

CACV2501

DWIGHT KOSOLOFSKI

APPELLANT



- and -

DANIELLE KOSOLOFSKI

RESPONDENT

W. Timothy Stodalka for the Appellant  
Drew Filyk for the Respondent

**Taxation before Melanie A. Baldwin  
Registrar, Court of Appeal  
September 27, 2016**

### **Background**

On January 7, 2014, Mr. Kosolofski filed a notice of appeal relating to a judgment of Kraus J. (after trial) ordering Mr. Kosolofski to pay spousal support to Ms. Kosolofski and making a distribution of his pension in her favour. An application for perfection was made by Ms. Kosolofski and, on December 10, 2014, Chief Justice Richards imposed a deadline on Mr. Kosolofski for filing an appeal book and factum and awarded costs of the application, in the amount of \$300, to Ms. Kosolofski.

The appeal was subsequently perfected and heard by the Court. On August 23, 2016, the Court released its decision allowing Mr. Kosolofski's appeal with respect to the division of his pension and with respect to spousal support. As part of its decision, the Court directed Ms. Kosolofski to pay Mr. Kosolofski "his costs of this appeal assessed in the usual manner."

Mr. Kosolofski served and filed a notice of appointment for taxation returnable on September 27, 2016, together with a proposed bill of costs and affidavit of disbursements. Mr. Stodalka and Mr. Filyk appeared before me on September 27, 2016 to make verbal submissions on the taxation of the proposed bill of costs and this fiat represents my decision in relation thereto.

**Proposed Bill of Costs**

The proposed bill of costs lists the following fees under column 4 of the Court of Appeal Tariff of Costs:

2	Notice of Appeal	\$ 600
6	Agreement as to Contents of Appeal Book	\$ 400
7	Preparation of Appeal Book	\$1250
8	Preparation of Factum	\$5000
9	All Other Preparation for Hearing	\$1250
10	Appearance to Present Argument on Appeal	\$ 600
11	Preparation of Formal Judgment	\$ 300
12	Correspondence	\$ 300
13	Preparation of Bill of Costs	\$ 250

The fees claimed total \$9950. The proposed bill of costs subtracts \$300 from this amount representing the fixed costs awarded to Ms. Kosolofski on the application for perfection for an adjusted total fees claimed of \$9650. PST and GST totaling \$965 are also claimed.

The proposed bill of costs claims disbursements amounting to \$1146.70 composed of \$125 for the Court's fee for filing the notice of appeal, \$100 for the Court's fee for filing the appeal book, \$20 for the Court's fee for issuing the formal judgment, \$365.80 for the cost of the transcript, \$505.90 for photocopies and \$30 for courier charges. At the taxation hearing, I noted that Mr. Kosolofski had also paid \$20 for the Court's fee for issuing the notice of appointment for taxation and I have added this amount to the disbursements claimed for a total of \$1166.70.

**Issue**

There is no dispute between the parties about the tariff fee items claimed in the proposed bill of costs. Similarly, no objection is made to the disbursements claimed in the proposed bill of costs with the addition of the \$20 fee for issuing the notice of appointment for taxation. At issue between the parties is the appropriate column under which the tariff fee items should be assessed.

Mr. Stodalka, on behalf of Mr. Kosolofski, asked that the proposed bill of costs be taxed on column 4 of the tariff on the basis that the value of the property at issue in the Court of Queen's Bench trial exceeded \$300,000.

Ms. Kosolofski, through Mr. Filyk, took the position that the proposed bill of costs should be taxed on column 2 of the tariff on the basis that the amount actually at issue in this Court (as opposed to in the Court of Queen's Bench) was between \$50,000 and \$100,000.

## Decision

In its decision of August 23, 2016, the Court directed me to assess costs in the usual manner. As I indicated to counsel at the taxation hearing, my usual manner of determining the appropriate column under which tariff items should be assessed has been to look at the amount involved in the appeal, not the amount involved in the proceeding in the Court of Queen's Bench. I arrived at this approach based on the former wording of Rule 54 of *The Court of Appeal Rules*.

Prior to July of 2014, Rule 54 of *The Court of Appeal Rules* provided that Part Forty-Six of *The Queen's Bench Rules* applied, with any necessary modification, to a taxation of costs under *The Court of Appeal Rules*.

In Part Forty-Six of *The Queen's Bench Rules* (as it was prior to amendments to *The Queen's Bench Rules*), Rule 564(1) and (2) provided as follows:

- 564 (1) The assessment of fees pursuant to clause 563(1)(a):
- (a) shall be in the discretion of the assessment officer; and
  - (b) shall be assessed according to the appropriate column of the applicable table of Tariff Schedule I, depending on the amount involved.
- (2) The amount involved shall be determined:
- (a) as against the plaintiff, by the amount claimed; or
  - (b) as against the defendant, by the amount of the judgment.

Prior to July of 2014, my approach was to apply Rule 564(2) after modifying it to replace "plaintiff" with "appellant" and "defendant" with "respondent." In this appeal, this approach would lead me to determine the amount involved as against Ms. Kosolofski by the amount of the judgment granted on the appeal. The judgment granted on the appeal resulted in a reduction in the amount of Mr. Kosolofski's pension available for distribution (with the amount payable to Ms. Kosolofski reduced by approximately \$60,000) and in a small reduction to Ms. Kosolofski's monthly spousal support award. The amount involved would therefore be between \$50,000 and \$100,000 and the appropriate column would be column 2.

The issue of appropriate column has not arisen in a taxation before me since Rule 54 of *The Court of Appeal Rules* was amended in July of 2014. Rule 54 no longer incorporates *The Queen's Bench Rules* provisions on costs and *The Queen's Bench Rules* no longer have a provision like Rule 564 providing direction on how the amount involved is to be determined. Despite these changes, I am of the view that it remains appropriate for me to follow this approach when I am directed to assess costs in the usual manner. As such, I conclude that the appropriate column under which the tariff items should be assessed on this taxation is column 2.

**Assessment**

The costs are therefore taxed as follows:

2	Notice of Appeal	\$ 400
6	Agreement as to Contents of Appeal Book	\$ 200
7	Preparation of Appeal Book	\$ 500
8	Preparation of Factum	\$2000
9	All Other Preparation for Hearing	\$ 750
10	Appearance to Present Argument on Appeal	\$ 400
11	Preparation of Formal Judgment	\$ 200
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
<b>Fees:</b>		<b>\$4800</b>

**Less \$300 (application for perfection)**

**Plus \$450 (GST and PST on fees)**

**Total Fees plus taxes: \$4950**

**Disbursements: \$1166.70**

**Plus \$45.09 (GST)**

**Total Disbursements plus tax: \$1211.79**

**Grand Total (\$4950 plus \$1211.79): \$6161.79**

The proposed Bill of Costs is therefore taxed and allowed at \$6161.79. Mr. Stodalka may prepare and file a Certificate of Taxation of Costs to this effect (in Form 11d) for issuance if necessary.

DATED at Regina, Saskatchewan, this 28<sup>th</sup> day of September, 2016

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

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REGISTRAR – COURT OF APPEAL