IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reynolds v. Deep Water Recovery Ltd.,* 2025 BCSC 1433

Date: 20250725
Docket: S224947
Registry: Vancouver

Between:

Mary Reynolds

Plaintiff

And

Deep Water Recovery Ltd., Mark Jurisich, John Doe #1, John Doe #2, John Doe #3 and John Doe #4

Defendants

And

Mary Reynolds

Defendant by way of counterclaim

Before: Registrar Gaily

Reasons for Decision on Costs

Counsel for the Plaintiff:	T. Rauch-Davis J.B. Gratl
Counsel for the Defendants, Deep Water Recovery Ltd. and Mark Jurisich:	S.M. Gallagher
Place and Date of Hearing:	Vancouver, B.C. June 2, 2025
Place and Date of Decision:	Vancouver, B.C. July 25, 2025

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Introduction

[1] This is an assessment of the costs awarded to the plaintiff, Mary Reynolds, pursuant to the order pronounced by Justice Morley on September 20, 2024, which was entered on December 5, 2024 (the "Costs Order").

[2] Over four days in October 2023 and January 2024, Morley J. heard the application Ms. Reynolds filed on August 8, 2022 under s. 4 of the *Protection of Public Participation Act*, SBC 2019, c. 3 [*PPPA*] (the "*PPPA* Application"), seeking an order dismissing the counterclaim filed by Deep Water Recovery Ltd. ("DWR") and Mark Jurisich in proceedings Ms. Reynolds commenced in 2022 (the "Counterclaim"). In the reasons released on April 8, 2024 (indexed at 2024 BCSC 570), Morley J. determined that portions of the Counterclaim should be dismissed under s. 4 of the *PPPA*, but that the remainder of it could proceed to trial (the "*PPPA* Reasons").

[3] In his subsequent oral reasons on costs released on September 20, 2024 (indexed at 2024 BCSC 1921) (the "Costs Reasons"), Morley J. found there was divided success. He awarded Ms. Reynolds "her costs of the dismissal application under the [*PPPA*] filed on 8/Aug/2022 (the *PPPA* Application) at 2/3 of full indemnity costs", pursuant to s. 7(1) of the *PPPA*. As reflected in the Costs Reasons, Morley J. intended that on the assessment, the registrar will determine which of the costs Ms. Reynolds claims are for the *PPPA* Application, as opposed to the advancement of the ongoing litigation and defence of the Counterclaim (para. 39).

[4] After I reserved this decision, Morley J. declined a request to appear before him filed by Jason Gratl, counsel for Ms. Reynolds, asking Morley J. to clarify the terms of the Costs Order. In the memorandum Morley J. sent to the parties dated June 10, 2025, he advised that the registrar was in a better position than him "to determine, at first instance, the merits of what should and should not be assessed as costs or disbursements under" the Costs Order.

[5] After Ms. Reynolds had filed the *PPPA* Application in August 2022, but before Morley J. released the Costs Reasons in September 2024, the parties appeared in

the Supreme Court on other applications, which I find were related to the *PPPA* Application and encompassed in the Costs Order as I discuss below.

[6] In the appointment filed on January 31, 2025, Ms. Reynolds sought $166,633.72 (including taxes) as her costs (both legal fees and disbursements). At the assessment, Ms. Reynolds reduced the amount she claimed to $165,107.53 ($151,092.48 for her legal fees, plus $14,015.05 in disbursements) due to clerical errors on the original bill. She says this amount is 2/3 of her costs of the relevant *PPPA* proceedings on a full indemnity basis, based on the redacted bills of Gratl and Company ("Gratl & Co"), her legal counsel, which are attached to the appointment.

[7] As detailed below, I allow Ms. Reynolds' costs as claimed without reduction at $165,107.53 (which is 2/3 of the full indemnity).

Procedural History

[8] The parties are familiar with the background; however, the procedural history of this ongoing and highly contested litigation is relevant to the assessment of Ms. Reynolds' costs. In detailing the procedural history, I have relied on the reasons for judgment of Justice Ahmad in *Reynolds v. Deep Water Recovery Ltd.*, 2023 BCSC 600 (the "Declaration Reasons"), as well as the Dismissal Reasons, and affidavit #6 of Shauna Stewart, a paralegal at Gratl & Co, filed March 21, 2025 ("Stewart Affidavit #6").

[9] DWR conducts its business operations from a property in Baynes Sound on Vancouver Island, near Union Bay. Mr. Jurisich is a director of DWR, its operations manager and its majority shareholder. In 2021, DWR began what Morley J. neutrally described as a "vessel recycling and disposal" operation at its facility (also referred to as shipbreaking). Ms. Reynolds is a retiree who lives in Union Bay and is among a group who are critical of DWR's activities. Starting in fall 2021, she began photographing and taking video recordings of DWR's shipbreaking operations, including using a drone. She posted some of her photos and videos online and some of her images were used by media reporting on the DWR operations.

[10] On June 20, 2022, Ms. Reynolds commenced a civil action against DWR, Mr. Jurisich and four unnamed DWR employees (the John Doe defendants), for relief including damages for conversion by theft, conversion by damaging property, harassment, assault and intimidation (the "Underlying Action"). The named defendants, DWR and Mr. Jurisich, are both represented by the same counsel and I will refer to DWR and Mr. Jurisich together as DWR, unless otherwise indicated. DWR filed a response to the Underlying Action on July 13, 2022, denying the allegations. They also filed the Counterclaim, in which they seek damages from Ms. Reynolds for alleged torts, including trespass, nuisance and invasion of privacy.

[11] On August 8, 2022, Ms. Reynolds filed the *PPPA* Application with three supporting affidavits. On August 16, 2022, DWR filed a response opposing the *PPPA* Application, together with supporting affidavits, including an affidavit of Terrance Ruttan, the DWR yard manager, filed on August 16, 2022.

[12] On August 17, 2022, Ms. Reynolds filed an application seeking procedural orders regarding the scheduling and conduct of the *PPPA* Application (the "Scheduling Application"). On August 24, 2022, DWR filed a response opposing the Scheduling Application, asserting that there was no merit to the *PPPA* Application.

[13] On August 30, 2022, DWR filed an application seeking a declaration that the *PPPA* does not apply to the Counterclaim (the "Declaration Application"). On September 7, 2022, Ms. Reynolds filed a response opposing the Declaration Application. On September 13 and October 6, 2022, the parties appeared before Ahmad J. on both applications, however, the Scheduling Application was adjourned generally, pending the outcome of the Declaration Application.

[14] In a memorandum dated April 4, 2023, Ahmad J. advised the parties that she had dismissed DWR's Declaration Application with reasons to follow. She released the Declaration Reasons on April 17, 2023. Ahmad J. found that the Declaration Application was contrary to the express provisions of the *PPPA*, as well as the legislative intent and the objects of the *PPPA* as set out in the case law (para. 74).

At para. 77 of her reasons, Ahmad J. stated the following regarding the costs of the Declaration Application:

> [77] By earlier memorandum to counsel, I had contemplated that costs of this application would be determined at the conclusion of the action. However, given the relationship between this application and the *PPPA* Dismissal Application, on further consideration, it is more appropriate that the handling of costs of this application be determined at the conclusion of the *PPPA* Dismissal Application. I make that order.

[15] The day that the Declaration Reasons were released (April 17, 2023), Ms. Reynolds filed an application returnable April 28, seeking orders that Mr. Ruttan and Mr. Jurisich attend for cross examination, and for an order setting a schedule for the *PPPA* Application (the "Revised Scheduling Application").

[16] On April 24, 2023, DWR filed a notice of appeal from the order of Ahmad J., and the next day (April 25), DWR filed a notice of urgent application in the Court of Appeal to set down a hearing for an application for a stay of the proceedings, pending the determination of the appeal. Also on April 25, DWR filed a response to the Revised Scheduling Application, opposing it.

[17] On April 26, 2023, Justice Voith heard DWR's urgent application and granted an interim stay of the proceeding pending the outcome of the stay application, scheduled for May 2. Justice Marchand (as he then was) heard DWR's application for a stay of proceedings on May 2 and on May 9, he dismissed DWR's stay application in oral reasons, indexed at 2023 BCCA 204. At that point, the *PPPA* Application was scheduled for two days, June 8 and 9, 2023.

[18] On May 10, 2023, the day after the stay application was dismissed, Ms. Reynolds filed an application to compel Mr. Ruttan to attend for cross examination on his affidavit and for an order that all cross-examinations on affidavits were to be completed by June 2, 2023. The application was set for hearing on May 29, 2023. On May 25, 2023, DWR filed its response, opposing some of the relief sought, noting that Mr. Jurisich would be filing an affidavit and that DWR had agreed to produce Mr. Jurisich for cross-examination on his affidavit on June 1 in Vancouver. Mr. Jurisich swore an affidavit on May 26, 2023, but it does not appear

in the court file. On May 29, the parties appeared before Justice Coval who ordered that by consent, Mr. Jurisich's cross-examination would be conducted on June 1, but he adjourned the portion of the application seeking to cross-examine Mr. Ruttan on his affidavit. After the first cross-examination on June 1, on June 7, DWR filed Mr. Jurisich's second affidavit, exhibiting further evidence.

[19] At the assessment, the parties agreed that the *PPPA* Application could not be heard as scheduled on June 8, 2023 (or again on September 11, 2023) due to a lack of judicial resources and it was rescheduled for October 25–27, 2023.

[20] On September 28, 2023, Ms. Reynolds filed an application returnable October 13, seeking an order that Mr. Jurisich attend for three hours of cross-examination on his affidavits, pursuant to s. 9 of the *PPPA*. The parties appeared before Justice Milman on October 13, who ordered that Mr. Jurisich attend for cross-examination for one hour on October 24, but only on the contents of his second affidavit (the one filed June 7, 2023).

[21] As noted, Morley J. heard the *PPPA* Application over four days, October 25 through 27, 2023, and an additional day on January 19, 2024, and he released the Dismissal Reasons on April 8, 2024. Morley J. ordered the portions of the Counterclaim referring to the dissemination of Ms. Reynolds' drone footage and the claim for punitive damages dismissed under s. 4 of the *PPPA* but found that the remainder of the Counterclaim could proceed. The order dismissing portions of the Counterclaim was entered on December 5, 2024 (the "Dismissal Order").

[22] The parties had agreed that Morley J. should address the costs of the *PPPA* Application separately (together with the damages Ms. Reynolds sought under s. 8 of the *PPPA*) and Ms. Reynolds filed a requisition setting the costs hearing before Morley J. for September 20, 2024.

[23] The parties appeared before Morley J. for the costs and damages hearing on September 20 and he provided the oral Costs Reasons that day (he also released the companion reasons dismissing Ms. Reynolds' application for damages under

s. 8 of the *PPPA* (2024 BCSC 1922)). Morley J. found there was divided success, with Ms. Reynolds being 2/3 successful and DWR 1/3 successful. He determined that it was appropriate to award Ms. Reynolds her share of the costs at the scale of full indemnity, as contemplated under s. 7(1) of the *PPPA*, but that DWR should receive its 1/3 costs on a party-and-party basis and in the cause. He also concluded that the parties should bear their own costs for the September 20, 2024 costs hearing.

[24] The trial of the Underlying Action is scheduled for 14 days starting October 14, 2025.

The Assessment

[25] The appointment was filed on January 31, 2025, setting a pre-hearing conference ("PHC") for March 21. At the PHC, the assessment of Ms. Reynolds' costs was scheduled for one day on June 2. At the PHC, I ordered DWR to serve their particularized objections to the costs Ms. Reynolds claims on her by May 2, and I ordered her counsel to serve affidavits of justification on DWR, speaking to the costs claimed and responding to the particularized objections.

[26] The hearing record contained DWR's particularized objections, which are set out in a letter dated May 2, 2025 (the "Objections"). The hearing record contained the affidavits of justification of Ms. Stewart and Mr. Gratl filed on May 16, 2025 ("Stewart Affidavit #7" and "Gratl Affidavit #1", respectively), together with the affidavit #1 of Jennifer Bianchi, a practice assistant at the law firm representing DWR ("Bianchi Affidavit #1"). It also contained Stewart Affidavit #6.

[27] At the commencement of the assessment, counsel for DWR sought an adjournment, asserting that they required further disclosure of information from Mr. Gratl because they were unable to assess the reasonableness of the costs Ms. Reynolds claimed, relying on *Gichuru v. Smith*, 2014 BCCA 414 [*Gichuru*]. In particular, DWR claimed that they were unable to distinguish the costs associated with the *PPPA* Application from those associated with the prosecution and defence of the Underlying Action on the entries on the bills attached to the appointment,

referring to *Joshi v. Allstate Insurance Company of Canada*, 2019 ONSC 5934 [*Joshi*], a case decided under the Ontario anti-SLAPP regime.

[28] In *Joshi*, Justice Kimmel summarily assessed the costs she had awarded to the plaintiff, Ms. Joshi, after dismissing Allstate's counterclaim in its entirety. At para. 21 of *Joshi*, Kimmel J. acknowledged that "not all the costs associated with the motion [to dismiss the counterclaim] were exclusively incurred in relation to the counterclaim given that the action is continuing" and that there "is no method by which [she] could parse through the bill of costs and assess which portions of the costs incurred also relate to matters in the issue in the main action". DWR submitted that based on the evidence before me in the hearing record, I would not be able to separate out costs related to the ongoing Underlying Action.

[29] Toby Rauch-Davis, counsel for Ms. Reynolds on the assessment, opposed the adjournment, asserting that DWR had not raised these issues in their Objections. He also submitted that *Gichuru* does not require the full disclosure of a solicitor's file to establish the reasonableness of the bills on which costs are based and that *Gichuru* could be distinguished on its facts. Unlike the situation in *Gichuru* where a trial judge had summarily assessed the successful party's special costs without evidence of the lawyer's fees on which those costs were based, Mr. Rauch-Davis pointed out that the evidence before me included affidavits of justification, as well as redacted Gratl & Co bills, and that Mr. Gratl was present and intended to speak to his affidavit and be cross-examined on his evidence. Mr. Rauch-Davis also noted that in *Joshi*, Kimmel J. had stated that she would not "go so far as to say that the plaintiff should be foreclosed from claiming any costs on this motion that may be for work done that will also be of use to the plaintiff in the main action" (*Joshi*, para. 21).

[30] Counsel agreed that DWR had relied on *Joshi* at the costs hearing as authority that Ms. Reynolds should not be awarded her costs on a full indemnity (as Morley J. noted at para. 37 of the Costs Reasons). In the Costs Reasons, Morley J. made the following comments about the application of *Joshi* to the scale of the costs he was awarding Ms. Reynolds and to their subsequent assessment:

> [38] *Joshi* differed from the application before me because it was the equivalent of an *assessment* of a full bill of costs. What Justice Kimmel did was to allow those costs in relation to what would be for us the *PPPA* application and not the ones that could instead be more correctly attributed to the overall litigation, which continued.
>
> [39] This is clearly appropriate, but I do not think it indicates that there should be less than full indemnity for those costs that are attributable to the *PPPA* application. If the costs of the application are assessed, the registrar will, of course, have to figure out what are the costs of this application as opposed to the proceeding as a whole. I certainly do not intend by that term that the costs of the application would include costs that are more appropriately attributable to the overall defence or advancement of the litigation. Those costs are not being awarded at all. But for the costs of the application itself, it is not inappropriate that it be a *full* indemnity. [emphasis original]

[31] Based on the evidence in the hearing record and the fact Mr. Gratl was present to speak to his bills and undergo cross-examination by Sean Gallagher, DWR's counsel on the costs assessment, I was satisfied that I had sufficient evidence on which to assess the costs claimed by Ms. Reynolds and I denied DWR's request for an adjournment. Because I denied the adjournment, I did not order further disclosure of Mr. Gratl's solicitor's file.

[32] In addition to the hearing record, Mr. Rauch-Davis provided a book containing copies of the Underlying Action, the DWR response, the Counterclaim and Ms. Reynolds' response to the Counterclaim. Mr. Gratl spoke to his affidavit and was cross-examined by Mr. Gallagher. Both parties provided closing submissions, with authorities in support and I reserved my decision.

[33] As I noted above, approximately one week after the assessment hearing, I was copied on a memorandum to the parties from Morley J. dated June 10, 2025, in response to Mr. Gratl's request to appear. In the memorandum, Morley J. directed that no application may be made to him to vary the Costs Order and he stated that the registrar was in a better position than him "to determine, at first instance, the merits of what should and should not be assessed as costs or disbursements under" the Costs Order. In the memorandum, Morley J. advised the parties that if they wished to seek directions from him under R. 14-1(7) of the *Supreme Court Civil Rules* [*SCCR*] whether a specific costs item or disbursement should be allowed (or

disallowed), they were to do so by certain dates. I was advised that neither party sought directions from Morley J. under R. 14-1(7) by the deadlines he had set.

Discussion

Applicable Principles

[34] The leading BC authority on the manner in which costs awarded on a full indemnity basis under s. 7 of the *PPPA* are to be assessed is *Hobbs v. Warner*, 2020 BCSC 1180 [*Hobbs*]. In *Hobbs*, Justice Donegan (as she then was) had allowed the application of the defendant, Mr. Warner, under s. 4 of the *PPPA* and dismissed the plaintiffs' action against him, awarding him costs under s. 7 of the *PPPA*. At the assessment of those costs, the parties disagreed on the approach and powers of the registrar on an assessment of full indemnity costs, and the registrar referred the issue back to Donegan J. At that reference, Mr. Warner asked Donegan J. to assess his costs on a summary basis pursuant to Rule 14-1(15) of the *SCCR* (which is analogous to the process followed in Ontario, as illustrated in *Joshi*). The plaintiffs opposed the summary assessment of Mr. Warner's full indemnity costs by Donegan J. and submitted that the assessment of costs under the *PPPA* should be the same as the assessment of any other costs awarded under the *SCCR* and should be conducted by the registrar.

[35] In determining the first question before her (that is, how full indemnity costs awards under s. 7 of the *PPPA* are to be assessed), Donegan J. relied on two decisions of the Court of Appeal Registrar, *Pallot v. Douglas*, 2018 BCCA 315 and *Wanson (Bristol) Development Ltd. v. Sahba*, 2019 BCCA 459 [*Wanson*], both of which involved the assessment of the successful party's full indemnity costs, awarded pursuant to the terms of the contracts in dispute. In these cases, Registrar Outerbridge determined that the assessment of full indemnity costs more closely resembles a review of a lawyer's bills under the *Legal Profession Act,* S.B.C. 1998, c. 9 [*LPA*], because it is subjective, not objective. In *Wanson*, he stated the following:

> [13] The main difference between "full indemnity" costs and "special costs" is the relationship informing the analysis. Like ordinary costs, special costs are a form of party and party costs — that is, they are assessed with a view to the

> relationship between the parties. Under the factors provided in Rule 61(2) [of the *Court of Appeal Rules*], the question on an assessment of special costs is framed objectively: what *ought* to be the proper and reasonable amount paid by the losing party to the successful party? The bills of the solicitor are evidence of what could be objectively reasonable.
>
> [14] In contrast, "full indemnity" costs are described more accurately, in my view, by the synonym "solicitor and own client" costs. The reason is because the analysis is focused on the relationship between the solicitor and their own client, rather than as between the parties. When assessing these costs the question is subjective: examining the bills of the solicitor *in this matter*, are the charges reasonable in the circumstances?

[36] In *Hobbs*, Donegan J. concluded that, like a review of a lawyer's bills under the *LPA*, "when assessing full indemnity costs the question is subjective: examining the bills of the solicitor in this matter, are the charges reasonable in the circumstances? As a guide in the consideration of what is reasonable in the circumstances, regard may be had to the non-exhaustive factors identified in s. 71 of the *LPA*" (*Hobbs*, para. 42). She continued,

> [43] To this I would add that although the reasonableness analysis for full indemnity costs is focused on the relationship between the solicitor and their own client, rather than as between the parties, this does not mean that principles of natural justice and procedural fairness somehow do not apply to the assessment. Full indemnity awards do not entitle the successful party to whatever costs he or she incurred. The quantum must still be fair, reasonable and proportionate: …. As with costs awards under the *Rules*, I am of the view that natural justice requires a level of procedural fairness to ensure that full indemnity costs awards cover fees incurred and do not provide a windfall to the recipient [citations omitted].

[37] In considering whether it was appropriate that she should assess Mr. Warner's costs on a summary basis, Donegan J. concluded that unlike the practice in Ontario, "the assessment of a costs award made pursuant to the *PPPA* should be treated in the same manner as any other cost award in British Columbia" (para. 58). In this respect, she noted the procedure for assessing costs in the two jurisdictions differs significantly "while costs are generally assessed by the registrar in British Columbia, there is a presumption in Ontario that costs are to be fixed by the court, unless exceptional circumstances exist" (para. 64). Donegan J. declined to summarily assess Mr. Warner's costs and referred the assessment to the registrar.

[38] The Court of Appeal subsequently overturned Donegan J.'s judgment and costs award: *Hobbs v. Warner*, 2021 BCCA 290 [*Hobbs BCCA*], [leave to appeal refused, [2021] S.C.C.A. No. 413]. However, the appellate court did not vary or criticize Donegan J.'s determination of the way full indemnity costs awarded under s. 7 of the *PPPA* are to be assessed.

[39] The parties' submissions on the assessment focused on the factors listed in R. 14-1(3), which governs an assessment of special costs, as opposed to the factors listed under s. 71(4) of the *LPA* referred to by Donegan J. in *Hobbs*. Rule 14-1(3) stipulates that the registrar must allow those fees that were proper or reasonably necessary to conduct the proceeding, having regard to the following factors:

a. the complexity of the proceeding and the difficulty/novelty of the issues involved;

b. the skill, specialized knowledge and responsibility required of the lawyer;

c. the amount involved in the proceeding;

d. the time reasonably spent in conducting the proceeding;

e. conduct that tended to shorten or unnecessarily lengthen the proceeding;

f. the importance of the proceeding to the party whose bill is being assessed, and the result obtained;

g. the benefit to the party whose bill is being assessed of the services rendered by the lawyer; and

h. Rule 1-3 (*i.e.* proportionality) and any case plan order.

[40] These factors are nearly identical to the factors that a registrar must consider on the review of a lawyer's bills, listed under s. 71(4) of the *LPA*. Under the *LPA*, the registrar must also consider a lawyer's character and standing in the profession (s. 71(4)(c)) and whether the fee rate agreed to was reasonable (s. 71(4)(f)), two factors

which are not listed under R. 14-1(3). The authorities hold that these factors are not exhaustive, and the registrar may consider other factors in reviewing bills. Those factors have included the conduct of the lawyer's client in the proceedings for which the lawyer was retained, as well as the conduct of the opposing party.

[41] Following *Hobbs*, I must approach the assessment of the full indemnity costs claimed by Ms. Reynolds subjectively and when examining the Gratl & Co bills in this matter, determine whether the charges are reasonable in the circumstances. In determining what is reasonable in this case, as detailed below, I have considered the factors listed under R. 14-1(3) of the *SCCR*, as well as whether the hourly rates charged by Mr. Gratl and Mr. Rauch-Davis were reasonable. I do not consider the lawyers' character and standing in the profession to be anything other than a neutral factor in this case.

[42] I will consider each factor in turn, after I discuss how I have determined which of the matters included in the bill of costs are properly included in the costs awarded to Ms. Reynolds under the Costs Order.

PPPA **Proceedings Encompassed in the Costs Order**

[43] The parties are familiar with the legislative intent and purpose behind the *PPPA*, as well as the threshold burden placed on an applicant seeking to succeed on a dismissal application under s. 4 of the *PPPA*, which Ahmad J. discussed in the Declaration Reasons (paras. 24–31). Both parties referred to the leading Supreme Court of Canada authorities, in particular *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes Protection*] (referred to by both Ahmad J. and Morely J. in their reasons).

[44] Section 5 of the *PPPA* provides that if an applicant serves on a respondent an application for a dismissal order under s. 4, "no party may take further steps in the proceeding until the application, including any appeals, has been finally resolved." The only exception is for injunctions and as Ahmad J. noted, s. 5 generally bars further steps in the main claim, but not those within the *PPPA* process (Declaration Reasons, para. 33, citing *Galloway v. A.B.*, 2020 BCCA 106, at paras. 50–51).

[45] Before me, DWR asserted that given the wording of the Costs Order, which awards Ms. Reynolds her costs "for the *PPPA* Application", she is only entitled to her costs for the preparation and hearing of that specific application before Morley J., and that if Morley J. had intended to award Ms. Reynolds her costs for the other *PPPA* proceedings (*i.e*., the Declaration Application and the applications heard by Coval and Milman JJ.), he would have expressly stated this in the Costs Order. In the Objections, DWR challenged that Ms. Reynolds was entitled to her costs for the preparation and attendance at these applications, as well as for the preparation of the Scheduling and Revised Scheduling Applications, which did not proceed.

[46] Both parties cited *567 Hornby Apartment Ltd. v. Le Soleil Restaurant Inc*., 2020 BCCA 69 [*567 Hornby*], although for different principles. Mr. Rauch-Davis relied on the Court of Appeal's confirmation at paras. 105 and 139–141 of *567 Hornby* that where a judge orders the costs of the proceedings at a specific scale, that scale of costs attaches to all orders made in the proceedings (unless expressly stated otherwise). Mr. Gallagher submits that the principles in *567 Hornby* do not apply to Costs Award, which addressed the scale of costs, not all of the costs of an interlocutory application amid ongoing litigation proceedings (which is how he described the *PPPA* Application).

[47] Although Ahmad J. dismissed DWR's Declaration Application, it is clear from both her Declaration Reasons, as well as the oral reasons of Chief Justice Marchand dismissing DWR's application for a stay, that the Declaration Application was closely related to the *PPPA* Application and as may seem obvious, it would not have been brought but for the *PPPA* Application. Morley J. did not expressly refer to the costs of the Declaration Application in the Costs Order. However, he was clearly alive to the fact that these costs were to be included in his award, noting in the Costs Reasons that DWR's response to the filing of the *PPPA* Application was to "seek a declaration that the *PPPA* did not apply to it" and that Ahmad J. "left the cost consequences of [the Declaration Application] to this proceeding that is before me today" (para. 32). Morley J. noted that DWR brought the Declaration Application "to prevent the hearing of" the *PPPA* Application and he criticized DWR for this

approach, acknowledging that DWR "may need to bear the consequences of this litigation approach" (Costs Reasons, paras. 33 and 34).

[48] Based on the authorities describing the purpose of the *PPPA,* together with *567 Hornby*, and Morley J.'s comments in the Costs Reasons, I find that the Declaration Application was part of the proceeding that was the *PPPA* Application and further, that Morley J. intended for the costs of the Declaration Application to be encompassed in the costs he awarded to Ms. Reynolds in the Costs Order.

[49] Section 9 of the *PPPA* sets out the procedure on dismissal applications, stipulating that the application "must be heard as soon as practicable" (s. 9(4)). For this reason, once the *PPPA* Application was filed, the parties moved quickly to prepare and have it heard (as set out in the procedural history above). Section 9 of the *PPPA* also provides that evidence on s. 4 dismissal applications must be given by affidavit and that, before the hearing of the s. 4 dismissal application, an applicant or respondent may cross-examine witnesses on their affidavits, but that the total period of cross-examination of all applicants and/or respondents cannot exceed seven hours without an order of the court extending the time period (s. 9(5)).

[50] DWR submitted that Ms. Reynolds should not be entitled to claim her costs for the preparation of the Scheduling and Revised Scheduling Applications (which did not go ahead) or for work related to the opposed applications heard by Coval and Milman JJ. DWR also submits that given the terms of the orders made at the applications before Coval and Milman JJ., Ms. Reynolds was not successful because DWR consented to some of the relief sought or it was unnecessarily sought.

[51] In the Costs Reasons, Morley J. noted that the affidavits in response to the *PPPA* Application "came out piecemeal", suggesting this was a result of DWR's decision to pursue the Declaration Application (and subsequent appeal) (para. 33). He noted the difficulty faced by Mr. Gratl in setting down cross-examination:

> [33] … After the first cross-examination of Mr. Jurisich, he filed a subsequent affidavit that appended video and photographic evidence and further

> evidence about the height of the drone when it is operating. Ms. Reynolds' counsel reasonably thought he needed to have further cross-examination and because of the amount of time left under the *Act* the default time of seven hours in the *PPPA* would have had to be extended. There had to be an order made by Justice [Milman] as a contested chambers application on that point.

[52] In the circumstances of this case, I find it is appropriate to include in the costs awarded to Ms. Reynolds under the Costs Award her costs associated with the applications heard by Coval and Milman JJ., as well as for the preparation of the Scheduling and Revised Scheduling Applications. At the assessment, DWR asserted that at the trial, Mr. Gratl may rely on the evidence obtained in the cross-examinations of Mr. Jurisich and for this reason, I should not allow costs relating to the applications or the disbursements for the transcripts because they are more properly costs associated with the Underlying Action. Mr. Gratl testified at the assessment that he did not think he would use Mr. Jurisich's evidence at the trial.

[53] In *Joshi*, Kimmel J. reduced the amount of full indemnity costs sought by the plaintiff, acknowledging that "some of the fruits of the work done will be of use to the plaintiff in the pursuit of her action and were not exclusively incurred in relation to the dismissed counterclaim" (para. 23). In my view, the procedural applications challenged by DWR were all pursued under the statutory authority of s. 9 of the *PPPA* for the purposes of the s. 4 dismissal application before Morley J. Based on the evidence before me, I find that they cannot be characterized as steps for the pursuit of the Underlying Action or defence of the Counterclaim for which Ms. Reynolds has not been awarded her costs, and that they should be encompassed in the costs awarded to her under the Costs Order (which is not the case with the applications for which Ms. Reynolds does not seek her costs relating to the production of documents for example).

[54] In the Costs Order, Morley J. determined that the parties were to bear their own costs for the costs hearing before him on September 20, 2024. In my view, any steps taken by Ms. Reynolds once Morley J. reserved his decision in the *PPPA* Application on January 19, 2024 are not encompassed in the costs awarded to her under the Costs Order, but are more properly associated with the pursuit of the

Underlying Action or defence of the Counterclaim. On my review of the Gratl & Co bills on which her costs are based, I did not find any costs clearly falling into this time period.

Consideration of the Relevant Factors

The complexity, difficulty or novelty of the issues involved

[55] Ms. Reynolds submits that the matter was complex and raised novel issues. Mr. Gratl deposed that the *PPPA* Application was "fairly complex", because in the Counterclaim, DWR had alleged that Ms. Reynolds' drone flying and recording using the drone constituted a privacy tort (that is, an unlawful violation of privacy under s. 2 of the *Privacy Act*, RSBC 1996, c. 373), as well as the torts of nuisance and trespass. He deposed that he found very little law on the issues raised in the Counterclaim. He also testified that the expression that they were seeking to protect under the *PPPA* was the gathering and distribution of the videos Ms. Reynolds took with her drone, which Mr. Gratl described as a novel issue.

[56] Mr. Gratl also testified that the *PPPA* Application was the first application under s. 4 of the *PPPA* seeking to dismiss a counterclaim and he had to research and prepare argument on whether s. 4 of the *PPPA* could apply to strike a counterclaim. He also testified that DWR's Declaration Application was novel and was the only time a party has sought such a declaration prior to a dismissal application under the *PPPA*.

[57] DWR submits that the issues raised in the Counterclaim were not novel and that the fundamental principles underlying the torts claimed are well-known and should not have required a lot of research. DWR also submits that this *PPPA* proceeding was of the "usual complexity" and that although the *PPPA* legislation is fairly new and this was the first instance of seeking to dismiss a counterclaim in this province, the Supreme Court of Canada has set out guidance on applying it in *Pointes Protection* (and the companion case, *Bent v. Platnick*, 2020 SCC 23). Further, DWR submits that its Declaration Application, although pursued in the

context of the *PPPA*, was analogous to a standard application seeking a declaration under R. 20-4 and was not particularly complex or novel.

[58] In explaining the reasons he was not dismissing DWR's Counterclaim in its entirety, Morley J. noted that, as Mr. Gratl testified, the "law of what people are allowed to do with their drones in the vicinity of other people's property is undeveloped and the Counterclaim raises reasonable issues in this regard" (Dismissal Reasons, para. 9). Further, in the Declaration Reasons, Ahmad J. expressly noted that DWR's counsel "did not refer to any case law in which a *PPPA* dismissal application was determined in the manner it proposes to do or otherwise pre-emptively determined by way of declaratory relief" (para. 46). In the Costs Reasons, Morley J. expressly found that the Declaration Application and DWR's subsequent appeal "added to the complexity" of the *PPPA* proceedings (para. 32).

[59] I cannot ignore the findings of Ahmad and Morley JJ. who have more familiarity with the issues than I do. Based on the evidence before me, I find that the *PPPA* Application proceedings were complex and raised novel issues and I find this is a factor weighing in favour of the costs claimed by Ms. Reynolds.

The skill, specialized knowledge and responsibility required of the lawyer

[60] Mr. Gratl was called to the bar in 2001 and he has primary conduct of the proceedings (both the Underlying Action and the *PPPA* proceedings). Mr. Rauch-Davis, who was called in 2017, has assisted Mr. Gratl. Mr. Gratl testified that he has represented clients "in a number of *PPPA* applications, defamation cases, human rights cases involving expressive elements and cases dealing with wiretapping and video surveillance" (Gratl Affidavit, para. 9). DWR takes no issue with the skill, specialized knowledge and responsibility displayed by Mr. Gratl and his colleague and staff.

[61] I find that the lawyers conducting Ms. Reynolds' proceedings have the requisite skill, specialized knowledge and responsibility.

The amount involved

[62] In the Underlying Action and Counterclaim, neither Ms. Reynolds nor DWR quantified the damages they seek from each other.

[63] However, Ms. Reynolds submits that the stakes in the *PPPA* proceeding were significant and should be acknowledged when considering the amount involved, citing para. 12 of the Costs Reasons, in which Morley J. considered each party's success in terms of the "overall effect" of his ruling on the *PPPA* Application:

> [12] The "overall effect of the judgment" cannot be reduced to the monetary liability that Ms. Reynolds might be subject to as a result of my order, compared with what would have been the case if I had dismissed the application, but that is surely relevant. She is no longer facing punitive damages, or any claim for business loss as a result of reputational harm or regulatory activity taken against [DWR]. She is still facing potential damages for nuisance and trespass, or for violation of privacy from surveillance as a result of the operation of the drone, and possibly injunctive and declaratory relief about what would be a lawful and non-tortious use of her drone. In monetary terms, that is a significant advantage for her relative to the situation she would otherwise have been in.

[64] I am satisfied that, as Morley J. characterized it, the monetary liability Ms. Reynolds was facing under the Counterclaim justified pursuing the *PPPA* Application and defending the Declaration Application.

The time reasonably spent in conducting the proceeding

[65] The parties agree that Ms. Reynolds is not entitled to her costs related to the appeal proceedings (as determined by the Court of Appeal in *Hobbs BCCA* (para. 101)) and Mr. Gratl testified that the charges related to the appeal proceedings before Voith and Marchand J.J.A. were not included in the costs Ms. Reynolds claims. I found no charges related to the appellate proceedings in the Gratl & Co bills.

[66] Ms. Reynolds submits that the time spent to conduct the *PPPA* Application, which includes the time spent to defend the Declaration Application, prepare for the Scheduling Application, and pursue the procedural applications heard by Coval J. and Milman J., were reasonable in the circumstances. The bill attached to the

appointment is dated January 3, 2025, and it encompasses time entries from July 15, 2022 to April 8, 2024, a span of slightly less than two years. Mr. Gratl recorded 299.5 hours, Mr. Rauch-Davis recorded 95.5 hours, and the support staff recorded slightly less than 10 hours. The bill has been redacted so that time entries associated with the Court of Appeal proceedings were removed (the time entries between April 17, 2023 when Ahmad J. released the Declaration Reasons and May 10, 2023, when the stay application was denied, are redacted). As well, time entries after April 8, 2024 (when Morley J. released the Dismissal Reasons) are redacted, and there are no time entries recorded from January 19, 2024 (when he reserved his judgment) to April 8.

[67] As I noted, in its Objections, DWR challenged Ms. Reynolds' ability to claim costs associated with the Declaration Application, as well as the Scheduling Application and the applications heard by Coval and Milman JJ. Because I have found that these proceedings are encompassed in the costs awarded to Ms. Reynolds by Morley J. in the Costs Order, I have considered DWR's alternative Objections to these costs, which includes that the application before Coval J. was unnecessary because DWR consented to produce Mr. Ruttan for discovery. DWR makes similar arguments about the costs associated with the application before Milman J., in which Mr. Jurisich's second cross-examination was ordered.

[68] In the Gratl Affidavit and at the assessment, Mr. Gratl testified that the applications to compel Mr. Jurisich and Mr. Ruttan to be cross-examined was necessitated by DWR's refusal to allow them to be cross-examined despite Ms. Reynolds' statutory right under s. 9 of the *PPPA*. Mr. Gratl testified that although some terms of the orders were by consent, DWR would not respond to or communicate with his office regarding requests to produce Mr. Jurisich and Mr. Ruttan for cross-examination on their affidavits, until after Ms. Reynolds had filed an application seeking a court order compelling the relief sought. DWR does not dispute that this litigation is hard fought and although it submits that applications were unnecessary because it consented to the relief sought, it did not dispute

Mr. Gratl's evidence that it did not respond to initial requests to produce Mr. Jurisich and Mr. Ruttan for cross-examination.

[69] DWR also submits that the costs associated with the applications before Coval and Milman JJ. are more appropriately attributable to Ms. Reynolds' pursuit of the underlying litigation because the cross-examination evidence did not "advance the *PPPA* Application." As I discussed above, I have found otherwise.

[70] I find that the time spent on the applications before Coval and Milman JJ. was reasonable in the circumstances and I prefer the evidence of Mr. Gratl describing the necessity of the applications (as well as Morley J.'s remarks in the Costs Reasons) over the submissions of DWR that the proceedings were unnecessary or related only to the underlying litigation.

[71] I also find that the time spent preparing for the Scheduling and Revised Scheduling Applications was reasonable and properly included in the costs Ms. Reynolds claims. Although it was never heard, given the approach DWR took to the *PPPA* Application, I find it was reasonable for Mr. Gratl to pursue the Scheduling Applications and he was permitted to do so under the *PPPA*. I do not find any of the time recorded for it to be unreasonable in the circumstances of this case.

[72] At the assessment, Mr. Gratl testified that his firm does not use billing software to record time, but he reconstructs his time by looking at the work product (such as emails, pleadings and draft materials) and that he "errs on the side of the client" to determine his time, which he describes in his opinion as at the "very low end of reasonable". He confirmed that as the billing lawyer, he reviews all of the time entries on the bills and approves it (or writes time off). Mr. Gratl acknowledged that there were some dates where both he and Mr. Rauch-Davis recorded time on the *PPPA* Application, but he denied that it was double-billing. I find that the time recorded was reasonable in the circumstances and I did not find any that I considered to be excessive for the tasks set out in the accompanying narrative, based on my experience as Registrar regularly reviewing lawyers' bills.

[73] DWR objected to time spent by Mr. Gratl on August 6, 2022, just prior to filing the *PPPA* Application, for travel to Vancouver Island to meet with witnesses and finalize and swear their affidavits in person, suggesting that Mr. Gratl should have conducted the interviews by video-conferencing and had a local counsel commission the affidavits. Mr. Gratl recorded 14.5 hours for this task and Mr. Gratl testified that because of the nature of the accusations levelled against DWR, in particular against Mr. Jurisich personally, he wanted to assess the credibility of the affiants as they could be subject to cross-examination on the *PPPA* Application. Mr. Gratl could not distinguish between his travel time and the time spent with the witnesses. I find that this time was reasonably spent in the circumstances and I do not reduce it.

[74] The bill attached to the appointment includes time spent by both Mr. Gratl and Mr. Rauch-Davis on April 8, 2024, the date the Dismissal Reasons were released, some of which was challenged by DWR as unnecessary. Mr. Gratl testified that reviewing reasons and drafting the ensuing order are “integral to an application”. Given that Morley J. did not dismiss the Counterclaim in its entirety, I do not find it unreasonable for both counsel to spend time reviewing the judgment and discussing the drafting of the ensuing order.

[75] It has been frequently stated that the registrar is not expected to do a line-by-line audit of a lawyer’s time entries when reviewing bills under the *LPA* and in my view, this applies in reviewing a lawyer’s bills on which full indemnity costs claimed under the *PPPA* are based.

[76] I have closely reviewed the bills on which Ms. Reynolds’ costs are based in preparing this decision. I have found no time entries that I would consider to be unreasonable in the circumstances, bearing in mind that this assessment is to be approached subjectively. There is no dispute that the *PPPA* Application was hard fought (Ms. Reynolds’ right to pursue the dismissal of the Counterclaim was aggressively challenged in the Declaration Application and ensuing appeal, and the procedural applications were opposed), which clearly increased the time that

Mr. Gratl and Mr. Rauch-Davis and the Gratl & Co staff spent assisting Ms. Reynolds.

Conduct that tended to unnecessarily lengthen the proceedings

[77] Ms. Reynolds submits that the court "has already found on multiple occasions that DWR's conduct unnecessarily lengthened the duration of the proceeding." For their part, DWR submits that they were permitted to pursue the Declaration Application and the related appeal and application for a stay in the Court of Appeal, and they did not unreasonably lengthen the *PPPA* proceedings.

[78] In the Costs Reasons, in considering whether he should award Ms. Reynolds full or partial indemnity costs, Morley J. made the following comments about whether and to what extent the parties engaged in unnecessary proceedings:

> [31] I have to also address the question of unnecessary proceedings. Here I think this factor weighs in favour of Ms. Reynolds. This application took a very long time to get heard, and much of this was due to Deep Water Recovery's litigation choices.
>
> [32] The *PPPA* application was originally filed on August 8, 2022, only a few weeks after the counterclaim. Deep Water Recovery's response to this was to seek a declaration that the *PPPA* did not apply to it. That was dismissed by Justice Ahmad, who left the cost consequences of that to this proceeding that is before me today. This decision was sought to be stayed in the Court of Appeal, which denied that application. All of this added to the complexity and length of time and cost of this application, certainly compared to what was intended by the Legislature when it sought to have an early way of addressing whether a proceeding should be dismissed to protect expression on matters of public interest.
>
> [33] Perhaps as a result of Deep Water Recovery's decision to bring a declaratory remedy to prevent the hearing of the application, and its subsequent appeal, the affidavits in response to this application came out piecemeal. There was also difficulty in setting down cross-examination. After the first cross-examination of Mr. Jurisich, he filed a subsequent affidavit that appended video and photographic evidence and further evidence about the height of the drone when it is operating. Ms. Reynolds' counsel reasonably thought he needed to have further cross-examination and because of the amount of time left under the *Act* the default time of seven hours in the *PPPA* would have had to be extended. There had to be an order made by Justice Coval as a contested chambers application on that point.
>
> [34] I would say that this has been a complex and indeed unnecessarily complex path to getting to resolution. In general, we want to encourage parties that oppose applications to do so by putting in all their materials opposing the application when they file an application response. I do not think

> interlocutory applications to prevent the hearing of interlocutory applications are generally a good idea, and Deep Water Recovery may need to bear the consequences of this litigation approach.
>
> [35] I have to think about the reasons the Legislature had for creating this presumption of full indemnity costs, which was that if the purpose of the *PPPA* was not to chill expression by exposing people engaged in public discourse to expensive litigation. It makes sense that there would be a presumption that if they are and to the extent they are successful, they would not face litigation expense, which can only be accomplished by full indemnification.

[79] In the Declaration Reasons, Ahmad J. also discussed how DWR's pursuit of the Declaration Application "significantly delayed the hearing" of the Dismissal Application and that proceeding with the Declaration Application first "has resulted in the antithesis of expediency" (para. 56).

[80] Based on the evidence before me, in particular, the findings of Ahmad and Morley JJ. in their respective judgments, I find that DWR's conduct unnecessarily lengthened the *PPPA* Application and is a factor weighing heavily in favour of not reducing the costs Ms. Reynolds claims.

Reasonableness of the Hourly Rates Charged

[81] Mr. Gratl's hourly rate throughout was $575 and Mr. Rauch-Davis's hourly rate was $325. Ms. Stewart and Jodi Kaldestad, paralegals at Gratl and Co, were billed at $125 per hour. Based on my experience as Registrar regularly reviewing legal bills for costs assessments and reviews under the *LPA*, I find that the hourly rates charged by the lawyers were reasonable in the circumstances.

The importance of the proceeding to the party whose bill is being assessed

[82] I find that based on the evidence before me, the pursuit of the *PPPA* proceedings were clearly important to Ms. Reynolds and DWR does not dispute this.

Results obtained

[83] Ms. Reynolds submits that the result of the Dismissal Application was that Ms. Reynolds' right to free expression was vindicated and continued public

discussion about DWR's operations was permitted. Although Morley J. did not dismiss the Counterclaim in its entirety and success was divided, he determined that Ms. Reynolds was more successful than DWR (2/3 versus 1/3) and he awarded her costs on the scale of full indemnity, whereas he awarded DWR its costs on a party-and-party scale (which is much lower).

[84] I find that the results the lawyers obtained for Ms. Reynolds on the Dismissal Application, which includes defending the Declaration Application and the procedural applications, were positive.

Proportionality

[85] Rule 1-3 sets out the objects of the *SCCR*, which is to "secure the just, speedy and inexpensive determination of every proceeding on its merits", which includes, so far as is practicable, conducting the proceeding in ways that are proportionate to the amount involved in the proceeding, the importance of the issues in dispute and the complexity of the proceeding.

[86] As detailed above, the *PPPA* proceedings in this case stretched over nearly two years, with over a week of court time (two days before Ahmad J., three days before Morley J. and the appearances before Coval and Milman JJ.). Ms. Reynolds' counsel was required to draft all of the pleadings and several supporting affidavits, prepare for the court appearances (which includes researching the issues and procedure and preparing written and oral argument) and conduct the cross-examinations of Mr. Jurisich and Mr. Ruttan for the *PPPA* Application.

[87] I find that in the circumstances of this hard-fought and highly contested matter, the $151,092.48 sought by Ms. Reynolds as her costs of the *PPPA* Application at 2/3 of her full indemnity (excluding disbursements) is a proportionate award of costs for the *PPPA* Application (including its related proceedings), particularly in the circumstances of this case.

Disbursements

[88] Ms. Reynolds claims disbursements of $14,015.05, which she submits arise exclusively from the Dismissal Application.

[89] Rule 14-1(5) sets out that when assessing costs, a registrar must determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding and allow a reasonable amount for those disbursements. Because this is the assessment of costs awarded as full indemnity, I must approach this subjectively, bearing in mind what was reasonable for Ms. Reynolds at the time the disbursements were incurred.

[90] DWR did not take any issue with the disbursements claimed, other than asserting that it could not assess whether the number of photocopies recorded was reasonable without reviewing the Gratl & Co file. The total claimed for copies was $6,186.25 (24,745 pages at $0.25/page). Based on my experience as Registrar assessing costs, I find this amount to be reasonable in the circumstances of this case, particularly considering the number of pleadings, affidavits and days in court. I do not reduce the disbursements claimed as copies.

[91] At the assessment, DWR submitted that if I found Ms. Reynolds was not entitled to the costs associated with the cross-examinations of Mr. Jurisich and Mr. Ruttan, then I should not allow related disbursements. I allow the disbursements as claimed given my conclusion that the applications were properly part of the *PPPA* Application for which Ms. Reynolds was awarded her costs.

Conclusion

[92] As I noted, the exercise in assessing full indemnity costs is to be approached subjectively to determine what is fair, reasonable and proportionate in the circumstances, considering the factors set out above.

[93] Accordingly, taking into account the factors set out above, in particular, that I have found that DWR's approach to the *PPPA* Application increased the complexity and novelty of the proceedings, and that DWR's conduct unnecessarily lengthened

the *PPPA* Application proceedings, and these are factors weighing heavily in favour of allowing the costs as claimed, I allow Ms. Reynolds' costs at $165,107.53, which includes disbursements and applicable taxes.

[94] I direct counsel for Ms. Reynolds to prepare and file a certificate of costs in Form 64 for my signature showing that the amount of Ms. Reynolds' costs allowed after assessment is $165,107.53.

"Registrar Gaily"