

Marlene Gail Primeau and Allan Joseph Primeau

APPELLANTS

- and -

Arnold Arthur Kuhn and Judith Kuhn

RESPONDENTS

Michael Mahon for the Appellants  
 Krista Eggum for the Respondents



**Taxation before Melanie Baldwin, Q.C.**  
**Registrar, Court of Appeal for Saskatchewan**  
**January 8, 2020**

### Background

[1] The appellants appealed a decision of the Court of Queen's Bench. The notice of appeal was filed on November 22, 2016. On March 20, 2018 I referred the appeal to the Court under Rule 46(2) of *The Court of Appeal Rules*. The appellant subsequently filed an application to show cause and, on June 26, 2018, the Court granted an order setting timelines for filing factums with "no order as to costs." The appeal was heard by the Court on October 4, 2018 and was dismissed from the bench. The Court's oral reasons concluded with "The appeal is dismissed, with costs in favour of the respondents."

[2] The respondents took out an appointment for taxation of costs returnable before me on January 8, 2020. Counsel for the appellants and respondents appeared before me on January 8, 2020 by telephone. This fiat is my decision on the taxation.

### Proposed Bill of Costs

[3] The respondents 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	\$ 150
4	Simple motions	\$ 500
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 or Order	\$ 300
12	Correspondence	\$ 300
13	Preparation of Bill of Costs	\$ 200

The fees claimed total \$6450 (the proposed bill of costs shows a total of \$5950 but this total resulted from a calculation error). The respondents also claim disbursements of \$284 comprising the \$20 fee for issuing the formal judgment, the \$20 fee for issuing the appointment for taxation, \$208 for photocopying and \$36 for postage.

### Issues

[4] The appellants take issue with the respondents' reliance on column 3 of the Tariff. Counsel for the appellants argues that, while the claim in the Court of Queen's Bench exceeded \$100,000 when it was filed, it was under \$100,000 by the time of trial and that the appropriate column should therefore be column 2. The recollection of counsel for the respondents was that the amount at issue was still over \$100,000 at the time of trial – the proposed bill of costs was drafted on this basis.

[5] I raised the issue of whether the respondents were entitled to claim fee item 4 relating to the application to show cause, noting that, if the Court specifically indicated that no costs were awarded in relation to the application to show cause, those costs could arguably not be claimed at this juncture.

[6] The respondents claim disbursements for photocopying and postage which do not appear on the proposed bill of costs but which are supported by the Affidavit of Disbursements.

### Analysis

#### Appropriate Column

[7] The respondents approached the determination of the appropriate column of the Tariff by looking at the amount of damages claimed in the proceedings in the Court of Queen's Bench. They say that this amount can be ascertained by referring to the statement of claim which seeks pecuniary damages of \$129,000 plus an unspecified amount of damages for mental distress.

[8] 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.

[9] In the notice of appeal and factum, the appellants ask the Court to assess damages against the respondents. No specific amount of damages is specified. Under these circumstances, I think that it is fair to assume that the amount of damages being sought was the same as that ultimately sought by the appellants in the Court of Queen's Bench. Counsel for the appellants indicates that, by the end of the trial, the amount claimed was less than \$100,000. I have

reviewed the trial transcript and the written argument filed by the appellants after trial and it appears that this is the case. At T267, counsel for the appellants identified a "sum total" of invoices of approximately \$60,000. In their written argument, the appellants refer to invoices amounting to just over \$50,000 plus estimated labour costs of \$37,000.

[10] I have concluded that the appellant's costs of this appeal should be taxed under column 2.

#### Item 4 Claim

[11] The respondents claim fee item 4 for a simple motion -- the application to show cause filed by the appellants. The Court's order resulting from the application to show cause includes "no order as to costs." This can be differentiated from situations where the chambers judge or Court is silent on the issue of costs for an application or where the Court provides that costs for an application will be in the cause or will be reserved to the panel of the Court hearing the appeal. In this case, the Court put its mind to the issue of costs relating to the show cause application and specifically made no order as to costs. The respondents are therefore not able to claim costs relating to the application. This amount will be taxed off.

#### Photocopying and Postage Disbursements

[12] The respondents claim \$208 for 416 photocopies at \$0.50 per page. The claim is supported by an Affidavit of Disbursements which constitutes a proper voucher.

[13] 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.

[14] The respondents' claim generally accords with the number of copies limit described above but the per copy cost claimed by the appellant (\$0.50) exceeds the established per copy charge limit. I am not inclined to depart from the \$0.25 maximum established in taxation case law. I will allow the appellant to claim a disbursement for 416 pages of photocopying at \$0.25 per page.

[15] The respondents claim \$36 for postage. The claim is supported by the Affidavit of Disbursements, which constitutes a proper voucher. I will allow this claim.

#### **Decision**

[16] 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
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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 or Order	\$ 200
12	Correspondence	\$ 200
13	Preparation of Bill of Costs	\$ 150
14	Taxation of Bill of Costs	\$ 75

The total fees allowed amount to \$3900.

[17] The disbursements claimed by the respondents are taxed and allowed at \$180 (\$104 for photocopying, \$36 for postage and \$40 for court fees).

[18] The proposed bill of costs is therefore taxed and allowed at **\$4080** (Fees of \$3900 plus disbursements of \$180). The respondents 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 9th day of January, 2020.



REGISTRAR – COURT OF APPEAL