COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Proudfoot v. Bryant,* 2026 BCCA 68

Date: 20260209
Docket: CA51074

Between:

William Alexander Proudfoot

Applicant/Appellant
(Plaintiff)

And

Jeffrey Bryant and North Shore Law LLP

Respondents
(Defendants)

Before: The Honourable Madam Justice DeWitt-Van Oosten
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated September 23, 2025 (*Proudfoot v. Bryant*, 2025 BCSC 2205, Victoria Docket S202471).

Oral Reasons for Judgment

Counsel for the Applicant/Appellant:	J.M. Aiyadurai
Counsel for the Respondent (via videoconference):	W.G. MacLeod, K.C.
Place and Date of Hearing:	Victoria, British Columbia February 9, 2026
Place and Date of Judgment:	Victoria, British Columbia February 9, 2026

Summary:

The appellant seeks leave to appeal an order for costs made in the context of an action against a solicitor. He was the successful party at trial, but deprived of his costs after a certain date because he rejected a formal settlement offer from the other side. HELD: Application for leave to appeal is dismissed. The proposed appeal does not raise legal issues that extend beyond the four corners of the case, and, in any event, there is no reasonable prospect of success.

[1] **DEWITT-VAN OOSTEN J.A.**: This is an application for leave to appeal a costs order that issued in a Supreme Court action for negligence and breach of contract against a solicitor. The plaintiff appellant, William Alexander Proudfoot, succeeded in the action and was awarded costs but only to a certain point. He was made to bear his own costs after February 6, 2024, on the basis that he unreasonably rejected an offer to settle.

[2] The appellant says the trial judge erred in this aspect of the order and wants costs for the entirety of the trial. He contends that the difference between what he received and what he could have received in costs is at least $20,000 and likely considerably more.

Background

[3] The appellant hired the defendant respondents, Jeffrey Bryant and North Shore Law LLP, to file a lawsuit that sought to vary his mother's will. Mr. Bryant inadvertently neglected to initiate that action before expiry of the limitation period. He has acknowledged responsibility for the error.

[4] The appellant sued the respondents to recover damages he would have obtained had the action been filed in time. He succeeded at trial and was awarded $107,629.

[5] The appellant was also awarded trial costs; however, not for the entirety of the proceeding: 2025 BCSC 2205. The trial judge acknowledged the general rule that a successful party is entitled to their costs: at para. 2. However, a court has the discretion to take a different approach where appropriate. Rule 9-1(5)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, for example, authorizes a court to

deprive a successful party of all or part of their costs if that party unreasonably rejected a settlement offer:

> (5) In a proceeding in which an offer to settle has been made, the court may …
>
> (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle …

[6] On February 6, 2024, the respondents offered to settle with the appellant in the amount of $100,000 plus costs and disbursements (valued at $101,379 once adjusted for interest). The appellant rejected that offer. Given the rejection, the judge was asked to decide whether the appellant should be deprived of some or all his trial costs.

[7] In answering this question, the trial judge instructed himself on the informing factors set out in R. 9-1(6). He considered (at para. 4):

> (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
>
> (b) the relationship between the terms of settlement offered and the final judgment . . .
>
> (c) the relative financial circumstances of the parties; [and]
>
> (d) any other factor the court considers appropriate.
>
> [Emphasis added, citing *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 26.]

[8] The trial judge concluded that R. 9-1(6)(a) weighed against the appellant because his rejection of the settlement offer was likely driven by emotion and his sense of injustice rather than considered reflection of the likelihood of success on all or some of the issues he sought to advance in support of damages:

> [9] The trial made it clear that the [appellant's] anger and sense of injustice stemming from the will stemmed from his belief that his brothers were criminals who received the family ranch for free, and from his baseless dismissal of George's extraordinary contributions to his mother's quality of life.

> [10] In my view, it is much more probable that these factors drove the [appellant] to reject the settlement offer as opposed to the explanation provided by his counsel. These subjective factors are not reasonable, and although … litigants are legally entitled to pursue claims based on these emotions and other … unreasonable views, doing so weighs heavily against them in situations such as assessment of costs.
>
> [Emphasis added.]

[9] The "explanation provided by [the appellant's] counsel" was that the appellant believed there was a realistic possibility the value of a condominium owned in joint tenancy between his mother and one of his brothers would form part of the estate. On that basis, he considered the settlement offer unreasonable.

[10] According to the trial judge, R. 9-1(6)(b) favored the respondents because the offer they made fell just below the damages awarded at trial: at para. 11. The third factor (R. 9-1(6)(c)) weighed in favor of the appellant because the respondents were insured, and the appellant was therefore more likely to be impacted by an adverse finding than the other side: at para. 12. Finally, with reference to "other factor[s]" (as contemplated by R. 9-1(6)(d)), the trial judge noted that both parties were responsible for conduct in the proceeding that prevented the economical and efficient resolution of issues at trial: at para. 14. In other words, to the extent litigation conduct might properly inform the R. 9-1(5)(a) and R. 9-1(6) assessment, its impact in this case appeared neutral.

[11] The trial judge concluded his analysis of costs with these comments:

> [15] When I consider all these factors, I am of the view that the primary issue driving this litigation was the [appellant's] emotions and sense of injustice. In my view, this overwhelms the other issues. To be clear, the [appellant] was well within his rights to pursue the litigation after the February 6th offer. However, given the policy reasons that I referred to earlier, it would not be appropriate for him to receive costs and disbursements after the February 6th offer.
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> [Emphasis added.]

Application for Leave to Appeal

[12] The appellant filed an application for leave to appeal the costs order on October 21, 2025. Since he is appealing costs only, leave is required under R. 11(f) of the *Court of Appeal Rules*, B.C. Reg. 120/2022.

[13] Should leave be granted, the appellant plans to argue that the trial judge misapplied R. 9-1(5)(a) and R. 9-1(6). More specifically, the appellant says:

a) The trial judge incorrectly placed a burden on him to show it was not unreasonable for him refuse the offer to settle. He says it should have been the respondents' burden to establish unreasonableness.

b) The trial judge made a material finding of fact regarding the appellant's emotional state of mind and its impact specific to rejection of the settlement offer in the absence of relevant evidence.

c) The trial judge erred by not allowing the unpredictability of a court's willingness to vary a will to inform his assessment of whether rejecting the offer was unreasonable.

d) The trial judge failed to appreciate that because the damages award exceeded the settlement offer, rejecting the offer was inherently reasonable. In fact, it is the appellant's position that when damages awarded at trial are greater than the amount of a settlement offer, it is automatically an error of law to deprive the successful plaintiff of costs.

[14] The party seeking leave to appeal must show that the criteria for leave have been met: *Hammond v. Hammond*, 2020 BCCA 314 (Chambers) at para. 46.

[15] Since costs awards are highly discretionary, they are subject to limited appellate review. As explained at para. 33 of *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, these awards "attract a high degree of appellate deference". As a result, a division will generally not interfere unless the appellant is able to show "the judge misdirected himself or herself on the applicable law, made

an error in principle, made a palpable error in assessing the facts or otherwise made an award that is so clearly wrong as to amount to an injustice": *Tanious* at para. 33, citing *Seminoff v. Seminoff*, 2007 BCCA 403 (Chambers) at paras. 2, 4.

[16] Given this context, it is necessary to consider the following factors:

> (1) whether the proposed appeal raises questions of principle that extend beyond the parameters of the particular case;
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> (2) whether the questions of principle are of significance to the practice; and
>
> (3) whether the proposed grounds for appeal are arguable.
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> [*Gichuru v. Pallai*, 2019 BCCA 282 (Chambers) at para. 10; *Singh v. Singh*, 2025 BCCA 309 at para. 25.]

[17] Ultimately, as with other leave decisions, the overarching question is whether leave to appeal is in the interests of justice: *Singh* at paras. 24–25.

Positions of the Parties

Appellant

[18] In his written material, the appellant argues leave should be granted because his proposed appeal raises broad questions about R. 9-1(5)(a), including: (a) the burden of proof specific to the rejection of settlement offers; (b) whether a successful party's emotions or state of mind towards the litigation is relevant to the R. 9-1(5)(a) analysis; and (c) whether a successful party can ever be deprived of costs when an offer to settle is less than the award granted. As noted, it is the appellant's position that receiving an award that exceeds an offer puts an end to the matter. There is no discretion to then deprive the successful party of their costs, in whole or in part.

[19] The appellant says his proposed appeal has merit and there is a strong possibility he would succeed. From his perspective, the questions he seeks to have answered by a division are significant to the practice.

Respondents

[20] The respondents argue the proposed appeal does not raise any question of principle that extends beyond the parameters of this case. In that context, it carries

no significance to the practice. The respondents say the principles governing the application of R. 9-1(5)(a) and R. 9-1(6) are settled and the proposed appeal simply involves the application of those principles to a particular set of facts. The respondents argue, for example, that the trial judge's ruling:

> … did not turn on questions of burden of proof. The findings were supported by findings of the court based on the conduct of the trial. The trial judge was best placed to assess the real issues in the trial and the motivations of the plaintiff …

[21] In their written material, the respondents say "[t]here is nothing in Rule 9-1(5)(a) that prohibits a judge from exercising his or her discretion where the amount recovered exceeds the offer of settlement". Judges always retain the discretion to deprive a successful plaintiff of costs, depending on the court's assessment and its application of the R. 9-1(6) factors. From the respondents' perspective, the case law cited by the appellant in support of this aspect of his argument is distinguishable on the facts. It does not stand for the proposition the appellant says it does and the appellant has taken the case law out of context.

Discussion

[22] A court's discretion surrounding costs is sometimes described as "unfettered and untrammeled, subject only to any applicable rules of court and to the need to act judicially on the facts of the case*": British Columbia (Minister of Forests) v. Okanagan Indian Band,* 2003 SCC 71 at para. 42. The discretion is contextually applied and exercised case-by-case. Given its breadth and the individualized nature of the inquiry under R. 9-1(5)(a) and R. 9-1(6), I am not persuaded it is in the interests of justice to grant leave to appeal.

[23] First, I do not read the trial judge's reasons as improperly imposing a burden of proof. Indeed, the words "burden" and "proof" appear nowhere in his reasons. In my view, the trial judge did not deprive the appellant of costs after February 6, 2024, because he decided the appellant failed to meet a particular evidentiary or legal threshold. Rather, the trial judge asked whether the settlement offer, in the specific context of this case, was objectively reasonable and ought to have been accepted:

at para. 8. He concluded it should have been accepted given the primary issues for determination at trial. There is nothing erroneous about this approach. It is consistent with the holistic analysis mandated by R. 9-1(5)(a) and R. 9-1(6) and the broad-scoped and permissive language of those provisions.

[24] Second, the appellant argues the trial judge erred in considering his emotions as part of the costs analysis because "there was no evidence before the Court of [his] emotional state of mind" in rejecting the settlement offer. Respectfully, this submission fails to appreciate that a trial judge's costs analysis is made within the context of the entirety of the proceeding. There may not have been evidence specific to the impact of the appellant's emotions on his response to the settlement offer but it is readily apparent from the trial judgment that the appellant's perspective on having been wronged by family members and his reaction to that perceived injustice impacted the judge's assessment of his evidence and its reliability, overall. For example, in his trial reasons, indexed at 2025 BCSC 1437, the trial judge said this about the appellant:

> [69] The [appellant] is an emotional person; in my view, his perception and recollection of events are clouded by his emotions and beliefs. I find that his recollection of [a particular conversation with his mother] is influenced by his anger and sense of injustice stemming from his belief that his brothers were criminals who received the family ranch for free.

See also para. 72(c) of the trial judgment.

[25] I see nothing legally improper about the trial judge allowing the findings he made about the appellant at trial to inform his assessment of costs, including his assignment of weight to the rationale offered by counsel for rejecting the settlement offer. He was entitled to consider that explanation in the context of everything else he heard and found. As noted by this Court in *Bains v. Antle*, 2019 BCCA 383, in deciding whether it was unreasonable to refuse an offer, a court may consider the recipient's subjective reasons for refusal but also whether those reasons were objectively reasonable: at para. 34. The trial judge's comments about the appellant's "anger and sense of injustice" clearly harkened back to his trial findings: at paras. 9–10. In my view, he was not precluded from taking those findings into account. I note

that in addition to this aspect of the case, the trial judge determined that the issue held out as being the primary reason for rejecting the settlement offer (identified above) was of relatively minor significance to resolution of the trial. This too was open for consideration.

[26] Finally, the appellant's argument that leave should be granted because the case law does not support depriving a successful party of costs where the settlement offer was less than the award at trial is not persuasive, and I see no reasonable prospect of success in challenging the costs order on this basis.

[27] First, the fact that a particular costs order may be unprecedented does not mean it must be erroneous: *Telus v. Telecommunications Workers Union*, 2008 BCCA 144 at para. 23.

[28] Second, as noted, the fact that costs are discretionary is well-established, including when they are withheld from a successful party under R. 9-1(5)(a): see *Wafler v. Trinh*, 2014 BCCA 95 at para. 82. That rule does not contain language prohibiting a court from withholding costs when the trial award exceeds the settlement offer. The appellant says this Court's decision in *Gichuru v. Purewal*, 2021 BCCA 91 stands for that proposition and once a damages award exceeds the settlement offer, even if only by a small amount, the successful party is automatically entitled to the entirety of their costs. He points to para. 35 of the Court's ruling, in which it stated: "There is no principled basis to punish a successful plaintiff in costs—whether by reducing the costs award the plaintiff otherwise would have received or by ordering costs in favour of the defendant—where the formal offer the plaintiff rejected was less than the amount they were awarded at trial" (internal references omitted).

[29] Respectfully, *Gichuru* is not a R. 9-1(5)(a) case and the appellant misinterprets its reach. The same can be said of *Cottrill v. Utopia Day Spas and Salons Ltd.*, 2019 BCCA 26, another case relied upon by the appellant. In *Gichuru*, the trial judge declined to find that a settlement offer made to Mr. Gichuru ought to have been accepted. She then proceeded to withhold costs based on that offer.

This was the context in which the Court made its comments at para. 35, explicitly noting earlier in its reasons that the trial judge "appear[ed] to have conflated the considerations that are relevant to weighing whether an offer to settle should have been accepted under Rule 9-1 … and the jurisdiction of a trial judge to reduce an award of costs that might otherwise be made": at para. 33, emphasis added. See also para. 38 of the reasons.

[30] This case is not *Gichuru.* Instead, the trial judge engaged in the R. 9-1(5)(a) and R. 9-1(6) analyses specific to the respondents' offer and found that the offer ought to have been accepted. In other words, he made the finding that this Court found was lacking in *Gichuru*. In my view, the trial judge's approach to costs and his assessment was consistent with the purpose of R. 9-1(5)(a), namely, to promote "reasonable settlements by rewarding a party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer": *Gichuru* at para. 36, citing *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25.

[31] The appellant has not persuaded me his proposed grounds of appeal raise questions of principle that extend beyond the four corners of this case and are therefore of significance to the practice. Instead, I see the trial judge's costs analysis as a highly individualized inquiry and application of settled principles to the facts as found by him and his assessment of the overall context of the case.

[32] I appreciate the appellant does not agree with the trial judge's exercise of discretion; however, standing alone, that is not a justifiable basis for granting leave. The trial judge, who listened to the evidence, assessed the credibility and reliability of witnesses (including the appellant), and was in the best position to determine the significance of the issues raised, decided the appellant ought reasonably to have accepted a settlement offer that was less than the amount awarded. Appreciating the stringent standard of review for costs awards, I see no reasonable prospect of success in overturning that decision. Accordingly, it would not be in the interests of justice to grant leave to appeal.

Disposition

[33] For the reasons provided, the application for leave to appeal is dismissed.

[Question from counsel regarding costs.]

[34] Costs of the application should follow in the ordinary course.

"The Honourable Madam Justice DeWitt-Van Oosten"