

Order No. 102/16

**DECISION ON COMPLAINT FILED BY
MR. CHIEW CHONG
AGAINST THE
CITY OF THOMPSON**

August 2, 2016

**BEFORE: Régis Gosselin, B ès Arts, MBA, CPA, CGA, Chair
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Member**

Table of Contents

| | | |
|-----|---|----|
| 1.0 | Executive Summary..... | 3 |
| 2.0 | Background | 3 |
| | Complaint to the Office of the Manitoba Ombudsman | 4 |
| | Powers of the Board | 5 |
| | Complaint | 7 |
| | Available evidence..... | 8 |
| | Estimate..... | 8 |
| 3.0 | Board Findings | 10 |
| | Inaccurate assessment of the work performed | 12 |
| | Excessive bill | 12 |
| | Excessive vibrations | 14 |
| | Placement of the line | 14 |
| 4.0 | Board Decision | 15 |
| 5.0 | IT IS THEREFORE ORDERED:..... | 16 |

1.0 Executive Summary

On April 14, 2016, the Public Utilities Board (the Board) received a complaint from Mr. Chiew Chong (the complainant) of Thompson Manitoba. The complaint involves a bill for \$9,326.43 received from the City of Thompson (the City) for repairs that were made by the City to the service line from the City main to the complainant's restaurant, the Wonton Place Restaurant.

The Board has decided that the complaint should be dismissed.

2.0 Background

A break occurred in the service line from the City main to Mr. Chong's restaurant in the first half of 2015. While there are some differences amongst the parties about the date when the break occurred, there was a leak in the water line which needed repairs. The City was initially uncertain about the location of the break. The City had plans to abandon the old main running in from of the complainant's restaurant once a new water main was installed across the road. The City also believed that there were fiber optic and traffic control cables laying close to the sidewalk on Cree Road neighbouring the complainant's restaurant; therefore, the City decided that the work could only be done using soft digging. The City decided to delay repairs until it could determine the location of the leak. In June of 2015, the City determined that the break was on the service line to the complainant's restaurant.

The complainant states that he believed that the repairs were to be made by Smook Contractors Ltd. (Smook) which was making repairs to the City main in proximity to the restaurant. He states that he came to this conclusion based on comments made by the City's Mayor. He wanted Smook to do the work because he wanted to get a new line connected to the break. There is no evidence made available to the Board that Smook was approached by the complainant to do the work. The City itself performed the work.

According to the complainant, he was notified at the end of June 2015 that the City would be making the repairs and was also notified that the work would commence on July 2, 2015. The City started the work on the scheduled date and completed the repairs on the following day as requested by the complainant rather than working overtime on July 2 to complete the work.

The repairs were made by the City using equipment that included a vacuum truck and the City billed the complainant. The complainant submitted photos of the work that was performed.

When the work was completed, the complainant received a City invoice which is the subject of the complaint.

The complainant appeared before the City Finance Committee which refused his request to waive the bill.

Complaint to the Office of the Manitoba Ombudsman

Initially, the complainant made a complaint to the Office of the Ombudsman (the Office) on December 31, 2015 that was described by the Office as follows:

The City of Thompson has unfairly charged me for the water break repair. I was not given a written quotation of the charges and the invoice provided was an inaccurate assessment of the actual work done on the water break.

According to the Office, it does not intervene when there is an existing review process. The Office's review does not replace an available option to appeal. The Office does not provide advocacy or mediation services nor does it take the place of the Courts. The Office does not have the authority to award and/or consider financial compensation, impose penalties or order a public body to change any action or decision. Its role is to promote administrative improvement.

When the Office reviews a complaint, it determines whether a public body's action are consistent and in accordance with applicable legislation, regulations, policies and/or

guidelines. The Office also considers whether the public body has a reasonable basis for its position.

During the course of its review, the Office could not clearly identify an administrative deficiency and/or elements of statutory non-compliance on the part of the City of Thompson (the City).

The Office determined that the complainant had appeared before the Finance and Administration Committee to dispute the bill received for the water repair break that occurred at Wonton Place Restaurant. In a letter dated October 23, 2015, the City advised that it had denied the complainant's request.

The Office was of the view that the City's decision was in line with the City's By-law 1842-2010. In a letter dated January 15, 2016, the City had clarified its decision and advised the complainant that he could file an appeal with the Public Utilities Board.

The Office concluded that it was satisfied with the steps taken by the City to address the complaint. Finally, the Office determined that, because the City's decision could be appealed to the PUB, there was no further role for the Office.

Powers of the Board

Pursuant to *The Public Utilities Board Act* (the Act), the Board exercises supervision over the City of Thompson's water and wastewater utility.

Various provisions of the Act apply in respect of this complaint.

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 expedient 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 therefore.

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.

Complaint

The Board considered the complaint made by the complainant to the Office of the Ombudsman as having been made to the Board, with the supplemented information set out in his letter received by the Board on April 14, 2016.

The Office of the Ombudsman considered the following complaint:

The City of Thompson has unfairly charged me for the water break repair. I was not given a written quotation of the charges and the invoice provided was an inaccurate assessment of the actual work done on the water break.

In the correspondence addressed to the Board, the complainant stated that the bill was excessive because the work could have been done more cheaply. He complained that the City moved the main line to the other side of the road in front of his restaurant; if further repairs are needed to his line, they will be more expensive because of the main line's new location. He stated that the repair work being done by the City in early March 2015 in front of a hairstylist salon adjacent to his restaurant caused severe vibrations that are a probable root cause of the initial damage to his water line.

When reviewing a complaint or an application, the Board has at its disposal two approaches, either a paper review or an oral hearing. The Board considers the matter and determines which method of review is the most appropriate one to use given the circumstances. In this case, the Board decided to proceed by way of a written hearing in order to minimize costs to all parties and because the City engineer who had been involved in the work performed by the City has left the employ of the City.

Available evidence

The Board had at its disposal various documents related to the complaint. In addition to the statement made to the Mayor, City Manager and Finance Committee, the Board received copies of letters sent to the complainant by the City and the Office of the Ombudsman. In addition, the Board considered the complainant's letter of complaint, the City's response to the letter of complaint, the information provided by Santokh Randhawa while still in the employ of the City in response to the Board's information requests. The complainant responded to the information from Mr. Randhawa and submitted photographs of the repair work being performed. The complainant also included a signed letter from Krystal Phillips of The Shop hair salon about the effects of heavy machinery work on Cree Road and photographs of some damage to the restaurant.

The Board also considered the City's:

- By-Law No. 1842-2010;
- 2015 Fee and Fine Schedule;
- Notice of Public Hearing – Special Service Levy By-law 1937-2016; and
- Special Service Levy Presentation.

Estimate

In his information to the Board, the complainant states that he was never offered a cost estimate nor details of the cost in writing or orally other than a statement that it was very difficult to estimate the cost for repairs.

In the complaint letter received by the PUB on April 14, 2016, the complainant states that he asked Mr. Santokh Randhawa, Manager of Infrastructure for the City, what his cost would be for the repairs to be made by the City. He alleges the engineer advised him that it was very difficult to estimate a written quote at that time. He expected but did not receive a quote.

According to the statement of Santokh Randhawa, he and the City's Director Public Works started conversations with Mr. Chong in June 2015 to address the issue. They both met him in person and had four or five telephone conversations with him. They discussed all the details about the proposed repair and how to minimize the water disruption during the repair.

Mr. Santokh Randhawa also stated:

Mr. Chong was given the option either to hire a private contractor or the City to get the service break repaired at his cost but it was Mr. Chong who requested The City to perform the work. Mr. Chong was made well aware that the repair will be at his cost if the break was on his service line.

Mr. Randhawa also stated:

Mr. Chong was given a verbal estimate of \$ 11,500 before the start of work and was told that the actual cost may vary depending on the underground conditions and the actual work carried out. The estimate was provided to him about three days before the start of work. It was only after Mr. Chong accepted the price and requested the City to proceed with the work that the work was scheduled for July 2, 2015. He also indicated that Mr. Chong was present on the site all day on July 2, 2015. At the end of day as the backfilling work was still remaining he indicated that Mr. Chong was given the option to have the work performed and finished on overtime and or to have the work completed the next day on regular hours. According to his statement, Mr. Chong said that he did not want to pay overtime and wanted the work performed on regular hours the next day. The work was completed on July 3, 2015.

3.0 Board Findings

The City enacted By-Law 1842-2010 which regulates and provides for the distribution and use of City water. The By-Law sets out the following provisions:

"City Water Service" or "Service Connection" shall mean that portion of a pipe used or intended to be used for the supply of water which extends from the water main to the property line for the serviced property;

"Private Water Service" shall mean that portion of a pipe used or intended to be used for the supply of water which extends from the property line to a water meter, or the foundation wall if no water meter exists.

Notwithstanding the payment by a Customer of any costs incurred by the City, the City shall retain full title to all lines, equipment, and apparatus on its side of the point of delivery, and to all meters and metering equipment provided by it whether or not on the Customer's side of the point of delivery.

SERVICE CALLS SERVICE CHARGE

When a Customer requests that the City attend their premises with respect to any matter relating to the supply of utility services or the servicing of the same, and for any reason whatsoever the City is unable to enter the said premises, or if in the opinion of the Director, the call is for failure of service not attributable to the utility service, the Customer shall pay a fee as set forth in Water and Wastewater Rates By-Law.

The City is empowered by *The Municipal Act* to establish a schedule of fees for services.

Powers respecting works, services, utilities

252(1) A municipality exercising powers in the nature of those referred to in clauses 250(2)(b), (c) and (e) may set terms and conditions in respect of users, including setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;

In 2015, the City established a Fees and Fines schedule by Council Resolution under which the City is authorized to undertake custom jobs, including the water service repairs, if the customer wishes to engage the City and the City has the resources available to do the work.

The Board concludes that the rates paid for water service and taxes paid for the property do not include repairs to the private water service. The City retains ownership of the water meter even if it is on the complainant's property. The complainant is responsible for the service line to his restaurant.

While the complainant expected Smook Contractors to do the work, his dealings were with the City engineer not Smook Contractors. In his statement of complaint, he knew the City would be doing the repairs because he states that he asked for a quotation.

The City was not told by the complainant not to undertake the repairs unless he received a quotation. The Board believes that the City would not have worked on the complainant's property unless the complainant had requested the service, given its Special Charge Service Calls cited above.

Based on the information provided by the City and confirmed in the complainant's evidence, the Board has concluded that the work proceeded while he was present.

The City has a tariff of fees for services that it performs. While the complainant may have been surprised about the amount of the bill, he had access as a citizen to the City's tariff of fees applicable to City services.

The Board believes that the City was not in a position to provide a written quotation because the City has to bill on the basis of its own schedule of fees and in accordance with the hours worked. The City is not a private contractor that can negotiate a fee for its services or bill on the basis of a written quotation since its fees are based on a fee per hours worked as set out in its own Tariff of fees.

Inaccurate assessment of the work performed

No evidence was made available by either parties that would lead the Board to conclude the amount of hours worked and the type equipment used was inaccurate.

The Board therefore sets aside this element of the complaint.

Excessive bill

The complainant complained that the technique used by the City, which involved a Hydrovac vacuum truck to remove the mud from the impacted area was unwarranted because it is a very long and uncalled for process to repair the service line and because there were no fiber optic cable lines as stated by the City. Furthermore, he objects to the many City staff that were involved in the repairs.

His written submission set out the following:

It is also important to stress that I am not inexperienced with these kinds of repairs. I have been working as an industrial mechanic and power engineer for what is now Vale INCO Ltd. for the past 41 years, and I've worked the water line and sewage line break at Vale's T-3 mine on a semi-frequent basis for over 22 years. I have experience working with Smook Contractor's backhoe excavator, and I understand how the work is to be properly and

effectively done. Hydrovacs or vacuum trucks are never used for the digging process.

With my professional experience established, I want to make one thing particularly clear: for a simple job like the one that was to be done on my property, it takes approximately four hours to complete. It is standard procedure that all lines are buried roughly eight to ten feet deep. From what I witnessed on hand, the city workers could easily have dug six feet below and then guided the operator to the dig without ever damaging the line. During the dig itself, the workers might have damaged the sewage line, therefore causing extra time to be added to the job and 6" Lermco couplings now required to be used. I also witnessed the workers being unable to completely shut off the valve to the line, therefore also requiring a 1" curb stop valve to be used. And instead of dumping the back fill to the ground and pushing it to cover the hole, the city workers used the backhoe excavator to scoop the sand from the Tandem to backfill the hole, requiring extra time to accomplish this than what was necessary. They worked eight hours a day, but then the Tandem was charged for ten hours on the invoice. The manpower for the job involved four operators, one foreman, and two labourers on the invoice, yet when I've worked on similar jobs for Vale, only one operator and two mechanics using back the same backfill accomplished the same work at a substantially more cost-efficient manner.

The Board is of the view that the complainant should have addressed the performance of the work, the techniques used and the numbers of staff employed while it was being performed. While the work was not undertaken in the same manner he has experienced in his place of employment, once he accepted that the City would perform the work, the City could decide how the work would be performed.

Excessive vibrations

The complainant has expressed the view that excessive vibrations were the root cause of the damage to the line.

Because this element of the complaint was contained in the complainant's rebuttal to the information requests made of the City, the City has not provided a response to this allegation.

There is no evidence that the complainant has addressed this issue with the City. The complainant should first seek redress from the City.

Placement of the line

The complaint also encompassed the new placement of the line.

Normally, the utility is responsible to deliver water to the curb stop of the client. The client is responsible for the line from the curb stop. Repairs that are required beyond the client's property line are not the responsibility of the client.

However, the Board will not address this element of the complaint since this is a matter within the City's purview. The Board has the power to issue orders that address the safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so. This element of the complaint does not involve safe, adequate or proper utility service.

4.0 Board Decision

Based on the above findings, the Board has decided that the complaint should be dismissed.

The Public Utilities Board Act specifies the following:

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.

The Board has the authority to assign costs for the Board's review of this complaint to one or both of the parties involved.

The Board has decided not to assign costs to the complainant even though the Board has concluded that the complaint should be set aside.

The Board advises the complainant to promptly pay the amount owed for the work performed by the City and any interest costs related to the unpaid bill.

Seeking redress from the Board should be a last resort when attempting to resolve a dispute of this nature. The parties involved should make every attempt to come to an agreed upon resolution before the Board is asked to settle a dispute.

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. The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

5.0 IT IS THEREFORE ORDERED:

That the complaint made by Mr. Chiew Chong against the City of Thompson regarding the City's bill in the amount of \$9,326.43 be dismissed.

THE PUBLIC UTILITIES BOARD

Régis Gosselin, B ès Arts, MBA, CPA, CGA
Chair

Jennifer Dubois, CPA, CMA
Acting Secretary

Certified a true copy of Order No. 102/16
issued by The Public Utilities Board

Acting Secretary