

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 70

Date: 2026 03 30
File No.: KBG-RG-02844-2023
Judicial Centre: Regina

BETWEEN:

ROYAL BANK OF CANADA

PLAINTIFF

- and -

JOSEPH BENNETT and BANK OF MONTREAL

DEFENDANTS

Counsel:

James Kroczyński
No one appearing
No one appearing

for the plaintiff
for the defendant, Joseph Bennett
for the defendant, Bank of Montreal

JUDGMENT
March 30, 2026

BERGBUSCH J.

I. Introduction

[1] The plaintiff mortgagee, Royal Bank of Canada [RBC], applies for assessment of its solicitor-client costs and for disbursement of funds paid into Court in a foreclosure proceeding. RBC claims \$5,500 as a lumpsum amount for legal fees, on the mistaken premise that this Court has established a tariff, in effect, for routine mortgage foreclosure proceedings. RBC filed scant evidence of the actual services provided by its solicitors in this action. In addition, RBC claims certain amounts as

disbursements where its solicitors did not incur any expense on its behalf and appraisal costs incurred prior to the granting of leave to commence foreclosure proceedings. These claims are improper and are denied. I have determined that RBC will recover \$3,500 for legal fees in this action.

II. Background

[2] Leave to commence this foreclosure action was granted on February 29, 2024. No order was made for pre-leave costs. An Order *Nisi* for Sale by Real Estate Listing was granted on October 24, 2024.

[3] The Order Confirming Sale of the mortgaged land was granted by Chief Justice Popescul on August 28, 2025. The property sold for \$291,000. The surplus sale proceeds, after payment of property tax arrears, real estate commissions, selling officer’s fee, and the RBC loan, were \$11,801.81. That amount was paid into Court.

[4] RBC’s application for assessment of its solicitor-client costs and for disbursement of funds in Court to cover those costs was heard on February 5, 2026.

[5] RBC claims recoverable costs in this proceeding as set out in the Affidavit of Solicitor sworn by Mr. Kroczyński on January 20, 2026:

Judicial Sale proceedings	\$5,500.00
Taxes on legal fees (11%)	\$605.00
Disbursements	\$1,100.91
Property Management charges	\$472.50
TOTAL	\$7,678.41

[6] Mr. Kroczyński stated the following in his Affidavit of Solicitor:

2. **THAT** the matter proceeded by way of Judicial Sale resulting in an Order confirming sale which was granted by this

Honourable Court on August 28, 2025. As such, these proceedings will attract recoverable costs in the amount of \$5,500.00 in accordance with the authority contained in *Home Trust Company v Haughian*, 2025 SKKB 8, plus disbursements as the Honourable Court may permit, and allowance for additional work and service/extraordinary circumstances as this Honourable Court shall deem just.

[7] Attached to Mr. Kroczyński's affidavit is his firm's statement of account, listing solicitor's fees of \$5,500.00 and disbursements of \$1,079.89, plus GST and PST.

III. Legal Fees in Foreclosure Proceedings

[8] Mortgagees who act reasonably in foreclosure actions are entitled to costs – on a solicitor-client basis if the mortgage agreement so provides. In this case, the mortgagors agreed to pay RBC “all reasonable expenses and costs” incurred to enforce the mortgage, including “legal fees (on a solicitor and his or her own client basis) and disbursements on a full indemnification basis...”: Mortgage – Residential Fixed Rate dated December 28, 2011 at s 22.4.

[9] Despite wording such as this in the mortgage agreement, this Court has consistently held that mortgagees should not expect to recover the entire amount charged by their solicitors: e.g., *Royal Bank of Canada v Lafond*, 2009 SKQB 346 at para 9. Solicitor-client costs must be assessed by the Court, in accordance with Rule 11-20 of *The King's Bench Rules*. This Court typically assesses solicitor-client costs in routine mortgage proceedings with reference to a standard or benchmark amount to promote consistency and transparency. This standard amount is just a starting point and is always subject to the Court's discretion. I recently reviewed at length the principles governing the assessment of solicitor-client costs in foreclosure proceedings in *Toronto-Dominion Bank v Stefaniszyn*, 2026 SKKB 61 at paras 19 – 36 [*Stefaniszyn*].

[10] The Court's discretionary assessment of solicitor-client costs in foreclosure actions is to be exercised in a principled manner in light of the facts: see

CIBC Mortgages Inc. v Greyeyes, 2017 SKQB 313 at para 11; *Royal Bank of Canada v Hollmann*, 2017 SKQB 299 at para 10 [*Hollmann*]. Further, the standard fee “is not meant to represent what lawyers would actually charge their mortgagee clients in any given case” and is “subject to adjustment”: *Bank of Nova Scotia v Smith*, 2022 SKQB 162 at para 14.

[11] Some counsel have interpreted this Court’s recent decision in *Home Trust Company v Haughian*, 2025 SKKB 8 [*Haughian*], as establishing a standardized tariff amount for foreclosure proceedings. It did not do so. *Haughian* simply confirmed an inflationary increase to the standard or benchmark fee for mortgage foreclosure proceedings to \$5,500. In *Stefaniszyn* at para 31, I addressed the *ratio* in *Haughian* as follows:

[31] The Notice of Application and Mr. Zerr’s Affidavit suggest that TD Bank and its counsel have misunderstood Wempe J.’s decision in *Haughian*. *Haughian* did not change the practice for assessing solicitor-client costs in foreclosure actions. It did not establish a “standardized tariff” for the usual steps in foreclosure proceedings. Rather, it reconciled several recent decisions of this Court that had taken differing stances regarding an increase of the “benchmark” amount for standard foreclosure actions and confirmed that the revised benchmark amount would be \$5,500 for the time being.

This applies to the present situation as well.

[12] Starting with the legal fees claimed in this action, the law firm’s statement of account contains a generic description of the professional services rendered. It reads:

TO ALL PROFESSIONAL SERVICES RENDERED IN CONNECTION WITH THE ABOVE NOTED MATTER, INCLUDING THE FOLLOWING:

To receipt and review Bank Instructions and Related Documentation; To conduct Provincial Land Registry Search; To receipt and review Search Results; To receipt and review Mortgage; To investigate and confirm property tax status; To

conduct Corporate Registry Search, and to receipt and review Search results; To receipt and review Appraisal Report; To prepare Demand Letter; To receipt and review periodic and updated arrears and close inquiries; To preparation of all Court process, Notices of Application, Affidavits/Acknowledgements of Service, supporting Affidavits, and draft Orders for sale and related relief, and to arranging all service of process; To preparation for and all attendances at Court; To all correspondence with Client, Provincial Mediation Board, Local Registrar's Office, Process Servers, and interested parties; To all correspondence with Mortgagor; To receipt and disburse sale proceeds; To all ancillary services not otherwise herein specifically referred to; and to reporting:

SOLICITOR'S FEES: \$5,500.00

[13] The amount of time spent by legal counsel and paralegals on this matter is not indicated in the materials filed. Perhaps the billing practices of Mr. Kroczyński's firm have changed, and lawyers and paralegals no longer record the time they work on a file or bill on an hourly rate basis for foreclosure proceedings as they once did: e.g., *Hollmann* at paras 7 and 12-13. The Court's role is not to speculate. As I said in *Stefaniszyn* at para 35: "Whatever the fee arrangement may be, on an assessment of solicitor-client costs the party seeking to prove its costs must file evidence of the actual legal fees it incurred for the services rendered, with sufficient detail so that the Court can determine the extent to which those fees should be borne by the opposing party."

[14] This was a very uneventful foreclosure action. Including the leave application, RBC counsel had four court appearances, including the hearing to assess costs. The Statement of Claim was issued on June 4, 2024, and the defendants were noted for default in July 2024. The Order *Nisi* was granted on October 24, 2024, and the final Order Confirming Sale was granted on August 28, 2025. Mr. Bennett appeared in chambers for the first two applications. No steps in the court proceeding were adjourned.

[15] Given the relative simplicity of this proceeding and the superficial

evidence of RBC's actual legal fees, I would exercise my discretion to award \$4,500, \$1,000 less than the standard amount approved in *Haughian*. However, I am going to award a lower amount than that, as I will explain.

IV. Disbursements in Foreclosure Proceedings

[16] As noted above, the mortgage agreement entitles RBC to recover its disbursements on a full indemnification basis. There is normally no confusion about the difference between legal fees and disbursements. Disbursements are expenses incurred by the law firm on behalf of its client.

[17] In *Stefaniszyn* at para 29, I said this about the absence of proof of disbursements incurred by the law firm:

[29] ... Rule 11-18(3) provides that disbursements other than fees paid to the Court must not be assessed or allowed unless it is established by affidavit that the disbursements were made. An ordinary bill of costs under the tariff prescribed in *The King's Bench Rules* permits claims for "all disbursements properly vouched for." Listing disbursements in the law firm's invoice without proving those expenses is not satisfactory. The invoices of process servers, bailiffs, appraisers, and so on, were undoubtedly received by the law firm and must be tendered in evidence.

[18] In this case, the disbursements listed on the law firm's invoice include "Process Serving Engagement Fees" of \$170 and "Attendance at Local Registrar's Office" of \$120. No invoices were attached for those items and I could not tell what those expenses were. I granted the mortgagee's counsel leave to file an explanation and supporting documentation.

[19] On March 23, 2026, counsel filed a letter containing the following explanation:

Further in regard to the Fiat of the Honourable Justice P.T. Bergbusch, the process serving engagement fee and attendance

at Local Registrar's Office are a fixed charge (akin to office administration/file opening and photocopying charges) levied as a disbursement for such engagement and attendance. There are no invoices rendered for these charges, and they are reflected only in the disbursements contained in our invoice which has been included in the material filed with the Court.

[20] There are no invoices for these "disbursements" of \$170 and \$120 because they are not expenses incurred by the law firm on behalf of its client. These disbursements are illusory. They are, in fact, additional fees for services provided by the law firm. They also seem to be duplicative: the generic description of legal services, cited above, includes "arranging all service of process", which is included in the \$5,500 fees claimed. Moreover, retaining a process server to serve documents is a basic step most likely completed by a legal assistant or paralegal. In this action, the only document personally served on the defendant was the Statement of Claim. Every other document was served by email. Therefore, \$170 is claimed for engaging a process server once.

[21] Attending at the Local Registrar's office is not legal work. Most law firms employ court runners or couriers to deliver documents to the courthouse. These routine steps are included in the standard or benchmark fee, which is "intended to cover all legal services involved in post-leave foreclosure proceedings": *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 at para 64. Further, the generic description on the law firm's statement of account includes "all attendances at Court" and "all ancillary services not otherwise herein specifically referred to."

[22] Claiming these amounts as disbursements recoverable from the surplus from the proceeds of sale of the house was disingenuous. In my view, this amounts to vexatious, oppressive, fraudulent, or otherwise inequitable conduct that justifies depriving the mortgage of some or all of its costs: *Mayhew v Adams*, 1930 CanLII 114 at paras 9-11, [1931] 1 DLR 611 (SKCA); *Central Mortgage and Housing Corporation v Johnson*, 1971 CanLII 818 at paras 7-8, 20 DLR (3d) 622 (SKCA); *Rozdilsky v Kokanee Mortgage M.I.C. Ltd.*, 2020 SKCA 1 at para 10; *Scotia Mortgage Corporation*

v Schneikart, 2025 SKKB 6 at para 24.

[23] I disallow the “disbursements” totaling \$290. Moreover, this conduct must be met with an appropriate sanction. In the circumstances, I exercise my discretion to reduce the fee I would otherwise have allowed in this proceeding. RBC shall recover legal fees of \$3,500, not \$4,500.

[24] Finally, I also granted counsel leave to provide an explanation for certain property management charges set out in a final invoice from Veranova Properties Limited, described as “Appraisal db” or “Appraisal fee.” These totaled \$472.50. I could not tell whether the charges were for appraisal reports and when those costs were incurred. I pointed out that, if the fees were incurred at the pre-leave stage, they might not be recoverable.

[25] Counsel’s letter included the following explanation:

The Appraisal and Appraisal fee dated September 26, 2023 is a pre-leave charge. The Appraisal and Appraisal Fee dated September 26, 2024 are a post-leave charge.

[26] An affidavit filed by RBC in support of its leave application confirmed that RBC had incurred appraisal costs in the amount of \$236.25 and RBC was not seeking pre-leave costs: Affidavit Regarding State of Respondent’s Account Under the Mortgage sworn October 3, 2023.

[27] Costs incurred for appraisal reports prior to the leave application are not recoverable, unless they were allowed by the judge who granted leave: see *Royal Bank of Canada v Millsap*, 2006 SKQB 464 at paras 4-13; *BTB Mortgage Investment Corporation v Harpham*, 2025 SKKB 16 at paras 19-21; *Royal Bank of Canada v Asare*, 2025 SKKB 70 at para 39. Accordingly, I allow \$236.25 for the post-leave appraisal costs, not \$472.50 as claimed.

V. Conclusion

[28] I assess RBC's solicitor-client fees for this proceeding as follows:

- (a) Solicitor's fees: \$3,500.00, plus PST and GST
- (b) Taxable disbursements: \$130.41, plus PST and GST
- (c) Non-taxable disbursements: \$659.48.

[29] A revised order may be filed for my review.

J.
P.T. BERGBUSCH