Court of King's Bench of Alberta

Citation: Gnyra v Condominium Corporation No. 0211811, 2026 ABKB 29

Date: 20260113
Docket: 2301 01650
Registry: Calgary

Between:

Chris Gnyra

Plaintiff/Respondent

- and -

Condominium Corporation No. 0211811

Defendant/Appellant

Corrected judgment: A corrigendum was issued on January 13, 2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

Reasons for Decision on Appeal of Applications Judge's Decision of the Honourable Justice A.L. Froese

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I. Introduction

[1] This is an appeal of an Applications Judge's award of full indemnity costs. It is a narrow appeal, concerning whether the Applications Judge was correct to award full indemnity costs to a condominium unit owner in a dispute with the condominium corporation, when the Applications Judge found that the conduct of the condominium corporation was not intentional and not in bad faith, and there was no finding of litigation misconduct. There has been no appeal or cross-appeal on any other aspect of the Applications Judge's findings of fact or law, and I do not revisit any of those findings as part of this appeal.

II. Background

[2] The Respondent, Chris Gnyra, owns a unit in a condominium in northwest Calgary. The Appellant, Condominium Corporation No. 0211811, is the corporation constituted under the

Condominium Property Act, RSA 2000, c C-22 (**CPA**) for that condominium property. Since a condominium corporation acts through its board of directors, I will refer to the Appellant as the "**Board**".

[3] The facts underlying this dispute may be briefly stated.

[4] In February 2021, Mr. Gnyra's unit was flooded, causing damage to, among other things, the hardwood flooring. It is undisputed that Mr. Gnyra was not in any way at fault for this incident.

[5] The Board retained 24/7 Restoration Ltd. (**24/7**), with which it had a longstanding relationship, to assess the damage and provide a quote for repairs. The quote provided was $21,378.00 (the **Original Quote**)[1]. In March 2021, Mr. Gnyra was advised that the Board had authorized 24/7 to proceed with the repairs.

[6] Mr. Gnyra has mobility restrictions. He wanted to have additional renovations done to his unit, at his own expense, to improve accessibility. There was no opposition to this proposal. Mr. Gnyra required time to plan and organize these additional renovations, which resulted in delay in proceeding with the flood-related repairs.

[7] The Board had insurance, but elected to perform the repairs to Mr. Gnyra's unit without accessing its insurance.

[8] In December 2021, Tim Martin of 24/7 attended at Mr. Gnyra's unit to discuss the work to be done. At that time, Mr. Martin says that he took the opportunity to reinspect the hardwood floors and formed the opinion that they might no longer have water damage, and had possibly returned to their pre-loss condition. He communicated this opinion to 24/7's CFO, who passed it on to Karys Hughes of the property management company retained by the Board.

[9] In February 2022, Mr. Martin re-attended at the unit and advised Mr. Gnyra that a revised quote was being issued. Soon after, 24/7 provided the Board with a revised quote of $7,610.45 (the "**Revised Quote**") for the repairs to Mr. Gnyra's unit, which did not include replacement of the hardwood floors. The Revised Quote was provided to Mr. Gnyra. Mr. Gnyra denied that his floors had repaired themselves. The Board refused to honour the Original Quote.

[10] In February 2022, Mr. Gnyra retained Ridge Construction Inc. ("**Ridge**"), with which he had no prior relationship, to assess the damage to his unit and provide a quote for repairs. Ridge provided a quote in March 2022, which it ultimately updated in October 2022 to reflect inflation and cost increases. The updated quote was for $30,134.00, and included replacement of the hardwood floors (the "**Ridge Quote**").

[11] Mr. Gnyra provided the Ridge Quote to Ms. Hughes, who disregarded it as did not contain any information with respect to the existing condition of the floors, and simply provided a price for their replacement.

[12] In November 2022, there was another flooding incident that caused damage to Mr. Gnyra's unit. Again, it is undisputed that Mr. Gnyra was not at fault for this incident. There were areas of overlapping damage with the 2021 flooding incident. 24/7 provided a quote of $2,924.76 to complete all of the repairs (the "**2022 Quote**"). As found by the Applications Judge, the 2022

[1] Affidavit of Chris Gnyra, affirmed March 2, 2023 at para 7.

quote stated that the quote was to return Mr. Gnyra's unit to its standard insured unit description ("**SIUD**") status, and not its pre-flood condition (Reasons, page 5).

[13] In January 2023, the Board wrote to Mr. Gnyra to advise of its position that the only repairs needing to be completed to satisfy the Board's obligations were those contemplated in the 2022 Quote.

[14] On February 6, 2023, Mr. Gnyra filed an Originating Application seeking a declaration that the Board had engaged in "improper conduct" as set out in section 67 of the CPA. He sought:

- Costs to repair the damages to his unit, estimated to be $35,000;
- Alternatively, an order permitting him to retain a qualified contractor to make the necessary repairs to his unit to be paid for by the Board;
- Further, or alternatively, an order directing how matters are to be carried out so that the improper conduct will not reoccur or continue;
- Additional general damages, or alternatively aggravated or exemplary damages, associated with the improper conduct and the Board's failure to resolve or negotiate in good faith;
- Damages for loss of enjoyment, access and use of his unit;
- Legal costs and other out of pocket expenses incurred by Mr. Gnyra as a consequence of having to commence an insurance claim under his own policy of insurance to preserve his claims to costs not being covered by the Board, such as relocation expenses during remediation work.

[15] The Originating Application did not specifically claim damages for mental distress, but this was the subject of argument in Mr. Gnyra's written brief and argument before the Applications Judge.

III. Decision of the Applications Judge

[16] The issues before the Applications Judge were:

- Whether the Board had engaged in "improper conduct" within the meaning of section 67 of the CPA, in relation to their response to the flooding damage to Mr. Gnyra's unit;
- What was the appropriate compensation or remedy owed to Mr. Gnyra for the damage to his unit from flooding; and
- Whether Mr. Gnyra was entitled to additional damages as claimed.

[17] The Applications Judge heard Mr. Gnyra's application on January 23, 2024 and gave oral reasons for her decision on February 22, 2024.

[18] The Applications Judge addressed the interpretation of "improper conduct" under the CPA, which is not in dispute on this appeal. She noted that the CPA defined improper conduct to include conduct that is "oppressive or unfairly prejudicial to, or that unfairly disregards the interests of an interested party" (section 67(1)(a)(ii), CPA), and set out her interpretation of the

meaning of "improper conduct" based upon ***934859 Alberta Inc. v Condominium Corporation No. 0312180***, 2007 ABQB 640.

[19] The Applications Judge found that Mr. Gnyra reasonably expected that the repairs would be performed in accordance with the Original Quote and that the scope of the work would not be changed without consultation with him, and providing him with sufficient evidence of the basis of the change in scope.

[20] While the Applications Judge did not find that reducing the scope of work was improper conduct by itself, the way it occurred was "arbitrary" and "unfairly disregarded Mr. Gnyra's rights". She found that there was insufficient investigation when Mr. Gnyra disputed that the floors had repaired themselves, and no follow-up evaluation of the damage. Mr. Gnyra's views as to the state of the hardwood were "simply disregarded out-of-hand" (Reasons at pp 9-10).

[21] The Applications Judge acknowledged that the Board acted upon the advice of the property management company. Nevertheless, she concluded that retaining a property management company did not absolve the Board of responsibility. Narrowing the scope of the work without any real explanation was "inequitably detrimental to and unfairly disregard[ed]" Mr. Gnyra's interests (Reasons at p 10).

[22] Accordingly, while the Applications Judge found that the Board's actions were not "intentional" and that there was no "bad faith", its conduct amounted to improper conduct within the meaning of section 67 of the CPA.

[23] The Applications Judge declined to award damages to Mr. Gnyra for loss of enjoyment of his property based upon inadequate evidence. She also declined to award general damages for mental distress. She noted that the damages for mental distress were not supported by medical evidence and found that they were too remote. Referencing ***Lauder v Condo Corp No 932 1565 (Grand Carlisle)*** 2022 ABQB 382 in relation to her decision not to award damages for mental distress, she stated, "I find that damages associated with a dispute such as this are appropriately dealt with in deciding whether to award costs. I would not award – or I do not award general damages in this case" (Reasons at p 12).

[24] The Applications Judge also declined to award Mr. Gnyra special damages to compensate him for having had to commence an action against his own insurer on the basis that they were too remote.

[25] After delivery of her Reasons, and further consultation with counsel for the parties, the Applications Judge gave directions with respect to proceeding with the repairs, given the conflicting quotes. She ordered the parties to use reasonable efforts to mutually agree on the selection of an independent third-party expert, the costs of which would be paid by the Board, to investigate the hardwood flooring in the unit, provide an opinion on whether there was any residual damages to the hardwood flooring caused by the 2021 flood, and provide a quote for all repairs caused by both flooding incidents, to bring Mr. Gnyra's unit back to its pre-loss state. If the parties could not agree on the third-party expert, the Board would provide a list of three experts, and Mr. Gnyra would select the expert. If the parties could not agree on the scope of work to be performed after the investigation, they could request a trial on that issue.

[26] On the issue of costs, which is the subject of the appeal, the Applications Judge noted that "[as] is often the case in condominium disputes, ... costs very soon overtake what is ... in dispute" (Reasons at p 19). She referred to ***Stagg v Condominium Plan 882-2999***, 2013 ABQB

684 [***Stagg***], which in turn cited ***Jackson v Trimac Industries Ltd.*** (1993), 138 A.R. 161 (Alta Q.B.) at para 28, (1993), 8 Alta. L.R. (3d) 403 (Alta. Q.B.), aff'd on costs (1994), 155 A.R. 42, 20 Alta. L.R. (3d) 117 (Alta C.A.) [***Jackson***]. She noted that the Court in ***Stagg*** referred to factors to be considered in awarding solicitor and client costs and found that the factors applicable in this case were "blameworthiness in conduct, cases in which justice can only be done by a complete indemnification, where the ... respondent ... is guilty of positive misconduct and others should be deterred by like conduct" (Reasons at p 20). The Applications Judge then stated at (at p 20):

> Costs are highly discretionary and the Rules speak to the considerations the Court can have. The Rules also speak to the various forms of Court orders for costs that can be made. In this case, there was a finding of improper conduct and while I have not found there was bad faith or misconduct in that sense there was conduct that caused Mr. Gnyra to have to pursue his rights this way. So, that is a factor, in my view, that mitigates in favour of solicitor and client costs.
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> And the other factors that I consider is I consider that Mr. Gnyra was successful. Even though he did not obtain orders for all of the costs he was seeking in the – in the big picture, conceptually, he was successful in – in obtaining a declaration of improper conduct and, basically, there was conduct or a lack of conduct that I found was improper. To me, the – and his interests were unfairly disregarded. And to me, the biggest consideration here is that in my view there has to be a higher level of indemnification for Mr. Gnyra because ... that is the only way, in my view, justice can be served in this case because he had to pursue his rights legally for these repairs that otherwise he was being offered $2,900.
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> So, for all of those reasons, I do think this is an appropriate case for solicitor and client costs. ...
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> [emphasis added]

[27] The costs award was all reasonable costs for all steps leading up to the application, and up to and including the selection of a third-party expert, and were to be assessed by the review officer if the parties could not agree.

[28] The Applications Judge also ordered that the Board take all necessary steps to ensure that Mr. Gnyra did not contribute to pay the costs award (i.e., through the imposition by the Board of condominium fees or expenses on all unit owners), as this would dilute the amount to which Mr. Gnyra would otherwise be entitled.

[29] The Applications Judge noted that any costs flowing from the time period after the selection of the third-party expert could be spoken to at a later date. She noted that it would be very hard at this stage to anticipate those costs and assess them for reasonableness, and solicitor-client costs might not be appropriate for the next tranche of costs. She also noted that if a trial was required, and the Board was successful at trial, she did not want to prejudge those costs.

[30] Following the decision, the parties appeared before the review officer to have Mr. Gnyra's costs assessed. Mr. Gnyra's reasonable costs as directed by the Applications Judge, up to March 12, 2024 (the drafting of the Order) were assessed and only slightly decreased from the original claim, for a total of $31,687.82, of which $26,320.00 were fees.

IV. Issue

[31] The only issue before me on this appeal is whether the Applications Judge made an error in awarding full indemnity costs for the proceedings to that date, and whether a lower award of costs was more appropriate and ought to be substituted.[2]

[32] There is no appeal of the Applications Judge's finding that there was improper conduct by the Board.

[33] As noted, the Applications Judge did not make a determination on costs for the remainder of the proceedings. Accordingly, there may be further arguments on costs at a later stage, including on the issue of costs after the selection of the third-party expert, and if this matter ultimately requires a hearing to address the issue of the future repairs. Those issues are not issues before me, and would need to be addressed by either of the Applications Judge, or a trial judge, if there is a trial.

V. The Record

[34] I reviewed the following record for the appeal:

- Originating Application of Mr. Gnyra, filed February 6, 2023;
- Affidavit of Mr. Gnyra, affirmed March 2, 2023, and the transcript of cross-examination on the Affidavit;
- Affidavit of John Seaborn (a director of the Board), sworn May 15, 2023, and the transcript of cross-examination on the Affidavit;
- Affidavit of Karys Hughes, sworn May 5, 2023, and the transcript of cross-examination on the Affidavit;
- Affidavit of Tim Martin, sworn May 4, 2023, and the transcript of cross-examination on the Affidavit;
- Affidavit of Shah Zamani (Owner and Director of Ridge), affirmed July 12, 2023;
- Transcript of proceedings before the Applications Judge on January 23, 2024;
- Transcript of Reasons of the Applications Judge on February 22, 2024;
- Order of the Applications Judge, filed March 21, 2024;
- Bill of Costs assessed by Assessment Officer Ellery on May 6, 2024; and
- Notice of Appeal, filed March 28, 2024.

[35] As noted, there is no appeal on the facts as found by the Applications Judge. No new evidence was put before me on the appeal.

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[2] The Notice of Appeal does not assist with defining the issues on appeal, as it simply states that the Board is appealing the decision of the Applications Judge. The issue on appeal as being confined to the award of costs was confirmed in both written and oral submissions.

[36] The parties also provided written briefs of argument with case law that had been before the Applications Judge, and their respective appeal briefs of law. The parties also gave oral submissions at the appeal.

VI. Positions of the Parties

[37] The Appellant Board argues that the award of full indemnity costs is incorrect and a misapplication of the *Alberta Rules of Court* and law because:

- The Applications Judge found that the Board's conduct was not intentional and was not in bad faith, there was no litigation misconduct, and none of the indicia to support the exceptional and rare award of full indemnity costs as set out in the *Alberta Rules of Court* and the applicable case law are present. This was routine litigation that was not protracted or complex;
- Mr. Gnyra had limited success on his application. His claim for a lump sum damages award was dismissed, as were his claims for general and special damages. He was only successful in establishing that the Board engaged in improper conduct under the CPA and should bear the cost of the flood-related repairs;
- The Applications Judge erred in finding that an award of full indemnity costs was the only way that justice could be served because Mr. Gnyra had no choice but to pursue litigation for the costs of the repairs, because he otherwise was only being offered $2,900 by the Board. However, the quantum of the costs for the flood-related repairs has not yet been established, with it being possible that the cost of the repairs as recommended by the third-party expert, or established at a trial, could be similar to the estimate relied upon by the Board before the litigation commenced.

[38] In their brief, the Board takes the position that, in these circumstances, Schedule C costs are the appropriate costs award, with taxable fees being a total of $5,975 under column 1. There is no reference to disbursements in the Appellant's written materials. In oral argument, the Board also argued that given that Mr. Gnyra was only partially successful before the Applications Judge, the parties should bear their own costs for the Action up until that time.

[39] Mr. Gnyra maintains that the award of costs, as assessed by the review officer, was appropriate. He argues:

- It is a mischaracterization that Mr. Gnyra only enjoyed partial or mixed success, and that the Applications Judge was correct in finding that he was successful "in the big picture";
- The Applications Judge's decision not to award general damages to Mr. Gnyra was influenced by her finding that damages for these types of disputes were more properly addressed in the award of costs, and played into her decision to award full indemnity costs;
- Even in the absence of litigation misconduct or bad faith, a dispute between a condominium corporation and a unit owner should attract

> additional consideration and a higher level of costs for a successful unit owner, due to the unique "social contract" that exists, whereby, due to the operation of the Bylaws of a condominium corporation, Mr. Gnyra says the Board would have been entitled to solicitor-client costs if the "tables had been turned", and the Board had been successful in defeating Mr. Gnyra's application;
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> - An award of costs restricted to Schedule C would be wholly insufficient and far below what is fair.

[40] In the alternative, Mr. Gnyra argues that should the Court conclude that full indemnity costs were not appropriate, the Court should instead order costs that are partial indemnity costs above 40-50% of the actual costs that Mr. Gnyra incurred.

[41] Mr. Gnyra also states in written argument that he made a Calderbank settlement offer pre-litigation on October 6, 2022 for a lump sum payment of $25,000, and that the costs awarded by the Applications Judge exceed that offer. He further states, "[a]ccordingly, even if this Court is inclined to refer to Schedule C, the Owner is entitled to double costs for beating the Calderbank offer."[3] No Calderbank offer was presented to me as part of this appeal.

VII. The Standard of Review

[42] There was some argument by the parties on the applicable standard of review on appeal from an Applications Judge on the issue of costs only.

[43] Although not referred to in argument by the parties, I note that the Court of Appeal in ***Bahcheli v Yorkton Securities***, 2012 ABCA 166 [***Bahcheli***] at para 30 held that "the standard of review on appeal from a Master to a judge, on all issues, is still correctness", following amendments to the *Alberta Rules of Court*.

[44] In ***Vegreville Electrical Services (1996) Ltd. V 695093 Alberta Ltd.***, 1998 ABQB 517 [***Vegreville***], a case relied upon by Mr. Gnyra, Justice Veit noted as follows (at para 8):

> Although there is no rule in relation to the appeal of a Master's costs award similar to Rule 505(3) which requires a litigant to obtain leave of a judge of this court in order to appeal that judge's costs decision to the Court of Appeal, the policy reasoning which underlies the rule should inform the approach of our court on the appeal of a costs decision by a Master. In other words, even if we don't require the Master's leave before we hear the costs appeal, we should show restraint in over-ruling a Master's costs decision, respecting the fact that the Master may have had reasons, arising out of the conduct of proceedings at that level, to make a particular costs decision even though the reasons are not fully articulated.

[45] This reasoning of Justice Veit in ***Vegreville*** was cited with approval by Justice Dario in ***Bank of Montreal v Rajakaruna***, 2014 ABQB 415 at para 108.

[46] Counsel for the Appellant relied upon ***McAllister v Calgary (City)***, 2021 ABCA 25 [***McAllister***] at paras 17 and 18 for the direction that, on costs, an appellate court "may and

[3] Appeal Brief of the Respondent at para 39.

should intervene where it finds a misdirection as to the applicable law, a palpable error in the assessment of the facts, or an unreasonable exercise of discretion". This well-known case is a decision of the Court of Appeal, on appeal from a trial judge's decision on costs. It did not specifically consider the issue of the standard of review applicable to Applications Judge's decisions on costs.

[47] In my view, the standard of review applicable to the costs decision of the Applications Judge is correctness, as set out by the Court of Appeal in ***Bahcheli* .** I am, however, guided by the reasoning in ***Vegreville***, that costs awards are highly discretionary, and judicial restraint should be exercised in reviewing costs decisions of Applications Judges. I also agree with the submissions on behalf of Mr. Gnyra that I need to take into account that the entire rationale of the Applications Judge in applying her findings of fact to the costs analysis may not be apparent in the transcript of her Reasons on costs, particularly taking into account that costs submissions were asked for and delivered orally, with the agreement of the parties, on the same day following her delivery of the Reasons on the application.

[48] Counsel for Mr. Gnyra also argued that it was questionable whether the Appellant's appeal on costs only was proper at all, relying upon ***Oxford Properties Group Inc. v 786372 Alberta Ltd***., 2005 ABQB 305 [***Oxford***], where the Court considered a self-represented litigant's appeal on an award of costs of $750 made by what was then a Master. The Court in that case considered Rule 505(3) of the prior version of the *Alberta Rules of Court* dealing with appeals, which required leave of the court making the order before an appeal limited to costs could proceed. The Court found that there were no Rules which expressly limited the application of Rule 505(3) to appeals made to the Court of Appeal, and no case law on the issue, and stated "common sense" would dictate that leave from the Master was required (at para 25).

[49] However, it appears that the Court's ultimate decision in ***Oxford*** not to disturb the Master's decision on costs was premised upon the Court's finding that the Master's decision on costs was not arbitrary, based on unreasonable or irrelevant considerations and was within the Master's discretion (at para 31). This was the stated basis for the dismissal of appeal on costs.

[50] A subsequent decision of this Court provides an answer to both of the issues relating to an appeal of an Applications Judge's costs decision. In ***Coley v Payne***, 2015 ABQB 269, the Court noted with approval that the parties had conceded in argument that the standard of review on appeal of an Applications Judge's decision on costs is correctness (at paras 5-7). The Court further noted that while the parties initially had relied upon ***Oxford*** to argue that leave was necessary to appeal an Applications Judge's decision on costs, they properly conceded there is no such rule that applies to costs decisions of Applications Judges, and explicitly did not accept the reasoning in ***Oxford*** (at paras 9-10).

[51] I agree. The *Alberta Rules of Court* and case law do not require that leave of the Applications Judge is required on appeals to this Court on Applications Judge's decisions on costs only. That is not the law.

[52] In summary, in considering this appeal, I have applied the standard of correctness to my review, but with careful consideration of the need to exercise restraint in applying that standard, and in evaluating the reasons of the Applications Judge.

VIII. Analysis

A. General Legal Principles Relating to Costs Awards

[53] Generally, a successful party is entitled to costs: *Alberta Rules of Court*, Alta Reg 124/2010, Rule 10.29.

[54] The Court may order a party to pay the "reasonable and proper costs" incurred in the action, and may order that a party pay costs to indemnify a party for the other party's lawyer's charges, or a lump sum payment of costs: Rule 10.31(1).

[55] Judges have considerable discretion when assessing costs: ***McAllister*** at para 17. Rule 10.33(1) permits the Court to take into account "all or any of the following" factors in determining the proper award of costs:

> (a) the result of the action and the degree of success of each party;
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> (b) the amount claimed and the amount recovered;
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> (c) the importance of the issues;
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> (d) the complexity of the action;
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> (e) the apportionment of liability;
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> (f) the conduct of a party that tended to shorten the action;
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> (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

[56] The Court may also consider matters related to the conduct of the parties, as set out in Rule 10.33(2), some of which are the following (as cited from the Rule):

> (a) the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;
>
> (b) a party's denial of or refusal to admit anything that should have been admitted;
>
> (d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;
>
> (g) whether a party has engaged in misconduct;
>
> (h) any offer of settlement made, regardless of whether or not the offer of settlement complies with Part 4, Division 5.

[57] Types of costs awards may vary in accordance with the particular facts of the case and the Court's assessment of what is appropriate in the circumstances.

[58] Costs awards may follow Schedule C of the *Alberta Rules of Court* [*Tariff of Recoverable Fees*], which is one of a number of options or tools to arrive at reasonable and proper costs: ***McAllister*** at para 29.

[59] In appropriate circumstances, the Court has discretion to award a party a multiple, proportion or fraction of Schedule C costs, and may also award a percentage of the solicitor-client costs incurred by the client: ***McAllister*** at para 29.

[60] In ***McCallister***, the Court held that indemnification of the successful party should not normally provide full indemnity for all legal fees and disbursements. A typical costs award is instead intended to be a partial indemnity of costs (at para 37). The Court held that "the weight of authority is that party and party costs should normally represent partial indemnification of the successful party at a level approximating 40-50% of actual costs" (at para 41). In cases where there is no misconduct by the parties to the litigation, this level of indemnification seeks to balance the interests of the successful party who had to commence legal proceedings to enforce their legal rights, with the desire not to impose too heavy of a penalty on the unsuccessful party, to avoid a chilling effect where parties will be deterred from asserting positions or defending claims out of a concern for being penalized with costs consequences (at para 45).

[61] The impact of ***McCallister*** has been considered by our Courts. The Board relied in its argument upon ***Brosseau Estate v Dubarry Estate***, 2023 ABKB 378, in which the Court noted that ***McAllister*** does not supplant Schedule C with a 40-50% indemnification model, but simply provides another option to assess reasonable costs (at para 21).

[62] The Board further relied upon ***Grimes v Governors of the University of Lethbridge***, 2023 ABKB 432 for the following post-***McAllister*** statements:

- " 'Routine' or ordinary cases should continue to attract Schedule C costs, and in appropriate cases, with multiplier applied or an inflationary adjustment" (at para 58);
- "... Schedule C remains the starting point for any party party costs award" (at para 64);
- "...Departing from Schedule C for party party costs requires some exceptional circumstances" (at para 65).

[63] In ***Maurier v Maurier***, 2023 ABKB 539, the Court held that Special Chambers applications typically come closer to cases in the "common stream of litigation," attracting Schedule C costs (at paras 21 and 22).

[64] In appropriate cases, the Court may award solicitor-client or solicitor-own-client costs. I adopt the helpful definitions that distinguish between these awards of costs as set out in ***Stagg*** at para 25, quoting from ***Sidorsky v CFCN Communications Ltd.*** (1995), 167 A.R. 181 (Alta. Q.B.):

> ...
>
> 2. Solicitor and client costs: which provide for indemnity to the party to whom they are awarded for costs that can be said to be essential to and arising within the four corners of the litigation.
>
> 3. Solicitor and his own client costs: sometimes referred to as complete indemnity for costs. These are costs which a solicitor could tax against a resisting client and may include payment for services which may not be strictly essential to the conduct of the litigation.

[65] The Applications Judge in the present case awarded full indemnification of Mr. Gnyra's costs, or solicitor-and-own-client costs, although this was referred to at times in argument and the costs decision as "solicitor-client costs". In these Reasons, I do not always distinguish between the two terms when describing the arguments of the parties.

[66] Solicitor-client or solicitor-own-client costs are awarded in "exceptional" cases: ***Stagg*** at para 32. Solicitor-own-client or full indemnity costs are "virtually unheard of" except when provided by contract, and will rarely be appropriate: ***Uhuegbulem v Balbi***, 2025 ABKB 318 [***Uhuegbulem***] at para 69, citing ***Barkwell v McDonald***, 2023 ABCA 87 at para 56 (other citations omitted).

[67] The indicia for these types of awards was summarized in ***Jackson*** (***Stagg*** at para 32):

1. circumstances constituting blameworthiness in the conduct of the litigation by that party;
2. cases in which justice can only be done by a complete indemnification for costs;
3. where there is evidence that the plaintiff did something to hinder, delay or confuse the litigation, where there was no serious issue of fact or law which required these lengthy, expensive proceedings, where the positively misconducting party was "contemptuous" of the aggrieved party in forcing that aggrieved party to exhaust legal proceedings to obtain that which was obviously his;
4. an attempt to deceive the court and defeat justice, an attempt to delay, deceive and defeat justice, a requirement imposed on the plaintiff to prove facts that should have been admitted, thus prolonging the trial, unnecessary adjournments, concealing material documents from the plaintiffs and failing to produce material documents in a timely fashion;
5. where the defendants were guilty of positive misconduct, where others should be deterred from like conduct and the defendants should be penalized beyond the ordinary order of costs;
6. defendants found to be acting fraudulently and in breach of trust;
7. the defendants' fraudulent conduct in inducing breach of contract and in presenting a deceptive statement of accounts to the court at trial;
8. fraudulent conduct;
9. an attempt to delay or hinder proceedings, an attempt to deceive or defeat justice, fraud or untrue or scandalous charges.

[68] There is significant overlap of these factors.

[69] The Board also cited ***Polar Ice Express Inc v Arctic Glacier Inc***, 2009 ABCA 20, in which the Court of Appeal stated that the "...binding authorities hold that in general solicitor-client costs for misconduct must relate to conduct during the suit, not the pre-suit conduct sued over" (at para 21).

[70] Another issue that arises in assessing costs in this case is how to assess costs where the successful party has not been successful on each issue alleged in the pleadings and argued at the application.

[71] The Courts have held that the proper assessment is that if a party has achieved "substantial success", the party is entitled to costs, because it is rare for parties to be successful

on all issues: ***Uhuegbulem*** at para 60, citing ***IFP Thechololologies (Canada) Inc v EnCana Midstream and Marketing***, 2024 ABCA 384 (other citations omitted).

[72] Substantial success is determined globally, having regard to the outcome, the degree of quantitative and qualitative success, and success on the issues or claims (although it does not require success on every issue or argument raised): ***Uhuegbulem*** at para 61, citing ***Abt Estate v Cold Lake Industrial Park GP Ltd***, 2019 ABCA 145 at para 2 (other citations omitted). A finding of success may be based on a finding that a party was successful on the most important issue litigated: ***JWS v CJS***, [2022] A.J. No. 234, 2022 ABCA 63 at para 26, quoting ***AE v TE***, 2017 ABQB 674 at paras 4-5.

B. Costs Awards in the Context of Condominium Disputes

[73] The parties each relied on cases where costs were awarded in the context of condominium disputes.

[74] Mr. Gnyra argues that disputes between a condominium corporation and an owner attract additional considerations with respect to costs, due to the unique "social contract" that exists in that context, as described in ***Lauder v Owners: Condominium Plan No 932 1565 (Grand Carlisle)***, 2021 ABQB 413 (Master) [***Lauder Master Decision***] at paras 17 and 18, aff'd 2022 ABQB 382 [***Lauder Justice Decision***] [collectively, ***Lauder***]. He argues that a salient consideration is that if a Board is required to engage in litigation with one of its owners, the Bylaws generally provide that if the Board is successful, they are entitled to recover solicitor-client costs, as the costs for engaging in the litigation will inevitably be borne by the other unit owners. However, if, on the other hand, an individual unit owner is required to commence litigation to protect their rights, the same scale of costs is not available to them in the Bylaws.

[75] In this regard, Mr. Gnyra refers to ***1212443 Alberta Ltd v Condominium Corporation No 0721898***, 2021 ABQB 329 [***1212443***], where Master Schlosser held in his Endorsement that the successful unit owner should not receive anything less than the Board would have been entitled to under the Bylaws if the situation were reversed, because "[a] courageous owner, forced to challenge the missteps of the Board in Court and ultimately to protect the interests of the corporation, should not be condemned to mount their campaign at a loss" (at para 8).

[76] In ***Lauder,*** there had been a finding of improper conduct by the Board through its failure to maintain and repair a window in the owner's bedroom and its decision not to replace the window until the other windows on the wall of the building were also replaced. The Board had retained an expert engineer and had conducted repairs, but had refused to replace the window in the time frame requested by the owner. The owner was successful in establishing the Board's conduct was improper conduct under the CPA, and sought solicitor-client costs.

[77] Master Robertson declined to award solicitor-client costs. He found that there was no litigation misconduct on the part of the Board. He also found that the Board had not ignored Ms. Lauder's complaints, but rather, "had simply concluded that everything it had to do had been done, when the facts, when I looked at them closely, indicated otherwise" (at para 12). He stated (at para 13):

> The is not misbehaviour. That is simply a court looking at the evidence carefully, concluding that one side was in the wrong, and making the appropriate order in the circumstances.

[78] Mr. Gnyra relies in particular on Master Robertson's comments that an absence of reprehensible, scandalous or outrageous conduct "does not end the analysis" as to whether solicitor-client costs are appropriate (at para 16). Master Robertson noted that the Court in ***1212443*** did apply the social contract and held that a successful owners should be entitled to solicitor-client costs, as the Board would have been entitled to this level of costs had the situation been reversed (at paras 17 to 18). He then went on to make the following findings on costs (at paras 22 and 28):

> [22] In a condominium, the owner is not in a position to effect the repair on common property themselves. She could not have mitigated her damages by repairing the windows herself. She could not have taken her business elsewhere ... She had no choice but to ask the Board of Directors to fix the common property. Here, the common property directly affected Ms. Lauder. She ultimately had no choice but to bring legal proceedings to try to force a proper resolution. Accepting anything less than getting the leaking to stop was not an option.
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> ...
>
> [28] In all of the circumstances, taking into account that Ms. Lauder had no realistic choice but to pursue the dispute at least most of the way to the hearing, that the cost of an award in her favour is borne by her neighbours (and by her, to the extent of her unit factor) and that the Board is made up of other owners who have volunteered their services, that the Board's behaviour through the litigation was far from "reprehensible" or "contemptuous", I set costs in the lump sum of $35,000 plus GST, for a total of $36,750. That represents roughly 2/3 of what I am told are her solicitor-client costs.

[79] The condominium corporation in ***Lauder*** appealed the Master's finding that the window had to be replaced, and his finding that the owner was entitled to general damages for the loss of enjoyment of her bedroom. Justice Friesen dismissed the appeal of Master Robertson's decision on these issues. She also upheld his costs award, but without reasons (***Lauder Justice Decision*** at para 64).

[80] The Board argues that the cases relied upon by Mr. Gnyra do not create an exception to the long-established criteria as to when the exceptional award of full indemnity costs ought to be awarded.

[81] In this regard, the Board points to ***Stagg***, in which the Court had made a finding of improper conduct on the part of the board under section 67 of the CPA, and awarded solicitor-client costs.

[82] In ***Stagg***, the Court stated that "...judicial authority to order solicitor-client costs is not totally unfettered, and must be awarded in accordance with established legal principles regarding when such an 'exceptional' award is justified..." (at para 32). In ***Stagg***, the Court awarded solicitor-client costs in the context of findings that the Board was guilty of "aberrant conduct". This included findings that the Board provided misinformation to the owners regarding a Court Order, vilified the applicants to all owners at the condominium, and engaged in other abuses of power (at paras 48, 49 and 50). The Court also found that there had been an attempt to hinder and delay litigation and a failure to produce material documents in a timely manner (at paras 43 and 44).

[83] In comparing ***Stagg*** to the present case, the Board noted that the two scenarios were not at all comparable. In ***Stagg***, the typical indicia of egregious conduct and litigation misconduct were present, whereas the Applications Judge specifically found a lack of intentional misconduct or bad faith in respect of the Board's conduct with Mr. Gnyra.

[84] The Board also notes that the cases relied upon by Mr. Gnyra involve misconduct that is not present here.

[85] In ***1212443***, the Master noted that the Board almost completely failed to perform its duties (at para 1).

[86] In ***Lauder***, the Appellant argues that the damage caused and the impact on the owner was more significant than the present case, and also the significant delay in that case was due to the Board, which was not an issue in Mr. Gnyra's case.

[87] Further, the Board notes that despite the reference to a social contract in the ***Lauder Master Decision***, there was no award of solicitor-client costs in that case. Instead, Master Robertson awarded partial indemnity of two-thirds of solicitor-client costs.

[88] The Board also cited ***Dunn v Condominium Corporation No. 0420105***, 2022 ABKB 782, overturned on appeal on other grounds, 2024 ABCA 103, decided after ***Lauder***, in which the Court made these comments in the context of awarded a lump sum of costs, instead of solicitor-client costs (at paras 32, 34 and 35):

> [32] Solicitor client costs will normally only be awarded where there has been reprehensible, scandalous, or outrageous conduct by a party... An award of solicitor client costs is rare and must be based on a finding of intentional conduct during the litigation... [Citations omitted.]
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> ...
>
> [34] The Defendants argue that the Plaintiff's costs are completely disproportionate to the amount of damages the Plaintiff sought, and the amount awarded. I agree. However, the difficulty with this argument is that it is not possible to retain counsel to conduct a three-day trial for a proportionate sum. This is particularly true when the Defendants raised numerous defences requiring the Plaintiff to respond. This is the access to justice issue the Rules seek to address. Accordingly, where the Defendants compel the Plaintiff to proceed to trial on a small claim by refusing to attend dispute resolution, any argument that the Plaintiff's costs are disproportionate should not be entertained.
>
> [35] Where solicitor client costs are not justified, it may still be appropriate to award enhanced costs [citations omitted]. Rule 10.31(b) provides that costs can be awarded in a lump sum instead of or in addition to assessed costs ...

[89] While the Board in the present case does not argue that enhanced costs are the appropriate substitute, the case indicates that the standard case law principles in assessing whether to award full indemnity costs have been applied in the context of condominium disputes.

C. Application of the Law to the Facts

[90] In reviewing the decision of the Applications Judge, I start with the accepted principle that full indemnity costs awards are exceptional and rare.

[91] A factor that may support these awards is when the unsuccessful party has been guilty of positive misconduct. This is not limited to cases of fraud or breach of trust, but is the type of misconduct where meaningful costs ought to be imposed to deter similar conduct and to penalize the conduct beyond the ordinary award of costs: ***Stagg*** at para 32. This conduct has also been described as "reprehensible, scandalous or outrageous" conduct: ***Uhuegbulem*** at para 68, citing ***Goldstick Estates (Re)***, 2019 ABCA 508 at para 24, leave to SCC refused 2020 CanLII 33848. Another common basis for awarding solicitor-client costs is misconduct during the litigation itself.

[92] In this case, the Applications Judge found that the improper conduct was through not acting, not communicating and not fairly considering Mr. Gnyra's position (Reasons at p 19), and this was the sort of conduct that ought to be deterred (Reasons at p 20). The additional basis for finding that full indemnification of Mr. Gnyra's costs was appropriate was because "that is the only way, in my view, justice can be served in this case because he had to pursue his rights legally for these repairs that otherwise he was being offered $2,900" (Reasons at p 20).

[93] Having carefully reviewed the Applications Judge's findings of fact and the case law principles that apply to the rare circumstances where a successful party will receive full indemnification for their costs, while considering that restraint should be exercised in reviewing costs decisions, I find that this case is not an appropriate case for the imposition of costs at the solicitor-and-own-client level of indemnification.

[94] The Applications Judge's finding was that there was no positive or intentional misconduct in this case. Similar to the finding in ***Lauder***, the parties disagreed about what was the appropriate way to remedy the damage to the unit. The Board did not cause the damage, the Board did not delay in addressing the damage with Mr. Gnyra when it first occurred and the Board did not refuse to remedy all of the damage to the unit. The dispute was about the extent of the damage that needed to be remedied. There was also no positive misconduct during the course of the litigation that was identified. Where there has been neither fraud, positive misconduct, scandalous or reprehensible conduct or litigation misconduct, an award of full indemnity costs generally is not appropriate.

[95] The Applications Judge did not explicitly reference Master Robertson's costs decision in ***Lauder*** in her decision on costs. However, considerable reliance was placed on this decision by Mr. Gnyra on the appeal. I make the following points in relation to the application of this case to Mr. Gnyra's case.

[96] First, Master Robertson did not award solicitor-client costs. He awarded partial indemnity of costs, in the amount of two-thirds of solicitor-client costs.

[97] Second, in respect of Mr. Gnyra's argument that the "social contract" weighs in favour of full indemnification for costs in condominium disputes, I do not agree that this invariably applies to condominium disputes, or to this case, in particular.

[98] Bylaws are not uniform across all condominium cases. The Bylaws in the present case permit the Board to recover solicitor-client costs when the Board is required to bring a court application for enforcement of sanctions against owners who fail to comply with the Bylaws.

They do not provide that the Board is entitled to recover solicitor-client costs in any dispute with an owner where the Board is successful[4].

[99] However, even if the Bylaws did make solicitor-client costs more generally available to the Board, I do not agree that it can be said that a "social contract" approach creates a blanket entitlement to solicitor-client costs for owners who succeed in condominium disputes, rather than requiring the usual analysis under the *Rules* and the case law. Not only would this result in ignoring established case law principles, finding an analogous entitlement would seem to read a term into the Bylaws that simply is not there. In the absence of legislative or appellate authority, I am not prepared to find such a blanket entitlement.

[100] As noted above, the Applications Judge expressly found that Mr. Gnyra had no choice but to proceed with this litigation to achieve recovery. I agree and I have sympathy for his predicament. Nevertheless, this is the situation faced by many litigants, and, in the absence of exceptional circumstances, an award of costs for a successful litigant is intended to represent partial, not full indemnity.

[101] Therefore, I find that I must set aside the Applications Judge's costs award and I turn now to the question of the appropriate costs award for Mr. Gnyra.

[102] The Board argued that Mr. Gnyra only had partial success at the application, and that each party should accordingly bear their own costs. In making this argument, the Board took the approach that because Mr. Gnyra was not able to establish every allegation of misconduct, and because he did not succeed in providing entitlement to the various additional damages claimed, he was only partially successful. I disagree with this approach. It is common for parties to list many alternative grounds to establish a cause of action. In this case, while Mr. Gnyra did not prove that every action of the Board satisfied the definition of improper conduct under the CPA, he ultimately did establish that there was improper conduct, to which he was entitled to compensation. He was successful on the most important issued litigated.

[103] I do agree with the Appellant that it is not known at this stage which estimate for the hardwoods will prevail. That is the "success" to be determined. Will it be a finding that Mr. Gnyra was entitled to the full amount of costs as set out in the Ridge Quote, or will it be closer to the Revised Quote after the second flood? This will potentially be resolved by the findings of the third-party expert.

[104] However, this outcome is effectively what had been proposed by Mr. Gnyra when he disagreed with the Revised Quote, and provided the Ridge Quote. As noted by the Applications Judge, Mr. Gnyra says that he tried to schedule meetings to discuss and negotiate a resolution, but no material response or action was taken by the Board, and he was excluded from a meeting where the repairs were discussed by the Board (Reasons at p 6). As further noted by the Applications Judge, there was "insufficient communication with Mr. Gnyra" and no follow up or investigation to conclusively establish that the hardwood floors did not need to be replaced (Reasons at p 9). Mr. Gnyra lived in the unit and could be expected to give his views as to what the hardwood floor looked like, but his "views were simply disregarded out-of-hand and there was no meaningful response or further investigation done" (Reasons at p 9).

[4] Paragraph 25 of Amended and Restated By-Laws of Condominium Corporation No. 0211811, Exhibit 9 to the Affidavit of Chris Gynra, affirmed March 2, 2023.

[105] Counsel for Mr. Gnyra noted in argument before the Applications Judge that the proposal of hiring a third-party contractor was something that was proposed once counsel was retained and it was not accepted by the Board (Reasons at p 13).

[106] Counsel for the Board argued that had Mr. Gnyra only claimed relief in the way of appointment of a third-party evaluation, instead of also seeking damages, then the litigation would likely have not proceeded. I cannot accept that as fact or likely, particularly since Mr. Gnyra had already presented a quote from an alternate contractor to the Board, and it had been dismissed without any real consideration, or follow-up.

[107] The outcome of this litigation is that there will be an assessment of what is required. Mr. Gnyra claimed and obtained this relief. I agree with the Appellant that it is not known at this time what that means. However, had the Board not failed to communicate and engage with Mr. Gnyra, this litigation may have been avoided.

[108] In the circumstances, I find that higher than Schedule C costs, and lower than full indemnity costs is appropriate.

[109] At the outset, I note that Mr. Gnyra's costs have been assessed by the assessment officer and were reduced by only a modest amount. Therefore, there can be no question as to the reasonableness of the full costs incurred by Mr. Gnyra up to the point of the hearing before the Applications Judge. The legal fees allowed were $26,320.00.

[110] I have considered Mr. Gnyra's argument that the Applications Judge declined to award damages in favour of granting a costs award, and that by interfering with her award on costs, I am interfering with the merits of her decision that are not under appeal. I do not agree that this is evident with respect to all of the damages claimed. The Applications Judge specifically found that certain types of damages, such as damages for loss of enjoyment of the property and the special damages relating to the additional insurance claim, were not supportable on the evidence, and dismissed them on that basis.

[111] With respect to damages for mental distress, it is arguable that this may have factored into the Applications Judge's decision on costs. While the Applications Judge did find that there was no medical evidence to support that the circumstances exacerbated Mr. Gnyra's medical condition, she accepted that stress was horrible for his condition. She then declined to award damages for mental distress but said, "I find that damages associated with a dispute such as this are appropriately dealt with in deciding whether to award costs. I would not award – or, I do not award general damages in this case" (Reasons at p 12). When later delivering her decision on costs, she did not reference the general damages issue again.

[112] In considering that the Applications Judge may not have fully articulated her reasoning on costs in this regard when giving her oral decision, I accept that her consideration of the conduct that caused unnecessary stress to Mr. Gnyra is a factor that is part of the consideration of the costs award. I do not agree that my consideration of this factor is an impermissible review of the Application Judge's findings on the merits of the application.

[113] Accordingly, similar to Master Robertson in ***Lauder***, I am prepared to award costs at 50% of Mr. Gnyra's assessed fees, or $13,160, plus disbursements and GST. The factors that I have taken into account, in addition to the factors already reviewed, include the following:

- Mr. Gnyra was substantially successful on this application. The ultimate success in the action is yet to be determined;

- although there was no litigation misconduct, the nature of the improper conduct (i.e. the refusal to engage with the Ridge Quote and the lack of communication with and explanation provided to Mr. Gnyra) caused the need for the lawsuit. Justice requires a higher scale than Schedule C costs;
- Mr. Gnyra needed to engage with Board to have the repairs to his unit done;
- the conduct of the Board did not rise to the level of being reprehensible or scandalous;
- a costs award against a Board is inevitably borne by other unit owners who did not benefit from the litigation.

[114] I do not make the same order of two-thirds of solicitor-client costs as Master Robertson did in ***Lauder***, in part because the Applications Judge has ordered that any costs to be paid by the Board are not to be passed onto Mr. Gnyra, which will have the effect of not diminishing his costs award. I do not know how the Board will ensure this, but it is an order of the Applications Judge that is not the subject of the appeal.

[115] I make no findings on costs for the next steps directed by the Applications Judge. I agree with the Applications Judge that it will be important to understand the final outcome before making any further or final determination on costs. This issue will be for determination by the Applications Judge, or a trial judge.

[116] I also have not considered the Calderbank Offer referenced by counsel where he says Mr. Gnyra offered $25,000 as a pre-litigation offer. I have not seen a Calderbank Offer. In addition, I do not know whether the terms of the offer are such that it is more appropriate to consider its impact after the true costs of the repair are known, potentially after a hearing. It is not factored into my decision. I also understand from oral submissions that the Appellants made a pre-litigation offer, that they will eventually argue should factor into costs.

IX. Conclusion

[117] The appeal on the award of full indemnity costs in favour of Mr. Gnyra is allowed.

[118] I award Mr. Gnyra costs in the amount of $13,160 for fees, plus taxable disbursements of $3,248.40, plus non-taxable disbursements of $641.00, plus GST.

[119] If the parties cannot agree on the issue of costs arising from this appeal, they have leave to contact me for further direction on written submissions on the issue of costs of the appeal.

Heard on the 19th day of February, 2025.
Dated at the City of Calgary, Alberta this 13th day of January, 2026.

A.L. Froese
J.C.K.B.A.

Appearances:

Dionne Levesque
Scott Venturo Rudakoff LLP
for the Defendant/Appellant

Brad Findlater
Wilson Laycraft
for the Plaintiff/Respondent

Corrigendum of the Reasons for Decision
of
The Honourable Justice A.L. Froese

Para 103 – know has been changed to known
Para 114 – Boad has been changed to Board