

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gesner v. Coast Capital Savings Federal
Credit Union*,
2026 BCCA 125

Date: 20260303
Docket: CA49800

Between:

Ashley Gesner

Appellant
(Plaintiff)

And

Coast Capital Savings Federal Credit Union

Respondent
(Defendant)

FILE SEALED IN PART

Before: The Honourable Mr. Justice Abrioux
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
March 25, 2024 (*Gesner v. Coast Capital Federal Savings*, 2024 BCSC 490,
Vancouver Docket S231434).

Oral Reasons for Judgment

The Appellant, appearing in person:

A. Gesner

Counsel for the Respondent:

S. Macdonald

Place and Date of Hearing:

Vancouver, British Columbia
February 24, 2026

Place and Date of Judgment:

Vancouver, British Columbia
March 3, 2026

Summary:

The appellant applies for what would amount to an indefinite sealing order over this entire appeal. She also seeks special costs. These applications were filed after the appeal was heard and decided in favour of the respondent. Held: Applications dismissed. The division that heard the appeal has ordered that a

significant portion of the filings in this Court be sealed. The risk to the appellant's privacy from the currently unsealed portions is not sufficiently material to displace the open courts principle. The application for special costs is dismissed because the appellant was unsuccessful, both on this application and in her appeal at large. The respondent is awarded 50% of its assessed costs of these applications.

ABRIOUX J.A.:

Introduction

[1] The applicant, Ashley Gesner, seeks an indefinite sealing order over the notice of appeal, appeal record, factums, memorandums of argument, reasons for judgment, and orders in this file. This would amount to an indefinite sealing order over the entire file. The notice of application provides that in support of the application the appellant relies on the “Affidavits provided by the Appellant 2023-2026” but those affidavits were not further identified nor were copies filed on this application or provided to the Court at the hearing of the application. Ms. Gesner’s notice of application also seeks special costs, “for intentional infliction of psychological distress”, although her memorandum of argument does not specifically address this issue.

Background

[2] This appeal is one of four, all initiated by Ms. Gesner in this Court since April 2024. On these applications, Ms. Gesner advances several arguments which relate to the other appeals, and what occurred in the British Columbia Supreme Court regarding the circumstances that underlie those appeals. For the sake of brevity in these reasons, I will focus only on what is relevant to this application, and the appeal to which it relates.

[3] I first observe that Ms. Gesner filed this application after the decision in this appeal was rendered. The reasons for judgment are indexed as *Gesner v. Coast Capital Savings Federal Credit Union*, 2026 BCCA 40 (the “RFJ”). At paras. 3–29 of the RFJ, Justice Groberman provided a thorough review of the relevant facts.

[4] In summary, Ms. Gesner was a member of Coast Capital Savings Federal Credit Union (“Coast Capital”) from 2017 until 2023. Due to a series of personal reasons, she fell into financial hardship. She argued that some of this hardship was attributable to Coast Capital’s alleged breaches of contract, negligence, and breaches of fiduciary duties.

[5] Justice Butler, in granting Ms. Gesner an order that no fees are payable on this appeal, provided a summary of the British Columbia Supreme Court proceedings:

[4] On March 1, 2023, Ms. Gesner filed a notice of civil claim against Coast Capital. On March 2, 2023, she filed an application for summary trial. On August 25, 2023, Coast Capital applied to strike, or alternatively, dismiss the claim.

[5] Both applications came before Justice McDonald on September 26, 2023. She summarized the claims as follows:

[2] Ms. Gesner claims that Coast Capital damaged her business and career prospects. She brings various claims for, among other things, breach of contract and negligence and she seeks damages and restoration of her credit rating.

[3] Coast Capital denies all aspects of the claim. In its own application, Coast Capital also seeks dismissal of Ms. Gesner's claim.

[6] After concluding that the matter was appropriate to be decided by way of summary trial, the judge addressed the following issues, whether Coast Capital:

- (1) wrongfully delayed opening Ms. Gesner's business account;
- (2) wrongfully debited funds or withdrew mortgage and line of credit payments;
- (3) failed to defer Ms. Gesner's mortgage payments and thus, forced her to sell her property; and
- (4) was liable for damages for cyber fraud.

[7] On the first issue, the judge found that Ms. Gesner had not established that Coast Capital had any obligation to open her business account within a certain time and that it failed to do so, or that the timing resulted in actionable loss or damage: at para. 26. On the second issue, the judge found that Ms. Gesner had not established that Coast Capital was liable, and to the extent the funds were debited, it was solely the result of Ms. Gesner's actions: at para. 34. On the third issue, the judge found that there was no evidence to support Ms. Gesner's claims that Coast Capital wrongfully failed to grant her additional payment deferrals. Further, the judge found that there was inadequate proof that Ms. Gesner suffered any loss or damage recoverable from Coast Capital: at para. 34. On the final issue, the judge found that Ms. Gesner had not established that Coast Capital was liable for the loss or damage she claims as a result of participating in a fraudulent online scheme: at para. 49. Additionally, the judge found that Ms. Gesner failed to show that Coast Capital wrongfully caused her credit rating to decline: at paras. 50–55.

[8] Ultimately the judge dismissed Ms. Gesner's application seeking judgment on the claim.

Gesner v. Coast Capital Savings Federal Credit Union (3 May 2024), Vancouver Docket No. CA49800 (B.C.C.A. Chambers).

[6] Ms. Gesner appealed the order dismissing her summary trial application. On appeal, Justice Groberman, on behalf of the Court, dismissed the appeal. Shortly before publishing the decision, he wrote a memorandum to the Deputy Registrar, on behalf of the division, clarifying to the parties the nature of a temporary sealing order on the file that expired on the date of the hearing. He provided a summary of the previous sealing orders on this file, and extended an indefinite sealing order over certain documents:

The parties should be aware that a temporary sealing order in respect of the file (made November 19, 2024) has expired. I write to indicate how the materials in the file will now be treated.

The history of the sealing order is as follows. On [October 29], 2024 Justice Griffin was asked to make a sealing order in respect of materials that were then filed. She declined to do so, citing *Sherman Estate v. Donovan*, 2021 SCC 25 and *NHK Spring Co. Ltd. v. Cheung*. She did order a single affidavit to be sealed, with a redacted copy being made available in the public file. Justice Griffin's order remains in place.

On November 19, 2024, Ms. Gesner applied to seal the entire file. Justice Fenlon indicated at the hearing that she was prepared to seal a single affidavit that had been filed, as she agreed that the stringent test for a sealing order had been made out in respect of it. A person assisting Ms. Gesner at the hearing objected that there might be severe and immediate consequences to Ms. Gesner's privacy if the entire file were not sealed. Justice Fenlon, understandably, did not hear full argument on the matter at that time. The trial was scheduled to proceed in January 2025 (though there was some suggestion that it might be adjourned to the Spring of 2025) and a more pressing matter was the settlement of the appeal record. The hearing to settle the appeal record was to be heard by the registrar that morning.

In view of the limited time available for the application and the proximity of the trial, Justice Fenlon granted what she acknowledged was an "extraordinary order", sealing the entire file, but only until the hearing of the appeal. Justice Fenlon emphasized that sealing orders are given sparingly. It is evident that she made her order taking into account the limited public interest in the case and the limited time that the order would be in place. Her order formally expired when the hearing of the appeal commenced.

I understand that, notwithstanding the expiry of Justice Fenlon's order, the registry has continued to treat the file as if it were sealed. The status of the file must now, however, be clarified.

In light of the very limited apparent public interest in this file, we are prepared to make an order sealing parts of the file indefinitely. We do so in recognition of the fact that it will be very time-consuming to redact the large volume of documents that have been filed. We also consider that the court time required to consider redaction of each individual document would be inordinate.

[7] In summary, the division hearing the appeal granted a partial, indefinite sealing order over the appeal books, transcript, books of new evidence, affidavits and exhibits. That order was made “without consideration of the specific content of the sealed documents, and without argument.” Justice Groberman clarified that if Ms. Gesner wished to address sealing parts of the notice of appeal, appeal record, factums, memorandums of argument, reasons for judgment and orders in the file, she was not prevented from bringing an application in chambers to do so.

[8] In this application, Ms. Gesner seeks an indefinite sealing order over those documents. This would amount to an extension of the division’s order, and would seal the entire file in this Court indefinitely.

Legal framework

[9] Justice Griffin, in her analysis of the first sealing order granted in this case, indexed as *Gesner v. Coast Capital Savings Federal Credit Union* (4 September 2024), Vancouver Docket No. CA49800 (B.C.C.A. Chambers), outlined the legal framework that applies to this application:

[9] A justice has authority to order a file sealed in whole or in part by virtue of s. 30 of the *Court of Appeal Act*, S.B.C. 2021, c. 6. That section reads, in part:

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

- (a) make orders incidental to the appeal or matter not involving a decision of the appeal on the merits;
- (b) make orders or give directions for the purposes of managing the conduct of the appeal or other matter;
- (c) make interim orders to prevent prejudice to any person;

See *NHK Spring Co., Ltd. v. Cheung*, 2023 BCCA 230 at para. 12 (Chambers).

[10] A sealing order is a discretionary limit on court openness. As court proceedings are presumptively open to the public, the bar for denying the public access to a court file is a high one: *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 37; *NHK* at para. 13.

[11] To succeed on an application for a sealing order, the applicant must establish the following prerequisites set out by the Supreme Court of Canada in *Sherman Estate* at para. 28:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

(3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[12] To pass the first stage of the analysis, the applicant must show that an important interest has been invoked and that there is a serious risk to that interest. The Court in *Sherman Estate* provided the following guidance:

[33] ...A court can make an exception to the open court principle, notwithstanding the strong presumption in its favour, if the interest in protecting core aspects of individuals' personal lives that bear on their dignity is at serious risk by reason of the dissemination of sufficiently sensitive information. The question is not whether the information is "personal" to the individual concerned, but whether, because of its highly sensitive character, its dissemination would occasion an affront to their dignity that society as a whole has a stake in protecting.

...

[42] While there is no closed list of important public interests for the purposes of this test, I share Iacobucci J.'s sense, explained in *Sierra Club*, that courts must be "cautious" and "alive to the fundamental importance of the open court rule" even at the earliest stage when they are identifying important public interests (para. 56). Determining what is an important public interest can be done in the abstract at the level of general principles that extend beyond the parties to the particular dispute (para. 55). By contrast, whether that interest is at "serious risk" is a fact-based finding that, for the judge considering the appropriateness of an order, is necessarily made in context. ... An order may therefore be refused simply because a valid important public interest is not at serious risk on the facts of a given case or, conversely, that the identified interests, regardless of whether they are at serious risk, do not have the requisite important public character as a matter of general principle.

[Emphasis in original.]

[13] Not all privacy considerations constitute an important public interest. As stated in *Sherman Estates*: "[n]either the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing or distressing to certain individuals will generally on their own warrant interference with court openness": at para. 63.

The parties' positions

[10] Ms. Gesner submits that all three factors under the *Sherman Estate v. Donovan*, 2021 SCC 25, test are met.

[11] Her position is that there is a serious risk to her interests in "privacy, personal safety and psychological security". She expresses fear that the continued public availability of any appeal document puts her at risk for future harm, harassment, and intrusion by the fraudulent actors that are now targeting her.

[12] She argues that there is no reasonable alternative to a full sealing order. Redaction, she says, does not mitigate the risk to her, because the currently-unsealed documents contain summaries, excerpts, and detailed references to sensitive information that is in the evidence Justice Groberman ordered to be sealed.

[13] She also submits that, as Justice Groberman noted in his letter to the Deputy Registrar, there is “very limited apparent public interest in this file”. As a result, she argues, the benefit of the file being open to the public is minimal, as compared to the real risk upon her.

[14] Coast Capital takes no position on the sealing of the file.

Analysis

[15] Ms. Gesner’s arguments are all predicated on the premise that her affected interest is the type of interest that must be protected under the *Sherman Estate* framework. As I shall explain, I have concluded that she has not satisfied this first element of the test.

[16] Ms. Gesner argues that her privacy and psychological security are at stake if the file is not sealed. In *Sherman Estate* at para. 63, Justice Kasirer, speaking for the Court, explicitly addressed this point. He held that “[n]either the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing or distressing to certain individuals will generally on their own warrant interference with court openness”. While I understand Ms. Gesner’s concerns that the publication of her personal information may be distressing to her, this, on its own, is not sufficient to rebut the strong presumption that the court processes remain open.

[17] I turn now to address the specific public interest in protecting Ms. Gesner’s information so the fraudulent actors can no longer take advantage of her. There is a high burden on Ms. Gesner to prove the materiality of this risk: *NHK Spring Co., Ltd. v. Cheung*, 2023 BCCA 230 at para. 13 (Chambers).

[18] Ms. Gesner has not identified any specifics that relate to the serious risk she says the fraudulent actors allegedly continue to pose based on the documents that remain unsealed. Nor has she filed any evidence of further attempts by the alleged fraudulent actors to access her information based on the currently-

unsealed court materials. In fact, she acknowledges that the unsealed materials only contain summaries, excerpts and references to sensitive portions of the evidence. Having reviewed those additional portions of the court file that Ms. Gesner now seeks to be sealed permanently, I am not persuaded that summaries and references to evidence create the risk Ms. Gesner believes continues to exist. Indeed, Justice Griffin has already granted an indefinite sealing order over certain particularly sensitive bank statements. Furthermore, Justice Groberman granted an additional order, which covers significant amounts of evidence, including the affidavits, exhibits, and books of new evidence.

[19] It is incumbent on Ms. Gesner not only to show that her interest in privacy is publicly important, but also that there is a real, demonstrable threat to that interest: *Sherman Estate* at para. 62. Respectfully, all that is before the Court on this application is her speculation that the unsealed portions of the appeal file will assist the alleged fraudulent actors in further harassing her. Given the high burden to displace the presumption of the open courts principle, I find that Ms. Gesner has failed to sufficiently demonstrate the purported risk to warrant an extension of the sealing order in this case.

[20] Given that, in my view, the first *Sherman Estate* factor is not met, I need not analyze the other factors. I would dismiss the application for a sealing order on this ground.

The special costs application

[21] Ms. Gesner also seeks special costs from Coast Capital. It is not clear to me whether Ms. Gesner is seeking special costs in relation to:

- (a) the appeal proceeding itself;
- (b) the application that is before me;
- (c) the Supreme Court proceedings that were the subject matter of this particular appeal; or
- (d) an entirely independent claim for special costs, unrelated to the proceedings underlying the appeal or this application.

[22] This lack of clarity arises from the thrust of her submissions—being that she is seeking an order for special costs because of Coast Capital’s “intentional infliction of psychological distress” upon her.

[23] Section 45(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, provides that, “[s]ubject to the rules, the court or a justice may make any order or give any direction that the court or justice considers appropriate in relation to costs.” Rule 71(1) of the *Court of Appeal Rules*, B.C. Reg. 120/2022, provides that, “[a] justice may order that costs be assessed as special costs.”

[24] Notwithstanding the apparent wide scope of these provisions, and without deciding the issue, since no fulsome submissions were made on the point, I have considerable difficulty in identifying any situation where either of those provisions could or should be applied in the circumstances such as those that exist on this application. This is because the result would be that a single justice in chambers, who was not on the division of the Court that heard and decided the appeal, would be ordering special costs of the appeal proceeding itself. And in that regard, it is of no moment whether Ms. Gesner seeks special costs in relation to the whole appeal, the proceedings in the Supreme Court or only on this application—she was unsuccessful on all accounts. Indeed, only in exceptional and specific circumstances will special costs be ordered in favour of an unsuccessful appellant: *Barclay (Guardian ad litem of) v. British Columbia (Attorney General)*, 2006 BCCA 434 at paras. 25, 35–36.

[25] I also observe that in her notice of appeal, factum, and reply factum, Ms. Gesner did not raise as a ground of appeal that the judge erred in failing to order special costs, nor did she seek an order for special costs in this Court. Accordingly, it was to be expected that, having dismissed the appeal, the division made no specific order as to costs. Furthermore, Coast Capital sought the ordinary costs of their appeal. That being the case, the usual rule applies, being the successful party will have their costs of the appeal: *Court of Appeal Act*, s. 44(1).

Disposition

[26] The application to extend the sealing order is dismissed, as is the application seeking special costs against the respondent.

[27] Coast Capital took no position on Ms. Gesner's application for an expanded sealing order. Accordingly, I order that it receive 50% of its assessed costs of these applications, being those costs incurred in relation to its opposition to the application seeking special costs against it.

"The Honourable Mr. Justice Abrioux"