

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chan v. British Columbia (Workers' Compensation Appeal Tribunal)*,
2025 BCCA 452

Date: 20251128
Dockets: CA51026; CA51060

Docket: CA51026

Between:

Emily Chan

Appellant
(Petitioner)

And

**Workers' Compensation Appeal Tribunal (WCAT)
and Fraser Health Authority Reach Management**

Respondents
(Respondents)

- and -

Docket: CA51060

Between:

Emily Chan

Appellant
(Petitioner)

And

**Workers' Compensation Appeal Tribunal (WCAT)
and Fraser Health Authority Reach Management**

Respondents
(Respondents)

Before: The Honourable Justice Griffin
(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated
September 11, 2025 and September 26, 2025 (*Chan v. British Columbia
(Workers' Compensation Appeal Tribunal)*, Vancouver Docket S249018).

Oral Reasons for Judgment

The Appellant, appearing in person: E. Chan

Counsel for the Respondent, Workers' Compensation Appeal Tribunal: J.L. Cameron

Counsel for the Respondent, Fraser Health Authority Reach Management: M. Monteith

Place and Date of Hearing: Vancouver, British Columbia
November 28, 2025

Place and Date of Judgment: Vancouver, British Columbia
November 28, 2025

Summary:

The appellant applies to seal this Court's files related to her appeals and for an order that no fees are payable. The respondent, Fraser Health Authority, seeks to quash portions of the appeals for lack of jurisdiction and seeks security for costs of the appeals and for costs of the orders under appeal. Held: Appellant's applications are dismissed; respondent's applications granted except for security for costs of the orders under appeal. The appellant seeks to appeal orders largely in the nature of procedural rulings and case management directions, which are not appealable and so portions of the appeals are quashed. The appellant did not show that court openness poses a serious risk to an important public interest and so a sealing order is not warranted in this case; a no fee order is not justified as there is no merit to her appeals. It is in the interests of justice to order posting security for costs of the appeals because the appeals lack merit, and there is a risk of non-recoverability. However, given the appellant's lack of income and the order for security for costs of the appeals, it is not in the interests of justice to order security for costs of the orders under appeal.

GRIFFIN J.A.:

Nature of the Applications

[1] The appellant, Ms. Emily Chan, seeks a sealing order and an order that no fees are payable.

[2] The respondent on the appeals, Fraser Health Authority Reach Management, the proper name of which is Fraser Health Authority ("FHA"), seeks to quash portions of the appeals for lack of jurisdiction. It also seeks security for costs of the appeals in the amount of \$12,500, security for costs of the orders being appealed in the amount of \$1,750, and a lump sum for costs of today's hearing of \$4,000.

[3] For the reasons that follow, I allow FHA's applications to quash portions of the appeals and for security for costs of the appeals in the amount of \$10,000, with terms which I will address at the end of these reasons. I dismiss the appellant's applications for a sealing order and for no fees to be payable. I decline to order security for costs of the trial. I decline to order costs payable today, but I will assess costs today at \$4,000, not payable forthwith.

Background

[4] The appeals CA51026 and CA51060 arise from two interlocutory decisions made in the same underlying proceeding. The underlying proceeding is a petition for judicial review of the decision of the respondent, the Workers' Compensation Appeal Tribunal ("WCAT"), denying Ms. Chan workers' compensation for injuries to her wrist and back. Ms. Chan commenced her petition for judicial review on December 24, 2024, but the petition hearing was adjourned with no new date set.

The Baker J. Order (11 September 2025)

[5] The first interlocutory decision under appeal is the order of Justice Baker, made on September 11, 2025 (the "Baker J. Order"), which set aside a sealing order over Ms. Chan's file.

[6] Ms. Chan had obtained the sealing order on an *ex parte* application, despite FHA asking for notice of her application and her agreeing to the same. The record shows that she made misrepresentations to the judge who granted the sealing order regarding FHA's knowledge of and interest in the application. Giving oral reasons for judgment, Baker J. concluded that the test for a sealing order was not met. Due to Ms. Chan's conduct, the judge considered ordering special costs against her but declined to do so, instead ordering lump sum costs of \$750.

[7] On the same day, Baker J. heard several applications brought by Ms. Chan that she sought to bring without notice to the respondents. Those applications sought numerous orders, including: an order that the certified record filed by WCAT be supplemented with the appellant's affidavits filed in the petition, declarations that the respondents breached the *Accessible British Columbia Act*, S.B.C. 2021, c. 19. and Bill 41, *Workers Compensation Amendment Act (No. 2)*, 3rd Sess, 42nd Leg, British Columbia, 2022, an order that the respondents reimburse the appellant for medical rehabilitation costs, and an order amending an order of Associate Judge Bilawich so as to "clarify".

[8] The jurisdictional basis for these applications is unknown. The best way to describe these multiple applications is that Ms. Chan was asking the judge to make interim directions pending the hearing of the petition. I will, therefore, refer to these applications as Ms. Chan's applications for directions.

[9] Justice Baker dismissed Ms. Chan's applications for directions. Ms. Chan also sought an anonymity order. In summary, Baker J. made the following orders:

1. setting aside the sealing order;
2. refusing the application for an anonymity order;
3. refusing Ms. Chan's applications for directions;
4. that Ms. Chan must pay FHA costs of the applications in the amount of \$750 (the judge did not order costs to be paid forthwith, as Ms. Chan made representations about her inability to pay);
5. directing that the respondents provide Ms. Chan a paper copy of any materials filed moving forward; and
6. dispensing with Ms. Chan's signature on the form of order.

The Majawa J. Order (26 September 2025)

[10] The second interlocutory decision under appeal is the order of Justice Majawa made on September 26, 2025 (the "Majawa J. Order").

[11] Justice Majawa's decision is related, in part, to two *ex parte* applications filed by Ms. Chan on September 15 and 23, 2025, respectively, which came to the attention of the respondents.

[12] On September 15, 2025, Ms. Chan filed a notice of application seeking, among other things, to anonymize the court file and set aside Baker J.'s costs order. The application was adjourned because Ms. Chan had not served the respondents.

[13] On September 23, 2025, Ms. Chan filed another application seeking the same remedy as in her application on September 15. On September 26, FHA filed an application seeking an adjournment of Ms. Chan's applications on the basis that they were an abuse of process, *res judicata*, and a collateral attack on the Baker J. Order.

[14] On September 26, 2025, in Ms. Chan's absence, Justice Majawa:

1. adjourned Ms. Chan's September 15 and 23 applications to the petition hearing;
2. directed that the respondents are not obliged to respond to Ms. Chan's September 23 application;
3. prohibited Ms. Chan from filing any further application in the petition without leave of the court or consent of the respondents;
4. required Ms. Chan to provide eight business days' written notice to the respondents of her intention to seek leave;
5. awarded costs of the application against Ms. Chan in the fixed amount of \$1,000, payable forthwith; and
6. dispensed with Ms. Chan's signature on the form of order.

[15] I pause to note that I am advised that, as of the date of Majawa J.'s order, Ms. Chan had already filed some 29 affidavits with the court.

Court of Appeal

[16] On October 2, 2025, Ms. Chan filed a notice of appeal of the Baker J. Order. On October 28, 2025, she amended the notice of appeal to indicate she is seeking leave. FHA submits that leave is not required from the decision not to grant a sealing order and/or an anonymity order and costs, although the other aspects of the order are not appealable.

[17] On October 10, 2025, Ms. Chan filed a notice of appeal of the Majawa J. Order. She did not seek leave to appeal despite Registrar Outerbridge advising the parties, on October 16, that they should consider whether leave is required. FHA submits that leave is required, and Ms. Chan is now out of time to bring a leave application.

[18] Both appeals have been ordered heard at the same time and so are proceeding in tandem.

[19] FHA now seeks to quash parts of Ms. Chan's appeals for lack of jurisdiction on the basis she is challenging unappealable orders.

[20] I will first address FHA's applications before addressing Ms. Chan's applications for a sealing order and no fees.

Issue 1: Quash Aspects of the Appeal

Legal Framework

[21] Pursuant to s. 20(2)(a) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [*Act*], a justice may, on application, quash an appeal on the basis that the court lacks jurisdiction.

[22] As a statutory court, this Court derives its appeal jurisdiction from statute. Section 13(1)(a)(ii) of the *Act* provides that an appeal may be brought to this Court from an order of a judge of the Supreme Court. The *Act* defines an order as including a judgment, a decree, and an opinion, advice, direction, determination, decision or declaration that is specifically authorized or required under an enactment to be given or made: s. 1(1).

[23] Not every order or pronouncement made by a judge is an appealable order. Some court orders are more in the nature of evidentiary or procedural rulings or case management or courtroom management directions. These are not considered by this Court to be orders subject to appeal. The mere fact that a document is filed in the Supreme Court and described as an order does not necessarily make it an order

subject to appeal in this Court. Rather, this Court looks at the substance of the event giving rise to the order. Rulings or directions made mid-application or mid-trial are usually reviewable after the trial decision or the full application decision, unless otherwise provided for in the *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*]. In this regard, see: *Skyllar v. The University of British Columbia*, 2022 BCCA 138; *First Majestic Silver Corp. v. Davila Santos*, 2012 BCCA 5; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2017 BCCA 287; *Flynn v. Woodward*, 2023 BCCA 45 (Chambers).

[24] Unfortunately, Ms. Chan takes issue with decisions of judges in the nature of proper case management. She has not only failed to consider the practical benefits of appealing such orders; she has also failed to appreciate the distinction between substantive orders that are appealable and procedural orders that are not. She has not made submissions challenging the application to quash.

[25] I am of the view that certain terms of the orders which Ms. Chan seeks to appeal are not appealable.

[26] With respect to the Baker J. Order, the only appealable orders are:

1. the setting aside of the sealing order;
2. the denial of the request for an anonymity order; and
3. the award of costs of \$750 in any event of the cause.

[27] Justice Baker's direction dispensing with Ms. Chan's signature on the order is not appealable: see *Flynn* at para. 21.

[28] Ms. Chan's appeal of other orders of Baker J. refusing her applications for directions are similarly not appealable. These orders were in the nature of the exercise of case management discretion pending final determination of the proceeding. Ms. Chan's appeal of these orders is, therefore, hereby quashed.

[29] The only orders made by Majawa J. that could be subject to an application for leave to appeal are the orders:

1. adjourning Ms. Chan's September 15 and 23 applications to the petition hearing; and
2. awarding \$1,000 costs in any event of the cause.

[30] The other orders made by Majawa J. are not appealable, as they all were simply procedural and part of the court's inherent jurisdiction to control its process. I quash Ms. Chan's appeal of these other orders made by Majawa J.

[31] Ms. Chan requires leave to appeal from the adjournment order and related costs order of Majawa J. She has not sought leave and is out of time to do so. Consequences will follow from this, but FHA does not seek relief in that regard today.

Issue 2: Security for Costs

Legal Framework

[32] A single justice has jurisdiction to order security for costs of the appeal and costs in the proceedings giving rise to the appeal: s. 34(1)(a) and (b) of the *Act*, respectively.

[33] Under s. 34(2), a payment of security must be in "the amount and form determined by the justice".

Costs of the Appeal

[34] The appellant against whom the order is sought bears the onus of demonstrating why security for costs of the appeal should not be ordered: *Lungu v. Cabrita*, 2025 BCCA 105 at para. 15 (Chambers).

[35] The relevant considerations are: (1) the appellant's financial means, (2) the merits of the appeal, (3) the timeliness of the application, and (4) whether the costs will be readily recoverable: *Ferguson v. Ferstay*, 2000 BCCA 592 at para. 7

(Chambers). The ultimate question, however, is whether an order for security would be in the interests of justice: *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers).

Costs of the Underlying Supreme Court Orders

[36] In contrast to applications for security for costs of the appeal, in applications for costs of the underlying Supreme Court orders, the onus rests with the applicant to establish that it is in the interests of justice to order security for costs: *Focken v. Fraser Health Authority*, 2023 BCCA 81 at para. 27 (Chambers).

[37] In determining the interests of justice, the Court should consider: (1) the merits of the appeal; (2) the effect of such an order on the ability of the appellant to continue the appeal; and (3) the prejudice caused to either party by granting or dismissing the application: *Focken* at para. 27.

[38] There is no formal requirement to establish prejudice, but it remains “an important consideration to the exercise of discretion” granted to a judge by s. 34(1)(b): *England Securities Ltd. v. Ulmer*, 2023 BCCA 11 at para. 32 (Chambers). Prejudice can be shown through a lack of exigible assets, a pattern of “expense-causing tactics”, or conduct causing delay and cost throughout the litigation: *Seikhon v. Dhillon*, 2020 BCCA 185 at para. 27.

Analysis

[39] I conclude it is in the interests of justice to order security for costs of these appeals. Regardless of her actual financial situation, security should be posted because Ms. Chan’s appeals are so clearly without merit, and her litigation conduct indicates a likelihood that she will engage in expense-causing tactics. I say this because of her conduct in the court below as well as her conduct in this Court in filing appeals from orders that are not appealable, filing numerous affidavits and documents of questionable relevance, and referring to AI-generated caselaw that does not exist.

[40] Not only has she attempted to appeal unappealable procedural directions, Ms. Chan has also not identified errors in the appealable orders that support an

arguable appeal. With respect to the Baker J. Order, Ms. Chan has not demonstrated any arguable merit in her position that Baker J. erred in declining to seal her file, grant an anonymity order, or in her costs award.

[41] Court proceedings are presumptively open to the public: *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 37. The party seeking a sealing order must show that:

1. court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk;
and
3. as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate at para. 38.

[42] A sealing order is discretionary, and the bar for obtaining the order is high: *Sherman Estate* at para. 34. The mere fact that court openness is “disadvantageous, embarrassing or distressing” to certain individuals will generally, on their own, not warrant interference: *Sherman Estate* at para. 63.

[43] Ms. Chan has not demonstrated any reason for Baker J. to have concluded that this litigation poses an extraordinary invasion of privacy such as to create a serious risk to an important public interest. Rather, the loss of privacy Ms. Chan faces is the same as many other litigants must endure in the interest of the open court principle. Such openness also serves as a deterrent to litigation misconduct.

[44] The costs award is also discretionary, and there were sound reasons for the order.

[45] With respect to the appeal of the Majawa J. order, Ms. Chan would first need to seek leave, which she has not sought. She seeks to appeal an adjournment

decision and a costs award, both of which are discretionary decisions that are subject to deference. It is especially difficult to appeal an adjournment order, as there is no practical impact on a party's rights arising by mere deferral of the court hearing. I see no likelihood that this Court would interfere with those orders.

[46] FHA submits that costs will not be readily recoverable if it succeeds on appeal, and Ms. Chan does not provide any evidence to the contrary. FHA points out that Ms. Chan has not made efforts to pay the \$1,000 costs award ordered by Majawa J. as payable forthwith.

[47] I accept that the application for security for costs was timely and that costs will not be readily recoverable.

[48] FHA estimates the costs of the appeals will be over \$14,000 on the lower end of the range and has provided a bill of costs to support this estimate. Although the bill of costs appears reasonable, taking into account Ms. Chan's lack of income I order that Ms. Chan post security for costs of the appeals in the amount of \$10,000.

[49] Each appeal will be stayed pending the posting of the security for costs of the appeals.

[50] Should Ms. Chan not post the security for costs by January 6, 2026, FHA may apply to dismiss the appeals as abandoned.

[51] In my view, having ordered security for costs of the appeals, again given Ms. Chan's evidence that she is not receiving income, it is not necessary or in the interests of justice to order additional security of the trial proceedings to be posted.

Issue 3: Sealing Order

[52] I have already referred to the proposition that court proceedings are presumptively open to the public. The party seeking a sealing order bears an onus to meet the test set out in *Sherman Estate*. A sealing order is discretionary, and the bar

for obtaining the order is high. The mere fact that court openness is embarrassing or distressing does not, on its own, warrant interference.

[53] Ms. Chan has raised concerns about her privacy but without any real details as to how disclosure of the court records related to the orders under appeal would put her privacy or safety at risk. She seeks to seal the entire file without limit.

[54] This is not at all like the case of *C.A.S. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2024 BCCA 315 (Chambers), where a justice in chambers heard arguments for a full sealing order in a case where the information in the file related to intimate partner violence and adult and child sexual violence. The justice declined to seal the entire file, recognizing that there was an anonymity order in that case. The justice decided to seal, in this Court, only those medical records that had already been or would, in the future, be sealed in the ongoing Supreme Court file.

[55] Here, there is no evidence of a similar nature, and Ms. Chan seeks a very broad order sealing the entire file.

[56] As emphasized by the Supreme Court of Canada, sealing orders are extraordinary. Ms. Chan has not provided evidence to support the conclusion that such a measure is necessary in this case.

[57] Furthermore, in my view, it would be contrary to the public interest to shield Ms. Chan's identity and her conduct in the litigation from the open court principle.

Issue 4: No Fees

Legal Framework

[58] Under R. 85(6) of the *Rules*, a justice may make an order that no fees are payable if they find that:

- a) the payment of court fees would cause undue hardship; and

b) the appeal is not bound to fail; scandalous, frivolous or vexatious; or an abuse of the process of the Court.

[59] The “bound to fail” standard is lower than the previous standard of “lack of merit”, which, itself, was not a high standard: *Harrison v. Law Society of British Columbia*, 2022 BCCA 316 at para. 5 (Chambers).

[60] In her Form 22, Ms. Chan states that she has a disability and is unemployed. I accept these submissions.

[61] Counsel for FHA alleges that Ms. Chan has not been forthright with the Court about the full picture of her financial situation. FHA has provided a title search of property owned by Ms. Chan. Ms. Chan has conceded before me that she owns property.

[62] Based on the limited information regarding Ms. Chan’s finances and her current unemployment, I am willing to accept that she would have difficulty paying court fees. However, I conclude that her appeals are bound to fail for the reasons already given.

[63] I therefore do not grant her a no fee order.

Disposition

[64] In conclusion, I grant FHA’s application to quash parts of the appeals as I have already described.

[65] I grant FHA’s application for security for costs of the appeals in the amount of \$10,000. The appeals will be stayed pending the posting of the security for costs. Should Ms. Chan not post the security for costs by January 6, 2026, FHA may apply to dismiss the appeals as abandoned.

[66] I do not grant the application for security for costs of the trial proceeding.

[67] I dismiss the appellant’s applications for a sealing order and a no fee waiver.

[68] I am satisfied that the bill of costs presented to me by FHA for today's hearing is reasonable, and I order costs of today's hearing in the amount of \$4,000.

"The Honourable Justice Griffin"