

CACV2931

McKay Career Training Inc.

APPELLANT

- and -

Bob Baker and 613791 Saskatchewan Ltd.

RESPONDENTS

- and -



The City of Saskatoon

NON-PARTY

Jessie Buydens for the Appellant
Grant Richards for the Respondents

**Taxation before Melanie Baldwin, Q.C.
Registrar, Court of Appeal for Saskatchewan
October 18, 2019**

Background

[1] The appellant appealed a decision of the Court of Queen's Bench dismissing its claims of negligent misrepresentation and breach of contract against the respondents. The notice of appeal was filed on July 22, 2016.

[2] The appeal was heard by the Court on June 6, 2018 and, on October 24, 2018, the Court allowed the appellant's appeal on liability and remitted the matter of damages to the Court of Queen's Bench, adding that "McKay Career shall have its costs in this appeal paid by Mr. Baker."

[3] The appellant took out an appointment for taxation of costs returnable before me on September 18, 2019. The taxation hearing date was adjourned on the respondents' request to October 18, 2019. On October 18, 2019 Ms. Buydens and Mr. Richards appeared before me by telephone for the taxation hearing.

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

Proposed Bill of Costs

[5] The appellant 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"):

2	Notice of appeal	\$ 500
7	Preparation of appeal book	\$ 750
8	Preparation of factum	\$3500
9	All other preparation for hearing	\$1000
10	Appearance to present argument on appeal before Court of Appeal	\$ 500
12	Correspondence	\$ 300
13	Preparation of Bill of Costs	\$ 200
14	Taxation of Bill of Costs	\$ unknown

The fees claimed total \$6750 plus the "unknown" cost for the taxation hearing. The proposed bill of costs claims GST (\$337.50) and PST (\$405) on the fees claimed.

[6] The proposed bill of costs also claims disbursements of \$3804.76 composed of \$270 for court fees, \$724.76 for the cost of the trial transcript and \$2810 for photocopying charges.

Issues and Arguments

[7] At the outset of the hearing, the appellant sought leave to amend the proposed bill of costs to claim a \$20 court fee for issuing the appointment for taxation of costs. The respondent did not object to this addition. The appellant also noted the "unknown" fee item claimed for the taxation hearing and took the position that this amount should be left to my discretion. The respondent agreed that the tariff fee amount for the taxation should be determined in accordance with the Court's taxation case law and practice.

[8] On the issue of appropriate column, the appellant chose to use column 3 on the basis that the trial judge determined damages in an amount that exceeded \$100,000. The respondent takes the position that, as there was no monetary relief granted by the Court on appeal, the appropriate column is column 2.

[9] Finally, the appellant claims a large disbursement for photocopying. The appellant has calculated the disbursement by multiplying the page length of documents served on the respondent and filed with the Court by \$0.50 per page. The per page amount is the amount that the Court was charging for photocopies at the time of its decision on the appeal. The respondent objects to this claim, taking the position that photocopying is not a proper disbursement and, in any event, the per copy amount claimed is excessive.

Analysis

Addition of Court Fee Disbursement

[10] As noted above, the appellant sought leave to amend the proposed bill of costs to add a claim for the \$20 court fee for issuing the appointment for taxation of costs. The respondent did not object to this additional claim. The court file discloses that the appellant paid this amount to have the appointment issued. This claim is allowed.

Tariff Fee Item for Taxation

[11] Item 14 of the Tariff is a per hour fee for the taxation hearing -- \$75 per hour under column 2 and \$100 per hour under column 3. This taxation hearing was significantly less than one hour in length. While it is open to me to prorate this fee item amount to accord with the actual length of the taxation hearing, I rarely do so in light of the relatively small amounts involved. In addition, this taxation hearing was adjourned once on the request of the respondents and I take the time spent on that process into account when considering this fee item amount. I will allow the appellant to claim an amount for fee item 14 calculated on the basis of a hearing lasting one hour.

Appropriate Tariff Column

[12] The appellant approached the determination of the appropriate column of the Tariff by looking at the amount of damages determined in the proceedings in the Court of Queen's Bench.

[13] 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 after reviewing the notice of appeal and appellant factum to see what relief is claimed. This is the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65.

[14] In its notice of appeal and factum, the appellant asks the Court to enter judgment in its favour in the amount of \$111,690.60 or, in the alternative, to order a new trial. If the appellant had been successful in having judgment entered in the amount claimed, there would be no question but that column 3 would be appropriate. If a new trial had been ordered on all issues before the Court, there would be no question but that column 2 would be appropriate. The Court's decision -- finding the respondent liable but remitting the matter of damages to the Court of Queen's Bench -- falls somewhere between the appellant's two prayers for relief.

[15] I have concluded that the appellant's costs of this appeal should be taxed under column 2 of the Tariff on the basis that the appeal involved non-monetary relief (Rule 54(1)(b) of *The Court of Appeal Rules*). There is undoubtedly a quantifiable amount of money at issue in the portion of the litigation that was remitted to the Court of Queen's Bench. If either party is aggrieved by the decision of that court on damages and chooses to appeal that decision, that appeal would involve monetary relief and costs would be taxed accordingly. This can be contrasted with the portion of the litigation actually decided by the Court where the Court concluded that the respondent was liable to the appellant. In my opinion, when allowing that part of the appellant's appeal, the Court granted non-monetary relief.

[16] I will therefore tax the appellant's costs under column 2.

Photocopying Disbursement

[17] I recently summarized taxation practice on photocopying disbursements in my March 27, 2019 decision in *AG Canada v Merchant Law Group LLP*, CACV2860 as follows:

There are, however, costs incurred by law firms that are properly characterized as disbursements and not as part of office overhead. One of these costs is the cost of in-firm photocopying. While, historically, in-firm photocopying charges were not considered to be proper disbursements, a review of registrar's fiats on taxations reveals a gradual change in this area. 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 \$0.25 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.

[18] The appellant's claim accords with the number of copies limit described above but the per copy cost claimed by the appellant (\$0.50) exceeds the per copy charge limit. While the appellant advances a reasonable basis for the per copy cost claimed -- this is the per copy amount that the Court's registry office was charging for photocopies at the time of the Court's decision on the appeal -- I am not convinced that I should depart from the \$0.25 maximum established in taxation case law. I will allow the appellant to claim a disbursement for 5620 pages of photocopying at \$0.25 per page.

Decision

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

2	Notice of appeal	\$ 400
7	Preparation of appeal book	\$ 500
8	Preparation of factum	\$2000
9	All other preparation for hearing	\$ 750
10	Appearance to present argument on appeal before Court of Appeal	\$ 400
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 75

The fees allowed total \$4475. The amounts claimed for GST and PST must be adjusted to accord with these fees. My calculations result in GST of \$223.75 and PST of \$268.50.

[20] The disbursements claimed on the proposed bill of costs and during the taxation hearing are taxed and allowed at \$2419.76 (\$1405 for photocopying, \$724.76 for the transcript and \$290 for court fees).

[21] The proposed bill of costs is therefore taxed and allowed at **\$7387.01** (\$4475 in fees + \$223.75 GST + \$268.50 PST + \$2419.76 in disbursements). The appellant 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 18th day of October, 2019.



REGISTRAR – COURT OF APPEAL

