

# Did my lawyer overcharge me? And what to do about it

\*By: Jill Phua

## I. Introduction

Having lost a lawsuit, imagine receiving this in your mailbox the next day: “legal fees owed to W&O Partnership: \$200,000”. While you know that litigation can be expensive, your lawyer had originally estimated the fees to be half that amount. Could he have overcharged you for unnecessary work? How then can you get the bill reduced?

This article will first set out the types of legal costs expected in litigation, followed by a guidance on how fees are calculated. Lastly, it will list the recommended steps to challenge a legal bill if you believe that you have been unfairly charged.

## II. Discussion

### A. *Understanding Legal Costs*

During the initial consultation with your lawyer, you should have been given an estimate of the legal costs. These costs can be split into two categories: (a) professional fees, and (b) disbursements.<sup>1</sup>

	<b>Professional fees</b>	<b>Disbursements</b>
What are they?	<ul style="list-style-type: none"><li>Fees charged by a lawyer for providing professional legal services.<sup>2</sup></li></ul>	<ul style="list-style-type: none"><li>Expenses paid to the Court, which are incurred in the course of litigation.<sup>3</sup></li></ul>
How are they calculated?	<ul style="list-style-type: none"><li>Generally charged as hourly fees for litigation.<sup>4</sup></li></ul>	<ul style="list-style-type: none"><li>Fixed charges set by the Court.<sup>5</sup></li></ul>

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<sup>1</sup> The Law Society of Singapore website <<https://www.lawsociety.org.sg/our-community/understand-legal-costs/>> (accessed 23 Oct 2021).

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Dominic Chan Wai Kit, “To Sue or Not to Sue”, Singapore Litigation Lawyer website <<https://singaporelitigationlawyer.com/2012/09/05/to-sue-or-not-to-sue-6-key-considerations-before-suing-someone-part-2/>> (accessed 23 Oct 2021).

<sup>5</sup> Rules of Court (Cap 322, R 5, 2014 Rev Ed), Appendix B – Court fees.

Example(s)	<ul style="list-style-type: none"> <li>• Time spent by your lawyer on legal research, drafting documents, and filing.</li> </ul>	<ul style="list-style-type: none"> <li>• Photocopying charges, court filing fees, and expenses for obtaining expert witnesses and/or reports.<sup>6</sup></li> </ul>
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*Why can't lawyers just quote a fixed fee?*

Just like construction firms facing unforeseen setbacks such as a sudden hike in raw materials, lawyers might face unpredictable scenarios in the trial process, such as the discovery of controversial evidence. This may require them to work beyond the original estimated hours. Hence, lawyers usually charge by an hourly rate (possibly subjected to a fee cap) to account for these unexpected scenarios.

*Why must I pay my lawyer even though I lost the case?*

"No win, no fee" agreements between lawyers and clients are not yet allowed in Singapore.<sup>7</sup> Such agreements are also called conditional fee agreements (CFAs), where the client only pays the lawyer if the lawsuit is successful.<sup>8</sup>

However, this may change as the Ministry of Law is looking into permitting CFAs for selected proceedings.<sup>9</sup> The proposed amendments will allow lawyers to enter into CFAs for Singapore International Commercial Court (SICC) proceedings, and arbitration cases.<sup>10</sup>

### ***B. Is there a recommended fee guideline?***

In line with Singapore's anti-competition laws, there are presently no guidelines or recommended structure for legal fees.<sup>11</sup> While the Ministry of Law did propose a fee framework in 2018,<sup>12</sup> it was withdrawn after facing widespread opposition from the legal fraternity.<sup>13</sup>

<sup>6</sup> *Supra* n 1.

<sup>7</sup> Selina Lum, "Changes to law mooted to allow 'no win, no fee' agreements between lawyers and clients in certain cases", Straits Times website <<https://www.straitstimes.com/singapore/changes-to-law-mooted-to-allow-no-win-no-fee-agreements-between-lawyers-and-clients-in>> (accessed 11 Nov 2021).

<sup>8</sup> Ministry of Law website <<https://www.mlaw.gov.sg/news/press-releases/2021-11-01-proposed-framework-for-conditional-fee-agreements>> (accessed 11 Nov 2021).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Supra* n 1.

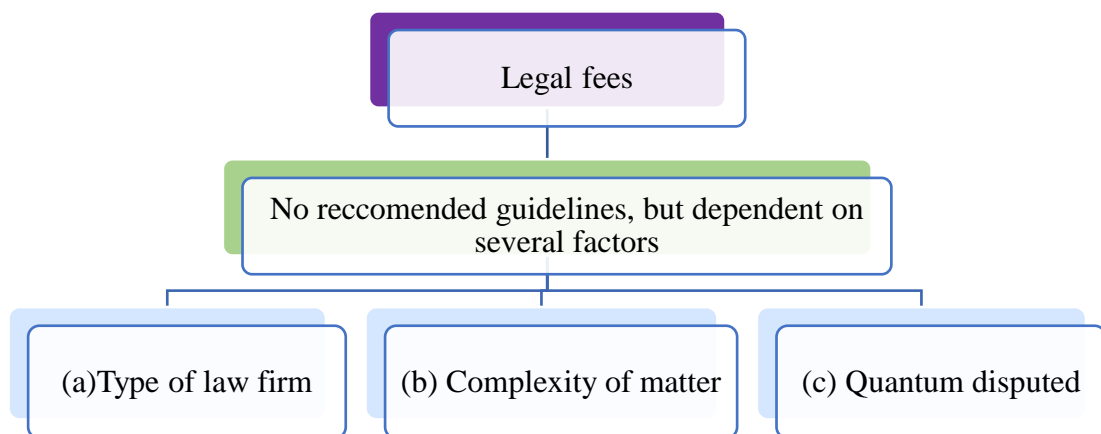
<sup>12</sup> Supreme Court website <<https://www.supremecourt.gov.sg/news/media-releases/public-consultation-on-proposed-reforms-to-the-civil-justice-system>> (accessed 11 Nov 2021).

<sup>13</sup> Tay Peck Gek, "Fixed legal fees off the table for now", The Business Times website <<https://www.businesstimes.com.sg/government-economy/fixed-legal-fees-off-the-table-for-now-0>> (accessed 11 Nov 2021).

However, this does not mean that lawyers can get away with charging extravagant fees. They must still abide by the practices set out in the Legal Profession (Professional Conduct) Rules (LPR).<sup>14</sup> In particular, your lawyer must provide you with: (a) an estimate of fees and disbursements, (b) advise you if the estimate given had increased, and (c) provide the reason(s) for the increase.<sup>15</sup>

Moreover, all lawyers are under an ethical obligation to charge *fairly* for work done.<sup>16</sup> Failure to do so would result in disciplinary action taken against them.<sup>17</sup> For instance, in *Arul Ravindran*,<sup>18</sup> a lawyer was fined \$50,000 for overcharging his client and failing to keep proper timesheets.<sup>19</sup> In *Ang Chin Peng*,<sup>20</sup> the court penalised the lawyers with a three-month suspension as the work done for the client was not as complex as claimed.<sup>21</sup>

*What determines a fair and reasonable fee?*



In determining what constitutes a fair and reasonable fee,<sup>22</sup> the relevant factors to consider are:<sup>23</sup>

<sup>14</sup> Legal Professional Act (Cap 161, S 706, 2015 Rev Ed) s 17.

<sup>15</sup> *Ibid.*

<sup>16</sup> The Singapore Law Gazette website <<https://v1.lawgazette.com.sg/2012-03/360.htm>> (accessed 11 Nov 2021).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Law Society of Singapore v Andre Ravindran Saravanapavan Arul* [2011] 4 SLR 1184; [2011] SGHC 224.

<sup>19</sup> *Ibid.*, at [43].

<sup>20</sup> *The Law Society of Singapore v Ang Chin Peng and Another* [2011] SGDT 17.

<sup>21</sup> *Ibid.*, at [50] – [52].

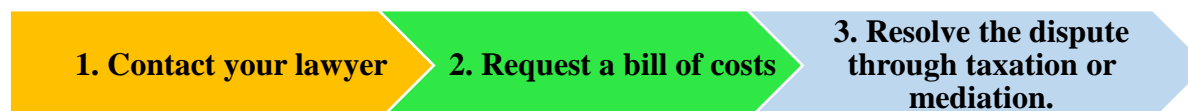
<sup>22</sup> Rule 2(2)(c) of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed)

<sup>23</sup> *Supra* n 18, at [31].

<b>(a) Type of law firm</b>	<ul style="list-style-type: none"> <li>• International and/or well-known law firms tend to charge more than smaller firms</li> <li>• Senior lawyers and/or lawyers with the specialised knowledge required may charge higher fees.</li> <li>• If client is overseas, the lawyer may charge more to cover the time spent and travel expenses.</li> </ul>
<b>(b) Complexity of matter</b>	<ul style="list-style-type: none"> <li>• Matters concerning different areas and/or novel aspects of the law would cost more.</li> <li>• Lawyers may charge more if the matter is of urgency.</li> </ul>
<b>(c) Quantum disputed</b>	<ul style="list-style-type: none"> <li>• If the amount disputed exceeds \$250,000, the case will be heard at the Supreme Court,<sup>24</sup> which would incur greater costs.<sup>25</sup></li> </ul>

### C. *What can I do to reduce the legal fees?*

The LSS recommends following these steps:<sup>26</sup>



#### *Step 1: Contact your lawyer*

It is possible that your concerns may be due to a misunderstanding which your lawyer can clarify for you.<sup>27</sup> Moreover, by addressing the matter directly with your lawyer, you could also ask for a reduction of fees to a sum within your budget.

#### *Step 2: Request a bill of costs*

<sup>24</sup> Supreme Court website <<https://www.ifaq.gov.sg/supremecourt/>> (accessed 11 Nov 2021).

<sup>25</sup> Supreme Court website <<https://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/commencement-of-an-action/court-fees-and-hearing-fees>> (accessed 11 Nov 2021).

<sup>26</sup> *Supra* n 1.

<sup>27</sup> *Ibid.*

In litigation, much of the preparatory work done takes place behind the scenes, which you may not be aware of. Thus, you should request your lawyer to provide you with a bill of costs (“bill”). A bill describes the nature of work done by your lawyer since day one. One can think of it as a grocery receipt which details what the cost of each item is. This can help you further ascertain the accuracy of the legal fees.

*Step 3: Taxation or mediation*

If you are still unable to come to an agreement, you have the right to consider either taxation or mediation.<sup>28</sup>

	<b>Taxation</b>	<b>Mediation</b>
What is it?	<ul style="list-style-type: none"> <li>Formal assessment undertaken by the Court to determine the reasonableness of the legal fee.<sup>29</sup></li> </ul>	<ul style="list-style-type: none"> <li>Cost Dispute Resolution (CDR) scheme administered by the LSS to resolve disputes swiftly and amicably.<sup>30</sup></li> </ul>
Pre-requisites	<ul style="list-style-type: none"> <li>Either the client or lawyer can apply for taxation.<sup>31</sup></li> <li>An application for taxation should be done within one year from the delivery of the bill.<sup>32</sup></li> </ul>	<ul style="list-style-type: none"> <li>Consent from <u>both</u> client and lawyer must be obtained.<sup>33</sup></li> </ul>
Costs	<ul style="list-style-type: none"> <li>Filing fees (\$300 - \$500).<sup>34</sup></li> <li>Additional legal fees required to hire another lawyer.</li> </ul>	<ul style="list-style-type: none"> <li>From \$500, cost to be shared equally by both parties.<sup>35</sup></li> </ul>

Taxation is recommended if you wish to determine what the proper fee is for the actual work done by your lawyer. If the court finds that the lawyer had overcharged you, they will order a

<sup>28</sup> The Singapore Law Gazette website <<https://v1.lawgazette.com.sg/2012-02/332.htm>> (accessed 11 Nov 2021).

<sup>29</sup> *Marisol Llenos Foley v Harry Elias Partnership LLP* [2021] SGHC 188 at [24].

<sup>30</sup> The Law Society of Singapore website <<https://www.lawsociety.org.sg/for-lawyers/cost-dispute-resolve/>> (accessed 23 Oct 2021).

<sup>31</sup> *Supra* n 1.

<sup>32</sup> Supreme Court Singapore website <<https://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/post-trial-matters/taxation-and-review-of-bills-of-costs>> (accessed 23 Oct 2021).

<sup>33</sup> *Supra* n 31.

<sup>34</sup> Singapore Courts The Judiciary website <<https://www.judiciary.gov.sg/civil/taxation-bills-of-costs/file-bill-of-costs>> (accessed 23 Oct 2021).

<sup>35</sup> *Supra* n 18.

discount and a refund of any difference. However, the court may also dismiss the case if they determine that the legal fees are fair.

If time and costs are your main concerns, you could consider mediation. The key advantage of mediation is that it allows for both parties to reach an outcome in 3 hours.<sup>36</sup> Additionally, the cost is much lower compared to taxation. However, for mediation to take place, consent from both parties is required. As both options have their pros and cons, you should choose the one best suited to your situation.

### **III. Conclusion**

If you are unhappy with your legal fees, there are three steps you could take. First, contact your lawyer to resolve any misunderstandings, if you can reach an agreement here, that could save you both time and costs. Second, request for a bill to ascertain the fee breakdown. Lastly, depending on your situation, you could request for taxation or mediation.

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<sup>36</sup> *Supra* n 31.