

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE: STRATEGIC MEDIA OUTDOOR INC. and  
BEAUX PROPERTIES**

Applicants

-and -

**THE CORPORATION OF THE CITY OF TORONTO**

Respondent

**BEFORE: Justice A. Hoy**

**COUNSEL: Stanley M. Makuch and Signe B. Leisk, for the Applicants**

**Diana Dimmer and Naomi Brown, for the Respondent**

**DATE HEARD: January 21, 2009**

**ENDORSEMENT AS TO COSTS**

[1] This is the costs disposition arising out of Strategic Media Outdoor Inc.'s unsuccessful one-half day motion for an interim and interlocutory injunction, exempting it from the application of the City of Toronto's sign by-laws pending the disposition of its Application for a declaration that such by-laws are of no force and effect.

[2] The City seeks costs on a partial indemnity scale of \$25,000, and disbursements in the amount of \$3,364.29, for a total of \$28,364.29, payable within 30 days. This includes the time of three salaried lawyers with varying degrees of seniority - Ms. Dimmer, Ms. Brown and Mr. Henderson. The City produced a bill of costs indicating that if the time of those lawyers was calculated at \$300, \$250 and \$150 per hour, respectively, total fees would amount to \$52,955.00. As Strategic Media points out, those hourly rates represent 86% of the \$350, 83% of the \$300 and 66% of the \$225 maximum rates for lawyers of their years of call under the "Information for the Profession" published by the Rules Committee, respectively. The City does not seek disbursements in respect of in-house photocopying.

[3] Strategic Media argues that costs should be in the cause because the motion was for an injunction or, in the alternative, that the costs sought by the City should be substantially reduced.

[4] In my view, it is appropriate to award costs at this juncture. The issue on this motion was discrete, namely whether or not to grant an interlocutory injunction pending the determination of the substantive issue, which the City conceded amounted to a "serious issue to be tried". The motion focussed on the issues of irreparable harm and balance of convenience, which will not be considered on the return of the Application.

[5] As to the quantum of the costs sought by the City, as Strategic Media acknowledges, by virtue of section 456 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, costs awarded to the City, "shall not be disallowed or reduced merely because the counsel who earned the costs, or in respect of whose services the costs are charged, was a salaried officer of the City...".

[6] Strategic Media argues, however, that the costs sought by the City are grossly excessive. It submits that, having regard to the publicly posted salaries of the City's solicitors plus taxable benefits (Disclosure for 2007 under the *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, c. 1, Sched. A) and adding an estimated additional 7% for administration costs, the estimated cost to the City would be approximately \$90.00 an hour for Ms. Dimmer and \$62.00 an hour for Ms. Brown. It did not provide an estimate in respect of Mr Henderson, and gives no explanation of why it selected 7% as an appropriate overhead charge. Strategic Media argues that the costs sought by the City would amount to a windfall.

[7] Strategic Media refers me to *Chiefs of Ontario v. Ontario*, [2007] O.J. No. 4068, where Swinton J. awarded hourly rates for salaried government lawyers ranging from \$190.00 to \$97.50.

[8] Swinton J. held in *Chiefs of Ontario* that it was unworkable in fixing costs to require evidence of the actual costs of in-house counsel. She was satisfied that the amounts sought in that case would clearly not amount to a windfall, and were a fair and reasonable amount for the losing party to pay. Given that the City is seeking less than half of the amount of its fees, calculated at rates of between \$300 and \$150, the effective hourly rates it seeks are between \$150.00 and \$75.00 - well within the range of rates approved by Swinton J. in *Chiefs of Ontario*, and less than the 50% of the maximum rates suggested by Strategic Media. Counsel for Strategic Media provided no basis for the 7% "administration charge" utilized in its calculations. That amount appears to me to be a remarkably low overhead allocation. As a small example, I note that the City does not claim in-house photocopy charges as a disbursement, and that they would be included in its overhead. I do not think that the effective rates sought amount to a windfall.

[9] Strategic Media also argues that the matter did not require the services of three counsel, or, alternatively, that more of the work should have been allocated to the most junior counsel. Additionally, it argues that to the extent time was spent by the City on the substantive issue, which will be addressed on the Application, it should be disallowed. It submits that the three affidavits relied on by the City related to the substantive issue, and not the issues considered on the motion.

[10] I note that both Strategic Media and the City were represented by two counsel at the hearing. It is therefore reasonable for Strategic Media to assume that the City would use more

than one counsel. The involvement of the third, and most junior, counsel, Mr. Henderson, was very limited. Arguably, more of the work might have been shifted to him.

[11] While the City conceded that there was a serious issue to be tried, thereby shortening the duration of the hearing, I accept that a portion of the work undertaken by the City in relation to the motion will also be applicable on the return of the Application and that this merits a reduction of the fees sought.

[12] Having regard to all of the foregoing, I consider \$21,500.00, inclusive of disbursements, a fair and reasonable amount for Strategic Media to pay the City, and costs in that amount are accordingly fixed, to be paid within 30 days.

  
Hoy J.

**DATE:** March 30, 2009