

In the Court of Appeal of Alberta

Citation: Gill v Alberta Environmental Appeals Board, 2026 ABCA 277

Date: 20260826

Docket: 2501-0200AC

Registry: Calgary

Between:

Mohinder Singh Gill and Five Pillar Holdings Ltd

Applicants

- and -

**Alberta Environmental Appeals Board and Director, Regional Compliance,
South Saskatchewan Region Alberta Environment and Parks**

Respondents

**Reasons for Decision of
The Honourable Justice April Grosse**

Application for Permission to Restore Appeal

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[1] The applicants apply to restore their appeal of a June 19, 2025 decision of the Court of King’s Bench dismissing their application for judicial review: *Gill v Alberta Environmental Appeals Board*, 2025 ABKB 373. For the following reasons, the application is dismissed.

[2] The applicants challenge recommendations made by the Alberta Environmental Appeals Board to the Minister of Environment and Parks as well as the decision of the Minister based on those recommendations. The recommendations and decision in question relate to a water well on the property of a hotel operated by the applicants in Strathmore. The judicial review application was struck on the basis that the Town of Strathmore was a person or body directly affected by the judicial review application and had not been served in accordance with rule 3.15(3)(c) of the *Alberta Rules of Court*, Alta Reg 124/2010. Further, the judicial review justice held that even if the judicial review application were not struck, he would dismiss it on the merits because the decisions in question were reasonable.

[3] On July 14, 2025, the applicants filed a notice of appeal of the judicial review decision in this Court. However, their appeal was struck in January 2026 pursuant to rule 14.23(1) for failure to file their factum by the prescribed deadline. The applicants now apply to restore the appeal pursuant to rule 14.47. The respondent Director, Regional Compliance, South Saskatchewan Region Alberta Environment and Parks, opposes the application to restore. The Alberta Environmental Appeals Board takes no position.¹

[4] The applicants, who are not represented by counsel, attempted to file a factum on November 25, 2025, but the submission was rejected by the Registry on December 1, 2025, due to formatting issues. The applicant Mr Gill was in India in December and January. On January 4, 2026, he emailed the Registry to advise that he would revise and resubmit the factum on or about January 25, 2026 upon his return to Canada. On January 13, 2026, however, the appeal was struck in accordance with rule 14.23(1).

[5] The applicants filed an application to restore the appeal on January 30, 2026, which was scheduled to be heard on May 20, 2026. The application was adjourned *sine die* to address issues with the names of the parties as set out in the applicants’ notice of appeal. The applicants did not seek an extension of time from the Case Management Officer for the application to be heard and

¹ The Minister of Environment and Parks was a party in the judicial review but was not named as a party to the appeal and did not participate in the application to restore. The Minister’s status in the appeal would have to be addressed if the application to restore the appeal were granted.

it was deemed abandoned on April 30, 2026 pursuant to rule 14.52. The applicants filed a second application to restore the appeal on May 15, 2026, which gives rise to this decision.

[6] The Court has a discretion to restore an appeal if it is in the interests of justice to permit the appeal to proceed. The Court generally considers whether to exercise its discretion by reference to the following factors:

- (a) Whether the appeal has arguable merit;
- (b) The explanation for the defect or delay that caused the appeal to be struck;
- (c) The applicants' reasonable promptness in acting to cure the defect;
- (d) The applicants' timely intention to proceed with the appeal; and
- (e) Whether there would be prejudice to the respondents, including the length of the delay.

None of these factors are determinative: *Prairie West Homes Inc v Baraka Homes Ltd*, 2023 ABCA 256 at para 10; *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4. The applicants have the onus to demonstrate that restoring their appeal is in the interests of justice: *Mylonas v Kadman*, 2019 ABCA 39 at para 10.

[7] Several factors in this case weigh in favour of restoring the appeal.

[8] First, the applicants have taken steps that demonstrate an intention to proceed with the appeal. They filed the notice of appeal and some other documents required for the appeal on time, they tried to file a factum before the deadline, and they filed two applications to restore the appeal. All of these steps suggest a continuing intention to proceed with the appeal.

[9] Second, there is a reasonable explanation for the original missed deadline. The applicants prepared a factum and tried to file it on time, but the factum was rejected due to formatting non-compliance on the day that Mr Gill left for India for an extended period. I accept that, as a person who is not particularly familiar with electronics, Mr Gill's absence hampered his ability to fix and resubmit the factum before the deadline.

[10] Third, the respondent Director has not suffered any prejudice as a result of the rejected factum or the time that has since passed.

[11] On the other hand, the apparent merits of the appeal and the failure of the applicants to take any reasonable steps to cure the defect weigh against restoring the appeal.

[12] The appeal lacks arguable merit. I am mindful that the merits assessment at this stage is preliminary and a very low bar of “not frivolous” is generally applicable: *Emelogu v Ekwulu*, 2023 ABCA 17 at para 9. I am also mindful that, but for their formatting error, the applicants had an appeal as of right regardless of its merits. That said, based on the available materials, the merits of the applicants’ appeal are not apparent. The applicants did not articulate any cogent viable arguments in their notice of appeal, their rejected factum, or their submissions before me.

[13] Of even greater concern is that the applicants have not acted to correct the defect that led to the appeal being struck. In the period of more than eight months since the factum was rejected, the applicants have not filed a compliant factum. In oral argument for the application to restore the appeal, the applicant Mr Gill purported to be unaware that the deficient factum had never been accepted and that the applicants were still required to file an acceptable factum. Yet, the Registry had informed the applicants in writing that they must file a corrected factum. Further, in the meantime, the applicants’ first application to restore the appeal was struck and deemed abandoned for failure to comply with time requirements.

[14] The Court understands that honest mistakes and misunderstandings occur and there is room for reasonable tolerance in that regard. However, the *Rules of Court* remain applicable: *Alberta Rules of Court*, r 1.1(2). In considering whether the interests of justice favour restoring the appeal, it is significant that the applicants have not demonstrated a willingness to use reasonable efforts to correct their original error and to comply with the *Rules of Court* on an ongoing basis. At a certain point, the applicants’ ambivalent approach to compliance with the *Rules of Court* derogates from their stated intention to pursue the appeal. An applicant who seeks to restore a struck appeal must act diligently in addressing the defects that caused the appeal to be struck: *Rusnak v Law Society of Alberta*, 2020 ABCA 278 at para 11.

[15] On balance, I am not convinced it is in the interests of justice to restore the appeal. The application is dismissed. The respondent's memorandum did not seek costs. Each party shall bear its own costs of this application.

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

Application heard on August 12, 2026

Reasons filed at Calgary, Alberta
this 26th day of August, 2026

Grosse J.A.

Appearances:

Applicant M. Gill

D.J. Hannaford, KC (no appearance)

A. Funk

for the Respondent Alberta Environmental Appeals Board

T.M. Thiesen

for the Respondent Director, Regional Compliance, South Saskatchewan Region Alberta
Environment and Parks