

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *MacDonald Estate v. Graham*, 2024 NSSM 4

**Date:** 20240216

**Claim:** No. SCT528751

**Registry:** Truro

**Between:**

The Estate of Richard MacDonald

**Applicants**

and

Larry Graham

**Respondent**

**Adjudicator:** Julien S. Matte

**Written Submissions:** February 9, 2024

**Appearances:** Corina Frank and Trevor MacDonald for the Applicants  
Larry Graham, K.C. for the Respondent

**By the Court:**

- [1] The Court is asked to determine whether it has jurisdiction over the taxation of a proctor's account concurrent to the Registrar of Probate's powers under the *Probate Act*<sup>1</sup>. While the parties recognize the Registrar's jurisdiction, the Applicants assert that the Small Claims Court has concurrent jurisdiction pursuant to the *Legal Profession Act*<sup>2</sup> thereby giving them the choice to proceed before this Court. The Respondent asserts that only the Registrar has the authority to tax a proctor's account.
- [2] After the Respondent filed a letter with the Court dated January 15, 2024, objecting to the Court's jurisdiction and after the Applicants affirmed their intention to proceed with the taxation before this Court on January 22, 2024, the Court asked the parties to provide written submissions with respect to the Court's jurisdiction. Both parties filed submissions on or before February 9, 2024.
- [3] Ultimately, the Legislature's intention as interpreted from relevant legislation is determinative of the Court's taxation jurisdiction.

**A. Parties Positions**

**I. Applicants**

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<sup>1</sup> RSNS 2023 c. P-43, s.90

<sup>2</sup> RSNS 2023 c.L-16 s.69

[4] The Applicants rely on the current s.69 of the *Legal Profession Act* as giving them the choice between an adjudicator and a judge when seeking taxation. The Applicants point out that there is no exception for probate matters. The Applicants also rely on the publication “The Taxation of Legal Accounts in the Small Claims Court of Nova Scotia” by Augustus Richardson K.C. in support of their position.

## **II. Respondent**

[5] The Respondent’s first objection referred the Court to the current s. 12(b) of the *SCCA* which reads that no claim can be made:

in respect of a dispute concerning the entitlement of a person under a will, or settlement, or on an intestacy;

[6] Section 12 of the *Small Claims Court Act* lists areas of the law where the Small Claims Court has no or limited jurisdiction to hear or make awards in disputes between parties. However, the issue before this Court is one of taxation. The subject matter between the parties is of no consequence to the task of an adjudicator on taxation. Similarly, any argument that the Small Claims Court lacks special expertise needed to assess a lawyer’s account in a niche area of the law was rejected “out of hand” by the Court of Appeal in *Mor-Town Developments Ltd. v. MacDonald*<sup>3</sup>. Adjudicators routinely tax accounts in relation to matters outside of its general jurisdiction such as criminal or family

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<sup>3</sup> 2012 NSCA 35 at para 59.

law. Section 12(b) of the *SCC Act* does not restrict the Court's ability to conduct taxations relating to estate matters nor is the Registrar's expertise preferable in assessing whether fees charged by a lawyer are fair and reasonable.

[7] The Respondent relies on the case of *Carruth v. Murphy*<sup>4</sup>, a case that predates the Small Claims Court's taxation jurisdiction, to argue that the addition of the former s.67 in the *Legal Profession Act* was done to:

solely to cure the ruling in *Carruth* and not to enhance the jurisdiction of the adjudicator beyond the scope defined by section 9A, i.e. powers held by taxing masters.

[8] Adjudicators did not have the jurisdiction to conduct taxations until 1999 when the *SCC Act* was amended and s.11 was added. At the same time and as part of a Law Reform initiative, the *Legal Profession Act* was enacted in 2004 which included the current s.69, a provision that confirms Adjudicator's broad jurisdiction over taxation, one inherited from Taxing Masters who have the duty "to tax all bills of costs presented to him for taxation in actions or under other proceedings in the Supreme Court". As noted above, s.69 follows a long legislative history dating back to the 19<sup>th</sup> century that includes the *BAA* and *BSA* and does not appear to have been enacted in response to *Carruth*. Whether the *LPA* broadens the Small Claims Court jurisdiction is discussed below.

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<sup>4</sup> 1998 CanLII 2246 (NS SC)

[9] The Respondent argues that s.15 of the *SCC Act* prevents this Court from assuming jurisdiction as another proceeding in another Court, namely the Probate Court is already underway. A taxation does not deal with “the issues in dispute” between the parties, only the fees incurred in the process of addressing the issues. Any account can be taxed at any time, even after it is paid (see *Mor-Town* at paras 43-45) or even if an underlying proceeding is not yet finished. Section 15 of the *SCC Act* does not apply.

[10] Finally, the Respondent argues that the unique process under the *Probate Act* cannot be replaced by a taxation before the Small Claims Court. The Respondent points to the notice provisions under the *Probate Act* that require more than just the parties to be notified of the taxation and the Registrar’s easy access to all relevant documents.

## **B. Legislative History**

### **I. *Probate Act* RSNS 2023 c.P-43, s.90**

[11] The history of probate legislation in Nova Scotia begins with the first sitting of the Legislature in 1758 and continues with the first comprehensive predecessor to the *Probate Act*, “*An Act relating to the Courts of Probate, and to the Settlement and Distribution of the Estates of Deceased Persons.*” (“*Courts of Probate Act*”) passed on March 19, 1842<sup>5</sup>.

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<sup>5</sup> SNS 1842 c.22

[12] Section XXXVIII, the *Courts of Probate Act* gave broad powers to Judges of Probate to:

[G]rant and issue such Process or Processes as may be usual or needful for the discharge of the trust reposed in them<sup>6</sup>

[13] With respect to taxation, section XLVII, granted Judges of Probate the power to “award and tax such costs as allowed by this Act” ... “to the form in the Schedule hereto annexed” which includes a schedule of fees for the “Proctor and Advocate”<sup>7</sup>. Section XLVIII also detailed that such taxations “may be reviewed by the Supreme Court or Court of Chancery”<sup>8</sup>.

[14] A similar provision<sup>9</sup> that appears in the fifth revision sets out the judge’s powers of taxation reviewable by the Supreme Court. In 1897, “*An Act to amend and Consolidate the Acts relating to the Probate Court and Procedure therein*” (“*Probate Act*”) was passed broadening the powers of the Registrar at ss. 6-7 with reform to replace district judges with registrars. Under part two, of the *Probate Act* where the office of the district judge of probate becomes vacant the registrar steps in and assumes the judge’s powers including the powers of taxation as follows:

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<sup>6</sup> SNS 1842 c.22 s.XXXVIII

<sup>7</sup> SNS 1842 c.22 s.XLVII

<sup>8</sup> SNS 1842 c.22 s.XLVIII

<sup>9</sup> RSNS 1884 c.100 s. 64

All bills of costs may be taxed by the registrar of probate, and every such taxation may be reviewed by a judge, upon notice given by the party aggrieved to the opposite party, or to the registrar in a case where his fees are objected to.<sup>10</sup>

A similar provision appears at s.160 where a judge continues to hold office:

All bills of costs may be taxed by the judge of probate, and every such taxation may be reviewed by the Supreme Court, or by any judge thereof at chambers upon notice given by the party aggrieved to the opposite party, or to the judge or registrar, whose fees are objected to.

[15] Since 1900, this provision has largely stayed the same and now appears as s.90 of the most current revision of 2023 as:

All bills of costs may be taxed by the registrar, and every such taxation may be reviewed by a judge, upon notice given by the party aggrieved to the opposite party, if any.<sup>11</sup>

## **II. *Small Claims Court Act* RSNS 2023 c. S-23, s.11(1)**

[16] The Small Claims Court was created through the *Small Claims Court Act* S.N.S. 1980 c.16. At the time the Small Claims Court did have powers of taxation.

[17] In 2000 and as part of a law reform initiative, amendments were made to several statutes including the repeal<sup>12</sup> of the *Taxing Masters Act*<sup>13</sup> and the addition<sup>14</sup> of the current s.11(1) to the *Small Claims Court Act*. As a result, Small Claims Adjudicators were given the powers of taxation formerly held by Taxing Masters.

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<sup>10</sup> RSNS 1900 c.158 at s.48

<sup>11</sup> RSNS 2023 c.P-43, s.90

<sup>12</sup> SNS 2000 c.28 s.97

<sup>13</sup> RSNS 1989 c.459

<sup>14</sup> SNS 2000 c.28 s.92

[18] Section 11(1) of the *Small Claims Court Act* (“*SCC Act*”) details:

An adjudicator has all the powers that were exercised by taxing masters appointed pursuant to the *Taxing Masters Act* immediately before the repeal of that Act, and may carry out any taxations of fees, costs, charges or disbursements that a taxing master had jurisdiction to perform pursuant to any enactment or rule.

[19] Section 4 of the now repealed *Taxing Masters Act*<sup>15</sup> first introduced in 1885, describes the duties of Taxing Masters as:

It shall be the duty of the Taxing Master to tax all bills of costs presented to him for taxation in actions or under other proceedings in the Supreme Court or in the County Court of District Number One, except bills of costs which by the *Civil Procedure Rules* and the *County Courts Act* are permitted to be taxed by the prothonotary or clerk.<sup>16</sup>

[20] Section 71 of the repealed *County Courts Act*<sup>17</sup> gave judges and taxing masters the ability to conduct taxations while clerks had those powers in the case of default or confession.

[21] The preamble to the *Taxing Masters Act* identifies *The Nova Scotia Judicature Act*, 1884 as the source of its taxation jurisdiction:

Whereas, the *Nova Scotia Judicature Act* has defined the duties of the taxing authority, and it is desirable, with a view of uniformity in the taxation of costs, that such authority should tax all costs taxable in Halifax under the *Judicature Act*, except as hereinafter provided;

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<sup>15</sup> SNS 1885 c.36

<sup>16</sup> RSNS 1989 c.459 s.4

<sup>17</sup> RSNS 1989 c.106

[22] The newly introduced *Judicature Act* established the jurisdiction of the Supreme Court.<sup>18</sup> Under the Schedule, “The Rules of the Supreme Court, 1884” direct the Judges of the Supreme Court of Nova Scotia in the pursuance and execution of their powers apply the Orders and Rules listed to all proceedings. Order “LXIX defines a “taxing authority” as the person whose duty it is to tax the costs to be taxed.

### **III. *Legal Profession Act* RSNS 2023 c.L-16**

[23] The *Legal Profession Act* governs the legal profession in Nova Scotia and came into force in 2004 as part of legal reforms. The *LPA*’s roots can be traced by to the *Barristers and Attorney’s Act* appearing in the first revision<sup>19</sup> with subsequent amendments<sup>20</sup> and addition of two other Acts<sup>21</sup>, all of which were consolidated into the *Barristers and Solicitors Act*<sup>22</sup>.

[24] At sections 67 and 68 of the *BSA*, under the heading “Taxation of Costs”, the “taxing authority” is described as able to tax fees, costs, charges or disbursements of barristers or solicitors in connection to professional services rendered. The taxing authority is not specifically defined but from the context can be interpreted

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<sup>18</sup> RSNS 1884 c.108 s.1-11

<sup>19</sup> RSNS 1884 c.108

<sup>20</sup>SNS 1885 c.20, 1886 c.35, 1887 c.24, 1888 c.34, 1891 c.22, 1892 c.14, 1893 c.26, 27, 1895 c.30

<sup>21</sup> 1879 c. 86, *An Act in Relation to the law Library at Halifax*; 1898, c.9 *An Act Respecting the Appointment of Queen’s Counsel*

<sup>22</sup> SNS 1899 c.27

as “such court or judge, or before the taxing master, or before any judge of the county court”.

[25] The following year, further amendments *BSA* appeared in the revision of 1900 at chapter 164 as:

71. Any bill for fees, costs, charges or disbursements of a barrister or solicitor may be taxed by a judge of the Supreme Court, the taxing master at Halifax or by the judge of county court for any county in which any of the business charged for in the bill was done; and pending such taxation all proceedings to recover any part of such bill shall be stayed.

....

73. Every taxing authority named in this Chapter is empowered to tax and determine on any taxation under this Chapter the several items and amounts claimed for such fees, costs, charges, or disbursements, notwithstanding no scale or table of fees is now in force thereof.<sup>23</sup>

[26] In 1952, the Legislature passed *An Act to Amend and Consolidate Chapter 9 of the Acts of 1939, The Barristers' and Solicitors' Act*<sup>24</sup> amending the taxation provisions which largely remained unchanged until the *Act's* repeal in 2005 with s.34 remaining as follows:

Any bills for fees, costs, charges or disbursements may be taxed by the taxing master, a Judge of the Supreme Court or a Judge of the County Court for the District in which any of the business charged for in the bill was done.

[27] This provision appeared in the 1989 revision at c.30 s.42 and was amended in 1999 by the *Justice and Administration Reform (1999) Act* in part to add

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<sup>23</sup> RSNS 1900 c. 164 s.71 and 73

<sup>24</sup> SNS 1952 c.7 s.33-41

adjudicators. Section 42 of the *Barristers and Solicitors Act* was amended by s.11 to:

Any bill for fees, costs, charges or disbursements may be taxed by a taxing master, taxing officer, judge of the Supreme Court of Nova Scotia or an adjudicator of the Small Claims Court of Nova Scotia.

[28] In 2000 the same section was amended by s.11 of the *Justice and Administration Reform (2000) Act*, to among other changes, strike “Any” and replace with “Notwithstanding any other enactment, any” and removing “taxing master, taxing officer”.

[29] In 2004, *The Legal Profession Act* replaced the *BSA* and under Part V1 outlined the relevant taxation provision at, then, s.67<sup>25</sup>:

Notwithstanding any other enactment, a lawyer's account may be taxed by  
(a) an adjudicator; or  
(b) a judge.

### **C. Issues**

- a. Does the *Legal Profession Act* give the Small Claims Court the jurisdiction to conduct taxations?
- b. Did the passing of the *Judicature Act* and the *Taxing Masters Act* grant taxing masters, and Small Claims Court adjudicators, concurrent jurisdiction with the Registrar to tax the accounts of proctors?

#### ***a. The Legal Profession Act***

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<sup>25</sup> This provision remains unchanged RSNS 2023 c. L-9, s.69.

[30] Both parties submit that Part VI Legal Fees of the *Legal Profession Act* governs the Small Claims Court's jurisdiction to conduct taxations of lawyers' accounts. However, its legislative history may not be as clear. The *LPA* and *BSA* have long governed the practice of law in Nova Scotia. These Acts have directed lawyers and their clients towards the decision makers empowered to perform taxation of bills. However, it would be an error to claim that the *LPA* or the *BSA* ever had the mandate to create or delegate the power of taxation to taxing authorities including courts. Legislative history seems to bear this out.

[31] The *LPA*, the *BSA* and *BAA* before it are laws that regulate lawyers in Nova Scotia. The taxing provisions in the *BSA* did not appear until the previous *BAA* was consolidated with amendments and other Acts in 1899, fifteen years after the introduction of the *Judicature Act*, 1884. The definition of a taxation authority was adopted into the *BSA* as being "the Court, taxing master or county court". The inclusion of taxation provision accords with the *BSA* purpose of giving lawyers recourse to obtain fees and giving the public a way to ensure that fees charged are fair and reasonable.

[32] It does not follow that the *BSA* created the authority of taxing master's any more than it created the authority of the Supreme Court or the County Courts to conduct taxations. The *BSA* and the *LPA* that followed simply availed themselves of the existing taxing authority in the regulation of lawyers much like parties to a

dispute might avail themselves of the services of an arbitrator. The *LPA* regulates lawyers not adjudicators.

[33] The Small Claims Court Adjudicators' taxation powers are directly traced back to the *Taxing Masters Act* of 1885 and the *Judicature Act* of 1884. These *Acts* give life to the idea of a taxing authority that is tasked with conducting taxations as part of a functioning court system, a court system that now includes the Nova Scotia Small Claims Court. When the Legislature repealed the *Taxing Masters Act*, it allowed then taxing masters to continue in their role "for the purpose of conducting taxations ....pursuant to the *Barrister and Solicitors Act*".<sup>26</sup> It is the taxation "proceeding" that are permitted pursuant to the *LPA* not the taxing authority itself.

[34] Given the clear words of s.11 of the *SCC Act* adopting the previous Taxing Masters' jurisdiction arising out of the *Judicature Act*'s definition of the taxing authority, the Small Claims Court is effectively a Court tasked with conducting taxation as a function of the administration of justice not the regulation of lawyers.

[35] The *LPA* is of no assistance in defining the Court's jurisdiction.

***b. Judicature Act and Taxing Masters Act***

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<sup>26</sup> SNS c. s.98

[36] The question remains whether the Small Claims Court has jurisdiction to conduct taxation concurrent to the Registrar of Probate with respect to the accounts of proctors pursuant to s.90 of the *Probate Act*. As per the above history, the *Probate Act* and its predecessor legislation start at the very beginning of our legal history in Nova Scotia in 1758. In 1842 the *Courts of Probate Act* granted Judges of Probate broad powers to control its own processes and included powers to tax costs of proctors and advocates forming the basis of s.90 of our most recent revision.

[37] As the two provisions, s.90 of the *Probate Act* and s.11 of the *SCC Act* are not truly inconsistent whether there is concurrent jurisdiction or not, resort to rules of interpretation such as “the more recent law takes precedence” or general laws do not derogate from special ones” are of no application. The legislative intent must be interpreted directly from the words of the relevant statutes.

[38] The Legislature’s intent in passing the *Taxing Masters Act* is set out in the preamble as giving effect to the *Judicature Act’s* taxing authority to tax all costs under that Act. The *Taxing Masters Act* created one authority for taxations under the *Judicature Act*. No express authority was granted over taxation of the then provisions existing under the *Courts of Probate Act*.

[39] While the *Taxing Masters Act’s* general intention of creating one taxation authority suggests that such an authority would also include the authority granted

pursuant to the *Court of Probate Act*, it does not necessarily follow unless the *Judicature Act* can also be interpreted to include taxing powers granted under previous *Acts*.

[40] The *Judicature Act* sets out the powers and processes of the Supreme Court. The broad definition of a “Taxing Authority” given under the *Judicature Act*, must be interpreted as within the context it is found, an Act defining the powers of the Supreme not the Probate Court. There is no doubt that the *Taxing Masters Act* could have incorporated the Court of Probate into its jurisdiction as a general Taxing Authority but if this was done, it was not accomplished by the interpretation that can be given to its preamble referencing the *Judicature Act*.

[41] Section 90 of the *Probate Act* evolved from the jurisdiction of judges of the Probate Court to tax bills of costs, a power that now rests with the Registrar. The duties of the Registrar are defined in the *Probate Court Practice, Procedure and Forms Regulations*<sup>27</sup> at s.5 and include the responsibilities to record and maintain information and documents. As argued by the Respondent, the taxing of a solicitor’s account must be done as part of or before the closing of the estate pursuant to s.61 of the *Regulations* and further that notice be given to persons interested in the estate as defined at 52(1)(a) through (h).

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<sup>27</sup> N.S. Reg. 119/2001 amended to N.S. Reg. 63/2010

[42] Both the Probate Court and the Small Claims Court orders can be appealed to the Supreme Court while only the Probate Court can award costs on a taxation, the losing party may be liable for additional costs beyond the taxed amount at issue.

#### ***D. Analysis***

##### ***I. Jurisprudence***

[43] In *Mor-Town*<sup>28</sup> the Court of Appeal considered whether the taxation of a paid account conferred jurisdiction of taxation to the Supreme Court rather than the Small Claims Court. In rejecting the argument, the Court of Appeal found:

In my respectful view, such a narrow, restrictive interpretation of the *Legal Profession Act* would be contrary to law, the statutory objectives, and the practicalities of every day legal commerce.

[44] In *Mor-Town* the Court considered the intent of the *LPA* behind the regulation of parties accessing the process of taxation after an account was already paid. The Court's reference to the *LPA* was not in reference to the *SCC*'s jurisdiction over taxation but rather addressed the regulation of lawyers and access to taxation.

[45] In *Lockyer Estate (Re)*, Justice Hood considered the litigation guardian's objections in the context of an appeal of a taxation pursuant to, then s.91 of the *Probate Act*<sup>29</sup> as to the application of costs. The litigation guardian argued that costs could not be awarded as the power of taxation flowed from the *Legal*

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<sup>28</sup> *Mor-Town Developments Ltd. v. MacDonald*, 2012 NSCA 35 at para 45

<sup>29</sup> RSN 1989 c. 359

*Profession Act* and the *SCC Act* which do not provide for costs. In response

Justice Hood writes:

There are two problems with these submissions. First, the taxation of the accounts in an Estate matter is required by, and pursuant to, the *Probate Act*, not the *Legal Profession Act*. Regulation 61 of the *Probate Act* provides for “taxation of a solicitor’s bill of costs ... pursuant to section 91.” Section 91 of the *Act* provides for bills of cost to be taxed.<sup>30</sup>

## ***II. Small Claims Court Jurisdiction***

[46] In *Lockyer* the parties had already attorned to the jurisdiction of the Registrar of Probate and any possible issue of concurrent jurisdiction of the Small Claims Court was moot and not before the Supreme Court. However, Justice Hood’s comment that “the taxation of the accounts in an Estate matter is required by, and pursuant to, the *Probate Act*” may be binding on this Court although the issue of the SCC’s concurrent jurisdiction was not before the Justice Hood in *Lockyer*.

[47] On the other hand, a plain reading of now s.69 of *Legal Profession Act* and in accordance with s.7(1)(e) of the *Interpretation Act* defining “enactment” as an “Act or a regulation or any portion of an Act or regulation” leads to the conclusion that notwithstanding s.90 of the *Probate Act*, a lawyer’s account may be taxed by an adjudicator or a judge. Accepting that the *SCC* taxation jurisdiction flows

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<sup>30</sup> *Lockyer Estate (Re)*, 2018 NSSC 128, Para.26

from the *LPA* would lead to the conclusion that the SCC has concurrent jurisdiction.

[48] However, the *LPA* did not create the *Small Claims Court* any more than the *BSA* created *Taxing Masters*. Simply because s.69 of the *LPA* identifies the *SCC* as a taxing authority, it does not follow that the *LPA* gave birth to the *SCC*'s taxation jurisdiction. Based on all the above, this Court concludes that the *SCC*'s jurisdiction arises from the now repealed *Taxing Masters Act* and the *Judicature Act* that preceded it. As a result, s.69 of the *LPA* is of no assistance in determining whether the *SCC* has concurrent jurisdiction to conduct taxation pursuant to now s.90 of the *Probate Act*.

[49] Accepting that this Court's jurisdiction flows directly from the *Taxing Masters Act* and the *Judicature Act* against the statutory scheme of the *Probate Act* properly frames the question before the Court.

### ***III. Taxations pursuant to s.90 of the Probate Act***

[50] As long as there has been property owned by persons, there has been a form of probate. In Nova Scotia the probate system began in 1758 and was followed by a modern consolidation of the laws relating to probate in 1842. The *Courts of Probate Act* was a complete statutory scheme to deal with all aspects of property owned by those who passed. The basic system is predicated on the deceased's wishes or certain legal presumptions where one person, an executor or an

administrator, as the case may be, is tasked with ensuring that the estate of the deceased is carried out in accordance with the relevant laws. The *Courts of Probate Act* gave judges of the Courts of Probate broad powers to control its own processes including with respect to proctors or advocates. Proctors assist executors, administrators or representatives of the estate in carrying out their duties. Often, if not always, a proctor is a solicitor. The current version of the *Probate Act* does not define “proctor”, but the term does appear in the *Regulations*.

[51] The section at issue, now s.90 of the current revision, deals with the taxation of all bills to be done by the Registrar. Section 61(1) of the *Regulations* outlines that “[t]he taxation of a solicitor’s bill of costs in relation to an estate of a deceased person pursuant to Section 91 of the Act may be conducted prior to or upon an application for passing.”<sup>31</sup>

[52] The parties agree that the Respondent is the representative of the estate whether referred to as proctor or solicitor. Nothing turns on this distinction. The parties also agree that it is the Respondent’s account that is to be taxed.

[53] The Court notes that its jurisdiction which arose out of the *Judicature Act*’s definition of taxing authority and subsequent passing of the *Taxing Masters Act* came to be over fifty years after the taxing provision under the *Courts of Probate*

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<sup>31</sup> N.S. Reg. 119/2001 amended to N.S. Reg. 63/2010 at reg 61.

*Act* were passed. Further, the taxation powers of the *Probate Court* arose out of the power given to judges of that Court to control its own processes. While not determinative, it is instructive to note that at no time after the coming into force of the *Judicature Act* and *Taxing Masters Act* were any amendments made to the *Probate Act* or its predecessor legislation to address a new “taxing authority” or conversely to add “probate court” to section 4 of the *Taxing Masters Act*.

[54] In 1842, the Legislature granted the Probate Court the necessary power to determine its own processes including taxations of solicitors acting as estate representative. It is far from clear that the Legislature acted to create a concurrent jurisdiction of taxation through the enactment of the *Taxing Masters Act*. The nature of the probate process requires a unique set of predetermined steps to arrive at the closing where all the steps have been completed and the property can be distributed. As s.61 of the *Regulations* requires, the taxation of the representative’s account must be completed, and notices given to all interested parties before the estate can be closed.

[55] Given that a taxation pursuant to s.90 is one step in a multi-step process rather than the end step after the result of a given proceeding, as is the case with most taxations, the legislative intention dating back to 1842 looms large. Allowing this Court to conduct taxations pursuant to s.90 of the *Probate Act* would interrupt a closed system by pausing the outcome of the entire process until this Court could

render a decision. Further, and as noted by the Respondent, this Court is ill equipped to provide the necessary notice under the *Probate Act* to interested parties or have access to the Probate Court's records as needed. Giving this Court the power to pause another Court's decision on the ultimate outcome of its process is not effective.

***D. Conclusion***

[56] As the *Judicature Act* did not purport to have any power over the Probate Court, it stands to reason that the creation of taxing masters did not disturb the Probate Court's power to control its own processes. Recognizing the Small Claims Court as having concurrent jurisdiction would do just that.

[57] The Court concludes that the Small Claims Court does not have jurisdiction to conduct taxations pursuant to s.90 of the *Probate Act*.

[58] The taxation is dismissed.

**Julien S. Matte, Small Claims Court Adjudicator**