

# Court of King's Bench of Alberta

**Citation:** McGregor v Wawanesa Mutual Insurance Company, 2025 ABKB 352

**Date:** 20250610  
**Docket:** 2101 03399  
**Registry:** Calgary

2025 ABKB 352 (CanLII)

Between:

**Clifford McGregor and Katrina McGregor**

Plaintiffs

- and -

**Wawanesa Mutual Insurance Company**

Defendant

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**Endorsement on Costs  
of the  
Honourable Justice B.B. Johnston**

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[1] On April 14, 2025, I issued my written decision: *McGregor v Wawanesa Mutual Insurance Company*, 2025 ABKB 227 (the “Decision”).

[2] In my Decision I allowed the Defendant’s application and dismissed the Plaintiffs action.

[3] The parties have asked this court to address the costs arising from the Decision.

[4] The Defendant as the successful party, asks for costs under Schedule C, Column 4 or alternatively, for enhanced costs.

[5] The Plaintiff disagrees and argues Schedule C, Column 1 costs are appropriate.

### **Background**

[6] The facts are fully set out in my Decision. I will only review some of the facts.

[7] The Plaintiffs were the owners of a home with a detached garage which was insured pursuant to a personal insurance policy with the Defendant with a term of August 17, 2017 to August 17, 2018 (the “Policy”).

[8] During the evening of October 6, 2017, Clifford McGregor was making cannabis oil in his garage. A fire ignited while Mr. McGregor was making the cannabis oil (the “Incident” or “Fire”). The sole and direct cause of the Fire was the production of cannabis oil including the use of butane in that process. The Fire resulted in damage to the garage. Mr. McGregor and two visitors to the property were injured. On April 8, 2019, Mr. McGregor pled guilty to two criminal charges arising from the Incident.

[9] One of the visitors to the Residence on the date of the Incident, Mr. Coffin, sued the Plaintiffs for bodily injury and related damages in Court of King’s Bench action number 1901-13245 (the “Coffin Action”). The Plaintiffs sought coverage from the Defendant to defend and indemnify the Plaintiffs in the Coffin Action under the Policy.

[10] The Defendant advised the Plaintiffs that they would provide a defence to the Coffin Action pursuant to a reservation of rights. The Defendant has continued to provide the Plaintiffs with a defence in the Coffin Action.

[11] The Plaintiffs commenced this action against the Defendant. The Plaintiffs sought property coverage under Section I of the Policy and liability coverage under Section II of the Policy. The Plaintiffs alleged, amongst other things, that the Defendant breached their duty to indemnify and defend the Plaintiffs for the Coffin Action under the terms of the Policy.

[12] The Defendant filed an application for a Summary Trial seeking the dismissal of this action including a determination that the Plaintiffs were not entitled to coverage under the Policy.

[13] This matter was directed to a Summary Trial on October 2, 2023 by Justice Sidnell (the “Summary Trial Order”).

[14] An agreed statement of facts was filed on October 3, 2023.

[15] The Summary Trial proceeded on March 6, 2025.

[16] At the start of the Summary Trial the Plaintiff withdrew their property claim.

[17] I issued the Decision on April 14, 2025 allowing the Defendant’s application and dismissing the Plaintiffs claim.

[18] I received written submissions on costs from the parties.

## Submissions of Parties

[19] The Plaintiffs submissions are summarized in part below:

- a. Costs should be based on Schedule C Column 1 along with reasonable disbursements: *Optrics Inc v Lloyds Underwriters*, 2022 ABCA 26.
- b. This was a hearing for declaratory relief relating to whether there was coverage under a policy of insurance. No argument was addressed regarding the bad faith or punitive damages. Bad faith is also a standard insurance claim pleading.
- c. The Plaintiffs did everything to litigate this matter in a timely and cost-effective manner. No parties were ever questioned and there was an extensive statement of agreed facts. They consented to a summary trial process. They abandoned various claims at the start of the application.
- d. There are no rare or exceptional factors that make enhanced costs appropriate: *Blaze Energy v Imperial Oil Resources*, 2014 ABQB 509 at para 72.

[20] The Defendant argues in part:

- a. A successful party is entitled to costs, subject to the Court's general discretion.
- b. The Defendant seeks costs based on Schedule C, Column 4 plus a 25% increase for inflation, or alternatively a multiplier of 1.5 times for enhanced costs.
- c. Where unsubstantiated allegations of fraud, deceit or dishonest conduct are made in a statement of claim, increased costs may be awarded: **956126 Alberta Ltd v JMS Alberta Co Ltd**, 2021 ABQB 121.
- d. Enhanced costs are appropriate given the allegations included "malicious, wanton, reckless and high-handed conduct made in bad faith" and there was a claim for punitive and aggravated damages.
- e. Given the relationship between insureds and an insurer are imposed with duties of "utmost good faith and fair dealing" between each other, the allegations are effectively of deceitful and dishonest conduct.
- f. Notwithstanding the allegations, the Defendant continued to defend the Coffin Action.

## Analysis

[21] A successful party is generally entitled to costs, subject to the discretion of the court under rules 10.29(1), 10.30(1), 10.31 and 10.33: *McAllister v City of Calgary (City)*, 2021 ABCA 25 at paras 17 and 21.

[22] In this case, the Defendant was the successful party.

[23] The Defendant is entitled to costs, subject to the discretion of this court.

[24] The question before me thus is whether I should exercise my discretion and award costs.

[25] I find it appropriate to award costs in this case. I must therefore determine what award of costs is appropriate.

[26] In exercising my discretion, I have considered all of the cost rules.

[27] I note that this matter was not complex. The evidence was not voluminous. The question before this court was whether there was coverage under the Policy.

[28] I agree with the Plaintiff that they approached the litigation in manner that was consistent with rule 1.2. Indeed, both parties conduct is to be lauded in this regard.

[29] The hearing proceeded with an extensive statement of agreed facts. No questioning occurred and the parties agreed to a Summary Trial. The Plaintiffs also abandoned claims at the outset of the hearing.

[30] The parties briefs were both helpful and necessary. Although the Plaintiffs were ultimately unsuccessful, their arguments were not without merit. The issue before this court was an important one and not one that was frivolous.

[31] I accept that in the statement of claim there were allegations of amongst other things, bad faith conduct on the part of the insurer. However, I do not find that such allegations in the context of a claim for insurance coverage are inflammatory as the Defendant asserts.

[32] Having considered all of the above, I award the Defendant costs under Column 1 of Schedule C plus reasonable disbursements.

[33] No costs are awarded for this cost application given the mixed success of the parties.

[34] If the parties are unable to agree on the bill of costs, any disagreements including with respect to disbursements not addressed in this cost decision, are to be dealt with by the review officer.

Heard by written submissions the 23<sup>rd</sup> day of May and 9<sup>th</sup> day of June 2025.

**Dated** at the City of Calgary, Alberta this 10<sup>th</sup> day of June, 2025.

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**B.B. Johnston**  
**J.C.K.B.A.**

**Appearances:**

Paul J. Stein, K.C. and Marc T. K. Matras  
for the Applicant/Defendant

Colin D. Roberts  
for the Respondents/Plaintiffs