

# In the Court of Appeal of Alberta

**Citation: Calgary Co-operative Association Limited v Federated Co-operatives Limited,  
2025 ABCA 249**

**Date: 20250704  
Docket: 2401-0018AC  
Registry: Calgary**

**Between:**

**Calgary Co-operative Association Limited**

Respondent

- and -

**Federated Co-operatives Limited**

Appellant

**The Court:**

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**The Honourable Justice Frans Slatter  
The Honourable Justice Jolaine Antonio  
The Honourable Justice Kevin Feehan**

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**Memorandum of Judgment Regarding Costs**

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## Memorandum of Judgment Regarding Costs

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### I. Overview

[1] Federated Co-operatives appealed a portion only of a partial summary judgment in favour of Calgary Co-operative, in which a chambers judge awarded \$35,351,440.12 plus pre- and post-judgment interest and costs. A majority of this Court dismissed the appeal: 2025 ABCA 142.

[2] The parties now ask this Court to determine costs on appeal. They agree that costs are payable to Calgary Co-op, but do not agree on the amount. We set costs as a lump sum: \$90,000, all inclusive of fees, disbursements, and other costs and charges, plus GST.

### II. Decision in King's Bench

[3] The parties were likewise unable to agree on costs for the summary judgment application before the Court of King's Bench. Calgary Co-op had asked for just over \$615,000 inclusive of fees and disbursements, based on its unassessed solicitor and client costs of \$915,000, plus recoverable disbursements and GST of \$25,000, for a total of \$940,000. The precise amount of solicitor and client costs attributable to the application was subject to dispute; Federated Co-op said the fees should be reduced to \$727,500, and one-half of that amount with disbursements and GST would range from \$363,750 to \$457,500.

[4] The summary decision judge concluded costs equal to 50% of Calgary Co-op's solicitor and client costs reasonably incurred was "neither desirable nor practical" in the circumstances of the case. She instead set lump sum costs at \$340,000, all inclusive. That amounts to approximately 36.2% of Calgary Co-op's claim for unassessed solicitor and client costs, all inclusive.

### III. Costs Submissions

[5] Before this Court, Calgary Co-op seeks 50% of its solicitor and client appeal costs reasonably incurred. In the alternative, it submits that costs should be awarded on a lump-sum basis in the amount of \$90,000, representing approximately 36.2% of Calgary Co-op's unassessed solicitor and client costs for the appeal, comparable to the approximate percentage of unassessed solicitor and client costs in the Court of King's Bench.

[6] Federated Co-op submits that r 14.88(2) of the *Alberta Rules of Court*, AR 124, 2010, should apply, and there is no basis for deviating from either standard appeal costs in Schedule C or in the alternative, the percentage awarded for the summary application costs. However, it calculates that the lump sum figure of \$340,000 in the Court of King's Bench represents "less than 28% of the solicitor and client costs alleged to have been incurred by Calgary Co-op". Federated Co-op provided no mathematical calculation for that percentage figure. It appears to reflect the percentage when compared to Calgary Co-op's total fees of \$1,219,055, before it reduced them to \$915,000 to account for block billing. We note this is inconsistent with Federated Co-op's position

before the summary decision judge, where it argued Calgary Co-op's unassessed solicitor and client fees should be \$727,500 rather than \$915,000.

[7] Calgary Co-op's calculation of costs based strictly on Column 5 of Schedule C of the *Alberta Rules of Court* amounts to \$24,228.75 for fees and GST.

#### IV. Costs on Appeal

[8] Costs on appeal are addressed in r 14.88:

- (1) Unless otherwise ordered, the successful party in an appeal or an application is entitled to a costs award against the unsuccessful party.
- (2) The provisions of Part 10, Division 2 and Schedule C apply to appeals.
- (3) Unless otherwise ordered, the scale of costs in an appeal shall be the same as the scale that applies to the order or judgment appealed from.

[9] Where the trial judge awards costs in a lump sum, r 14.88 is difficult to apply. For example, an appropriate percentage of solicitor and client costs at trial is not necessarily appropriate on appeal.

[10] At the Court of Appeal, Calgary Co-op's unassessed solicitor and client fees are said to be \$233,857.84. With GST of \$11,692.89, this becomes \$245,550.73. However, as pointed out in *Barkwell v McDonald*, 2023 ABCA 87, paras 55-59, 62 Alta LR (7th) 10, costs awards based on a percentage of solicitor and client costs must be justified beyond merely asserting the quantum charged to or paid by the client.

[11] Having regard to the factors listed in r 10.33 of the *Alberta Rules of Court*, including the scale of costs awarded by the trial judge and the costs award for the appeal that would be generated by the application of Schedule C, the appropriate costs award for the appeal is \$90,000, inclusive of disbursements, plus GST.

Written Submissions received on June 9 and June 20, 2025

Memorandum filed at Calgary, Alberta  
this 4th day of July, 2025

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Slatter J.A.

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Antonio J.A.

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Authorized to sign for: Feehan J.A.

**Submissions:**

S. H. Leidl, KC

L. B. Mason

S. Mann

for the Respondent

S. Parhev, KC

J. J. Bouchier

for the Appellant