

# In the Court of Appeal of Alberta

**Citation: Raymond James Ltd v Kostic, 2025 ABCA 296**

**Date:** 20250902  
**Docket:** 2401-0095AC  
**Registry:** Calgary

**Between:**

**Raymond James Ltd., Janet Potts, CIBC World Markets Inc., and CIBC Trust Corporation**

Respondents

- and -

**Liliana Kostic**

Applicant

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

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Application to Restore Appeal

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**Introduction**

[1] The applicant, Liliana Kostic, seeks to restore an appeal that was struck because the materials she attempted to file in support of her appeal did not comply with the applicable filing requirements.

[2] For the reasons following, the application to restore the appeal is dismissed.

**Brief Background**

[3] The appeal sought to be restored flows from litigation in the Court of King’s Bench, which has not yet proceeded to trial despite the fact that the underlying conflict began in 2006. As part of the case management process, this complicated and protracted piece of litigation is subject to legal filing restrictions. On March 12, 2024, the then case management judge denied Ms Kostic’s request for leave to file an application relating to indemnification. Ms Kostic appealed under the “fast track” process set out in r 14.14 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[4] Ms Kostic’s 12-page appellant’s factum was to be filed on July 9, 2025: r 14.24, 14.26(2)(e). On July 9, 2025, Ms Kostic attempted to file her appeal materials, but they were rejected because they did not comply with the requisite formatting and page limits. On July 10, 2025, upon receiving notification that her filing was rejected, Ms Kostic wrote to the Case Management Officer (CMO) requesting an extension of the deadline to file her materials and permission to file a factum that exceeded the page limit for fast track appeals. On July 11, 2025, the CMO informed Ms Kostic that the extension to July 16, 2025 was granted, but the request for an increased page limit was denied. On July 16, 2025, Ms Kostic’s factum again was rejected due to formatting issues and failure to comply with the page limit. Ms Kostic had not sought a further extension from the CMO, or a permission to file an overly long factum before attempting to file her 30 page factum. Her appeal was automatically struck on July 17, 2025, in accordance with rr 14.24(1)(a) and 14.64(b).

[5] Ms Kostic now applies to this Court to restore her appeal. The Respondents, the CIBC parties and RJL oppose the application. Ms Potts did not make submissions to the Court, but according to Ms Kostic, she consented to the application.

## Legal Test

[6] When a fast track appeal has been struck, the application to restore that appeal must be filed as soon as reasonably possible and no later than three months after having been struck: r 14.47.

[7] A single appeal judge has discretion to determine whether to restore an appeal. The following factors are considered:

- a) the arguable merit of the appeal;
- b) the reason for the defect or delay that caused the appeal to be struck;
- c) the applicant's reasonable promptness in taking steps to cure the defect and have the appeal restored;
- d) the applicant's intention in time to proceed with the appeal; and
- e) absence of prejudice to the respondents if the appeal were restored.

See *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4 [*Prochazka*]; see also *The Owners: Condominium Plan No 982 6403 v CPI Crown Properties International Corporation*, 2018 ABCA 232 at para 11. The court must determine if, considering all the factors, it is in the interests of justice to restore the appeal: *Prairie West Homes Inc v Baraka Homes Ltd*, 2023 ABCA 256 at para 10; *Prochazka* at para 4. While many of the factors are not determinative, an absence of arguable merit for the appeal will often be fatal to restoring the appeal: *Bank of Montreal v McLennan*, 2024 ABCA 410 at para 16; *Nkusi v Patricia C Tiffen Professional Corporation*, 2023 ABCA 272 at para 38; *Holden v Holden*, 2022 ABCA 341 at paras 62, 87. The applicant bears the onus of establishing that restoring their appeal is in the interests of justice: *Mylonas v Kadman*, 2019 ABCA 39 at para 10.

## Analysis

[8] Ms Kostic's struck appeal is from a case management decision declining her request for leave to bring an application for indemnification and save harmless relief against her former employers, CIBC World Markets (formerly CIBC Wood Gundy), the Piikani Nation, and Raymond James Ltd: *Piikani Nation v Kostic*, 2024 ABKB 137 [*Kostic*]. Leave was required for any application as part of managing the litigation: *Piikani Nation v McMullen*, 2020 ABCA 183 at para 5. The case management judge deferred consideration of this issue to trial. He noted it was "absolutely necessary to carefully control the proceedings in all of these lawsuits as to date they have all been delayed by a myriad of applications and appeals from procedural applications": at paras 83, 141, 142. Doing so was also consistent with this Court's previous decision with respect

to some of the parties that indemnification was to be considered at trial: paras 100, 102. Due to the nature of the claims, determination of indemnity would need to take place following trial: *Kostic* at para 125.

[9] This Court determined that Ms Kostic did not require permission to appeal the case management decision: *Piikani Nation v Kostic*, 2025 ABCA 7 at para 18. In rendering that decision, this Court did not analyze the merits of Ms Kostic's appeal; rather, it determined that she could apply to appeal the decision as of right.

[10] The respondents oppose Ms Kostic's application to restore her appeal, emphasizing the appeal has no merit. RJL argues essentially that it will fail as the indemnification claim has previously been decided by several courts, including this one. The CIBC parties argue this appeal is a collateral attack and abuse of process.

#### *Merits of the appeal*

[11] The underlying decision is a discretionary procedural case management determination entitled to significant deference on review. In the absence of an error of law, such a decision can be overruled by this Court only if it reflects an error of principle or is clearly unreasonable: *Piikani Nation v Kostic*, 2018 ABCA 234 at para 12; *Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited*, 2014 ABCA 74 at para 17. This is a very high onus.

[12] Furthermore, the decision sought to be appealed was based in part on this Court's previous determinations that indemnity in this matter is to be decided at trial: *Kostic v CIBC Trust Corporation*, 2018 ABCA 355; *Piikani Nation v Kostic*, 2018 ABCA 234; *Kostic v CIBC Trust*, 2019 ABCA 29; *Kostic v CIBC Trust*, 2019 ABCA 173. The trial has not yet occurred.

[13] Ms Kostic says that these cases do not apply to the current application, as she now seeks to make new arguments in support of her claim of indemnity: she now wishes to argue that she has a common law entitlement to indemnification and save harmless relief prior to trial on the basis of principles of employment and agency relationships.

[14] Applicants are generally entitled one opportunity to argue a cause of action. The principle of *res judicata* prevents a party from re-litigating a matter that has been previously decided. It is an inefficient use of judicial resources to reconsider issues already decided simply because the applicant has devised or discovered a new legal argument after the fact. On that basis, I agree that there is little merit to Ms Kostic's appeal of the case management decision declining her request for leave to bring an application for indemnification and save harmless relief.

[15] Importantly, no court has ruled that Ms Kostic is *not* entitled to indemnification and save harmless relief. She retains the ability to argue her entitlement after a full evidentiary record is before the court at trial.

*Reason for the defect*

[16] Ms Kostic provides two explanations for her failure to file a compliant factum in time: technical difficulties and the fact that she is a self-represented litigant. Ms Kostic submits that a mere slip resulting in an unintentional procedural error is not grounds to dismiss an application to restore an appeal: *Primerica Inc v Moukhaiber*, 2025 ABCA 86 at paras 10-12.

[17] This is not an adequate explanation. This Court, in *Xu v Ma*, 2024 ABCA 29 at para 16, stated that “a lack of legal knowledge alone does not provide justification for failing to meet the timelines to proceed with an appeal. Rule 1.1(2) clarifies that the *Rules* govern all litigants, whether self-represented or represented by counsel. All parties have access to the Court’s Case Management Officers to seek clarifications about the appeal process”. The facts here are important: Ms. Kostic was provided with a seven-day extension beyond the original deadline and was made aware of the required format and length of the factum by the CMO at the time the extension was granted. She had an additional seven days to ensure the factum complied with the formatting and length requirements. Ms Kostic was aware of the requirements for her filed materials and was given ample time to comply with them. The fact that she submitted a factum that was not compliant with the length and formatting requirements cannot be adequately categorized as a mere slip or inadvertent procedural error. Furthermore, Ms Kostic made no further attempts to request an extension from the CMO before the July 16, 2025 deadline. This is not something she can lay at the feet of the respondents, who she attempted to contact only at the very last moment. The proper approach is to apply for an extension before a deadline passes once it appears a deadline cannot be met: *Li v Morgan*, 2020 ABCA 186 at para 10.

[18] In sum, Ms Kostic has not provided an adequate explanation as to defect that caused the appeal to be struck.

*Promptness, intention and prejudice*

[19] Ms Kostic applied to restore the appeal within the three-month timeline. She acted with reasonable promptness in attempting to restore the appeal and has demonstrated an intention to pursue the appeal. RJL concedes this, and CIBC does not dispute it.

[20] The respondents have not alleged prejudice in their materials. The relevant prejudice when considering applications to restore appeals is that which results from the delay in meeting the requirements in the rules, not prejudice that might otherwise be suffered by any party: *Wallace v Eastside City Church*, 2020 ABCA 126 at para 13. In the circumstances, the impacts on the respondents do not rise to the level of prejudice.

## Conclusion

[21] Despite Ms Kostic's prompt action to restore the appeal, her demonstrated intention to pursue the appeal, and the lack of prejudice to the respondents, she has failed to provide an adequate explanation for missing the deadlines and she has not demonstrated that her appeal has sufficient arguable merit to tip the scales her favour. Considering the entirety of the circumstances, it would not be in the interests of justice to restore the appeal.

[22] The application to restore the appeal is dismissed.

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

Application heard on August 20, 2025

Reasons filed at Calgary, Alberta  
this 2nd day of September, 2025

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Friesen J.A.

**Appearances:**

S.B. King  
for the Respondent, Raymond James Ltd.

Respondent J. Potts

D.V. Tupper (no appearance)

G.H. Adair  
for the Respondents, CIBC World Markets Inc. and CIBC Trust Corporation

Applicant L. Kostic