

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Moore v. Cheung*,
2026 BCCA 259

Date: 20260612
Dockets: CA50328; CA51220

Docket: CA50328

Between:

Wayne Moore

Applicant/Appellant
(Petitioner)

And

Kevin Cheung

Respondent
(Respondent)

- and -

Docket: CA51220

Between:

Wayne Moore

Appellant
(Petitioner)

And

Kevin Cheung

Applicant/Respondent
(Respondent)

Before: The Honourable Madam Justice Fisher
The Honourable Mr. Justice Abrioux
The Honourable Madam Justice DeWitt-Van Oosten

On an application to vary: An order of the Court of Appeal for British Columbia,
dated April 7, 2026 (*Moore v. Cheung*, Vancouver Dockets CA50328 and CA51220)

- and -

On appeal from: An order of the Supreme Court of British Columbia, dated
December 15, 2025 (*Moore v. Cheung*, Vancouver Docket S235747).

The Appellant (Applicant in CA50328),
appearing in person:

W. Moore

Counsel for the Respondent
(Applicant in CA51220):

T. Boyd
C.L. Formosa

Place and Date of Hearing:

Vancouver, British Columbia
June 4, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 12, 2026

Written Reasons by:

The Honourable Madam Justice DeWitt-Van Oosten

Concurred in by:

The Honourable Madam Justice Fisher
The Honourable Mr. Justice Abrioux

Summary:

This appeal involves two applications: (a) an application to vary an order declining to remove an appeal from the inactive list; and (b) an application to quash a separate but related appeal. HELD: the application to vary is dismissed; the application to quash is allowed. The appeals underlying both applications involve a residential tenancy dispute. The appellant no longer resides in the rental unit. There is no live controversy between the parties and in the particular context of this case, the appeals are moot.

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

Introduction

[1] There are two applications before us: (a) an application to vary an order dismissing an application by the appellant, Wayne Moore, to remove an appeal from the inactive list; and (b) an application by the respondent, Kevin Cheung, to quash a separate (but related) appeal filed by Mr. Moore.

[2] Mr. Moore appeared personally at the application hearing. He said he did not consent to Mr. Cheung's application being heard, he wants to have a lawyer represent him, and the applications require two days of hearing time. He was told the applications would proceed.

[3] Mr. Moore also said Justice Abrioux had a conflict of interest and could not hear the applications, based on a notice of civil claim that Mr. Moore recently filed in the Supreme Court. Effectively, this was a recusal application. He was told we would proceed with the applications and consider that issue in our deliberations. Mr. Moore was not satisfied with these answers and elected to leave the courtroom. Consequently, his position in the applications has been considered based on his written material. We heard brief oral submissions from counsel for Mr. Cheung.

[4] Justice Abrioux has declined to recuse himself. His explanatory reasons have been published separately. A copy of those reasons is attached as an appendix to this judgment.

Background

[5] The parties have been involved in a tenancy dispute for several years. I do not consider it necessary to set out the entire history. Instead, I will refer only to those matters most germane to issues properly before us.

[6] Mr. Cheung was Mr. Moore's landlord. In May 2023, he gave Mr. Moore notice ending the tenancy. Mr. Moore disputed the notice under the *Residential Tenancy Act*, S.B.C. 2002, c. 78. In August 2023, an arbitrator dismissed the dispute and granted an order of possession in Mr. Cheung's favour. Mr. Moore applied for reconsideration of the arbitrator's decision; however, the application failed and the possession order was affirmed.

[7] Mr. Moore subsequently sought judicial review in the British Columbia Supreme Court. In December 2024, his petition was dismissed. Consequently, the notice to end tenancy and the possession order remained intact. At this time, Mr. Moore was still living in the rental unit. He had obtained stays of the possession order which allowed him to occupy the unit until completion of the judicial review process.

[8] Mr. Moore appealed the dismissal of the petition (CA50328). In February 2025, a judge of this Court stayed the possession order pending appeal. However, she attached conditions to the stay, including an obligation that Mr. Moore pay rent to Mr. Cheung.

[9] Mr. Moore did not do what was required of him. In April 2025, the stay of the possession order was lifted, and Mr. Cheung enforced the order. Consequently, Mr. Moore has not lived in the rental unit since April 12, 2025.

[10] The appeal from the order dismissing the petition ended up on this Court's inactive list. Mr. Moore applied to remove the appeal from the list. The application was dismissed by Justice Francis on April 7, 2026. That order forms the subject matter of the first application before us.

[11] After the petition concluded in the British Columbia Supreme Court and while the appeal in CA50328 was outstanding, Mr. Moore filed an application in the Supreme Court seeking, among other things, leave to amend the petition. The application was dismissed in December 2025. Mr. Moore appealed the dismissal to this Court (CA51220). Mr. Cheung applies to quash the appeal for lack of merit. This is the second application before us.

Issues on Appeal

[12] There are two questions to resolve:

- a) Did Justice Francis err in dismissing Mr. Moore’s application to remove appeal CA50328 from the inactive list?
- b) Should appeal CA51220 be quashed for lack of merit?

Discussion

[13] I will address the applications in turn.

Review of the refusal to reinstate (CA50328)

[14] The application to vary the order made by Justice Francis is brought pursuant to s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6. As recently explained in *Bryzzhev v. University of British Columbia*, 2026 BCCA 213:

[13] The standard of review on an application under s. 29 ... is highly deferential. The review is not to be treated as a re-hearing. For a review division to interfere with the order of a justice in chambers, an applicant must demonstrate that the justice was wrong in law, wrong in principle, or misconceived the facts: *Seattle Environmental Consulting Ltd. v. Workers’ Compensation Board of British Columbia*, 2017 BCCA 386 at paras. 5–7.

[Emphasis added.]

[15] Mr. Moore says the order denying reinstatement reflects several errors. In his written material, Mr. Moore claims: (a) Justice Francis wrongly relied on unproven allegations and misrepresentations advanced by Mr. Cheung’s lawyer; (b) she did not give Mr. Moore sufficient opportunity to state his case; (c) she was misled by the “sharp practi[c]e” of the law firm representing Mr. Cheung and “hoodwinked”

by counsel; (d) her decision is the “antithesis of the rule of law and fair treatment”; (e) she ignored the evidence Mr. Moore adduced in support of reinstatement; and (f) she failed to consider collusion between the law firm representing Mr. Cheung and an individual who formerly represented Mr. Moore as an agent in the tenancy proceedings.

[16] Mr. Cheung opposes the application to vary. He says both the appeal from judicial review and the application to vary are moot. Mr. Moore has not lived in the rental unit for more than one year and there is no longer a live controversy between the parties. In addition, Mr. Cheung submits Mr. Moore has not identified an actual error in law, error in principle, or misconception of the facts by Justice Francis that would allow us to interfere with her decision. She conducted a fair and comprehensive review of the application to reinstate, and she made findings that were open to her on the record.

[17] I have read Justice Francis’ reasons, in the context of the record, and I agree with Mr. Cheung that there is no principled basis for varying her order.

[18] After reviewing the history of the underlying proceedings, Justice Francis correctly instructed herself on the legal principles that govern a reinstatement application: at paras. 15–18. Indeed, Mr. Moore does not allege she erred in this regard.

[19] Justice Francis then analyzed the application and made specific findings, including: (a) although Mr. Moore caused the delay which led to the appeal being placed on the inactive list, the delay was not inordinate; (b) however, Mr. Moore did not provide a reasonable explanation for the delay; (c) his factum in the appeal impliedly raises an issue that has some merit (whether the arbitrator held him to a higher evidentiary standard than Mr. Cheung) but there is no longer a live controversy between the parties because the order for possession has been enforced; and (d) there are “no special circumstances that would make it worthwhile to apply scarce judicial resources to these matters”: at para. 30.

[20] The application for reinstatement was dismissed primarily because of mootness. With Mr. Moore out of the unit, Justice Francis did not consider reinstatement to be in the interests of justice.

[21] In my view, this was a reasonable conclusion and open to her.

[22] In *Raju v. Red Door Housing Society*, 2025 BCCA 212, this Court dismissed applications to vary three chambers orders that involved a residential tenancy dispute for essentially the same reason. Each of the orders declined to stay a possession order that had been upheld following judicial review in the Supreme Court. By the time the variation applications were heard, the applicant, Ms. Raju, was no longer living in the rental unit. Her applications to vary were dismissed as moot:

[29] All three of Ms. Raju's applications to vary are moot. The substantive relief she seeks in all three applications is a stay of the Order of Possession, which has already been enforced. In addition, the applications to vary the Abrioux Order and the Grauer Order have been rendered moot by the passage of time. The relief sought in each of those is a stay pending the hearing of the variation applications which, of course, have now been heard. There is no longer a "live controversy" between the parties with respect to the enforcement of the Order of Possession or stays pending review: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 354, 1989 CanLII 123, citing *The King ex rel. Tolfree v. Clark*, [1944] S.C.R. 69, 1943 CanLII 3; *Tran v. Abbott*, 2018 BCCA 365 at para. 13.

[30] There is a general rule against hearing and deciding moot disputes. One of the rationales for that general rule is judicial economy: given the scarcity of judicial resources and the many live controversies that demand the courts' attention, there must be an element of "social cost in leaving the matter undecided": *Borowski* at 362. Concerns about judicial economy will be addressed where "the special circumstances of the case make it worthwhile to apply scarce judicial resources to resolve it": *Vancouver Shipyards Co. Ltd. v. Canadian Merchant Services Guild*, 2023 BCCA 77 at para. 24 (Chambers), citing *Mapara v. Ferndale Institution*, 2014 BCCA 49 at para. 34. This may be the case where the court's decision will have some practical effect on the rights of the parties even without determining the controversy that gave rise to the action; the matter raises an issue of a brief and recurring nature that might otherwise evade review; or the matter raises an issue of public importance the resolution of which would be in the public interest: *Vancouver Shipyards* at para. 24.

...

[31] Ms. Raju believes the RTB decision was incorrect and that her perspective and evidence have not been given appropriate consideration throughout the process. While Ms. Raju's situation is no doubt difficult, her applications for review must be dismissed as moot.

[32] There is no longer a "live controversy" between the parties with respect to the enforcement of the Order of Possession or the necessity of stays pending a hearing of the applications because the Order of Possession has already been enforced. There are no special circumstances that would make it worthwhile to apply scarce judicial resources to these matters.

[23] As with *Raju*, there is no longer a live controversy between Mr. Moore and Mr. Cheung specific to the rental unit. Setting aside Justice Francis' order, reinstating Mr. Moore's appeal, and allowing him to pursue his challenge to the dismissal of his petition would have no practical effect on the rights of these parties. Mr. Moore cannot go back into the unit. The tenancy relationship between the parties is over and there is no likelihood of reoccurring issues between them relevant to that issue.

[24] Finally, I agree with Justice Francis that this case does not involve special circumstances justifying reinstatement and the use of scarce judicial resources.

[25] Mr. Moore has not identified an unsettled or novel legal issue in his appeal, one that requires appellate clarification or direction for future cases, or an issue that carries broad implications in the residential tenancy context. He has filed a factum in the appeal, alleging the petition judge: (a) "more than likely" ignored his evidence; (b) failed to appreciate that the arbitrator and the reconsideration panel were "incompetent" in finding that he damaged the unit; (c) erred in fact by not concluding there was no evidence in support of the alleged damage; (d) failed to appreciate that Mr. Cheung's allegations were fraudulent; and (e) wrongly reached a legal conclusion without a credible evidentiary foundation. These are case-specific complaints, grounded in Mr. Moore's interpretation of the evidence adduced before the arbitrator and his assessment of its probative value. On the face of it, there is nothing about the case that transcends its four corners. A ruling from this Court is

unlikely to carry precedential importance; rather, it will reflect a highly individualized inquiry, unique to the context and the circumstances of the case.

[26] Consistent with the approach taken in *Raju*, I would not vary Justice Francis' order. In my view, Mr. Moore's appeal from the dismissal of his application for judicial review is moot.

[27] I note Justice Francis also dismissed a no fee application by Mr. Moore specific to CA51220. She did so after finding that the second appeal has no prospect of success. Given the conclusion I reach below, it is not necessary to address this aspect of her judgment.

Application to dismiss appeal (CA51220)

[28] The application to quash Mr. Moore's second appeal is brought pursuant to s. 20(1) of the *Court of Appeal Act* and R. 60(1)(c) of the *Court of Appeal Rules*, B.C. Reg. 120/2022. This Court's Registrar directed that the application to quash and the s. 29 review be heard together.

[29] Appeal CA51220 was filed on December 16, 2025. It challenges the dismissal of an application filed by Mr. Moore in the petition proceeding on December 2, 2025. In that application, Mr. Moore sought: (a) an order that his "former agent" return stolen court files; (b) an order that counsel for Mr. Cheung file an order dismissing the petition (it had already been sent to this Court's Registry); (c) costs; (d) punitive damages; (e) leave to add third parties to the petition; (f) leave to file or amend a notice of civil claim and counterclaim (no drafts of these claims were before the court); (g) a waiver of filing fees; (h) an order that a plumbers union and the Lawyers' Insurance Fund pay for a lawyer to represent him in the petition; (i) leave to amend the petition; and (j) a stay of proceedings.

[30] The presiding judge did not issue reasons for his dismissal of the application. However, it is apparent from a transcript of the related proceeding that the judge concluded Mr. Moore was not entitled to revisit issues related to the petition because that matter had ended and was under appeal and his other requests required independent proceedings and notice to third parties.

[31] Before us, Mr. Cheung applies to quash the appeal from the post-petition application because Mr. Moore has not identified any legal error by the judge and the appeal is devoid of merit. Mr. Moore has filed a factum in CA51220, but it is effectively the same factum filed in the appeal from judicial review and alleges error specific to the petition judge, not the judge who dismissed the post-petition application.

[32] Mr. Moore sent two letters to this Court's Registrar, parts of which respond to the application to quash. These letters were filed May 6 and May 25, 2026.

[33] In the May 6 letter, Mr. Moore accuses Mr. Cheung's lawyer of acting in bad faith and unilaterally arranging for a quash application with the specific objective of depriving Mr. Moore of his right to be heard. He says matters arising from the tenancy dispute are "tainted with bias and racism". Specific to the second appeal, he says the only reason he returned to the Supreme Court in search of a post-petition remedy was because counsel for Mr. Cheung obstructed his ability to file the order dismissing the petition and doing so was necessary for him to pursue his appeal. He seeks "due process" in the letter and says that if his second appeal fails, it should be because of the merits, not based on a preliminary application to quash. From Mr. Moore's perspective, his second appeal "has a strong leg to stand on".

[34] The May 25 letter repeats some of these accusations. Mr. Moore asks that counsel for Mr. Cheung and his law firm "identify and name the leverage" they have that allows them to "intimidate" Mr. Moore and "expedite ... hearing dates without [his] consent". The letter seeks directions on: (a) an emergency stay; (b) orders preserving "assets protection and constitutional and equity rights"; (c) orders preventing "irreparable harm and undue hardship"; and (d) orders granting

contractual rights and “enforcement procedures”. Mr. Moore says the application to quash represents an attempt to obstruct justice by pre-empting a hearing of the merits of the appeal based on “scurrilous” allegations.

[35] Justice Francis briefly addressed appeal CA51220 when dismissing Mr. Moore’s application for a no fee order. She concluded the appeal has no prospect of success, stating there was no basis for any of the relief he sought.

[36] I agree with that assessment.

[37] In *Grewal v. Grewal*, 2017 BCCA 261, this Court confirmed we have jurisdiction to quash an appeal that is so devoid of merit or substance that to allow it to continue through the appeal process would amount to an abuse of process: at paras. 15–16.

[38] I appreciate Mr. Moore believes he has not received a fair opportunity to advance either of his appeals, that Mr. Cheung and his counsel are trying to thwart his attempts to obtain a remedy, and that the judges who have decided the tenancy-related issues have either been misled or ignored his evidence. However, I am of the view Mr. Moore’s second appeal should be quashed for substantially the same reason as the first one.

[39] To the extent this appeal seeks to revisit issues raised in the petition proceeding or asks for relief (such as funding) to assist in advancing petition-related issues, there is no longer a live controversy between the parties and the tenancy matter is moot. To the extent this appeal challenges the judge’s decision to not engage on new matters that require independent proceedings, specific to named third parties, I agree with Justice Francis the judge did not have jurisdiction to consider those issues in the context of the petition. Accordingly, he correctly declined to hear them, without prejudice to Mr. Moore to bring a separate action for the return of files that he says are unlawfully held by someone else.

Disposition

[40] For the reasons provided, I would dismiss the application to vary the order dismissing Mr. Moore's application to reinstate appeal CA50328 and dismiss that appeal for mootness.

[41] I would also quash appeal CA51220 for mootness and lack of merit.

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Madam Justice Fisher"

I AGREE:

"The Honourable Mr. Justice Abrioux"

Appendix A

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Moore v. Cheung*,
2026 BCCA 258

Date: 20260612
Dockets: CA50328; CA51220

Docket: CA50328

Between:

Wayne Moore

Applicant/Appellant
(Petitioner)

And

Kevin Cheung

Respondent
(Respondent)

- and -

Docket: CA51220

Between:

Wayne Moore

Appellant
(Petitioner)

And

Kevin Cheung

Applicant/Respondent
(Respondent)

Before: The Honourable Mr. Justice Abrioux

On an application to vary: An order of the Court of Appeal for British Columbia,
dated April 7, 2026 (*Moore v. Cheung*, Vancouver Dockets CA50328 and CA51220)

- and -

On appeal from: An order of the Supreme Court of British Columbia, dated
December 15, 2025 (*Moore v. Cheung*, Vancouver Docket S235747).

The Appellant (Applicant in CA50328),
appearing in person:

W. Moore

Counsel for the Respondent
(Applicant in CA51220):

T. Boyd
C.L. Formosa

Place and Date of Hearing:

Vancouver, British Columbia
June 4, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 12, 2026

Summary:

The appellant applied to have the justice recuse himself from the hearing of two applications before the Court, which are described in reasons for judgment indexed as Moore v. Cheung, 2026 BCCA 259. The application is denied.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

[42] The background to the applications which are before this Court are set out in the reasons for judgment of Justice DeWitt-Van Oosten, indexed at 2026 BCCA 259. At the commencement of the proceedings on June 4, 2026, the appellant, Mr. Moore, submitted that I was in a conflict of interest and could not participate in the hearing of the applications because he had named me as a defendant in a notice of civil claim that had recently been filed in the Supreme Court of British Columbia. I viewed Mr. Moore's submission as an application for me to recuse myself. Judgment was reserved on the applications, in part so that I could consider whether I should do so.

[43] It is well established that a recusal application is to be decided by the judge to whom the application is directed.

[44] The notice of civil claim bears a Supreme Court of British Columbia Vancouver docket number S263765 and a filing date of May 20, 2026 (the "NOCC"). I had no knowledge of the NOCC until Mr. Moore brought it to this Court's attention at the appeal hearing on June 4, 2026.

[45] I have now reviewed the NOCC. It names over 50 defendants, including "Quinlan Abrioux Grant Richley Harvey Grewal and the Firm". The allegations relate in part to:

- Mr. Moore allegedly attempting to attend the Union Pension Health and Welfare Meeting in Delta, B.C. on May 4, 2024, and alleging that the actions of those who denied him entry, "constituted criminal mischief, criminal obstruction of justice, defamation, slander, election and pension fraud" and a number of other alleged acts;

- the review of certain decisions of the Workers' Compensation Appeal Tribunal; and
- the matters before this Court on these applications.

[46] Although my former firm Quinlan Abrioux ("QA") is named as a defendant, there are no references to QA in the lengthy NOCC.

[47] Mr. Moore has not identified whether he seeks my recusal on the basis of an actual or a reasonable apprehension of bias.

[48] The relevant legal framework was considered in *Walker v. Kierans*, 2024 BCCA 119, in which Justice Voith explained:

[5] ... The narrow issue Ms. Walker raises was recently addressed in *Pereira v. Dexterra Group Inc.*, 2023 BCCA 201:

[12] The strong presumption that judges act impartially means that a party must meet a high burden to prove that a reasonable apprehension of bias exists. The longstanding test as repeated in *Yukon Francophone School Board* is:

[20] The test for a reasonable apprehension of bias is undisputed and was first articulated by this Court as follows:

... what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. [Citation omitted.]

(*Committee for Justice and Liberty v. National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 S.C.R. 369, at p. 394, per de Grandpré J. (dissenting))

...

[15] As summarized in *Taylor Ventures Ltd. (Trustee of) v. Taylor*, 2005 BCCA 350 [Taylor], the question of whether there is a reasonable apprehension of bias should be considered with the following principles in mind:

- a) a judge's impartiality is presumed;

- b) a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified;
- c) the criterion of disqualification is the reasonable apprehension of bias;
- d) the question to be determined is what would an informed reasonable and right-minded person, viewing the matter realistically and practically, and having thought the matter through, conclude;
- e) the test for disqualification is not satisfied unless it is proved that the informed, reasonable and right-minded person would think it more likely than not that the judge, whether consciously or unconsciously, not decide fairly;
- f) the test requires demonstration of serious grounds on which to base the apprehension; and
- g) each case must be examined contextually and the inquiry is fact-specific.

Taylor at para. 7, referencing *S.(R.D.)*.

[49] I have no knowledge of any of the matters referred to in the NOCC, with the exception of those relating to these applications, and that knowledge is limited to the record on appeal.

[50] I left QA approximately 14 and a half years ago upon my appointment to the Supreme Court of British Columbia. There is nothing in the NOCC that raises either an actual or a reasonable apprehension of bias on my part. When I consider the NOCC in the context of the legal framework to which I have referred, I conclude that Mr. Moore has not met the burden of establishing that a reasonably informed person would be of the view that I am unable to decide the applications fairly and objectively.

[51] Accordingly, I decline to recuse myself. The application is dismissed.

“The Honourable Mr. Justice Abrioux”