

KIRK HAROLD KNUDSON

APPELLANT  
(Respondent)

- and -

RAELYN DIANE KNUDSON

RESPONDENT  
(Petitioner)

Annand Law Office, for the Appellant  
(Mel Annand)

Carson and Company, for the Respondent  
(Mark Carson)

The appellant, Kirk Harold Knudson, commenced an appeal before this Court in May 2007. His appeal was heard on April 17, 2008, with written decision rendered on August 25, 2008. [*Knudson v. Knudson*, 2008 SKCA 106]. As the appellant was largely successful with his appeal, costs were awarded in his favour as set out in paragraph 29 therein:

[29] The appellant shall have the costs of the appeal to be taxed.

Thereafter, counsel for the appellant prepared a Bill of Costs and took out an Appointment for Taxation. Taxation of the proposed Bill of Costs was heard by me as Registrar on November 3<sup>rd</sup> pursuant to Rule 54, the relevant portions of which provide:

- 54(1) Unless otherwise ordered:
- (a) the costs of an appeal or application shall be taxed as between party and party by the registrar in accordance with the fees set out in the appropriate column of Schedule 1;

Aside from the disbursement for legal research – discussed more fully below – there is general agreement on all fee items and disbursement costs as well as agreement that Column 2 was appropriately applied.

Disagreement arose on the narrow point of whether \$1,875 for legal research is an appropriate disbursement. Rule 54(1)(a) directs taxation of party and party costs in

accordance with the items and amounts in Schedule I of the Rules (the "Tariff"). Tariff item 16 allows "*all necessary disbursements for which there are proper vouchers.*" To that end, counsel for the appellant filed an Affidavit of Disbursements claiming, *inter alia*, legal research of \$1,875 supported by an invoice from Madisun Browne Legal Research attached and marked as Exhibit A to his affidavit. The nature of the work described in the invoice is legal research (both manual and electronic) and preparation of legal memorandum.

Counsel for the Respondent relies on the decision of Ryan-Froslic, J. in *Reid v. Babchouk* 246 Sask. R. 155, which, he argues, stands for the proposition that legal fees of an agent do not form part of an award of 'taxable costs' and consequently are not a proper disbursement to be dealt with on taxation. Mr. Carson says *Reid* is directly on point and determinative of the issue. Appellant counsel takes the position that *Reid* can be distinguished from the facts in the within matter and therefore should not be applied. In *Reid*, another lawyer was engaged by plaintiff's counsel because of a conflict. The agent prepared and argued the motion. Unlike the facts in *Reid*, Mr. Annand points to the fact that outside counsel in this case was hired solely to undertake legal research; she neither appeared nor argued the case on appeal.

Orkin on *The Law of Costs*, 2<sup>nd</sup> ed. provides a useful overview of the general principles pertaining to disbursements.

To be assessable, disbursements must be reasonably necessary to advance a party's position, and the amount of disbursements must be reasonable..... Only disbursements made and charged for by the party's solicitor qualify as assessable disbursements. As a general rule, overhead costs, as opposed to expenses incurred in furtherance of an individual file, are not assessable [Orkin, 219.65(1)]

Argument on taxation seemed to turn on whether this invoice should be characterized as research or as the legal fees of an agent.

Even if characterized purely as legal research, the cases are divided on whether computer assisted research is a proper disbursement costs. [Orkin, 219.6(9); *Denzler v. Aull* (1994) 19 O.R. (3d) 507] In one case, the costs were limited to those cases ultimately presented in court. [*Sandu v. ICBC* (1999), 45 C.P.C. (4<sup>th</sup>) 266]. The other line of thought – for which there appears ample authority – is to disallow this cost on the footing that legal research is effectively part of the fees taxed by legal counsel or as part of the general cost of overhead. [*Sidorsky v. CFCN Communications Ltd.*, (1995) 35 C.P.C. (3<sup>rd</sup>) 239; see also *Harach v. Schubert*, [1999] 12 W.W.R. 273 (Sask. Q.B.) where Quicklaw costs were denied in Saskatchewan]

Orkin cites authority for outsourced legal fees constituting an appropriate disbursement on a party-and-party bill of costs. In *Mullen v. Lockhart Motor Sales (Collingwood) Ltd.* (1998), 31 C.P.C. 4<sup>th</sup> 287 the court allowed this as a disbursement on the footing that the case was complex and handled by a solo practitioner.

This issue is not strictly one of proper characterization of the invoice; it must also be viewed within the context of the registrar's jurisdiction on taxation in contrast with the court's broad authority to award costs in the initial instance. There are two cases of relevance in Saskatchewan which brings this issue to the fore. As mentioned earlier, the *Reid* case involved the fees of an agent engaged by counsel on record for Ms. Babchouk to argue a motion brought to remove Ms. Babchouk's legal counsel from the file. The application was denied with Ms. Babchouk being awarded "taxable costs". The assessor found the agent's fees to be a "necessary disbursement" in the circumstances and allowed it. Ryan-Froslic, J. overturned the assessor's determination on review concluding at paragraph 15:

To allow the agent's bill as a disbursement has the effect of awarding Ms. Babchouk solicitor/client costs. In effect, she is being compensated for her entire legal bill with regard to the application.....If Ms. Babchouk wanted the disbursement, she should have raised that issue with Justice Klebuc. [as he then was].

The second case, *Simpson v. Chiropractors Association*, 210 Sask. R. 301, is cited in *Reid* to illustrate the wide discretion accorded Queen's Bench judges in granting costs. Counsel in *Simpson* were similarly faced with an application to remove them from the file however, unlike in *Reid*, counsel specifically asked for and were granted costs for their agent's bill by the court.

Allowing an agent's bill to stand as an appropriate disbursement cost is not in keeping with what generally is considered to be a disbursement. Typically, disbursements embrace things such as the costs of faxes, photocopying, courier fees, court filing. There are others. Legal fees, however, regardless if reasonable and necessary, are not of the same ilk. Had counsel specifically requested indemnity for his agent's account in court at the time of appeal, the court could have dealt with it within the context of its broad authority to award costs. Arguments could have been made at that time on a host of issues, including whether the account was subsumed within fees awarded as taxable costs; 'research' versus a 'legal fee'; or reasonable and necessary in the circumstances. None of those issues were argued, consequently I am left to tax this as a disbursement. Applying the

logic in *Reid*, I am asked to effectively make an award of costs for legal fees which in my opinion was not contemplated in the court's decision, and which is beyond my jurisdiction on taxation.

I conclude the decision in *Reid* should be applied to this case; accordingly the sum of \$1,875 for legal research is taxed off. Counsel for the appellant neglected to include item 14 of the Tariff – Taxation of Bill of Costs – for which column 2 allows \$75, and the related disbursement of \$15 to issue the Bill of Costs. I therefore tax off the disbursement of \$1,875 for legal research, but tax on \$75 as a fee for taxation along with \$15 as a disbursement for issuance of the bill of costs. In summary, the bill of costs shall be allowed as follows:

TOTAL FEES	\$ 5,190.00
TOTAL DISBURSEMENTS	\$ 1,968.44
TOTAL BILL	\$ 7,158.44

DATED at the City of Regina, in the Province of Saskatchewan, this 12<sup>th</sup> day of November, 2008.

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