

Billable hours

I don't think it's practical to talk about the billable hour as an outdated idea ready to be replaced by alternative methods ("A billable (r)evolution," March 2005, p. 20). Lawyers generally have only time to sell, and in that sense, we are no different from many other professions and trades.

The only way to measure time is with, well, time. After all, the fixed-fee model is not a departure from the billable hour model — it's just the billable hour model supplemented by an estimate of the time taken and a promise of a fee cap at that estimate. The same can be said of every other approach listed in your sidebar, except perhaps for contingency/success fees.

The real issue here is control — who gets to control the way the lawyer charges for and uses his time. And for that reason, I have often thought that the project approach briefly discussed in your article has a lot more going for it than is generally thought.

Lawyers are no different from many other businesses that manage time spent on tasks. This is a capacity management and utilization game — time is spent on projects, and the client reasonably wants control over how that time will be spent and how much will be used. Much of the project-oriented business world already uses that model, and uses it very well.

In software development, for example, it is common for the developer and the client to settle on a spec document to govern the project. It sets out budgets, time periods, milestones, deliverables, personnel, etc., all estimated up front, item by item. Interestingly, software development clients are often concerned about the personnel who are assigned to their projects and want to control that in the development agreement. Sound familiar? Lawyers'



clients often express the same concerns. We are no different from these other professions — we just think we are.

Why don't lawyers use this approach? Because so far, we have generally resisted client efforts to make us assume the risk of our own inability to control controllable costs — lawyers can still say, "Trust me, I will take care of you and not charge you unreasonably," and, well, get away with it. And yes, I did actually hear a senior partner say just that in a mandate I was recently on.

Final comments: (1) we are project managers, (2) as a profession, we do not manage projects efficiently, (3) clients understand that and want more control, and (4) they are going to get it. The first firm to adapt strict project management budgeting/estimating techniques to legal mandates is, in my opinion, going to (1) make a fortune, and (2) change the entire profession very quickly.

Rob Hyndman
Toronto

J'ai réagi avec étonnement à l'article *A Billable Revolution* de votre numéro de Mars dernier. On semble y oublier que c'est la clientèle surtout institutionnelle qui a astreint les avocats à une computation de leurs services sur la base stricte du temps consacré et au minutage. ...

Ma pratique en litige de construction depuis une quarantaine d'années démontre sans l'ombre d'un doute que les systèmes d'honoraires fixes et de prix forfaitaires constituent la recette idéale aux disputes et procès qui m'ont permis de gagner ma vie.

Les professionnels de la construction conviennent d'avance de réaliser, pour un prix fixe, des plans et des devis pour des projets en apparence déterminés. Les entrepreneurs conviennent d'avance d'exécuter à prix fixe des ouvrages selon des plans et des devis qui, eux aussi, paraissent complets et définitifs pour un ouvrage qu'ils croient défini sur un site bien précis et connu à l'intérieur d'un délai convenu.

Malgré cet ensemble de paramètres en apparence connus et de conditions convenues, les entrepreneurs sont appelés à exécuter d'innombrables changements et les disputes naissent.

Le professionnel consciencieux payé sur la base du temps qu'il doit consacrer pour atteindre le but recherché saura prendre les moyens qu'il faut pour y arriver (...)

Le temps facturable n'est pas sur le point de disparaître. Il constitue une forme, si détestable soit-elle, de rémunérer à leur juste valeur les services professionnels dont l'envergure ne pourrait être déterminée qu'à l'aide d'une boule de cristal, méthode artisanale qui n'a pas encore fait ses preuves.

André Simard
Montréal

Correcting the record

I was one of the people featured in the "Sacred Settlements" article (March 2005, p. 32). I found the article to be informative and well-written. Indeed, it was flattering. I wish to thank both you and the author for dealing with the issues raised in a comprehensive manner.

However, kindly consider publishing a correction to one important mistake. On p. 35, the article notes as follows: "[Tirzah Meacham] was a member of the Canadian Coalition of Jewish Women for the Get that successfully lobbied for amendments to the Ontario *Family Law Act* and the federal *Divorce Act* in the late 1980s to aid the *agunot*." (*Agunot* are separated Jewish women who are not free to remarry within the Jewish faith because their husbands refuse to consent to a Jewish divorce.)

As I was the lawyer who created and originated the Get legislation in 1985, I can confirm that this Coalition was very helpful in joining a number of Jewish and non-Jewish groups in lobbying amendments to the federal *Divorce Act* between 1986 and 1991. They were far from alone. Prior to that, they gave us tremendous moral support and important advice during the Ontario campaign, when we lobbied for amendments to the Ontario *Family Law Act* in 1985-86. However, being based in Montreal, their lobbying efforts were understandably limited.

This attempt at historical revisionism must cease, since this is not the first time I have seen this mistake come up in print. The original sponsors and promoters of both the federal and provincial legislators had nothing whatsoever to do with this Coalition.

When I approached organizations with my idea, they were the Orthodox Rabbis of Toronto, led by Rabbis M. Ochs and B. Taub, and the B'nai Brith Canada, led by its Executive Vice-President, Frank Dimant. They were quickly joined by the Canadian Jewish Congress and its then-executive officer, Toronto lawyer Lester Scheninger. Were it not for these initial organizations, there would be no Get legislation.

Moreover, the difficult footwork for lobbying passage of the Ontario *Family Law Act* Get Law, the predecessor to the *Divorce Act* amendment by five years, also goes to a few dedicated individuals in Toronto, not this Coalition based in Montreal — women like Dvora Danziger and Toronto lawyers Judith Holzman and Shayna Kravitz, as well as the above-named Rabbis and leaders.

John T. Syrtash
Beard Winter LLP, Toronto