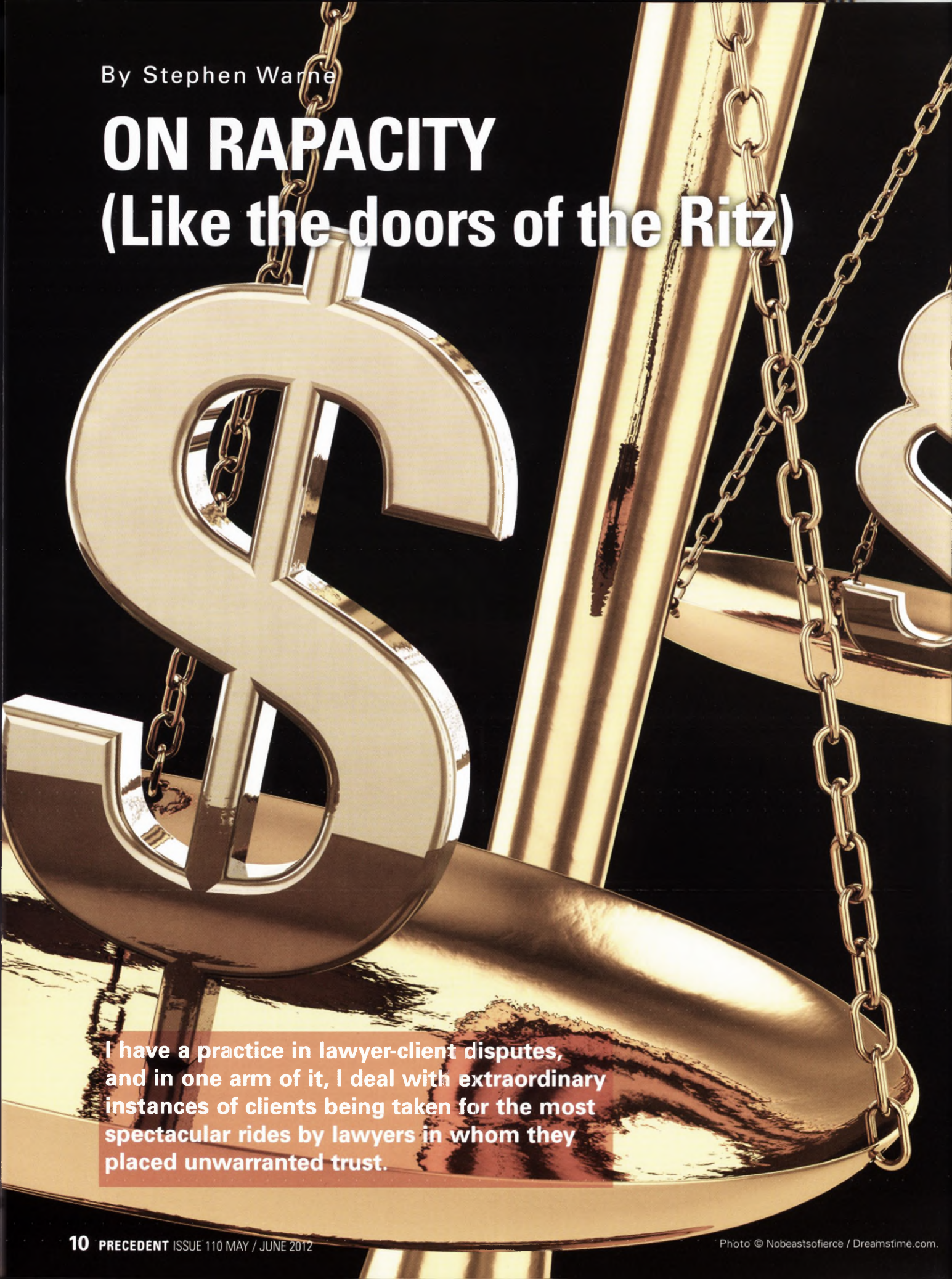
By Stephen Warne

ON RAPACITY (Like the doors of the Ritz)



I have a practice in lawyer-client disputes, and in one arm of it, I deal with extraordinary instances of clients being taken for the most spectacular rides by lawyers in whom they placed unwarranted trust.

As clients sit across my desk, I often wonder how they could have let themselves be ravished so by these Svengalis. These clients are not idiots, and the lawyers' conduct generally appears to me to be their *modus operandi*, the product of years of unchecked rapacity.

One of the relatively recent Roche brothers cases gave us the celebrated example of two units of six-minutes (or part thereof) being charged for a 'paralegal' wrapping a box of chocolates; and two more units for 'discussing arrangements for the purchase of the gift' for a doctor who gave a report in respect of the client. The client was billed $156 for that work.[1]

More recently, the wheels of justice have been grinding particularly slowly for the 100 or more former clients of Keddies who allege that they were overcharged. Keddies was until recently a leading NSW personal injuries plaintiff's firm. An idea of its size and success may be gleaned from the fact that, after the allegations of overcharging became public, it was able to be sold for $35 million. One of its partners was vice-president of the NSW Law Society. A couple of cases have scraped through to judgment:

- Mr Liu's case revealed what appears to be fraud on the part of the persons responsible for the bill in question. Work done by secretaries was represented as having been done by a partner and charged accordingly, at $460 per hour. One hour of a partner's time was charged for filling the client's name in on the costs agreement, a charge which should never have been made at all. The client was charged $161 (18 minutes of a partner's time) for reading an administrative one-word email. Extreme examples, sure, but I can assure you that not too far back along the continuum of time-charging abuses, less extreme examples abound.[2]
- Mr Bazdarov's case was for medical negligence, and was settled for $450,000 on the first day of trial. Keddies subtracted its charges of $290,325, including $154,929 for its own work, from the settlement sum, an overcharge of more than $155,000. And that was after the firm knocked off $30,000 on a 'but to you say' basis out of the goodness of its heart. The trial judge allowed professional costs of $60,000, the upper limit of an expert's opinion that between $40,000 and $60,000 was fair and reasonable. But for the kind gesture in reducing fees by $30,000, the discrepancy between what was billed for its own work and the fair and reasonable charge for that work would have been about $125,000. Junior and senior counsel were briefed after the initial client conference; the solicitor, but not junior counsel, considered the matter complex. Statement-taking was delegated to an external agency. Both counsel charged for five days of trial, despite the fact that it settled on day one. The firm could offer no explanation for $1,794 worth of charges, its claim to which it abandoned upon filing its defence. It could not explain, for example, how a cheque could be perused for 18 minutes. It withdrew its claim for charges of $9,770, being the difference between its charges according to the costs agreement and its charges following a unilateral increase in rates mid-retainer. Otherwise, Keddies denied overcharging and ran, and lost, the case. The client, whose testicle had been amputated, was dying of lung cancer at the time, and gave evidence while 'very ill' and 'wearing a breathing device and with the assistance of morphine medication'.[3]

At the time of writing, 23 claims have been settled. The total of damages agreed or ordered to be paid by Keddies to former clients totalled $3.4 million at the time of writing,[4] and NSW's Administrative Decisions Tribunal has reserved on the question of penalty in the sole disciplinary prosecution of a single Keddies partner and an employee solicitor. That prosecution relates to the admitted overcharging of more than $200,000 in an $800,000 plus bill. Significantly, more than $85,000 was charged for work not contemplated by the costs agreement. The victim, Ms Meng, was a paraplegic whom Keddies assisted in seeking compensation in a claim in which liability was admitted.[5]

I was asked to contribute a piece for this legal practice-oriented issue of *Precedent*. My own experiences, and the public interest generated by the Keddies saga, have generated sufficient indignation to prompt me to write exclusively on rapacity, one of the seven deadly sins. There is no professional obligation not to be rapacious. But there is an obligation of honesty, and though equity generally does not treat reasonable professional remuneration as a benefit such as to give rise to a conflict between duty and self- >>

interest, remuneration calculated on a basis more generous than scale is not regarded as 'reasonable remuneration' for the purposes of this rule.[6] Probably the least observed professional obligation is that of giving fastidious advice to a client contemplating entering into a time-based costs agreement so as to ensure they are not entering into the agreement under any undue influence. And there are, of course, many professional obligations which rapacity directly undermines, such as the obligation not to take on work you do not have the time to do, or for which you are not competent, and not to charge for learning the law in a new area.

Even making due allowance for the skewed perspective my particular practice brings, I feel that rapacity in the form of overcharging is rife;[7] that outside of judges' extra-judicial speeches, there is little serious discussion of it; that it is not recognised within legal ethics circles as the great legal ethics issue; and that in not enforcing the obligation not to overcharge and to comply with costs disclosure obligations, the complaints investigation and disciplinary systems are a joke. Costs lawyers know all this well, but many charge a pretty penny themselves, keep their arcane law shrouded in mystery, and can be shy of biting the hand that feeds them.

The Australian Lawyers Alliance is focused on the legal experience of individuals. It is this class of consumers of lawyers' services in civil litigation – the *ad hoc* individual and small business non-institutional purchaser of litigation services, often in times of crisis or misfortune – which is at the forefront of my mind when I say overcharging is rife. Criminal lawyers and a large swathe of lawyers at the wide bottom of the legal remuneration pyramid more often charge reasonably and earn far less than the public might expect, including large swathes of the Bar. The market probably works quite well for the very top end of the profession where even high fees probably represent fair value for excellence. In fact, institutional clients are successful at negotiating rates that represent comparatively good value, and there is a somewhat efficient market for their work. But in between is a band of the poor, the mediocre and the merely good, who charge all too frequently like wounded bulls when the opportunity presents itself. Such practices are unduly tolerated, degrading the whole profession in the process.

> Unchecked, legal rapacity eats away at access to justice. It's the hallmark of a profession out of touch with the real world, full of delusions of grandeur.

This is not a new problem, but it is probably one that is getting worse. It was said in 1648 of civil proceedings that 'The remedy is worse than the disease … A man must spend £10 to recover £5.'[8] The quip 'the law is open to all, like the doors of the Ritz' is thought to have been made by Lord Darling about a century ago. He finished his career on the Privy Council, and was a conservative who rode to court in a silk top hat accompanied by a liveried groom, so the fact that he was offended by the subject matter of his quip is instructive.

INSTITUTIONAL RAPACITY

Unchecked, rapacity in lawyers eats away at access to justice. Rapacity fulfilled begets a profession out of touch with the real world, filled with delusions of grandeur.

There is an institutional rapacity in the sense that what is charged by lawyers is out of whack with what others in society charge. Especially when considered from the proper perspective – that the affordability of legal fees, at least for a core set of services, is an essential public good, much more so than, say, access to accounting services. Delays occasioned by taking on too much work, fuelled by rapacity,

are tolerated. There is a want of what would be appropriate fury about the complexity, uncertainty and non-uniformity of the law, which necessitates the involvement of the terribly clever at rates appropriate for the terribly clever. There is a staggering failure of imagination in dealing with the unrepresented, who are routinely identified as 'the problem' rather than the institutional barriers to their participation in the justice system which increasingly swell their ranks.

Though rarely articulated, I am convinced that rapacity is also what generates such a poor perception of the profession, as well as being the force that eats out its heart and leaves it as one of the least happy. Depression is fuelled in some by a failure to make the kind of money the big boys command, and I have no doubt that young lawyers often leave the law because of the difficulty in resolving the tension between the self-horror at the absurd charges rendered for their work by and for the benefit of their bosses, and their own rapacity which causes them to write the time to exceed budget in the first place.[9]

Given the high starting point for legal charges, it is reasonable to expect lawyers to approach the application of high hourly rates with restraint. There is, in fact, high authority for this proposition. Queensland's Chief Justice de Jersey said in *Council of the Queensland Law Society Inc v Roche*:

> 'The legal profession must realise that to maintain its perceived professionalism, its practices must be seen as those appropriate to a profession, and not those of a run-of-the-mill commercial enterprise. There is, in short, a large role for discretion and conservative moderation, characteristics not evident in this unfortunate case.'[10]

In 2004, Chief Justice Spigelman said, rather optimistically, that 'The control [on the tyranny of the billable hour] is of course, the practitioner's sense of professional responsibility.'[11]

ACCESS TO JUSTICE PARALYSIS

Judges, the third arm of government, and with direct supervisory jurisdiction over the profession, wring their hands in horror in extra-judicial speeches to other lawyers,[12] but fail to deal with the problem.

Report after report on civil justice tinkers around the edges of the civil justice problem. They suggest emasculating discovery entitlements rather than properly policing their abuse. They enthuse about substituting what it is becoming correct, Newspeak-like, to call 'appropriate dispute resolution' for what I suggest the citizen wants – fast, affordable, neutral, predictable and consistent judicial determination, or a compromise based on a skilled forecast of what that determination is likely to be.[13]

Many years as a professional negligence lawyer concentrating on lawyers' negligence has taught me that when mediation becomes the near-universal method of determining civil complaints, it can be a dark and murky place. Legal incompetence can be glossed over without much fear of being revealed,[14] and dishonesty comes more easily,[15] far from the disinfectant glare of judicial scrutiny, either at trial or – by virtue of the breadth of advocates' immunity – in a professional negligence suit. And far from the win-win, low-cost rhetoric of the amply paid alternative dispute resolution industry, very often it is the crushing cost of litigation – the inaccessibility of justice itself – which is used like a jackhammer by mediators without shame to bludgeon the virtuous protagonist into accepting secret deals. These are often negotiated privately between lawyers in the absence of their clients, with no distinction made between compensation and legal costs, representing some fraction of their never particularly well-ascertained loss, under cover of a denial of liability, the parties never having had an opportunity properly to confront, or even know, each other's testimony. For many, that is not justice; it is what you get when trials are unaffordable and lawyers seek to maximise their profits and minimise difficult work. It is the acceptance of hush money as compensation for non-resolution. All the result of how much litigation lawyers charge.

Desultory gross overcharging prosecutions are occasionally brought and fail at a higher rate than other disciplinary prosecutions.[16] My survey of recent gross overcharging prosecutions suggests that disciplinary prosecutions tend to fail unless based on a fee of at least twice what the disciplinary tribunal decides to be the reasonable fee.[17] Nothing less than 'gross overcharging', which is misconduct at common law, generally gives rise to disciplinary charges, even though the statutory definitions of 'professional >>

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misconduct' in the *Legal Profession Acts* specifically include plain old 'charging of excessive legal costs'.[18]

Despite what I estimate to be scores of thousands of infractions against the costs disclosure regimes around Australia each year, and though deliberate breach of the *Legal Profession Acts* is likely to amount to statutory professional misconduct, these breaches never reach disciplinary tribunals, unless they are tacked on as an afterthought in a 'more serious' prosecution. I strongly suspect that they are too often dealt with inappropriately as civil disputes by legal regulators and settled without thought of disciplinary action. At least in Victoria, figures relating to the number of reprimands and cautions administered by the Legal Services Commissioner suggest that few such infractions are even punished in this behind-the-scenes way. Rather, they are 'settled'.

Astonishingly, of the three referrals by the Costs Court between early 2006 and late 2011 to the Victorian Legal Services Commissioner for the investigation of gross overcharging suspected by the Costs Court following taxations, two were investigated and found unlikely to be established in a disciplinary prosecution, and so were dismissed without penalty. And the one that was found likely to be so established was not prosecuted, and no caution or reprimand was administered.

THE NATIONAL PROFESSION LEGISLATION

In 1999, the ALRC recommended that the Law Council should ensure that national model professional practice rules should expressly prohibit the charging of unreasonable fees, and provide guidance as to what is reasonable.[19] The national professional conduct rules promulgated by the Law Council[20] are already in force in some parts of Australia, and by next year the national legislation is likely to be in force in the Northern Territory, Queensland, NSW and Victoria, jurisdictions home to 85 per cent of the nation's solicitors.[21]

The proposed national conduct rules for solicitors do not prohibit the charging of excessive fees. All they say is:

> '12.2 A solicitor must not exercise any undue influence intended to dispose the client to benefit the solicitor in excess of the solicitor's fair remuneration for legal services provided to the client…',

an unnecessary restatement of the judge-made law.

I think that is a pity. The proposed national legislation for regulating the profession might be expected to do the job of making overcharging a disciplinary offence, since breach of the Act is capable of amounting to unsatisfactory conduct or professional misconduct. But no guidance has been provided as to what is 'reasonable'. The unsatisfactory case law, replete with 'I know it when I see it' tests is left to fill the gaps.

Sections 4.3.4 and 4.3.5 of the draft *Legal Profession National Law*[22] say:

> '4.3.4 Legal costs must be fair and reasonable
>
> (1) A law practice must, in charging legal costs, charge costs that are no more than fair and reasonable in all the circumstances and that in particular are:
>
> (a) proportionately and reasonably incurred; and
>
> (b) proportionate and reasonable in amount.
>
> 4.3.5 Avoidance of increased legal costs
>
> A law practice must not act in a way that unnecessarily results in increased legal costs payable by a client, and in particular must act reasonably to avoid unnecessary delay resulting in increased legal costs.'[23]

And s4.3.9 says that failure to comply with disclosure obligations, including an obligation to give a written estimate of total legal costs at the outset, and obligations to revise the estimates as soon as reasonably practicable if things change, voids any costs agreement entered into. This dramatic and unnecessarily draconian change leaves the practitioner to recover on scale following a solicitor-client taxation at his expense with penalties built into it for costs disclosure defaults. The provision providing for referral to disciplinary bodies (s4.3.22) is more exacting than the current version of the provision.

What we see is ever-more draconian regulation aimed at preventing the problem of clients being sucked into litigation without a true appreciation of the costs and costs risks. That is a serious problem, but it leaves unregulated the more fundamental problem – the amounts charged by some lawyers and the nasty, rapacious ways too many go about charging. The most pernicious trick employed by lawyers, of course, is the use of the words 'or part thereof' in costs agreements, which many believe allows them to pretend to charge a mere $550 per hour, but to achieve that fee in six separate attendances of a few seconds each.[24] There is nothing good about billing by units of time which are exclusively rounded up. A client who is charged $500 per hour is entitled to deadly accuracy in time recording, and scrupulous fairness in rounding protocols.

THE FUTURE

There are some causes for optimism. Gradually, some law in relation to time costing is developing. The rule against double-billing has been restated and clarified in *Bechara v Legal Services Commissioner* ('If a solicitor can apply the benefit of his or her work to two clients, he or she should do – indeed must do so – without any expectation of double recovery.')[25] Interesting avenues in misleading and deceptive conduct for challenging lawyers' bills have been opened up in the Keddies litigation.[26] So, for example, in Mr Liu's

case, damages were awarded for a misleading and deceptive representation said to have been inherent in the giving of a bill, namely that the lawyers were legally entitled to the fees charged in the bill.

Lawyers are gradually being taken to task for specific abuses of hourly billing *per se* as opposed only to gross overcharging considered *in globo*.[27] In *Legal Profession Complaints Committee and O'Halloran* [2011] WASAT 95(S), the solicitor was suspended for six months for overcharging, constituted by charging by units of six-minutes or part thereof, only rounding time up, and routinely charging one unit for work which took little time at all, such as reviewing incoming correspondence. Ask yourselves how many colleagues you can think of who charge, or whom you suspect of charging, on that basis.

Most importantly, the Queensland Legal Services Commissioner has published a draft guideline on time-based costing.[28] It provides the missing guidance that the ALRC recommended be given in 1999. It is a punchy document, atypical of the timidity of bureaucracies. For example, it suggests that *Bechara's* rule against double-billing:

- prohibits barristers from charging an appearance fee for a day for a matter over by lunchtime, as well as a fee for other work done, even for another client, in the afternoon; and
- requires a lawyer who charges in six-minute units and who has two attendances with two different clients in the one six-minute block to pro-rate the charge for the work across the two attendances so as not to charge twice for the same time.

Whether or not these principles make it through to the final draft, the fact is that these issues have until recently not even been much recognised in the mainstream as issues.

CONCLUSION

Rapacity is perhaps the least excusable explanation for wrongdoing. I no longer think, as I did for many years, that equity's presumption of undue influence in relation to contracts for remuneration above scale is antiquated. Applied properly by those who know how to do so, scale fees provide what everyone else in the community would regard as generous remuneration. Without scales of costs, the value proposition represented by legal fees is without a reference point. Scales could doubtless be improved, and modernised, and I see that beginning to happen.

When lawyers give estimates and then charge twice or thrice the sum estimated without apology or sanction, the profession suffers infinitely more than when a lawyer acts in the face of a theoretical and prospective conflict of duties, a key fascination of legal ethicists. There is a battery of laws available for penalising mis-estimating and overcharging of legal fees, but somehow they are rarely brought to bear. The profession suffers just as much, though, when the accurately quoted estimate of fees makes a claim for a substantial sum unaffordable or just economically unattractive.

As a profession, we do not embrace the dissuasion of overcharging. Perhaps this is because legislatures have tried to fix the problem by devising regulatory laws which are more and more consumer-oriented, so that in those comparatively rare instances when they are applied by someone competent, minor disclosure defaults can render the recovery of even quite substantial fees uneconomic, giving rise to resentment among lawyers.

It is time for the profession to come together and get the regulation of overcharging right. A new national law is being rolled out, and the Keddies storm suggests, to my mind at least, that outrageous practices had become standard operating procedure, at least in parts of the firm. For some reason, these practices were not identified and denounced by all those lawyers dealing with them, who must have had an insight into how these poor clients were being charged, and the kinds of sums they were being charged. ■

Notes: **1** *Law Society of the ACT v Roche* [2002] ACTSC 104; *Council of the Queensland Law Society Inc v Roche* [2003] QCA 469 (see [16] re the chocolates). **2** *Liu v Barakat*, unreported, District Court of NSW, Curtis J, 8 November 2011, well reported at Richard Ackland's *Justinian*. My case note is here: http://lawyerslawyer.net/2011/11/24/the-keddies-overcharging-civil-case-no-1. **3** *Bazdarov v Barakat*, unreported, Judge Ashford, District Court of NSW, 24 June 2011. The decision was affirmed in *Barakat v Bazdarova* [2012] NSWCA 140. **4** Richard Ackland, 'Keddies Drops Claim to Pay $3.4 million by instalments', *Justinian*, 16 May 2012. **5** See *Justinian's* 'Russell Keddie Admits He Overcharged', 1 May 2012, reproduced here: http://bit.ly/J7hzm5. **6** *Symonds v Raphael* (1998) 148 FLR 171. **7** This article is in the nature of an indignant polemic based on parochial, limited and skewed experience, >>

Though the proposed national legislation for regulating the profession might be thought to make overcharging a disciplinary offence, no guidance has been provided as to what is reasonable other than by irregular case law.

but in an attempt to minimise the hate mail, I point out that an English study of 7,000 firms' fees to insurers found that 24 per cent were unjustified: see David Edwards, 'Wounding the Bull: Costs in A Disciplinary Context', a seminar given on 18 March 2009, reproduced here: http://bit.ly/JilO3w. WA's Chief Justice Martin recently declared that timesheet forgery is running rife in the profession and that nothing is being done about it: see 'Billable Hours Place Profession Under Threat', *Lawyers Weekly*, 19 May 2010, reproduced here: <http://bit.ly/HSYxAc>. **8** Lady Hale, 'Equal Access to Justice in the Big Society', Sir Henry Hodge Memorial Lecture 2011, reproduced here: <http://bit.ly/JuAPtH>. **9** Chief Justice Martin has made a similar point: above, note 7. NSW's Chief Justice Bathurst has taken the mantle from his predecessor Chief Justice Spigelman in warning the profession against hourly billing: see 'Commercialisation of Legal Practice', a speech given on 21 April 2012, reproduced here: http://bit.ly/KWzr7s ('A firm with hundreds of partners and thousands of employees will find it difficult, if not impossible, to assess the "skill, professional quality and worth of peers other than through revenue generation", citing James Allsop, resident of the NSW Court of Appeal, 'Professionalism and Commercialism – Conflict or Harmony in Modern Legal Practice?' (Speech to the Australian Academy of Law 2009 Symposium Series, 5 May 2009)). **10** [2003] QCA 469 at [32]. The other members of the Court agreed at [48] and [59].
11 Chief Justice Spigelman's address on the occasion of the Opening of the Law Term 2004, reproduced here: http://bit.ly/I606Ow, the seminal address bemoaning hourly billing.
12 Michael Pelly, 'Lawyers Lashed Over Civil Justice', *The Australian*, 6 October 2007 (Chief Justice Gleeson) ("A basic problem of access to civil justice is the remorseless mercantilisation of legal practice"); Olivia Collings, 'Chief Justice Calls for Debate on Billable Hour', *ALB Legal News*, 29 October 2010, reproduced here: http://bit.ly/r9SbE5 (Chief Justice French); 'CJ Makes Case Against Timesheets', *Lawyers Weekly*, 17 February 2011, reproduced here: http://bit.ly/oyom8F (QLD's Chief Justice de Jersey); 'Hourly billing for lawyers should end, says top judge', *The Telegraph*, 12 May 2012 reporting comments on Lord Neuberger, Master of the Rolls, reproduced here: http://tgr.ph/katytk.
13 For some rare contradiction of the unblinking orthodoxy of the excellence of alternative dispute resolution, see O Fiss, 'Against Settlement' (1984) 93 *Yale LJ* 1073, and R Ackland, 'Mediation More Pork for Lawyers', *Sydney Morning Herald*, 5 August 2011.
14 A recent example is *Goddard Elliott v Fritsch* [2012] VSC 87, where the husband's lawyers negligently failed to obtain appropriate expert evidence and then, faced with disaster, exaggerated to their client the consequences of evidence working against the husband's credit, leading to a compromise with the wife $1 million short of what would have been awarded at trial. 'Deeply troubled' by the law which bound him, however, the trial judge gave judgment for the defendants by reference to their defence of advocates' immunity. See also my article, 'Compromise of Litigation and Lawyers' Liability' (2002) 10 *Torts Law Journal* 167.
15 *Legal Services Commissioner v Mullins* [2006] LPT 012. My case note is here: <http://bit.ly/HWnwof>. **16** See, for example, *Nikolaidis v Legal Services Commissioner* [2007] NSWCA 130; *Legal Services Commissioner v Galitsky* [2008] NSWADT 48; *Bar Association of NSW v Ward* [2011] NSWADT 33. **17** An exception is *Legal Profession Complaints Committee and O'Halloran* [2011] WASAT 95, where an charge of 130 per cent of the reasonable charge was found to be professional misconduct in the context of several other professional misconduct charges, which involved charges of at least 200 per cent of what was reasonable. According to Richard Ackland's *Justinian*, the NSW Legal Services Commissioner dismissed an overcharging complaint by a Keddies client on the basis that the estimate of the overcharge (70 per cent) was unlikely to result in a conviction because the Administrative Decisions Tribunal had rejected a charge of overcharging to the extent of 63 per cent (no doubt a reference to *Bar Association of NSW v Ward* [2011] NSWADT 33 but that was an unusual case): <http://www.justinian.com.au/news/keddies-latest-trick.html>. **18** *Legal Profession Act* 2006 (ACT) s389; *Legal Profession Act* 2004 (NSW) s498; *Legal Profession Act* 2007 (Qld) s420; *Legal Profession Act* 2007 (Tas) s422; *Legal Profession Act* 2004 (Vic) s4.4.4(b); *Legal Profession Act* 2008 (WA) s404. I grant that in some of the excessive charging cases, the courts have regarded 'excessive charging' and 'gross overcharging' as synonyms, despite the fact that the former may amount to unsatisfactory professional conduct as well as statutory professional misconduct, while 'gross overcharging' was an instance of professional misconduct at common law before statutory misconduct was invented. Such an interpretation may be more difficult under the draft national law, which would provide at s4.3.37 that 'a contravention of a requirement that a law practice must not charge more than fair and reasonable costs is capable of constituting unsatisfactory professional conduct or professional misconduct', since 'fair and reasonable' is probably code for the costs allowable on a taxation.
19 Australian Law Reform Commission, 'Managing Justice: A Review of the Federal Civil Justice System' (Report No. 89), ch. 4, reproduced at <http://bit.ly/I3Zmvh>, recommendation 27.
20 Available at the Law Council of Australia's National Profession Project page, or from this URL: <http://bit.ly/ongAnb>. **21** Attorney-general's media release dated 19 October 2011, 'host state for national legal profession reform announced', reproduced here: http://bit.ly/kxz6ki. **22** The 'Post-COAG draft' dated 31 May 2011, available at the Attorney-General's website's 'National Legal Profession Reform' at: <http://bit.ly/y31pne>. **23** It has been suggested that even in the absence of such a provision, where an hourly rate costs agreement is silent on this point, there is an implied term that the lawyer will perform the retainer efficiently in terms of legal costs: *Michaels v Daley* [2010] VCAT 1205 at [12] per Senior Member Howell. **24** Lest the reader think the statement hyperbole, see *Legal Profession Complaints Committee and O'Halloran* [2011] WASAT 95 at [79], where reading letters for a few seconds inevitably resulted in a charge for six minutes' work at hundreds of dollars an hour. **25** [2010] NSWCA 369 at [140].
26 See my file note referred to above at note 1.
27 See *Liu v Barakat*, above, note 2 and *Legal Profession Complaints Committee and O'Halloran*, above note 24. **28** The document is available here: http://bit.ly/IZFAA6. For the philosophy behind the draft guideline, see John Briton, 'At What Cost Costs?', paper delivered at The Vincents' 49th Annual Queensland Law Society Symposium on 25 March 2011, reproduced here: http://www.lsc.qld.gov.au/home/speeches-and-publications/speeches-and-papers; and Christine Parker and David Ruschena, 'The Pressures of Billable Hours: Lessons From A Survey of Billing Practices Inside Law Firms', reproduced on the same page.

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