



Candice Miranda Lonsdale

APPELLANT

- and -

Travis Parry Evans

RESPONDENT

William Langen for the Appellant  
Lindsay Gates for the Respondent

**Taxation before Melanie Baldwin, QC**  
**Registrar, Court of Appeal for Saskatchewan**  
**May 26, 2020**

### Background

[1] On December 14, 2018 the appellant filed a notice of appeal relating to a family law decision from the Court of Queen's Bench. The appeal was heard on December 6, 2019. On March 24, 2020 the Court partially allowed the appeal and granted the appellant her costs of the appeal "calculated in the usual fashion."

[2] The appellant took out an appointment for taxation of costs returnable before me on May 26, 2020. The appointment for taxation was served and filed together with a draft bill of costs and an affidavit of disbursements. The taxation hearing took place on May 26, 2020 with counsel for the appellant and counsel for the respondent both appearing by telephone. This fiat is my decision on the taxation.

### Proposed Bill of Costs

[3] The proposed bill of costs lists the following fees under column 4 of the Court of Appeal Tariff of Costs (the "Tariff"):

2	Notice of appeal	\$ 600
6	Agreement as to Contents of Appeal Book	\$ 400
7	Preparation of Appeal Book	\$ 1250
8	Preparation of Factum	\$ 5000

9	All Other Preparation for Hearing	\$ 1250
10	Appearing to Present Argument on Appeal before Court of Appeal	\$ 600
11	Preparing Formal Judgment or Order	\$ 400
12	Correspondence	\$ 400
13	Preparation of Bill of Costs	\$ 250
14	Taxation of Bill of Costs	\$ 125

The fees claimed total \$10,275. The appellant also claims disbursements totaling \$2459.08. The disbursements claimed are supported by an affidavit of disbursements and the court fee disbursements are supported by the court file. The appellant also claims GST on fees and disbursements of \$622.93 and PST on fees of \$616.50.

### Issues

[4] The only issue raised by the parties on the taxation is what column of the Tariff should be used to calculate the costs owing. The appellant asks for the costs to be calculated on column 4 and the respondent maintains that the costs should be calculated on column 2. The respondent takes no issue with the specific fee items and disbursements claimed.

### Arguments

[5] Both parties agree that the test for determining what column of the Tariff should be used to calculate the costs owing is stated in *Hanna v Beckman*, CACV3053 (unreported) as follows:

[11] My usual manner of determining the appropriate column under which Tariff fee items should be assessed has been to look at the amount of money involved in the appeal. I determine the amount involved in the appeal by reviewing the notice of appeal and appellant factum (if there is one) to see what relief is claimed. This was also the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65.

[6] The appellant argues that both its factum and the Court's decision make it clear that there were bonuses exceeding \$1 million declared by a corporation in the respondent's favour. The appellant took the position before the Court and continues to take the position that these bonuses should have formed part of the family property subject to division. The Court set aside the trial judge's decision on this issue (which found that the bonuses were not subject to division) and directed a new trial. On these bases, the appellant takes the position that the amount of money involved in the appeal exceeds \$300,000 and that costs owing should therefore be calculated under column 4.

[7] The respondent notes that no specific monetary amount was claimed as relief in the notice of appeal and that, while the appellant factum and the Court's decision both identify the monetary amount of the bonuses at issue, no specific monetary relief was awarded by the Court in relation to the bonuses. Rather, the Court remitted the issue of the treatment of the bonuses to the Court of Queen's Bench. The respondent argues that the outcome of the new trial on that

issue is not yet known. For these reasons, the respondent takes the position that this is an appeal where non-monetary relief is involved and that costs owing should therefore be calculated under column 2.

### **Analysis**

[8] In this appeal, the notice of appeal and appellant factum ask the Court, *inter alia*, to overturn the decision from the Court of Queen's Bench relating to the characterization (as family property), valuation and division of the bonuses and to substitute its own decision on these points. In the alternative, the notice of appeal asks the Court to allow the appeal and order a new trial. In its decision, the Court allows the appeal and sets aside the trial decision on the points identified above but it remits those issues to the Court of Queen's Bench for determination rather than substituting its own decision.

[9] If the Court had substituted its own decision on the characterization, valuation and division of the bonuses, its decision would clearly have involved monetary relief – either granted or not. The issue before me is what impact the Court's decision to remit those points to the Court of Queen's Bench for determination rather than determining them itself has on the issue of whether the appeal involves quantifiable monetary relief. In other words, where a review of a notice of appeal and appellant factum results in the identification of an amount of money claimed in an appeal, does the Court's decision to remit that claim to the Court of Queen's Bench mean that the appeal involves non-monetary relief?

[10] I have reviewed taxation case law from the Court to determine if and how this issue has been dealt with in the past. In my opinion, the decision in *McKay Career Training Inc. v Bob Baker and 613791 Saskatchewan Ltd.*, CACV2031 (unreported) arose from facts analogous to those before me. In that case, in its notice of appeal and factum, the appellant asked the Court to enter judgment in its favour in a specific monetary amount or, in the alternative, to order a new trial. The Court chose a third option – it found the respondent liable to the appellant but remitted the matter of damages to the Court of Queen's Bench. In concluding that the costs should be taxed under column 2, I found as follows:

[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.

[11] As in the *McKay Career Training Inc.* situation, I find that the portion of the litigation relating to the characterization, valuation and division of the bonuses that was actually decided by the Court resulted in the Court granting non-monetary relief. I will therefore tax the appellant's costs under column 2 of the Tariff.

### **Decision**

[12] The fees items to which the appellant is entitled are therefore taxed and allowed as follows:

2	Notice of appeal	\$ 400
6	Agreement as to Contents of Appeal Book	\$ 200
7	Preparation of Appeal Book	\$ 500
8	Preparation of Factum	\$ 2000
9	All Other Preparation for Hearing	\$ 750
10	Appearing 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 are \$4875.

[13] As noted above, the proposed bill of costs claims disbursements amounting to \$2459.08 and the respondent takes no issue with this amount. The total disbursements allowed are \$2459.08.

[14] Finally, the proposed bill of costs claims GST and PST in the total amount of \$1239.43. The GST and PST relating to fees have to be adjusted to reflect the total fees of \$4875. The total GST allowed is \$352.93 and the total PST allowed is \$292.50.

[15] The proposed bill of costs is therefore taxed and allowed at **\$7979.51** (fees of \$4875 plus disbursements of \$2459.08 plus GST of \$352.93 plus PST of \$292.50). 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 28th day of May, 2020.



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REGISTRAR – COURT OF APPEAL