SC CIV 93 008

CV 03322

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF Cooper, Peach & Gullberg, solicitors, and Prowse & Chowne, client;

AND IN THE MATTER OF an appeal from the Report of Taxing Officer dated August 14, 1992

Appeal of a Taxation of Solicitor-and-Client Costs

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife: January 18, 1993
Reasons filed: January 25, 1993

Counsel for the Solicitor: D.M. Cooper, Q.C.
Counsel for the Client: D. Rutschmann

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REASONS FOR JUDGMENT

This is an appeal from a taxation of solicitor-and-client costs.

In July, 1991, the Edmonton law firm of Prose & Chowne (the "client") retained the Yellowknife law firm of Cooper, Peach and Gullberg (the "solicitors") to bring an application to restore a company to good standing under the Companies Act, R.S.N.W.T. 1988, c. C-12. The matter was not straight-forward. The application resulted eventually in a contested hearing before Richard J. on September 30, 1991. Contesting the application were another company and the Registrar of Companies.

Richard J. delivered written reasons granting the application on December 3, 1991. The formal Order was not filed until March 24, 1992. The Order contained a provision that the Registrar of Companies pay costs of $379.94 (an agreed figure) to the applicant.

4 The solicitors submitted three statements of account to the client. Apparently the accounts were not paid so the solicitors took out an Appointment for Taxation. The taxation was conducted by the Taxing Officer on August 12, 1992. The Taxing Officer delivered her report on August 14, 1992, in which she confirmed the accounts with the exception of one containing a double entry. She also took into account the costs recovered by the solicitors.

5 The accounts, as submitted and as taxed, are as follows:

DATE		ACCOUNT	TAXED ACCOUNT
(a)	September 18, 1991	$2,075.18	$2,075.18
(b)	October 23, 1991	$3,653.26	$2,643.32
(c)	April 21, 1992	$1,082.55	$1,082.55

These amounts represent both fees and disbursements.

6 The client now appeals to this court and seeks a new taxation of these accounts.

7 The powers of this court on an appeal are set out in Rule 593:

> **593.(1) On any such appeal the court may exercise all of the powers of the taxing officer and may review any discretion exercised by the taxing officer as fully as if the taxation had been made by the court in the first instance.**
>
> **(2) The court may make such order as to costs of the appeal and taxation as seems fit.**

While this rule may appear to give the appeal court an unfettered ability to re-tax accounts, case law has circumscribed the scope of review.

8 An appeal from a taxation of costs should not be a hearing de novo except in special circumstances. The appeal court will not interfere with the quantum fixed by a

taxing officer unless the taxing officer makes an error of principle, or if the award is inordinately high or low. Ordinarily a fact finding by a taxing officer will not be set aside unless it is clearly in error. See Carter v. Blake (1982), 41 A.R. 418 (N.W.T.C.A.) and McLennan Ross v. Mercantile Bank of Canada (1988), 59 Alta.L.R. (2d) 369 (Alta.C.A.).

In this case there are special circumstances. The client, through a misunderstanding, was unrepresented at the taxation. The client therefore was unable to present its arguments. In my view this is the type of special circumstance that justifies a de novo approach.

When this matter came on in Chambers before me counsel asked that I re-tax the accounts simply by reference to the material already on file. Affidavits were previously filed by both parties and no further arguments were presented. In the affidavit material there was some reference to an offer and acceptance of a settlement but I was told that I should ignore that question.

Having reviewed the material on file it appears obvious that the client did not expect that the accounts would be so much for this work. There are two points raised by the client: (1) they anticipated fees based on one associate's hourly rate as opposed to the higher rate charged by another associate; and (2) they did not anticipate that the application would require as much time as it did in preparation and attendance in Chambers.

12 On the first point, the file was initially handled by one associate for the solicitors whose hourly rate was $170.00. Five days before the hearing of the application, the file was transferred to another associate, a more experienced one, whose hourly rate was $210.00. The reason given for the change was that the first associate was leaving on holidays.

13 The client says that it was not aware that the file would be transferred to another associate. The first associate of the solicitors, however, says in his affidavit that the client was informed of the transfer before it took place and there was no discussion at any time concerning hourly rates. He further states that the only concern expressed to him about the file was one of time, that there was a sense of urgency in having the matter completed.

14 I am satisfied, from my review of the affidavits and time dockets, that the client was made aware of the transfer of the file before extensive work was undertaken by the second associate. The client had an opportunity to express any reservations about anticipated fees. It is important to keep in mind that the client in this case is another firm of solicitors. They are expected to have greater awareness of potential costs than a lay consumer of legal services. Also, one would expect that they would make specific enquiries about anticipated costs so as to protect the pocketbook of their client, the ultimate payor.

I also do not find any unusual or excessive billings caused by the transfer of the file. What I do find, however, is another instance of a double entry on the time dockets.

For September 27, 1991, there is a total of 7.4 hours docketed. Of that total, one-half (3.7 hours) are shown in one block listing preparation for chambers, research on law, preparation of memorandum of authorities, telephone calls to two specific individuals, correspondence, and reviewing an affidavit. The other half of that total (also 3.7 hours) is broken up into six separate entries which appear to be individually the same items covered in the earlier block entry. I have therefore decided to tax 3.7 hours off the October 23, 1991 account.

On the second point, the client offers no specific arguments as to why they think too much time was spent on this file. It may have started out as a relatively straightforward matter, however, a review of the Reasons for Judgment prepared by Richard J. shows that it was (perhaps unduly) complicated by the position taken by the Registrar of Companies. Bearing in mind the criteria set out in Rule 551, I find no reason to second-guess the amount of time spent on what eventually turned out to be a successful application. I find no evidence to suggest that the work done was unnecessary or inefficient. Further, there is no evidence that this is a case where an estimate of total fees was either given or requested.

I also find it significant that the client apparently did not raise any concerns about

the accounts until May, 1992, well after all the work was concluded. The issues raised by the client on this appeal would have been readily apparent after the account of October 23, 1991, was rendered. Again, the client, being a firm of solicitors, should have been aware of its professional obligation to raise these concerns at an early date.

19 In conclusion, I uphold the Taxing Officer's taxation of the accounts of September 18, 1991, and April 21, 1992. With respect to the account of October 23, 1991, I hereby tax it as follows:

(i)	Fees as submitted	$ 3,370.00
	Less taxed off by Taxing Officer	1,009.94
	Less taxed off on appeal (3.7 hours)	777.00
(ii)	Net fee	**$ 1,583.06**
(iii)	G.S.T. on fee	110.81
(iv)	Disbursements	44.26
(v)	G.S.T. on Disbursements	3.10
	TOTAL ACCOUNT:	**$ 1,741.23**

The total of the accounts are therefore as follows:

(a)	September 18, 1991	$ 2,075.18
(b)	October 23, 1991	$ 1,741.23
(c)	April 21, 1992	$ 1,082.55
	TOTAL:	**$ 4,898.96**

The total shall bear interest to date as determined by the interest calculation attached to the Taxing Officer's Report.

20 I have given some thought to the question of costs. As this appears to be essentially a dispute between law firms, I am reluctant to impose the possibility of even

more expense on the ultimate client of both firms. Therefore, considering all of the circumstances, there will be no order as to costs.

John Z. Vertes
J.S.C.

Counsel for the Solicitors: D.M. Cooper, Q.C.
Counsel for the Client: D. Rutschmann

Dated at Yellowknife, Northwest Territories
this 25th day of January 1993

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