

In the Court of Appeal of Alberta

Citation: Prezes v CannAmm OTS Limited Partnership, 2026 ABCA 75

Date: 20260313
Docket: 2503-0191AC
Registry: Edmonton

Between:

Kevin Benjamin Prezes

Appellant

- and -

CannAmm OTS Limited Partnership

Respondent

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Tamara Friesen
The Honourable Justice Karan Shaner**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.S. Hayes-Richards
Dated on the 22nd day of September, 2025
Filed on the 1st day of October, 2025
(Docket: 2503 02038)

Memorandum of Judgment

The Court:

[1] The appellant, Kevin Benjamin Prezes, appeals a chambers judge's decision from September 22, 2025 dismissing the appellant's appeal and allowing the cross-application of the respondent, CannAmm OTS Limited Partnership.

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

[3] On September 6, 2023, the appellant used the respondent's services to obtain an occupational drug test by providing an oral fluid sample. The initial screening revealed a non-negative result, so the respondent sent the sample to one of its laboratories in Ontario for further analysis. The test came back positive for cocaine and marijuana. The appellant objected to these results, and requested the respondent send the sample for secondary testing. The respondent sent the sample to Clinical Reference Laboratory, an independent laboratory located in the United States. The laboratory tested the sample and confirmed the respondent's test results.

[4] On January 29, 2025 the appellant filed an originating application alleging the test results were false and that the sample needed to be sent to an independent third-party to be re-tested. On February 12, 2025 the appellant appeared *ex parte* before an applications judge. The appellant did not serve the originating application on the respondent or inform them of the hearing date. The applications judge granted an order directing the respondent to provide the appellant's sample to a third-party laboratory of the appellant's choosing.

[5] The appellant served the order on the respondent. The respondent informed the appellant through several exchanges that it did not have the sample anymore, and that the entirety of the sample had been sent to the Clinical Reference Laboratory in the United States.

[6] On July 14, 2025, the parties appeared before the same applications judge. The appellant sought a further order for loss of income, an apology, and reinstatement relying on his understanding that the applications judge had ordered the respondent to give the sample to a third party to be retested. The respondent cross-applied to set aside the *ex parte* original order and to have the second application dismissed on the merits. The applications judge set aside the original order as it had been made without notice to the respondent and dismissed the appellant's new application as there was no evidentiary basis for the relief sought. The order arising from that decision was filed July 22, 2025.

[7] The appellant filed a notice of appeal of the second order in the Court of King's Bench on August 22, 2025. On August 29, 2025 the respondent filed a cross-application to dismiss the appeal

as the appellant had filed it outside the 10-day appeal period for applications judge's orders, contrary to r 6.14(2) of the *Alberta Rules of Court*, Alta Reg 124/2010. The appellant then filed an additional application on September 9, 2025 repeating the same or similar allegations.

[8] The chambers judge heard the appeal and the cross-application on September 22, 2025. The chambers judge noted the appellant had not filed any affidavit evidence explaining why the appeal had been filed late. In oral argument the appellant claimed that the registry staff had said he had 30 days to 60 days to appeal a judge's order.

[9] The chambers judge granted the respondent's cross-application and dismissed the appeal because the notice of appeal had been filed late. She explained that even if she had accepted that the appellant had been provided the wrong information about the time limit, the appeal had no merit because the respondent did not have the sample in its possession.

[10] On appeal to this Court, the appellant submits that his appeal to the Court of King's Bench should not have been dismissed because the registry staff provided him with incorrect information about when he needed to file his notice of appeal. He asks that the chambers judge's decision be overturned and his appeal restored.

[11] In exercising its discretion with respect to extending the time limit to file an appeal, a court will consider, as the chambers judge did in this case, whether the applicant has shown that:

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

Cairns v Cairns, 1931 CanLII 471 (AB CA), [1931] 4 DLR 819 at 826-827 (Alta SC (AD)); *Sohal v Brar*, 1998 ABCA 375 at para 1; and *Li v Morgan*, 2020 ABCA 186 at para 4.

[12] The last factor, if not met, is often decisive as "(e)xtending time for hopeless appeals is of no benefit to anyone": *Stoddard v Montague*, 2006 ABCA 109 at para 21. This court will only interfere with a chambers judge's discretionary decision to deny an extension of time to file a notice of appeal on that basis if the chambers judge committed a palpable and overriding error:

Housen v Nikolaisen, 2002 SCC 33 at para 36; and see *Bristol-Myers Squibb Canada Co v Grande Prairie (City)*, 2023 ABCA 294 at paras 13-14.

[13] An appeal from a decision regarding a time limit requires permission to appeal per r 14.5(1)(b) of the *Alberta Rules of Court: Rath & Company Barristers & Solicitors v Sturgeon Lake Cree Nation*, 2022 ABCA 373 at paras 8-13. It appears that permission may be required in this case, but it was not sought by the appellant, nor was the issue raised by the respondent. We will not decide whether permission is required because we have no submissions before us on that point. Assuming this appeal is properly before us, the chambers judge's decision on the merits branch of the *Cairns* test was correct and is therefore decisive.

[14] The appeal is dismissed. Costs are awarded to the respondent in the amount of \$1000.

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

Appeal heard on March 4, 2026

Memorandum filed at Edmonton, Alberta
this 13th day of March, 2026

Authorized to sign for: Antonio J.A.

Friesen J.A.

Shaner J.A.

Appearances:

Appellant K.B. Prezes

M. Parker

E. Davies (no appearance)
for the Respondent