

RULE 605(1) & THE ELUSIVE “INFLATION FACTOR”

Memo from Taxing Officers Morin & Christensen:

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Background: December 5, 2006, the Honourable Mr. Justice T.F. McMahon rendered a decision in *Zust Bachmeier International Air Cargo, Inc. v. Klapatiuk*, 2006 ABQB 875 which awarded the successful defendant an “inflation factor” of 1.2 times Column 3 of Schedule C. At paragraph 6 the decision of the Court states:

“The Defendants seek to increase Schedule ‘C’ costs by a factor of 1.2 based upon a Bank of Canada inflation calculation from 1998 (when the current Schedule ‘C’ came into effect) to the date of trial. Plaintiff’s Counsel does not take issue with the calculation. An inflation factor was in common use before Schedule ‘C’ was revised upwards in 1998. See *Dilcon Constructors Ltd. v. ANC Developments Inc.* (1996), 42 Alta. L.R (3d) 132 (Q.B.). Now in 2006 an inflation factor is again reasonable so that the costs address their intended purpose of reasonable reimbursement to the successful party of its actual costs. Except for that, there are no factors present here which would take these costs out of Column 3, increased by a factor of 1.2.”

Issue: Does the decision of Justice McMahon oblige taxing officers to apply a 1.2 inflation factor to all bills of costs tendered for taxation post-December 5, 2006?

Answer: No.

Taxing officers lack the authority to apply an inflation factor except as otherwise ordered on a case-by-case basis by the Court. **Rule 605(1)** states:

“Unless otherwise ordered the charges of barristers and solicitors provided by Rule 600 shall be determined by the taxing officer, but shall not exceed the amounts set out in the columns of Schedule C, depending upon the amount involved.”

In this instance, the Honourable Justice was merely exercising the discretion accorded all Justices of the Court of Queen’s Bench by the following:

- **Court of Queen’s Bench Act, R.S.A. 2000, c. C-31, Costs - s. 21** “Subject to an express provision to the contrary in any enactment, the costs of and incidental to any matter authorized to be taken before the Court or a judge are in the discretion of the Court or judge and the Court or judge may make any order relating to costs that is appropriate in the circumstances. *RSA 1980 cC-29 s19.*”
- **Alberta Rules of Court - 601(1)** “Notwithstanding anything in Rules 602 to 612, but subject to any Rule expressly requiring costs to be ordered, the costs of all parties to any proceedings (including third parties), the amount of costs and the party by whom or the fund or estate or portion of an estate (if any) out of which they are to be paid are in the discretion of the Court . . .”

Therefore, the *Zust v. Klapatiuk* decision is nothing more than a one-time exercise of judicial discretion relative to costs of a particular application or action.