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Docket: CI 12-01-79322
(Winnipeg Centre)
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Cited as: 2024 MBKB 138

# COURT OF KING'S BENCH OF MANITOBA

**B E T W E E N:**

| | | |
|---|---|---|
| KENNETH WAYNE MUZIK, | ) | |
| | ) | William S. Gange |
| plaintiff, | ) | for the plaintiff |
| | ) | |
| -and- | ) | |
| | ) | |
| WILLIAM WORTHINGTON, | ) | Rod C. Roy |
| CANADIAN BROADCASTING CORPORATION, | ) | Andrea Gonsalves |
| GOSIA SAWICKA, CECIL ROSNER and | ) | Justin A. Safayeni |
| JOHN BERTRAND, | ) | for the defendants |
| | ) | |
| defendants. | ) | |
| | ) | JUDGMENT DELIVERED: |
| | ) | September 11, 2024 |

## Post-Appeal Reasons with Respect to Costs

## REMPEL J.

### BACKGROUND

[1] The plaintiff, Mr. Muzik, was an investment advisor who developed an investment strategy for retired railway employees that allowed them to cash out their defined benefit pension plans and convert them into a privately managed investment portfolio.

[2] In 2011 one of Mr. Muzik's clients, who was unhappy about the returns he was receiving on his investment portfolio, filed complaints with Mr. Muzik's employer as well as the Manitoba Securities Commission and the Mutual Fund Dealers Association. The client and his spouse also brought their complaints about Mr. Muzik to a reporter at the Canadian Broadcasting Corporation ("CBC"), which aired two separate news broadcasts on one of the CBC's local news broadcasts in Winnipeg in 2012 and subsequently published online articles on the CBC news website (the "News Stories") concerning the unhappy client's investments and Mr. Muzik's response to these complaints.

[3] Mr. Muzik sued the former client and the CBC, along with two CBC employees, alleging that the News Stories were defamatory.

[4] After a lengthy trial I concluded that the News Stories were in fact defamatory and that the respondents had not established any available defence to defamation. The CBC successfully appealed my decision to the Manitoba Court of Appeal (***Muzik v. Canadian Broadcasting Corporation et al***., 2023 MBCA 95) which ruled that although I was correct in concluding the News Stories were in fact defamatory, I was wrong in concluding that the defence of responsible communication on matters of public interest did not apply in the circumstances. The Manitoba Court of Appeal also gave *obiter* reasons indicating that if their decision with respect to liability was wrong, they would have only allowed damages of $100,000 to Mr. Muzik. My decision at trial was that Mr. Muzik was entitled to damages of $1,659,403.

[5] The Supreme Court of Canada denied Mr. Muzik's application for leave to appeal on July 25, 2024.

[6] The ruling of the Manitoba Court of Appeal indicated that the CBC should be allowed one set of costs against Mr. Muzik on the appeal and in the Court of King's Bench. The parties have been unable to agree on costs and the Registrar of the Manitoba Court of Appeal indicated to counsel that I was seized as to costs related to the trial of this action. After an exchange of letters with counsel, it was agreed that they would make written submissions to me as to costs and forgo oral arguments. The CBC filed its brief first, after which Mr. Muzik filed a responding brief. The CBC then filed a reply to Mr. Muzik's brief.

[7] My reasons as to costs, post-appeal, follow.

## ORIGINAL RULING AS TO COSTS

[8] On March 4, 2022, I published reasons with respect to costs and pre-judgment interest in favour of Mr. Muzik in the sum of $295,017.15. (See ***Muzik v. Worthington et al.***, 2022 MBQB 44.)

[9] There is no need for me to repeat anything with respect to those reasons, other than the summary from para. 45 of my decision which shows how the calculation as to costs under Tariff A (Class 4) and pre-judgment interest was broken down:

> [45] My ruling on the costs and interest in dispute are summarized below, as are the items on which counsel agreed.
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> | | | |
> |---|---|---|
> | 5(2)(a) | Pleadings | $2,000.00 |
> | 5(2)(d) | Discovery of Documents | $1,500.00 |
> | 5(2)(e) | Examination for Discovery and Interrogatories | $15,000.00 |
> | 5(2)(h) | Preparing Applications and Motions | $8,000.00 |
> | 5(2)(k) | Attendance on Contested Hearing | $6,000.00 |

| | | |
|---|---|---|
| 5(2)(m) | Preparation for Trial | $32,000.00 |
| 5(2)(n) | Preparation or Answering to an Offer to Settle | $150.00 |
| 5(2)(o) | Lawyer's Fees on Pre-Trials | $1,600.00 |
| 5(2)(r) | Lawyer's Fees at Trial | $143,333.33 |
| 5(2)(t) | Assessment of Contested Costs | $1,000.00 |
| 5(2)(u) | Fees Post Order | $600.00 |
| | Written Argument | $15,000.00 |
| | Pre-Judgment Interest | $68,833.82 |
| | Total Awarded | $295,017.15. |

[10] As set out in my original ruling as to costs, I noted that some of the above noted Tariff items attracted double costs under Rule 49.10(1) of the Court of King's Bench Rules, M.R. 553/88 (the "King's Bench Rules"). That rule provides that a plaintiff is entitled to double costs under the Tariff for steps taken in the litigation after an offer to settle is served on the defendant and the offer remains in effect until the start of trial. In short, the rule provides an incentive to plaintiffs to make settlement proposals in advance of trial, because if they "beat the offer" they will be rewarded with double costs.

[11] There is no provision in the King's Bench Rules that incentivizes defendants in the same way. In fact, Rule 49.10(2) explicitly makes no provision for double costs when defendants beat an offer they have submitted in advance of trial:

| COST CONSEQUENCES OF FAILURE TO ACCEPT OFFER | DÉPENS EN CAS DE DÉFAUT D'ACCEPTATION D'UNE OFFRE |
|---|---|
| **Plaintiff's offer not accepted** | **Offre du demandeur refusée** |
| **49.10(1)** Where<br>(a) an offer to settle<br>(i) that relates to a motion is made by a plaintiff at least three | **49.10(1)** Sauf ordonnance contraire du tribunal, le demandeur a droit aux dépens partie-partie jusqu'à la date de signification de son offre de règlement et au double de ces dépens à compter de cette date, dans le cas suivant: |

days before the commencement of the hearing, or

(ii) that relates to a proceeding is made by a plaintiff at least seven days before the commencement of the hearing;

(b) the offer to settle is not withdrawn and does not expire before the commencement of the hearing;

(c) the offer to settle is not accepted by the defendant; and

(d) the plaintiff obtains a judgment or order as favourable as or more favourable than the terms of the offer to settle;

the plaintiff is entitled to party and party costs to the date the offer to settle was served and double the party and party costs from that date, unless the court orders otherwise.

a) l'offre:

(i) porte sur une motion et est faite au moins trois jours avant le début de l'audience,

(ii) porte sur une instance et est faite au moins sept jours avant le début de l'audience;

b) l'offre n'est pas retirée et n'expire pas avant le début de l'audience;

c) le défendeur n'accepte pas l'offre;

d) le demandeur obtient un jugement ou une ordonnance qui est au moins aussi favorable que les conditions de l'offre.

**Defendant's offer not accepted**

**49.10(2)** Where

(a) an offer to settle

(i) that relates to a motion is made by a defendant at least three days before the commencement of the hearing, or

(ii) that relates to a proceeding is made by a defendant at least seven days before the commencement of the hearing;

(b) the offer to settle is not withdrawn and does not expire before the commencement of the hearing;

(c) the offer to settle is not accepted by the plaintiff; and

**Offre du défendeur refusée**

**49.10(2)** Sauf ordonnance contraire du tribunal, le demandeur a droit aux dépens partie-partie jusqu'à la date de signification de l'offre de règlement du défendeur et celui-ci a droit à ces dépens à compter de cette date, dans le cas suivant:

a) l'offre:

(i) porte sur une motion et est faite au moins trois jours avant le début de l'audience,

(ii) porte sur une instance et est faite au moins sept jours avant le début de l'audience;

b) l'offre n'est pas retirée et n'expire pas avant le début de l'audience;

c) le demandeur n'accepte pas l'offre;

| | |
|---|---|
| (d) the plaintiff obtains a judgment or order, excluding interest and costs subsequent to the date the plaintiff was served with the offer, as favourable as or less favourable than the terms of the offer to settle; | d) le demandeur obtient un jugement ou une ordonnance qui, à l'exclusion des intérêts et dépens engagés après la date où l'offre lui a été signifiée, est tout au plus aussi favorable que les conditions de l'offre. |

the plaintiff is entitled to party and party costs to the date the offer to settle was served and the defendant is entitled to party and party costs from that date, unless the court orders otherwise.

[12] The only reported decision in Manitoba that highlights the important distinction between settlement offers made by plaintiffs in contrast to those made by defendants is ***Olson v. Gould***, 2004 MBQB 142, which confirms at para. 10 that there is no double costs provision from offers made by defendants under Rule 49.10(2).

## **POSITION OF THE CBC**

[13] Notwithstanding the provision of the King's Bench Rule 49.10(2), the CBC is seeking double costs under the Tariff for steps it took in the litigation based on the offer it served in advance of trial. The CBC is limiting its claim for Tariff A costs to the amounts in effect prior to the amendments to Tariff A that came into force on July 1, 2022.

[14] The breakdown of the CBC's claim for costs under Class 4 of Tariff A, as it then was, is as follows:

| | |
|---|---|
| Pleadings (s. 5(2)(a)) | $2,000.00 |
| Respond to amended pleading (s. 5(2)(b)) | $500.00 |
| Discovery of documents (s. 5(2)(d)) | $1,500.00 |
| Examination for discovery and interrogatories (s. 5(2)(e)) | $15,000.00 |

| | |
|---|---|
| Motions/applications (s. 5(2)(h)) | $8,000.00 |
| Attendance on contested motions (s. 5(2)(k)) | $6,000.00 |
| Trial preparation (s. 5(2)(m)) | $39,000.00 |
| Prepare/Answer offer to settle (s. 5(2)(n)) | $150.00 |
| Pre-trial conferences (s. 5(2)(o)) | $1,600.00 |
| Lawyer's fees at trial (s. 5(2)(r)) | $143,333.33 |
| Written argument | $15,000.00 |
| Assessment of costs – contested (s. 5(2)(t)) | $1,000.00 |
| Services after judgment (s. 5(2)(u)) | $600.00 |
| **Total:** | **$233,683.33**. |

[15] Some of the above noted claims are elevated above the Tariff amounts.

## ANALYSIS

[16] The foundation of the CBC's argument for double costs is rooted in a notion that the double costs rule established by the King's Bench Rules should be applied to offers made by defendants, notwithstanding the provision of King's Bench Rule 49.10(2). In support of this argument, the CBC relies exclusively on case law from Ontario that speaks to the principle of indemnity as an overarching consideration when costs are at issue after trial.

[17] I am not persuaded that the Ontario case law with respect to costs is persuasive in Manitoba, as the rules of procedure in the two provinces contemplate dramatically different regimes with respect to the factors that guide the discretion of judges in making awards as to costs.

[18] In Manitoba, Tariff A of recoverable costs under the King's Bench Rules offers a menu of steps that typically occur prior to, during and after trial. Tariff A, with few exceptions, is the starting point for judges when costs are assessed, although there is always discretion to deviate from the amounts set out in the Tarriff for any given step taken during the litigation. As I noted in my original ruling as to costs, which the parties accepted as accurate, the discretion of a judge in Manitoba as to an award for costs under s. 96 of ***The Court of King's Bench Act***, C.C.S.M. c. C280 (the "***Act***"), is a broad one, but it is circumscribed by the discretionary factors set out in King's Bench Rule 57.01(1) and the appellate authorities.

[19] ***Bibeau et al. v. Chartier et al.***, 2022 MBCA 2, sets a high bar for appellate review of a discretionary order as to costs in this court:

> [51] The standard of review applicable to a costs award was restated by this Court in *Nash v Nash*, 2019 MBCA 31 (at para 42):
>
> > Appellate courts will very rarely intervene in costs awards. A judge's decision on costs has been described as "quintessentially discretionary" (*Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para 126), and as being generally "insulated from appellate review" (*Little Sisters Book and Art Emporium v Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2 at para 49). However, a costs award can be set aside on appellate review "if it is based on an error in principle or is plainly wrong" (*ibid*; see also *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27; and *232 Kennedy Street Ltd v King Insurance Brokers (2002) Ltd*, 2009 MBCA 22 at para 14).

[20] The factors a judge may consider under an exercise of their discretion as to costs are set out in King's Bench Rule 57.01(1), which provides:

GENERAL PRINCIPLES

**Factors in Discretion**

**57.01(1)** In exercising its discretion under section 96 of *The Court of King's Bench Act*, to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle made in writing,

(a) the amount claimed and the amount recovered in the proceeding;

(b) the complexity of the proceeding;

(c) the importance of the issues;

(d) the conduct of any party which tended to shorten or lengthen unnecessarily the duration of the proceeding;

(d.1) the conduct of any party which unnecessarily complicated the proceeding;

(d.2) the failure of a party to meet a filing deadline;

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

(f) a party's denial or refusal to admit anything which should have been admitted;

(f.1) the relative success of a party on one or more issues in a proceeding in relation to all matters put in issue by that party;

PRINCIPES GÉNÉRAUX

**Pouvoir discrétionnaire du tribunal**

**57.01(1)** Dans l'exercice du pouvoir discrétionnaire d'adjudication des dépens que lui confère l'article 96 de la *Loi sur la Cour du Banc du Roi*, le tribunal peut prendre en considération, outre le résultat de l'instance et une offre de transaction présentée par écrit:

a) le montant demandé dans l'instance et le montant obtenu;

b) le degré de complexité de l'instance;

c) l'importance des questions en litige;

d) la conduite d'une partie qui a eu pour effet d'abréger ou de prolonger inutilement la durée de l'instance;

d.1) la conduite d'une partie qui a compliqué l'instance inutilement;

d.2) le défaut d'une partie de déposer un document dans le délai imparti;

e) une mesure prise dans l'instance qui était irrégulière, vexatoire ou inutile;

f) la dénégation, par une partie, d'un fait qui aurait dû être reconnu ou son refus de reconnaître un tel fait;

f.1) le fait qu'une partie ait eu gain de cause à l'égard d'une ou plusieurs questions en litige dans une instance compte tenu de l'ensemble des questions qu'elle a soulevées;

| | |
|---|---|
| (g) whether it is appropriate to award any costs or more than one set of costs where there are several parties with identical interests who are unnecessarily represented by more than one counsel; and | g) l'opportunité de condamner aux dépens d'une ou de plusieurs instances, s'il y a plusieurs parties qui ont des intérêts identiques et qui sont représentées inutilement par plus d'un avocat; |
| (h) any other matter relevant to the question of costs. | h) les autres facteurs pertinents à la question des dépens. |

[21] The ***Rules of Civil Procedure*** in Ontario (R.R.O. 1990, Reg. 194) set out a dramatically different set of factors that guide the discretion of judges when assessing costs. The Ontario rules explicitly invite judges to address the "principle of indemnity" when assessing costs, which strikes me as coming close to what the Manitoba authorities describe as "solicitor and client" costs. The Ontario rules also directs judges to consider the key driving factors that impact the legal fees a client actually pays to litigate a case, including the experience of the lawyers, the hourly rates charged by the lawyers and the billable hours the lawyers devoted to the case. Again, this is, in my view, akin to solicitor and client costs, rather than the checklist of steps taken during the litigation that are set out in Manitoba's Tariff A. In Manitoba these various steps are all assigned flat rates regardless of the experience of the lawyers or the actual hours expended by lawyers at their hourly rates over the course of the trial.

[22] Rule 57 in Ontario provides:

RULE 57 COSTS OF PROCEEDINGS

**General Principles**

***Factors in Discretion***

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

> 0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
>
> 0.(b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
>
> (a) the amount claimed and the amount recovered in the proceeding;
>
> (b) the apportionment of liability;
>
> (c) the complexity of the proceeding;
>
> (d) the importance of the issues;
>
> (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
>
> (f) whether any step in the proceeding was,
>
> (i) improper, vexatious or unnecessary, or
>
> (ii) taken through negligence, mistake or excessive caution;
>
> (g) a party's denial of or refusal to admit anything that should have been admitted;
>
> (h) whether it is appropriate to award any costs or more than one set of costs where a party,
>
> (i) commenced separate proceedings for claims that should have been made in one proceeding, or
>
> (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
>
> (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1; O. Reg. 689/20, s. 37.
>
> ***Costs Against Successful Party***
>
> (2) The fact that a party succeeds in a proceeding or at any stage of a proceeding does not preclude the court from ordering the party to pay costs, if any. R.R.O. 1990, Reg. 194, para. 57.01 (2).
>
> ***Determination of Costs: Tariffs***
>
> (3) Where the court awards costs, the court shall fix the costs in accordance with subsection (1) and the tariffs. Eir. of Ont. 284/01, para. 15 (1).

[23] There is case law in Manitoba that supports awards for costs in elevated amounts above the Tariff, but below full indemnification as represented by solicitor-client costs.

(See ***The Manufacturers Life Insurance Company (formerly North American Life Assurance Company) v. Pitblado & Hoskin et al.***, 2008 MBQB 11; ***Tregobov v. Paradis et al.***, 2017 MBCA 60.)

[24] In the ***Manufacturers Life*** case, Kennedy J. addressed the fact that Tarriff A, did not adequately reflect the time and efforts lawyers have to invest in complex and lengthy trials and judges did not necessarily have to be fettered by the amounts stipulated in Tariff A in all circumstances. This decision speaks to the broad discretion judges have in awarding costs elevated above the Tarriff, at paras. 16-18:

> [16] Prior decisions have provided that based on the complexity and the length of cases, the allowance for costs must bear some recognition of the reality of the actual fees incurred.
>
> [17] In the *Apotex Fermentation Inc. v. Novopharm Ltd.* decision of M. Monnin J. (as he then was, now of the Court of Appeal) reviewed the costs payable under the initial order he had set of $252,667, while the true fees charged to the successful litigant were $1,874,720 plus GST.
>
> [18] In reviewing these costs, Justice Monnin came to the conclusion that given the reality of costs of litigation, the amount of costs originally set should be and were considerably increased to roughly one-half of the true fees which were $1,874,720. The costs, taking these fees into account, were increased from the original amount to $900,000.

[25] ***Tregobov*** teaches that "*[i]t is trite law that a costs award must be fair and reasonable in all of the circumstances of the case*" (at para. 28). In that case the Manitoba Court of Appeal held that litigants who pursue fraud allegations in the face of weak evidence and who ignore the principle of proportionality by unnecessarily lengthening or complicating trials, can expect judges to impose elevated costs above the Tariff. This underscores the broad discretion judges have in exceeding the Tarriff,

when they conclude the unique facts of the case warrant an order for elevated costs, as stated in ***Tregobov***, at paras. 26-27:

> [26] The decision to jump from costs on a Class II level to a Class IV level on a QB r 20A action requires a rationale as to why it is necessary and proportional to do so given the conduct of the unsuccessful party (see *Manitoba Keewatinowi Okimakanak Inc* at paras 13-14). Ordering elevated costs on a Class III level is an alternative where unfounded allegations of fraud are made in a QB r 20A action (see *Tereck Diesel Ltd v Gebhardt et al*, 2010 MBQB 182 at para 26).
>
> [27] In our view, maintaining the allegation of fraud despite a weak case, as the costs judge noted, and conducting the claim as if it were a regular civil action as opposed to a QB r 20A action, contrary to the principle of proportionality, were reasons for the costs judge to exercise her discretion as she did. While another judge may have imposed elevated costs on a Class III basis, as opposed to Class IV basis, on these facts, that is not a reason for this Court to interfere with the costs order that was made (see *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27).

## **CONCLUSION**

[26] Although I agree with the CBC that I have the discretion to award double costs with respect to any item under the Tariff, I am not satisfied that I can make a double costs award in favour of the CBC simply because I did this for Mr. Muzik after erroneously concluding that the CBC was liable for damages in defamation. Cutting and pasting the same cost award from my original decision in favour of Mr. Muzik to the post-appeal award for costs that the CBC is entitled to, cannot reasonably be described as a principled approach. I am satisfied that this would ignore the principles established in the King's Bench Rules and Rule 49.10(2) in particular.

[27] A quick recap of the facts leading up to the litigation and the litigation itself is important here to establish if there is a principled reason to award elevated costs to the CBC in this litigation. Prior to the start of trial in April of 2019 the CBC made an offer to Mr. Muzik to consent to a discontinuance of his action without costs. About a week later

Mr. Muzik made an offer to discontinue his action upon receiving payment of $500,000. During its opening statement at trial, the lawyer for the CBC indicated that the CBC would lead evidence that Mr. Muzik's financial plan for this client was detrimental to his client's best interests and was designed to achieve higher commission fees for Mr. Muzik. This is referred to as "churning" in the financial services industry.

[28] In the course of his direct examination, Mr. Muzik gave evidence to refute the churning allegation and relied on financial records in support of his position. These records had not been disclosed to the CBC and I granted its motion to adjourn the trial in the circumstances to allow for proper review of this new disclosure. The pandemic intervened and the trial did not reconvene for over a year. The CBC retained new counsel who decided not to pursue the churning allegation or to rely on the expert report that seemed to support that position. Thereafter new counsel for the CBC made a new offer to Mr. Muzik to consent to a discontinuance of the action without costs before the trial reconvened.

[29] When the trial reconvened the CBC conceded that there were statements in the News Stories that bore a defamatory sting but they actively pursued the defence of justification. The Court of Appeal agreed with my assessment that the News Stories were defamatory to Mr. Muzik and the defence of justification was not available to the CBC. Mr. Muzik was successful in discharging that significant part of the evidentiary burden resting on him. The only remaining defence open to the CBC to defeat the finding of defamation was the defence of responsible communication in the public interest and the Manitoba Court of Appeal found that the CBC met its evidentiary burden on that point and I was in error for concluding the contrary.

[30] The CBC admits that it spent about $740,000 in legal fees in defending the action brought by Mr. Muzik and but for an agreement by the lawyers for the CBC to reduce their hourly rates by more than 50 per cent, the legal fees incurred by the CBC would have been significantly higher. Although the CBC had every right to take a hard position in opposing Mr. Muzik's claim, I cannot agree with the CBC that it was wholly successful on its appeal and that should somehow justify an award for elevated costs. Mr. Muzik was correct in arguing that the News Stories were defamatory and the defence of justification was not applicable. Had the one remaining defence available to the CBC failed, the Manitoba Court of Appeal would have awarded $100,000 in damages to Mr. Muzik.

[31] With this factual matrix as a backdrop, I cannot see a principled reason to make an award for elevated costs in favour of the CBC. The manner in which Mr. Muzik went about litigating this case in an effort to defend his reputation did not violate the principle of proportionality and he did nothing that unnecessarily complicated or lengthened the trial given the crucial issues that were at stake during the litigation. Mr. Muzik persuaded me after trial that he was entitled to significant damages due to the devastating impact the New Stories had on his career, so at the very least he had an arguable case that was worth pursuing. I see no principled reason to award elevated costs to the CBC in circumstances such as these, where not even a settlement on a nuisance basis was offered to Mr. Muzik.

[32] For all of these reasons I am ordering costs in favour of the CBC on a Class 4 basis under the old Tarriff for the steps taken by the CBC in this case as set in para. 14 of these

reasons. The CBC will also be entitled to $15,000 for written arguments, which is the same amount I awarded to Mr. Muzik in my original reasons as to costs.

[33] The CBC will also be entitled to Tariff costs with respect to three of the four contested motions in this matter. As to the lawyers' fees at trial the CBC will be entitled to $43,000 for senior counsel ($1,000 x 43 one-half days) plus 2/3 of that amount for junior counsel. The costs award will include the applicable taxes.

[34] Mr. Muzik did not take issue with the disbursements claimed by CBC in the sum of $204,202.60, other than the service of documents in the sum of $2,078.62 and the report of the expert who concluded that Mr. Muzik was engaged in churning, which is an allegation the CBC decided to abandon before the trial reconvened. The costs of that expert report amounted to $62,150.

[35] I agree with Mr. Muzik that the CBC cannot fairly claim the costs of the report of that particular expert or the costs pertaining to the service of documents, which could have been forwarded to counsel for Mr. Muzik. Ergo, the CBC's claim for disbursements will be reduced by $64,228.62 resulting in a reduced total of $139,973.98.

REMPEL J.