IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Smith v. Investors Group Financial Services Inc.*, 2026 BCSC 2151

Date: 20261104
Docket: S28755
Registry: Cranbrook

Between:

Jeffrey Michael Smith

Plaintiff

And

Investors Group Financial Services Inc.

Defendant

Before: The Honourable Justice L. Bennett

Reasons for Judgment on Costs

Counsel for the Plaintiff:	J. Lalonde
Counsel for the Defendant:	N. Lapper
Place and Date of Hearing:	Kamloops, B.C. October 6, 2026
Place and Date of Judgment:	Cranbrook, B.C. November 4, 2026

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Introduction

[1] On July 14, 2026, I delivered written reasons for judgment (indexed at 2026 BCSC 1310) in which I dismissed the plaintiff's claim for wrongful dismissal against the defendant, Investor's Group Financial Services Inc. ("IG"). My decision followed 14 days of trial, and is therefore subject to the costs provisions of Rule 14-1 of the *Supreme Court Civil Rules*, BC Reg 168/2009 [*Rules*].

[2] On the issue of costs, my decision stated:

> **Costs**
>
> [93] As the successful party, IG is presumably entitled to costs. If either party wishes to make different submissions on costs, they must advise the other side and Supreme Court Scheduling within 14 days of these reasons and are at liberty to schedule a date before me as soon as reasonably practicable to argue the matter. Prior to the hearing, each side will provide a brief (no more than two pages) written argument to the other side and to the court at least seven days before the hearing date.

[3] IG, as the successful party at trial, seeks an order that the plaintiff pay costs at Scale B to May 22, 2020 (the date of IG's first formal offer to settle), and double costs thereafter.

[4] The plaintiff disagrees with any costs order and submits that the defendant's conduct and the particular facts of this case warrant an order that each party bear their own costs.

Applicable Law

[5] The standard order for costs is set out in Rule 14-1(9) of the *Rules*: "Subject to subrule (12), costs of a proceeding must be awarded to the successful party unless the court otherwise orders."

[6] Our Court of Appeal confirmed the presumption in Rule 14-1(9) in *Loft v Nat,* 2014 BCCA 108 [*Loft*]*,* at para 46:

> … At its most basic level the successful party is the plaintiff who establishes liability under a cause of action and obtains a remedy, or a defendant who obtains a dismissal of the plaintiff's case: *Service Corporation International*

> *(Canada) Ltd. (Graham Funeral Ltd.) v. Nunes-Pottinger Funeral Services & Crematorium Ltd.*, 2012 BCSC 1588, 42 C.P.C. (7th) 416.

[7] At para 49 of *Loft*, the Court of Appeal summarized the circumstances in which a court may depart from the presumptive rule that costs follow the event:

> [49] … The court may make a contrary order for many reasons. One example is misconduct in the course of the litigation: *Brown v. Lowe*, 2002 BCCA 7, 97 B.C.L.R. (3d) 246. Another is a failure to accept an offer to settle under Rule 9-1. A third arises when the court rules against the successful party on one or more issues that took a discrete amount of time at trial. In such a case the judge may award costs in respect to those issues to the other party under Rule 14-1(15): *Lee v. Jarvie*, 2013 BCCA 515. Such an order is not a regular part of litigation and should be confined to relatively rare cases*: Sutherland v. Canada (Attorney General),* 2008 BCCA 27, 77 B.C.L.R. (4th) 142*; Lewis v. Lehigh Northwest Cement Limited,* 2009 BCCA 424, 97 B.C.L.R. (4th) 256. Whether a judge will order otherwise in any particular case will be dependent upon the circumstances of that individual action.

[8] In addition to a regular order for costs, Rule 9-1(5)(b) provides that where an offer to settle has been made, "the court may … award double costs of all or some of the steps taken in the proceeding after the date of delivery or service of the offer to settle".

[9] Rule 9-1(6) provides a list of factors the court may consider in making an order for double costs. Those considerations include:

a) whether the offer to settle was one that ought reasonably to have been accepted, either on the date that the offer to settle was delivered or served or on any later date;

b) the relationship between the terms of settlement offered and the final judgment of the court;

c) the relative financial circumstances of the parties; and

d) any other factor the court considers appropriate.

[10] The guiding principles with respect to the double costs rule are summarized in *Hartshorne v Hartshorne*, 2011 BCCA 29 [*Hartshorne*] at para 25:

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> [25] An award of double costs is a punitive measure against a litigant for that party's failure, in all of the circumstances, to have accepted an offer to settle that should have been accepted. Litigants are to be reminded that costs rules are in place "to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer and penalizing the party who declines to accept such an offer" (*A.E. v. D.W.J.,* 2009 BCSC 505, 91 B.C.L.R. (4th) 372 at para. 61, citing *MacKenzie v. Brooks,* 1999 BCCA 623, *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.), *Radke v. Parry,* 2008 BCSC 1397). In this regard, Mr. Justice Frankel's comments in *Giles* are apposite:
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> > [74] The purposes for which costs rules exist must be kept in mind in determining whether appellate intervention is warranted. In addition to indemnifying a successful litigant, those purposes have been described as follows by this Court:
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> > • "[D]eterring frivolous actions or defences": *Houweling Nurseries Ltd. v. Fisons Western Corp.* (1988), 37 B.C.L.R. (2d) 2 at 25 (C.A.), leave ref'd, [1988] 1 S.C.R. ix;
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> > • "[T]o encourage conduct that reduces the duration and expense of litigation and to discourage conduct that has the opposite effect": *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 at para. 28 (C.A.);
> >
> > • "[E]ncouraging litigants to settle whenever possible, thus freeing up judicial resources for other cases: *Bedwell v. McGill*, 2008 BCCA 526, 86 B.C.L.R. (4th) 343 at para. 33;
> >
> > • "[T]o have a winnowing function in the litigation process" by "requir[ing] litigants to make a careful assessment of the strength or lack thereof of their cases at the commencement and throughout the course of the litigation", and by "discourag[ing] the continuance of doubtful cases or defences": *Catalyst Paper Corporation v. Companhia de Navegação Norsul*, 2009 BCCA 16, 88 B.C.L.R. (4th) 17 at para. 16.

[11] The Court in *Hartshorne* also provided guidance on how courts should evaluate the first factor under Rule 9-1(6), stating:

> [27] The first factor – whether the offer to settle was one that ought reasonably to have been accepted – is not determined by reference to the award that was ultimately made. Rather, in considering that factor, the court must determine whether, at the time that the offer was open for acceptance, it would have been reasonable for it to have been accepted: *Bailey v. Jang*, 2008 BCSC 1372, 90 B.C.L.R. (4th) 125 at para. 24; *A.E. v. D.W.J.* at para. 55. As was said in *A.E. v. D.W.J.*, "The reasonableness of the plaintiff's decision not to accept the offer to settle must be assessed without reference to the court's decision" (para. 55). Instead, the reasonableness is to be assessed by considering such factors as the timing of the offer, whether it had some relationship to the claim (as opposed to simply being a "nuisance

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> offer"), whether it could be easily evaluated, and whether some rationale for the offer was provided. We do not intend this to be a comprehensive list, nor do we suggest that each of these factors will necessarily be relevant in a given case.

Analysis

Costs to the Successful Party

[12] In summary, the plaintiff's allegations of misconduct by the defendant include:

a) advancing disingenuous and unwarranted applications for third party document production in the days or weeks before trial in a strategic attempt to adjourn the first two trial dates set in this matter and for the additional purpose of forcing the plaintiff to spend more money on legal and accounting fees;

b) refusing to have this matter heard in a different court registry, thereby delaying trial;

c) refusing to provide the plaintiff with required documentation for the calculation of the Regional Director Assured Value Plan ("RDAVP"), which delayed the plaintiff's expert report;

d) failing to provide proper notice of its August 28, 2024 application to adjourn the third scheduled trial that was set for the assize commencing on September 23, 2024 (the "Adjournment Application");

e) failing to take reasonable opportunity to engage a defendant expert between the spring and summer 2024, contributing to a third adjournment of trial;

f) purposely providing grossly inaccurate trial time estimates, all of which necessitated new trial dates, and all in an effort to avoid trial; and

g) doing a "document dump" (a further 394 documents, totalling 3,639 pages) on the plaintiff on the eve of trial, despite the defendant having the documents in its possession well in advance of trial.

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[13] Having considered the plaintiff's submissions, I find that none of the reasons for departing from the usual rule, as established by the case law referenced above, apply in this case because:

a) The plaintiff's assertions that IG brought last-minute applications for document production in a concerted effort to adjourn the first two trial dates set in this matter are unfounded:

    i. With respect to the first adjourned trial date, the plaintiff conceded at this hearing that the first trial date (set to commence on July 14, 2020) was adjourned by consent due to the onset of the Covid-19 pandemic. This concession aligns with his counsel's comments beginning at page 9, line 6 of the 2024 Adjournment Application hearing transcript (the "Adjournment Application Transcript"):

> And then, obviously, COVID happened, which set -- set this matter back quite a bit … so this matter was then reset between counsel.

    ii. In response to the plaintiff's contention that IG brought a frivolous application shortly before the June 2021 trial in an effort to obtain an adjournment and to force the plaintiff to spend more on legal and accounting fees, the defendant points out that it certified on May 19, 2021 that it was ready to proceed on the scheduled trial date. However, and while the trial certificate attached as Appendix D to the defendant's reply submissions does indicate the defendant's readiness, it is unfiled and I can find no indication that it was filed. Regardless, the order made after application dated May 25, 2021 speaks for itself; IG's application for production of documents was meritorious. IG was successful, with costs.

    iii. Moreover, the plaintiff's suggestion during oral submissions that the second trial date (set to commence on June 8, 2021) was not adjourned by consent contradicts filed court documents, which support

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the defendant's argument that the second trial date was ultimately adjourned by consent due to lack of court availability.

b) The plaintiff's assertion that IG failed to cooperate on the issue of moving the trial to a different registry is similarly not supported by any evidence. In fact, the correspondence between counsel attached to IG's reply submission confirms that IG was willing to schedule trial dates in Vancouver, New Westminster, Nanaimo, Kamloops, or Kelowna subject to availability.

c) In response to the plaintiff's assertion that IG failed to provide him with required documentation for the calculation of the RDAVP, IG's response is undisputed; that is, IG received no formal demand for AVP-related documents, and the plaintiff made only one informal request in a June 2022 email, but never followed up on that request.

d) In response to IG's alleged failure to provide proper notice of the 2024 Adjournment Application, the record clearly shows that IG took reasonable efforts in advance of any application to seek the plaintiff's consent to adjourn the 2024 trial date as a result of the plaintiff's late-filed expert report. The plaintiff, however, refused to consent to an adjournment, despite his own failure to comply with expert deadlines, which necessitated IG's short leave application and the subsequent order adjourning the third trial date.

e) Regarding IG's alleged responsibility for the third adjournment, the court's finding — set out in the Adjournment Application Transcript — contradicts the plaintiff's allegations of IG's misconduct. Specifically, the court recognized that the plaintiff served his expert report late and then refused IG's request to adjourn the September 2024 trial so that IG could obtain a responding expert report. At page 15 of the Adjournment Application Transcript, the court concludes that the defendant's application to adjourn the trial should not have been necessary and the plaintiff's late service of his expert report was the entire basis of that application. Because the adjournment issue should have

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been resolved by the plaintiff's consent without an application, the court awarded costs against the plaintiff in any event of the cause.

f) In response to the plaintiff's assertion that the defendant provided grossly inaccurate trial time estimates necessitating new trial dates, it is significant to note that notwithstanding the initial ten-day time estimate of both parties, the trial took significantly longer (14 days in total) than anticipated, and the plaintiff was partially responsible for exceeding this time estimate. The plaintiff consumed the first day of trial with two last-minute pre-trial applications, both of which I dismissed. The plaintiff then underestimated his evidence and submission time estimates by almost two further days.

g) In response to the alleged "document dump" on the eve of trial, IG says that many of the documents had already been disclosed and were reiterations of originals and/or updates of documents already provided. I accept these remarks because I do recall that there were approximately 800 + tabs of documents dispersed amongst 14 + binders, many of which were duplicative. When I questioned counsel about the volume of documents at the outset of the trial, plaintiff's counsel referenced his last-minute receipt of documents and the need to err on the side of caution by including every document for potential use. By the end of trial, it was apparent that plaintiff's counsel did not refer to a substantial number of documents, and many documents counsel referred to were included in duplicate. This redundancy and the volume of unreferenced documents resulted in my direction that counsel jointly eliminate the unnecessary, unreferenced documents prior to closing submissions in an effort to simplify the exhibits.

In the end, all of this created additional delays, which added to the time it took to conclude the trial. Consequently, I do not accept the plaintiff's argument that the defendant is somehow solely responsible for the additional length of the trial. The need for counsel, myself, court staff, and witnesses to constantly switch between various documents and volumes of binders multiple times

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within one court sitting was not the fault of either party, but it did add significantly to the time required to complete the evidence.

[14] In summary, and despite the plaintiff's attempts to parse through opposing counsel's conduct in search of behaviour that might be criticized, I do not find any basis on which to conclude that the defendant has engaged in "conduct that manifestly warrants rebuke": *LeClair v Mibrella Inc*., 2011 BCSC 533 at para 11. To the contrary, and for additional reasons that I will elaborate on below, the defendant's conduct demonstrates that it reasonably attempted to litigate and/or resolve the plaintiff's claim in good faith.

[15] As I stated in my trial decision, the defendant, as the successful party, is presumptively entitled to its costs. Having now considered the submissions of both parties on this issue, I find no basis to depart from that presumption.

Double Costs

[16] Throughout the course of this litigation, the defendant made four formal offers to settle. IG's first formal offer, dated May 22, 2020, was in the amount of $225,000, representing general damages inclusive of costs. The defendant seeks double costs from the date of this first offer onward on the basis that the offer was reasonable and better than the plaintiff achieved at trial. The defendant argues that the plaintiff could have, and should have, accepted the offer.

[17] The timing of this offer is relevant. The defendant made the first offer approximately two weeks after mediation and about two months before the first trial date. The defendant submits that its position was well laid out in its mediation brief, and at the mediation the plaintiff had the opportunity to discuss the defendant's position and the associated risks of trial with both his counsel and the mediator.

[18] In the alternative, the defendant argues that if the court is not inclined to order costs from May 22, 2020 onward, that it is entitled to double costs nonetheless, and submits that the court still has three other dates to chose from, as it made three further formal offers to settle.

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[19] The second formal offer, dated June 3, 2021, was in the amount of $325,000. As was the case with the first formal offer, the defendant submits that the plaintiff was, again, well aware of the risks of trial by June 3, 2021, and that he could have, and should have, accepted the offer — especially as it was more generous than the first offer; and in any event, it was better than he achieved at trial.

[20] The defendant made two final offers prior to the fourth scheduled trial date. On August 20, 2025, the defendant served a third formal offer to settle in the amount of $574,089, and on September 6, 2025, the defendant served a final formal offer for $650,000. The plaintiff declined both offers, and counter-offered at $1,500,000.

[21] The plaintiff submits that the court should not award double costs because none of the formal offers were reasonable in relation to what the plaintiff felt his claim was worth. In oral submissions, plaintiff's counsel described the effect of the events underlying this litigation on the plaintiff as a "significant loss in his life." However, the factors that I am required to consider on this issue require me not to consider the reasonableness of the offer in relation to the plaintiff's own subjective assessment of his claim, but rather to consider whether the plaintiff's reasons for refusing the offer were objectively reasonable at the time the offer was open for acceptance.

[22] In considering the objective reasonableness factor, I am mindful that the first two formal offers were made soon before trial dates (which were ultimately adjourned), that neither formal offer was a nuisance offer, and that IG explained the terms of each offer and provided a rationale for each offer.

[23] Nevertheless, in May 2020 and June 2021, the plaintiff believed that he was entitled to far more than the amounts offered. Indeed, even at the time of the second offer, the plaintiff's claim for pay in lieu of notice alone was almost double the offered amount. Given the amounts in issue, and even if the plaintiff's claim had a relatively limited prospect of success, I am not entirely convinced that the plaintiff ought reasonably to have accepted either of the first two formal offers at the times they were open for acceptance.

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[24] I cannot say the same of the third or fourth formal offer.

[25] The defendant's formal offer on August 20, 2025, more than doubled its original offer; and the defendant's formal offer on September 6, 2025, doubled its second formal offer. If he had not done so already, by the time of both the third and fourth offers, the plaintiff ought to have undertaken an incredibly careful assessment of his case and given extra consideration to the costs and apparent risks associated with a multi-day trial. Both the third and fourth offers should have given the plaintiff pause: they were not only reasonable but also generous, especially in comparison with the first two offers.

[26] Turning to the Rule 9-1(6) factors, I am satisfied that the plaintiff ought reasonably to have accepted the third offer. In terms of timing, IG made the third offer approximately three weeks before trial. The plaintiff's acceptance would have avoided the need for what was scheduled to be a ten-day trial, and for what turned out to be a 14-day trial. At that point, the plaintiff should have been aware that he could be entirely unsuccessful at trial. Further, the third offer was generous — more than double IG's initial offer. In addition, the defendant clearly explained the rationale behind the third offer: it represented the plaintiff's own calculation of all the income payable to him during the notice period (as per his counsel's letter dated August 14, 2025). In short, the third formal offer represented a reasonable compromise, particularly considering the uncertain outcome of the impending trial, and I find the plaintiff ought reasonably to have accepted it.

[27] In considering the plaintiff's argument that an award of double costs will cause him financial hardship, he led no detailed evidence regarding his current financial situation either at trial or at this costs hearing. The limited evidence I have regarding the plaintiff's financial position includes that he continues to be employed full-time as a financial advisor for TD Wealth, and prior to this he had a lengthy and successful career at IG, where at times he earned in excess of $400,000. Consequently, and although I have no doubt that a costs award of any nature is an

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expense that the plaintiff, understandably, wants to avoid, I find no basis on which to conclude that a double costs award would cause the plaintiff financial hardship.

[28] Similarly, I do not accept the plaintiff's submission that a double costs award would cause a windfall to IG or otherwise result in any unjust gain. Costs are not awarded on a dollar-for-dollar basis, but rather serve to offset legal costs. In all likelihood, the actual legal costs incurred by the defendant will exceed any costs award it may receive, particularly given the duration of this litigation, the length of the trial, and the document-heavy nature of this case.

[29] In summary, each of the defendant's four formal offers to settle were clear and unambiguous, and compliant with the *Rules.* Each offer exceeds what the plaintiff achieved at trial. Each offer was reasonable at the time it was made, and the purpose of each was to remind the plaintiff that there are costs rules in place to encourage the early settlement of disputes by rewarding the party who makes a reasonable settlement offer. Notwithstanding, the rationale behind the third offer of August 20, 2025 was a reasonable compromise, and the generosity of the third offer— for $574,089 — far exceeded the first two offers. That is the point when, if he had not done so already, the plaintiff ought to have realistically reassessed his case, especially in light of the estimated ten-day trial that lay just ahead of him.

Decision

[30] In summary, I find no basis on which to depart from the standard order of costs, and an award of double costs is justified. The defendant, as the successful party, is entitled to its costs, and to double costs from August 20, 2025 onward.

"L. Bennett J."

BENNETT J.

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