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COURT OF QUEEN'S BENCH FOR SASKATCHEWAN	
JUDICIAL CENTRE	REGINA
APPLICANTS	JUNE LEDREW, ROBERT SCHMIDT and DEVON HACK
RESPONDENT	COUNCIL OF THE RURAL MUNICIPALITY OF MCKILLOP NO. 220

BRIEF OF LAW ON BEHALF OF THE APPLICANTS
(Re: Costs)

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I. INTRODUCTION

1. The only issue left to be determined by this Honourable Court is the issue of costs. Prior to bringing this Application, the Applicants gave the Rural Municipality of McKillop No. 220's (the "RM") ample opportunity to take the steps necessary to correct the RM's failures with respect to the 2018 Tax Bylaws. The RM's position at that time was that its hands were tied. Only after this Application was brought did the RM realize the merits of the Applicants' argument and conversely their failures. The RM requested two adjournments to implement their strategy to correct the RM's admitted failure to comply with *The Municipalities Act*, SS 2005, c M-36.1 [*The Municipalities Act*] with respect to the 2018 Tax Bylaws. Those steps have now been taken by the RM.

2. Rather than consenting to the Applicants proposals prior to this Application being brought, or consenting to the Application once it was brought, the RM asked for two adjournments (one by consent and one strongly opposed) to provide the RM time to render the Application moot by correcting the failures identified by the Applicants and reissuing Tax Notices. However, as the facts of the case demonstrate, the Applicants, who represent a much a larger group of ratepayers, went through a great deal of time, expense and effort to demonstrate the RM's failures. It was only after the Application was brought and adjourned two times that the RM took corrective measures. In these circumstances costs should be awarded at a fixed amount of $55,000 representing less than the actual costs incurred by the Applicants.

II. ISSUES

3. The issues arising in this brief are:

   (a) What quantum of costs should be awarded in this case?

III. BACKGROUND

4. On August 10, 2018, Council for the Rural Municipality of McKillop No. 220 (the "RM") passed its 2018 Tax Bylaws (the "Tax Bylaws") which imposed an over 100% tax increase on the residential ratepayers within the RM.[1] Not only did the Council impose an onerous tax burden on a subset of its residents, but the Tax Bylaws were also passed illegally because the Budget was not approved until August 13.[2] The tax increases posed a significant hardship to many ratepayers within the RM, especially those on fixed incomes.[3]

[1] Affidavit of Robert Schmidt at paras 19-22 and 27.
[2] Affidavit of Robert Schmidt at para 43.
[3] Affidavit of Lawrence Garry Dixon at Exhibit F.

5. Ratepayers immediately showed their displeasure at the tax increase. On the day the tax notices were released, a rally was held outside of the RM office in Bulyea. The Reeve stated that the RM would work to reduce the taxes. However, the Reeve later claimed that the RM was bound by the Tax Notices and could not reduce the tax rates. On September 4, 2018, the Interim Administrator gave a report to the RM which found that the RM had no options to reduce the tax burden.

6. As a result of the clear illegality of the Tax Bylaws, on September 13, 2018, counsel for the Applicants wrote to the RM requesting that the RM reconsider its Tax Bylaws and impose an alternative tax rate.[4] The Applicants' received a response from the RM's legal counsel stating that, while the RM wished to act, it was unable to do so because the tax notices had already been released.[5]

7. On September 27, 2018, a resolution was put before the RM which proposed that the RM would consent to an application to quash the Tax Bylaws. This resolution was rejected.[6]

8. The present Application was issued on October 11, 2018 and made returnable on November 1, 2018. Counsel for the Applicants sent a letter to the RM, attaching the Application and reiterating the Applicants' position that the RM had options to quash its Tax Bylaws.[7] The RM did not substantively respond to this letter.

9. On October 15, 2018, another resolution was put before the RM which would have the Council consent to the present Application. This resolution was rejected.[8]

10. On October 19, 2018, only after this Application educated the RM on the issue, counsel for the RM provided a legal opinion to the RM which stated that there was a way for the RM to amend its Tax Bylaws to reduce the taxes, despite previously providing an opinion that no such action was possible.

11. Counsel for the RM then sent a letter on October 23, 2018, requesting an adjournment of the Application until November 13, 2018. Counsel for the Applicants agreed to consent to the adjournment, but emphasized that counsel would only consent to one adjournment due to the time sensitive nature of the Application.[9]

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[4] Affidavit of Robert Schmidt at para 56.
[5] Affidavit of Robert Schmidt at para 57.
[6] Affidavit of Robert Schmidt at para 58.
[7] Supplemental Affidavit of June LeDrew at para 3.
[8] Supplemental Affidavit of Robert Schmidt at para 4.
[9] Supplemental Affidavit of June LeDrew at paras 5-7.

12. On November 7, 2018, counsel for the RM requested a further adjournment until December 18, 2018 because counsel had not yet received instructions from the RM on the matter, despite both counsel and the RM Council knowing about the Application well in advance of it being served.[10]

13. At the November 13, 2018 hearing, counsel for the RM made representations that the RM had given instructions to request an adjournment. There is no record of any such instructions. An adjournment was granted until December 20, 2018 because counsel for the RM had not filed any materials and the Honourable Mr. Justice Kalmakoff was hesitant to hear the Application without the opportunity to hear the RM's position.

14. During the intervening adjournment, on November 23, 2018, the RM introduced and passed Bylaw No. 367/2018 which repealed and replaced the Tax Bylaws, reducing the rate of taxes borne by the residential ratepayers and, effectively, granting the ratepayers of the RM the relief sought by the present Application.[11]

15. Furthermore, and importantly, **the reason given for repealing the Tax Bylaws was that amortization was erroneously included in the operating deficit of the Budget. The RM was notified of this error by counsel for the Applicants on September 13, 2018.**

16. The actions of the RM have resulted in increased costs being incurred by the Applicants and effectively granting the Applicants the relief sought without consenting to or defending the present Application.

IV. ARGUMENT

A. Elevated Costs Should be Awarded in this Case

17. The Court is granted a broad discretion to award costs in an application brought under section 358 of *The Municipalities Act* per subsection 358(5) which provides:

> (5) A judge of the court may quash the bylaw or resolution in whole or in part and may award costs for or against the municipality and determine the scale of costs.

18. In granting an award of costs, it is well settled that this Honourable Court has wide discretion to award whatever quantum of costs it deems appropriate and in doing so can consider whatever factors it deems relevant. In fact, Rule 11-1 of *The Queen's Bench Rules* is express in that regard:

> 11-1 Discretion of Court

[10] Supplemental Affidavit of June LeDrew at Exhibit E.
[11] Affidavit of Howard Arndt at Exhibit C.

(1) Subject to the express provisions of any enactment and notwithstanding any other rule, the Court has discretion respecting the costs of and incidental to a proceeding or a step in a proceeding, and may make any direction or order respecting costs that it considers appropriate.

(2) In exercising its discretion as to costs, the Court may determine:

(a) by whom costs are to be paid, which may include a successful party;

(b) to whom costs are to be paid;

(c) the amount of costs;

(d) the date by which costs are to be paid; and

(e) the fund or estate or portion of the fund or estate out of which costs are to be paid.

(3) In awarding costs the Court may:

(a) fix all or part of the costs with or without reference to the Tariff;

(b) award a lump sum instead of or in addition to any assessed costs;

(c) award or refuse costs with respect to a particular issue or step in a proceeding;

(d) award assessed costs up to or from a particular step in a proceeding;

(e) award all or part of the costs to be assessed as a multiple or a proportion of any column of the Tariff;

(f) award costs to one or more parties on one scale, and to another party or other parties on the same or another scale;

(g) direct whether or not any costs are to be set off; and

(h) make any other order it considers appropriate.

(4) In exercising its discretion as to costs, the Court may consider:

(a) the result of the proceeding;

(b) the amounts claimed and the amounts recovered;

(c) the importance of the issues;

(d) the complexity of the proceedings;

(e) the apportionment of liability;

(f) any written offer to settle or any written offer to contribute;

(g) the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding;

(h) a party's denial of or refusal to admit anything that should have been admitted;

(i) whether any step in the proceeding was improper, vexatious or unnecessary;

(j) whether any step in the proceeding was taken through negligence, mistake or excessive caution;

(k) whether a party commenced separate proceedings for claims that should have been made in one proceeding or whether a party unnecessarily separated his or her defence from that of another party; and

(l) any other matter it considers relevant.

19. There can be no doubt that costs must be awarded in favour of the Applicants. This is especially true in light of the comments offered by Neva R. McKeague & Christine Johnston, *Saskatchewan Queen's Bench Rules, Annotated* (Regina: Law Society of Saskatchewan Library, 2018) at pp. 575-576, with respect to the purpose of modern costs awards:

> Modern costs rules accomplish various purposes in addition to the traditional objective of indemnification. **Courts employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice – courts use costs awards so as to encourage settlement, to deter frivolous actions and defences, to discourage unnecessary steps in the litigation and to sanction unreasonable or vexatious behaviour. Courts may exercise their discretion on costs so as to ensure that ordinary citizens have access to the justice system when they seek to resolve matters of consequence to the community as a whole**: *British Columbia (Minister of Forests) v Okanagan Indian Band,* 2003 SCC 71; *Saskatchewan Regional Council of Carpenters, Drywall, Millwrights and Allied Workers v Saskatchewan Labour Relations Board,* 2013 SKQB 209; *Good Spirit School Division No. 204 v Christ the Teacher Roman Catholic Separate School Division No. 212*, 2018 SKQB 30.
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> [Emphasis added]

20. The test for solicitor-client costs was recently summarized by the Court of Appeal in *Hope v Pylypow*, 2015 SKCA 26 at para 47, 384 DLR (4th) 255, where it was 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] 11 WWR 246. There, Jackson J.A. writing for the Court at para. 118, summarized those principles as follows:
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> > …
> >
> > 1. solicitor and client costs are awarded in rare and exceptional cases only;
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> > 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.

21. While the above test sets a high threshold for solicitor-client costs, **the Applicants are not seeking solicitor-client costs** and are instead seeking a fixed sum of costs less than the costs

actually incurred. Therefore, the threshold for awarding these costs is less than that for awarding solicitor-client costs.

22. As will be examined below, many of these factors and the factors enumerated in Rule 11-1 weigh in favour of granting the Applicants costs in the fixed sum requested.

B. Relevant Factors to be taken into Consideration by the Court

(i) The Relief Sought has Effectively been Granted by the RM

23. Subrule 11-1(4)(a) provides that the Court may take into account the result of the proceeding. While the Application has not yet been heard, the RM has taken steps to grant the relief sought by the Applicants.

24. The traditional purpose of costs is to indemnify the successful party in pursuing a legal right, *British Columbia (Minister of Forests) v Okanagan Indian*, 2003 SCC 71 at para 19, [2003] 3 SCR 371. There is no reason on the facts of this case to deviate from this approach.

25. As the Court of Appeal stated in *Johnson v Erickson*, [1941] 3 DLR 651 (Sask CA):

> [5] **Where a plaintiff comes to enforce a legal right and completely succeeds and has been guilty of no misconduct there are no materials upon which the Court can exercise a discretion and the plaintiff is entitled to his costs**: *Cooper v. Whittingham* (1880) 15 Ch. D. 501, 49 L.J. Ch. 752; *Civil Service Co-op. Soc. v. Gen. Steam Nav. Co.* [1903] 2 K.B. 756, 72 L.J.K.B. 933; *Halsbury*, 1st ed., vol. 23, p. 179; *Edmanson v. Chelie* (1914), 7 W.W.R. 96, 29 W.L.R. 328, 7 Sask. L.R. 34; *MacMillen v. Taylor* [1932] 3 W.W.R. 264. A fortiori a successful defendant who has been guilty of no misconduct has a right to his costs. In *Ritter v. Godfrey* [1920] 2 K.B. 47, 89 L.J.K.B. 467, Lord Sterndale, M.R., at p. 470, states:
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> > "The principle as to the exercise of discretion is the same in the case of plaintiffs and defendants, but it is clear that considerations sufficient to justify a refusal of costs to a plaintiff are not necessarily sufficient in the case of a defendant, for the former initiates the litigation while the latter is brought into it against his will."
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> [Emphasis added]

26. By passing Bylaw 367/2018 on November 23, 2018, the RM has effectively granted the applicants the relief sought. Bylaw 367 repealed the impugned Tax Bylaws and replaced them with bylaws that decreased the tax rates and spread the burden borne by the residential ratepayers amongst the other classes of property within the RM.

27. The passing of Bylaw 367 was in the face of the present Application and consistent pressure that has been applied to the RM by the Applicants since September. The relief sought in the Application is substantially the same as the relief awarded by Bylaw 367. There is no doubt that the

result of the Application has been nothing short of a success. Therefore, this consideration weighs in favour of granting the Applicants' request for fixed costs.

(ii) The Issue of the Tax Bylaws is Very Important

28. Subrule 11-1(4)(c) states that the court can consider the importance of the issues decided in the litigation. The present Application is of great importance to the ratepayers of the RM and, therefore, justifies an award of costs in favour of the Applicants.

29. Implementing tax rates and collecting taxes is a crucial aspect of governance. Because of the importance of taxation to good governance, it is imperative that the proper procedures are followed by the governmental body to protect ratepayers from abuses of governmental power. The RM failed, and arguably continues to fail, to follow the proper procedures in implementing its Tax Bylaws. It is of the utmost importance that the RM follow the proper procedures.

30. The Legislature saw the importance of holding municipal governments accountable to ensure proper procedures are followed. In order for municipal governments to be properly held to account, the Legislature provided the opportunity for ratepayers in a municipality to participate directly in the democratic process by applying to quash municipal bylaws via section 358 of *The Municipalities Act*, SS 2005, c M-36.1. The Applicants have successfully held the RM to account on behalf of the ratepayers in the RM and ought not to bear the full burden of their costs.

(iii) The RM is Solely Liable

31. Rule 11-1(4)(e) provides that the Court may consider the apportionment of liability in the result.

32. The present Application was brought to remedy the improper passing of and undue hardship imposed by the Tax Bylaws passed by the RM. The Application was brought to hold the RM accountable for its failures. In no way are the applicants liable for the conduct of the RM in either the failings of the Tax Bylaws or the carriage of this case. As such, this factor weighs in favour of the Applicants request for fixed costs.

(iv) The Applicants have made Numerous Offers to Settle both the Application and the Costs Thereof

33. The RM has been afforded numerous opportunities to settle both the Application and the present issue of costs. The RM was afforded the opportunity to consent to quashing the Tax Bylaws as early as September 13. The RM then had the opportunity to approve two separate resolutions that would consent to the quashing of the Tax Bylaws.

34. Importantly, the proposed Resolution of October 15, 2018 was rejected because of language contained in the Applicants' Draft Order filed with the Application.[12] The position of the Applicants, as set out in the Draft Order, was negotiable. The RM, however, chose not to negotiate and instead rejected the opportunity to consent outright.

35. The Application could have been avoided or the proceedings could have been greatly shortened if the RM had accepted the offers to consent at an earlier date.

(v) The Conduct of the RM has Tended to Unnecessarily Lengthen the Proceeding

36. Subrule 11-1(4)(g) states that the court may take into consideration "the conduct of any party that tended to shorten or to unnecessarily lengthen the proceeding". Further, as stated in *Hope* at para 47, the purpose of solicitor-client costs is to censure behaviour related to the litigation. There is no doubt that the conduct of the RM has inappropriately lengthened the present proceedings.

37. The entirety of the proceedings could have been avoided had the RM consented to the Application. The RM was afforded numerous opportunities to consent to the Application but has instead incurred increased costs for both the Applicants and the RM, which costs will be paid by the ratepayers' taxes. While failing to concede to an Application does not in and of itself ground a claim for costs, the fact that the RM took steps to effectively grant the relief sought while still defending the Application justifies an award of costs.

38. The RM repealed and replaced its Tax Bylaws in the face of the present Application. This was the exact relief sought by the Applicants. The Applicants had sought the consent of the RM to take this course of action as early as September. Instead, the Applicants were forced to prepare materials for the Application and subsequent materials following each adjournment.

39. The RM also based its decision to repeal the Tax Bylaws on reasoning given to it by counsel for the Applicants in September. In the letter to the RM sent by the Applicants' counsel on September 13, the Applicants' counsel noted that the inclusion of amortization in the operating deficit was improper.[13] Bylaw 367 states that the mistake discovered in the Budget was that too much amortization was included and, as a result, the RM could "correct" the tax notices. In other words, the Application educated the RM about its failures and the RM used that knowledge to correct those failures rather than consent to this Application.

[12] Affidavit of Howard Arndt at para 23.
[13] Affidavit of Robert Schmidt at Exhibit P.

40. **The RM had the information that it relied upon to repeal the Tax Bylaws for over three months and did not act upon it until after the hearing had been adjourned a second time.** Counsel for the Applicants will now have prepared and appeared twice on this matter. This Application never needed to come before the Court and is only before this Honourable Court due to the conduct of this matter by the RM Council.

41. This factor clearly weighs in favour of granting the Applicant's request for fixed costs.

(vi) The RM has Refused to Admit the Tax Bylaws were Passed Illegally

42. *The Queen's Bench Rules* provide at subrule 11-1(4)(h): "a party's denial of or refusal to admit anything that should have been admitted" should be considered by the Court in making an award of costs. The RM Council has never admitted that the Tax Bylaws were passed illegally and only claims to have remedied an "error" in the tax notices.

43. In *Good Spirit School Division No. 204 v Christ Teacher Roman Catholic Separate School Division No. 212*, 2018 SKQB 30 at para 40 [*Good Spirit*], it was found that where a defendant takes a position that is "disingenuous", such a position can ground a claim that costs beyond the Tariff ought to be awarded. The RM has failed to refute the fact that the Tax Bylaws were passed illegally. The RM has therefore acted disingenuously and improperly by actively delaying the Application while seeking an alternative means of repealing the Tax Bylaws.

44. The RM passed the Tax Bylaws illegally by passing them prior to approving the 2018 Budget. The RM has not submitted evidence denying this and it remains uncontroverted that the Tax Bylaws were passed prior to adopting the Budget. This is directly contrary to subsection 155(2) of The Municipalities Act and constitutes clear grounds to quash the Tax Bylaws. Despite this, the RM continues to deny that the Tax Bylaws were illegal. This is evidenced by the failure of the Affidavit of Howard Arndt to address the uncontroverted fact that the Budget was passed on August 13, three days after the Tax Bylaws were approved.[14]

45. The RM found a questionable workaround to come to the same result as was sought by the Applicants. Furthermore, the RM has taken the position that the Application has had no bearing on the actions taken remedy the Tax Bylaws, despite the similarities between the result and the relief requested in the Application.

46. Again, this consideration weighs in favour of granting the Applicants fixed costs.

[14] Affidavit of Howard Arndt at paras 13-16.

(vii) The Proceedings have been Unnecessary Considering the Actions of the RM

47. The Court should consider whether any step in the proceeding has been unnecessary pursuant to subrule 11-1(4)(i). The entire proceedings have been unnecessary considering that the RM had all the information necessary to take the course of action it has chosen to follow.

48. An example of this issue arises in *Good Spirit* at pars 48-54 where the Government did not concede any issue while also failing to defend the issue. Notably, at para 54, Layh J. states: The Government did not discharge this burden of carefully considering the strength of its case. **It did not yield its position and, at the same time, did not mount an argument to defend it**." The present circumstances are directly analogous to this finding.

49. The RM chose to repeal the Tax Bylaws on November 23, a month after the Application was issued and served and two months after the RM was given the option to consent to quashing the Tax Bylaws. Furthermore, the RM knew since September 13 that it had improperly included amortization in its Budget. Considering the eventual result, the Applicants would not have had to incur the significant legal costs they have if the RM had taken steps to remedy the errors in the Tax Bylaws sooner or by consent. Instead, the Applicants have had to incur the costs of preparing the Application and materials following each adjournment while the RM has actively delayed the hearing of the present Application.

50. The RM has not addressed the clear illegality of its Tax Bylaws. Instead, the RM has worked diligently towards finding a backdoor route to granting the Applicants the relief sought without accepting any responsibility or liability for its own negligence.

(viii) The Adjournments in the Proceeding were Negligent Because of the RM's Failure to Obtain Legal Advice

51. Subrule 11-1(4)(j) requests that the Court consider "whether any step in the proceeding was taken through negligence, mistake or excessive caution." The adjournments in the proceedings resulted from the RM negligently failing to give instructions to counsel to defend the Application.

52. The RM was aware that an Application would be brought as early as September 13. Further, the Application had been served on the RM's legal counsel by October 15. Despite this, as stated above, the RM has failed to submit any materials with respect to the present Application. At the hearing date on November 13, counsel for the RM submitted that she had not received instructions to defend the present Application. Despite this, counsel for the RM has been instructed to provide a number of legal opinions in order to find an alternative method to repeal the Tax Bylaws without

addressing the Application. The Applicants should not be forced to bear the burden of unnecessarily incurred costs because the RM negligently failed to instruct legal counsel.

C. The Applicants Costs should be paid by the Respondents

53. The Court has the discretion to determine by whom costs are paid, to whom and the amount of the costs as set out in subrule 11-1(2). It is clear, in light of the above relevant considerations, that the Applicants costs must be paid by the RM. The only question that remains is the amount of costs to be paid.

D. A Lump Sum Costs Award is Fair in the Circumstances

54. Pursuant to subrule 11-1(3)(a) a costs award may come in the form of a lump sum.

55. It has long been accepted that the Court can grant lump sum costs awards: *Bain & Torrey v Eagle* (1914), 6 WWR 1551, 7 Sask LR 169 (CA) (CanLii) at para 6. Furthermore, the determination of fixing a lump sum costs award is a discretionary determination based on the particular facts of each case: *Kapeluck v Yablonski* (1997), 152 Sask R 231, 24 CELR (2d) 1 (CA).

56. When a judge exercises his or her discretion in awarding a lump sum cost award, the judgment will be upheld provided the judge does not misapply any governing principle or disregard a critical fact or consideration: *Stelter v Stelter*, 2012 SKCA 117, 405 Sask R 63. The above analysis of the relevant considerations which this Honourable Court should take into consideration makes it clear that this is the proper case for an award of lump sum damages.

57. Recently, the Court has shown a willingness to award fixed costs in an amount more closely resembling the actual legal costs incurred in an action, above the costs contained in the Tariff, see e.g.: *Good Spirit* ($810,087.75 in legal fees awarded), *Hailink Dent Removal Inc. v Kindersley Mainline Motor Products Limited*, 2018 SKQB 180 ($40,000 in costs awarded) and *Hill v Famhill Investments Limited*, 2017 SKQB 6 ($134,245.28 in costs awarded).

58. In the similar situation of *Goodtrack v The Rural Municipality of Waverley No 44*, 2013 SKCA 137, Mr. Goodtrack, succeeded in obtaining an order in the Court of Queen's Bench quashing a municipal bylaw expropriating a portion of his farm land. In consequence, he asked the Chambers judge to order the municipality to pay him the costs he had incurred in having the bylaw set aside. His solicitor-client costs, he said, amounted to $64,498.92. The Chambers judge declined to award him costs on a solicitor-client basis and instead, awarded him the fixed sum of $3,000 payable by the municipality. Mr. Goodtrack then brought the appeal related to the costs issue. The Court of Appeal reversed the Chambers Judge decision and awarded solicitor and client costs.

> [28] There was no finding by the Chambers judge that the Rural Municipality of Waverley acted in bad faith or that its conduct was scandalous, outrageous or reprehensible. **The question then becomes is conduct deserving of censure required in order for solicitor-client costs to be awarded under the fourth principle in *Siemens*?**
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> …
>
> [35] In reading *Siemens v. Bawolin* together with *Sask Water*, it is our view that **this is an appropriate case in which solicitor-client costs should be awarded.**
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> [Emphasis added]

59. The Applicants respectfully submit that for all of the foregoing reasons in consistent with the cases above this Honourable Court should award the Applicants costs fixed at $55,000 which is an amount representing less than the actual costs incurred by the Applicants.

V. CONCLUSION

60. The Applicants submit that they be awarded $55,000 in fixed costs, or costs to be assessed. The Bylaws have effectively been quashed, the RM is in the same position had they consented to this Application.

61. Finally, it is self-evident that the application that the Applicants brought was for the benefit of all ratepayers in the RM even though a fraction (about 400) of them participated and paid for the legal action to secure that remedy. By not awarding costs to these Applicants the message to the community would be that people need not participate in these important legal challenges because somebody else will take care of it for you. The end result should be that all ratepayers are put in the same position whether they directly participated in the challenge or not. A group of 400 should not bear the burden of the expense incurred for the direct benefit of 1800. That cost should be shared in the name of equity.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Regina, Saskatchewan, this 14th day of December, 2018.

MLT AIKINS LLP

Per:_____
Deron A. Kuski, Q.C., Counsel for the Applicants
June LeDrew, Robert Schmidt, Devon Hack

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VI. LIST OF AUTHORITIES

Tab	Cases
1.	*Hope v Pylypow*, 2015 SKCA 26, 384 DLR (4th) 255.
2.	*British Columbia (Minister of Forests) v Okanagan Indian*, 2003 SCC 71, [2003] 3 SCR 371.
3.	*Johnson v Erickson*, [1941] 3 DLR 651 (Sask CA).
4.	*Good Spirit School Division No. 204 v Christ Teacher Roman Catholic Separate School Division No. 212*, 2018 SKQB 30.
5.	*Bain & Torrey v Eagle* (1914), 6 WWR 1551, 7 Sask LR 169 (CA) (CanLii).
6.	*Kapeluck v Yablonski* (1997), 152 Sask R 231, 24 CELR (2d) 1 (CA).
7.	*Stelter v Stelter*, 2012 SKCA 117, 405 Sask R 63.
8.	*Hailink Dent Removal Inc. v Kindersley Mainline Motor Products Limited*, 2018 SKQB 180.
9.	*Hill v Famhill Investments Limited*, 2017 SKQB 6.
10.	*Goodtrack v The Rural Municipality of Waverley No 44*, 2013 SKCA 137.
	Acts
11.	*The Municipalities Act*, SS 2005, c M-36.1