

# **Court of King's Bench of Alberta**

**Citation: JH Drilling Inc v Barsi Enterprises Ltd, 2025 ABKB 456**

**Date:** 20250731  
**Docket:** 1503 13709  
**Registry:** Edmonton

Between:

**JH Drilling Inc**

Plaintiff

- and -

**Barsi Enterprises Ltd, Don Goulet,  
and Darcy Underwood, carrying on business as Misty Valley Trucking**

Defendants

- and -

**Barsi Enterprises Ltd**

Plaintiff by Counterclaim

- and -

**JH Drilling Inc and John Harms**

Defendants by Counterclaim

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**Costs Endorsement  
of the  
Honourable Justice L.K. Harris**

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[1] The Plaintiff, JH Drilling Inc. (“JHD”), has brought an action against the Defendants for breach of contract. The Defendants, Barsi Enterprises Ltd. (“Barsi”) and Don Goulet (“Goulet”), have in turn issued a counterclaim against JHD for, *inter alia*, misrepresentation.

[2] After several years of litigation, the file was directed to case management. JHD applied for summary judgment and either striking or for summary dismissal of the counterclaim pursuant to the *Alberta Rules of Court*, A/R 124/2010 (the “*Rules*”) which application I heard in my role as Case Management Justice. I dismissed the Application with written reasons and directed that Barsi was entitled to its costs of the application. If the parties could not agree on the amount of costs to be paid, they could make submissions to me in writing, no longer than 3 pages, within 30 days from the date of this decision: *JH Drilling Inc v Barsi Enterprises Ltd*, 2025 ABKB 288.

[3] The parties have been unable to agree on the quantum of costs. This is my decision on the issue of the costs that Barsi is entitled to.

**I. Barsi’s Position on Costs**

[4] Barsi seeks enhanced costs of \$15,000.

[5] Barsi argues that JHD’s Statement of Claim advances a claim exceeding \$4.0 million, meaning that costs should be assessed based on Column 5 of Schedule “C” of the *Rules*. Utilizing Column 5 alone would result in costs of \$6,750. However, Barsi points to the wide discretion given to the Court to adjust Schedule “C” costs if it appears that those costs would be inadequate and says that enhanced costs are appropriate in this case. The amount of the claim alone is double the \$2.0 million threshold required for Column 5 costs. The Plaintiff’s materials filed in relation to the Summary Judgment Application were voluminous, repetitive and lacked clarity, such that it required a significant non-productive time to respond to. It should have been “obvious” that this matter was not appropriate for a summary judgment application and yet, JHD pursued that Application. These factors all weigh in favour of enhanced costs in the amount of \$15,000.

**II. JHD’s Position on Costs**

[6] JHD argues that costs in the amount of \$4,725 are reasonable. JHD says that the amount of the claim was not \$4.0 million, but instead, \$560,000, because it had made an offer of settlement, along with several “concessions” to Barsi in advance of the Summary Judgment Application, which were not accepted by Barsi. If one concludes that the value of the claim is \$560,000 then the appropriate column to use to assess costs is Column 3. JHD also argues that this matter is not nearly as complex as is argued by Barsi, and that \$4,725 in costs is reasonable.

### III. Analysis

[7] The facts are fully set out in my Summary Judgment Decision and so I will review only those facts necessary to this costs decision.

[8] Determining the quantum of costs to be awarded is inherently discretionary. My exercise of discretion must however be based upon the principles of reasonableness, fairness, balance and equity: *JBRO Holdings Inc v Dynasty Power Inc*, 2022 ABCA 258 at para 26, *Rule* 10.31. The non-exhaustive list of factors enumerated in *Rule* 10.33 help guide my discretion. That *Rule* states:

10.33(1) In making a costs award, the Court may consider all or any of the following:

- (a) the result of the action and the degree of success of each party;
- (b) the amount claimed and the amount recovered;
- (c) the importance of the issues;
- (d) the complexity of the action;
- (e) the apportionment of liability;
- (f) the conduct of a party that tended to shorten the action;
- (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

[9] *Rule* 10.33(2) also directs me to consider other factors, including the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action, a party's denial of or refusal to admit anything that should have been admitted, whether any application, proceeding or step in an action was unnecessary, improper or a mistake, an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document, or any offer of settlement made.

[10] I have already concluded that as Barsi successfully defended JHD's Summary Judgment Application, Barsi is entitled to its costs, in accordance with the default rule which is that the party who is substantially successful receives costs: *McAllister v Calgary (City)*, 2021 ABCA 25 at paras 17 and 21.

[11] I will therefore begin with the issue of the amount of the claim advanced.

[12] The amount of the claim as advanced within the originating document sets the "tone" for the amount of costs to be awarded. The greater the amount claimed, typically the more it costs to defend: *Geophysical Service Incorporated v Canadian Natural Resources Limited*, 2025 ABKB 60 at para 13. This was explained in *Jordan v Power*, 2002 ABQB 875 at para 26:

The policy which underlies the establishment of different columns is, presumably, that litigants are expected to take the amount at stake into account in determining what reasonable steps should be taken in the litigation: a litigant would be expected to prepare differently for a trial in which \$10,000 is at stake from one in which \$1,000,000 is at stake. The awarding of costs is sufficiently discretionary so that larger costs could be awarded for the \$10,000 trial if, in a specific

situation, the amount at stake was not a reliable guide to the amount of work that could reasonably be expected.

[13] Costs awards should always be proportional to the interests involved: *Goldstick Estates (Re)*, 2019 ABCA 508 at para 31.

[14] JHD points to “concessions” and an offer of settlement as being factors I should take into account when identifying the appropriate column to use under Schedule “C”, in essence saying that had some been accepted by Barsi then the amount of the claim advanced would have been far less than what was claimed in the Statement of Claim.

[15] I conclude that neither the offer nor the proposed “concessions” assist JHD in this case.

[16] The *Rules of Court* require parties to negotiate in an attempt to reach a resolution of their dispute: *Rules* 1.2(2) and 1.2(3). The *Rules* also provide for consequences in the event that a reasonable offer made by one party is not accepted by another: *Rule* 4.29. Parties who refuse to consider reasonable offers must bear the consequences of that decision, but the key to this provision is that the party who advanced the offer must show that it beat the offer – whether at trial or upon an application.

[17] That is not the situation in this case. Here, JHD purported to advance an offer of settlement and “concessions”. However, JHD failed to beat those offers in that it was entirely unsuccessful in its Summary Judgment Application. I therefore see no basis to consider the offer of settlement or “concessions” in determining the appropriate column to use under Schedule “C”.

[18] In my view, the appropriate figure to use is the amount claimed pursuant to the Statement of Claim, which exceeds \$4.0 million. JHD advanced a claim in that amount within the Statement of Claim. While JHD may not now feel that this amount is a realistic assessment of the value of its claim, the risk of advancing an exaggerated claim must rest with JHD as the Plaintiff in control of the amount claimed. If JHD feels that this was not the appropriate amount, then it ought to have amended its Statement of Claim to reflect the appropriate amount or properly assessed its claim to begin with.

[19] The starting point therefore is that Barsi’s costs of the Application must begin with a consideration of the costs awarded under Column 5 of Schedule “C”. In my view, the remainder of the factors listed under *Rule* 10.33(1) and (2) do not cause me to conclude that all things considered, the starting point should be anything less than Column 5.

[20] Whether or not Barsi is entitled to some form of enhanced costs also depends upon the other factors listed in *Rule* 10.33.

[21] This Action centres upon the interpretation of a Royalty Agreement between JHD and Barsi, and whether Barsi is entitled to treat the Royalty Agreement at an end because the land which formed the subject of the Royalty Agreement was “exhausted” of usable gravel. While I recognize that there is a myriad of ways to present evidence and argue such a case, the record put forward by JHD within the context of this Summary Judgment Application rendered the Application far more complex than was necessary. As I stated in the Summary Judgment Decision, the Application itself set out 11 different issues to be determined, some of which were not clearly articulated, some of which were duplicative. This was not assisted by the materials filed in support of the Application, which were extremely voluminous and complex, and some of which were irrelevant to the issues before me. In short, it appeared to me that JHD had put forward every shred of information it had, sometimes in multiple formats, without carefully

considering whether it was necessary or relevant to its application. While I want to be clear that at no time did JHD engage in conduct which could be described as being in bad faith or reprehensible, or make allegations such as fraud which could attract significant enhanced costs, it is clear that JHD's manner of presentation was highly inefficient and rendered this Application far more complex than necessary, requiring a significant amount of time to respond to on the part of Barsi.

[22] In my view, given the directions given to parties under *Rule* 1.2, considered to be a "foundational" *Rule*, JHD's conduct requires some form of enhanced costs.

[23] Barsi argues that defending this Application required more than 70 hours of counsel time. However, Barsi has not presented any evidence in support of this, and I have no way of assessing the reasonableness of this estimate. I cannot use this as a measure of appropriate enhanced costs.

[24] Instead, I choose to use a multiplier approach. In my view, given the nature of the Application, the conduct of JHD, and the amount claimed, it is appropriate to award double Column 5 costs to Barsi for the Summary Judgment Application.

[25] Single Column 5 costs for this Application amount to the following:

Applications requiring written briefs:	\$2,700
<u>Oral Questioning under part 5:</u>	<u>\$4,050</u>
	\$6,750

[26] Applying a multiplier of 2 results in total costs of \$13,500.

#### **IV. Conclusions**

[27] Barsi is entitled to costs in the total amount of \$13,500, to be paid by JHD forthwith.

Written submissions provided on the 5<sup>th</sup> and 9<sup>th</sup> days of June, 2025.

**Dated** at the City of Edmonton, Alberta this 31<sup>st</sup> day of July, 2025.

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**L.K. Harris**  
**J.C.K.B.A.**

#### **Appearances:**

John Harms  
JH Drilling Inc  
for the Plaintiff/Defendants by Counterclaim

Benito Guido  
Odishaw & Guido  
for the Defendants/Plaintiff by Counterclaim