

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *MFSJ862 v. FFSJ862*,  
2023 BCSC 1088

Date: 20230623  
Docket: E23862  
Registry: Fort St. John

Between:

**MFSJ862**

Claimant

And

**FFSJ862**

Respondent

Before: Master Muir  
(As Registrar)

## Reasons for Decision

Counsel for the Claimant:

P. Boles

Counsel for the Respondent:

A. James

Place and Date of Hearing:

Prince George, B.C.  
April 13, 2023

Place and Date of Decision:

Fort St. John, B.C.  
June 23, 2023

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**Introduction**

[1] The matter before me is for the assessment of the costs of the special costs hearings held November 17 and 18, 2022, which was the subject of my reasons for decision in this matter given February 27, 2023 and indexed as 2023 BCSC 273 (the “special costs reasons”).

[2] In addition, before me was the assessment of the costs of a hearing before Justice Church on September 29, 2022.

[3] I will not repeat any of the conclusions I reached in the special costs reasons, other than to say that this entire action has been tainted by the deceit and scorched-earth tactics of the respondent.

[4] Nor will I repeat the legal analysis set out in those reasons. It is equally applicable here.

[5] In the special costs reasons, I concluded that as the costs of the special costs hearings and the costs of the hearing before Church J. had not been the subject of an appointment to assess costs, I had no jurisdiction to assess them.

[6] The claimant was granted leave to file a new appointment to deal with those matters and that appointment was filed on March 14, 2023.

[7] In addition to evidence from the earlier hearing in November 2022, where preparation for the hearing was canvassed extensively, the claimant relies on a new affidavit of Ms. Boles sworn March 10, 2023. In addition, at the April 13, 2023 hearing, Ms. Boles gave viva voce evidence.

[8] The respondent, at this hearing and the November special costs hearings, relied on affidavits of a legal assistant to his counsel. As well, counsel for the respondent cross-examined Ms. Boles at the November hearings and at this hearing, but other than that, the respondent did not call or rely upon any evidence for this hearing.

[9] The claimant seeks the following costs:

a) Costs for the September 29, 2022 hearing before Church J.:

|                |             |
|----------------|-------------|
| Fees:          | \$16,800.00 |
| Taxes:         | \$2,016.00  |
| Disbursements: | \$500.76    |

**Total claimed: \$19,316.76**

b) Costs of preparation for the special costs assessment hearings on November 17 and 18, 2022:

|                              |             |
|------------------------------|-------------|
| Ms. Boles' preparation fees: | \$76,550.00 |
| Taxes:                       | \$9,186.00  |
| Sub-total:                   | \$85,736.00 |

|                                   |             |
|-----------------------------------|-------------|
| Ms. Katerberg's preparation fees: | \$45,000.00 |
| Taxes:                            | \$5,400.00  |
| Disbursements:                    | \$758.42    |
| Sub-total:                        | \$51,158.42 |

**Total claimed: \$136,894.42**

c) Costs of attendance at the November 17 and 18, 2022 special costs hearings:

|                  |             |
|------------------|-------------|
| Ms. Boles' fees: | \$12,000.00 |
| Taxes:           | \$1,440.00  |
| Sub-total:       | \$13,440.00 |

|   |            |
|---|------------|
| Ms. Katerberg's fees (per amendment to appointment sought at this hearing): | \$7,500.00 |
| Taxes:  | \$900.00   |
| Sub-total:  | \$8,400.00 |

**Total claimed: \$21,840.00**

## d) Costs of written submissions:

|                       |                    |
|-----------------------|--------------------|
| Ms. Boles' fees:      | \$22,500.00        |
| Taxes:                | \$2,700.00         |
| <b>Total claimed:</b> | <b>\$25,200.00</b> |

## e) Costs of preparation for April 13, 2023 hearing:

|                       |                    |
|-----------------------|--------------------|
| Ms. Boles' fees:      | \$12,500.00        |
| Taxes:                | \$1,500.00         |
| <b>Total claimed:</b> | <b>\$14,000.00</b> |

## f) Costs of supplemental preparation and attendance at April 13, 2023 hearing (per amendment to appointment sought at hearing):

|  |                    |
|--|--------------------|
| Ms. Boles' fees (13 hours @ \$700/hour): | \$9,100.00         |
| Taxes:                                   | \$1,092.00         |
| <b>Total claimed:</b>                    | <b>\$10,192.00</b> |

[10] In addition, Ms. Boles claimed disbursements from August 8, 2022 in the amount of \$14,834.74.

[11] The amount sought for preparation and attendance at the September 29, 2022 hearing before Church J. and the various hearings before me, including provision of written argument, is thus a total of fees of \$201,950, taxes of \$24,234, Ms. Boles' disbursements of \$14,834.74 plus \$500.76 (for hearing before Church J.), and Ms. Katerberg's disbursements of \$758.42 (\$722.30 plus tax of \$36.12), for a total of \$242,277.92 (\$201,950 + \$24,234 + \$14,834.74 + \$500.76 + \$758.42).

[12] The respondent took the position that the amount sought was not proportional to the matters at issue and submitted that the fee amount should be allowed at 80% of that claimed, or \$161,560.

### **Hearing Before Justice Church on September 29, 2022**

[13] In preparation for the November special costs hearings, the respondent had been ordered by Master Robertson at a pre-hearing conference on August 25, 2022

to provide particulars of his objections to the accounts attached to the appointment filed August 15, 2022 by September 30, 2022.

[14] While Ms. Boles was preparing for another trial in Fort St. John, on Friday, September 23, 2022, her office received a notice of application and a 100-page affidavit filed that day, along with a short notice requisition granted for the hearing, which was set for September 29, 2022. The respondent was seeking an extension of time to provide particulars of his objections to the accounts. The complete materials were not received by Ms. Boles' office until after 4 p.m. on September 23, 2022.

[15] Ms. Boles was firstly of the view that the short leave application had been improperly granted and suspected that the court had not been apprised of her circumstances. Secondly, she was of the view that any delay in production of the particulars would have a disastrous domino effect, likely resulting in the adjournment of the special costs hearings scheduled for November 17 and 18, 2022.

[16] Given the difficulty in scheduling long registrar's hearings, particularly in the Peace Region, added to the difficulty of arranging mutually agreeable dates, Ms. Boles expected that such an adjournment would result in a lengthy delay in an already disastrously protracted matter for her client. As a result, despite fighting a last-minute adjournment application in her scheduled high-conflict trial, she turned full attention to defeating what she perceived to be an attempt to delay the costs assessment.

[17] Ms. Boles' evidence is that she spent 24 hours responding to the respondent's application materials, including drafting a lengthy affidavit for the claimant. Those hours included Ms. Boles working from 5 p.m. on September 26, 2022 to 4 a.m. on September 27, 2022.

[18] It then turned out that counsel for the respondent did not intend to speak to the matter in person at the September 29, 2022 hearing, but sought a video attendance, which was refused, twice. Counsel for the respondent then sought a link to appear remotely, regardless. That was, quite properly, not provided as there was

no order allowing it. A letter was then provided to the registry, which counsel for the respondent sought to be delivered to the presider. That too was properly refused. Counsel for the respondent then sought a remote attendance to speak to an adjournment of the matter.

[19] Without delving into all of the evidence about these procedural concerns, suffice it to say that neither counsel for the respondent nor the respondent himself ultimately appeared on the application.

[20] Church J. ordered that the respondent's September 23, 2022 notice of application be struck off the list as a result of the respondent's failure to appear. The claimant was awarded her costs thrown away on a special costs basis.

[21] At the hearing before me on April 13, 2022, counsel for the respondent, in cross-examination of Ms. Boles, sought to make an issue of an alleged difference between costs thrown away and costs of the hearing. In the circumstances here, however, all were costs thrown away.

[22] In addition, the respondent took the position that the amount of work done, the time spent, and the amount claimed by Ms. Boles were completely out of proportion to a simple procedural application.

[23] I accept Ms. Boles' evidence as to the urgency of responding to the application, particularly in the context of this extraordinarily acrimonious proceeding.

[24] Given the urgency and that Ms. Boles had to work overnight during her another high conflict trial, her position is that a higher hourly rate than that normally charged is appropriate. She has billed for 24 hours at \$700/hour. The normal hourly rate for the claimant at this time was \$500/hour. I noted in my special costs reasons that Ms. Boles could certainly justify billing at a higher rate than that.

[25] Ms. Boles' accounts to the claimant were drastically reduced on most occasions due to the claimant's impecuniosity. In para. 18 of my special costs reasons, I noted that it was ironic that the respondent ultimately benefitted from

these reductions despite his outrageous actions being the cause, or at least a cause, of the impecuniosity of the claimant.

[26] Ms. Boles argued that no such reduction should be made here.

[27] I agree that being asked to respond to this application, in all of the circumstances here, was worthy of an increased fee. I accept Ms. Boles' evidence that she spent 24 hours on this application. While that is perhaps out of the ordinary for what is, on its face, a very simple application, here, the impact on the claimant had the order been granted could well have been yet another lengthy delay orchestrated by the respondent. Ms. Boles is very experienced in dealing with high conflict cases and she is well aware of the need to deal with issues forcefully and in a manner that in less contentious cases would not be necessary.

[28] In the circumstances, I will assess the costs of the hearing before Church J. on the basis of an hourly rate of \$600. Thus, fees of \$14,400 (24 hours x \$600/hour) plus taxes of \$1,728, plus disbursements of \$500.76 as sought, are allowed, for a total of \$16,628.76.

**Costs of Preparation for the Special Costs Hearings on November 17 and 18, 2022**

**Ms. Boles**

[29] In his particulars of objections to the accounts, the respondent took issue with virtually everything. This necessitated extensive evidence on every aspect of the underlying action.

[30] Four binders of documents were provided, comprised of 19 affidavits filed by the claimant and two by the respondent.

[31] Ms. Boles gave extensive evidence as to the nature and necessity of these affidavit materials. Ms. Katerberg, former counsel for the claimant, also provided an affidavit and testified as to her involvement.

[32] The respondent challenged the time spent on this preparation by both Ms. Boles and Ms. Katerberg. He argued that the amount claimed for this two-day hearing was completely out of proportion to the amount claimed for the entire action.

[33] What the respondent fails to recognize, however, is that in preparing for a special costs hearing, where everything in the action has been put in issue, counsel are required to revisit every step in the action. They must make judgements about what must be included in affidavits and what can be left to viva voce evidence or argument. They must martial back-up for every charge, revisit every decision. All of that takes an extraordinary amount of time to do properly.

[34] I agree that costs of more than \$200,000 for the special costs assessment, compared to the just under \$400,000 for the entire action, seems disproportionate. It must be remembered, however, that significant discounts were given by both Ms. Boles and Ms. Katerberg for the conduct of the action, which Ms. Boles, for her accounts, said were sometimes one-third and, on occasion, more than one-half of what she would normally have charged. No such discounts were provided for the costs assessment.

[35] I reiterate that the respondent is largely the author of his own misfortune. The costs assessment was complex because he made it so. It does not lie in his mouth to complain that claimant's counsel spent time responding to his objections unless that time was inordinate.

[36] As of October 24, 2022, when Ms. Boles swore her affidavit of justification in this matter, she had spent 100 hours in preparation for the November special costs hearings. In her affidavit filed March 13, 2023 for this hearing, she deposed that she spent an additional 25 hours preparing for and attending the November 17 and 18 hearings.

[37] That is in addition to the time that was spent by others in Ms. Boles' office, in particular, Ms. Cunningham, who is charged out at \$100/hour and has significant

responsibilities, and who also swore four affidavits in October 2023 that were before me on this matter.

[38] The hours spent by Ms. Cunningham in preparation for the special costs hearings were not broken down. Ms. Boles typically bills on a fair fee basis, not on an hourly rate basis.

[39] There is no method of precise analysis that can be applied here. The total seems high, but the work done was clearly extensive. I will assess the costs for preparation for the November 17 and 18, 2022 special costs hearings at \$70,000 plus taxes of \$8,400, for a total of \$78,400.

**Ms. Katerberg**

[40] Ms. Katerberg claims \$45,000 for her preparation of the affidavit relied on in this assessment.

[41] Ms. Katerberg was cross-examined regarding the amount of time she spent on preparing her affidavit. Counsel for the respondent pointed out that at a rate of \$500/hour, this fee equates to 90 hours of work. Ms. Katerberg said she was not surprised at that total as she had put extensive work into the preparation of her affidavit.

[42] She noted, however, that she could not be as efficient as usual because she did not have the physical file and was recreating things from her computer records. In addition, she had suffered a personal injury and was not as efficient as she perhaps could have been.

[43] Those contingencies are not things that the respondent should be required to pay for in a special costs hearing. I conclude the amount should be reduced by 10% to reflect that. Ms. Katerberg's costs are allowed at \$40,500 plus taxes of \$4,860, for a total of \$45,360.

[44] The disbursements on this account were not questioned other than as dealt with in my special costs reasons. They are allowed as sought.

**Amount Allowed**

[45] Thus, the total amount assessed for preparation for the November 17 and 18, 2022 special costs hearings is \$124,518.42 (\$78,400 + \$45,360 + disbursements of \$758.42).

**Costs of Attendance at the Special Costs Hearings on November 17 and 18, 2022**

[46] Ms. Boles charged out her attendance for these special costs hearings at \$6,000 per day. While that rate may be appropriate for trials, where long days are the norm, it seems high to me for a costs assessment.

[47] I accept that preparation was required over and above the hearing time. I think that \$5,000 per day is more appropriate. Ms. Boles' time is allowed at \$10,000 (\$5,000 x 2 days) plus taxes of \$1,200, for a total of \$11,200.

[48] The cost of Ms. Katerberg's attendance on one of the two days of the special costs hearings is sought at \$7,500. I see no basis for that. Ms. Katerberg's evidence is that her daily rate at the time was \$4,000 to \$5,000. Her evidence was completed in the afternoon of November 18, 2022. Again, I accept that preparation over and above actual court time was required. Ms. Katerberg's attendance is allowed at \$4,500 plus taxes of \$540, for a total of \$5,040.

[49] The costs allowed for attendance at the November 17 and 18, 2022 hearings are therefore assessed at \$16,240 (\$11,200 + \$5,040).

**Costs of Written Submissions and Responses**

[50] A secondary issue arose during this period. As noted in my special costs reasons at para. 75, the respondent flatly submitted on more than one occasion that the report of Dr. Korpach was not admitted as an exhibit at the trial in this action.

[51] This resulted in Ms. Boles scheduling a judicial management conference before me on January 24, 2023, seeking leave to have the actual trial exhibit

produced to me. I granted leave and received the exhibited report of Dr. Korpach, clearly demonstrating that the respondent was wrong.

[52] The costs argument of the respondent was lengthy and referenced 19 authorities. Ms. Boles deposed that she spent more than 40 hours reviewing the submissions and authorities and crafting a response. That response was a dense 19-pages.

[53] Ms. Boles submits that the amount sought of \$22,500 for this work is reasonable.

[54] I accept that additional work was created by the respondent inexplicably denying that the Dr. Korpach report had been accepted as an exhibit at trial and seeking to discount it as a result.

[55] That, including the additional hearing before me, combined with the authorities that had to be reviewed and distinguished by Ms. Boles, and the breadth of the position that had to be canvassed satisfies me that the amount claimed by counsel for the claimant is appropriate. Thus, the costs claimed for this work are allowed at \$22,500 plus taxes of \$2,700 for a total of \$25,200.

**Costs of Preparation for the April 13, 2023 Hearing**

[56] In her affidavit filed March 13, 2023, Ms. Boles indicates that she had spent 20 hours to date preparing for the April 13, 2023 hearing.

[57] The claim for that time is \$12,500, which would be at an hourly rate of \$625. In submissions, Ms. Boles argued that her time should be allowed at a rate of \$700 per hour. Even in the circumstances of this case, which as noted are egregious, I think that is excessive. I will allow this at \$11,000 (20 hours x \$550/hour) plus taxes of \$1,320, for a total of \$12,320.

**Supplementary Costs of Preparation and Costs of Attendance at April 13, 2023 Hearing**

[58] Ms. Boles submitted that these costs should be allowed at \$700 per hour. Her evidence was that there were an additional eight hours of preparation and that she worked from 8 a.m. on April 13, 2023. The hearing lasted approximately three hours. A total of 13 hours of preparation and attendance.

[59] As per my conclusion in para. 50 above, it is my view that this is excessive. I will allow this time at \$550/hour for a total of \$7,150 plus taxes of \$858, for a total of \$8,008.

**Conclusion**

[60] The costs of the special costs assessment hearings and the hearing before Church J. are allowed as follows:

a) Costs for the September 29, 2022 hearing before Church J.:

|                |             |
|----------------|-------------|
| Fees:          | \$14,400.00 |
| Taxes:         | \$1,728.00  |
| Disbursements: | \$500.76    |

**Total claimed: \$16,628.76**

b) Costs of preparation for the special costs assessment hearings on November 17 and 18, 2022:

|                              |             |
|------------------------------|-------------|
| Ms. Boles' preparation fees: | \$70,000.00 |
| Taxes:                       | \$8,400.00  |
| Sub-total:                   | \$78,400.00 |

|                                   |             |
|-----------------------------------|-------------|
| Ms. Katerberg's preparation fees: | \$40,500.00 |
| Taxes:                            | \$4,860.00  |
| Disbursements:                    | \$758.42    |
| Sub-total:                        | \$46,118.42 |

**Total claimed: \$124,518.42**

- c) Costs of attendance at the November 17 and 18, 2022 special costs assessment hearings:

|                  |             |
|------------------|-------------|
| Ms. Boles' fees: | \$10,000.00 |
| Taxes:           | \$1,200.00  |
| Sub-total:       | \$11,200.00 |

|  |            |
|--|------------|
| Ms. Katerberg's fees (per amendment to appointment sought at hearing): | \$4,500.00 |
| Taxes:   | \$540.00   |
| Sub-total:   | \$5,040.00 |

**Total claimed: \$16,240.00**

- d) Costs of written submissions:

|                       |                    |
|-----------------------|--------------------|
| Ms. Boles' fees:      | \$22,500.00        |
| Taxes:                | \$2,700.00         |
| <b>Total claimed:</b> | <b>\$25,200.00</b> |

- e) Costs of preparation for April 13, 2023 hearing:

|                       |                    |
|-----------------------|--------------------|
| Ms. Boles' fees:      | \$11,000.00        |
| Taxes:                | \$1,320.00         |
| <b>Total claimed:</b> | <b>\$12,320.00</b> |

- f) Costs of supplemental preparation and attendance at April 13, 2023 hearing (per amendment to appointment sought at hearing):

|  |                   |
|--|-------------------|
| Ms. Boles' fees (13 hours @ \$550/hour): | \$7,150.00        |
| Taxes:                                   | \$858.00          |
| <b>Total claimed:</b>                    | <b>\$8,008.00</b> |

[61] Thus, fees of \$180,050 are allowed plus taxes of \$21,606, for a total of \$201,656.

[62] With respect to disbursements, Ms. Boles' disbursements are allowed at \$14,834.74 plus \$500.76 (hearing before Church J.), for a total of \$15,335.50; Ms. Katerberg's disbursements are allowed as claimed at \$758.42 inclusive of tax.

[63] The costs are therefore assessed at \$217,749.92, inclusive of taxes and disbursements.

"Master Muir"