COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *1182573 B.C. Ltd. v Gerber,* 2026 BCCA 399

Date: 20261007
Docket: CA51532

Between:

1182573 B.C. Ltd. and Halfmoon Waterfront Properties Inc.

Appellants
(Plaintiffs)

And

Martin Gerber and Michelle Gerber

Respondents
(Defendants)

Before: The Honourable Justice Griffin
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated April 17, 2026 (*1182573 B.C. Ltd. v Gerber*, Vancouver Docket S260656).

Representative appearing on behalf of the Appellants, in person:	A. Toma
Counsel for the Respondents:	Q.T. Duong A.V. Mackenzie
Place and Date of Hearing:	Vancouver, British Columbia September 22, 2026
Place and Date of Judgment with Written Reasons to Follow:	Vancouver, British Columbia September 23, 2026
Place and Date of Written Reasons:	Vancouver, British Columbia October 7, 2026

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Summary:

The appellants seek to appeal an order of the Supreme Court, ordering them to post security for costs and issuing directions for notices to admit. The respondents bring an application to quash the appeal on the basis that leave to appeal is required and has not been sought. The appellants argue that leave to appeal is not required because they are not seeking to appeal the security for costs orders alone; they seek to appeal the notice to admit orders too, which they argue are substantive orders. In the alternative, the appellants argue that if leave is required, it should be granted.

Held: Application to quash the appeal is dismissed; the notice of appeal is converted to an application for leave to appeal; the application for leave to appeal is dismissed. The security for costs orders and notice to admit orders both constitute limited appeal orders requiring leave to appeal. On application for leave to appeal, there was no basis for finding the chambers judged erred in assessing the appellants' inability to pay a costs award, nor in issuing directions for notices to admit. There is no prospect that a division of this Court could find error in the chambers judge's exercises of discretion.

Reasons for Judgment of the Honourable Justice Griffin:

Introduction

[1] After hearing from the parties on September 22, 2026, on September 23, 2026, I pronounced my judgment with reasons to follow. The result of this judgment is: the respondents' application to quash the appeal is dismissed; the notice of appeal is converted to an application for leave to appeal; and the application for leave to appeal is dismissed. These are my reasons.

[2] Halfmoon Waterfront Properties Inc. ("HWPI") and 1182573 B.C. Ltd. ("1182 Co.") are plaintiffs in the trial court and have filed a notice of appeal from an order of Justice Elwood made April 17, 2026 (the "Order"). For ease of reference, I will refer to them as appellants, but by doing so I do not intend to convey the impression that an appeal has been properly brought, as that is the very issue before me.

[3] The terms of the Order are:

> 1. The plaintiffs shall post security for costs in the total amount of $20,000 (the "Security"), to be paid in the following installments:
>
> a. $5,000 within 30 days of the pronouncement of this Order;

b. $5,000 within the earliest of either 150 days of the pronouncement of this Order, or 60 days prior to any examination for discovery conducted in this action; and

c. $10,000 within the earliest of either 120 days prior to the trial date or any hearing for summary trial or summary judgment.

2. The action is stayed pending the posting of the initial installment of $5,000.
3. The defendants are at liberty to apply dismiss [*sic*] the action if the plaintiffs fail to post Security as required.
4. The Security may be posted with the court or, subject to agreement of the parties, in the trust account of the defendants' counsel.
5. The plaintiffs shall serve a revised Notice to Admit addressing both defendants (the "Lead Notice to Admit") that reduces the amount of admissions being sought from the previous Notices to Admit served on March 17 and 18, 2026.
6. The plaintiffs are at liberty to serve a second Notice to Admit addressing the defendant Michelle Gerber, provided this does not duplicate any of the admissions being sought in the Lead Notice to Admit.
7. The defendants shall deliver responses to the Notices to Admit referenced in paragraphs 5 and 6 above within 21 days of service of the Notice to Admit.

[4] The respondents Martin Gerber and Michelle Gerber, who are defendants in the action, have brought an application to quash the appeal on the basis that leave to appeal is required and has not been sought.

[5] The appellants take the position that leave is not required. They also now say that if they are wrong, leave should be granted.

[6] The matter before me requires some discussion of the rules of procedure in each of the Supreme Court and Court of Appeal. For ease of reference, I will refer to the *Supreme Court Civil Rules*, BC Reg 168/2009, as "Civil Rules", and the *Court of Appeal Rules*, BC Reg 120/2022, as "CA Rules".

Background

[7] This proceeding arises out of a purchase and sale agreement (the "Agreement") between HWPI, the seller, and the respondent purchasers, the Gerbers.

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[8] Under the Agreement, HWPI sold and the respondents purchased waterfront property in Halfmoon Bay, British Columbia and a Crown land tenure/dock application that had already been submitted by HWPI.

[9] The purchase and sale of the property closed, and the respondents paid the purchase price of $999,000 owed under the Agreement.

[10] However, a dispute arose concerning a term of an addendum to the Agreement that the respondents would pay HWPI an additional $25,000 success fee if the dock application was approved.

[11] HWPI assigned its rights and causes of action arising under the Agreement to 1182 Co., and the two companies commenced a claim against the respondents.

[12] The appellants' complaint seems to be that the respondents wrongfully withdrew the dock application and substituted a different dock application that is bigger in scope and will take much longer to process, delaying the $25,000 fee that would be paid if the application is successful. The representative of the appellants, and their sole shareholder and director, Mr. Alister Toma, has demanded that the $25,000 be paid.

[13] This appears to be a simple breach of contract damages claim, but the notice of civil claim also asserts a property interest against the land purchased by the Gerbers, claiming that the new dock application will result in an "uplift to the Land". Mr. Toma explained to me that had he known the new dock application was going to be made, he would have demanded a much bigger success fee because it is going to make the land much more valuable, and because the payment of the success fee will be delayed accordingly. The drafted claim contains legal language to purportedly support a certificate of pending litigation ("CPL") that the appellants filed against the Gerbers' land. I pause to say that while I am very doubtful about whether or not there is a viable cause of action in this regard, that has not been canvassed before me.

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[14] The respondents have filed a response to civil claim. They say that as part of the Agreement, the dock application was assigned to them, and they have all rights of ownership in it. Further, they readily admit they amended the dock application, with the advice of a consultant, to address deficiencies in it and so that it would have a better chance of being approved. The approval remains outstanding and so the $25,000 payment is not yet due and owing. They further say they owe no obligations under the Agreement to the appellants to advance the dock application for the benefit of the appellants.

[15] On March 26, 2026, the respondents filed a notice of application seeking certain relief against the appellants, including an order for security for costs in the amount of $40,000. They also sought relief in relation to what they described as two "lengthy and duplicative Notices to Admit" served by the appellants. The respondents sought to substitute one Notice to Admit for the two duplicative ones. The respondents sought an order for an extension of time to respond to the notices to admit, relying on Rule 22-4 of the Civil Rules.

[16] The respondents put in affidavit evidence showing that: HWPI was no longer a company in good standing having been struck from the corporate register; Mr. Toma was shown as the sole director prior to its dissolution; and searches of the Land Title Office, the Land Owner Transparency Registry, and the Personal Property Registry show that the appellant companies have no assets in British Columbia. They also put in evidence that the appellants had served notices to admit on each of the respondents, seeking admission of some approximately 200 facts each, and that the notices to admit were largely duplicative.

[17] The appellants filed a response to the application for security for costs and the notice to admit relief. Mr. Toma also filed a responsive affidavit. He set out his evidence that 1182 Co. has "a live British Columbia litigation position", referring to litigation that 1182 Co. is prosecuting as plaintiff. He put forward that although 1182 Co. and HWPI have no property in their names, they do have CPLs claiming

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property interests. However, the only CPL filed by HWPI is the one against the Gerbers' property based on this very lawsuit.

[18] Mr. Toma did not provide evidence that either appellant company is an operating company generating revenues or has any asset other than litigation they are advancing as plaintiffs and related CPLs (including the present claim).

[19] After hearing submissions, Elwood J. gave oral reasons for judgment on the security for costs aspect of the application. The reasons are succinct and so I will refer to them here:

> [1] **THE COURT**: This is an application for an order that the plaintiffs post security for costs in the amount of $40,000 and related orders.
>
> [2] The application is brought under s. 236 of the *Business Corporations Act*, S.B.C. 2002, c. 57. The test is well-established in numerous decisions by this Court. It is a four-part test.
>
> [3] First, the defendants have established a *prima facie* case that the plaintiffs will not be able to pay the costs should the claim fail. The plaintiff Halfmoon Waterfront Properties Inc. ("Halfmoon") was struck from the corporate register in June 2024. There is no evidence that it has been reinstated. Searches in the names of the plaintiffs in the Land Title Office and Personal Property Registry show no assets in the jurisdiction.
>
> [4] Second, the plaintiffs have not shown that they have exigible assets of sufficient value to satisfy an award of costs. At most, the plaintiffs have pointed to claims and lawsuits, which are not exigible assets.
>
> [5] Third, the defendants have an arguable defence to the plaintiffs' claims. Their defence is based on the contract between the parties. The plain language of the contract is that the rights to the application submitted to the Ministry were transferred and acquired by the defendants. Accordingly, the defendants argue that they acquired the right to cancel the application and replace it even with a different application.
>
> [6] In my view, the defendants have a good defence to the claim of a proprietary interest in the subject property, as well as the claim based on repudiation of contract.
>
> [7] Even assuming a breach of the defendants' obligation in the addendum to the contract, which would be to manage the application process moving forward, the plaintiffs' claim would be a damages claim to an additional success amount of $25,000.
>
> [8] The fourth part of the test is whether an order for costs would visit undue hardship on the plaintiffs such that it would prevent their case from being heard. Here, I have some concern that the full amount of costs claimed by the defendants would prevent the plaintiffs from pursuing even their claim to a breach of the addendum and the success amount of $25,000.

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> [9] The defendants' draft bill of costs with estimated costs of $46,000 seems high to me given what I know about the case. It appears that the defendants have claimed units for both a summary trial and a fairly lengthy trial, 10 days, which seems excessive to me. I think an order of $40,000 would stifle the plaintiffs' claim for its success fee.
>
> [10] To balance the interests of the parties, I would order that the plaintiffs post security for costs in the amount of $20,000, and that the action be stayed until the security is paid into the Court.

[20] At the end of the reasons, Elwood J. invited and received submissions in respect of the notices to admit. I am not aware of there being additional oral reasons for judgment on this aspect of the application. However, the results are clear from the Order.

[21] The appellants filed a notice of appeal on May 1, 2026. They seek to set aside the terms of the Order both with respect to security for costs and the notices to admit.

[22] The appellants did not seek leave to appeal.

[23] On April 30, 2026, counsel for the respondents wrote to the appellants care of Mr. Toma. Among other things, counsel informed the appellants that leave to appeal was required to appeal the Order and made reference to the case of *Yang v Shi*, 2022 BCCA 317 at paras 28-29 (Chambers) [*Yang*].

[24] On April 30, 2026, Mr. Toma for the appellants responded by email, taking the position that leave to appeal was not required, and the case of *Yang* did not apply. His position was that since the Order was not just in relation to security for costs, but also in relation to notices to admit, specifically "[Civil] Rule 7-7 directions", then CA Rule 11(f) was not engaged.

[25] More recently, in response to the respondents' application to quash, Mr. Toma for the appellants has added an alternative position, namely, that if leave is required, it should be granted.

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Issue

[26] The central issue is whether leave is required to appeal the Order.

[27] If leave to appeal is required, the next issues are whether a leave application should be considered, and if so, should it be granted.

Analysis

[28] As I will explain, I am of the view that leave to appeal is required, a leave application should be considered, but it should not be granted.

Leave to Appeal is Required

[29] CA Rule 11 enumerates "limited appeal orders" for which leave to appeal is required. They include the following, of which I emphasize subrules (a)(iii), (e), and (f):

> **11** For the purposes of the definition of "limited appeal order" in section 1 of the Act, the following orders are prescribed as limited appeal orders:
>
> (a) an order granting or refusing relief for which provision is made under any of the following Parts or rules of the Supreme Court Civil Rules:
>
> (i) Rule 3-7 (22) [*order for particulars*];
>
> (ii) Part 5 [*Case Planning*];
>
> (iii) Part 7 [*Procedures for Ascertaining Facts*], other than Rule 7-7 (6) [*application for order on admissions*];
>
> (iv) Rule 9-7 (11), (12), (17) or (18) [*adjournment or dismissal, preliminary orders, orders, and right to vary or set aside order*];
>
> (v) Part 10 [*Property and Injunctions*];
>
> (vi) Part 11 [*Experts*];
>
> (vii) Rule 12-2 [*Trial Management Conference*];
>
> (viii) Rule 18-1 [*Inquiries, Assessments and Accounts*];
>
> (ix) Rule 21-7 [*Foreclosure and Cancellation*];
>
> (x) Rule 22-1 (4) [*evidence on an application*];
>
> (xi) Rule 22-9 [*vexatious litigants*];
>
> …
>
> (e) an order granting or refusing an adjournment or an extension or a shortening of time;

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> (f) an order in respect of costs or security for costs, if the only matter being appealed is in respect of costs or security for costs;
>
> [Emphasis added.]

[30] CA Rule 12(a) further clarifies that, if the order being appealed is a limited appeal order, as defined in CA Rule 11, the appellant must apply for leave to appeal.

[31] Where leave is not required, there is an appeal as of right from an order of the Supreme Court: *Court of Appeal Act*, SBC 2021, c 6 at s 13.

[32] The appellants' position appears to be that they have an appeal as of right from the terms of the Order regarding security for costs, because they are also appealing the terms of the Order regarding the notices to admit which they describe as "substantive orders". This means, according to their logic, that the order for security for costs is not "the only matter being appealed", and CA Rule 11(f) does not apply.

[33] Where the appellants' argument fails is in understanding what is meant by "the only matter being appealed" pursuant to CA Rule 11(f).

[34] When an order is a limited appeal order, it is not properly an appeal until leave is granted. This is clear from s 13(2) of the *Court of Appeal Act* and CA Rule 22.

[35] Section 13 of the *Court of Appeal Act* reads:

> **13** (1) An appeal may be brought to the court
>
> (a) from an order of
>
> (i) the Supreme Court, or
>
> (ii) a judge of the Supreme Court, or
>
> (b) in any matter for which jurisdiction is given to the court under an enactment of British Columbia or Canada.
>
> (2) Despite subsection (1), an appeal may not be brought to the court
>
> (a) from a limited appeal order, unless leave to appeal is granted by a justice, or
>
> (b) from an order of an associate judge of the Supreme Court.

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> (3) If another enactment of British Columbia or Canada provides that there is no appeal or a limited right of appeal from an order or matter referred to in subsection (1), that enactment prevails.
>
> (4) If leave to appeal is granted for a limited appeal order under subsection (2) (a), the appeal is deemed, for all purposes, to have been brought on the date that leave is granted.
>
> [Emphasis added.]

[36] CA Rule 22 defines when an appeal can be considered to have been brought. It reads:

> **22** An appeal is brought for the purposes of these rules as follows:
>
> (a) if leave to appeal is not required, when the appellant
>
> (i) files the notice of appeal, and
>
> (ii) serves a copy of the filed notice of appeal on each respondent named in the notice of appeal;
>
> (b) if leave to appeal is required, when leave to appeal is granted.
>
> [Emphasis added.]

[37] Thus, where leave to appeal is required, a matter does not become an "appeal" until leave is granted.

[38] This is consistent with the approach in the *Yang* case. In that case, the applicant in this Court, Ms. Yang, filed a notice of appeal from a Supreme Court order that adjourned an appeal of an order of a master (now known as associate judge), and ordered costs against Ms. Yang. She did not seek leave to appeal. The respondent sought to quash the appeal because leave had not been sought or obtained.

[39] Justice Willcock, in *Yang*, noted that the adjournment order was a limited appeal order pursuant to CA Rule 11(e). The costs order thus also required leave pursuant to CA Rule 11(f). He granted the applicant an opportunity to apply for leave to appeal.

[40] The appellants say that *Yang* turned on Willcock J.A.'s finding at paragraph 29, that the costs order was unrelated to a "substantive order". The appellants submit that here the orders respecting the notices to admit effectively threw out the

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filed notices to admit prepared with much work by Mr. Toma and were therefore "substantive orders".

[41] The appellants' reliance on the phrase "substantive orders" derives from language used in the case of *Smithies Holdings Inc. v RCV Holdings Ltd.*, 2016 BCCA 311 (Chambers) [*Smithies Holdings*], cited in *Yang*. However, as I read *Smithies Holdings*, the description "substantive orders" was meant to describe orders that are appealable as of right and do not require leave to appeal: *Smithies Holdings* at para 12.

[42] That is also the sense in which the word was used by Willcock J.A. in *Yang*. He held at paragraph 29 that "[t]he appeal of a costs order unrelated to a substantive order (or one that may be appealed without leave) requires leave" (emphasis added).

[43] The *Court of Appeal Act* and CA Rules do not use the language "substantive" when describing orders of the Supreme Court. Orders that are "limited appeal orders" require leave before an appeal may be commenced; other orders are appealable as of right.

[44] Where two orders are made—one being a costs or security for costs order, and a second order—what will dictate whether leave is required turns on whether there is an automatic right of appeal from the second order, or whether the second order requires leave to appeal. If the second order requires leave to appeal, so too will the costs or security for costs order. This conclusion is the effect of reading s 13 of the *Court of Appeal Act* together with CA Rules 11(f) and 22(b). It is also consistent with the analysis in *Yang*.

[45] Here, the notice to admit orders clearly require leave to appeal. As initially described and acknowledged by the appellants, orders concerning notices to admit fall under Civil Rule 7-7. This means they fall under Part 7 of the Civil Rules, and therefore are limited appeal orders pursuant to CA Rule 11(a)(iii), unless the orders were made pursuant to Civil Rule 7-7(6), which is not the case here.

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[46] In addition, the legal basis for the respondents' notice of application seeking relief in respect of the notices to admit was Civil Rule 22-4, permitting extensions of time, and so the orders made also fall within the ambit of CA Rule 11(e), being orders granting or refusing an extension of time.

[47] The result is that the terms of the Order having to do with notices to admit require leave to appeal. That also means that the terms of the Order having to do with security for costs also require leave to appeal pursuant to CA Rule 11(f).

Should An Application for Leave to Appeal Be Entertained?

[48] This leads to the question of whether an application for leave to appeal ought to be entertained now.

[49] CA Rule 12(c) provides for the circumstance where a party does not know whether an appeal requires leave or not. In such a case, the party must apply for leave. Under the Court of Appeal forms, all notices of appeal and applications for leave to appeal are initiated using the same form, Form 1. They are distinguished by the boxes that are ticked off on the form. A party can tick off the box for "leave required", if leave is required or they are uncertain that it is.

[50] If leave to appeal is required or a party is uncertain that it is, an applicant must comply with the CA Rules for seeking leave. The appellants have not done so.

[51] Failure to seek leave to appeal where it is needed can result in an order quashing an appeal as a nullity: *Janssen Inc. v British Columbia*, 2026 BCCA 233.

[52] There is an issue of whether an application for leave to appeal should be entertained when the appellants refused to seek leave in a timely manner. This is especially so when the respondents drew the appellants' attention to the need to seek leave.

[53] I am conscious that the appellants do not have legal counsel and are acting through their principal, Mr. Toma. Mr. Toma is a developer, and I acknowledge that it

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is expensive to hire lawyers. However, I am somewhat concerned about Mr. Toma's litigation style, for lack of a better description.

[54] Nevertheless, on balance I am persuaded I should show the appellants some leniency. I have reached this conclusion because of the position taken by counsel for the respondents initially in support of their application to quash.

[55] When the respondents brought the application to quash in this Court, the terms of the Order had not been settled. The respondents took the position that no orders regarding notices to admit had been made by Elwood J. The position was not nuanced. This position was implausible and contrary to their own notice of application and positions in the Court below. However, the respondents took this position because it seemed advantageous to them: they apparently and incorrectly believed that the outcome of a leave application would turn on whether or not the security for costs order was made at the same time as orders concerning notices to admit.

[56] It is perhaps understandable, given the respondents' initial misplaced focus, that the appellants were confident that they would not require leave if they could show that notice to admit orders were indeed made. This focused the appellants' efforts on having the Order settled. The fact that notice to admit orders were indeed made has been confirmed now that the Order is settled. However, as I have set out above, the Order requires leave to appeal.

[57] In the circumstances, I would exercise my discretion to convert the notice of appeal to an application for leave to appeal.

[58] The parties agreed that the application for leave to appeal could be heard at this hearing.

Leave to Appeal Should Not Be Granted

[59] The test for leave to appeal is well-established.

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[60] The relevant criteria were set out in *Goldman, Sachs & Co. v Sessions*, 2000 BCCA 326 (Chambers):

> [10] The criteria for leave to appeal are well known. As stated in *Power Consolidated (China) Pulp Inc. v. B.C. Resources Investment Corp*. (1988), 19 C.P.C. (3d) 396 (C.A.) they include:
>
> (1) whether the point on appeal is of significance to the practice;
>
> (2) whether the point raised is of significance to the action itself;
>
> (3) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and
>
> (4) whether the appeal will unduly hinder the progress of the action.

[61] These criteria are "all considered under the rubric of the interests of justice": *Vancouver (City) v Zhang*, 2007 BCCA 280 at para 10 (Chambers) [*Zhang*].

[62] When the order for which leave to appeal is sought is discretionary, the burden on the applicant to show there is merit to the appeal is substantial; this Court does not lightly interfere with the exercise of discretion: *Zhang* at para 11. The applicant must show an arguable case that the chambers judge erred in principle, made an order that is not supported by evidence, or that the order will result in an injustice: *Hagwilneghl v Canadian Forest Products Ltd.*, 2011 BCCA 478 at para 31 (Chambers).

[63] The appellants submit that Elwood J. made 10 or 11 errors in principle. However, despite the quantum of their purported grounds of appeal, in my view their grounds are simply disagreement with the result. It is not the role of this Court to substitute its discretion for that of the trial judge.

[64] The appellants seem to focus on the conclusion by Elwood J. that they have no "exigible" assets to satisfy an award of costs. They have tried to find authorities that address the meaning of "exigible" in different contexts. They say that 1182 Co. has a chose in action, a claim it is advancing as plaintiff, that has resulted in 1182 Co. filing a CPL against property. They also list as an asset the CPLs filed against the respondents' property tied to the present claim. They argue strenuously that they therefore have assets of value.

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[65] The argument that the appellants had lawsuits and that these were exigible assets was considered by Elwood J. and rejected at para 4.

[66] I do not find the appellants' authorities on the meaning of "exigible" helpful, as many of them are not dealing with the context of a security for costs application. I accept that the word "exigible" may mean different things in different legal contexts. Perhaps it is a word that should be retired from use in security for costs applications, as not being plain enough to describe what the court is truly concerned about.

[67] In this context, what the court is concerned about is whether the respondents will easily be able to recover their costs against the corporate plaintiffs if the respondents are successful in defeating the claims, or whether there is a risk either that they will not be able to recover their costs or it will be too burdensome or too uncertain that they will be able to do so. It is clear from the reasoning of Elwood J. that was what he meant by the use of the phrase "exigible assets".

[68] The proper approach to an application for security for costs brought against a corporate plaintiff is well-established. The analysis in *Red Carpet Tailoring and Alterations Inc. v Appia Development (Rosser) Limited*, 2025 BCCA 280 at paras 31-34 (Chambers) applies equally here:

> First, the judge instructed herself on the proper legal principles that apply to an application for security for costs against a corporation, citing at paras. 12-14 the principles stated in *Ocean Pastures Corporation v. Old Masset Economic Development Corporation*, 2016 BCCA 12 [*Ocean Pastures*] and *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.* (1993), 1993 CanLII 1669, 76 B.C.L.R. (2d) 231 (C.A.).
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> In *Ocean Pastures*, this Court at para. 17 cited the legal principles that are derived from earlier authorities, such as *Kropp v. Swaneset Bay Golf Course Ltd.* (1997), 29 B.C.L.R. (3d) 252, 1997 CanLII 4037 (C.A.) [*Kropp*]:
>
> 1. The court has a complete discretion whether to order security, and will act in light of all the relevant circumstances;
> 2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim is not without more sufficient reason for not ordering security;
> 3. The court must attempt to balance injustices arising from use of security as an instrument of oppression to stifle a legitimate claim on the one hand, and use of impecuniosity as a means of putting unfair pressure on a defendant on the other;

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> 4. The court may have regard to the merits of the action, but should avoid going into detail on the merits unless success or failure appears obvious;
> 5. The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
> 6. Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled; and
> 7. The lateness of the application for security is a circumstance which can properly be taken into account.
>
> Second, this is not a case where it can be said the judge overlooked a factor. The judge did consider the possibility that the corporation's claim would be stifled if an order for security for costs would be made because it has no assets and is no longer operating, as set out at para. 30.
>
> The central problem with RCTA's argument in the court below, and with its position on this application, is that RCTA adduced no evidence as to its corporate structure and ability or inability to fundraise through shareholders or investors or other backers. RCTA's position seems to rest solely on evidence that it has no assets and ceased operating, and that Mr. Alizada has no funds. But it was open to the chambers judge to not be satisfied that the evidence went far enough.

[69] I see nothing appealable arising from the conclusion of Elwood J. at para 4 that the appellants have not shown that they have assets that are readily recoverable by the respondents and of sufficient value to satisfy an award of costs. The word "exigible" is not relevant to this conclusion.

[70] Likewise, a reading of the parties' pleadings and the relevant Agreement supports the conclusion that the respondents have an arguable defence to the appellants' claims. I also agree with the chambers judge that it is difficult to see much chance that the claims advanced, even if successful, would result in any remedy greater than an award of $25,000 in damages.

[71] Regardless of the size of the claim, the respondents ought not to bear the risk that they will not be able to recover their costs if they are successful in defending against these corporate appellants.

[72] Further, the terms of the security for costs order were proportionate. The appellants did not establish that the claim would be likely stifled by the amount

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ordered. In the present case, the chambers judge did not comment on the lack of evidence from Mr. Toma, the appellants' sole shareholder, about the companies' ability to fundraise through him. Regardless, if Mr. Toma is correct in his submissions that there is value in the appellants' lawsuits, then there is nothing to stop the appellants from raising the funds necessary to post the required security for costs.

[73] In my view, requiring the appellants to post $20,000 in stages was entirely reasonable in the circumstances of the appellants' claim.

[74] There is nothing about the issues that the appellants seek to raise on this appeal that are significant to the practice or the action itself.

[75] Allowing an appeal of this nature would be disproportionate to the issues in dispute.

[76] I conclude it is not in the interests of justice to grant leave to appeal from the terms of the Order regarding security for costs. The chambers judge instructed himself on the correct factors that apply to consideration of an order for security for costs and based his conclusions on the evidence before him.

[77] The terms regarding the notices to admit were discretionary and do not impose any great burden on the appellants. The chambers judge was justified in encouraging the appellants to focus their notices to admit. It was within the judge's discretion to conclude that the appellants' attempt to seek 200 admissions per respondent in a relatively narrow contract dispute of this nature was entirely disproportionate. It is also not in the interests of justice to grant leave to appeal these terms of the Order.

Use of Generative AI Has Risks

[78] I acknowledge Mr. Toma's complaint that he did a lot of work putting together the notices to admit. This leads me back to make some general comments about litigation style.

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[79] Our courts are increasingly experiencing self-represented litigants who have relied extensively on generative artificial intelligence (“AI”). Mr. Toma agreed in the hearing before me that he relied on AI in preparing his submissions. Respectfully, his pleadings, correspondence to the other side and their employers, and his submissions all bear resemblance to AI-generated materials.

[80] I have a few words of advice and warnings to give litigants about the use of AI-generated materials in court. Using generative AI tools without sufficient human oversight and caution creates a number of risks.

Risk of Hallucinations

[81] The risk that AI will generate hallucinations, by making up case authorities that do not in fact exist, making up purported case quotes that do not exist, or incorrectly summarizing real cases, is by now fairly well known.

[82] A litigant who files submissions containing false case authorities will be in violation of the *Registrar’s Filing Directive* (4 September 2025). This Directive acknowledges the rapid development of AI and reiterates that litigants are “responsible for the authenticity and accuracy of all materials filed with the Court”: at p 14. A litigant who files submissions without reviewing them to ensure their authenticity and accuracy is in violation of this Directive and risks a costs award being issued against them: *Wu v Murray*, 2025 BCCA 365 at paras 11-15.

[83] If a litigant uses AI to assist them in searching for relevant legal authorities, in my view they should focus on the free legal source and search tools provided by CanLII and found at www.canlii.org. The CanLII tool uses AI to generate search terms based on plain language questions that a litigant enters. It then identifies real cases that may be relevant to the search query.

[84] No matter what tools the litigant uses, it remains their responsibility to ensure that the authorities they put before the court are real (not hallucinated) and that they are relevant to the legal or factual issues being decided.

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Risk of Attaching Numerous and Irrelevant Legal Authorities

[85] Another risk of using AI is that the non-legally trained person will not exercise their own judgment as to what is or is not relevant.

[86] From my observations, it appears to me that some non-legally trained litigants are using AI to generate long lists of case authorities and then excerpting sentences or paragraphs from those authorities into their submissions as though these cases and excerpts support their arguments, without realizing (or perhaps caring) that the many cases they are citing are irrelevant to the issues before the court.

[87] It is the opposite of persuasive advocacy to cite and excerpt long lists of irrelevant case authorities. It makes submissions incoherent.

Risk of Bad Legal Advice

[88] There is an additional risk that is involved with the use of generative AI as a tool to assist in a court action. That risk is that AI will give bad legal advice and that the non-legally trained litigant will not recognize this.

[89] Again, from personal observation, it appears that increasingly the courts are receiving pleadings and submissions that are unduly lengthy and verbose, containing “legal” language untethered from established legal principles, and which are incomprehensible. These types of materials do nothing to advance a party’s legal case. It seems likely that at least some of these materials are AI generated. It appears that AI can be quite delusional about one’s legal rights and how to present legal argument.

[90] I am also concerned by the increasingly aggressive tone I am seeing in some litigation files, not just in the pleadings and submissions but also in correspondence. It causes me to wonder if AI may be leading individuals to lose their human moral instincts to be polite, measured, honest, and ethical. AI has no moral code: no sense of ethics or honesty. Poor conduct by a party within litigation not only exacerbates the conflict and leads to more expense, but it can also undermine the person’s

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credibility. This can contribute to the court making negative findings against them, and a high costs award against them at the end of the case.

[91] A party using AI to assist them needs to be aware of these risks, needs to carefully review and circumscribe the use of such material, and must exercise good judgment in culling it and in toning it down.

[92] Importantly, generative AI does not understand the law, legal system, legal reasoning, or exercise good judgment. Our society is complex and so too is the legal system. Understanding the law and having the judgment to know how to advance a case is complicated. That is why lawyers require years of training and experience and are professionally regulated. AI does not replace the expertise and value of trained lawyers.

[93] That is not to say I do not recognize that lawyers may also be using AI, and these same risks apply to them. But lawyers who use AI can apply their professional training and judgment to the results to guard against these same risks.

Access to Justice Concerns

[94] The use of AI to prepare court pleadings and submissions, without exercising independent and informed judgment, can result in multiple lawsuits and applications that have no merit. It can unfairly increase the time and expense of the respondents who have to respond to the materials.

[95] It can also increase the judicial resources expended on reviewing the materials. This raises access to justice concerns.

[96] Judges are a limited human resource. They must organize their time to best serve the broader public in deciding disputes based on established legal principles and evidence. Judges cannot provide an unlimited audience to litigants who have relied on AI to generate submissions that are not relevant. Judges will not always have time to explain at length that an AI-generated argument is baseless. Judges

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have to focus their attention on the issues that are truly legally relevant in a particular case.

[97] Simply put, a litigant who decides to use AI to help them in their case needs to be cautious, and to be aware that it might not help but rather hinder and lead them astray. They could end up disappointed and confused, as well as subject to successive costs awards.

Disposition

[98] The motion to quash is dismissed. The notice of appeal is converted to an application for leave to appeal. The application for leave to appeal is dismissed.

"The Honourable Justice Griffin"

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