COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bains v. Morishita,*
2026 BCCA 241

Date: 20260522
Dockets: CA50982; CA50983

Between:

Jessie Bains

Appellant
(Plaintiff)

And

Scott Morishita

Respondent
(Defendant)

Corrected Judgment: The cover page of the judgment was corrected on June 4 and June 5, 2026.

Before: The Honourable Justice Gomery
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated September 10, 2025 (*Bains v. Morishita*, Vancouver Docket S255766).

Oral Reasons for Judgment

The Appellant, appearing in person:	J. Bains
Counsel for the Respondent:	T.M Cohen, K.C. V. Tortora
Place and Date of Hearing:	Vancouver, British Columbia May 22, 2026
Place and Date of Judgment:	Vancouver, British Columbia May 22, 2026

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Summary:

An application to restore appeals from the inactive list was dismissed because they are wholly lacking in merit. The appeals are from orders striking the appellant's claim against the respondent and refusing the appellant's application for default judgment. The respondent is a judge of the Supreme Court of British Columbia and the appellant's claim was brought against him in respect of the respondent's conduct while presiding over a matter in Supreme Court chambers. The appellant's argument is that it is possible to distinguish the respondent's conduct "as an individual who presided over a chambers hearing" from his conduct in his judicial capacity. It is not. The respondent is immune from suit in respect of conduct in his judicial capacity. The judge in the court below did not err in striking it and refusing default judgment.

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[1] **GOMERY J.A.**: Mr. Bains sued Scott Morishita in the Supreme Court of British Columbia. Mr. Morishita is a judge of the Supreme Court. In his notice of civil claim, Mr. Bains identifies Mr. Morishita as "a man who … presided over a chambers hearing in the Supreme Court of British Columbia in the matter of Bains v. Barker (Civil Claim S-254074)." He pleads that he requested that Mr. Morishita "place his Oath of Office on the record" and was refused. He seeks declarations that Mr. Morishita's refusal to provide his Oath of Office "constitutes an unlawful act undertaken in his private capacity", and that he "acted without lawful authority during the chambers hearing", and general damages for the tort of misfeasance in public office.

[2] Justice Morishita filed a response to civil claim and applied, through counsel, to strike the notice of civil claim. Mr. Bains cross-applied for default judgment on the theory that the response to civil claim did not constitute a defence to a claim brought against Mr. Morishita "in his private capacity". The applications came on for hearing before Justice P. Walker. He allowed the defence application and struck the notice of civil claim. Concurrently, he dismissed Mr. Bains' application to obtain default judgment

[3] Mr. Bains filed two notices of appeal. The notice of appeal commencing appeal CA50982 seeks to set aside the order striking the notice of civil claim. The notice of appeal commencing appeal CA50983 seeks to set aside the order refusing default judgment.

[4] The notices of appeal were filed on September 15, 2025, and Mr. Bains subsequently filed a transcript, appeal record, factum and appellant's appeal book as required by the *Court of Appeal Rules*. Counsel for the respondent filed their factums on December 29, 2025.

[5] The appeals were then ready for hearing, but Mr. Bains did not take steps to set them down for hearing, as required by Rules 32 and 33(1)(a). After 60 days, the appeals were placed on the inactive list pursuant to R. 50(1)(b). If the appeals remain on the inactive list for 180 days, they will be dismissed as abandoned: R. 51(1).

[6] Mr. Bains applies pursuant to R. 50(3) to have the appeals reactivated in order that he may proceed with them. The respondent opposes on various grounds, including that the appeals are without merit. Mr. Bains also seeks orders dispensing with his obligation to pay court filing fees on the ground that he cannot afford them.

[7] The test to reactivate an inactive appeal requires an assessment of the interests of justice, having regard to considerations including the extent of the delay, explanation for the delay, any prejudice arising from the delay, and the likelihood of success on appeal: *Kar Recovery, Ltd. v. KDA*, 2004 BCCA 503 at paras. 23–24 (Chambers).

[8] In this case, the delay is modest but unexplained in the materials. There is no specific evidence of prejudice to the respondent. The decisive consideration bearing on the interests of justice is the likelihood of success on appeal because, in my view, both appeals are obviously bound to fail. Lack of merit alone may justify refusal of an application to restore an inactive appeal: *Masjoody v. Simon Fraser University*, 2025 BCCA 175 at para. 21 (Chambers).

[9] In oral submissions before me, Mr. Bains said that his whole case is that he is suing Mr. Morishita as an individual, not as a justice. This is the argument he advanced in the court below. The unsound legal premiss of the argument is that it is possible to distinguish a claim brought against Mr. Morishita as "a man who …

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presided over a chambers hearing in the Supreme Court of British Columbia" from a claim against Justice Morishita in his judicial capacity. The two are one and the same. A claim against Mr. Morishita in respect of his conduct as a presiding judge is a claim against him as in his capacity as a judge of the Supreme Court of British Columbia. In his judicial capacity he is immune from suit. His performance of his judicial duties is not subject to a requirement that he produce evidence that he took the oath of office before taking up his duties: *R. v. Lindsay*, 2011 BCCA 99 at paras. 38–39 (Chambers).

[10] In my opinion, it is beyond argument that the notice of civil claim fails to state a reasonable cause of action against Justice Morishita and is an abuse of the process of the court. Justice Walker did not err in striking it pursuant to R. 9-5(1)(a) and (d) of the *Supreme Court Civil Rules*. It follows that he did not err in refusing Mr. Bains' application for default judgment.

[11] I therefore refuse the applications to reactivate the appeals. In light of my conclusion that the appeals are bound to fail, I dismiss the applications for no fee orders.

"The Honourable Justice Gomery"

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