

In the Court of Appeal of Alberta

Citation: Farm Credit Canada v Wiebe, 2026 ABCA 235

Date: 20260707

Docket: 2503-0071AC

Registry: Edmonton

Between:

Farm Credit Canada

Respondent/Cross-Appellant

- and -

Frank Wesley Wiebe and Derrick Shawn Wiebe

Appellants/Cross-Respondents

The Court:

**The Honourable Justice Kevin Feehan
The Honourable Justice Anne Kirker
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice J. T. Neilson
Dated the 27th day of March, 2025
Filed on the 11th day of April, 2025
(Docket: 2203 09028)

Memorandum of Judgment

The Court:

I. Overview

[1] Frank and Derrick Wiebe appeal an order of a chambers judge dated March 27, 2025. The order under appeal dismissed their application pursuant to r 13.5(1)(a) of the *Alberta Rules of Court*, AR 124/2010, for an extension of time to file a notice of appeal from an order of an applications judge dated December 18, 2024. That order fixed the amount the Wiebes owed to Farm Credit Canada. Farm Credit cross-appeals the March 27, 2025 order, asserting the chambers judge erred by not also dismissing the Wiebes' application for mootness.

[2] For the reasons below, the appeal and the cross-appeal are dismissed.

II. Facts

[3] On April 7, 2021, the Wiebes obtained a loan from Farm Credit in the amount of \$134,557.98. As collateral, they granted a security interest in their livestock, including but not limited to breeding bison cows.

[4] As of June 8, 2022, the amount due and owing by the Wiebes to Farm Credit was \$120,737.48, plus interest, an amount on which the Wiebes defaulted.

[5] On June 10, 2022, Farm Credit issued a statement of claim to collect the debt. Derrick Wiebe did not defend, nor ask for an extension of time to defend. Default judgment was granted against him in the amount of \$121,291.82, plus costs, on July 22, 2022.

[6] Frank Wiebe received the courtesy of an extension of time to file a statement of defence, which he filed on August 22, 2022. In his defence, Frank Wiebe admitted the loan and security agreements, and that he had not made the necessary payments in accordance with those agreements. He pleaded that he had sought to proceed under the *Farm Debt Mediation Act*, SC 1997, c 21, to have a mediator determine the proper indebtedness and terms of payment. The mediation was scheduled to proceed on July 14, 2022, but Farm Credit advised on July 12, 2022, that it would not attend and had no interest in mediation.

[7] Farm Credit seized the Wiebes' herd of bison on September 24, 2022. The Wiebes agreed they would continue to house and feed the bison for Farm Credit until sale.

[8] The Wiebes say that during this time, they secured the agreement of a neighbour, Rod Loftstrom, to buy the bison herd for \$50,000. The Wiebes contend that they advised Farm Credit

of this arrangement but were advised some time later that Farm Credit sold the bison to Mr Loftstrom for \$22,000.

[9] On August 22, 2024, an applications judge granted judgment to Farm Credit against Frank Wiebe on the basis that “admissions of fact are made in the pleadings of Frank [Wiebe] sufficient to determine that [Farm Credit] is entitled to Judgment and the only question, if any, is the quantum of the Judgment”. The applications judge set a further hearing date to address quantum.

[10] On August 27, 2024, Farm Credit filed a garnishee summons against Derrick Wiebe, in response to which Servus Credit Union remitted \$66,076.02 to Farm Credit on September 12, 2024.

[11] Derrick Wiebe's application to set aside the default judgment against him was dismissed by an applications judge on October 3, 2024. On October 29, 2024, he sought a stay of enforcement of the default judgment.

[12] On December 17, 2024, Derrick Wiebe made a voluntary payment to Farm Credit of \$57,061.15.

[13] On December 18, 2024, the applications judge dismissed Derrick Wiebe’s application for a stay of enforcement and granted an order quantifying the amount of the judgment to be paid by the Wiebes at \$134,348.93 as of August 22, 2024, less amounts received. That order was filed December 21, 2024 and served upon former counsel for the Wiebes on December 23, 2024.

[14] The appeal period for the December 18, 2024 order expired on January 2, 2025, pursuant to r 6.14(2) of the *Rules*, which requires that a notice of appeal from an applications judge “be filed and served within 10 days after the judgment or order is entered and served”. Counsel for the Wiebes advised counsel for Farm Credit of a “likely appeal” on January 6, 2025.

[15] On January 14, 2025, the Wiebes filed a notice of appeal from the December 18, 2024 decision of the applications judge.

[16] On January 15, 2025, the balance of the indebtedness owing to Farm Credit was paid in full, other than costs, which remained to be determined.

[17] On January 29, 2025, Farm Credit brought an application to strike or dismiss the notice of appeal filed on January 14, 2025 for the Wiebe’s failure to file and serve it within the 10-day period set out in r 6.14(2) or on the basis that the proposed appeal was moot because the judgment had been paid.

[18] On March 27, 2025, a chambers judge found that the notice of appeal was filed and served out of time, and the appeal was dismissed with costs.

[19] Notice of appeal of that dismissal was filed with this Court on April 22, 2025, and the cross-appeal was filed on April 23, 2025.

III. Grounds of Appeal

[20] The Wiebes allege the chambers judge erred by failing to consider relevant factors in determining whether to grant their application to extend the time to appeal. Those factors, first articulated in *Cairns v Cairns*, [1931] 4 DLR 819, 826-827, [1931] 3 WWR 335 (Alta SC (AD)), and how they apply are discussed below.

IV. Standard of Review

[21] The chambers judge made a discretionary, procedural decision not to extend time. The decision is entitled to deference unless it is based on an error of law or principle, or it is otherwise unreasonable: *Bristol-Myers Squibb Canada Co v Grande Prairie (City)*, 2023 ABCA 294, paras 14, 22; *Scott v Westwinds Communities*, 2021 ABCA 30, paras 23, 43.

V. Preliminary Issue

[22] A preliminary question arose as to whether the present appeal requires permission to appeal pursuant to r 14.5(1)(b) of the *Rules*, which applies to “any pre-trial decision respecting adjournments, time periods or time limits”.

[23] Several recent decisions of this Court have addressed this rule. In *Rath & Company Barristers & Solicitors v Sturgeon Lake Cree Nation*, 2022 ABCA 373, para 13, a single judge of this Court addressed whether permission to appeal was required from a decision which extended the time to serve a notice of appointment filed by Sturgeon Lake for review of Rath’s retainer agreement and fees invoiced for services rendered. The applicant argued r 14.5(1)(b) did not apply because the proposed appeal could “determine all or some significant part of a party’s substantive rights”, para 9. The judge rejected this argument, distinguishing the scope of r 14.5(1)(b) from the scope of the former rule and reasoning “the effect of the decision sought to be appealed no longer determines whether the permission requirement applies”, para 10. The judge held, para 13:

The proposed appeal in this case challenges a discretionary decision respecting a time limit that was subject to variation pursuant to Rule 13.5(2) [variation of time periods]. Because these types of decisions attract a highly deferential standard of review, appeals of this nature often achieve nothing but delay. To avoid this, it is

appropriate that the court serve its screening function to determine whether the appeal ought to be heard.

The single judge in **Rath** determined permission to appeal was required.

[24] In **26th Avenue River Holding Limited Partnership v Winspia Co Ltd**, 2025 ABCA 384, the issue was whether r 14.5(1)(b) applied to require permission to appeal a decision refusing to set aside two orders extending the time for service of the respondents' statement of claim. A panel of this Court endorsed the principle in **Rath** that r 14.5(1)(b) "applies even when the decision may impact substantive rights": **26th Avenue**, para 9; see also **Debut Developments Incorporated v Redcliff (Town)**, 2025 ABCA 223, para 12.

[25] The Court rejected the appellant's arguments that permission should not be required "where the grant or denial of an extension has the potential to bring the litigation to an end; where there is a legal test governing the extension, as opposed to pure discretion; [or] where an appeal is a proportionate response to the challenged order". The Court found these "distinctions ... may have scope to operate within the test for permission to appeal, they do not determine the applicability of Rule 14.5(1)(b)", paras 8, 9. The Court in **26th Avenue** found the matter before it clearly was a pre-trial decision in respect of a time limit, the "one-year time limit" for service in Rule 3.26(1), and therefore permission was required.

[26] The Court in **26th Avenue** recognized that each case turns on its facts. For example, **Osadchuk v Kidd**, 2025 ABCA 125, paras 19-24, cited in **26th Avenue**, para 10, concerned whether service was properly effected pursuant to the *Rules* and *Hague Convention*. The core of the issue was not in respect of a time limit or the variation of a time limit, but whether the requisite step (service) had in fact been taken within the applicable time limit. The panel found permission to appeal was not required: **Osadchuk**, para 21. Conversely, in **26th Avenue**, para 10, the real issue was whether the time limit for service ought to have been extended, so the decision was "respecting ... time limits" and r 14.5(1)(b) applied.

[27] In **DAKA Holdings Ltd v Boyle (Village)**, 2026 ABCA 127, another single judge of this Court considered whether permission was required to appeal an order for summary dismissal because the 10-year "ultimate" limitation period in s 3(1)(b) of the *Limitations Act*, RSA 2000, c L-12 barred those claims. That judge found permission to appeal was not required.

[28] The ruling in **DAKA** turned on whether summary dismissal for the failure to meet the ultimate 10-year limitation period in the *Limitations Act* was a "pre-trial decision". The judge said while an appeal from a discretionary pre-trial decision to extend the time for service does require permission to appeal, citing **26th Avenue**, para 9, that is substantially different than an appeal from a final adjudication.

[29] The judge in **DAKA** expressed the view that 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”, para 24. He found, however, he did not need to make a definitive finding on that point to resolve the matter before him. Again, the outcome in **DAKA** turned on the meaning of “pre-trial” within the rule: “the final *adjudication* of substantive rights, even through summary adjudication, is not a ‘pre-trial decision’ within the meaning of Rule 14.5(1)(b)”, para 25 [emphasis in original].

[30] There is no conflict among **Rath**, **26th Avenue**, **Osadchuk**, and **DAKA**. By its terms, r 14.5(1)(b) requires permission to appeal “any pre-trial decision respecting adjournments, time periods or time limits” (emphasis added). There are therefore two main elements to the scope of this rule. First, it applies only to “pre-trial” decisions, which means that orders adjudicating the merits of a claim fall outside its scope, including orders rendered through summary dismissal or summary judgment: **DAKA**, para 25. Second, the scope of the rule is also limited to decisions “respecting adjournments, time periods or time limits”. As **26th Avenue** and **Osadchuk** demonstrate, the determination of whether a particular order is in respect of an “adjournment, time period or time limit” depends on the facts.

[31] Here, the chambers judge's discretionary refusal to extend time to appeal an applications judge's order pursuant to r 13.5(2) plainly requires permission to appeal as a pre-trial decision respecting a time limit.

VI. Test for Extension of Time to Appeal

[32] Courts retain “unfettered discretion to extend the time for appealing if the justice of the situation so requires”: **Smoky Lake General and Auxiliary Hospital v Higdon**, 1983 ABCA 331, para 16, 4 DLR (4th) 175; **Cairns**, 826-827. The exercise of that discretion is guided by principles first established in **Cairns**:

- 1) a *bona fide* intention to appeal was held while the right to appeal existed;
- 2) an explanation for the failure to appeal in time exists that serves to excuse or justify the lateness;
- 3) an absence of serious prejudice such that it would not be unjust to disturb the judgment;
- 4) the applicant must not have taken the benefits of the judgment under appeal; and
- 5) the appeal would have a reasonable chance of success, which might be better described as a reasonably arguable appeal.

These principles have been repeated many times: see **McCarthy Estate (Re)**, 2021 ABCA 293, paras 11, 12; **Li v Morgan**, 2020 ABCA 186, para 4, 8 Alta LR (7th) 65; **Dureab v Ben-Harhara**, 2021 ABCA 128, para 6; **LDS v SCA**, 2021 ABCA 429, para 17; **Blume v Blume**, 2023

ABCA 174, para 8; **Prosser v Woodhouse**, 2025 ABCA 159, para 11; **Eccles v Eccles**, 2025 ABCA 259, paras 8, 9.

[33] As explained in **Li**, short appeal deadlines exist to promote finality in litigation. Therefore, a court must consider all factors before exercising its overriding discretion to extend time. An applicant does not have to satisfy every component of the test to be successful and the test does not set rigid requirements; the court retains general discretion to extend time where justice requires it: **Li**, para 4; see also **Stoddard v Montague**, 2006 ABCA 109, para 8, 412 AR 88; **Kehewin Cree Nation v Mulvey**, 2013 ABCA 294, para 26, 91 Alta LR (5th) 116; **R v Canto**, 2015 ABCA 306, paras 14, 21, [2015] 11 WWR 354; **Lavoie v Lukiw**, 2025 ABCA 12, paras 7, 8.

a) Bona Fide Intention to Appeal

[34] The chambers judge did not consider whether the Wiebes had a *bona fide* intention to appeal within the appeal period. We note that the Wiebes' former counsel argued "the Wiebes have sought from ... *the outset* to revisit the decision of the applications judge" [emphasis added]. Further, in his affidavit of March 24, 2025, Frank Wiebe deposed:

In respect of the matters that came on before the hono[u]rable Applications Judge B. Summers on December 18th, 2024, on analysis of what laid beneath that decision and its antecedence, it was determined that an appeal may well be appropriate.

[35] Although the evidence could be stronger, we accept that the Wiebes formed a *bona fide* intention to appeal upon receiving the applications judge's decision and order.

b) Accounting for the Delay

[36] In his affidavit of March 24, 2025, Frank Wiebe explains the delay at paras 8 and 9.

Our lawyer's office was booked to be closed for the entirety of Christmas week even though December 23rd was a day on which the Courts were still functioning. Notwithstanding that fact our lawyer was scheduled to be at his office without staff on Monday the 23rd of December. We are advised and verily believe that that planned attendance did not occur as a result of a life-threatening emergency in his immediate family. In any event, not surprisingly, it was discovered that the Respondent's counsel's office had seen it fit to serve the formal order arising on the 18th on that date by facsimiles, an event that wasn't actually discovered till the office opened again on the first business day of the new year.

Steps were then taken to begin the appeal process, all of which was complicated by further life threatening events in our lawyers family coupled with the fact that he,

himself, became incapacitated from a fall resulting in a broken leg, the effects of which, by and large, kept him out of his office for a period of weeks thereafter followed by further weeks of a gradual reattendance at that place of business.

[37] It is noted, however, from former counsel's email of February 20, 2025, that he "suffered a broken leg as a result of a fall some few weeks ago". That presumably puts the date of that event sometime after January 2, 2025. We also note the Wiebes' former counsel did not file his own affidavit setting out his reasons for the delay. That is of some concern, although not fatal. Before the chambers judge, the Wiebes' former counsel adopted Frank Wiebe's explanation: "with respect to the issue of delay in the filing of the appeal ... it lies entirely at the doorstep of counsel". Their current counsel says that should be considered "special circumstances".

[38] Before the chambers judge, the Wiebes provided reasons, as they understood them, accounting for the delay. The evidence respecting counsel's life-threatening family emergency is sufficient to conclude that "the failure to appeal was by reason of some very special circumstance which serves to excuse or justify such failure".

c) Prejudice/Taking Benefits of the Judgment

[39] The Wiebes say that Farm Credit is not prejudiced by the delay in the filing of their appeal on January 14, 2025. They say it was filed 12 days late, but the Wiebes' debt to Farm Credit has now been paid, and only the issue of costs is outstanding before the assessment officer.

[40] Farm Credit says it is prejudiced by the effect of the passage of time on witnesses' memories and that one employee with direct knowledge of the early stages of this matter has left their employment. It is not credible that a significant memory loss has occurred since January 2025. It is also not an impediment to Farm Credit to call upon the assistance of a former employee who left the employment of Farm Credit after that date. These circumstances do not cause serious prejudice that cannot be overcome.

[41] Additionally, the Wiebes, having paid the debt, have taken no benefit from the period of delay.

d) Reasonable Chance of Success on Appeal

[42] In this case, the question of whether the chambers judge erred in his decision to refuse to extend the time to appeal and whether this Court should, in turn, grant permission and an extension of time to appeal the chambers judge's decision, turns on this factor.

[43] The Wiebes say that in his reasons, the chambers judge made no comment on whether there was a reasonable chance of success, or whether their appeal was at least arguable. He said, “I can’t comment that there would be a reasonable chance of success for the appeal to proceed”.

[44] The Wiebes say that throughout this litigation, they have disagreed on the amount properly owing to Farm Credit, primarily due to the additional losses they incurred during the debt enforcement process. They say they incurred expenses for the care of the bison for six months after Farm Credit seized the animals but before a finalized sale to Mr Loftstrom. They have received no credit for the care and feeding of the bison for those six months, and they say they should have been given credit for their time and expenses over that period.

[45] Additionally, the Wiebes say Mr Loftstrom agreed to purchase their bison herd for \$50,000. After the seizure by Farm Credit, it sold the bison to him for \$22,000. The Wiebes say that is an improvident realization and they should be given credit for the \$28,000 difference.

[46] In his affidavit of October 17, 2024, Derrick Wiebe indicated Mr Loftstrom had “agreed to buy the herd for \$50,000”. He said that upon checking the reasonableness of that proposed purchase price, he called an officer at Farm Credit, and “let him know that I talked to his potential buyers and this is what they said so we wanted to proceed with the sale to Rod [Loftstrom]”. Improvident realization occurs when the method of selling collateral was imprudent and commercially unreasonable, leading to a reduced recovery: *Smith v PricewaterhouseCoopers Inc*, 2013 ABCA 288, para 28, 3 Alta LR (6th) 341.

[47] Derrick Wiebe said:

After that, some time had passed; we had not heard from [the officer with Farm Credit] but then we talked with Rod and he said very surprisingly that he had purchased the bison from FCC for \$22,000! We were shocked and asked how come so low. Rod explained that [the officer] and he talked. [The officer] told him, well what could you afford without a loan? He said he had \$22,000 and then [the officer] said, well we can probably make that work and so they set forth making this deal without contacting us once even after being under the mindset that we were part of the sale process and had a deal with the same individual.

[48] Farm Credit submits that claims for the care and feeding of the bison between the date of seizure and the date of sale, and the concern over the sale price of the bison to the neighbour, were not raised before the applications judge or the chambers judge, and that the original loan agreement between the parties provided that the Wiebes’ obligations were “absolute and unconditional and shall not be affected by any right of set-off, compensation, counterclaim or other right”. It says s 9(c) of the security agreement allowed it to sell “the Collateral [the bison] or dispense of it in any commercially reasonable way”. Improvident realization was contractually excluded pursuant to s

14(e) of the security agreement: “[Farm Credit is] not liable ... for any failure or delay in exercising any of [its] rights under this Security Agreement. The same applies to any failure on [Farm Credit’s] part to take any steps to preserve rights ... or any delay in doing so”.

[49] The Wiebes cannot now advance claims, for the first time, in set-off, compensation, counterclaim, and improvident realization that they have specifically excluded in their loan and security agreements with Farm Credit. These claims are hopeless and have no reasonable chance of success. They are not contractually arguable.

[50] Even if we were to grant permission to appeal, which we are not persuaded is appropriate, courts are required to consider whether it is in the interest of justice to allow the extension of time for the appeal to proceed. The Wiebes say that failure to allow for the extension of time prevents them from making substantive arguments before an appeal court, which may reduce their indebtedness to Farm Credit, and it would be unjust to prevent them from advancing their arguments as a result of the unfortunate confluence of events affecting their former legal counsel between December 23, 2024 and January 14, 2025. As indicated, however, the Wiebes contracted out of their claims in set-off, compensation, counterclaim, and improvident realization in the loan and security agreements signed with Farm Credit. They cannot now advance these claims. In these circumstances, it is not in the interests of justice to allow the Wiebes to advance the appeal.

VII. Cross-Appeal

[51] Farm Credit cross-appeals, asking this Court to vary the decision of the chambers judge below “to include, as a ground for dismissal of the Appeal ... the alternative ground of dismissal being the mootness of the Appeal”. It says the applications judge heard their submissions that the appeal of the Wiebes was moot but declined to determine that question.

[52] What the chambers judge said was: “I am of the view that ... whether the appeal is moot because the judgment amount has been paid -- I am not sure. I am not sure that that is true”.

[53] The order does not reflect any determination as to whether the appeal should have been struck for mootness. It simply declared that the appeal “was filed and served out of time”.

[54] An appeal to this Court is made only on the order granted, and not on the reasons provided. The only matter before this Court is therefore whether the chambers judge erred in dismissing the Wiebes’ application to extend the time to file the appeal. We have upheld that order and thus the question of the mootness of the proposed appeal does not arise. A determination of whether the proposed appeal was moot would have no effect on the right of the parties; this sub-issue is moot. This is not an appropriate case for the court to exercise its discretion to determine a moot issue: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 353, 57 DLR (4th) 231.

VIII. Conclusion

[55] The appeal and cross-appeal are dismissed.

[56] Success is divided. Each party shall bear their own costs.

Appeal heard on May 7, 2026 and
Written Submissions filed on May 1 and May 5, 2026

Memorandum filed at Edmonton, Alberta
this 7th day of July, 2026

Feehan J.A.

Kirker J.A.

Shaner J.A.

Appearances:

D. Archibold
for Respondent/Cross-Appellant

K. Kawanami, KC

E. Peters
for the Appellants/Cross-Respondents