

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Booth v. Habitat for Humanity Victoria*,  
2026 BCCA 123

Date: 20260212  
Docket: CA51331

Between:

**Erin Elizabeth Booth**

Appellant  
(Respondent)

And

**Habitat for Humanity Victoria**

Respondent  
(Petitioner)

Before: The Honourable Justice Mayer  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
January 28, 2026 (*Habitat for Humanity Victoria v. Booth*, Victoria Docket S248140).

## Oral Reasons for Judgment

The Appellant, appearing in person  
(via videoconference):

E.E. Booth

Counsel for the Respondent  
(via videoconference):

S.A. Gray-Schleihauf

Place and Date of Hearing:

Vancouver, British Columbia  
February 12, 2026

Place and Date of Judgment:

Vancouver, British Columbia  
February 12, 2026

**Summary:**

*The applicant applies for a stay of the execution of an order that she deliver vacant possession of the property she currently occupies and costs. Held: Application dismissed. The balance of convenience does not favour the granting of a stay. To do so would not be in the interests of justice.*

[1] **MAYER J.A.:** The appellant, Erin Booth, applies for a stay of the execution of an order that she deliver vacant possession of the property she currently occupies in Saanichton, British Columbia (the “Property”), to the respondent, Habitat for Humanity Victoria (“Habitat”), pending final determination of the appeal. Ms. Booth also applies for costs.

**Background**

[2] A matter arising from the same factual matrix recently came before this Court. Briefly, Habitat gave Ms. Booth occupancy of the Property as part of its Homeownership Program (the “Program”), which is designed to provide housing at below-market cost to eligible working families. Ms. Booth could not maintain eligibility for the Program. After Ms. Booth refused to vacate upon request, Habitat issued a notice to vacate. Ms. Booth took the position that her occupancy was a tenancy within the meaning of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA], and applied to the Residential Tenancy Branch (“RTB”) seeking a decision that the RTB had jurisdiction over what she asserted was her tenancy. The RTB arbitrator found the Property was not a “rental unit” as defined by the RTA and concluded the matter did not come within the RTB’s jurisdiction.

[3] Upon judicial review, the reviewing judge found the arbitrator’s decision was patently unreasonable and issued a stay of petition proceedings commenced by Habitat to obtain vacant possession. In reasons indexed as *Habitat for Humanity v. Booth*, 2026 BCCA 8, released January 12, 2026, this Court allowed Habitat’s appeal of the judge’s decision and lifted the stay.

[4] On January 28, 2026, Justice Jackson heard Habitat’s petition to obtain vacant possession. The only issue before the judge was not if, but when Ms. Booth

and her family would be required to vacate the Property. Ms. Booth sought to vacate in June 2026, after her children finished school. The judge was not satisfied that Ms. Booth had made efforts to secure alternative accommodation or had demonstrated hardship in doing so on short notice. The judge considered that the Property should be made available as soon as possible for charitable purposes. The judge ordered that Ms. Booth immediately deliver vacant possession to Habitat of the Property, on or before 12:00 P.M. on January 30, 2026, or on another later date as agreed to by the parties.

[5] On January 30, 2026, Habitat agreed not to enforce the order prior to February 6, 2026.

[6] On February 4, 2026, Ms. Booth filed her notice of appeal and an urgent application to stay Jackson J.'s order. Registrar Outerbridge heard Ms. Booth's urgent application on February 5, 2026, and ordered a stay until her application could be properly heard in regular chambers. The application is now before me.

**The Law**

[7] Sections 30(c) and 33 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, provide authority for a judge in chambers to grant a stay of execution:

30 In an appeal or other matter before the court, a justice may do one or more of the following:

...

(c) make interim orders to prevent prejudice to any person;

...

33 (1) After an appeal or application for leave to appeal is brought, a justice may, on terms and conditions the justice considers appropriate, order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought.

[8] The well-known test for a stay of proceedings or execution is set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117. To succeed, the applicant must show:

- a) that there is some merit to the appeal in the sense that there is a serious question to be determined;
- b) that irreparable harm would be occasioned to the applicant if the stay was refused; and
- c) that, on balance, the inconvenience to the applicant if the stay was refused would be greater than the inconvenience to the respondent if the stay was granted.

[9] The threshold for determining whether there is a serious question to be tried is “a low one”. The Court must be satisfied only that the issues being raised on appeal are neither frivolous nor vexatious; “[a] prolonged examination of the merits is generally neither necessary nor desirable”: *RJR-MacDonald Inc.* at 337–338.

[10] The ultimate consideration in deciding whether to grant a stay is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607, at paras. 7, 9.

### **Serious question**

[11] Ms. Booth argues her appeal raises serious and arguable issues of procedural fairness and natural justice. In her written submissions, she sets out three grounds of appeal:

- a) She “was unrepresented at the hearing despite demonstrating diligent efforts to obtain legal counsel”;
- b) She “was denied the opportunity to present relevant evidence, including critical facts arising in 2024”; and
- c) “The Order appears to rely on arguments or considerations that were not advanced at the hearing.”

[12] Habitat argues there is a low likelihood of success in this appeal, as the underlying basis for the petition that gives rise to this appeal is Habitat's entitlement to possess the Property, which they legally and beneficially own. Habitat further submits Ms. Booth acknowledged, during the January 28, 2026, hearing before Jackson J., that she could not stay in the property, and stated that she would pursue her other remedies to inflict monetary and reputational damage on Habitat. Habitat argues the issues raised on appeal are not meritorious but rather vexatious and frivolous.

[13] I am not satisfied that there is a serious question to be addressed. With respect to Ms. Booth's argument that she was unrepresented at the hearing, there is no evidence before me regarding efforts made by Ms. Booth to obtain counsel, and I am not satisfied that this would have made a difference. The judge dismissed her application for an adjournment and Ms. Booth has provided insufficient materials or evidence demonstrating any error in law, principle or fact in the judge's determination.

[14] With respect to Ms. Booth's argument that she "was denied the opportunity to present relevant evidence", it appears that Ms. Booth takes issue with the judge not affording her an opportunity to do so when the judge was in the process of pronouncing reasons. Understandably, the judge was not inclined to reopen argument at that stage. Also, Ms. Booth has not explained what evidence she would have provided. She has not explained why evidence from 2024, well before the January 2026 decision of this Court confirming the decision of the RTB arbitrator that she was not a tenant of the Property, is relevant. It appears that Ms. Booth seeks to adduce evidence going to the issue of her right to remain as a tenant, or to remain within Habitat's Program generally. In my view, that evidence was not relevant to the issues under consideration by the chambers judge when the matter came on before her on January 28, 2026.

[15] With respect to Ms. Booth's argument that the judge relied on arguments or considerations that were not advanced at the hearing, she has not indicated what those arguments were.

[16] Ultimately, I am not satisfied that there is a serious question to be determined in this appeal, because Ms. Booth has not substantiated her argument with respect to procedural fairness. It is her obligation to do so in this application, with necessary evidence. There can be no dispute that Ms. Booth had no rights to occupy the Property as a tenant, and she has not shown that the judge erred in deciding that it was appropriate to order vacant possession on January 28, 2026 — as she did.

### **Irreparable harm if the stay is refused**

[17] Ms. Booth submits without a stay, she and her family will be evicted immediately, resulting in immediate and irreparable harm, which includes loss of her family home, permanent displacement of her and her children, significant emotional and psychological harm arising from the sudden eviction, and disruption to schooling, healthcare, and family stability. Again, other than making those statements, Ms. Booth has not provided evidence to substantiate those points. She submits that this harm could not be later remedied by damages or other forms of legal relief. Again, she does not explain why that is the case.

[18] In another respect, in submissions before this Court, Ms. Booth has indicated that she continues to seek other remedies against Habitat, including proceedings before the Human Rights Tribunal, in which she is seeking significant damages from them.

[19] Ms. Booth argues, and there is some merit to this submission, that if the stay is not granted, and she is evicted, the appeal risks becoming moot or illusory. That may be the case, depending on the remedies that Ms. Booth ultimately seeks in her appeal.

[20] Ms. Booth submits that she has made "reasonable efforts to obtain alternative housing" but has been unable to do so for various reasons, including limited

timelines, market conditions, financial constraints, and childcare obligations. Again, at the risk of being repetitive, it was incumbent upon Ms. Booth to provide evidence to the Court in that respect. There is none before the Court other than Ms. Booth's statements.

[21] Habitat acknowledges that, if the stay is not granted, enforcement will begin immediately and the appeal of Jackson J's order is rendered moot, but it argues that is a factor on an application for stay but it is not determinative. Habitat says there is no irreparable harm to Ms. Booth because she is already functionally moved out, as evidenced by public posts etc. online. It is unclear to me whether Ms. Booth has entirely moved out of the Property. She submits to the Court orally that she has started to take steps to remove some of her possessions in anticipation of a potential move out.

[22] Given the circumstances, and given some indication that Ms. Booth has started the process of moving some of her items from the Property, I am not satisfied that irreparable harm has been demonstrated if she is required to move out pursuant to the order of Jackson J.

**Balance of convenience**

[23] I begin by noting it has been approximately 30 days since this Court lifted the stay preventing Habitat from seeking Ms. Booth's removal from the Property. During this period, Ms. Booth had the opportunity to start preparing for what was a possible result, which is that Habitat would be successful in obtaining an order for vacant possession.

[24] Ms. Booth argues the balance of convenience favours granting the stay, because "[a] stay would preserve the status quo pending appeal, which is the preferred course where enforcement of the order would otherwise render the appeal ineffective." She submits Habitat "will suffer no meaningful prejudice from a short delay" and has "previously indicated a willingness to allow [her] to remain until March 31, 2026," subject to various conditions. Ms. Booth argues that she, on the

contrary, will “face immediate and irreversible harm if forced to vacate before the appeal is heard.”

[25] Habitat argues there is no evidence that Ms. Booth has taken any steps to obtain alternative accommodation. I agree, as I indicated earlier. Conversely, Habitat says it has a family in need waiting to take possession of the property now.

[26] In summary, in my view, the balance of convenience does not favour the granting of a stay. In consideration of all the factors and the circumstances, I conclude that it is not in the interests of justice to grant a stay.

**Disposition**

[27] As a result, Ms. Booth’s application is dismissed.

[28] Being the successful party, Habitat is entitled to its costs of this application.

[29] I will not make any further orders.

“The Honourable Justice Mayer”