

1. Welcome to the Validatum™ Relationship Property & Child Care Fee Survey - J...

Welcome to our latest fee benchmarking survey - the first to include barristers practising at the independent bar with the support of the New Zealand Bar Association. You can view details of previous surveys available for purchase through our website www.validatum.com

Participating in these Surveys and purchasing the reports and analysis is likely to be one of the best practice management investments you can make. There is no substitute for good market information when it comes to making critical pricing decisions. Lawyers have struggled for the last 27 years with a lack of comparative pricing information - no longer is that necessary.

What is more, you are likely to recover the cost of the report by making a better informed pricing decision on just one or two files.

The report will only be sent out by e-mail as a PDF file to facilitate distribution within your firm. It will include colour graph/table depiction of the results of each question and a commentary and analysis.

We invite you to complete the Survey (at no cost), whether you intend to purchase the report or not. You don't have to make that choice until after the last question in the Survey. However, as you can see below, there is a strong financial incentive to participate in the Survey.

Firms/Practitioners that provide at least one completed Survey response:

Barristers - \$150 plus GST

1 or 2 partners/principals - \$150 plus GST total cost per firm

3 to 5 partners/principals - \$295 plus GST total cost per firm

6 to 10 partners/principals - \$395 plus GST total cost per firm

11 or more partners/principals - \$495 plus GST total cost per firm

Firms/Practitioners that do NOT provide any Survey response:

Barristers - \$300 plus GST

1 or 2 partners/principals - \$300 plus GST total cost per firm

3 to 5 partners/principals - \$590 plus GST total cost per firm

6 to 10 partners/principals - \$790 plus GST total cost per firm

11 or more partners/principals - \$990 plus GST total cost per firm

Remember, you are likely to recover the cost of the report by making a better informed costing decision on just one or two files.

2. PLEASE READ THESE NOTES CAREFULLY BEFORE STARTING THE SURVEY

1. The survey can only be completed on-line. We do not accept hard copy of the questions as we cannot conveniently use your answers in the statistical analysis. The survey is designed to be read and completed on-screen but we strongly recommend that you go to our website www.validatum.com, follow the links from the "Fee Survey" page and print off a hard copy - you will find it much easier to read and enter answers on the hard copy before completing the survey on-line.
2. To avoid distortions in the results due to inexperience, please do not complete this survey unless you have at least 2 years' relevant experience. We encourage as many participants from within firms as possible to complete the survey. You should also skip questions that you have little or no knowledge or experience of eg, the Haque Convention application.
3. No time recording information is provided - you should assume that you have been asked to provide a cost estimate in the early stages of the file. The clients are loyal to you, they are not shopping around and don't expect discounted pricing - they just want some idea of the likely costs. You have to make an informed assessment of the value of the job without the benefit of time records.
4. Richard Burcher of Validatum™ Limited has a well established reputation within the legal profession for high quality pricing research and pricing consulting services. Your answers will be treated with utmost confidentiality by us (see our Privacy Statement on our website). Individual responses will not be provided to your employer, the NZLS or any other third party. No firm or individual author will be able to be identified in the published results. The answers will be used for no other purpose than to provide you with tabulated results by region and nationally.
5. Do not consult with anyone on the completion of the questions. They should be your own assessment. There is no limit to the number of survey participants from each firm. The more participants the better so please pass this on to others in the firm.
6. Record what you are actually charging at present, not what you think you should be charging or would like to charge, unless a question specifically asks you to speculate.
7. For all answers, disregard GST and disbursements. Also disregard all aspects of Legal Aid. This entire survey relates to "full paying" clients.
8. The survey closes at 5:00pm on Friday 16th July and the report should be published mid August.
9. If you have any queries concerning the survey, please e-mail Richard Burcher - richard@validatum.com or phone 021-982-290

3. Firm Location & Job Title

* **Where is your firm (or the office of the firm in which you personally work) located?**

Auckland/Wellington

Other North Island

Christchurch/Dunedin

Other South Island

* **I am a...**

Barrister

Partner/Consultant/Director

Solicitor

Legal Executive

* **How did you learn that this survey was taking place (you can select more than one if appropriate)**

Validatum email

Property Law Section (NZLS) email

Family Law Section (NZLS) email

Browsing Validatum website

Informed by someone else in my firm

Other (please specify)

4. Relationship Property Scenario 1 - (Simple Facts)

Unless otherwise indicated, the basic fact Scenario common to these relationship property questions is as follows: A husband and wife who are separating after having been married for 20 years own the following assets, all acquired after the marriage:

- family home, owned by the husband and wife as joint tenants and having a current market value of \$500,000. There is a mortgage of \$200,000 owing to one of the trading banks
- each has a motor car worth approximately \$20,000
- they have the usual complement of household chattels and personal effects
- a cheque account with a credit balance of approximately \$3,000

There are two teenage children of which the husband and wife are the natural parents.

The husband and wife both have full-time jobs paying \$60,000 each.

The husband and wife have agreed to separate. They are however on speaking terms and have agreed between themselves the terms of their separation namely;

(a) the house is to be sold and the proceeds, after payment of agents commission, conveyancing fees and the mortgage, are to be divided equally

(b) the husband has agreed to move out of the family home immediately and he will be renting a property of comparable value. The wife and children will remain in the family home until it sells. They have agreed that when the family home does sell, the husband will, from the sale proceeds, receive a credit equivalent to one half of the market rent that would have been achievable on the family home between the date of separation and the date on which the sale of the family home is settled.

(c) Each has agreed to take one of the cars.

(d) they have agreed on the division of the household chattels and personal effects and have agreed to divide the balance on the cheque account.

(e) the couple have agreed on an informal arrangement with regard to the children. The husband intends to rent close to the family home and the children divide their time with alternate weeks between the husband and wife.

The couple comes to see you together as a result of a referral from another of your many satisfied clients. They understand that one of them will need to see another practitioner for independent legal advice but they ask you to draft the requisite agreement incorporating all the matters referred to in (a) to (e) and any other general provisions you consider appropriate.

Given the relatively certain nature of what is required, they ask you for a fixed fee before commencing work. They make it clear that they are not shopping around and are not particularly looking for a discount - they want quality advice and quality documentation and are happy to pay for it. They simply want a budget for the cost so that they know what they are up for.

Disregard:

(a) costs associated with the independent advice on the assumption that the independent lawyer was happy with your draft agreement

(b) the conveyancing costs on the sale of the family home.

(c) Care arrangements for the children which will be the subject of a separate pricing

question later in this survey

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband?

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife?

5. Relationship Property Scenario 2 - (high-value relationship property)

Assume the same basic facts as in Scenario 1 except that the family home is valued at \$2.5 million and the mortgage is \$500,000.

Acting for the husband, how much EXTRA, if anything, would you charge to reflect the additional \$2 million in relationship property value? (only indicate the premium, NOT the new total fee)

Acting for the wife, how much EXTRA, if anything, would you charge to reflect the additional \$2 million in relationship property value? (only indicate the premium, NOT the new total fee)

6. Relationship Property Scenario 3 - (spouse accepts less than 50%)

Assume the same basic facts as in Scenario 1 with the following changes;

The husband is referred to you to act for him. The relationship is being terminated as a result of the husband having conducted an affair which the wife has discovered. The husband feels extremely guilty and as a tangible acknowledgement of that guilt, he instructs you that he will be satisfied with 30% of the relationship property with the wife receiving 70% of the relationship property.

You advise that, notwithstanding his guilt, he remains entitled to 50% of the relationship property but he is insistent and you end up drafting and facilitating the conclusion of an agreement along those lines.

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband?

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife?

7. Relationship Property Scenario 4 - (house owned by spouses trust)

Assume the same asset base as in Scenario 1 with the following changes;

- the marriage is of 5 years duration and there are 2 infant children
- the family home was owned by the husband for a year prior to them meeting and therefore prior to the commencement of the relationship and the marriage. It has therefore only ever been in his name alone. Two years after the marriage, the husband forms a trust and settles the home onto the trust with a debt back to the husband from the trust. The husband has completed two gifts by way of reduction of debt so that as at the date of separation, there is still \$446,000 owing to the husband by the trust. There is no section 21 agreement in place.
- You are representing the wife on whose behalf you manage to negotiate by means of careful research, several exchanges of correspondence and two face-to-face meetings with the husband's solicitor, an acknowledgement from the husband that the house should be regarded as relationship property and subject to equal division.

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife?

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband?

8. Relationship Property Scenario 5 (husband's home settled on trust – signed ...)

Assume the same facts as in Scenario 1 except that there is a section 21 agreement stipulating that the debt owing by the trust to the husband is his separate property as a result of which the relationship property is divided equally with the exception of the family home and the debt owing by the husband's trust to the husband which the wife abandons any claim in respect of.

You were acting for the husband on whose behalf you are asked to draft and implement the relationship property agreement.

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband?

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife?

9. Relationship Property Scenario 6 - (economic disparity adjustment)

Assume the same basic facts as in Scenario 1 except that the wife was a successful barrister whose business generated a net profit of \$200,000 per annum before having the first of the couple's two children.

The couple decided at the time of the birth of their first child that because the husband was only earning \$60,000 a year it made more sense for him to assume the role of full-time child-carer, even though he was on the cusp of a major promotion to a role within his Company with greater responsibility and a salary package of \$100,000 a year.

The wife's particular legal skills revolve around an area of law in which there is a substantial amount of high-paying work and realistically, her net profit for the current financial year is likely to be \$300,000 and this level of income appears sustainable.

The husband is unhappy at the fact that the nature of his previous work role is such that he will have to undergo substantial retraining and in the meantime, he will have to start at the bottom of the ladder again or choose an entirely different career.

Either way, even if he can get a job which is proving to be very difficult in the current economic climate, he is unlikely to be paid much more than the \$60,000 a year he was earning when he ceased work to become the children's full-time care-giver.

The husband's lawyer raises an economic disparity argument and puts a proposal to the wife's lawyer that there needs to be some adjustment to the relationship property division to compensate the husband for the fact that his career was put on hold.

Following two months of negotiations which prove fruitless, the husband's solicitor makes an application to the court for determination of the relationship property issues and specifically, seeking a 75/25 division of the relationship property in favour of the husband to address the economic disparity argument. The husband's lawyer has commissioned an actuarial report which mathematically anyway, lends strong weight to the husband's argument.

The wife's lawyer files a defense but neither party advances the proceedings while they resume negotiations. After a short period of further discussion, they conclude a 65/35 division in favour of the husband which the lawyers then document.

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband?

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife?

10. Relationship Property Scenario 7 (independent advice)

- * You receive a phone call from a colleague in a nearby firm asking if you would be willing to provide a client with independent advice on a section 21 agreement. The agreement has been prepared as a precursor to the couple settling most of their assets onto two parallel family trusts.

The other solicitor follows up with the two copies of the agreement which has already been signed by the husband. The covering letter also provides the following salient facts which the wife confirms as being correct when you meet with her:

- * the couple have been married to each other for 25 years. Neither was previously married
- * their only children are two adult children of the relationship, both of whom have left home.
- * neither had any assets of any consequence when they married
- * they purchased the first home three years into the marriage and have upgraded three times since then
- * they have both work in salaried positions throughout the marriage although the husband's income has been roughly double that of the wife on an annual basis and the wife did not work for 10 years while the children were young
- * for reasons which neither of them can remember, the family home is and always has been in the wife's name alone (they have a vague recollection that it might have had something to do with a first home stamp duty exemption). The house is worth \$700,000 and has a mortgage of \$150,000.
- * about three years ago, the husband inherited \$200,000 from his mother's estate which the couple used, together with a further \$200,000 in bank borrowing, to buy a modest holiday home. The holiday home has been used extensively by the couple since they purchased it. The holiday home was purchased in the husband's name alone for two reasons. Firstly, they thought it would be a little fairer to the husband since the family home had always been on the wife's name alone and secondly, the wife was visiting her elderly parents in the UK at the time and it was easier to do the deal on the husband's name alone

The purpose of the section 21 agreement is to equalise ownership of the family home and the holiday home and to equalise responsibility for the mortgages secured on

the two properties as a precursor to settling the family home and the holiday home on their respective newly formed parallel trusts.

Please answer the following two questions on the assumptions that you are providing the wife with independent advice, you have had no previous involvement with either of the couple and after explaining the agreement carefully to the wife she signs the agreement:

How much time do you anticipate devoting to this matter?

What fee would you consider appropriate to charge the wife?

11. Protection and Occupation Orders - Scenario 8

Assume the same basic facts as in Scenario 1 except that the split is extremely acrimonious and there is a history of domestic violence directed at the wife.

On behalf of the wife, you make an urgent application for protection and occupation orders accompanied by 4 affidavits; 1 from the wife, 1 from the wife's sister, 1 from the wife's friend and immediate neighbour and 1 from the wife's doctor. Both applications are defended by the husband and his lawyer.

However the court is convinced of the merits of the application and orders are made.

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife (only the fee on the protection and occupation orders aspect)?

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband (only the fee on the protection and occupation orders aspect)?

12. Care Arrangements for Children - Scenario 9

Assume the same basic facts as in Scenario 1 except that the children are aged 8 and 6. With assistance from both the husband and the wife's lawyers, workable shared care arrangements are negotiated and documented by the couple's lawyers separately from the relationship property issues.

What would you regard as a reasonable fee for that outcome assuming you were acting for the husband (only the fee on the care arrangements aspect of your efforts, your time records for which suggest 4 hours has been devoted to this aspect)?

What would you regard as a reasonable fee for that outcome assuming you were acting for the wife (only the fee on the care arrangements aspect of your efforts, your time records for which suggest 4 hours has been devoted to this aspect)?

13. Removal of children from New Zealand - Scenario 10

A married couple separated two years ago. The relationship property was negligible and what they had in the way of vehicles and household and personal effects was divided between them. Both of them are in full-time employment earning approximately \$40,000 per annum.

There are two children of the marriage aged 6 and 8. The couple still lives relatively close to one another and in the absence of any formal or structured care arrangements, the children happily split their time between the two parents as everyone's needs and circumstances dictate. It is casual but it works well and the children are happy.

The husband has entered into a new relationship with a lady who has been part of the couple's circle of friends for many years and is also well known to the children who get on well with her.

The husband's brother runs a successful construction company on the Gold Coast of Australia and offers the husband a permanent project management role starting immediately on a salary of \$A80,000. It is too good an offer to refuse, more than doubling the husband's income and he and his new partner decide to move to the Gold Coast.

The husband announces that in his opinion it would be better for the children if they come to live with him as he can offer them a two-parent household and a much higher standard of living. He proceeds to book plane tickets for himself, his partner and the two children, leaving in 10 days.

The wife's lawyer applies ex parte for urgent interim orders preventing removal of the children from New Zealand and granting her day-to-day care of the children. The application is successful and the interim orders are made ex parte.

What would you regard as a reasonable fee for that outcome acting for the wife?

14. Removal of children from New Zealand – Scenario 11

Assume the same facts as in the preceding Scenario 9 except that the husband takes the children to Australia without informing the wife.

The wife makes a successful Hague Convention application for return of the children to New Zealand.

What would you regard as a reasonable fee for that outcome acting for the wife?

15. Urgency

Practitioners are often confronted with having to complete a transaction in circumstances of considerable urgency through no fault of the practitioner. This can occur in the context of any of the scenarios already canvassed in the survey. Many practitioners overlook the fact that 'urgency' has always been and remains one of the costing criteria but it is one of the most misunderstood and underutilised of the criteria.

*** In those circumstances where you consider that a particular job warrants a "loading" for urgency, that loading would generally take the form of:**

A percentage uplift over your normal fee (indicate a range depending on the level of urgency eg. a 'loading' of 10% to 30%)

Other (explain)

16. Ordering Your Report (1)

The report will be sent out by e-mail only as a PDF file. It will include colour graph/table depiction of the results of each question and a commentary and analysis.

We want all law firms to have access to this information.

We believe that firms cannot be expected to make fully informed management and pricing decisions without it.

What is more, you are likely to recover the cost of the report by making a better informed costing decision on just 1 or 2 files.

To that end, we have kept the cost of the report as affordable as possible.

Firms/Practitioners that provide at least one completed Survey response:

Barristers - \$150 plus GST

1 or 2 partners/principals - \$150 plus GST total cost per firm

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11 or more partners/principals - \$990 plus GST total cost per firm

Remember, you are likely to recover the cost of the report by making a better informed costing decision on just 1 or 2 files.

*** I confirm that I want my firm to receive a copy of the survey report and analysis AND I have the authority to order it.**

[IMPORTANT NOTE if you do not have the authority to order the report, please ask your supervising partner NOW, before you leave the survey, if it is okay for you to order the report as you may well be the only person in your firm who has been asked to complete the survey. If you don't do so, your firm will not receive the report]

Do not be concerned about whether someone else in your firm may also have ordered the report. Irrespective of the number of responses from a firm, there will only be one invoice per firm. If in doubt, answer "Yes" below and provide your contact details in the next section)

Yes

No

17. Ordering Your Report (2)

* **Please provide all details below:**

Your Name

Firm Name

PO Box Number

Town/City

Post Code

Phone

Number of

Partners/Directors

Your email Address (check

carefully or you won't
receive the report)

18. Final Comments

As always, we welcome and encourage comments and suggestions, whether about the subject matter of the survey, the survey format, future topics or anything else related to pricing of legal services.

Thank you. Your time and effort is much appreciated and we are confident that if you have subscribed for the report, it will be of significant and immediate help to you.

We would appreciate any suggestions you have for improving this particular survey topic.