[2015] JMCA Civ 33

JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO 68/2012

BETWEEN	**ERNEST DAVIS**	**APPELLANT**
AND	**THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Paul Beswick and Kayode Smith instructed by Ballantyne Beswick and Company for the appellant

Mrs Alexis Robinson instructed by Myers Fletcher and Gordon for the respondent

14 April and 12 June 2015

IN CHAMBERS

BROOKS JA

[1] Mr Ernest Davis, an attorney-at-law, was on 2 May 2014, successful in his appeal against a decision of the Disciplinary Committee of the General Legal Council (GLC). He was, at that time, awarded costs of the appeal. On 8 December 2014, the learned registrar of this court taxed Mr Davis' bill of costs in the sum of $1,877,386.60. Mr Davis is unhappy with the decision because the bill of costs, as originally laid, had claimed much more. The main points of the discontent with the learned registrar's decision are firstly, the reduction in the time allowed for various tasks performed by Mr Davis' attorneys-at-law, secondly, the reduction in counsel's brief fees and, thirdly, the

denial of the principle that the time allotted for tasks performed should be rounded up to increments of an hour. Mr Davis has appealed from the learned registrar's decision.

[2] His appeal has come before a single judge of the court. The jurisdiction of the single judge to hear the appeal, and the method of approach to such appeals shall be dealt with first. Thereafter, the Registrar's decision and the grounds of appeal shall be set out and assessed.

The jurisdiction of the single judge and the method of assessing an appeal from the decision of the registrar

[3] The Court of Appeal Rules (CAR) do not deal extensively with the issue of costs. Rule 1.18 stipulates that the relevant provisions in Parts 64 and 65 of the Civil Procedure Rules (CPR) apply to the award and quantification of costs in this court "subject to any necessary modifications and in particular to the amendments set out in" rule 1.18.

[4] One of the necessary modifications made by rule 1.18 is that the term "registrar", as used in Parts 64 and 65 of the CPR, means, for the purposes of the CAR, "the Registrar of the Court of Appeal" (rule 1.18(3)). Taxations and the mechanics of assessing costs of appeals are therefore to be done by the registrar of this court.

[5] Appeals from the decisions of the registrar are considered in rules 65.26 through 65.29 of the CPR. Rule 65.27 states the authority of a judge of this court to hear those appeals. With the necessary modifications, pursuant to rule 1.18 of the CAR, to make rule 65.27 relevant to this court, it would read thus:

> "(1) An appeal against a decision of [the] registrar on taxation is to a judge of the court [of appeal].
>
> (2) The [President of the Court of Appeal] may from time to time nominate a judge of the court [of appeal] to hear appeals against taxation."

[6] Rule 65.29 of the CPR sets out the powers of the judge on an appeal from the decision of the registrar. It provides that the appeal is by way of a re-hearing. The re-hearing is limited, however, to the matters that are raised by the appellant. The rule states:

> "On an appeal from a registrar the judge will –
>
> (a) re-hear the proceedings which gave rise to the decision appealed against so far as is necessary to deal with the items specified in the appeal notice; and
>
> (b) make any order or give any directions as he or she considers appropriate."

All the provisions of Part 65 dealing with the quantification of costs are, therefore, at the disposal of the judge, on an appeal from the decision of the registrar. The main principle that guides the quantification of costs is what is reasonable and appears fair to both the party paying and the party receiving such costs (rule 65.17(1)).

[7] There are very few cases decided in these courts in respect of the application of rule 65.29. There is guidance to be had, however, from some of the cases from England and Wales. The principle to be extracted from those cases is that the judge, who hears the appeal, will not interfere with the decision of the registrar unless the registrar "has acted on a wrong principle or taken into account irrelevant matters or

failed to exercise his [or her] discretion" (Halsbury's Laws of England 4th Ed (Reissue) Vol 3(1) paragraph 427).

[8] Among the cases relied upon by the learned editors in support of that statement, is **Gorfin v Odhams Press Ltd** [1958] 1 All ER 578. The terms used by the learned editors are very similar to those used by Parker LJ, at page 579 of the report in **Gorfin**. He said:

> "…Although the terms of RSC, Ord 65, r 27(41), are very wide, and, in effect, treat the matter before the judge in chambers as a re-hearing, I think that it is now clear in practice and on authority that the court will only interfere with the exercise of the master's discretion if it is clear that the master has gone wrong in principle. It is for this reason that matters of quantum only, where no principle is involved, are rarely, if ever, interfered with....."

[9] It is to be noted that the principle enunciated by the learned judge of appeal recognises that the proceedings before the judge, on appeal from the taxing master's decision, is by way of re-hearing. Rule 65.27, at that time, however, spoke to a review by a judge of a taxing master's certificate. The rules continued to speak of a review up to the time of the advent of the Civil Procedure Rules in that jurisdiction in 1998.

[10] The advent of the Civil Procedure Rules in that jurisdiction brought about an adjustment of the procedure. When those rules were first promulgated, rule 47.26 allowed for a two-tiered approach to appeals in respect of assessment of costs, with different standards for each tier. The difference in the approaches were outlined by Jackson J in **Hornsby and Others v Clark Kenneth Leventhal (a firm) and Others** [2000] 4 All ER 567 at page 570:

"…The appeal by the first and second appellants against the detailed assessment of their costs was brought in 1999. That appeal is governed by CPR Pt 47. CPR 47.26 provides:

> '(1) **On an appeal from an authorised officer** the court will—(a) **re-hear the proceedings** which gave rise to the decision appealed against; and (b) make any order and give such directions as it considers appropriate.
>
> (2) **On an appeal from a costs judge or district judge, if the court is satisfied that the appeal should be allowed, it may make any order and give such directions as it considers appropriate**.
>
> (3) If on an appeal the court exercises the power to appoint assessors conferred—(a) by section 70 of the Supreme Court Act 1981; or (b) by section 63 of the County Courts Act 1984, it must appoint at least two assessors.
>
> (4) One assessor must be a district judge or costs judge and one must be a practising barrister or solicitor.'

This rule makes it clear that there is a difference between an appeal from an authorised officer to a costs judge, and an appeal from a costs judge to a High Court judge. An appeal from an authorised officer to a costs judge is a complete rehearing. An appeal from a costs judge to a High Court judge is not." (Emphasis supplied)

[11] The English rules have since been amended. The current rule is rule 47.23. It only speaks to appeals from the decision of an authorised court officer. It states:

"On an appeal from an authorised court officer the court will-

(a) **re-hear the proceedings** which gave rise to the decision appealed against; and

(b) make any order and give such directions as it considers appropriate."

That rule is very similar in effect to rule 65.29 of our CPR.

[12] In our jurisdiction, the matter was addressed, not surprisingly, in a judgment by Sykes J, the most prolific writer of judgments in the Supreme Court in recent times. In **Allen and Another v Spence and Others** [2013] JMSC Civ 28, the learned judge echoed the sentiments of Parker LJ in **Gorfin**, although he did not cite that case. Sykes J referred to three English cases decided since the advent of the Civil Procedure Rules in that jurisdiction, namely **Mealing-McLeod v The Common Professional Examination Board** [2000] All ER (D) 436; [2000] 2 Costs LR 223; All England Official Transcripts (1997 – 2008) (delivered March 30, 2000), **Orwin v British Coal Corporation and Others** [2003] EWHC 757 (Ch) and **Kris Motor Spares Ltd v Fox Williams LLP** [2010] EWHC 1008 (QB); [2010] 4 Costs LR 620. The principle to be derived from those cases was succinctly stated by Simon J at paragraph [55] of **Kris Motor Spares**. There the learned judge said:

> "There is a well-established principle that this court will not permit appeals on questions which are ultimately matters of judgment for the Costs Judge."

It is to be noted that all the cases cited by Sykes J involved an appeal from a costs judge, where a re-hearing is not stipulated, and not from an authorised court officer, where a re-hearing is stipulated. The distinction must be borne in mind in this context.

[13] Sykes J did not address that difference in the rules, but he adopted the principle set out in **Kris Motor Spares**. He explained his stance in the context of this jurisdiction at paragraph [2] of his judgment:

> "What are the guiding principles in appeals in these kinds of cases? In the view of this court, it is important to recall that the assessment of costs is not capable of exactness. It is largely a matter of judgment on the part of the taxing

> officer, who in this case, has far more experience than perhaps many if not most of the judges of this court. This is what she does daily. **Thus, the principle is that unless it can be shown that she made an error of principle, or the interpretation of some legal principle, or she omitted material considerations or included immaterial considerations appeals against her decision should not be entertained**…."

[14] Despite the stipulation in rule 65.29 that the appeal from the registrar's decision to a judge should be treated as a re-hearing, it should not be said that Sykes J has stated the principle too strongly. It is agreed, that on the question of quantum, as Buckley J stated in **Mealing-McLeod**, that the judge conducting the appeal should not be, "drawn into an exercise calculated to add a little here or knock off a little there. If the Judge's attention is drawn to items which...he feels should, in fairness, be altered, doubtless he will act".

[15] Based on that assessment, it must be recognised that the registrars, both of this court and of the Supreme Court, will have far greater experience than a judge, in either court, in determining what quantum of costs is reasonable and fair. Whereas in England, judges, on hearing an appeal from an authorised court officer or a costs judge, will often sit with referees who are experienced in the matter of litigation costs, that situation does not exist in this jurisdiction. A degree of deference should therefore be given to the exercise of judgment by the registrar, whose decisions on such matters should only be disturbed where it is shown that there has been an error in principle or on compelling material, which demonstrates that the exercise of that judgment resulted in an error.

[16] The circumstances of the present case shall now be examined.

The Registrar's decision

[17] In arriving at her decision, the learned registrar considered Mr Davis' bill of costs, as laid, the GLC's points of dispute and the oral submissions of both parties. Her reasons for her decision were reduced to writing and were contained in a letter addressed to the parties. The letter followed a provisional ruling that had been, by agreement, sent to the parties for their comments. In her letter, the learned registrar addressed the major points of dispute that had been raised by the GLC's attorneys-at-law and the response to them by Mr Davis' legal representatives. The relevant portions of the letter will be set out during the assessment of the respective grounds of appeal.

The grounds of appeal

[18] Mr Davis filed five grounds of appeal against the learned registrar's decision. They are set out below:

> (1) "The [registrar] wrongly exercised her discretion when she reduced the time for perusing the respondent's submissions and failed to take into account the time and consideration needed to be given to Opposing Counsel's arguments and interpretation of the relevant law."
>
> (2) "The [registrar] wrongly exercised her discretion when she reduced the time for the researching and drafting of the Appellant's submissions and failed to take into account the time and research needed to properly and effectively present an appeal."
>
> (3) "The [registrar] wrongly exercised her discretion when she ruled that Counsel's fee for perusing the judgment should be reduced to 30 minutes having

failed to take into account the time needed to carefully and purposively read and interpret the judgment handed down."

(4) "The [registrar] wrongly exercised her discretion when she ruled that Counsel's brief fee should be reduced bearing in mind the nature and importance of the matter."

(5) "The [registrar] wrongly exercised her discretion when she ruled that items on the Bill of Cost [sic] should not be rounded to one hour increments."

Mr Beswick and Mr Smith, who appeared for Mr Davis, divided the arguments between them. Mr Smith argued grounds one, two and three together. He argued that the Registrar had erred in not allowing more time to counsel for consideration of documents that they were required to prepare and to peruse. He also made specific submissions in respect of ground four. Mr Beswick argued ground five.

[19] Mrs Robinson, on behalf of the GLC, addressed each of the five grounds. The grounds will be addressed in turn.

Ground one – The time allowed for perusing the GLC's written submissions

[20] The bill of costs claimed two hours for perusing the GLC's written submissions. The GLC disputed the time and asserted that .75 hour was more reasonable. The learned registrar taxed the bill allowing one hour for this item. The decision is the subject of this ground of appeal.

[21] Mr Smith argued that the learned registrar had failed to allow sufficient time for counsel to secure the file, read the GLC's written submissions and consider them in the context of the submission that had been made on behalf of Mr Davis. Mrs Robinson

submitted that the learned registrar was generous in her assessment of the item as the submissions were only three and a half pages and were particularly skeletal.

[22] Having reviewed the GLC's written submissions on the appeal, it cannot be said that there was any error in principle by the learned registrar, or that the time allotted by the learned registrar was unreasonable. The GLC's submissions on the appeal advocated that Mr Davis was wrong in his approach to the court, both in respect of the substance of the grounds and the manner in which they had been presented. The submissions were very concise. An hour would have been more than enough time to peruse and consider them. The learned registrar's ruling should, therefore, stand.

Ground two – The time allowed for researching the authorities and drafting the submissions for the appeal

[23] The bill of costs claimed 10 hours for senior counsel and 16 for junior counsel for researching the authorities and drafting the submissions for the appeal. The GLC disputed the time claimed and asserted that it was excessive. It suggested that three hours for senior counsel and five hours for junior counsel was more reasonable. The learned registrar ruled that six hours would be allowed for senior counsel and nine for junior counsel for this item. The decision is the subject of this ground of appeal.

[24] Mrs Robinson argued that there were only three cases cited in the submissions and that none was relied on in the court's judgment. She submitted that it was unreasonable to ask the GLC to pay for the time spent researching authorities that were not pivotal for the case. She stressed that the case was not a complex one. Learned counsel asked that the ruling of the learned registrar should stand.

[25] It would be unfortunate if the time allowed for researching would be dependent on the authorities that the court had relied upon in its judgment. It may well be that cases researched and cited by counsel are helpful in developing the argument before the court but are not cited by the court in its judgment. Mrs Robinson's test is not definitive of the point.

[26] What is more definitive is the comment by the court, in its judgment, that only two of the six grounds of appeal were in a format that allowed the court to consider them. The GLC should not be required to pay for the cost of preparing arguments in respect of impotent grounds of appeal.

[27] Taking these factors into account, it cannot be said that the learned registrar erred in principle. The time allowed by her is generous and should stand.

Ground three – The time allowed for perusing the judgment

[28] The bill of costs claimed one hour each for the perusal of the judgment by junior and senior counsel. The GLC asserted that the time was excessive and that no more than half an hour each should be allowed. The learned registrar allowed the shorter period. The decision is the subject of this ground of appeal.

[29] The judgment of the court is seven pages. It mainly dealt with questions of fact, but did address certain principles concerning service by the GLC before the disciplinary committee should proceed to hear a complaint. Nonetheless, the judgment was not a complex one and it did not require any cross-reference or comparison with any other

documents. There is no error in principle committed in respect of this issue. The learned registrar's assessment is reasonable and fair and should stand.

Ground four – The amount allowed for the brief fee

[30] Two items of the bill of costs are relevant to this ground. The first is the claim in respect of researching the authorities and drafting the appellant's submissions on appeal. It has been mentioned in respect of ground two, but in the context of the present ground, it may assist to set out the item in full:

> "[2014]
> ...
>
> Apr Researching authorities and drafting
> Appellants [sic] Submissions on appeal
>
> Senior Counsel
> Paul A. Beswick,
> 10 hrs. $350,000.00
> Junior Counsel
> Carissa Bryan,
> 16 hrs. $240,000.00 $590,000.00"

The second item is the claim for a brief fee. It states:

> "[2014]
>
> Jun Counsel's brief fee on hearing of Appeal
> 29/4/2014
>
> Senior Counsel - Paul A.
> Beswick $1,500,000.00
> Junior Counsel - Kayode
> Smith $800,000.00 $2,300,000.00"

[31] In its points of dispute, the GLC relied on the principle that a brief fee encompasses the costs for preparing for an appeal, including the cost of researching

the authorities and developing the arguments to be used in the appeal. It contended that there was a duplication of costs in Mr Davis' claiming both the brief fee and a charge for researching the authorities and drafting the submissions. It asserted that, a claim having been made for researching the authorities and drafting the appellant's submissions, nothing should be awarded as a brief fee.

[32] The learned registrar took a middle-ground approach to the matter. She reduced the number of hours awarded for researching the authorities and drafting the submissions and she reduced the brief fee. She proposed an award along those lines and invited comments from counsel in respect of the proposed award. After having receiving further submissions on the matter, she made a final award in respect of both items. The number of hours for researching and drafting were left unchanged but she reduced the sum claimed for the brief fee from $708,000.00 and $170,000.00, for senior and junior counsel respectively, to $576,000.00 and $93,500.00 respectively. The reasons for her decision in regard to this item are set out below:

> "In relation to the brief fee I note that some amount of counsel's preparatory work would have been covered by the preparation of the skeleton arguments and that in arriving at the brief fee, where an award has already been made for the skeleton arguments, one has to make necessary discounts in order to avoid duplication. With this in mind and having regard to the submissions of both counsel, the factors to be considered under the rules, and previous awards made, I have reviewed the proposed award. I have determined that, after discounting the awards made for the preparation of the skeleton arguments I will allow a brief fee of $576,000 for Mr. Beswick and $93,500 for Mr. Smith."

The learned registrar, for the researching and drafting item, awarded $192,000.00 for senior counsel (6 hours x $32,000.00 per hour) and $72,000.00 for junior counsel (9

hours x $8,000.00 per hour). The total of these awards is $264,000.00 as opposed to the claim of $590,000.00 for this item, as set out above.

[33] On this ground, Mr Smith submitted that the learned registrar erred in awarding a disproportionately small brief fee, especially in respect of junior counsel. He argued that the learned registrar placed too great an emphasis on the preparatory steps in respect of the appeal and thus reduced the brief fee by an unreasonable amount. Mr Smith also submitted that the two-stage reduction by the learned registrar, in the provisional, and then in the final ruling, was unreasonable. Learned counsel referred to **Hornsby**, which also dealt with assessing counsel's fees in appeals. He submitted that the learned registrar was not faithful to the approach recommended in **Hornsby**.

[34] Mrs Robinson also referred to **Hornsby** in her submissions. Learned counsel submitted that **Hornsby** advocated a three-step process to the assessment of counsel's fees where there has been a charge for both the preparation of submissions as well as a claim for a brief fee. She submitted that an application of the principles recommended in **Hornsby**, for the assessment of counsel's fees, was apparent in the learned registrar's approach. Mrs Robinson argued that the approach to junior counsel's brief fee was appropriate to the part that junior counsel played in the appeal. The participation of junior counsel in the instant case, learned counsel submitted, was far different from that of the junior counsel in **Hornsby**, who "had an active role in the case and undertook some of the advocacy" (page 574 of **Hornsby**). With respect to complaint by Mr Smith that there was a double deduction, Mrs Robinson argued that it

could be deduced from the provisional indication by the learned registrar that the third step, as recommended in **Hornsby**, had not yet been taken.

[35] Both counsel referred to taxation decisions in cases in this court but provided nothing to support those references; not even a record of the decision in any of them. The cases referred to were **Haughton-Cardenas v The General Legal Council** SCCA No 82/2006 and **Brady v The General Legal Council (Ex parte Alva Langley and Another)** SCCA No 70/2011. The files for those cases were, therefore, taken from the court's archives and perused. A perusal of the taxed bills of costs in those cases revealed that the taxation of costs in **Haughton-Cardenas** and the appeal therefrom were too long ago (2008) to be of any assistance with regard to what would be reasonable in terms of quantum.

[36] In **Brady**, the last taxation took place in 2013. Two points are to be noted from that case, in this regard. Firstly, no brief fee was charged. Counsel charged for the time spent in research and preparation of the arguments and for the time spent in court. Secondly, the amount allowed for the leading counsel (Queen's Counsel) was $26,000.00 per hour and $10,000.00 per hour was allowed for the junior counsel.

[37] In assessing this ground, there is some assistance to be gleaned from the judgment in **Hornsby**. One of the first principles to be extracted from that case is that the brief fee incorporates work done in research and preparation of the arguments to be advanced in court. Jackson J, in **Hornsby**, relied, in part, on the judgment in

Loveday v Renton and another (No 2) [1992] 3 All ER 184. In **Loveday**, Hobhouse J, at page 190, stated the principle as follows:

> "In assessing a brief fee it is always relevant to take into account what work that fee, together with the refreshers, has to cover. **The brief fee covers all the work done by way of preparation for representation at the trial and attendance on the first day of the trial**." (Emphasis supplied)

[38] Jackson J used that principle as his platform for setting out the procedure for assessing counsel's fees where both brief fees and skeleton argument fees were claimed. He said at pages 572-573:

> "…In my judgment, the correct approach to assessing brief fees and skeleton argument fees for counsel in the Court of Appeal is in three stages. *Stage 1*: the fee for the skeleton argument should be assessed. In the ordinary run of cases, this can be done largely by reference to the amount of time which counsel has reasonably and proportionately devoted to reading the documents, researching the law and drafting the skeleton argument. *Stage 2*: the brief fee should be assessed. This exercise involves considering both the amount of time properly spent and many other factors. See para 1(2) of Pt 1 of App 2 to RSC Ord 62 (which is relevant to the present case) and also CPR 44.5, which has now superseded RSC Ord 62. The correct approach to assessing brief fees was discussed by Hobhouse J, as he then was, in **Loveday v Renton (No 2)** [1992] 3 All ER 184 at 194. In my judgment that guidance is still effective. **In relation to a brief fee for the Court of Appeal, however, it is important to avoid double payment. In so far as counsel prepared himself/herself whilst drafting the skeleton argument, that preparation time should not be paid for in the brief fee.** *Stage 3*: having arrived at an appropriate skeleton argument fee and brief fee, a cross-check should then be done. The two figures should be aggregated to see whether the total appears too large or too small for the overall conduct of the case in the Court of Appeal. If the total figure seems to be disproportionately large or disproportionately small, then an appropriate

> adjustment should be made to the brief fee or the skeleton argument fee…." (Emphasis supplied)

[39] In this case, the principle in **Hornsby** was brought to the learned registrar's attention in the course of submissions. What has to be done, to test her decision on the appropriateness of counsel's fees, is to apply the test that was recommended in **Hornsby**. This will be done below.

[40] The first step is to assess the fees for the skeleton arguments. That has already been done in the analysis of ground two. The figures resulting, it will be recalled, are $192,000.00 for senior counsel and $72,000.00 for junior counsel, with the total of these awards being $264,000.00.

[41] For the second stage, the brief fees have to be assessed. The brief fees were preliminarily assessed by the learned registrar at $708,000.00 for senior counsel and $170,000.00 for junior counsel.

[42] The third step is to add the fee for the skeleton arguments and the brief fee and determine whether the aggregate appears too large or too small for the overall conduct of the case. In conducting this step in this case, using the learned registrar's preliminary figures for the exercise, the total fees amount to $900,000.00 for senior counsel and $242,000.00 for junior counsel. The overall total for that preliminary position was $1,142,000.00.

[43] The learned registrar then reduced the brief fee to $576,000.00 for senior counsel and $93,500.00 for junior counsel. The total for senior counsel then became

$768,000.00 ($576,000.00 + $192,000.00) and that for junior became $165,500.00 ($93,500.00 + $72,000.00). The final position for the overall total for counsel's fees, for the preparation for the appeal and the arguments before the court, was therefore $933,500.00. The question to be asked at this stage, using the words of Jackson J, is whether the individual totals or the overall total seem "to be disproportionately large or disproportionately small" in the circumstances.

[44] That question must be answered in accordance with the principle, cited above, that the judge hearing the appeal from the registrar's decision will not interfere with it unless the registrar, "has acted on a wrong principle or taken into account irrelevant matters or failed to exercise his [or her] discretion". After consideration of all the circumstances and the submissions made by the parties, it cannot be said that the learned registrar fell afoul of any of the principles mentioned in the last sentence.

[45] It appears, from her reasons, as quoted at paragraph [33] above, that she took the **Hornsby** procedure into account. Contrary to Mr Smith's submissions, the fact that the learned registrar made two reductions to the brief fee is not an error of principle. It is reflective of the unusual step that the learned registrar adopted, with the consent of the parties, of sending them a preliminary ruling for their respective perusal and comment. Accordingly, the learned registrar's decision in respect of counsel's brief fee should not be disturbed.

Ground five – The use of fractions of an hour

[46] The bill of costs, in respect of tasks done by fee earners, largely charged no less than an hour for each task. There were five items where the charge was for .50 hours. The GLC, in its points of dispute, asserted for a number of the time-based items, that the time claimed was unreasonable. It asserted, for a number of items that a more reasonable time would be .10 or .16 hours. The learned registrar, after hearing submissions from the parties, decided that portions of an hour could reasonably be allocated for certain claimed tasks. In taxing the bill of costs, she reduced the time allowed for a number of items from an hour, to 10 minutes and 15 minutes respectively. In her letter, mentioned above, she explained her position thus:

> "Bearing in mind rule 65.17, as well as the approach taken in other taxation proceedings, and observing that in this particular bill there are some items in which claims were made in fractions of time (such as on page 3 item 8), I am of the view that awards of fractions of time can be made. As to the amount of time to be allotted, I am also of the view that the times I had previously proposed are reasonable and fair and will therefore stand as my final ruling."

[47] That decision is the subject of this ground of appeal.

[48] Mr Beswick argued that the learned registrar had erred in her approach. Learned counsel submitted that the ruling not only went against normal taxation practice, but was impractical. Nothing was placed before the court to state what the normal taxation practice was. In addressing the issue of practicality, however, learned counsel submitted that the simplest task in respect of any case involved fetching the file, reading the relevant material and putting away the file. He argued that these items

alone can take no less than .5 of an hour. He further submitted that even the shortest letter could take no less that .5 of an hour to have it completed in the context of that procedure. That period, he argued, should be the minimum time allocated for charges.

[49] Mrs Robinson supported the learned registrar's position. Learned counsel argued that the items, which the learned registrar reduced, were mainly for perusing simple letters and e-mail. She submitted that the ruling was manifestly fair and reasonable.

[50] Rule 65.17 does not specifically address the issue of fractions of an hour in bills of costs. The relevant parts of the rule that may be relied upon by a proponent of applying fractions of an hour are paragraphs (1) and (3)(d). They state:

> "65.17(1) Where the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is the amount –
>
> (a) that the court deems to be reasonable; and
> (b) which appears to the court to be fair both to the person paying and the person receiving such costs.
>
> …
>
> (3) In deciding what would be reasonable the court must take into account all the circumstances including-
> …
> (d) the time reasonably spent on the matter;
> …"

[51] These portions of rule 65.17 do suggest that fractions of an hour would be allowable if such times were reasonable and fair to both parties. It is also to be noted

that a perusal of the court's file for **Brady** revealed that there were several items in which fractions of an hour were used in calculating fees. There can, therefore, be no faulting the learned registrar in her ruling on the principle.

[52] The times allotted for the particular items, similarly, cannot be said to be unreasonable. The vast majority of items for which the learned registrar allotted portions of an hour, usually 10 minutes and 15 minutes respectively, were for perusing letters and e-mail. A few were for drafting what appeared to be simple letters. Mrs Robinson is correct in her submissions that the learned registrar's experience in respect of these matters should be respected. She has not erred on any of the bases which would allow her ruling to be set aside.

Conclusion

[53] Mr Davis, in respect of the bulk of his complaints against the learned registrar's decision, has sought to impugn the exercise of her discretion. This is not something with which this court would interfere unless there was an indication that the learned registrar had erred in respect of a relevant principle. Based on all the reasons set out above, the appeal fails.

ORDER

1. Appeal dismissed.
2. Costs to the respondent to be taxed if not agreed.