

CANADA / JUDGMENT

Neustaeter v. Woroniuk

2020 BCSC 273

COURT

Supreme Court of British Columbia

DECIDED

28 February 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 273 Neustaeter v. Woroniuk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Neustaeter v. Woroniuk,

2020 BCSC 273

Date: 20200228

Docket: 55160

Registry: Kamloops

Between:

Keturah Anne Neustaeter

Plaintiff

And

Anita Woroniuk, Richard Woroniuk, Matthew Landrie,

Marti Landri, Michael Landri, Michelle Eye, Larry Eye

and Canadian Road Management Company

Defendants

Corrected Judgment: The text of the judgment was corrected at
para. 40 on May 27, 2022

Before: Master J.M. Keim

as Registrar

Reasons for Judgment on Costs

Counsel for the Plaintiff:

E.C. Hughes

Counsel for the Defendants:

T.J. Decker

Place and Date of Hearing:

Kamloops, B.C.

November 21, 2019 &

January 6, 2020

Place and Date of Judgment:

Kamloops, B.C.

February 28, 2020

[1] This is an assessment of costs following settlement of the plaintiff's claim against the defendants arising from injuries the plaintiff sustained in a motor vehicle accident that occurred on July 18, 2016. The notice of civil claim was filed October 20, 2017 and a response was filed June 11, 2018 denying liability.

[2] The plaintiff claimed damages for:

- a. Concussion;
- b. Injury to her neck and back;
- c. Injury to her shoulders;
- d. Headaches;
- e. Dizziness;
- f. Cognitive impairment, including difficulties with concentrating, multitasking and short term memory;
- g. Fatigue;
- h. Emotional upset;
- i. such other injuries as may be advised;

[3] The matter was set for a ten-day trial, to commence October 21, 2019. That trial date was adjourned on September 16, 2019 at a trial management conference when the parties were ordered to reset the trial for a 12-day trial to allow sufficient time to complete the matter.

- [4] Following the trial adjournment, the parties reached a settlement in both this action and action number 55213 (Part 7 benefits action) on October 23, 2019 for \$103,209.44, plus taxable costs and disbursements.
- [5] Many tariff items and some disbursements are at issue in this assessment. After the first day of submissions, the plaintiff submitted an amended bill of costs to address a re-allocation of tariff items. Submissions from both counsel were based on the items as set out in the amended bill of costs. Both counsel provided several helpful authorities as referenced throughout this decision. I have reviewed all of the provided cases. Many of the case authorities were provided to deal with specific submissions on specific tariff items.
- [6] Both counsel referenced the applicable law as set out in the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Civil Rules] in Rule 14-1 and Rule 1-3. Subrule 14-1(2) reads:

Assessment of party and party costs

- (2) On an assessment of party and party costs under Appendix B, a registrar must
- (a) allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding, and
 - (b) consider Rule 1-3 and any case plan order.
- [7] Rule 1-3 which sets out the object of the Civil Rules reads:

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
- (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.
- [8] With respect to disbursements, subrule 14-1(5) provides:

Disbursements

- (5) When assessing costs under subrule (2) or (3) of this rule, a registrar must
- (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and

(b) allow a reasonable amount for those disbursements.

[9] Thus, an assessment of costs involves determining which expenses have been necessarily or properly incurred and whether or not the amount claimed is reasonable and proportionate within the overall context of the action.

TARIFF ITEMS

[10] The parties agreed on the following tariff items:

Tariff Item 2 - 15 units;

Tariff Item 19 - 3 units;

Tariff Item 20 - 5 units;

Tariff Item 29 - 2 units;

Tariff Item 30 - 4 units;

Tariff Item 34 - 5 units;

Tariff Item 40 - 1 unit;

Tariff Item 44 - 5 units.

[11] In dispute are tariff items 1, 6, 10, 11, 17, 18, 31 and 32.

Tariff Item 1

[12] The plaintiff seeks 5 units. The maximum is 10 units. The defence position is that 2 to 3 units would be appropriate as there is little evidence as to the actual work product that was done during that time period.

[13] However, the affidavit evidence details the type of investigations and correspondence that were undertaken between the time that the plaintiff's counsel was retained in September 2016 and the commencement of the proceeding in November 2017.

[14] Plaintiff's counsel referred to Gibson v. Mihalcheon, 2018 BCSC 35 for the proposition that the mid-range of units is appropriate unless evidence is led to the contrary. In that case, the file was open for approximately 14 months prior to the filing of the notice of civil claim and Master McDiarmid allowed 5 units. Defence counsel noted that Gibson involved a settlement of \$736,807.00 and, therefore, is presumed to be a more complex case requiring more work.

[15] The accident in this matter involved several vehicles which led to the inclusion of multiple defendants. I am satisfied that sufficient work was undertaken to investigate the circumstances and communicate with the various parties during this time period to justify the 5 units as sought.

Tariff Item 6

- [16] The plaintiff seeks 4 units. The maximum is 10 units. The defendants submit that 3 units would be more appropriate.
- [17] The plaintiff submits that the pleadings were not merely boilerplate as there were several vehicles involved in the accident which resulted in multiple defendants being named. The plaintiff relied on *Senner v. GE Canada Leasing Services Company*, 2018 BCSC 1256 and noted that in that case Master McDiarmid allowed 5 units for the pleadings as he found that only part of the pleadings constituted "boiler plate" material and that an amended notice of civil claim was required (para. 25).
- [18] Defence counsel submits that the pleadings are in the nature of a pro forma boilerplate and were repetitious as against each defendant and, therefore, did not require any particular drafting skill.
- [19] I am satisfied that the pleadings themselves did not evidence detailed specifics for the multiple defendants and, therefore, award 3 units for this tariff item.

Tariff Item 10

- [20] Both parties agree that this tariff item falls under 10(a) given the number of documents. The plaintiff seeks 4 units. The maximum is 10 units. The defence position is that I should allow 2 units.
- [21] The defendants provided both a list of documents and an amended list of documents. In total there were 43 documents listed and it is clear that this was not a document-heavy file.
- [22] I am satisfied that 3 units are appropriate.

Tariff Item 11

- [23] Both parties agree that this tariff item falls under 11(a) given the number of documents. The plaintiff seeks 5 units. The maximum permitted is 10 units. The defence position is that 2 units would be appropriate.
- [24] The plaintiff produced both a list of documents and an amended list of documents. Although the total number of documents is relatively low, the multiple page count for most documents raises the amount of time and effort that was necessary to review and produce the documents. I award 4 units for this tariff item.

Tariff Item 17

- [25] The plaintiff seeks 6 units. The maximum is 10 units. Defence submits that 4 units are appropriate. Both counsel refer to *Senner* in support of their position. Plaintiff's counsel notes that in para. 36 Master McDiarmid allowed 8 units for this item as there were numerous experts utilized. Defence counsel notes that *Senner* involved a judgment of \$700,000.00 which signals increased complexity of the injuries and issues before the court. Further, counsel noted that in *Senner*, 18 reports were produced by the multitude of experts,

while in the case before me, there were eight reports issued by seven experts.

- [26] I am satisfied that the mid-range of the scale is appropriate and award 5 units for this tariff item.

Tariff Item 18

- [27] The plaintiff seeks 10 units which is the allowable maximum. The defence position is that 3 units are appropriate.
- [28] The plaintiff seeks the maximum number of units for this tariff item as the defendants listed 17 lay witnesses on their trial brief witness list, and the plaintiff undertook significant work in attempting to contact all the witnesses in order to be prepared for trial. Counsel referred to Gibson in support of their submission as Master McDiarmid awarded 6 units for seven lay witnesses.
- [29] The defendants say that this tariff item is properly used only for the plaintiff's witnesses and, as the plaintiff only had five lay witnesses, that 3 units would be appropriate.
- [30] I am satisfied that there was more than the usual amount of work undertaken on the plaintiff's behalf in regards to the sheer number of witnesses that were contemplated to be called in this action. I, therefore, award 8 units for this tariff item.

Tariff Item 31

- [31] The plaintiff seeks 5 units, 2 units which relate to a case planning conference from June 20, 2018 and 3 units for a trial management conference held September 16, 2019. The maximum permitted per each day of attendance is 3 units.
- [32] The defence submit that 3 units in total are appropriate and states that in both cases they were minor attendances that took very little time.
- [33] For both appearances, the parties were required to produce briefs and be prepared to fully discuss the current status of the claim. I am satisfied that 2 units are appropriate for each attendance and, therefore, award 4 units for this tariff item.

Tariff Item 32

- [34] The plaintiff seeks 4 units in relation to a case planning conference held June 20, 2018 and a trial management conference on September 16, 2019. The maximum units permitted for each appearance is 5 units which would give rise to a maximum of 10 units in this matter.
- [35] The defence submit that 3 units in total would be appropriate - 1 unit for the case planning conference and 2 units for the trial management conference.
- [36] I am satisfied that it is appropriate that there be 2 units for each appearance and, therefore, award 4 units for this tariff item.

[37] The result is that there are 40 units as agreed between the parties and 36 units as awarded and, therefore, the total number of units awarded is 76 units.

DISBURSEMENTS

Agreed Disbursements

[38] The parties agree on the following disbursements which are allowed:

Land Title Office corporate search - \$34.50;

Trust administration fee - \$15.00;

Kamloops Reporting Services discovery transcript - \$612.00;

Dr. Mah's report - \$1,761.00;

Dr. Mah's clinical records - \$100.00;

Dimensional Massage & Wellness clinical records - \$142.86;

PETA Consultants (Vancouver) Ltd. - \$875.00;

Miller Neuropsychological Services Inc. - \$750.00;

Parking - \$5.00;

Client travel - Dr. Robinson's assessment dated September 19, 2018 - \$401.96;

Client travel - Dr. Giantomaso's assessment dated June 12, 2019 - \$647.46;

Non-taxable disbursements - \$636.00.

Disputed Disbursements

Photocopies

[39] The plaintiff claims photocopies of \$769.25 at \$.25 per page. The defendants take no issue with the stated rate for office photocopies, but submit that a 25% reduction is appropriate. The amount being sought by the plaintiff works out to 3,077 photocopies for a three-year matter that involved a significant number of parties. Plaintiff's counsel relies on Master McDiarmid's analysis in *Vink v Valenzuela*, 2015 BCSC 232, regarding the apportionment of photocopying between what is necessary for the file and what is more properly attributed to overhead (para. 20). I note that Master McDiarmid applied a 15% reduction to the number of photocopies, but referenced that the reduction was lower than is usual.

[40] Defence counsel referred to *Antulov v. Emery*, 2018 BCSC 898, *Dakin v Roth*, 2013 BCSC 1018 and *Park v Koepke*, 2013 BCSC 1806. All three cases provide helpful commentary on the approach to be taken regarding this type of disbursement. Absent clear evidence that photocopy charges do not include photocopies that are made for administrative purposes, the courts have generally applied some form of discount to the amount of photocopies

made.

- [41] As noted earlier, the actual number of documents overall was on the lower end of the scale and, therefore, I apply a 25% discount on the basis that some of the photocopies would have related to the overhead associated with the file. I allow the office photocopies at \$576.94.
- [42] On the amended bill of costs, there was a second item added for office photocopies at \$113.75. The defendants took no issue with this amount as it relates to the various documents that were prepared in support of this continuing application and, therefore, the \$113.75 is allowed in its entirety.

Colour Photocopies

- [43] The office colour photocopies were claimed at \$82.00 at \$1.00 per page. Given the number of parties involved, it was reasonably necessary that the number of colour photocopies were required. The defendants state that a 25% reduction would be appropriate because some of the photocopying would have been done for overhead. However, I allow \$82.00 in its entirety as I am satisfied that the office would not have required colour copies for any purpose other than to advance this matter.

Fax Charges

- [44] Telecopier charges were claimed at \$56.35 at \$.35 per page. The plaintiff submits that these charges relate only to faxes that were sent to various physicians and that there were no charges for scanning included in this disbursement amount.
- [45] Again, the defendants submit that a 25% reduction is appropriate because some of the faxing must have been related to the overhead. However, I am satisfied that given the number of experts involved in this matter, it is reasonable to have incurred the telecopier charges as set out. Therefore, I allow the \$56.35 in its entirety.

Postage

- [46] The plaintiff claims \$45.67 for office postage. Although there are a number of parties involved in this particular action, I am satisfied that at least some of the postage charged would be related to file management. I allow \$34.25 for this disbursement.

Courier Charges

- [47] The plaintiff claims courier charges of \$66.25 and advises that this is primarily due to couriating medical records to the various health professionals that were involved. I allow the disbursement as claimed in its entirety.

Expert Reports

[48] The plaintiff seeks reimbursement for expenses relating to experts retained by the plaintiff, namely Dr. Robinson, Dr. Giantomaso and Focus Rehabilitation & Consulting ("Focus"). Defence counsel concedes that it was necessary for the plaintiff to have retained the three specialists, however, defence counsel does take issue with the reasonableness of the expenses for all three experts.

[49] In addition to submissions regarding the specific charges of each expert, defence counsel further submits that the total charges being sought are disproportionate to the quantum of the settlement. In total, the disputed disbursements total \$16,700.00, which defence counsel submits is not appropriate given that the matter settled for just over \$103,000.00.

[50] In support of their position, defence counsel referred me to:

a) Senner, para. 113, wherein the court states:

I have previously commented that a fee an expert can command from the person who retains the expert may well be justified, but the defendants are only required to pay a reasonable amount.

b) Antulov, wherein Master McDiarmid reduced the amount allowed for an economist report. At para. 73, Master McDiarmid said:

At the time he was retained, Mr. Matthews had additional expertise beyond that of an economist. It was proper for plaintiff's counsel to retain someone who had worked on a file with the same scenario. However, it is not reasonable to expect a losing litigant to pay significantly more than what is typically allowed for labour economists

[51] In both cases, the court undertook an analysis based on the facts before it to determine what is a reasonable amount that an unsuccessful litigant should pay.

[52] The plaintiff submits that the retention of the experts must be assessed as to the reasonableness of the expenses at the time that the expert was retained. Further, the plaintiff submits that the court should be hesitant to revise the amounts charged by the experts. Simply put, experts charge what they charge and it is a necessary cost of undertaking the litigation.

[53] In support of their position, plaintiff's counsel referred to:

a) Haller v. Galey, 2016 BCSC 998, wherein Master McDiarmid stated at para. 67:

The realities of retaining highly qualified medical practitioners by plaintiffs require proper compensation to be paid to those medical practitioners.

In that case, Master McDiarmid reduced various aspects of the submitted expenses, but primarily for costs associated with overhead or administrative matters and not relating to the amounts charged by Dr. Giantomaso for his expertise.

- b) Gibson, wherein Master McDiarmid allowed the full costs of the medical experts on the basis that the amounts being charged were in line with the charges of other experts and that there was no clear overcharge.

Dr. Robinson

- [54] Dr. Robinson is a neurologist who specializes in headache disorders and was retained by the plaintiff in 2018. Dr. Robinson conducted his independent medical examination on September 19, 2018, resulting in a report dated October 16, 2018.
- [55] Dr. Robinson's total charge was \$4,200.00, although the invoice does not break down the number of hours specifically spent on each aspect of the report. The time spent is detailed as reviewing the records, conducting the examination and writing the 13-page report. The defence position is that it would be appropriate to reduce the account by \$500.00 as there is not sufficient detail on the invoice to justify the full amount.
- [56] Defence counsel referred me to Senner for the proposition that a reasonable amount for experts to charge is somewhere between \$500.00 and \$600.00 per hour. Plaintiff's counsel distinguishes Senner by noting that the medical examinations had taken place in 2011 and 2012. The evidence before me is that the defence paid \$3,500.00 for their neurological expert report.
- [57] I am satisfied that, given his particular expertise and absent any clear evidence of an overcharge, the amount charged by Dr. Robinson is appropriate and I allow \$4,200.00 as claimed.

Dr. Giantomaso

- [58] Dr. Giantomaso is a physiatrist who examined the plaintiff on June 12, 2019 and produced a report dated June 24, 2019. He then completed an additional records review in July 2019. Defence counsel raises no issue as to the necessity of utilizing Dr. Giantomaso's services, but does raise concerns about the reasonableness of the fees charged.
- [59] The plaintiff seeks reimbursement of Dr. Giantomaso's invoices in the amount of \$8,400.00. The specific invoices detail: an initial report for \$7,350.00, a records review of \$1,181.25 and \$288.75 for copying and releasing his notes. I note that these amounts total \$8,806.25 not \$8,400.00, but have not been provided with any explanation as to the difference in amount. I will proceed on the basis of the requested amount of \$8,400.00 as set out in the amended bill of costs.
- [60] In the invoice included within the evidence before me, Dr. Giantomaso's invoice sets out that he charges a base fee of \$5,500.00 for a medical report which is calculated at \$1,000.00 an hour for the first five and a half hours. The invoice notes that any further work will be billed at \$750.00 an hour.

- [61] Defence counsel submits that the hourly rate for Dr. Giantomaso is not proportionate in terms of both the amount of work produced or proportionate to the ultimate settlement in this matter. The defence notes that Dr. Giantomaso's report is only ten pages in length as compared to Dr. Robinson's report, which was 13 pages, and both specialists utilized virtually the same material in producing their reports. The defendants do not take any issue in regards to the amount of time that Dr. Giantomaso sets out he has spent on the file, but says that a more appropriate rate would be \$500.00 to \$600.00 an hour rather than the \$1000.00 or \$750.00 per hour as billed by Dr. Giantomaso. Plaintiff's counsel submits that, as with Dr. Robinson, experts charge what they charge and the court should be hesitant to reduce the invoices of medical experts.
- [62] The detail regarding Dr. Giantomaso's invoices and the time spent for each item is included in the materials before me. For the medical report, Dr. Giantomaso billed a \$5,500.00 base fee (for 5.5. hours of work), plus an additional 2 hours of work at \$750.00 per hour. I note that the time detail in exhibit BB of the affidavit of Erin Hughes dated November 8, 2019 adds up to 6.75 hours, not the 7.5 hours billed - no explanation for the difference in time was included in the materials. The total billed for the medical report was \$7,000.00, plus tax. The records review took 1.5 hours at \$750.00 per hour for a total cost of \$1,125.00 plus tax. The file production charge did not involve any time from Dr. Giantomaso. In total, the evidence shows Dr. Giantomaso billed for 9 hours on this matter, but the actual time listing totals 8.25 hours.
- [63] I was also provided with Dr. Giantomaso's curriculum vitae and am satisfied that he is a well-qualified specialist whose particular expertise with headaches and concussion syndrome were appropriate given the plaintiff's injuries. Given his level of expertise, I accept that an hourly rate of \$750.00 is appropriate. I can see no reason, however, why some of his work should be at the higher rate of \$1,000.00 per hour.
- [64] I am satisfied that, given the need for proportionality and reasonableness of the expense, it is appropriate to reduce Dr. Giantomaso's hourly rate to \$750.00 per hour for all time spent on the account. I also find that the amount of time spent totals 8.25 hours, not the 9 hours billed. Accordingly, I allow the amount of \$6,785.63 (\$6,496.88 + \$288.75, inclusive of taxes) for Dr. Giantomaso's invoices.

Focus Rehabilitation & Consulting

- [65] Focus was the occupational therapist retained by the plaintiff to provide an occupational therapy assessment, future care assessment and a functional assessment. The plaintiff submits that the charges incurred are entirely reasonable as Focus provided both an initial report and a rebuttal report which involved travel for the expert from Kelowna to Kamloops. The total charged was \$4,186.74. I was advised that the defendants, who obtained only a functional assessment report, paid \$4,000.00 for their expert report.
- [66] Defence counsel takes issue with:

- a) the amount of time that is attributed to the work on the file;
 - b) the hourly rate; and
 - c) the need for travel expenses given that the plaintiff could have retained a Kamloops-based occupational therapist which would have eliminated the need for travel.
- [67] Focus billed 15 hours to write the report and provide the costing of future care. Defence counsel submits that as the report was only 14 pages, the amount of time allotted is excessive. Further, defence submits that the costing component contained within the report does not evidence any significant or complex analysis worthy of the amount attributed and charged for that component. I am satisfied that as the report contained the only evidence regarding future costs that it provided information that would have been helpful to the court had the trial proceeded. The amount of time is not excessive given that it captures both the report writing as well as the work involved in gathering and analyzing information for the costs of future care.
- [68] Defence counsel submits that Focus charged their work at \$140.00 an hour despite noting within the report that occupational therapists generally charge patients \$120.00 an hour and, therefore, the hourly rate should be reduced to \$120.00 per hour for all work performed. In response, the plaintiff notes that the difference in rates can be attributed to the fact that experts charge different rates for different activities. The rate being charged at \$140.00 is not excessive despite the fact that it is higher than the rate quoted of \$120.00 an hour, which is for hands-on work with an occupational therapist who is not acting as a medical expert capacity. I agree with plaintiff's counsel that it could be expected that experts charge different rates for different types of work and I do not find the \$140.00 an hour rate to be excessive. This is particularly so since the evidence before me is that the rate charged by the defence occupational therapist was \$200.00 per hour.
- [69] Defence counsel submits that the plaintiff could have chosen to retain a Kamloops occupational therapist and thereby save the \$504.74 in travel charges. Plaintiff's counsel submits that the plaintiff is entitled to retain whatever expert they feel is appropriate for their particular case and that the decision to retain Focus is reasonable given the relative short distance between Kamloops and Kelowna. I agree that the geographic distance is minor and, therefore, the plaintiff's choice of occupational therapist was reasonable.
- [70] Accordingly, I find that the amount charged by Focus is reasonable and allow the amount of \$4,186.74 in its entirety.
- [71] I am satisfied that, other than one adjustment, the amount spent on experts was proportionate and not unreasonable given the nature of the injuries and the circumstances of the accident.

[72] Plaintiff's counsel should submit a revised bill of costs and certificate of costs reflecting this decision. If there are offers to settle costs of which I am not aware, counsel have leave to provide written submissions to me through the Supreme Court Scheduler in Kamloops.

"Master J.M. Keim"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/02/2020BCSC0273cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/neustaeter-v-woroniuk-2020>

Prepared on 27 October 2026 · Esheria