

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Moradi v. Whole Foods Market*,
2026 BCCA 105

Date: 20260310
Docket: CA50800

Between:

Faranak Moradi

Applicant/Appellant
(Petitioner)

And

Whole Foods Market

Applicant/Respondent
(Respondent)

And

Workers' Compensation Appeal Tribunal

Respondent
(Respondent)

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

On appeal from: An order of the Supreme Court of British Columbia, dated
June 6, 2025 (*Moradi v. British Columbia (Workers' Compensation
Appeal Tribunal)*), Vancouver Docket S226131).

The Applicant/Appellant, appearing
in person (via videoconference on
February 20, 2026):

F. Moradi
A. Negahban, Interpreter
(February 20 and 24, 2026)

Counsel for the Applicant/Respondent,
Whole Foods Market:

K. Liset

Counsel for the Respondent, Workers'
Compensation Appeal Tribunal:

I.D. Morrison

Place and Dates of Hearing:

Vancouver, British Columbia
October 21, 2025,
February 20 and 24, 2026

Place and Date of Judgment:

Vancouver, British Columbia
March 10, 2026

Summary:

These reasons address three applications brought in Court of Appeal chambers: (a) security for costs of the appeal; (b) extension of time to file the respondent's factum; and (c) stay of costs ordered in the Supreme Court of British Columbia. HELD: Security for costs in the amount of \$7,500 is ordered. The respondent is granted an extension of time to file its factum. The appellant's application for a stay of costs in the Court below is dismissed as unnecessary.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] These reasons address three separate applications.

[2] The respondent, Whole Foods Market, asks that the appellant, Faranak Moradi, post security for costs of her appeal. Alternatively, it asks that the appeal be stayed pending resolution of possible reconsideration by the Workers' Compensation Appeal Tribunal ("WCAT"). Finally, the respondent seeks an extension of time to file its factum.

[3] Ms. Moradi represents herself in the appeal and appeared with the assistance of an interpreter. Her written materials oppose the orders sought by the respondent. She also applies for an order of her own, namely, a stay of any obligation to pay costs arising from the proceeding below.

Background

WCB and WCAT decisions

[4] In 2019, the respondent terminated Ms. Moradi's employment after 70 days' work. In response, she filed a prohibited action complaint, alleging she was unlawfully dismissed as retaliation for reporting health and safety issues, contrary to s. 48 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

[5] On December 4, 2020, an officer with the Workers' Compensation Board ("WCB") determined the respondent did not take prohibited action.

[6] That decision was upheld by WCAT. It concluded that Ms. Moradi made out a *prima facie* case for a prohibited action; however, the respondent proved the termination was due to performance issues rather than Ms. Moradi's reporting of health and safety concerns.

Judicial review

[7] Ms. Moradi sought judicial review of the WCAT decision. On June 6, 2025, that petition was dismissed.

[8] Ms. Moradi challenged the WCAT decision on five main grounds. She alleged the tribunal erred by:

- a) unfairly denying Ms. Moradi's request to call certain witnesses;
- b) refusing to consider closed-circuit television ("CCTV") footage, employment contracts, and Ms. Moradi's comparative workload before rendering its decision;
- c) failing to properly assess the authenticity and reliability of performance reviews and other evidence adduced by the respondent;
- d) failing to properly assess Ms. Moradi's claims of workplace retaliation and harassment; and
- e) demonstrating bias or unreasonably failing to address Ms. Moradi's claims.

[9] The Supreme Court judge instructed herself that any substantive errors were to be assessed applying a standard of patent unreasonableness. Errors alleging procedural unfairness were subject to a standard of fairness. Ultimately, the judge concluded that:

[59] ... None of the substantive grounds for judicial review me[t] the standard of patent unreasonableness, and nor [did] the alleged procedural grounds reveal any unfairness in the process.

[Unpublished reasons.]

[10] The judge declined to admit fresh evidence Ms. Moradi sought to adduce at the Supreme Court hearing, concluding this material did not justify departing from the general rule that a judicial review is to be conducted on the tribunal record alone.

Court of Appeal

[11] Ms. Moradi filed a notice of appeal from the judicial review on July 7, 2025. She sought a no fees order, which was granted on August 12, 2025. That is a separate order and has its own threshold. The fact that a no fees order was granted is not determinative of any issues before me.

[12] Approximately two months later, on October 10, 2025, the respondent filed an application for security of costs. On October 21, the parties appeared before me. I adjourned the application to December 9, 2025, because Ms. Moradi required an interpreter, and an interpreter was not available. At that time, Ms. Moradi was directed to file her factum by December 22, 2025.

[13] After the October 21 hearing, the following occurred:

- a) On December 5, 2025, Ms. Moradi requested an adjournment of the December 9 date due to a medical emergency. The respondent consented on the condition that Ms. Moradi agree to reschedule the respondent's application for security of costs to February 2026. The hearing was rescheduled by consent to February 20, 2026. The respondent says it agreed in this exchange that Ms. Moradi could file her factum two weeks after the February date.
- b) On December 22, 2025, Ms. Moradi chose to file her factum and appeal book.
- c) On December 24, 2025, the respondent requested that Ms. Moradi consent to an extension of its factum-filing deadline.

- d) On December 29, 2025, Ms. Moradi wrote a letter to the Court's Registrar opposing any request for an extension of time and asking that the appeal be heard on the merits on February 20, 2026.
- e) On January 6, 2026, Ms. Moradi filed an application for a stay. In addition to seeking a stay of the costs order in the Supreme Court, Ms. Moradi asked this Court to:
 - (1) cancel the security for costs hearing;
 - (2) direct the respondent to file its factum without the benefit of an extension;
 - (3) hear the merits of her appeal on February 20, 2026; and,
 - (4) decide her application without an oral hearing.
- f) The parties were informed that their applications would proceed on February 20, 2026. The appeal was not set for a hearing of the merits.
- g) On February 11, 2026, the respondent filed an application for an extension of time to file its factum.

Issues

- [14] There are four questions for me to answer:
- a) Should Ms. Moradi be ordered to post security?
 - b) If not, should the appeal be stayed pending a possible reconsideration application by Ms. Moradi?
 - c) Should the respondent be granted an extension of time to file its factum?
 - d) Should Ms. Moradi be granted a stay of the costs order?

Legal Frameworks

Security for costs

[15] This Court has jurisdiction to order security for costs of an appeal under s. 34(1)(a) of the *Court of Appeal Act*, S.B.C. 2021, c. 6. The party against whom the order is sought must show why security should not be ordered: *Lungu v. Cabrita*, 2025 BCCA 105 at para. 15 (Chambers). Relevant considerations include: (a) the appellant’s financial means; (b) the merits of the appeal; (c) the timeliness of the application; and (d) whether costs will be readily recoverable: *Badela v. Donald*, 2025 BCCA 278 at para. 14 (Chambers). The ultimate question, however, is whether an order for security is in the interests of justice: at para. 16.

Stay of hearing of appeal

[16] Section 30 of the *Court of Appeal Act* empowers a justice to stay the hearing of an appeal pending the outcome of other related proceedings: *Bonneau v. British Columbia*, 2024 BCCA 260 at para. 12 (Chambers). Two main principles are engaged: (a) the efficient use of judicial resources and disallowing parties from “litigating in slices”; and (b) balancing the prejudice between the parties: *Li v. Rao*, 2019 BCCA 56 at para. 13 (Chambers).

Extension of time to file a factum

[17] Section 32 of the *Court of Appeal Act* governs applications for extensions of time. Factors to consider include: (a) when the opposing party was informed of the intention to seek an extension; (b) whether the opposing party would be unduly prejudiced by an extension; and (c) whether an extension is in the interests of justice: *Alter v. British Columbia*, 2024 BCCA 396 at para. 31 (Chambers).

Application for stay of a court order

[18] Section 30 of the *Court of Appeal Act* empowers a justice to stay the enforcement of a costs order pending the determination of an appeal. The applicant must show that: (a) there is a serious question to be tried; (b) the applicant will suffer irreparable harm without a stay; and (c) the applicant would suffer greater harm from

refusing a stay than the respondent would from granting one: *Choi v. Slopinski*, 2026 BCCA 12 at para. 33 (Chambers).

Parties' Positions

Respondent

[19] The respondent says Ms. Moradi has the financial means to post security. It points to previous payments for disbursements relating to claims against the respondent as well as her payment for transcripts. Alternatively, and in any event, the respondent contends that Ms. Moradi's grounds of appeal are weak and justify an order for security. The respondent says the Supreme Court judge correctly applied the relevant standards of review and reached sound conclusions on Ms. Moradi's substantive and procedural complaints.

[20] Additionally, the respondent argues it is in the interests of justice to order security in view of the possibility of reconsideration by WCAT. According to the respondent, there is an "imminent risk of duplicative proceedings and abuse of process". A requirement that Ms. Moradi post security would respond to this risk; at the very least, the respondent says the appeal should be stayed until the question of reconsideration has been resolved. If Ms. Moradi succeeds on reconsideration, the appeal will likely be moot.

[21] On the application for an extension of time, the respondent says: (a) it promptly sought Ms. Moradi's consent for an extension in advance of the filing deadline; (b) any prejudice is a result of Ms. Moradi's choice to file her factum and appeal book before it was necessary to do so; (c) Ms. Moradi previously failed to adhere to a filing deadline and was given a second chance; and (d) an extension is in the interests of justice because there is a realistic potential of Ms. Moradi not complying with an order for security (should one be granted), and it would be a waste of expense and resources to file a factum in that context.

Ms. Moradi

[22] Ms. Moradi argues the respondent should not be granted security because doing so will: (a) likely prevent substantive appellate review of her claims; and (b) constitute an improper use of the security for costs regime. Ms. Moradi says her appeal raises important matters of public interest about the respondent’s conduct, both towards her and other employees, and denying her the ability to pursue those issues through a requirement to post security is not in the interests of justice.

[23] In an affidavit before me, Ms. Moradi deposes that because of her “medical disability, unemployment, and financial circumstances”, she does not have the ability to post security or to “withstand the enforcement of costs orders”. She says she has not been able to “access necessary medical treatment and remedies” and this has “caused [her] medical condition to worsen, ultimately resulting in [a] current state of full disability”. She deposes that proceeding without legal assistance in her appeal has “subjected [her] to significant and ongoing psychological stress” and she is “unable to meet basic living expenses, including essential medical treatment costs, housing expenses, and other fundamental living necessities”. From her perspective, the “cumulative impact of the Respondent’s conduct, the lack of remediation, and the protracted legal processes has resulted in serious and irreparable harm”. An order for security will simply exacerbate an already prejudicial situation.

[24] Ms. Moradi initially opposed the respondent’s request for an extension of time to file its factum because, among other things, she says the absence of a factum has prejudiced her ability to respond to the request for security and to advance her own application. However, before me, she accepted that whether the respondent is granted an extension is appropriately a matter for this Court’s discretion and she did not press her objection. Finally, she seeks a stay of the order for costs below because of her current financial circumstances. She says she could commit to “incrementally” pay costs over time if she fails in the appeal; however, she does not currently have money to cover a costs award and other than a leased vehicle (for which she is in debt), she has no property in her own name.

[25] I note that Ms. Moradi has another appeal before this Court involving the same employment matrix. In addition to filing a prohibited action complaint, Ms. Moradi alleged discrimination before the British Columbia Human Rights Tribunal. She says the respondent and certain individual respondents discriminated against her based on mental disability, physical disability, race, sex, and sexual orientation. Various orders made as part of that complaint process have since been the subject of judicial review in the Supreme Court and Ms. Moradi has appealed the results of the judicial review (CA50911). She has been denied a no fees order in CA50911. To my understanding, neither factums nor appeal books have been filed in that appeal.

Discussion

[26] Both parties made extensive submissions for and against the orders sought. They also filed detailed written materials in support of their positions.

[27] I have reviewed that material, including the Supreme Court reasons. On the face of it, the judge properly instructed herself on the legal principles that governed her assessment of WCAT's decision, carefully considered the issues raised by Ms. Moradi (both substantive and procedural), paid attention to the record before WCAT, and reached principled conclusions about whether Ms. Moradi met the test for judicial intervention. In assessing the substantive issues raised by Ms. Moradi, the judge was duty-bound to apply a highly deferential standard of review. That same standard would apply in this Court.

[28] The respondent promptly brought its application for security. The hearing of that application has been delayed largely due to Ms. Moradi's unreadiness.

[29] I have limited information about Ms. Moradi's financial circumstances. However, based on her submissions and the fact of a no fees order, I accept that posting security will prove difficult (and potentially impossible) for her. At the same time, if Ms. Moradi fails in the appeal, the respondent is likely to have trouble in recovering its costs. Ms. Moradi has deposed to limited financial means. She has not

paid the costs ordered below. She also has a second appeal. That appeal (and the related Supreme Court proceeding) also carry the potential for cost consequences.

[30] Ms. Moradi has filed her factum. Although Ms. Moradi asserts in her application material that her appeal raises issues of systemic discrimination, occupational health and safety reporting, wrongful dismissal, and other issues “affecting public health”, the predominant complaint in the factum is that both the WCAT and Supreme Court decisions were procedurally unfair because they reflect decisions made on an incomplete evidentiary record. For example, the factum contains these assertions (among others):

...

This appeal concerns fundamental breaches of procedural fairness. The decision under review was reached on an incomplete and internally inconsistent record, despite the Tribunal's own acknowledgements of evidentiary gaps.

...

The Appellant, a self-represented litigant with a formally recognized disability, made reasonable requests for basic procedural safeguards, including completion of the record, proper allocation of the burden of proof to the employer, and limited non-advocacy assistance. These requests were denied, and the matter proceeded without curing the structural defects.

...

This appeal raises a fundamental [issue]: whether the decision under review was procedurally fair. The Appellant submits that it was not.

The Tribunal and the reviewing court relied on an incomplete and internally inconsistent record, a deficiency expressly acknowledged during the proceedings.

...

The reviewing judge erred in law by upholding a decision reached through a procedurally unfair process.

The Tribunal proceeded on an incomplete and internally inconsistent evidentiary record.

[31] The Supreme Court considered Ms. Moradi’s procedural fairness arguments and rejected them. In its submissions before me, the respondent highlighted various parts of the WCAT record that it says contradict Ms. Moradi’s claims about an incomplete record. It contends WCAT generously considered everything advanced

by Ms. Moradi, including evidence adduced after the WCAT hearing, and that Ms. Moradi was given the benefit of the doubt on admissibility and relevance. The respondent also says that in advancing her procedural unfairness claims, Ms. Moradi has failed to consider the WCAT record in its entirety. She interprets questions posed by WCAT and/or comments about various documents as an indication of a deficient record. However, that interpretation is based on a piecemeal reading of WCAT's decision and words have been taken out of context and read in isolation.

[32] On the face of it, WCAT's decision appears to support the respondent's submission. It is apparent from the decision that Ms. Moradi received multiple opportunities to submit documentary evidence to WCAT, both solicited and non-solicited. She personally participated in the WCAT hearing and it appears additional hearing time was provided to ensure the parties could complete their evidence and submissions. At para. 70 of its decision (dated May 30, 2022), WCAT confirms that after the hearing, it received additional evidence and submissions from Ms. Moradi that it had not agreed to accept in advance. Although unusual, the tribunal nonetheless took that material into account, acknowledging that Ms. Moradi "has some physical and/or mental health concerns which may have made it difficult to provide evidence and submissions within the regular timeframes". Ultimately, "[o]n review of the evidence as a whole", WCAT agreed with the investigations legal officer that the respondent proved it did not engage in a prohibited action when it terminated Ms. Moradi's employment and the termination was "in no way tainted by [Ms. Moradi's] reporting of occupational health and safety concerns: at para. 106, emphasis added.

[33] I appreciate I have not addressed each of Ms. Moradi's procedural complaints in these reasons or assessed their individual strength. Before me, she said there were many procedural errors in the WCAT and Supreme Court proceedings and she will have little difficulty showing that such is the case on appeal. However, it appears to me that in challenging the Supreme Court ruling, Ms. Moradi is raising many of the same arguments she raised on judicial review. She disagrees with the judge's

conclusions and says the judge should have seen the case differently—substantively and procedurally. However, Ms. Moradi has not identified a clear error of law, error in principle, abjectly flawed reasoning process, or a misapprehension of the record specific to the judge’s conclusions. Although unclear, Ms. Moradi appears to be alleging that in addition to procedural unfairness in processes, the respondent, the legal investigations officer, WCAT, and possibly other adjudicators have either intentionally removed or altered relevant documents to thwart a successful complaint. This is a serious allegation, and on the face of it, unsubstantiated.

[34] The fact that Ms. Moradi sees the case differently than the judge does not mean she has a strong appeal, rendering an order for security unjustified. To the contrary, I consider her appeal to carry little prospect of success. Although not dispositive, the chambers judge who heard the no fees application arrived at a similar conclusion, finding that the evidentiary issues Ms. Moradi seeks to advance will likely be difficult to establish (although not bound to fail). Ms. Moradi bears the burden here; the respondent does not have to show that an order for security is warranted. It is presumptively in the interests of justice to grant one.

[35] I appreciate this Court will not generally order security for costs against an appellant who has a meritorious appeal but no financial capacity to post funds. However, where an appeal is “virtually without merit”, security for costs may well be ordered even though an appellant is impecunious. In its practical effect, this would mean the appeal likely does not proceed; however, a “successful [party] should not be required to respond to an unmeritorious appeal when there is no real prospect of recovery”: *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285 at para. 12 (Chambers), application to vary ref’d, 2008 BCCA 496 (Chambers). Based on my reading of the application material, I am satisfied Ms. Moradi faces a significant challenge in advancing this appeal.

[36] Accordingly, I am satisfied security for costs of the appeal is in the interests of justice. The respondent seeks an order in the amount of \$11,048.40, which it says represents only two-thirds of the estimated cost of defending the appeal. However,

in the circumstances of this case, including Ms. Moradi's limited financial means, I consider \$7,500 to be fair.

[37] Given this decision, it is not necessary to resolve the respondent's application for a stay of the appeal pending adjudication of a potential reconsideration. In any event, I understand that Ms. Moradi has not filed a reconsideration application and there are no outstanding matters before WCAT. To grant a stay of the appeal on that basis would be speculative.

[38] That brings me to the request for an extension of time to file the respondent's factum. As noted, Ms. Moradi did not press this issue. In my view, an extension to await to see if Ms. Moradi posts security makes good sense. Otherwise, there is the realistic potential for wasted resources and expense in the production of a factum that is ultimately unnecessary. Ms. Moradi has not identified how she would be prejudiced by an extension. She was able to make her arguments without a respondent's factum. She has filed her factum and if she posts security as required, the appeal can move towards an assessment of the merits without undue delay.

[39] Finally, there is Ms. Moradi's application for a stay of costs in the proceeding below. The respondent has filed a letter stating it will not seek to enforce the Supreme Court costs order while this appeal remains outstanding. Ms. Moradi asked for a stay in any event, so that the fact of the outstanding order would not be a distraction while advancing her appeal. She also submitted that if the respondent has no intention of presently enforcing the order, there is no harm in granting a stay. Given the respondent's commitment, I consider Ms. Moradi's application for a stay unnecessary and I decline to make that order. She cannot show irreparable harm.

Disposition

[40] For these reasons, I grant an order for security of costs in the amount of \$7,500. Ms. Moradi has 30 days from the date of these reasons to post that security. Until security is posted, the appeal is stayed. If Ms. Moradi does not post security as required, the respondent has liberty to apply to have the appeal dismissed as abandoned.

[41] I grant the respondent's request for an extension of time to file its factum until 30 days past the posting of security.

[42] I dismiss Ms. Moradi's application for a stay of costs in the Supreme Court on grounds that a stay is not necessary.

"The Honourable Madam Justice DeWitt-Van Oosten"