



CACV3554

Kalem Anderson

APPELLANT

- and -

The Saskatchewan Apprenticeship and Trade Certification Commission

RESPONDENT

Steve Seiferling for the Appellant
Haley Irwin for the Respondent

**Taxation before Melanie Baldwin, QC
Registrar, Court of Appeal for Saskatchewan
September 30, 2020**

Background

[1] The appellant's appeal was filed on January 13, 2020. The respondent served and filed an application to quash the appeal. The application to quash the appeal was heard by the Court on April 23, 2020 and, on May 1, 2020, the Court granted the application to quash the appeal with costs to the respondent "in the usual way." The respondent took out and served an appointment for taxation of costs returnable before me on September 24, 2020. The taxation hearing was subsequently adjourned to September 30, 2020. On September 30, 2020, counsel for the parties appeared before me by telephone for the taxation hearing. This fiat is my decision on the taxation.

Proposed Bill of Costs

[2] The respondent filed a proposed bill of costs. 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
5(a)	Complex Motion to Quash Appeal (Opposed)	\$1000
8	Preparation of Factum/Brief of Law	\$1000
9	All Other Preparation for Hearing	\$ 500
10	Appearance to Present Argument on Motion to Quash Appeal	\$ 300
11	Preparing formal judgment or order	\$ 100

12	Correspondence	\$ 100
13	Preparation of Bill of Costs	\$ 100
14	Taxation of Bill of Costs	\$ 50

The fees claimed total \$3250. The respondent also claims GST (\$163) and PST (\$195) on fees.

[3] The proposed bill of costs also claims disbursements of \$150 composed of \$25 to file the application to quash the appeal, \$20 to issue the formal order and \$20 to issue the notice of appointment for taxation plus \$85 in photocopying/printing charges.

Issues

[4] The appellant takes issue with the respondent's claims for fee items 5(a), 8, 9 and 10 and with the disbursement for photocopying.

Arguments

[5] The respondent relies on the bill of costs as filed. The respondent argues that the application to quash was a complex motion, noting that it was opposed and that there is no fee item for an opposed simple motion. The appropriate fee item for the application to quash is therefore fee item 5(a), according to the respondent.

[6] The respondent takes the position that fee items 8, 9 and 10 are properly claimed. A brief was filed, preparation took place for oral argument and counsel appeared before the Court to argue the application.

[7] The \$85 photocopying/printing disbursement claimed is respondent counsel's best estimate of the amount of the overall photocopying/printing attributable to the appellant's portion of counsel's file (which pertains to actions involving a number of other individuals as well as the appellant). Photocopying/printing was required in order to file hard copies of the respondent's application material with the Court.

[8] The appellant notes that the issue of costs was not argued before the panel of the Court hearing the application to quash.

[9] The appellant describes the application decided by the Court as an application to quash in the context of an appeal in administrative law proceedings. The appellant takes the position that, as the application to quash was granted, the parties to the appeal did not have to argue the substantive merits of the appeal. The appellant concedes that an argument on the substance of the appeal would have been complex but argues that the application to quash was simple. The appellant therefore takes the position that the respondent's claim under fee item 5(a) should be a claim under fee item 4.

[10] The appellant argues that there is overlap or duplication between the tariff fee item for a motion (whether it is item 4 or item 5(a)) and fee items 8, 9 and 10. The appellant notes that fee item 1 for an application for leave specifically includes brief and argument and argues that the motion amount awarded to the respondent (whether it is item 4 or item 5(a)) should also be taken to include these aspects of the application. Finally, the appellant reiterates that the appeal was quashed before it could be heard so there was no need for the parties to prepare for or appear at an appeal hearing. The appellant therefore objects to the respondent's claim for fee items 8, 9 and 10.

[11] The appellant does not object to the respondent's claims under fee items 11 (on the basis that it refers to the formal order issued on the respondent's behest and not a formal judgment), 12, 13 and 14, to the claim for PST and GST on fees or to the claim for disbursements paid to the Court. The appellant does object to the photocopying/printing disbursement on the basis that all documents are filed electronically with the Court.

Analysis

Fee item 5(a)

[12] As I noted at paragraph 9 of my decision in *Melnick v Tapp*, CACV3262, October 5, 2018 (unreported):

[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 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.

I have consistently followed this practice and have treated applications to strike or quash as complex applications throughout my taxation decisions. I am not persuaded to change this approach in this case. The respondent is entitled to claim fee item 5(a) for the application to quash.

Fee items 8, 9 and 10

[13] I most recently considered the issue of what fee items can properly be claimed in connection with the hearing of an application in *Veolia Water Technologies Inc. v K+S Potash Canada General Partnership*, CACV3268, June 19, 2020 (unreported) at paragraph 26:

[26] As the proceeding was an application, the appellant is entitled to claim fee item 5(a) but is not entitled to claim fee items 8, 9 and 10. This is clear from the *Melnick* decision cited above and the decision in *Borowski v Ukrainetz*, CACV2690 (unreported). The principle from *Melnick* – that the motion items in the Tariff are intended to include all of the steps taken to make or respond to an application, including preparing for a hearing in chambers or court – has been described in *Borowski* as also subsuming the making of oral submissions in chambers. I will tax off the amounts claimed under fee items 8 through 10.

The respondent is not entitled to claim fee items 8, 9 and 10.

Photocopying/Printing Disbursement

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

[21] 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.

[15] The affidavit of disbursements filed by respondent counsel was not particularly helpful in light of the fact that a number of actions were consolidated on one file so that the amount claimed (\$85) is counsel's best estimate only. I have reviewed the court file. Based on the hard copy material filed with the Court, I allow a claim for \$20 for photocopying.

Decision

[16] The respondent's fees are therefore taxed and allowed as follows:

3	Fee to Respondent on receipt of Notice of Appeal	\$ 100
5(a)	Complex Motion to Quash Appeal (Opposed)	\$1000
11	Preparing formal judgment or order	\$ 100
12	Correspondence	\$ 100
13	Preparation of Bill of Costs	\$ 100
14	Taxation of Bill of Costs	\$ 50

The total fees allowed are \$1450. The respondent is entitled to GST on fees of \$72.50 and PST on fees of \$87.

[17] The disbursements are taxed and allowed at \$85.

[18] The proposed bill of costs is therefore taxed and allowed at **\$1694.50** (\$1450 for fees + \$72.50 for GST on fees + \$87 for PST on fees + \$85 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 30th day of September, 2020.



REGISTRAR – COURT OF APPEAL