

In the Court of Appeal of Alberta

Citation: Diggs v Weir, 2026 ABCA 279

Date: 20260826

Docket: 2601-0138AC

Registry: Calgary

Between:

Anthony Diggs

Applicant

- and -

**James R. Weir,
Administrator of the Motor Vehicle Accident Claims Act (MVAC)**

Respondents

**Reasons for Decision of
The Honourable Justice Karan M. Shaner**

Application to Extend Time to File Notice of Appeal

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[1] Mr. Diggs applies to extend time to appeal from an order striking a claim against the respondents, James Weir, and the Administrator of the Motor Vehicle Accident Claims Act (the Administrator).

[2] Mr. Diggs had a car accident, while uninsured, over 20 years ago. He entered into a consent judgment in 2010 for \$99,205.00 in favour of the plaintiffs (the 2010 judgment or the motor vehicle action). The Administrator paid the plaintiffs, and, pursuant to s 5 of the *Motor Vehicle Accident Claims Act*, RSA 2000, c M-22, the judgment was then assigned to the Administrator, who has since been taking enforcement proceedings to recover from Mr. Diggs. The judgment remains unsatisfied and one of the consequences is that Mr. Diggs' has been disqualified from driving pursuant to s 102 of the *Traffic Safety Act*, RSA 2000, c T-6 [*Traffic Safety Act*].

[3] On September 24, 2025, Mr. Diggs filed a statement of claim in which he made several allegations related directly to enforcement proceedings taken pursuant to the 2010 judgment. He alleged, among other things: he was not properly served with the statement of claim before the 2010 judgment was entered; the 2010 judgment contained impermissible heads of damage; and enforcement actions were taken under the 2010 judgment against him in violation of a stay order. Mr. Diggs claimed his license suspension was unconstitutional because he was an insolvent person within the meaning of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*], which is paramount to the *Traffic Safety Act*. ***Alberta (Attorney General) v Moloney***, 2015 SCC 51. Notably, Mr. Diggs has not made an assignment into bankruptcy. Mr. Diggs also claimed the enforcement proceedings violated his right to life, liberty and security of the person under the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Mr. Diggs claimed the alleged improper actions Mr. Weir and the Administrator took against him caused him to suffer loss of employment, to accumulate debt, mental stress, anxiety and depression and related health complications. He sought just over \$3 million in damages.

[4] The Administrator and Mr. Weir applied to the chambers judge to review Mr. Diggs' statement of claim pursuant to the process set out in Civil Practice Note 7, which governs Apparent Vexatious Application or Proceeding (AVAP) applications. An AVAP application allows a party to ask the Court of King's Bench to review and, if appropriate, summarily dismiss, an action that appears on its face to be frivolous, vexatious, or otherwise an abuse of process. Pursuant to Civil Practice Note 7, Mr. Diggs was provided with written notice of the AVAP application and with an opportunity to respond to it. ***Diggs v Weir***, 2025 ABKB 737. Mr. Diggs' response expanded upon the allegations he made in the statement of claim.

[5] The chambers judge concluded Mr. Diggs' statement of claim was a collateral attack on the 2010 judgment, designed to avoid compliance, and was therefore an abuse of process pursuant to r 3.68(2)(d) of the *Alberta Rules of Court*, Alta Reg 124/2010. **Diggs v Weir**, 2026 ABKB 261. In reaching this conclusion, the chambers judge considered Mr. Diggs' arguments concerning his drivers license suspension and the application of the *BIA*. He found it did not assist Mr. Diggs as Mr. Diggs had not made an assignment into bankruptcy. The chambers judge also noted Mr. Diggs could apply to have his driving privileges reinstated under the *Traffic Safety Act*.

[6] Mr. Diggs wishes to appeal the chambers judge's order; however, he missed the deadline to file the appeal, and he requires an order extending the time to do so. The criteria Mr. Diggs must satisfy are set out in **Cairns v Cairns**, 1931 CanLII 471 [**Cairns**], and **Li v Morgan**, 2020 ABCA 186, and others. Specifically:

- a) Whether there is a *bona fide* intention to appeal while the right existed;
- b) Whether there is some special circumstance that would excuse or justify the failure to appeal;
- c) Whether the applicant provided an explanation for the delay;
- d) Whether the respondents are prejudiced by the delay;
- e) Whether the applicant has taken the benefits of the judgment; and
- f) Whether the appeal has a reasonable chance of success if allowed to proceed.

These are not rigid requirements, and they do not override this Court's general discretion to extend time where justice requires it. **Cairns** at 829; **Stoddard v Montague**, 2006 ABCA 109 at para 8.

[7] The respondents do not dispute that Mr. Diggs formed the requisite intention to appeal while the right to do so existed, that he had a reasonable excuse for missing the deadline, and that there is a reasonable explanation for the delay. However, the respondents contend that Mr. Diggs' appeal has no reasonable prospect of success if allowed to proceed and that is fatal to this application.

[8] Mr. Diggs alleges the chambers judge erred by misapplying the collateral attack doctrine; failing to analyze Mr. Diggs' *Charter* claims; failing to fairly assess Mr. Diggs' evidence; failing to apply the timelines and page restrictions set out in Civil Practice Note 7 uniformly; ignoring Mr. Diggs' "uncontroverted" allegations of bad faith; and failing to apply an appropriately strict threshold.

[9] There is nothing in the record to support Mr. Diggs' allegations that the chambers judge failed to properly apply timelines and page restrictions, nor has Mr. Diggs articulated why he feels

the chambers judge failed to fairly assess his evidence. With respect to the balance of the grounds of appeal, the chambers judge conducted a thorough analysis of Mr. Diggs' key arguments and the allegations in the statement of claim before concluding it represented a collateral attack on the 2010 judgment. Mr. Diggs quarrels with the result; however, the chambers judge's analysis and conclusions reveal no error. The allegations against Mr. Weir and the Administrator in Mr. Diggs' statement of claim were clearly a collateral attack on the judgment and the enforcement proceedings taken under it. There is no stand-alone, independent cause of action.

[10] Allowing the appeal to proceed in these circumstances would benefit no one and would be unduly prejudicial to the respondents, who would be put to the time and expense of responding to an appeal that is doomed to fail. This is not in the interests of justice.

[11] Mr. Diggs also asks that his drivers license suspension be lifted. That issue is not properly before this Court. As the chambers judge noted, the process by which Mr. Diggs can seek this relief is set out in the *Traffic Safety Act*.

[12] Mr. Diggs' application to extend time to appeal and his request to have his license reinstated are dismissed.

[13] The Court will prepare the resulting order and r 9.4(2)(c) is invoked.

Application heard on August 20, 2026

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

Shaner J.A.

Appearances:

Applicant A. Diggs

P.R. Mack, KC

J. Bolton (no appearance)
for the Respondents

Z. Verjee, KC (no appearance)

A. Zalmanowitz
for P.J. Tesi (not party to the application)