

Problems Associated with Fees

The Bar Council has, for some time, been concerned about the level of fees in the various jurisdictions and has in the last twelve months succeeded in bringing about increases in fees which have alleviated to some extent an unsatisfactory position which has been developing in recent years.

The years since the war have been years of very considerable inflation, particularly the years since 1950. The fees payable to the Bar have by no means kept pace with the decline in the value of money with the result that, contrary to what is believed by many, the cost of litigation has, case by case, been decreased in real terms by the operation of inflation and the failure of counsel's fees to keep moving with inflation.

The inflationary trends have made it necessary for the Council, as for most bodies concerned with the welfare of professional and other groups, to propose and obtain recurrent increases in fees. These increases have by no means redressed the adverse effect of inflation to the same extent in the case of counsel's fees as in the case of other remuneration e.g. Judges' salaries, public service salaries, and wages and salaries generally.

In the course of the discussions which the Council had with regard to increases of fees, it became apparent that there were no statistics available to it from which conclusions as to the relative prosperity of the Bar and other professions and occupations could be drawn, and, perhaps even more important, there was an absence of statistics which could assist in determining whether incomes at the Bar have been declining, advancing, or remaining stationary in relation to the changes in incomes of other sections of the community. For example, one factor at work at the Bar today, by comparison with the pre-war and early post-war period, is the greater resort to typing and secretarial assistance and the increased outgoings for Chambers. All the ingredients in the increased outgoings of the practising barrister reflect growing inflation far more than do the fees he charges.

In arriving at an assessment of the position of the Bar, it must not be overlooked that the Bar is no longer a profession with any degree of leisure but has to work much longer hours to maintain its standard of remuneration, especially with overhead increasing. It must also be remembered that, as by tradition a barrister is remunerated by separate payment for each piece of work done, in order to increase his earnings, he must work harder and longer hours.

However, in order to have real knowledge of how the junior Bar is faring under modern conditions it is necessary to know what average annual incomes are being earned by barristers of different standings, and the Council has decided to conduct on a completely anonymous basis, a survey of incomes at the Bar. This survey will be conducted in a simple way by asking all barristers to answer a short questionnaire giving net income over the last three years, stating the year of commencement of practice at the Bar. These returns, to be filled in anonymously and in an unidentifiable way, will then be handed to a selected person, not a member of the Bar, to examine with a view to evolving statistics of a general kind; these statistics alone will become available to the Council.

In this way it may be possible to assess the effect of inflation and other factors at work and the Council will have available important information to help it decide upon its fees policy in future years, but to be effective the questionnaire will need to be answered by a high proportion of members of the Bar. The survey will be kept up to date.

Other professions conduct such surveys and, indeed, a Royal Commission in England carried out in 1959 a similar survey of incomes at the English Bar.

The point should be made, however, that the Council, while regarding it as important to give constant attention to fees, is by no means of the view that this question is the dominant one in the affairs of the Bar today.

Attention is being given in a constructive way, not only by the Council, but by many members of the Bar who are helping on the many committees of the Council, to a wide range of matters. Not the least among these are the special committees which have been set up to consider matters of law reform connected with the need to increase the efficiency of the machinery for the administration of justice, discussed elsewhere in this issue. The Council is most anxious to ensure that those critics of the Bar who say that its concern about fees and, for example, about the preservation of the jury system of trial of civil actions, demonstrates an over-material approach to the problems of the day, are adequately answered. This can best be done by constructive participation of as many members of the Bar as possible in the various activities discussed in more detail elsewhere in this issue. The Council feels that it can look forward to very useful work of this kind being done in the coming year.