

MICHAEL SEON

APPELLANT

- and -

MINISTRY OF SASKATCHEWAN HEALTH, REGINA QU'APPELLE
 HEALTH REGION, REGINA PIONEER VILLAGE, ALGER SEON
 and PUBLIC GUARDIAN AND TRUSTEE

RESPONDENTS

Michael Seon, the Appellant
 Neil Elder for the Respondent, Alger Seon

**Taxation before Melanie A. Baldwin
 Registrar, Court of Appeal
 October 12, 2011**

The appeal was dismissed with costs to the Respondent Alger Seon under Column 2 of the Court of Appeal Tariff of Costs [see Amended Judgment of the Court dated June 17, 2011]. The Respondent, Alger Seon, took out an appointment for taxation and served that appointment for taxation and a proposed bill of costs on the Appellant, Michael Seon, on September 27, 2011. The appointment, proposed bill of costs and proof of service were filed with me on September 27, 2011. The proposed bill of costs was taxed by me in the presence of Mr. Michael Seon and Mr. Elder on October 12, 2011 and this fiat represents my decision in relation thereto.

Authority for Taxation

Rule 54 of *The Court of Appeal Rules* provides for taxation of costs and indicates that Part Forty-Six of *The Queen's Bench Rules* applies, with any necessary modification, to a taxation of costs under Rule 54. Rules 563 and 564 in Division 3 of Part Forty-Six of *The Queen's Bench Rules* deal specifically with assessment of party and party costs. I provided Mr. Michael Seon and Mr. Elder with copies of Rule 54 of *The Court of Appeal Rules* and Division 3 of Part Forty-Six of *The Queen's Bench Rules* at the taxation on October 12, 2011.

Proposed Bill of Costs

The proposed bill of costs lists the following fees under Column 2 of the Court of Appeal Tariff of Costs:

8	Preparation of Factum	\$ 2000
9	All Other Preparation for Hearing	\$ 750
10	Appearance to Present Argument on Appeal before Court of Appeal	\$ 400
13	Preparation of Bill of Costs	\$ 150

The proposed bill of costs claims PST of \$165 and GST of \$165 on these fees.

The proposed bill of costs also lists a disbursement of \$100 representing a filing fee for Mr. Alger Seon's Factum.

Preliminary Matter

At the outset of the taxation, I advised the parties that the Court's records did not support the claim for a \$100 filing fee for Mr. Alger Seon's Factum. In fact, the only party who must pay a \$100 filing fee for a Factum is the party who is also filing the Appeal Book. In this appeal, it was not Mr. Alger Seon who filed the Appeal Book. As such, no filing fee was collected when Mr. Alger Seon's Factum was filed. Mr. Elder took no issue with the Court's records in this regard. This disbursement will therefore be taxed off.

Positions of the Parties

Mr. Michael Seon raised the following objections to the proposed bill of costs:

- He was not contacted by Mr. Elder's firm about paying the costs voluntarily before being served with the proposed bill of costs and appointment for taxation.
- The amounts set out in Column 2 of the Court of Appeal Tariff of Costs seem excessive to him, particularly the Preparation of Factum fee of \$2000 in light of the fact that the Factum filed by Mr. Alger Seon was not involved or lengthy.

Mr. Elder responded as follows:

- He has no knowledge of whether there was contact made with Mr. Michael Seon about paying the costs voluntarily before his firm served the proposed bill of costs and appointment for taxation.
- The amounts set out in Column 2 are not excessive, particularly the All Other Preparation for Hearing amount of \$750, which is low given the time spent preparing for a hearing in the Court.

Decision

It is a best practice for a party which is awarded costs to attempt to reach agreement with the party which must pay costs as to amount and terms of payment. It does not appear that this happened in this case. Perhaps this is why the proposed bill of costs does not list the Taxation of Bill of Costs fee of \$75/hour or a disbursement of \$20 for the cost of issuing the appointment for taxation of costs. In any event, I would not be inclined to allow a claim for either of these amounts in these circumstances.

Rule 564(4) of *The Queen's Bench Rules* contemplates allowance of a proportionate part of a charge under the Tariff where a step "has only been partially completed." In this case, Mr. Alger Seon's Factum was not lengthy but it was complete. As such, I do not believe that it is open to me to prorate the Preparation of Factum fee. In any event, by setting page limits and by insisting upon brevity and conciseness for facta in Rule 28 of *The Court of Appeal Rules*, the Court has signaled its position that facta should only be as long as is necessary to ensure that the content listed in Rule 28 is provided. Even if it is open to me to prorate this fee, I would decline to do so for this reason.

The proposed bill of costs will be taxed as follows:

Taxed on:	\$nil	
Taxed off:	\$105	Disbursement for filing Factum and GST

The proposed bill of costs is therefore taxed and allowed at \$3630. Mr. Elder's firm may prepare and file a Certificate of Taxation of Costs to this effect (in Form C) for issuance, if necessary.

DATED at Regina, Saskatchewan, this 12th day of October, 2011



REGISTRAR – COURT OF APPEAL