TAXATION OF COSTS

Continuing Legal Education

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Anne Cap 4) coincided with an upsurge in vexatious litigation which was thought to have been the result of the earthquake and fire at Port Royal which had caused considerable destruction and loss of records, including titles to lands, as well as, the want of skill and knowledge in those that drew conveyances. The Act of 1711 was eventually repealed in 1879 when the Judicature (Supreme Court) Act, Law 24 of 1879 was promulgated to take effect on 1st January, 1880. The Judicature (Supreme Court) Act now contains the provision from which the Supreme Court's power to award costs derives at section 47 which provides:-

> "(1) In the absence of express provision to the contrary the costs of and incident to every proceeding in the Supreme Court shall be in the discretion of the Court, but nothing herein contained shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules acted upon in Courts of Equity before the commencement of this Act...
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> (2) In every legal proceeding in which one party shall be entitled to recover costs from the other party, the same fees shall be allowed for the services of solicitors employed at fixed salaries by the party so recovering costs, as if such solicitors were remunerated by fees in the ordinary way for their specific services in the proceeding in respect of which such party shall be entitled to costs."

4. Section 36 of the 1879 Act (now deleted) also conferred power upon the judges to make rules of Court including rules for regulating matters relating to costs and taxation arising from proceedings in Court, including the costs of solicitors, the expenses of witnesses and the fees of bailiffs. No mention was

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1. The purpose of this paper is to briefly trace the evolution of the law of Jamaica with regards to taxation of costs with particular emphasis upon the role which scales of fees have played in that process. A useful statement of the approach taken by the Court with regards to taxation of costs is to be found in the case of **Abrahams v Lindo (1918) SCJB Vol. 10 p. 49**; **Vol. 1 STPH 522 at 523** where the Supreme Court stated as follows:-

> "...The discretion conferred on the Court in awarding costs, though wide, is a judicial and not an arbitrary discretion and must therefore be exercised in accordance with rules of reason and justice, and not according to private opinion, according to law and not humor. It is not to be arbitrary, vague or fanciful, but legal and regular."

2. An analysis of the development of Jamaican law must begin with the case of **Woodgate v Malabre (1835) Vol. 1 STPH at 472**, where the Jamaican Court held that the power to award costs derived from statute and as there was no local law sanctioning awards of costs by the Jamaican Courts up to the year 1711, the practice of the Courts of awarding costs prior to that date was accepted as deriving legitimacy from the English Acts which gave such powers to the courts in Westminister Hall and therefore it was held that the English Acts were to be treated as having full force and effect in Jamaica.

3. In the year 1711 the first attempt appears to have been made to pass local legislation to fix the fees recoverable by solicitors by the imposition of a scale of charges. This law (10

made of the costs of barristers. In the exercise of that power, the rules which are now known as the Supreme Court General Rules & Orders were made in 1882, whereby the judges of the Supreme Court took upon themselves the task of fixing the scales of fees recoverable on the taxation of solicitors' bills for work done in the Supreme Court including work in its probate and admiralty divisions.

5. The scales for contentious solicitors work continued to be made by the judges until 1961 when the Judicature (Rules of Court) Act was passed, which established a Rules Committee to make rules for the Supreme Court and by section 4 (2) (f), the power to regulate matters relating to the costs of proceedings in the Court of Appeal and the Supreme Court was passed to that Committee which comprises three (3) judges, including the Chief Justice, the President of the Court of Appeal, as well as the Attorney General, the Director of State of Proceedings and five (5) attorneys-at-law nominated by the Bar Council. That Committee's first scale of fees was published in 1967 and was entitled Rules of the Supreme Court (Solicitors Costs) Order PRR 61/67. The Rules Committee's scale as amended from time to time has continued to govern the instructing attorney's charges recoverable on taxation in proceedings in the Supreme Court and the Court of Appeal, while up to the year 1993, the Jamaica Bar Association published a minimum scale of charges for counsel's work as well as a fixed scale for non-contentious business such as conveyancing, securities and estates which served as the governing guide for such work.

6. In July 1993, the Jamaica Bar Association decided to discontinue its practice of publishing a scale of charges. That decision was made in pursuance of a recommendation made by a committee specifically appointed to consider the impact of the Fair Competition Act which came into effect in September 1993. The recommendation of the Committee was that the Association's practice of making and publishing a scale of charges should be discontinued as it would constitute a breach of section 17 (2) (a) of the Act, which prohibited agreements which directly or indirectly fixed prices or other trading conditions.

7. The Committee of the Bar Association also considered the scale of fees issued under the Judicature (Rules of Court) Act and concluded that as that scale took effect as a law, it was not governed by the Fair Competition Act and remained in force until repealed. The Committee recommended that the Rules Committee should proceed to make a scale of minimum counsel's fees for work in the Supreme Court, a role hitherto accepted as the sole prerogative of the legal profession. Unlike the fees of the instructing attorney or solicitor, the Rules Committee and before it the judges of the Supreme Court never sought to issue a scale regulating the fees for counsel's work. This deference was consistent with English practice and arose from the differences in the status of solicitors and barristers which existed as a matter of substantive law prior to fusion of the profession in 1972.

8. Some of the legal impediments imposed upon barristers prior to fusion which were relevant to the manner in which

barristers' fees were fixed and paid were as follows:-

(a) Barristers and solicitors could not practice in formal partnership. If only in theory, a fee agreed between a barrister and a solicitor was assumed to be determined by persons dealing at arms length;

(b) No fee could be taxed for a barrister without proof that such fee had actually been received. The usual receipt took the form of the barrister's brief which on conclusion of a case was returned to the solicitor marked with the amount of fees paid. The brief so marked had to be produced to the taxing officer for otherwise any fee claimed for the barrister would be disallowed on taxation. In effect the barrister's fee was always treated on taxation as a cash disbursement;

(c) In the unusual instance where a barrister was also an enrolled solicitor and appeared in the same matter both as advocate and solicitor, on a party and party taxation the Supreme Court refused to allow any barrister's fee for the work done as advocate: **Marsh v Henderson (1901) Vol. II STPH 1821**;

(d) Unlike a solicitor a barrister could not sue for his fee. However, it would be an act of professional misconduct for a solicitor to not pay a barrister the agreed fee. Nonetheless the legal impediment precluding a barrister from suing to recover his fee, resulted in a barrister being legally entitled to insist on the payment of his

fee on acceptance of a brief from the solicitor and prior to the commencement of work. No portion of the brief fee was refundable even if the case was settled or discontinued prior to trial. On non-payment of his fee the barrister would usually be allowed to withdraw from the matter.

9. Exceptions to these rules were made for criminal cases where a barrister was entitled to appear without a solicitor and therefore to sue the lay client for his fee. In **Stewart v Lewis (1967) 11 WLR 99**, the Jamaican Court of Appeal held that a barrister who had been retained for a preliminary enquiry and who had received a portion of his fee could sue for the balance when he was instructed directly by the lay client and not by a solicitor. Again as an exception to the rule in **R v Stephens (1963) 6 WIR 145**, where a barrister without seeking the permission of the Court withdrew in the middle of a criminal trial because the balance of a fee was outstanding, the Court of Appeal described such conduct as reprehensible and expressed the view that counsel owed a duty to a client for whom he appeared in a criminal matter not to forsake him during the trial.

10. Upon fusion of the two facets of the legal profession, most of the rules governing recovery of fees by barristers ceased to apply in Jamaica as a matter of law, although many instructing attorneys continue to treat counsel's fees in the old manner as a cash disbursement for which they are responsible to protect counsel. The formal abandonment of the rules and impediments

applicable to barristers was effected primarily by section 5 (1) of the Legal Profession Act which provides:-

> "Every person whose name is entered on the Roll shall be known as an attorney-at-law (hereinafter in this Act referred to as an attorney) and-
> (a) subject to subsection (2), be entitled to practise as a lawyer and to sue for and recover his fees for services rendered as such;
> (b) be an officer of the Supreme Court except for the purposes of section 23 of the Judicature (Supreme Court) Act; and
> (c) when acting as a lawyer, be subject to all such liabilities as attach by law to a solicitor."

11. In Jamaica, in effecting fusion of legal profession, the rules governing solicitors were made applicable to most aspects of taxation and recovery of attorneys' fees. These rules were in many respects opposite to the rules governing barristers. Thus, in the absence of special agreement a solicitor usually had no right to charge a fee prior to the conclusion of the work undertaken. Where an advance on fees was taken from the client, again in the absence of agreement, that money had to be applied to the payment of cash disbursements and not to the remuneration of the solicitor. In the case **White v Bell (1881) Vol. 2 STPH 1797**, where, in the course of litigation, a solicitor without the client's agreement applied money advanced by the client to his own remuneration and, after unsuccessfully demanding further payment, withdrew from the matter so that the litigant was undefended, the Court described such conduct as a case of gross professional rapacity, which it would not tolerate in an officer, if the Court was to maintain the

respect and confidence of the public.

12. Also in protection of the client equity developed a most important rule that every bill rendered by a solicitor irrespective of the description of work was subject to taxation by the Court prior to that bill becoming payable by the client. This rule of equity found general application when given legislative effect, first in the Solicitors Act [1843] [U.K.], an imperial statute, and its equivalent is now to be found at section 22 of the Legal Profession Act which provides:-

> "(1) An attorney shall not be entitled to commence any suit for the recovery of any fees for any legal business done by him until the expiration of one month after he has served on the party to be charged a bill of those fees, the bill either being signed by the attorney (or in the case of a partnership by any one of the partners either in his own name or in the name of the partnership) or being enclosed in or accompanied by a letter signed in like manner referring to the bill:
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> Provided that if there is probable cause for believing that the party chargeable with the fees is about to leave Jamaica, or to become bankrupt, or compound with his creditors or to do any act which would tend to prevent or delay the attorney obtaining payment, the Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the attorney be at liberty to commence an action to recover his fees and may order those fees to be taxed.
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> (2) Subject to the provisions of this Part, any party chargeable with an attorney's bill of fees may refer it to the taxing officer for taxation within one month after the date on which the bill was served on him.
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> (3) If application is not made within the period of one month aforesaid a reference for taxation may be ordered by the Court either on the application of the attorney or on the

> application of the party chargeable with the fees, and may be ordered with such directions and subject to such conditions as the Court thinks fit..."

13. Section 23 of the Legal Profession Act defines the taxing officer as being the Registrar of the Supreme Court or such other person as prescribed by rules of the Court. Further, by section 27 (2) of the Act, if either party is dissatisfied with the decision of the taxing officer he may within twenty-one days of the decision apply to the Court for a review and the Court is entitled to vary or confirm the decision as the Court considers fair and reasonable. Subject to any rules of court, the determination of the taxing officer or the Court is deemed final and conclusive as to the amount due:- see section 27 (3).

14. The phrase fair and reasonable which is used in section 27 (2) in reference to an attorneys fee is again underscored by Canon IV (f) of the Legal Profession (Canons of Professional Ethics) Rules (1978), which is made under the Legal Profession Act by the General Legal Council and which declares in relation to the charging of attorneys fees:-

> "The fees that an attorney may charge shall be fair and reasonable and in determining the fairness and reasonableness of the fees any of the following factors may be taken into account:-
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> (i) the time and labour required, the novelty and difficulty of the questions involved and the skill required to perform the legal service properly;
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> (ii) the likelihood that the acceptance of the particular employment will preclude other employment by the

Attorney;

(iii) the fee customarily charged in the locality for similar legal services;

(iv) the amount, if any, involved;

(v) the time limitations imposed by the client or by the circumstances;

(vi) the nature and length of the professional relationship with the client;

(vii) the experience, reputation and ability of the Attorney concerned;

(viii) whether the fee is fixed or contingent;

(ix) any scale of fees or recommended guide as to charges prescribed by the Incorporated Law Society of Jamaica, the Bar Association, the Northern Jamaica Law Society or any other body approved by the General Legal Council for the purpose of prescribing fees."

The factors which are identified by Canon IV (f) would be the factors which would undoubtedly be taken into account by a taxing officer in determining the fairness and reasonableness of a fee.

15. It is noteworthy that, a breach of Canon IV (f), that is to say, the conduct of an attorney in charging a fee which is unreasonable or unfair is not declared to be an act of professional misconduct. This appears to reflect the position declared in the judgement of the Jamaican Supreme Court in **Anderson v Watson (1876) Vol. 2 STPH 1797**, where it was held that the client was adequately protected from excessive charges by a solicitor by virtue of the client's right on demand to have such charges disallowed by the Court on a taxation. Excessive charges would only constitute

professional misconduct in exceptional circumstances where the client is able to prove wilful fraud on the part of the attorney in laying the bill.

16. As to the proper measure to be allowed on a taxation not governed by a fixed scale, the leading case is **Simpsons Motor Sales (London) Ltd. v Hendon Corporation [1964] 3 All E.R. 833**, which concerned counsel's fees. At the successful outcome of proceedings which went to the House of Lords, the defendant corporation sought to tax a bill for the fees of its leading counsel which included brief fees more than 100 guineas in excess of what the unsuccessful plaintiff had been charged by its own counsel. At the taxation, the plaintiff's objection was dismissed. Pennycuick J., in reviewing the taxing master's decision held that the fee paid by the opposing party was not a proper yardstick, rather the proper measure was to estimate what fee a hypothetical counsel, capable of conducting the case effectively, but unable or unwilling to insist on the high fees sometimes demanded by counsel of pre-eminent reputation, would be content to take on the brief. There was no precise standard of measurement and the taxing master or the judge must use their knowledge and experience to determine a proper figure. In that case, the judge concluded that the case could only have been conducted effectively by leading counsel of high calibre and the fees charged were not higher than what was expected from leading counsel competent to conduct the particular case.

17. In the case of **Johnson v Reed Corrugated Cases Ltd. [1992] 1 All E.R. 169**, in reviewing a taxing master's certificate

as to a solicitor's fee, Evans J., emphasized that the process of taxation was not an exact science, nor was it to be approached as an accounting exercise. Rather, it was a process dependent upon the taxing master's general knowledge and experience of local conditions, which the learned judge described at page 183 b as being "the only firm basis for reliable and consistent taxation". The learned judge identified the proper measure as being the average cost of an average solicitor in the relevant area at the relevant time. In effect, relying upon his knowledge and experience, the taxing master must determine a base cost to which would be added a mark-up or uplift to give a fair profit return based upon an assessment of factors, such as, complexity and the degree of special attention and responsibility required in the particular case. The judge explained his approach to mark-up at page 184 g as follows:-

> "I approach the assessment on the following basis. I am advised that the range for normal, i.e. non-exceptional, cases starts at 50%, which the registrar regarded rightly in my view, as an appropriate figure for 'run-of-the-mill' cases. The figure increases above 50% so as to reflect a number of possible factors - including the complexity of the case, any particular need for special attention to be paid to it and any additional responsibilities which the solicitor may have undertaken towards the client, and others, depending on the circumstances - but only a small percentage of accident cases results in an allowance over 70%. To justify a figure of 100% or even one closely approaching 100% there must be some factor or combination of factors which mean that the case approaches the exceptional. A figure above 100% would seem to be appropriate only when the individual case, or cases of the particular kind, can properly be regarded as exceptional,

> and such cases will be rare. I am aware that the figures cannot be precise, but equally in my view the need for consistency and fairness means that some limits, however elastic, should be recognised."

18. The learned judge also dealt with the question of inflation at page 178 as he noted that it was the invariable experience that the costs recovered at taxation were incurred sometimes long before the year in which they fell to be assessed with payment given even longer after the event. However this, in his view, did not warrant a departure from the rule that costs must be assessed at the rate in existence at the date when such costs were incurred. No allowance could be made for inflation occurring between the date when the costs were incurred and the date of taxation. The attorney wishing to guard against inflation could only do so by requesting interim payments sufficient to cover his costs when incurred; the client's only protection was the interest received on his award of costs which runs from the date of judgement.

19. Finally, Evans J., also explained that on a party and party taxation, it was not the court's function to use the process of taxation to influence a solicitor into charging the client less. The learned judge stated at page 193 J:-

> "I wish to add, for the avoidance of doubt, that I do not support the idea that part of the court's functions on an inter-party taxation is to discipline solicitors into charging less than they have done, or to regulate the amount of their charges to their clients. The court is not concerned with charges, only with costs; it is not concerned with any market, except indirectly, certainly not to influence any market. Its function, as

> ORD. 62 R 12 requires, is to assess the reasonable amount of costs for work reasonably done; that, and nothing else."

20. An important distinction is to be drawn between the basis upon which a bill is taxed between party and party, as opposed to a taxation between attorney and client. In relation to a bill between attorney and client, we have already seen that section 27 of the Legal Profession Act and Canon IV (f) made thereunder have reference to a test of what is fair and reasonable and this is consistent with English rules of practice and particularly, the 1959 English Supreme Court Costs Rules, which are rules of practice still applied in Jamaica as no local rules of practice governing taxation have been enacted. The English rules therefore continue to be applicable pursuant to section 686 of the Judicature (Civil Procedure Code) Act.

21. By Order 29 (1) of the English Rules, it is declared that on taxation of a solicitor's bill to his own client all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred. On the other hand in respect to party and party taxation, Order 28 (2) provides:-

> "Subject to the following provisions of this rule, costs to which this rule applies should be taxed on a party and party basis, and on a taxation on that basis there shall be allowed all such costs as were <u>necessary or proper</u> for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed."

22. The essential difference therefore between what the successful litigant recovers, and the amount recoverable by the attorney from the client is a difference between the two standards,

the one being a determination of what is proper and necessary for the conduct of the litigation, and no more, as compared to what is reasonable. In the case of **Pecheries Ostendaises v Merchants Marine Ins. [1928] 1KB at 762**, Atkin LJ thought there was no difference between the two standards in holding that the word 'proper' meant the same as reasonably incurred. In the later case of **Francis v Francis & Dickerson [1955] 3 All E.R. at 840**, Sachs J, expressed the correct test as to whether costs were proper as follows:-

> "When considering whether or not an item in a bill is 'proper' the correct viewpoint to be adopted by a taxing officer is that of a sensible solicitor sitting in his chair and considering what in the light of his then knowledge is reasonable in the interests of his lay client...It is wrong for a taxing officer to adopt an attitude akin to a revenue official called on to apply vigorously one of those Income Tax Act rules as to expenses which have been judiciously described as 'jealously restricted' and 'notoriously rigid and narrow in their operation'. I should add that, as previously indicated, the lay client in question should be deemed a man of means adequate to bear the expense of the litigation out of his own pocket - and by 'adequate' I mean neither 'barely adequate' nor 'super-abundant'."

23. In any event, at the inception, it was not envisioned that an application of the two standards of taxation would result in an appreciable difference between the amount recoverable by the successful litigant as compared to the amount recoverable from the client by a solicitor. Thus, in **Doe v Filliter (1844) 3 M & W at 51**, Pollock CB was able to speak confidently in relation to the costs recoverable by a successful party to litigation that:-

> "The taxed costs are a fair indemnity; and if they are not so, the rules which govern taxation ought to be altered."

Within the space of twenty-five years, Blackburn J in **Wren v Weild (1869) LR 4 Q.B. at 736** was less confident when he described the principle that an aggrieved party had an adequate remedy in his judgement for costs as being artificial. One hundred years later in **Berry v British Transport Comm. (1961) 3 All E.R. at p. 72**, Devlin L.J., described any notion that the taxed party and party costs approximated to the costs reasonably incurred as being a legal fiction, though he thought that the public interest was served by requiring a litigant to exercise austerity. According to Devlin L.J:-

> "It helps to keep down extravagance in litigation and that is a benefit to all those who have resort to the law."

24. There is no doubt that the legal fiction that costs recoverable by the litigant from the opposing party bears some relationship to the reasonable costs payable to the attorney has been caused the use of scales of fees. The current gazetted Rules Committee scales for work in the Supreme Court other than for counsel's work was last revised in 1991 (PRR 38B/1991) and that scale is based on an hourly rate of **$400.00**, which I daresay is now less than the hourly rate quoted by most technicians who service the equipment in the attorneys' office. The gazetted scale confers little, if any, discretion upon the taxing officer to give a mark-up as it provides, inter alia, as explanatory note H to the scale:-

> "In all cases the costs listed above shall be the costs allowed on taxation between party

> and party as well as between attorney-at-law and client except varied by agreement in writing."

Most attorneys would act prudently by making an agreement with the client which is more favourable than the scale. However, on a party and party taxation, the client would in effect recover from the opposing party costs at scale which is but a fraction of the true cost incurred.

25. In focusing upon the problem which has been created by the use of fee scales for work in the Supreme Court, one should not readily go to the extreme position of advocating abandonment of all scales and the repeal of the gazetted scale made under the Judicature (Rules of Court) Act, as it must also be recognized that the scale nevertheless serves the useful purpose of being a guide to the taxing officer, to the legal profession and to the public as to the rates which are to be considered reasonable. In United Kingdom, a scale of basic costs for uncontested claims for debt and liquidated damages continues to be found in the 1993 Supreme Court Practice Ord. 62/A3. There is also a basic scale of counsel's fees for interlocutory work done in personal injury and running down cases to be found in Ord. 62/A2.

26. The problem which is experienced in Jamaica results from the failure on the part of the Rules Committee to regularly update the scale so that what was a respectable hourly fee for instructing attorney in 1991 when the gazetted scale was last revised is now wholly out of line with current costs. Such a problem would not be as chronic in the United Kingdom where the practice is to update

the rules governing Supreme Court practice annually. The process of regular updating and review has led to simplication of the English rules of practice; something long overdue in Jamaica where even the forms still in use are archaic and unduly complicated. Abandonment of the use of folios as the measure fixed in the gazetted scale for calculating the costs to be allowed for the preparation of documents is, in my opinion, long overdue. Regular review of the amounts stipulated in the scale to keep pace with inflation accompanied by simplication of the rules and recommended forms would have the most desirable effect of lessening the time and effort expended in preparing and taxing a bill, while giving a more meaningful award to the client and the attorney.

27. Wholesale abandonment of the gazetted scales of fees made under the Judicature (Rules of Court) Act might lead to a much more serious problem of overcharging in circumstances where the taxing officer would not have any objective guidance from any responsible body having input from the profession as to the quantum of fees which are to be considered reasonable. A taxing officer may be required to review an attorney's bill for work of a type not within the taxing officer's experience, and in the absence of agreement or evidence, the taxing officer would have no idea what are to be considered reasonable charges. The Committee of the Jamaican Bar Association which recommended abandonment of the Bar Association's scale of charges had regard to this very real problem for in such circumstances, the right to have the attorney's bill taxed would be no real protection to either the attorney or the client, left

to the mercy of the taxing officer, who, bereft of guidance, would be taking a subjective decision as to the fee to be allowed. The process of taxation then becomes a matter of arbitrary private opinion, rather than one of consistent reason and justice.

28. The Committee which examined the impact of the Fair Competition Act advised that, it might be necessary to modify the Legal Profession Act and the Canons if the publication of the Jamaican Bar Association scale of charges were to be discontinued. The Committee indicated that there may be need to formulate a canon imposing a positive duty upon the attorney to advise proposed clients, in writing, as to the basis for charging for work to be done, and to obtain the client's written agreement to same, if possible. The Committee was not in favour of making the breach of such a canon a disciplinary offence, having regard to the client's existing right to insist upon taxation of the attorney's bill.

29. In the United Kingdom, the problem was dealt with by rules of a different nature. Up to the year 1972, non-contentious solicitor's work such as conveyancing, leases and mortgages were also governed by a fixed scale of charges first made in 1883 and known as the Solicitors Remuneration Order, which was continued under the Solicitors Act [U.K.] [1957]. This scale was determined by a committee which included the Lord Chancellor, the Chief Justice, the Master of the Rolls and the President of the Law Society. In 1972, a new Solicitors Remuneration Order came into effect, which abandoned the fixed scale of charges and in wording which has some similarity to Canon IV (f), it was declared by Rule

2 of the Order that a solicitor's remuneration for non-contentious business should be such sum as was fair and reasonable, having regard to all the circumstances and in particular, the following:-

> "(i) The complexity of the matter or the difficulty or novelty of the question raised;
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> (ii) the skill, labour, specialized knowledge and responsibility involved;
> (iii) the time spent on the business;
> (iv) the number and importance of the documents prepared or perused without regard to length;
> (v) the place where and the circumstances in which the business or any part thereof is transacted;
> (vi) the amount or value of any money or property involved;
> (vii) whether any land involved is registered land within the meaning of the Land Registration Act 1925; and
> (viii) the importance of the matter to the client."

30. Rule 2 contains nothing which was particularly new or innovative. However, Rule 3 of the aforesaid Order gave the client a new right to have the attorney submit his bill to the Law Society for certification that the bill was reasonable, in addition to the right to have the bill taxed. Rule 3 of the aforesaid Order provides:-

> "(1) Without prejudice to the provisions of sections 69, 70 and 71 of the Solicitors Act 1974 (which relate to taxation of costs) the client may require the solicitor to obtain a certificate from the Law Society stating that in their opinion the sum charged is fair and reasonable or, as the case may be, what other sum would be fair and reasonable, and in the absence of taxation the sum stated in the certificate, if less than that charged, shall be the sum payable by the client.
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> (2) Before the solicitor brings proceedings to recover costs on a bill for non-contentious

business he must, unless the costs have been taxed, have informed the client in writing-

(i) of his right under paragraph (1) of this article to require the solicitor to obtain a certificate from The Law Society, and

(ii) of the provisions of the Solicitors Act 1974 relating to taxation of costs.

(3) The client shall not be entitled to require the solicitor to obtain a certificate from The Law Society under paragraph (1) of this article-

(i) after the expiry of one month from the date on which the client was given the information required by paragraph (2) of this article;

(ii) after a bill has been delivered and paid; or

(iii) after the High Court has ordered the bill to be taxed."

31. The process introduced by the 1972 English Order, giving the client the right to insist on certification of a solicitor's bill prior to taxation, also serves the useful purpose of giving guidance to the legal practitioner, the client and indeed, to the taxing officer in the event of the bill being subjected to taxation and is in any event a useful method for resolving disputes concerning attorneys' charges. Notwithstanding the abandonment of the Jamaican Bar Association's scales of fees, the Association should play a similar role of giving such guidance and assistance. Rule 3 (2) should also be emphasized because it imposes a duty to inform the client of these rights. This obligation to inform the client is an important substantive right for the Jamaican experience reveals that most clients who are dissatisfied with the charges made by an attorney remain ignorant of the right to demand

taxation and therefore resort is not usually had to this fundamental safeguard.

32. Simply to abandon the use of all scales without the substitution of rules to safeguard the public from overcharging is not in the interest of either the public or the profession. Resort to taxation has not proven to be adequate protection. In casual conversation with a businessman, I was recently informed that the usual fee now charged by the profession for conveyancing was 1.5% of value. This is to be compared with the Bar Association's last recommended scale abandoned in 1993 which was .75%. The Association was compelled by the Fair Competition Act to abandon its scale, yet one must still ponder upon the question - in whose interest.

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