
Larry Medynski and Jean Medynski

Appellants
(Applicants)

and

Rural Municipality of Prince Albert No. 461

Respondent
(Respondent)

Before: Amy Groothuis, Registrar (on June 3, 2024)

Fiat

I. Introduction

[1] Larry and Jean Medynski appealed a fiat issued by a Court of Queen's Bench Chambers judge, which dismissed their application for an order that the Rural Municipality of Prince Albert No. 461 [RMPA] produce certain documents in an ongoing action between the parties. Given the interlocutory nature of the decision, the Medynskis were obligated to first apply for leave to appeal, which was granted by Barrington-Foote J.A., with the costs of the leave application being reserved to the panel of the court hearing the appeal.

[2] As in the normal course, the appeal was perfect and heard. By way of a decision issued August 10, 2023, the Medynskis' appeal was dismissed, with the final paragraph of the judgment reading:

[52] For the foregoing reasons, I would dismiss the appeal, with costs in favour of RMPA both for the appeal, and the application for leave to appeal, calculated in the usual way.

[3] The RMPA took out a formal judgment, and on May 9, 2024, it served and filed a Notice of Appointment for Taxation of Costs, supported by a proposed bill of costs. At the beginning of the taxation hearing, the Medynskis requested an adjournment, which was opposed by the RMPA. The contested adjournment request was considered as a preliminary matter.

[4] While the Medynskis acknowledged that they are liable for the costs flowing from their dismissed appeal, they submit that as the matter has now returned to the Court of King's Bench, and negotiations between the parties may occur, that it would be most appropriate to delay the taxation of the appeal costs until after the final conclusion of the matter between the parties, whether by way of trial or negotiated settlement. This formed the basis for their adjournment request.

[5] The RMPA opposed what was effectively an adjournment *sine die*. It argued that in accordance with *MFI AG Services Ltd v Sotkowy*, 2014 SKCA 69, when costs are awarded “in the usual way”, that means the successful party’s costs were both taxable and payable forthwith, and as the appeal had been fully disposed of it was within the RMPA’s rights to have its costs taxed before the action was fully determined.

[6] Having heard the parties, I declined to adjourn the taxation hearing until after the action was fully resolved on the basis that the appeal was concluded, and the Court had awarded costs to the RMPA, which as the successful party was entitled to have its costs taxed and received. However, I questioned whether the Medynskis required an adjournment of a few days or a week, to prepare for the substantive taxation hearing, given that they had approached the hearing date with the view to requesting an adjournment. The Medynskis confirmed that they did not require a short adjournment and they were prepared to proceed with the hearing. As such, the taxation hearing continued.

II. Proposed Bill of Costs

[7] The RMPA filed a proposed bill of costs that relies on Column 2 of the Court of Appeal Tariff of Costs [Tariff], as follows:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 125.00
5.	Complex Motion (opposed)	\$1,500.00
8.	Preparation of Factum	\$2,000.00
9.	All Other Preparation of Hearing	\$ 750.00
10.	Appearance to present argument on appeal	\$ 400.00
11.	Preparing formal order or judgment	\$ 200.00
12.	Correspondence	\$ 200.00
13.	Preparation of Bill of Costs	\$ 150.00

[8] The RMPA claims a total of \$5,325.00 in fees, plus the court filing fees of \$20.00 for each of issuing the formal judgment and taking out a notice of appointment for taxation of costs. The total fees and disbursements claimed are \$5,365.00.

III. Issues

[9] The Medynskis raised two issues with the proposed bill of costs:

- (a) Whether Column 1 or Column 2 of the Tariff applies?

- (b) Whether the RMPA is entitled to claim Tariff item 5 as a complex rather than as a simple application?

IV. Analysis

A. Appropriate Column

[10] In terms of determining which column applies, the RMPA relies on Rule 54(1)(b) of *The Court of Appeal Rules* [Rules]. This Rule provides that where an appeal involves non-monetary relief, Column 2 of the Tariff applies. It submits that the relief sought by the Medynskis was the production of certain documents over which the RMPA had claimed solicitor-client privilege, which is non-monetary relief.

[11] While the Medynskis initially submitted that the costs ought to be taxed pursuant to Column 1 given the relative simplicity of the application to produce records, once Rule 54(1)(b) was brought to their attention, they conceded that the costs should be taxed as in the normal way, being Column 2.

[12] Having heard the parties' submissions on this point, and after reviewing the court file, I am satisfied that the relief sought by the Medynskis in both their notice of appeal and factum involves non-monetary relief. As such, Rule 54(1)(b) applies, and the costs shall be taxed in accordance with Column 2 of the Tariff.

B. Tariff item 5

[13] The Medynskis took issue with characterizing the application for leave to appeal as a "complex" application. They submit that their request for documents was "simple" and that as such the application should not be considered complex. Respectfully, the Medynskis misconstrue the nature of the inquiry; the question of simple versus complex is not focused on the ultimate dispute or issue under appeal, but rather the specific application for which a party is entitled to claim costs.

[14] The RMPA argues that the application for leave to appeal is properly considered complex, because both parties filed briefs of law, making written and oral arguments in opposition to each other. The question of whether leave to appeal was granted was important to both parties and they gave due attention and resources to the application.

[15] I conclude that the RMPA is entitled to claim the Tariff amount for a complex, opposed application. While I agree with the RMPA that the material filed and arguments advanced supports its position that this was a complex application, in the end I am content to rely on the fact that an applicant who is granted leave to appeal, and receives its taxable costs for such an application, receives \$1,500.00 pursuant to Tariff item 1 under Column 2, which is the same amount as identified as for a complex application, opposed, pursuant to Tariff item 5. The RMPA could have just as easily claimed Tariff 1 (application for leave to appeal) rather than Tariff 5, as the Court awarded it costs for both the appeal and "the application for leave to appeal, calculated in the usual way". Regardless of which Tariff item is relied upon, the RMPA is entitled to receive \$1,500.00 for the costs associated with the application for leave to appeal.

V. Decision

[16] For the foregoing reasons, I tax the RMPA's cost on Column 2 of the Tariff:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 125.00
5.	Complex Motion (opposed)	\$1,500.00
8.	Preparation of Factum	\$2,000.00
9.	All Other Preparation of Hearing	\$ 750.00
10.	Appearance to present argument on appeal	\$ 400.00
11.	Preparing formal order or judgment	\$ 200.00
12.	Correspondence	\$ 200.00
13.	Preparation of Bill of Costs	<u>\$ 150.00</u>
		\$5,325.00

[17] Properly added to the above amount is \$40.00 in disbursements, being the court filing fees incurred by the RMPA to (a) have the formal judgment issued and (b) take out the notice of appointment for taxation of costs. The proposed bill of costs is therefore taxed and allowed at \$5,365.00.

[18] The RMPA is entitled to receive \$5,365.00 from Larry and Jean Medynski for the taxable costs related to dismissal of the appeal and for the application for leave to appeal. For enforcement purposes, the RMPA may wish to prepare and file a certificate of taxation of costs in Form 11d in the amount of \$5,365.00 for issuance.



Counsel: Larry Medynski and Jean Medynski, for themselves
Michael Morris, K.C. for Rural Municipality of Prince Albert No. 461