The Block System of Costs in Litigation

Notes of an Address to Vancouver Board of Trade by F. G. T. Lucas, Barrister

The expression "costs" is defined generally as being the remuneration of the solicitor for professional work done by him for a client. The whole subject of costs is divided into two main divisions:—

1—Costs in non-Contentious business.
2—Costs in contentious business.

In non-contentious business the expression "costs" truly means the actual remuneration which a solicitor is entitled to charge his client for professional work performed; and by the terms of the Legal Professions Act, no solicitor may bring any action to enforce payment by his client of any costs, that is to say, of any remuneration that he may have claimed to have earned, until he has first delivered to his client a bill thereof, subscribed by his hand.

Costs in contentious matters is not intended to be the remuneration to a solicitor for professioinal services rendered, but is intended as an indemnity to be paid by the losing party in litigation to the winning party. The amount of this indemnity, the terms thereof and the conditions under which it is taxable and payable are governed by the Rules of Court.

The relation between solicitor and client is that the client is under obligation to pay the solicitor proper remuneration for his work, whether it is non-contentious business or contentious business; but when the business is contentious, and results in an action at law, then he is entitled to be indemnified by the party unsuccessfully opposing such action.

It is the unqualified opinion of certain eminent members of the Bar that this indemnity should be a full and complete indemnity.

In our practise in British Columbia, however, it has not turned out so, and I understand that this condition prevails in England, that is to say, there are many things that may be required to be done by the solicitor preparing a case for trial which cannot be taxed against the losing party in the event of success. For instance: an extended period of preparation by solicitor or counsel on a technical subject; the bringing of an expert witness to the trial, and the total fees payable to him, and such like instances. The reason for this is that our tariff of costs, upon which the winning party prepares his bill, is a set and rigid tariff of 230 items and no party may tax against another party for any work not included in one or other of the said 230 items.

Our present system also fails to be a complete indemnity for the reason that in many of the important items, for instance the fee to be allowed for the instructions for brief on the trial, it is left to the discretion of the taxing officer with a reference to a Judge in Chambers by any person dissatisfied.

In many ways, our practice under this tariff has been unsatisfactory in British Columbia and several very eminent lawyers in this province have from time to time advocated the doing away with the tariff altogether and adopting of the system which prevails in many of the United States of America, namely that there should be no indemnity, but that the winning party shall be entitled only to his actual out-of-pocket disbursements, for witness fees, Court fees, etc., which in an ordinary action would not amount to more than thirty of forty dollars.

In addition to giving dissatisfaction to members of the profession, this system of costs has received great criticisms on the part of our citizens; and from time to time serious strictures have been issued from our Bench on the subject of exorbitant bills of costs so called, in particular cases.

The most serious criticism to my mind seems to be that we have, as a profession, failed to recognize the changing conditions of our time, failed to recognize the imperative demands of our public for simplification in the matter of the practice of the law and in particular, serious complaints on the part of those responsible men of our business community who would seek to avail themselves of the processes of the law in order to determine and establish rights, that it has been and is impossible for them to be given any reasonably accurate estimate of the amount of costs which they are going to be found to be compelled to pay in the event of loss. The result is that amongst our business community we find groups of business men in classified lines of business forming arbitration boards and adopting other expedients of many kinds in order to avoid what should be a perfectly natural and lawful method of settlement of disputed claims, namely to refer them to the Courts of our country which are maintained by the tax-payers of our country for this express purpose.

Our judiciary consists of a group of highly trained and experienced lawyers, who, by reason of their long experience in the practice of the profession, previous to going on the Bench, and their experience whilst on the Bench, in the matter of having the determining of great and important questions put before them for consideration and determination in all branches of business and commercial activities, are eminently fitted to perform this function; and the criticism levelled at our profession, which I say is a well-founded criticism, is that the public find themselves in a great measure debarred from access to our Courts by reason of the system of costs, that is to say by the remuneration which we as a profession secure to ourselves, and which system I do characterize as being entirely antiquated and not meeting the needs of the present day in any way, shape or form.

Our Bar Association addressed itself to the matter of ascertaining wherein lay the cause for such criticisms and the root of the dissatisfaction which exists in our business community towards ourselves as a profession in this particular matter. For two and a half years strong committees of the Bar have worked on the matter. The systems of costs prevailing in other jurisdictions and particularly the system of costs prevailing in the States of the Union have been carefully analyzed and examined.

The conclusions arrived at by the Bar Association as a result of these investigations are:—

First that while it is reasonable and proper that a certain amount of indemnity be allowed to the winning party over the losing party, it is most essential that the amount of this indemnity be determined for given actions, in order that people contemplating taking action to enforce a claim, or seeking to defend themselves against what they consider to be an unjust claim made against them, may know—before entering the courts to maintain what they believe to be their rights,