

AN INTERNATIONAL PERSPECTIVE

BY LUCY TERRACALL, CLAYTON UTZ

I recently returned from New York City where I attended the American Bar Association annual meeting.

As LIV Young Lawyers' Section (YLS) president and a young lawyer in the insurance and litigation team at Clayton Utz, my time at the meeting was divided between Young Lawyers' Division (YLD) meetings and events hosted by the Trial, Torts and Insurance Section.

The first event I attended was the YLD Council meeting which provided an opportunity for all regional leaders to report on their activities and exchange ideas.

To an observer at the meeting, it was apparent that many of the YLD activities had a political flavour. For example, it is common for the regional sections to arrange political marches and public protests on issues affecting the legal profession. On the same day, I attended the YLD Council Dinner as a guest of the chair, Justin Goldstein, which provided the perfect opportunity to meet with the members of the YLD Council.

During the conference I attended a number of continuing legal education sessions run by both the YLD as well as the Torts, Trials and Insurance Section. Many of these sessions focused on the future of legal practice in America and around the world.

One particularly interesting session I attended was entitled "Mourning the death of the billable hour – successfully transitioning to alternative billing methods". Timekeeping is one of the many things that young lawyers in Australia and around the world have to come to grips with in their first years of practice and it was interesting to hear the American perspective on this issue.

Although not a new topic, the lively panel discussion led by an animated Texan criminal lawyer provided practical alternative methods to the traditional hourly billing methods. One panellist made the obvious but enlightening point that clients don't purchase lawyers' time; they purchase the lawyer's skill, judgment and knowledge. On that basis, it was argued that it is nonsensical to bill clients on an hourly basis.

A number of billing methods were discussed, including a flat fee retainer based on value billing and a flat fee

upfront retainer with a monthly flat fee and value billed options. The latter method involves the client paying a flat fee for taking on the matter, a capped monthly fee to cover ongoing expenses and a flat fee for attending motions, trial and depositions. Under this arrangement, the client continues to be accountable for disbursements. The upshot for the firm in adopting this method is that they do not need to generate hourly billing records for the client. The invoice received by the client would only show what was owed at that time and payment is due before the work is performed.

This session on alternatives to hourly billing involved a lot of audience discussion and raised interesting issues, such as how firms measure the performance of their lawyers in the absence of the traditional hourly billing method.

I do wonder though how a court might tax a bill of costs in the absence of agreement between the parties where there is no detailed record of the tasks undertaken and time spent on the matter. Also, while Australian clients may indeed dislike being billed by the hour, I am not sure how keen many of them would be on this sort of alternative.

Another highlight of the YLD program at the annual meeting was the Fellows Dinner Dance. The dinner was more grandiose than anything ever hosted by the YLS in Victoria. With a renaissance building as the backdrop, a band playing on stage and more than 250 guests, the dinner resembled something between a high school "prom" and the Oscars. It was interesting to observe that the office of the chair of the YLD attracts almost hero-status in America.

The atmosphere among the crowd was electric when the outgoing chair was reunited with his Law School band, the Pro Bonos, to play the drums for the last few numbers of the evening.

The American people were extremely welcoming and I thoroughly enjoyed my time in New York. One gentleman actually addressed me throughout the meeting as "Melbourne". I can only hope that at the YLS Christmas party for 2008 in Melbourne I will also be reunited with my high school band. ■