IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hoem v. Macquarie Energy Canada Ltd.,* 2025 BCSC 1508

Date: 20250806
Docket: S230966
Registry: Vancouver

Between:

Bradley Allan Hoem

Plaintiff

And

Macquarie Energy Canada Ltd.

Defendant

Before: The Honourable Justice Layton

Reasons for Judgment on Costs

Counsel for the Plaintiff:	D.S. Penner M. Lusk
Counsel for the Defendant:	A. McLachlan T.M. Fox
Written Submissions Received:	May 28, 2025 June 11 & 13, 2025
Place and Date of Judgment:	Vancouver, B.C. August 6, 2025

Table of Contents

INTRODUCTION **3**
SPECIAL COSTS **3**
Legal Principles 4
Analysis 5
INCREASED COSTS **15**
Legal Principles 15
ANALYSIS **16**
CONCLUSION **18**

Introduction

[1] On March 13, 2025, I released my reasons in the plaintiff Bradley Hoem's wrongful dismissal action against the defendant Macquarie Energy Canada Ltd. ("Macquarie"). Those reasons are indexed at 2025 BCSC 446 ("Trial Reasons").

[2] As Mr. Hoem was substantially successful in this action, Macquarie agrees that he is entitled to Scale B costs. However, Mr. Hoem seeks special costs for at least part of the proceedings, or in the alternative increased costs, on two grounds.

[3] First, Mr. Hoem contends that special costs are justified because Macquarie made allegations of just cause that it knew or ought to have known had no foundation or prospect of success.

[4] Second, Mr. Hoem argues that Macquarie attempt to delay the litigation by ignoring deadlines in the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. He says these dilatory tactics were contrary to the object of the *Rules*, resulted in unnecessary added expense, and when considered together with Macquarie's unfounded allegations of just cause supports an augmented costs award.

[5] Macquarie opposes special or increased costs, asserting that Mr. Hoem has not met the threshold for making either type of costs award.

[6] The parties made their arguments solely by written submissions, which in my view provided a sufficient basis to decide the costs issue.

[7] In my reasons below, I will address the issues of special costs and increased costs separately.

Special Costs

[8] I will begin my discussion by reviewing legal principles applicable to the court's consideration of whether to award special costs, after which I will determine whether special costs should be granted in the circumstances of this case.

Legal Principles

[9] Rule 14-1(1) provides that if costs are payable to a party they must be assessed as party and party costs in accordance with Appendix B unless one of several listed exceptions exist. Those exceptions include that the court orders that costs in a proceeding or part of a proceeding be assessed as special costs: Rule 14-1(b).

[10] Special costs provide a much greater indemnity than party and party costs, but do not provide a full indemnity since they cover only those fees and disbursements that were proper or reasonably necessary for the successful party to conduct the proceeding: *Wight v. Strata Plan VR 123*, 2024 BCSC 1952 at para. 34.

[11] Exceptional circumstances are required to justify awarding special costs: *Morriss v. British Columbia*, 2021 BCCA 451 at para. 22, leave ref'd 2024 CanLII 22665 (S.C.C.).

[12] Special costs are punitive, not compensatory, and are typically awarded to address litigation conduct that deserves censure and rebuke: *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284 at para. 53, leave ref'd 2022 CanLII 78979 (S.C.C.); *Sandhu v. Mangat*, 2019 BCCA 238 at para. 5.

[13] The threshold for ordering special costs is "reprehensible" conduct. In this context, "reprehensible" is a word capable of wide meaning, encompassing scandalous or outrageous conduct but also milder forms of misconduct deserving of reproof or rebuke. See *Garcia v. Crestbrook Forest Industries Ltd*., 1994 CanLII 2570 (B.C.C.A.) at para. 17.

[14] As noted in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73, the concept of "reprehensibility" captures different kinds of misconduct, but not all forms of misconduct are encompassed by this term. Rather, reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court or persistent

breaches of the rules of professional conduct and the rules of court that prejudice the successful party.

[15] That a party takes a position that is entirely meritless is not in itself a reason for awarding special costs. Something more is required, such as improper allegations of fraud, an improper motive for taking the position, being reckless regarding the truth, or taking a position so utterly hopeless that advancing it amounts to misconduct or an abuse of process. See *Garcia* at para. 23; *Berthin v. British Columbia (Registrar of Land Titles)*, 2017 BCCA 181 at para. 53; *Vassilaki v. Vassilakakis,* 2024 BCCA 15 at paras. 43-49.

[16] Accordingly, special costs are not justified simply because a party has advanced a meritless position that they ought to have recognized was deficient: *Vassilaki* at para. 47; *Laas v. Morrison*, 2024 BCSC 191 at para. 28.

[17] While special costs are usually made for an entire proceeding, if doing so would be disproportionate the court may award partial special costs: *Gichuru v. Smith*, 2014 BCCA 414 at para. 91, leave ref'd 2015 CanLII 19743 (S.C.C.).

Analysis

[18] Mr. Hoem argues that Macquarie failed to comply with deadlines set out in the *Rules* as part of an intentional attempt to delay resolution of the proceeding, which resulted in unnecessary additional expense and, while not in itself sufficient to justify awarding special costs, supports making such an order when viewed together with Macquarie's unfounded allegations of just cause.

[19] In advancing this position, Mr. Hoem relies on the following conduct by Macquarie:

a) a request by Macquarie to file its response to civil claim ("RCC") one week late, while refusing Mr. Hoem's responding request that the deadline for document production also be shortened by one week;

b) Macquarie's objection to setting down trial dates and seeking to delay doing so until after examinations for discovery;

c) Macquarie serving its list of documents late, and only after counsel for Mr. Hoem followed up with counsel for Macquarie;

d) Macquarie "repeatedly" delaying responding to Mr. Hoem's requests to schedule examinations for discovery, which together with its failure to adhere to other deadlines resulted in Mr. Hoem setting down a case planning conference.

[20] I reject that this conduct, even viewed compendiously, in any way supports a special costs order. In particular, nothing in the correspondence filed by Mr. Hoem in advancing this argument suggests that Macquarie was motivated by a desire to delay the resolution of this proceeding, or that Mr. Hoem suffered material prejudice as a result of any delay.

[21] For example, the one-week extension Macquarie sought for filing its RCC was not significant, and was reasonably justified by the fact that, as a multinational corporation, Macquarie operated over several time zones including Australia.

[22] Similarly, Macquarie was only one business day late in filing its list of documents.

[23] And while taking the position that trial dates should be set after completing examinations for discovery, Macquarie did not object to Mr. Hoem doing so provided that its position was indicated on the form, which is what Mr. Hoem ended up doing two weeks after Macquarie filed its RCC.

[24] Finally, while there appears to have been some delay in setting dates for examinations for discovery, on the record before me I am unable to conclude that Macquarie acted unreasonably or with the improper aim of avoiding the resolution of the proceeding, or that Macquarie's conduct caused Mr. Hoem any material harm.

[25] Mr. Hoem's main argument in support of special costs relates to four allegations of just cause that Macquarie raised and either abandoned or did not seriously maintain at trial. The allegations of just cause are that Mr. Hoem:

a) breached Macquarie's remote work policy by working in the United States without permission for two one-week periods;

b) breached Macquarie's alcohol and drug policy by frequently using cannabis during work hours;

c) caused Macquarie losses of between $100,000 and $890,000 by intentionally providing reduced pricing to one of its clients, Richmond Steel, without authorization; and

d) provided confidential information to Douglas Johnson, who worked for one of Macquarie's competitors.

[26] Mr. Hoem says special costs are justified because Macquarie knew or ought to have known that these four allegations had no prospect of success, and that the allegations harmed his reputation. In support of this argument, Mr. Hoem notes that in the Trial Reasons I awarded him aggravated damages because some of these allegations in whole or part lacked a reasonable foundation and caused him compensable harm.

[27] However, in my view the unfounded allegations made by Macquarie do not rise to the level of being reprehensible, within the meaning of the case law, so as to justify special costs. In explaining why, I will begin by reproducing excerpts from the sections of the Trial Reasons addressing whether aggravated and punitive damages should be awarded because Macquarie made unfounded allegations.

[28] Starting with the alleged breach of Macquarie's remote work policy, in dealing with aggravated damages I concluded that Macquarie did not act unreasonably in advancing this allegation and withdrawing it only shortly before trial:

> [328] The claim of after-acquired cause in the RCC and amended RCC includes the assertion that Mr. Hoem engaged in unauthorized remote working in the United States for two one-week periods in October 2022, in breach of Macquarie's Travel and Expense Policy and Remote Working Standard. The pleadings claim this conduct constituted a breach of trust and put the company at risk of regulatory implications.
>
> [329] Mr. Hoem concedes Macquarie had a reasonable basis to believe he worked in the United States without authorization, based on information showing he made hotel bookings in that country. Macquarie only learned Mr. Hoem was not in the United States at those times during his EFD. In fact, Mr. Hoem made the bookings as part of a plan to earn points with a hotel loyalty program, without any intention of ever staying at the hotels.
>
> [330] In August 2024, Macquarie informed Mr. Hoem it was abandoning this aspect of the claim for after-acquired cause. The abandonment was late in

> the day, given that EFDs ended in January 2024. But I accept that there were still answers to requests to be exchanged. And there is no suggestion any resources were expended by Mr. Hoem to defend this allegation in the interlude.
>
> [331] Mr. Hoem's main complaint regarding the remote-working allegation is that Macquarie was unable to articulate in any concrete way why doing so would be an issue for the company. In cross-examination, Mr. Richardson had some difficulty in explaining precisely how working remotely from the United States might clash with Macquarie's regulatory obligations. He made very general references to tax regulations and Canadian banking rules, and said he had been briefed on the latter in the past, but he admitted he could not be more specific in pointing to any applicable regulations.
>
> [332] I am not, however, satisfied this absence of specificity constitutes a lack of candidness, reasonableness, honesty or forthrightness by Macquarie. Moreover, there is no evidentiary basis to find that Macquarie's remote working allegation materially contributed to serious and prolonged distress on the part of Mr. Hoem. I therefore conclude that, by making this allegation in its pleadings, Macquarie did not breach its duty of good faith and fair dealing to Mr. Hoem so as to justify him receiving any compensable damages.

[29] Turning next to Macquarie's allegation of just cause based on Mr. Hoem's Outlook notes indicating that he had ingested cannabis gummies while working, in the Trial Reasons I concluded that the evidence established only that he ingested cannabis products containing cannabidiol, or CBD, which unlike delta-9-tetrahydrocannabinol, or THC, does not cause impairment. Indeed, in closing submissions, Macquarie did not seriously contend that the evidence supported a finding that Mr. Hoem had ingested THC, and conceded that taking CBD did not breach its alcohol and drug policy. Accordingly, I concluded that Macquarie had not proven just cause for terminating Mr. Hoem based on the consumption of cannabis products during work hours. See Trial Reasons, paras. 100-111.

[30] It is in this context that in the part of the Trial Reasons dealing with aggravated damages I made the following comments about the cannabis allegation:

> [334] Mr. Hoem's Outlook note referencing milligram dosages, dates and times for "gummies", cross-referenced with emails he sent while working, raised a legitimate concern that he was taking THC during work hours. While Mr. Hoem's reference to taking "a weed gummy … to dumb myself down" was made in a note referencing many obviously fictional events, it provided some further context that supported this concern, albeit only slightly. And while the inquiries Mr. Richardson made with Ms. Mitchell and Mr. Christman did not provide evidence suggesting Mr. Hoem was impaired at work, these

> two employees were based in different cities from Mr. Hoem, who worked remotely.
>
> [335] That said, by the time EFDs ended in January 2024, and any associated answers to requests were provided, it should have been clear to Macquarie that this allegation had no prospect of success. Based on the available evidence, proving Mr. Hoem took THC during work hours was highly unlikely. And establishing only that he had taken CBD, even if viewed as a breach of Macquarie's Local Alcohol & Drugs Policy, could not have helped prove after-acquired cause for dismissal.
>
> [336] I therefore conclude that continuing with this allegation at trial breached Macquarie's duty to deal with Mr. Hoem fairly, in particular because an allegation of work-place use of intoxicating drugs carried a real potential to harm Mr. Hoem's search for a new job. The allegation should have been withdrawn once it became clear there was no reasonable chance of proving it at trial.

[31] The third unfounded allegation of just cause was made for the first time in Macquarie's amended RCC, filed November 23, 2023, and arose in respect of erroneously low pricing numbers that Mr. Hoem sent to Macquarie client Richmond Steel. While this allegation of just cause was not advanced in closing submissions, Macquarie nonetheless relied on the same allegation in seeking a set off of damages, albeit for $45,000 as opposed to the range of between $100,000 and $890,000 asserted in the amended RCC.

[32] I rejected this set off claim because Macquarie failed to call evidence establishing any loss arising from Mr. Hoem's conduct in providing the lower pricing to Richmond Steel. I also concluded that Macquarie had failed to prove that Mr. Hoem provided the lower pricing knowing that his numbers had not been approved by Macquarie. Rather, his conduct was at worst the result of mere error or negligence *simpliciter*, and thus insufficient at law to justify Macquarie in recovering damages, even were a loss established. See Trial Reasons, paras. 224-241.

[33] Here is what I then said about the Richmond Steel allegations in the section of the Trial Reasons dealing with aggravated damages:

> [338] As already noted, in July 2023 Macquarie learned that Mr. Hoem had submitted pricing numbers to Richmond Steel lower than those sent to him by Mr. Watts. The absence of documentation to suggest Mr. Watts or one of Mr. Hoem's superiors had approved these lower numbers caused Macquarie real difficulties with its client. Macquarie did not act in bad faith or unfairly in

> suspecting or believing the lower numbers were submitted intentionally, presumably in an attempt to win the work, including because every number was lower than that approved by Mr. Watts.
>
> [339] Nonetheless, in its amended RCC filed four months after the problem was discovered, Macquarie alleged "significant losses on the contract" due to Mr. Hoem's conduct, and claimed that, although the extent of the damages remained to be determined, they could be as high as $890,000 and no lower than $100,000.
>
> [340] This assertion was unreasonable regarding both ends of the range, given the information then in Macquarie's possession or easily available through inquiries with Richmond Steel.
>
> [341] With respect to the upper end—$890,000—Macquarie's bid for Richmond Steel's business succeeded on only a few pieces of equipment listed on the pricing sheet submitted by Mr. Hoem. Thus, Macquarie had no reasonable basis to believe it would be asked (let alone required) by Richmond Steel to enter into further operating leases at similarly reduced prices.
>
> [342] Nor was Macquarie's claim of $100,000 losses at the lower end of the range reasonable. In his testimony, Mr. Richardson did not suggest that his analysis of the potential for losses was ever any higher than $45,000, other than to say Macquarie did not initially know how many leases would be impacted or whether Richmond Steel might accept a price increase on some of the leases. But, as stated in the previous paragraph, any legitimate uncertainty in this regard could easily have been cleared up by inquiring of Richmond Steel.
>
> [343] For these reasons, I conclude that, while Macquarie did not act in bad faith in pursuing the Richmond Steel allegation, the company breached its duty of fair dealing by unreasonably alleging losses no lower than $100,000 and as high as $890,000.

[34] The fourth and final allegation of just cause relied on by Mr. Hoem in seeking special costs is related to Macquarie's claim that he disclosed confidential information to Douglas Johnson. In the Trial Reasons, I made the following comments in finding that making this allegation, and only withdrawing it a month before the start of the trial, supported an award of aggravated damages:

> [344] The final allegation in support of after-acquired cause relied on by Mr. Hoem to establish a breach of the duty of good faith and fair dealing concerns Macquarie's claim in its pleadings that he violated his duty of confidentiality by disclosing confidential information to Mr. Johnson. The pleadings identify Mr. Johnson as a former Macquarie employee engaged in litigation with the company at that time, but provide no further detail regarding the allegation

[345] As previously mentioned, Mr. Johnson was Mr. Hoem's manager at Macquarie before being terminated as redundant, after which he ran Insight, one of Macquarie's main competitors in the operating leases business.

[346] In cross-examination, Mr. Richardson testified that the allegation Mr. Hoem gave confidential information to Mr. Johnson was based on a single, specific Outlook note indicating that Mr. Hoem discussed with Mr. Johnson about becoming an Insight employee and the nature of Insight's business and operating model. Mr. Richardson explained that, even though this note contained the same sort of information regarding Mr. Hoem's conversations with representatives at CHG-Meridian and CSI, the concern about confidential information being disclosed to Mr. Johnson at Insight arose because Mr. Johnson was an ex-employee who had known Mr. Hoem for many years.

[347] Mr. Richardson was invited to review the other Outlook notes filed as exhibits, and having done so testified that he did not recall any additional notes that caused him concern regarding the disclosure of confidential information. In re-examination, he confirmed that this allegation was discontinued because the discovery process provided no "further evidence" to support the claim.

[348] In my view, the note identified by Mr. Richardson did not provide a reasonable basis for Macquarie to allege that Mr. Hoem disclosed confidential information to Mr. Johnson.

[349] The portion of the note Mr. Richardson suggested might be problematic indicated that information was flowing from Mr. Johnson to Mr. Hoem. But nothing in it suggests Mr. Hoem provided confidential information to Mr. Johnson. I do not accept that such an inference was reasonably justified merely because Mr. Johnson had been Mr. Hoem's supervisor in the past.

[350] My conclusion is supported by the surrounding context.

[351] The note relied on by Mr. Richardson was a draft of a July 17, 2021 email sent by Mr. Hoem to his supervisor, Mr. Christman, under the subject heading "Competitive Offers". The note and related email were part of Mr. Hoem's attempt to have Macquarie change its compensation, pricing and platform after Mr. Hoem saw the LinkedIn job posting. As Mr. Hoem testified in cross-examination, he sent the email because he told Mr. Christman about receiving offers from Macquarie's main competitors, and Mr. Christman asked that he send Mr. Christman the information he had gathered.

[352] Mr. Hoem's email to Mr. Christman meant that Macquarie now had potentially useful information about its competitors. Far from expressing any concern that Mr. Hoem might have provided confidential information in the opposite direction, in a reply email the next day Mr. Christman thanked Mr. Hoem for the "thoughtful review" and said he would discuss it with Mr. Richardson directly. This reply email strongly militates against the conclusion that the Outlook note referenced by Mr. Richardson at trial provided a reasonable basis to believe Mr. Hoem had disclosed confidential information to Mr. Johnson.

[353] Macquarie nonetheless argues that another Outlook note made by Mr. Hoem around the same time reasonably supported including in its pleadings the allegation that Mr. Hoem disclosed confidential information to Mr. Johnson. The subject line for this other note is "Call with JD" (i.e., Mr. Christman). Mr. Hoem testified that the note contains speaking points for calls he had with Mr. Christman around the time of the LinkedIn posting, and that while he could not recall what he did or did not say to Mr. Christman he would have conveyed the gist of the note during those conversations.

[354] The speaking points include the nature of the discussions Mr. Hoem had been having with Macquarie's three main competitors, albeit with less detail than in the Outlook note referred to by Mr. Richardson in his testimony. However, the speaking points add that Mr. Johnson had been calling Mr. Hoem to try to get him to run Insight's Western Canada business. They also include comments clearly meant to convey Mr. Johnson's desires if Mr. Hoem were to take up that position, namely, that Mr. Johnson wanted Mr. Hoem to cause "pain" to Mr. Richardson by bringing about the demise of Macquarie.

[355] Mr. Hoem's speaking points for the call with Mr. Christman go on to address the LinkedIn posting and ask whether Macquarie is trying to advertise Mr. Hoem's job and turn him into another Macquarie competitor. They state that as a competitor he would be a hugely disruptive force because:

(a) he would know how to market against Macquarie;

(b) most of his time would be spent prospecting Macquarie clients;

(c) he would know the lease expirations and could contact Macquarie clients six months in advance and give them lease rates to help win deals; and

(d) he would be the last person Macquarie would want to turn against "our business".

[356] Mr. Hoem testified that he believes he said all the things in the previous paragraph to Mr. Christman. Macquarie did not challenge him on this point, and I find that he did so. For one thing, the note was made to provide speaking points for the conversation with Mr. Christman. In addition, having watched Mr. Hoem testify for several days, I find it more probable than not that he would be very candid with Mr. Christman about his views on these matters. Whether rightly or wrongly, Mr. Hoem believed he was fighting to keep his job or at least control of his sales territory, and his strategy for doing so was to convince Mr. Christman not only that he could continue to benefit Macquarie in his current role, but that taking steps that might drive him away would not be good for the company.

[357] The contents of this Outlook note were thus known to the Macquarie through Mr. Christman well over a year prior to Mr. Hoem's termination. Yet there is no evidence that during this time Macquarie did anything to investigate the possibility that Mr. Hoem might have provided confidential information to Mr. Johnson.

[358] Macquarie's apparent failure to investigate or take further action is unsurprising, because nothing in what Mr. Hoem would have told Mr. Christman reasonably supports the conclusion that he may have provided confidential information to Mr. Johnson prior to his termination. My finding in this regard is further supported by the fact that Mr. Richardson did not rely on this note in setting out the basis for Macquarie alleging the disclosure of confidential information to Mr. Johnson in its pleadings.

[359] I also find that Macquarie's failure to raise with Mr. Hoem any concerns regarding the two notes discussed above, or to carry out any related investigations or inquiries, constitutes condonation of Mr. Hoem's conduct as reflected in the notes. This condonation would constitute a significant if not insurmountable obstacle to Macquarie relying on the notes to establish after-acquired cause.

[360] Macquarie relies on one final Outlook note to argue that the allegation that Mr. Hoem disclosed confidential information to Mr. Johnson was reasonably made. The note, created in June 2022, sets out Mr. Hoem's "To Do" list if he were to leave Macquarie based on constructive dismissal. The list includes: (i) obtaining emails exchanged with Ms. Mitchell, Mr. Watt, Mr. Richardson and Mr. Christman; and (ii) obtaining information such as "client volumes", "assets by client", portfolio by client", "profit by client", "total assets", and "business plan". Finally, the note states: "Call all clients before I leave".

[361] Macquarie argues that this note, combined with the one previously discussed, provided a reasonable basis to allege that Mr. Hoem gave Mr. Johnson confidential information prior to his termination.

[362] I disagree. This note relates to Mr. Hoem's fear that he was being or might be constructively dismissed. But he did not leave Macquarie on this basis. Rather, he was terminated without cause. Mr. Richardson's failure to mention this note as a basis for Macquarie's allegation provides additional support for my conclusion. Plus, the note does not say anything about giving the listed materials to Mr. Johnson, or any other Macquarie competitor for that matter. Given its contents, I accept as reliable Mr. Hoem's testimony that he was simply planning for the possibility of providing the materials to his lawyer.

[363] For the reasons set out above, I conclude that Macquarie did not have a reasonable basis to allege in its pleadings that Mr. Hoem disclosed confidential information to Mr. Johnson prior to his termination. It is true that Macquarie abandoned this allegation, but not until August 2024, a mere month before the trial started. The allegation was originally made in the RCC filed on March 10, 2023, and then again in the amended RCC filed on November 27, 2023.

[364] This allegation was especially problematic for Mr. Hoem when it came to obtaining new employment from Macquarie's three main competitors. He testified that the allegation scuppered any chance of working for Insight. Text messages sent to Mr. Hoem by Mr. Johnson even *after* being told the allegation was withdrawn strongly support his testimony in this respect. This allegation also caused concern for Mr. Poirier at CHG-Meridian, because his company had become embroiled in a lawsuit between Macquarie and

> Mr. Johnson in which the former alleged the latter gave confidential information to CHG-Meridian.
>
> [365] Waiting until a month before the trial to withdraw the allegation was thus too little, too late: it should not have been made in the first place.

[35] Ultimately, I concluded that Macquarie breached its duty of good faith and fair dealing owed to Mr. Hoem by making unreasonable allegations in its pleadings, which caused him compensable harm justifying an award of $35,000 in aggravated damages. See Trial Reasons, paras. 366-376.

[36] Mr. Hoem argued that Macquarie should also be liable for punitive damages for making these same allegations. But I did not accept this submission, instead concluding in the Trial Reasons as follows:

> [384] In addressing Mr. Hoem's claim for aggravated damages, I have considered his arguments regarding the allegations Macquarie made in its pleadings. These same arguments form the basis of his claim for punitive damages, and I already concluded that some of Macquarie's allegations were advanced, or continued to be advanced, absent a reasonable basis to do so.
>
> [385] However, unreasonableness without more does not meet the high threshold for awarding punitive damages. And I am unable to conclude that Macquarie also acted in bad faith in conducting the litigation the way it did, nor do I find the impugned litigation strategies amount to arbitrary conduct constituting a marked departure from ordinary standards of decent behaviour. This is therefore not one of those exceptional cases where punitive damages are justified.

[37] I do not suggest that denying a party punitive damages in relation to litigation conduct necessarily precludes that party from obtaining special costs in relation to the conduct: see, *e.g.*, Trial Reasons, para. 382. But as intimated in the excerpt set out immediately above, I am not prepared to find that Macquarie's decision to advance the allegations of just cause in the manner that it did constitutes anything more than an unreasonable litigation decision.

[38] For example, I do not find that Macquarie acted in bad faith, had an improper motive or was reckless regarding the truth in taking the positions that it did. I am also not prepared to find that Macquarie's positions were so utterly hopeless that advancing them amounted to misconduct or an abuse of process.

[39] In sum, while Macquarie advanced meritless positions regarding some of these allegations, which it ought to have recognized were deficient, this conduct does not without more justify awarding Mr. Hoem special costs.

Increased Costs

[40] I will begin this discussion with an overview of the legal principles bearing on increased costs, after which I will determine whether increased costs should be awarded in the circumstances of this case.

Legal Principles

[41] Section 2(5) and (6) of Appendix B to the *Rules* provides the authority for awarding increased costs:

> (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).

[42] The terms “increased costs” and “uplift costs” are used interchangeably to refer to the augmentation in costs permitted under Section 2(5) and (6): *Globalnet Management Solutions Inc. v. Aviva Insurance Company*, 2020 BCSC 1361 at paras. 31-34. I will use the former term, as the parties have done in their written submissions.

[43] The purpose of increased costs is to indemnify the successful party, not to punish the unsuccessful party: *Ding v. Canam Super Vacation Inc.*, 2024 BCCA 102 at para. 213, leave ref’d 2024 CanLII 93646 (S.C.C.).

[44] To obtain increased costs, the successful party must establish unusual circumstances that make an award of costs on the standard fixed scale grossly

inadequate or unjust. The inquiry is necessarily fact-based, driven by the nature of the litigation and the conduct of the parties. See *Ding* at para. 211.

[45] The term “unusual circumstances” encompasses conduct deserving of some form of rebuke, albeit less than that required for an award of special costs: *Ding* at para. 212.

[46] In *Prokam Enterprises Ltd. v. British Columbia Farm Industry Review Board*, 2023 BCSC 606 at para. 19, Justice Brongers noted that unusual circumstances include:

> (i) positions or behaviour which have added to the complexity of the litigation;
>
> (ii) the importance of the matter to a party;
>
> (iii) misbehaviour by a party that added to the expense incurred by the party claiming costs;
>
> (iv) the degree of disparity between costs calculated at Scale B and actual legal fees incurred; and
>
> (v) actions taken in bad faith, disobedience of courts processes, incivility, frivolity, and impertinence.

[47] Some of this conduct overlaps with factors that may be applicable in determining whether to award special costs. Accordingly, even if such conduct does not rise to the level of being reprehensible so as to warrant the punitive award of special costs, increased costs may be justified because the conduct constitutes “unusual circumstances”, and leaving the successful party with the limited indemnity provided by costs at the tariff scale would be unjust: *Heffel v. Cole*, 2023 BCSC 2140 at paras. 27-28.

Analysis

[48] For the same reasons set out in my analysis of Mr. Hoem’s claim for special costs, I have concluded that his allegations that Macquarie ignored deadlines in the *Rules* in an attempt to delay a resolution of this litigation are without foundation and do not support a claim for increased costs.

[49] However, in my view Mr. Hoem's claim for increased costs is made out based on the unfounded allegations of just cause advanced by Macquarie. I come to this conclusion for two main reasons.

[50] First, Macquarie advanced or failed to withdraw in a timely way not just one but three allegations that lacked a reasonable prospect of success, namely, the disclosure of confidential information, the ingestion of THC Gummies and the unauthorized price quotation provided to Richmond Steel.

[51] Second, these three allegations related to matters of real importance to Mr. Hoem. In making this point, I am not suggesting that increased costs should be ordered to compensate Mr. Hoem for mental distress caused by Macquarie's conduct in advancing these allegations – that has already been addressed through my award of aggravated damages (Trial Reasons, paras. 366-376).

[52] As I have already concluded, these factors do not constitute reprehensible conduct so as to attract an order of special costs. But in my view they do result in unusual circumstances that would make an ordinary Scale B award of costs grossly inadequate or unjust within the meaning of s. 2(5) of Appendix B of the *Rules*. See *Allen v. Ainsworth Lumber Co. Ltd.*, 2012 BCSC 213 at para. 15.

[53] That said, the increased costs provided for in s. 2(5), Appendix B of the *Rules* should be limited to the units referable to those parts of the proceeding that relate to these three allegations.

[54] Furthermore, based on the logic set out in the Trial Reasons at para. 335, increased costs with respect to the alleged ingestion of THC Gummies should be limited to the units referable to those parts of the proceeding following the conclusion of the EFDs and any associated answers to requests that were provided.

[55] Similarly, based on the logic set out in the Trial Reasons at paras. 338-343, increased costs regarding the Richmond Steel allegations should be limited to the units referable to those parts of the proceeding relating to the claim of losses between $100,000 and $890,000.

Conclusion

[56] Mr. Hoem's claim for special costs is rejected, but under s. 2(5), Appendix B of the *Rules* he is entitled to increased costs at 1.5 times Scale B with respect to the units referable to the parts of the proceeding that I have identified at paragraphs 53-55 above.

[57] Given the divided result, each party will bear their own costs regarding this application for augmented costs.

"D. Layton J."