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**Court of Appeal for Saskatchewan**  
**Dockets: CACV3635; CACV3636;**  
**CACV3638**

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**Date: 2023-06-22**

Docket: CACV3635

Between:

***Mervin Slater***

Appellant  
(Defendant)

*And*

***Pedigree Poultry Ltd. and Ronald Dubois***

Respondents  
(Plaintiffs)

*and*

***Saskatchewan Broiler Hatching Egg Producers’  
Marketing Board and Victor Loewen***

Respondents  
(Defendants)

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Docket: CACV3636

Between:

***Victor Loewen***

Appellant  
(Defendant)

*and*

***Pedigree Poultry Ltd. and Ronald Dubois***

Respondents  
(Plaintiffs)

*and*

***Saskatchewan Broiler Hatching Egg Producers’  
Marketing Board and Mervin Slater***

Respondents  
(Defendants)

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Docket: CACV3638

Between:

***Saskatchewan Broiler Hatching Egg Producers’  
Marketing Board***

Appellant  
(Defendant)

*and*

***Pedigree Poultry Ltd. and Ronald Dubois***

Respondents  
(Plaintiffs)

*and*

***Victor Loewen and Mervin Slater***

Respondents  
(Defendants)

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## **I. Introduction**

[1] This taxation hearing follows from three appeals, all stemming from a trial judgment in which the Saskatchewan Broiler Hatching Egg Producers' Marketing Board [Board], Mervin Slater, and Victor Loewen were found liable for misfeasance in public office. The plaintiffs, Pedigree Poultry Ltd. and Ronald Dubois, were awarded substantial damages, with a punitive damage award being imposed against Mr. Slater personally. Each of the Board, Mr. Slater and Mr. Loewen appealed [collectively, the appellants].

[2] The three appeals were dismissed, except to the limited extent of setting aside the trial judge's finding that Mr. Loewen was personally liable for a portion of the damages. With respect to costs, the Court ordered:

[287] Pedigree and Mr. Dubois shall have one set of costs against the appellants, assessed in the usual way. Given Mr. Loewen's partial success on appeal, his share of the taxable costs shall be 25% of the total amount.

[3] On November 23, 2022, Pedigree Poultry Ltd. and Ronald Dubois [collectively, the respondents] took out a formal judgment. Following an application for leave to appeal to the Supreme Court of Canada brought by the appellants, which was dismissed, the respondents took out a notice of appointment for taxation of costs, supported by a proposed bill of costs. On May 31, 2023, counsel for the respondents served both the notice of appointment for taxation of costs and the proposed bill of costs on counsel for each of the appellants. While counsel for Mr. Slater served and filed a notice of withdrawal of representation on May 30, 2023, that notice did not take effect for ten days and as such I am satisfied that through his then-counsel, Mr. Slater was properly served with the relevant documents.

## **II. Proposed Bill of Costs**

[4] The respondents claim the following fees under Column 4 of the Court of Appeal Tariff of Costs [Tariff]:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 200.00
6.	Agreement as to contents of appeal book	\$ 400.00
8.	Preparation of Factum	\$ 5,000.00
9.	All Other Preparation of Hearing	\$ 1,250.00
10.	Appearance to Present Argument	\$ 1,800.00
11.	Preparing Formal Judgment	\$ 400.00
12.	Correspondence	\$ 400.00
13.	Preparation of Bill of Costs	\$ 250.00

[5] The proposed fees total \$9,700.00. With the addition of court filing fees in the amount of \$40.00, the total amount claimed is \$9,740.00.

### III. Issues

[6] The appellants raised no specific issues with the proposed bill of costs. Counsel for Victor Loewen and counsel for the Board both filed consents to the proposed bill of costs and did not file written submissions or appear at the taxation hearing. While represented by counsel on the appeal, at the time of the taxation hearing Mr. Slater was self-represented. The notice of appointment for taxation of costs and the proposed bill of costs were properly served on Mr. Slater and he was properly provided with a Webex hearing link. He did not appear, nor did the Registry receive any written submissions from him.

[7] I identified one potential issue, which arose following the consents filed by counsel for Mr. Loewen and the Board. As drafted and consented to by these two appellants, the proposed bill of costs included the following language:

The Respondents, Pedigree Poultry Ltd. and Ronald Dubois' Bill of Costs has been taxed and allowed at \$ \_\_\_\_\_ on \_\_\_\_\_, 2023, of which the Appellants, Mervin Slater, Victor Loewen and Saskatchewan Broiler Hatching Egg Producers' Marketing Board are jointly and severally liable for 25% of the said amount, and Mervin Slater and Saskatchewan Broiler Hatching Egg Producers' Marketing Board are jointly and severally liable for the remaining balance.

[8] Recognizing that the signed consents by two of the parties likely meant they would not attend the hearing, on June 8, 2023, I had a deputy registrar write to the parties, as follows:

Good afternoon Counsel and Mr. Slater,

The respondents, Pedigree Poultry Ltd and Ronald Dubois have taken out a notice of appointment for taxation of costs, which is scheduled to be heard before the Registrar on Wednesday, June 21 at 10:00 am. This hearing will occur by Webex and individual Webex links have been sent. Please contact the Registry if you do not have a Webex link.

The Registrar has asked me to convey to the parties that she has reviewed the attached correspondence from Mr. Madigan, and the accompanying consent bill of costs endorsed by counsel for Victor Loewen and the Board, and has identified that the consent bill of costs includes wording on the second page describing the level of liability for each appellant that may not align with the liability imposed by the Court at paragraph 287 of the reasons for judgment. As such, the Registrar wishes to convey to the parties that executing the consent bill of costs does not automatically or necessarily result in the specific outcome described in the within document. The Registrar is obligated to tax costs in accordance with *The Court of Appeal Rules*, the Tariff, and the Court's direction, and she will hear submissions from any party who attends the taxation hearing. Finally, the Registrar advises that while there appears to be proper service of the notice of appointment for taxation of costs, it does not appear that counsel for the respondents has filed proof of service for the proposed bill of costs, and he is requested to do so as soon as possible.

If any questions arise from the above, please contact the undersigned.

[9] Following the above, proof of service for the proposed bill of costs was filed with the Registry, but no substantive response was received from any of the appellants, and as noted none of the appellants appeared at the taxation hearing.

[10] At the taxation hearing, counsel for the respondents advanced the position that the appellants were jointly and severally liable for the costs, as outlined in the proposed bill of costs. The issue was thus whether this was the appropriate interpretation of the Court's judgment.

#### **IV. Analysis**

[11] As a start, and having reviewed the Court file, I am satisfied that each of the Tariff items is properly claimed. Additionally, as the trial judgment awarded damages well in excess of \$300,000 to the respondents, Column 4 is appropriately used. The proposed bill of costs is taxed, and the only question is the apportionment of liability as between the three appellants.

[12] With respect to each of the appellants' liability for the costs, I am bound by the wording of the Court's decision, which is reflected in the issued formal judgment, the relevant portions of which read:

[...]

3. The Respondents Pedigree Poultry Ltd. and Ronald Dubois shall have one set of costs against the Appellants, assessed in the usual way; and



4. The Appellant Victor Loewen's share of the costs assessed pursuant to clause 3 shall be 25% of the total assessed amount.

[13] I have assessed the respondents' costs in the usual way, as required by clause 3.

[14] Respectfully, on a plain reading of clause 4 of the issued judgment, Mr. Loewen's share of the costs is 25% of the total assessed amount. While unstated, the only logical conclusion is that the other two appellants' share of the costs is the remainder, being 75% of the total assessed amount. The decision is entirely silent on making the costs jointly and severally liable, and it is beyond the scope of my authority to go behind the Court's judgment to insert language or explain the implementation of the costs award.

## V. Decision

[15] The proposed bill of costs, set out in paragraph 4 above, is taxed and assessed, and the respondents are entitled to costs of \$9,740.00.

[16] As a result of the Court's order that Mr. Loewen's share of the taxable amount is 25%, and therefore Mr. Slater and the Board are liable for the remaining 75% of \$9,740.00, the amount payable to the Pedigree Poultry and Mr. Dubois is as follows:

- (a) Mr. Loewen: \$2,435.00 [ $\$9,740 \times 25\%$ ]
- (b) Mr. Slater & the Board: \$7,305.00 [ $\$9,740 \times 75\%$ ]

[17] For enforcement purposes, Pedigree Poultry Ltd. and Ronald Dubois may prepare and file a certificate of taxation of costs in Form 11d in the amount of \$9,740.00, reflecting the proportionate liability set out immediately above, for issuance.



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Counsel: No one appearing for Mervin Slater, Victor Loewen or the Saskatchewan Broiler Hatching Egg Producers' Marketing Board  
Daniel J. Maddigan for Pedigree Poultry Ltd. and Ronald Dubois