

Shinkaruk Enterprises Ltd. and Peter Shinkaruk

APPELLANT



- and -

City of Saskatoon

RESPONDENT

Peter Shinkaruk for the Appellants
Alan Rankine for the Respondent

**Taxation before Melanie Baldwin, Q.C.
Registrar, Court of Appeal for Saskatchewan
June 13, 2019**

Background

[1] The appellants appealed a decision of the Court of Queen’s Bench striking their action against the respondent. The notice of appeal was filed on February 8, 2018.

[2] The appeal was heard by the Court on March 6, 2019 and, on March 18, 2019, the Court dismissed the appeal, adding that the respondent “is entitled to one set of costs if it chooses to pursue them.” A formal judgment was issued on April 23, 2019.

[3] The respondent chose to pursue costs, taking out an appointment for taxation of costs returnable before me on May 16, 2019. The taxation hearing date was adjourned on Mr. Shinkaruk’s request to June 13, 2019. On June 12, 2019, Mr. Shinkaruk filed a written submission with me and provided a copy of that submission to Mr. Rankine. On June 13, 2019 Mr. Shinkaruk and Mr. Rankine appeared before me by telephone for the taxation hearing.

[4] This fiat is my decision on the taxation.

Proposed Bill of Costs

[5] The respondent filed a proposed bill of costs. The proposed bill of costs lists the following fees under column 3 of the Court of Appeal Tariff of Costs (the “Tariff”):

3	Fee to respondent on receipt of notice of appeal	\$ 500
6	Agreement as to contents of appeal book	\$ 300
8	Preparation of factum	\$3500

9	All other preparation for hearing	\$1000
10	Appearance to present argument on appeal before Court of Appeal	\$ 500
11	Preparing formal judgment	\$ 300
12	Correspondence	\$ 300
13	Preparation of Bill of Costs	\$ 200
14	Taxation of Bill of Costs	\$ 100

The fees claimed total \$6700 (\$6600 plus \$100 for the taxation hearing).

[6] The proposed bill of costs also claims disbursements of \$163.99 composed of \$112.50 for photocopying and \$51.49 for shipping/courier charges.

Issues

[7] The appellants take issue with the respondent's reliance on column 3 of the Tariff, on the basis that (the appellants say) the amount at issue in the Court of Queen's Bench was under \$100,000. In addition and in any event, the appellants note that the amount claimed for fee item 3 is not correct. Finally, the appellants say that several of the fee item amounts should be prorated in the circumstances of this appeal.

[8] I raised the issue of whether the amount under fee item 6 was properly claimed on this appeal. I also noted that the court file discloses that the respondent paid two court fees for issuing the formal judgment and appointment for taxation that were not claimed on the proposed bill of costs.

Arguments

Changes to Proposed Bill of Costs

[9] The respondent concedes that the amount claimed for fee item 3 is not correct and asserts a claim to the correct amount under that fee item. The respondent also asks to add claims for the two court fees to the disbursement amount included on the proposed bill of costs. The appellants do not oppose the addition of the two court fees to the proposed bill of costs.

Appropriate Tariff Column

[10] On the issue of the appropriate column, the respondent determined the amount at issue by referring to the amounts claimed in the appellant's statement of claim filed in the Court of Queen's Bench. While the appellants say that their claims for certain damages were abandoned in oral argument in the Court of Queen's Bench, the respondent notes that the merits of the claim were not actually argued in the Court of Queen's Bench as the issue was whether the claim should proceed. When the amounts claimed in the statement of claim are combined, the total amount exceeds \$200,000 which falls in the range covered by column 3 of the Tariff.

[11] The appellants argue that the amount at issue in the Court of Queen's Bench was actually less than \$100,000 in part because they say that their claims for certain damages were

abandoned in oral argument in the Court of Queen's Bench. The written submission filed with me by the appellants identifies the specific amounts that the appellants say were at issue in the lower court. A monetary amount of less than \$100,000 falls in the range covered by column 2 of the Tariff. The appellants also note that proceedings against other defendants are ongoing in the Court of Queen's Bench so it is not yet known what the final outcome of their action will be and that final outcome might impact on the amount at issue and on costs.

Agreement as to Contents of Appeal Book

[12] The respondent notes that it received and responded to an agreement as to contents of appeal book and an amended agreement as to contents of appeal book. The court file confirms that a formal agreement as to contents of appeal book and amended agreement as to contents of appeal book were prepared by the appellant and sent to the respondent.

[13] The appellants agree that they corresponded with the respondent about the contents of the appeal book but add that, at the time of that correspondence, they did not realize that an agreement as to contents was not necessary as the appeal was an expedited appeal under *The Court of Appeal Rules*. The appellants proposed contents and the respondent objected to the inclusion of an amended statement of claim which was not before the Court of Queen's Bench judge. The appellants ultimately did not include the amended statement of claim in the appeal book but filed an application to adduce it as fresh evidence instead.

Specific Fee Item Amounts in Dispute

[14] The appellants object to paying the full amount of certain tariff items on the basis that the amounts are too high particularly as the lawyers for the respondent are employees of the respondent who are paid fixed salaries. The appellants ask me to prorate the amounts allowed under fee items 8, 9 and 11.

[15] The respondent cites s. 336 of *The Cities Act*, SS 2002, c C-11.1 as authority for the proposition that the respondent's costs cannot be reduced or disallowed on the basis that the respondent's lawyers are also the respondent's employees.

Analysis

Appropriate Tariff Column

[16] Both parties to this appeal approached the determination of the appropriate column of the Tariff by looking at the amount of money at issue in the proceedings in the Court of Queen's Bench. This is not the approach generally taken in taxations of costs in the Court of Appeal.

[17] The traditional approach taken by registrars of the Court of Appeal is to look at the amount involved in the appeal, not the amount involved in the proceeding in the Court of Queen's Bench. The amount involved in the appeal is determined by reviewing the notice of appeal and appellant factum to see what relief is claimed. This is also the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65.

[18] In their notice of appeal and written argument, the appellants asked the Court to "dismiss" the decision of the Court of Queen's Bench which struck their statement of claim against the respondent. The appellants were not successful so the Court of Queen's Bench decision striking their statement of claim stands.

[19] While there likely was a quantifiable amount of money at issue in the appellants' action against the respondent in the Court of Queen's Bench (had that proceeding not been struck), that amount of money was not at issue in this appeal. In my opinion, the relief sought in the appeal was non-monetary (overturn the decision striking the statement of claim thus allowing the litigation to proceed in the Court of Queen's Bench) as was the relief granted. Pursuant to Rule 54(1)(b) of *The Court of Appeal Rules*, column 2 applies to the taxation of costs where non-monetary relief is involved. I will therefore tax the respondent's costs on column 2.

Agreement as to Contents of Appeal Book

[20] No agreement as to contents of appeal book was necessary on this appeal as the appeal was an expedited appeal under Rule 43 of *The Court of Appeal Rules*. The appellants are self-represented and did not realize that an agreement as to contents of appeal book was not necessary. They therefore took this unnecessary step in a *bona fide* attempt to comply with *The Court of Appeal Rules*. Although I accept that the respondent did receive and respond to both an agreement as to contents of appeal book and an amended agreement as to contents of appeal book, I am not inclined to allow the respondent to recover this fee item from the appellants under the circumstances.

Specific Fee Item Amounts in Dispute

[21] Past taxation practice in the Court has included recognition of the registrar's ability to prorate Tariff fee item amounts in appropriate circumstances. Having said this, proration is relatively rare and has been largely limited to situations where the party seeking costs has only partially completed a particular step in the appeal litigation. In this appeal, the respondent did everything necessary to (a) prepare and file a factum (b) prepare for the appeal hearing and (c) prepare and file the formal judgment for issuance by the Court.

[22] The appellants raise the length of the respondent factum as part of their argument for proration. I note that the body of the respondent factum is 17 pages long. This is neither a long factum nor is it a short factum. The fact that the respondent was the successful party on the appeal suggests that its factum was sufficient. I am not inclined to prorate fee item 8 based on factum length.

[23] Finally, the appellants suggest that there should be proration of specific fee items on the basis that the respondent's lawyers are also its employees. Section 336 of *The Cities Act* appears to be a complete answer to this argument.

[24] I will not prorate the specific fee item amounts put in issue by the appellants.

Decision

[25] The fee items claimed on the proposed bill of costs are taxed and allowed under column 2 of the Tariff as follows:

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 allowed total \$3900.

[26] The disbursements claimed on the proposed bill of costs and during the taxation hearing are taxed and allowed at \$203.99 (\$112.50 for photocopying, \$51.49 for courier fees and \$40 for court fees).

[27] The proposed bill of costs is therefore taxed and allowed at **\$4103.99** (\$3900 for fees + \$203.99 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 14th day of June, 2019.



REGISTRAR – COURT OF APPEAL