

# Court of King's Bench of Alberta

Citation: 102125001 Saskatchewan Ltd v Hutchings, 2024 ABKB 110

Date: 20240227  
Docket: 2103 15849  
Registry: Edmonton

Between:

**102125001 Saskatchewan Ltd.**

Plaintiff

- and -

**Alphonse Hutchings, Suan Hozjan, Clifford Maron, Lucille Turpin also known as Lucile Turpin, Hault Construction Co. Ltd., Hutchings Concrete Alberta Inc., CSM Consulting Inc., and 1315897 Alberta Ltd.**

Defendants

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**Costs Endorsement  
of the  
Honourable Justice M. J. Lema**

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## ***I. Introduction***

[1] This is a costs decision following *102125001 Saskatchewan Ltd v Alphonse Hutchings*, 2023 ABKB 630, which upheld 102's right to enforce certain loans despite enforcement by a non-Alberta credit union (or its assignee) breaching a provision of the *Alberta Credit Union Act*.

[2] 102 seeks loan-contract-based solicitor-client legal fees of \$38,0003.50, plus disbursements and GST, for total costs of \$42,677.07.

[3] The borrowers resist, pointing in part to the contract's own reference to "reasonable" solicitor-client costs and the absence of reasonableness-gauging evidence. They propose Schedule-C-based costs (with a multiplier of 2.5) amounting (with disbursements and GST) to \$17,984.25.

[4] I find for the borrowers, as explained below.

## II. Analysis

- [5] 102 is entitled to costs as proposed by the borrowers, for these reasons:
1. assuming that s. 8 of each lease (“Lessee Default”) would otherwise entitle 102 to solicitor-client-level costs here, it entitles 102 to “reasonable legal fees and costs” at that level;
  2. however, 102 did not provide sufficient evidence with which to gauge the reasonableness of the total legal fees claimed by it (\$38,003.50), instead providing only the bottom-line fees amount for five noted invoices and a brief list (“additional context”) of some of the tasks performed. And this despite a follow-up request by the borrowers for more (gauge-reasonableness) information about the legal fees (with appropriate redactions of the invoices), which 102 declined to provide;
  3. without evidence of all the tasks reflected in a given invoice, the person(s) who performed them and their billable rates, the amount of time spent by a given person on a given task, the discounts apparently applied, and other “reasonableness factors”, I cannot, and neither could an assessment officer, gauge the reasonableness of the claimed fees;
  4. where solicitor-client costs are sought (even without an express “reasonable” ceiling), reasonableness-gauging evidence must be provided: *Barkwell v McDonald*, 2023 ABCA 87 (paras 55-61). See also *Petropoulos v Petropoulos*, 2023 ABCA 193:  

**... A party seeking costs on this basis cannot simply assert a quantum of the fees charged by their counsel. The overriding issue is proportionality between the quantum of costs claimed and the issues and amounts involved in the litigation.** Further, the party seeking solicitor-client costs should also provide the court with an assessment of the fees that would be ordered under Schedule C, which provides a rough measure of how much should have been incurred: *Barkwell v McDonald*, 2023 ABCA 87 at paras 53-61; *Sunridge Nissan Inc v McRuer*, 2023 ABCA 128 at para 57. Here, none of the underlying information was provided. Absent was a proposed Bill of Costs on either a solicitor-client basis or under Schedule C. [para 18] [emphasis added] [As noted, 102 provided only a skeletal solicitor-client bill of costs (total of five invoices); it provided no Schedule-C-comparator bill of costs]
  5. in para 139 of 2023 ABKB 630, I invited costs submissions on “[t]he scale (Schedule C, solicitor-client, or otherwise) and quantum of those costs [via] letter (maximum 2.5 pages, excluding any supporting materials e.g.

cases, draft bill of costs, etc)” i.e. 102 was directed, if it sought solicitor-client costs, to provide supporting materials, including a draft bill of costs, which (in light of *Barkwell* and *Petropoulos*) had to include the noted “gauging” information; and

6. my costs direction contemplated the parties providing one costs submission each i.e. not a two-stage (or multi-stage) process. Per *Earth Drilling Co Ltd v Keystone Drilling Corp*, 2023 ABKB 17 (paras 26-30), the door for further costs evidence has closed.

[6] That leaves the costs amount proposed by Ms. Finlay in her November 24, 2023 letter (\$17,984.25 – fees and disbursements), anchored in Schedule C, Column 1. Per her, with no “amount” directly at issue in the application (instead, at least centrally, a declaration as to lease enforceability), Column 1 applies: see Schedule C, ss 1(4) (“Framework”).

[7] While one might argue that the additional (“enforcement mechanics”) relief granted to 102 (paras 134-138 of the judgment) moved 102 within the “amount” zone (i.e. beyond purely declaratory relief), 102 did not offer any alternative submissions e.g. on how Schedule C should be applied if it governed costs.

[8] The borrowers also noted that the Schedule C (Column 1) fees (\$6,345), multiplied by 2.5 (yielding \$15,862.50), equal approximately 40 per cent – actually 41.7 per cent -- of the solicitor-client legal fees claimed by 102 (\$38,003.50). Assuming the latter amount to be reasonable, 102 is receiving an acceptable level of party-and-party costs recovery, per *McAllister v Calgary (City)*, 2021 ABCA 25:

In Alberta, the weight of authority is that **party and party costs should normally represent partial indemnification of the successful party at a level approximating 40-50% of actual costs** [cited cases omitted] [para 41] [See also *Barkwell* (cited above) at para 58.]

### III. Conclusion

[9] With 102 providing insufficient evidence to allow reasonableness gauging of its claimed solicitor-client costs, the borrowers proposing a reasonable amount of party-and-party-scale costs, and 102 offering no alternative submissions on party-party costs (or otherwise), I accept the borrowers’ approach and approve total fees and disbursements for 102 of \$17,984.25.

[10] I also award costs of this costs exercise to the borrowers of \$984.25, to be offset against 102’s costs award, leaving net costs payable to it of \$17,000.

Heard by way of written submissions received on November 17 and 24, 2023.

**Dated** at Edmonton, Alberta this 27<sup>th</sup> day of February, 2024.

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**M. J. Lema**  
**J.C.K.B.A.**

**Appearances:**

John Regush

Dentons Canada LLP

For the Plaintiff / Applicant

Shauna Finlay

Reynolds Mirth Richards & Farmer LLP

For the Defendants / Respondents