Getting Paid a Reasonable Fee
A Thumbnail Sketch of the Art and Science of the Solicitor-Client Taxation

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Introduction:

I have been asked to prepare this paper as something of an addendum to a decision arising out of a solicitor-client taxation over which I presided in my role as the Chief Adjudicator of the Small Claims Court of Nova Scotia.

McInnes Cooper v. Slaunwhite, [2004] N.S.J. No. 276, 241 N.S.R. (2d) 12 ("*McInnes Cooper*"), heard in early 2004, was, at least to that time, likely the most significant case – in term of monetary jurisdiction and factual complexity – to have come before the Small Claims Court of Nova Scotia.

It is against the backdrop of *McInnes Cooper* that I seek to outline for the reader some of the most important elements which arise in circumstances wherein counsel are attempting a taxation to seek the recovery of their own accounts. This area of law is made all the more complex in that counsel and their clients rarely – even now – carefully define – if they define at all – the terms of the engagements in which they are involved. If ever there was a lesson regarding clear – if not ironclad – retainer agreements, this might be it.

The Basic Guiding Principle:

The Canadian Bar Association's *Code of Professional Conduct*, at Chapter 11, deals with the issue of counsels' fees. It provides that:

> The lawyer shall not:
>
> (a) stipulate for, charge or accept any fee that is not fully disclosed, fair and reasonable;
>
> (b) appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees without the express authority of the client, save as permitted by the rules of the governing body. [underlining and double underlining added]

The Facts Underpinning McInnes Cooper:

McInnes Cooper involved a considerable sum of money. Senior lawyers of a prominent firm had been engaged by a desperately-injured Plaintiff whose residual medical conditions would leave him with significant physical challenges and permanent requirements for considerable future care.

Given principles of vicarious liability relative to the Defendant driver's employer, there was a sound argument that policy limits would not apply. There were also numerous factors which potentially cut in favour of the Defendant driver. These included what were alleged by the Defendant driver as the Plaintiff's significant pre-existing conditions and diseases. Overlaid on top of all of that were the Defendant driver's allegations and arguments that the Plaintiff's medical and physical conditions had been potentially compromised as a result of negligent or sub-par post-injury medical care and treatment.

Not long before the Plaintiff's claims were scheduled to proceed to mediation, he retained other counsel. He sought and received McInnes Cooper's assistance in readying his extensive file for transfer to his new counsel. In the end, McInnes Cooper's very comprehensive mediation brief formed the bulwark of the Plaintiff's very appreciable settlement which was negotiated by his new counsel.

McInnes Cooper had been acting for the Plaintiff on a relatively standard form Contingency Fee Agreement. The Agreement contained the relatively-standard provision which permitted McInnes Cooper to recover on the basis of its docketed hours – and its normal hourly rates – spent on the Plaintiff's matter in circumstances in which the firm was released prior to the conclusion of the engagement.

Although McInnes Cooper agreed to "hold" its account pending the outcome of the Plaintiff's claims while they were being prosecuted by his new counsel, it eventually claimed fees on the basis of its docketed hours and applicable hourly rates in the approximate sum of

$350,000. When the Plaintiff refused to pay, McInnes Cooper proceeded to taxation pursuant to the then relatively new *Small Claims Court Taxation of Costs Regulations*.

The Small Claims Court's standard monetary jurisdiction is $25,000. When taxations are in issue, however, this monetary jurisdiction is limitless.

Some More Guiding Principles:

The *McInnes Cooper* taxation entailed a very thorough consideration of the law surrounding the reasonableness of a law firm's fee accounts. An oft quoted case that sets out the factors to be considered in this sort of investigation is *Cohen v. Kealey and Blaney*, [1985] O.J. No. 160 10 O.A.C. 344 (Ont. C.A.) wherein Robins J.A. articulated the following factors (at page 350):

1. The time expended by the solicitor.
2. The legal complexity of the matters dealt with.
3. The degree of responsibility assumed by the solicitor.
4. The monetary value of the matters in issue.
5. The importance of the matters to the client.
6. The degree of skill and competence demonstrated by the solicitor.
7. The result achieved.
8. The ability of the client to pay.
9. The expectation of the client as to the amount of the fee.

An important point to keep in mind in all solicitor-client taxations is the benefit of hindsight available to the Small Claims Court Adjudicator in the course of a taxation. That benefit was referred to by the late Mr. Justice Grant in *MacLean v. Van Duinen*, [1994] N.S.J. No. 206, 131 N.S.R. (2d) 60 (NSSC) (at paragraph 30) as follows:

> No lawyer undertakes perfection, no client is entitled to that expectation.
>
> The applicants were presented with a factual situation not of their making. Their role was to use their training, expertise, and skill to protect and promote their clients' best interests. In doing so they adhere to a standard of reasonableness. They were to do so at a reasonable charge.
>
> Three years later with the benefit of hindsight we are examining and diagnosing each step taken as the file progressed. That is not the proper standard because we are then looking at perfection. The test is whether the acts were reasonable in the circumstances at the time they were done.

Hours and Hourly Rates:

As lawyers, we generally – though not necessarily – bill for our services on the basis of our time spent on them and on our applicable hourly rates. The determination of the correct or appropriate number of hours to spend on any given matter or on any given aspect of any matter is certainly much more of an art than it is a science. Additionally, the calculation or setting of "normal hourly rates" is certainly a matter which is in a state of continual flux in our profession. Firms rarely "post" their hourly rates publicly. Though not necessarily a closely-guarded secret, hourly rates are not usually widely discussed. Additionally, some firms apply different hourly rates depending on the nature of the client, its business and it principal location. The result is that much of the available information on hourly rates is, at best, anecdotal.

The assessment of the appropriate "billable time" associated with any particular service is also problematic. On the one hand, a senior counsel billing 30 hours at more than $300 an hour for the drafting of a routine Statement of Claim, where the value of the claim is unlikely to exceed $10,000, will readily be seen as excessive in his or her approach. On the other hand, the same counsel, billing three hours or six hours, or even 12 hours, on a more complex Statement of Claim, will just as readily be seen as appropriate from the perspective his or her billing approach. There are limitless indefinable circumstances which fit between these two.

For the majority of cases the Adjudicators of the Small Claims Court must rely on the judgment and integrity of the billing counsel. Taxations are not meant as exercises in the splitting of hairs. Instead, the Small Claims Court's taxation of costs jurisdiction is aimed at correcting relatively clear wrongs and in setting aside or amending accounts for legal services which are obviously not sustainable. It is therefore only in the clearer cases of billing impropriety that the Small Claims Court will interfere with a counsel's account.

As I suggested in *McInnes Cooper* (at paragraph 113):

> When looking at the time dockets of a law firm, it is important to remember that the time dockets alone cannot be used to justify a solicitor/client account in totality. Instead, some ancillary evidence is required. That said, it is not incumbent upon me to review in detail every one of the time entries docketed. As was held by the Supreme Court of Nova Scotia in *Tannous v. Halifax (City)* (1995), 145 N.S.R. (2d) 23 (Per Goodfellow, J.), I am entitled to take an overall view of the law firm's account in determining whether or not it is reasonable. In doing so, I have considered both the law firm's overall account and many, but not all, of the individual time entries it comprises.

The Overarching Principle of Reasonableness:

The seminal test which has emerged in Nova Scotia is that of the "reasonableness" of the fee account being tested.

In *Blackburn English v. Ezuricke* (2007), 2008 Carswell N.S. 232, the Supreme Court was reviewing a taxation case on appeal from the Small Claims Court. The Supreme Court allowed the appeal and held that while the time spent by a counsel on a divorce proceeding was appropriate, the counsel's hourly charge-out rate was not.

Though the decision is instructive from the perspective of the reasonableness principle, it is devoid of the type of analysis which would be expected for the other findings which were made. There are many, in fact, who have come to regard the counsel in *Blackburn*

as having been short-changed. Such is the risk from both the taxation process generally and from the failure to properly regulate the solicitor-client relationship through carefully drawn retainer agreements.

For example, the Supreme Court found that the counsel in *Blackburn English* had worked hard on the matter and had been very effective in his representation of his client's interests. There was therefore no articulated concern over the counsel's docketed hours. Nevertheless, the Supreme Court reduced the counsel's hourly rate from $250 to $175. There was no expressed reason for doing so and no indication from the Supreme Court's reasons that it had analysed what the counsel's hourly rate should have been. The facts that the counsel was a senior member of the Bar, with more than 30 years of experience, and a Queen's Counsel, appear to have played no role in the Supreme Court's analysis.

Instead, the Supreme Court appeared to have concentrated more on the "means of client". Apparently ignored was that the hourly rate of $175 permitted to the counsel involved was well below what would ordinarily be charged by similar counsel in both the practice and in the geographical the areas. In short, the overall finding was not leastways consistent with the Supreme Court's following observation:

> The Adjudicator, as I said, looked at the reasonableness of the services provided and, based on what I can see on the record and from what I have heard today, it is apparent to me that Mr. Ezuricke got effective and competent legal representation from Blackburn English and in particular [from the counsel].

The seminal authority in Nova Scotia on the reasonableness of a counsel's fee is *Lindsay v. Stewart, McKeen and Covert*, [1988] N.S.J. No. 9, 47 D.L.R. (4th). More than anything, *Lindsay* underscored the notion that the taxation of a counsel's fee account is a fluid exercise. It is not dependent specifically on any one feature. It is not a science which is to be practiced empirically. Instead it is an exercise which attempts to bring facets of order to an amalgam of circumstances which are not easily reconcilable with each other.

Very often, the taxation of a counsel's fee account dissolves into an exercise in which attempts are made to reconcile individual time charges while each individual service is assessed retrospectively from the perspective of whether or not it was necessary or unnecessary. It is an approach which can lack both sanity and fairness to clients and counsel alike.

Though the dissective approach remains inviting, especially to clients against whom claims are being made by former counsel, the more accepted role of the Small Claims Court Adjudicator is to gauge what was reasonable – all things considered – at the time the counsel was undertaking the services to the client. That is routinely how I have approached (and will continue to approach) my own role.

The Retainer:

An important factor that often arises in the investigation of the hours billed is the question of whether the client was fully informed of the potential costs of the claim. A mistake that counsel routinely make is in their reliance on oral agreements with clients as to fees.

To be remembered is that the burden of proof in all taxation cases is upon the counsel who is claiming. If there is no written agreement setting out the parameters of the retainer, particularly in the case of an unsophisticated client, the lawyer involved is setting up a difficult burden for himself or herself to meet or overcome.

However, if terms of the counsel's engagement are clearly set out in a retainer letter – or agreement – the prospects of a successful taxation are much greater.

The better retainer agreements set out the expectations of the counsel on the issues of fees, the likelihood of success and the value of the claim. Potential costs recovery from an opponent is also an important factor. More and more often, the better retainer letters are also setting out what each aspect of claim is likely to cost a client. Indeed, the more sophisticated the client, the more likely is it to ask for that type of breakdown. Finally, retainer agreements should

look at related matters prospectively and should set out, as accurately as possible, how costs, including hourly rates, might change in the future. I suggest something like the following:

> My current hourly rate is CAN$---. This rate is subject to change without notice. That said, it is not likely to change until at least the end of the year and maybe not then.
> ...
>
> Disbursements and applicable taxes are additional to fees. Currently, provincial and federal legislation require our clients – even our US and international clients – to pay a 13% tax on our fees and on most (but not all) of our disbursements.
>
> Services to your client will be docketed in tenths of hours. The starting point for docketing is, generally speaking, two-tenths of an hour. Though there are services which can be accomplished within a one-tenth of an hour time frame, those services are very few. We therefore tend not to docket in increments of less than two-tenths of an hour.
>
> Docketed time and hourly rates are the predominant basis for our fee accounts to our clients. That said, there are circumstances which can arise in the course of our services on any matter which can serve to reduce or increase fees which otherwise would be calculated from the application of normal dockets and hourly rates. In circumstances where individual services seem to have taken too much time or to have been of too little value to your client, fees on the basis of normal dockets and hourly rates will be reduced. Conversely, for services which are provided on an urgent basis, or within compressed time periods, or which are particularly complex, or which result in particularly good value to your client, fees can be increased from those resulting from normal dockets and hourly rates. In both instances (down and up), deviation from fees calculated on the basis of normal dockets and hourly rates is rare.
>
> All of our firm's fee accounts are due when rendered. If the fee accounts are not to be directed to you, I would ask that you provide the name and contacts for your client's representative who will be attending to our fee accounts. Fee accounts which remain past due beyond thirty (30) days are subject to interest at the rate of --% per month (or --% annually).
>
> Our firm's preference with U.S. and international clients is that they use wire services to pay our accounts where possible. If your client is so inclined, we will provide the necessary co-ordinates. With the exchange rate prevailing these days, payments of our Canadian dollar accounts in US dollars will usually result in a premium. These premiums are accounted for through set offs and credits against subsequent accounts.
>
> Although I will be the member of our firm primarily responsible to you and to your client for the services required by this matter, a significant effort is made to delegate specific tasks and services to the resources within our firm best suited to them. The intention is not to create teams

> of multiple lawyers working on the same matter or aspect of a matter. Instead, the intention is to reduce the client's exposure to fees to whatever extent is possible. It is therefore likely that for many aspects of the matter, I will delegate to a senior associate whose hourly rate will be in the range of $--- - $---.
>
> Additionally, for the purposes of the production of Lists of Documents and the establishment and maintenance of any electronic document database required by the matter, delegation will be to specially-trained paralegal assistants whose hourly rates generally range between $-- and $---. Some of these legal assistants are trained and qualified lawyers themselves. I referred above to disbursements. These disbursements arise out of services provided both in-house and those for which out-of-pocket payments are made to third party suppliers.
>
> Disbursements are generally limited to photocopying and printing, long distance telephone charges, courier and delivery, court filing fees, discovery (deposition) and transcription services, travel and the accounts of any third-party service providers (such as experts) who are engaged in consultation with the client to assist with the prosecution or defence of any matter. Car travel (and it is unlikely that there will be any in this matter) is billed to our clients at the rate of --¢ per kilometre (roughly --¢ per mile). Airline travel is booked as far in advance as possible to ensure whatever savings are available. Airline travel is booked economy class as far west as Toronto, Ontario, as far east as St. John's, Newfoundland and Labrador and as far south as New York. Beyond those geographic boundaries, air travel is booked in business class.
>
> Except in circumstances where responsibility for our fee accounts is undertaken by our corresponding firms, we ask our U.S. and international clients to provide us with small cash retainers. These retainers are held in trust in interest-bearing accounts to be credited to our final billing. They do not substitute for our normal monthly billing. In circumstances wherein the balance of a cash retainer and accrued interest exceeds our final billing, a refund is paid to the client. For this case, I suggest a cash retainer of CAN$--,---.00.
>
> We acknowledge our clients' rights to query and challenge our fee accounts to whatever extent they feel is reasonable. We also remind all of our clients that they can apply to the Small Claims Court of Nova Scotia to have any of our fee accounts "taxed". The "taxing" procedure is set out in the Small Claims Court Taxation of Costs Regulations made pursuant to the provisions of Section 33 of the Nova Scotia *Small Claims Court Act*. The *Act* and Regulations are available on-line. If you or your client would like to see them, I would be pleased to furnish copies to you. I think the above covers off the most salient issues with respect to our firm's fees and related issues. If you agree and your client agrees, I would be grateful if you would arrange for your client to counter-sign this letter and return a counter-signed copy to me.

It is also important to note that a counsel shouldn't be too worried about prior retainer agreements if a matter becomes more complex as it proceeds. It is often the case that

what at first appeared to be a simple matter is one that will take more time and increased resources. The key in such circumstances is to document the complicating factor(s) in follow-up retainer letters to the client and receive the client's expressed authority to proceed with the matter and the costs associated with the further work to be done on the matter.

Contingency Fee Agreements:

In *McInnes Cooper*, I was called upon to consider that the relationship between the law firm and client was predicated on a Contingency Fee Agreement. In such circumstances, the client can often see the relationship with the firm as a "no-lose" proposition. The client receives relatively unrestricted access to the law firm and pays nothing for excessive communications. When there is then a change of counsel and the former firm is required (or entitled) to bill the client on a time basis fees, the establishment or assessment of a reasonable fee can become very difficult.

That is because law firms rarely draft their Contingency Fee Agreements around the prospect that they will be terminated by their clients with the result that their entitlements to fees will have to assessed on the basis of the factors set our above. The difficulty is compounded by the fact that many law firms working on contingent fee arrangements often neglect to engage in proper time entry (if they engage in any time entry at all).

The key successful taxation is to maintain diligent time records even in circumstances where fees are being calculated on a contingent basis. Though time alone is not the determining factor is assessing an appropriate fee in a contingent arrangement, it remains an important factor. In fact, without having the benefit of time, it is difficult to assess how complex – and therefore how valuable – certain aspects of the legal services under examination might have been.

Multiplicity of Staff:

While it was at one time common for law firms to assign more than one lawyer to any given matter, such multiple lawyer assignment are no longer so much the case. In fact, many

GCs are reluctant for their law firms of choice to assign more than one lawyer to the matters in which they are involved. There are exceptions but they relate normally to highly complex matters or matters in which there will be many witnesses, voluminous documents or both.

One of the issues which arose in *McInnes Cooper* was the client's assertion that the firm had engaged too many lawyers, paralegals and other staff members in the matter and that there was a natural overlap in the respective legal services which each provided.

In *Canada Trusco Mortgage Company v. Homburg* (2000), 180 N.S.R. (2d) 258, the Supreme Court was critical of the apparently haphazard approach by which the law firm went about assigning its lawyers to the prosecution of an admittedly-complex foreclosure. A total of nine of the firm's lawyers had provided services on the file from time-to-time. It was found by the Supreme Court that there had been considerable overlap. As lawyers left the firm, they were replaced by others; each of whom effectively had to re-learn the file – or, as it was held, "re-invent the wheel".

In *McInnes Cooper*, the objective evidence of the firm's approach to the client's legal services was that it was far from haphazard. I found, instead, that the firm's legal services to the client stemmed from a true team approach: the best and most economic resources were assigned to the tasks at hand bearing in mind their nature, their complexity and the availability of appropriate resources for them.

Tied closely to the issue of multiple lawyers being assigned to a single matter is the issue of the valuation of the time docketed to any given matter by so-called junior lawyers. My colleague on the Small Claims Court, Adjudicator W. Augustus ("Gus") Richardson, Q.C. has considered, in the course of several taxations, the issue of billing for the time of junior colleagues.

Most recently, Adjudicator Richardson held in *Burchell Hayman Parish v. Sirena Canada Inc.*, [2006] Carswell NS 520, (at paras. 17 and 21) that:

> The relative inexperience of a junior lawyer does not in and of itself warrant discounting its [sic] value. It does, however, raise the possibility that the lawyer might spend more time than necessary (that is, more than would be reasonable for a reasonably experienced lawyer in the field) performing the work in question. In my opinion on a taxation the standard to be applied in evaluating the reasonableness of a lawyers account includes an assessment of the amount of time it would take a reasonably competent lawyer with several years experience to perform the services at issue.
>
> […]
>
> This of course poses a problem to the client. A client is entitled to expect good work (which it received in this case). But is should not be required to pay for the learning experience of a junior: *Goodman v. Tempermendrum Limited* (1991), 25 A.C.W.S. (3d) 169 (Ont.Assess.O.) … see also *Canada Trust Co. Mortgage Co. v. Homburg*, [1999] N.S.J. No. 382 (N.S.S.C.). [underlining added]

Adjudicator Richardson also considered the assessment of the value of junior layers' time in *Miller v. Johnson* (2006), 247 N.S.R. (2d) 297 at paragraph 21:

> As a rule, a client should not be expected to pay for the training of young lawyers or students. There is no doubt that such work does give value to the client (and for that the client should expect to pay), but there is equally no doubt that in [the] ordinary course some of the time spent performing the work is composed of false starts, or looking at precedents that will later be known by heart.

Adjudicator Richardson's points have been routinely endorsed and applied by me and by other Adjudicators. As such, the standard approach is to consider the amount of time any reasonably competent lawyer would spend on any given task. If the time sought to be recovered by way of a fee account is disproportionate, it should be adjusted or disallowed. The only exception is where the junior lawyer whose time is being assessed carried an hourly rate much lower than that which would be charged on average by the reasonably competent lawyer carrying out the task in question.

In the end, the analysis is always about value received. If there is value received for the work of a junior lawyer, then his or her time should be allowed in full.

Client Contact and Communication:

One of the more noteworthy factors in *McInnes Cooper* was the client's allegation that the firm permitted him too much of its time. Perhaps oxymoronic in that the most common complaint lodged against lawyers with their professional governing bodies relates to their failures to communicate with their clients and respond to their inquiries, the client in *McInnes Cooper* alleged that his calls to the firm and his follow-ups with its lawyers with respect to his case were excessive and that he should not have been billed for them.

Almost without exception, lawyers have an obligation to communicate with their clients even at the expense of the lawyers' time. The only exception is the circumstance in which the client's level of communication is truly excessive, it fails to advance his or her case and is either not informative or not informative in a practical way.

Assessing the boundaries of legitimate solicitor-client communication is very difficult. In fact, it would be all but impossible for a lawyer to be able to determine where legitimate communication has ceased and wasteful and unproductive communication has commenced.

Within some circumstances, that assessment may have to be made within individual telephone calls, within each series of written communications or within each meeting.

In *McInnes Cooper* I was not persuaded that the client was unaware of the inordinate amount of time he spent in communication with the firm nor of the fact that there could be a future circumstance wherein the value of that time would have to be reconciled. Though his veiled suggestion as that as he had suffered a closed head injury, had been left brain-damaged and was prone to excessive worry as a result, no such evidence was led before me and I declined to adopt the suggested inference that the client had been so compromised.

The relevant principles have been expressed in *Robertson v. Ostrander*, [1992] S.J. No. 450 (Sask.Q.B.) (at para. 3) as follows:

> There is, however, an obligation on a lawyer to protect his client from the tendency to take up too much of the lawyer's expensive time, and from the tendency to allow a computerized timekeeping system to mandate the amount of the bill. The timekeeping system, however effective in providing a guideline to the time spent on a matter, has no value whatever in way of necessity or advisability of that time having been spent nor can it have an eye to the results achieved. Simply to allow the computer to make the decision as to the amount to be charged deprives the client of the wisdom of this counsel in giving consideration to those factors which the courts have held over the years to be material in deciding the amount of the lawyers account.

The court in *Ostrander* supported the principle that the test is one of value and reasonableness when it comes to billing for a communication with a client. It is trite law that a lawyer cannot bill her client for wasted time – however it is the responsibility and privilege of the lawyer to determine what is valuable to the client.

Value to the Client:

In *Roebuck, Garbig v. Albert*, [1992] O.J. No. 1113 (Ont. Assess. O.) the court articulated three important principles when looking at the value a client received from legal services rendered on their behalf:

1. The ability of the client to pay;

2. The results achieved; and,

3. The reasonable expectation of the client as to fees.

The summation of the above principles brings us to the main thrust of taxation – the value to the client. Though trite, the work that a lawyer does for a client must have value in order for the client to be billed. The value is measured against the ability of the client to pay, the reasonable expectation of fees and (to a lesser degree) the results achieved.

It is the duty of the lawyer to fully inform the client of the reasonable prospects of success and the potential cost of pursuing different legal options. The informed consent is best captured in a retainer agreement to ensure that both parties possess an understanding of the relationship going forward. Finally, the bill must be reasonable against the above mentioned principles.

Conclusion:

I want to leave the reader with a quote which I regard as summarizing the correct design and implementation of a lawyer's account for legal services. In *The Law of Costs* (2d), Mark M. Orkin, Q.C. points out at section302.2 that:

> A solicitor's bill of fees, charges or disbursements is sufficient in form if it contains a reasonable statement or description of the services rendered with a lump charge therefore, together with a detailed statement of disbursements. The object of a bill of costs is
>
> > '...to secure a mode by which the items of which the total sum are made up, should be clearly and distinctly shewn, so as to give the client an opportunity of exercising his judgment as to whether the bill was reasonable or not....'
>
> A bill for professional fees is, therefore, sufficient if it sets out an account of the services rendered itemized so that the reasonableness of the charges may be ascertained by the client. The contents of the bill must, however, show sufficient information to enable the assessment officer to determine whether or not the charge is reasonable. It is not necessary in the first instance to give details or charges or items, such as the time occupied in consultations, folios contained in a conveyance, or detailed statements as to attendances or searches; but the solicitor is under a duty to render a bill containing such a general statement of the services as would enable another solicitor to advise the client as to the propriety or reasonableness of the bill. In any action upon or assessment of a bill, further details of the services rendered may be ordered. If the bill as delivered does not comply with the statute because it lacks a reasonable statement of the services for which the fee is demanded, leave may be given to deliver a further bill in extended form which will comply.

It can be reasonably expected that the determination of what a lawyer is entitled to by way of payment for the services which he or she has rendered will continue to be a difficult exercise. As such, the best approach to the determination of what the lawyer's account will be a fair assessment of the value to the client of the services the account encompasses.

Value to the client is an amorphous concept. It must be assessed objectively. The test is what the services should have cost. Though the lawyer has considerable flexibility in determining what to charge, the flexibility is not limitless and must be based on the few standard precepts which have been set out above.

Getting paid is, and will remain, a challenging part of what all of us do. The best approach, therefore, is to define in advance as many variables to the solicitor-client relationship as are possible. The more which is set out in advance, the less traction the client will be able to engage in the challenge to an account.