

In the Court of Appeal of Alberta

Citation: Pitte v Pitte, 2026 ABCA 326

Date: 20261015

Docket: 2603-0043AC

Registry: Edmonton

Between:

Lorraine D. Pitte

Applicant

- and -

Louis Henri Pitte

Respondent

**Reasons for Decision of
The Honourable Justice Michelle Crighton**

Application to Restore Appeal

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[1] The applicant applies to restore an appeal of a chambers judge's order that enforced the terms of a binding arbitration consent award between her and her husband, the respondent. The appeal was struck after the applicant failed to file her factum by the deadline.

[2] In May 2025, the applicant and her husband agreed to arbitrate their separation. They reached a settlement and the arbitrator recorded a Consent Award pursuant to the *Arbitration Act*, RSA 2000, c A-43 [Act]. The Award directed that the family home be transferred to the respondent. The Award also provided that: "Both parties confirm and acknowledge there is essentially no appeal from the within Consent Award, akin to a Consent Judgement".

[3] The applicant refused to sign the minutes of settlement or any of the documents giving effect to that settlement. However, she brought no appeal of the Consent Award within the 30 days deadline set out in s 46 of the Act.

[4] On October 14, 2025, the respondent successfully applied to convert the Consent Award into a judgment. The applicant did not appeal that judgment order. Thereafter, on February 2, 2026, the respondent successfully applied for an order directing Land Titles registry to discharge the applicant's legal interest in the family home. The applicant appealed this enforcement order, filing a Notice of Appeal in this Court on February 25, 2026, but did not seek a stay of the order. The applicant's interest in the family home has now been discharged as evidenced by the Land Title Certificate appended to the applicant's supplementary affidavit filed in this matter.

[5] The applicant ultimately failed to file her factum in this appeal in accordance with rule 14.64(b), and her appeal was struck on August 25, 2026. Three days later, the applicant applied to restore her appeal. This is the application before the Court.

[6] The application must be dismissed.

[7] The test to restore an appeal is well-known: *Way-Patenaude v Human Rights Tribunal*, 2022 ABCA 101 at para 6; *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4. The test looks at several considerations, including:

- (a) arguable merit to the appeal;
- (b) explanation for the delay which caused the appeal to be struck;
- (c) reasonable promptness in moving to cure the defect and have the appeal restored;
- (d) continuing intention to proceed with the appeal; and
- (e) lack of prejudice to the respondents (including length of delay)

[8] The onus is on the applicant to demonstrate that it is in the interests of justice to permit the appeal to proceed: *Mylonas v Kadman*, 2019 ABCA 39 at para 10. Generally, all of the above considerations are weighed together and none are determinative on their own; however, the

absence of any arguable merit to the appeal is fatal: *Scheffelmaier v Scheffelmaier*, 2026 ABCA 80 at para 9, citing *Kimberley Management Ltd v Klammer*, 2000 ABCA 271 at para 3, 281 AR 158.

[9] The respondent has properly conceded that the applicant may have had technical internet connectivity issues that explain her failure to file her factum by the deadline, she has otherwise had the intent to appeal the enforcement order since the date of the enforcement order, and she promptly applied to restore her appeal. Further, the respondent does not claim any “undue” prejudice because of the delay.

[10] However, the insurmountable obstacle here is the lack of merit to the applicant’s appeal. In particular, the applicant failed to appeal either the Consent Award or the order converting the Award into a judgment. Permitting the applicant to appeal the enforcement order leaves the underlying Award and judgment intact.

[11] The applicant recognizes this obstacle and asks that she be permitted to roll the appeal of the judgment order into her appeal of the enforcement order. She provides in her written materials that her lawyer “withdrew June 18, 2025. . . the appeal [of the Consent Award] had to be done before June 22, 2025 [the 30-day deadline in s 46 of the *Act*]. With such short notice at this critical time, I could not find anyone willing to take the case on”.

[12] First, the applicant has provided no evidence as to why she did not pursue an appeal of the Consent Award on her own, as she has done in this matter. Second, this Court has no jurisdiction to extend the 30-day deadline to appeal the Consent Award under section 46 of the *Act*: *Javaid v Javaid*, 2026 ABCA 240 at para 11. Third, she has provided no explanation for failing to appeal the judgment order.

[13] Further, and in any event, while the applicant has made a statement about “financial duress” related to the Consent Award, no argument has been provided as to any circumstances which may ground setting aside the Consent Award under s 45 of the *Act*. In particular, she does not say who inflicted the duress upon her or why she may have felt she had no choice but to enter the Consent Award. In contrast, the Award itself sets out that a “fulsome agreement was reached” between the parties, including that the family home be transferred to the respondent “in exchange for an equalization payment to [the applicant] in the sum of” \$100,000, and at the parties’ request, the agreement was rendered into a Consent Award. It further provides that the parties understood the agreement reached and “have had an opportunity to obtain independent legal advice, separate and apart from the Arbitrator or other party”. This would include that the Consent Award provided for no appeal.

[14] I agree with the respondent that the applicant’s appeal of the enforcement order appears to be a backdoor attempt to appeal the Consent Award, and the judgment order, which settled the division of the family home between the parties and are no longer appealable. Even if the appeal

were restored and permitted to proceed, it would accomplish nothing as the Consent Award and judgment order stand. There is therefore no arguable merit to the appeal.

[15] The application to restore the appeal is dismissed.

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

Application heard on October 14, 2026

Reasons filed at Edmonton, Alberta
this 15th day of October, 2026

Crighton J.A.

Appearances:

Applicant L. Pitte

M.E. Murdoch
for the Respondent