

In the Court of Appeal of Alberta

**Citation: LaTrace v Warkentin Building Movers Virden Inc (Warkentin Building Movers),
2026 ABCA 25**

Date: 20260128
Docket: 2503-0146AC
Registry: Edmonton

Between:

Dean LaTrace and Darlene LaTrace

Applicants

- and -

Warkentin Building Movers Virden Inc., o/a Warkentin Building Movers

Respondent

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

Application to Extend Factum Page Limit
Application to Extend Time to File Factum
Application for Permission to File Affidavit on Costs
Application to File Briefs of Argument Submitted at Trial

**Reasons for Decision of
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Introduction

[1] The applicants, Dean LaTrace and Darlene LaTrace, ask this Court to rescind the direction of a Case Management Officer (CMO) and allow them to: (a) file a factum that is 60 pages in length, exceeding the 30-page limit prescribed by r 14.26(2)(a) of the *Alberta Rules of Court* Alta Reg 124/2010 (*Rules*); (b) file written arguments submitted at trial (trial briefs); and (c) file an affidavit respecting costs at the trial level. They also ask to extend the deadline to file their factum by one month.

[2] The respondent consents to the application to extend the deadline for the applicants to file their factum. It takes no position on the remaining applications.

[3] For reasons below, the applications to extend the factum page limit, permission to file affidavit on costs and to include trial briefs are dismissed. The application to extend time to file factum is allowed.

Background

[4] Following a trial over damages sustained during a building move, the applicants were awarded approximately \$211,000 for damage to property. The respondent was awarded \$39,000 in contract damages. The trial lasted over 20 days and included testimony from eight expert witnesses. The applicants characterize the issues at the trial, as well as on appeal, as complex, spanning an array of issues, including contract and tort law, statutory interpretation, and technical expert evidence. In addition to the trial that is the subject of this appeal, there was a summary trial held to determine the applicability of the *Consumer Protection Act*, RSA 2000 c C-26.3, where the summary trial judge determined the *Consumer Protection Act* applied in the circumstances. This was upheld on appeal. *Latrace v Warkentin Building Movers Virden Inc*, 2021 ABQB 297, aff'd 2021 ABCA 333. The applicants suggest this adds to the complexity of this appeal.

[5] On December 1, 2025, the applicants wrote to the CMO requesting permission to file a 180-page factum. The CMO declined the request on the basis that it was premature, as the appeal record had not yet been filed. The CMO also said that had she not found the request to increase the page limit premature, she would nevertheless have denied it. She cited the principles in *OZ Merchandising Inc v Canadian Professional Soccer League Inc*, 2020 ONCA 532 [*OZ Merchandising*], which are as follows:

- a) The maximum length for appellate *facta* is “not a suggestion or a starting point”; rather, it has “been set with a view to reasonably complex cases – simpler cases can

often be dealt with adequately in much shorter factums”. *Oz Merchandising* at para 4.

- b) The purpose of the 30-page limit is to focus parties on the issues and not have a factum “that goes on, and in fact wanders”. *Oz Merchandising* at para 4, citing *Brown v Lowe*, 2000 BCCA 635 at para 1.
- c) Leave to file a factum exceeding the page limit is an exceptional request, to be “granted sparingly in special circumstances” only. *Oz Merchandising* at para 5.
- d) “While a party must be permitted to present its whole case effectively, this does not take away from the requirement of conciseness and the duty of efficiency to the court”. *Oz Merchandising* at para 5.
- e) The 30-page limit is imposed to keep appeals manageable, efficient and cost-effective for the litigants and the court. *Oz Merchandising* at para 5, citing *Michail v Ontario English Catholic Teachers’ Association*, 2018 ONCA 950 at para 6.
- f) “The overarching question is whether the extension is required in the interests of procedural fairness and justice to advise the other side of the issues in dispute so it can prepare properly for the appeal and to assist the division of the Court that hears the appeal to deal effectively with the issues”. *Oz Merchandising* at para 6.
- g) “The fact that the appeal raises important and complicated questions of fact or law, there are numerous grounds of appeal, the underlying proceedings have been ongoing for many years, or the trial was lengthy, does not automatically justify an extension of the page limit. These circumstances inform many appeals that are nevertheless contained within the 30-page factum limit”. *Oz Merchandising* at para 7.

[6] The CMO found the applicants had not demonstrated circumstances justifying an increase to the page limit. She noted the applicants’ argument that the appeal is complex but pointed out, correctly, that complexity on its own is not enough. The applicants also argued the need to quote at length from transcripts, statutes, and case authorities. The CMO found this argument did not assist them, as those materials could be hyperlinked to the factum. Finally, the CMO addressed the applicants’ argument that there was a need to increase the page limit because there were multiple (17) grounds of appeal, noting that this does not justify additional pages.

[7] Subsequently, the applicants filed the appeal record. On December 12, 2025, they again asked the CMO to permit them to file a longer factum, this time 60 pages. They also requested permission to file copies of trial briefs, and an affidavit respecting trial costs.

[8] The CMO denied the requests to file the trial briefs and the affidavit. With respect to the trial briefs, she pointed out that under r 14.27(1)(c) parties are prohibited from including trial briefs in their extracts of key evidence. With respect to the affidavit on costs, the CMO ruled that it should be the subject of a new evidence application under r 14.45.

[9] With respect to the length of the factum, the CMO explained that the applicants presented the same arguments they had the last time they made the request, and she cited her earlier reasons to deny it. She did, however, grant the applicants permission to file a factum 35 pages in length.

Discussion

[10] A single judge of this Court can rescind, confirm, amend, or enforce an administrative direction of a CMO under r 14.36(3).

[11] Under r 14.73, a single appeal judge may direct any deviation from the *Rules* with respect to the form or filing of any document. This includes the ability to alter the deadlines for filing factums imposed by r 14.23, and the length of factums prescribed by r 14.26(2).

[12] Rule 14.27(1)(c) prohibits the inclusion of trial briefs, among other things, in a party's extracts of key evidence.

[13] If a party wishes to adduce new evidence on appeal, they must file and serve an application to admit new evidence prior to the filing of, and prior to the deadline for filing, the applicant's factum pursuant to r 14.45. Applications to adduce new evidence must be heard by the panel hearing the appeal, not a single judge: r 14.38(2)(b); *MD v Alberta (Director of Child and Family Services)*, 2022 ABCA 281 at para 9.

Factum Length

[14] In deciding this issue, I rely on the principles summarized in *OZ Merchandising*, set out above. Although *OZ Merchandising* is not binding on this Court, it provides useful guidance and the principles have been applied by other appellate courts. See e.g. *Equustek Solutions Inc v Jack*, 2022 BCCA 194 at paras 11-12; *McLeod Estate v Cole et al*, 2021 MBCA 80 at paras 10-15; *Canada (Minister of National Revenue) v Ochapowace Ski Resort Inc*, 2006 SKCA 70 at para 6; *Chief Mountain v Canada (AG)*, 2012 BCCA 69 at paras 7-11 [*Chief Mountain*].

[15] The applicants were invited to file a draft copy of their proposed factum. They could not do so as it has not yet been prepared. Having a draft factum would have been of great assistance as without it, assessing whether there are exceptional circumstances that would justify additional pages must be performed with only partial information. The applicants did, however, submit a proposed table of contents with the number of pages anticipated for each topic and they included a summary of the proposed structure of the factum. These were somewhat helpful. The applicants

plan to use 5.75 pages to set out the facts, issues, and standard of review. The remaining 54.25 pages of the proposed factum would be used to explain nine interrelated issues, namely, the application of the *Consumer Protection Act*; contract formation, including the parole evidence rule; causation; expert evidence on structural damage; quantum of damages; mitigation; betterment; adverse inferences related to disclosure; a mid-trial site visit; mid-trial reports; and, costs.

[16] The applicants argue that the increased factum page limit is necessary due to the complexity of the issues, the size of the record, the length of the trial, and the length of the reasons for judgment (about 60 pages) under appeal. Darlene LaTrace expanded on these issues in her affidavit, and they are summarized as follows:

- a) The argument on appeal will engage the prior decisions on the applicability of the *Consumer Protection Act*, which the trial judge did not apply.
- b) There is a complex interplay between those decisions, the text of the *Consumer Protection Act*, and the trial judge's reasons, which requires an extensive side-by-side comparison.
- c) There is a need for careful statutory analysis to distinguish licensed transactions from unlicensed ones that cannot be reduced to summary form.
- d) The trial judge's conclusions on negligence hinge on the same facts as the contractual and *Consumer Protection Act* issues, which require "integration across legal categories".
- e) Additional pages are necessary for the Court's understanding of how *res judicata* was misapplied.
- f) The factum must address substantial procedural irregularities, including evidentiary disputes, late filings of expert reports, and refusals to produce critical documents or answer undertakings.
- g) If limited to 35 pages, the applicants would be required to summarize approximately 100 pages of transcribed evidence on each single page of argument, rendering the factum incoherent.
- h) Additional pages are required to allow coherent argument about how certain judicial errors operate across "multiple doctrinal areas" and even a brief articulation of each ground necessitates a combination of factual review, transcript reference, and legal analysis.

- i) The factum must address several “uncommon or advanced legal doctrines”, which are not standard appellate issues and require a reasoned explanation supported by caselaw.
- j) The applicants will have to reconcile conflicting testimony from eight expert witnesses across three disciplines.
- k) Further, among the grounds of appeal is misapprehension of evidence, requiring precise reference to the record and summaries of technical evidence which cannot be accomplished without the requested additional pages.

[17] Permission to extend factum page limits is granted sparingly and only where the circumstances are exceptional. Complex issues alone will not generally create exceptional circumstances. As noted in *OZ Merchandising*, complex issues and lengthy trials are characteristics that mark many cases that come before the appellate courts and are, in most cases, effectively addressed within the normal page limit for factums. Parties are expected to provide the Court with focussed, precise *facta* that summarize the relevant facts and express legal arguments that inform the alleged judicial error. The appeal record, extracts of key evidence, and trial transcripts are filed with the Court separately, and references to those materials can be pinpointed in the factum. In *Chief Mountain*, the purpose of a factum was explained this way:

[10] The main purpose of the factum is to provide the court and the opposing party with an outline of the arguments that will be advanced, and a list of the authorities to be cited. The factum need not set out every nuance of the argument, nor need it comprehensively quote passages of relevant cases. Counsel should be aware, as well, that the members of the division hearing the case will have read, in addition to the factums, the judgment or judgments appealed from, as well as portions of other filed material. The factum should certainly refer to that material, but need not be repetitive of it.

[18] Importantly, appeals are not an opportunity to re-argue the underlying action before different judges. Rather, they are focused on identifying and, if necessary, correcting errors. Many of the arguments the appellants wish to raise in their factum are those which would be made at trial to urge the trial judge to reach certain factual and legal conclusions. They do not appear to inform the question, whether the trial judge made reviewable errors warranting appellate intervention in reaching those conclusions. It is not clear, for example, how devoting over 10 pages of the proposed factum to the procedural history of the summary trial on the applicability of the *Consumer Protection Act*, and the appeal that followed it, along with a comparison of those rulings to the trial decision, would assist this Court in determining whether the trial judge erred in his ruling on that issue. The relevance of the proposed arguments on “uncommon or advanced legal

doctrines” to the issues on appeal has not been explained. It is not apparent why it would be necessary for the applicants to reconcile the eight expert opinions to demonstrate how the trial judge may have misunderstood that evidence. Relatedly, the applicants offer little in the way of an explanation as to why it is necessary to extensively summarize evidence in the factum. To the extent they need to draw the Court’s attention to portions of the evidence to demonstrate alleged judicial error, they may do so by pinpointing page and line numbers in the transcript and concisely explaining the relevance to the issues on appeal.

[19] The applicants have not shown the issues posed in this appeal present exceptional circumstances that would justify extending their factum page limit beyond the additional five-page extension granted by the CMO.

Inclusion of trial briefs

[20] As the CMO stated in her decision, r 14.27(1)(c) prohibits including trial briefs in extracts of key evidence. An appeal is not an opportunity to repeat the trial. The purpose of an appeal is to identify and, if necessary, correct errors. Trial briefs are of little assistance in this exercise and their inclusion risks circumventing the factum page limits and the focussed and concise arguments necessitated by those limits. *Carbone v Whidden*, 2015 ABCA 161 at para 28.

[21] The applicants ask that I exercise my discretion under the *Rules* and allow them to file the trial briefs submitted at trial respecting the application of the *Consumer Protection Act*. They say this is necessary to demonstrate the respondent raised a new argument at the trial concerning the applicability of the *Consumer Protection Act*, which they assert was barred by the doctrine of *res judicata*. The difficulty with the applicants’ argument is that there is no justification for including the trial briefs. They have not identified a relationship between opposing counsel’s representations to the trial judge and the applicants’ argument on appeal that the trial judge erred by failing to apply *res judicata*.

Inclusion of affidavit on costs

[22] Costs were not argued before the trial judge. Therefore, the affidavit constitutes new evidence. An application to admit new evidence is heard and decided by the panel hearing the appeal. The applicants must file an application under r 14.45, prior to filing their factum, if they wish to apply to the panel to admit new evidence.

Disposition

[23] The CMO’s decision of December 18, 2025, is confirmed.

[24] The applicant’s factum shall be no more than 35 pages in length and otherwise formatted in accordance with the *Rules*.

[25] The applications to file trial briefs and the affidavit on costs are dismissed. With respect to the affidavit on costs, the applicants may apply to the appeal panel to submit it as new evidence.

[26] The application to extend deadline for the applicants to file their factum is granted on consent. The deadline is extended to March 4, 2026.

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

Application heard on January 21, 2026

Reasons filed at Edmonton, Alberta
this 28th day of January, 2026

Shaner J.A.

Appearances:

Applicants Dean LaTrace and Darlene LaTrace

D.P. Wedge, KC
for the Respondent