

In the Court of Appeal of Alberta

Citation: McCormack v Alberta (Attorney General), 2026 ABCA 272

Date: 20260817

Docket: 2603-0009AC

Registry: Edmonton

Between:

Mark JJ McCormack

Applicant

- and -

**Attorney General of Alberta, Alberta Minister of Justice,
Chief Justice of Alberta (administrative capacity), Hyder Hassan et al
(Pro Bono Law Alberta), and Byron Chan (Law Foundation of Alberta)**

Respondents

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Application to Restore Appeal

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[1] The applicant's application to restore his appeal under Rule 14.47 of the *Alberta Rules of Court*, Alta Reg 124/2010 is dismissed for the following reasons.

[2] The applicant filed a Civil Notice of Appeal on January 5, 2026.

[3] On January 9, 2026, the Case Management Officer (CMO) sent the standard Civil Appeal Commencement letter advising the applicant of the appeal procedure and applicable timelines, and confirmed this appeal was a "fast-track" appeal with tight timelines. The letter also advised that failure to file the appeal record or the factum by the applicable deadlines would result in the appeal being struck.

[4] On February 6, 2026, the Registrar certified that the appeal had been struck pursuant to Rules 14.17(1) and 14.64(a) due to the appeal record not having been filed by the deadline. The Registrar also noted the appeal would be deemed abandoned after three months.

[5] On May 7, 2026, the Deputy Registrar confirmed the appeal was deemed abandoned.

[6] The applicant filed this application to restore the appeal on June 8, 2026, one month after the appeal was deemed abandoned and four months after it was struck. The submitted materials included an unsworn affidavit that was not filed. At the applicant's request, this application was dealt with in writing without oral argument.

[7] Restoring an appeal is discretionary and engages the following considerations: (a) arguable merit of the appeal; (b) explanation for the defect or delay which caused the appeal to be taken off the list; (c) reasonable promptness in moving to cure the defect and have the appeal restored to the list; (d) intention to proceed with the appeal; and (e) lack of prejudice to the respondents (including the length of the delay): *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4; *The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation*, 2018 ABCA 232 at para 11. The failure to meet one of these factors is not fatal; all the factors are weighed to determine whether it is in the interests of justice to permit the appeal to proceed: *Prochazka* at para 4.

[8] The applicant is not represented by counsel. He says he was overwhelmed and this is why he failed to follow the prescribed steps for the appeal.

[9] The CMO's letter of January 9, 2026 and the Registrar's Certificate of February 6, 2026 clearly explained the deadlines and the consequences for failure to comply with them. This Court

has definitively stated that all litigants, including those who are self-represented, are required to comply with the rules: *McCormack v Alberta Health Services*, 2025 ABCA 63 at para 16.

[10] The applicant has previous experience with the consequences imposed for failure to meet the timelines to file appeal materials. His appeals 2503-0208AC and 2403-0230AC were deemed abandoned for failure to file materials in a timely fashion or at all. Appeal 2603-0031AC has also recently been deemed abandoned.

[11] In the circumstances, the applicant's explanations for the delay are far from compelling.

[12] With respect to promptness in curing the defect, the applicant says he did not have the means to pay the fee to apply to restore his appeal and that he applied as promptly as his means allowed. However, there is no sworn evidence before the Court on this application. Nor has he provided a draft Appeal Record or Factum which would have indicated an intention and ability to proceed in a timely fashion.

[13] As for arguable merit, the absence of a draft Factum leaves this Court in somewhat of an informational vacuum. In the circumstances, arguable merit can be assessed only based on the Notice of Appeal and the transcript of the proceedings before the ACJ.

[14] The Notice of Appeal raises 22 separate grounds of appeal, many of which are difficult to decipher and were not before the chambers judge whose order dated December 5, 2025 the applicant intends to appeal. The applicant makes vague assertions of *Charter* or constitutional violations impacting his access to justice as a self described "indigent, self-represented litigant". He also seeks forms of relief which fall outside the jurisdiction of either the Court of Kings Bench or the Court of Appeal.

[15] The transcript of the proceeding in question is instructive. For completeness, I will assume the applicant intends to appeal all the rulings made by the ACJ on the date in question. The 22 grounds reference all of them, albeit in some cases quite obliquely.

[16] At the hearing, the ACJ denied applications for: a transcript fee waiver at the outset of that hearing in anticipation that the applicant would appeal the result of the hearing; a universal waiver of transcript fees; an adjournment; the ACJ's recusal; appointment of an *amicus curiae*; appointment of a case manager; a deadline for the clerks to schedule the applicant's judicial reviews; and an order for substitutional service.

[17] In Alberta, transcripts of proceedings before the courts are prepared by Transcript Management Services (TMS) on a fee-for-service basis. When a transcript is requested, private individuals on contract with TMS generate the transcript for a fee. The individual or the organization requesting the transcript is required to pay that fee. Transcript service fees are prescribed in Division 4, Tariff of Fees Payable for Court Reporting Services in Schedule "B" of the *Alberta Rules of Court*: s 1, *Transcript Fees and Format Regulation*, AR 167/2010.

[18] Rule 13.32 indicates that some fees may be waived by the court clerk in accordance with guidelines adopted by the Minister of Justice for persons unable to pay fees. Those guidelines are set out in Ministerial Order 22-2020 and extend only to certain types of payments. Notably, there is no provision in Ministerial Order 22-2020 for waiver of transcript fees: *Martinez v Chaffin*, 2018 ABCA 244 at para 11 (referring to the prior Ministerial Order 18/2015).

[19] The ACJ held that the Court may have jurisdiction to waive transcript fees in a particular case where, taking into account the litigant's finances and the merit of the litigation, the applicant's constitutional right to access justice could be compromised by the imposition of the fees. Counsel for TMS had acknowledged as much, citing *Carbone v Whidden*, 2015 ABCA 255 among other cases.

[20] The ACJ denied the application for a prospective transcript fee waiver for the transcript of the hearing before him. There is no arguable merit to an appeal of that denial, as there was no basis upon which the ACJ could assess the merits of any future appeal. In any event, that issue is now moot. The applicant filed the transcript for that hearing with this Court on January 5, 2026. The applicant has not demonstrated any public interest reason weighing in favour of this Court hearing the appeal notwithstanding its mootness.

[21] The applicant also sought a waiver of all transcript fees for proceedings before the Court of King's Bench in the numerous actions he has initiated, for the purposes of appeals to this Court or for appeals to a Court of King's Bench justice from application justice decisions. The ACJ denied the application for a blanket "universal fee waiver" covering transcripts of all past, present and potential future proceedings. The applicant has pointed to no authority supporting jurisdiction to make such an unusual order. Even if such an order were possible, it would be well within the discretion of the justice to require that any waiver be addressed on a case-by-case basis, as the merit of each claim would be an important consideration.

[22] In discussing the universal waiver issue, the ACJ referenced what he found to be incomplete information about the applicant's financial means and two prior recusal applications that were denied by an applications justice. He correctly noted that the test for recusal is difficult to meet in the first instance, as is the test on appeal of such a decision: *County of Stettler No 6 v Earl Marshall Trucking Ltd*, 2023 ABCA 362 at para 9.

[23] The applicant has not identified any error in the ACJ's analysis on the issue of a universal waiver.

[24] The ACJ also denied an adjournment for 14 days to serve the Attorney General notice of a constitutional question on the fee waiver issue. There is nothing to suggest the applicant had been unable to serve the Attorney General prior to the hearing had he wished to properly raise the issue before the Court.

[25] Adjournment decisions are highly discretionary and are entitled to deference unless an adjournment impacts procedural fairness: **KB v Alberta (Director of the Child, Youth and Family Enhancement Act)**, 2015 ABCA 278 at para 26; **R v TML**, 2019 ABCA 176 at para 17. There is no arguable merit to the ground.

[26] The applicant also sought recusal of the ACJ on the basis he had attended the University of Alberta and on the assumption he might have donated to the University at some point. The applicant alleged the ACJ was trivializing his claims. The ACJ rejected this allegation, noting he had chosen not to strike the claims. The applicant alleged the ACJ trivialized his hunger strike. In response, the ACJ said: “It’s a fact and we deal with it accordingly”. The ACJ declined to recuse himself.

[27] Recusal issues are highly fact specific. Substantial grounds and cogent evidence are required: **CZ v RB**, 2019 ABCA 445 at para 36. The determination engages the exercise of the judge’s discretion and therefore is entitled to deference on appeal absent legal error or palpable and overriding error of fact: **Nazarewycz v Dool**, 2009 ABCA 70 at para 55; **Hayden v Alberta Health Services**, 2018 ABCA 439 at para 20. There is no arguable merit to this ground of appeal.

[28] The applicant argued the ACJ should have appointed an *amicus curiae* for the application for a transcript fee waiver. The ACJ had communicated prior to the hearing that the applicant should bring an application if he intended to apply for an *amicus*. It appears the application was not properly before the ACJ. Nevertheless, he did hear submissions from the applicant on this point and found an *amicus* was not required.

[29] The authority to appoint an *amicus* is to be used sparingly, with caution and in response to specific and exceptional circumstances; an *amicus* can only be appointed if it is essential to the judge discharging his judicial functions in the case at hand: **Ontario v Criminal Lawyers’ Association of Ontario**, 2013 SCC 43 at para 47. The ACJ himself determined he did not require such assistance. This ground of appeal has no chance of success.

[30] The applicant argued his matters required case management. The ACJ found there was no particular series of applications requiring case management, the applicant was the one who was complicating his litigation, and an applications justice was effectively providing some case management as he had seized himself of a number of matters that were before him.

[31] The decision whether to appoint a case manager is a highly discretionary decision relating to court administration and is entitled to significant deference: **Penner v Niagara (Regional Police Services Board)**, 2013 SCC 19 at para 27. A court on appeal may only interfere with the decision where the judge did not give sufficient weight to relevant considerations; proceeded arbitrarily, on wrong principles or on an erroneous view of the facts; or there is likely to be a failure of justice: **Metropolitan Life Insurance Co v Hover**, 1999 ABCA 123 at para 10. This ground has no arguable merit.

[32] The ACJ refused to impose a deadline for the clerks to schedule the applicant's judicial reviews and to vary a prior order restricting his communication with court staff. It appears from the transcript that the applicant had provided no factual or legal basis to support such directions. There is no arguable merit to this ground.

[33] Finally, the ACJ denied an application for an order for substitutional service. The applicant noted a problem he had encountered in emergency chambers. Counsel submitted that problem was related to the applicant failing to give adequate notice of an application. The ACJ found the applicant's request was too vague and he had not established that such an order was required on the basis it was impractical for him to serve other parties as he had been doing, as required, under Rule 11.28. As with a chambers judge's decision to appoint a case manager, this is a highly discretionary decision which is entitled to great deference on appeal. Based on the transcript discussions on this issue, it appears there is no arguable merit to an appeal on this ground.

[34] The applicant submits the respondents would not be prejudiced by the appeal as the delay is short and the transcripts have been filed. However, at some point the successful party has a legitimate expectation that the judgment is final: *Li v Morgan*, 2020 ABCA 186 at para 9; *Prairie West Homes Inc v Baraka Homes Ltd*, 2023 ABCA 256 at para 13.

[35] As previously noted, all the relevant factors must be weighed to determine whether it is in the interests of justice to permit the appeal to proceed. The discretion to restore an appeal should be used sparingly and with a view to the interests of justice: *Allen v Alberta (Seniors and Community Supports)*, 2015 ABCA 238 at para 5.

[36] In this case, it would not be in the interests of justice to restore the appeal as the applicant has not provided a compelling explanation for the delay, he has not established that he acted with reasonable promptness to file the documents in question, and none of the various potential grounds of appeal meets the low threshold of arguable merit.

[37] The application is denied.

[38] Rule 9.4(2)(c) is invoked. The Court will prepare the resulting order.

Written submissions filed on June 8 and 24, 2026.

Reasons filed at Edmonton, Alberta
this 17th day of August, 2026

Fagnan J.A.

Submissions:

Applicant M. JJ McCormack

A.M. Simmonds (no written submissions)
for the Respondent Attorney General of Alberta

P. Buijs
for the Respondent Alberta Minister of Justice (Transcript Management Services)

M. Woodley (no written submissions)
for University of Alberta and University of Alberta Students Union

E. Seniuk (no written submissions)
for Minister of Advanced Education

J. Bolton (no written submissions)
for College of Physicians and Surgeons of Alberta

A.C. Abbott (no written submissions)
for Alberta Human Rights Commission

M.L. McMahon (no written submissions)
for Dr. Miao

K. Fu (no written submissions)
for Alberta Health Services