

QUEEN'S BENCH FOR SASKATCHEWAN

Date: 2018 12 28
Docket: QBG 2911 of 2018
Judicial Centre: Regina

BETWEEN:

JUNE LEDREW, ROBERT SCHMIDT AND
DEVON HACK

APPLICANTS

- and -

COUNCIL OF THE RURAL MUNICIPALITY OF
MCKILLOP NO. 220

RESPONDENT

Counsel:

Deron A. Kuski, Q.C. and Milad I. Alishahi
Merrilee Rasmussen, Q.C.

for the applicants
for the respondent

FIAT
DECEMBER 28, 2018

KEENE J.

[1] This application started out as an application to quash a number of bylaws passed by the respondent. The principle concern of the 400 or so rate payors (see Brief of applicant dated December 14, 2018 at para 61) behind this action was that the respondent illegally passed the taxation bylaws before council had passed its budget. Perhaps of even more concern was the large increase in taxation. This all appears to have taken place in the late summer or early fall of 2018.

[2] The high level of taxation alarmed the applicants (who it seems represent the 400 rate payors) and they retained MLT Aikins LLP. Correspondence went back and forth between lawyers. However despite a reconciliatory tone of sorts from the respondent, the applicants pressed on and served the application with a return date of November 1, 2018. The application was adjourned by consent to November 13, 2018. From that point on the applicants contested any further adjournments but the application was adjourned to December 20, 2018. By that date the original controversy had become moot – since the respondent had taken steps to remedy the applicants' concerns. In addition, during this time the respondent had to deal with considerable turbulence and change (i.e. change of administrator, appointment of an inspector and then in due course a supervisor and an election with a resulting new constituted council).

[3] The issue is now costs. The applicants state that they have a legal bill of over \$58,000 occasioned by the work of their lawyers. The applicants request that they receive costs fixed at \$55,000.00.

[4] The respondent resists such an award of costs but does concede that even though the contest is now moot and there was actually no argument presented or adjudication; costs could still be awarded. However it balks at the payment of \$55,000 which it characterizes as a thinly veiled request for solicitor/client costs. The respondent does agree costs could be fixed but the costs should be assessed on the basis of a review of the usual tariff of costs.

[5] In reviewing the file record, I find that while this appears to have been an emotionally charged piece of litigation, nothing really stands out as

extraordinary in either the issues or the complexity of argument or the affidavit material filed by the applicants. In short, it was a chambers application that actually resolved itself before argument.

[6] The starting point (since I agree with the respondent the amount of costs requested almost mirrors the actual legal bill) is found in *Hope v Pylypow*, 2015 SKCA 26, 457 Sask R 55 where Chief Justice Richards stated:

[47] The exceptional nature of solicitor-client costs is well known. The framework principles which govern their award was outlined by this Court in *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246. There, Jackson J.A. writing for the Court at para. 118, summarized those principles as follows:

...

1. solicitor and client costs are awarded in rare and exceptional cases only;
2. solicitor and client costs are awarded in cases where the conduct of the party against whom they are sought is described variously as scandalous, outrageous or reprehensible;
3. solicitor and client costs are not generally awarded as a reaction to the conduct giving rise to the litigation, but are intended to censure behaviour related to the litigation alone;
4. notwithstanding point 3, solicitor and client costs may be awarded in exceptional cases to provide the other party complete indemnification for costs reasonably incurred.

[7] In analyzing this application against the above background in *Siemens v Bawolin*, 2002 SKCA 84, [2002] 11 WWR 246 [*Siemens*], I find that this case would not have qualified for solicitor/client costs if requested. As indicated I am aware that this is not an application for such, but the

analysis is still useful. Firstly I have to consider this request only in "rare and exceptional cases". I do not find on the basis of the record before me that this case reaches that level.

[8] Secondly, I have to consider whether the respondent's conduct was so bad as to warrant solicitor/client costs. I do not find that this is the case. Understandably council's actions were a concern to some of the rate payors. Their taxes were about to go up alot. However council does not appear to have been acting maliciously or with the *mens rea* to engage the above descriptors in *Siemens*. Council appears to have essentially sought and received professional advice that in hindsight may have been incorrect.

[9] Thirdly, I find nothing in the conduct of the respondent after the application was served (or for that matter in the days before) rose to the level that required "censure". Certainly council could have acquiesced to the demand by the applicants to consent to the quashing of the bylaws. However under the circumstances set out above, the respondents appear to have been trying to find the right course to take and were seeking further legal and professional advice along with intervention from the Provincial government. I cannot see there being any bad behaviour related to the litigation alone that would require the sanction of solicitor/client costs. The requesting of adjournments were not unreasonable under the circumstances. In short, I do not find the level of fault during the litigation to warrant solicitor/client costs.

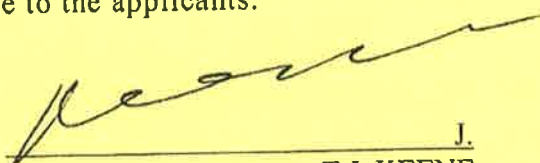
[10] As indicated above, I do not find this to be an exceptional case and I do not find that the applicants should receive "complete indemnification

for costs reasonably incurred". Again I acknowledge the applicants are not asking for complete indemnification.

[11] Here the applicants do not actually ask for solicitor/client costs. I find that they come pretty close to that. What they do point to is a number of other cases in which sizable amount of costs were fixed. The cases referred to me are not similar to this case. Those cases were much longer and protracted and they bear little resemblance to this chambers application. Quite frankly this Court routinely has before it judicial reviews and summary judgment applications that are more involved and result in an actual decision and the successful litigant does not seek or receive fixed costs at the level asked here. Accordingly, even though there are some cases where large amounts of costs were fixed, that does not mean the applicants are eligible for the same consideration in this case.

Conclusion

[12] Despite the well-presented argument on behalf of the applicants for fixed costs of \$55,000, I find that I am not persuaded that this is the type of chambers application requires such an extraordinary award. I am in agreement with the respondent that costs should be awarded in the usual fashion based on a review of the tariff. I will exercise my discretion and fix costs which is set at a total of \$1,500 payable to the applicants.



T.J. KEENE