CPL cancellation in B.C.: Court of Appeal clarifies protective actions and abuse of process

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A certificate of pending litigation (CPL) can effectively freeze title to real property before the underlying claim has been proven. In British Columbia real estate litigation, a CPL can impede a sale, refinancing, development, or other transaction involving the property. Because of those consequences, the *Land Title Act* requires litigants who register CPLs to diligently advance the underlying proceeding. Section 252 of the *Land Title Act* permits a property owner or other interested party to apply for cancellation of a CPL where no step has been taken by the plaintiff in the underlying claim for one year.

In *1316215 BC Ltd. v. Davis*, 2026 BCCA 338, the Court of Appeal for British Columbia considered whether a s. 252 application could be sidestepped through procedural manoeuvring, specifically by the plaintiff filing a second "protective" proceeding and a second CPL.

While the Court of Appeal accepted that a plaintiff may commence a second "protective" proceeding in certain circumstances, it held that litigation strategy has limits. A litigant cannot use a fresh action and a new CPL to deprive a property owner of a crystallized right to seek cancellation of an existing CPL under s. 252 of the *Land Title Act*.

This decision provides important guidance on the purpose of s. 252 of the *Land Title Act*, the limits of protective proceedings, and the circumstances in which a litigant's use of a second CPL may constitute an abuse of process.

Understanding CPLs and s. 252 of the *Land Title Act*: What you need to know

- A CPL permits a litigant claiming an interest in land to register that claim against title while the litigation remains unresolved. Because a CPL can prevent or impede transactions affecting the property, it is presumptively prejudicial to the property owner.

- A CPL is not a “set it and forget it” remedy. Section 252 of the *Land Title Act* protects against dormant litigation by permitting a cancellation application where no step has been taken in the underlying proceeding for one year.
- Cancellation is not automatic. The court retains discretion to preserve the CPL where the presumed prejudice to the property owner is not serious or is outweighed by circumstances that would make cancellation unjust.

Background of the dispute

The dispute arose from allegations that a property in Squamish was jointly owned, had been sold without the alleged co-owner’s knowledge, and that the sale proceeds were used to acquire a property in Lake Country. An action advancing proprietary claims was commenced, and CPLs were registered against both properties.

More than a year passed without any litigation step being taken in that action. The owner of the Squamish property, 1316215 BC Ltd. (1316), then applied under s. 252 of the *Land Title Act* to cancel the CPL on the basis of that inactivity.

Before that application was heard, the plaintiff commenced a second action naming additional defendants. She then registered a second CPL against the same property, subsequently removed the original CPL, and discontinued the first action. Those steps eliminated the original proceeding and CPL to which 1316’s pending s. 252 application related, thereby preventing the application from being determined in the ordinary course.

Analysis

The Chambers Judge’s decision

The chambers judge recognized that while a multiplicity of proceedings involving the same issues may constitute an abuse of process, this is not always the case. Courts have accepted that a second proceeding may be commenced as a “protective action,” including where it is brought out of an abundance of caution and there is no intention to pursue both proceedings to judgment.

The judge found that there was evidence that the plaintiff only discovered the identity and alleged involvement of certain additional defendants after the first action was underway. In those circumstances, and given the potential limitation concerns, the commencement of a second action was a permissible protective measure.

1316 argued that commencing the second action and registering a fresh CPL improperly frustrated its pending application under s. 252. The chambers judge rejected that argument, concluding that the second action was a legitimate protective action and that the registration of the second CPL did not constitute an abuse of process.

The Court of Appeal decision

On appeal, the central issue was not whether the second action had been commenced for a legitimate protective purpose. It was whether the subsequent registration of a fresh

CPL, discontinuance of the original proceeding, and removal of the first CPL improperly defeated 1316's accrued right to have its s. 252 application determined. The Court of Appeal concluded that those steps constituted an abuse of process and allowed the appeal.

Can a second action and CPL be filed as protective measures?

The Court of Appeal distinguished between the purpose for commencing a protective action and the manner in which the action is subsequently used. A second proceeding may be justified by limitation concerns or the identification of additional parties. That legitimate purpose, however, does not insulate the litigant's later procedural choices from scrutiny.

In the Court of Appeal's view, it was neither necessary nor appropriate, for the plaintiff to proceed as she did. After commencing the second action, the plaintiff could have sought to amend the first action, pursued joinder applications, or preserved the status quo until the existing cancellation application was determined. There was no compelling protective basis to register a new CPL, discontinue the first action, and remove the original CPL before 1316's pending application could be heard.

When does the right to seek cancellation of a CPL crystallize?

Section 252 reflects the principle that a litigant who obtains the benefit of a CPL must diligently pursue the underlying claim. Once no litigation step has been taken for one year, the property owner or other interested party may apply for cancellation.

The Court of Appeal emphasized that once the statutory preconditions for a s. 252 application have been met, the property owner's right to seek cancellation has "crystallized." Although the court retains discretion to refuse cancellation, the property owner is entitled to have the application heard and determined on its merits.

By registering a new CPL, discontinuing the first action, and removing the original CPL, the plaintiff effectively deprived 1316 of its accrued right to pursue cancellation under s. 252. The Court of Appeal held that this frustrated both the purpose of the statute and the integrity of the CPL regime.

When can filing a second CPL constitute an abuse of process?

The abuse in this case arose from the manner in which the plaintiff used the second action and the second CPL.

The Court of Appeal held that the plaintiff proceeded with full knowledge of the effect her actions would have on 1316's pending application to cancel the CPL. In doing so, she intentionally disregarded and effectively thwarted 1316's crystallized right to have its application to cancel the first CPL determined on the merits. It concluded that "[t]he manner in which Ms. Davis chose to proceed was so outside the range of reasonable strategic choices to qualify as an abuse of process."

The Court of Appeal restored the lost s. 252 application

The Court of Appeal remitted the matter to the Supreme Court with directions to assess the new CPL as though the original s. 252 application had proceeded in the ordinary course.

In effect, the Court of Appeal sought to restore 1316 to the position it would have been in had the plaintiff not frustrated the statutory process. The Court described this as a "just and proportionate" remedy that both protected the integrity of the CPL regime and preserved 1316's right to have its s. 252 application determined on its merits.

What does the decision mean for B.C. real estate litigation?

For property owners, developers, lenders, and other real estate stakeholders, the decision reinforces the importance of monitoring both the litigation record and the property's transaction calendar. The ability to seek cancellation under s. 252 may become critical if a CPL threatens a sale, financing, development milestone, or other time-sensitive transaction.

Parties relying on a CPL should likewise ensure that the underlying claim continues to advance. If a second proceeding becomes necessary because of limitation concerns or newly identified parties, counsel should consider whether amendment, joinder, or preservation of the existing proceeding would protect those interests without interfering with an accrued cancellation right.

Key takeaways for B.C. property owners, developers, lenders and CPL plaintiffs

- Because a CPL is an extraordinary pre-judgment mechanism that secures an unproven claim by tying up a property owner's title, the party who obtains it must diligently advance the underlying claim.
- Section 252 protects against dormant litigation. If no litigation step has been taken for one year, a property owner may seek cancellation of a CPL, reflecting the concern that property not remain tied up indefinitely.
- A fresh action and CPL do not necessarily reset the clock. Once a property owner has accrued the right to seek cancellation under s. 252, a plaintiff cannot sidestep that process by registering a new CPL through a duplicative proceeding.
- A proper protective action will not immunize or insulate later litigation conduct.
- Courts will closely scrutinize litigation tactics that seek to defeat crystallized statutory rights or the integrity of the CPL regime. Steps that knowingly frustrate an opposing party's accrued procedural rights may cross the line into abuse of process, and the question is whether a tactic is outside the range of reasonable strategic litigation choices.

BLG can assist

CPL disputes often require urgent coordination between litigation strategy and the commercial timetable for the property. If a CPL is affecting a proposed sale, financing, development, restructuring, or other transaction, early assessment of the available

cancellation and preservation remedies may be critical. For advice concerning CPLs, real estate disputes, abuse of process, or remedies under the *Land Title Act*, please contact any of the key contacts below.

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