

# KEEPING CURRENT

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## Recovering Online Legal Research Disbursements

By Stephen Thiele

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In previous blogs, I have written about the careful scrutiny given by courts to claims for costs for online legal research incurred during a proceeding. In most instances, the claims have either been disallowed or reduced on the grounds that they were either excessive or unsupported.

In the recent case of [D.Z. v. R.H.Z., 2021 BCSC 689](#), however, a claim for over \$1,700 in online legal research was granted, thereby demonstrating that despite the reluctance in awarding these kinds of costs, a court will do so, particularly where a clear submission to justify the costs is provided.

This case involved a family law matter. After a 12-day trial, the claimant was substantially successful, and accordingly he was entitled to costs. Although costs submissions were to be exchanged, only the claimant filed a submission. The trial judge then made her award.

Thereafter the losing party filed her cost submission and contended the trial judge's costs award should be set aside or revised to include her costs submission. The losing party also

commenced an application essentially seeking the same relief. Among other things, the losing party submitted that the order for costs was made without the inclusion of her responding costs submission, deeming the trial judge's costs order a default judgment, and that there had been a failure to establish or follow a schedule for the submission of costs as required.

The trial judge ultimately confirmed her decision with respect to costs and the matter proceeded to an assessment hearing. It was at this hearing where the costs of online legal research was reviewed.

The costs claimed were \$1,795.25, plus 89.90 GST. In justifying this disbursement, the following [submission](#) was made:

35. It is submitted that a significant amount of legal research was required by the Claimant throughout this matter. The invoice from Westlaw, which is the paid subscription of the Claimant's counsel's office, for the

legal research conducted on this file amounts to \$1,795.25, plus \$89.80 GST. There were multiple legal issues over the course of the file and ongoing research was required to prepare for the submissions and legal arguments relating to various matters, including but not limited to, contested court applications, closing submissions, multiple books or authorities for trial.

36. For example, in the middle of the trial, the Respondent's counsel advised that she intended to call the Parties' 18-year — old daughter as a witness at the trial, despite having advised the Court at the Trial Management Conference that the child would not be called to testify. The Trial Judge required oral submissions with case law to determine the issue. Several hours of legal research by the Claimant's counsel was required to make oral submissions on the matter.

37. In addition, the Respondent brought on an adjournment application just prior to trial, which also required various legal research to defend the position against the trial adjournment. As well, while on a continuation of the trial, the Respondent brought on another application to adduce new evidence after his case had closed. The matter required extensive legal research to reply to the application, which was ultimately denied by the Trial Judge.

38. In another example, the Respondent did not plead child support for on of the Children, Ciara, in his Response to Family Claim or Counterclaim; however, at trial, he asserted the child was child of the marriage and that he was owed

child support. Case law was required to support the Claimant's position that the child was not a child of the marriage for the period in question and that the Respondent's claim to child support for that period should fail, which the Trial Judge accepted.

39. The respondent also denied that the Claimant had any entitlement to spousal support whatsoever (after a 20-year marriage and 5-children) and significant case law was required to support the Claimant's position at the trial. The Trial Judge found in favour of the Claimant's position with respect to her entitlement to spousal support.

40. The Respondent also asserted that various expenses should be treated as s. 7 expenses, which was not accepted by the Trial Judge. The Claimant's counsel required case law authorities to support her position that such expenses are both reasonable and necessary and must be agreed between the Parties or ordered by the court.

The court noted that in the British Columbia Court of Appeal case of [\*Baiden v. Vancouver \(City\)\*, 2010 BCCA 375](#), it had been determined that in limited and exceptional circumstances, the expense of outsourced legal work might be recoverable as a disbursement where urgent circumstances justified the hiring of additional counsel.

While the claimant's submissions did not suggest that the legal research in the circumstances had been outsourced to a third party legal researcher, the court was satisfied that the expense incurred for online legal research was justified. Accordingly, the court ordered that the full amount of the expense for online legal research was recoverable.



Legal research is, of course, important. Although it can be time-consuming and sometimes costly to use online commercial legal research products, it should be strongly encouraged, and, like any other disbursement, legal research should form part of a claim for costs. But in order to make full recovery for this kind of disbursement, lawyers should follow the lead of what counsel did in this case to ensure that courts completely understand why the costs incurred for online legal research were necessary during the course of a proceeding and to provide proof of the actual amount incurred.

### **Contact us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at [sthiele@grllp.com](mailto:sthiele@grllp.com).

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