

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nouhi v. Pourtaghi*,
2026 BCSC 246

Date: 20260212
Docket: S184410
Registry: Vancouver

Between:

Massimo Aki Nouhi

Plaintiff

And

Nahid Pourtaghi and Naki Enterprises Inc.

Defendants

And

Massimo Aki Nouhi

Defendant by way of Counterclaim

Before: Registrar Gaily

Reasons for Decision

Counsel for the Plaintiff/Defendant by way
of Counterclaim:

R.L. Power
G. Rincon

The Defendant, appearing in her personal
capacity and as representative for the
Defendant, Naki Enterprises Inc.:

N. Pourtaghi

Place and Date of Pre-Hearing Conference:

Vancouver, B.C.
December 8, 2025

Place and Date of Decision:

Vancouver, B.C.
February 12, 2026

Introduction

[1] This decision addresses whether Nahid Pourtaghi and Naki Enterprises Inc. (“Naki”), the defendants and plaintiffs by way of counterclaim, have complied with a production order I made in pre-hearing proceedings related to the assessment of the costs awarded to them by Justice Harvey, which includes special costs for a portion of the litigation. Despite Dr. Pourtaghi’s assertions that the defendants have complied with the production order, this is the first time the issue has been before the registrar for determination after Justice Veenstra adjourned the application of the plaintiff, Massimo Nouhi, for a stay of the costs assessment and directed this hearing (the “Compliance Hearing”).

[2] As the parties know, at the conclusion of the trial of the counterclaim, Harvey J. refused to summarily assess the defendants’ costs as special costs and directed the assessment to the registrar. The assessment will be complex and lengthy for several reasons. Harvey J. awarded the defendants costs of the litigation as special costs, party-and-party costs, and as increased party-and-party costs. The bulk of the costs claimed are special costs (approximately \$310,000 of \$500,000), based on the bills of the defendants’ former lawyers. However, no effort has been made to separate from the lawyers’ bills the fees for the work performed on the counterclaim, for which Harvey J. awarded the defendants increased party-and-party costs. Further, the parties were (or are) involved in concurrent litigation in Ontario, Michigan and Switzerland. The defendants’ former lawyers admit in their affidavits that they did not maintain separate client files for the proceedings outside BC. Dr. Pourtaghi acknowledges that the special costs claimed includes fees related to these other proceedings, which she asserts should be included because of Mr. Nouhi’s conduct. Harvey J. reiterated that he had no jurisdiction over costs in the Court of Appeal, but Dr. Pourtaghi also acknowledges that the special costs claimed also might include fees for the appeal proceedings.

[3] I appreciate that Dr. Pourtaghi represents herself and Naki in the costs assessment (they were represented by counsel through the costs hearing before Harvey J.). It is obvious that she is very frustrated that she has been unable to

proceed with the assessment of the defendants' costs since filing the appointment in 2023. However, as both Harvey J. and I have stated on the record, she faces a formidable opponent in Mr. Nouhi, who is Dr. Pourtaghi's uncle, and who is represented in the costs proceedings by extremely skilled and experienced counsel.

[4] At this Compliance Hearing, the defendants bear the onus to satisfy me that they have complied with the production order I made on October 31, 2023, and reiterated on January 11, 2024. There is no dispute that on January 19, 2024, Dr. Pourtaghi produced to Mr. Nouhi's counsel a USB stick containing nearly 900 documents (the "2024 USB").¹ There is also no dispute that since the production of the 2024 USB, the defendants admit that they did not produce all of the records in their counsel's files because they submit these records are subject to privilege and non-producible. After several pre-hearing conferences ("PHCs"), the application before Veenstra J. and his judgment, as well as a PHC in July 2025, in August 2025, the defendants provided Mr. Nouhi's counsel a list of 13,824 records from their counsel's files, which records had not been previously identified (the "August 2025 List"²). As Mr. Nouhi's counsel notes, of the 13,824 records on the August 2025 List, 4,784 are identified as subject to solicitor-client privilege, 43 are identified as subject to litigation privilege, and 8,997 are identified as irrelevant.

[5] To convince me that some or all of the 13,824 records on the August 2025 List should not be produced to Mr. Nouhi's counsel, I require evidence that satisfies me that the documents over which the defendants have claimed privilege (in this case, both solicitor-client privilege and litigation privilege) or which they identify as irrelevant to the assessment of their costs should not be produced to Mr. Nouhi. The affidavits of the defendants' former counsel filed in July and August 2024 do not address the records in the August 2025 List. Critically, I have no further evidence from Dr. Pourtaghi or anyone else about the records in the August 2025 List, which explains in any detail the basis on which the privilege or irrelevance is claimed. The

¹ Affidavit #12 of Dr. Pourtaghi, filed July 4, 2024 ("Pourtaghi Affidavit #12"), paras. 3–5, Ex. A

² Affidavit #3 of San Chan, a paralegal with Dennis Dawson James Aitken LLP, filed on October 10, 2025 ("Chan Affidavit #3"), para. 2, Ex. A.

information that is provided in the August 2025 List as the basis for the classification of the records is unsatisfactory. For example, the defendants repeatedly state that a record is classified as subject to solicitor-client privilege on the basis that it is “email correspondence presumed privileged unless otherwise shown”. In several other instances, the defendants simply state that a record is identified as irrelevant on the basis that it is a “non email document, not relevant to BC special costs”.

[6] As detailed below, based on the evidence before me, I have determined that the defendants have not complied with the production order.

[7] As I detail below, I find that Dr. Pourtaghi has deposed in her affidavits that I made findings on the record that she and Naki have complied with the production order, including quoting me to this effect, knowing that these statements were not true. When she affirmed these affidavits, she possessed official transcripts of the proceedings before me confirming her statements were not true, as well as the reasons for judgment of Veenstra J. in which he confirmed I had not found she had complied with the production order.

Background

[8] This decision is made in the context of an appointment before the registrar to assess the costs awarded by Harvey J. to Dr. Pourtaghi and Naki in the order he made on March 2, 2023, which was entered on July 30, 2024 (the “Costs Order”). The parties are familiar with the history of this litigation, which Harvey J. summarized in his reasons for judgment on costs, indexed at 2023 BCSC 306 (the “Costs Judgment”), and detailed in his 75-page trial judgment, indexed at 2022 BCSC 807. I will not summarize the litigation background, or the reasons for which Harvey J. awarded special costs to the defendants. Mr. Nouhi discontinued his action at the beginning of the trial, and it proceeded before Harvey J. on the counterclaim. At paras. 122–125 of the Costs Judgment, Harvey J. set out his reasons for rejecting the defendants’ request that he summarily assess their costs.

[9] The defendants were represented by counsel throughout the litigation and the costs hearing, but since the fall of 2023, Dr. Pourtaghi has represented herself and

Naki. After the trial, Mr. Nouhi retained new counsel, Craig Dennis K.C., to represent him at the costs hearing before Harvey J. and the assessment of those costs.

[10] On October 4, 2023, Dr. Pourtaghi filed an appointment to assess the defendants' costs, attaching to the appointment a copy of the Costs Reasons, three draft bills of costs, as well as a copy of a without prejudice settlement offer sent by one of the defendants' former lawyers to Mr. Dennis in May 2023. Of the \$500,000 in costs they claim, approximately \$310,000 is claimed as the defendants' special costs. The assessment of the special costs has been the focus of the ongoing pre-hearing proceedings of which I seized myself and I have presided at all the PHCs.

[11] There is no doubt that the assessment of the defendants' special costs will be challenging. As set out in the Costs Judgment and reflected in the Costs Order, Harvey J. awarded the defendants special costs to the point Mr. Nouhi discontinued his claim (and for the costs assessment), increased party-and-party costs for the counterclaim (Scale B times 1.5), and party-and-party costs for the costs application and for applications heard on July 13–14, 2021 for which Justice Skolrood (as he then was) ordered party-and-party costs.

[12] In his reasons for judgment released on February 25, 2025, which are indexed at 2025 BCSC 327 (the "Stay Judgment"), Veenstra J. also acknowledged the complexity of assessing the defendants' special costs:

[54] ... the special costs assessment in this matter will be a complex one. It will involve review of the various steps taken over a 3 ½ year period from the time the action was commenced until [Mr. Nouhi] discontinued his claim. For most of those 3 ½ years, the defendants' counsel would have been working concurrently on advancing their counterclaim – for which they are entitled to tariff costs only. Presumably, all time entries would have been recorded on one file, yet the Registrar will be required not only to determine what portion of each time entry related to the claim, as opposed to the counterclaim, but also the reasonableness of the work performed and time recorded ...

[13] As I noted above, the parties are or have been involved in litigation in Ontario, Michigan and Switzerland, but legal fees related to this litigation are included in the special costs claimed. As well, there was an appeal to the Court of Appeal, the legal fees for which may also be included in the special costs claimed. The Costs Order

only encompasses costs incurred for proceedings in the Supreme Court, as Harvey J. noted (Costs Judgment, para. 81), and it is established law that the Supreme Court Registrar has no jurisdiction to assess costs incurred for Court of Appeal proceedings.

[14] As Veenstra J. noted, knowing the task ahead, I made a document production order at a PHC on October 31, 2023, which I reiterated at a PHC on January 11, 2024 (the “Production Order”) (Stay Judgment, para. 55). The jurisdiction to make the Production Order is afforded the registrar under Rule 23-6(5) of the *Supreme Court Civil Rules* [SCCR]. As I discussed with the parties on more than one occasion, the Production Order follows *Gichuru v. Smith*, 2014 BCCA 414, in which the Court of Appeal discussed how “it was difficult to conceive how a proper examination of a party’s reasonably incurred legal fees can be made without disclosure of the party’s file” and that, where a party is claiming its legal accounts are privileged, “it can elect to waive privilege, wait until all appeals are exhausted before having its costs assessed or choose to abandon its claim to special costs” (see *Gichuru*, paras. 111–120).

[15] The defendants have never appealed the Production Order (see also Stay Judgment, para. 24).

[16] Dr. Pourtaghi has asserted that Mr. Nouhi’s counsel has never provided a list of particularized objections to the special costs claimed and is not in compliance with the order I made at the PHC held on January 11, 2024. This is inaccurate. Following the reiteration of the Production Order on January 11, on January 19, 2024, one of the defendants’ former lawyers, Dale Lysak, provided the 2024 USB to Mr. Dennis containing nearly 900 documents.³ On April 4, 2024, Mr. Dennis served Dr. Pourtaghi with a partial list of particularized objections, on which is written “the defendants have not complied fully with the Registrar’s order that they produce their counsels’ files. Until they do, the Plaintiff is unable to deliver a complete list of

³ Affidavit #12 of Dr. Pourtaghi, filed July 4, 2024 (“Pourtaghi Affidavit #12”), paras. 3–5, Ex. A

objections. Accordingly, this list is a partial list only and subject to revision.”⁴ Justice Veenstra also noted this at para. 27 of the Stay Judgment.

[17] Justice Veenstra summarized the Production Order and the proceedings at PHCs that took place through 2024, reproducing the order I made at the PHC held on July 5, 2024. At that PHC, to assist Dr. Pourtaghi understand what was involved in complying with the Production Order, among other things, I ordered that the defendants file affidavits of their former counsel, Mr. Lysak and Don Sorochan K.C., “which shall attest to whether there are additional materials in their respective counsel files (the “Files”) which have not been produced, and if so, a description of that material and if there are further materials in the Files, whether privilege is claimed over any such material, and the basis for that privilege” (reproduced in Stay Judgment, para. 33). As Veenstra J. noted, the order from this PHC was not entered until November 2024, and the parties relied on the clerk’s notes recorded on the court summary sheet (Stay Judgment, para. 32)

[18] In August 2024, Mr. Lysak and Mr. Sorochan filed affidavits. Justice Veenstra summarized the contents of these affidavits, reproducing some of what they attested to, including the following conclusion from Mr. Sorochan’s affidavit at para. 38:

... So, the answer to the question (however inappropriately) asked of me in the “Court Summary Sheet” as to whether “the claim privilege over solicitor client communications is made” is that the fundamental constitutional law is that the solicitor client communications are constitutionally protected without the need for any such claim by me or anyone.

[19] Justice Veenstra also cited Mr. Lysak’s affidavit at para. 39, in which he stated that:

10. ... I am able to produce MLT Aikins emails for the period of June to September 2021, but can only do when either instructed by our former clients to waive privilege and produce such communications or in the event the Court, after considering the objections and legal issues raised in Mr. Sorochan’s affidavit, issues an order requiring such production after proper notice to our firm.

⁴ Pourtaghi Affidavit #12, para. 10, Ex. D.

[20] Justice Veenstra stated that he doubted that either of the lawyers were aware that I had made the Production Order (Stay Judgment, para. 40).

[21] The affidavits of Mr. Lysak and Mr. Sorochan were not before me at the subsequent PHC on September 11, 2024 (as Veenstra J. noted at para. 41 of the Stay Judgment). I did not review them until this Compliance Hearing, despite Dr. Pourtaghi deposing that I had previously reviewed these affidavits.⁵ At the PHC held on September 11, I ordered that the transcripts of the PHCs held on October 31, 2023, January 11, July 5, and September 11, 2024, be obtained and provided to both parties so that the parties could re-appear before me to determine if the Production Order had been complied with, or the matter could be referred to a justice (Stay Judgment, paras. 45 and 46).

[22] On January 30, 2025, Mr. Nouhi filed an application seeking an order that the assessment of the defendants' costs be stayed until they complied with the Production Order. Although Veenstra J. ordered the stay application adjourned generally, he directed the determination of whether the defendants have complied with the Production Order be referred to me, together with directions, as set out in the following paragraphs:

[56] ... I am not satisfied that this matter is at a point where a stay is appropriate. In my view, there has been no judicial determination to this point as to whether the defendants have complied with Registrar Gaily's order, and that is something that is properly done by the Registrar. As well, Registrar Gaily has indicated a willingness to consider the producibility of documents that may be in possession of Mr. Sorochan and Mr. Lysak that relate to litigation in other jurisdictions. There has been no opportunity for Registrar Gaily to decide that issue, nor any mechanism established to have any such documents identified in a manner that will facilitate her decision-making.

[57] In my view, this matter is best referred back to Registrar Gaily for a further pre-hearing conference to consider these issues. I suspect that dealing with the specific issues I have identified will require at least a half-day, and so the substantive hearing with respect to document production should be scheduled accordingly. Whether there is merit to having a prior pre-hearing conference, limited to the usual 30 minutes, to discuss how the substantive hearing will proceed, is something that I will leave to the parties and to Registrar Gaily.

⁵ Affidavit #20 of Dr. Pourtaghi, filed December 3, 2025 ("Pourtaghi Affidavit #20"), para. 34.

[58] I will direct that Registrar Gaily be provided with a record in advance of the next pre-hearing conference that should contain all of the affidavits that were put before me, and including all of the transcripts that were obtained pursuant to the order she made on September 11, 2024.

[59] I intend to have my oral reasons for judgment transcribed. I will direct that a copy be provided to Registrar Gaily so that she is aware of my reasoning. The transcribed reasons will also facilitate the defendants obtaining legal advice with respect to their position, should they choose to do so.

[23] The order of Veenstra J. was entered on May 9, 2025.

[24] In June 2025, Associate Judge Robertson, sitting as Registrar, released reasons in an assessment of special costs where the disclosure of the successful party's solicitor's file was in issue, in *De Angelis v. Sierny*, 2025 BCSC 1031. In *De Angelis*, the successful defendants, like Dr. Pourtaghi and Naki in this case, had asked the trial judge to summarily assess their costs as special costs in a specific amount, based on affidavits filed by their counsel. The trial judge in *De Angelis*, Justice A. Ross, declined the request, directing the assessment to the registrar, commenting that the affidavit evidence before him "[boiled] down to a partner at the firm indicating that the time recording was accurate and reasonable" (para. 19). Like this case, in *De Angelis*, the counsel provided legal services to the defendants for other matters but did not bill the other matters to separate file numbers and as Robertson A.J. noted, "legal costs incurred in respect of matters outside of this action are not recoverable from the plaintiff and need to both be separated out, and quantified" (para. 20). Associate Judge Robertson summarized the evidence in the lawyers' affidavits of justification at paras. 21 through 32 of *De Angelis*.

[25] I directed the parties to review *De Angelis* prior to the PHC before me because in it, Robertson A.J. had reviewed the relevant law on disclosure and privilege arising on the assessment of a party's special costs (including summarizing *Pyper v. Schuetze*, 2023 BCSC 2321, a case cited by Mr. Lysak and relied on by the defendants as limiting *Gichuru*). In her decision, Robertson A.J. noted that where disclosure is challenged on the basis of privilege, a party claiming that a document is subject to litigation privilege bears the onus of establishing that privilege (para. 76).

In her conclusion in *De Angelis*, Robertson A.J. made the following observations, based on the authorities she had reviewed:

[89] A party presenting their accounts to be assessed to support a special costs award may find that disclosure of counsel's file materials which are otherwise subject to privilege will be necessary given that:

- a) They have the onus to establish that the accounts are reasonable and counsel's bare assertion, in sworn evidence or otherwise, that they are is generally not sufficient evidence; and
- b) the rules of natural justice require that the payor be able to test the reasonableness of those accounts, which may require production of their counsel's file materials; or
- c) they have implicitly waived privilege through the materials that they have filed to justify their accounts.

[90] It remains the discretion of the presider, typically the registrar, to determine the scope that will be necessary for the case before it, having regard to issues such as proportionality as set out in R. 1-3(2), as incorporated specifically in R. 14-1(3)(viii), and the balancing of the protection afforded by a claim of solicitor-client privilege and the fundamental rules of natural justice.

...

[92] In all cases the directions of the court in *Pyper* are apt, the registrar should consider and weigh the entitlement to solicitor-client privilege against the relevance and usefulness in ensuring the principles of natural justice are upheld, and then tailor disclosure to what is both necessary and proportionate having regard to the costs being assessed and the costs and effort of the procedural steps being proposed.

[26] In the circumstances of the case before her, Robertson A.J. found that it was appropriate to order tailored disclosure and, among other things, ordered the defendants to provide the plaintiff's counsel, "a list of their counsel's file contents, disclosing [the] documents over which they are asserting litigation privilege, solicitor-client privilege, and relevance, and the basis for each such claim" (para 108).

[27] When the parties appeared before me at the PHC on August 11 in advance of this Compliance Hearing, they confirmed that they had reviewed *De Angelis* (Mr. Dennis is counsel for the plaintiff in *De Angelis* and he also confirmed that the defendants had filed a notice of appeal from Robertson A.J.'s decision, but the appeal has not been heard). As I discussed with the parties, given the complexity of

the assessment of the defendants' special costs in this case (summarized above) and the fact that the defendants acknowledged that they had not disclosed their counsel's files and were asserting the files were subject to solicitor-client privilege, I adopted the same approach as Robertson A.J. did in *De Angelis*, that is, tailored disclosure. I ordered that on or before September 15, the defendants were to serve Mr. Nouhi with a list of the contents of their counsels' files, indicating those documents over which they are asserting litigation privilege, solicitor-client privilege, and relevance, and the basis for each claim.

[28] As noted, on August 22, Dr. Pourtaghi sent an email to Mr. Dennis attaching a list of documents in Form 22, with two attached schedules, Schedule A and Schedule B. Schedule A lists the documents on the 2024 USB, which have been produced to counsel for Mr. Nouhi. Schedule B is the August 2025 List and, as noted, it lists a further 13,824 documents over which the defendants claim solicitor-client privilege, litigation privilege or the production of which they object to for relevance. On September 10, Dr. Pourtaghi sent a further email to Mr. Dennis, re-attaching Schedule B (the August 2025 List) in an Excel spreadsheet.⁶

[29] As noted, there was no evidence before me at the Compliance Hearing confirming who prepared the August 2025 List, or providing further evidence on which the claims of privilege and relevance are based.

The Compliance Hearing

[30] This Compliance Hearing was originally scheduled for October 16, but I became unavailable and it had to be rescheduled to December 8, 2025.

[31] Before the October Compliance Hearing, both sides had filed hearing records (a total of six binders). Mr. Dennis' office asked Scheduling to return their record so that it could be updated and refiled before the December hearing. Dr. Pourtaghi did not ask for hers to be returned.

⁶ Chan Affidavit #3, para. 3, Ex. B.

[32] Ray Power and Gabriel Rincon appeared in person for Mr. Nouhi. They provided a four-volume hearing record, containing the material that Veenstra J. had ordered included (all affidavits in the application record before him, as well as the transcripts of the four PHC proceedings I had ordered), the originating pleadings, as well as copies of the order I made at the PHC on July 5, 2024 and Veenstra J.'s order. The hearing record also contained two affidavits filed by Dr. Pourtaghi on September 15 and October 6, 2025 ("Pourtaghi Affidavit #14" and "Pourtaghi Affidavit #16" respectively) and Chan Affidavit #3.

[33] Dr. Pourtaghi attended remotely by videoconference. Her hearing record was largely duplicative of the hearing record filed by counsel. After retaining Dr. Pourtaghi's affidavit #13, which she had filed on August 8, 2025 ("Pourtaghi Affidavit #13") but was not in the hearing record filed by Mr. Nouhi's counsel, I advised I was returning the rest of her record to her through Scheduling. Dr. Pourtaghi had also filed Pourtaghi Affidavit #20 on December 3, but because the hearing records had already been filed with Scheduling when she filed it, a copy of it (without exhibits) was provided at the hearing.

[34] Mr. Nouhi's counsel had filed written submissions on December 4 in advance of the Compliance Hearing. Dr. Pourtaghi had not filed written submissions, but at the hearing, she confirmed that she was reading from prepared submissions responding to the Nouhi Submissions. She finished her submissions prior to the afternoon break, and I asked if she could provide the submissions as a pdf attached to an email to counsel and to me during the break so that Mr. Nouhi's counsel could reply to them at the hearing. She agreed and we took an extended break so this could be arranged. Dr. Pourtaghi provided four separate submissions, only one of which addressed whether the defendants had complied with the Production Order. Two of the other submissions focused on the objections to the special costs provided by Mr. Dennis in April 2024, an issue that is not before me on this Compliance Hearing, and the other focused on the "misunderstanding" in Pourtaghi Affidavit #14, which I discuss below.

[35] As Dr. Pourtaghi knows, when the hearing resumed, Mr. Power pointed out that her written submissions had been generated with the assistance of an AI program, noting where it contained the phrases “integrating your new file content” and “your added section – fully integrated”. She did not deny this. If someone appearing remotely is using an AI program on a separate device to assist them to prepare their submissions in real time, the AI program will record the proceedings to facilitate this. I do not know if this was occurring at the Compliance Hearing, but I remind Dr. Pourtaghi that the court does not permit unauthorized recording of its proceedings and I strongly recommend that if she chooses to use AI to assist her to prepare her submissions, she must do this in advance of the hearing and not concurrently (that is, while the hearing is underway).

Dr. Pourtaghi’s affidavits

[36] Since the trial judgment was released and while they have been seeking to have their costs assessed, the defendants have been attempting to conduct an examination in aid of execution of Mr. Nouhi (see also para. 50 of the Stay Judgment). The parties have appeared in chambers before associate judges and justices on applications related to the scheduling of the examination and its adjournment. In pursuing the applications to schedule the examination, and defending the applications to adjourn it, Dr. Pourtaghi has maintained that Mr. Nouhi has not complied with court orders and is responsible for unreasonably delaying the examination, and that she has complied with all court orders.

[37] Mr. Power directed me to the affidavits in which Dr. Pourtaghi has deposed that I have found she has complied with the Production Order, including reproducing quotes of my findings, which she deposes I have made in court on the record. As noted above, after the PHC on September 11, 2024, transcripts of the four PHCs were obtained and provided to the parties. Dr. Pourtaghi has deposed that she received these transcripts on December 9, 2024, and on February 14, 2025⁷, several months before she made and filed the affidavits in question.

⁷ Pourtaghi Affidavit #13, para. 39, Ex. S, and para. 101, Ex. X.

[38] In Pourtaghi Affidavit #14, filed on September 15, 2025, Dr. Pourtaghi deposed the following (her emphasis):

14. July 5, 2024 – Registrar confirmation of compliance (Pre-Hearing Conference). Registrar Gaily ordered affidavits from my former counsel (sworn and filed August 8, 2024) and stated:

“I am not prepared to find Dr. Pourtaghi in breach. She has filed the necessary affidavits of counsel and produced the USB. There is compliance.”

Prejudice: I complied fully, yet allegations of non-compliance continued, causing delay and expense.

Now shown to me and marked as Exhibit “M” is a true copy of the Order and the pre-hearing transcript of July 5, 2024.

15. September 11, 2024 – Transcript order; non-compliance allegation rejected. Registrar Gaily ordered release of audio for transcripts (Oct 31, 2023; Jan 11, 2024; Jul 5, 2024; Sep 11, 2024) first two transcripts were provided on December 9, 2024 and the remaining two on February 14, 2025. And stated:

“The Respondent has filed affidavits of former counsel. I do not accept Mr. Dennis’ submission of non-compliance.”

Prejudice: these transcript delays postponed access to evidence of compliance and increased costs.

Now shown to me and marked as Exhibit “N” is a true copy of the Order and pre-hearing record of Sept. 11, 2024.

[39] In her written submissions addressing the contents of Pourtaghi Affidavit #14, Dr. Pourtaghi indicated that Mr. Nouhi’s counsel advised her on September 17, 2025, that statements she made in Pourtaghi Affidavit #14 do not appear in the transcripts.

[40] However, in Pourtaghi Affidavit #16, filed October 6, 2025, after she would have received notice from Mr. Nouhi’s counsel that the transcripts do not support her statements, she deposed that “on July 5, 2024, Registrar Gaily confirmed compliance, rejecting allegations of breach” and that “on September 11, 2024, Registrar Gaily again confirmed compliance and directed that the matter be set down promptly” (paras. 51 and 53).

[41] Pourtaghi Affidavit #20 was filed a few days before the Compliance Hearing and, as she stated in para. 2 of the affidavit, it was “sworn in response to recent

allegations of non-compliance and delay raised by the Plaintiff’s counsel in correspondence and in various applications filed throughout 2024–2025”. Like Pourtaghi Affidavit #16, it was filed after Dr. Pourtaghi had copies of the transcripts and had been advised that the transcripts do not support that I made the findings she attributes to me.

[42] Pourtaghi Affidavit #20 contains argument to support that the defendants have complied with the Production Order, but it is affirmed and commissioned and filed as an affidavit, not as written submissions. In Pourtaghi Affidavit #20, Dr. Pourtaghi again repeatedly deposes that I made findings and confirmed on the record that she is in compliance with the Production Order, as follows (her emphasis):

20. On **July 5, 2024**, after reviewing the production, **Registrar Gaily confirmed on the record that I had complied with all outstanding production requirements.**

...

23. On **September 11, 2024**, **Registrar Gaily again confirmed** that I had complied with all outstanding production requirements and stated that the matter was ready to be set for taxation, **subject only to the Plaintiff providing their objection list.**

...

25. On **August 11, 2025**, Registrar Gaily directed that the parties exchange **full privilege and relevance lists** before dates for the taxation hearing could be finalized.

...

33. On July 5, 2024, after reviewing my production, Registrar Gaily confirmed on the record that I had complied with all outstanding production requirements. The Plaintiff did not appeal or challenge that confirmation.

34. On September 11, 2024, after reviewing the sworn affidavits of former counsel, Registrar Gaily again confirmed that my production was complete and stated that the matter was ready to be set for taxation, subject only to the Plaintiff providing their objection list.

...

40. The Plaintiff has repeatedly taken the position that the Special Costs process cannot proceed due to alleged non-compliance. However, no judge has found any such non-compliance, and this position is inconsistent with the findings of Registrar Gaily on July 5, 2024 and September 11, 2024.

...

51. On August 11, 2025, Registrar Gaily directed the parties to exchange privilege and relevance lists so that dates for the Special Costs taxation could be finalized.

...

G REGISTRAR GAILY’S CONFIRMATION OF COMPLIANCE

66. Registrar Gaily has twice confirmed my compliance:

- **July 5, 2024 hearing** – after reviewing my production and counsel affidavits, she confirmed that I had complied with all outstanding requirements;
- **September 11, 2024 hearing** – she reiterated that my production was complete and that the matter was ready to be set for taxation, subject only to the Plaintiff delivering his objection list.

[43] Dr. Pourtaghi acknowledged at the Compliance Hearing that the transcripts demonstrate that I did not confirm or find that Dr. Pourtaghi had complied with the Production Order (or “all outstanding requirements”) on either July 5, 2024, or on September 11, 2024. It was also acknowledged that Mr. Lysak’s affidavits were filed on July 5 and August 9, 2024, and Mr. Sorochan’s affidavit was filed on August 8, 2024. These affidavits were not before me at the PHC on July 5, 2024 (two of them had not yet been filed) and I could not have reviewed the affidavits, contrary to what Dr. Pourtaghi has deposed. Further, the affidavits were not before me at the PHC held on September 11, 2024, as Veenstra J. expressly noted in the Stay Judgment, which he had confirmed after reviewing the transcript of that PHC (see Stay Judgment, para. 41).

[44] I appreciate that Dr. Pourtaghi is representing herself and Naki and that she is frustrated that she has not been able to proceed with the assessment of their special costs, or to conduct an examination of Mr. Nouhi and execute on her judgment. However, this does not excuse Dr. Pourtaghi’s conduct in deposing to findings that I did not make, especially after this was brought to her attention by Mr. Nouhi’s counsel. At the Compliance Hearing, Dr. Pourtaghi read from her written submissions that the “misunderstanding” in her affidavits arose from her “good faith attempt as a self-represented litigant to summarize [the registrar’s] directions”, that

she did not intend to mislead the court and believed that I had “expressed those *ideas* during the hearings” (her emphasis).

[45] Dr. Pourtaghi has been involved in litigation before the BC courts for several years and I have no doubt that she understands that an affidavit is a sworn statement of evidence. I do not accept her explanation that she was attempting to summarize my directions and simply made a “correctible” mistake in the paragraphs of the affidavits reproduced above, particularly in the two affidavits she filed after Mr. Nouhi’s counsel brought this to her attention. I find that in her affidavits she falsely deposed that I had made findings in her favour.

The August 2025 List and the Evidence before me

[46] The 2024 USB was produced to Mr. Nouhi’s counsel in January 2024, after I had reiterated the Production Order. Dr. Pourtaghi has pointed to the production of the 2024 USB as evidence of the defendants’ compliance with the Production Order, but it has never been disputed that after the 2024 USB was produced, the defendants acknowledged that they had not produced their counsels’ files because they maintain they are subject to privilege.

[47] In the Stay Judgment, as noted above, Veenstra J. reviewed the affidavits of Mr. Lysak and Mr. Sorochan, both of which confirmed that records had not been produced. I have reviewed the affidavits, but I will not detail their evidence further. Dr. Pourtaghi submits that the sworn evidence from her former counsel “proves that” the 2024 USB “contained all documents counsel determined were appropriate and lawful for production” and that “anything not produced is privileged and cannot legally be compelled.”

[48] In her written submissions, Dr. Pourtaghi states that “counsel prepared, reviewed and approved the production – not me”, however, there is no evidence before me confirming this. The affidavits of Mr. Lysak and Mr. Sorochan were filed a year before the August 2025 List was delivered to Mr. Nouhi’s counsel and the affidavits do not speak to the records in the August 2025 List. The defendants have not filed further affidavits from Mr. Lysak or Mr. Sorochan for the Compliance

Hearing. I am not satisfied that the affidavits filed by the defendants' former counsel in the record before me establishes that the defendants have complied with the Production Order.

[49] I appreciate that Dr. Pourtaghi represents the defendants herself and that the task of listing records can be daunting. The August 2025 List lists close to 14,000 documents and in the Excel format, it is 586 pages long. The affidavits of Dr. Pourtaghi in the record before me do not explain who created the August 2025 List or the approach that was taken to listing the records. Her written submissions do not address the August 2025 List (the submissions reiterate that the defendants complied with the Production Order through the delivery of the 2024 USB).

[50] Given the number of records and the length of the August 2025 List, it is impossible for me to describe every record listed in detail. I reviewed the entire August 2025 List at a high level to confirm that the descriptions for the basis of the identified objections are consistently the same. For example, on page 62 of the August 2025 List, seventeen records are listed (from NP000756 through NP000772). Fourteen of the records are identified as subject to solicitor-client privilege, and three are identified as irrelevant. The basis listed for those records subject to solicitor-client privilege is as follows: for five of the fourteen records, the basis for the privilege claimed is stated as, "confidential communication with legal counsel for purpose of advice"; for the remaining nine records, the basis for the privilege claimed is stated as, "email correspondence presumed privileged unless otherwise shown". For those records identified as not relevant to the special costs assessment, the basis provided is stated as, "non-email document, not relevant to BC special costs."

[51] I have provided a few other examples below to illustrate the problems presented.

[52] The defendants object to the production of most of the records on the August 2025 List based on relevance (Mr. Nouhi's counsel identified 8,997 records of the 13,824 listed as "objected to on the basis of relevance"). On my review of the August 2025 List, I found that it is not possible from the description given of a particular

record to know what the document is (or might be) or whether it might be relevant. I found that the stated reason for the relevance objection for the vast majority of these records was simply stated as: “non-email document, not relevant to BC special costs” without anything further. For example, the record listed at NP003519 is identified as an attachment, “Pourtaghi Affidavit #3 pdf”. The basis for the relevance objection is stated as “non-email document, not relevant to BC special costs”. Similarly, the record at NP003906 is identified as an attachment, “Corrected Reason Judge Matthews re Nouhi v Pourtaghi 06-18 pdf”, the basis for the relevance objection is also stated as “non-email document, not relevant to BC special costs”.

[53] I also found some records listed as non-producible because of relevance for the following stated reason: “unrelated to BC special costs, pertains to other jurisdictions or corporate matters” without anything further. For example, the record listed at NP013449 is identified as an email sent August 10, 2022, from Dr. Pourtaghi to her children, the subject line of which is “search about finding Maple Florida Property”, objected to on the basis that it is, “unrelated to BC special costs; pertains to other jurisdictions or corporate matters”.

[54] Mr. Nouhi’s counsel identified 43 records on the August 2025 List claimed to be subject to litigation privilege. For example, the record at NP013513 identified as an email dated August 24, 2022, from Dr. Pourtaghi to her children with the subject line, “settlement documents” is identified as subject to litigation privilege, the basis of which is stated as, “created for dominant purpose of litigation/settlement privilege.” While the records identified as non-producible because of litigation privilege represent a small fraction of the listed records, Dr. Pourtaghi does not dispute that the litigation for which the defendants were awarded their costs concluded in 2023. No effort was made to explain why the identified records are still subject to litigation privilege.

[55] Of the records identified as subject to solicitor-client privilege, the basis for the privilege claimed is repeatedly stated on the August 2025 List as, “email correspondence presumed privileged unless otherwise shown” with no further

explanation. For example, the record at NP003914 is identified as an email dated June 22, 2019, from Dr. Pourtaghi to one of her children, re “notices from Jun 13, 2019 to Jun 22, 2019. Great volunteer international Experience Cooperation” claimed to be subject to solicitor-client privilege on the stated basis that “email correspondence presumed privileged unless otherwise shown”. In some cases, the basis for the solicitor-client privilege is stated as, “confidential communication with legal counsel for purpose of advice”, without further explanation. For example, the record at NP013431 is identified as an email from Dr. Pourtaghi to Mr. Lysak, copied to Mr. Sorochan and her children, dated August 4, 2022, the subject line of which is “request for revised invoice”, identified as subject to solicitor-client privilege on the basis that it is “confidential communication with legal counsel for purpose of advice.”

[56] I find the August 2025 List does not provide enough evidence on which I can be satisfied that the records listed on it should not be produced because they are subject to the privilege claimed or are irrelevant.

Conclusion

[57] As detailed above, I am not satisfied on the evidence before me that the defendants have complied with the Production Order. I find that the defendants have not complied with the Production Order.

“Registrar Gaily”