

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bryzzhev v. University of British Columbia*,
2026 BCCA 87

Date: 20260218
Docket: CA50879

Between:

Oleg Bryzzhev

Appellant
(Plaintiff)

And

University of British Columbia, UBC Senate, Committee on Academic Standing

Respondents
(Defendants)

Before: The Honourable Justice Iyer
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
July 8, 2025 (*Bryzzhev v. University of British Columbia*, 2025 BCSC 1285,
Vancouver Docket S251748).

Oral Reasons for Judgment

The Appellant, appearing in person:

O. Bryzzhev

Counsel for the Respondents:

J. Chohan

Place and Date of Hearing:

Vancouver, British Columbia
February 18, 2026

Place and Date of Judgment:

Vancouver, British Columbia
February 18, 2026

Summary:

The respondent applies for security for costs in an appeal from a chambers judgment striking the appellant's claim under Rule 9-5(1)(a) as disclosing no reasonable cause of action, because the essential character of the dispute was academic in nature and barred by s. 69(2) of the University Act, R.S.B.C. 1996, c. 468. HELD: Application granted. It is in the interests of justice to order security for costs despite the appellant's impecuniosity because the appeal has little prospect of success. The dispute is academic in nature, and the appellant's proposed challenge to the constitutionality of s. 69 was not raised in the court below.

[1] **IYER J.A.:** The University of British Columbia ("UBC"), the respondent in this appeal, applies for security for costs. At the outset of the hearing, the appellant, Oleg Bryzzhev, asked for this application to be adjourned and heard at or after the hearing date for three applications he intends to bring. He has not decided when that will be. He informed UBC yesterday that he would be making this request. In my view, UBC is entitled to have its application heard within a reasonable time. I denied Mr. Bryzzhev's request.

[2] The underlying dispute concerns the way UBC treated the credits Mr. Bryzzhev earned from courses he took when he was registered as an "unclassified" student at UBC. UBC recognized the credits and awarded Mr. Bryzzhev a Diploma in Education – Teaching English as a Second Language in May 2022. Mr. Bryzzhev then registered in a Bachelor of Arts degree program and sought to have the credits he had earned applied towards that degree. When UBC denied his request, Mr. Bryzzhev appealed to UBC's Senate Committee.

[3] The Senate Committee dismissed the appeal in June 2024. Mr. Bryzzhev applied for judicial review. However, he discontinued his petition and commenced a civil claim in March 2025. UBC applied to have the claim struck under Rule 9-5(1)(a) as disclosing no reasonable cause of action. In a decision issued on July 8, 2025 (indexed as 2025 BCSC 1285), the chambers judge granted the application and struck the claim without leave to amend.

[4] Although Mr. Bryzzhev had advanced various causes of action, the judge found the essential character of the dispute was academic in nature. As she put it:

[20] ... At its heart and in relation to each cause of action named in the claim, the dispute is about the way in which the University registered the plaintiff as a student and how the course credits that he earned were, or were not, applied towards the requirements of earning [a] diploma or a degree.

[5] Under s. 69(2) of the *University Act*, R.S.B.C. 1996, c. 468 [*Act*], the court must dismiss an action against a university if it appears the university acted under the authority of the *Act*. Section 37 of the *Act* confers on universities the power to grant degrees and diplomas.

[6] The judge concluded that the breach of contract, tort, and bad faith causes of action were not actionable because of s. 69(2). She also found the alleged statutory and constitutional breaches were not actionable under the *Act* and because it is well-settled that the *Charter* does not apply to universities.

[7] The judge denied leave to amend because the identified defects went to the heart of the claim, so it was not possible to cure them.

[8] Mr. Bryzzhev appealed the decision to this Court. He also filed a notice of constitutional question, challenging the constitutionality of s. 69 and of the chambers judge's decision under the equality and mobility provisions of the *Charter* and the equality provision of the *Canadian Bill of Rights*.

[9] The test on an application for security for costs requires the appellant to show that such an order is not in the interests of justice. Relevant factors include the appellant's financial means, the merits of the appeal, the timeliness of the application, and whether costs will be readily recoverable: *Gardezi v. Positive Living Society of British Columbia*, 2018 BCCA 84 (Chambers). Importantly in the context of this case, an appellant's impecuniosity will not bar an order for security for costs where the appeal has very little merit: *Chung v. Shin*, 2017 BCCA 355 at para. 24.

[10] In his response to the application, Mr. Bryzzhev says he is indigent. He has opposed the costs order against him made by the chambers judge. UBC's application was timely and I accept it will be difficult for UBC to recover its costs in the event the appeal is unsuccessful.

[11] Therefore, this application turns on an assessment of the merits. I accept that Mr. Bryzzhev's financial circumstances may mean that any order for security will mean he cannot pursue the appeal. However, a party that was successful in the court below should not have to bear the unrecoverable costs of an appeal that has very little prospect of success. The circumstance of this case and similar cases mean the stakes on the merits assessment are high.

[12] I consider Mr. Bryzzhev's appeal has little prospect of success. It is clear from the material Mr. Bryzzhev has filed that the essence of his complaint is that UBC did not apply the course credits he earned for his diploma towards his degree program.

[13] It is well-established that s. 69(2) of the *Act* prohibits such causes of action. In *Skyllar v. The University of British Columbia*, 2023 BCCA 90 at para. 28, this Court adopted the reasoning of the Ontario Superior Court of Justice in *Dawson v. University of Toronto*, [2007] O.J. No. 591 at paras. 18–19:

[18] Authorities such [as] *Wong v. University of Toronto*, 1990 CanLII 8102 (ON SC), [1989] O.J. No. 979 (Div. Ct.), affd. [1992] O.J. No. 3608 (C.A.); *Zabo v. University of Ottawa*, [2004] O.J. No. 1499 (S.C.J), affd. 2005 CanLII 22452 (ON CA), [2005] O.J. No. 2664 (C.A.); *Warraich v. University of Manitoba*, 2003 MBCA 58 (CanLII), [2003] M.J. No. 138 (C.A.); *Re Polton and Governing Council of the University of Toronto* (1976), 1975 CanLII 709 (ON SC), 8 O.R. (2d) 749 (Div. Ct.); *Derakhshan v. University of Toronto*, [2000] O.J. No. 1463 (Sm. Clm. Ct.) establish that apart from a judicial review function about procedural fairness and natural justice, the court does not have jurisdiction over matters of an academic nature. Where the essential character of the dispute is of an academic nature, the dispute remains exclusively a matter to be dealt with by the school's own procedures provided that the school does not breach the principles of natural justice.

[19] I appreciate that not all conduct by a university is of an academic nature. The example of non-academic conduct, which I posed during argument, was a university that failed to maintain its premises and to perform its obligations as an occupier. If a person were injured, the university would be subject to a tort claim and perhaps a breach of contract claim. However, I have no doubt that Ms. Dawson's complaints are about academic matters. Her essential complaints are that her thesis work was insufficiently assisted and unfairly and incorrectly evaluated and that the procedure adopted by the university to determine whether she should have an opportunity to defend her thesis and complete her doctorate was contrary to the principles of natural justice. Her dispute is a disagreement about academic matters associated with the completion of her doctoral program

and according to the authorities, these matters of university affairs are not the subject matter of breach of contract or tort claims.

[Emphasis added in *Skyllar*.]

See also: *Williams v. Simon Fraser University*, 2019 BCCA 41 at para. 15; *Albu v. The University of British Columbia*, 2019 BCCA 222 at para. 14.

[14] Mr. Bryzzhev’s dispute about how UBC treats course credits falls squarely within its exclusive jurisdiction over academic matters.

[15] Mr. Bryzzhev challenges the constitutionality of s. 69 and also claims the chambers judge’s decision was unconstitutional. Even if his matter was not essentially of an academic nature, I note that appellate courts do not generally hear issues raised for the first time on appeal: *Quan v. Cusson*, 2009 SCC 62 at paras. 36–37. Even if an exception were made, the *Charter* does not apply to court judgments. Mr. Bryzzhev invokes s. 15 of the *Charter*, as well as international human rights instruments. As he explained this morning, he says the grounds of discrimination are his status as an unclassified student and/or UBC’s policies. Based on the s. 15 jurisprudence, I consider he has no prospect of establishing either as an analogous s. 15 ground.

[16] I conclude that it is in the interests of justice to grant UBC’s application. It has asked for security of \$7,500 to be posted based on a draft bill of costs of \$12,443.20. I consider that amount reasonable.

[17] In summary, I grant the application for security for costs. I order that, within 30 days of today’s date, Mr. Bryzzhev must post security in the amount of \$7,500 in a form acceptable to the registrar or in such form as the parties may agree, and the appeal is stayed pending posting of security. If security is not posted within 30 days, UBC may apply to have the appeal dismissed as abandoned.

[Discussion with parties re: dispensing with appellant's signature on the form of order]

[18] **IYER J.A.:** The need for Mr. Bryzzhev's signature is dispensed with on the draft order.

"The Honourable Justice Iyer"