



August 28, 2015

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3C2

Attention: Mr. Lorne S. Silver

Dear Mr. Silver,

RE: *Donald Best*
v.
Kingsland Estates Limited, et al.
File No.: 35785

Attached please find the certificate of taxation issued by the Registrar with respect to the above-referenced matter along with an English and French copy of the reasons for taxation.

If you need further assistance please do not hesitate to contact us.

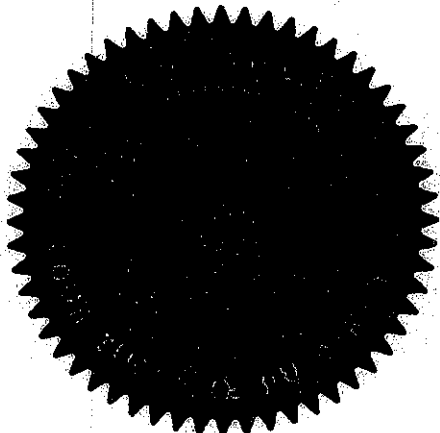
Yours truly,

A black rectangular redaction box covering the signature of Denis Gagné.

Denis Gagné
Senior Registry Officer

Encl.

c.c.: Mr. K. Scott McLean
Mr. Paul Slansky
Ms. D. Lynne Watt
Mr. Gerald L.R. Ranking



No. 35785

BETWEEN:

Donald Best

Applicant

- and -

Kingsland Estates Limited and Price
Waterhouse Coopers East Caribbean Firm

Respondents

ENTRE :

Donald Best

Demandeur

- et -

Kingsland Estates Limited et Price
Waterhouse Coopers East Caribbean Firm

Intimées

I hereby certify that the costs of the respondent, Kingsland Estates Limited, have been taxed and allowed in the sum of twenty thousand three hundred sixty-four dollars and seventy-nine cents (\$20,364.79).

Je certifie par les présentes que les frais de l'intimée, Kingsland Estates Limited, ont été taxés et que leur montant a été fixé à vingt mille trois cent soixante-quatre dollars et soixante-dix-neuf cents (20 364,79\$).



**DEPUTY REGISTRAR OF THE
SUPREME COURT OF CANADA**

**REGISTRAIRE ADJOINT DE LA
COUR SUPRÊME DU CANADA**

Dated this 28th day of August 2015.

Fait le 28e jour d'août 2015.

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

DONALD BEST

Applicant

-and

KINGSLAND ESTATES LIMITED AND PRICEWATERHOUSECOOPERS
EAST CARIBBEAN FIRM

Respondents

**AMENDED BILL OF COSTS OF THE RESPONDENT
KINGSLAND ESTATES LIMITED**

Fees

**Solicitor Client Costs
(90% of actual costs)**

Robert Kligman
23.6 Hours x \$870.00 (actual rate) x 90%

\$18,478.80

Lorne Silver
14.4 Hours x \$870.00 (actual rate) x 90%

\$11,275.20

Colin Pendrith
1.3 Hours x \$ 400.00 (actual rate) x 90%
Disbursements (as detailed below)

\$422.50

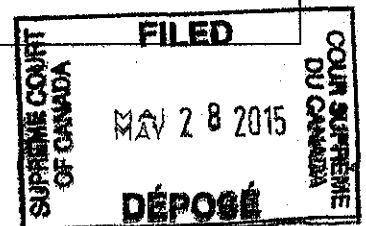
\$664.69

Total Fees and Disbursements

~~\$30,841.19~~
\$20,384.79

Fees

Date	Lawyer	Description	Hours
4/28/2014	Lorne Silver	receipt and consider application for leave to Supreme Court of Canada record; instructions re copying, etc.; meet C. Pendrith to discuss;	0.7 4
4/29/2014	Lorne Silver	receipt and consider application for leave to appeal; telephone call from G. Ranking to discuss; consider Best application resulting in removal from jail; telephone call client to discuss; email P. Slansky requesting copy of	1.4 1.0



		application materials;	
5/1/2014	Lorne Silver	telephone call from Gerry Ranking re approach to response to leave application; consider issues and discuss with C. Pendrith ; consider P. Slansky email re approval of order and email P. Slansky in response; letter from Supreme Court of Canada re leave to appeal application;	2.1 1.5
5/1/2014	Colin Pendrith	<u>review leave to appeal materials and discuss same with Lorne Silver</u> ; emails with Rob Kligman;	1.0
5/5/2014	Lorne Silver	emails Messrs. Pendrith and Kligman re response to application for leave to appeal; consider issues and course of action;	0.8
5/5/2014	Robert Kligman	<u>review leave to appeal application; meeting and discussion with C. Pendrith</u> ; preparation of memorandum to L. Silver and C. Pendrith;	1.2
5/6/2014	Robert Kligman	telephone call and discussion with V. Maric; correspondence to G. Ranking and V. Maric; preparation of memorandum to L. Silver;	0.4 0.3
5/7/2014	Lorne Silver	emails R. Kligman re responding factum to leave to appeal application, consider issues and course of action; instruct R. Kligman;	0.8
5/7/2014	Robert Kligman	Research	0.2
5/8/2014	Robert Kligman	meeting with L. Silver and C. Pendrith; research including LawSource;	1.5
5/8/2014	Colin Pendrith	meet with Lorne Silver and Rob Kligman to discuss leave to appeal application to Supreme Court of Canada;	0.3
5/9/2014	Robert Kligman	correspondence with V. Maric; research including WLN;	0.7
5/12/2014	Robert Kligman	research; preparation of response; preparation of brief of authorities;	3.5
5/13/2014	Robert Kligman	meeting and discussion with L. Silver; review and revise draft memorandum of argument;	2.0 1.5
5/14/2014	Lorne Silver	emails R. Kligman re responding factum for leave to appeal application; consider issues and instruct;	0.3
5/14/2014	Robert Kligman	review and revise memorandum of argument; preparation of memorandum to L. Silver;	1.5 1.0
5/15/2014	Lorne Silver	consider, review and revise joint factum of KEL and PwC re application for leave to appeal to Supreme Court of Canada;	1.0

5/16/2014	Robert Kligman	meeting and discussion with L. Silver; review and revise memorandum of argument; preparation of response; correspondence to G. Ranking;	3.2 ?
5/16/2014	Lorne Silver	continued revisions to responding factum for leave to appeal to Supreme Court of Canada application;	1.4
5/20/2014	Robert Kligman	telephone call with V. Maric; meeting and discussion with L. Silver; review and revise response; correspondence with G. Ranking and V. Maric;	4.8 4.0
5/20/2014	Lorne Silver	further revisions to joint memorandum; telephone call with G. Ranking and R. Kligman to discuss; meet R. Kligman; consider Ottawa agent for filing;	1.0 .7
5/21/2014	Lorne Silver	further review, revision and finalize joint factum in response to request for leave; telephone call with G. Ranking to discuss; instruct R. Kligman;	2.4 2.0
5/21/2014	Robert Kligman	meeting and discussion with L. Silver; review and revise response; telephone call with Supreme Law Group (Ottawa); correspondence with G. Ranking;	3.0 2.0
5/22/2014	Robert Kligman	preparation of response; telephone call with C. Villeneuve (Dentons - Ottawa); correspondence with C. Villeneuve;	1.0
5/26/2014	Lorne Silver	various emails and communications with R. Kligman and Ottawa agent re filing of responding materials to motion for leave to appeal to Supreme Court of Canada; execute form re no bilingual name for respondents and confirm service and filing;	1.2 1.0
5/26/2014	Robert Kligman	preparation of Forms 14 and 23; correspondence to C. Villeneuve; engaged to approve, serve and file response;	0.5
5/27/2014	Lorne Silver	attend to final filing requirements re joint response to Supreme Court of Canada leave to appeal; report to client; emails to and from R. Kligman and G. Ranking;	0.5 .4
5/27/2014	Robert Kligman	correspondence to C. Villeneuve;	0.1
5/29/2014	Lorne Silver	reporting email to client re joint response to application for leave to appeal to Supreme Court of Canada; email review and follow-ups; email from and to G. Ranking;	0.8 .5

NON-TAXABLE DISBURSEMENTS

Copies	355.50 ✓
Binding, tabs, disks etc.	109.19 ✓
Supreme Court Agency fees (Tariff Item Part 1 counsel fees #4(a)(i))	200.00 ✓
Total Non-Taxable Disbursements	\$664.69

STATEMENT OF EXPERIENCE

A claim for fees is being made with respect to the following lawyers:

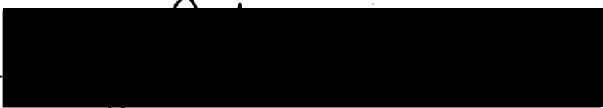
PERSONS	SOLICITOR CLIENT COSTS (90% of actual rate)	ACTUAL RATE
Robert Kligman (1980 call)	\$783.00	\$870.00
Lorne Silver (1984 call)	\$783.00	\$870.00
Colin Pendrith (2011 call)	\$360.00	\$400.00

March 5, 2015
Amended May 27, 2015

CASSELS BROCK & BLACKWELL LLP
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40 King Street West
Toronto ON M5H 3C2

Lorne S. Silver LSUC #: 24238L
Tel: 416.869.5490
Fax: 416.640.3018
lsilver@casselsbrock.com

Lawyers for Kingsland Estates Limited



DEPUTY REGISTRAR

August 28, 2015

DATE

TO: SLANSKY LAW PROFESSIONAL CORP.
1062 College Street
Lower Level
Toronto ON M6H 1A9

Paul Slansky LSUC #: 259981
Tel: 416.536.1220
Fax: 416.536.8842

Lawyers for Donald Best

AND TO: FASKEN MARTINEAU
333 Bay Street
Suite 2400
Toronto ON M5H 2T6

Gerald L.R. Ranking
Tel: 416.366.8381
Fax: 416.364.7813

Lawyers for PricewaterhouseCoopers East Caribbean Firm

IN THE SUPREME COURT OF CANADA

(On appeal from the Court of Appeal for Ontario)

BETWEEN:

DONALD BEST

Applicant

and

KINGSLAND ESTATES LIMITED and
PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM

Respondents

TAXATION

[1] On September 4, 2014, this Court dismissed Donald Best's application for leave to appeal from a judgment of the Court of Appeal for Ontario dated March 4, 2014, with costs on a solicitor and client basis.

[2] The respondent, Kingsland Estates Limited, initially filed its bill of costs setting out its fees on the basis of the three costs scales used in the Ontario courts, namely partial, substantial and full indemnity; the amounts of those fees were, respectively, \$13,592.50, \$21,322.50 and \$33,580.00. No submission was made as to which amount should be taxed. Upon request by the Registry of the Court to specify the particular amount being claimed, the respondent filed an amended bill of costs in which it claimed 90% of the full indemnity amount, which it submits is in accordance with the solicitor and client costs awarded by the Court. The respondent, PriceWaterhouseCoopers, has not submitted a bill of costs. The applicant, Donald Best, has filed no response to the bill of costs.

[3] It should be noted at this juncture that counsel fees in this Court are taxed in conformity with the order of the Court on either a party and party scale in accordance with the Tariff found in Schedule B, Part 1, of the *Rules of the Supreme Court of Canada*, SOR/2002-156, as am., or on a solicitor and client scale. Parties should therefore not submit bills of costs to be taxed based on any other method or scale unless otherwise directed by the Court. In particular, the indemnity scales used in Ontario, or other measures of awarding costs that may exist in other provinces from time to time, do not apply to awards of costs made in this Court, other than in very particular and extremely rare circumstances where the order of the Court makes clear that another scale or basis for costs is to be applied: see, e.g., *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331.

[4] As to the calculation of solicitor and client costs, the jurisprudence is settled that costs awarded on that scale shall be assessed on the basis of *quantum meruit*: see Mark Orkin, *The Law of Costs*, loose leaf updated May 2015, Release No. 51, Vol. 1, at pp.1-13 to 1-14); see also, *Metzner v. Metzner*, (S.C.C. file no. 28208) reasons for taxation of the Registrar dated June 15,

2001, *Alberta (Human Rights and Citizenship Commission) v. Brewer*, (S.C.C. file no. 32695) reasons for taxation of the Registrar dated August 25, 2009, and *Richard v. Time Inc.*, (S.C.C. file no. 33554) reasons for taxation of the Deputy Registrar dated June 6, 2013. The question is therefore what is “fair and reasonable” when applying the criteria set out in *Cohen v. Kealy & Blaney* (1985), 26 C.P.C. (2d) 211 (Ont. C.A.), cited with approval by this Court in *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1991] 3 S.C.R. 317.

[5] It should also be stressed that all parties are obliged to “do their utmost to minimize costs” of litigation: see *Richard and Pétroles Therrien Inc. v. 156036 Canada Inc.*, (S.C.C. file no. 27158) reasons for taxation of the Registrar dated March 16, 2000.

[6] With these principles and the *Cohen* factors in mind, I must decide whether or not the respondent’s amended bill of costs constitutes *quantum meruit* in the circumstances of this case.


[7] The respondent claims \$30,176.50 in fees, representing 39.3 hours of time spent on the response to the application for leave to appeal, including 38 hours for two senior lawyers in the same firm at a rate of \$870 per hour (reduced by 10% in the bill of costs). In my view, this is not fair and reasonable in the circumstances of this application which was average in complexity and involved a response nineteen pages in length.

[8] The 39.3 hours claimed includes a substantial amount of time spent by the two senior lawyers and one junior meeting together and conferring with one another on the approach to be taken in the response to the application. On that issue, the case law is clear – when assessing the reasonableness of a bill of costs, courts should make reductions for any duplication of work by lawyers in the same firm as reflected by multiple billing for inter-office conferences, attending meetings together, or otherwise conferring with one another: see, e.g., *Beamish v. Regional Municipality of York (No. 2)* (1982), 27 L.C.R. 165 (Ont. Assessment Officer), and *Re Solicitors* (1978), 6 C.P.C. 49 (Ont. Assessment Officer).

[9] From a review of the respondent’s docket, in my view a total of 13.6 hours should be disallowed for duplication of work by multiple lawyers in the same firm. Of this, 13.3 hours should be disallowed from the senior lawyers, and 0.3 hours should be disallowed from the junior lawyer. In the result, I find a total of approximately 25 hours spent by senior and junior counsel to compile the response to the within application for leave is fair and reasonable in the circumstances.

[10] Accordingly, the respondent’s amended bill of costs is taxed as follows: fees in the amount of \$19,700.10; disbursements, as claimed, in the amount of \$664.69, for a total of \$20,364.79.

Ottawa, August 28, 2015.


David Power
Deputy Registrar