULATOR), 2026 ABKB 628
	SAKAMOTO V ATTORNEY GENERAL OF CANADA, 2026 ABKB 676
13.18	**WANG V SECURITY NATIONAL INSURANCE COMPANY,** 2026 ABKB 559
	CALGARY (CITY) V ECCO RECYCLING & ENERGY CORPORATION, 2026 ABKB 640
13.32	**MCCORMACK V ALBERTA (ATTORNEY GENERAL),** 2026 ABCA 272
14.5	**FARM CREDIT CANADA V WIEBE,** 2026 ABCA 235
	SHODUNKE V MERCREDI (ESTATE), 2026 ABCA 243
	BOSSE V CARRIGAN, 2026 ABCA 267
	COURCHESNE V MAZUR, 2026 ABCA 276
	UBAH V UBAH, 2026 ABCA 301
	ADVEN INC (RE), 2026 ABCA 310
14.8	**42ND DENTAL INC (AMARA DENTAL) V MOUHAMAD,** 2026 ABCA 266
	STUART FINANCIAL CORPORATION V KIEHLBAUCH, 2026 ABCA 311
14.16	**HAYDEN V ALBERTA (WORKERS' COMPENSATION BOARD),** 2026 ABCA 278
14.27	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 620
14.28	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 620
14.29	**PIIKANI NATION V RAYMOND JAMES LTD,** 2026 ABKB 620
14.37	**NORTHBACK HOLDINGS CORPORATION V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER),** 2026 ABCA 256
	42ND DENTAL INC (AMARA DENTAL) V MOUHAMAD, 2026 ABCA 266
	DIGGS V WEIR, 2026 ABCA 279
	ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (CHIEF ELECTORAL OFFICER), 2026 ABCA 287

14.47	**EARL V PETER,** 2026 ABCA 234
	MCCORMACK V ALBERTA (ATTORNEY GENERAL), 2026 ABCA 272
	GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD, 2026 ABCA 277
14.48	**JAVAID V JAVAID,** 2026 ABCA 240
	FREDERICO V CABRAL, 2026 ABCA 251
	BUSINESS CARE CORP V EDMONTON (CITY), 2026 ABCA 295
14.58	**NORTHBACK HOLDINGS CORPORATION V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER),** 2026 ABCA 256
	ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (CHIEF ELECTORAL OFFICER), 2026 ABCA 287
14.64	**HAYDEN V ALBERTA (WORKERS' COMPENSATION BOARD),** 2026 ABCA 278
14.65	**EARL V PETER,** 2026 ABCA 234
14.67	**LAW SOCIETY OF ALBERTA V BILLINGSLEY,** 2026 ABCA 268
14.88	**FERNANDO V PHILIPS,** 2026 ABCA 238
	HABIB V HABIB, 2026 ABCA 263
	HAYDEN V ALBERTA (WORKERS' COMPENSATION BOARD), 2026 ABCA 278
14.90	**FERNANDO V PHILIPS,** 2026 ABCA 238

GILL V ALBERTA ENVIRONMENTAL APPEALS BOARD, 2026 ABCA 277

(GROSSE JA)

Rules 1.1 (What these Rules Do) and 14.47 (Application to Restore an Appeal)

The Applicants sought to restore an Appeal under Rule 14.47 after it had been struck for failure to file a Factum on time. The Applicants, who were self-represented, attempted to file a Factum before the deadline, but it was rejected for formatting deficiencies.

The Court dismissed the Application.

The Court confirmed the test for restoring an Appeal is whether it is in the interests of justice to restore the Appeal, having regard to factors, including: (a) whether the Appeal had arguable merit; (b) the explanation for the defect or delay that caused the Appeal to be struck; (c) the Applicants' reasonable promptness in curing any defects; (d) the Applicant's intention to proceed with the Appeal; and (e) any prejudice to the Respondent.

The Court found that some of these factors favoured restoration. The Applicants had demonstrated an intention to proceed with the Appeal, provided a reasonable explanation for the missed deadline, and restoration would cause no prejudice to the Respondent.

However, the Appeal lacked arguable merit and, most notably, the Applicants failed to take meaningful steps to correct the defect that led to the Appeal being struck. More than eight months after their Factum was rejected, the Applicants had still not filed a compliant Factum, despite being expressly directed by the Registry to do so.

The Court emphasized that, while there is room for tolerance of honest mistakes and misunderstandings, Rule 1.1(2) confirms that the Rules remain binding on all litigants, including self-represented parties. The Court held that a party seeking to restore a struck Appeal must diligently address the procedural defects that caused the Appeal to be struck. The Applicants' "ambivalent approach to compliance" of the Rules outweighed the factors favouring restoration, and the Court concluded that it was not in the interests of justice to restore the Appeal.

DION V RASHID, 2026 ABKB 492

(APPLICATIONS JUDGE SUMMERS)

Rules 1.2 (Purpose and Intention of These Rules), 4.31 (Application to Deal with Delay) and 4.33 (Dismissal for Long Delay)

The Defendants sought to dismiss five related Actions for long delay pursuant to Rules 4.33 and 4.31. At issue was whether one Defendant's response to an Undertaking and another Defendant's failure to answer Undertakings, despite an Order compelling answers, constituted a significant advance in the Actions.

Applications Judge Summers reviewed the functional approach to Rule 4.33 and confirmed

that whether a step significantly advances an Action depends on its nature, quality, genuineness, and timing. The Court further emphasized that, while responses to Undertakings generally constitute a significant advance since they form part of the discovery process, that determination is context specific and depends on whether the response meaningfully advances the litigation.

Applying those principles, the Court held that the response to one Defendant's Undertaking did not significantly advance the Action. While relevant, the response did not meaningfully assist the parties in resolving the dispute or the Court in adjudicating the issues. Conversely, Applications Judge Summers found that the unanswered Undertakings sought from another Defendant related to the central issue of consent and, if answered, would have constituted a significant advance.

The Court held that a Defendant could not rely on Rule 4.33 where that Defendant failed to comply with a Court Order compelling production of Undertakings that would have significantly advanced the Action. Applications Judge Summers concluded that the Order compelling answers to the Undertakings, together with the Defendant's continued non-compliance, prevented dismissal for long delay under Rule 4.33.

With respect to Rule 4.31, the Court held that the Defendants could not establish significant prejudice. Applications Judge Summers noted that the Defendants previously maintained that the outstanding Undertakings addressed a central issue in the litigation that required resolution before other procedural steps could be taken. Further, the Court noted that no evidence of prejudice was adduced in support of the Application.

In the result, the Court dismissed the Applications under Rules 4.31 and 4.33. The parties were directed to speak to costs in morning chambers, if required.

PRA GROUP CANADA INC V WYLIE, 2026 ABKB 512

(APPLICATIONS JUDGE WANKE)

Rule 1.2 (Purpose and Intention of These Rules), 1.4 (Procedural Orders) and 9.15 (Setting aside, Varying and Discharging Judgments and Orders)

This decision arose from a Desk Application for an Order to extend the time for filing and serving a Statement of Claim, as well as an Order for substitutional service. The Applicant sought to file a Statement of Claim in respect of a modest debt claim. However, the Court focused primarily on whether the matter should be transferred to the Court of Justice, which was raised by the Court on its own initiative.

Applications Judge Wanke noted that Rule 1.4 empowers the Court to make any Order necessary to further the purpose and intention of the foundational rules set out in Rule 1.2. Given the broad language of Rule 1.4, the Court determined that no common law, statutory, or constitutional barriers limited that interpretation. In assessing whether the matter should proceed in the Court of Justice, Applications Judge Wanke found the Claim to be clearly within the subject matter and financial limit of the Court of Justice and considered whether transferring the matter would further the purpose of the Rules.

Applications Judge Wanke concluded that a transfer to the Court of Justice would be more

proportionate, fair, and cost-effective than proceeding in the Court of King's Bench, largely because of the matter's relative simplicity. The Court acknowledged that the more extensive discovery processes available in the Court of King's Bench would likely provide little benefit in the circumstances. By contrast, the Court of Justice's mediation and payment hearing processes were well suited to the dispute, particularly given its nature as a debt claim. The Court also noted that the filing fees and costs consequences available in the Court of Justice would be more proportionate than those available in the Court of King's Bench. Applications Judge Wanke further observed that the modest claim had already made inefficient use of judicial resources through a deficient Desk Application, weighing in favour of transfer.

The Court directed the Action be transferred to the Court of Justice. However, Applications Judge Wanke stayed the transfer for 30 days to allow the Applicant to apply to set aside or vary the decision pursuant to Rule 9.15, if he chose to do so. The Court determined that the Application for substitutional service was unsatisfactory and dismissed the Application. However, given the low threshold for granting an extension of time for service, Applications Judge Wanke extended the time for service of the Statement of Claim by three months, during which time the Applicant would have the opportunity to bring another substitutional service Application, but directed that service should be dealt with at the Court of Justice.

TERRIGNO V ROCKY VIEW COUNTY, 2026 ABKB 553

(MALIK J)

Rule 1.2 (Purpose and Intention of These Rules)

The Applicant filed an Application which was scheduled for a hearing that ultimately proved unnecessary because the parties resolved the issue. A consent Order was granted by the Court. Justice Malik suggested that each party be responsible for its own costs. The Respondent agreed, but the Applicant maintained his claim for costs.

The Applicant sought costs on the basis that the Respondent's conduct allegedly forced him to commence the Application and incur unnecessary expenses. The Respondent argued that an award of costs was unreasonable because the dispute could have been resolved informally without the Application, it responded promptly to the Applicant's inquiries, and the Applicant's continued pursuit of costs was unreasonable.

The Court declined to award costs, finding that the dispute could have been resolved informally, the Respondent acted promptly, and the Applicant suffered no prejudice. Justice Malik opined that awarding costs would be inconsistent with the foundational objectives of Rule 1.2, mainly proportionality, cost-effectiveness, and the efficient resolution of disputes. The matter was resolved by consent with minimal Court involvement whereas an award of costs would discourage settlement and incentivize unnecessary litigation over costs alone.

ROBINSON V MARWOOD, 2026 ABKB 558

(EAMON J)

Rules 1.2 (Purpose and Intention of These Rules), 3.2 (How to Start an Action) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

The Appellant appealed an Arbitration Award and attempted to advance additional questions of law beyond those permitted by a prior Court Order. The issue was whether the Appellant could expand the scope of the Appeal despite directions that only two specific grounds could proceed. The Court considered the requirements for commencing an Appeal by Originating Application and the circumstances in which a Procedural Order may be varied.

Justice Eamon noted that the earlier Order had struck several grounds of appeal, required the filing of an Amended Originating Application, and expressly prohibited the addition of new grounds. Despite that direction, the Appellant's written brief advanced several new alleged errors of law. The Appellant argued that the surviving grounds were broad enough to encompass those additional arguments.

The Court rejected that position. Justice Eamon held that the prior Order limited the Appeal to the two specific grounds that survived the Strike Application. Rule 3.2 required the Appellant to clearly state the basis of the Appeal, and that requirement promoted the foundational objectives in Rule 1.2, including identifying the real issues, facilitating efficient resolution, and ensuring timely and open communication. While Rule 9.15(4)(c) permitted the Court to vary a interlocutory Procedural Order, the Appellant had not applied to vary the earlier Order and provided no basis to depart from it.

Eamon J. held that the additional grounds were not properly before it and confined the Appeal to the grounds expressly set out in the Amended Originating Application. The Court emphasized the importance of certainty, finality, and procedural fairness in Arbitration Appeals, particularly where a prior gatekeeping Order had limited the issues. The Appeal was dismissed.

WANG V SECURITY NATIONAL INSURANCE COMPANY, 2026 ABKB 559

(SIDNELL J)

Rules 1.2 (Purpose and Intention of these Rules), 1.5 (Rule Contravention, Non-Compliance and Irregularities), 5.17 (People who may be Questioned), 5.18 (Persons Providing Services to Corporation or Partnership), 5.28 (Written Questions), 5.31 (Use of Transcript and Answers to Written Questions), 5.36 (Objection to Expert's Report), 6.11 (Evidence at Application Hearings), 6.37 (Notice to Admit), 8.8 (Notice to Attend as Witness at Trial), 9.2 (Preparation of Judgments and Orders), 10.33 (Court Considerations in Making Costs Award), 10.49 (Penalty for Contravening Rules) and 13.18 (Types of Affidavit)

The Plaintiffs brought an Action against their home insurer and a roofing contractor arising from an alleged defective roof replacement and subsequent insurance claims. At Trial, several procedural and evidentiary issues arose concerning Notices to Admit Facts and expert evidence.

Justice Sidnell considered the Plaintiffs' reliance on admissions and responses obtained through Notices to Admit Facts pursuant to Rule 6.37. The Court noted that Rule 5.31 permitted evidence to be read in from transcripts of Questioning obtained under Rules 5.17 and 5.18 and answers to written questions under Rule 5.28. However, Sidnell J. confirmed that Rule 5.31 did not permit admissions obtained under Rule 6.37 to be read in as evidence.

The Court further confirmed that explanations provided in response to a Notice to Admit Facts were ordinarily not evidence. Treating them as such would be contrary to the requirements for Affidavit evidence pursuant to Rules 6.11 and 13.18. However, the parties agreed that the Plaintiffs could rely on select admissions and responses, including the explanations provided by the Defendants. The Court permitted this modification to the usual application of the Rules, finding that it furthered the objectives of Rule 1.2.

Sidnell J. considered several issues regarding the admissibility of expert evidence. Security National Insurance Company ("Security National") objected to one of the Plaintiffs' expert reports one day before Trial. Justice Sidnell confirmed that Rule 5.36 required reasonable notice of an objection and was intended to ensure timely objections, avoid Trial by ambush and unnecessary adjournments, and maintain procedural fairness. The Court found that Security National's objection was extremely late and untimely.

The Plaintiffs also sought to rely on a supplemental expert report prepared in response to a late report served by Security National. Although a Procedural Order established deadlines for expert reports, Security National incorrectly asserted that no such deadlines existed. The Court noted that Security National originally drafted and consented to the Procedural Order and relied on Rule 9.2(4)(c) in having the Procedural Order signed without the other parties acknowledging its form and content. This allowed Security National to confirm that the Order reflected what was granted.

Justice Sidnell noted that Rule 1.5 governed Applications to cure non-compliance or irregularities, which must be brought within a reasonable time. The relevant considerations for extending a filing deadline included the length of the delay, the explanation for the delay, and relative prejudice. The Court further

noted that Rule 1.5(6) permits a penalty under Rule 10.49 where relief from non-compliance was granted. Justice Sidnell excluded the Plaintiffs' supplemental expert report because its late admission would undermine Trial fairness.

When Security National sought to rely on its own supplemental expert report, it again maintained that the Procedural Order contained no deadlines for expert reports. Sidnell J. ultimately excluded the supplemental report because its admission would cause serious Trial unfairness and irrevocable prejudice to the Plaintiffs.

The Plaintiffs had also issued subpoenas for two witnesses for the first day of Trial but failed to pay the required witness fees pursuant to Rule 8.8(5). As the Plaintiffs failed to pay the required fees, Justice Sidnell found that the subpoenas were invalid and released the witnesses.

In the result, Sidnell J. found that the Plaintiffs failed to establish liability against either Defendant and dismissed the Action in its entirety. The parties were directed to attempt to resolve costs and, if unable to do so, provide costs submissions addressing the factors under Rule 10.33.

RK V GSG, 2026 ABKB 594

(MAH J)

Rules 1.2 (Purpose and Intention of These Rules), 1.4 (Procedural Orders), 4.14 (Authority of Case Management Judge), 8.20 (Application for Dismissal at Close of Plaintiff's Case) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

The Plaintiff applied to prohibit two Defendants' Summary Dismissal Applications after they failed, for a second time, to comply with deadlines in a Case Management Order. The Defendants cross-applied to vary the Order.

Rules 1.2 and 1.4 required timely, cost-effective litigation and a proportionate remedy. Pursuant to Rule 4.14, the Court could make procedural Orders necessary for the fair and efficient resolution of the Action. Rule 9.15(4) also permitted variation of the interlocutory Order on grounds the Court considered just.

The Court found that the deadline was unambiguous, the Defendants had taken no steps toward compliance, and their conduct reflected deliberate avoidance rather than inattention. Their explanations did not justify the delay or their failure to seek a variance before the deadline.

Justice Mah held that further delay would prejudice the parties, a young non-party witness, and the administration of justice. The Court commented that "it is important to dispel the idea that Court-imposed deadlines are optional". Prohibiting the Applications remained proportionate because the Defendants could advance their defences at Trial and seek a non-suit pursuant to Rule 8.20.

The Court prohibited the Summary Dismissal Applications, denied the cross-Applications to vary the Case Management Order, and awarded the Plaintiff costs in the cause, to be determined after Trial.

BIG COUNTRY OUTDOOR SUPERSTORE INC V ROBERTSON, 2026 ABKB 610

(KISS J)

Rules 1.2 (Purpose and Intention of these Rules), 1.5 (Rule Contravention, Non-Compliance and Irregularities), 4.10 (Assistance by the Court), 4.31 (Application to Deal with Delay), 4.33 (Dismissal for Long Delay), 6.14 (Appeal from Applications Judge's Judgment or Order), 6.15 (Appointment for Questioning Under this Part) and 10.49 (Penalty for Contravening Rules)

The Plaintiffs appealed an Applications Judge's decision granting Summary Dismissal of the Action. The Defendants applied to set aside the Plaintiffs' Notice of Appeal for failure to comply with the procedural requirements in Rule 6.14 and 6.15.

Justice Kiss confirmed that an Application to set aside a Notice of Appeal for procedural non-compliance is governed by Rule 1.5. The Defendants had to establish procedural non-compliance and resulting prejudice, apply within a reasonable time, and take no further steps in the Action after learning of the prejudice. Any remedy or sanction was required to be proportionate pursuant to Rule 1.2(4).

The Court found that the Plaintiffs had failed to comply with Rules 6.14(2) and 6.14(5). Although the Plaintiffs filed and served the Notice of Appeal on time, they failed to reschedule the Appeal after it was adjourned *sine die*. The Plaintiffs also failed to file additional evidence within the prescribed deadline and waited more than a year to apply for an extension.

Justice Kiss rejected the Plaintiffs' characterization of the breaches as mere technicalities, finding that the delay caused the Defendants both litigation and non-litigation prejudice. Kiss J. explained that Rule 1.5 requires prejudice rather than the "significant prejudice" required for dismissal for delay pursuant to Rule 4.31. The Court considered the age of the underlying events, the effect of further delay on witnesses, and the continued payment of substantial sale proceeds into Court.

Kiss J. found that the Defendants brought their Application within a reasonable time. Further, Justice Kiss determined that cross-examinations on Affidavits filed in support of a separate Application did not constitute a further step in the Action pursuant to Rule 1.5(3).

Given the Plaintiffs' continuing non-compliance and delay in advancing the Appeal, the Court found that setting aside the Notice of Appeal was the only appropriate remedy. The Defendants' Application was granted, and the Court did not consider the Plaintiffs' Application to admit late evidence.

PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 622

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 3.43 (How to Make Claim Against Co-Defendant), 3.57 (Contents of Counterclaim), 3.59 (Claiming Set-Off), 3.63 (Identifying Amendments to Pleadings), 3.68 (Court Options to Deal with Significant Deficiencies), 4.14 (Authority of Case Management Judge) and 13.5 (Variation of Time Periods)

This Action formed part of a broader group of Actions (the "Case Managed Actions"), over which Justice Marion presided as the Case Management Justice ("CMJ"). Parties seeking to file Applications in the Case Managed Actions were required to obtain the CMJ's permission through the ordered "Fiat Process". This decision addressed several fiat requests (the "November 2025 Fiat Requests"), as well as an Application by one of the Defendants, Liliana Kostic, concerning one of the Case Managed Actions.

In the Application, Ms. Kostic sought leave to file a late Notice to Co-Defendant against Raymond James ("RJL"). Justice Marion had previously granted permission to Ms. Kostic to bring this Application. In considering the Application, Marion J. reviewed the legal framework governing late Notices to Co-Defendants, including the requirement for extending a deadline pursuant to Rule 13.5 and the factors for considering extensions to permit late-filed Third Party Claims.

The Court denied Ms. Kostic leave to file the late Notice to Co-Defendant against RJL. Justice Marion concluded that Ms. Kostic had not provided a reasonable excuse for the delay and that permitting the late filing would likely prejudice RJL. However, Marion J. clarified that the proposed late Notice to Co-Defendant was not barred by the *Limitations Act*, RSA 2000, c L-12, because it fell within Section 6(2), which addresses situations where there is no change of a party in an Action.

Ms. Kostic also sought permission to pursue various forms of relief through the November 2025 Fiat Requests, while requesting that their determination be deferred. The Court declined the requested deferral, finding that it would be inefficient and waste judicial and party resources. Justice Marion ultimately denied the November 2025 Fiat Requests because they materially failed to comply with the Fiat Process and the Court's prior directions. Marion J. further concluded that, even if the November 2025 Fiat Requests had been procedurally compliant, none of Ms. Kostic's proposed Applications would have succeeded on their merits.

Accordingly, the Court dismissed the Application and denied the November 2025 Fiat Requests.

KOSTIC V SCOTT VENTURO RUDAKOFF LLP, 2026 ABKB 626

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 3.68 (Court Options to Deal with Significant Deficiencies), 3.72 (Consolidation or Separation of Claims and Actions), 4.22 (Considerations for Security for Costs Order), 4.23 (Contents of Security for Costs Order), 5.13 (Obtaining Records from Others), 6.11 (Evidence at Application Hearings) and 10.49 (Penalty for Contravening Rules)

The Court considered several related Applications in an Action brought by self-represented plaintiff Liliana Kostic ("Kostic") against Scott Venturo Rudakoff LLP ("SVR") and various lawyers that worked or previously worked at SVR. The Action arose from SVR's involvement in Kostic's defence under a prior Action.

The Applications before the Court included the Defendants' Security for Costs Application, two Applications filed by Kostic on September 14, 2021 (the "Cross-Application") and January 31, 2025 (the "2025 PICA Application") seeking, among other things, an interim or advanced Costs Award, and a Fiat request to file an Application to compel production of third-party records from AIG Insurance Company of Canada ("AIG") (the "Production Application").

Justice Marion first applied Rule 6.11 and rejected Kostic's argument that SVR could not rely on an Affidavit filed by a previous employee of SVR on behalf of all of the Defendants. The Court held that the evidence was properly before the Court for the purpose of the Application.

With respect to Security for Costs, the Court applied the two-step analysis under Rule 4.22, first considering the enumerated factors and then determining whether an Order would be just and reasonable. The Court found it unlikely that SVR would be able to enforce a future Costs Award against Kostic. In reaching that conclusion, the Court relied on Kostic's history of unpaid Costs, her failure to provide meaningful evidence of assets in Alberta, her admitted impecuniosity, and evidence that she lacked the present ability to satisfy a significant Costs Award.

Justice Marion further concluded that Kostic's claim against SVR appeared relatively weak. The Court noted that Kostic had provided very little evidence concerning her assets, finances, or ability to continue the Action in the face of a Security for Costs Award, beyond generalized statements regarding her income and debts. The Court found that, absent security, Kostic effectively had "no skin in the game," as a self-represented litigant.

Justice Marion rejected Kostic's various arguments against the Security for Costs Application, including her assertions that the Application was brought too late, that the Defendants had failed to produce records, that the matter raised issues of public importance, that insurance coverage eliminated any prejudice to the Defendants, and that alleged misconduct by the Defendants justified refusing relief.

Although SVR sought security in the range of approximately $150,000 to $245,000 based on Column 4 of Schedule C and a multiplier reflecting the complexity of the litigation, the Court declined to award the full amount requested or to include past costs. Instead, the Court imposed a staged security amount designed to balance the Defendants' interests against the risk of terminating the Action. Kostic was ordered to post $20,000 into Court within two months. If her Summary Judgment Application was struck or dismissed, she would be required

to post an additional $30,000 within two months. The Court also granted leave for either party to return following discoveries to address whether further security should be required for expert evidence, Trial preparation, and Trial.

Both Kostic's Cross-Application and 2025 PICA Application sought advanced Costs. The Court held that Kostic failed to satisfy the test from *British Columbia (Minister of Forests) v Okanagan Indian Band,* 2003 SCC 71 for such extraordinary relief.

The Cross-Application was struck in its entirely. The Court further dismissed Kostic's Fiat request relating to her proposed 2025 PICA Application. The Court observed that aspects of the proposed relief had already been struck in earlier decisions and that Kostic had failed to revise the Application accordingly. The Court indicated that it was considering a penalty under Rule 10.49 in relation to the 2025 PICA Application.

Lastly the Court did not approve the filing of Kostic's SVR Records Application. The Court held that Kostic's proposed Affidavit failed to provide sufficient evidence of identified or identifiable records that likely exist, that are relevant and material, and that have not been disclosed or produced. She had not yet conducted a Questioning on the Affidavit of Records of SVR. The Court also noted that, as far as her Application related to seeking records from AIG, it was essentially a request for records from a non-party and Rule 5.13 was not to be used as a "fishing expedition".

MCGRATH V MCGRATH, 2026 ABKB 684

(SILVER J)

Rules 1.2 (Purpose and Intention of These Rules), 5.2 (When Something is Relevant and Material) and 5.13 (Obtaining Records From Others)

Ms. Petrovic and Mr. McGrath divorced in 2017. Ms. Petrovic applied for retroactive child support and provided financial disclosure in support of her Application.

During the marriage and until July 3, 2024, Ms. Petrovic was a discretionary beneficiary of a family trust (the "Trust"). The Trust was the sole or majority shareholder of six closely related family-held corporations.

Ms. Petrovic was not a shareholder, director, or officer of any of the six corporations and held no decision-making authority within them. Ms. Petrovic was employed by one of the trust-held corporations, from which she received a salary and access to a company credit card. She also disclosed monetary gifts from her father, including mortgage payments. Mr. McGrath claimed that the source of these gifts was from the closely held family companies held by the Trust.

Mr. McGrath opposed the retroactive child support Application and argued that Ms. Petrovic enjoyed benefits and financial support from sources that substantially enhanced her lifestyle. Pursuant to Rule 5.13, he sought production of the financial statements of all six trust-held corporations for the years 2019 through 2024. Mr. McGrath argued that the disclosure already provided by the Trust was incomplete and disorganized.

Justice Silver first considered the scope of the records sought. The Court emphasized that third-party production applications require careful scrutiny because non-parties are not

subject to the same disclosure obligations as litigants. Any Production Order must be proportionate, minimally intrusive, and tailored to produce meaningful and relevant information. Justice Silver found that portions of the request were overly broad. For example, Mr. McGrath sought information related to credit cards "attributable" to Ms. Petrovic despite an absence of evidence that she had access to any credit cards other than the company card already disclosed. The evidence also quantified the personal expenses paid through that card.

The Court then considered whether to exercise its discretion pursuant to Rule 5.13. Justice Silver noted that the Rule permits production from a non-party where the records are under that party's control, there is reason to believe they are relevant and material, and the third party might be required to produce them at trial.

Although the Trust and corporations were controlled by Ms. Petrovic's family, the Court held that the privacy interests of the Trust and the six corporations had to be balanced against Mr. McGrath's interest in obtaining further disclosure. In assessing relevance and materiality, Justice Silver considered whether the requested records could reasonably be expected to significantly assist in determining Ms. Petrovic's financial means for the purposes of the retroactive child support Application.

The Court concluded that Mr. McGrath had not established a sufficient evidentiary basis for production. While the financial disclosure produced by the Trust reflected only the Trust's income and liabilities and did not include the underlying corporate financial statements, Justice Silver rejected the submission that disclosure was warranted simply to determine the "full extent" of the benefits available to Ms. Petrovic. The Court found no evidence supporting an argument under Section 19(1)(d) of the *Federal Child Support Guidelines* that Ms. Petrovic was diverting income or using the corporate structure to shield or minimize income. The fact that she received certain benefits from some of the corporations did not justify production of the financial statements of all six entities. Similarly, evidence that Ms. Petrovic's father had provided significant gifts did not entitle Mr. McGrath to access his personal financial information or the financial information of corporations from which he derived wealth.

Justice Silver ultimately dismissed the Application for third-party disclosure.

PATEL V PARIKH, 2026 ABCA 299

(FEEHAN, KIRKEN AND GROSS JJA)

Rule 1.2 (Purpose and Intention of These Rules)

The Appellant appealed a Chambers Order striking her family law Arbitration Appeal after she failed to comply with a peremptory filing deadline. Although her Appeal materials were served on the Respondent on the deadline date, they were not successfully filed due to a procedural irregularity. The Chambers Judge struck the Appeal pursuant to a prior Order that expressly provided the Appeal would be struck if the materials were not filed by the specified deadline.

In upholding the decision, the Court rejected the Appellant's reliance on Rule 1.2, which emphasizes resolving claims fairly and justly and imposing remedies and sanctions pro-

portionate to the circumstances. The Court acknowledged the importance of those principles but held that Rule 1.2 did not fetter the Chambers Judge's discretion or prevent the Appeal from being struck. The Chambers Judge had considered the surrounding circumstances, including the lack of prejudice to the Respondent, the nature of the non-compliance, and the importance of the underlying family law issues. Ultimately, the Chambers Judge concluded that enforcement of the clear and peremptory Order was warranted.

STURGEON LAKE CREE NATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS), 2026 ABKB 569

(JOHAL J)

Rules 2.10 (Intervenor Status), 3.15 (Originating Application for Judicial Review), 3.68 (Court Options to Deal with Significant Deficiencies) and 3.75 (Adding, Removing, or Substituting Parties to an Originating Application)

O'Leary Digital Limited ("ODL") applied to strike a Judicial Review Application brought by the Sturgeon Lake Cree Nation (the "Nation"). It argued that ODL was "directly affected" by the Application and therefore was required to be served, but was not, within the mandatory six-month period prescribed by Rule 3.15. Alternatively, ODL sought intervenor status under Rule 2.10 or to be added as a Respondent pursuant to Rule 3.75.

The Judicial Review challenged the issuance of a licence under the Water Act, RSA 2000, c W-3 (the "Water Licence") to the Municipal District of Greenview (the "Municipality"). ODL asserted an interest in the Judicial Review based on an agreement with the Municipality purporting to transfer the Water Licence to ODL (the "Agreement"). The Nation served the Municipality and Alberta, but not ODL.

The Court dismissed ODL's Application in its entirety.

As a preliminary matter, Justice Johal found that ODL had improperly redacted the Agreement, which it intended to rely on. ODL argued that it only redacted irrelevant portions of the Agreement. However, in light of the modern approach to contract interpretation, requiring contracts to be interpreted as a whole, the Court found the entire Agreement to be relevant. The Court acknowledged its authority to strike part of an Affidavit containing improper information pursuant to Rule 3.68(4)(a). However, Justice Johal declined to do so, recognizing that ODL insisted on the redactions to its own peril.

Johal J. concluded that the Nation was not required to serve ODL. While Rule 3.15 prescribes a strict 6-month deadline to give notice to persons "directly affected" by a Judicial Review Application, the Court found that ODL was not directly affected. ODL was neither the licence holder nor the licence applicant. None of the recognized "directly affected" categories applied.

The Court further found that ODL had not established a trust or commercial interest in the Water Licence. The trust argument failed because the test for a trust was not met, and any commercial interest was merely an indirect and speculative economic interest arising from ODL's contractual relationship with the Municipality.

The Court also found that ODL had failed to prove a contractual interest in the Water Licence. ODL's alleged contractual entitlement depended on a series of future contingencies. ODL's own redactions to the Agreement prevented the Court from determining whether ODL's contractual rights had vested or when any entitlement to the licence would crystallize.

Although unnecessary to the result, the Court observed that the Nation had taken reasonable steps to identify and serve all directly affected parties. ODL's representatives communicated with the Nation under different corporate identities, declined to provide requested information about the Agreement, and repeatedly denied having an interest in the Water Licence. The Nation did not know ODL existed and, given the representatives' conduct, could not reasonably have been expected to identify and serve ODL.

The Court also refused to grant ODL intervenor status under Rule 2.10. Justice Johal found that ODL lacked a sufficient interest in the subject matter of the Judicial Review because it would not be directly and significantly affected by the outcome. Moreover, ODL's participation was unnecessary, would not provide a useful perspective unavailable from existing parties, and risked complicating and delaying the proceeding.

For the same reasons, the Court declined to add ODL as a Respondent under Rule 3.75.

ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (CHIEF ELECTORAL OFFICER), 2026 ABCA 287

(FEEHAN JA)

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

The proposed intervenor, the Development Foundation of Treaty Six Confederacy ("Treaty Six Confederacy"), applied for leave to intervene in several related Appeals concerning Judicial Review proceedings quashing approval of a citizen-initiated petition for a referendum proposal on Alberta separation.

The Treaty Six Confederacy, comprised of sixteen Treaty No 6. First Nations, sought to make submissions regarding the duty to consult and the potential impact of the Appeals on Treaty and Aboriginal rights protected by Section 35 of the *Constitution Act*, 1982, while taking no position on the outcome of the Appeals. It argued that no existing party represented the distinct interests of Treaty No. 6 signatories and that it could offer a perspective different from the Treaty No. 7 and Treaty No. 8 First Nations already participating in the Appeals.

Feehan J.A. recognized that intervention is discretionarily permitted pursuant to Rules 2.10, 14.37(2) and 14.58(1) and emphasized that an intervener must provide useful and distinct submissions arising from a special interest or expertise. The Court applied the two-step intervention analysis, considering both the nature of the proceedings and the proposed intervenor's interest in the outcome. Given the constitutional and appellate context, the Court applied a more relaxed standard. Feehan J.A. found that Treaty Six Confederacy would be directly affected by the Court's decision, offered a unique Treaty No. 6 perspective, and would assist the Court without causing delay, prejudice, or expansion of the issues in dispute.

Further, Treaty Six Confederacy's perspective was useful and distinct due to its special interest and expertise in Section 35 of the *Constitution Act*, 1982, Treaty No. 6, and the duty to consult context.

The Court granted Treaty Six Confederacy intervenor status. Feehan J.A. held that the proposed intervention was fair, reasonable, and just, and directed that procedural matters, including factum length, filing deadlines, and oral argument time, be addressed through case management. The Court made no Costs Award.

BUSINESS CARE CORP V EDMONTON (CITY), 2026 ABCA 295

(FETH JA)

Rules 2.23 (Assistance Before the Court) and 14.48 (Stay Pending Appeal)

The underlying Action arose out of the City of Edmonton's 2013 expropriation of lands comprising the former City Centre Airport. Business Care Corp. ("BCC") leased and occupied a building on the expropriated lands and commenced proceedings before the Land and Property Rights Tribunal ("LPRT") for compensation. BCC applied for interim costs, which the LPRT dismissed (the "Costs Decision"). BCC appealed the Costs Decision. While the Appeal was pending, BCC applied for a stay to prevent the LPRT from proceeding with steps and deadlines contemplated by a litigation plan (the "Stay Application").

BCC first sought permission for Matthew Lawrence, the son of the corporation's sole shareholder and director, who was not a lawyer, to represent it in the Stay Application. The Court reviewed the general rule that corporations must be represented by lawyers and that non-lawyer representation is prohibited absent Court authorization. However, Rule 2.23(4) affords a Judge discretion to allow a non-lawyer agent to appear in appropriate circumstances.

The Court considered factors such as the relationship between the representative and the corporation, whether the representative is being paid, the corporation's financial circumstances, the complexity, and whether denying representation would effectively leave the corporation without any representation. The Court determined that BCC had provided sufficient evidence that it lacked the resources to retain legal counsel. Given his familial relationship to the corporation's principal, the modest nature of the Stay Application, and the absence of public-interest concerns, the Court granted Mr. Lawrence a limited right to appear at the Stay Application.

The Court then addressed the Stay Application itself. The Stay BCC sought was to prevent the LPRT from proceeding with steps and deadlines contemplated by a litigation plan, and the enforcement of any penalties resulting from non-compliance.

The Court held that BCC's Application in this regard was flawed. A stay pending appeal can only affect the Order that is actually under appeal and the consequences flowing directly from that Order. BCC appealed only the Costs Decision. The procedural directions BCC wished to suspend did not relate to the Costs Decision and fell outside the scope of Rule 14.48. The Application was therefore dismissed.

PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 625

(MARION J)

Rules 3.61 (Request for Particulars), 5.1 (Purpose of Disclosure of Information), 5.13 (Obtaining Records from Others), 5.25 (Appropriate Questions and Objections), 5.28 (Written Questions), 5.30 (Duty to Inform Oneself) and 13.7 (Pleadings: Other Requirements)

In long-standing case-managed litigation involving Piikani, the Court addressed four interlocutory Applications relating to pre-trial discovery, records production, and requests for particulars in two related Actions (the "0601 Action" and the "0801 Action"). The Plaintiff, Piikani Nation, and Third Parties, CIBC Trust Corporation and CIBC World Markets Inc. (the "CIBC Parties"), applied in the 0601 Action to compel the Defendant, Liliana Kostic ("Kostic"), to respond to Undertakings and attend further Questioning. Kostic applied for extensive additional disclosure in both Actions, as well as further particulars and responses to written questions in the 0601 Action.

Piikani Nation's Application, and Kostic's Applications, were each granted in part with specific directions for discovery completion. The Application by the CIBC Parties was also granted.

Justice Marion emphasized the distinction between particulars pursuant to Rule 3.61 and pre-trial discovery. The Court held that particulars are a matter of pleadings, rather than discovery or evidence, and serve to inform parties of the case to meet and narrow issues, whereas discovery functions to obtain evidence. Pursuant to Rule 13.7, particulars of misrepresentation must be pleaded.

Marion J. held that the particulars of Piikani Nation's misrepresentation claim provided sufficient material facts and confirmed that the claim was for negligent misrepresentation or misrepresentation by silence. However, the Court relied on Rule 3.61 and directed Piikani Nation to file misrepresentation particulars setting out pleaded facts rather than incorporating discovery evidence. The Court dismissed Kostic's demands for further particulars for damages, negligence, and realized gains, holding that particulars were not meant to obtain or recite evidence and that relevant factual inquiries and expert opinions were properly addressed through discovery, the expert process, or trial.

The Court reaffirmed that Part 5 of the Rules establishes a self-discovery system imposing positive and ongoing obligations on the parties to disclose relevant and material records, subject to relevance, materiality, and proportionality. Addressing Kostic's Application for additional disclosure, the Court dismissed the request, holding that a party takes an adversary's production as complete unless it establishes otherwise or that further disclosure cannot be compelled.

On the non-party CIBC Trust in the 0801 Action, Justice Marion applied Rule 5.13. The Court found that records pertaining to CIBC Trust's involvement in the SWIFT Scheme allegations were relevant and material to issues raised in that Action. Because those records could not be obtained from Piikani Nation, the Court ordered non-party production, subject to privilege or other valid objections, and payment of CIBC Trust's incremental out-of-pocket production costs by Kostic.

Regarding Questioning and Undertakings, Marion J. granted the CIBC Parties' Application to question Kostic for an extra day. The Court found that this was a reasonable and

proportionate particularly as Kostic acted unreasonably by refusing to complete her previously scheduled Questioning.

In evaluating Piikani Nation's Application, the Court directed Kostic to provide proper answers to several outstanding Undertakings pursuant to Rule 5.30. Regarding Kostic's written questions pursuant to Rule 5.28, the Court noted that written questions must be succinct, as per Rule 5.28(1), and remain subject to requirements governing proper Questioning, pursuant to Rule 5.25. While rejecting most of Kostic's questions as improper, non-succinct or overly broad, the Court applied Rule 1.2 to give effect to factual inquiries for relevant and material information.

Lastly, Marion J. held that Piikani Nation's representative had a duty to make inquiries of CIBC Trust regarding matters over which Piikani Nation, as beneficiary of the Trust, had the right to request and compel information. The Court rejected Piikani Nation's position that those inquiries should simply be directed to the trustee.

GOVERNORS OF THE UNIVERSITY OF ALBERTA V ALBERTA (MINISTER OF JUSTICE), 2026 ABKB 562

(YUNGWIRTH J)

Rules 3.8 (Originating Application), 3.14 (Originating Application Evidence Other Than Judicial Review) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Governors of the University of Alberta, as sole trustee of a charitable endowment, applied for permission to terminate the trust and return the trust property to the settlor. Before deciding the Application pursuant to the *Trustee Act*, SA 2022, c T-8 (the "*Trustee Act*"), the Court addressed objections to Affidavit and expert evidence filed by both sides.

Pursuant to Rule 3.8(2) an affidavit filed in support of an originating application must contain only facts within the deponent's personal knowledge or evidence that the deponent could give at trial. The University attached more than 75 public statements, media articles and social media posts to an Affidavit to show the context that informed its termination decision. Yungwirth J. held that the exhibits were not hearsay because the University did not rely on them for the truth of their contents. They were admissible to establish narrative and context, and their probative value outweighed any prejudicial effect.

Pursuant to Rule 3.14(1)(a), the Court may consider expert evidence by affidavit on an originating application if the evidence was otherwise admissible. Applying the threshold requirements of relevance, necessity, the absence of an exclusionary rule, and special expertise, together with the Court's gatekeeping role, Justice Yungwirth excluded a proposed historical expert report. The report did not assist with the issues on the Application and the proposed expert was not qualified to opine on the subjective beliefs or conduct of a particular individual.

Rule 3.68(4)(a) permitted the Court to strike all or part of an affidavit containing frivolous, irrelevant or improper information. The Court confirmed that affidavit evidence must be necessary, reliable, relevant and material, and that its probative value must outweigh its prejudicial effect. Affidavits must contain facts rather than legal argument or unsupported conclusions. Lay opinion is admissible only

where it communicates relevant observations and the witness has the experiential capacity to draw the conclusion.

Applying Rule 3.68(4)(a), the Court admitted evidence about the creation and objectives of the trust. It excluded evidence about the University's treatment of other endowments as irrelevant, as well as other speculative and unsupported statements. The Court similarly excluded portions of the other Affidavits that contained hearsay, irrelevant historical material, opinion or legal argument.

The Court rejected the submission that the University's failure to cross-examine certain witnesses prevented it from challenging admissibility. The rule in *Browne v Dunn* (1893), 6 R. 67 (H.L.) applies where a party seeks to impeach or contradict a witness on credibility. It does not prevent a party from challenging evidence that is inadmissible on its face. Nor does a failure to cross-examine require the Court to accept the evidence.

The Court emphasized that it must perform an active gatekeeping function. It is improper to admit inadmissible evidence merely for expediency and then address its deficiencies by assigning it less weight. After resolving the evidentiary objections, Yungwirth J. held that the *Trustee Act* permitted the termination of charitable trusts, approved the termination and the return of the trust property, and found that the University's premature return of the property was a *de minimis* breach of trust without a remedy.

ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA, 2026 ABKB 460

(DAVIS J)

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

The Athabasca Chipewyan First Nation ("ACFN") brought an Originating Application for Judicial Review challenging the Director of Environment and Protected Areas' decision to issue a revised Mine Financial Security Program Standard (the "Standard"). The Standard established the financial security requirements for Alberta oil sands mine operators. Alberta subsequently applied pursuant to Rules 3.15 and 3.68 to strike the Application on the basis that ACFN had served only Alberta and had failed to serve the oil sands operators identified in the Standard. The principal issue was whether those operators were "persons or bodies directly affected" within the meaning of Rule 3.15(3)(c), such that they were required to be served, and whether the failure to do so required the Application to be struck.

Justice Davis held that Rule 3.15 applied to all originating applications for judicial review and drew no distinction between legislative and administrative decisions. Whether a party was "directly affected" depended on the pleadings, the relief sought, and the legal or economic consequences of the application. Davis j. further confirmed that Rule 3.15 should not be interpreted restrictively and that parties whose legal or financial interests would be directly affected by the outcome of the judicial review were required to be served.

Applying these principles, the Court concluded that the oil sands operators were directly affected. The Standard specifically identified the operators, established their financial security obligations, and the relief sought would directly affect those obligations. Justice Davis

held that the operators' interests were immediate and individualized, rather than indirect or merely precedential, and distinguished authorities in which the alleged impact on third parties was contingent or remote.

The Court further held that compliance with Rule 3.15 was mandatory and that ACFN's failure to serve the directly affected operators was fatal to the Application. Davis J. rejected ACFN's submission that only portions of the Application should be struck, finding that every claim and form of relief was anchored to the impugned decision and would require the Director to revisit or alter that decision in a manner that affected the operators' legal and financial interests. Justice Davis also rejected ACFN's argument that its ultra vires claim fell outside Rule 3.15, holding that, in substance, the claim challenged the adequacy and content of the Standard rather than the Director's authority to issue it. The Court therefore concluded that the entire Application, rather than only part of it, was subject to Rule 3.15 and struck it pursuant to Rules 3.15 and 3.68.

ATWOOD V MACEWAN UNIVERSITY, 2026 ABKB 643

(MARTIN J)

Rules 3.15 (Originating Application for Judicial Review) and 3.17 (Attorney General's Right to be Heard)

The University applied for an Order striking or, in the alternative, dismissing an Application for Judicial Review of a decision of the University Provost. The Applicant argued that the Respondent had served the Minister of Justice after the expiry of the 6-month time limit established by Rule 3.15(2). The Respondent acknowledged that the Application was not served on the Minister within the required time limit, but argued that the Minister had waived the requirements under Rule 3.15(2).

The Court reviewed Rules 3.15(2), 3.15(3), and 3.17 and the test for waiver: the Minister must have, with full knowledge of their right, intended to unequivocally and consciously abandon it.

The Respondent had received a letter acknowledging that the Minister had been "duly" served and advising that the Minister would not be participating in the proceedings. The Court held that the letter was not sufficient to waive the 6-month service requirement. In particular, Justice Martin found that the use of the word "duly" did not meet the test for waiver. The Minister's office's refusal to backdate the Notice of Service upon the Respondent's request demonstrated its intention not to waive its right.

The Court held that Rule 3.15 is a substantive requirement that the Minister does not have authority to waive. Martin J. recited case law for the principle that a failure to provide a statutory mechanism to waive a requirement does not amount to a gap in the legislation which might permit the Court to make such an Order. Further, previous case law had established that Rule 3.15 could not be waived.

Justice Martin held that the Respondent's failure to comply with Rule 3.15(2) was fatal to his Application for Judicial Review, in accordance with the governing authorities. The Application for Judicial Review was therefore struck.

PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 620

(MARION J)

Rules 3.18 (Notice to Obtain Record of Proceedings), 3.19 (Sending in Certified Record of Proceedings), 3.22 (Evidence on Judicial Review), 14.27 (Filing Extracts of Key Evidence), 14.28 (Record Before the Court) and 14.29 (Format of Extracts of Key Evidence)

This decision addressed two privilege Applications arising from longstanding litigation between Piikani Nation and, among others, Liliana Kostic. In the underlying Action, Piikani Nation alleged that Kostic participated in a scheme to unlawfully transfer $23 million of its investments, while Kostic separately alleged that Piikani Nation terminated her services contract in bad faith.

A 2006 investigation report (the "Navigant Report") formed part of the basis for Piikani Nation's fraud allegations. Although privilege had been waived over two schedules, the remainder was protected by litigation privilege and a 2014 Court Order prohibiting its unauthorized use. Despite the Order, the Report was subsequently filed in several Court proceedings.

Kostic applied to unseal the Navigant Report, arguing that privilege had been waived through Piikani Nation's pleadings, partial disclosure, and failure to protect the Report after it became publicly available. Piikani Nation maintained that unauthorized disclosure by others did not constitute waiver.

Separately, Piikani Nation applied for declarations preserving privilege over six records consisting of legal reports, memoranda and correspondence concerning the litigation (the "Six Records"). Kostic disputed the privilege claims, relying on the records' previous disclosure and use in other proceedings.

Justice Marion confirmed that the party alleging waiver bears the burden of establishing it. Privilege may be expressly waived or deemed waived where the privilege holder acts inconsistently with maintaining confidentiality. Unauthorized or wrongful use of privileged material by another person does not itself constitute waiver, although a privilege holder's failure to respond reasonably and expeditiously to unauthorized disclosure may support deemed waiver.

The Court held that Piikani Nation did not waive privilege over the Navigant Report through its pleadings. Kostic had placed Piikani Nation's state of mind in issue by alleging bad faith, and Piikani Nation's denial of bad faith did not amount to reliance on privileged material. The unauthorized use of the Navigant Report by Kostic and others similarly did not constitute waiver.

However, Marion J. held that Piikani Nation lost privilege over the Navigant Report through its own conduct and lack of diligence. Piikani Nation knew by 2021 that the Report had been filed in Federal Court but did not pursue a sealing Order. It subsequently publicly filed the Navigant Report in a Federal Court Judicial Review Application without seeking restricted access and, in 2024, consented to its inclusion in a Federal Court of Appeal record.

The Court rejected Piikani Nation's submission that filing the Navigant Report in the Federal Court Judicial Review was compelled. Justice Marion contrasted Judicial Review proceedings in Alberta under Rules 3.18, 3.19 and 3.22, where the tribunal under review must provide its complete record to the Court, with the Federal Court process, which appeared to be

court-supervised but litigant-driven. The latter was more analogous to the extracts of key evidence process under Rules 14.27 to 14.29.

Turning to the Six Records, the Court considered their relevance and materiality in assessing whether prejudice from their exclusion supported deemed waiver. Only the 2010 assessment of Piikani Nation's claims against Kostic (the "Befus Report"), was relevant and material to Kostic's claim for aggravated or punitive damages arising from the termination of her contract. The Befus Report was protected by solicitor-client privilege, and any carelessness by Piikani Nation in protecting it did not warrant a finding of waiver, as the Nation had not failed to respond to a clear allegation of waiver and Kostic would suffer little prejudice from its exclusion. The Court found no utility in considering waiver over the remaining records.

The Court declared that privilege over the Navigant Report had been waived or lost and ordered it unsealed. Privilege over the Six Records had not been waived or lost, and those records were ordered sealed.

METIS NATION OF ALBERTA ASSOCIATION V ALBERTA (MINISTER OF INDIGENOUS RELATIONS), 2026 ABKB 630

(LEMA J)

Rules 3.18 (Notice to Obtain Record of Proceedings), 3.19 (Sending in Certified Record of Proceedings) and 6.28 (Application of This Division)

This decision arose from a dispute concerning the contents of the record for the Métis Nation of Alberta Association ("MNA")'s Application for Judicial Review of an administrative decision recognizing the Lac Ste. Anne Métis Community Association ("LSA") for duty-to-consult purposes. LSA sought to exclude certain materials that it had provided to Alberta during the administrative process, relying on statutory disclosure restrictions, case-by-case privilege, and relevance. In the alternative, LSA sought a restricted court-access Order over portions of the record. MNA and Alberta took the position that the complete record should be produced.

Justice Lema considered the requirements for the record of proceedings under Rules 3.18 and 3.19. The Court held that the content of a Judicial Review record was generally broad and was generally required to include all evidence that had been before the administrative decision maker, so that the reviewing Court could assess the decision in light of the material actually considered. The Court emphasized the importance of the evidentiary record to meaningful Judicial Review.

Lema J. rejected LSA's argument that statutory disclosure restrictions required materials to be excluded from the record. The applicable access-to-information legislation expressly did not limit information otherwise available by law to a party to legal proceedings, while the statutory restrictions concerning vital-statistics information did not govern the subsequent treatment of information once it had lawfully been provided to another person. The Court also rejected LSA's claim of case-by-case privilege. An expectation or request that information would remain confidential was insufficient without an assurance from the recipient that confidentiality would be main-

tained. As Alberta had provided no assurance that the information would be withheld from a subsequent Judicial Review record, the first requirement for case-by-case privilege was not established.

The Court also rejected LSA's argument that portions of the material should be excluded as irrelevant. Because MNA challenged the reasonableness of Alberta's decision, the full record before the decision maker was required to permit the Court to assess the decision in the context of the evidence on which it had been made. The Court found no basis to conclude that the decision maker had considered only a subset of the information and held that the information submitted by LSA in support of its Application for recognition bore on the reasonableness issue and formed part of the Judicial Review record.

Justice Lema therefore directed that the complete record be produced. To address concerns about collateral use of sensitive information, Lema J. treated MNA's position that the implied Undertaking rule applied as an effective undertaking that the record would be used only for the Judicial Review and, alternatively, found that MNA was subject to an equivalent implied obligation of confidentiality. The Court also granted a restricted court-access Order under Rule 6.28 over much of the sensitive information, but excluded individual LSA members' names from the Order because disclosure of membership alone did not establish sufficient harm to privacy or dignity when balanced against the open Court principle.

HALLWAS V ALBERTA (DIRECTOR OF SAFEROADS), 2026 ABKB 551

(JUGNAUTH J)

Rule 3.22 (Evidence on Judicial Review)

The Applicant applied for Judicial Review of an Adjudicator's decision to uphold a Notice of Administrative Penalty issued pursuant to Section 88.1(1)(a) of the *Traffic Safety Act*, RSA 2000, c T-6.

The Applicant sought to rely on a Supplemental Affidavit that contained evidence that was not before the Adjudicator at first instance. Despite having previously consented to the Supplemental Affidavit being struck, the Applicant still attempted to rely on factual assertions within it.

The Respondent argued that Rule 3.22 generally limits the evidentiary record on Judicial Review to the certified proceedings. Additionally, the Applicant did not obtain permission pursuant to Rule 3.22(d) to provide new evidence, nor did the Supplemental Affidavit satisfy any of the limited exceptions to the Rule relating to bias, procedural unfairness, standing, or an inadequate tribunal record. Instead, the Supplemental Affidavit contained factual assertions that spoke to the merits of the underlying dispute. The Respondent further noted that the Applicant had ample opportunity to present such evidence to the Adjudicator and had provided extensive viva voce evidence during the hearing.

In rejecting the admissibility of the Supplemental Affidavit, Jugnauth J. agreed with the Respondent's submissions and adopted them as his reasons. Justice Jugnauth noted that the Supplemental Affidavit would have been struck in the absence of the Applicant's consent.

In the result, the Court dismissed the Judicial Review Application, finding that the Adjudicator's decision was reasonable.

PICKLE V UNIVERSITY OF LETHBRIDGE, 2026 ABKB 659

(SIMARD J)

Rule 3.22 (Evidence on Judicial Review)

This decision arose from an Application for Judicial Review of the University of Lethbridge's decision to cancel a scheduled speaking event. The Applicants alleged that the cancellation infringed their rights under the *Charter*. As part of the Judicial Review, the Court considered whether additional Affidavit evidence submitted by the Applicants was admissible under Rule 3.22.

Justice Simard confirmed that Rule 3.22 limited the evidence admissible on Judicial Review to the certified record of proceedings and other evidence specifically permitted by the Rule. Under Rule 3.22(d), the Court has discretion to admit additional evidence, but such admission is exceptional. Recognized exceptions include evidence demonstrating bias or breaches of natural justice not apparent from the record, background information necessary to determine an issue such as standing, and evidence addressing an absent or inadequate record. Even where additional evidence is permitted, judicial review cannot be converted into a *de novo* trial.

The Court also considered Rule 3.22(b.1), which permits affidavit evidence if the Originating Application sought relief other than *certiorari* or an Order setting aside a decision or act. The Court held that the substance of the relief sought, rather than its formal description, determined whether the provision applied. Although the Applicants had sought declaratory and injunctive relief without expressly requesting that the decision be set aside, the relief necessarily required the Court to set aside the University's decision. Rule 3.22(b.1) therefore did not apply.

Applying Rule 3.22(d), Simard J. admitted certain documents concerning the University's relationship with the Government because they provided relevant background information reasonably necessary to determine a disputed issue. However, the Court excluded the remaining additional evidence, including personal opinions, commentary, hearsay and events occurring after the decision, because it fell outside the proper scope of Judicial Review and did not satisfy the recognized exceptions. The Court ultimately set aside the University's decision on grounds unrelated to the evidentiary ruling.

ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (ENERGY REGULATOR), 2026 ABKB 628

(RENKE J)

Rules 3.61 (Request for Particulars), 13.6 (Pleadings: General Requirements) and 13.7 (Pleadings: Other Requirements)

The Alberta Energy Regulator ("AER") applied pursuant to Rule 3.61 for further particulars of the Athabasca Chipewyan First Nation ("ACFN")'s claims. ACFN's claims included AER's alleged failure to regulate tailings discharges from the Kearl oil sands facility and to notify ACFN regarding those discharges, as well as a claim against Alberta for breaching its duty to consult.

Rule 3.61 allows a party served with a pleading to request particulars about anything in that pleading and, if it does not receive a sufficient response within 10 days, to apply for an Order compelling particulars. A request for particulars does not suspend the requesting party's obligation to file and serve its own pleading. The Court interpreted Rule 3.61 together with Rule 13.6, the latter of which requires a pleading to be succinct and state the facts relied upon rather than the evidence by which those facts will be proved, and Rule 13.7, which requires particulars of specified allegations.

Justice Renke held that particulars are factual propositions that specify, clarify, restrict or limit more general pleaded facts. Particulars are distinct from the evidence by which those facts will ultimately be established. Essential facts are necessary to disclose a complete cause of action and they must be pleaded; however, their absence is properly addressed through an Application to Strike rather than a request for particulars. Particulars may constitute material facts because they add factual specificity and, once provided pursuant to Rule 3.61, form part of the pleading. Renke J. explained that the distinction between particulars and evidence is functional: particulars define or constrain the facts in issue, while evidence proves or disproves those facts.

The Court found that the primary purpose of particulars pursuant to Rule 3.61 is to provide the responding party sufficient notice of the case it must meet and enough information to frame its Statement of Defence. The party seeking particulars bears the onus of establishing that the requested information is necessary to plead. Justice Renke noted that the Court will generally hesitate to order particulars before the Defendant has served a Statement of Defence unless the particulars are necessary to formulate that Defence. Particulars may also prevent surprise, define or narrow the issues, identify the evidence required and circumscribe Questioning and records disclosure, but those secondary objectives may instead be addressed through disclosure, Questioning or Case Management. In this case, the Court rejected particulars as the primary means of resolving an extensive document production problem where the Pleading already provided sufficient information to permit a Statement of Defence.

Renke J. held that the decision to order particulars is discretionary, practical and context-specific and must be reasonable and fair in the circumstances. Relevant circumstances include the magnitude and complexity of the Action and the relationship between the parties. Notably, a Defendant's knowledge of its own conduct does not negate its entitlement to particulars. In other words, the Defendant might know what they did, but not what the Plaintiff thinks they did. The Court may also consider an asymmetry in access to informa-

tion where the Plaintiff knows that it suffered harm but lacks the Defendant's information concerning how or why that harm occurred.

Justice Renke emphasized that complex litigation requires a realistic and pragmatic approach because not every claim can be pleaded with equal precision at the outset and later disclosure, Questioning and Case Management may clarify and narrow the issues. Renke J. also held that the Court must read a pleading contextually and as a whole, including any particulars already supplied, and may treat a fact properly inferred from other pleaded facts as sufficiently pleaded.

The Court rejected AER's argument that Rules 13.6(3) and 13.7 imposed a heightened standard of particularity because ACFN had to establish bad faith to overcome AER's statutory immunity, as set out in Section 27 of the *Responsible Energy Development Act*, SA 2012, c R-17.3.

Justice Renke found that ACFN's claims against the AER were in the nature of bad faith through serious carelessness or recklessness, rather than bad faith through intentional wrongdoing or wilful default. As such, the provisions of Rules 13.6(3) and 13.7 concerning wilful default did not apply. Renke J. held that Rule 13.6(3)(r), which addresses reliance on a provision of an enactment that may take another party by surprise, confirmed that the ordinary standard governing particulars applied. The Court concluded that ACFN had pleaded factual foundations for its allegations and that many of AER's requests improperly sought details, including dates, authors, formats and recipients, that were essentially evidence. Justice Renke dismissed the AER's Application, except that ACFN was required to amend two of its existing responses to particulars.

REGENCY INNOVATIONS INC V WEHBE, 2026 ABKB 537

(MARTIN J)

Rules 3.62 (Amending Pleadings), 3.65 (Permission of Court to Amendment Before and After Close of Pleadings) and 3.67 (Close of Pleadings)

The Applicant sought permission to amend his Counterclaim during Trial in an Action concerning custom cabinetry installed in his home by the Respondent, Regency Innovations Inc. ("Regency"). The Applicant had consistently denied having a contract with Regency and advanced his Counterclaim against Regency solely in negligence. Shortly before Trial, Regency abandoned its own claim, and the Parties agreed the Counterclaim was the only issue remaining between them.

After the Applicant closed his case, and before Regency called its final witness, the Applicant sought to add claims for breach of contract, negligent misrepresentation, general damages, and statutory breaches under the *Sale of Goods Act,* RSA 2000, c S-2 and the *Consumer Protection Act*, RSA 2000, c C-26.3.

Justice Martin noted that, once pleadings close, Rules 3.62, 3.65 and 3.67 require the Court's permission to amend absent consent. The threshold is low, requiring only some evidence supporting the amendment. However, permission may be refused where the amendment would cause serious prejudice not compensable in costs, is hopeless, is

limitation-barred, or involves bad faith.

Justice Martin held that the proposed amendments would cause serious prejudice to Regency. For almost five years, document production, questioning, expert selection and Trial preparation had proceeded on the basis that the Applicant denied any contractual relationship with Regency. The amendments would introduce new factual inquiries concerning an alleged contract, the Applicant's reliance, the quality and fitness of the cabinetry, mental and emotional distress, and alleged unfair practices.

Martin J. found the factual foundations for the proposed claims were known to the Applicant well before Trial. Allowing the amendments would require Regency to revisit discovery, evidence, witnesses, experts and Trial strategy. Justice Martin held that this prejudice could not be cured by costs.

The amendments were also statute-barred. Section 6 of the Limitations Act, RSA 2000, c L-12 may preserve a late claim where it relates to the conduct, transaction, or events described in the existing pleadings. The proposed claims required proof of new material facts and evidence and did not fall within Section 6.

The Application to amend the Counterclaim was dismissed.

PIIKANI NATION V RAYMOND JAMES LTD, 2026 ABKB 621

(MARION J)

Rules 3.62 (Amending Pleadings), 3.68 (Court Options to Deal with Significant Deficiencies), 4.36 (Discontinuance of Claim), 9.15 (Setting Aside, Varying and Discharging Judgments and Orders) and 11.27 (Validating Service)

The Defendant, Janet Potts ("Potts"), applied to set aside a filed Discontinuance of an Action against her by the Plaintiff, Piikani Nation. In the underlying Action, Piikani Nation alleged that its investment advisors and several councillors, including Potts, conspired to defraud it. Potts never filed a Statement of Defence and was noted in default. In 2018, Piikani Nation amended its Statement of Claim to remove the specific allegations against Potts but never served the Amended Statement of Claim (the "ASOC") on her.

In 2025, the Court permitted Potts to apply to set aside her Noting in Default and strike the ASOC (the "Potts Application"), and directed the parties to book a Trial for the earliest available dates in 2027. Before a Trial date was scheduled, Piikani Nation filed a Discontinuance of their Action as against Potts (the "Discontinuance").

Pursuant to Rule 4.36(1), a Plaintiff may discontinue as of right "before a date is set for Trial". After that point, Rule 4.36(2) requires the written agreement of every party, or the Court's permission. Reading Rule 4.36 with the trial scheduling Rules, Marion J. confirmed that a trial date is set only when a precise date has been scheduled and the parties notified. A direction to book the earliest available dates was insufficient. The Discontinuance was therefore properly filed pursuant to Rule 4.36(1).

However, the Court retained inherent jurisdiction to set aside a Discontinuance that operates abusively or unfairly, including where it is used to avoid a legitimate procedural

step. The central issue was therefore whether the Discontinuance improperly avoided the Potts Application, which the Court had already permitted to proceed.

The Court found that the Potts Application had merit in part. Potts' deemed admissions arose from the allegations pleaded against her and fell away when those allegations were removed from the ASOC. Further, Rule 3.62(2) required Piikani Nation to serve the ASOC on Potts because, despite being noted in default, she remained a party.

Marion J. also held that it was "plain and obvious" under Rule 3.68(2)(b) that the ASOC disclosed no reasonable claim against Potts. It identified her only as a councillor and pleaded no conduct capable of supporting a claim against her. The Court rejected Piikani Nation's argument that Potts first had to set aside her Noting in Default before seeking to strike the ASOC, noting that Rule 3.42(b) itself provides that a party cannot be noted in default if they have filed an Application to strike out a claim. Alternatively, if necessary, it would have been "fair and just" pursuant to Rule 9.15(3) to set aside the Noting in Default.

Justice Marion found that allowing the Discontinuance to stand could prejudice Potts' position on costs because, having never defended the Action, she was arguably not entitled to costs under Rule 4.36(4). However, if the Discontinuance was set aside and the ASOC struck, ordinary costs principles would apply, and Potts had a reasonable prospect of recovering some costs despite being self-represented. The Court held that the Discontinuance unfairly avoided the Potts Application and the potential costs consequences that could follow.

Piikani Nation's Application to validate service of the original Statement of Claim pursuant to Rule 11.27 was consequently moot. Had it been necessary, the Court would have validated service because Potts had actual notice of the Statement of Claim, including having appended a copy to an Affidavit she swore in 2007.

Accordingly, the Discontinuance was set aside and the ASOC was struck as against Potts.

KOSTIC V CIBC TRUST CORPORATION, 2026 ABKB 623

(MARION J)

Rules 3.62 (Amending Pleadings), 3.64 (Time Limit for Application to Disallow Amendment to Pleading), 3.67 (Close of Pleadings), 3.68 (Court Options to Deal with Significant Deficiencies), 4.14 (Authority of Case Management Judge) and 9.6 (Effective Date of Judgments and Orders)

The Plaintiff commenced an Action against the Defendant, CIBC Trust Corporation ("CIBC Trust"), alleging inducement of breach of contract and interference with contractual relations and economic interests. The Plaintiff filed the Action while a request for permission to bring the same claim remained undecided, and despite an earlier Order prohibiting new Actions among the parties without leave. CIBC Trust applied to strike the Action pursuant to Rules 3.68(1) and 3.68(2) as an abuse of process. Alternatively, CIBC Trust sought to dismiss the Action for delay. The Plaintiff cross-applied to amend the Statement of Claim.

Marion J. explained that 3.68(2)(d) is flexible and protects against misuse of Court procedure, including re-litigation, duplicative proceedings, failure to follow Court Orders, and collateral attacks on final decisions.

The Court found several related abuses. For example, the Plaintiff filed the Action without the leave required by an earlier Order, and duplicated the fiat processes the Plaintiff had already commenced. The Plaintiff then maintained the Action after the Court refused permission to bring the claim and the Court of Appeal upheld that result. The Action's dormancy did not cure the abuse. On either explanation for the filing, the Action either improperly preserved a claim after leave was denied or created a duplicative process designed to avoid the Court's directions.

CIBC Trust also relied on Rule 3.68(2)(b), which permits the Court to strike a pleading that discloses no reasonable claim. On that branch of Rule 3.68, the Court applied the "plain and obvious" test, assumed properly pleaded facts to be true, and considered no evidence. Although some allegations appeared vulnerable to the ultimate limitation period, the Statement of Claim alleged conduct that occurred within ten years of filing. The Court therefore would not have struck the entire Action pursuant to Rule 3.68(2)(b) if its conclusion that the claim was an abuse of process was wrong.

Justice Marion also considered whether to grant leave *nunc pro tunc.* Rule 9.6(b), together with the Court's inherent jurisdiction, permits an Order to take effect before pronouncement. The remedy is extraordinary and must be used sparingly. The Court refused relief because it could prejudice CIBC Trust's limitation defences and retroactive relief would increase delay and costs rather than facilitate access to justice.

The Court rejected the argument that CIBC Trust could not seek striking before pleadings closed. Rule 3.68 does not require pleadings to be closed. The assigned Case Management Justice had granted CIBC Trust permission to bring the amalgamated Application. The Court also relied on Rule 4.14(2), pursuant to which the Case Management Justice must hear every application in a managed action unless otherwise directed.

Because the Court struck the Action, it did not decide the delay Application and dismissed the Amendment Application as moot. The Court nevertheless observed that, had the Action survived, the Plaintiff could have amended the Statement of Claim as of right pursuant to Rule 3.62(1)(a) because no Defence had been filed and pleadings had not closed under Rule 3.67. CIBC Trust's recourse would then have been to apply under Rule 3.64 to disallow or strike the amended pleading.

The Court granted the Strike/Dismissal Application only to the extent of striking the Action as an abuse of process. It dismissed the Amendment Application and reserved costs.

SANCE CASTRO V LEGAL AID SOCIETY, 2026 ABKB 588

(NIXON ACJ)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 9.4 (Signing Judgments and Orders), 10.49 (Penalty for Contravening Rules) and 10.50 (Penalty for Litigation Misconduct by Lawyer)

The individual Plaintiff filed a Statement of Claim against the Legal Aid Society of Alberta and Gianpaolo Panusa KC (the "Defendants"), alleging that the denial of access to the Plaintiff's preferred legal counsel through Legal Aid of Alberta ("LAA") interfered with the administration of justice and caused damages through professional and personal misconduct, negligence, and obstruction of justice.

The Defendants requested that the Court review the Statement of Claim pursuant to Civil Practice Note 7 ("CPN7"), which uses Rule 3.68 to permit the summary review and dismissal of a claim, defence, action, application, or proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process. After reviewing the facts and law, Nixon ACJ found that the Statement of Claim appeared on its face to be frivolous, vexatious, or an abuse of process.

The Court's first concern was that the Statement of Claim appeared to be an indirect attempt by the Plaintiff's former lawyer, who was not a party to the Action, but who may have authored the Statement of Claim, to challenge LAA's practices and procedures. Nixon ACJ stated that lawyers cannot properly use litigants as "strawmen" to advance litigation that may be frivolous, vexatious, or abusive and that a penalty pursuant to Rule 10.49 or Rule 10.50 may be appropriate in those circumstances. The Court's second concern was that Section 4(2) of the *Legal Profession Act,* RSA 2000, c L-8, provides LAA with statutory immunity from Actions concerning anything done in good faith in operating a legal aid plan, including the appointment of counsel.

Nixon ACJ issued an Apparent Vexatious Application or Proceeding Notice and gave the Plaintiff, his former lawyer, and the Defendants an opportunity to provide Written Submissions addressing the apparent deficiencies in the Statement of Claim. After receiving any Written Submissions, the Court would determine whether to strike all or part of the Statement of Claim pursuant to Rule 3.68. Nixon ACJ also authorized the Defendants to prepare and serve an Interim Order staying the Action until completion of the CPN7 process, dispensing with the requirement for approval by the Plaintiff and his former counsel pursuant to Rule 9.4(2)(c).

DYNAFLEX PIPE LTD V HOVE, 2026 ABKB 602

(APPLICATIONS JUDGE SUMMERS)

Rule 3.68 (Court Options to Deal With Significant Deficiencies)

This decision arose from an Application by one Defendant to strike the Action against it, without leave to amend, on the basis that the Statement of Claim disclosed no reasonable claim pursuant to Rule 3.68(2)(b). The Plaintiff alleged that several related Defendants had participated in the misuse of confidential and proprietary business information and asserted claims including conspiracy and breach of confidence. The Defendant argued that the pleading improperly grouped it together with other entities and failed to plead sufficient material facts concerning its own involvement.

Applications Judge Summers confirmed that, pursuant to Rule 3.68(3), no evidence could be considered on an Application under Rule 3.68(2)(b). The governing test was whether it was plain and obvious, assuming the pleaded facts to be true, that the pleading failed to disclose a reasonable cause of action. The pleaded facts were to be accepted as true except where they were speculative, patently ridiculous, or incapable of proof.

The Court held that grouping multiple Defendants together was not necessarily improper and that the adequacy of the pleading depended on the nature of the claims and the information reasonably available to the Plaintiff at the pleading stage. Claims such as conspiracy and breach of confidence frequent-

ly involved secret conduct and information primarily within the knowledge of the alleged wrongdoers. A Plaintiff therefore could not always be expected to plead detailed particulars of each Defendant's involvement at the outset.

Applying these principles, Applications Judge Summers found that grouping the related Defendants together was not inappropriate.

The Court relied on the nature of the conspiracy and breach of confidence claims, the Plaintiff's alleged inability to obtain particulars because some of the conduct had occurred in secret, and uncertainty concerning the status and identity of certain related entities during the relevant period. The Court therefore dismissed the Application to strike.

ALBERTA (MINISTER OF JUSTICE) V VIAL, 2026 ABKB 618

(MAGNAN J)

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

The Appellants appealed an Applications Judge's decision to dismiss their Application to strike the Respondent's Statement of Claim. The Respondent's Statement of Claim alleged that the Appellants had breached their duty of care in exercising their powers under the *Maintenance Enforcement Act*, RSA 2000, c M-1 by suspending the Respondent's passport notwithstanding that their employment required them to travel internationally, and that doing so adversely impacted the Respondent's ability to earn income. The Application was dismissed the by the presiding Applications Judge, and the Appellants subsequently appealed the dismissal.

The Court noted that as the Appeal arose from the decision of an Applications Judge, it was to be reviewed for correctness. However, pursuant to Rule 6.14, the Appeal may also include relevant and material new evidence. As such, the Appellants were permitted to evidence that was not before the Applications Judge when the Appellants' Application was initially heard.

Justice Magnan considered Rule 3.68 and the underlying principles governing applications to strike a claim; namely that a pleading must be read generously and may only be struck where it is plain and obvious and discloses no valid claim. In considering such an application, the Court is not expected to undertake an assessment of the merits, and if the claim itself is properly pleaded, it should not be struck merely because it appears dubious.

The Appellants raised three separate issues with the Respondent's Statement of Claim that they submitted permitted it to be struck. It was argued that the claim represented a collateral attack and abuse of process, that the Respondent did not disclose a reasonable cause of action, and that any claim brought by the Respondent ought to barred by the *Limitations Act*, RSA 2000, c L-12.

The Court disagreed with the Appellants submissions on all fronts. The Appellants submitted that the Respondent's Action was an abuse of process because rather than appealing the Court Order that suspended their passport, they commenced an Action against the Appellants. The Court disagreed. Because the claim sought to target the mishandling of the Appellants' enforcement powers rather

than a variation of prior Court Orders, it was concerned with the cause rather than the consequence.

With respect to the position that the Respondent's Statement of Claim lacked a reasonable cause of action, the Court noted the generous reading of the alleged material facts from which bad faith may be inferred. If the Appellants were found to be acting in bad faith, then it would support the Respondent's allegations of breach of duty on the part of the Appellants.

Finally, and with respect to the Appellants' arguments that the claim was barred by operation of the Limitations Act, Justice Mangan noted that the Respondent's Statement of Claim noted several facts that the Respondent only discovered after they had occurred; such as misclassifying their employment and acknowledgements by the Appellants of their mistakes. As these facts only came to be known by the Respondent long after they occurred, the claim was not clearly brought out of time.

Ultimately, the Court dismissed the Appeal and directed that the Respondent be entitled to costs.

BIGNALL V CANADA (ATTORNEY GENERAL), 2026 ABKB 668

(NIXON J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Plaintiff commenced an Action against the Attorney General of Canada seeking $900 million in damages, $100 in punitive damages, and declaratory relief. The Defendant asked the Court to review the Statement of Claim pursuant to Civil Practice Note 7 ("CPN7").

CPN7 uses Rule 3.68 to permit a summary assessment of: "a claim, defence, action, application, or proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process."

Nixon A.C.J. noted that Rule 3.68 allows the Court to summarily identify and dismiss meritless claims with no prospect of success, conserving judicial resources.

The Plaintiff had previously commenced a related Action against the Attorney General of Canada and the Attorney General of Alberta that was reviewed through the CPN7 process. After the Plaintiff amended the Claim to remove those Defendants and substitute the Calgary Police Service, the Court treated the Amended Statement of Claim as a continuation of the original Action and continued the CPN7 review of the claims against all Defendants.

The Court had issued an Apparent Vexatious Application or Proceeding ("AVAP") Notice after finding that the first Action was unlikely to succeed due to jurisdictional, evidentiary, pleading, and damages concerns. Rather than addressing those concerns, the Plaintiff commenced a new Action, which the Court viewed as a possible attack on its process and prior directions.

The Court considered the present Statement of Claim together with the Plaintiff's Amended Statement of Claim in the earlier Action because the pleadings contained similar and repetitive allegations. The Court did not finally strike either pleading. Instead, it issued an AVAP Notice and established a written process before deciding whether Rule 3.68 should apply. The Plaintiff received 14 days after

service to file written submissions of no more than 10 pages. The Defendants could then file written replies of up to 10 pages within seven days.

When considering whether the pleadings should be struck pursuant to Rule 3.68, Nixon A.C.J. recognized that pleaded facts are typically presumed true. However, the Court stated that this principle has limits where allegations are unbelievable and supported only by suspicion or speculation. The Court directed the Plaintiff to identify specific facts supporting the alleged surveillance and profiling and to explain the Court's jurisdiction over alleged *Charter* claims. The Plaintiff was also directed to distinguish the new Action from the earlier Action, explain how unrelated grievances justified the use of Court resources, and justify the damages claimed.

NOVA OCULUS CANADA MANUFACTURING ULC V SATHER, 2026 ABCA 297

(FAGNAN, GROSS AND FETH JJA)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Appellants were former officers or directors of the Respondent. The Appellant sought to strike the Respondent's Statement of Claim in the Court of King's Bench of Alberta on the basis that *British Columbia's Business Corporations Act*, SBC 2002, c 57 ("*BCBCA*") granted exclusive jurisdiction to hear the claim to the Supreme Court of British Columbia. The Chambers Judge dismissed the Application to Strike and the Appellants's appeal of the Chambers Judge's decision.

Pursuant to Rule 3.68(2)(a), claims may be struck where the Court does not have subject matter jurisdiction because another forum has exclusive jurisdiction. To determine whether a Court has subject matter jurisdiction, the Court must determine the "essential nature or character" of the claim. The Court must then determine whether the claim falls within the scope of the exclusive jurisdiction of the competing forum based on the determination of its essential nature or character. When determining the essential character of a claim, the focus is on the claim advanced and not a different claim the Defendant submits the Plaintiff should have brought.

The Appellants argued the Respondent's claim for impugned transactions amounted to a "disposition of all or substantially all of [the Respondent's] undertaking and were carried out without a special resolution of shareholders", bringing the claim within the exclusive jurisdiction of the *BCBCA*. Section 301(2) of the *BCBCA* provides a remedy to shareholders, directors, or creditors of a company, but not the company itself, to apply to either enjoin, set aside, or have a Court make any other order it deems appropriate in relation to the disposition.

The Court found no reversible error in the Chambers Judge's characterization of the essential nature of the Plaintiff's claim. The Chambers Judge found that the essential nature and character was to obtain legal recourse against wrongdoers for their wrongdoing against the Plaintiff, not to obtain a statutory remedy under the *BCBCA*. Therefore, the essence of the claim was not within the exclusive jurisdiction of the British Columbia Supreme Court and an Alberta Court had inherent subject-matter jurisdiction.

The Appellants argued that Section 301 of the *BCBCA* was a "complete code" for granting a remedy to invalidate a transaction that purports to sell all or substantially all of a company's undertaking. In rejecting this argument, the Court reiterated that the essence of the claim was not about the disposition of all or substantially all of the Respondent's undertaking. This was just one material fact. Therefore, this did not bring the claim within the exclusive jurisdiction of the *BCBCA*.

The Court went on the consider whether the *BCBCA* abrogated from any common law or equitable rights that would otherwise exist in relation to setting aside a transaction. The Court did not agree with the Appellants that the *BCBCA* was a "complete code" to the extent that it might displace all common law or equitable rights otherwise available to a company to challenge such a transaction.

The Appellant further argued that Section 228 of the *BCBCA* allows any person whom the Court considers an appropriate person to apply under the *BCBCA* to prohibit a party or parties from contravening another provision of the *BCBCA*. Because this argument assumed that the essence of the claim was that it was a Section 301 Application, the Court rejected it for the reasons indicated above.

The Appellant further argued that the *BCBCA* should have been interpreted as creating a "complete code" by way of analogy to case law that has found that other aspects of the *BCBCA* have created a "complete code" for other issues. The Court rejected this argument as legislation can create a complete code on one or more topics and not for others. Additionally, the argument that a complete code is created for companies seeking to challenge a disposition of all or substantially all of their undertakings further failed to recognize that this was not the essence of the claim at issue.

Finally, the Court considered the Appellants' argument that allowing a company to pursue claims in other forums arising from a disposition of all or substantially all of its assets would undermine the *BCBCA*'s role regulating such claims. As with the above, the Court rejected this argument as it assumed that the essence of the Respondent's claim was to challenge a disposition of all or substantially all of their undertakings.

UBAH V UBAH, 2026 ABCA 301

(KIRKER JA)

Rules 4.11 (Ways the Court may Manage Action), 9.4 (Signing Judgments and Orders) and 14.5 (Appeals Only with Permission)

The Applicant sought permission to appeal a Judgment and Costs Order arising from a family law Streamlined Trial. As the Applicant had previously been declared a vexatious litigant, permission to appeal was required pursuant to Rule 14.5(1)(j).

Appeal Justice Kirker confirmed that Rule 14.5 and Section 23.1(7) of the *Judicature Act*, RSA 2000, c J-2, governed permission to appeal. The Applicant was required to demonstrate that the proposed Appeal raised an important question of law, had a reasonable prospect of success, and would not cause undue delay or prejudice or constitute an abuse of process.

Kirker J.A. found that the proposed Appeal did not satisfy these requirements. The Applicant

challenged the Trial Judge's findings on the validity of the marriage and contended that the Order directing a Streamlined Trial had discharged the burden of proving its invalidity. The Court rejected this argument, noting that the Order was a procedural measure pursuant to Rule 4.11 which did not determine substantive issues or alter the applicable burden of proof.

The Court also rejected the Applicant's arguments concerning procedural unfairness, reasonable apprehension of bias, and inadequate reasons. Kirker J.A. determined that the proposed Appeal of the Costs Order had no reasonable prospect of success, given the discretionary nature of Costs Awards and the deferential standard of review.

Thus, allowing the Appeal would constitute an abuse of process. Accordingly, the Application was denied, and Rule 9.4(2)(c) was invoked for the Court to prepare the resulting Order.

ENMAX POWER CORPORATION V REMINGTON DEVELOPMENT CORPORATION, 2026 ABKB 596

(DILTS J)

Rules 4.14 (Authority of Case Management Judge), 5.10 (Subsequent Disclosure of Records) and 5.16 (Undisclosed Records Not to Be Used Without Permission)

The Applicant sought various relief related to document production obligations and the contents of several expert reports served by the Respondent. The Applicant argued that the Respondent served a Supplemental Affidavit of Records outside of the timelines prescribed by the Court, and that those records were relied upon in preparation of an expert witness report.

The parties were subject to a complex litigation plan that set out a deadline (February 13, 2023) to serve the Respondent's Supplemental Affidavit of Records. Notwithstanding this deadline, the Respondent served a sixth, seventh, eighth, and ninth Supplemental Affidavit of Records on July 24, 2025, well after the deadline contained in the litigation plan. The Applicant took the position that in serving their Supplemental Affidavits of Records after the deadline, the Respondents failed to comply with Rules 5.10 and 5.16, and as such the Respondents should not be permitted to rely upon those records.

The Court noted that the intention of Rules 5.10 and 5.16 is to avoid trial by ambush and the unfairness that arises from that; and that there was no risk of that occurring in the present case. The Court was satisfied that the Respondent swore their Supplemental Affidavits of Records as soon as they became aware that the documents contained therein were relevant to the Action. Additionally, given the status of the Action, the Applicant had ample opportunity to question on the newly disclosed records, which dispelled the risk of a trial by ambush while also avoiding a situation with undisclosed records being produced at the trial of the Action. The Court ultimately held that the Respondent was permitted to rely upon the records in their Supplemental Affidavits of Records.

The Applicant also argued that the Respondent's expert reports ought to be struck as inadmissible. In particular, the Applicants took the position that one report, the Kolesar Report, was inadmissible for lack of necessity. The Kolesar Report provided interpretation of judicial decisions, legislation, and decisions from the Alberta Utilities Commission. The Applicants argued that this interpretation

was unnecessary as it was squarely within the capability of the Court to undertake on its own. Although the Respondent argued that the Kolesar Report did more than simply interpret the decisions, Justice Dilts agreed with the Applicant's position and found that the Kolesar Report was neither necessary nor relevant.

Pursuant to Rule 4.14(g)(ii), a Case Management Juge or, if the circumstances require, any other Judge, could make Procedural Orders regarding issues pertaining to expert witnesses. The Court canvassed relevant case law and noted that on a pre-trial application, a Judge should restrict its considerations to whether an expert report meets the baseline preconditions for admissibility and only exclude all or portions of that report if it fails to meet those preconditions. With respect to the Kolesar Report, Justice Dilts ultimately decided that it was a clear case where pre-trial determination of admissibility was appropriate, and found that the report was inadmissible.

RAJPAUL ESTATE (RE), 2026 ABKB 546

(MALIK J)

Rule 4.22 (Considerations for Security for Costs Order)

The underlying Action arose from a dispute concerning the validity of a will in the Estate of Margaret Rajpaul. The Respondent, Romesh Singh, challenged the will and alleged that the deceased lacked testamentary capacity when it was executed. The Estate applied for Security for Costs pursuant to Rule 69 of the Surrogate Rules.

The Court held that, while Rule 69 confers the authority to order security for costs, the framework under Rule 4.22 of the Rules of Court can be used for guidance in exercising that discretion. The Respondent conceded that he had no assets in Alberta. Although he argued that an Order for security would effectively prevent him from continuing the Action, he provided no evidence to support that. The Court found that the relevant factors under Rule 4.22 favoured granting Security for Costs.

The Court noted that Romesh was not a beneficiary under the impugned will and, as a result, the Estate had no ability to recover any adverse Costs Award from his share of the Estate. This increased the Estate's risk of unrecoverable litigation costs. The Court was satisfied that it was just and reasonable to require Security for Costs.

Romesh argued that security should be limited to $10,000 to $15,000 on the basis that suspicious circumstances could be determined as a threshold issue. The Court rejected that position, finding that the evidence relating to suspicious circumstances substantially overlapped with the evidence required to determine testamentary capacity, knowledge and approval, and undue influence. A separate hearing would create a risk of duplication, increased expense, and delay.

The Court ordered Romesh to post Security for Costs in the amount of $50,726.66, based on the Estate's Bill of Costs calculated under Column 4 of Schedule C.

PIATRASHKA V KAZACHENKO, 2026 ABKB 665

(LOPARCO J)

Rules 4.22 (Considerations for Security for Costs Order) and 12.36 (Advance Payments of Costs)

The Plaintiff in a family law Action sought $70,000 in Advance Costs pursuant to Rule 12.36 or, alternatively, an interim distribution of family property. The Court decided the Application on the existing evidence because the parties submitted the issue by consent.

Rule 12.36 authorizes the Court, in addition to an Order pursuant to Rule 4.22, to make any appropriate Order for Advance Costs. Justice Loparco applied the three-part test from *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, through the family law principles in *McDonald v McDonal*d, 1998 ABCA 241. The Plaintiff had to establish an inability to fund the litigation, sufficient prima facie merit, and special circumstances.

The Court found that the Plaintiff could not meet basic living expenses and finance the Action. The Plaintiff had limited liquid assets, significant debt, modest income, and no meaningful access to readily saleable family property. The parenting, spousal support, and family property claims had sufficient prima facie merit. Special circumstances arose from the unresolved claims, the parties' significant financial disparity, the Defendant's control over most family and corporate assets, and the Plaintiff's resulting inability to participate meaningfully in the litigation.

The Court awarded $50,000 in Advance Costs pursuant to Rule 12.36. The requested $70,000 was unsupported by a detailed litigation budget. The Court directed that the Award be paid into the Plaintiff's counsel's trust account and only be used for legal fees and disbursements. Further, Loparco J. advised the parties that the $50,000 and remained subject to accounting and final characterization or set-off. Alternatively, the Court would have authorized the same amount as an interim advance against the Plaintiff's family property entitlement.

LAW SOCIETY OF ALBERTA V BILLINGSLEY, 2026 ABCA 268

(FAGNAN JA)

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

The Applicant, the Law Society of Alberta, sought an Order pursuant to Rules 4.22 and 14.67 for Security for Costs in respect of an Appeal filed by the Respondent, a formerly practicing lawyer.

The underlying Action concerned the custodianship of the Respondent's former law practice. The Chambers Justice granted an Order approving the distribution of the funds remaining in the Respondent's trust account pursuant to Section 95(5)(c) of the *Legal Profession Act*, RSA 2000, c L-8 (the "Order"). The Respondent appealed the Order on several grounds.

The Applicant argued that Security for Costs was warranted in light of, among other things, the Respondent's Affidavit evidence regarding

his limited financial means and his failure to pay an outstanding Costs Award of $400.

Appeal Justice Fagnan considered the factors set out in Rule 4.22 and the governing test for Security for Costs. The Court found that the Applicant's submissions met the criteria for an Order for Security for Costs in some amount. In particular, Fagnan J.A. opined that each of the grounds of appeal advanced by the Respondent was unlikely to succeed. Fagnan J.A. also noted that, notwithstanding the steps the Respondent had taken to improve his financial circumstances, he continued to have limited means.

The Court declined, however, to award the $10,500 sought by the Applicant, emphasizing that an Order for Security for Costs must not unduly prejudice the Respondent's ability to continue the Action.

Fagnan J.A. instead ordered the Respondent to post Security for Costs in the amount of $3,025, consisting of $1,000 for costs of this Application and $2,025 for costs of the Appeal, within four weeks. If this Security for Costs was not paid within that time, the Respondent's Appeal would be deemed abandoned pursuant to Rule 14.67(2).

RUYGROK V RUYGROK, 2026 ABCA 289

(ANTONIO JA)

Rule 4.22 (Considerations for Security for Costs Order)

The Applicant applied for an Order that the Respondent post Security for Costs for his upcoming Appeal of a child support Order.

The Court confirmed its discretion to order Security for Costs pursuant to Rule 4.22 if it is just and reasonable to do so. The burden was on the Applicant to show Security for Costs were justified.

The Court granted the Order for Security for Costs. In doing so, Antonio J.A. assessed the factors for consideration outlined in Rule 4.22.

First, the Court concluded that the Applicant would likely be unable to enforce a Costs Award against the Respondent's assets in Alberta. Although the Respondent possessed assets, Antonio J.A. accepted the Applicant's submission that the Respondent had "made efforts to render himself judgment-proof" and had been largely successful. The Court also noted the Respondent's history of refusing to provide timely financial information and failing to pay child support. Appeal Justice Antonio rejected the Respondent's submission that the Maintenance Enforcement Program could enforce the Judgment under Appeal because the Respondent failed to identify any assets or income against which enforcement steps could be taken.

Second, Antonio J.A. concluded that the Respondent did not have a high likelihood of success on Appeal.

Third, the Respondent had not claimed that Security for Costs would unduly prejudice his ability to continue the Action.

In determining the quantum of security, the Court declined to presume it would order enhanced costs. Antonio J.A. was not prepared to make assumptions about settlement offers potentially affecting the costs of the Appeal. Instead, the Court based the quantum on Column 2 of Schedule C of the Rules, consistent with previous Costs Awards in the Action.

EK V RO, 2026 ABCA 293

(ANTONIO JA)

Rule 4.22 (Considerations for Security for Costs Order)

The Applicant, EK, applied for a stay of a parenting reversal Order pending Appeal, seeking the return of the parties' three children to her primary care until the Appeal was decided. RO opposed the Stay Application and cross-applied for Security for Costs under Rule 4.22.

Relying on *Bains v Adam*, 2025 ABCA 235, Antonio J.A. outlined that ordering Security for Costs is discretionary. Pursuant to Rule 4.22, the Court must determine if an Order is just and reasonable by taking into consideration: the enforceability of a potential costs award, the respondent's ability to pay, the merits of the proceeding, any prejudice to continuing the action, and any other relevant circumstances.

The Respondent sought Security for Costs arguing the Appellant lacked assets, relied primarily on spousal support, and had a history of failing to comply with Court Orders. Antonio J.A. accepted that the Appellant had limited means and that recovery of a future Costs Award might be difficult.

However, the Court declined to order Security for Costs. While recognizing that the Appeal would be subject to deferential standards of review, the Court emphasized that the Appeal engaged the best interests of the children. In the circumstances, it was "just and equitable" to permit the Appeal to proceed without a financial impediment. Antonio J.A. held that the importance of determining the children's best interests outweighed the Respondent's interest in securing recovery of potential Appeal costs and dismissed the Application for Security for Costs.

GRAUPNER V PEILL, 2026 ABKB 593

(JONES J)

Rules 4.24 (Formal Offers 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)

Following an expedited Application concerning the enforcement of a restrictive covenant affecting a subdivision in Foothills County, the parties could not agree on costs. The Applicant sought enhanced costs, including partial indemnity solicitor-client costs and double costs based on an alleged settlement offer made before the hearing.

The Applicant succeeded in obtaining a permanent injunction preventing the Respondents from completing residential construction but did not obtain several other forms of relief, including damages and orders affecting third parties. The Applicant argued that a pre-hearing Settlement Offer justified double costs and that the Court should depart from Schedule C

in favour of awarding a percentage of at least 75% (or 50%) of actual legal fees incurred.

Justice Jones held that the Settlement Offer did not justify a costs penalty against the Respondents. The offer did not comply with Rule 4.24 and therefore was not a Formal Offer to settle. The offer was not framed as a *Calderbank* offer and was not stated to be "without prejudice except as to costs". Jones J. also noted that the offer did not indicate that double costs would be sought if the offer was not accepted. Although the offer indicated a willingness to agree to amendments to the restrictive covenant in exchange for payment, Justice Jones found this had little practical significance. The Applicant's consent would have been necessary to amend the covenant, but not sufficient to permit construction because other property owners in the subdivision would also be stakeholders in any process seeking to amend the restrictive covenant. As such, the Court found that the offer did not support an award of double costs.

Turning to enhanced costs generally, the Applicant argued that the Court should depart from Schedule C because: (i) she did not receive a monetary award despite achieving success on her Application; (ii) Schedule C would not provide reasonable indemnification; (iii) the matter required an urgent hearing; and (iv) the value of the legal services provided, as reflected in her fees and disbursements, viewed in the context of the need for urgent resolution, justified a departure from Schedule C. Justice Jones noted that although it was unfortunate the Applicant did not receive monetary damages, that outcome did not justify the Court compensating for the absence of a monetary damages award through a Costs Award. The Court emphasized that costs and damages serve different purposes.

The Court reviewed the principles governing departures from Schedule C and emphasized that a party seeking partial indemnity costs must provide sufficient information to allow the Court to assess whether the claimed fees were reasonable and reasonably incurred. Justice Jones noted that percentage-based solicitor-client costs require the Court to consider the factors in Rules 10.2 and 10.33, along with the reasonableness, necessity, and proportionality of the legal fees incurred.

Jones J. found that an award based on a percentage of actual legal fees may or may not be appropriate but found that the record lacked sufficient information to determine that appropriateness and whether the Applicant's claimed fees were reasonable or reasonably incurred. As such, the Court concluded that it was necessary for the reasonableness of the Applicant's alleged legal fees and disbursements to be determined prior to proceeding with an award of costs.

Justice Jones denied the request for double costs and declined to determine the appropriate costs methodology on the existing record. Instead, Justice Jones directed a Review Officer to assess the reasonableness of the Applicant's claimed fees and disbursements and provide a non-binding recommendation. The Court reserved its final costs determination pending that review.

RK V GSG, 2026 ABKB 647

(MAH J)

Rules 4.24 (Formal Offers to Settle), 4.29 (Costs Consequences of Formal Offer to Settle), 5.16 (Undisclosed Records not to be Used Without Permission), 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 had previously summarily dismissed the Plaintiff's claims against the Defendant for defamation, conspiracy, and intentional infliction of mental suffering, and was prepared to make a decision on costs. The Defendant had served a Formal Offer to Settle pursuant to Rule 4.24 on March 16, 2022, and sought a multiple of Column 5 costs, together with double costs for all steps taken after service of the Formal Offer. The Plaintiff argued that the Defendant's costs should not be doubled because of the Defendant's conduct and several allegedly inflated items in the Defendant's proposed Bill of Costs.

The Court discussed the objective of costs. The primary objective of a costs ruling, pursuant to Rule 10.31(1), is to provide a reasonable and proper measure of indemnity for costs incurred in successfully advancing or defending an action, proceeding, or application. A Costs Award may also discourage unnecessary litigation or sanction improper litigation conduct. The Court noted that the determination of costs is discretionary and recognizes the principles of reasonableness, fairness, balance, and equity, with proportionality as the overriding consideration. Proportionality requires the Court to consider the amount at stake and the importance of the issues to the parties while balancing fair indemnification of the successful party against the need to preserve access to justice and avoid unduly burdening the unsuccessful party, having regard to the factors set out in Rule 10.33. The Court noted that a costs ruling consists of three parts: (i) entitlement, (ii) scale, and (iii) quantum.

In this case, the Defendant's presumptive entitlement to costs pursuant to Rule 10.29(1) was not disputed. Mah J. applied the "costs in the cause" approach for interlocutory matters where costs had not previously been awarded. The purpose behind this approach was to avoid the need to revisit costs entitlement questions for past events.

Mah J. found that the Formal Offer satisfied Rule 4.24(2) and that the Defendant obtained a result nominally more favourable than the Formal Offer, giving the Defendant a prima facie entitlement to double costs for all steps taken after service, pursuant to Rule 4.29.

However, the Court went on to assess whether special circumstances justified refusing double costs pursuant to Rule 4.29(4)(e). Mah J. considered the parties' competing allegations of litigation misconduct. The Court found that the relevant conduct on each side cancelled the other side's effect and so chose not to award enhanced nor reduced the scale of costs on that basis. Although the Defendant's request for a multiple of Column 5 followed by doubling would have produced a disproportionate Costs Award, the policy underlying Rule 4.24 and the Defendant's minimally better result warranted double Column 5 costs from the date of service of the Formal Offer.

The Court held that Rule 10.29(1) separates an interlocutory Costs Order from the ultimate outcome of the Action. Further, Rules 4.29(2) and 4.29(3) do not contemplate reopening costs that had already been ordered and paid.

Rule 4.29(2) also confines double costs to steps taken after service of the Formal Offer, requiring reductions for steps taken before March 16, 2022 in this case.

In addressing the remaining disputed items, the Court removed or reduced amounts that duplicated prior Costs Awards, stemmed from unnecessary steps, or claimed full attendance costs for Applications only requiring written work. Mah J. applied Rule 10.30(1)(c) and the "costs in the cause" approach to interlocutory costs that had not previously been determined. The Court ultimately awarded the Defendant costs of the Action on Column 5, with steps taken after service of the Formal Offer assessed at double Column 5.

JONK V MERCIER, 2026 ABKB 674

(MARION J)

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

This case involved the costs portion of a family law dispute between Mercier (the "Defendant") and Jonk (the "Plaintiff"), with each party claiming substantial success and seeking costs against the other. Justice Marion highlighted that substantial success, rather than absolute success, governs costs in family matters and that costs generally follow the overall result rather than being apportioned issue-by-issue. In assessing substantial success, the Court considered quantitative and qualitative factors, including the parties' success on the various claims, the complexity of the issues, the monetary significance of the results, and the parties' positions at trial against the results.

The property distribution was the principal issue in this case, and the result fell between the parties' competing economic positions. The Plaintiff obtained an Award but received substantially less than claimed, while the Defendant achieved an unequal distribution in the Defendant's favour but did not avoid distribution altogether. The parties similarly achieved mixed success on partner support because the Plaintiff obtained support, but in an amount significantly below the amount claimed, while the Defendant reduced but did not eliminate liability. Marion J. therefore found that neither party achieved substantial success and that the overall result reflected mixed success.

Applying the factors in Rule 10.33, the Court considered the Trial's complexity, the financial significance of the issues, the parties' relative success, and their litigation conduct. The Defendant unnecessarily prolonged the Trial by refusing to admit an adult interdependent partner relationship, while the Plaintiff's reckless or dishonest testimony constituted a material factor against the Plaintiff and supported reducing any costs to which the Plaintiff might otherwise have been entitled. However, the Court concluded that awarding the Defendant costs because of the Plaintiff's testimony would not be a proportionate response.

The Plaintiff made a Settlement Offer. However, it had not been left open for 2 months, as required for Formal Offers to Settle by Rule 4.29. Further, the Plaintiff had not proven that the Judgment put the Defendant in a worse position than her offer once the necessary adjustments were made.

The offer remained relevant pursuant to Rule 10.33(2)(h), however, because even offers that fail to comply with the Rules are relevant to costs if they are bone fide attempts to settle. The Plaintiff's offer was a substantial and *bona fide* attempt to compromise the Plaintiff's Trial position and would have provided the Defendant with a costs advantage by avoiding the Trial.

Weighing the mixed success, the parties' unsuccessful positions, the Defendant's unreasonable position on the adult interdependent partner issue, the Plaintiff's reckless or dishonest testimony, and the Plaintiff's Settlement Offer, Marion J. ordered each party to bear their own costs of the Action. Because neither party succeeded on the costs submissions, each party was also required to bear their own costs of the costs determination.

YAKUBOW V EDMONTON GRANITE MEMORIALS LTD, 2026 ABKB 613

(OVIATT J)

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

This decision addressed pre-judgment interest and costs following the Plaintiff's success at a constructive dismissal Trial.

Justice Oviatt applied the midpoint approach in *Christianson v North Hill News Inc,* 1993 ABCA 232 and directed that pre-judgment interest run from September 10, 2023, the midpoint of the 15-month notice period.

Pursuant to Rule 10.29, the Court found that the substantially successful Plaintiff was entitled to costs. In applying Rule 10.33, the Court considered the Plaintiff's degree of success, the amount claimed and recovered, the importance and complexity of the issues, and the parties' efforts to streamline the action. Although the Plaintiff succeeded on constructive dismissal, the Plaintiff did not recover aggravated or punitive damages and received substantially less than the amount claimed.

Rule 10.31(3)(a) permitted the Court to award costs with or without reference to Schedule C. The Court used Column 2 but reduced the Trial preparation item by 50% because the streamlined Trial lasted one day, involved two witnesses, and was supported by separately compensable written briefs. The Court also allowed $1,000 for preparation of the Agreed Statement of Facts because it materially improved Trial efficiency, despite not being an itemized step in Schedule C.

The Court declined to award enhanced costs pursuant to Rule 4.29 because the Plaintiff's $180,000 Formal Offer to Settle exceeded the $149,812.50 Judgment. Justice Oviatt held that the automatic double-cost consequences of Rule 4.29 apply only when a party obtains a result more favourable than its Formal Offer and found no basis to award enhanced costs otherwise. The Court awarded costs and disbursements of $25,984.11.

LENCUCHA V CENNON ESTATE, 2026 ABKB 550

(MALIK J)

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

The Defendant sought to dismiss the Plaintiff's Action for delay under Rule 4.31 or long delay under Rule 4.33. The Application failed under both Rules.

The Plaintiff commenced the Action in 2018, seeking adult interdependent partner support. The Defendant passed away in March 2026. The Plaintiff argued that settlement negotiations between June and November 2022 significantly advanced the Action. In particular, she relied on the Defendant's November 28, 2022 settlement offer (the "Offer") to argue that the Defendant's November 24, 2025 dismissal Application was premature.

The Court held that the Offer constituted a significant advance under Rule 4.33. Justice Malik emphasized that the question under Rule 4.33 is whether settlement discussions resulted in important or notable progress toward resolution. Here, the Offer represented a "meaningful departure" from the Defendant's earlier settlement positions and materially narrowed the gap between the parties. Because less than three years had elapsed between the Offer and the dismissal Application, Rule 4.33 did not apply.

The Court also declined to dismiss the Action under Rule 4.31, although it found the Plaintiff's delay was inordinate and inexcusable. Malik J. held that the Plaintiff failed to advance the Action to the extent a reasonable litigant would have, and her expectation that settlement would eventually be reached did not excuse nearly three years of delay. However, the Estate failed to establish significant prejudice, as there was no evidence that the Defendant's death had materially impaired its ability to defend the Action.

LJ RESOURCES CO LTD V INDEPTH ENERGY INC, 2026 ABKB 574

(JUGNAUTH J)

Rule 4.31 (Application to Deal with Delay)

The underlying Action relates to a fraud claim started in 2016. The claim alleged that the Defendants used a scheme to cause Goldenkey Oil Inc. (formerly LJ Resources Co. Ltd.) to transfer about $9.2 million to shell companies. The Defendants included several individuals and corporate entities. There was also a related shareholder loan action brought by some of the Defendants, as well as a separate but related lawsuit commenced by Baytech Energy Investment Inc.

Between 2016 and 2018, the parties exchanged Affidavits of Records and conducted Questioning. Those questionings resulted in hundreds of undertakings, including 216 from a single witness. Progress then slowed for a number of reasons, including the need to answer Undertakings, procedural issues in the related actions, the COVID-19 pandemic, disputes over litigation plans, insolvency proceedings arising from the Plaintiff's bankruptcy, and various procedural Applications,

including a Security for Costs Application. The fraud Action and the shareholder loan Action were ultimately consolidated.

In 2024, after nearly eight years of litigation, the Defendants applied to dismiss the fraud Action under Rule 4.31 for inordinate and inexcusable delay.

The Court found that there had been delay, including inordinate delay. It identified significant periods during which the Plaintiff failed to meaningfully advance the litigation, including lengthy delays in providing Undertaking responses and extended periods of limited activity. The Action remained not trial-ready after more than eight years, with Questioning outstanding and expert evidence yet to be exchanged.

The Court nevertheless held that the delay was excusable. The major periods of delay were explained by the volume and complexity of the undertaking requests, the need to obtain information from former directors, accountants, financial institutions, and other third parties, the complex procedural history of the litigation, the Plaintiff's insolvency, proposal and bankruptcy proceedings, COVID-19 disruptions, and the Defendants' own conduct.

The Court emphasized that delay must be assessed in the context of the litigation as a whole and not by focusing solely on isolated periods of inactivity. While the Court did not condone the lengthy time taken to answer Undertakings, it accepted the Plaintiff's explanations in the circumstances.

The Court further found that, because the delay was excusable, the presumption of significant prejudice did not arise. In any event, the Defendants failed to establish actual significant prejudice caused by the Plaintiff's conduct. The Court noted that the Defendants themselves had materially contributed to the pace of the litigation.

The 4.31 Application was dismissed.

STUREK V FERNWOOD DEVELOPMENTS LTD, 2026 ABKB 564

(APPLICATIONS JUDGE WANKE)

Rules 4.33 (Dismissal for Long Delay), 5.5 (When Affidavit of Records Must be Served) and 5.6 (Form and Contents of Affidavit of Records)

This was an Application to dismiss an Action for long delay pursuant to Rule 4.33. The underlying Action alleged a conspiracy by the Plaintiff's landlord, its officers and property managers, and the Plaintiff's business partner to evict him and take over his business.

The Parties accepted that service of the Fernwood Defendants' Affidavit of Records in May 2022 significantly advanced the Action. The Plaintiff argued that two later steps also significantly advanced the Action: a partial Discontinuance against two Defendants in November 2024, and the Applicants' January 2025 consent to a proposed Amended Statement of Claim that was never filed.

Applications Judge Wanke held that the Discontinuance significantly advanced the Action. Removing the Defendants narrowed the parties and issues, clarified the Plaintiff's position, and improved the efficiency of the litigation. The timing of the Discontinuance, following new counsel's review of the file, supported its genuineness. Applications Judge Wanke also noted that the strength or

weakness of the abandoned claims was not determinative.

The consent to the proposed Amended Statement of Claim provided relevant context but did not independently advance the Action. The Court noted that Rule 4.33 requires one significant advance within the three-year period, not continuous diligence.

Although it did not affect the disposition, the Court commented on the practice of serving unsworn affidavits of records. An unsworn affidavit does not satisfy Rule 5.5, because it is not sworn as Form 26 requires under Rule 5.6(1), and it does not trigger a defendant's reciprocal obligation under Rule 5.5(3).

Accordingly, the Application was dismissed.

STARK V STARK, 2026 ABKB 632

(AKGUNGOR J)

Rules 4.33 (Dismissal for Long Delay) and 4.34 (Stay of Proceedings on Transfer or Transmission of Interest)

The Applicant applied pursuant to Rule 4.33 to dismiss the Respondent's Counterclaim for matrimonial property division for long delay. The Applicant had commenced the Action for divorce and division of matrimonial property in 2015, and the Respondent filed a Counterclaim in 2016. The Respondent died in October 2024, before the matrimonial property dispute was resolved, and his personal representative opposed the Application.

The Court first considered whether the Respondent's death prevented the Rule 4.33 Application from proceeding. Rule 4.34 automatically stays an Action where a party's interest or liability is transferred or transmitted by death until an Order to continue is obtained. However, Justice Akgungor held that an automatic stay pursuant to Rule 4.34 was not a stay "by Order" within the exception in Rule 4.33(2)(a), and the period during which the automatic stay operated was not deducted from the period of delay. Accordingly, Rule 4.34 did not preclude the Applicant from seeking dismissal pursuant to Rule 4.33.

Turning to the calculation of delay, the Court rejected the Estate's submission that the relevant period was determined by looking back three years from the date the dismissal Application was filed. Relying on *Rahmani v 959630 Alberta Ltd*, 2021 ABCA 110, Akgungor J. held that time is counted forward from the last uncontroversial significant advance until the filing of the Rule 4.33 Application. Following an exchange of settlement proposals in January 2020, no potential significant advance occurred before settlement discussions resumed in the summer of 2024.

The Estate relied on those settlement discussions in the summer of 2024 and the Applicant's acquisition of the former matrimonial home (the "Acreage") to invoke the exception in Rule 4.33(2)(b). That exception did not require a significant advance, but the Applicant's participation had to be such that the Estate could fairly assume the accumulated delay had been waived.

The Court held that the settlement discussions did not narrow the issues, produce relevant information, or otherwise amount to meaningful progress toward resolution. They therefore could not reasonably have led the Respondent to assume that the Applicant had waived the delay.

The Court reached the same conclusion regarding the Acreage. The Respondent's interest passed to the Applicant by right of survivorship upon his death. As that transfer occurred by operation of law, it did not constitute active participation by the Applicant in the Action. Filing an Affidavit of Surviving Joint Tenant was also not a "proceeding" for the purposes of Rule 4.33(2)(b). Similarly, changing the locks and removing personal items from the Acreage were, at most, preliminary or preparatory conduct and did not amount to participation warranting continuation of the Action.

Finally, the Estate argued that dismissal would be unfair because Section 16 of the Matrimonial Property Act, RSA 2000, c M-8 permitted an estate to continue, but not commence, a matrimonial property Action. Justice Akgungor held that prejudice or unfairness resulting from dismissal was irrelevant under Rule 4.33.

Having found a continuous three-year period without a significant advance and no applicable exception, the Court dismissed the Counterclaim and, at the Applicant's request, the Statement of Claim.

BARON REAL ESTATE INVESTMENTS LTD V TRI-ARROW INDUSTRIAL RECOVERY INC, 2026 ABCA 249

(SLATTER, KIRKER AND HAWKES JJA)

Rule 4.33 (Dismissal for Long Delay)

This Appeal sought to restore an Action which was dismissed for long delay, pursuant to Rule 4.33. Prior to the dismissal of the Action, the parties had exchanged Affidavits of Records and had scheduled Questioning. However, Questioning was postponed to allow the Appellant to provide a supplemental Affidavit of Records. Shortly after receiving the Appellant's Affidavit of Records, the Respondents applied to dismiss the Application for long delay pursuant to Rule 4.33.

The primary issue between the parties was whether the service of the supplemental Affidavit of Records constituted a significant advance in the Action. The Chambers Judge held that while the documents in the supplemental Affidavit of Records were relevant and material, they did not address the central issue of the dispute. Further, the documents provided were in the Appellant's possession prior to service of the original Affidavit of Records and no explanation was given for why they were not provided at first instance. As such, the Chambers Judge concluded that the supplemental Affidavit of Records did not significantly advance the Action and dismissed the Action for long delay.

The Appellant argued that the Chambers Judge had mischaracterized the significance of the supplemental records by erroneously narrowing the issues beyond what the pleadings disclosed. Further, the Appellants submitted that the Chambers Judge wrongfully placed the burden under Rule 4.33 on the Appellants to prove a significant advance had occurred in the Action rather than requiring the Respondents to establish the absence of such an advance.

The Respondents maintained the position they had advanced before the Chambers Judge—that the supplemental Affidavit of Records did not advance the Action and addressed issues that did not require resolution.

In assessing the requirements of Rule 4.33, the Court noted that, in considering whether a significant advance had occurred, the Court

must consider if the step moved the Action forward in an essential way considering the nature, value, importance, and quality of the matter. The question for the Court to determine was whether anything had occurred that could put either the Court or the parties in a better position to either settle or adjudicate the Action. The Court determined that the documents in the Appellant's supplemental Affidavit of Records were relevant and material to the Action and, although the Respondents took issue with the timing of the production, the Appellant was able to provide a reasonable explanation for when the records were produced.

Given the relevance and materiality of the records, the Court held that the Appellant had significantly advanced the Action. The Appeal was allowed and the Action was restored.

2114223 ALBERTA LTD V LOUGHEED, 2026 ABCA 291

(HO, FAGNAN AND SHANER JJA)

Rule 4.33 (Dismissal for Long Delay) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

This Appeal concerned a decision of a Chambers Judge (the "Second Decision") on appeal from a decision by an Applications Judge (the "First Decision").

In the First Decision, the Applications Judge granted the Defendant's Application to set aside Default Judgment against him pursuant to Rule 9.15(3) and to dismiss the Action for long delay pursuant to Rule 4.33. In the Second Decision, the Chambers Judge allowed the Plaintiffs' appeal in part, reversing the dismissal for long delay but affirming the ruling to set aside the Default Judgment. Both parties subsequently appealed the Second Decision. The Defendant appealed the reversal of the dismissal for long delay, while the Plaintiffs' cross-appealed the ruling affirming that the Default Judgment be set aside.

The Court of Appeal upheld the Second Decision in its entirety. The Court found no reviewable error in the Chambers Judge's conclusion that the Defendant's participation in the Action after Default Judgment precluded dismissal for long delay. The Court likewise found no reviewable error in the Chambers Judge's articulation and application of the test for setting aside a Default Judgment.

The Court of Appeal dismissed both the Defendant's Appeal and the Plaintiffs' Cross-Appeal and directed that each party bear their own costs.

CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC, 2026 ABKB 570

(NIXON ACJ)

Rules 5.2 (When Something is Relevant and Material), 5.5 (When Affidavit of Records Must Be Served), 5.6 (Form and Contents of Affidavit of Records) and 5.11 (Order for Record to be Produced)

The Plaintiff, CNOOC Petroleum North America ULC, and the Defendant by Counterclaim, CNOOC Limited (collectively, the "CNOOC Parties"), applied pursuant to Rule 5.11 for an Order for further and better Affidavits of Records from the Defendant, 801 Seventh Inc (the "Landlord"), and the other Defendants (the "Beneficial Owners") (collectively, the "Respondents").

The underlying Action arose from a dispute concerning a commercial lease. The CNOOC Parties brought these Applications following the conclusion of the liability phase of the Action and before the assessment of damages. In an earlier 2026 decision, Associate Chief Justice Nixon granted the CNOOC Parties leave to amend their Statements of Defence to Counterclaim. Following those amendments, the Landlord produced a fifth supplemental Affidavit of Records disclosing new records. The Beneficial Owners also provided supplemental Affidavits of Records stating that any further relevant and material records in their control had already been produced by the Landlord.

In their Applications, the CNOOC Parties requested the production of communication and financial records that were not disclosed in the Respondents' supplemental Affidavits of Records. The CNOOC Parties also sought an Order requiring the Respondents to undertake a new record collection process, arguing that the Respondents' failure to communicate a document-retention policy had resulted in relevant and material records being overlooked or destroyed.

Nixon A.C.J. emphasized the importance of the disclosure obligations imposed by Rules 5.5 and 5.6, reviewed the test governing applications under Rule 5.11, and considered the meaning of "relevant and material" under Rule 5.2.

The Court held that the CNOOC Parties had failed to establish, on a balance of probabilities, that any additional records ought to be produced. Associate Chief Justice Nixon found that a failure to communicate a retention policy did not, by itself, prove that relevant and material records were destroyed or not disclosed. Nixon A.C.J. also concluded that the CNOOC Parties' production requests amounted to impermissible fishing expeditions, based on unrealistic or speculative premises.

The Court dismissed the CNOOC Parties' Applications in their entirety.

MENTZELOPOULOS V ALBERTA HEALTH SERVICES, 2026 ABKB 502

(LEMA J)

Rule 5.3 (Modification or Waiver of this Part)

In this Case Management Endorsement, the Court considered whether the Plaintiff's Application for further and better records should be heard before the Defendants' narrowly focused Summary Dismissal Application.

Justice Lema agreed with Plaintiff's counsel that, even if the Summary Dismissal Application resulted in the determination of certain issues, other issues would remain outstanding. The Court therefore found that proceeding with the Summary Dismissal Application first would not be an efficient use of resources.

Lema J. considered the Court of Appeal decision in *P. Burns Resources Limited v Honourable Patrick Burns Memorial Trust*, 2015 ABCA 390 ("*P. Burns Resources*"), in relation to the Application for further and better records. In *P. Burns Resources*, the Court of Appeal held that Rule 5.3 confers a discretionary power to modify or waive any right or obligation under Part 5 of the Rules, and that there is no mandatory suspension of Part 5 document production or questioning merely because an application for summary judgment has been brought. Applying *P. Burns Resources*, Justice Lema held that much of the documentary evidence relevant to the substantive issues was in the Defendants' possession.

The Court concluded that the Defendants' narrow-focused Summary Dismissal Application would not be appropriate. The next step would therefore be the Plaintiff's Application for further and better records, unless the Defendants provided further disclosure that the Plaintiff accepted as adequate.

NOVA OCULUS CANADA MANUFACTURING ULC V SATHER, 2026 ABKB 616

(DARIO J)

Rules 5.22 (Questioning Options), 5.24 (Oral and Written Questioning Limitations) and 5.28 (Written Questions)

The Applicant sought leave to provide written interrogatories rather than be subjected to in-person Questioning. The Applicant had previously participated in Questioning on multiple occasions throughout the Action. However, their counsel advised that they would be unable to continue in-person Questioning due to medical issues and on advice from their doctor. The Applicant was in poor health, and their physician had concerns that the stress of participating in Questioning would be detrimental to the Applicant's health.

The Applicant submitted that in the circumstances, the Court ought to permit questions to be answered through interrogatories, as permitted by Rule 5.22. The Rules contemplate that, subject to the limitations set out in Rule 5.28, questions can be answered under oath and in writing. The Applicant went on to argue

that any prejudice to the Respondents would be remedied by requiring follow-up questions to be answered in the event of any deficient responses from the Applicant.

The Respondent took the position that the Applicant was a central witness to the matter; that his credibility was highly relevant and that the lack of spontaneity and immediacy in his responses would be highly prejudicial to the Respondents. Further, the Respondents argued that the evidence submitted by the Applicants was insufficient to demonstrate the necessity of written interrogatories rather than oral Questioning. The Respondent also proposed a litany of accommodations in an attempt to address the Applicant's circumstances, while still recognizing the importance of the witness to the Action.

Justice Dario agreed that the Applicant's evidence was central to the Action, and that their credibility was a principal issue in the dispute. The Court also noted the evidence from the Applicant's physician regarding the medical risks that would come from oral Questioning. Given the accommodations proposed by the Respondent, the medical concerns outlined by the physician, and the hybrid processes available, the Court directed a modified procedure under Rule 5.24(b) wherein some questions would be answered in writing with the balance to occur orally.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 582

(NIXON ACJ)

Rules 5.35 (Sequence of Exchange of Experts' Reports) and 8.16 (Number of Experts)

This decision arose from competing Applications concerning expert reports in complex, multi-party pipeline litigation approaching Trial. After primary expert reports were exchanged, the parties served a number of rebuttal reports. Each side alleged that certain reports, characterized as rebuttal reports, were, in substance, primary reports that should have been served earlier under the Complex Case Litigation Plan (the "CCLP"). The parties also disputed whether one rebuttal report improperly duplicated other expert evidence and what surrebuttal reports could address.

Associate Chief Justice Nixon considered the sequencing of expert reports pursuant to Rule 5.35. Nixon A.C.J. confirmed that Rule 5.35 establishes a sequential process for the exchange of expert reports. The party bearing the primary onus of proof serves its initial expert report first. The other party or parties may then serve their rebuttal reports, which could include issues not raised in the initial report. Finally, the party that served the initial report may serve a surrebuttal report responding only to new issues raised in rebuttal.

The process promotes meaningful pre-trial disclosure and focuses the issues for trial. While a rebuttal report could raise new issues, it cannot be used to split a party's case or merely confirm or reinforce evidence that should have been included in its primary report. The Court emphasized that Rule 5.35 was to be applied as a fair and workable process for disclosure rather than through an overly rigid or expansive interpretation.

In considering the "primary onus of proof" under Rule 5.35, Nixon A.C.J. held that the inquiry depended on the circumstances of the particular case and the specific issue on which the expert evidence was tendered.

The Court rejected a rigid interpretation of the Rule and held that, although a defendant might bear the burden of proving a defence such as contributory negligence, that did not necessarily require an expert report concerning that defence to be served as a primary report. Applying this approach, the Court held that the challenged reports had properly been served as rebuttal reports. Nixon A.C.J. further held that, even if the reports had ventured into matters that should have been addressed in primary reports, striking them would have been an inappropriate remedy where any resulting prejudice could be addressed at Trial or through costs.

Nixon A.C.J. also held that Rule 8.16 did not prohibit all overlap among a party's experts. The Rule was intended to prevent the abuse, expense, and delay associated with unnecessary duplication of expert evidence, but a broader issue could encompass multiple distinct subjects requiring different expertise. In complex litigation, some overlap was unavoidable where experts addressed common subject matter from the perspective of their distinct training, experience, and expertise. The Court declined to strike the challenged rebuttal report because the expert's expertise was sufficiently distinct from that of the party's other experts and the evidence was not improperly duplicative.

With respect to surrebuttal reports under Rule 5.35(2)(c), Nixon A.C.J. held that whether a matter constituted a "new issue" depended on the circumstances of each case and declined to establish an exhaustive definition or framework. A surrebuttal report could respond to an alternative theory or new dimension raised in rebuttal and could contain expanded discussion where reasonably necessary to address matters of which the primary expert would not have been aware. However, a surrebuttal report could not merely reiterate, expand, or emphasize the primary report, make new allegations, or be used to split a party's case. The focus remained on whether the surrebuttal was carefully confined to genuinely new matters arising from the rebuttal report.

Finally, Nixon A.C.J. recognized that the sequential process under Rule 5.35 was designed primarily for conventional two-party litigation and was more difficult to apply where multiple parties had divergent interests. Because Rule 5.35 permitted the ordinary sequence to be altered by agreement or Court Order, the Court amended the CCLP to extend the deadline and permit certain additional surrebuttal reports. However, the Court declined to permit a party to serve a surrebuttal report in the form of a rebuttal report that could raise new issues, holding that the parties should instead focus on narrowing the issues as Trial approached.

MENTZELOPOULOS V ALBERTA HEALTH SERVICES, 2026 ABKB 675

(LEMA J)

Rule 6.8 (Questioning Witness Before Hearing)

The Defendants sought, among other relief, an Order requiring the Plaintiff to return documents obtained or created during her employment as president of the Defendant, Alberta Health Services ("AHS") (the "Documents").

The underlying Action arose from the Defendants' termination of the Plaintiff's employment. The Plaintiff maintained that she was entitled to retain and use the Documents in support of her wrongful dismissal claim. The Defendants argued that, following the

termination, the Plaintiff had no right to retain the Documents because they were protected by solicitor-client privilege and/or contained confidential information.

Applying the relevant jurisprudence and governing principles, the Court held that, with limited exceptions, the Documents were confidential and/or privileged. Justice Lema found that the Defendants had neither expressly nor impliedly waived privilege over the privileged Documents. Lema J. further found that the Plaintiff was not entitled to retain the confidential Documents, having regard to her obligations under her employment agreement, fiduciary law, and the law governing employees' use of confidential information.

Accordingly, the Court ordered the Plaintiff to return all original privileged or confidential Documents in her possession or control, destroy any copies, and refrain from disclosing or otherwise using them without the Court's express permission. The Plaintiff was also directed to amend her Affidavit of Records accordingly.

Justice Lema also ordered that any privileged or confidential Documents filed in connection with the Application be sealed, and directed a particular counsel to provide an Affidavit concerning their review of the privileged Documents. However, Lema J. declined to require the Plaintiff to re-attend Questioning pursuant to Rule 6.8 or provide an Affidavit concerning her disclosure of privileged or confidential information. Justice Lema noted that existing Orders already prohibited such disclosure and the Defendants had not adduced evidence of any actual or suspected breach of those Orders.

The Court ultimately granted the Defendants' Application and awarded them costs.

BOILEAU V NATURENER ENERGY CANADA INC, 2026 ABKB 627

(DARIO J)

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

The Applicants sought Summary Dismissal of an Action arising from a Share Purchase Agreement (the "SPA") and appealed an Applications Judge's refusal to summarily dismiss a related Action. Both Actions concerned the interpretation of the SPA and the Applicants' contractual obligations.

Dario J. confirmed that, pursuant to Rule 6.14(3), and Appeal from an Applications Judge proceeded *de novo* but, absent new evidence, the standard of review was correctness. In determining whether Summary Judgment was appropriate pursuant to Rule 7.3(1)(b), the Court considered whether the evidentiary record permitted fair resolution of the dispute without a Trial. Justice Dario noted that the record contained thousands of pages of documents, involved overlapping issues, and that Part 5 Questioning had not occurred. In those circumstances, Summary Judgment was less appropriate.

The Appellants argued, relying on *WP v Alberta,* 2014 ABCA 404, that Summary Judgment required an issue of merit genuinely requiring a Trial, rather than merely a triable issue. Dario J. found that the record was insufficient to resolve the disputed issues fairly and that issues of merit genuinely required a Trial, even under the higher standard advanced by the Appellants.

In the result, the Appeal was dismissed and the Application for Summary Dismissal was denied.

ST PIERRE ESTATE V BLACK ESTATE, 2026 ABKB 686

(ADAMS J)

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

The Plaintiff appealed an Applications Judge's decision summarily dismissing its claim for negligence pursuant to Rule 7.3. The Plaintiff had previously been granted leave to amend his Statement of Claim to allege negligence against the Defendants. However, the Order granting leave specifically maintained the Defendants' ability to any defence, including a defence based on limitation periods. The Applications Judge found that the Plaintiff's claim was statute-barred by the *Limitations Act*, RSA 2000, c L-12.

Justice Adams reiterated that appeals from Applications Judges' decisions are reviewed for correctness pursuant to Rule 6.14(3). Therefore, there is no deference to the decision of the Applications Judge. However, the burden remains on the appellant to demonstrate that the decision was incorrect.

The Court found that the Applications Judge was correct in finding that the limitation period for the Plaintiff's claim had already lapsed for the purposes of the Limitations Act. Further, Adams J. held that a finding that a negligence claim is precluded by the Limitations Act satisfies the test for summary dismissal.

The Court dismissed the Plaintiff's Appeal.

FARM CREDIT CANADA V WIEBE, 2026 ABCA 235

(FEEHAN, KIRKER AND SHANER JJA)

Rules 6.14 (Appeal from Applications Judge's Judgment or Order), 13.5 (Variation of Time Periods) and 14.5 (Appeals Only with Permission)

The Appellants defaulted on a loan secured against their livestock. After an Applications Judge quantified the debt owing to Farm Credit Canada ("Farm Credit"), the Appellants filed a Notice of Appeal twelve days after the expiry of the Rule 6.14 appeal period and sought an extension of time to appeal pursuant to Rule 13.5. A Chambers Judge dismissed the Application.

The Appellants appealed that decision, while Farm Credit cross-appealed on the basis that the issue was moot since the debt had been paid.

The Court first considered whether permission to appeal was required. The Court confirmed that Rule 14.5(1)(b) applies to pre-trial decisions respecting time periods or time limits, even where such decisions may affect substantive rights. A decision refusing to extend the time to appeal pursuant to Rule 13.5 is a pre-trial decision respecting a time limit and therefore requires permission to appeal.

The Court then considered the established factors governing an extension of time to appeal, including whether the applicant formed a *bona fide* intention to appeal, whether the

delay was explained, whether prejudice would result, whether the applicant had taken the benefit of the Judgment, and whether the proposed appeal was reasonably arguable. The Court accepted that the Appellants intended to appeal, that serious personal circumstances affecting former counsel explained the delay, that the Respondent would suffer no serious prejudice, and that the Appellants had not taken any benefit from the delayed filing.

However, the Court held that the proposed Appeal had no reasonable chance of success. The Appellants argued that the amount owing should be reduced because they incurred expenses caring for the livestock after seizure, and they were sold for $22,000 despite an alleged agreement by a purchaser to pay $50,000. The Court held that those claims had not been advanced below and, in any event, the terms of the loan and security agreements excluded claims in set-off, compensation, counterclaim, and improvident realization.

The Court concluded that the proposed Appeal was hopeless. The Appeal and Cross-Appeal were both dismissed with each party to bear its own costs.

KEYES V KEYES, 2026 ABKB 661

(LOPARCO J)

Rule 6.37 (Notice to Admit)

The Defendant applied under the Court's inherent jurisdiction to remove the Plaintiff's counsel of record from their contested family law proceeding. The Defendant claimed that the Plaintiff's counsel would likely become a necessary and compellable witness regarding events connected to allegations of family violence and abuse of process.

The Defendant relied on an alleged telephone call to police, an email authored by opposing counsel, opposing counsel's participation by telephone in a meeting involving the children and police, and correspondence with the Defendant's accountant. The Defendant alleged that opposing counsel participated in efforts to secure his arrest, undermine a parenting order, and alienate the children.

The Court held that removing counsel was an extraordinary remedy available only in the clearest cases. Justice Loparco emphasized that Courts of inherent jurisdiction had supervisory power over the litigation before them but that such power was exercised in tension with the established right of retaining counsel of choice. The governing standard in determining whether the removal of counsel is required is objective and subject to a high degree of restraint. The Defendant had to establish that counsel would likely provide material evidence on a contested issue and that the proper administration of justice required removal. The mere possibility that counsel might testify is insufficient.

Loparco J. found that the allegations rested largely on inference and characterization, rather than on admissions in the record. The documents spoke for themselves, and other witnesses could provide testimony on the relevant events. The Defendant could not manufacture a basis for disqualification by suing opposing counsel or declaring an intention to call counsel at Trial.

Removing counsel would also cause substantial expense and delay in an Action that the Court

of Appeal had directed should proceed to Trial promptly. Justice Loparco found that the Application was, in significant part, a collateral attack on prior Orders and was a continuation of a sustained campaign of personal attacks on opposing counsel. The presence of additional relief on the Application for removal, including for deemed admissions under Rule 6.37(3), refused Undertakings, and contempt, suggested the Application's collateral purpose.

The Court dismissed the Application. The Defendant had not established that opposing counsel was likely to be a material witness or that the administration of justice required his removal. Justice Loparco noted that the Trial Judge could address any discrete issue if counsel's evidence later became necessary and unavailable from another source. The Court directed the parties to complete the remaining litigation steps and arrange to finalize a Trial Order.

HOROBEC V TRAN, 2026 ABKB 494

(MCGUIRE J)

Rules 6.40 (Appointment of Court Expert), 6.41 (Instructions or Questions to Court Expert), 6.42 (Application to Question Court Expert) and 6.43 (Costs of Court Expert)

The Parties consented to a child support Order that required annual financial disclosure; however, the father, the Respondent, never complied. The mother, the Applicant, applied for an Order for disclosure. The Applicant also sought an Order to appoint Cameron Brinkman, a Senior Valuation Consultant, to provide a guideline income report at the Respondent's sole expense.

Justice McGuire acknowledged that there was no statutory jurisdiction, applicable Rule, or precedential authority to grant an Order requiring the Respondent to retain Mr. Brinkman at his own expense. Although Case Management Judges in Ontario may grant Orders requiring the engagement of an expert by or for one or more parties, Alberta has no similar rule. McGuire J. noted that Alberta has Rules 6.40-6.43 which permits the Court to appoint experts for trial, emphasizing that Rule 6.40 relates to trial evidence, not pre-trial discovery. Further, the cost of a Court-appointed expert must be shared equally by the parties.

The Court found that the Applicant did not seek an Order to appoint an expert pursuant to Rule 6.40 by requesting an Order requiring the Respondent to pay for her chosen expert. As such, Justice McGuire dismissed the Application for this Order, noting that the Applicant could retain Mr. Brinkman as an expert if she wanted to and could seek an Order for those costs before the trial Judge. McGuire J. emphasized that the Respondent was obligated to make full and complete disclosure of his financial information and that he was entitled to retain an expert of his choosing. The Court ordered full and complete financial disclosure of all information from 2008 to 2025 and directed that if the Respondent did not comply with the Order, the Applicant had leave to bring a contempt Application.

JBRO HOLDINGS INC V DYNASTY POWER INC, 2026 ABKB 505

(SIMARD J)

Rules 9.12 (Correcting Mistakes or Errors), 9.13 (Re-opening Case) and 9.14 (Further or Other Order After Judgment or Order Entered)

The parties filed a Correction Application under Rules 9.13 and 9.14 seeking to correct, clarify, or revise the Court's April 2026 decision ("April 2026 Decision") arising from an Application heard in March 2026. After receiving written submissions and hearing oral argument on the Correction Application in June 2026, the Court released this decision.

In the Correction Application, the parties raised four issues: whether the term "JBRO" should be replaced; whether the valuation date should be changed; what governing parameters should apply at the next hearing; and which report the expert witnesses should use.

Justice Simard explained that Rule 9.12 is confined to correcting errors in a Judgement or Order. Rule 9.13, by contrast, is broader and allows the Court to vary or modify a Judgment, Order, or its reasoning for a decision at any time before it is entered. In deciding whether to exercise its authority under Rule 9.13, the Court emphasized that the power should be used sparingly and should not allow parties to reargue the case, raise new arguments, or revisit a judgment call. The Court must also balance the purposes of the Rules, the avoidance of unnecessary appeals, the need for a complete record on appeal, and the importance of finality and certainty, particularly where the alleged error was already addressed and is not plain and manifest. Simard J. held that Rule 9.14 would not be applicable here as no Judgement or Order had been entered.

The Court clarified that its use of "JBRO" in the April 2026 Decision was imprecise because it referred to two different Plaintiff entities. However, the Court found that the intended entity was clear from the context of each passage and that the clarification resolved any resulting ambiguity.

Simard J. rejected the Plaintiffs' request to change the valuation date from December 31, 2021 to December 31, 2022. Although the Court acknowledged an arithmetical error in describing the length of the delay, it held that the valuation date was a discretionary, multi-factorial decision rather than a mathematical calculation, and the error did not affect the outcome.

Justice Simard found that the structure and characterization of damages and pay entitlement were already clearly described in the April 2026 Decision and required no further clarification. The Court clarified that the Judge later determining the remaining issues would decide the outstanding matters.

The Court changed its earlier direction that the experts use only "estimate valuation reports" after recognizing that direction was based on a factual misunderstanding. Given the value and complexity of the companies, Simard J. held that the parties could obtain valuation reports on whatever standard they considered appropriate, including "comprehensive valuation reports."

OFFREY V OFFREY, 2026 ABKB 660

(MANDZIUK J)

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

The Plaintiff was granted Judgment for an equalization payment following a Trial concerning the division of family property. The Judgment specified that the Defendant would either purchase the Plaintiff's interest in the family home or sell the property. When the parties disagreed on reducing the listing price, the Plaintiff sought advice and direction from the Court. No formal Application was brought.

Justice Mandziuk considered whether the Court retained jurisdiction to provide directions after the Judgment had been entered. The Court noted that the absence of directions in the Judgment concerning the sale of the family home was not an accidental slip, error or omission that would engage Rule 9.12. The manner of satisfying the Judgment was left to the parties.

Mandziuk J. also examined whether a further Order could be granted pursuant to Rule 9.14 to give effect to the relief contemplated by the Judgment. The Court noted that it had not reserved jurisdiction to determine how the Judgment would be satisfied. Justice Mandziuk found that issuing specific directions concerning the sale or refinancing of the family home would constitute a variation of the Judgment and was therefore not permitted by Rule 9.14.

The Court further reviewed the doctrine of *functus officio*, which prevents reconsideration of a final Judgment once entered, subject to limited exceptions. Mandziuk J. found no basis to exercise the Court's inherent jurisdiction to amend the Judgment, as the dispute concerned enforcement of a monetary Judgment rather than the underlying division of family property.

Accordingly, Justice Mandziuk declined to issue directions but confirmed that either party could bring a separate Application before another Justice for relief concerning the sale of the property.

HOROBEC V TRAN, 2026 ABKB 598

(MCGUIRE J)

Rules 9.14 (Further or Other Order after Judgment or Order Entered), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This was a costs decision following an Application to compel financial disclosure in child support litigation. In the underlying proceedings, the Applicant sought retroactive and ongoing child support from the Respondent, the payor parent, who had provided no financial disclosure for eighteen years, despite three previous disclosure Orders. The Court ordered full financial disclosure under Section 21 of the *Alberta Child Support Guidelines*, Alta Reg

147/2005. The Applicant sought solicitor-client costs. The Respondent argued that success was mixed and that costs should await Trial.

Under Rule 10.29, a successful party is presumptively entitled to costs. Solicitor-client costs are reserved for rare and exceptional circumstances involving misconduct described as scandalous, outrageous or reprehensible.

Applying the factors in Rule 10.33, Justice McGuire found that there was mixed success, but the Applicant was substantially successful on the most important issue—the disclosure itself. The opposition was not grounded in any difficult legal principle. It was "simple obstinance", and the Respondent was fully responsible for the non-disclosure that made the Application necessary. The Court also rejected the Respondent's attempt to revisit the disclosure ruling through the costs submissions, noting that costs submissions are not an opportunity to bring a new Application under Rule 9.14 or vary a decision already made.

McGuire J. held that eighteen years of non-disclosure and non-compliance with three disclosure Orders was blameworthy conduct that frustrated the litigation, warranting solicitor-client costs. The Court awarded the Applicant a lump sum of $7,500, representing a little more than three times the Schedule C amount.

JACKSON V PIIKANI NATION, 2026 ABKB 624

(MARION J)

Rule 9.19 (Persons who are not Parties)

This Action was part of case managed litigation (the "Case Managed Actions"). The Applicant submitted a request for a fiat allowing them to file an Originating Application (the "Proposed Action") against the Respondents to enforce prior Court Orders, among other relief. The Respondents opposed the request on the basis that it failed to comply with the established fiat process and constituted an abusive re-litigation of previously determined issues. Although the fiat request for the Proposed Action failed to comply with the procedural requirements set out in prior Endorsements, Marion J. considered its merits to avoid further delay and consumption of resources.

The Applicant was no longer a party in the Case Managed Actions yet was attempting to enforce "final orders of this Court." Applying Rule 9.19, Marion J. noted that a non-party may enforce a Court order only if the person obtains an Order or an Order is obtained in that person's favour. Justice Marion found that the Proposed Action was hopeless as the Applicant failed to identify any Order obtained in his favour. The mere fact that prior judicial findings aligned with the Applicant's evidentiary position or arguments did not confer standing pursuant to Rule 9.19.

Marion J. reiterated that the Applicant did not require permission of the Court to commence an independent civil action against the Respondents for contractual indemnity or unpaid compensation, making the inclusion of such claims within the Case Managed Actions an abuse of process. In the result, the Court denied the fiat request to file the Proposed Action.

SUNSTRUM ESTATE (RE), 2026 ABKB 491

(EAMON J)

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

The Court clarified that estate litigation is not subject to a special costs regime. While personal representatives may recover legal expenses reasonably incurred in administering an estate under the Surrogate Rules, litigation costs are governed by the Rules. There is no presumption that personal representatives or beneficiaries are entitled to have their legal fees paid from the estate, nor are unsuccessful estate litigants entitled to indemnification simply because the dispute concerns an estate. The recognized exceptions, such as disputes over the validity or interpretation of a will or claims under dependant's relief legislation, remain rare.

The Court reviewed Rule 10.29, confirming that costs generally follow the event, although where success is divided, parties may bear their own costs or costs may be apportioned by issue. The Court further emphasized that Rule 10.33 grants broad discretion to determine costs by considering litigation conduct, including unnecessary or disproportionate steps, delay, refusals to admit facts, unnecessary applications, breaches of the Rules or Court Orders, and other misconduct. Applying these principles, the Court held that the Personal Representatives' failure to provide timely accounts until compelled by Court Order, and the resulting unnecessary litigation, justified refusing indemnification for their legal fees incurred before the initial accounts were delivered.

The Court also rejected the parties' assumption that solicitor-and-client costs were available because the litigation involved an estate. Such awards remain exceptional and must satisfy Rule 10.2, including the principle of proportionality and adequate evidentiary support. Parties seeking solicitor-and-client costs must provide sufficient disclosure, including their lawyer's accounts, detailed time dockets, and a Schedule C Bill of Costs, to permit meaningful scrutiny by both the opposing parties and the Court, subject only to limited redactions for privileged information.

The decision confirms that the ordinary costs principles under the Rules apply equally in estate litigation, while reinforcing that estates should not be depleted by unnecessary litigation or by legal fees incurred in advancing a personal representative's own interests rather than the proper administration of the estate.

COAST AUTOMOTIVE GROUP INC (RE), 2026 ABKB 490

(MAH J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 10.41 (Assessment Officer's Decision)

This decision arose from competing costs Applications following the dismissal of a cross Application in proceedings under the *Companies' Creditors Arrangement Act* ("*CCAA*"). The successful parties, the Monitor and the secured creditor, sought costs against the unsuccessful parties. The principal issue was whether the Court should depart from the usual practice in *CCAA* proceedings that each party bears its own costs and, if so, the appropriate entitlement, scale, and quantum of costs.

Justice Mah considered the interaction between the Rules and costs principles applicable in *CCAA* proceedings. Mah J. confirmed that, although the *CCAA* contains no costs provisions, the Court retained discretion to award costs under the Rules and its inherent jurisdiction. Applying Rules 10.29, 10.31, and 10.33, the Court held that while the ordinary practice in *CCAA* proceedings was for each party to bear its own costs, that practice could be displaced where the unsuccessful party advanced unusual applications, adopted unreasonable positions, took unnecessary procedural steps, or otherwise increased the costs or delayed the winding up of the estate. The Court further held that costs could also be awarded where the proceeding had evolved from a stakeholder forum into a traditional adversarial proceeding, or where the applications served no legitimate remedial purpose under the *CCAA* but instead sought to obtain a tactical advantage in collateral litigation.

Applying these principles, Justice Mah concluded that the unsuccessful parties had opposed the Monitor's Application to terminate the *CCAA* proceedings and advanced a Cross-Application seeking to continue the proceedings, replace the Monitor, and assume control of the proceedings in order to advance collateral litigation against the secured creditor. Mah J. found that the Applications did not further any recognized objective of the *CCAA*, unnecessarily prolonged the proceedings, increased costs, and transformed the restructuring process into an adversarial dispute unrelated to the remedial purposes of the *CCAA*. The Court rejected the argument that the Monitor had forfeited its entitlement to costs by taking an adversarial position, holding that the Monitor had acted consistently with its statutory role in preserving the integrity of the *CCAA* proceedings.

The Court then considered the appropriate scale of costs under Rule 10.31. Justice Mah confirmed that Schedule C was not the mandatory default and that the appropriate Costs Award remained a discretionary exercise guided by proportionality and reasonableness. The Court held that Schedule C was inappropriate because of the complexity, importance, and intensity of the proceedings, and instead awarded costs based on 50% of the successful parties' actual legal fees. Finally, the Court held that if the parties could not agree on the quantum of costs, either party could seek an assessment under Rule 10.41, with the Assessment Officer determining any issues arising from redacted accounts.

YEGPRO REALTY LTD V DHILLON, 2026 ABKB 530

(MAH J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award) and 10.42 (Actions Within Court of Justice Jurisdiction)

The Plaintiff sought costs following success at Trial. The Plaintiff argued that, under the Independent Contractor Agreement (the "ICA") between the parties, it was entitled to solicitor-client costs. Alternatively, it claimed it was entitled to enhanced costs based on *Calderbank* offers and the Defendant's alleged litigation misconduct. The Defendant contended that any Costs Award was limited pursuant to Rule 10.42, since the claim fell within the monetary jurisdiction of the Alberta Court of Justice ("Court of Justice").

Justice Mah confirmed that the successful party in litigation is presumptively entitled to costs, pursuant to Rule 10.29. Mah J. further noted that costs are to be determined in accordance with the discretionary principles set out in Rules 10.31 and 10.33.

The Court held that the ICA did not clearly provide for solicitor-client costs. Applying the principles of contractual interpretation, Justice Mah concluded that the reference to court costs, litigation expenses and reasonable lawyers' fees in the ICA was insufficient to displace the ordinary party-and-party costs regime.

Further, Justice Mah found that the Defendant's conduct did not rise to the level of reprehensible, scandalous, or outrageous conduct required to justify solicitor-client costs under Rule 10.33. Mah J. held that, while the Defendant rejected several *Calderbank* offers, those offers justified only a degree of enhancement and did not warrant solicitor-client costs.

With respect to Rule 10.42, the Court held that the Rule ordinarily limits recoverable costs where the amount in issue falls within the jurisdiction of the Court of Justice. However, Mah J. highlighted that, while the Plaintiff commenced the Action in the Court of Justice, the matter was transferred to the Court of King's Bench on the Court's own initiative rather than at the Plaintiff's election. While Rule 10.42 remained applicable, Justice Mah held that the circumstances justified departing from its prescribed limits, subject to the overriding principle of proportionality.

In the result, Justice Mah awarded the Plaintiff costs for the Court of Justice proceedings under the applicable tariff. Mah J. further awarded enhanced costs in the Court of King's Bench at 1.5 times the applicable Rule 10.42 tariff, reflecting the Defendant's rejection of the *Calderbank* offers, together with actual disbursements and GST.

CAMBARERI V CAMBARERI, 2026 ABKB 552

(DARIO J)

Rules 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.33 (Court Considerations in Making Costs Award), 10.49 (Penalty for Contravening Rules), 10.51 (Order to Appeal), 10.53 (Punishment for Civil Contempt of Court) and 12.41 (Notice to Disclose Documents)

This was a costs decision following a summary Trial concerning matrimonial property and spousal support.

The litigation had continued for more than a decade and involved repeated failures by the Defendant and Third Party Defendant to provide financial disclosure and comply with Court Orders. Both had been found in contempt, and their pleadings were ultimately struck. The Plaintiff sought full indemnity costs and enforcement of recurring fines previously imposed for non-compliance with disclosure Orders.

Justice Dario confirmed that a substantially successful party was presumptively entitled to costs pursuant to Rule 10.29, subject to the Court's discretion under Rule 10.31. The Court considered the factors under Rule 10.33, including the parties' relative success, conduct that unnecessarily lengthened the Action, and non-compliance with Court Orders.

Although the Plaintiff was more successful overall, Justice Dario declined to award full indemnity costs. The Defendant's repeated non-disclosure and disregard of Court Orders had significantly prolonged the litigation. The Court considered the significant consequences already imposed for the Defendant's conduct and emphasized that a Costs Award should not penalize a party twice for the same misconduct.

With respect to the recurring fines, Dario J. noted that pursuant to Rule 12.41(7)(c), solicitor-client costs may be awarded for failures to provide disclosure. However, Justice Dario confirmed that Rule 12.41(7)(c) does not authorize indefinite and accumulating penalties payable to the opposing party. The Court further noted that fines imposed under Rules 10.49 and 10.53 were directed at the administration of justice and payable to the Clerk of the Court, rather than the opposing party.

Accordingly, Justice Dario declined to enforce the prior Orders as they imposed indefinite recurring fines payable to the Plaintiff. The Court distinguished those fines from costs, noting that costs were intended to reflect the reasonable and proper costs of litigation, while fines were intended to compel compliance and protect the administration of justice.

The Court also considered the Plaintiff's request for security to enforce the amounts owing by the Defendant. Relying on *Aubin v Petrone*, 2020 ABCA 13 and *Unterschultz v Clark*, 2020 ABQB 338, Justice Dario held that it was appropriate to grant the Plaintiff a security interest in the Defendant's shares in his closely held corporations.

ABDESSEMED V ECKENSVILLER, 2026 ABKB 651

(MCGUIRE J)

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

The Applicant sought a lump sum enhanced Costs Award in the amount of $10,000 arising from her post-divorce variation Application concerning child support.

There was no dispute that, as the substantially successful party, the Applicant was entitled to costs pursuant to Rule 10.29. The Applicant argued that enhanced costs were warranted because the Application would have been unnecessary but for the Respondent's decision to stop paying child support without lawful basis and his refusal to participate in the Child Support Recalculation Program. However, the Applicant did not submit a Bill of Costs as required. Instead, she submitted what she described a "reasonable Schedule C based breakdown", claiming costs in excess of the tariff amounts prescribed by Schedule C.

The Court considered Rules 10.29 and 10.33, together with the governing principles and jurisprudence respecting Costs Awards. Applying those principles, Justice McGuire held that the Applicant was entitled to costs but concluded that the appropriate Award was the Schedule C tariff rather than the higher amounts claimed in the Applicant's proposed breakdown. McGuire J. nevertheless found that enhanced costs were justified pursuant to Rule 10.33(2)(g) because of the Respondent's misconduct.

Accordingly, the Court awarded the Applicant enhanced costs of $2,700, representing twice the applicable Schedule C tariff amount.

TERRIGNO V WEAL, 2026 ABKB 501

(OVIATT J)

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

The Plaintiff, as the successful party to an Appeal of an Applications Judge's decision, sought costs from the Defendant. The Plaintiff was self-represented and had only retained counsel in a partial capacity.

The Plaintiff argued that, despite being self-represented, he was entitled to costs because he incurred legal fees through a partial retainer. Additionally, the Plaintiff sought enhanced costs based on alleged litigation misconduct by the Defendant, which prolonged the proceedings. The Defendant contended that the Plaintiff was not entitled to costs as a self-represented litigant. In the alternative, the Defendant argued that costs should be reduced due to the Plaintiff's litigation misconduct related to procedural deficiencies.

Oviatt J. acknowledged that Rule 10.31(5) allows the Court to award Schedule C costs to a self-represented litigant in appropriate circum-

stances, although such awards are exceptional. Justice Oviatt clarified that the rationale for denying costs to self-represented litigants is typically the absence of legal fees. As the Plaintiff incurred legal fees through a partial retainer, the Court held that he was entitled to some costs.

Justice Oviatt also considered Rule 10.33 and held that neither party's conduct warranted enhanced or reduced costs. Oviatt J. found that the Defendant's unsuccessful service argument did not amount to litigation misconduct, particularly since the Plaintiff's own conduct complicated the service issue. Similarly, Justice Oviatt found that the Plaintiff's late filing of new evidence did not justify reducing costs, as the evidence was at least partially responsive to issues raised during litigation.

With respect to quantum pursuant to Rule 10.31(3), Oviatt J. held that costs should always be reasonable and proportionate. While noting that using Schedule C is not the presumption, Justice Oviatt found it was appropriate given the uncomplicated nature of the litigation. The Court awarded 50% of Schedule C costs to reflect counsel's limited role under the partial retainer. Oviatt J. clarified that Section 5 of Schedule C is limited to tariffs for oral questioning for discovery under Part 5 of the Rules and does not provide a separate tariff for questioning on an affidavit under Part 6 of the Rules.

PACIFIC WEST SYSTEMS SUPPLY LTD V A & K TILES & DRYWALL LTD, 2026 ABKB 633

(MAH J)

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

This decision determined costs following the dismissal of an Application by the Plaintiff, Pacific West Systems Supply Ltd. ("Pac West"), for a pre-judgment Attachment Order. Although the Application had initially sought relief against A&K Tiles & Drywall Ltd. ("A&K") and its guarantor, by the Hearing, the attachment relief was restricted to approximately $200,000 in net property sale proceeds belonging to Dhothar Developments Inc. ("DDI").

Following the dismissal, A&K sought partial indemnity amounting to 45% of its actual legal costs ($35,395.41) pursuant to Rule 10.33. A&K argued that partial indemnity was justified by the detailed record, the extraordinary nature of a pre-judgment attachment, and relied on *Southwest Design & Construction Ltd v Janssens*, 2024 ABKB 698 ("*Southwest Design*"). Pac West argued that costs should be restricted to party-and-party costs under Schedule C, contending that seeking extraordinary relief did not automatically warrant enhanced costs. DDI requested party-and-party costs under Schedule C.

Pursuant to Rules 10.31 and 10.33, the Court confirmed that the primary objective of a Costs Award is to provide a reasonable and proper measure of indemnity, guided by proportionality, fairness, and equity. The Court emphasized that while Schedule C was not mandatory, it provided certainty and simplicity, and there was no legal presumption in favour of either a percentage of actual legal costs or Schedule C. Justice Mah held that proportionality did not justify awarding A&K 45% partial indemnity. Mah J. also observed that the Application, as ultimately presented, was restricted to funds owned by DDI, meaning

A&K faced no asset attachment or monetary risk in the Application itself.

The Court distinguished *Southwest Design* as involving greater factual and legal complexity and substantially greater commercial consequences, as the injunction sought in that case would have prohibited the Respondents from operating or bidding on contracts or soliciting former clients or employees. In contrast, the $200,000 in issue did not justify approximately $35,000 in costs for a party that ultimately faced no monetary exposure. Justice Mah affirmed that while pre-judgment attachment was an extraordinary remedy in its effect on the party whose property was attached, seeking such relief did not automatically elevate the scale of costs when denied. Consequently, the Court found that party-and-party costs under Schedule C plus disbursements and GST were proportional and appropriate.

Justice Mah declined to award costs for preparing written costs briefs. A&K had not succeeded in their position seeking 45% of their actual costs, while DDI had achieved mixed success on the costs issues.

BUYE V FISHER, 2026 ABKB 589

(BOURQUE J)

Rule 10.33 (Court Considerations in Making Costs Award)

This matter was a costs decision following a Trial in which the Applicant challenged instruments and transactions involving her mother, Joyce Fisher, and her siblings, Debbie Fisher and Rene Fisher (the "Respondents"). In the Trial Decision, Justice Bourque upheld Joyce's enduring powers of attorney, personal directives, and most disputed transactions, but invalidated a $2 million *inter vivos* gift that Joyce had made to the Respondents. Bourque J. declined to defer costs pending the Applicant's Appeals because neither decision was subject to a stay and the Applicant provided no supporting authority.

In determining substantial success pursuant to Rule 10.33(1)(a), the Court held that success was not measured by tallying the issues won, but by objectively assessing the parties' quantitative and qualitative success relative to each other. Although the Applicant succeeded in invalidating the $2 million *inter vivos* gift, Justice Bourque found that this provided limited practical benefit and was narrow compared with the relief sought and issues litigated. By contrast, Joyce and the Respondents successfully defended all other instruments and transactions, defeated the Applicant's undue influence claims, and defeated the Applications concerning Debbie's appointment, indemnification, and accounting. The Court found that Joyce and the Respondents were substantially successful.

Bourque J. also considered that the value of the upheld transactions exceeded the invalidated gifts and that the issues were important to the Respondents because the Applicant's allegations impugned their character, honesty, and integrity (Rule 10.33(1)(c)). Although the Court did not find the Action overly complex pursuant to Rule 10.33(1)(d) or give significant weight to the Applicant's litigation conduct pursuant to Rule 10.33(2)(a), (b), (d), and (g), the Applicant's rejection of a formal Settlement Offer that would have produced a substantially better outcome weighed heavily pursuant to Rule 10.33(2)(h).

The Court awarded Joyce and the Respondents costs payable by the Applicant. However,

Justice Bourque denied Joyce full indemnity costs because the record disclosed no misconduct, exceptional circumstances, or other principled basis for departing from the ordinary costs regime. Bourque J. noted that Column 1 did not reflect the value of the disputed transactions, while Column 5 with the requested multiplier would provide excessive indemnification because Joyce and the Respondents had not succeeded on every issue. Accordingly, the Court awarded Joyce and the Respondents Schedule C, Column 4 costs. The Court also awarded the Respondents a 2.5-times multiplier on the portion of their Schedule C costs attributable to litigating the dismissed allegations of undue influence, together with second counsel fees, deemed to be 35% of their Schedule C costs.

KOEHLER V MISKEW, 2026 ABKB 634

(AKGUNGOR J)

Rule 10.33 (Court Considerations in Making Costs Award)

The underlying Action arose from a family dispute between the Applicant, Yogi, and the Respondents, Nola and Ida, concerning their mother, Eugenia Yvonne Miskew ("Jean"), and the ownership of farm property held by Jean and the Applicant as joint tenants.

Pursuant to Jean's Personal Directive and Enduring Power of Attorney, the Applicant and the Respondents had been appointed to act jointly on Jean's behalf, with decisions to be made by majority where unanimous agreement could not be reached.

In Spring 2021, the Respondents, acting as two of Jean's three attorneys, severed the joint tenancy in the farm property without the Applicant's knowledge or participation. The Applicant had resided on the property with his family since 2007. The dispute resulted in litigation, including a Partition and Sale Application filed by the Respondents in October 2022, an Application by the Applicant in August 2023 for Advice and Direction and a January 2024 Application by the Applicant for restoration of the joint tenancy.

On February 26, 2025, the parties entered into a mediation-arbitration agreement to resolve their disputes. The matter proceeded to arbitration. The Arbitrator released an Award on August 14, 2025, finding, among other things, that the Respondents lacked authority to sever the joint tenancy and directing that the joint tenancy be restored.

The Arbitrator awarded costs to the Applicant. In doing so, the Arbitrator reviewed the factors set out in Rule 10.33 of the Rules of Court and concluded that the arbitration involved complex issues and that the proceedings had been made more difficult by the Respondents' resistance. The Arbitrator acknowledged that solicitor-client costs are generally reserved for reprehensible, scandalous, or outrageous conduct. The Arbitrator concluded that the Respondents' conduct did not rise to the level necessary to justify a solicitor-client Costs Award.

The Arbitrator then considered Schedule C. She found that an award under Column 1, which would have resulted in costs of only $29,259.50, was unreasonable given that the Applicant had incurred actual legal fees of approximately $240,334.01. The Arbitrator applied Column 4 of Schedule C and awarded the Applicant $79,782.50 in legal fees, plus disbursements and GST.

The Respondents commenced an Appeal of the Award on September 12, 2025, and subsequently amended the Appeal multiple times. The central issue on the Appeal was whether the Arbitrator had exceeded her jurisdiction. The Applicant applied to strike the Appeal. The Court held that disputes concerning survivorship and the disposition of the farm property were within the Arbitrator's jurisdiction.

The Court also considered the appeal provisions of the Arbitration Act, RSA 2000, c A-43, noting that Section 46 imposes a strict 30-day period for commencing an appeal. The Arbitrator held that any of the Respondents' amendments which refined or clarified existing grounds of appeal were permitted after that period, but amendments that introduced new grounds of appeal were out of time.

KATERYNYCH V POISSON, 2026 ABKB 635

(LEW J)

Rule 10.33 (Court Considerations in Making Costs Award)

The Respondent was successful in dismissing the Applicant's Originating Application and sought costs based on 50% of actual legal costs incurred. The Applicant argued that a specific lump sum award was more appropriate and that the Respondent had failed to provide a Schedule C costs analysis as contemplated in *Barkwell v McDonald*, 2023 ABCA 87 ("*Barkwell*"). The Applicant further contended that some of the costs sought by the Respondent were incurred in relation to a separate Action.

Justice Lew accepted the Applicant's submissions that some of the costs included in the Respondent's calculation pertained to another Action and ought not to form part of the Costs Award. The Court confirmed that *Barkwell* directs parties seeking indemnity costs to provide a Schedule C costs analysis as a benchmark. Lew J. noted that Schedule C column 1 applied to disputes valued at less than $75,000 and non-financial relief. Justice Lew further highlighted that family law matters often involve non-financial relief but could still involve complex factual or legal issues.

Having regard to the significant importance of the underlying family law issue to the parties, the Court's discretion in awarding costs espoused in *Barkwell*, and the factors under Rule 10.33(1)(a), (c), and (g), Lew J. awarded lump sum costs of $1,500.

MURRAY V WINDSOR BRUNELLO LTD, 2026 ABCA 275

(FEEHAN, HO AND FETH JJA)

Rule 10.33 (Court Considerations in Making Costs Award)

The Plaintiffs appealed the Trial Judge's decision dismissing their Application for a *Sanderson* Order or a *Bullock* Order (the "Decision").

A *Sanderson* Order requires an unsuccessful Defendant to pay the costs of a successful Defendant. By contrast, under a *Bullock* Order, the Plaintiff pays the successful Defendant's costs and is then entitled to recover those costs from the unsuccessful Defendant.

In the Decision, the Trial Judge applied the tri-partite test set forth by the Court of Appeal of *Alberta in Abt Estate v Ryan*, 2020 ABCA 133: (1) whether it was reasonable for the Plaintiff to join the successful Defendants; (2) whether there was good reason to deprive the successful Defendants of their costs; and (3) whether the unsuccessful Defendants were wholly responsible for the Action. On Appeal, the Plaintiffs argued that the Trial Judge erred in interpreting and applying the second and third branches of the test.

The Court of Appeal did not find any error in the Trial Judge's approach. The Panel held that the Trial Judge correctly concluded that a *Sanderson* Order would be unjust under the second branch of the test because the unsuccessful Defendant's liability arose solely in contract, while the Plaintiffs' negligence claims against all the Defendants, including the unsuccessful Defendant, had been dismissed. The Court of Appeal further held that, having determined that neither a *Sanderson* nor a *Bullock* Order was appropriate, the Trial Judge was not required to consider the third branch of the test.

Accordingly, the Court of Appeal dismissed the Appeal.

ST LAWRENCE V ARSENAULT, 2026 ABKB 669

(HARTIGAN J)

Rule 11.25 (Real and Substantial Connection)

Adam Arsenault (the "Deceased") died intestate in Texas in March 2019 and was survived by his two minor children (the "Children"), who resided in Alberta. His estate proceeds were administered by the Public Guardian and Trustee of Alberta, and the Deceased had a $300,000 life insurance policy that named the Deceased's brother, as trustee (the "Applicant"). The Applicant and the Deceased's father created a trust in British Columbia (the "Trust"), governed by British Columbia law, into which the life insurance proceeds and $41,625.95 raised by a GoFundMe account were deposited. The Children filed an Originating Application in the Court of King's Bench of Alberta seeking to remove the Applicant as Trustee, compel a full accounting, and transfer the Trust assets to Alberta. The Applicant applied to strike or stay the Originating Application on the grounds that the Court lacked jurisdiction *simpliciter* or, alternatively, on the basis of *forum non conveniens.*

Justice Hartigan found that the Court had jurisdiction *simpliciter* pursuant to Rule 11.25(3). Under that Rule, a real and substantial connection to Alberta is presumed for claims relating to certain Alberta contracts, the administration of estates of persons ordinarily resident in Alberta, and breaches of equitable duties in Alberta. The Children bore the initial onus of establishing one or more objective presumptive connecting factors, after which the burden shifted to the Applicant to rebut the presumption of jurisdiction. The Court found multiple connecting factors. These included the Alberta insurance contract establishing the trusteeship, the administration of the Deceased's estate and related GoFundMe funds in Alberta, and alleged breaches of equitable duties in Alberta. The Applicant failed to meet the evidentiary burden required to rebut the resulting presumption of jurisdiction.

The Applicant also argued that the Court should decline jurisdiction based on *forum non conveniens* but failed to establish that British Columbia was clearly the more appropriate forum. Although the Trustee and trust assets were located in British Columbia and the Trust contained a British Columbia governing-law clause, the Court gave these factors limited weight and found the risk of parallel proceedings or inconsistent Orders speculative. In contrast, the Children and their mother were located in Alberta, as was relevant evidence concerning the Children's needs, the Deceased's insurance contract and estate, and the creation and collection of the GoFundMe funds.

For these reasons, Hartigan J. held that the Applicant failed to demonstrate that British Columbia was clearly a more appropriate forum and dismissed the strike or stay Application.

MCCORMACK V ALBERTA (ATTORNEY GENERAL), 2026 ABCA 272

(FAGNAN JA)

Rules 11.28 (Substitutional Service), 13.32 (Fees and Allowances) and 14.47 (Application to Restore an Appeal)

This Application was brought under Rule 14.47 to restore an appeal that had been struck and subsequently deemed abandoned. The Applicant filed a Civil Notice of Appeal on January 5, 2026. On January 9, 2026, the Case Management Officer sent the standard Civil Appeal Commencement Letter (the "Letter") advising that the Appeal was a Fast-Track Appeal with strict timelines, and warning that failure to file the Appeal Record or Factum by the applicable deadlines would result in the Appeal being struck.

After the Applicant failed to file the Appeal Record, the Registrar struck the Appeal on February 6, 2026, pursuant to Rules 14.17(1) and 14.64(a). On May 7, 2026, the Deputy Registrar confirmed that the Appeal had been deemed abandoned. The Applicant then applied to restore the Appeal, which the Court dismissed.

In determining whether to restore the Appeal, Fagnan J.A. considered the established factors: the arguable merit of the Appeal, the explanation for the delay, the promptness in curing the defect, the intention to proceed with the Appeal, and any prejudice to the Respondents. The Court found the Applicant's explanation for the delay, namely that he was overwhelmed as a self-represented litigant, was not compelling.

The deadlines and consequences of non-compliance had been clearly communicated in the Letter, and the Applicant had previously had Appeals deemed abandoned for similar procedural failures.

Fagnan J.A. also found that the Applicant had not acted with reasonable promptness. Although he claimed he could not afford the restoration application fee, he provided no sworn evidence supporting that assertion. The Court further noted that he had not filed a draft Appeal Record or Factum, which would have demonstrated both an intention and ability to proceed.

With respect to arguable merit, Appeal Justice Fagan noted that the Applicant had not filed a draft Factum, leaving the Court to assess the proposed appeal based only on the Notice of Appeal and the hearing transcript.

The Notice of Appeal contained 22 largely unclear grounds of appeal, including vague allegations of *Charter* and constitutional breaches and requests for relief beyond the jurisdiction of the Courts. Fagnan J.A. therefore reviewed the rulings made by the Associate Chief Justice, including the denial of transcript fee waivers, an adjournment, recusal, appointment of an *amicus curiae*, case management, scheduling directions, and substitutional service, to determine whether any of the proposed grounds disclosed arguable merit.

Specifically, considering the transcript fee waiver requests, Fagnan J.A. reviewed the Associate Chief Justice's application of Rule 13.32. While the Rule permits certain court fees to be waived for individuals unable to pay, transcript fees are generally not among the fees eligible for waiver under the applicable Ministerial Order. Although a Court may have jurisdiction to waive transcript fees in exceptional circumstances where access to justice is compromised, Fagnan J.A. found no arguable error in the lower Court's refusal to grant either a prospective fee waiver or the Applicant's requested blanket waiver of all transcript fees. The prospective waiver request was speculative and had become moot once the transcript was filed, and the Applicant identified no authority supporting the broad universal waiver he sought.

The Applicant was also seeking to appeal the denial of Substitutional Service, pursuant to Rule 11.28. Appeal Justice Fagnan found that the request was vague and unsupported by evidence establishing that ordinary service was impractical. Given the discretionary nature of Substitutional Service Orders and the absence of any reviewable error, the proposed ground of appeal lacked arguable merit.

Finally, although the Applicant argued that the Respondents would suffer little prejudice because the delay was short and the transcripts had been filed, the Court emphasized that successful parties are entitled to expect finality in litigation. Weighing all relevant factors together, Fagnan J.A. concluded that restoring the Appeal would not be in the interests of justice. The Applicant had failed to provide a compelling explanation for the delay, had not acted with reasonable promptness to cure the defects, and had failed to establish that any of the proposed grounds of appeal met even the low threshold of arguable merit.

DUURSEMA V DUURSEMA, 2026 ABKB 587

(BOURQUE J)

Rule 12.36 (Advance Payment of Costs)

The Applicant applied for interim relief in a family law matter, seeking an Order for spousal support, child support, and advance litigation costs.

Pursuant to Rule 12.36, the Court had discretion to order the advance payment of litigation costs. In exercising that discretion, the Court applied the tripartite test from *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71, which required the Applicant to establish impecuniosity, prima facie merit, and special circumstances. To establish impecuniosity, the Applicant must demonstrate that without an Order, she would be deprived of the opportunity to proceed with the case.

In assessing impecuniosity, the Court found that the Applicant had offshore investments of approximately $450,000. Although the Applicant preferred not to liquidate those assets, the Court found that it was a realistic option to fund the litigation. The Applicant argued that because the offshore investments were an exempt asset for property division purposes, it should be excluded from the impecuniosity assessment. Bourque J. rejected this argument, holding that even if the asset is ultimately determined to be exempt, it still provided the Applicant with the means to advocate for child and spousal support and her share of family property. Because the Applicant was not impecunious, the Court dismissed the Application for advance litigation costs.

COURCHESNE V MAZUR, 2026 ABCA 276

(GROSSE JA)

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

The Applicant sought permission to appeal a decision denying her Application for an extension of time to appeal a prior Parenting Order ("Parenting Order"), pursuant to Rule 14.5(1)(i).

Following the Parenting Order, the Applicant obtained the transcript but believed it did not accurately reflect the Hearing. She requested access to the court audio recording, which was denied. The Applicant did not challenge that denial or pursue an appeal of the Parenting Order until sixteen months later, when she applied for an extension of time to appeal.

The Chambers Judge dismissed the Application. While the Applicant argued that the denial of access to the audio recording impeded her ability to pursue her Appeal, the Chambers Judge concluded that the denial did not prevent her from appealing.

Justice Grosse declined to grant the Applicant permission to appeal. The Court held that a

further appeal in a family law matter would only be available on a question of law or jurisdiction, and found that the proposed Appeal raised neither. Rather, the Applicant sought to challenge a discretionary decision denying an extension of time to appeal and to have the Court reweigh the relevant factors.

The Court further held that, even if a question of law or jurisdiction had been identified, leave would not have been granted. Any legal issue was fact-specific and lacked broader importance, the proposed Appeal had little prospect of success given the deferential standard of review applicable to discretionary decisions, and no reviewable error was apparent. In addition, subsequent enforcement orders, case management proceedings, and an upcoming parenting trial meant that the proposed Appeal would serve no practical purpose.

The Application for permission to appeal was dismissed.

OKEKE V COYLE, 2026 ABKB 475

(SILVER J)

Rule 13.7 (Pleadings: Other Requirements)

The Applicant applied to amend her Statement of Claim arising from an incident at the Calgary International Airport involving WestJet employees and Calgary Police Service ("CPS") officers (the "Incident"). The proposed amendments added claims of defamation, conspiracy, and retaliation, substituted unnamed Defendants for identified individuals, expanded the alleged injuries, and increased the damages claimed. WestJet opposed portions of the amendments and sought particulars, including of the proposed defamation and conspiracy claims.

WestJet argued the proposed amendments were deficient because the Applicant did not plead the material facts and particulars required by law and Rule 13.7. Justice Silver accepted that the proposed pleading was deficient.

Silver J. permitted the Applicant to amend the Statement of Claim to add the identified WestJet employees, the additional injuries, and the claim in conspiracy against WestJet and CPS. The claim in defamation was permitted only with respect to specific statements arising from the Incident and not to comments made during litigation which would be subject to privilege.

The Court therefore allowed the amendments in part but imposed pleading-related conditions. The Applicant was required to serve and file a further Amended Statement of Claim that properly pleaded the permitted claims, corrected numbering errors, and consistently identified the Defendants in relation to each claim. Justice Silver also directed that any conspiracy pleading must set out the material facts necessary to support the alleged agreement, unlawful conduct, and resulting damage.

Silver J. allowed the claims that were not hopeless; however, claims based on facts materially different than those in the original Statement of Claim were not permitted. WestJet's Application for particulars was allowed in part.

SAKAMOTO V ATTORNEY GENERAL OF CANADA, 2026 ABKB 676

(DILTS J)

Rule 13.7 (Pleadings: Other Requirements)

The Plaintiff applied to certify a proposed Class Action against Canada and Alberta arising from alleged injuries caused by COVID-19 vaccines. The causes of action included negligent misrepresentation, negligence, conspiracy to commit assault and battery, misfeasance in public office and breach of fiduciary duty. The Court dismissed the certification Application because the pleadings did not disclose a viable cause of action and therefore failed to satisfy Section 5(1)(a) of the *Class Proceedings Act*, SA 2003, c C-16.5.

Rule 13.7 required serious allegations of intentional wrongdoing to be pleaded with a high level of detail. The Court outlined that Rule 13.7 required a high level of particularity for serious allegations of intentional wrongdoing. Justice Dilts applied the Rule to the conspiracy claim, which alleged that Canada and Alberta coordinated vaccine messaging and coercive measures to cause injury. The Plaintiff did not identify the alleged conspirators or plead material facts showing an agreement, its purpose, the acts taken to advance it, or whether those acts were lawful or unlawful. The Court found that the conspiracy claim, which alleged intentional conduct intended to cause harm, lacked sufficient particulars to support a claim of conspiracy to commit assault and battery.

CALGARY (CITY) V ECCO RECYCLING & ENERGY CORPORATION, 2026 ABKB 640

(EAMON J)

Rule 13.18 (Affidavit Evidence)

The City of Calgary (the "City") applied pursuant to s. 554 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Act*"), for a statutory injunction requiring Ecco Recycling & Energy Corporation ("Ecco") to cease storing waste outside its recycling facility and remove accumulated waste. Ecco cross-applied to strike portions of the City's Affidavit evidence and argued that disputed facts, credibility concerns, and disclosure issues required a Trial rather than determination by Originating Application.

The Respondent applied to strike portions of an Affidavit as inadmissible hearsay. The City relied on the Affidavit in support of an Application for final relief. Rule 13.18 required that the Affidavit only contain information personally known by the affiant, rather than information and belief. The central admissibility issue was whether hearsay information contained in reports prepared by City representatives during their investigation of complaints about Ecco's site was admissible under the common law business records exception.

Justice Eamon held that, although Rule 13.18(3) generally requires a deponent seeking final relief to swear evidence based on personal knowledge, some flexibility exists for corporate litigants. Relying on *Saito v Lester Estate*, 2021

ABCA 179, the Court held that a deponent may obtain the requisite personal knowledge through review of relevant and reliable records, provided the underlying information would itself be admissible. The reliability of the source material and the deponent's proximity to the underlying events and records affect the weight of the evidence. However, a corporate representative cannot circumvent Rule 13.18 by repeating inadmissible hearsay obtained from files or conversations.

Justice Eamon further held that records created during an investigation are not categorically excluded from the common law business records exception. Applying *R v Monkhouse*, 1987 ABCA 227 ("*Monkhouse*"), the Court noted that admissibility depends on whether the records constitute an original entry made contemporaneously in the ordinary course of business by a person with personal knowledge and a duty to record, and without a motive to misrepresent. The Court emphasized that the exception is grounded in reliability, not necessity, and that investigative records must be assessed on their particular facts to determine whether those indicia of reliability are present.

The Court excluded much of City's Affidavit concerning site activities and conditions because the City failed to establish that the affiant's purported personal knowledge was derived solely from admissible business records. The Court found insufficient evidence regarding the creation of the records, the individuals who gathered the information, and whether the affiant relied on business records rather than inadmissible hearsay. The Court similarly excluded the sketch plans of the waste piles because the *Monkhouse* reliability factors could not be assessed on the evidentiary record. Portions of the City's Affidavit interpreting a development permit were also struck as inadmissible opinion evidence.

The Court admitted photographs attached to the City's Affidavit, finding that they were taken by City personnel, recorded contemporaneously, and maintained in the ordinary course of the City's operations. Other admissible evidence authenticated the photographs as depicting the Ecco site, and the Court was satisfied there was little risk of error or motive to misrepresent. The Court likewise admitted the affiant's evidence arising from his personal site visit and observations.

The Court held that the summary procedure was fair, just, and proportionate. The photographs were reliable, Ecco filed no contradictory evidence about property it controlled, and the remaining defences raised legal issues that could be decided on the record. Questioning gave Ecco an opportunity to seek the City records that the affiant consulted, while the ongoing breach favoured prompt determination rather than extensive Part 5 disclosure.

Having ruled on the admissibility of the Affidavit evidence, the Court ultimately found that Ecco was operating contrary to its development permit and granted a permanent injunction under Section 554 of the *Act*.

SHODUNKE V MERCREDI (ESTATE), 2026 ABCA 243

(FEEHAN JA)

Rule 14.5 (Appeals Only with Permission)

The Applicant sought permission to appeal to a panel of the Court of Appeal pursuant to Rule 14.5(1)(a). The Appeal was in respect of Feehan J.A.'s earlier decision that dismissed an Application for an extension of time to appeal a Chambers Judge's decision on Judicial Review. Pursuant to Rule 14.5(2), the Applicant was required to seek permission from the same Judge that made the decision that was subject to the Appeal. As such, the Applicant sought permission from Feehan J.A. to appeal Justice Feehan's decision.

The underlying dispute arose from a human rights complaint that the Alberta Human Rights Commission, which was dismissed as having no reasonable prospect of success. The complaint was also dismissed on appeal and was characterized as an abuse of process, frivolous, and vexatious. A Chambers Judge upheld those findings on Judicial Review. The Applicant did not file his Notice of Appeal within the prescribed time and later applied for an extension, which Feehan J.A. dismissed.

The Court held that there was no basis to grant permission to appeal the earlier extension decision. Feehan J.A. noted that the Applicant had failed to satisfy the established test for an extension of time to appeal. The Court had already found that the Applicant lacked a demonstrated intention to appeal within time, provided no adequate explanation for the delay, failed to support his alleged incapacity with cogent medical evidence, and advanced a proposed Appeal that lacked merit. The Application for permission did not identify any reviewable error in that analysis.

The Application was dismissed and Feehan J.A. concluded that the matter should not proceed to a panel of three Judges of the Court of Appeal.

BOSSE V CARRIGAN, 2026 ABCA 267

(FAGNAN JA)

Rule 14.5 (Appeals Only with Permission)

The Applicant applied for permission to appeal and for an Order extending time to appeal.

The matter had previously gone to binding Arbitration, resulting in an interim Award. The Applicant filed Applications seeking to overturn the interim Award. When the Applications were heard (the "November 2025 Proceedings"), the Chambers Justice sent the parties outside the courtroom to see if they could reach an agreement. The agreed terms of the parties were read into the record. The Chambers Justice also struck the Applicant's Applications, as he had not obtained the required leave, and confirmed and made enforceable most of the interim Award.

Counsel were to agree on the precise form of Order after the proceedings. However, after failing to do so, they eventually returned to the same Chambers Justice for assistance. The resulting Order was filed.

The Applicant filed a Notice of Appeal of that Order on the basis that the Order resulted from a "contested form-of-order process without a contested evidentiary adjudication on the merits" while multiple issues remained unresolved before the Courts.

The Court held that the transcripts from the November 25 Proceedings made it clear that, except for the provision striking the Applicant's Applications, the Order was a Consent Order. As such, permission to appeal was required pursuant to Rule 14.5(1)(d). Fagnan J.A. confirmed that the test for permission to appeal requires that the proposed appeal raise an important question of law or precedent, have a reasonable prospect of success, and not result in undue delay or prejudice.

The Court found that permission should not be granted. The proposed Appeal raised no important issue of law or precedent and had no reasonable chance of success. It would not resolve any fundamental issues in dispute and would instead distract the parties from the real issues, consume further time and resources, and not move the matter forward. The Court also found no exceptional circumstances relating to the November 2025 Proceedings. The Applicant was present, his counsel was present, and the terms of the parties' agreement were read into the record. Further, the Applicant's dissatisfaction with the results of the underlying Arbitration did not affect the analysis.

ADVEN INC (RE), 2026 ABCA 310

(FAGNAN JA)

Rule 14.5 (Appeals Only with Permission)

The Respondents to an Appeal applied to strike the Notice of Appeal of an Order made in insolvency proceedings on the basis that permission to appeal was required but not sought. The Appellants cross-applied for a declaration that permission to appeal was unnecessary or, alternatively, for an extension of time and an Order granting permission to appeal.

The underlying Order approved interim financing and a sale and investment solicitation process, granted priority charges, and refused the Appellants' request for an adjournment. The Appellants challenged the procedural aspects of the hearing, the interim financing and priority charges, and the sale process.

The Court considered Rule 14.5 together with the appeal provisions of the Bankruptcy and *Insolvency Act*, RSC 1985, c B-3 ("BIA").

Fagnan J.A. found that permission to appeal was required. The challenges to service, notice, and the refusal of an adjournment concerned procedural matters, and Rule 14.5(1)(b) independently required permission to appeal a decision respecting an adjournment. The terms relating to the sale process were also procedural. Further, because the Appellants had agreed to the sale process during the hearing, Rule 14.5(1)(d) required permission to appeal that aspect of the Order. The Court also found that the Appellants had not established an actual loss resulting from the Order that would provide an appeal as of right under the BIA.

The Court denied the extension of time because the Appellants had no reasonable

explanation for failing to seek permission within time and lacked a reasonable prospect of success. Fagnan J.A. added that permission would have been denied in any event, noting that the points on appeal were not of significance to the practice nor the Action. The Application to strike the Notice of Appeal was granted.

42ND DENTAL INC (AMARA DENTAL) V MOUHAMAD, 2026 ABCA 266

(HAWKES JA)

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

This decision concerned an Application for an extension of time to file a Notice of Appeal from an Order governing the temporary custody of patient records following the breakup of a dental practice.

The Applicants abruptly left the Respondent's dental clinic, taking all patient records. At an urgent Chambers hearing on April 24, 2026, the parties agreed on a transition process but disputed where the records of patients who did not respond should remain pending further instructions. The Chambers Justice directed that these records remain at the original clinic. The Applicants filed a Notice of Appeal on June 4, 2026, after the Order was filed on May 19, 2026.

The Case Management Officer advised that the Applicants filed the Notice of Appeal late, requiring them to seek an extension of time. Hawkes J.A. confirmed that pursuant to Rule 14.8, the appeal period runs from the date of pronouncement, not when the parties settle or file the order. A dispute over the form of an Order does not excuse late filing. Accordingly, the Notice of Appeal was filed out of time.

The Applicants applied for an extension of time pursuant to Rule 14.37. The Court applied the established test for an extension, including whether the appeal had a reasonable chance of success. Hawkes J.A. concluded that the Appeal lacked arguable merit because it had become moot. By the time of the Application, the transition process was nearly complete, and the parties were transferring all patient records according to patient instructions. Any remaining records would remain under the custody of a dentist as required by the *Health Information Act*, RSA 2000, c H-5.

Furthermore, the Applicants' stated goal was to ensure compliance with professional bylaws, which made the Appeal essentially advisory. Hawkes J.A. noted that an Appeal was not a substitute for seeking direction directly from the College of Dental Surgeons of Alberta. Because the Appeal was moot and lacked arguable merit, the Application was dismissed.

STUART FINANCIAL CORPORATION V KIEHLBAUCH, 2026 ABCA 311

(FAGNAN JA)

Rule 14.8 (Filing a Notice of Appeal)

The Applicant sought to extend the time to file an Appeal after neglecting to properly file their materials within the prescribed timelines. In considering the Application, the Court reviewed the relevant caselaw, as well as the facts of the matter.

While the Applicant had initially submitted their materials within the required timelines, the submission was inadequate for several reasons. The Applicant neglected to pay the requisite fees, provide the proper supporting documentation, or properly communicate with the Court about how they were addressing those issues. Given the difficulties surrounding the filing of the Appeal, the Case Management Officer directed the Applicant to apply to extend the time to file their Appeal.

While Fagnan J.A. acknowledged that the Applicant had clearly intended to submit their Appeal within the requisite timeframe, they had not provided any reasonable excuse for the delay in correcting the issues that resulted in the delay. Further, in considering the test to extend time, the Court noted that the Applicant had not established a reasonable chance of success for their Appeal. The Applicant had raised no error of fact or law but instead raised a disagreement with certain procedural elements of the underlying decision. As the Applicant had not advanced any arguments that suggested a reasonable chance of success, the Application was dismissed.

HAYDEN V ALBERTA (WORKERS' COMPENSATION BOARD), 2026 ABCA 278

(GROSSE JA)

Rules 14.16 (Filing the Appeal Record), 14.64 (Failure to Meet Deadlines), and 14.88 (Cost Awards)

The Applicant applied to restore an Appeal which had been struck by operation of Rules 14.16(3) and 14.64(a) for failure to file the Appeal Record within the applicable deadline. Further, the Applicant challenged the enhanced costs award made in the underlying Application.

The Applicant had filed a Notice of Appeal and ordered the transcript the same day. However, the Applicant received the transcript only two days before the filing deadline. While the Applicant attempted to file the transcript before the deadline expired, it was rejected for non-compliance with formatting requirements. As the deadline had expired, the Appeal was struck by the Registrar pursuant to Rules 14.16(3) and 14.64(a).

Grosse J.A. confirmed the Court retains discretion to restore an appeal, having regard to several factors. Grosse J.A. considered whether the Appeal had arguable merit, the explanation for the defect or delay, the Applicant's prompt-

ness in curing the defect, the Applicant's intention to proceed, and any prejudice to the Respondent, including the length of delay.

The Court held that most of the factors weighed in favour of restoring the Appeal. The Applicant promptly applied to restore the Appeal and successfully filed the transcript later that month, demonstrating reasonable promptness in acting to cure the defect and a timely intention to proceed. Additionally, the Applicant had a reasonable explanation for the delay, as the transcript was received only two days after the deadline.

However, Grosse J.A. confirmed that once an Appeal has been struck pursuant to Rules 14.16 and 14.64, the Court must conduct a preliminary review of the merits. Appeal Justice Grosse found that the underlying Application was an attempt to relitigate issues that had already been decided in a previous Application. Grosse J.A. determined that the Appeal therefore lacked merit, and it was not in the interests of justice to restore it.

With respect to the Applicant's challenge to the enhanced costs award made, Grosse J.A. noted that there are no appeals as of right on costs alone under Rule 14.5, and found no basis to interfere with the Award. The Court separately considered the costs of the Application to restore the Appeal. Justice Grosse noted that, pursuant to Rule 14.88, the successful party would ordinarily be entitled to costs on the same scale as the Order under appeal. However, Grosse J.A. found that the circumstances which justified enhanced costs in the underlying Application were not present in the Application to restore. Given the early stage of the Appeal and the Applicant's efforts to correct the filing error, the Court ordered that each party bear their own costs.

NORTHBACK HOLDINGS CORPORATION V ALBERTA (INFORMATION AND PRIVACY COMMISSIONER), 2026 ABCA 256

(FETH JA)

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

The Canadian Taxpayers Federation ("CTF") applied for leave to intervene in an Appeal of a decision dismissing Northback Holdings Corporation's ("Northback") Application to compel the Office of the Information and Privacy Commissioner (the "OIPC") to expedite its review of requests for information made pursuant to the *Freedom of Information and Protection of Privacy Act*, SA 2000 c F-25 (the "*Act*").

CTF, a not-for-profit federal corporation, asserted that Northback's Appeal raised issues of significant public interest concerning timely access to government information and the role of the Courts in addressing systemic delays. Northback took no position on CTF's Application, while the OIPC opposed it.

Northback's Appeal concerned the consequences of delay and the impact of "queue jumping" and whether an Order compelling expedited review would adversely affect other participants awaiting review. Although Northback referred to the quasi-constitutional nature of the *Act* in its written submissions, it did not advance any arguments based on the *Charter*. As intervenor, CTF nevertheless sought to make submissions connecting the *Act*'s quasi-constitutional nature to Section 2(b) of the *Charter*, contending that such

submissions fell naturally within Northback's quasi-constitutional arguments.

Appeal Justice Feth considered Rules 14.37 and 14.58 and the factors governing intervening set out in *JJ v AK*, 2025 ABCA 113. Feth J.A. emphasized that intervenors could not raise new issues on appeal, challenge findings of fact, or advocate for a particular outcome.

Applying those principles, the Court concluded that CTF had not met the test for intervening. Feth J.A. held that the proposed *Charter* submissions would raise a new issue not advanced by the parties. Feth J.A. further noted that the record before the Court was insufficient to warrant assessment of this new issue and that CTF had not demonstrated any particular expertise in constitutional or *Charter* matters. Finally, the Appeal Justice Feth observed that the specific Charter issue identified by CTF had already been addressed by the Supreme Court of Canada in *Ontario (Public Safety and Security) v Criminal Lawyers' Association,* 2010 SCC 23.

Accordingly, the Court denied CTF's Application to intervene in Northback's Appeal.

DIGGS V WEIR, 2026 ABCA 279

(SHANER JA)

Rule 14.37 (Single Appeal Judge)

This Application was for an extension of time to appeal a Chambers Judge's Order striking the Applicant's Statement of Claim. The Applicant had commenced an Action against the Respondents arising from the enforcement of a 2010 Judgment relating to an uninsured motor vehicle accident. The Respondents brought an Apparent Vexatious Application under Civil Practice Note 7. The Chambers Judge struck the claim as a collateral attack on the 2010 Judgment and therefore an abuse of process. The Applicant failed to file a Notice of Appeal within the prescribed time pursuant to Rule 3.68(2)(d). Consequently, the Applicant applied for an Order allowing extension of time to appeal pursuant to Rule 14.37(2)(c).

Shaner J.A. considered the Application to extend the time to appeal under the *Cairns*. The factors included the Applicant's intention to appeal, the explanation for the delay, any special circumstances justifying the delay, prejudice to the Respondent, whether the Applicant benefited from the Judgment, and whether the proposed Appeal had a reasonable prospect of success. It was noted that these factors are not rigid requirements, however, and the ultimate question was whether extending time was in the interests of justice.

The Respondents conceded that the Applicant intended to appeal, had a reasonable excuse for missing the deadline, and had adequately explained the delay. Accordingly, the Application turned on whether the proposed Appeal had a reasonable chance of success. The Court found that it did not. The Chambers Judge had properly analyzed the Applicant's arguments and correctly concluded that the claim was an impermissible collateral attack on the underlying Judgment. The Appeal had no reasonable prospect of success. Therefore, allowing it to proceed would unnecessarily prejudice the Respondents and would not be in the interests of justice. The Application for an extension of time to appeal was dismissed.

EARL V PETER, 2026 ABCA 234

(FEEHAN JA)

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

The Applicant sought to restore their Appeal pursuant to Rules 14.47 and 14.65. The Appeal had been struck due to the Applicant's failure to file an Appeal Record within the timelines prescribed by the Rules. The Applicant had commenced the Appeal following a Trial decision related to various family law issues where the Applicant was found to be wholly unsuccessful.

On March 20, 2026, the Applicant filed the Notice of Appeal. The following day, the Applicant was advised by the Registry that a Commencement Letter for the Appeal was uploaded to the Court of Appeal Management System, that this document set out important information related to deadlines for the Appeal, and that it was the Applicant's responsibility to create an account to retrieve the document. The Applicant did not create an account with the Court of Appeal Management System until April 22, 2026, and only after they were advised that the Appeal had been struck for failure to file an Appeal Record. The Applicant was advised that they would be required to apply to restore the Appeal in order to have it heard by the Court.

The Court reviewed the test for restoring an appeal set out in Rules 14.47 and 14.65 and noted several pertinent factors, including the arguable merit of the appeal, an explanation for the delay, promptness of the applicant, and prejudice to the respondent. Appeal Justice Feehan noted that the threshold for demonstrating the merit of the Appeal was low, and that based on the evidence before the Court it was not possible to determine whether the Appeal was bound to fail. As such, there was arguable merit to the Appeal.

With respect to an explanation for the Applicant's delay, the Court noted that there was no reasonable excuse. Although the Applicant did not have an account to permit access the Commencement Letter, they were advised that they were required to make such an account and ought to have known that an account was necessary. That said, the Court noted that the Applicant acted promptly to restore the Appeal and applied shortly after being advised that the Appeal had been struck.

Finally, and with respect to potential prejudice, the Court held that the Respondent would not suffer any undue prejudice from the restoration of the Appeal, as the status quo resulting from the Trial Judge's decision would stand pending the outcome of the Appeal itself.

In considering the facts in their totality, Feehan J.A. held that no single factor was determinative. While there was no excuse for the delay, there was merit to the Appeal and the Applicant acted promptly to address the situation. As such, it was in the interests of justice to restore the Appeal.

JAVAID V JAVAID, 2026 ABCA 240

(HO JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant and Respondent had previously agreed to arbitrate certain issues arising from their separation. On February 5, 2026, the Arbitrator issued an Award on the merits and invited written submissions on costs by February 20, 2026. The Applicant requested extensions of time to provide costs submissions, but the Arbitrator denied those requests. The Arbitrator subsequently issued a Costs Award on March 5, 2026, without receiving submissions from the Applicant.

The Applicant applied for permission to appeal the Arbitration Award, to set aside the Award, and to continue a previously granted Stay of Enforcement. The Chambers Judge dismissed the Application insofar as it related to the Costs Award, finding that the Applicant had failed to commence the Application within the time required by Section 46(1) of the *Arbitration Act*.

The Applicant then sought permission to appeal pursuant to Section 48 of the *Arbitration Act*. The Court granted permission to appeal on two issues: whether the Chambers Judge erred by failing to consider authorities permitting a proceeding to be treated as commenced when documents were submitted for filing within the limitation period but filed later because of an administrative issue, and whether the Applicant was denied procedural fairness by not having the opportunity to meaningfully respond to counsel's limitations arguments.

Pending the Appeal, the Applicant sought a Stay of Enforcement of the Costs Award. The Respondent applied to strike the Application, arguing that the issue was *res judicata* because the Court of King's Bench had denied similar stay Applications on two prior occasions. The Court rejected that argument, noting that Rule 14.48(b) of the Rules expressly permits a party to seek a stay in the Court of Appeal regardless of whether the Judge whose Order is under appeal previously denied a stay application.

The Court concluded that the Appeal raised a serious issue and that it was just and equitable to grant a stay pending determination of the Appeal.

FREDERICO V CABRAL, 2026 ABCA 251

(FETH JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant husband applied for permission to appeal a Court of King's Bench decision overturning an Arbitration Award determining spousal support. If the permission to appeal was granted, the Applicant also sought a stay of the decision pending Appeal, pursuant to Rule 14.48(b).

Having determined the applicable test was met, the Court of Appeal granted the Application for permission to appeal.

Turning to the stay, Feth J.A. reviewed the RJR MacDonald test: (1) whether there was a serious question to be determined; (2) whether

the Applicant would suffer irreparable harm if the Stay was not granted; and (3) whether the balance of convenience favoured granting the stay.

The Court granted a partial stay. Feth J.A. found that the test was met for a stay of the direction remitting the Arbitration issues to a new Arbitrator. In the permission to appeal analysis, Feth J.A. had already determined that the questions raised in the Appeal were reasonably arguable and that the Appeal was likely of interest to other persons or was generally important. These findings were sufficient to establish that there was a serious issue to be tried.

On the second and third legs of the test, the Court found that both parties would suffer irreparable harm if the stay was not granted and that the balance of convenience favoured the stay. Forcing the parties to proceed with a new Arbitration before the Appeal was decided would create unnecessary expense and effort that could be wasted if the Appeal succeeded and might heighten conflict between the parties.

However, Feth J.A. refused to stay the Appeal Costs Award or the setting aside of the Arbitration Costs Award. The Court found the Applicant failed to show irreparable harm. There was no evidence he would suffer any financial hardship if required to pay, or that the wife would not be able to repay the Costs Awards if the Appeal succeeded.

FERNANDO V PHILIPS, 2026 ABCA 238

(HO JA)

Rules 14.88 (Cost Awards) and 14.90 (Sanctions)

The Applicant sought $5,000 in enhanced costs after the Respondent appealed a Consent Order requiring the sale of the parties' matrimonial home. The Appeal was later struck and deemed abandoned.

Ho J.A. denied the Application, finding that the evidence did not establish bad faith and did not support the Applicant's claimed legal fees.

The Applicant argued that the Respondent knew the Appeal was unmeritorious and filed it in bad faith. The Respondent explained that he had consented to the Order in error and appealed because his elderly mother was living in the home. He abandoned the Appeal after his mother passed away.

The Court rejected the allegation of bad faith and confirmed that a meritless Appeal, on its own, does not warrant enhanced costs. Ho J.A. also noted that the Appeal was struck at an early stage before an Appeal Record or Factum had been filed, and the Respondent had advised opposing counsel months earlier that he would not pursue the Appeal.

Costs were awarded in accordance with *Hansen v Hansen,* 2023 ABCA 335 ("*Hansen*"). The Court confirmed that, under Rules 14.88 and 14.90, costs are to be awarded on the same scale as the Order under Appeal. Enhanced costs are reserved for litigation misconduct. Because the Respondent had not taken significant steps in the Appeal and no misconduct was established, Ho J.A. followed *Hansen* and awarded costs equal to one-half of Item 19(2) under Column 1 of Schedule C, plus reasonable disbursements and GST.

HABIB V HABIB, 2026 ABCA 263

(GROSSE JA)

Rule 14.88 (Cost Awards)

The Applicants applied for a stay of a Case Management Order that declared the Applicants in contempt of court and directed distribution of funds held in Court to the Respondent.

Grosse J.A. dismissed the Stay Application for two reasons. First, the Applicants failed to establish an arguable case on Appeal. Second, the Applicants failed to demonstrate that they would suffer irreparable harm if the funds were distributed. As such, there was nothing to balance against the Respondent's interest in having immediate access to funds that the Applicants admitted belonged to the Respondent, and that the Case Management Judge had already ordered distributed.

The Respondents sought to defer costs until the Case Management Judge released a penalty decision for contempt. They argued that, if the Case Management Judge awarded full indemnity or enhanced costs, they could rely on that direction and Rule 14.88 to seek costs in the Court of Appeal on the same basis. Grosse J.A. noted that Rule 14.88 applied unless the Court ordered otherwise. However, departing from Rule 14.88, the Court declined to defer costs because the Stay Application concerned the distribution of undisputed funds, which was not directly tied to the merits of the contempt findings or any contempt penalty. In addition, although the Respondents incurred significant fees to review numerous records to prepare for the Application, Grosse J.A. found that the Respondents brought those costs upon themselves.

Last, the Court awarded the Respondents enhanced costs of $4,000 because they had to respond to an urgent Application with only one or two days of notice, particularly where the Applicants' position became clear only as the matter developed.

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