



## **From the October 1996 Canadian Lawyer Magazine**

### **On the Audit Trail**

by Rosie Black, Canadian Lawyer, October 1996

Look out Practitioners! Pad bills, puff up disbursements or throw too many drones on the file and you could have Stephen Ruben to deal with. Law firm audits have come to Canada.

ONE DAY, A FEW YEARS AGO, Stephen Ruben got a call from a client that opened his eyes to an opportunity. For almost five years, a large litigation file in the hands of another law firm was at a virtual standstill. "The client was getting the litigators' song-and-dance, a tune which everyone who's been in practice for a long time knows," says the Toronto lawyer.

As the client's proxy, Ruben stepped into the relationship, asking the law firm to explain what was happening, where the lawsuit was going and why it was taking so long. Within three months, the client had a trial date and Ruben had an idea.

Thus, Valuelaw Consulting Inc. was born and, since 1994, Ruben has been working with businesses concerned about whether they're getting value for their money from outside counsel.

Companies and consultants that audit outside law firm bills and practices are increasingly popular in the United States. In most cases, lawyers' fees and disbursements are closely scrutinized by the audit company, which often derives its own compensation from any savings recovered. Ruben's Valuelaw is a variation on the general theme, but not quite as mercenary.

Ruben, with more than 20 years as a corporate-commercial general practitioner, doesn't work off contingency fees and isn't out to nickel-and-dime private practitioners. "Frankly, I'm not there to turn a \$5,000 bill into a \$4,750 bill, that's not my function," he says. By the same token, clients do hire him to pore over bills, review outside staffing levels and, yes, watch photocopy and fax charges.

Ruben stresses that his business has nothing to do with practising law and "everything to do with managing lawyers." When he's got his Valuelaw hat on, Ruben also doesn't

give any legal advice and comforts outside counsel that he isn't out to steal away the client. In that first case, for example, he handled his intervention "delicately" by explaining that the client, who was in another city, was having a problem understanding the lawyers' explanations as to why the file was taking so long.

As facilitator between client and lawyer, Ruben advises companies on how to manage lawyers' time and rates, implement alternative billing methods, budget legal costs and ensure a constant flow of information.

As might be expected, most of Valuelaw's client base has been companies without inside counsel; however, Ruben suggests more in-house lawyers could use his services. "There is a sense among in-house counsel that they should be doing this work, but I seriously doubt whether they're doing it effectively," he says. "In-house counsel, to a certain extent, have an incestuous relationship with outside counsel in the sense that outside counsel helps them get paper off their desk."

In many cases, he says outside and inside counsel have fostered a long-term relationship and "it's very hard to go in and do a very objective assessment process with people you're working with everyday." Ruben knows many in-house counsel recognize their job is to scrutinize bills and outside services, but believes they are often too busy to do it right. "I certainly don't think any in-house counsel sits back knowing that they're overcharged," he says, "but the urgent tends to crowd out the important."

Scrutinizing outside counsel also involves more than simply asking for a 10 percent reduction on a bill. "It's not a one-time deal," says Ruben. "It is a process and it is time-consuming."

Auditing outside counsel involves reviewing both financial and communications aspects. Ruben begins by assessing the perceived problem, whether it's a law firm taking too long to handle files or suspected over-billing. He then looks at all the bills outside counsel have submitted, determining such things as whether they're putting the right lawyers on the file and the reasonableness of disbursements. Where multiple lawyers are working on a file, for instance, he compares the time records to see if they match. In one case, a lawyer billed 1.2 hours for a meeting that a fellow lawyer docketed for 1.6 hours.

Sometimes, he may tell the client right away that outside counsel is treating them quite fairly and looking out for the client's best interests. Outside counsel won't even know, as this point, that a review had been conducted – an approach Ruben prefers, since it doesn't unnecessarily upset the trust built up between lawyer and client. If apparent problems turn up, however, Ruben introduces himself to the outside firm.

At companies without inside counsel, Ruben says many CEO's and CFOs simply don't realize they can negotiate their costs and relationship with outside counsel. They're also

attracted to the idea that an audit firm can objectively confirm whether they are getting value. And, Ruben, is finding lots of examples of bad service.

“Disbursements, for sure. Overstaffing. Stretching time,” he notes. Commonly found on bills, for example is a red flag along the lines of “file maintenance – 1.6 hours.” As Ruben points out on behalf of clients, “if you haven’t looked at the file in six months, that’s not my problem. I don’t pay you to look at the file.”

A common problem, particularly in some big law firms, is putting too many juniors or students on simple tasks. In one instance, a large firm had two students vetting for a full month material in a documentary evidence file. The firm billed \$10,000 for the students’ time. Ruben knew a real lawyer would eventually have to look over all those documents. “It’s the junior lawyer who will eventually have to do the work on this file,” he says. “It should have been that lawyer and one secretary doing that work, instead of two students at \$85-an-hour.”

Interestingly, Ruben doesn’t just monitor how outside counsel behave. He also speaks to employees about the ways they use lawyers. For example, some managers worry about risk to such a degree that they open files with outside counsel for very minor matters. To avoid that, Ruben works with companies to develop procedural guides to opening files.

So far, Ruben is finding a receptive client base, although initially skeptical. Some company executives wonder if he’s just out to win their business and upset the relationship with incumbent counsel. In other cases, executives are afraid to challenge their law firm or won’t believe their own in-house counsel is paying runaway legal bills. Ruben tries to calm the fears by assuring clients his role is not confrontational and aims to improve the communication process between lawyer and client. Indeed, for most assignments, Ruben’s presence never is revealed to outside lawyers.

As for the reaction among in-house counsel, it’s been mixed. Some welcome the third-party objectivity, while others are offended at the inference that they’re not doing their job. Ruben contends, however, that it’s the largest companies that can benefit most from his services because of the high volume of legal work going outside and the distracting, multiple responsibilities of inside counsel.

The smaller companies, which one might think would be a bigger target market, actually are a small part of his clientele because the volume of legal work is lower. In fact, Ruben notes the business is evolving differently than even he imagined. In the beginning, he thought clients would be more interested in buying his services as a drafter of contracts between clients and lawyers. Instead, it’s his roles as auditor and intermediary that are of highest interest.

What kind of value does Ruben deliver? That first audit, the one with the stalling

litigators, he estimates saved the client “well into five-figures.” More importantly, though, he aims to improve relations between client and lawyer, adding, “so much of this is about creating equilibrium in a relationship.”