

Docket: CACV3536

***Farms and Families of North  
America Inc. (carrying on business  
as Farmers of North America)***

Appellant  
(Plaintiff/Applicant/Non-Party)

*and*

***AgraCity Crop & Nutrition Ltd.***

Respondent  
(Defendant/Respondent/Non-Party)

*and*

***Jason Mann***

Respondent  
(Defendant/Non-Party/Plaintiff by  
Counterclaim)

*and*

***James Mann and Robert Friesen***

Non-Parties  
(Non-parties/Non-parties/Defendants by Counterclaim)

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Docket: CACV3634

***Farms and Families of North  
America Inc. (carrying on business  
as Farmers of North America)***

Appellant  
(Plaintiff/Defendant by Counterclaim)

*and*

***AgraCity Crop & Nutrition Ltd.***

Respondent  
(Defendant/Plaintiff by Counterclaim)

*and*

***Jason Mann***

Respondent  
(Non-Parties/Defendants by Counterclaim)

*and*

***James Mann and Robert Friesen***

Non-Parties  
(Defendants by Counterclaim/Respondents)

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Before: Amy Groothuis, Registrar (on October 25, 2024)

## ***Fiat***

### **I. Introduction**

#### **A. Preliminary matters**

[1] On October 25, 2024, eight (8) Notice of Appointment for Taxation of Costs [collectively, Appointments] came before me for hearing, involving a number of different parties in a total of eleven different appeal files. One lead decision for the court file CACV3505 provides background and outlines the reasoning on common issues arising in most of the 11 taxations of costs. The fiat issued for CACV3505 is to be read in conjunction with the within decision.

#### **B. CACV3536/CACV3634**

[2] The Notice of Appointment for Taxation of Costs in CACV3536 and CACV3634 arose out of the Court of Appeal's decision dated March 5, 2024, bearing the citation *Farms and Families of North America Inc. (Farmers of North America) v AgraCity Crop & Nutrition Ltd.*, 2024 SKCA 22, which dismissed two appeals brought by Farms and Families of North America [FNA]. In dismissing the two appeals, the Court awarded costs to AgraCity Crop & Nutrition [AgraCity] and Jason Mann [Jason] as follows:

[140] I would grant to each of AgraCity and Jason costs in both appeals, to be calculated in accordance with Column 3 of the *Tariff of Costs in the Court of Appeal*. As part of this, both respondents are entitled to taxable costs in both appeals for responding to FNA's application under Rule 59 dated July 7, 2023. Additionally, AgraCity is entitled to costs in one appeal only associated with its response to what I have styled as the Second New Evidence Application. To avoid any controversy over the matter, the costs relating to the Second New Evidence Application form part of the costs awarded in connection with the appeal against the First Membership Injunction (CACV3536).

[3] On September 23, 2024, a formal judgment was issued for each of the two within court files, essentially contemporaneously with the filing of the Notice of Appointment for Taxation of Costs.

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

[4] AgraCity and Jason each filed a proposed bill of costs that relies on Column 3 of the Court of Appeal Tariff of Costs [Tariff], as follows:

#### **A. AgraCity Crop & Nutrition Ltd. (CACV3536)**

- |    |                                                     |           |
|----|-----------------------------------------------------|-----------|
| 3. | Fee to Respondent on receipt of<br>Notice of Appeal | \$ 150.00 |
|----|-----------------------------------------------------|-----------|

5a.	Complex Motion (opposed)	\$2,000.00
5a.	Complex Motion (opposed)	\$2,000.00
8.	Preparation of Factum	\$3,500.00
9.	All Other Preparation of Hearing	\$1,000.00
10.	Appearance to present argument on appeal (plus second counsel fee)	\$ 750.00
11.	Preparing formal order or judgment	\$ 300.00
13.	Preparation of Bill of Costs	\$ 200.00
7.	Preparation of supplementary appeal book	\$ 750.00

[5] On this court file, AgraCity claims a total of \$10,650.00 in fees plus PST in the amount of \$639.00 and GST in the amount of \$532.50, for a total claimed amount of 11,821.50.

**B. AgraCity Crop & Nutrition Ltd. (CACV3634)**

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
5a.	Complex Motion (opposed)	\$2,000.00
8.	Preparation of Factum	\$3,500.00
9.	All Other Preparation of Hearing	\$1,000.00
10.	Appearance to present argument on appeal (plus second counsel fee)	\$ 750.00
11.	Preparing formal order or judgment	\$ 300.00
13.	Preparation of Bill of Costs	\$ 200.00
7.	Preparation of supplementary appeal book	\$ 750.00

[6] On this court file, AgraCity therefore claims fees in the total of \$8,650.00, plus PST in the amount of \$519.00 and GST in the amount of \$432.50, for a total claimed amount of \$9,601.50.

**C. Jason Mann (CACV3536 and CACV3634)**

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 300.00
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5a.	Complex Motion (opposed)	\$4,000.00
8.	Preparation of Factum	\$7,000.00
9.	All Other Preparation of Hearing	\$2,000.00
10.	Appearance to present argument on appeal (for each ½ day)	\$2,000.00
13.	Preparation of Bill of Costs	\$ 400.00

[7] For these two appeals combined, Jason Mann therefore claims fees in the total of \$15,700.00, plus PST in the amount of \$942.00 and GST in the amount of \$785.00, for a total claimed amount of \$17,427.00.

### **III. Issues and Analysis**

[8] Counsel for the appellant raised the following issues on these proposed bills of costs:

- (a) Item #10 – appearance to present argument (for both respondents, on each of CACV3536 and CACV3634);
- (b) Item #5 – complex motion (for Jason Mann only)
- (c) Item #7 – preparation of appeal book (for AgraCity, on each of CACV3536 and CACV3634)

[9] Note that the question of Tariff item #14 – Taxation of Bill of Costs is addressed in the lead decision of CACV3505. This amount is taxed off, on the parties' agreement that the costs of the taxation hearings be comprehensively addressed in one fiat.

#### **A. Tariff Item #10 – Appearance to Present Argument**

[10] There are two components to this objection raised by counsel for the appellant, FNA. The first is whether AgraCity can claim for a second counsel fee. This issue was comprehensively addressed in the fiat arising out of CACV3505's taxation of costs: the Court did not award a second counsel fee, and as in CACV3505, this amount is taxed off for each of AgraCity's proposed bill of costs in CACV3536 and CACV3634.

[11] The second issue is whether a half-day of argument should be allocated for each of the respondents. With respect to this issue, it is important to acknowledge that these two appeals were heard over the course of two days (being September 20 and September 22, 2023) along with three other appeal files. That is, the Court heard five appeals over two days. Counsel for FNA submits that it is difficult to allocate how much time was spent for each appeal, and how that should be reflected in the costs award.

[12] While the Court heard five appeals over two days, the appeals were not disposed of all via one decision. Rather, CACV3536 and CACV3634 were the subject of one decision, and each of CACV3637, CACV3815 and CACV4066 were the subject of a standalone decision, released at different times.

[13] I agree with counsel for FNA that it is not possible to determine – and thus allocate – an exact amount of time spent on each of the five appeals over the two-day hearing. Certainly, there is no dispute, and FNA does not suggest otherwise, that counsel for the respondents attended the entire two days of hearing for these five appeals. However, at the same time, I acknowledge that with each of the five proposed bills of costs claiming for a half-day of hearing, that ultimately adds up to the equivalent value of 2.5 days of hearing time, which is in excess of what actually took place.

[14] In this instance, while I am bound by the Court’s determination that the respondents are entitled to their costs of the two appeals, such costs are to be “calculated in accordance with...the [Tariff]”. The Tariff is clear that item #10 is awarded “for each ½ day”. I therefore conclude that a two-day hearing cannot result in more than four half-day amounts, for each of the two respondent parties.

[15] This issue was made somewhat more complicated by the fact that the proposed bill of costs submitted by Jason for both appeals included at Tariff Item #10 the amount of \$2,000. During the hearing, I questioned counsel on this amount, and he candidly acknowledged what looked to be an error in doubling. While the proposed bill of costs reflects the amount of \$2,000, in fact it should only be \$1,000 (recognizing a \$500 Tariff item for a half-day of argument on each of CACV3536 and CACV3634). I therefore correct this typographical error by deducting \$1,000.00 from this Tariff item for Jason.

[16] In light of the above, given that the proposed bills of costs for CACV3536 and CACV3634 were reviewed first out of the five appeals argued together on September 20 and 22, 2023, I will address the totality issue regarding Tariff item #10 within a later fiat, ensuring that the respondents do not, in the end result, receive more than the equivalent of two days’ costs for Tariff item #10 in these five appeals.

[17] On the basis of the above, with respect to these two appeal files and the resulting proposed bills of costs, I tax off \$250 for the claimed second-counsel fee under Tariff Item #10 by AgraCity on each of the proposed bill of costs and I reduce the amount claimed under this Tariff item by Jason from \$2,000 to \$1,000.

## **B. Tariff Item #5 – Opposed Complex Application**

[18] As I understand the argument, FNA submits that the \$4,000.00 claimed by Jason under Tariff item #5, related to the application to adduce evidence not before the lower court judge, should be halved to \$2,000.00 to reflect one complex application only (not two).

[19] I have reviewed the files in detail. I suspect that part of the confusion in determining what is properly included on the proposed bill of costs stems from the fact that Jason completed one bill

of costs for the two files (CACV3536 and CACV3634), which practically means that each Tariff amount is included once but is doubled.

[20] A review of the court file confirms that the appellants filed applications pursuant to Rule 59 of *The Court of Appeal Rules* [Rules] to adduce evidence that was not before the lower court judge, as follows:

- (a) July 7, 2023 – on CACV3536
- (b) October 27, 2023 – on CACV3536
- (c) July 7, 2023 – on CACV3634

[21] I find it useful to repeat the Court’s direction with respect to costs for these two appeals:

[140] I would grant to each of AgraCity and Jason costs in both appeals, to be calculated in accordance with Column 3 of the *Tariff of Costs in the Court of Appeal*. As part of this, **both respondents are entitled to taxable costs in both appeals for responding to FNA’s application under Rule 59 dated July 7, 2023. Additionally, AgraCity is entitled to costs in one appeal only associated with its response to what I have styled as the Second New Evidence Application.** To avoid any controversy over the matter, the costs relating to the Second New Evidence Application form part of the costs awarded in connection with the appeal against the First Membership Injunction (CACV3536).

[bolding added]

[22] Putting the above another way, AgraCity is entitled to the Tariff Item #5 for three complex (opposed) applications, and Jason is entitled to costs for two complex (opposed) applications – being the applications filed on July 7, 2023, for each of CACV3536 and CACV3634. Under Column 3, a complex (opposed) application results in an amount of \$2,000. As Jason is entitled to two entries for item #5, the value he inputted – \$4,000 – is correct. No change is made to this entry.

### C. Tariff Item #7 – Preparation of Appeal Book

[23] This is the one other common issue that arose more than once over the duration of the taxation hearing, but which did not arise in CACV3505.

[24] Essentially, in addition to what had previously been placed on the court file by the appellant, the respondent AgraCity filed what it termed a “supplementary appeal book” along with its factum. This has led to multiple proposed bills of costs to include the full Tariff amount for the “preparation of a supplementary appeal book”, claiming costs at \$750.00 in each instance.

[25] AgraCity takes the position that the record before the Court was incomplete, and a supplementary appeal book was necessary. FNA strenuously objects to this characterization, and claims that the appeal books filed by it included all necessary documents. FNA asks that the amounts claimed in each proposed bill of costs for Tariff item #7 be taxed off.

[26] In CACV3536, AgraCity submitted an 835-page supplementary appeal book for filing at the same time as its factum in response. In CACV3634, AgraCity submitted a 212-page supplementary appeal book for filing at the same time as its factum in response. In both instances, the supplementary appeal books were accepted for filing, and the Court’s decision is silent with respect to the filing of these documents.

[27] I consider that there are three salient factors at play. First, the Tariff does not include an amount identified as being for a “supplementary” appeal book. Second, for these two appeals there is no order of the Court or a judge of the Court permitting AgraCity to file a supplementary appeal book. Third, and perhaps drawing from both of the first two factors, even if Tariff Item #7 could be included in this instance, it seems inappropriate to claim the full tariff amount when the appellant had already filed an appeal book. If a party considers that an appeal book is deficient, The Rules expressly provide for an avenue under which it can apply to cure those deficiencies. While I have no doubt that counsel for AgraCity was acting in good faith in attempting to ensure that the Court had before it the full and complete appeal record, a procedural gap exists in that any suggested deficiency was not addressed through the usual course.

[28] As such, I conclude that AgraCity is not entitled to claim Tariff item #7 for either CACV3536 or CACV3634, and I therefore tax off that amount from each proposed bill of costs.

#### **IV. Decision**

[29] As a result of the above, I tax AgraCity’s costs on Column 3 of the Tariff, as follows:

##### **A. AgraCity Crop & Nutrition Ltd. (CACV3536)**

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
5a.	Complex Motion (opposed)	\$2,000.00
5a.	Complex Motion (opposed)	\$2,000.00
8.	Preparation of Factum	\$3,500.00
9.	All Other Preparation of Hearing	\$1,000.00
10.	Appearance to present argument on appeal	\$ 500.00
11.	Preparing formal order or judgment	\$ 300.00
13.	Preparation of Bill of Costs	<u>\$ 200.00</u>
		\$9,650.00

[30] On the fees of \$9,650.00 is added PST in the amount of \$579.00 and GST in the amount of \$482.50, for a total of \$10,711.50

**B. AgraCity Crop & Nutrition Ltd. (CACV3634)**

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
5a.	Complex Motion (opposed)	\$2,000.00
8.	Preparation of Factum	\$3,500.00
9.	All Other Preparation of Hearing	\$1,000.00
10.	Appearance to present argument on appeal	\$ 500.00
11.	Preparing formal order or judgment	\$ 300.00
13.	Preparation of Bill of Costs	<u>\$ 200.00</u>
		\$7,650.00

[31] On fees of \$7,650.00, PST in the amount of \$459.00 and GST in the amount of \$382.50 is added, for a total of \$8,491.50.

**C. Jason Mann (CACV3536 and CACV3634)**

[32] As a result of the above, I tax Jason Mann's costs of these two appeals on Column 3 of the Tariff, as follows:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 300.00
5a.	Complex Motion (opposed)	\$4,000.00
8.	Preparation of Factum	\$7,000.00
9.	All Other Preparation of Hearing	\$2,000.00
10.	Appearance to present argument on appeal (for each ½ day)	\$1,000.00
13.	Preparation of Bill of Costs	<u>\$ 400.00</u>
		\$14,700.00



[33] On fees of \$14,700.00, PST in the amount of \$882.00 and GST in the amount of \$735.00 is added, for a total of \$16,317.00.

[34] For enforcement purposes, the respondents may wish to prepare and file a certificate of taxation of costs in Form 11d in the amounts noted herein for issuance.

A handwritten signature in black ink, reading "amy Groothuis". The signature is written in a cursive style with a long horizontal stroke at the end.

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Amy Groothuis, Registrar  
Court of Appeal for Saskatchewan

Counsel: Alex Baboi for Farms and Families of North America Inc.  
James Mann for himself  
Daniel Cherian for AgraCity Crop & Nutrition Ltd  
Matthew Scott for Jason Mann