

Just What are You On – A Wages and Conditions Seminar

Saturday 21st September, 2008

Harold Park Hotel, Sydney

Panel: Patrick Jury, Solicitor
Andrea Lang ASE, Editor
Frank Haines, Producer
Raena Lea-Shannon, Lawyer

Andrea: To start with Frank's going to tell us what it is like when he hires an Editor.

Frank: Essentially I work as a freelance Producer - I don't work for an organisation. I've never worked for Beckers, I never worked for the ABC or any corporations, with the exception of working at Film Australia for ten years - so I understand systems via that.

Invariably the way I work is I either do something through my own production company or I work with another production company as co-Producer.

Usually the first point of contact with the Editor is that I will discuss with the Director "who do you want to cut this thing?" and we will go through a variety of names and look at who's available. Most of the time we leave it too late so we are ringing you with no notice and that must drive most Editors mad. I think that's symptomatic of working as an independent.

Andrea: Why does that happen?

Frank: The financing process is so fraught in terms of knowing whether it's actually going to get funded that you would have been working for six months investing time and aspects of your personal finances to keep something on the move, and then they'll say "Right go! We need it in three months time!" and you may be talking about a half hour programme or you may be talking about a one hour documentary.

That's a dramatic way to put it but that's the kind of environment you're dealing with as a Producer in terms of dealing with the broadcaster. For the majority of films you're making the one thing you need is a presale so that you can go the funding organisations to raise the balance of the capital to be able to make the film.

So what I was saying was that I will usually meet with the Editor who is the Director's preference, my preference is always to have the Director there at the same time. Speaking as a Producer I find that Editor's are generally not very assertive in terms of negotiation, in terms of saying "are you kidding - you want me to work for that rate?" That's understandable because Editors also appreciate that if you're working as an independent

and also if you working predominately in documentary it's not that you're hiving off the budget so that you can go to Cannes later in the year, it's because you haven't go much money to make that project.

Maybe the flipside is that some Producers, and I'll include myself, are perhaps not the epitome of professionalism, by having a checklist to go through, and say this is what's going to happen in this engagement – I would like you to work on this film which is about this, I would like you to work on this film for this period of time, I can afford to pay you this much money. I like to have an inking of the edit room - that you're not getting people working ridiculous hours. Some people will do that because they're nice and trying to help you. I haven't had that situation arise very often. But that's something you need to raise in the first negotiation with the Producer and say "OK if you're going to pay me that amount of money and you'd like me to work for this amount of time, my terms are I work a 50 hour week etc".

My point is that at that first point of contact it's a good idea for an Editor to sit down before the meeting and think "what do I want to walk away from this meeting knowing?" If the Producer is reasonably well organised they should be able to say to you "OK we've got this amount of time to cut this much material and this is how I'm looking at the post production plan", and you should be able to be consulted on that and to be able to give input.

Question from the Floor: In relation to Editors and their assertiveness – do you think it is a supply/demand thing? People want the job and think well if I raise a concern they'll get someone else?

Frank: I don't think it's a supply and demand issue at the moment because my experience is Editors are really busy at the moment. I recently did a film where we were three weeks out from starting and we needed three Editors and we only had one so that was not the greatest feeling. I think that is an experience thing, it's to do with the relationship that the Editor has with the Producer or Director but Sydney is like a small town in terms of the documentary community - most of us know each other. For example I've worked with about a third of the people in this room. There is a degree of informality which comes about because of that.

Andrea: I think Editors are seen as an easier touch to negotiate with, I think maybe because we do know the budget is running down, maybe Editors have more beautiful souls. What is it like negotiating with Cinematographers?

Frank: I work exclusively in documentary. In terms of negotiating with a DOP it is not that dissimilar and the fees aren't that dissimilar either.

Andrea: What's the definition of reasonable hours?

Frank: For me it's a 50 hour week.

Question: Is that also a standard Cinematographers week?

Frank: I've never discussed hours with Cinematographers.

Question: Sometimes I also work as a Producer and what I would say in terms of assertiveness is whoever bleeps louder gets heard. In my experience the DOPs bleep louder so they get noticed. Sometimes the Editor isn't saying "hey what about me?"

Frank: I'm not saying Editors are not assertive enough in a way to criticise, or say it's your fault you're in the situation you are now. I think informality tends to exist in the way jobs are put together. One of the side effects is that relationships are unclear and perhaps defined at a later stage than they should be.

Question: You said reasonable was a 50 hour week. But if you're going from job to job, start at 9am with an hour off for lunch then you're finishing at 8 at night. I think that's pretty unreasonable.

Frank: Maybe it's more of a case that you work less at the start of a job and work longer towards the end. And generally it works out as a 40 hour week.

Question: I think we can be hostage to the passion, the emotion of the person who you are working with. But as the pressure builds it can be detrimental to the work. It's beneficial to break for a few days and do a bit of thinking.

Raena: If you're there for hours above the agreed time you should be paid for the hours above and that should have been negotiated at the beginning.

The MEAA (Media, Entertainment and Arts Alliance) Industry agreement actually has a 50 hour week as standard. They have a 40 hour week plus 10 hours overtime.

Question: How do we bring the rate up?

Raena: Join the MEAA and lobby them to lobby SPAA to lobby with the industry to increase the rates.

Lindi Harrison: Also a Guild we should look at this as there's ergonomic issues with working a 50 hour week. I don't think that's safe, and it's not necessary.

Raena: If you're at the point when you're on the brink of a nervous breakdown you could complain under OH&S. Although if you did that there is probably the fear of losing the next job.

Frank: The Producer needs to ask the Editor “what is your company structure”. If you’re working as a company I won’t be liable for workers compensation, I won’t be liable for 9% super. If you’re PAYG then I do the calculation in head and say “OK, so the fee will actually be”. A Producer would prefer everyone to be a company because they wouldn’t have those loadings. I have no problem with them. But the Producer faces the same dilemma as well.

Patrick: If you’re using the company structure then you’ve got to think of the total cost of employment. If you’re working through a company structure you should be charging your fee plus super plus others. It can be as high as adding 21%.

Question: I work as a company and no one ever paid my super. I end up paying it myself which brings my real fees down.

Patrick: There’s no excuse for them not to be paying your fee plus super - that should be the bottom line.

Question: There is one excuse - that they don’t have the money.

Raena: I’ve been doing a lot of stuff with a lot of Producers over a long period of time. My observation of filmmaking in Australia is that from the moment you lock off on the budget everyone gets into a tiny train and straps themselves together with chains, then they let go of the brakes and the train goes flying down a steep hill and money pisses out all the way down - and just when you’re about to hit the bottom the Editor starts working.

Question: There are lots of outside normal hours. Sometimes you want to spend time with the cut, unlocking secrets with no one else in the room. Say after a six week period the job gets done. Then everyone views that period as the time it takes to get done. So you set everything by that time from then on. They’re not thinking about all the extra time.

Patrick: A lot of negotiation is sharing information. A useful thing to use is the MEAA checklist. Discuss the contract being offered - include the length of engagement, wages and overtime.

We did a negotiation for Andrea on one documentary where there was going to be a break in the middle. Andrea’s schedule could be put back as much as three months. We negotiated a notice period for any extension which was quite generous. If they didn’t give Andrea notice and they didn’t have the footage they would have to start paying her. Obviously she had turned down work on the basis she was not going to be available for this period.

Andrea: It’s so hard to fill those holes as you know. If someone rings you up as it happens so often – “we want you quick”. So you go “right, good, locked and loaded”.

Then almost always they ring you up later - can we start two weeks later, three weeks later etc. There's never any addressing of that in contracts so we thought we'd have a crack at it.

The production company was amenable to it because they understood it. But it was only because we raised it and it was part of that discussion that this may happen. So it was a factor of this particular engagement. It wasn't necessarily about being assertive, although assertiveness can sometimes just be getting across a detail. If you do that you won't have a problem later on.

Of course what happened is that they were really careful about how they did it. Instead of just saying two weeks before the start date, "oh we're not ready to go" they came and gave me heaps of notice and formally told me "we're not ready to start will that be OK with you?" It was just different. Only because it was in the contract and they knew it was in the contract.

Frank: It goes back to what was said earlier about the squeaky wheel being the one that gets oiled. The word that you were using Patrick is "clarity" where I was saying "assertiveness". I think clarity is actually the quality that is more important in negotiation.

It is setting things upfront and understanding what the situation is that you're getting into. Because if I could just say in defence of the Producer - that more often than not, the Producer is dealing with a situation where they think they know what is going on - until it changes. You're constantly in the situation of working out "OK how on earth do we deal with this?" I think it's harder as an independent when that happens.

Patrick: I can refer you also to the MEAA contract, which is not a bad place to start. Although is it 40 or 50 hours a week? The contract has both, it has 40 hours then another 10 which is paid at one and a half. So the standard contract has 50 hours - 10 of which are overtime. But then the hourly rate is calculated based on 55 hours a week, which is even weirder.

So I think you've got to get along to the MEAA and sort out the bottom line, which is the award rate. We did a calculation based on 40 hours a week and the baseline is 2200. Based on a 50 hours week it is less than 2000.

Raena: Technically speaking it is not an award. Awards were done away with when they made amendments to the workplace relations legislation about 6 or 7 years ago. It is an industry agreement that MEAA has struck with SPAA. The way that it is enforced across the industry is that effectively MEAA says if you produce a film that doesn't comply, we won't allow our members to work on your film. Historically speaking that really only works with actors.

Patrick: In terms of gaining the clarity that's necessary I would recommend that you have the meeting implied by this checklist; that you know what it is you want and you listen to what the engagement's going to be about. Most negotiation is about information sharing. You find out stuff that might alter your position, you work out what your new position is and what it is worth. There's a little bit of to-ing and fro-ing but 90% is dealt with quickly. The 10% that's left might not be resolved at the meeting and you'll need to think about it.

Andrea: When I negotiate I find out how much money they want to pay. I hardly ever straight away say "yep that's fine". I always let some silence go and then I go "mmm" and see what happens and see if they come back straight away. A line I often use is "my fee is blah" and then I'll say "let's not shut this down, let's have a look at the budget, let's find a way this can work". Just to keep it going, "come back to me I want to do the job". I'll always try to hook them into the idea of having me to do the job, I'll be trying to sell myself and at the same time keep that conversation about money open, but going up, not going down.

Frank: Andrea did give me the silent technique on my initial offer and we played around for a while. But what she said then is, "can I look at the budget and look at what your budget for post is, and what can I bring to the table". We found a way to work out how to deal with it. She ended up getting what she wanted. It was a very good piece of negotiation and I think that's something to keep in mind. There are so many things you're thinking about when employing a particular Editor. If you haven't worked with them before there's a degree of risk. From the point of view of a Producer - if you are working with an Editor you haven't worked with before you're probably going to back away from getting heavy in relation to your budget.

Question: Do you start from the industry standard?

Frank: The industry standard that I understand is my industry standard and what I mean by that is - I work from this all the time and I generally know what people's rates are. Maybe there's been a year and they say to me "well that was my rate last year and now it's this". I do say it's fine because I know it's true.

Raena: But you're dictated to by the board and the government funding bodies.

Frank: That is the big elephant in the room. As a Producer what happens is somebody has an idea and they come to you, or you've been working with them. I do the budgeting for everything I do. The first pass of the budget will usually be 50% more than the amount of money I know can be gotten. So I'll go through another process which will pare the budget down again.

The bottom line is presales are usually fixed, unless the board wants something so badly you're not going to get a hell of a lot for a presale. Then when you go to the funding body

which is now Screen Australia you get people coming back to you with your budget. The budget analysts are employed by the funding body, and I always know there are going to be two criticisms I'm going to get immediately. That is "why are you paying your Editor so much" and "it can't take that long to online the program?"

Andrea: Is there a stated amount that the FFC or whatever expect to see as a rate come through?

Raena: Historically speaking every element of the film had to get approved by the FFC. The budget committee approves the budget and the production managers approve the allocation within the budget. The Editors aren't even involved in that process and the Producers are basically dictated to as to what the rate is going to be. So everyone is disenfranchised. It's been this dreadful top down monopoly where those terms are dictated, and the only way that the Editors are going to be in the position to get more money is if the Producer is advocating on the Editors behalf to the funding body. The funding bodies only look at how are you attracting money to the budget – otherwise you are just an employee and doing a job on the film that's replaceable by anyone else. There's a constant downward pressure on those rates because the object of the organisations is to get the budget down to make as many films as they possibly can.

Frank: More for Less.

Raena: I don't think across the board there's been an increase in Editor's rates for probably the last ten years.

Frank: I think one of the real difficulties we have is that is that so much of what we do is personal. Often we're talking to people where we have a degree of friendship or we're building professional relationships. The situation is invariably nuanced in many ways and so things are rarely straight forward. That is why it's a really good idea, when you first sit down at a meeting with the Producer, to work through that checklist. Then you can at least tick off a number of things.

Andrea: I don't think 50 hours a week over 10 weeks is possible. For me that destroys me. So I'll say at some point mmm 50 hours, I'm not going to work 50 hours a week for the first bit, but I'll work like buggery at the end. I'll know how I'll have to work so I'll get the best money I can. So I've got something left in me to give at the end of it. And I won't be feel embittered - that's all going on in my brain. I'm really annoyed that this whole 50 or 40 hour a week thing is sitting around dogging us.

Question: What is the standard Screen Australia contract?

Andrea: Well the MEAA contract is saying 40, with 10 hours overtime. There's an attitude in having a 40 hour week as standard that overtime is more than what you should be working. Overtime is over the time. So if it is saying a standard week is 40 hours, it's

quite different from saying this is 50 hour week as a standard week. Different in your head, that's for sure. So I think in a way we should be saying – it is a 40 hour week, that is what we do. 40 hours a week in front of a computer screen is plenty.

Patrick: Basically you do the job. But you say it is a 40 hour a week and you do the job. Once you get outside those parameters you've set in your initial negotiation, maybe you're going to be working more in the last two weeks, but then you're in variation territory. And then there needs to be an adjustment, you need more money, or you need more time.

Question: I've found a way to deal with hours. I just can't work after 9 hours, after that it takes me two hours to do what I normally do in one. My way is to say, "OK I'll come in Saturday". And then when I come in on Saturday I charge Saturday hours. I've never had anyone say I won't pay you that.

Question: Can we talk about rates of pay?

Andrea: I wouldn't work for under \$2000 a week. \$2500 is what I try to get as a matter of course. I say that is my fee. I work under a company structure so I pay my own super, sick leave, holidays, workers compensation etc. I would only work for less if I did it for blind love.

Raena: I think \$2200 or \$2300 would be pretty normal.

Frank: The range of fees I've paid over the last two years would be from \$1000 a week for something no budget, to the highest which would be about \$2300. So that's a huge discrepancy in terms of fees. If someone said to me what do you think an Editors fee in Sydney would be - my first reaction when I did the budget would be \$1800. Also one of those things when you have these early discussions about fees is if you say to the Producer "I'm PAYG", they will be doing that calculation in their head, "Oh, OK that means it will be this much per week for you". They may say "I only have that amount and I wasn't able to budget full super", and that's where you get the process of negotiation, but as I say it still surprises me the range that there is. The \$1000/week was a very one off experience. Once I paid \$1200 which was low and was actually a favour in many ways. The default figure I look at is \$1800 a week.

Andrea: Is that what goes into the budget to the funding body?

Frank: Yes, and if I make it any higher they say "what's going on? Who are you getting Thelma Schoonmaker?"

Andrea: Of course there's a huge difference in the world of advertising. Peter knows about that?

Question: Are you getting a fortune Pete?

Peter Whitmore: Absolute fortune [jokes] - It doesn't get any better. The commercial industry really is no different, apart from the money. But it has the same problems and they're probably magnified. When something goes wrong it goes horribly wrong - and a lot of money gets thrown at the problem. One Producer said to me "Peter there's always money - it's just a matter of how you ask for it". The fees range from say \$500 a day to \$2000 a day. But that range always shifts. There's very few contracts, nobody I know has a contract. It does work though as it's about relationships.

Andrea: We've got a survey online at the moment. Soon we'll have the results of what people are getting paid. It's anonymous. Soon you can have a look at where you fit into that and get an idea.

Frank: Should this be available to people like the broadcasters and funding bodies?

Lindi: I don't know about that. I think it would be better if we were making a recommendation and that information stays with us. Because there's a difference between what is actually happening and what should be happening.

Frank: The whole trend at the moment is for budgets to go down. There's no trend in the remotest of funding things better, not remotely.

Peter: At same time lots of content is being delivered. There's a notion to say "oh it's only a viral or it's only for the internet", and you think "how does that equate with being paid less?" It doesn't take any less work to do it. It's not just Editors it's everybody. It's been driven down.

Raena: The fact is that sharing information through your website means that everyone is in a better position to negotiate relative to where they are. Now there'll be a unified group of people saying "no, no, no this is what the market is and this is what I need to get paid".

Question: People used to get holiday pay? That seems to have disappeared?

Raena: The MEAA contract also includes holiday loading. So you should get your pay, plus super, plus one twelfth of your income as your holiday pay.

Frank: I have had said to me by the funding bodies repeatedly over the past five years "why are you budgeting for holiday pay?!"

Raena: It's a statutory requirement that they pay holiday pay. It has its own act - it's called the holiday pay act. They can't walk away from it.

Question: Well they have!

Patrick: You're grossing the whole thing up. What they pay is including everything. That's what they're saying – that's the total amount, deal with it. Your super's in there, your holiday pay is in there, workers compensation, all of your entitlements are in there. As an employee you need to look at it, do the calculations and say "is that enough?"

Andrea: That's why we have that question on the website survey - are you a private contractor or are you PAYG. So we can start to get it straight. So we know that when you go out there and charge \$1800 a week, you're actually charging \$1600 a week. We've just got to get through this. A Producer might say "oh I don't pay that much" – but they might pay that much to a PAYG and all those things are on top.

Andrea: Start where you want to be, start up - then work it out from there. No one's going to push you up - so start there.

Lindi: You can always ring someone.

Andrea: Sometimes you can't do a job and they really want you. So I'll say have you tried James? – yes, have you tried Lindi? – yes, have you tried Emma? – she's away. So I think - how far down the list was I?!

But that's good - you get to know who else is in the same list as you, and that allows you to all talk to each other. If I bump into an Editor somewhere I'll often ask what are you charging? It's the only way to find out what's going on.

Patrick: One other thing we haven't touched on is you're not only bringing yourself to the table but your expertise. So it's good to look at the budget that can help Producers. You've got to be able to say where you can help. If that's not taken on board then the onus is on the Producer.

Lindi: As Andrea said - you've got to express it is really a project you want to work on, you can impress them with how much you want to work on it. They will know this person is going to work their guts out because they really like the project. Then when it gets to negotiating a price it's just a small detail.

Peter: Lawyers sometimes work pro-bono, like the old medical practice where Doctors used to decide who could afford what treatment and those that couldn't afford it were just looked after. So if you can't afford it you don't always get charged. But what value you place on yourself is that first amount you mention. You put the value there and if they can't make that - then you talk. But it's got to be at the top - this is my rate.

Andrea: When we had this ten years ago one of the things that I really took away from it and valued was when someone asked Glenys Rowe – "if someone asks you for a huge fee what do you think?" and she said. "then I think they're probably worth it". The

assumption is they're probably worth it, it's probably what they've been getting. It's not shock, it's not "they're asking what!" Put value on yourself.

Question: What about having your own gear, there are costs with that too?

Frank: Well I usually pay between \$900 – \$950 a week.

Question: Does that include technical support.

Frank: Yes, technical support. But not internet access and phone calls.

Question: I only charge \$200 a week and that includes internet and telephone calls.

Frank: If you're not billing for internet and telephone calls then you need to see a doctor. In terms of the costs of hiring someone who's got an Avid or a Final Cut or whatever it just keeps on going down and down. I like working at a facility because of the feel of the place and the technical support. I've never had a film cut at somebody's home. Maybe it's my conservatism but there's something about that that makes me nervous, maybe it's the lack of technical support.

Andrea: I think it is a pitfall when you have gear to get it all rolled into the same fee. I think there's a need to keep that separate to what you're worth.

Question: I work full time and get holiday pay etc, but I was wondering with working freelance – how many weeks in the year do you work?

Andrea: That varies. But it is a question we asked on the survey – how many weeks have you worked in the last 6 months. So we'll get those results.

Question: Yes it is hard as one job may run into another. Or a job may not start for a while after one has finished.

Frank: One of the things I find difficult in terms of the schedule is not so much being late starting but when the Editor's got a back-end as in they have to go onto another job. If something has gone wrong, you know the last thing you want is have another Editor come on and finish something the first Editor has worked on for ten weeks. You know that the Editor is under a lot of stress as well as me saying "please, please, please", there's someone else going "wah, wah, wah". So you're getting it from both ends. I think it's so common and I don't know why.

Question: I always try to factor in a window between jobs, but then you're probably not going to get paid. It could be a month.

Andrea: That's why you've got to look at your overall fee and at the end of the year – it's

got to add up to a decent salary. The fact is there has been a lot of work around, well in documentary.

Frank: One of my first jobs in the industry was an Edit Assistant. I remember watching the technology change from the late 80s and watch the Editing Assistant disappear as a career path and I just thought where are the Editors going to come from? They're going to come from the film school and some of the arts colleges. But it just stuck in me that there was going to be a lack of Editors in 20 years time. It shocks me to say that 20 years has elapsed. It's now. And it is hard generally to find an Editor these days. If you're slack and don't get onto it 4 or 5 months out then it then it's very hard.

Question: I'm an emerging Editor; I want to be an Editor. I find it hard to find somewhere where I can sit in a room and watch an Editor

Andrea: I had a Producer once whose niece wanted to become an Editor. She wanted to sit in the room. After half a day the Director said I don't feel completely comfortable and out she went. It's just because it's so out of the norm.

Peter: We're working on the mentorship scheme. It's good just to meet Editors. But the training itself has to come from somewhere else.

Question: I find it hard to set a rate. One time I said a rate and didn't get the job. I don't want to take jobs off other people and charge too low though.

Andrea: It's really difficult because you're out on your own as well. What sort of work is it?

Question: Short films mostly.

Andrea: I think they're the lowest paid area – short films with no budget. I think almost always people hope not to pay anything.

Patrick: But you can still set your rate and then negotiate. You can say this is my rate but I'll work to your budget.

Andrea: I'd say the ones that don't ring back were hoping for a freebie. Just don't worry about that. You can't worry about that. You have to be paid. Even starting out you should be paid something. Otherwise it's volunteer work and you can go and do that for Meals on Wheels for a much more worthy cause.

Question: Do I need insurance?

Raena: If you're an independent contractor the best thing you can do is keep your own insurance up to date. Make sure you have insurance for death and disability as well as

public liability. But get your name noted on the production company's insurance - that way you're covered for working from home. You don't want to be in the situation where the insurance company can get out of it. If you're noted on the production company's insurance then you're covered and it doesn't cost them to have you noted on their policy.

Patrick: You still have to have your own insurance though. You don't have to have workers compensation for yourself if you're a sole trader not a company. But you should have death and disability insurance.

Raena: Yes you should always have income protection insurance and public liability for yourself. And when you work on a project get noted on the production company's policy. And the costs of those of course need to be recovered on top of the \$1800, plus holiday pay plus super!

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