

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION (FAMILY)**

Court No. 1002

Court File No. 2004/0071

Central Divorce Registry No. 12839

**IN THE MATTER OF
Section 74 of the *Law Society Act 1999*
SNL 1999, c. L-9.1**

**AND IN THE MATTER OF
Bill of Fees dated February 26, 2009 and
June 8, 2009 to Louise Dredge, rendered
By the law firm of Roebathan, McKay
& Marshall, 5th Floor, Paramount Building,
34 Harvey Road, P.O. Box 5236,
St. John's, NL A1C 5W1**

BETWEEN:

ROEBOTHAN, McKAY & MARSHALL

APPLICANT

AND:

LOUISE DREDGE

RESPONDENT

DECISION OF MASTER DAVID C. DAY, Q.C.

Hearing: 23 November 2011

Decision: 14 February 2012

COUNSEL:

Glenda C. Best Q.C., for Applicant

Louise Dredge, Respondent In Person

SUMMARY:

Application, by law partnership (Applicant), under *Law Society Act* (SNL 1999, c. L-9.1, s. 74), for taxation of two Bills Of Fees to client (Respondent)—Bills Of Fees assessed and taxed as claimed—No fees allowed Applicant on taxation—Master foregoes fees on taxation—Master does not have jurisdiction to delay payment by client of taxed Bills Of Fees.

Applicant:

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c/o Glenda C Best, QC

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Respondent:

Ms. Louise Dredge

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DECISION

MASTER DAVID C. DAY, Q.C.:-

Synopsis

1. When a Master of the Court is tasked to tax a solicitor's account, may the Master do more than determine a reasonable and lawful amount?
2. Specifically, in a Certificate stating results of taxation—more accurately, assessment—of a solicitor's account (a Bill Of Fees, including costs, charges and disbursements) to a client, under the *Law Society Act, 1999* (SNL 1999, c. L-9.1, ss. 74(1), (3)), may a Master include a condition that delays payment, by the client to the solicitor, of the sum of the taxed account?
3. Ordinarily, a solicitor's Bill Of Fees rendered to a client is due and payable immediately after being approved by a Master's Certificate Of Taxation. If the client does not expeditiously pay the certified Bill, the involved solicitor may register the certified Bill in the Court as a judgment, file the judgment in the Judgment Enforcement Registry of the Office of the Sheriff of Newfoundland and Labrador, and take execution steps to collect the judgment from the client (SNL 1999, c. L-9.1, s. 74(9)).
4. This issue—whether a Master may delay payment of a taxed Bill Of Fees—derives from circumstances leading to, and statements during, taxation of the two here-involved Bills rendered by the law partnership—the Applicant—to its client Respondent. This requires consideration of the jurisdiction of a Master. And, of course, this is subsidiary to the

principal question, on this taxation application: whether the two Bills are reasonable and lawful.

Facts

5. That the circumstances generating this taxation were unusual was apparent from arrival, at the Master's law chambers at 2:30 PM, 23 November 2011, of the solicitor for the law partnership Applicant, and the client Respondent.
6. Together, they sat, cordially exchanging parlour conversation.
7. On behalf of the law partnership Applicant, Glenda C. Best Q.C.—a prominent 'family law' counsel and Applicant partner—had accepted retention by the client Respondent, Louise Dredge, in 2008. By then, Ms. Dredge's 'family law' proceeding had been in progress for more than four years.
8. Experienced 'family law' counsel, such as Best Q.C., are loathe to accept the baton from a lawyer who—as here the case—has previously had carriage of a client's file. Retracing a matter of long vintage adds to legal expense otherwise payable by the client. Doing so in a matter already in litigation imposes constraints on a subsequent solicitor's ability to adequately grasp all of its important features (although Best Q.C. evidently managed to do so). Legal expense previously incurred by the client diminishes a subsequent lawyer's prospect of recompense.
9. Nonetheless, Best Q.C., congruent with her impeccable sense of professional responsibility, agreed to act for Ms. Dredge.

10. (Professional responsibility refers to what a lawyer should do. Rules of legal, and of ethical, responsibility—not here pertinent—mandate what a lawyer must do.)
11. Diligently, from 11 June 2008 to 08 July 2011 (or thereabout), Best Q.C. litigated and negotiated Ms. Dredge's domestic legal issues.
12. The issues were complex and contentious; more so because Ms. Dredge's now-former spouse, who had practised law in Newfoundland and Labrador (before migrating to Nova Scotia), chose to self-represent. (So much for the wisdom of Henry Kett's 1814 epithet about a lawyer representing himself.)
13. An 80-paragraph decision by Dunn J., on 11 February 2011 (307 Nfld. & P.E.I. R. 204 (NLSC [TD] (F)))—the most recent in Ms. Dredge's proceeding—bears witness to the proceeding's Gordian nature.
14. Ms. Dredge characterized legal representation of her by Best Q.C. as "wonderful"; and as "an excellent job for every minute she represented me."
15. For Best Q.C.'s prodigious professional services, her law partnership rendered two Bills to Ms. Dredge: (i) dated 26 February 2009 (covering the period 11 June 2008 to 29 January 2009), and (ii) dated 08 June 2009 (covering the period 30 January 2009—the first service under this Bill was on 31 March 2009—to 28 May 2009). No payment has been made on account of either of the Bills.
16. Needs be added, Best Q.C.—reflecting the commendable practise of some 'family law' lawyers—did not claim for all time she spent on Ms. Dredge's behalf during the periods

of the two Bills Of Fees. And, after the end-date of the second Bill—28 May 2009—to termination by Best Q.C. of her retention by Ms. Dredge, 08 July 2011 (or thereabout), she, in effect, acted *pro bono* for Ms. Dredge, and therefore claimed nothing for that period. (She did, however, continue to docket her time after 28 May 2009, as Ms. Dredge's lawyer, until 08 July 2011: Exhibit 1.) Moreover, in the two Bills rendered to Ms. Dredge, Best Q.C. claimed an hourly tariff (\$250.00), 10 per cent below her customary hourly rate (which, in turn, was, in my opinion, 25 per cent lower than deserved by the nature and circumstances of the retention she accepted from Ms. Dredge).

17. To the question whether the two Bills Of Fees from Best Q.C.'s law partnership, presented to me for assessment, are reasonable and lawful—the cardinal issue on this application—I will return.

Issues And Determination Of Issues

First Issue – Jurisdiction

18. First, however, I address the subsidiary question, whether, as Master, I have authority to delay payment by the Respondent of the two Bills Of Fees—or the portion of the amounts of them I allow—such as by lump sum payment on some fixed date, or by instalment payments on fixed dates? Otherwise stated, is a Master invested with jurisdiction to enjoin the Applicant from enforcing recovery of the amount of each of the Bills, to the extent approved by me, immediately after I tax them?

- 19.** Generating this issue is Ms. Dredge's position, on taxation of the two Bills Of Fees. I will let her speak:

“The issue is money I am not getting [from my former spouse] with which I intend to pay [Best Q.C.]. The thrust of why I am here is because, although ... [Best Q.C.] represented me extremely well—I have no dispute about the amounts of her bills—I am presently unable to pay [them]”

for credible reasons, beyond her control; which she detailed. Not least of those reasons is that her now-former spouse's obligation to pay considerable arrears of periodic spousal support has been judicially stayed pending further steps in her unavoidably prolix proceeding (now in its ninth year). Were the support arrears paid by her former spouse, today, Ms. Dredge made clear that the Applicant's two Bills would be satisfied tomorrow.

- 20.** I conclude I do not have jurisdiction to delay, even for a moment, payment—more to the point, in this matter, payment enforcement—of the amounts of the two Bills Of Fees, after their taxation on this application.
- 21.** A Master is appointed by the Chief Justice of Newfoundland and Labrador. The Chief Justice's authority to issue a commission appointing a Master is provided by section 77 of the *Judicature Act* (RSNL 1990, c. J-4).
- 22.** By virtue of being so appointed, a Master, in addition to a Master's other authority, also acquires the jurisdiction of a Taxing Officer; a position to which appointment may be made, separately from that of Master (see: Rules of The Supreme Court, 1986, RSNL 1990, c. J-4, Sch. D., Rule 1.03(v)). In fact, commissions from the Chief Justice

appointing qualified persons as Masters, usually also appoint them as Taxing Officers (as occurred with my appointment), under section 77 of the *Judicature Act* (RSNL 1990, c. J-4).

23. Taxation of a Bill Of Fees from solicitor to client—if requested by either—must be taxed by a Master in exercise of the Master’s legislated authority (which includes Taxing Officer authority), or by the Registrar of the Court (a position presently vacant) serving as Master (*Law Society Act*, 1999, c. L-9.1, s. 74(3)). Taxation of a Bill Of Costs—where costs are judicially ordered to be paid by one or another party to a proceeding—must be taxed by a Taxing Officer (who is, usually, also a Master) (Rules of The Supreme Court, 1986, RSNL 1990, c. J-4, Sch. D, Rule 55.25(1)). The distinction between the offices of Master and Taxing Officer is more than semantic. A Master ‘enjoys’ broader authority than a Taxing Officer.
24. The Supreme Court of Newfoundland and Labrador, under auspices of the *Constitution Act, 1867*, s. 96, is a court of inherent jurisdiction. Thus, the Court’s jurisdiction derives from the Constitution of Canada, and is defined by sources of authority besides those memorialized in legislation (e.g., see: *Judicature Act*, RSNL 1990, c. J-4, s. 3(1)(b)). In contrast, although a Master—and a Taxing Officer—are judicial officers of the Court (historically, Masters were sometimes called Assistant Judges), neither has inherent jurisdiction. Their authority is prescribed, exclusively, by legislation (e.g., see: the *Law Society Act*, SNL 1999, c. L-9.1, s. 74).
25. No legislation empowers a Master, having taxed and certified a Bill Of Fees, to delay its payment or enforcement of its payment. (Even had I jurisdiction to do so, I would not

have delayed payment of the Bills, because of the time which has elapsed since Best, Q.C. commenced representing Ms. Dredge—uncompensated to date—and the concessions by Best, Q.C. in fixing her hourly rate and foregoing claim to some of the legal services she performed for Ms. Dredge.)

Second Issue: Reasonableness and Lawfulness

26. Turning, then, to the two Bills Of Fees before me for taxation: the benchmarks for assessing the amounts of them are that they are—no doubt, objectively—“reasonable and lawful” (*Law Society Act*, 1999, c. L-9.1, s. 74(2).)
27. The client Respondent agrees with the amount claimed by each of the Bills Of Fees. She does not, however, expressly agree to my issuing a Certificate of Taxation which approves the Bills because, understandably, she is currently unable to pay them. Even had the Respondent agreed that a Certificate issue, approving the sum claimed by each of the Bills, my view is that, as Master, I must exercise my judgment, independently of the Respondent’s agreement, to assess amounts of the two Bills; because I must be satisfied they are reasonable and lawful. (For example, a client cannot give enforceable consent to an unlawful Bill.)
28. No objection is raised by the client Respondent, under the statutory criteria of lawfulness, to either of the two Bills Of Fees. They resulted from performance, by Best Q.C., of professional legal services under, I infer, a parol retention agreement informed by the services to be provided, and the compensation (an hourly rate) to be paid for those

services. No requirements imposed, by statute, on retention agreements in special circumstances apply here (e.g., see: Rules of The Supreme Court, 1986, RSNL 1990, c. J-4, Sch. D, Rules 55.16, 55.17). No challenge has been made to Best Q.C. being a member in good standing of the Law Society (she having verified, by filed Affidavit, her entitlement to practice law, and to be compensated for so doing, during the period material to the Bills). The Bills, I conclude, are lawful.

29. The other statutory criteria for assessment of the amount of a Bill Of Fees—a common law fiction, elusive of definition, called “reasonable”—is another matter.
30. Neither the *Law Society Act, 1999* (SNL 1999, c. L-9.1, s. 74(3)—which authorizes me, as Master, to tax the Bills Of Fees—nor other legislation, expressly affords me direction or guidance in determining whether the amounts of the Bills are “reasonable.” Were I taxing a Bill Of Costs claimed by a solicitor from a client who is a party in a legal proceeding, Rule 55.15(1) furnishes criteria, albeit not definitive (see: Rule 55.15(1)(f)).
31. (The Bills before me do not trigger Rule 55.15(1)—reference a solicitor’s Bill Of Costs to a client who is party to a legal proceeding—which (unlike a Bill Of Fees) must, in any event, be taxed (Rule 55.25). Granted, the Respondent is party to a proceeding; however, the Bills Of Fees before me cover considerably more than solicitor’s fees relating to that proceeding. And, Bills referred to in Rule 55.15 are framed in terms of “costs” and “compensation from a client, who is a party”; not the much broader concept of solicitor’s fees to a client, whether or not a party.)

- 32.** Nonetheless, many of the criteria for taxing a solicitor and client Bill Of Costs, under Rule 55.15(1), incorporate considerations also rooted in common law, and in practice among Masters in this and other Provinces and the Territories of Canada. (In so stating, I note that “the circumstances ... of the person by whom the costs are payable”, in Rule 55.15(1)(b), are relevant to assessing the amount payable, and not to whether s(he) should be obligated to pay, without delay, the amount of costs which have been assessed.)
- 33.** Likewise mirroring common law and Master practice in determining reasonableness of the amount of a Bill Of Fees is Chapter XI of the Code of Professional Conduct of the Law Society of Newfoundland and Labrador. Commentary 1 to Chapter XI, to the extent here material, provides:
1. A fair and reasonable fee will depend on and reflect such factors as:
 - (a) the time and effort required and spent;
 - (b) the difficulty and importance of the matter;
 - (c) whether special skill or service has been required and provided;
 - (d) the customary charges of other lawyers of equal standing in the locality in like matters and circumstances;
 - (e) in civil cases the amount involved, or the value of the subject matter;
 - (f) ;
 - (g) the results obtained;
 - (h) tariffs or scales authorized by local law [or prescribed for taxing Bills of Costs];
 - (i) ... special circumstances ...;
 - (j) any relevant agreement between the lawyer and the client.
- 34.** To those factors, developed at common law and by Master practice—which are not intended to be all-inclusive—I would add: the detail, cogency and credibility of a Bill Of Fees.

- 35.** Each of the Bills Of Fees before me is fastidiously detailed; describing each of the professional services Best Q.C. provided the Respondent, and the related times involved. Times claimed are credible. The hourly rate (see: above in para. 16) is less than what, in my view, Best Q.C. could have justified claiming; especially considering the effort invested, difficulty presented, importance of legal issues involved, special skill exhibited, and results obtained. (See: above paras. 12 and 13; and Exhibit 2 in which Best Q.C. details Ms. Dredge's proceeding in a letter to the Newfoundland Legal Aid Commission to assist her obtain another lawyer.) To the extent junior lawyers were engaged by Best Q.C. to assist her, their much lower hourly rates are eminently fair. Overall, the amount claimed by each of the Bills Of Fees is reasonable.
- 36.** Nothing in Ms. Dredge's circumstances warrants impact on my assessing of the amount of either of the Bills Of Fees. Rather, her unfortunate financial situation impairs her ability to expeditiously pay the assessed amounts of the Bills, which, I have decided, I lack jurisdiction to delay.
- 37.** In the result, I shall endorse one Certificate covering both of the Bills Of Fees of the Applicant—Best Q.C.'s law partnership—for the amount claimed, including Applicant's out-of-pocket expenses incidental to this taxation (altered only to correct slight arithmetic errors in the totalling of one of the Bills).
- 38.** In consideration of Ms. Dredge's fragile financial situation, which I find is beyond her control, I exercise my discretion—implicit in, and incidental to, my legislated authority

as Master—by declining to allow any amount to the Applicant for fees related to the taxation, and I forego, entirely, my entitlement to fees, as Master conducting the taxation.

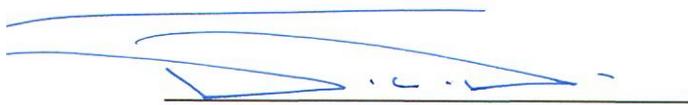
Master's Role

39. Being a member of the Law Society, like Best Q.C., I note that I have no professional— or other—relationship with Best Q.C. or her law partnership that has influenced, or is capable of influencing, my impartial deportment as Master in this matter

Result

40. Certificate accordingly.

DATED AT St. John's, Newfoundland and Labrador this 14th day of February 2012.



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Master

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