

In the Court of Appeal of Alberta

Citation: Reddy v Saroya, 2026 ABCA 20

Date: 20260122
Docket: 2401-0228AC
Registry: Calgary

Between:

Neville Reddy

Respondent

- and -

Parminder Saroya

Appellant

- and -

Jyoti Saroya, John Doe, Joseph B Amantea, and Warren Tettensor Amantea LLP, a limited liability partnership, carrying on the practice of law under the partnership, firm, name and style of Warren Tettensor Amantea LLP

Not Parties to the Appeal

The Court:

**The Honourable Justice Bernette Ho
The Honourable Justice April Grosse
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment Regarding Costs

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The Court:

[1] In *Reddy v Saroya*, 2025 ABCA 322 [Decision], this Court allowed an appeal in part and directed further submissions from the parties to address costs because the appellant’s lead counsel had filed a factum drafted by a contractor using a large language model (or generative artificial intelligence), which contained references to non-existent authorities. The Decision made it clear that the panel was considering imposing a costs award payable by the appellant’s lead counsel in an amount up to double Column 5, Schedule C, the amount requested by the respondent.

The parties’ submissions

[2] The appellant’s¹ lead counsel emphasized that there was mixed success on the appeal and maintained that should be a key consideration for the panel. In addition, lead counsel’s failure was in filing the factum without verifying the authorities cited. Counsel acknowledged that the appellant’s initial factum had to be amended, and the respondent had to file additional submissions, but he submitted that the “inadvertent use of AI Hallucinations” should not attract an award against counsel pursuant to rule 10.50 of the *Alberta Rules of Court*, Alta Reg 124/2010. Something categorically more than mere error or inadvertence is required to levy costs against a lawyer personally. He submits that appellate authorities generally only award substantially enhanced costs where conduct is fraudulent, deceitful or there is an intention to delay or obstruct proceedings. It would be inappropriate to sanction counsel by way of a personal cost award in the circumstances of this case because there would be no differentiation going forward between mere inadvertence and more serious misconduct. He warns of a “chilling effect on the profession” because AI technology is new and emerging. He asks that the panel direct a reasonable and proportionate party-party costs award.

[3] During the initial oral hearing, the respondent asked that double Column 5 costs be awarded but submitted it was not necessary to have the costs award paid by the appellant’s lead counsel personally. After being invited to provide further submissions on the issue in the Decision, the respondent now maintains that the costs award should be paid by appellant’s lead counsel to hold him accountable for failing to discharge his professional obligations, to compensate the respondent and to deter others from engaging in similar conduct. He emphasizes that the integrity of court processes must be maintained. The respondent also reviews the factual circumstances around the filing of the appellant’s initial factum and subsequent communications between counsel in support of his submission that appellant’s lead counsel did not take matters seriously or show contrition at the outset. Moreover, though a contract lawyer prepared the factum, he reiterates the position

¹ The appellant’s costs submissions were submitted by “Agent for Counsel for the Appellant” in the name of the appellant.

outlined in the Decision that lead counsel must ultimately take responsibility for the contents of the filed factum.

Analysis

[4] As noted in the Decision, the appellant filed his initial factum on December 16, 2024. It became apparent to counsel for the respondent that the initial factum contained references to fabricated case authorities. Prior to filing his factum, counsel for the respondent contacted the appellant's lead counsel because he was unable to locate several of the cases identified and they were not hyperlinked or appended. At one point, appellant's lead counsel suggested that cases could not be located because of typographical errors, and he did not display any sense of urgency although the respondent's factum was due in a few days. Ultimately, the respondent was required to dedicate space in his factum to addressing the issue of the seven non-existent cases relied upon in the appellant's initial factum.

[5] Over a week after the respondent's factum was filed, the appellant's lead counsel filed a letter requesting permission to file an amended factum. The Case Management Officer issued an administrative direction allowing an amended factum to be filed and permitting the respondent to file supplemental submissions. After the amended factum was filed, the respondent filed a letter submitting the arguments in the amended factum had been changed in a way that went beyond what was necessary to correct the non-existent citations. The Case Management Officer issued another administrative direction allowing the respondent further time to file supplemental submissions but leaving other issues on this point to be decided by panel. The respondent then filed a supplemental factum.

[6] Rule 10.50 provides that a court may order a lawyer to pay a costs award if that lawyer engages in serious misconduct. Such an award is appropriate only in exceptional circumstances, where the lawyer's actions seriously undermined the authority of the courts or interfered with the administration of justice: *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 at paras 26-29; *1985 Sawridge Trust v Alberta (Public Trustee)*, 2019 ABCA 243 at para 44. An error or mistake in judgment is not enough, there must at least be a marked departure from the standard of reasonable conduct or gross neglect: *Sawridge* at para 44, citing *Jodoin* at para 27.

[7] There is no denying that the use of AI is becoming more prevalent in society. This is what necessitated the issuance of the Notice to the Public and Legal Profession dated October 6, 2023, titled *Ensuring the Integrity of Court Submissions When Using Large Language Models*,²

² Court of Appeal of Alberta, Court of King's Bench of Alberta, Alberta Court of Justice, "Notice to the Public and Legal Profession, Ensuring the Integrity of Court Submissions When Using Large Language Models" (6 October

applicable to lawyers and self-represented litigants alike. The October 2023 Notice serves to reinforce the integrity and credibility of legal proceedings. Strict adherence to the October 2023 Notice is critical to ensure that litigants do not provide inaccurate or misleading information to courts and do not waste the time and resources of the judiciary and other litigants. The administration of justice demands no less.

[8] Here, while the appellant did not ultimately rely on his initial factum before the panel during the hearing, the unchecked use of AI undeniably resulted in a misleading factum being filed with the Court and led to a waste of time and resources. The respondent had to search for cases that do not exist and address this issue in its initial factum. The Case Management Officer had to deal with the issue. When the amended factum was filed, it went beyond correcting the AI errors and augmented the substantive arguments made. This required the respondent to seek further guidance from the Case Management Officer about the nature of the changes, and to address these augmentations in the supplemental factum.

[9] Had appellant’s counsel complied with the October 2023 Notice and exercised caution, none of that would have been necessary.

[10] It is also inaccurate to suggest that the panel’s work was not impacted because the appellant did not rely on his initial factum at the time of the hearing. The panel was required to understand the magnitude of the AI issue and how the appellant’s amended submissions were augmented to engage substantively with the matter.

[11] Moreover, we cannot agree that this case involves “mere inadvertence”. Factums must include a table of authorities with a hyperlink to each authority cited, or copies or extracts of any authorities for which a hyperlink is not available: *Rules*, r 14.25(1)(h). If the appellant had complied with this rule, the non-existent cases would have been immediately identified. That did not occur, and as a result nearly half of the cases listed in the table of authorities were non-existent.

[12] While it seems that the use of a contractor caused timing issues for the appellant’s lead counsel, that did not absolve him of the need to adequately review work prepared by someone else prior to filing it with the Court. A lawyer should allow time for contingencies arising in their practice. Once the factum was filed, if there was any doubt as to the adequacy of the initial review, it was incumbent on counsel to go check again and correct any misleading information. Nor does the use of a contractor explain the appellant’s lead counsel’s response when initially contacted by

2023), online (pdf): <https://albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf?sfvrsn=713d5a82_7>.

counsel to the respondent, in which he suggested that typographical or similar errors served as an explanation without thoroughly investigating the issue immediately.

[13] Finally, the appellant added substantive content to the amended factum that could have been included in the initial factum, and that went well beyond correcting the references to non-existent cases. While it followed from the Case Management Officer's direction that some changes were to be made, the extent of these changes took unfair advantage of the opportunity the appellant had been provided and put the respondent in a difficult position. This exacerbated the seriousness of the misconduct and its implications for the proper administration of justice.

[14] We conclude that in the specific circumstances of this case, there is sufficiently serious misconduct to warrant a costs award under rule 10.50 of the *Rules* payable by appellant's lead counsel, personally. In our view, the failure to strictly comply with the October 2023 Notice and counsel's conduct in the events that followed constitutes a marked departure from reasonable conduct that seriously interfered with the administration of justice in the circumstances. The direction of a costs award against the appellant's lead counsel is also consistent with the principle that the lawyer whose name appears on the filed document bears ultimate responsibility for the material's form and contents, as well as ensuring compliance with the October 2023 Notice.

[15] Turning to the amount of costs, when there is mixed success on appeal, a panel commonly directs that each party bear their own costs: for example, see *Hyundai Auto Canada Corp v Engen*, 2023 ABCA 85 at para 47; *McAdam v McAdam*, 2010 ABCA 136 at para 10. Here, notwithstanding the mixed result, the respondent was forced to take additional steps that warrant a commensurate costs award.

[16] Respondent's counsel filed a draft bill of costs with his written costs submissions. The total amount claimed, calculated on a double Column 5 basis, inclusive of disbursements and GST, is \$68,266.39. In the circumstances of this case, we conclude that the costs awarded should be reflective of the steps the respondent had to take because of the appellant's lead counsel's conduct. This includes the costs associated with the respondent making submissions in relation to two different requests to the Case Management Officer, filing a supplemental factum (to address new arguments raised in the appellant's amended factum), and providing further oral and written submissions with respect to the scope of the amended factum and costs to this Court. The panel has determined that the appropriate way to quantify these costs is based on Column 5 of Schedule C³ without a multiplier, for the preparation of a factum and two appearances on a contested application before this Court including a brief (the latter representing costs awarded for the

³ Column 5 is the applicable column based on the amount claimed in the litigation.

applications before the Case Management Officer and further submissions to the panel). The total amount of \$17,550.00 plus GST shall be payable by appellant's lead counsel personally.

Written submissions filed November 13 and 14, 2025

Memorandum filed at Calgary, Alberta
this 22nd day of January, 2026

Ho J.A.

Grosse J.A.

Hawkes J.A.

Appearances:

I. Ioudine
for the Respondent

Z. Verjee, KC
Agent for counsel for the Appellant