

Court of King's Bench of Alberta

Citation: **Yegpro Realty Ltd. v Dhillon**, 2026 ABKB 530

Date: 20260723
Docket: 2403 19312
Registry: Edmonton

Between:

Yegpro Realty Ltd.

Plaintiff

- and -

Kirandeep Dhillon

Defendant

**Costs Endorsement
of the
Honourable Justice Douglas R. Mah**

A. Background

[1] Following issuance of my decision reported as ***Yegpro Realty Ltd v Dhillon***, 2026 ABKB 438 (the Decision), the parties were unable to agree with respect to the costs payable by the unsuccessful Defendant (Ms. Dhillon) to the successful Plaintiff (YegPro). Their counsel have made written submissions in accordance with para 84 of the Decision.

[2] YegPro seeks costs on a solicitor-and-own-client, full-indemnity basis, for these reasons:

- At para 76 of the Decision, I found that “reasonable legal fees” payable by Ms. Dhillon under the Independent Contractor Agreement (ICA) between the parties means solicitor-client costs. This position is supported by

Manson Insulation Products Ltd v Crossroads C & I Distributors, 2019 ABQB 684 at para 559.

- YegPro made several *Calderbank* offers which were refused.
- Ms. Dhillon was obstructive during the litigation: refusing to agree to a Streamlined Trial, refusing to admit facts or exhibits, and attempting to delay trial with a last-minute challenge to this Court's jurisdiction to hear the matter.

[3] Ms. Dhillon responds that:

- The ICA does not specify that “solicitor-client costs” are payable if YegPro is required to enforce it.
- She was successful in recouping her unpaid commission of \$1400, as pled in her Counterclaim.
- Ms. Dhillon was prepared to proceed with trial in the Court of Justice (COJ) on September 23, 2024. It was the COJ Justice who directed the matter into King's Bench on her own motion, not at Ms. Dhillon's request. Therefore, there should be no costs for proceedings in the COJ.
- She did not oppose a Streamlined Trial but rather only wanted oral questioning to be completed. She was successful in getting oral questioning completed as part of the Streamlined Trial Order.
- A large Costs Order is prejudicial to her as an individual.
- The costs payable by Ms. Dhillon in this case are circumscribed by the operation of Rule 10.42. This Rule prescribes a standard of costs of not more than 75% of Column 1 costs under Schedule C where the amount sued for does not exceed the COJ limit, and a limit of 100% of Column 1 costs for post-judgment items.

B. Costs Principles

[4] A costs inquiry proceeds on the basis that the successful party is presumptively entitled to costs: *Rule 10.29(1)*. Aside from the question of contract, the 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*. The relevant considerations for a costs award are found in *Rule 10.33* and include, among a list of factors, result, complexity, and conduct of the parties during litigation.

[5] Where there is a contractual provision governing the payment of costs following a lawsuit, the usual principles of contractual interpretation apply.

C. Para 5(c) of the ICA

[6] I'll deal first with YegPro's argument that an obligation to reimburse for solicitor-client costs arises from contractual wording.

[7] For clarification, I do not think that my comments in para 76 of the Decision should be taken as a general finding that “reasonable legal fees” under the ICA means “solicitor-client costs.” I was dealing then with the legal fees charged to YegPro as a result of its dealings and negotiations with Canada Revenue Agency (which I felt were reasonable), not with costs payable after litigation. Whether solicitor-client costs are payable following litigation engages a completely different analysis.

[8] YegPro points out that para 5(c) of the ICA states that Ms. Dhillon must pay “court costs, legal expenses and reasonable legal fees” related to the collection of amounts owing by Ms. Dhillon under the ICA. My comment in para 76 of the Decision regarding the interpretation of “reasonable” in the context of legal fees related to the indemnity clause in para 6 of the ICA, i.e. the situation (as pointed out in the previous bullet point) where YegPro incurs costs in responding to third-party claims occasioned by Ms. Dhillon’s acts or omissions. It does not relate to litigation costs against Ms. Dhillon under para 5(c).

[9] YegPro relies on Thomas J’s decision in **Manson Insulation**, at para 559. The Court noted that the right in question was for *actual* “costs and expenses of recovery” of which “reasonable attorneys’ fees and expenses” were a part, not the whole. Thus, the result in **Manson Insulation** was that the assessed party-and-party costs were merely a component of *actual* costs, and the successful party was entitled to the latter, which are solicitor-client costs.

[10] The Court in **Manson Insulation** cited **West Edmonton Mall Ltd v McDonald’s Restaurants of Canada Ltd**, 1995 ABCA 503 at para 23. In that case, the Court of Appeal held that recovery of “all expenses including reasonable legal fees” in a contract means as assessed by the Taxing Officer (now Assessment Officer) and upheld the trial judge’s finding that party-and-party and not solicitor-client costs were recoverable. The Court of Appeal agreed with the trial judge that the covenant was not clear enough to enable imposition of solicitor-client costs.

[11] In **Manson Insulation**, the operative wording (at para 554) was “the costs and expenses of recovery, including reasonable attorneys’ fees and expenses.” In **West Edmonton Mall Ltd**, the phrase used was (at para 23): “all expenses including reasonable legal fees.” In the present case, the relevant part of para 5(c) of the ICA reads: “any and all costs including court costs, litigation expenses and reasonable lawyers’ fees.” While the exact words chosen in each phrase are different, the phrases are functionally the same.

[12] Thomas J in **Manson Insulation** observed at para 559 that there is no clear binding precedent with respect to the meaning of “reasonable legal fees” or functionally equivalent phrases and that context and principles of contractual interpretation must be used. He noted that in the case before him the litigants were sophisticated corporate parties who had used expert legal counsel in drafting the contract. He came to the conclusion, in that particular context, that “reasonable attorneys’ fees” were part of a whole and the plaintiff in that case was entitled to the whole.

[13] In **West Edmonton Mall**, the Court of Appeal noted that the phrases “party-and-party costs” and “solicitor-client costs” are well-known and clear, but that “reasonable legal fees” is ambiguous even when inserted into “all expenses including reasonable legal fees”. The Court also urged contextual analysis.

[14] Here, para 5(c) of the ICA enumerates specific components. Taking a plain and ordinary approach to interpretation, as I am required to do, and giving meaning to individual phrases, in

this case “court costs” must refer to out-of-pocket costs paid to the court such as filing fees, “litigation expenses” would be other disbursements necessary for the action and “reasonable lawyers’ fees” refers to fees for legal counsel.

[15] In line with **West Edmonton Mall**, I find that the covenant in para 5(c) of the ICA is not clear enough to sustain an award of solicitor-client costs. It would have been a simple enough thing to specify “solicitor-client costs” to achieve clarity as many business and commercial contracts do these days. That is not the case here. I agree with the Court of Appeal’s acceptance in **West Edmonton Mall** that “reasonable” in relation to legal fees following an action means costs of the action on a party-and-party basis, as may be assessed.

D. Other Costs Considerations in this Case

[16] I deal with some of the other arguments put forward by counsel:

- I agree that *Calderbank* offers, even though not complying with the Rules of Court, may be nevertheless a relevant consideration: **Mahe v Boulianne**, 2010 ABCA 74 at para 10, citing **Fullowka v Royal Oak Ventures Inc.**, 2008 NWTCA 9 at paras 23-5. See also **EAD Property Holdings (103) Corp v Greyhound Canada Transportation ULC**, 2015 ABQB 425 at paras 35-37 and **Prevatt v Prevatt**, 2024 ABKB 386 at paras 58-59. Here, Ms. Dhillon was served with a succession of such offers and declined them all. Because of the number of offers made, any of which would have been a more favourable outcome to her and therefore reasonable, I think YegPro is entitled to some degree of enhancement. The fact that Ms. Dhillon made counteroffers that were not accepted does not detract from the fact that she allowed several *Calderbank* offers to go by the wayside.
- Even if I accept YegPro’s submission that Ms. Dhillon’s conduct was obstructive during the litigation, and reject her explanations, the conduct still does not rise to the level of “reprehensible, scandalous or outrageous conduct in the course of litigation” so as to attract solicitor-client costs: **Goldstick Estates (Re)**, 2019 ABCA 508 at para 24 citing **Young v Young**, 1993 CanLII 34 (SCC), [1993] 4 SCR 3 at p. 134. See also **Sunridge Nissan Inc v McRuer**, 2023 ABCA 128 at para 48; **Condo Corporation No. 0410106 v Medicine Hat (City)**, 2020 ABCA 43 at para 3.
- Ms. Dhillon did succeed in recovering her unpaid commission as pled in her counterclaim. But it was always conceded by YegPro, from the very start. This does not amount to “mixed success” or a credit to her.
- I will accept that the COJ Justice, of her own motion and not on anyone’s request, sent the trial to King’s Bench. However, the COJ Justice’s reason for doing so was Ms. Dhillon’s invocation of a form of defence based on the *Real Estate Act* which ultimately turned out to be immaterial. YegPro was still put to the cost of dealing with the matter in both levels of court.

The transfer of the matter from the COJ to King's Bench will have some effect on costs.

- A party's financial circumstances neither immunize that party from a costs award nor dictate a reduction of a costs award: *GO Community Centre v Clark Builders and Stantec Consulting Ltd*, 2020 ABQB 203 at para 208; *Anderson v Canada Safeway Ltd*, 2005 ABCA 6 at para 3; *MDS v DSM*, 2020 ABQB 749 at para 13.

[17] Having said that, I observe, as the Court of Appeal does in *Goldstick Estates (Re)* at para 31 that "costs awards should always be proportional to the interests involved." This was a relatively low-dollar civil case that should have dealt with in the COJ. Rule 10.42, cited by Ms. Dhillon, inherently invokes proportionality as a guiding principle in cases where the amount sued for falls within the COJ jurisdictional limit. The amount of full indemnity legal fees requested by YegPro (not including disbursements or GST) represents, by my estimate, about 130% of the value of the judgment.

E. Rule 10.42

[18] Rule 10.42 is not one of the more renowned Rules in the book. It reads:

Actions within Court of Justice jurisdiction

10.42(1) This rule applies only to actions the subject-matter of which is within the jurisdiction of the Court of Justice.

(2) Despite anything in this Division or Schedule C, unless the Court otherwise orders,

(a) in the case of an action brought in the Court of King's Bench for which the amount sued for or the amount of the judgment or order does not exceed the amount for which the Court of Justice has jurisdiction under *section 9.6* of the *Court of Justice Act*, the costs to and including judgment or order must be assessed, if at all, at not more than 75% of the amount specified in Column 1 of the tariff in Division 2 of Schedule C;

(b) in the case of an action described in clause (a), post-judgment matters are to be assessed, if at all, at not more than 100% of the amount specified in Column 1 of the tariff in Division 2 of Schedule C.

[19] The application of Rule 10.42, like all of the costs Rules, is a matter of discretion. The limit found in Rule 10.42 is a prescribed guideline. Accordingly, I would need to have a justifiable reason to depart from the guideline. I conclude that something in the nature of one or more unusual or aggravating circumstances must exist to lead me to exercise discretion outside of the guideline that normally governs this category of cases.

[20] As I found above, in this case "reasonable legal fees" in para 5(c) of the ICA should be interpreted as meaning party-and-party costs as assessed under the Rules of Court. Therefore, Rule 10.42 is a necessary part of the analysis.

[21] To me, the rationale underlying Rule 10.42 is to penalize a plaintiff who, where there is concurrent jurisdiction between the COJ and King's Bench, chooses to conduct the action in the more elaborate and expensive forum. The Rule encourages timely, cost-effective, and expedient resolution or adjudication where the dollar value of the claim falls within the COJ's jurisdiction. It discourages a plaintiff from using the higher costs of King's Bench to intimidate the other party into submission.

[22] That rationale does not apply in this case. YegPro chose to conduct its action in the COJ. The matter ended up in the hands of King's Bench because of the COJ's own decision to send it there. One could argue that the action was not "brought" in King's Bench as it was started in the COJ and so the Rule does not apply at all but that is a semantic argument only. I could equally argue that YegPro still brought its action in King's Bench, even if involuntarily. The fact remains that some of the proceedings and the trial occurred in King's Bench.

[23] I find that Rule 10.42 applies, but I exercise discretion to deviate from the guideline amounts. My reason for doing so is that YegPro commenced its action in the COJ but found itself (not by choice) in King's Bench, an unusual circumstance justifying departure from the Rule. Nonetheless, I must still have due regard to the overall principle of proportionality, particularly in light of the relatively small dollar value at stake in this litigation.

F. Summary and Conclusion

[24] In summary, I take into account:

- my duty to act judicially,
- the lack of clarity in the contractual wording per *West Edmonton Mall* at para 23;
- the principle of proportionality,
- the need to encourage early settlement of litigation through meaningful settlement offers;
- the need to provide some level of indemnity to the successful party,
- the purpose and objective of promoting the deterrent and incentive effects of costs awards, and
- the exercise of discretion in applying of Rule 10.42.

[25] In the result, I award costs to YegPro:

- for steps taken in the COJ under the COJ Tariff;
- for steps taken in King's Bench up to and including trial at the rate of 75% x 1.5 of Column 1 of Schedule C;
- for any post-judgment steps taken in King's Bench at the rate of 100% x 1.5 of Column 1 of Schedule C; and
- actual disbursements and applicable GST.

[26] The enhancement of 1.5 x applicable to the Column 1 costs reflects the effect of rejecting the *Calderbank* offers.

[27] Finally, if there continues to be disagreement about the amount awarded in para 76 of the Decision, *either* party may apply to the Assessment Officer for a final determination. The Assessment Officer may, if required, make a ruling on or determine how to deal with the redactions in the account.

Heard on the 8th & 9th day of July, 2026.

Dated at the City of Edmonton, Alberta this 23rd day of July, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

Ryan Henriques, Prowse Barrette LLP
for the Plaintiff/Defendant by Counterclaim

Girish Goyal, Super City Law
for the Defendant/Plaintiff by Counterclaim