

In the Court of Appeal of Alberta

Citation: Uhuegbulem v Timpano, 2025 ABCA 287

Date: 20250815
Docket: 2501-0084AC
Registry: Calgary

Between:

Ikenna Uhuegbulem

Applicant

- and -

Toni Timpano

Respondent

**Reasons for Decision
of the Honourable Justice Kevin Feth**

Application for Permission to Appeal

**Reasons for Decision
of the Honourable Justice Kevin Feth**

Overview

[1] The applicant, Ikenna Uhuegbulem, seeks permission to appeal an Order of the Court of King’s Bench dismissing an appeal from an assessment officer’s decision that quantified the solicitor and own client costs payable by Mr Uhuegbulem for a previous application in that Court. The assessment officer quantified those costs in the amount of \$19,394.81 (the “Assessment Order”).

[2] The applicant contends that the appeal judge made various errors in upholding the Assessment Order. He also contends that the appeal judge erred in awarding double costs against him for the appeal.

[3] For the reasons to follow, permission to appeal is denied.

Background

[4] The applicant and his former spouse were the respondent’s landlords. In 2023, a dispute between those parties was referred to the Residential Tenancy Dispute Resolution Service (RTDRS), which found that a rent increase notice sent by the applicant was invalid. The landlords were directed to pay the respondent \$2,522, which included a rent rebate of \$1,650 (RTDRS Order).

[5] The applicant appealed the rent rebate portion of the RTDRS Order to the Court of King’s Bench. He initially obtained *ex parte* Orders extending the time to appeal and granting his appeal, but Justice M. Gaston later vacated those Orders and then dismissed the appeal. She concluded that the applicant engaged in litigation misconduct and ordered him to pay solicitor and own client costs, meaning full indemnity costs, of the appeal (Rebate Appeal Order).

[6] The applicant sought to appeal the Rebate Appeal Order to this Court, but his request for an extension of time to seek permission to appeal was dismissed. The proposed appeal was found to have no reasonable chance of success: *Uhuegbulem v Timpano*, 2025 ABCA 110.

[7] The solicitor and own client costs awarded under the Rebate Appeal Order were quantified at \$19,394.81 by an assessment officer following a hearing directed by Justice Gaston, resulting in the Assessment Order.

[8] The applicant appealed the Assessment Order under Rule 10.44 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*). A Justice of the Court of King's Bench, sitting as an appeal judge, heard the appeal and reserved judgment. On February 27, 2025, the appeal judge delivered oral reasons dismissing the appeal. The appeal judge confirmed that she had reviewed the materials filed by the applicant and those provided by the respondent's counsel, which were organized in a binder and included the full transcript of the assessment hearing. The appeal judge acknowledged that the standard of review is deferential given the specialized knowledge of the assessment officer, but that any question of law or principle is reviewed for correctness.

[9] The appeal judge found that many of the applicant's complaints were focused on Justice Gaston's earlier decision to order solicitor and own client costs, which was not the issue before the assessment officer. The assessment merely determined the quantum of the costs awarded. The appeal was not an opportunity to revisit whether full indemnity costs should have been ordered.

[10] The appeal judge rejected the applicant's arguments that the assessment officer had conducted an unfair hearing or had arrived at unreasonable findings of fact. In particular, she rejected his submission that the assessment officer did not review relevant material, gave weight to negative assertions about the applicant's conduct in quantifying the costs award, and interpreted the costs award to require "punitive costs". Instead, the appeal judge concluded that the assessment officer properly reviewed the respondent's legal fees invoice in determining the quantum of the costs award, and that submissions about the merits of Justice Gaston's decision were not relevant to the assessment.

[11] The applicant was concerned that the assessment officer did not read his affidavit. The appeal judge reviewed the applicant's affidavit and found that the contents related to the Rebate Appeal Order and "would not have been considered by the assessment officer in performing his task of quantifying solicitor [and own] client costs under the Rules."

[12] The applicant further argued that the legal fees charged to the respondent were excessive because the file was used as a "learning experiment" by the law firm; a junior lawyer was assigned some of the work conducted on the file. The appeal judge found that the assessment officer was alive to the applicant's concerns, conducted a line-by-line review of the law firm's invoice, and appropriately questioned the respondent's counsel. She found no basis to disturb the assessment officer's findings about the quantification of the costs award.

[13] As for the costs of the appeal, the appeal judge awarded double costs totalling \$4,050 because of a *Calderbank* offer.

Proposed grounds of appeal

[14] In seeking permission to appeal, the applicant advances numerous proposed grounds of appeal, which may be summarized as follows: the hearings before both the assessment officer and the appeal judge were procedurally unfair; the assessment officer was guided by irrelevant considerations (e.g., quantifying the costs award to be punitive and considering the applicant's litigation misconduct); the assessment officer and the appeal judge failed to demand from the respondent a Bill of Costs calculated under Schedule C of the *Rules* and to use an estimate of party-and-party costs to guide the assessment; the assessment officer conducted the assessment without sufficient guidance from Justice Gaston; and the appeal judge provided inadequate reasons for her decision. Further, the appeal judge allegedly failed to adequately consider access to justice for self-represented litigants and the public interest in arriving at her decision.

[15] The applicant also contends that the appeal judge erred in determining that he should pay enhanced costs for the unsuccessful appeal. Specifically, he contends the appeal judge relied on a *Calderbank* offer that she did not read and that was not a *bona fide* offer of compromise.

Appeal from an assessment officer's decision

[16] The appeal decision in this matter was made under Rule 10.44, which states in part:

Appeal to judge

10.44(1) A party to an assessment officer's decision under this Division or a party to an assessment officer's decision under rule 9.35 may appeal the decision to a judge.

(2) The appeal from an assessment officer's decision is an appeal on the record of proceedings before the assessment officer.

[17] An appeal judge's remedial powers are broad, but the appeal hearing is not *de novo* and the assessment officer's decision is entitled to deference: *Betser-Zilevitch v Prowse Chowne LLP*, 2021 ABCA 129 at para 13. An assessment officer "is in the best position to assess and weigh the evidence": *Rocks v Ian Savage Professional Corporation*, 2015 ABCA 77 at para 15, leave to appeal to SCC refused 36454 (1 October 2015). Given an assessment officer's specialized knowledge and experience in assessing costs, interference will usually only be justified if the

decision discloses “an error in principle or palpable and overriding error”, or the “award is inordinately high or low”: *Dear v McLennan Ross*, 2008 ABCA 137 at para 1, 429 AR 75; *Mercantile Bank of Canada v Keen Industries Ltd*, 1988 ABCA 224 at paras 12-14, 86 AR 311.

Test for permission to appeal

[18] Access to another level of appeal is restricted by Rule 14.5(1), which requires permission to appeal for several types of decisions. The applicant requests permission to appeal to this Court pursuant to subrule 14.5(1)(i):

14.5(1) Except as provided in this rule, no appeal is allowed to the Court of Appeal from the following types of decisions unless permission to appeal has been obtained:

...

- (i) any decision of the Court of King’s Bench sitting as an appeal court under rule 10.26, 10.44 or 12.71.

[19] Subrule (i) addresses three types of appeal decisions: an appeal from a review officer’s decision (Rule 10.26), an appeal from an assessment officer’s decision (Rule 10.44), and an appeal from a decision made under the *Family Law Act*, SA 2003, c F-4.5 (Rule 12.71). Historically, the subrule only addressed appeals from decisions under Rule 12.71. However, an amendment effective January 1, 2024 added appeals under Rules 10.26 and 10.44: *Alberta Rules of Court Amendment Regulation*, Alta Reg 126/2023.

[20] Appeals under Rule 12.71(1) are confined to questions of law or jurisdiction. The test for permission to appeal under the former subrule (i) developed in that context. However, the *Rules* do not expressly limit permission to appeal from decisions under Rule 10.44 (or Rule 10.26) to a question of law or jurisdiction.

[21] This application for permission to appeal appears to be the first from a Court of King’s Bench appeal decision under Rule 10.44 raising the amended Rule 14.5(1)(i). Recently, the first permission to appeal application in respect of Rule 10.26 was decided under the amended subrule (i): *Bertram Family Trust v Felesky Flynn LLP*, 2025 ABCA 54 [*Bertram*]. This Court established a new test for permission to appeal for a second appeal arising from a review officer’s decision about lawyer’s charges. The new test recognizes the “exceptional nature of second appeals, the absence of a strict requirement for a question of law or jurisdiction, and the objectives of the simplified, timely, and economical process for reviews contemplated in Part 10 of the *Rules*. The ultimately inquiry is whether a second appeal serves the interests of justice”: *Bertram* at para 41.

[22] The new test for permission to appeal a Rule 10.26 appeal decision considers whether:

- a) There is a question of general or public importance that warrants another appeal;
- b) There is a reasonable chance of success on appeal; and
- c) The delay will not unduly hinder the progress of a related proceeding or cause undue prejudice to the simplified, timely and economical process contemplated for the review of a lawyer's charges.

The factors are reviewed holistically, and the burden rests with the applicant to demonstrate that a second appeal has a reasonable chance of success and is warranted.

[23] For the reasons below, I conclude that the same substantive test should be adopted for permission to appeal from an appeal decision concerning an assessment officer's decision.

a) Second appeals

[24] As with a review officer's decision, only one appeal of an assessment officer's decision operates as of right and granting permission for a second appeal is the exception, not the rule: *R v Lofstrom*, 2020 ABCA 286 at para 6; *Pilgrim v True-Line Contracting Ltd*, 2023 ABCA 126 at para 17. Permission to further appeal from an assessment appeal decision is granted only sparingly, and must meet a high bar: *Carbone v Burnett*, 2021 ABCA 432 at para 23 [*Carbone*]; *Hudye Inc v Rosowsky*, 2025 ABCA 51 at para 7 (applying the pre-amendment version of Rule 14.5(1)). Reviewability on a second appeal is substantially constrained. The first appeal ostensibly already addressed issues of principle or general law: *Cold Lake Industrial Park GP Ltd v Abt (Estate)*, 2022 ABCA 23 at para 27 [*Cold Lake*]. Permission to appeal is from the decision of the appeal judge, not the assessment officer's decision. "A permission to appeal application and a second possible appeal is not a blanket opportunity to raise the same arguments and evidence again, in the hope that a different and more beneficial decision will result": *Bertram* at para 22, quoting *Biernacki v Alberta (Land and Property Rights Tribunal)*, 2022 ABCA 56 at para 20. "Appeals are expensive and introduce delay": *Mudrick Capital Management LP v Lightstream Resources Ltd*, 2016 ABCA 401 at para 11.

[25] Here, an assessment officer and a judge of the Court of King's Bench, sitting as an appeal judge, have carefully reviewed the legal fees charged by the respondent's counsel in quantifying the solicitor and own client costs payable by the applicant. Deference is owed by this Court where the appeal judge identified and applied the proper standards of review to the assessment process

and the assessment officer's decision, and no misstatement of the law is present: *Carbone* at para 20.

[26] As for the costs of the initial appeal, costs decisions are highly discretionary and will not be interfered with lightly: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 42, [2003] 3 SCR 371. “Costs awards should not be set aside on appeal unless the judge below made an error in principle or the award is plainly wrong”: *Bun v Seng*, 2015 ABCA 165 at para 5; *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27, [2004] 1 SCR 303.

b) Test for permission to appeal under Rule 14.5(1)(i) – Assessment of costs

[27] Before the amendment to Rule 14.5(1)(i) added Rule 10.26 and 10.44 appeals, some authorities held that a second appeal from an assessment decision was captured by the permission to appeal requirement in the former Rule 14.5(1)(e) dealing with a decision “as to costs only”: *Cold Lake* at paras 1, 21; *Carbone* at paras 11-12, 15. In those cases, a four-part test for permission to appeal was applied. The applicant was required to demonstrate:

- (i) . . . a good, arguable case having enough merit to warrant scrutiny by the court;
- (ii) the issues must be important, both to the parties and in general;
- (iii) the appeal must have some practical utility; and
- (iv) the court should consider the effect of delay in proceedings caused by the appeal.

[28] Rule 14.5(1)(e) was amended at the same time as Rule 14.5(1)(i). Rule 14.5(1)(e) now provides that permission to appeal is required for “a decision as to a *costs award* only”, rather than “as to *costs* only” (emphasis added). “Costs award” is a defined term in the *Rules*, and “means the amount payable by one party to another” in accordance with court-ordered costs awards under Rule 10.31 or a certificate assessing costs under Rule 10.43. The amount payable can be expressed as either a specific dollar figure or an amount to be calculated based on a scale of costs – such as party-and-party costs determined under a column of Schedule C of the *Rules* or solicitor and own client costs. Where the costs award does not specify the dollar figure and the parties cannot agree on the calculation of the figure, the quantification may be referred to the assessment process under Part 10 of the *Rules*. The determination of a “costs award” is discrete from the determination of the quantification of that award. Rule 14.5(1)(e) was not amended to include Rule 10.44 appeal decisions about quantification. Instead, appeals from assessments of quantum are found under subrule (i).

[29] The distinction is important, as illustrated in this case. The “costs award” of solicitor and own client costs was made by Justice Gaston. The assessment officer merely quantified that award. Justice Gaston’s costs award was not the subject of the Rule 10.44 appeal before the Court of King’s Bench appeal judge; only the assessment officer’s quantification of that award was.

[30] When the applicant sought permission to appeal Justice Gaston’s Order, he relied on Rule 14.5(1)(e). However, the current proposed appeal is not an appeal of Justice Gaston’s costs award, but instead of the assessment officer’s quantification. As a result, permission to appeal is not in respect of a “costs award only”, but rather a second appeal of the assessment officer’s quantification of that costs award.

[31] The historical test for permission to appeal under Rule 14.5(1)(i) also has no application. The test was described in *Szakaly v Smith*, 2024 ABCA 171 at para 5; an applicant must demonstrate: (i) there is an important question of law or precedent; (ii) there is a reasonable chance of success on appeal; and (iii) the delay will not unduly hinder the progress of the action or cause undue prejudice. However, that test was developed when Rule 14.5(1)(i) applied exclusively to allowing a second appeal from an appeal decision made pursuant to Rule 12.71 and the *Family Law Act*. For the reasons discussed in *Bertram* at para 24, which arose in the context of appeals about reviews of legal charges under Rule 10.26, that test has no application to appeals from assessment decisions, which arise in a different context and are not confined to questions of law or jurisdiction.

[32] The context of a Rule 10.44 appeal includes the narrow subject matter of the dispute and the simplified process for resolving it. Finality is a key consideration in deciding whether to allow access to a second appeal. The *Rules* provide a streamlined process for setting the amount of the costs award: a basic hearing is conducted before an assessment officer, who has expertise in reviewing the quantum of cost awards and the reasonableness of lawyer’s charges. An assessment officer’s decision is intended to be a final determination on the quantum of costs ordered. Rule 10.44 provides for an appeal of that decision but limited to the record. The reasoning in *Bertram* at paragraph 33 about determining the recoverable legal charges owed by a client to a lawyer also applies to the assessment of costs awards:

... Litigation efficiency, judicial economy and certainty must prevail at some point through finality, particularly where matters concerning the reasonableness of fees will be largely, if not wholly, fact-driven, and will not involve issues of any importance to the public or the practice. Further, the review and appeal provisions under the *Rules* concerning a lawyer’s charges are meant to streamline the review process and underscore the aim of quick and efficient resolution between the parties.

[33] This streamlined process promotes access to justice by reducing the expense to the parties and avoids excessive consumption of court resources.

[34] This Court confirmed in *1985 Sawridge Trust v Kennedy*, 2017 ABCA 368 at para 4, that “appeals on the *details* of costs award (e.g., which Column applies, was second counsel required, etc.) are rarely appropriate” (emphasis added); *Bertram* at para 32. A Rule 10.44 appeal is in the nature of the *details* of a costs award, not the award itself. When those details have already been assessed, set and reviewed on appeal, the test for permission to appeal, unlike that for “costs awards only”, must necessarily recognize that the review and assessment process under Part 10 of the *Rules* has already been conducted. The new test set out in *Bertram* for Rule 10.26 decisions does just that.

[35] First, the *Bertram* test demands that the question for appeal has importance beyond the parties’ particular interests. An issue of general or public importance “will usually involve an unsettled issue of law or one of jurisprudential significance”: *Bertram* at para 37. More specifically, the question will usually involve “a matter of policy, principle or law that might have precedential value” and requires “more than a disagreement with a factual interpretation or a quarrel with an exercise of discretion”: *Bertram* at para 37, citing *Ardmore Properties Inc v Sturgeon School Division No 24*, 2024 ABCA 88 at para 5. The involvement of a large or extraordinary sum alone does not necessarily satisfy the test for permission to appeal: *Cold Lake* at paras 28-29; *Bertram* at para 35.

[36] Second, the proposed appeal must have a reasonable chance of success: *Bertram* at para 38. The standard of review applicable to each question is a relevant consideration in determining whether the proposed second appeal has a reasonable chance of success.

[37] Finally, a second appeal must respect the purpose of Part 10 of the *Rules*, which is to resolve disputes about the assessment of costs and the review of a lawyer’s charges through a simplified, timely, and economical process. Further, a second appeal generally should not unduly hinder the progress of a related proceeding or cause undue prejudice to the streamlined process contemplated for the assessment of costs awards. As *Bertram* explained at paragraph 40 in the context of reviewing legal charges:

Any consideration of undue prejudice will largely be driven by this purpose, including the expense of a further appeal relative to the value of the legal charges in dispute. The more modest the sum in dispute, the less likely a second appeal will be proportionate to the financial interests at play. When interpreting the *Rules*, proportionality is a foundational principle to be considered in exercising a discretion to grant a remedy, including access to a further appeal: Rule 1.2(4).

Proportionality is similarly reflected in Rule 14.5(1)(g) which requires permission to appeal a money dispute involving \$25,000 or less, exclusive of costs.

[38] The considerations supporting the *Bertram* test for Rule 10.26 appeals apply equally to Rule 10.44 permission to appeal applications. Further, using the same test for both Rule 10.26 and Rule 10.44 decisions supports simplicity and consistency under Rule 14.5(1)(i).

[39] Based on the foregoing, I depart from the four-part test for permission to appeal under the former Rule 14.5(1)(e) that was sometimes applied to second appeals of assessment decisions before Rule 10.44 decisions were added to Rule 14.5(1)(i). The departure respects the exceptional nature of second appeals and the objectives of the simplified, timely, and economical process for assessments of costs awards contemplated by Part 10 of the *Rules*. Accordingly, the test for permission to appeal under Rule 14.5(1)(i) from a Rule 10.44 appeal decision considers whether:

- a) There is a question of general or public importance that warrants another appeal;
- b) There is a reasonable chance of success on appeal; and
- c) The delay will not unduly hinder the progress of a related proceeding or cause undue prejudice to the simplified, timely and economical process contemplated for the assessment of costs awards.

The factors are reviewed holistically, and the burden rests with the applicant to demonstrate that a second appeal has a reasonable chance of success and is warranted.

Application

a) No question of general or public importance warranting another appeal

[40] The proposed grounds of appeal do not raise a question of general or public importance. They do not involve “policy, principle or law that might have precedential value”. No unsettled and significant issue of law or jurisdiction is identified. Instead, the proposed grounds are directed at disagreements about the conduct of the assessment and appeal hearings, the review of and weight given to the evidence, the interpretation of facts, the exercise of discretion, and the adequacy of reasons. The allegations are unique to the circumstances of this assessment decision and its appellate review by the appeal judge. No overarching public interest is engaged.

b) No reasonable chance of success on appeal

[41] The applicant advances several proposed grounds of appeal, none of which have a reasonable chance of success.

[42] First, the applicant contends that it was procedurally unfair for the appeal judge to rely on the respondent's binder of materials, which the applicant asserts was not properly served on him in advance of the initial hearing. Procedural fairness is reviewed for whether the standard of fairness required by the law in the circumstances has been met; the standard of review may be characterized as correctness in the sense that no deference is given: *Sorenson v Stewart*, 2024 ABCA 336 at para 14; *Nadarasah v Uthayakumar*, 2022 ABCA 119 at para 20. The requirements of the duty of procedural fairness are context specific: *Nitschmann v Nitschmann*, 2025 ABCA 95 at para 10.

[43] This proposed ground has no arguable merit. During the hearing before the appeal judge, after her decision was delivered but before costs of the appeal were determined, the applicant asserted for the first time that he had not received the respondent's binder of materials containing counsel's legal argument, key documents, and case law. The respondent's counsel replied that the materials had been served by email. The appeal judge then canvassed the binder's contents in detail with the applicant. He did not identify anything that was unknown to him during that process.

[44] For this application for permission to appeal, the applicant was cross-examined on his supporting affidavit. That questioning demonstrates that the materials were served on the applicant through his email account, which was an approved form of service in the court below. Further, most of the material had been shared previously or originated with the applicant. This argument amounts to nothing more than a complaint about not having been provided with a physical copy of the binder. The applicant said as much during his questioning:

A: Like I said, I mean, going through and asking me [about the email he received and its attachments] -- I am not agreeing that that is what the binder contains, and you are trying to go through the transcript and trying to stipulate that the tabs as mentioned by ... [the appeal judge], equates to the document that we saw separately, and they are not. I want it on record that I am disagreeing to that. *I was not served a copy of the binder. So you can mention all the tabs you want that were in the transcript. It does not equate to a service of the binder as you were supposed to by law.* [Emphasis added]

[45] The applicant acknowledged that his email address was his address of service. He was therefore properly served. Before me, he still could not identify anything from the binder that was

unknown to him when the appeal was argued. Accordingly, he was aware of the case to be met and was not prejudiced. He was not deprived of procedural fairness. This proposed ground of appeal is frivolous and has no reasonable chance of success

[46] Second, the applicant contends the appeal judge did not provide a meaningful and transparent analysis of the case law submitted in support of his appeal, so the reasons are allegedly insufficient.

[47] A judge must provide reasons for a decision, but the inadequacy of reasons is not automatically a reason to allow an appeal: *FH v McDougall*, 2008 SCC 53 at para 99, [2008] 3 SCR 41. Reasons must be “reasonably intelligible to the parties, and provide the basis for meaningful appellate review”, but they “are not dissected minutely nor out of context”: *University of Alberta v Chang*, 2012 ABCA 324 at paras 23-24, 539 AR 58. “The thoroughness of the analysis, and the level of detail in the reasons, seldom generate stand-alone reviewable errors”: *Royal Bank of Canada v Levy*, 2020 ABCA 338 at para 11. Judges are “presumed to know the law with which they work day in and day out”, so they are not required to “to deal in their reasons with every aspect of every case”: *R v Burns*, [1994] 1 SCR 656, 664; see also *R v Lugela*, 2025 ABCA 194 at para 18. In short, reasons do not have to be perfect, answer every argument raised, or canvas every legal authority provided.

[48] In the appeal judge’s oral reasons, she cited the authorities that correctly described the standard of review. She canvassed the material that was before the assessment officer and confirmed that his role was to “determine the appropriate quantum of solicitor and own client costs in accordance with the order of the court”. She confirmed that she had reviewed the parties’ written legal arguments. She canvassed the applicant’s arguments in detail and explained her reasons for rejecting them. She was under no obligation to refer to any of the applicant’s legal authorities in her reasons and exercised her discretion not to specifically comment on them. Nothing in the record suggests that any relevant principles mentioned in the legal authorities were overlooked in the appeal judge’s analysis.

[49] At the end of the appeal judge’s reasons, the applicant noted that she had not mentioned *Tallcree First Nation v Rath & Company*, 2020 ABQB 592. He made some references to it during his oral submissions about the merits of the appeal, suggesting the assessment officer’s comments about the costs being punitive indicate that he had predetermined the matter, which was a basis to set aside his decision for procedural unfairness. *Tallcree* involved an appeal from a review decision, not an assessment of a costs award, and found reversible errors by a review officer in relation to a contingency fee agreement.

[50] In the applicant's written submissions for this permission to appeal application, he referred to *Tallcree* only for the relevant standards of review. However, the appeal judge demonstrated during her reasons that she understood those standards of review, referring to other legal authorities in addressing them. Reference to *Tallcree* was unnecessary. This proposed ground of appeal has no arguable merit.

[51] Third, the applicant contends the appeal judge failed to appreciate that the assessment officer erroneously assessed the costs to be punitive. The suggestion is that the approval of the lawyer's charges was influenced by an intention to punish the applicant for litigation misconduct. However, the record of proceedings before the assessment officer reveals no such error. The assessment officer said to the applicant, in summarizing the background leading up to the assessment, that Justice Gaston's costs award "is a punitive order that is against you because of the way you misled the Court on a couple of occasions. Seriously misled the Court. That is why she gave solicitor and own client costs." However, his assessment of the costs, which was conducted through a careful line-by-line review of the lawyer's invoice, does not suggest that he was approving those costs to be "punitive". Nothing suggests that he was inflating the quantification of the costs award to impose a penalty. This proposed ground has no arguable merit.

[52] Fourth and relatedly, the appeal judge allegedly erred by not recognizing that the assessment officer's quantification of the costs award was tainted by irrelevant considerations, specifically negative assertions about the applicant's litigation conduct. However, the record reveals no such error. Comments about the applicant's past conduct arose in the context of the assessment officer trying to explain to the applicant why Justice Gaston imposed full indemnification of legal expenses. The assessment officer explained that Justice Gaston's rationale for making her "costs order on a solicitor and [own] client basis ... has got nothing to do with me". The assessment officer recognized that the rationale for granting the costs award was distinct from his function in assessing the quantum of that award. This proposed ground of appeal has no reasonable chance of success.

[53] Fifth, the appeal judge allegedly failed to find that the assessment officer erred by not reading the applicant's affidavit. However, the failure to read the affidavit must be contextualized. The assessment officer learned at the start of the hearing that the applicant had filed an affidavit which had not made its way to the assessment officer's file. The assessment officer expressly asked the applicant to explain the contents of his affidavit. He gave the applicant substantial time to do so. He also confirmed that the respondent's lawyer had received the affidavit and invited the lawyer to interject if the applicant's summary was inaccurate in any way. The applicant was therefore able to comprehensively canvas his affidavit evidence. No prejudice arose.

[54] At the appeal of the assessment officer's decision, the appeal judge reviewed the affidavit and concluded that the contents were not germane to the issues at the assessment and would not have affected the assessment officer's determination of quantum.

[55] Before me, the applicant identified no evidence in the affidavit that was relevant to the assessment. The contents of the affidavit are largely legal arguments focused on the merits of Justice Gaston's decision to award solicitor and own client costs rather than the proper quantification of the costs award. That was not the issue referred to assessment or under appeal. No procedural or substantive prejudice is shown. This proposed ground of appeal has no reasonable chance of success.

[56] Sixth, the appeal judge and the assessment officer allegedly failed to consider the party-and-party costs calculated under Schedule C of the *Rules* when assessing the award of solicitor and own client costs. The applicant argues the respondent should have provided a Bill of Costs calculated under the appropriate column of Schedule C to the *Rules*, which would have served as a comparison or "benchmark" when assessing the solicitor and own client costs.

[57] No arguable error is shown. The applicant asserted before the assessment officer that a draft Bill of Costs calculated under Schedule C ensures that the legal expenses incurred are proportional to the interests at stake, and is required by caselaw including *Barkwell v McDonald*, 2023 ABCA 87 and *McAllister v Calgary (City)*, 2021 ABCA 25. However, the assessment officer correctly explained to the applicant that *Barkwell* and *McAllister* provide directions to judges about determining a costs award, not the quantification of that award.

[58] The assessment officer was not required to reference the hypothetical party-and-party costs that would have been applicable if Justice Gaston had made a different award. On appeal and before me, the applicant failed to explain how an estimate of party-and-party costs based on a hypothetical column under Schedule C would have assisted the assessment officer in quantifying the solicitor and own client costs actually incurred. The assessment officer undertook a line-by-line analysis of the respondent's actual legal charges and addressed the applicant's arguments about the work performed, the time billed, the hourly rates, and the delegation of some work to a student-at-law, in accordance with the scope of his role.

[59] The applicant's argument fails to appreciate the difference between solicitor and own client costs and solicitor-and-client costs. The distinction was addressed in *Barkwell* at paragraphs 56-57:

Solicitor and own client costs are those costs that counsel can charge to the winning party, and that the winning party is required to pay as a matter of contract. Solicitor

and client costs represent the costs that a reasonable client might be required to pay for the services rendered. It is rarely appropriate to award solicitor and own client costs as a costs award in litigation: *Luft v Taylor, Zinkhofer & Conway*, 2017 ABCA 228 at paras 77-78, 53 Alta LR (6th) 44.

The overriding issue is proportionality. The rules on costs aim to balance indemnity of the winner without unreasonably discouraging access to the court, or unduly penalizing the losing party: *McAllister* at para 45. The winning party cannot simply claim a percentage of the fees paid if they are disproportionate to the issues and the amounts involved. Success is not a justification for disproportionate litigation. One important feature of the tariff in Schedule C is that it does not measure how much in fees was paid by the winning party, but rather, gives a rough measure of how much should have been incurred in the ordinary case having regard to the amounts in dispute. [Emphasis in original]

[60] The distinction is reflected in Rule 10.31(1) which distinguishes between “reasonable and proper costs” a party incurred and “any amount that the Court considers to be appropriate in the circumstances, including ... an indemnity to a party for that party’s lawyer’s charges”.

[61] The applicant’s arguments about proportionality and a benchmark were only relevant to Justice Gaston’s exercise of discretion in making a costs award. They were not relevant to the quantification of the solicitor and own client cost award which simply depended on the amounts charged by the respondent’s lawyers. Justice Gaston’s decision to award full indemnity for the respondent’s legal charges was not the subject of the appeal from the assessment officer’s decision. This proposed ground of appeal has no reasonable chance of success.

[62] Seventh, the applicant complains that the appeal judge failed to find that the assessment proceeded without adequate guidance and directions from Justice Gaston. He refers to comments in *Ford v New Democrats of Canada Association*, 2024 ABCA 395 at para 21 where this Court stated: “An assessment officer will rarely be in a position to assess the appropriateness of a cost award without detailed guidance from the judge who made the award”. Again, this is an attack on Justice Gaston’s Order making the costs award, not the quantification of that award. In any event, Justice Gaston gave clear guidance: the respondent was entitled to costs calculated on a solicitor and own client basis. This proposed ground of appeal has no reasonable chance of success.

[63] Eighth, the applicant asserts that the appeal judge erroneously stated on the second hearing day that the applicant only provided an excerpt from the transcript of the assessment hearing when, in fact, a full transcript was before the appeal judge.

[64] The record reveals no error. The appeal judge stated that the applicant's affidavit, filed for the appeal, only contained excerpts from the transcript of the proceeding before the assessment officer. The applicant has not filed a copy of that affidavit, so no evidence is before me showing such an error. More fundamentally, even if the description of the attachment to the affidavit was inaccurate, the misdescription was immaterial to the appeal. The appeal judge confirmed during her hearing that she had received a complete transcript though the respondent's binder and had reviewed it. Nothing suggests the appeal judge failed to consider the entire transcript. This proposed ground of appeal does not demonstrate procedural unfairness or a material error of fact and has no reasonable chance of success.

[65] Ninth, the appeal judge allegedly erred by relying on a *Calderbank* offer that she did not read in setting the costs of the appeal. The appeal decision was delivered orally over Webex, following which the appeal judge invited submissions on costs. Counsel for the respondent informed the Court of a *Calderbank* offer for \$16,500 and requested double costs for the appeal. As counsel was appearing remotely, he could not easily provide a physical copy of the offer letter to the appeal judge. Instead, he provided a short description and expressed a willingness to file a copy of the offer with the Court through an affidavit. The applicant did not contest the description of the offer and did not deny receiving it. The appeal judge relied on counsel's representations about the offer and ordered double costs for the appeal.

[66] The applicant now argues, for the first time, that the appeal judge was required to read the *Calderbank* letter before pronouncing on costs for the appeal. Reiterating his position before the appeal judge, he argues that the offer was not a *bona fide* compromise because the offer was only a \$3,000 "reduction" to the quantum directed by the Assessment Order. He submits that the offer was a stratagem to double costs rather than a genuine effort to compromise, so double cost should not be awarded: *Bruen v University of Calgary*, 2019 ABCA 275 [*Bruen*]; *Allen (Next Friend of) v Mueller*, 2006 ABCA 101 at paras 12-15, 384 AR 23 [*Allen*].

[67] The appeal judge was not required to read the *Calderbank* letter because counsel summarized the contents and that summary was not challenged by the applicant. She was satisfied the applicant acknowledged he received the offer in the amount described and elected not to accept it. Even now, the applicant does not identify any misdescription in the summary provided. The appeal judge was allowed to exercise her discretion to find that the offer was "realistic, reasonable and represent[ed] a *bona fide* compromise" and not merely a "stratagem for doubling costs": *Bruen* at para 8, citing *Allen*. No arguable error in principle is shown and the award is not plainly wrong. The costs award is therefore entitled to substantial deference. This proposed ground of appeal has no reasonable chance of success.

[68] Tenth, the appeal judge allegedly failed to adequately consider access to justice for self-represented litigants and the public interest in arriving at her decision. However, this contention ignores the applicant's responsibilities as a self-representing litigant and is in reality directed at Justice Gaston's exercise of discretion in awarding full indemnity solicitor and own client costs.

[69] The *Statement of Principles on Self-represented Litigants and Accused Persons* adopted by the Canadian Judicial Council and endorsed by the Supreme Court of Canada in *Pintea v Johns*, 2017 SCC 23 at para 4, [2017] 1 SCR 470, confirms that self-represented persons "are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case ... to be respectful of the court process and ... will not be permitted to abuse the process". The applicant was found to have engaged in litigation misconduct through which two court orders were obtained improperly. The process of setting aside those Orders caused the respondent to incur legal expenses of \$19,394.81 to restore her entitlement to \$1,650. Justice Gaston concluded that the applicant's conduct warranted an extraordinary costs award reserved for rare circumstances. That decision is not subject to appeal through this application.

[70] Nothing before me suggests that the assessment officer and the appeal judge failed to appreciate their responsibilities to promote access to justice through open, transparent, clearly defined, simple, convenient and accommodating processes. The quantification of the costs award was conducted in a manner that respected those principles. This proposed ground of appeal is frivolous and has no reasonable chance of success.

[71] In summary, the applicant has not identified any ground of appeal having a reasonable chance of success.

c) Another appeal is unduly prejudicial to the simplified, timely and economical process contemplated for the assessment of costs

[72] The underlying proceedings in this matter have been spent. While a second appeal will therefore not unduly hinder the progress of any related proceeding, the expense and delay of another appeal will significantly compromise the objectives of the streamlined process for the assessment of costs contemplated under Part 10 of the *Rules*.

[73] The applicant emphasizes the disparity between the amount he was directed to pay under the original RTDRS Order (\$2,522) and the costs he was directed to pay under the Assessment Order (\$19,394.81) and the further \$4,050 in costs ordered by the appeal judge. However, all those costs arose because the applicant engaged in litigation misconduct, failed to make timely payment of the RTDRS award and the resulting appeal costs, and pursued a meritless appeal rather than

accepting a reasonable compromise. The costs awards reflect the consequences of his choices and the resulting expenses visited on the respondent.

Conclusion

[74] The application for permission to appeal is dismissed.

Costs

[75] Unless otherwise ordered, the successful party in an application before this Court is entitled to a costs award against the unsuccessful party: Rule 14.88(1). The scale of the costs in an appeal shall be the same as the scale that applies to the order appealed from, unless otherwise ordered: Rule 14.88(3).

[76] The appeal judge granted enhanced costs against the applicant, although the quantum was influenced by a *Calderbank* offer.

[77] This application for permission to appeal was wholly without merit, needlessly complicated by the litany of proposed grounds, and continued the applicant's pattern of unreasonable conduct in preventing the resolution of the underlying dispute. Since the RTDRS Order issued, at least five chambers hearings in the Court of King's Bench, two appeal hearings in that Court, an assessment hearing, and two permission to appeal applications to this Court have followed. Based on the costs submissions before me, the applicant still does not accept responsibility for the disproportionate complexity of this litigation concerning a small RTDRS award. His litigation conduct should not deprive the respondent of her underlying RTDRS award by making her absorb some of the legal expense of this application.

[78] The applicant asks for leniency because he is self-representing. However, all litigants are required to pursue their claims in a timely and cost-effective way that promotes fair and just resolutions. Parties to litigation must refrain from filing applications or taking proceedings that do not further that purpose. Publicly funded Court resources must be used effectively. These foundational principles apply whether a litigant is self-represented or represented by a lawyer: Rules 1.1(2) and 1.2; *Municipal District of Foothills No 31 v Alston*, 2023 ABCA 46 at para 3.

[79] The respondent's counsel provided an estimate of the full indemnity legal expenses for responding to this application (\$6,200), which includes the attendance of two counsel at the hearing. While both counsel made helpful oral submissions, one counsel could have conducted the hearing. A modest reduction is appropriate to recognize some duplication.

[80] The applicant shall pay lump sum costs of \$5,500 forthwith to the respondent for this application.

[81] The Court will prepare the Order. Rule 9.4(2)(c) is invoked.

Application heard on July 31, 2025.

Memorandum filed at Calgary, Alberta
this 15 day of August, 2025

Feth J.A.

Appearances:

Applicant I. Uhuegbulem

M.A. Loberg

D. Weiss

for the Respondent