

CANADA / JUDGMENT

Tan v. British Columbia (Attorney General)

2024 BCCA 92

COURT

British Columbia Court of Appeal

DECIDED

4 March 2024

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

2024 BCCA 92 Tan v. British Columbia (Attorney General) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Tan v. British Columbia (Attorney General), 2024 BCCA 92 Date: 20240304 Docket: CA49630 Between: Li Wen Tan Appellant (Plaintiff) And Attorney General of British Columbia Respondent (Defendant) Before: The Honourable Madam Justice Stromberg-Stein (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated January 15, 2024 (Tan v. Tan, New Westminster Docket S252249). Oral Reasons for Judgment The Appellant, appearing in person (via teleconference): L.W. Tan Counsel for the Respondent: M.J. Kleisinger Place and Date of Hearing: Vancouver, British Columbia March 4, 2024 Place and Date of Judgment: Vancouver, British Columbia March 4, 2024 Summary: The appellant applies for a no fees order in addition to various other orders modifying or waiving the service, filing and formatting requirements for his appeal documents. Held: Applications dismissed. The no fee order cannot be granted because the appeal is bound to fail. The appellant is required to serve the Attorney General in the manner specified in the Crown Proceeding Act. The appellant did not present a sufficient reason why the other orders sought are necessary or in the interests of justice to grant. STROMBERG-STEIN J.A.:

Introduction

- [1] These reasons concern the applications brought by the appellant, Mr. Li Wen Tan, in the matter of Tan v. British Columbia (Attorney General).

Background

- [2] The underlying proceeding concerns applications brought by the appellant seeking a fee waiver with respect to five actions in the Supreme Court of British Columbia. In reasons issued on January 15, 2024, a chambers judge dismissed the appellant's applications for a fee waiver with respect to four of the actions on the basis they were doomed to fail, and adjourned the appellant's application for a fee waiver with respect to the fifth action.
- [3] On January 29, 2024, the appellant filed a Notice of Appeal with respect to the denial of his application for a fee waiver only with respect to one of the actions, New Westminster No. S-252249.

- [4] In the underlying Notice of Civil Claim, the appellant alleges the RCMP wrongfully arrested him and the Crown wrongfully approved charges against him based on false evidence. The charges were ultimately stayed by the Crown. The appellant seeks damages arising from his arrest. Discussion
- [5] The appellant's Notice of Application before this Court, filed on February 23, 2024, seeks the following orders, in his words: 1, no fee 2, file factum, appeal record, appeal book in 3 ring binder option 3, apply email method to serve Attorney General. 4, exempt filing paper copy for factum, appeal book, appeal record 5, exempt "bookmark" feature for filing electronic factum, appeal book, appeal record 6, ask court order transcripts for indigent people 7, exempt "order" to be included in Appeal Record 8, exempt "fee waiver package filed in Supreme Court" to be included in Appeal Record 9, ask for extended time to file factum, appeal book, appeal record. 10, Please enter supreme court file 252249, the CSO website will tell you the fee waiver application is dismissed. You can verify the fee waiver was denied, without order and filed fee waiver package.
- [6] The appellant's position, as I understand it, is that he lacks the financial means to comply with service, filing and formatting requirements set out in the Court of Appeal Rules, B.C. Reg. 120/2022 [the "Rules"] and Court of Appeal Act, S.B.C. 2021, c. 6 [the "Act"].
- [7] I first propose to address his application for a no fee order, followed by his application for an extension of time, and finally his applications for other orders concerning service, transcripts, and the filing and formatting of appeal materials. No Fee Application
- [8] Under Rule 85(4) of the Rules, a justice of the Court of Appeal may order that the court fees owed under Schedule 2 of the Rules are not payable where the justice finds that:
- (a) the appeal is not
 - (i) bound to fail, (ii) scandalous, frivolous or vexatious, or (iii) an abuse of the process of the court, and
 - (b) the person's payment of court fees under Rule 84 would cause undue hardship.
- [9] The appellant has filed a Form 22 in which he certifies that his household income is less than \$60,000 and that the value of his household assets is less than \$10,000. If the financial criteria on Form 22 apply, undue hardship is established: *Harrison v. Law Society of British Columbia*, 2022 BCCA 316 (Chambers) at para. 6. On that basis, I will proceed to consider the merits of the appeal.
- [10] In the appellant's Notice of Appeal, he seeks the same relief as is sought in the underling Notice of Civil Claim, i.e., damages, settlement, mediation and alternative service on the Attorney General. This Court is unable to grant the appellant the ultimate relief he seeks. In my view, the Notice of Appeal as drafted is doomed to fail.

- [11] Even if the appellant were to amend his Notice of Appeal to address the chambers judge's dismissal of his no fee application, I would still be of the view that the appeal is bound to fail. The chambers judge dismissed the fee waiver application on the basis that the claim was bound to fail. The judge also stated that the appellant's application was improperly brought, as he had previously been unsuccessful in seeking a fee waiver in respect of a virtually identical claim. The appellant did not bring an appeal from the earlier denial of his fee waiver application and instead simply filed a new claim in which he raises the same allegations.
- [12] I can see no reason why this Court would interfere with the chambers judge's determination that the claim was bound to fail. The appellant is seeking damages against the Attorney General for the actions of third, non-related parties, such as a Provincial Court Judge, the appellant's parents, and the RCMP. Furthermore, it seems apparent that the application for a fee waiver in the court below was improperly brought because the underlying claim was duplicative of a claim for which a fee waiver had previously been denied.
- [13] I am unable to find that the appeal is not bound to fail. I would accordingly dismiss the application for a no fee waiver. Order #2 - Extension of Time
- [14] The appellant seeks an order pursuant to s. 32(2) of the Act extending the time to file and serve his factum, appeal book, and appeal record.
- [15] In my view, an order extending the time for the appellant to file and serve his materials would be premature. The Notice of Appeal was filed on January 29, 2024, and the appellant still has ample time to file his materials.
- [16] Even if the application is not premature, I would dismiss the application for an extension of time on the basis that the appeal is doomed to fail and it is not in the interests of justice to prolong meritless litigation: *Moore v. Moore*, 2012 BCCA 266 at para. 35 (Chambers). Applications for Orders #6, #7, #8, and #10
- [17] I would also dismiss the appellant's application for an order that he be permitted to serve the Attorney General via e-mail. The Attorney General has filed a Notice of Appearance containing an address for service. Additionally, s. 8 of the Crown Proceeding Act, R.S.B.C. 1996, c. 89 provides: 8 A document to be served on the government
- (a) must be served on the Attorney General at the Ministry of Attorney General in the City of Victoria, and
 - (b) is sufficiently served if
 - (i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria, or (ii) mailed by registered mail to the Deputy Attorney General at Victoria.

- [18] This is not a case in which a party is evading service or is unable to be found, and I am not satisfied that the appellant has demonstrated that serving the Attorney General in the manner required would be impractical: see *Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 41 (Registrar) at paras. 12-15.
- [19] The applications for orders #7, #8 and #10 relate to obtaining the record in the court below and entering the order made. In my view, these orders are unnecessary. The Attorney General submits that the record was obtained and sent to the appellant, and assistance was offered to the appellant to submit the order for entry. I would dismiss the appellant's applications for these orders.
- [20] Finally, the appellant applies for an order that this Court order transcripts of the chambers proceeding on his behalf. This order, as requested, is outside the jurisdiction of a justice of this Court to grant. Even if I were to treat the appellant's request as being for an order waiving the requirement to file a transcript, filing a transcript is only a requirement under the Rules if oral testimony was given in the proceeding giving rise to the judgment under appeal, or if a transcript is necessary for the purposes of an appeal: R. 24(3) of the Rules. In my view, there is no requirement that the appellant file a transcript in these circumstances. I would dismiss the appellant's application for an order concerning the transcript.
- Applications for Orders #2, #4, and #5
- [21] The appellant applies for orders waiving certain filing and formatting requirements for his appeal materials. More specifically, he seeks an order under s. 32(1) of the Act dispensing with the requirement that he file his appeal factum, appeal book and appeal record in paper and in the manner specified in the completion instructions. He also seeks an order exempting him from the "'bookmark' feature for filing electronic factum, appeal book, appeal record".
- [22] For the following reasons, I would dismiss the appellant's applications for orders concerning the filing and formatting of his appeal documents.
- [23] One of the purposes of the Act and Rules is to ensure that appeals are presented in an organized manner and are accessible to the division hearing the appeal and the parties. In effect, the provisions in the Act and Rules governing the filing and formatting of appeal documents impose a minimum cost of participating in an appeal which cannot be alleviated.
- [24] For instance, to comply with the Act and Rules, a litigant will almost invariably require access to a computer with internet, a printer and binding materials, and a method to compile documents, whether that be a computer software or a document scanner. Accessing these resources may serve as a barrier to the most impecunious of litigants, but the basic requirements of presenting an appeal cannot typically be waived without risking appeals being presented haphazardly or incompletely, to the clear disadvantage of all parties. In my view, exceptions should not be granted on the basis of convenience or nominal cost savings, but rather only in exceptional circumstances, where the party seeking the exception has

demonstrated undue hardship and where the exception is sought in the interests of justice.

- [25] In my view, it is not in the interests of justice to grant the orders sought by the appellant because the appellant has failed to present a sufficient reason why he should not be required to file his appeal materials in accordance with the Act and Rules. The nominal costs saved by binding his appeal documents in a different way is not sufficient, nor do I think the appeal should be presented without paper filed materials. I would note that as a self-represented litigant, Mr. Tan is not required to file his factum, appeal book or appeal record electronically, nor is he required to apply any form of "bookmark feature", aside from the standard table of contents that is required under the paper filing completion instructions.
- [26] Even if I have taken an overly restrictive view towards granting exceptions to filing and formatting requirements, I would also refuse to grant these orders on the basis that the appeal is bound to fail. I see no reason why the general principle that applies in the context of applications for no fees orders, security for costs orders, and extensions of time--that is, that it is not contrary to the interests of justice to make or refuse to make an order where the result may be that an unmeritorious appeal cannot proceed--does not apply in this context.

Disposition

- [27] For all of the foregoing reasons, I would dismiss the appellant's applications. "The Honourable Madam Justice Stromberg-Stein"

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/ca/24/00/2024BCCA0092.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tan-v-british-columbia-attorney-general-2024>

Prepared on 26 October 2026 · Esheria