

In the Court of Appeal of Alberta

Citation: Westcan Recyclers Ltd v Calgary (City), 2025 ABCA 215

Date: 20250618
Docket: 2301-0194AC
Registry: Calgary

Between:

Westcan Recyclers Ltd and 664078 Alberta Ltd

Respondents
(Plaintiffs)

- and -

The City of Calgary

Appellant
(Defendant)

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Kevin Feehan
The Honourable Justice Alice Woolley**

Memorandum of Judgment Regarding Costs

Memorandum of Judgment Regarding Costs

The Court:

I. Overview

[1] The City of Calgary appealed two orders of a special chambers judge dated July 20, 2023. The special chambers judge dismissed the City's application to vacate an interlocutory prohibitory injunction dated April 14, 2022, and quashed a City closure bylaw, declaring it of no force or effect: 2023 ABKB 442. Both matters involved the construction of a four-lane divided roadway on 68 Street SE in Calgary, a north-south two-lane road between 86 Avenue SE and 90 Avenue SE, immediately adjacent to Westcan's property.

[2] The majority of this Court allowed the appeal, setting aside the order quashing the closure by-law and vacating the injunction order: 2025 ABCA 67.

[3] The parties have been unable to resolve questions pertaining to costs in this Court and in the court below.

[4] The City submits it is entitled to costs in relation to both the appeals and chambers applications in King's Bench. Its first position is that it should be entitled to the same scale of costs as had been agreed between the parties in King's Bench: 54% partial indemnity of reasonable solicitor-client costs (although this principle from *McAllister v Calgary*, 2021 ABCA 25, would almost invariably require attendance before a review officer to determine those reasonable solicitor-client costs). The City calculates this amount to be \$335,147.76, but it would be prepared to accept \$335,000, all inclusive.

[5] In the alternative, the City suggests costs on four times Column 5 of Schedule C of the *Alberta Rules of Court*, AR 124/2010. That amount would be \$104,809.88.

[6] The City also requests costs in King's Bench on four times Column 5 of Schedule C plus reasonable disbursements, calculated at \$231,070.79, plus return of the \$600,000 paid to Westcan after the King's Bench decision.

[7] In response, Westcan Recyclers asks that costs in this Court be granted on Column 1 of Schedule C, calculating fees at \$4,320 and disbursements at \$737.60, stayed pending final decision in the Supreme Court. It also asks that all costs awarded be stayed until after the decision in the Supreme Court, and that it not be required to return the \$600,000 paid to it following the King's Bench decision.

[8] The City is entitled to costs in this Court. The costs in King's Bench were the product of an agreement between the parties, but this agreement is not determinative of the scale of costs in this Court.

[9] Costs are awarded on three times Column 5 of Schedule C, plus reasonable disbursements. Costs in King's Bench now should be set on the same basis, three times Column 5 of Schedule C. Westcan is required to return the \$600,000 paid to it following the King's Bench decision.

[10] All costs decisions made herein are stayed pending completion of this matter in the Supreme Court of Canada.

Written submissions received on April 23 and May 9, 2025

Memorandum filed at Calgary, Alberta
this 18th day of June, 2025

Authorized to sign for: Antonio J.A.

Feehan J.A.

Authorized to sign for: Woolley J.A.

Submissions:

M. Mohamed, KC
M.J. Lafleche
for the Respondents

K. Colborne
K. Zucchi
J. Watson
for the Appellant