

In the Court of Appeal of Alberta

Citation: 42nd Dental Inc (Amara Dental) v Mouhamad, 2026 ABCA 266

Date: 20260814

Docket: 2601-0167AC

Registry: Calgary

Between:

42nd Dental Inc. operating as Amara Dental

Respondent

- and -

**Faissal Mouhamad, Fetoun Ahmad,
South Hill Smiles Corporation,
Bridge Dental Corporation and ABC Corporation**

Applicants

**Reasons for Decision of
The Honourable Justice Joshua B. Hawkes**

Application to Extend Time to File Notice of Appeal

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Introduction

[1] This application for an extension for the time for filing and service of a notice of appeal pursuant to Rule 14.37(c) of the *Alberta Rules of Court*, AR 124/2010 is factually unusual, but the law is well settled. The applicant seeks to appeal a single term of the Order in question to ensure that he remains in compliance with the applicable bylaws of the College of Dental Surgeons of Alberta. For the reasons that follow, the application is denied as the appeal is moot and therefore without arguable merit.

Background

[2] The circumstances that dictate this result arose out of the rupture of a dental clinic. The applicant and some other dentists abruptly left the clinic where they were working to start a new clinic. The applicant took all the patient records with him to the new clinic, ostensibly on the basis that he was the custodian of the patient records as described in the *Health Information Act*, RSA 2000, c H-5. This had the unfortunate effect of leaving the remaining dentists and denturists at the original clinic, who were also custodians of those records as defined in the *Health Information Act*, without any records and unable to provide care to their patients. They filed an Originating Application on April 21, 2026, seeking injunctive relief and scheduled an urgent chambers hearing which occurred on April 24, 2026. With the agreement of the parties, the issues were narrowed to address concerns surrounding how to manage an orderly transition so that patients could choose to either attend at the new clinic, remain at the former clinic, or choose a completely different dentist or denturist.

[3] One of the chief tasks at the hearing was to establish a process whereby patients could be notified of the departure of the applicant and others and make a choice as to where and with whom they would like their dental care to continue. The Chambers Justice provided a framework where neutral messaging would be provided to patients through a variety of means so they could choose where to continue their care. Counsel were encouraged to work collaboratively on the language of the messages. After the order was granted on April 24, 2026, counsel began to work on the terms of the order. Disputes arose, and an exchange of emails followed with conflicting terms proposed particularly with respect to the retention of the patient records while the notification process was underway. The applicant thought that, in the event of no response from a patient, those records should remain with him as the custodian of the records. The respondents thought that those records should remain with them. The fundamental disagreement regarding this term was apparent from the first draft order sent by the respondents on April 28, 2026. After a protracted exchange of e-mail, counsel for the respondent wrote to the Chambers Justice advising of the dispute and requesting assistance to settle the order.

[4] The Chambers Justice advised that due to the delay in settling the order Rules 9.2 and 9.3 of the *Rules of Court* applied. Following submissions, she provided her view that the records should remain at the original location, as that is where they were before they were removed without notice (a view which she believed she expressed at the hearing). If both parties agreed this direction could be included in the order, otherwise, they would be required to find a time to reappear before the Justice to settle the issue.

[5] Counsel for the applicant responded on May 6, 2026, advising that the location of the records remained disputed and suggested dates when they could reappear before her. The Chambers Justice responded on May 8, 2026, by letter directing them to file a form of order and schedule availability with the court coordinator for a further appearance. That order included a term requiring the files to be retained at the original clinic in the event a patient did not respond pending further direction from a patient or from the court. The order was ultimately filed on May 19, 2026, and served on May 20, 2026. A Notice of Appeal was filed on June 4, 2026. An endorsement from the case management officer confirmed that the appeal was filed late and that application for extension was required on June 8, 2026.

Analysis

[6] The proper interpretation of Rule 14.8(2)(a)(iii) of the *Rules of Court* is settled. Time begins to run from the date when the order was pronounced, not from when the Order was settled or entered.¹ “[I]f a party is unsure of which order is going to be filed but has [...] a genuine intention to appeal, or if one form of the order is preferred over the other, then that notice of appeal should have been filed and could always be abandoned later.”² Dispute about the form of order does not change that deadline, and delay to settle a disputed order is not a sufficient excuse to justify not filing an appeal with the designated appeal period.³

[7] In the absence of a transcript of proceedings, the best evidence of whether the disputed term was addressed during the hearing on April 24, 2026, is found in the response from the Chambers Justice where she indicated that the issue was raised, and it was clear that she expressed a view as to where the records should remain while the process unfolded. It is clear that inclusion of the disputed term was not a new matter raised by the Justice after the hearing. Time would

¹ *Big Plans for Little Kids v Souster*, 2021 ABCA 73 at paras 10-12.

² *Kure v Kure*, 2017 ABCA 215 at para 11.

³ *Big Plans for Little Kids* at para 12; *Kure* at para 11.

therefore begin to run from April 24, 2026. The Notice of Appeal filed on June 4, 2026, is late and an extension is required.

[8] The test for an extension is well established.⁴ The disputed issue in this case is whether the appeal would have a reasonable chance of success if allowed to proceed.

[9] The mechanism created by the Order has now been in effect for some time. It provides that all the affected patients would be contacted by either the original or the new clinic and advised of their options. Counsel at the hearing advised that this process is well underway and anticipated to be completed soon. As a result of that process, all the affected patients will be contacted, and their records moved according to their instructions to the dentist or clinic of their choice. Any remaining records of patients who did not respond or could not be contacted will remain under the control of a dentist as required by the *Health Information Act* and the bylaws of the College of Dental Surgeons of Alberta. Both counsel have assured the Court that their clients will comply with their professional obligations and forward the patient records in accordance with the wishes of the patients. Neither are asserting a proprietary interest in the records in this proceeding.

[10] An appeal will have no merit if it has been overtaken by a change in circumstances such that it will have no practical effect, where there is no live controversy between the parties in relation to the issue, or, where the question posed is for an essentially advisory purpose.⁵

[11] In this case, the issue of records returning to the custody of treating dentists or denturists is addressed by the order, and that process will be complete long before the appeal can be heard.

[12] As noted above, the appellant's stated purpose in bringing this appeal of the condition of the order regarding the residual patient records is to ensure that he remains in compliance with his obligations regarding patient records with the College of Dental Surgeons of Alberta. What remains, then, is essentially an advisory question for the Court – which dentist or practice should retain the remaining records (if any) to ensure compliance with the College? Counsel for the applicant was unable to confirm whether his client had contacted the College to seek direction. An appeal to this Court is not a substitute for that step. That question, in the circumstances of this case, has insufficient merit to extend the time for filing.

⁴ *Cairns v Cairns* (1931), 26 Alta LR 69 (CA) at 69, 1931 CanLII 471.

⁵ *CM v Alberta*, 2024 ABCA 136 at paras 20-32; *Ranchland (Municipal District No 66) v Alberta Energy Regulator*, 2026 ABCA 206 at paras 15-20.

Conclusion

[13] The application is dismissed.

Application heard on July 30, 2026

Reasons filed at Calgary, Alberta
this 14th day of August, 2026

Hawkes J.A.

Appearances:

M.A. Amery
for the Respondent

J. Demers (no appearance)
D.G. Gryba
for the Applicants