

CANADA / JUDGMENT

Taherkhani v. Este

2025 BCSC 2464

COURT

Supreme Court of British Columbia

DECIDED

2 December 2025

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

2025 BCSC 2464 Taherkhani v. Este

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Taherkhani v. Este,

2025 BCSC 2464

Date: 20251202

Docket: E131501

Registry: Vancouver

Between:

Mehran Taherkhani

Claimant

And:

Rosa Donna Este also known as Rosa Donna Taherkhani also known as Donna Este, Mina Esteghamat-Ardakani also known as Mina Esteghamat-Ardakani, Francis Amir Este, 0831295 B.C. Ltd., Vitality Holdings Corp., and John/Jane Doe as Trustee of the Mina Esteghamat-Ardakani Alter Ego Trust No. 1

Respondents

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

Counsel for the Claimant:

J. Shewfelt

The Respondent, Rosa Donna Este, appearing in person:

R.D. Este

Counsel for the Respondent,

M. Esteghamat-Ardakani:

T. Cohen, K.C.

E. Cribb

Place and Date of Hearing:

Vancouver, B.C.

October 31, 2025

Place and Date of Decision:

Vancouver, B.C.

November 4, 2025

Place and Date of Reasons for Judgment:

Vancouver, B.C.

December 2, 2025

Table of Contents

I. Introduction.. 3

II. Summary of Decisions. 4

III. Application to Cross-Examine. 4

A. Background Facts and Evidence. 4

B. Discussion and Analysis. 7

1. Application to cross-examine Ms. Esteghamat-Ardakani and Ms. Ensor 7

2. Application to cross-examine Mr. Cribb. 11

3. Conclusion. 12

IV. Application for Production of Documents. 12

V. Application to Disqualify Counsel. 13

A. Legal Framework. 13

B. Discussion and Analysis. 14

1. Allegation of coaching after the first day of discovery. 14
2. Allegation of coaching during the discovery. 15
3. Allegations of past misconduct 19
4. Conclusion. 20

VI. Costs. 20

- A. Should costs be assessed as special costs?. 21
- B. When should the special costs be payable?. 25

I. Introduction

- [1] Mehran Taherkhani commenced this family action in May 2013, in which he asserted an entitlement to certain real estate and other assets, some of which were legally owned by his former spouse, Rosa Donna Este. In response, Dr. Este asserted that, despite her legal title, the assets were held in trust for her mother, Mina Esteghamat-Ardakani.
- [2] The family action has been since joined for hearing with a related civil action. The parties have been embroiled in protracted litigation involving both actions, in which all parties have made various claims of fraud against the others.
- [3] I have case managed both actions since approximately July 2024. The actions are set for trial in April 2026.
- [4] On June 17 and 18, 2025, Mr. Shewfelt, counsel for Mr. Taherkhani, conducted an examination for discovery of Ms. Esteghamat-Ardakani in the family action. Mr. McEwan and Ms. Kirkpatrick attended at the discovery on behalf of Ms. Esteghamat-Ardakani. By consent order, Dr. Este observed the discovery by way of video.
- [5] Citing the conduct of counsel at and in between the two days of discovery, by application filed on August 11, 2025 ("Disqualification Application"), Dr. Este sought an order to disqualify Mr. McEwan and Ms. Kirkpatrick, as well as their colleague, Mr. Cribb, from continuing to act as counsel for Ms. Esteghamat-Ardakani in either the family action or the civil action.[1]
- [6] In her response to the Disqualification Application, Ms. Esteghamat-Ardakani served Dr. Este with three affidavits, including hers and that of Anita Ensor, a legal assistant. Both of those affidavits were affirmed in front of Mr. Cribb.
- [7] In a second application filed on October 8, 2025 ("Application to Cross-Examine"), Dr. Este sought orders permitting her to cross-examine Ms. Esteghamat-Ardakani and Ms. Ensor on their affidavits, as well as Mr. Cribb in respect of those affidavits.
- [8] Dr. Este also sought an order for production of certain communications of Ms. Esteghamat-Ardakani and/or her counsel with each other and third parties.

II. Summary of Decisions

- [9] At the conclusion of the hearing of Dr. Este's applications on October 31, 2025, I was advised that the continuation of Ms. Esteghamat-Ardakani's discovery, then tentatively scheduled for the next week, was dependent on the outcome of the applications.
- [10] Accordingly, having reviewed the materials and considered the submissions of the parties, by memorandum dated November 4, 2025, I advised the parties of my decision to dismiss both the Application to Cross-Examine and the Disqualification Application, with reasons to follow.
- [11] I reserved my decision on costs.
- [12] Those reasons, as well as the reasons and decision for costs, follow.

III. Application to Cross-Examine

A. Background Facts and Evidence

- [13] In circumstances that are not clear, by email dated July 8, 2025 addressed to Dr. Este (and copied to others), Mr. McEwan suggested that at the end of the first day of Ms. Esteghamat-Ardakani's discovery on June 17, 2025, a witness had seen "us put your mother into an UBER "
- [14] By email dated July 9, 2025, Dr. Este replied:
- The UBER event had to be on the SECOND day as the first day you took my mother to YOUR OFFICE for further preparation for discovery as I have evidence and saw with my own eyes!
- [15] She requested, among other things, that Mr. McEwan provide: an affidavit of the time and day of the Uber, affidavits of witnesses from his office "with times and dates of events", Mina's affidavit, and "supporting security camera recordings and time stamps from [his] office and from the building entrance lobby camera recordings". She also advised that she would be bringing an application for him to go off the file.
- [16] As noted, she did so two months later, on August 11, 2025, alleging that Mr. McEwan and Ms. Kirkpatrick had coached Ms. Esteghamat-Ardakani at their office after the first day of discovery and guided her responses during the discovery.
- [17] In support of that application, Dr. Este deposes that:
- On June 17, 2025, I witnessed and heard Mr. McEwan speaking in a low voice with Mina to go together after the examination that day for a private conversation.
- [18] And that:

Mina was further coached by Mr. McEwan and Ms. Kirkpatrick after the June 17, 2025 examination for discovery of Mina was paused and before the next morning of June 18, 2025 when the examination for discovery of Mina continued.

[19] Dr. Este also deposes that in prior examinations for discovery, Ms. Esteghamat-Ardakani and Francis Este, also a party to the actions, "communicated with 'coughing', 'throat clearing' and 'pen clicking' signals to guide [Ms. Esteghamat-Ardakani] in responding to the questions or altering her position to achieve an outcome in her benefit "

[20] In her responding affidavit, Ms. Esteghamat-Ardakani expressly denies both allegations. Regarding the alleged coaching after the first day of discovery, Ms. Esteghamat-Ardakani deposes that her counsel had booked her an Uber from the discovery and helped her into the car.

[21] Ms. Esteghamat-Ardakani also relies on the affidavit of Anita Ensor, a legal assistant. For the most part, in her affidavit, Ms. Ensor describes various steps and positions taken and other related conduct in the actions, most of which is supported by documents she exhibits to her affidavit.

[22] At paras. 9 to 13 of her affidavit, Ms. Ensor sets out the dates that Ms. Esteghamat-Ardakani had been examined for discovery in the actions, attaches a copy of the transcript of those examinations, and attaches a video of the examinations that were conducted on June 17 and 18, 2025.

[23] Ms. Ensor deposes:

I have been informed by Mr. McEwan and verily believe it to be true that at the end of the first day of the Taherkhani Discovery [on June 17, 2025], Mr. McEwan booked an Uber for Mina to return to her home in West Vancouver. A true copy of the receipt from that trip is attached to this affidavit as Exhibit "L".

[24] On its face, that receipt, emailed to a redacted email address on June 18, 2025, indicates that on June 17, an Uber had a pick-up at 801 W. Georgia Street at 1:32 pm and made a drop off at 2120 Argyle Ave. in West Vancouver at 1:50 pm.

[25] Ms. Esteghamat-Ardakani did not provide the security camera recordings or the other information that Dr. Este had requested in her July 9, 2025, email.

[26] On this application to cross-examine, Dr. Este argues that:

- a) the affidavits filed in response to the Disqualification Application did not make full disclosure of material facts; made false, inaccurate and misleading statements, and the evidence within them is inconsistent; and
- b) Ms. Esteghamat-Ardakani's counsel, that is, Mr. Cribb, prepared both affidavits "in conflict of interest" and that their preparation was "serious misconduct".

[27] She seeks cross-examination on those bases.

B. Discussion and Analysis

1. Application to cross-examine Ms. Esteghamat-Ardakani and Ms. Ensor

[28] Rule 22-1(4)(a) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 provides:

- (4) On a chambers proceeding, evidence must be given by affidavit, but the court may
 - (a) order the attendance for cross-examination of the person who swore or affirmed the affidavit, either before the court or before another person as the court directs . . .

[29] In *Stephens v. Altria Group, Inc.*, 2021 BCCA 396 at paras. 5-9, the Court summarized the factors to consider in exercising the discretion afforded under Rule 22-1(4)(a). They are:

- a) whether there are material facts in issue;
- b) whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application; and
- c) whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue.

[30] The Court in *Stephens* also noted additional factors (citing *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2015 BCSC 1995) as follows:

- a) whether the information sought is available through other means; and
- b) whether the cross-examination will produce unreasonable delay or generate unreasonable expense.

[31] Weighed collectively, these factors do not support the order for cross-examination sought.

[32] First, contrary to Dr. Este's assertion, there is nothing inconsistent about the evidence of Ms. Esteghamat-Ardakani and Ms. Ensor. Ms. Esteghamat-Ardakani deposes that counsel booked her an Uber from the discovery. Ms. Ensor attached an Uber receipt that shows an Uber starting a trip from a location in the area where the discovery was conducted and with a drop-off at a destination in West Vancouver. The pick-up address is located in the vicinity of the discovery; the destination address is Ms. Esteghamat-Ardakani's. The pick-up time (1:32 pm) is within 14 minutes of the time the last question was asked at the discovery (1:18 pm), leaving little possibility of packing up at the discovery, going to counsels' office, having a discussion about the evidence, and returning to the area of the discovery for the Uber pick-up.

- [33] Second, the only evidence to support the allegation of coaching after the first day is Dr. Este's assertion of a conversation between Mr. McEwan and Ms. Esteghamat-Ardakani, for which she did not provide any particulars, and her bald assertion is that Ms. Esteghamat-Ardakani was "further coached by Mr. McEwan and Ms. Kirkpatrick". In my view, that evidence does not provide a sufficient basis on which to contradict the documentary evidence in the form of the Uber receipt.
- [34] Notably, despite purporting to have evidence and that she saw "with [her] own eyes" Mr. McEwan take Ms. Esteghamat-Ardakani to his office for further discovery preparation, Dr. Este failed to produce any such evidence (or even say what the evidence is). Nor did she provide a sworn statement of what she purports to have seen.
- [35] In making that observation, I acknowledge that there is no requirement for conflicting affidavits to exercise the discretion afforded by Rule 22-1(4)(a): *Stephens* at para. 8.[2] However, this is not like the situation in *Stephens*, a jurisdictional dispute, where the plaintiff was unlikely to be able to swear to events largely within the knowledge of the defendant. In this case, Dr. Este has purported to have evidence that Ms. Esteghamat-Ardakani went to her counsels' office for further discovery preparation after the first day of the discovery; she has not produced it. I can only assume that no such evidence exists.
- [36] Similarly, the best and direct evidence of counsels' conduct at the discovery is the discovery transcript and video, both of which are also available to Dr. Este. As I discuss in more detail below, that evidence does not support Dr. Este's allegations of misconduct.
- [37] In this case:
- i. Dr. Este has failed to properly adduce evidence that she asserts is available; and
 - ii. the evidence that had been adduced does not support her allegations.
- [38] In those circumstances, Dr. Este's bald assertions of misconduct are an insufficient basis on which to conclude that there are any material facts seriously in conflict so as to make cross-examination necessary.
- [39] In any event, to the extent that material facts are in issue, Dr. Este has not identified how cross-examination could elicit evidence that would assist in determining the issues on the Disqualification Application. I am not satisfied that it would.
- [40] Ms. Esteghamat-Ardakani's evidence that counsel booked her an Uber after the discovery is well supported by the Uber receipt. While there may be some scenarios that could diminish the value of that documentary evidence (for example, if the receipt was falsified or if someone other than Ms. Esteghamat-Ardakani took the Uber to her home address), they are nothing more than unsupported speculation. With no foundation on which to discount the significance of the Uber receipt, it is difficult to discern what questions could be asked or what meaningful evidence could be elicited on cross-examination that would shed further light on that evidence. I cannot conclude there is any.

- [41] Moreover, the written and video record of the discovery speaks for itself. While Dr. Este has suggested that Ms. Esteghamat-Ardakani has relied on codes to guide her responses at discovery in the past, the issue on the Disqualification Application is counsels' conduct, not Ms. Esteghamat-Ardakani's. Even assuming there is some basis for the assertion (and I do not make any findings in that regard), cross-examination on Ms. Esteghamat-Ardakani's alleged past conduct has marginal, if any, relevance to the issue to be determined.
- [42] There is less purpose to be obtained from a cross-examination of Ms. Ensor, who does not purport to have any direct knowledge of the conduct that is the subject of the Disqualification Application. Having identified Mr. McEwan as the source of her information that he booked an Uber for Ms. Esteghamat-Ardakani there is nothing to be gained from her cross-examination.
- [43] I have also considered Dr. Este's argument that Ms. Esteghamat-Ardakani's failure to produce evidence such as security camera footage or evidence from an employee at Mr. McEwan's office or the Uber driver justifies cross-examination. I reject that argument.
- [44] There is no obligation on an application respondent to produce an exhaustive end of evidence to support its defence to an application. As I have ultimately concluded, in this case, the Uber receipt and the discovery transcript and video are ample evidence to support the denial of misconduct and to dismiss the Disqualification Application. There was no need to produce any additional evidence.
- [45] Given the strength of Ms. Esteghamat-Ardakani's position, the delay that cross-examination would create, is another factor that militates against the cross-examination sought.
- [46] Finally, the exercise of a judge's discretion to permit cross-examination must be sensitive to the context in which the application is brought: Stephens at para. 8. In Stephens, the Court provides an example of relevant context:
- [8] As Justice Hunter observed in [H.M.B. Holdings Limited v. Replay Resorts Inc., 2018 BCCA 263] at para. 61, if the underlying application is one that, if successful, would result in the striking out of the plaintiff's claim without any consideration of its merits, that context may weigh in favour of granting cross-examination.
- [47] Unlike the situations in H.M.B. or in Stephens, the Disqualification Application for which the cross-examination is sought is not determinative of the issues to be decided in the actions.
- [48] On the foregoing analysis, the factors to be considered weigh against permitting the cross-examination sought.
2. Application to cross-examine Mr. Cribb
- [49] While the above analysis is focussed on the affidavits of Ms. Esteghamat-Ardakani and Ms. Ensor, I come to the same conclusion regarding the application to cross-examine Mr. Cribb.

- [50] First, the jurisdiction to permit cross-examination under R. 22-1(4) is limited to a "person who swore or affirmed [an] affidavit". Mr. Cribb did not swear an affidavit. There is no jurisdiction under that Rule on which to order his cross-examination.
- [51] Second, Dr. Este has not asserted any waiver of privilege that would be necessary to ground the cross-examination of counsel. The fact that Mr. Cribb witnessed the affiants' affirmations does not amount to waiver. Nor is there any basis on which to conclude that there is anything sinister about Mr. Cribb witnessing the affirmations.
- [52] There is no basis on which to order the cross-examination of Mr. Cribb.

3. Conclusion

- [53] Dr. Este's application to permit cross-examinations of Ms. Esteghamat-Ardakani, Ms. Ensor, and Mr. Cribb is dismissed.

IV. Application for Production of Documents

- [54] Although she did not pursue the issue in oral argument, Dr. Este's notice of application includes an application for the production of "a copy of all communication of Ms. Esteghamat-Ardakani and/or her counsel with each other and third parties including her medical professionals since November 1, 2024 in relation to her attendance for examination for discovery" (emphasis added).
- [55] As the form of relief sought indicates, this application relates, not to the Disqualification Application, but to Ms. Esteghamat-Ardakani's prior objection to Mr. Taherkhani's application to compel her to in person attendance at discovery, rather than remotely. Having heard the submissions of all the parties, that matter was determined on June 3, 2025, with an Order that Ms. Esteghamat-Ardakani attend the discovery in person, however with a maximum of 2½ hours on each day.
- [56] That matter having been determined, and with no further evidence, there is no basis on which to re-visit it, by the production of documents or otherwise.
- [57] In any event, Dr. Este's request for communications between Ms. Esteghamat-Ardakani and her counsel seeks documents that are subject to solicitor-client privilege; the request for communications with third parties are subject to litigation privilege. While both forms of privilege can be waived in certain circumstances, there is no basis for waiver, nor is any even alleged, in the circumstances of this case. Neither category of documents is subject to production.
- [58] Dr. Este's application for production of documents is dismissed.

V. Application to Disqualify Counsel

A. Legal Framework

- [59] The courts have an inherent jurisdiction to remove counsel of record: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1245, 1990 CanLII 32 (S.C.C.). The decision to do so is a discretionary one that is to be made only in the clearest of cases. It is an extraordinary remedy to be used with great caution and rarely invoked: *Tiffin v. Teplitsky Colson LLP*, 2018 ONSC 5122 at para. 29; *Gichuru v. Purewal*, 2017 BCCA 281 at para. 17, citing *Brown v. Silvera*, 2006 ABQB 647.
- [60] The court is primarily concerned with three competing values, two of which are engaged on this application: (a) the concern to maintain the high standards of the legal profession and the integrity of our justice system; and (b) ensuring that a litigant is not deprived of his or her choice of counsel without good cause: *MacDonald Estate* at 1243.
- [61] While typically engaged in cases of an alleged conflict of interest or the disclosure of documents subject to solicitor-client privilege, those principles apply for all applications to disqualify: *MacDonald Estate* at 1242-1243; *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36 at paras. 2-3; *Singh v. Nielsen*, 2016 BCSC 2331 at paras. 26-27.
- [62] Where the applicant is not a current or former client, the principal interest must be "whether there is 'a substantial risk of a compromised trial process'": *Gichuru* at para. 16, citing *Bulloch-MacIntosh v. Browne*, 2015 ONSC 1622 at para. 28. The test is whether the applicant has established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of counsel is necessary for the proper administration of justice: *Talisman Resort v. Keyser, Usling*, 2013 ONSC 1901 at para. 14, citing *MacDonald Estate* at 1259-1260.
- [63] Other factors include the stage of the litigation, whether the application is brought as a tactical measure, whether the application was brought in good faith, and the prejudice Ms. Esteghamat-Ardakani would suffer should counsel be disqualified: *Celanese* at paras. 59 and 64; *Singh* at para. 20.

B. Discussion and Analysis

- [64] Dr. Este's application is premised upon her allegations of opposing counsel misconduct, in particular that:
- a. Counsel coached Ms. Esteghamat-Ardakani after the first day of the discovery on June 17, 2025; and
 - b. Counsel guided Ms. Esteghamat-Ardakani in giving answers during the discovery.
- [65] In addition, Dr. Este argues that other conduct during the history of the proceedings both support the allegations of misconduct at the discovery and independently justify disqualification.
- [66] I will address each of the allegations of misconduct, in turn.

1. Allegation of coaching after the first day of discovery

[67] I have set out the evidence regarding this allegation above. For the same reasons that I have concluded there is no serious conflict of material facts, I also find that Dr. Este has not shown that there was any coaching of Ms. Esteghamat-Ardakani after the first day of discovery.

[68] In particular, I am satisfied that, with no compelling evidence to show otherwise, the Uber receipt supports Ms. Esteghamat-Ardakani's evidence that counsel booked her an Uber home at the conclusion of the discovery. In my view, that direct documentary evidence is a complete answer to this allegation.

[69] Other indirect evidence is at odds with Dr. Este's assertion that she saw counsel take Ms. Esteghamat-Ardakani to their office. In an email to Mr. McEwan the morning of June 18, 2025, Dr. Este reminds counsel not to speak to Ms. Esteghamat-Ardakani during the breaks at discovery and requests that counsel keep a reasonable distance from her. She makes no mention that she had seen counsel take Ms. Esteghamat-Ardakani to their office the day before. The omission is a telling indication that she made no such observation. I find that she did not.

[70] In my view, despite what Dr. Este purports to have heard at the end of the conclusion of the discovery on June 17, with no compelling evidence, I do not accept that Ms. Esteghamat-Ardakani's counsel coached her after the first day of discovery at their office, or at all. I find that they did not.

2. Allegation of coaching during the discovery

[71] In support of this allegation, Dr. Este relies on various excerpts from the discovery transcript, a video clip of the discovery, and still photographs taken from the video. She says all demonstrate strategic interruptions by counsel and non-verbal cues designed to assist and guide Ms. Esteghamat-Ardakani in answering questions.

[72] Having reviewed the portions of that evidence that I was referred to, I cannot conclude that they do.

[73] The transcript does reveal that both Mr. McEwan and Ms. Kirkpartrick interjected in the questioning, both in the form of what I would characterize as objections or, at worst, interruptions of Mr. Shewfelt's questioning. For example, in one passage, Ms. Esteghamat-Ardakani started to provide a response before Mr. Shewfelt had finished asking the question. Mr. Shewfelt asked Ms. Esteghamat-Ardakani to "Please wait". This exchange followed:

CNSL J. MCEWAN: Well, you wait as well too, then, Mr. Shewfelt. You interrupted her in her last answer. If you both did, it would be better.

CNSL J. SHEWFELT: There was no question, so she shouldn't have been answering.

CNSL J. MCEWAN: I'm not going to allow you to interrupt her either.

CNSL J. SHEWFELT: I'll continue.

[74] The discovery continued.

[75] In another exchange Mr. Shewfelt referred Ms. Esteghamat-Ardakani to a "collection of documents", asking:

Just look at the front page. And do you know who compiled that collection of documents?

[76] Ms. Kirkpatrick interjected. This exchange followed:

CNSL E. KIRKPATRICK: Well, no, then she has to look at the package of documents.

CNSL J. SHEWFELT: I disagree.

[77] Having established that Ms. Esteghamat-Ardakani recognized the documents, Mr. Shewfelt asked who created the document. Ms. Kirkpatrick interjected again. This exchange followed:

CNSL E. KIRKPATRICK: Well, you've given the witness the opportunity to look at the first two pages, being 004255 through 004257.

CNSL SHEWFELT: I'm going to move on.

[78] The discovery continued.

[79] As these exchanges demonstrate, it is true as Dr. Este says, that Ms. Esteghamat-Ardakani's counsel did not allow the discovery to proceed without interruption. However, there is nothing in these representative exchanges that demonstrate any untoward conduct on the part of counsel, whose role it is to ensure that the questions asked in the discovery process are fair for their client. While I do not make any determinations regarding the necessity or appropriateness of these interjections, I easily conclude that they do not rise to anywhere near the level of impropriety Dr. Este suggests.

[80] More significantly, there is nothing in any of the exchanges referred to by Dr. Este to indicate that Ms. Esteghamat-Ardakani changed her evidence, or was otherwise influenced, by the interjections of her counsel. I was not taken to any portion of the transcript that would suggest otherwise.

[81] I do not accept that anything on the transcript raises any issue of improper conduct on the part of counsel.

[82] The same is true of the video clip and the still photographs on which Dr. Este relies. Of the two half-days of discovery, Dr. Este refers to a single video clip which is four minutes and 25 seconds in length to support her allegation of misconduct. In that video clip, after a question was posed of Ms. Esteghamat-Ardakani regarding a declaration of trust (as I understand it), her counsel can be seen touching their heads and foreheads and, in the case of Ms. Kirkpatrick, holding the sides of her mouth. At one point in the video clip and in the still photographs, Ms. Esteghamat-Ardakani can be seen looking at Ms. Kirkpatrick with what I would describe as a confused look. While Ms. Kirkpatrick can be seen nodding her head, it

is not clear that she-that is, Ms. Kirkpatrick-is aware that Ms. Esteghamat-Ardakani has turned to look at her.

- [83] Dr. Este argues that by their contemplative and ponderous gestures, counsel indicated to Ms. Esteghamat-Ardakani their difficulty with the trust document and conveyed to Ms. Esteghamat-Ardakani that she was not to give evidence about it. Dr. Este argues that Ms. Esteghamat-Ardakani's purported inability to recall the document, despite previously having given evidence about it, was the direct result of those gestures.
- [84] I do not agree. Even if counsels' gestures created some uncertainty or confusion for Ms. Esteghamat-Ardakani, I see no basis on which to conclude that those gestures were made deliberately with the intention of guiding Ms. Esteghamat-Ardakani's responses, using pre-determined "codes" or otherwise. In my view, it is only viewing the video through the most cynical and suspicious lens-where every look or gesture is a code or a message-that could lead to the conclusion that Dr. Este asks the Court to make.
- [85] That is true even given the other factors that Dr. Este argues support this allegation, that is: (a) her allegation that, in the past, Ms. Esteghamat-Ardakani had pre-arranged a "series of codes" by which Francis Este guided her responses on discovery; and (b) the inconsistencies in Ms. Esteghamat-Ardakani's evidence.
- [86] Neither lend any support to her assertion of misconduct against counsel.
- [87] First, even if Ms. Esteghamat-Ardakani's alleged past conduct is taken to be true (and I make no finding on the point), the issue before the Court is whether counsel, not Ms. Esteghamat-Ardakani, has engaged in misconduct. There can be no basis on which to attach this very serious allegation to counsel on the basis of another person's misconduct.
- [88] Second, inconsistencies in a party's evidence are hardly an unusual occurrence and are attributable to various factors, not all of which are nefarious. Any inconsistency in Ms. Esteghamat-Ardakani's evidence regarding the trust declaration (if any) is a woefully inadequate basis on which to conclude that misconduct occurred. To the extent that inconsistencies do exist, they can be assessed on the issue of credibility to be determined at trial. They are not a basis for seeking the disqualification of counsel.
- [89] Even with the benefit of that more fulsome argument to augment the direct evidence of the video, I am not able to find any basis on which to conclude that counsel engaged in the conduct alleged. I find they did not.
- [90] Finally, Mr. Shewfelt was physically present across the table at the discovery and was in the best position to observe the conduct of counsel. Significantly, he has not objected to counsels' conduct or suggested that the discovery was improperly guided in the manner alleged, or at all. Mr. Taherkhani takes no position on this application.
- [91] There is no merit to the allegation that Ms. Esteghamat-Ardakani's counsel engaged in any misconduct at the examination for discovery.

3. Allegations of past misconduct

- [92] As the final basis for the Disqualification Application, Dr. Este refers to counsels' conduct during the history of the proceedings including: her allegation of counsels' complicity and involvement in the falsification and destruction of documents; surveilling her; and their more general conduct "over the past decade", including aggressive positions taken on applications and general incivility and harassment.
- [93] None of these allegations give rise to the relief sought.
- [94] One of the primary issues to be determined at trial is the validity and circumstances of the transfer and ownership of the various properties and assets in dispute. In respect of that issue, all of the parties have alleged fraud. Those allegations, including Dr. Este's allegation that Ms. Esteghamat-Ardakani has fabricated and destroyed documents, have not been proven. The bald assertions that counsel has participated in the same fraud by the destruction of documents, or otherwise, cannot stand.
- [95] Nor can the assertions of general bad conduct in the litigation. Given the allegations of fraud and collusion, Ms. Esteghamat-Ardakani does not deny that she has engaged private investigators to support her position. Without any further evidence of the intrusiveness of the investigation, I cannot conclude that such tactics are objectionable, let alone worthy of rebuke in the form of disqualification.
- [96] There is little doubt that this long outstanding litigation has created a level of distrust, perhaps rising to the level of animosity. The correspondence on which Dr. Este relies demonstrates that those feelings are likely mutual. However, they do not demonstrate anywhere near the level of incivility that would justify disqualification of counsel.
- [97] Similarly, it may be that counsel has pursued Ms. Esteghamat-Ardakani's position in the litigation, or taken positions, in a manner that Dr. Este feels are unnecessary or unwarranted. She cites, as examples, taking positions with no supporting evidence and seeking production of un-related documents. However, those positions have been assessed by the Court when they arose; none gave rise to any concern by the Court.
- [98] Without further or meaningful particulars of other "misconduct of Mina's counsel over the past decade", there is no basis on which to conclude that any other conduct warrants disqualification.

4. Conclusion

- [99] As the jurisprudence provides, there are situations where counsel's misconduct amounts to a serious interference with the administration of justice to warrant disqualification. However, the circumstances of this case are widely removed and easily distinguishable from the conduct and circumstances in those cases.

[100] The serious allegations made on this application are unfounded and wholly without merit. The evidence does not support that the impugned actions taken by counsel can in any way be described as misconduct, let alone as an interference with the administration of justice. I easily conclude that Dr. Este's Disqualification Application must be dismissed.

[101] Before leaving this issue, I note that, citing the "real mischief" of counsel, Dr. Este has also sought to have Ms. Esteghamat-Ardakani's pleadings struck as an abuse of process. Having found no mischief on the part of counsel, that alternative argument is also dismissed.

VI. Costs

[102] The general rule is that costs, assessed in accordance with the tariff set out in Appendix B of the Supreme Court Family Rules, B.C. Reg. 169/2009 are awarded to the successful party payable on the conclusion of the family law case: Rules 16-1(1), (7), and (10).

[103] However, the Court has the discretion to award otherwise. Rule 16-1(1)(b) expressly contemplates that the costs of an application may be assessed as special costs.

[104] As the successful party on these applications, Ms. Esteghamat-Ardakani is entitled to costs. The issue is whether those costs should be assessed as special costs and, in any event, when should they be payable?

A. Should costs be assessed as special costs?

[105] Generally speaking, "[s]pecial costs are an extraordinary measure and an award of special costs should be made both cautiously and sparingly": *Concord Pacific Acquisitions Inc. v. Oei*, 2021 BCSC 129 at para. 42 (citing *Grewal v. Sandhu*, 2012 BCCA 26 at paras. 106-107), *aff'd* 2022 BCCA 16, leave to appeal to SCC *ref'd*, 40089 (18 August 2022).

[106] "The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence": *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 8 [*Osborne Contracting*]. The question is whether, in the conduct of the litigation, the person against whom the order is sought has acted in a manner that is "sufficiently reprehensible to warrant chastisement of the court": *Gichuru v. Smith*, 2013 BCSC 1818 at para. 60 (citing *Bradshaw v. Stenner*, 2012 BCSC 237 at para. 10), *rev'd* on other grounds 2014 BCCA 414, leave to appeal to SCC *ref'd*, 36221 (16 April 2015).

[107] "Reprehensible", is a word of wide meaning that encompasses scandalous or outrageous conduct but also includes "milder forms of misconduct" that are "deserving of reproof or rebuke": *Osborne Contracting* at paras. 8-9, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 at para. 17, 1994 CanLII 2570 (B.C.C.A.).

[108] Referring to those principles, the case authorities have considered a variety of circumstances in which a litigant's conduct has been "reprehensible" to warrant an award of special costs. They include:

- a) unfounded allegations of misconduct against counsel: *Moon Development Corporation v. Pirooz*, 2015 BCCA 213 at para. 9; *Song v. Westwood Plateau Golf & Country Club*, 2016 BCCA 95 at paras. 25-29; *Bajwa v. Habib*, 2019 BCSC 721 at paras. 41-45, aff'd 2020 BCCA 230, leave to appeal to SCC ref'd, 39468 (18 March 2021); and
 - b) "tactical" applications to disqualify opposing counsel based on unfounded allegations of misconduct: *Mayer v. Mayer*, 2016 BCSC 615 at para. 13, citing *Global Chinese Press Inc. v. Zhang* (31 July 2025), Vancouver Reg. No. S148822 (B.C.S.C.) at para. 20 [*Global Chinese Press*].
- [109] It has been noted that where the reputation of a professional is "falsely assailed, the court's reproof should be felt": *Osborne Contracting* at para. 16.
- [110] A party cannot be shielded from the repercussions of an order for special costs merely by the fact that they are self-represented. As the Court stated in *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424:
- [11] Self-represented litigants have no licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made. By "responsibly", I mean measured, careful, and faithful to the evidence. Self-represented litigants must understand that the court is not a free fire zone where anything can be said regardless of the harm to others and their reputations.
- [111] In my view, the above principles apply to warrant an award of special costs against Dr. Este.
- [112] As a starting point, as the Court notes in *Mayer*:
- [12] It does not necessarily follow that bringing an unsuccessful application to disqualify counsel is reprehensible and worthy of rebuke. As the cases make clear, the elements that need to be balanced in considering such an application are the integrity of the justice system on the one hand, and the right of a litigant to counsel of its choice on the other: *MacDonald Estate v. Martin*, [1990] 3 SCR 1235.
- [13] The problem I identified in the *Global Chinese Press* case was that the basis of the application lacked any air of reality, and was speculative at best. The "competing threat", in short, was illusory, and there was really nothing to balance. The type of conflict that could justify disqualification simply did not exist, and the application appeared to have been tactically driven. In those circumstances, I concluded that an award of special costs was appropriate
- [113] In my view, Dr. Este's application fits squarely within the characterization of the application in *Global Chinese Press*: it lacks any air of reality and is "speculative" at best: at para. 20. As I have described, Dr. Este's reliance on a four-minute video clip as evidence of misconduct is indicative of her preconceived and cynical view of counsel-it is not grounded on the evidence.

- [114] Likewise, to the extent that Dr. Este may have misheard a private conversation between Ms. Esteghamat-Ardakani and her counsel to meet after the first day of discovery, with no other evidence, the production of the Uber receipt should have been enough for her to reconsider what she may have thought she heard.
- [115] In other words, not only did Dr. Este not have any evidence to support her allegations, the evidence that was adduced directly refutes them. Simply put, there was no foundation whatsoever on which to base the very serious allegations of counsel misconduct for which I have found there is no merit.
- [116] In fact, it seems that Dr. Este approached the discovery speculating about counsel misconduct. She advised Ms. Esteghamat-Ardakani's counsel on June 16-the day before the discovery-that she would be reviewing the video recording "if any mischief is suspected of Mina" and putting counsel on notice that they were "prohibited from talking to Mina during breaks and it will be brought to the court's attention as wilful misconduct and will be used against you and your client". Dr. Este saw what she wanted to see.
- [117] It is significant that this is not the first serious, and wholly unsubstantiated, allegation of misconduct Dr. Este has made against Mr. McEwan in the time that I have been case managing these actions. In an earlier application for my recusal, Dr. Este made the remarkable allegation that Mr. McEwan had used "intimidation tactics" on the Court to secure my appointment as case management judge: *Taherkhani v. Este*, 2025 BCSC 375 at para. 44.
- [118] Those allegations were as equally unsupported as the allegations in this case. As I noted in respect of the former allegation:
- [46] Remarkably, in her oral submissions, Dr. Este expressly referred to the appointment as made pursuant to a "backdoor request" by Mr. McEwan to the Court. When pressed for evidence or any basis on which to substantiate that allegation, she referred to her "experience" and "observations" in the courtroom. She provided no further particulars.
- [47] None of those allegations have any foundation and find no support [on] the evidentiary record. As I have set out above, some are demonstrably false.
- [48] Rather, these allegations are based solely on Dr. Este's cynical and suspicious view of the appointment
- [119] I conclude that the allegations made on these applications are also based, not on evidence, but solely on Dr. Este's cynical and suspicious view of Ms. Esteghamat-Ardakani's counsel, in particular, Mr. McEwan.
- [120] As another factor on this analysis, I have also considered the delay that these applications have caused. It is notable that Dr. Este unilaterally set these applications for hearing on a date that had been set for the continuation of an application that Ms. Esteghamat-Ardakani had previously brought. Given the seriousness of Dr. Este's allegations, I proceeded with

these applications instead, thus leaving Ms. Esteghamat-Ardakani's application to be continued and determined. As the trial is scheduled to start in four months, any delay at this point is significant.

- [121] The fact that Dr. Este delayed two months after the discovery to bring this application is some indication that the filing was a tactical one, intended to cause delay.
- [122] For all of the above reasons, I am satisfied that Dr. Este advanced and pursued meritless allegations, including baseless allegations of dishonesty and serious misconduct. She pursued allegations that were not based on any evidence and were inconsistent with the admissible evidence that was produced. Her conduct is reprehensible and is worthy of rebuke.
- [123] Ms. Esteghamat-Ardakani is entitled to special costs against Dr. Este for the Disqualification Application, in any event of the cause.
- [124] As the Application for Cross-Examination arose directly from Ms. Esteghamat-Ardakani having to respond to the Disqualification Application, Ms. Esteghamat-Ardakani is also entitled to costs of that application-that is the Application for Cross-Examination-against Dr. Este assessed as special costs, in any event of the cause.
- [125] I pause here to note for Dr. Este's benefit that I am aware the actions against her include disputed allegations of misconduct, including fraud. If those allegations are not proven, she too will have to opportunity to make a claim for special costs.
- [126] The next issue to be determined is when the special costs I have awarded are payable.

B. When should the special costs be payable?

- [127] As noted, in the normal course, costs are payable on the conclusion of the case: Rules 16-1(1), (7), and (10). As the Court notes in *Osborne Contracting*:
- [21] Costs awards from interlocutory proceedings are not usually payable forthwith for two reasons: (a) to avoid adverse financial repercussions to the unsuccessful litigant that would prevent it from proceeding with the litigation; and (b) to avoid limiting the range of options available to the trial judge to deal with costs at the conclusion of the litigation: *Lalji v. Sunderji*, [1997] B.C.J. No 239 (S.C.).
- [128] However, there are times when it is desirable to award special costs payable forthwith as a means of controlling the court's process and where they may serve to discourage further unnecessary interlocutory proceedings: *Osborne Contracting* at para. 20, citing *G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada* (1993), 14 C.P.C. (3d) 91, 1993 CarswellBC 637 at para. 8 (B.C.S.C.).

[129] In this case, Dr. Este must be discouraged from continuing with meritless and scandalous applications. However, the trial is scheduled to commence four months from now. While there is no direct evidence before me, I am concerned that the adverse financial impact of awarding special costs payable now may preclude or limit Dr. Este's ability to pursue any legitimate defences she may have in the actions. That is particularly true given the suggestion that she does intend to retain counsel for the trial.

[130] The upcoming trial date will also minimize the time that Ms. Esteghamat-Ardakani will have to directly bear the legal cost of having had to defend the applications. That assumes, however, that the trial proceeds and concludes in the time currently set. To accommodate the possibility that it might not, and keeping in mind the above considerations, I order as follows:

- a) in the event the trial commences on April 7, 2026, and concludes (except for a decision) by May 15, 2026, special costs are payable on the determination of the Supreme Court actions;
- b) in the event that the trial commences on April 7, 2026, but the evidence and submissions are not concluded by May 15, 2026, special costs are payable by May 29, 2026; or
- c) in the event that the trial does not commence on April 7, 2026, special costs are payable by April 7, 2026.

"Ahmad J."

[1] Dr. Este also sought, in the alternative, that Ms. Esteghamat-Ardakani's pleadings in the proceedings be struck.

[2] In Stephens, a conflict grounded in the pleadings, without affidavit evidence, was sufficient to allow cross-examination on affidavit.

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/sc/25/24/2025BCSC2464.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/taherkhani-v-este-2025-bcsc-2464>

Prepared on 25 October 2026 · Esheria