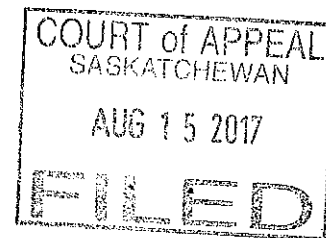


Linton Carlyle Potzus

APPELLANT
(RESPONDENT)

- and -

Kendra Rae Potzus

RESPONDENT
(PETITIONER)Kevin Bell for Linton Carlyle Potzus
Madlin Lucyk for Kendra Rae Potzus**Taxation before Melanie A. Baldwin, Q.C.**
Registrar, Court of Appeal for Saskatchewan
August 15, 2017**Background**

[1] On February 27, 2017, the Court dismissed this appeal, indicating that Ms. Potzus was "entitled to her costs of the appeal on column 4." An appointment for taxation was taken out on behalf of Ms. Potzus, made returnable before me on August 15, 2017. On August 15, 2017, Mr. Bell and Ms. Lucyk appeared before me by telephone at the taxation hearing. This is my decision on the taxation.

Proposed Bill of Costs

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

3	Fee to Respondent on receipt of Notice of Appeal	\$ 200
8	Preparation of Factum	\$5000
9	All other preparation for hearing	\$1000
10	Appearance to present argument on appeal before Court of Appeal	\$1200
11	Preparing formal judgment or order	\$ 400
12	Correspondence	\$ 400
13	Preparation of Bill of Costs	\$ 250

The fees claimed total \$8450. The proposed bill of costs also claims a disbursement of \$20 for the court fee for issuing the appointment for taxation.

Issues

[3] The following issues relating to the proposed bill of costs were identified at the taxation hearing:

What are the appropriate amounts claimed under items 9, 10 and 11?

Arguments, Analysis and Decision

[4] Ms. Potzus claims \$1000 under item 9 (all other preparation for hearing). Under column 4, the amount that can be claimed is actually \$1250. At the taxation hearing, Ms. Lucyk, on behalf of Ms. Potzus, confirmed that this was an error and that the amount claimed should be \$1250.

[5] Ms. Potzus claims \$1200 under item 10 (appearance to present argument on appeal before Court of Appeal). This represents a full day as the amount that can be claimed under item 10 on column 4 is \$600 per half day. Ms. Potzus takes the position that a full day amount is warranted for the following reasons:

- The hearing took longer than 2 ½ hours. The Court of Appeal tariff is silent about what constitutes a half day but the Court of Queen's Bench tariff specifies in several places that a half day is 2 ½ hours.
- The Court gave counsel the option of taking a lunch break but all involved opted to continue with the hearing which started at 10:00 a.m. and ended at 1:00 p.m. If a break had been taken, the hearing would surely have been considered to be longer than a half day. The fact that a break was not taken should not change this analysis.
- Costs are intended to send a message to the party ordered to pay them. For this reason, it is not appropriate to underestimate them.

[6] Mr. Potzus, through Mr. Bell, takes issue with the amount claimed under item 10 and argues that the appropriate amount for this item is \$600 or a half day only for the following reasons:

- The panel stood down for a period in the middle of the hearing and then reconvened. As such, the hearing was much closer to 2 ½ hours than to 5 hours long (if 2 ½ hours in fact constitutes a half day) and it is more equitable to allow the tariff amount for a half day.
- The Court of Appeal rules on costs no longer expressly incorporate the Court of Queen's rules on costs and it is therefore not appropriate to automatically import concepts from the Court of Queen's Bench tariff into the Court of Appeal tariff.

[7] The clerk's endorsement from the hearing shows that the hearing commenced at 10:03 a.m. At 11:29 a.m., the panel stood down and the hearing reconvened at 11:43 a.m. The hearing continued and ended at 1:02 p.m. The hearing was therefore two hours and 45 minutes long.

[8] As I indicated to counsel, I was not able to locate any decisions of the Court or of its registrars which deal with the issue of what constitutes a half day for the purposes of item 10 and when it is appropriate to claim for more than a half day. Under these circumstances, I think that the treatment given to this issue in the Court of Queen's Bench tariff is relevant to my analysis, although it is not binding on me.

[9] As noted by Ms. Lucyk, what constitutes a half day is mentioned in several places in the Court of Queen's Bench tariff, including when the time is spent in mediation, at pre-trial, in questioning and at trial. In all of those places, a half day is described as being 2 ½ hours long. It

is true that days in court tend to be shorter than work days in most instances. It is also true that many, if not most, Court of Appeal hearings take less than 2 ½ hours and very few take more than 5 hours to complete. As such, I find that using 2 ½ hours as the measure of a half day in a Court of Appeal hearing is generally appropriate.

[10] This finding does not end the inquiry, however. In my opinion, the closest corollary to the item 10 counsel fee at an appeal hearing is the counsel fee at trial, which is found in item 35 of the general Court of Queen's Bench tariff and in item 37 of the family Court of Queen's Bench tariff. The treatment of the counsel fee at trial in the Court of Queen's Bench tariffs differs from the other Court of Queen's Bench tariff items where a half day is mentioned in one important respect – for the counsel fee at trial, the practice of proration is specifically contemplated. So, as I read the Court of Queen's Bench tariffs, counsel in trial for longer than 2 ½ hours but less than 5 hours could be allowed to claim either the tariff amount for two half days or the tariff amount for one half day plus a prorated amount for time spent at trial over and above 2 ½ hours.

[11] The latter approach recommends itself to me in the situation before me where the hearing did exceed 2 ½ hours but only did so by 15 minutes. I will therefore allow a fee of \$660 under item 10.

[12] Ms. Potzus claims \$400 under item 11 (preparing formal judgment or order). According to both eCourt and the paper file, no formal judgment has ever been taken out on this appeal. At the taxation hearing, Ms. Lucyk indicated that a draft formal judgment had been prepared but conceded that, if a formal judgment had not actually been issued, this item should not be claimed.

Taxation

[13] The fees are therefore taxed as follows:

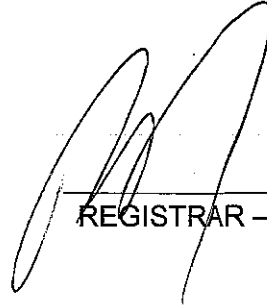
3	Fee to Respondent on receipt of Notice of Appeal	\$ 200
8	Preparation of Factum	\$5000
9	All other preparation for hearing	\$1250
10	Appearance to present argument on appeal before Court of Appeal	\$ 660
12	Correspondence	\$ 400
13	Preparation of Bill of Costs	\$ 250

The total fees allowed are \$7760.

[14] As for disbursements, the amount claimed was \$20, which is allowed.

[15] The proposed bill of costs is therefore taxed and allowed at **\$7780** (\$7760 in fees + \$20 in disbursements). As a formal judgment has not been taken out yet, Ms. Lucyk may wish, for enforcement purposes, to prepare and file a formal judgment which specifies costs in this amount. Alternatively, Ms. Lucyk may prepare and file a certificate of taxation of costs in Form 11d for issuance.

DATED at Regina, Saskatchewan, this 15th day of August, 2017



REGISTRAR – COURT OF APPEAL