IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *British Columbia v. Querin,* 2024 BCSC 197

Date: 20240208
Docket: S23692
Registry: Dawson Creek

Between:

His Majesty the King in Right of the Province of British Columbia

Plaintiff

And

Curtis Querin and Deanne Querin

Defendants

Before: The Honourable Justice Kirchner

Reasons for Judgment on Costs

Counsel for the Plaintiff:	G.N. Rudyk L.F. de Lima J. McKay
Counsel for the Defendants:	J.G. Frame
Place and Dates of Trial:	Dawson Creek, B.C. September 13-15 and 18-22, 2023
Written Submissions on Costs by Plaintiff:	December 14, 2023 January 19, 2024
Written Submissions on Costs by Defendants:	January 18, 2024
Place and Date of Judgment:	Dawson Creek, B.C. February 8, 2024

[1] In reasons for judgment dated November 15, 2023 (2023 BCSC 1994), I found that a road (the "Disputed Roadway") that runs across the defendants' property just inside its northern boundary is a public highway under s. 42(1) of the *Transportation Act,* S.B.C. 2004, c. 44 and is thus owned by the Province. I found the Province had established public use of, and public expenditures on, the Disputed Roadway sufficient to establish it as a public highway under s. 42(1). In doing so, I noted (at para. 183) that it was a marginal case that turned substantially on the standard implied by the Court of Appeal's decision in *Campbell v. Thomson*, 1990 CanLII 2332 (B.C.C.A.), which I suggested represents the "low-water mark for public use". At para. 169, I agreed with counsel for the defendants that the evidence in this case lacked the "layered history and diverse groups of people" using the road as seen in most cases where sufficient public use is established, other than *Campbell* which is something of a unique case, though binding on me.

[2] With respect to costs, I invited submissions but said I was inclined to order the parties bear their own costs. Given that this was a marginal case, I found it was not unreasonable for the Querins to defend against the Province's claim in an effort to protect an area of their land they reasonably but unsuccessfully maintained was part of their property. In making those comments, I was not aware of the Province's offers to settle.

[3] The Province now seeks its costs, relying largely on its offers to settle. It points to three offers that it argues the Querins unreasonably rejected. It argues that a party who rejects a reasonable offer to settle should usually face some costs sanction: *Wafler v. Trinh* 2014 BCCA 95; *Evans v. Jensen*, 2011 BCCA 279 at para 41.

[4] The first offer to settle proposed that the Querins agree to transfer to the Province a 25-metre-wide roadway encompassing the Disputed Roadway in exchange for $5,000.

[5] The second offer to settle was for the proposed 25-metre-wide roadway to be surveyed and its fair market value appraised independently. The Province would pay

the Querins the appraised value plus $25,000 towards their legal costs to date. In exchange, the Querins would transfer title of the road to the Province. The parties would be bound by the result of the appraisal.

[6] The third offer was a renewal of the second which had expired.

[7] I note that in all three offers the Province also offered to waive its claim to $4,727.25 which was its cost to remove materials Mr. Querin had placed on or across the Disputed Roadway to impede access. However, I dismissed that part of the Province's claim on the basis that the Province also removed materials belonging to Mr. Querin that sat outside of the travelled portion of the roadway. In other words, the Province took Mr. Querin's materials off his private property without his consent. In view of that overreach, I declined to award the Province damages. Thus, its offer to waive this claim is, at best, a neutral factor in assessing the impact of the settlement offers on costs.

[8] Despite the Province's offers to settle, I remain of the view that the Querins decision to defend the claim was not unreasonable. (I refer here to the litigation and not to Mr. Querin's self-help actions in blocking the roadway.) In addition to my earlier view on costs expressed in the reasons for judgment, I would add the following.

[9] First, the Province's offer to take a 25-metre-wide roadway would likely have taken more of the Querins' property than what results from my declaration, which was confined to the travelled surface of the road. A wider roadway could also potentially have opened up the road to wider use than is possible within the limits of my declaration.

[10] Second, it seems unlikely that the market value of a 25-metre strip of land in that area would be significant. The strip of land has more value to the Querins personally than it does to the market.

[11] Third, the Province sought a declaration that the Disputed Roadway is a two-lane public highway but I declined to grant the declaration, finding instead that the

public highway is limited to the travelled surface. Thus, the Province was not wholly successful in obtaining the relief it sought and, as I said earlier, the scope of the declaration I have made could limit the use that might be made of the road compared to what the Province had sought. In this sense, the Querins had some success in confining the practical effect of the Court's declaration.

[12] For these reasons, I conclude that a just result is for the parties to bear their own costs.

"Kirchner J."