

# PRECISION MATTERS

Bills reveal more than you think.

Consistency in recording and charging for legal work is a measure of the honesty and consistency of the lawyer and the firm.

Exaggerated times or inaccurate descriptions of work done give a free kick to the client in the credibility stakes.

A bill of costs can frame a credible defence or undermine it. The defence of a number of claims run in recent years by LPLC has been aided by precise file notes backed by consistent bills of costs.

## The good

In one claim, the lawyer was in the witness box being cross-examined about instructions received on a commercial file many years earlier. The lawyer's credibility was seriously in issue.

The aggrieved client had no written records of his own but claimed to have a robust memory of the detail in his instructions. But the lawyer's cross-examiner had nowhere to go with a bill that corresponded in precise detail with the start and stop times and the subject matter covered in the lawyer's file notes.

The inference was undeniable – this lawyer was an honest and meticulous practitioner and an entirely reliable witness.

## The bad

Conversely, sloppy billing practices can cause headaches for the defence of a claim that otherwise has real merit. In one case, discrepancies about dates in a bill of costs hindered the defence of a claim.

The client was dissatisfied with the settlement of a partnership dispute. On affidavit and at trial he swore that the retainer started on an earlier date than his lawyer claimed.

They had different versions of the scope of the retainer as well. The timing of the retainer was relevant to instructions on a crucial step in proceedings.

Despite good file notes by the lawyer, the bill of costs inexplicably covered an earlier date that suited the client's version of events.

Eventually this discrepancy was demonstrated to be an administrative error, but it added expense and difficulty to the trial.

The trial had a happy ending, with a doctored diary entry by the client exposing the client as a witness of something less than the truth.

## Consistency

Detailed bills of costs need to be consistent with the scope of a firm's retainer. The focus of one dispute was the nature of taxation advice given to a client.

The client claimed that no taxation advice was given but this did not accord with a line item in the bill of costs for "taxation advice".

The lawyer claimed to have given cursory advice by telephone to the effect that the tax issue was not relevant. If only the bill had more accurately tallied with the lawyer's version of events.

A lawyer's inclination toward a generous description of the work performed can return to bite in the event of a claim.

The review process should also look at bills rendered by the firm to ensure that the narrative descriptions of work undertaken reflect the agreed scope of services and that the method and quantum of billing accurately reflect the terms of the retainer.

## Keeping the client informed

Good billing practices can go a long way to improving lawyer/client relations.

Some firms have told us that they have noticed a significant reduction in complaints from family law clients after implementing a new billing procedure. While the firms did not ask for payment until after the property settlement was finalised, they sent regular monthly bills to the clients detailing what had been done and charged each month.

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## Suing for costs

Suing a client for unpaid costs is a sure way to land a claim for professional negligence. LPLC has a specific category of claims where this is exactly what happens, especially in litigious and family law matters.

Often clients object to paying the bill because they were not expecting such a large amount and felt that they had not been treated well by the lawyer or the firm or were unhappy with the outcome of the matter.

A costs complaint might appear trifling, but before commencing legal action to recover unpaid accounts, LPLC recommends that an internal review of the relevant file be undertaken by an independent operator to assess any susceptibility the firm may have to a claim.

This had the benefit of educating the clients as to how much each phone call to the lawyer or support staff cost, how the overall costs were accumulating and what was being done on their matter.

The regular communication with the clients helped allay any fears they may have had as to whether their matter was receiving adequate attention and why things appeared to be taking so long – a common complaint by many clients.

At the end of the matter the clients were then less surprised by the bill and felt they had been well looked after along the way. ●

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