
Jason Lyle Dean



Applicant/Appellant
(Respondent)

and

Corina Dawn Koczka

Respondent/Respondent
(Petitioner)

Before: Amy Groothuis, Registrar (on March 24, 2022)

Fiat

I. Introduction

[1] Mr. Jason Dean appealed a decision following trial related to parenting, child support, spousal support, and the division of family property. The Court of Appeal's decision was released on January 7, 2022. Writing for the Court, Richards C.J.S. dismissed Mr. Dean's application for fresh evidence and allowed his appeal in part. With respect to costs, Richards C.J.S. made no order for costs on the application for fresh evidence, and on the substance of the appeal ordered that Ms. Koczka was entitled to costs in the usual way.

[2] Formal judgment was taken out by counsel for Ms. Koczka and issued by the Court on January 27, 2022. A notice of appointment for taxation of costs supported by a proposed bill of costs followed, and the matter came before me as Registrar on March 24, 2022. Mr. Dean appeared on his own behalf, and Ms. Koczka was represented by counsel at the taxation hearing.

II. Proposed Bill of Costs

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

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|----|---|-------------|
| 3. | Fee to Respondent on receipt of Notice of Appeal | \$ 125.00 |
| 5. | Complex Motion (Application to Perfect) - opposed | \$ 1,500.00 |
| 5. | Complex Motion (Application to Perfect) – opposed (continued) | \$ 1,500.00 |

7.	Preparation of Supplemental Appeal Book (Transcript)	\$ 500.00
8.	Preparation of Factum	\$ 2,000.00
9.	All Other Preparation for Hearing	\$ 750.00
10.	Appearance to Present Argument on Appeal	\$ 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

[4] The proposed fees total \$7,400.00. To this amount, Ms. Koczka claims GST on fees totalling \$370.00.

III. Issues

[5] The proposed bill of costs claims for two complex motions. The Tariff awards \$1,500.00 for an opposed, complex motion and so these two entries total \$3,000.00.

[6] The primary issue raised during the taxation hearing was the double entry for a complex motion, related to an application to perfect the appeal brought by the respondent. To his credit, counsel for Ms. Koczka candidly acknowledged that he was not certain whether two appearances arising out of the same application resulted in a second Tariff amount. Mr. Dean raised no other issues with respect to the proposed bill of costs.

IV. Analysis

[7] On October 22, 2020, counsel for Ms. Koczka filed a motion to perfect, which was first returnable before Caldwell J.A. in Chambers on November 25, 2020. The motion to perfect was supported by a one-page affidavit that appended two letters sent by counsel for Ms. Koczka to Mr. Dean, and an eight-paragraph memorandum of law that identified *The Court of Appeal Rules* [Rules] related to the application.

[8] The endorsement on the Court file shows that on November 25, 2020, the Chambers judge asked Mr. Dean about ordering the transcripts, Mr. Dean confirmed his intention to proceed with the appeal, and Caldwell J.A. seized himself with the management of the matter such that the application could be brought back before him to move the appeal forward if necessary. No other order was made.

[9] The application to perfect came back before Caldwell J.A. on July 12, 2021, following a request by the respondent's legal counsel. At that time, the Chambers judge ordered Mr. Dean to file his appeal book and argument within 30 days, granted Ms. Koczka leave to file a supplemental appeal book if necessary, and confirmed that costs of the application were left to the panel hearing the appeal.

[10] Ultimately, Mr. Dean filed his materials within the ordered timeline and counsel for the respondent filed a supplemental appeal book that contained the transcripts of trial, which had not been included in the appeal book filed by Mr. Dean.

[11] Neither the Rules nor the Tariff define what constitutes a "simple" motion versus a "complex" motion. However, I consider that there are two primary indicators that assist in determining whether a particular application is complex or simple.

[12] First, I consider whether there is a specific Form in place for parties to use when preparing their motion. For an application to perfect brought pursuant to Rule 46(1), Form 6a provides the requisite form and Form 6b provides the draft order to be filed in support of the application. In this instance, counsel was not required to prepare a unique or bespoke notice of motion. While not determinative on its own, this factor is an indicator that a motion may be considered "simple".

[13] Second, I look to the materials filed by the parties. Complex motions will generally be supported by an affidavit sworn by the litigant that provides relevant evidence (as opposed to an affidavit sworn by a lawyer or legal assistant that provides a file review where the information is purely formal or uncontroverted), along with a memorandum of law that identifies germane case law and that makes a substantive argument for a specific outcome or remedy. Here, the memorandum of law can only be described as brief, and simply reiterates the request that an order issue requiring the appellant to perfect his appeal.

[14] Additionally, I note that Mr. Dean filed no material, though he spoke at both appearances. As such, counsel for Ms. Koczka was not required to spend time reviewing materials in advance of the Chambers appearance. Finally, while both parties ultimately appeared in Chambers twice to speak to the application, motion items included in the Tariff are intended to be all inclusive; as compared to Tariff items related to the appeal proper, there are no separate entries for preparation time or time spent appearing on a motion.

[15] Taken together, in this instance I do not agree that the application to perfect was complex, nor do the two appearances result in an entitlement to claim this Tariff item twice. While counsel for the respondent pointed out that the Tariff does not assign an amount for appearing in Chambers, as noted this does not mean that a party is entitled to claim for one motion twice. Adjournments are not uncommon, and the focus is on what is filed and before the Chambers judge. In this instance, there was one motion filed: an application to perfect.

[16] Consequently, I conclude that Ms. Koczka is entitled to one Tariff amount for a simple motion, which is \$375.00 under Column II. I therefore tax off the two, \$1,500.00 amounts claimed for complex motions and tax on \$375.00 for the simple motion.


V. Decision

[17] I therefore conclude Ms. Koczka is entitled to the following costs:

2.	Fee to Respondent on receipt of Notice of Appeal	\$ 125.00
4.	Simple Motion (Application to Perfect)	\$ 375.00
7.	Preparation of Supplemental Appeal Book (Transcript)	\$ 500.00
8.	Preparation of Factum	\$2,000.00
9.	All Other Preparation for Hearing	\$ 750.00
10.	Appearance to Present Argument on Appeal	\$ 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	<u>\$ 75.00</u>
		\$4,775.00

[18] The proposed bill of costs is therefore taxed and allowed at \$4,775.00, plus GST in the amount of \$238.75, for a total of \$5,013.75. The respondent did not claim any disbursements.

[19] For enforcement purposes, Ms. Koczka may wish to prepare and file a certificate of taxation of costs in Form 11d in the amount of \$5013.75 for issuance.

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Counsel: Jason Lyle Dean for himself
Jean Jordaan for Corina Dawn Koczka