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# Poll: Cost of billable hours too high

Stephanie Quine

A *LAWYERS WEEKLY* online poll has found that almost half of those surveyed believe billable hours are harmful to the legal profession.

In response to the question: *Is it time to phase out billable hours?*, 47 per cent of over 400 respondents said they believed billable hours were harmful to the profession.

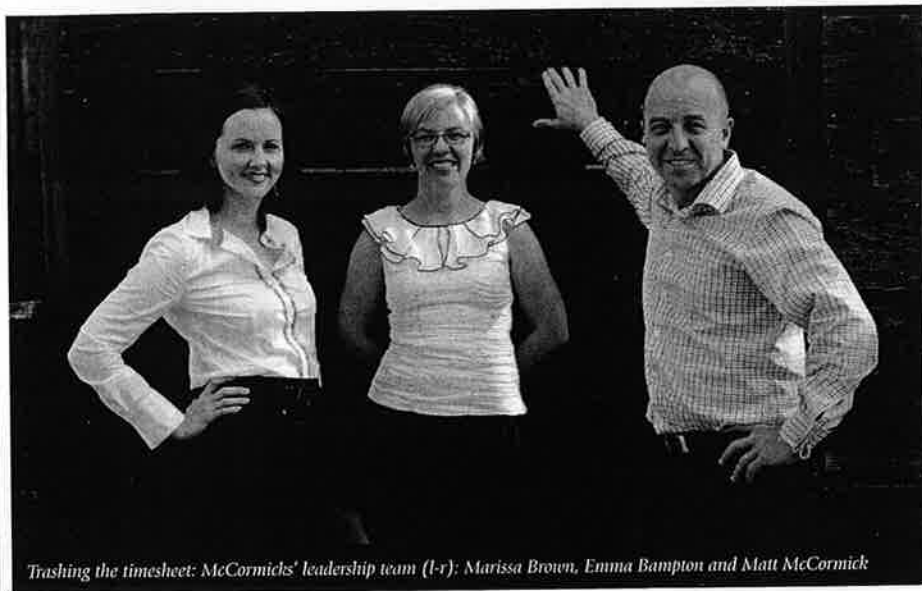
Another 30 per cent of voters said billable hours should 'maybe' be phased out, but only once a widely-accepted alternative option has been established.

Matt McCormick, the founder of newly-established McCormicks Law and Consulting in Brisbane, said this suggests many legal professionals are "waiting for someone else to come up and tell us how to bill in an alternative way".

McCormick admitted that he struggled with the decision to launch a firm with "value-based billing".

"It took a long time for me to have the courage to break out and start a firm on a platform that doesn't use time as a core component for the basis of the

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Trashing the timesheet: McCormicks' leadership team (l-r): Marissa Brown, Emma Bampton and Matt McCormick

## Lawsuits may follow poor rating

Leanne Mezrani

RATINGS agencies worldwide could be sued by investors who lost money during the global financial crisis after the Federal Court ruled that Standard & Poor's AAA rating of complex financial products was "misleading".

On 5 November, the Federal Court slammed Standard & Poor's for failing in its duty of care to investors by assigning a AAA rating to "grotesquely complicated" and risky synthetic derivatives known as constant proportion debt obligations (CPDOs).

Justice Jayne Jagot ruled in favour of 12 NSW local councils that lost millions on the failed investments in the aftermath of the GFC. She said a reasonably competent ratings agency could not have rated the product AAA.

Piper Alderman's Amanda Banton,

who represented the councils, argued that the volatility level assigned to the CPDOs was "clearly inappropriate".

"The correct [volatility] figure should have been about 28 per cent and, if that correct figure was used, the product would not have received a AAA rating," she told *Lawyers Weekly*.

Consequently, the ratings methodology for CPDOs will be investigated and could prompt litigation against ratings agencies worldwide, said Banton, pointing out that the global value of CPDO products is estimated to be around \$5 billion.

"That methodology has been found to be incorrect and we would assume ... having the benefit of our judgement, there will be further litigation in respect of CPDOs."

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## UCI lawsuit unlikely to be easy ride

Andrew Jennings

A LEADING sports lawyer has claimed Australian company Skins' decision to sue world cycling governing body UCI for \$2 million will ultimately prove unsuccessful.

The sportswear maker, which has invested around \$10 million into the UCI over the last five years, has claimed the Lance Armstrong doping scandal has caused reputational damage to the sponsors, alleging the UCI harmed the image of the company by failing to crack down sufficiently on doping and run a clean sport.

Tim Fuller of Walsh Haligan Douglas Lawyers – and also a former Gold Coast and South Sydney Rabbitohs NRL star – told *Lawyers Weekly* that, although Skins have an arguable claim, recouping damages is unlikely.

"On whether the doping scandal has led to a loss of confidence and credibility for its product – and by fact it entered the sport in good faith – Skins do have an argument," said Fuller.

"However, the reality is that the UCI has a zero-tolerance

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recruitment seems difficult,

# Poll: Cost of billable hours too high

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relationship with your customers and also the way that you deal with your staff and your colleagues," he said.

He believes it can be demoralising when lawyers have to justify daily timesheets to clients and firm management. Time-based billing also stifles innovation and forces lawyers to focus on a spreadsheet rather than what their clients have engaged them for, he added.

Morgan Solomon, a director at Perth-based Bowen Buchbinder Vilensky (BBV) agreed.

"When you give a client a bill that's based on time billing, what you're showing them is the labour pains when all they wanted to see was the baby," he said, quoting Ron Baker, one of the founders of think tank Verasage Institute.

While the majority of poll respondents agreed it is time to phase out billable hours, 13 per cent said timesheets are the best way to charge clients and measure a lawyer's productivity.

Solomon puts this result down to the fact that there will always be a portion of the profession that is resistant to change.

"It's hard to convince



Morgan Solomon, director, Bowen Buchbinder Vilensky Lawyers

**"What you're showing them is the labour pains when all they wanted to see was the baby"**

people who are making profit to change," he said, clarifying that billable hours are only profitable for partners.

"It burns out the young lawyers and creates great resentment within the profession and certainly within clients."

## True alternatives

The remaining 10 per cent of poll respondents believe it's time to phase out billable hours because clients are already demanding it.

But those firms that are offering fixed-fee alternatives have not gone far enough to meet client demands, according to McCormick.

At his previous firm, Walsh Halligan Douglas, where he was managing partner, areas of practice that used fixed-fee billing simply calculated the cost based on time taken in the past to do a similar activity.

"You're still feeding the beast; you're still putting your time in the system so you're still

the documents prepared and read, regardless of length; the amount or value of property involved, and any other relevant matter.

"What's interesting to me is that time is just one of the factors that they look at, there are all these other subjective elements," said Solomon.

"If the Federal Court is willing to recognise that value is subjective, it's amazing that we don't as lawyers.

"We still adhere to this rigid idea that there's one price for everyone and that's it."

Some clients value turnaround time, others value the ability to contact their lawyer wherever and whenever they want without being charged for each phone call, added McCormick.

Lawyers may be very good estimators, he said, but hourly billing has stifted their ability to develop pricing skills.

"No one teaches lawyers how to price in the way that other

industries develop a great skill in pricing and value," he added.

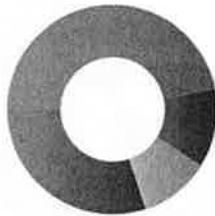
Solomon revealed that lawyers at BBV are only now starting to get comfortable with the idea of pricing based on value even though the firm has been working on phasing out billable hours for almost three years.

Thanks to the firm's alternative pricing model, BBV has attracted a number of new clients, including a large fund manager in Melbourne.

"These clients are good users of legal services, they're commercial people and they're tired of the mystery bill at the end of the month showing how many hours are spent," he said.

"Timesheets are one of the key problems with clients' perceptions of the profession as being outdated and rapacious, and lawyers themselves are finding this interminable ... capturing and recording of hours soul destroying."

## Is it time to phase out billable hours?



Yes, the system is harmful to the profession

No, it is the best way to charge clients and measure a lawyer's productivity

Yes, because clients are already demanding it

Maybe, but only once a widely-accepted alternative option has been established

# UCI lawsuit unlikely to be easy ride



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on doping. They adhere to World Anti-Doping Agency codes and, as long as they abide by these policies, I

a governing body" like in this

instance, and added that he didn't believe Skins' claim was vexatious.

"I don't think so," he said.

doping practices as outlined by the US Anti-Doping Agency (USADA) report," said Jaimic Fuller.

"We were not aware that this was as systemic and widespread as it has been proven to be. I think it's unfair

felt it was damaging their brand."

He added that it might be a case of Skins using the opportunity to "make a bit of noise" about their brand, while at the same time boosting its credibility.