
Evan Jones



Respondent
(Appellant)

and

Kent Jones

Applicant
(Respondent)

Before: Amy Groothuis, Registrar on March 3, 2021

Fiat

Introduction

[1] On April 8, 2020, Evan Jones [appellant] filed a notice of appeal from a Court of Queen's Bench decision made in Chambers that found him in contempt of court. To remedy the finding of contempt, the Chambers judge struck the appellant's affidavit and granted the respondent summary judgment. The appellant asked the Court of Appeal to set aside the Chambers judge's decision [Chambers Decision].

[2] The appeal was heard on November 4, 2020, and the Court's reserved decision, which dismissed the appeal, was released on December 23, 2020. Writing for the Court, and in dismissing the appeal, Tholl J.A. concluded by stating:

[30] The appeal is dismissed with costs in the usual way.

[3] Following the above, Kent Jones [respondent] took out an appointment for taxation of costs returnable on March 9, 2021, supported by a draft bill of costs. On March 3, 2021, I emailed the parties, to confirm the date and time of the hearing, that the hearing would proceed by telephone, and providing a link to the Court's website listing past taxation decisions issued by the Registrar. In response to my email correspondence, counsel for the respondent replied, with a copy to both the appellant and his wife, Donna Jones, circulating an updated, draft bill of costs and enclosing *Hanna v Beckman* (CACV3053, April 8, 2019, Melanie Baldwin) [*Hanna*] in support of his position that the taxable costs should be determined on the basis of Column II. I then invited the appellant to provide me with his written submissions prior to the hearing if he wished to do so, but I received no submissions in response to my email. On March 9, 2021 I heard submissions from counsel for the respondent, as well as from the appellant and his wife, Donna Jones [Ms. Jones], by telephone. This fiat is my decision on the taxation of costs.

Proposed Bill of Costs

[4] As noted above, the respondent filed a draft bill of costs, and then subsequently served an amended bill of costs on the appellant and Ms. Jones by email on March 4, 2021, with a copy to me [proposed bill of costs]. During the March 9, 2021 taxation hearing, Ms. Jones confirmed that she and the appellant had a copy of the proposed bill of costs, but out of caution I re-circulated the March 4 email from counsel for the respondent to the parties, which included his amended bill of costs, and once Ms. Jones confirmed receipt of this email, the hearing continued.

[5] The respondent claims the following fees under Column II of the Court of Appeal Tariff of Costs [the “Tariff”]:

3.	Fee to Respondent on receipt of notice of appeal	\$125.00
4.	Simple Motion	\$375.00
6.	Agreement as to contents of Appeal Book	\$200.00
8.	Preparation of Factum	\$2,000.00
9.	All Other Preparation for Hearing	\$750.00
10.	Appearance to present Argument	\$400.00
11.	Preparing Formal Judgment	\$200.00
12.	Correspondence	\$200.00
13.	Preparation of Bill of Costs	\$150.00
14.	Taxation of Bill of Costs	\$75.00

[6] The fees claimed total \$4,475.00. Counsel for the respondent confirmed during the hearing that the respondent is not seeking to recover any amounts for disbursements.

Issue

[7] The appellant takes issue with the Tariff column used by the respondent in the proposed bill of costs, and more generally, submits that the fees claimed are in many instances “too high”. The appellant also specifically took issue with item 10, appearance to present argument, on the basis that the hearing did not proceed in person, but rather by way of WebEx virtual hearing.

Analysis

[8] My authority to hear and decide this taxation stems from Rule 54 of *The Court of Appeal Rules*. Rule 54 also provides direction on the manner in which costs are taxed. More particularly, Rule 54(1)(b) directs that Column II applies to the taxation of costs where non-monetary relief is involved.

[9] Determining whether non-monetary relief is involved requires examining the notice of appeal and appellant's factum (where one is filed), to see what relief is claimed. This was the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65, as well as that utilized by Registrar Baldwin (as she then was) in *Hanna*.

[10] The appellant's notice of appeal asks the Court to set aside the Chambers Decision, which had found him to be in contempt and which ultimately granted summary judgment to the respondent. At the taxation hearing, the appellant took the position that the relief was monetary, because the underlying issue concerned the valuation of certain farm equipment as well as a disagreement over the proper allocation of ownership of that farm equipment. Conversely, and relying on *Hanna* and the cases cited therein, the respondent submits that determining whether the relief sought is monetary in nature is determined not by looking at the underlying amount at issue in the lower court, but by the manner in which the Chambers judge exercised his discretion, and the relief sought with respect to the resulting Chambers Decision.

[11] Having heard the parties and reviewed the applicable law, including *Hanna*, I am satisfied that the relief sought by the appellant was non-monetary. At its core, the notice of appeal sought to set aside the Chambers Decision, which found the appellant in contempt of court, struck his affidavit, and granted summary judgment to the respondent. To look at the issue another way, had the appellant been successful on appeal, he would not have been awarded an amount of damages, rather he would have been able to continue with his court action at Queen's Bench. I will therefore tax the respondent's costs on Column II.

[12] Having determined the appropriate column, I turn to the specific items with which the appellant took issue. Generally speaking, I understood the appellant's position to be that the Tariff amounts were, in many cases, "too high" although I also understood that this largely flowed from the proposed application of Column II, which provides for tariff amounts that are often twice the amount as Column I. By way of example, the appellant noted that under Column I, item 6 (agreement as to contents of appeal book) is \$100 while under Column II that item is \$200. Similarly, the Tariff for item 8 (preparation of factum) is \$1,000.00 under Column I while it is \$2,000.00 under Column II.

[13] I will pause to note that I closely considered the appellant's position that the respondent was not entitled to claim the \$400.00 pursuant to item 10 (appearance to present at argument), on the basis that the appeal hearing did not proceed in person, but rather by way of videoconference. Because the hearing proceeded virtually, the appellant contends, counsel for the respondent could have been tending to other matters at the same time, such as responding to emails and such. I am not convinced that item 10 should be read as narrowly as suggested by the appellant. While the Court of Appeal's hearings have proceeded virtually since the covid-19 pandemic started, the Court treats all hearings in the same manner whether they proceed in person or virtually, and

indeed appeals have been heard since March, 2020 without any significant interruption. Counsel are still expected to gown, and the parties still appear before a panel of three judges for a full and substantive hearing on the merits of the appeal. Whether in person or virtual, a hearing demands the parties' full attention. I find that item 10 may be claimed whether a hearing proceeds virtually or in person.

[14] While I understand the appellant's dismay at the increase in Tariff amounts between Column I and Column II, a party is not entitled to any reduction in the costs claimed so long as they are pursuant to the proper column and the services have been provided as identified in the bill of costs. Rule 54(1) requires that unless otherwise ordered, the costs of an appeal shall be taxed by the Registrar in accordance with the fees set out in the appropriate Column of the Tariff of Costs in the Court of Appeal, which is Schedule 1 to the Rules.

[15] Having reviewed the Court file, I am satisfied that the items listed in the respondent's proposed bill of costs are appropriate and have been incurred. As counsel for the respondent noted, as a courtesy they did not seek any disbursements, and the Tariff's purpose is to provide partial and not full indemnity for the legal costs incurred by the respondent. The respondent is entitled to receive the costs as claimed in the proposed bill of costs.

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

3.	Fee to Respondent on receipt of notice of appeal	\$125.00
4.	Simple Motion	\$375.00
6.	Agreement as to contents of Appeal Book	\$200.00
8.	Preparation of Factum	\$2,000.00
9.	All Other Preparation for Hearing	\$750.00
10.	Appearance to present Argument	\$400.00
11.	Preparing Formal Judgment	\$200.00
12.	Correspondence	\$200.00
13.	Preparation of Bill of Costs	\$150.00
14.	Taxation of Bill of Costs	\$75.00

[17] The proposed bill of costs is therefore taxed and allowed at \$4,475.00. For enforcement purposes, the respondent may wish to prepare and file a certificate of taxation of costs in Form 11d in this amount for issuance.

AMY GROOTHUIS
Registrar

Counsel: Evan Jones and Donna Jones for Evan Jones
Nicholas Stooshinoff, Q.C. for Kent Jones