

# In the Court of Appeal of Alberta

**Citation: The Toronto Dominion Bank v Monk, 2025 ABCA 209**

**Date:** 20250613  
**Docket:** 2503-0080AC  
**Registry:** Edmonton

**Between:**

**The Toronto Dominion Bank**

Respondent

- and -

**Constance Monk**

Applicant

- and -

**Elaine Monk**

Not a Party to the Application

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**Reasons for Decision of  
The Honourable Justice Tamara Friesen**

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Application to Extend Time to File Notice of Appeal

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[1] The applicant, Constance Monk, seeks an extension of time to appeal a chambers judge's order made March 31, 2025. The order dismissed her appeal and entitled the Toronto-Dominion Bank (TD) to proceed with sale of property as provided in the order confirming sale and vesting title. The one-month time limit for filing an appeal to this Court applied: *Alberta Rules of Court*, AR 124/2010, r 14.8(2)(a)(iii). Ms Monk filed her notice of appeal on May 1, 2025, one day late.

[2] The order Ms Monk seeks to appeal is an Order Confirming Sale and Vesting Title (OCSVT). The underlying action is a foreclosure action involving Ms Monk's home. Ms Monk failed to make the required mortgage payments and on October 13, 2022, the respondent, TD, obtained a Redemption Order Listing that declared the mortgage valid and enforceable. The Redemption Order was not appealed.

[3] On January 8, 2025, Applications Judge Summers granted the OCSVT with a vacant possession date of February 28, 2025, and a closing date of March 5, 2025. The chambers justice dismissed Ms Monk's appeal of the OCSVT on March 31, 2025. Included in the OCSVT were terms that amended the possession date to April 14, 2025, with a closing date of April 17, 2025.

[4] On April 16, 2025, Ms Monk filed an application seeking a stay of enforcement pending appeal; however, this application was dismissed on April 29, 2025, as she had not yet filed her Civil Notice of Appeal. Ms Monk filed her appeal on May 2, 2025. It should have been filed on April 30, 2025. Ms Monk provided an explanation for late filing, describing the difficulties she had negotiating the electronic filing system, as well as the added challenges of her health, and particularly her visual impairments.

[5] Ms Monk did not vacate the premises by March 31, 2025, as required by OSCVT order, and TD took steps to enforce it. Ms Monk was eventually evicted from her home with the assistance of the Edmonton Police Service; however, following that eviction, Ms Monk returned to the premises. On April 25, 2025, the purchasers withdrew from the purchase agreement. On May 7, 2025, TD obtained an order setting aside the OSCVT, confirming that TD was to retain possession of the property until further order of the court, and permitting the property to be re-listed.

[6] In exercising its discretion with respect to extending the time limit to file an appeal, this Court will consider whether the applicant has shown that:

- a) the applicant had a *bona fide* intention to appeal the decision while the right to appeal existed;

- b) the explanation given for the failure to appeal in time excuses or justifies the delay in filing;
- c) the other party has not been prejudiced by the delay to such a degree that it would be unjust to disturb the judgment;
- d) the applicant did not benefit from the judgment under appeal; and
- e) the appeal has a reasonable prospect of success.

*Cairns v Cairns*, [1931] 4 DLR 819 at 826-827 (Alta SC (AD)); *Sohal v Brar*, 1998 ABCA 375 at para 1, 223 AR 141; and *Li v Morgan*, 2020 ABCA 186 at para 4, 8 Alta LR (7th) 65.

[7] If an appellant can satisfy these criteria, a “minor temporal delay” of one day will rarely result in the Court denying an application to extend time to appeal: *1664694 Alberta Ltd v Beljan Development Management*, 2022 ABCA 41 at para 9; and *L.C. v Alberta*, 2009 ABCA 77 at para 10, 448 AR 293.

[8] If it is in the interests of justice to do so, the court may exercise its discretion to grant an extension in unique or special circumstances, even if some of the criteria have not been met: *Stoddard v Montague*, 2006 ABCA 109 at para 8, 412 AR 88; *Johnston v Hader*, 2010 ABCA 47 at para 12, 22 Alta LR (5th) 353; and *Miller-Tait v Miller-Tait*, 2024 ABCA 263 at para 9.

[9] Here, while the delay is minor, the appeal itself stands no reasonable prospect of success. The OSCVT order has been set aside, and the court would find an appeal of that order to be moot. Furthermore, as the respondent points out, the Redemption Order Listing at the root of the foreclosure action was not appealed. The time for doing so has long since passed. That order declared the validity of the mortgage and set out the amount owing on it, an amount which is to be repaid to TD Bank through sale of the property, as agreed to under the terms of the mortgage.

[10] The application to extend time to appeal is denied.

[11] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on June 4, 2025

Reasons filed at Edmonton, Alberta  
this 13th day of June, 2025

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Friesen J.A.

**Appearances:**

C.J. Mohr  
for the Respondent

Applicant C. Monk