

CPD BOARD – DISCUSSION ON LEGAL FEES & BILLING

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Shane Galligan,
Legal Costs Accountant

BEHAN &
ASSOCIATES

Legal Costs Discussion – Shane Galligan, Behan & Associates

- LEGAL COSTS;



- S.150 OBLIGATIONS & BILLING ;



- PRACTICAL EXAMPLE;



- CONCLUSION.



THE GENERAL POSITION

Part 10 of the LSRA, 2015 – October, 2019;

Rules of the Superior Courts (Costs) 2019 – December, 2019

Establishment of the Office of Legal Costs Adjudicators -

- Chief Legal Costs Adjudicator – Paul Behan;
- Legal Costs Adjudicator –Niall O’Hanlon;
- Legal Costs Adjudicator – Barry Magee.

NATURE OF LEGAL COSTS

Costs as between a Solicitor/Legal Practitioner and his/her client and Party/Party Costs.

LEGAL PRACTITIONER/CLIENT COSTS

Generally described as the totality of the charges and expenses which a client is contracted to pay.

PARTY AND PARTY COSTS

Costs awarded in '*contentious business*' mean Party and Party Costs unless the contrary provision is expressed.

Broadly speaking, '*contentious business*' means litigation of whatever nature.

Section 150 – The core requirements

- Clear language – avoid ambiguity;
- Issue as soon as possible;
- Outline the Basis of Charges (and stick to it). If Time alone, keep Time records;
- Provide an estimate (where reasonably practicable) on each stage of the likely process.
- If not reasonably practicable at that time, Say so and undertake to provide an estimate at a later point (It must be done at some point);
- Advise on all Costs to that date, i.e. all work done beforehand and precise charge;
- Ensure estimates from Counsel (who have their own S.150 requirements) and Experts;

Update Section 150 – ‘..... aware of any factor that would make the legal costs significantly greater than disclosed or indicated in the original notice.

Non-Compliance –

- LSRA Complaint;
- Solicitor/Own Client – effectively bars recovery entirely;
- Party/Party – “Legal Costs Adjudicator shall not confirm a charge in respect of a matter or item if the matter or item is not included in the Notice or is not subject to an agreement, unless the Legal Costs Adjudicator is of the opinion that to disallow the matter or item would create injustice between the parties...”

THE DECISION TO BILL –

TO DO - COMPONENTS OF A BILL (Summary Form)

- Broad Outline of the Work done;
- Breakdown of all Outlay/Counsel's fees/Experts fees etc;
- Append S.150 terms;
- Where Time alone – append Time Records. Otherwise discretionary;
- If available, mention Amount of damages or monies recovered and amount of Costs recovered on a Party/Party basis;
- Sign & Date the Bill. (Good reasons for that - Time Frames – 3 Months/6 Months – Solicitors referral to Costs Adjudication, after 30 days);

Notification

- In the event of a concern or dispute;
- Discuss with you;
- Communicate any dispute within 21 days;
- Attempt to resolve by Mediation;
- Refer the matter to Legal Costs Adjudication

Entirely Bound by Solicitor/Client Bill (Not Party/Party)

- ‘15% Rule’ – Solicitor/Own Client only.

DO NOT;

1. Charge a percentage of damages;
2. Bill otherwise than in accordance in S.150 terms – e.g. cannot charge for work on the basis of all factors, if you agreed Time alone and vice versa;
3. Add to Party/Party Costs unless for specified reason(s). If in addition then be specific – precisely detail the work that is likely to fall, or has fallen, outside the scope;
4. Send a bill on account unless clearly stated and for specified reason(s);
5. Send a bill without outlining the client’s entitlements in the event of a dispute;
6. Agree Party/Party Costs without the client’s approval, if you intend to charge, or have charged, Solicitor/Client fees;

PRACTICAL EXAMPLE;

Personal Injuries Litigation – trip and fall on a building site - Injury to back, neck and shoulder.

Accident during the course of employment, on a building site owned/occupied by another party and in the control/supervision of another party.

First Defendant – Employer.

Second Defendant – Main Contractor.

Third Defendant – Owner/Occupier of the site.

Section A;

Liability Investigations – Review terms and conditions of employment/Consulting Engineer engaged.

Medical Investigations – A&E Consultant/Medical Records/GP /Ortho Surgeon/Neurosurgeon/Pain Consultant.

Losses – Earnings/travel/medical expenses.

Companies Searches.

Letters before Action.

PIAB Application – No assessment.

PIAB Authorisation.

Section B;

Personal Injuries Summons & Affidavit of Verification;

Appearance – Separate Solicitors for each of the 3 Defendants;

Notices for Particulars/Replies (x3) and Affidavits of Verification;

Motion for Judgment in default of Defence – Order for Costs;

Defence (each Defendant full denials and pleas of con neg) and Affidavits of Verification

Request for Discovery – training records/Accident report form;

Motion for Discovery – Order and Costs reserved to Trial;

Affidavit of Discovery – First Defendant (Employer);

Defendant's request for Discovery of Plaintiff's prior medical records (relevant pre existing injuries);

Affidavit of Discovery – Plaintiff with Medical Records;

Advice on Proofs by Senior Counsel;

Notice of Trial/Notice to Produce – Called on for hearing;

Briefing Counsel for Trial – One Senior and One Junior;

Further Liability work/investigating prognosis, required treatment and future requirements/Loss of earnings and other Specials.

Section C;

Trial – 1 week i.e. 4 days;

Judgment & Order - €95,000.00 & Costs;

The Order - **required Costs components;**

Section D;

Post Trial work;

Legal Costs Adjudication – **the Process.**

The Costs Allowances;

Solicitors:

Section A -	€8,000.00;
Section B -	€25,000.00;
Section C -	€11,000.00;
Section D -	€4,000.00.

Counsel:

Senior

Brief fee -	€5,000.00;
Proofs -	€500.00;
Consultation -	€350.00;
Refresher fees -	€2,500.00x3.

Junior

Brief fee -	€3,500.00;
Drafting work -	€800.00;
Motions -	€1,500.00;
Consultation -	€350.00;
Refresher fees -	€1,600.00x3.

Witnesses;

1. Engineer – Inspection/Report – €2,600.00;
Court attendance - €1,800.00 (€900.00 x 2 days).

2. Doctors - Reports (13)- €400-600.00 each;
Court - €900 each day and Standby €300.00.

3. Voc Assessor - Report - €1,200.00;
Court – €600.00 (half day).

4. Actuary - Report - €1,500.00;
Court - €300.00 (standby only).

Outlay;

Court fees etc €1,180.00;

Room Hire €600.00;

Stenographer €6,000.00.

The Basis of Calculation (Solicitor & Counsel);

Schedule 1, as mentioned in S.155;

- ‘[a] The complexity and novelty of the issues involved;*
- [b] The skill or specialised knowledge which a Legal Practitioner has applied to the matter;*
- [c] The time and labour expended;*
- [d] The urgency attached to the matter;*
- [e] The place and circumstances which a matter is transacted;*
- [f] The number, importance and complexity of documentation drafted, prepared or examined;*
- [g] Where money or property is involved its value;*
- [h] Whether or not there is an agreement to limit the liability of the Legal Practitioner pursuant to Section 48;*
- [i] Whether a Legal Practitioner undertook research or investigative work, and if so, the time involved;*
- [j] The use and Costs of expert witnesses or other expertise engaged by a Legal Practitioner and whether such Costs were necessary or reasonable;’.*

- **Costs in Probate/Conveyancing**
- *Fixed Fee/Time Costing/General basis – The contract for services*

CONCLUSIONS

S.150 = Contract. Take care in its construction;

Outline work done to date of S.150;

Contract to work on Time alone – Bill Time alone and ensure contemporaneous Time Records;

Estimate going forward, if reasonably practicable (but must be done at some point);

Take the estimate in stages – range of fees;

Revised estimate ‘*....aware of any factor ...legal costs significantly greater than.... in the original notice*’;

Ensure estimates/S.150 terms from Counsel and all/any witnesses;

Costs in Litigation - various stages/Counsel/Experts/Outlay;

Interim Applications/Mediation;

Final Order – Reserved Costs/Mediation/Stenographer/E-Discovery;

Costs Recovery Process.



BEHAN &
ASSOCIATES

Blanchardstown Corporate Park, Dublin 15, Ireland Tel: +353 1 8606000 Fax: +353 1 8829647

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