

**BETWEEN:**

**TAYLOR MADE GOLF COMPANY, INC. and  
SALOMON CANADA SPORTS LTD.**

**Plaintiffs**

**- and -**

**SULLY IMPORTS LTD.**

**Defendant**

**TAXATION OF COSTS - REASONS**

Smith, G.M.  
Taxing Officer

This is a taxation on a party-and-party basis of the plaintiffs' costs of this action.

These proceedings were commenced by way of a Statement of Claim filed on December 2, 1996. On April 1, 1997, judgment issued against the defendant in default of defence. The plaintiffs were also awarded their costs of the action.

On June 26, 1997 the plaintiffs filed a Bill of Costs supported by the affidavit of Carolyn Knobel sworn June 2, 1997. The plaintiffs' requested the taxation proceed by way of written representations, without the personal appearance of the parties. As attested to in the affidavit of Allen Kirk, sworn September 12, 1997 and filed the same day, the Bill of Costs and supporting documentation were served on the defendant on August 22, 1997.

On September 15, 1997, directions were issued to the parties that the defendant would have until Tuesday, September 30, 1997 to file written representations in reply to the plaintiffs' Bill of Costs and the plaintiffs would have until Friday, October 10, 1997 to file written representations in further reply to those made by the defendant. In the eventuality, no further representations were received from either party. I therefore assessed the plaintiffs' costs on the basis of the documentation which then appeared on the Court record.

The plaintiffs claim for services relating to items 1, 4 and 26 of Tariff B, Part II, Column III. The Bill of Costs itself distinguishes those services in connection with the two lawyers from the firm representing the plaintiffs. For example, the plaintiffs' claim for "Preparation of Statement of Claim" identifies 6 units - Mirko Bibic and 1 unit - Kathryn Chalmers. I do not take this to mean that the plaintiffs are claiming for first and second counsel as, for example, might only be permitted under items 14 and 22 of the Tariff and if so directed by the Court. Rather, I interpret the delineation of the two lawyers quite simply as justification for the maximum of seven units allowable under that item. I have therefore allowed the maximum for each item for a total of 14 units, multiplied by the unit value of \$100 and arriving at a total amount of \$14,000 for services.

Costs are also claimed for process services, film development, search and filing fees. Those disbursements were supported by invoices appended to the affidavit of Carolyn Knobel. I have allowed them as claimed.

Disbursements are claimed as well for telecopier charges, photocopying and binding. However, I have decided to disallow those items for the following reason. Charges for photocopies and telecopy appear among a plethora of other items in the solicitors' disbursement ledger, a copy of which is exhibited to the Knobel affidavit. It would appear then that they are in-house expenditures as opposed to out-of-pocket expenditures which would normally be supported by an invoice or a voucher. No detail is provided as to, for example, what was copied or telecopied, the number of copies that were made and the purpose, or the actual or estimated cost incurred by the law firm for making the calls or the copies. The ledger does not refer to binding at all.

In dealing with a similar claim in an earlier taxation in the case of *F-C Research Institute Ltd. v. H.M.Q.*, unreported, Court file no. T-2338-87, September 21, 1995, I expressed the opinion that the simple delineation of expenditures generally described in a Bill and supported only by the scant statement that they were reasonable and necessary fails to provide sufficient information upon which a taxing officer can discharge the responsibility of being satisfied that the costs claimed were essential to the conduct of the proceedings, that they were prudently incurred, or that the quantity or rate applied, as the case may be, was reasonable in the circumstances. Later taxations in this Court, *Grace M. Carlile v. H.M.Q.*, Court file number A-486-93, Stinson T.O., May 8, 1997 and *AlliedSignal Inc. v. Du Pont Canada Inc.*, Court file number A-600-93, Reinhardt T.O., July 16/97, both unreported, have allowed photocopies at a rate which the taxing officer determined himself, rather than disallowing the disbursement completely, because the service had obviously been incurred.

In the present case, I do not know if the costs for telecopy, binding and photocopies were for multiple documents or for only one. I have no manner by which to determine whether 25¢ was charged or \$1.00 per page. I also do not know what was photocopied or what portion of the amount claimed is for binding and what amount is for photocopies. Nor has it even been shown whether those costs were remotely related to the action or highly relevant. As for binding, the Court record consists of only one document produced by the plaintiffs which was bound, but it could hardly have cost anywhere near the total amount of \$363.25 claimed. I therefore have no way of determining whether the amount was in any way reasonable or necessary. Nor, for that matter, do the plaintiffs in their affidavit or written representations aver to that fact.

Unless the parties agree, the party whose bill is being assessed must prove the disbursement. No agreement has been brought to my attention and the information provided by the plaintiffs and described above falls well short of establishing any basis for even guessing at an amount for which, in a party-and-party context, the defendant should be held accountable. The words used in section 3 of Part III of Tariff B to the Rules, "Such other disbursements as were reasonably necessary in the proceeding", must surely have been intended to require something other than the simple production of a list.

Quite simply, I am unable to determine in any way, and then certify, that the disbursements claimed for photocopies, telecopying and binding were reasonably necessary in these proceedings and, in my opinion, it would be absurd for me to assume, in the absence of any agreement of the parties, that the plaintiffs' list is sufficient to meet the "reasonably necessary" requirement of section 3.

Accordingly, the plaintiffs' Bill of Costs is assessed in the total amount of \$1,955.55.

"Gregory M. Smith"

Gregory M. Smith  
Taxing Officer

Ottawa, Ontario  
October 23, 1997

**FEDERAL COURT OF CANADA**

**TRIAL DIVISION**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**COURT FILE NO.:** T-2637-96

**STYLE OF CAUSE:** Taylor Made Golf Company, Inc. and Salomon Canada Sports Ltd. v.  
Sully Imports Ltd.

**TAXATION IN WRITING WITHOUT PERSONAL APPEARANCE OF PARTIES**

**TAXATION OF COSTS - REASONS OF GREGORY M. SMITH, TAXING OFFICER**  
**DATED:** October 23, 1997

**APPEARANCES:**

Mr. Mirko Bibic for the Plaintiffs

No one appearing for the Defendant

**SOLICITORS OF RECORD:**

Stikeman, Elliot  
Barristers & Solicitors  
Ottawa, Ontario for the Plaintiffs