

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Parker Cove Properties Limited
Partnership v Okanagan Indian Band,*
2026 BCSC 1837

Date: 20260928
Docket: S259096
Registry: Vancouver

Between:

**Parker Cove Properties Limited Partnership,
Reynolds John Bonneau and Mildred Rose Bonneau**

Plaintiffs

And

**Okanagan Indian Band, as represented by its elected Chief and Council
and Chief Dan Wilson**

Defendants

Before: The Honourable Madam Justice Sharma

Reasons for Judgment on Costs

In Chambers

Counsel for the Plaintiffs:

K.N. Ramji

Counsel for the Defendant Okanagan Indian
Band:

I.C. Jones

Counsel for the Defendant Chief Dan
Wilson:

M. Yawney, K.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.
June 17, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 28, 2026

[1] In their June 1, 2026, notice of application, the plaintiffs seek an award of special costs against the defendants jointly for the injunction hearing and costs of this application. The application is in relation to an interim injunction that I granted to the plaintiffs on February 12, 2026: *Parker Cove Properties Limited Partnership v Okanagan Indian Band*, 2026 BCSC 601 (“*Injunction RFJ*”). The background to that application is set out in paras 2-3 of that judgment:

[2] This is an application for an injunction. It relates to fire protection services provided by the defendant Okanagan Indian Band (the “Band”) to the plaintiffs. The plaintiffs are a partnership and certain individuals in control of that partnership, who are involved in a development on the Band's reserve. The development consists of a large number of units and residents who live there.

[3] The parties have been in a dispute about certain aspects of a recent bylaw passed by the Band and an agreement that they entered into for fire services since late 2022. That dispute has escalated to the point where the Band has said it has terminated the fire services agreement, which will result in the cutting-off of any fire protection and emergency services to the development and its residents by February 27, 2026.

I. PRELIMINARY ISSUES

[2] Before addressing the substantial issue about special costs, I will address some preliminary matters that arose during the hearing.

A. The Band's Participation in the Costs Hearing

[3] The first is whether the Okanagan Indian Band (the “Band”) had a right of audience at this hearing.

[4] As noted, the plaintiffs filed a notice of application seeking special costs on June 1, 2026. Chief Dan Wilson in his personal capacity filed a response on June 9, 2026. No response was filed on behalf of the Band. Counsel for the plaintiffs was unaware until the morning of the costs hearing that counsel for the Band would appear and make oral submissions.

[5] I indicated I would hear from counsel for the Band and reserve my decision as to whether the Band had a right of an audience in the absence of filing a response. A

paramount consideration is considering the prejudice from allowing the Band to make submissions, and prejudice from not allowing it to do so.

[6] The Band's counsel provided a few reasons for the lack of a response. He first stated it was due to the "inadvertence of counsel". However, he also said that he had expected there would simply be oral submissions on costs without the necessity of parties having to file anything. He added that in his view, the plaintiffs' filing of a notice of application regarding costs was unnecessary or was inconsistent with directions I had given.

[7] The last point is reflected in the belief held both by counsel for the Band, and counsel for Chief Wilson, that there was a signed order that costs would be dealt with by way of oral submissions only. I do not recall that there was an order granted to that effect.

[8] There is no standard way that costs are dealt with after the hearing of an application. Sometimes, they are dealt with and addressed at the hearing of the substantive application, but that is not always the case. Sometimes, the judge will direct or order how and when a costs hearing will take place, including directing an exchange of submissions accompanied by an oral hearing, or proceeding by written submissions only. This may be done at the conclusion of the hearing or in the concluding paragraphs of a written judgment. However, it is also common that no directions are given for a number of reasons, including that the *Supreme Court Civil Rules* provide that a successful party is entitled to costs unless the court otherwise orders. Also, importantly, the parties may be able to agree on costs without the necessity of invoking the court process further.

[9] The clerk's notes from the injunction hearing indicate that the parties had leave to schedule a costs hearing before me. Granting leave to schedule a costs hearing is not a mandatory order, but rather confirmation that if any party believed it was necessary to have a hearing about costs, they had leave to seek a hearing before me. My recollection is the plaintiffs, at that time, anticipated they may seek special costs.

[10] In this case, the plaintiffs' original notice of application seeking an injunction only sought costs. The plaintiffs' counsel explained that when the application was filed, not all the circumstances upon which they rely in seeking special costs had arisen. Therefore, it was appropriate for the plaintiffs to file a notice of application seeking special costs to give other parties notice of what was being sought, and the factual and legal basis supporting the application. Thus, I do not agree with the defendants' position that filing a notice of application regarding costs was unnecessary or inconsistent with any direction from me.

[11] Once the plaintiffs filed their notice of application, the other parties were obliged to file an application response if they wanted to make submissions. Not only did counsel for the Band fail to do so, he also did not notify the plaintiffs' counsel that notwithstanding the Band's failure to file a response, he intended to appear at the hearing to make submissions.

[12] To a large degree, the Band relied on and agreed with the submissions made by Chief Wilson, and for that reason, the Band's counsel submits there was minimal prejudice to the plaintiffs by allowing them to make submissions.

[13] However, the Band wanted to rely on a previously filed affidavit in support of its position, something the plaintiffs could not have anticipated. Counsel for the Band submits there was no reason why the Court could not consider it. The Band's position is that since it had been filed, there can be no objection to the Band relying on it.

[14] I disagree.

[15] The Band's position underscores the prejudice caused by a party failing to file an application response. A primary function of a notice of application and a response is to put the opposing party on fair notice as to the case they will have to meet. That is a fundamental aspect of a fair hearing. Therefore, it is an error to think simply because an affidavit had been filed, it is appropriate for any party to rely on it at any subsequent application, without informing the other side.

[16] Moreover, presiders are given materials filed for the particular hearing, not the complete file. The Court does not necessarily have easy access to the affidavit, even when it has been filed.

[17] Furthermore, it would be unreasonable for counsel to assume because an affidavit was filed, the presider would have familiarity with it months later. This case may not contain numerous affidavits, but some actions, particularly in family law, have dozens of affidavits filed by each party. Not identifying which ones you intend to rely on at any particular hearing means the presider may not have all the necessary material, and it puts the opposing party at a considerable disadvantage.

[18] Regardless of my preceding comments, the more important point is that the *Rules of Court* are clear on what needs to be done to respond to a notice of application. To allow the Band to simply show up at the hearing, make submissions, rely on an affidavit not referred to in the notice of application after not filing a response itself nor giving any notice to the plaintiffs of its intention to appear, is conduct I am not prepared to condone.

[19] I add that there may be occasions it would be appropriate in similar to hear a party, including situations of urgency or unexpected complications, but those circumstances do not apply here.

[20] I add that it is not clear to me why the Band did not respond to the notice of application about costs. I was informed at the costs hearing that the Band applied for leave to appeal the injunction and that it sought, at the same time, a stay of this Court's costs order (even though no costs order had been made). On June 4, 2026, the Court of Appeal dismissed the Band's application. Thus, counsel was engaged in litigation on this file around the time that the plaintiffs filed their application.

[21] Even if the Band had a strong belief that its application to the Court of Appeal was going to be successful and assumed this hearing would be stayed, counsel certainly could no longer hold that view after the Court of Appeal's June 4, 2026, decision. Despite that, there was no communication to the plaintiffs' counsel

indicating that the counsel for the Band intended to appear and make submissions at this hearing.

[22] The Band assumed it had a right to be heard despite not complying with a basic requirement from the *Rules of Court* and without extending to the plaintiffs' counsel the courtesy of advising him that it would appear to make submissions. Furthermore, the reasons given for not responding to the notice of application were difficult to reconcile with other facts.

[23] For those reasons, I conclude the Band did not have a right of audience before this Court at the costs hearing.

B. The Riemer Affidavits

[24] As noted, Chief Wilson did file a response to the plaintiffs' notice of application and he wants to rely on the affidavits of Don Riemer made February 10, 2026 (DR #1), and one made June 9, 2026 (DR #2).

[25] The plaintiffs object to the admission of these affidavits into evidence. At the hearing for the injunction held February 11 and 12, 2026, Chief Wilson attempted to have DR #1 admitted into evidence. I made comments about the content of that affidavit at paras 56-58 of *Injunction RFJ*, and addressed its admissibility at paras 63-68, ultimately concluding that it was not admissible at that hearing.

[26] The plaintiffs say DR #1 remains inadmissible. They further object to DR #2 on the basis that it would be inappropriate to admit it when the affiant attempts to explain portions of his previous affidavit on which I have already made findings and comments in *Injunction RFJ*. The plaintiffs allege given the specific content of DR#2 especially, the Chief is attempting to revisit conclusions reached in *Injunction RFJ*.

[27] There is nothing necessarily improper by an affiant wanting to adduce at an application an affidavit previously ruled inadmissible at a different application. Nor is there anything necessarily wrong in a second affidavit being filed by an affiant to

clarify or expand upon information in an earlier affidavit. However, the analysis is considerably more complicated in this situation for a number of reasons.

[28] The first is the circumstances surrounding the attempt to admit DR #1 into evidence. In his application response to the costs application, Chief Wilson asserts that he took no position at the injunction hearing and, therefore, did not submit or rely on any of the content in DR #1. He further submits the affidavit simply provides information about the financial situation of the fire department and genuine concern about not being able to fund the needed expansion.

[29] Looking at the Chief's response to the injunction application, as well as the DR #2, the Chief's position that he took no position is more nuanced. That is certainly what is stated in Part 3 of his application response. In Part 4, he specifically adopted paras 1-27 of the Band's response, which contained the Band's factual narrative, but he also added:

The [Band's] Fire Department is presently operating in a deficit position in large part due to the failure of the plaintiff, PCPLP, to pay for fire protection services (affidavit #1 of Don R[ie]mer, paras. 9 and 10).

[30] The financial situation of the fire department was a contested issue at the hearing.

[31] My comments about DR #1 in the *Injunction RFJ* included the following from para 63, which is relevant here:

... it purports to contain information that the Band says is so materially relevant that it would be an error for me not to admit it into evidence. ... If it is so material, it ought to have been included beforehand by the Band.

[32] For all those reasons, I have difficulty acceding to the Chief's assertion that he remained neutral at the injunction hearing.

[33] However, he also supports the admission of both affidavits on the basis that they merely present facts to the court. That is not entirely accurate. They contain conclusions and opinions and, at times, strays into being argument.

[34] Specifically, in DR #1, the affiant explicitly stated that “the Fire Department is currently underfunded”, including needing, in his “professional opinion” updated firefighting equipment and the construction or acquisition of an additional fire hall (paras 14-15). It is not clear to me how or why the Director of Finance (as opposed to someone in charge of the fire department) would have the expertise to opine on that. I assume that information was provided to him, but he does not list a source.

[35] Another problem is a possible inconsistency between DR#1 and DR #2. At paras 11-13 of DR #1, he describes how an unaudited statement of revenue and expenses and surplus for the fire department for the years April 2019 to March 2025 shows the Band's direct financial contribution in certain years to keep the fire department operational. He stated that without those contributions, the fire department would not have been able to maintain service levels.

[36] However, in DR #2, he stated how the fire department, while not a separate legal entity, is a separate program and that “each program stands on its own”. He further deposed that funds are not generally shared between programs in a way that the strong would help the weak.

[37] It is difficult to reconcile that description with what he said in DR #1. I note that throughout his affidavit #2, he starts a number of paragraphs by saying his statements are factual and accurate, and states he is responding to specific paragraphs of the plaintiffs’ notice of application. These are argumentative statements that ought not to be included in an affidavit.

[38] In making these points, I want to be very clear that I am not calling into question Mr. Riemer's professionalism as a chartered accountant and nothing in my judgement should be read as making that implication. Any concerns I raised about the content of his affidavit are meant to reflect the Court’s commentary on the party submitting that affidavit.

[39] However, to the extent that DR #2 contains further explanations as a way of answering the plaintiffs’ allegation that DR #1 was misleading or inaccurate, I accept

it is admissible for that purpose. Therefore, DR #1 is also admissible because without it, DR #2 would have no context. The issue of the accuracy of information in the affidavits might be relevant to one of the factors regarding special costs. However, much of the affidavits other are not relevant to special costs.

C. Paragraph 40 of the Lawrence Affidavit

[40] The defendants submit that para. 40 of Garrett Lawrence's affidavit could not and should not be read as his statement that having to provide services to the plaintiffs without getting payment would result in the fire department essentially shutting down. The plaintiffs submit this is an attempt to re-argue and interfere with the comments I have already made in my original judgement. Those comments are contained at paras 56-60 of the *Injunction RFJ*.

[41] I agree with the plaintiffs that the submissions by the defendants about how I should interpret or read para 40 are misplaced because I have already commented on what that paragraph means and should be taken to mean.

III. SPECIAL COSTS

[42] The parties agree about the applicable legal principles, some of which I summarize here:

- a) Special costs are punitive in nature and meant to provide deterrence and chastise a litigant: *Mayer v Osborne Contracting Ltd.*, 2011 BCSC 914 at para 8.
- b) Special costs are meant to be awarded rarely and are an extraordinary measure: *Concord Pacific Acquisitions Inc. v Oei*, 2021 BCSC 129 at para 42.
- c) The power to award special costs arises from the court's inherent jurisdiction as well as Rule 14-1: *MacLeod v Harrington (Guardian of)*, 1995 CanLII 2345 at paras 17-18, 14 BCLR (3d) 201 (BCCA).

- d) However, even where conduct deserving of rebuke, it is established that special costs are not necessarily automatic: *AM Gold Inc. v Kaizen Discovery Inc.*, 2022 BCCA 284. That is because special costs are discretionary, and the court must engage in a careful consideration each time they are sought.

[43] Many cases have commented on the factors to consider with regard to special costs, including *Smithies Holdings Inc. v RCV Holdings Ltd.*, 2017 BCCA 177 at paras 56-57; *Garcia v Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570, 119 DLR (4th) 740 (BCCA); and *Westsea Construction Ltd. v 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para 73.

[44] The plaintiffs submit that the giving of false evidence is reprehensible conduct deserving special costs, citing Justice Southin in *Brown v Lowe*, 2002 BCCA 7 at para 149; see also *Mee Hoi Bros. Company Ltd. v Borving Investments (Canada) Ltd.*, 2017 BCSC 1910 at para 371. There is no doubt that the giving of false evidence negatively impacts the integrity of the judicial process as noted in *G.W.G. Woodcrafters Ltd. v Bourque*, 2023 BCSC 484 at para 32.

[45] However, the defendants emphasize that whether evidence was accepted or rejected does not necessarily equate to the evidence being false. As noted in *Gill v Bassi*, 2016 BCSC 754 at para 13, the logical chain that a party's evidence not being believed means it must have been false and they must have known it to be false and were, therefore, recklessly indifferent in pursuing it is a chain of reasoning that is not necessarily accurate. This is reflected in Justice Southin's comments when she distinguished "erroneous" evidence from that which is "knowingly untrue".

[46] The plaintiffs focus on what it says were misleading and/or careless statements in the affidavit filed by Garrett Lawrence made February 6, 2026, and DR #1. In particular, they focus on Mr. Lawrence's statement that the department was heading towards a deficit and would soon result in the inability to provide services to band members. That paragraph was the subject of commentary in the *Injunction RFJ*. They also point to another statement that was contradicted by their own

affidavit regarding representations made to the plaintiffs about fire service agreements. They then refer to the circumstances surrounding the attempt to have DR #1 admitted into evidence.

[47] The chief's primary position is that he did not attend the injunction hearing and, therefore, special costs should not be awarded against him. I have already reviewed the circumstances in which I find his submission that he took no position to be somewhat troubling given his attempt to have an affidavit supporting the Band admitted at the hearing. However, I agree that his non-appearance at the hearing is largely determinative in prohibiting an award of special costs against him.

[48] With regard to both the Chief and the Band, I agree that the case law cited also states that even where the Court finds evidence given was unreliable or dishonest (to be clear, neither the Band nor the Chief accepted they gave such evidence), there must be something more to justify an award of special costs. As stated in *Gill*, the Court looks for something more egregious in impugned conduct to be considered reprehensible. Similarly in *Turpin v Constantinescu*, 2018 BCSC 1679 at para 19, the court said that a finding that a party lacked credibility or assertions were implausible is not proof of conscious effort to mislead the court, and something more is required to meet the high bar of reprehensible conduct.

[49] Despite my comments about the content of the affidavits and circumstances of them being presented to court, I am not persuaded that there was a deliberate attempt to mislead the court. At worst, the quality of the evidence may have been poor, but despite the able submissions of the plaintiffs' counsel, I am not persuaded that either the Band's or the Chief's conduct rose to the level of being reprehensible.

[50] It is important to emphasize that this was an application for an injunction. Such applications are typically time-sensitive relating to urgent circumstances where parties and counsel may be rushed in their preparation and response. A primary focus of the plaintiffs' allegation that the defendants' conduct warranted special costs was the defendants' evidence about the financial circumstances of the fire department and the Band in general. While I made findings and comments about

that, that is likely to be a main issue should the matter proceed to trial, where a more complete evidentiary records would be available to the Court. It would be unwise to weigh heavily imperfections in that evidence at an interim application.

[51] For all those reasons, the application for special costs is dismissed.

[52] However, given the nature of the issues in dispute and the underlying circumstances as addressed in the *Injunction RFJ*, I exercise my discretion and find it just and appropriate to award the plaintiffs costs of the injunction application in any event of the cause. I also find that that the plaintiffs were not unreasonable in seeking special costs. For that reason, I also exercise my discretion and find that the parties shall bear their own costs in relation to the costs hearing.

“Sharma J.”