IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia (Securities Commission) v. Brar,* 2023 BCSC 1715

Date: 20231003
Docket: S216267
Registry: Vancouver

Between:

British Columbia Securities Commission

Petitioner

And

Ranvir Brar

Respondent

- and -

Docket: S216249
Registry: Vancouver

Between:

British Columbia Securities Commission

Petitioner

And

Harjit Gahunia

Respondent

Before: The Honourable Justice Shergill

Reasons for Judgment on Costs

Counsel for Petitioner:	L.L. Bevan
Counsel for Respondents:	M. Magaril
Written Submissions of the Petitioner:	July 28, 2023 and August 4, 2023
Written Submissions of the Respondents:	July 31, 2023

Place and Date of Judgment:	Vancouver, B.C. October 3, 2023

Overview

[1] On June 29, 2023, I issued Reasons in this case indexed at 2023 BCSC 1122 (the "Reasons"). I dismissed the Respondents' Constitutional Challenge and *Stinchcombe* Applications. I granted leave to the parties to provide written submissions on costs.

[2] The Petitioner seeks costs at scale B, payable by the Respondents jointly and severally in any event of the cause. Further, the Petitioner asks that costs be fixed at $19,000, or alternatively, the Bill of Costs be referred to the Registrar for assessment.

[3] The Respondents argue that costs should be awarded in the cause, and at Scale C. They also submit that the matter of the assessment of the costs award should be left to the Registrar for determination.

Issues

[4] The issues raised by the parties are as follows:

a) Should the costs award be in the cause, or any event of the cause?

b) Should costs be awarded at Scale B or C?

c) Should the costs award be fixed?

[5] Both parties agree that there should be a single set of costs for both applications.

Preliminary Matter

[6] In anticipation that the Respondents would rely on the fact that they have appealed the Order made in the Reasons, the Petitioner has made submissions regarding the merits of the pending appeal.

[7] However, the Respondents have clarified at para. 4 of their written costs submissions that "the fact that they are appealing the subject Order should not factor

into what order of costs is appropriate and that the Court should disabuse itself from the fact."

[8] I agree with the Respondents that whether or not the Order has been appealed, it is not relevant to my consideration. Accordingly, I have placed no weight on this fact.

Costs in the Cause or in any Event?

[9] Pursuant to Rules 14-1(9) and (12), the general rule is that costs follow the event, and are to be awarded to the successful party in the cause, unless the court otherwise orders.

[10] In *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 74 the Court noted that costs awards are intended to:

a) Indemnify the successful party;
b) Deter frivolous actions or defences;
c) Encourage conduct that reduces the duration and expense of litigation and discourage conduct that has the opposite effect;
d) Encourage litigants to settle whenever possible, thus freeing up judicial resources for other cases; and
e) 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.

[11] 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.

[12] The Petitioner submits that:

a) The Reasons make it clear that the Respondents' constitutional challenges of the impugned provisions of the *Securities Act* have already been considered and settled by the Supreme Court of Canada; and

b) The Petitions for contempt deal with discrete issues that are severable from the constitutional arguments raised in the Applications.

[13] I am not swayed that costs should be awarded to the Petitioner in any event of the cause.

[14] Though the Petitions for contempt deal with discrete issues that are severable from the constitutional arguments raised by the Applications, that is not a sufficient reason to veer away from the ordinary rule of awarding costs in the cause. This is particularly so having regard to the serious nature of the contempt proceedings, and the *Charter* rights that are engaged.

[15] If the Petitioner is successful in the Petitions, the Respondents are facing incarceration. As such, it is not unreasonable for them to try to advance constitutional arguments in their defence. Further, although I found that the matters raised in relation to the constitutionality of s. 144(2) of the *Securities Act* have already been settled by the Supreme Court of Canada, the Applications also addressed the constitutionality of the *Supreme Court Civil Rules* relating to petitions and chambers applications, and sought *Stinchcombe* like disclosure. Though the Respondents were unsuccessful on those fronts as well, the arguments raised were not bound to fail.

[16] Further, I agree with the Respondents that it would be unjust if the Respondents were to ultimately succeed in the Petition, but remain burdened with a costs award flowing from their lack of success in the Applications.

Scale B or Scale C?

[17] The Respondents argue that the time and intensity with which the Applications were fought, as well as the constitutional issues raised, should result in an award of costs at Scale C, provided that the award is "in the cause". They do not seek Scale C costs if the Court makes an order for costs to be paid in any event of the cause.

[18] For its part, the Petitioner has only sought costs of the Applications at Scale B. However, in the event that the Court finds that the Applications were of higher than usual complexity, the Petitioner asks to benefit from Scale C costs, regardless of whether costs are in the cause or any event of the cause.

[19] The Respondents have provided no authority that supports the proposition that the scale of costs is tied to whether the award is made in the cause, or any event of the cause. Indeed, it would be strange if that were the case. The complexity of a matter does not depend on who ultimately has to pay the award.

[20] In *Mort v. Saanich School Board No. 63*, 2001 BCSC 1473, the Court noted the following factors relevant to determining the level of difficulty of a proceeding:

> (a) The length of the trial;
>
> (b) the complexity of the issues involved;
>
> (c) the number and complexity of pre-trial applications;
>
> (d) whether or not the action was hard fought with little or nothing being conceded along the way;
>
> (e) the number and length of Examinations for Discovery;
>
> (f) the number and complexity of Experts' Reports; and
>
> (g) the extent of the effort required in the collection and proof of facts.

[21] These considerations were endorsed by the Court of Appeal in *Meghji v. Lee,* 2014 BCCA 105 at para. 138.

[22] The hearing of the Applications was initially set for three days, but required any additional three days for continuation. The constitutional arguments raised were

complex and detailed. Between them, the parties cited more than 150 cases as authorities.

[23] Based on the material before me, I am satisfied that Applications were of greater than ordinary complexity, and should attract a costs award at Scale C.

Lump Sum or Assessment by the Registrar?

[24] The Petitioner has provided draft Bill of Costs and has asked this Court to fix the costs award. The Respondents raise 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.

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

[26] In *Gichuru v. Smith*, 2014 BCCA 414, leave to appeal 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.

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

[28] 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 it is to assess costs, deal with the matter.

[29] 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.

Conclusion

[30] The Petitioner is awarded costs of the Applications, in the cause, at Scale C.

"Shergill J."