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Billing ain't pricing – and understanding the difference will pay off for your firm

Being aware of the real value your firm is delivering to clients is the key to successful pricing strategies, writes John Chisholm.

“Pricing occurs before you start any work. Billing occurs after your work.”

While pricing has by far the greatest impact on any firm's profit (more than managing a firm's fixed or variable expenses) the legal profession has always been a little different to many other businesses and industries when it comes to billing.

Most lawyers were brought up on retrospective billing of our services. We either relied on an antiquated Scales of Costs model or, at least since the 1980s, time-based billing. Neither of those billing models really required lawyers to practice up-front pricing, so it follows that most lawyers had very little, if any, training or experience in how to price their services or how to sell their services to clients.

Instead, lawyers were constrained by cost plus accounting, benchmarking and comparisons of hourly rates. Systems training consisted of exposure to increasingly sophisticated processes to enable us to more accurately record our time to support these retrospective billing models.

Indeed, most firms built their business model around these retrospective billing practices, deviating from them only when market forces (competitors and deregulation) or powerful clients demanded either a fixed fee, or, at the very least, more certainty and predictability around the cost of their legal services.

Bill shock

As a profession, lawyers have been fortunate that our clients accepted these retrospective billing practices where, if the fee bore any relationship to the outcome, it was a mere coincidence. Some less powerful clients still do.

Any retrospective billing premised on activity rather than outcome has its obvious downsides both for law firms and their clients. No one likes surprises and, let's face it, 'bill shock' happens far too frequently in our profession. Even if an independent third party deems our fees 'fair and reasonable', that is little comfort to a client if the client was not expecting the magnitude of the fee. Even if the fee can be extracted from the client, it does little for the lawyer-client relationship.

If a client does not like our fee, are we better off knowing *before* we do the work or *after*?

The world has changed and even the legal profession is changing. While Scales of Costs have mostly outlived their usefulness and the billable hour still predominates, more and more clients, competitive market forces and even the regulators now expect lawyers to be either far more accurate in their estimate of legal costs or to provide fixed fees and up-front pricing.

In my 25 years as a practising lawyer, I cannot remember ever using the "P" word – *pricing* – in my firms. Now *pricing* rolls off the tongue in most firms. Many lawyers have now had experience in, exposure to and/or education about various forms of pricing. An increasing number of firms employ or use professional pricers.

Most of us know about the deficiencies with time-based billing, even if we do not always like to admit it (for example, it rewards the slowest horse in the race; promotes inefficiencies; discourages genuine collaboration; puts a cap on any law firm's profit). In an era when many firms are investing heavily in technology to improve internal efficiencies and make things happen quicker, it makes absolutely no business sense whatsoever to keep billing by time.

Be up-front

For more than a decade, I have believed in and advocated for this move to up-front pricing. As painful as it may be for some lawyers initially, mainly due to the unlearning and relearning required, it is well overdue and will ultimately prove to be hugely beneficial for both the legal profession and its clients.

A large number of firms have already made or are making the transition to non-time-based pricing. While recognising the many challenges in moving away from a business model that leverages people x time x hourly rate, firms that have embraced the change testify to the improvements in their practices.

The benefits are numerous, but the major ones include:

- better and more transparent relationships with the right clients;
- a more collaborative and creative approach to finding solutions for their clients;
- improved cash flow as clients pay more quickly;

- reduced if not total elimination of cost disputes with clients;
- higher profits as you become more competent and confident in your pricing; and
- team members who are more content.

My advice to any law firm worried about pricing your services up front? Read what you can about pricing (there is a mountain of material and information out there now about pricing in the legal profession), talk to colleagues and other professionals (not just lawyers) who price their services up front, experiment (you will make pricing mistakes) and continue to learn.

You will never, however, be able to become more competent and confident in your pricing until you understand the *real* value you are providing to your clients and then being able to articulate and communicate that value.

After all, if your client does not understand the value you are providing to them whose fault is that?

John Chisholm is the founder of John Chisholm Consulting, a Victoria-based firm. He is a third-generation lawyer who, prior to establishing his consulting business, held senior executive positions in leading Australian legal and accounting firms for more than 17 years. This is the first in a series of articles on pricing in the legal profession. The next post will focus on the different forms of pricing (not billing) law firms can and are using. www.chisconsult.com