

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *C.D. v. Facebook, Inc.*,
2025 BCCA 215

Date: 20250605
Docket: CA50282

Between:

**C.D. and Amber Rutherford, Infant, by her
Litigation Guardian, Winter Sprowl**

Appellants
(Plaintiffs)

And

**Facebook, Inc. (now known as Meta Platforms Inc.),
Facebook Canada Ltd., Instagram Inc., and
Instagram, LLC**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Groberman
The Honourable Justice Edelmann
The Honourable Justice Warren

On an application to vary: An Order of the Court of Appeal for British Columbia,
dated May 2, 2025 (*C.D. v. Facebook, Inc.*, Vancouver Docket CA50282).

Oral Reasons for Judgment

Counsel for the Appellants:

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Place and Date of Hearing:

Vancouver, British Columbia
June 5, 2025

Place and Date of Judgment:

Vancouver, British Columbia
June 5, 2025

Summary:

Application to vary the order of a judge in chambers granting the appellants a stay of their own appeal. The appellants appealed from an evidentiary ruling striking as inadmissible portions of affidavits they sought to rely on at a certification hearing for a proposed class action. The judge stayed the appeal pending completion of the certification hearing. The respondents apply to vary that order.

Held: Application dismissed. The judge did not err by failing to identify a basis for believing a stay would promote efficiency. This was central to her reasoning, and it is not this Court's role on a variation application to reconsider the issue. The judge did not require the respondents to show that the appeal would resolve the underlying proceeding; her assessment was contextual and not decided solely on whether the appeal was interlocutory. Finally, the judge did not usurp the case management judge's role in sequencing the proceedings below. She was considering whether the appeal, not the evidentiary questions, should be heard before the certification hearing.

EDELMANN J.A.:

Overview

[1] Before us is an application by the respondents on the appeal to vary the order of a judge in chambers. The underlying appeal arises from an evidentiary ruling striking various portions of affidavits the appellants were seeking to tender at a certification hearing in a proposed class action. The appellants successfully applied to a judge in chambers to stay their appeal pending the completion of the certification hearing.

[2] I will begin by setting out the procedural background before turning to the relevant legal principles and their application. For ease of reference, I will refer to the respondents on the appeal as the respondents even though they are the applicants on the application before us.

Background

[3] In April 2022, the appellants filed a class action alleging the respondents' platforms expose minors to harmful content and cause social media addiction. Prior to a certification hearing that was scheduled for June 2024, the respondents applied to strike portions of the affidavit material the appellants sought to rely upon in support of certification. The case management judge granted the application, holding that much of the impugned evidence was inadmissible: *C.D. v. Facebook, Inc. (Meta Platforms Inc.)*, 2024 BCSC 2081. The certification hearing was adjourned.

[4] On November 21, 2024, the appellants appealed the order to strike. The parties agree it is an appealable order and that this Court has jurisdiction to review the order prior to the certification hearing (*Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2019 BCCA 60 at paras. 29–39).

[5] On February 14, 2025, the appellants and the respondents separately wrote to the Registrar of the Court of Appeal about whether the appeal should be held in abeyance. On February 18, 2025, the Registrar declined to hold the appeal in abeyance.

[6] On March 12, 2025, the appellants applied to have their appeal stayed pending resolution of the certification hearing. Alternatively, they sought an extension of time to file their factum in the appeal until 30 days after judgment. The respondents opposed the application. The matter was heard in chambers on April 29, 2025.

[7] On May 2, 2025, the chambers judge granted a stay of the appeal pending resolution of the certification hearing. As noted earlier, the respondents now seek to cancel that stay.

Legal Framework

[8] The parties largely agree on the applicable legal principles.

[9] Section 30 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, gives a justice in chambers authority to stay an appeal pending the outcome of related proceedings in another court (see *Facebook, Inc. v. Douez*, 2023 BCCA 40 at para. 17; *Hollander v. Nelson*, 2013 BCCA 83 at para. 21 [*Hollander*]).

[10] The approach to be taken in considering whether to stay an appeal has been considered by several judges of this Court sitting in chambers and has been articulated in the following terms:

[13] In deciding whether to stay an appeal pending a decision from another body, such as a trial court, a justice must consider two principles. The first is the need to efficiently manage judicial resources and avoid excessive delays and unnecessary expense associated with appealing separate issues in the same litigation. Second is the need to balance the prejudice to one party from a delay in the proceeding below and the prejudice to the other party from a delay in the appeal [...]

[*Bonneau v. British Columbia*, 2024 BCCA 260 [*Bonneau*], citing *Habitat for Humanity Canada v. Hearts and Hands for Homes Society*, 2015 BCCA 443 at paras. 24–25.]

[11] Pursuant to s. 29(1) of the *Court of Appeal Act*, a division of this Court may vary or cancel any order made by a justice. The standard of review applicable in an

application to vary or cancel the order of a chambers judge is well established and was set out in *Haldorson v. Coquitlam (City)*, 2000 BCCA 672:

[7] It comes to this: that the review hearing is not a hearing of the original application as if it were a new application brought to a division of the court rather than to a chambers judge, but is instead a review of what the chambers judge did against the test encompassed by asking: was the chambers judge wrong in law, or wrong in principle, or did the chambers judge misconceive the facts. If the chambers judge did not commit any of those errors, then the division of the court in review should not change the order of the chambers judge.

[12] The applicants allege three errors in principle in the approach taken by the chambers judge. I will address each in turn.

Whether a Stay Would Promote Efficiency

[13] First, the respondents allege the chambers judge failed to identify any basis to believe a stay might somehow promote efficiency. I disagree. In my reading of the chambers judge’s decision, the question of whether a stay would promote efficiency was central to her reasoning.

[14] In her discussion of the applicable principles, the chambers judge referred to *Bonneau* for the proposition “that the fact completion of the proceedings below might render the appeal moot ... weighed in favour of granting a stay”. The respondents have not directly taken issue with this proposition. In any event, I agree that the extent to which an appeal might be rendered moot through further steps in the proceedings is a factor that would generally weigh in favour of a stay. I accept, as argued by counsel for the respondents, that whether it is a factor that is dispositive would depend on the facts of the case.

[15] The chambers judge quite accurately characterized the underlying decision as akin to an evidentiary ruling. As noted by the chambers judge, the composition and relevance of the evidentiary record could shift significantly by the time of the certification decision even without an appeal. Changes to the evidentiary record are only one of several ways in which the appeal could be rendered moot upon resolution of the certification hearing in this case. During the hearing, counsel for the

respondents asserted the absence of an “evidentiary” basis for these observations. It is obvious that these are potential developments and ones that, according to the chambers judge, the respondents acknowledged in the hearing before her, as they did in the hearing before us.

[16] Trial judges routinely proceed to a final decision in complex matters involving multiple evidentiary rulings without appellate intervention. Although the chambers judge did not enumerate them, she would undoubtedly have been alive to the manners in which interlocutory evidentiary rulings might ultimately not be decisive of a case.

[17] The respondents further argue that the stay will not promote efficiency as the certification hearing will proceed on an uncertain record and, if the appeal is ultimately successful, the entire process may be for naught. It is clear from the reasons of the chambers judge that she was alive to the potential prejudice to the respondents of redoing the certification hearing and weighed it in considering whether to exercise her discretion to order a stay.

[18] Far from demonstrating the chambers judge did not turn her mind to the question of whether the stay would promote efficiency, the respondents are asking us to reconsider the question afresh. That is not our role on the application before us.

Whether the Appeal Might be Dispositive

[19] Secondly, the respondents allege the chambers judge erred by requiring the respondents to show the appeal could resolve the proceedings to warrant hearing the appeal in the normal course.

[20] With respect, this is a mischaracterization of the basis for the decision of the chambers judge. I do not read the reasons of the chambers judge as requiring the respondents to demonstrate the appeal would resolve the underlying proceedings. She does discuss the question of whether the appeal would be dispositive of the underlying action, and identifies that as a relevant issue to be considered in deciding

whether a stay was appropriate. She relied on decisions of judges of this Court sitting in chambers for that proposition (see *Bonneau* and *Hollander*), and I see no error in principle in doing so.

[21] The chambers judge explicitly noted that an individualized, case-by-case assessment was required, and in particular recognized that she was applying it in the class action context, unlike some of the cases she was considering. Her analysis clearly went further than simply considering whether the appeal might be dispositive of the certification hearing (which is itself, as noted by the respondents, an interlocutory application). She described the decision under appeal as “functionally akin to an evidentiary ruling”, a characterization the respondents do not suggest is mistaken. In my view, this was clearly indicative of the individualized and contextual assessment the chambers judge said she would undertake. I do not accept that she decided the stay on the bare question of the interlocutory nature of the appeal.

Whether the Chambers Judge Effectively Usurped the Case Management Judge’s Role

[22] Finally, the respondents argue that, in staying the appeal, the chambers judge effectively usurped the case management judge’s role by not giving sufficient weight to his discretionary decision to sequence the strike application before the certification application.

[23] I do not agree. In my view, the question facing the chambers judge of this Court was very different from the question that was before the case management judge in the Supreme Court. The decision to address certain evidentiary questions prior to the certification hearing was done by consent, and was presumably appropriate in the circumstances. That was not the question before the chambers judge in this Court. The question before her was whether the appeal should be heard prior to a certification decision. Counsel for the respondents conceded in submissions that the case management judge has not expressed an opinion on whether the appeal should proceed prior to certification, nor was he asked to do so. It would seem the respondents seek to infer such a view from the fact that he

acceded to a joint request to make an evidentiary ruling prior to certification. I do not interpret his decision in that way.

[24] In my view, the chambers judge in this Court was asked to exercise her discretion in relation to the process of this Court. She appropriately considered the overall context of the proceedings in both courts and concluded that a stay was appropriate. I am not persuaded she effectively usurped the role of the case management judge in doing so.

Conclusion

[25] Ultimately, the application before us is not a rehearing of the stay application. It is an application for review of a decision made by a chambers judge exercising her discretion to stay an appeal. I am not persuaded that she erred in principle in the exercise of her discretion to do so.

Order

[26] I would therefore dismiss the application.

[27] **GROBERMAN J.A.:** I agree.

[28] **WARREN J.A.:** I agree.

[29] **GROBERMAN J.A.:** The application is dismissed.

“The Honourable Justice Edelman”