

***James Mann and Farms and
Families of North America Inc.
(dba Farmers of North America)***

Appellants
(Applicants)

and

***Jason Mann and AgraCity Crop &
Nutrition Ltd.***

Respondents
(Respondents)

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 taxations of costs. The fiat issued for CACV3505 is to be read in conjunction with the within decision.

B. CACV4066

[2] The Notice of Appointment for Taxation of Costs in this appeal file arose out of an appeal filed by James Mann [James] and Farms and Families of North America Inc. [FNA] against Jason Mann [Jason] and AgraCity Crop & Nutrition Ltd. [AgraCity] (*Mann v Mann*, 2024 SKCA 24). The appeal was heard and dismissed by a panel of Leurer, C.J.S., Tholl and Kalmakoff JJ.A., with the Court's judgment concluding:

[71] I would dismiss FNA and James's appeal. I would also grant to each of AgraCity and Jason one set of the costs of this appeal, payable jointly and severally by James and FNA, to be calculated in accordance with Column 3 of the *Tariff of Costs in the Court of Appeal*.

[3] On September 23, 2024, a formal judgment was issued with respect to this appeal, essentially contemporaneously with the filing of the Notice of Appointment for Taxation of Costs.

II. Proposed Bill of Costs

[4] The respondents 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.

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
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

[5] AgraCity claims a total of \$5,900.00 in fees plus PST in the amount of \$354.00 and GST in the amount of \$295.00, for a total claimed amount of \$6,549.00.

B. Jason Mann

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
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)	\$ 500.00
13.	Preparation of Bill of Costs	\$ 200.00

[6] Jason therefore claims fees in the total of \$5,350.00 in fees, plus PST in the amount of \$321.00 and GST in the amount of \$267.50, for a total claimed amount of \$5,938.50. Jason's proposed bill of costs only differs from that of AgraCity's in that there is no second counsel fee, and because AgraCity's counsel took out the judgment, Jason did not claim item #11 (preparing formal order or judgment).

III. Issues and Analysis

[7] In terms of raising any specific issues with respect to the proposed bill of costs for each of the respondents, James and FNA once again identified as an issue the proposed second counsel fee claimed by AgraCity under Tariff item #10. In addition, James identified a concern with the language “one set of costs”, asking whether this could be clarified by the Court to ensure the meaning is clear.

[8] I also note that the within taxation of costs relates to the final of five appeals heard together by the Court on September 20 and 23, 2023. As outlined in detail in the fiat for appeal files CACV3536 and CACV3634 at paragraphs 11 to 16, it was not possible to determine and thus allocate an exact amount of time spent on each of the five appeals over the two-day hearing. This fiat addresses in more detail the issue of the totality of the respondents’ claims for Tariff item #10, recognizing that a two-day hearing cannot result in more than four half-day amounts, for each of the two respondent parties.

A. Item #10 – Appearance to Present Argument

[9] As with the other proposed bill of costs, AgraCity has claimed 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 of AgraCity’s proposed bill of costs in CACV4066.

[10] I repeat my conclusion outlined in the fiat released in CACV3536 and CACV3634, that as Tariff item #10 awards a set amount “for each 1/2 day”, a hearing that lasts two full days (or, four half-days) cannot logically result in costs exceeding that length of hearing.

[11] AgraCity has been allowed its taxed costs for Tariff item #10 (\$500.00) for each half-day, in each of CACV3536, CACV3634, CACV3637, and CACV3815. To allow this Tariff item to remain on the proposed bill of costs in the within appeal matter would lead to the result that AgraCity receives its costs for the equivalent of 2.5 days of hearing. I therefore tax off the remaining \$500.00 for this Tariff item, having already reduced the amount by \$250.00 for the second counsel fee.

[12] Jason, however, is in a different situation. Although this is the taxation for the fifth of the five appeals heard together, Jason did not file a proposed bill of costs on CACV3815. As such, his costs have only been taxed for Tariff item #10 three times in the course of these proceedings. This leads me to the conclusion that he is entitled to receive his taxable costs for this Tariff item on CACV4066, and as such it would not be appropriate to tax off that amount for his proposed bill of costs.

B. “One set of costs”

[13] I understand the concern raised by James to be whether the Court ordered “one set of costs”, which would then be shared between the two respondent parties, or, ordered that each respondent

is entitled to its costs. During this portion of the hearing, James inquired about checking with the panel of the Court that heard the appeal, to confirm its intention. He noted the repetition in what each of the respondents claim and appeared to suggest that given the practical way that the appeals proceeded, it would not make sense for each of AgraCity and Jason to receive a full set of costs.

[14] There are two answers to James' query. First, Rule 57.1 of *The Court of Appeal Rules* sets out the process by which a party takes out an issued order or judgment. This Rule requires a draft judgment to be served on the other parties, "so as to permit the other to raise with the registrar such concerns, if any, as that party may have as to the consistency of the judgment or order with the decision on which it is based". The registrar is not permitted to issue the draft judgment until three days have passed since the service of the draft on the other parties. As in the normal course, the Registry did not issue this judgment until the three days had elapsed, and the court file does not reflect any issues being raised by either appellant as to the form or content of the draft judgment. If James considered that the proposed form and content of the draft judgment was unclear or did not align with what the Court's reserved decision ordered, that was his opportunity to address his concerns.

[15] Second, as explained to James during the hearing and as reviewed more fully in the fiat issued on CACV3505, the Registrar's authority when taxing costs is prescribed and limited by Rule 54. Essentially, the "function of an assessment officer is to assess costs the right to which has been established elsewhere": Mark M. Orkin, Robert Schipper, *Orkin On the Law of Costs, 2nd Edition* (Toronto: Thomson Reuters Canada, 2020). Online: Westlaw Canada at para 6:22. In this instance, I consider that the Court's language is clear: "I would also grant to each of AgraCity and Jason one set of costs of this appeal..." (at para 71). Each party is entitled to one set of costs, and I cannot see any other logical interpretation that may result from this direction.

IV. Decision

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

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
8.	Preparation of Factum	\$3,500.00
9.	All Other Preparation of Hearing	\$1,000.00
11.	Preparing formal order or judgment	\$ 300.00
13.	Preparation of Bill of Costs	<u>\$ 200.00</u>
		\$5,150.00

[17] GST and PST are properly added in the amounts of \$257.50 and \$309.00, respectively. The total amount of costs, inclusive of taxes, is \$5,716.50.

[18] I tax Jason Mann's costs on Column 3 of the Tariff, as follows:

3.	Fee to Respondent on receipt of Notice of Appeal	\$ 150.00
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
13.	Preparation of Bill of Costs	<u>\$ 200.00</u>
		\$5,350.00

[19] GST and PST are properly added in the amounts of \$267.50 and \$321.00, respectively. The total amount of costs, inclusive of taxes, is \$5,938.50.

[20] 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.



Amy Groothuis, Registrar
Court of Appeal for Saskatchewan

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