Date Corrigendum Filed: 2026 02 19
Date:2026 02 12
Docket: S-1-CV-2024-000-361

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MID-WEST DESIGN AND CONSTRUCTION LTD.

Plaintiff

-and-

INUVIALUIT REGIONAL CORPORATION AND INUVIALUIT DEVELOPMENT CORPORATION CONSTRUCTION LTD.

Defendants

Corrected judgment: A corrigendum was issued on February 19, 2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT

[1] Mid-West Design and Construction Limited [Mid-West] filed two actions: one against Inuvialuit Regional Corporation under S-I-CV-2024-000360 and one against Inuvialuit Regional Corporation and Inuvialuit Development Construction Corporation under file number S-I-CV-2004-000361 [the Claims]. In these reasons I will refer to Inuvialuit Regional Corporation and Inuvialuit Development Construction Corporation collectively as "the Applicant".

[2] The Claims relate to unpaid invoices under two construction contracts. The general conditions in each contract were identical and included an agreement to

arbitrate disputes. The Applicant brought applications to stay the Claims in favour of arbitration pursuant to s 8 of the *Arbitration Act* [Stay Applications].

[3] The Applicant was successful on the Stay Applications. The courts' decisions are reported as 2025 NWTSC 35 and 2025 NWTSC 36.

[4] This is an application for costs pertaining to the Stay Applications. The costs applications were heard together and the material referred to the Claims jointly. This judgment resolves the issue of costs for both S-I-CV-2024-000360 and S-I-CV-2024-000361.

[5] The Applicant is seeking enhanced costs. Mid-West asserts costs in accordance with the tariff set out in Schedule "A" of the *Rules of the Supreme Court of the Northwest Territories* are appropriate.

LEGAL FRAMEWORK

[6] Costs are discretionary, and there is a presumption that costs are awarded on a party-to-party basis, in accordance with the tariff (*Rules* 643 and 648). The application of this *Rule* was summarized in *GNWT v 831594*, 2017 NWTSC 78 at para 4:

> The legal framework that governs costs awards in this jurisdiction is not controversial. The basic principles can be summarized as follows: costs are always in the discretion of the Court; they are intended to indemnify the successful party, encourage settlement, and punish inappropriate behavior by litigants; they generally consist of partial indemnification, calculated in accordance with the Tariff set out in Appendix A of the *Rules of the Supreme Court of the Northwest Territories*, R-010-96, as amended; they can, however, also be awarded on an enhanced basis, and, in rare circumstances, be awarded on a solicitor-client basis.

[7] Enhanced costs are generally awarded as a multiple of tariff costs, in preference to being measured by the solicitor's account, except in cases of litigation misconduct (*Anderson v Bell Mobility Inc*, 2011 NWTSC 28 at para 44, *Marlowe et al v Barlas et al*, 2025 NWTSC 12 at para 48).

[8] In *Northwest Territories (Commissioner) v 923115 NWT Limited*, 2019 NWTSC 13 the court addresses the factors to consider on an application for enhanced costs at para 32:

> In determining whether enhanced costs are justified, the Court may take a number of factors into account, including: the complexity of the suit; the amount of the costs recoverable under the tariff compared to the actual costs incurred; the conduct of the other party or parties; and the importance of the issues raised for both the litigants and the broader community. *WCB v Mercer et al; and Mercer v WCB*, 2012 NWTSC 78 (CanLII), at para 11; *5142 NWT LTD et al v Town of Hay River et al*, 2008 NWTSC 31 (CanLII), at para 6;*Union of Northern Workers v Carriere (No. 2)*, 2013 NWTSC 27 (CanLII), at para 17.

POSITION OF THE PARTIES

[9] The Applicant argues that Mid-West created complexity in the Stay Applications by:

i. Commencing two court actions which they say were not necessary.
ii. Filing a Claim of Lien against the Applicant that was out of time and was not perfected.
iii. Filing additional briefs after the matter was referred to special chambers.
iv. Alleging that the Applicant had not complied with the *Rules* in filing their Reply Brief and seeking a dismissal. The Applicant states they incurred unnecessary costs in responding to these procedural allegations.

[10] The Applicant's total legal costs for the Stay Applications are $113,251.45. They assert that a strict application of the tariff would not lead to a just result because it would not meaningfully indemnify the Applicant for the costs incurred, and seek partial indemnity of 40%, being $46,166.68. They argue this is fair and reasonable given the steps required to conduct the Stay Applications. They also submit the tariffs are inadequate because they are out of date.

[11] Mid-West argues that the Stay Applications were straightforward chambers applications, and that their conduct did not add unnecessary complexity or cost. They submit that the Applicant's legal costs are not reasonable and should not be used as a benchmark for calculating the costs award. Mid-West asserts that costs in accordance with the Schedule A tariff are appropriate.

Conduct of the Parties and Complexity

[12] The Applicant is of the view that the Stay Applications could have been avoided entirely if Mid-West had followed the dispute resolution provisions they contractually agreed to.

[13] Although the Applicant was successful in the Stay Applications, there was a legal question to be addressed about the applicability of the arbitration clause in these factual circumstances. I therefore cannot find that the litigation was frivolous or vexatious.

[14] Further, there were two separate contracts relating to different projects with distinct legal issues arising on each. One was a signed contract while the other was unsigned. Given this, it was not unreasonable to file two separate actions.

[15] The referral to special chambers arguably triggered additional filing requirements under *Rule* 391, which states:

> 391. (1) Unless ordered otherwise, each party at a special chambers application shall prepare a pre-hearing brief containing (a) a succinct outline of the argument the party intends to make; (b) a concise statement of the principles of law that are relied on; and (c) a citation of the relevant cases, statutory provisions and any other authorities.
>
> (2) The pre-hearing brief of an applicant must be filed with the Clerk and served on each other party at least 20 days before the hearing.
>
> (3) The pre-hearing brief of a respondent must be filed with the Clerk and served on each other party at least 10 days before the hearing.
>
> (4) The filing deadlines set out in subrules (2) and (3) may be extended or abridged by direction of the Court.

[16] Mid-West, in compliance with *Rule* 391, filed two additional pre-hearing briefs once the matter was referred to special chambers. The Applicant asserts this was unnecessary because briefs had already been filed prior to the regular chambers appearance. The Applicant then filed a reply brief which they say was necessary to respond to new issues raised in Mid-West's second set of briefs.

[17] The reply brief was filed less than ten days before the hearing. As such, it was not compliant with *Rule* 391(3). Mid-West sought to have the application struck pursuant to *Rule* 395:

> 395. (1) A judge in chambers on a regularly scheduled chambers date may strike an application from the chambers list or may assess costs against a party or the party's solicitor where there is a failure to file an affidavit, or a memorandum as referred to in rule 390, within the time limits set out in these rules and the judge is satisfied that there is no reasonable excuse for the omission.
>
> (2) Where the applicant or respondent fails to submit a pre-hearing brief or files the pre-hearing brief late for a special chambers date, a judge in chambers on a regularly scheduled chambers date may cancel the hearing or assess costs against the defaulting party or the party's solicitor.

[18] The Applicant says this was a disproportionate response. They assert that responding to Mid-West's request to dismiss added unnecessary time and complexity to the application.

[19] Mid-West disagrees that they added unnecessary complexity or that their conduct was otherwise blameworthy. They assert that they were following the *Rules* when they filed the additional briefs and when they sought a dismissal based on the Applicant's late filing.

[20] Matters over 30 minutes are required to go to special chambers, pursuant to *Rule* 389. The referral to special chambers was at the request of the Court because there was not enough court time remaining in the day. Any increase in complexity arising from this referral cannot be attributed to Mid-West. Although the Applicant indicated they were ready to argue their case in regular chambers, it was reasonable for Mid-West to say they required more than fifteen minutes to make their arguments.

[21] *Rule* 391 applies "unless ordered otherwise". It is somewhat ambiguous whether, if briefs are filed in advance of regular chambers, additional briefs are required. This is a matter that the parties should have clarified with the Court but did not. Mid-West applied the *Rule* literally and filed additional briefs. I cannot find this to be blameworthy conduct given the ambiguity arising from the circumstances.

[22] Mid-West then sought a dismissal based on the Applicant's late filed reply brief. This did add some procedural complexity. As pointed out by the Applicant, it was nearly impossible to meet the filing deadline once the special chambers date was confirmed. However, the remedy sought by Midwest is one that was available to them under *Rule* 395(2). Ultimately, the relief was denied and the hearing proceeded as scheduled.

Importance of the Matter

[23] Both the importance to the individual parties and the broader legal importance must be considered.

[24] The Applicant argues that the case is of great importance to them as it seeks to protect their contractual rights and without a stay they would have been forced to proceed in a forum they did not contract for.

[25] The Stay Applications did not resolve any of the substantive legal issues between the parties. Whether or not the matter should ultimately be arbitrated was not determined and instead referred back to an arbitrator for decision.

[26] In terms of the broader legal importance, no new principles of law were involved in this matter and the decision was not legally significant. I therefore disagree the matter is of sufficient importance to justify enhanced costs.

Reasonableness of Legal Costs in Comparison to the Tariff

[27] The Applicant asserts there is nothing unreasonable about the legal fees or the time spent on the Stay Applications. They characterize this as a fairly complex matter, requiring two notices of motion, two affidavits, cross examination on affidavit, six briefs, appearance in regular chambers, and the special chambers hearing.

[28] Mid-West submits that the Applicant's legal fees are excessive for a straightforward Chambers application. They say both the underlying facts and the applicable law are not complex, and the decision was a preliminary one.

[29] In *Walker v Ritchie*, 2006 SCC 45 [*Walker*], the Supreme Court of Canada noted that similar litigation should attract similar costs awards so that parties can assess litigation risks predictably.

[30] The Applicants rely on the case of *Anderson v Bell Mobility Inc*, 2015 NWTCA 3, which they say stands for the principle that party-to-party costs should result in 50% indemnity.

[31] They also cite *McAllister v Calgary (City)*, 2021 ABCA 25 [*McAllister*] to support their position that party-to-party costs should represent partial indemnification of 40-50% of actual costs (paras 41 and 51).

[32] It should be emphasized that the court in *McAllister* was focused on "the level of indemnification a successful party to protracted litigation should receive in costs from the losing party" (para 4). In my view, *McAllister* does not translate directly to interlocutory applications such as this one. In contrast, *McAllister* explicitly identifies the tariff as a useful tool in matters such as chambers applications (para 59).

[33] The Applicant provided two examples of cases where enhanced costs were awarded on a stay application: *Kore Meals LLC v Freshii Development LLC*, 2021 ONSC 3736 [*Kore Meals*] and *Ticketops Corporation v Costco Wholesale Corporation*, 2023 ONSC 1191 [*Ticketops*].

[34] In *Kore Meals*, enhanced costs were awarded in the amount of $43,805.72. This was a case involving the enforceability of an international arbitration agreement and therefore is distinguishable on the facts and complexity.

[35] In *Ticketops*, the applicant sued Costo for breach of contract, negligent misrepresentation, and conversion of intellectual property. Costco successfully sought a stay asserting an agreement to arbitrate. Their total costs were $61,499.03. They sought partial indemnity of $30,000 to $40,000 and were awarded all-inclusive costs of $40,000. The dispute was governed by both the Ontario *Arbitration Act* and the *International Commercial Arbitration Act*. The case involved an analysis of four different agreements spanning three countries. This was a significantly more complex matter than the one before this court.

[36] Mid-West submitted a number of cases where costs were awarded in accordance with the tariff amounts:

i) *Octaform Systems Inc v Clayworth*, 2019 BCSC 711

ii) *Lorneville Mechanical Contractors Ltd v Clyde Bergemann Canada Ltd*, 2017 NSCC 119

iii) *AECOM Consultants Inc v Tata Steel Minerals Canada Ltd*, 2017 CanlII 20090 (NL SC)

iv) *BWV Investments Ltd v SaskFerco Products Inc*, 1994 CanLII 4557 (SK CA)

v) *Pixhug Media Inc v Steeves*, 2017 BCSC 2171

vi) *Azam v Multani Custom Homes Ltd*, 2022 ONSC 6536

[37] In *Azam v Multani Custom Homes Ltd*, 2022 ONSC 6536, the court considered a stay application under s 7 of the Ontario *Arbitration Act* which was very similar to the case at bar. The court called it an “unremarkable motion” and described cost claims of $15,553 and $19,720 as “excessive” (para 71). The court ultimately awarded partial indemnity of $3,500 to the successful party.

[38] Overall, it is my view that compared to other similar cases, the costs claimed by the Applicant are excessive. The total hours billed were 187. This was a half day special chambers hearing on a preliminary issue. I acknowledge there was some additional complexity due to there being two actions filed, cross examination on an affidavit, and additional briefs submitted. However, even considering the added complexity I cannot agree that $113, 251.45 is a reasonable legal bill from which to calculate partial indemnity.

[39] Therefore, using full indemnity as the starting point for a costs award in this case would not be reasonable, and could compromise the goal of consistency in costs awards, contrary to the Supreme Court of Canada's direction in *Walker*.

Conclusion on Enhanced Costs

[40] The Stay Applications were not legally complex and the conduct of the parties was not blameworthy such that it would attract enhanced costs. The Stay Applications did not raise significant legal issues of importance to the larger community.

[41] I accept there was some additional complexity beyond what may arise in a typical chambers application. There were two applications being heard together. The matters were referred to special chambers which resulted in two sets of briefs being filed. Further, there was a lien claim that was addressed in the written materials and vacated at the hearing. This complexity alone does not meet the threshold for enhanced costs.

[42] After considering the relevant factors, I conclude that the facts do not support a claim for enhanced costs. It is more appropriate to apply party-to-party costs in this case.

Calculation of Party-Party Costs

[43] This leaves me to consider the proper measure of a party-to-party costs award. In *Anderson v Bell*, at para 99, the Court of Appeal stated:

> How should a trial judge arrive at a proper party-party costs award? The precise method ordinarily does not matter. It is only necessary that the trial judge weigh all the relevant factors, omit no important factor, and be reasonable. There is usually more than one permissible way to get to a reasonable final number, which is the true goal. Weighing only one or two factors is not enough to set costs, and frequently different relevant factors will point in different directions. The exercise is one of balancing as well as weighing.

[44] The tariff Calculation submitted by the Applicant and attached to their pre-hearing brief as Appendix "C" calculates total legal fees as $11,315. The total of fees, taxes, and disbursements is $13,324.26.

[45] Mid-West takes issue with the Applicant's tariff calculation. They assert that certain entries are not applicable because either they did not occur or only occurred on one of the two files. They assert the proper amount of costs under the Tariff

should be $9,940.00. The total for taxes, fees, and disbursements would be $11,949.26.

[46] I have reviewed the tariff amounts. The follow items should be removed from the Applicant's calculation:

i) Item 19: Discovery did not occur.

ii) Item 20(a): Cross examination only occurred on the 360 file and should not be claimed on the 361 file.

iii) Item 38(b): this was a notice of withdrawal, not a court appearance. The amount should be reduced accordingly.

[47] Based on the foregoing, I calculate the tariff amount to be $9,790. With fees, disbursements, and GST the total is $11,799.26. This calculation is set out in Appendix A hereto.

[48] I retain the discretion to assess whether the tariff amount is reasonable on the facts.

[49] In *Blake v Kyikavichik et al*, 2025 NWTSC 40 [*Blake*], the court adopted a line of authorities from Alberta, including *Grimes v Governors of the University of Lethbridge*, 2023 ABKB 432 and found inflation was a factor that could justify adjusting the tariff. In that case, the parties submitted evidence regarding inflation rates to justify increasing the tariff, and a multiplier of 1.5 was applied.

[50] The Applicant did not submit evidence about inflation in this case. However, I accept the passage of time since the tariffs have been updated is a valid consideration that could justify an adjustment, considering the outcome in *Blake*. This, combined with the procedural complexity in the Stay Applications, justifies an upward adjustment to the tariff.

ORDER

[51] I therefore order that a 1.5 multiplier be applied to the tariff amount for a total of $14,685.00 plus fees and disbursements of $2,009.26. The total costs payable to the Applicant are $16,694.26.

“K.L. TAYLOR”

Justice K.L. Taylor
J.S.C.

Dated in Yellowknife, NT this
12th day of February, 2026

Counsel for the Plaintiff: John Evans

Counsel for the Respondent: Lindsay Rowell & Mitchell Folk

Schedule "A"

Costs of Stay Application – Tariff Calculation

Item No	Description	File No. SICV-2024-000360 Column 5	File No. SICV-2024-000361 Column 2
1	Commencement of proceeding by notice of motion	$900	$500
2	Service of any pleading or notice required by the rules of any applicable Act	$50	$50
18	Arranging for cross-examination for discovery of Shane Sundquist on Affidavit sworn January 22, 2025	$50	$50
19	Preparation for examination for discovery of Shane Sundquist on Affidavit sworn January 22, 2025	NA (no discoveries occurred)	NA (no discoveries occurred)
20(a)	Conducting question of Shane Sundquist held on Jan 28, 2025 (half-day)	$700	$0 (no cross occurred on the 361 file)
26(a)	Preparation, filing and service of special chambers brief	$1,600	$800
35	Complex opposed application	$900	$500
38(b)	Adjournment of application or motion by attendance in court	$25	$25
49(1)	Correspondence, conferences, instructions, investigation or negotiations until commencement of proceeding	$750	$350
49(2)	Correspondence after commencement of proceeding to completion of hearing	$1,500	$700
32	Preparation of party-to-party bill of costs	$240	$100
	Totals	6,715	3, 075
	TOTAL FEES	**$9,790**	

Corrigendum of the Memorandum of Judgment

Of

The Honourable Justice K.L. Taylor

1. An error occurred on the signature page where Counsel are listed below the date of filing in Yellowknife, NT.

It reads:

Counsel for the Plaintiff: B. MacArthur-Stevens & M. Folk

Counsel for the Respondent: J. Evans

It has now been corrected to read:

Counsel for the Plaintiff: **John Evans**

Counsel for the Respondents: **Lindsay Rowell & Mitchell Folk**

2. The citation has been amended to read:

Mid-West Design & Construction Ltd v IRC & IDCC, 2026 NWTSC 9.cor1

(The changes to the text of the document are highlighted and underlined)

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MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE K.L. TAYLOR