IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA } W.S. 82 of 1959 (W.G.)

BETWEEN:

ORAZIO MARIANELLA

Plaintiff

and

CHARLES R. RYLAND

Defendant.

This is a reference to me by the Registrar on certain questions arising in relation to the taxation of costs. It is not in form an appeal from any decision of the Registrar, rather the Registrar seeks guidance as to the standards which he should observe in relation to items in respect of which he has a discretion to exercise under the Rules.

The practitioners have made it clear that they also seek some guidance in this matter, for there is no established practice of the Court which affords appropriate guidance either to practitioners who have to submit bills of costs for taxation or to the Registrar who must tax them. The obvious need for revision of Rules of Practice and Scales of Costs will, I hope, shortly receive the attention that it deserves. I trust that the profession will be in a position to make appropriate representations as to matters which should be taken into account in establishing scales of costs on all types of proceedings, appropriate to the conditions obtaining in the Territory.

In the meantime in matters left to the discretion of the Registrar, I think that the Registrar must be prepared to take a broad view which will look beyond minor inconsistencies and anomalies, so that he can allow items at a rate which will represent a fair remuneration for work actually done. This means in practice that the bill for taxation must itself disclose fully and frankly the time and effort spent by the practitioner in preparing the case for trial.

Some re-statement of principle may be called for. According to professional tradition, qualified practitioners were granted an exclusive right of audience in superior courts, not for the purpose of granting a monopoly to a favoured class but simply to enable the profession to achieve and maintain high standards of integrity and skill.

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The actual quantum of fees charged for professional services is to be regulated according to tradition by competition within a trusted profession of people who subscribe to the established standards. The difficulty in the Territory is that Counsel are not given the traditional exclusive right of audience and the profession is not sufficiently numerous to enable questions of appropriate remuneration to be determined according to competitive standards. The Registrar must therefore be prepared to exercise his discretion as best he can, so that practitioners will not be discouraged from accepting instructions to appear in cases which are to be heard in remote parts of the Territory. In the absence of any established standards here comparisons with scales in force in the various States of the Commonwealth do not provide a precise guide. I have studied the scale of fees normally allowed in New South Wales, which has been provided by the Bar Council of that State. I have not seen scales observed in other States.

Pending further consideration of the matters involved, I propose to suggest to the Registrar that he should regard defended cases where substantial issues of fact are contested, as justifying a Counsel's fee on brief ranging from thirty guineas to forty-five guineas, subject to his discretion to allow a higher fee in exceptional cases.

In cases heard outside Port Moresby, at centres where the practitioner does not maintain an office, or in cases where it is necessary for the practitioner to make a special journey to attend the Court sittings, an additional fee should be allowed. This is the equivalent of a Circuit Fee. In the Territory I think that it would be convenient for this fee to be fixed on a daily basis and that a sum of ten guineas per day should be allowed to Counsel travelling beyond the district in which his office is situated. Distant journeys might justify a slightly higher fee. I think that in addition the Registrar should be prepared to allow expenses actually incurred including fares and hotel and other expenses, to be apportioned on a reasonable footing in case Counsel travels to appear in more than one case. Where Counsel incurs expenses for accommodation an allowance of £4. per day would be reasonable unless some greater expense is actually incurred and vouched for.

In the present case, I think that a brief fee of thirty-six guineas on a taxation as between party and party would be adequate. This fee should carry the normal rate of refreshers. In addition I think that a Circuit Fee at the

rate of ten guineas per day is reasonable, together with any expenses actually incurred, including one-half of the air fares to Lee and return.

The item "Instructions for Brief" is more difficult. The Conference Fee included in this item should be allowed for separately, since it is an item which pertains to Counsel rather than to the instructing Solicitor. On a brief of thirty-six guineas I think that a Conference Fee of five guineas is appropriate.

The remaining items are subject to the amending provisions of the Rules, which provide for an increase at the rate of thirty-three and one-third per cent plus the addition of one hundred per cent. The work represented by the item "Instructions for Brief" is work appropriate to be done by a Solicitor. Preparation for trial subsequently is included in Counsel's fee. The brief itself should reveal the work which has been done and this item can only be allowed according to what has been done in fact.

According to Counsel's estimate six hours' work would adequately cover the item. Allowing this at what may be regarded as a high rate under the old scale of one guinea per hour, the result is six guineas, plus an allowance for general care and attention, the degree of which should also be apparent from the brief. The present case does not involve any difficult questions of law, the main difficulty being that of obtaining instructions from a client whose English was somewhat inadequate. I would think that at the date when the scale was brought into operation, the sum of ten guineas would be regarded as adequate to cover the whole item "Instructions for Brief" subject of course to the subsequent provisions for increase on that item.

Since the contents of the brief have been charged for under the heading of Instructions for Brief, on a basis of time actually occupied in obtaining instructions, there cannot be an additional item for drawing the brief itself, unless the brief includes observations or brief notes useful on the trial. Those items which are charged for in the bill on a time basis under the heading of Instructions for Brief, which were in fact engrossed, should be allowed for as a separate item at the usual rate for engrossment.

In taxing bills of this nature a clear distinction must be observed between work done as Solicitor and work done as Counsel. Whereas Counsel's fees can be allowed as between party and party on an appropriately broad basis of responsibility,

those parts of the bill which represent work done as a Solicitor, must be strictly confined to work which was in fact done and necessarily done and must be assessed according to the appropriate scale. The bill for taxation and the brief which should be delivered to the Registrar with the bill, should present a clear picture of what was in fact necessarily done.

CHIEF JUSTICE.