

In the Court of Appeal of Alberta

Citation: Wilson v Wilson, 2026 ABCA 313

Date: 20261001

Docket: 2603-0094AC

Registry: Edmonton

Between:

Elaine Helen Wilson

Respondent

- and -

John Harold Wilson

Applicant

**Reasons for Decision of
The Honourable Justice Jane Fagnan**

Application for Permission to Appeal

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[1] The applicant seeks permission to appeal a chambers decision dismissing his appeal of a divorce and matrimonial arbitration award on the basis that he had not applied to the Court of King's Bench for permission to appeal within 30 days of receipt of the award.

[2] With respect to appeals, the parties' arbitration agreement provided:

26 The parties specifically waive all rights of appeal under the Act on any question of law, question of fact, mixed fact and law, and waive appeal rights except for those provided for in sections 44, 45 and 47 of the Act.

[3] The applicant filed a Notice of Appeal pursuant to s 44(1) of the *Arbitration Act*, RSA 2000, c A-43 from the arbitrator's decision within the time prescribed in s 46(1) for doing so and served it on respondent's counsel. The Notice of Appeal was in the form of an application returnable in morning chambers. The respondent filed a cross application returnable that same date seeking dismissal of the Notice of Appeal.

[4] At the chambers hearing, the applicant sought an adjournment of the appeal into special chambers. The respondent submitted the appeal should be dismissed, arguing that paragraph 26 of the Agreement meant that the parties waived all rights to appeal except for questions of law with permission under s 44(2) of the *Arbitration Act*. The applicant argued that this proposed interpretation of paragraph 26 ignores the words "except for", and that the correct reading of paragraph 26 is to the effect that it allows appeals on questions as described in s 44(1), including questions of fact and mixed fact and law.

[5] The chambers justice struck the Notice of Appeal, finding the clause incorporated the provisions of the *Arbitration Act*, which limits rights of appeal to questions of law and imposes a requirement to apply for permission to appeal within 30 days of the award.

[6] The applicant intends to argue on appeal that the chambers justice erred in finding the arbitration agreement prohibited the applicant from appealing under s 44(1) and that the applicant was restricted to an appeal, with permission, on a question of law.

[7] Pursuant to s 48 of the *Arbitration Act*, an appeal of a Court of King's Bench decision is available with permission of a justice of the Court of Appeal. The test for permission to appeal requires the Court to consider the following:

- (a) Is the question reasonably arguable?
- (b) Is the deciding of the ground of appeal likely to affect the result of litigation?
- (c) Is the answer to the proposed question likely to be of interest to anyone other than the litigants, or is it likely to influence other litigation?
- (d) Is there any independent reason not to relitigate the issue, or to limit the scope of the appeal?

See *Javaid v Javaid*, 2026 ABCA 240 at para 13, citing *Nilsson v Alberta*, 1999 ABCA 340 at para 4; *Alanen v Elliott*, 2019 ABCA 290.

[8] The ground of appeal involves the interpretation of paragraph 26 of the arbitration agreement and its interaction with s 44 of the *Arbitration Act*.

[9] Statutory interpretation of a provision of the *Arbitration Act* is reviewed for correctness: *Housen v Nikolaisen*, 2002 SCC 33 at para 8, *Thomson v Thomson*, 2024 ABCA 293 at para 24. Although contractual interpretation generally involves issues of mixed fact and law, extricable legal errors may arise; an incorrect principle or the failure to consider a relevant factor of the arbitration agreement constitutes a legal error: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 50, 53. The applicant intends to argue that interpretation of paragraph 26 of the arbitration agreement involves an extricable legal error and is intertwined with the interpretation of appeal rights under s 44 of the *Arbitration Act*, and therefore is also reviewable on a standard of correctness.

[10] The ground of appeal meets the relatively low “reasonably arguable” threshold.

[11] The applicant submits the matters at stake in the arbitration are financially significant as the award directs him to pay more than \$2,500,000 to the respondent. The appeal and the issues in question significantly affect the parties’ prospective rights and obligations, specifically the right to appeal the arbitration award.

[12] The appeal is of broader significance insofar as it relates generally to similar clauses in arbitration agreements.

[13] Although the policy of courts to encourage dispute settlement militates against setting aside an arbitration award except in the most compelling of cases (*Alanen v Elliott*, 2019 ABCA 290 at para 30), the issue raised here relates solely to an arguably ambiguously drafted appeal rights clause. As such, there is no independent reason to limit the scope of the appeal or refuse to relitigate the ground of appeal.

[14] Permission is granted with respect to the following issue:

Did the chambers justice err in determining that an appeal under s 44(1) of the *Arbitration Act* was not available in the circumstances?

Application heard on September 24, 2026

Reasons filed at Edmonton, Alberta
this 1st day of October, 2026

Fagnan J.A.

Appearances:

D.E. Tumbach
for the Respondent

D.N. Skovberg
for the Applicant