Juniors' fees

For the quantification, then, what shall I do? I am already reeling under the advice of many prophets. There is no Polonius at hand to give me memorable precepts as he did Laertes when he fled the confusion. I shall simply select a figure as Tom Collins selected a day from his diary and we shall see what turns up. Such is life.

Readers who are very old or who practise in the ignoble and second-rate field of industrial law may recognise the above passage from a judgment of Justice Staples, formerly of the Conciliation and Arbitration Commission in *Federated Storemen and Packers' Union v Albany Wool Stores Pty Ltd and Ors* (1979) 231 CAR 388. Decrepit industrial barristers (like our president) will also recall that Staples J was the first and thus far last tribunal member to publicly acknowledge that award wage setting is an intellectually offensive psuedo-science, much like colonic hydrotherapy, feng shui and the assessment of damages. His Honour's candour was rewarded by the abolition of the Arbitration Commission and its reconstitution as the Australian Industrial Relations Commission, sans Staples J.

In *Albany Wool Stores* Jim Staples was asked to fix the wages of wool storemen. Junior barristers are asked to fix their own rates of pay. The judge and the juniors have a problem in common.

A junior seeking guidance about a proposed rate will receive many opinions. They will generally fall into two categories: the rate is far too high; or the rate is far too low. 'The juniors at Banco charge thrice that--people will assume you're not good.'; or 'That's far too high. I can get Andrew Bell for that. And you're not even a doctor.'

Some of the advice is given during the Bar Practice Course. M-, an experienced and highly regarded clerk, came to speak to the nascent readers about rates. She is an adherent of the second view. She suggested that readers should charge $750 for a day in court. 'But M-', no one exclaimed, 'that's ridiculous. A month ago as a solicitor I charged $500 for one hour. And that was before I had the benefit of this life-changing Bar Practice Course'.

M- also suggested that readers charge one third of their normal hourly rate for devilling. This because the silk would do the work in a third of the time and would only charge the client a third of the time. 'But M-', no one pointed out, 'there is an enormous flaw in that logic. It takes me three times as long but the silk is charging the client at three times my normal rate. The effect of your proposed discount is that I am subsidising either the silk or the client. It is a nonsense.'

Perhaps M-, like many clerks, is suffering from a kind of Stockholm syndrome vis-a-vis silks which saps her objectivity. But she is not alone in eschewing rationality when it comes to juniors' fees, prospects and working requirements. Lack of reason is characteristic of discourse in these areas. Cognitive dissonance is common. Consider two familiar refrains:

> I regret that you have come to the bar at a time of severe decline. Everything settles. You will have no work. Financially you will suffer.
>
> You will be perpetually over-worked. You will not see your families for many moons. Cheshire & Fifoot are your only friends now.

One might, stoically, accept a moderate income for a 35 hour working week. Or a 70 hour week with commensurate financial rewards. It is a little more difficult to resign oneself to a future characterised by both overwork *and* financial ruin. Similarly:

> The bar is not what it was. Our work is no longer valued. Clients are forever squeezing us on costs, usually successfully.
>
> The cost of litigation is now astronomical. Lawyers over-charge continually. Millions of dollars are diverted from commerce and the public into the pockets of lawyers. The barristers may not be as bad as the solicitors for overcharging, but they are bad.

One might be able to bear public disapprobrium with the help of, say, a BMW 5-Series; or endure penury comforted by a kind of moral correctness. But to suffer both poverty and public censure seems a little unfair.

So, then, for the quantification, what shall the junior barrister, reeling from the incongruent advice of many prophets, do?

The one true prophecy is this. The junior's rates have little to do with the quality or quantity of work received. Early success is a function of many other factors, some related to capability but most arbitrary; predominantly accidents of timing and the random kindness and cruelty of others. With time, perhaps, ability and cost--or ability relative to cost--become factors. But not so in the early years.

Once that premise is accepted, the answer to the rate-setting question is clear. The junior should determine the top of the range for her level of experience and area of law, and adopt it. It probably will not win briefs; it probably will not cost briefs. If it does cost some briefs, there is the comfort of earning the same money for less work, and there is something to be said for that.

And, of course, Polonious' precepts remain true:

> Give every man thy ear, but few thy voice;

And certainly not thy voice for $750 a day; not once, not ever, no matter what the M-s may say.

Roy Delgado / Cartoonstock

"Remember to bill for the time it takes to bill for the time it takes to bill."

Advocatus replaces the previous column Advocata, following Advocata's retirement.
Practising barristers at the NSW Bar are invited to send an opinion column to the editor, with your name, providing a perspective of practice at the Bar.
Entries that seek to critique existing practice or mores by reference to personal experience will be preferred.
In each edition one selected piece will be published anonymously under the title 'Advocatus'.