

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *The Owners, Strata Plan BCS 3495 v. The Owners, Strata Plan BCS 3495 (Residential Section)*,
2026 BCCA 111

Date: 20260310
Dockets: CA51224; CA51225

Between:

The Owners, Strata Plan BCS 3495

Appellant
(Petitioner)

And

**The Owners, Strata Plan BCS 3495 (Residential Section)
and Prosperise Realty Corp.**

Respondents
(Respondents)

Before: The Honourable Justice Gomery
(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated
November 26, 2025 and December 10, 2025 (*The Owners, Strata Plan BCS 3495 v.
The Owners, Strata Plan BCS 3495 (Residential Section)*,
Vancouver Docket S257689).

Oral Reasons for Judgment

Counsel for the Appellant:

A. Rowshanzamir

Counsel for the Respondent, The Owners,
Strata Plan BCS 3495 (Residential Section):

S.A. Douglas

Counsel for certain Owners:

U. Ghani

Place and Date of Hearing:

Vancouver, British Columbia
March 10, 2026

Place and Date of Judgment:

Vancouver, British Columbia
March 10, 2026

Summary:

This application arises out of an acrimonious dispute about the management of a strata corporation. The applicant seeks leave to appeal two orders effecting an adjournment of the hearing of the underlying petition proceeding pending the outcome of an upcoming special general meeting. Held: Application dismissed. Most of the terms of the orders are unappealable. Even if it were not so, leave to appeal would be refused. The arguments the applicant seeks to advance on appeal have no significance to the practice or the proceeding. The decisions of the chambers judge are highly discretionary and the appeals would lack merit. The proposed appeals would undoubtedly delay final resolution of the petition proceeding.

GOMERY J.A.:

Overview

[1] These applications derive from acrimonious litigation between two factions within a Strata Corporation. The factions dispute the validity of resolutions replacing the strata council and executive purportedly passed at a Special General Meeting (SGM) held on September 27, 2025. The applicant, seeking leave to appeal, maintains that the resolutions were valid. It represents the people it says were validly appointed at the meeting.

[2] There was an issue at the commencement of the hearing today as to who is entitled to speak for the Strata Respondent. In the court below, it represented the people who were purportedly displaced and maintained that they continue to hold office. Two lawyers attended. Mr. Ghani represented the Strata Respondent in the court below and filed an appearance to the notices of appeal. Ms. Douglas has filed notices of change of representation. She acknowledged that she takes instructions from persons allied with the applicant, and that her instructions are to take no position in opposition to the applications. Mr. Ghani continues to take instructions from the opposing faction who wish to oppose the applications.

[3] In order that both sides would be heard, and that I would have the benefit of submissions in opposition to the applications, I granted Mr. Ghani standing to speak in opposition to the applications.

[4] A second respondent is a management company that sides with the Strata Respondent.

[5] The applicant commenced proceedings by a petition filed in the Supreme Court of British Columbia on October 14, 2025. On October 27, Justice Francis (then of the Supreme Court) granted the applicant “[a] temporary injunction barring the ousted Strata Council and Residential Executive members ... from further providing any instructions or otherwise acting on behalf of any facet of the Strata Corporation”, and barred both respondents “from purporting to represent” the Strata Corporation. She ordered that annual general meetings scheduled by the respondents to take place in October should not take place until the matters in the petition were resolved “with the Petition set for a one day hearing on November 26, 2025”.

[6] The petition came on for hearing before Justice Coval on November 26, 2025, as contemplated by Francis J.’s order. In the course of the hearing, the respondents asked that the hearing be adjourned to be continued after a fresh special general meeting recently requested by a representative of the Strata Respondent had taken place. The judge agreed to this request. The applicant seeks leave to appeal the November order adjourning the hearing.

[7] On December 1, 2025, the applicant filed a notice of application in the Supreme Court seeking to forestall the holding of a special general meeting until matters raised in the petition were resolved. In the same notice of application, the applicant sought an order that a principal representative of the Strata Respondent be found in contempt. The Strata Respondent responded with a request to appear before Coval J. noting the applicant’s notice of application and seeking “to determine next steps”.

[8] On December 10, 2025, the parties appeared before Coval J. While there is not a transcript in the file, there is a draft order, signed by counsel, that I am told has now been entered, although the entered order has not been filed. It directs that the applicant’s notice of application be adjourned pending the outcome of the special

general meeting, that the parties exchange position letters, and that “costs of this appearance [be] awarded to the ... (Residential Section)”. The applicant seeks leave to appeal this order.

[9] In both appeals, the applicant seeks a stay of the underlying petition proceeding. It also seeks, remarkably, orders that the Court of Appeal should hear, as a court of first instance, its notice of application filed on December 1, 2025. It would have this Court receive “full affidavit materials”, fix deadlines, and grant it the relief it seeks in the application that has not yet been heard in the Court below.

[10] Much of the relief sought by the applicant is procedurally and substantively misconceived, and the applications are generally lacking in merit. For the reasons that follow, I dismiss the applications.

The application for leave to appeal the November order

Justice Coval’s reasons

[11] Justice Coval gave brief oral reasons for his decision to adjourn the hearing that was taking place before him. He began by identifying three considerations in play:

- a) The record was very large and more time than was presently available would be required to complete the hearing;
- b) It appeared that scheduling difficulties would prevent the continuation from taking place in December and even possibly in January; and
- c) “Perhaps most importantly”, the petition might become moot as a result of the further SGM that had been requested.

[12] The judge noted the applicant's opposition to the adjournment based on reasons that included disputed allegations concerning the conduct of previous council members. He made the following finding:

[4] From my hearing of the submissions and review of the evidence, I do not see a basis, at this point, for a risk that such conduct will occur unless this hearing goes forward.

[13] While the applicant sought clarity as to who would conduct the potential future SGM, the judge observed that the injunction pronounced by Francis J. "essentially puts the [applicant's] counsel and executive, and its preferred property manager, in control on an interlocutory basis". He added that he did not consider that deciding the petition in advance of the SGM would assist in addressing any questions as to its validity or the validity of any resolutions to be passed.

[14] Justice Coval made the following order:

1. The continuation of this hearing is adjourned pending the outcome of the Special General Meeting ("SGM") that was demanded by Mr. Zhou on November 17, 2025, under SPA 43(1).
2. At their earliest convenience after the SGM, counsel for the parties schedule a 9AM appearance before Justice Coval to discuss next steps in this proceeding, including scheduling future hearings and any variation of the October 27, 2025 Order of Madam Justice Francis.
3. If the SGM is not going to proceed, counsel schedule a 9AM appearance before Justice Coval to discuss next steps in this proceeding, including scheduling future hearings and any variation of the October 27 Order of Madam Justice Francis.

He also directed the applicant to provide to the Strata Respondent its position on the validity of the proposed SGM by November 27.

Legal framework

[15] An order adjourning a proceeding is a limited appeal order: *Court of Appeal Rules* R. 11(e). Limited appeal orders are appealable, though only with leave of a justice: *Court of Appeal Act* s. 13(2)(a). Directions that do not determine procedural or substantive rights or make declarations of law are not appealable: *1163499 B.C. Ltd. v. Yao*, 2025 BCCA 443 at para. 14.

[16] A decision to grant or refuse leave to appeal an appealable order involves an exercise of judicial discretion in the interests of justice having regard to:

- a) whether the point on appeal is of significance to the practice;
- b) whether the point raised is of significance to the action itself;
- c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
- d) whether the appeal will unduly hinder the progress of the action.

Goldman, Sachs & Co. v. Sessions, 2000 BCCA 326 at para. 10 (chambers);
Movassaghi v. Aghtai, 2010 BCCA 175 at paras. 22 and 27 (chambers).

[17] Leave to appeal is rarely granted for discretionary orders unless the order is clearly wrong, or it is demonstrated that the judge did not exercise their discretion judiciously or relied upon a wrong legal principle that would result in a serious injustice if leave is not granted: *Movassaghi* at para. 23.

[18] A trial judge's decision to grant or refuse an adjournment is highly discretionary. The discretion is one involving an assessment of the interests of justice with a view to ensuring that there will be a fair hearing on the merits: *Navarro v. Doig River First Nation*, 2015 BCSC 2173 at paras. 18–21. *Navarro* is a leading case in which Justice Dhillon stated, with copious citation of authority:

[18] A judge exercises discretion when an adjournment is sought and has wide powers in relation to the order that is made ... The discretion must, of course, be exercised judicially in accordance with appropriate principles ... The exercise of discretion is a delicate and difficult matter that addresses the interests of justice by balancing the interests of the plaintiff and of the defendant ... This balancing requires a careful consideration of all of the elements of the case including the nature of the proceedings and the parties ... The Court of Appeal will be extremely reluctant to interfere with a decision of a trial judge on an adjournment matter which is integral to exercise of judicial discretion ...

Analysis

[19] It became clear in oral argument that the applicant's objection to the November order is not to the decision to adjourn the hearing that was taking place. An adjournment was necessary because the hearing could not be completed in the time set aside. The objection was to the direction, in para. 1 of the order, that the hearing not resume until the request for an SGM had been dealt with.

[20] In my opinion, this direction was not an appealable order because it did not determine procedural or substantive rights. This Court would have no jurisdiction to set it aside. This is a full answer to the application for leave to appeal the November order. However, in case I am wrong, I will go on to consider whether I would grant leave to appeal if the order were appealable.

[21] The applicant's notice of appeal lists 13 grounds for its application for leave to appeal the November order. Its memorandum of argument is more focused. It submits that the judge erred in his "reasoning regarding mootness", and that there was "actual, palpable bias all throughout". The mootness argument is that the judge assumed that the holding of a further SGM would resolve matters when it would not. The bias argument is that the judge departed from a judicial role in attempting to mediate, and then in jumping upon the respondents' proposal for an adjournment when it became apparent that the parties would not settle. The applicant speculates that the judge had recently decided a judicial review application involving some of the same parties and "may have possessed a desire to equalize the scorecard". It says that "the hearing simply went off the rails". I should say that the applicant did not press the bias argument in oral submissions.

Are the points on appeal of significance to the practice?

[22] To the extent that there is any merit at all to the arguments the applicant proposes to advance on appeal, they have no significance to the practice. The applicant does not identify any legal points in issue. The legal principles pertaining to mootness and bias are well established and the applicant's arguments are closely tied to what it submits are the facts of this case.

Are the points on appeal of significance to the proceeding?

[23] The mootness point lacks general significance. If the applicant were able to establish a reasonable apprehension of bias on the part of the judge, it would be necessary for the petition of which he is seized to be reassigned to another judge. This would be a significant development in the proceeding.

Is there apparent merit to the appeal, or is it frivolous?

[24] In my view, the proposed appeal lacks merit to such an extent that it is best characterized as frivolous.

[25] As noted, the standard of review on an appeal from an adjournment decision is highly deferential. The judge's reasons for adjourning the hearing are cogent and fall within the scope of the discretion afforded him. He reasoned that the hearing was bound to be adjourned, because it could not be completed in the time available. Some delay was inevitable. There would be delay in rescheduling. It was appropriate for him to consider whether the result of a further SGM had the potential to resolve or simplify the issues, and to determine that the hearing should not resume until the SGM had taken place. He made provision for the possibility that the SGM would not take place, and for further hearings "to discuss next steps in this proceeding". I can discern no realistic possibility that a division of this Court would take issue with this reasoning.

[26] Turning to the bias argument, the applicant has not addressed the authorities establishing what constitutes a bias on the part of a judge or tribunal. They were recently reviewed by Justice Griffin in *Pereira v. Dexterra Group Inc.*, 2023 BCCA 201 at paras. 10–17. As she noted, there is a strong presumption of judicial impartiality that is not easily displaced (citing *Yukon Francophone School Board, Education Area No. 23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 25). A party alleging a reasonable apprehension of bias must meet a high burden (at para. 12). The test is whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would think that it is more likely than not that the decision maker would, either consciously or unconsciously,

not decide the matter fairly. The approach to that test is inherently contextual and fact specific.

[27] The bias allegation is unsupported on the record before me. There is no realistic possibility that a division of this Court would find the test satisfied on these materials. I should add that the applicant's memorandum of argument refers to a transcript that has not been filed and indulges in inappropriate speculation as to the judge's thinking and motives.

Would an appeal unduly hinder the progress of the proceeding?

[28] An appeal in this Court would undoubtedly delay final resolution of the applicant's petition proceeding, which has already been much delayed since the hearing on November 26, 2025. I would view further delay as undue. It is curious that the applicant wishes to pause the proceeding in the court below in order that it might complain in this Court that the judge erred in pausing the proceeding in the court below.

Conclusion as to leave to appeal the November order

[29] The considerations I have outlined lead me to conclude that, if the November order were appealable, it would not be in the interests of justice to grant the applicant leave to appeal.

The application for leave to appeal the December order

[30] It is an obstacle to considering an application for leave to appeal the December order that the applicant has not obtained a transcript of the judge's reasons, nor has it tendered an agreed note prepared by counsel of what was said by the judge: *T.F.R. v. Y.T.*, 2025 BCCA 349 at paras. 24–26.

[31] The order provides as follows:

1. The Petitioner's application filed on December 1, 2025 is adjourned pending the outcome of the Special General Meeting.
2. The Parties to exchange position letters and determine with the Court a timetable for delivery of materials, hearing dates and possible variation of the Order of Madam Justice Francis made October 27, 2025.

3. Costs of this appearance [are] awarded to the Respondent, The Owners, Strata Plan BCS 3495 (Residential Section).

[32] In my opinion, except for para. 3, this is not an appealable order because it does not determine procedural or substantive rights. Paragraph 3 is only appealable with leave: *Rules R. 11(f)*.

[33] I will deal with the leave application on the assumption, contrary to my view, that the entire order is appealable.

[34] The applicant lists 14 grounds of appeal in its notice of appeal and identifies “three main issues” in its memorandum of argument. These are:

- (1) The efficacy of Mr. Justice Coval’s abuse of process commentary from December 10th, 2025 and the requisite adjournment order of the Petitioner Appellant’s application filed December 1st, 2025;
- (2) The jurisdictional and legal basis for Mr. Justice Coval setting down his Appearance for Directions of December 10th, 2025 and then adjourning the Petitioner Appellant’s application in such a context; and
- (2) Actual, palpable bias all throughout.

[35] The first of these grounds concerning the judge’s “abuse of process commentary” cannot found an order granting the applicant leave to appeal in the absence of a record of the judge’s reasons. The second ground is a complaint about the judge’s decision to hear the parties on December 10, 2025, and to postpone scheduling of the hearing of the applicant’s application for the time being. This is a decision falling squarely within the case management powers of a judge of the trial Court. The third is a continuation of the bias allegation I have already discussed.

[36] In my view, it is not in the interests of justice that leave to appeal be granted on the record at hand. None of the points raised is of significance to the practice. The bias allegation is the only point of significance to the proceeding. I am not persuaded that any of grounds of appeal have merit: the appeal appears to me to be frivolous. I find that an appeal would unduly hinder final resolution of the proceeding in the trial court.

[37] I therefore would deny leave to appeal the December order.

Stay applications and other relief sought by the applicant

[38] It follows from my denial of leave to appeal that the stay applications and other relief sought by the applicant must be dismissed.

[39] I would add this. The applicant relies on ss. 24–25 of the *Court of Appeal Act* which confer upon this Court authority and jurisdiction to make orders that might have been made by the court below including for purposes incidental to the hearing and determination of any matter. But the general authority and jurisdiction of a single justice are more confined: ss. 30–34. With the exception of the powers to draw inferences of fact and find parties in contempt of court pursuant to s. 24(2)(a) and (b), the powers of the Court under ss. 24 and 25 are exercised by divisions of at least three judges: s. 4.

[40] Under ss. 24 and 25, even a division of the Court is limited to making orders on applications that were properly before the court below. The application filed on December 1, 2025 was never heard by the British Columbia Supreme Court, it was not the subject of a substantive order by the Supreme Court, and, in my view, this Court would lack jurisdiction to decide it, even if leave were granted.

[41] If I had granted leave to appeal, I would have had jurisdiction to order a stay of the proceedings in the court below, pending determination of the appeal: s. 33(1). The effect would have been to delay resolution of the proceeding in the court below, for very little benefit. Applying the test in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117, I would have found that consideration of the balance of convenience favours the respondents and refused a stay.

“The Honourable Justice Gomery”