

CANADA / JUDGMENT

Behnke v. Pannu

2025 BCCA 456

COURT

British Columbia Court of Appeal

DECIDED

22 December 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCCA 456 Behnke v. Pannu COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Behnke v. Pannu, 2025 BCCA 456 Date: 20251222 Docket: CA49781 Between: Zachary Jordan Behnke Appellant/ Respondent on Cross Appeal (Defendant) And Varinder Singh Pannu Respondent/ Appellant on Cross Appeal (Plaintiff) Before: The Honourable Justice Dickson The Honourable Mr. Justice Butler The Honourable Madam Justice DeWitt-Van Oosten Supplementary Reasons to Behnke v. Pannu, 2025 BCCA 182, Vancouver Docket CA49781. Counsel for the Appellant/ Respondent on Cross Appeal: J.D. James Counsel for the Respondent/Appellant on Cross Appeal: B.J. Yu Place and Date of Hearing: Vancouver, British Columbia March 18, 2025 Place and Date of Judgment: Vancouver, British Columbia June 6, 2025 Written Submissions Received: June 20, June 27, and July 2, 2025 Place and Date of Supplementary Judgment: Vancouver, British Columbia December 22, 2025 Supplementary Reasons of the Court Summary: In reasons indexed at 2025 BCCA 182, the Court dismissed the appeal and cross-appeal from a judgment awarding damages for injuries suffered in two motor vehicle accidents. The parties were unable to agree on the order for costs. Mr. Behnke, the appellant in the appeal and defendant in the court below, submits that the general rule should be followed and seeks an order that each party recover the costs of their appeal from the opposing party and that the costs of the appeal and the cross-appeal be set off. Mr. Pannu, the respondent in the appeal and plaintiff in the court below, submits that he should recover costs of the appeal and that each party should bear their own costs of the cross-appeal. Held: Mr. Pannu is awarded 75% of his costs of the appeal, and each party shall bear their own costs of the cross-appeal. On the appeal, Mr. Behnke raised a multiplicity of issues, while the cross-appeal was narrow and focused. The vast majority of time and effort spent by the parties in preparing and presenting the appeal and the cross-appeal related solely to the issues raised on the appeal. Mr. Pannu clearly achieved substantial success if the appeal and the cross-appeal are viewed together. This was an appropriate case to depart from the general rule. Supplementary Reasons for Judgment of the Court:

- [1] In reasons issued on June 6, 2025, and indexed at 2025 BCCA 182 ("Reasons"), this Court dismissed Mr. Behnke's appeal and Mr. Pannu's cross-appeal of a judgment awarding damages to Mr. Pannu for injuries suffered in two motor vehicle accidents. When the parties were unable to agree on the costs order, the Registrar invited them to exchange written submissions. Positions of the Parties

- [2] The division has now received those submissions. Mr. Behnke seeks orders that: he recover the costs of the cross-appeal from Mr. Pannu; Mr. Pannu recover the costs of the appeal from Mr. Behnke; and the costs of the appeal and the cross-appeal be set off.
- [3] Mr. Pannu seeks an order that he recover costs of the appeal and that each side bear their own costs of the cross-appeal.
- [4] Mr. Behnke's position is based on ss. 44 and 14(2) of the Court of Appeal Act, S.B.C. 2021, c. 6. The former provides that the successful party on appeal is entitled to costs of the appeal including the costs of all applications. The latter provides that a cross-appeal must, subject to the Rules, be treated as an appeal for all purposes. He further submits it is well-established that costs should follow the event and be payable to the successful party unless there is a principled basis for departure from that general rule: *Vandev Consulting Limited v. Pacific Maple Manufacture Inc.*, 2022 BCCA 97 at para. 51.
- [5] Mr. Pannu's position is based on the equally well-established principle that this Court may make any order it considers appropriate in relation to costs: Court of Appeal Act, s. 45. Relying on *Venables v. Venables*, 2019 BCCA 378, he submits that where claims and counterclaims are "completely intertwined" this Court may view them together in determining which party has been successful: at para. 12. Following that approach, Mr. Pannu says the Court should conclude that he obtained "substantial success" and deny Mr. Behnke his costs of the cross-appeal.
- [6] Mr. Pannu also refers to *Taylor-Wright v. CHBC-TV*, 2001 BCCA 298, where this Court awarded the plaintiffs/respondents two thirds of their costs of the appeal, and no costs to the defendants/appellants. On appeal, the defendants/appellants had sought dismissal of the action or a reduction in damages and the plaintiffs/respondents had sought an increase in damages. The Court dismissed the appeal and cross-appeal but departed from the general rule set out in the Court of Appeal Act because it would result in the defendants/respondents recovering "nearly as much in costs as the plaintiffs" which would be "excessively onerous": *Taylor-Wright* at para. 6.
- [7] Mr. Pannu submits that the costs award sought by Mr. Behnke would be similarly onerous because he adopted a shotgun approach and raised a multiplicity of issues on the appeal. By comparison, Mr. Pannu's cross-appeal raised a single issue (an increase in non-pecuniary damages) that mirrored one of the appellant's arguments on appeal (a decrease in non-pecuniary damages) and was little more than a "subset" of the appellant's arguments on that issue. Mr. Pannu says the parties expended little additional time or effort on the cross-appeal issue and, in these circumstances, it would be unfair to award costs to Mr. Behnke for the cross-appeal.

Analysis

- [8] As Mr. Pannu argues, Mr. Behnke indeed raised a multiplicity of issues on appeal, while Mr. Pannu's cross-appeal was narrow and focused. In seeking to set aside the award of damages, Mr. Behnke raised nine errors in judgment that are summarized at para. 17 of the Reasons. The alleged errors challenged the trial judge's: assessment of credibility and reliability of the witnesses; determination of fault in relation to a subsequent motor vehicle accident; determination of the divisibility of injuries; determination of causation of Mr. Pannu's injuries; and assessment of non-pecuniary damages and damages for past loss of income, future earning capacity and cost of future care.
- [9] Mr. Pannu is also correct that the vast majority of time and effort spent by the parties in preparing their factums and submissions for the hearing of the appeals, and by the Court in its consideration of the issues raised by the parties, related solely to the issues raised by Mr. Behnke on the appeal. To provide some context, only six paragraphs of the 92 paragraphs in the Reasons related to the non-pecuniary damage issues raised by the appeal and the cross-appeal.
- [10] As Mr. Pannu argues, if both parties are awarded costs of their successful appeals and the costs were set off, Mr. Behnke would recover nearly as much in costs as Mr. Pannu. Such a result would be onerous for Mr. Pannu and would not fairly reflect the fact that he achieved substantial success if the appeal and the cross-appeal are viewed together.
- [11] Accordingly, this is an appropriate case for the Court to depart from the general rule and make an order similar to that made in Taylor-Wright.

Disposition

- [12] Mr. Pannu is entitled to 75% of his costs for the appeal. Each party shall bear their own costs for the cross-appeal. "The Honourable Justice Dickson" "The Honourable Mr. Justice Butler" "The Honourable Madam Justice DeWitt-Van Oosten"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/25/04/2025BCCA0456.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/behnke-v-pannu-2025>

Prepared on 29 October 2026 · Esheria