
Kelly Kish

Prospective Appellant
(Plaintiff)

And

Facebook Canada Ltd. and Facebook, Inc.

Prospective Respondents
(Defendants)

Before: Amy Groothuis, Registrar (on January 10, 2022)

Fiat

[1] Ms. Kelly Kish applied for leave to appeal a Court of Queen's Bench Chambers decision that dismissed her application to certify her claim as a class action pursuant to *The Class Actions Act*, SS 2001, c C-12.01. The application for leave to appeal came before Caldwell, J.A. on September 20, 2021. In a fiat dated November 2, 2021, Caldwell, J.A. denied Ms. Kish leave to appeal and awarded one set of costs to the respondents, Facebook Canada Ltd. and Facebook, Inc. [Facebook].

[2] Counsel for Facebook served and filed a formal order reflecting the decision dismissing Ms. Kish's leave application, which was issued on December 2, 2021. This was followed by a notice of appointment for taxation of costs supported by a proposed bill of costs, returnable before me on January 10, 2022. On January 6, 2022, counsel for Ms. Kish wrote to the Registry advising that he would not be attending the taxation hearing. The taxation hearing proceeded on January 10, 2022 as scheduled; neither Ms. Kish nor her counsel appeared. This fiat is my brief decision.

[3] Facebook claims the following fees under Column II of the Court of Appeal Tariff of Costs [Tariff]:

1. Motion for leave to appeal	\$1,500.00
11. Preparing Formal Order	\$ 200.00
12. Correspondence	\$ 200.00
13. Preparation of Bill of Costs	\$ 150.00
14. Taxation of Bill of Costs	\$ 75.00

[4] The proposed fees total \$2,125.00. The only disbursements claimed are for Court filing fees: \$20.00 for the fee to issue the order, and \$20.00 for the fee to issue the appointment for taxation. During the taxation hearing, counsel for Facebook confirmed their intention to take out a certificate of taxation of costs in Form 11d following the taxation, which has a non-taxable cost of \$20.00, for the purposes of enforcement. I tax on that additional disbursement.

[5] *The Court of Appeal Rules (Civil)* provide at Rule 54(1)(b) that where non-monetary relief is involved, Column II of the Tariff applies. In this instance, the underlying dispute centred on whether the Chambers judge erred in declining to certify Ms. Kish's claim as a class action. The draft notice of appeal filed in support of the application for leave to appeal is lengthy, but many of the proposed grounds of appeal may be fairly summarized as being focused on the dismissal of the application for certification. I am satisfied that the proposed appeal sought non-monetary relief, and therefore Column II is appropriately used by Facebook.

[6] I reviewed the Court file and am satisfied that all Tariff items claimed on the proposed bill of costs, as well as the disbursements, are properly claimed. However, given that Ms. Kish's counsel did not appear and did not raise any issues with the proposed bill of costs, a lengthy hearing was not necessary. As a result, while the proposed bill of costs claims \$75.00 for a one-hour hearing, given the brevity of the taxation hearing I decrease that amount to \$37.50 and tax off \$37.50.

[7] The proposed bill of costs is therefore taxed and allowed at \$2,087.50, plus non-taxable disbursements in the amount of \$60.00.



Counsel: No one appearing for Kelly Kish
Amanda Quayle, Q.C. for Facebook Canada Ltd. and Facebook, Inc.