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Feds look to bolster government lawyers' billable hour targets

Glenn Kauth, Legal Feeds Blog, Canadian Lawyer Magazine, August 25, 2014

The Department of Justice is taking a further step towards mirroring private practice by including billable-hour targets in federal lawyers' performance reviews and increasing the numbers it expects them to meet.

→ That's the word from the Association of Justice Counsel, which is raising concerns about the new approach.

"Historically, they've always told us through the years that they don't use the time keeping to keep an eye on us," says Len MacKay, president of the association that represents federal government lawyers.

According to a recent letter to MacKay from Deputy Justice Minister William Pentney, the department is increasing the "average time spent on the delivery of legal services" to 1,400 hours per year, up from 1,300. While MacKay notes the department has long had the targets for what it said were budgeting purposes, the move to incorporate them into performance reviews is new.

The goal, according to Pentney's letter, is to reduce the time spent on non-legal activities.

"While the participation of counsel to non-legal services work remains important, the department will examine the extent of counsel involvement in corporate and non-legal activities to ensure that their time is used most efficiently," he wrote, adding the department also uses the numbers when it comes to collecting revenues from other ministries and agencies.

MacKay has a couple of concerns about the change. First, lawyers can only bill for work on behalf of clients.

"But many lawyers don't work necessarily for clients, so in many ways the target is artificial," he says.

Also, he notes the targets won't include administrative duties, something lawyers have had to take on more of as the government has cut staff in recent years.

"Lawyers are having to work more administrative duties, which can't go towards billable targets, for example," he says.

While Pentney's letter hints at the need to move lawyers away from such tasks, MacKay doubts that'll mean more support staff to do them.

"In this current climate, in this current government, we're not optimistic that's going to happen," he says.

More generally, MacKay says the move highlights the government's efforts over the years to have the department reflect a more private-sector approach. He notes part of the implicit deal in taking a government job with the attendant lower salary was a better work-life balance and benefits. But with changes to things like severance and pensions and now the increased focus on billable hours, those advantages are eroding.

"These things that used to be better benefits in the public sector are no longer there," he says, noting the new approach may prompt the association to push harder on the salary issue (which he acknowledges lawyers made major gains on in the last round of bargaining).

The 1,400-hour target is in line with the median reported by Canadian Lawyer in its recent compensation survey. That survey put the median at 1,470 hours, although the targets are often higher at large national and global firms. When it comes to federal lawyers, MacKay says the target is generally doable but not necessarily for all lawyers. "I think they're putting the hours in," he says.

"I think it's realistic for some folks because they do a job where it's almost entirely billable work," he adds. "But for others, it's not going to be realistic."