

THE QUEEN'S BENCH  
GENERAL DIVISION  
WINNIPEG CENTRE

**BETWEEN:**

**LADCO COMPANY LIMITED,**

**Applicant**

**- and -**

**THE CITY OF WINNIPEG,**

**Respondent**

**APPLICATION UNDER:** The City of  
Winnipeg Charter, S.M. 2002, c. 39;  
The Constitution Act 1867 and The  
Court of Queen's Bench Act S.M.  
1988-89 c.4

**IN THE MATTER OF:** The City of  
Winnipeg Charter Act, City of Winnipeg  
By-law 127/2016 and Section 92(2) of  
the Constitution Act 1867

**AND BETWEEN:**

**RIDGEWOOD WEST LAND CORP., and  
SAGE CREEK DEVELOPMENT CORPORATION,**

**applicants,**

**- and -**

**THE CITY OF WINNIPEG,**

**respondent,**

**IN THE MATTER OF:** City of Winnipeg  
By-law 127/2016, as amended and  
passed on October 26, 2016, *The City of  
Winnipeg Charter* S.M. 2002, c. 39 and  
Subsection 92(2) and (9) of the  
*Constitution Act 1867*

**URBAN DEVELOPMENT INSTITUTE  
(MANITOBA DIVISION) and MANITOBA  
HOME BUILDERS' ASSOCIATION INC.,**

**applicants,**

**- and -**

**THE CITY OF WINNIPEG,**

**respondent.**

**ENDORSEMENT SHEET**

**SITTING DATE: March 12, 2021**

**JUDGE: Edmond J.**

**COUNSEL:****Keith Ferbers** **Applicant (Ladco Company Limited)****Mark Newman and Dayna Steinfeld**  **Applicants (Ridgewood West Land Corp. and Sage Creek Development Corporation)****John Stefaniuk and Lindsay Werelis** **Applicants (Urban Development Institute (Manitoba Division) and Manitoba Home Builders' Association)****Brian Meronek, Orvel Currie  
Jennifer Hanson and Erin  
Lawlor-Forsyth** **Respondent****ENDORSEMENT:**

[1] On March 12, 2021, the court heard submissions regarding costs. Following the submissions, an oral decision was delivered. At paragraph 36 of those reasons for decision, I stated:

Accordingly, costs of the applications and motions are granted as follows:

- a) The applicants are each awarded double tariff costs calculated on a Class 4 basis respecting the applications.
- b) The applicants are each awarded double tariff costs calculated on a Class 4 basis on the expungement motion.
- c) The applicants are each awarded costs in accordance with the tariff on the document motions calculated on a Class 4 basis.
- d) The applicants are entitled to costs regarding the motion by the City to seek leave to file the expert report prepared by Mr. Stevens. As mentioned above, throw away costs are granted to the applicants as follows:
  - Ladco and Qualico - \$4,500 each
  - UDI/MHBA - \$2,500
- e) The applicants are awarded costs on this cost motion heard today on a Class 4 basis pursuant to the Queen's Bench tariff.
- f) The disbursements claimed by the applicants are not out of the ordinary and disbursements over \$100.00, subject to production of invoices, are ordinarily reimbursed pursuant to the Queen's Bench tariff providing they are reasonable. In my view, the disbursements submitted are reasonable and should be reimbursed.
- g) All costs and disbursements granted are subject to applicable taxes.

[2] In accordance with my directions, counsel prepared bills of costs for the three applications. There was disagreement between the parties respecting the allowance for second counsel. Rather than have a further in person hearing, the court agreed that submissions could be filed in writing and the court would issue further directions on this issue. Written submissions were received and reviewed by me.

[3] In essence, counsel for the applicants take the position that second counsel was necessary and the award of costs is reasonable in the circumstances. Counsel submit that the role of a second counsel was required given the complexity of the applications, the significant amount of material filed and the various motions heard. Counsel referred to the decision in *Man-Shield Construction Inc. v. Renaissance Station Inc.*, 2016 MBQB 107, [2017] 1 W.W.R. 180 (QL), in which the court considered the question of whether an allowance would be made for second counsel. The court stated at para. 15 as follows:

**15** It is the position of the Man-Shield parties that no amount is recoverable for second counsel at trial. However, I am exercising my discretion to allow a fee for a second lawyer for each of Renaissance and Mr. Rice in the amount of two-thirds of the fee allowed for lead

counsel. Relevant factors in considering whether a second counsel fee should be allowed include:

- \*The length of the trial;
- \*The complexity of the action;
- \*The role that second counsel played not only at trial, but during the entire course of the suit itself; and
- \*The impact of second counsel's involvement.

[4] Earlier authorities of our court have made similar rulings taking into account the nature and length of the litigation, the complexity of the matter and the shared responsibilities of counsel. (See *Milburn and Klippenstein v. Dueck* (1992), 79 Man.R. (2d) 119, [1992] M.J. No. 18; *Morton v. Asper* (1991), 72 Man.R. (2d) 184, [1991] M.J. No. 94); and another decision referenced: *Man v. 61813 Manitoba Ltd.* (1990), 71 Man.R. (2d) 72 (Man. Q.B.), in which second counsel fee costs were awarded for contributions of junior counsel.

[5] The City submits that the court has ordered enhanced costs which are the exception and not the general rule. Awarding enhanced costs and also permitting a second counsel fee increases the enhanced costs beyond what is fair and unreasonable and raises costs to "punitive levels without justification". The City submits that if the court is inclined to grant second counsel fee costs, then the allocation for second counsel fee should not be based on Class 4 enhanced costs, but on a Class 3 basis. The City points out that this alternative argument applies to the Qualico applicants only and not to UDI and MHBA. The City submits that in the case of UDI "the junior was unnecessary entirely."

[6] I disagree with the submission advanced on behalf of the City. In my view, this is an appropriate case to exercise my discretion to allow a fee for a second lawyer for Qualico and UDI and MHBA based on two-thirds of the fee allowed for lead counsel. Having regard to the nature and length of this litigation, the relative complexity and the fact that second counsel played a significant role in these matters, the attendance of second counsel to prepare affidavit material, conduct cross-examinations and attend at the hearing of the applications and motions, was entirely reasonable.

[7] In the case of the Qualico applicants, the second counsel was Ms. Dayna Steinfeld. She was involved in this litigation throughout and according to senior counsel, she played a significant role. She was also involved in making submissions on certain issues during the course of the final hearing. I accept Mr. Newman's statement that "her role was integral to the preparation of all material submitted on behalf of the Qualico applicants".

[8] As to the inclusion of second counsel fee costs of UDI and MHBA, the second counsel included, Mr. Antoine Hacault, a senior partner at Thompson Dorfman Sweatman LLP (TDS), Mr. Scott Birse, an associate at TDS and Ms. Lindsay Warelis, second counsel at the hearing of the application and the expungement motion. Mr. Stefaniuk of TDS describes her involvement as follows:

She played a significant role throughout the proceedings, first as an articling student and then as an associate lawyer. She conducted legal research on various issues. She prepared the extensive responding brief in respect of the City's expungement motion. Ms. Warelis assisting in drafting the applicants' briefs. She provided valuable support at the hearing, assisting in the management of the large volume of documentary evidence and authorities, thereby contributing to the efficiency of the proceedings. As an associate, Ms. Warelis prepared the written submissions of UDI and MHBA on the issue of costs and she attended the costs motion, which was heard on March 12, 2021.

[9] In some of the cases referenced by the parties, counsel fees were requested for more than two lawyers. Given the complexity and nature of this matter, and in recognition of the participation of several lawyers as second counsel throughout the entirety of the proceedings, I am prepared to exercise my discretion to award second counsel fees at two-thirds of the rate in relation to the preparation for and attending the application and the expungement motion.

[10] I disagree with the submission made by the City that granting a second counsel fee increases costs beyond what is fair and reasonable or is punitive. I exercised my discretion to award enhanced costs for the reasons set out in the earlier oral decision delivered on March 12, 2021. Granting a second counsel fee is a separate issue and based on the relevant factors set out in the authorities, I am satisfied granting the second counsel fee is fair and reasonable in the circumstances.

[11] I do not accept the City's submission that any allocation for second counsel should not be based on Class 4 enhanced costs, but rather on a Class 3 basis. In my view, reducing the second counsel fee to Class 3 is inconsistent with the previous ruling granting costs on a Class 4 basis.

[12] One final note made by the applicants was that the City had four counsel present at the counsel table throughout the hearing of both the application and the expungement motion. Had the City been successful in dismissing the application, I would have expected that the Bill of Costs would have included a request for more than one counsel and for the same reasons, I would have been prepared to grant such a request.

[13] The Bills of Costs submitted by the Qualico applicants and the UDI and MHBA applicants attached to their correspondence are approved. I understand that the Ladco Bill of Costs has already been resolved.

**DATE: May 21, 2021**

**JUDGE**



**Edmond J.**

**Copies of this Endorsement Sheet have been sent to counsel on the 21<sup>st</sup> day of May, 2021.**