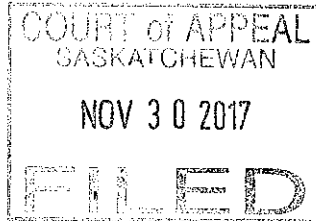


David Robert Allan Viczko and Jennifer Lenore Viczko

APPELLANTS
(Defendants)



- and -

Yvonne Choquette

RESPONDENT
(Plaintiff)

- and -

Donna Boots, in Her Capacity as Executrix of the Estate
of Joseph Frank Viczko, Farm Credit Canada

RESPONDENT
(Defendant)

Ryan R. Lavoie for the appellants
Curtis J. Onishenko for the estate
Mathew R. Wawryk for the respondent

**Taxation before Melanie A. Baldwin, Q.C.
Registrar, Court of Appeal for Saskatchewan
November 27, 2017**

Background

[1] David Viczko, Yvonne Choquette and Donna Boots are siblings. This appeal relates to a dispute that arose among them as a result of the administration of their father's estate. Mr. Viczko and his spouse (the "appellants") arranged with Ms. Boots, in her capacity as executor of the estate (the "estate"), to purchase some land from the estate. Ms. Choquette (the "respondent") was also interested in purchasing this land. The transaction between the estate and the appellants took place without the respondent's consent. The respondent brought an application for summary judgment to have the transaction set aside.

[2] In a decision dated November 3, 2014, Acton J. concluded that the matter could be determined on a summary basis, that the respondent's consent was required and that the appellants were not good faith purchasers of the land. Acton J. therefore found that the transfer of the land was invalid and cancelled the appellants' title to the land, issuing a new title to the estate.

[3] The appellants appealed the decision of Acton J. Their notice of appeal was filed on December 2, 2014. The appeal book and appellant factum were filed on March 18, 2015. The estate's factum was filed on April 15, 2015 and the respondent's factum was filed on April 24, 2015. The appeal was heard by the Court on September 24, 2015 and the Court's decision was delivered on April 7, 2016.

[4] The Court concluded that Acton J. had committed palpable and overriding error by proceeding on a summary basis relying on affidavit evidence to make a finding on the contentious issue of whether the appellants were good faith purchasers. The Court noted that the finding of Acton J. that the appellants were not good faith purchasers was controversial and pivotal and that the evidence before him to support that finding was "inconclusive at best." The Court concluded that resolution of this genuine issue required a trial or, at the very least, oral evidence. The Court allowed the appellants' appeal, set aside the decision of Acton J. and remitted the matter to the Court of Queen's Bench.

[5] In its decision dated April 7, 2016, the Court ordered that the appellants "shall have their reasonable costs in this Court payable from the estate." The parties were unable to agree on whether the reasonable costs described by the Court were to be party and party or solicitor and client costs. The appellants' lawyer sought clarification from the Court on this point on March 28, 2017. On April 4, 2017 after consulting with the panel of the Court that heard the appeal, I advised counsel that "the "reasonable costs" mentioned in their [the panel's] decision are "reasonable solicitor and client costs"." The parties were not able to agree on an amount of reasonable solicitor and client costs payable to the appellants from the estate. The appellants therefore took out an appointment for taxation on October 10, 2017 initially returnable before me on November 6, 2017 but subsequently adjourned to November 27, 2017.

[6] On November 27, 2017, I conducted a taxation hearing with counsel appearing before me by conference call. Mr. Lavoie appeared for the appellants, Mr. Onishenko appeared for the estate and Mr. Wawryk appeared for the respondent. This fiat represents my decision on the taxation.

Issue

[7] The issue that I must decide on this taxation is the amount of reasonable solicitor and client costs payable to the appellants from the estate in relation to the appeal. As indicated to the parties on October 24, 2017, I will decide this issue after taking into account the following factors (the "Orkin factors") listed in Orkin on *The Law of Costs*:

- The time expended by the solicitor.
- The legal complexity of the matters dealt with on the appeal.
- The degree of responsibility assumed by the solicitor.
- The monetary value of the matters at issue.
- The importance of the matters to the client.
- The degree of skill and competence demonstrated by the solicitor.
- The results achieved.
- The ability of the client to pay.
- The expectation of the client as to the amount of the fee.

Evidence and Argument

[8] On October 24, 2017, I invited the parties to file brief memoranda of argument addressing the Orkin factors. Each party filed written material and had counsel make oral submissions before me. I have read all of the written material filed and heard all of the oral submissions. I have also reviewed both the Queen's Bench file and the Court of Appeal file in their entirety. A summary of the material filed and argument made by each of the parties in connection with the taxation follows.

[9] The appellants filed two affidavits of disbursements sworn on October 12, 2017 and November 21, 2017 respectively. In addition, on November 15, 2017, they filed redacted copies of counsel's invoices to them. They also filed a memorandum of argument dated November 1, 2017 and a memorandum of argument in reply dated November 22, 2017.

[10] In the November 21, 2017 affidavit of disbursements, counsel attests that, between November 20, 2014 and November 20, 2017, he billed the appellants for legal fees of \$34,085.00, GST/PST of \$3500.91 and disbursements of \$1319.27 for a total of \$38,905.18. He estimates that he will bill the appellants further fees of \$600, GST/PST of \$66 and disbursements of \$20 for the taxation hearing.

[11] Counsel's redacted statements of account disclose that his hourly rate was initially \$275 and was increased to \$300 in late August or September of 2016. The redacted statements of account are lengthy. A synopsis of the time spent by counsel on various tasks is contained in the memorandum of argument dated November 1, 2017.

[12] The appellants argue as follows:

- The time expended by counsel was reasonable. Counsel reduced the time billed for by nearly 14 hours from the time spent. In particular, the time spent by counsel on correspondence with other counsel and the Court relating to costs was necessary in light of the fact that the parties could not agree on reasonable costs and the Court was not clear in its decision that the reasonable costs ordered were solicitor and client costs. Counsel also had to spend significant time going through his accounts to redact charges that did not relate to the appeal.
- The matters dealt with on the appeal were legally complex. There were 14 issues raised in the appellant factum, each of which had to be addressed. For two of the issues, there was no case law in Saskatchewan and the appellants had to look to other jurisdictions for case law. The appellant factum was 40 pages long and referred to 18 cases which represented a fraction of the cases reviewed by counsel. While there was some minimal overlap between the brief of law filed in the Court of Queen's Bench and the appellant factum, there were a number of important new arguments made in the latter. The complexity of the appeal was heightened by the fact that the evidence was highly contested which required a careful review of the affidavits filed in the Court of Queen's Bench. The fact that the appeal was complex has been buttressed by subsequent proceedings in the Court of Queen's Bench and the fact that the outstanding issues between the parties are going to trial.
- Counsel assumed the proper degree of responsibility.

- The monetary value of the matters at issue is not limited to the market value of the disputed land but extends to the long term damage to the appellants' farming operation which could result from the loss of the disputed land and to the unquantifiable value of the impact of the finding of a lack of good faith on the reputation of the appellants, particularly Ms. Viczko who is a crown prosecutor.
- The matters dealt with on appeal are particularly important to the appellants as they carry long term consequences and impact on the appellants' reputations, their farming operation and their livelihoods. The appellants and their counsel were required to make every possible effort to have the finding of a lack of good faith overturned as this finding could result in a disciplinary hearing for Ms. Viczko by the law society, the termination of her employment and long term unquantifiable consequences to her reputation. The disputed land is an integral part of the appellants' farming operation.
- Counsel's skill and competence were such that he was the moving force that resulted in the appellants winning the appeal.
- The ability of the client to pay is not an issue on this taxation.
- The appellants have not challenged or taken issue with the amounts billed.

[13] Finally, in the memorandum of law dated November 1, 2017, the appellants argue that the Court's intention in ordering solicitor and client costs was to completely indemnify them in relation to the appeal.

[14] The estate filed a memorandum of argument dated November 10, 2017, attaching statements of account and detailed time dockets from the solicitor who represented the estate on the appeal. The legal fees charged in those statements of account amount to approximately \$3000.

[15] The estate argues that an award of solicitor and client costs should be contrasted with an award of solicitor and own client costs. An award of solicitor and client costs does not necessarily mean a full indemnity for legal fees incurred. The Court's use of the word "reasonable" means that I am able to assess solicitor and client costs.

[16] The estate argues as follows:

- The appellants have the right to instruct counsel as they see fit. Notwithstanding this, the question is what a reasonable amount of legal fees and disbursements is. A reasonable amount of solicitor and client costs is \$12,000.
- In relation to specific accounts filed by the appellants, there is a significant amount of correspondence and telephone conversations between the appellants and counsel. If a client requires extra attention from counsel and is willing to pay for it, that is up to them but this is not something that should be included in reasonable solicitor and client costs. The amount billed for preparation of the factum is excessive. The amount of time spent at the appeal hearing is different on the account rendered by the appellants' counsel than on the account rendered by the estate's counsel. Travel time is also a solicitor and own client type of expense.

- The issue in this case is whether a quarter section of land was wrongfully transferred to the appellants. It is an estate issue between family members. Ms. Viczko's reputation is not the issue – there is no allegation of a lack of good faith in the pleadings in the Court of Queen's Bench. Concerns about findings of fact and credibility are, at best, collateral issues which should not be considered when assessing costs.
- This is not a complex case and it has not been resolved by the appeal – it is now going to trial.
- The monetary value of the disputed land is between \$94,000 and \$120,000.

[17] The respondent filed an affidavit sworn on November 9, 2017. In her affidavit, the respondent attests that she incurred fees in relation to the appeal in the range of \$10,000 to \$11,000 including taxes and after courtesy discounts.

[18] The respondent argues as follows:

- In relation to specific accounts filed by the appellants, the time spent on the factum was not reasonable in that the issues on appeal were mostly the same as those in the Court of Queen's Bench. The time spent on correspondence is also excessive, particularly in light of the fact that some of the time entries related to work that should be done by administrative staff.
- The monetary value of this case is not high – it relates to a \$90,000 land transaction.
- There is no allegation of professional misconduct in the pleadings – this is not a case like the cases cited in the appellants' memorandum of argument in reply. The courts have so far only scratched the surface in this litigation and there is a lot that will be determined at trial. At this point, it is not possible to know how the questions that remain will be answered.

[19] In reply, the appellants argue:

- The respondents have alleged that the appellants were dishonest, willfully blind and lacked good faith. They have alleged that Ms. Viczko provided legal advice to the estate and that the estate relied upon this advice. These are material issues and a party that makes allegations of impropriety should expect to pay substantial indemnity costs.
- The legal fees incurred by the estate and the respondent are not relevant to a taxation of costs payable to the appellants nor is the estate's assessment of what the appellants' party and party costs would amount to if costs had been ordered on that basis. In any event, the information filed about the legal fees incurred by the estate and the respondent is deficient. Finally, the estate has not filed any case law to support its position that certain of the fees claimed are more properly solicitor and own client items than solicitor and client items.

[20] At the close of the taxation hearing, I asked counsel to address the issue of costs for the taxation in light of Rule 54(3)(b) of *The Court of Appeal Rules*. My specific question was when costs for the appeal ended and costs for the taxation began.

[21] The appellants argue that receiving the Court's decision, having the formal judgment issued and negotiating, asking for and receiving clarification about what kind of costs were awarded were all properly part of the appeal. The appellants asked for costs of the taxation.

[22] The estate and the respondent take the position that the Court's award includes costs up to and including its decision and that the registrar's discretion as to costs begins if the question of costs goes to taxation. The estate seeks costs of the taxation.

Analysis

[23] There have apparently been very few instances of registrars in the Court taxing solicitor and client costs. In fact, I have only been able to locate one written decision on point.

[24] In her June 20, 2008 fiat in *Lisa Ritchie v. Royal Trust Corporation of Canada*, CA 1223 (unreported), Registrar Schwann, as she then was, said the following, at page 3:

The case of *Re Kinar Estate* [1998] S.J. No. 616 [1998 CanLII 13628 (SKQB)] stands for the following succinctly stated proposition:

The executrix is clearly entitled to her costs out of the estate on a solicitor and client basis because she was the successful party at the end of the trial and the practice in this province has always awarded solicitor and client costs to the successful party out of the estate.

The Court of Appeal applied this principle by awarding Royal Trust its solicitor-own client costs. This does not mean, however, that any amount is appropriate or that some level of oversight for 'reasonableness' cannot or should not be applied. In *Frymer v. Brettschneider* (1992) A.C.W.S. (3d) 355, the court stated the principle this way:

The general rule is that trustees are to be indemnified against all *reasonable* costs and expenses which they incur as trustees.
[emphasis added by Registrar Schwann]

Indeed, inclusion of the modifier "*reasonable*" in the disposition as to costs by both the majority and dissenting judges of the Court of Appeal is strongly suggestive of a reasoned and balanced approach to legal fees, particularly so, as is the case here, the estate is not large.

The question to be answered is this: are Royal Trust's legal bills reasonable?

[25] Registrar Schwann went on to apply the Orkin factors to assess the reasonableness of the solicitor and client costs being claimed by the successful litigant before her. In the end result, adjustments were made to the amount being claimed on the basis that it was not entirely reasonable.

[26] While Registrar Schwann's decision is not binding on me and the circumstances before her were different than those before me, her overall approach recommends itself to me. *Reasonable* solicitor and client costs will only indemnify the appellants for *reasonable* costs which they have incurred in connection with their appeal. A taxation of solicitor and client costs is not a rubber stamp process. I intend to consider the costs incurred by the appellants in light of the Orkin factors with a view to determining what is reasonable. The amount of solicitor and client costs that I conclude is reasonable will be what is payable to the appellants from the estate, whether

that amount is the same as or less or more than the amount that the appellants have been billed by counsel.

[27] Before moving to a consideration of the Orkin factors, there is one more thing that I want to say about the solicitor and client costs awarded on this appeal. The appellants in their memorandum of argument in reply cite case law where "substantial indemnity costs" were awarded to censure or punish unfounded allegations of unethical or improper conduct. I do not believe that these cases are relevant to my analysis.

[28] On this appeal, the Court did not reach any conclusions about the merits of the parties' evidence before Acton J. Rather, the Court found that the evidence overall was "inconclusive at best." Simply put, in my opinion, the Court would not award solicitor and client costs for the purpose of censuring or punishing conduct without making it clear that it was doing so and, in that event, the costs would presumably not be payable from the estate but would be payable by the party being censured. I believe that the fact that solicitor and client costs were awarded in this case rather than party and party costs reflects nothing more or less than the historical practice (identified in *Re Kinar Estate*) of awarding solicitor and client costs to the successful litigant in estate litigation.

[29] The Orkin factors are listed above. I will address each of them individually in reverse order.

- **The expectation of the client as to the amount of the fee.**

[30] I do not think that the appellants' expectations as to the amount of counsel's fees are particularly relevant to the situation before me where the costs awarded are payable from the estate. Having said this, there is no suggestion that counsel billed amounts beyond what the appellants expected or that he undertook work beyond what the appellants felt was necessary. My consideration of this factor does not mandate any adjustment to the solicitor and client costs claimed.

- **The ability of the client to pay.**

[31] This factor is also not particularly relevant in the circumstances before me. In any event, I have no information about the ability of the appellants to pay the solicitor and client costs claimed by their counsel. I also have no information about the overall value of the estate and how well it will bear the costs that I assess. My consideration of this factor does not mandate any adjustment to the solicitor and client costs claimed.

- **The results achieved.**

[32] The result achieved on appeal cannot be characterized as anything other than a win for the appellants. Counsel was successful in convincing the Court that this was not an appropriate case for summary judgment and in having the matter remitted to the Court of Queen's Bench for oral evidence or trial. Having said this, the Court did not grant all of the relief sought by the appellants -- the appellants had asked the Court to dispose of the matter in its entirety on the basis that the respondent's consent was not required for the land transaction. The Court only determined the summary judgment issue. My consideration of this factor does not mandate any adjustment to the solicitor and client costs claimed.

- **The degree of skill and competence demonstrated by the solicitor.**

[33] There is no suggestion that counsel did not have all of the skill and competence that one would expect of a seasoned litigation lawyer. My consideration of this factor does not mandate any adjustment to the solicitor and client costs claimed.

- **The importance of the matters to the client and the monetary value of the matters at issue**

[34] I have combined these two factors for the purpose of this analysis. The disputed land and the appellants' role in the transfer transaction are clearly matters of great importance to the appellants. The land is central to their farming operation and the question of whether they were good faith purchasers or not brings considerations of reputation and character into play. It is difficult to conceive of issues more important to most people than livelihood, reputation and character.

[35] While the matters at issue on the appeal have great importance to the appellants, issues of reputation and character are difficult to quantify in monetary terms. Further, in light of the fact that the final decision has not yet been made about whether the appellants were good faith purchasers, it is not necessary or appropriate to attempt that quantification at this juncture. What we do know is that the monetary value of the disputed land is between \$94,000 and \$120,000. This is not an insignificant amount but it is also not a substantial monetary value, particularly in light of the fact that the issue of the ownership of the land remains in dispute notwithstanding the appellants' success on the appeal.

[36] The matters are immensely important to the appellants but the monetary value of the matters at issue on the appeal is not substantial. My consideration of these two factors does not mandate any adjustment to the solicitor and client costs claimed.

- **The degree of responsibility assumed by the solicitor.**

[37] It seems that counsel assumed complete responsibility for his firm's work associated with the appeal. For items requiring the skills of a lawyer, this makes practical sense – counsel's firm is not a large one with junior lawyers to delegate such work to and counsel's hourly rate is reasonable. My review of the redacted accounts leads me to question, however, whether time was spent on tasks not requiring legal expertise that could have been delegated, in whole or in part, to support staff. I will have more to say about this below.

- **The legal complexity of the matters dealt with on the appeal.**

[38] The appellants maintain that the matters dealt with on the appeal were very complex. The law relating to summary judgment was not settled when the appeal was argued. While the Court determined the appeal on the basis of the law relating to summary judgment, there were numerous other grounds of appeal that had to be addressed in the factum and in oral submissions to the Court. There were multiple parties involved. All of this made for an unusually complex appeal.

[39] The estate and the respondent argue that the matters dealt with on the appeal were not complex at all. They note that the Court decided the appeal on one issue alone, a procedural issue at that, and sent the remaining issues back to the Court of Queen's Bench for oral evidence or trial. While the law was perhaps not entirely settled in relation to the one issue addressed by the Court, the issue was not overly complex or difficult to understand.

[40] I think that the answer lies somewhere in between the two positions taken. In my view, most appeals are more legally complex for the appellant than for the respondent. This is particularly the case where the body of case law relating to the appeal is in its infancy or in a state of flux. Having said this, it is important to note that the complexity described by Orkin is legal complexity – not factual complexity. While the factual underpinnings of the appeal and the relationships between and among the litigants are undoubtedly complex, they are not necessarily legally complex. My consideration of this factor does not mandate any adjustment to the solicitor and client costs claimed.

- **The time expended by the solicitor.**

[41] In *Lisa Ritchie v. Royal Trust Corporation of Canada*, Registrar Schwann identified this factor as being the most prominent of the Orkin factors. Whether or not that is the case for all taxations of solicitor and client costs, in my view it is the case for this taxation.

[42] As indicated above, I reviewed the redacted accounts filed with me by the appellants. I do not intend to parse those accounts on an entry by entry basis. Rather, I will note the areas where I have concerns about the time expended by counsel for the appellants.

- The amount of time spent on the appellant factum, appeal book and book of authorities.

[43] The redacted accounts indicate that the appellants' counsel spent approximately 53 hours on research and drafting of the appellant factum, appeal book and book of authorities. A courtesy reduction of approximately 14 hours was applied to this account, leaving a total of 39 hours.

[44] Most, if not all, of this time must have been spent on the factum. There was an agreement as to contents of appeal book for which the appellants' counsel has billed separately. Once this agreement was reached, the remainder of the work relating to the appeal book would have properly been performed by support staff. The book of authorities would be the same – once the authorities were identified, the work of putting the book of authorities together would have properly been performed by support staff. In fact, the accounts include support staff time specifically for preparing the appeal book and book of authorities.

[45] Many of the legal arguments made in the factum were also made in the brief of law filed by the appellants before Acton J. Most were addressed in a more fulsome way in the factum but the guiding principles and leading cases did not change. There were also some new arguments made in the factum that were not made in the brief of law – specifically, arguments relating to the Court's jurisdiction and standard of review and to whether Acton J. erred by vesting the land back in the estate.

[46] In light of the overlap between the brief of law and the factum, I do not think that the amount of time spent on the factum was reasonable, even after the courtesy discount. I will make an adjustment to the solicitor and client costs claimed for the preparation of the appellant factum, appeal book and book of authorities.

➤ Travel time and time waiting in Court.

[47] Counsel for the appellants billed for 3 hours of travel time from Prince Albert to Saskatoon for the hearing of the appeal. Once in Saskatoon, counsel billed for 5.75 hours for attending court. The estate's counsel at the time of appeal hearing billed for a shorter hearing. The appeal hearing was scheduled for 10:00 a.m. on September 24, 2015 but was the second appeal on the list that day. The arguments on the appeal took place between 11:19 a.m. and 12:24 p.m. and then again between 2:01 p.m. and 2:59 p.m. Counsel had to be in Saskatoon from before 10:00 a.m. until after 3:00 p.m. The amount of time claimed for travel, waiting and appearing in Court is reasonable.

[48] At page 3-62 and 3-63, Orkin suggests that a solicitor is not entitled to be paid at the same rate for travel time and waiting time as he or she is for solicitor's work. While the amounts claimed for travel time and waiting time are not large, they are billed at counsel's regular rate and are therefore not reasonable. I will make a minor adjustment to the solicitor and client costs claimed for travel and waiting time.

➤ Correspondence between the appellants and counsel

[49] The redacted accounts disclose approximately 12 hours of correspondence between the appellants and counsel, including letters, emails and phone conversations. Almost nine of the 12 hours is for correspondence between the appellants and counsel after the Court's decision was rendered.

[50] It is difficult to conceive of what kind of correspondence relating to the appeal was necessary after the Court's decision was rendered that could reasonably amount to nine hours of billable time. Counsel and the appellants would have had to have phone calls or meetings to discuss the decision and obtain/give instructions to take out the formal judgment, to negotiate the matter of costs and to proceed to taxation if negotiation was not fruitful. In my estimation, these necessary communications combined would reasonably take two or three hours at most. I will have more to say about post decision costs below.

➤ Correspondence between appellant counsel and counsel for the other parties and between appellant counsel and the Court's registry office.

[51] The redacted accounts disclose in excess of 13 hours of correspondence between appellant counsel and counsel for the other parties and between appellant counsel and the Court's registry office. Half of this amount relates to correspondence after the Court's decision was rendered. Much of the correspondence with the registry office consisted of cover letters which did not require legal expertise and could have been delegated to support staff. The same can no doubt be said for at least some of the correspondence to counsel opposite. I do not think that the solicitor and client costs claimed for correspondence with counsel opposite and the Court's registry office are reasonable, particularly those costs arising after the Court's decision. I will have more to say about post decision costs below.

➤ Post decision costs.

[52] The Court ordered solicitor and client costs of the appeal. As noted above, Rule 54(3)(b) of *The Court of Appeal Rules* provides that I may award the costs of a taxation to any party and fix those costs. I therefore need to find the line between the appeal and the taxation to determine where the Court's costs award ends and my jurisdiction to award costs starts.

[53] I agree with the appellants' counsel that the costs of the appeal include the costs associated with receiving the Court's decision and issuing the formal judgment. I would also put the correspondence between the Court and the appellants' counsel about whether the costs ordered were party and party or solicitor and client costs into the costs of the appeal. All other post decision costs are not, in my opinion, costs of the appeal.

[54] In my view, reasonable post decision costs falling under the Court's solicitor and client costs award would include approximately one and a half of the two or three hours of post decision correspondence between the appellants and their counsel identified above, perhaps a half hour of correspondence with counsel opposite and the Court and the hour that appellant counsel spent drafting the formal judgment, for a total of three hours.

[55] Some of the post decision costs which are not costs of the appeal might be considered costs of the taxation – perhaps the costs associated with trying to negotiate an amount of costs and certainly costs incurred after the appointment for taxation was issued. I will address the issue of a costs award for the taxation below.

Taxation of Reasonable Solicitor and Client Costs for the Appeal

[56] On the basis of the foregoing analysis, I make the following adjustments to the fees portion of the appellants' amended bill of costs:

Account	Legal Fees Claimed	Reasonable Solicitor and Client Fees
November 20, 2014	\$708.75	\$708.75
January 19, 2015	\$2782.50	\$2782.50
April 16, 2015	\$12858.75	\$10,000 (adjustment for amount of time spent on appeal book, factum and book of authorities)
May 8, 2015	\$330	\$330
August 21, 2015	\$440	\$440
June 27, 2016	\$5475	\$5275.50 (10% adjustment to hourly rate for 6.75 hours travel time/waiting time)
October 10, 2017	\$7740	\$900 (adjustment for post decision costs not part of appeal costs)
November 20, 2017	\$3750	\$0 (adjustment for post decision costs not part of appeal costs)
Total:	\$34,085	\$20,436.75

Taxation of Disbursements

[57] The appellants claim disbursements amounting to \$1319.27. Neither the estate nor the respondent made any objection to the disbursements claimed. I have reviewed the disbursements and the vouchers supporting them and I find that they are reasonable.

Costs of the Taxation

[58] As noted above, I have the discretion to award costs for the taxation. But, solicitor and client costs can only be ordered by the Court or a judge of the Court (Rule 54 (2)). I cannot order solicitor and client costs for the taxation. I can order and fix costs on a party and party basis only. I find that the taxation proceeding commenced with the taking out of the appointment for taxation and ends with the issuance of a certificate following the release of this fiat. Both the appellants and the estate have asked for costs of the taxation.

[59] It is not possible to identify a winner on the taxation. The appellants will receive a large sum of solicitor and client costs from the estate – a fair bit larger than the amount suggested by the estate – but much smaller than what was being claimed. I decline to award costs of the taxation, except for the disbursement for taking out the appointment for taxation which is included in the amount of disbursements allowed above.

Conclusion

[60] The appellants are entitled to reasonable solicitor and client costs of **\$23,799.70** including fees of \$20,436.75 plus GST/PST on fees of \$2043.68 plus disbursements of \$1319.27 payable from the estate. The appellants may take out a certificate of taxation in this amount.

[61] Pursuant to Rule 54.1 of *The Court of Appeal Rules*, a person with a pecuniary interest in the result of this taxation may apply to a judge of the Court for a review of the taxation within 14 days after the date of the certificate as to taxation of costs.

DATED at Regina, Saskatchewan, this 30th day of November, 2017.



REGISTRAR – COURT OF APPEAL