

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Girard v. Clace Holdings Ltd.*,
2026 BCSC 1369

Date: 20260722
Docket: S2511973
Registry: Victoria

Between:

Martin Girard

Petitioner

And:

Clace Holdings Ltd. and the British Columbia Human Rights Tribunal

Respondents

On judicial review from: A decision of the British Columbia Human Rights Tribunal,
dated July 16, 2025 (*Girard v. Clace Holdings*, CS-006674).

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Petitioner on his own behalf:

M. Girard

Counsel for the Respondent, the British
Columbia Human Rights Tribunal:

J. Thackeray

Place and Date of Hearing:

Victoria, B.C.
May 27, 2026

Place and Date of Judgment:

Victoria, B.C.
July 22, 2026

Introduction

[1] Mr. Girard seeks judicial review of the British Columbia Human Rights Tribunal (the “Tribunal”) decision to deny him a costs order against Clace Holdings Ltd. following an interim application.

[2] The Tribunal took no position on the granting of the orders sought by Mr. Girard; however, raised the issue of prematurity of Mr. Girard’s petition as the Tribunal has not completed its processes.

[3] Clace Holdings Ltd. (“Clace”) did not participate in the hearing.

[4] The threshold issue on this judicial review is whether Mr. Girard has established exceptional circumstances justifying judicial intervention before the Tribunal completes its processes. For the reasons that follow, I find that Mr. Girard has failed to demonstrate exceptional circumstances that would justify judicial intervention prior to the Tribunal completing its process.

Procedural Background at the Tribunal

[5] On April 8, 2022, Mr. Girard filed a human rights complaint against Clace. In that complaint, Mr. Girard alleges he experienced discrimination on January 17 and 18, 2022, when he claims Clace refused to exempt him from mask-wearing requirements and denied him service at the grocery store because he was not wearing a mask. Mr. Girard alleges he was not able to wear a mask due to a disability.

[6] Clace filed its complaint response in December 2023.

[7] On March 13, 2025, Clace filed an application to dismiss Mr. Girard’s complaint without a hearing (the “Dismissal Application”).

[8] On March 17, 2025, Mr. Girard applied for an order for costs pursuant to s. 37(4)(b) of the *Human Rights Code*, RSBC 1996, c. 210 (the “Code”) based on allegations of misconduct by Clace (the “Costs Application”). In particular, Mr. Girard alleges, based on his review of the metadata, that Clace fraudulently created a

letter. The letter concerned Clace's mask policies at the time the alleged discrimination occurred. The Costs Application alleged the following:

I accuse the Respondent of conspiring to mislead the Tribunal by fabricating a document shared as evidence of a statement made in a dismissal application. See argument.pdf for details.

[9] On March 24, 2025, the Tribunal wrote to the parties setting a schedule for submissions on the Costs Application. Consistent with the schedule, Clace filed its response to the Costs Application on March 27, 2025, and Mr. Girard filed his reply on April 18, 2025.

[10] On April 18, 2025, Mr. Girard also filed an application seeking orders for document disclosure from Clace (the "Disclosure Application").

[11] On June 3, 2025, the Tribunal wrote to the parties setting a schedule for submissions on the Disclosure Application. Consistent with the schedule, Clace filed its response material to the Disclosure Application on June 10, 2025, and Mr. Girard filed his reply materials on June 12, 2025.

[12] On July 16, 2025, the Tribunal issued its decision dismissing the Costs Application (the "Costs Decision") and allowing the Disclosure Application, in part. The Tribunal also granted Mr. Girard leave to amend his response to the Dismissal Application.

[13] In the Costs Decision the Tribunal Member summarized the applicable provisions of the *Code* and legal authorities which allows the Tribunal to award costs against a party who has engaged in improper conduct during the course of a complaint. After considering the evidence put forward by Mr. Girard, the Tribunal Member found that Mr. Girard had failed to establish that Clace attempted to mislead the Tribunal or otherwise engage in improper conduct. In coming to this conclusion, the Tribunal Member found that:

- a) the letter was not submitted to the Tribunal by Clace;
- b) Clace was not relying on the letter for its Dismissal Application;

- c) there was no attempt to mislead the Tribunal by reliance on the letter; and
- d) the evidence did not disclose that the letter was fraudulent or plagiarised from another store.

[14] On July 28, 2025, Mr. Girard applied for reconsideration of the Costs Decision.

[15] On August 27, 2025, the Tribunal issued its decision denying reconsideration of the Costs Decision (the “Reconsideration Decision”). The Tribunal Member was not satisfied that fairness required reconsideration of the Costs Decision or that Mr. Girard was subjected to procedural unfairness.

[16] The Dismissal Application remains extant, and the Tribunal processes are still underway.

Position of Mr. Girard

[17] In his petition, Mr. Girard seeks to set aside the Costs Decision on the basis that it is patently unreasonable, procedurally unfair and makes unreasonable findings of fact. Mr. Girard also seeks to have the Costs Application remitted back to the Tribunal to be decided by a different Tribunal Member.

[18] With respect to prematurity of this judicial review, Mr. Girard submits that the matter is now before the Court and it is more convenient for the judicial review to be heard on its merits and not delayed. In summary, Mr. Girard submits that nothing will change by “waiting”.

Applicable Legal Principles

[19] The burden is on Mr. Girard to satisfy the Court that it should proceed with a judicial review despite the fact that the complaint process has not been completed: *British Columbia (Workers’ Compensation Appeal Tribunal) v. Hill*, 2011 BCCA 49 at para. 38; *College of Physicians and Surgeons of British Columbia v. The Complainant*, 2019 BCSC 1898; *Golden Eagle Blueberry Farm v. Gatica*, 2022 BCSC 304 at para. 27.

[20] In *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, the Court addressed the risks of early intervention in preliminary decisions in the human rights context. These risks include depriving the Court of a full record bearing on the issue, encouraging a multiplicity of proceedings in tribunals and courts, and compromising comprehensive legislative regimes. At para. 36, Justice Cromwell (as he then was) urged restraint absent exceptional circumstances:

[36] While such intervention may sometimes be appropriate, there are sound practical and theoretical reasons for restraint... Early judicial intervention risks depriving the reviewing court of a full record bearing on the issue; allows for judicial imposition of a correctness standard with respect to legal questions that, had they been decided by the tribunal, might to be entitled to deference; encourages an inefficient multiplicity of proceedings in tribunals and courts; and may compromise carefully crafted, comprehensive legislative regimes... Thus, reviewing courts now show more restraint in short-circuiting the decision-making role of the tribunal, particularly when asked to review a preliminary screening decision such as that at issue in *Bell*.

[21] Exceptional circumstances must be demonstrated before a court will intervene prior to the completion of a tribunal's process: *Chu v. British Columbia (Police Complaint Commissioner)*, 2021 BCCA 174; *Grimsmo v. Jones*, 2021 BCSC 575 at paras. 38 – 40.

[22] While the analysis of exceptional circumstances does not necessarily turn on a single factor, exceptional circumstances may include: (1) hardship or prejudice to the applicant; (2) waste of resources; (3) delay if judicial review proceeds; (4) fragmentation of the proceedings; (5) the strength of the case; and (6) the statutory context: *Chu* at para. 66.

Discussion

[23] Mr. Girard bears the burden of establishing exceptional circumstances. Mr. Girard did not address any exceptional circumstances as to why this judicial review should proceed. Instead, he relies on his perception of the strength of his position and submits that waiting will not change the analysis. His position rests on his contention that he has “proven” that Clace created a fraudulent document and he

is therefore entitled to costs in the range of \$10,000. He also submits that he should not have to wait to get his costs against Clace, to which he submits he is entitled.

[24] Notwithstanding the lack of submissions from Mr. Girard on this threshold issue, I will address the factors that I consider determinative on the issue of prematurity.

[25] In determining prematurity, the Court can consider the strength of the case. The decision Mr. Girard seeks to review is a discretionary decision and must not be set aside unless it is patently unreasonable: *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the “ATA”) at s. 59(3). A discretionary decision is patently unreasonable if the discretion: (a) is exercised arbitrarily or in bad faith; (b) is exercised for an improper purpose; (c) is based entirely or predominately on irrelevant factors, or (d) fails to take statutory requirements into account: *ATA* s. 59(4).

[26] In my view, considering the discretionary nature of the Costs Decision, Mr. Girard has not identified an obvious alleged error that would warrant judicial intervention at this stage. Mr. Girard is not being denied procedural fairness within the Tribunal processes. The nature of Mr. Girard’s complaint can be characterized as dissatisfaction with the outcome of the interim Costs Decision. That is a matter that can be addressed when the Tribunal has finalized his processes, if Mr. Girard seeks to do so.

[27] With respect to hardship or prejudice, I agree with the Tribunal that the Costs Decision does not prevent Mr. Girard from opposing the Dismissal Application, or if that application is denied, pursuing his human rights complaint on its merits.

[28] Further, and importantly, the Costs Decision does not prevent Mr. Girard from seeking costs under s. 37(4) of the *Code* based on new information or circumstances as the complaint proceeds through the Tribunal processes.

[29] I am of the view that interim costs decisions of the Tribunal are of the kind and nature that they should only be judicially reviewed when the Tribunal process is complete and the Court has the benefit of the record of the final decision. Doing

otherwise would lead to fragmentation of the proceeding and frustrate the Tribunal's mandate to resolve complaints in a just and timely manner.

[30] As was found in *Golden Eagle* at para. 53, permitting judicial review at this early stage, "may encourage participants in other administrative proceedings to commence judicial reviews with a view to delaying the underlying administrative process". I find procedural delay to be a legitimate concern when it relates to interim costs decisions as I have found they are not the type of decision that would necessitate interim judicial intervention.

[31] Having regard to the record, the submissions of Mr. Girard and counsel on behalf of the Tribunal, and the applicable legal principles, I find that Mr. Girard has failed to establish any exceptional circumstances that would warrant the exercise of my discretion to hear this judicial review prior to the conclusion of the Tribunal's processes.

[32] The petition is dismissed in its entirety as premature.

"LeBlanc, J."