

**THE HIGH COURT**

JUDICIAL REVIEW

1998 No. 261 JR

BETWEEN

**PATRICIA LORD****APPLICANT****AND****MASTER JAMES FLYNN AND MASTER CHARLES MORAN, TAXING MASTERS****OF THE HIGH COURT****RESPONDENTS****Judgment of Mr. Justice Geoghegan delivered the 14th day of May, 1999**

The Applicant in this judicial review proceeding is a practising Solicitor and Costs Accountant. In carrying on the practice of Costs Accountant, the Applicant is a single practitioner relatively new to the profession. As precedents are of considerable importance in hearings **before the** Taxing Masters the Applicant was in the habit of inspecting taxed bills of costs so as to obtain relevant precedents for her cases. As a consequence of a practice direction of the Respondents, the two Taxing Masters on 3rd April, 1998 the Applicant is no longer permitted to inspect these taxed bills of costs without first obtaining the consent of the relevant party to the action in respect of which the bill arises. She seeks the following reliefs:-

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- (i) A declaration that the Applicant is entitled to inspect taxed bills of costs which have been taxed in accordance with law by either of the Respondents herein or their predecessors in office;
  - (ii) A declaration that the Respondents have no jurisdiction or competence in law to direct that any person (including the Applicant herein) not being a party to a taxation of costs must obtain consent from a party to such taxation before inspection of the taxed bills of costs;
  - (iii) A declaration that the practice direction of the Respondents of 3rd April, 1998 to the effect that any person not being a party to a taxation of costs must obtain consent from a party to such taxation before being permitted to inspect the taxed bills of costs is ultra vires, void and of no force and effect;
  - (iv) An Order of Certiorari quashing the decision or direction of the Respondents of 3rd April, 1998 whereby they have prevented the Applicant from inspecting taxed bills of costs without obtaining the consent of a party to the taxation;
  - (v) A declaration that the said practice direction is ultra vires the provisions of the Court Officers Acts, 1926 to 1995 and/or the Courts (Supplemental) Provisions Act, 1961 as amended;
  - (vi) A declaration that the said direction of 3rd April, 1998 is ultra vires the provisions of Order 99 of the Rules of the Superior Courts; and
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- (vii) A declaration that the said direction of 3rd April, 1998 is unlawful, unreasonable and anti-competitive in so far as it unduly and disproportionately restricts and fails to respect the Applicant's constitutional right to earn her livelihood by means of her profession as a Legal Costs Accountant.

The background to the case is explained by the Applicant in her Affidavit sworn on the 25th day of June, 1998. In the Affidavit, the Applicant says that she is both a Solicitor and Legal Costs Accountant and that she commenced practice as a Costs Accountant in December 1990. The substantial part of her work is in that capacity. She explains that she is a sole practitioner and that the volume of her business would be extremely small compared to that of the larger firms. The Applicant testifies that she regularly researched taxed bills of costs in the central office of the Taxing Masters with the knowledge and co-operation of the officials and would therefore have assumed that she was doing so with the knowledge and co-operation of the Taxing Masters themselves. In or about the middle of August 1997, she was informed by one of the Registrars in the Taxing Masters' Office that she was no longer entitled to research and examine taxed bills of costs and that a Ruling to this effect would shortly issue from the Taxing Masters. After correspondence had passed between the Applicant's Solicitor and the Registrars of the Taxing Masters, a formal practice direction was issued by the Taxing Masters on 3rd April, 1998. That practice direction provided that any person not being a party to a taxation must obtain consent from the party whose costs were taxed before inspecting the taxed bill of costs.

The Deponent goes on to point out that a second practice direction of the same date was issued requiring written submissions to be lodged in advance of a taxation including a list and details of decided cases or other relevant documents upon which the submissions

are based. The Applicant's basic complaint is that she is unable to produce precedents unless she is allowed inspect the taxed bills of costs. She claims that in this respect she is at a very serious competitive disadvantage *vis-à-vis* the larger firms of Legal Costs Accountants. She goes on to point out that it is not realistic to have to seek the consent of a party to a taxation as a pre-condition to the examination of a taxed bill of costs, both because until she can examine or trawl through the bills of costs she cannot know which one she requires and because, in practice, she believes such consent would not be easily forthcoming. The Applicant goes on to complain that the prohibition on her now is anti-competitive and is a breach of her legitimate expectation to be able to continue to inspect taxed bills of costs and that the directive generally is a disproportionate interference with her constitutional right to earn a livelihood as a Legal Costs Accountant.

The first matter which I have to decide is whether the undoubted practice of the Applicant and presumably of some other Costs Accountants also of going behind the counter of the general office of the Taxing Masters and browsing through the taxed bills of costs was as a consequence of a right vested in the Costs Accountant or as a consequence of a concession or implied permission by the Taxing Masters. I am quite satisfied that it can only have been **the latter**. There are rules of court dealing with the inspection of bills of costs and parties to a **taxation** have certain rights in relation thereto. But there could not possibly be some kind of legal and, still less, constitutional right of a Legal Costs Accountant to wander into the office *ad lib* and trawl through taxed bills. I have no doubt that the Costs Accountants heretofore carried out this practice by virtue of a permission or concession and not as of right. On the other hand I am equally satisfied that the practice was not an unlawful practice at the time that it was permitted. I do not agree with the argument put forward on behalf of the Taxing Masters that the Rules of the Superior Courts by implication prohibited

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it. Furthermore, I do accept that to some extent the practice was helpful in so far as the due taxation of costs was concerned and, therefore, the due administration of justice in that it was a method whereby helpful precedents could be brought before the Taxing Master.

The next question which I have to consider is whether the practice direction issued by the Taxing Masters on 3rd April, 1998 prohibiting such researches through the bills of costs is lawful. I think that it was lawful but was probably unnecessary as to its extent. I am quite satisfied that the reason for the practice direction was the provisions of Section 27 of the Court Officers Act, 1995. That section conferred added powers on the Taxing Master so that he would have power to examine the nature and extent of any work done or services rendered or provided by Counsel or by a Solicitor or by an expert witness. As a corollary to these additional powers, there could be many instances now where documents, which in the ordinary way would be privileged, would be annexed to a bill of costs. I believe that the Taxing Masters were quite properly concerned that third parties ought not to have access to such documents and therefore that there could be no question of Costs Accountants being entitled to search through the bills of costs. The Applicant, however, has made it clear that she has no wish to see any document which would be privileged.

It is, I think, rather unfortunate that the practice direction is so absolute and wide in its **terms**. I am satisfied for the reasons which I have indicated that the Applicant herself has no particular rights nor even a legitimate expectation as against the Taxing Masters but I think that it would be desirable in the interests of the efficient taxation of costs if the Taxing Masters adopted some suitable procedures whereby Legal Costs Accountants, such as the Applicant could have access to bills of costs which would not disclose any privileged documents or matters. It should be possible to adopt some method of separately filing the bills of costs which would have been affected by Section 27 of the 1995 Act and

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those which would be unaffected. But I am not making any Order against the Taxing Masters in this regard as I do not think that the Applicant would have any right to such an Order. I think however that it would be desirable for the Respondents to reconsider the problems.

To some extent I agree with the arguments put forward on behalf of the Respondents that the Applicant is not in any different position from a young barrister or solicitor or an auctioneer coming into business and who has to compete with the larger practitioners with their possession of considerable experience and precedents. There is nothing unfair or unlawful or uncompetitive about this. It is simply part and parcel of normal life. The Applicant's complaint, therefore, is to that extent overstated. Nevertheless, I think that she is right in her argument that it was desirable in the overall interests of efficient taxation that there be some facility for inspecting bills of costs which would not prejudice a privilege issue. But this is a matter for the Taxing Masters and I do not think that this Court has any power to interfere with the efficient management of their offices. The various reliefs sought, therefore, must be refused.

*approved*

