IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

Judicial Review HBJ No 42 Of 2001

BETWEEN:

DILDAR SHAH *Applicant*

AND:

FIJI ISLANDS REVENUE AND CUSTOMS AUTHORITY

First Respondent

AND:

FIJI PUBLIC SERVICE COMMISSION

Second Respondent

AND:

THE ATTORNEY-GENERAL OF FIJI

Third Respondent

Counsel:	Mr. S Chandra	–	for Applicant
	Mr. J. Apted	–	for 1st Respondent
	Mr. Daunivalu	–	for 2nd and 3rd Respondent

Date of decision: 11th May, 2006

DECISION

(Taxation of interim indemnity costs)

Introduction

[1] I have before me two bills of costs for a detailed taxation on indemnity basis, each filed by *Fiji Islands Revenue & Customs Authority* (FIRCA) *and Public Service Commission* (PSC) and *Attorney General*, the first and second and third respondents respectively. The underlying facts leading to this application are set out in considerable detail in the reserved

judgment of His Lordship Mr. Justice Winter delivered on the 30th day of January, 2006.

Brief back ground

[2] The principal action herein is an application for Judicial Review pertaining to the termination of the applicant's employment with FIRCA. Pursuant to O. 53, r.3 of the *High Court Rules 1988*, leave of the Court is required to file an application for judicial review. Leave was granted by His Lordship Mr. Justice Scott on 1st of March, 2004. Shortly thereafter the applicant filed an originating motion under O. 53 rule 5(1) to make an application for judicial review.

[3] The Respondents took objection to the motion as it was not in conformity with the order granting leave to apply for judicial review. As expected the objection was reciprocated by an application for an amendment which was granted by consent. The precise nature of the amendment was not expressly spelt out at the time of the making and granting of the consent order. However, implicit within the consent was that the amend was strictly limited to allow the applicant to confine the motion to His Lordship, Mr Justice Scott's order.

[4] After some delay, an amended motion was filed, which was again opposed by the Respondents. But on this latter occasion the first respondent, sought to have the entire application dismissed for abuse of process. The second and third respondents supported and joined the first respondent in that application.

[5] Winter J at page 11 of the Judgment *inter-alia* ordered as follows:

"(i) *I strike out the second amended motion*
(ii) I grant the first and second respondents' application but do not strike-out the entire proceedings.
(iii) ***The history of this matter is such that the respondents are entitled to indemnity costs. They are to calculate, certify these and then submit them for taxation. Those costs are to include wasted hearing fee reserved on 2nd of May when my orders of the 1st of March, 2005 were not complied with when the applicant sought an adjournment***"

[6] Para (iii) of the order is central to taxation of costs. I have read and taken into account the comprehensive reasoning of His Lordship, in awarding costs on indemnity basis. Indeed his reasons are of fundamental importance to the application before me.

[7] Subsequent to the order, FIRCA filed a bill of costs in the sum of $10,282.92, and Public Service Commission and Attorney General for $1,760.00.

[8] Since this taxation exercise was necessitated in the midst of a pending action, which was aptly described by Winter J as having a "*checked curial history*", I sought clarification from the counsel as to the segment and the precise matters of the proceeding over which the taxation order was applicable. In that respect, they all concurred that the order was limited to and from the time when the second amended motion was filed. This relates back to 17th March, 2005.

[9] Both the bills presented for taxation are challenged *albeit* on different grounds, which I will be shortly alluding to in the judgment.

[10] Counsel filed very helpful written, as well as presented oral submissions. Since, there are two independent bills of cost, compounded with different grounds of objections, it is convenient to deal with them separately.

Second and Third Respondents Bill

[11] The Counsel for the second and third respondents initially filed a bill of costs for the entire proceedings in which a sum of $10,563-75 was sought. When the matter came for hearing, counsel appropriately conceded that the bill should only have been in relation to the second amended motion. Thereafter, by consent of the Counsel for the applicant, I granted leave to the second and third respondents to file an amended bill for which a short adjournment was also out of necessity granted. When appropriate revised bill was filed, the quantum was substantially reduced. At the resumption of the adjourned hearing, the counsel had reached an agreement as to a quantum of costs at $1,730-00. However, the consensus reached was subject to a reservation by Mr Chandra. He submitted that since State counsel do not render or raise bills of costs nor can charge for the legal services provided to the government entities, the quantum of costs can not be assessed similar to that of a private practitioner. Also it was argued that due to the Attorney General's special position, in that he was to be compulsorily joined as a party under S12 of the *State Proceedings Act* (24) full indemnity costs should not be allowed. Only out of pocket expenses are to be permitted. It was further contended by Mr. Chandra, that the revenue collected or monies paid out by the respondents are controlled and received by the Chief Executive Officer of Ministry of Finance under the Financial Management Act 2004. The receiving parties, PSC Attorney General Chambers, cannot retain the same thus an award of cost would be inconsistent with O.62, r. 12(2).

[12] In summary, what Mr. Chandra appeared to be submitting was that taxing costs based on an indemnity basis in favour of the State Counsel will invariably offend the principles upon which indemnity basis costs are taxed.

[13] In response, both by the way of written as well oral submissions, Mr. Daunivalu very firmly asserted that the second and third respondents are entitled to full indemnity costs which should be taxed upon the same principles applicable to that of a private legal practitioner. He emphasised that his Lordship, Mr Justice Winter granted the order and the taxing officer is to required to tax the bill of costs upon establishment principles. In his submissions, Mr Daunivalu stated that it mattered not whether Attorney General's Chambers rendered or raised bills. Annually, the Parliament categorically assigns an annual budget to the office of the Attorney General for providing legal services to the government. Equally important, to note, also is that, the ministries and departments to which legal services are provided are not allocated any expenditure for this. Even though state solicitors, are paid a fixed annual salary, their bills of costs are not to be treated differently to the private bar. He principally relied upon S. 16 of the *State Proceeding Act* (Cap 24). In addition, in very meticulously researched submissions, he referred to a number of applicable authorities , which only add to and fortify the legislative position.

[14] The first case cited by him was ***Attorney General -v- Shillibeer [1849] 4 Ex 606.*** In ***Shillibeer*** *(supra)*, an in-house Crown Solicitor, employed at an annual salary had conducted the hearing of the principal action. On an application for taxation, *Her Majesty's Remembrance* allowed regular cost of a solicitor-client as between party and party. Costs were also allowed for the witnesses. This was challenged and the Attorney General shewed cause. The court had to deliberate upon an issue identical to the one before me, which was, *'whether the Solicitor for Inland Revenue, who was paid a fixed yearly salary, was entitled to the costs of an ordinary Solicitor, as between "party and party"*. Parke J, in a considered decision held that Crown was entitled to the *'full costs of the suit' (see at page 613)*. One of the objections of the defendant was that the Solicitor for the Inland Revenue received a fixed annual salary from Crown thus the costs should be limited to *'mere payments and out of pocket expenses'* which excluded the salary component. To that argument, Parke J at page 613 of the report stated:-

> *".....We think that objection really has no weight. The Crown has a Solicitor, and makes a perfectly fair bargain with him, and one which is very much to the benefit of the public, and therefore that ought to make no difference in the case. We think that the costs of this case are to be taxed on the same principle as if the Crown Solicitor himself were conducting each suit at the expense of the Crown in the ordinary way".*
>
> (emphasis added)

[15] Once again this contention was raised in ***Henderson -v- Merthyr Tydfil Urban District Counsel [1900] 1 QB 434,*** except on this occasion an in-an house legally qualified person was employed but designated as a Clerk, on an annual salary of £400. His engagement was for Council's legal work, which were of both litigious and non litigious in nature. The Council succeeded in the primary action conducted by the Clerk with an order for costs on a solicitor-client basis. The taxing officer disallowed all costs except for the out of pocket expenses. The salary of the Clerk was disallowed under S4 and S5 of the *Solicitors Act 1870.* On appeal, Channel J, held that the Council was entitled to the *"amount charged by the Solicitor in respect of work done by him"*. In apportioning costs for individual matters which is both litigious and non litigious, the onus lies with the objecting and not the claiming party. His Lordship at page 437 held :

> *" **It is for the party objecting to the allowance of the usual costs under such circumstances to shew that the allowance will give more than an indemnity,** and in all ordinary cases, such as the present, **it is impossible for him to shew it.** In some cases, however, he might be able to do so"*
>
> (emphasis added)

[16] Finally, in what came to be the most commonly cited cases on taxation of in-house solicitors bill of costs, Re ***East Wood deceased), Lloyd's Bank Limited -v- Eastwood and others; [1974] 3 ALLER 603,*** the Court of Appeal, put a rest to the issue. Briefly, this case involved the costs of an in-house salaried solicitor employed by the Attorney General's Office. The Attorney General was joined as a defendant in the action which related to construction of a will. At the conclusion of the proceedings, Attorney General was ordered costs on a *"common fund basis"* which was to be paid out of the testator's estate. Consequently, the treasury solicitor presented a bill of costs which included the costs for preparation and general care of the case in the sum of £ 75. The taxing master reduced it to £ 45, excluding £ 30 recording that the same represented the profit of a private legal practitioner. The Masters decision was up-held by the Judge. The Attorney General appealed. On appeal the precise question the court had to answer was:

> *"... whether the taxing master correctly approached the problem of taxation of costs awarded to the Crown, having regard to the fact that the Crown was represented on the originating summons not by an independent solicitor but by a Treasury Solicitor and his department......"* (see page 606 at para e-f)

[17] Due to the importance of the principle involved, which inevitably applied to all in-house salaried solicitor's, assistant solicitors and legal executives of the

Local Government Authorities, Nationalised Industries etc the court took time to deliver the decision. An unanimous judgment of the Court was delivered by Lord Russell. The court decisively held :-

> *".... **The system of direct application of the approach to taxation of an independent solicitor's bill to a case such as this has relative simplicity greatly to recommend it, and it seems to have worked without it being thought for many years to lead to significant injustice in the field of taxation** where justice is in any event rough justice, in the sense of being compounded of much sensible approximation."*
>
> (emphasis added)

[18] Following on in the judgment, His Lordship, summed up the applicable principles as follows:

> "1. *It is the proper method of taxation of a bill in a case of this sort to deal with it **as though it were the bill of an independent solicitor, assessing accordingly the reasonable and fair amount of a discretionary item** such as this, having regard to all the circumstances of the case.*
> 2. *There is no reason to suppose that the conventional A B method is other than appropriate to the case of both independent and employed solicitors.*
> 3. ***It is sensible and reasonable presumption that the figure arrived at on this basis will not infringe the principle that the taxed costs should not be more than an indemnity** to the party against the expense to which has been put in the litigation.*
> 4. *There may be special cases in which it appears reasonably plain that the principle will be infringed if the method of taxation appropriate to an independent solicitor's bill is entirely applied: but it would be impracticable and wrong in all cases of an employed solicitor to require a total exposition and breakdown of the activities and expenses of the department with a view to ensuring that the principle is not infringed, and it is doubtful, to say the least whether by any method certainty on the point could be reached.*
>
> (emphasis added)

[19] *Re : Eastwood* (*supra*) was applied by the Court of Appeal in *Official Revier -v- Brunt & Others [1999] EWCA Civ. 879* where it was required to tax the costs and disbursements of the Official Receiver as opposed to an in-house solicitor.

tax the costs and disbursements of the Official Receiver as opposed to an in-house solicitor.

[20] Recently, the Court of Appeal in ***Richard John Cole -v- British Telecommunications PLC [2000]EWCA Civ. App. 208*** reiterated that the principles enunciated in ***Re – Eastwood (Supra)*** was firmly established and is still the most practical way to tax bills of costs of in-house salaried solicitors.

[21] In my considered opinion the aforementioned principles of law pertaining to taxation of costs of in-house salaried solicitors apply delineated from the above cases on all fours to our jurisdiction. Thus I hold that the bills of costs for in-house salaried solicitors are to be taxed accordingly.

[22] Mr. Daunivalu also very appositely submitted that the relevant legislative provisions do not forbid the application of the aforementioned principles. If anything, the common law merely compliments legislation.

[23] As to the legislative provisions, perhaps the most appropriate starting point is the *State Proceedings Act* (Cap 24), which regulates civil proceedings by or against the State. S. 15 of the Act empowers the court to "*make all such orders as it has power to make between subjects.......*". There are a few exceptions of which costs is not one. S. 16 expressly and unreservedly provides that "*In any civil proceedings or arbitration to which the State is a party, the costs of and incidental to the proceedings shall be awarded in the same manner and "on the same principles as in cases between subjects and the Court or arbitrator shall have power to make an order for payment of costs by or to the Crown accordingly....*". *(emphasis added).*

[24] In addition, Order 62 rule 12 explicitly provides for taxation of costs on indemnity principles. Needless to mention, O. 62 Part I, rule 2 of the *High Court Rules* 1988 which primarily deals with "costs" does not exclude nor distinguish State Solicitors , or for that matter any in-house. O. 62 Part I, rule 2 defines a solicitor, which "*includes a legal practitioner admitted to practice in Fiji*". A "*legal representative*" is defined as "a legal practitioner or a Barrister or a solicitor".

[25] The State has its own in-house '*legal representatives*' who are for all intent and purpose of taxation of costs, "practitioners, or barrister or solicitor". It is patently obvious that there are no practical differences in the execution of the professional nature of work by government legal practitioners when compared to the private bar. Except their work is of a specialised nature and the government being the only recipient of their service. The only material difference is that private practitioners earn by charging fees for their services to individual client on an engagement by an engagement basis, where as

State legal practitioners receive a fixed salary with an obligations to provide government's legal needs.

[26] Notably they are bound by the same duties and responsibilities to their clients under the *Legal Practitioners Act 1997*. At least Mr. Chandra conceded that the State solicitors are " *practitioners*" under the *Legal Practitioners Act, 1997*. They are required to obtain a "*Practising Certificate*" just like other practitioners. State legal practitioners are also required to pay the same fees for issuance of practising certificate; 43(1). Equally as "*practitioners*" they are required to conduct and practice within the rules of professional conduct; S.101(1)

[27] In light of the legislative provisions which are buttressed by well settled common law, I am of the opinion that in taxing the State's indemnity costs, its solicitors and indeed for that matter all in-house salaried solicitors, are to be dealt with in a like manner to that of independent solicitors. That is to say that costs are to be taxed in accordance with the principles set out in Order 62, rule 12(2).

[28] However, in light of a pragmatic pre-hearing resolution reached between the respective Counsel as to the quantum of costs in this application, I am not required to tax the costs. Even if I were require to tax, the principles discussed above would have been applied. The applicant did not adduce evidence to discharge the onus as stated in ***Herderson*** (supra) nor does the facts of the case fall in to a *"special category"* referred to in ***Re Eastwood (supra)***. Therefore, by consent the cost of $1730.00 is awarded to the second and third defendants.

Fiji Islands Revenue & Customs Authority Schedule of Costs

[29] FIRCA filed a bill of costs in the sum of $10,286.92. Of the total sum, $1,142.99 is value added tax. The total disbursements claimed, is $163. 93. Item 12 represented costs for a consent adjournment ***with no order as to costs.*** When pressed at the hearing, Mr Apted withdrew item 12. He submitted that the remaining 18 items remains to be taxed. In his written and oral submissions, Mr Apted emphasised that subject to the discretion of the court, all 18 items should be allowed, in accordance with order 62 rule 12(2).

[30] On the other hand, Mr Chandra submitted that costs as presented in the bill of costs were excessive, having no correlation as to quality and quantity of work necessary for the an interlocutory application. He stressed at length, that an hourly rate of $400.00 was disproportionate to the prevalent rate of fees charged by the practitioners. Mr Chandra next submitted that *"in Fiji in*

matters of such nature an experience counsel handling the brief would charge no more than $350.00 per hour". He also argued that there was substantial duplication in the content of submission for which adequate rebate should be given. Initially detailed submissions were filed for the purposes of leave, and overall the contents of the final submissions largely remained the same with minor editing. He concluded by saying that the costs are not to be *"assessed at a higher rate"* with a particular consideration to be given to the applicants personal circumstances.

[31] Costs are for the most part an allowance made to a successful party recoverable from a losing party. The guiding principle still stands as pronounced in *Donald Campbell & Co. Limited -v- Pollak [1927] AC 732,* which is that the *'general discretion as to costs is absolute and unfettered except that it must be exercised judiciously, not arbitrary or capriciously and that it cannot be exercised on grounds unconnected with litigation'*. In *Oshlack -v- Richmond River Council (1998) 193CLR 72,* at page 89 Gordon and Gummow JJ in awarding solicitor-client or indemnity costs pertinently said;

> *"The result is more fully or adequately to **compensate the successful** party to the disadvantages of what otherwise would have been the position of the unsuccessful party in the absence of delinquency".*

[32] However, it needs to be stressed that indemnity costs are not penal but merely compensatory; *Willis -v- Redbridge Health Authority (1996) 1 WLR 1228 at 1232.*

[33] Personal circumstances of the paying party plays no role in taxing costs; *Canada (Minister for Citizenship and Immigration) –v- Wen Bin Wu 2003 FCT 789 (CanLII).*

[34] Mr Chandra's submissions relating to a "higher scale costs" is obviously misconceived. It may be applicable in assessing costs on standard basis under O.62 rule 12(1). There exists a material distinction as to standard and indemnity basis of taxation. Lord Woolf in *Petrotrade Incorporated v Texaco Ltd [2002] 1 WLR 2002* succinctly identified the same as follows:

> *"An order for indemnity costs does not enable a claimant to receive more costs than he has incurred. Its practical effect is to avoid his costs being assessed at a lesser figure. When assessing costs on the standard basis the court will only allow costs **"which are proportionate to the matters in issue" and (will) "resolve any doubt which it may have as to whether costs were reasonably incurred or reasonably proportionate in amount in favour of the paying party". On the other hand,** where the costs are assessed on an indemnity basis, the issue of **proportionality does not have to be considered.***

The court only considers whether the costs were unreasonably incurred or for an unreasonable amount.

The Court will then resolve any doubt in favour of the receiving party."

(emphasis added)

[35] The meaning and application of indemnity costs in our context was adopted and applied by the Court of Appeal in *Public Service Commission v Naiveli,* Court of Appeal civil appeal No ABU 0052/95 where it was held:-

> *"Until it was recognized in the amendment to the English Order 62 in 1986, a separate category of "indemnity costs" was not mentioned in either the former English rules or the present Fiji rules based on them. In EMI Records v. Wallace (1982) 2 ALLER 980, Sir Robert Megarry V-C undertook a detailed review of the use f that expression and concluded that it was equivalent to an award of "Solicitor and own client costs" in o.62, r.29 (described in its Fiji equivalent 0.62, r.26 as "costs payable to a barrister and solicitor by his own client"), but excluding paras 2 and 3 thereof. It will result in all costs being allowed "except insofar as they are of an unreasonable amount or have unreasonably incurred" (r.26(1)). Sir Robert's judgment is with respect* ***persuasive, and we concur with Scott J in accepting his conclusion that an award of costs on an indemnity basis is to be understand in Fiji as an award in terms of O62, r.26(1)".***

(emphasis added)

[36] After the amendment to O.62 in 1998 the principles upon which indemnity costs are taxed is expressly spelt out in rule 12 (2). It is important to cite this rule in:-

> *"On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly."*

[37] The rule cited above requires a taxing officer to take into consideration the following:-

(a) whether the costs were reasonably incurred.
(b) Whether the costs are of a reasonable amount; and
(c) where there is a doubt it must be resolved in favour of the receiving party; (see also Ranjay Shandil -v- PSC Suva High Court J/R No: HBJ 0004/1996.

[38] The word *"reasonable"* in the rules is not defined. For the purposes of taxation of costs guidance can be found in *Francis -v- Francis and Dickerson 1955] 3 ALLER 836* where the court said that a *'reasonable step is that of a sensible solicitor considering in his knowledge was reasonable for his client?* As to 'necessarily incurred' in my view the test laid down in *Smith –v- Buller [1875] EQ 473* is still applicable. Sir Malins V-C said at page 475:

> *"I think he ought not to bear more than the necessary costs. I adhere to the rule , which has ready been laid down, that the costs chargeable under a taxation is between a party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more.* ***Any charges merely for contacting litigation more conveniently, may be called luxuries, and that must be paid by the party incurring them.*** *The plaintiff, is the attacking party, and has failed, and he must therefore pay all charges which are necessary to the litigation.* ***But if the defendants, give greater facilities for the conduct of the case than are strictly necessary they ought not to be allowed to throw them upon the plaintiff. "***
>
> *(emphasis added)*

[39] A *fortiori* these principles apply to Fiji. Our Order 62, for most part is similar to the English counter-part. With these basic principles in mind, I will now asses the costs.

Hourly Rate

[40] This was one of the most difficult items for taxation. There are no set guidelines for this. Mr Apted claimed $400.00 per hour. Mr Chandra was of the view that $350.00 per hour, though on the higher scale, would be appropriate. He did not adduce any evidence of the current hourly rates charged by the practitioners. Of course, I am wary of the sentiment acknowledged by the Court of Appeal, that *"....A Court is not obliged to make the unsuccessful party to pay to the opponent's desire for the "Rolls Royce" representation"*; ***South Pacific recording Limited –v- Yates*** *civil appeal number ABU 0039/96.* On the same token, in taxing indemnity costs a court can not be oblivious of the fact that a successful party in order to guard his/her interest is more likely than not will not engage a sub-standard legal representation. A litigant is entitled to the best available legal representation. The choice rests with the litigant.

[41] Be that as it may, there is a general paucity of evidence in respect of the rate of professional charges of legal practitioners. Due to want of any such evidence, I find that Mr Chandra was not able to discharge the onus. Thus in accordance with rule 12(2) any doubt has to be resolved in favour of the

receiving party which follows that award the sum of $400-00 per hour as submitted by the applicant as reasonable and necessarily incurred.

Reporting to client

[42] Whilst Mr Chandra did not disagree with FIRCA's submission relating to reporting to client, but the objection was as to the frequency and duration of the same. On the other hand Mr Apted submitted that the increased frequency of reporting was necessitated as a result of the applicant's own conduct. Of course, precisely it is for this nature of conduct indemnity costs are awarded.

[43] Practitioners are under a legislative obligation to keep their clients informed of court proceedings. Pursuant to S101 (1) and (2), of the Act, the Law Society brought into effect "*Rules of Professional Conduct and Practice*". This appears as schedule to the Act. A chapter is assigned to 'client care'. Clause 8.01(b), and (c) of the Rules mandate reporting.

[44] Since this is a statutory as well as a professional and contractual obligation, in my view expenses were necessarily and reasonably incurred. Duration of time spent in reporting to client in my view was reasonable and necessary. I have no difficulty in allowing this component of the costs in the bill with some adjustments in the bills of costs as the first respondent lumped together other matters with reporting. In taxing the costs, I have taken this in to account.

Duplication of Work

[45] One of the principle objections raised by Mr. Chandra was that there has been a substantive duplication of work. His submission was in reference to the notice of opposition and the submission and preparation time for hearing on each occasion. What he appeared to be submitting was that the Notice of opposition and submissions were merely amended edited and adopted for the purposes of the substantive hearing. Effectively, he added that the time for preparation of submissions or hearing, even though later it had to be adjourned should progressively be reduced with increased level of counsel's acquaintance with the matter meaning on each occasion this exercise was repeated. In his view most of the work would have been achieved with half of the time claimed.

[46] For the First Respondent, Mr. Apted submitted that this was indemnity costs. In fact, he had under-charged for the quality and quantity of work. He insisted that the costs were necessarily incurred as a consequence of the applicant's conduct which needs to be compensated. For most part he relied upon Justice Winter's judgment.

[47] I have perused through the submissions filed by FIRCA. In relation to the principal action, the first respondent has filed submissions on 28th February 2003, 7th March 2003 and 28th of February 2005. After comparing these submissions, I agree with the Mr Chandra that the submissions filed on 28th February, 2005, are to at length a composite of the submissions filed in 2003. In fact, a substantial portion of the submissions are duplicated. I may also add that the preparation time progressively should also be reduced as counsel's familiarity with the matter is enhanced particularly where an experience Counsel like Mr Apted is engaged. For this, in taxing the costs I have to grant appropriate discount. In doing so, I have also considered that these submissions will still be of great assistance to the first respondent in future as the principal action progresses. Authorities do allow for such discounts in cases of duplication of work; *Prkacin v Winter (2005) CanLII 23085 (SC)*. I have also given discount in respect of the Notice of Opposition, which was filed in response to the second amended motion. The rules do not require such a notice once leave is granted under O.53 rule 3(1). This was an expenditure unnecessarily incurred.

[48] However, the claim for the submission relating to the interlocutory application is to be allowed in full. Clearly, this was an unnecessary extra expenditure the Respondents had to execute as a result of the *delinquency* on the part of the Applicant in not filing the motion correctly.

Disbursement

[49] The disbursements were in the sum of $163.93. Mr Chandra has no objection to the same. Thus, the disbursement is allowed by consent.

The costs taxed are as follows:-

Item	Reasons for Taxation of Costs	Amount ($)
1	Notice of Opposition not required under O 53 r 5, unreasonably incurred.	200.00
2	Unreasonable Amount thus adjusted	50.00
3, 4 & 5	Duplication of submission. Preparation time is time should have been reduced	1,000.00
6	Allowed	800.00
7	Allowed	40.00
8	Allowed	600.00
9	Allowed	200.00
10	Amount is unreasonable to allow.	70.00

11	Allowed	200.00
12	Withdrawn	Nil
13	Allowed	400.00
14	Allowed	40.00
15 & 16	Allowed	1,600.00
17	Allowed	20.00
18	Partially allowed	70.00
19	2 hours allowed	700.00
	TOTAL	6,090.00
	ADD Disbursements	163.93
		6,253.93
	Add VAT (12.5%)	769.24
	TOTAL	7,087.10

Considering the nature of the interlocutory application, and in the overall Justice of the case I will round-off the sum of $7,000.00 as being "reasonably and necessarily incurred."

[50] Thus the costs are taxed at $7,000.00. I re-iterate that this costs are only specific to the successful interlocutory application and other incidentals relating to Applicants second amended motion as directed by His Lordship Mr Justice Winter.

Wasted Hearing fee

[51] In paragraph (iii) of his orders, Mr Justice Winter, also directed that the "Wasted hearing fee" and not "Wasted Costs" reserved for 2nd May, 2005 to be taxed. "Wasted hearing fee" is part of General Registry fees provided for in *Appendix 2* to the *High Court Rules1988* This is payable to the Court. Since the matter had to be adjourned, a wasted hearing fee of $200.00, as directed is payable as per item 22 in the Appendix. So I order.

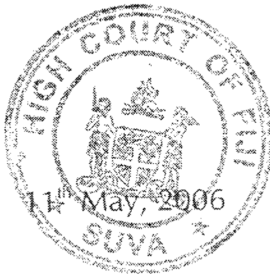
Conclusions

[52] In summary the costs taxed are as follows:-

(a)	First Respondent	:	$7,000.00
(a)	Second and Third Respondent	:	$1,730.00
(b)	Wasted hearing fee	:	$ 200.00

A certificate for the aforementioned sum is respectively issued. The Applicant is to also pay cost of $300.00 each to the First and Second and Third Respondents respectively.

Accordingly, costs so taxed and ordered.



J. J. Udit
Master
Taxing Officer

11th May, 2006