

V. JENSEN & SONS CO-OPERATIVE STOCKFARM
LIMITED and BARRY JENSEN

APPELLANTS

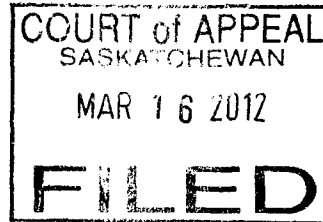
- and -

AGRICULTURAL CREDIT CORPORATION OF
SASKATCHEWAN

RESPONDENT

Peter V. Abrametz for the Appellants
Ryan Lepage for the Respondent

**Taxation before Melanie A. Baldwin
Registrar, Court of Appeal
March 15, 2012**



The appeal was dismissed with costs to the Respondent under Column 1 of the Court of Appeal Tariff of Costs [see Judgment of the Court dated February 9, 2012]. The Respondent took out an appointment for taxation and served that appointment for taxation, a proposed bill of costs and an affidavit of disbursements on the Appellant on February 24, 2012. The proposed bill of costs was taxed by me by telephone conference call with Mr. Abrametz and Mr. Lepage on March 15, 2012 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.

Proposed Bill of Costs

The proposed bill of costs lists the following fees under Column 1 of the Court of Appeal Tariff of Costs:

3	Fee to Respondent on Notice of Appeal	\$ 100
8	Preparation of Factum	\$ 1000
9	All Other Preparation for Hearing	\$ 500
10	Appearance to Present Argument on Appeal before Court of Appeal	\$ 300
11	Preparing Formal Judgment or Order	\$ 100
12	Correspondence	\$ 100

13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 50

The fees claimed total \$2250.

The proposed bill of costs also claims disbursements amounting to \$1444.92 composed of \$875 for online legal research, \$531 for photocopying, \$20 for the Court's fee for issuing the Formal Judgment, \$16.03 for courier and \$0.64 for telephone.

Preliminary Matters

I have reviewed the affidavit of disbursements filed by the Respondent and have identified some issues with the amounts claimed. Exhibit "A" to the affidavit of disbursements contains particulars of the disbursements claimed and describes "total disbursements" of \$1424.92. It seems that this total amount, combined with the \$20 fee for issuing the Formal Judgment, amount to the \$1444.92 disbursements claimed in the proposed bill of costs.

The charges particularized in Exhibit "A" do not amount to \$1424.92 however. Rather, they amount to \$1422.67. It seems that the \$2.25 discrepancy can be traced to the photocopying total which should be \$533.25 rather than \$531.00 based on the amounts shown on Exhibit "A".

In addition, there are individual amounts shown on Exhibit "A" which do not seem to be supported by statements of account in Exhibit "B" and there is a charge shown in the statements of account in Exhibit "B" which does not appear on Exhibit "A". The \$10.50 photocopying charge and \$150 online research charge listed on Exhibit "A" as December 16, 2011 charges do not appear in the Exhibit "B" statements of account attached to the affidavit of disbursements filed with the Court. In fact there was no December 16, 2011 statement of account in Exhibit "B" of the affidavit of disbursements filed with the Court. Finally, there is a \$35 online research charge which appears on the June 15, 2011 statement of account but does not appear on Exhibit "A".

These errors do not impact on the decision that I reach below for the reasons stated below. Having said this, the assessment process is not advanced or assisted by the filing of documents containing errors of this kind.

Positions of the Parties

There is no dispute between the parties in relation to the tariff fee items claimed in the proposed bill of costs amounting to \$2250. In addition, Mr. Abrametz did not dispute certain disbursements totaling \$36.67 (\$20 cost of issuing judgment, \$16.03 courier charge and \$0.64 telephone charge) notwithstanding his position that the latter two amounts were not supported by proper vouchers.

Mr. Abrametz raised the following objections to the disbursements claimed for online research and photocopying:

- Online research charges and photocopying charges are not "disbursements" for which Mr. Lepage's firm incurred out-of-pocket cost but are internal charges incurred within Mr. Lepage's firm. Internal charges of this sort are part of a firm's overhead and are not properly claimed as disbursements.

- Even if online research and photocopying charges can be characterized as disbursements, item 16 of the Court of Appeal Tariff of Costs provides for “all necessary disbursements **for which there are proper vouchers.**” Mr. Lepage has not filed proper vouchers for either the online research charges or for the photocopying charges but has simply filed an affidavit of disbursements attaching copies of firm invoices. Those firm invoices do not provide any detail or breakdown for the impugned charges.

Mr. Lepage responded as follows:

- In the event that the case law establishes that online research is not a disbursement, he is willing to withdraw the claim for online research.
- The affidavit of disbursements does provide proper vouchers for the disbursements claimed. The statements of account represent what his firm can provide as evidence that the disbursements were incurred.
- The amounts claimed for photocopying represent a charge of \$0.25 per page. The respondent’s factum and book of authorities put together were approximately 280 pages long.

Decision

I have reviewed a number of fiats delivered by past Registrars of this Court on assessments as well as relevant case law. I believe that Mr. Abrametz’s argument about what constitutes or does not constitute a disbursement accurately portrays the historical approach taken in this Court and in the Court of Queen’s Bench.

With respect to online research charges, Registrar Schwann, as she then was, made the following statement in a fiat in *Knudson v. Knudson*, CA 1461 dated November 12, 2008:

. . . the cases are divided on whether computer assisted research is a proper disbursement cost. [Orkin, 219.6(9); *Denzler v. Aull*, (1994) 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. (4th) 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. (3rd) 239; see also *Harach v. Schubert*, [1999] 12 W.W.R. 273 (Sask. Q.B.) where Quicklaw costs were denied in Saskatchewan]

In her fiat in *Knudson*, Registrar Schwann also referred to the decision of Ryan-Froslic J. in *Reid v. Babchouk* (2004), 246 Sask. R. 155 as authority for the proposition that allowing disbursements for items such as legal research has the effect of awarding solicitor/client costs rather than party-and-party costs. Registrar Schwann ultimately taxed off the item claimed for legal research in that case.

While the case law may not yet be settled on this issue, I prefer the approach taken by the court in *Sidorsky* and by Registrar Schwann in *Knudson*. For this reason, I will tax off the amount claimed for online legal research.

While, historically, in-firm photocopying charges were not considered to be proper disbursements, a review of fiats on assessments reveals a gradual change in this area to the point where, in *Knudson*, Registrar Schwann said the following:

Typically, disbursements embrace things such as the costs of faxes, photocopying, courier fees, court filing.

I am inclined to follow more recent practice and allow a photocopying disbursement. There must, however, be limits. The per copy cost of \$0.25 claimed by the Respondent seems reasonable. A higher per copy cost could be adjusted. For example, in a fiat in *Smith v. Smith*, CA 1516 dated February 9, 2009, Registrar Schwann reduced a per copy amount of \$0.35 to \$0.25.

Further, I intend to also place a limit on the amount of copies for which reimbursement may be sought on the basis of what documents were filed with the Court by the Respondent on this appeal. Mr. Lepage advised that the Respondent's factum and book of authorities, put together, were approximately 280 pages long. Assuming that Mr. Lepage's firm had to make 7 copies of these documents (1 to keep, 1 for the client, 1 for Mr. Abrametz and 4 for the Court), approximately 1960 pages of photocopying were required. At \$0.25 per copy, the disbursement I will allow here is \$490.

I do not need to address Mr. Abrametz's argument about proper vouchers in relation to the online research charges as I have determined that those charges cannot properly be characterized as disbursements. With respect to photocopying, while it would be more useful to have a printout detailing how many copies were made, when they were made and at what unit cost, I conclude that the vouchers provided in this case for photocopying charges are proper when augmented by the further information provided by Mr. Lepage.

The proposed bill of costs will be taxed as follows:

Taxed on:	\$ nil	
Taxed off:	\$ 875	Online research charges
	\$ 43.25	Photocopying

The proposed bill of costs is therefore taxed and allowed at \$2776.67 (\$2250 in fees, \$490 for photocopying, \$20 to issue Judgment, \$16.03 for courier and \$0.64 for telephone). Mr. Lepage 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 16th day of March, 2012



REGISTRAR – COURT OF APPEAL