

Alarmingly, with the passage of time I find that I am a member of a diminishing segment of the profession for whom when it came to pricing our services, comfort and succour was to be found in the profession's very own Little Red Book. No, not the Kama Sutra or The Thoughts of Chairman Mao but rather, the holy grail of our pricing regime - the New Zealand Law Society Scale of Professional Charges.

It is hard to imagine that it is only some 25 years ago that much of our pricing as a profession was determined in prescriptive fashion by means of an ad valorem formula revised from time to time by the profession's governing body. Indeed, so much stock was put in the importance of the scale, that it was not merely a recommended pricing regime, but a mandatory one. It was a disciplinary offence to charge less than the scale unless prior approval was obtained.

Life was straightforward for both practitioner and client when it came to pricing the job. Firstly, we would ascertain from the client how much money or the value of the property that was involved, locate the relevant schedule, run the finger down the page to find the relevant figure and alongside it was the fee - *and [we] saw that it was good.*

Since the abolition of the scale in the early 1980s, practitioners have had to not only adapt their pricing strategies, with questionable success, but we have had to do so in a vacuum of ignorance in terms of where our firms pricing practices sit relative to our colleagues. To be sure, there is the usual anecdotal banter and information exchanged on an ad hoc and informal basis but that scarcely forms a satisfactory basis for a firm's pricing strategies. Something was needed.

The last straw as it were has been two matters that have their genesis in the Lawyers and Conveyancers Act and its Rules. The first is the requirement to be upfront about providing the client with pricing information and specifically, if requested, an estimate. The second is the introduction of a new reasonable fee factor namely, *the fee customarily charged in the market and locality for similar legal services*, which of course begs the question, 'of what is customarily being charged'.

Our fee benchmarking survey project goes a long way toward answering that question. More importantly, the information provides law firms with statistically robust data based on surveys prepared by lawyers for lawyers and with that comes considerably greater pricing confidence and independent data with which to assuage clients concerns. The latest survey, Wills & Deceased Estate Administration Fees, adds to the valuable pool of pricing information now available to all law firms.

The purpose of this article is not to report extensively on the results of the survey as the firm's that participated in the survey and invested in the 62 page report are entitled to the benefit of having done so. However, I can share some of the major findings from the survey:

wide classic “Bell Curve” consistent with the broad range of
: from these fee surveys

- (2) Some 75% of respondents consider that they are either poorly paid or very poorly paid in relation to the preparation of Wills. Of those that provided supplementary comments, the theme of many was that Wills always have been complex and important documents but they have become increasingly complex and difficult as family situations have become more convoluted and diverse. However, most practitioners struggle with getting clients to understand that these documents are worth considerably more than the profession has become accustomed to charging. Many participants laid much of the blame at the feet of trustee Company's for doing Wills for free. However, note my comments below.
- (3) With the fact scenario questions, survey participants were able to choose between a variety of pricing methodologies including: time only, a percentage of the gross value of the estate only, task-based pricing only, time plus a percentage of the gross value of the estate, task-based pricing plus a percentage of the gross value of the estate, gut feel or some other methodology. Perhaps surprisingly, with the exception of a fee based solely on a percentage of the gross value of the estate which did not feature prominently, practitioners preferred pricing methodology was relatively evenly spread across the remaining options. None stood out as predominant although the different methodologies did produce markedly different fees.
- (4) Fees based on time only or a percentage of the gross value of the estate only, generally produced the lowest fees. Conversely, those participants who adopt a pricing methodology of either, time plus a percentage of the gross value of the estate or task-based pricing plus a percentage, invariably produced a significantly higher fee.
- (5) Not surprisingly, the larger the estate, the more polarised the fee range became - \$4,425 to \$16,235 for the particular fact scenario.
- (6) The Deed of Family Arrangement fact scenario produced a bizarre fee range. Even removing the extreme responses at both ends of the continuum, the fees still ranged between \$500 and \$6,000.
- (7) Over 70% of respondents confirmed that even if they are named as an executor and trustee under a will, they never make a separate trusteeship charge in addition to the fees that are appropriate in relation to the legal work.

Practitioners are no doubt aware from a number of cases in recent years that a practitioner can face a claim for negligence and breach of contract as the estate's solicitor and a separate and additional set of claims as an executor and trustee. This begs the question, why would a practitioner accept appointment as a trustee with all the attendant additional responsibility and risk if they were not going to be appropriately and additionally remunerated for it?



Your complimentary
use period has ended.
Thank you for using
PDF Complete.

[Click Here to upgrade to
Unlimited Pages and Expanded Features](#)

ed concerns that the practice of some of the trust companies, created an expectation in the mind of the public that the preparation of Wills by law firms will attract little or no fee. However, for the most part, the trustee companies treat the preparation of the will as a loss leader and are far more inclined to charge appropriately for both the legal work **and** the executor and trustee role in the context of the administration of the estate.

This at least compensates those trust companies for the 'investment' of unremunerated time at the outset. In contrast, lawyers by and large don't charge properly for Wills and then happily assume trusteeship responsibilities which more than 70% of lawyers say they **never** charge for. A further 22% said they occasionally charge and only 7% said they always charge for the additional trustee responsibilities.

Instead of laying the blame at the feet of the trustee companies who, at the end of the day, have merely developed a business model that works for them, we might be better served by either adopting a "if you can't beat 'em, join 'em" attitude by doing Wills for free on the condition that a partner in the firm is appointed one of the trustees **and** that service is charged for properly, or alternatively, create a very clear distinction from the trustee companies and charge properly for the preparation of Wills (perhaps \$500-\$1500 plus GST) but unlike trustee companies, there will be no charge made for the firm assuming a trusteeship role.

Each has its advantages and disadvantages but I confess to still having no clear understanding of the rationale of many firms that charge little or nothing for the preparation of Wills and also do not seek to be paid properly for the work associated with the administration of the estate and where applicable, the assumption of the additional responsibilities as a trustee.

Richard Burcher's company Validatum™ Limited provides a variety of pricing services to the legal profession. For further details see the company's website www.Validatum.com