

CANADA / JUDGMENT

Este v. Taherkhani

2025 BCCA 336

COURT

British Columbia Court of Appeal

DECIDED

18 September 2025

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2025 BCCA 336 Este v. Taherkhani COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Este v. Taherkhani, 2025 BCCA 336 Date: 20250918 Docket: CA50451 Between: Rosa Donna Este also known as Rosa Donna Taherkhani also known as Donna Este Appellant (Respondent) And Mehran Taherkhani Respondent (Claimant) And Mina Esteghamat-Ardakani also known as Mina Esteghamat-Ardakani, Francis Amir Este, 0831296 B.C. Ltd., Vitality Holdings Corp., and John/Jane Doe as Trustee of the Mina Esteghamat-Ardakani Alter Ego Trust No. 1 Respondents (Respondents) Before: The Honourable Mr. Justice Harris The Honourable Madam Justice DeWitt-Van Oosten The Honourable Justice Edelmann On an application to vary: An order of the Court of Appeal for British Columbia, dated June 12, 2025 (Este v. Taherkhani, Vancouver Docket CA50451).

- and - On appeal from: An order of the Supreme Court of British Columbia, dated January 21, 2025 (Taherkhani v. Este, 2025 BCSC 375, Vancouver Dockets E131501 and S151066). Oral Reasons for Judgment The Appellant, appearing in person: R.D. Este No one appearing on behalf of the Respondent, Mehran Taherkhani Counsel for the Respondent, Mina Esteghamat-Ardakani: E. Cribb Place and Date of Hearing: Vancouver, British Columbia September 15, 2025 Place and Date of Judgment: Vancouver, British Columbia September 18, 2025 Summary: This matter involves two applications: an application to vary a chambers order allowing the respondents to apply to quash the appeal; and the application to quash. The central issue in both applications is whether the order sought to be appealed is an "order" within the meaning of the Court of Appeal Act. HELD: The application for review is dismissed and the application to quash is granted. The chambers judge correctly found that the order under appeal is not appealable at this stage of the lower court proceedings. Accordingly, she did not err in granting permission to the respondents to file an application to quash. Furthermore, the application to quash must be granted for want of jurisdiction. A challenge to the impugned order, if it proceeds, must await the outcome of the lower court proceedings.

- [1] DEWITT-VAN OOSTEN J.A.: We have two applications before us: a) an application by the appellant, Rosa Donna Este, asking that we set aside an order of Justice Fleming in chambers allowing the respondents to apply to quash Ms. Este's appeal before the appeal is set for hearing; and b) the application to quash, which has since been filed by one of the named respondents, Mina Esteghamat-Ardakani.
- [2] At the hearing of these applications, Ms. Este suggested that she was not properly served with the application to quash. However, the record demonstrates the contrary and we are satisfied Ms. Este entered this hearing with sufficient time to prepare her response.
- [3] Ms. Este's appeal seeks to challenge a January 2025 decision by a case management judge in the British Columbia Supreme Court dismissing an application to disqualify herself. Justice Ahmad is case managing two files involving Ms. Este that have been joined in the Supreme Court: a family action (E131501) and a civil action (S151066). These actions were filed in 2013 and 2015, respectively, and involve claims relating to the ownership of certain properties in West Vancouver and other assets. It is not necessary to set out the lengthy history of the litigation. That has been done before: see, for example, the reasons for judgment indexed at 2023 BCCA 290 at paras. 7-76.
- [4] Justice Fleming granted permission to bring a preliminary application to quash Ms. Este's appeal on the basis that the dismissal of the disqualification application cannot be appealed as a freestanding order. An application to quash, if successful, would avoid unnecessary time, expense, and judicial resources in preparing for an appeal that is unlikely to proceed. In reaching this conclusion, Justice Fleming applied *Skyllar v. The University of British Columbia*, 2022 BCCA 138, in which this Court quashed an appeal from a dismissal of a disqualification application for want of jurisdiction.
- [5] Justice Fleming recognized that pursuant to R. 60 of the Court of Appeal Rules, B.C. Reg. 120/2022, applications to quash are to be heard at the same time as the hearing of the appeal. However, R. 60(4) allows a justice to order otherwise. She decided it was appropriate to exercise that discretion. The application of R. 60(4) involves an individualized inquiry, informed by the circumstances of the case and its context.
- [6] Ms. Este says Justice Fleming's decision under R. 60(4) reflects a fundamental error, namely, she mischaracterized the order dismissing the disqualification application as non-appealable. According to Ms. Este, the dismissal of the disqualification application profoundly affects her procedural and substantive rights in the Supreme Court litigation and should be treated as the equivalent of a final order, reviewable by a division of this Court even though the Supreme Court litigation remains ongoing.
- [7] In her written material, Ms. Este makes various submissions about the history of the Supreme Court litigation, the disqualification ruling, other decisions by Justice Ahmad in her role as case management judge, the bases on which Ms. Este says Justice Ahmad is biased, and the reasons why she says her appeal should be allowed to proceed in the interests of justice. She says the application to quash should be heard at the same time as the

appeal to ensure that the application is appropriately informed by the whole of the case, including fresh evidence she wants to adduce in support of the appeal.

- [8] Much of what is contained in Ms. Este's written material is irrelevant to her application for review of Justice Fleming's order. The review application has been brought under s. 29(1) of the Court of Appeal Act, S.B.C. 2021, c. 6 and is limited to challenging Justice Fleming's exercise of discretion, not the Supreme Court proceedings or the way that litigation is unfolding. On the review application, the only question for us to answer is whether Ms. Este has established that Justice Fleming erred in law, erred in principle, or misconceived the facts in allowing the respondents to bring an application to quash in advance of the appeal: *Kepa v. Catlin*, 2025 BCCA 307 at para. 27, citing *Arvanitis v. Slater Vecchio LLP*, 2022 BCCA 326 at para. 14. Without demonstrating one or more of those errors, a division of this Court cannot interfere.
- [9] In our view, Justice Fleming did not err. To the contrary, she correctly interpreted and applied *Skyllar*, and that decision is dispositive of the application for review.
- [10] In *Skyllar*, the plaintiff initiated legal proceedings against the University of British Columbia ("UBC"). In response, UBC filed a notice of application in Supreme Court chambers seeking summary dismissal of the civil action: at para. 5. Before Ms. *Skyllar* made submissions in response to the dismissal application, she applied to have the chambers judge disqualify herself. The summary dismissal application was adjourned. A date was set for the disqualification application and the parties made their submissions on that issue. The judge dismissed the application and Ms. *Skyllar* appealed: at para. 6.
- [11] On appeal, this Court asked whether it had jurisdiction to hear Ms. *Skyllar*'s appeal "before the completion of the underlying proceeding": at para. 2. Resolving that issue depended on whether "the refusal of a judge to disqualify himself or herself is [an] "order" within the meaning of the [Court of Appeal Act]": at para. 24. Writing for the Court, Justice Goepel reviewed case authority relevant to the issue and held that an order dismissing a disqualification application is generally not appealable until the underlying proceeding has finished:
- [37] I find this Court does not have jurisdiction at this time in the proceeding to entertain the application to disqualify the chambers judge. The chambers judge's decision to reject the application does not lead to an "order" under the CA Act. This was the type of mid-hearing ruling which is appealable only by way of appeal from the final judgment. Neither the CA Act or CA Rules permit a party, during the course of a hearing or trial, to appeal rulings or directions to a higher court. The rationale for such a principle is obvious: the trial process would soon grind to a halt if mid-trial rulings were subject to immediate appeal. This case is an example. The Dismissal Application has been on hold for more than seven months pending determination of this appeal. [Emphasis added.]

- [12] We agree with Justice Fleming that consistent with *Skyllar*, the disqualification ruling in this case is also "the type of mid-hearing ruling which is appealable only by way of appeal from the final judgment": *Skyllar* at para. 37, emphasis added. Ms. Este says *Skyllar* is distinguishable because Justice Ahmad's ruling was not made in the middle of a specific hearing or ongoing application. Instead, Ms. Este brought a stand-alone application for disqualification in the larger context of the litigation to remove Justice Ahmad from the proceedings in their entirety, and prospectively protect Ms. Este's procedural and substantive rights as the joined actions move forward. Respectfully, this is a distinction without a difference. In substance, there is no difference between the disqualification application in this case and *Skyllar*. They were both brought and ruled upon before completion of the underlying proceedings. That was the factor that weighed most heavily with the Court in *Skyllar* and is equally applicable here. The joined actions in the Supreme Court have not completed. When they do and if there is an appeal of the outcomes, the disqualification ruling can be raised as a ground of appeal.
- [13] Ms. Este also claims that the hearing before Justice Fleming was procedurally unfair. We see no basis for this claim. Justice Fleming was clearly alive to the submissions advanced by Ms. Este and the reasons she offered for distinguishing *Skyllar*: at paras. 18-19. The fact that Justice Fleming did not resolve the issue in Ms. Este's favour does not mean the hearing must have been unfair.
- [14] Given these findings, there is no principled basis on which to vary Justice Fleming's order allowing the respondents to proceed with an application to quash for want of jurisdiction in advance of the appeal. Ms. Este has not met her burden on review.
- [15] That brings us to the second application before us. We have found Justice Fleming correctly determined that the order sought to be appealed by Ms. Este is not an order within the meaning of s. 13(1) of the Court of Appeal Act. As a result, *Skyllar* prevails and the application to quash for want of jurisdiction must be granted. Ms. Esteghamat-Ardakani agrees that Ms. Este's complaints about judicial bias can be raised as part of any appeal from the outcomes of the joined actions. As such, quashing her appeal does not deprive her of an opportunity to seek a remedy when the time is right, should she meet the criteria for appellate intervention. As noted in *Skyllar*, "[a] decision reached and orders made in the course of a hearing that is found by a court of appeal to be unfair as a result of a reasonable apprehension of bias are void and unenforceable": at para. 38.

Disposition

- [16] The application for review is dismissed. The application to quash Ms. Este's appeal is granted and the appeal is quashed for want of jurisdiction. "The Honourable Mr. Justice Harris" "The Honourable Madam Justice DeWitt-Van Oosten" "The Honourable Justice Edelman"

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Prepared on 29 October 2026 · Esheria