Court of King's Bench of Alberta

Citation: Greco v Calgary (City), 2026 ABKB 153

Date: 20260303
Docket: 1401 01554
Registry: Calgary

Between:

Christina Marie Greco

Plaintiff

- and -

The City of Calgary, Calgary Exhibition and Stampede Limited, Calgary Exhibition & Stampede and Weadick Properties Ltd.

Defendants

Ruling on Costs
of the
Honourable Justice D.J. Reed

I. Introduction

[1] This is my decision on costs of this action arising from the Reasons for Judgment issued on October 31, 2025, and reported at 2025 ABKB 629 ("**Decision**"). Capitalized terms used in this Ruling have the same meaning as in the Decision unless otherwise noted.

[2] The Parties have filed their costs submissions in accordance with the Decision.

[3] Ms. Greco argues that while the City of Calgary ("**City**") and Calgary Exhibition and Stampede Limited, Calgary Exhibition & Stampede and Weadick Properties Ltd. ("**Stampede**

Defendants") were substantially successful, they should receive one set of costs under Column 1, Schedule C, Division 2 of the *Rules of Court*, Alta Reg 124/2010 ("*Rules*").

[4] The Stampede Defendants argue that Schedule C costs would be woefully inadequate in the circumstances of this case, amounting to approximately 5% indemnification of the legal fees they actually incurred in this Action. They also rely on a *Calderbank* offer sent to Ms. Greco on October 25, 2024 (the "**Calderbank Offer**"). Citing ***McAllister v Calgary (City)***, 2021 ABCA 25 [***McAllister***], and subsequent cases, the Stampede Defendants submit that an award of 40% of their solicitor-and-own-client indemnity costs up to the date of the Calderbank Offer, and 80% thereafter, is an appropriate costs award. In the alternative, they seek a lump-sum award of $300,000.00 plus disbursements. They have provided information to the court that suggests that they have incurred $673,001.50 in solicitor and own client costs, with disbursements of $24,438.06 exclusive of GST.

[5] The City, on the other hand, acknowledges its role as a public body and that it relied on in-house salaried counsel to conduct this matter. It relies on provisions of the *Municipal Government Act*, RSA 2000, c M-26 ("*MGA*"), to ground its entitlement to costs, and seeks an award pursuant to Schedule C, Column 4 of the Rules. In addition, the City asks the Court to apply a three-times multiplier. It further seeks to double its assessable costs after the date of its Calderbank Offer. In total, the City claims $197,727.09, inclusive of disbursements.

II. Background

[6] The facts, and necessary background to this Ruling are contained in the Decision. I will not repeat them here.

III. Summary of Outcome

[7] The Defendants are awarded costs of the action as follows:

(a) The Stampede Defendants are awarded 30% of their assessed solicitor-client costs (to be distinguished from solicitor-and-own-client indemnity costs) from the commencement of the action to October 25, 2024, the date of the Calderbank Offer. From that date forward, they are awarded 60% of their assessed solicitor-client costs. In addition, they are entitled to their assessed disbursements and applicable GST. If the parties are unable to agree on quantum following this ruling, the costs shall be assessed by an Assessment Officer.

(b) The City is awarded its costs of the action pursuant to Column 3 of Schedule C of the *Rules*, together with its disbursements and applicable charges. If the parties are unable to agree on quantum, the costs shall be assessed by an Assessment Officer.

IV. Position of the Parties

A. Ms. Greco's Position on Costs

[8] Ms. Greco argues that this Action was a straightforward claim in nuisance and for a declaration. Her primary position is that the Defendants are entitled to a single set of costs under Column 1 of Schedule C of the *Rules*. She attaches draft bills of costs to her submissions.

[9] Ms. Greco notes that although it took a number of years for the case to reach trial, it involved a limited number of litigation steps. There were seven days of Part 5 Questioning and seven days of trial, including final argument. She submits that she answered undertakings in a timely manner and prepared a detailed summary of her photos and videos to assist the Defendants.

[10] Ms. Greco also points out that both the City and the Stampede Defendants had multiple lawyers engaged throughout the litigation. She argues that second-counsel fees should not be awarded in this case, as they are unnecessary expenses.

[11] With respect to the factors the Court may consider under Rule 10.33, Ms. Greco notes that she was not seeking damages at trial, although pleaded in her Statement of Claim. While the litigation was important to her, she submits that the relief she sought from the Stampede Defendants was relief they were, in her view, prepared to provide earlier in the history of this matter.

[12] Notwithstanding her pleas against the City in her Statement of Claim, she asserts that she "communicated throughout" that she was not seeking to compel enforcement but was instead seeking a declaration.

[13] She characterizes the Action as uncomplicated. She further notes that there was little dispute on the applicable law, particularly on the principles of nuisance. There were five witnesses. To streamline the trial, she testified only to a sample of the photos and videos in her possession.

[14] Ms. Greco places great reliance on the case of ***Grimes v Governors of the University of Lethbridge***, 2023 ABKB 432 [***Grimes***] in support of her position. She also points to other decisions citing ***Grimes*** in what she calls a favourable manner, including ***North v Davison***, 2024 ABKB 52 at para 18 [***North***]; ***Sutherland v Sutherland***, 2023 ABCA 185 at para 4 [***Sutherland***]; and ***VLM v Dominey***, 2025 ABKB 295 at para 6 [***VLM***].

[15] Alternatively, she argues that if the Defendants are entitled to enhanced costs, they should not be based upon a percentage of actual costs, relying upon ***Barkwell v McDonald***, 2023 ABCA 87 [***Barkwell***] and ***Barkwell v McDonald***, 2023 ABCA 183 [***Barkwell #2***]. She again relies upon ***Grimes*** to try to diminish the exercise of awarding costs based upon a percentage of actual costs, and some of the issues presented by that task that make it inappropriate for the Court to undertake such an exercise.

[16] As a benchmark, Ms. Greco argues that her own legal fees, which she stipulates total $216,952.50, provide some guidance. She challenges the disbursements sought by the City—having not yet seen the Stampede Defendants' disbursements at the time her submissions were filed—noting by way of example that the "Coding Fees," "Mediator Fee," and the "Witness Fee" for Ms. McClary appear, in her view, to be either unreasonable or inconsistent with the requirements for such charges under the *Rules*.

[17] Ms. Greco acknowledges that a Calderbank Offer was made in this case and that the Defendants seek to rely on it. She argues that, to be effective, such an offer must be genuine—that is, reasonable and realistic in all the circumstances at the time it was served and while it remained open. She emphasizes that the assessment must be conducted as of that time, and not through a mere comparison to the eventual trial result. She also notes that double costs are neither automatic nor presumed when a Calderbank Offer is engaged.

[18] Ms. Greco seeks to downplay the two "without prejudice" offers made by noting that the first, made in June 2023, proposed that she sell her home—an option she says was entirely unacceptable to her. The second offer, made in October 2024, three weeks before trial, involved modifications to the Ramsay Lands and payment of a portion of her costs. She submits that by that time she had invested significant time and effort in pursuing the Action, and that what was offered "seemed minimal and inadequate compared to the time and expense invested." She also references her own *Calderbank* offer, made in November 2024, just prior to trial, which she says mirrored but expanded upon the Defendants' October offer.

[19] Her submission is that exclusive of disbursements, the Defendants are entitled to one set of costs totalling $26,000.00.

B. The Stampede Defendants' Position on Costs

[20] The Stampede Defendants take the position that Schedule C costs would be "woefully inadequate in all of the circumstances." They argue that a ***Barkwell*** style proportionality approach is the one that should apply, and that a percentage or lump sum award should be granted.

[21] The Stampede Defendants note that the Court has broad discretion under the *Rules* and the case law to set reasonable and proper costs under Rule 10.31(1). Relying upon ***McAllister***, they assert that costs awards should typically reflect 40-50% of solicitor-client costs, representing the costs a reasonable client might be expected to pay for the services rendered. If such an award is granted, the Court must then consider whether the quantum sought is an amount the losing party should reasonably be expected to pay the successful party.

[22] The Stampede Defendants further argue for an upward increase in the costs they are entitled to based upon what they call "aggravating factors". Their assessment of the factors under Rule 10.33 includes:

(a) They were wholly successful in defeating Ms. Greco's nuisance claim.

(b) Ms. Greco's claim for declaratory relief was declared an abuse of process and was flawed from the outset, which should attract increased indemnification.

(c) There was a damages claim pleaded that was not abandoned until trial, and they were required to prepare for it.

(d) The relief sought by Ms. Greco amounted to a mandatory injunction, representing a significant business risk to the Stampede Defendants—something Ms. Greco would reasonably have understood would require them to incur meaningful legal costs to defend.

(e) The action was record-intensive, requiring counsel to review, among other things, 4,000 photographs and 80 videos, along with extensive supporting documentation.

(f) They prepared and submitted a Notice to Admit Facts in an effort to shorten and simplify the trial (and Ms. Greco did respond to it).

(g) Ms. Greco was found not to be a credible witness in portions of her testimony.

(h) Ms. Greco rejected three settlement offers from the Stampede Defendants.

[23] The latter point requires some detail. The first offer was issued June 16, 2023 following mediation. In that offer, the Stampede Defendants offered to purchase Ms. Greco's house for a price generated by an agreed upon appraiser. In addition, the Stampede Defendants offered $120,000 to account for moving costs, upgrading expenses to a new residence, and legal costs. ("**First Settlement Offer**")

[24] The second offer was made on October 9, 2024. In that offer, the Stampede Defendants offered settlement on the basis of trees, shrubs, and other plantings on both side of the fence of a similar nature to those existing along other parts of the Spiller Road fence line, a protected setback zone with a constructed jersey barrier perimeter delineating the setback zone, dispute resolution mechanism , and the payment of $40,000 for legal costs in exchange for a settlement of the matter. ("**Second Settlement Offer**")

[25] The Stampede Defendants and the City delivered the Calderbank Offer via letter on October 25, 2024, that provided for much of the relief that Ms. Greco sought at trial. This included relief in the Second Settlement Offer with additional consideration included. I agree with the Stampede Defendants that the Calderbank Offer proposed to settle with Ms. Greco for nearly all the relief she ultimately sought at trial, including:

(a) the permanent closure of the Spiller Gate;

(b) the planting of trees, shrubs, and other landscaping at the former location of the Spiller Gate and in other areas as appropriate;

(c) the establishment of a protected zone within the 30-metre setback, using jersey barriers, which shall not be used for any purpose other than landscaping or maintenance of the setback area, or in the event of an emergency;

(d) the appointment of a designated representative for all communications with Ms. Greco, together with a dispute-resolution process involving an appointed mediator, whose decisions shall be final, binding, and not subject to appeal; and

(e) payment in the amount of $40,000.00 by the Stampede Defendants and $10,000.00 by the City.

[26] The Calderbank Offer, if accepted, was to stay in place for so long as Ms. Greco used the Greco Lands as her principal residence and resided on them. It required a full release of all defendants, and proposed discontinuance of the action on a without costs basis.

[27] Ms. Greco was put on notice in the Calderbank Offer that the Defendants would seek double costs for two sets of costs if the offer what not accepted and the claim was dismissed. She was also put on notice that "rejection of a fair offer such as this may result in a costs award of at least 40% and possibly as much as 100% of our solicitor-client costs". The Calderbank Offer was left open until November 1, 2024. Trial commenced November 18, 2024.

[28] The Stampede Defendants have provided detailed billing summaries showing they incurred $673,001.50 in solicitor and own client costs, with disbursements of $24,438.06 exclusive of GST.

[29] They seek 40% of these costs to the date of the Calderbank Offer, and 80% of their costs thereafter. In the alternative, they seek a lump sum amount of $300,000.00.

C. The City's Position on Costs

[30] The City points out that the *MGA*, and in particular ss 554.1(1) and (2) provide the authority to seek its lawful costs and that such costs are not to be disallowed or reduced because the municipal lawyer is an employee of the municipality.

[31] The City also relies on ***McAllister*** and related cases. It argues that, as a government entity funded by taxpayers, a significant amount of public resources was required to defend this Action over approximately 11 years.

[32] The City does not render accounts to its client. It acknowledges that assessing costs as a percentage of billing would be inappropriate in these circumstances. The City relies on ***Lehodey v Calgary (City)***, 2025 ABKB 76 [***Lehodey***], in which this Court recognized that Schedule C costs cannot be compared with actual legal fees incurred in relation to a municipality. The City further argues that each case must be assessed on its own merits, with careful consideration of the relevant facts and circumstances.

[33] The City argues that Schedule C, Column 1, in this case suggests a costs award of $30,782.50 plus disbursements, which it says is woefully insufficient. Relying on ***Lehodey***, it instead seeks costs under Column 3 with a three-times multiplier, for a total award of $197,727.09 inclusive of disbursements.

[34] The City submits that its position is supported by the length and complexity of the litigation and the resources required to complete significant document production. It argues that much of this work "became moot" considering the Court's finding that the claim against the City was an abuse of process and ought to have been commenced by way of judicial review.

[35] The City also relies on the legal effect of the Calderbank Offer, which Ms. Greco did not accept. It submits that the offer would have provided Ms. Greco with the "wish list" she identified at trial.

[36] In addition, the City argues that the outcome of the trial is an important factor. Ms. Greco's claim was dismissed. The City maintains that the case was very important to it because an unfavourable ruling could have had the effect of granting individuals standing to ask Courts to enforce bylaws against third parties. It further argues that the declaration sought, had it been granted, would have created an additional review process for decisions of a Development Authority outside the judicial review and Subdivision and Development Appeal Board processes. The City also notes that, had the declaration been granted, Ms. Greco may have taken further steps against it.

V. Issue

[37] What are the reasonable and proper costs of the action to be awarded to the Defendants in this case?

VI. Law

A. Costs Generally

[38] I fully canvassed the law on costs relied upon in this case, including when a proportion of solicitor client or solicitor and own client costs are warranted, in my decision in ***Prevatt v Prevatt,*** 2024 ABKB 386 at paragraphs 13-26, which I adopt and apply. In that case, I stated:

[13] The *Rules* set out the framework for determining a costs award. An award of costs is a discretionary one. The default rule that applies in the present case is that the successful party to an application is entitled to an award of costs payable forthwith, subject to the Court's general discretion under Rule 10.31: *Rules* 10.29(1) and 10.29(1)(a). A costs award may be made using any multiple or fraction of Schedule C, as a lump sum, or as a percentage of assessed costs: Rule 10.31(1).

[14] Rule 10.33 sets out guidelines for the Court in making an award of costs:

> **10.33 Court considerations in making costs award**
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> 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;
>
> (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.
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> 10.33(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;
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> (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;
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> (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.

[15] As mentioned, the Court has broad (but not absolutely unfettered) discretion in making a costs award in accordance with *Rules* 10.31 and 10.33 of the *Rules of Court*. The Court of Appeal, in ***McAllister v Calgary (City)***, 2021 ABCA 25 at paras 33, 37-38 noted that Rule 10.31(a) distinguishes between two types of costs awards, the first being "reasonable and proper costs" incurred, which can be structured in a variety of ways set out in Rule 10.31(3) and means some form of partial indemnity for actual legal expenses, with or without reference to Schedule C of the *Rules of Court*. The second type of costs award is any amount the court considers appropriate, including an indemnity for actual lawyers' charges.

[16] The decision in ***McAllister*** confirmed that judges have considerable discretion in setting "reasonable and proper costs" under Rule 10.31(1). A costs award need not be based on Schedule C, and Schedule C is not a mandated default method: ***McAllister*** at para 54; ***Barkwell v McDonald***, 2023 ABCA 87 at para 53. ***McAllister*** confirmed at para 58, that does not mean that Schedule C is without utility and "is used day in and day out by judges in a great variety of situations.": ***Barkwell*** at para 53. See also, ***Barkwell v McDonald***, 2023 ABCA 183 [***Barkwell #2***].

[17] Since ***McAllister***, several recent authorities of this Court have developed which suggest that party and party costs should normally represent partial indemnification of the successful party at a level approximating 40-50% of solicitor and client costs: ***McAllister***, at para 41; ***RVW v CLW***, 2021 ABQB 546 at para 14; ***Barry v Industrial Alliance Assurance***, 2022 ABQB 265 ***Olson v Olson***, 2022 ABQB 356 at para 35.

[18] However, in ***Barkwell***, and other recent decisions, the Court of Appeal discusses the fact that there are no legal presumptions in favour of using a percentage of actual legal expenses or Schedule C to set "reasonable and proper costs." The governing principles are proportionality (having regard, for example, to the amounts in issue) and the factors in Rule 10.33: ***Sutherland v Sutherland***, 2023 ABCA 185 at para 4; citing ***Barkwell*** at paras 52-61; and ***Sunridge Nissan Inc v McRuer***, 2023 ABCA 128 at paras 57-58; ***Kantor v Kantor***, 2023 ABCA 329 at paras 12-15.

[19] The Court of Appeal also noted in ***Barkwell*** at para 56 that:

> The starting point is to recognize the important distinction between solicitor and own client costs, and solicitor and client costs. Solicitor and own client costs are those costs that counsel can charge to the winning party, and that the winning party is required to pay as a matter of contract. Solicitor and client costs represent the costs that a reasonable client might be required to pay for the services rendered. <u>It is rarely appropriate to award solicitor and own client costs as a costs award in litigation</u>: ***Luft v Taylor, Zinkhofer & Conway***, 2017 ABCA 228 at paras 77-78, 53 Alta LR (6th) 44. [Emphasis added]

[20] This latter point was recently reiterated by Justice Eamon of this Court in ***AGS v RNS***, 2024 ABKB 280 at para 50, citing from the very recent decision of the Court of Appeal in ***Vaillancourt v Carter***, 2024 ABCA 65 at paras 28-29:

[50] There is a difference between a solicitor-client account and a full indemnity on a solicitor and own client basis. The latter are rarely, if ever, recoverable:

> [28] This Court has confirmed that solicitor-client costs are reserved for exceptional circumstances involving reprehensible, scandalous or outrageous conduct of litigation. They allow for the recovery of reasonable fees and disbursements for all steps reasonably necessary within the four corners of the litigation. Solicitor and own client costs allow for "frills and extras" not reasonably required to advance the litigation. If authorized by a client, the latter are recoverable by that client's lawyer as against the client, but they are "rarely, if ever" recoverable against an opposing party unless provided for by contract or statute: ***Luft v Taylor, Zinkhofer & Conway***, 2017 ABCA 228 at para 77, leave to appeal to SCC dismissed, 37805 (7 June 2018); ***Twinn v Twinn***, 2017 ABCA 419 at paras 24-25; ***Fech v Lewington***, 2022 ABCA 154 at para 30; ***Goldstick Estates (Re)***, 2019 ABCA 508 at para 25, leave to appeal to SCC dismissed, 39063 (14 May 2020).
>
> [29] A party awarded solicitor-client costs may recover 100% of its fees and disbursements if they are all reasonably necessary within the four corners of the litigation: ***Twinn*** at para 24. What is reasonably necessary, as opposed to what amounts to a "frill or extra" available under an award of solicitor and own client costs, must be assessed in context. In this case, that context will include the findings of the chambers justice and this Court regarding the appellants' role in thwarting the respondent's attempts to collect her judgment and the context in which the garnishment proceedings arose. Elaborate steps to avoid a judgment may reasonably give rise to elaborate steps to collect.
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> (Underlining in original from ***AGS***)

[21] See also ***Olson***, at para 36.

[22] Thus, the key theme of the inquiry is proportionality and reasonableness: ***Barkwell*** at paras 57 and 58. The court in ***Barkwell*** went on to state at para 58 that:

> The long-established principle is that costs awards are designed to partially, but not fully indemnify the winning party: ***McAllister*** at para 37. It is frequently said that a rough rule of thumb is that the costs award should reflect 40 to 50% of the solicitor and client costs: ***McAllister*** at paras 41-42. That again is not necessarily a reference to the costs incurred

> and paid by the client, but rather to the costs that should reasonably have been incurred given the issues. This was also the benchmark that was used to set the tariff in Schedule C (***McAllister*** at para 43), and why we stress that a party, regardless of the costs claimed, should always provide as a benchmark a draft Bill of Costs based on Schedule C.

[23] If the Court decides to make a costs award based on a percentage of solicitor and client costs the analysis must go further, the question is whether the quantum represents an amount that the losing party in the litigation should reasonably be expected to pay to the winning party: ***Barkwell*** at para 59.

[24] Such costs claimed must be justified by the requesting party by consideration of the factors in *Rules* 10.2 and 10.33 that are relevant to the reasonableness of the fee. This includes a consideration of hourly rates (including paralegals and administrative time), the appropriateness of rates, whether the work was done by lawyers of appropriate seniority, the number of counsel involved, whether interlocutory proceedings were unnecessary and their outcome, and whether the ultimate fee was proportionate to the issues. It is not as simple, nor proper, to default to a percentage of fees claimed by the successful party; the issue is not what the successful party spent but how much it can reasonably expect the other party to pay. The analysis is one of proportionality: ***Barkwell*** at para 60, 74; ***Kantor*** at paras 12-14.

[25] In ***Barkwell #2*** at para 74, the Court of Appeal stated:

> As indicated in the appeal reasons, an award of party and party costs based on solicitor and client costs must be justified: 2023 ABCA 87 at paras. 52–61. The issue is not simply how much the successful party spent, but how much that party can reasonably expect the other party to pay. The amount actually charged to the client is not definitive. The rates and amount of time invested must be justified. The costs awarded must be proportionate to the amounts in issue.

[26] The Court is aware of, and has had regard to the decision of Graesser, J. in ***Grimes v Governors of the University of Lethbridge***, 2023 ABKB 432, argued by Suzanne. The ***Grimes*** decision has been referred to in several decisions of this Court and has received different treatment depending upon the circumstances of each case. Like the court in ***AGS***, I do not need to address, nor reconcile all of the reasoning in ***Grimes*** in this case. Further, at para 64 of ***Grimes***, the Court states: "As such, except in cases where indemnity costs based on solicitor and client costs are sought, Schedule C remains the starting point for any party party costs award."

[39] In my view, ***Grimes*** simply stands for the proposition that, in the appropriate case, Schedule C is a useful tool frequently employed by judges in determining the quantum of an appropriate costs award. That principle is not inconsistent with ***McAllister*** and its progeny from our Court of Appeal, canvassed above. ***Grimes***, being a decision of this Court, is subordinate to the extant Court of Appeal authorities in any event. Its reasoning is in large part consistent with those authorities. To the extent ***Grimes*** is saying more than that, it is inconsistent with the jurisprudence from our Court of Appeal in recent years and I decline to follow it.

[40] Mah, J stated at para 18 of ***North*** that "I have regard to the extensive and scholarly review of the caselaw conducted by Graesser J in ***Grimes*** and agree that ***McAllister*** does not necessarily create a "new normal" or presumption of 40-50% indemnity for successful litigants. The costs assessment exercise remains inherently discretionary and contextual." With respect to ***Grimes***, as noted above, that is not what ***McAllister*** really says, nor is it what the other Court of Appeal authorities related to it say. Justice Mah's statement is in fact consistent with the direction provided by our Court of Appeal in the case law I have canvassed above.

[41] Also consistent is what Mah J, noted at para 17, stating that "determination of costs is inherently discretionary, and the exercise of that discretion must be based on judicial principles of reasonableness, fairness, balance and equity: ***JBRO Holdings Inc v Dynasty Power Inc***, 2022 ABCA 258 at para 26, Rule 10.31."

[42] ***Sutherland***, relied upon by Ms. Greco, does not cite ***Grimes***. In fact, that case is an application of the law outlined above in ***McAllister***, ***Barkwell***, and ***Sunridge Nissan***.

[43] ***VLM*** also does not cite ***Grimes***. Instead, it follows an analysis based upon ***McAllister***, ***Barkwell***, and ***Sutherland*** in arriving at the decision to apply Schedule C in the context of a certification application for a proposed class proceeding.

[44] The reality is that assessing costs is a discretionary, contextual analysis, and the judge making that assessment has a wide variety of tools to come to a decision on what amounts to a reasonable and proper costs award on the facts of the case before them, guided by the *Rules* and guidance from our Court of Appeal. ***McAllister*** style indemnity awards are not the default, nor presumed. The Court, in assessing costs, must undertake its own analysis in each case utilizing the *Rules* and guidance from the case law in the exercise of its discretion in assessing a reasonable and proportionate costs award in each case.

B. The Calderbank Offer

[45] The Stampede Defendants and the City both raise the Calderbank Offer in their submissions to support enhanced costs awards: ***Calderbank v Calderbank***, [1975] 3 All ER 333 (CA).

[46] *Calderbank* offers do not immediately attract a doubling, or enhancement of costs. In ***Prevatt*** I summarized the law of ***Calderbank*** offers at paras 58 and 59:

> [58] Informal offers, such as ***Calderbank*** offers that arguably do not comply with the *Rules* of Court can have an effect on costs: ***Mahe v Boulianne***, 2010 ABCA 74 at para 10, citing ***Fullowka v Royal Oak Ventures Inc.***, 2008 NWTCA 9 at paras 23-5. While informal offers do not restrict the court's discretion over costs, they are nevertheless a relevant consideration: ***Mahe*** at para 10.
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> [59] In ***EAD Property Holdings (103) Corp v Greyhound Canada Transportation ULC***, 2015 ABQB 425, this Court summarized at paras 35-37:
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> > [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.

> [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.

VII. Analysis

A. The Stampede Defendants

[47] The submissions of the Stampede Defendants fall within what ***McAllister*** describes as a "reasonable and proper" costs award. As noted in ***Barkwell***, the governing principles are proportionality and the factors in Rule 10.33. The key themes of the inquiry are proportionality and reasonableness. I agree that where the Court elects to award costs as a percentage of solicitor-and-client costs, the analysis must go further. The question is whether the quantum represents an amount the losing party should reasonably be expected to pay the successful party: ***Barkwell*** at para 59.

[48] Here, the Stampede Defendants were completely successful. Although damages were sought, no amount was claimed and no evidence was led in relation to any damages. The only relief sought at trial was injunctive and declaratory. Accordingly, the nature of the claims places the Action in Column 1 of Schedule C by default. That was not, of course, a foregone conclusion when the action was commenced. Rather, it was a matter to be determined over time, through the evidentiary record, in assessing whether Ms. Greco had a well-founded claim for damages.

[49] The issues raised were of significant importance to the Stampede Defendants for nearly the entire duration of this case. Until trial, it was unclear whether Ms. Greco continued to seek the "full" injunctive relief pleaded in the Action. Had she succeeded on that claim, on the facts before the Court the relief sought would have posed a substantial financial and operational threat to critical business operations of the Stampede Defendants. Given the nature of the claims made, it is understandable that the Stampede Defendants believed they were required to marshal the strongest defence possible.

[50] This Action was not overly complex. A review of the court file shows that, aside from discovery-related applications—which were not heavily contested—the Action proceeded smoothly. The passage of time from filing to trial is not, in this case, an indicator of complexity, although the length of time the allegations remained outstanding against the Defendants is a relevant consideration. There were no experts and five lay witnesses. The evidentiary record,

despite submissions to the contrary by the Stampede Defendants, was certainly historically complex but only moderately onerous. The law of nuisance is well settled.

[51] I do not accept the Stampede Defendants' submission that there was misconduct or other conduct sufficient to justify an enhanced costs award. The credibility issues and related evidence are concerning and warrant consideration. Any resulting impact on costs is modest at best.

[52] The First Settlement Offer and Second Settlement Offer are not sufficient to attract costs consequences. The First Settlement Offer, given the timing and circumstances, was not a reasonable proposal, and I will not impose costs consequences on Ms. Greco for rejecting it. Further, it was made without prejudice and did not indicate that it would be relied upon for costs. The Second Settlement Offer was also made without prejudice and similarly did not contain notice that it would be relied upon with respect to costs.

[53] What does potentially attract an enhanced costs award is the Calderbank Offer. Consistent with the law I have outlined above in ***EAD Property Holdings (103) Corp*** I find that it:

(a) was a reasonable, genuine compromise;
(b) gave a cost advantage if accepted;
(c) adequate time for consideration was provided;
(d) the offer was unreasonably rejected; and
(e) the party making the offer fared better than if the offer was accepted.

[54] I agree that the Calderbank Offer gave Ms. Greco nearly all the relief she sought at trial against the Stampede Defendants and, in fact, more than the Court could reasonably have granted with respect to the dispute-resolution clause and certain other nuances. It also provided her with a costs advantage. By the time the Calderbank Offer was made—approximately four weeks before trial—Ms. Greco had a clear understanding of the relief she intended to seek. She had one week to consider the offer, which was reasonable given the stage of the Action and the proximity to trial. The Calderbank Offer was not complex. I find that, in all the circumstances, Ms. Greco unreasonably rejected the offer, and the Stampede Defendants ultimately fared better at trial than if it had been accepted.

[55] Had Ms. Greco accepted the offer, she would have obtained substantial relief: payment of $50,000.00 (I acknowledge this includes the $10,000.00 offered by the City), a dispute-resolution mechanism, and certainty of outcome. Instead, she chose to proceed to trial. This decision, in the circumstances, was at her peril regarding costs, particularly given that the Stampede Defendants expressly advised her of the potential cost consequences.

[56] I accept that costs, including those in respect of *Calderbank* offers, are discretionary. Where informal offers are made there is no "one-size fits all" response. Doubling costs based on a Calderbank offer is neither automatic nor presumed: ***Ting v Ting***, 2023 ABCA 9 at para 6; these principles also cited in ***MRP v K-AP***, 2025 ABKB 669 at para 50.

[57] However, in all the circumstances, I find that the proper effect of the Calderbank Offer in this case is for the Stampede Defendants to be awarded double costs from the date of that offer (October 25, 2024). Assessing that offer, in context at the time it was made, meets all the criteria under the case law and it should have a direct impact on costs.

[58] What then, is the appropriate quantum of costs?

[59] The information before me is that the Stampede Defendants have expended more than $673,000.00 in solicitor and own client indemnity costs, and that Ms. Greco herself has spent over $216,000.00.

[60] Ms. Greco's proposal that Schedule C, Column 1 be applied to award a single set of costs to both Defendants is not an acceptable measure of costs quantification in the circumstances. While in many cases Schedule C can be utilized to reach a proportionate and reasonable costs award pursuant to the principles in the *Rules* and the case law, Ms. Greco's position is neither proportional nor reasonable.

[61] This Action has been in existence for over 10 years. For that decade, up to trial, the threat of the relief pleaded hung over the Stampede Defendants and the City. I agree that the issues raised were significant to the Stampede Defendants, just as they were to Ms. Greco. Ms. Greco had to be aware that these two entities would marshal significant resources to defend her claim. She also ought to have been aware that if she were unsuccessful, they would likely seek costs beyond Column 1 of Schedule C, given her pleadings and the nature of the case. Had she been the successful party, I would be surprised if she would simply accept her own position as a reasonable and proportionate award payable to her.

[62] Many of the pre- and post- ***McAllister*** cases wrestle with Schedule C costs, applying various columns, multipliers and percentage increases to try to achieve the goal of awarding a reasonable and proper costs award that achieves the level of indemnity required in the case. That type of contortionist exercise is often mandated in cases where the Court, assessing a reasonable and proper costs award, has limited information or, as in the case of the City in this case, a party that has not incurred external counsel fees in conducting the litigation.

[63] However, like ***Prevatt***, in this case I have the benefit of benchmarks for the actual legal fees incurred by both parties and a reasonably detailed understanding of what has occurred in the litigation. The Stampede Defendants have provided reasonably detailed accounts of their claimed costs. Ms. Greco has stipulated her expenditures, and I accept that stipulation. I am not prepared to make a lump-sum award, as I find on the facts before me that Ms. Greco is entitled to test the ultimate quantum of the Stampede Defendants' claimed costs through the assessment process under the *Rules*.

[64] Having said that, I do think that a ***McAllister*** partial indemnity approach is appropriate in this case. Considering the amount claimed by the Stampede Defendants and all relevant factors, 40% indemnity in this case is too high. Some reduction must be made to properly meet the requirements of reasonableness and proportionality here, bespoke to this case. As the Court in ***McAllister*** noted, it was refraining from defining with any precision the level of indemnification required in any given case, stating that "all we say is that the level of indemnification must be both meaningful and reasonable.": para 51. The Court also made clear that I have discretion to move up or down from that starting point, having regard to the factors in Rule 10.33 and Rule 10.2(1). The appropriate level of indemnification may therefore be higher or lower than 40–50%, depending on how the litigation was conducted and other factors not necessarily related to litigation conduct: ***McAllister*** at para 51.

[65] Considering all the facts in this case and the applicable factors under the *Rules* and the case law, I find it reasonable and proportionate for Ms. Greco to have expected to indemnify the Stampede Defendants for 30% of their assessed solicitor-client costs (to be distinguished from

solicitor-and-own-client indemnity). They shall have those costs from the commencement of the action to the date of the Calderbank offer.

[66] The Calderbank Offer is valid, and effective, as discussed above. I find that it should have the impact of doubling the costs payable to the Defendants by Ms. Greco. From the date of the Calderbank Offer forward, the Stampede Defendants shall have 60% of assessed solicitor client costs.

[67] To be added to these costs will be disbursements and applicable GST, as assessed.

[68] If the quantum cannot be agreed to, these costs shall be determined and fixed by an Assessment Officer pursuant to the provisions of the *Rules* that apply to assessments and assessment hearings. This approach addresses not only some of the criticisms raised in ***Grimes*** but also permits Ms. Greco to test the accounts of the Stampede Defendants and raise issues related to the reasonableness of any fees, charges, and disbursements she may wish to challenge, such as the need for multiple counsel, for example.

[69] I am mindful of the potential financial impact this costs award may have on Ms. Greco. Costs awards, however, invariably carry such consequences. This award is not punitive; it is compensatory in nature.

B. The City

[70] As the City notes, it stands on a different footing for costs than the Stampede Defendants. Schedule C must guide any costs award. The City did not retain external counsel but instead relied on salaried, in-house lawyers. There is no other way to properly assess the City's costs. The real question is how Schedule C should be applied to quantify those costs.

[71] While Ms. Greco sought a single set of costs for both Defendants under Column 1 of Schedule C, as noted that is not an appropriate outcome. Although the cases against the Stampede Defendants and the City were intertwined, they remained distinct. While it is clear to me that while the Stampede Defendants "took the lead" in some aspects of this case, neither relied exclusively on the work of the other at trial. Each was required to fully defend the independent claims advanced against them. There was only modest overlap in the cases and submissions of the defendants. The City is therefore entitled to its own set of costs.

[72] Again, what constitutes a "reasonable and proper" costs award for the City, having regard to proportionality and the factors in Rule 10.33?

[73] As with the Stampede Defendants, the City was completely successful. I accept the City's submission that the potential consequences for it—even on the declaration sought by Ms. Greco—were serious and important, with the potential to affect the City beyond the facts of this case. The law was more complex in relation to the claims against it, requiring the City to do additional work in this regard.

[74] As far as the Calderbank Offer is concerned, some independent analysis of whether it constituted a reasonable, genuine compromise on the City's behalf is required. Based upon my reading of the offer, the City's contribution was to plant large shrubs across from the Greco Lands, including where the Spiller Gate was located, and a $10,000.00 contribution "in full and final compensation for any and all damages and legal costs related to this Action."

[75] The City's position on the Calderbank Offer is much weaker than that of the Stampede Defendants. Considered on its own, and having regard to the criteria set out above, I do not find

that it should have the same effect on costs vis-à-vis the City. The benefit the City sought to obtain from its contribution to the Calderbank Offer is grossly disproportionate to the benefit that would have accrued to Ms. Greco had she accepted it. The City's offer was not a reasonable, genuine compromise of the claims made against it, which related to development and development law. The Calderbank Offer did not address those claims in a satisfactory manner. For minimal consideration, the City effectively "piggybacked" on the previously made offer of the Stampede Defendants to obtain a full settlement and release, or the advantage of a Calderbank offer. In the circumstances, I decline to award any multiplier of costs to the City on this basis. To do so would not be just or appropriate. I have, however, otherwise taken this offer of compromise into account when assessing the City's costs in this case.

[76] As with the Stampede Defendants, I find that awarding Schedule C, Column 1 costs to the City would be unjust and unreasonable. Quite simply, it would not provide the level of indemnification required. This is so even accounting for the fact that the City utilized salaried in-house lawyers for this action. However, I also find that the City overreached in analogizing this case to ***Lehodey***. While the issues at trial were serious and could have affected the City beyond this case, the matter is not comparable to ***Lehodey***, where the complexity of the factual and legal issues—and the magnitude of the central issue—were significantly greater. It was primarily for those reasons that Lema J held that a multiplier of "at least" three times (3x) was warranted. I note as well that in ***Lehodey***, the applicants did not contest the use of Schedule C, Column 3, unlike the case before me.

[77] In ***Lehodey***, the underlying decision concerned a challenge to the City's 2024 general rezoning bylaw. The Court noted that its decision on the merits directly affected the owners of 311,570 residential properties in Calgary, and that the complexity of the issues required extensive analysis of the discretionary nature of districting decisions, the purpose of zoning provisions and the *MGA*, and the proper legal characterization of general rezoning, among other matters. The Court in that case suggested that absent the City's position in that case that a three times (3x) multiplier was sufficient, it would have awarded a four to five times (4-5x) multiplier.

[78] I have reviewed ***Lehodey*** carefully, as well as the case law referred to in that decision, in particular the cases relied upon at paragraph 11 by the City in that case. This case simply does not rise to that level when the requisite level of costs indemnification is considered.

[79] I agree that Column 1 is not adequate to compensate the City for its costs in a 10-year action that involved just over one week of Questioning and a similar amount of time for trial. However, I find that no multiplier is required to achieve a just and appropriate costs award for the City in this case. I have no sense of the actual costs incurred by the City. There was no information provided that would let me assess what might obtain a partial indemnity for the actual costs incurred by the City in this case. Applying a multiplier in this case could result in over indemnification which could amount to a punitive award.

[80] As a result, having regard to the case law, the factors outlined above and Schedule C of the *Rules*, I find that Column 3 of Schedule C is the appropriate column by which to award costs to the City in this case, plus disbursements and other charges. These costs are to be assessed by an Assessment Officer under the *Rules* if the parties cannot agree on the quantum payable. This, in my view, is a reasonable and proper costs award that Ms. Greco should be reasonably expected to pay to the City given the duration, complexity and nature of this action.

VIII. Conclusion

[81] The parties are directed to attempt to agree upon and resolve all quantum issues in accordance with this decision, failing which they are directed to proceed with the assessment process under the *Rules*.

[82] I thank the parties for their able submissions.

Written costs submissions received on the 6th day of February, 2026.
Dated at the City of Calgary, Alberta this 3rd day of March, 2026.

D.J. Reed
J.C.K.B.A.

Appearances:

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E. Bruce Mellett, KC and George Bocock
for the Defendants, Calgary Exhibition and Stampede Limited, Calgary Exhibition & Stampede and Weadick Properties Ltd.