

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Moreau v. Hawkins*,
2025 BCSC 2197

Date: 20251104
Docket: S23775
Registry: Nelson

Between:

Simon Adrian Campbell Moreau

Petitioner

And

Austin Gregg Hawkins, Eva Andrea Hawkins and William Gregg Hawkins

Respondents

Before: The Honourable Madam Justice Lyster

Oral Reasons for Judgment

Counsel for the Petitioner:

T. Zoobkoff

Counsel for the Respondents:

M. Scheffelmaier

Place and Date of Hearing:

Nelson, B.C.
October 20 and 22, 2025

Place and Date of Judgment:

Nelson, B.C.
November 4, 2025

[1] These are my oral reasons for judgment on the stay application currently before the court.

[2] On August 11, 2025, Simon Moreau filed a petition seeking a declaration that an easement dated July 22, 1976, over property owned by the respondents, the Hawkins, is valid and enforceable. The parties own properties on Kitto Creek, which is on the north side of the West Arm of Kootenay Lake, near Balfour, British Columbia.

[3] Mr. Moreau owns Parcel 2. A non-party, Chelsea Gogal, who is Mr. Moreau's spouse, owns Lot 5, which is adjacent to Parcel 2. The Hawkins own Lot 6, which is adjacent to Lot 5, directly to the east, and upstream. Lot A is owned by a non-party, Jessica Mann. Lot A is located to the west of Parcel 2, and downstream.

[4] The easement at issue in the petition is known as Easement K. It is registered in the Land Titles Office, with Lot 6 as the servient tenement and Parcel 2 as the dominant tenement. The easement was granted when Thomas McKnown acquired Parcel 2 from his mother, who owned Lot 6 and Lot 5 at that time. It provides that the owner of Parcel 2 is granted "an easement in perpetuity for water over parts of Lots 5 and 6.... for the purpose of maintaining an existing pipeline."

[5] Lot A's significance to the present proceeding is that since June 2022 Mr. Moreau has, with the permission of Ms. Mann's father, connected his waterline to Ms. Mann's waterline and been drawing water from that waterline for the benefit of Parcel 2, thereby obviating the need for him to use Easement K.

[6] By the petition, Mr. Moreau seeks a declaration that Easement K is valid and enforceable, a declaration that the Hawkins' denial of access to him constitutes a substantial interference with his use and enjoyment of Easement K, and a declaration that he is entitled to free, full and uninterrupted access to Lot 6 for the purpose of maintaining and repairing the existing waterline.

[7] The Hawkins have not filed a response to petition, purportedly on the basis that they did not wish to attorn to the jurisdiction of this court. They have filed the

stay application that is now before the court for decision. By their notice of application, they seek a stay of the petition proceedings until the conclusion of what they describe as “the ongoing Ministry of Water, Land, and Resource Stewardship proceeding, including any and all appeals” in relation to Mr. Moreau’s conditional water licence C120806 (the “Water Licence Proceeding”).

[8] Before this court, the Hawkins also seek an order permitting them to have 30 days from the conclusion of the Water Licence Proceeding to file a response to petition. In the alternative, if a stay is not granted, they seek an order permitting them to file a response to petition within 30 days of the date their stay application is dismissed.

[9] The basis for the stay application is, in short, that there is an active Water Licence Proceeding before the Ministry. As mentioned, Mr. Moreau is the holder of the Water Licence. The Water Licence permits the owner of Parcel 2 to obtain water from a diversion point on Kitto Creek located on the Hawkins’ property. The Hawkins say that the Water Licence has not been beneficially used by any owner of Parcel 2 for at least 40 years. They say that the Water Licence has been abandoned. On December 20, 2024, the Hawkins applied to the Ministry asking for an order to cancel or amend Mr. Moreau’s licence. Both Mr. Moreau and the Hawkins have made written submissions to the Ministry in the Water Licence Proceeding. Mr. Moreau opposes the application, and disputes the facts alleged by the Hawkins. No decision has been made, and there is no way of knowing when the Ministry will make a decision in that proceeding.

[10] The Hawkins submit that if Mr. Moreau’s Water Licence is cancelled, then he will have to apply for a new water licence, which may not allow for the same point of diversion on Kitto Creek or the same location for the works carrying water to Parcel 2. The same, they submit, would be true if the Water Licence is amended. They submit that if the point of diversion and location of the works change, then the present petition may become obsolete. They further submit that if the point of

diversion and location of the works do not change, then they may choose not to resist the petition at all.

[11] On this basis, the Hawkins submit that the present petition is duplicative of the Water Licence Proceeding and should not be permitted to proceed until the Water Licence Proceeding, including all potential appeals and judicial reviews, have been completed. They further submit that the petition constitutes an abuse of process, although they say it is not necessary for the court to come to that conclusion in order to grant the stay requested.

[12] Mr. Moreau opposes the stay application. He says that he has been threatened by the Hawkins with trespass if he enters onto Lot 6 via Easement K. He has been told that if he places any new infrastructure on Lot 6 or in Kitto Creek, it will be confiscated. They have told him that if he wants access, he must obtain an order from the court, resulting in him filing the present petition. He acknowledges that he has been able to obtain water via Lot A, but says that the Hawkins have taken the position with the Ministry that his actions in doing so are contrary to his Water Licence, and that a Ministry officer has stated that his use of Ms. Mann's waterline would be investigated, leaving him in a vulnerable position.

[13] Mr. Moreau denies that the petition and Water Licence Proceeding are duplicative, emphasizing that they deal with different legal rights, being the Easement and the Water Licence, with the court and the Ministry, respectively, being the only bodies that can decide them.

[14] I have decided that the respondents' stay application should be denied.

[15] The Hawkins relied on *Ainsworth Lumber Co. v. A.G. of Canada*, 2001 BCCA 105 in support of a stay being imposed. That was an appeal of a chambers judge's ruling refusing an application for a temporary stay of proceedings in this court, pending the conclusion of related tax court litigation. The appellant argued that if the respondent received a favourable ruling in the tax court litigation, the appeal would be rendered substantially moot. The Court of Appeal granted the appeal and ordered

a stay. At para. 11, they stated that while the named defendants were nominally different from those in tax court, in essence the two actions were both against the Government of Canada. There was a substantial overlap, if not nearly total congruence, between the remedies sought. At para. 14, the Court held that the tax court proceedings had the capacity to have a material, if not conclusive, impact upon the issues outstanding before the British Columbia courts. They held that if the respondent were to succeed in tax court, the causes of actions alleged in the British Columbia proceedings would cease to have any substance or possibility of success, rendering the BC proceedings superfluous.

[16] The Hawkins also relied on *Saskatchewan (Environment) v. Metis Nation – Saskatchewan*, 2025 SCC 4. In that case the Supreme Court of Canada was required to consider whether it was an abuse of process for the Metis Nation – Saskatchewan to bring an application challenging the granting of uranium exploration permits in light of previous court decisions. At para. 33, the Court described the doctrine of abuse of process, which engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair or bring the administration of justice into disrepute. That can occur by way of re-litigation of previously decided matters. It can also, as discussed at para. 38, occur when there is a multiplicity of proceedings which engage the same issues.

[17] As discussed at para. 39, the existence of two or more ongoing legal proceedings involving the same or similar parties or issues is not itself sufficient for an abuse of process. There may be cases where parties have a valid reason for bringing separate but related proceedings. As stated at para. 40, “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”.

[18] The Hawkins also relied on cases invoking the prematurity doctrine, but I find that that doctrine has no role in the present application. The Water Licence Proceeding is a separate administrative proceeding. Mr. Moreau does not ask the

court to short circuit or interfere with that process, nor would any remedy the court might order in response to his petition have the effect of doing so. The Hawkins' decision to initiate the Water Licence Proceeding does not serve as any kind of bar to Mr. Moreau filing the present petition.

[19] I accept that the principles discussed in cases such as *Ainsworth* and *Metis Nation–Saskatchewan* provide the appropriate lens through which to examine the present application.

[20] There is some obvious factual overlap between the two proceedings, as they each deal with Mr. Moreau's right to obtain water from Kitto Creek. But the legal issues raised in the two proceedings are entirely distinct. In the Water Licence Proceeding what is at issue is Mr. Moreau's right to hold a water licence, and what the terms of that licence ought to be. Those are matters within the exclusive jurisdiction of the Ministry. In the petition, what is in issue is the parties' current property rights. Is Easement K valid and enforceable? If so, what rights does it give Mr. Moreau to enter upon the Hawkins' property, to maintain and work on the waterline, and to use it to draw water from the Creek?

[21] I accept that it is possible that the Water Licence Proceedings could, eventually, have a significant impact on the parties' rights. If Mr. Moreau is granted a water licence that requires him to use a different diversion point, that may require an application for a new easement. But no decision that the Ministry may make will or can determine the parties' present property rights, a matter within this court's exclusive jurisdiction.

[22] It is important for the parties' current property rights to be determined in an efficient manner. Mr. Moreau has been fortunate to obtain Mr. Mann's permission to obtain water from Ms. Mann's waterline. Mr. Mann has sworn an affidavit in which he indicated that Mr. Moreau had previously been made aware that his use of the Lot A waterline was set to expire in July 2025. He and his daughter were committed to upholding that termination date, but do not wish to see Mr. Moreau left without water while he pursues his petition. They have granted a temporary extension while "this

process plays out”, but Mr. Moreau’s access is not permanent, and will terminate once the petition is decided, regardless of outcome.

[23] While Mr. Moreau, therefore, has a temporary work around to obtain water from Kitto Creek, that work around is less than ideal. As stated in his affidavit, his use of the Mann waterline is impractical. Lot A is located below Parcel 2, which means that instead of a gravity fed waterline, as he would have could he use Easement K, he needs an electric pump to pump water uphill to his house. The water pressure is low, and the pump has been prone to outages when the power goes out, resulting in no water supply until the power comes back on. It bears noting that not only is Mr. Moreau affected, but so too are his spouse and children who live with him on Parcel 2. There is also an annual cost to maintain the pump and supply it with electrical power.

[24] Further, relations between the parties have clearly been fraught while this dispute remains outstanding. Without entering into a discussion of the respective rights and wrongs of the parties, there have been threats of trespass should Mr. Moreau enter upon Lot 6 to inspect or work on the waterline. There is no way of knowing when the Ministry will make its decision, or what decision it might make. If there are internal appeals, judicial reviews or appeals to the Court of Appeal, the process could take years. Even if there is some lack of judicial economy in dealing with the petition while the Water Licence Proceeding remains outstanding, these parties will be better served, and respect for the rule of law, and thus the reputation of the administration of justice, will be enhanced, by this court dealing with the petition now.

[25] For these reasons, I dismiss the Hawkins’ stay application. I grant the alternative relief sought and make an order granting them 30 days from today’s date to file a petition response. In doing so, I would note that there was no juridical reason for the Hawkins’ failure to file a petition response within the time required under the *Rules*. Their concern with respect to attorning to this court’s jurisdiction was misplaced. This court’s jurisdiction to decide the petition was never in issue; the only

issue raised by the Hawkins' application was whether the petition should be temporarily stayed.

[26] Mr. Moreau has been successful and is entitled to his costs of this application.

"L.M. Lyster J."

LYSTER J.