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LEGAL FEES ON TRIAL

By Stephen J. Ruben, Canadian Underwriter, February 1997

Given the volume of industry soul-searching over the need to operate efficiently and cut costs, why has the auditing of lawyers' accounts been so long in coming?

In an industry that expends so much money to obtain high quality legal services, one has to be concerned and ask are we getting good value for our lawyer buck? The answer is often no but that does not necessarily lead us closer to the solution.

Consumers have been carefully monitoring the cost of goods and services for years. So why has the auditing of lawyers' account been so long in coming? One might think that because the cost of legal services is so high, lawyers would be on the early 1990s hit list.. After all you demand precise estimates and cost efficiencies from all other suppliers of goods and services from your house painter to your dentist. So why not your lawyer?

Let us remember that the relationship between a lawyer and his client has characteristics that differ from every other commercial relationship. There is a bond of trust (reluctant or otherwise) between a client and her lawyer. If the situation demands, you will tell your lawyer more than you might tell your spouse or even your doctor. Lawyers may know where your skeletons are closeted. Lawyers by their nature and by the architecture of their offices, their dress and their demeanor can emit an aura of intimidation. The practice of law is not "paint by numbers". There are processes and judgments that vary amongst excellent counsel. There is a mystery and mystique about the practice that makes the process difficult to both explain and predict, therefore requiring a much greater leap of faith when compared to the provision of other services including professional services.

Lawyers have historically traded on this mystique to their significant financial advantage. And in my experience as a consultant with a mission to ensure that clients get better value from their lawyers, it is these special aspects of the relationship that has created the greatest obstacle to cost efficient legal services.

I continuously ask and answer the question: How many consultants does it take to get good value from your lawyers? **ONE** but the **CLIENT** has to really want to change.

More recently, some barriers have begun to fall as CFOs try to squeeze profitability from various sources back onto the bottom line and as in-house counsel respond to the pressure to reduce the overall legal budgets for their companies or divisions. But too often, companies overburdened with the cost of legal services are reluctant to

do what is necessary to reduce the costs in a meaningful way without jeopardizing their relationship with counsel.

It is naive to assume that the consumer of legal services is prepared to emerge from denial, look carefully at the inflated cost of legal services, then do something concrete to dramatically improve the long term cost efficiency of obtaining legal services. So consultants and advisers face a couple of major obstacles. Firstly, there exists the challenge of persuading their clients that the problems of legal costs and management of legal personnel **can** be solved without ill will. Secondly, the adviser must also convince the consumer of legal services that adding a consultant to the mix leads to **solving** the problem **not just compounding it**.

The management of lawyers and legal services involves a multitude of issues... Is the right law firm and lawyer being retained? Is the right lawyer, assistant or support staff providing the service? What is the appropriate basis for fee determination among tasks? What is the right hourly rate for this task and this provider? All of these issues require not only foresight but insight; the insight to ensure that the changes create cost savings to the client and an invigorated relationship between solicitor and client. For an intimidated lawyer like an overpaid lawyer looks out only for himself.

How do you know when you are or aren't getting good value?

It may appear to be an easy question to answer but you must look beyond the outflow of dollars. Initially, your gut may tell you that the *value* is not there but where do you go from there? You must have a point of reference. A comparative cost analysis is useful between lawyers and law firms and, for that matter, lawyers within the same law firm. Having a real understanding of the objective components to a lawyer's bill is an essential component to the analysis process. Here are some red flags that can help you determine if *value* is a low priority to your lawyer:

- Phrases in accounts like "file maintenance", "file review", "organize file". Within context these expressions add and mean nothing. Without context, they mean less!
- Billing increments of .25 hours minimum. You can assume they are being rounded up. Lawyers who can tell time should be able to bill in twentieths of an hour or to the minute when possible.
- Seniors are doing what appears to be junior's work.
- Juniors are performing work for which they are ill prepared.
- The file is touched by anyone and everyone.
- Travel time is billed as productive time.
- 10 plus hour billing days with vague descriptions of the services rendered.
- Disbursement costs are petty, or worse, prohibitive.

Please understand that this list is by no means comprehensive but you get the idea.

OKAY.. You like your lawyer's work but you don't necessarily want to send the lawyer's kids through private school. What should you do?

Some companies have adopted what I like to call the "Meat Chart" approach; where all services and sub-services are broken down with strict time and cost allotments to each... A great route to short term savings but

not for a long term relationship with highly valued lawyers....Perhaps, the corporate culture in which you find yourself makes this approach viable but the best lawyers will avoid the heavy hand.

We cannot forget that change is a process. There is and always will be resistance to change. So for it to be meaningful, change has to be done correctly!! Here is how we approach things at my company **Valuelaw**.

First, we systematically review several bills from each lawyer and/or each law firm to determine what and who constitute the problem areas. In some simple cases, a client will be directed to use firm X more and firm Y less. But most often, there will be recommendations involving :

- regulating the appearance, form and substance of all bills so that they become documents of communication not just reasons for payment;
- ensuring that billing is effected on a regular basis in accordance with client needs;
- advise and participate in the process of negotiating fees and rates, including review of alternative billing scenarios and negotiating volume discounts: Why should a client buy wholesale but pay retail?
- establishing a system of task driven time and cost estimates;
- clearly regulating who and how many lawyers will be working on the file and monitoring the use and cost of students, paralegals and support staff;
- ensuring that disbursements are not profit centres;
- negotiating travel time provisions;
- regulating research;
- establishing reporting system to ensure that files get processed;
- establishing internal client procedures so that lawyer's time is spent efficiently;
- developing a system, of which the lawyers are made aware, of monitoring future accounts to ensure compliance;

Any process of change requires commitment by all parties. If the client doesn't invest long term in the process of change, the lawyer won't!!

Real change will only happen with (i) the understanding of the fundamental difference between the solicitor client relationship and all other commercial relationships; (ii) the necessary analysis, understanding and communication of the problem areas between lawyer and client; (iii) the commitment by all parties to do what is necessary to control costs and enhance the relationship; and (iv) the monitoring of the process primarily by the client but also by the lawyer to ensure that the process is meeting the minimum requirements of all parties. When the job is done between all clients and their lawyers, **Valuelaw** will rest and there will be a sharp decline in the number of lawyers' jokes. In the meantime, we all have work to do!!