

In the Court of Appeal of Alberta

Citation: Chisholm v Fehlberg Estate, 2026 ABCA 282

Date: 20260831

Docket: 2603-0063AC

Registry: Edmonton

Between:

Leigh Anne Chisholm

Applicant

- and -

**The Estate of Dieter Fehlberg,
Registrar of Land Titles, and Muhammad Arshad**

Respondents

**Reasons for Decision of
The Honourable Justice Karan M. Shaner**

Application to Extend Time to File Notice of Appeal

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The Honourable Justice Karan M. Shaner**

[1] Leigh Anne Chisholm applies to extend time to appeal two orders granted in the Court of King's Bench in 2026. The orders dismissed two applications, a civil proceeding and a surrogate proceeding, challenging the validity of a 2023 order made by the same judge relating to real property held by the respondent estate (the 2023 order). The chambers judge held the applications represented collateral attacks on the 2023 order, which Ms. Chisholm had appealed but did not prosecute. The property in question has long since been transferred to a third party.

[2] The decision, whether to grant an extension of time to appeal, is discretionary, with the ultimate question being whether it is in the interests of justice to allow the appeal to proceed. In exercising that discretion, judges of this Court are guided by criteria set out in *Cairns v Cairns*, 1931 CanLII 471, *Li v Morgan*, 2020 ABCA 186, and others. Those criteria are:

- a) Whether there is a *bona fide* intention to appeal while the right existed;
- b) Whether there is some special circumstance that would excuse or justify the failure to appeal;
- c) Whether the applicant provided an explanation for the delay;
- d) Whether the respondents are prejudiced by the delay;
- e) Whether the applicant has taken the benefits of the judgment; and
- f) Whether the appeal has a reasonable chance of success if allowed to proceed.

The overarching question these criteria inform is whether granting the extension is in the interests of justice. The criteria are not rigid, and they do not override this Court's general discretion to extend time where justice requires it. *Cairns* at 829; *Stoddard v Montague*, 2006 ABCA 109 at para 8.

[3] Ultimately, this application turns on whether Ms. Chisholm's proposed appeals stand a reasonable chance of success. Ms. Chisholm's application discloses only that she disagrees with the 2023 order, in particular, an alleged jurisdictional error pertaining to that order. Importantly, her application does not identify any legal or factual error that could form the basis of an appeal from either of the 2026 orders. The proposed appeals are fairly characterized as an abuse of process: they are further collateral attacks on the 2023 order and have no merit. Allowing them to proceed would benefit no one and would be unduly prejudicial to the respondents by forcing them

to respond to appeals that are bound to fail. Moreover, prolonging these proceedings would be particularly prejudicial to Mr. Arshad, who has since purchased the property. It follows that allowing these proposed appeals to proceed would not serve the interests of justice. The application is dismissed.

[4] The amount of \$3,543.75 was set as security for costs in relation to this application in favour of the estate based largely on a finding that the proposed appeals are frivolous, vexatious, and had no real prospect of success. *Chisholm v Chisholm*, 2026 ABCA 185 at para 52; *Chisholm v Chisholm*, 2026 ABCA 209 at para 13. That conclusion has been borne out here. The estate shall receive costs in the amount of \$3,543.75. These will be paid out from monies deposited with the Court pursuant to paragraph 5 of the order of Feehan JA pronounced June 1, 2026.

[5] The Registrar of Titles shall have its regular, party-and-party costs.

[6] Finally, the Registrar of Titles is improperly described as the “Registrar of Land Titles” in the style of cause. I order the style of cause be amended to say the “Registrar of Titles”, which is the proper name of that party as set out in s 4(a) of the *Land Titles Act*, RSA 2000, c L-4.

[7] The Court will prepare the resulting order and r 9.4(2)(c) is invoked.

Application heard on August 20, 2026

Reasons filed at Edmonton, Alberta
this 31st day of August, 2026

Shaner J.A.

Appearances:

Applicant L.A. Chisholm

T.J. King
for the Respondent The Estate of Dieter Fehlberg

J. Flanders
for the Respondent Registrar of Land Titles

Respondent M. Arshad