

CANADA / JUDGMENT

Casses v. Canadian Broadcasting Corporation

2016 BCSC 949

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 949 *Casses v. Canadian Broadcasting Corporation* IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: *Casses v. Canadian Broadcasting Corporation*, 2016 BCSC 949 Date: 20160527 Docket: S115272 Registry: Vancouver Between: Fernando Casses and Dr. Fernando Casses Inc. Plaintiffs And Canadian Broadcasting Corporation, Kathy Tomlinson, Enza Uda, Chris Doe, Wayne Williams, Chris Poe, Brett Hyde, Charlie Cho and Kim Loe Defendants

- and - Docket: S098449 Registry: Vancouver Between: Fernando Casses and Dr. Fernando Casses Inc. Plaintiffs And Douglas Backer, Caroline Mitchell and Elizabeth Watkins Defendants And Kathy Tomlinson and The Canadian Broadcasting Corporation Third Parties
- and - Docket: S098738 Registry: Vancouver Between: Fernando Casses and Dr. Fernando Casses Inc. Plaintiffs And Krystal Lee Cook Defendant And Kathy Tomlinson and The Canadian Broadcasting Corporation Third Parties
- and - Docket: S099002 Registry: Vancouver Between: Fernando Casses and Dr. Fernando Casses Inc. Plaintiffs And Robin Lee Patricia Odiorne Defendant And Kathy Tomlinson and The Canadian Broadcasting Corporation Third Parties Before: The Honourable Madam Justice Adair Supplementary Reasons for Judgment on Costs Counsel for the Plaintiffs: Roger D. McConchie Counsel for the Defendants Canadian Broadcasting Corporation, Kathy Tomlinson, Enza Uda, Wayne Williams, Brett Hyde and Charlie Cho (in Action No. S115272), and for the Third Parties Canadian Broadcasting Corporation and Kathy Tomlinson: Daniel W. Burnett, Q.C. and Z. Ansley Counsel for the Defendants Douglas Backer (in Action No. S098449) and Krystal Lee Cook (in Action No. S098738): R. Nigel Beckmann and M. Santalucia Counsel for the Defendant Elizabeth Watkins (in Action No. S098449): B. Morley Counsel for the Defendant Robin Lee Patricia Odiorne (in Action No. S099002): J. West Written submissions filed by the CBC Defendants: February 19, 2016 Written submissions filed by the Defendants Douglas Backer (in Action No. S098449) and Krystal Lee Cook (in Action No. S098738): February 18, 2016 Written submissions filed by the Defendant Elizabeth Watkins (in Action No. S098449): February 19, 2016 Written submissions filed by the Defendant Robin Lee Patricia Odiorne (in Action No. S099002): February 18, 2016 Written

submissions filed by in each Action by the Plaintiffs: March 21, 2016 Place and Date of Judgment: Vancouver, B.C. May 27, 2016 Introduction. 4 Special costs. 4 The scale of costs. 10 The offers to settle. 11 Summary. 18

Introduction

- [1] On November 24, 2015, I issued Reasons for Judgment in these four defamation actions. My Reasons for Judgment are indexed at 2015 BCSC 2150. I dismissed the plaintiffs' claims in all four actions. The plaintiffs have appealed.
- [2] I have now received written submissions on costs.
- [3] There is no dispute that the defendants, as the successful parties in each of the actions, are entitled to costs. The issues in dispute concern: (a) whether the court should order special costs or increased (Scale C) costs in any of the actions; and (b) what effect (if any) should be given to offers to settle made by the defendants.
- [4] I will use the same defined terms here as in my Reasons for Judgment from the trial. Special costs
- [5] The CBC Defendants and the Individual Defendants say that special costs are justified in each of the four actions.
- [6] Both the CBC Defendants and the Individual Defendants say that the plaintiffs' litigation tactics made resolution of the issues in the Actions far more difficult and expensive than necessary, and amounted to reprehensible conduct.
- [7] Dr. Casses' litigation tactics included commencing the separate actions against the Individual Defendants. The CBC Defendants and the Individual Defendants say this was done with the hope of keeping the scope of each Individual Action artificially narrow, and it forced the Individual Defendants to bring the CBC and Ms. Tomlinson into the litigation by way of third party notices. When the CBC Defendants filed their responses to civil claim (in both the Individual Actions and the CBC Action), Dr. Casses then applied to strike out the CBC's pleaded meanings. The court dismissed Dr. Casses' applications (see *Casses v. Backer*, 2012 BCSC 17 and *Casses v. Canadian Broadcasting Corp.*, 2012 BCSC 18), but Dr. Casses appealed. His appeals were dismissed, with the Court of Appeal finding he had employed the rejected "blue-pencil" approach: *Casses v. Canadian Broadcasting Corporation*, 2013 BCCA 200, at para. 42.
- [8] The CBC Defendants say that, when the appeals were dismissed, Dr. Casses then switched tactics to plead extreme meanings in the hope that they could not be justified, and sought to avoid fighting the cases based on the words actually used. The CBC Defendants say that the plaintiffs took other steps (including late production of documents just before Dr. Casses' examination for discovery, and delivery of ten expert reports) that necessarily led to the adjournment of the original trial date that had been set for March 2014. Then, only two months before the October 2014 trial date, the plaintiffs brought applications for delivery of

extensive particulars and for leave to examine Mr. Daniel Henry (CBC in-house legal counsel) as a second representative for the CBC. The application for particulars was mostly dismissed. The application to examine Mr. Henry, which, in the submission of the CBC Defendants, was obviously absurd, was also dismissed.

- [9] The defendants say further that by filing the separate actions initially against the Individual Defendants only, and ignoring the obvious defendants (the CBC and Ms. Tomlinson), the plaintiffs' conduct amounted to economic intimidation and an attempt to use legal proceedings to muzzle free speech. Such conduct in relation to the Individual Defendants in particular is reprehensible.
- [10] The Individual Defendants also say that the plaintiffs alleged serious misconduct against each of them, in support of claims for aggravated and punitive damages, and special costs. For example, the plaintiffs alleged in each of the Individual Actions that the Individual Defendant was: guilty of reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct and such conduct by the defendant justifies the court in imposing a substantial penalty of exemplary damages on the defendant plus an award of special costs in favour of the plaintiffs, in addition to an award of general damages for injury to reputation.
- [11] The Individual Defendants argue that such allegations were also part of Dr. Casses' litigation tactics, designed to punish each of them and silence their criticisms of him.
- [12] The plaintiffs made similar allegations against the CBC Defendants in support of the plaintiffs' claims for aggravated and punitive damages, and special costs, against those defendants.
- [13] Ms. Watkins and Mr. Backer were alleged to have conspired together to publish the RateMDs post.
- [14] The defendants say that the plaintiffs' unjustified pursuit, through to closing submissions, of aggravated and punitive damages, and their persistence in claims that the defendants engaged in egregious and malicious conduct, none of which was proved, also amounts to reprehensible conduct. On this point, the defendants cite *Taseko Mines Limited v. Western Canada Wilderness Committee*, 2016 BCSC 109, in particular the discussion at paras. 186 and following.
- [15] On the other hand, the plaintiffs say that, on the authorities, the court must exercise restraint in awarding special costs, and the party seeking special costs must demonstrate exceptional circumstances to justify such an order. The plaintiffs say their conduct cannot justify an order for special costs in any of the Actions.
- [16] The basic principles are not in dispute.
- [17] The single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible." The word "reprehensible" has a wide meaning. It encompasses scandalous or outrageous conduct, but it also encompasses milder forms of

misconduct deserving of reproof or rebuke. See *Behan v. Park*, 2014 BCSC 1982, at para. 28 and *Wilson v. Switlo*, 2016 BCSC 130, at paras. 24 and 25. See also *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 (cited in both *Behan* and *Wilson*, among other cases), where Madam Justice Gropper very helpfully reviews a number of authorities and summarizes the law.

- [18] Special costs may be awarded where a party made the resolution of an issue far more difficult than it should have been, or where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party. See *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914, at para. 11.
- [19] A party who alleges serious misconduct against another in a civil lawsuit must be prepared to prove such allegations or reap the consequences in the form of an order for special costs: see *Taseko Mines*, at para. 187 (citing *Gichuru v. Smith*, 2014 BCCA 414, at paras. 78 and 79).
- [20] I will first address special costs in relation to the CBC Defendants.
- [21] The plaintiffs alleged serious misconduct against the CBC Defendants, and Ms. Tomlinson in particular. They persisted in those claims through to closing submissions, where (as I noted in my Reasons for Judgment, at para. 7) they asserted among other things that the TV Reports "may represent the most savage attack on the reputation of a professional person by the news media of this province in living memory." In closing, Mr. McConchie described what Ms. Tomlinson had done as "deliberate lies, reckless invention, malignant distortion, calculated ambiguity, superficial and lazy research, and callous indifference to the public's interest in fair, balanced and accurate reporting," which, in his submission, "made a potent recipe for devastating injury to reputation." This is very strong language indeed. The plaintiffs argued that they were entitled to a very significant award for punitive damages (in the hundreds of thousands of dollars) against the CBC Defendants, in addition to aggravated damages. The plaintiffs engaged in aggressive litigation tactics in relation to the CBC Defendants, and pursued positions (for example, the application to examine Mr. Henry for discovery as a second representative) that were almost certainly doomed to fail.
- [22] In my opinion, the plaintiffs' conduct in relation to the CBC Defendants comes close to the border of reprehensible conduct. However, the CBC, as a large media organization, is no stranger to libel litigation and has the resources to defend such claims. Special costs require exceptional circumstances, and the court must exercise restraint in making such an award. I have not been persuaded that, in relation to the CBC Defendants, the circumstances justify an award of special costs against the plaintiffs. The vindication for the CBC Defendants is found in my Judgment.
- [23] I have, however, reached a different conclusion in relation to the Individual Defendants. In my opinion, the plaintiffs' conduct in relation to each of them qualifies as reprehensible, and justifies an award of special costs.

- [24] The litigation strategy of commencing three separate legal proceedings (against each of Ms. Cook and Ms. Odiorne, and suing Mr. Backer and Ms. Watkins together) qualifies as an exceptional circumstance. In my opinion, that strategy was adopted and pursued deliberately by Dr. Casses, who was undoubtedly in a financially superior position, to put economic pressure on the Individual Defendants, and, in my opinion, was reprehensible. It must have been completely obvious to everyone that the CBC was the natural defendant in relation to the TV Reports and the Web Story. Yet, it was left to the Individual Defendants to bring the CBC into the Individual Actions. Dr. Casses did not sue the CBC until August 2011, almost two years after the events in issue. The plaintiffs' strategy also made resolution of the issues much more difficult. It required a judgment from the Court of Appeal before Dr. Casses was forced to abandon his original "blue pencil" approach. The plaintiffs' extreme pleaded meanings added to the difficulty. The plaintiffs alleged serious misconduct against the Individual Defendants. At trial, Ms. Cook became a particular target for Dr. Casses' scorn. She was vilified in closing submissions, as was Mr. Backer. In respect of Ms. Odiorne, at trial, Dr. Casses took the highly unusual step of distancing himself from his own words in his own operative report, in an attempt to minimize the consequences of his actions to his patient. I found that none of the serious misconduct alleged by the plaintiffs in respect of Ms. Cook, Ms. Odiorne, Mr. Backer and Ms. Watkins was proved.
- [25] In my opinion, the circumstances of the Individual Defendants, and the manner in which the plaintiffs pursued their claims against them in the Individual Actions, are exceptional, and special costs are justified.
- [26] I therefore order that the plaintiffs pay:
- (a) Ms. Cook's costs to be assessed as special costs;
 - (b) Ms. Odiorne's costs to be assessed as special costs;
 - (c) Mr. Backer's costs to be assessed as special costs; and
 - (d) Ms. Watkins' costs to be assessed as special costs.
- [27] The plaintiffs sought an order that Ms. Cook and Mr. Backer should be awarded only one set of costs for trial and preparation for trial, on the grounds that they were represented by the same counsel. I will leave that matter for the Registrar on the assessment of costs.
- [28] As appeals are pending, I order that an Individual Defendant will not be required to have her or his costs assessed until after all appeals have been finally disposed of. If an Individual Defendant wishes to have her or his costs assessed before that, the Individual Defendant has liberty to arrange the assessment accordingly. The scale of costs
- [29] In the event that I declined to order special costs, the CBC Defendants and Ms. Odiorne sought costs at Scale C. The plaintiffs made no submissions on the scale of costs.

- [30] Section 2 of Appendix B of the Supreme Court Civil Rules provides in relevant part: Scale of costs 2 (1) If a court has made an order for costs, it may fix the scale, from Scale A to Scale C in subsection (2), under which the costs will be assessed, and may order that one or more steps in the proceeding be assessed under a different scale from that fixed for other steps.
- (2) In fixing the scale of costs, the court must have regard to the following principles:
- (a) Scale A is for matters of little or less than ordinary difficulty;
 - (b) Scale B is for matters of ordinary difficulty;
 - (c) Scale C is for matters of more than ordinary difficulty.
- [31] Relevant factors in relation to whether costs at Scale C are justified can include: the length of the trial; the complexity of the issues involved; the number and complexity of pre-trial applications; whether or not the action was hard-fought, with little or nothing being conceded along the way; the number and length of examinations for discovery; the number and complexity of experts' reports; and the extent of the effort required in the collection and proof of facts. See *Frame v. Rai*, 2013 BCSC 686, at para. 31 and *Westsea*, at para. 90.
- [32] In my opinion, the matters were of more than ordinary difficulty, and costs at Scale C are justified.
- [33] I note the following matters in particular.
- [34] The trial was a long one, and the litigation was extremely hard-fought. The CBC Defendants took the lead on the defence side.
- [35] The pleadings in the trial record ran to about 200 pages. The amended notice of civil claim in the CBC Action was over 50 pages. In closing submissions, counsel for the plaintiffs presented the court with more than 150 authorities, and hundreds of pages of written submissions (including a lengthy chronology). Oral closing submissions occupied a week. The strategy adopted by Dr. Casses of suing the Individual Defendants separately in the Individual Actions, and waiting until just before the second anniversary of the broadcasts to file the action against the CBC Defendants, added very considerably to the complexity and difficulty of the litigation. The strategy resulted in multiple days of interlocutory arguments on pleadings issues, and, when the applications were dismissed, Dr. Casses pressed on to the Court of Appeal. After his appeals were dismissed, Dr. Casses' new strategy of pleading extreme meanings also contributed significantly to the complexity and difficulty of the litigation. There were numerous other interlocutory applications, in addition to the applications to strike pleadings. Dr. Casses' position was that the CBC Defendants were required to prove medical negligence to succeed on their pleaded defences, which added a further layer of complexity to the litigation. There was late document production by Dr. Casses, and the effort required in the collection and proof of facts was very substantial indeed.

- [36] I therefore order that costs in the CBC Action be assessed at Scale C.
- [37] Had I not been persuaded that special costs are justified in the Individual Actions, I would have ordered that costs in those actions also be assessed at Scale C. The Individual Defendants were drawn into what was very complex and difficult litigation, and a long trial. The offers to settle
- [38] On September 3, 2013, Mr. Bennett (counsel for the CBC Defendants) sent a letter to Mr. McConchie containing an offer to settle made on behalf of all of the defendants in all of the actions, as follows: We are writing with the authority of our clients as well as all defendants in all four actions set forth above (the "Actions"). This letter sets out a collective offer to settle pursuant to Rule 9-1. The defendants in the Actions [each named] offer to settle by waiving costs in exchange for the filling and entry of consent dismissal orders of the Actions. The defendants in the Actions reserve the right to bring this offer to the attention of the court for consideration in relation to costs after the court has pronounced judgment on all other issues in this proceeding.
- [39] I will refer to this offer to settle as the "Global Offer."
- [40] In addition, separate offers to settle were made by Ms. Cook, Mr. Backer and Ms. Watkins.
- [41] By letter dated September 19, 2014, counsel for Ms. Cook made an offer to counsel for the plaintiffs, offering to pay \$11,000 plus reasonable costs and disbursements in exchange for a notice of discontinuance and a release. There was no expiry date in the offer.
- [42] By letter dated September 12, 2014, counsel for Mr. Backer made an offer to settle to counsel for the plaintiffs, offering to pay the plaintiffs \$6,000 plus reasonable costs and disbursements in exchange for a notice of discontinuance and a release. There was no expiry date in the offer.
- [43] By letter dated September 23, 2014, counsel for Ms. Watkins made an offer to settle to counsel for the plaintiffs, offering to pay \$5,000 in settlement of the plaintiffs' claims against her. That offer was open for acceptance until Noon on September 26, 2014. By letter dated October 24, 2014, counsel for Ms. Watkins made a further offer to counsel for the plaintiffs, offering to pay \$10,000 in full and final settlement of the plaintiffs' claims against her. The offer was open for acceptance until 5 p.m. on October 26, 2014 (the evening before the first day of trial).
- [44] The plaintiffs did not respond to any of the offers to settle, nor did they deliver any offer to settle.
- [45] The basic principles relating to offers to settle are well-known.

- [46] The court may consider an offer to settle when exercising the court's discretion in relation to costs: see Rule 9-1(4). The available options are set out in Rule 9-1(5). Rule 9-1(5)(b) provides that the court may "award double costs of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle."
- [47] Rule 9-1(6) provides:
- (6) In making an order under subrule (5), the court may consider the following:
- (a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;
 - (b) the relationship between the terms of settlement offered and the final judgment of the court;
 - (c) the relative financial circumstances of the parties;
 - (d) any other factor the court considers appropriate.
- [48] An underlying purpose of the rule is to encourage settlement by rewarding the party who makes a reasonable offer and penalizing the party who declines to accept such an offer: see *Paskall v. Scheithauer*, 2014 BCCA 26, at para. 82. Whether the offer to settle was one that ought reasonably to have been accepted is not determined with reference to the judgment that was ultimately pronounced: see *Hartshorne v. Hartshorne*, 2011 BCCA 29, at para. 27. However, even if an offer was one that it was reasonable not to accept, that is not the end of the analysis: see *British Columbia v. Salt Spring Ventures Incorporated*, 2015 BCCA 343, at para. 20 and *Ward v. Klaus*, 2012 BCSC 99, at para. 53.
- [49] With respect to double costs, in *Hartshorne*, the Court wrote, at para. 25: An award of double costs is a punitive measure against a litigant for that party's failure, in all of the circumstances, to have accepted an offer to settle that should have been accepted. Litigants are to be reminded that costs rules are in place "to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer" [citations omitted]. . . .
- [50] In the light of those principles, I turn first to consider the Global Offer.
- [51] The defendants say that the Global Offer was one that ought reasonably to have been accepted. It was delivered about 6 months before the original trial date of March 3, 2014. The defendants say that, by September 2013, Dr. Casses had lost (in the Court of Appeal) his bid to narrow the litigation and must have known that his troublesome history in Arizona and elsewhere would illustrate there was a solid factual basis for the concerns expressed in the TV Reports and the Web Story. They say that the offer to waive costs in exchange for a dismissal had a genuine value to Dr. Casses, given the stage of the litigation. The defendants say in addition that, by that stage, the plaintiffs should have appreciated the weaknesses in their claims, especially against the Individual Defendants.

- [52] In support of their position that double costs should be ordered based on the Global Offer, the defendants cite *Johnson v. Jamieson*, 2015 BCSC 648. There, a "walk away" offer to settle was given effect as an offer that ought reasonably to have been accepted, and double costs ordered.
- [53] The plaintiffs say that the Global Offer contained no meaningful element of compromise, and offered no meaningful benefit to them. They say it was not one that ought reasonably to have been accepted, either when the offer was made or at any later date, and say further that the court should resist finding in favour of the defendants on the basis of hindsight. They note that in *Stuart v. Hugh*, 2011 BCSC 575, a defamation action where the claim was dismissed, the court refused to give effect to an offer from the defendants to settle for \$5 plus taxable costs and disbursements. Verhoeven J. wrote (at paras. 35-36):
- [35] Here, the offer made would have provided little meaningful benefit to the plaintiff. In effect, he was being asked to give up his claim, without adjudication, in return for a waiver of the defendants' costs to date and payment of his costs on a party and party (i.e. partial indemnity) basis. Nothing was offered in relation to the claim itself. There was no offer of an apology or retraction. \$5 would be equivalent to an award of derisory or contemptuous damages by the court. Such an award does not vindicate one's reputation; rather, "it adds insult to injury" [citation omitted]. Acceptance of the offer would entail implicit recognition by the plaintiff that his claim was without merit.
- [36] In the circumstances of this case, I think the plaintiff would have been obliged to consider very carefully even a modest but meaningful offer of payment. In view of the context of the plaintiff's claim, the offer of \$5 was clearly not meaningful. Rather, it amounted to a "nuisance offer" in the words of Hartshorne, *supra*.
- [54] In my opinion, the Global Offer was not merely a nuisance offer. Given the steps that had been taken in the Actions to September 2013, there was a real value (probably in the tens of thousands of dollars) in an offer to waive costs. However, there was nothing offered in relation to the claims themselves. There was no genuine compromise. Rather, like in *Stuart v. Hugh*, acceptance would have entailed the implicit recognition by the plaintiffs that their claims were without merit. The claims in the Actions were complex, and of more than ordinary difficulty, in contrast to the relatively simple claim in issue in *Johnson v. Jamieson*. The plaintiffs were not given the option of letting one or some or all of the Individual Defendants out of the litigation. Rather, the Global Offer was presented as a package.
- [55] In my opinion, therefore, the Global Offer was not one that the plaintiffs ought reasonably to have accepted. That factor favours the plaintiffs.
- [56] However, that is not the end of the analysis.
- [57] With respect to the factor under Rule 9-1(6)(b), the result at trial was worse for the plaintiffs than the settlement offered. That factor favours the defendants.

- [58] I consider the relative financial circumstances of the parties to be a neutral factor. As discussed above, the plaintiffs used their superior financial circumstances and resources to pressure and intimidate the Individual Defendants. However, the Global Offer included the CBC Defendants, whose financial resources were at least equal to (if not substantially more than) those available to the plaintiffs.
- [59] Finally, the matters I have discussed above in relation to special costs are also factors I can consider under Rule 9-1(6)(d), in deciding whether to give effect to the Global Offer. Those matters favour the defendants, and the Individual Defendants in particular. In addition, had the Global Offer been accepted, a lengthy trial could have been avoided.
- [60] After considering all of those factors, I have concluded that an award of double costs from the date of the Global Offer, or from any later date, should not be made. I have considered whether the factors that favour the defendants should be recognized in some way, given the underlying purposes of the rule. Indeed, some of those factors have been recognized in relation to the order for special costs in favour of the Individual Defendants, and my order that costs should be assessed at Scale C for the CBC Defendants. In my opinion, as of trial, the plaintiffs should have taken a harder look at the strength (or lack thereof) of their claims, in particular their allegations of misconduct and the claims for punitive damages, in the light of the cost rules. However, in relation to the Global Offer, I conclude that the strongest factor is the first - whether the offer was one that ought reasonably to have been accepted - and it favors the plaintiffs. I therefore decline to give effect to the Global Offer.
- [61] Next, I consider the individual offers made by Ms. Cook, Mr. Backer and Ms. Watkins.
- [62] In my opinion, Ms. Cook's offer of \$11,000 was a meaningful offer of settlement, and represented a reasonable compromise in relation to the merits of claims made against Ms. Cook. It was not simply a nuisance offer. It ought to have been seriously considered by the plaintiffs at the time it was made. I conclude that it was an offer the plaintiffs ought reasonably to have accepted.
- [63] Ms. Cook's offer would have achieved a better result for the plaintiffs than the trial. This factor favours Ms. Cook.
- [64] With respect to the relative financial circumstances of the parties, this factor also favours Ms. Cook. Finally, the matters I discussed above in relation to special costs also favour Ms. Cook. Dr. Casses appeared intent on making Ms. Cook suffer in court because she complained about how he had treated her, and he preferred risking dismissal of his claim against her to accepting a reasonable settlement offer.
- [65] I conclude therefore that, based on Ms. Cook's offer to settle, Ms. Cook should have her costs against the plaintiffs (assessed as special costs) up to and including September 19, 2014, and double costs (assessed as special costs) thereafter. Ms. Cook is also entitled to necessary and reasonable disbursements.

- [66] In my opinion, Mr. Backer's offer of \$6,000 was also a meaningful offer of settlement, and represented a reasonable compromise in relation to the merits of claims made against Mr. Backer. Like Ms. Cook's offer, Mr. Backer's offer was not simply a nuisance offer. It ought to have been seriously considered by the plaintiffs at the time it was made. I conclude that it was an offer the plaintiffs ought reasonably to have accepted.
- [67] The offer would have achieved a better result for the plaintiffs than the result at trial. This factor favours Mr. Backer. With respect to the relative financial circumstances of the parties, this factor also favours Mr. Backer, as do the matters I discussed above in relation to special costs. As he did with Ms. Cook, Dr. Casses preferred having the opportunity to vilify Mr. Backer in court and run the risk of the plaintiffs' claims being dismissed, to accepting a reasonable settlement offer.
- [68] I conclude therefore that, based on Mr. Backer's offer to settle, Mr. Backer should have his costs against the plaintiffs (assessed as special costs) up to and including September 12, 2014, and double costs (assessed as special costs) thereafter. Mr. Backer is also entitled to necessary and reasonable disbursements.
- [69] In my opinion, each of Ms. Watkins' offers to settle made a meaningful offer of settlement, and represented a reasonable compromise in relation to the merits of claims made against her. I found that her comments were defamatory of Dr. Casses, but she was entitled to succeed on the defence of fair comment. In my opinion, the second offer of \$10,000 should have been very seriously considered by the plaintiffs at the time it was made and in the period it was open for acceptance. I conclude that it was an offer the plaintiffs ought reasonably to have accepted.
- [70] This offer would have achieved a better result for the plaintiffs than the result at trial, a factor that favours Ms. Watkins. With respect to the relative financial circumstances of the parties, this factor also favours Ms. Watkins, as do the matters I discussed above in relation to special costs.
- [71] I conclude therefore that, based on Ms. Watkins' second offer to settle, she should have her costs against the plaintiffs (assessed as special costs) up to and including October 24, 2014, and double costs (assessed as special costs) thereafter. Ms. Watkins is also entitled to necessary and reasonable disbursements. Summary
- [72] In summary:
- (a) in the CBC Action, the CBC Defendants are entitled to costs (one set) assessed on Scale C, together with necessary and reasonable disbursements;
 - (b) in Action No. S098738, Ms. Cook is entitled to costs assessed as special costs up to and including September 19, 2014, with double costs (assessed as special costs) thereafter, together with necessary and reasonable disbursements;

- (c) in Action No. S099002, Ms. Odiorne is entitled to costs assessed as special costs, together with necessary and reasonable disbursements;
 - (d) in Action No. S098449, Mr. Backer is entitled to costs assessed as special costs up to and including September 12, 2014, with double costs (assessed as special costs) thereafter, together with necessary and reasonable disbursements;
 - (e) in Action No. S098449, Ms. Watkins is entitled to costs assessed as special costs up to and including October 24, 2014, with double costs (assessed as special costs) thereafter, together with necessary and reasonable disbursements;
 - (f) I leave to the Registrar, on the assessment, the matter of whether Ms. Cook and Mr. Backer should be awarded only one set of costs for trial and preparation for trial; and
 - (g) as appeals are pending, I order that an Individual Defendant will not be required to have her or his costs assessed until after all appeals have been finally disposed of. If an Individual Defendant wishes to have her or his costs assessed before that, the Individual Defendant has liberty to arrange the assessment accordingly.
- [73] I consider that the defendants have been substantially successful in relation to the matter of costs following the trial, and I order that they have their costs accordingly. "E. Adair J."

The Honourable Madam Justice Adair

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