



Perth Press Club

Launch of Law Week 2010

"Billable Hours – past their use-by date"

Address by

The Hon Wayne Martin
Chief Justice of Western Australia

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Introduction

It is a pleasure and an honour to have been invited to address the Perth Press Club and to launch Law Week 2010.

Given that we meet this morning on a site of particular cultural significance to the Wajuk people, who are part of the Noongar peoples, it is more than usually appropriate that I pay my respects to the traditional custodians of these lands and acknowledge their Elders, past and present.

Law Week provides a focused opportunity for members of the legal profession to improve interaction with the community which the profession serves. Historically, the profession has not been particularly good at informing the community of the reasons for its practices and procedures. Lack of information and understanding breeds suspicion and distrust. This is unfortunate, as the legal profession has an important constitutional dimension.

Independence of the Legal Profession

The importance of the independence of the judiciary is, within Australia at least, generally acknowledged. No-one seriously doubts that the stability of our liberal democracy depends critically upon the judicial branch of government being free to determine and enforce the law without interference or influence by executive government. Any system of justice worthy of that description requires nothing less.

The importance of the independence of the legal profession is less well understood. Under our system of justice, the courts depend heavily upon the robust practice of the law by members of an independent profession, who are able to present cases to the courts without fear of interference

from government. Unless the profession enjoys that independence, the independence of the judiciary is an illusion.

These observations have a topicality because of the current moves towards the creation of a national legal profession. Those responsible for the formulation of the structures that are proposed to govern and regulate the national profession do not appear to have given adequate weight to the importance, and constitutional significance, of the independence of the profession. They have consistently proposed that the profession be regulated by a board constituted with a majority of members appointed by executive government. Even more extraordinarily, the draft legislation released last week proposes that the National Board regulating the profession be subject to direction by the Standing Committee of Attorneys-General on matters of policy. A regulatory structure which would empower executive government to control the legal profession is utterly inconsistent with the independence of the courts and should be rejected unequivocally and emphatically. While the creation of a national system for the regulation of the legal profession is a worthy objective, the surrender of the independence of the profession to control by executive government is too high a price to pay for the achievement of that objective.

Charges for Legal Services

Law Week also provides an invaluable opportunity for the profession to reappraise its processes and procedures, particularly those which relate to their relationships with the community. It is in that spirit of constructive analysis and beneficial public debate that I wish to again raise for consideration the sensitive question of lawyers' fees and, in particular, the way those fees are assessed. The charges made by lawyers for their

services have been a topic of community debate for centuries. I am not quite sure why this is so, as it seems lawyers' fortunes have fluctuated over the centuries. What is clearer, however, is that in the latter decades of last century some (but by no means all) lawyers' earnings placed them amongst the higher income earners in our society.

And lawyers' charges have long been the subject of humour. I remember reading, as an adolescent, the Wizard of Id comic strip, in which the lawyer, Larson E Pettifogger proclaimed volubly "every man is innocent until proven broke".

Time Billing

Time billing has also been the subject of a number of jokes. Many of you may have heard the one about the lawyer in his early 40s who arrived at the pearly gates and protested to St Peter that he had been taken too young and deserved to live longer. St Peter replied that while the lawyer might believe he was only in his early 40s, analysis of his time-sheets revealed that he must in fact be in his 90s.

During my time in the law there has been a complete change in the way in which lawyers charge for their services. When I started out in the legal profession in the 1970s, the documents on the file provided the essential record of work done. Work which did not generate a document, such as a meeting with the client, a telephone call, or a court appearance would be recorded, somewhat haphazardly, by a scratchy note made on the inside of the file cover. The bill would not generally be rendered until the matter was complete. The amount of the bill would be determined by a process which usually involved picking up the file in one hand to assess its weight, conjuring to mind an image of the client and their capacity to

pay, and then assessing the benefit which the client received from the work done on his or her behalf, to arrive at a figure.

By the late '70s or early '80s, all that changed. Time-sheets were introduced and bills were rendered by reference to time expended. Interim billing prior to the completion of a matter – usually monthly, became commonplace. Interestingly it seems that part of the rationale for this change to billable hours was to address clients' demands for more information about how legal fees were calculated - perhaps understandable given the rather arcane way of charging I outlined before. In any event the result was that lawyers' cash flows, and incomes increased dramatically. Public disquiet in relation to the size of lawyers' fees also increased.

Over the last 30 years, time costing, or rendering fees by reference to time spent on any particular matter, has become the dominant method used by lawyers to calculate the charge for their services. Adverse client reaction to this methodology has resulted in commercial pressure being applied to lawyers to move away from this method of charging. There have also been concerns about the effect of this billing paradigm expressed by elements within the profession itself, and recent years have seen a number of firms and lawyers adopt alternatives to time billing, at least in some areas of work. In this paper, I will suggest that the profession should enthusiastically embrace the pressure for change, and generally adopt alternative methods of charging for services rendered. I will do so by briefly analysing the history of time charging, its advantages and disadvantages, and the alternative methods available.

Before doing so, however, it is important that I emphasise that in making this call for change, I do not mean to disparage or criticise the legal profession. Law Week is an appropriate occasion to acknowledge the enormous contribution which lawyers make to the stability, order and well-being of our community in a wide variety of ways. Nor do I mean to suggest that the profession is uni-dimensional or properly characterised only by partners in national or multi-national firms, or well paid commercial barristers (of which I was one). There are many lawyers in Australia working in small suburban or rural firms, community law centres, legal aid bodies, government agencies and so on who are in some cases very modestly remunerated but nevertheless work diligently to serve their clients and the community. Nor do I mean to suggest that big firms and commercial barristers do not fulfil their obligations to the community. Most have well developed *pro bono* policies and practices which provide invaluable assistance to people who would not otherwise be able to afford it.

I readily acknowledge that I practised time billing over many years myself, and derived significant financial benefit from it. I am vulnerable to the criticism that I am one of those Judges who upon appointment, turns to criticise publicly professional practices in which they were engaged prior to appointment – poachers turned gamekeepers if you like. But in my defence, it is a matter of record that I first called for change in relation to time billing while I was still in practice and long before I had any thought of possibly taking a judicial appointment. My personal experience of time billing, its strengths and weaknesses informs the views I express in this paper - none of which are novel - all having been expressed by representatives of the profession over many years. This paper merely collates and represents propositions which have emerged

from the profession itself, with a view to stimulating interest and debate, which may in turn accelerate changes which are already evident in some parts of the profession.

The History of Time Charging

The well-known expression "time is money" is attributed to Benjamin Franklin, who used it in a letter to a young businessman in 1748.¹ As Ron Baker has pointed out, in the context in which Franklin wrote, he was using the expression to refer to what economists now call opportunity cost – that is, the cost of the lost opportunity to work or generate income.

The transmutation of that notion, into the notion that time was something which could be sold, was achieved by another American statesman about 100 years later, when Abraham Lincoln observed:

"Time is an attorney's stock in trade."

But it was yet another American, Reginald Herber Smith, who another 100 years later again, translated this notion into practice when he recommended the recording of a lawyer's time and the introduction of the notion of the "billable hour" in his work *"Law Office Organization"*, published in the early 1940s. It was Smith who recommended that time-sheets be kept in 10th of an hour increments (6 minute units).

However, it is important to realise that Smith did not recommend time costing as a method of billing. Rather, he recommended time recording as a method of cost accounting – that is, so that the firm could assess the

¹ Much of the material in this paper is drawn from material published by Ron Baker, of the VeraSage Institute in the US, and NSW Legal Services Commissioner Steve Mark, both of whom have written extensively on the need to move away from time costing.

cost of the service provided, not the price. That is clear from the following passage about time recording:

"That is the cost. Maybe the bill will be more than that; if so, there is a profit. Maybe it will have to be less; if so, there is a loss. In practicing a profession, knowledge of the cost is a helpful guide towards arriving at a fair bill but it's not a determinant."

However, as Baker points out, the role of the time-sheet soon changed:

"...the time-sheet was introduced mainly to perform cost accounting; not for pricing. It was a way to *manage* and *cost* the inventory, but after lawyers became acclimatised to completing a daily time-sheet every day, it *became* the inventory lawyers sold."

The use of time-sheets as a method of billing was promoted to the US legal profession during the 50s and 60s by management consultants. Their efforts were assisted by studies which showed that lawyers who kept time-sheets had an after-tax income which was almost equal to the before tax income of lawyers who did not. The same process occurred in Australia about 20 years later when time costing was introduced in the mid to late '70s. It coincided with the increasing commercialisation of legal practice, and a period of significant economic development in Australia. All these things combined to significantly increase lawyer's incomes over a relatively short period.

The Market for Legal Services

The size and economic impact of the market for legal services in Australia should not be underestimated. According to the Australian Bureau of Statistics, during the year ended 30 June 2008, legal services generated \$18 billion of income and contributed \$11 billion to the

Australian economy, employing almost 100,000 people. Time costing has undoubtedly made a significant contribution to these figures.

The Calls for Reform

While many lawyers have enthusiastically embraced time costing because of its obvious benefits to them, other sectors of the community (including the courts), have not been so enthusiastic. In 1999, the Law Reform Commission of Western Australia² reported on the incentive which time costing provided for the undertaking of unnecessary work and the maintenance of inefficient ways of doing work.³ The Law Reform Commission recommended that the legal profession, in consultation with those responsible in the courts for the taxation of legal costs and the public, should be invited to inquire into appropriate methods of billing, with a view to reducing the prominence of time costing as a methodology for calculating professional fees. As far as I am aware, this recommendation was not taken up. For reasons which I will develop, I remain of the view that this recommendation should be taken up by the profession and those responsible for the regulation of the profession, with a view to reducing the dominance of time billing.

A small step was taken in this direction earlier this year, when, at the suggestion of the Supreme Court, the Legal Costs Committee published a scale of fees for non-contentious probate work which included a number of fixed fee items, replacing items which were previously time-costed.

² I chaired the Commission at the time.

³ Review of the Criminal and Civil Justice System.

The Advantages of Time Billing

As time billing has become the dominant method of charging for legal services, it must have some advantages. It is appropriate to consider and weigh those advantages against the disadvantages of time billing so as to evaluate whether adoption of alternative billing methods is justified.

Easy and efficient

Time billing supported by appropriate time recording and billing software is easy. The billing function becomes an administrative task handled by non-legal personnel. A button is pressed and a bill comes out.

Time billing ensures the relationship between price and cost

As I have mentioned, time billing evolved from a method of accounting for the cost of providing services on any particular matter. In theory, hourly rates are set by dividing the firm's costs amongst the billable hours likely to be worked by each fee earner and adding a margin for profit. In theory therefore, this system ensures a relationship between the cost to the firm of providing the service to the client, and the price charged. On one view, this ensures a relationship between cost and price which is fair to both practitioner and client. However, as we shall see, in practice, hourly rates are set more by reference to competition in the marketplace than cost accounting - enabling returns that provide a significant margin over cost.

Price comparison

Time billing enables consumers to make comparisons of price amongst competitive suppliers of legal services. It also provides a degree of predictability and stability, when compared to other methodologies such as value pricing. However, this should not be overstated. The hourly rate

is, of course, only one component of the bill – the other component is time spent. There may be significant and unpredictable differences between firms as to the amount of time likely to be taken for any task. Further, the price to be charged for any particular service remains open-ended, because the time to be taken to complete the task cannot be predicted with certainty before the task is performed.

Fairer than fixed fee

It can be argued that if fixed fee pricing is adopted, the fee will include such a margin for risk and error in favour of the law firm, as to result in clients being overcharged in many cases.

Time billing as a cost accounting, productivity and project management tool

Time recording enables a firm to track the cost of providing any service, the productivity of its fee earners, and provides a tool for managing the cost of any particular service using simple accounting software.

Risk transfer

Time billing transfers all risk to the client. The risks of unforeseen circumstances, resulting in more time being spent, inefficiency, duplication of work, are all transferred to the client. The firm takes no risk whatever, as recovery of its costs and the derivation of profit is built into the hourly rates charged. This is a big advantage to the firm, but is not so great for the client.

The Disadvantages of Time Billing

The disadvantages of time billing that have been identified in the literature I have reviewed are so many that it is difficult to know where to start. The following issues have been identified, in no particular order.

Conflict of interest

Time billing creates an inherent and irreconcilable conflict between the interest of the client in the achievement of an expeditious resolution, and the interest of the lawyer in billing time. In litigation, the client has an interest in minimising the steps and the time taken between the commencement of proceedings and their completion, whereas the lawyer has an interest in maximising them. The client has an interest in early resolution by agreement, which is antithetical to the lawyer's financial interests.

Client bears all the risk

As already noted, time billing passes virtually all risk to the client. It is very unusual in commerce for one party to a transaction to bear all commercial risk. Where that occurs, the fact that the other party is bearing no risk is usually reflected in the adoption of a very modest profit margin for the party bearing minimal financial risk. That is not the case with lawyers' services.

No upfront price

As I have already noted, a lawyer's quote of an hourly rate is not really a quote at all. That is because, even if the lawyer provides an estimate of the hours likely to be consumed, that will only be an estimate, not a quote, and the ultimate price to the client may be much higher. Uncertainty as to price is unusual in commerce and disadvantages the

acquirer of services, especially where information asymmetry is present – that is, where the client lacks the information and knowledge necessary to make an informed assessment of the services provided, and the desirability or need for a particular level of service.

While it is not uncommon for consumers to engage a tradesman such as a plumber or an electrician, for a small job on the basis that the charge will be a function of time spent, for larger jobs, such as a house renovation or additions, or a new home, consumers will generally require the certainty of a fixed price quote. However, consumers acquiring legal services are commonly denied that certainty.

High levels of complaint

Time billing has generated high levels of complaint in relation to lawyers' costs. Legal Services Commissioner Steve Mark estimates that about 80% of the complaints received by his office have an element of complaint about charges, and the dominant charging method, the subject of these complaints is time costing.

Focuses on hours, not value

Time costing focuses the efforts of the legal practitioner upon the production of billable hours, rather than the production of value for the client. It rewards efforts and not results, promotes quantity over quality, repetition over creativity.

Fosters production mentality

Time costing fosters a production mentality which actively discourages efficiency or innovation because the lawyers' bills, and profit, would be reduced by the development of efficiencies. Time billing has an element

of cost plus billing (although not strictly, because rates tend to be set by market competition, rather than cost analysis). Cost plus billing is the antithesis of efficiency, and encourages the service provider to increase cost, thereby increasing profits.

Encourages over-servicing

Time costing encourages over-servicing. Four lawyers might attend a meeting where one would do. Teams of lawyers go to court, some just sitting and watching.

Discourages project management or case planning

Significant legal work, such as a major acquisition or complex litigation requires careful planning if it is to be provided efficiently. Contemporary techniques of project management are of great assistance in minimising cost and maximising efficiency. However, they are not commonly employed in the legal profession, as firms have no incentive to use them. A firm's reward is simply a function of time spent, whether that time is spent efficiently or productively or not.

Discourages cost benefit analysis

Cost benefit analysis is another tool routinely used in many areas of commerce. It is not prominent in the field of legal services, because lawyers derive a guaranteed return from everything they do, irrespective of benefit to the client.

Time billing penalises technological advance

Technological developments create opportunities for performing tasks quicker and more efficiently. There is little incentive for law firms to

embrace these developments, because their utilisation reduces profits by reducing time spent on tasks.

Time billing creates a bureaucracy

Most major law firms have significant resources deployed in the areas of time-recording and billing, and data analysis. These are part of the costs which must be passed on to the client.

Time billing prices by reference to service not the customer

Time billing makes no allowance for the capacity of a customer to pay. Unless hourly rates are discounted, the biggest corporation is charged the same price as the smallest business.

Time billing results in cost subsidisation amongst clients

Time billing results in random cross-subsidisation amongst clients. So, when new legislation is introduced, the first client to require services relating to that legislation will pay for the firm's acquisition of knowledge in that area, through the time required to "come up to speed". The next client will get the benefit of that knowledge, at no cost. The first client is therefore effectively subsidising the second client. The same occurs whenever a lawyer takes on an area of work with which he or she is unfamiliar.

Time billing discourages communication between lawyer and client

Clients are aware that every time they communicate with their lawyer it increases cost. There is a natural disinclination to communicate with the lawyer, even on important issues like billing and the progress of the case.

Bills report mechanical functions not real progress

Bills sent under time billing regimes report in great detail upon mechanical functions – meetings, telephone calls, letters, etc. They do not report to the client on the real progress that has been achieved as a result of performance of those mechanical functions.

Time billing encourages boosting profits by boosting targets

Under a time billing regime, the only way a firm can increase profits is by increasing that which is sold – namely, billable hours. That can be done by acquiring additional staff. It can also be done by requiring existing staff to work longer hours, by increasing their billing targets. This practice has been routinely adopted over recent years, resulting in lawyers being given targets for billable hours which can only be achieved by working extremely long hours at nights and over weekends.

Time billing encourages time-sheet padding

Because the performance of each lawyer in a firm is essentially assessed by reference to the billable hours he or she produces, there is an incentive for lawyers to pad their time-sheets. Short telephone calls may be recorded as having taken 6 minutes. Clients may be charged for the lawyer thinking about their case while driving to work, or showering, or shaving. Time spent by the lawyer familiarising himself or herself with a general area of law may be charged to a client, when really that time is part of the lawyer's continuing professional development or skills acquisition.

Rates are not based on cost

Given that lawyers bear no commercial risk where time billing is utilised, fairness would suggest that hourly rates should be set by reference to an

analysis of cost, plus a modest profit margin which reflects the lack of commercial risk. However, that is not the usual practice. Rather, hourly rates are set by competition within the marketplace. This may result in hourly rates being set which produce very substantial profits, notwithstanding the minimal levels of risk borne by the service provider.

Time billing discourages professionalism

Lawyers, as professionals, should be expected to participate in continuing professional development and education, community projects, professional organisations, the active and detailed supervision of junior staff, etc. Time billing actively discourages all of these activities, because it is not billable time. Professional organisations find it difficult to recruit to governance and leadership roles because of the unwillingness of some — but fortunately not all — senior practitioners to devote time to the activities of the organisation that would otherwise constitute billable hours. Spending that time producing billable hours will improve their assessed performance within the firm.

Time billing distorts performance assessment

Under time billing, production of billable hours is a key criterion of assessment of a practitioner's success, and results in advancement within the firm. Qualities such as customer service attitude, customer retention rates, creativity, innovation, willingness to delegate, mentoring and teaching skills, and practice development activities are all diminished in value because of the emphasis placed upon production of billable hours.

Decline in collegiality

Lawyers within a firm compete with each other on production of billable hours. This discourages collegiality and mutual co-operation.

Time billing encourages hoarding of hours

Conversely, competitive practitioners within a firm have a tendency to hoard work to ensure that they can fulfil their quota of target hours. This can result in low-level work being performed by high level associates which is inefficient and costly to the client. Another way the same result can be achieved is by a more senior practitioner writing off the time of a junior practitioner when the bill comes to be sent, so that all the hours the senior practitioner has put into the matter are billed, at the expense of the junior practitioner's assessed performance.

Time billing discourages *pro bono* work

Because of the focus on production of billable hours, there is an inherent disincentive to the performance of *pro bono* work.

Time billing reduces quality of life

The literature is replete with complaints from young practitioners about the unsatisfying nature of legal work in a time billing environment. High levels of dissatisfaction are evident in surveys, computer blogs and in the high number of young lawyers who leave the profession. The emphasis upon the production of billable hours creates a working environment which, as I have noted, discourages professionalism and reduces work satisfaction to unacceptable levels. Clever young lawyers are leaving the profession in droves, or shifting to corporate, government and NGO roles where their motivation is provided, and their performance assessed by outcomes other than the production of billable hours. High levels of depression and substance abuse have also been detected amongst legal practitioners.

Time billing insulates lawyers from community and family

Time billing has resulted in lawyers being required to work very long hours to meet billable hour targets. This alienates them from family members and from their community.

Alternatives to Time Billing

The disadvantages I have set out above have been known for many years. They are amply recorded in the voluminous literature on this subject. Yet, until recently, little has been done to reduce the dominance of time billing in the methodology used to set lawyers' fees. However, in recent years we have seen greater recognition of the many disadvantages of time billing, and a greater willingness to explore alternatives, particularly in the area of transactional work, as opposed to litigation work. I will conclude with a brief review of some of those alternatives.

1. Focus on value

As I have noted, one of the main problems with time billing is that it is unrelated to the value of the service to the client. A short phone call that might save the client millions of dollars might be billed at a tiny fraction of what would otherwise have cost many hours spent on litigation.

More progressive firms have realised that there is a competitive advantage to be gained by focusing on service, value and client satisfaction. Legal Services Commissioner, Steve Mark cites the example of the firm Ungaretti & Harris, a mid-size US law firm, which provides its clients with a money-back guarantee in the following terms:

"We **GUARANTEE** that as a client ... you will receive **COST-EFFECTIVE** legal services delivered in a **TIMELY** manner. We

promise to **INVOLVE** you in strategic decisions and to **COMMUNICATE** with you regularly. We cannot guarantee outcomes, but we do **GUARANTEE YOUR SATISFACTION** with our **SERVICE**. If at any time Ungaretti & Harris does not perform to your satisfaction, we ask that you inform us **PROMPTLY**. We will then resolve the issue to **YOUR SATISFACTION**, even if it means reducing our legal fees."

Another firm cited by Mark goes one step further, by stating that if at the conclusion of the matter the client is not happy with the bill, the client can pay the firm whatever it considers fair, and the firm will never sue them, although reserving the right not to act for them again.

Ron Baker refers to the firm Bartlit Beck which does not use time billing. He reports they are incredibly profitable and have major corporate clients. The most profitable law firm in the world, said by Baker to be Wachtell Lipton Rosen & Katz, has never used time billing. Others working in this field point also to a UK firm, Eversheds, which has a large commercial client base. Its competitive advantage is derived from the fact that all its lawyers receive specialist external training in project management, which trains them to think about resources, timetables and budgets. It also uses a proprietary computer software package, which provides a management system by which general counsel within the corporate client are firmly in charge of the purse strings and are required to sign off on fees, electronically, before any legal work resulting in fee generation is started.

2. Event billing

In its report on access to justice, the Commonwealth Department of the Attorney General recorded the greater enthusiasm of the Commonwealth,

as a client in the legal services market, for event billing rather than time billing. Under these arrangements, the Commonwealth negotiates a price for each event in the course of a series of services, such as initial advice, pre-filing, filing, discovery, interlocutory disputes, mediation etc. The amount for each stage is agreed, and paid as and when that stage is reached. This has the advantage of discouraging over-servicing and providing greater certainty of fee outcomes. However, it does not have the disadvantage of a fixed fee for an entire matter, which, if resolved early, might result in super profit for the firm. It seems to me that event billing, with pre-agreed amounts to be paid for each significant event in the course of a series of services provided by the lawyer, is probably the most practical and effective of the various alternatives to time billing.

3. Fixed fees

Recent articles in the financial press have reported the enthusiasm of large consumers of legal services for fixed fee arrangements with law firms. Those arrangements come in a variety of shapes and forms, such as, an agreement to provide all services required by the client for a specified period, with retrospective top-ups, reductions, or sliding scales depending upon the volume of services actually provided.

There are difficulties in a single fixed fee for a compendious legal service, such as a piece of litigation. For example, if the firm agrees to represent the client from beginning to end of the case for, say, \$200,000, whenever the case settles or whatever the outcome, there is a conflict of interest between the client and firm of a different character in that the firm's financial interest now lies in the early resolution of the matter, whereas the client will have no such interest, and will be disinclined to settle. There will also be an incentive for the firm to pass the work down

to lower level lawyers, so as to increase profits under a fixed fee arrangement.

Modifications of fixed fee schemes have been suggested by authors like Baker, which enable the legal service provider to have what he calls "skin in the game". Under those arrangements, a fixed fee can be negotiated, but with increases or decreases depending on outcome or the stage at which the case settles.

4. Blended billing rates

Blended billing rates describe systems under which a single hourly rate is chosen by the firm, whatever level of practitioner is utilised. This reduces the incentive to have low level work done by highly experienced and over-priced practitioners.

5. Contingency fees

Under these fee arrangements, payment of the lawyer depends upon the outcome of the litigation. The lawyer only gets paid if the client succeeds. Because of the commercial risk borne by the lawyer under these arrangements, some form of fee "uplift" or profit premium is required to compensate for that risk.

6. Hybrid methods

The alternatives to time billing, and time billing itself, do not need to be isolated from each other. It is quite possible to devise hybrid methods, which involve a combination of different methods of billing, which reflect the particular services to be provided, and the relative appetites of the parties to the transaction for risk. Ingenious lawyers and their clients

should have the capacity to arrive at solutions which best suit their particular circumstances.

Conclusion

I remain of the view which I expressed as a member of the Law Reform Commission in 1999. The dominance of time billing as a method for assessing the price of legal services should be diminished. This is not to say that time billing has no place in legal service charging, but rather that other methods which encourage efficiency and better allocate risk should be developed. As I have indicated, quite apart from anything else, time billing can have alienating, and worse impacts, upon lawyers. Those many lawyers who come to the profession motivated, at least in part, by idealism and altruism, and a desire to help the clients they serve, may instead find a competitive and relentlessly demanding environment driven by commercial imperatives. In my view, the legal profession, and the bodies responsible for the regulation of that profession, should act to diminish the dominance of time billing if they are to avoid consumer dissatisfaction with providers of legal services to rise to levels where other alternatives to those services are sought, to the detriment of the profession, but more importantly to the detriment of the rule of law.