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(FRIESEN JA)

Rules 1.1 (What These Rules do), 14.8 (Filing a Notice of Appeal), 14.14 (Fast Track Appeals), 14.16 (Filing the Appeal Record), 14.47 (Application to Restore and Appeal), 14.64 (Failure to Meet Deadlines) and 14.65 (Restoring Appeals)

The Applicant, Dr. Basaraba, received an interim suspension pursuant to the *Health Professions Act*, RSA 2000, c H-7. The Applicant applied to stay the suspension. That Application was denied by the Chambers Judge (the "Lower Court Decision"). The Applicant then appealed the Lower Court Decision within the one-month deadline pursuant to Rule 14.8(2)(a)(iii) (the "Chambers Appeal"). The Chambers Appeal was granted fast track status pursuant to Rule 14.4, which gave the Applicant one month from the date of filing to file and serve the Appeal Record and transcripts, pursuant to Rule 14.16(3)(a). The Applicant failed to meet this deadline.

Accordingly, the Registrar struck the Chambers Appeal, pursuant to Rule 14.64(a). Three months and ten days later, the Applicant applied to restore the Chambers Appeal, requesting a hearing date four months after the Appeal was struck.

The Court considered whether it ought to allow the Application to restore. This included consideration of whether the Application was made in a reasonably prompt manner, given that the Applicant missed the deadline to complete the Application to restore within three months of the Appeal being struck, as set by Rules 14.47 and 14.65.

The Applicant advised that he had always intended to pursue the Appeal but was experiencing medical and financial challenges. While the Court accepted that the Applicant had intended to continue the Appeal, Justice Friesen did not accept that the Applicant had a reasonable excuse for failing to follow the deadlines prescribed by the Rules. Friesen J.A. noted that, while self-represented litigants are not expected to meet the same practise standards as lawyers, pursuant to Rule 1.1(2), they are still required to know and follow the procedures and timelines set out in the Rules. The Application was not deemed to have been made promptly.

The Court went on to say that, even if the Applicant had provided a reasonable excuse for the delay, the Application would have failed in any event because the Chambers Appeal had no reasonable prospect of success. Therefore, the Application to restore the Chambers Appeal was dismissed.

DIGGS V WEIR, 2026 ABKB 261

(NIXON ACJ)

Rules 1.2 (Purpose and Intention of These Rules), 1.4 (Procedural Order), 3.68 (Court Options to Deal With Significant Deficiencies), 9.4 (Signing Judgments and Orders), 9.13 (Re-Opening Case), 9.15 (Setting Aside, Varying and Discharging Judgments and Orders) and 10.49 (Penalty for Contravening Rules)

This decision concerned a review of a Statement of Claim (the "Claim") under Civil Practice Note 7 ("CPN7") and Rule 3.68. The Plaintiff, Anthony Diggs ("Diggs"), commenced an Action against James Weir ("Weir"), the Administrator of the *Motor Vehicle Accident Claims Act*, RSA 2000, c M-22 (the "Administrator"), and Peter Tesi ("Tesi"), challenging the enforcement of a Consent Judgment arising from a motor vehicle accident.

Associate Chief Justice Nixon noted that CPN7 permits an abbreviated review of proceedings that appear on their face to be frivolous, vexatious, or an abuse of process. Nixon A.C.J. held that the CPN7 process is appropriate where the abusive nature of the proceeding is apparent and summary review is preferable to ordinary Court procedures.

Applying Rule 3.68(2)(d), Associate Chief Justice Nixon held that the claims against Weir and the Administrator were an abuse of process, as they amounted to a collateral attack on the underlying Consent Judgment and related enforcement proceedings. The Court further noted that Diggs had not pursued available remedies, such as an Application to Set Aside the Noting in Default pursuant to Rule 9.15, or the statutory remedies available under the *Traffic Safety Act*, RSA 2000, c T-6.

Nixon A.C.J. rejected Diggs' argument that Rules 1.2 and 1.3 imposed obligations on Weir and the Administrator to facilitate a fair and timely resolution while protecting Diggs' rights. Further, the Court found that *Alberta (Attorney General) v Moloney,* 2015 SCC 51, was distinguishable since Diggs had not been discharged from bankruptcy and remained subject to the Consent Judgment.

With respect to Tesi, the Court held that, although Diggs relied on Rules 1.2, 1.4, 9.13, and 10.49, those Rules govern the Court's processes rather than create causes of action. Nevertheless, Associate Chief Justice Nixon found that the Claim pleaded facts capable of supporting claims in negligence, breach of fiduciary duty, and breach of contract. Accordingly, it was not plain and obvious that the claims against Tesi were frivolous, vexatious, or an abuse of process for the purposes of Rule 3.68(2)(c) and (d).

In the result, the Court ordered the portions of the Claim against Weir and the Administrator be struck pursuant to Rule 3.68(2)(d) but permitted the Claim against Tesi to proceed. Rule 9.4(2)(c) was invoked for the Defendants to prepare the resulting Order.

FORD V JIVRAJ, 2026 ABKB 263

(HARRIS J)

Rules 1.2 (Purpose and Intention of These Rules), 3.37 (Application for Judgment Against Defendant Noted in Default), 8.8 (Notice to Attend as Witness at Trial) and 8.17 (Proving Facts)

This decision concerned procedural issues regarding the examination of a Defendant, Karim Jivraj ("Jivraj"), who was Noted in Default but summoned to attend Trial pursuant to an Interprovincial Subpoena issued under Section 5 of the *Interprovincial Subpoenas Act*, RSA 2000, c I-9 (the "Interprovincial Subpoena"), in a defamation Action.

The Plaintiff previously sought leave under Rule 8.17 to read into evidence portions of Jivraj's evidence from a separate Action in which the Plaintiff obtained a permanent Restraining Order against Jivraj. Justice Harris dismissed the Leave Application but granted the Plaintiff's alternative request for the Interprovincial Subpoena.

The Plaintiff argued that Jivraj remained a party adverse in interest and should therefore be subject to cross-examination. Alternatively, the Plaintiff sought to have Jivraj declared a hostile witness. The remaining Defendants argued that Jivraj, having been summoned pursuant to the Interprovincial Subpoena, was the Plaintiff's witness and must be examined in accordance with the ordinary common law rules governing a party's own witness.

Justice Harris held that, despite the Statement of Defence being struck and Jivraj being Noted in Default, Jivraj remained a party to the Action. In reaching that conclusion, Harris J. considered the Court's authority under Rule 3.37 to permit participation by a party whose pleading has been struck. However, the Court emphasized that Jivraj's status as a party did not determine how examination at Trial would proceed.

Harris J. considered Rules 8.17 and 8.8 and noted that, although Rule 8.8 did not apply directly because Jivraj resided outside Alberta, neither the Rule nor the *Interprovincial Subpoenas Act* distinguished between parties and non-parties for the purpose of compelling attendance as a witness. Justice Harris held that, because the Interprovincial Subpoena was obtained on the basis that Jivraj's evidence was necessary to prove the Plaintiff's case, Jivraj was properly treated as the Plaintiff's witness.

The Court further held that, in the absence of any Alberta Rule permitting otherwise, the common law rule applies, and a party may not cross-examine its own witness unless the witness is declared hostile. Justice Harris declined to rule on hostility in advance, stating that such a determination must be based on the witness's conduct while giving evidence at Trial.

Regarding the remaining Defendants, the Court adopted the approach in *Trizec Equities Ltd. v Ellis-Don Management Services Ltd.*, 1996 CanLII 10350 (AB KB), holding that they may examine Jivraj in chief to elicit supplementary evidence. However, any right to cross-examine would depend on whether a genuine adversity of interest or conflict in the evidence arose. Harris J. held that the scope of any cross-examination should be determined after Jivraj testified to avoid non-adversarial or "sweetheart" cross-examination.

LINDSTROM V CASHYN HOMES INC, 2026 ABKB 265

(DARIO J)

Rules 1.2 (Purpose and Intention of These Rules), 1.4 (Procedural Orders), 3.65 (Permission of Court to Amendment Before or After Close of Pleadings) and 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings)

The Appellants appealed a Court of Justice's decision denying portions of their Application to amend their Amended Amended Dispute Note and Counterclaim and denying a request to transfer the Action to the Court of King's Bench (the "COJ Decision"). The denied proposed amendments included: (i) adding a corporate officer as a Defendant to the Counterclaim; (ii) increasing the amount of certain damages claimed; and (iii) adding a new cause of action related to theft. The request to transfer the Action to the Court of King's Bench was based on an assertion that the proposed amendments would increase damages above the Court of Justice's monetary jurisdiction (the "Transfer Application"). As the amendments were denied, the Transfer Application was likewise denied.

Applying Rules 3.65 and 3.74, Dario J. noted that amendments should generally be permitted except where the proposed claim is hopeless, advanced in bad faith, or would cause serious prejudice. Applying this principle, the Court reached a mixed result regarding the appeal on the proposed amendments.

The Court allowed the corporate representative to be added as a Defendant for limited negligence claims based on an alleged personal duty of care, but held that the proposed contract claims against him were doomed to fail because he was not a party to the contract. It also rejected several proposed amendments as hopeless, including claims to recover personal debts allegedly caused by the Respondents' non-payment. However, the Court permitted a claim for consequential damages arising from that non-payment, such as interest, collection costs, and legal expenses. The claim for loss of future opportunities was denied for lack of sufficient particulars, and the proposed increase in damages for allegedly stolen property was dismissed as an unsupported "bald assertion." However, the Court allowed a $15,615 increase in damages for "extra work" completed by the Appellant because the claim was itemized and supported by evidence.

The Court applied Rules 1.2 and 1.4 to dismiss the appeal of the Transfer Application, finding that transferring the Action after 18 months of litigation, where the allowable claims remained within the Court of Justice's $100,000 monetary jurisdiction, would result in significant "throw-away costs" and waste judicial resources. The Court held that the guiding principles of timely and cost-effective resolution outweighed the Appellants' interest in transferring the matter to increase the Quantum of Damages.

The Appeal was allowed in part. However, the Court found that portions of the Appeal of the amendment Application were brought in bad faith due to their late timing, lack of supporting evidence, and potential prejudice to the proceedings. As a result, the Respondent was awarded costs.

STAUFFER ESTATE (RE), 2026 ABKB 327

(LEMA J)

Rule 1.2 (Purpose and Intention of These Rules)

The Applicant, Megan Brawn, applied under Rule 4 of the *Surrogate Rules* for advice and directions concerning the Estate of her aunt, Diane Stauffer. The Applicant sought production: of wills-related information; disclosure regarding a life insurance policy; preservation orders over estate and insurance assets; and directions pending resolution of concerns about testamentary capacity, undue influence, and whether Jeffery Keck was the deceased's adult interdependent partner.

Following Ms. Stauffer's death, Mr. Keck applied for probate of a handwritten will that appointed him executor and trustee, but contained no distribution provisions. He asserted that he was the deceased's adult interdependent partner and therefore the sole beneficiary on intestacy. The Applicant filed a caveat and alleged that the handwritten will may have been executed when the deceased lacked capacity or was subject to undue influence or duress. She also believed earlier wills existed and sought disclosure of those documents and related estate information.

In assessing the Application for production of other wills, Justice Lema found that the Applicant had demonstrated a legitimate interest in determining whether prior wills existed, and if so, their validity. Lema J. emphasized the broad and discretionary nature of Surrogate Rule 4 and found that the Application qualified as a Surrogate Rule 4(2)(b) matter. Further, that the Applicant was an "applicant" applying for an Order within the meaning of Surrogate Rule 68 and the Application was in respect of a "contentious matter" within the meaning of Surrogate Rule 55(1).

Justice Lema also emphasized that Rule 1.2 of the Rules of Court applies to surrogate proceedings, with no counterpart in the Surrogate Rules, obligating the Court to identify the real issues in dispute and to facilitate an efficient means of resolving a claim with the least expense. Lema J. concluded that the Applicant had a legitimate stake in the possible other wills, had proceeded on an appropriate procedural pathway, with the acceptable aim of getting to the heart of the matter, and therefore ordered Mr. Keck to provide an Affidavit addressing efforts to locate and disclose any other wills.

However, Justice Lema denied the Applicant's requests regarding life insurance disclosure and broader asset preservation relief. The Court held that designated insurance proceeds are generally not estate assets and remain outside the estate unless the beneficiary designation was successfully challenged. As the Applicant had not commenced any proceeding to set aside the designation and provided no evidentiary basis for freezing assets or requiring further estate disclosure, the Court found the requested relief fell outside the scope of the surrogate proceedings and denied it. Due to the mixed success, the parties were ordered to bear their own costs for the Application.

REMMINGTON V RBC DIRECT INVESTING INC, 2026 ABKB 341

(GASTON J)

Rules 1.2 (Purpose and Intention of These Rules), 10.51 (Order to Appear), 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt of Court)

The Plaintiff applied to find the Defendant in civil contempt for allegedly failing to comply with a prior Production Order. The dispute arose after incorrect tax reporting by the Defendant led to adverse tax consequences for the Plaintiff. Although the Defendant later corrected the tax documents and the Plaintiff successfully resolved his issue with the Canada Revenue Agency, he continued the litigation and sought additional records and sanctions.

The Plaintiff argued that the Defendant failed to produce all relevant records, particularly metadata relating to the removal of certain shares from his account. The Court applied the test for civil contempt, which requires proof beyond a reasonable doubt that a clear order was breached, the party knew of the order, and intentionally failed to comply. Justice Gaston found that the Order did not clearly require the Defendant to extract or create metadata from its systems, that the Defendant had produced all reasonably identifiable records, and that there was no evidence of intentional non-compliance.

Gaston J. held that the contempt test was not met and, in any event, declined to exercise its discretion to find contempt. The Court found that the Defendant had taken reasonable steps to comply, and the situation did not threaten the authority of the Court. Justice Gaston emphasized that contempt is a last resort and that alternative remedies were available. Given that the Plaintiff had already obtained the primary relief sought, the Application for contempt and further disclosure was dismissed.

BRUCE MINTZ PROFESSIONAL CORPORATION V FAIRCLOUGH, 2026 ABKB 349

(FRASER J)

Rules 1.2 (Purpose and Intention of These Rules) and 4.33 (Dismissal for Long Delay)

This decision arose from an Appeal of an Applications Judge's dismissal of an Application to strike an Action for long delay pursuant to Rule 4.33(2). The underlying Action concerned a law firm's claim for unpaid legal fees. The Applications Judge dismissed the delay Application on the basis that additional documents should have been before the Court. On Appeal, those documents were filed as fresh evidence, resulting in a *de novo* review before the Court of King's Bench.

Justice Fraser confirmed that where new, relevant, and material evidence is introduced on appeal from an Applications Judge's decision, the appeal proceeds as a *de novo* review. The Court commented critically on the continued use of *de novo* appeals from Applications Judge decisions, observing that the current system permits unsuccessful parties to effectively repair deficiencies in their evidence and relitigate the matter before a Justice of the Court of King's Bench, thereby increasing costs, delay, and pressure on the court system.

The Court then considered Rule 4.33(2) in light of the foundational purpose provision in Rule 1.2(1). Applying the functional approach articulated in authorities, the Court emphasized that whether a step constitutes a "significant advance" depends on its substance, genuineness, timing, and actual effect on moving the litigation toward resolution. The analysis is fact specific and focuses on whether the step meaningfully advances the action in a timely and cost-effective manner consistent with the objectives of the Rules.

Applying these principles, Fraser J. held that the Plaintiff's conduct did not amount to a significant advance in the Action. Nearly three years after the last meaningful step, the Plaintiff sent emails attaching partial records and referring to an Affidavit of Records that was neither attached, filed, nor properly served. The Court found that the Affidavit of Records was incomplete, omitted clearly relevant billing documents later relied upon in a Summary Judgment Application, and was not a genuine attempt to move the litigation forward. Justice Fraser concluded that an unfiled and incomplete Affidavit of Records, delivered in an irregular manner after years of inactivity, was inconsistent with the purposes of Rules 1.2 and 4.33 and did not significantly advance the Action.

The Appeal was therefore allowed, and both the Claim and Counterclaim were dismissed pursuant to Rule 4.33 for long delay.

KOSTIC V AIG INSURANCE COMPANY OF CANADA, 2026 ABKB 390

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 3.72 (Consolidation or Separation of Claims and Actions) and 10.49 (Penalty for Contravening Rules)

The Applicant sought the consolidation of two Actions, pursuant to Rule 3.72, as part of a larger set of Actions that were being managed by Justice Marion (the "Case Managed Actions"). The Applicant had previously advised the Court of their intention to seek consolidation of the Case Managed Actions and was provided with direction from the Court as to the required process when seeking such relief.

Specifically, on March 10, 2025, the Applicant was directed to advise the parties of the Case Managed Actions of the particulars of the relief she sought, and to do so within a week of that date. The Applicant failed to advise the other parties as directed. On May 9, 2025, the Applicant advised that they still intended to seek the consolidation of the Case Managed Actions, and was directed to provide the materials for their request to all other parties by August 29, 2025. The Applicant did not provide their materials within the timeframe directed by the Court. On September 8, 2025, the Court directed that the Applicant was to provide the materials for their sought relief by no later than September 19, 2025, failing which the Applicant would be deemed to be no longer seeking that relief.

The Applicant provided materials to the Court within the timeframe directed. However, those materials were non-compliant with the Rules and the directions of the Court. Justice Marion then directed that the Applicant provide new materials, and provided procedural directions with respect to those materials. Once again, the Applicant provided materials that were non-compliant with the Court's direction.

The Court considered whether the Application ought to be dismissed as a result of the repeated non-compliance with the Court's directions. Justice Marion considered Rule 1.2 and the general goal of the Courts to resolve matters as quickly and efficiently as possible. In furtherance of these purposes, the Court is provided with significant discretion to provide directions and impose sanctions as needed to ensure that matters advance at a reasonable rate.

The Court noted that, in failing to abide by the Court's repeated procedural directives, the Applicant was acting contrary to the very purpose of the Rules. As such, the Court dismissed the Application and the Case Managed Actions were not consolidated.

The Respondents submitted that, in light of the Applicant's repeated procedural non-compliance, costs alone would be an insufficient remedy. To address this, the Court raised the possibility of imposing an additional penalty on the Applicant, pursuant to Rule 10.49, and provided the parties the opportunity to make submissions on that issue at a later date.

RN CARDIUM OIL INC V LOYAL ENERGY (CANADA) OPERATING LTD, 2026 ABKB 404

(JEFFREY J)

Rule 1.2 (Purpose and Intention of These Rules)

The Court was asked to determine costs following the Applicant's successful Application for Summary Dismissal of the Respondent's Action. The issue in dispute was quantum.

The Applicant argued for costs on a full indemnity basis due to the Respondent's conduct during the course of the litigation. The Applicant took the position that the Respondent's claim alleged serious impropriety on the part of the Applicant; and not only did the Respondent fail to prove these allegations, but it also made no effort to substantiate the allegations.

The Respondent took the position that solicitor-client costs would be inappropriate in the circumstances. Solicitor-client costs ought to only be awarded in exceptional circumstances or where there is reprehensible conduct on the part of one of the parties. The Respondent argued that while the Court may have disagreed with their arguments, that did not make their conduct reprehensible. The Respondent argued for Schedule C costs.

In considering the parties' positions, the Court reviewed Rule 1.2 and a party's inherent obligation to pursue the quickest means of resolving a claim at the least expense. In looking to how the Respondent commenced the Action and conducted themselves throughout, the Court determined that they had taken a far costlier route than was necessary, and expanded the scope of the litigation beyond what was needed to resolve the parties' dispute.

Justice Jeffrey ultimately decided that in light of the Respondent's overall approach to the litigation, the appropriate costs to award in these circumstances were something greater than Schedule C, but less than solicitor-client costs. The Court awarded costs equal to 85% of solicitor-client costs.

BEAVER LAKE CREE NATION V ALBERTA, 2026 ABKB 420

(JERKE J)

Rules 1.2 (Purpose and Intention of These Rules), 3.65 (Permission of Court to Amend Before or After Close of Pleadings), 4.14 (Authority of Case Management Judge) and 13.8 (Pleadings: Other Contents)

The Plaintiff, Beaver Lake Cree Nation ("Beaver Lake"), applied to further amend its Statement of Claim in a long-standing litigation concerning Treaty 6 rights. The core of the Action involved allegations that the cumulative effects of Crown authorizations infringed Beaver Lake's Treaty rights and constituted a breach of fiduciary duty.

The proposed amendments sought to place the words "cede" and "surrender" in quotation marks and clarify that those terms appeared in the written Treaty. Beaver Lake maintained that the amendments were intended to reflect that the Treaty must be interpreted as a whole, including both its written terms and the Crown's oral assurances.

The Defendants opposed the Application, arguing that the amendments would reframe the litigation from a cumulative effects case to one questioning the fundamental nature and interpretation of Treaty 6. They contended that Beaver Lake was attempting to withdraw a long-standing admission regarding land surrender, which would upend the litigation as it neared Trial.

Justice Jerke noted that pursuant to Rule 3.65, the Court has discretion to grant permission to amend a pleading after the close of pleadings. In exercising that discretion, Jerke J. also considered Rule 1.2, which requires claims to be resolved fairly, justly, and in a timely, cost-effective manner by identifying the real issues and achieving the quickest and least expensive resolution.

The Court weighed the potential benefits of the amendments against the concerns raised by the Defendants. Jerke J. found that there was no discernible benefit because the legal principles requiring a flexible, purposive, and contextual interpretation of historic treaties had already been established by the Supreme Court of Canada.

Although Rule 4.14 allows concerns regarding admissions and evidentiary issues to be addressed through pre-Trial adjudication, Justice Jerke concluded that permitting the amendments could necessitate further pleadings, document production, and Questioning, which could potentially affect the Trial schedule. The Court also noted that while Rule 13.8 permits parties to plead points of law, it is not a requirement, particularly where the relevant legal principles are already well settled.In the result, the Application was dismissed.

DAVLYN CORPORATION LTD V LATIUM FLEET MANAGEMENT INC, 2026 ABKB 322

(LEW J)

Rules 1.3 (General Authority of the Court to Provide Remedies), 6.14 (Appeal from Applications Judge's Judgment or Order) and 7.3 (Summary Judgment)

The Defendant and Plaintiff by Counterclaim appealed an Applications Judge's decision granting the Plaintiff Summary Judgment on a debt claim for unpaid commercial vehicle lease invoices. The Applications Judge did not dismiss the Defendant's Counterclaim.

The Defendant argued that its defence of set-off and Counterclaim were inextricably linked to the debt claim, and that the matter should not have been resolved on a piecemeal basis. The Plaintiff maintained that Summary Judgment was properly granted and sought dismissal of the Counterclaim.

The Defendant argued that the Appeal should proceed as a hearing de novo because fresh evidence was available, including Undertaking Responses, the hearing transcript, and the resulting Order. Justice Lew held that, pursuant to Rule 6.14, the standard of review was correctness. The Undertaking Responses were not fresh evidence because they were available on the original Application, and the Court records and Order were not evidence.

Justice Lew further held that the Defendant had not established a genuine issue requiring a Trial under Rule 7.3. The Plaintiff proved the governing rental terms, including a right to terminate on 24 hours' notice, and the Defendant's conduct demonstrated acceptance of those terms. By contrast, the Defendant's pleadings relied on unparticularized alternative contractual arrangements that were unsupported by evidence.

The Court held that the Applications Judge erred by failing to dispose of the claim and Counterclaim together. Justice Lew dismissed the Counterclaim pursuant to the Court's inherent jurisdiction under section 8 of the *Judicature Act*, RSA 2000, c J-2, and Rule 1.3. Although the Plaintiff had not filed a Cross-Appeal, the Counterclaim was governed by the same facts, evidence, and legal principles as the defence. Requiring a further Application would provide no procedural protection and would only cause additional cost and delay.

The Appeal was dismissed, the Summary Judgment was upheld, and the Counterclaim was dismissed.

TAYLOR V ALBERTA (MINISTER OF JUSTICE AND SOLICITOR GENERAL), 2026 ABCA 109

(STREKAF JA)

Rules 1.4 (Procedural Orders), 14.5 (Appeals Only with Permission) and 14.8 (Filing a Notice of Appeal)

The Applicant sought an extension of time and permission to appeal two procedural Orders granted on October 2, 2025 (the "Procedural Orders") and permission to appeal a December 5, 2025 Order dismissing his Application to vacate those Procedural Orders (the "Dismissal Order"). The Procedural Orders, among other things, transferred the matter from Edmonton to Calgary with the parties' consent, consolidated the Application with another Calgary proceeding involving the Applicant, and barred the Applicant from bringing new Applications related to a residential tenancy dispute without leave of the Court.

Since the Applicant failed to appeal the Procedural Orders within the one-month time frame mandated by Rule 14.8(2)(a)(iii), the Court applied the test from *Cairns v Cairns,* 4 DLR 819 (ABCA) to determine whether an extension of time should be granted. While the Court found that the Applicant intended to challenge the Procedural Orders within the Appeal period, it concluded that the Applicant failed to provide an adequate explanation for the delay. Furthermore, Justice Strekaf held that the proposed Appeal had no reasonable chance of success. The Procedural Orders were discretionary case-management decisions entitled to significant deference on appeal, and there was no error of law or unreasonable exercise of discretion warranting appellate intervention.

Regarding permission to appeal, the Court held that both the Procedural Orders and the Dismissal Order fell within Rule 14.5(1)(b) as pre-trial "case-flow" or scheduling decisions requiring permission to appeal. Permission was also required under Rule 14.5(1)(d) because the transfer Order had been granted on consent. Applying the test for permission to appeal, Strekaf J.A. concluded that the Applicant failed to meet the criteria for permission because the proposed Appeals raised no important questions of law or precedent and would unduly delay the resolution of the underlying proceeding.

The Court emphasized that the Chambers Judges properly exercised their broad authority pursuant to Rule 1.4 to manage case flow, including transferring the venue, directing case management, and requiring leave for future Applications. These discretionary Orders were reasonable attempts to avoid bifurcated proceedings and were entitled to deference.

In the result, the Applications were dismissed.

ALBERTA FINANCE & MORTGAGE CORPORATION V WESTANA ASSET MANAGEMENT CORP, 2026 ABKB 336

(MAH J)

Rule 3.2 (How to Start an Action)

The Applicant filed Originating Applications pursuant to Rule 3.2 for Receivership Orders (collectively, the “Applications”) against two groups of related corporate entities (collectively, the “Respondents”). Among other things, one of the issues was whether there were factual disputes that precluded relief on the Applications.

Mah J. refused to grant the Receivership Orders, partly on the basis that there were significant and unresolved factual disputes regarding the existence and extent of the alleged debts and the validity of any security, contrary to Rule 3.2. In particular, Justice Mah noted that the origin and history of the indebtedness was set out in a confusing manner in the Affidavit evidence, such that there were significant gaps in narrative and documentation.

The Court dismissed the Applications.

DUVAL V EDMONTON (POLICE SERVICE), 2026 ABCA 215

(PENTELECHUK, KIRKER AND WOOLLEY JJA)

Rules 3.2 (How to Start an Action) and 3.15 (Originating Application for Judicial Review)

The Appellant appealed a Chambers decision striking her Originating Application that sought, among other relief, amendments to a police investigative report, removal of a trespass notation, and damages for emotional distress, defamation, humiliation, and violations of her *Charter* rights. The investigative report was issued as part of an investigation undertaken pursuant to the *Police Act*, RSA 2000 c P-17, because of a complaint made by the Appellant to the professional standards branch of the Edmonton Police Service regarding officers removing her from the Royal Alexandra Hospital.

The Appeal concerned whether portions of the Originating Application proceeding constituted Judicial Review under Rule 3.15, and whether the balance should have proceeded as an Action, pursuant to Rule 3.2. The Appellant filed the Originating Application approximately eight months after the Edmonton Police Service determined there was no reasonable basis for a finding of police misconduct.

The Applications Judge found that requests to amend the investigative report and remove the trespass notation amounted to Judicial Review and were therefore barred by the six-month limitation in Rule 3.15(2). The Applications Judge also held that the damages claim required a Statement of Claim because the matter involved substantial factual disputes.

The Court of Appeal agreed that the Judicial Review aspects of the proceeding were out of time and properly struck. However, Justice Slatter held that the Applications Judge should have exercised the discretion available under Rule 3.2(6) to make a procedural Order correcting and continuing the proceeding. The Court found no practical impediment to converting the remaining damages claim into a Statement of Claim, particularly given the Appellant's self-represented status and clear intention to pursue a civil claim. Furthermore, at the time the Originating Application was filed and at the time it was heard, the Appellant was not out of time to file a Statement of Claim.

The Appeal was allowed in part. The Court directed that the Judicial Review portions of the pleading be struck, that the remainder be converted into a Statement of Claim with a new Action number, and that each party bear its own costs.

AA V TW, 2026 ABKB 398

(MCLEOD J)

Rules 3.5 (Transfer of Action) and 10.52 (Declaration of Civil Contempt)

The Defendant sought an Order to vary the existing parenting schedule, and requested that the Court hold the Plaintiff in civil contempt, pursuant to Rule 10.52, for her persistent non-compliance with prior parenting Orders.

Under Rule 10.52(1), the Court may declare a party in civil contempt if they fail to comply with an Order of which they have actual knowledge, without a reasonable excuse. The Court found that the Plaintiff repeatedly failed to obey Court Orders over a 15-month period, frequently placing the responsibility on the parties' eight-year-old child to decide whether the Defendant would be permitted parenting time.

Despite these findings, McLeod J. declined to make a formal declaration of contempt, as findings of contempt in family proceedings should be a last resort, and the Defendant had not exhausted remedies under the *Family Law Act,* SA 2003, c F-4.5. Instead, the Court granted the Defendant leave to bring a future contempt Application should the Plaintiff fail to comply with the new parenting schedule. The Court further encouraged compliance by ordering the Plaintiff to personally transport the child to the next scheduled parenting visit.

The Court also considered whether to transfer the Action to a different judicial centre, pursuant to Rule 3.5(a), permitting a transfer if the Court is satisfied that it would be unreasonable for the Action to be carried on through its current judicial centre. Justice McLeod found that, since the Defendant resided in Edmonton, the Plaintiff lived in British Columbia, and the future meetings with the child counsel were scheduled for Edmonton, maintaining the registry in Fort McMurray was unreasonable. The Court transferred the matter to the Edmonton judicial centre.

The Court established a permanent parenting schedule, appointed child counsel to advocate for the child, and granted the Defendant leave to apply for financial penalties and makeup parenting time in the event of non-compliance. McLeod J. partially granted the Defendant's Application and awarded the Defendant costs.

ANGUS A2A GP INC V ALVAREZ & MARSAL CANADA INC, 2026 ABCA 156

(KHULLAR, DE WIT AND SHANER JJA)

Rules 3.9 (Service of Originating Application and Evidence) and 11.25 (Real and Substantial Connection)

The Appellants appealed several Orders continuing and confirming proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("*CCAA*") arising from two real estate development projects in Texas. Equity investors had commenced the proceedings by Originating Application and obtained an Initial Order under the *CCAA*.

The Initial Order was made on short notice and was subject to a "comeback hearing" at which the Applicants were required to justify the continuation of the proceedings on notice to affected parties. One group of Appellants, consisting of two Texas corporations (the "Texas LLCs"), which owned and developed the project lands, argued that the Alberta Court lacked jurisdiction over them because they had been served outside Canada without first obtaining an Order permitting service *ex juris* under Rule 11.25(2). They also contended that the Initial Order had been obtained on less than two days' notice of the Application, contrary to the 10-day notice required under Rule 3.9, rendering the proceedings procedurally unfair.

On the issue of service, the Court accepted that the Applicants had not complied with Rule 11.25(2) because they had served the Texas LLCs without first obtaining an Order permitting service *ex juris*. However, the Court observed that the service Rules served two purposes: the purpose of providing notice to the responding party and to establish an arguable basis for the Alberta Court to exercise jurisdiction. The Court found that the Texas LLCs had received actual notice of both the initial *CCAA* Application and the subsequent comeback hearing, and that the Chambers Judge had determined there was a sufficient connection to Alberta to support the Court's jurisdiction. The Texas LLCs did not challenge the jurisdiction finding on Appeal. In those circumstances, the procedural defect in service did not justify setting aside the proceedings.

The Court also considered the Applicants' failure to comply with Rule 3.9. It accepted that the Initial Order had effectively been obtained on an *ex parte* basis and that the two-day notice was procedurally unfair when viewed in isolation. However, the Court found that any prejudice arising from the inadequate notice was alleviated by the comeback hearing, which operated as a *de novo* hearing, on full notice to the affected parties. At the hearing, the Applicants continued to bear the burden of establishing that the Initial Order and continuation of the *CCAA* proceedings were warranted. Although there was no urgency justifying the Applicant's departure from the notice requirements, the Court held that it would have been a disproportionate response to terminate otherwise meritorious *CCAA* proceedings solely based on the notice deficiency.

The Court also addressed other issues, including whether equity investors could commence *CCAA* proceedings, whether the Texas LLCs could be included within the Initial Order despite not qualifying as debtor companies, and whether the challenged Orders furthered the purposes of the *CCAA*. The Court concluded that the equity investors qualified as "persons interested" for the purposes of Section 11 of the *CCAA*, upheld the inclusion of the Texas LLCs under the Court's broad authority under that provision, and found that the challenged Orders were supported by the evidence and consistent with the objectives of the *CCAA*. Accordingly, the Appeal was dismissed.

HUBER V GUYON, 2026 ABKB 359

(RENKE J)

Rules 3.10 (Application of Part 4 and Part 5), 3.12 (Application of Statement of Claim Rules to Originating Applications), 7.2 (Application for Judgment), 7.3 (Summary Judgment), 13.13 (Requirements for all Filed Documents), 13.14 (Endorsement on Documents) and 13.15 (When Document is Filed)

An Application was brought by the Applicants/Respondents, who were electors and residents of the Brazeau County, to disqualify the Respondent/Applicant, a municipal councilor, from office for alleged undisclosed pecuniary interests in several council votes. The Respondent applied for Summary Judgment, arguing that the claims were barred by the three-year limitation period placed by the municipal law. The key issue was whether the electors' claims were brought within the statutory time limit and whether they could proceed on the record.

Justice Renke held that most of the claims were statute-barred. In arriving at this conclusion, Renke J. held that the limitation period runs from the date of the alleged disqualification, not from when it is discovered. Based on this, claims tied to earlier votes (2018–2020) were filed outside the three-year window and were summarily dismissed. The Court found no genuine issue requiring a Trial of these claims because the dates and evidence were clear.

However, Justice Renke declined to dismiss the claims relating to later Herbicide Rebate Program (HRP) votes. As the Court found, these claims involved delayed disclosure of relevant information, including whether the Respondent/Applicant or his family benefited financially. Renke J. found that issues such as fraudulent concealment and a possible continuing course of conduct could affect the limitation analysis and could not be fairly resolved on the existing record. As a result, Summary Judgment was refused for the HRP-related claims, which would have to proceed through further litigation.

BELACHEWU V GEBREMARIAM, 2026 ABKB 396

(KRAUS J)

Rules 3.12 (Application of Statement of Claim Rules to Originating Applications), 3.62 (Amending Pleading) and 3.67 (Close of Pleadings)

This decision arose in the context of an interlocutory Injunction Application brought during a dispute over the governance of a church in Edmonton (the "Church"). During the hearing, the Applicants sought leave to amend their Originating Application to add a claim for the winding up of the Church, pursuant to section 25 of the *Religious Societies' Land Act*, RSA 2000 c R-15. The Respondents opposed the amendment, arguing that winding up had not been pleaded and the Applicants had failed to adduce evidence supporting the proposed amendment.

Justice Kraus considered the Court's authority to permit amendments in proceedings commenced by Originating Application. The Court noted that Rule 3.12 permitted the Court to direct that Rules applicable to Actions commenced by Statement of Claim apply to proceedings commenced by Originating Application. Kraus J. noted that Rules 3.62 to 3.67 governed amendments to pleadings, and nothing in the Rules precluded amendments to an Originating Application. Further, the Court concluded that filing of a new Originating Application would only cause further delay. Therefore, in principle, the Court found no issue with allowing an amendment to an Originating Application.

Justice Kraus reiterated that amendments are generally permitted where they would not result in prejudice to the opposing party. The Court concluded that the Affidavit evidence already before the Court provided a sufficient factual basis for the new proposed claim, and that the Respondents would suffer no prejudice if the amendment was allowed.

Accordingly, the Court granted leave to amend the Originating Application to add a claim for the winding up of the Church.

ECOJUSTICE CANADA SOCIETY V ALBERTA (MINISTER OF ENVIRONMENT), 2026 ABKB 306

(FROESE J)

Rules 3.15 (Originating Application for Judicial Review), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

The Applicant sought costs of an Application for Judicial Review of the Respondents' decision to redact information from a mercury emissions study conducted by a third party.

Although the Respondents did not take a position and had in fact consented to the Application, the parties were unable to agree on costs. The parties did not dispute the presumption of a successful litigant's entitlement to costs pursuant to Rules 10.29 and 10.33, nor did they dispute the principle of tribunal immunity from costs, absent misconduct or extraordinary circumstances.

The dispute instead centered on whether the tribunal immunity exception applied to the Respondent Director who was acting under statutory authority and, if so, whether the Director's conduct was sufficient to disqualify them from the exception.

The Applicant argued, in part, that the Director failed to disclose in a timely manner that the Respondents would not be taking a position, despite the parties having entered into a procedural Consent Order, and that this delay caused the Applicant to incur unnecessary costs.

Froese J. ruled against the Applicant, finding that the tribunal immunity exemption applied to the Director and that the Director's conduct did not meet the high threshold required to establish misconduct. In reaching this conclusion, Justice Froese noted that the Respondents were not required to be active participants in the Action, and that the Consent Order did not impose such an obligation. The Court also found that the delay was attributable to the third party who conducted the mercury emissions study.

While the Application was dismissed, the Court agreed to include additional context regarding the decision and its procedural history in the resulting Order.

PURE CANADIAN ENTERTAINMENT LP V ALBERTA GAMING LIQUOR AND CANNABIS COMMISSION, 2026 ABKB 370

(WHITLING J)

Rule 3.15 (Originating Application for Judicial Review)

This decision arose in the context of Applications for Judicial Review challenging a decision of the Alberta Gaming, Liquor and Cannabis Commission ("AGLC") approving the relocation of a casino licence.

As a preliminary issue, the Court considered whether the Applicants had complied with Rule 3.15(3)(c), which required service of a Judicial Review Application on "every person or body directly affected by the Application." Although the Applicants had served the proposed licensee, Capital City Casinos Ltd. ("CCC"), they had not served its parent corporation, Mather Gaming and Entertainment Investments Ltd. ("Mather Gaming"). Mather Gaming argued that it was directly affected because it had been referenced in the AGLC's decision approving the relocation and issuance of the new casino licence.

Justice Whitling reviewed the jurisprudence interpreting Rule 3.15(3)(c), including the guidance that the phrase "directly affected" was to be given its ordinary meaning and interpreted restrictively. The Court noted that the Rule was intended to limit the number of parties who must be served in Judicial Review proceedings and that persons with only an indirect or derivative interest were not captured by the Rule.

Applying these principles, the Court concluded that Mather Gaming was not a person or body directly affected by the Judicial Review Applications. Despite references to Mather Gaming in the AGLC Board's minutes and approval correspondence, the evidentiary record established that CCC had been the Applicant for the licence, the intended recipient of the licence, and the entity that ultimately acquired the casino assets. The Court characterized the Board's references to Mather Gaming as an administrative error and held that any interest Mather Gaming possessed arose solely through its relationship as parent company of CCC.

Justice Whitling therefore held that Mather Gaming had been only indirectly affected by the Applications and was not required to have been served under Rule 3.15(3)(c). Accordingly, the Applications were not subject to dismissal for non-compliance with the Rule.

REAL ESTATE COUNCIL OF ALBERTA V MORE, 2026 ABKB 459

(DUNLOP J)

Rules 3.15 (Originating Application for Judicial Review), 11.28 (Substitutional Service) and 11.29 (Dispensing With Service)

The Applicant, the Registrar of the Real Estate Council of Alberta (the "Registrar"), applied for Judicial Review of a decision of a hearing panel of the Real Estate Council of Alberta (the "Panel"). The Panel declined to proceed with a disciplinary hearing against a former licensee (the "Respondent") after finding that the Notice of Hearing was not properly served (the "Notice"). In the alternative, the Registrar sought an Order for substitutional service or dispensing with service.

As a preliminary matter, Justice Dunlop considered Rule 3.15(2), and held that the Judicial Review Application was commenced within the six-month limitation period because time began to run when the Panel issued its written reasons, rather than its earlier oral decision. Justice Dunlop found that the oral decision did not provide sufficient reasons for the parties to understand the basis of the decision or assess whether Judicial Review was warranted.

On the merits, Dunlop J. rejected the Registrar's argument that service by registered mail was complete upon sending. The Court held that the Panel reasonably interpreted the applicable statutory service provisions and procedural fairness requirements in concluding that service by registered mail required acknowledgement of receipt. Justice Dunlop further held that the Panel reasonably determined that the obligation of current licensees to maintain updated contact information did not alter the service requirements for the Notice, particularly as the Respondent was no longer a licensee.

The Court considered the Registrar's alternative request for substitutional service or an Order dispensing with service. Applying Rule 11.28, Justice Dunlop held that the Registrar failed to establish that posting the Notice on the Real Estate Council of Alberta's website was likely to bring the Respondent's attention to the proceeding. The Court further found that the requirements for dispensing with service under Rule 11.29 had not been met, including the requirement for evidence that the issues were unlikely to be disputed. Justice Dunlop also noted that granting the requested relief would be inconsistent with the legislative scheme favouring the timely resolution of disciplinary proceedings.

In the result, Justice Dunlop dismissed the Judicial Review Application and the Registrar's alternative Application for substitutional service or an Order dispensing with service. The Court directed that each party bear its own costs.

HAYDEN V ALBERTA (WORKERS' COMPENSATION BOARD), 2026 ABCA 113

(KIRKER JA)

Rules 3.15 (Originating Application for Judicial Review), 13.5 (Variation of Time Periods) and 14.5 (Appeals Only With Permission)

The Applicant sought permission to appeal an Order issued in Chambers. The Order in question dismissed an Application to validate or cure late service of an amended Originating Application for Judicial Review of a decision of the Appeals Commission for Alberta Workers' Compensation. The Applicant served the Appeals Commission in time but missed the 6-month deadline to serve the Workers' Compensation Board, as required by Rules 3.15(2) and (3). The Chambers Judge had declined to exercise discretion to extend the deadline.

The Court of Appeal confirmed that Rule 14.5(1)(b) requires permission to appeal an Application to validate or cure late service. Kirker J.A. recited the test from the applicable authorities: permission to Appeal will generally be granted only if the applicant shows that the appeal raises a serious question of general importance and has a reasonable chance of success.

The test was not met. The Court of Appeal was not satisfied that there was a question of general importance to be determined in the case. The case law defined a question of general importance as involving a matter of policy, principle, or law that might have precedential value. The Applicant's argument for why the Appeal raised such a question was unsupported by any evidence.

Further, Kirker J.A. found that the proposed Appeal had little chance of success. Rule 13.5, which authorizes the court to extend or shorten a time period specified in the Rules, does not apply to Rule 3.15. Thus, the 6-month deadline under Rule 3.15 was mandatory and not extendable. The Court of Appeal found no basis on which it could overturn the Chambers Judge's decision.

BOW VALLEY ENGAGE SOCIETY V ALBERTA (ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT, DESIGNATED DIRECTOR), 2026 ABCA 188

(FEEHAN, DE WIT AND FRIESEN JJA)

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

This decision determined four Appeals arising from Judicial Review Applications involving the proposed Three Sisters Mountain Village development near Canmore. Bow Valley Engage Society ("Bow Valley") and the Stoney Nakoda First Nations ("Stoney Nakoda") had asked the Designated Director under the Environmental Protection and *Enhancement Ac*t, RSA 2000, c E-12, to consider whether an environmental impact assessment was required for two area structure plans related to the development. The Designated Director declined to do so, finding that the development was a continuation of a tourism and recreational project approved by the Natural Resources Conservation Board in 1992, and was not a "proposed activity" under the Act.

The first two Appeals were brought by Three Sisters Mountain Village Properties Ltd. ("Three Sisters") from a Chambers Judge's decision dismissing its preliminary challenges to the Judicial Review Applications on the basis of standing and abuse of process. The Court dismissed those Appeals. Although Bow Valley and Stoney Nakoda did not have statutory private interest standing, both had common law private interest standing because their interests in the proposed development were distinct from those of the general public. The Court also held that the Judicial Review Applications were not an abuse of process under Rule 3.68 because they concerned the Designated Director's jurisdiction under a distinct administrative process, rather than a collateral attack on prior regulatory or Court proceedings.

The third and fourth Appeals concerned a second Chambers Judge's decision striking the Judicial Review Applications for want of service under Rule 3.15. Thunderstone Quarries Canmore Ltd. ("Thunderstone") had applied to strike the Application, claiming it was a party affected by the Applications, and had not been served within the six-month service period. The second Chambers Judge held that Thunderstone was directly affected because it owned lands within the structure plan area and had interests connected to the wildlife corridor.

The Court of Appeal held that the second Chambers Judge erred. Rule 3.15 requires an Originating Application for Judicial Review to be served on every person or body directly affected by the Application. Although Thunderstone had land and business interests connected to the Smith Creek area structure plan, any effect on Thunderstone from the Judicial Review Applications was too remote to make it directly affected under the Rule.

The Court explained that, even if the Judicial Review Applications succeeded, the Designated Director would still have to decide whether an environmental impact assessment was required. Any environmental impact assessment would only inform later regulatory decisions. It would not itself approve, deny, or alter Thunderstone's land use rights. Thunderstone would also have later opportunities to participate in or challenge decisions that directly affected its interests. Bow Valley and Stoney Nakoda were therefore not required to serve Thunderstone under Rule 3.15, and the Applications should not have been struck for want of service.

Bow Valley and Stoney Nakoda also challenged the constitutionality of Rule 3.15(3)(c), arguing that the service requirement infringed Section 96 of the *Constitution Act*, 1867 where the identity of directly affected parties is unknown, uncertain, or unascertainable, and failure to serve within six months operates as a complete bar to Judicial Review. The Court declined to decide the constitutional question. Because Thunderstone was not directly affected, Bow Valley and Stoney Nakoda were not precluded from advancing their Judicial Review Applications, making the constitutional issue hypothetical.

The Court then considered the merits of the Judicial Review Applications. It held that the Designated Director's decision was reasonable. The Designated Director considered the relevant statutory scheme and reasonably concluded that the development was ongoing construction rather than a new "proposed activity" requiring consideration under the environmental assessment provisions.

The Appeals from the first Chambers Judge's Order were dismissed. The Appeals from the second Chambers Judge's Order were allowed with respect to the striking of the Judicial Review Applications, but dismissed on the merits.

ATHABASCA CHIPEWYAN FIRST NATION V ALBERTA (CHIEF ELECTORAL OFFICER), 2026 ABKB 375

(LEONARD J)

Rules 3.22 (Evidence on Judicial Review) and 3.68 (Court Options to Deal With Significant Deficiencies)

The Proponent, Mr. Sylvestre, applied for the issuance of a constitutional referendum which would ask Albertans the following question: "Do you agree that the Province of Alberta shall become a sovereign country and cease to be a province in Canada" (the "First Proposal"), which was later amended pursuant to an adapted statutory scheme to "Do you agree that the Province of Alberta should cease to be a part of Canada to become an independent state" (the "Second Proposal"). The Second Proposal was approved by the Chief Electoral Officer (the "CEO") in Alberta and the question was to be posed to Albertans by Elections Alberta (the "CEO Decision").

Four First Nations applied for Judicial Review of the CEO Decision. The First Nations filed Affidavits in support of their Applications, and filed Notices of Constitutional Question seeking clarity on the constitutionality of certain provisions of the *Citizen Initiative Act*, SA 2021, c C-13.2 ("CIA"). Alberta applied to strike all or portions of the Affidavits filed by the First Nations.

In response to Alberta's Application to strike the Affidavits, Justice Leonard applied Rule 3.22 which addresses evidence on a Judicial Review, and held that affidavit evidence is generally inadmissible with narrow exceptions. The Court held these exceptions apply when Rule 3.22(b.1) is not engaged. When Rule 3.22(b.1) is engaged, such that an originating application seeks relief other than an order in the nature of *certiorari* or an order to set aside a decision or act, the court retains its ordinary gatekeeping function and the evidence must still remain relevant and material. Further, Leonard J. noted that the Court may strike out all or part of an affidavit that contains frivolous, irrelevant, and improper information pursuant to Rule 3.68(4).

Justice Leonard found that the relief sought by the Applicants went beyond an Order in the nature of *certiorari* and, as such, Rule 3.22(b.1) was engaged and provided a statutory basis for the admissibility of the Affidavits. The Court went on, however, to review each Affidavit for general admissibility on the basis of relevance/materiality and struck one Affidavit and parts of another for failing to be relevant and material. Leonard J. also found some paragraphs within Affidavits to be legal argument/conclusion and directed that those paragraphs be given no weight.

Ultimately, the Court overturned the CEO Decision on three main grounds (each of which is explained briefly below): 1) Error of law in applying transitional provisions, 2) Failure to follow prior binding decision, and 3) Breach of the Crown's duty to consult.

(1) Error in law: The CEO treated the First Proposal as if it had never been made which the Court held to be unreasonable.

(2) Failure to follow prior binding decision: Justice Leonard held that the CEO erred in failing to apply the reasons for decision in *Chief Electoral Officer of Alberta v Sylvestre*, 2025 ABKB 712, which required rejection of the Second Proposal on the basis that it contravened Section 35 of the *Constitution Act*, 1982.

(3) Breach of the Crown's duty to consult: The Court considered the government's duty to consult with First Nations pursuant to Section 35.1 of the *Constitution Act*, 1982. Alberta's duty to consult was triggered by the CEO decision. The CEO has implied jurisdiction, pursuant to the amended CIA to decide questions of law. The Court declined to determine the constitutionality of the CIA on the basis of its aforementioned ruling.

UHRUM V ALBERTA (DIRECTOR FOR THE ASSURED INCOME FOR THE SEVERELY HANDICAPPED), 2026 ABKB 481

(OVIATT J)

Rule 3.22 (Evidence on Judicial Review)

The Applicant sought Judicial Review of a decision denying her request for an extension of time to appeal the commencement date of her benefits under the Assured Income for the Severely Handicapped ("AISH") program. The Applicant began receiving AISH benefits in 1996 and applied for the extension in 2025.

As a preliminary issue on Judicial Review, the Applicant filed multiple Affidavits containing argument, information already included in the Certified Record, and additional records directed at the merits of the decision.

Justice Oviatt confirmed that, pursuant to Rule 3.22, the Court may consider the Certified Record of Proceedings and any additional evidence it permits. However, Judicial Review is not a rehearing. The Court's role is to assess the reasonableness and procedural fairness of the administrative decision based on the record before the decision-maker. As a result, the general rule is that evidence not before the decision-maker is inadmissible on Judicial Review.

The Court reviewed the recognized exceptions to this rule, including where additional evidence is necessary to establish bias, demonstrate breaches of natural justice not apparent on the record, provide background information, or address circumstances where the decision-maker created no record or an inadequate record.

None of the exceptions applied. The Affidavits and documents were largely argumentative, duplicative of the Certified Record, or consisted of materials that were available to the Applicant at the time of her extension request but were not put before the decision-maker.

On the merits of the Judicial Review, Oviatt J. applied the reasonableness standard. The Court held that the decision was reasonable, including the finding that the Applicant had notice of her right to appeal and had not provided a sufficient explanation for an extension of nearly three decades from a 30-day appeal period. The Application for Judicial Review was dismissed.

The Court dismissed both the Application to admit new evidence and the Judicial Review.

DUPUIS V ZIBELL, 2026 ABCA 218

(FAGNAN, FRIESEN AND HAWKES JJA)

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

The Defendant sought to appeal a Chambers Justice's decision allowing the Plaintiff to amend their Statement of Claim to add the enforcement of a contract entered into by the parties under the then *Matrimonial Property Act*, RSA 2000, c M-8 (now *Family Property Act*, RSA 2000, c F-4.7) (the "Act").

The issues on Appeal were whether the amendment amounted to a new cause of action and, if so, whether the amendment was barred by operation of a limitation period.

After considering Rules 3.62(1) and 3.65(1) and applying relevant caselaw, the Court upheld the prior decision. The Court found that the Chambers Justice committed no error in concluding that the amendment did not raise a new cause of action but rather particularized an existing claim and sought an additional remedy under the Act. The Court noted that the Chambers Justice' ruling was consistent with the Court of Appeal's decision in *Arnston v Arnston*, 2024 ABCA 226, which provided that a court retains jurisdiction to enforce agreements that settle litigation.

The Court dismissed the Appeal.

LANDRY V AURORA CANNABIS INC, 2026 ABCA 131

(FEEHAN, WOOLLEY, FRIESEN JJA)

Rules 3.64 (Time Limit for Application to Disallow Amendment to Pleading) and 3.68 (Court Options to Deal with Significant Deficiencies)

The Appellants appealed a Case Management Judge's dismissal of their Application to strike an Amended Statement of Claim in a proposed Class Action. In the alternative, they appealed the dismissal of their Application to disallow the addition of a second proposed representative Plaintiff, pursuant to Rule 3.64, and to strike various amendments to the pleadings.

On the issue of striking, pursuant to Rule 3.68, the Appellants argued that the proceeding constituted an abuse of process because the original representative Plaintiff, Robert Landry ("Landry"), was not a member of either the proposed statutory or common-law classes. They further argued that Landry's negligent misrepresentation claim was untenable because he could not establish reliance on the alleged misrepresentations or resulting damages.

Applying the principle that pleadings must be read generously and that pleaded facts are assumed to be true on an Application to strike, the Court held that it was not plain and obvious that he fell outside the proposed classes or that his claims were doomed to fail. The Court further held that issues relating to reliance, damages, and the ultimate merits of the negligent misrepresentation claim should be determined at the certification or trial stage, rather than on a striking Application.

On the issue of the second proposed representative Plaintiff, the Appellants argued that the claim was statute barred pursuant to the limitation period under the *Securities Act*, RSA 2000, c S-4. The Court rejected that argument, holding that the limitation periods applicable to both the statutory and common-law claims had been suspended by the tolling provision under the Securities Act and the limitation rules under the *Class Proceedings Act*, SA 2003, c C-16.5. It remained within the applicable limitation period to be add a second representative Plaintiff.

In the result, the Court dismissed the Appeal, allowing the Class Action to proceed.

EGALE CANADA V ALBERTA, 2026 ABKB 333

(KUNTZ J)

Rule 3.65 (Permission of Court to Amendment Before or After Close of Pleadings)

An Action was commenced by Originating Application to challenge amendments to the *Health Professions Act*, RSA 2000, c H-7. The amendments prohibited health care professionals from providing certain treatments to minors, including sex reassignment surgeries and certain hormone therapies (the "Ban"). The Applicants initially advanced claims under Sections 7, 12, and 15 of the *Charter*.

The Applicants previously obtained an Interlocutory Injunction suspending portions of the Ban. After Alberta invoked Section 33 of the *Charter*, the Injunction was set aside. The Applicants then applied pursuant to Rule 3.65 to amend their Originating Application, alleging that the Ban was criminal in nature and *ultra vires* provincial jurisdiction.

Justice Kuntz confirmed that Rule 3.65 gives the Court broad discretion to permit amendments, and that amendments are presumptively allowed unless they are hopeless. An amendment is hopeless if it discloses no reasonable claim, or when it is clear there is no triable issue.

Kuntz J. noted that an Amendment Application was not a Summary Judgment Application. In the normal course, determining whether an amendment is hopeless does not involve an inquiry into the merits because pleadings define the scope of record production and questioning, and summary adjudication usually occurs after discovery. However, where the record on an Amendment Application is extensive, the Court may make a more detailed assessment of the evidence and apply the more stringent evidentiary standard used on summary determinations.

Justice Kuntz held that this was an appropriate case to apply that standard. The record from the earlier Injunction Application included 34 Affidavits, nine expert reports, and 38 cross-examination transcripts. The proceeding was also brought by Originating Application, so discovery was not the ordinary rule and was unlikely to alter the assessment of the proposed claim.

Applying that standard, Justice Kuntz determined that the evidence established that the Ban's dominant purpose was to address the health and safety of minors by restricting access to treatments the government considered harmful or uncertain. Kuntz J. further held that Alberta's invocation of Section 33 of the *Charter* did not make the proposed amendment necessary or viable. The *ultra vires* claim had to stand on its own and could not succeed on the existing record.

The Application to amend the Originating Application was dismissed.

CNOOC PETROLEUM NORTH AMERICA ULC V 801 SEVENTH INC, 2026 ABKB 361

(NIXON ACJ)

Rule 3.65 (Permission of Court to Amendment Before or After Close of Pleadings)

This decision arose from an Application by the Plaintiffs and Defendants by counterclaim, CNOOC Petroleum North America ULC and CNOOC Limited (collectively, the "CNOOC Parties"), for permission to amend their Statements of Defence to Counterclaim pursuant to Rule 3.65, following the liability phase of a bifurcated commercial lease dispute. The Defendant, 801 Seventh Inc. (the "Landlord"), opposed some of the proposed amendments.

Associate Chief Justice Nixon reviewed the governing principles under Rule 3.65 and confirmed that the threshold for amending pleadings is low. The Court reaffirmed the general rule that amendments should ordinarily be allowed unless one of the recognized exceptions applies, including serious non-compensable prejudice, bad faith, limitation concerns, or where the proposed amendment is hopeless. The Court explained that a proposed amendment is hopeless if it would be subject to being struck under principles analogous to Rule 3.68, including where it discloses no reasonable claim or defence, is frivolous or irrelevant, constitutes an abuse of process, or is otherwise plainly incapable of succeeding. Nixon A.C.J. further emphasized that only modest evidence is required to support proposed amendments, particularly where the amendments merely provide further particulars to existing pleadings.

In applying these principles, the Court repeatedly emphasized that relevance remains the foundation of pleadings and that amendments must still meet a minimal threshold of factual support. However, the Court rejected the Landlord's position that prior interlocutory decisions concerning production or abuse of process conclusively barred the proposed amendments. The Court held that many of the amendments either responded to allegations already advanced by the Landlord, further particularized existing pleadings, or were supported by "some evidence" contained in agreements and documentary records already before the Court. Associate Chief Justice Nixon also confirmed that permitting amendments under Rule 3.65 does not determine the ultimate merits, relevance, or admissibility of the allegations at later stages of the litigation.

Applying the low threshold governing amendments, the Court granted permission under Rule 3.65 for all disputed amendments to the Statements of Defence to Counterclaim.

MAYHEW V WCB, 2026 ABKB 254

(DEVLIN J)

Rules 3.68 (Court Options to Deal With Significant Deficiencies) and 13.7 (Pleadings: Other Requirements)

The Defendant, the Worker's Compensation Board ("WCB"), applied to strike an Amended Statement of Claim pursuant to Rule 3.68 on the basis that it did not disclose a Cause of Action.

The Action arose from allegations that the WCB failed to provide appropriate compensation and treatment in relation to the Plaintiff's injury, resulting in various losses. The Court advised the Plaintiff that the Statement of Claim failed to plead material facts and granted several adjournments to allow the Plaintiff to seek assistance in correcting this deficiency. Despite having filed several hundred pages of Affidavit evidence and amending the Statement of Claim twice, the Plaintiff still failed to plead the material facts necessary to support a viable cause of action.

Justice Devlin noted the similarity to *Gay v Alberta (Workers' Compensation Board)*, 2023 ABCA 351 ("*Gay*"), in which the Court of Appeal upheld a decision to strike a claim on similar grounds advanced by the WCB.

Applying the Rule 3.68 test, Devlin J. struck the Amended Statement of Claim in its entirety. Justice Devlin adopted the Court of Appeal's reasons in *Gay*, finding that the claim for WCB compensation was statutorily barred and not actionable in tort, and failed to plead facts supporting any recognized cause of action. The Court further found that the allegations of conspiracy were improper and the claims relating to interference with legal representation were doomed to fail, scandalous, and vexatious.

Justice Devlin granted the Application in full, without further leave to amend.

PINKNEY V HINES, 2026 ABKB 267

(LEMA J)

Rules 3.68 (Court Options to Deal With Significant Deficiencies) and 13.18 (Types of Affidavit)

The Appellants appealed an Application Judge's decision dismissing their Application to strike portions of the Statement of Claim pursuant to Rule 3.68 and their Application for summary dismissal. The Respondent's Statement of Claim alleged that the Appellants defamed him and induced his employer, Manulife Securities Inc. ("Manulife"), to breach his employment contract by providing a filed Statement of Claim from a separate litigation to Manulife, which terminated his employment shortly thereafter. The Appellants sought to strike the defamation claim on the basis of absolute privilege and to summarily dismiss the inducing breach of contract claim.

The Appellants argued that the impugned statements were protected by absolute privilege because they were contained in a court pleading and that there was no evidence they intended to cause the Respondent's dismissal. The Respondent maintained that absolute privilege did not extend to the distribution of the pleading to a third party outside the litigation and that the summary dismissal Application relied on inadmissible hearsay evidence.

In assessing the Application Judge's decision, Justice Lema held that the Rule 3.68 Application failed because it was not plain and obvious that the defence of absolute privilege applied. While pleadings filed in court are generally protected, the focus was on the separate act of sending the pleading to a non-party. The Court found that this communication was not obviously a litigation step or otherwise shown to be incidental to, or in furtherance of, the underlying proceeding. As a result, it was not plain and obvious that the defamation claim disclosed no reasonable cause of action to grant striking under Rule 3.68.

Lema J. also upheld the dismissal of the Summary Judgment Application. Rule 13.18(3) requires affidavits supporting dispositive applications to be based on personal knowledge. The Appellants relied on an affidavit from a legal assistant regarding the state of communications between the law firm and Manulife, but this was based on hearsay and the affiant lacked personal knowledge, contrary to Rule 13.18(3). Justice Lema declined to relax the Rule where the party with direct knowledge (the lawyer) was available to provide direct evidence but chose not to and concluded that the lack of sufficient evidence created a genuine issue for trial concerning the nature and effect of any communications with the employer.

The Appeal was dismissed in its entirety, the Applications Judge's decision was upheld, and the Respondent was awarded Schedule C costs.

WINSLOW V THIVIERGE, 2026 ABKB 273

(MARION J)

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

The Defendants applied to strike the Statement of Claim or, in the alternative, to dismiss it summarily. The underlying claim concerned an alleged breach of contract stemming from a real estate transaction; with the Plaintiff as the purchaser and the Defendants as the sellers. During negotiations, the Defendants sent a written counter-offer to the Plaintiff. The Plaintiff made changes to this counter-offer, signed it, and returned it to the Defendants.

The Plaintiff contended that the offer signed and returned to the Defendants was not a counter-offer, but was a clarification on a previously agreed upon offer, and as such it was binding on the parties. Defendants disagreed and characterized the Plaintiff's revised offer as a counter-offer that was not accepted. The Plaintiff sued to direct the sale of the property in accordance with the terms of the exchanged offer.

Although the Defendants applied to strike the Plaintiff's claim, the Court noted that they did not substantively address that aspect of their Application in their submissions. In any event, Justice Marion noted that striking the claim would not be appropriate. In canvassing the relevant caselaw and consideration of the requirements of Rule 3.68, Justice Marion noted that a claim should only be struck if it is "plain and obvious" that the claim does not disclose a reasonable cause of action. In this case, the Plaintiff disclosed a valid claim for breach of contract, and as such, it would not be appropriate to strike the claim.

In considering the Defendants' Application for summary dismissal, the Court noted that the matter was appropriate for summary disposition; the facts were largely uncontested and the only matter in dispute was the legal determination of the validity of the contract itself and the issues surrounding that determination. The Plaintiff raised a number of issues which they submitted amounted to genuine issues for trial, such as whether the counter-offer was properly accepted by the parties, and the relevance of oral conversations between the realtors surrounding the counter-offer.

In reviewing the facts and evidence, the Court determined that there was no genuine issue for trial. Although the Plaintiff alleged that they had accepted the Defendants counter-offer, Justice Marion noted that this position was rebutted by the fact that the version of the agreement that they had initialed contained revisions from their realtor; the version of the agreement that was 'accepted' was not the same on that was provided by the Defendants.

Further, the Plaintiff's position that the oral conversations between the realtors amounted to a genuine issue for trial was similarly rejected. The terms of the proposed agreement were unambiguous in that the written contract was the entirety of the agreement between the parties. If the parties intended the surrounding written discussions to form parts of the agreement, they would have included those terms in the written agreement.

ALBERTA UNION OF PROVINCIAL EMPLOYEES V HER MAJESTY THE QUEEN (ALBERTA), 2026 ABKB 282

(LEONARD J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Applicant, Her Majesty the Queen in Right of Alberta, applied under Rule 3.68 to strike the Respondents' Statement of Claim, which challenged the constitutionality of the *Critical Infrastructure Defence Act*, SA 2020, c C-32.7 ("*CIDA*"). The Applicant argued that the Action was an abuse of process because the Respondents lacked standing, the claim was premature and non-justiciable, and the pleadings disclosed no reasonable cause of action.

The Respondents, including the Alberta Union of Provincial Employees and individual union representatives, alleged that the *CIDA* infringed *Charter* freedoms of expression, assembly and association, as well as section 7 rights, by creating a chilling effect on lawful demonstrations, leafleting, picketing and collective bargaining activities. Although none of the Respondents had been charged under the legislation, they contended that the breadth of the Act and its application to "essential infrastructure," including highways and sidewalks, created an immediate impact on protected activities.

Justice Leonard found it appropriate to consider the issue of standing in an Application pursuant to Rule 3.68, noting that if there was no standing to bring a claim, it would follow that the claim would have no reasonable prospect of success. Leonard J. held that the Respondents did not have private interest standing because they had not been charged under the *CIDA* and could not rely on hypothetical future prosecutions. However, the Court found that they satisfied the test for public interest standing. Applying the flexible approach from *Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General)*, 2012 SCC 45, Justice Leonard concluded that the claim raised serious constitutional issues, that the Respondents had a genuine interest in the outcome, and that the Action was a reasonable and effective means of bringing the issues before the Court. The Court emphasized that the absence of an evidentiary record was not fatal where the legislation could be assessed through reasonably foreseeable hypothetical scenarios.

Justice Leonard further held that it was not plain and obvious that the claim would fail. The broad scope of the *CIDA*, its application to public streets and sidewalks, and the undefined concept of acting "without lawful right" gave rise to arguable constitutional questions concerning freedom of expression, assembly, association, liberty interests, and potential overbreadth. The Court was satisfied some portions of the Respondents' claim raised a serious issue of the validity of the *CIDA*.

The Application to Strike was dismissed. The Respondents were awarded costs, with directions that if the parties could not agree on quantum, they were to contact the Court within 30 days to arrange a process for resolving costs.

BOONSTRA V EDMONTON (CITY), 2026 ABKB 308

(AKGUNGOR J)

Rules 3.68 (Court Options to Deal With Significant Deficiencies) and 8.10 (Order of Presentation)

The Appellant appealed a municipal Order requiring the Appellant to cut overgrown grass and remove a derelict motorhome from their property. The Order was issued under the *Municipal Government Act*, RSA 2000, c M-26, and was upheld by the City of Edmonton's Community Standards and Licensing Appeal Committee ("CSLAC"), with only a minor portion struck for being overbroad. The Appellant appealed to the Court of King's Bench, arguing that the decision was unreasonable and procedurally unfair.

The Court applied a patent unreasonableness standard and found that the CSLAC's decision was reasonable. It held that the statutory definition of nuisance in the applicable bylaw governed the analysis, not broader common law definitions relied on by the Appellant. The evidence showed that the grass exceeded 10 cm and the motorhome was damaged and in disrepair, which clearly met the bylaw definition of nuisance. The Court also rejected arguments that the Order was issued to the wrong party, that it was barred by *res judicata*, or that it was unfair compared to neighbouring properties.

Justice Akgungor further held that there was no procedural unfairness as the Appellant had sufficient notice, received the relevant evidence, and was able to respond. Akgungor J. also held that the refusal to disclose the identity of the complainant and information about neighbouring properties was appropriate because it was not relevant to whether a nuisance existed. The Court also rejected allegations of bias and other arguments, including claims of abuse of process and intimidation, as meritless. The Appeal was dismissed.

OPABIN SAND AND GRAVEL INC V VINCI GEOINFRASTRUCTURE CANADA LIMITED, 2026 ABCA 212

(FEEHAN, GROSSE AND WOOLLEY JJA)

Rules 3.68 (Court Options to Deal With Significant Deficiencies)

The Appellant, Opabin Sand and Gravel Inc. ("Opabin"), appealed a Chambers Judge's dismissal of its Application to Strike the Amended Counterclaim of the Respondent, VINCI GeoInfrastructure Canada Limited ("VINCI"), pursuant to Rule 3.68(2)(b).

The Amended Counterclaim alleged that Opabin was liable for the torts of abuse of process and conversion arising from a claim under the *Public Works Act*, RSA 2000, c P-46 (the "*PWA*") and a related Action. The Applications Judge struck VINCI's Amended Counterclaim, finding that it disclosed no reasonable claim. On Appeal, the Chambers Judge reversed that decision, concluding that the pleaded claims were arguable.

The Court reviewed the test under Rule 3.68, confirming that the question is whether, assuming the pleaded facts are true, it is plain and obvious that the pleading discloses no reasonable claim. The Court emphasized that bare allegations of misconduct unsupported by material facts or reasonable particulars are insufficient to withstand an Application to strike. The Court also noted that whether a pleading discloses a cause of action is a question of law, reviewable on the correctness standard.

Applying those principles, the Court held that the Amended Counterclaim failed to disclose a reasonable claim for abuse of process. The Court confirmed that the tort requires, among other things, an indirect, collateral, and improper purpose together with a definite act or threat in furtherance of that purpose. The Court held that VINCI's allegations did not disclose an improper collateral purpose. Further, allegations in the Amended Counterclaim were unsupported by material facts, and therefore amounted to bare assertions, or lacked reasonable particulars. Accordingly, the Court held that the Amended Counterclaim failed to plead the essential elements of the tort of abuse of process.

The Court also held that the Chambers Judge erred in permitting the conversion claim to proceed. Issuing a notice under the *PWA* invoked a statutory process to determine entitlement to funds and, as a matter of law, did not constitute a wrongful interference with property capable of amounting to conversion.

In the result, the Court allowed the Appeal and struck the Amended Counterclaim pursuant to Rule 3.68(2)(b).

HTOO V SAY, 2026 ABKB 456

(LOPARCO J)

Rule 3.72 (Consolidation or Separation of Claims and Actions)

The Defendant, Ku Paw Say, applied to consolidate a newly commenced Action, which was later amended to include a claim for the newly recognized tort of intimate partner violence (the "Tort Action"), with a pending corollary relief proceeding in the parties' divorce Action (the "Corollary Relief Action"). The Plaintiff, Wa Nay Htoo, opposed the Application. The parties had been litigating the Corollary Relief Action for approximately 10 years, and the live issues had narrowed to the division of matrimonial property and the quantum of retroactive child support.

The Court considered Rule 3.72, which governs Applications to consolidate proceedings and requires the Court to assess whether consolidation is in the interests of justice and enhances the administration of justice. Loparco J. applied a non-exhaustive list of factors, including whether there were common claims or disputes, the potential to save time and resources, the stage of the proceedings, and whether consolidation would cause serious prejudice to a party. The Court also held that the Supreme Court of Canada's recognition of the tort of intimate partner violence did not alter the legal framework governing consolidation applications.

The Court declined to consolidate the two Actions. Justice Loparco found that the Tort Action and the Corollary Relief Action shared no meaningful factual or evidentiary overlap. While the Corollary Relief Action focused on financial issues like income and assets, the Tort Action required distinct evidence regarding specific defamatory statements and instances of alleged coercive control giving rise to the intimate partner violence claim. Furthermore, the Corollary Relief Action was at a substantially more advanced stage than the recently commenced Tort Action.

Loparco J. held that consolidation would delay the efficient resolution of the family law matters and impose additional costs and complexity on the litigants. The Court emphasized that delaying child support payments due to unrelated tort allegations would be contrary to the best interests of the children. Justice Loparco concluded that the Plaintiff would suffer meaningful prejudice if consolidation were granted, while Ms. Say would suffer no prejudice because she remained entitled to pursue all remedies in the separate Tort Action.

The Application was dismissed.

1646274 ALBERTA LTD V 2402806 ALBERTA LTD, 2026 ABKB 289

(SUMMERS AJ)

Rule 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings)

The Plaintiff applied to amend its Statement of Claim pursuant to Rule 3.74 to add additional Defendants after obtaining a Consent Judgment against the originally named Defendants.

On March 7, 2023, the Plaintiff commenced the Action against two parties (collectively, the "Current Defendants"). On March 4, 2024, the Plaintiff filed this Application to add five further parties (the "Proposed Defendants"), alleging that they had conspired with the Current Defendants to defraud the Plaintiff. While the Plaintiff and the Proposed Defendants waited to secure a date for the Application in Special Chambers, the Current Defendants consented to Judgment in favour of the Plaintiff on November 28, 2025 (the "Consent Judgment").

Applications Judge Summers found that additional parties could only be added to an action before a final Judgment is entered. The fact that the Application had been filed prior to the Consent Judgment did not alter this conclusion, in part because the Plaintiff voluntarily entered into the Consent Judgment before the Application was heard.

The Court dismissed the Application. However, Applications Judge Summers also noted that, subject to any limitation issues, the Plaintiff could commence a separate Action against the Proposed Defendants.

MARKET SURVEILLANCE ADMINISTRATOR V SAMARODEN, 2026 ABKB 348

(HO J)

Rule 3.75 (Adding, Removing, or Substituting Parties to Originating Application)

The matter concerned an investigation by the Market Service Administrator ("MSA") into the Alberta Electric System Operator ("AESO"). The MSA applied to compel a former employee of the AESO to attend for an interview. The AESO sought, among others, to be added as a party to the Action pursuant Rule 3.75.

In considering AESO's Application, the Court canvassed the caselaw with respect to Rule 3.75, which indicated that for an applicant to be added as a party, it must establish that it has a legal interest in the outcome of the proceeding. Justice Ho noted that the relief sought by the MSA was limited to compelling the former employee of the AESO to attend for an interview. Although the outcome of that interview may lead to further proceedings in which the AESO might have a legal interest, the question of whether or not the former employee was required to attend for an interview did not give rise to any legal interest of the AESO.

As the AESO could not establish a legal interest, the Court dismissed the Application and declined to add the AESO as a party to the Action.

RK V GSG, 2026 ABKB 430

(MAH J)

Rules 4.13 (Appointment of Case Management Judge) and 9.12 (Correcting Mistakes or Errors)

This decision addressed whether several Defendants were barred from advancing Summary Dismissal applications on account of their failure to comply with deadlines set out in a Case Management Order.

The Case Management Order required any new Summary Dismissal applications to be filed and served by a specified deadline. Although the signed Order referred to filing and service "prior to February 27, 2026," Justice Mah reviewed the court recording and confirmed that he had actually directed compliance "by February 27, 2026." One Defendant fully complied, while two others filed their Applications on time but served materials late and did not provide properly sworn and filed Affidavits until several weeks after the deadline.

Justice Mah considered the purposes of case management under Rule 4.13, including promoting the fair, efficient, and orderly progress of litigation. The Court emphasized that case management is intended to facilitate proportionate and efficient resolution of disputes and noted the Court of Appeal's encouragement of appropriate summary determination processes. While the Defendants had not complied strictly with the deadlines and demonstrated a lack of diligence, some steps toward compliance had been taken and the delays did not justify preventing potentially case-narrowing summary dismissal Applications from proceeding.

Mah J. permitted all summary dismissal Applications to continue. Justice Mah held that any prejudice arising from the missed deadlines could be addressed through costs rather than by barring the Applications. The Court also exercised its authority under Rule 9.12 to correct the earlier Case Management Order so that the deadline read "by February 27, 2026," reflecting the Order actually pronounced.

RAJPAUL ESTATE (RE), 2026 ABKB 294

(MALIK J)

Rule 4.22 (Considerations for Security for Costs Order)

This case arose from a dispute over the validity of a will in the Estate of Margaret Rajpaul. The Respondent challenged the will and raised concerns about the deceased's capacity at the time it was executed. The Estate applied for security for costs, and a preliminary issue arose as to whether the Respondent should be allowed to question the drafting lawyer before that Application is heard.

The Respondent argued that questioning the drafting lawyer was necessary to assess suspicious circumstances surrounding the will, including concerns from medical records and the lawyer's file about the deceased's cognitive state. The Estate accepted the evidence was relevant to the will challenge but argued that it was not necessary at this stage. It emphasized that a security for costs application only requires a limited review of the merits and should not involve detailed examination of disputed facts or credibility.

Justice Malik agreed with the Estate and refused to allow questioning at this stage. It held that permitting a third-party examination would improperly expand a preliminary costs inquiry into a full merits review. The Court confirmed that security for costs applications are meant to involve only a limited assessment and that the parties already had sufficient evidence to proceed. The Application to question the drafting lawyer was therefore dismissed.

COAST AUTOMOTIVE GROUP INC (RE), 2026 ABCA 123

(FEEHAN JA)

Rule 4.22 (Considerations for Security for Costs Order)

Coast Automotive Group Inc. ("Coast") and related entities were undergoing *Companies' Creditors Arrangement Act* ("*CCAA*") proceedings. The Applicants, Coast and related non-*CCAA* parties sought permission to appeal a Chambers decision that, among other things, ordered them to post $100,000 in security for costs. The Application for Leave to Appeal was dismissed.

The Security for Costs Order arose in the context of ongoing *CCAA* proceedings, where the Applicants were pursuing broad cross-applications relating to the conduct of the Court-appointed Monitor, the continuation of the restructuring proceedings, and a separate Action against the Bank of Montreal known as the Founder's Claim. The Court of Appeal considered whether leave to appeal should be granted in relation to the Security for Costs Order and the underlying exercise of discretion under Rule 4.22.

The *CCAA* proceedings had reached an advanced stage. The Chambers Judge found that the debtor companies' assets had been realized, remaining liquidity was limited, and there was little evidence that the Applicants held meaningful assets in Alberta. The Bank of Montreal was funding the ongoing restructuring proceedings and opposed Applications that would further consume the remaining funds.

Feehan J.A. held that the Chambers Judge properly applied Rule 4.22. The Chambers Judge considered the enforceability of a future costs award, the parties' ability to satisfy such an award, the merits of the proposed litigation, and whether security would cause undue prejudice. The Chambers Judge found that enforceability concerns and the parties' apparent inability to pay weighed in favour of security, while the merits factor was neutral. The Security for Costs Order did not unduly prejudice the Applicants ability to pursue their claims, and the Bank of Montreal's financing of the *CCAA* proceedings justified the protection of its economic interests. Feehan J.A. concluded that the Chamber Judge's reasons demonstrated a reasonable exercise of discretion and reflected the balancing required by Rule 4.22.

The Court refused permission to appeal. It found that the proposed Appeal did not raise an issue of significance to the practice or the Action, particularly because security had already been posted and the underlying Applications would proceed as scheduled.

TICAN V ALAMGIR, 2026 ABCA 141

(SHANER JA)

Rules 4.22 (Considerations for Security for Costs Order), 14.5 (Appeals Only With Permission), 14.8 (Filing a Notice of Appeal) and 14.37 (Single Appeal Judges)

The Applicant, a vexatious litigant, sought permission to appeal two Orders, one seeking permission, and extending time, to appeal a 2017 Consent Order, and the other for a stay pending Appeal. The Court dismissed the Applications.

The Court confirmed that where a party is subject to a vexatious litigant Order, Rule 14.5 requires permission to appeal, and the Applicant must demonstrate an important question of law and a reasonable likelihood of success. The Applicant's proposed grounds, including allegations of procedural unfairness and bias, did not meet this threshold.

The Court considered the applicable timelines under Rule 14.8 and rejected the Applicant's argument that a subsequent vexatious litigant Order revived the right to appeal the earlier Consent Order. The incorporation or modification of earlier restrictions does not restart the appeal period.

With respect to the extension of time, the Court noted that Rule 14.37 requires evidence of a bona fide intention to appeal within the original time, a reasonable explanation for delay, lack of prejudice, and an arguable Appeal. The Court found that the Applicant, who filed approximately eight years late, failed to satisfy any of these criteria, and that granting the extension would be prejudicial.

The Court also addressed the use of procedural tools to manage vexatious litigation, noting that Security for Costs under Rule 4.22 forms part of the Court's ordinary gatekeeping mechanisms and can be reasonably anticipated.

Accordingly, the Applications for permission to appeal, extension of time, and Stay were dismissed.

PIIKANI NATION V MCMULLEN, 2026 ABCA 179

(FEEHAN JA)

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

The Court considered a Security for Costs Application by the Piikani Nation in response to an Appeal by the Respondent, Dale McMullen ("Mr. McMullen"), of a Case Management Judge's endorsement.

The endorsement at issue addressed the handling of the "Navigant Report," which had been previously sealed by Court Order but was subsequently distributed by another party in its Court materials. The Case Management Judge ordered that the Court's electronic copy be sealed, all other Court copies destroyed, and all copies held by recipients likewise destroyed (the "Endorsement").

Mr. McMullen sought to appeal the Endorsement, alleging that the Case Management Judge had improperly addressed the distribution of the report. In response, the Piikani Nation applied for Security for Costs.

Mr. McMullen provided no written submissions opposing the Security for Costs Application. In oral argument he focused on the United Nations Declaration on the Rights of Indigenous Peoples and the financial impact of the litigation on him to date. He did not address the legal test for Security for Costs. In a prior proceeding Mr. McMullen had acknowledged that he was impecunious. He had no assets in Alberta apart from his personal residence, which was subject to a mortgage and numerous writs.

Justice Feehan applied the test for Security for Costs under Rules 4.22 and 14.67, confirming that the Applicant bore the burden of establishing that Mr. McMullen was unable to pay a potential Costs Award. The Court determined that the Piikani Nation had met this test and that it was unlikely that any Costs Award could be enforced against Mr. McMullen, that he lacked the ability to pay, and that his Appeal did not appear to have merit.

Security for Costs was ordered in the amount of $7,000, payable within four weeks. If the security was not paid within that time, the Appeal would be deemed abandoned pursuant to Rule 14.67(2).

RUDKO V INSIGHT CANADA INC, 2026 ABKB 178

(ANGOTTI J)

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

A former employee of the Defendant, Insight Canada Inc. (“Insight”), sued Insight for wrongful termination and damages. Insight conceded that the Plaintiff was entitled to his bonus. The remainder of the Plaintiff’s claims were dismissed after the Court found that he had introduced fabricated documents at Trial.

The parties returned to Court to dispute costs. Insight sought party-and-party costs pursuant to column 5 of Schedule C with a five times multiplier as well as double costs pursuant to Rule 4.49. Insight had served a Formal Offer pursuant to Rule 4.24 which was more favourable for the Plaintiff then the outcome at Trial. Justice Angotti considered the wording of Rule 4.29(4), which provides that Rule 4.29 does not apply when the Court orders costs in amounts other then those prescribed in Rule 10.31(1)(b). The Court found that the use of a multiplier should not negate the application of Rule 4.29.

The Plaintiff argued that Insight’s failure to pay his bonus was a refusal to admit, contrary to Rule 10.33(2)(b). The Court held that the bonus claim was a peripheral claim in the lawsuit and thus Insight’s delayed admission was a “minor transgression” in the whole of the litigation. Angotti J. considered the definition of “reasonable and proper costs” pursuant to Rule 10.31 and *McAllister v Calgary (City)*, 2021 ABCA 25, finding that party-and-party costs cannot exceed full indemnity costs.

Justice Angotti held that the assessment of which column of Schedule C to apply should be made in the context of the whole action pursuant to the considerations set out at Rule 10.33. The Plaintiff's misconduct was found to be relevant pursuant to Rule 10.33(2). Ultimately, the Court balanced the Plaintiff's misconduct with the fact that he did have an arguable case and awarded Insight half of their claimed full indemnity costs and half of their reasonable party-and-party costs. Angotti J. determined reasonable party-and-party costs by applying a two times multiplier to column 5 of Schedule C, holding that failure to apply a multiple would result in an insufficient costs award pursuant to the factors set out in Rule 10.33. Further, all steps following the Formal Offer were doubled over and above the multiplier. After GST and disbursements, total costs were awarded in the amount of $492,112.

PT V ZWN, 2026 ABKB 354

(SIDNELL J)

Rules 4.29 (Costs Consequences of Formal Offer to Settle), 10.31 (Court-Ordered Costs Award) and 10.33 (Court Considerations in Making Costs Award)

This is a costs decision arising from an underlying eight-day Trial, with reasons at *PT v ZWN*, 2025 ABKB 716. The Trial concerned a guardianship and access dispute between a child's biological father and aunt. The Court granted the father's Application to terminate the aunt's guardianship, reduce her access, and reclassify her access as 'contact time'. The father sought costs of $81,610.00, pursuant to Column 1 of Schedule C of the Rules, with doubling after delivery of a settlement offer or, alternatively $80,000.00, being 50% of his legal fees.

Pursuant to Rule 10.31, Justice Sidnell considered the factors set out in Rule 10.33, together with the Trial reasons, and noted, among other things:

a) In terms of degree of success, the Court found that the father was partially successful and the aunt was unsuccessful. The father's success was limited as he failed to demonstrate that it was in the best interest of the child to terminate the aunt's access time completely.

b) While the Trial and its outcome were exceedingly important to the parties, it did not rise to the level of public importance.

c) The Court addressed the fact that the parties brought various Interlocutory Applications during the Trial, many of which the father successfully advanced. However, Justice Sidnell held that the costs for those Applications were determined by the Justice or Applications Judge most familiar with them, and that she could not assess those costs.

d) Enhanced costs were not warranted based on the parties' conduct, despite the alleged inefficiencies and the father's assertion that the aunt caused many unnecessary steps in the litigation. The record was insufficient to support a Costs Award on this basis.

e) The Court considered the father's submission that his settlement offer should carry cost consequences. The offer was an unconventional handwritten settlement offer made during an impromptu courthouse meeting and did not comply with Rule 4.29, and any cost consequences were discretionary, not mandatory. In any event, the father did not obtain a more favourable result than the offer.

Based on these factors, Justice Sidnell awarded the father a lump sum Costs Award of $15,000 along with disbursements of $1,985.34.

BURRIS V DYCK, 2026 ABKB 421

(LEMA J)

Rule 4.29 (Costs Consequences of Formal Offer to Settle)

The Court considered the appropriate Costs Award following the Plaintiff's Statement of Claim being struck.

Justice Lema held that costs should be awarded based on Column 1 of Schedule C. The Defendants had sought Column 3 costs, despite the fact that the Plaintiff had claimed "compensation and relief…as the [C]ourt shall deem fit" in an unquantified amount. The Court found there was no justification for applying Column 3. The Court emphasized that the Statement of Claim contained no quantification of Damages and no particulars of the alleged pain and suffering from which the scale of Damages could be gauged. The Defendants failed to identify any basis — such as complexity or special circumstances — to support a higher column.

The Court also found that it was not appropriate for the Defendants' draft Bill of Costs to include both Item 7(1) ("Contested applications…before…[a] judge…") and Item 8(1) ("Applications…requiring written briefs"). Justice Lema stated that Items 7(1) and 8(1) are mutually exclusive alternatives corresponding to Applications with or without written Briefs. Because the Application proceeded with written Briefs, Item 8(1) applied.

Justice Lema considered whether the Defendants could recover costs under Item 12 ("written argument requested by a trial judge for use at trial"). The Court found that recovery under Item 12 was not appropriate, since the Trial stage was not reached nor did the Court request Trial Briefs from the parties.

Finally, the Court held that a formal Offer made by the Defendants to discontinue the Action without costs, which was rejected by the Plaintiff, entitled the Defendants to double costs for post-Offer litigation steps pursuant to Rule 4.29. Justice Lema confirmed that Rules 4.29(2) and (3) provide that if a Defendant makes a formal Settlement Offer which is rejected and later receives a Judgment or Order equally or more favourable to the Defendant than the Offer, then the Defendant is entitled to double costs. Justice Lema referenced case law for the principle that the Offer must contain a genuine element of compromise.

The Court held that the Defendants' Offer met the requirements of Rule 4.29. Justice Lema found that the Offer was made after disclosure, at a point when both parties had sufficient information to assess the Claim's merits and was not made at the eve of Trial. Further, given the obvious "strike-ability" of the Claim due to the absence of particulars and the material costs incurred by the Defendants, the Offer to forego those costs was a meaningful compromise.

WAQUAN V CANADA (ATTORNEY GENERAL), 2026 ABKB 172

(CARRUTHERS J)

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

The Defendants applied to strike the Plaintiffs' Action for delay under Rules 4.33 and 4.31. The Court granted the Application, in part, dismissing the claim of the Mikisew Cree First Nation ("MCFN") but allowing the Individual Plaintiffs' claims to proceed.

The Court considered the operation of Rule 4.33, which mandates dismissal where three or more years have passed without a significant advance in an action. The Court emphasized that a "significant advance" requires a functional analysis, focusing on whether the step meaningfully moved the action toward resolution. Steps such as correspondence, attempts to schedule case management, or unresolved applications do not qualify unless they genuinely advance the litigation.

Applying this approach, the Court held that the last significant advance occurred on January 8, 2020, when the Plaintiffs served Replies to Demands for Particulars. Subsequent steps, including filing Applications, responding Briefs, and attempts to schedule Case Management, did not materially advance the Action. Accordingly, more than three years had passed without a significant advance, engaging Rule 4.33.

The Court rejected arguments that time should be excluded due to a "standstill agreement" or "institutional delay." A valid standstill agreement under Rule 4.33(5) must clearly and explicitly suspend time for the purposes of the Rule, which was not established. Further, the Rules do not recognize "institutional delay" as a basis to suspend the limitation period.

However, the Court found that the exception in Rule 4.33(2)(b) applied. The Defendants' on-going participation after the expiry of the three-year period, particularly their efforts to schedule and advance their own Application, constituted participation in a "proceeding" sufficient to reasonably lead the Plaintiffs to believe the delay had been waived.

The Court also found, in the alternative, that the Action was effectively stayed by a prior Case Management Order under Rule 4.33(2)(a), which relieved the Defendants from filing Statements of Defence pending further Order. This prevented the Action from progressing in the usual manner.

The Court then considered Rule 4.31, which permits dismissal where delay has caused significant prejudice. It found that the delay was inordinate and inexcusable, noting that the Action was over ten years old, pleadings had not closed, and key issues remained unresolved. The delay was attributed primarily to the Plaintiffs, including the failure of MCFN to clarify its position and prolonged inactivity across multiple stages of the litigation.

The Court further found that the delay caused significant prejudice. The passage of time impaired witness memory, and several key witnesses had died or became unavailable. Given the nature of the allegations, fraud, misrepresentation, and breaches of duty, this prejudice was particularly serious. The Plaintiffs failed to rebut the presumption of prejudice or demonstrate that documentary evidence would adequately mitigate these concerns.

Despite these findings, the Court exercised its discretion not to dismiss the Individual Plaintiffs' claims due to the unique context of Indigenous land claims and the importance of resolving such matters on their merits. However, no such compelling reason applied to

MCFN, which had delayed the Action and failed to clarify its position. As a result, MCFN's claim was dismissed, while the Individual Plaintiffs' claims were permitted to proceed under continued Case Management.

EMM ENERGY INC V CANADIAN NATURAL RESOURCES LIMITED, 2026 ABCA 181

(STREKAF, ANTONIO AND FAGNAN JJA)

Rule 4.31 (Application to Deal With Delay)

This was an Appeal from the dismissal of an Application to strike a Claim for delay, pursuant to Rule 4.31. The Respondent commenced the Action in 2009 for alleged damage to an oil and gas formation. In 2022, the Appellant applied to dismiss the Claim for inordinate delay pursuant to Rule 4.31, and the Applications Judge struck the Claim.

The Respondent appealed that decision and a Chambers Judge allowed the appeal. The Chambers Judge found the delay, while inordinate, did not meet the requirements for dismissal under Rule 4.31 since it was excusable and caused no significant prejudice.

The Appellant then appealed the Chambers Judge's decision. The parties agreed with the Chambers Judge that the delay was inordinate. Therefore, the issues on Appeal were whether the Chambers Judge erred in finding that the delay was excusable and that the Appellant suffered no significant prejudice.

A unanimous panel of the Court of Appeal dismissed the Appeal. The Court found no reviewable error in the Chambers Judge's analysis of delay or prejudice under Rule 4.31 and held that those findings were entitled to deference.

The Court upheld the finding that the delay was excusable. The Appellant argued that the Chambers Judge erred in applying Rule 4.31 by focusing too much on the Appellant's conduct rather than the Respondent's obligation to advance the Action, effectively reversing the onus to justify the delay. The Court rejected this argument, confirming that Rule 4.31(3) expressly requires the Court to consider whether the party seeking dismissal contributed to the delay. Further, the Court noted that the Chambers Judge also considered delay attributable to the Respondent. There was no palpable and overriding error in the Chambers Judge's conclusion that both parties contributed significantly to the delay.

The Court of Appeal also upheld the finding that no significant prejudice was established. The Chambers Judge was entitled to deference with respect to findings that the Action was "largely a documents case" and changes in personnel or witness availability did not impair the Appellant's ability to respond to the Claim.

WILLIER (WILLIER & COMPANY) V FRANCOEUR, 2026 ABCA 211

(DE WIT, FAGNAN AND GROSSE JJA)

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

The Court considered an Appeal of a decision from a Chambers Justice refusing to dismiss an Action for long delay, pursuant to Rules 4.33 and 4.31. The underlying Action concerned a dispute arising from an oral agreement between two lawyers. Although the Chambers Justice found that the Action had not been significantly advanced within three years for the purposes of Rule 4.33, he concluded that the Appellant's response to the Respondent's proposal to schedule the matter for Trial, indicating that he expected to be ready for Trial in early 2020, constituted participation in the proceedings under Rule 4.33(2)(b). The Appellant appealed, arguing that this communication did not preclude dismissal under Rule 4.33 and that the Action should alternatively have been dismissed for long delay under Rule 4.31.

The Court considered the interpretation and application of Rule 4.33(2)(b), which permits an Action to continue where a party has participated in the proceedings to such an extent that, in the Court's opinion, the Action should proceed. The Court reviewed the authorities confirming that Rule 4.33(2)(b) was not to be interpreted by reference to the common law doctrine of waiver or other technical common law tests, but rather holistically in light of the Rule's purpose. The relevant question was whether the responding party's conduct could reasonably have led the opposing party to assume that the delay would not be relied upon to seek dismissal. The Court also confirmed that applying Rule 4.33 to particular facts was a question of mixed fact and law attracting appellate deference.

Applying these principles, the Court held that the Chambers Justice had not erred in concluding that the Appellant's response regarding Trial readiness constituted participation within the meaning of Rule 4.33(2)(b). Although the Appellant argued that the communication was conditional and did not satisfy the common law requirements for waiver, the Court held that those principles did not govern the interpretation of the Rule. The Chambers Justice's conclusion that the Respondent could reasonably have understood the Appellant's communication as an intention to continue the litigation was entitled to deference.

The Court also considered the Chambers Justice's application of Rule 4.31. The Court reviewed the principles governing dismissal for inordinate and inexcusable delay and noted that discretionary decisions under Rule 4.31 were entitled to deference absent an error in principle or an unreasonable exercise of discretion. The Court held that the Chambers Justice had considered the litigation history as a whole, had reasonably concluded that the delay was not inordinate, and had not erred in finding that the Appellant had failed to establish significant prejudice. Accordingly, the Court dismissed the Appeal and upheld the Chambers Justice's refusal to dismiss the Action under either Rule 4.33 or Rule 4.31.

LI V EYONG, 2026 ABCA 202

(STREKAF, ANTONIO, FRIESEN JJA)

Rules 4.33 (Dismissal for Long Delay) and 11.22 (Recorded Mail Service)

The Plaintiffs appealed a decision dismissing an Action for long delay, pursuant to Rule 4.33(2). In February 2016, the Appellants commenced an Action against the Respondents. In February 2017, the Respondents filed an Application to strike the Statement of Claim (the "Strike Application"). The Strike Application was adjourned *sine die*, twice. After COVID-19 Court restrictions were lifted on September 23, 2020, the parties took no further steps for almost three years. Although counsel for one of the Appellants sought consent to suspend time pursuant to Rule 4.33, the Respondents did not respond, and the Appellants did not bring an Application for a suspension of time, pursuant to Rule 4.33(9).

On October 22, 2024, the Respondents applied to dismiss the Action for long delay, pursuant to Rule 4.33(2). The Applications Judge granted the Application and the Chambers Judge dismissed the subsequent Appeal. The Appellants then appealed to the Court of Appeal.

The Court held that the standard of review was palpable and overriding error. Justice Strekaf, Justice Antonio, and Justice Friesen confirmed that Rule 4.33(2) is mandatory. Once three years pass without a significant advance in an Action, dismissal must follow unless a prescribed exception applies.

The Court rejected the Appellants' argument that the *sine die* adjournment of the Strike Application constituted a stay or litigation plan pursuant to Rule 4.33(2)(a). The adjournment affected only a single Application and did not suspend or govern the Action as a whole.

The Court also rejected the submission that the Respondents' failure to respond to the request to suspend time implied consent to a suspension. The Court held that an agreement under Rule 4.33(5) must be clear, explicit, and in writing.

Finally, the Court rejected an argument that service of the Strike Application was not in order. The Court held that the Strike Application was properly served pursuant to Rule 11.22 and there was no evidence that it did not come to the Appellants' attention.

The Appeal was dismissed.

SUNDER BUILDING SUPPLIES LTD V 7TH AVENUE SKY PROPERTY INC, 2026 ABCA 210

(FEEHAN, HO AND HAWKES JJA)

Rule 4.33 (Dismissal for Long Delay)

The Court of Appeal affirmed a Chambers Judge's decision to dismiss an Action for long delay, pursuant to Rule 4.33. The Appellant appealed on the basis that the Chambers Judge erred in applying Rule 4.33.

The Appellant filed a Statement of Claim in October 2017, followed by an Application and supporting Affidavit to have its associated lien declared valid and obtain judgment. The Appellant's deponent was questioned on their Affidavit in September 2019. The Application was then adjourned *sine die* to allow the Respondent time to file an Affidavit in response. The Respondent made repeated commitments that it would file an Affidavit, but no Affidavit was ever filed. The Appellant threatened to bring an Application to set a Litigation Plan, but never did. In March 2023, the Appellant brought an Application for judgment, and the Respondent cross-applied for dismissal on the basis of long delay. The Application for dismissal was granted, which decision was then appealed.

Considering Rule 4.33, the Court held that the Chambers Judge made no reviewable error in finding that more than three years had passed without a significant advance in the Action. The Court confirmed that the inquiry as to whether a significant advance had occurred was functional and contextual.

The Appellant argued that the ongoing communication regarding the Affidavit significantly advanced the Action. However, the Chambers Judge reasonably found that it was apparent the Affidavit was never going be filed and that it was incumbent on the Appellant to take steps to enforce the undertaking or otherwise advance the Action. While the Court noted that the Respondent's counsel could have been more forthcoming, the Chambers Judge's findings were entitled to deference.

Under Rule 4.33(2)(b), the Court held that the Chambers Judge made no reviewable error in concluding that the Respondent had not participated in the Action in a manner warranting its continuation. The Court emphasized that the application of Rule 4.33(2)(b) is largely discretionary and is subject to deference.

Under Rule 4.33(5), the Court upheld the Chamber Judge's finding that there was no written agreement suspending the running of the three-year period. While the parties had discussions regarding settlement and future litigation steps, this was insufficient to satisfy the Rule's requirement for a written suspension agreement.

STASHIN V VAN NORMAN, 2026 ABKB 297

(DEVLIN J)

Rules 4.36 (Discontinuance of Claim) and 6.14 (Appeal From Applications Judge's Judgment or Order)

The Plaintiff brought a claim against her real estate solicitor and various others in respect of a property sale (the "Original Claim"). The Original Claim was summarily dismissed. The Plaintiff appealed. The Appeal was resolved by way of settlement agreement between the parties (the "Settlement Agreement"). The Plaintiff then brought a further redundant claim almost two years later (the "2025 Action"), naming the same Defendants as the Original Claim, plus the Plaintiff's husband, as Defendants. The Plaintiff then subsequently noted her husband in default and filed a discontinuance of the 2025 Action (the "Discontinuance"). The Defendants were awarded solicitor-client costs for the 2025 Action (the "Costs Decision"). The Plaintiff sought to have her own Discontinuance set aside, and appealed the Costs Decision.

On the Application to set aside the Discontinuance, the Court considered Rule 4.36. Pursuant to Rule 4.36(5) a discontinuance is not a defence to any subsequent Action. Therefore, a Plaintiff can file a new Statement of Claim alleging the same causes of Action. A revival of a discontinued claim only becomes necessary where a limitation period has expired. As such, the test for setting aside a discontinuance is very high. According to Devlin J., "this case poses an analytical challenge in transposition of these sensible principles, because it is largely untouched by good sense or rational litigation conduct. The discontinuance here was sudden and largely inexplicable".

The Plaintiff had to show special circumstances to revive the 2025 Action. The Plaintiff provided a doctor's note indicating that she was experiencing vertigo. In response, the Court held that the medical letter neither supported the Plaintiff's version of events, nor explained the Discontinuance. The Plaintiff submitted five alternative bases for setting aside the Discontinuance, none of which Justice Devlin found to be persuasive. The Court concluded that the Original Claim was meritless and the 2025 Action was a clear breach of the Settlement Agreement. Ultimately, the Court dismissed the Application to set aside the Discontinuance.

On the Appeal of the Costs Decision, Justice Devlin noted that appeals from Applications Judges are *de novo* hearings pursuant to Rule 6.14. However, the Appeal was dismissed because the Applicant's arguments lacked merit.

The Court took additional steps to prevent further injustice and litigation abuse by directing that the Applicant required leave to file any further materials or Applications related to the Original Claim, the Settlement Agreement, and the 2025 Action.

KOCHAN V KOCHAN, 2026 ABKB 461

(RENKE J)

Rules 5.1 (Purpose of This Part), 5.2 (When Something is Relevant and Material), 5.11 (Order for Record to be Produced), 5.17 (People Who May be Questioned), 5.25 (Appropriate Questions and Objections) and 5.30 (Undertakings)

The Plaintiff, Jerry Kochan, applied to compel the Respondents, Penny Frederiksen ("Ms. Frederiksen") and Emery Jamieson LLP, to answer 20 Undertakings that were refused during Ms. Frederiksen's Questioning. Ms. Frederiksen prepared Helen Kochan ("Helen")'s 2017 Will (the "Will"), and the validity of the Will was one issue in broader litigation concerning farmland, capacity, undue influence, contract, trust, and unjust enrichment claims. The Plaintiff also requested that Ms. Frederiksen or Emery Jamieson LLP produce Helen's entire file so that Justice Renke, who was acting as Case Management Justice, could review the file pursuant to Rule 5.11.

In its analysis, the Court observed that the Rules apply to Applications arising from Questionings in surrogate matters. As such, Justice Renke treated the Rules as the general disclosure framework but held that privilege decided the Application. Rule 5.1 informed the purpose of disclosure by promoting evidence gathering and efficiency. However, the Court held that those disclosure objectives could not override solicitor-client privilege or litigation privilege.

Solicitor-client privilege survives the death of a client. An exception has been made to permit lawyers to testify in testamentary matters respecting the validity, execution, and contents of a will (this is known as the "Wills Exception"). The Wills Exception is codified in Surrogate Rule 85(2). Renke J. emphasized that the Wills Exception is a narrow exception to privilege, not a broad discovery mechanism.

Justice Renke considered Rule 5.2, which addresses relevance and materiality. The Court held that the pleadings define relevance, and that records must still be producible rather than privileged. For example, the Court rejected Undertaking 13 which was to "…determine if Helen Kochan's identity was ever verified", because identity verification was not an issue in the pleadings and was immaterial. The Court also rejected several other undertakings because their potential relevance did not bring them within Surrogate Rule 85(2).

Where production is relevant and material, a Court is empowered to make an Order concerning production pursuant to Rule 5.11. Rules 5.17 and 5.25 governed the scope of Questioning and objections. The Court confirmed that a party may ask about relevant and material information, but a witness may object on grounds including privilege, lack of relevance and materiality, or other legal grounds. Justice Renke upheld objections where the questions sought privileged information from Helen's litigation file, which was not directly connected to the Will. The Court rejected the Plaintiff's attempt to characterize the broader litigation context as part of the circumstances of the Will.

Undertakings were requested pursuant to Rule 5.30. The Court refused to direct responses to said Undertakings when the requested information was privileged, outside Surrogate Rule 85(2), or unnecessary. The Court allowed the Application in part, and directed that responses be provided to Undertakings 8 and 21, but upheld the remaining objections.

In response to the Application brought pursuant to Rule 5.11, for the Court to inspect Emery Jamieson LLP's files, Justice Renke refused to review the entire file, holding that inspection of privileged records should occur only where the Applicant provides evidence supporting a reasonable inference that privilege was improperly claimed or that an exception to privilege may apply. The Plaintiff had shown only that Emery Jamieson LLP had produced some documents from files other than the Will file. That fact did not justify having the Court "check" counsel's review. The Court found no evidence that Emery Jamieson LLP overlooked producible records or incorrectly applied Surrogate Rule 85(2).

FURLONGER V LAFARGE CANADA INC, 2026 ABKB 351

(SIMARD J)

Rules 5.2 (When Something is Relevant and Material), 5.37 (Questioning Experts Before Trial), 13.6 (Pleadings: General Requirements) and 13.12 (Pleadings: Denial of Facts)

The Court certified a proposed Class Action that alleged emissions from a cement plant caused damage to nearby properties. In addressing whether the pleadings disclosed a cause of action, the Court emphasized that under Rule 13.6, a plaintiff need only plead the type of damages claimed, confirming that deficiencies alleged by the Defendant (including punitive damages particulars) did not defeat the pleading. The Court also rejected arguments that the Plaintiff failed to respond properly to a limitations defence, holding that the Rules impose no obligation on a Plaintiff to plead discoverability in Reply, and under Rule 13.12, a failure to file a Reply is deemed to be a denial of the defence.

The Court further noted that limitations issues are generally inappropriate for determination at the certification stage, and that compliance with pleading rules is assessed based on whether the claim is "plain and obvious" to fail. In considering the identifiable class and common issues requirements, the Court found that issues relating to the Defendant's conduct, including whether emissions reached the class area, could be determined on a class-wide basis, notwithstanding that individual issues such as causation, damages, and defences would remain.

Justice Simard confirmed that, pursuant to Rule 5.37, pre-trial questioning of experts is "exceptional" rather than routine, and that the typical process involves the exchange of primary and rebuttal expert reports, with cross-examination to occur at trial. As such, the Plaintiff's decision not to cross-examine the Defendant's expert prior to serving rebuttal evidence did not violate procedural fairness or render the rebuttal report inadmissible.

Finally, in rejecting the Defendant's request to limit documentary production, the Court confirmed that Rule 5.2 requires production of all relevant and material records, including those predating the proposed limitation period, where they may significantly assist in determining the issues. The presence of individual issues did not outweigh the common issues, and a Class Proceeding was the preferable procedure.

TERRIGNO V WEAL, 2026 ABKB 409

(OVIATT J)

Rules 5.2 (When Something is Relevant and Material), 5.13 (Obtaining Records from Others) and 6.14 (Appeal from Application Judge's Judgment or Order)

This was an Appeal pursuant to Rule 6.14 from an Applications Judge's Order requiring a non-party, X Corporation ("X Corp"), to produce direct messages and deactivation data from two X (formerly Twitter) accounts (the "Order").

The underlying litigation involved allegations by the Respondent that the Appellant and an unidentified individual defamed him and conspired to do so on X. The Applications Judge granted the Order, which the Appellant challenged on the basis that the Respondent's Application for Production (the "Application") did not meet the requirements to compel records from a third party, as set out in Rule 5.13.

Oviatt J. found that the Rule 5.13 requirements were satisfied. The Court held that X Corp had sufficient notice of the Application and did not oppose it; there was a reasonable basis to infer the existence and control of the requested records; and the records were relevant and material, pursuant to Rule 5.2. Justice Oviatt further held that non-party production pursuant to Rule 5.13 was appropriate because the records could not be obtained from the Appellant due to account deactivation, and the Appellant's concerns about privilege were unsubstantiated.

The Court dismissed the Appeal.

MOSCA V LANDMARK WEST CAPITAL MANAGEMENT INC, 2026 ABCA 136

(ANTONIO, FAGNAN AND HAWKES JJA)

Rules 5.2 (When Something is Relevant and Material), 5.11 (Order for Record to be Produced), 5.33 (Confidentiality and Use of Information) and 14.72 (Binding Precedents)

This decision concerns an Appeal by the Plaintiffs, and a Cross-Appeal by the Defendant, of an Order by the Court of King's Bench (the "Order").

The Appeal challenged the portion of the Order permitting the Defendant to maintain its Certificate of *Lis Pendens* (the "CLP"). However, the Order also provided that, upon the Plaintiff amending their Statement of Claim to remove the claim for specific performance, the Defendant would be required to discharge the CLP forthwith. Although the Plaintiffs later amended the Statement of Claim in accordance with the Order, the Defendant did not withdraw the CLP.

The Cross-Appeal contested a portion of the Order which denied the Defendant's request for production.

The Court dismissed the Plaintiffs' Appeal as moot, noting that the Defendant was already obligated under the Order to withdraw the CLP. The Court also dismissed the Cross-Appeal, finding that the Defendant's production request was overly broad and requiring particulars.

The Court awarded costs of both the Appeal and the Cross-Appeal to the Plaintiffs, in part because the Appeal would not have been necessary if the Defendant had complied with the Order.

MO'ALLIM V GALLANT, 2026 ABCA 201

(STREKAF, FEEHAN, HO JJA)

Rule 5.2 (When Something is Relevant and Material)

An Appeal was brought with respect of a Chambers Judge's decision regarding the pre-trial production of settlement documents. The Respondent commenced two separate Actions to recover damages arising from two unrelated motor vehicle accidents that occurred sixteen months apart. The two Actions had commonality in some of the injuries being alleged, but each Action alleged unique injuries, as well.

The Respondent's second Action (the "Second Action") was settled.

The matter was initially brought before an Applications Judge, where the Appellants applied for the disclosure of the settlement documents in the Second Action. The Appellants submitted that injuries in the two Actions were indivisible, and this created a risk of overcompensation if the amount received in the Second Action was not set-off against any potential damages to be awarded. The Respondent argued that while prevention of double recovery was an exception to settlement privilege, the documents ought not be disclosed until the conclusion of the Trial. The Applications Judge determined that the settlement documents were potentially relevant and directed they be produced.

The Respondent appealed the Applications Judge's decision. The Chambers Judge allowed the Appeal and held that the disclosure of documents could be addressed by a Trial Judge after a determination was made that the injuries were indivisible. The Chambers Judge went on to say that allowing the issue of disclosure to be determined after a determination on the issue of indivisibility would protect settlement privilege while still allowing the parties to address the issue of overcompensation, if it arose.

In making its determination, the Court of Appeal considered the interplay between settlement privilege and the Rules regarding document production. The Court of Appeal noted that, on their face, the settlement documents were producible according to the Rules. Rule 5.2 provides that a record is relevant and material if it could be reasonably expected to either significantly help determine one of the issues raised in the pleading or ascertain evidence that could do so. Given the overlap in the injuries between the two Actions, there was no doubt that these documents were relevant and material. However, the relevance and materiality of the settlement documents would be subject to any privilege that could reasonably be asserted, and there was similarly no doubt that settlement privilege applied to the settlement documents.

The Appeal was dismissed. The disclosure of the settlement documents was ordered to be addressed by the Trial Judge in the event that the injuries were found to be indivisible between the two Actions.

MEDICINE HAT (CITY) V FIELDCORE SERVICE SOLUTIONS CANADA COMPANY, 2026 ABKB 447

(FROESE J)

Rules 5.4 (Appointment of Corporate Representatives), 5.39 (Use of Expert's Report at Trial Without Expert) and 5.40 (Expert's Attendance at Trial)

The Plaintiff, the City of Medicine Hat (the "City"), sought to appeal an Arbitration Award and related Costs Award (collectively, the "Award") pursuant to sections 44 and 45 of the *Arbitration Act*, RSA 2000, c A-43.

The underlying Arbitration arose from a negligence claim by the City against the Defendant, Fieldcore Service Solutions Canada Company ("Fieldcore"), related to inspections Fieldcore conducted on a turbine. On Appeal, the City challenged, among other things, the Arbitrator's treatment of the City's expert evidence (the "Report") and the evidence of Fieldcore's corporate representatives.

During the Arbitration, the City sought to admit the Report pursuant to Rules 5.39 and 5.40, without calling its author or reviewer as witnesses. Instead, the City relied on Steve Caldwell ("Caldwell"), a Vice President of the company that prepared the Report, to defend its contents. Although the Arbitrator admitted the Report into evidence, it was afforded little weight because Fieldcore was prejudiced by its inability to cross-examine the author and reviewer or assess their qualifications. The Arbitrator also rejected the City's submission that Caldwell qualified as a "Category 2 Witness" under *Kon Construction Ltd. v Terranova Developments Ltd.*, 2015 ABCA 249, because of his involvement and expertise. The City argued that this limitation to the use of the Report prevented it from being able to fully present its case.

The City further argued that it had been denied the opportunity to cross-examine Fieldcore's first corporate representative, who provided some evidence prior to being replaced by a second corporate representative. Neither the City nor the Arbitrator objected at the time to the substitution or the second corporate representative's adoption of the first representative's evidence. The City subsequently cross-examined the second corporate representative.

Justice Froese upheld the Award and rejected both grounds of Appeal. With respect to Rules 5.39 and 5.40, Froese J. held that the Arbitrator appropriately admitted the Report, permitted submissions regarding its admissibility and weight, and accordingly determined the weight to be afforded to the Report. The Court held that any resulting prejudice arose from the City's own litigation decisions rather than any procedural unfairness. With respect to the corporate representatives, Justice Froese held that Rule 5.4 does not entitle a party to cross-examine a particular individual and that the City had, in fact, cross-examined Fieldcore through its second corporate representative.

In the result, the Court dismissed the Appeal and granted the parties leave to provide written submissions on the costs of the Appeal.

INGLIS V HAIGHT, 2026 ABCA 221

(DE WIT, FAGNAN AND GROSSE JJA)

Rule 5.13 (Obtaining Records From Others)

The Appellant, Mr. Inglis, appealed a decision of the Chambers Justice denying his Application for production of financial records from corporations owned by the Respondent's parents and from a family trust that had been wound up following the parties' separation. The Application arose in the context of divorce proceedings between Mr. Inglis and Ms. Haight.

Ms. Haight was employed by one of the Respondent corporations owned by her parents. Another Respondent corporation was likewise owned by her parents. During the marriage, Ms. Haight's parents established a family trust under which both Ms. Haight and Mr. Inglis were discretionary beneficiaries. The trust was wound up in 2022 after the parties separated.

Mr. Inglis sought production of financial records from the corporations and the trust pursuant to Rule 5.13, arguing that the records were necessary to determine Ms. Haight's actual income. The Chambers Justice dismissed the Application and awarded lump-sum costs.

On Appeal, Mr. Inglis claimed that the Chambers Judge erred by:

a) misapplying Rule 5.13 by requiring proof of wrongdoing, hidden income, or established benefit before ordering non-party disclosure;

b) concluding that the trust disclosure was complete despite alleged uncertainty in the records; and

c) awarding disproportionate costs.

The Court of Appeal upheld the Chamber Justice's decision. It confirmed that an applicant seeking non-party disclosure must generally establish that the requested records exist, are within the control of the non-party, are relevant and material to the issues in dispute, cannot be obtained from a party, and that it is otherwise appropriate to order production. The Court emphasized that Rule 5.13 cannot be used as a "fishing expedition" for third-party records.

With respect to the trust documents, the Court accepted the evidence that all available records had already been produced. With respect to production of records from the Respondent corporations, the Chambers Justice found that the requested documents were not relevant and material. Ms. Haight had no ownership interest in the corporations and was not a shareholder, officer, or director.

The Court further held that the Chambers Justice's finding that there were no additional trust records available for production was supported by the record. The Court also found no error in principle that would justify intervening with the Costs Award.

The Appeal was dismissed.

LORENSON V LORENSON, 2026 ABKB 305

(LEW J)

Rules 5.15 (Admissions of Authenticity of Records) and 13.6 (Pleadings: General Requirements)

At Trial, the Defendant challenged the authenticity of certain records relating to the Plaintiff's income (the "Impugned Documents"). The Impugned Documents were produced and disclosed by the Plaintiff in response to Undertakings given in pre-trial cross-examination on an Affidavit.

Justice Lew confirmed that allegations of falsified documents are determined on a balance of probabilities and the burden rests with the party alleging falsification.

The Court found that the Rules did not provide an analytical roadmap for assessing the question of authenticity raised by the Defendant. Rule 5.15 sets out a process for challenging the authenticity of documents produced in an Affidavit of Records, including serving notice. However, Justice Lew found that this process did not apply since the Impugned Documents were produced in response to Undertakings, not in an Affidavit of Records.

Justice Lew also disagreed with the Plaintiff's reliance on Rule 13.6(3), which requires particulars of a pleading of fraud or misrepresentation for matters which "may take another party by surprise". The Court found that Rule 13.6(3) did not apply since the Defendant's position related to falsification of evidence, not a cause of action in fraud.

In the absence of a governing Rule, the Court assessed procedural fairness and the merits of the Defendant's falsification allegation. Justice Lew emphasized that the Plaintiff has been deprived of an opportunity to take pre-trial steps to prepare a response to the Defendant's authenticity challenge since no advance notice of the challenge had been given. Further, the Defendant had opportunities to attempt to verify authenticity himself but did not do so.

On the merits, the Court held that the Defendant failed to meet the burden of proof. Alleged irregularities in the Impugned Documentation were capable of multiple explanations, and determining their cause would likely have required expert evidence or evidence from the author, neither of which were provided. The Court also declined to draw an adverse inference from any alleged deficiencies in the Plaintiff's responses to Undertakings. Justice Lew found that the Plaintiff reasonably concluded she had provided sufficient documentation, particularly since she was not put on notice that the Defendant considered the disclosure incomplete. Ultimately, the Court rejected the Defendant's allegations of falsification.

RICARD ESTATE (RE), 2026 ABKB 288

(LEMA J)

Rules 5.30 (Undertakings) and 6.7 (Questioning on Affidavit in Support, Response and Reply to Application)

The Court considered whether the self-represented Deponent/Applicant had given Undertakings to several requests for evidence during Cross-Examination on an Affidavit. The Respondent's position was that the Applicant had given twelve Undertakings and had not yet fulfilled them.

The issue of undertakings had arisen during a prior Application on an unrelated matter. At that time, Justice Lema had reviewed the index of Undertakings in the transcript and inferred that all Undertakings had been given. This was also the information provided to the Court by the Respondent's counsel. However, in response to the Applicant's protests, Justice Lema seized the matter and adjourned it to review the transcripts in their entirety.

The Court recognized that Part 6 of the Rules do not contain an equivalent to Rule 5.30, which allows undertaking requests in Part 5 questioning. However, surveying the relevant case law, the Court confirmed that undertaking requests can be appropriate in limited circumstances in questioning on an affidavit. Relying on prior jurisprudence, Justice Lema noted that undertaking answers form part of the transcript pursuant to Rule 6.7 and should be filed with the transcript.

Justice Lema acknowledged that, at the prior Application, the Court had erred by inferring from the index of Undertakings that all twelve of the Undertakings had been given. The Court cited case law for the principle that the text of the undertakings, not the Court Reporter's summary, must be examined. Reviewing the text of the transcript, Justice Lema found that only two Undertakings had been given. In several instances, the Applicant had denied the Undertaking, but the Respondent's counsel had declared on the record that the Undertakings "stand" or "still stand". The Court confirmed that an undertaking must be accepted by the deponent; counsel cannot "foist" undertakings onto the deponent simply by stating that they "stand".

The Court commented that counsel should have advised of the true state of affairs, i.e., that only two of the twelve Undertakings had been given. Justice Lema set deadlines for the Applicant to provide the information for which she accepted Undertakings and held that any further responses would have to be sought by an Application to compel.

BREWER ESTATE V BREWER, 2026 ABKB 287

(SIDNELL J)

Rules 6.3 (Applications Generally) and 11.28 (Substitutional Service)

The Applicant submitted a Desk Order for substitutional service on the Respondent. The Applicant submitted a proposed Order, a supporting Affidavit, and a document entitled "Desk Application for Substitutional Service without Notice Application" which stated that the Court should consider the uploaded Order and Affidavit. The Applicant did not file an Application that complied with Rule 6.3(2), which sets out the requirements for an Application.

Notwithstanding the absence of an Application, the supporting Affidavit made it clear that the request for substitutional service was made under Rule 11.28. Nevertheless, the Court refused to grant the request for substitutional service without a filed Application as this was a requirement of Rule 11.28. The Court also denied the request because the Applicant failed to show that service was impractical. The Respondent was represented by counsel, and it was appropriate for documents to be served on the lawyer, including this Application. That the lawyer had been unresponsive did not warrant substitutional service and there was no evidence of withdrawal by the lawyer. Further, service was not impractical simply because the hearing date was nearing.

LIBERTY LAND CORPORATION V KINNEAR, 2026 ABKB 248

(REED J)

Rules 6.8 (Questioning Witness Before Hearing), 6.14 (Appeal From Applications Judge's Judgment or Order), 7.3 (Summary Judgment), 10.29 (General Rule for Payment of Litigation Costs) and 13.18 (Types of Affidavit)

The Plaintiff alleged that the Defendant, a real estate agent, disclosed confidential information about the Plaintiff's maximum purchase price to the sellers in breach of his obligations. In 2022 the Plaintiff's claim was summarily dismissed after an Applications Judge held there was no genuine issue for trial because the claims were based on inadmissible hearsay evidence (the "Applications Judge Decision").

The Plaintiff appealed the Applications Judge Decision arguing that the hearsay evidence created credibility and other triable issues. The Plaintiff presented new evidence on Appeal, including new evidence obtained from a witness pursuant to Rule 6.8. In interpreting Rule 6.8, the Court held that the Rule is designed to assist parties with putting their "best foot forward". The Court acknowledged that the threshold for admitting new evidence on appeal is low. Pursuant to Rule 6.14(3) such evidence must be "relevant and material".

In assessing whether the Appeal should be permitted, the Court considered the Applications Judge Decision. The Defendant's Summary Dismissal Application was brought pursuant to Rule 7.3(1)(b). The Defendants had the onus of proving there was no genuine issue for trial. On Appeal, however, the burden shifted to the Appellant to show that after considering the new evidence the Applications Judge Decision was not correct.

Justice Reed held that the Applications Judge misstated the law by saying that the law had evolved toward the exclusion of hearsay evidence on summary judgement applications. The Court acknowledged that, pursuant to Rule 13.18(3), affidavits should generally be based on personal knowledge. However, sometimes, evidence that is not based on personal knowledge can be admitted. Where a respondent seeks to rely on hearsay evidence, they must show that such evidence would be admissible at trial, either under a known hearsay exception, the principled approach to the admission of hearsay evidence, or for some other reason pursuant to the Rules.

On Appeal, Reed J. addressed each type of hearsay evidence the Plaintiff sought to admit. Ultimately, the Appeal was allowed, and the case was remitted to Trial. The Court acknowledged that the Plaintiff was presumptively entitled to costs pursuant to Rule 10.29.

O'DONOGHUE V FLUID ENERGY GROUP LTD, 2026 ABKB 428

(REED J)

Rules 6.8 (Questioning Witness Before Hearing), 7.2 (Application for Judgment), 7.3 (Summary Judgment), 7.4 (Proceedings After Summary Judgment Against Party), 10.29 (General Rule for Payment of Litigation Costs) and 13.6 (Pleadings: General Requirements)

This was an Appeal from an Order of an Applications Judge dismissing the Plaintiff's Application for Summary Judgment and granting Summary Dismissal in favour of certain Defendants in a wrongful dismissal Action.

The Plaintiff alleged termination without cause following a corporate transaction and argued the Defendants operated as a common employer. The Defendants asserted that the Plaintiff was dismissed for just cause and that certain Defendants had no employment relationship with the Plaintiff. The Applications Judge held that conflicting evidence gave rise to genuine issues requiring a Trial, including constructive dismissal, condonation of the alleged misconduct, and compliance with contractual notice requirements. Accordingly, the Applications Judge dismissed the Plaintiff's Application for Summary Judgment and granted Summary Dismissal in favour of all Defendants except Chemical Evolution Ltd. ("CEL").

Justice Reed reviewed the Summary Judgment framework under Rules 7.2, 7.3 and 7.4, and confirmed that the Appeal proceeded *de novo*, reviewable on the correctness standard. Reed J. emphasized that the existence of disputed facts, competing evidence, or conflicting arguments did not, without more, establish credibility issues or a genuine issue requiring a Trial. Rather, the Court had to determine whether the record permitted the necessary findings of fact and application of the law to fairly resolve the dispute.

Applying that framework, Justice Reed held that the Applications Judge erred in treating the parties' conflicting positions as credibility issues requiring a Trial. The Court found that many of the alleged disputes were immaterial, resolved by the documentary record, or reflected disagreement rather than genuine conflicts in the evidence. Reed J. determined that Summary Judgment was appropriate as the record permitted the necessary findings of fact without viva voce evidence. The Court found that the Plaintiff was dismissed without cause and that CEL, SixRing Inc., and SciencePak operated as a common employer.

Reed J. also considered Rule 13.6, holding that condonation constitutes a plea of waiver that must be specifically pleaded. Although the record disclosed evidence capable of supporting a condonation argument, Justice Reed declined to determine that issue because condonation was not pleaded in accordance with the Rule. Justice Reed further noted that the Defendants served Appointments for Questioning on the Plaintiff's spouse and daughter pursuant to Rule 6.8, who declined to answer questions on the basis that their evidence was neither relevant nor material. The Court held that certain litigation conduct, including the Defendants' attempt to question the Plaintiff's wife and daughter, could be considered in assessing costs.

In the result, Justice Reed allowed the Appeal. The Court granted Summary Judgment in favour of the Plaintiff, awarded damages for termination without cause, and held that CEL, SixRing Inc., and Science Pak were jointly and severally liable for those damages. Pursuant to Rule 10.29, the Plaintiff was presumptively entitled to costs. Justice Reed directed that, if the parties were unable to agree on the method of calculation or quantum of costs, written submissions could be provided.

10060 JASPER AVENUE BUILDING LIMITED V SCOTIA PLACE TOWER III INC, 2026 ABKB 275

(FRASER J)

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

This was an Appeal from a decision of Applications Judge Summers granting Summary Judgment in favour of the Plaintiffs, 10060 Jasper Avenue Building Limited and WR Equities Inc. (collectively, the "Respondents"), and dismissing the Defendant's Cross-Application for Summary Dismissal.

The parties owned portions of a multi-building commercial complex governed by an Owners Agreement and a Management Agreement (collectively, the "Agreements"). Following concerns regarding the condition of the exterior glass panels, a majority of the owners approved a project to replace the panels (the "Project"). The Defendant, Scotia Place Tower III Inc. ("Scotia"), opposed the Project, denied access to its property, and refused to pay its proportionate share of the costs. Scotia argued that the Project required unanimous approval under the Agreements.

Justice Fraser noted that, pursuant to Rule 6.14(3), the Appeal included new, relevant, and material evidence. While recognizing criticism of the current approach to appeals from Applications Judges, Fraser J. confirmed that the Appeal was to be heard de novo in accordance with existing authority.

On the merits, the Court held that Applications Judge Summers correctly interpreted the Agreements. Justice Fraser agreed that the Project constituted an unbudgeted capital project and that the associated costs were properly allocated among the owners pursuant to the Agreements. Fraser J. rejected Scotia's argument that unanimous approval was required, holding that the unanimity requirement applied only to maintenance expenses included in the annual budget and not to unbudgeted capital expenditures. Justice Fraser concluded that the Project was properly approved by the required majority vote pursuant to the Agreements.

Scotia further argued that Applications Judge Summers mischaracterized its submissions on "Permitted Alterations" and fairness. The Court rejected those arguments, finding that the decision, when read as a whole, accurately reflected Scotia's position and that any imprecise wording had no impact on the outcome. Justice Fraser also noted that considerations of fairness formed an underlying theme of Scotia's submissions, notwithstanding the absence of any express unfairness argument.

In the result, the Court dismissed the Appeal and upheld the Summary Judgment granted in favour of the Respondents. Fraser J. directed that, if the parties were unable to agree on costs, written submissions could be provided within 30 days.

INTERRA ENERGY SERVICES CANADA LTD V YANGARRA RESOURCES LTD, 2026 ABKB 387

(FEASBY J)

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

By way of Applications before an Applications Judge, Interra Energy Services Canada Ltd. ("Interra") applied for and obtained Summary Judgment of its claim against Yangarra Resources Inc. ("Yangarra") for unpaid invoices in relation to fracking products and services it provided to Yangarra. Interra also applied for and obtained Summary Dismissal of the Counterclaim commenced by Yangarra based on contractual limitations of liability. Yangarra appealed the decision.

On Appeal, Yangarra relied on Rule 6.14 to file four additional Affidavits, including expert evidence, and two cross-examination transcripts. Yangarra argued that genuine issues remained regarding Interra's alleged defective products and services, as supported by new expert evidence, and the enforceability of contractual limitation of liability provisions that were not brought to its attention at the time of signing.

Justice Feasby held that Rule 6.14 permitted the admission of the additional evidence, notwithstanding his criticism of the Rule as a "dispiritingly dysfunctional" mechanism that effectively allowed appeals from Applications Judges' decisions to proceed on a substantially expanded record.

Applying the Summary Judgment framework, pursuant to Rule 7.3, the Court found a genuine issue for Trial regarding whether the limitation of liability clauses had been sufficiently brought to Yangarra's attention to form part of the contract. Feasby J. reviewed the law governing standard form contracts and concluded that the issue could not be resolved summarily.

The Court set aside the Applications Judge's decision. As the enforceability of the limitation clauses remained in dispute, the counterclaim could not be summarily dismissed and Interra's claim could not be separated from the Counterclaim. As such, both claims were directed to proceed to Trial.

DUMKEE V WETASKIWIN (CITY), 2026 ABKB 431

(MCLEOD J)

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

The Plaintiff commenced an Action against the Defendant municipality arising from a slip and fall at a public pool. The Defendant applied for Summary Judgment, and the Applications Judge dismissed the Action on the basis that the claim was barred by Section 530 of the Municipal Government Act, RSA 2000, c M-26 (the "MGA"). The Plaintiffs appealed the dismissal pursuant to Rule 6.14.

Justice McLeod held that Appeals from Applications Judge decisions are heard de novo and are subject to a correctness standard where no fresh evidence is filed. The Court noted that Rule 6.14 has been described as a "dispiritingly dysfunctional rule" because it permits parties to advance more robust arguments on appeal rather than requiring them to present their full case initially. Notwithstanding that concern, McLeod J. confirmed that the Court must rehear the Application as if it were being argued for the first time and without deference to the Applications Judge.

In considering the Application pursuant to Rule 7.3, the Court assessed whether it could make the necessary findings of fact and apply the law to reach a fair and just determination on the merits. The Court considered two distinct theories advanced by the Plaintiffs.

First, the Plaintiffs alleged that the pool floor was inherently defective because it was too slippery. Justice McLeod found that there was no evidence that the floor was unfit for its intended purpose. As a result, Justice McLeod concluded that this aspect of the claim had no merit and summarily dismissed it pursuant to Rule 7.3.

Second, the Plaintiffs alleged that the Defendant failed to take reasonable steps to maintain the pool floor in a safe condition, including failing to re-apply anti-slip spray in accordance with the manufacturer's recommendations. McLeod J. held that this aspect of the claim engaged the municipality's obligations under Section 532 of the MGA rather than the immunity in Section 530. The Court found that there was insufficient evidence to determine whether the failure to reapply the spray for nearly a year beyond the recommended interval was reasonable.

Because the Court could not make the necessary findings of fact on that issue, Justice McLeod held that there was a genuine issue requiring Trial. Accordingly, that portion of the claim was not suitable for Summary Judgment under Rule 7.3.

The Court allowed the Appeal in part pursuant to Rule 7.3(1)(a) and set aside the Summary Dismissal except with respect to the defective floor claim, which was dismissed.

EQUITABLE BANK V TAYLOR, 2026 ABKB 451

(KUNTZ J)

Rule 6.14 (Applications Without Notice)

This Appeal arose from a Redemption Order granted by an Applications Judge in a mortgage foreclosure proceeding. The Appellant sought to introduce four new expert reports concerning the amount owing under the mortgage. This raised the issue of whether the Appeal should proceed by way of a *de novo* review, or on the record before the Applications Judge.

Justice Kuntz confirmed that Appeals from Applications Judges are governed by Rule 6.14 and reviewed for correctness on the record before them. A *de novo* review is only required if the proposed new evidence is relevant and material.

The proposed new evidence was neither relevant nor material. The expert reports addressed the amount owing under the mortgage, rather than the issue on Appeal, which was whether the respondents were entitled to foreclose. Justice Kuntz held that the Application Judge did not need to determine the precise amount owing under the mortgage to grant the Redemption Order. As a result, the Appeal proceeded on the existing record, on a correctness standard.

NICHE DEVELOPMENTS CORP V 2555436 ALBERTA LTD, 2026 ABKB 284

(MAH J)

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

The Defendants sought summary dismissal of a fraudulent conveyance Action and the concurrent discharge of a Certificate of *Lis Pendens* ("CLP") registered against the lands now owned by the Defendants. The Plaintiff alleged that the Defendant, 1981606 Alberta Ltd. ("198"), transferred its only asset to the other Defendant, 2555436 Alberta Ltd. ("255"), while the Plaintiff's debt claim against 198 remained unresolved. The Defendants maintained that the transfer was a legitimate sale for fair market value and that the claim was without merit.

Pursuant to Rules 7.2 and 7.3, summary judgment is appropriate where there is "no defence to a claim" or no merit to it, provided the Judge can reach a fair determination on the record. The test for summary judgment requires the defendants, to show there is no genuine issue requiring a trial, after which the plaintiffs are to put their "best foot forward" to demonstrate that a trial is necessary.

The Defendants argued that the sale of land from 198 to 255 was a legitimate fair-market value transaction and proved that the land was sold for adequate market value consideration. However, the Court found that several "badges of fraud" existed, including the non-arm's length relationship between the transferor and transferee and the transfer denuded the transferor of all assets while a debt claim was pending. These factors created a genuine issue for trial regarding the parties' intent, which led the Court to dismissing the Application for Summary Dismissal.

On the discharge of the CLP, the Court applied the "preferred approach" which established that a CLP should generally "run with the Action" and remain on title as long as the underlying claims are being litigated. Normally, the Court would decline to discharge the CLP because the Court did not grant Summy Dismissal. However, to prevent the collapse of the Defendant's ongoing construction project due to lack of financing, the Court exercised its discretion to direct that security be posted in place of the CLP.

KASTEN ENERGY INC V WHITEMUD RESOURCES INC, 2026 ABKB 212

(FEASBY J)

Rule 7.3 (Summary Judgment)

The Applicant, Whitemud Resources Inc. ("Whitemud"), sought to appeal the decision of an Applications Judge granting Summary Judgment in favour of the Respondent, Kasten Energy Inc. ("Kasten"), and dismissing Whitemud's Cross-Application for Summary Dismissal.

Kasten sought to recover amounts owing under a loan agreement (the "Agreement"). Whitemud argued that the claim was limitation-barred, as no Action was commenced within two years of the loan's maturity date. Further, Whitemud contended that extensions of the maturity date and the assignment of its debt from Kasten to its subsidiary, Kasten Resources Inc. ("Kasten Resources"), were ineffective because they did not comply with the Agreement.

Justice Feasby confirmed that, pursuant to Rule 7.3(1)(a), Summary Judgment may be granted where there is no merit to a claim or no defence to a claim. The Court held that the record permitted the necessary findings of fact and application of the law. Accordingly, summary disposition was a proportionate means of resolving the dispute. Feasby J. further confirmed that, notwithstanding his criticism of the current process, an appeal from an Applications Judge remained a de novo hearing.

The Court held that the limitation period began to run on the original maturity date of the loan. However, applying sections 8 and 9 of the *Limitations Act*, RSA 2000, c L-12, Feasby J. found that Whitemud repeatedly acknowledged the debt in audited financial statements and a loan amending agreement, thereby restarting the limitation period. As no period greater than two years elapsed between acknowledgements, the Action was not statute-barred.

Feasby J. also rejected Whitemud's argument that Kasten's assignment of the debt to Kasten Resources was ineffective. Justice Feasby held that the Agreement's assignment provisions were distinct from its amendment provision and did not require a formal written agreement among all parties. The Court found that Whitemud had received notice of, and consented to, the assignment, as evidenced by its audited financial statements and course of dealing.

In the result, Feasby J. granted Summary Judgment in favour of Kasten and dismissed Whitemud's Cross-Application for Summary Dismissal. Justice Feasby directed that, if the parties were unable to agree on costs, they could provide written submissions and a Bill of Costs.

BRIDGEPOINT FINANCIAL SERVICES INC V WILLIAM S KLYM PROFESSIONAL CORPORATION, 2026 ABKB 236

(MARION J)

Rules 7.3 (Summary Judgment) and 13.18 (Types of Affidavit)

This decision arose from a Summary Judgment Application in a case managed proceeding involving litigation financing agreements. The Plaintiff lender sought rectification of certain loan agreements and Summary Judgment pursuant to Rule 7.3 against a lawyer, his professional corporation, and related parties arising from loans connected to ongoing litigation. The Defendants opposed the Application on the basis that the agreements had not yet become repayable and that the record disclosed genuine issues requiring a Trial.

Justice Marion applied the Summary Judgment framework from *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd,* 2019 ABCA 49, and reaffirmed that summary judgment is only appropriate where the moving party establishes there is no genuine issue requiring a trial and the court can fairly resolve the dispute on the existing record. The Court emphasized that the analysis requires a "hard look" at the merits, including whether the evidentiary record is sufficiently complete, whether the law can properly be applied on the record before the court, and whether summary adjudication would lead to a just and proportionate result.

The Court rejected the argument that the Application failed for technical non-compliance with Rule 7.3(2), holding that the Rule does not require strict adherence to specific wording in an Affidavit when the evidentiary record, as a whole, establishes the basis for the Application. However, Marion J. held that Summary Judgment was inappropriate because the record disclosed unresolved contractual ambiguities, insufficient evidence regarding the surrounding circumstances and industry context, and evidentiary deficiencies including hearsay, speculation, conclusory assertions, and opinion evidence contrary to Rule 13.18. The Court further held that granting partial Summary Judgment in a complex multi-party proceeding risked procedural unfairness, duplication, and inconsistent findings.

Applying these principles, Justice Marion dismissed the Summary Judgment Application but granted rectification of the loan agreements on the basis that there was no genuine dispute regarding the intended corporate party to the agreements, subject to procedural protections for a non-participating party.

WAN V H & R BLOCK CANADA INC, 2026 ABKB 367

(DEVLIN J)

Rule 7.3 (Summary Judgment)

The Appellant employer appealed the Applications Judge's dismissal of its Summary Judgment Application in a wrongful dismissal Action. The Appeal was dismissed.

The Appellant sought a determination that the employee's claim should be dismissed because the evidentiary record established cause for his termination based on alleged dishonesty, disclosure of confidential information, surreptitious workplace recordings, and post-termination misconduct. The Respondent, the employee, argued that summary determination was unsuitable because of material factual disputes and credibility issues that pervaded all alleged misconduct.

Justice Devlin found that the Applications Judge correctly determined that a Trial was required for the Action. Devlin J. held that Rule 7.3 did not permit summary disposition because the alleged misconduct raised material factual disputes and credibility issues. The Court emphasized that summary judgment requires a sufficiently reliable record to resolve the dispute fairly and justly without a trial.

Certain allegations in the case at bar depended on competing accounts and unresolved factual questions. Surreptitious recordings did not establish cause for termination as a matter of law because Alberta jurisprudence required a contextual analysis rather than a categorical rule. The significance of the recordings depended on factors such as the state of the employment relationship, the employee's purpose, workplace policies, the nature of the information recorded, and how the recordings were used. Those issues remained contested and could not be resolved on a summary record.

Justice Devlin concluded that material factual disputes persisted across each alleged category of misconduct, and that too many relevant factors remained contested or unexplored, particularly in relation to the recordings, to determine the context of just cause without a Trial.

MELESHKO V HRYNIW, 2026 ABKB 386

(MILLSAP J)

Rule 7.3 (Summary Judgment)

The Estate of John Hrynew brought an Application for Summary Dismissal of a challenge to the proposed distribution of the Estate, pursuant to Rule 7.3(1)(b). The challenge to the distribution of the Estate came from Mr. Hrynew's step-children (the "Children"), who alleged that their mother and Mr. Hrynew had mutual wills, and that Mr. Hrynew's Estate owed them $250,000 for their expenses and time spent taking care of him.

Justice Millsap considered the test for Summary Dismissal, first asking if the record before the Court was sufficient for summary determination. In doing so, Millsap J. applied principles from *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, and held that the record was thorough and complete. All potential parties and witnesses were represented on the record, with Questioning having occurred in relation to many of them.

Justice Millsap found that the Children's position that their mother and Mr. Hrynew had mutual wills was based on circumstantial evidence which they could not corroborate. Further, the litigation had been ongoing for almost ten years and, in that time, the Children had not produced any evidence relating to the alleged $250,000 they claimed to be owed.

Ultimately, there was the Children were required to put their "best foot forward" to advance their claim, and they fell well short of identifying a meritorious claim. Accordingly, the claim was summarily dismissed.

KOSTIC V RAYMOND JAMES LTD, 2026 ABCA 135

(SLATTER, ANTONIO AND HAWKES JJA)

Rule 7.3 (Summary Judgment) and 14.38 (Court of Appeal Panels)

The Appellant appealed a Case Management Justice's dismissal of her Application to strike portions of an amended Statement of Claim.

The Court of Appeal acknowledged that the decision of a Case Management Justice ("CMJ") will not be overturned unless there is an error on an extricable question of law, or the decision is clearly unreasonable. The Court of Appeal held that there was no reviewable error in the CMJ's findings that the amended Statement of Claim had been authorized by prior Orders, and that the proposed Application to strike them now was a collateral attack on that Order and would be barred by estoppel.

The Appellant also appealed the CMJ's decision not to permit her to apply for Summary Dismissal pursuant to Rule 7.3. The Court of Appeal held that there was no reviewable error in the CMJ's findings that the Appellant had not met the applicable test. In particular, her proposed Affidavit did not show that the claims against her had no merit and some of the arguments advanced by the Appellant could not be fairly or reasonably resolved summarily.

Finally, the Appellant appealed the CMJ's dismissal of her Application to amend her pleadings to claim what she described as "immediate save harmless relief" and to schedule a hearing for that relief prior to Trial. Prior decisions had already addressed the Appellant's claim for defence costs and indemnity from certain Respondents, determining that the issue must be addressed at Trial. The Court of Appeal found that the Appellant's Application effectively asked the CMJ for permission to re-hear those decisions, in contravention of Rule 14.38(2)(c), which required such appeals to be heard by a panel of the Court of Appeal. Regardless, the CMJ had correctly identified that the prior decisions on this issue were binding.

The Appeal was dismissed.

ATM CASH SYSTEMS (CANADA) LTD V DIRECTCASH PAYMENTS INC, 2026 ABKB 324

(JUGNAUTH J)

Rule 8.13 (No Communication With Excluded Witnesses)

The Plaintiff, ATM Cash Systems, and a casino had a contract for an exclusive licence wherein the parties agreed that the Plaintiff would be the only supplier and operator of ATMs within the casino. The Plaintiff alleges that the Defendants, DirectCash Payments Inc., induced the casino into a breach of contract by entering into a licence with the casino when they had knowledge of ATM Cash Systems' exclusive contract.

In considering the totality of the evidence, the Plaintiff asked the Court to prefer the evidence of Mr. Steiert (president and sole shareholder of the Plaintiff) and Mr. Van Der Kooy (president of the casino) over Mr. Smith (president and CEO of the Defendant) where they conflict due to an admitted breach of Rule 8.13. Mr. Smith was briefed by his counsel about Mr. Steiert's evidence, despite an order excluding witnesses from Trial. Justice Jugnauth declined to favour the evidence of Mr. Van Der Kooy, holding that Mr. Smith was not untruthful.

JB V BAILEY, 2026 ABKB 243

(DILTS J)

Rule 8.15 (Notice of Persons not Intended to be Called as Witnesses)

This decision arose from a medical negligence Action for injuries sustained by the Plaintiff, JB, during birth. Although the Defendant admitted negligence and liability for certain injuries, the parties disputed whether the negligence caused JB's alleged long-term neurodevelopmental impairments.

During Trial, the Defendant argued that the Court should draw an adverse inference from the Plaintiffs' failure to call several of JB's treating physicians. Justice Dilts considered Rule 8.15, which permits a party to provide notice that it does not intend to call a witness to avoid a potential adverse inference. Dilts J. noted that the Plaintiffs had not invoked Rule 8.15 but held that the Rule does not require an adverse inference where notice is not given. The Court emphasized that whether to draw an adverse inference remains a discretionary determination based on the circumstances, including the materiality of the witness's evidence and whether the witness is within a party's control.

Applying those principles, Justice Dilts declined to draw an adverse inference, finding that the Plaintiffs had produced the relevant medical records and extensive expert evidence, and that the treating physicians were not shown to be unavailable to the Defendant.

PIIKANI NATION V NORTH PEIGAN, 2026 ABKB 374

(MARION J)

Rules 9.4 (Signing Judgments and Orders) and 13.7 (Pleadings: Other Requirements)

This decision concerned whether certain Respondents could pursue claims allegedly arising from an interim Injunction obtained by Piikani Nation and Piikani Nation Chief and Council (collectively, "Piikani Nation") in 2022, which was subsequently vacated in 2025 (the "Injunction").

The Court had previously established a process to address potential claims arising from the Injunction (the "Injunction Claim Process"). The Injunction Claim Process required any Respondent seeking compensation to file an Application and supporting Affidavit evidence by specified deadlines. Although several Respondents indicated intent to pursue claims, none filed the required materials. After multiple extensions, a proposed Application was submitted without the required supporting Affidavit.

Justice Marion held that the Respondents failed to comply with the Injunction Claim Process and were therefore deemed to have waived any right to pursue claims arising from the Injunction. Notwithstanding the Court's finding that the filing deadline extended to the next business day, as it fell on a statutory holiday, the Respondents did not file or attempt to file the required evidence in time.

Applying a Fiat process previously established in Piikani Nation v McMullen, 2025 ABKB 481, Marion J. declined to grant a Fiat to permit the late evidence to be filed. The Court found that the Respondents provided no reasonable explanation for their failure to comply with the Court's directions and did not demonstrate that their proposed claims had a reasonable prospect of success. Justice Marion held that the asserted claims, including claims for lost honorariums, legal fees, special damages, and aggravated damages, were unsupported by evidence, speculative, and otherwise hopeless.

The Court further held that the proposed defamation claim lacked particulars, as required pursuant Rule 13.7(f), and that any defamation claim related to the Injunction was likely to be barred by absolute privilege. Justice Marion concluded that permitting the proposed Application to proceed would result in unnecessary delay, disproportionate expense, and a waste of judicial resources.

In the result, Marion J. held that the Respondents were no longer entitled to pursue claims arising from the Injunction and that each party was to bear its own costs. The Court invoked Rule 9.4(2)(c) and directed Counsel for Piikani Nation to prepare the resulting Order.

KONG V CONDOMINIUM CORPORATION NO 0313339, 2026 ABCA 134

(CRIGHTON JA)

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

The Applicant sought permission, pursuant to Rule 14.5, to appeal the decision of Justice Crighton to dismiss an Application for a Stay of Proceedings to a full panel of the Court of Appeal of Alberta.

Crighton J.A. noted that Applications under Rule 14.5 are rarely granted and will only succeed where a serious issue is raised, and compelling reasons are provided, to justify review by a full panel of the Court.

Justice Crighton found that the Applicant failed to satisfy the requirements for a Rule 14.5 Application as set out in *Habib v Habib*, 2025 ABCA 243. Crighton J.A. also observed that the Applicant chose to bring their Stay Application rather than accept a Consent Order that would have stayed enforcement by the Respondent.

Justice Crighton dismissed the Application and noted that the resulting Judgment would be prepared by the Court, pursuant to Rule 9.4.

WALCZAK V HENDRIX LAW, 2026 ABCA 137

(GROSSE JA)

Rules 9.4 (Signing Judgments and Orders), 14.47 (Application to Restore an Appeal) and 14.65 (Restoring Appeals)

The Applicant applied to restore an Appeal that had been deemed abandoned after he failed to post Security for Costs. The Applicant's earlier attempt to appeal the Security for Costs Order was also dismissed. The Appellant argued that his financial situation prevented compliance and sought to revive the Appeal under the Rules of Court.

Justice Grosse applied the governing principles for restoring Appeals, emphasizing that restoration will rarely be granted where an Appeal was abandoned for failure to post Security for Costs. At a minimum, Grosse J.A. held that an Applicant must show that Security has been posted or that there was a genuine attempt to do so. The Court found that the Applicant had not posted Security and did not provide sufficient evidence to support his claim that he was unable to do so.

The Court also noted that the Applicant's arguments focused on the merits of underlying foreclosure litigation, which was not directly before the Court. Considering the procedural history and the lack of merit in the proposed Appeal, Justice Grosse held that this was not a rare case where restoration was justified. The Application to restore the Appeal was therefore dismissed.

DIXON V MAC, 2026 ABCA 145

(CRIGHTON, GROSSE AND HAWKES JJA)

Rule 9.4 (Signing Judgments and Orders)

The Appellant was a Defendant in a defamation Action. The claim was dismissed against him but not against two co-Defendants. The Appellant sought to appeal that decision and have the Action dismissed in its entirety.

The Appeal was dismissed. The Court found that, notwithstanding the Appellant's status as a party to the action, it could not appeal an Order that was favourable to it. Although the Court has discretion to grant standing to a non-party on appeal, such discretion is generally exercised if the applicant's interests were not adequately represented in the proceeding below.

DIDOW V EDMONTON (CITY), 2026 ABCA 203

(FEEHAN JA)

Rules 9.4 (Signing Judgments and Orders) and 14.44 (Application for Permission to Appeal)

The Applicants sought permission from the Court to appeal a decision of one of the Respondents, the Edmonton Subdivision and Development Appeal Board (the "Board"), pursuant to Rule 14.44.

Feehan J.A. considered the preliminary issue of whether the Applicants properly filed and served the Board and another Respondent, the City of Edmonton (the "City"), with their Application, pursuant to Rule 14.44 and section 688 of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Act*").

Justice Feehan found that they did not, and held that the Application could not succeed because the Applicants had failed to serve their Application on both the Board and the City within the 30-day deadline set out in the *Act*. Feehan J.A. emphasized that the Courts are unable to grant an extension and that this deadline is strictly applied.

The Court dismissed the Application and ruled that there would be no Costs Award. Justice Feehan invoked Rule 9.4(2), noting that the Court would prepare the resulting Order.

TERRIGNO V CELMAINIS, 2026 ABKB 311

(MALIK J)

Rule 9.13 (Re-Opening Case)

This decision arose from an Application by the Plaintiff to vary a prior costs decision before the corresponding Order had been entered. In the underlying proceeding, the Court had granted the Defendants' disqualification Application and awarded them costs, including costs under item 1(1) of Schedule C of the Rules for "commencement documents, affidavits, pleadings and related documents". The Plaintiff subsequently applied pursuant to Rule 9.13 to correct the Costs Award on the basis that Application materials and supporting Affidavits do not fall within the scope of item 1(1).

Justice Malik considered the scope of Rule 9.13 and confirmed that the Rule grants the Court broad authority to vary a Judgment or Order before entry where there is a "plain and manifest error". The Court emphasized that Rule 9.13 should be exercised sparingly, but may appropriately be invoked to correct errors of law and avoid unnecessary and costly Appeals. Malik J. also reviewed the "block tariff approach" to Schedule C Costs and confirmed that commencement documents under item 1(1) are distinct from materials filed later in litigation, including Notices of Application and supporting Affidavits, which instead fall within item 8(1).

Applying these principles, the Court held that it had erred in awarding costs under item 1(1) for the preparation of the Defendants' Applications and supporting Affidavits. Although the Defendants argued the Award was proportionate and reasonable given the complexity of the Applications, the Court concluded that the prior Award was inconsistent with the established interpretation of Schedule C. Justice Malik therefore amended the earlier Costs Award pursuant to Rule 9.13 and directed that no costs were payable under item 1(1).

RAILTON V RAILTON, 2026 ABCA 150

(STREKAF JA)

Rules 9.13 (Re-Opening a Case) and 14.5 (Appeals Only With Permission)

The Applicant sought permission to appeal a Court of King's Bench decision that dismissed three former appeals arising from a parenting dispute. The dispute concerned whether the Respondent should have primary parenting and ultimate decision-making authority, and whether the Applicant's parenting time should remain supervised.

The three former appeals arose from an Interim Parenting Order requiring supervised parenting pending Trial, the dismissal of the Applicant's Rule 9.13 Application to adduce additional evidence, and the Trial decision granting the Respondent primary parenting and ultimate decision-making authority.

On the Application for permission to appeal, Strekaf J.A. confirmed that, under Rule 14.5, permission was required for a further appeal from the Court of King's Bench sitting as an Appeal Court. Permission would only be granted where the proposed appeal raised a serious issue of general importance with a reasonable chance of success.

With respect to Rule 9.13, Strekaf J.A. held that the Chambers Justice properly upheld the Trial Judge's refusal to admit both pre- and post-Trial evidence. The pre-Trial evidence was rejected for lack of due diligence, and the post-Trial evidence was rejected because it would not have affected the outcome.

The Court found no error in the Chambers Justice's review of the Trial decision, including with respect to the legal analysis, procedural fairness, or reasonable apprehension of bias. The Applicant failed to demonstrate that the proposed appeal raised a serious issue of general importance with a reasonable chance of success.

Permission to appeal was denied.

CHISHOLM V CHISHOLM, 2026 ABCA 209

(FEEHAN J)

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

The Applicant sought Permission to Appeal a single Appeal Judge's decision granting Security for Costs against her in three Appeals, arising from litigation concerning the sale of her parents' matrimonial home.

The underlying dispute began when, on November 30, 2023, the Court ordered the termination of co-ownership and sale of the property. The Applicant subsequently applied to set aside that Order, but her Application was dismissed on December 13, 2023, with the Court advising that an Appeal was her proper remedy. Rather than successfully appealing the original Order, the Applicant commenced additional proceedings challenging both the sale Order and the subsequent dismissal of her Application. A further Application was dismissed on January 16, 2026, with costs, and an Originating Application seeking declaratory relief regarding the November 30, 2023 order was dismissed on February 19, 2026. On June 1, 2026, Justice Feehan granted a Security for Costs Application in relation to the second and third Appeals.

The Applicant sought permission under Rule 14.5(1)(a) of the Rules to appeal the Security for Costs decision to a panel. Permission to appeal a decision of a single Appeal Judge must be sought from the same Judge who made the decision that is to be appealed: Rule 14.5(2). The Court noted that its role under Rule 14.5 was a gatekeeping function and that permission to appeal would only be granted where the Applicant demonstrated a question of general importance, a possible error of law, an unreasonable exercise of discretion, or a misapprehension of important facts. The Court further clarifies that an Applicant is required to identify a serious issue warranting another level of review and to demonstrate more than a merely non-frivolous argument.

Justice Feehan concluded that the Applicant had failed to satisfy this test. The Security for

Costs decision had been based on the conclusion that the Chambers Judges were correct in finding that her Applications constituted collateral attacks on earlier Orders that had not been appealed, were frivolous and vexatious, and had no reasonable prospect of success.

The Court found that she had not identified any serious issue arising from the Security for Costs Order itself that justified review by a panel of the Court. Accordingly, the Application for permission to appeal was dismissed.

DAKA HOLDINGS LTD V BOYLE (VILLAGE), 2026 ABCA 127

(FETH JA)

Rules 9.21 (Application for a new Judgment or Order), 14.4 (Right to Appeal) and 14.5 (Appeals Only With Permission)

The Applicants acquired property from a private landowner for residential development. While developing the property, the Applicants discovered a historical landfill buried underneath parts of the property, which effectively frustrated the intended development. The Applicants sued arguing that the existence of the landfill had been concealed from them. The Respondents applied to summarily dismiss the Action, which was ultimately granted by the Chambers Judge, largely on the basis of statutory limitation. The Applicants then applied for leave to appeal the Summary decision.

On Appeal, Justice Feth confirmed that Rule 14.5(1)(b) acts as a gatekeeping function, aimed at interlocutory and procedural Orders, to avoid delays by restricting Appeals that do not speak to substantive interests, and therefore involve a high degree of discretion. The Court also noted that the gatekeeping rationale traces to the former Part J leave regime and continues to inform Rule 14.5(1)(b).

The Respondents argued that Rule 14.5(1)(b) should apply to summary decisions on limitation period defences or extensions of limitations periods. The Court declined to make a definitive finding of the meaning of "time periods" as opposed to "time limitations" in the Rules.

However, using Rule 9.21 as an example, Feth J.A. found that the overall structure of the Rules suggested that Rule 14.5(1)(b) only applies to time periods imposed by the Rules and not limitation periods found pursuant to the *Limitations Act*, RSA 2000, c L-12 or other statutes. The Court also noted the "pre-trial" aspect of the Rule, finding that a summary decision that finally adjudicates substantive rights does not qualify as a pre-trial decision.

Given this, the Court concluded that the final determination of whether a limitation period will be extended under s. 218 of the *Environmental Protection and Enhancement Act*, which was integral to the final adjudication of the substantive limitation right, was not a pre-trial decision directed at interlocutory and procedural orders.

However, Justice Feth went on to note that, if permission to appeal had been required, the Applicants would have met the test in this case, because much of the Applicants' Action had already been summarily dismissed, and any delay caused would have been of proportionate benefit.

Because no Cross-Application was filed and full argument was not made, the issue regarding permission for the ultimate limitation ruling was not decided by the Court. The Court concluded that permission to appeal was not required.

SILVA ESTATE (RE), 2026 ABKB 334

(MCLEOD J)

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

The Respondent sought full-indemnity solicitor-client costs against the Applicant personally, following a decision that removed the Applicant as the personal representative of her mother's Estate for failing to comply with her duty to account. The Applicant argued there was no reprehensible conduct to justify solicitor-client costs and therefore costs should be assessed under Schedule C and paid from the Estate.

As the successful party, the Respondent was presumptively entitled to costs under Rule 10.29. In considering the factors set out in Rule 10.33, the Court found that the Applicant had unnecessarily prolonged and complicated the litigation. Specifically, despite a prior Court Order, the Applicant failed to account for international assets and funds and produced highly disorganized records, requiring the Respondent to retain an accountant to reconstruct the Estate's financial information. Justice McLeod concluded that the Applicant's conduct reflected "self-benefit, dishonesty, and gross negligence," rather than mere incompetence.

Although Rule 10.31 generally contemplates partial-indemnity costs through Schedule C, Justice McLeod held that this was one of the rare cases warranting an award of solicitor-client costs. Such an award was necessary to deter "positive misconduct," including self-dealing by a fiduciary and the refusal to comply with a Court Order.

The Court further ordered that the costs be paid personally by the Applicant, rather than from the Estate, to prevent the successful party's recovery from being unfairly diminished by the depletion of Estate assets.

OFFREY V OFFREY, 2026 ABKB 335

(MANDZIUK J)

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

The Court considered the appropriate costs Award following the Trial of a family law matter. The Plaintiff sought solicitor-client costs, or alternatively enhanced costs, based on the conduct of the Defendant and his counsel throughout the litigation.

The Court held that, as the substantially successful party, the Plaintiff was presumptively entitled to costs pursuant to Rule 10.29. Justice Mandziuk emphasized that courts retain broad discretion to set costs under Rules 10.29, 10.31, and 10.33.

Justice Mandziuk held that solicitor-client costs were not available. The Court found the Defendant had prolonged and complicated the proceedings unnecessarily by proliferating irrelevant records and conducting excessive questioning on irrelevant issues. However, Justice Mandziuk also considered that the Defendant's counsel had demonstrated reasonable concessions and extensive cooperation with the Plaintiff's counsel during Trial preparation. There was nothing to suggest the actions of the Defendant and his counsel were reprehensible, scandalous, or outrageous so as to attract the exceptional remedy of solicitor-client costs.

The Court also found that enhanced costs were not appropriate. Justice Mandziuk reiterated that enhanced costs are awarded only when a litigant's conduct falls below the standard expected of a responsible litigant. Despite the Defendant's unreasonable positions on some issues, the Defendant's conduct did not meet this threshold. There was no evidence of the types of misconduct typically justifying enhanced costs, such as failure to observe time limits under the Rules, deception, unsubstantiated fraud allegations, or the refusal of reasonable formal offers on the record.

Ultimately, the Court awarded costs pursuant to Column 3 of Schedule C, reflecting the monetary amount at stake in the litigation.

The Court further exercised its discretion to award a lump sum of $2,500 to account for the Defendant's late abandonment of his spousal support claim during final argument. While costs are not usually apportioned on an issue-by-issue basis, the Court found it appropriate to account for the Plaintiff's costs to address that claim.

However, Justice Mandziuk did not award any additional costs for a vacated Emergency Protection Order ("EPO") since the EPO was both obtained and vacated on reasonable grounds. Similarly, no costs were awarded in relation to a Restraining Order Application between the parties since the Application was resolved by consent without a Hearing.

JULIEN V ALBERTA (HUMAN RIGHTS TRIBUNAL), 2026 ABKB 363

(BERCOV J)

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

The self-represented Applicants unsuccessfully sought Judicial Review of an Alberta Human Rights Tribunal decision involving complaints they had brought against the Brazeau Seniors Foundation ("Brazeau"). Following dismissal of the Judicial Review, Brazeau sought enhanced costs against each Applicant, calculated under Column 5 of Schedule C with a multiplier of five. The Applicants sought costs in their favour and alleged misconduct by Brazeau and its counsel.

The Applicants' submissions largely repeated allegations that had already been rejected on Judicial Review, or raised new allegations directed at the underlying issues. Justice Bercov held that a costs hearing is not an opportunity to reargue the merits and declined to consider those allegations in determining costs.

Turning to Rules 10.31 and 10.33, Justice Bercov considered the complexity of the Judicial Review and the conduct of the parties. Although the Judicial Review itself was not complex, the Applicants' conduct significantly increased the work required to respond. The Applicants advanced numerous unsupported allegations, mischaracterized the record, and attempted to relitigate the evidence, contrary to the applicable standard of review.

Justice Bercov held that enhanced costs were appropriate, but declined to award the full amount sought since Brazeau had not provided sufficient detail regarding its actual legal fees.

The Court awarded costs against each Applicant under Column 5 of Schedule C, including Items 19 and 20, and second counsel fees in lieu of Item 8.

CANTAK CORPORATION V HADERER, 2026 ABKB 403

(MARION J)

Rule 10.29 (General Rule for Payment of Litigation Costs)

The Court ruled on costs following an Application brought by Cantak, who successfully obtained an Attachment Order and Mareva Injunction against the individual Respondents. Cantak sought solicitor-client costs of $89,924.45 or, alternatively, enhanced costs of $64,545.95 pursuant to Column 5 of Schedule C of the Rules.

The Respondents argued that a Costs Award of $32,000.00 was appropriate. Their position was that Cantak's claimed costs were excessive, costs should not be elevated based on interlocutory success on an incomplete evidentiary record, and a significant Cost Award would impair their ability to defend the underlying Action.

Justice Marion relied on Rule 10.29, highlighting that Cantak was successful in its Application and was therefore presumptively entitled to costs. The Court found that the Application fell within Column 5 of Schedule C, based on the value of the assets at issue, despite evidence that the Respondents had spent a significant portion of those assets. The Court further found that the Application was of critical importance to both parties and was reasonably complex, involving extensive records, Affidavit evidence, and transcripts. It was further noted that the Respondents failed to respond to Cantak's proposed Consent Order, the terms of which ended up being quite similar to the relief granted.

The Court rejected the Respondents' submission that Cantak's conduct unnecessarily increased costs, finding that the Application was justified and warranted. The Court similarly rejected the argument that Cantak failed to provide relevant and material records, noting that the Respondents did not take appropriate steps at the time to seek further production.

Cantak took the position that the Respondent's conduct, including pre-litigation conduct, justified solicitor-client costs. Justice Marion held that the high threshold for solicitor-client costs was not met. However, Justice Marion determined that the Respondents conduct supported an award of enhanced costs, resulting in a Cost Award of $58,219, together with disbursements.

The Court took time to address Cantak's attempt to rely on settlement communications exchanged after the underlying decision but before the costs determination. Justice Marion confirmed that such communications were privileged and should not have been disclosed without the consent of both parties.

WINSLOW V THIVIERGE, 2026 ABKB 422

(MARION J)

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

The Plaintiff alleged that the Defendants breached an agreement for the sale of a property. The Defendants successfully obtained Summary Dismissal of the Action and were therefore presumptively entitled to their costs pursuant to Rule 10.29.

The Defendants, who were separately represented, each sought solicitor-client or enhanced costs. The Defendants argued, among other things, that Section 149 of the *Land Titles Act*, RSA 2000 c L-4 (the "Act") supported an award of solicitor-client costs or costs on a full indemnity basis.

Applying the factors set out in Rule 10.33, the Court noted that the Action was relatively simple and of limited importance. Justice Marion found that the Plaintiff had, at times, unnecessarily delayed and complicated the Action in certain respects. However, Marion J. also noted that the Defendants increased costs unnecessarily by retaining separate counsel and by failing to make a Counterclaim or Claim pursuant to Section 149 of the Act.

Justice Marion ruled that neither solicitor-client nor full indemnity costs were appropriate for this Action. Marion J. rejected the Defendants' reliance on Section 149 of the Act, emphasizing that it was not appropriate to import the compensation analysis under that provision into a separate costs determination. Justice Marion further held that, notwithstanding the lack of a genuine issue requiring a Trial, the Plaintiff's litigation conduct did not warrant solicitor-client or full indemnity costs.

In light of the foregoing, the Court awarded the Defendants party-party costs based on Column 2 of Schedule C and allowed the disbursements and other costs set out in the Defendants' proposed Bill of Costs. Justice Marion noted that the resulting award exceeded 50% of the Plaintiff's actual incurred costs. Marion J. directed that there be no costs arising from the costs determination itself and noted that any costs Settlement Offers would be considered if provided to the Court within two weeks of this decision.

CNOOC PETROLEUM NORTH AMERICA ULC V ITP SA, 2026 ABKB 466

(NIXON ACJ)

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

The decision dealt with the appropriate Costs Award for five separate Applications brought within the same case-managed Action. The parties to the Action had mixed success across the various Applications.

The Court noted the general Rules for determining costs; in particular that Rule 10.29 entitles a successful party to an application to costs, and that Rules 10.31 and 10.33 give the Court discretion to apportion costs proportionately and reasonably in the circumstances. Although the various costs Applications were addressed in a single decision, there was still a need for the Court to determine what was appropriate in light of the result of each individual Application.

Nixon A.C.J. first turned to a pair of Applications brought with respect to the refusal of Undertaking Responses. In the first, the Plaintiff was substantially successful, and in the second the Defendants had found success. The Court noted that each party's success party in these two Applications was effectively the same, and as such it was appropriate to set off the costs against one another and award no costs to either party.

The Court also considered an Application brought by the Defendants seeking to compel a corrected Affidavit from the Plaintiff in light of certain changes to Undertaking Responses. The parties disagreed as to the degree of success achieved; with the Defendants arguing that it was successful in its Application and the Plaintiff taking the position that, at best, the Defendants had achieved mixed success. The Court ultimately held that while the Defendants were not completely successful in achieving their sought relief, a successful Application does not mean success on all issues. The Defendants were the substantially successful party, and as such was entitled to costs.

Associate Chief Justice Nixon then considered a further Application brought by the Defendants to replace the corporate representative of the Plaintiff. The Defendants argued that this Application was closely intertwined with their Application seeking a corrected Affidavit; and that entitlement to costs in one must result in a similar finding in the other. The Court disagreed and noted that while the Applications were closely related, they sought distinct relief. The Defendants were not successful in their Application to replace the corporate representative, and as such they were not entitled to costs purely by virtue of their prior success.

Finally, the Court considered the appropriate costs for a third Application regarding Undertaking Responses provided by the Plaintiff. Of the 28 Undertaking Responses complained of, ten of the Plaintiff's answers were upheld. Once again, the parties differed in their view of the relative success achieved; with the Defendants arguing they were substantially successful and the Plaintiff asserting that the success was mixed. The Court ultimately determined that the Defendants were successful on their Application. While not all of their challenges to Undertaking Responses were agreed with by the Court, they still achieved substantial success relative to the Plaintiff, and as such were entitled to costs.

LA CAILLE NORTH POINT INC V 2160806 ALBERTA LTD, 2026 ABKB 434

(SILVER J)

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

The Court was called upon to determine the costs following the conclusion of a Trial. The Plaintiff's claim was allowed in part and the Defendants' cross-claim was dismissed in its entirety. As the parties were unable to come to an agreement on costs, the Court was required to determine the appropriate costs Award in the circumstances.

The Plaintiffs submitted that in the contractual arrangement between the parties that gave rise to the dispute, the parties agreed that solicitor-client costs were to be awarded. As such, the Plaintiff took the position that there was no basis for the Court to exercise any discretion with respect to costs. The Defendants submitted that the Plaintiff's conduct during the course of the dispute justified a departure from the contractual arrangement, and that an award of solicitor-client costs would amount to a windfall to the Plaintiff in light of their success in the Action.

Justice Silver first had to determine whether the Court should exercise its discretion in determining the appropriate costs to award. In canvassing the relevant caselaw, the Court noted that while it typically is not appropriate for the Court to interfere with a contractual agreement on costs, if the contractual terms result in a harsh or disproportionate Costs Award, it will be appropriate for the Court to step-in. Justice Silver addressed the Defendants' allegations of litigation misconduct and held that no such misconduct occurred. While there was questionable conduct on the part of the Plaintiff, and while Justice Silver noted that she did not condone the Plaintiff's acts, it did not rise to litigation misconduct.

Although the Court did not find litigation misconduct, it held that the amount of solicitor-client costs being sought were disproportionate. The costs claimed were essentially equal in amount to the total value of the Plaintiff's claim and the damages awarded. The proposed Bill of Costs also sought recovery of costs that appeared to be unnecessarily incurred by the Plaintiff. In particular, Justice Silver noted that although only one lawyer litigated the case on behalf of the Plaintiff, they sought to recover costs for two additional counsel who attended the trial for 20 days.

Justice Silver questioned the necessity of the daily attendance of what she viewed lawyers acting as note takers. Ultimately, Justice Silver held that the disproportionate costs sought necessitated the Court exercising its discretion with respect to the appropriate costs.

In considering the factors outlined in Rule 10.33, Justice Silver noted that while the issues in dispute were of great importance to the parties and did involve a degree of legal complexity, the evidence went in smoothly and the factual basis was straightforward and easy to understand. The Court also noted that neither party took meaningful steps to shorten the action. After considering these factors, the awarded the Plaintiff costs on a party-party basis at a two-times multiplier of what was set-out in Schedule C to the Rules of Court. However, Justice Silver noted that she would not be permitting counsel fees for three lawyers. Not only did she see no justification for those fees but also noted that costs for second counsel is permitted upon leave being granted by the Court. In this matter, leave for second or third counsel was neither sought nor referenced at any point in the proceedings.

THOMPSON V THOMPSON, 2026 ABKB 439

(LEW J)

Rule 10.33 (Court Considerations in Making Costs Awards)

This was a costs decision following a parenting and decision-making dispute between separated parents. Both the father and mother sought costs, or alternatively an Order that each bear their own costs. Each also sought costs on a partial indemnity basis or under Column 1 of Schedule C.

The Court identified parenting time as the primary issue and decision-making and scheduling as secondary issues.

Justice Lew confirmed that, in family law matters, costs are based on substantial rather than absolute success.

The Court found the father substantially successful on the primary issue of parenting time. Although he did not obtain the equal shared parenting he sought, he succeeded in obtaining a significant increase in parenting time.

The Court found the mother substantially successful on the secondary issues. Justice Lew accepted her position on decision-making and adopted her proposed parenting schedule.

The mixed result warranted a reduced Costs Award in favour of the father. Applying Rule 10.33, the Court awarded the father 75% of his costs under Column 1 of Schedule C. The 25% reduction reflected the mother's success on the secondary issues, while recognizing that the father substantially prevailed on the most important issue in the litigation.

The Court declined to award partial indemnity costs because neither party provided evidence of their legal fees or a draft bill of costs. In those circumstances, Lew J concluded that Column 1 of Schedule C provided the fairest basis for assessing costs. The Court also declined to award costs for written submissions because they primarily addressed scheduling and decision-making issues on which the father was unsuccessful.

LLOYD V DE WALLE, 2026 ABKB 458

(KUBIK J)

Rules 10.33 (Court Considerations in Making Costs Award), 10.47 (Liability of Litigation Representative for Costs) and 10.50 (Costs Imposed on Lawyer)

The Court considered costs following successful Applications to remove one of the parties' ("Lloyd") litigation representative ("McDonald") and to preclude former counsel ("Moodie") from continuing to act after a new litigation representative had been appointed.

Lloyd's capacity was a live issue in the litigation. Moodie had been retained by McDonald while she was Lloyd's litigation representative. After McDonald was removed for conflict-related reasons, the Court appointed a new litigation representative who then retained new counsel. Despite that appointment, Moodie continued to file documents and appear in Court on Lloyd's behalf without instructions from the new litigation representative. Moodie's actions necessitated multiple Applications culminating in a finding that Moodie did not have a client in the proceedings and an Order prohibiting him from filing further materials.

The Court confirmed that the Defendants were presumptively entitled to costs under Rule 10.29. The Court held that McDonald was personally liable under Rule 10.47 for the costs of the Application removing her. The litigation involved multiple Actions, in some of which Lloyd was the Plaintiff ("Plaintiff Actions") and in others the Defendant ("Defendant Actions"). Under Rule 10.47(1), McDonald was liable for costs in the Plaintiff Actions. Justice Kubik also held that McDonald should be liable for costs in the Defendant Actions because she had engaged in serious misconduct as contemplated in Rule 10.47(2)(a). Her removal related to her conflict of interest in relation to Lloyd's financial affairs and findings that she obstructed the determination of Lloyd's capacity. Further, she had caused delay in the proceedings. The Court awarded partial solicitor-client costs calculated based on the Schedule C Tariff items.

The Court held that Moodie was not personally liable for costs pursuant to Rule 10.50 in relation to the Application removing McDonald. Justice Kubik confirmed that costs against a lawyer personally are an exceptional remedy that requires clear evidence of serious misconduct. That threshold had not been met in relation to McDonald's removal Application.

However, the Court held that Moodie's conduct after the appointment of the new litigation representative seriously interfered with the administration of justice and orderly Court proceedings, engaging Rule 10.50 costs. By continuing to act without instructions from the new litigation representative and without a client in the proceedings, he confused the issues, compounded costs, and delayed necessary litigation steps. His conduct was a marked and unacceptable departure from the standard of reasonable conduct expected of a lawyer. Justice Kubik held that Moodie should personally pay the costs associated with these steps, rather than Lloyd. The Court ordered Moodie to pay the solicitor-client costs of the Defendants' and new litigation representative's legal fees, and the litigation representative's fees, for all steps between June 7, 2025, and December 16, 2025.

The Court awarded an additional $6,000 to the Defendants and Lloyd in costs for the present Application. All costs were payable forthwith.

STACKARD V 1256009 ALBERTA LTD, 2026 ABKB 258

(EAMON J)

Rules 10.50 (Costs Imposed on Lawyer), 10.52 (Declaration of Civil Contempt) and 11.21 (Service by Electronic Method)

The Plaintiff, the Estate of Nora Stackard, applied for declarations concerning ownership of a transferred mortgage and its proceeds, restitution of allegedly misappropriated funds, contempt findings, and related relief.

The Plaintiff alleged that the corporate Defendant (the "Corporation") and Rosa Dorath, the representative of the Defendant, the Estate of Arthur Stackard (Nora's son), breached a Consent Order that prohibited the use of mortgage proceeds pending determination of ownership. The Plaintiff sought findings of civil contempt arising from withdrawals from the Corporation's bank account and later tax-related payments. The Plaintiff also sought costs against Defendant counsel personally on account of, among other things, the counsel's refusal to accept service by email.

Nora Stackard transferred a $1.7 million vendor-takeback mortgage to the Corporation, controlled by her son, Arthur, under a hastily drafted Mortgage Transfer Agreement ("MTA") intended to protect Nora's finances. A central issue in this case was whether the MTA transferred the beneficial ownership of the mortgage and whether any mortgage proceeds were misappropriated during Nora's lifetime. The dispute arose within a longstanding family conflict over control of Nora and her assets, with mistrust between her children (Arthur, Deborah, and Alex) influencing key decisions about her finances, estate planning, and care. The Court found that this conflict permeated the parties' Actions and complicated the administration of the mortgage proceeds, particularly after Arthur's death, when Rosa assumed control of the Corporation and withheld funds intended for Nora's living expenses.

Justice Eamon carefully limited the evidence to be considered, rejecting subjective intentions, after-the-fact opinions, and irrelevant materials when interpreting the MTA, emphasizing that only objective evidence and legally admissible surrounding circumstances could be used. Eamon J. held that the MTA was not a binding contract, admitted the prior Affidavits of deceased witnesses Nora and Alex because the opposing party had adequate opportunities to cross-examine them, and ruled that Arthur's communication with counsel was not protected by solicitor-client privilege but ultimately gave it no evidentiary weight due to its unreliability.

Justice Eamon found that the MTA was not supported by consideration and was instead a gratuitous transfer, giving rise to a resulting trust. The mortgage was transferred to the Corporation solely to protect the Plaintiff's financial interests and facilitate banking arrangements, with no intention to confer a beneficial interest on the Corporation. Eamon J. determined that the Corporation breached its obligations under the MTA by failing to pay the Plaintiff's living expenses and misappropriating mortgage proceeds for unrelated purposes.

In relation to the claim for costs against Defence counsel, the Court acknowledged that if counsel did not specifically provide an address for the transmission of information or data pursuant to Rule 11.21, then the counsel was not obliged to accept service by email.

In assessing the Application for Civil Contempt against the Corporation and Rosa, Justice Eamon applied Rule 10.52 and held that contempt required proof beyond a reasonable doubt that the Order was clear, the alleged contemnor had actual knowledge of it, intentionally breached it, and lacked a reasonable excuse. The Court emphasized that corporate officers bound by an Order must exercise due diligence to ensure compliance. Eamon J. found that the Consent Order unambiguously prohibited use of mortgage proceeds in the Corporation's account. Rosa knew of the Consent Order, failed to investigate and stop the withdrawals, and had no reasonable excuse for her inaction. However, Justice Eamon distinguished between Rosa and the Corporation itself, finding that the Corporation was not directly bound by the relevant prohibition.

Eamon J. concluded that Rosa was in contempt for failing to ensure compliance with the Consent Order and for knowingly or wilfully blindly permitting continued withdrawals of mortgage proceeds. The Court dismissed the contempt Application against the Corporation and rejected contempt allegations relating to later tax payments. Justice Eamon also declined to award costs against defence counsel pursuant to Rule 10.50 because there was no evidence of serious misconduct or gross neglect.

ESTATE OF HAGINICOLAKIS (RE), 2026 ABKB 303

(MCLEOD J)

Rule 10.52 (Declaration of Civil Contempt)

The Applicant applied for an Order declaring the Respondent, the Personal Representative of the Estate of Thomas Haginicolakis (the "Estate"), to be in civil contempt for failing to provide a "true and perfect" accounting of the Estate. A prior Order required the Respondent to provide an accounting pursuant to the *Surrogate Rules*, Alta Reg 130/1995 (the "Accounting Order"). The Respondent argued that they complied by providing financial materials, including bank records and tax summaries.

The Court found that the Respondent failed to meet the "high bar" required for a "true and perfect" accounting. The *Surrogate Rules* prescribed specific elements for estate financial statements, and the Court noted that it was the responsibility of the Personal Representative to compile and explain the Estate's accounts. The Court identified significant deficiencies in the materials provided, including certain taxable income not shown or readily calculable from the financial records provided.

On the Application for civil contempt, the Court applied Rule 10.52(3). Justice McLeod found that the Accounting Order was clear, that the Respondent had actual knowledge of it, and that she had intentionally failed to comply without a reasonable excuse. The fact that the Respondent provided some financial records did not amount to compliance with the Accounting Order.

The Court declared the Respondent to be in civil contempt, but granted the Respondent an opportunity to purge the contempt by providing a compliant accounting within 60 days of the decision.

HABIB V HABIB, 2026 ABKB 350

(BOURQUE J)

Rules 10.53 (Punishment for Civil Contempt of Court) and 14.48 (Stay Pending Appeal)

This Contempt Sanction decision followed an earlier finding by Justice Bourque that the Defendants were in civil contempt for failing to comply with production and procedural Orders (the "Contempt Order").

The Defendants had been ordered to provide a compliant Affidavit of Records, produce documents, and provide available dates for Questioning. After being found in contempt, the Defendants filed an appeal and sought to avoid compliance. Specifically, the Defendants engaged in improper communications with the Court and asserted that the appeal stayed the proceedings. In response to these communications, the Court rejected the Defendants' assertion and confirmed that a stay must be formally obtained pursuant to Rule 14.48.

At the Hearing, the Plaintiff argued that the Defendants had not complied with the Contempt Order, while the Defendants maintained that their appeal relieved them of the obligation to comply and limited their Production to a single issue.

Bourque J. emphasized that Contempt Sanctions may still be imposed pursuant to Rule 10.53, where a party's conduct is persistently defiant, abusive, and undermines the administration of justice. Even though the Defendants had technically purged their contempt by providing Affidavits of Records and producing documents, Justice Bourque found that their conduct warranted sanctions. Specifically, the Court noted that the record reflected repeated obstructionist conduct, including defiance of prior Orders, improper communications, and personal attacks on the Court and counsel for the Plaintiffs. Bourque J. also noted that, by limiting their production to a single issue, the Defendants had effectively abandoned their Counterclaim.

The Court imposed Contempt Sanctions on the Defendants, which included striking their Counterclaim, ordered full solicitor-client costs in favour of the Plaintiff, and imposed a $10,000 fine to address their pattern of process abuse.

REDDY V SAROYA, 2026 ABKB 457

(NIXON ACJ)

Rule 10.53 (Punishment for Civil Contempt of Court)

This decision arose in the context of a sanctions hearing following findings of civil contempt for failure to comply with Undertakings and production obligations. After some of the contempt findings were set aside on Appeal, and others were purged, the Court was required to determine the appropriate sanction for the remaining contempt findings. The Plaintiff sought to strike the contemnor's pleadings, while the contemnor argued that such a sanction would be disproportionate and that lesser remedies remained available.

Associate Chief Justice Nixon considered the Court's discretion under Rule 10.53, which set out the penalties and sanctions available for civil contempt, including imprisonment, fines, striking pleadings, staying or dismissing proceedings, prohibiting evidence, and costs. The Court reviewed the principles governing contempt sanctions and noted they must be proportionate and reflect both the gravity of the contempt and the contemnor's personal culpability. Nixon A.C.J. also observed that civil contempt sanctions were generally coercive, rather than punitive, although punishment and deterrence remained relevant considerations. The Court further emphasized that contempt was a serious remedy that should not be used routinely to resolve disputes over Undertakings or production.

Applying these principles, the Court declined to strike the contemnor's Statement of Defence. Associate Chief Justice Nixon accepted that the failure to comply with Undertakings had affected the Plaintiff's ability to prove its case, but concluded that striking pleadings would have been an extreme sanction and was not proportionate in the circumstances. The Court instead imposed an $8,000 fine payable to the Clerk of the Court, and awarded costs pursuant to Rule 10.53(2), including solicitor-client costs of $69,977 for the third contempt Application, and Schedule C costs of $5,400 and $10,800 for the first and second contempt Applications. The Court also observed that any prejudice arising from the missing production could be addressed at Trial, including through a possible adverse inference.

MENTZELOPOULOS V ALBERTA HEALTH SERVICES, 2026 ABKB 397

(LEMA J)

Rules 10.55 (Inherent Jurisdiction) and 13.18 (Types of Affidavit)

The underlying dispute arose from a wrongful dismissal Action brought by Athana Mentzelopoulos. Sandy Edmonstone, a former Alberta Health Services board member, identified as a prospective witness in that Action, alleged that the Applicants conducted a public campaign targeting him through podcasts and online commentary. He asserted that the campaign was intended to intimidate or discourage him from testifying, and obtained contempt-related relief and evidence preservation measures on an *ex parte* basis (the "Ex Parte Orders").

The Applicants, two podcast hosts, applied to set aside the Ex Parte Orders. The Applicants argued that the Ex Parte Orders were improperly granted as Mr. Edmonstone lacked standing to seek contempt relief, relied on inadmissible hearsay and speculation, failed to make full and frank disclosure, failed to satisfy the Anton Piller test, and infringed their *Charter* rights.

Justice Lema held that Rule 10.55 and the Court's inherent jurisdiction permit an interested person, including a non-party witness, to initiate contempt proceedings, and that it was appropriate to pursue the contempt process within the underlying Action. The Court further held that a contempt citation is interlocutory, permitting information-and-belief evidence under Rule 13.18. The principal evidence consisted of the Applicants' own published statements, which were admissible as party admissions. The Court found no breach of the duty of full and frank disclosure, applied an objective witness-interference test, and concluded that there was a strong *prima facie* case that the campaign was likely to deter or influence prospective testimony.

Justice Lema also found that the Anton Piller requirements were met, including a reasonable inference of the existence of responsive documents and a material risk of concealment or destruction. Finally, Lema J. held that the *Charter* did not apply to Anton Piller proceedings between private parties, and the Restraining Order targeted only harassing, defamatory, or intimidating publications. Accordingly, the Applicants' *Charter* rights were not violated.

The Court dismissed the set-aside Application and maintained the Ex Parte Orders.

AUTHENTIC SOUTHSIDE TAEKWON-DO CLUB (TIEN LUNG TAEKWON DO CLUB EDMONTON SOUTH) V TAYLOR, 2026 ABKB 470

(JERKE J)

Rule 11.5 (Service on Individuals)

This was a defamation Action in which one of the issues was whether a Defendant had been properly served with Notice under the *Defamation Act,* RSA 2000, c D-7 (the "*Defamation Act*"). The Court confirmed that the notice provisions in the *Defamation Act* may not require strict compliance with the service requirements set out in Rule 11.5.

The Court held that substantial compliance, meaning evidence that the Defendant was aware of the intention to commence an action, is sufficient with respect to Notice under the Defamation Act. Justice Jerke noted that substantial compliance focuses on whether the Defendant had actual notice of the Plaintiff's intention to commence an Action. Strict adherence to the service requirements in Rule 11.5, including personal service or registered mail, is not necessarily required.

In reaching this conclusion, Jerke J. relied on *Alberta Adolescent Recovery Centre v Canadian Broadcasting Corporation*, 2012 ABQB 48, where the Court held that the language of Rule 11.5 leaves open the possibility that a Defamation Notice may be served by means other than those expressly identified in the Rule. Justice Jerke agreed with that reasoning.

Applying that approach, the Court found that the Plaintiffs had substantially complied with the Notice requirements because the Defendant was aware of the complaint, the allegations, and the Plaintiffs' intention to pursue a claim. Accordingly, strict compliance with Rule 11.5 was not required.

HORSWILL V GREY, 2026 ABKB 389

(REED J)

Rule 12.41 (Notice to Disclose Documents)

The Plaintiff wife and the Defendant husband lived together from 2009 to 2019 and shared two children together. The Plaintiff had primary parenting of both children. The Plaintiff filed a Statement of Claim pursuant to the *Family Law Act*, SA 2003, c F-45 seeking, amongst other relief, retroactive and ongoing Section 3 and Section 7 child support, as well as imputation of income to the Defendant. The Defendant applied for division of family property pursuant to the *Family Property Act*, RSA 2000, c F-4.7; however the Court granted an amendment to the Application because it was the *Matrimonial Property Act*, RSA 2000, c F-47 (the "MPA") that applied in the circumstances. Initially, the Defendant lacked standing to bring the MPA Application because he was an undischarged bankrupt. However, the defect in the Application was cured when the Defendant added the Trustee as a third-party Applicant.

The Court reviewed substantial Affidavit evidence from both parties. In assessing the credibility of the parties, Justice Reed found the Plaintiff's evidence to be credible, open, and honest. Reed J. held that the Defendant's evidence was sometimes credible. The lack of credibility was, in part, due to the Defendant's failure to produce financial disclosure as required by Rule 12.41. As a result, where there was a discrepancy in the evidence, the Court favoured the evidence of the Plaintiff. The Plaintiff's evidence established that while the Defendant was an undischarged bankrupt, he opened a liquor store in Calgary and held bank accounts under various pseudonyms.

The Court held that Rule 12.41 imposed a mandatory obligation to provide full and complete financial disclosure. Justice Reed found that the Defendant failed to comply with this obligation and breached multiple Orders requiring disclosure. Reed J. emphasized that disclosure was fundamental to determining income for child support and to identifying and valuing property.

Justice Reed set the Defendant's income based on the best evidence before the Court, being the Defendant's tax returns from 2019 to 2023. For 2024 forward, the Court imputed income by calculating the Defendant's average income over the last three years. The Defendant's failure to comply with Rule 12.41 also affected property division. The absence of disclosure prevented the Court from valuing certain assets. Reed J. relied on the best evidence available and resolved evidentiary gaps by applying an adverse inference against the Defendant. Property was apportioned between the parties such that the Plaintiff owed the Defendant an equalization payment, however, the Court directed that the retroactive child support owed to the Plaintiff be set off against the equalization payment.

UNGER V SCOTT, 2026 ABKB 448

(BROOKES J)

Rule 13.6 (Pleadings: General Requirements)

Two hospital co-workers entered into an intimate relationship. Ms. Scott became pregnant, and either the Plaintiff, Mr. Unger, or another partner could have been the father. She obtained prenatal DNA testing that excluded the other partner. She relayed this to Mr. Unger but did not disclose the results. Ms. Scott then sought and received child support from Mr. Unger. Mr. Unger played a limited role in the child's life but paid child support for nearly two decades. At his request, further testing later confirmed that he was not the father.

Mr. Unger advanced claims in fraudulent and negligent misrepresentation, alleging that Ms. Scott misrepresented paternity and caused him to pay approximately $386,000 in child support. In the alternative, he claimed unjust enrichment based on a mutual mistake of fact.

Ms. Scott argued that repayment would be inequitable given her reasonable and good faith belief that Mr. Unger was the father. In both written and oral submissions, she relied on the equitable defence of estoppel by convention. Mr. Unger argued that estoppel by convention was unavailable because Ms. Scott did not expressly plead it, contrary to Rule 13.6(3)(c). Rule 13.6(3) requires a party to include any matter that may take the opposing party by surprise, including estoppel, in the Statement of Defence.

Ms. Scott maintained that the Rules require only the pleading of material facts sufficient to establish a claim or defence, and that her Statement of Defence set out the facts to support estoppel by convention.

Justice Brookes noted that Rule 13.6(2) requires a party to plead the material facts relied on, not the evidence. She further held that, although Rule 13.6(3) requires parties to plead matters that may cause surprise, Ms. Scott's Statement of Defence set out the material facts supporting estoppel by convention: both parties shared the belief that Mr. Unger was the father; Mr. Unger relied on that belief in paying support; and Ms. Scott would suffer prejudice if required to repay funds that she had already spent. She also noted that Mr. Unger knew of this argument before oral submissions through Ms. Scott's written materials.

Justice Brookes held that Ms. Scott had sufficiently referenced the facts supporting estoppel by convention in her Statement of Defence and could rely on it.

In the result, the Court dismissed the claims of fraudulent and negligent misrepresentation. Although unjust enrichment was established, the Court denied recovery.

MANCHESTER ROSE GROUP INC V RUTHERFORD SENIORS DEVELOPMENT LTD, 2026 ABCA 155

(FEEHAN, DE WIT AND FRIESEN JJA)

Rule 13.18 (Types of Affidavit)

The Respondent, a homecare provider, had been barred by Appellant from accessing a seniors' residence after their service agreement was terminated. A Chambers Judge granted an Injunction preventing the Appellant from restricting the Respondent's access to the residence so the Respondent could continue to provide care to residents. The Appellant appealed, arguing that the Injunction was improperly granted.

The Court dismissed the Appeal and upheld the Injunction. The Court found that the Chambers Judge correctly applied the test laid down in *RJR-MacDonald Inc v Canada (Attorney General)* for interlocutory injunctions. The Injunction, the Court found, was properly characterized as prohibitive and not mandatory, because it only prevented the Appellant from blocking access rather than requiring positive action.

Feehan, De Wit, and Friesen J.J.A. also upheld the finding of irreparable harm, noting that loss of client relationships and reputational damage is not easily compensated by damages, and found no reviewable error in how the balance of convenience was assessed, particularly given the impact on vulnerable residents who relied on care services.

The Court further rejected arguments that the Injunction was procedurally unfair, overbroad, or improperly based on hearsay evidence. It confirmed that hearsay is permissible in interlocutory proceedings and that the scope of the Injunction was appropriately limited to allowing access for service provision. While the issue of an undertaking as to damages was raised for the first time on Appeal, it was resolved by consent. Overall, the Court found no error in principle or law and dismissed the Appeal.

ZORBAWON V OSWALD, 2026 ABCA 124

(FEEHAN J)

Rule 14.5 (Appeals Only With Permission)

This was an Application for permission to appeal a decision of a Chambers Judge dismissing an Originating Application. The Applicant disputed poplar trees grown by his neighbour near the fence separating their property lines.

The Court of Appeal summarized that, to grant permission to appeal under Rule 14.5(1)(g), the Court must be satisfied that 1) an Appeal would have a reasonable prospect of success; and 2) there is an issue of law or jurisdiction of importance to the public.

Justice Feehan held that the test was not met and dismissed the Application.

On the first branch of the test, the Appeal had no reasonable prospect of success. If permission to appeal were granted, the issues would be whether the hearing was fair and whether the Chambers Judge's decision was reasonable. The Court of Appeal found that the Chambers Judge was alive to the issues at hand and made a reasonable determination to dismiss the Application given the lack of evidence of the damages asserted.

On the second branch of the test, the Appeal would not raise a novel issue of law. Justice Feehan stated that the law on how neighbours can address property line disputes is well established.

BURNS V MOORE, 2026 ABCA 129

(FRIESEN JA)

Rule 14.5 (Appeals Only With Permission)

The Applicant sought permission to appeal a Consent Final Property Judgment, and for an extension of time to do so. The Applicant submitted that they did not have capacity to instruct their counsel to enter into the Consent Judgment due to pre-existing brain injuries, and in fact did not instruct their counsel to enter into the Consent Judgment. The Applicant brought the Application seeking permission to Appeal the Consent Judgment one day after the deadline to do so.

In considering the Appeal of a Consent Judgment, the Court looked both to Rule 14.15 and to the surrounding caselaw. The Court noted that, in most cases, a party being a single day past the deadline would not be of concern due to the minimal prejudice to the opposing party. However, the present case raised some additional concerns. In particular, it was required to consider whether the Applicant benefitted from the Judgment under Appeal. Justice Friesen noted that, in the present case, the Consent Judgment provided that the Applicant would be paid $10,000.00 within 30 days of the Judgment. That payment was made and the funds were used in their entirety by the Applicant.

Further, the Applicant's position on Appeal was that they had not instructed their counsel to enter into the Consent Judgment. However, the Applicant was present when the Judgment was entered and when the terms of the Judgment were read into the record. There was no evidence or indication that either party's counsel or the Court ought to have known or suspected that the Applicant did not or could not agree to the terms of the Consent Judgment. There was no reasonable prospect of success for the Applicant's Appeal and as such the Court dismissed the Application.

REMINGTON DEVELOPMENT CORPORATION V ENMAX POWER CORPORATION, 2026 ABCA 142

(FEEHAN JA)

Rule 14.5 (Appeals Only With Permission)

The Applicant, ENMAX Power Corporation ("ENMAX"), sought permission to appeal a Chambers Judge's costs decision arising from Appeals of determinations under the *Surface Rights Act*, RSA 2000, c S-24 (the "Act").

The Chambers Judge first determined the merits of the Appeals and awarded Remington Development Corporation ("Remington") additional compensation under section 25(1)(b) of the Act. ENMAX subsequently obtained permission to appeal that ruling on a question concerning the interpretation of section 25(1)(b) (the "Substantive Appeal"). The Chambers Judge later awarded Remington solicitor-client costs (the "Costs Award"). ENMAX then sought permission to appeal the Costs Award pursuant to Rule 14.5(1)(f) and section 26(8) of the Act.

Justice Feehan confirmed that leave to appeal under the Act should be granted where there is a reasonable prospect of success and that success would have a significant impact on the parties. Feehan J.A. further noted that, where an Appeal raises a question of law or procedure of importance to the Act's operation, leave should be granted.

The Court held that ENMAX satisfied the test for leave to appeal. Justice Feehan found that the interpretation of section 26(9) of the Act was closely linked to the issues raised in the Substantive Appeal and therefore gave rise to a reasonable prospect of success. The Court further held that the proposed Appeal could significantly affect the parties given the magnitude of the Costs Award and the possibility that the outcome of the Substantive Appeal could affect entitlement to costs. Finally, Feehan J.A. concluded that the proposed Appeal would address questions of statutory interpretation concerning sections 25 and 26 of the Act that were important to the ongoing operation of the legislative scheme.

In the result, Feehan J.A. granted ENMAX permission to appeal the Costs Award and directed that it be heard concurrently with the Substantive Appeal before the same panel.

LEVY V ALBERTA (SECURITIES COMMISSION), 2026 ABCA 149

(STREKAF JA)

Rule 14.5 (Appeals Only With Permission)

The Applicant applied for permission to appeal a decision of the Alberta Securities Commission (the "ASC"). The ASC denied the Applicant's request for further disclosure, for the determination of a constitutional issue, and for the adjournment of the hearing of the matter.

The Applicant was of the position that it did not require permission to appeal the ASC's decision; submitting that Rule 14.51 stipulates that permission is required only in circumstances where a ruling is delivered during the proceeding, but prior to that proceeding concluding.

The Applicant argued that that ASC's decision occurred prior to the commencement of the hearing and was therefore not captured by the requirements of Rule 14.51.

Strekaf J.A. disagreed with the Applicant's position. The Court initially noted that although the wording of Rule 14.51 referred to trials rather than administrative hearings, the Rule has historically been applied to hearings of the ASC in the same manner. The Court went on to state that while the final hearing had yet to occur, the Applicant sought relief for an interlocutory application that was brought after the process for the hearing before the ASC had begun. The Court noted that in considering Rule 14.51, interlocutory applications of administrative tribunals will only be reviewed in rare and exceptional circumstances.

In considering the Applicant's position, the Court noted that this was not a rare or exceptional circumstance such that a review of an interlocutory application ought to be undertaken; and that the Applicant would be entitled to challenge the ASC's decision once a final decision on the merits was delivered. The Application was dismissed and the Applicant was not granted permission to appeal.

ECCLES V ECCLES, 2026 ABCA 154

(FRIESEN JA)

Rule 14.5 (Appeals Only With Permission)

The Applicant sought permission to appeal a Procedural Order directing the parties to a two-day Streamlined Trial on non-parenting issues and prohibiting further Applications before Trial without leave of the Court. The decision was made at a Case Management Meeting on September 18, 2025, after the Applicant failed to attend an earlier meeting and her last-minute request for a further adjournment was not granted. The Applicant also sought permission to appeal the Order denying her request to adjourn the Case Management Meeting and filed a Notice of Constitutional Question (the "Notice"). The Applicant argued that the exclusion of parenting issues from the Streamlined Trial denied her access to the courts to seek parenting relief and was discriminatory against her as a woman and survivor of domestic violence.

Pursuant to Rule 14.5, permission to appeal is required for scheduling and adjournment orders to prevent litigation by instalment and unmeritorious interlocutory appeals. To obtain permission, an applicant must demonstrate that the proposed appeal raises an important question of law or precedent of general importance, has a reasonable chance of success, and will not unduly delay or prejudice the parties.

Friesen J.A. held that the Applicant has failed to satisfy the test for permission to appeal. The proposed Appeal did not raise any question of law or precedent extending beyond the interests of the parties and had no reasonable prospect of success. The Court found that the Case Management Judge's decisions were highly discretionary, grounded in the parties' extensive litigation history, and directed to move the matter to Trial. The Court further held that allowing the Appeal would delay the resolution of the Action and hinder its progress.

The Court also rejected the Applicant's constitutional arguments. It found that the Notice failed to identify any specific *Charter* breach arising from the Procedural Orders under appeal and lacked the evidentiary foundation necessary to support allegations of systemic discrimination or broader constitutional violations.

Lastly, Friesen J.A. clarified that the Procedural Order did not preclude a future determination of parenting issues but merely directed that non-parenting issues proceed to Trial first.

Accordingly, the Application was denied.

CONDOMINIUM CORPORATION NO 9913345 (TALL TIMBER LEISURE PARK) V HALL, 2026 ABCA 199

(GROSSE JA)

Rules 14.5 (Appeals Only With Permission) and 14.88 (Costs Awards)

The Applicant sought permission to appeal a Court of King's Bench Summary Judgment that awarded the Respondent $1,243.37, struck the Applicant's Counterclaim, and awarded solicitor-client costs. The Applicant also sought a stay of enforcement and related declaratory relief. The Application engaged Rule 14.5 because the amount in controversy fell below the monetary threshold requiring permission to appeal.

The Court applied the established test for permission to appeal, pursuant to Rule 14.5, and considered whether the proposed Appeal had arguable merit and raised a question of law of sufficient importance to warrant review by a three-judge panel. Justice Grosse concluded that the Applicant's complaints largely concerned factual findings, discretionary procedural rulings, evidentiary issues, or matters specific to the litigation record. The Court found that none of the proposed grounds raised an important question of law, and several were disconnected from the Order under Appeal.

The Court dismissed the Application. As no Appeal could proceed, Grosse J.A. also refused a stay of enforcement and related declaratory relief, and terminated an interim stay previously granted. Justice Grosse found the Respondent was entitled to costs pursuant to Rule 14.88, on the same scale as awarded in the Court of King's Bench, which was solicitor-client costs.

SOCHOWSKI V LAW SOCIETY OF ALBERTA, 2026 ABCA 183

(FRIESEN JA)

Rule 14.8 (Filing a Notice of Appeal)

This decision arose from an Application to extend the time for filing and serving a Notice of Appeal pursuant to Rule 14.8. The Applicant sought to appeal a Chambers decision dismissing his application for Judicial Review of a decision of the Law Society of Alberta concerning a complaint he had made against his former spouse's lawyer. The Notice of Appeal was filed two days after the applicable deadline and served five days late. The Applicant attributed the delay to incorrect legal advice regarding the filing deadline and his misunderstanding of the Rules governing service.

Friesen J.A. considered the factors for an extension of time to appeal, including whether the Applicant had a *bona fide* intention to appeal, whether special circumstances explained the delay, whether the Respondent had suffered prejudice, whether the Applicant had benefitted from the Judgment, and whether the proposed Appeal had a reasonable prospect of success. The Court reviewed the authorities confirming that the merits component of the test imposed a low threshold and required only that the proposed Appeal be arguable rather than likely to succeed. Friesen J.A. also noted that, on an appeal from Judicial Review, an Appellate Court effectively stepped into the shoes of the reviewing Judge and applied no deference in selecting or applying the standard of review.

Applying these principles, the Court concluded that the Applicant had satisfied the first four criteria for an extension of time. Friesen J.A. accepted that the Applicant had intended to appeal, that his reliance on incorrect legal advice constituted a special circumstance explaining the delay, that the delays in filing and service were minor, that no prejudice had been suffered by the Law Society, and that the Applicant had not benefitted from the Judgment. With respect to the merits criterion, the Court held that the Applicant's proposed procedural fairness ground was arguable and therefore met the low threshold required on an extension Application. Friesen J.A. was not satisfied that the Appeal had no prospect of success and therefore granted the Application to extend the time for filing and serving the Notice of Appeal.

PETERS V SWAN, 2026 ABCA 158

(CRIGHTON, DEWIT AND SHANER JJA)

Rules 14.38 (Case Management Officers) and 14.74 (Application to Dismiss an Appeal)

This was an Appeal from a Case Management Judge's Order dismissing a father's Application for leave to make a new Parenting Application. The mother responded by applying to dismiss the Appeal.

Addressing the mother's Application first, the Court of Appeal confirmed that Rules 14.38(2)(a) and 14.74(c) allow a panel of the Court to dismiss all or part of an Appeal if the Appeal is frivolous, vexatious, without merit, or improper. Referencing prior case law, the Court of Appeal stated that the test for Summary Dismissal was a very high threshold. Further, the caselaw indicated that it is rarely in the interests of justice to summarily dispose of an appeal because the resources required to do so are virtually identical to the resources required to simply argue the appeal in the normal way. The Court of Appeal found the threshold was not met and dismissed the Application for Summary Dismissal.

The Court of Appeal also dismissed the father's Appeal. The Case Management Judge's decision attracted a highly deferential standard of review and the Court of Appeal agreed that the test for reopening a Parenting Order was not met.

ABBASI V KHAN, 2026 ABCA 139

(FEEHAN JA)

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

This decision arose from an Application to restore an Appeal, pursuant to Rules 14.47 and 14.65, after the Appeal had been struck for failure to file an Appeal record within the timelines required by Rule 14.16(3)(b). The underlying Appeal concerned family law issues arising from a Summary Trial, including child support, spousal support, and division of family property. The Applicant sought restoration of the Appeal after retaining new counsel shortly following the issuance of the struck certificate.

Feehan J.A. reviewed the applicable framework governing restorations of Appeals, and confirmed that the test under Rules 14.47 and 14.65 is discretionary and engages five non determinative factors: arguable merit to the appeal, explanation for the delay or defect, reasonable promptness in curing the defect, intention to proceed with the Appeal, and prejudice to the Respondent. The Court emphasized that these factors must be weighed holistically to determine whether restoration is in the interests of justice, and that failure to satisfy one factor is not necessarily fatal.

In applying the test, Feehan J.A. confirmed that the threshold for arguable merit is low and requires only that the Appeal not be hopeless, frivolous, or bound to fail. The Court found that the proposed grounds of appeal met that standard. Although the Court concluded there was not an adequate explanation for part of the delay following the striking of the Appeal, it found the Applicant had acted with reasonable promptness after retaining counsel and had consistently demonstrated an intention to pursue the Appeal, including by filing the Notice of Appeal on time, ordering transcripts, and seeking extensions before the Appeal was struck. Justice Feehan also held that the prejudice to the Respondent consisted primarily of delay and was not sufficiently serious to outweigh the remaining factors.

Balancing all of the circumstances, the Court concluded that it was in the interests of justice to restore the Appeal to the record pursuant to Rules 14.47 and 14.65. The Court granted the Application and imposed a strict deadline for filing the outstanding transcript and Appeal record materials, failing which the Appeal would again be struck.

PATEL V PARIKH, 2026 ABCA 144

(FEEHAN JA)

Rule 14.48 (Stay Pending Appeal)

The Applicant sought a stay pending the appeal of a Chambers Judge's Order striking her appeal from an Arbitration Award after she failed to comply with a peremptory filing deadline. She argued the appeal should proceed despite the missed deadline because her counsel had mistakenly submitted the required materials to the wrong court.

The underlying arbitration concerned family property, including an Order requiring the sale of two Calgary properties. The Applicant filed the appeal of the Arbitration Award within the statutory time limit. However, she failed to meet a later peremptory deadline for filing appeal materials after her counsel mistakenly sent the materials for filing to the Alberta Court of Justice rather than the Court of King's Bench. A Chambers Judge subsequently struck the appeal. After the Arbitration Award was registered as a Judgment, steps commenced to list the matrimonial home for sale. Subsequently, this Application was brought seeking a stay pending appeal while the matrimonial home was listed for sale.

Feehan J.A. applied the tripartite test for a stay pending appeal. The Court found that the threshold for a serious question was low and that the Applicant's explanation for missing the deadline was reasonable. The proposed appeal was neither frivolous nor vexatious. The Court also found irreparable harm because the imminent sale of the matrimonial home could displace the Applicant and the parties' young children, disrupting their housing stability and community ties. Finally, the balance of convenience favoured preserving the status quo while the appeal proceeded.

The Application for a stay pending appeal was granted. Feehan J.A. stayed the Chambers Judge's Order striking the appeal.

DF V MF, 2026 ABCA 110

(FRIESEN JA)

Rules 14.66 (Discontinuance) and 14.88 (Costs Award)

This case concerned a costs Application following a discontinued Appeal in a high-conflict family law dispute. The Appellant had filed an Appeal challenging interim procedural decisions while related parenting issues were still pending at the trial level. The Appeal progressed partway but was later discontinued by the Appellant before any submissions were filed. The Respondent then sought costs for having responded to the Appeal.

The Respondent asked for elevated or solicitor-client costs, arguing the Appeal was improper and part of a wider pattern of delay and litigation misconduct. The Appellant accepted that some costs were payable but argued they should be limited to standard

Schedule C (party-and-party) costs. Justice Friesen confirmed that while respondents are generally entitled to costs on a discontinued appeal, higher costs are only awarded in rare cases involving serious misconduct.

The Court held that the Appellant's conduct did not meet the high threshold required for enhanced costs. While the Appeal was ill-advised, it was not considered misconduct justifying a departure from standard costs. The Court therefore awarded the Respondent $6,255 in costs, required each party to bear their own costs of the Application, and ordered that the costs of children's counsel be shared equally between the parties.