Shorvon Simon v Singapore Medical Council
[2005] SGCA 49

Case Number : CA 48/2005

Decision Date : 17 October 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; V K Rajah J; Yong Pung How CJ

Counsel Name(s) : Myint Soe, Daniel Atticus Xu and Jamilah bte Ibrahim (MyintSoe and Selvaraj) for the appellant; Tan Chee Meng, Melanie Ho and Chang Man Phing (Harry Elias Partnership) for the respondent

Parties : Shorvon Simon — Singapore Medical Council

Administrative Law – Disciplinary proceedings – Scope of Disciplinary Committee's power to order costs under Medical Registration Act – Whether costs incurred for work done for proceedings before Complaints Committee incidental to proceedings before Disciplinary Committee – Section 45(4) Medical Registration Act (Cap 174, 2004 Rev Ed)

Civil Procedure – Costs – Taxation – Principles to be applied – Particulars required to be furnished in bill of costs

17 October 2005

V K Rajah J (delivering the judgment of the court):

1 This was an appeal against a judge's decision on the quantum of costs allowable for work in the preparation and conduct of disciplinary proceedings against the appellant, Prof Simon Shorvon, a research scientist, by the respondent, the Singapore Medical Council ("SMC").

2 Upon the conclusion of the disciplinary proceedings pursuant to the Medical Registration Act (Cap 174, 2004 Rev Ed) ("MRA"), the appellant had been found guilty by the Disciplinary Committee ("DC") of professional misconduct. The DC then directed that the appellant pay *the costs and expenses of and incidental to the proceedings*, including the costs and expenses of counsel for the SMC and the Legal Assessor.

3 Section 45(4) of the MRA stipulates that:

> A Disciplinary Committee may under subsection (2) order the registered medical practitioner concerned to pay to the Medical Council such sums as it thinks fit in respect of *costs and expenses of and incidental to any proceedings before the Disciplinary Committee* and, where applicable, *an Interim Orders Committee*. [emphasis added]

while s 45(5) of the MRA goes on to provide that:

> The High Court shall have jurisdiction to tax such costs referred to in subsection (4) and any such order for costs made shall be enforceable as if it were ordered in connection with a civil action in the High Court.

4 An assistant registrar ("the AR") quantified the sum of $250,000 as the appropriate quantum of costs for the "getting-up" section of the Bill of Costs. This amount was intended to cover the solicitors' services during and prior to the sitting of the DC inclusive of work done in framing the charges. Some of the work was completed well before the formation of the DC. Both the appellant and SMC appealed against the AR's decision. On 30 March 2005, the judge dismissed both appeals.

Dissatisfied with this, the appellant lodged a further appeal to this court. We allowed the appeal and reduced the quantum of costs to $175,000. The reasons for such a reduction are now set out.

Factual matrix

The disciplinary proceedings

5 The appellant was the director of the National Neuroscience Institute ("NNI"), a wholly-owned subsidiary of the National Healthcare Group ("NHG"). During the relevant period, he was also the lead Principal Investigator of a research project named "A Study of Haplotype Structure and SNPs Frequencies in Candidate Genes Associated with Neurological Diseases and Drug Response" ("the project"). The project was funded by a $10m grant from the Biomedical Research Council over a five-year period.

6 At some point after the project was initiated, concerns were raised in relation to the research being conducted on patients afflicted with Parkinson's disease ("PD"). The NNI appointed an inquiry panel ("the Panel") on 24 January 2003. The Panel in turn appointed M/s Allen & Gledhill ("A&G") as their legal counsel. The appellant appointed M/s Wong Partnership to represent him in the inquiry. The findings of the Panel were issued on 21 March 2003 in the form of a report ("the NNI Report"). The NNI Report dwelt on four concerns in relation to the inappropriate handling of the project by the appellant ("the four concerns"). These were that:

(a) patient confidentiality was breached;

(b) testing on human subjects was done without Ethics approval [*sic*];

(c) human subjects researched upon were exposed to risks. No competent medical assessment was made as to the suitability of the human subjects to be researched upon; and

(d) the human subjects did not give informed consent to the testing that was done on them.

as articulated in a letter by the NHG to the SMC dated 10 April 2003.

7 Relying on the findings of the Panel, the NHG preferred a complaint with the SMC against the appellant on 11 April 2003. The appellant was invited to respond. Although he declined to do so personally, his insurers, the Medical Protection Society ("MPS") took up cudgels with the SMC, boldly asserting that it had no jurisdiction over the appellant as he had resigned from the register of medical practitioners in Singapore prior to the lodgment of the complaint.

8 The Complaints Committee ("CC") of the SMC determined that there should be an inquiry by a DC in respect of only two of the four concerns raised in the complaint, thereby dismissing the rest of the complaint. The NHG then appealed against such a dismissal. After the Minister for Health allowed the NHG's appeal, a total of 30 charges categorised into four groups (corresponding to the four concerns) were preferred against the appellant in the DC proceedings.

9 The charges of professional misconduct levelled against the appellant were as follows:

(a) Thirteen charges in relation to 13 PD patients for failing on various dates between September and December 2002 to safeguard their best interests and health by exposing them to unnecessary risks ("Best Interest Charges"). The PD patients' medication had been omitted

and/or modified for the purpose of "on-off" L-Dopa (or Levodopa, a drug used to treat patients with PD) testing without a proper assessment being made by the patients' respective managing physicians or other clinically competent medical persons as to their suitability for the test. It was also alleged that proper safeguards were not put in place.

(b) Thirteen charges for failing to obtain the informed consent of each of these 13 PD patients prior to carrying out the "on-off" L-Dopa testing ("Informed Consent Charges").

(c) Two charges for failing to obtain ethics approval from the Ethics Committees of the Tan Tock Seng Hospital ("TTSH") and the Singapore General Hospital ("SGH") respectively for the "on-off" L-Dopa testing that was carried on the PD patients. This included, *inter alia*, a failure to make, in his application letters, any request for ethics approval and to indicate that such testing would be implemented ("Ethics Approval Charges").

(d) Two charges for breaching the PD patients' right to medical confidentiality by obtaining their medical data and records from the TTSH and SGH pharmacies without their consent and using this information for the purposes of the project ("Confidentiality Charges").

10 Despite the appellant's refusal to participate in the DC proceedings, the MPS insisted that the SMC's solicitors make known the appellant's position on the jurisdictional and other issues to the DC. The MPS further requested that his previous statements made at the NNI and Ministry of Health inquiries be considered by the DC. The SMC's solicitors acceded to this request.

11 The DC hearing took place over nine days. The jurisdictional issue alone occupied the first one and a half days, with the DC unequivocally concluding that it had jurisdiction over the appellant. In relation to the Best Interest Charges and the Informed Consent Charges, the DC censured the appellant, fining him $5,000 on each charge and ordering that his name be removed from the register of medical practitioners. Apropos the Ethics Approval Charges and Confidentiality Charges, the DC censured the appellant, fining him $5,000 on each charge. Subsequently, and in response to the High Court ruling in *Chia Yang Pong v Singapore Medical Council* [2004] 3 SLR 151, the SMC applied to court for the total sum of the fines imposed on the appellant to be limited to $10,000. The court duly allowed the application.

The taxation proceedings and the appeal to the judge

12 At the original taxation proceedings before the AR, the SMC claimed $450,000 as getting-up costs for work done prior to and during the DC proceedings. The AR reduced this amount to $250,000. Before the judge, the SMC continued to press for a higher sum, with the appellant submitting on the other hand that no more than $108,000 should be allowed. The judge felt the amount of $250,000 awarded by the AR was fair and reasonable and dismissed both applications for review while additionally directing that each party bear its own costs (see *Singapore Medical Council v Shorvon Simon* [2005] SGHC 93).

13 The judge took into account the novelty of the jurisdictional and ethical issues, the time expended in procuring the statements of the PD patients, the copious documents, the absence of the appellant at the proceedings, and finally the pressing need to take immediate and urgent action. The judge also rejected the appellant's argument that the costs for work done at the CC stage prior to the formation of the DC were not costs of and incidental to the disciplinary proceedings within the meaning of s 45(4) of the MRA.

14 In response to the appellant's main submission that the amount of $250,000 amounted to a

princely $28,000 per day, in stark contrast to and at variance with both the $13,000 to $14,000 per trial day allowed for High Court Bill of Costs No 600176 of 2001 in the medical negligence suit of *Tan Hun Hoe v Harte Denis Mathew* [2001] 4 SLR 317 as well as the $10,000 per day guideline employed by the court in *Tan Boon Hai v Lee Ah Fong* [2002] 1 SLR 10, the judge opined (correctly in our view) that the length of the hearing was but one of many factors to be taken into account.

15 The judge emphasised that he was not attempting to re-write the criteria for taxation of costs in disciplinary proceedings. Awarding costs on a per-trial-day basis was a rough guide which, if adhered to rigidly, could operate unfairly. The appellant had submitted that the amount of costs awarded ought to be $12,000 per day, which would amount to $108,000 for nine days. The judge extrapolated that assuming the appellant had admitted to all the charges preferred against him on the eve of the proceedings and assuming further that the hearing was completed in just one day, the SMC would, based on such a hypothesis and such a proffered quantum, receive only about $12,000 in costs; such an outcome, he emphasised, would be most unjust. Even if that amount was supplemented by another two days' worth of work (still proceeding on the per-trial-day basis), the judge doubted very much if the resulting amount of $36,000 would have adequately acknowledged and compensated the time and effort expended by the solicitors for the SMC.

16 The judge also dismissed as unhelpful an attempt to draw an exact parallel between disciplinary proceedings and the court system for taxation of costs, stating (at [29]):

> The better view is that disciplinary proceedings are really a hybrid category of cases with no strict rules of evidence or procedure but which incorporate aspects of criminal and civil procedure applicable in the courts, and the Disciplinary Committee under the Act is neither the equivalent of a District Court nor the High Court. It is unique in that an appeal therefrom lies to a High Court of three judges as the final decision-making body.

We concur with these observations.

17 The judge was clearly not impressed by the appellant's argument that disciplinary proceedings were relaxed and casual as opposed to the formality and rigour of court proceedings. The judge countered that it was arguably more demanding to appear before a fact-finding tribunal of three professionals and an observer – in this case the DC – since this entailed both the possibility of being questioned by more than one panel member as well as the onerous responsibility of having to persuade not one but three "judges". The fact that the panel members were senior doctors "who pick up the complexities and technicalities with relative ease" did not mean that counsel for the SMC could afford to be less than adequately prepared.

18 While the judge took into account the fact that the testimony adduced at the hearing was completed without the necessity for cross-examination and re-examination, he wryly observed (at [31]) that:

> In some instances, coming up with the recipe and then shopping frantically for the correct ingredients are much more onerous and demanding than the actual cooking process and the proceedings here were one such case.

The relevant legal principles

19 The procedure and rules pertaining to the taxation of costs by the court are set out in O 59 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules"). The underpinning approach to the taxation of costs, whether on a standard or indemnity basis, is that of reasonableness. In the

exercise of its discretion in determining the amount of costs to be allowed, the court must have regard to all the relevant circumstances and, in particular, to the following factors stipulated in Appendix 1 of O 59:

(*a*) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(*b*) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;

(*c*) the number and importance of the documents (however brief) prepared or perused;

(*d*) the place and circumstances in which the business involved is transacted;

(*e*) the urgency and importance of the cause or matter to the client; and

(*f*) where money or property is involved, its amount or value.

20 A taxing master ought to ascertain the amount of costs allowed for similar cases, if any, before determining the quantum of costs that would be reasonable in any given matter. Cases which differ from the matter at hand can sometimes afford a guide, albeit a rough-and-ready one, of the range of the awards for getting up: *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1993] 1 SLR 185 at 196, [32]. A departure from the norm invariably warrants justification by reference to the reasons necessitating the exercise of such judicial discretion; see *Lipkin Gorman v Karpnale Ltd* [1989] 1 WLR 1340 at 1398.

21 It is trite law that a judge hearing an application for review of taxation of costs under O 59 r 34 and O 59 r 35 hears the matter *de novo* and is not fettered by the discretion exercised by the Registrar. The judge may substitute his discretion for that of the Registrar although the judge ought to give appropriate weightage to the Registrar's decision on the quantum allowed: *Tan Boon Hai v Lee Ah Fong* ([14] *supra*) at [31].

22 An appellate court will be reluctant to interfere with the judge's exercise of discretion, unless the decision is manifestly wrong or was exercised on wrong principles: *Tullio v Maoro* [1994] 2 SLR 489. The usual principles applicable to costs in civil proceedings apply with the same cogency to the assessment of costs incurred in a disciplinary process: *Lim Teng Ee Joyce v Singapore Medical Council* [2005] 3 SLR 709 at [18].

The appeal

23 The appellant's submissions in this appeal were a re-enactment of those made to the judge. In arguing for a significant reduction of the $250,000, the appellant strenuously contended that the judge failed to take into consideration pertinent factors. The appellant outlined the following issues for consideration:

(a) whether costs incurred for work done at the complaints stage were incidental to the disciplinary proceedings;

(b) whether the award of $250,000 as costs of the getting up was excessive in the circumstances, notwithstanding:

(i) the novelty of the jurisdiction issues;

(ii) the novelty of the ethical issues;

(iii) the complexity of the charges;

(iv) the effect of the previous work done by the NNI and its counsel, A&G, and the MOH on the workload for the SMC;

(v) the effect of the appellant's absence from the DC proceedings on the workload of counsel for the SMC;

(vi) the considerable documentation; and

(vii) the appropriate yardsticks applicable to costs for disciplinary proceedings.

Are costs incurred at the complaints stage incidental to the disciplinary proceedings?

24 The SMC submitted that the complaints stage was a prelude to the disciplinary proceedings. Work done, even prior to the formation of the DC, was therefore incidental to those proceedings and consequentially embraced within the ambit of s 45(4) of the MRA. The judge agreed.

Meaning of "incidental"

25 It cannot be gainsaid that the DC's power to direct the payment of costs is purely statutory in nature. It has no inherent jurisdiction to make costs orders. While s 45(4) of the MRA states that the DC may order an offending practitioner to pay to the Medical Council such sums as it thinks fit, this power is immediately limited by the words "in respect of … and incidental to any proceedings before the Disciplinary Committee". This is clearly neither a subjective nor an unfettered statutory licence to make arbitrary orders of costs and/or expenses. The power is strictly limited to the costs of and incidental to the DC proceedings. We note that when Parliament amended the MRA in 2002 by way of Act 46 of 2002 to create an Interim Orders Committee ("IOC"), it saw fit to expressly address the issue of the costs and expenses of solicitors appointed by the SMC for work done before an IOC. In addition to amending s 45(4) of the MRA, s 45(7) of the MRA was also modified to read as follows:

The costs and expenses referred to in subsection (4) shall include —

(*a*) *the costs and expenses of any assessor and advocate and solicitor appointed by the Medical Council for proceedings before the Disciplinary Committee and the Interim Orders Committee*;

(*b*) such reasonable expenses as the Medical Council may pay to witnesses; and

(*c*) such reasonable expenses as are necessary for the conduct of proceedings before the Disciplinary Committee and the Interim Orders Committee.

[emphasis added]

26 Viewed against this precisely defined legislative backdrop, the appellant's argument that the *costs* incurred by the SMC at the complaints phase should *not* be regarded as "incidental to any proceedings before the Disciplinary Committee" seems entirely justified. The word "incidental" ordinarily signifies "attendant" or "accompanying". We would be conferring undue elasticity to the

word "incidental" should we stretch it to embrace the work done earlier for the purposes of the CC inquiry. It also appears to us that the word "incidental" ought to be read in conjunction with and qualified by the word "before" in s 45(4) of the MRA. Construed in this light, the incidental work for which costs and expenses can be recovered must necessarily be those incurred primarily in connection with the DC hearing. In addition, by virtue of the express power conferred by s 45(4) read with s 45(7) of the MRA, the DC has the power to direct the payment of costs and expenses incidental to proceedings before an IOC.

27 There appears to be only one reported decision addressing a similar issue involving costs. Regrettably, counsel did not draw the attention of the various courts to it. In *Re Fahy's Will Trusts* [1962] 1 WLR 17 it was held that the words "and incidental to" in an order for costs meant "and consequent upon". Therefore an order that was made for costs "of and incidental to" the negotiations leading up to the order could not include costs incurred before negotiations. Plowman J (at 20) opined:

> Strangely enough, there is, I am told, no authority as to the meaning of the words "and incidental to" and what they add to "costs of" in an order for costs.
>
> In my judgment the words "and incidental to" as used in the order of Buckley J., "costs of and incidental to the negotiations" mean "costs of and consequent upon the negotiations" and costs incurred before negotiations commenced cannot be said to be costs incidental to the negotiations.

28 In the context of s 45(4) of the MRA, the term "and incidental to" is not to be interpreted as an abbreviated notation deemed to embrace items and prior work lacking a direct and apparently immediate nexus to the relevant proceedings.

29 We are therefore unable to agree with the judge that the work done by the SMC's solicitors in drafting charges and/or primarily preparing for the matters raised in connection with the CC phase of the disciplinary continuum fell within the purview of the DC's order of costs. The DC, IOC and the CC are separate and distinct statutory bodies which serve and fulfil dissimilar statutory functions in the disciplinary continuum. In the absence of an express power conferred on the DC to authorise the payment of costs for work done "*before*" each of these distinct committees, the SMC's solicitors are not entitled, purportedly and merely under cover of the word "incidental", to recover by a side wind costs incurred in connection with work done primarily and essentially at a prior, disparate stage of the disciplinary process.

Strict construction

30 There is yet a further point to be considered. In *Lim Teng Ee Joyce v Singapore Medical Council* ([22] *supra* at [15]) Chao Hick Tin JA observed:

> It is true that s 45(4) provides that the DC may order the RMP to pay to the SMC "such sums as it thinks fit in respect of costs and expenses" but that power should only be exercised within the framework of ss 45(1) and 45(2). *In the scheme of things under s 45 of the MRA, an order requiring the RMP to pay costs of the proceedings is a form of punishment* even though the provision conferring the power to order costs against the RMP is set out in sub-s (4) instead of sub-s (2) of s 45, as sub-s (4) merely expands the powers of the DC under sub-s (2). Section 45(4) does not confer an unfettered discretion. [emphasis added]

31 The determination to award legal costs in disciplinary proceedings carries with it a dual

punitive and compensatory dimension. It is punitive in the sense that the offender has to bear the pain of making financial reparation to the administrative body that had carriage of the prosecution of the disciplinary proceedings. It is compensatory in that it seeks to redress and reduce the extent of the out-of-pocket expenses incurred by that body. It is trite law that the exercise of and the ambit of statutory powers in a penal context ought to be construed narrowly and/or strictly as the case may be (*per* F A R Bennion, *Statutory Interpretation*, *A Code* (Butterworths, 4th Ed, 2002) at pp 705–706:

> It is a principle of legal policy that a person should not be penalised except under clear law. ... Whenever it can be argued that an enactment has a meaning requiring infliction of a detriment of any kind, the principle against doubtful penalisation comes into play.

The punitive power to award costs conferred by s 45(4) of the MRA is a form of detriment that ought not to be construed with any degree of latitude. If Parliament had intended the words "and incidental to" to extend to costs for work done for the CC phase of the proceedings it would, in any event, have made its intentions clear as it indeed did with regard to the IOC phase of the disciplinary proceedings.

32 In the circumstances, we agree with the appellant that the SMC's solicitors are not entitled to recover the legal costs incurred in relation to work done primarily for the CC phase of the proceedings and that the quantum of costs ought to be appropriately abated. When those costs were incurred, the DC had not even been constituted. That work could not have been incidental to proceedings before a DC not yet existent.

Was the award of $250,000 manifestly wrong?

33 The appellant also vigorously maintained that the SMC's counsel had their work cut out for them thanks to the existence of the NNI Report. The crux of the submission was that because the Panel's solicitors, A&G, had already completed all the spadework for the DC proceedings including the finalisation of the witness statements, the SMC's counsel had no need to reinvent the wheel. In addition, it was also pressed that as the appellant had not personally appeared before the DC and because no cross-examination had taken place, the alleged preparation by the SMC's solicitors was redolent of legal "overkill".

34 In our view, the appellant is entirely disingenuous in raising these arguments with shallow roots. We note that in its correspondence with the SMC's solicitors, the MPS on behalf of the appellant adverted to the "complexity of the matter". On 30 January 2004, the MPS wrote to the SMC's solicitors demanding that its many "concerns" be placed before the DC. The MPS emphatically asserted in that letter:

> For the avoidance of doubt:
>
> 1. Professor Shorvon rejects the allegations made against him in their entirety asserting that they are unfounded.
>
> 2. Professor Shorvon has made all relevant comments on the issues to be considered by your clients in his responses, written and oral, to the Ministry of Health Inquiry, the NHG and the NHG Panel of Inquiry, and its lawyers, between 29 January and 28 March 2003, by which he stands.
>
> 3. Professor Shorvon rejects the NHG Report and its conclusions as his letters to the panel

referred to the above make clear. *The Inquiry's process was improper, in failing to follow principles of natural justice, and its conclusions are not substantiated by the evidence. Assertions to the contrary can be resisted on numerous grounds, not least with the benefit of independent expert evidence I have obtained*.

[emphasis added]

35 Faced with this root-and-branch attack on all facets of the NNI Report including its ultimate conclusions as well as the preliminary issue of the DC's jurisdiction, the SMC's solicitors cannot be chided or challenged for assiduously retracing the Panel's factual path in addition to probing and testing its conclusions. This was clearly not some prosaic disciplinary proceeding that could be routinely and mechanically prepared for and prosecuted. The prosecution of this matter required a thorough understanding of scientific and medical practices, methodologies, ethics as well as a mastery of the copious relevant documents. It was nothing less than imperative for the SMC's solicitors to independently probe into and verify the factual and legal substratum of the complaint. Indeed, we were also informed by the SMC's solicitors that this was the first disciplinary case in Singapore calling into question the practices of a research scientist.

36 In the final analysis, the issue that stubbornly prevails is whether the award of the sum of $250,000 was manifestly excessive and to that extent incorrect. Our attention was drawn to the quantum of costs awarded in *Singapore Medical Council v Goh Swee Lian Eileen* Bill of Costs No 248 of 2004. That was a relatively anodyne matter involving a clinician and occupied only three days of the relevant DC's time. The getting-up costs were assessed at $36,000. That particular assessment appears to be consistent with the norm for similar routine disciplinary proceedings. The appellant heavily relies on that assessment in contending that the award of costs in disciplinary proceedings ought to be confined to $12,000 per trial day. This is, with respect, far too simplistic an approach. We agree with the judge that the actual number of hearing days is but "a very rough guide" which cannot be rigorously adhered to in the discretionary determination of costs.

37 The AR and the judge were clearly aware of the current benchmarks for costs awarded in relation to disciplinary proceedings. Both the AR and the judge clearly and consciously chose to depart from the norm by determining that $250,000 was in fact the appropriate amount. While we accept that this matter clearly justified a substantial departure from the norm, the real crux of the matter is the question of proportionality. In this regard, it comes as a surprise, both that the SMC's solicitors did not see it fit to seek, and the DC did not make, any order that "costs for more than one solicitor be paid" because the matter was indeed one of "sufficient complexity" to justify a departure from the norm. Such a failure cannot be casually brushed aside. The MRA expressly confers on the DC the power to make such an order pursuant to s 45(6):

> The Disciplinary Committee in ordering that costs be paid by the registered medical practitioner under this section *may certify that costs for more than one solicitor be paid if it is satisfied that the issues involved in the proceedings are of sufficient complexity*, and the certification by the Disciplinary Committee shall have the same effect as if it were a certification by a Judge in a civil action in the High Court. [emphasis added]

38 When queried why such an order was not sought, Mr Tan Chee Meng, on behalf of the SMC, candidly stated that because the appellant was unrepresented he did not want the costs order to be perceived as heavy-handed. This succinctly sums up the dilemma facing the SMC's solicitors in the taxation proceedings. Having concluded that it was not proper to seek costs for two solicitors, can the SMC's solicitors now seek a substantial quantum of costs indirectly through the back door? The SMC's solicitors' failure to obtain the appropriate order of costs in a case that they maintain is

complex (and which in all fairness appears to be so) cannot and should not now be retrospectively repaired by a sympathetic assessment of costs. Principle cannot and should not be sacrificed at the altar of expediency. Arguably, if the SMC's solicitors had in fact sought, and the DC had indeed certified, that costs for two solicitors were justified, the AR's costs assessment might have been upheld.

39 For the sake of a complete discussion, we ought to advert to an additional but important point of practice that escaped earlier attention. In the Bill of Costs, the SMC claimed that an impressive total of 1,020 hours were spent cumulatively by four solicitors in the preparation and conduct of the DC proceedings. The seniority of the solicitors involved in the matter ranged from a mere fledgling of three years to a veteran of 14 years. Most regrettably, and quite inexplicably, no breakdown of the number of hours spent by *each* solicitor in the matter was mentioned. Was the solicitor of three years' standing responsible for half or perhaps more than that of the hours? We do not know. While we can and will assume that the lead solicitor would have been present during the oral phase of the DC hearing, which would have occupied some 60 hours, the Bill of Costs itself gives neither any assistance nor any indication at all as to how the time was apportioned among the various solicitors. There was also no indication whatsoever that any consideration and/or provision had been made for the overlap of the time involved in the getting-up phase. Though it is perfectly acceptable for solicitors to divide their responsibilities and/or delegate their work to various team members, it is nevertheless incumbent on them in taxation proceedings to accurately state the actual time spent by each team member in attending to the matter. The taxing master will be unable to divine and therefore ultimately accurately determine whether the time spent was excessive or disproportionate in relation to the matter at hand unless an accurate breakdown of the time spent by each team member is furnished. A taxing master should not be asked to speculate unnecessarily. Solicitors who do not ensure that their bills of costs contain the requisite details cannot complain if this lack of particularity rebounds with adverse implications. In addition and as a matter of sound practice, the charge-out rate claimed for each solicitor ought to be expressly articulated. If a "blended" rate has been or is to be applied across the board then this too ought to be expressly stipulated. The SMC's solicitors' Bill of Costs was completely and inexplicably bereft of all such crucial details.

40 While the assessment of costs is not in the ultimate analysis a purely mathematical exercise, it cannot be gainsaid that the taxing master must be accurately appraised of all the relevant considerations, including the seniority of the team members, the time expended by each team member on the matter and the relevant charge-out rates. Evidence of all these pertinent particulars ought to be expressly included in a bill of costs and never left either to conjecture or to statements arbitrarily furnished by counsel. This is because any inaccuracy in such statements may attract other consequences.

Conclusion

41 The SMC's solicitors cannot be taken to task for the effort they expended, the time spent and the care with which they approached this matter. It is churlish for the appellant to dispute or take issue with the actual work done by the SMC's solicitors particularly as much of this was performed in the light of and in response to the MPS's robust, tireless and uncompromising efforts to rake up, undermine and dispute not only every facet of the NNI Report but the DC's jurisdiction as well.

42 That said, while we are satisfied that the SMC's solicitors justifiably spent a considerable amount of time and effort in this matter, the award of costs for getting-up strikes us as manifestly high when assessed by the appropriate yardstick for such costs on a standard cost basis. Granting

that in assessing the quantum of costs a departure from the norm was indeed warranted, the amount of $250,000 cannot be justified in the absence of a certificate for two solicitors and a proper breakdown of the actual time spent by each member of the SMC's team of solicitors. In addition, the SMC's solicitors clearly cannot recover the costs attributable to the preparatory work for the CC stage of the proceedings. We therefore concluded in the circumstances that the award be reduced by $75,000. The appellant is entitled to the taxed costs of this appeal with the usual consequential orders. The order of costs made by the judge below as to the review before him is to remain undisturbed.