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## YSP Podcast Transcript: Episode 137. 5 steps to take when challenging a lawyer's bill

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**Intro:** Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au).

**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. A rare solo episode from me today. Hi everyone, I don't do too many solo eps, but this is one of the few I usually jump on and have a chat when there's a particular issue. Particular something that's come up, that I would like to run through for you, share with you, make sure you're aware of.

Today, we're talking about lawyers' fees, in particular, and perhaps a little surprisingly, I want to talk about what you should do if you think you have been overcharged by your lawyer. Maybe not a topic that most lawyers want to or are willing to talk about, but I think it's an important one particularly because of a recent experience that I had, which I'll tell you a little bit about.

This topic is not strictly strata related, of course it could cover a whole range of legal services, but I know that many of you in your capacity as strata managers, as committee members, as buildings, as owners are working from time to time with lawyers like myself and of course getting bills, being charged for that service. It can be a very handy skill to have to be able to look at a bill and work out whether or not you have been overcharged or charged incorrectly and if you have what to do about it.

But first up, I want to tell you about an event that is happening for Women in Strata. Women in Strata is a networking and support group for women working in strata management. It's a group that I founded. Oh my goodness, three, four years ago now, how time flies. We will be having our annual mentoring launch, which is occurring on Friday, 16th November, breakfast at Macquarie Bank in Sydney, Shelley Street, Sydney. Lovely venue.

We launched this program this time last year and matched up to a number of mentors in the sector with women mentorees, women working in the strata sector, and it was such a success that we are indeed running it again this year. Many of you have been asking me about that and the launch date is here. If you want to find out more, come along to the breakfast. Natalie Fitzgerald, who is one of our very energetic committee members on the Women in Strata steering committee has done so much work. She's been working on this for months, putting together the 2019 Women in Strata Mentoring Program.

We're doing things a little bit differently next year. We've identified 6 areas of expertise and those are leadership, business management, innovation, strata management, confidence and self-belief that's one and communication. We are going to match mentors and mentorees based on those areas of expertise in which area a mentoree would like to excel in or improve in.

We have positions available of course for both mentorees and mentors. If you would like to be a mentoree, all you need to be is a woman who is working in the strata sector, whether as a strata manager or in a strata management office or maybe your service provider to the sector. You've just started out in an engineering or legal or insurance firm, and you're new to this stuff and you'd love to have an experienced guide to help you maximise your opportunity for success.

We will match you with an expert mentor. We have positions open for mentors, we have both male and female mentors. Don't hesitate to come along to the breakfast if you are an experienced man in strata, and would like to put your hand up to be a mentor with our program. I was partnered with a fabulous mentoree, a strata manager last year, and we had some wonderful sessions. There is so much that I personally get out of being a mentor and I'm a mentor to a few young people. If you're looking to give back to a sector that has given so much to you as I was looking to do, then becoming a mentor is a fabulous idea.

To find out more, you're going to head over to [womeninstrata.com.au/events](http://womeninstrata.com.au/events) and you'll be able to click through to register for our Friday, 16th November breakfast absolutely free. Big thanks to Macquarie Bank for putting that on for us and we also have our leading sponsors, Real Estate Training solutions, thank you, Sasha Boe, Luna Building Management, thank you Dino and Diagnostech Remedial Building Consultants. Without them we can't make these things happen. Looking forward to seeing so many of you at that breakfast. I'll put a link to that page in the show notes so you can check it out.



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**Amanda Farmer:** Now, back to our topic of the day, legal costs and what to do if you think you have been overcharged by a lawyer. The recent experience that I was referring to earlier is this, I am working with a building that is in the middle of some fairly hefty supreme court litigation. They have been working with another lawyer and I have been brought in for a different reason. I'm on the sidelines a little bit, but part of my task involved me having a look at some of the other lawyer's bills, and having seen some of the correspondence and being involved in the background of this supreme court litigation. I knew what had been going on, the kind of work that the lawyer had been doing, and when I looked through the bill just to check that everything had, in my view, been properly and reasonably charged.

A few things jumped out to me as being rather exorbitant, let's say that. I was surprised at what the lawyer was charging for particular items of work. Especially when I knew what the work was and how long I thought it should have taken. For example, to write a particular letter or to send an email, or to draft some court process. When I looked at the itemised entries that were on the bill, I thought that they needed review and I communicated with that lawyer, asked for the review. Promptly, very promptly, that lawyer reduced the bill quite significantly.

I thought to myself, why is it that some buildings who perhaps have access to knowledge such as mine or maybe they've had past experience working with lawyers and paying lawyers bills. Why is it that those buildings should get a reduction in fees or should be more properly charged than other buildings? Who don't pick these things up? Who doesn't go through the bill or don't understand that they can go through the bill and raise concerns with lawyers and properly have a reduction in fees applied?

It occurred to me that this is a fabulous topic to talk about on the podcast, and to bring you some tips, some guidance, share with you the places that you can go to learn more about this topic of legal fees, and how to challenge them if you think that they haven't been properly charged. I'm going to run through those steps in today's episode, and remember that you can always get the transcript of our episodes over at [yourstrataproperty.com.au/podcasts](http://yourstrataproperty.com.au/podcasts).

You'll get to the podcast page and you'll see our many, many podcasts. We are now up to Episode 137 if you can believe that. Click into that episode and you'll have the option there to access the transcript, and you might want to share these transcripts with your fellow committee members. If you're a strata manager, you might want to follow that one away, and the next time you get a bill from a lawyer that you're a little bit uncomfortable with, review these steps that I'm going to give you.

**Step 1**, you're going to receive the bill. Usually by email these days, you receive the bill make sure you read it. Might seem basic, but often lawyers bills have a covering page which gives you the total. The amount that's too annoying says, "*Please pay, often, please pay by this date. This is how you pay.*" But, following that first summary page is more often than not an itemised list of all the work that the lawyer has done. The hourly rate that they have applied to the work, the number of minutes that they have spent doing the work and what the total is, also who has done the work.

These are the kinds of things that lawyers are professionally obliged to set out in their bills. If you don't have an itemised bill, you can certainly request one. For some fixed fee work, there's more and more of that happening. A lump sum has been agreed for a certain type of work. The lawyer might just give you the one-page lump sum bill, with no itemisation. You can actually request an itemised bill if you would like one if you haven't got one. I find most of the bills that I'm sending out our itemised bills, so don't forget to have a look at that itemisation. It might not be on the first page.

If you are a committee member, and the strata manager has said, "*The lawyer has sent a bill, they want to be paid.*" Make sure the strata manager sends you a copy of that bill so that you can look at it. You're going to look at the building and read it, look going to look at the entries. You're going to have to think about it. You're going to think back to the work that has been done. The letter that was drafted, the emails that were sent, the conference that was heard, the tribunal application that was filed. Is what you're reading looking like it's reasonable, compared to the work that was actually produced.

Have you been charged 7 hours for a 1-page letter? That would seem a little bit unusual depending on the content of the letter, but if that's jumping out to you that you see a 7-hour entry. For many thousands of dollars, if you've got a senior lawyer working for 7 hours and a one-page letter is the result. What's going on there? Do we have a typo? Has somebody perhaps put the wrong entry

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in the wrong matter? Are these things happen? Administrative errors happen in lawyers offices?

Amanda Farmer: Be attuned to that kind of thing, and if you're the strata manager, you may not be across everything that's been happening in the legal matter, particularly if the lawyer has been communicating directly with the committee members. Do make sure that you are sharing this bill with your committee members and asking for their feedback, making sure they are looking at it, and checking that they're comfortable with those itemised entries. You've got the bill, you've looked at it, you've thought about it.

**Step 2**, if something doesn't seem right, it looks like maybe you've been charged a little too much for a particular task. I suggest you go back to your costs agreement with the lawyer, and that's essentially your contract with the lawyer. It's the document that sets out what it is they're going to do? That's their scope of work sets out what it is they're going to charge. We must, under New South Wales law, give a total estimate of legal fees for a particular matter. There'll be an estimate there for the whole matter, and there will be a method of charging.

We're charging by hourly rates. What are those hourly rates? You're going to cross refer the bill to the cost agreement, and make sure that the correct rates have been charged. That the bill does not exceed the estimate, particularly if it's a final bill and you might have to add up your earlier bills, and just see whether we've reached the estimate or gone over the estimate.

Particularly, on the question of hourly rates, sometimes our lawyers hourly rates increase over time. You might be working with a lawyer for some years, particularly if you're in court litigation. You might find that in 2015 they are rate was \$400 an hour, but by the time we get to 2017, they're charging \$600 an hour.

Now, unless the cost agreement provides for that rate to increase, then you have agreed at a particular time on a particular rate on that lower rate. The cost agreement may set out a mechanism for how that rate can be increased, and usually, it's by way of giving notice. If you're finding that the lawyer is charging a higher rate, did you get notice that, that high rate was going to be charged and did you agree to that? There's a little tip there for checking up on hourly rates and make sure the correct rates are being charged.

If you've crossed referred to your cost agreements, you've checked the itemised entries against the rates, you've checked the estimate and you've made sure that the work that the lawyers doing is still within the scope of the cost agreements, sometimes these things change. If you're still not comfortable or something has been flagged, therefore you through that process.

**Step 3** I say is communicated with your lawyer. Pick up the phone if you like, if you got that kind of relationship or perhaps in an email. Lawyers being lawyers, we often like to have things in writing. If you are not comfortable or you haven't been communicating direct with the lawyer, then certainly you can do that through your strata manager. Just let your manager know what you'd like them to raise, and from the lawyer's perspective, if somebody has a query about a bill, it's really helpful for us, for them to set out.

The particular entry in the bill, entry or entries that they're not comfortable with and ask them questions. Why? For example, now why was it that this one-page letter took 7 hours? Can you just explain that one to me? Why is it that the bill is exceeding the estimate that was set out in the cost agreement? Why is it that we are being charged an hourly rate of 600 when your cost agreement says that your hourly rate is 400? Would you mind just clarifying that for me? Certainly, a polite courteous note, but raising this issue, these types of issues for the lawyer's attention.

Now, that's pretty much what I did in the situation that I've flagged earlier where I was assisting a building to go through their bill. These concerns came to the fore and I dropped an email over to the lawyer just sitting out those were. See what the lawyer says in return, I would like to think that in 90% of cases, most lawyers who have perhaps made administrative errors on bills or the accounts department has typed in a wrong number or wrong entry, has been put into a bill.

Most lawyers will quite quickly resolve that for you. Get back to you, let you know, "Oh, sorry that shouldn't be there. I'll review that, I'll speak to the junior who did that work and I'll just check their time entries." We do like to deal with those kinds of concerns very promptly and I personally think that is very important. If you find that you're not getting a response and you'd sent an email, pick up the phone and be persistent and consistent about getting that lawyer's attention.

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**Amanda Farmer:** That's particularly the case where you've got ongoing legal matters. You might be in court or in the tribunal and the lawyer is continuing to do work. Often quite quickly if there are court timetables to adhere to, you want to make sure you're nipping these cost issues in the bud very promptly because of course more costs are being incurred while that time is passing.

**Step 4**, you get the lawyer's response. Might be happy, might be resolved. If you are still not happy, then I have found in the past when assisting clients go through this process, that a face to face meeting with the lawyer is often helpful. Of course, this might depend on how much money we're talking about. I've been involved in cases where costs in the hundreds of thousands have been disputed by clients and we've ended up sitting around a table to talk about it. That can be very helpful and as I said, I do think that most lawyers will want to take the time out to resolve that complaint. Time is money in our game really, and of course, time spent, dealing with these kinds of issues is time taken away from doing legal work and continuing to assist you or assisting other clients. If they're taking time out to meet with you, discuss the issue, it will almost certainly be resolved.

Now, if that is not something that you're comfortable with or maybe the lawyer is not willing to take that step and you still have not resolved this issue. Then the 5th step that I suggest is to make an application for costs assessment. Now, I'm going to include a link in the show notes to a website that gives you lots of great information about the process of costs assessment. It's done through the supreme court, but it's not actually a court matter, it's simply the supreme court who appoints the cost assessors, who are solicitors who are experts in costs.

You make your application through the supreme court registry and the link in the show notes will tell you exactly how to do that. Your application basically sets out what it is that you're not happy with about the bill. Which items you are essentially disputing, and the paperwork gets sent off to a cost assessor and the cost assessor looks at what should have been a fair and reasonable charge in relation to the matter and determines an amount, a proper amount that is due to the lawyer.

Now, you can go through this process even if you have already paid the bill. The requirement is that the application be lodged within 12 months of the bill being issued. Now, there is some case law to the effect that, that 12 months runs from the final bill. If you've got an ongoing case, you might have a few bills issued by the lawyer. The question has come up before, when does the 12 months run? When I get the first bill, second bill, the last bill is it 12 months on each bill? I believe we've had a case that says the 12 months runs from the last bill.

But I would suggest to you if you've got these queries about costs, these concerns that you don't let this drag out. Don't wait until the last bill is issued to make an application for costs assessment. The minute you have a dispute that you can't resolve, I would suggest commencing this cost assessment process.

There is a filing fee and that fee is \$100 or 1% of the amount in dispute, whichever is more. It's a purely paper-driven process, this assessment, the cost assessor will send you a letter, will send the lawyer a letter. Will ask you to make submissions in support of your dispute, will ask you to point out with particularity which items are the bill you're not happy with. Will ask the lawyer if they object to what it is you're complaining about to say why? Why it is that they think they're charging is fair and reasonable.

The assessor is going to look at the cost agreement, going to check that the costs are within the estimate. The proper rates have been applied, and the determination that is made by the assessor is produced in the form of a certificate. Which will either say, you owe some money to the lawyer because you haven't paid their bill or the lawyer owed some money to you in circumstances where you've already paid and you need some money back.

Now, the assessment process is not really something you want to go getting involved in, it is a last resort. Lawyers like being involved in it. It has to be a fairly sticky situation, if you like, with a client that ends up in cost assessment. It's also a process that lawyers can use if their bills are not paid, they can apply for an assessment of costs and that's often what a lawyer will do before are suing somebody for not paying their costs. That's a little bit more information for you as well, if you're ever on the other side of one of these applications. If you receive one of them from a lawyer when oops you have forgotten to pay their bill or perhaps thought that it didn't need to be paid.

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**Amanda Farmer:** Those are some fast ready references there for you. I hope that gives you some assistance, next time you might be pondering a lawyers bill and feeling a little bit uncomfortable where to from here. I really did have that sense when I was helping that building who got a significant discount, how the knowledge that I have from doing the work that I do can be of such benefit, not just to me, but of course to those who I help in these situations. If you're a longtime listener to this podcast, and you follow the work that I do, you'll know that I am passionate about empowering others to have that knowledge, to enjoy the benefits that being informed brings.

I hope I've done that for you today. Don't forget about the Women in Strata Mentoring Event, 16 November. Head over to [womeninstrata.com.au/events](http://womeninstrata.com.au/events). I will be there, I would love to see you there that morning, lovely breakfast at Macquarie Bank. Enjoy the rest of your week and I will catch you next time.

**Outro:** Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at [www.yourstrataproperty.com.au](http://www.yourstrataproperty.com.au). You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?

