IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Parolin v. Cressey Construction Corporation,* 2025 BCSC 1828

Date: 20250919
Docket: S233938
Registry: Vancouver

Between:

Tracy Parolin

Plaintiff

And

Cressey Construction Corporation

Defendant

Before: The Honourable Madam Justice Burke

Reasons for Judgment on Costs

Counsel for the Plaintiff:	S. Robertson
Counsel for the Defendant:	N. Mitha K.C. E. White
Place and Date of Hearing:	Vancouver, B.C. September 10, 2025
Place and Date of Judgment:	Vancouver, B.C. September 19, 2025

INTRODUCTION

[1] The plaintiff, Ms. Tracy Parolin, sought damages for constructive dismissal from her employment with the defendant, Cressey Construction Corporation ("Cressey") on the basis of a change in the terms of her employment contract with the defendant.

[2] The trial proceeded for nine days—eight in which evidence was presented with the ninth day taken up by submissions of counsel. One day was adjourned due to the illness of defendant's counsel.

[3] The plaintiff was successful and the Court awarded costs to the plaintiff at Scale B, unless a party filed an application otherwise. The plaintiff has now applied for costs at Scale C for all steps in the litigation up to the end of trial.

[4] The parties made oral submissions with respect to this matter.

[5] My reasons will be brief.

OVERVIEW

[6] The plaintiff maintains an order of costs assessed at Scale C is appropriate as the length of the trial reflects the complexity and breadth of the factual and legal issues. The plaintiff points out the case raised novel and complex questions of law including the right of an employer to require a return to office post-COVID-19. In addition, the plaintiff points out the decision has significant precedential value as very few cases in Canada deal with the issue of mitigation raised in this case - whether it is reasonable for an employee to start a business rather than seek comparable employment.

[7] The plaintiff also says the case addresses other issues of importance in Canadian employment law, particularly regarding post-pandemic workplace arrangements and the rights of employees with caregiving responsibilities who have negotiated more flexible working arrangements.

[8] The plaintiff points out the factual matrix was intricate involving a lengthy employment relationship and evolving contractual terms. The plaintiff was required to call evidence on how the parties' agreement evolved over the course of a decade, along with stereotypes associated with her choice on how to balance her working life and raising children. This, the plaintiff says, required the consideration of constructive dismissal law and human rights, particularly as it relates to flexible work arrangements and gender-based stereotypes.

[9] The plaintiff says the matter was hard-fought with the defendant represented by multiple counsel throughout trial along with late disclosure of documents and last-minute witnesses. This increased the adversarial nature and complexity of the proceedings.

[10] In contrast, the defendant says the matter was not overly complex, nor was it litigated in a manner beyond the ordinary, and costs should therefore remain assessed at Scale B.

LEGAL FRAMEWORK

[11] As noted in *Acciona Infrastructure Canada Inc. v. Allianz Global Risks US Insurance Company*, 2014 BCSC 1907 at para. 11;

> In *Slocan Forest Products Ltd. v. Trapper Enterprises Ltd.*, 2010 BCSC 1494 [*Slocan*], McEwen J., identified the following factors as being relevant to the determination of the appropriate scale at para. 6:
>
> (a) Length of trial;
>
> (b) Complexity of issues;
>
> (c) Number and complexity of pre-trial applications;
>
> (d) Whether or not the action was hard-fought with little or nothing conceded along the way;
>
> (e) The number and length of examinations for discovery;
>
> (f) The number and complexity of expert reports;
>
> (g) The extent of the effort required in the collection of and proof of the facts.

[12] The Court in *Neuzen v. Korn*, 64 B.C.L.R. (2d) 125, 1991 CanLII 1662 (BC SC) considered the term "unusual difficulty" in the context of the scale of costs under the former *Rules of Court*, providing the following useful comment at para. 20:

> … The cases do not give any empirical formula for determining what is and what is not "of more than unusual difficulty" or what is or what is not "of unusual difficulty". They do give some guidance but the trial judge should, or at least is expected to, recognize such a case when he [or she] hears and sees it…

DISCUSSION

[13] While I agree with many of the propositions raised by the plaintiff, in particular that this case raised somewhat difficult and important novel issues, I am not persuaded this case reaches the threshold of "unusual difficulty". A novel claim, or lack of judicial authority, does not necessarily indicate complexity beyond ordinary difficulty: *Snaw-Naw-As First Nation v. Attorney General of Canada,* 2020 BCSC 1967 at para. 43 [*Snaw-Naw-As*].

[14] Additionally, while the case involved contested factual issues over some period of time, it did not involve multiple issues nor the assessment of complex technical or competing expert evidence, and the trial was not unduly long.

[15] Furthermore, the parties were relatively cooperative to ensure the efficiency of the trial process by working to identify common documents and preparing a joint book of documents, with the defendant permitting the plaintiff to amend her pleadings by consent a number of times. (See *Snaw-Naw-As* at para. 47.) The plaintiff, for her part, made certain concessions at trial concerning the issue of bad faith, which further promoted efficiency and which have been acknowledged.

[16] While the action was hard-fought, particularly at trial, the defendant's actions in this regard did not unduly prolong the proceedings. In any event, the jurisprudence cautions against placing too much weight on this factor: *Snaw-Naw-As* at para. 48. As the Court in *Avelin v. Aya Lasers Inc.*, 2019 BCSC 42, noted at para. 13, "…[m]any hard fought actions are nonetheless within the range of cases of ordinary difficulty." That alone cannot result in costs at Scale C.

[17] Finally, there were no pre-trial applications, no experts and the plaintiff did not conduct any examinations for discovery. The defendant conducted one virtual examination for discovery of the plaintiff which was completed in a day.

[18] In view of all the above, this Court concludes the plaintiff is entitled to costs at Scale B.

"Burke J."