



TIME IS UP

for old-style billing

Companies need to focus on clients, not their timesheets, to give their customers the best service

>James Perkins

Time-based billing is a maligned but almost ubiquitous practice in the legal profession and there is a growing debate about alternatives to its use.

It has copped the blame for many of the things perceived to be wrong in the profession, but it is not clear what will replace it, or whether it even needs to be replaced.

Voices of those looking for new ways to bill are getting louder and new law firms like Brisbane's McCormicks Law and Consulting have been founded on the ethos of a value-based billing philosophy.

Matt McCormick was inspired to practice law in a "better way" by starting his own firm.

"Time sheets were the main issue, [value billing guru] Ron Baker says the hourly billing is the symptom, the timesheets are the issue," says McCormick.

"Instead of concentrating on spread sheets, our focus is on the customer and the outcome we can provide them."

He says it is a mistake to base a relationship with a client on time, because "the reality is, customers generally do not care about how long it takes to do something".

"They want work done with an outcome," he says.

More than 25 per cent of complaints to Queensland Legal Services Commission relate directly to costs, while the percentage with costs as an issue is much higher.

Legal Services Commissioner John Briton welcomes the debate on the topic of billing



Matt McCormick

and he was highly critical of a number of practices within the profession in last year's annual report.

Billing is the biggest issue facing the legal practice today, says Briton, but it goes much deeper than the method of billing itself.

"I don't think anyone is going to say the profession is facing a crisis, but what we are getting interested in is that there is not just the occasional ratbag that is the problem for the profession," says Briton.

"The more troubling stuff is practices that are dubious, that are more widespread. They are not uncommon and they are troubling."

The commission will this year focus on eliminating bill practices it considers

questionable, but just like a complicated legal matter, the answer is not clear cut. Lawyers work with people of all demographics at every level of society, from the average punter, to accused criminals and huge corporations.

Certain billing structures work best in different matters, but communication is important no matter the process.

"The bottom line is that you can criticise time based billing on the basis it rewards over servicing, but equally, if you have a fixed fee agreement, you could argue fixed fee agreements reward underservicing," says Briton.

"The real issue is always: is the bill fair and reasonable? The real issue is: if you have got someone who is greedy, they will find a way to be greedy however they calculate their bill."

An inherent part of the value billing model is strong communication between the firm and its client.

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John Briton, Queensland Legal Commissioner

"Lawyers that take this approach seriously are likely to have good client management processes in place because that is inherent in their billing practice," says Briton.

McCormick holds a meeting with the client at the beginning of the matter, allowing parties to come to an agreement on costs.

"I can't tell a customer what value of a piece of work or an outcome has. It is subjective. After that discussion, we put a price on it. We use the skill of pricing to judge that."

He says lawyers are crying out for a new way to bill, but can't find one and there is an opportunity for someone to develop a new system, though he has no ambition to sell his own method.

The market itself plays a significant role in ensuring legal fees are fair. TressCox Lawyers partner Bill Hickey says that a firm can't achieve success without successful billing practices suitable for the client and the firm.

"It is an integral part of the relationship you have with your client – they have to feel comfortable with the bills you are providing," says Hickey.

"A firm such as TressCox relies heavily on client loyalty; therefore it is inconsistent to have billing practices which would be seen as problematic for client loyalty."

Hickey rates transparency as a key to successful customer-client relationship.

"You need a billing system which is transparent. You as best you can explain what costs are involved and there is a clear costs agreement, itemised bills and the opportunity for the client to discuss it if there is any problem with the bills," says Hickey.

"Clarity is needed. Nobody denies legal fees are expensive, it is important to clarify as best you can the work that needs to be done and to allow the client to understand that and ask questions.

"We have had very few issues, if any, over the years."

Briton agrees good communication prevents complaints.

"The standard complaint we get is that 'I was told it was going to cost me \$3000, but then when I got my bill it was for \$6000 and nobody talked to me in the meantime.' That is the type of garden variety complaint," he says.

But it is not the large clients with significant bargaining power that are most at risk. Briton says direct complaints of fraud are rare, but in any case, many clients would not know whether they are being defrauded or not, because they have no way to measure whether their fees are fair.

"Most ordinary folk who we deal with are never going to be in a position to know how much time a reasonably competent lawyer would normally put in to a matter of this kind," he says.

"That being the case, you don't get too many complaints saying 'this seemed to take a bloody long time to me and that was improper'.

"We wouldn't expect to get complaints of that sort because complainants are never in a position to make that sort of complaint."

He believes there are practices within the profession which are widespread, but potentially unethical and need to be addressed. There are four key issues the Commission will study this year (see box, left).

THE BIG COST ISSUES

The Queensland Legal Commissioner John Briton has identified four areas of concern relating to billing in the legal profession that need a "really close look".

1. When a client asks for itemisation of a bill and the lawyer withdraws it and replaces it with a lump sum bill of a higher amount.
2. Lawyers charging a care and consideration component. "We think, particularly in the case of time billing - that is unacceptable."
3. Lawyers billing in units and over the life of file billing for work that took a lot less than the minimum allotted time.
4. Barristers charging a cancellation fee. "There are real questions about whether barristers can charge for the time they set aside, but never used," says Briton.

"There is practice that is not uncommon in the profession that people are engaging in without necessarily any intention to rip people off or malevolence, but are potentially unsatisfactory and need some clarity," he says.

