IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Howes v. FortisBC Inc.,*
2025 BCSC 792

Date: 20250430
Docket: S2013723
Registry: Vancouver

Between:

Beverly Howes

Petitioner

And

Ministry of the Attorney General for British Columbia, FortisBC Inc., Ministry of Energy, Mines & Petroleum Resources for British Columbia and Ministry of Forests, Lands, Natural Resource Operations and Rural Development of British Columbia

Respondents

Before: The Honourable Justice Branch

Reasons for Judgment

The Petitioner, appearing in person:	B. Howes
Counsel for the Respondent, FortisBC Inc.:	D. R. Urquhart H. Pattenden
Counsel for the Ministry of the Attorney General for British Columbia, Ministry of Energy, Mines & Petroleum Resources for British Columbia and Ministry of Forests, Lands, Natural Resource Operations and Rural Development of British Columbia	P. Phan
Written Submissions Received:	Vancouver, B.C. November 10 and 22, 2022, March 20, and 26, 2025

Place and Date of Judgment: Vancouver, B.C.
April 30, 2025

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I. INTRODUCTION

[1] This is my costs direction flowing from my earlier decision dismissing the petitioner's application for judicial review (the "Decision"). The Decision is reported at 2022 BCSC 1797.

[2] The respondent FortisBC Inc. ("Fortis") seeks costs in the normal course. The petitioner argues that there are unique features in this case, such that the normal rule should not be applied against her.

[3] I will not repeat the facts set out in the Decision and will use the same defined terms.

II. PROCEDURAL ISSUES

[4] There has obviously been a long time gap between the Decision and this costs consideration.

[5] In the Decision, I provided as follows:

> [43] The application for judicial review is dismissed. If the parties cannot agree on costs, they may make written submissions on the following schedule:
>
> a) Petitioner: 30 days from this judgment;
>
> b) Fortis and the AG: 30 days from receipt of the petitioner's costs submission;
>
> c) Petitioner's Reply: 15 days from receipt of the latter of Fortis or the AG's submission.

[6] The problems that occurred thereafter appear to be explained by classic "technical difficulties".

[7] In terms of the petitioner's initial costs submissions, the petitioner asserts that they were delivered to the Court in writing on or about November 10, 2022. However, the Registry has no record of such delivery having occurred. Certainly, no referral of the petitioner's submissions was made to Court. I note that petitioner's counsel resigned during this period, leaving the petitioner to represent herself. A Notice of Intention to Act in Person was filed on January 30, 2023. Perhaps there

was a communication breakdown in terms of what was done or not done by counsel, or what was going to be done by whom, as part of that transition.

[8] To make matters worse, somehow the respondent Fortis' initial costs submissions, which were delivered electronically on November 22, 2022, were then filtered out by the court's administrative email system. No error message was provided to Fortis' counsel. Again, no notice was provided to the Court that submissions had been delivered.

[9] Not having received any response from the Court, and assuming that costs reasons were simply pending, Fortis proposed to the petitioner that the parties contact the Court in August 2023. The petitioner was not agreeable to a follow-up occurring at that time, and no such correspondence was delivered.

[10] Fortis finally sent a follow-up email to the Court on February 14, 2024. But to add further insult to injury, the court's system also filtered out this email. Again, Fortis received no response or error message from the system.

[11] Hence the costs issue remained in a state of "suspended animation" until Fortis followed up once again in February 2025. Investigations flowing therefrom yielded the information above.

[12] So what to do?

[13] First, from a court systems perspective, the technical failing that occurred has apparently been corrected by the implementation of an email failure alert system.

[14] Second, in terms of what effect this unfortunate chain of events should have in the present case, I have decided that it is inappropriate to penalize either party. Rather, I will simply consider the issue of costs on its merits afresh at this time. I find that this is the appropriate approach for the following reasons:

a) In relation to the petitioner:

i. I am unable to determine at this late date whether anything went awry in relation to her original filing;

ii. The respondents are prepared to allow the costs issue to be considered on the merits in any event.

b) In relation to the respondent Fortis:

i. Given that the problems with their filing appear to have originated with the Court's systems, I cannot place blame at their feet;

ii. While Fortis arguably should have followed up more aggressively, I do not see that any prejudice has accrued to the petitioner. Although she asks that the Court not consider Fortis' arguments, she should not seek to obtain a strategic advantage from the technical problems that originated with the Court, particularly when the delay is partially of her own making in terms of her decision to oppose the follow-up in August 2023. Further, the petitioner could have done her own follow-up, but she did not.

c) In relation to both parties, I was able to minimize any prejudice by allowing them to refresh and supplement their submissions in 2025.

III. COSTS CONSIDERATION ON THE MERITS

[15] The respondents were substantially successful defeating the petition. I see no reason why they should not be awarded their costs.

[16] Rule 14-1(9) provides that costs of a proceeding must be awarded to the successful party unless the court otherwise orders: *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[17] The onus is on the party seeking to have the court exercise its discretion to depart from the usual rule that costs follow the event. The onus is a substantial one and requires a party to prove that special circumstances exist to displace the general rule: *Gill v. Canada (Minister of Transport)*, 2014 BCSC 2235 at para. 17.

[18] At its most basic level, the successful party is one who obtains a remedy or who obtains a dismissal of the relevant proceeding: *Loft v. Nat*, 2014 BCCA 108 at para. 46.

[19] Addressing the petitioner's proposed grounds for avoiding a cost award, the first related to the interplay with the related trespass action in which the petitioner was successful. I agree with Fortis that the fact that Fortis and the petitioner had previously been involved in a civil trespass action is not a relevant factor in determining whether Fortis was the successful party in the petition. "Success" under Rule 14-1(9) necessarily contemplates success within the context of the proceeding being decided. Furthermore, the petitioner's "success" in the trespass action was muted, resulting in a costs order that each party bear their own costs.

[20] Next, I find that the petitioner does not qualify as a public interest litigant: *Snaw-Naw-As First Nation v. Attorney General of Canada*, 2020 BCSC 1967 at para. 29. I find that, as in *Snaw-Naw-As First Nation*, the "public interest relied on was at best tangential to their claim, which does not rise to the 'exceptional level' that justifies a departure from the 'usual rule'": at para. 29. The petitioner submits that it played a public interest role in bringing clarity to an untested legislative provision. However, even where a novel issue is raised, this factor must be weighed in context. Where the determination was not complex, but rather involved the application of usual principles of statutory interpretation, this factor will not generally justify departure from the general rule: *Snaw-Naw-As First Nation* at para. 30. Mere obscurity of the statutory provision will not always justify a favourable costs award on the grounds of novelty.

[21] Note that the two decisions cited by the petitioner are either distinguishable or do not support the petitioner's argument. The first involved a much more compelling and prominent issue, being the ability of parents to refuse blood transfusions on the part of their children: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R 315, 1995 CanLII 115 (SCC). In *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329, the court expressly acknowledged that "[b]ringing an

issue of public importance to the courts does not necessarily entitle a litigant to preferential costs treatment": at para. 62.

[22] In terms of her laudable conduct in narrowing the issues at the hearing of the petition, although the petitioner ultimately abandoned various issues plead in the petition, the respondents were not advised that these issues would be abandoned until the morning of the hearing. As a result, Fortis nevertheless incurred the cost of preparing argument with respect to the abandoned issues.

[23] The fact that a party has (eventually) conducted litigation efficiently is not a reason to excuse them from paying costs: *Bell v. Ries and Wigmore*, 2016 BCSC 1405 at para. 14.

"The Honourable Mr. Justice Branch"