COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Nielsen v. Beland,*
2025 BCCA 458

Date: 20251219
Docket: CA50479

Between:

Johan Nielsen

Appellant
(Non-party)

And

Colleen Beland, Greg Cowan, Brendan Keys and Birgit Keys

Respondents
(Plaintiffs)

Before: The Honourable Chief Justice Marchand
The Honourable Madam Justice Horsman
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated February 18, 2025 (*Beland v. Stave Gardens Community Association*, New Westminster Docket 251349).

The Appellant, appearing in person:	J. Nielsen
Counsel for the Respondents:	J.A. Morris J.M.P. Yonge
Place and Date of Hearing:	Vancouver, British Columbia October 30, 2025
Place and Date of Judgment:	Vancouver, British Columbia December 19, 2025

Written Reasons by:
The Honourable Madam Justice Horsman

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

Summary:

The appellant is a member, and former interim director, of a society. The respondents filed a notice of civil claim seeking remedies in relation to an ongoing dispute over the governance of the society. They then obtained an ex parte order suspending the operation of the society. The appellant applied for orders adding himself as a party to the proceeding and setting aside the ex parte order, and for other forms of related relief. The respondents later filed a notice of discontinuance and consent order setting aside the ex parte order. The appellant applied to recover the costs he incurred in the discontinued proceeding. The respondents cross-applied for special costs against the appellant and a finding that he is a vexatious litigant. The chambers judge dismissed the appellant's application and granted the relief sought by the respondents. The appellant argues on appeal that the hearing before the chambers judge was procedurally unfair.

Held: Appeal allowed. The appellant was denied procedural fairness because he was not provided with an opportunity to be heard on the applications. The orders of the chambers judge are set aside. The respondents' application is dismissed because there is no basis in the record for the award of special costs or the finding that the appellant is a vexatious litigant. The appellant's application for costs is remitted to the Supreme Court for a new hearing.

Reasons for Judgment of the Honourable Madam Justice Horsman:

[1] The appellant, Mr. Nielsen, appeals the order of a chambers judge finding that he is a vexatious litigant, ordering him to pay special costs, and dismissing his application for costs.

[2] This proceeding has a complicated procedural history that must be understood to provide context to the orders that were made and to Mr. Nielsen's arguments on appeal. I will begin with a review of the chronology of relevant events.

Procedural history

The notice of civil claim

[3] The underlying proceeding arose in the context of a dispute over the control and business of a society, the Stave Gardens Community Association (the "Society"). Mr. Nielsen and the respondents have all, at different times, been directors of the Society.

[4] The respondents were involved in a process to restore the Society and recover property that had escheated to the Attorney General. Having recovered the property, they then sold it to pay off a tax liability leaving proceeds of approximately $260,000. Other members claimed that the respondents had not been transparent in their dealings with the property, and they posted allegedly defamatory comments about the respondents on social media. In September 2023, the respondents filed a defamation action against other members of the Society, not including Mr. Nielsen.

[5] On September 27, 2023, other members of the Society voted to remove the respondents from the board of directors. The respondents objected to this process. They became concerned that the new board of directors would use Society resources to fund their defence of the defamation action.

[6] On October 23, 2023, the respondents filed a notice of civil claim. All four respondents were named as plaintiffs and the Society was named as the defendant. The respondents set out the two orders they sought in the proceeding in Part 2 of the notice of civil claim:

a) an order suspending all business of the Society pending the resolution of the defamation action, except to ensure that it remains in good standing by providing an annual filing to the BC Societies Registry; and

b) an order requiring the Society's directors to reinvest all assets of the Society into term deposit accounts for a period of no less than three years or until the resolution of the defamation proceeding.

[7] Under Part 3 Legal Basis in the notice of civil claim, the respondents referred to various bylaws of the Society.

[8] The respondents were self-represented when they filed their notice of civil claim. They continued to represent themselves through a series of interlocutory applications heard in October and November 2023.

The October 26, 2023, hearing before Taylor J.

[9] On October 26, 2023, the respondents filed an *ex parte* application seeking the orders set out in Part 2 of the notice of civil claim. The factual and legal basis of the notice of application was identical to that set out in the notice of civil claim. The respondents estimated that the application would require 45 minutes to be heard. They did not serve the notice of application, or the notice of civil claim, on the defendant Society.

[10] The application came on for hearing the same day before Taylor J. in chambers. A transcript of this hearing is in the record on appeal. Justice Taylor inquired as to why the application was without notice. The respondent Mr. Cowan, who provided submissions on behalf of the respondents, stated that the Society had an Annual General Meeting scheduled for the following week. Justice Taylor expressed concern about his authority to grant the relief sought. By way of illustration, he stated:

> And suspending the business of the community society, that's -- I just don't see that unless there's some -- under the *Societies Act*, some -- some action by the board or the society that -- that allows you to complain and -- and -- and make that application.
>
> …
>
> So I don't know if you need to go back and -- and, you know, consult with a lawyer as to, you know -- a lawyer that's -- that's versed in the *Societies Act* or the corporation -- *Societies Act*, not the *Corporations Act* as you've rightly said. So, you know, I -- I think then it's just a matter of amending your application or just, you know, using the same materials perhaps but just having the notice of application that says here's the authority upon which such an order can be based.

[11] The transcript reflects that Taylor J. provided reasons for judgment on the application. However, those reasons do not appear to have been transcribed and there is no entered order. The clerk’s notes of the hearing state that the application was “dismissed”.

The November 1, 2023, hearing before the chambers judge

[12] On November 1, 2023, the respondents brought their application a second time in chambers, again on an *ex parte* basis. The application was heard by the chambers judge—the same chambers judge who issued the orders under appeal. It does not appear that the respondents amended their material, other than including a copy of the *Societies Act*, S.B.C. 2015, c. 18. During the hearing, Mr. Cowan advised the chambers judge that the respondents "went through a process" with Taylor J., but "we just ran out of time". It appears from the record that this statement was incorrect. The respondents did not run out of time before Taylor J., rather the application was dismissed.

[13] Mr. Cowan went through his version of the facts. He advised the chambers judge that he and the other respondents were targeted by a "ghost board of directors" who were trying to wrest control from them. Mr. Cowan stated that the Society had an annual general meeting scheduled for that evening, and he feared that the rogue members would try to "move everything forward". As to the authority for the relief sought, Mr. Cowan referred to the fact that there was a copy of the *Societies Act* in the application material, but he made no submissions as to what provisions of that statute the respondents relied upon.

[14] The chambers judge granted the orders sought without providing reasons. The entered order provided:

> 1. All business of the Stave Gardens Community Association (SGCA, Society) is suspended pending the resolution of the Notice of Civil Claim (filed on September 18, 2023, S-236398 Vancouver Registry) except to ensure the Society remain in good standing by providing an annual filing to BC Societies.
> 2. That the Directors for the SGCA (the Society) reinvest all assets of the Society into the term deposit accounts they are currently invested in, for a period of no less than three (3) years or until the resolution of the Notice of Civil Claim (filed on Sept 18, 2023, S-236398 Vancouver Registry) A nominal amount of $10,000.00 should be retained in the Society's chequing account for Society business, with annual expenses over 3 years of $4294.95 being included in that amount.

(the "November 1 Order")

[15] I note that the effect of the November 1 Order was to grant the respondents the entirety of the relief they sought in the notice of civil claim on an *ex parte* interlocutory application before the notice of civil claim had even been served on the defendant or any member of what Mr. Cowan had characterized as the ghost board.

Mr. Nielsen's November 9, 2023, application

[16] On November 9, 2023, Mr. Nielsen, who was self-represented, filed an application seeking a variety of relief, including orders adding him as a party to the proceeding and setting aside the November 1 Order. Mr. Nielsen also sought to regularize the Society's annual general meeting that was held on the evening of November 1, after the chambers judge had ordered that the Society's business was suspended. In the notice of application, Mr. Nielsen described his interest in the proceeding in these terms:

> 1. The applicant Johan Nielsen is a resident of the Stave falls community…and a member in good standing of the Stave Gardens Community Association (the Association). He is not one of the named Defendants and probably not one of the 12 John Does in the civil action dated September 18, 2023 (the Defamation Action) because his name is not mentioned in it. With that formality aside I will switch to the first person for sake of brevity.
> 2. I ask to be heard because the order of the court has invalidated many hours I have invested in trying to resolve the long standing divisions in our community first as a director of the Association (November 2022 to March 2023) and then as a member of the interim board of the Association (September 27, 2023 to November 1, 2023). Depending on the decision of the court perhaps I still am.
> 3. The order of the court suspends the normal function of my community association because of a dispute between private individuals for up to 3 years. I believe their dispute should not affect me nor have any bearing on the normal function of the Association. The Plaintiffs seem to imply that it is just a few people who want them to relinquish control. When 75 people show up at a meeting to vote them out of office it is the community speaking loudly and clearly. That actually happened on September 27, 2023 despite the Plaintiffs sending out several cancellation notices.
> 4. The in chambers hearing of the application dated Oct 26, 2023 on November 1, 2023 (the Hearing) was without notice to the members of the Association or the interim board of the Association so only one side of the issue was heard. Both groups of individuals are affected by the orders sought. They were not served.

[17] The notice of application listed an original hearing date of November 15, 2023, and then an amended hearing date of November 23, 2023. Mr. Nielsen appears to have had difficulty serving the respondents. His application did not proceed on either of these dates.

The November 22, 2023, hearing before Verhoeven J.

[18] On November 22, 2023, the respondents filed another *ex parte* application seeking an order recognizing the respondents as "the rightful Directors of the Society". The application was heard before Verhoeven J. on the same day. Justice Verhoeven expressed understandable confusion as to what had transpired to date and concern that there was no other party before the Court. When he asked Mr. Cowan why the Society had not been served, Mr. Cowan responded:

> That's the way we did the other one [the application before the chambers judge]. And we are the only board of directors, so it would be notice to ourselves because there is no membership at this point, you know, with the society suspended, we are the only four members.

[19] In other words, having obtained an *ex parte* order from the chambers judge suspending the operation of the Society, the respondents thereafter took the view that they were the only ones who could represent the Society. It is not clear to me how the respondents could have interpreted the November 1 Order as having such an effect. The November 1 Order suspended the operation of the Society, but said nothing about the respondents' status as directors.

[20] Justice Verhoeven expressed the view that the action and the application were "misconceived", and he urged the respondents to get legal advice. He dismissed the application.

Mr. Nielsen's notices of application filed in December 2023

[21] On December 4 and 13, 2023, Mr. Nielsen filed further notices of application seeking the same relief as sought in his application of November 9, 2023. It appears that Mr. Nielsen continued to have difficulty serving the respondents and believed he

needed to file a new application if the hearing did not proceed on the date indicated in the notice of application.

[22] On December 19, 2023, Mr. Nielsen applied for and obtained an order for substituted service on the respondents.

[23] On December 22, 2023, Mr. Nielsen filed a notice of application seeking orders, among other things: modifying the November 1 Order to allow the Society to retain a lawyer to defend the action; appointing him as the Society's representative in the meantime; and adding him as a third party to the proceeding.

The respondents retain counsel

[24] On December 29, 2023, the respondents filed a notice of appointment of a lawyer to act for them in the proceeding.

[25] In early January 2024, the respondents filed responses to Mr. Nielsen's applications of December 13 and 22, 2023. The respondents asserted, among other things, that: (1) Mr. Nielsen did not have standing because he was not a party to the proceeding; (2) the orders they sought in the underlying application were appropriate remedies under s. 102 of the *Societies Act* in response to "the unfairly prejudicial actions or threatened actions" of certain members in relation to the assets of the Society; and (3) the respondents had a reasonable expectation that the Society's assets would be used in accordance with the Society's Constitution and Bylaws.

[26] This was the first time that the respondents asserted that s. 102 of the *Societies Act* provided authority for the November 1 Order. The assertion raises procedural difficulties. First, the notice of civil claim does not cite s. 102 of the *Societies Act* as the legal basis for the claim. Second, while s. 102 of the *Societies Act* authorizes a member of a society to apply to court to remedy conduct that is unfairly prejudicial, R. 2-1(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, provides that such a proceeding must be commenced by petition. Third, regardless of the form of proceeding, no explanation was offered for the respondents' failure to serve the Society with their claim. Fourth, final remedies under s. 102 of the

Societies Act should not be sought on an *ex parte* interlocutory application when the affected society has not even been served with the original pleading.

The January 2024 settlement discussions

[27] Mr. Nielsen's December 13 and 22 applications were originally scheduled for hearing in January 2024. The hearing date was adjourned by consent to allow Mr. Nielsen and the respondents' counsel to engage in discussions directed at achieving a consent resolution of the issues. In an email sent to Mr. Nielsen on January 9, 2024, the respondents' counsel stated:

> I confirm that I believe the current Without Prejudice discussions are being conducted by the plaintiffs with serious intent to arrive at what is essentially a mediated settlement between yourself and the plaintiffs. These discussions are not a delaying tactic. I ask that you adjourn generally the proceeding scheduled for tomorrow in order to give those discussions the best possible chance of success. Should those negotiations fail for any reason we agree you can bring back both applications with 4 days notice, at a time mutually agreed upon by the parties.

[28] These discussions concluded without a settlement for reasons that are not clear on the record. Mr. Nielsen then took steps to re-set his applications.

The notice of discontinuance and consent order

[29] On January 17, 2024, the respondents filed a requisition for a consent order containing two terms: (1) the November 1 Order is set aside; and (2) the Society is directed to "resume normal business activities and operations as of the date of this order". The requisition indicated that "[e]ach party affected has consented to the order". The consent order was signed on behalf of the plaintiffs by their counsel, and by the respondent Colleen Beland—who was one of the plaintiffs—purporting to act as a representative of the defendant Society.

[30] On February 6, 2024, the respondents filed a notice of discontinuance of the civil action.

[31] The consent order was signed by a judge on February 12, 2024, and entered the same day (the "Consent Order"). It is unclear how a consent order could properly

have been issued in a proceeding that no longer existed: *DLC Holdings Corp. v. Payne*, 2021 BCCA 31 at para. 50 [*DLC Holdings*]. However, this is not an issue that must be resolved on this appeal.

[32] On February 16, 2024, the respondents added to the confusion by filing an application, returnable on March 5, 2024, seeking an order that the term of the November 1 Order that suspended the business of the Society—now set aside by the Consent order entered on February 12—be cancelled as of February 6, 2024. The application was stated to be brought pursuant to R. 22-7 of the *Supreme Court Civil Rules* to "correct an irregularity". The nature of the irregularity was not identified in the notice of application. The notice of application also did not articulate the basis for the court's jurisdiction to entertain the application after the notice of discontinuance had been filed: *DLC Holdings* at para. 35.

[33] The respondents did not take the position that Mr. Nielsen lacked standing to respond to their February 16 application. On the contrary, the application stated that it was on notice to Mr. Nielsen. Mr. Nielsen requested an explanation of the nature of the irregularity from counsel for the respondents so that he could consider his position. Counsel replied as follows:

> As set out in the application, we are applying pursuant to Rule 22-7 to correct any possible procedural irregularity if there is one. There may be no irregularity, but we would like that clarified.

[34] Understandably, Mr. Nielsen remained confused about the nature of the procedural irregularity that was the subject of the respondents' application. He requested that the respondents amend their application to particularize the irregularity so that he could properly respond to it. This was not done.

[35] On February 27, 2024, Mr. Nielsen filed an application response opposing the relief sought on the basis that he needed an adjournment to properly respond to it. In his application response, Mr. Nielsen stated that the application "sufficiently confuses [Mr. Nielsen] that he asks for an adjournment to seek legal advice and do further research".

[36] On February 28, 2024, Mr. Nielsen filed a notice of application, returnable March 12, 2024, seeking orders: setting aside the November 1 Order; setting aside the Consent Order; suspending the discontinuance of the action until the Society had filed a response and counterclaim; declaring that the November 1 Order appeared to have been obtained fraudulently; and providing directions regarding the operation of the Society.

The hearings in March 2024

[37] On March 5, 2024, the respondents' application of February 16, 2024, came on for hearing. Justice Girn granted the application and issued an order that the term of the November 1 Order that suspended the operation of the Society be cancelled as of the filing of the notice of discontinuance on February 6, 2024. There is no transcript of the appearance before Girn J. As such, the record on appeal contains no information regarding: (1) the nature of the irregularity the respondents were attempting to cure; (2) why the irregularity impacted only one term of the November 1 Order; and (3) what jurisdiction the court had to make an order in a discontinued action.

[38] On March 12, 2024, Mr. Nielsen's application of February 28, 2024, came on for hearing before the chambers judge—again, the same chambers judge who issued the orders under appeal. There is a transcript of this hearing in the record. The hearing was brief. The chambers judge questioned Mr. Nielsen about whether he understood the effect of the notice of discontinuance. Mr. Nielsen stated that he did understand it, but since the respondents were permitted to bring an application to correct irregularities after the notice of discontinuance was filed, he thought the same process was open to him. Counsel for the respondents clarified that the application before Girn J. was intended to address uncertainty among Society members as to the effect of the notice of discontinuance on the interim order. The following exchange occurred:

> THE COURT: …So, sir, the action is gone.
>
> J. NIELSEN: Understood.
>
> THE COURT: And Madam – the fact that Madam Justice Girn simply confirmed it doesn't restore anything, and it doesn't give you a right to act.
>
> J. NIELSEN: Except that application was brought based –
>
> THE COURT: It doesn't give you a right to act. So this matter simply discontinued, and that's the end of it. Thank you.
>
> J. NIELSEN: Thank you.
>
> THE COURT: I have no – so we're clear. I have no authority to do anything with this action. It's gone.
>
> J. NIELSEN: What I don't understand is how Justice Girn was able to hear an application.
>
> THE COURT: Justice Girn was just dealing with a procedural aspect, and it was dealt with.
>
> J. NIELSEN: Well, I'm – I would like to suggest that I'm dealing with procedural aspects as well.
>
> THE COURT: You're not a party is another problem. So get some legal advice, but this action is gone. Thank you.
>
> J. NIELSEN: Thank you, sir.

[39] At this point, counsel for the respondents intervened to advise the chambers judge that Mr. Nielsen had two outstanding applications—his applications of December 13 and 22, 2023. Counsel requested that the chambers judge provide direction to Mr. Nielsen that those applications should not be pursued. The chambers judge then had this exchange with Mr. Nielsen:

> THE COURT: Don't waste anybody's time.
>
> J. NIELSEN: Yep. I plan to adjourn those generally.
>
> THE COURT: Well, you can't adjourn them. They're simply gone.
>
> J. NIELSEN: They're gone. Okay. I do not need to adjourn them.
>
> THE COURT: Yeah. Just confirm you're not going to proceed with them.
>
> J. NIELSEN: I am not going to proceed with them.

[40] Thereafter, Mr. Nielsen did not proceed with either application.

The costs/vexatious litigant applications

[41] On December 23, 2024, Mr. Nielsen filed an application seeking an order that the respondents pay the costs he incurred in the proceeding as a result of the discontinuance as special costs. He relied on R. 9-8(4) of the *Supreme Court Civil Rules*, which provides that a party wholly discontinuing a proceeding against a party must pay the costs of that party up to the time of the discontinuance. Mr. Nielsen asserted in his application that an order for special costs was warranted for two reasons:

(1) The respondents had engaged in an "abuse of process and perjury" to "fraudulently" obtain the November 1 Order. The alleged misconduct consisted of the respondents' misrepresentation to the chambers judge that Taylor J. had "run out of time" to deal with their application on October 26, 2023, when in fact the application was dismissed.

(2) The respondents were in contempt of court in filing a requisition to obtain the Consent Order. Mr. Nielsen alleged that this was a contempt of court because at the time the requisition was filed, the order suspending the affairs of the Society was still in effect. Therefore, it was a breach of the November 1 Order for the respondents to purport to conduct business on behalf of the Society.

[42] The respondents' application response did not address the substance of Mr. Nielsen's application. Instead, the respondents asserted that: (1) Mr. Nielsen did not have standing to seek costs because he was not a party; and (2) his application contravened the direction of the chambers judge at the March 12, 2024 hearing that Mr. Nielsen "was not to proceed with any more applications".

[43] On January 28, 2025, the respondents filed a cross-application seeking orders that:

(1) Mr. Nielsen, or anyone on his behalf, shall not bring or commence any legal proceeding in any court in British Columbia without leave of the Court;

(2) In the alternative, that Mr. Nielsen, or anyone on his behalf, shall not bring or commence further legal proceedings against the respondents without leave of the Court; and

(3) Mr. Nielsen pay lump sum special costs for this application due to his "reprehensible conduct".

[44] The respondents alleged that Mr. Nielsen had commenced a series of "improper and vexatious actions" that had no merit. The respondents further asserted that Mr. Nielsen had disregarded the direction of the chambers judge that he had no standing in the proceeding and that he should not proceed with any further applications.

The February 18, 2025, hearing before the chambers judge

[45] The two applications came on for hearing before the chambers judge on February 18, 2025. This is the hearing that resulted in the orders under appeal.

[46] The chambers judge did not provide reasons for judgment. The respondents say that it is possible to discern the reasons of the chambers judge from the hearing transcript. With that submission in mind, I will review the transcript in some detail.

[47] The hearing began with the chambers judge questioning Mr. Nielsen about his standing in the proceeding. Mr. Nielsen indicated that he believed he was a party affected by the November 1 Order and therefore had standing to apply to set the orders aside under R. 8-5(8) of the *Supreme Court Civil Rules*. He sought to recover the costs he had incurred in the proceeding. The chambers judge observed that making an order for costs in favour of a non-party was "a very difficult concept" and that he would require more material before making such an order. Mr. Nielsen

inquired as to whether the chambers judge wished to hear the remainder of his submissions on costs. The chambers judge stated:

> THE COURT: There's – there's no point in it, sir. I would do a disservice to the other people in the courtroom.
>
> All right. The application's dismissed for reasons which are obvious. The applicant is not a party, and the action has been discontinued. Bringing this application would not be appropriate in all those circumstances. Thank you.

[48] The hearing then turned to the respondents' application. Counsel for the respondents made the following submission regarding the conduct of Mr. Nielsen that was said to justify a vexatious litigant order and an order for special costs of the application:

> CNSL S. BRAUN: We do have an application before you as well based on this being vexatious litigation. And the fact that we were before you last year, we were before Justice Girn last year – and this is pretty much a relitigation of the same one that we were before you on last year. And Mr. Nielsen did not seem to understand then that he wasn't to bring more applications in this discontinued action and did so without any merit, without any chance of success, and it is costly to my clients for me to keep coming and appearing on applications Mr. Nielsen is bringing a year after it was discontinued, a lot further than that, after the order that he still seems to take issue with. And so we are seeking an order that he not be allowed to bring any more proceedings without leave of the court.
>
> [Emphasis added.]

[49] The chambers judge asked Mr. Nielsen what he had to say in response. Mr. Nielsen requested an opportunity to make submissions as to "how we got here". The transcript then reflects this exchange:

> THE COURT: Are you going to persist in this?
>
> J. NIELSEN: I am not going to persist in this except to ask that you hear the circumstances of –
>
> THE COURT: Sorry.
>
> J. NIELSEN: -- what happened.
>
> THE COURT: Sir, I've already told you I'm dismissing this application today. Are you going to persist in this?
>
> J. NIELSEN: In what way, sir?
>
> THE COURT: Are you coming back again?

> J. NIELSEN: Never. I was told – I was told I could not bring back those applications in our last hearing, and I did not. I thought –
>
> THE COURT: You just duplicated them and thought that was fine.
>
> J. NIELSEN: This is – this is – …for costs.
>
> THE COURT: Come on.

[50] Mr. Nielsen again requested an opportunity to speak to the history of the proceeding. The chambers judge stated, "that's all behind us". This exchange then followed:

> J. NIELSEN: ... Perhaps if we proceeded with the vexatious litigation [application] I would have the opportunity there to explain the circumstances.
>
> THE COURT: And you'd have an opportunity there for a judge to get wound up and give you a whack.
>
> J. NIELSEN: Sorry, sir.
>
> THE COURT: No, I mean, it – this action's gone. I explained that to you a year ago. Why are you back here? Unless you're just trying to spend somebody else's money.
>
> J. NIELSEN: The fact is that I misunderstood that a – that costs after discontinuance could never be applied for.
>
> THE COURT: Well, they can be applied for, but they – they're very unique circumstances, and you're not close to any of them.
>
> J. NIELSEN: That's – that's why I'm here. But the question –
>
> THE COURT: Let me – let me say two things to you. First of all, what you're doing here is what's called vexatious – vexatious litigation. The matter's already been dismissed. The action's been discontinued. There's nothing before the court, and somehow you're pulling the bandage off. And it's – it's called vexatious litigation for that very purpose. Do you – do you have any idea what it costs to open this courtroom today?
>
> J. NIELSEN: I understand it's very expensive, sir.
>
> [Emphasis added.]

[51] The chambers judge explained to Mr. Nielsen the costs involved in the operation of a courtroom. He then continued:

> THE COURT: So it strikes me that I've got to impose some kind of penalty for this behaviour. I suspect 12,000 is too much. What do you say it should be?
>
> J. NIELSEN: Well, a large number of the cases were never heard, if that makes –
>
> THE COURT: Sorry.
>
> J. NIELSEN: -- a portion –

> THE COURT: You're missing the point then, sir. You tied up the courtroom –
>
> J. NIELSEN: Well –
>
> THE COURT: -- time after time for nothing.
>
> J. NIELSEN: Yes.
>
> THE COURT: What do you say it should be?
>
> J. NIELSEN: 3,000.
>
> THE COURT: All right. That's the order I'm making then. There will be an order that you pay for the vexatious behaviour that you have shown towards the court. There will be a costs order. I'm going to fix it in a lump sum of $3,000, and it'll be payable within 45 days from today. Are we understood?
>
> J. NIELSEN: I understand, sir.

[52] The chambers judge then engaged in an exchange with counsel for the respondents to clarify the precise terms of the vexatious litigant order.

[53] The chambers judge's order as entered provides:

1. Johan Nielsen's application is dismissed.
2. Johan Nielsen shall pay lump sum costs of $3,000.00 to the plaintiffs within forty-five (45) days from the day this Order is pronounced.
3. Johan Nielsen, or anyone acting on his behalf, shall not file any new materials, in any registry of the Supreme Court of British Columbia, in relation to this action.
4. Johan Nielsen, or anyone acting on his behalf, shall not commence any proceedings, against the plaintiffs, Colleen Beland, Greg Cowan, Birgit Keys, and Brendan Keys, in any registry of the Supreme Court of British Columbia, without first obtaining the leave of a Justice of the court.

[54] Mr. Nielsen challenges all of these orders on appeal.

Issues on appeal and standard of review

[55] Mr. Nielsen argues that the chambers judge erred in:

a) failing to afford him an opportunity to be heard; and

b) granting the orders sought by the respondents, while at the same time ruling that he had no jurisdiction to grant the order sought by Mr. Nielsen because a notice of discontinuance had been filed.

[56] The respondents contend that the chambers judge treated Mr. Nielsen fairly and fully understood the relevant facts and applicable law. They emphasize the deferential standard of review on an appeal of a chambers judge's exercise of discretion. Mr. Nielsen must show that the chambers judge misdirected himself, gave no or insufficient weight to relevant considerations, or came to a decision so clearly wrong that it amounts to an injustice: *Queen Elizabeth Annex (QEA) Parents' Society v. Vancouver School District No. 39*, 2025 BCCA 160 at para. 90.

[57] In light of the arguments advanced on appeal, I would characterize the issues as follows:

a) was the hearing before the chambers judge procedurally unfair?

b) if so, what is the remedy?

Discussion

Issue 1: Procedural fairness

[58] As the respondents emphasize, the impugned orders of the chambers judge were discretionary, inviting a deferential standard of review on appeal. However, appellate intervention is warranted where the process leading to the decision was demonstrably unfair: *Walsh v. Muirhead*, 2020 BCCA 225 at para. 20. In my view, the process in this case was unfair to Mr. Nielsen.

[59] The foundation of procedural fairness is the principle of *audi alteram partem*, which encompasses a right to be heard. A party is entitled to a meaningful opportunity to present their case: *Campbell v. The Bloom Group*, 2023 BCCA 84 at para. 48. This does not mean an unbounded opportunity. A chambers judge may appropriately exercise their case management powers by limiting submissions that are repetitive, irrelevant, abusive, or disrespectful to the court. However, a party must have an opportunity to convey submissions that are central to the live issues on the application. An opportunity to be heard was of particular importance in this case given that the respondents sought a finding that Mr. Nielsen was a vexatious litigant and a punitive order for special costs.

[60] The unusual procedural history of this proceeding was of central importance in understanding Mr. Nielsen's position that: (1) a costs order should be made in his favour even though he was not a party; (2) he had a genuine interest in the proceeding as a member of the Society and an interim director; and (3) he had not brought meritless and repetitive applications that could be considered vexatious. The relevant history included the respondents' conduct in originally obtaining an *ex parte* order that suspended the operation of the Society, and their belief—properly described by Verhoeven J. as "misguided"—that they were both the plaintiffs in the proceeding and the only persons authorized to represent the defendant.

[61] The transcript reflects that Mr. Nielsen repeatedly, and respectfully, requested an opportunity to explain the relevant context to the chambers judge, and those requests were repeatedly refused. Without allowing Mr. Nielsen to make his submission, the chambers judge formed the view that he was attempting to relitigate issues determined at the hearing of March 12, 2024. The chambers judge did not permit Mr. Nielsen an opportunity to make submissions to correct this misconception. Mr. Nielsen requested an opportunity to address the background circumstances in responding to the vexatious litigant application. The chambers judge denied this request as well, suggesting to Mr. Nielsen that he was "just trying to spend someone else's money".

[62] It is apparent from the transcript that the process leading to the orders under appeal was demonstrably unfair to Mr. Nielsen, particularly as it relates to his lack of opportunity to make submissions on the exceptional orders sought by the respondents. The question then becomes one of remedy.

Issue 2: Remedy

[63] Where an appellate court has identified a reversible error, it may either remit the matter back to the lower court for a rehearing or conduct its own reassessment where it is feasible and in the interests of justice to do so: *West Moberley First Nations v. British Columbia*, 2020 BCCA 138 at para. 135. The authority for the Court to conduct its own assessment comes from s. 24(1)(a) of the *Court of Appeal*

Act, S.B.C. 2021, c. 6, which provides that on an appeal this Court may "make any order that the court appealed from could have made".

[64] The record is sufficient in this case to allow this Court to reassess some, but not all, of the issues on appeal. I consider that it would be in the interests of justice for this Court to reassess the orders of the chambers judge on the respondents' application for special costs and a vexatious litigant finding. I reach a different conclusion regarding Mr. Nielsen's application for costs.

The respondents' application for a vexatious litigant and special costs finding

[65] Section 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, provides the court with discretion to order that a legal proceeding must not, without leave of the court, be instituted in any court where the court is satisfied that the person has "habitually, persistently and without reasonable grounds" instituted vexatious legal proceedings in the Supreme Court. The applicant on a vexatious litigant application must demonstrate that: (a) the proceedings are vexatious in the sense of having been initiated in the absence of objectively reasonable grounds; and (b) the proceedings have been brought habitually or persistently, such that the litigant has continued obstinately in the course of conduct, despite protests or criticism: *Holland v. Marshall*, 2010 BCSC 1560 at paras. 7–8, leave to appeal to BCCA ref'd 2010 BCCA 579.

[66] The orders made by the chambers judge include an order pursuant to s. 18 of the *Supreme Court Act* preventing Mr. Nielsen from commencing proceedings against the respondents without first obtaining leave, and a *Houweling* order preventing him from filing any new materials in the Supreme Court registry in relation to this matter. Courts have an inherent jurisdiction to make a *Houweling* order to prevent an abuse of the court process: *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315 at paras. 38–40.

[67] I accept that the chambers had the jurisdiction to issue such orders even after the notice of discontinuance was filed. This Court held in *DLC Holdings* that where a

court finds it necessary to intervene to protect its processes, it may make orders without reinstating the action. The vexatious litigant and *Houweling* orders made by the chambers judge are examples of the exercise of such a jurisdiction. The order that Mr. Nielsen pay special costs of the application was, as the respondents argue, ancillary to the vexatious litigant orders. Special costs may be ordered where a litigant's conduct may properly be characterized as reprehensible: *Morriss v. British Columbia*, 2021 BCCA 451 at para. 21. An award of special costs may be justified where a party has abused the court process: *Morriss* at para. 22.

[68] Although the chambers judge had jurisdiction to make the impugned orders, I see no basis upon which such orders could be made in this case. In their notice of application, the respondents rely on the same conduct in support of an order for special costs and a finding that Mr. Nielsen is a vexatious litigant. They contend that: (1) Mr. Nielsen is a litigant who has habitually brought meritless claims at the expense of the respondents and the justice system; (2) Mr. Nielsen has no standing in the action; and (3) on March 12, 2024, the chambers judge directed Mr. Nielsen not to proceed with any further applications and he disregarded that direction.

[69] The respondents' arguments cannot be sustained when viewed within the context of the history of this proceeding. The following points are of particular significance:

a) The procedural difficulties in this case flowed from the respondents' actions in: filing a notice of civil claim that cited no authority for the relief sought; failing to serve the pleading on the only named defendant; bringing an *ex parte* application for an order suspending the operation of the Society; bringing the same application before the chambers judge after it had been dismissed by Taylor J.; and taking the position that they were the only authorized representatives of the Society after the November 1 Order had been issued. The fact that there was division concerning the governance of the Society was patently clear on the respondents' own material, which complained about a "ghost" or "shadow" board that had

assumed control. While there may have been remedies the respondents could properly have sought under the *Societies Act*, the legal process should have at the very least involved notice to other members of the Society who had contrary interests to the respondents.

b) Mr. Nielsen is not a "stranger" to the litigation, as the respondents have repeatedly asserted. He is a member of the Society and was a member of the interim board at the time this proceeding commenced. He was clearly a person affected by the November 1 Order. While it may be that Mr. Nielsen has not always followed a proper procedural path in challenging the November 1 Order, his fundamental concern about how the orders were obtained was understandable and legitimate. In short, Mr. Nielsen's applications were not "meritless".

c) The respondents cite the repetitive notices of application Mr. Nielsen filed in November and December 2023 as evidence of his vexatious conduct. However, as I have explained, Mr. Nielsen was having difficulty serving the respondents and was under the mistaken view that a new notice of application had to be filed to set a new hearing date. Mr. Nielsen believed that his applications of December 13 and 22, 2023 subsumed the previous duplicative applications. The respondents apparently had the same view because they only responded to those two applications.

d) The respondents encouraged Mr. Nielsen to adjourn the hearing of his applications in January 2024 by promising to engage in a good faith settlement process. They then filed a notice of discontinuance and requisition for a consent order without notice to him and without responding to his inquiries regarding the status of the settlement discussions. The respondents followed this up by serving Mr. Nielsen with a notice of application intended to correct "irregularities" in the process that were never explained to him.

e) While the merits of Mr. Nielsen's February 28, 2024, application may have been of questionable strength, his decision to pursue the application was understandable given the circumstances and the respondents' conduct since filing the notice of civil claim. The court has a limited jurisdiction to set aside a notice of discontinuance to prevent the perpetuation of an injustice or an abuse of process: *DLC Holdings* at para. 33. This is effectively the relief that Mr. Nielsen sought before the chambers judge on March 12, 2024. Although Mr. Nielsen was unsuccessful in obtaining this relief, his application cannot properly be described as vexatious or meritless.

f) The appealed orders of the chambers judge, and the respondents' arguments on appeal, rely heavily on the assertion that Mr. Nielsen's application for costs amounted to impermissible re-litigation and non-compliance with the directions of the chambers judge. This is inaccurate. The chambers judge did not direct Mr. Nielsen not to bring any further applications. Rather, he directed him not to proceed with his applications of December 13 and 22, 2023. Mr. Nielsen followed that direction. The application he filed on December 23, 2024, was for costs pursuant to R. 9-8(4) of the *Supreme Court Civil Rules*.

g) The respondents say that the chambers judge was correct to find that he had no jurisdiction to order costs to a non-party under that Rule. However, the chambers judge made no such finding. On the contrary, as set out in the transcript extracts I have quoted, the chambers judge acknowledged that an order for costs may be made in favour of a non-party in exceptional circumstances. The existence of such a jurisdiction is supported by several Supreme Court decisions: *Krafta v. F.L.E.X. Excavating Ltd.*, 2012 BCSC 616 at para. 35; *Hy's North Transportation Ltd. v. Yukon Zinc Corporation*, 2014 BCSC 2291 at paras. 27–30; *McLeod Lake Indian Band v. British Columbia*, 2021 BCSC 2560 at para. 16; *Bowman v. Kimberly-Clark Corporation*, 2024 BCSC 1975 at

> para. 5. While none of these cases were decided under R. 9-8(4) of the *Supreme Court Civil Rules*, they provide at least a ground for arguing that an order in favour of a non-party may be made under that Rule.

[70] In summary, there is no basis in this case for a finding that Mr. Nielsen persistently and habitually brought vexatious proceedings, abused the court process, or engaged in reprehensible conduct. Instead, he endeavoured as a self-represented litigant to remedy the respondents' conduct in pursuing and obtaining *ex parte* orders that suspended the operation of the Society without opportunity for opposing views to be heard. He did not disregard the court's directions. His application for costs, even if it is ultimately unsuccessful, is not meritless.

[71] For these reasons, in addition to setting aside the orders of the chambers judge, I would make an order dismissing the respondents' application for a vexatious litigant finding and an award of special costs.

Mr. Nielsen's application for costs

[72] I conclude that the appropriate remedy with respect to Mr. Nielsen's application for costs is to remit the application to the Supreme Court for a new hearing.

[73] As I have noted, the jurisprudence provides some support for the argument that a party filing a notice of discontinuance may have to pay costs to a non-party under R. 9-8(4) of the *Supreme Court Civil Rules* in exceptional circumstances. However, this issue was not the subject of detailed submissions on this appeal. To decide the issue, the court hearing the application may have to determine as a first step whether the notice of discontinuance must be set aside to allow the application to proceed. That determination invokes the inherent jurisdiction of the Supreme Court to control its own processes. This question was also not the subject of submissions before us on this appeal. We have no reasons from the lower court on this application, which is a further reason why the reassessment of Mr. Nielsen's costs application is best addressed in the Supreme Court.

[74] The preferable remedy in these circumstances is to remit Mr. Nielsen's application for costs back to the Supreme Court for a new hearing. Mr. Nielsen will have a full opportunity to make his submissions at the new hearing, and they can be considered in the full context of the complex procedural history of this proceeding.

Disposition

[75] I would allow the appeal and make the following orders:

a) All four terms of the February 18, 2025 order of the chambers judge are set aside;

b) The respondents' January 28, 2025 application is dismissed;

c) Mr. Nielsen's December 23, 2024 application is remitted to the Supreme Court for a new hearing; and

d) Mr. Nielsen is entitled to the costs of the appeal.

"The Honourable Madam Justice Horsman"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Justice Iyer"