In the Court of Appeal of Alberta

Citation: DAKA Holdings Ltd v Boyle (Village), 2026 ABCA 127

Date: 20260422
Docket: 2603-0041AC
Registry: Edmonton

2026 ABCA 127 (CanLII)

Between:

DAKA Holdings Ltd., H.E.R.O. Construction Ltd., Spectar Consulting Ltd., Omnicore Inc., and Gen-X Initiatives Inc.

Applicants

- and -

Village of Boyle and County of Athabasca No. 12

Respondents

Reasons for Decision of
The Honourable Justice Kevin Feth

Application for Permission to Appeal

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Overview

[1] The applicants appeal from an Order summarily dismissing most of their action because the chambers judge found that the 10-year "ultimate" limitation period in s 3(1)(b) of the *Limitations Act*, RSA 2000, c L-12 bars those claims. The chambers judge declined to exercise his discretion under s 218 of the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 to extend the limitation period.

[2] After the appeal was filed, a case management officer of this Court informed the applicants that permission to appeal is required to review the s 218 decision not to extend the limitation period because Rule 14.5(1)(b) of the *Alberta Rules of Court*, Alta Reg 124/2010 requires permission for "any pre-trial decision respecting adjournments, time periods or time limits".

[3] The applicants contend that permission to appeal is not required. Alternatively, they ask for permission.

[4] I conclude that permission to appeal is not required. The appeal may proceed.

Background

[5] The applicants acquired property from a private landowner for residential development. In 2019, while developing the property, the applicants discovered an historical landfill buried underneath parts of the property, which effectively frustrated the intended development.

[6] On September 9, 2019, the applicants sued the respondents, the County of Athabasca No. 12 (the County) and the Village of Boyle, as the former owners and operators of the landfill, and as the municipal authorities responsible for issuing permits, approvals, and tax assessments related to the property. The applicants complained that the existence of the landfill had been concealed from them.

[7] After years of litigation and discovery, the respondents applied to summarily dismiss the action because the applicants' claims are allegedly barred by the 10-year limitation period. The applicants resisted on the basis that the respondents' conduct was either: a) "a continuing course of conduct or a series of related acts or omissions" for the purposes of s 3(3)(a) of the *Limitations Act* which extended into the 10 years preceding the commencement of the action, or b) a fraudulent concealment for the purposes of s 4(1) of the *Limitations Act* which suspended the operation of the limitation period. In the alternative, the applicants sought an Order extending the limitation period because of "an alleged adverse effect resulting from the alleged release of a substance into the environment", relying on s 218 of the *Environmental Protection and Enhancement Act*.

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[8] The chambers judge summarily dismissed most of the claims. He found that the "entirety of the [applicants'] claims" are "barred by the ultimate limitation period", except for the claim for the recovery of property taxes from the Village of Boyle and aspects of the claims made by H.E.R.O. Construction Ltd. The chambers judge declined to exercise his discretion under s 218 of the *Environmental Protection and Enhancement Act* to extend the limitation period: ***DAKA Holdings Ltd v Boyle (Village)***, 2026 ABKB 83 at para 170 (the *Decision*).

[9] The applicants filed a Notice of Appeal. The Court's case management officer informed them that permission to appeal is required from the "decision that denied the plaintiffs' application for an extension of a limitation period".

Analysis

[10] An appeal lies as of right to this Court from the whole or any part of a decision of a Court of King's Bench judge sitting in court or chambers, except as otherwise provided: Rule 14.4(1).

[11] Rule 14.5 identifies several exceptions, including sub-rule (1)(b) which requires that permission be obtained when appealing "<u>any pre-trial decision</u> respecting adjournments, time periods or time limits" (emphasis added). A "pre-trial decision" is not defined in the *Rules* but contemplates a decision that precedes the final adjudication of substantive rights.

[12] The requirement for permission in Rule 14.5(1)(b) serves a gatekeeping function that limits appeals from discretionary interlocutory and procedural decisions, which are subject to a high degree of deference and therefore unlikely to be overturned on appeal. The screening exercise avoids delay and maintains proportionality in the litigation process by restricting access to appeals that do not involve the final adjudication of the parties' substantive interests.

[13] The rationale for Rule 14.5(1)(b) was partially explained in ***Esfahani v Samimi***, 2021 ABCA 290 at para 6 [***Esfahani***]: "Appeals as of right are not allowed from this category of discretionary decision, in part because of the highly deferential standard of review that is applied . . . Further, these sorts of interlocutory decisions may not have any substantive impact on the rights of the parties or the outcome of the proceeding."

[14] The gatekeeping function was further addressed in ***Rath & Company Barristers & Solicitors v Sturgeon Lake Cree Nation***, 2022 ABCA 373 at para 11, referring to ***Piikani Nation v McMullen***, 2020 ABCA 366 [***Piikani***]:

> ... permission to appeal under Rule 14.5(1)(b) promotes "the policy to avoid litigation by installments, to discourage appeals where success is unlikely, and to avoid delay": *Piikani* at para 33, citing *Jeerh v Yorkton Securities Inc*, 2005 ABCA 64 at paras 23-26 [***Jeerh***]. The court in *Piikani* confirmed that "[w]hat constitutes a 'pre-trial decision respecting adjournments, time periods or time limits' [under Rule 14.5(1)(b)] has been broadly interpreted": at para 35.

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[15] While Rule 14.5(1)(b) is applied broadly, the interpretation must remain faithful to its purpose, which is focused on procedural and litigation management orders. That purpose was discussed in ***Alston v Foothills No. 31 (District of)***, 2021 ABCA 150 at para 5:

> … sub-rule 14.5(1)(b) only applies to a limited number of categories of procedural appeals. While rule 14.5(1)(b) may be interpreted broadly, it does not capture every pre-trial decision made by a Court of [King's] Bench judge that relates to litigation management; rather, the sub-rule provides this Court with a limited gate-keeping function in respect of certain appeals which do not determine all or some significant part of a party's substantive rights, and about which an appeal is often not a proportionate response: ***1920341 Alberta Ltd v Jonsson***, 2018 ABCA 231 at para 10.

[16] The gatekeeping function is contextualized by the predecessor to Rule 14.5(1)(b), which was found in Part J of the former Court of Appeal Consolidated Practice Directions. Part J applied to procedural, maintenance and children's rights appeals. In that context, Part J required leave to appeal from certain types of orders and rulings including:

a) "any case management or pre-trial order directing adjournments, time periods or time limits": s 3(a)(ii); and

b) "any ruling during trial, where the appeal is brought before the trial is concluded": s 3(a)(iii).

[17] The purpose of the leave provisions for Part J appeals was described in ***Jeerh*** at paragraphs 23-26:

> . . . The decisions described in Part J.3(a)(ii) and (iii) ... are orders or rulings which involve the exercise of discretion. Additionally, in those decisions, the issue in question may be rendered moot or can be appealed after a trial or other final decision has been rendered. As well, the standard of review for such discretionary orders is very high.
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> Appeals in such cases are generally contrary to the policy adopted by this Court which discourages litigation by installments and appeals of preliminary issues where success is unlikely: Robertson v Wasylyshen (2003), 2003 ABCA 279 (Can LII), 339 A.R. 169 (C.A.). These factors are particularly acute for appeals which fall under Part J.3(a)(ii) and (iii) because those categories are most likely to be cases where an appeal is likely to cause a worse effect, namely, delay. For example, if a party appeals a timing order, a decision by this Court will inevitably take some months from filing the appeal. If that much delay has no practical effect on complying with the deadline set by the order under appeal, in most cases, no reasonable person would appeal. If the appeal has no practical effect, the appeal is

> likely academic or useless. Alternatively, if there is a practical effect on the action and no stay, the appeal will almost inevitably become moot. Alternatively, if there is a stay of a timing order, the appellant wins the appeal de facto even before the appeal is argued. Because of this situation, the mere arguability or importance of an issue is not a sufficient test.
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> In addition, given the highly deferential standard of review, intervention by this Court is unlikely and the reluctance to permit such appeals is increased. Leave is intended to discourage appeals in those narrow cases, absent some reasonable chance of success.

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[18] In ***Piikani*** at paragraph 35, this Court confirmed that the "interpretation of Part J.3(a)(ii), and the rationales supporting it, apply equally to rule 14.5(1)(b). . .".

[19] When the current appeal rules under Rule 14 of the *Alberta Rules of Court* came into effect in September 2014, Rule 14.5(1) consolidated several categories of appeals for which permission is required. The essential language of Part J.3(a)(ii) and (iii) was transferred into Rule 14.5(1) as sub-rules (b) and (c). The *Alberta Rules of Court Project, Civil Appeals, Consultation Memorandum No 12.21* (Alberta Law Reform Institute: April, 2007) does not suggest these sub-rules were to have a different purpose, although they now apply to appeals generally.

[20] The County asserts a broader purpose because Rule 14.5(1)(b), unlike the former Part J, applies "even when the decision may impact substantive rights": ***26th Avenue River Holding Limited Partnership v Winspia Co Ltd***, 2025 ABCA 384 at para 9 [***26th Avenue***]. Limitations are generally characterized as substantive, not procedural rights: ***Tolofson v Jensen; Lucas (Litigation Guardian of) v Gagnon***, 1994 CanLII 44 (SCC), [1994] 3 SCR 1022 at 1071-73. However, the finding that a decision within the scope of Rule 14.5(1)(b) can incidentally affect substantive rights does not mean that decisions adjudicating substantive rights are routinely within its scope.

[21] In ***26th Avenue***, the plaintiffs obtained two court orders extending the time to serve a statement of claim. One of the defendants applied to set aside the extension orders. An applications judge denied the application. The defendant appealed to a chambers judge, who dismissed the appeal. The defendant sought a further appeal to this Court. A question arose whether permission to appeal was required because of Rule 14.5(1)(b). The defendant contended permission was not necessary where denying an extension has the potential to bring the litigation to an end.

[22] This Court concluded that, unlike the former Part J, the effect of the decision to be appealed no longer determines whether permission is required, even if substantive rights are affected. The nature of the relief granted by the decision ("pre-trial decision respecting ... time limits"), rather than the consequential effect, determines whether Rule 14.5(1)(b) is engaged. Accordingly, an appeal from a discretionary pre-trial decision to extend the time limit for service of the statement of claim required permission: ***26th Avenue*** at paras 9, 11. However, that finding does not suggest

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that appeals from the final adjudication of limitation periods are within the scope of Rule 14.5(1)(b). The purpose of Rule 14.5(1)(b) is still the gatekeeping exercise directed at interlocutory and procedural orders.

[23] The respondents submit Rule 14.5(1)(b) should apply to appeals from the summary determination of a limitation period defence, or a final decision to extend or deny an extension of a limitation period, because restricted access to appeals from these determinations serves finality and repose, which are important rationales for limitation periods. However, that reasoning does not change the purpose of Rule 14.5(1)(b), nor the nature of the "pre-trial" timing orders to which it applies.

[24] The applicants contend the references to "time periods" and "time limits" in Rule 14.5(1)(b) refer only to time periods and limits imposed by the *Alberta Rules of Court*, not an enactment. While no authority is offered for their position, the use of those terms elsewhere in the *Rules* is consistent with that contention: as examples, see Rules 1.4(2)(e), 1.5(5), 3.15, 3.26, 3.27, 3.57, 3.64, 3.65, 3.76, 4.33, 5.5, 9.46, 10.14, 10.17, 10.18, 10.39, 12.65, 13.5, 14.2, 14.8, 14.37, 14.61, 14.64, 15.8, 15.9 and 15.10. In contrast, Rule 9.21(a) refers to the "expiry of the limitation period under the *Limitations Act*" when referring to a limitation period rather than a time limit under the *Rules.* While I need not make a definitive finding, the overall structure of the *Rules* strongly suggests that Rule 14.5(1)(b) only applies to time periods and time limits imposed by the *Rules* and not limitation periods created by an enactment such as the *Limitations Act* or the *Environmental Protection and Enhancement Act.*

[25] In my view, the final *adjudication* of substantive rights, even through summary adjudication, is not a "pre-trial decision" within the meaning of Rule 15.4(1)(b). This Court confirmed in ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49 at paras 14,16, and 20, that the "new approach to summary adjudication" recognizes that the conventional trial is not the "default procedure", and "alternative models of adjudication" are no less legitimate than a conventional trial in adjudicating substantive rights. If access to an appeal from the judgment arising out of a conventional trial does not require a gatekeeping function, I can find no persuasive reason to impose one for a summary adjudication procedure.

[26] Similarly, the final determination of whether a limitation period will be extended under s 218 of the *Environmental Protection and Enhancement Act*, which is integral to the final adjudication of the substantive limitation right, is not a pre-trial decision directed at interlocutory and procedural orders. The extension application involves the weighing and balancing of evidence and competing factors including when the adverse effect occurred, discoverability, prejudice, and other criteria the court considers to be relevant: s 218(3). As the chambers judge set out in the *Decision* at paragraphs 156-168, the determination in this case came down to competing policy objectives, the evidence related to environmental harm, the historical context of the claim, and the causal relationship between the parties. All of these are substantive rather than procedural

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considerations. Restricting access to an appeal from the final determination is not aligned with the purpose of Rule 14.5(1)(b).

[27] If permission to appeal had been required, I would have found that the applicants have met the test for permission to appeal in this case. To obtain permission, the applicants must show "an arguable point of some significance to the practice or the particular proceeding. A further consideration is whether an interlocutory appeal will unduly hinder the progress of the action or cause undue prejudice, without any proportionate benefit": ***Esfahani*** at para 7.

[28] In my view, the applicants have raised an arguable point of some significance to their particular action, and to the practice in terms of assessing the competing priorities of limitation periods and holding alleged polluters accountable. This includes consideration of when the alleged adverse effect commenced, its discoverability, and prejudice in granting an extension of a limitation period including in the face of prior subdivision approval. Even if the appeal causes some delay, it will be of proportionate benefit in the context of this case where the applicants' action has been largely summarily dismissed.

[29] Finally, the respondents argue that permission to appeal is required for the balance of the chambers judge's decision because his findings about the operation of the ultimate limitation period are also a "pre-trial decision respecting ... time periods or time limits". No cross-application was filed seeking a determination of that issue and the applicants objected to the issue being raised without a proper application. The applicants' written submissions did not address the issue. In light of the objection and the absence of full argument, I declined to consider that issue, although these reasons now provide guidance to the parties.

Conclusion

[30] Permission to appeal is not required. The applicants may proceed with their appeal in keeping with the *Rules* and the deadlines related to standard appeals in this Court.

Application heard on April 9, 2026

Reasons filed at Edmonton, Alberta
this 22nd day of April, 2026

Feth J.A.

Appearances:

P.D. Kirwin
for the Applicants

P.D. Gibson
for the Respondent, Village of Boyle

K.T. West
for the Respondent, County of Athabasca No. 12

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