

CANADA / JUDGMENT

Katz v. Kosikar

2026 BCSC 75

COURT

Supreme Court of British Columbia

DECIDED

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2026 BCSC 75 Katz v. Kosikar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Katz v. Kosikar,

2026 BCSC 75

Date: 20260116

Docket: S228836

Registry: Vancouver

Between:

Karen Marie Katz

Plaintiff

And

Terrance Joseph Kosikar

Defendant

- and -

Docket: S234520

Registry: Vancouver

Between:

Karen Marie Katz

Plaintiff

And

Catrina M. Chisholm and Kahn Zack Ehrlich Lithwick

Defendants

Before: The Honourable Justice Shergill

Reasons for Judgment - Costs

The Plaintiff appearing in person:

K.M. Katz

The Defendant appearing in person in Action No. S228836:

T.J. Kosikar

Counsel for Defendants in Action No. S234520:

D. Rondeau

Written Submissions from Plaintiff:

August 11, 25, 2025

November 10, 12, 17, 27, 2025

Written Submissions from Defendant, Terrace Joseph Kosikar:

June 5, 2025

October 31, 2025

November 4, 2025

Written Submissions from Defendants, Catrina M. Chisholm and Kahn Zack Ehrlich Lithwick:

May 20, 2025

August 20, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 16, 2026

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I. Overview

- [1] In this application, all of the parties are seeking special or uplift costs from the opposing party, payable forthwith in any event of the cause.
- [2] The issue of costs arises from a hearing regarding Conduct of Proceedings ("Hearing"). I issued Reasons for Judgment on this matter on January 9, 2025, which are indexed at 2025 BCSC 34.
- [3] The Reasons relate to two separate proceedings commenced by Ms. Katz: the first is against Terrance Joseph Kosikar;[1] and the second is against lawyer, Catrina M. Chisholm and her law firm, Kahn Zack Ehrlich Lithwick.[2] A third action commenced by Ms. Katz against Mr. Kosikar and Camp My Way Society [3] was the subject of a consent order in which the parties agreed to it being tried with the Kosikar Action.
- [4] The Reasons arose from five chambers applications: four were brought by the Plaintiff, and one was brought by the Lawyer Defendants. The overarching purpose in the Plaintiff's four applications was to have all of her available claims against the various Defendants determined at the same time before the same judge. In contrast, the Lawyer Defendants sought a stay of proceedings, so that the claim against them could be determined separately and after all the other matters were resolved. Mr. Kosikar supported the Lawyer Defendants' Stay Application.
- [5] Ms. Katz was unsuccessful at the Hearing. I dismissed the applications brought by the Plaintiff and allowed the Lawyer Defendants' application for a stay of the Lawyer Action pending resolution of the Kosikar Action.

- [6] As the parties were unable to resolve the issue of costs, on April 23, 2025, I granted them leave to make written submissions. Not long after, both Ms. Katz and Mr. Kosikar parted ways from their respective lawyers.[4]
- [7] On May 12, 2025, Ms. Katz discontinued proceedings against: (a) Mr. Kosikar in the Kosikar Action; and (b) both Mr. Kosikar and Camp My Way Society, in the Camp Action.
- [8] In this costs hearing, Ms. Katz opposes any award of ordinary costs, special costs, or unit costs to the Lawyer Defendants or to Mr. Kosikar. Ms. Katz argues that costs should instead be awarded to her, given the conduct of the opposing parties and the circumstances of the litigation. She also argues that there is a reasonable apprehension of bias. I will begin with this latter allegation first.

II. Reasonable Apprehension of Bias

- [9] Ms. Katz asserts that she holds a reasonable apprehension of bias on the part of the Court because of events that occurred prior to, during, and following the Hearing.
- [10] In particular she alleges that she is being treated differently due to her being a self-represented litigant, having a legal disability, and being a former police officer.
- [11] Ms. Katz provides the following particulars to support her claims that she is experiencing "prejudice", "lack of integrity", and "possible corruption of [her] case file":
1. Mr. Kosikar filed a 117-page Response to Civil Claim which was improper, highly prejudicial to Ms. Katz, and which the Court had access to in advance of the Hearing.
 2. Both sets of opposing counsel made defamatory statements, improper references to nullified cases, and personal attacks against Ms. Katz during and/or after the Hearing, which has prejudiced the Court against her.
 3. The Defendants intentionally brought this Costs application before me to gain an advantage, as I ruled against Ms. Katz in the Hearing.
 4. Ms. Rondeau directly communicated with the Court in August 2025 which is improper.
 5. While making submissions on costs, Mr. Kosikar sent communications to the Court without Ms. Katz being copied, which is improper.
 6. Mr. Kosikar has been improperly trying to influence the Court by making favourable online posts about myself.
 7. Mr. Kosikar attempted to bribe the Court by delivering a box of apples to myself and posting about it online.
 8. Registry and other Court Staff have been treating Ms. Katz unfairly.

- [12] Ms. Katz has not articulated the relief she is seeking based on her allegations of reasonable apprehension of bias. Presumably, she would like me to recuse myself. If that is the case, the request is denied for the following reasons.
- [13] The test for recusal on grounds of reasonable apprehension of bias is whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that the judge's conduct gives rise to a reasonable apprehension of bias: *Coote v. British Columbia Civil Liberties Association*, 2025 BCCA 409 at para. 34, citing *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 37.
- [14] None of the elements of the test are met by Ms. Katz. The circumstances asserted by Ms. Katz are based on speculation or a misapprehension of the facts and the law.
- [15] Ms. Katz's general argument is that this Court is biased against Ms. Katz because of her personal characteristics and status as a self-represented litigant. There is no basis to this allegation. This Court is well familiar with the concept of judicial independence and impartiality. Judges are trained to understand the social context of litigants and are also trained to deal with litigants that appear without legal counsel. This Court is aware of the duty to ensure that decisions are made on the basis of admissible evidence and materials that have been put properly before the Court.
- [16] In relation to the specific allegations made by Ms. Katz, I note the following.
1. I do not find that the submissions made by opposing counsel at the Hearing were improper or have biased the Court against Ms. Katz.
 2. The simple filing of a pleading or submissions does not create grounds for a reasonable apprehension of bias. It is not unusual for the Court to review allegations made by parties which are ultimately found to be baseless. Judges are trained to disabuse themselves of information that might be inflammatory or highly prejudicial to a party.
 3. It is perfectly appropriate, and indeed required, that the parties make their costs submissions to the Justice that heard the matter for which costs are sought: see Rule 14-1 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules].
 4. There was nothing improper about the communication that Ms. Rondeau sent to the Court. The impugned communication addressed legitimate concerns and was copied to Ms. Katz. Ms. Katz had full opportunity to respond to the concerns raised and indeed, took advantage of that opportunity in her August submissions.
 5. This Court has not received any improper communication from Mr. Kosikar. Mr. Kosikar's costs submissions were submitted in June 2025 in full compliance with the timelines set out by the Court. After learning of Ms. Katz's concern that Mr. Kosikar had not provided a copy of this submission to Ms. Katz, the Court directed Mr. Kosikar to send or re-send the materials to Ms. Katz with proof of service. I am satisfied that Mr. Kosikar complied with this

direction. Ms. Katz had full opportunity to review Mr. Kosikar's submissions and provide her Reply. She chose not to do so. Instead, she returned his submissions unread and refused to accept delivery of the Court's October and November Memorandums which addressed this concern[5].

6. The Court was not aware of any online posts made by Mr. Kosikar until Ms. Katz referenced them in her materials. At no time did Mr. Kosikar, either directly or indirectly, alert the Court that he had made social media posts about this case. In any event, there is nothing in the posts attached to Ms. Katz's materials that would cause this Court to be biased against Ms. Katz and in favour of Mr. Kosikar.
7. Ms. Katz's submission that Mr. Kosikar tried to bribe the Court by sending apples is false. The Court did not receive any apples from Mr. Kosikar nor any indication that he would be sending apples.
8. There is no evidence to support the allegations that Registry staff are treating Ms. Katz differentially.

[17] In conclusion, there is no basis on which a reasonable person who is aware of the facts would consider that the Court is biased against Ms. Katz.

[18] The application for recusal on grounds of bias or otherwise, is dismissed.

III. Is there a Reason to Depart from the General Rule Regarding Costs?

[19] I now turn to the main crux of this application - whether there is any basis to veer from the general rule that costs follow the event and are payable to the successful party at the conclusion of the proceeding.

[20] All the parties urge me to depart from this general rule by awarding them special costs payable forthwith, and in any event of the cause.

[21] The relevant provisions are set out in Rule 14-1 as follows:

Costs to follow event

- (9) Subject to subrule (12), costs of a proceeding must be awarded to the successful party unless the court otherwise orders.

Costs of applications

- (12) Unless the court hearing an application otherwise orders,
- (a) if the application is granted, the party who brought the application is entitled to costs of the application if that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is not entitled to costs even though that party is awarded costs at trial or at the hearing of the petition, and

- (b) if the application is refused, the party who brought the application is not entitled to costs of the application even though that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is entitled to costs if that party is awarded costs at trial or at the hearing of the petition.

When costs payable

- [13] If an entitlement to costs arises during a proceeding, whether as a result of an order or otherwise, those costs are payable on the conclusion of the proceeding unless the court otherwise orders.
- [22] The combined effect of these provisions is that costs will generally be awarded to the successful party in the cause, unless the court otherwise orders.
- [23] In *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 74, the Court noted the following purposes for costs awards:
1. indemnify the successful party;
 2. deter frivolous actions or defences;
 3. encourage conduct that reduces the duration and expense of litigation and discourage conduct that has the opposite effect;
 4. encourage litigants to settle whenever possible, thus freeing up judicial resources for other cases; and
 5. serve a "winnowing function" in the litigation process by:
 - i. requiring litigants to make a careful assessment of the strength or weakness of their cases at the commencement and throughout the course of the litigation; and
 - ii. discouraging the continuance of doubtful cases or defences.
- [24] I now turn to address the issues.

A. Costs to the Defendants as Successful Parties

- [25] There is no dispute that the Lawyer Defendants and Mr. Kosikar were the successful parties in the Hearing. By operation of the general rule, they are entitled to their costs. The question is whether Ms. Katz has shown a sufficient basis to depart from this general rule and deprive them of their costs.
- [26] The court has discretion to depart from the general rule regarding costs, though that discretion must be exercised judiciously: *Culos Development (1996) Inc. v. Baytalan*, 2024 BCSC 1634 at para. 7.

- [27] The court should only depart from the general rule when special circumstances exist: *JM Bay Properties Inc. v. Tung Cheng Yuen Buddhist Association*, 2025 BCSC 2281 ("JM Bay") at para. 31, citing *Sutherland v. Attorney General of Canada*, 2008 BCCA 27 at para. 26.
- [28] In determining whether a successful party should be deprived of its costs, the court should consider the following factors: misconduct in the course of the litigation; a failure to accept a formal offer to settle; and where the court rules against a successful party on one or more issues that took a discrete amount of time at trial: *JM Bay* at para. 32, citing *Loft v. Nat*, 2014 BCCA 108 at para. 49.
- [29] Where the court finds it appropriate to depart from the general rule, it may order a portion of a substantially successful party's costs, or order costs in respect to identifiable issues or for only part of the proceeding: *JM Bay* at paras. 34-40.
- [30] Ms. Katz submits that the Lawyer Defendants' success at the Hearing does not automatically entitle them to costs under Rule 14-1(9) and (12). Rather the Court should have regard to: (1) the reason for the litigation; (2) the parties' conduct in the litigation; (3) her personal circumstances which make the costs award unjust; and (4) the financial impact of the costs award which would create hardship.
- [31] Ms. Katz raises factors beyond those required by the authorities. Nevertheless, I have addressed her arguments for the sake of completeness.
- [32] Simply because the litigation was provoked by Ms. Chisholm's alleged negligence does not mean that the Lawyer Defendants should be denied their costs of the Hearing. It remains to be proven if the Lawyer Defendants did indeed commit the wrongful acts that the Plaintiff complains of. If they did, then the costs of the Lawyer Action may very well be awarded to the Plaintiff as the successful party. This issue before me relates to an interim application which Ms. Katz lost.
- [33] Insofar as the interim applications are concerned, there is no basis to conclude that the Stay Application brought by the Lawyer Defendants was ill-conceived. Nor do I find the position taken by the Lawyer Defendants on the Plaintiff's four applications was unreasonable, given the circumstances that existed at the time.
- [34] I also reject Ms. Katz's argument that the Court should depart from the usual rule on costs based on the "public interest litigation" exception because it is in the interest of the public to bring negligence cases against lawyers. I disagree. The public interest litigation exception applies to cases that engage issues beyond the immediate interests of the parties involved: *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at paras. 250-252, citing *Guide Outfitters Association v. British Columbia (Information and Privacy Commissioner)*, 2005 BCCA 368 at paras. 4, 8. That is not the case here.

- [35] I turn to the second argument raised by Ms. Katz, that the Lawyer Defendants should be deprived of their costs of the Hearing because they breached procedural rules and engaged in conduct deserving of rebuke. Ms. Katz relies on the following authorities to support this proposition: McMahon v. Harper, 2017 BCSC 2328 and MOBE Ltd. v. Loudoun, 2017 BCSC 1873.
- [36] Ms. Katz submits that Ms. Chisholm's counsel (Ms. Rondeau) and Mr. Kosikar's counsel (Ms. Qamar) collectively acted improperly by breaching the Rules. For example, they repeatedly failed to comply with Rule 7-1 regarding document disclosure. This caused her significant expense and prejudiced her position. Consequently, this conduct should disqualify the Lawyer Defendants from recovering costs from Ms. Katz. The evidence does not support such a finding.
- [37] The cases relied on by Ms. Katz are also factually different than the case at bar and do not support Ms. Katz's position. Although a failure to include certain documents was at issue in McMahon, the Court was considering whether to award special costs, not whether to deprive a successful party of their costs. Ms. Katz's application goes beyond seeking special costs - she is also seeking to deprive the Defendants of costs they are otherwise entitled to. Further, no abuse of process on the part of the Defendant's has occurred in this case.
- [38] MOBE Ltd. was an application to strike the defendant's pleadings. The Court found that the refusal to produce documents was reprehensible conduct justifying an award of special costs: MOBE Ltd. at para. 36. However, the Court had made three different document production orders, which the defendant's had failed to meaningfully comply with. Moreover, the trial was two weeks away: MOBE Ltd. at paras. 12, 28.
- [39] Ms. Katz's third argument is that a costs award would be unjust given her personal circumstances, which are as follows:
- o She has been unable to read the earlier reasons for judgment because doing so made her "physically and mentally sick".
 - o Ms. Katz cannot have any contact with Ms. Rondeau because it would create a risk to her reputation, health, and wellbeing.
 - o Ms. Katz is not technologically literate.
- [40] Even if the above assertions were true, I do not consider them sufficient reasons to deprive the Defendants of their costs of the Hearing. These factors support Ms. Katz's request for accommodation due to her disability and not to the merits of the costs award. She was given such accommodation both in terms of being granted additional time to prepare and file her submissions on costs, and her desire not to have an in-person costs hearing.
- [41] I turn to the final argument regarding hardship.

- [42] Ms. Katz submits that she will suffer financial hardship as she is retired, financially unsophisticated, and lives on a modest pension. In contrast, the Lawyer Defendants have a greater ability to bear costs than the Plaintiff as they are indemnified by the Lawyers Indemnity Fund.
- [43] Financial hardship experienced by an unsuccessful litigant in a civil proceeding is not sufficient reason to deprive a successful litigant of a costs award: *Briante v. Vancouver Island Health Authority*, 2017 BCCA 148 at paras. 211-214, leave to appeal to SCC ref'd, 37595 (28 September 2017).
- [44] The purpose of a costs award weighs heavily in favour of granting costs to the Lawyer Defendants. The "winnowing" function of a costs award is particularly relevant. It is important to reinforce the need for parties to carefully assess the merits of their position before embarking on a particular course of action. The Plaintiff's actions during and after the release of the Reasons reveal the importance of this consideration.
- [45] The Plaintiff made several concessions during the Hearing which, if they had been made beforehand, could have shortened the amount of court time and resources expended. Further, Ms. Katz's decision to discontinue the proceeding against Mr. Kosikar resulted in an enormous waste of resources. Had she discontinued that action prior to the Hearing, the parties would not have needed to bring the Joint Trial Application, the Applications to Add Parties, or the Stay Application. This would have avoided the enormous costs and resources expended in preparation and attendance at the Hearing.
- [46] I conclude that the Lawyer Defendants should not be deprived of their costs of the Hearing.
- [47] I come to a similar conclusion regarding Mr. Kosikar, who should be indemnified for the costs of a Hearing in an action that was subsequently discontinued against him. In coming to this conclusion, I specifically reject the arguments that have been advanced by Ms. Katz regarding her entitlement to special costs against Mr. Kosikar for what she refers to as his "heinous and egregious" pre-hearing conduct, such as her allegations of:
1. Litigation related misconduct including:
 - i. filing a 117-page Response to Civil Claim which was "highly prejudicial" to Ms. Katz;
 - ii. refusing to disclose documents even though he had access to Ms. Katz's documents, which created an unfair advantage; and
 - iii. failing to amend his Response to Civil Claim.
 2. Other wrongful acts including:
 - i. breaching his fiduciary duties by accepting money from Ms. Katz when he believed she was interested in him romantically;
 - ii. taking advantage of Ms. Katz's disabilities;

- iii. threatening Ms. Katz; and
- iv. engaging in a campaign of defamation against Ms. Katz.

- [48] I do not consider the litigation-related allegations to be sufficient basis to deprive Mr. Kosikar of his costs of the Hearing. Further, none of the wrongful acts complained of have been proven.
- [49] In summary, there is no reason to deprive either the Lawyer Defendants or Mr. Kosikar of their costs of the Hearing.

B. Costs in any event of the Cause

- [50] I now turn to the Defendants request to have costs payable forthwith, in any event of the cause.
- [51] In *Martel v. Wallace*, 2008 BCSC 436 at para. 28, the Court noted that costs may be made payable in any event of the cause: (a) to deter unnecessary or unreasonable conduct in the proceedings; (b) if it is unlikely that the matter will proceed to trial; or (c) if the motion deals with discrete issues that are severable from the remaining claims.
- [52] The presence of discrete issues on their own is not enough to justify departing from the general rule: *British Columbia (Securities Commission) v. Brar*, 2023 BCSC 1715 at para. 14.
- [53] I have already commented on the importance of the first *Martel* factor when discussing Ms. Katz's late in the day concessions and the Notice of Discontinuance in the *Kosikar Action*.
- [54] In terms of the second *Martel* factor, the discontinuance of the *Kosikar Action* also makes it unlikely that the matter against Mr. Kosikar will proceed to trial. Consequently, it is appropriate to award Mr. Kosikar costs of the Hearing in any event of the cause, payable forthwith.
- [55] In coming to this conclusion, I have considered Ms. Katz's argument that:
1. While the *Kosikar Action* has been discontinued, the *Chisholm Action* is ongoing so it would be more appropriate to award costs to the Defendants once it has been resolved.
 2. On June 17, 2025, the Lawyer Defendants obtained an order from Associate Judge Robertson to add Mr. Kosikar as a Third Party to the *Lawyer Action*.
- [56] While these considerations are relevant, they are not sufficient to overcome the third *Martel* factor as it relates to Mr. Kosikar's claim for costs. First, all five applications (Joint Trial Application, the Applications to Add Parties, and the Stay Application) raised discrete issues that are severable from the remaining claims. Second, the *Kosikar Action*, which has been discontinued, is distinct from the *Chisholm Action*, which is ongoing. This does not change even if Mr. Kosikar has been added to the *Chisholm Action* as a Third Party.

- [57] In summary, I am satisfied that Mr. Kosikar should be awarded his costs of the Hearing payable forthwith, in any event of the cause.
- [58] I come to a different conclusion in relation to the Lawyer Defendants, for several reasons.
- [59] First, the underlying lawsuit against the Lawyer Defendants remains outstanding. If Ms. Katz succeeds in her claim of professional negligence, it would be unjust for her to have to pay the costs of the interlocutory application: Brar at para. 16. This is particularly so when one considers the addition of Mr. Kosikar as a Third Party.
- [60] Second, the Lawyer Defendants' decision to add Mr. Kosikar as a Third Party achieves the goal that Ms. Katz was pursuing when she brought the Joint Trial Application, the Applications to Add Parties, and opposed the Stay Application. She was effectively trying to ensure that all the matters were determined at the same time before the same judge. Even if the Lawyer Defendants' Third Party Notice was motivated by Ms. Katz's late in the day discontinuance of the Kosikar Action, it adds additional colour and complexity to the issues which weighs in favour of making the usual costs award of costs in the cause.
- [61] In coming to this conclusion, I have considered Ms. Katz's argument that the Lawyer Defendants should not be entitled to costs for Ms. Katz's application to add Mr. Kosikar as a party to the Lawyer Action because they also filed a similar application to add Mr. Kosikar to the Lawyer Action as a Third Party. I do not agree. There is a material difference between a Third Party and a party to a proceeding, as reflected by Rule 3-5 and Rule 6-2.
- [62] The request for the Lawyer Defendants to have the costs of the Hearing payable forthwith in any event of the cause, is dismissed. The Lawyer Defendants are awarded their costs of the Hearing in the cause.

C. Costs of the Plaintiff's Document Production Application

- [63] The Lawyer Defendants also seek costs of the Plaintiff's Document Production Application. This application came before Associate Judge Bilawich in June 2024. Associate Judge Bilawich adjourned the Document Production Application and ordered that it not be reset for hearing until after the Stay Application was determined on its merits.
- [64] I see no basis to make a costs award for the Document Production Application. The Rules make it clear that if an order is silent as to costs, then Rule 14-1(12) applies "unless the court hearing an application otherwise orders". No such order was made by Associate Judge Bilawich.
- [65] If the Lawyer Defendants wanted their costs of the court attendance before Associate Judge Bilawich, then they should have raised the matter with him. The Lawyer Defendants have provided no explanation for why they did not do that, or why they believe that I have jurisdiction to address this issue over that of Associate Judge Bilawich who heard the application.

[66] The Lawyer Defendants' request for costs of the Plaintiff's Document Production Application is dismissed.

D. Special Costs

[67] I now turn to the Defendants' request for special costs of the Hearing.

[68] An award for special costs is discretionary. At issue is "whether the party against whom costs are awarded has engaged in reprehensible conduct or conduct that is deserving of reproof or rebuke": *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 ("Westsea") at paras. 27-37, citing *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (B.C.C.A.).

[69] Special costs are punitive in nature rather than compensatory. The aim behind a special costs award is to deter misconduct: *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc.*, 2020 BCCA 69 at para. 42, leave to appeal to SCC ref'd, 39145 (1 October 2020).

[70] The kinds of conduct that can attract an award of special costs was summarized in *Wang v. Jiang*, 2020 BCSC 1761 at para. 17, as follows:

- acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation;
- dissipating and/or not disclosing assets;
- abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules in a manner that prejudices the other party;
- misleading the court, through outright fabrications or through evasive and/or equivocal responses; and
- disobeying a court order.

[71] In *Westsea* at para. 73, Justice Gropper summarized the principles that apply for determining special costs:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;

- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.

[72] I will first address the Lawyer Defendants' claim for special costs.

1. Lawyer Defendants

[73] The Lawyer Defendants seek special or "uplift" costs in both actions, payable forthwith and in any event of the cause. They also ask that the costs be assessed summarily, as follows: special costs of about \$41,300, or alternatively, uplift costs of approximately \$10,400.

[74] They assert that the Plaintiff's litigation conduct was reprehensible or deserving of rebuke because of:

1. numerous duplicative, meritless, and tactical applications aimed at obtaining the Lawyers' file;
2. abuse of process by seeking to add parties for discovery purposes;
3. unreasonable opposition to the Stay Application, despite its obvious merit;
4. changing positions repeatedly, abandoning applications late, and causing wasted time and expense; and
5. continuing to reference inadmissible Law Society complaint material and making unfounded allegations of negligence and misconduct.

[75] According to the Lawyer Defendants, this conduct falls within the spectrum of misconduct warranting special costs: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 57; *Nazari v. El Assal*, 2024 BCSC 1018 at para. 10.

[76] I am not prepared to accede to the Lawyer Defendants' position. While Ms. Katz's conduct during the litigation may ultimately be deemed worthy of a special costs award, it is premature to make that assessment in the context of a claim for costs of the Hearing. I say this for the following reasons.

[77] First, at least some, if not most, of the misconduct complained of relates to Ms. Katz's overall actions during the litigation, rather than the narrow parameters of the applications that were determined by me. The main thrust of the Lawyer Defendants' argument is that Ms. Katz's conduct "must be judged wholistically, in the context of all that has occurred".^[6] This is precisely why the special costs application cannot succeed at this stage. Those global allegations of misconduct are more appropriately raised at the conclusion of this proceeding for a claim for special costs of the proceeding rather than for this Hearing.

- [78] Second, the matters complained of that are directly connected to the Hearing, on their own, do not rise to the level required for an award of special costs. This includes the complaint that Ms. Katz changed positions repeatedly during the Hearing or abandoned applications late. While that was no doubt frustrating, I am not prepared to find at this time that it was reprehensible conduct worthy of rebuke.
- [79] Third, this litigation is far from over. It may be that as matters progress Ms. Katz's conduct during this hearing is seen in a different light. As an example, the Lawyer Defendants' application to have Mr. Kosikar added as a Third Party to their proceeding casts a different light on the positions taken by the parties during the Hearing. This does not mean that the Lawyer Defendants' Stay Application was unreasonable or that Ms. Katz's opposition to it was reasonable - it simply underscores the need for restraint and to let the litigation run its course before determining the issue of special costs of this Hearing.
- [80] Finally, even if I was inclined to award special costs to the lawyers, Ms. Katz would be entitled to reviewing their files before an assessment was made. The Lawyer Defendants resist such a move, on the grounds that the litigation is still ongoing and they are not prepared to waive privilege. The Lawyer Defendants cannot have it both ways: use the prospect of ongoing litigation to shield their files from review for an assessment of special costs, while at the same time pushing to have the assessment done without giving the Plaintiff a fair opportunity to defend against the claim.
- [81] As such, I consider it more appropriate for the issue of special costs of this Hearing to be determined at the conclusion of Lawyer Action along with the costs of the proceeding.
- [82] I come to a similar conclusion on the question of uplift costs.
- [83] The Lawyer Defendants seek uplift costs as an alternative relief, citing "unusual circumstances" that would make the standard tariff costs "grossly inadequate": *Ding v. Canam Super Vacation Inc.*, 2024 BCCA 102 at paras. 210-212.
- [84] I do not find it appropriate to accede to this request, for the same reasons as outlined above in my rejection of the claim for special costs.
- [85] In conclusion, the Lawyer Defendants' request for special costs of the Hearing is dismissed, without prejudice to their ability to raise Ms. Katz's conduct at the Hearing to support any claim made for special costs at the conclusion of the entire proceeding.
2. Kosikar
- [86] Like the Lawyer Defendants, Mr. Kosikar seeks special or "uplift" costs in both actions, payable forthwith and in any event of the cause. He also asks that the costs be assessed summarily, as follows: special costs of approximately \$34,000, or uplift costs approximating \$6,800. Both figures include disbursements and taxes.

[87] Mr. Kosikar advances similar arguments as the Lawyer Defendants. He contends the Plaintiff's conduct was unreasonable and tactical for various reasons, including:

1. bringing meritless and duplicative applications;
2. attempting to add parties for collateral purposes (to obtain documents);
3. changing positions repeatedly and abandoning applications late, causing wasted time and expense.

[88] Consequently, Mr. Kosikar submits that this conduct is "reprehensible" under the continuum described in *Smithies Holdings Inc.* (and related authorities) and warrants an award of special costs.

[89] The main difference between Mr. Kosikar's position and that of the Lawyer Defendants, is that the lawsuit against him has been discontinued. This is the basis upon which I have determined that Mr. Kosikar is entitled to his costs of the Hearing payable forthwith, in any event of the cause. However, I am not swayed that Ms. Katz's conduct in relation to the Hearing or her position taken in the applications warrants an award of special costs. In the event that Mr. Kosikar seeks costs of the discontinued proceeding, that would be the appropriate time to make a determination for a special costs award.

[90] In conclusion, Mr. Kosikar's request for special costs of the Hearing is dismissed without prejudice to his ability to raise Ms. Katz's conduct at the Hearing to support a claim for special costs of the discontinued proceeding.

IV. Fixed Costs

[91] The Defendants have provided a draft Bill of Costs and have asked this Court to fix the costs award. The Plaintiff raises significant concerns about the Bill of Costs, including the lack of evidentiary basis for the tariff items claimed and the disbursements that are being sought.

[92] Rule 14-1(15) permits the court to award costs of a proceeding and to fix the amount of costs, including the amount of disbursements.

[93] In *Gichuru v. Smith*, 2014 BCCA 414, leave to appeal to SCC ref'd [2014] S.C.C.A. No. 547, one of the issues on appeal was the summary assessment of a costs award made by the trial judge. In setting aside the assessment of special costs, the Court stated as follows at para. 154:

The decision to fix the quantum of costs under R. 14-1(15) is a matter of judicial discretion that should be sparingly exercised. The court officer best placed to conduct an assessment is usually the registrar, whose knowledge and experience in assessing legal bills is extensive and seldom matched by that of a trial judge. An exception may arise in cases when the judge is intimately familiar with the litigation or the time and cost of a registrar's hearing cannot be justified or where the parties consent. The fact that a judge has heard the trial does not necessarily lead to the conclusion that the best use of judicial resources is for the judge to assess costs. A concern

that a party who might have to pay costs will prolong the costs assessment by requiring a microscopic review of the services provided by counsel must be balanced against the right of that party to challenge the reasonableness of the proposed costs.

[94] The conclusions of the Court in *Gichuru* are apt in this case.

[95] Registrars routinely assess costs for matters that have gone to trial. Aside from being the chambers judge, I have no special familiarity with this case such that it would be a better use of resources for me to assess costs rather than to have the Registrar, whose expertise is to assess costs, deal with the matter.

[96] As noted in *Kemp v. Vancouver Coastal Health Authority Ltd*, 2016 BCSC 1541 at para. 51, the decision to fix costs is discretionary, and the discretion is to be used sparingly. The circumstances in this case do not warrant the exercise of my discretion to assess costs summarily.

[97] The request for costs to be fixed is dismissed, and this matter is remitted to the Registrar for assessment of costs.

V. Personal Costs Against Ms. Katz's Former Counsel

[98] Ms. Katz submits that if she is required to pay costs, these should be borne personally by her former lawyer under Rule 14-1(33) for acting contrary to instructions and causing unnecessary expense.

[99] Ms. Katz cites the following authorities in support of this position: *Nazmdeh v. Spraggs*, 2010 BCCA 131; *Young v. Young*, [1993] 4 S.C.R. 3, 1993 CanLII 34 (S.C.C.); and *Quebec (Director of Criminal and Penal Prosecutions) v. Jodoin*, 2017 SCC 26.

[100] Ms. Katz submits that the following actions on the part of her former counsel, Mr. MacDonald, justify an order for costs to be borne personally by him:

- he refused to discontinue the Kosikar action;
- he brought applications against Ms. Katz's wishes; and
- when the Hearing lasted longer than it was originally scheduled for, Mr. MacDonald attended the additional day and a half even though Ms. Katz asked him not to because she could not afford it.

[101] Ms. Katz submits that she believed that her retainer agreement required her to take counsel's advice, including the decision to oppose the Stay Application and to make the other applications. Presumably, if she had known she could refuse her counsel's advice, then she could have avoided making any applications.

[102] I am not prepared to grant the relief sought by Ms. Katz within the context of this application. Her former counsel has not had proper notice of this application, the Lawyer Defendants do not seek costs against the Plaintiff's former counsel, and the evidentiary

record is insufficient for me to conclude that the former lawyer is to blame for Ms. Katz's changed positions during the Hearing. In such circumstances, it is appropriate to make a costs award against Ms. Katz without prejudice to her ability to seek indemnity from her former legal counsel, Mr. MacDonald.

[103] If the Plaintiff wishes to seek indemnity for her costs from her former legal counsel, then she will need to do that by bringing a separate application with notice to him.

[104] The Plaintiff's request for her costs award to be borne by her former legal counsel is dismissed. The costs award against Ms. Katz is made without prejudice to her ability to seek indemnity from her former legal counsel, Mr. MacDonald, at a later date.

[105] In the event that Ms. Katz does bring an application to be indemnified by Mr. MacDonald for her costs award I am not seized of it.

VI. Costs to Ms. Katz

[106] In light of my above conclusions, it should be self-evident that I do not find any basis to award costs of the applications to Ms. Katz, either against the Lawyer Defendants, Mr. Kosikar, or their collective legal counsel.

[107] In relation to the latter, Ms. Katz submits that Ms. Rondeau engaged in the following conduct which was "unbecoming":

- failing to respond to requests for documents;
- wasting the court's time;
- dishonestly portraying Ms. Katz and thereby damaging the Plaintiff's reputation;
- filing unnecessary applications, such as an application seeking document disclosure. This would not have been necessary if Ms. Rondeau had followed the Rules. Therefore, Ms. Katz should not be responsible for the cost of this application;
- Ms. Rondeau should have used junior counsel, rather than senior counsel, to save on costs. Ms. Katz should not be responsible for the increased cost of paying senior counsel; and
- the lawyers breached Ms. Katz's privacy by sharing her address, entitling her to special costs.

[108] Ms. Katz also makes allegations against Ms. Qamar, as follows:

- for wasting the court's time dishonestly portraying Ms. Katz;
- because Ms. Qamar "simply copied" Ms. Rondeau's work, so Ms. Katz should not have to pay costs for this duplication; and
- because the lawyers breached Ms. Katz's privacy by sharing her address, entitling her to special costs.

[109] Ms. Katz argues that special costs or uplift costs should be awarded in her favour and borne personally by the Defendants' lawyers. She relies on the following authorities: *Raven v. A&W Ranching Ltd.*, 2016 BCSC 2360; and *Nazerali v. Mitchell*, 2016 BCSC 2424.

[110] I do not find Ms. Katz's arguments on this point persuasive. There is no basis to grant her an award of ordinary costs of the Hearing, let alone special or uplift costs.

[111] Ms. Katz's request to have the costs award made against her, payable by Ms. Rondeau or Ms. Qamar, is dismissed.

VII. Summary of Orders Made

[112] The following is a summary of the orders made pursuant to these Reasons:

1. The Plaintiff's recusal application is dismissed.
2. Mr. Kosikar is entitled to costs of the Hearing payable forthwith, in any event of the cause.
3. The Lawyer Defendants' application for costs of the Hearing payable forthwith, in any event of the cause, is dismissed. The Lawyer Defendants' are awarded costs of the Hearing in the cause.
4. The Lawyer Defendants' application for costs of the Plaintiff's Document Production Application, is dismissed.
5. The Lawyer Defendants' application for special costs of the Hearing is dismissed, without prejudice to their ability to rely on Ms. Katz's conduct at the Hearing to support any claim made for special costs at the conclusion of the entire proceeding.
6. Mr. Kosikar's application for special costs of the Hearing is dismissed, without prejudice to his ability to rely on Ms. Katz's conduct at the Hearing to support a claim for special costs for the discontinued Kosikar Action.
7. The Defendants' application for fixed costs is dismissed.
8. Costs awarded in this application are remitted to the Registrar for assessment.
9. The Plaintiff's application for her former legal counsel to indemnify her for the costs award is dismissed, without prejudice to her ability to bring an application seeking indemnity from her former legal counsel, Mr. MacDonald. I am not seized of any such application.
10. The Plaintiff's application for costs, payable by the Defendants' lawyers, is dismissed.

[113] Given the mixed result, each party is to bear their own costs of this costs application.

"Shergill J."

[1] SCBC Action No. S-228836, Vancouver Registry; referred to as the "Kosikar Action".

[2] SCBC Action No. S-234520, Vancouver Registry, referred to as the "Lawyer Action". The Defendants in this action are collectively referred to as the "Lawyer Defendants".

- [3] SCBC Action No. S-233949, Vancouver Registry; referred to as the "Camp Action".
- [4] Ms. Katz filed her Notice of Intention to Act in Person in all three actions, on May 12, 2025. Mr. Kosikar's legal counsel withdrew on May 28, 2025.
- [5] I issued four Memorandums to the parties on matters related to costs: April 23, 2025; May 29, 2025; October 28, 2025; and November 21, 2025.
- [6] Written Submissions of Lawyer Defendants at para. 5.
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