IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Robertson v. Lauchlin Enterprises Ltd.,* 2025 BCSC 1600

Date: 20250709
Docket: S255294
Registry: New Westminster

Between:

Janet Lea Robertson and Gordon Gerald Robertson

Petitioners

And:

Lauchlin Enterprises Ltd., Carolynne Wilda Cassidy, in her personal capacity and in her capacity as Executor and Trustee of the Estate of Evelyn Beatrice Robertson, Deceased, and Peter Lauchlin Robertson

Respondents

Before: The Honourable Justice J. Walker

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:	D.H. Griffith
Counsel for the Respondent Carolynne Cassidy in her personal capacity and in her capacity as Executor and Trustee of the Estate of Evelyn Beatrice Robertson, Deceased:	M.W. Buhler
No other appearances	
Place and Date of Hearing:	New Westminster, B.C. June 18, 2025
Place and Date of Judgment:	New Westminster, B.C. July 9, 2025

[1] **THE COURT:** I am prepared to give my reasons on this application now.

Introduction

[2] This is an application to strike this petition brought by the respondents Carolynne Cassidy in her personal capacity and in her capacity as executor and trustee of the estate of Evelyn Robertson.

[3] The application is brought under Rule 9-5(1)(b) of the *Supreme Court Civil Rules*. It is alleged that this petition is an abuse of process because there is an outstanding petition involving the same parties with the same factual underpinnings.

[4] The petitioners, Janet Robertson and Gordon Robertson, and the respondents Carolynne Cassidy and Peter Robertson, are siblings. I will be referring to them by first names, meaning no disrespect but for the purpose of clarity of these reasons.

[5] Lauchlin Enterprises Incorporated (”LEI”) is a British Columbia corporation. The four siblings are all shareholders of the corporation. Carolynne is also a shareholder of LEI in her capacity as executor of the estate of Evelyn Robertson.

[6] LEI was a company incorporated by the siblings' father, William Robertson, who died in 2012. Since his death, the parties have had a series of disagreements regarding the conduct of LEI's affairs.

[7] Upon William's death, his shares in LEI passed to his wife, Evelyn Robertson, the mother of the four siblings.

[8] Evelyn died on October 16, 2018. Her will named Carolynne as the executor. Evelyn's shares in LEI were not immediately transferred to Carolynne as Evelyn's personal representative because Janet disputed the will, alleging that it was invalid, thus preventing Evelyn's shares from being transferred to Carolynne in her capacity as executor and trustee of Evelyn's estate. This created a deadlock in the shareholders of the LEI since as evidenced by the style of cause that two siblings are aligned against the other two siblings.

[9] The respondents characterize this deadlock as artificial. The petitioners do not agree with that characterization.

[10] The disagreements between the siblings have led to other litigation. As noted, there was a challenge to the validity of Evelyn's will. Further, in 2019, Janet sued Carolynne personally and in her capacity as executor seeking an order that the will was invalid or alternatively that the will be varied. Pleadings were filed. However, Janet discontinued her action in November 2021, but Janet's notice of dispute with respect to the will remained in place, blocking Carolynne's application for the grant of probate.

[11] Carolynne brought a petition seeking to have the will proved in solemn form. On December 12, 2022, Justice Thompson ordered that the will was proved in solemn form and that Carolynne was to be issued a grant of probate. On August 8, 2023, Carolynne was issued the grant of probate for Evelyn's estate.

[12] Janet and Gordon also commenced petition proceedings on August 25, 2021. This first petition was brought against LEI, Carolynne, and Peter. The relief sought includes an order under the *Business Corporations Act,* S.B.C. 2002, c. 57 that LEI be liquidated and dissolved.

[13] The first petition was set to be heard on September 21, 2022. The hearing did not proceed, in part due to a dispute about the time it would take to be heard and whether the estate should be made a party to the proceeding. However, prior to adjourning the hearing, Justice Girn made a number of procedural orders, including adding the estate as a party, orders regarding service of materials on the estate, and an order regarding the length and scheduling of the hearing, with the parties being required to schedule a two-day hearing if the petition remained unamended or a hearing in regular chambers provided that certain amendments were made.

[14] The parties were unable to agree on the terms of the September 21, 2022 order and had to attend back before Justice Girn to settle its terms on December 7, 2022.

[15] The petitioners did make the amendments to the first petition in accordance with Justice Girn's order, and the respondents filed a response to the amended petition and filed a second affidavit from Carolynne.

[16] The petitioners set the petition down for a hearing in regular chambers, returnable on February 14, 2024. Counsel for the respondents say that the hearing

was unilaterally set without consultation with him.

[17] Two days before the scheduled hearing, counsel for the petitioners stated they would be adjourning the hearing. Counsel for the petitioners did not file a petition record as required, and as a result the petition was removed from the hearing list.

[18] Initially, the petitioners took the position that the respondents had consented to this adjournment. However, current counsel for the petitioners, on review of the record, accepts that the hearing was unilaterally adjourned and consent was not sought nor obtained.

[19] Counsel for the petitioners requested new dates from counsel for Carolynne for the hearing of the first petition. Counsel for Carolynne provided available hearing dates. However, the petitioners never reset the first petition for hearing.

[20] Instead, on October 9, 2024, the petitioners filed a second petition, which was later amended on March 7, 2025.

[21] The parties to this new petition are the same as the parties in the first petition. However, the relief sought seeks orders under the oppression provisions in the *Business Corporations Act*. The respondents say that the relief sought in the two petitions are incompatible.

[22] The petitioners explain the reason for the second petition and the relief sought therein is because on August 28, 2024, the company held a special general meeting and using the shares belonging to Evelyn's estate, Carolynne, with Peter's support, overcame the deadlock between the shareholders and passed a number of resolutions which the petitioners view as oppressive. The result of the resolutions, the petitioners say, effectively allowed Carolynne to take control of the company and prevent the petitioners from having any say or influence over its affairs. This is the reason for the second petition.

The Law

[23] As noted, this application is brought under Rule 9-5(1)(d), which states:

> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on

> the ground that
>
> > …
> >
> > (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[24] Also relevant to my consideration on this application is the object of the *Supreme Court Civil Rules*, which is to secure the just, speedy, and inexpensive determination of every proceeding on its merits as set out in Rule 1-3(1), and the proportionality rule, which is set out in Rule 1-3(2), and which read as follows:

> **Proportionality**
>
> (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
>
> > (a) the amount involved in the proceeding,
> >
> > (b) the importance of the issues in dispute, and
> >
> > (c) the complexity of the proceeding.

Abuse of Process

[25] There is no dispute as to the threshold the applicant must meet to establish an abuse of process in multiple proceedings. The Supreme Court of Canada recently addressed this issue in *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4.

[26] In paragraph 33 of *Métis, supra*, the court set out the nature of the abuse of process doctrine as follows:

> [33] The doctrine of abuse of process is concerned with the administration of justice and fairness (*Behn*, at para. 41). The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37; *Behn*, at para. 39; *Abrametz*, at para. 33).

[27] At paragraph 38 to 40, the court described how multiple proceedings can constitute an abuse of process:

> [38] A multiplicity of proceedings which engage the same issues can amount to an abuse of process. In the foundational case of *McHenry v. Lewis* (1882), 22 Ch. D. 397, Sir George Jessel observed that: "... It is

> *prima facie* vexatious to bring two actions where one will do" (p. 400). Examples of where a multiplicity of proceedings has amounted to an abuse of process include: Where two parallel class actions involving the same parties were brought in two different jurisdictions (*Englund v. Pfizer Canada Inc.*, 2007 SKCA 62, 284 D.L.R. (4th) 94, at paras. 38-40); where plaintiffs initiated multiple actions claiming Aboriginal and treaty rights over the same land and natural resources (*Dixon v. Canada (Attorney General)*, 2015 ABQB 565); and where the plaintiffs provided "no viable explanation" for bringing a second action that duplicated the issue of ownership of a trade name which encapsulated the original defendants (*Cashin Mortgages Inc. v. 2511311 Ontario Ltd.*, 2024 ONCA 103, 170 O.R. (3d) 107, at para. 14).
>
> [39] However, the fact that there are two or more ongoing legal proceedings which involve the same, or similar, parties or legal issues, is in itself not sufficient for an abuse of process. As this Court recognized in *Toronto (City)*, "[t]here may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system" (para. 52). Similarly, there may be instances where parties have a valid reason for bringing separate, but related, proceedings; in such cases, a multiplicity of proceedings can serve to enhance the administration of justice (see, e.g., *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, at paras. 20-22). The inverse can also be true: pleadings do not need to be identical in order for a multiplicity of proceedings to amount to abuse of process (see, e.g., *Dixon*, at para. 85; *Fillion v. Degen*, 2005 MBCA 58, 195 Man. R. (2d) 2, at para. 23).
>
> [40] Thus, the abuse of process analysis does not end when multiple or similar proceedings exist. Rather, the analysis needs to focus on whether allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice, as discussed above. Where, for example, having duplicative proceedings would waste the resources of the parties, courts and witnesses, or risk inconsistent results and therefore undermine the credibility of the judicial process, this can amount to an abuse of process.

[28] The parties also refer to Justice Branch's decision in *Collingwood Investment Ltd. v. Masita Korean Cuisine Ltd.*, 2025 BCSC 570, paragraphs 23 to 32 and his summary of the principles derived from *Métis, supra* and his summary of Justice Fitzpatrick's decision in *Concord Kingsway Project Limited Partnership v. Ivanhoe Cambridge II Inc.*, 2017 BCSC 282.

[29] The respondents also rely on *Stanford v. Beazley*, 2019 BCSC 671, a decision of Justice Horsman, as she then was, at paragraphs 36 to 40, where she held it is well established as a matter of common law that commencement by a plaintiff of more than one action in the same jurisdiction arising from the same dispute is an abuse of the court's process.

Positions of the Parties

[30] The respondents submit that the second petition constitutes an abuse of process for three reasons:

1. The parties to the second petition are identical to the first petition, and involve the same underlying factual basis.

2. The relief sought in the second petition is diametrically opposed to the first petitioner: oppression versus liquidation.

3. If the second petition proceeds, it circumvents the order of Justice Girn.

[31] The respondents submit that these three stated reasons when viewed in the context of the history of the litigation between the parties demonstrate the second petition constitutes an abuse of the court's process and that it should be struck. In the alternative, the respondents submit that this court should stay the second petition until such time as the first petition is heard or discontinued.

[32] The petitioners submit the second petition is not an abuse of process because it is brought subsequent to the key events in August of 2024. It is an alternative position to what was claimed in the first petition because the facts have changed.

[33] The petitioners submit in the alternative that if this court finds the second petition constitutes an abuse of process, striking a petition is a draconian remedy that is unwarranted in the circumstances. They submit that other remedies such as hearing the petitions together or case management would adequately address the issues raised.

Discussion

[34] The respondent's position that the second petition is an abuse of the court's process has significant merit when all of the surrounding circumstances are considered. Not only has the underlying disputes between the siblings led to two related petitions; it has also led to other litigation involving the validity of Evelyn's will, the petitioners' action against Carolynne personally, and in relation to her role as executor of Evelyn's estate, which although those proceedings were eventually discontinued, Carolynne was nevertheless compelled to prove the will.

[35] The petitioners' conduct in relation to the hearing of the first petition also gives rise to concerns about abuse of process. The petition was set for hearing after a dispute about how it would be heard and unilaterally adjourned by the petitioners. The petitioners then took no steps to have their petition heard. All of that occurred before the events of August 2024, which are said to give rise to the need for the relief sought in the second petition. There were other ways the petitioner could have gone about addressing their concerns arising from the August 2024 events without filing a second petition involving the same parties that is grounded in the same general dispute.

[36] I accept that a multiplicity of proceedings engaging the same issues and the same parties does not automatically or invariably result in an abuse of process as set out in paragraph 40 of *Métis, supra*. The analysis needs to focus on whether allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality, and the integrity of the administration of justice. Where duplicative proceedings would waste the resources of the parties, courts, or risk inconsistent results, this can undermine the credibility of judicial process and amount to an abuse of process.

[37] In my view, while there is an explanation for why the petitioners have commenced the second petition, there is a significant risk of inconsistent results if the two petitions were both allowed to move forward. In light of the surrounding circumstances as described above, it is difficult for me to see the initiation of a second petition as anything other than a tactical and calculated move on the part of the petitioners, even though I accept the second petition results from events that took place after the first petition was filed.

[38] In my view, the decisions in *Collingwood, supra*; *Concord, supra*; and *Lacharity v. University of Victoria Students' Society*, 2012 BCSC 1819, support the respondents' position.

[39] In all three cases it was found that there would be a substantial risk of inconsistent verdicts and that the subsequent proceedings violated principles of judicial economy, consistency, finality, and the administration of justice.

[40] The petitioners acknowledge that the relief sought in the two petitions are inconsistent, liquidation versus oppression, but argue that the two sections relied

on are different and involve different legal tests, and it is not uncommon to plead alternative grounds of relief. I accept that without hesitation, but advancing alternative positions in the same proceeding is not what the petitioners did. The petitioners chose not to proceed with their first petition that was ready to be heard and instead chose to advance their alternative position in an entirely different petition.

[41] I am satisfied the respondents have established that the second petition constitutes an abuse of process.

Remedy

[42] While the respondents seek to have the second petition struck, the respondent acknowledges and relies on Justice Goepel's decision in *Lacharity, supra* at paragraph 24, where he noted that the usual remedy where a plaintiff has commenced two actions against one defendant in relation to the same dispute or matter is to stay one of the proceedings.

[43] The petitioners submit, as I have already noted, that I should order the petitions be heard together or make other case management orders or alternatively at most order that the petition be stayed.

[44] The lesser remedies proposed by the petitioners are unsatisfactory because case-management directions were already attempted. Justice Girn made an order designed to enable the hearing of the first petition and to have it heard in a relatively efficient manner, but the petitioners chose not to proceed with that petition.

[45] At the same time, striking pleadings for abuse of process is a drastic remedy that should be granted only in the clearest of cases when the abuse falls at the high end of the spectrum: *Métis, supra* at paragraph 60.

[46] In my view, striking the petition would be unjust in all the circumstances and would deprive the petitioner from seeking relief from events that occurred after the first petition was filed that may or may not have merit. The abuse does not fall at the high end of the spectrum.

[47] It is tempting to order the two petitions be heard together, but I am mindful that the first petition is ready to be heard. The hearing of the two petitions will delay the proceedings further as the respondents will be required to prepare their response. Unquestionably the proceedings and hearing will be lengthier. Furthermore, it is entirely possible that the results of the first petition will mean that the second petition need not be heard or if it is heard, it should be able to proceed in a streamlined way once the findings and results of the first petition are known. Even if the second petition proceeds, hearing the two petitions separately is likely to be more efficient than hearing them together.

[48] As a result, I have concluded that the appropriate remedy is to stay the second petition until such time as the first petition is heard or discontinued. If the petitioners elect to discontinue, the petitioners must pay the associated costs of discontinuance to the respondents before proceeding with the second petition.

[49] The parties agree I have the authority to make such an order under the *Supreme Court Civil Rules*, Rules 16-1(18) and (22)(5) and pursuant to s. 10 of the *Law and Equity Act,* R.S.B.C. 1996, c. 253, and pursuant to my inherent jurisdiction.

[50] I will add this: even if I had found the second petition did not constitute an abuse of process, or if I am wrong about that, I would nonetheless have arrived at the same result. I would have exercised my discretion to direct the first petition proceed before the second petition.

Costs

[51] In my view, as the successful party in this application, the respondents are entitled their costs of this application. I note that as a result of this decision, it is entirely possible this petition will never be heard.

[52] Rule 9-5(1) provides that the court may order the costs of a successful application to strike be paid as special costs. The decision as to whether to make such an order is, however, discretionary. The normal case law on special costs wherein special costs are generally reserved for punishing and deterring reprehensible conduct, apply to applications to strike under Rule 9-5(1).

[53] In *Lacharity, supra*, the successful party UVSS sought special costs in relation to its application to strike. The court found that while the second petition "was an abuse of process, not all cases of abuse of process lead to special costs," noting that the "petition was not brought in bad faith." The court then awarded regular costs in favour of UBSS payable in the event of the cause.

[54] In my view, despite my findings, I am unable to conclude that the second petition was brought in bad faith, and the petitioners' conduct does not rise to the level of egregious misconduct that warrants an award of special costs: See *Stanford, supra*, at paragraph 54.

[55] The respondents are entitled to their ordinary costs of this application in any event of the cause payable within 45 days of today's date.

[56] To confirm, my order is that this petition is stayed until such time as the first petition, NW registry file number S-240167, is heard or discontinued. If the petitioners elect to discontinue the first petition, the petitioners must pay the associated costs of discontinuance to the respondents before proceeding with the second petition.

[57] That concludes my Reasons.

[58] CNSL M.W. BUHLER: And, sorry, justice, you had one term regarding costs. Was it that costs are to be payable within 45 days of -- for this application, of -- at an ordinary scale, within 45 days of this order; is that correct?

[59] THE COURT: Correct. In any event, yes, that's right.

[60] CNSL M.W. BUHLER: In any event. Thank you.

[61] THE COURT: Costs in any event of the cause in relation to this application, payable within 45 days of today's date.

[62] CNSL D.H. GRIFFITH: Thank you, justice.

[63] CNSL M.W. BUHLER: Thank you, justice.

[64] THE COURT: Thank you. We are adjourned.

"J. Walker, J."