

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Waterway Houseboats Ltd. v. British Columbia*,
2025 BCSC 1788

Date: 20250916
Docket: S103630
Registry: Kelowna

Between:

**Waterway Houseboats Ltd., Vinco Holdings Ltd.,
Waterway Houseboat Charters Ltd., et al**

Plaintiffs

And

**His Majesty the King in Right of the Province of British Columbia,
The District of Sicamous, Bryan McLaughlin and Constance McLaughlin**

Defendants

And

**His Majesty the King in Right of the Province of British Columbia,
The District of Sicamous, Bryan McLaughlin and Constance McLaughlin**

Third Party Defendants

Before: The Honourable Mr. Justice G.P. Weatherill

Reasons for Judgment re: Costs

Counsel for the Defendant
His Majesty the King in Right of the Province of
British Columbia:

K. Vicei

Counsel for the Defendants
Bryan McLaughlin and Constance McLaughlin:

D. Bilkey, K.C.

Place and Date of Hearing:

Kelowna, B.C.
August 22, 2025

Place and Date of Judgment:

Kelowna, B.C.
September 16, 2025

Introduction

[1] Following a June 2012 flood that devastated its businesses, Waterway Houseboats Ltd. (“Waterway”), Vinco Holding Ltd. (“Vinco”) and 63 Individual houseboat owners (“IHOs”) (collectively the “Waterway Plaintiffs”) sued claiming damages against His Majesty the King in Right of the Province of British Columbia (the “Province”), the District of Sicamous (“Sicamous”) and Bryan McLaughlin and Constance McLaughlin (the “McLaughlins”). The flood happened during a major spring run-off when rocks, logs, a truck and other debris became lodged under and plugged a bridge owned by the McLaughlins. All defendants filed responses to the Waterway Plaintiffs’ action and issued third-party proceedings against each other claiming contribution and/or indemnity.

[2] The trial was lengthy, complex, hard-fought and involved the testimony of several experts. On April 16, 2019, following 57 days of trial, I issued reasons for judgment (indexed as 2019 BCSC 581) finding that the Province was liable in negligence for the actions of an employee of the then Ministry of the Environment, and finding both Sicamous and the McLaughlins liable, *inter alia*, in negligence and pursuant to s. 21 of the former *Water Act*, R.S.B.C. 1996, c. 483. In supplementary reasons reported at 2020 BCSC 719, among other things, I ordered that the defendants were jointly and severally liable to pay the IHOs’ damages totaling \$312,997 plus pre-judgment interest of \$22,356.13 to be allocated *pro rata* between the IHOs.

[3] Appeals were taken by all parties. Prior to the appeals being heard, the defendants entered into a settlement agreement with 47 of the 63 IHOs releasing each other, *inter alia*, from any obligation to pay costs of the litigation.

[4] On December 20, 2020, the Court of Appeal (in reasons for judgment indexed as 2020 BCCA 378) *inter alia*:

- a) allowed the Province’s appeal and set aside my finding of liability against it on the basis that it owed no duty of care to the Waterway Plaintiffs. The Court of Appeal remitted the issue concerning the Province’s duty of care

to the McLaughlins advanced in the third-party proceedings back to the trial court;

- b) dismissed the McLaughlins' and Sicamous' appeals, aside from the narrow issue regarding s. 21 of the *Water Act*. The Court of Appeal upheld the finding of liability against the McLaughlins for other reasons; and
- c) ordered that the trial costs be assessed by the trial court.

[5] With the Province's success on appeal, it would ordinarily be seeking costs against the Waterway Plaintiffs which costs it says are in the order of \$750,000. However, because it says the two main plaintiffs Waterway and Vinco are insolvent and unable to pay its costs, it now seeks what is known as a "*Sanderson*" order allowing it to recover its costs on a joint and several basis from the McLaughlins.

[6] Even though Sicamous was also an unsuccessful defendant, the Province does not seek to recover costs against it. This is because, the Province says, in its closing submissions at trial, Sicamous adopted the Province's position on liability respecting the McLaughlins and did not vigorously "point a finger" at the Province or suggest that the Province was the culprit that caused the flood. The Province says that the McLaughlins, on the other hand, asserted that the Province was the party responsible for the Waterway Plaintiffs' losses.

[7] While conceding that the Province was the successful defendant, the McLaughlins oppose the Province's application for a *Sanderson* order. They say that the Province should be looking to the Waterway Plaintiffs who were ultimately unsuccessful against it and who are the proper parties to be responsible to pay its costs. In any event, they argue the Province has not met the test for establishing that a *Sanderson* order should be made.

Summary of Decision

[8] For the following reasons, the Province's application is dismissed.

Sanderson Orders – Legal Considerations

[9] Rule 14-1(9) of the *Supreme Court Civil Rules* governs costs. Unless otherwise ordered by the court, costs will be awarded to the successful party, meaning the party that had “substantial success” in the proceeding: *Vigier v. Darren Hart Law Corporation (Hart Legal)*, 2025 BCSC 794 at paras. 13–18.

[10] Rule 14-1(18) provides authority for the court to order either a *Sanderson* order or what is known as a *Bullock* order:

(18) If the costs of one defendant against a plaintiff ought to be paid by another defendant, the court may order payment to be made by one defendant to the other directly [*Sanderson* Order], or may order the plaintiff to pay the costs of the successful defendant and allow the plaintiff to include those costs as a disbursement in the costs payable to the plaintiff by the unsuccessful defendant [*Bullock* Order].

[11] Unlike a *Bullock* order where the burden is on the plaintiff to collect the successful defendant’s costs from an unsuccessful defendant, a *Sanderson* order allows a successful defendant to collect costs directly from an unsuccessful defendant. It is a discretionary order.

[12] The rule itself does not list any criteria for the exercise of discretion to make a *Sanderson* order, but the case law has established a two-part test: i) whether it was reasonable for the plaintiff to have joined the successful defendant in the action and ii) whether such an order would be just and fair in the circumstances: *Provost v. Dueck Downtown Chevrolet Buick GMC Limited*, 2021 BCCA 15 at paras. 17–19 citing *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528 at paras. 53–56.

[13] The first part of the test is the “threshold” issue and addresses the reasonableness of the plaintiff joining the successful defendant in the action: *Robertson v. North Island College Technical and Vocational Institute* (1980), 26 B.C.L.R. 225 at 228, 1980 CanLII 2581 (C.A.); *Davidson* at para. 55.

[14] The second part requires a consideration of whether the unsuccessful defendant did something to justify a *Sanderson* order. There must be something which the unsuccessful defendant did, such as asserting the successful defendant

was the “culprit” in the case or where the unsuccessful defendant caused the successful defendant to be brought into the action, to warrant having to pay the successful defendant’s costs: *Grassi v. WIC Radio Ltd.*, 2001 BCCA 376 at paras. 18, 33 and 34.

[15] Once the threshold part of the test has been met, the analysis is highly contextualised and fact based: *Robertson* at 228.

[16] Where a party who would ordinarily be required to pay costs is insolvent, a hardship could be imposed on a party entitled to its costs. As was summarized in *Moulton Contracting Ltd. v. British Columbia*, 2014 BCSC 993:

[48] The effect of the subrule generally is described in the following passages from Fraser, Horn & Griffin, *The Conduct of Civil Litigation in British Columbia*, 2nd ed. looseleaf (Markham: LexisNexis, 2007), quoted with approval in *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528:

Rule 14-1(18) [formerly Rule 57(18)] provides that the court may order that a successful plaintiff pay the costs of a successful defendant and recover such costs as a disbursement against an unsuccessful defendant. Such order is commonly known as a *Bullock* order. The Rule also provides that the court may, as an alternative, order that the unsuccessful defendant pay the costs of the successful defendant directly. Such order is commonly known as a *Sanderson* order. A court may make such order where there is more than one defendant in an action and also where actions have been consolidated for trial or ordered to be tried at the same time.

...

Where all parties are solvent, it does not matter much which form of order is made. The advantage of a *Sanderson* order in such a case is confined to avoiding circuitousness.

If the unsuccessful defendant is insolvent, then the *Bullock* form of order imposes a hardship upon the plaintiff who may recover nothing from the unsuccessful defendant and yet has to pay the successful defendant. A *Sanderson* form of order, on the other hand, imposes the hardship upon the successful defendant. Where the successful defendant is blameless, the courts have generally refused to make a *Sanderson* order.

[17] The plaintiff, as the party who initiated the proceedings, bears the primary risk of paying the successful defendant’s costs. Once it is shown that joining the unsuccessful defendant in the action was a reasonable thing for the plaintiff to do,

whether a *Sanderson* order should be made is within the trial judge’s discretion to be judicially exercised. In the case of a plaintiff who may be insolvent, it becomes a matter of policy whether the successful defendant or the unsuccessful defendant should bear the risk of that insolvency. Even where the conduct of the defendants is related, in the absence of special circumstances, such as where the unsuccessful defendant is legally related to the successful defendant, a *Sanderson* order should not be made: *Imperial Salmon House Ltd. v. Krdzalic* (1983), 48 B.C.L.R. 256 at 258–259, 1983 CanLII 576 (S.C.) [*Imperial Salmon*]; *McEvoy v. McEachnie*, 2008 BCSC 1496 at para. 65.

The Province’s Position

[18] As a result of the appeal, the Province was wholly exonerated from fault for the flood and Sicamous and the McLaughlins were held to be liable. Ordinarily, the Province would have pursued its costs against the Waterway Plaintiffs in the usual fashion. However, the Province says that the situation here is not ordinary. It asserts that both Waterway and Vinco are insolvent, have been struck from the corporate registry, and are unable to pay the Province’s costs. They also say that it would be unreasonable to expect them to pursue the IHOs, who had purchased houseboats and rented them out through Waterway, because Waterway was “driving the litigation bus” and the IHOs were essentially “along for the ride”. If a *Sanderson* order is not made, the Province says it would be saddled with its own costs even though it was ultimately the successful litigant.

[19] The Province contends that the fact of Waterway and Vinco’s insolvency is a “special circumstance” as was contemplated in *Imperial Salmon*.

[20] The Province contends that the McLaughlins maintained throughout the litigation that the Province was the party responsible for the flood and the Waterway Plaintiffs’ losses. Such a position, it says, falls squarely within what the Court in *Provost* referred to as “asserting that the other defendant was the culprit”: at para. 18, citing *Grassi*. By contrast, it says that Sicamous neither vigorously pointed

a finger at the Province in their pleadings nor made full throated submissions to cast blame on the Province.

[21] The Province argues that by asserting it was liable, the McLaughlins exposed themselves to a *Sanderson* order in the event, as has occurred here, the Waterway Plaintiffs were unable to pay costs.

[22] Viewed holistically and put in context, the Province contends that it was ultimately held to be blameless and because Waterway and Vinco are insolvent, the McLaughlins, as unsuccessful defendants, should bear the burden of paying its costs. It says a *Sanderson* order against the McLaughlins is appropriate, is the only just and fair order and would prevent hardship on it as the successful defendant.

The McLaughlins' Position

[23] For their part, the McLaughlins oppose the Province's application and say that it should be seeking its costs from the Waterway Plaintiffs.

[24] The McLaughlins say that, although the evidence suggests both Waterway and Vinco were placed into receivership and struck from the corporate register, there is no admissible evidence that either company is indeed insolvent. While they concede that Waterway's and Vinco's solvency is in question, whether either would be able to pay costs, they submit, is an important consideration with respect to the exercise of discretion as to whether a *Sanderson* order would be fair and just in the circumstances and the Province should have submitted more cogent evidence on the point. They contend that the Province has not shown that it has taken any steps to determine whether Waterway or Vinco can pay costs and argue that the Province has simply chosen to proceed against them as a matter of convenience.

[25] More to the point and relying on the courts' comments in both *Imperial Salmon* and *Grassi*, the McLaughlins argue that it would neither be just nor fair to make a *Sanderson* order against them because: i) they did nothing to cause the Province to be sued – all defendants were sued together; ii) the case against the Province was strong and the McLaughlins simply adopted the Waterway Plaintiffs'

position at trial; and iii) there was nothing they did, nor are there any special circumstances, to justify a *Sanderson* order being made against them.

[26] The McLaughlins point out that their defence was principally that their actions respecting the reconstruction of their bridge were reasonable and not negligent. Their alternative position, as pleaded, was that if their bridge caused or contributed to the Waterway Plaintiffs' losses, they weren't liable because it was the Province's representatives who provided the specifications, oversight, direction and approval for the bridge. Put differently, they say that while the Waterway Plaintiffs sued the McLaughlins for not retaining an engineer, the McLaughlins' alternative position at trial was that they were not negligent in doing so because they accepted and relied on the Province's approvals respecting the bridge construction. They argue that this was much different to taking the position that the Province was the "culprit" in the case.

[27] The McLaughlins also point out that the Waterway Plaintiffs claimed independent and unconnected causes of action against the Province and the McLaughlins. As against the Province, they asserted a private duty of care not to grant an approval for the bridge's construction without ensuring its height did not create an unreasonable risk of flooding. As against the McLaughlins, they asserted a duty of care to obtain the advice of a qualified professional engineer before building the bridge. Accordingly, they argue, a *Sanderson* order would be inappropriate: *Mulready v. J. H. & W. Bell Ltd., et. al.*, [1953] 2 All E.R. 215 at 219 (C.A.), cited in *Robertson* at 228.

[28] They also say that the Province's defence, upheld on appeal, was that it did not owe a private duty of care to the Waterway Plaintiffs whereas the McLaughlin's defence, rejected at trial and on appeal, was that their reliance on a statutory approval was reasonable. They say that this position neither blamed the Province nor contended that the Province's approval for the bridge cause the plaintiffs' loss. Rather, their position was that they were not negligent in relying on the Province's approval. In short, the McLaughlins argue that although they were joined in the

lawsuit because of the flood, the causes of action against them were completely different: *Grassi*, at para. 33.

[29] The McLaughlins also say that the IHOs allowed themselves to be named as plaintiffs in the litigation and they must have been willing to assume the risk of having to pay costs if they were unsuccessful. Instead of pursuing the IHOs for costs, the Province has either released them or has chosen not to pursue them.

[30] Militating against making a *Sanderson* order, the McLaughlins submit:

- a) there has been a seven-year delay between the trial decision and the Province bringing its application for costs;
- b) the Province released 47 of the 63 IHO's leaving 16 others that they could have, but have chosen not to, pursue for costs; and
- c) throughout the litigation, Sicamous also "pointed its finger" at the Province. The Province could have, and has chosen not to, proceed against Sicamous for costs.

[31] Respecting whether Waterway's and Vinco's suspected insolvency amounts to a "special circumstance" that would justify a *Sanderson* order, the McLaughlins argue that the Province is simply attempting to take an easier route to recover its costs. Efficiency or expediency can neither be a "special circumstance" nor is a *Sanderson* order a just and fair remedy in the circumstances.

Discussion

[32] There is no dispute that the Province, as a successful party, is entitled to its trial and appeal costs. The question is whether they should be paid by the Waterway Plaintiffs, or by the McLaughlins, as one of the unsuccessful defendants in the case.

[33] There is also no dispute that the threshold part of the test for a *Sanderson* order has been met. Both the Province and the McLaughlins agree that it was reasonable for the Waterway Plaintiffs to have sued the Province.

[34] That leaves the second part of the test, whether, in the specific circumstances of this case it would be fair and just in the circumstances for a *Sanderson* order to be made against the McLaughlins.

[35] With respect to the insolvency issue, I am satisfied that both Waterway and Vinco are probably insolvent and are unable to pay the Province's costs.

[36] I propose to determine the issue on a review of the relevant case law as it applies to the facts of this case and keeping in mind that the ultimate question is whether a *Sanderson* order against the McLaughlins would be fair and just in the circumstances.

[37] The Province contends that the fact of Waterway's and Vinco's insolvency has been held to be such a "special circumstance" that would justify a *Sanderson* order, citing *Wood v. Hungerford (Township)*, [2005] O.J. No. 1656, 2005 CanLII 13822 (S.C.J.) [*Wood*]:

[12] ...In my view, the plaintiff's situation of potential insolvency requires that the liable defendants make the costs due to the successful defendants payable directly to them. In the circumstances, the so-called *Sanderson* Order is appropriate, rather than the more common *Bullock* Order in which the liable defendants pay to the plaintiff both the plaintiff's costs and the costs of the successful defendants, leaving the plaintiff to then pay the costs of the successful defendants.

[13] I appreciate the argument that *Bullock* and *Sanderson* orders are normally made when a plaintiff appropriately sues more than one defendant for the same cause of action and for the same injury or loss, in which case the defendants contest liability *inter se* ... In the circumstances of this case, the damages are one and the same, and it would not be reasonable to think that the plaintiff could have pursued this action without joining the vendors and the vendor's agent. The named defendants were property named, given the nature, scope and interrelationship of the issues and notwithstanding that some defendants were vindicated in the final result. In the submission of Mr. Gallagher (supported by the Lautenback's), it is submitted that the costs of the successful defendants should actually be charged against the plaintiff's judgment in order to gain priority over general creditors in the event of the plaintiff's insolvency. I do not think the Court has any such power except to the limited extent provided for charging orders under the Solicitor's Act. In my view, a *Sanderson* Order is an adequate answer to the successful defendant's concerns pertaining to the plaintiff's solvency.

[38] This is the only case to which I have been referred dealing with *Sanderson* orders where a plaintiff is insolvent. In that case, the plaintiff was successful against the township and one set of realtors, but unsuccessful against a second set of realtors who were entitled to their costs. The plaintiffs were facing potential insolvency, and the Court made a *Sanderson* order against the unsuccessful defendants on an application by the plaintiffs.

[39] In my view, the exercise of my discretion requires a focus on what I consider is just and equitable in *this* case, which requires an assessment of the events leading up to and during trial. Given the circumstances leading up to the flood, it was entirely appropriate, not only for the Waterway Plaintiffs to sue the Province, Sicamous and the McLaughlins, but for each of those defendants to issue third-party proceedings against each other. The legal and factual issues were complex, difficult, and highly technical and warranted a fulsome airing. All defendants were necessary parties to the lawsuit.

[40] For the following reasons, I am not persuaded that a *Sanderson* order against the McLaughlins is warranted, and I exercise my discretion against making such an order.

[41] First, the Waterway Plaintiffs sued the Province, Sicamous and the McLaughlins claiming that each caused or contributed to the flood that devastated their business. In their respective responses to civil claim and as against the Province, Sicamous and the McLaughlins both followed the plaintiffs' theory of the case, namely that it was the Province's employees who negligently specified the height of and approved the bridge over the offending creek.

[42] Second, as the parties who initiated the proceedings, the Waterway Plaintiffs must bear the primary risk of meeting the Province's costs. They were the parties driving the bus. The fact that, in and of itself, the McLaughlins were passengers on the bus, is insufficient to warrant a *Sanderson* order: *Imperial Salmon*, at 259.

[43] Third, there was nothing the McLaughlins did to cause the Province to be brought into the action. All defendants were sued together, and all defended the case together, often assuming and adopting each other's positions against the plaintiffs.

[44] Fourth, the third-party proceedings taken by all defendants, although not identical, were in essence *pro forma* pleadings claiming contribution and/or indemnity from the other defendants if the Waterway Plaintiffs made out a case against them. Third-party proceedings are customary in cases such as this. All defendants pointed fingers at each other and all sought contribution and/or indemnity. I do not consider these to be "special circumstances" as that phrase was used in *Imperial Salmon*. If it were so, *Sanderson* and/or *Bullock* orders would be commonly sought and awarded in most, if not all cases where third-party notices have been filed.

[45] Fifth, other than taking third-party proceedings and adopting the plaintiffs' position regarding the Province's liability during submissions if there was liability at all, there was no conduct on the McLaughlins' part that would justify a *Sanderson* order.

[46] Sixth, whether "special circumstances" that warrant a *Sanderson* order exist is contextual. In my view, there are no "special circumstances" here that warrant such an order. I do not accept the Province's position that because *Waterway* and *Vinco* are insolvent, special circumstance exist. To the extent that the Court in *Wood* might suggest otherwise, I decline to follow it.

[47] Seventh, the McLaughlins did not allege that the flood was *caused* by the Province but rather they took the position that if they were liable, the other defendants, including the Province, contributed to the damages. As such, they were simply following the Waterway Plaintiffs' theory of the case by saying that if there was any specific risk posed by the bridge approval, the Province, as the designer, was in the best position to be aware of the risk and should have communicated that

risk to them: *Ding v. Prévost, A Division of Volvo Group Canada Inc.*, 2023 BCSC 518 at para. 51.

[48] Eighth, even though the IHOs received over \$300,000 in damages, for efficiency, the Province has elected either to release them from a claim for costs or has elected not to pursue them as a matter of convenience.

[49] In sum, on my assessment of the circumstances of this case, I do not consider it would be just, fair or equitable for the McLaughlins to bear the Province's costs.

Decision

[50] The Province's application for a *Sanderson* order against the McLaughlins is dismissed with costs.

"G.P. Weatherill J."