

CANADA / JUDGMENT

Braun v. Scholey

2025 BCSC 2528

COURT

Supreme Court of British Columbia

DECIDED

22 December 2025

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2025 BCSC 2528 Braun v. Scholey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Braun v. Scholey,

2025 BCSC 2528

Date: 20251222

Docket: S102625

Registry: Nanaimo

Between:

Trevor Braun

Petitioner

And

Tiffany M Scholey

Respondent

Before: The Honourable Justice Hamilton

On judicial review from: An order of the Provincial Court of British Columbia, dated June 10, 2025 (Braun v. Scholey, C21885).

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

E. Montes

No other appearances

Place and Date of Hearing:

Nanaimo, B.C.

October 27, 2025

Place and Date of Judgment:

Nanaimo, B.C.

December 22, 2025

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- [1] The petitioner Trevor Braun seeks an order that: (1) a Provincial Court Judge's decision dated June 10, 2025 (the "PCJ Decision") be set aside; and (2) the matter be remitted to the Provincial Court for a hearing on its merits before a different judge.
- [2] The respondent, Tiffany Scholey, was served with the petition and did not respond. The respondent was also notified of the date of the hearing but did not appear.

Background

- [3] The petitioner commenced a small claims proceeding in the Provincial Court of BC, Port Alberni registry, under court file number C-21885, against the respondent, his former romantic partner.
- [4] The petitioner's claim included the following:

- (1) compensation for more than 400 hours of renovation he allegedly did to improve the respondent's residence;
 - (2) reimbursement of approximately \$2500, which he allegedly spent on renovation materials;
 - (3) compensation for approximately \$8800 in temporary housing and displacement expenses he claims he incurred after the petitioner asked him and his child to move out of the residence;
 - (4) reimbursement of \$4200 that he allegedly contributed to the respondent's mortgage; and
 - (5) a claim based in unjust enrichment for the benefits he conferred on the respondent to his detriment or in the alternative a claim based on quantum meruit.
- [5] The respondent filed a counterclaim alleging that the petitioner's renovations were unauthorized or defective. She claimed damages for: (1) expenses allegedly incurred to fix faulty renovations; and (2) the petitioner removing her personal property from the residence.
- [6] The parties attended a settlement conference on October 4, 2024, before the Provincial Court Judge ("PCJ"), but the matter did not resolve. At the settlement conference, the PCJ expressed concern regarding whether the Provincial Court had jurisdiction to hear the claims.
- [7] The PCJ directed the parties to attend a hearing on February 14, 2025 (the "Hearing"), focused solely on jurisdiction.
- [8] The petitioner's counsel asked for directions regarding what evidence ought to be submitted for the Hearing. The PCJ directed the parties to make legal submissions only, not to provide evidence. Therefore, no affidavits, oral testimony or other evidence was submitted by either party at the Hearing.
- [9] On June 10, 2025, the PCJ issued the PCJ Decision, dismissing all but one of the petitioner's claims. The only one of the petitioner's claims that survived was his claim for reimbursement for renovation materials of approximately \$2500.
- [10] The petitioner seeks judicial review of the PCJ Decision with respect to the dismissal of his other claims.
- [11] As a procedural matter, I will first address whether a judicial review is the correct procedure in these circumstances and, if so, I will outline the appropriate standard of review, before turning to the merits of the petitioner's petition.

Judicial Review

- [12] I agree with the petitioner that judicial review is the appropriate procedure to challenge the PCJ Decision where no statutory right of appeal exists.

- [13] Section 5 of the Small Claims Act, R.S.B.C. 1996, c. 430, limits appeals to final orders made after trial. Therefore, when a Provincial Court judge dismisses a claim at a hearing before trial, judicial review under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, is the correct procedural route: *Andrews v. Clay*, 2018 BCCA 50 at para. 25; *Revive Spa Ltd. v. Melka Construction Ltd.*, 2022 BCCA 336 at para. 2 [Revive].
- [14] Here, the PCJ dismissed the petitioner's claims at a hearing prior to trial. Therefore, judicial review is the appropriate procedure.

Standard of Review

- [15] Having accepted that a judicial review is the appropriate procedure in this matter, I must first determine the standard of review that should apply.

Determining Standard of Review

- [16] The petitioner submits that a judicial review of the PCJ Decision is justified on both the basis of procedural unfairness, in that the PCJ made errors that amount to serious breaches of natural justice, and on the basis of substantive error, in that the PCJ misapplied the legal test for unjust enrichment.
- [17] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov], the Supreme Court of Canada made a landmark ruling regarding the standard of review for the judicial review of administrative decisions.
- [18] In *Revive*, Justice Horsman, writing for a unanimous court, considered the impact of Vavilov on determining the standard of review in judicial review and stated as follows:
- [27] There is no question that the standard of review to be applied in reviewing the merits of the decision of the provincial court judge is reasonableness. The judgment of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] establishes that reasonableness is the presumptive standard of review on judicial review of a statutory decision. The appellant does not say that the present case falls within any of the exceptions identified in Vavilov where correctness, rather than reasonableness, is the applicable standard of review.
- [28] It is true that a different standard of review applies where a petitioner alleges that the decision-making process did not meet procedural fairness requirements. In assessing a claim of procedural unfairness, the role of the reviewing court is to determine whether the statutory decision maker's choice of procedure met the requirements of procedural fairness. The reviewing court does not owe deference to the decision maker in deciding whether procedural fairness requirements were met: *Seaspan Ferries Corp. v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at para. 52.

[Emphasis added.]

- [19] The standard of review to be applied in a judicial review of a PCJ decision therefore depends on the type of error alleged. For when reviewing the merits of a decision made by the PCJ, the presumptive standard is reasonableness: *Revive* at para. 27.
- [20] For reviews of a PCJ decision based on procedural fairness requirements, a less deferential standard of correctness or fairness applies: *Revive* at para. 28; *Fets Fine Foods Ltd. (Fets Whisky Kitchen) v British Columbia (Liquor and Cannabis Regulation Branch)*, 2022 BCSC 410 at para. 28.

Did the PCJ Make Errors Which Justify Setting Aside the PCJ Decision?

- [21] The petitioner submits that the PCJ erred in two ways:
- (a) The PCJ breached procedural fairness requirements by making factual findings adverse to the petitioner without any evidence, rendering her decision unfair; and
 - (b) The PCJ's decision on the merits to dismiss the petitioner's unjust enrichment claims was unreasonable because she misapplied the test for unjust enrichment.

Findings of Fact by the PCJ

- [22] It is a basic tenet of our legal system that parties have the right to meaningful notice and the opportunity to be heard: *R. v. D'Allesandro*, 2018 BCCA 118 at para. 17; *A. (L.L.) v. B. (A.)*, [1995] 4 S.C.R. 536.
- [23] Here, the petitioner had notice that the PJC would hear legal submissions regarding whether the Provincial Court had jurisdiction to deal with his claims including his claims based on unjust enrichment.
- [24] However, the petitioner was unaware during the Hearing that the PJC would make factual findings on the merits based on the submissions made at the Hearing. The PCJ did not give the petitioner an opportunity to provide evidence or test the submissions of the respondent.
- [25] In the absence of evidence, the PCJ made factual findings on contested facts, including that:
- (1) Certain funds that Mr. Braun paid Ms. Scholey constituted rent as opposed to his contributions to Ms. Scholey's mortgage;
 - (2) Ms. Scholey did not authorize Mr. Braun's renovations to her residence;
 - (3) Mr. Braun's renovations caused damage to Ms. Scholey's residence; and
 - (4) Mr. Braun improperly took Ms. Scholey's personal property when he left the residence.
- [26] These facts were contested and were relevant and material to the petitioner's claims in unjust enrichment and alternatively, quantum meruit. However, the PCJ appears to have accepted Ms. Scholey's version of events, without any evidence and without being in a position to properly assess each party's credibility.

- [27] The petitioner was unaware at the Hearing that the PCJ intended to make factual findings or assess the parties' credibility. The petitioner did not have meaningful notice that factual findings would be made and that his claims would be dismissed based on such findings.
- [28] I find that the PCJ's finding of key, contested facts without evidence constitutes a procedural error that violated fundamental principles of natural justice. and constitutes procedural unfairness in the decision-making process. I find that the PCJ's error made the procedure and the Decision unfair and incorrect.
- [29] However, in the event I am wrong, I will address the petitioner's second alleged error--that the PCJ failed to apply the proper test for unjust enrichment.

PCJ's Failure to Apply Test for Unjust Enrichment

- [30] Failure to apply the correct legal test for unjust enrichment constitutes an error of law: *Pheasant v. Thompson*, 2023 BCCA 291 at para. 39.
- [31] The Court of Appeal confirmed that the proper legal test for unjust enrichment is as set out in *Moore v. Sweet*, 2018 SCC 52:
- [38] Three-part test applies to establish an unjust enrichment claim that can attract a remedy. A plaintiff will succeed on the cause of action in unjust enrichment if he or she can show: (a) that the defendant was enriched; (b) that the plaintiff suffered a corresponding deprivation; and (c) that the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason.
- [32] In her reasons for judgement, the PCJ does find that the Provincial Court has jurisdiction, albeit limited, to deal with claims in unjust enrichment. As I discuss below, I agree with the PCJ on this matter.
- [33] However, the PCJ then finds that Mr. Braun had "no standing" to claim unjust enrichment based on the following:
- (a) the short duration of the parties' relationship;
 - (b) the fact that the parties were not legally married;
 - (c) the parties did not live together in a marriage-like relationship long enough to fit the definition of spouses in the Family Law Act, S.B.C. 2011, c. 25 [FLA] which would qualify Mr. Braun to make property claims under the FLA; and
 - (d) her finding that Mr. Braun paid Ms. Scholey rent.
- [34] An unjust enrichment claim does not require the parties to be legally married or to be common law spouses. A claim in unjust enrichment does not require that parties have any particular nature or duration of relationship.

- [35] Further, while Ms. Scholey's assertion that Mr. Braun paid her rent was contested, even if Mr. Braun had paid Ms. Scholey rent, that fact would not preclude Mr. Braun's claims in unjust enrichment. The test for unjust enrichment embodies three questions: (1) was Ms. Scholey unjustly enriched?; (2) was Mr. Braun correspondingly deprived?; and (3) was there a juristic reason?
- [36] The PCJ did not apply the three-part test for unjust enrichment. To that end, I find that she erred. In addition, the PCJ did not address the petitioner's alternative claim based in quantum meruit. For these reasons, I find that the PCJ's Decision to dismiss Mr. Braun's claims was unreasonable.

Does the Provincial Court have Jurisdiction to Hear Unjust Enrichment Claims?

- [37] I pause to briefly discuss the Provincial Court's jurisdiction in hearing unjust enrichment claims.
- [38] At the Hearing, the PCJ questioned the Provincial Court's jurisdiction to hear unjust enrichment claims. While this matter has been repeatedly discussed at the Provincial Court level, there is limited, if any, discussion at the BC Supreme Court level.
- [39] In *Cantronic Systems Inc. v. Pavan*, 2017 BCPC 341, Judge Woods considered the Provincial Court's jurisdiction over equitable remedies, including unjust enrichment, and stated as follows:
- [27] Cases in the civil division of this court where the remedial constructive trust remedy specifically has been recognised as available (and sometimes employed) when unjust enrichment has been established include *True Fit Form Rentals Ltd. v. Carr*, [2005] B.C.J. No. 621 at paras. 13-16 (Prov. Ct.) and *Royal Bank of Canada v. Romanczuk*, [1999] B.C.J. No. 1870 (Prov. Ct.). Further, in *Artisan Floor Co. v. Lam* (1993), 1993 CanLII 2138 (BC SC), 76 B.C.L.R. (2d) 384 (S.C.), Esson, C.J.S.C. (as he then was) adverted, in obiter, to the remedy of the constructive trust in a discussion of Provincial Court civil proceedings and did not gainsay or question its availability to those who litigate in that forum.
- [29] To the extent that Cantronic asserts a claim in the present proceedings against Ms. Pavan for unjust enrichment, the Provincial Court possesses sufficient equitable jurisdiction to adjudicate it.
- [Emphasis added.]
- [40] In *Mort and Power et al. v. Le et al.*, 2016 BCPC 287, Judge MacCarthy had a similar opinion, as follows:

- [68] The Provincial Court has no express authority to grant equitable remedies. However, under the Law and Equity Act, R.S.B.C. 1996, c. 253, the Provincial Court has limited jurisdiction arising from "necessary implication" to deal with matters of procedure to ensure justice is done (see: CLEBC: Provincial Court Small Claims Handbook, Chapter 2, part 2.3 and the cases referred to therein including R.K. v. McBride, [1994] B.C.J. No. 2791 (QL) (Prov. Ct.), and Craig v. Gidyk, [1994] B.C.J. No. 1591).
- [41] In Grenier v. Williams, 2020 BCSC 1827, Justice Schultes favourably referred to paras. 67 to 70 of Mort and Power et al., stating that the plaintiff had "correctly cited the governing principles applicable to Small Claims jurisdiction": para. 11.
- [42] In Pomozon v. Beausoleil, 2021 BCSC 1290, Justice Shergill considered the scope of equitable remedies within the jurisdiction of the Provincial Court and stated as follows:
- [16] Seeking an accounting from a trustee is an equitable remedy: Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd., 2010 BCCA 357 at para. 50. The Provincial Court "does not have inherent jurisdiction to grant equitable remedies", outside of a very narrow exception relating to specific performance, which does not apply in this case: Cimaco Travel v. British Airways, 2002 BCPC 226 at para. 20.
- [17] Thus, the plaintiff's claims, which sought equitable remedies including an accounting and allegations of breach of trust, could only have been brought in Supreme Court, as those remedies are not available in Provincial Court.
- [Emphasis added.]
- [43] While Justice Shergill does not specifically discuss the remedy of unjust enrichment, she discusses equitable remedies being generally restricted in Provincial Court. However, as clarified by the Supreme Court of Canada in Moore, while a constructive trust is one of the remedies available in unjust enrichment claims, it is not the only remedy available; an unjust enrichment claim may be remedied by way of a personal remedy, such as a debt claim against the unsuccessful party: Moore at para. 89. Therefore, Justice Shergill's comments do not specifically preclude an unjust enrichment claim from being heard by the Provincial Court.
- [44] Based on the comments in case law of the Provincial Court and this Court, I am satisfied that unjust enrichment claims are within the jurisdiction of the Provincial Court. While the Provincial Court may be limited as to the remedies that may be ordered to remedy such enrichment, the matter may nevertheless be adjudicated.

What Is the Appropriate Remedy?

- [45] The petitioner asks that the PCJ's order be set aside and that the matter be remitted to trial before another judge.

[46] Having found that the PCJ erred on procedurally fairness grounds and in the alternative in misapplying the test for unjust enrichment, I am satisfied that the PCJ Decision ought to be set aside. It is appropriate to remit this matter back to the Provincial Court, where a trial on the claim and counterclaim can proceed on the merits.

[47] I understand from the petitioner that the PCJ had seized herself and the trial is currently set in Provincial Court for February 2026. The trial may or may not have to be adjourned to assign another PCJ to hear matters. However, in light of the factual findings made by the PCJ, it is appropriate that another PCJ hear the trial.

Result

[48] I hereby set aside the order of the PCJ made June 10, 2025.

[49] The petitioner's claims shall be remitted to trial before another PCJ.

[50] The petitioner reasonably does not seek costs because the respondent took no position in regard to the petition. Thus, there are no costs awarded.

"Hamilton J."

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