

Court of King's Bench of Alberta

Citation: Leyne v Saint-Cyr, 2025 ABKB 580

Date: 20251006
Docket: 250113067
Registry: Calgary

Between:

Louis Daniel Saint-Cyr

Applicant

- and -

Deirdre Ann Leyne

Respondent

**Reasons for Decision
of the
Honourable Justice M.H. Bourque**

I. Introduction

[1] This matter came before me in morning civil chambers. It raises an unusual and apparently unresolved issue regarding the effect of delays in marking “filed” documents submitted through the Court’s electronic submission portals on limitation periods.

II. Background

[2] The parties are involved in matrimonial litigation. They entered into a mediation/arbitration agreement (“Agreement”) and attended before an arbitrator (“Arbitrator”). The Arbitrator issued an award (“Award”) on June 28, 2025, but did not deliver it to the parties until July 22, 2025. Both parties were unsatisfied with the Award. The Agreement provides that either party may appeal the Award on the grounds of an error of law or a mixed question of law and fact. Each party contends that the Award contains such errors.

[3] It is common ground between the parties that s. 46(1) of the *Arbitration Act*, RSA 2000, c A-43 requires that an appeal must be “commenced” within 30 days of receipt of the award. The parties agree that the deadline for filing an appeal of the Award was August 21, 2025.

[4] Ms. Leyne (“Respondent”) filed an appeal of the Award in the form of an originating notice on August 20, 2025. Her counsel advises that, on that date, a student-at-law from her

office appeared in morning civil chambers to seek permission to file the originating notice “at the counter” instead of filing electronically. Ironically, earlier this year, the Respondent was on the opposite side of the issue addressed in these reasons (as discussed later), in that her counsel had submitted, for filing through one of the Court’s electronical portals, an originating notice appealing a different award one day before the 30-day limitation period, only to have it marked filed by the clerks one day late. Her application for a *nunc pro tunc* order was denied.

[5] Mr. Saint-Cyr (“Applicant”) attempted to file a cross-appeal in the form of an originating application. He provided an affidavit (“Affidavit”) from a legal assistant in his counsel’s office (“Affiant”). The Affiant avers that “on or about” August 21, 2025, she submitted the originating application for filing. Given the deadline, she submitted it “both via email filling [sic] and the online portal procedure.” She then attaches a series of email correspondence between herself and the clerks in which she attempted to confirm that the originating application had been filed. At 3:47 p.m., she received what appears to be an automated response indicating “Your filing request has been submitted.” She also sent the documents by email at 3:52 p.m. At 4:01 pm, she received an automated response stating: “Your filing request has been rejected by the Court of King’s Bench.” At 4:10 p.m., she received an email from “KB General Filing Calgary” saying, “I can see in our system that your document was already filed right?” At 4:12 p.m., the Affiant replied: “I am not sure if our document has been filed. I did try and file it on the E systems, but it seems as though it has been rejected.” At 4:27 p.m., she received a reply saying, “okay, then we are good.” At 4:29 p.m., the Affiant replied: “Just to confirm my application and affidavit are filed? I just did didn’t [sic] see an attachment.” She received no further reply that day.

[6] On August 22, 2025, at 8:39 a.m., the Affiant sent an email: “As per our previous emails, I am just following up with respect to our filed documents. Can you please provide filed copies as we are on a tight deadline.” At 8:50 a.m., she received an automated notice saying, “Your filing request has been submitted.” At 10:41 a.m., she received a similar notice saying, “Your package has been accepted.” At 1:51 p.m., she received an email saying, “To confirm, your cross application materials appear to have been filed through the digital portal.”

[7] On August 25, 2025, at 10:16 a.m., the Affiant sent an email saying, “They were filed. But they were filed late. As per my email communication with the clerk on Thursday. Can we please have the stamp changed to August 21, as they stated in their email below that ‘we are good’, assuming that my documents had been filed on August 21, which they were not.”

[8] The Affiant followed up again on August 27 and received a reply at 4:17 p.m., stating that the matter had been submitted at 3:47 p.m. on August 21, rejected at 4:01 p.m., resubmitted at 8:49 a.m. on August 22, and filed at 10:41 a.m. The email went on: “As submissions are filed for the date they are processed, since the matter is already filed, any concerns will need to be addressed before the court.”

III. Justice Digital Strategy

[9] The facts of this case intersect with both the Court’s desire to modernize and fully digitize its records and the Government of Alberta’s financial investment and commitment to achieving that goal. It is therefore essential to highlight the legislative objectives behind this transformative investment.

[10] In his 2021-22 Annual Report, citing his Ministry’s objective “Make the justice system fairer, faster and more effective”, Minister Shandro highlights the results of that year’s \$7.8 mm

investment in Justice Digital “to better meet the needs of citizens, court users, and the judiciary, and reduce red tape for Albertans” as part of its five-year \$38 mm broader strategy “to implement new or enhanced online services and digital platforms to modernize Alberta’s courts and the broader justice system and deliver transformational change.” See: Government of Alberta, Justice and Solicitor General, *2021-2022 Annual Report* (Alberta Open Government Portal: www.open.alberta.ca, June 2022) at 45.

[11] A key accomplishment for the 2021-22 fiscal year was the “Filing Digital Service,” the purpose of which is described as: “[streamlining] the process of filing documents with the Court of Queen’s Bench, allowing certain court applications to be submitted, reviewed, and granted digitally. To date, more than 36,000 document packages have been processed in Calgary, Edmonton, Lethbridge, and Red Deer using the service – freeing up hundreds of hours of clerk time to review more complex filings and assist elsewhere in the courts” (*ibid.*, at 45-46).

[12] More recently, Minister Amery highlights the 2024-25 fiscal year \$5.6 mm investment in the Justice Digital Strategy, highlighting that 12 digital services have been launched since 2019 (3 more than targeted), with the current fiscal year focus being to “enhance or expand existing digital services.” Regarding the “Filing Digital Service” launched in 2021: “as of March 31, 2025, more than 474,222 documents were filed using this service, reducing filing time by 97 per cent since its introduction in July 2021:” Government of Alberta, Justice, *2024-2025 Annual Report* (Alberta Open Government Portal: <https://open.alberta.ca/publications/2817-4526>).

[13] On March 18, 2024, Minister Amery provided additional information regarding the Justice Digital Strategy in response to questions during a session of the Standing Committee on Families and Communities, describing it as “a suite of interconnected digital services that are transforming legacy processes and modernizing court operations ... [allowing] for better service to Albertans” (at FC-114), “very innovative, probably the best in Canada” (at FC-111), and a tool to “help modernize the court and justice systems ... to make it easier and faster for Albertans, the legal community, police officers, and others to be able to access the court system anywhere, any time” (at FC-110). See: Legislative Assembly of Alberta. Standing Committee on Families and Communities, *Ministry of Justice Consideration of Main Estimates*, 31st Leg, 1st Sess., Transcript No. 31-1-7 (18 March 2024).

[14] With that additional context and background in mind, I proceed to analyze the issue before me.

IV. Issue

[15] The Respondent seeks to strike the Applicant’s originating notice on the basis that, although it was submitted for filing through the Court’s digital filing portal before the expiration of the limitation period, it was processed by the clerk’s office after that limitation period had expired. In response, the Applicant seeks an order *nunc pro tunc* to recognize August 21, 2025, as the effective date of filing his appeal.

V. Analysis

[16] As the Court of Appeal noted in *Sedgwick v Edmonton Real Estate Board Co-Operative Listing Bureau Limited*, 2022 ABCA 264 at para 78, “*Nunc pro tunc* orders, meaning ‘now for then’, grant something now but with earlier effect...”.

[17] In **Sedgwick** at para 79, the Court of Appeal noted that *nunc pro tunc* orders are “...grounded in the inherent jurisdiction of the court to control its own process and [are] typically granted to correct minor errors or omissions in the record. ... This equitable remedy is tied to the maxim, *actus curiae neminem gravabit* (an act of the court shall prejudice no one).”

[18] The Court of Appeal went on at para 80 to discuss the Supreme Court of Canada’s comments about *nunc pro tunc*:

Long thought to be an equitable remedy for minor or trivial breaches or slips, we note that in **Canadian Imperial Bank of Commerce v Green**, 2015 SCC 60 at para 88, [2015] SCJ No 60, Côté J at para 88, concluded as to *nunc pro tunc* that “the occurrence of a slip or oversight is not the only circumstance in which a court may exercise its inherent jurisdiction, but is instead one example of a situation in which it may do so. To hold otherwise would run counter to the historical basis for the development of the doctrine.” Côté J identified several factors for a court to consider in determining whether to grant *nunc pro tunc*:

90 In fact, beyond cases involving the death of a party or a slip, the courts have identified the following non-exhaustive factors in determining whether the exercise their inherent jurisdiction to grant such an order: (1) the opposing party will not be prejudiced by the order; (2) the order would have been granted had it been sought at the appropriate time, such that the timing of the order is merely an irregularity; (3) the irregularity is not intentional; (4) the order will effectively achieve the relief sought or cure the irregularity; (5) the delay has been caused by an act of the court; and (6) the order would facilitate access to justice... None of these factors is determinative.

[19] At para 81, the Court of Appeal also noted that the Supreme Court had added an “important caveat” at para 94 of **Green**:

94 ...as with all common law doctrines and rules, the inherent jurisdiction to grant *nunc pro tunc* orders is circumscribed by legislative intent. ...However, *nunc pro tunc* orders will not be available if they are precluded by either the language or the purpose of a statute. *None of the other equitable factors listed above, including the delay being caused by an act of the court, can be relied on to effectively circumvent or defeat the express will of the legislature.* [Emphasis by the Court of Appeal.]

[20] The Court of Appeal in **Sedgwick** found that the appellant had failed to obtain the requisite leave to appeal and declined to grant that permission *nunc pro tunc*.

[21] In **Kwadrans v Kwadrans**, 2023 ABCA 203, the Court of Appeal dealt with an application similar to one for a *nunc pro tunc* order. In that case, which also dealt with an appeal from an arbitration award, the party seeking to appeal, instead of filing an originating application, filed a Notice to Attend Family Docket Court. She argued that this was an irregularity that could be “cured” pursuant to Rule 1.5. The Court of Appeal agreed with the

chambers judge that this was not within the purview of the Rule and held as follows at paras 34 and 35:

First, we disagree with the appellant's position that no irreparable harm or prejudice would be caused if rule 1.5 was used to cure the contravention in this case. We have already determined that the appellant did not commence an appeal within 30 days, as required by the *Arbitration Act* and rule 3.2(5). While the Notice to Attend Family Docket Court may have signalled the appellant's intention to appeal the arbitral award, the record establishes that it did not assist the respondent in understanding the substantive grounds of appeal and the specific aspects of the award being challenged. Thus, the appellant is in effect seeking an extension of time to file an appeal of the arbitration award, where the court cannot extend the time for filing an appeal under the *Arbitration Act*...

Second, it is not appropriate to provide a remedy under rule 1.5 in the present circumstances. The general rule 1.5 should not be invoked if there is a specific rule that addresses the issue in question, here being rule 3.2(6)... Further, rule 1.5(5) expressly prohibits the court from curing any contravention, non-compliance or irregularity if to do so would have the effect of extending a time period that the court is prohibited from extending, which as already noted, is the case with the *Arbitration Act*.

[22] Counsel provided me with the case of ***Patkaciunas v Economical Mutual Insurance Company***, 2021 ONSC 5945. In that case, Justice Dunphy stated at para 1 that the issue before the Court was “Do I have the necessary jurisdiction to treat a claim as having been commenced when the statement of claim ought to have been issued by the public official to whom it was presented for this purpose if doing so affects the application of a limitation period?” The facts were that the plaintiffs’ paralegal had come to the courthouse to file a statement of claim. After waiting for some time, he was called to the counter only to be told that the clerk was shutting down his computer and would not process the statement of claim that day. Justice Dunphy granted a *nunc pro tunc* order and stated as follows at paras 9 and 10:

The plaintiffs ... did all that was necessary to commence a proceeding within the time prescribed. The court staff failed to record that fact. Staff ought to have confirmed that fact and provided evidence of it in the form of a properly dated stamp on the statement of claim to evidence its issuance.

I have the inherent jurisdiction to treat as done that which public officials had a duty to do and when they had a duty to do it. I am declaring that the statement of claim was issued on June 25, 2019. I am not excusing the plaintiffs’ failure to take a step in the time prescribed – I am finding as a fact on the evidence before me that the step required was taken even if not recorded by the court as it ought to have been through no fault of the plaintiffs.

[23] ***Patkaciunas*** was cited by the respondent in ***Norman Towing v Riordan Leasing Inc***, 2024 ONCA 518. In that case, the respondent had filed a statement of defence and counterclaim to the appellant’s statement of claim. However, the counterclaim, though filed, was not issued by the court. The error was not discovered until after the expiry of the limitation period for filing the counterclaim. The motions judge issued a *nunc pro tunc* order, finding that issuing the counterclaim was an administrative step that should have occurred as a matter of course. The

Court of Appeal dismissed the appeal, describing the lack of issuance as an “administrative misstep” and an “irregularity” at paras 26 and 28, respectively. Significantly, the Court of Appeal stated at para 29 that “It was therefore open to [the motions judge] to grant an order that treated the date of filing as the date of issuance. Having done so, the *limitation period had not expired*” (my emphasis).

[24] This Court considered ***Patkaciunas*** in ***Resta v Thornton***, 2023 ABKB 498, a case involving the respondents’ failure to meet a court-ordered deadline for payment of security for costs, despite attempts to do so. Justice Funk granted a *nunc pro tunc* order, stating as follows at para 27:

While the facts before me do not involve a failing by the court to fully accomplish a required step, I find the reasoning in ***Patkaciunas*** applies equally here. In both cases the parties had done what was necessary to complete the required step on time; for reasons beyond their control, they were unable to complete the step; and there was no ability to apply for equitable relief until after the deadline (or limitation period) had passed.

[25] In contrast, in two recent cases, Justice Jugnauth declined to apply ***Patkaciunas*** to permit a step to be taken after the expiry of a limitation period. As I mentioned earlier, one of those cases involved the very parties before me now.

[26] In the case before me involving the same parties, it was the Respondent who sought a *nunc pro tunc* order. She had filed an appeal of an arbitration award (not the one presently before me) on December 16, 2024, the day before the limitation period expired. However, the clerk did not process the originating application until December 18, 2024, which was too late. In that case, the Applicant argued that the Respondent was not diligent in filing her originating application. He argued that she should have either marked the application urgent or obtained a fiat to allow her to file it in person rather than electronically.

[27] Justice Jugnauth denied the order sought, distinguishing the case from previous decisions such as ***Kwadrans*** and ***Patkaciunas***. He emphasized that waiting until the last moment to file carries inherent risks, and there was no evidence that the registry failed in its duties. Justice Jugnauth also highlighted that granting the order would prejudice the respondent by removing their ability to rely on the defence of an expired limitation period. The applicant acted in good faith but was ultimately caught out by standard processing times, not by any error or omission on the part of the court. The judge concluded that, in line with Supreme Court guidance, the circumstances did not justify overriding the statutory limitation period.

[28] A similar issue was considered by Justice Jugnauth in ***Gill v Sabir***, 2025 ABKB 402. In that case, a legal assistant made a significant mistake when attempting to file a statement of claim electronically, resulting in the document being filed late after resubmission. In my view, ***Gill*** is distinguishable since the plaintiff waited over seven months after becoming aware of the late-filing problem and engaged in prolonged correspondence with the clerk’s office before seeking judicial relief.

[29] In the instant case, I find that the Applicant did everything necessary and within his power to file his appeal within the limitation period. This case is therefore distinguishable from ***Sedgwick***, ***Kwadrans*** and ***Gill***.

[30] Simply put, the Applicant was caught up in what Justice Jugnauth referred to as the “administrative machinery” of the Court. I hasten to add that, unlike in *Patkaciunas*, there is no suggestion in this case that there was any dereliction of duty on the part of the Court clerks. Here, the difficulty lies in the disconnect between submitting a document for filing and its subsequent processing by the Court; a document is considered to have been filed only when this latter step has been completed.

[31] However, with respect, I cannot agree with Justice Jugnauth’s view that litigants should file their documents earlier to account for processing times. I say this for several reasons.

[32] Processing times are outside not only the control of litigants, but also their knowledge. A litigant has no way of knowing if a document submitted for filing will be processed the same day, a day later, or a week later. Moreover, there is nothing before me to suggest that processing times are static. Rather, one would expect them to vary based on several factors, including ordinary variances such as the volume of documents received on a given date and the level of staffing at the courthouse.

[33] Processing times may also be affected by extraordinary events. The COVID-19 pandemic is an obvious example. Several years ago, a fire at an electrical substation caused a power outage in downtown Calgary, resulting in the closure of the courthouse for several days. Processing delays also could result from a cyberattack or a labour disruption affecting the Court clerks. None of these events could be anticipated or accommodated by litigants seeking to file documents. In my view, it is not reasonable to expect litigants to allow for a margin in filing dates when they cannot know how much margin may be required.

[34] I find this case is distinguishable from the earlier decision involving the same parties. Justice Jugnauth found that the applicant could have done more in that case to ensure her appeal was filed within the limitation period. In this iteration of the case, the legal assistant filing the originating application sought confirmation that the document had been filed and received a message saying: “we are good”. In my view, it was reasonable for her to take this as the necessary confirmation.

[35] I would also reject counsel’s suggestion that sensitive limitation date filing issues can easily be addressed by attending morning civil chambers to seek leave to “file at the counter,” thus entirely bypassing the Court’s digital or email filing platforms. Leaving aside the fact that morning civil chambers lists are sufficiently busy without the need to further encumber the presiding Justice and courtroom clerk with requests for fiats “for leave to file at the counter”, such “solution” stands in sharp contradiction with the Court’s transformative court-process digitization goals and the government’s investments in modernizing and digitizing the court system.

[36] I am, of course, mindful of the Supreme Court’s admonition in *Green* that *nunc pro tunc* orders cannot be used to circumvent or defeat the express will of the legislature. In my view, however, to expect litigants to file documents well in advance of the expiration of a limitation period does precisely that. If, as in the case of the *Arbitration Act*, the legislature has provided for a 30-day limitation period, expecting litigants to file proceedings in less than 30 days to account for administrative processing by the Court effectively substitutes a shorter period for that chosen by the legislature. There is nothing in the *Interpretation Act*, RSA 2000, c I-8, that requires subtracting processing times from a statutory limitation period. Accordingly, I find that granting a *nunc pro tunc* order in this case does not circumvent the legislative will.

[37] The problems faced by each party in this case on separate and distinct occasions could easily be resolved if the date on which the act of properly electronically or digitally submitting a commencement document for filing was recognized as the date on which the appeal was “commenced” for limitation period purposes, regardless of the date the clerk’s office applies – electronically or otherwise – the “Filed” stamp. The government’s significant investment in the Justice Digital Strategy was meant to facilitate, not hinder, access to justice.

VI. Disposition

[38] I find that the Applicant did everything necessary and within his power to file the originating application with his appeal within the limitation period. I grant an order *nunc pro tunc* declaring that the originating application was filed on August 21, 2025.

[39] I can appreciate that the Respondent will find this outcome frustrating, particularly given that she was denied a similar order in similar circumstances. This is the unfortunate result of what I consider to be an uncertain state of the law. Perhaps at some point, an opportunity will arise for the Court of Appeal to clarify the issue.

[40] Despite the Applicant’s success in obtaining the *nunc pro tunc* order, given the uncertainty in the law, I think it is appropriate that the parties should bear their own costs.

Heard on September 19, 2025.

Dated at Peace River, Alberta, on October 6, 2025.

M.H. Bourque
J.C.K.B.A.

Appearances:

A. Paul Allyjan
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for the Applicant

Lisa Handfield
The Calgary Legal Team
for the Respondent