

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ladhar Estate v. Ladhar*,
2025 BCSC 2000

Date: 20251015
Docket: S216433
Registry: Vancouver

Between:

**Harveer Ladhar, in her capacity as Administrator of the Will and Trustee
of the Estate of Agya Pal Singh Ladhar, deceased**

Plaintiff

And

**Jaskirat Singh Ladhar, Baljeet Kaur Ladhar, Navjeevan Ladhar,
Ladhar Development Ltd., and Ladhar Development Group Ltd.**

Defendants

And

Sukbhinder Kaur Ladhar

Defendant by Counterclaim

Before: The Honourable Madam Justice Sharma

Reasons for Judgment on Costs

Counsel for the Plaintiff:

E.B. Clavier

Counsel for the Defendants:

G. Banipal

Written Submissions:

Vancouver, B.C.
July 11, 2025

Place and Date of Judgment:

Vancouver, B.C.
October 15, 2025

[1] This judgement addresses costs arising from the hearing that took place on June 2, 2025, resulting in judgement issued June 9, 2025, indexed at 2025 BCSC 1782. In that judgement I set out a process for the parties to send in submissions on costs, which they have now done.

[2] In the June 9 judgment, I dismissed an application brought by the plaintiff to disqualify a law firm and lawyer from representing the defendants in this action. The defendants now seek special costs against the plaintiff. The defendants submit that the application was unsupported by a *bona fide* argument or current evidence, which are among the reasons why special costs ought to be awarded. In the alternative, they seek an order awarding an uplift to costs.

[3] The plaintiff's position is that the circumstances do not justify special or uplifted costs.

[4] There is no dispute about the applicable legal principles. A helpful summary is contained at paras. 22–27 of *Kim v. Choi*, 2019 BCSC 1792, reproduced below:

[22] Special costs may be awarded where the conduct of a party is reprehensible. Reprehensible conduct includes conduct that is scandalous or outrageous, or milder forms of misconduct that are deserving of reproof or rebuke: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 at 747 (B.C.C.A.).

[23] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11, Walker, J. set out those circumstances that warranted the attraction of special costs:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed “reckless indifference” by not recognizing early on that its claim was manifestly deficient;
- (d) where a party made the resolution of an issue far more difficult than it should have been;
- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;

(f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;

(g) where a party brings a proceeding for an improper motive;

(h) where a party maintains unfounded allegations of fraud or dishonesty; and

(i) where a party pursues claims frivolously or without foundation.

[24] Special costs are punitive and serve to chastise the offending party: *Ip v. Insurance Corp of British Columbia* (1994), 89 B.C.L.R. (2d) 251 at para. 7.

[25] Special costs are the exception. Special costs should not be awarded where the only issue is a party's credibility: *Schwabe v. Dr. Lisinski*, 2005 BCSC 1284 at para. 26; *Grewal v. Sandhu*, 2012 BCCA 26 at para. 107, leave to appeal ref'd [2012] S.C.C.A. No. 120. However, a party who lies, falsifies evidence and attempts to deceive the court can be subjected to special costs: *Hoffman v. Percheson*, 2011 BCSC 1175 at paras. 19-23.

[26] Special costs may also awarded where a litigant makes allegations of fraud without foundation. A prima facie case must exist before such a serious allegation is made: *Ip* at paras. 7-8.

[27] In *Ip*, at para. 8, the Court outlined the injuries inflicted by fraud allegations and the consequences that flow from baseless claims:

An allegation of fraud, willful misstatements, or other such claims made against a person casts a serious pall over his or her reputation in the community. Very careful consideration must be given by the defendant before making such serious allegations. At the very least, a prima facie case must exist and if it does not then special costs by way of "chastisement" is a reminder to the defendant to exercise better care in the future.

[5] In *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, the court emphasized that restraint should be exercised in awarding special costs such that the party seeking them should demonstrate the presence of exceptional circumstances: at para. 73.

[6] In *Grewal v. Sandhu*, 2012 BCCA 26, the Court of Appeal overturned the award of special costs. It held that the trial judge incorrectly believed that the aggrieved party was entitled to be properly and fully compensated for the breaches of professional duty. At para. 106, the Court of Appeal stated that special costs are not compensatory, but are punitive and are meant to address conduct during the course of the litigation.

[7] The defendants point to a number of circumstances they say support an award for special costs. Noting that an application for disqualification application is based on the risk of sharing confidential information, the defendants submit the following admissions made during the hearing warrant an award for special costs:

- a) there was a 15-month gap between Mr. Stephen and Ms. James working at the same firm;
- b) there was no actual risk of confidential information being shared because the two lawyers were never at the same law firm at the same time; and,
- c) the current application was an attempt to expand the scope of the previous disqualification decision issued by Justice Tucker in *Ladhar v. Ladhar*, 2024 BCSC 1339.

[8] The defendants also contend the plaintiff's failure to file any new evidence and, instead, relying on the evidence submitted before Justice Tucker to support their position that the application had no merit.

[9] They also point out that the plaintiff did not attempt to bring any evidence from Sukbhinder Ladhar, who is the person that had the previous solicitor-client relationship with Mr. Steven, whose joining Richter Trial Lawyers ("RTL") created the conflict. Moreover, there was no counsel at the hearing before me representing Sukbhinder Ladhar.

[10] The defendants submit there was a subtle attempt by the plaintiff to argue that Mr. Steven provided Ms. James with certain confidential information despite the fact that the plaintiff herself disclosed that same information in the trust action. They allege that is conduct worthy of rebuke.

[11] They also assert that the delay between the plaintiff's knowledge that Ms. James would be representing the defendants and the current application is relevant. The defendants retained Ms. James on August 2, 2024. On September 16, 2024, Ms. James advised the plaintiff's counsel that she had been retained and had

submitted to the Registry a notice of change of solicitor; she included an unfiled copy of that notice in her correspondence. The plaintiff's notice of application was filed on February 7, 2025.

[12] At the hearing before me, the plaintiff took the position she was entitled to wait to receive the filed copy of that notice. However, the defendants call into question the sincerity of that submission because the plaintiff participated in a conference call with Ms. James after the unfiled copy was received, without raising any concern about potential conflict.

[13] Furthermore, the defendants allege it was only after Ms. James scheduled an application for the release of funds that the plaintiff decided to challenge her representation of the defendants on the basis of a purported conflict of interest. The defendants point out that, had the plaintiff raised an objection immediately, as Mr. Miller did in August 2021, the defendants could have considered the option of seeking other counsel before Ms. James worked on the file for a number of months, incurring legal fees in the process: *Merrick v. Rubinoff*, 2013 BCSC 2552 at para. 22.

[14] The defendants go further and argue that the plaintiff's bringing of two disqualification applications in the span of just over a year prolonged the litigation, delayed their ability to address the merits, and is deserving a rebuke, as mentioned in *Robertson v. Slater Vecchio*, 2007 BCSC 987 at para. 60, citing the then Chief Justice Esson in *Manville Canada Inc. v. Ladner Downs* (1992), 63 B.C.L.R. (2d) 102 (S.C.), aff'd 76 B.C.L.R. (2d) 273 (C.A.).

[15] They also point to *Dyer v. Dyer*, 2016 BCSC 1115, in which the delay in bringing a disqualification application was one of the bases upon which special costs were ordered (para. 64). The defendants say they are in a stronger position because the current application was based on pure speculation and had no evidentiary basis, unlike in *Dyer*, where the existence of evidence was seen to be a mitigating factor (para. 66; see also *Global Chinese Press Inc. v. Zhang*, (July 31, 2015) Vancouver S148822 (B.C.S.C.)[*Zhang*], cited in *Dyer* at para. 56).

[16] The defendants allege not only was there a lack of factual or legal basis to bring the application, but the plaintiff also had explicit knowledge that there was no legal basis. Ms. James responded to the allegation of a disqualifying conflict of interest in correspondence from December, citing case authority, to which no response was made.

[17] The defendants also submit it is significant that the plaintiff argued their position at the hearing before me without filing any additional cases. They submit the lack of legal authority put forth by the plaintiff necessitated more research than usual. When combined with what they say are the factual admissions made during the hearing, counsel asserts their client was subjected to unnecessary increased legal costs to oppose the application.

[18] In the alternative, the defendants seek an uplift of costs pursuant to s. 2(5) of Appendix B to the *Supreme Court Civil Rules*. Section 2(5) permits the court to award costs at 1.5 times the value that would apply to a unit as a result of unusual circumstances, including that costs on the usual scale would be “grossly inadequate or unjust”.

[19] In *Johnson v. Heer*, 2020 BCSC 1751 at para. 27, the Court commented on what unusual circumstances could justify an uplift of costs. Examples of unusual circumstances include misbehaviour of a party, the importance of the matter to a party, and actions that unnecessarily added to the complexity of the litigation: *Johnson* at para. 27; *Globalnet Management Solutions Inc. v. Aviva Insurance Company*, 2020 BCSC 1361 at para. 30.

[20] The plaintiff submits that the defendants have not pointed to any outrageous or scandalous conduct that justifies special costs.

[21] In response to the argument that there was a lack of fresh evidence, the plaintiff submits the application cannot be viewed in isolation. She contends her application must be viewed in the context of the previous disqualification application. The plaintiff’s position is that the “interwoven relationships of the various lawyers and

firms” created a risk that confidential information was shared, which could negatively impact public confidence in the integrity of the administration of justice. However, the plaintiff acknowledges that Ms. James left RTL more than a year before the conflict that gave rise to Justice Tucker's decision. Nevertheless, the plaintiff argues it was reasonable to invoke the court's inherent jurisdiction to seek to protect the estate.

[22] I do not agree. I find there was no basis to assert that there was a risk of the disclosure of confidential information, given the plaintiff's knowledge of the gap in time between Ms. James and Mr. Steven working at RTL. More importantly, that assertion was contradicted by explicit evidence filed by Ms. James, Mr. Richter, and Mr. Steven.

[23] In response to the defendants' argument that she has caused intolerable delay in the proceedings, the plaintiff argues that delay was caused because of the defendants' choice to retain Ms. James after RTL had been successfully disqualified. I do not find that position compelling because it presumes that the order made by Justice Tucker was somehow forward-looking, which it was not.

[24] The plaintiff also contends that Ms. James indicated she was retained in August 2024, but presented no filed notice to that effect until November 2024. In this case, Ms. James' initial correspondence included only an unfiled copy of the notice.

[25] I reject this argument. Counsel are officers of the court and bound by ethical duties. If we give credence to the argument that absent a filed notice of a change of solicitor, counsel cannot rely on another counsel's representation that they have been retained and have sent a notice to the Registry for filing, it would be a significant erosion of the courtesy and collegiality expected of members of the bar. If the plaintiff objected to Ms. James acting for the defendants, counsel should have raised that issue immediately even if the filed notice of change of solicitor was not yet received.

[26] The plaintiff also seeks to distinguish *Zhang*, where the court ordered the defendant to pay special costs for a failed disqualification application. In *Zhang*, the

failure of the defendant to adduce evidence related to the alleged conflict rendered the application speculative and interrupted the proceedings as a result, which warranted the award of special costs. The plaintiff submits that, unlike in *Zhang*, there is a history of Ms. James being at RTL and working on the same file, and therefore there is *some* evidence to support existence of a conflict.

[27] However, that argument fails to account for the plaintiff's acknowledgement at the hearing that the 15-month gap between the presence of Ms. James and Mr. Steven at RTL precluded the risk of confidential information being shared at the law firm.

[28] The facts in this case are somewhat different from the cases cited by the parties because of the previously successful disqualification application brought by the plaintiff. However, it is notable that in her judgment, Justice Tucker found that the delay in implementing safeguards to be fatal supporting the disqualification of RTL acting for the defendants. In other words, the fact that Mr. Steven jointed RTL may not have disqualified RTL had they immediately taken appropriate steps to create firewalls.

[29] The plaintiff submits that despite the lack of new evidence, she was justified to bring the application in light of the possible negative impact on public confidence in the integrity of the administration of justice. However, that is not a free-standing basis to bring an application for disqualification. The impact on public confidence and integrity of the justice system must be tied to the objective risk of the sharing of confidential information.

[30] Two factors are particularly compelling in support of an order for special costs. After receiving notice of their intention to seek disqualification a second time, Ms. James provided correspondence containing a thorough response explaining her position and the timing of her and Mr. Steven's working at RTL. She included case law. The plaintiff did not respond to that correspondence until the application was filed. In addition, all of the lawyers involved filed affidavits providing detailed evidence. In particular, Ms. James very carefully set out every circumstance she

recalled running into Mr. Richter and the nature of their interaction. As I noted in the previous judgment, this was not evidence from a lawyer of the “simply trust me” description referred to in the case law.

[31] I also find the plaintiff's delay in bringing the application to be concerning. Concerns about possible disqualifying conflicts should be raised immediately. As noted, I do not agree waiting for receipt of a filed copy of change of solicitor was necessary before raising the concern about potential conflict. Together with the fact that the application was brought after an application for release of funds was filed raises the spectre of this application being tactical.

[32] In light of those facts, the plaintiff's insistence on seeking a second order for disqualification was akin to an unsubstantiated allegation of conflict. Since such allegations implicate the integrity of the justice system, it was foreseeable and reasonable that the defendants would respond thoroughly. I agree with the defendants that they were put to the extra task and expense of having to respond to something that sounded like a novel argument or an expansion of a previous order.

[33] Lastly, this application inevitably caused a delay to the progress of this litigation.

[34] All of those factors in my mind justify an award for special costs in favour of the defendants.

“Sharma J.”