

THE TRUTH ABOUT TARGETS

Sky-high billable-hour targets are rampant throughout the legal world. Is reform possible? • By Daniel Fish • The history of the modern law firm—a peculiar business that asks its workforce to bill by the hour and devote themselves to daunting annual targets—is surprisingly uncomplicated. The story begins in the 1950s, a time when law firms typically charged set rates for discrete tasks. Prices were high, but clients begrudgingly accepted the cost. ¶ In 1960, however, the legal world started to transform. Throughout the decade, new regulations—in employment, banking, human rights—triggered a spike in corporate legal work. To meet the demand, law firms swelled in size and built up specialized practice groups. Billing practices, too, underwent a historic reform. “General counsels demanded a better method for determining the cost of legal work, and fixed fee schedules simply could not account for the ever growing and complex list of services that firms provided,” according to an article in the *Stanford Law Review* that chronicles this period. The billable hour came to dominate the industry. ¶ That did not, on its own, lead to a spike in workload. In the 1960s, most lawyers thought it reasonable to bill between 1,200 and 1,500 hours a year—or roughly five to six hours per workday, a manageable amount. Then the 1980s arrived. Salary competition became fierce. As the Stanford paper explains, lawyers “sought to improve their

position relative to their colleagues and to other high-status workers,” particularly those in finance, who became wealthier near the beginning of the decade. To afford higher salaries, law firms pushed lawyers to work longer hours and drive up profits. The proliferation of aggressive annual targets arose at this historical moment.

Fast-forward to today. At many of Bay Street’s top firms, the average associate lives under an annual billable-hour target between 1,750 and 1,900. Those figures translate to about seven and seven-and-a-half billable hours each workday. Let’s assume, though, that a lawyer wants to mentor a summer student. Attend seminars on the latest legal trends. Have lunch with potential clients. Now, in the vast majority of cases, the only way to hit that target is to work regularly over the evening and weekend. (In some instances, associates can allocate tasks like mentorship and professional development toward their yearly targets, but policies of this kind are by no means universal.)

Such long hours can exact a toll. In 2022, a research team at the University of Sherbrooke published a landmark study on the mental health of lawyers in Canada. The report found that 68 percent of lawyers who have to bill more than 1,800 hours per year have experienced psychological distress, an umbrella term that includes a range of potential health issues like fatigue, anxiety and insomnia. Among those with an annual target between 1,200 and 1,800 hours, that number is still far too high—at 60 percent—but the data is clear. Working long hours puts lawyers at a heightened risk of mental anguish. As one lawyer told the authors, “The pressure to meet billable hours and the expectation to be constantly available to senior lawyers have caused me serious mental health problems. I am exhausted all the time.” How can the profession tackle this dilemma?

In his nearly decade-long legal career, Nathaniel Marshall has seen the inside of all kinds of workplaces: boutiques and large firms, on the East Coast and in Toronto. He also knows what it’s like to chase an immense target, having on more than one occasion billed about 2,100 hours in a single year. Looking back, he has no regrets. “It’s a great way to learn,” says the 36-year-old. But he didn’t see that sort of volume as sustainable.

At the start of 2022, he launched his own practice, Marshall Workplace Law, in the



area of workplace investigations. Partly to keep costs down, but also for lifestyle reasons, he decided to run the firm remotely, with access to shared office space in downtown Toronto. When building a team—which, about a year after the firm opened, included an assistant and three staff lawyers—he prized work-life balance.

Together, Marshall and his team agreed on an annual target of 1,300 to 1,500 hours. The lawyers also accepted salaries that sit below what they would earn with a higher target at a large Bay Street firm. In the future, Marshall is open to increasing his team’s compensation in exchange for a heavier workload, but he intends to tread carefully. “I never want my staff to feel like

“*I never want my staff to feel like they have onerous targets.*”

they have onerous targets,” he says. “I want people coming in feeling refreshed, mentally well and in a good space.”

Faren Bogach has adopted the same philosophy. In January 2022, she took what she calls “a leap of faith.” Fifteen years into her legal career—during which she’d made partner at a leading Bay Street firm and become an expert in construction law—she opened her own practice: Construct Legal. In short order, she hired three lawyers and took on the same kind of work she always had, including contracts, risk management and complex litigation.

Her long-term plan is to rethink much of the private-practice business model. But, in the firm’s early days, she took aim at one

tradition in particular: the billable-hour target. Bogach, now 40, wanted to avoid one altogether. In her view, no matter how low she set the bar, her committed team would simply blow past it.

Instead, she implemented a billable-hour *maximum*. Collectively, the team agreed on an annual cap of 1,750 hours. “I would’ve done, like, 1,600, to be honest,” says Bogach. But her colleagues thought that a slightly higher number was reasonable and would still prevent deleterious overwork.

Putting that rule into practice was a challenge. For one thing, construction law is a time-intensive area. “I’m not just working nine to five,” says Paul Conrod, a fourth-year lawyer at the firm. “I do regularly start earlier than that and end later.”

And, as Bogach explains, the demands of litigation are no less intense: “You’re in trial? It’s hard. It’s brutal. We don’t go, ‘Oh, it’s 5:00. We have our maximum billable hours. Okay, we’re out of here!’ You have to keep working.”

But the firm is serious about its maximum-hours policy. The team meets often to talk about workload, upcoming deadlines and whether anyone is stretched too thin. That approach has worked. Last year, no one billed beyond the 1,750-hour ceiling. Conrod could “quite regularly” close his laptop on Friday and not open it again until Monday. In a profession beset by overwork, he considers that a meaningful accomplishment.

That accomplishment has involved a compromise: Bogach pays each lawyer a slightly below-market base salary. At the year-end, though, she divvies up any surplus profit and disburses it through bonuses. In 2022, no one earned less than they had the year before at their previous firms—in part, says Bogach, because of the firm’s low overhead and its first-rate work on behalf of clients—but there’s no guarantee that subsequent years will be so prosperous. “Everyone was content to have a pay cut to work here,” she says. “That was the opening offer.”

Money, however, was never the point. Bogach wanted her team to have the freedom to enjoy evenings with friends and family or take a weekend trip without worrying that such time would be better spent accumulating hours. “I’m a believer that we can make law better for more people,” she says. “The first step was dealing with workload.” **P**

Daniel Fish is the editor of Precedent.

ADVICE

HOW TO TAKE VACATION

Bay Street lawyers serve up practical tips on getting away



NADIA CAMPION

Partner, Lax O’Sullivan

Once you identify a period in your calendar that works, book the vacation immediately. Do not procrastinate. Importantly, put money down: pay for the flights and the deposits for accommodations up front.

This encourages “calendar discipline.” You’ll be less likely to let the vacation be derailed if a cancellation will cost you money.



MARIAM MOKHTAR

Associate, Paliare Roland

Before your vacation, meet with your assistant to make a plan. Decide how to address emergencies in your absence, so you can stay off email—as much as possible—while you’re away.

And try to take a two-week vacation. It’s such a challenge to fully disconnect in a single week.



WARREN CASS

Partner, Gowling WLG

Vacation is important to stay sane, focused and effective. If you want to truly enjoy your time off, you should contribute to a healthy vacation culture year-round. When your colleagues are on vacation, cover for them and respect their boundaries. After all, what goes around comes around.