

CANADA / JUDGMENT

Barrie v. British Columbia

2022 BCSC 1245

COURT

Supreme Court of British Columbia

DECIDED

21 July 2022

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2022 BCSC 1245 Barrie v. British Columbia IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Barrie v. British Columbia, 2022 BCSC 1245 Date: 20220721 Docket: S145732 Registry:

Vancouver Between: Carol Barrie in her own right, as Personal Representative of Andrew Barrie,

deceased, and the Executrix of the Estate of the said Andrew Barrie; Andrew Barrie Jr., by his

Litigation Guardian, Carol Barrie; Mary Barrie; Craig Vallance; and Stuart Vallance Plaintiffs And

Her Majesty the Queen in Right of the Province of British Columbia; Regional District of

Kootenay Boundary; City of Grand Forks; Scott MacNeill; Kathy MacNeill; Jacqueline MacNeill;

Jamie MacNeill; Government Entity #1; Government Entity #2; Government Entity #3;

Government Entity #4; and Government Entity #5 Defendants Before: The Honourable Chief

Justice Hinkson Supplementary Reasons for Judgment on Costs Counsel for the Plaintiffs: D.K.

Muir R.W. Richardson Counsel for the Defendant Her Majesty The Queen: P.D. Ameerali Written

Submissions of the Plaintiffs: April 19, 2022 Written Submissions of the Defendant: July 7, 2022

Reply Submissions of the Plaintiffs: July 14, 2022 Place and Date of Hearing: Vancouver, B.C. May

4, 2022 Place and Date of Judgment: Vancouver, B.C. July 21, 2022

Introduction

[1] The history and details of these proceedings can be found in my reasons for judgment dated July 5, 2022, indexed at 2022 BCSC 1122.

[2] In those reasons for judgment I stated at para. 77 that:

[77] The Province ought to have made its submissions on the issue of costs on this application. I permit them one week from the date of these reasons to file and serve written submissions, and the plaintiffs are permitted one week to reply. The Province is permitted one week thereafter to submit a further reply.

[3] I have now received the submissions of the Province and the reply submissions of the plaintiffs, and can rule on the matter of costs. Relief Sought

[4] In the proceedings before me on May 4, 2022, the plaintiffs sought orders that:

- a) The Defendant Province pay to the Plaintiffs special costs and disbursements incurred for all proceedings related to the liability of the Province from the date of commencement of this Action to the date of the Strike Application before Mr. Justice Groves.
 - b) The order made January 6, 2020, that the Defendant Province pay to the Plaintiffs special costs of the previous Strike Application itself be varied to be payable forthwith.
 - c) The Defendant Province pay to the Plaintiffs special costs of this continued application, also forthwith.
- [5] I dismissed the first of these orders sought, and acceded to the second, leaving the third order sought to be addressed by the submissions of counsel, which I have now received.
- [6] For its part, the Province seeks orders that:
- a) Each party bear its own costs of the plaintiffs' application for lesser remedies; or at the very least;
 - b) Any costs granted to the plaintiffs in respect of the application be at no more than Scale B (of the Supreme Court Civil Rules, B.C. Reg. 168/2009). Discussion
- [7] An award of special costs may be justified as a lesser remedy to the dismissal of a defence. In *Leung v. Leung* (1993), 77 B.C.L.R. (2d) 314 at 315 (S.C.), Chief Justice Esson said: 4 The concept of special costs was introduced to our rules in the 1990 amendments. It has been held that entitlement to special costs is to be determined on the same principles formerly applied to awarding solicitor-client costs. The test for awarding such costs was stated thus by Lambert J.A. in *Stiles v. British Columbia (Workers' Compensation Board)* (1989), 38 B.C.L.R. (2d) 307 (C.A.), at p. 311: ...solicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which makes such costs desirable as a form of chastisement. The words "scandalous" and "outrageous" have also been used. 5 There is nothing in the conduct of Mr. Leung in relation to this matter which I would call "scandalous" or "outrageous". But "reprehensible" is a word of wide meaning. It can include conduct which is scandalous, outrageous or constitutes misbehavior; but it also includes milder forms of misconduct. It means simply "deserving of reproof or rebuke".
- [8] The Province takes some comfort from the fact that it attempted, albeit unsuccessfully, to negotiate a resolution of the issues that remained following the decision of the Court of Appeal in this case. I do not consider this unsuccessful attempt to weigh in its favour.
- [9] I agree with the plaintiffs that the May 4, 2022 hearing was to complete the applications for what were described as "lesser remedies" that had been made before Justice Groves, given that the relief he had ordered was, in part, set aside by the Court of Appeal.

[10] In my view, as the Court of Appeal upheld the award of special costs by Groves J., there is no principled basis upon which a different costs order should be made for the completion of those applications, and I order that the Province pay special costs of the May 4, 2022 hearing and the subsequent written submissions relating to costs to the plaintiffs, forthwith. The Honourable Chief Justice Hinkson

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Prepared on 30 October 2026 · Esheria