

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Surrey (City)*,  
2024 BCSC 1198

Date: 20240705  
Docket: S252197  
Registry: New Westminster

Between:

**Amarpreet Singh**

Petitioner

And

**City of Surrey**

Respondent

Before: The Honourable Justice J. Hughes

## Reasons for Judgment on Costs

The Petitioner on his own behalf: A. Singh

Counsel for the Respondent: A. Wu  
W. Aujla

Written Submissions of the Respondent: May 17, 2024

Written Submissions of the Petitioner: May 27, 2024

Place and Date of Judgment: New Westminster, B.C.  
July 5, 2024

[1] These are my costs reasons following the respondent's successful application to strike the underlying petition. In my reasons for judgment indexed at 2024 BCSC 980, I found that the petition failed to disclose the type of claim that may be brought by petition, was unnecessary and vexatious, and otherwise constituted an abuse of the process of the court. Accordingly, I granted the City of Surrey's application and struck the petition pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], without leave to amend.

[2] At the City's request, I granted the parties leave to provide written submissions on costs. I have received and considered the parties' submissions and will now determine the appropriate costs order.

### **Background**

[3] The circumstances giving rise to the filing of the underlying petition and the City's application to strike are set out in detail in my earlier reasons for judgment and need not be repeated in detail here.

[4] In short, in June 2022, the petitioner was convicted of five counts under the City of Surrey, By-law No. 12000, *Zoning By-law* (13 September 1999) and the City of Surrey, By-law No. 16393, *Surrey Property Maintenance and Unsightly Premises By-law* (28 May 2007) (the "BCPC Convictions"). The petitioner appealed the BCPC Convictions to this Court, and also sought reconsideration in the Provincial Court. He was unsuccessful in both respects. He then initiated proceedings in the Court of Appeal, while simultaneously seeking reconsideration of this Court's decision dismissing his appeal of the BCPC Convictions. He was again unsuccessful and initiated further proceedings in the Court of Appeal. The proceedings in the Court of Appeal remain extant.

[5] The current petition was filed in January 2024, and sought substantively the same relief as was refused by the Provincial Court and this Court: that the BCPC Convictions be set aside. The factual basis underpinning the petition repeated the same themes that formed the basis of the earlier proceedings, namely allegations of

non-disclosure, prosecutorial misconduct and miscarriage of justice in the course of the proceedings that resulted in the BCPC Convictions.

[6] The City brought an application to strike the petition pursuant to Rule 9-5(1) of the *Rules*, which came on before me on May 8, 2024. I granted the application, concluding that the petition failed to disclose a claim that can be bought by petition, was unnecessary and vexatious, and constituted an abuse of process as it was duplicative of positions previously advanced by the petitioner and rejected by this Court and the Provincial Court.

[7] The petitioner was unrepresented when he initially filed the petition. On that basis, the City did not initially seek special costs. However, the petitioner retained counsel to represent him in responding to the City's application to strike. Upon counsel being retained, the City gave notice that it had not sought special costs in its application response because the petitioner was self-represented, but that if the application proceeded despite the petitioner subsequently having had the benefit of legal advice, the City would be seeking special costs.

[8] It is unclear whether the petitioner remains represented as he appears to have filed his costs submissions acting on his own behalf.

**Parties' Positions**

[9] The City seeks uplift costs against the petitioner pursuant to s. 2(5) of Appendix B of the *Rules*. While the City did not seek uplift costs in its notice of application, that does not operate as a bar to it now seeking uplift costs: *Pioneer Distributors Ltd. v. Orr*, 2015 BCSC 1237 at para. 22.

[10] The petitioner's position is that "Considering City employees, prosecutors and elected and non-elected official have been unconcerned, uncooperative no costs should be awarded".

## Analysis

### **(a) Is the City entitled to costs?**

[11] Costs are governed by Rule 14-1 of the *Rules*. Costs are presumptively awarded to the successful party: Rule 14-1(9). The City was the successful party on the underlying application: it succeeded in having the petition struck, without leave to amend.

[12] The petitioner has not articulated any basis upon which to depart from the presumptive award of costs in the City's favour. I thus find that the City is entitled to its costs of the application to strike and of the petition.

### **(b) What is the appropriate scale of costs?**

[13] Where costs are payable under the *Rules*, absent circumstances not present here, they must be assessed as party and party costs in accordance with Appendix B: Rule 14-1(1). In doing so, the Court must first fix the scale of costs. In this respect, s. 2 of Appendix B of the *Rules* provides:

2(1) If a court has made an order for costs, it may fix the scale, from Scale A to Scale C in subsection (2), under which the costs will be assessed, and may order that one or more steps in the proceeding be assessed under a different scale from that fixed for other steps.

(2) In fixing the scale of costs, the court must have regard to the following principles:

- (a) Scale A is for matters of little or less than ordinary difficulty;
- (b) Scale B is for matters of ordinary difficulty;
- (c) Scale C is for matters of more than ordinary difficulty.

(3) In fixing the appropriate scale under which costs will be assessed, the court may take into account the following:

- (a) whether a difficult issue of law, fact or construction is involved;
- (b) whether an issue is of importance to a class or body of persons, or is of general interest;
- (c) whether the result of the proceeding effectively determines the rights and obligations as between the parties beyond the relief that was actually granted or denied.

[14] The City seeks costs at Scale B. The petitioner did not take issue with the scale of costs. Considering the factors set out in s. 2(3) of the Appendix B, I agree with the City that Scale B costs are appropriate. This was a matter of ordinary difficulty that involved the application of well-settled legal principles to the circumstances in which the petition was brought and resulted in the petition being struck.

**(b) Is the City entitled to uplift costs?**

[15] The City seeks uplift costs as provided for in s. 2 of Appendix B of the *Rules*:

(5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).

(6) For the purposes of subsection (5) of this section, an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (1) or (4).

[16] Uplift costs may be allowed after the scale of costs is fixed where, as a result of unusual circumstances, an award on that scale would be grossly inadequate or unjust: *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCSC 1675 at para. 66 [*Trial Lawyers*], citing *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 41. There are two pre-requisites that must be met for an order of uplift costs to be made. First, there must be unusual circumstances. Second, because of those unusual circumstances, awarding costs on the fixed-scale tariff would be grossly inadequate or unjust: *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd.*, 2021 BCSC 1574 at para. 36; *Shen v. West Continent Development Inc. (BC0844848)*, 2022 BCSC 462 at para. 29.

[17] An award of uplift costs is intended to indemnify a party where there are unusual circumstances, not to punish the unsuccessful party: *Sheppard v. Vancouver Coastal Health Authority*, 2021 BCSC 539 at para. 56. That being said,

uplift costs can be justified by misconduct in the litigation rendering ordinary costs “grossly inadequate or unjust”: *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284 at para. 89.

[18] Misconduct or conduct that is deserving of rebuke, but which falls short of attracting an award of special costs, can constitute “unusual circumstances” in support of an award of uplift costs: *AM Gold Inc.* at para. 89; see also *J.P. v. British Columbia (Children and Family Development)*, 2018 BCCA 325, at para. 57.

[19] A party seeking to rely on misconduct as an “unusual circumstance” must show that there was misconduct deserving of rebuke: *J.P.* at para. 57; *Berthin* at para. 41; *Trial Lawyers* at para. 67. Misconduct deserving of rebuke includes “actions taken in bad faith, disobedience of court processes, incivility, frivolity, and impertinence”: *Berthin* at para. 43.

[20] Additional factors that may attract an award of uplift costs include: the serious nature of the allegations; the complexity or difficulty of the issues in the litigation; and the importance of the litigation to the parties or to the development of the law generally: *Shen* at para. 34; *J.P.* at para. 58.

[21] The City says that the following circumstances constitute “unusual circumstances” sufficient to warrant an award of uplift costs:

- a) the petition was not simply weak, but rather was found to constitute an abuse of process with no arguable merit;
- b) at no point did the petitioner grapple with or attempt to remedy the many deficiencies in the petition, even after retaining counsel and being served with the City’s application particularizing the multitude of grounds upon which it was deficient;
- c) the petitioner defended the application to strike in the absence of any relevant legal authority supporting his position; and

- d) the petition advanced serious allegations of misconduct on the part of the City, which allegations were further expanded on in his application response.

[22] I agree with the City and find that the circumstances outlined above constitute “unusual circumstances” as that term is understood in the context of s. 2(5) of Appendix B.

[23] The petitioner advanced no substantive defence on the application to strike, and his counsel did not engage in any meaningful way with the issues properly before the Court. Instead, the petitioner’s submissions repeated and reargued the serious allegations of misconduct against the City that had previously been rejected by the courts. He now repeats the same assertions of non-disclosure and prosecutorial misconduct that have been previously rejected in support of his position that no costs should be awarded against him.

[24] I find the petitioner’s conduct is deserving of rebuke and constitutes “unusual circumstances” which result in an award of ordinary costs being “grossly inadequate or unjust”.

**Conclusion**

[25] In the result, I conclude that an award of ordinary costs at Scale B would be unjust and award the City uplift costs at Scale B pursuant to s. 2 of Appendix B of the *Rules*.

“Hughes J.”