

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 61

Date: 2026 03 18
File No.: KBG-YT-00004-2023
Judicial Centre: Yorkton

BETWEEN:

THE TORONTO-DOMINION BANK

PLAINTIFF

- and -

ELIZABETH STEFANISZYN, DARREN STEFANISZYN,
ECOHOME FINANCIAL INC. AND EASYFINANCIAL
SERVICES INC.

DEFENDANTS

Counsel:

Dexter Bricker
No one appearing

for the plaintiff
for the defendants

JUDGMENT
MARCH 18, 2026

BERGBUSCH J.

I. OVERVIEW

[1] The plaintiff mortgagee, The Toronto-Dominion Bank [TD Bank], has applied for an order assessing its post-leave solicitor-client costs and for a deficiency judgment against the defendant mortgagors.

[2] This application addresses the “benchmark” or “standard” fee allowable for solicitor-client costs in mortgage foreclosure actions, additional fees that may be

claimed for “non-standard” steps in the foreclosure proceeding, and calculation of the deficiency judgment.

[3] Mortgage lenders have interpreted this Court’s recent decision in *Home Trust Company v Haughian*, 2025 SKKB 8 [*Haughian*] to mean that they are entitled to claim the “benchmark” fee as a standardized tariff, without adducing evidence of the actual legal fees incurred for post-leave steps in the foreclosure proceeding. *Haughian* simply confirmed that the “benchmark” fee would be increased from \$5,000 to \$5,500, in keeping with inflation.

[4] This decision will address the following issues:

- a. What evidence is required to prove solicitor-client costs and disbursements in foreclosure proceedings?
- b. What additional solicitor-client fees should be awarded for non-standard steps in foreclosure proceedings?
- c. What interest rate should be used to calculate the deficiency judgment?

II. SUMMARY OF FACTS AND HISTORY OF PROCEEDING

[5] On June 19, 2015, the defendants, Elizabeth Stefaniszyn and Darren Stefaniszyn, granted TD Bank a collateral mortgage to secure repayment of a loan for the principal amount of \$120,000. The collateral mortgage was registered against title to Surface Parcel #203161283, Blk/Par G Plan No 102200825 Extension 0, a residential property owned by Elizabeth Stefaniszyn. The defendants went into default by failing to make monthly mortgage payments after July 7, 2022.

[6] TD Bank applied for leave to commence an action, pursuant to s. 6 of *The Land Contracts (Actions) Act, 2018*, SS 2018, c L-3.001 on January 17, 2023.

Following an adjournment so TD Bank could serve Elizabeth Stefaniszyn with its application, TD Bank obtained leave on March 28, 2023.

[7] The Statement of Claim was issued on April 3, 2023. Among other things, TD Bank sought judgment against the defendants for the full amount owing under the collateral mortgage as at March 31, 2023, \$106,744.13, plus interest at 2.44% per annum, judicial sale of the mortgaged premises, and costs of the action on a solicitor-client basis, excluding pre-leave costs.

[8] The defendants were noted for default on August 30, 2023.

[9] On August 30, 2023, TD Bank applied without notice for an Order *Nisi* for Sale by Real Estate Listing [Order *Nisi*]. On September 5, 2023, Baldwin J. denied the application because she was not satisfied the evidence supported appointing a selling officer from the law firm representing TD Bank rather than an independent selling officer.

[10] On September 8, 2023, TD Bank filed a revised Order *Nisi*, naming a selling officer from another law firm, which the Court issued. Among other things, the Order *Nisi* established a listing period of 180 days and set an upset price of \$80,000. The Order *Nisi* granted judgment for the amount payable under the mortgage against the defendant, Darren Stefaniszyn, but not against Elizabeth Stefaniszyn.

[11] Between September 11 and November 3, 2023, a process server made numerous attempts to personally serve the Order *Nisi* on Elizabeth Stefaniszyn. On November 27, 2023, TD Bank applied for an order for substituted service on Elizabeth Stefaniszyn. The order was granted by Layh J. on December 5, 2023.

[12] On November 12, 2024, TD Bank applied to amend the Order *Nisi* to reduce the upset price to \$60,000 and to extend the listing period for another 180-day period. The application was adjourned for two weeks at Darren Stefaniszyn's request.

Mitchell J. granted the amended Order *Nisi* on November 26, 2024.

[13] On February 6, 2025, TD Bank applied without notice for an order for substituted service on Darren Stefaniszyn, which was granted by Megaw J. on February 10, 2025.

[14] TD Bank next applied for an Order Confirming Sale on March 4, 2025, at a sale price of \$82,000, which was granted by Davis J.

[15] Finally, TD Bank applied for an order assessing its post-leave solicitor-client costs and for deficiency judgment against both defendants, Darren and Elizabeth Stefaniszyn.

[16] TD Bank claims the following expenses in relation to the sale:

- a. \$3,640.80 in real estate commissions;
- b. \$14,461.06 in property management fees;
- c. \$1,000.00 in selling officer fees;
- d. \$3,351.42 in tax arrears; and
- e. \$74.91 in vendor's share of unpaid taxes.

[17] Each of these expenses is properly vouched for and is approved.

[18] After subtracting these amounts, the net proceeds of sale were \$59,472.53. As the outstanding accumulated debt under the mortgage was \$109,790.70 (as of September 5, 2023), the balance owing was \$50,318.17.

III. SOLICITOR-CLIENT COSTS IN FORECLOSURE PROCEEDINGS

[19] The Court has discretion respecting the costs of and incidental to a proceeding. A mortgagee who has acted reasonably in conducting a foreclosure proceeding is entitled to costs of the action. This includes costs on a solicitor-and-client basis if the mortgage agreement provides for such: Rule 11-7 of *The King's Bench Rules*; *Central Mortgage and Housing Corporation v Johnson*, 1971 CanLII 818, 20 DLR (3d) 622 at pp 624-625 (SKCA). In this case, the mortgage obliges the mortgagors to pay TD Bank the costs of any sale or foreclosure proceedings, which include “all lawyers’ fees and disbursements ... on a full indemnity basis.”

[20] Despite this broad wording, this Court has consistently held that mortgagees are not entitled to claim the full amount of their legal costs charged by their solicitors. An award of solicitor-client costs, solicitor-and-client costs, or costs “as between solicitor and client” is normally less than the amount billed by the law firm to its client, since the party ordered to pay costs had no control over them, such as in the case where a mortgagor contractually agreed to pay all of the mortgagee’s costs: *Royal Bank of Canada v Lafond*, 2009 SKQB 346 at para 9. Moreover, awards of solicitor and client costs must be assessed by the Court: Rule 11-20.

[21] This Court normally assesses solicitor-client costs claimed in mortgage foreclosure actions by comparing them to a standard reference point or standard cost as a benchmark. This promotes consistency and transparency and assists the parties in assessing their positions. This was well-explained by Mills J. in *CIBC Mortgages Inc. v Greyeyes*, 2017 SKQB 313 at paras 11-13 [*Greyeyes*], as follows:

[11] Judges of this court do not automatically apply a standard solicitor-client fee to every foreclosure action. This court utilizes the phrase “standard foreclosure action” or “standard foreclosure costs” as a reference point in the assessment of such costs.

[12] The value of using a standard reference point or a standard cost is fourfold. First, to the mortgagor it provides a benchmark to help establish the costs likely to be awarded when redeeming the property as stated in the order *nisi*. The order *nisi* provides an outstanding balance for principal and interest plus solicitor-client costs to be taxed. A reference point gives a number to that undetermined cost and more information to the mortgagor in determining whether redemption of the property or a sale is an appropriate avenue to pursue. Second, it assists in determining the equity in the property so that any party to the action is in a better position to determine whether it is appropriate to seek a sale order. Third, it provides the mortgagee with a reference point on costs collectible in making its decision in pursuing and negotiating settlement with the mortgagee or other parties with an interest in the property. Fourth, it provides that all parties appearing on any foreclosure action will be treated in a transparent and consistent manner.

[13] The establishment of a reference point for costs in a standard foreclosure action involving a single judicial sale application is an application of the principles contained in Rule 11-1 using this court's significant experience in dealing with such applications in foreclosure actions on a daily basis. It is precisely because of this experience that the court is able in applying those principles to come up with a reference point for all standard foreclosure applications. ...

[Emphasis added]

[22] In *Greyeyes*, Mills J. determined that, since costs naturally increase over time, it was appropriate for him to approve an increase of the standard charge by \$500, to \$4,500. Following this reasoning, judges of this Court have subsequently approved increases to the benchmark fee in increments of \$500, in *First National Financial GP Corporation v Maurice*, 2021 SKQB 248 and most recently in *Haughian*. The standard fee is presently set at \$5,500.

[23] In *Royal Bank of Canada v Hollmann*, 2017 SKQB 299 [*Hollmann*], Barrington-Foote J. (as he then was) commented on the standard costs approach to the awarding of solicitor-client costs in foreclosure proceedings. Next, he emphasized that the standard amount will not be awarded automatically and the discretion to award costs

must be exercised in a principled manner and on the facts:

[10] These cases do not mean that \$4,000.00 will be awarded as a matter of course. The discretion to award costs must always be exercised in a principled manner, and on the facts. These decisions reflect that fact. In each case, the court considered the facts, and awarded an amount that was based on, but differed from, the standard amount. That approach accords with Rule 11-1 of *The Queen's Bench Rules*, which contains a non-inclusive list of factors the court may consider in awarding costs.

[Emphasis added]

[24] Justice Barrington-Foote noted the facts before him did not involve a standard foreclosure, as there had been a second application for an order *nisi* for sale, but nothing suggested the mortgagee had faced unusual obstacles or the mortgagor had been obstructive, leading to extra expense. He also noted that the law firm's detailed statement of account was of limited assistance, since it listed standardized time charges rather than the exact time spent by lawyers and included no time entries for paralegals. He concluded it was appropriate to reduce the amount claimed for legal fees by 50%, which resulted in an amount falling within the range of standard costs approved in other cases.

[25] In another recent decision, Danyliuk J. commented that 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 [*Smith*].

[26] In this case, TD Bank's Notice of Application for the assessment of its post-leave solicitor-client costs and for a deficiency judgment requests legal fees of "\$5,500.00 pursuant to *Home Trust Company v Haughian*, 2025 SKKB 8" and additional legal fees of "\$3,000.00 pursuant to *Home Trust Company v Haughian*, 2025 SKKB 8 ..." for "judicial interventions beyond what one might think is necessary in a

“standard” judicial action...” I will have more to say about the additional legal fees later in this decision.

[27] TD Bank relies upon the Affidavit of Von Zerr, a foreclosure paralegal with the law firm representing the mortgagee. The Affidavit confirms that the mortgaged lands sold for \$82,000 and includes a summary of the expenses incurred on the sale, as well as property management fees incurred by TD Bank during the foreclosure process. Copies of invoices in relation to those matters are attached to the Affidavit.

[28] As for TD Bank’s legal fees, the Affidavit states the following:

5. MLT Aikins LLP no longer actively records time on foreclosure files given the use of standardized tariffs for legal costs in a foreclosure proceeding. Attached as Exhibit “F” is a copy of the list of disbursements incurred in the within proceeding. MLT Aikins LLP completed the following in furtherance to the proceeding:
 - a. Drafted, served and filed the Statement of Claim;
 - b. Noted the defendant in default of defence;
 - c. Drafted application materials for an order nisi for sale by real estate listing;
 - d. Drafted application materials for sub-service order on defendant;
 - e. Administered the sales process pursuant to the order nisi for sale by real estate listing with the selling officer, the realtor and the defendant;
 - f. Drafted application materials to extend the real estate listing and reduce the upset price;
 - g. Drafted application materials for sub-service order on second defendant;
 - h. Drafted application materials for the order confirming sale;
 - i. Administered the closing of the sale; and
 - j. Drafted application materials to assess costs.

[29] Exhibit F consists of a three-page invoice rendered by MLT Aikins LLP to TD Bank on May 5, 2025, listing total fees of \$8,500.00, without any description provided of the work done. The invoice also lists various disbursements, including process server expenses of \$2,968.09, bailiff/investigation services of \$500.00, and real estate appraisal fees of \$1,225.00. Mr. Zerr's Affidavit does not include any invoices supporting the claimed disbursements. 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.

[30] I observe that Mr. Zerr's description of the legal work performed in this foreclosure proceeding could not be more generic. Most of the items listed referred to "the defendant" when there are two defendants in this case. It is unclear what legal work MLT Aikins LLP performed in administering the sales process or the closing of the sale, given that an independent selling officer was involved. The Court file suggests that "the defendant" was not involved in the sale process at all.

[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.

[32] I return to what Mills J. said in *Greyeyes* at para 11: “Judges of this court do not automatically apply a standard solicitor-client fee to every foreclosure action.” Barrington-Foote J. said much the same in *Hollman* at para 10: “These cases do not mean that \$4,000.00 will be awarded as a matter of course. The discretion to award costs must always be exercised in a principled manner, and on the facts.”

[33] In some cases, the actual post-leave legal work involved in a straightforward foreclosure proceeding can be completed for legal fees less than the benchmark amount. For example, see *Scotia Mortgage Corporation v Schneikart*, 2025 SKKB 6, a recent case involving MLT Aikins LLP where legal fees were \$4,386.10. If a “standardized tariff” of \$5,500 had been claimed and accepted by the Court in that case, the result would have been a windfall to the mortgagee. Solicitor-client costs awarded against a third party should never be greater than the amount the law firm actually billed its client.

[34] Typically, it is standard practice for the mortgagee to file evidence of its actual legal costs incurred in the proceeding. The point can be made by citing several recent examples:

- a. *Bridgewater v Mulligan*, 2017 SKQB 208 - \$21,727.50 + \$1,500.00
- b. *Smith* - \$12,929.00
- c. *Scotia Mortgage Corporation v Irvine*, 2023 SKKB 171 [*Irvine*] - \$13,710.50 + \$720.00
- d. *Scotia Mortgage Corporation v Yamniuk*, 2024 SKKB 48 [*Yamniuk*] - \$14,325.37
- e. *Scotia Mortgage Corporation v Keep*, 2024 SKKB 133 - \$5,831.40
- f. *Haughian* - \$8,368.41

[35] Where lawyers and paralegals record the time they worked on a file, invoices usually set out individual time entries for each timekeeper, with hourly rates

indicated. Most law firms bill for their services in this manner. There are alternatives to hourly rate billing, such as fixed fee billing. 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.

[36] This foreclosure proceeding was very straightforward. All appearances by TD Bank's counsel in Yorkton chambers occurred by telephone. The defendants requested one adjournment but none of the steps were opposed. TD Bank applied successfully for two substituted service orders and an amendment to the Order *Nisi*, which I will address below. Given the relative simplicity of this proceeding and the superficial evidence of TD Bank's actual legal fees, I exercise my discretion to award \$4,500, \$1,000 less than the standard amount approved in *Haughian*.

[37] Further, TD Bank has leave to file a supplemental affidavit providing supporting documentation for the disbursements incurred by MLT Aikins LLP.

IV. ADDITIONAL FEES FOR NON-STANDARD STEPS

[38] In *Haughian* at para 16, Wempe J. allowed additional fees of \$1,000 for a substituted service application. In its Notice of Application, TD Bank relies upon *Haughian* to claim additional legal fees "for the following judicial interventions beyond what one might think is necessary in a "standard" judicial action: ...". TD Bank then requests 3 x \$1,000, for three applications – two to seek orders for substituted service and one to vary the Order *Nisi* to reduce the upset price and extend the listing period.

[39] In *Irvine*, Layh J. allowed fees of \$3,000 for three applications to vary the order *nisi* to reduce the upset price and extend the listing period. In that case, the mortgagee had "progressively learned about increasing numbers of problems,

occasioned by the mortgagors' care of the property" and judges had been satisfied that the mortgagee had presented sufficient evidence to justify lowering the upset price: *Irvine* at para 27. Justice Layh explained his reason for approving \$1,000 in additional fees at para. 28 as follows:

[28] I have considered that Scotia Mortgage has successfully sought three judicial interventions beyond what one might think is necessary in a "standard" judicial action. When asked, counsel for RBC (the second encumbrance holder) suggested that a fee of approximately \$1,000 for each of these additional applications might be appropriate. I think that suggestion is reasonable.

Rothery J. followed this approach to assessing fees for additional court applications in *Yamniuk* at para 36, allowing \$1,000.00 each for an application for immediate possession and an application for substituted service.

[40] Both of my colleagues concluded in the exercise of their discretion that \$1,000.00 was a reasonable amount for additional applications made in the foreclosure proceedings before them. It is apparent from Layh J.'s brief reasons, cited above, that \$1,000.00 was the fee suggested to him by counsel for the second mortgagee as an appropriate fee for each application to amend the order *nisi*, and Justice Layh found it to be reasonable in the circumstances.

[41] None of these decisions attempted to resolve which judicial interventions are out of the ordinary in foreclosure proceedings nor did they establish a standard fee for such "non-standard" applications.

[42] In my view, a one-size-fits-all approach to solicitor-client costs for additional applications in foreclosure proceedings is not appropriate. Extra fees for extra steps are not automatic. The nature and circumstances of each application should be reviewed before an extra fee is awarded in addition to the standard or benchmark fee. Applications for substituted service orders are typically very simple and are

common in foreclosure proceedings. Other applications, such as for immediate possession or to reduce the upset price, can require more detailed evidence and analysis: e.g., *Royal Bank of Canada v Preston*, 2025 SKKB 144; *CIBC Mortgages Inc. v Taylor*, 2018 SKQB 118 at para 30; *Innovation Credit Union v Brudor Holdings Ltd.*, *Travis Nerada, Bahan Holdings Ltd.*, and *Chinook Refrigeration & Air Conditioning Ltd.*, 2024 SKKB 38 at para 28. In some cases, an additional fee for an application to amend the order *nisi* may not be warranted even where the order was granted.

[43] In this case, the original upset price was set at \$80,000, based upon an appraisal report dated August 2, 2023, providing an opinion of value of \$92,000. Two offers were received, both below the upset price of \$80,000. Prospective buyers who viewed the property commented that it would need a lot of work. Given the market's lukewarm reception, TD Bank applied successfully to lower the upset price to \$60,000 and to extend the listing period. Eventually, an offer was received for \$82,000, above the original upset price. Allowing \$1,000 for the application to amend the Order *Nisi* is appropriate in this case.

[44] Two applications for substituted service were also granted. Awarding \$2,000 for both applications would be out of proportion to the amount of legal work required to prepare them. I exercise my discretion to award \$1,500 total for both applications.

[45] Accordingly, TD Bank is entitled to \$2,500 in solicitor-client fees for these additional applications.

V. DEFICIENCY JUDGMENT

[46] TD Bank seeks post-judgment interest on the total judgment amount of \$109,790.70 x 5% post-judgment interest rate = \$5,480.82 (annual interest rate) / 365 days = \$15.04 (interest per day) from the date of the Order *Nisi* to the date of the Order

Confirming Sale.

[47] Five percent is the amount of post-judgment interest prescribed by s. 10 of *The Enforcement of Money Judgments Regulations*, RRS c E-9.22 Reg 1. However, an order *nisi* is not a final judgment. Five percent is not the correct interest rate to be applied to the principal from the date of the Order *Nisi* to the date of final judgment.

[48] The affidavit evidence filed by TD Bank in support of its leave application and its application for Order *Nisi* For Sale by Real Estate Listing indicated that the interest rate applicable to the principal amount of the mortgage debt was 2.44% per year. That was also the interest rate specified in the Order *Nisi*, including at paragraph 5, which reads:

Judgment

5. The Plaintiff shall have judgment against the defendant, Darren Stefaniszyn, for the sum of \$109,614.78, together with interest on that amount at the rate of 2.44% per year from the 13th day of August, 2023, to this date, plus costs to [be] assessed on a solicitor-client basis.

[49] Interest on the deficiency judgment from August 13, 2023, to the date of this decision must be calculated at the rate of 2.44% per year, not 5%. TD Bank has leave to file a revised draft order and draft judgment in pursuance of an order for my approval.

[50] I note that the Order *Nisi* prepared by TD Bank and issued by the Court on September 8, 2023, grants a deficiency judgment against Darren Stefaniszyn only. However, the Statement of Claim sought a deficiency judgment against both defendants. Both defendants are parties to the collateral mortgage agreement. TD Bank now seeks personal judgment against both defendants for the amount of the deficiency. Both defendants were served with the application. Since the Order *Nisi* was not a final judgment, the Court can grant a deficiency judgment against both defendants despite the error in the Order *Nisi*.

VI. CONCLUSION

[51] The post-leave solicitor-client fees of TD Bank are assessed in the total amount of \$7,000. TD Bank has leave to file an affidavit evidencing the disbursements incurred by its solicitors in this proceeding and a revised draft order and judgment in pursuance of an order, all of which should be filed with a request that they be brought to my attention.

J.
P.T. BERGBUSCH