# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Stanley Park Preservation Society v. Vancouver Board of Parks and Recreation,* 2026 BCCA 85

Date: 20260213
Docket: CA51262

Between:

**Stanley Park Preservation Society, Michael Robert Caditz, Katherine Rose Caditz, Anita Ahlmann Hansen, and Jillian Margaret Maguire**

Appellants
(Petitioners)

And

**Vancouver Board of Parks and Recreation and the City of Vancouver**

Respondents
(Respondents)

Before: The Honourable Justice Iyer
The Honourable Justice Gomery
The Honourable Justice Brundrett

On an application to vary: An order of the Court of Appeal for British Columbia, dated January 9, 2026 (*Stanley Park Preservation Society v. Vancouver Board of Parks and Recreation*, 2026 BCCA 21, Vancouver Docket CA51262).

## Oral Reasons for Judgment

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| The Appellants, appearing in person, and on behalf of the Stanley Park Preservation Society: | M.R. Caditz<br>K.R. Caditz<br>A.A. Hansen<br>J.M. Maguire |
| Counsel for the Respondents: | I.K. Dixon<br>W.R. LeBlanc |
| Place and Date of Hearing: | Vancouver, British Columbia<br>February 11, 2026 |
| Place and Date of Judgment: | Vancouver, British Columbia<br>February 13, 2026 |

***Summary:***

*The appellants apply to vary the order of a justice in chambers that dismissed their application to stay a tree removal project in Stanley Park pending the outcome of their appeal of the authorization of that project. They argue the justice erred by considering irrelevant information, refusing to allow them to cross-examine the respondents' affiant, and unreasonably weighing the affidavit evidence before her. HELD: The application to vary is dismissed. The appellants failed to establish any error in law, principle, or misconception of the facts in the order under review.*



[1] **IYER J.A.**: The applicants apply to vary the decision of Justice Horsman, sitting in chambers, dismissing their application for an order prohibiting the respondents from proceeding with a tree removal project in Stanley Park until the conclusion of their appeal of the authorization of that project.

[2] The tree removal project was in response to a Hemlock Looper Moth outbreak that started in 2019 and killed many trees in Stanley Park. In 2023 and 2024, the City of Vancouver ("City") and the Vancouver Board of Parks and Recreation ("Park Board") authorized the project based on concerns that dead and dying trees pose risks to public safety from falling trees or branches and increased chances of wildfires. The applicants disagree that the affected trees pose these risks to public safety and challenge the scientific basis for that conclusion.

[3] At a series of public meetings, the Park Board passed resolutions authorizing a three-phase removal of affected trees, including procurement of a contractor. The meetings included presentations from staff and members of the public, as well as written material from staff and the public. The applicants attended and participated in those meetings. One such resolution was made at a meeting on July 21, 2025, which authorized phase three of the project and permitted the City to contract with a particular contractor to do the work.

[4] After passage of the resolutions, the applicants applied for judicial review in the British Columbia Supreme Court. They sought declarations that the contracts for the first two phases of tree removal were not authorized, and orders quashing two Park Board decisions made in 2025 respecting completion of the third phase of the project that had not yet occurred. The parties agreed to suspend work on completion

of the third phase of the project (authorized by the July 21, 2025, resolution) pending completion of the petition proceedings.

[5] The chambers judge issued his decision dismissing the judicial review application on December 17, 2025. He found the first two phases of tree removal were authorized, the Park Board did not breach a duty of procedural fairness to the applicants, and its July 21, 2025, resolution was reasonable.

[6] The applicants appealed only the chambers judge's refusal to set aside the July 21, 2025, Park Board resolution. They applied to this Court for an order prohibiting the respondents from completing the phase three work until conclusion of the appeal.

[7] The applicants were self-represented at the hearing of their stay application. At its outset, they sought an order permitting them to cross-examine the Park Board's affiant, Mr. Gandha, on matters relating to the public safety risks posed by dead and dying trees. Justice Horsman denied that request for the same reasons she denied the stay application.

[8] On the stay application, Justice Horsman applied the well-settled three-part test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117 [*RJR*]. An applicant seeking a stay must show (1) there is merit to the appeal in the sense that there is a serious question to be tried; (2) they will suffer irreparable harm if the stay was refused; and (3) the balance of convenience favours granting the stay.

[9] The respondents conceded the merits threshold was met. Both parties alleged irreparable harm to the public, the applicants saying that tree removal causes irreparable harm and the respondents saying that failing to remove trees causes irreparable harm. In these circumstances, Justice Horsman considered it appropriate to balance these competing harms and prejudice under the balance of convenience test. She examined the affidavit evidence tendered by the parties on those issues.

[10] Justice Horsman relied on Mr. Gandha's evidence that the phase three work had been delayed already by the petition proceedings and that further delay, even for two months, would necessitate closure of some public trails or park areas until October 2026, adversely affecting the high usage of Stanley Park during the tourist season. She also relied on the presumed harm to the public interest that arises if the Park Board is prevented from carrying out its duty to manage Stanley Park in the public interest. For these reasons, Justice Horsman concluded the balance of convenience weighed against granting a stay:

> [40] … The balance of convenience weighs against issuing a stay that would have the effect of necessitating the closure of areas of Stanley Park during a period when demand for access to the Park is at its peak, and which may cause significant attendant financial and operational disruption to the respondents, third party businesses and employees, and community groups.

[11] The applicants submit Justice Horsman erred in three ways: (1) relying on the impugned decisions of the Park Board in weighing the balance of convenience; (2) denying cross-examination of Mr. Gandha; and (3) giving greater weight to Mr. Gandha's evidence than to the evidence of their affiants.

[12] An application to vary under s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, is not a re-hearing of the original application. The reviewing court may not intervene unless the applicants show the judge was wrong in law, wrong in principle, or misconceived the facts: *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia*, 2017 BCCA 386 at paras. 5–7. To the extent that the applicants ask this Court to reconsider the merits of their stay application, they cannot succeed.

[13] On the first issue, the applicants say that Justice Horsman erred in principle because she relied on Mr. Gandha's evidence, which they say was based on the Park Board decision approving phase three of the project. They submit that decision is irrelevant to an interim stay because the Park Board was approving a multi-year tree removal project, not considering a delay of a few months. The applicants say this is evident from para. 37 of Justice Horsman's decision:

> Mr. Gandha's evidence that the portions of Stanley Park would have to be closed if the Phase 3 work was halted is not impermissible opinion evidence, as the appellants have argued. The Park Board has accepted there is a public safety risk and wildfire risk if the mitigation steps anticipated by the Phase 3 project are not carried out.

[14] I do not read the paragraph in this way. Justice Horsman had already summarized the salient points in Mr. Gandha's affidavit, which addressed the risks posed by a delay of a few months. She was rejecting the applicants' argument that he was opining about the existence of a public safety risk, pointing to the fact that the Park Board's decisions had accepted tree removal was necessary to address an ongoing risk to public safety. She was not relying on the Park Board having decided that a delay of a few months would create an unacceptable risk.

[15] Respectfully, I disagree with the applicants that the decision of the Park Board under appeal is irrelevant to the consideration of the balance of convenience. As the Supreme Court of Canada said in *RJR*, the existence of a risk to public harm is a relevant consideration. In the decision under appeal, the Park Board determined that such a risk exists. The fact that it did not specifically address the impact of delays on that risk goes to the weight to be given to its decision, not its relevance.

[16] In my view, the applicants have pointed to no reviewable error on this ground.

[17] The second ground concerns the denial of cross-examination. While cross-examination is available under Rule 44 of the *Court of Appeal Rules*, B.C. Reg. 120/2022, it is rarely ordered. As a discretionary decision, the standard of review is very deferential. The applicants say the refusal of their without-notice request to cross-examine Mr. Gandha was unreasonable. In oral argument, they submitted that it was an error for Justice Horsman to rely on Mr. Gandha's affidavit without having permitted cross-examination. That is incorrect: parties do not have a right to cross-examine in this Court. I see no basis to interfere with Justice Horsman's exercise of discretion.

[18] On the third ground, it was for Justice Horsman to weigh the evidence before her on the nature and magnitude of the harms flowing from temporarily halting

further tree removal versus allowing it to proceed. The applicants' argument that she should have weighed the evidence differently does not show an error in law or principle, or a misconception of the facts.

[19] Like Justice Horsman, I appreciate the applicants' deeply felt opposition to the tree removal project. They have engaged all legal mechanisms to advance their cause, including the ongoing appeal. Dismissal of their variation application does not address the merits of the appeal.

[20] I would dismiss the variation application.

[21] **GOMERY J.A.**: I agree.

[22] **BRUNDRETT J.A.**: I agree.

[23] **IYER J.A.**: The application is dismissed.

"The Honourable Justice Iyer"