COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Jones v. Bottom,*
2026 BCCA 73

Date: 20260122
Docket: CA50920

Between:

David Lloyd William Jones

Applicant/Appellant
(Applicant/Defendant)

And

David Bottom, J. Bottom & Associates Ltd. (Licensed Insolvency Trustee), and the Office of the Superintendent of Bankruptcy

Respondents
(Application Respondents/Defendants)

And

Nora Patricia Ni Chonchuir c/o Reedman Law

Respondent
(Creditor/Plaintiff)

And

Canaccede International Management Ltd., John Schaub, Frank Yan, Canada Revenue Agency, and FDR Asset Recovery Group Canada Limited

Respondents
(Creditors)

Before: The Honourable Justice Dickson
The Honourable Mr. Justice Abrioux
The Honourable Justice Mayer

On an application to vary: An Order of the Court of Appeal for British Columbia, dated November 20, 2025 (*Jones v. Bottom*, Vancouver Docket CA50920).

Oral Reasons for Judgment

The Appellant, appearing in person:	D.L.W. Jones
Counsel for the Respondents, David Bottom and J. Bottom & Associates Ltd. (Licensed Insolvency Trustee):	K.S. Campbell

Counsel for the Respondent, Nora Patricia Ni Chonchuir:	C.G. Reedman
Place and Date of Hearing:	Vancouver, British Columbia January 22, 2026
Place and Date of Judgment:	Vancouver, British Columbia January 22, 2026

Summary:

The appellant applies to vary or set aside an order made in chambers dismissing his application for an extension of time to file a notice of appeal, appeal record, transcripts and factum, and dismissing the appeal as abandoned. He argues the justice made errors in fact in determining whether the first factor (bona fide intention to appeal) and third factor (undue prejudice) were satisfied. He further contends the judge made errors of mixed fact and law in determining the merits of his appeal were very low.

Held: Application dismissed. The justice applied the correct principles. The appellant was unable to show the justice was wrong in law or misapprehended the facts.

[1] **MAYER J.A.**: This is an application to vary or set aside the order made by Justice Winteringham in chambers on November 20, 2025, dismissing the application of the appellant, David Jones, for an extension of time to file a notice of appeal, appeal record, transcripts and factum and dismissing the appeal as abandoned.

Background

[2] On July 23, 2025, Chief Justice Skolrood dismissed Mr. Jones' application to annul a bankruptcy which arose by operation of law, after a proposal he had made under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*], s. 57(a) was rejected by a majority of his creditors. The Chief Justice granted the application of Nora Chonchuir, a creditor, to lift a statutory stay, allowing her to proceed with a debt action against Mr. Jones and one of his companies. The applications arose in the context of an ongoing bankruptcy proceeding for several companies owned by Mr. Jones.

[3] The Chief Justice found Mr. Jones had not provided sufficient evidence to justify annulling the bankruptcy. He noted annulments were a discretionary remedy, to be exercised rarely. He concluded that granting one in this case would undermine the integrity of the bankruptcy process and prejudice Mr. Jones' creditors.

[4] Rule 31(1) of the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, requires that an appeal to this Court be brought "within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of

appeal stipulates". As a result, Mr. Jones was required to file his notice of appeal by August 5, 2025, but did not do so until August 22, 2025. He did not serve the respondents, David Bottom and J. Bottom and Associates Ltd. (the "Trustee Respondents"), and Ms. Chonchuir until September 2, 2025.

[5] On October 22, 2025, Mr. Jones applied to this Court for an order extending the time to file and serve his appeal record, transcripts, and factum, by 30 days. He had not applied to extend the time to file and serve his notice of appeal.

[6] The application came on for hearing before Justice Winteringham on November 20, 2025. The justice treated Mr. Jones' application as one to extend the time for commencement of an appeal and filing of materials. The justice applied the factors to be considered in determining whether to grant an extension set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259–260, 1987 CanLII 2608 (C.A.) (the "*Davies* factors"). She concluded Mr. Jones had not demonstrated a *bona fide* intention to appeal, an extension would result in prejudice to the respondent creditor Nora Chonchuir, and the merits of the appeal were very low. She determined that overall, it was not in the interests of justice to grant the extensions sought by Mr. Jones and dismissed his appeal as abandoned.

Submissions of Mr. Jones

[7] Mr. Jones submits he believed, erroneously, that the filing deadline for his appeal of the order of Chief Justice Skolrood was 30 days. He says he provided notice to his insolvency trustee, David Bottom, of his intention to appeal the order on July 24, 2025, and provided notice to counsel for Ms. Chonchuir on August 1, 2025.

[8] In addition, Mr. Jones submits he experienced delays between August and November 2025 because he had difficulty retaining pro bono counsel to assist him with progressing his appeal and because he was caring for his aging parents in Kelowna. He says he was unrepresented at the hearing before the justice on November 20, 2025, and misunderstood the nature of the hearing—thinking that the hearing was to allow him to apply for leave to appeal was unprepared to advance an application for an extension. He says he did not receive the Trustee Respondents'

and Ms. Chonchuir's response materials until November 17 and 18, 2025, respectively.

[9] In specific reference to the *Davies* factors, Mr. Jones submits, in summary, that the factual record demonstrates a *bona fide* intention to appeal Chief Justice Skolrood's order, that he provided notice of his intention to do so in a timely manner, and that the respondents will not suffer undue prejudice as he is in a position to advance his appeal expeditiously. With respect to the merits of his appeal, Mr. Jones submits his appeal is not frivolous. He contends there were voting or other irregularities in the procedures carried out by the Trustee Respondents, leading to rejection of his bankruptcy proposal by his creditors.

[10] Mr. Jones says if he is allowed to continue with his appeal, he will file his materials and schedule a hearing date promptly so that his appeal can be heard within the normal time frame.

Analysis

[11] Section 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, permits a division of the Court to cancel or vary an order made by a single justice sitting in chambers. However, the Court will not do so unless it is satisfied the justice was wrong in law, or in principle, or misconceived the facts: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672, at para. 7.

[12] Mr. Jones sought an order from Justice Winteringham to extend the time for filing his appeal record, transcripts, and his factum. Such an order is within this Court's discretionary authority, pursuant to s. 32(2) of the *Court of Appeal Act*, and R. 41 of the *Court of Appeal Rules*. The standard of review for discretionary orders is highly deferential: *Ashraf v. Jazz Aviation LP*, 2024 BCCA 45, at para. 3.

[13] An application to vary an order is not a fresh hearing or a rehearing of the original application: *Sparwood (District) v. Teck Coal Ltd.*, 2023 BCCA 353, at para. 9.

[14] Mr. Jones does not dispute the justice appropriately considered the *Davies* factors in deciding whether to grant his application. He contends, in essence, that the justice made errors in fact in determining whether the first factor (*bona fide* intention to appeal) and third factor (undue prejudice) were satisfied. In addition, it appears that he contends the judge made errors of mixed fact and law in determining the merits of his appeal were very low.

[15] The justice did not conclude Mr. Jones' failure to meet the filing and service deadline for his notice of appeal indicated a lack of intention to appeal. The justice concluded, "given the absence of evidence to support his statements about the steps he has taken to continue his appeal" (emphasis added), that he had not met his burden of establishing a *bona fide* intention to appeal.

[16] Mr. Jones has not filed an affidavit setting out his evidence concerning delays he experienced in advancing this appeal, nor does it appear that such evidence was before the justice, with the exception of some evidence that he had made efforts to retain pro bono legal counsel to assist him. In addition, I see little merit to Mr. Jones' argument that he was not prepared to speak to his application for an extension of time when he appeared before the justice. He filed an application for just this purpose.

[17] Although I understand Mr. Jones is a self-represented litigant, as the justice noted, he had the onus to establish the criteria for an extension of time were met: *Rapton v. British Columbia v. British Columbia (Motor Vehicles)*, 2011 BCCA 71, at para. 19.

[18] The standard of review that applies to the justice's finding of fact concerning whether Mr. Jones had a *bona fide* intention to appeal is palpable and overriding error. In my view, Mr. Jones has not identified palpable or overriding errors of fact in the justice's analysis of this factor.

[19] With respect to prejudice, the justice concluded Mr. Jones had not provided evidence that the respondents would not be prejudiced if an extension of time were

granted. The justice correctly noted the focus of a prejudice assessment was the prejudice resulting from delay and not to the appeal itself, referring to the decision of this Court in *Fidler v. Forensic Psychiatric Institute, a Hospital*, 2016 BCCA 83, at para. 33. The justice accepted submissions of Ms. Chonchuir that granting Mr. Jones a further extension would result in prejudice to her, including a delay in recovering a substantial debt from Mr. Jones and increased legal costs.

[20] Again, in my view, Mr. Jones has not identified palpable and overriding errors of fact in the justice's analysis.

[21] Mr. Jones impermissibly asks this division to reweigh evidence that was before the justice concerning factors to be considered in deciding whether to grant an extension of time and come to a different conclusion. This is not the role of a division on a review application.

[22] Regarding the merits of his appeal, the justice noted Mr. Jones had not provided submissions in this respect in his written materials. The justice noted his oral argument that the meeting of the creditors (resulting in the rejection of his proposal) was somehow improperly constituted and/or invalid but considered that he had not particularized any of those allegations in the record before her.

[23] Justice Winteringham referred to the decision of Justice Fitzpatrick in *EncoreFX Inc. (Re),* 2023 BCSC 39, at para. 30 (also referred to by Chief Justice Skolrood in his reasons), holding that annulment of a bankruptcy is a discretionary remedy to be used sparingly in special circumstances. The justice considered that Mr. Jones had not addressed the relevant circumstances set out at para. 31, either before Chief Justice Skolrood or in the application before her, which include the following: was there an improper use of the *BIA* or improper motive; was there a failure to refer the court to all material facts; has there been an abuse of process; and was there a lack of notice.

[24] The justice considered that Chief Justice Skolrood appeared to set out the governing legal test to annul a bankruptcy and applied it. She noted the Chief

Justice had not found grounds to support an annulment and that an annulment would risk the integrity of the bankruptcy process. She concluded there was no additional evidence in the materials to suggest that the Chief Justice erred in finding an annulment was not appropriate.

[25] A division of this Court will not interfere with a single justice's assessment of the merits of an appeal absent a manifest error of fact, or in the applicable principles of law: *Friedlander v. Claman*, 2015 BCCA 483, at para. 10. In my view, Mr. Jones has not identified any such errors in Justice Winteringham's analysis.

[26] The justice noted the interests of justice factor is an overriding rule, guided by the four other rules, referring the *Perren v. Lalari*, 2009 BCCA 564, at para. 33, citing para. 9 of *Haldorson*. After considering the *Davies* factors again, the justice concluded it was not in the interests of justice to grant Mr. Jones' application for an extension of time to file his materials. Mr. Jones has not identified any error of law or principle leading to this conclusion.

Disposition

[27] Justice Winteringham applied the correct principles, and it has not been shown that the justice was wrong in law or misapprehended the facts. I would dismiss the application.

[28] **DICKSON J.A.**: I agree.

[29] **ABRIOUX J.A.**: I agree.

[30] **DICKSON J.A.**: The application is dismissed.

"The Honourable Justice Mayer"