

In the Court of Appeal of Alberta

**Citation: Remington Development Corporation v Canadian Pacific Railway Company, 2025
ABCA 332**

Date: 20251002
Docket: 2201-0274AC
2201-0276AC
Registry: Calgary

Between:

Remington Development Corporation

Respondent/Cross-Appellant

- and -

**Canadian Pacific Railway Company and His Majesty the
King in right of Alberta as Represented by
the Minister of Infrastructure and the Minister of Transportation**

Appellants/Cross-Respondents

The Court:

The Honourable Justice Thomas W. Wakeling*
The Honourable Justice Jolaine Antonio
The Honourable Justice Kevin Feth

Memorandum of Judgment Regarding Costs

* Justice Thomas W. Wakeling did not participate in the disposition on costs.

Memorandum of Judgment

The Court:

[1] The parties request a direction with respect to the cost consequences that should follow from the disposition of these appeals reported at *Remington Development Corporation v Canadian Pacific Railway Company*, 2025 ABCA 244.

[2] Wakeling JA has now retired. Accordingly, the judges deciding this issue consist of the two remaining members of the panel: s 8 of the *Court of Appeal Act*, RSA 2000, c C-30.

[3] Canadian Pacific Railway Company (CPR) and Alberta successfully appealed a trial decision that found CPR breached a real estate sale agreement and that Alberta induced the breach, including a damages award of more than \$165,000,000 plus interest. The cross-appeal by Remington Development Corporation for punitive damages was also dismissed. A new trial was ordered by this Court. CPR and Alberta were also successful in an application for a stay of the trial judgment and costs award pending the appeal.

[4] As successful parties on the appeal and cross-appeal, CPR and Alberta are *prima facie* entitled to costs: Rule 14.88(1) of the *Alberta Rules of Court*, Alta Reg 124/2010 [Rules]. The presumption in Rule 14.88(3) is that the scale of costs on appeal is the same scale of costs at trial.

[5] In the court below, Remington was awarded costs equivalent to 50% of its legal fees, plus disbursements in keeping with *McAllister v Calgary (City)*, 2021 ABCA 25 at paras 37-42; *Weatherford Canada Partnership v Artemis Kautschuk und Kunststoff-Technik GmbH*, 2019 ABCA 92 at paras 11-13. CPR and Alberta ask that this Court award costs on the same basis, 50% of the reasonable and proper fees incurred on appeal.

[6] In contrast, Remington asks that appeal costs be addressed by the new trial judge who can assess the entire litigation and consider a global award of costs. In the alternative, Remington argues costs should be awarded in keeping with Schedule “C”.

[7] Each side has cited precedent from this Court in advancing their positions. Those cases do not purport to lay down any guiding principle, but rather are conclusions tailored to the circumstances in each case.

[8] In this matter, we find no principled reason to depart from the default rule that the successful parties are entitled to costs of the appeal. We further conclude that the costs of the appeal should be awarded now, not after re-trial, if any.

[9] As to the level of indemnification, we have considered the factors identified in the *Rules* including the complexity of the appeal, the importance of the issues raised, and the magnitude of the judgment. We find it is appropriate to award costs at 50% of the reasonable and proper legal

fees (plus disbursements) incurred by CPR and Alberta. Costs of the first trial are otherwise to be addressed by the trial judge at the end of any re-trial: *Polansky Electronics Ltd v AGT Ltd*, 2001 ABCA 164.

[10] To the extent the parties cannot agree as to what legal fees are reasonable and proper, they may attend before an assessment officer for a direction or order. The parties are reminded that under the *Rules*, “reasonable and proper costs [are those] that a party incurred to file an application, to take proceedings or to carry on an” appeal: see Rules 10.31, 10.41. Further, should an assessment officer make an assessment of costs, any appeal of that decision is to the Court of the King’s Bench: Rule 10.44.

[11] In response to certain discrete issues raised by the parties, we offer the following guidance. First, this award includes costs of the successful stay application including all related steps.

[12] Second, while CPR retained new counsel for the appeal, this is not an unusual step and costs for counsel to come up to speed can be reasonable and proper fees. As this Court said in *Hill v Hill*, 2013 ABCA 389 at paragraphs 32-33:

.... Even if counsel for the two [appellants] had been able to recall all of the trial and all of the evidence, and thus prepare factums off the top of their heads (which we much doubt), an enormous amount of checking of exhibits and transcripts would then have been necessary before the factums could be signed and filed. All careful counsel do that.

Besides, long experience shows that good appellate advocacy requires intimate knowledge of the record, and checking every legal proposition in either factum. ...

An assessment officer can make further determinations on this issue if required.

[13] Lastly, Alberta retained the Honourable Robert Richards, KC as what it called an “external consulting legal counsel” and claims his fees as a disbursement. Generally, legal services should

be assessed as fees, not a disbursement, although we cannot rule out the possibility of justifiable exceptions. We have otherwise been given little information and cannot comment further. If required, an assessment officer can make the necessary determinations in this regard.

Written submissions filed on August 15, 2025 and August 18, 2025

Memorandum filed at Calgary, Alberta
this 2nd day of October, 2025

Authorized to sign for: Antonio J.A.

Feth J.A.

Appearances:

L.G. Vogeli, KC
M.J. Donaldson, KC
S.K. Hayes, KC
for the Respondent/Cross-Appellant

M. Mohamed, KC
M.D. Mysak
C.J. Mackey
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