



BROWNLEE LLP
Barristers & Solicitors

Inflation May be Considered in Costs Awards in Alberta



Christianne Murphy

We have seen a recent increase in the number of Plaintiff's counsel requesting an inflationary adjustment on the Bill of Costs. A Bill of Costs is based on Schedule C of the *Alberta Rules of Court*, which specifies the lawyer's fees that may be recovered as costs by one party from another.

The argument behind applying an inflationary adjustment is that the tariff in Schedule C was set in 1998 and the Schedule has never been revised for inflation. Plaintiff's counsel are now frequently arguing that Schedule C fees should be increased by an inflationary factor to reflect inflation between 1998 and the date of settlement. There have been some recent developments in the law in this area, and we wanted to take this opportunity to provide you with a brief update.

In the past, there have been inconsistent judgments as to whether an inflationary adjustment should be applied. For many years, it was successfully argued that it was inappropriate to apply an inflationary factor. The court found that it was up to the legislators, not the courts, to determine an appropriate Schedule C and to revise it if necessary. The success of this argument relied on the fact that the new *Alberta Rules of Court* (in force on November 1, 2010), did not change Schedule C.

A line of more recent decisions including *Geophysical Service Incorporated v. Falkland Oil and Gas Limited*, 2019 ABQB 314 and *Athabasca Minerals Inc. v. Syncrude Canada Ltd.*, 2018 ABQB 551, discuss a change in the court's attitude towards inflation to consider what is reasonable to ensure fairness. Schedule C contains presumptive amounts for costs and the court may still exercise its discretion over costs. The re-enactment of Schedule C in 2010 did not limit the court's discretion to set costs. Factors the court may consider in making a costs award include: the degree of success of each party; the amount claimed and recovered; the importance of the issues; the complexity of the action; the apportionment of liability; and the conduct of a party that tended to shorten the action.

There are a number of different ways the court may choose to adjust Schedule C depending on whether the final total is "reasonable". Multiplying for inflation is one way the court can reach a reasonable figure. Other possible methods include: using higher column; multiples of a column; extra lump sums; or some form of solicitor-client costs. In some recent cases the court used Schedule C with an inflationary adjustment as a way to ensure fairness. In cases where an inflationary adjustment is used, the court prefers evidence of inflation. However, in *RVB Managements Ltd. v. Rocky Mountain House (Town)*, 2015 ABCA 304, the Bank of Canada online Inflation Calculator was deemed an appropriate tool for determining the applicable level of inflation to apply.

If you have any questions with respect to this bulletin, please contact Christianne Murphy by email at cmurphy@brownleelaw.com or by phone at: (403) 260-1463.

CALGARY

7th Floor
396 – 11th Avenue S.W.
Calgary, AB T2R 0C5
T: (403) 232-8300
F: (403) 232-8408

Toll Free: 1-800-661-9069

EDMONTON

2200 Commerce Place
10155 – 102 Street
Edmonton, AB T5J 4G8
T: (780) 497-4800
F: (780) 424-3254