

The journey from the billable hour to value-based flat fees

Managing Partner Forum

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Most lawyers will tell you it is impossible to bill on a flat-fee basis. They will claim “our work is too customized” or “there are far too many unknowns to ever predict cost.” Surprisingly, these same lawyers also pitch that they “are experts in their field” and “have handled many cases just like yours.”

This has never made sense to me. On the one hand, they cannot possibly know the future of your case. On the other, you should trust them with it *because* they know what to expect and how to deal with it.

This dichotomy raises obvious questions. Why are non-legal businesses capable of setting fixed fees despite the fact every business deals with unknowns? Are legal fees incapable of being fixed or are lawyers afraid or unwilling to take the risk that they cannot accurately predict what will transpire?

The answer lies in a related tension. Most lawyers will tell you their fees are calculated based on hours worked, not the result obtained. Yet, in the same breath, they also assure you they intend to be your partner

in the matter. Can lawyers ever be true partners if they have no skin in the game?

In 2013, I returned to Toronto after having spent five years practising in the BigLaw world in New York City. When deciding what to do next, I could not wrap my head around the traditional legal model. The same few questions plagued me: Why do law firms believe there is only one way to skin a cat? Why are legal fees not tied to results? Why are firms so inefficient?

With these questions in mind, I convinced my father to let me join his team at Speigel Nichols Fox LLP with the understanding that the firm would be willing to implement real change.

By mid-2014, Speigel Nichols Fox LLP became one of the first law firms in Canada to offer clients value-based, flat fees on all litigation and corporate matters.

The “value-based” aspect of our billing model has actually been a cornerstone of the firm’s business for decades; it ensures that our legal bills account in some way for the result obtained. The firm learned early on that we serve our clients best when we share some of the risk and reward in a matter.

Our rationale for implementing flat fees, however, has evolved over the past year.

Stage 1: Flat fee billing focuses on value, aligns the financial interests of the client and the firm, and provides cost certainty.

We started with the obvious realization that time spent does not necessarily equal value delivered. A lawyer can spend 30 hours researching a topic and come up empty-handed or can have a flash of brilliance that results in a perfect legal solution. What matters most to a client is the result, not the effort it took to get there. Flat fees ensure a firm focuses on the destination, not the length of the journey.

In addition, flat fees incentivize lawyers to complete work in the most

efficient manner possible. Conversely, the hourly billing model ensures, to some degree, a law firm's financial interests are opposite of those of its clients. Hourly billing rewards inefficiency and provides an incentive to undertake make-work or low-value projects: working inefficiently means more money coming in on a given file.

Consider this: if, unbeknownst to a client, a lawyer makes a mistake and then spends hours correcting that mistake, that lawyer will charge more money than had the lawyer done the work correctly in the first place.

Lastly, flat-fee billing provides greater cost certainty. The billable hour model, on the other hand, makes it next to impossible to accurately evaluate the business case for proceeding with a matter. The billable hour shifts the risk of future events entirely on the client despite the fact it is the lawyer who has the experience to predict what is likely to happen.

Stage 2: Flat fees should be offered as one of many choices.

Every client is unique. Each one evaluates risk differently, places value on different things, and has unique needs to be met. Each client should be able to decide for itself what billing method makes the most sense. There is no reason why law firms cannot provide their clients with choices. Our clients may still choose the billable-hour model. When they do, however, it is a true choice, not because it is the only option presented.

Stage 3: Flat fee billing promotes innovation and efficiency.

We recently have come to understand that flat fees are not just better for our clients; they are also better for us (which, in turn, is better for our clients).

Firms modelled on the billable hour are only incentivized to be as efficient as their competitors. Although firms can justify technology investments as generally being good for business, in the sense they can provide a certain competitive advantage, the truth is the investment is a sunk cost with no direct financial benefit to the firm. The lack of direct financial benefit from investing in technology is one reason why the legal sector seems to be so lagging technologically.

Conversely, when a law firm implements flat-fee billing, the firm can easily do a return on investment calculation when evaluating new technology. The firm can say, "this technology will make us two per cent more efficient, which means the firm will earn two per cent more on all flat fees." All investments in efficiency (technological or otherwise) have a direct impact on profit. Flat fees establish a framework that encourages firms to invest in their own efficiency.

If the experience in the United States is any indication, clients in Canada will increasingly demand the option of flat-fee billing. This is not a negative. Our experience is that value-based, flat-fee billing aligns the interests of lawyers and client and is better for both. It ensures a firm's goal is to obtain the best result as efficiently as possible; the very thing that its clients desire. By offering value-based, flat-fee billing, our firm is selling value, not just time.

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