In the Court of Appeal of Alberta

Citation: Kong v Condominium Corporation No 0313339, 2026 ABCA 3

Date: 20260112
Docket: 2501-0187AC
Registry: Calgary

Between:

Zhao Xia Kong

Applicant

- and -

Condominium Corporation No. 0313339

Respondent

Reasons for Decision of
The Honourable Justice April Grosse

Applications to Extend Time to File Notice of Appeal and for Permission to Appeal

Reasons for Decision of
The Honourable Justice April Grosse

I. Application to Extend Time

A. Introduction

[1] The applicant, Ms. Kong, seeks to appeal a chambers order pronounced May 21, 2025 (the May 21 order). However, she did not file a notice of appeal until June 30, 2025, which means she requires an extension of time pursuant to the *Alberta Rules of Court*, Alta Reg 124/2010, rule 14.37(2)(c) [*Rules*]. Ms. Kong filed an application to extend time on July 17, 2025.[1]

[2] Where an appeal is filed out of time, the Court has the discretion to extend the time to appeal. In deciding whether to exercise that discretion, the Court is guided by several factors that were described in *Cairns v Cairns*, 1931 CanLII 471 (ABCA), [1931] 4 DLR 819 at 826–27 [*Cairns*]:

1. whether there was a *bona fide* intention to appeal while the right to appeal existed, and whether there was some special circumstance that would excuse or justify the failure to appeal in time;
2. any explanation for the delay and whether the other side was not so seriously prejudiced by the delay that it would be unjust to disturb the judgment, having regard to the position of both parties;
3. whether the appellant has taken the benefits of the judgment from which appeal is sought; and
4. whether the appeal would have a reasonable chance of success if allowed to proceed.

See also: *1199096 Alberta Inc v Imperial Oil Limited*, 2024 ABCA 166 at para 5.

[3] These factors are "weighed to determine if it is in the interest of justice to permit the appeal to proceed": *Piikani Nation v Kostic*, 2017 ABCA 350 at para 21.

B. The May 21 order

[4] The May 21 order decides four distinct applications arising out of three different actions:

[1] It is not clear to me based on the totality of the filed materials whether the parties intend the other parties named in the various actions in the Court of King's Bench to be parties on appeal. I refer to a singular respondent, Condominium Corporation No. 031339 herein, but nothing in this decision determines who are proper parties to the appeal because that issue was not raised before me.

a. On June 24, 2024, an applications judge issued an order in Action 1901-13575 (1901 Action). Ms. Kong filed an appeal of the June 24 order to the Court of King's Bench. On November 7, 2024, a King's Bench justice denied an application to stay enforcement of the June 24 order pending appeal. On November 15, 2024, Ms. Kong filed an application in the Court of King's Bench that seeks to appeal the November 7 order. The May 21 order dismisses that application.

b. Also in the 1901 Action, the May 21 order grants Ms. Kong's application (filed December 2, 2024) to file an additional brief for the appeal to the Court of King's Bench. The May 21 order dismisses Ms. Kong's application to cross-examine on an affidavit for that appeal.

c. The second action is Action 2301-02695, which was struck out by an applications judge on June 24, 2024. Ms. Kong filed an appeal of that order (the 2301 Appeal) to the Court of King's Bench. The May 21 order strikes out the 2301 Appeal. Ms. Kong argues that the 2301 Appeal was withdrawn before the respondent took any steps and before the respondent filed its December 10, 2024 application to strike the 2301 Appeal.

d. The May 21 order strikes out Ms. Kong's claim in Action 2401-15144 (the 2401 Action) as an abuse of process on the basis that it was duplicative of previous litigation. The May 21 order also requires that Ms. Kong take certain steps before filing specific types of documents in the Court of King's Bench. These parts of the May 21 order arose out of an application by the respondent filed on December 10, 2024.

[5] The May 21 order also awards costs to the respondent in relation to the various applications, sometimes on a solicitor and client basis and sometimes on an enhanced basis.

[6] The four applications were heard together on May 21, 2025 and the results were consolidated in the May 21 order. However, the parties both submit that I should treat the various portions of the May 21 order as distinct for the purpose of this application. In other words, I could extend the time to appeal with respect to part of the May 21 order dealing with one application but refuse to extend the time to appeal with respect to part of the May 21 order dealing with a different application. I accept that this is an appropriate way to proceed given the nature of the applications and the way they were addressed at the Court of King's Bench.

[7] There are aspects of Ms. Kong's argument that are common to all four parts of the May 21 order, and I will outline those first.

C. Arguments regarding procedural fairness and issues with interpretation

[8] Ms. Kong seeks to appeal all the applications covered by the May 21 order on the basis that the proceeding was procedurally unfair. In particular, she argues that the chambers judge was biased against her, that she was not heard because the four applications were dealt with all at once instead of in succession, and that she did not have the benefit of interpretation during the oral argument of opposing counsel, thereby impairing her ability to reply.

[9] Ms. Kong has not raised a serious question to be tried with respect to bias. I do not see any basis in the record on which a reasonably informed person, reviewing the matter realistically and practically, would perceive a reasonable apprehension of bias on the part of the chambers judge. There is no reasonable apprehension of bias simply because a judge rules in favour of the other party, limits the time in which a party can present argument or does not hear from each party for the same amount of time. Therefore, Ms. Kong's bias argument does not weigh in favour of granting an extension of time to appeal any aspect of the May 21 order.

[10] I understand the basis for Ms. Kong's concerns with respect to how the four applications were heard. There were four distinct applications in three different court actions. In the course of two previous appearances, Ms. Kong was told by at least one judge that the four applications were being adjourned and would be heard using four spots on the chambers list (totaling 80 minutes). The chambers list for May 21 listed each application separately and Ms. Kong was the applicant in two of the applications and the respondent in the other two. In these circumstances, it is easy to see how Ms. Kong could have expected the applications to proceed one at a time. Unfortunately, neither the chambers judge nor opposing counsel clarified at the outset how they were planning to proceed. Ms. Kong was asked to start. Through the interpreter, she made submissions on her application in the 1901 Action for an extension of time to file a brief and to cross-examine on an affidavit. At the conclusion of those submissions, the chambers judge asked which matter they related to and Ms. Kong answered. The chambers judge then asked the interpreter, "Anything else this morning from Ms. Kong?", to which the interpreter answered, "...that's it for her." When opposing counsel began outlining all the applications before the court, Ms. Kong interjected, indicating that she wanted to proceed one by one. The chambers judge stated that he would hear from opposing counsel and Ms. Kong would have a chance to speak again when counsel had concluded. A review of the transcript reveals that, after opposing counsel concluded his submissions, Ms. Kong was given the opportunity to make lengthy reply submissions. In this way, she was arguably able to make her intended submissions with respect to some, but not all, of the applications that were at issue in the May 21 hearing.

[11] Ms. Kong also raises concerns with respect to the interpretation available to her during the May 21 hearing. Her evidence is that even though she had arranged for an interpreter to accompany her for the hearing, and she presented her submissions through the interpreter, the interpreter did not interpret opposing counsel's submissions or the oral decision of the chambers judge. The transcript indicates that the chambers judge asked opposing counsel to slow down to accommodate

the interpreter, but the transcript does not expressly indicate whether the interpreter was assisting Ms. Kong during opposing counsel's submissions.

[12] The right to interpreter assistance is a means of ensuring that proceedings are fair and comply with the basic principles of natural justice: *R v Tran*, [1994] 2 SCR 951, 1994 CanLII 56 (SCC). The Supreme Court of Canada in *Tran* was considering the application of s 14 of the *Canadian Charter of Rights and Freedoms*, which provides that a party in any proceedings "who does not understand or speak the language in which the proceedings are conducted ... has the right to the assistance of an interpreter". Ms. Kong relies on section 14 of the *Charter*. It is well-established that the need for interpreter assistance and the type of interpreter assistance required to meet a need, even in the criminal context, are contextual: for example, see *R v Gill*, 2017 SKCA 76 at para 48 and *R v Ryback*, 2008 ONCA 354 at para 78. Some parties or witnesses need consecutive interpretation of every word; some only need or want occasional help from an interpreter. In this case, Ms. Kong attended with an interpreter and he participated on her behalf. She did not raise any concerns with the chambers judge during the May 21 hearing that the interpreter was not interpreting during submissions by opposing counsel or that she was unable to understand those submissions so as to make a reply. She otherwise interacted with the chambers judge after the submissions of opposing counsel and raised other concerns, but she did not raise a concern about a lack of interpretation until after the decision was rendered. At that time, her concern was with respect to lack of interpretation of the decision itself. While not raising a concern about interpretation at the time of the hearing does not necessarily preclude an appellant from raising the issue on appeal, it is a relevant consideration: *R v Gill* at para 54; *R v Tran* at 982; *R v Chica*, 2016 ONCA 252 at paras 33-35.

[13] The analysis below includes an assessment of Ms. Kong's procedural fairness and interpretation arguments in the context of the proposed appeal from the decision in each application that formed part of the May 21 order.

D. Application of the *Cairns* factors

1. The first three *Cairns* factors

[14] As noted above, I have considered the criteria for extending time to appeal as if the orders for each application were issued separately, instead of consolidated in one document. In doing so, I have concluded that the first three *Cairns* factors are met for each application.

[15] Ms. Kong's evidence with respect to all the applications is that she had an intention to appeal while the right to appeal existed. It is uncontested that Ms. Kong took steps to obtain the transcript of the May 21 appearance within the appeal period, which is consistent with an intention to appeal. The respondent takes no position on whether Ms. Kong had a *bona fide* intention to appeal during the appeal period. I accept that she did.

[16] With respect to special circumstances and an explanation for the delay, the May 21 order was pronounced from the bench in morning chambers. Ms. Kong's evidence, supported by the transcript, is that while she had an interpreter with her during the May 21 appearance, the interpreter did not interpret the oral reasons for decision of the chambers judge. Following the oral reasons, opposing counsel asked several clarifying questions of the chambers judge. Ms. Kong then said, "Sorry. I didn't ask them because he didn't translate it to me." The chambers judge replied:

> You'll be able to get the translation through the order or you can order the transcript and take your time translating it. The bottom line is you're going to be paying costs and you're not to make any more applications without leave of the Court. A number of your matters were struck here today. You should read the order very carefully....

[17] Ms. Kong's evidence is that she wanted to review the transcript to understand the decision and prepare the necessary appeal materials. A party does not have an invariable right to wait for a transcript before filing appeal documents. However, I find that in the circumstances of this case, it was reasonable for Ms. Kong to want the transcript to inform her thinking about an appeal. The May 21 hearing took at least an hour and covered four different applications. It appears that Ms. Kong did not have the benefit of interpretation in respect of the decision itself, which referred to legal concepts such as *res judicata*. Ms. Kong was told she could obtain an understanding by translating the order or by receiving and translating the transcript.

[18] Ms. Kong received the transcript on June 19. In oral argument before me, the respondents questioned whether Ms. Kong ordered the transcript as quickly as she could have, in part by reference to Ms. Kong applying for access to the audio recording for the May 21 hearing. Ms. Kong replied with further information about the timeline for ordering and requesting the audio and the transcript. I have not considered the information provided by either party on this point in oral argument because it was not sworn or affirmed evidence submitted within the timelines for submitting evidence. There can be delays in receiving transcripts, even if ordered promptly and on a rush basis. Therefore, the June 19 receipt date does not, on its own, say anything about when the transcript was ordered or on what basis. In all the circumstances of this case, I am satisfied that if the transcript was received on June 19, it was ordered with reasonable diligence. It is reasonable to expect it would take Ms. Kong at least a few days to translate and digest the transcript. Overall, I am satisfied that Ms. Kong acted with reasonable dispatch in the circumstances, that she has provided a reasonable explanation for her delay and that some special circumstances existed in terms of the length and complexity of the hearing, the nature of the issues, the lack of interpretation of the oral decision and the timing of receipt of the transcript.

[19] Ms. Kong filed appeal documentation in this Court on June 30, 2025, within ten days after the deadline, a relatively short delay. I do not find the respondent's arguments about prejudice persuasive. The stress that the respondent or its members experience because of the ongoing acrimonious litigation arises from the litigation itself, not from the delay of approximately ten days

in filing the appeal in this Court. Similarly, if an appeal to this Court were to jeopardize the date set for the pending appeal in the Court of King's Bench from the June 24 2024 order of the applications judge in Action 1901, it is reasonable to assume that the same jeopardy would have occurred had a notice of appeal been filed in time in this Court. It is unlikely that the delay of approximately ten days in filing the notice of appeal in June 2025 would make a difference as to whether an appeal in this Court would be heard and decided before the appeal in Action 1901, which is set in the Court of King's Bench for February 2026. The same reasoning applies with respect to the respondent's argument that ongoing proceedings in this Court will prejudice its ability to govern and manage the affairs of the condominium. Any such prejudice arises from the existence of an appeal, not from the delay in filing.

[20] Ms. Kong has not taken any benefit from the chambers order.

2. Fourth Cairns factor: would the appeal have a reasonable chance of success if it were allowed to proceed?

[21] I have concluded that the first three *Cairns* factors weigh in favour of granting an extension of time with respect to the appeal from the decision in each of the four applications that proceeded on May 21. I must now consider the final *Cairns* factor for each part of the May 21 order –whether the appeal from that part of the order would have a reasonable chance of success if it were allowed to proceed.

[22] When considering whether an appeal has a reasonable chance of success in the context of an application for an extension of time, the question is whether the appeal is not hopeless or frivolous. If an appeal has no reasonable prospect of success, this strongly suggests that an application to extend time to appeal should be dismissed: *Stoddard v Montague*, 2006 ABCA 109 at para 21.

[23] I will consider the reasonable chance of success for each part of the May 21 order separately.

a. 1901 Action – Dismissal of appeal to the Court of King's Bench from the November 7, 2024 order refusing a stay

[24] Ms. Kong's proposed appeal from the May 21 order as it relates to the appeal of the November 7, 2024 order refusing a stay has no reasonable chance of success. As a matter of law, it was not open to Ms. Kong to appeal the November 7, 2024 order issued by one justice of the Court of King's Bench to another justice of the Court of King's Bench: *Rules*, r 14.4(1); *Judicature Act*, RSA 2000, c J-2, s 3(b)(iv)(A). The appeal that Ms. Kong sought to file by way of her November 15, 2024 application was simply not available in the Court of King's Bench and there is no prospect that a panel of this Court would say otherwise. Ms. Kong's argument that the clerk's office in the Court of King's Bench allowed her to file the application, using a document styled

"Notice of Appeal of Applications Judge's Judgment or Order", does not change the legal and jurisdictional flaw. Her proposed appeal to this Court will not succeed.

[25] Ms. Kong's arguments regarding procedural fairness do not affect that conclusion. While the hearing may not have unfolded as Ms. Kong expected, she was permitted to make submissions on the appeal from the November 7 order refusing a stay after the respondent's counsel concluded his submissions on all four applications. After hearing from Ms. Kong for some time, the chambers judge indicated that he did not need to hear anymore from her on the appeal from the refusal of a stay. As set out above, Ms. Kong's appeal to the Court of King's Bench from a previous decision of the Court of King's Bench was bound to fail as a matter of law. It was permissible for the chambers judge to determine he had heard enough about that appeal to be satisfied that he need not hear more. Further, even if there were a breach of procedural fairness, whether with respect to the way the matter was heard or the interpretation, Ms. Kong's appeal to this Court arising out of the May 21 order as it relates to the dismissal of the appeal from the November 7 order refusing a stay would fail because her "appeal" to the chambers judge was doomed to fail: *Mobil Oil Canada Ltd v Canada-Newfoundland (Offshore Petroleum Board)*, [1994] 1 SCR 202 at 228–29, 1994 CanLII 114 (SCC).

[26] The fact that Ms. Kong's attempted appeal of the November 7, 2024 decision refusing a stay has no prospect of success is determinative in this case. It is not in the interest of justice to allow an appeal to proceed that is doomed to fail. Therefore, the application for an extension of time with respect to the dismissal of the application filed November 15, 2024 to appeal the November 7, 2024 decision refusing a stay (Action 1901) is dismissed. For clarity, that includes the costs order associated with the dismissal of the November 15, 2024 application.

b. 1901 Action – Dismissal of application to cross-examine on affidavit

[27] The May 21 order dismissed Ms. Kong's application filed December 2, 2024 to conduct questioning and cross-examination prior to the appeal of the June 24, 2024 order of the applications judge (appeal scheduled for February 2026). For the reasons set out below, an appeal from the order denying questioning and cross-examination does not have a reasonable chance of success.

[28] In the May 21 order, Ms. Kong was partially successful with respect to her application filed December 2, 2024 in the 1901 Action. The chambers judge permitted her to file an additional brief. However, the chambers judge did not grant Ms. Kong permission to conduct questioning. Ms. Kong sought to question on affidavits that were filed and relied upon before the applications judge. She said that she did not conduct questioning prior to the hearing before the applications judge because she was not aware of the procedure. Appeals from orders of an applications judge are conducted "on the record of proceedings before the applications judge and may also be based on additional evidence that is, in the opinion of the judge hearing the appeal, relevant and material": Rule 6.14. For present purposes, I assume, without deciding, that such additional evidence could include the transcript of newly conducted questioning on an affidavit that was part of the record before the applications judge. However, the deadline for filing such evidence is one

month after service of the notice of appeal: Rule 6.14(5)(b). Therefore, in essence, the application before the chambers judge was an application to extend the time for filing additional evidence for the appeal. Such a decision is highly discretionary: *Scott v Westwinds Communities*, 2021 ABCA 30 at para 23. Ms. Kong has not raised any error of principle in the decision of the chambers judge to refuse the extension of time, other than repeating that the process was unfair to her and that she was not previously aware of her right to cross-examine. The *Rules* make it clear that they apply to all parties, including self-represented parties: Rule 1.1(2); *Goldstick Estates (Re)*, 2019 ABCA 508 at para 55. Further, it was open to the chambers judge to accept the respondent's submission that in the context of this litigation, starting down the road of questioning risked significant cost and delay in the proceedings. Overall, I am not convinced that Ms. Kong has demonstrated that her appeal from the decision of the chambers judge regarding cross-examination has a reasonable prospect of success.

[29] Ms. Kong's procedural fairness and interpretation arguments do not affect my assessment of the proposed appeal from the refusal to conduct questioning. The May 21 hearing began with Ms. Kong's submissions on the application to file a brief and conduct questioning/cross-examination. She was fully heard on that application. Also, since Ms. Kong addressed this matter first, and not in response to submissions made by opposing counsel, concerns about the alleged impact of any lack of interpretation during counsel's submissions on Ms. Kong's ability to fully make this part of her case are less acute, in the context of morning chambers and where Ms. Kong did not identify any concerns at the time.

[30] Overall, while some *Cairns* factors weigh in favour of granting an extension of time in respect of the appeal from the dismissal of Ms. Kong's application filed December 2, 2024, requesting permission to conduct questioning in aid of her appeal from the order of the applications judge in the 1901 Action, the appeal has no reasonable chance of success, which weighs heavily against granting an extension of time. In this case, the lack of merit in the appeal outweighs the other factors and the application for an extension of time in respect of May 21 order as it relates to the December 2, 2024 application in the 1901 Action is dismissed. For clarity, this includes the appeal from the costs award relating to the December 2, 2024 application.

c. 2301 Action – Appeal from striking of appeal

[31] Ms. Kong's position throughout has been that she withdrew the 2301 Appeal as of September 4, 2024, long before the May 21, 2025 hearing. The respondent argues that a formal discontinuance document was required and that Ms. Kong then changed her position during a hearing on September 10, 2024, although she did not go on to pursue the 2301 Appeal. On its own, an appeal to this Court focused on whether the 2301 Appeal was substantively withdrawn in September 2024, whether it was later abandoned, or whether it remained live to be struck on May 21, 2025, is likely moot. All parties agree that the 2301 Appeal is, and should be, at an end. In isolation, the exact manner in which the 2301 Appeal came to an end is of little import. However, the chambers judge did not simply strike the 2301 Appeal to formally bring it to an end. He

described the 2301 Action as abusive in the nature of *res judicata*, he described the 2301 Appeal as "time barred" and he awarded enhanced costs of the 2301 Appeal against Ms. Kong. The chambers judge also imposed filing restrictions on Ms. Kong, which remedy was requested by the respondent in the applications filed in both the 2301 and the 2401 Actions on December 10, 2024. In other words, the striking of the appeal had a practical consequence because it was the basis for an award of enhanced costs and presumably part of the basis for the imposition of filing restrictions.

[32] In combination, the striking of the 2301 Appeal and the resulting enhanced costs award and other consequences give rise to an appeal with a reasonable chance of success in this Court. The chambers judge accepted that Ms. Kong withdrew the 2301 Appeal and took it off the list. Having accepted that the 2301 Appeal was withdrawn on September 4, 2024, it is arguable that there was no basis on which to strike the 2301 Appeal, except perhaps as a formality, and no basis to award enhanced costs or any other relief against Ms. Kong arising from the 2301 Appeal. As of September 4, 2024, the respondent had not filed a brief or any other materials in the 2301 Appeal. Accordingly, the respondent was not necessarily entitled to any taxable costs as of right at that point. On September 9, 2024, the respondent insisted that the Court of King's Bench file its brief in the 2301 Appeal, even though Ms. Kong had informed the respondent that she was withdrawing the appeal and the clerk's office said the 2301 Appeal had been taken off the list. It is arguable that the costs of filing a brief in an appeal that had been removed from the list, and for which there was a written statement that it was being withdrawn, were for the respondent's own account. It is also arguable that subsequent attendances in respect of the 2301 Appeal arose because of the respondent's insistence that it was entitled to costs of the 2301 Appeal or because of its subsequent application to strike the 2301 Appeal. The respondent relies heavily on what it describes as a lack of clarity or change in position from Ms. Kong during a hearing on September 10, 2024. However, that transcript could be read in different ways in terms of how and why the purported change in position came about. To the extent that the chambers judge relied on the 2301 Action being *res judicata* as the basis for enhanced costs, it is noteworthy that the applications judge had already dealt with the costs relating to his decision to strike the 2301 Action as abusive. Therefore, it is arguable that it was not open to the chambers judge to impose costs again on that basis, given that the 2301 Appeal did not proceed. The conclusion of the chambers judge that the 2301 Appeal was time barred also raises an arguable issue and is connected to the award of enhanced costs and imposition of filing restrictions.

[33] It is important to reinforce that the foregoing merely articulates the arguable issues arising from the decision of the chambers judge in relation to the 2301 Appeal. A panel of this Court may ultimately decide that the chambers judge made no error. However, my task at this stage is not to decide whether the chambers judge was right or wrong. Rather, I must determine whether the appeal has a reasonable chance of success.

[34] Having found that Ms. Kong has raised a ground of appeal with a reasonable prospect of success in respect of the May 21 order striking the 2301 Appeal and the associated award of

enhanced costs and imposition of filing restrictions, I need not consider the merits of her procedural fairness and interpretation arguments in the context of this proposed appeal because I am not deciding whether to grant an extension of time on an issue-by-issue basis.

[35] In summary, I am satisfied that Ms. Kong has a reasonable chance of success on the appeal from the May 21 order striking the 2301 Appeal and the associated award of enhanced costs and imposition of filing restrictions. As set out above, the other *Cairns* factors also weigh in favour of granting an extension of time. I therefore grant the application to extend time to appeal the May 21 order as it relates to the 2301 Action.

d. 2401 Action – Appeal from striking of action

[36] I am satisfied that Ms. Kong's appeal from the decision of the chambers judge striking the 2401 Action has a reasonable chance of success. The chambers judge struck the 2401 Action on the basis that it was a "rehash" of the 2301 Action and the 1901 Action and was barred as "estoppel res judicata". The chambers judge did not account for the fact that after the respondent filed the application to strike the 2401 Action on December 10, 2024, and before the May 21, 2025 hearing, Ms. Kong filed an Amended Statement of Claim in the 2401 Action. The Amended Statement of Claim includes allegations of legal wrongdoing at the annual general meeting of the respondent condominium corporation that took place on April 22, 2025. Those specific allegations could not have been covered in the 1901 Action or the 2301 Action, both of which were struck long before April 22, 2025. It may be that some or all of the allegations in the amended claim were also susceptible to being struck. However, for present purposes, and on the face of the allegations, there is an arguable case that at least some of them were viable. In the context of an application to extend time, it is not for me to decide whether the chambers judge should have considered the amendments but there is sufficient jurisprudence regarding the need to consider amendments before striking a claim to raise an arguable issue on appeal: *Goodswimmer v Canada (AG)*, 2017 ABCA 365 at para 17; *Farm Credit Canada v Chan*, 2021 ABCA 168 at para 17.

[37] I also note that Ms. Kong's procedural fairness argument has more merit in the context of the 2401 Action, which adds to the viability of the appeal in the 2401 Action. Although the chambers judge permitted Ms. Kong a relatively lengthy reply, which gave her an opportunity to address more than the one application on which she made submissions initially, Ms. Kong did not end up making submissions in response to the application to strike the 2401 Action. Before she got to the 2401 Action, the chambers judge concluded the proceedings. It is not my role to determine at this time whether there was a breach of procedural fairness, but I find that the procedural fairness argument in the context of the 2401 Action supports my conclusion that the appeal in the 2401 Action is not hopeless.

[38] In summary, I am satisfied that the totality of the *Cairns* factors weigh in favour of granting an extension of time to Ms. Kong to appeal the decision of the chambers judge striking the 2401 Action. For clarity, that appeal includes all orders in the May 21 order arising from the application filed by the respondents in the 2401 Action on December 10, 2024.

II. Permission to Appeal

[39] On June 30, 2025, Ms. Kong not only filed a notice of appeal in this Court (seemingly with respect to the May 21 order as it relates to the 2401 Action), but she also filed applications for permission to appeal that, when taken together, relate to the entirety of the May 21 order. I heard the parties' arguments with respect to the permission to appeal applications at the same time as the applications to extend time.

[40] Ms. Kong filed the applications for permission on the basis that the litigation restrictions placed on her in the May 21 order (which were requested by the respondent in the applications filed December 10, 2024 in both the 2301 and 2401 Actions) might be construed as vexatious litigant restrictions so as to bring her within Rule 14.5(1)(j). The respondent does not take a position on whether permission to appeal is required and does not argue that the chambers order should be interpreted as a vexatious litigant order. The respondent was clear that it did not apply to have Ms. Kong declared a vexatious litigant.

[41] Sometimes, an order restricting access to the court is treated as a "vexatious litigant order" in substance even if it does not use those words: for example, see *Bains v Adam*, 2024 ABCA 271 at paras 3-5. In the particular circumstances of this case, including how the application was addressed below, the substance of the order granted, and the positions of the parties, I am satisfied that the May 21 order should not be treated as a vexatious litigant order for the purposes of Rule 14.5(1)(j). No party, nor the Registry or Case Management Officer, has raised any other basis on which permission to appeal would be required for any of the proposed appeals. I agree with the parties that while one of the key components of the proposed appeal in the 2301 Action is the enhanced costs award, it is not an appeal from a costs award only so as to require permission to appeal pursuant to Ruel 14.5(1)(e).

[42] Therefore, the applications for permission to appeal are unnecessary and the appeals for which time has been extended, that is the appeals in the 2301 and 2401 Actions, may proceed without permission.

III. Ancillary Matters

[43] In hopes of reducing the risk of further disputes between the parties, I note the following with respect to the hearing of the applications to extend time and for permission to appeal:

- Prior to the hearing scheduled for October 16, 2025, Ms. Kong, by letter, requested that I recuse myself, that she be permitted to file a reply argument, and that the application be adjourned. I issued two letter decisions via the Case Management Officer on those matters. At the outset of the hearing on October 16, 2025, I directed that the reply argument submitted in advance be filed and that it would be part of the materials considered for the applications.

- On October 16, 2025, after we addressed some preliminary matters and swore a Mandarin/English interpreter from Language Line, Ms. Kong made submissions and answered questions from the Court. Ms. Kong used an application that spoke for her, in English, for significant parts of her submissions. Accordingly, at Ms. Kong's suggestion, there was no interpretation during those parts of her submissions. Any interaction not done through the speech application proceeded with consecutive interpretation. The respondent's counsel then made submissions and answered questions from the Court, during which there was consecutive interpretation. At approximately 1:30 pm, the respondent's counsel indicated that he required more time. The interpreter was not in a position to continue and we had not yet had a lunch break. The hearing was adjourned to 2:30 pm on Friday, October 17. On October 17, the respondent's counsel made submissions and answered questions from the Court, again with consecutive interpretation throughout. Ms. Kong then made reply submissions, initially with consecutive interpretation and thereafter using the speech application to speak for her in English. When it was time for Court to close for the day, Ms. Kong indicated that she was not done her reply submissions. It was clear that by that point, Ms. Kong was working from a prepared text. Accordingly, I suggested that instead of continuing to have the speech application read the text, Ms. Kong could file her prepared text in writing. Ms. Kong agreed and the text was filed. I dismissed the respondent's request to file a sur-reply in writing.

- Other than as noted in the previous bullet regarding Ms. Kong's use of the application to speak for her in English, the entire hearing was conducted using consecutive interpretation with a Mandarin/English interpreter from Language Line.

- I am satisfied that both parties had a fair opportunity to present their positions in writing and orally.

[44] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order. Given the mixed success on the applications, each party shall bear their own costs.

Applications heard on October 16 and 17, 2025

Reasons filed at Calgary, Alberta
this 12th day of January, 2026

Grosse J.A.

Appearances:

Applicant Z. X. Kong

J. R. R. Gilbert
E.M. Berney (No appearance)
for the Respondent