

CANADA / JUDGMENT

Este v. West Vancouver (District)

2025 BCCA 269

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 269 Este v. West Vancouver (District)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Este v. West Vancouver (District),

2025 BCCA 269

Date: 20250710

Docket: CA50401

Between:

Rosa Donna Este

Appellant

(Respondent)

And

District of West Vancouver

Respondent

(Petitioner)

And

Mina Esteghamat-Ardakani

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Butler

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated December 24, 2024 (West Vancouver (District) v. Este, 2024 BCSC 2363, Vancouver Docket S247392).

Oral Reasons for Judgment

The Appellant, appearing in person:

R.D. Este

Counsel for the Respondent, District of West Vancouver:

E.A. Anderson

Counsel for the Respondent, Mina Esteghamat-Ardakani:

E. Cribb

Counsel for Mehran Taherkhani:

J.R. Shewfelt

Place and Date of Hearing:

Vancouver, British Columbia

July 10, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 10, 2025

Summary:

The judge ordered injunctive relief preventing the applicant from violating building bylaws and interfering with the execution of a demolition order. The applicant seeks leave to appeal and a stay of the orders below. The applicant raises several grounds of appeal, including a claim that the judge erred by failing to recuse herself based on a reasonable apprehension of bias.

Held: Application allowed. New information concerning the judge's prior involvement in this matter while working at the law firm that represents the respondent means there is merit to this ground of appeal. The appeal will unduly hinder progress in this drawn-out dispute, but it is significant to the action because success would prevent the respondent from removing the applicant from the property and executing the demolition order. The interests of justice, and in particular the need to ensure the principles of judicial independence and impartiality are upheld

in the eyes of the public, necessitate granting leave. For the same reasons, a stay of certain terms of the order is warranted to preserve the current state of affairs.

- [1] BUTLER J.A.: The applicant, Dr. Rosa Donna Este, seeks leave to appeal the order of a judge on the hearing of a petition, reasons for which are indexed as West Vancouver (District) v. Este, 2024 BCSC 2363 ("RFJ"). Dr. Este also seeks a stay of that order pending the appeal. The respondents oppose the application for leave and for a stay of the orders made by the judge.

Background

- [2] The underlying appeal is the latest development in a long-standing dispute over a fire-damaged house in West Vancouver. The dispute involves not only Dr. Este and the respondent, the District of West Vancouver (the "District"), but also Dr. Este's mother, Mina Esteghamat-Ardakani, and Dr. Este's ex-husband, Mehran Taherkhani. The judge summarized the considerable litigation history involving the house at paras. 10-27 of the RFJ. I need not repeat that.
- [3] The present appeal concerns the District's ongoing efforts to have the house demolished.
- [4] On December 14, 2020, the District passed a remedial action requirement ("RAR") under ss. 72-74 of the Community Charter, S.B.C. 2003, c. 26, requiring the house be demolished (the "Demolition Order"). On March 29, 2021, the District affirmed this resolution.
- [5] In the court below, the District brought an application for several injunctions under s. 274(1) of the Community Charter. The injunctions were aimed at preventing Dr. Este from interfering with the execution of the Demolition Order and violating the Building Bylaw, Bylaw No. 4400, 2004.
- [6] The judge agreed with the District. She found there was uncontested evidence Dr. Este had breached both the Demolition Order and the Building Bylaw. She found Dr. Este had engaged in unpermitted demolition and renovation works on the house. She also found Dr. Este had interfered with stop work orders and the ability of the District to proceed with demolition of the house in accordance with the Demolition Order: RFJ at para. 41.
- [7] The judge considered and rejected Dr. Este's various claims, including that the Demolition Order was invalid, inapplicable, or otherwise unenforceable, and that the District was required to issue her permits to keep and repair the house rather than demolish it. She found these issues had already been resolved by the Supreme Court and Court of Appeal in prior decisions concerning the house and the Demolition Order. According to the judge, Dr. Este's arguments amounted to an impermissible collateral attack on existing orders of the court: RFJ at paras. 38, 42-51.
- [8] The judge therefore granted the orders sought by the District as follows (from para. 67 of the RFJ):

- a) An interlocutory order, pursuant to s. 274(1) of the Community Charter, enjoining and restraining the Respondent Rosa Donna Este, her agents, servants, employees, contractors, or any other person having notice of this order from doing any of the following on or from the lands and premises with a civic address of 2668 Bellevue Avenue, legally described as PID 013-216-422, Lot 5, Block 33, District Lot 555, Plan 3058 (the "Property"):
 - i. carrying out any construction or demolition work upon the Property without a valid and subsisting permit issued to that person for the subject work, contrary to section 5.1 of the Building Bylaw;
 - ii. removing, defacing, obscuring or otherwise tampering with any Stop Work Order posted on or near the Property, contrary to section 5.3 of the Building Bylaw;
 - iii. obstructing the entry of the District's Building Inspectors, including Bylaw Officers, on and into the Property, contrary to section 5.4 of the Building Bylaw; and
 - iv. obstructing the entry of District building contractors on and into the Property, contrary to the District of West Vancouver Demolition Order dated December 14, 2020 (the "Remedial Action Requirement");
 - b) An interlocutory order, pursuant to s. 274(1) of the Community Charter, preventing the Respondent Rosa Donna Este from further interfering with the carrying out of the Remedial Action Requirement by prohibiting her from attending on or within 100 feet of the Property, until the demolition work ordered by the Remedial Action Requirement has been fully completed;
 - c) An order that this injunction will remain in effect pending final disposition of the petition in this proceeding; and
 - d) An order that the petition in this matter will be filed within 30 days of the date of this order.
- [9] On appeal, Dr. Este claims the judge erred concerning the reasonableness, validity, and applicability of the Demolition Order. She also maintains she did not violate the Building Bylaw. In addition, Dr. Este argues the judge was not made aware of certain facts pertaining to Ms. Esteghamat-Ardakani's health and seeks to adduce fresh evidence in that regard.
- [10] According to Dr. Este, the judge also erred by failing to recuse herself based on a reasonable apprehension of bias. Dr. Este's concern is that before being appointed to the bench, the judge had worked at the firm representing the District. During the hearing below, in oral submissions, Dr. Este raised this issue prior to the hearing and advanced an application asking the judge to recuse herself on this basis. The judge dismissed the application, noting that almost seven years had elapsed since she had worked at the firm and stating she could not recall having ever been involved in the file or related matters.
- [11] However, in the course of submissions on the recusal application, the judge made a number of comments that are relevant to the application before me today, including:

I need to understand if you think that there's a chance that I was somehow involved in this case prior to 2017

I would be concerned if I had -- and I certainly have looked at all the names of the affiants. I don't recognize anybody's names. I don't recall being involved in this file whatsoever. I think it arose after my appointment. But if there's been some correspondence in 2017 or earlier, it would be wise to bring it to my attention so that I am not in a situation where I find out later that I had some involvement and I wasn't -- that I can't recall at this time

... and I need you to respect my decision because it's my decision as to whether or not I can be impartial in this, subject to me being advised that I was involved in your file prior -- you know, in 2017 or earlier. Is there any possibility that that was the case?...

I'm going to ask, is anybody else aware? Ms. Anderson, [counsel for the District of West Vancouver] are you aware when this matter first arose? (Ms. Anderson stated she could not recall any involvement prior to 2020.)

[12] In making her decision on the recusal application, the judge stated:

I have no concerns that I am biased in this case or that I'm impartial or that I've had any involvement through my former law firm, as I said, which I have no longer been involved with since December 2017. So I am going to proceed to hear the case today.

[13] Counsel for the District has very recently filed an affidavit alerting the Court to the fact that the judge, while practicing at the firm, had sent an email to employees of the District advising them on matters related to the possible demolition of Dr. Este's home. This information about the judge's prior involvement in the matter under appeal is clearly relevant to Dr. Este's allegation of apprehension of bias. For the reasons that follow, I conclude Dr. Este's applications must be granted.

Legal Framework

[14] The test for determining whether leave to appeal should be granted is well-established. The criteria include:

- a) whether the point on appeal is of significance to the practice of law;
- b) whether the point raised is of significance to the action itself;
- c) whether the appeal is prima facie meritorious; and
- d) whether the appeal will unduly hinder the progress of the action.

Goldman, Sachs & Co. v. Sessions, 2000 BCCA 326 at para. 10 (Chambers).

[15] The party seeking leave must demonstrate the requirements have been met: V.F. v. E.B., 2011 BCCA 238 at para. 22 (Chambers).

[16] To obtain a stay of proceedings, the applicant must demonstrate:

- a) there is some merit to the appeal;
- b) the applicant will suffer irreparable harm if the stay is refused; and
- c) the balance of convenience favours granting the stay.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311, 1994 CanLII 117; Cascade Aerospace Inc. v. Viking Air Limited, 2024 BCCA 256 at para. 37 (Chambers).

- [17] The ultimate consideration in deciding both applications is the interests of justice: Vancouver (City) v. Zhang, 2007 BCCA 280 at para. 10 (Chambers); Coburn v. Nagra, 2001 BCCA 607 at paras. 7, 9.

Discussion

Leave to Appeal

- [18] The submissions of all parties focus on whether leave to appeal should be granted. In her initial application, Dr. Este noted she was unsure whether leave of the Court was necessary. Registrar Outerbridge, in earlier correspondence with the parties, also raised the question of whether leave was needed "given permanent, statutory injunctions are usually appealable as of right." The parties did not heed the Registrar's views and have not focused on the question of whether leave is required in the submissions they have made.
- [19] However, given the parties' positions, I have not considered this question in any detail even though it appears to me there are cogent arguments both for and against the proposition that leave is required. Nevertheless, as the parties have approached this application on the basis that leave is required, and I have reached the conclusion that leave should be granted, I need not resolve the question of whether leave is required to pursue an appeal of the order granting the injunction.
- [20] The merits threshold for leave to appeal has been described as "relatively low": Bartram v. Glaxosmithkline Inc., 2011 BCCA 539 at para. 16 (Chambers). As is the case with stay applications, when considering the merits of a leave to appeal application, "a prolonged examination of the merits is generally neither necessary nor desirable": Western Forest Products Inc. v. Capital Regional District, 2009 BCCA 80 at para. 22 (Chambers).
- [21] As alluded to above, the new information concerning the judge's prior involvement in this matter leads me to conclude there is merit to Dr. Este's appeal, at least on that ground of appeal. This determination should in no way be read as an impeachment of the judge's impartiality.
- [22] It is clear the judge was alive to the issue of a potential conflict arising from her past involvement with the District. While she did not recall any involvement in the file, she clearly wanted to know if "there's a chance I was somehow involved". She also indicated that if she had been involved, "I would be concerned". She was also of the view that "it would be wise to bring (any prior involvement) to my attention". However, the information regarding

her prior involvement was not brought to the attention of the judge and the information was only provided by the District to Dr. Este last week.

- [23] On an application asserting reasonable apprehension of bias, the question to be determined is not whether the judge was in fact biased. Rather, the well-established test, as set out in *Wewaykum Indian Band v. Canada*, 2003 SCC 45, at para. 60, referring to *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at p. 394, is:

what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

- [24] The District, in their written response to the application, cite *Testar Estate v. Hean Wylie & Company*, 2024 BCCA 126, at para. 9, as authority for this proposition: "Even where a judge has formerly been involved as counsel for a party, but does not recall such representation or the details, this will not be sufficient to raise a reasonable apprehension of bias."
- [25] With respect, *Testar Estate* does not stand for that proposition. Indeed, in this area, there can be no such general proposition. This is because the test for reasonable apprehension of bias is "a corner of the law in which the context, and the particular circumstances, are of supreme importance": *Man O'War Station Ltd. v. Auckland City Council* (Judgment No. 1), [2002] N.Z.L.R. 577 at para. 11, cited in *Wewaykum* at para. 77. The circumstances in *Testar Estate* bear no similarity to the circumstances here. The justice in *Testar Estate* was asked to recuse himself from deciding an appeal because he had acted as counsel for a law firm, one of the parties to the appeal, in 1995, almost 30 years earlier.
- [26] The present circumstances have some similarity to those in *Wewaykum*. There, the judge, Justice Binnie, had written a unanimous decision of the Court in 2002 dismissing the claims of two First Nations bands regarding entitlement to two Indian reserves on Vancouver Island. Justice Binnie had been Associate Deputy Minister of Justice in 1982-1986 and had been responsible for all litigation involving the government of Canada (outside of Quebec), a role in which he had supervisory authority over thousands of cases. Following the decision of the Supreme Court of Canada in 2002, the Department of Justice found internal memoranda which indicated Mr. Binnie had received information concerning one of the Band's claims and had attended a meeting at which it was discussed. The Crown filed a motion seeking directions and one of the bands sought an order setting aside the judgment of the Court.
- [27] The Court in *Wewaykum* dismissed the band's application to set aside the order. It concluded the record did not support a reasonable apprehension of bias. In doing so, it noted that Justice Binnie's involvement in the dispute as Associate Deputy Minister was confined to a limited supervisory and administrative role in which he was never counsel of record, played no active role after the claim was filed, and did not plan litigation strategy.

- [28] Here, the circumstances illuminated by the new information have some similarity to those in *Wewaykum*, in that the information has come to light after reasons were delivered, and, at the time of the hearing, the judge could not recall having any involvement with the particular file. However, there are also important differences. Here, the new information establishes not only that the judge had acted as counsel for the District prior to her appointment to the bench, but had provided some advice to it regarding the very dispute in question about Dr. Este's property and possible demolition of the home. In addition, the judge's involvement was much more recent than Justice Binnie's involvement in *Wewaykum*.
- [29] The new information means there is at least an arguable case that an informed person, having thought the matter through and having viewed it realistically and practically, might conclude that it is more likely than not that the judge, consciously or unconsciously, would not decide the case fairly. In other words, there is an arguable case regarding the ground of appeal based on a reasonable apprehension of bias. This is particularly so given the judge's own repeated statements during the hearing.
- [30] This ground of appeal, if successful, could result in the entire order being set aside. Accordingly, while it appears on first blush that the other grounds of appeal are weak, I need not consider those merits.
- [31] Turning to the other considerations relevant to the leave to appeal application, the District is correct to note the appeal will unduly hinder progress in this already long, drawn-out dispute.
- [32] As for the importance of the case to the practice of law, while the general test for determining reasonable apprehension of bias is well-settled, the case does raise an interesting question about the application of that test that may have some significance beyond this case.
- [33] In addition, the issue raised is significant to the action itself. Success on the appeal would prevent the District--at least until the matter is reheard or the underlying petition resolved--from removing Dr. Este from the property and executing the Demolition Order.
- [34] In sum, the interests of justice necessitate granting leave to appeal. In particular, granting leave is critical to ensuring the core principles of judicial independence and impartiality are upheld in the eyes of the public.

Stay Application

- [35] For the same reasons, I would grant the application for a stay of the terms of the order. As noted, there is some merit to Dr. Este's argument concerning a reasonable apprehension of bias. If the stay were refused, the appeal may be rendered moot and steps could be taken that could lead to irreparable harm to Dr. Este. The balance of convenience, and particularly the overriding concern for maintaining judicial independence and impartiality, weighs in favour of granting a stay.

[36] However, I would only stay those terms of the order set out in para. 67 a) iii); a) iv); and b) in the RFJ. In my view, this reflects a fair balancing of the interests of the parties and would preserve the current status.

Disposition

[37] The application for leave to appeal is granted. The provisions of the order set out at para. 67 a) iii); a) iv); and b) of the RFJ are stayed pending further order of this Court or agreement of the parties.[1]

[Discussion with the appellant re: costs]

[38] BUTLER J.A.: Costs follow the event

"The Honourable Mr. Justice Butler"

[1] It is my understanding Dr. Este, in addition to appealing the order, is also applying for reconsideration of the order in light of the new evidence. That application is outside the jurisdiction of this Court. As a point of clarification, this stay will remain in place whether or not that application is pursued.

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