

Court of King's Bench of Alberta

Citation: Kitchenham v Koster, 2026 ABKB 12

Date: 20260106
Docket: 2101 08362
Registry: Calgary

Between:

Georgina Kitchenham

Plaintiff

- and -

Joe Koster

Defendant

Date:
Docket: 1901 03381
Registry: Calgary

Between:

Georgina Kitchenham

Plaintiff

- and -

Joe Koster

Defendant

**Ruling on Costs
of the
Associate Chief Justice
D.B. Nixon**

I. Introduction

[1] The parties were unable to agree on costs following my decision in *Kitchenham v Koster*, 2023 ABKB 501 [the *Underlying Decision*].

II. Background

[2] This costs decision involves two separate actions, although related to the same initial issue. As recounted in the *Underlying Decision*, Georgina Kitchenham had initially filed a statement of claim in Action Number 1901 03381 (the “1901 Action”) for misrepresentation and breach of contract. She applied for summary judgment on December 13, 2019 and obtained a judgment against Joe Koster on January 9, 2020.

[3] Mr. Koster declared bankruptcy following this judgment. On June 24, 2021, Applications Judge Prowse granted an order lifting the stay of proceedings against Mr. Koster, and Ms. Kitchenham then filed a second statement of claim in Action Number 2101 08362 (the “2101 Action”) for fraudulent misrepresentation.

[4] Following my decision, Ms. Kitchenham is seeking full indemnity, with claimed solicitor and own client costs in the amount of \$28,526.92. Alternatively, she is seeking Schedule C Column 2 costs which she claims would exceed her solicitor and own client costs. Ms. Kitchenham seeks this award as a lump sum.

[5] Mr. Koster does not dispute Ms. Kitchenham’s entitlement to costs. However, he claims that this has been an arduous litigation history caused by Ms. Kitchenham’s own actions, and further that due to a consent order from January 26, 2021, and the cheque provided to Ms. Kitchenham for \$2000, all the steps prior to that consent order should not be considered in the context of an award for costs.

[6] In essence, Mr. Koster argues that only the 2101 Action should have a costs award. He also argues that some of the amounts on the draft Bill of Costs provided by Ms. Kitchenham have relied on the wrong column, and that only Column 2 should be applied.

III. Issue?

[7] What is the appropriate award of costs for Ms. Kitchenham in her capacity as the successful party?

IV. Analysis

A. The Law of Costs

[8] The framework for determining costs is set out in the *Alberta Rules of Court*, Alta Reg 124/2010 (the “*Rules*”). The default rule is that a successful party to an application is entitled to an award of costs against the unsuccessful party payable forthwith, subject to the Court’s general discretion under *Rule* 10.31; *Rule* 10.29(1); *McAllister v Calgary (City)*, 2021 ABCA 25 at paras 21-22.

[9] There are no particular constraints or rules that apply to the application of these general rules. This decision fits within the broad discretion the Court has in making a costs award as per *Rules* 10.31 and 10.33. This discretion is of course subject to the need to act judicially on the facts of the case: *McAllister* at para 18.

[10] The primary purpose of a costs award is to partially indemnify the successful party for either defending a claim that proved unfounded or in pursuing a valid legal right: *McAllister* at para 33. Under *Rule* 10.31(1), the trial judge holds considerable discretion in determining what constitutes reasonable and proper costs: *Barkwell v McDonald*, 2023 ABCA 87.

[11] The costs award need not be based on Schedule C, and Schedule C is not a mandated default method: *McAllister* at para 54. However, Schedule C does, in certain situations, have the “advantage of providing parties with greater certainty as to their exposure to costs, it is simple, efficient, and inexpensive to apply, and in many cases avoids the need for lengthy inquiries into and assessment of the appropriate level of costs”: *Barkwell* at para 53.

[12] The Court in *Barkwell* also noted that “whenever the winning party seeks a lump sum costs award, that party should provide the court, as a benchmark, an assessment of the fees that would be ordered under Schedule C”: at para 54.

[13] The overriding issue is proportionality and reasonableness: *Barkwell* at paras 57 and 58.

B. Application of the Law to the Facts

[14] As mentioned above, Mr. Koster argued that the combination of the \$2000 payment to purge his contempt and the consent order of January 26, 2021 (the “January 26, 2021 Order”) means that there should be no costs payable in respect of the time period prior to the issuance of that order. I disagree. I make this determination because: (i) the proceedings in the 1901 Action were commenced in March of 2019; and (ii) such an amount appears far too small to settle the entirety of the steps taken over a year and half.

[15] More importantly, the wording of January 26, 2021 Order itself clearly states “[t]here shall be no costs of this Application to either party nor shall there be any costs to either party in respect of the earlier Orders granted by the Court related to the contempt of the Defendant” (emphasis added). The language is clear that this limitation only applies to the 1901 Action orders that are in respect of the contempt of the Defendant. Based on my review of the court file, most of the steps taken by Ms. Kitchenham did not relate to the contempt of Mr. Koster.

[16] In reviewing the draft Bill of Costs provided by Ms. Kitchenham, it does appear to have had a couple of typos. There is a Notice of Appeal sought under s 8(1) of Schedule C, which should be under 18(1) and a Written Interrogatories under 5(4) which is erroneously providing a higher number. Correcting these errors lower the amount that is cited by Ms. Kitchenham and the Schedule C Column 2 costs. The revised amount is still quite close, but ends up at an amount that

is lower than the claimed solicitor and own client costs of \$28,526.92. Further, I would disallow the claim for the Contested Purge Application, as in my view that would have been caught within the wording of the January 26, 2021 Order. Taking all the revised information into account, I determine the total revised amount under the Draft Bill of Costs to be 24,410.83.

[17] In my review of the law and of the record, I believe that this an appropriate case in which to exercise my discretion to award a lump sum of costs in the amount of \$25,000 to Ms. Kitchenham. I am of the view that this is an appropriate and reasonable partial indemnification taking into account the Schedule C Draft Bill of Costs provided by her.

V. Conclusion

[18] Based on my review of the evidence and analysis of the law, I find it is appropriate to award Ms. Kitchenham costs in the amount of a lump sum of \$25,000.

Dated at the City of Calgary, Alberta this 6th day of January, 2026.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Richard E. Harrison
for the Plaintiff

Richard I. John
for the Defendant