Court of King's Bench of Alberta

Citation: Rumancik v Hardy, 2026 ABKB 131

Date: 20260224
Docket: 1701 16893
Registry: Calgary

Between:

JOEL RUMANCIK and CANDACE RUMANCIK

Plaintiffs

- and -

JACOB HARDY and MICHAEL BATES

Defendants

Costs Endorsement
of the
Honourable Justice James T Eamon

I Introduction

[1] These are my directions on costs of the second application by the Defendant Bates for summary judgment dismissing the action and the Plaintiffs' application to strike his application as an abuse of process.

[2] Mr Bates is a lawyer who represented Mr Hardy in an action alleging misconduct against the Plaintiffs and Calgary Police Service. At the material times, one of the Plaintiffs was a police officer and the other Plaintiff was a civilian employee of that service. Mr Bates published the statement of claim to news media, resulting in wide dissemination to the public. The Plaintiffs sued Mr Bates and his client, Mr Hardy, for defamation. Mr Bates relies on qualified privilege, applicable where the contents of a pleading are published outside of the Court (***Hill v Church of***

Scientology of Toronto, 1995 CanLII 59 (SCC)), in his defence. The Plaintiffs assert that qualified privilege does not protect Mr Bates because his publication was overbroad and malicious.

[3] Mr Bates brought a summary judgment application in 2018, focussing mainly on the defence of qualified privilege. Robertson AJ dismissed his application on January 16, 2019. Mr Bates made a second summary judgment application before me, heard January 27, 2025. Mr Bates' then-counsel submitted that Mr Bates relied on additional records, not available to him when he made the first summary judgment application, and that these justified a second attempt at dismissing the action.

[4] In oral reasons on January 27, 2025 I concluded that Mr Bates relied on additional records which were not previously available to him. However, they did not address the fundamental basis on which Robertson AJ had dismissed his first summary judgment application and so did not justify a second application.

[5] The Plaintiffs were substantially successful on the applications. They seek solicitor and client costs of about $32,650 plus disbursements, or enhanced costs based on a *Calderbank* offer. The Defendant Bates, represented by new counsel, acknowledges liability for costs, but asserts the Court should apply Schedule "C" to the Alberta Rules of Court.

II Costs framework

[6] A successful party to an application, proceeding or action is entitled to a costs award against the unsuccessful party, and the unsuccessful party must pay the costs forthwith, notwithstanding the final determination of the application, proceeding or action, subject to the Court's general discretion under rule 10.31 (R 10.29).

[7] Rule 10.31 provides the Court wide discretion and flexibility in making a costs award:

> 10.31(1) After considering the matters described in rule 10.33, the Court may order one party to pay to another party, as a costs award, one or a combination of the following:
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> > (a) the reasonable and proper costs that a party incurred to file an application, to take proceedings or to carry on an action, or that a party incurred to participate in an application, proceeding or action, or
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> > (b) any amount that the Court considers to be appropriate in the circumstances, including, without limitation,
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> > > (i) an indemnity to a party for that party's lawyer's charges, or
> > >
> > > (ii) a lump sum instead of or in addition to assessed costs.

[8] In making a costs award under subrule 10.31(1)(a), the Court may order any one or more of the following: (a) one party to pay to another all or part of the reasonable and proper costs with or without reference to Schedule C; (b) one party to pay to another an amount equal to a multiple, proportion or fraction of an amount set out in any column of the tariff in Division 2 of Schedule C or an amount based on one column of the tariff, and to pay to another party or parties an amount based on amounts set out in the same or another column; (c) one party to pay to another party all or part of the reasonable and proper costs with respect to a particular issue,

application or proceeding or part of an action; (d) one party to pay to another a percentage of assessed costs, or assessed costs up to or from a particular point in an action (Rule 10.31(3)).

[9] Rule 10.33 lists the well established considerations in making or quantifying a costs award:

> 10.33(1) In making a costs award, the Court may consider all or any of the following:
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> (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.
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> (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:
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> (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;
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> (b) a party's denial of or refusal to admit anything that should have been admitted;
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> (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;
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> (d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;
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> (e) an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document;
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> (f) a contravention of or non-compliance with these rules or an order;
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> (g) whether a party has engaged in misconduct;
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> (h) any offer of settlement made ....
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> (Underlining added).

III Solicitor client costs

[10] An award of solicitor-client costs is only available in rare and exceptional cases (***Sidorsky v CFCN Communications Limited***, 1997 ABCA 280 at para 29). The fact that an application has little merit is not a basis of awarding solicitor-client costs (***Young v Young***, 1993 CanLII 34, [1993] 4 SCR 3 at p 134). In ***FIC Real Estate Fund Ltd v Phoenix Land Ventures***

Ltd, 2016 ABCA 303 at para 6, the Court of Appeal noted the direction from ***Young***, that "Solicitor-and-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties". To the same effect, see ***Goldstick Estates (Re)***, 2019 ABCA 508, para 24. The examples from ***Sidorsky*** at para 28 illustrate the gravity of misconduct required to justify an award of solicitor-client costs.

[11] I did not agree with Mr Bates' then-counsel that the new records justified a second summary judgment application. However, the mere failure of a matter based on *res judicata*, issue estoppel, or (in this case) the bar against re-litigating an interlocutory application which is founded in abuse of process, does not alone justify a solicitor-client costs award. I do not consider that the second summary judgment application was brought in bad faith or that the conduct rose to the level of reprehensible, scandalous or outrageous conduct needed for an award of solicitor-client costs.

IV Party and party scale

[12] Following the decisions of the Court of Appeal in ***McAllister v Calgary (City)***, 2021 ABCA 25 and ***Barkwell v McDonald (#1)***, 2023 ABCA 87 at paras 55 - 60, many costs awards may be quantified with reference to a range of about 40 - 50% of a hypothetical solicitor-client account. The reference to a hypothetical account serves to temper amounts actually charged by consideration of both reasonableness and proportionality.

[13] The Court of Appeal recently observed in ***V.L.M. v Dominey Estate***, 2023 ABCA 382 that:

> [4] The primary purpose of a costs award is to partly indemnify the successful party for the legal expenses it incurred in the proceedings. Costs awards may serve other purposes such as discouraging unnecessary steps in litigation, encouraging efficiency and proportionality in the steps that are taken, sanctioning bad or frivolous behavior, encouraging settlement, and promoting access to justice: ***British Columbia (Minister of Forests) v Okanagan Indian Band***, 2003 SCC 71 at paras. 22-30, [2003] 3 SCR 371.
>
> [5] The Court has a wide discretion over what are "reasonable and proper costs . . . that the Court considers to be appropriate in the circumstances" under R. 10.31: ***McAllister v Calgary (City)***, 2021 ABCA 25 at paras. 25-26. A number of relevant factors are set out in R. 10.31 and 10.33. Costs are frequently awarded by reference to Schedule C, a method that has the advantage of providing the parties with greater certainty as to their exposure to costs, 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: ***McAllister*** at paras. 59-60, 62. The Court can, in appropriate cases, award costs without reference to Schedule C, for example by a lump sum costs award or by a percentage of solicitor and client costs.
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> [6] Schedule C will in many cases represent an appropriate level of indemnification. The Schedule has as its basis an assumption about the relationship between the costs it would generate and solicitor and client costs that should have been incurred for similar pieces of litigation: ***Barkwell v McDonald (#1)***, 2023 ABCA 87 at para. 58. However, there is no presumption in the Rules

> that the successful party is entitled to any particular level of indemnification: ***McAllister*** at para. 31; ***Brosseau Estate v Dubarry Estate***, 2023 ABKB 378 at para. 21.

[14] In assessing costs based on a percentage of solicitor and client fees, the issue is not what counsel actually charged the successful litigant, but what costs should have been incurred in the litigation having regard to all of the relevant circumstances and what amount the unsuccessful party can fairly be expected to contribute (***V.L.M.*** at para 8 and authorities cited therein). The overriding issue is proportionality. The rules on costs aim to balance indemnity of the winner without unreasonably discouraging access to the court or unduly penalizing the losing party (***V.L.M.*** at para 9 and authorities cited therein).

[15] The approach to awarding costs on a percentage of solicitor-client costs was recently summarized by the Court of Appeal in ***Sunridge Nissan Inc v McRuer***, 2023 ABCA 128 as follows:

> [57] As this Court recently stated in *Barkwell v McDonald*, 2023 ABCA 87 at paras 53-61:
>
> - The discretion to award a percentage of solicitor-and-client costs does not mean the winning party can simply assert the quantum of the fees charged by counsel and paid by the winning party;
> - The overriding issue is proportionality, the winning party only being able to claim a percentage of the fees paid that are proportionate to the issues and the amounts involved;
> - Awarding 40-50% of solicitor-and-client costs does not necessarily refer to partial indemnity of the costs incurred and paid by the client, but rather to the costs that should reasonably have been incurred;
> - A party seeking a lump sum costs award should provide the court an assessment of the fees that would be ordered under Schedule C, which provides a rough measure of how much should have been incurred;
> - In addition to the costs being reasonable as between solicitor and client, the court must consider whether the quantum represents an amount that the losing party in the litigation should reasonably be expected to pay to the winning party;
> - Awarding costs based on a percentage of solicitor and client fees involves a number of factors, including those set out in Rules 10.2 and 10.33, as well as things like: whether the hourly rates charged were appropriate; whether the work was being done by lawyers of appropriate seniority; the number of counsel involved; the proportionality and necessity of pre-trial steps; and whether the ultimate fee was proportionate to the issues.

[16] Schedule "C" remains a useful tool in assessing the quantum of costs. See ***Barkwell (#1)*** at para 53 and 57; ***VLM*** at para 5.

[17] Schedule "C" is not a default tool that must be used where there is inadequate evidence of reasonableness of solicitor-client accounts before the Court (***Signalta Resources Limited v Canadian Natural Resources Limited***, 2025 ABCA 306 at paras 147 – 148). The Court might direct the matter to a review officer or apply Schedule "C" as a tool to assess reasonable and

proper costs. The Court has considerable discretion and exercises it in the context of the circumstances of the case before it.

[18] I do not have time dockets or detail of the Plaintiff's solicitor-client accounts before me. The Plaintiffs advised the details of such accounts are available if required. I could direct that the accounts be assessed by an assessment officer, then defer the decision on a proportionate amount that the Defendant Bates should bear following the outcome of the assessment.

[19] I considered whether to do so. I concluded that such an inquiry is not a proportionate means of proceeding. The application was brought in case management, would have merited about the same effort as a ½ day civil special application, and is of a relatively routine nature. Schedule "C" is an appropriate starting point to assess the costs.

V Settlement offer

[20] The Plaintiffs rely on an informal settlement offer that reserved liberty to refer to the offer in speaking to costs (a *Calderbank* offer).

[21] The costs consequences of a *Calderbank* offer are assessed having regard to the following principles:

> [35] A defining feature of a *Calderbank* offer of settlement is that if it is not accepted, the party making the offer reserves the right to disclose non-privileged communications about costs to the Court: ***Holizki Estate v Alberta (Public Trustee)*** at paras 39, 62. Once disclosed, the Court considers the offer as it would a formal offer made under the *Rules*: ***Quarin v Prien***, at para 19.
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> [36] Although the focus is on substance over form, the offer must nevertheless be clear, precise, and certain in its terms. The recipient must also be able to appreciate that the communication is not privileged at the costs stage.
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> [37] In exercising its discretion, the Court is to consider if:
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> a) the offer was a reasonable, genuine compromise;
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> b) it gave a cost advantage if accepted;
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> c) adequate time for consideration was provided;
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> d) the offer was unreasonably rejected; and
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> e) the party making the offer fared better than if the offer was accepted.
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> see: ***Holizki Estate***, at para 47; ***Murphy v Cahill*** at para 12; ***Horizon Resource Management*** at para 97.

(***EAD Property Holdings (103) Corp v Greyhound Canada Transportation ULC***, 2015 ABQB 425 at paras 35 – 37; see also ***Battaglini v Battaglini***, 2021 ABQB 89 at paras 60 – 73).

[22] Costs, including those in respect of *Calderbank* offers, are discretionary. Where informal offers are made there is no "one-size fits all" response and doubling costs based on a *Calderbank* offer is neither automatic nor presumed (***Ting v Ting***, 2023 ABCA 9 at para 6).

[23] The Plaintiffs offered on November 20, 2024 to pay Mr Bates $1,000 in exchange for a withdrawal of Bates' application "on a with prejudice basis such that the Bates Application will not be brought again". The offer was open for two weeks.

[24] I see a minor issue of interpretation in the offer – whether it merely precluded Mr Bates from applying later for summary judgment on the same grounds set out in his second application, or whether it would preclude any future dismissal application even ones permitted under the principles in ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2022 ABCA 111 at para 91. The second type of bar would be unusual, and absent an express bar of this nature I conclude the offer simply sought to ensure the second summary judgment application was withdrawn and would stay that way.

[25] Consequently, I agree with the Plaintiffs that they achieved a better result than what they had informally offered in settlement of the application. I further find:

(a) Their offer was a reasonable and genuine compromise. Mr Bates' argument was unlikely to succeed given the highly factual nature of the qualified privilege defence and the fact that none of the new records on which he relied to justify a second application were decisive.

(b) The offer was open for a sufficient period of time. The actions were pending for a long period of time. The issues were well defined. Mr Bates had previously applied for summary judgment. It would not require much time to assess the merits of the second application.

(c) The offer was advantageous to Mr Bates. He stood to defray some of his costs in brining the application and avoided the serious risk of adverse costs following the outcome of the application.

[26] In deciding the consequences to attach to the offer, the Court should recognize the strong public interest in settlement of lawsuits:

> In approaching this matter, I believe it should be observed at the outset that the courts consistently favour the settlement of lawsuits in general. To put it another way, there is an overriding public interest in favour of settlement. This policy promotes the interests of litigants generally by saving them the expense of trial of disputed issues, and it reduces the strain upon an already overburdened provincial court system.
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> (***Sparling v Southam Inc***, 1988 CanLII 4694 (ON SC), 66 OR (2d) 225 at p 230 (HCJ) per Callaghan, ACJHC).

The policy rationale underlying settlements has been frequently applied in the many years after Justice Callaghan's decision. See, for example, ***Kelvin Energy Ltd v Lee***, 1992 CanLII 38 (SCC), [1992] 3 SCR 235 at p 259; ***Amoco Canada Petroleum Co Ltd v. Propak Systems Ltd***, 2001 ABCA 110 (CanLII); ***Kuo v Kuo***, 2017 BCCA 245 at para 37.

[27] Mr Bates' application was weak, and he received a reasonable off ramp that would have encouraged the parties to focus on more effective means of resolving the hotly contested issues of mixed fact and law.

[28] It serves the foundational principles underlying the Rules of Court, which include economy, efficiency, and encouraging the parties to resolve the claim themselves, by agreement,

with or without assistance, as early in the process as practicable (Rule 1.2), to place a greater costs burden on Mr Bates. It will bring home to him and other litigants the public interest in promoting settlement of disputes or narrowing of issues, which are a significant component of a cost effective and timely dispute resolution system.

[29] I note Mr Bates' counsel does not appear to dispute that a multiplier should be applied to steps taken following the service of the ***Calderbank*** offer.

VI Costs award

[30] Both sides suggested that the Court assess the costs on column 4 if it decided to utilize Schedule "C".

[31] I resolve the individual items of Schedule "C" which are in dispute as follows:

(d) Fee for abandoned application by Meghan Grant to set aside Notice of Appointment for Questioning ($200). I do not allow this fee against Mr Bates. The costs relate to the abandonment and should be addressed there.

(e) Fees and disbursements for cross-examinations (two ½ days) of Mr Hardy. I accept the Plaintiffs' explanation that these cross-examinations were required mainly to respond to Mr Bates' application. I note that Mr Hardy also applied for dismissal, but on much narrower grounds (see ***Rumancik v Hardy***, 2025 ABKB 277) so I would not exercise my discretion to allocate some of the fee to the account of the Hardy application. Having reviewed again the content of the examination, the examination does not appear to have been unreasonable or excessive. These fees and disbursements are allowed as claimed by the Plaintiffs.

[32] The fees for item 8(1) as claimed by the Plaintiffs should be increased on account of the *Calderbank* offer. Doubling of costs is not automatic and there may have been other options open to me. However, the Defendant Bates accepted doubling in their quantification of a reasonable costs award. I therefore accept that the fee be doubled for item 8(1), subject to assessing overall proportionality, the final matter to which I now turn.

[33] The resulting amount is in the range of $22,500 including substantial disbursements for transcripts ($5,850), other minor disbursements and GST. The result is proportionate given the amounts at stake had the summary judgment been allowed, the effort which was apparent from the written and verbal submissions, the affidavits and the lengthy cross-examinations of both Hardy and Bates, and the opportunity to settle which ought to have been taken.

[34] The parties will deduct the $200 item, adjust GST and submit an order for my approval. In accordance with the practice of the Court, costs are payable forthwith unless an application for time to pay is made and granted.

Heard by written submissions, July 2, 2025 (Plaintiffs), July 8, 2025 (Defendant Bates), and July 9, 2025 (Plaintiffs).

Dated at Calgary, Alberta this 24th day of February, 2026.

JT Eamon
J.C.K.B.A.

Appearances:

Matti Lemmens
Stikeman Elliott LLP
for the Plaintiffs

Stuart Weatherill
Emery Jamieson LLP
for the Defendant Bates