



Joseph Melnick

APPELLANT

- and -

Angela Tapp

RESPONDENT

Deron Kuski, Q.C. for the Appellant  
Travis Avery for the Respondent

**Taxation before Melanie Baldwin, Q.C.**  
**Registrar, Court of Appeal for Saskatchewan**  
**October 5, 2018**

### Background

[1] The notice of appeal was filed on June 21, 2018. On August 31, 2018 the respondent filed an application asking the Court to quash the appeal for being manifestly without merit. The respondent filed a memorandum of law and a proposed appeal book in support of its application to the Court. On September 13, 2018, before the application to quash was scheduled for hearing, the appellant filed a notice of abandonment of appeal.

[2] Pursuant to Rule 45 of *The Court of Appeal Rules*, when the appellant filed the notice of abandonment, the respondent became entitled to her taxable costs. The respondent took out an appointment for taxation which, after an initial adjournment, was scheduled for October 5, 2018. I heard submissions from counsel for both parties by telephone on October 5, 2018. This fiat is my decision on the taxation.

### Proposed Bill of Costs

[3] The respondent filed a proposed bill of costs. At the taxation hearing, one item was removed from the proposed bill of costs by consent. After the removal of that item, the proposed bill of costs lists the following fees under column 1 of the Court of Appeal Tariff of Costs:

3	Fee to Respondent on receipt of Notice of Appeal	\$ 100
5a	Complex Motion (opposed)	\$1000
9	All other preparation for hearing	\$ 500
11	Preparing formal judgment	\$ 100
13	Preparation of Bill of Costs	\$ 100

The fees claimed total \$1800.

[4] The proposed bill of costs also claims disbursements of \$89 [while the first page of the proposed bill of costs says that the disbursements amount to \$109, the actual total amount claimed is \$89] composed of \$25 for filing the application to quash, \$20 for issuing the appointment for taxation, \$20 for photocopying and \$24 for courier charges. No affidavit of disbursements or other voucher was filed in support of the claimed disbursements.

### **Issues**

[5] The appellant takes issue with the amounts claimed under fee items 5a and 9 of the tariff. Also at issue is the amount claimed under fee item 11 of the tariff.

### **Argument**

[6] The respondent characterizes the application to quash as a complex opposed application, noting that there are no forms provided for this type of application and that, despite the fact that the application was never actually argued in front of the Court, a not insignificant amount of work was required to prepare the application materials. The appellant takes the position that the application to quash should be characterized as a simple application or, at most, as a complex unopposed application, noting that the appeal was abandoned before the application was argued.

[7] The respondent argues that the amount claimed under fee item 9 is warranted in light of the fact that this application is an application to the full Court rather than to a single judge in chambers. For this reason, preparation for the hearing of this application is akin to preparation for an appeal hearing. The appellant submits that the respondent is not entitled to claim this amount as the appeal was abandoned before the application to quash was even scheduled for hearing.

[8] As for the amount claimed under fee item 11 of the tariff for preparation of a formal judgment, I noted in the course of the taxation hearing that there was no formal judgment issued, nor could there have been given the abandonment of the appeal.

### **Analysis**

[9] An application to quash an appeal is not a simple application. As noted by the respondent, there are no forms provided for this type of application which tends to be one indicator of level of simplicity/complexity. The application is made to the full Court rather than to a single judge in chambers and the stakes are extremely high – a successful application to quash results in a final decision on the appeal. I therefore conclude that the application to quash was a complex application.

[10] The issue then becomes whether the application should be characterized as opposed or unopposed for the purposes of taxation. The appellant did not file any material opposing the application – instead, it abandoned the appeal. I am therefore not inclined to characterize the application as opposed. In addition, the application was not heard by the Court. In fact, it was not even scheduled for hearing. The fee items in the tariff apply to completed steps in the appeal process. For this reason, even if I had determined that the application was opposed, I would have prorated the tariff amount allowed.

[11] As for the amount claimed under item 9 of the tariff, it is my opinion that this amount is not properly claimed in the context of anything less than the hearing of an appeal proper. This is buttressed by the placement of this item in the tariff, below the appeal book and factum items. In addition, my understanding is that the motion items in the tariff are intended to be all inclusive. In other words, item 5b (complex motion unopposed) is intended to include all of the steps taken to make or respond to the application, including preparing for a hearing in chambers or court.

[12] Finally, as no formal judgment was issued and no formal judgment could have been issued due to the abandonment of the appeal, the amount claimed under fee item 11 of the tariff for preparation of a formal judgment is not appropriately claimed and will be taxed off.

**Decision**

[13] The fees are therefore taxed and allowed as follows:

3	Fee to Respondent on receipt of Notice of Appeal	\$ 100
5b	Complex Motion (unopposed)	\$ 500
13	Preparation of Bill of Costs	\$ 100

The total fees allowed are \$700. The respondent is entitled to GST on fees of \$35 and PST on fees of \$42.

[14] The disbursements are taxed and allowed at \$89. The respondent is entitled to GST on disbursements of \$2.20.

[15] The proposed bill of costs is therefore taxed and allowed at **\$868.20** (\$700 for fees + \$35 for GST on fees + \$42 for PST on fees + \$89 for disbursements + \$2.20 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 5th day of October, 2018.



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REGISTRAR – COURT OF APPEAL