

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Nova-BioRubber Green Technologies Inc.*
v. Investment Agriculture Foundation
British Columbia,
2026 BCCA 266

Date: 20260601
Docket: CA51134

Between:

Nova-BioRubber Green Technologies Inc.

Appellant
(Plaintiff)

And

Investment Agriculture Foundation British Columbia

Respondent
(Defendant)

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Winteringham
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated
November 7, 2025 (*Nova-BioRubber Green Technologies Inc. v. Investment*
Agriculture Foundation British Columbia, 2025 BCSC 2220,
New Westminster Docket S248859).

Oral Reasons for Judgment

Representative for the Appellant company,
appearing in person:

A. Buranov

Counsel for the Respondent:

J.A. Der
S.S.F. Chua

Place and Date of Hearing:

Vancouver, British Columbia
June 1, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 1, 2026

Summary:

In 2019, the respondent foundation dismissed the appellant company's applications for scientific grants. In response, the appellant filed a petition for judicial review. This Court found that a breach of procedural fairness had occurred and remitted the matter to the foundation. The foundation reconsidered the applications but determined once again that they should be dismissed. The appellant subsequently filed a notice of civil claim, seeking damages from the foundation. At trial, the foundation successfully brought a no evidence motion. The appellant now appeals the dismissal of its case following the no evidence motion. Held: Appeal dismissed. The appellant has not established any error in the judge's reasoning in granting the no evidence motion. The appellant's other arguments, including that the judge below was biased and failed to apply this Court's earlier decision allowing the judicial review, are either misguided or unsupported by the record.

[1] **FENLON J.A.:** The appellant Nova-BioRubber Green Technologies Inc. ("Nova") appeals the dismissal of its case at trial following a successful no evidence motion brought by the respondent Investment Agriculture Foundation British Columbia (the "Foundation").

[2] The underlying dispute relates to scientific grants Nova applied for in 2019. The Foundation declined the applications that had been prepared by Dr. Buranov, who is a research scientist and Nova's principal. Nova petitioned for judicial review of that decision. The petition was dismissed at first instance but allowed by this Court in reasons indexed as 2022 BCCA 247. The Court concluded the Foundation had breached procedural fairness by rejecting Nova's applications on the basis of two concerns it had not communicated to Nova. The Court therefore remitted the decisions to the Foundation, saying:

[83] To be clear, I do not intend the remittal order to indicate that the Foundation must grant the appellant's funding applications. That is a matter for the Foundation to decide, in the exercise of its independent judgment. Nor should the remittal be taken to indicate that employees of the Foundation or the Ministry of Agriculture have acted improperly, or that they are guilty of any of the serious acts of misconduct alleged by the appellant. As I have already stated, the appellant's allegations are not based in evidence, and are beyond the proper scope of a petition for judicial review in any event. The purpose of the remittal is simply to allow the appellant's applications to be adjudicated in a manner that is procedurally fair.

[Emphasis added.]

[3] The Foundation accordingly reconsidered Nova's applications for grants, giving Dr. Buranov an opportunity to address the additional concerns. In August 2022, the Foundation again determined that grants should not be awarded to Nova.

[4] In response, Nova filed a notice of civil claim in April 2023, identifying six legal bases in support of a claim for a minimum award of \$900,000 in damages:

- a. Intentional Interference with the economic relations;
- b. Lack of Transparency and Conflict of Interest;
- c. Negligence;
- d. Breach of public confidence and duty;
- e. Breach of statutory duty in *Financial Administration Act* and *Conflict of Interests Act*; and
- f. Breach of *Canadian Human Rights Act* and *Canadian Charter of Rights and Freedom*.

Nova eventually abandoned the claim for intentional interference with economic relations, pursuing the five remaining claims.

[5] The trial began on October 27, 2025, and lasted two days. Dr. Buranov represented Nova, and after making an opening statement, gave evidence and was cross-examined. After Nova closed its case, the Foundation applied to have the claims dismissed under R. 12-5(4) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], which reads:

No evidence application

- (4) At the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that there is no evidence to support the plaintiff's case.

[6] The judge granted the application, finding that Nova had led no evidence to support its claims, and dismissed the case in its entirety.

[7] Following the receipt of written submissions, the judge awarded the Foundation double costs, concluding that Nova should have accepted an offer to settle of \$25,000 made by the Foundation early in the proceedings below.

On Appeal

[8] The appellant raises 23 grounds of appeal, challenging almost every aspect of the judge’s reasons. Fundamentally, however, the question on appeal is whether the judge erred in granting the no evidence motion and dismissing Nova’s action. In my view, the appeal can be dealt with summarily.

[9] The judge set out the correct analytical framework under R. 12-5(4), asking whether Nova had failed to adduce evidence upon which a properly instructed trier of fact, acting reasonably, could find for the plaintiff. He recognized that the relevant question was whether a reasonable trier of fact “could” find in Nova’s favour, not whether the trier of fact “would” do so, citing *Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242 at paras. 44, 49. In order to identify what causes of action were in issue—a necessary first step before assessing the adequacy of the evidence with respect to each—the judge read Nova’s pleading generously. For example, he recast the claim for “breach of public confidence and duty” as a claim for misfeasance in public office.

[10] The judge reasoned that many of the claims sought relief available only on judicial review. As for those claims that might form the basis of a cause of action supporting an award of damages, such as misfeasance and negligence, the judge found the causes of action were not made out on the pleading and, in any event, that no evidence had been led in support of those claims.

[11] In my view, Nova has not established any error in the judge’s reasoning and decisions concerning the arguments before him.

[12] I turn now to additional arguments raised on appeal. First, Dr. Buranov asserts that the trial was procedurally unfair because he was “taken by surprise” by the no evidence motion, expecting the trial to continue for another eight days. However, the Foundation brought the motion in accordance with the *Rules*. A no evidence motion is available to defendants in the event that a plaintiff fails to prove essential elements of their claim, making it unnecessary for the defendant to put in its case. Nova had an opportunity to oppose the motion and did so. There is no merit

to the submission that Nova was denied procedural fairness on the application. Dr. Buranov acknowledges he was invited to make submissions on the no evidence motion application and did so.

[13] Second, Nova claims the judge was biased in his conduct of the proceedings below, “siding with the defendant” and “trying to protect” the Foundation, and appearing to want to end the trial early. There is, however, nothing in the record to support that allegation. A ruling that goes against a party does not demonstrate bias.

[14] Third, Nova argues that the judge’s reasons are inadequate to explain his decision. I find quite to the contrary that they are clear and concise.

[15] Fourth, Nova argues that the judge failed to apply this Court’s earlier decision allowing the judicial review. It is not entirely clear what is meant by this submission. If Nova submits that this Court’s finding of a breach of procedural fairness entitled it to sue for damages, that submission is misguided. The only remedy granted to Nova in the judicial review proceeding was a rehearing of the applications—damages are not available on judicial review.

[16] If Nova intends to suggest that this Court directed the Foundation on the rehearing to approve his applications, or consider them in a particular way, including through the use of independent experts external to the Foundation, that submission too is misguided. To repeat, this Court did nothing more than remit the matter to the Foundation for a rehearing of the applications so that Nova had an opportunity in a new hearing to respond to the Foundation’s concerns about the applications.

[17] Fifth, Nova seeks “financial compensation for previous low salary and small development expenses for 2012–2019”, and damages from “April 2019 to present”. This claim was neither pleaded by Nova nor raised by it at trial. This Court does not hear matters at first instance. Our role is to review the proceedings heard in the court below, not to consider new claims raised for the first time on appeal.

[18] Finally, Nova argues the judge should not have awarded double costs against it because, by offering to pay Nova \$25,000, the Foundation admitted it had

engaged in wrongful conduct. Respectfully, that is a gross misunderstanding of the nature of an offer to settle. An offer to settle is not an admission of liability. It reflects nothing more than a party's desire to compromise, even if they think they are right, so as to avoid the costs, time, and effort of a trial.

[19] Finding no basis on which this Court could interfere with the judge's decision, I would dismiss the appeal.

[20] **WINTERINGHAM J.A.:** I agree.

[21] **IYER J.A.:** I. agree.

[22] **FENLON J.A.:** The appeal is dismissed.

"The Honourable Madam Justice Fenlon"