

Order No. 97/21

**DECISION ON COMPLAINT FILED BY
MR. VOLKER BECKMANN
AGAINST
THE CITY OF THOMPSON**

SEPTEMBER 14, 2021

BEFORE: Irene Hamilton, Q.C., Panel Chair
Marilyn Kapitany, B.Sc. (Hon), M.Sc., Panel Member
Shawn McCutcheon, Panel Member

Table of Contents

1.0	Executive Summary.....	3
2.0	Background	4
	Appeals to the City.....	5
	Complaint/Appeal to the Board	6
	Evidence	7
	Powers of the Board	8
3.0	Board Findings	10
4.0	IT IS HEREBY ORDERED THAT:.....	14
5.0	IT IS RECOMMENDED THAT:.....	14

1.0 Executive Summary

On April 7, 2021, the Public Utilities Board (Board) received a complaint from Mr. Volker Beckmann (the complainant) against The City of Thompson, Manitoba (City). The complaint was regarding a \$10,773.38 bill received from the City for the repair of a wastewater line break on the complainant's rental property, located at 211 Brandon Crescent (the property) in the City. The complainant requested that the Board order the City to waive the bill in its entirety.

The complaint centers around City By-Law 1937-2016 Schedule A that states, any break that occurs 1 meter or less from a structure is to remain the full responsibility of the homeowner and any break that occurs beyond one meter from a structure will be the responsibility of the City.

By this Order, the Board finds the City failed to adequately communicate with the complainant on a number of occasions, which had an impact on the complainant's ability to understand the full scope of the excavation work required to repair the wastewater line break on the property and his responsibility for costs regarding any wastewater line repairs required to be performed at the property. The Board also finds the complainant bears some responsibility for this complaint by signing the City's Statement of Cost Responsibility/Non-Levy Waiver Letter (Waiver) without a complete understanding of what they were signing. The Board therefore, orders that the City reduce Mr. Beckmann's bill of \$10,773.38 by 50% to \$5,336.69 and that it be paid by the complainant within 60 days or in accordance with a payment schedule agreed to by both parties.

The Board also recommends the City develop and implement clearer policies, processes, and procedures regarding communication to constituents for work similar to that done on the complainant's property prior to its commencement.

2.0 Background

On January 5, 2020, the complainant hired Blair Cormier of Can-do Plumbing (plumber) to clear a plumbing blockage reported by the tenants at the property. The blockage re-occurred shortly thereafter and the plumber was contacted again to clear the blockage. During the second visit, the plumber determined there was a wastewater line break and the City Water and Wastewater Foreman, Dan Rose (Foreman) was contacted to meet with the complainant and plumber at the property to discuss the wastewater line break.

The complainant's evidence states that during the meeting he and the plumber advised the City Foreman there was a wastewater line break 8' or 9' down from the top of the cleanout. A wastewater cleanout is a small, capped pipe typically located on or near a structure, that connects to the lateral wastewater line. When the lateral wastewater line clogs, it can cause wastewater to back up into the drains of a house. The plumber has corroborated this information in an Affidavit to the Board included in the complainant's initial complaint filing. The City's evidence, however, states that during the meeting the plumber indicated where to dig, advising the Foreman the collapse was approximately to be 8'-10' from the front edge of the house. The Foreman has corroborated this information in an Excavation Report for the property.

A Statement of Cost Responsibility/Non-Levy Waiver Letter (Waiver) was signed by the complainant and the Foreman (on behalf of Neil MacLaine, Director of Public Works) on January 23, 2020 providing that: the complainant formally authorized the City to complete the required excavation work and wastewater line repairs; the City has provided a written quote for the excavation work/repairs to the complainant of \$15,000; and the complainant has read and understands they are responsible for the total cost of the excavation work and materials if it is found the issue with the wastewater service line is not covered by the City Water, Storm, Sewer Service Line Maintenance Special Levy.

The Board notes, neither the City nor the complainant provided evidence that a detailed, written quote for the excavation work and wastewater line repairs of \$15,000 was provided to the complainant.

The complainant's evidence states that miscommunications among City staff, inefficient processes, and delays in preparing the Waiver for signature resulted in delays to the City commencing excavation work and wastewater line repairs at the house. The City's evidence, however, states that delays in commencing excavation work and wastewater line repairs were due to waiting for details about the location of the underground lines and cables on the property and waiting for the complainant to sign the Waiver.

On January 24, 2020, the City workers arrived at the property to commence excavation work and wastewater line repairs. The City began excavation approximately 8' to 10' from the house and did not find a wastewater line break. The complainant was billed \$10,773.38 by the City for the excavation work.

On January 27, 2020, the complainant contacted three local contractors: A & B Builders; Sapach Trucking; and Smook Contractors. The contractors advised the complainant the City had not dug close enough to the house to find the correct location of the wastewater line break.

Video footage in the wastewater line was taken by the plumber on January 28, 2020 to assist in locating the wastewater line break, and Smook Contractors arrived on January 29, 2020 to perform the required work. The total cost of the work was \$5,947.64.

The complainant's evidence states the City performed excavation work in an incorrect location, different from where the plumber advised the break was, resulting in additional, unnecessary costs (\$10,773.38 as noted above). The City's evidence, however, states that had they been advised by the plumber the wastewater line break was 8' to 9' down from the clean out, the City would have never commenced excavation work and wastewater line repairs on the property.

Appeals to the City

Upon notification of the bill from the City, the complainant made multiple attempts to contact various City representatives to have the \$10,773.38 City bill waived.

On February 14, 2020, the complainant presented a 10-minute, formal appeal to The City Finance Committee to have the \$10,773.38 bill waived. On June 22, 2020, the City denied the complainant's appeal. The City provided a letter to the complainant and advised that Section 18 of City Water and Wastewater By-Law 1842-10 states, the property owner is responsible for maintaining their service line at their own expense from the wastewater sewer to the property line, unless provided for in the Special Levy. City By-Law 1937-2016 Schedule A states, any break that occurs 1 meter or less from the structure is to remain the full responsibility of the homeowner. The break was found six inches from the structure and therefore would not be covered by the Special Levy By-Law. The City also noted in its letter that the complainant signed the City's Waiver, indicating the complainant understood the complainant would be responsible for the work if the break was not found in the area indicated to the City by the complainant's plumber.

On July 29, 2020, legal counsel for the complainant sent a letter to the City to conduct resolution discussions regarding this matter. No response was provided by the City.

On December 9, 2020, the City Mayor, the City Manager, and the complainant met to discuss an appeal to have the City bill of \$10,773.38 waived. The City Legislative and Finance Committee met pursuant to the meeting on January 11, 2021 to review the appeal. On January 14, 2021, the City upheld its decision to dismiss the complainant's appeal on the same grounds noted from the June 22, 2020 letter, as noted above.

Complaint/Appeal to the Board

Based on the City's dismissal of the complainant's appeals, on April 7, 2021 the complainant then appealed to the Board, seeking that: the Board order the City to waive Invoice #IVC0077762 in the amount of \$10,773.38 for attempts to find a wastewater line break by excavating the complainant's yard; the Board not apply any costs associated with hearing the complaint to the complainant; and the Board advise the City to review its protocol, dispute, and appeal mechanisms to seek more open, more fair, less confusing, and more efficient solutions.

Evidence

In reviewing the complaint, the Board considered the information provided by the complainant in the initial complaint. The information included an account of events between January 5, 2020 and July 29, 2020 that included: various pictures and schematics of the events in question; affidavits from the plumber and Diane Blais (for cleaning services provided); various text messages between the complainant and the tenant at the property, the City Mayor, and City Manager; the City Waiver and letters from the City to the complainant dated June 22, 2020 and January 14, 2021; and various bills to the complainant associated with the work in question and other supplementary materials, information, and comments.

The complainant also submitted competitive quotes of \$4,500.00 plus GST from A&B Builders and \$5,124.00 from A. Sapach Trucking Ltd. This was to demonstrate that the bill for the excavation work provided in City invoice #IVC0077762 for \$10,773.38 was excessive.

On April 21, 2021, the Board sent a letter to the City requesting a response to the complaint, copies of associated By-Laws, associated invoices, associated communications, and any other information deemed relevant to the complaint by the City.

On May 13, 2021, the City responded to the Board's letter. The City's response included: City Invoice #IVC0077762; Excavation Reports from the City Assistant Director of Public Works and City Foreman; the signed Waiver and various communication documents; City decision letters dated June 22, 2020 and January 14, 2021 pursuant to the complainant's appeals; City By-Laws (and associated documents) 1826-2010, 1937-2016, and 2006-2021; and various other information and documents.

On May 31, 2021, the complainant provided a response to the City's information noted above, refuting the City's position, for the Board's consideration.

On August 13, 2021, the Board requested additional information regarding the \$15,000 quote identified in the City's Waiver and specific details regarding the City's communication processes, and policies and procedures between the City and the property owner prior to the commencement of work.

On August 19, 2021, the City provided a response to the Board's additional information requests and on August 24, 2021, the complainant provided a response to the City's response letter.

Powers of the Board

When reviewing a complaint the Board can either: hold an oral hearing at which the complainant can present its case and present their concerns; or where it is deemed to be in the best interests of involved parties, the Board can review the complaint using a paper review process without holding an oral hearing. The paper review process considers all written materials submitted by all involved parties, as well as any information requests and responses between the Board and any involved parties. This process may reduce regulatory costs to the involved parties.

Whenever reasonable, the Board will review the application using a paper review process, which saves the cost of an oral hearing process. The Board has chosen a paper review process for the complaint to minimize costs to all parties.

Pursuant to *The Public Utilities Board Act (The Act)*, the Board exercises various provisions of The Act that apply in respect of the complaint:

Power of board on complaints generally

33 Where the Minister of Justice, a municipality, or a person interested makes a complaint to the board that the owner of a public utility, a municipality, a corporation, or any person, has unlawfully done or unlawfully failed to do, or is about unlawfully to do, or unlawfully not to do, something relating to a matter over which the board has jurisdiction as aforesaid, and requests the board to make some order in the matter, the board shall, after hearing such evidence as it may think fit to require, make such order as it thinks proper under the circumstances.

Investigation of excess charges

64(1) Where

- (a) It is made to appear to the board, upon the complaint of an owner of a public utility, or of any municipality or person having an interest, present or contingent, in the matter in respect of which the complaint is made, that there is reason to believe that the tolls or charges demanded by any owner of a public utility exceed what is just and reasonable, having regard to the nature and quality of the service rendered or of the commodity supplied; or
- (b) requested to do so by the minister; or
- (c) in the opinion of the board it is expected to do so, on its own initiative;

the board may proceed to hold such investigation as it sees fit into all matters relating to the nature and quality of the service or the commodity in question, or to the performance of the service and the tolls or charges demanded therefor.

Order on investigation

64(2) Upon completion of an investigation made under subsection (1), the board may make such order respecting the improvement of the service or commodity and as to the tolls or charges demanded, as seems to it to be just and reasonable, and may disallow or change, as it thinks reasonable, any such tolls or charges as, in its opinion, are excessive, unjust, or unreasonable or unjustly discriminate between different persons or different municipalities, but subject, however, to such of the provisions of any contract existing between the owner and a municipality at the time the complaint is made as the board considers fair and reasonable.

Expenses of Board

97(4) The expenses and costs of and incidental to proceedings to be taken by the board under this section are in the discretion of the board; and the board may direct by whom and to what extent they shall be paid.

3.0 Board Findings

The Board has reviewed the complaint and all relevant evidence provided by all involved parties.

Waiver of Invoice #IVC0077762 in the Amount of \$10,773.38

The Board did not find compelling evidence from either party to resolve the conflicting information that is in dispute regarding the complaint. Therefore, the Board finds it cannot waive the wastewater line break repair charges from the City of \$10,773.38 in its entirety.

The Board finds the complainant signed the Waiver, acknowledging their liability for costs regarding the excavation and wastewater line repair work on the property pursuant to the City's Water, Storm, Sewer Service Line Maintenance Special Levy. In the Board's view, it is a signatory's responsibility to understand what they are signing, prior to signing a document. In this instance, signing a waiver acknowledges one's understanding of why a waiver is required by the organization that has provided it and that you have read the waiver carefully (prior to signing) and understand the terms and conditions of the waiver. If the complainant required additional explanations or clarifications regarding the Waiver, they should requested them prior to signing the Waiver.

The Board commends the City with respect to its Water, Storm, Sewer Service Line Maintenance Special Levy and its respective By-Laws. The Board also commends the City regarding the implementation of Schedule C to By-Law No. 2006-2021 following this complaint, requiring a signed statement from a homeowner and plumber prior to commencement of any work. In the Board's view, these measures provide clarification for how the City will proceed with water and wastewater line maintenance.

The Board notes, however, the Waiver signed by the complainant contains some inconsistencies. The Waiver first references a sewer line stating, "If it is found that the issue with the sewer service line is not one that is covered by the Water, Storm, Sewer Service Line Maintenance Special Levy then the total cost of the excavation and repair will be the responsibility of the property owner". The Waiver later, however, references a water line stating that, "I [The Complainant] have read and understand that I will be responsible for the total cost of the excavation and materials if it is found that the issue with the water service line is not covered by the Water, Storm, Sewer, Service Line Maintenance Special Levy. The Board recommends the City review this document for such inconsistencies and rectify them accordingly. Second, the Waiver states, "The City of Thompson will excavate the property stated to investigate and repair the issue that was brought forward". The Board finds that while the City did investigate the issue brought forward by the complainant, the City failed to repair the issue that was brought forward.

The Board finds that pursuant to the signed Waiver provided by both parties, the City did not provide an adequate quote to the complainant that includes a detailed scope of work and a specific outline of costs. The Board also finds the City did not take all reasonable steps to communicate the liability for potential charges of the related work. In the Board's view, the City should have clearer policies, processes, and procedures in place regarding communication to constituents prior to commencement of any work. Specifically, the scope of work to be performed (including on-site advisement, if possible, prior to the commencement of agreed to work); details regarding liability for all costs and forecasted costs; and other options for the constituent with respect to the scope of work forecasted to be required.

The Board recommends the City review and rewrite its Waiver to remove any inconsistencies and to provide additional detail and clarity regarding liabilities for costs with respect to the Water, Storm, Sewer Service Line Maintenance Special Levy.

The Board understands the City's Private Works Policy that prohibits municipalities from using public funds to unfairly compete against the private sector. The Board finds, however, based on the evidence provided by both parties that the City workers performed excavation work in the incorrect location on the property requiring the complainant to retain additional services to complete the required wastewater line break repair. The Board also finds the \$10,773.38 bill for the excavation work performed on the property to be excessive, given the City neither located nor completed the wastewater line break repair.

The Board notes that the competitive quotes provided by private sector companies A&B Builders of \$4,725.00 and A. Sapach Trucking Ltd. of \$5,124.00 are approximately half the cost invoiced by the City. The Board therefore orders that Invoice #IVC0077762 be reduced by 50% from \$10,773.38 to \$5,386.69, to be approximately comparable with the competitive quotes. The Board also orders that the amount of \$5,386.69 be payable by the complainant to the City within 60 days from the date of this Order or in accordance with a payment schedule agreed to by both parties.

City Protocol, Dispute, and Appeal Mechanisms

As noted above, the Board finds the City did not take all reasonable steps to clearly communicate the specific details to the complainant regarding the scope of work to be performed, liability for costs and potential/forecasted costs, and other potential options to proceed with respect to the scope of work forecasted to be required.

As noted above, the Board believes that the implementation of Schedule C to By-Law No. 2006-2021 is a positive addition to the City's existing Water, Storm, Sewer Service Line Maintenance Special Levy and its respective By-Laws. The Board recommends, that in addition, the City develop and implement clearer policies, processes, and procedures regarding communication to constituents for work to be performed prior to commencement of any work. This includes, but is not limited to: a detailed quote/forecast of the cost of work to be performed; a detailed outline of the scope of work to be performed including timelines; potential alternatives and options for the constituent to have the forecasted required scope of work performed; and the details of the liability for the forecasted costs of the scope of work to be performed.

Assignment of Costs

The Board has the jurisdiction to order its costs be assigned to either or both parties. The Board received a significant amount of evidence from both parties regarding the facts giving rise to this complaint, and the communications and correspondence between the parties. Many of the details of what transpired are disputed, and required significant Board time to reach a decision on the matter. As outlined in the Executive Summary and Board Findings section of this Order, the Board concludes that both parties could have done more to resolve their dispute before bringing the matter to the Board. The Board has therefore determined that the costs for this Order should be shared equally by the parties. The Board therefore orders that costs of these proceedings of \$500.00 be shared by both parties in the amount of \$250.00 each. Similarly, with respect to the costs for the City and the complainant, the Board orders that the parties shall bear their own costs.

4.0 IT IS HEREBY ORDERED THAT:

1. The City of Thompson reduce the amount of Invoice #IVC0077762 for \$10,773.38 to Mr. Volker Beckmann by 50% to \$5,386.69.
2. Revised Invoice #IVC0077762 in the amount of \$5,386.69 be payable by Mr. Volker Beckmann within 60 days of this Order or in accordance with a payment schedule agreed to by both parties.
3. The City of Thompson and Mr. Volker Beckmann pay the Board's costs in respect of this complaint, totalling \$500.00, to be shared equally at \$250.00 each.
4. The City of Thompson and Mr. Volker Beckmann bear their own costs of this complaint.

5.0 IT IS RECOMMENDED THAT:

1. The City of Thompson develop and implement clearer policies, processes, and procedures regarding communication to constituents for work to be performed prior to commencement of any work related to similar issues.

2. The City of Thompson review and rewrite its Statement of Cost Responsibility/Non-Levy Waiver Letter to remove any inconsistencies and provide additional detail and clarity regarding liabilities for costs with respect to the Water, Storm, Sewer Service Line Maintenance Special Levy.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

Fees payable upon this Order - \$500.00
(\$250.00 payable by Mr. Volker Beckmann and \$250.00 payable by the City of Thompson.)

THE PUBLIC UTILITIES BOARD

"Irene Hamilton, Q.C."

Panel Chair

"Frederick Mykytyshyn"

Assistant Associate Secretary

Certified a true copy of Order No. 97/21
issued by The Public Utilities Board



Assistant Associate Secretary