



## Welcome to the Spring edition of The Chisconsult Circle.

October 2009 Springtime in Melbourne: AFL footy over for another 127 days (the mighty Cats victorious again this time over a very brave and talented St Kilda!), the Royal Melbourne Show has come and gone and that first Tuesday in November at Flemington to look forward to. Bring it on!

As indicated in the previous **Chisconsult Circle** I had the pleasure of accompanying **Ron Baker** for over 2 weeks up and down the east coast of Australia speaking to 100's of lawyers and accountants, legal administrators, government representatives, the legal press and commentators, young lawyers and most importantly clients of law firms about **The Firm of the Future**, so much of this **Chisconsult Circle** will be about Ron's "tour".

We have an article featuring my colleague **Liz Harris** of Allocatur Consulting, a passionate proponent of law firms moving away from billable hours, reporting on our joint seminar with Australian Corporate Lawyers Association (**ACLA**) members in Melbourne. And there is some more on partnership profit sharing.

Last but by no means least, Kate from **Auscellardoor** picks a couple of wines to enjoy during Springtime.

I also want to take this opportunity to thank all of you who gave me feedback and suggestions on my website, blogsite and newsletter. Much appreciated.

If you would like to subscribe to the **Chisconsult News** and/or my Blogs please go to my website [www.chisconsult.com](http://www.chisconsult.com) and enter "subscribe" on both the newsletter and on my Blog page.

### Recent Blog posts include:

[Who Are The Obstacles to Moving Away From Time Based Billing?](#)

[There is an Alternative to Time Based Billing](#)

[Maybe Clients Will Change Law Firm Pricing Models](#)

[With a Little Help From Our Friends The Politicians](#)

### Recent Articles added to my website include:

[Carving Up The Partnership Pie](#)

[Putting A Value On Professions](#)

[Its Time To Get Rid Of Those Silly Unnecessary Timesheets](#)

[Billable Time](#)

Enjoy!



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## Ron Baker Downunder

I am not sure how Ron kept up the pace to be honest but in the 2 weeks he was in Australia Ron undertook no less than 16 formal presentations (some lasting 3-4 hours plus), attended numerous meetings with lawyers, accountants, the legal press, government legal policy makers over bottomless cups of coffee (I tried to keep him away from Starbucks but he did manage to find 1 or 2 on his travels) and yet we still managed to find time to introduce him to Australian rules football and Australian wines.

I got to experience first hand why Ron truly is a world recognised leader and forward thinker not just on pricing but on business and people modeling in professional knowledge firms generally.

You can read Ron's summary of his trip entitled "What I learned Downunder" by visiting Ron's website at [www.verasage.com](http://www.verasage.com).

Ron believes Australian law firms are behind Australian accounting firms in experimenting and implementing *value pricing* but that both sectors are well behind the U.S. in pricing generally. Nevertheless Ron was staggered with the amount of interest both law firms and their clients have in finding an alternative to time based billing and is firmly convinced that the billable hour's days are numbered. I hope Ron is right.

Certainly what I am finding is that in the work I am doing with firms and their clients it has shifted increasingly from *why* we should move away from billing by time to *how* are we going to make the move.

Ron, Liz Harris and I discussed/debated ad infinitum who might lead this change – the firms themselves or the clients? Whilst contrary to the normal economic paradigm that sellers change pricing strategies and business models not buyers the greater concentration of corporate counsel in a much smaller market than the U.S. indicates that clients could potentially exert more influence on law firms to change their pricing strategies.

Only time will tell but increasingly I am seeing clients are exerting greater pressure not just on billing rates but on asking "what is this going to cost me?" and then keeping firms to the estimate/quote provided in response.

Ron began his "tour" on the Gold Coast at the Australian Legal Practice Management Association (**ALPMA**) Annual Summit where Ron was the keynote speaker on *Law Firm of the Future*. It was a great opening to what proved to be a very successful conference attended by over 180 delegates from around Australia and New Zealand.

The **ALPMA** theme was "How fit is your law firm?" and whilst I admit to some bias being on the Conference Committee I have seen the delegates feedback comments and they were the most complimentary and positive yet in all the time I have been involved with **ALPMA**. Maybe it was due partly to the location (some sun in winter!) but mostly it was due to the superb range of presenters and the topics covered.

## What's Coming Up

Details on these events can be found on my website at [www.chisconsult.com/seminars](http://www.chisconsult.com/seminars) but over the next couple of months I am speaking at, facilitating or attending the following:

**Alternative Fee Arrangements** Forum San Francisco 11 November

**Managing A Law Firm in the 21st Century** Conference Kuala Lumpur 20 November

Law Institute of Victoria  
Ethics Professional Skills and  
Practice Management  
Forum "**Creating and Capturing Value**"  
Melbourne 2 December



## Ron Baker Downunder cont...

Considering we were supposedly in a GFC to see so many people "invest" in this Summit was most gratifying for the future of our legal profession. I just feel sorry for those firms who choose not invest in events like this.

After the Gold Coast and Brisbane, Ron moved south to Sydney where he presented to 60 plus law firm representatives (and 1 general counsel) on *value pricing* for the **Law Council of Australia's World Masters of Law Firm Management**. The attendees were mostly those interested in moving away from time as the prime determinant of price to value being the sole determinant and any attendees who may have still been a little skeptical on this need to change soon altered their views when the general counsel present gave his opinion – change or we will change it for you!

In Melbourne Ron spoke for a few hours to the **Young Lawyers Section** of the Law Institute of Victoria (law firm leaders of the future) and whilst they do indeed see themselves as knowledge workers they bemoan the fact that many employers see them little more than fee earners whose real worth is tied to 6 minute units of time.

Ron's workshop with **ACLA** members was especially enlightening and this is covered separately below.

Rounding off Ron's Victorian tour was a presentation to 70 representatives from a range of Victorian regional professional knowledge firms in Geelong.

I think it is fair to say Ron's "tour" stimulated a huge awareness of the imperative to change the profession's pricing model with many firms now moving to the *implementation* stage.

Following Ron's tour I was fortunate to be on a panel at the recent Law Council **36th Australian Legal Convention** discussing "What do clients want from Australian lawyers in the future - the end of the billable hour?" Also on the panel with me were **David Nolan** Senior Legal Counsel Bankwest and **Brett Davies** Partner Brett Davies Lawyers.

The papers from all 3 of us plus other papers from the Convention can be downloaded at [www.lawcouncil.asn.au/library/speeches/australian-legal-conventions/2009.cfm](http://www.lawcouncil.asn.au/library/speeches/australian-legal-conventions/2009.cfm)

Again clients are telling us they are sick and tired of hourly rates - when are we going to listen to them?

What is still somewhat disappointing is the failure of the legal profession to *publicly* debate the pros and cons of time based billing. The debate needs to be moved into the public arena before our clients or our regulators move it there for us.



**Ron Baker, John Chisholm, Dan Simmonds at Breakfast presentation for professional knowledge firms at Barwon Edge Geelong**



## What Some Clients Say About Time Based Billing



Liz Harris of Allocatur Consulting

The Legal Profession Acts allow pure value pricing in non-litigious work and still gave scope for creative value based arrangements in litigious work.

**Ron Baker** conducted a very successful workshop for the Australian Corporate Lawyers Association members (**ACLA**), assisted by Liz Harris of Allocatur Consulting [www.allocatur.com.au](http://www.allocatur.com.au) and myself. The timing of the seminar was most appropriate given news had come through that day that Pfizer in the U.S. is introducing *fixed fee billing* for all its legal work, following the lead of other mega companies such as Cisco, American Express and ITV.

It was interesting to hear the perspective of clients on hourly billing and especially the reasons why most law firms and their clients whilst "fed up" with time based charging are often reluctant to move away from the billable hour. The clear message from general counsel was that although they are keen to adopt a different pricing model they query how they can lead the change, when the message from their law firms is that it is "too hard to find a practical and usable alternative". Hence for many the status quo often remains.

Most of the participants were clearly eager to have fixed fees and in most cases were prepared to pay a premium for the *certainty* of fixed fees and in fact some queried why no firms had seen the marketing advantages of adopting such an alternative pricing method.

One corporate counsel noted however that whilst he was prepared to pay some premium for certainty of fees his limited experience with fixed fees was that either the fee the law firm set was so far above what the client expected – presumably in the client's view so the firm could take into account all the contingencies – or the scoping of the work for the fixed fee had "so many outs, its ridiculous", and again they retreated back to what they both knew best – billing by time.

The 3 of us all noted that whilst some boutique firms are very public about their non-time based fees some of the larger and mid tier law firms were entering into alternative pricing arrangements with some of their clients, but the firms themselves were not prepared to publicise this. It was agreed that the "first to market" top firm who publicly moves away from billable hour for all or most of its work would reap the "first mover" benefits.

There was scepticism about why law firms were reluctant to move away from hourly billing – "law firms are in a privileged position and it is in their vested interest to keep it that way". Others thought law firms just "too comfortable and too lazy" to change.

**Liz Harris** and I noted the fiduciary tension in hourly billing – law firms should have their client's best interests at heart, often to conclude a matter as quickly as possible but hourly billing gave firms no real incentive to resolve a matter quickly. **The Legal Profession Acts** allow pure value pricing in non-litigious work and still gave scope for creative value based arrangements in litigious work.



## What Some Clients Say About Time Based Billing cont...

It was agreed that it is a matter of the firms and the clients becoming far more creative about firstly determining what is value and secondly how to go about pricing it.

It was recognised that in-house counsel themselves can find it safe to agree to hourly billing, as it is what they are used to. Law firms have taught their clients to measure value by reference to time, by using time to set the price. My experience was that there are also law firms who say they want to change but say their clients are "wary" of the motive behind yet another pricing arrangement.

There was however recognition that the impact of the GFC was causing a shift in law firm attitudes to fees and pricing and that this may be the window which results in a change.

**Ron Baker** pointed out that *law firms sell knowledge*, not time, and gave numerous examples of how time is no measure of knowledge including the example of that flash of brilliance that comes to a lawyer in the shower which solves a legal problem worth millions. As Ron says, measuring knowledge by reference to time is like using a ruler to measure the temperature of the oven – it is simply the wrong metric.

### But if time is not the measure of value, what is?

**Liz Harris** discussed practical examples where the fee was tied to contribution of the law firm, such as the speed with which documents were approved by a regulator, or the number of planning permits issued in a property development, which were a better measure of what the client saw as the value provided by the firm.

Again most participants reiterated that they were happy to pay an incentive fee or success fee and were also happy to pay a premium for certainty of price.

In value based pricing, a lawyer actually has to have a *conversation* with the client to identify expectations, as value pricing starts with clear expectations. **Ron Baker** pointed out that hourly billing does not require this conversation up front. The present arrangement involves pricing at the end of the matter, by which time it is too late for the firm if the client then believes the price is wrong.

Value is subjective - some elements may be measureable, others are purely subjective, such as the ability to pick up the phone and talk to the senior partner at any time, or even the value of price certainty. But one thing all participants agreed upon - *value was in no way tied to time*.

There was considerable discussion about whether the law firms or the clients would lead any change in this area. The Pfizer arrangement indicates it may be the client, but Ron was not so sure, as a pricing change is business model change, and they usually come from the seller rather than the buyer. However, it was noted that in the small Australian legal market clients have considerable power, and the difference in a law firm market for general counsel clients, is that the client has formerly been the pricer (i.e. worked in private practice) and understand how the price is reached. There are few other areas where the buyer has that level of pricing knowledge.

One of the solutions preferred by **Ron** was for clients to stop putting out tenders and RFPs suggesting hourly rates as the pricing model, but rather put out tenders which require responses which only offer alternative billing arrangements. Certainly, this is the approach adopted by ITV and Pfizer. **Liz Harris** indicated she had been involved in these sorts of arrangements and they had elicited responses which enabled alternative arrangements to be put in place.

In the end the feeling was that everyone was like the penguins lined up along the edge of the iceberg waiting to see who would jump first. Once one jumped the others would follow. It was a matter of who saw it as a chance to pursue opportunities, rather than trying to solve problems – there will always be reasons to stay with the billable hour model, but the firms or the clients who jump in and give it a try will develop models which truly deliver value to both lawyer and client.



## Cutting Up The Partnership Pie – Part II

Last time we looked at what partner compensation models should try and encourage. Today we look at the pros and cons of the Equal Profit Share Model.

Whilst not exhaustive I think the most common pros and cons of an equal profit share model are set out in the following table:

Pros	Cons
<p><b>Traditionally</b> how partnerships started</p> <p>Mostly in <b>smaller</b> firms- but some large firms</p> <p><b>Rewards firm</b> rather than individual <b>performance</b></p> <p>More <b>outward looking</b> than inward focus</p> <p>Promotes <b>pie getting bigger</b></p> <p>Security, <b>camaraderie</b></p> <p>More <b>team</b> playing – less hoarding</p>	<p><b>No</b> or little <b>individual recognition</b> and accountability</p> <p><b>Lack of incentive</b> to do better</p> <p>High performing partners leave- underperforming partners stay</p> <p><b>Succession planning</b> issues</p>

Notwithstanding that the number - if not the popularity - of merit based profit sharing in partnerships has substantially increased over the last 10 years or so equal sharing of partnership income amongst full equity partners is still favoured by many firms for the reasons above.

Whilst everyone knows not all partners contribute equally at the same time to the partnership, for many firms it is some what understandably simply too difficult and/or of little value to measure individual contribution and even harder to reward it. Whilst in some firms with equal profit sharing this can and does mean performance of the whole firm could be dragged down if the partnership tolerates too many persistent underperformers the better firms do take action to minimize this - usually by removing any "offending" partners from equity or from the firm altogether.

Even in these firms over the years has often crept in a form of "bonus" scheme applicable to placate and reward a select few (sometimes only one or two) of super over performing partners who say have had an absolute stellar year and all recognize that failure to reward them a bonus could have significant consequences.

Even in those firms with equal profit sharing between full equity partners most partners are not created equal and hence the Lock Step Model whereby newly admitted junior partners and sometimes lateral recruits are brought in at a lower equity holding and progressively over time their holding is increased

Some of the pros and cons of lockstep are:

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In many firms that had this lockstep model however the "lock" has been removed so that partners may come in on a stepped basis but they are progressed or not progressed dependant upon them achieving a set of predetermined milestones usually no longer dependant on years but on performance.

**What profit share model is best and what is best for your firm?** I have no idea but two things I do know and that is just because a certain model appears to work well in one firm may not necessarily mean it will work for yours. Secondly there is no perfect compensation model and never will be.

Some models are definitely better than others and for a more detailed analysis of my personal views in this regard I would refer you to my article entitled "Carving Up the Partnership Pie" published in Lawyers Weekly 14 August 2009 which can be read via the following link: [www.chisconsult.com/sites/default/files/Carving\\_up\\_the\\_partnership\\_pie.pdf](http://www.chisconsult.com/sites/default/files/Carving_up_the_partnership_pie.pdf)



## Wines For Springtime Drinking

In celebration of Geelong Cats winning the 2009 AFL Premiership I thought we might showcase a couple of terrific wines from that area including a chardonnay from **Austins**, a great pinot from my friend Rainer Breit at **Curlewis** and great value and great tasting shiraz from Matt Harrop at **Shadowfax**.

These wines can be ordered through Kate Chisholm at **Auscellardoor** at [www.auscellardoor.com.au](http://www.auscellardoor.com.au) or by phone on (03) 9646 4099.

### Austins 2008 Chardonnay \$23.90



This is a stunning new Chardonnay from Austins, that demonstrates the suitability of their Geelong Vineyards for producing exceptional cool-climate Chardonnay. Only very limited stocks of this wine are available.

"Mid-straw tinged with gold, gleaming and brilliant in the glass. On the nose the wine lifts into the senses, fresh and vibrant; delicate, stone-fruits and citrus in league with an appealing mineral edge. The bouquet is complex, layered and restrained; a touch of biscuit and nut-like character supported by light oak complex the back palate and gently dominate the fruit. On the palate, delicate stone-fruits and citrus zest, a mineral freshness, long and lean, in harmony with back palate, biscuit nuttiness. The back palate dominates the foreground fruit in an example of seductive, cool climate, Geelong elegance and a wine at the forefront of style." - **Notes from Austins**

### Shadowfax 2007 Shiraz \$19.90



"**94 Points.** Perfumed, spicy red/black fruit aromas lead into an intensely flavoured palate with spicy red fruits to the fore, French oak in the background; fine tannins and excellent length. Screwcap. 13.5% alc. Drink 2015 Date Tasted Aug 08" - **James Halliday, Australian Wine Companion 2010 Edition.**

"Harvest Date: 18th March - 8th April 2007 Vineyards: Werribee 38%, Tallarook 55%, Heathcote 8% Winemaking: Shiraz was hand picked, destemmed and lightly crushed to static and open fermenters. Fermentation proceeded using native and selected yeasts. Pressed at dryness, the new wine was carefully transferred to a mix of new (18%) and used French and American barriques. After 16 months maturation in oak, the wine was blended, filtered and bottled in December 2008." - **Notes from Shadowfax.**

### Curlewis Reserve Pinot Noir 2007 \$59.90



Rainer Breit and partner Wendy Oliver purchased their property in 1996 with 1.6 hectares of what were then 11-year-old pinot noir vines. Rainer Breit, a self-taught winemaker, uses the full bag of pinot noir

winemaking tricks: cold-soaking, hot-fermentation, post-ferment maceration, part inoculated and partly wild yeast use, prolonged lees contact, and bottling the wine neither fined nor filtered.

- **James Halliday Australian Wine Companion 2010**

**96 Points** "Fractionally deeper colour; a particularly rich, velvety smooth pinot seemingly achieved without effort, and certainly without any alcohol push; will evolve for seven years or more; well worth all the patience at your command". Screwcap. 13% alc. Rating 96 Drink 2017 \$70 Date Tasted Feb 09 **James Halliday Australian Wine Companion**

As usual your feedback-on the wines especially - is encouraged.

October 2009

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*Please feel free to  
contact John on the  
details below*