



COURT OF APPEAL FILE NO. 51450
Marie-louise Felicia Allen vs Attorney General Of British Columbia
Appellant's Factum

COURT OF APPEAL

ON APPEAL FROM the order of Mr. Justice Fowler of the Supreme Court of British
Columbia pronounced on the 25th of February 2026.

BETWEEN:

Marie-louise Felicia Allen

APPELLANT(S)
Petitioner

AND:

Attorney General Of British Columbia

RESPONDENT(S)
Respondent

APPELLANT'S FACTUM
Marie-louise Felicia Allen

Marie-louise Felicia Allen

Attorney General Of British Columbia

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CHRONOLOGY

Date	Event	Reference
December 19, 2025	Order To Waive Fees granted by Supreme Court Associate Judge Vos	BCSC Rule 20-5(1)(a)(b)(c)(d)(e) Appeal Record, Tab 1, page 1
December 19, 2025	Petition To The Court filed	Appeal Record, Part 1, #1
December 19, 2025	Affidavit #1 made by Felicia Allen	Appeal Book, Tab 6
16 January 2026	Affidavit of Service made by appellant on January 16, 2026	Appeal Book, Tab 2
January 26, 2026	Notice Of Hearing for petition served on defendant and Canada Post confirmation of receipt.	Appeal Book, Tab 3
February 6, 2026	Response To Petition filed and.	Appeal Record
February 6, 2026	1 st Affidavit of Arnette Huizinga filed	
February 10, 2026	Notice Of Application filed by Respondent	
February 11, 2026	Affidavit made by the appellant 1) confirming receipt by respondent on January 5, 2026 of petition and affidavit 2) the filed Notice of Hearing for the petition had been served on the respondent	Appeal Book, Tab 4
February 13, 2026	Correspondence to the respondent by the Appellant confirming that the Appellant	Appeal Book, Tab 5

	has not received Response To Petition or materials	
February 19, 2026	2 nd affidavit made by Felicia Allen confirming that 1) Response To Petition has not been received and 2) the Response has been downloaded by the appellant at her expense from Court Services online.	Appeal Book, Tab 6
February 23, 2026	Correspondence to the respondent re-confirming that the appellant has not received Response To Petition or materials	Appeal Book, Tab 7
February 23, 2026	Affidavit of service of the Trial (Petition) Record binder on the respondent	Appeal Book, Tab 8
February 24, 2026	1 st affidavit of Lorraine Greselin made on February 24, 2026 by the Respondent and filed in the Supreme court	not served on the appellant
February 25, 2026	Judgment by Judge Fowler striking the Petition	Appeal Record, Tab 5
March 24, 2026	Notice Of Appeal filed	Appeal Record, Tab 6
April 2, 2026	Notice of Appearance filed	
April 17, 2026	Notice Of Appearance served on appellant	
April 14, 2026	Notice Of Application filed by Respondent	
June 3, 2026	Notice Of Application filed by Appellant for an extension to file Factum and Appeal Book	
June 3, 2026	Affidavit Of Felicia Allen dated June 3, 2026 filed.	Appeal Book, Tab 12
June 29, 2026	Court of Appeal notes from hearing of Appellant's application for an extension of	Appeal Book Tab 13

	time to file Factum before Justice Abrioux and acceptable method of service on the Appellant. Ms. Harjinder Lally in attendance at the hearing for the Society Of Prevention Of Cruelty To Animals (BC SPCA) for their counsel Mr. Christopher Rhone at the Hearing.	
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OPENING STATEMENT

The Appellant appeals the final order of Mr. Justice Fowler pronounced on February 25, 2026, which dismissed the Appellant's *Canadian Charter of Rights and Freedoms* Petition under section 7 as an abuse of process and an impermissible collateral attack.

This case raises a novel and systemic constitutional issue of broad public interest: The boundaries of the power to seize an animal(s) under Sections 11 and 12 of the *Prevention of Cruelty to Animals Act* when an animal is under the active, ongoing medical care of a licensed veterinarian. The Appellant brought a public law challenge to determine whether there is a violation of Section 7 of the *Canadian Charter of Rights and Freedoms* by overriding professional medical treatment plans and executing seizures.

The chambers judge erred in law by characterizing this petition as a collateral attack on a Provincial Court regulatory conviction. The Provincial Court is a statutory court that lacked the jurisdiction to grant the global remedy sought—a Section 52(1) declaration striking down the legislative seizure provisions for the public benefit. Furthermore, a regulatory trial under Section 24(1) of the *Prevention Of Cruelty To Animals Act* lacks any procedural mechanism to join essential public stakeholders, such as the College of Veterinarians of British Columbia and various associations, all of whom were formally served and have a direct interest in this constitutional challenge.

By treating a complex, multi-party public interest lawsuit as a mere defence to a personal regulatory charge, the chambers judge denied the Appellant a proper forum to litigate a vital constitutional question. The Appellant respectfully requests that this appeal be allowed, the order of the chambers judge be set aside, and the matter be remitted to the Supreme Court of British Columbia for a hearing on the merits.

PART 1 - STATEMENT OF FACTS

The Background and Veterinary Care

1. The Respondent's *Response to Petition* (Factual Basis, paras. 2–4), *Notice of Application* (paras. 1–4) and Affidavit 1 of Arnette Huizinga (pages 1-59) contain extensive narrative assertions regarding the background of the provincial proceedings. To ensure a balanced and accurate record, the Appellant provides the following summary of the material facts as they occurred:

1. The Appellant has extensive experience in rescuing farm animals like horses from slaughter, contracting veterinary care and rehabilitating the animals in her rescue operations begun in 1975. Until the provincial court proceeding referred to herein, the appellant had not been charged with animal neglect and does not hold a criminal record. She is recognized by her peers and the public as an animal activist whose life has been dedicated to the servitude of the wellbeing of all animals and as an educator thereof of nearly sixty years in British Columbia. She is the founder and originator of non-riding equine therapy for primarily youth at risk and children on the spectrum which has since become more broadly recognized under the banner of Animal Therapy.
2. One of the animals, a miniature therapy pony in the care of the appellant for eleven years, had an unfortunate and unforeseeable accident in his barn. The miniature pony (Bentley) is the subject of the provincial court proceedings under file number 253459-1.
3. At the time of seizure, the pony was under the active, ongoing medical care and supervision of two experienced, licensed veterinarians (veterinary team): Dr. Hermann Geertsema, *Dvm* an established equine veterinarian whose practice, an equine veterinary clinic *Total Equine Veterinary Services* located in Langley, British Columbia provides horse veterinary care and treatment, and Dr. Joanna Virgin *Dv Mms, Dvcls-Ma*, a board certified, licensed

- specialist in equine surgery and a Diplomate of the American College of Veterinary Surgeons who practiced as a Veterinary Surgeon at the respective time for a horse veterinary clinic also located in Langley.
4. On October 7, 2022, the Society For The Prevention Of Cruelty To Animals (BC SPCA) received a written complaint by a veterinarian, Dr. Jane Westendorf who had attended with Dr. Geertsema on July 7, 2022 by permission of the appellant for the first examination of the pony's injury as an observer (shoulder injuries are rare in horses).
 5. Dr. Westendorf testified at the trial that she had not seen or examined the pony since nor in the approximate 12 weeks preceding her written complaint, she was not the treating veterinarian, she did not know about the upcoming scheduled treatment for the pony, and had not shown the written complaint with a recommendation of euthanasia of the pony to the appellant's veterinary team. The complaint specifically stated that the pony's "shoulder is permanently damaged and is not fixable without veterinary intervention. The prognosis for his injury and his quality of life is grave."
 6. Dr. Westendorf testified at the trial that she relied on a sports veterinarian whom she knew and consulted with about the pony who has an equine practice located in Alberta, Dr. Sean Mattson. During their communications about the pony's condition and the pony's x-rays that she provided Dr. Mattson with, he had recommended an expensive surgery for the pony's condition consisting of a "gold standard treatment with quotes between \$9,000 to \$15,000". During the trial, the trial judge rejected an application made by the appellant that Dr. Mattson had denied any knowledge of, or any communication or receiving any materials relating to the pony according to a *Freedom of Information and Protection of Privacy Act (FOIPPA)* request.

7. The trial judge relied on the testimony by Dr. Westendorf of Dr. Mattson's involvement (paras 24, 25, 33 Oral Reasons For Judgment) to convict the appellant, thereby implicating a respected veterinarian in circumstances alleging treatment recommendations (that were contrary to the veterinary team's treatment plan) who had no knowledge of or participation in Bentley's injury or treatment at any time.
8. On October 14, 2022, an authorized police agent of the British Columbia Society for the Prevention of Cruelty to Animals (BC SPCA) entered the Appellant's property and executed a seizure of the pony pursuant to the statutory powers granted under Sections 11 and 12 of the *Prevention of Cruelty to Animals Act*, R.S.B.C. 1996, c. 372.
9. Prior to the seizure, the pony had been scheduled for his next treatment and in evidence was the funds of approximately \$1,100 for the treatment that had been raised based on an estimate of same provided by Dr. Geertsema to the appellant. Both were in evidence in the provincial court proceeding.
10. Neither of the pony's treating veterinarians were contacted by the authorized SPCA police agent nor the veterinarian that had been hired to examine the pony. Neither of the veterinary team had been shown the written complaint by Dr. Westendorf (by her own testimony at the trial) that had led to the investigation.
11. Dr. Geertsema contacted the BC SPCA investigating officer when it became known that the pony had been seized however he was informed that the pony had already been euthanized that day by the BC SPCA hired veterinarian who determined the animal to be in 'critical distress', a pronouncement not borne of, or supported by his veterinary team at any time.

12. The video evidence at the trial shortly before the unexpected BC SPCA raid showed that Bentley had been progressing well in his recovery during the 12 weeks of treatment. He was weight bearing on all four legs, mobile and in good spirits. He was scheduled for his next set of x-rays and a possible shoulder manipulation if the x-rays showed it would be beneficial.
13. Dr. Geertsema's medical notes had been deleted. When it became known at the trial that the BC SPCA chief of policing, Marcie Moriarity (a lawyer by profession) had assisted the hired veterinarian as she testified with the wording of the pony's veterinary report which was relied on as evidence during the trial, a complaint was made by the appellant to the RCMP who are currently conducting an investigation on Ms. Moriarity's conduct.
14. The BC SPCA hired veterinarian testified at the trial that Dr. Westendorf was her "best friend" and she had communicated with her to obtain the information on the pony and she had read the written complaint. She testified that she did not therefore see a need to consult with the veterinary team.
15. In all, the appellant's costs for the pony's treatments and special care provisions prior to the raid had totalled approximately \$5,000 to-date.

Crown and the Provincial Court Proceedings

2. Following the seizure, the Crown initiated quasi-criminal regulatory proceedings against the Appellant in the Provincial Court of British Columbia under Court File No. 253459-1.
3. Before the impending provincial trial of the Appellant, Dr. Geertsema had passed away of cardiac arrest and Dr. Virgin had moved from Canada with her family to an unknown destination outside of Canada.

4. The Appellant was convicted of an offense under Section 24(1) of the *Prevention Of Cruelty To Animals Act* for allegedly prolonging the distress of the pony while in the care of his veterinary team.
5. Neither Dr. Geertsema or Dr. Virgin had filed a complaint to the BC SPCA about the appellant's care of the pony as is mandatory to do by Law if there is need to under section 22.1 of the Prevention Of Cruelty To Animals Act .

Prevention Of Cruelty To Animals Act, s. 22.1

The Supreme Court Petition and Service of Parties

6. On December 19, 2025 Supreme Court Associate Judge Vos considered the appellant's standalone constitutional Petition and accompanying affidavit under Supreme Civil Rule 20-5(1)(a)(c)(d)(e) and granted the appellant an Order To Waive Fees.

Appellant's Appeal Book, Tab 1, page 1

7. On the same day, the Appellant filed the Petition and affidavit in the Supreme Court of British Columbia Court, File No. 259504.

Appeal Record, Petition, page 1
Appellant's Appeal Book, Tab 2, page 3

8. The Petition sought a global declaration pursuant to Section 52(1) of the *Constitution Act, 1982*, that Sections 11 and 12 of the *Prevention Of Cruelty To Animals Act* unjustifiably infringe Section 7 of the *Canadian Charter of Rights and Freedoms* to the extent that they permit the extra-judicial seizure of animals who are under an active, professional veterinary medical treatment plan as the pony was at all relevant times.
9. In accordance with the *Constitutional Question Act*, R.S.B.C. 1996, c. 68, the Appellant formally served a Notice of Constitutional Question on the Attorney General of Canada and the Attorney General Of British Columbia with the Petition and affidavit who confirmed by letter receipt of same.

Appellant's Appeal Book, Tab 3, page 22

10. Recognizing the systemic, industry-wide impact of the constitutional question, the Appellant further served the Petition and affidavit upon affected third-party public stakeholders listed on the Petition, including the *College of Veterinarians of British Columbia*, the *Society Of British Columbia Veterinarians*, the *Society for British Columbia Public Guardians and Animals* and the *Society For The Prevention Of Cruelty To Animals*.

Appeal Record, Petition, page 1

The Respondent's Service Confirmation and Late Filing in the Supreme Court

11. On December 23, 2025, the Appellant had served the Petition and supporting Affidavit on the Respondent, the Attorney General of British Columbia by a registered, trackable Canada Post delivery method.

12. The Appellant subsequently received formal delivery verification including a signature confirming safe receipt from Canada Post. Shortly thereafter, the Deputy Supervising Counsel of the Ministry's Litigation Group sent a letter confirming receipt of the Petition and affidavit. Notably, this confirmation letter was originally mailed to an incorrect address.

Appellant's Appeal Book, Tab 3, page 22

13. Pursuant to Rule 16-1(4) of the *Supreme Court Civil Rules*, the Respondent's deadline to file a Response to Petition expired on Friday, January 13, 2026. The Respondent did not file or serve a Response to Petition within the prescribed statutory timeline.

14. The Appellant then sought a date for a full day chamber hearing of the Petition from Supreme Court *Scheduling*. Supreme Court scheduling confirmed that the date for filing the Response To Petition had passed and set the petition hearing date for February 25, 2026. A filed *Notice Of Hearing* was provided by the Appellant to the Respondent by registered mail on January 26, 2026 (which was later confirmed received on January 29, 2026).

Appellant's Appeal Book, Tab 4, page 26

15. The Respondent asserted that the Petition and affidavit had been served incorrectly. Despite disagreeing with this assertion, the Appellant accommodated the Respondent's insistence and re-served the documents by registered mail again. There is no requirement in the *Supreme Court Civil Rules* or relevant statutes mandating that a petitioner serve the Ministry of Attorney General twice.
16. The Respondent ultimately filed the Response to Petition on February 6, 2026, representing a delay of 24 days past the mandatory Rule threshold, without seeking or obtaining prior leave of the Court or the consent of the Appellant.
17. The Appellant learned of the *Response to Petition* through a paid search on Court Services Online. While the Response itself was downloadable, the platform prohibited affidavit downloads, leaving the Appellant unaware of the associated affidavit's contents.
18. Throughout the Supreme Court proceedings, the Respondent consistently used incorrect address variations— such as "136 King George Boulevard, Suite 10136"—to serve materials on the Appellant.

Appellant's Appeal Book, Tab 12, page 61
19. No other participant party(s) in the Supreme court proceedings experienced delivery issues as they successfully relied on the address provided on the face of the Petition.
20. The Appellant filed and served the Petition Record binder by noon on February 23, 2026, which was the final day of the filing timeline for the February 25, 2026 petition hearing before a judge. While the binder was mistakenly filed under the label "Trial Record," it was successfully delivered to the Respondent within the required timeframe.

21. The Appellant had attempted on two separate occasions, February 13, 2026 and February 23, 2026 to inform the Respondent by correspondence that she had not received the materials for the upcoming February 25, 2026 petition hearing.

Appellant's Appeal Book, Tab(s) 6 and 8, page(s) 34 and 55

22. The Petition Record binder did not include the respondent's Notice Of Application nor affidavit(s) relied on therein since neither had been served on the Appellant by the time of the Petition Record binder filing.

Appeal Record: Part 1

23. On February 23, 2026—two days before the scheduled hearing—the Appellant had proactively filed an affidavit, 2nd affidavit of Felicia Allen, containing preliminary arguments in an attempt to respond to the unserved materials.

Appellant's Appeal Book, Tab 7, page 45

24. At the time of the hearing on February 25, 2026 before Judge Fowler, the Respondent had completely failed to serve the Appellant with the primary evidentiary basis for its lack of service of materials, namely *Affidavit No. 1 of Lorraine Greselin made on February 24, 2026*.

The Expectation and Purpose of the Scheduled Hearing

25. The hearing before Justice Fowler on February 25, 2026 was formally scheduled and booked for the express purpose of considering the substantive merits of the Appellant's constitutional Petition. The Respondent had been served with a filed *Notice Of Hearing* of the Petition on January 26, 2026 by registered mail.

Appellant's Appeal Book, Tab 4, page 28

26. The Appellant attended the scheduled appearance with the understanding and expectation that the court would adjudicate the *Charter* challenge regarding Sections 11 and 12 of the *PCA Act as enunciated on the Petition*.

27. Upon arrival, the Respondent redirected the proceeding by introducing its application for summary dismissal prior to a hearing on the merits, characterising the public law challenge as an abuse of process and an impermissible collateral attack on the Provincial Court conviction.

Allen v British Columbia (Attorney General), 2026 BCSC 599 , paras 2 and 3

28. On February 25, 2026 Justice Fowler of the Supreme Court of British Columbia acceded to the Respondent's application and pronounced a final order dismissing the Appellant's Petition without hearing the underlying *Charter* arguments.

29. In delivering judgment, the chambers judge failed to independently review or accurately replicate the specific, qualified reliefs requested on the face of the Appellant's Petition. Instead, the court adopted a broader, over-generalized characterization advanced by the Respondent in the *Response To Petition*, stating at paragraph 1 of the oral reasons:

[1] THE COURT: On December 19, 2025, Ms. Allen filed a petition naming the Attorney General of British Columbia as respondent, seeking the following orders:

1. a declaration that ss. 11 and 12 of the Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372 [Act], infringe s. 7 of the Canadian Charter of Rights and Freedoms;
2. a declaration that commencing or continuing prosecutions under s. 24(1) of the Act violates s. 7 of the Charter;
3. an order stating that laws permitting the seizure of sick or injured animals under the care of licensed veterinarians violate s. 7 of the Charter of pet guardians; and
4. an order pursuant to s. 24(1) of the Charter staying the Provincial Court prosecution of the petitioner under File Number 253459-1..."

Appeal Record, Reasons for Judgment of Justice Fowler, para 1
Allen v British Columbia (Attorney General), 2026 BCSC 599 at para 1
 Response To Petition, Part 5, page 4-5

25. In contrast to the generalized summary adopted by the chambers judge, the Appellant's actual originating process sought conditional declarations on the face of the Petition:

Part 1: ORDER(S) SOUGHT

1. A declaration that *sections 11 and 12* of the Prevention of Cruelty to Animals Act, to the extent that they authorize the seizure of an animal already under the care of a licensed treating veterinarian in the circumstances of animals under active diagnosis or treatment, as described in the Petitioner's affidavit, infringe section 7 of the Canadian Charter of Rights and Freedoms and are of no force and effect **to the extent that they authorize the seizure of an animal already under the care of a licensed treating veterinarian in the circumstances of animals under active diagnosis or treatment, as described in the Petitioner's affidavit.**
2. A declaration that commencing or continuing prosecutions under section 24(1) of the Prevention of Cruelty to Animals Act against pet guardians whose injured animals were, **at the material time, under the care of a licensed treating veterinarian, where the sole or predominant basis for the prosecution is a seizure of the kind declared unconstitutional in paragraph 1**, violates section 7 of the Canadian Charter of Rights and Freedoms and is unconstitutional.
3. Pursuant to Section 7 of the Canadian Charter of Rights and Freedoms, an order stating that laws permitting the seizure of sick or injured animals under the care of licensed veterinarians violate the rights of pet guardians to **liberty and security of the person**, as guaranteed by the Charter, and are **inconsistent with the principles of fundamental justice and unfair.**
4. An order, under section 24(1) of the Canadian Charter of Rights and Freedoms, staying any further proceedings in *R. v. Marie-louise Felicia Allen*, Provincial Court of British Columbia File No. 253459-1, because continuing the prosecution in light of the declarations in paragraphs 1 and 2 would violate the Petitioner's rights under section 7 of the Charter.

[bold emphasis by the appellant]

Appeal Record, Petition, Part 1

26. Justice Fowler struck the Petition pursuant to Supreme Court civil Rule 9-5(1)(d).

The Respondent's Service and Late Filing in this Court

27. The pattern of late service or no service on the appellant has continued by the Respondent in this Court.

28. The Respondent served its Notice of Appearance past the prescribed deadline. In this instance, the Appellant initially objected and eventually consented to the late service and agreed to continue to provide copies of filed court materials.

29. On June 29, 2026 Justice Abrioux of this Court on an application made earlier by the Respondent recognized that Canada Post Xpresspost with a signature is an acceptable method of service of materials on the appellant:

9:58:31 Am The Court: (a[ppellant])'s address for service be her email address... and service of delivery by XpressPost with the ddelivery acceptance option at the Staples address at 1013-10136 King George Boulevard, Surrey, BC V3T 4G1. Service is to be effected both by email and Xpresspost at the Staples address.

Appellant's Appeal Book, Tab 14, page 70

30. *XpressPost with a signature was the service method that the Petition and Affidavit had been served on the Respondent and had been confirmed received on December 23, 2025 in the lower court proceedings.*

Appellant's Appeal Book, Tab 3, page 22

A pattern of procedural non-compliance persists

31. Despite being served with a formal Notice of Change of Address in this Court filed on April 27, 2026 the Respondent consistently failed to update its records and continued using incorrect address variations.

Appellant's Appeal Book, Tab 12, page 61

32. The Appellant submits that the Respondent's untimeliness is not an isolated incident, but rather a continuous failure to adhere to the mandatory *Rules* in both courts.

Double Standard Of Enforcement Of The *Rules*

33. The Appellant submits that a consistent history of unequal procedural treatment throughout the proceedings in the Courts has compromised procedural fairness and created an unjustifiable double standard in the enforcement of the *Rules*.

34. On May 27, 2026 the Respondent was granted an extension to file its factum by this Court *despite failing to request this relief in its application materials*. In contrast, the resultant order mandated that *the Appellant must initiate a formal application at her own cost* (Application \$80 and affidavit \$40) to seek a filing for an extension of her factum.

Appellant's Appeal Book, Tab 13, page 71

PART 2 - ERRORS IN JUDGMENT

The Chambers Judge erred by:

25. Failing to recognize that the Provincial Court lacked the statutory jurisdiction to permit third-party joinder leaving a Supreme Court petition as the Appellant's procedural remedy.
26. Mischaracterizing the Petition as an impermissible collateral attack, failing to recognize that because the Provincial Court trial had already concluded in a conviction, the Petition was an independent, legally valid proceeding that could not disrupt the trial process.
27. Committed a palpable and overriding error by finding the Petition to be an abuse of process under Rule 9-5(1)(d), by failing to reconcile his decision with the prior operational order of Supreme Court Associate Judge Vos which had already judicially screened and cleared the Petition under Rule 20-5(1)(a)(c)(d)(e) identical to Rule 9-5(1)(d).
28. Failing to apply binding authority from this Court, the Supreme Court of Canada and the *Canadian Charter Of Rights and Freedoms* s. 24(1) which establishes that an independent Supreme Court petition is the proper legal avenue to seek constitutional remedies when a lower statutory court lacks the jurisdiction to grant them.
29. Committed a palpable and overriding error by misapprehending the true nature of the Petition, failing to review the initiating pleading independently, and relying instead on the Respondent's broad, over-generalized caricature of the orders sought.
30. Misapplying the doctrine of collateral attack to a standalone public law constitutional petition brought under Section 52(1) of the *Constitution Act, 1982*.

31. Erred in Law by failing to recognize that a *Charter* challenge requires a concrete factual foundation, improperly treating the Appellant's necessary personal narrative and adjudicative facts in the petition as an abuse of process.
32. Condoning systemic procedural non-compliance by the Respondent by relying on a *Response to Petition* that was filed 26 days past the mandatory statutory deadline prescribed by Rule 16-1(4), without the Respondent seeking or obtaining leave of the court.
33. The chambers judge erred in law by failing to recognize that a Petition is the legally correct and mandated form under Rule 16-1 to seek constitutional declarations and public law remedies supported by this Court's case law.
34. Erred in Law and Natural Justice by relying on the Respondent's unserved affidavit evidence.

PART 3 - ARGUMENT

The provincial Court lacked the statutory jurisdiction

35. The Chamber judge failed to consider the 3 tiered test to determine whether the provincial court was a court of competent jurisdiction as enumerated in *R. v. 974649 Ontario Inc.*, 2001 SCC 81, [2001] 3 SCR 575 at para 15:

15 . . . This Court has considered the attributes of a “court of competent jurisdiction” on a number of occasions, commencing with its seminal decision in *Mills, supra*. In that case, Lamer J. (as he then was), with whom all agreed on this point, defined a “court of competent jurisdiction” as one that possesses (1) jurisdiction over the person; (2) jurisdiction over the subject matter; and (3) jurisdiction to grant the remedy (p. 890). Subsequent decisions of this Court have affirmed this three-tiered test for identifying the courts and tribunals competent to issue *Charter* remedies under s. 24: *Weber v. Ontario Hydro*, 1995 108 (SCC), [1995] 2 S.C.R. 929; *Mooring v. Canada (National Parole Board)*, 1996 254 (SCC), [1996] 1 S.C.R. 75. Only where a court or tribunal possesses all three attributes is it considered a “court of competent jurisdiction” for the purpose of ordering the desired *Charter* relief under s. 24.

36. In a regulatory trial under Section 24(1) of the *Prevention of Cruelty to Animals Act*, the court's jurisdiction is strictly binary, confined entirely to the Crown prosecution and the Accused: The regulatory claim before the provincial trial judge of alleged animal neglect was limited in scope to considering a defense of due diligence and the Crown proving beyond a reasonable doubt that the offense was committed.

37. The Court possesses no freestanding power to adjudicate constitutional questions outside the strict parameters of the regulatory offence brought before it by the Crown.

38. The Provincial Court possesses no procedural mechanism or statutory authority to permit the joinder of interested third parties such as the College of Veterinarians and the others listed on the face of the Petition.

39. Section 24(1) of the *Charter* provides that:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

40. The Supreme Court of Canada has firmly established that a statutory provincial court judge is not a "court of competent jurisdiction" to issue declarations of statutory invalidity under section 52(1) of the *Constitution Act, 1982* that apply to the public at large.

[15] The law on this matter is clear. Provincial court judges are not empowered to make formal declarations that a law is of no force or effect under s. 52(1) of the *Constitution Act, 1982*; only superior court judges of inherent jurisdiction and courts with statutory authority possess this power.

R. v. Lloyd, 2016 SCC 13, [2016] 1 SCR 130 at para 15

41. The Appellant submits that to characterize the filing of a Supreme Court Petition as an "abuse of process" or a "collateral attack" ignores these absolute structural barriers.

42. Had the Appellant attempted to raise these broader legislative claims and seek third-party remedies before the provincial trial judge, the court would have been legally forced to refuse them for want of jurisdiction.

43. In *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31 [2019] SCR 535, at paras 31-33 the Court reaffirmed an independent petition to a superior court of inherent jurisdiction is the correct and lawful procedural pathway where the statutory lower court lacks the structural jurisdiction to grant the remedy sought.

44. Characterizing a procedure explicitly sanctioned by the Supreme Court of Canada as an "abuse of process" constitutes a reversible error of law.

The Supreme Court Civil Rules are not mere suggestions; they are mandatory procedural safeguards.

45. Prejudice was compounded on the appellant by a dual standard of procedural enforcement. The court date was formally scheduled for the sole purpose of hearing the substantive merits of the constitutional Petition. The Appellant attended with a bona fide expectation that her Charter arguments would be evaluated.
46. Instead, the proceeding was entirely focussed on a jurisdictional challenge with evidence that had been served on the appellant one and a half days prior, or not at all. The civil court *Rules* strictly dictate that any affidavit a party intends to rely on must be filed and served within the mandatory statutory timelines. The appellant could not therefore dispute the claims in for example, the Respondent's 1st Affidavit of Lorraine Greselin made on 24 February 2026 which had not been served on her.
47. The Respondent failed to comply with the mandatory deadline for filing the Response To Petition and did not seek leave of the Court for an extension. Justice Fowler did not factor in the mayhem this caused on procedural fairness.

The Provincial Court Was an Inadequate Forum to Address a Multi-Party Systemic Conflict

48. The Provincial Court of British Columbia is a statutory creation.
Offence Act, R.S.B.C. 1996, c. 338; Provincial Court Act, R.S.B.C. 1996, c. 379
49. The Appellant's *Charter* challenge is inherently a complex, multi-party public law matter. It targets a systemic statutory conflict between the clinical medical authority of regulated veterinary professionals and the extra-judicial seizure powers of state enforcement agents under Sections 11 and 12 of the *PCA Act*. Because this challenge directly engages the regulatory mandates of the College of Veterinarians of British Columbia and various veterinary and other associations, their formal participation was required to be considered to build a proper factual and expert

record. The BC Supreme Court was the primary and only competent forum capable of hosting these essential stakeholders, all of whom were formally served.

50. While the served veterinary bodies chose to remain neutral and not take an active adversarial role in the lower court, their non-participation does not change the jurisdictional analysis. The central issue is that the BC Supreme Court was the primary and only competent forum that possessed the statutory capacity to afford these vital public stakeholders notice and the legal right to participate—a procedural opportunity that is completely non-existent within a binary Provincial Court regulatory trial.
51. The Appellant’s Petition did not seek to re-litigate her personal guilt or innocence regarding the regulatory offense under Section 24.1. Rather, it sought a broad public remedy: a declaration that Sections 11 and 12 are unconstitutionally overbroad under Section 7 of the *Charter* to the extent that they permit the seizure of animals currently under a veterinarian’s active care. Because this broad remedy protects all pet owners across British Columbia and is exclusively within the inherent jurisdiction of a Supreme Court, the chambers judge erred in law by characterizing this distinct public law petition as an impermissible collateral attack.
52. The Appellant clarifies that the remedy sought in Part 1, paragraph 4 of the Petition flows automatically from the constitutional declarations requested in paragraphs 1 and 2. The core submission is one of constitutional dependency: If the statutory practice of seizing an animal while under the active care of a licensed veterinarian is declared to infringe section 7 of the *Charter*, then any subsequent prosecution built upon that unconstitutional seizure is fundamentally tainted. Consequently therefore the resulting Provincial Court conviction cannot stand as a matter of law, and a section 24(1) stay of proceedings is the necessary and appropriate remedy for the Court to consider in order to rectify the breach. In *Bessette v British Columbia (Attorney General)*, 2018 BCCA 59, this Court relied on *Baier v. Alberta* 2006, SCC 38 at paras 12-13, where Justice Rothstein, sitting as the rota judge, stated:

[12] ... Nonetheless, this Court has adopted an expansive interpretation of s. 65.1(1) of the Supreme Court Act and Rules 62 of the Rules of the Supreme Court of Canada, SOR/2002-156. Rule 62 (formerly Rule 27) provides:

62. any party against whom a judgment has been given, or an order made, by the Court or any other court, may make a motion to the Court for a stay of execution or other relief against such judgment or order, and the Court may give such relief on the terms that may be appropriate. [Emphasis added]

53. *R v. Sarmales* 2017 ONSC 1869 put it this way at para 20:

[20] ... once a declaration is made by a judge with inherent jurisdiction, that the law contravenes the Constitution, the offending section ceases to exist and is of no force and effect.

54. In *R. v. Field*, 2003, 64250 (ON SC), Macdougall J held at para 42:

[42] ... A judicial stay of proceedings under s. 7 of the Charter can issue prior to the Respondent being placed in jeopardy.

55. *R. v. Domm*, 1996 1331 (On CA) relied at para 5:

... where constitutional rights are implicated, the court must be particularly concerned about the availability of an effective remedy apart from collateral attack.

56. *Bogaerts v Attorney General Of Ontario*, 2019 ONSC 41 repeated essentially what other courts have recognized as determining of section 7 of the Charter at para 11:

As the Act provides for incarceration, “liberty” per section 7 is engaged.

57. *R. v. Field* 2003 64250 (ONSC) reiterated that a charge can be stated as a Charter remedy at para 47:

... this generally reflects a judicial determination to the charged person cannot, in the circumstances of the case, fairly be called on to respond to the underlying allegation of wrongdoing.

58. *Cepuran v Carlton*, 2022 BCCA 76, recognized the petition format for resolving constitutional issues at para 156, 157, 159 and in summary at para 160 where Justice Griffin, writing for the Court stated:

[160] To summarize, I am of the view that a judge hearing a petition proceeding that raises triable issues is not required to refer the matter to trial. The judge has discretion to do so or to use hybrid procedures within the petition proceeding itself to assist in determining the issues, pursuant to R. 16-1(18) and R. 22-1(4). For example, the judge may decide that some limited discovery of documents or cross-examination on affidavits will provide an opportunity to investigate or challenge the triable issue sufficiently to allow it to be fairly determined by the court within the petition proceeding, without the need to convert the proceeding to an action and refer it to trial.

59. Section. 24(1), like all **Charter** provisions, commands a broad and purposive interpretation. This section forms a vital part of the *Charter*, and must be construed generously, in a manner that best ensures the attainment of its objects: *R. v. Big M Drug Mart Ltd.*, 1985 69 (SCC), [1985] 1 S.C.R. 295, at para 344; *Hunter v. Southam Inc.*, 1984 33 (SCC), [1984] 2 S.C.R. 145, at para 155; *Canadian National Railway Co. v. Canada (Canadian Human Rights Commission)*, 1987 109 (SCC), [1987] 1 S.C.R. 1114, at para 1134. Moreover, it is remedial, and hence benefits from the general rule of statutory interpretation that accords remedial statutes a “large and liberal” interpretation: *British Columbia Development Corp. v. Friedmann*, 1984 121 (SCC), [1984] 2 S.C.R. 447, at p. 458; *Toronto Area Transit Operating Authority v. Dell Holdings Ltd.*, 1997 400 (SCC), [1997] 1 S.C.R. 32, at para 21. Finally, and most importantly, the language of this provision appears to confer the widest possible discretion on a court to craft remedies for violation of Charter rights. In *Mills v. The Queen*, 1986 17 (SCC), [1986] 1 S.C.R. 863, McIntyre J. observed at para 965 that “[i]t is difficult to imagine language which could give the court a wider and less fettered discretion”.

60. The Constitution Act, 1982, section 52(1) reminds us that:

The Constitution Of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Threshold Test for Abuse of Process Was Misapplied

61. The doctrine of abuse of process is a flexible, residual common-law doctrine as re-affirmed in *Behn v Moulton Contracting Ltd.*, 2013 SCC26 where Justice LeBel, for the Court, stated at *para 40*:

The doctrine of abuse is characterized by its flexibility. Unlike the concepts of res judicata and issue estoppel, abuse of process is unencumbered by specific requirements.

62. In *Zhou v Liu* 2025 BCSC 1088, the court held at *para 18*:

I agree that where a defendant is sued in two actions over the same matter it will almost certainly create an abuse. However, it is a different matter if all of the defendants in the second action are different than those in the first. A plaintiff has the right, and the rules do not curtail that right, to sue a defendant as the plaintiff wishes.

63. *Zhou* affirmed at *para 20*:

While the Court has discretion to prevent abuse of its process, its power to do so should be exercised sparingly: *Chapman v Canada* 2001 BCSC 420.

64. The chambers judge erred by applying a rigid, mechanical approach to the doctrine. The Appellant's Petition did not challenge the factual findings of the Provincial Court judge, nor did it seek to overturn the regulatory conviction under Section 24.1 of the *PCA Act*. Rather, it sought to resolve a separate and distinct public law issue—the threshold of state seizure powers over animals under active veterinary care—which the statutory trial court lacked the jurisdiction to determine.

65. The chambers judge equated the appellant's related experience, referred to as a 'case in point' in the petition, at *para 39* of the Judgment as:

[39] ... so evidently clear that Ms. Allen is attacking her conviction. The petition makes clear it is about her case: see paragraphs 14, 15, 16, and 17 of Part 2 of the factual basis

66. It is well established that if a plaintiff seeks to challenge a statute there must be standing showing that the person was affected directly. In *Minister of Justice of Canada et al. v. Borowski*, [1981] 2 S.C.R. 575, the test which has been often referred to was set forth by Martland, J. speaking for the majority at *para 598*:

I interpret these cases as deciding that to establish status as a plaintiff in a suit seeking a declaration that legislation is invalid, if there is a serious issue as to its invalidity, a person need only to show that he is affected by it directly or that he has a genuine interest as a citizen in the validity of the legislation and that there is no other reasonable and effective manner in which the issue may be brought before the Court.

67. In *Mackay v. Manitoba*, 1989 26 (SCC), [1989] 2 SCR 357 the Court declared at *para 39*:

A factual foundation is of fundamental importance on this appeal. It is not the purpose of the legislation which is said to infringe the *Charter* but its effects. If the deleterious effects are not established there can be no *Charter* violation and no case has been made out. Thus the absence of a factual base is not just a technicality that could be overlooked, but rather it is a flaw that is fatal to the appellants' position.

68. In *Danson v. Ontario (Attorney General)*, 1990 93 (SCC), [1990] 2 SCR 1086, at *para 25*:

In general, any *Charter* challenge based upon allegations of the unconstitutional effects of impugned legislation must be accompanied by admissible evidence of the alleged effects. In the absence of such evidence, the courts are left to proceed in a vacuum, which, in constitutional cases as in nature, has always been abhorred.

69. *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC44 2 SCR 307 affirmed at *para 3* (detailed in the Petition, section V, paras 45-47):

The right to security of the person guaranteed by s. 7 protects the psychological integrity of an individual ... the psychological harm must result from the actions of the state and it must be serious.

Multiple Proceedings Do Not Inherently Constitute an Abuse of Process

70. The Supreme Court of Canada has clarified that the mere existence of two or more legal proceedings involving similar parties or background facts is not, in itself,

sufficient to constitute an abuse of process. The Court recently addressed this issue in *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4.at para 39 and 40:

[39] However, the fact that there are two or more ongoing legal proceedings which involve the same, or similar, parties or legal issues, is in itself not sufficient for an abuse of process ... there may be instances where parties have a valid reason for bringing separate, but related, proceedings; in such cases, a multiplicity of proceedings can serve to enhance the administration of justice (see, e.g., *Birdseye Security Inc. v. Milosevic*, 2020 ONCA 355, at paras. 20-22).

[40] Thus, the abuse of process analysis does not end when multiple or similar proceedings exist.

71. On the face of it, it is apparent that the provincial court proceeding differs from the Petition: The two parties are not the same; the issue before the two respective courts (Provincial and Supreme) are not exactly the same; the provincial court lacks jurisdiction for the reasons described herein whereas the Supreme court does not.

72. The public interest petition sought a systemic, prospective remedy for all pet owners and veterinarians across British Columbia, the lower court erred in law by failing to recognize that the petition supported, rather than undermined, the proper administration of public law.

73. In the matter of costs, the appellant relies on the Supreme Court of Canada test for public interest cost protection (*British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71) on the basis that the Constitutional and Charter issue presents a public interest claim for the public with pets and the veterinarians who treat them rather than a private dispute.

British Columbia (Minister of Forests) v. Okanagan Indian Band, 2003 SCC 71

The Petition was struck out prematurely without considering whether an unconstitutional breach existed and the test for section 7

73. The underlying current in the hearing before Justice Fowler was that the judge did not want to consider the Petition because that meant that he would grant an ‘animal abuser’ and her ‘incompetent veterinary team’ as the conviction in the provincial court is often *perceived* as, another go at proving innocence.

74. In *Re B.C. Motor Vehicle Act, 1985 81 (SCC), [1985] 2 SCR* a provincial regulatory offense was struck down under the Charter. The Supreme Court of Canada ruled at para 130 that:

[130] ... Section 94(2) of the Motor Vehicle Act is accordingly inconsistent with s. 7 of the Charter and must, to the extent of the inconsistency, be declared of no force and effect under s. 52.

75. In *R. v. Pontes, 1995 61 (SCC), [1995] 3 SCR 44* the defendant was convicted of a provincial motor vehicle offence in the provincial court of British Columbia. The Supreme Court of Canada ruled that to prevent an unconstitutional Section 7 breach a new trial was ordered.

76. In *Canada (Attorney General) v. Bedford, 2013 SCC 72* the Court ruled that the serious impact of some of the prohibitions on sex workers’ safety was “totally out of sync” with the objective of the law. The Petition advances that police interference in seizing animals in veterinary care where no complaint has been made by the treating practitioner in regard to the pet guardian is totally out of sync with the objective of the *Prevention of Cruelty To Animals Act*.

77. Judge Fowler erred in prematurely striking out the Petition as a ‘collateral attack’ without first considering the test of whether there was an unconstitutional breach of section 7. Section 7 involves a two-step analysis:

1. Is there a deprivation of one of the three (3) protected interests, that is to say life, liberty or security of the person?
2. Is the deprivation in accordance with the principles of fundamental justice?

78. This second step may be broken down into two steps, where it is necessary a) to identify the relevant principle or principles of fundamental justice and then b) to determine whether the deprivation has occurred in accordance with such principles.

R. v. Malmö-Levine, [2003] 3 S.C.R. 571 at para 83;
 R. v. White, [1999] 2 S.C.R. 417 at para 38;
 R. v. S.(R.J.), [1995] 1 S.C.R. 451 at para 479.

84. A conviction in another Court is not solely ground to deny a Constitutional question *even if it relates in some aspect* to proceedings. Although not a constitutional claim, the Supreme Court of Canada in *Bessette v. British Columbia (Attorney General)*, 2019 SCC 31, [2019] 2 SCR 53 allowed the appeal, quashed the lower provincial court order, and declared that Mr. Bessette was entitled to stand trial in French as held at *para 94*:

[94] We would therefore allow the appeal, quash the order of the Provincial Court, and order that Mr. Bessette be allowed to stand trial in French

85. It is submitted that a pet guardian's liberty and security interests under Section 7 of the *Charter* protect them and their animal family while in veterinary treatment from police seizure *under the circumstances* in the Petition. No one stops to think of the terrible cruelty and suffering an animal endures when seized from its family and loved ones while recovering – it is cruel to pit one veterinarian against another to effect this on a helpless animal. Bentley was distraught crying out for his herd whom he had never been apart from. He was forced to stand in the middle of a horse trailer traumatized and calling desperately for help with no supports contrary to the Act. His veterinary team has endured terrible public backlash and Dr. Virgin was right to leave Canada – the public thinks that Bentley was allowed to suffer in critical distress under the care of his veterinary team for the duration of his treatment. This is the stigma that comes of these horrendous abuses on animals and their guardians who pay fortunes for the medical care of a kindred soul.

PART 4 - NATURE OF ORDER SOUGHT

1. The Appellant respectfully requests that this appeal be allowed, and that the order of Justice Fowler pronounced on February 25, 2026, which summarily struck the Petition as an abuse of process and an impermissible collateral attack, be set aside in its entirety.
2. The Appellant seeks an order remitting the matter back to the Supreme Court of British Columbia for a full hearing on the substantive merits of the constitutional issues raised in the Petition.
3. The Appellant requests that no costs be awarded against her in respect of this appeal as this litigation raises a novel, serious, and systemic constitutional question of significant public importance and remedy affecting pet guardians, their 'family members' – their pets and animals - and licensed veterinary professionals inherent rights to treat their client's pets or animals free of police interference that denigrates and undermines their expertise and professionalism across British Columbia.

All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this 1 July of 2026.



Marie-louise Felicia Allen

Appellant

APPENDICES: LIST OF AUTHORITIES

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<i>R. v. Big M Drug Mart Ltd.</i> , 1985 69 (SCC), [1985] 1 S.C.R. 295	25	59
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<i>Toronto Area Transit Operating Authority v. Dell Holdings Ltd.</i> , 1997 400 (SCC), [1997] 1 S.C.R. 32,	25	59
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APPENDICES: ENACTMENTS

Prevention of Cruelty to Animals Act

[RSBC 1996] CHAPTER 372

Part 1 — Interpretation and Application

Definitions

...

(2) For the purposes of this Act, an animal is in distress if it is

- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,

...

Relieving distress in animals

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal

- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including, without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

Relieving critical distress in animals

12 (1) In this section, "**critical distress**" means distress in an animal of such a nature that

- (a) immediate veterinary treatment cannot prolong the animal's life, or
- (b) prolonging the animal's life would result in the animal suffering unduly.

(2) If, in the opinion of

(a) a registered veterinarian, or

(b) an authorized agent, if a registered veterinarian is not readily available,

an animal is in critical distress, the registered veterinarian or authorized agent may destroy the animal or have the animal destroyed.

...

Duty to report distress

22.1 A registered veterinarian who believes on reasonable grounds that a person responsible for an animal is, or is likely, causing or permitting the animal to be in distress in contravention of this Act must promptly report, to the best of the registered veterinarian's knowledge and belief, all of the following information to an authorized agent:

(a) the reason for believing that an animal is in distress;

(b) sufficient information to contact the person responsible for the animal, including the person's name and address;

(c) sufficient information to identify the animal.

Offences

24 (1) A person who contravenes section 9.1, 9.2, 9.3, 23, 23.1, 23.2 or 23.3 commits an offence.

(2) [Repealed 2011-7-6.]

(3) If a person is convicted of an offence under subsection (1), a justice may, in addition to any other penalty that may be imposed for the offence, prohibit the person from owning or having custody or control of an animal for a period of time specified by the justice.

...

Penalties

24.1 A person who commits an offence under this Act is liable on conviction to a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 2 years, or to both.

Court Rules Act

Supreme Court Civil Rules

[Last amended May 4, 2026 by B.C. Reg. 31/2026]

Rule 9-5 — Striking Pleadings

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

Part 16 — Petition Proceedings

Rule 16-1 — Petitions

Response to petition

- (4) A person who has been served with a copy of a filed petition under subrule (3) of this rule must, if the person wishes to receive notice of the time and date of the hearing of the petition, do the following:
 - (a) file a response to petition in accordance with subrule (5);

- (b) file, with the response to petition, all affidavits that have not already been filed and on which the person intends to rely at the hearing of the petition;
- (c) unless the court otherwise orders, serve on the petitioner 2 copies and on every other party of record one copy of each document filed under paragraph (a) or (b) as follows:

...

- (i) if the petition respondent was served with the petition anywhere in Canada, within 21 days after that service;

Rule 20-5 — Persons Who Are Not Required to Pay Fees

Court may order that no fees are payable

(1) If the court, on application made in accordance with subrule (3) before or after the start of a proceeding, finds that a person

(a) receives benefits under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act*, or

(b) cannot, without undue hardship, afford to pay the fees under Schedule 1 of Appendix

in relation to the proceeding,

the court may order that no fees are payable by the person to the government under Schedule 1 of Appendix C in relation to the proceeding unless the court considers that the claim or defence

(c) discloses no reasonable claim or defence, as the case may be,

(d) is scandalous, frivolous or vexatious, or

(e) is otherwise an abuse of the process of the court.

Court Rules Act and Court of Appeal Act

Court of Appeal Rules

[Last amended April 7, 2026 by B.C. Reg. 56/2026]

...

How to respond to a notice of appeal

- 7 (1) A respondent who is served a notice of appeal and who wishes to participate in the appeal must, not more than 10 days after being served the notice of appeal, file and serve on the appellant a notice of appearance in Form 2.
- (2) If a respondent who has been served a notice of appeal does not file a notice of appearance under this rule,
- (a) the respondent is presumed to take no position on the appeal, and
 - (b) a party is not required to serve on the respondent any further documents related to the appeal, unless the court or a justice orders otherwise.