JSS BARRISTERS

RULES

Jensen Shawa Solomon Duguid Hawkes LLP

Jensen Shawa Solomon Duguid Hawkes LLP is pleased to provide summaries of recent Court Decisions which consider the Alberta Rules of Court. Our website, **www.jssbarristers.ca**, also features a fully functional Rules database, giving users full search capabilities of all past summaries up to, and including, our latest release. The interface now improves the user experience through the ability to search and filter summaries by Rule, Judges and Applications Judges and keywords.

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

2.25	**TORNQVIST V SHENNER,** 2024 ABCA 285
3.15	**BEARSPAW FIRST NATION V CANMORE (TOWN),** 2024 ABKB 505
3.19	**CM V ALBERTA,** 2024 ABKB 398
3.26	**OSADCHUK V KIDD,** 2024 ABKB 448
3.28	**OSADCHUK V KIDD,** 2024 ABKB 448
3.33	**JORDAN V DE WET,** 2024 ABKB 462
3.43	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 423
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 428
3.45	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 428
3.61	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 423
3.62	**THOMSON V THOMSON,** 2024 ABCA 293
3.68	**1285486 ALBERTA LTD V APE PARKOUR INC,** 2024 ABKB 406
	O'CONNOR V SIVACOE ESTATE, 2024 ABKB 420
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 423
	MAO V TD INSURANCE MELOCHE MONNEX, 2024 ABKB 434
	NORTH V DAVISON, 2024 ABKB 469
	RK V GSG, 2024 ABKB 487
	GEOPHYSICAL SERVICE INCORPORATED V CANADIAN NATURAL RESOURCES LIMITED, 2024 ABKB 491
	TUHARSKY V O'CHIESE FIRST NATION, 2024 ABKB 511
	WHITE BUFFALO MECHANICAL LTD (RE), 2024 ABKB 558
3.72	**QUESTOR TECHNOLOGY INC V STAGG,** 2024 ABKB 377
3.74	**DUNLOP V CARPENTERS' REGIONAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,** 2024 ABKB 496
	CHRYSANTHOUS V APEGA APPEAL BOARD, 2024 ABCA 242

3.75	**BEARSPAW FIRST NATION V CANMORE (TOWN),** 2024 ABKB 505
4.1	**MOMAN V BRADLEY,** 2024 ABKB 416
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 424
	CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2024 ABKB 489
4.2	**CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD,** 2024 ABKB 489
4.3	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
4.5	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
4.6	**MOMAN V BRADLEY,** 2024 ABKB 416
4.10	**JORDAN V DE WET,** 2024 ABKB 462
4.14	**PARKS V 1509856 ALBERTA LTD,** 2024 ABKB 376
	QUESTOR TECHNOLOGY INC V STAGG, 2024 ABKB 377
4.15	**BAINS V ADAM,** 2024 ABCA 271
4.22	**BONVILLE V PRESIDENT'S CHOICE FINANCIAL,** 2024 ABKB 483
	ABOU SHAABAN V BALJAK, 2024 ABCA 282
4.24	**RICHARDSON V SCHAFER,** 2024 ABKB 379
	DOERKSEN ESTATE (RE), 2024 ABCA 262
4.29	**CAMACHO V LACROIX,** 2024 ABKB 179
	RICHARDSON V SCHAFER, 2024 ABKB 379
	DOERKSEN ESTATE (RE), 2024 ABCA 262
4.31	**MOMAN V BRADLEY,** 2024 ABKB 416
	SEGOVIA V MCCARRICK, 2024 ABKB 431
	JORDAN V DE WET, 2024 ABKB 462
	CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2024 ABKB 489
4.33	**WHALEN V CALLIHOO, 2050787 ALBERTA LTD, KREUTZER, KREUTZER AND BATES,** 2024 ABKB 402
	CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2024 ABKB 489

4.33 (cont)	**DANIS-SIM V SIM,** 2024 ABCA 297
5.1	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442
5.2	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442
5.3	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442
5.4	**PARKS V 1509856 ALBERTA LTD,** 2024 ABKB 376
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 424
5.5	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
5.10	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
5.11	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442
	RK V GSG, 2024 ABKB 487
5.12	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 424
5.16	**RK V GSG,** 2024 ABKB 487
5.17	**ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP,** 2024 ABKB 387
	DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442
5.27	**QUESTOR TECHNOLOGY INC V STAGG,** 2024 ABKB 377

5.31	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 423
5.32	**SIMPSON V PAWLOWSKI,** 2024 ABCA 254
5.33	**GIESBRECHT V PRPICK,** 2024 ABKB 433
	SIMPSON V PAWLOWSKI, 2024 ABCA 254
5.37	**DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION,** 2024 ABKB 442
6.3	**DUNLOP V CARPENTERS' REGIONAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,** 2024 ABKB 496
6.8	**RK V GSG,** 2024 ABKB 487
6.14	**MAO V TD INSURANCE MELOCHE MONNEX,** 2024 ABKB 434
6.16	**RK V GSG,** 2024 ABKB 487
6.17	**RK V GSG,** 2024 ABKB 487
6.18	**RK V GSG,** 2024 ABKB 487
6.19	**RK V GSG,** 2024 ABKB 487
6.20	**RK V GSG,** 2024 ABKB 487
6.22	**RK V GSG,** 2024 ABKB 487
6.28	**SIMPSON V PAWLOWSKI,** 2024 ABCA 254
6.32	**ANDERSON V ALBERTA,** 2024 ABKB 405
6.36	**SIMPSON V PAWLOWSKI,** 2024 ABCA 254
6.49	**SPARTAN DELTA CORP V ORPHAN WELL ASSOCIATION,** 2024 ABKB 555
7.2	**HANSEN V FELGATE,** 2024 ABKB 419
	O'CONNOR V SIVACOE ESTATE, 2024 ABKB 420
	GRAHAM INFRASTRUCTURE LTD V EPCOR UTILITIES INC, 2024 ABKB 453
7.3	**1285486 ALBERTA LTD V APE PARKOUR INC,** 2024 ABKB 406
	HANSEN V FELGATE, 2024 ABKB 419
	O'CONNOR V SIVACOE ESTATE, 2024 ABKB 420
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 423

7.3 (cont)	**RABOBANK CANADA V STRINGAM,** 2024 ABKB 425
	GRAHAM INFRASTRUCTURE LTD V EPCOR UTILITIES INC, 2024 ABKB 453
	JORDAN V DE WET, 2024 ABKB 462
	GEOPHYSICAL SERVICE INCORPORATED V CANADIAN NATURAL RESOURCES LIMITED, 2024 ABKB 491
	POLLARD V LOUGHEED BLOCK INC, 2024 ABKB 493
	FRIESEN V SILVERBERG & ASSOCIATES INC, 2024 ABKB 518
8.25	**ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP,** 2024 ABKB 387
	MOORE V TURNER, 2024 ABKB 435
	HOU V CANADIAN NORTH INC, 2024 ABKB 549
	BAILEY V NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY, 2024 ABKB 563
8.26	**ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP,** 2024 ABKB 387
	HOU V CANADIAN NORTH INC, 2024 ABKB 549
8.27	**ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP,** 2024 ABKB 387
	HOU V CANADIAN NORTH INC, 2024 ABKB 549
	BAILEY V NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY, 2024 ABKB 563
8.28	**HOU V CANADIAN NORTH INC,** 2024 ABKB 549
8.29	**HOU V CANADIAN NORTH INC,** 2024 ABKB 549
8.30	**HOU V CANADIAN NORTH INC,** 2024 ABKB 549
8.31	**ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP,** 2024 ABKB 387

9.4	**CERATO V CERATO,** 2024 ABCA 296
	PARIKH V AMAZON CANADA FULFILLMENT SERVICES, ULC, 2024 ABCA 303
9.13	**1731271 ALBERTA INC V REIMER,** 2024 ABKB 529
9.14	**NORTH V DAVISON,** 2024 ABKB 528
9.15	**MOORE V TURNER,** 2024 ABKB 435
	TORNQVIST V SHENNER, 2024 ABCA 285
10.2	**LAU V DENTONS CANADA LLP,** 2024 ABKB 497
10.4	**LAW SOCIETY OF ALBERTA V HIGGERTY,** 2024 ABKB 410
10.10	**OSADCHUK V KIDD,** 2024 ABKB 448
	LAU V DENTONS CANADA LLP, 2024 ABKB 497
10.13	**LAU V DENTONS CANADA LLP,** 2024 ABKB 497
10.17	**LAU V DENTONS CANADA LLP,** 2024 ABKB 497
10.19	**LAU V DENTONS CANADA LLP,** 2024 ABKB 497
10.26	**OSADCHUK V KIDD,** 2024 ABKB 448
10.29	**RICHARDSON V SCHAFER,** 2024 ABKB 379
	GIESBRECHT V PRPICK, 2024 ABKB 433
	CATTERALL V CONDOMINIUM PLAN NO 752 1572 (PARK TOWERS), 2024 ABKB 452
	NORTH V DAVISON, 2024 ABKB 469
	SHAMAEIIRANI V AJAMIAN, 2024 ABKB 474
	RK V GSG, 2024 ABKB 477
	BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2024 ABKB 483
	1731271 ALBERTA INC V REIMER, 2024 ABKB 529
10.31	**RICHARDSON V SCHAFER,** 2024 ABKB 379
	BALDWIN V VAN HOUT, 2024 ABKB 415
	DANIELS SHARPSMART CANADA LTD O/A DANIELS HEALTH V ALBERTA HEALTH SERVICES, 2024 ABKB 418
	TC V MH, 2024 ABKB 447
	CATTERALL V CONDOMINIUM PLAN NO 752 1572 (PARK TOWERS), 2024 ABKB 452
	NORTH V DAVISON, 2024 ABKB 469
	420 INVESTMENTS LTD V TILRAY INC, 2024 ABKB 480

10.31 (cont)	**1731271 ALBERTA INC V REIMER,** 2024 ABKB 529
10.32	**NORTH V DAVISON,** 2024 ABKB 469
10.33	**CAMACHO V LACROIX,** 2024 ABKB 179
	RICHARDSON V SCHAFER, 2024 ABKB 379
	CM V ALBERTA, 2024 ABKB 398
	BALDWIN V VAN HOUT, 2024 ABKB 415
	DANIELS SHARPSMART CANADA LTD O/A DANIELS HEALTH V ALBERTA HEALTH SERVICES, 2024 ABKB 418
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 423
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 428
	TL V RAC, 2024 ABKB 430
	GIESBRECHT V PRPICK, 2024 ABKB 433
	TC V MH, 2024 ABKB 447
	CATTERALL V CONDOMINIUM PLAN NO 752 1572 (PARK TOWERS), 2024 ABKB 452
	NORTH V DAVISON, 2024 ABKB 469
	SHAMAEIIRANI V AJAMIAN, 2024 ABKB 474
	RK V GSG, 2024 ABKB 477
	420 INVESTMENTS LTD V TILRAY INC, 2024 ABKB 480
	BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2024 ABKB 483
	NORTH V DAVISON, 2024 ABKB 528
	1731271 ALBERTA INC V REIMER, 2024 ABKB 529
10.48	**NORTH V DAVISON,** 2024 ABKB 528
10.49	**AKPAN (RE),** 2024 ABKB 417
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 424
	TL V RAC, 2024 ABKB 430
	BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2024 ABKB 483
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 536

10.49 (cont)	**BONVILLE V PRESIDENT'S CHOICE FINANCIAL,** 2024 ABKB 546
10.50	**DE V DE,** 2024 ABKB 512
10.51	**REDDY V SAROYA,** 2024 ABKB 478
10.52	**QUESTOR TECHNOLOGY INC V STAGG,** 2024 ABKB 377
	UHRYN V UHRYN, 2024 ABKB 407
	H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 424
	TL V RAC, 2024 ABKB 430
	DC V NBC, 2024 ABKB 444
	TC V MH, 2024 ABKB 447
	REDDY V SAROYA, 2024 ABKB 478
	TORNQVIST V SHENNER, 2024 ABCA 285
10.53	**UHRYN V UHRYN,** 2024 ABKB 407
	TL V RAC, 2024 ABKB 430
	TC V MH, 2024 ABKB 447
	REDDY V SAROYA, 2024 ABKB 478
10.55	**TC V MH,** 2024 ABKB 447
11.5	**OSADCHUK V KIDD,** 2024 ABKB 448
11.15	**TORNQVIST V SHENNER,** 2024 ABCA 285
11.16	**TORNQVIST V SHENNER,** 2024 ABCA 285
11.17	**TORNQVIST V SHENNER,** 2024 ABCA 285
11.25	**OSADCHUK V KIDD,** 2024 ABKB 448
11.26	**OSADCHUK V KIDD,** 2024 ABKB 448
11.27	**OSADCHUK V KIDD,** 2024 ABKB 448
11.28	**OSADCHUK V KIDD,** 2024 ABKB 448
11.31	**OSADCHUK V KIDD,** 2024 ABKB 448
	BADGER INFRASTRUCTURE V PARENT-WALKER, 2024 ABKB 550
11.34	**OSADCHUK V KIDD,** 2024 ABKB 448
13.4	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 428
13.5	**OKEKE V OAKES,** 2024 ABCA 305

13.6	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 423
13.7	**H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD,** 2024 ABKB 423
	JORDAN V DE WET, 2024 ABKB 462
14.4	**SIVITILLI V PESORAMA INC,** 2024 ABCA 249
14.5	**SIVITILLI V PESORAMA INC,** 2024 ABCA 249
	VERMILLION NETWORKS INC V VERMILLION ENERGY INC, 2024 ABCA 261
	BAINS V ADAM, 2024 ABCA 271
	HEATH-ENGEL V ALBERTA (HUMAN RIGHTS COMMISSION), 2024 ABCA 277
	NOVA CHEMICALS V DOW CHEMICAL CANADA, 2024 ABCA 278
	REININK V ALBERTA (LABOUR RELATIONS BOARD), 2024 ABCA 280
	PIIKANI NATION V MCMULLEN, 2024 ABCA 306
14.8	**HEATH-ENGEL V ALBERTA (HUMAN RIGHTS COMMISSION),** 2024 ABCA 277
14.9	**BAINS V ADAM,** 2024 ABCA 271
14.16	**CERATO V CERATO,** 2024 ABCA 296
14.36	**OKEKE V OAKES,** 2024 ABCA 305
14.38	**NOVA CHEMICALS V DOW CHEMICAL CANADA,** 2024 ABCA 278
	PARIKH V AMAZON CANADA FULFILLMENT SERVICES, ULC, 2024 ABCA 303
14.41	**REININK V ALBERTA (LABOUR RELATIONS BOARD),** 2024 ABCA 280
14.45	**OKEKE V OAKES,** 2024 ABCA 305
14.46	**CHARKHANDEH V COLLEGE OF DENTAL SURGEONS OF ALBERTA,** 2024 ABCA 239
14.48	**BAINS V ADAM,** 2024 ABCA 271
	NOVA CHEMICALS V DOW CHEMICAL CANADA, 2024 ABCA 278
14.51	**GIESBRECHT V PRPICK,** 2024 ABCA 265

ARSENAULT V BIG ROCK BREWERY LIMITED PARTNERSHIP BY ITS GENERAL PARTNER BIG ROCK BREWERY OPERATIONS CORP. AND BIG ROCK BREWERY OPERATIONS CORP, 2024 ABKB 387

(ARMSTRONG J)

Rules 1.2 (Purpose and Intention of the Rules), 5.17 (People Who May be Questioned), 8.25 (Use of Streamlined Trial), 8.26 (Application for Streamlined Trial), 8.27 (Dispute Over Mode of Trial) and 8.31 (Decision After Streamlined Trial)

The matter involved a claim for wrongful termination of the Plaintiff by the Defendant. The Plaintiff brought an Application for a Streamlined Trial, pursuant to Rule 8.26.

The Streamlined Trial process was contrasted against the process for a Summary Judgment, which requires no merit to a claim, and Summary Trials, which were available to determine an issue, question, or Action until Rule 7.5 was repealed.

Streamlined Trials were added as an option pursuant to Rules 8.25-8.27 in January 2024. The Court confirmed that, as part of an Application for a Streamlined Trial, an Applicant is not required to provide an Affidavit addressing why the matter is suitable for a Streamlined Trial. The appropriateness of a Streamlined Trial is based on the pleadings and submissions of the parties. The Court also noted that the streamlined Trial process eliminates the prior issue with Summary Trials, which rendered a decision on the appropriateness of Summary Trial at the end of the proceeding. With Streamlined Trial, there is a decision up front on the suitability of the process. Once determined to be suitable, the proceeding can continue on the merits and Judgment can be granted, pursuant to Rule 8.31.

Justice Armstrong went through the two-part test for a Streamlined Trial under Rule 8.25, which requires that the Court be satisfied that: (1) a Streamlined Trial is necessary for the purpose of the Action to be fairly and justly resolved; and (2) the Streamlined Trial is proportionate to the importance and complexity of the issues, the amounts involved and the resources that can reasonably be allocated to resolving the dispute. He noted that this test differs from the previous test for a Summary Trial. The issue is no longer whether the matter can be decided summarily, but whether it is necessary to use a streamlined process to have the matter fairly and justly resolved. This is a discretionary decision based on the record, as set out in Rule 8.27.

Justice Armstrong provided a list of circumstances in which a Streamlined Trial may be found necessary. That list included where the Streamlined Trial will: (1) create a more efficient process by eliminating unnecessary steps and reducing overall delay in the resolution of the dispute; (2) result in a more cost-effective process for the parties; (3) enhance the administration of justice by making more efficient use of Court resources and provide litigants with a more accessible and timely dispute resolution process; (4) result in a more sharply focused process and the elimination of complexities in the form of interim Applications that do not bear on the ultimate resolution of the real issues in dispute; (5) simplify the proceeding to make it easier for the parties to assess the strengths and weaknesses of their positions and thereby potentially reach a resolution without the need for a Trial; and (6) where it would be unjust to require the parties to proceed to a full Trial, considering the value and complexity of the dispute.

Here, Armstrong J. found that a Streamlined Trial was not necessary. There were likely to be a number of Affidavits from a number of witnesses who would all need to be cross-examined. This would be more witnesses than would be allowed as of right in a standard Trial, pursuant to Rule 5.17. This would be less efficient and more costly than a standard Trial.

Justice Armstrong also noted that preparing for a Streamlined Trial would take more time than a standard Trial. For a standard Trial, Justices typically only review the pleadings and any pre-Trial Orders and, if necessary, the pertinent law. For a Streamlined Trial where there are multiple Affidavits and transcripts of cross-examinations, it can be very intensive and require significant judicial time. There may then be additional oral evidence to complete the evidentiary record, which adds to the complexity.

The Court concluded that, while a Streamlined Trial may save a few days of Trial time, they are offset by the additional pre-Trial steps and the considerably time the Judge must spend preparing. It found no efficiencies added by the Streamlined Trial process in this case. Where there is no increase in efficiency or cost-effectiveness, the Streamlined Trial process should not be allowed.

Despite finding that a Streamlined Trial was not necessary, Justice Armstrong went on to consider whether it would be proportionate to allow it. He noted that the concept of proportionality in part two of the test borrowed directly from the foundational Rules set out in Rule 1.2. On this stage, Armstrong J. advised that the jurisprudence on Summary Trials can be instructive, as the factors considered for the suitability of a Summary Trial are applicable. This includes the amount involved, the complexity of the matter, the urgency, any prejudice likely to arise by reason of delay, the cost of a Trial, the course of the proceedings, the need to cross examine witnesses in Court, the necessity of Questioning for discovery and whether resolution of the matter will depend on findings of credibility. However, these factors must be considered in light of Rule 8.25(3), which expressly states that a Streamlined Trial shall not be considered a disproportionate process solely because issues of credibility may arise, some oral evidence may be required at the Streamlined Trial,

cross-examination of some witnesses may be required, or expert evidence may be adduced. These factors are relevant considerations but the mere existence of any one or more of these factors should not, in itself, preclude the granting of a Streamlined Trial.

Applying the factors, Justice Armstrong found that the proportionate process was a standard Trial, as it would be quicker and carry less expense. The Application was therefore dismissed.

H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 423

(MARION J)

Rules 1.2 (Purpose and Intention of These Rules), 3.43 (How to Make Claim Against Co-Defendant), 3.61 (Request for Particulars), 3.68 (Court Options to Deal with Significant Deficiencies), 5.31 (Use of Transcript and Answers to Written Questions), 7.3 (Summary Judgment), 10.33 (Court Considerations in Making Costs Award), 13.6 (Pleadings: General Requirements) and 13.7 (Pleadings: Other Requirements)

The Plaintiffs were involved in the construction of an apartment building in Canmore (the "Project"). The commenced an Action against a construction company ("Cormode"), its personnel (the "Cormode Defendants"), and several subcontractors and consultants. The Plaintiffs alleged breach of contract, negligence, and deceit, asserting these issues caused significant delays and increased Project expenses. In 2022, the Action was consolidated with ten related Actions, and Justice Marion was appointed as the Case Management Justice.

This Application sought Summary Dismissal of the claims against the Cormode Defendants. Marion J. explained that, pursuant to Rule 7.3(1)(b), a claim may be summarily dismissed where it lacks merit and does not raise a genuine issue for Trial. Conversely, to avoid Summary Dismissal, a Respondent must prove a genuine issue for Trial exists. Ultimately, the presiding Judge must be convinced that Summary Dismissal is fair and appropriate based on the facts for an Application to be granted.

The Cormode Defendants contended that the claims lacked the specifics required under Rules 13.6 and 13.7. However, Marion J. noted that the Cormode Defendants did not request particulars under Rule 3.61, did not raise concerns about the lack of specifics in their Statement of Defence, and did not seek to strike the claim pursuant to Rule 3.68. While acknowledging that the Cormode Defendants actively engaged with the issue and provided sworn Affidavits denying any misrepresentation, Justice Marion concluded that the Plaintiffs failed to establish a genuine issue for Trial with respect to most of the alleged negligent misrepresentations.

Ultimately, the Court deemed Summary Dismissal inappropriate in the circumstances, except for a few distinct claims. Marion J. expressed concern about the unintended consequences of dismissing intertwined claims and noted that partial Summary Dismissal would not adequately address the main issues raised by the Cormode Defendants. Additionally, Justice Marion indicated that

the Cormode Defendants' concerns could be resolved through alternative measures, such as enhanced Costs for litigation misconduct pursuant to Rule 10.33. Marion J. advised the Parties to refine or eliminate non-meritorious claims and adjust their positions as the litigation progresses, in accordance with Rule 1.2.

H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 424

(MARION J)

Rules 1.2 (Purpose and Intention of these Rules), 1.5 (Rule Contravention, Non-Compliance and Irregularities), 4.1 (Responsibilities of Parties to Manage Litigation), 4.3 (Categories of Court Action), 4.5 (Complex Case Obligations), 5.1 (Purpose of This Part (Disclosure of Information)), 5.2 (When Something is Relevant and Material), 5.3 (Modification or Waiver of this Part), 5.4 (Appointment of Corporate Representatives), 5.5 (When Affidavit Of Records Must Be Served), 5.10 (Subsequent Disclosure of Records), 5.11 (Order for Record To Be Produced), 5.12 (Penalty for not Serving Affidavit Of Records), 10.49 (Penalty for Contravening Rules) and 10.52 (Declaration of Civil Contempt)

The Applicant Plaintiffs sought further and better record production from some of the Defendants; penalties for providing late, incomplete, and improper disclosure; and the appointment of an additional or substitute corporate representative for one of the Defendants.

Marion J. emphasized the parties' obligations under several Rules: Rule 1.2(1) to resolve claims fairly, justly, and efficiently; Rule 5.1 to obtain evidence to define issues and encourage early disclosure to facilitate resolution and minimize delays and cost; Rule 1.2(3) to resolve claims quickly and economically; Rule 4.1 for managing and planning dispute resolution; and Rules 4.3(2) and 4.5(1)(b)(ii) for determining case complexity and agreeing on record production protocols for complex cases.

The Court emphasized the importance of early discovery planning, especially for significant electronic records, and the mandatory self-discovery system under Rule 5.2, which requires parties to disclose relevant and material records. Alberta Courts have incorporated proportionality to ensure suitable discovery procedures. Rule 5.3 allows the Court to modify or waive discovery requirements or order cost-shifting if compliance is disproportionate. Further, the Rules provide the Courts with several tools to sanction non-compliance with discovery obligations: Rule 5.12 (breach of Rules 5.5 or 5.10, or an Order under Rule 5.11), Rule 1.5(6), Rule 10.49 (noncompliance with the Rules), and Rule 10.52 (contempt of court).

The Court noted that the discovery process in this case was problematic from the start. The parties failed to formally designate the Action as a complex case, which would have required them to agree on a production protocol. Despite experienced counsel and the complexity of the construction project, there was no initial pre-discovery planning or consultation. This lack of preparation led to inefficiencies and delays. The Respondents' inadequate and careless discovery process led to delays and higher costs, resulting in thousands of relevant records initially being missed.

The Court then dealt with the Plaintiffs' Application for penalties pursuant to Rule 5.12 and 10.49 for the Respondents' breach of their disclosure and production obligation.

Justice Marion noted that Rule 5.12 permits monetary penalties for non-compliance with discovery deadlines or Orders. While it mainly addresses missed deadlines, it can also apply to deficient disclosure. In this case, the Respondents submitted their Affidavits of Records about two months late, but this was not the primary complaint in the Plaintiffs' Application. Consequently, Marion J. found a penalty under Rule 5.12 inappropriate and suggested considering costs or general non-compliance rules (Rules 1.5(6) and 10.49) instead. Rule 1.5 allows the Court to grant relief in cases of procedural non-compliance, with Rule 1.5(6) enabling penalties under Rule 10.49 for non-compliance affecting the administration of justice. In this case, the Respondents' inadequate and careless discovery process led to delays and higher costs, prompting the Court to impose a $7,500 penalty to deter similar conduct in the future.

The Court then considered whether to appoint a substitute or additional corporate representative for the Respondents. Under Rule 5.4(1), a corporation must act through a human representative, and the Court can intervene if the chosen representative is unsuitable. Justice Marion found that, while the current representative had shortcomings in the disclosure of records, these did not warrant his replacement. The Court noted that due to the broad scope of the project, no single representative could address all matters, and significant Undertakings would be required regardless. Additionally, the proposed alternatives, who were semi-retired and less involved, were not deemed more suitable, and compelling them would be unfair. Thus, Marion J. dismissed the Plaintiffs' Application to replace the corporate representative, as it was not demonstrated that a change was necessary.

BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2024 ABKB 483

(NIELSEN J)

Rules 1.2 (Purpose and Intention of These Rules), 4.22 (Advance Payment of Costs), 10.29 (General Rule for Payment of Litigation Costs), 10.33 (Court Considerations in Making Costs Award) and 10.49 (Penalty for Contravening Rules)

Three individuals, under the influence of a UnitedWeStandPeople scheme, engaged in abusive litigation to evade debt obligations. They employed pseudolaw arguments, including demands for "wet ink" signatures and proof of non-securitization of debts, to frustrate legitimate debt collection processes.

Justice Nielsen ultimately concluded that if people want to advance known and rejected not-law claims in relation to their debts, they may be required "to put their money where their mouth is" and take steps to establish their litigation and intentions are genuine.

In coming to this conclusion, Nielsen J. stated that a person conducting Organized Pseudolegal Commercial Argument ("OPCA")-based litigation breaches all the foundational principles for how civil litigation must be conducted in Alberta, as set out in Rule 1.2 of the Rules of Court. The Court's negative conclusions as to the character of wet ink signature and securitization arguments meant that someone

who engages in these strategies presumptively breaches Rule 1.2 with a bad faith motive, ulterior purpose, and abusive illegitimate objective.

The three individuals and the promoters of the UnitedWeStandPeople scheme were given a deadline to pay Security for Costs ordered, and to provide argument and/or Affidavit evidence as to why they should not be subject to additional penalties pursuant to Rule 10.49(1).

In calculating the lump sum quantum of the Costs Award, the Court considered the presumption under Rule 10.29(1) that a successful party is entitled to Costs, and the factors for calculating the quantum of those Costs pursuant to Rule 10.33(1), with a view of the abusive OPCA character of the lawsuit.

The Court further found that the promoters of the UnitedWeStandPeople scheme, Kevin Kumar and Colton Kumar, should be held jointly and severally liable for Costs to deter further abuse and ensure fairness to the lenders. However, Justice Nielsen afforded them the opportunity to submit evidence and arguments to avoid penalties, emphasizing the need for genuine intentions and compliance with Court Orders.

CENTER STREET LIMITED PARTNERSHIP V NUERA PLATINUM CONSTRUCTION LTD, 2024 ABKB 489

(PRICE J)

Rules 1.2 (Purpose and Intention of These Rules), 4.1 (Responsibility of Parties to Manage Litigation), 4.2 (What the Responsibility Includes), 4.31 (Application to Deal With Delay) and 4.33 (Dismissal for Long Delay)

The Plaintiff commenced their Action against the Defendants on February 12, 2016 (the "Trades Action"), and also commenced a separate Action against its insurer, Lloyd's of London ("Lloyd's"), around the same time (the "Coverage Action"). The Trades Action and the Coverage Action both concerned a fire that took place on a construction project.

In 2017, Lloyd's applied to consolidate the Coverage Action with the Trades Action (the "Consolidation Application"). The Plaintiff and Defendants in the Trades Action agreed to oppose the Consolidation Application, and the agreement provided that, if they successfully opposed the Consolidation Application, the Plaintiff would pursue the Coverage Action to trial before the Trades Action (the "Agreement"). They were successful in opposing the Consolidation Application and, since then, the Plaintiff only took steps in the Coverage Action.

The Defendants brought an Application to dismiss the Trades Action for long delay pursuant to Rule 4.33. The Application was dismissed by Farrington J. on the basis that Trades Action and Coverage Action were inextricably linked, and there had been significant steps taken in the Coverage Action. The Defendants appealed.

On Appeal, the Court began by considering whether the Agreement was a "standstill agreement". The Court cited comments from the Alberta Court of Appeal in *Flock v Flock Estate,* 2017 ABCA 67, that Rule 4.33 must be read in light of the foundational rules, including that Rule 1.2(2)(b) stipulates that the Rules are intended to facilitate the quickest means of resolving a dispute at the least expense on the merits. Rules 4.1 and 4.2 also make this clear.

The Court ultimately found that, although the Agreement was not as clearly drafted as a standstill agreement should be, it contained the essential terms to suspend the application of Rule 4.33(2) in the Trades Action. Justice Price also agreed with Application Judge Farrington's finding that the Trades Action and Coverage Action were inextricably linked.

In closing, the Court noted that there was discussion regarding the application of Rule 4.31 at the oral hearing. However, Price J. held that Rule 4.31 did not apply as there was no inexcusable delay or significant prejudice. The Appeal was dismissed.

ANDERSON V ALBERTA, 2024 ABKB 507

(JERKE J)

Rule 1.2 (Purpose and Intention of These Rules)

In broader and ongoing litigation between the parties, the Beaver Lake Cree Nation ("BLCN") claimed, among other things, that the Federal and Provincial Crown had significantly infringed its Treaty rights by providing authorizations for activities which adversely affected BLCN's traditional hunting, fishing, and trapping territories. In the present Application, the Attorney General for Alberta applied for advice and direction from the Court, and a Declaration that BLCN's claims were restricted to events that had already occurred before May 14, 2008, when the Action was commenced by BLCN. For its part, BLCN contended that actions taken by the Crown after 2008 were already included in its claim.

Justice Jerke considered the purpose and intention of the Alberta Rules of Court to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way. On his reading of the Statement of Claim, Jerke J. found that BLCN had claimed for past and future damages arising from actions already taken by the Crown. It did not seek relief for harm caused by actions not yet taken as of the time of filing.

However, the Court noted that using the "linear, settler-based litigation model" to resolve a claim for Treaty infringement was "much like trying to fit a square peg into a round hole". In that regard, Justice Jerke noted that Treaties contain ongoing rights and obligations and, in particular, BLCN's claim related to allegations of breach of an ongoing fiduciary duty, breach of a claimed ongoing management obligation, and the effect of the accumulation of a host of activities. In light of this, the Court found that the actions alleged were not "frozen in time" as of the date of the Statement of Claim. They included all actions taken by the Crown on an ongoing basis. Jerke J. further noted that interpreting the Statement of Claim in this way avoided serial litigation, which would be contrary to Rule 1.2 and the obligation to engage in meaningful reconciliation.

In the result, Justice Jerke provided the direction in response to the Application that the Statement of Claim included actions of the Crown that took place after the Statement of Claim was filed. The Court further granted BLCN leave to amend its Statement of Claim.

WHITE BUFFALO MECHANICAL LTD (RE), 2024 ABKB 558

(MAH J)

Rules 1.3 (General Authority of the Court to Provide Remedies), 1.5 (Rule Contravention, Non-Compliance and Irregularities) and 3.68 (Court Options to deal with Significant Deficiencies)

This Decision addressed whether procedural deficiencies in Bennington Financial's ("Bennington") Appeal of a Registrar's decision under the *Bankruptcy and Insolvency Act* ("*BIA*") were curable and considered the Appeal's merits. The Registrar ruled that the Trustee of White Buffalo Mechanical Ltd. validly redeemed a leased truck and required Bennington to discharge its security.

Instead of filing the Appeal within the bankruptcy Action, as required, Bennington filed a new Civil Action, arguing that procedural errors could be corrected. The Trustee moved to strike the Civil Action, and the Applications Judge stayed it, instructing Bennington to refile in the bankruptcy Action and address the procedural issues. Despite these directions, Bennington continued in the Civil Action, prompting the Trustee's Cross-Application to strike the Appeal under Rule 3.68. This Decision concerns these Applications.

Justice Mah lifted the Stay pursuant to Rules 1.3(1) and (2) for the purpose of dealing with the Applications. The Court stated that the Appeal was brought in the wrong forum and the proper question to answer was whether there was authority to cure such a defect. Justice Mah stated that Rule 1.5 allows the Court to relieve against non-compliance, however, in this case the non-compliance was in respect to the *BIA* General Rules, not the Rules of Court. Justice Mah conducted the analysis as if he stepped into the role as a Bankruptcy Judge, pursuant to the *BIA* and its General Rules. The Court found that Bennington's non-compliance was a matter of form not substance and that there was no prejudice or injustice that could not be remedied by costs. Therefore, the Court did not strike the Originating Application under Rule 3.68 and accepted it as an Appeal of the Registrar's Order.

The Court analyzed the merits of the Appeal and found that the Registrar's findings were correct, and that Bennington did not reach the low threshold of proving that the Appeal had "arguable merit." The fact that Bennington missed the filing deadline by one day did not change the status of the merits sufficient to grant an extension for filing the Appeal. The Court also determined that in the Trustee's Cross-Application for dismissal of the Appeal, the Appeal also failed on the merits. The Court refused leave for Bennington to file the Appeal late because the Appeal was non-meritorious and, in the alternative, granted the Trustee's motion for dismissal of the Appeal itself.

OKEKE V OAKES, 2024 ABCA 305

(WOOLLEY JA)

Rules 1.4 (Procedural Orders), 13.5 (Variation of Time Periods), 14.36 (Case Management Officers), 14.45 (Application to Admit New Evidence) and 14.70 (No New Evidence without Order)

The Applicant applied under Rule 14.36(3) to rescind directions made by a Case Management Officer directing his two Appeals to be heard in writing and refusing to allow an Affidavit to be made available to the Panel in one of the Appeals.

Rule 14.36(3) governs the review of Case Management Officers' directions and provides an avenue for parties to bring procedural questions before a Justice of this Court.

It was found that while Case Management Officers are not owed deference in the traditional sense, a Judge asked to rescind a decision of a Case Management Officer "should pay careful consideration to that decision and any reasons for it". However, the Application challenging the direction regarding written submissions was not filed within the one-month period required by Rule 14.36(3). That said, Woolley J.A. noted that the Court has discretion to extend time periods under Rules 1.4(2)(h) and 13.5(2). Ultimately, no extension was granted as the direction to proceed in writing was found to be preliminary, and not final, so the Applicant could still make submissions to the Appeal Panel.

The reasons of the Case Management Officer for refusing to make the Affidavit available to the Panel in this case was found to be "unassailable". The Affidavit at issue was not adduced in the proceeding below. As such, it was new evidence. When parties wish to admit new evidence on Appeal, they must make an Application to admit that evidence, which "must be filed and served prior to... the deadline for filing, the applicant's factum", as per Rule 14.45(1). If no Order to admit new evidence is granted, then the Appeal "will be decided on the record before the court appealed from": Rule 14.70. The Applicant did not file an Application to admit new evidence and the deadline for such an Application had passed by the time of the Applicant's request. The Applicant did not apply for an extension of time. As such, it was found that the Case Management Officer was right to deny the Applicant's request to make the Affidavit available to the Panel.

OSADCHUK V KIDD, 2024 ABKB 448

(SIMARD J)

Rules 1.5 (Rule Contravention, Non-Compliance and Irregularities), 3.26 (Time to Serve Statement of Claim), 3.28 (Effect of Not Serving Statement of Claim), 10.10 (Time Limitation on Reviewing Retainer Agreements and Charges), 10.26 (Appeal to Judge), 11.5 (Service on Individuals), 11.25 (Real and Substantial Connection), 11.26 (Method of Service Outside Alberta), 11.27 (Validating Service), 11.28 (Substitutional Service), 11.31 (Setting Aside Service) and 11.34 (Service in Contracting State)

This was an Appeal in which the Appellants and Defendants challenged the service of a Statement of Claim. The Plaintiffs alleged that the Defendants defrauded them. The Defendants argued that they had not been validly served before the claim expired, rendering the Action a nullity pursuant to Rule 3.28.

The Plaintiffs originally filed their Statement of Claim on January 25, 2019, and extended the service deadline pursuant to Rule 3.26. The initial deadline for service was extended by an *ex parte* Order to April 25, 2020, but due to the Ministerial Order issued in response to the COVID-19 pandemic, the Chambers Judge found that the service deadline was further extended to July 10, 2020. This allowed the Plaintiffs additional time to effect service, avoiding expiration of the Claim under Rule 3.28.

Under Rule 1.5, the Plaintiffs sought to have any procedural irregularities cured, and the Court found that the Plaintiffs' service complied with the Rules sufficiently to validate the service under Rule 11.27. The Court also held that the Defendants had not established sufficient grounds to have the service set aside under Rule 11.31.

The Defendants challenged the validity of the service and sought to have the service set aside, relying on various procedural rules. They argued that the Plaintiffs failed to comply with Rule 11.26 regarding service *ex juris*, and that the Plaintiffs' method of service, including taping documents to a door and later mailing them, was not proper pursuant to Rule 11.5. However, the Court upheld the Plaintiffs' argument that Substitutional Service under Rule 11.28 was appropriate, and that the service was valid based on the specific circumstances. The Plaintiffs' service outside Alberta was also challenged by the Defendants, but the Court found that the service met the necessary criteria under Rule 11.25, including a valid connection to Alberta and proper authorization by the Court.

The Defendants argued that the Plaintiffs' failure to serve the claim within the initial time frame rendered the Action null, but the Court dismissed this argument based on the extended time frame allowed under the Ministerial Order and Rule 3.26. Additionally, the Court found that service by Express Post, a method authorized by Rule 11.34, was valid under the Hague Convention.

Kidd also argued that the review of the Substitutional Service should have been subject to Rule 10.26, but the Court determined that there was no error in the application of the procedural steps. The Court further addressed the timing of reviewing procedural charges under Rule 10.10, but it found no prejudice to the Defendants resulting from the timing of service.

In conclusion, the Court dismissed the Defendants' Appeal, finding that the Plaintiffs had validly served the Defendants before the extended service deadline, and the Action could proceed.

SIVITILLI V PESORAMA INC, 2024 ABCA 249

(HAWKES JA)

Rules 1.9 (Conflicts and Inconsistencies with Enactments), 14.4 (Right to Appeal) and 14.5 (Appeals only with Permission)

The Defendant applied for permission to appeal the Decision regarding the validity of an Arbitration Agreement between the parties ("Appeal #1") and the Decision to not stay the Arbitration ("Appeal #2"). The Plaintiff applied for permission to appeal a Costs Order ("Appeal #3").

Hawkes J.A. noted that Appeal #1 was filed late and held that an Application for late filing was required (the "Application for Late Filing"). Having found that there was a manifest intention to appeal within the time period, that the Defendant had not taken any benefit of the Decision under appeal in the interim, and that the Plaintiff would suffer no prejudice by reason of the extension, Hawkes J.A. concluded that the test regarding late filing had been satisfied and granted the Application for Late Filing.

However, having concluded that the issues raised regarding Appeal #1 did not meet the criteria for granting permission to Appeal, as the law was settled and the circumstances were unique to the parties, Hawkes J.A. denied leave to Appeal #1.

Citing *Schafer v Schafer,* 2023 ABCA 117, Hawkes J.A. held that no permission was required for Appeal #2. Specifically, pursuant to Rule 14.4(1), the Court of Appeal is a statutory Court which means it can only hear and decide Appeals provided for in Legislation. Rules 14.4 and 14.5 distinguish between Appeals as of right and Appeals where permission to Appeal must be obtained. Rule 14.4 carves out Appeals where the legislature has "otherwise provided". Any claimed right to Appeal under Rule 14.4 may be curtailed by another enactment. This is reinforced by Rule 1.9 which provides that an enactment prevails over the Rules to the extent of any inconsistency. Applying that reasoning, the right of Appeal with permission in section 48 of the *Arbitration Act* prevails over the general Appeal provisions in the Rules.

Appeal #3 was denied by Hawkes J.A., who pointed out that the arguments for costs did not meet the threshold for granting permission to Appeal, as they were seen as attempts for error correction rather than raising significant legal questions.

MD V ALBERTA (DIRECTOR OF CHILD AND FAMILY SERVICES), 2024 ABKB 565

(FEASBY J)

Rule 2.23 (Assistance Before the Court)

The Applicant sought a writ of *habeas corpus* for the return of her daughter, CD, who was removed from her care by Children and Family Services in late 2020. The Applicant had not provided sworn evidence but relied on an Order from the Alliance of Indigenous Nations Tribunal, which directed the return of CD and imposed a penalty of $100 million for each year CD was separated from the Applicant. The Applicant, with the aid of Spirit Warrior, advanced pseudo-legal arguments rejecting the authority of the Court and the legitimacy of the Canadian state.

Among other things, the Court decided whether Spirit Warrior was an appropriate litigation representative under Rule 2.32. The Applicant argued that as an Indigenous person, she was entitled to an Indigenous representative, regardless of whether they are a licensed lawyer. However, the *Legal Profession Act,* RSA 2000, c L-8, prohibits anyone other than a licensed lawyer from acting as a barrister or solicitor, with limited exceptions. While Courts may allow laypersons to assist, their role is restricted. Rule 2.23 permits a lay representative to provide limited assistance in Court, such as offering quiet suggestions, taking notes, providing support, or addressing specific needs of a party. However, assistance is not allowed if it violates the *Legal Profession Act,* is disruptive, or fails to align with the Rules' intended purpose.

Spirit Warrior, formerly known as Glenn Bogue, was a practicing lawyer until his suspension in Ontario in 2019 for delusional behavior. Since then, he has continued to make pseudo-legal arguments, often invoking Indigenous identity or tribunals, and was found guilty of illegally practicing law in Quebec in 2023. Despite citing previous instances where he acted as a representative, the Court found his conduct unsuitable and noted that the *United Nations Declaration on the Rights of Indigenous People* does not grant individuals the right to non-lawyer representation in civil matters under Alberta law.

Ultimately, the Court ruled that Spirit Warrior's involvement would undermine the process, finding him an inappropriate representative for the Applicant, and dismissed the habeas corpus Application.

TORNQVIST V SHENNER, 2024 ABCA 285

(MARTIN, HO AND GROSSE JJA)

Rules 2.25 (Duties of Lawyer of Record), 9.15 (Setting Aside, Varying and Discharging Judgments and Orders), 10.52 (Declaration of Civil Contempt), 11.15 (Service on Person Providing an Address for Service), 11.16 (Service on Lawyer) and 11.17 (Service on Lawyer of Record)

The Respondents, minority shareholders in Zybertech Construction Software Services Ltd. ("Zybertech"), alleged that the Appellant, Zybertech's President and Director, misused corporate resources. The Court was tasked with determining two questions: whether the Appellant was properly served with the Contempt Application and whether service on the Appellant's lawyer of record constituted good service. The Appellant emphasised the fact that he was not personally served with the second Contempt Application. However, the Court found that neither the Rules nor the jurisprudence required personal service.

The Court noted that Rule 10.52 requires an Application for a declaration of Civil Contempt to be served on the alleged contemnor in the same manner as a commencement document. The Court highlighted that while personal service is a common mode of service for commencement documents, the Rules set out other permissible ways to serve a commencement document on an individual in Alberta, namely Rule 11.15 and Rule 11.17. The Court stated that the Court of Appeal has expressly confirmed that service of a contempt application may be effected pursuant to Rule 11.17.

The Appellant argued that his lawyer could not be characterized as the lawyer of record or address for service in respect of the Contempt Application because the Application was quasi-criminal and constituted a new or distinct matter from the main Action. However, the Court disagreed and found that the Rules do not treat an Application for Contempt arising out of the alleged breach of a Court Order in a Civil Action as a fresh action, as Rule 10.52(1) requires the use of Form 27, which is the standard form for Applications, not Originating Applications, and also requires service "in the same manner as a commencement document". The Court further stated that if contempt arising out of an alleged failure to comply with a Court Order were to be treated as a distinct Action, the Rules would presumably require an actual commencement document.

The Court also dismissed the Appellant's argument that his lawyer had no obligation to accept service and if their lawyer did not accept service, then the lawyer had no obligation to take any further steps with respect to the Contempt Application. The Court found that an obligation to bring an application to the attention of a client is consistent with the explicit duties of a lawyer of record set out in Rule 2.25(1) and with the fiduciary obligation of a lawyer to disclose material information to their client. The Court did not accept the Appellant's interpretation of Rule 10.52(2), which was used to support the Appellant's argument that that unless a lawyer accepts service of a Contempt Application, the lawyer is not obliged to notify the client. Rather, the Court noted that Rule 10.52(2) must be read in the context of the Rules as a whole, including Rule 11.16.

Therefore, the Court dismissed the Appeal as premature and found that the appropriate first recourse for the Appellant was to apply to set aside the second Contempt Order pursuant to Rule 9.15.

BEARSPAW FIRST NATION V CANMORE (TOWN), 2024 ABKB 505

(APPLICATIONS JUDGE PARK)

Rules 3.15 (Originating Application for Judicial Review) and 3.75 (Adding, Removing or Substituting Parties to Originating Application)

Stoney Nakoda ("Stoney") brought an Originating Application seeking an Order declaring certain bylaws passed by the Town of Canmore as invalid or void for a purported failure to discharge certain constitutional duties said to be owed to Stoney. Three Sisters Mountain Village Properties Ltd. ("Three Sisters") applied to be added as a party to the proceedings. Three Sisters was instrumental in having the bylaws implemented after a lengthy Court battle. Three Sisters required the bylaws for land development purposes.

Justice Park noted that Rule 3.75 allows a Respondent to be added as a party to a proceeding brought by Originating Application if the Court is satisfied that the Order should be made, and that the Court retains residual discretion even if the joinder test is not met.

Justice Park began by finding that Three Sisters had a legal interest in the outcome of the proceedings and then went on to consider whether it was just and convenient to add Three Sisters as a party. Stoney served their Originating Application on Three Sisters pursuant to Rule 3.15, which Three Sisters argued signaled that it was just and convenient for them to be added as a party. The Court agreed, finding that Three Sisters was directly affected by the outcome of the Originating Application. Three Sisters' Application was ultimately granted.

CM V ALBERTA, 2024 ABKB 398

(DUNLOP J)

Rules 3.19 (Sending in Certified Record of Proceedings) and 10.33 (Court Considerations in Making Costs Award)

The Applicant sought double Column 5 Schedule C Costs related to three Decisions addressing the COVID-19 mask mandates (the "Decisions"). The Court held that the Applicants were substantially successful in the Decisions, thereby entitling them to Costs. The Court found that the Respondent had engaged in misconduct throughout the Decisions, including that Justice Minister Shandro's *Evidence Act* certificate was misleading, that the Respondent wrote to the Court without advance notice to opposing counsel or providing opposing counsel a copy, by rearguing issues that the Court had already decided, and by engaging in "wasteful" and "obstructionist conduct in the litigation." Justice Dunlop also noted that Rule 3.19(1)(b) specifically permits a person whose Decision is subject to Judicial Review to provide a written explanation as to why the Notice could not be complied with. While Dr. Hinshaw did that in the final version of the Certified Record, she could and should have done that to begin with.

The misconduct of the Respondent supported an increase in Costs. The Court noted that

nearly all the Rule 10.33(2) factors were engaged. Further, that the Respondent was the provincial Crown was relevant to Costs because, as a frequent litigator, the Crown should "scrupulously" comply with the Rules and standard of conduct for litigants. In the result, the Applicant was awarded the full Costs it sought, being $101,790.

JORDAN V DE WET, 2024 ABKB 462

(DILTS J)

Rules 3.33 (Reply to Defence), 4.10 (Assistance by the Court), 4.31 (Applications to Deal with Delay), 7.3 (Summary Judgment) and 13.7 (Pleadings: Other Requirements)

The Defendants, Dr. Charl de Wet ("Dr. de Wet") and Dawn Johnson ("Johnson"), applied to strike the Plaintiff's Action under Rule 4.31 and for Summary Dismissal under Rule 7.3. The Applications were scheduled together at a Rule 4.10 Case Conference.

The Action, which was commenced in 2011 by Shawn Jordan ("Jordan"), arose out of the breakdown of the relationship between Jordan and Johnson and the alleged publication of a letter written by Dr. de Wet in 2009 (the "Letter"). Dr. de Wet was Johnson's psychologist and authored the Letter for the family law proceedings between Johnson and Jordan. Jordan alleged that the Letter was published outside of the family law proceedings, that it was false and defamatory, and that it tarnished his reputation and undermined his relationship with his children.

On the Rule 4.31 Application, the Court reviewed the Plaintiff's history of inaction and failure to comply with the Rules, such as filing a reply to the Statement of Defence nearly five years after the deadline specified in Rule 3.33. Ultimately, the Court held that the delay was inordinate and inexcusable, and that it resulted in real and significant prejudice to the Defendants. As such, the Application was granted, and the Action was dismissed.

Although the Action was dismissed for delay, the Court also considered the Summary Dismissal Application. The Defendants sought summary dismissal on the basis that the Plaintiff had failed to produce any evidence that the Defendants had published the Letter outside the family law proceedings. The Court agreed, noting the heightened requirement under Rule 13.7(f) for particulars in pleadings in defamation actions, which Jordan failed to comply with. After considering the evidence, the Court granted the Summary Dismissal Application.

H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 428

(MARION J)

Rules 3.43 (How to Make Claim Against Co-Defendant), 3.45 (Form of Third Party Claim), 10.33 (Court Considerations in Making Costs Award) and 13.4 (Variation of Time Periods)

One of the Defendants, Cormode & Dickson Construction Edmonton Ltd. ("Cormode"), applied for permission to file a Third Party Claim against Cascade Mechanical Ltd. ("Cascade"), a non-party, 21 months after the expiry of the 6-month deadline in Rule 3.45(c). The issue on the Application, which Cascade opposed, was whether the Court should extend the deadline to permit Cormode to file the Third Party Claim against Cascade. The Action, generally, was related to the construction of an apartment building in Canmore.

The Court began by noting that when Cormode initially filed its Statement of Defence in July 2021, it also filed a Notice of Claim Against Co-Defendants against fourteen other Defendants, pursuant to Rule 3.43. Justice Marion held that the Court did have discretion to extend the time period pursuant to Rule 13.5(2) and (3), and that the factors the Court must consider are the length of delay, the reason for the delay, and prejudice. This, however, is a non-exhaustive list. After providing a lengthy recitation of the case law, as well as a discussion of pertinent precedents, the Court dismissed Cormode's Application, noting, among other things, that Cormode's asserted explanation for its delay "does not stand up to scrutiny" and that Cormode knew a year before it filed its Statement of Defence "about the need to file a third party claim against Cascade." The Court ordered that if the parties could not agree on Costs of the Application, they must provide written submissions addressing, in part, their position on the factors set out in Rule 10.33.

THOMSON V THOMSON, 2024 ABCA 293

(WATSON, PENTELECHUK AND ANTONIO JJA)

Rule 3.62 (Amending Pleading)

This was an Appeal from an Order where the Appellant challenged a Decision allowing the Respondent to amend his Originating Application. The Respondent cross-appealed the entry of Arbitration Awards as a Judgment. The Appellant argued that the amendments were out of time under section 46(1) of the *Arbitration Act*, RSA 2000, c A-43 and sought dismissal.

The Chambers Judge applied Rule 3.62 to allow amendments to the Pleadings. The Respondent's amendments were made outside the 30-day limit set by section 46(1)(b) and (c) of the *Arbitration Act*. As a result, the Appellant's Appeal was allowed, and the Decision arising from the Respondent's Originating Application was set aside.

The Respondent's Cross-Appeal, arguing that the arbitral Awards should not have been entered as a Judgment under Section 49(3)(b) of the *Arbitration Act*, was dismissed. The Court found no Appeal was pending, and Section 49(3) mandated enforcement of the Arbitration Awards. Costs were awarded to the Appellant.

1285486 ALBERTA LTD V APE PARKOUR INC, 2024 ABKB 406

(MILLSAP J)

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

The Defendants operated a fitness centre on premises leased from the Plaintiff. As a result of the COVID-19 pandemic, public health orders mandated the closure of the fitness centre. The Defendants brought a Third Party Claim against His Majesty the King in Right of Alberta ("HMTK") and Alberta Health Services ("AHS") for financial losses arising from the issuance of the public health orders (the "3P Claim").

HMTK and AHS applied for Summary Dismissal of the 3P Claim and to strike the Action. Both Applications were successful.

Rule 3.68(2)(b) allows the Court to strike a claim where the pleading fails to establish a reasonable basis for the claim. The Court struck the 3P Claim because it did not disclose a cause of action against HMTK or AHS that could withstand scrutiny. While the Defendants were able to establish that the public health orders negatively impacted their business, they failed to explain why or how HMTK or AHS should be liable for that impact.

Having already ruled that the 3P Claim should be struck, the Court nonetheless undertook an analysis of whether the 3P Claim could be summarily dismissed under Rule 7.3(1)(b). There was no evidence of misfeasance or bad faith in the enforcement of the public health orders by AHS and, as such, the 3P Claim was summarily dismissed.

O'CONNOR V SIVACOE ESTATE, 2024 ABKB 420

(APPLICATIONS JUDGE PARK)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 7.2 (Application for Judgment) and 7.3 (Summary Judgment)

The Defendant sought an Order to strike or stay the Action pursuant to Rule 3.68(1). This case involved a company incorporated in the United States ("DDT US"). The Plaintiff claimed ownership of 50% of DDT US shares (the "Shares"), despite a Recission Agreement which rescinded the purchase of shares and stipulated that any disputes be resolved under Washington law (the "Clause"). Despite this, the Plaintiff claimed ownership of the Shares and alleged negligence in a Florida lawsuit (the "Florida Action"). The Defendant asserted the

allegations regarding the Florida Action did not disclose a reasonable cause of Action and the Court lacked jurisdiction over the Shares.

Applications Judge Park outlined that the Court is restricted to the pleadings to assess whether the Statement of Claim discloses a reasonable cause of Action in an Application under Rule 3.68(2)(b), and the submission of evidence for such Applications is prohibited by Rule 3.68(3). Regarding the Florida Action, Applications Judge Park observed that the Defendant improperly relied on the Plaintiffs admissions from cross-examination on Affidavit. Although the Court stated these admissions could be considered in an Application made pursuant to Rule 7.2(1) or 7.3(1)(b). Based on the pleadings, Applications Judge Park could not conclude that the Florida Action failed to disclose a reasonable cause of Action.

Regarding the Shares, the Defendant claimed the Court lacked jurisdiction and sought to strike the claim pursuant to Rule 3.68(2)(a). The Plaintiff contended that filing a Statement of Defence constituted attornment to jurisdiction. Applications Judge Park ruled that filing responsive pleadings is not a prerequisite for an Application under Rule 3.68, and while it may be argued the Defendant attorned by filing pleadings, this does not dictate whether jurisdiction should be exercised.

The Court outlined a two-step test for enforcing a forum selection clause and Stay Applications filed in violation of it. First, the Applicant must establish that the clause is valid, clear, enforceable, and applicable to the cause of Action. If successful, the burden shifts to the Respondent to demonstrate strong reasons against enforcement. Applications Judge Park noted that in a commercial context, sophisticated parties are deemed to have accepted the risks associated with such clauses. The Court determined that the Parties were sophisticated businessmen, there was no power imbalance, and the Rescission Agreement clearly applied to the proceedings.

Applications Judge Park stated that strong reasons can include fraud, lack of jurisdiction, claims outside the parties expectations, inability to ensure a fair trial, or if enforcement contradicts public policy. The Court determined that while the litigation had ties to Alberta, which may be the appropriate forum but for the Clause, these connections were insufficient to override the Clause. The Court ruled the Plaintiff failed to demonstrate strong reasons to not enforce the Clause.

Consequently, the Application to strike the claims related to the Florida Action was dismissed, but the claims related to the Shares were struck.

MAO V TD INSURANCE MELOCHE MONNEX, 2024 ABKB 434

(HO J)

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

The Applicant, TD Insurance Meloch Monnex ("TD"), appealed an Applications Judge's Decision granting Summary Judgment in favour of the Respondents in the amount of $10,000 for replacing the roof on their home ("Decision"). The Court began by noting that the starting point in determining the standard of review of the Decision is Rule 6.14(3)(c) and held that,

where an Appeal is on the record, as it was in the present case, the standard of review is correctness.

The Court noted that one of the preliminary issues that the Applications Judge considered was whether portions of the Plaintiffs' Affidavit evidence ought to be struck pursuant to Rule 3.68(4). However, as this issue was not raised in TD's Notice of Appeal, Ho J. did not consider it.

Ultimately, the Appeal of the Decision was allowed, with the Court holding that, given the factual background, the nature of the relationship between the parties, and the issues to be determined, an Application for Summary Judgment without expert evidence about the standard of care could not succeed.

NORTH V DAVISON, 2024 ABKB 469

(BURNS J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 10.29 (General Rule for Payment of Litigation Costs), 10.31 (Court-Ordered Costs Award), 10.32 (Costs in Class Proceeding) and 10.33 (Court Considerations in Making Costs Award)

In this Decision, the Court decided the appropriate Costs following a successful Application by the E & Y Parties to strike the Davison Parties' Counterclaim and prevent further legal action. The E & Y Parties sought solicitor and client Costs, arguing that the Davison Parties made reckless, unsubstantiated allegations of fraud, which harmed the reputations of the E & Y Parties. The Davison Parties contended that Costs should be awarded based on Schedule C, or, if enhanced, by applying a multiplier of three under Column 5.

The Court acknowledged that a successful party is typically entitled to Costs under Rule 10.29, subject to the Court's discretion under Rule 10.31. In determining the appropriate level of Costs, the Court applied the factors set out in Rules 10.32 and 10.33, and considered the result, complexity, and conduct of the parties. The Court noted that although solicitor and client costs can be awarded for scandalous or outrageous conduct, the allegations made by the Davison Parties, while serious, did not reach the level of reprehensibility required for such an award.

In particular, the Court found that the allegations were made without a sufficient factual basis and were directed at the court-appointed receiver, a reputable accounting firm. The Court considered the lack of evidence underpinning the claims and noted that the allegations appeared to be driven more by animosity toward other Defendants than by any intention to harm the E & Y Parties specifically. Although the Court did not find the conduct egregious enough to warrant solicitor and client Costs, it did determine that an enhanced Costs Award was appropriate due to the baseless nature of the allegations.

Applying a principled approach, the Court awarded Costs under Column 5 of Schedule C, with a multiplier of three, reflecting the seriousness of the unfounded allegations and their impact on the E & Y Parties. Costs were ordered against the Davison parties on a joint and several basis.

RK V GSG, 2024 ABKB 487`

(MAH J)

Rules 3.68 (Court Options to Deal with Significant Deficiencies), 5.11 (Order for Record to be Produced), 5.16 (Undisclosed Records Not to be Used Without Permission), 6.8 (Questioning Witness Before Hearing), 6.16 (Contents of Notice of Appointment), 6.17 (Payment of Allowance), 6.18 (Lawyer's Responsibilities), 6.19 (Interpreter), 6.20 (Form of Questioning and Transcript) and 6.22 (Obtaining Evidence Outside Alberta)

Three Applications were brought in Case Management: (i) by the Defendant to strike certain evidence of the Plaintiff ("Application to Strike"), (ii) by the Plaintiff to compel production of a letter from the Defendant's counsel to Mah J. along with a withheld document ("Application to Compel Production"), and (iii) by the Defendant to compel a refused undertaking by the Plaintiff ("Application to Compel Undertaking").

Application to Strike

The Application to Strike sought to strike three parts of the Plaintiff's evidence: an Affidavit, Third-Party evidence, and an Exhibit to the Plaintiff's Affidavit.

The Court reviewed Rule 3.68, which permits the striking of all or part of an Affidavit that includes frivolous, irrelevant, or improper content. The Court noted that Affidavits should present essential facts without arguments or opinions, leaving conclusions to the Court. Although the Plaintiff's Affidavit included opinions and arguments, the Court chose not to strike any paragraphs at this stage, opting instead to evaluate the relevance of the content at an upcoming Summary Dismissal Application. The Court was cautious about striking evidence before assessing the sufficiency of the record and the existence of genuine trial issues, reserving its judgment for the Summary Dismissal Application.

Regarding the Third-Party evidence, the Defendant attempted to introduce a transcript from a witness, SD, a guarantor like himself, to support his claims. SD's testimony focused on the individuals present during the execution and notarization of the joint guarantee. The Plaintiff argued for its exclusion due to inaccuracies, coercion, and procedural failures. The Court noted that SD's examination occurred without legal counsel and referenced Rule 6.8, which requires notice to all parties and allows for questioning by others.

The Court noted that Rule 6.16(2)(b) directs the service of a Notice of Appointment on each of the other parties. Rule 6.20(1) provides that a person questioned on an Affidavit may also be questioned by any other party during the same Questioning. While the latter rule is permissive, the discretion is to be exercised by the "other party". In this case, the Plaintiff and his counsel were unaware of the examination and could not question SD, undermining the intended operation of the Rules. Additionally, SD's questioning in Halifax raised concerns under Rule 6.22 regarding evidence obtained from outside Alberta. Ultimately, the Court found SD's evidence to have minimal probative value and struck his transcript from the record.

The Court then considered Rule 5.16 to determine whether the Exhibit to the Defendant's Affidavit should be excluded due to nondisclosure in the Affidavit of Records. The Court reviewed the relevant jurisprudence regarding its discretion to admit a record not disclosed in an Affidavit of Records, and noted that Rule

5.16 is premised on the omitting party (now seeking to adduce it) convincing the Court that there is a sufficient reason for the omission. In this instance, however, no justification was provided, nor an Application to introduce the record submitted, resulting in the record being inadmissible as evidence in the Action.

Application to Compel Production

The Application to Compel Production related to production of a letter and the other document that Mah J. previously determined to be irrelevant in an earlier ruling. The Defendant contended that the letter was essential to mitigate a reasonable fear of prejudice. However, Mah J. remarked that the basis for any potential prejudice remains unclear, as he had neither seen nor reviewed the letter.

Justice Mah had already addressed the matter concerning the production of the "other" document, and that ruling was not contested. The Defendant maintained that he could not assess relevance until he had the opportunity to view the document; however, the Court pointed out that allowing access to the document for the Defendant and his counsel would compromise the very privacy that the Plaintiff aimed to protect. Rule 5.11 is designed for inspection by the Court, rather than the opposing party. Consequently, Mah J. dismissed this Application.

The Court did not rule on the Application to Compel Undertaking, as it had become irrelevant following the prior findings.

GEOPHYSICAL SERVICE INCORPORATED V CANADIAN NATURAL RESOURCES LIMITED, 2024 ABKB 491

(PRICE J)

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

The Plaintiff in this Action commenced multiple Actions against the same Defendant. In 2018, the Alberta Court of King's Bench granted a Consent Order dismissing the Plaintiff's claim against the Defendant (the "Old Action"). In 2020, the Plaintiffs filed a new Statement of Claim against the Defendant (the "New Action"). This Decision dealt with an Application by the Defendant to strike the New Action, pursuant to Rule 3.68(2), or alternatively to summarily dismiss the New Action, pursuant to Rule 7.3. The Plaintiffs brought a Cross-Application for Summary Judgment, alleging that the Defendants had no defence.

In addressing both Applications, the Court acknowledged that the question before it was whether, based on the record, it could resolve the dispute fairly on a summary basis in favour of either the Plaintiff or the Defendant. Justice Price conducted a review of the extensive record. There was little argument by the Defendant in its Brief regarding Rule 3.68(2)(e), other than a brief mention that the Plaintiff's claim relied on events that took place more than ten years prior and that it repeated allegations that were dismissed by consent. The Plaintiff's Brief spoke to this issue in greater detail, alleging that they entered the Consent Dismissal based on fraudulent Affidavit evidence filed in the Old Action by the Defendant. The Court agreed that a Consent Judgment could be set aside if it was obtained by fraud. Although it was not clear if the Defendant sought Summary Dismissal based on Rule 3.68(2)(e), the Court found that it would not be appropriate to dismiss its claim

under this subsection of the Rule because it did not find a procedural irregularity.

The Court found that the alleged fraudulent Affidavit evidence filed in the Old Action was given in error and the affiants were simply mistaken, but that it was not *ipso facto* fraudulent. Therefore, the Court declined to set aside the Consent Dismissal. Despite finding there was no fraud, the Court did not find it appropriate to strike the New Action pursuant to Rule 3.68 that it was hopeless or an abuse of process because contrary to Rule 3.68(3), it was necessary to review and consider a variety of evidence contained in the record to determine whether the Defendants committed fraud in the Old Action. Therefore, striking the New Action under Rule 3.68 would be in contravention of Rule 3.68(3).

The Court found, however, that the New Action was filed after the expiration of the 10-year limitation period. Given that the Court determined that there was no fraud and that the limitation period expired, the Court found that the Defendant established there was no merit to the Plaintiff's Claims in the New Action. Consequently, the Court granted the Defendant's Application for Summary Dismissal pursuant to Rule 7.3. The Plaintiff's Counter-Application for Summary Judgment was dismissed.

TUHARSKY V O'CHIESE FIRST NATION, 2024 ABKB 511

(SILVER J)

Rule 3.68 (Court Options to Deal with Significant Deficiencies)

The Defendants applied to strike the Amended Statement of Claim under Rule 3.68, arguing that the Claim was defeated by the defamation doctrine of absolute privilege. The Claim was struck by an Applications Judge. The Plaintiff appealed this decision (the "Appeal"). Justice Silver allowed the Appeal and set aside the Applications Judge's Order.

The Court applied the test for striking a claim under Rule 3.68(2)(b) if pleadings disclose no reasonable claim (the "Test"), and found that the Claim disclosed an arguable cause of action because it was not "plain and obvious" that the doctrine of absolute privilege attached to the allegations in the Claim.

Citing *R v Imperial Tobacco Canada Ltd,* 2011 SCC 42, Silver J. commented that striking a claim is an extraordinary remedy that circumvents the Trial process. The purpose of Rule 3.68(2)(b) is to dispose of those claims that have no reasonable chance of success. It is a form of early intervention to ensure the just and proper use of Court resources by "weeding out" "hopeless" claims. Justice Silver further noted that, because of the finality of striking a claim, the Court should not do so unless it is plain and obvious that there is no reasonable basis for the claim. To do otherwise would be unjust.

Justice Silver stated that in applying the Test, the Court must accept the allegations in the claim as true. It must also "err on the side of generosity" to permit novel arguments or evolving areas of law to proceed. The Court is not deciding the final merits of the defamatory Action. Rather, it is deciding whether on its face the Claim is arguable and should therefore proceed.

QUESTOR TECHNOLOGY INC V STAGG, 2024 ABKB 377

(JEFFREY J)

Rules 3.72 (Consolidation or Separation of Claims and Actions), 4.14 (Authority of Case Management Judge), 5.27 (Continuing Duty to Disclose) and 10.52 (Declaration of Civil Contempt)

Justice Jeffrey considered whether the test for civil Contempt should be more stringent when the alleged contempt involves lying under oath during litigation, compared to civil Contempt for breaching a Court Order.

The case stemmed from Questor Technology Inc.'s allegations that the Respondents knowingly provided false evidence, withheld information, and misled both Questor and the Court during litigation.

Justice Jeffrey noted that the Action was under case management by another Justice. According to Rule 4.14(2), all interlocutory Applications in a case under case management should be heard by the Case Management Justice. However, due to a Court oversight, this Application was mistakenly reassigned to Justice Jeffrey. Upon realizing the mistake, the Case Management Justice allowed the Application to proceed before Justice Jeffrey, and the Parties did not object.

Justice Jeffrey also considered whether to consolidate the Contempt Application with the Trial, as per Rule 3.72. However, after careful consideration and because all parties opposed consolidation, Justice Jeffrey decided against consolidating the contempt Application with the Trial.

The Court clarified that civil Contempt does not necessitate proof of contumacious intent

(i.e., intent to deceive or mislead). Instead, it requires only that the act or omission constituting contempt be intentional. The Court emphasized that civil Contempt and perjury are distinct legal concepts, and conflating the two would unduly elevate the standard of proof for civil Contempt involving false statements under oath.

The Court also highlighted that the absence of a reasonable excuse is a critical consideration in civil Contempt cases, as specified in Rule 10.52(3)(a), placing the burden on the moving party to prove such absence. Furthermore, the Court noted that while civil Contempt does not require proof of intent to deceive, such intent, if proven, might influence the severity of the penalty.

The Court found that the Respondents' actions did not align with the purpose of Rule 5.27. The errors were known at the time they were made, and the corrections were motivated by

self-interest rather than a genuine effort to comply with the Rules. Consequently, the Court concluded that the Respondents' conduct constituted civil Contempt.

DUNLOP V CARPENTERS' REGIONAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, 2024 ABKB 496

(LEMA J)

Rules 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings) and 6.3 (Applications Generally)

This was an Injunction Application by a Pension Trust (the "Trust") seeking to stay union-discipline trials against three union members pending the outcome of a Court proceeding concerning trust amendments and compensation paid to trustees. The Trust argued that the Court was the proper venue to resolve these issues, asserting the legality of the amendments and compensation. However, the Union maintained that the disciplinary trials involved different legal and factual matters, and the Trust lacked standing.

The Court found that the Trust had no procedural foundation for its Application under Rules 6.3 and 3.74, as it failed to file a Statement of Claim or become a party to the existing Originating Application. The Court noted that Rule 6.3(2)(a) mandates that only parties to an Action may bring Applications, and the Trust did not meet the requirements under Rule 3.74. The Court also found no valid argument that the disciplinary proceedings should be stayed due to the compensation litigation, as the Trust failed to demonstrate any material stake or potential harm from the removal of the union trustees. As a result, the Court dismissed the Application and awarded full-indemnity costs to the Union.

CHRYSANTHOUS V APEGA APPEAL BOARD, 2024 ABCA 242

(DE WIT JA)

Rules 3.74 (Adding, Removing or Substituting Parties After Close of Pleadings) and 14.57 (Adding, Removing or Substituting Parties to An Appeal)

The APEGA Investigative Committee applied to be added as an additional Respondent to the Appeal. The Appellant opposed the Application on the basis that the APEGA Investigative Committee lacked standing. Appeal Justice de Wit granted the Application.

The Court of Appeal has the power to function as an Appeal Court by virtue of section 70 of the *Engineering and Geoscience Professions Act,* RSA 2000, c E-11, and can also control its own process and therefore add, remove, or substitute parties as it deems fit. For example, Rule 14.57 enables the Court of Appeal to add parties to Appeals in accordance with Rule 3.74. Under Rule 3.74(2)(b), an Applicant can apply for an Order to add any other person to an Action. Therefore, the APEGA Investigative Committee had standing to make the Application to be added as a Respondent. Its inclusion as a party would provide a "full adversarial context" for the Appeal and would "further the interests of justice".

MOMAN V BRADLEY, 2024 ABKB 416

(FEASBY J)

Rules 4.1 (Responsibility of Parties to Manage Litigation), 4.6 (Settling Disputes About Complex Case Litigation Plans) and 4.31 (Applications to Deal with Delay)

Justice Feasby required the parties to provide the Court with a litigation plan pursuant to Rule 4.33(3) to address the procedural delays and ensure the timely progression of the case.

The Court adopted an approach similar to a "final offer arbitration" ("FOA") to determine the appropriate litigation plan. The Court noted that this method encourages parties to bargain in good faith and propose reasonable plans, as extreme positions are unlikely to be accepted.

Justice Feasby emphasized that Rule 4.1 places the primary responsibility on the parties to manage their dispute and plan its resolution in a timely and cost-effective manner. Justice Feasby followed that while FOA is effective for straightforward procedural disputes, Rule 4.6 allows for flexibility in more complex cases. In such instances, the Court may need to make separate decisions on individual components of a litigation plan rather than simply choosing between two proposals.

Justice Feasby preferred the Plaintiffs' litigation plan because it provided specific calendar dates for all relevant pre-Trial steps, which was crucial given the delays that had already occurred in the case. The fixed deadlines in the Plaintiffs' plan offered certainty to the parties and facilitated easy enforcement by the Court, aligning with the principles of Rule 4.1, which emphasizes timely and cost-effective resolution of disputes.

The Plaintiffs' plan also included a timeline for hearing a previously filed partial Summary Judgment Application without allowing it or any other Application to obstruct the goal of having the case ready for Trial within one year. This approach was consistent with Justice Feasby's direction to expedite the litigation process and avoid unnecessary delays.

In contrast, the Defendants' litigation plan relied heavily on waiting for the resolution of an Appeal and a Rule 4.31 Application for dismissal due to inexcusable delay before proceeding with any pre-Trial steps. Justice Feasby found this approach unacceptable, as it would likely delay the Trial readiness far beyond the one-year deadline he had set. Additionally, the Defendants' plan left much of the scheduling in the hands of the Case Management Judge, which could lead to further delays given the current strain on Court resources.

Justice Feasby ultimately chose the Plaintiffs' litigation plan, emphasizing that the parties must take the deadlines outlined in the plan seriously. He cautioned that there would be consequences for any failure to adhere to these deadlines, underscoring the importance of maintaining the pace of litigation as directed by the Court.

PARKS V 1509856 ALBERTA LTD, 2024 ABKB 376

(HOLLINS J)

Rules 4.14 (Authority of Case Management Judge) and 5.4 (Appointment of Corporate Representatives)

The Applicant sought an Order appointing an individual ("Ruggieri") as the corporate representative of one of the Defendants and Third Parties ("150 Ltd."). The Application was allowed and Ruggieri was appointed as the corporate representative of 150 Ltd.

Hollins J. noted that there was no designated corporate representative for 150 Ltd., which must be remedied so that the discovery process could be completed and that Ruggieri's evidence could be adopted, rejected, or clarified by 150 Ltd. for use at Trial.

Hollins J., citing the following Rules, appointed Ruggieri as the corporate representative for 150 Ltd.:

Rule 5.4(1), which requires corporate Defendants to appoint a corporate representative.

Rule 5.4(5), which provides that if the corporation fails to do so, the Court may appoint the representative.

Rule 4.14(1)(f), which enables a Case Management Justice to make any procedural Order they consider necessary; and pursuant to Rule 4.14(1)(c), such power includes an Order to facilitate Questioning.

BAINS V ADAM, 2024 ABCA 271

(STREKAF JA)

Rules 4.15 (Case Management Judge Presiding at Streamlined Trial and Trial), 14.5 (Appeals Only with Permission), 14.9 (Appeals from Several Decisions) and 14.48 (Stay Pending Appeal)

The self-represented Applicant sought permission to Appeal an Order from the Trial Judge that dismissed the Applicant's three Actions for damages against the Respondents. The Actions were for damages arising from separate motor vehicle accidents. The Respondents admitted liability and as a result, the Trial was to determine damages. The Trial Judge determined that the Applicant was not entitled to any damages and dismissed the claims.

The Applicant was subject to an Interim Court Access Restriction Order that was pending on a Decision from an Application for a Vexatious Litigant Order. Strekaf J., following Rule 14.5(1)(j), was satisfied that due to the presence of the Interim Court Access Restriction Order, the Applicant was required to obtain permission to appeal the Trial Decision. Justice Strekaf clarified that if an individual is subject to a Vexatious Litigant Order, they are considered a

vexatious litigant under Rule 14.5(1)(j).

The Court followed the criteria set out in *Tican and Thompson v Procrane Inc (Sterling Crane),* 2016 ABCA 71 to determine whether to grant permission to Appeal: The Applicant must demonstrate an important question of law, a reasonable likelihood of success, and that the Appeal will not cause undue delays or prejudice. As a result, Strekaf J. granted the Applicant permission to Appeal the Trial Judge's Decision.

The Applicant alleged that the Trial Judge breached Rule 4.15. However, the Court determined the circumstances did not give rise to a breach of Rule 4.15 because the Trial Judge would not become the Case Management Judge until after the damages trial. This Ground of Appeal was held to be without merit and permission to Appeal on these grounds was not granted.

The Applicant also sought a Stay of the Trial Judge's Costs Order pending the resolution of the Appeal. The Respondents argued that Strekaf J. did not have jurisdiction to grant a Stay of the Costs Order because the Applicant did not apply to Appeal the Costs Order and the Appeal period expired. Justice Strekaf was satisfied pursuant to Rule 14.9(b) that the requirement that separate Notices of Appeal must be filed for each Decision that is appealed does not apply to a decision on Costs for the same Hearing and that the Applicant still had the option to bring an Application to Amend the Notice of Appeal to include an Appeal of the Costs Judgment.

The Court noted that when a Stay is sought pending Appeal pursuant to Rule 14.48, the tripartite test from *RJR-MacDonald Inc v Canada (Attorney General),* [1994] 1 SCR 311 applies: (1) Is there a serious question to be tried as opposed to a frivolous and vexatious one?; (2) Would the Applicant suffer irreparable harm if the stay is refused?; and (3) If the stay is refused, will the Applicant suffer greater harm than the respondent would suffer if the stay were granted?

Justice Strekaf was satisfied that it would not be appropriate to grant a Stay in this case because there was a lack of established irreparable harm from denying the Stay and the balance of convenience did not weigh in favour of granting one. The Application for a Stay of the Costs Order pending Appeal was dismissed.

ABOU SHAABAN V BALJAK, 2024 ABCA 282

(FRIESEN JA)

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

The Applicants applied for Security for Costs of this Appeal pursuant to Rules 14.67 and 4.22. In the underlying Action, the Respondent/Plaintiffs alleged that the Applicants breached, among other things, a non-disclosure agreement and interfered with economic relations related to the development of new technologies in alternative energy. In 2022, an Applications Judge dismissed the Respondent's Action against all Defendants (including the Applicants) for long delay under Rule 4.33.

Appeal Justice Friesen began by noting that a Security for Costs Order is discretionary and must balance the reasonable expectations and rights of the parties to achieve a just and reasonable outcome. Like here, a single Appeal Judge may award Security for Costs in accor-

dance with rules 14.67(1) and 4.22. Rule 14.67 permits a single Appeal Judge to order a party to provide Security for Costs pursuant to Part 4, Division 4 of the Rules. Rule 4.22 provides that the Court may order a party to provide Security for Costs if the Court considers it just and reasonable to do so, taking into account a number of factors enumerated within that Rule.

Appeal Justice Friesen found that there was evidence that the Respondents had not paid costs awarded to the Applicants and owed large sums of money to other parties which had not yet been paid. The individual Respondent's Affidavit attesting to assets in Alberta did not provide details of those assets and did not address whether there were any assets of the corporate Respondent. Further, the Respondents had done little to explain the merits of their Appeal. Finally, the Respondents claimed that their ability to carry on with the Appeal will be prejudiced if they have to give security for payment of a costs award; however, they failed to elaborate on that assertion in Affidavit evidence or otherwise.

Relying on previous decisions of the Court, Friesen J.A. found that the "failure to pay costs awarded following trial court process, combined with a demonstrated inability to pay costs should an appeal be unsuccessful is, in most cases, good reason to grant a security for costs order" and that "concerns regarding a party's ability to pay costs coupled with modest prospects of an appeal's success have also been sufficient to justify granting an application for security for costs". In considering these factors, Friesen J.A. was satisfied that it was appropriate to grant an Order for Security for Costs in favour of the Applicants.

RICHARDSON V SCHAFER, 2024 ABKB 379

(EAMON J)

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

The Plaintiff initiated three separate Actions against various Defendants following injuries claimed from motor vehicle accidents occurring on different dates. The Actions were processed separately but were collectively addressed in a Joint Application to strike the Actions due to procedural issues. The Plaintiff did not respond to the Applications or participate further beyond Pre-Trial Questioning. On December 19, 2023, Justice Eamon found that service of the Joint Application was good and sufficient, struck out the Plaintiffs claims in the three Actions, ordered that each Defendant was entitled to Costs, and set out the process for quantifying the costs ("Endorsement 1"). Justice Eamon went on to find that Endorsement 1, the Formal Order dated December 19, 2023, and respective Costs submissions and supporting documentation were served in accordance with the Rules.

The Court therefore turned its attention to determining Costs and concluded that the portion of their lawyer's fees, plus their reasonable third-party disbursements and "other charges" under Rules 10.29 and 10.31(1)(a). In calculating the amount of the fees awarded to a litigant under Rule 10.31(1)(a), the most common methods are to award a percentage of their reasonable solicitor-client accounts

or to award an amount calculated under the non-binding tariff in Schedule C to the Rules. The Court determined that Schedule C was appropriate for quantifying Costs, because (1) the Actions were relatively routine in the sense that the underlying allegations were not complex and the Actions were in their early stages, and (2) the Defendants should not be forced to disclose their privileged legal bills to the Plaintiff or be forced to undergo the expense and delay of assessing their accounts, in view of the Plaintiff's misconduct and abuse of process.

Further, the Court found that Column 4 was the appropriate column based on the amount claimed in the Statement of Claim. The Court found that the Defendant Schafer was entitled under Rule 4.29 to double schedule C Costs for steps taken after service of the Formal Offer, as the settlement offer complied with the formal requirements of Rule 4.24, and the Court did not find any special circumstances or Orders that would negate the application of the Rule, pursuant to Rule 4.29(4)(e)).

The Defendant Schafer also claimed for full Costs of the Joint Application. The Court noted that in some cases, each set of Applicants in a Joint Application should not receive full Costs because counsel for some of them take the lead and counsel for others expend less effort. However, the Court concluded that the Defendant Schafer had to incur legal costs to obtain dismissal of an Action that had become abusive, and that the Court had discretion to award enhanced Costs for steps of the Action taken to address litigation misconduct, pursuant to Rule 10.33(2), such as abuse of process. Further, the Plaintiff had not opposed the Costs Application or suggested that the three law firms did not expend approximately equal amounts of effort for their respective clients. Therefore, it was appropriate to award full Costs of the Application to each of the three groups of Defendants.

DOERKSEN ESTATE (RE), 2024 ABCA 262

(KHULLAR, DE WIT AND GROSSE JJA)

Rules 4.24 (Formal Offers to Settle) and 4.29 (Costs Consequences of Formal Offer to Settle)

This Costs Decision arose from the dismissal of the Appeal in *Doerksen Estate (Re),* 2024 ABCA 129. The Appellant, a residual beneficiary of her mother's Estate, opposed the approval of the Estate's accounts and assets distribution. The Appellant was ordered to pay costs of $2,500 by the Chambers Judge who approved the Estate's accounts.

The Respondents sought double Schedule C costs based on an informal Calderbank Offer they had made before the Appeal. The Appellant did not accept or reject the Offer. The Court of Appeal found that while the Offer did not comply with the formal requirements of Rule 4.24, it was a genuine Calderbank Offer and open for acceptance for a reasonable time. If accepted, the Offer would have left the Appellant $5,000 better off compared to the Appeal's outcome.

The Court of Appeal noted that since the Offer did not comply with Rule 4.24, it was not bound to double the costs under Rule 4.29 for steps taken by the Respondents after the Offer was served. However, the Court exercised its discretion and awarded enhanced costs. The Respondents received $8,075 in Appeal Costs, plus disbursements and GST, and an additional $500 for the Costs Application.

CAMACHO V LACROIX, 2024 ABKB 179

(DEVLIN J)

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

The Plaintiff was involved in a rear-end motor vehicle collision in March 2009, resulting in a whiplash injury and chronic pain. The Plaintiff was awarded $471,298 after a two-week Trial. The Plaintiff sought costs of $233,300, disbursements of $160,533 and pre-judgment interest of $47,966.

The Plaintiff did not disclose a Bill of Costs but calculated their baseline Schedule C costs at $116,650. The Plaintiff then proposed a further doubling of this amount as an "inflation adjustment", resulting in the proposed total of $233,300. This further enhancement was premised on the Schedule C tariff being out-dated and inadequate, and on previous Alberta jurisprudence.

The Court noted that in making a Costs Award, it must consider the factors in Rule 10.33. Further, the Court noted that the Plaintiff's award for damages bested a formal offer made by the Defendant in May 2021, activating their entitlement to double costs pursuant to Rule 4.29(1). The Court also considered second counsel costs, noting that the key to assessing second counsel fees lies in a Trial Judge's discretion to assess the value added by junior counsel, being cases where: (i) second counsel was clearly a luxury and not required by the nature of the proceeding; (ii) second counsel was obviously justified; and (iii) the assistance of second counsel was valuable but not essential.

In making its Costs Award, the Court noted that the costs sought by the Plaintiff were excessive. The Court found that the "double doubling" sought by the Plaintiff would produce over-indemnification. Moreover, the claimed costs and disbursements would total nearly $400,000 in connection with an award of $470,000, which seemed disproportionate. The Court added a discretionary amount for second counsel, stating that while their presence was not strictly necessary, both sides thought it appropriate to have two counsel, and it was readily apparent to the Court that in observing the conduct of the Trial, second counsel added value on both sides.

The Plaintiff was therefore awarded costs of $111,800.

SEGOVIA V MCCARRICK, 2024 ABKB 431

(HALL J)

Rules 4.31 (Application to Deal with Delay)

The Defendant applied to dismiss the Plaintiff's personal injury Action for long delay under Rule 4.31. This Action was initiated on March 15, 2013, stemming from a motor vehicle accident that occurred on April 18, 2011. The matter was complicated by the fact that, since the subject

accident, the Plaintiff had been involved in four subsequent automobile accidents, three of which had been litigated.

The Court reviewed Rule 4.31 and acknowledged that, while the delay was considerable, it was not inexcusable. The primary reason for the delay was the subsequent accidents and the related litigation, indicating that neither the Plaintiff nor the Defendants are solely responsible for the delay. The Defendants contended that the delay has resulted in significant prejudice due to fading witness memories and the loss of medical records. However, the Court determined that the pertinent medical records and notes were eventually provided, even if late, and had not been lost, negating any claims of prejudice from their delayed submission. Justice Hall ultimately dismissed the Application for these reasons.

WHALEN V CALLIHOO, 2050787 ALBERTA LTD, KREUTZER, KREUTZER AND BATES, 2024 ABKB 402

(APPLICATIONS JUDGE PARK)

Rule 4.33 (Dismissal for Long Delay)

This Decision concerned an Application by the Defendants to dismiss an Action for long delay pursuant to Rule 4.33. The Plaintiff, Samantha Whalen, was an elected councillor of the Fort McMurray 458 First Nation ("FMFN"). The Defendant, Bradley Callihoo, was FMFN's Chief Executive Officer, while certain other individual Defendants were elected FMFN councillors. The corporate Defendant was a numbered company incorporated and controlled by Mr. Callihoo.

In the underlying Action, Ms. Whalen claimed that following her election in June 2018, she uncovered financial irregularities in respect of FMFM. Specifically, Ms. Whalen, through a Statement of Claim filed on August 23, 2018, argued that she discovered, among other things, that Mr. Callihoo received a payment of $600,000 in relation to a settlement received by FMFN.

Ms. Whalen first attempted to characterize the underlying Action as part of a larger "governance dispute" with FMFN, which, she argued, led to other litigation that had the effect of advancing the present Action; namely, there was a quasi-related injunction Action and Judicial Review proceedings. The Court, through Application Judge Park, noted that in certain circumstances, an advance in one Action can constitute a significant advance in a different Action for purposes of a 4.33 Application. While the Court agreed with Ms. Whalen that there was some "underlying commonality" among the proceedings, it was a stretch to characterize them as being "inextricably linked".

Turning to settlement discussions that had ensued between the parties in 2019 and early 2020, the Court found "numerous meetings" were held and there were "many, many conversations about settling". Settlement discussions, in and of themselves, do not generally constitute a significant advance in an Action. However, settlement discussions that have the effect of narrowing the issues in dispute may be viewed as a "significant advance" for the purposes of Rule 4.33.

At the outset of the litigation, one of the primary points of contention, in addition to the alleged FMFN settlement payment to Mr. Callihoo, had to do with the payment to the

parties of various Christmas bonuses. Ms. Whalen contended that these bonuses, which amounted to hundreds of thousands of dollars in the aggregate, were paid out unlawfully. The Christmas bonuses were among the issues considered by the parties during their settlement discussions. Although the negotiations did not result in the conclusion of the proceedings, the evidence pointed to the parties' positions becoming more "congruent" as settlement discussions progressed, and thereby resulted "in a narrowing of the issues in dispute". In light of the foregoing, Applications Judge Park found that the settlement discussions engaged in by the parties significantly advanced the Action. The Defendants' Application was dismissed.

DANIS-SIM V SIM, 2024 ABCA 297

(ROWBOTHAM, KIRKER AND FAGNAN JJA)

Rule 4.33 (Dismissal for Long Delay)

In June 2017, the Respondent filed an Application to confirm that she owed no child support arrears after the Appellant registered a Divorce Judgment and Corollary Relief Order declaring arrears were owing (the 2017 Application). In August 2017, an Interim Order was granted providing some relief. Neither party sought further Court assistance until May 2022, when the Appellant applied to dismiss the 2017 Application for long delay under Rule 4.33 (the "4.33 Application").

The Chambers Judge refused to dismiss the 2017 Application (the "Decision"), suggesting Alberta courts had chosen not to apply Rule 4.33 where the Respondent could file a new Claim under the *Divorce Act*. The Appellant appealed the Decision. The Appeal was dismissed.

The Court found that the Chambers Judge erred in her interpretation of Rule 4.33. Pursuant to Rule 12.34, Rule 4.33 does apply in the family law context. The Court further found that the Chambers Judge erred in suggesting that Judges have discretion to disregard Rule 4.33 in the absence of an applicable limitation period. While the absence of an applicable limitation period may be considered under Rule 4.31, which affords the Court discretion to dismiss all or any part of a claim if there is delay that has resulted in significant prejudice to a party, the plain language of Rule 4.33 affords Judges no such discretion.

However, having concluded that Rule 4.33 is designed to dismiss Actions, not Applications within an Action, and cannot be used to reverse an existing Order, the Court held that the Decision to dismiss the Rule 4.33 Application was correct, and that the 2017 Application should proceed for final determination.

DOW CHEMICAL CANADA ULC V NOVA CHEMICALS CORPORATION, 2024 ABKB 442

(ROMAINE J)

Rules 5.1 (Purpose of This Part), 5.2 (When Something is Relevant or Material), 5.3 (Modification or Waiver of This Part), 5.11 (Order for Record to be Produced), 5.17 (People Who May be Questioned) and 5.37 (Questioning Experts Before Trial)

This was an Application addressing procedural issues in the ongoing "Second Remand" hearing between Dow Chemical Canada ULC ("Dow") and NOVA Chemicals Corporation ("NOVA"). NOVA sought various forms of relief, including the production of specific records from Dow, the appointment of a Dow corporate representative for questioning, pre-trial questioning of Dow's experts, and an adjustment of the hearing schedule to accommodate these requests. The Court ultimately dismissed NOVA's Application.

In view of Rules 5.1 and 5.2, the Court analyzed whether the documents sought by NOVA were essential to resolving the issues at the "Second Remand" hearing and if the result would significantly help determine one or more of the issues in the Pleadings. The Court recognized its discretion under Rule 5.3 to modify or waive disclosure obligations when strict compliance would be disproportionately burdensome. However, the Court found that NOVA had not demonstrated sufficient justification for such relief, particularly given the broad nature of the request, the alleged prejudice, and the potential confidentiality concerns.

Applying Rule 5.11, Justice Romaine concluded that NOVA had not met the threshold required to compel production, as the requested documents were not sufficiently relevant to the specific issues being litigated. Additionally, NOVA sought to question a Dow corporate representative under Rule 5.17(b)(ii), but the Court denied this request, finding that the relevance and materiality thresholds had not been met. The Court emphasized that the litigation had already involved extensive pre-trial discovery and additional questioning would not significantly aid in resolving the issues.

Lastly, the Court considered NOVA's request for pre-hearing questioning of Dow's experts under Rule 5.37. Justice Romaine declined to order such questioning, noting that it was not likely to narrow the issues or promote resolution, and the circumstances did not warrant the exceptional measure.

In summary, Romaine J. found that the documents and questioning requested by NOVA did not meet the standards of relevance and materiality required for the "Second Remand" hearing, and NOVA's Application was accordingly dismissed.

SIMPSON V PAWLOWSKI, 2024 ABCA 254

(ANTONIO, DE WIT AND FETH JJA)

Rules 5.32 (When Information May be Used), 5.33 (Confidentiality and Use of Information), 6.28 (Application of This Division), 6.36 (No Publication Pending Application) and 14.88 (Cost Awards)

This is an Appeal of the Decision of the Chambers Judge declining to hold the Respondents and their lawyer in Civil Contempt for allegedly breaching the "implied undertaking of confidentiality" outlined in Rule 5.33. The Applicant contended that the breach occurred when the Respondents used an email disclosed during discovery in a previous Action (the "First Action"), as evidence in the current Action. Additionally, the Applicant claimed the Chambers Judge erred in finding that the Undertaking was not applicable and that the Respondents could unilaterally waive confidentiality by filing the email in Court. The Respondents argued that no breach occurred since the email became part of the public record when it was filed in the First Action, and that their conduct did not constitute Contempt of Court.

The Court cited Rule 5.33, which codifies the common law principle that information obtained through discovery cannot be used for purposes beyond the scope of the Action. Citing the Decision in *Lac d'Amiante du Québec Ltée v 2858 Québec Inc,* 2001 SCC 51, the Court noted that confidentiality does not extend to information that is publicly accessible, including filed Affidavits and cross-examinations. Further, the Court concluded that confidentiality concerns could be addressed through alternative measures, such as a restricted Court Access Order under Rule 6.28 or 6.36.

The Court rejected the Applicants assertion that the public record exception only applies when records are produced at Trial, or attached to an Affidavit filed by the party who disclosed them in the litigation. The Court determined that the implied undertaking of confidentially does not apply to documents that are properly entered into the public record, including those filed in Chambers Applications. Additionally, the Court disagreed with the Applicants assertion that the public record exception is limited to records produced under Part 6 of the Rules, noting that Rules 5.32 and 5.33 frame the undertaking as applicable to Division 1 of Part 5. Thus, the Court affirmed that the public record exception was valid, pursuant to Rule 5.33(1)(c).

Ultimately, the Court concluded that no breach of the Undertaking occurred, and the Chambers Judge was correct in finding no basis for civil contempt. In the result, the Court dismissed the Appeal.

The Court considered the proper Costs to be awarded to the Respondent. It stated that, pursuant to Rule 14.88(1), the successful party to an Appeal is entitled to Costs, but where an Appeal reflects a pattern of excessive litigation, enhanced Costs may be warranted. The Court found the Appeal did not respect the foundational principles found in Part 1 of the Rules and, as a result, determined that enhanced Costs of $5,000 were appropriate in the circumstances.

GIESBRECHT V PRPICK, 2024 ABKB 433

(DEVLIN J)

Rules 5.33 (Confidentiality and Use of Information), 10.29 (General Rule for Payment of Litigation Costs) and 10.33 (Court Considerations in Making Costs Award)

The Plaintiffs sued the Defendant for defamation and achieved substantial success following an extended Trial, notwithstanding the exclusion of an email (the "BMO Email") from the Trial, which had a negligible effect on the damages awarded. Each Plaintiff received $40,000 in general and aggravated damages.

The Plaintiffs sought to have a 2.5 times multiplier applied to the Tariffs in Column 2 of Schedule C of the Rules, arguing it was necessary to prevent the damages from being rendered nugatory in light of the disproportionately high legal costs incurred. The Defendant contended that the Plaintiffs should be disentitled to Costs as they were "wholly unsuccessful" in the Action. Devlin J. dismissed this argument from the Defendant.

The Defendant further accused the Plaintiffs of litigation misconduct by asserting a claim that partially relied on the BMO Email, which was excluded pursuant to Rule 5.33. During the Trial, Justice Devlin ruled that admitting the BMO Email would undermine Rule 5.33's objective to maintain evidentiary transparency while safeguarding confidentiality. Devlin J. clarified that although the BMO Email was not admissible, the Plaintiffs' approach did not constitute misconduct, and this aspect of the case required minimal Court time.

The Court indicated that the Plaintiffs were entitled to Costs of the Action in principle, emphasizing that any Costs awarded must be reasonable and proper, considering factors such as the Parties' litigation conduct as per Rule 10.33. Devlin J. highlighted that the Plaintiffs presented their case over three and a half days, whereas the Defendants' presentation spanned over eight days. While acknowledging the Defendants' proper and professional conduct as a self-represented party, and the absence of misconduct, Justice Devlin found the defence was meritless and lacked rational connection, which needlessly prolonged the Trial.

The Court concluded that enhanced Costs were necessary to address the unfair burden placed on the Plaintiffs due to the Defendants actions that unnecessarily extended the Trial proceedings. However, Devlin J. determined that full indemnity costs were not warranted, noting that, while the Defendants conduct was frustrating, it did not exhibit the kind of behavior that would justify such Costs. Consequently, Devlin J. determined that applying a two-times multiplier of Column 2 was appropriate in the circumstances, reflecting the need for proportionality given the intricate and intense nature of the issues litigated.

As a result, the Court granted Costs to the Plaintiffs with the multiplier, in addition to disbursements and other recoverable charges, for a total award of $98,714.97. Acknowledging the substantial impact of the award on an individual in the Defendants position, Devlin J. remarked that dedicating weeks of Court time to pursue unsubstantiated allegations against upstanding, hard-working community members carries repercussions.

ANDERSON V ALBERTA, 2024 ABKB 405

(JERKE J)

Rule 6.32 (Notice to Media)

The Applicant, Beaver Lake Cree Nation ("Beaver Lake") requested a sealing Order and a process for managing the sealed records, for the supporting documents to the Application (the "Restricted Court Access Application"). Jerke J. noted that while the supporting documents were not privileged, they contained confidential information shared among Beaver Lake members, crucial to their personal exercise of treaty rights. The Respondents consented to Beaver Lake's requested Order, and the parties agreed that the Order would be temporary and subject to review before the Trial.

In accordance with Rule 6.32, notice was provided to the media regarding the Restricted Court Access Application, but no media representatives attended the Application. Jerke J. emphasized that, despite all parties agreeing to the terms of the Order, the public interest in maintaining open Court proceedings must be considered. Consequently, any Application for restricted Court access must weigh the arguments and evidence presented by the parties alongside the fundamental right to Court openness.

Jerke J. outlined the criteria for limiting Court openness established in *Sherman Estate v Donovan,* 2021 SCC 25, requiring the Applicant to satisfy three conditions. First, the Applicant must demonstrate that Court openness poses a serious risk to an important public interest. Second, the proposed Order must be necessary to mitigate that risk, as reasonable alternative measures would not suffice. Lastly, there must be a proportionality assessment, showing that the benefits of the Order outweigh any negative impacts.

Jerke J. concluded that protecting confidential information is vital to avoid harm to the reconciliation process, which is essential for the integrity and dignity of Beaver Lake and Indigenous cultures. Furthermore, it was determined that maintaining Court openness would significantly jeopardize the public interest in fostering reconciliation and hinder meaningful consultation efforts. Finally, Jerke J. found that the proposed sealing Order, covering a limited number of documents for a specified duration and subject to future review, adequately served the public interest.

Recognizing that the benefits of safeguarding the spirit of reconciliation outweighed the drawbacks of limiting Court openness, Jerke J. granted the Application to seal the supporting documents until the Trial or until further Order of the Court.

SPARTAN DELTA CORP V ORPHAN WELL ASSOCIATION, 2024 ABKB 555

(HOLLINS J)

Rule 6.49 (Application for Replevin Order)

The Plaintiff applied for Replevin pursuant to Rule 6.49. The Plaintiff claimed that it owned a specialized compressor that was taken by the Defendant and sold to a third party. The Defendant contended that it had statutory authority to possess and sell the compressor.

The Court held that a party applying for a Replevin Order for return of property must establish: (1) the wrongful taking or detention of the property; (2) the value and description of the property; and (3) its ownership of the property. Justice Hollins also noted that because the Replevin Order sought was an interim Order, it did not require a full adjudication of the issues but rather just that the Applicant had established substantial grounds for bringing the Application under Rule 6.49.

The Court, however, found that the governing legislation, specifically section 102(1) of the *Oil and Gas Conservation Act,* required actual knowledge of ownership in order for the Defendant to be restricted from selling the equipment. Since the Defendant did not have actual knowledge that the Plaintiff owned the compressor, it was authorized to sell it. The Court emphasized that imposing a duty to inquire would hinder the Defendant's ability to fulfill its statutory obligations effectively. The Court also noted that the Plaintiff could have taken steps to assert its ownership. Consequently, Hollins J. dismissed the Plaintiff's Application for Replevin.

HANSEN V FELGATE, 2024 ABKB 419

(MILLSAP J)

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

The Plaintiff Applicants, Aaron and Donna Hansen sought enforcement of a loan agreement between themselves and the Defendants, Nicholas and Andrea Felgate, by way of Summary Judgment under Rules 7.2 and 7.3. Specifically, in 2019, Aaron loaned Nicholas $20,000 and Donna issued loans to Nicholas totalling $70,000. The terms and conditions of the loan agreements were reduced to writing in promissory notes by Nicholas, that he signed and forwarded to the Hansens.

Initially, the Defendants complied with the repayment terms and sent money from their bank accounts to both Aaron and Donna; however, regular payments abruptly stopped. The Hansens sought Summary Judgment for the principal amount of the loans plus interest, arguing that there were no issues that required a full hearing of the matter.

The issues in dispute was whether (i) the Defendant Nicholas had the capacity to contract at

the time he entered into the agreements with the Plaintiff; and (ii) whether Andrea Felgate was a party to the loans.

Justice Millsap found Nicholas' defence of "lack of capacity" to be without merit. The Court found that the evidence established that Nicholas may have been suffering from mania and/or psychosis at the material time he entered into the loan agreements, but that it was equally possible that he was not. Importantly, no expert medical evidence was presented, and it was his burden to prove that he did not have capacity. Here, Millsap J. wrote that "[n]otwithstanding his purportedly psychotic views about his own wealth or ability to create wealth, he clearly knew he was borrowing money, knew he would eventually have to pay it back and understood that he would have to pay back more than he borrowed". As such, Millsap J. granted the Application for Summary Judgment against Nicholas.

Regarding Andrea, the Court determined that her role and liability could not be conclusively decided through Summary Judgment due to insufficient evidence about her involvement in the loan agreements. It was therefore found by Justice Millsap that the Summary Judgment Application against Andrea should fail. In this respect, the matter was remitted to Trial to determine the extent of Andrea's liability.

GRAHAM INFRASTRUCTURE LTD V EPCOR UTILITIES INC, 2024 ABKB 453

(EAMON J)

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

This decision involved an Application for Summary Judgment.

Graham, the Respondent, was the general contractor under a Construction Contract with the Town of Strathmore (the "Town") for the construction of a water reservoir and pump station project on lands owned by the Town. The project site was adjacent to the East Calgary Regional Waterline ("ECRW"), which was operated by Epcor, the Applicant, under a Utility Services Agreement between it and Strathmore. In January 2013, while the project was under construction, a "tee fitting" on the ECRW failed, resulting in a large water leak from the ECRW and flooding of nearby areas including the project. By the time Epcor shut off the water, flood waters had accumulated on the project site causing damage allegedly exceeding $2,800,000. Graham remediated the site and repaired the flood damage.

Graham was insured under a course of construction policy for the project ("COC Policy"). In January 2015, Graham's insurer commenced a subrogated Action in Graham's name against Epcor for its alleged negligence in responding to the leak, including by failing to promptly turn off the water flow, increasing the flow of water, and representing to Graham that it had shut off the water when in fact it had increased the flow of water.

In November 2022, Epcor applied for Summary Dismissal of the Action, asserting that: (i) any losses were suffered by the Town, not Graham; and (ii) Epcor was an insured under the COC Policy and subrogated claims by the insurers against its insureds including Epcor were barred.

Applications Judge Mattis dismissed Epcor's Summary Judgment Application, finding that

the issues could not be summarily decided on the record before her. Epcor appealed.

On Appeal, Justice Eamon found that, notwithstanding the fact that the Action had been in existence for some years, there was no evidence of any discussions or communications with the Town to the effect that the Town bore financial responsibility. Rather, the evidence from Graham's corporate representative was contrary to that assertion. It was made clear to Graham that the Town would not be reimbursing Graham for the costs, so it looked to its insurers. Utilizing the principles of contract interpretation, Eamon J. found that the construction Contract between the Town and Graham made clear that "Graham [was] responsible for damage to the project while under construction". As such, Justice Eamon agreed with Applications Judge Mattis that the matter could not be fairly resolved in favour of Epcor on a Summary Judgment Application.

Turning to whether Epcor was an insured under the COC Policy, Article 1 provided a lengthy list of persons who were deemed to be named insureds. Epcor asserted it was an insured by supplying "services to the Project, at the project site", as outlined in the policy. The parties proceeded in the Summary Judgment Application on the basis that the relevant time to assess whether Epcor was an insured was during Epcor's response to the rupture in the ECRW. However, given the ambiguities of the evidence as to when Epcor provided services, the purposes for which the services were provided, and where the services were provided, Justice Eamon was not satisfied that a fair and just determination could be made on the present record. Therefore, Epcor failed on its second ground of appeal, and the Appeal was dismissed.

RABOBANK CANADA V STRINGAM, 2024 ABKB 425

(ARMSTRONG J)

Rule 7.3 (Summary Judgment)

This was an Application for Summary Judgment pursuant to Rule 7.3. In the underlying Action, the Applicant, Rabobank Canada ("Rabobank"), started an Action against George Stringam, alleging that Rabobank loaned Mr. Stringam funds pursuant to a Financing Agreement so he could purchase farm equipment and supplies from Richardson Pioneer Ltd. ("Richardson"). The Statement of Claim alleged that Mr. Stringam failed to repay the loan, with the amount owing being approximately $86,000.

Mr. Stringam defended the Action against him on the basis that the equipment and fertilizer he acquired from Richardson were defective. Mr. Stringam pleaded that the Action against him should be dismissed because the losses he suffered exceeded the amount due pursuant to the Financing Agreement with Rabobank. Mr. Stringam also started a third-party Action against Richardson, alleging that the fertilizer spreader he acquired from Richardson was defective, resulting in an uneven application of fertilizer across Mr. Stringam's lands.

Rabobank filed an Application for Summary Judgment against Mr. Stringam for the amounts owing pursuant to the Financing Agreement. Richardson also applied for summary dismissal of the third-party claim against it.

The Financing Agreement included a term that Mr. Stringam was obligated to repay Rabobank

all amounts advanced on his behalf in accordance with the Financing Agreement, even if the amounts advanced exceeded his credit limit. It was further found that Mr. Stringam subsequently signed a repayment plan, acknowledging that he was indebted to Rabobank and promised to repay. Given these facts, which were largely uncontradicted, Rabobank established its claim in debt against Mr. Stringam.

However, the Court noted that to succeed on a Summary Judgment Application, Rabobank must further establish that Mr. Stringam has no meritorious defence to the claim. On this front, Mr. Stringam raised three defences. First, he claimed that Rabobank's action is statute-barred because Rabobank filed the claim after the expiration of the limitation period. Second, he claimed that Rabobank did not consistently provide him statements of account and notice of the increases to his credit limit, and was therefore in breach of the Financing Agreement. Third, Mr. Stringam argued that Richardson and Rabobank were in an "agency relationship" and any amount of indebtedness to Rabobank was more than offset by damages caused to him because of a faulty fertilizer spreader provided by Richardson.

The Court rejected each of Mr. Stringam's defences. In particular, Justice Armstrong found: (i) Mr. Stringam's obligation to repay the amounts he borrowed through the Financing Agreement was an ongoing obligation; (ii) although Rabobank neglected to send statements to Mr. Stringam, he "was aware of all the amounts he was borrowing and the indebtedness he was incurring pursuant to the Financing Agreement [and] knew full well how the credit financing worked"; and (iii) the "plain wording of the Financing Agreement clearly differentiate[d] between Rabobank and any dealer a borrower may do business with". Mr. Stringam accepted the acknowledgement in the Financing Agreement that any purchase made from the dealer or manufacturer was not from Rabobank and that those purchases were on an "as-is, where-is" basis.

Taken together, Armstrong J. was satisfied that there was no meritorious defence to Rabobank's claim in debt as against Mr. Stringam. The Application for Summary Judgment against Mr. Stringam was allowed.

With respect to the third-party claim against Richardson, the Court determined that Richardson did not meet the burden of proof required for summary dismissal. There were unresolved factual issues regarding the functionality of the fertilizer spreader and its impact on crop yield and quality, which was a genuine issue that required a Trial.

POLLARD V LOUGHEED BLOCK INC, 2024 ABKB 493

(APPLICATIONS JUDGE PARK)

Rule 7.3 (Summary Judgment)

This was an Application by the Plaintiffs seeking Summary Judgment against three out of four Defendants. The dispute centred around mortgage syndication agreements ("MSAs") between the Plaintiffs and Heritage Capital Corporation "(HCC"), which enabled them to invest in loans to Lougheed Block Inc. ("Lougheed").

According to the MSAs, HCC was supposed to secure these loans with a mortgage and personal guarantees. However, the mortgage was improperly registered, and personal guarantees were never secured. As a result, when the property was foreclosed, the Plaintiffs lost their investments with no repayment.

Applications Judge Park explained that Rule 7.3(1) sets out the guidelines for Summary Judgment, stating that it is available to a Plaintiff when there is no defence to their claim or to any part of it, or if the only genuine issue is the amount of damages to be awarded. Applications Judge Park outlined the test for Summary Judgment established in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.,* 2019 ABCA 49, and further refined by the Court of Appeal in *Hannam v Medicine Hat School District No. 76,* 2020 ABCA 343. Referencing these decisions, the Court noted that Summary Judgment is appropriate where the presiding Judge is confident in the record and prepared to exercise judicial discretion to resolve the dispute without trial. Further, Applications Judge Park stated that this is warranted where the moving party has established the material facts on the balance of probabilities, demonstrating that the law supports their position. However, the Court highlighted that Summary Judgment cannot be granted if there is a genuine issue that requires a trial.

The Plaintiffs also sought to pierce the corporate veil to hold the sole director of HCC, JR Smith (Smith), personally liable for HCC's alleged wrongdoings. Applications Judge Park referenced the factors used in determining control over a corporation, as outlined in *Tirecraft Group Inc. (Receiver of) v High Park Holdings ULC,* 2020 ABQB 653. The Court concluded there was insufficient evidence to satisfy the criteria for piercing the corporate veil, namely that the Plaintiffs did not establish that HCC was entirely dominated by Smith or that HCC acted merely as Smith's agent.

Applications Judge Park found that, while HCC breached its duty by failing to properly secure the investments, the Plaintiffs failed to demonstrate that this breach resulted in a loss. There was no evidence to suggest that realizing on the guarantees would have been possible even if they had been secured. Further, the Court determined that the Plaintiffs' claims against Smith were insufficiently substantiated to enable resolution without a trial.

Ultimately, Applications Judge Park concluded there was insufficient evidence to support a finding of Summary Judgment, and the Application was dismissed.

FRIESEN V SILVERBERG & ASSOCIATES INC, 2024 ABKB 518

(APPLICATIONS JUDGE PARK)

Rule 7.3 (Summary Judgment)

The Applicant applied for Summary Dismissal, arguing that the Plaintiff's claims for conspiracy and inducement of breach of contract had no merit and should be dismissed.

The Court set out Rule 7.3 which allows for the summary dismissal of a claim if there is no merit to it. The Court followed the analysis set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.,* 2019 ABCA 49. The Court further cited *Hannam v Medicine Hat School District No. 76,* 2020 ABCA 343 for the proposition that Summary Judgment will be appropriate where the moving party has proved the material facts on the balance of probabilities and advanced the law that vindicates their position even though the outcome may not be obvious. Further, if the Application presents a genuine issue requiring Trial, Summary Judgment cannot be granted.

The Court found that the evidence did not establish a breach of contract. Some of the evidence was hearsay and was contradicted by the

Applicant's Affidavits. The Court also found that the elements necessary to establish conspiracy were not met and that there was no evidence of an agreement between the Applicant and the other Defendants to conspire against the Plaintiff. The Court concluded that there were no genuine issues for Trial regarding the allegations of conspiracy and inducement breach of contract. The Application for Summary Dismissal was granted.

MOORE V TURNER, 2024 ABKB 435

(EAMON J)

Rules 8.25 (Use of Streamlined Trial) and 9.15 (Setting Aside, Varying and Discharging Judgments and Orders)

This Action was scheduled for determination under the Summary Trial Rules pursuant to a previously granted Consent Order (the "Consent Order"). The Plaintiff sought a direction varying the Consent Order to permit the matter to proceed under the Streamlined Trial Rules.

Eamon J. commented that the Streamlined Trial Rules and the repealed Summary Trial Rules are similar, but with an important difference. Unlike Rule 7.9 (repealed), the Streamlined Trial Rules require the hearing Justice to grant Judgment at the conclusion of the Trial. Streamlined Trials under the new Rule are scheduled through case conference to ensure the matter is appropriate for a Streamlined Trial with the necessary processes for a fair Trial.

Justice Eamon took note of the amendment to the Rules of Court which replaced Summary Trials with Streamlined Trials and held that such amendment permits the Court to vary a hearing Order that was made under the Summary Trial Rules. Procedural Orders can be varied under Rule 9.15(4) in the interests of justice.

Eamon J. stated that the test for a Streamlined Trial, as codified in Rule 8.25 (the "Test"), is similar to the test for whether a Summary Trial is appropriate: (1) whether the Court can decide disputed questions of fact on Affidavits or by other proceedings authorized by the Rules for Summary Trial; and (2) would it be unjust to decide the issues in such a way?

Having applied the Test to the matter, the Court concluded that the matter satisfied the requirements of fairness, justice, and proportionality set out in Rule 8.25(1). Specifically, the Defendant was not in any way prejudiced by continuing the agreed-on Summary Trial as a Streamlined Trial under the amended Rules.

Furthermore, it was found that there were some factors in this matter that favoured a finding of fairness, justice, and proportionality. These factors included: (a) the amount involved was relatively low; (b) the number of potential witnesses was small; (c) the matter was not complex; (d) there were specific requirements of burden of proof and corroboration that protect the Estate's interests; (e) the matter was long standing given the Trial of the issue was directed more than 4 years 3 months before the Trial; (f) both sides had a fair opportunity to put forward evidence and neither have identified any potential evidence for which they have not had a fair opportunity to adduce; (g) the parties were elderly and the matter should be resolved without further delay; and (h) the evidence in the record was sufficient for a Streamlined Trial.

HOU V CANADIAN NORTH INC, 2024 ABKB 549

(RENKE J)

Rules 8.25 (Use of Streamlined Trial), 8.26 (Application for Streamlined Trial), 8.27 (Dispute Over Mode of Trial), 8.28 (Preparing Record), 8.29 (Scheduling of Streamlined Trials) and 8.30 (Procedure at Streamlined Trial)

The Plaintiffs applied permission to proceed by Streamlined Trial. The Plaintiffs alleged wrongful dismissal by the Defendants and claimed entitlement to overtime pay, holiday pay, vacation pay, and other employment benefits. The Defendants disputed these claims, alleging that the Plaintiffs were independent or dependent contractors, not employees. A Case Management Conference was held pursuant to Rules 8.25(2) and 8.26(1)(c), and the *Notice to the Profession and Public – Streamlined Trial Process – Civil (Non-Family) Actions,* December 22, 2023 (NPP#2023-02).

Renke J. reviewed the test for ordering a Streamlined Trial pursuant Rule 8.25: that the Court must be satisfied that a Streamlined Trial is necessary for the purpose of the Action to be fairly and justly resolved; and that it is proportionate to the importance and complexity of the issues, the amounts involved, and the resources that can reasonably be allocated to resolving the dispute. The Court set out that the "necessity" standard of the test is to be assessed on the limited and predictive materials contemplated under Rule 8.27(1), and that the nature of the Action is to be considered, not the "cause of Action" alone. Additionally, the Court stated that necessity for a Streamlined Trial can be established by showing that an Action cannot be fairly and justly resolved by the ordinary Trial process.

Regarding the proportionality element of the test, Justice Renke stated that a Streamlined Trial may be disproportionate if it cannot provide sufficient procedural mechanisms to address the complexity of the issues in the Action, or if it imposes excessive burdens on court resources. Parties must provide an estimate of judicial preparation time required for the Streamlined Trial under Rule 8.29(3). If the review would require excessive demands on judicial resources, then a Streamlined Trial would be unsuitable.

The Court confirmed that, pursuant to Rule 8.28 and NPP#2023-02, parties have a joint responsibility to prepare the record for a Streamlined Trial, proceeding with an Agreed Statement of Facts. Renke J. also confirmed that, according to Rule 8.30(2), Streamlined Trials are, for the most part, decided on the documentary record as opposed to live testimony.

Renke J. determined that both facts and law were at issue in this case and that significant evidence would be required to understand the contractual relations between the parties. Further, depending on the legal characterization of the contractual relationship, more issues may arise. The Court determined that the "lead Affidavit" approach of Streamlined Trials would not be feasible in this case because an Agreed Statement of Facts appeared to be out of reach, and more time for argument, testimony and cross-examination was required than is contemplated by NPP#2023-02.

The Court concluded that a Streamlined Trial would not permit a fair and just resolution of the issues raised in the litigation and that a Streamlined approach would be disproportionately deficient due to the issues and evidential requirements of the Actions. Justice Renke therefore dismissed the Application.

BAILEY V NORTHERN ALBERTA INSTITUTE OF TECHNOLOGY, 2024 ABKB 563

(MAH J)

Rules 8.25 (Use of Streamlined Trial) and 8.27 (Dispute Over Mode of Trial)

This was an Application by the Plaintiff for a Streamlined Trial under Rule 8.25 in a wrongful dismissal action against his former employer, the Northern Alberta Institute of Technology ("NAIT"). The Plaintiff argued that the case could be efficiently resolved through Affidavits and limited in-person testimony, given that the primary issue was his intent when removing office chairs, which he claimed were destined for disposal.

The Court applied the two-part test under Rule 8.25, assessing whether a Streamlined Trial was both necessary for a fair and just resolution and proportionate to the complexity and significance of the case. The Plaintiff contended that his case met these requirements, citing Rule 8.25(3), which allows Streamlined Trials even where some credibility issues or

cross-examination may be necessary. However, NAIT, opposed the Streamlined Trial, arguing that multiple witnesses would need to be called to address the broader issues of just cause, breach of trust, and the investigation process.

The Court emphasized that under Rule 8.27, Affidavits are not required for a Streamlined Trial Application, and the decision should be based on Pleadings and submissions. Despite the Plaintiff's extensive Affidavit, the Court found it unnecessary and noted that it only presented one side of the case. The Court identified multiple credibility issues involving several witnesses that would need to be resolved through a full trial process, making a Streamlined Trial unsuitable in this instance.

After reviewing the necessity and proportionality factors, the Court concluded that a Streamlined Trial was neither necessary nor proportionate due to the complexity of the factual issues and the number of witnesses required. The Application for a Streamlined Trial was dismissed.

CERATO V CERATO, 2024 ABCA 296

(HAWKES JA)

Rules 9.4 (Signing Judgments and Orders), 14.16 (Filing the Appeal Record), 14.64 (Failure to Meet Deadlines) and 14.65 (Restoring Appeals)

The Applicant applied to restore her Appeal of an Order granted by Justice Feasby that, among other things, found that the Applicant lacked the capacity to make decisions on personal, legal and financial matters.

The Applicant's Appeal was struck for failing to file an Appeal Record and transcripts in a timely manner pursuant to Rules 14.16(3) and 14.64(a). However, the Applicant filed its Application to restore the Appeal on the same day. The Appeal was therefore not deemed to be abandoned under Rule 14.65(3).

Justice Hawkes noted that the assessment of the merits on an Application to restore an

Appeal is a "very low standard". Hawkes J. emphasized that, while the Court has discretion in deciding whether to restore an Appeal, it may take into account specific factors. Among these were the Applicant's clear intention to proceed with the case by requesting the necessary transcripts and the lack of potential prejudice to the parties, which supported the decision to restore the Appeal. Accordingly, the Application to restore the Appeal was granted.

PARIKH V AMAZON CANADA FULFILLMENT SERVICES, ULC, 2024 ABCA 303

(FEEHAN, FETH AND FRIESEN JJA)

Rules 9.4 (Signing Judgments and Orders) and 14.38 (Court of Appeal Panels)

The Applicant filed an Originating Application against a multitude of parties, alleging, *inter alia*, that he had suffered a workplace injury and had been constructively dismissed. The Originating Application was struck by an Applications Judge. The Court of King's Bench dismissed the Applicant's appeal and declared him a vexatious litigant. The Applicant then appealed to the Court of Appeal, and an Appeal conference before a single Appeal Judge was convened. At the Appeal conference, the parties agreed to enter into a Consent Judgment which set aside the declaration that the Applicant was a vexatious litigant and dismissed the Appeal.

The Applicant applied pursuant to Rule 14.38(2)(c) to reargue or reopen the Appeal, arguing that after the Consent Judgment was entered into, he was advised that he could not recommence the Action by way of Statement of Claim as the Action would be time barred pursuant to the *Limitations Act,* RSA 2000, c L-12. As such, the Applicant sought to set aside the Consent Judgment.

The Court found that the Applicant had voluntarily entered into the Consent Judgment after full discussion and after having been encouraged to obtain legal advice, which he refused to do. The Applicant's concern that he may not now recommence the entire process was not an exceptional circumstance that warranted reopening or rearguing the Appeal. Nor was the Court misled about the record or the nature of the issues at the Appeal conference. As such, the Application was dismissed, and Rule 9.4(2)(c) was invoked.

1731271 ALBERTA INC V REIMER, 2024 ABKB 529

(MAH J)

Rules 9.13 (Re-Opening Case), 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 Defendants sought full indemnity or enhanced costs as a result of the dismissal of the Plaintiff's Interlocutory Injunction Application (the "Application").

Justice Mah noted that pursuant to Rule 10.29(1) the successful party is presumptively entitled to costs. Per Rule 10.31 and *JBRO Holdings Inc v Dynasty Power Inc,* 2022 ABCA 258, the determination of costs is inherently discretionary, and the exercise of that discretion must be based on judicial principles of reasonableness, fairness, balance, and equity. The relevant considerations for a costs award are found in Rule 10.33 and include, among other factors, the result, complexity, and whether a matter was unnecessarily or improperly brought. Having applied the above principles, Mah J. awarded enhanced costs for the entire Action at 65% of the actual costs reflected in the Bill of Costs.

The Plaintiff submitted that no costs should be awarded and that the Court should consider revisiting one of the issues. To support its submission, the Plaintiff filed an Affidavit of a professed IT expert (the "Affidavit"). Justice Mah stated that the Plaintiff's submission presumably invoked Rule 9.13.

Justice Mah found that the Affidavit had little relevance to the issue of costs and took issue with the affiant's opinion that one of the Defendants likely misappropriated digital information, as that opinion was based on his review of printed copies of emails and nothing else.

Further, Mah J. pointed out that the method by which the Plaintiff sought to pry open a matter already decided would lead to an impermissible case-splitting. The Plaintiff could have, and should have, adduced the evidence at the Application. The Defendants should have had the opportunity to receive it in advance of the Application in order to respond to it. As such, Mah J. was not satisfied that there was a good reason to reopen the matter under Rule 9.13.

NORTH V DAVISON, 2024 ABKB 528

(MAH J)

Rules 9.14 (Further or Other Order after Judgment or Order Entered), 10.33 (Court Considerations in Making Costs Award) and 10.48 (Recovery of Goods and Services Tax)

The Court issued this Decision further to its Cost Endorsement at 2024 ABKB 52, as a result of questions from counsel. The Cost Endorsement awarded the Plaintiffs three times Schedule C Column 5 costs in accordance with Rule 10.33. Counsel requested more details on the Costs Award.

Justice Mah relied on Rule 9.14 to clarify that he had the authority to provide the further

details regarding the earlier Costs Award. The Court clarified that the two Applications were Special Applications, and thus the appropriate fee portion was two times two half days under Item 8(1), totaling $24,300. Justice Mah awarded GST on the costs payable as it was not refundable or rebateable under Rule 10.48(2) since the Plaintiff paid all legal fees and did not claim GST inputs.

LAU V DENTONS CANADA LLP, 2024 ABKB 497

(KOOTENAY J)

Rules 10.2 (Payment for Lawyer's Services and Contents of Lawyer's Account), 10.10 (Time Limitation on Reviewing Retainer Agreements and Charges), 10.13 (Appointment for Review), 10.17 (Review Officer's Authority) and 10.19 (Review Officer's Decision)

The Applicant, acting as the personal representative of an estate, entered into a retainer agreement with a law firm to pursue legal action against an individual for business misconduct. A dispute arose after the law firm billed the Applicant, leading to a Review of the charges under Rule 10.13. A Review Officer conducted the Review and upheld the fees. The Applicant then appealed the Decision, challenging both the Review Officer's findings and the procedural fairness of the Review process.

The Court, citing *Betser-Zilevitch v Prowse Chowne LLP,* 2021 ABCA 129, noted that under Rule 10.2, the Review Officer has broad discretion to assess the reasonableness of fees, considering factors such as the retainer agreement, the surrounding circumstances, the hours worked, the settlement achieved, time recorded, the result obtained, and any other relevant factor. After reviewing the Review Officer's authority under Rules 10.10, 10.17, and 10.19, the Court found that the Review Officer had correctly applied the law and made appropriate factual findings. The Review Officer properly evaluated the fees based on the retainer agreement and the detailed invoices provided.

However, the Court did identify a procedural fairness issue, as the Review Officer made a Decision before the Applicant had the opportunity to fully present her concerns regarding the billing. Despite this, the Court upheld the Review Officer's Decision, concluding that the fees were reasonable and justified by the services rendered. The Appeal was dismissed.

LAW SOCIETY OF ALBERTA V HIGGERTY, 2024 ABKB 410

(NIXON J)

Rule 10.4 (Charging Order for Payment of Lawyer's Charges)

Higgerty Law, which focused on contingent-based personal injury law and class action litigation, was placed under Law Society custodianship and a receiver was appointed pursuant to section 13(2) of the *Judicature Act,* RSA 2000, c J-2. Easy Legal Finance Inc ("ELFCo") was the largest secured creditor, being owed more than $1.4 million ("ELFCo Loan").

ELFCo sought a charging lien or a charging Order pursuant to Rule 10.4(2) over the proceeds of the contingency files that were transferred out of Higgerty Law. ELFCo argued that since it had a security interest in all the Higgerty Law property, this gave ELFCo the right to assert a solicitor's lien in respect of its files. The Court noted that the Alberta case law did not support that a non-lawyer with a secured interest could assert a solicitor's lien. However, the Court held it did not need to determine this issue as ELFCo had not satisfied Rule 10.4(2)(a). Specifically, there was no evidence that the files transferred out of Higgerty Law would not involve recovery by the firm, which would then allow it to pay its creditors. As such, ELFCo was not entitled to a charging Order pursuant to Rule 10.4. The Court also dismissed ELFCo's argument for a charging lien, noting that while it was in the Court's discretion to grant such a lien, it was not an appropriate case to do so. In the result, ELFCo's Application was dismissed.

CATTERALL V CONDOMINIUM PLAN NO 752 1572 (PARK TOWERS), 2024 ABKB 452

(DUNLOP 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 Applicants, who owned a unit in Park Towers condominium, brought an Action against the Respondent, the Park Towers condominium corporation. The Action was dismissed. The Respondents sought solicitor-client Costs, arguing that the Applicants had a political motive for bringing the Action, had filed too much evidence, and had delayed the Action and wasted Court resources. The Applicants argued each party should bear their own Costs or that Costs should be based on Column 1 of Schedule C of the Rules.

The Court noted that the Respondent was entitled to Costs pursuant to Rule 10.29 as they were entirely successful, and they were entitled to reasonable and proper Costs pursuant to Rule 10.31(1)(a). However, the Court rejected the Respondents arguments that it was an appropriate case for solicitor-client costs, finding that the evidence did not support their arguments. Ultimately, the Court granted the Respondents Column 1 of Schedule C with a 1.25x multiplier, noting that "[t]he amounts in Schedule C are out of date."

SHAMAEIIRANI V AJAMIAN, 2024 ABKB 474

(DAVIDSON CJ)

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

This was a Costs Decision following the dismissal of a father's Application to vary the child support payable for his two daughters. The mother sought $27,555.14 in solicitor-client costs or an award for enhanced costs.

The Court considered Rule 10.29 and the factors outlined in Rule 10.33, which include the outcome of the case, its complexity, and the behavior of the parties involved. Exercising its discretion, the Court awarded the mother lump sum costs of $8,500. It noted the father's history of ignoring Court Orders, his failure to provide financial disclosure, his refusal of a more favorable settlement offer from the mother, and his attempts to evade child support obligations. The Court found the father's Application frivolous and his behavior contemptuous. The Costs awarded reflected the unnecessary nature of the Application and the father's ongoing misconduct.

RK V GSG, 2024 ABKB 477

(MAH J)

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

This was a Costs Decision arising from two matters: (i) GW's Application to Strike the Statement of Claim by RK as against him, and (ii) the Application by RK and SK to strike the Counterclaim and Third-Party Claim brought by GW against them. Justice Mah allowed GW's Application in part, striking out causes of action for abuse of process, intimidation, fraud, unlawful interference with economic interests, negligence and breach of trust, while preserving causes of action for conspiracy, malicious prosecution, defamation and intentional infliction of mental harm. Justice Mah struck the Counterclaim and Third-Party Claim, granting RK and SK's Application in full.

RK and SK argued that GW's Counterclaim and Third-Party Claim were "hopeless", leading to an unnecessary expense to achieve an inevitable result. They submitted that an elevated costs award was warranted, and, if not, then full indemnity was required to deter what was in effect an abuse of the litigation process.

Justice Mah began by citing Rule 10.29(1) for the proposition that the successful party is presumptively entitled to costs. However, the determination of costs is "inherently discretionary, and the exercise of that discretion must be based on judicial principles of reasonableness, fairness, balance and equity".

The Court noted that while there was a great deal of antipathy between RK and GW, this was not an excuse for GW to bring needless and hopeless actions. As such, some measure

of elevated costs was needed to express the Court's disapproval.

Applying a multiplier of two to Item 8(1) in Schedule C (Applications Requiring Written Briefs), Justice Mah ordered GW to pay costs of $4,000 for the unsuccessful Counterclaim and Third-Party Claim, after crediting GW costs of $1,000 for his partial success on the Application to Strike.

BALDWIN V VAN HOUT, 2024 ABKB 415

(ARMSTRONG J)

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

The underlying claim dealt with a dispute between co-executors of an estate. The issue was disposed of and the parties were unable to resolve the issue of Costs. The Applicant took the position that Costs were payable by the estate on a solicitor-client basis or otherwise on an enhanced basis. The Respondent argued that each party should bear their own Costs, as there was mixed success or, in the alternative, the estate should pay both party's Costs pursuant to Schedule C of the Rules.

Justice Armstrong considered Rule 10.33, which sets out relevant factors to consider when the Court exercises its discretion in making a Costs Award. This includes the result of the Action and the degree of success of each party, the amount claimed, the amount recovered, the complexity of the Action, and the conduct of the parties. Armstrong J. also considered Rule 10.31, which grants the Court broad discretion to determine Costs, including with relation to the actual costs incurred by a successful party. In the estate context, the Court also considered the added consideration of whether the challenge to the estate was reasonable.

Justice Armstrong ultimately concluded that both parties should have their Costs based on the Schedule C rate, by the estate. There was mixed success. There was no unreasonable conduct by the parties during the litigation, and the Application was necessary. There were offers to settle, but the value of those offers was not properly before the Court, as they were based on the value of lands and no appraisal was provided.

DANIELS SHARPSMART CANADA LTD O/A DANIELS HEALTH V ALBERTA HEALTH SERVICES, 2024 ABKB 418

(ARMSTRONG J)

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

The Applicant, Daniels Sharpsmart Canada Ltd. ("Daniels"), responded to a request for proposals issued by the Respondent, Alberta Health Services ("AHS"). Daniels was unsuccessful and, upon learning it was not going to get the contract, sought an Injunction to halt negotiations between AHS and the successful bidder. Prior to the injunction, AHS offered to accept a consent discontinuance of the Application in exchange for Daniels paying Schedule C Costs, which Daniels rejected. The Injunction was denied, and the parties returned to Court to address Costs.

AHS sought solicitor-client Costs, alleging that the Injunction was motivated by Daniels malice against the successful bidder, which was a competitor. The Court began by noting that it had broad discretion pursuant to Rule 10.31 when awarding Costs and that Rule 10.33 set out factors that may assist the Court in exercising its discretion. The Court rejected that it was an appropriate case for solicitor-client Costs, finding that Daniels had not engaged in any litigation misconduct. In the result, the Court held that AHS was entitled to Costs in the amount of $14,175, which was based on 2x column 1 of Schedule C with an additional multiplier of 1.5x to account for the offer to settle made by AHS that was rejected.

TC V MH, 2024 ABKB 447

(YUNGWIRTH J)

Rules 10.31 (Court-ordered Costs Award), 10.33 (Court Considerations in Making Costs Award), 10.52 (Declaration of Civil Contempt), 10.53 (Punishment for Civil Contempt of Court) and 10.55 (Inherent Jurisdiction)

The Applicant applied to the Court for a finding that the Respondent was in Civil Contempt. This case involved complex family law issues, with both the mother and father having violated Court Orders. In this instance, the father aimed to have the mother found in Civil Contempt for breaching a Shared Parenting Order by unilaterally changing the child's school and residence, and interfering with the father's relationship with the child. The mother also accused the father of Contempt for posting on the internet, contrary to an internet posting prohibition imposed by the Trial Judge.

The Court considered Rules 10.52, 10.53 and 10.55, regarding declarations of Civil Contempt and the corresponding punishments. Justice Yungwirth examined pertinent case law, referencing the Supreme Court of Canada's finding in *Carey v Laiken,* 2015 SCC 17 that, to prove Civil Contempt, one must demonstrate beyond a reasonable doubt that an intentional act or

omission breached a clear Order of which the alleged contemnor was aware. Yungwirth J. noted that applying the test for Civil Contempt and determining suitable consequences in family law requires special consideration. This is due to the necessity of balancing the duty to uphold the dignity of the Courts and the authority of their Orders with the obligation to protect the best interests of children.

Justice Yungwirth found that the mother had breached Court Orders and a Trial Judgment, and was in Contempt. The Court then analyzed Rule 10.53(2) to ascertain appropriate penalties for the finding of Contempt, including punitive costs.

In determining the suitable remedy, the Court took into account Rule 10.31 and the seminal case of *McAllister v Calgary (City),* 2021 ABCA 25 regarding litigation costs. After considering the submissions and behavior of both parties throughout the litigation, Justice Yungwirth determined that a fair and reasonable punitive costs award addressing the mother's Contempt and any litigation misconduct amounted to $90,000, prior to any deductions for the father's misconduct. Yungwirth J. subsequently lowered the amount from $90,000 to $45,000, acknowledging the father's culpability in violating Court Orders himself, and his role in perpetuating the ongoing conflict.

420 INVESTMENTS LTD V TILRAY INC, 2024 ABKB 480

(SIDNELL J)

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

This was a Decision regarding Costs following the Dismissal of an Appeal from a Decision of an Applications Judge (the "Appeal"). The Respondent, High Park, was successful in the Appeal. The Applications Judge in the underlying Decision had awarded Costs. However, the Costs Award made by the Applications Judge was not appealed. Accordingly, the Court of King's Bench declined to reconsider the Costs Award. The Costs Endorsement reviewed in this Decision solely related to the Appeal. High Park argued for partial indemnity Costs based on several factors, including the emergency nature of the Appeal and the significant monetary judgment involved. 420 argued for lower Costs based on Schedule C of the Rules of Court, questioning the justification for High Park's legal fees.

After considering the submissions of both parties, along with Rules 10.31 and 10.33, Justice Sidnell found that awarding Costs based on a percentage of legal costs incurred was not appropriate due to the lack of substantiation provided by High Park. Instead, considering the high stakes of the Appeal for both parties and the work required, Justice Sidnell found it appropriate to award Costs based on Schedule C, for one counsel and two times Column 5 for the appearance at the Appeal, plus GST.

TL V RAC, 2024 ABKB 430

(MARION J)

Rule 10.33 (Court Considerations in Making Costs Award), 10.49 (Penalty for Contravening Rules), 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt of Court)

The underlying Action involved a dispute between a mother and father regarding the mother's Application to relocate their two children to Munich, Germany. The mother was granted permission to relocate by the Court, in reasons reported as *TL v RAC,* 2024 ABKB 366 (the "Relocation Decision"). This Decision addresses Costs and parenting matters ancillary to the Relocation Decision, including summer parenting, decision-making, post-relocation parenting time, and cost apportionment related to the father's parenting time.

In the Relocation Decision, Marion J. provided that if the parties could not agree on Costs, they could make additional Submissions on that issue. Neither party provided Costs Submissions as required by the Relocation Decision. Based on the fact neither party had sought Costs, and in view of the factors set out in Rule 10.33, Justice Marion found it appropriate to order that each party bear their own Costs.

As noted in the Relocation Decision, Marion J. was concerned about the mother's historical approach to the father's parenting time, and her support of the father's relationship with the children. In light of this finding, the Court retained jurisdiction to hear future Applications for a penalty under Rule 10.49, or for a finding of contempt under Rules 10.52 and 10.53, in the event the parties did not follow Marion J.'s directions.

AKPAN (RE), 2024 ABKB 417

(NIXON ACJ)

Rule 10.49 (Penalty for Contravening Rules)

Two members of the Law Society of Alberta notarized documents that were identified as part of Organized Pseudolegal Commercial Argument ("OPCA") schemes. These documents were submitted to the Alberta Court of King's Bench and led to penalties under Rule 10.49(1). The penalties were initially imposed but later successfully appealed before the Alberta Court of Appeal, leading the remission of the matter to the Court of King's Bench for reconsideration.

The Court, after reviewing the materials notarized by Ms. Akpan and Mr. Kotyk, concluded that Ms. Akpan and Mr. Kotyk should be evaluated for possible Rule 10.49(1) penalties. Since the facts and legal issues in these two matters were very closely related, the Court conducted both Rule 10.49(1) proceedings together in the interests of judicial economy, and so that Ms. Akpan and Mr. Kotyk have a broad context in which to present their arguments and evidence.

Rule 10.49(1) raised three issues, namely: 1) Did Ms. Akpan and/or Mr. Kotyk contravene or fail to comply with Court processes and directions, that "has interfered with or may interfere with the proper or efficient administration of justice"; 2) If so, did they have an "adequate excuse" for that misconduct; 3) If no adequate excuse exists, what is the penalty amount that should be imposed.

The Court emphasized the importance of notaries adhering to legal standards and not facilitating OPCA schemes. The Court also referenced multiple legal and regulatory sources outlining the responsibilities and restrictions on notaries in Alberta, highlighting the serious nature of the misconduct by notarizing documents associated with OPCA strategies. Therefore, the Court concluded that it would reconsider the imposition of Rule 10.49(1) penalties on Ms. Akpan and Mr. Kotyk. The Court noted that the process will be conducted on a document-only basis, with a decision to be issued after reviewing their written arguments and Affidavit evidence.

H2 CANMORE APARTMENTS LP V CORMODE & DICKSON CONSTRUCTION EDMONTON LTD, 2024 ABKB 536

(MARION J)

Rule 10.49 (Penalty for Contravening Rules)

The Action involved a claim for damages arising from the construction of an apartment building. In a previous Application, the Plaintiffs sought further and better record production from the Defendants and an imposition of penalties for late and improper disclosure. On that Application, Justice Marion imposed a $7,500 penalty against one of the defendants, Cormode & Dickson Construction Edmonton Ltd ("Cormode"), pursuant to Rule 10.49. However, Marion J. also had concerns regarding the Plaintiffs' lack of compliance with the Rules in respect of the Cormode discovery, writing that "had these parties engaged in reasonable discovery planning and consultation, it is quite likely a significant portion of the Application would not have been required". As a result of his concerns, Justice Marion asked the Plaintiffs and Cormode to provide written submissions as to whether a Rule 10.49 penalty should be imposed on the Plaintiffs. This was the subject matter of this Decision.

Justice Marion found that a penalty against the Plaintiffs would not be required or appropriate in this case, for the following reasons:

The Plaintiffs did not breach their own records disclosure and production obligations, rather they reasonably used their in-house e-discovery team (which was encouraged by the Court);

While early consultation and discovery planning with Cormode would have saved time and expense, there is "not an express rule in the Rules requiring parties to engage and consult early about records production";

The Plaintiffs responded immediately when the deficiencies in Cormode's production became apparent;

It had already been found in the underlying decision that the Plaintiffs should materially share the costs to implement the Plaintiffs request to require Cormode to fix its deficient

production (therefore, no additional costs were needed);

Other defendant parties did not engage with Cormode either, making it less appropriate to penalize the Plaintiffs in isolation;

On balance, the Plaintiffs did not sufficiently interfere with the administration of justice to warrant a penalty.

As a result, no penalty was levied against the Plaintiffs.

BONVILLE V PRESIDENT'S CHOICE FINANCIAL, 2024 ABKB 546

(NIELSEN ACJ)

Rule 10.49 (Penalty for Contravening Rules)

Three individual Plaintiffs (the "Debtors") used the services of "UnitedWeStandPeople" ("UWSP"), a money-for-nothing / debt elimination scam, to advance illegal and abusive defences called "Organized Pseudolegal Commercial Arguments" ("OPCA"). These defences are intended to block debt collection by lenders and retaliate against them for alleged bad conduct. The OPCAs also take the position that the debts in question purportedly do not exist.

The Debtors were asked to make submissions as to why they should not be required to make payments of security for costs pursuant to Rule 4.22. They failed to do so by the prescribed deadline, and they did not pay the security for costs. As a result, their claims and defences were struck out, costs were imposed, and they were asked to make submissions as to why they should not be subject to penalties pursuant to Rule 10.49. The Debtors did not make such submissions. The Court therefore proceeded to determine whether the Debtors should be subject to penalties for misuse of Court processes, pursuant to Rule 10.49(1).

Associate Chief Justice Nielsen began by noting that the law is very clear in Canada that OPCA defences "are consistently rejected and classified as abusive strategies, marketed by unscrupulous people".

In review of the Action, the Court concluded that the Debtors' litigation had interfered with the proper and efficient administration of justice. The Debtors were given the opportunity to establish that they had engaged in this litigation in good faith, as fair-dealing litigants. They chose not to take that opportunity, leading to the inference that their steps did not have a legitimate purpose. The Court ordered each of the Debtors to pay a $5,000 penalty, pursuant to Rule 10.49(1). The Court stressed that this was not a debt owed to the Court, but a penalty due to the Province of Alberta for the Debtors wasting state and taxpayer resources in their improper attempts to apply a money-for-nothing / debt elimination scheme. The Court further imposed a penalty of $10,000 on the organizers of UWSP.

DE V DE, 2024 ABKB 512

(DEVLIN J)

Rule 10.50 (Costs Imposed on Lawyer)

Anupam De's ("Mr. De") Application against Gopa De ("Mrs. De") for severance of divorce from corollary relief was granted ("Initial Severance Judgment"). It was discovered that Mrs. De did not appear or respond to the Application due to her previous lawyer suffering personal circumstances which incapacitated her from practice. The Initial Severance Judgment was set aside, and the Application was re-heard, which resulted in the same outcome ("Final Severance Judgment"). Mr. and Mrs. De sought costs against Mrs. De's former lawyer personally, and Mr. De sought costs for the Final Severance Judgment.

The Court noted that Rule 10.50 sets out when costs may be awarded against a lawyer personally. Mrs. De's former lawyer agreed that she should be personally liable for the costs inflicted on Mr. De by virtue of her absence, which the Court agreed with. The Court also granted costs to Mr. De for his success in the Final Severance Judgment. However, the Court declined Mrs. De's Application for Costs against her former lawyer, finding that there was no evidence that the amounts paid by Mrs. De were attributable to her former lawyer's circumstance, and that any financial consequences of any defaults in the client relationship were better resolved in a forum where the inner workings between the lawyer and client were available as evidence.

REDDY V SAROYA, 2024 ABKB 478

(NIXON ACJ)

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

The Applicant commenced an Action for misappropriation of funds. The Respondent failed to satisfy multiple Undertakings related to the alleged misappropriation, despite several Court Orders issued to compel answers.

Following three Contempt Applications, the Respondent was found to have provided inadequate answers to 35 Undertakings. The Respondent asserted that all Undertakings were answered in accordance with Alberta law, whereas the Applicant maintained that the responses given were insufficient.

Associate Chief Justice Nixon outlined the relevant provisions of the Rules pertaining to Civil Contempt of Court, specifically Rules 10.51, 10.52, and 10.53, which address the Order to Appear, Declarations of Civil Contempt, and Punishments for Civil Contempt of Court. Associate Chief Justice Nixon clarified that the purpose of civil contempt is to ensure compliance with Court Orders and uphold the authority of the Court. Citing *Schitthelm v Kelemen,* 2013 ABQB 42, Nixon A.C.J. outlined the three elements required to prove civil con-

tempt: (i) an existing requirement of the Court, (ii) proper notice of this requirement to the alleged contemnor, and (iii) an intentional act or failure to act that breaches this requirement without a valid excuse.

After evaluating each of the Undertakings, Nixon A.C.J. found that adequate answers were provided for only three of them. The Respondent failed to exercise due diligence or follow Court directions and, by neglecting to address 32 of the Undertakings, severely prejudiced the Applicant's claims. Additionally, the Respondent was deliberately evasive, late, and non-responsive, indicating a deliberate attempt to avoid fulfilling his obligations.

Consequently, Nixon A.C.J. found the Respondent in civil contempt for willfully failing, neglecting, or refusing to provide answers to the Undertakings, in violation of four previous Court Orders. The Court noted that the Respondent had an overall failure rate of 6.64% (calculated based on the 32 insufficiently answered Undertakings out of the total 482) and directed the parties to provide further submissions on the appropriate level of punishment.

UHRYN V UHRYN, 2024 ABKB 407

(YUNGWIRTH J)

Rules 10.52 (Declaration of Civil Contempt) and 10.53 (Punishment for Civil Contempt)

The Applicant applied for, among other things, an Order declaring the Respondent to be in contempt of two Disclosure Orders, dated June 29, 2023 (the "June 29 Order") and November 12, 2023 (the "November 12 Order"), respectively. The Respondent was declared to be in contempt of the November 12 Order.

Citing *Carey v Laiken,* 2015 SCC 17, Yungwirth J. commented that the test for Civil Contempt is whether there is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear Order of which the alleged contemnor has notice (the "Test"). The Test is codified in Rule 10.52(3) in similar words but makes express the provision that the breach of an Order must be without reasonable excuse.

Yungwirth J, citing *JLZ v CMZ,* 2021 ABCA 200, further commented that the application of the Test and the consideration of the appropriate consequences where contempt is found have special considerations in the family law context. In the family law context, the Court must balance the obligation to safeguard the dignity of the Courts and the force of their Orders, and the obligation to safeguard the best interests of children. As such, there have been some constraints put on the Court's ability to use the Civil Contempt remedy. In family cases, Courts should use Civil Contempt "sparingly and as a last resort" *(MEL (P) v BJL,* 2013 ABQB 227).

Yungwirth J. went on to state that there are many ways for a request for disclosure to be made. Once there has been an Order for disclosure, a litigant must obey that Order. The failure to do so prolongs litigation, which is not in the best interests of children or families. It can also prevent a proper child support Order from being determined, which is not fair to children, as child support is their right.

Yungwirth J. held that because the June 29 Order, on its face, did not detail exactly what was to be provided, it would not be appropriate to declare the Respondent to be in contempt of it.

Having found that the required elements for a declaration of Contempt have been proven beyond a reasonable doubt, and that the Respondent offered no explanation for his noncompliance, Yungwirth J. declared the Respondent to be in Contempt of the November 12 Order.

DC V NBC, 2024 ABKB 444

(THOMPSON J)

Rule 10.52 (Declaration of Civil Contempt)

This was an Application by a father to hold a mother in Contempt of Court for non-compliance with parenting Orders, and to vary the existing parenting Order for their child as a result of the mother's non-compliance and parental alienation of the child. The mother's non-compliance included not facilitating parenting time and not sharing essential information about the child.

With respect to the father's allegation of Civil Contempt, the Court considered Rule 10.52, which governs declarations of civil Contempt. Under Rule 10.52(3), the Plaintiff had the burden of proving beyond a reasonable doubt all the essential elements of Contempt, including: (1) the Order's terms must be clear and unambiguous; (2) the breaching party must have had proper notice and actual knowledge of the Order; (3) the breaching party must have intentionally violated the Order; and (4) there must be no reasonable excuse for the breach.

Applying the factors, the Court found that the mother knowingly and intentionally breached the existing Court Order, which governed parenting arrangements, without reasonable excuse. While some of the mother's actions were not covered by the Order and reflected poor parenting, they did not amount to Contempt. However, her conduct in insisting on supervised parenting time, blocking the father's communications, and withholding information about the child, directly violated the Order. The Court rejected the mother's claims that she acted in the child's best interest or that the father's behavior justified her actions.

The Court concluded that the mother was in Contempt of Court, and a sanction proceeding was to be scheduled to determine the consequences. Sentencing for the mother's Contempt was adjourned for six months to allow her an opportunity to purge her Contempt.

BADGER INFRASTRUCTURE V PARENT-WALKER, 2024 ABKB 550

(SIMARD J)

Rule 11.31 (Setting Aside Service)

Badger Infrastructure Solutions Ltd ("Badger") sought an Interim Injunction pending Trial. In September 2023, Badger terminated Mr. Parent-Walker for cause. Shortly thereafter, in November 2023, Mr. Parent-Walker commenced employment with a competitor, Ontario Excavac Inc ("OE"). Badger alleged that Mr. Parent-Walker violated the Confidentiality, Non-Solicitation and Non-Competition Agreement (the "Restrictive Covenant Agreement") by soliciting its employees and customers, and that OE conspired with him in these breaches. Mr. Parent-Walker denied any breaches and argued that Badger waived its rights to enforce the agreement, while OE argued that Badger inappropriately sued in Alberta, since all relevant events occurred in Ontario.

Simard J. observed that, while the Defendants objected to the Action being initiated in Alberta, they failed to formally challenge the Court's jurisdiction by filing an Application under Rule 11.31 to set aside service of the commencement documents. Justice Simard emphasized that the Defendants actively participated in the Application process by engaging in questioning, submitting evidence, and providing both written and oral submissions. Further, Simard J. found that the Restrictive Covenant Agreement, which Badger sought to enforce, contained a clause granting exclusive jurisdiction to the Courts of Alberta. As a result, Justice Simard was satisfied that there was appropriate jurisdiction to hear the Application.

Despite this, the Court found that Badger failed to satisfy the tripartite test for injunctions as set out in *RJR-MacDonald v Canada (Attorney General),* [1994] 1 SCR 311. Specifically, Badger failed to establish a strong *prima facie* case against Mr. Parent-Walker or a serious issue to be tried against OE, leading Simard J. to dismiss the Application for an Interim Injunction without addressing the remaining steps of the test.

VERMILLION NETWORKS INC V VERMILLION ENERGY INC, 2024 ABCA 261

(WOOLLEY JA)

Rule 14.5 (Appeals Only with Permission)

The Applicants sought permission to appeal a decision subjecting them to indefinite Court access restrictions and designating them as vexatious litigants (the "Application"). Woolley J. dismissed the Application.

Justice Woolley stated that whether leave to appeal ought to be granted pursuant to Rule 14.5(1)(j) depends on the answer to the following questions: (1) Is there an important question of law or precedent; (2) is there a reasonable chance of success on appeal; and (3) will the delay unduly hinder the progress of the Action or cause undue prejudice?

The Court further stated that other considerations include whether there is a possible error of law; whether a discretion has been

unreasonably exercised; whether the Chambers Judge misapprehended important facts; whether there are conflicting decisions on the point; the standard of review that would be applied on the Appeal; and whether there are other good reasons why a full panel of the Court should review the Order under Appeal.

Woolley J. noted that the Decision to declare a party a vexatious litigant is a discretionary one, to which deferential standard of review applies. That deferential standard of review must be factored into the assessment of whether the Applicants have a reasonable chance of success on Appeal.

It was held that none of the errors alleged by the Applicants constituted an important question of law or precedent that would have a reasonable chance of success on Appeal. The Chambers Judge's factual findings were entitled to deference and did not warrant appellate intervention.

Justice Woolley was satisfied that granting leave would cause significant prejudice to the Respondents, who had been engaged in years of litigation across multiple jurisdictions, and that the time and expense of further litigation on questions with no broader legal significance ought not to be imposed upon the Respondents.

HEATH-ENGEL V ALBERTA (HUMAN RIGHTS COMMISSION), 2024 ABCA 277

(GROSSE JA)

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

The Applicant applied for permission to appeal a decision by Grosse J.A. dismissing her motion to extend the time to file an Appeal (the "Previous Decision").

Appeal Justice Grosse, who made the Previous Decision, considered the requirement under Rule 14.5 for obtaining permission to appeal a decision of a single Appeal Judge. Additionally, the Rules mandate that permission be sought from the same Judge who issued the original decision, as outlined in Rule 14.5(2).

The Court emphasized that permission to appeal a ruling from a single Appeal Judge is granted only when there is a compelling reason. The Application for permission to appeal is not a rehearing of the initial application; thus, merely wishing to re-argue the motion before a full panel is insufficient. The Applicant must show the existence of a reviewable and significant legal issue that, in the interests of justice, merits examination by a full panel.

In this instance, Grosse J.A. observed that the Applicant's Application did not articulate any alleged error in the Previous Decision, other than disagreeing with the conclusion. The Court further noted that the Applicant essentially repeated its previous submissions. While the issues raised were undoubtedly significant to the Applicant, the proposed Appeal did not raise an issue of law or an issue of importance outside of the case. Consequently, the Court concluded that to allow the parties to reargue the Application before a panel of three Appeal Judges would not serve the interests of justice and thus dismissed the Application.

NOVA CHEMICALS V DOW CHEMICAL CANADA, 2024 ABCA 278

(ANTONIO JA)

Rules 14.5 (Appeals with Permission), 14.38 (Court of Appeal Panels) and 14.48 (Stay Pending Appeal)

NOVA Chemicals Corporation ("NOVA") applied for a determination of whether it needed permission to appeal several Pre-Trial matters and sought a Stay of Proceedings in the Court below. The Court considered Rule 14.5(1)(c) and held that permission was not required for the first two grounds, as they involved a separate phase of the Trial. However, Rule 14.5(1)(b) applied to the third ground, and thus the Court found that permission to appeal was required for this issue as it involved Pre-Trial timing Orders. Permission to appeal on the third ground was ultimately denied, with the Court noting that the matters raised were fact-specific and did not have broader precedential value.

NOVA also sought a Stay of Proceedings under Rule 14.48. The Court applied the *RJR-MacDonald* test, which examines whether there is a serious question to be tried, the possibility of irreparable harm, and whether the balance of convenience favours the Stay. The Court found that NOVA had not demonstrated irreparable harm or that the balance of convenience supported granting the Stay. Consequently, the Application to Stay Proceedings was denied.

The Court did not find it necessary to delve deeply into the mechanics of Rule 14.38 beyond denying permission for NOVA's expedited hearing date. Other procedural requests were adjourned. Costs were awarded to Dow Chemical Canada as it was largely successful in the Applications.

REININK V ALBERTA (LABOUR RELATIONS BOARD), 2024 ABCA 280

(ANTONIO JA)

Rules 14.5 (Appeals Only with Permission) and 14.41 (Responses to Applications to Single Appeal Judges)

The Applicant sought permission to extend the time to appeal a 2019 Court of Queen's Bench decision that dismissed her application for Judicial Review of an Alberta Labour Relations Board decision. She also applied for a Restricted Court Access Order. Both Applications were denied by Antonio J.A. (the "Decision").

After the Decision, the Applicant claimed she did not receive the Respondent's memorandum of argument or supporting Affidavit before the Hearing, which the Respondent acknowledged was due to an administrative error.

As a result, the Applicant filed an application for permission to appeal the Decision pursuant to Rule 14.5, arguing that the lack of service of the Respondent's materials warranted setting aside the Decision. While the Court acknowledged that the Respondent's failure to serve the materials under Rule 14.41(a) was not trivial, the Applicant was later allowed to

submit further submissions in response to the Respondent's materials.

After reviewing these submissions, the Court concluded that the Applicant had no reasonable chance of success on Appeal, particularly as her delay in filing the Appeal was not justified by the COVID-19 pandemic, and she had failed to establish the exceptional circumstances required for a restricted Court Access Order. The Court found no compelling reason to re-hear the matter or reconsider the original Decision.

As such, the Application for permission to appeal the Decision was denied.

PIIKANI NATION V MCMULLEN, 2024 ABCA 306

(WOOLLEY JA)

Rule 14.5 (Appeals Only with Permission)

The Appellants, including Gowlings WLG ("Gowlings"), applied for permission to appeal a decision of a Case Management Judge disqualifying Gowlings from acting as counsel against the Respondent in ongoing litigation between him and several other parties.

The Appellants based their request for Appeal on Rule 14.5(1)(j) and referenced a previously issued Access Restriction Order affecting all parties involved in this Action. Justice Wooley examined Rule 14.5 and relied on *Tican v Alamgir,* 2023 ABCA 115 which stipulates that an individual is considered a "vexatious litigant" under Rule 14.5(1)(j) if they are subject to an Access Restriction Order.

Justice Wooley granted the Application, noting: (i) the Application did not constitute an abuse of process, (ii) there were substantial legal questions warranting an Appeal, (iii) the likelihood of success for the Appeal outweighed the chances of failure, and (iv) proceeding with the Appeal would not impede the ongoing actions, especially given the prolonged duration these matters have been in Court with minimal progress. The Court emphasized the necessity of determining the appropriateness of Gowlings' disqualification.

CHARKHANDEH V COLLEGE OF DENTAL SURGEONS OF ALBERTA, 2024 ABCA 239

(SLATTER, FAGNAN AND FRIESEN JJA)

Rules 14.46 (Application to Reconsider a Previous Decision) and 14.72 (Binding Precedents)

The Respondent sought permission, pursuant to Rules 14.46 and 14.72, to reconsider a previous Decision, *Jinnah v Alberta Dental Association and College,* 2022 ABCA 336 ("*Jinnah*"), which established a presumption that regulatory bodies should bear the full Costs of disciplinary proceedings unless compelling reasons exist otherwise. Before *Jinnah*, Costs were discretionary and based on various factors, as established in *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253.

The Court emphasized the importance of maintaining judicial consistency and the careful consideration required before overturning precedents. Factors to consider include whether the precedent is recent or old; has been disapproved of or is contrary to Decisions of other Courts of Appeal; contains some "simple, obvious, demonstrable flaw"; was created by overlooking binding statute or authority; or created settled expectations. The Court acknowledged that Jinnah was recent, has not created settled expectations, and has been inconsistently followed in subsequent Decisions.

As a result, the Application to reconsider *Jinnah* was granted.

GIESBRECHT V PRPICK, 2024 ABCA 265

(HAWKES JA)

Rules 14.51 (Applications Without Oral Argument) and 14.52 (Applications Not Heard Within 3 Months)

The Applicant sought permission to Appeal Justice Hawkes' earlier ruling, reported at 2024 ABCA 187, pursuant to Rules 14.51(1)(a) and 14.52.

Justice Hawkes evaluated the criteria for granting permission to appeal a decision made by a single Judge of the Court of Appeal, referencing *Xu v Ma,* 2024 ABCA 81. The Court examined the Applicant's claims that the Court of King's Bench had erred by not addressing the issue of costs and by neglecting the Applicant's plea for a stay on all proceedings related to costs. Justice Hawkes clarified that there is no rule or statutory provision that would allow a single Justice of the Court of Appeal to obstruct the Court of King's Bench from making a decision on Costs. The request for Justice Hawkes to prevent the Court of King's Bench from taking any action regarding Costs is a type of Order that cannot be issued against a Superior Court.

Justice Hawkes also noted that his jurisdiction under the Rules of Court pertains to Appeals from an Order or Decision. Since no Order existed at the time of his initial ruling, he lacked the jurisdiction to act. Consequently, the Court denied the Application.

BIRCH V BIRCH, 2024 ABCA 284

(ANTONIO, FEEHAN AND GROSSE JJA)

Rule 14.88 (Cost Awards)

The Appellant appealed an interim child support Order shortly before an impending Special Chambers hearing, arguing lack of procedural fairness and abuse of process. The Appeal was dismissed. The Respondent sought solicitor-and-own client costs of $8,500, arguing the Appeal had no merit. No legal argument was made, and the interim Order was set for review shortly after the Appeal hearing date.

The Court noted that under Rules 14.88(1) and (3) a successful party on an Appeal is entitled to costs on the same scale that applied to the Judgment below. The Court held that it was not an appropriate case for solicitor-client Costs, but that enhanced Costs were appropriate as a formal offer to withdraw the Appeal had been made, and the Appeal should not have been brought in the circumstances. The Court awarded $5,000 in costs, which represented approximately 1.5 times Schedule C Costs under Column 1.

GORDON ESTATE (RE), 2024 ABCA 286

(WATSON, FEEHAN AND GROSSE JJA)

Rule 14.88 (Costs of Appeal)

This was a Memorandum of Judgment regarding costs in an Appeal. The Respondents sought enhanced costs against the Appellant following her unsuccessful Appeal regarding the validity of their father's will. The Respondents requested solicitor-and-own-client indemnity costs, citing litigation misconduct and rejected settlement offers.

Under Rule 14.88(1), the Court determined that the Appellant, as the unsuccessful party, was liable for costs. Solicitor-client costs, however, were deemed inappropriate as the Appellant's conduct, though unsuccessful, did not rise to the level of reprehensible or outrageous.

The Court considered Schedule C, which provided for standard costs of $16,301.25 for each Respondent. Although the Respondents requested double costs of $32,602.50 each, the Court found that their positions and submissions were largely overlapping, reducing their total costs to $25,000 each, for a combined total of $50,000. This amount was in addition to unpaid costs of $16,301.29 from an earlier Appeal.