

Douglas Cameron

APPELLANT

- and -

The Saskatchewan Institute of Agrologists

RESPONDENT



Douglas Cameron, the Appellant  
John Agioritis for the Respondent

**Taxation before Melanie Baldwin, Q.C.**  
**Registrar, Court of Appeal for Saskatchewan**  
**April 2, 2019**

### Background

[1] Mr. Cameron's appeal was filed on November 9, 2017. It was heard by the Court on April 17, 2018 and on November 21, 2018 the Court dismissed his appeal with costs to the respondent "to be assessed under the appropriate Column." A formal judgment was issued on March 5, 2019 confirming that the costs would be determined under Column 2. The respondent took out an appointment for taxation of costs returnable before me on April 2, 2019. On April 2, 2019 the appellant and counsel for 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 2 of the Court of Appeal Tariff of Costs (the "Tariff"):

3	Fee to respondent on receipt of notice of appeal	\$ 125
8	Preparation of factum	\$2000
9	All other preparation for hearing	\$ 750

10	Appearance to present argument on appeal before Court of Appeal	\$ 400
11	Preparing formal judgment	\$ 200
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 75

The fees claimed total \$3900. The respondent claims GST (\$195) and PST (\$234) on fees.

[3] The proposed bill of costs also claims disbursements of \$886.69 composed of \$645.25 for photocopying, \$20 to issue the formal judgment, \$21.44 for courier fees and \$200 for online research. The respondent claims GST (\$43.33) and PST (\$52) on disbursements.

### **Issues**

[4] The appellant does not take issue with any of the tariff fee items claimed by the respondent. He objects to certain disbursements claimed by the respondent including photocopying, courier fees and online research. He also takes issue with the GST and PST claimed by the respondent on the proposed bill of costs.

### **Arguments**

#### Photocopying

[5] The respondent relies on the proposed bill of costs and affidavit of disbursements. The respondent argues that the amount claimed on the proposed bill of costs for photocopying (\$645.25) is the actual amount that was charged to it by its counsel for photocopying and that it is entitled to be reimbursed for this out of pocket cost. The respondent notes that the per copy cost of 25 cents charged to it by its counsel has been found to be reasonable by taxation officers of the Court in the past. Finally, the respondent takes the position that the photocopying charges relate to documents that the respondent and its counsel deemed necessary to properly respond to the appeal.

[6] The appellant carefully reviewed the affidavit of disbursements and its appendices as they relate to photocopying charges. He questions the number of copies made and the per copy cost. As to the number of copies made, I understand the appellant to be making two distinct arguments:

- It is not clear from the affidavit of disbursements what was photocopied on the various dates identified on the detailed itemization of disbursements from the respondent's counsel. Perhaps some of the photocopies identified did not relate to this appeal or were unnecessary.

- Even if the photocopies identified did relate to documents filed on the appeal, some of those documents contained too many pages. For example, the respondent's book of authorities did not have to be as voluminous as it was. The respondent could have reproduced portions of cases only, thereby shortening the book of authorities, without compromising its ability to argue the appeal.

On the issue of the per copy cost of 25 cents, the appellant takes the position that this is arbitrary and excessive. He notes that the per copy cost for his appeal book was only 10 cents and argues that a per copy cost of 25 cents represents a profit for the respondent's counsel.

#### Courier

[7] The respondent relies on the proposed bill of costs and the affidavit of disbursements. It argues that the courier charge claimed (\$21.44) was actually incurred by its counsel and was actually charged to it (both of which aspects are supported by the affidavit of disbursements) so it is entitled to be reimbursed for this expense.

[8] The appellant takes issue with the voucher provided for the courier disbursement. He argues that the affidavit of disbursements is not sufficient and that an original courier bill or receipt is required in order to constitute a proper voucher for this disbursement.

#### Online research

[9] The respondent relies on the proposed bill of costs and the affidavit of disbursements. It argues that online research effectively reduces the amount of time that a lawyer must spend on a file thereby decreasing cost. Counsel for the respondent concedes that case law across Canada has "gone both ways" on whether online research is an allowable disbursement and cites case law from other jurisdictions in support of the respondent's ability to claim reimbursement for this amount.

[10] The appellant takes the position that online research is not a proper disbursement but is rather part of respondent counsel's overhead costs which is covered by the fee items in the Tariff. The appellant notes the case law cited by the respondent but argues that case law from registrars of this Court confirms that the position that he is taking on this issue is the correct position in this jurisdiction.

#### GST and PST

[11] The respondent relies on the proposed bill of costs and the affidavit of disbursements. It argues that, if GST and/or PST has been paid by a party, that party is entitled to be reimbursed for these amounts on taxation. The respondent takes the position that it should be reimbursed for any GST and PST which it has paid and invites me to make any necessary adjustments to those amounts after reviewing the proposed bill of costs and the affidavit of disbursements.

[12] The appellant takes the position that the respondent is "double dipping" on GST and has raised this issue with the federal government and asked for a ruling. He has also been in contact with provincial PST officials seeking clarification about the application of that tax. The appellant argues that the respondent is double claiming tax on disbursements in some instances and claiming tax where it is not warranted in others. For example, the appellant says that the proposed bill of costs claims PST on all disbursements when the respondent was not charged PST.

## Analysis

### Photocopying

[13] The respondent claims \$645.25 for photocopying on the proposed bill of costs. According to my calculations, the three statements of account attached to the affidavit of disbursements show that the respondent was charged \$648.50 for photocopying/printing. I will resolve this discrepancy in Mr. Cameron's favour and treat the claim as being for \$645.25.

[14] In taxations since 2008 in-firm photocopying charges have been allowed as disbursements with certain limits. Those limits relate to the per copy charge -- which has not been allowed at more than 25 cents per copy -- and to the number of copies -- which must correspond with the length of the documents filed with the Court by the party claiming the disbursement.

[15] The per copy cost charged to the respondent by its counsel is 25 cents -- that is established by the appendices to the affidavit of disbursements. The hard copy respondent factum filed with the Court is 38 pages long and the respondent's book of authorities is 663 pages long for a total length of 701 pages. At least five copies of this material would have been needed -- one for respondent counsel, one for appellant counsel and three for the Court. At 25 cents per page, five copies of the material would cost \$876.25 which is more than what is claimed by the respondent.

[16] I am satisfied that the photocopying disbursement claimed by the respondent is reasonable. While the appellant takes issue with the per copy cost, noting that it is possible to obtain photocopies at a lower price, the amount claimed is not exorbitant particularly when contrasted with the \$1 per copy currently being charged by the Court's registry office under *The Court of Appeal Fee Regulations, 2019*. As for whether the documents filed by the respondent were too long, I do not intend to second guess the respondent's strategy on the appeal -- a strategy which resulted in success for the respondent.

[17] I will allow the respondent's claim for \$645.25 for a photocopying disbursement.

### Courier

[18] The respondent claims \$21.44 for courier charges on the proposed bill of costs. This amount is borne out by the detailed itemization of disbursements and statements of account attached to the affidavit of disbursements and represents the cost for sending documents by express courier to appellant counsel on February 2, 2018 -- the day that the respondent factum was filed.

[19] I am satisfied that the affidavit of disbursements and its appendices constitute a proper voucher for this charge. While the respondent could have appended a paper receipt from the courier to the affidavit of disbursements, I am not convinced that this is necessary here. I will allow the respondent's claim for \$21.44 for courier charges.

### Online research

[20] The respondent claims \$200 for online research. The underlying issue here is the proper delineation of the boundary between fees and disbursements claimable under the Tariff. Fees are reimbursed only up to the fee item amounts found in the Tariff. All necessary disbursements for which there are proper vouchers are reimbursed in full.

[21] When assessing party and party costs in Saskatchewan (as in this case), if an amount claimed is considered to be part of a law firm's office overhead, it falls under and is addressed through the fee items in the Tariff and it does not constitute a disbursement. It has been my position in the time that I have spent as the Court's taxation officer that the cost of online legal research for a factum is part of a law office's overhead which falls under and is addressed by the Tariff fee item for a factum (item 8) – the same Tariff fee item that applies to the other legal work that the lawyer (who did the research or for whom the research was done) put into the factum.

[22] This approach to online legal research charges was described by Registrar Schwann, as she then was, in her November 12, 2008 taxation decision in *Knudson v Knudson*, CA1461 (unreported):

. . . 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. (4<sup>th</sup>) 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. (3<sup>rd</sup>) 239; see also *Harach v. Schubert*, [1999] 12 W.W.R. 273 (Sask. Q.B.) where Quicklaw costs were denied in Saskatchewan]

[23] In my March 16, 2012 taxation decision in *Jensen v Agricultural Credit Corporation of Saskatchewan*, CACV2080 (unreported), I referred to Registrar Schwann's decision in *Knudson* and added the following:

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.

Since my decision in *Jensen*, I have continued to take this approach to claims relating to online legal research charges – these charges are not legitimately characterized as disbursements as contemplated in the Tariff.

[24] I have reviewed the case law cited by the respondent in support of its position that the online legal research charges it claims should be allowed as a disbursement. In *Murray Purcha & Son Ltd v Barriere (District)*, 2018 BCSC 1445, after noting that online legal research charges are generally not allowed "as they relate to overhead," Master McDiarmid went on to award one-half of the amount claimed as a disbursement on the basis that the issue researched was "somewhat novel." The decision of Master McDiarmid does not explain however how the "novel" character of the issue changes the character of the online research charge from overhead fee to disbursement.

[25] In *Atomic Energy Control Board v Inter-Church Uranium Committee Educational Co-operative*, 2006 FCA 274, Assessment Officer Stinson allowed an amount for online research after noting that he routinely allowed claims for this type of cost. In *Leo Pharma Inc v Teva Canada Limited*, 2016 FC 107, Justice Locke of the Federal Court allowed a disbursement for online research without analyzing the fee versus disbursement issue.

[26] I did not find any of these decisions to be persuasive and I am not convinced that I should deviate from the case law from registrars of the Court (including myself) which establishes that online legal research charges are addressed by fee items in the Tariff and are not properly categorized as disbursements. I will tax this amount off.

#### GST and PST

[27] The respondent claims GST and PST on the Tariff fees and the disbursements claimed in the proposed bill of costs. The appellant has concerns about the respondent's GST and PST status and how that status impacts on its ability to claim GST and PST on the proposed bill of costs. He has raised those concerns with the appropriate federal and provincial officials. Before me, counsel for the respondent confirmed that the respondent had actually paid and is eligible to claim the GST and PST amounts identified in the proposed bill of costs. I am taxing the GST and PST portions of the proposed bill of costs on that basis.

[28] The Tariff fee items claimed in the proposed bill of costs total \$3900. The appellant has not taken issue with the fee items claimed. I will allow GST of \$195 and PST of \$234 on fees.

[29] The respondent claims GST and PST on all of the disbursements listed on the proposed bill of costs. It appears from a review of the statements of account attached to the affidavit of disbursements that the respondent did not actually pay PST on any of these amounts. I will therefore tax off the PST amount. In addition, the court fee of \$20 for issuing the formal judgment is not taxable. As such, the respondent would not have paid any GST on this particular disbursement. The respondent was charged GST by its counsel for both the photocopying and courier disbursements so I will allow GST on these disbursements. These two disbursements combined total \$666.69 and GST therefore amounts to \$33.33.

#### **Decision**

[30] The fees are taxed and allowed as claimed by the respondent in the bill of costs. The total fees allowed are \$3900. The respondent is entitled to GST on fees of \$195 and PST on fees of \$234.

[31] The disbursements are taxed and allowed at \$686.69 (\$20 for issuing the judgment, \$645.25 for photocopies and \$21.44 for courier). The \$20 court fee is non-taxable. The respondent is entitled to GST on the remaining taxable disbursements of \$33.33.

[32] The proposed bill of costs is therefore taxed and allowed at **\$5049.02** (\$3900 for fees + \$195 for GST on fees + \$234 for PST on fees + \$686.69 for disbursements plus \$33.33 for GST on 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 3rd day of April, 2019.



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REGISTRAR – COURT OF APPEAL