Court of King's Bench of Alberta

Citation: Remington Development Corporation v ENMAX Power Corporation, 2026 ABKB 114

Date: 20260219
Docket: 2201 13321
Registry: Calgary

Between:

Remington Development Corporation

Appellant

- and -

ENMAX Power Corporation

Respondent

Ruling on Costs
of the
Honourable Justice C.D. Simard

I. Introduction

[1] Remington Development Corporation (**Remington**) and ENMAX Power Corporation (**ENMAX**) have been involved in a long-running series of disputes involving a piece of property in downtown Calgary (the **Interlink Lands**). By 2010, Remington was the owner of the Interlink Lands, on which there were situated two overhead power transmission lines (the **Transmission Lines**) owned and operated by ENMAX.

[2] In September, October and November 2020, the Surface Rights Board (the **SRB**, now known as the Land and Property Rights Tribunal, or **LPRT**) conducted a hearing (the **LPRT**

Hearing) to determine what statutory compensation ENMAX was required to pay Remington pursuant to section 23 of the *Surface Rights Act*, RSA 2000 c S-24 (the ***SRA***) with respect to four right of entry orders (the **ROE Orders**) that the LPRT had previously issued regarding the Transmission Lines. On October 21, 2022, the LPRT ordered ENMAX to compensate Remington by making a $7.9 million lump sum payment, and annual payments of about $357,000 (the **LPRT Decision**). The parties agree that ENMAX had paid $11,177,473.20 to Remington (including interest) pursuant to the LPRT Decision.

[3] Both parties appealed the LPRT Decision to this Court, and I heard their appeals as a four-week trial (the **Appeals**). In my Judgment, I ordered that ENMAX was required to compensate Remington by making a one-time payment of $11,078,123, plus interest. The parties were unable to agree on costs, and they provided me with their written submissions on that issue between October 17 and December 19, 2025. This is my decision on the costs of the Appeals.

II. Issue

[4] The issue I must decide is whether either party is entitled to costs, and if so, in what amount.

III. Analysis

A. Is Any Party Entitled to Costs and, if so, in What Amount?

1. The Applicable Law

[5] The *SRA* contains very specific provisions that govern this issue. Subsection 26(7)(d) mandates that in appeals from decisions of the LPRT, this Court "shall make directions as to costs of the appeal in accordance with subsection (9). Subsection (9) states:

> (9) The costs of an appeal under this section,
>
> (a) when the appeal is by the operator, are payable by the operator on the basis of the lawyer's charges to the client regardless of the result of the appeal, unless the Court finds special circumstances to justify it to award costs on any other basis, or
>
> (b) when the appeal is by the owner or occupant,
>
> (i) if the appeal is successful, are payable by the operator on the basis of the lawyer's charges to the client, and
>
> (ii) if the appeal is unsuccessful, are payable on the basis of any costs incurred in the proceeding determined under the *Alberta Rules of Court* to the party, if any, that the Court in its discretion may direct.

[6] In this case, ENMAX is the operator and Remington is the owner/occupant.

[7] Prior to 2009, the equivalent provisions to section 26(9) used the phrase "on a solicitor and client basis" instead of the current formulation "on the basis of the lawyer's charges to the client". That change was enacted by the *Rules of Court Statutes Amendment Act, 2009*. I agree with Remington's submission (which was supported by the Hansard transcript from when that

amending Act was introduced in the Legislative Assembly, and which was not contested by ENMAX) that these amendments were only of a "housekeeping" or "consequential" nature. As a result, the phrase "on the basis of the lawyer's charges to the client" is equivalent to "solicitor and client costs". This Court has also confirmed that interpretation, for example in ***1724732 Alberta Ltd. v. Lexin Resources Ltd.***, 2025 ABKB 239 at para 100, where Richardson J recently observed:

> Section 26(9)(b)(i) of the [*SRA*] states the costs of an appeal under this section when the appeal is by the owner or occupant, if the appeal is successful, are payable by the operator on the basis of the lawyer's charges to the client. From ***Cabre Exploration Ltd. v Arndt***, 1988 ABCA 212 to ***Bateman v Alberta (Surface Rights Board)***, 2023 ABKB 640 there is a long line of jurisprudence concluding that landowners who incur the costs of litigating their statutory entitlement to compensation are not ordinary litigants. **Full indemnity costs are warranted** in this particular type of litigation as to conclude otherwise would significantly erode the amount of compensation to which landowners are entitled.
> ...
>
> [emphasis added]

[8] As noted by Fagnan J (as she then was) in ***Lemay v Canadian Natural Resources Limited***, 2020 ABQB 250 at para 39, the costs scheme in section 26(9) favours landowners: "on an appeal by the operator, **regardless of the result**, or on a successful appeal by the landowner, costs are generally payable by the operator on a solicitor-and-own-client basis" [emphasis added].

[9] The costs scheme in section 26(9) governing appeals from the LPRT to this Court is very different than the way costs are treated in hearings before the LPRT itself. There, costs "are in the discretion of" the LPRT: *SRA*, section 39(1).

2. The Parties' Positions

[10] Remington says that it is entitled to its solicitor and client costs of the Appeals.

[11] ENMAX says that the parties should each bear their own costs of the Appeals, because:

(a) Remington was not successful, or substantially successful, in the Appeals;

(b) to grant solicitor and client costs to Remington would "distort the animating purpose" of the *SRA*; and

(c) the quantum of costs claimed by Remington is not reasonable or proportional.

[12] For following reasons, I find that Remington is entitled to its reasonable solicitor and client costs of the Appeals.

3. Applying the Law to the Facts of this Case

a. Remington Was Successful in the Appeals

[13] As noted, the parties agree that ENMAX has paid $11,177,473.20 to Remington (including interest) pursuant to the LPRT Decision. ENMAX argues that Remington was not successful in the Appeals, because Remington had asked me to increase that amount by approximately $55 million and I awarded it much less than it sought. I awarded Remington

$11,078,123 plus interest of $794,715.98 (calculated to October 31, 2025). This resulted in ENMAX having to make an additional payment to Remington of $695,365.78.

[14] Thus, ENMAX says, the "net increase" I awarded to Remington was only 6.2% of the increase that Remington sought. While that mathematical calculation is correct, ENMAX ignores the relief that it sought in its own Appeal. It asked me to reduce the amount awarded by the LPRT to only $312,000. Therefore, the amount I awarded in my Judgment was approximately 3800% greater than what ENMAX had sought in its Appeal. ENMAX also ignores the fact that the amount it has paid to Remington has increased because of the passage of time. The LPRT awarded compensation of $7.9 million, plus interest, as at the May 17, 2018 (the **Effective Date**), plus ongoing annual payments to be made after the Effective Date. I awarded just over $11 million, plus interest, as at the Effective Date. Therefore, the "principal" or one-time amount of my Judgment as at the Effective Date was a significant increase over the "principal" amount of the LPRT's award as at the Effective Date.

[15] Whether the appliable standard for success is simply "successful" (as the Legislature enacted in section 26(9)) or "substantially successful" (the commonly-used measure for discretionary costs decisions under the *Rules of Court*, which ENMAX advocated for), Remington satisfied the standard. Remington was successful in the Appeals, not only in obtaining increased compensation, but in every other important way. I found that the LPRT had made five unreasonable errors in the LPRT Decision, which had the effect of undercompensating Remington. I completely rejected ENMAX's new income theory of damages respecting section 25(1)(a) of the *SRA*, which was the centrepiece of its Appeal. On virtually every issue where there was a substantive dispute between the parties' expert witnesses, I preferred Remington's experts over ENMAX's experts.

[16] Because Remington was successful in its own Appeal, its costs are payable by ENMAX on the basis of Remington's lawyer's charges to its client, under section 26(9)(b)(i) of the *SRA*. Section 26(9)(b)(ii), under which I would have had the discretion to determine costs under the *Alberta Rules of Court*, does not come into play.

[17] Also, ENMAX must pay Remington's costs of its (ENMAX's) own Appeal on the basis of Remington's lawyer's charges to its client, under section 26(9)(a) of the *SRA*. The only way that result would not follow is if I find that there are "special circumstances" justifying a costs award on some other basis. I find that there are no such special circumstances here.

[18] ENMAX relies on the ***Lemay*** case to argue that if neither party is "truly successful," an award of costs to the operator can be justified. That case is entirely distinguishable and has no application on these facts. ***Lemay*** was an appeal by the landowner only. In opposing the landowner's appeal, the operator had argued for a reduction from the compensation ordered by the LPRT, but it had not brought a cross-appeal of its own. Fagnan J dismissed the owner's appeal, confirmed the compensation that the LPRT had ordered, and awarded costs in favour of the operator. Therefore, ***Lemay*** was a case of an unsuccessful appeal by a landowner, which the Court was required to decide under section 26(9)(b)(ii) of the *SRA*, giving it the discretion to determine costs under the *Rules of Court*. In this case, because Remington was successful in its appeal and ENMAX was unsuccessful in its own appeal (with no special circumstances present), I must award costs under section 26(9)(a) and (b)(i).

b. Awarding Solicitor and Client Costs to Remington Would Not Distort the Animating Purpose of the *SRA*

[19] ENMAX argues that because the quantum of costs sought by Remington ($2,528,771.80, plus expert fees of $544,203.74, for a total of $3,072,975.54) "dramatically" exceeds the increased compensation I awarded to it ($695,365.78), awarding Remington its solicitor and client costs would overcompensate Remington, thereby subverting the *SRA's* guiding purpose of only compensating landowners fairly.

[20] I disagree. Both subsections that are engaged here (sections 26(9)(a) and (b)(i)) simply and clearly require ENMAX to pay Remington's solicitor and client costs. There is no exception or carveout based on the relative quantum of the costs and the compensation award. These statutory provisions reflect a policy choice by the Legislature, which Fagnan J described as follows in ***Lemay*** at para 40:

> The legislature clearly intended that the costs of responding to an appeal by an operator be borne by the operator, and that costs at least not be prohibitive in the case of an unsuccessful appeal by the landowner. This makes sense, given the impact of the statutory scheme on the landowners' property rights, the significant disparity in resources of the average landowner compared to the average operator, and the small compensation amounts which may well be in issue in these types of appeals.

[21] It could fairly be said that Remington is not like the "average" landowner who engages in compensation hearings before the LPRT. Remington is a large and successful property developer, who has been able to devote significant resources to this dispute over a lengthy period of time. However, that fact does not change the policy issue that section 26(9) is addressing. In the context of this case, the ROE Orders constituted a serious intrusion into Remington's rights as a landowner. And ENMAX, owned by the City of Calgary, is unquestionably and amply resourced and resolute opponent.

[22] All costs decisions must be reasonable and proportional. As stated by Fagnan J in ***Lemay*** at para 44: costs decisions "provide an opportunity for the Court to further the administration of justice's goal of efficient resolution of claims through an emphasis on reasonableness and proportionality of steps taken toward resolution of disputes". Even if those overarching common law principles give me with the jurisdiction to override the clear language that the Legislature has employed in section 26(9) of the *SRA*, I would not rely on them to deviate from what the *SRA* mandates. In the circumstances of this case, I am satisfied that awarding Remington its solicitor and client costs of the Appeals is both reasonable and proportionate.

[23] ENMAX bases its overcompensation argument on mathematics. It calculates that Remington's requested costs ($3,072,975.54) are 466% of the increased compensation I awarded (my ENMAX's math, $695,365.78). However, I did not award Remington $695,365.78. I awarded it $11,078,123, plus interest of $794,715.98. Remington's claimed costs are approximately 26% of that total amount. And as I have noted above, the amount I awarded to Remington was a significant increase over the amount the LPRT had awarded as at the date of the LPRT Decision, and a significant victory in the face of the *de minimis* compensation that ENMAX urged me to award.

[24] In the context of the Appeals and how the parties conducted them, Remington's claimed costs are not disproportionate. Both parties approached the Appeals in a similar fashion. They both had a number of lawyers attending each day and participating in the Appeals. They called similar quantities of evidence and both engaged a similar number of professional expert witnesses. They both submitted similar amounts of well-researched and well-written submissions before, during and after the Appeals.

[25] There is also nothing unreasonable or unfair about awarding Remington its solicitor and client costs as the successful party in the Appeals. ENMAX cannot claim to have been surprised by the level of resources that Remington devoted to the Appeals, because it did the same. It also could have taken steps to limit its exposure to costs. Because I had the authority under section 26(7) of the *SRA* to vary the compensation awarded by the LPRT, ENMAX did not have to file its own Appeal to argue for lower compensation (as noted by Fagnan J in ***Lemay*** at para 12). By filing its own Appeal, ENMAX created a situation where, regardless of the result, it would be required to pay Remington's solicitor client costs of its (ENMAX's) own Appeal under section 26(9)(a) of the *SRA*.

c. The Quantum of Remington's Claimed Costs

[26] For the reasons I have already described, costs "on the basis of a lawyer's charges to the client" as described in sections 26(9)(a)(i) and (b) are the same as "solicitor and client" costs, and that is the measure of costs to which Remington is entitled. Solicitor and client costs are costs that a reasonable client might be required to pay for the services rendered for all steps reasonably necessary within the four corners of the litigation: ***Serinus Energy PLC v SysGen Solutions Group Ltd***, 2024 ABKB 123 at para 18; ***Luft v Taylor***, 2017 ABCA 228 at para 77.

[27] ENMAX argues that what Remington is really seeking something different: solicitor-own-client full indemnity costs. Solicitor-own-client, or full indemnity, costs are costs that counsel can charge as a matter of contract, and which may include "frills or extras" authorized by the client. An award of full indemnity costs is said to be "virtually unheard of" except where provided by contract, and will rarely be appropriate: ***Serinus*** at para 19. Hutchinson J set out the types of circumstances in which a solicitor-own-client costs order can be appropriate, in ***Jackson v Trimac Industries Ltd***, 1993 CanLII 16373 (ABQB) at para 28. They all involve serious litigation misconduct, if not fraud. There was no such conduct by either party in this case. This was simply a case of hard-fought litigation, conducted by two well-resourced and resolute adversaries.

[28] Remington is claiming all the fees and disbursements it paid. It is not entitled to reimbursement for any items that are "frills or extras", but can only recover the fees and disbursements that a reasonable client would pay for the steps that were reasonably necessary. The customary way to make these types of detailed distinctions would be to direct the parties to a review of Remington's fees and disbursements by an Assessment Officer under Rule 10.41. I would normally direct the parties to follow that process, but have decided it is not appropriate to do so here, because of the significant length and complexity of the Appeals, and my familiarity with them. It will be most efficient for me to make those decisions myself.

[29] Although Remington provided me with a comprehensive set of backup materials for its legal fees and disbursements, and ENMAX has commented on those, I do not have all the information or submissions that I would need to assess which fees and disbursements are

reasonable. At the end of these Reasons, I will address what next steps should be followed to allow me to quantify Remington's costs.

[30] First, I will address a number of ENMAX's overall complaints, which may provide the parties with some assistance to move this matter forward. ENMAX says, overall, that Remington's fees and disbursements are excessive and unreasonable, because:

(a) Remington "adopted virtually identical positions" in the Appeals as the positions it adopted in the LPRT Hearing;

(b) Remington's $2,528,771.80 in legal fees are greater than the amount it spent on the LPRT Hearing, $2,029,671.08, which the LPRT found to be excessive;

(c) the Appeals did not involve complex issues;

(d) the legal bills:

(i) contain overly vague task descriptions;

(ii) contain obvious errors;[1]

(iii) demonstrate excessive and unnecessary legal research and duplication of work;

(iv) contain time entries that are often rounded to whole numbers of hours as opposed to partial hours;

(e) Remington seeks recovery of costs spent working with a prospective expert witness, Randy Magnussen, who was never called to testify at the Appeals; and

(f) Remington's experts who had testified in the LPRT Hearing prepared entirely new reports and prepared afresh to testify at the Appeals.

[31] I am able to comment on those overarching complaints at this time in a general way, and I do so as follows:

(a) the complaint that Remington "adopted virtually identical positions" in the Appeals as it had adopted in the LPRT Hearing has very limited relevance to whether its fees and disbursements are reasonable. ENMAX's own Appeal sought a drastic reduction in the compensation awarded by the LPRT, so Remington was required not only to advance its own request for increased compensation in its own Appeal, but also to defend against ENMAX's Appeal;

(b) the LPRT's comments on Remington's costs in the LPRT Hearing are irrelevant, because the LPRT's discretion to award costs in that forum is discretionary, and the LPRT Hearing was not a trial in this Court;

(c) it was not unreasonable for Remington's experts to prepare new reports and prepare afresh for their testimony in the Appeals, because:

(i) two years passed between the LPRT Decision and the Appeals;

[1] In its reply submissions, Remington acknowledged that there were some erroneous duplicate entries in its lawyers' invoices, and that its legal fees should be reduced by $3,705.

(ii) the Appeals were conducted as a trial in this Court, subject to rules of evidence;

(iii) the LPRT had made a number of findings in the LPRT Decision that required the parties' experts to revisit their approaches; and

(iv) ENMAX was advancing an entirely new theory of compensation in the Appeals;

(d) I do not have sufficient evidence to determine whether the work done to prepare for the expert evidence of Mr. Magnussen should be included in Remington's reasonable solicitor and client costs. I have only assertions from the parties' counsel. The principle that will govern this decision is whether the charges were or were not reasonable when they were incurred, as enunciated in ***Bruen v University of Calgary***, 2018 ABQB 650 at para 35.

IV. Conclusion

[32] Remington is entitled to its solicitor and client costs of the Appeals.

[33] That decision, and the additional guidance I have provided in paragraph 31 of these Reasons, may assist the parties in attempting to reach agreement on the total quantum of costs to which Remington is entitled. I direct them to hold discussions to try to seek agreement on that overall issue, or on any partial or sub-issues that they can resolve. If they cannot agree within the next 45 days, they may contact my assistant to book a meeting with me to discuss the next steps that will be necessary for me to decide the precise quantum of costs to which Remington is entitled.

Final written cost submissions received on the 19th day of December, 2025.

Dated at the City of Calgary, Alberta this 19th day of February, 2026.

C.D. Simard
J.C.K.B.A.

Appearances:

Grant Vogeli, KC
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Dalton McGrath, KC
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