

# LEGAL PERSPECTIVE

by John G. Goodwin

## COST OF LEGAL SERVICES IN FAMILY LAW: A CONSUMER'S GUIDE

Article as printed in the Newsletter  
of the Ontario Association for Family  
Mediation, September, 1986.

All of us as professionals in the area of marriage and family breakdown have to deal with the cost of legal services sooner or later. Speaking as a lawyer, it is one of the most troublesome aspects of the practice of family law. Clients rightly ask "How much will it cost?" so that they can make decisions about how they wish to proceed and so that they can budget for the upcoming expense. From the lawyer's point of view it is one of the most difficult questions to answer. In many cases the ultimate cost exceeds the lawyer's reasonable estimate. How does this unhappy circumstance arise and what can we do about it? Here are some tips which may help clients get the most for their legal dollar and also to help them gain a better understanding of how legal fees are arrived at.

What are the factors which determine the cost of legal services in family law cases? Most accounts are based primarily upon the amount of time required for the case and this involves a multiplication of the number of hours times the lawyer's hourly rate. The number of hours required for the case is affected by the following:

- (a) the complexity of the issues;
- (b) the degree of cooperation of the client's spouse;
- (c) the degree of cooperation by the spouse's lawyer;
- (d) the degree of difficulty in obtaining necessary information and documentation from the client and the client's spouse;
- (g) the extent to which outside professional help must be retained to assist the lawyer (i.e. accountants, appraisers, etc.);
- (h) whether circumstances in the client's family change during the course of the lawyer's work which require new effort or a change in the old approach. For example, a serious access problem may arise in the course of the lawyer's work which was unforeseeable at the outset;
- (i) If the matter goes to trial, the number and expense of potential witnesses and the number of issues to be dealt with at trial;
- (j) In many cases the clients are very upset by their family circumstances. If this is not dealt with by the appropriate professional, the client may involve the lawyer in lengthy meetings and telephone calls which don't,

py with the explanation or thinks that the account is too high, then clients have the right, within the legal time limits provided, to have the matter reviewed by a court-appointed assessor. At the assessment, clients can state their positions and ask their lawyer questions and the assessor will consider what reduction, if any, is appropriate. There have been many cases where lawyers' accounts have been reduced and in some cases quite substantially. This applies to accounts whether or not there has been litigation.

strictly speaking, advance a legal resolution of the case.

As you can see, many of the factors listed above cannot be known by the lawyer at the outset of the case and this is what makes the estimation of legal costs so difficult. If lawyers are asked to draft an agreement after *all* the issues have been resolved, it is a fairly straightforward matter and fairly easy to estimate the cost. It is the negotiation or litigation of unresolved issues combined with the factors set out above which can increase the cost dramatically. Neither client nor lawyer could be expected to quantify these factors precisely. How can clients keep legal fees to a minimum and maximize the benefits received? Here are a number of suggestions:

- (a) Ask the lawyer in advance for his hourly rate and the basis upon which the account will be calculated.
- (b) Ask for monthly or bimonthly accounts providing particulars on a daily basis on the services provided. Most lawyers record this on a computer or other record and it should be readily available to the client. Clients should review the accounts upon receipt and should not hesitate to call the lawyer with any questions. If the client feels that a different or less expensive approach might better be taken then he should discuss it with the lawyer as soon as possible.
- (c) Prepare for all meetings and telephone calls with the lawyer so that the time required is kept to a minimum.
- (d) Provide point form memoranda to the lawyer on the various issues to be dealt with. It will save a lot of time ordinarily required for information gathering.
- (e) Keep and produce records (financial, etc.) as requested by the lawyer on a timely basis.
- (f) If the client finds his or her family or personal situation upsetting, professional help should be sought from a counsellor. The law can only deal with part of the problems associated with marriage and family breakdown and if the other matters are not being attended to, it can dramatically increase the legal costs. Clients who are upset tend to require more of their lawyer's time to discuss and re-discuss the case. Also unresolved emotional issues may make it impossible for a client to reach agreement with

- (k) The client's ultimate sanction is to change lawyers and this is entirely appropriate in some cases. Family law problems often take weeks and months to resolve and this places high importance on the personal relationship between the lawyer and the client. Like any relationship, there will be good and bad moments. However, if the client is clearly unhappy then he or she should consider retaining other counsel. One factor to keep in mind is that the new lawyer will require some time to review the file and there will be a certain amount of added expense involved for this purpose.

his or her spouse on relatively simple matters.

- (g) Clients should be aware that they may get the same legal service or information at different prices, depending on whom they involve. For example, if they have a question about the completion of a financial form, the lawyer's secretary may be able to give an answer at no cost. If the lawyer has a law clerk, the client might be able to call the clerk and receive the information at an hourly rate of approximately \$45.00 to \$60.00, or they can call the lawyer and get the same information at a multiple of that rate. Clients should learn to use the less expensive resources available to them through their lawyer's office. Lawyers will often use and recommend this approach but it helps if the client is also aware of these options in advance.
- (h) Pay legal accounts, if possible, when they are due. As with most other businesses, many lawyers are now charging interest on unpaid accounts. Clients will find that most lawyers are flexible about the terms of payment of their accounts and these matters should certainly be discussed with the lawyer.
- (i) Discuss with the lawyer the various options to the resolution of the issues in the case. Unnecessary litigation is one of the most expensive ways of settling family affairs. Mediation is certainly a cost-effective way of resolving many issues if the spouses are able to agree to mediation. This option should be explored at the outset. Assessments in custody and access cases can often short-circuit arguments on these matters and resolve them without an expensive trial. There are many creative options for resolving family disputes and clients should insist that their lawyers explore these and be prepared to discuss them. If the lawyer is not prepared to do this to the client's satisfaction, then the client should seek other advice.
- (i) If clients are unhappy with their legal account, they should speak to the lawyer by telephone or at a meeting. Questions should be answered in reasonable detail. If the client is not hap-

All of us as professionals in the area of marriage and family breakdown wish to provide our clients with the best possible service at a reasonable cost. Together we will have to make better use of the skills and resources available to us. And an increasingly educated consumer will provide us all with an added incentive to do so.

*Mr. Goodwin is a lawyer and mediator in private practice as well as a past president of the O.A.F.M.*