

Court of King's Bench of Alberta

Citation: Bennett v NE2 Canada Inc, 2025 ABKB 87

Date: 20250218
Docket: 2201 04415
Registry: Calgary

2025 ABKB 87 (CanLII)

Between:

Marc Bennett

Plaintiff

- and -

NE2 Canada Inc. and Timothy Gunn

Defendants

And Between:

NE2 Canada Inc.

Plaintiff by Counterclaim

- and -

**Marc Bennett, Mandy Burgess, Dario Vigna, Jack Widmer, Charles Douglas,
Ryan Beckwermert, Christy See and Modern Commodities Inc.**

Defendants by Counterclaim

**Interim Ruling on Costs
of the
Honourable Justice R.A. Neufeld**

[1] On November 25, 2024 I rendered a decision in respect of an application by a group of five oil brokers who are defendants by counterclaim in an action brought by Mark Bennett against NE2 Canada Inc and its founder Timothy Gunn (collectively “the Company”). The brokers are represented by Bennett Jones. The Company is represented by BDP.

[2] The principal application before me was to strike from the court record an application for security for costs that had been filed by the brokers and to prevent the filing of transcripts of cross-examination on affidavits relied upon in that application which the brokers considered to contain irrelevant and personally embarrassing evidence. The application was heard on September 6, 2024. It was preceded by an application by the brokers for an injunction prohibiting the dissemination of information contained in the transcripts, and a sealing order over materials already on the public record, including an affidavit filed approximately one year earlier in support of a restricted court access application that had not proceeded to hearing. The injunction against dissemination was granted on a temporary basis, pending hearing of the application to strike. The request for a sealing order was denied by Justice Horner due to lack of notice to the media. It was heard in morning chambers by Justice Carruthers who reserved her decision and then denied the application in a written endorsement issued shortly thereafter.

[3] I denied the application to strike, vacated the temporary injunction, and allowed with reasons from the bench an application by the Company to clarify a decision previously made by me in chambers. I found that the Company was entitled to costs and directed that if the parties could not agree on within 30 days the matter could be directed to me for determination.

[4] The parties could not agree on costs. The Company now seeks costs in the amount of \$434,347.42 comprising 50% of its solicitor client costs over the past 1.5 years of “needless litigation”. It provides no detailed information regarding those costs such as invoices. Nor does it provide any breakdown of charges by month or by category of legal services.

[5] The brokers do not dispute entitlement to costs in the application to strike. They note the absence of detail in the application by the Company and submit that reasonable costs would amount to schedule C Column 5 costs with a two times multiplier. Their cost calculations and proposed bill of costs for the Company show the resulting amount of \$20,250, against which they seek costs for what they argue was a successful appearance before Justice Horner of \$4203.94.

Direction

[6] Having reviewed the submissions of counsel I find that there is insufficient information before the court to make a proper determination of costs. The costs application is bereft of the detail needed for the court to undertake an examination for reasonableness itself or through referral to an assessment officer with guidance as may be deemed appropriate. It is also a barrier to resolution as between the parties.

[7] At the same time, the Bills of Cost provided by the brokers would result in party and party costs that are clearly inappropriate. For example, the brokers’ own claim for costs in respect of the injunction proceeding before Justice Horner [for which it appears there was mixed success at best] would have legal fees awarded of \$2700. The actual fees charged by Bennett Jones for the injunction application were, according to the redacted invoice provided, \$46,710. This is over 17 times higher than Schedule 2 Column 5.

[8] This is not to say that the fees charged by Bennett Jones were unreasonable. Rather it shows that Column 5 costs, even with a two times multiplier, are not an appropriate measure of reasonableness in this case.

[9] I direct therefore that should the Company wish to continue to seek costs based on a percentage of fees actually incurred, it must provide better and adequate details in support of its claim. These need not include line-item descriptions that might disclose privileged information as to legal services, but it must be sufficient to determine the fees charged in respect of the applications before me on September 6, 2024 and those heard by Justice Horner and Justice Carruthers in respect of which costs were reserved for the September 6, 2024 proceeding. This includes the hours and hourly rates of timekeepers. They must also allow the court and the brokers to understand the amount of fees charged prior to the filing of the strike application- in particular the fees charged for preparation and attendance at cross examinations on affidavits. I do not consider the latter to be thrown away costs given the representations of the Company's counsel that the transcripts will have continuing use in the action and should therefore be available on the court record.

[10] Once adequate information is disclosed to the brokers, I direct that the parties engage in further discussions regarding resolution of the costs issue.

[11] Failing agreement, the Company may file a supplementary brief not exceeding three pages in length and attaching adequate details in support of its claim. The brokers may file a reply brief within seven days thereafter.

[12] The parties have requested that this action be assigned to me for case management, and I am prepared to schedule a further appearance if necessary to hear oral submissions. The parties may pre-book a one hour appearance date through the Seized Matters Coordinator.

Dated at the City of Calgary, Alberta this 18th day of February, 2025.

R.A. Neufeld
J.C.K.B.A.

Appearances:

James D. Murphy, Susan Fader, Karim Ismail and Marcus Memedovich
for NE2 Canada Inc. and Timothy Gunn

Grant N. Stapon, K.C. and Keely Cameron
For the Defendants by Counterclaim/Applicants, Dario Vigna, Jack Widmer, Charles Douglas, Ryan Beckwermert and Christy See