

# Court of King's Bench of Alberta

**Citation: 995544 Alberta Ltd. v. Cenovus Energy Inc., 2026 ABKB 19**

**Date:** 20260108  
**Docket:** 1601 00481  
**Registry:** Calgary

Between:

**9955544 Alberta Ltd.**

Plaintiff

- and -

**Cenovus Energy Inc. and Harvard International Resources Ltd.**

Defendants

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**Ruling on Costs  
of the  
Honourable Applications Judge J. Farrington**

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[1] This decision relates to costs arising from a special chambers application which I heard on October 2, 2025. At the end of the session, it was directed that if the parties could not reach an agreement on costs that they book a time in morning chambers to speak to costs. The parties instead proposed proceeding by way of brief written submissions, and I agreed to proceed on that basis.

[2] There were two applications by the defendant Cenovus Energy Inc. The other defendant did not participate in the applications. One application was to dismiss the action for delay pursuant to Rule 4.33. The other application was a security for costs application based upon a legal assistant affidavit. The parties disagreed on what ought to be the outcome on each application, as is their right. The complexity of the legal issues raised was not particularly broad,

and the parties were able to speak to and resolve both applications within the scheduled afternoon session.

[3] The plaintiff was successful in resisting both of the defendant's applications. The plaintiff asked for costs based on the principles in *McAllister v Calgary (City)*, 2021 ABCA 25 in the amount of \$48,751.26, being what it says are 75% of its actual costs. The defendant proposes that it pay \$2,531.50 as the unsuccessful party. As a result, the parties' costs suggestions differ by a factor of approximately 20.

[4] Of course, the default rule is that the successful party on an application is typically entitled to costs, subject to the discretion of the Court. The Rule does not say what quantum of costs the successful party is entitled to, and that is left to the discretion of the Court. As an anecdotal observation, it is not unusual at the present time to see successful parties on isolated chambers applications seeking *McAllister* costs.

[5] *McAllister* was a case that went through contentious procedures from beginning to end with a trial on liability and a subsequent appeal. *Barkwell v McDonald*, 2023 ABCA 87 is an important subsequent decision when considering *McAllister* costs. It is also a decision of the Court of Appeal, and it reminds that a party seeking indemnity based on actual costs incurred must do more than simply present a summation as to its counsel's invoices and apply a percentage multiplier. It must show that the costs are reasonable and proper for the legal task at hand.

[6] A costs award after a full proceeding is different from an interlocutory costs award. A costs award after a full proceeding is made knowing which party has been successful in the proceeding, and which party has a good case for a reasonable level of indemnification. In my respectful view, the cases do not go so far as to entitle a party to an expectation of isolated indemnification for every step along the way on an immediate basis, particularly when the future outcome of the litigation is in doubt. Here, we do not know who will prevail in the litigation. In fact, cross summary judgement applications were dismissed at an earlier stage in the proceeding.

[7] Suppose the plaintiff, who is seeking enhanced costs on these two applications, is unsuccessful in the eventual cause. In my view, it would be inappropriate for the plaintiff to have earlier received a significant enhanced costs award when its claim was found to have had no merit. In effect, it would reward the plaintiff for delaying its inevitable loss on the merits.

[8] On the other hand, if the plaintiff is ultimately successful in the action, an enhanced costs award for these applications may be entirely appropriate.

[9] The default rule of costs to the successful party in an application is no doubt in place to discourage unreasonable positions on applications and the bringing of applications without merit, but it was formulated in an environment which includes Schedule C. In *Grimes v Governors of the University of Lethbridge*, 2023 ABKB 432, Justice Graesser reminded of the continuing importance of Schedule C.

[10] Rule 10.33 describes some of the factors that the court may consider in making a costs award:

10.33(1) In making a costs award, the Court may consider all or any of the following:

- (a) the result of the action and the degree of success of each party;
- (b) the amount claimed and the amount recovered;

- (c) the importance of the issues;
  - (d) the complexity of the action;
  - (e) the apportionment of liability;
  - (f) the conduct of a party that tended to shorten the action;
  - (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.
- (2) In deciding whether to impose, deny or vary an amount in a costs award, the Court may consider all or any of the following:
- (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;
  - (c) whether a party started separate actions for claims that should have been filed in one action or whether a party unnecessarily separated that party's defence from that of another party;
  - (d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;
  - (e) an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document;
  - (f) a contravention of or non-compliance with these rules or an order;
  - (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.

[11] Notably, a number of them refer to an "action", although many of them can certainly be adapted to an "application". The former gives some support for the principle that overall perspective is often important when evaluating costs.

[12] Applying some of the factors in Rule 10.33 to these applications:

- as to complexity, there was nothing particularly complex about these applications.
- neither party made things more complicated than they needed to be or engaged in misconduct
- the applications were certainly important in the sense that they were potentially dispositive of the action.
- the plaintiff was wholly successful in resisting the applications

[13] On the whole, I am reluctant to award immediate enhanced costs at a higher indemnity level when we do not know what the result of the action will be. I reiterate, that if the plaintiff is

successful in the action, it may well be appropriate that it receive enhanced higher indemnity costs. If it is not successful in the action, however, it arguably should not receive any enhanced costs for simply postponing an inevitable loss in the proceedings.

[14] Having regard to the circumstances here, the most appropriate costs order, and the costs order that I make, is that the plaintiff is awarded costs in the cause of the action. In other words, if the plaintiff is successful in the action, the plaintiff is entitled to costs for these two applications calculated in the same fashion and methodology as any other costs that they are awarded by way of success in the proceedings. But if the plaintiff is not successful in the action, the plaintiff will not be entitled to costs of these two applications. In this manner, the plaintiff preserves its potential entitlement to enhanced costs if it otherwise receives enhanced costs in the proceedings, but it is not given a forthwith enhanced costs award which might otherwise not be warranted. For clarity, the moving defendant will not be entitled to any costs for these two applications, even if it is ultimately successful in the action.

[15] Had the plaintiff requested a forthwith Schedule C based costs award, I likely would have been inclined to grant an award at a lesser sum based upon the time tested Schedule C principles and having regard to the general principle in the Rules that costs follow the event on applications.

[16] I will comment briefly on the formal offer of the plaintiff. For the most part, these were all or nothing applications which did not lend themselves to compromise in the way that other applications may sometimes do so. It is difficult to tell from the limited materials available, but the costs potentially to be forgiven under the offer do not appear to have been particularly high at the time of the formal offer. At best, there was a likely forgiveness of some early Schedule C costs by way of reply. In my view, this is not the type of offer that would be a genuine offer of compromise triggering costs consequences. It appears to have essentially been an offer to the effect that the defendants abandon their applications (when the bulk of the response costs may not yet have been incurred) and the parties carry on.

[17] This is my disposition on costs in this matter. Thank you to the parties for their helpful submissions.

Heard on the 2<sup>nd</sup> day of October, 2025 with written costs submissions on November 19, 2025 and November 25, 2025.

**Dated** at the City of Calgary, Alberta this 8<sup>th</sup> day of January, 2026.

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**J.R. Farrington**  
**A.J.C.K.B.A.**

**Appearances:**

Carscallen LLP  
Catherine A. Crang, K.C.  
Tolu Adetomiwa  
for the Plaintiff

Bennett Jones LLP  
Christopher Petrucci  
Timothy Ke  
for the Defendant Cenovus Energy Inc.