

CANADA / JUDGMENT

Degen v. British Columbia (Public Safety)

2025 BCSC 2461

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Supreme Court of British Columbia

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2025 BCSC 2461 Degen v. British Columbia (Public Safety)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Degen v. British Columbia (Public Safety),

2025 BCSC 2461

Date: 20251211

Docket: S198647

Registry: New Westminster

Between:

Bradley Marvin Degen

Plaintiff

And

The Minister of Public Safety and

Solicitor General of British Columbia

Defendant

Before: The Honourable Mr. Justice Blok

Reasons for Judgment on Costs

The Plaintiff, appearing in person:

B. Degen

Counsel for the Defendant:

A. Scarth

Place and Date of Hearing:

New Westminster, B.C.

October 22, 2025

Place and Date of Judgment:

New Westminster, B.C.

December 11, 2025

I. Introduction

- [1] These reasons address the issue of costs in this case.
- [2] This lawsuit stems from a July 2016 incident where the plaintiff was injured by police officers during an interaction and arrest. The plaintiff alleged the police used several forms of excessive force during this event.
- [3] The matter proceeded to a 20-day trial that took place over 10 months in 2021 and 2022. In reasons dated March 31, 2023 ("RFJ") and found at 2023 BCSC 508, the trial judge found that one of those forms of force, the officers' use of conductive energy weapons on the plaintiff, was not an objectively reasonable use of force in the circumstances. He awarded damages for battery totalling \$317,120.
- [4] As to costs, the trial judge said:
- [737] The plaintiff has been largely successful. Costs will follow the event and are awarded to the plaintiff at Scale B. The award of costs is subject to any party advising there are circumstances relevant to the issue of costs that ought to be brought to my attention. In that event, the parties may contact Scheduling and so advise.
- [5] A number of subsequent events intervened, and by the time the parties were ready to address costs, the trial judge had retired. As a result, on September 22, 2025, the Chief Justice made an order ex mero motu appointing me to determine the costs in this case.
- [6] There are two main issues on costs, which arise from: (1) an offer to settle from the defendant, which exceeded the ultimate award by about 5 percent; and (2) acts of misconduct by the plaintiff during the litigation.

II. Defendant's Offer to Settle

- [7] On August 13, 2021, the defendants sent an offer to settle the action for \$335,000. August 13 was the Friday prior to the Monday start of trial. The offer was open for acceptance up to 10 am on August 16. The email conveying the offer was sent at 2:43 pm.

- [8] The defendant's offer to settle contained a term requiring the plaintiff to agree to "execute and deliver a Full and Final Release in a form satisfactory to the Defendant" along with a consent dismissal order. No form of release was provided by the defendant.

III. Misconduct of the Plaintiff

- [9] The defendant raises various incidents of litigation misconduct on the part of the plaintiff, arguing that these events are worthy of rebuke and justify an order that gives effect to the defence offer. The incidents of misconduct all involve uttering threats of harm to several justice system participants associated with this case. Three were witnesses and two were involved in the proceedings in key capacities.
- [10] Criminal charges were laid, and convictions entered, as a result of those incidents. Importantly, there were publication bans ordered in the several criminal proceedings, so I have been careful to avoid mentioning information that might tend to identify the complainants. I did not have the benefit of sentencing reasons for all those cases, but I have a relatively clear picture of the criminal proceedings from the one set of reasons that was available as well as other documents and information in evidence on this costs application. The following is a brief summary.
- [11] On January 20, 2023, the plaintiff was sentenced for four offences, two of which were for uttering threats. The first of those was a threat made in March 2021 to two witnesses in this case. The second was a series of threatening emails made to another witness from September 2021 to May 2022. Of note, those latter emails were sent after the trial had begun.
- [12] The plaintiff was sentenced to 90 days in jail for the uttering threats offences, which was part of a global sentence of 164 days in jail plus 18 months probation for all the offences. A later sentencing judge noted the probation order included a Rogers order for forensic counselling, which indicated that the plaintiff's mental health had been a factor in sentencing.
- [13] On February 8, 2023, the plaintiff was sentenced on two further counts of uttering threats, which were threats made against two witnesses in June 2022. The plaintiff was sentenced to 120 days in jail, less time served, on each count, with the sentences to run concurrently. In his reasons, the sentencing judge said he was satisfied the plaintiff's mental health issues continued to be a factor in his behaviour.
- [14] There is a brief reference to a further threat to one of the same witnesses in August 2022, but it does not appear that criminal charges resulted.
- [15] On February 22, 2024, the plaintiff was sentenced for further incidents during the May to July 2023 time frame where he threatened three individuals involved in this personal injury case.

- [16] The sentencing judge concluded that the appropriate sentence was one year in jail on each of the counts, to be served consecutively, but he reduced each of those sentences to nine months based on the totality principle. With credit for time served, the plaintiff was required to serve a further 483 days in jail. The sentencing judge also imposed a three-year probation order, the first 18 months of which involved a curfew and electronic monitoring.
- [17] At the costs hearing on October 22, 2025, counsel for the defendant brought to the Court's attention two further emails the plaintiff had sent to him the day before. These emails generally had to do with remarks about the corrupt legal system and its corrupt participants, but they also referred to "friends" of his and his family who know where most of the people involved in this case reside and who have said they will "dispense with some justice on those involved in due time".

IV. Offers to Settle - Rules 9-1(5)(a) and 9-1(6)

- [18] Both parties presented their submissions in a manner that followed the factors set out in the Supreme Court Civil Rules, so it is convenient to first set out those provisions that address the costs consequences associated with offers to settle. Rule 9-1(5) and 9-1(6) read as follows:
- (5) In a proceeding in which an offer to settle has been made, the court may do one or more of the following:
- (a) deprive a party of any or all of the costs, including any or all of the disbursements, to which the party would otherwise be entitled in respect of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle;
- (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.
- [19] *Hartshorne v. Hartshorne*, 2011 BCCA 29, is the leading case on offers to settle and the related exercise of discretion. There, the Court of Appeal said:
- [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" In this regard, Mr. Justice Frankel's comments in *Giles* [*Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282] are

apposite:

[74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:

- "[D]eterring frivolous actions or defences";
- "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect";
- "[E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases;
- "[T]o have a winnowing function in the litigation process" by "requir[ing] litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation", and by "discourag[ing] the continuance of doubtful cases or defences".

[26] Rule 37B(6) of the Rules of Court (which is now R. 9-1(6) of the Supreme Court Civil Rules and remains the same as its predecessor) lists the following factors to be considered in making an award for double costs under R. 37B(5)(b):

- (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 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.

[27] The first factor - whether the offer to settle was one that ought reasonably to have been accepted - is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted. As was said in *A.E. v. D.W.J.* [2009 BCSC 505], "The reasonableness of the plaintiff's decision not to accept the offer to settle must be assessed without reference to the court's decision" (para. 55). Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.

[Citations omitted.]

V. Positions of the Parties

A. Defendant

- [20] The defendant reviewed the course of the lawsuit and the threats made by the plaintiff both during and after the trial.
- [21] The defendant submits that although a successful party is normally entitled to costs, the Court has a discretion to deny a successful party costs to which they might otherwise be entitled: *LeClair v. Mibrella Inc.*, 2011 BCSC 533 at para. 10. There are many reasons why the court might deny costs to a successful party, with one example being litigation misconduct: *Loft v. Nat*, 2014 BCCA 108 at para. 49.
- [22] The defendant made submissions on each of the considerations set out in Rule 9-1(6), which I will summarize under the subheadings that follow.

Whether the Offer Ought Reasonably to Have Been Accepted

- [23] Additional factors relevant to this consideration include whether the offer had some relationship to the claim (as opposed to simply being a "nuisance offer"), whether it could be easily evaluated, and whether a rationale for the offer was provided: *Hartshorne* at para. 27.
- [24] The defendant notes the offer to settle was made after discoveries had been conducted, document disclosure was complete, the parties had exchanged will-say statements and notices to admit, the parties had exchanged experts' reports, and the parties had exchanged mediation briefs and attended a mediation. Also, the plaintiff would or should have known that he could not pursue his claim for Charter damages because he had not filed a notice of constitutional question.
- [25] The defendant also submits that the conflicting medical opinions as to whether the plaintiff suffered a brain injury or concussion, or developed PTSD, together with the contested opinions on use of force, ought to have alerted the plaintiff to the risks that his claim might not be made out, or at least, not made out in full.
- [26] Finally, the plaintiff would also have been aware his credibility was in issue and that he was vulnerable in certain areas.
- [27] The defendant submits that all these matters, taken together, show that the defence offer was one that the plaintiff ought to have accepted.
- [28] In answer to a point raised in the plaintiff's written submissions, the defendant says an offer is not ambiguous or uncertain where a copy of the release is not included with the offer: *Gill v. McChesney*, 2018 BCSC 1378; *Bideci v. Neuhold*, 2014 BCSC 1212; and *Gichuru v. Pallai*, 2012 BCSC 1316. As to the contrary cases cited by the plaintiff, the defendant says these are distinguishable. In any event, if the plaintiff had any concerns about the release terms, the plaintiff could have inquired about those terms through his counsel.

- [29] In oral submissions, the defendant addressed the timing of the defence offer, noting that the plaintiff had the weekend to ponder it and take advice from his counsel. The defendant notes that in both *Kostinuk v. Fellows*, 2015 BCSC 2327 and *White v. Wang*, 2015 BCSC 1080, a weekend was found to be sufficient time within which to evaluate an offer of settlement.

Relationship Between the Offer and the Judgment Amount

- [30] The defendant notes the award is \$17,880 less than the offer and submits that this factor weighs in favour of the defendant.

The Relative Financial Circumstances of the Parties

- [31] The defendant submits that while the defendant is a minister of the Crown, this fact carries no weight unless its superior financial resources were used to create an unfair advantage or to incur unnecessary costs: *Rabnett v. Halliday*, 2022 BCSC 1759 at para. 36.
- [32] In any event, the availability of a contingency arrangement can mitigate any imbalance in the parties' financial circumstances: *White* at para. 18; *Kobetitch v. Belski*, 2018 BCSC 2247 at para. 45.
- [33] Here, the plaintiff was not prevented by his financial circumstances from presenting a sophisticated claim supported by many experts, and he recovered a substantial award. For those reasons, the defendant says that relative financial circumstances are not a material consideration in this case.

Other Factors

- [34] The defendant submits that the following are other factors relevant to the question of giving effect to the offer to settle: (1) the plaintiff's false evidence at trial; (2) the plaintiff's misconduct in threatening participants in the trial; and (3) the defendant's relative success on contentious issues at trial.
- [35] The defendant cites various authorities for the proposition that knowingly giving false evidence at any stage of the proceedings can support a denial of costs, including *Brown v. Lowe*, 2002 BCCA 7 at paras. 144-151.
- [36] Here, the defendant relies on the trial judge's conclusion that the plaintiff provided false evidence when he maintained the tasers deployed by the two officers were not deployed simultaneously. The trial judge described this as "a self-serving attempt to knowingly provide false evidence in order to enhance his claim": RFJ at para. 535.
- [37] Later in his reasons, the trial judge rejected the argument that any credibility or reliability failings in the plaintiff's testimony were simply corroborative of the allegation he suffered cognitive injuries. Instead, the judge found it to be "evidence of a witness that is not forthcoming and prone to overstate matters that he believes will assist him": RFJ at para. 622.

- [38] Turning to the issue of reprehensible conduct, the defendant submits that this may be considered under Rule 9-1(6)(d): *TeBaerts v. Penta Builders Group Inc.*, 2015 BCSC 2449 at paras. 28-30.
- [39] Here, the defendant summarized the threatening conduct of the plaintiff, characterizing this as conduct, relevant to this action, that demonstrates a disdain for the administration of justice and is worthy of rebuke.
- [40] Finally, the defendant argues that the Court may consider the defendant's success on some of the contentious issues at trial, including: (1) the plaintiff's allegations that he was punched in the head numerous times and tasered at separate times, which were found to be unproven; (2) the plaintiff's unsuccessful claims for negligent investigation and malicious prosecution; and (3) his unsuccessful claims that he suffered a brain injury and post-traumatic stress disorder.
- [41] Based on these considerations, the defendant submits the plaintiff ought to receive his reasonable costs and disbursements to the date of the offer to settle, and the defendant ought to receive its reasonable costs for the period thereafter.

B. Plaintiff

- [42] The plaintiff's written submissions, prepared by his former counsel, were before the Court on this application and provided helpful legal argument that was absent from the plaintiff's oral submissions.
- [43] In the written submissions, the plaintiff notes that 42 days prior to trial he delivered his own offer to settle for the sum of \$1.7 million, which was accompanied by a brief that ran to 51 pages and addressed all the main issues in the case. The offer included the following paragraph:

This brief is presented with the hope you will engage in a discussion of the facts and applicable law, rather than merely taking a position as to the amount you are prepared to pay. That too, will factor into the Court's assessment of the reasonableness of this offer versus your rejection of it.

- [44] By contrast, the defendant's offer was 1.5 pages long, provided no analysis, and did not respond to any of the points made by the plaintiff in his offer brief.
- [45] The plaintiff says the starting point is Rule 14-1(9), which says a successful party must be awarded costs unless the court otherwise orders.
- [46] Rule 9-1(5) deals with offers to settle and gives the court the discretion to depart from the ordinary rule, and when exercising its discretion the court may consider the factors set out in Rule 9-1(6).

- [47] Reference was made to Hartshorne, and to the following passage from Fan (Guardian ad litem of) v. Chana, 2009 BCSC 1497 (a passage that was cited with approval in the later appeal: see Fan v. Chana, 2011 BCCA 516 at paras. 52-53):
- [19] The reintroduction of judicial discretion in costs certainly serves the ends of justice. Costs should be a penalty for unreasonable conduct in the litigation, not a penalty for failing to guess the outcome. In this regard, Courts must, I think, extend some leeway to litigants holding honest but, ultimately, mistaken views of their claims. It is generally better that such expectations be disposed of at law, rather than discouraged. The public should not be given the impression that there is no reasonable access to a legal resolution. It must be recognized that some people will only be comfortable if they "hear it from the judge." This should be a valid option for those who seek it, not a form of deemed unreasonableness. As such, inducements to settle, and to avail oneself of alternate dispute resolution, ought to complement rather than obstruct judicial determinations.

[Emphasis added.]

- [48] The plaintiff addressed the factors set out in Rule 9-1(6), which I summarize below.

Whether the Offer Ought Reasonably to Have Been Accepted

- [49] The plaintiff notes the defence offer made no attempt to address the issues raised in the plaintiff's offer, and there was no explanation of the basis for the defence offer.
- [50] The plaintiff also notes that, as a condition of the offer, the defendant required the plaintiff to execute a "full and final release in a form satisfactory to the defendant" as well as a consent dismissal order, but no form of release was supplied. The plaintiff maintains that an offer requiring the execution of a release, where the terms of the release are not specified, is uncertain and so it is not unreasonable for the plaintiff to decline it: Degen v. British Columbia, 2019 BCSC 1216 at paras. 32-33 [Degen 2019]; Froese v. Sharif, 2021 BCSC 550 at paras. 62-65.
- [51] The plaintiff submits that the defendant's requirement that there be a release in addition to a consent dismissal order implies that the defendant had further terms in mind, including terms as to confidentiality. These were not stated; hence, the offer was uncertain.
- [52] The plaintiff responded to the defendant's argument that if the plaintiff had questions about the offer, he ought to have made inquiries, noting that the Friday afternoon offer left just over an hour for plaintiff's counsel to do that before defence counsel's office closed for the weekend.
- [53] The plaintiff argued that there was insufficient time to properly consider the defendant's offer, noting that little time was available here, and citing cases suggesting that seven days is a reasonable amount of time to consider a settlement offer: Bailey v. Jan, 2008 BCSC 1372 at para. 39; Parker v. Martin, 2017 BCSC 1161 at para. 22.

[54] The plaintiff also noted that the potential punitive damages award was "not knowable". The plaintiff considered other awards of punitive damages against police, as well as the rational or purposive approach to punitive damages. He noted that prior punitive damages awards appeared to have had no effect on RCMP behaviour. Here, the plaintiff referred to the November 2020 report of the Hon. Michel Bastarache on sexual harassment within the RCMP and referred to various aspects of internal abuse documented there.

[55] In his affidavit, the plaintiff said:

At the time of My Offer, I believed that I had a legitimate claim for punitive damages. I believed that a punitive damage award at trial would likely result in the media reporting it, and the federal government being force[d] to give some attention to the issue of RCMP brutality.

[56] The plaintiff submits that it is not unreasonable to reject an offer which does not address a potentially significant aspect of the claim - in this case, punitive damages: *Bains v. Antle*, 2019 BCCA 383 at para. 39.

Relationship Between the Offer and the Judgment Amount

[57] The plaintiff notes the offer exceeded the award by just over 5 percent. He says that even a modest punitive damages award would have put the total above the defence offer. A small difference between the award and a defence offer ought not to result in an award of costs to the defendant: see *Zhao v. Yu*, 2015 BCSC 2342; *Century 21 Seaside Realty v. Armstrong*, 2023 BCSC 27; *Glendenning v. Matwychuk*, (Unreported, B.C.S.C., October 25, 2021, Vancouver Registry No. M155773); *Munro v. Thompson*, 2009 BCSC 923.

The Relative Financial Circumstances of the Parties

[58] The plaintiff referred to his modest financial circumstances, noting that he has a mobile home for his residence, and to his status as being "severely handicapped" and receiving disability income under the Alberta Ministry of Health's Assured Income for the Severely Handicapped program. He contrasted his financial situation by comparing it to Canada's budget estimate for 2022-2023 at around \$400 billion.

Other Factors

[59] The plaintiff says he was the victim of what the Court has found to be excessive violence by the police. His arrest and charges arising out of this incident are a matter of public record. He submits that only a judgment in his favour, or a non-confidential settlement, would vindicate his reputation: *Munro*, at para. 35; *Mayer v. Umabao*, 2016 BCSC 2355 at para. 19. In his affidavit, he noted that non-confidentiality was important to him:

I also understood that most releases include a term making the details of the settlement - especially the amount paid - secret. That meant that people would be able to find out I had been arrested but I would not be able to show I have been vindicated by the Crown paying to settle my case. I wanted to be publicly cleared of any criminal conduct.

- [60] In this case, depriving the plaintiff of his costs after the date of the defence offer would deprive him of tariff costs totalling about \$37,000 and all of his trial disbursements (about \$30,000) for a total of about \$67,000. This would have the effect of significantly reducing the net amount received by the plaintiff.
- [61] In oral submissions, the plaintiff, representing himself, did not address the legal arguments other than to say that the defendant's offer to settle did not come to his attention until just before the trial started on Monday, August 16, 2021.
- [62] The remainder of the plaintiff's oral submissions consisted of various comments about the crooked and corrupt justice system, lying and corrupt witnesses and the injustice of the result in this case.

VI. Discussion

- [63] I will not repeat the principles set out earlier, other than to reiterate that whether the Court should give effect to an offer to settle is a discretionary matter, the discretion must be exercised judicially, and there are some factors set out in the Rules that the Court may consider in coming to its decision. I address those factors under the headings that follow.

Whether the Offer Ought Reasonably to Have Been Accepted

- [64] In *Hartshorne* at para. 27, the Court of Appeal suggested some further matters to consider under this factor, those being: (1) the timing of the offer; (2) whether the offer had some relationship to the claim as opposed to simply being a "nuisance offer"; (3) whether the offer could be easily evaluated; and (4) whether some rationale for the offer was provided.
- [65] Here, the offer was made very late in the proceedings. I accept that different cases have come to different conclusions about what a reasonable time would be for the consideration of an offer, with some suggesting seven days and others accepting lesser amounts of time, even just the weekend prior to trial, but "the question of what is a reasonable amount of time to consider an offer is largely driven by context": *White* at para. 11; see also *Brewster v. Li*, 2014 BCSC 463 at para. 26 and the various other cases cited therein.
- [66] The two cases cited by the defendant (*Kostinuk* and *White*) illustrate the importance of context. Both involved offers from plaintiffs in motor vehicle cases and sophisticated insurers who were evaluating the offers on behalf of defendants. In both cases there were prior offers and the plaintiffs had provided explanations or rationales for the offers made.

- [67] Here, the offer was a "bare bones" offer with no explanation or rationale offered despite the exhaustive explanation provided by the plaintiff in his own settlement offer, there were no prior offers, and there is no evidence that the plaintiff is sophisticated in legal matters of this type in the same way that an insurance adjuster or claims examiner would be.
- [68] In his oral submissions, the plaintiff said he did not learn of the offer until the Monday morning of trial. I acknowledge that this statement was not made in an affidavit, but I also note that the plaintiff was apparently living in Alberta at the time of the trial (as noted in the trial judge's reasons), and so he would have had to travel to attend the trial. Whether or not the plaintiff was in transit over the weekend I cannot say, but even if not he would have had to meet with his lawyer over the weekend, assuming that was possible, to discuss and evaluate a first-time offer that had no accompanying rationale or explanation.
- [69] Given these circumstances, the lateness of the defence offer, together with the absence of any accompanying explanation or rationale, is a factor that is strongly in favour of the plaintiff.
- [70] A further consideration is whether the offer had some relationship to the claim. The problem in this case is that the "swing" was extremely large, with the parties' respective positions being about \$1.4 million apart. While in most personal injury cases where liability is not in issue (bearing in mind that liability was very much in issue here), there may be a "somewhat predictable range of possible awards" (*Bevacqua v. Yaworski*, 2013 BCSC 29 at para. 8), the present case, with its myriad of moving parts both in terms of liability and damages, would have been very difficult to assess for settlement purposes. I note that this was all the more reason why time would be needed to evaluate a settlement offer and why it would have been preferable for the defendant to have provided an explanation or rationale for the offer.
- [71] It is only in hindsight that one can say the offer had a close relationship to the value of the claim, but hindsight is not to be used here: *Hartshorne* at para. 27. At the time the offer was made the sum offered was about 20 percent of the amount claimed. Given the many uncertainties in the case generally, I am unable to say the "relationship to the claim" factor assists either party.
- [72] Finally under this heading, the plaintiff argues that the offer was not sufficiently certain because the defendant did not forward a draft of the release it required the plaintiff to sign as a condition of settlement. Both parties cited cases in their favour, with the plaintiff citing *Degen* 2019 and *Froese*, and the defendant citing *Gill*, *Bideci* and *Gichuru*.
- [73] A close reading of these cases reveals that they turn on their individual contexts. In *Degen* 2019 the release terms had particular importance because the case was carrying on with other defendants and thus it was necessary that the release terms be known in terms of their impact on the ongoing action. In *Froese*, the defendants sought not merely a release but a release with confidentiality terms, in the context of a matter that was continuing against another party and where the released parties might be witnesses. As the court said, "In that

context, the plaintiffs were entitled to know exactly what they would and would not be able to do in compliance with the offer" (at para. 65). In *Gill*, an alleged ambiguity concerning a proposed release was rejected because the offer expressly referred to a release of parties including ICBC, thus making it clear that Part VII claims would also be released. In *Bideci*, the court found that there was no ambiguity as to who or what was being released because the parties to be released were specifically named in the offer. In *Gichuru*, the court rejected a plaintiff's argument that a straightforward offer requiring a "standard release" of the defendants was ambiguous.

- [74] In his written submissions, the plaintiff says the fact that the defendant also required a consent dismissal order should be taken to imply that there was more to the release than a simple release of claims because the consent dismissal order itself would extinguish the plaintiff's claims.
- [75] I do not accept that argument. It is common practice to finalize a settlement of a lawsuit through both a release and a consent dismissal order.
- [76] In his affidavit, the plaintiff emphasized that it was important to him that he not be constrained from speaking about the case or any settlement. The release sought as part of the offer here was "a full and final release in a form satisfactory to the defendant". The plaintiff notes that this might have meant the defendant would be including confidentiality terms in the release.
- [77] I accept that this would have been a concern to the plaintiff, but ultimately that concern is based on mere speculation. If that had been the only concern about the offer, the issue could have been easily clarified with defence counsel on the morning of trial. I do not consider the speculative concern about possible confidentiality provisions to be a sufficient basis on which to find the settlement offer to be ambiguous.
- [78] Having carefully considered all those matters, and in particular the very late delivery of the offer, I am not satisfied the offer to settle was one that ought reasonably to have been accepted.

Relationship Between the Offer and the Judgment Amount

- [79] The total judgment amount, including prejudgment interest, is \$317,795.22. In this regard, I note that prejudgement interest forms part of the judgment, but post-judgment interest does not. I mention that because the defendant paid an amount for post-judgment interest in January 2025.
- [80] The difference between the offer amount (\$335,000) and the judgment amount is \$17,204.78, or about 5.4 percent of the judgment amount. The difference is relatively small. This is a factor that is modestly in favour of the defendant.

The Relative Financial Circumstances of the Parties

- [81] The gulf between the financial circumstances of the parties is immense, but I accept the defendant's argument that the vast resources available to the government carry no significance unless these are used in a manner that distorted the litigation process, created an unfair advantage or led to unnecessary costs. I also accept that the availability of a contingency arrangement can mitigate any imbalance in the parties' financial circumstances. Although there is no direct evidence that the plaintiff had a contingency fee arrangement with his counsel, the circumstances strongly suggest this was the case. In any event, the plaintiff was able to muster what appears to be a full case with an array of witnesses, including five expert witnesses.
- [82] This consideration does not favour either party.

Other Factors

- [83] The defendant argues that the plaintiff's various forms of misconduct are matters that may be considered when pondering the exercise of discretion associated with offers to settle.
- [84] I accept the general proposition that misconduct in the course of the litigation can be properly taken into account when considering an award of costs, although typically this is reflected either in a denial of costs or an award of special costs in favour of the other party.
- [85] Here, the defendant does not argue that there should be an outright denial of costs to the plaintiff, but merely that the plaintiff's misconduct is an additional basis on which to give effect to the defendant's offer to settle.
- [86] There are two cases where misconduct has been considered in the context of an offer to settle: *TeBaerts*, which in turn cited *Witzel Capital Corp. v. LED Medical Diagnostics Inc.*, 2010 BCSC 959. In both of those cases, the question related to a plaintiff's offer to settle and whether the plaintiff should be awarded double costs in light (at least in part) of litigation misconduct of the defendant. They did not involve any question of denying costs to a successful plaintiff.
- [87] Perhaps there ought to be no difference in principle between the two scenarios, but the consequences are really quite different to a plaintiff. So even if misconduct can always be considered in the exercise of discretion associated with an offer to settle, I conclude that this must always be done bearing in mind the context of the matter and the consequences to the party.
- [88] The defendant referred to the trial judge's findings that the plaintiff overstated matters that he believed would assist him and, in another instance, knowingly provided false evidence in order to enhance his claim. I do not consider the former carries much weight; if it did, there could be many a personal injury claimant who would be at risk for an adverse costs order.

- [89] I fully accept that giving false evidence is a serious matter, yet the trial judge, knowing that the plaintiff had testified falsely on one aspect of his case, still offered the tentative view that the plaintiff should have his costs. I appreciate that the trial judge did not yet have submissions on the matter, but still, those were his initial thoughts on costs. I also bear in mind the mental health issues the plaintiff appears to have, a topic to which I will return shortly.
- [90] I turn now to the plaintiff's threats to the justice system participants. One cannot overstate the seriousness of this behaviour: this was outrageous misconduct of the worst and most extreme kind. It was behaviour that sought to strike at the core of the justice system. It was misconduct that deserves - indeed, requires - both severe rebuke and harsh sanction.
- [91] But the plaintiff was sanctioned for this behaviour through the criminal justice system, three times in fact, and each time he was given a longer jail sentence. The plaintiff spent a significant time in jail. He was also ordered to complete periods of probation of 18 months and three years, respectively, with the latter order also involving curfew restrictions and electronic monitoring for 18 months of that probation period.
- [92] These were severe sanctions and punishments. Deservedly so. However, the question now before the Court is whether the plaintiff ought to be further sanctioned by effectively reducing the amount he receives from his judgment for compensatory damages. With one exception, I conclude that this would be inappropriate because it would amount to double punishment. I will return to that exception shortly.
- [93] I also bear in mind that there are mental health issues at play here. These are apparent from both the sentencing reasons and the results from the criminal proceedings. They are also apparent from the nature and repetition of the offending itself. One sentencing judge expressly accepted that mental health issues were a factor and noted they had clearly been a factor in an earlier sentencing. These issues were also apparent from the plaintiff's presentation at this costs hearing.
- [94] The exception relates to the two emails the plaintiff sent to defence counsel on the eve of this costs hearing, which I described earlier. It is clear these emails were intended to instill in counsel an apprehension of harm at the hands of others. This was abhorrent, reprehensible behaviour on the part of the plaintiff that has not been the subject of any sanction. I conclude that an appropriate sanction for that misconduct is to deny the plaintiff any costs relating to this costs hearing.
- [95] In conclusion on this point, I do not consider it appropriate to use the already-punished misconduct of the plaintiff as an additional basis on which to give effect to the defendant's offer to settle.
- [96] For all of these reasons, and having considered the various Rule 9-1(6) factors as they apply to this case, I decline to make a costs order that gives effect to the defendant's offer to settle.

VII. Conclusion

[97] The plaintiff will have his costs of this action on the ordinary scale (Scale B), except for the costs application. There will be no costs to either party for the costs application.

"Blok J."

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