

Robert L. Stevenson

APPELLANT

- and -

Ronald Lewis O'Byrne

RESPONDENT



- and -

RBC Life Insurance Company

NON-PARTY

John Benesh for the Appellant
Ronald O'Byrne, the Respondent

**Taxation before Melanie Baldwin, QC
Registrar, Court of Appeal for Saskatchewan
April 26, 2019**

Background

[1] The notice of appeal was filed on February 13, 2017. On December 5, 2017, the respondent's application seeking an order for the appellant to perfect the appeal was granted by Whitmore JA. The appeal book and appellant factum were filed in January of 2018 and the respondent filed a written argument on May 2, 2018. The appeal was heard on September 12, 2018. On November 15, 2018, the Court released its decision dismissing the appeal and awarding costs to the respondent "in the usual manner." A formal judgment was taken out by the respondent on January 11, 2019 and, on January 21, 2019, the respondent took out an appointment for taxation returnable on April 26, 2019. On April 26, 2019 counsel for the appellant and the respondent both appeared before me by telephone for the taxation hearing. This fiat is my decision on the taxation.

Proposed Bill of Costs

[2] The respondent filed a proposed bill of costs. The proposed bill of costs lists the following fees under column 1 of the Court of Appeal Tariff of Costs (the "Tariff"):

3	Fee to respondent on receipt of notice of appeal	\$ 100
4	Simple motion	\$ 250

8	Preparation of factum	\$1000
9	All other preparation for hearing	\$ 500
10	Appearance to present argument on appeal before Court of Appeal	\$ 300
13	Preparation of Bill of Costs	\$ 100
14	Taxation of Bill of Costs	\$ 50
15	For all other services not otherwise provided for	\$ 200
		\$ 1264.80

The amounts claimed under fee item 15 are \$200 for costs awarded in the Court of Queen's Bench and a \$1264.80 interest charge. The fees claimed total \$3764.80.

[3] The proposed bill of costs also claims disbursements of \$1810.93 composed of \$1785.93 for two accounts from the respondent's then counsel (dated October 21, 2016 and April 24, 2017) plus \$25 for the cost of filing the application to perfect.

Issues

[4] The appellant takes issue with the amounts claimed by the respondent under item 15 of the Tariff and with the disbursements claimed for legal fees incurred by the respondent.

Arguments

Fees

[5] The respondent's position is that the costs awarded by Mills J. (\$200) have not yet been paid and should therefore follow the case to the Court of Appeal and be a proper claim in this taxation. As for the interest charge (\$1264.80), the respondent argues that the assessment made by the local registrar was not changed as a result of the proceeding before Mills J. or the appeal to the Court of Appeal. For this reason, the appellant has owed money (\$13,640.01) to the respondent since the local registrar's assessment and the respondent feels that reasonable interest on this amount is properly claimed on his bill of costs.

[6] The appellant argues that neither of these amounts are Court of Appeal costs taxable before me. The \$200 claimed is a cost award in the Court of Queen's Bench – not in the Court of Appeal. The \$1264.80 interest charge is not a court cost.

[7] In response to an inquiry from me, the respondent advances claims under fee items 6 and 11 of the Tariff. According to the parties, there was an agreement as to contents of appeal book and the court file discloses that the respondent did prepare the formal judgment. The appellant does not object to these additional claims.

Disbursements

[8] The respondent argues that he was out of the country when the notice of appeal was served and filed and that he needed legal advice and assistance to get through the appeal process. The lawyer's accounts claimed as disbursements under item 16 were what that legal advice and assistance cost him out of pocket.

[9] The appellant takes the position that the lawyer's accounts identified by the respondent are not appropriate disbursements in the Court. Appellant counsel raised this objection with the respondent prior to the taxation hearing.

[10] In response to an inquiry from me, the respondent advances claims for court fees for issuing the formal judgment (\$20) and the appointment for taxation (\$20). The appellant does not object to these disbursements.

Analysis

Fees

[11] As registrar of the Court of Appeal for Saskatchewan, I am authorized by *The Court of Appeal Rules* to tax the costs of an appeal or application in the Court of Appeal. My authority does not extend to taxing or enforcing costs ordered in the Court of Queen's Bench or to dealing with potential interest arising from a certificate of assessment from the local registrar at the Court of Queen's Bench. Enforcement of these claims must take place in the Court of Queen's Bench. I will therefore tax off the amounts claimed by the respondent under fee item 15 of the Tariff.

[12] I will tax on \$100 under each of Tariff items 6 and 11.

Disbursements

[13] The court file confirms that, in addition to the \$25 court filing fee for the application for perfection, the respondent paid a \$20 fee to have the formal judgment issued and a \$20 fee to have the appointment for taxation issued. I will tax on \$40 to reflect this.

[14] I will tax off the amounts claimed (as disbursements) by the respondent to reimburse him for legal accounts that he incurred in the course of his dispute with the appellant. I do this for several reasons:

- The account dated October 21, 2016 is for services provided prior to the filing of the notice of appeal. As stated above, my jurisdiction is limited to taxing costs associated with an appeal or application in the Court. As such, even if this type of account could be the subject of a claim under the Tariff, this particular account cannot.

- The account dated April 24, 2017 is for services provided after the filing of the notice of appeal. Legal fees associated with an appeal in the Court are reimbursed only up to the fee item amounts in the Tariff. The respondent has claimed and will be awarded the Tariff fee item amounts to which he is entitled. Legal fees above and beyond the Tariff fee item amounts cannot be categorized as disbursements for the purpose of supplementing the fee items in the Tariff. Therefore, the legal fees described in the account dated April 24, 2017 cannot properly be the subject of a fee or disbursement claim under the Tariff.
- Finally, the account dated April 24, 2017 includes \$50 in disbursements for photocopies, postage, telephone, fax and email. If these disbursements related directly to documents filed with the Court, they could constitute necessary disbursements as contemplated in item 16 of the Tariff. A review of the court file discloses that the respondent did not file material with the Court until October of 2017, several months after the time period to which the April 24, 2017 account relates. I have therefore concluded that the disbursements included in the April 24, 2017 lawyer's account do not constitute necessary disbursements under item 16 of the Tariff.

Decision

[15] The respondent is entitled to claim the following items under the Tariff:

3	Fee to respondent on receipt of notice of appeal	\$ 100
4	Simple motion	\$ 250
6	Agreement as to contents of appeal book	\$ 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	\$ 100
13	Preparation of Bill of Costs	\$ 100
14	Taxation of Bill of Costs	\$ 50
16	All necessary disbursements	\$ 65

Fees are taxed and allowed at \$2500. Disbursements are taxed and allowed at \$65 (\$25 + \$20 + \$20 for court fees).

[16] The proposed bill of costs is therefore taxed and allowed at **\$2565** (\$2500 for fees + \$65 for disbursements). The respondent may wish, for enforcement purposes, to prepare and file a certificate of taxation of costs in Form 11d in this amount for issuance.

DATED at Regina, Saskatchewan, this 26th day of April, 2019.



REGISTRAR – COURT OF APPEAL