

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Badela v. Donald*,  
2025 BCCA 278

Date: 20250707  
Dockets: CA50599; CA50600

Docket: CA50599

Between:

**Kal Mohamed Badela**

Appellant  
(Plaintiff)

And

**James Joseph Donald, Insurance Corporation of British Columbia,  
Beata Siwinski, Edward Leung, Ryan Ruggles, Claudia Cortez,  
Megan Stapelmann, Scot Jackson, Navdeep Brar, and Daryl Learned**

Respondents  
(Defendants)

- and -

Docket: CA50600

Between:

**Kal Mohamed Badela**

Appellant  
(Plaintiff)

And

**James Joseph Donald and Sterling Rychkun**

Respondents  
(Defendants)

Before: The Honourable Mr. Justice Butler  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
March 19, 2025 (*Badela v. Donald*, 2025 BCSC 493,  
New Westminster Dockets M246736; M245869).

**Oral Reasons for Judgment**

The Appellant, appearing in person: K.M. Badela

Counsel for the Respondent, James Joseph Donald: V.G. Critchley, K.C.

Counsel for the Respondents, Insurance Corporation of British Columbia, Beata Siwinski, Edward Leung, Ryan Ruggles, Claudia Cortez, Megan Stapelmann, Scot Jackson, Navdeep Brar, and Daryl Learned: J.A. Morris  
J.M.P. Yonge

Counsel for the Respondent, Sterling Rychkun: C. Winiarski

Place and Date of Hearing: Vancouver, British Columbia  
July 7, 2025

Place and Date of Judgment: Vancouver, British Columbia  
July 7, 2025

**Summary:**

*The respondents apply for an order requiring the appellant to post security for costs of his appeals. Held: Application granted. The application is timely. The appellant has the ability to pay costs and, in the absence of an order for security for costs, recovery may be difficult. As to the merits, the appellant appeals a discretionary case management decision of the judge, and there is nothing to indicate the judge erred in principle, failed to consider or weigh relevant circumstances, or misconceived the evidence. His reasons reveal he weighed the parties' positions and considered the relevant factors in deciding to sever and stay the claims. The merits do not appear strong. All factors weigh in favour of granting the application.*

[1] **BUTLER J.A.:** The respondents apply for an order requiring the appellant, Kal Mohamed Badela, to post security for costs of the appeals, and an order staying the appeals pending Mr. Badela posting security.

**Background**

[2] The appeals underlying this application arise from a motor vehicle accident between Mr. Badela and Mr. Donald, one of the respondents. It is undisputed Mr. Donald rear-ended Mr. Badela on December 16, 2019 (the "Accident"). However, Mr. Donald claimed the Accident occurred because Mr. Badela suddenly cut into his lane. Mr. Donald's account of events was supported by a third-party witness, Mr. Rychkun, who reported his version of events to the Insurance Corporation of British Columbia ("ICBC"). ICBC investigated the accident and concluded Mr. Badela was 100% at fault.

[3] Mr. Badela has brought a variety of claims against the respondents concerning the Accident and the subsequent investigation.

[4] Mr. Badela first commenced an action against Mr. Donald and Mr. Rychkun alleging they conspired to make false claims to ICBC about the Accident (the "Conspiracy Claim").

[5] He then brought an action encompassing several different claims. He alleged negligence against Mr. Donald for his part in the Accident (the "Motor Vehicle Claim"). He also alleged (among other things) fraudulent misrepresentation, unlawful means tort, conspiracy, and negligence against ICBC and nine ICBC employees

(the “ICBC respondents”) based on ICBC’s determination that Mr. Badela was responsible for the Accident (the “ICBC Claim”). Finally, he brought a claim against ICBC in negligence related to his alleged denial of entitlement to disability benefits under Part 7 of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83 (the “Part 7 Claim”).

[6] Both parties brought pre-trial applications. The respondents applied to sever and stay the Conspiracy Claim, ICBC Claim, and Part 7 Claim from the Motor Vehicle Claim. Mr. Badela applied to strike elements of the respondents’ responses to civil claim and require they comply with discovery.

[7] On October 20, 2023, the judge issued a procedural sequencing order determining the order in which applications brought by both Mr. Badela and the respondents would be heard. He determined the respondents’ application should be heard first as the outcome would impact the plaintiff’s application: *Badela v. Donald*, 2023 BCSC 2366. Mr. Badela appealed that order. The appeal was quashed by a justice of this Court in chambers: *Badela v. Donald*, 2024 BCCA 215 (Chambers).

[8] Mr. Badela then filed a fresh notice of application seeking to have the judge recuse himself for bias and reconsider the sequencing order.

[9] The respondents’ application to sever and stay the claims was heard on February 6 and 7, 2025. At the outset of the hearing, the judge denied Mr. Badela’s request that he recuse himself and held the request to reconsider the sequencing decision was moot. On March 19, the judge issued an order and accompanying reasons for judgment granting the defendants’ application and ordering costs against Mr. Badela: *Badela v. Donald*, 2025 BCSC 493 (the “Reasons”). It is these orders that are currently under appeal.

### **Reasons for judgment**

[10] The judge granted the respondents’ applications to sever and stay the claims because doing so would promote judicial economy and a speedy resolution of the claims.

[11] He held that hearing the Conspiracy Claim and ICBC Claim together with the Motor Vehicle Claim would unduly complicate, delay, and otherwise inconvenience their adjudication. He noted the claims raised different legal and factual issues, required different evidence, and, for the most part, involved different defendants. He also determined a resolution to the Motor Vehicle Claim may render the Conspiracy Claim and ICBC Claim moot. Finally, he found Mr. Badela's actions had been unreasonable and contributed to the complication, delay, and inconvenience of the litigation, raising concerns Mr. Badela would seek to further complicate the proceedings if he did not intervene to limit their scope: Reasons at paras. 52–84.

[12] The judge also found the Part 7 Claim must be severed from the Motor Vehicle Claim for two reasons. First, s. 83(4) of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231 requires that benefits claims must be tried separately from personal injury claims. Second, even if Mr. Badela were to commence a separate proceeding for the Part 7 Claim, that claim would have to be preceded by a determination by the Civil Resolution Tribunal as provided for by s. 133(1) of the *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25: Reasons at paras. 85–95.

### **Legal framework**

[13] The jurisdiction to order security for costs of the appeal and the proceedings giving rise to the appeal is found in s. 34(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6.

[14] The appellant against whom the order is sought bears the onus of showing why security should not be ordered: *Lungu v. Cabrita*, 2025 BCCA 105 at para. 15 (Chambers). Four considerations are relevant:

- a) the appellant's financial means;
- b) the merits of the appeal;
- c) the timeliness of the application; and
- d) whether the costs will be readily recoverable.

*Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers).

[15] In *Chung v. Shin*, 2017 BCCA 355, Justice Hunter observed that the appellant’s financial means and the merits analysis are connected:

[24] ... On a security for costs application, the merits may be important in one of two ways. If the appeal appears to be meritorious and a security order might prevent an appellant without means from pursuing it, security for costs will generally not be ordered: *Gardezi v. Canadian Union of Public Employees, Local 3495*, 2016 BCCA 462 at para. 10. On the other hand, if an appeal appears to be weak, the impecuniosity of an appellant will not prevent an order for security for costs from being issued, as “without an order for security for costs, the appeal is a gamble by the appellants with the respondents’ money”: *Daymax Management Inc. v. WHA 820 Holdings Ltd.*, 2004 BCCA 414 (in Chambers) at para. 24.

[16] The ultimate question to be answered is whether the order would be in the interests of justice: *Lu* at para. 6.

**Discussion**

[17] Mr. Badela bears the burden to establish that payment of security for costs should not be ordered in this case. He has put forward limited evidence regarding his financial means. He has provided no information about his assets or liabilities. However, he has attached his two most recent notices of assessment from Revenue Canada to his affidavit. These indicate that he has received only modest income—approximately \$20,000 per year—over that time. He also has indicated that he is about to start a new job that will allow him to pay approximately \$2,200 per month towards security for costs, but says he is unable to pay the security requested in a lump sum within 30 days. On the basis of his submissions this morning, I conclude that he does have the ability to post security for costs, but would require approximately four months to post the amount sought. I also conclude that in the absence of an order for security for costs, it is likely the recovery of the costs may be difficult. This information is significant as the most likely reason to grant or not grant security is the financial position of the appellant: *Kedia v. Shandro Dixon Edgson*, 2007 BCCA 316 at paras. 20–21 (Chambers).

[18] There is no question about the timeliness of the application and Mr. Badela does not contest that the application is timely. This factor weighs in favour of granting the application.

[19] Turning to the merits of these appeals, the standard of review for discretionary case management orders is deferential: *British Columbia v. The Jean Coutu Group (PJC) Inc.*, 2021 BCCA 219 at para. 32; *Strohmaier v. K.S.*, 2019 BCCA 388 at para. 22. In the present case, there is nothing to indicate the judge erred in principle, failed to consider or weigh relevant circumstances, or misconceived the evidence. His reasons reveal he weighed the parties' positions and considered the relevant factors in deciding to sever and stay the claims.

[20] Mr. Badela argued below and will argue on appeal that the severance would result in a clear injustice to him because Mr. Rychkun is not a party to the Motor Vehicle Claim. The judge specifically addressed Mr. Badela's claim that severing the Conspiracy Claim and the Motor Vehicle Claim would deprive Mr. Badela of his right to fully examine Mr. Rychkun for discovery. As the judge made clear, just because a party is no longer a defendant does not mean they cannot be called as a witness to give evidence or that they do not have procedures available to them to obtain discovery regarding that evidence: Reasons at para. 81.

[21] Although the judge acknowledged Mr. Badela's ability to obtain evidence from Mr. Rychkun as a witness would not be as fulsome as the full right to discover Mr. Rychkun as a defendant, he noted these rights were "nonetheless robust". He found he had to "balance Mr. Badela's desire to maximize his tactical advantages in the Motor Vehicle Claim against the right of the other parties in all the proceedings to a fair, focused and timely trial": Reasons at para. 82. Such balancing of interests is consistent with a judge's discretionary case management role.

[22] Mr. Badela says the judge erred in law by asking him, during the hearing, whether he had any evidence to support certain facts in his pleadings. I see little merit in this argument. During their exchanges, the judge reaffirmed the pleadings would be taken to be true for the purposes of the hearing, and the judge's reasons

do not include reference to, or indicate any reliance on, the absence of evidence to support an allegation in the pleadings.

[23] Mr. Badela also claims the judge “failed to apply the law” and “lacked the discretion to sever defendants whose evidence is necessary to determine responsibility for the motor vehicle accident (MVA)”. In support of this contention, Mr. Badela cites several cases, including a helpful summary from *Johnston Estate v. Johnston*, 2017 BCCA 59, at para. 46, that lists the relevant factors to be considered when determining whether claims should be severed.

[24] The cases cited by Mr. Badela do not support the proposition that a judge lacks discretion “to sever defendants whose evidence is necessary to determine responsibility” in a given dispute. The judge cited the same summary from *Johnston Estate* and went on to apply the factors to the case before him: Reasons at paras. 50–84.

[25] In sum, while I cannot conclude that the appeals are entirely lacking in merit, at this stage the merits do not appear to be strong. This factor also weighs in favour of requiring Mr. Badela to post security for costs.

[26] Finally, although the applicants have not stressed this point, I note that Mr. Badela has so far not paid the costs ordered against him in the court below. Unwillingness to pay previous costs orders can weigh in favour of granting an application for security: *Carten v. Carten*, 2015 BCCA 201 at para. 41 (Chambers). However, Mr. Badela has now indicated a willingness and ability to post security for the appeals if that is ordered.

### **Disposition**

[27] When I consider the relevant factors, I conclude that Mr. Badela has not shown that it would not be in the interests of justice to order security for costs of the appeals. Accordingly, I grant the respondents’ application but with somewhat different terms than proposed in light of Mr. Badela’s submissions this morning. I order that Mr. Badela shall post security for costs in the amount of \$8,800 by Friday,

November 14, 2025. The appeals are stayed pending the posting of security. In the event that Mr. Badela fails to post security as ordered, the respondents may apply for an order that the appeals be dismissed as abandoned.

[28] By consent, I order that the appeals be heard together.

“The Honourable Mr. Justice Butler”