COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *British Columbia (Ministry of Social Development and Poverty Reduction) v. Choquette,* 2025 BCCA 333

Date: 20250924
Docket: CA50320

Between:

His Majesty the King in Right of the Province of British Columbia

Appellant
(Plaintiff)

And

Dylan Anthony Choquette

Respondent
(Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Justice Griffin
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated November 19, 2024 (*British Columbia (Ministry of Social Development and Poverty Reduction) v. Choquette*, 2024 BCSC 2098, Kelowna Docket S136086).

Counsel for the Appellant:	F. de Lima G. Termuende, Articled Student
Place and Date of Hearing:	Vancouver, British Columbia June 9, 2025
Place and Date of Judgment:	Vancouver, British Columbia September 24, 2025

Written Reasons by:
The Honourable Justice Mayer

Concurred in by:
The Honourable Chief Justice Marchand
The Honourable Justice Griffin

Summary:

The Province brought an application in the underlying claim seeking default judgment against Dylan Choquette and a permanent injunction preventing him from attending at the West Kelowna office of the Ministry of Social Development and Poverty Reduction. The chambers judge granted default judgment but dismissed the application for a permanent injunction on the basis that the incident reports tendered by the Province in support of its application were inadmissible hearsay evidence. The Province submits the judge erred in law, holding that to be admissible, documents which satisfy the criteria in s. 42 of the Evidence Act also have to satisfy the criteria of necessity and reliability under the principled approach to the hearsay rule.

HELD: Appeal dismissed. The judge did not apply a two-stage process. The judge appropriately incorporated reliability considerations into his analysis of whether the admissibility requirements of s. 42 were met.

Reasons for Judgment of the Honourable Justice Mayer:

Overview

[1] In reasons for judgment released November 19, 2024, indexed as 2024 BCSC 2098 (the “Chambers Reasons”), a chambers judge granted an application brought by His Majesty the King in right of the Province of British Columbia (the “Province”) for default judgment against Dylan Choquette for nuisance and trespass. The Province filed the underlying claim after several incidents in 2022, during which Mr. Choquette used profanities and displayed aggressive behaviour when interacting with staff at the West Kelowna office of the Ministry of Social Development and Poverty Reduction (the “Ministry”). In one instance in June 2022, after he had been banned from the Ministry office, Mr. Choquette allegedly threatened staff.

[2] The judge granted the Province’s application for default judgment but declined to grant its application for a permanent injunction. The purpose of the injunction was to prevent Mr. Choquette from intimidating or interfering with staff. However, if granted, the injunction also would have permanently barred Mr. Choquette from attending at the Ministry offices without prior authorization or communicating with staff except through a third party. In summary, the basis of the

judge's refusal to grant the injunction was that the incident reports tendered by the Province in support of its application were inadmissible hearsay evidence.

[3] In this appeal, the Province contends the judge erred in law by refusing to admit the incident reports—which it had sought to admit as business records pursuant s. 42 of the *Evidence Act*, R.S.B.C. 1996, c. 124 [the "*Evidence Act*"]. In particular, the Province says the judge erred by imposing the dual criteria of necessity and reliability for the admission of this hearsay evidence under the principled approach to the hearsay rule. The Province seeks an order from this Court setting aside the judge's order and issuing a permanent injunction on the same terms as sought in the court below.

[4] Mr. Choquette, although duly served, has not responded to this appeal just as he did not appear in the court below in response to the injunction application. As a result, the appeal proceeded on an undefended basis.

[5] For the reasons that follow, I would dismiss the appeal.

[6] In my view, the judge's concerns about the reliability of the records were consistent with the conclusion that they ought not be admitted under s. 42 of the *Evidence Act*. Regardless, there are other concerns about making a permanent injunction of the breadth sought by the Province here, such that I would not grant the remedy sought by the Province in any event.

Background

[7] In January 2022, a Ministry supervisor sent Mr. Choquette a warning letter concerning his behaviour, including his use of profanities and aggression when interacting with staff at the Ministry's West Kelowna office. After another incident in May 2022, the supervisor sent him a second letter banning him from the Ministry's offices and providing him with information about using a third party to attend at the offices on his behalf. Later in May, and in the following months, Mr. Choquette violated the Ministry's ban on several occasions and continued to act

inappropriately, including using intemperate language, threatening staff, and using a large stick to hit the Ministry office.

[8] The Province commenced its action in December 2022, seeking temporary and permanent injunctions preventing Mr. Choquette from continuing to trespass and cause a nuisance at the Ministry office. A justice of the Supreme Court granted an interim injunction on January 30, 2023, which Mr. Choquette then breached on several occasions between March and December 2023. In the months of January, July and September 2024, respectively, justices of the Supreme Court extended the interim injunction.

[9] The Province filed its application seeking default judgment and a permanent injunction against Mr. Choquette in October 2024. Mr. Choquette did not file a response.

[10] In support of its application, the Province relied on an affidavit from David Rice, the former manager of the Ministry's Service Delivery Division. Mr. Rice's affidavit included exhibits of various entries in the Ministry's incident report and tracking system, detailing interactions between Ministry staff and Mr. Choquette (the "IRT entries"). In addition, the Province relied on an affidavit from acting manager Beverly Andrews, which attached additional notations from the IRT entries.

[11] In the Chambers Reasons, the judge set out extracts from IRT entries made on May 30 and June 30, 2022, which had been appended to the affidavit of Mr. Rice. Those extracts were summaries, made by a supervisor, of reports made by Ministry staff describing Mr. Choquette's alleged behaviour. Staff reports of this behaviour were also included in the IRT entries. The judge referenced similar evidence appended to the affidavit of Ms. Andrews. He expressed his concern that neither Mr. Rice nor Ms. Andrews had personal knowledge of the incidents recorded in the extracts.

[12] The judge noted that the Province relied on s. 42 of the *Evidence Act* for admissibility of the IRT entries as business records. The judge then summarized

relevant law concerning admissibility of business records under the common law, citing *Ares v. Venner,* [1970] S.C.R. 608, 1970 CanLII 5. At para. 28 of the Chambers Reasons, referring to para. 19 of *Oswald v. Start Up SRL,* 2020 BCSC 205, the judge provided a summary of the requirements for admission of a business record for the truth of its contents under s. 42 of the *Evidence Act,* namely that the document:

> a) be made contemporaneously;
>
> b) be made by someone having personal knowledge of the matters being recorded;
>
> c) be made by someone who has a duty to record the notes or to communicate the notes to someone else to record as part of the usual and ordinary course of their business; and
>
> d) record matters that would ordinarily be recorded in the usual and ordinary course of that business.

[13] The judge commented that on their face, the IRT entries fell within the business records exception under s. 42 of the *Evidence Act*, but also stated that "the principled approach to the admission of hearsay evidence applies to traditional hearsay exceptions": Chambers Reasons, para. 29.

[14] The judge went on to say that "[a]pplication of s. 42 of the *Evidence Act* requires consideration of the principled approach to the admission of hearsay". He set out his view that the principled approach required consideration of both the necessity for and reliability of the documentary evidence sought to be admitted. He cited the decision in *McGarry v. Co-operators Life Insurance Co.,* 2011 BCCA 214, at paras. 65–68, in support of the position that these factors were to be considered in applying s. 42 of the *Evidence Act*: Chambers Reasons, paras. 30, 32.

[15] The judge distinguished between automatically generated information such as bank records and credit card statements and information generated by way of

human intervention, such as hospital notes or employee log notes. He commented that automatically generated information should be treated as real evidence and is admissible as a business record, but information or observation recorded by way of human intervention raised hearsay issues. He concluded the IRT entries were recorded by way of human intervention and expressed concern that employees making the entries could be motivated to misrepresent or overstate facts: Chambers Reasons, para. 36.

[16] The judge concluded that under a principled approach to the business records hearsay exception codified in s. 42, the IRT entries were not "reasonably necessary" and further, did not have "sufficient indicia of reliability so as to afford the Court a satisfactory basis for evaluating the truth of their contents": Chambers Reasons, para. 39.

Analysis

[17] As set out earlier, the Province submits the judge erred in law holding that to be admissible, documents which satisfy the criteria in s. 42 of the *Evidence Act* also have to satisfy the criteria of necessity and reliability under the principled approach to the hearsay rule. In effect, the Province contends the judge applied a two-stage process. It says the judge erred in doing so given the absence of any grounding for such a requirement in the text, context or purpose of the *Evidence Act*, which it submits is part of the necessary analysis under the modern approach to statutory interpretation. Based on this alleged error, the Province asks this Court to substitute its discretion for that of the judge below, and to grant the remedy of a permanent injunction.

[18] In my view, the judge did not in fact apply a two-stage process. Reading his reasons as a whole, it is apparent the judge appropriately incorporated reliability considerations into his analysis of whether the admissibility requirements of s. 42 were met. I will explain why.

[19] The judge was aware that the Province relied on s. 42 of the *Evidence Act* as a basis for admissibility of the IRT entries: Chambers Reasons at para. 22. The relevant portions, ss 42(2) and (3), read as follows:

> (2) In proceedings in which direct oral evidence of a fact would be admissible, a statement of a fact in a document is admissible as evidence of the fact if
>
> > (a) the document was made or kept in the usual and ordinary course of business, and
> >
> > (b) it was in the usual and ordinary course of the business to record in that document a statement of the fact at the time it occurred or within a reasonable time after that.
>
> (3) Subject to subsection (4), the circumstances of the making of the statement, including lack of personal knowledge by the person who made the statement, may be shown to affect the statement's weight but not its admissibility.

[20] Also relevant is s. 42(4) of the *Evidence Act*:

> (4) Nothing in this section makes admissible as evidence a statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to a fact that the statement might tend to establish.

[21] As noted earlier, the judge referred to the decision of this Court in *McGarry*. In that case Justice Hinkson stated at para. 68 that "…some evidence of reliability must be available for each document before it could be admitted under s. 42". Justice Hinkson described indicia of reliability as including "…whether the source of the information, who prepared the document and when it was created is known; and whether there is anything on the face of the document that indicates it was made in the 'ordinary course' of business": *McGarry,* at paras. 67. In *McGarry*, the records were created before there was litigation and so the Court found that s. 42(4) was not engaged. I agree with the submission of the Province that Hinkson JA did not consider reliability separately, under the principled approach to the hearsay at common law, but rather did so in determining whether the statutory criteria for admission in s. 42 were satisfied.

[22] At para. 37 of the Chambers Reasons, the judge set out his concerns with respect to the reliability of the IRT entries, stating as follows:

> In this case, the notations in the IRT are observations recorded by way of human intervention and raise hearsay concerns affecting their reliability. There are some indicia of reliability including information surrounding the creation of the records, and a business policy obligating employees to record the information. However, the information posted to the IRT is not the type of automatic information or information that is subject to frequent checking and cross-checking that carries an inherent circumstantial guarantee of accuracy. Employees could be motivated to potentially misrepresent or overstate the facts in recording their observations in order to support further action from the Province. There is no suggestion that a posting is subject to independent scrutiny. Considering how the information is being recorded, and the purpose the information is recorded for, the IRT records are not the type of information that have hallmarks of reliability that the business records exception is intended to apply to. There is no opportunity to challenge the veracity of the records if they are simply admitted to prove the truth of the contents through the manager's affidavit.
>
> [Emphasis added.]

[23] In my view, the first underlined portion of the excerpt above refers to the requirement set out at s. 42(2)(a): that a document sought to be admitted was made or kept in the usual and ordinary course of business. It appears the judge found this requirement was satisfied.

[24] This does not appear to be the case with respect to the second requirement set out at s. 42(2)(b): that the relevant statement of fact in a document be recorded in the usual and ordinary course of the business. In my view, reading the Chambers Reasons as a whole, the judge concluded the second requirement was not satisfied. I note, for example, the judge's concern regarding "the purpose the information [was] recorded for" and the potential motivations of the employees to record notes for the purpose of supporting further action being taken by the Province. This indicates the judge was concerned the statements in the IRT entries concerning Mr. Choquette's behaviour were not recorded in the usual and ordinary course of the business. Rather, they were in anticipation of action to be taken by the Province against Mr. Choquette, potentially engaging the concerns that animate s. 42(4).

[25] There is evidentiary support for a finding that the statements in the IRT entries sought to be relied upon by the Province for the truth of their contents were not recorded in the usual and ordinary course of business. As was set out in the affidavit of Mr. Rice, referred to by the judge at para. 17 of his reasons:

> 9. If an individual behaves in an aggressive manner towards [Ministry] Staff or creates safety concerns, [the Ministry] may take the following steps in accordance with the Standard Operating Procedure for Third Party Administration Referral – Supervisor policy:
>
> a. [Ministry] Staff will report behaviour which is then reviewed by a supervisor to determine if the client has behaved in an unacceptable manner.
>
> b. The Supervisor will identify all [Ministry] Staff members involved and ensure they complete an IRT entry.
>
> c. The Supervisor will then determine how to proceed based on whether there have been previous incidents involving the client. This includes:
>
> i. Issuing a verbal warning to the client.
>
> ii. Issuing a written warning letter…
>
> iii. Issuing a Third Party Administration Contractor Referral to the individual informing them that they will have to engage the services of a third party to collect their social assistance….
>
> …
>
> [Emphasis added.]

[26] This procedure indicates that when Ministry staff make an initial report of aggressive client behaviour, they make an IRT entry if directed to do so by a supervisor. This does not suggest that reporting of aggressive client behaviour is recorded in the usual course of Ministry business, but this may be done at the direction of a supervisor and possibly for the purpose of creating a record to support Ministry action taken against the client. The judge referred to this evidence at para. 17 of the reasons and expressed his concern that none of the persons who recorded the incidents in the IRT entries relied on by the Province provided evidence testifying as to the truth of those entries.

[27] In the Chambers Reasons, the judge did not expressly connect his concerns regarding the reliability of the criteria for admissibility set out at s. 42(2)(b) of the *Evidence Act.* Despite this, reading the logic of the judge's reasons as a whole, I am

satisfied he considered reliability in the context of the requirements of this provision in determining the IRT entries were not made in the usual and ordinary course of business.

[28] The overall context of the judge's assessment of the evidence was the Province's application for a permanent injunction of wide scope. This is an extraordinary remedy, as noted in a number of authorities cited by the judge, including: *NunatuKavut Community Council Inc. v. Nalcor Energy*, 2014 NLCA 46; *Grosz v. Guo*, 2020 BCSC 997; and *Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc.*, 2022 BCSC 15, varied on other grounds 2024 BCCA 62.

[29] The terms of the order sought by the Province would impose a lifetime ban on a person from seeking to personally access social services from a government office. This was a very broad remedy. The judge's decision to decline to grant such a broad injunction was a discretionary decision. Even if this Court were to find that the judge erred in not admitting the IRT records, I would nevertheless not exercise discretion to impose the broad remedy sought by the Province.

Disposition

[30] Accordingly, I would dismiss the appeal.

"The Honourable Justice Mayer"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Justice Griffin"