

FORUM#**STOPPING THE CLOCK?
THE FUTURE OF THE BILLABLE HOUR****FOREWORD**

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In formally opening the 2004 Law Term, the Hon J J Spigelman, Chief Justice of the Supreme Court of NSW, brought the issue of legal fees to the forefront of debate about the legal profession in NSW. Ten years after the most recent reforms to the way practitioners in NSW levy fees for their services (and how those fees are assessed), his Honour's address reignited debate within the profession and the wider community about the efficacy of time-based billing: the 'billable hour'.¹

Largely in response to those remarks, the Legal Fees Review Panel was created by the NSW State government whose members are drawn from the office of the Attorney-General of NSW, the Law Society of NSW, the NSW Bar Association and the Office of the Legal Services Commissioner. This *Forum* clarifies and discusses the broad terms of reference of this Panel (which is due to report later this year) as well as other issues associated with legal fees and costs.

The aim of each *Forum* is to promote thoughtful and informed dialogue on an issue of contemporary relevance to the law. Given the recurring nature of debate about legal billing and costs assessment, such considered scrutiny is not only desirable, but essential, if disputation about this issue is to amount to anything more substantial than grandstanding. The relevance of legal costs – the manner in which they are calculated, the degree to which they are and should be regulated and their wider impact on society – is undeniable. The significance of this debate may be tested, for example, against ramifications it may have for the ideals

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1 The Hon J J Spigelman, Chief Justice of the Supreme Court of NSW, 'Opening of the Law Term 2004' (Speech delivered at the Opening of the Law Term Dinner, Sydney, 2 February 2004) <http://www.lawlink.nsw.gov.au/sc/%5Csc.nsf/pages/Spigelman_040202> at 6 July 2004.

underlying the NSW Bar Association's long-standing motto: 'Servants of All, Yet of None'.

Similarly, two themes arising out of *The Future of the Billable Hour* are consumer service ideals and the independence of the legal profession.

At the heart of each contribution is a concern for the welfare of those who use legal services. As the NSW Law Reform Commission recognised in its *First Report on the Legal Profession* 'the profession must be responsive to the community's need for legal services'.² The ability of *all* to have access to these services, and to have them delivered in an efficient and effective manner, is of paramount importance. The bearing which the issue of legal costs, and the way in which they are calculated, levied, ordered or assessed, has on the requirement for access and delivery of legal services is explored in the contributions to this *Forum*.

For the maintenance of a 'just and democratic society', (to borrow the words of the NSW Law Reform Commission again), 'it is essential that there be an independent legal profession, in the sense of a body of lawyers ... willing and free to provide legal assistance ... to all sections of the community'.³ This sentiment also bears on the issue of costs, for if solicitors and barristers lack sufficient economic incentive to offer satisfactory services to *all* members of society, whether because of regulation or other circumstances outside of their control, their independence is equally undermined. Balanced against this, is the need to ensure that the costs of obtaining justice are proportionate to the stake involved.

Thus to characterise this debate as merely haggling over hourly or 'value-based' rates of remuneration for lawyers is to ignore the wider issues. This is demonstrated by the broad-ranging topics addressed in this *Forum*, including costs assessment under Part 11 of the *Legal Profession Act 1987* (NSW), case management, costs disclosure, access to justice, the psychology of consumer complaints about legal services, alternative methods of calculating fees and costs and the impact of the nationalisation of the legal profession.

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2 NSW Law Reform Commission, *First Report on the Legal Profession: General Regulation and Structure*, Report No 31 (1982) [3.9].

3 Ibid [3.8].