

CANADA / JUDGMENT

Henry v. A.B.

2026 BCCA 126

COURT

British Columbia Court of Appeal

DECIDED

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2026 BCCA 126 Henry v. A.B. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Henry v. A.B., 2026 BCCA 126 Date: 20260213 Docket: CA50443 Between: Ivan William Mervin Henry Appellant/ Respondent on Cross Appeal (Defendant) And A.B., C.D., E.F., G.H., and I.J. Respondents/ Appellants on Cross Appeal (Plaintiffs) FILE SEALED IN PART Before: The Honourable Justice Mayer (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated January 29, 2025 (A.B. v. Henry, 2025 BCSC 137, Vancouver Docket S179580). Oral Reasons for Judgment Counsel for the Appellant/ Respondent on Cross Appeal: C.M. Considine, K.C. P.M. McGowan, K.C. Counsel for the Respondents/ Appellants on Cross Appeal: I. Kordic K. Gourlay Place and Date of Hearing: Vancouver, British Columbia February 13, 2026 Place and Date of Judgment: Vancouver, British Columbia February 13, 2026 Summary: The appellant applies for an order allowing him to file a 91-page factum. Application allowed with some variance: This is an appeal of more than usual complexity. The appellant and respondent may file factums of no more than 70 pages in length.

[1] MAYER J.A.: The appellant, Ivan Henry, brings an application to extend the 30-page limit on the length of his factum to 91 pages. The respondents, A.B., C.D., E.F., G.H. and I.J. oppose this application.

Background

[2] Mr. Henry was convicted by a jury of ten counts of sexual assault involving eight women. In 1983, he was declared a dangerous offender and sentenced to an indefinite period of incarceration. He remained imprisoned for almost 27 years.

[3] In 2010, this Court allowed Mr. Henry's conviction appeal, found he had been wrongfully convicted, and substituted verdicts of acquittal on all counts. Following his acquittal, Mr. Henry commenced a civil action for wrongful conviction and was awarded \$8.07 million in damages.

- [4] In the action underlying this appeal, commenced in 2017, the respondents (five of the complainants from the 1983 criminal trial) filed a notice of civil claim against Mr. Henry, alleging he had sexually assaulted them between 1981 and 1982. In early 2025, after a 45-day trial, a trial judge decided in favour of the respondents and awarded each of them damages of \$375,000, plus costs.
- [5] Mr. Henry is now appealing the trial decision. The respondents cross appeal the part of the order dismissing their claim for punitive damages. By consent, Mr. Henry is required to file his factum by February 17, 2026, amongst other schedule revisions, and the appeal is set to be heard over two days -- on June 9 and 10, 2026.

Issues

- [6] The sole issue before this Court today is whether to grant Mr. Henry's application to extend the page limit of his factum. The Law
- [7] Rule 25(4) of the Court of Appeal Rules and s. 1.1 of the Completion Instructions: Civil Factums and Replies set the default page limit for an appellant's factum as 30 pages.
- [8] The purpose of the rule limiting factums to 30 pages is to focus counsel on the issues: *Brown v. Lowe*, 2000 BCCA 635 (Chambers).
- [9] It has been stated that "[w]hile the overwhelming complexity of a case may justify a longer factum, the 30-page limit has already been determined with reasonably complex cases in mind": *A.B. v. C.D.*, 2019 BCCA 256, at para. 13 (Chambers) quoting from *Ma v. Vansanten*, 2017 BCCA 441.
- [10] On an application to extend the page limit for a factum, any extra length should be justified by showing (in a summary fashion) why it would be difficult to set out the legal and factual background and analysis in a more concise fashion: *Chief Mountain v. Canada* (Attorney General), 2012 BCCA 69 (Chambers), at para. 11.
- [11] In *Maughan v. University of British Columbia*, 2008 BCCA 452 (Chambers), Justice Chiasson noted:
- [13] The jurisdiction to relieve from prescribed factum length is discretionary. The determination has been described as, by its nature, somewhat arbitrary: *Brown v. Lowe*, 2000 BCCA 635, para. 4 (Braidwood J.A. in Chambers).
- [14] The objectives of a factum are to advise the other side of the issues in dispute so that it can prepare properly for the appeal and to assist the division of the Court that hears the appeal to deal effectively with the issues: *Gould v. Sandau*, 2004 BCCA 90, para. 10 (Saunders J.A. in Chambers). A purpose of the 30-page limit is to focus the parties on the issues: *Brown*, para. 1).

- [15] While the norm is adherence to the requirements of the Court of Appeal Rules and Directives, as Locke J.A. noted in *Kerlenmar Holdings Ltd. v. Matsqui* (District), [1991] B.C.J. No. 706 (C.A.), "the Rules are the servants of the Court and not the master". In appropriate circumstances it is in order to mould factums to suit the requirements of an appeal.
- [12] In *The Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2026 BCCA 4 [Conseil], the Registrar set out a non-exhaustive list of factors relevant to an application to extend factum length at para. 7:
- a) the number and complexity of the issues on the appeal (e.g., *Maughan*, at para. 14);
 - b) the size of the proposed record, including the evidentiary record below (e.g., *R. v. Port Chevrolet Oldsmobile Ltd.*, 2008 BCCA 443, at para. 5 (Chambers)); and
 - c) the number of parties to an appeal (*Noramco [LLC v. British Columbia]*, 2025 BCCA 161, at para. 33).

Analysis

- [13] Mr. Henry submits his application should be granted because the issues on appeal are numerous, both legally and factually complex, and engage significant portions of the very large record from proceedings in the court below. He argues the central issue of identification is particularly factually and legally complex, as it involves five separate plaintiffs, each describing a different transaction and each having given multiple versions of evidence on the issue of identity. He submits the evidence of the respondents in this proceeding occupied 13 days of trial, with related exhibits occupying over a thousand pages. He further submits this Court must also review the analysis of these materials and issues in the related wrongful conviction case and the Charter damages case, as the trial judge was bound by, or at least required to give weight to, those findings.
- [14] Mr. Henry argues some of the issues he raises on appeal relate to facts and submissions that the trial judge did not recognize or grapple with, and accordingly, involve large portions of the record that, in many cases, are not mentioned in the trial decision.
- [15] Mr. Henry relies on *Port Chevrolet Oldsmobile*, in which this Court extended the appellant's factum page limit to 55 pages. He submits the magnitude of the record and number and complexity of the issues in his case far exceed those in *Port Chevrolet Oldsmobile*.
- [16] Mr. Henry asks this Court to exercise its discretion to extend the factum length given the complexity of the appeal within the related context of his nearly 27 years in prison following a wrongful conviction. He submits the trial judge's decision is "replete with egregious errors resulting in a serious miscarriage of justice." He submits he ought to be given an opportunity to meaningfully explain and challenge these errors in furtherance of his efforts to overturn the trial judge's findings of liability.

- [17] Finally, Mr. Henry submits he has no objection to the respondents being granted the same factum length extension. He has filed with this application a draft of the factum he seeks leave to file.
- [18] The respondents refer to Conseil as offering a helpful parallel in support of their position opposing Mr. Henry's application. They point to the trial record in Conseil scolaire including 77,000 pages of exhibits and an 11,000-page transcript, as well as the appellant proposing 63 separated, detailed grounds of appeal. The Respondents submit, by contrast, the trial record here is said to be approximately 7,000 pages, the transcript approximately 3,700 pages, with Mr. Henry proposing 16 grounds of appeal. As the appellant in Conseil sought a factum of 120 pages, and Registrar Outerbridge granted them a factum of 60 pages, the respondents submit granting Mr. Henry his requested 91 pages would be disproportionate in relation to the Conseil precedent.
- [19] The respondents concede there is no doubt that Mr. Henry's trial was a lengthy and complex. However, they submit the Court will be assisted by focused written arguments that narrow in on the issues on appeal. The respondents argue allowing additional pages is an exceptional remedy, not a routine accommodation, and requires a specific, persuasive explanation tied to the issues on appeal.
- [20] In summary, the respondents submit a substantially expanded appellant's factum necessarily increases the burden and cost of responding, prolongs the appeal process, and imposes further prejudice on older respondents who have yet to receive compensation.
- [21] If an extension is granted to Mr. Henry, the respondents request that the order include a reciprocal extension in their favour.
- [22] Mr. Henry has provided a draft factum which I have reviewed.
- [23] I am satisfied that the level of complexity of this appeal exceeds the "reasonably complex" category, to the extent there is one, for which a 30-page factum is appropriate. There are five respondents, the trial was lengthy and the record from the court below is extensive. In addition, this appeal can be distinguished from others which result from a single trial judgment, given the potential relevance of materials and issues in the related wrongful conviction case and the Charter damages case. Some extension from the 30-page limit is warranted.
- [24] I note that the appeal is set for only two days. I am not satisfied that a 91-page factum is necessary for the appellant to appropriately set out the issues and argument to be reviewed with the division over a two day period.
- [25] Although I cannot say that the issues set out in Mr. Henry's draft factum are overly repetitive or include unnecessary materials -- it will benefit from editing. By way of example, the draft includes a number of extracts and narrative concerning large portions of the reasons of the court below.

- [26] After discussing the matter with counsel this morning, I am satisfied that an extension of the page limit for Mr. Henry's factum to 70 pages would be appropriate. Mr. Considine K.C. advises that with careful edits he could reasonably reduce the length of his factum to this length.
- [27] The respondents do not take a position with respect to an order from this Court extending the factum length to 70 pages, so long as the current appeal hearing dates are maintained and they receive a reciprocal order allowing them to file a response factum of the same length and the timeline for service of the appellant's factum is not significantly disturbed.
- [28] The order will reflect that the appellant may file a factum of 70 pages in length. A related order will be that the current deadline of February 17, 2026, for filing of the appellant's factum will be extended to February 20, 2026. There will be no other changes to any deadlines or timelines that have previously been set.
- [29] The respondents are entitled to file a responding factum of 70 pages. "The Honourable Justice Mayer"

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