
Janet Milburn

Appellant
(Respondent)

And

Jason Sansom

Respondent
(Petitioner)

Before: Amy Groothuis, Registrar (on May 10, 2023)

Fiat

I. Introduction

[1] On June 15, 2022, Ms. Janet Milburn [appellant] applied for an order extending time to serve and file her notice of appeal from a May 6, 2022 order made by a Court of Queen's Bench Chambers Judge. The appellant's application was heard and granted by Tholl J.A. in Chambers on June 23, 2022. The appellant filed her notice of appeal on June 29, 2022.

[2] Nothing further happened on this appeal until November 17, 2022, when Mr. Jason Sansom [respondent] filed an application for the appellant to perfect her appeal. The perfection application was heard by Jackson J.A. on November 23, 2022. Counsel appeared for the appellant and the respondent acted for himself. The endorsement reflects that counsel for the appellant consented to the order requiring the appellant perfect her appeal within 30 days, and that Jackson J.A. granted the respondent costs in the amount of \$50.00 in any event of the appeal.

[3] Rather than file her factum and appeal book within the 30 days, the appellant served and filed a notice of abandonment in accordance with Rule 45 of *The Court of Appeal Rules* [Rules]. This was followed by a notice of appointment for taxation of costs taken out by the respondent, supported by a proposed bill of costs, which was ultimately returnable before me on May 10, 2023. Both parties appeared and spoke to the proposed bill of costs.

[4] On May 9, 2023, the day prior to the appointment for taxation of costs, the respondent submitted for filing a set of account statements from a law firm that identified certain legal costs he had paid. While the appellant acknowledged receiving the account statements, and I heard submissions from both parties with respect to importance of these statements, as further explained they have no bearing on the issue before me.

II. Proposed Bill of Costs

[5] The respondent, who has represented himself throughout these proceedings up to and including the taxation of costs, has filed a proposed bill of costs that is somewhat deficient. There is no Column identified and many of the amounts do not align with a set fee contained in the Court of Appeal Tariff of Costs [Tariff].

[6] However, for the sake of completeness, the respondent's proposed fees are as follows:

7.	Preparation of Appeal Book	\$1,800.00
8.	Preparation of Factum	\$1,600.00
9.	All Other Preparation of Hearing	\$ 250.00
12.	Correspondence	\$ 200.00
13.	Preparation of Bill of Costs	\$ 150.00
14.	Taxation of Bill of Costs	\$ 75.00

[7] The proposed fees total \$3,865.00, plus \$40.00 in disbursements for court filing fees.

III. Issues

[8] The two issues before me are the proper column used to tax the costs, and the Tariff items that may be properly claimed. On the first issue, the question is whether the relief sought by the appellant is properly characterized as "non-monetary relief".

IV. Analysis

A. Which Column Applies?

[9] The first issue that must be determined is which Column applies when taxing the respondent's costs. Rule 54 provides:

54(1) Unless otherwise ordered:

(a) the costs of an appeal or application shall be taxed as between party and party 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 attached as Schedule 1 to these Rules; and

(b) Column 2 of Schedule 1 applies to the taxation of costs where non-monetary relief is involved.

[10] That is, where an appeal seeks non-monetary relief, then the Rules require that the costs be taxed on Column 2. In *Lloyd Hanna v Nancy Beckman*, CACV3053, April 8, 2019 (Baldwin) Registrar Baldwin (as she then was) described the approach to ascertaining the appropriate column to use:

[11] My usual manner of determining the appropriate column under which Tariff fee items should be assessed has been to look at the amount of money involved in the appeal. I determine the amount involved in the appeal by reviewing the notice of appeal and appellant factum (if there is one) to see what relief is claimed. This was also the approach followed by Richards, J.A. (as he then was) in *Farmers of North America Incorporated v Bushell*, 2013 SKCA 65.

[12] In its notice of appeal, the appellant asked the Court to set aside the lower court's decision (which dismissed the appellant's application to stay the respondent's enforcement) and to stay the respondent's enforcement proceedings. No appellant factum was filed before the appeal was abandoned. In my view, the relief sought in the appeal is non-monetary. Pursuant to Rule 54(1)(b) of *The Court of Appeal Rules*, column 2 applies to the taxation of costs where non-monetary relief is involved. I will therefore tax the appellant's costs on column 2.

[11] The notice of appeal in the within matter identifies four parts of the Chambers judge's decision that were under appeal:

- (a) That the appellant provide her pension statement to the respondent within 60 days;
- (b) That the appellant provide her real estate sales contract and statement of adjustments from her lawyer to the respondent;
- (c) That the appellant provide her income tax returns to the extent she has not already done so, for the years 2017 to 2021; and,
- (d) That the respondent's application was dismissed, without costs.

[12] The four issues under appeal are clearly non-monetary, and I conclude that Column 2 of the Tariff applies.

B. Which Tariff Items are Properly Claimed?

[13] The appeal was abandoned before either party filed their factum, and there was no appeal hearing. Rule 45 confirms that where an appeal is abandoned, the respondent is entitled to his taxable costs without order.

[14] Prior to the abandonment being served and filed, the only substantive steps taken were the two applications described at paragraphs 1 and 2, above. First, before Justice Tholl, who granted an extension of time to appeal and ordered that "there shall be no costs for this application". Second, before Justice Jackson, who set costs of \$50.00 in favour of the respondent in any event of the cause. Thus, the respondent is not entitled to claim any amount for the application to extend time to appeal, and he is entitled to \$50.00 for his perfection application.

[15] The respondent submits that he is entitled to receive costs for Tariff items #7 (preparation of appeal book), #8 (preparation of factum) and #9 (all other preparation for hearing) because he spent time and resources on the appeal. In support of his position, the respondent relied on the law firm statements of account he submitted on May 9. During the hearing, he confirmed that he calculated the specific amounts for each of these three Tariff items through a combination of estimating the value of his time spent on the appeal and the amount of money he actually incurred through lawyer fees to assist him.

[16] While the respondent's explanation is understandable, as explained during the taxation hearing the Registrar's authority to tax costs is limited to (a) steps actually taken prior to the abandonment being filed, and (b) for the specific Tariff amount, depending on which Column applies. Generally, a Tariff item is only awarded for a step or process that has been taken: see, for example, *Tyacke v Tyacke*, CACV3524, September 14, 2021 (Groothuis) at paragraph 28.

[17] In the within matter, it is uncontroverted that no appeal book or factum was filed by either the appellant or the respondent. As a result, the respondent is not entitled to claim those amounts and I therefore tax off the \$1,800.00 and \$1,600.00, respectively, for those items. For the same reason, I tax off the \$250.00 claimed for Tariff item #9 (all other preparation for hearing) as no appeal hearing occurred.

[18] The respondent is entitled to, and has properly claimed, Tariff items #12 (correspondence), #13 (preparation of bill of costs) and #14 (taxation of bill of costs). However, with respect to the final item, the hearing for the taxation did not last an hour, and as such I will tax off half of the amount, with the remaining amount being \$37.50. The respondent has not claimed, but is entitled to receive, \$125.00 for Tariff item #3 (fee to respondent on receipt of notice of appeal). I tax on this amount.

[19] Finally, the respondent is entitled to receive his non-taxable disbursements, being fees paid to file certain court documents. He is entitled to receive the court filing fee associated with the November perfection application (\$25.00) and the appointment for taxation of costs (\$20.00) for a total of \$45.00.

V. Decision

[20] As a result of the above, I tax the respondent's cost on Column 2 of the Tariff:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 125.00
12.	Correspondence	\$ 200.00
13.	Preparation of Bill of Costs	\$ 150.00
14.	Taxation of Bill of Costs	<u>\$ 37.50</u>
		\$ 512.50

[21] The proposed bill of costs is therefore taxed and allowed at \$512.50. Properly added to this amount is disbursements, being the court filing fees, in the amount of \$45.00, plus the \$50.00 awarded with respect to the perfection application, bringing the total taxed amount to \$607.50.

[22] Mr. Sansom is entitled to receive \$607.50 from Ms. Milburn for his taxable costs and disbursements, for this abandoned appeal.

A handwritten signature in blue ink, reading "Amy Brothman", is written over a horizontal line.

Counsel: Janet Milburn, for herself
Jason Sansom, for himself