

# In the Court of Appeal of Alberta

**Citation:** Milot Law v Sittler, 2025 ABCA 241

**Date:** 20250630  
**Docket:** 2303-0176AC  
**Registry:** Edmonton

**Between:**

**Milot Law Professional Corporation, as assignee of BDO Canada Limited's  
interest in these proceedings pursuant to section 38 of the Bankruptcy and Insolvency Act**

Respondent  
(Cross-Appellant)

- and -

**Heather M. Sittler and Sheldon L. Sittler**

Appellants  
(Cross-Respondents)

**The Court:**

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**The Honourable Justice Anne Kirker  
The Honourable Justice Tamara Friesen  
The Honourable Justice Karan Shaner**

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**Memorandum of Judgment Regarding Costs**

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## Memorandum of Judgment Regarding Costs

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### The Court:

[1] The appeal brought by Heather and Sheldon Sittler was dismissed. Milot Law Professional Corporation's cross-appeal was allowed: *Milot Law v Sittler*, 2025 ABCA 72. Rules 14.88(1) and (3) of the *Alberta Rules of Court*, Alta Reg 124/2010 (the *Rules*), provide that the successful party in an appeal is generally entitled to a costs award against the unsuccessful party and that "[u]nless otherwise ordered, the scale of costs in an appeal shall be the same as the scale that applies to the order or judgment appealed from." In this case, there were two related decisions under appeal; the first directed that each party bear their own costs and the second ordered costs of \$1000 payable by Milot Law, based on column 2 of the Schedule C tariff of recoverable fees under the *Rules*. As the successful party in both the appeal and cross-appeal, Milot Law asks that we order the Sittlers to pay costs based on a percentage of the legal fees and disbursements it has incurred.

[2] Included in Milot Law's costs submission is a breakdown of the time spent, and rates charged, by Milot Law's counsel to address the underlying applications heard by the chambers judge, the permission to appeal applications, its new evidence application, and the appeal and cross-appeal: see *Barkwell v McDonald*, 2023 ABCA 87 at para 60, leave to appeal to SCC refused, 40742 (2 November 2023). Milot Law's legal fees and disbursements for all this work totalled \$56,012.22. A draft bill of costs based on column 2 of Schedule C of the *Rules* was also included: see *Barkwell* at para 58. Recoverable fees and disbursements based on the Schedule C tariff total \$16,118.01. Milot Law seeks a costs award of approximately \$33,000, representing 80% of what it paid for all steps related to a redacted email that Milot Law disclosed to the trustee in the Sittlers' bankruptcy and that the chambers judge erroneously found contained legal advice and 40% of the amount paid for all other steps (\$22,404.80 and \$11,202.40, respectively). It argues this is justified because it was entirely successful, the issues were important, and the Sittlers failed to correct the chambers judge's inaccurate understanding of the email that formed the basis of his finding Milot Law had breached privilege.

[3] The Sittlers dispute the suggestion they engaged in any litigation misconduct. They note that the importance of the redactions made to the impugned email did not become apparent until after the chambers judge released his reasons, and that the chambers judge's concern when Milot Law asked him to consider an unredacted copy of the email and to vary his August 23, 2023, order was that the unredacted email could have been provided by Milot Law in the original application. We note that the Sittlers did ultimately concede that the unredacted email could be considered fresh evidence in this Court. The Sittlers ask that costs be awarded pursuant to Schedule C.

[4] Milot Law was the successful party. The issues in relation to the email were especially important given the finding there had been a breach of privilege. Although the Sittlers agreed it was reasonable for this Court to have access to the redacted portions of the email for the purpose of deciding the matter, they maintained its disclosure by Milot Law was improper including

because it breached privilege. The cross-appeal and related steps taken in this Court in relation to the email could have been avoided had the Sittlers made an obvious admission. In these circumstances, it is reasonable that the Sittlers pay and Milot Law recover a greater proportion of the reasonable expense it incurred for steps taken in this Court than Schedule C provides.

[5] The Sittlers shall pay costs and disbursements totalling \$25,000 to Milot Law. This reflects column 2, Schedule C costs for the applications heard by the chambers judge and approximately 50% of the legal fees and disbursements otherwise incurred by Milot Law for all steps taken in this Court.

Written submissions filed April 25, 2025, and May 9, 2025

Memorandum filed at Edmonton, Alberta  
this 30th day of June, 2025

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Kirker J.A.

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Friesen J.A.

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Shaner J.A.

**Submissions:**

D.A. England  
for the Respondent

C.M. Floden  
for the Appellants