

C.A. No. 1245

PADDY ANN O'REILLY

APPELLANT
(Petitioner)

- and -

DARYL ALLAN TAYLOR

RESPONDENT
(Respondent)

Paddy O'Reilly, by teleconference

Jonathan Goby, by teleconference

Taxation before Lian M. Schwann, Q.C.
Registrar, Court of Appeal
January 23, 2009

The appellant, having met with success on her appeal, was awarded costs subject to the limitations imposed by the Court expressed in the written reasons of Richards J.A.. Speaking for the Court, he said:

In keeping with the usual practice of this court, there will be no order as to costs given that Ms. O'Reilly is self-represented. She is entitled to recover the cost of her reasonable disbursements, properly receipted, and there will be an order to that effect. Her airfare is not to be included in her list of disbursements.

[2008 SKCA 124, par. 10]

To that end, and after several false starts, Ms. O'Reilly submitted a Bill of Costs. Mr. Goby, counsel for the respondent, was not prepared to consent to Ms. O'Reilly's Bill

of Costs, consequently an Appointment for Taxation was taken out and the taxation proceeded before me as Registrar by way of teleconference call.

Mr. Goby's objections can be summarized as follows:

1. The \$20 fee for Show Cause should be disallowed because this Court made no order as to costs at the time of the Show Cause hearing on May 13, 2008. He further observes that issuance of an order following the Show Cause hearing allowing Ms. O'Reilly to proceed with her appeal would have been required in any event, was of her own doing, and therefore was disconnected from the appeal itself.
2. Disbursement costs, such as mail, service and photocopying, related to show cause should be disallowed.
3. The receipts provided were insufficiently documented so as to demonstrate how or if each related to the appeal.
4. The appellant should not be entitled to claim for the costs associated with serving documents twice – once by fax and then by Canada Post. Duplication of service was her choice and was not of necessity.

In response to these points, Ms. O'Reilly argues:

1. The Show Cause proceedings were precipitated by the general uncooperative nature of Mr. Goby and the respondent and therefore the dilatory history of her appeal (in the first year), not being solely attributable to her, should not sound in her being penalized.
2. The receipts filed in this taxation are sufficiently clear as to date and purpose so as to connect the expense to the appeal proceedings. All relate to mailing, fax costs or printing/binding supplies in relation to this appeal.
3. As a non-lawyer and thereby unfamiliar with the rules on service, she should be given some latitude. She further argues that as a non-lawyer she is not entitled to serve by fax. The fact she served many

documents twice was simply to give Mr. Goby prompt notice and because duplication was considered by her to be necessary given the uncooperative nature of the party with whom she was dealing.

4. As she did not include long distance telephone charges, further latitude should be given as to the expenses which were claimed.

As observed above, Ms. O'Reilly is entitled to her 'reasonable disbursements' properly receipted. The first 4 items claimed by her relate to filing and other court fees charged by the Registrar's office in connection with appeals. These 'fees' are typically set out in a Bill of Costs as 'disbursements', and therefore will be considered as such regardless of the format. All of these fees were properly incurred by her as evidenced by the receipts and information provided, however it was only the \$20 fee for issuance of the court order following show cause proceedings that is in issue on taxation.

I am inclined to agree with Mr. Goby. Show Cause proceedings are initiated by the Registrar pursuant to Rule 46(2) of *The Court of Appeal Rules* where an appellant fails to perfect his or her appeal within one year from date of filing. The obligation to move an appeal along rests solely with appellants and failure on their part to do so exposes the appeal to the prospect of dismissal. The court file demonstrates that little if anything was done by the appellant after the appeal was filed on January 6, 2006 until Show Cause was commenced. The consequence of this delay, for whatever reason it was brought about, is one visited upon the appellant. Further, and more directly on point, by order of this Court the appellant was allowed to proceed with her appeal "with no order as to costs".

Ms. O'Reilly claims a total of \$123.40 for the costs of service by fax and by Canada Post. Of that amount, the following will be taxed off:

- the sum of \$27.37 ($\$18.25 + \$9.12 = \27.37) for which receipts were not provided. Consistent with the Court of Appeal Tariff and the Court's decision, only properly receipted disbursement costs can be claimed.

- the sum of \$15.36 ($\$4.66 + \$10.70 = \15.36) as they relate to show cause proceedings. In fact the sum of \$10.70, incurred at Canada Post on March 17, 2008, must surely relate to the cost of serving Mr. Goby with her Notice of Motion, supporting affidavit and draft order filed in response to the show cause proceedings.

- the sum of \$9.12 for service on the Court of Queen's Bench in Estevan. No rationale was provided as to why the Court of Queen's Bench was required to be 'served', nor can I think of one.

One of the receipts for binding supplies was in the amount of \$46.16 not \$46.18, as stated in the Bill of Costs, and a correction of \$0.02 has been made.

In summary, the Bill of Costs will be taxed as follows:

Taxed on:	\$ nil	
Taxed off:	\$ 20.00	Issuance of Show Cause Order
	\$ 51.85	Service fees
	\$ 00.02	Correction

The Bill of Costs is therefore taxed and allowed at \$581.50.

DATED at the City of Regina, in the Province of Saskatchewan, this 2nd day of February, 2009.

LIAN M. SCHWANN
Registrar Court of Appeal

Lian M. Schwann, Q.C., Registrar.