

# Court of King's Bench of Alberta

Citation: **Dell v Brookfield Residential (Alberta) LP, 2025 ABKB 504**

**Date:** 20250829  
**Docket:** 1801 14045  
**Registry:** Calgary

Between:

**Bryan Dell**

Plaintiff

- and -

**Brookfield Residential (Alberta) LP**

Defendant

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## Reasons for Decision as to Costs of the Honourable Justice O. Ho

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[1] This costs decision arises from the decision reported at *Dell v Brookfield Residential (Alberta) LP*, 2025 ABKB 403 (the “**Substantive Reasons**”). At paragraph 114 of that decision I directed that the parties bear their own costs of this Action except insofar as settlement offers might have been made. I permitted the parties to make written costs submissions if any such settlement offers had been made. I received written submissions from the Plaintiff on August 12, 2025 and from the Defendant on August 14, 2025.

[2] The Plaintiff made a Formal Offer on February 15, 2022; the offer was to resolve the entirety of the lawsuit in exchange for a payment by the Defendant in the amount of \$80,000. While the Formal Offer included a breakdown of the \$80,000 offer, I do not view such breakdown as being a series of individual offers which ought to be considered independently. The Plaintiff may have had reasons for providing a breakdown of the offered amount (including possibly tax implications), but the bottom line, regardless of how the Plaintiff rationalized it, is that the offer required the Defendant to pay \$80,000 in order to fully resolve the lawsuit.

[3] The Defendant made a written offer on February 14, 2025. That correspondence contained a settlement offer and was characterized as a Calderbank offer. The terms set out in that correspondence was to resolve the entirety of the lawsuit in exchange for a payment by the Defendant in the amount of \$150,000. This offer was made 10 days before the first day of trial, but the Defendant was explicit that the offer was only open until 6:00pm that same evening. The Plaintiff says that this offer was received by his counsel at 12:12pm, which, if true, would mean that the offer was open for acceptance for 5 hours and 48 minutes. I have been presented with a copy of the correspondence setting out the terms of that offer; it is indeed dated February 14, 2025, and it is marked as having been sent by email. The Defendant does not say when the email was sent or received. The Defendant points out that Plaintiff's counsel neither requested an extension of time, or even responded to the offer at all.

[4] One of the requirements that must be present in Calderbank offers before cost consequences may be imposed for the failure of one party to accept the Calderbank offer is that an adequate amount of time must be given for consideration of the offer. This is repeatedly stated by the courts including as recently as in the cases of *Axiom Oil and Gas Inc v Tidewater Midstream and Infrastructure Ltd*, 2025 ABKB 64 at para 16, and *Murray v Windsor Brunello Ltd*, 2025 ABKB 299 at para 82 ("*Murray*").

[5] The Plaintiff cites the case of *Kent v MacDonald*, 2020 ABQB 29 at para 20 ("*Kent*") to suggest that an offer being open for four days is insufficient to meet the time-requirement for an offer be open. That case is not persuasive because in *Kent*, the offer made would have required multiple defendants to communicate with each other not only to determine whether to accept the offer, but if so, to also determine in what proportion each of them would contribute to the settlement amount. The Court in *Kent*, explained that the multiple defendants could not have been expected to coordinate such a response within 4 days on the eve of trial. The Plaintiff also referred to *Murray* where the Court concluded that an offer kept open for 2.5 days and made only four days prior to the commencement of trial was also not sufficient to meet the requirement of an offer being open adequate time. *Murray* is persuasive.

[6] In the present circumstances, the Defendant's offer was made 10 days prior to the commencement of trial. It was made on Friday, February 14, 2025 and trial was scheduled to commence on Monday, February 24, 2025. I am cognizant that significant amounts of preparation were likely being undertaken by the time the Defendant's offer was made. The context of a 10-day trial being scheduled to commence 10 days after a settlement offer is made is indeed important context. The Defendant's intent on imposing the 6:00pm deadline likely related to the resources the Defendant had been incurring and the coordination and increased resources that were about to be incurred over the long weekend, the 4 business days that followed, and the weekend after that. Even with that context, I am not prepared to accept that an offer being open for less than one day can satisfy the requirement of adequate time being given for consideration. The period of less than one day is compounded by the reality that emails sent to counsel are not necessarily read immediately, and that counsel are not necessarily able to have a discussion with their clients immediately.

[7] Therefore, unlike the Formal Offer made on February 14, 2025, I do not give any weight to the Defendant's offer made on February 14, 2025 in my consideration of cost consequences.

[8] In light of the Plaintiff having been awarded more than the amount set out in the Formal Offer he made on February 15, 2022, combined with my decision in the Substantive Reasons that

each party bear their own costs, I grant the Plaintiff costs according to Schedule C for all steps from February 15, 2022 through to the end of trial. For further clarity, given my decision in the Substantive Reasons, the parties shall bear their own costs of this Action up until February 14, 2022. However, for the steps taken from February 15, 2022, the Plaintiff is awarded costs according to Schedule C.

[9] The Remedy section of the Plaintiff's Statement of Claim seeks, among other things, \$148,122.41 for lost wages, and \$88,500 for unpaid commissions. The sum of these two amounts exceeds \$200,000. Therefore, the corresponding column of Schedule C to be applied is Column 3.

[10] To be clear, there is no multiplier being awarded for the time period February 15, 2022 to the end of trial; only single Column 3 of Schedule C. Further, I am not awarding costs as it relates to the written submissions related to costs, which I permitted at paragraph 114 of the Substantive Reasons. Finally, I grant a 25% inflationary adjustment on the award on the fees portion of the costs award set out herein in accordance with the principals set out in *McAllister v Calgary (City)*, 2021 ABCA 25.

[11] In relation to disbursements, the parties shall bear their own disbursements incurred up until February 14, 2022. However, the Plaintiff's costs award shall also include disbursements incurred between February 15, 2022 through to the end of trial.

Heard by way of written submissions dated August 12, 2025 and August 14, 2025  
**Dated** at the City of Calgary, Alberta this 29<sup>th</sup> day of August, 2025.

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**O. Ho**  
**J.C.K.B.A.**

**Appearances:**

D. Snowdon and J. Premji, Carbert Waite LLP  
for the Plaintiff, Bryan Dell

A. Kosten, R. Jangi, Dentons Canada LLP  
for the Defendant, Brookfield Residential (Alberta) LP