

Date: 20260422
Docket: CI 24-01-49863
(Winnipeg Centre)
Indexed as: Memaz Inc. v. Gauthier et al.
Cited as: 2026 MBKB 55

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

MEMAZ INC.,) Kevin D. Toyne
) for the plaintiff
 plaintiff,)
)
-and-)
)
)
MONIQUE GAUTHIER, also known as CAT GAUTHIER,) R. Ian Histed
) for defendant
COALITION TO SAVE THE LEMAY FOREST,)
DIANE BOUSQUET, TERRI BOUSQUET,) Monique Gauthier
)
LINDSEY MARIE, EVIO RICE, GERALD TOLE,)
)
MEGHAN GREEN, DION NEMEZ, PATRICK JX NEILAN,) The other named defendants
) did not participate in this
ANGELA BRYDGES, MELISSA WARRINGTON,)
) motion.
NICK LAMERANTE, CHASE PUTCH DE-LESELEUC,)
)
JOHN DOE #1, JOHN DOE #2, JOHN DOE #3,)
)
JOHN DOE #4, JANE DOE #1, JANE DOE #2,)
)
JANE DOE #3, and JANE DOE #4,)
)
) Judgment Delivered:
defendants.) April 22, 2026

**MOTION DECISION ON LEAVE TO DISCONTINUE THE
CLAIM WITHOUT COSTS**

INNESS J.

INTRODUCTION

[1] The plaintiff's decision to cut down trees on its land, commonly referred to as "the Lemay Forest" sparked outrage in some members of the public who were concerned about Indigenous and environmental impacts. The plaintiff asserted its right as a private landowner to cut trees on its land, notwithstanding it had not yet obtained the necessary permits for its redevelopment. In opposition, a group of people mobilized to form "the Coalition to Save the Lemay Forest" (the "Coalition"). The attempts to stop the plaintiff from cutting down trees prompted this litigation. One of the people associated with the Coalition is the defendant, Monique Gauthier.

[2] In the meantime, the Province of Manitoba took steps to expropriate the Lemay Forest. As a result, the plaintiff moves to discharge the interlocutory injunction and discontinue the claim. Ms. Gauthier opposes the discontinuance on a "without cost" basis. Therefore, the only remaining issue to be decided is costs.

[3] For the reasons explained below, in the unique circumstances of this case, I am exercising my discretion to grant the plaintiff leave to discontinue the claim against Ms. Gauthier without costs. Each party is to bear its own costs for the entire cause, including the injunction motions.

BACKGROUND AND FACTS

[4] The plaintiff's action in relation to claims of nuisance and trespass commenced on December 30, 2024. On the same date, I granted the plaintiff an *ex parte* interim injunction until the continuation hearing on January 6, 2025.

[5] Ms. Gauthier retained Mr. Histed on January 2, 2025. She appeared at the hearing on January 6, 2025, to oppose the injunction. Ms. Gauthier argued that the plaintiff's actions constituted an offence under ***The Cemeteries Act***, C.C.S.M. c. C30, because a former cemetery is believed to be located on the land. Other self-represented individuals also opposed the injunction, including Louise May who was later convicted of civil contempt of court for violating the injunction.

[6] At the conclusion of the hearing, I denied the plaintiff's request to expand the terms of the injunction to prohibit protestors from trespassing on adjacent municipal land, for which the plaintiff had obtained an easement from the City of Winnipeg to access its land. I also denied Ms. Gauthier's request for an adjournment and injunctive relief against the plaintiff to prevent it from cutting trees on its property. I ordered the interlocutory injunction to remain in place until varied or discharged by the court, or the completion of a contested hearing before me. The issue of costs was adjourned.

[7] The reasons for granting injunctive relief are set out in the oral judgments delivered on December 30, 2024 and January 6, 2025. The purpose of the injunctions was to protect the plaintiff's lawful right to access and use its property without impediment, interference, or the threat or use of violence, while ensuring the right of citizens to publicly protest against the plaintiff's activities. I note that neither party sought to vary, discharge, or appeal the injunction or its terms.

[8] With respect to the steps in the action, Ms. Gauthier requested further particulars, which were provided by the plaintiff. None of the defendants filed statements of defence.

As stated earlier, the Province of Manitoba has expropriated the land. Also, Louise May was sentenced to pay a fine in the amount of \$15,000.

[9] The above overview of the history of the litigation makes it abundantly clear that the majority of the litigation related to the injunction.

POSITIONS OF THE PARTIES ON COSTS

The Plaintiff

[10] The plaintiff acknowledges it filed the claim to obtain an injunction as it is not a stand-alone remedy. The plaintiff argues that it was entitled to cut trees at its pleasure on its land for any purpose, however it did so in anticipation of obtaining municipal approval for redevelopment of the land into residential housing. The plaintiff says that due to the expropriation, there is no valid purpose for the injunction or action to continue.

[11] The plaintiff reached an agreement with a number of defendants to discontinue the claim on a without cost basis. It offered the same to Ms. Gauthier but she rejected the offer. The plaintiff's position was that if Ms. Gauthier opposed its motion for leave to discontinue the claim without costs, it would seek solicitor-client costs against her, including for the injunction hearings where it was the successful party. It would also seek solicitor-client costs for the opposed costs motion.

Monique Gauthier

[12] Ms. Gauthier argues the plaintiff's action is indicative of what is commonly referred to as "SLAPP" litigation (Strategic Lawsuit Against Public Participation), in other words a frivolous lawsuit designed to intimidate and silence protestors, including the threat of crushing legal fees. Ms. Gauthier argues that the overall purpose for the issuance of the

injunction was to prevent violence based on the evidence of John Wintrup, which is proven false by the affidavits and video recordings filed by her at this hearing. Her position is that the claim was baseless and the injunction was issued on false information. Ms. Gauthier offered to accept \$10,000 in costs on a discontinuance, relying on Rule 22.03 of *The Court of King's Bench Rules*, M.R. 553/88 (the "*Rules*").

DECISION ON COSTS ON THE MOTION FOR DISCONTINUANCE

[13] Rule 23.03 ordinarily entitles a defendant to costs when a plaintiff discontinues the action. That said, there is discretion to order otherwise. Oftentimes, it is preferable for parties to agree.

[14] Typically, when an injunction is granted, the motion judge ought to reserve the issue of costs for the trial judge because there has been no final determination of the rights between the parties. In cases where the injunction will effectively put an end to the litigation, it may be appropriate for the motion judge to make a costs order (*Hudson Bay Mining & Smelting Co., Limited v. Dumas et al.*, 2014 MBCA 6, at paras. 96-97).

[15] As I mentioned earlier, in this case the issue of costs was adjourned at the injunction hearings where injunctive relief was ordered. Subsequently, the parties could not agree on costs. As a result, a half-day opposed costs motion was set.

[16] First, it is appropriate for me to address the plaintiff's motion to discharge the injunction. The plaintiff no longer owns the property. It could have sought to discharge it earlier, but it waited until sufficient time passed after the appeal period relating to the

expropriation decision. The plaintiff asserts that it is now appropriate for the injunction to be discharged, and I agree.

[17] As I have said, the plaintiff has discontinued the claim against most of the defendants, on a without cost basis. Ms. Gauthier filed an affidavit from herself and two others in support of her opposition to a discontinuance without costs (Affidavit of Justin Lamoreux, affirmed on March 6, 2026 and Affidavit of Lorraine Clements, affirmed on January 14, 2026). Ms. Gauthier argues that the video taken by Justin Lamoreux is definitive evidence proving John Wintrup was dishonest under oath at the injunction hearing on December 30, 2024 regarding allegations of threats and assaultive conduct against him. Ms. Gauthier argues that the evidence proves, without doubt, that I was deceived at the injunction hearings and the injunctions were issued erroneously.

[18] The evidence filed by Ms. Gauthier, while informative, has limitations. For the purposes of this costs motion, however, I decline to make specific findings about it for two reasons. First, even if the evidence was accepted by me, it would not have caused me to decline injunctive relief. While some of my concerns regarding the potential for violence or intimidation arose from evidence provided by the plaintiff's professional planner, John Wintrup, other evidence, including voice recordings of intimidation filed in evidence on December 29, 2024 caused me concern. Although the potential for violence informed my decision to include a clause addressing same within the order, it did not inform the underlying purpose for granting injunctive relief. I agree with the plaintiff's

argument that the main purpose of the injunction was to ensure the plaintiff had unimpeded and lawful access to its property, not to preserve peace and prevent violence. Second, there is an ongoing claim and counterclaim in this court between Lorraine Clements and John Wintrup regarding these very allegations. I decline to make findings that are not necessary to my determination here, that may detrimentally impact either party in a completely different proceeding.

[19] The plaintiff's discontinuance is filed without a ruling on the merits of the claim. Nonetheless, each party asserts success. During the injunction hearings, I made findings regarding merit necessary for injunctive relief. There is nothing that causes me to come to a different conclusion now. Whether ultimately the plaintiff would have succeeded or obtained more than nominal damages is unknown. As stated earlier, no statements of defence were filed. Based on the statement of claim, the evidence before me, and the early stage of the litigation, I disagree with Ms. Gauthier that the claim had no merit, was frivolous, vexatious and filed for an improper purpose. While Ms. Gauthier, and others, hold strong views about the motives and intentions of the plaintiff, including the claim, that is not a basis to conclude the litigation was frivolous or vexatious. In my objective and reasoned assessment of this litigation, it is apparent that the case raised significant issues of disagreement over private property rights and public interest rights. Ultimately, the litigation became moot when the Province of Manitoba intervened to expropriate the land.

[20] Ms. Gauthier relies on Rule 23.03 and ***Glenwood Label & Box Mfg. Ltd. v. Brunswick Label Systems Inc. et al.***, 2021 MBQB 30, in support of her request for

costs. She is correct that generally a defendant is entitled to costs when the plaintiff discontinues an action. Of course, this is always subject to the discretion of the court.

[21] In support of an exception to the **Rules**, the plaintiff relies on **Mustang Investigations v. Ironside**, 2009 CanLII 38489 (ON SC). In that case the court considered a rule similar to Rule 23.03. The court held that “[t]o be relieved of costs, the plaintiff must satisfy the court that: (1) the material filed discloses a *bona fide* cause of action; (2) the action was not frivolous or vexatious; and [(3)] he or she was justified in commencing a law suit” (at para. 30). These factors are necessary but not sufficient to justify an order that the discontinuance be without costs. The court must still consider the usual criteria applicable to deciding costs and the purpose of cost orders as set out in the **Rules** and caselaw.

[22] In **232 Kennedy Street Ltd. v. King Insurance Brokers (2002) Ltd.**, 2009 MBCA 22 (CanLII), 236 Man. R. (2d) 147, the Manitoba Court of Appeal held the following purposes are served by party and party cost awards, at para. 35:

35 . . .

- to indemnify the successful litigant, on a partial basis, for legal costs incurred or, in the case of a self-represented litigant, for lost opportunity;
- to encourage settlements by having all litigants, whether represented or not, address the issue of costs;
- to discourage and sanction frivolous actions or defences, unnecessary steps in litigation and inappropriate behaviour by ensuring that all litigants, whether represented or not, have recourse to, or are subject to, an award of costs; and
- to facilitate access to justice. ...

[23] Rule 57.01(1) guides the court in the exercise of discretion by setting out a variety of factors to be considered in deciding the issue of costs. It is important to recognize that some but not all factors may take on greater significance, depending on the case. Also, the court should consider any other relevant factors in deciding costs.

[24] I find it necessary to comment on the mutual request for solicitor-client costs. Each party alleged conduct that was “reprehensible, scandalous or outrageous” (*Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3). I summarily dismiss these requests. The actions of neither party rose to that level. This is not one of the “rare and exceptional cases” where an order for solicitor-client costs ought to be imposed (*Ultracuts v. Magicuts*, 2024 MBCA 45, at para. 12). Making some allowance for the deeply held views at stake, I find the parties vigorously litigated their respective positions but did so within the bounds of reasonable conduct.

[25] I have considered Ms. Gauthier’s actions in opposing the injunction, which I find had a public interest component. I cannot agree that she unreasonably opposed the injunction, particularly given the significant interests at stake and the short timeframe to consider her position before the hearing. I also take into account that the injunction was opposed by other self-represented defendants. Furthermore, I have taken into consideration that the plaintiff’s conduct was provocative at times, for example by making public statements it must have known would inflame the defendants. I found this conduct to be a mitigating factor at Louise May’s sentencing. Ms. Gauthier, unlike Louise May, was not convicted of contempt of court.

[26] While not binding on me, I have considered the *Mustang Investigations* case. I have also considered the decision in *Polischuk v. The City of Winnipeg*, 2024 MBKB 156. Each case is an example of the exception to the norm when it comes to cost awards and underscores the importance of a fair and proper exercise of discretion. In the circumstances of the motion before me, however, neither case assists the parties in obtaining a costs order in its favour.

[27] In this case, the main issue in dispute was the use of the Lemay Forest, which became the focal point of the injunction hearings. The plaintiff was the successful party at each of the injunction hearings. On the other hand, the defendant's opposition to the injunction and the claim rises close to that of public interest litigant (*Hudson Bay Mining & Smelting Co., Limited*, at paras. 99-100). The issues raised were of importance to the broader community, ultimately resulting in an expropriation of the land by the Province of Manitoba. The stated purpose for expropriation was the public interest, namely to protect the Lemay Forest for its use as a public park. In my opinion, this distinguishes this case from others where cost orders have been granted against those who unsuccessfully oppose motions for injunctions.

CONCLUSION

[28] The plaintiff was successful in obtaining injunctive relief to protect its property interest and will benefit from the sale of the property through the expropriation process. The defendants, including Ms. Gauthier, who sought to protect the environment and spiritual importance of the land were successful in bringing the tree cutting to an end.

Each party gained something of value to it in the end. Neither party ought to pay the other's cost in this litigation.

[29] I am ordering each party to bear its own costs throughout the proceedings, including on this contested costs motion.

_____ J.