Court of King's Bench of Alberta

Citation: Davidson (Re), 2026 ABKB 15

Date: 20260107
Docket: B303 176277
Registry: Edmonton

Between:

In the Matter of the Bankruptcy of Tannis Shirley Davidson

Costs Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] What costs (if any) are payable by a creditor who objected unsuccessfully to court approval of a Division I proposal? (The proposal was approved for the reasons outlined in ***Davidson (Re)***, 2025 ABKB 528.)

[2] As explained below, the creditor is not required to pay costs to either the proposal proponent or the proposal trustee.

II. Analysis

A. Costs claim of proposal maker

[3] The proposal maker cited the following factors in support of a solicitor-client-level costs award against the creditor:

1. **vulnerable position** ("[Ms. Davidson] is a vulnerable person in … that she cannot afford to address enhanced trustee fees and legal counsel fees to respond to the unreasonable and unsubstantiated positions of the objecting creditor").

   FINDING: This is not a costs-driving factor, as all proposal makers are, by definition, insolvent persons.

2. **delay** ("… Nikathan [Developments Ltd i.e. the objecting creditor] initially sought an adjournment and then raised vague objections about accounting. [Nikathan's principal] was warned by [the Registrar] that there may be costs consequences as this matter will now [i.e. as a result of Nikathan's objection] have to go before a Justice of the Court of King's Bench. The Registrar could not approve the proposal in the face of the objecting creditor [in light of para 192(1)(a) *BIA* – "The registrars … have power and jurisdiction … to approve proposals where they are **not opposed**]. … [Nikathan] had almost four months [after the Registrar hearing] to secure a real estate appraisal … but did not do so and then tried to argue [real estate] values in Court [i.e. at the application I heard on July 25, 2025] …").

   FINDINGS: Nikathan's request for an adjournment of the creditors' meeting (to consider and vote on the proposal) was denied.

   As for "vague objections about accounting", the proposal trustee treated them as legitimate inquiries, providing the (admittedly voluminous) material requested. Nikathan complained to the Office of the Superintendent of Bankruptcy about (among other matters) the trustee's responses to its requests for information. The OSB dismissed that complaint (and all other complaints). Notably for present purposes, the OSB did not opine that Nikathan's information requests were disproportionate or vexatious or that the trustee acted unreasonably in responding to them.

   As well, the mere fact of objecting and the resulting need for a Justice-level hearing are not, on their own, reasons for costs.

   Finally, the non-pursuit of an appraisal before the July 25, 2025 hearing did not cause any incremental delay. [and]

3. **proposed side agreement**: at the approval hearing on July 25, 2025, Ms. Davidson and the trustee both referred to a side arrangement proposed by Nikathan – namely, withdrawal of its vote against the proposal in exchange for a particular payment. Nikathan objected to that evidence on the basis of settlement privilege.

   FINDINGS: I found it unnecessary to explore whether such an arrangement had in fact been proposed but offered general comments on the "dim view" taken by the bankruptcy courts of arrangements aimed at changing the statutory distributions to creditors under proposals and bankruptcies and the possible inapplicability of settlement privilege in such circumstances: see paras 98 and 99 of the main decision.

   With no finding made on whether such an arrangement was proposed and, in any case, with no evidence that any priorities-changing agreement was made (unlike in, for example, *Cicoria (Re)*, 2000 CanLII 22483 (ONSC) (Yates J.)), the possible side arrangement is not a costs factor here.

[4] Given these conclusions, I decline to characterize Nikathan's objection to the proposal or its litigation conduct overall as "misconduct", finding no "undue delays", "attempting to hinder the proceedings", "improper or unethical conduct on the part of counsel" or "misconduct on the part of [Nikathan], such as deceitful behaviour or obstructive tactics."

[5] In other words, no reason to award solicitor-client-level costs here.

[6] Ms. Davidson argued in the alternative for 40-50 per cent of her actual legal costs, citing ***McAllister v Calgary (City)***, 2021 ABCA 25, as the successful party i.e. with her proposal approved.

[7] She did not cite any cases featuring costs awarded against a creditor objecting unsuccessfully to a *BIA* proposal i.e. merely on the basis of the unsuccessful objection.

[8] On the topic of costs in proposals, see *Bankruptcy and Insolvency Law of Canada*, 4th ed. (online – Westlaw Canada – reviewed December 29, 2025) (title 8.133):

> **If a creditor has acted *bona fide* in unsuccessfully opposing a proposal, the objecting creditor should not be ordered to pay costs:** *Re Rideau Carleton Raceway Holdings Ltd.* (1971), 15 C.B.R. (N.S.) 72 (Ont. S.C.); *Re Alberta Western Wholesale Lumber Ltd.* (1961), 2 C.B.R. (N.S.) 151, 27 D.L.R. (2d) 598 (B.C. S.C.). **Objecting creditors should only be ordered to pay costs if the opposition is without merit or is made from some improper motive: see comment 35 C.B.R. 221.**
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> In *Ramlo Kosher Packers Ltd. v. Canadian Beef Co.* (1955), 35 C.B.R. 210 (Que. S.C.), the court ordered creditors opposing the approval of a proposal to pay costs where the opposition was unsuccessful. The costs were **limited, however, to the costs occasioned by the opposition, not the entire costs of the application**, since there must be an application to have the proposal approved by the court.
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> In *Re Economopoulos* (2000), 20 C.B.R. (4th) 71, 2000 CarswellOnt 3778 (Ont. Gen. Div.), the court found that the amount of work involved in having a proposal approved was dramatically increased by the intervention of the opposing creditor. Accordingly, the court ordered the opposing creditor to pay most of the costs of the application for approval and only ordered payment of a small amount out of the estate. [emphasis added]

[9] In ***Rideau*** (cited above), Houlden J. held:

> To sum up: On a careful review and study of all the evidence, I believe the proposal is a reasonable one and in the best interests of unsecured creditors. There will, therefore, be an order approving the proposal. The applicant will be entitled to its costs out of the bankrupt estate. **I believe the opposing creditor has acted bona fide in opposing the proposal. Some of the matters, such as the clerical error which occurred in the proposal, gave a basis for the opposition. For this reason, there will be no order as to costs in respect of the opposing creditor.** [para 25] [emphasis added]

[10] In ***Re Alberta Western*** (cited above), Ruttan J. held:

> As to costs I am prepared to hear counsel again. My present thought is that **this was a contested matter and the objections were not frivolous but were by and**

> **large made in good faith** ... The trustee should have his costs out of the estate and there should be no other order. [para 31] [emphasis added]

[11] In ***Economopoulos*** (cited above), Gillese J. held:

> If I did need to consider the matter of weight, and I do not believe that I do given my previous findings, at this point **I would also consider the motive behind the objecting creditor in coming forward. That motive was self interest in civil litigation against the proposal debtor, not the interests of the general body of creditors.**
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> ...
>
> I accept the total taxable services as asked at $7,768 with G.S.T. and the disbursements. Those are costs fixed in those amounts on a party and party basis, but the distribution as between the two parties is this. In light of my view that **there was success on the status motion brought by the opposing creditor, and that there was some benefit to his opposing it in the sense of increasing the likelihood that the money would be paid, I am going to order that $1,000 of the costs be paid from the estate and the balance is payable by the opposing creditor.**
>
> **That reflects what I have just said and that the bulk of work done was in order to have this actual amended proposal approved by the Court. There is no question that the amount of work that was involved was increased dramatically by the interventions of the objecting creditor, and his motive, in my view, is highly relevant in a determination of costs.**
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> **For these reasons, the bulk of costs ought to be visited against the unsuccessful objecting creditor. As I said, I am influenced in this by my findings on improper purpose.** [paras 33, 138, 139, and 140] [emphasis added]

[12] I find that the present case is akin to ***Rideau*** and ***Re Alberta Western*** and not akin to ***Economopoulos***.

[13] As reflected in the main judgment (2025 ABKB 528), it was not obvious that Ms. Davidson had no material equity in any of her companies or in her personal residence.

[14] I find that Nikathan raised legitimate questions, which sparked materially helpful information disclosure by the trustee and in turn the detailed exploration of the equity points in the judgment.

[15] In the realm of bankruptcies (compared to the proposal here), creditor oppositions to a bankrupt's discharge which are found to be frivolous or vexatious may incur a costs award in favour of the bankruptcy estate: ss 197(7) *BIA*.

[16] In the realm of commercial insolvencies (compared to the personal insolvency here), the general Alberta approach appears to be "parties bear own costs" absent subpar conduct or materially unusual circumstances: see ***Goldenkey Oil Inc (Re)***, 2023 ABKB 365

[17] Concluding on this aspect, I find no compelling reason to award costs against Nikathan in favour of Ms. Davidson.

B. Costs claim of proposal trustee

[18] I turn to the trustee's own claim for costs against Nikathan.

[19] The trustee prepared a bill of costs isolating what he regarded as costs related to Nikathan's objection, including work such as correspondence with Nikathan and its counsel, correspondence with Ms. Davidson, her counsel, and the OSB regarding responding to Nikathan's requests for further information, reviewing materials provided to Nikathan, and other such work. Including minimal ($149.50) disbursements and GST ($400.67), the trustee seeks a total of $8,414.17 i.e. full indemnity for this amount.

[20] In his costs brief, the trustee cited largely the same delay, information requests, and side-arrangement factors identified by Ms. Davidson in her costs request.

[21] The trustee did not cite any cases reflecting a costs award to a trustee in a proposal-approval setting against a non-vexatious, non-frivolous, and non-materially-delaying creditor.

[22] For the same reasons outlined above, I decline to award costs against Nikathan in the trustee's favour.

[23] The trustee is entitled to claim the identified expenses, along with all other proper expenses, from the proposal estate i.e. the payments made and to be made by Ms. Davidson under her approved proposal.

[24] I thank the parties for their helpful written submissions.

Heard by was of written submissions received on the October 3, 6, and 10, 2025
Dated at Edmonton, Alberta on January 7, 2026

Michael J. Lema
J.C.K.B.A.

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