

The Bar on barristers' cancellation fees.

Dear Ed,

Your note in the June edition of *Balance* and Hugh Bradley's letter in the July/August issue refer to observations by Mr Justice Wilcox concerning cancellation fees.

His Honour's comments refer back to when he practiced at the bar — a time when the "fee on brief" system operated, often with some unfairness to the client due to the fact that the fee was payable irrespective of whether or not the matter was settled, cancelled or adjourned.

As Hugh Bradley observed, many counsel, particularly from this Bar, now charge on a time basis.

This move properly rewards counsel for work actually done, and ensures that the client only pays what is fair. Indeed the fee on brief system no longer applies in regard to local counsel.

Your readers' attention is directed to the *Master's Guidelines to Taxation of Costs*, in force since May 1988 — see *Supreme Court Almanac 1990* pp56-60.

The Guidelines deal specifically with daily fees (paras 5 & 6) and settlement before or during trial (page 10).

Counsel are encouraged to negotiate the full terms of their engagement at the time of accepting their brief.

Likewise, the instructing solicitor should satisfy himself that the terms are agreed, failing which confusion may arise.

Indeed some agreements allow for a cancellation/settlement/adjournment fee of a percentage of the daily fee, which "cancellation fee" is payable only to the extent that counsel is not otherwise able to earn the agreed daily fee on the day(s) lost.

In other words, if counsel is able to obtain another brief for those days, at his normal rate, no cancellation fee is payable.

To avoid unnecessary loss to the client (and/or counsel) a solicitor should:

(a) advise counsel of a settlement, adjournment, and indeed of the likelihood of that occurring, as early as possible to enable counsel to accept another brief for that day; and

(b) ensure that the matter is indeed ready for trial on the appointed day to avoid the matter having to be adjourned because of some interlocutory (or similar) problem such as inadequate discovery, late service of subpoenas or deficient pleadings.

As stressed on numerous occasions, the Northern Territory local counsel are willing, indeed anxious, to negotiate not only the quantum of their fees but also the other terms associated with their retainer.

Unlike the situation with some of the interstate Bars, fees are negotiated with counsel direct, not with the Clerk of Chambers.

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