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***Tracy Kashuba***

Applicant/Prospective Appellant  
(Respondent)

*and*

***Rural Municipality of Wilton No. 472***

Respondent/Prospective Respondent  
(Applicant)

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Before: Richards C.J.S. (in Chambers on September 30, 2020)

***Fiat***

[1] Tracy Kashuba has abandoned her application for leave to appeal in this matter. The parties accept that the Rural Municipality of Wilton No. 472 [R.M.] should receive costs.

[2] Ms. Kashuba suggests, as I understand it, that any costs award should, by virtue of s. 356 of *The Municipalities Act*, SS 2005, c M-36.1, be payable by the R.M. I will not make any order against the R.M. because (a) it is not a party to these proceedings, and (b) on its face at any rate, s. 356 would not seem to be applicable. Any claim for indemnification that Ms. Kashuba might have against the R.M. will have to be worked out between her and the R.M.

[3] The R.M. seeks an enhanced costs award in the amount of \$5,000 on the grounds that (a) the application raised irrelevant issues relating to its counsel, Gerald Heinrichs, and its nominee to the Appeal Board, Greg Heinrichs, (b) the application required the preparation of a brief of law and two chambers appearances, (c) the application was abandoned only at the outset of the argument to deal with it on the merits, and (d) the application appears, in the R.M.'s view, to have been pursued for some ulterior motive.

[4] The standard costs award in this matter would be calculated under Column 2 of the Tariff of Costs. Given that there was correspondence and assuming that the R.M. will take out a formal order, that would put the total costs award at \$1,900 (Item 1 – \$1,500; Item 11 – \$200; Item 12 – \$200).

[5] That said, I accept that, in the particular circumstances here, it is appropriate to increase that award somewhat because (a) the application improperly sought to raise issues concerning Greg Heinrichs that fall outside the scope of this case, and (b) the application was entirely ill-founded in that (i) no leave to appeal was required because the decision of Justice Zuk was not interlocutory in nature, (ii) the proposed appeal was moot given that the Hamlet had appointed a different person to the Appeal Board, and (iii) Ms. Kashuba did not include the Hamlet as a party even though the Hamlet is responsible for appointing its representative on the Appeal Board. As well, the application involved two chambers appearances because of a meritless attempt to adjourn

the proceedings. In short, there was an element of vexatiousness to the application. I note that it would have been helpful if Ms. Kashuba had given some clear advance notice of her intention to abandon the application but, in and of itself, that does not warrant any enhancement of the standard costs award because the standard award is all that would have been payable even if she had argued the appeal and lost.

[6] In the end, Ms. Kashuba's application for leave to appeal is abandoned and she is ordered to pay the R.M. \$2,500 in costs, payable forthwith.

"Richards C.J.S."  
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Richards C.J.S.

Counsel: Tracy Kashuba appearing on her own behalf  
Gerald Heinrichs for the Rural Municipality of Wilton No. 472