

Court of King's Bench of Alberta

Citation: Montreal Trust Company of Canada v Astl, 2026 ABKB 510

Date: 20260715
Docket: 8901 10340
Registry: Calgary

Between:

953342 Alberta Ltd.

Applicant

- and -

Computershare Trust Company of Canada

Respondent

Reasons for Decision as to Costs of the Honourable Justice C.M. Jones

[1] The Applicant, 953342 Alberta Ltd., sought an order declaring certain trusts partially terminated, with various consequences. In my decision cited at 2026 ABKB 255 (the “Decision”), I dismissed the application. In these Reasons with respect to costs, I will use certain terms as defined in the Decision.

[2] The Respondent asserts that it is entitled to full indemnity costs pursuant to section 7.1 of the Supplemental Agreement, which provides as follows:

The Mineral Owner shall indemnify and save the Trustee harmless from any and all charges, costs and expenses, including legal expenses on a full indemnity basis, in respect of claims, demands and actions of any person asserting through the Mineral Owner an interest in the Mineral Rights and Royalty Rights contrary to the Royalty Trust Agreement and this agreement.

[3] The Respondent contends that all of what it refers to as “basic components” of this provision are satisfied. It argues that the Applicant is the Mineral Owner and that the application was a “claim, demand or action undertaken by the Mineral Owner” that was contrary to the GRTs and the SAs. The Respondent states that it was required to undertake significant work to respond to the application and that, therefore, its claim for full indemnification of its costs is justified.

[4] In its brief, the Applicant argues that it should not be liable for costs for various reasons:

The Applicant submits that it brought this application as mineral owner in exceptional circumstances, where it sought the direction of the Court as to Clause 22 Terms of Agreement, specifically, its right to partially terminate as provided by Clause 22 of the Royalty Trust Agreements, and as to the Supplementary Agreements.

In the circumstances, where accumulating non-distributable royalties continue with the Respondent as trustee, the Applicant as mineral owner, in good faith and for the first time, applied to the Court to adjudicate upon the Applicant's right to partially terminate, and the implications thereof relating to the accumulating non-distributable royalties.

Both the Applicant as mineral owner and the Respondent as trustee by the decision of the Court have received and will receive direction of the Court as to the rights of the mineral owner and to the duty of the trustee now and in the future, as to the rights and duties of all parties to the Royalty Trust Agreements and the Supplementary Agreements.

This Application needed to be brought to decide in the circumstances the key questions of the right of the mineral owner to partially terminate, the duty of the trustee by direction of the Court in circumstances of lost contact with beneficiaries, and what disposition is to be made of the accumulating non-distributable royalties in this and the many similar circumstances where these Agreements exist.

With the dismissal of Applicant's claim to partially terminate and to non-distributable royalties, the Applicant submits it should not bear the legal costs of the Respondent. Both the Applicant's and the Respondents' legal costs and expenses in connection with the advice of counsel should be borne from available accumulated non-distributable royalties as a practical matter.

[5] I reject all these arguments. The Applicant seems to argue that the application was brought not solely for its benefit but also for the benefit of the Respondent and of parties to similar agreements. I disagree. While a decision in the Applicant's favour might have had implications for mineral owners under similar agreements, that is not sufficient to justify declining to order costs against the Applicant in these circumstances.

[6] I agree with the Respondent that the criteria set out in section 7.1 of the SA are met. Therefore, the Respondent is entitled to indemnification for its costs.

[7] That said, I turn now to the issue of the quantum of costs. The case law in Alberta is clear that a contractual provision in respect of litigation costs does not oust the jurisdiction of the Court.

[8] In *Alberta Treasury Branches v 1401057 Alberta Ltd (cob Katch 22)*, 2013 ABQB 748, Wakeling J (as he then was) reviewed several costs principles, particularly in the context of a contract expressly dealing with costs. He held at para 28 that the Court's discretion to issue a costs order was "...so important that a contractual provision relating to costs does not oust the court's jurisdiction to set costs as it sees fit." He went on to say at para 35 that "Contracts may contemplate the existence of litigation between the parties and allocate the burdens associated with it, including provisions obligating the payment of legal costs at stipulated levels under

specified circumstances. The seventh costs principle is that a court may choose to hold a party to its promise.” In that same paragraph, however, he goes on to note that “The court may refuse to enforce the contractual rights where there is good reason for so doing” and that “Although such a contractual entitlement is a relevant consideration, the court is not bound to give effect to it”.

[9] At paras 42 and 44, he stated that “The ninth cost principle is that a party who is ordered to indemnify another party for its legal fees is not responsible for costs associated with unnecessary steps.” and that “The tenth principle is that the court has an overriding obligation to ensure that those who are obliged to pay for legal services are treated reasonably, taking into account all the circumstances. This is an important function in all cases but particularly so when the person who may be liable to pay a lawyer’s charges does not select the lawyer.”

[10] These principles also were referred to in *Alberta (Treasury Branches) v Ethier*, 2015 ABQB 389, *Paradigm Quest Inc v Moser*, 2015 ABQB 557 and *Royal Bank of Canada v Simmer Project Solutions Inc*, 2026 ABKB 250. In *Paradigm* at para 28, the Court held that “...full indemnity does not necessarily mean there is no role for an Assessment Officer or the Court. Rather, the Court must look to whether the fees were reasonable, equitable, harsh, or otherwise unprofessional.” At para 30, the Court stated “Regarding quantum, the courts will allow all reasonably incurred costs, ‘provided the rates charged by counsel bear some reasonable relationship to those prevailing in the relevant marketplace for counsel of comparable skill and experience’”. At para 32, the Court stated that “The Assessment Officer’s task (or the Court’s) in reviewing costs is not to substitute its opinion of what it considers were, or ought to have been, the true costs, but to determine whether the costs submitted are unreasonable, or improper.”

[11] The Respondent seeks full indemnity for legal costs. I award the Respondent full indemnity costs, payable by the Applicant, as assessed by the Review Officer.

[12] To the extent the Respondent’s request for full indemnity for legal costs is disallowed by the Review Officer, the Respondent may, in addition to any right of appeal it may choose to pursue, seek indemnification for the shortfall from trust property on a formal passing of accounts.

C.M. Jones
J.C.K.B.A.

Appearances:

Ronald J. Young
Ronald J. Young Professional Corporation
for the Applicant
Derek Pontin
Dentons Canada LLP
for the Respondent