

**Centre for Employment and Labour Relations Law
The University of Melbourne**

May 2008

Working Paper No. 43

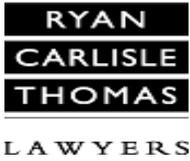
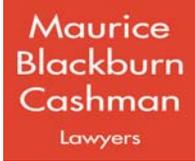
**“THE ELEPHANT IN THE ROOM”:
WORKING-TIME PATTERNS OF
SOLICITORS IN PRIVATE
PRACTICE IN MELBOURNE**

*Iain Campbell, Jenny Malone
and Sara Charlesworth*



ISSN 1321-9235

The Centre for Employment and Labour Relations Law gratefully acknowledges the support of the following major legal practices and organisations:



“THE ELEPHANT IN THE ROOM”: WORKING-TIME PATTERNS OF SOLICITORS IN PRIVATE PRACTICE IN MELBOURNE

*Iain Campbell**, *Jenny Malone***, *Sara Charlesworth**

The elephant in the room is working hours... (Elizabeth Broderick, Sex Discrimination Commissioner, The Australian 8 February 2008)

This is the industry where you work the long hours, but you get rewarded for it down the track, if you don't burn out in the meantime... (Amanda, HR Manager in large law firm)

One of the historical factors is the implementation of modern management techniques by law firms... Prior to the mid-80s pretty much everything was done on scale, so you got paid per item, and nobody particularly cared how long it took you as long as you billed enough items... But all that's changed... Things are getting measured more precisely; the overseers have become crueller... (John, solicitor, ex-private practice)

I remember sitting in a performance review one year where my supervising partner attended with one sheet of paper – a printout of my billings for the year. At the end of a year of long hours and hard work, everything I had given to the firm was reduced to one sheet of numbers – if my time didn't directly result in money made by the firm, it was of no interest to them... ('guera', post on The Legal Soapbox, 23 December 2007)

We don't run this place as a holiday camp... We expect our people to treat the client as if they were God and to put themselves out for clients. You don't say “Sorry I can't do it, I'm playing cricket on the weekend”... You don't have a right to any free time... (Tom Poulton, Managing Partner of Allens Arthur Robinson, cited in Schmidt 2005)

*Centre for Applied Social Research, RMIT University; **School of Political Science, University of Melbourne. The research for this paper was supported by funding under the Australian Research Council's Discovery Projects scheme (DP 0449771). We would like to thank the interviewees who generously gave their time. Thanks also to the Victorian Women Lawyers, Elizabeth Hayes and other members of the Part-time Lawyers Network, Darren Hoogenboom from the Law Institute of Victoria, and Edgar Burns. Thanks to Beth Gaze, Alex Heron, Estelle Tang and Georgina Murray who provided useful comments on earlier drafts and thanks to Estelle Tang who conducted the majority of the interviews.

ABSTRACT

This paper explores working-time arrangements for solicitors in private practice, drawing on official data from the Australian Bureau of Statistics (ABS), varied documents, surveys, postings on legal blogs ('blawgs') and other secondary material, as well as a small program of interviews with solicitors, ex-solicitors and Human Resources (HR) managers in law firms in Melbourne (Victoria). It seeks to both describe and explain the working-time patterns of solicitors in private practice. We sketch out the dominant working-time pattern, centred on long daily hours and limited opportunities for flexibility and diversity (such as part-time work), and argue that this pattern is both rigid and demanding. After briefly considering the response of employees and the tendency for many men and even more women to exit out of law firms, the paper takes up the challenge of explaining the dominant working-time pattern. We examine the peculiar system of 'billable hours' that provides the framework for the work of most solicitors in private practice. We suggest that this system has been transformed from a technique for billing clients to a tool for managing and controlling the work of employee solicitors, in particular through the imposition of targets, close time recording and careful monitoring of the performance of work. As a result, it functions as a vehicle for tight control over the work of employee solicitors, pressing their work into a narrow and rigid set of working-time arrangements and promoting a pattern of long daily hours. Nevertheless, though powerful, the billable hours system is only a technical tool, and we go on to argue that the crucial underlying dynamic is provided by management practices and the drive for profit. This analysis implies that rigid and demanding work schedules of solicitors in private practice are not a mere hangover from the past that can be expected to dissolve with the passage of time, the succession of new generations, or an appeal to a 'business case' for more humane employee relations.

I INTRODUCTION

The work of solicitors in Australia presents an intriguing puzzle. The profession is clearly being modernised. It has moved away from its traditional format as a life-time career for an exclusive coterie of men, working within the confines of small firms. Modernisation seems to pivot on greater diversity in workforces and workplaces, signalled most obviously by the entry of more women into the profession. Many expect the process of diversification to continue, leading to a fundamental transformation of law firms. But this vision of steady progress has been blurred in recent years by several shadows. The most important stems from solicitors' working-time arrangements, which remain surprisingly inflexible and seem to take only one form, tightly modelled on long daily hours.

The existing academic literature on the legal profession in Australia is relatively sparse, and it has not paid much attention to working-time arrangements (Williams-Wynn and Nieuwenhuysen 1982; Weisbrot, 1990; Roach-Anleu 1992b; Hughes 2001). The work of solicitors is identified with long hours, but this is rarely examined in any depth. Many recent contributions focus on the situation of women, and they may refer in passing to the barriers imposed by a 'long hours culture', but they do not consider the issue in detail (Roach-Anleu 1992a, Cook and Waters 1998; Thornton 1996, 2005; Hunter, 2003; Thornton and Bagust 2007; Strachan and Barrett 2007). But the existence of rigid working-time arrangements, geared to long hours, raises some important

questions about the future of the profession. Is this rigidity simply a lag effect, which can be expected to dissolve in time? Or is it the product of more fundamental forces? What are the forces sustaining these rigid patterns? Are they old or new? What is the impact on men and women? What is the likely direction of change?

This paper explores the issue of working-time arrangements for solicitors in private practice, drawing on official data from the Australian Bureau of Statistics (ABS), varied documents, surveys, postings on legal blogs ('blawgs') and other secondary material, as well as a small program of interviews with solicitors, ex-solicitors and Human Resources (HR) managers in law firms in Melbourne (Victoria). The interviews were conducted in 2007 and early 2008 using a semi-structured interview schedule and were designed to explore issues around working hours, especially the possibility of what is called 'good quality part-time work' (Chalmers, Campbell and Charlesworth 2005). The program of interviews included one focus group with part-time solicitors, followed by individual interviews with eleven solicitors currently practising in law firms, five solicitors who had left law firms, and four human resource (HR) managers in large law firms. Most were employees, but we also included a small number of partners or principals. The focus group included one man, and we interviewed individually three other men currently practising as solicitors in law firms. All the other interviewees were women. Though not constituting a representative sample, the interviews are useful in revealing the lived experience of working-time arrangements and in generating questions for examination with other methods.

We are interested in both describing and explaining the working-time patterns of solicitors in private practice. The first section of the paper introduces the profession in Australia. The second section sketches out the working hours of solicitors, drawing on ABS data and other material in order to outline the current pattern of long hours and the limited opportunities for, and experiences of, part-time work. The third section looks at the response of workers to these working-time patterns, including the significant issue of attrition from law firms. After this initial description, we turn to the challenge of explanation. The fourth section examines a factor that is crucial for understanding the working-time patterns of solicitors in private practice – the system of 'billable hours'. This system, in which solicitors record their daily tasks and the time taken for each task (in units of six minutes), was originally just a useful method for billing clients and controlling inventory. However, as it spread through most law firms it came to be linked with the imposition of targets for 'billable hours' on employee solicitors. These targets, set at a high level, function as a vehicle for tight control over the work of employee solicitors, pressing their work into a narrow and rigid set of working-time arrangements and promoting a pattern of long daily hours. The fifth section explores the dynamics underlying the system of billable hours, including in particular the role of management practices and the drive for profit. Finally, a conclusion returns to the issue of modernisation in law firms and its impact on men and women.

II THE LEGAL PROFESSION

Solicitors are a traditional profession, and their work displays the classic hallmarks of professionalisation, such as credentials, autonomy and prestige (Johnson 1972). The variant in Australia derives from the United Kingdom, and both the career path and the content of the work still owe much to its historical antecedents. Summarising crudely,

we can describe the process of becoming a solicitor as a series of successive steps. After gaining a legal qualification, almost exclusively a Bachelor of Laws (LLB) at a university, and a period of practical training, traditionally via articles within a legal firm but increasingly through other means, the aspiring lawyer will seek recognition as a legal practitioner through application for admission to a relevant body such as an Admissions Board and through application for a practising certificate to the relevant professional association (a Law Society or a Bar Council). Though the legal profession is now formally fused in many jurisdictions, a *de facto* distinction between solicitors and barristers survives in one form or another. According to one Australian textbook (Hughes 2001: 277):

The term 'solicitor' generally refers to a person who specialises in legal work other than advocacy work, at least advocacy work in the superior courts... Solicitors are those legal practitioners who commonly: prepare matters for trial or hearing; carry out conveyancing work; handle corporate matters; administer deceased and bankrupt estates; and provide advice of a general nature.

Although some practising solicitors work as in-house counsel for large corporations or public sector departments, and a small number work in legal aid or community legal centres, the vast majority work in private solicitor practices, which bring together solicitors with administrative staff and paralegals. It is this majority segment of the profession working in private practice that is the focus of this paper. Private practices are usually organised as partnerships, although recent legislative change permitting incorporation has produced a few incorporated entities (Harvey 2005), and one large firm (Slater and Gordon) was floated on the Stock Exchange in May 2007, with others likely to follow (IBISWorld 2007, 60). The partnership structure can be varied, allowing different sizes from single-partner firms to large, national firms with over one hundred partners and over one thousand employees. Though some practising solicitors are sole proprietors of their own business, most work in multi-practitioner legal firms.

Solicitors provide legal services to clients, who can be individuals or firms. Even in large firms, solicitors often work directly with clients, either individually or as members of a small team. The range of legal services can cover various fields such as conveyancing, banking and finance, family, criminal, intellectual property and personal injury. The income of solicitors in private practice, whether proprietor/partner or employee, ultimately derives from the income (and profit) that is achieved by means of fees received from clients for the provision of these legal services.

The legal profession has been traditionally organised around a gendered model of the 'ideal worker' (Williams 2000). Work was structured around the notion of the male breadwinner who was available to work across a wide range of hours, supported by a female partner responsible for caring and domestic responsibilities. For many centuries women were formally barred from participation at any level in the legal profession. Entry into legal training was traditionally understood as entry by men into a life-time career. Solicitors' work was organised as full-time work and the workplace culture acquired a distinctly masculine cast, described in terms of homosociality (Thornton 1996). Most solicitors would expect to follow a model career path in their chosen firm, starting with articles before moving to a position as an Associate, then Senior Associate, and ultimately progressing to be an equity partner.

In spite of elements of continuity with the past, the profession has changed markedly in recent decades, in particular as a result of the rise of large law firms serving corporate clients and the shifts both in the gender composition of the workforce and the way in which men and women participate in the conventional career path. Until the 1960s most solicitors' practices in Australia were sole practices or small family concerns (Weisbrot 1990: 257, 250; see Mendelsohn and Lippman 1979). The rise of large law firms is associated with increased specialisation and increased competition. The larger firms have concentrated on commercial and regulatory work for large organisations, either large corporations or government departments, leaving the smaller firms with the less profitable forms of legal assistance for individuals and small businesses such as wills, probate, family law and criminal work (Law Council of Australia 2001: 116). Competition may take place between legal firms and non-lawyers such as financial advisors, tax consultants, bankers, and estate agents, but it is particularly evident amongst legal firms. This can pit large firms against small firms, but the most intense competition occurs amongst the large firms themselves, as they bid for the more lucrative commercial business. Competition may be in terms of price and also in terms of reputation, knowledge of the specialty and service quality.

Large law firms are now tied closely to their clients, which have themselves built up legal departments that employ many practising solicitors as in-house counsel. Law firms often mimic their corporate clients in the location and furnishings of their offices. They are equipped with similar structures, including HR Departments. The largest have grown through mergers and associations from single locations in Sydney or Melbourne to national firms with offices in several capital cities (Weisbrot 1990, 259). Some are increasingly participating in the global market, in particular in the Asia-Pacific region, where they compete against other large international firms. Today the private sector includes several large 'top-tier' or 'mega' firms, usually headquartered in either Melbourne or Sydney. In one estimate, six of the world's 40 largest law firms are from Australia, while in the Asia-Pacific region Australia is the headquarters for ten of the top fifteen firms (Thornton 2005, 138). Yet the industry remains highly competitive. Though the 'top-tier' firms are the most prominent, they account for just thirteen percent of the revenue of all legal firms, and they are joined in the competition for corporate clients by many 'mid-tier' firms (IBISWorld 2007, 44; Merritt 2007). Table 1 presents basic information about ten of the largest law firms. These large firms are all highly profitable, with Clayton Utz leading the way in 2005-2006 with a figure for profit as 45 percent of revenue (IBISWorld 2007, 28-29).

Table 1: Top Ten Australian Law Firms, December 2007

Firm	Partners	Non-partner 'fee earners'	Graduate recruits in 2007	Gearing ratio *
Minter Ellison Legal Group	272	831	115	3.0
Mallesons Stephen Jaques	202	858	132	4.3
Freehills	216	733	111	3.4
Allens Arthur Robinson	192	731	112	3.8
Clayton Utz	226	673	106	3.0
Blake Dawson Waldron	176	545	78	3.0
DLA Phillips Fox	166	632	53	3.8

Deacons	137	458	35	3.3
Gadens Lawyers	117	453	37	3.9
Corrs Chambers Westgarth	117	343	52	2.9

* gearing ratio = non-partner fee earners: total partners.

Source: *The Australian* 14 December 2007, pp. 33, 39.

Associated with the rise of larger firms is a shift in the terms of employment for solicitors, more of whom now work in a bureaucratised setting as salaried employees. Table 2 shows that ‘solicitors’ (ANZSCO 2713), defined as persons who “provide legal advice, prepare and draft legal documents, and conduct negotiations on behalf of clients on matters associated with the law” (ABS 2005), numbered 36,806 at the time of the most recent Census. Around two thirds were categorised as employees.

Table 2: Solicitors, by employment type, by sex, 2006

	Male	Female	Total
Employee not owning business	10982	13267	24249
Non-employee a)	10350	2065	12415
Total b)	21414	15392	36806

a) comprises ‘owner-managers of incorporated enterprises’, ‘owner-managers of unincorporated enterprises’ and ‘contributing family workers’

b) includes ‘not stated’

Source: ABS 2006 Census, customised data supplied on request.

The increasing participation of women has been another major aspect of change in the legal profession. Women now constitute 41.8 percent of the category of ‘solicitor’ (Table 2).¹ Similarly, women now make up more than half of all law students and law graduates in Australian universities, and it is likely that this has been true for more than twenty years (Hunter 2003, 100; VWL 2005: 4-5). Nevertheless, in spite of the steady increase in female participation, women have failed to progress along the career path within firms at the same rate as men. They remain concentrated at lower levels and continue to be poorly represented at the level of partner or principal in the large firms (Hunter 2003, Strachan and Barrett 2007). Table 2 suggests that although women constituted over half (54.7 percent) of solicitors classified as employees in 2006, they accounted for only 16.6 percent of those classified as non-employees (the category covering principals or partners in law firms). As Hunter notes (2003, 95), this can be attributed both to a higher drop-out rate for women compared to men and to slower progress for the women who remain.

III WORKING HOURS AMONGST SOLICITORS

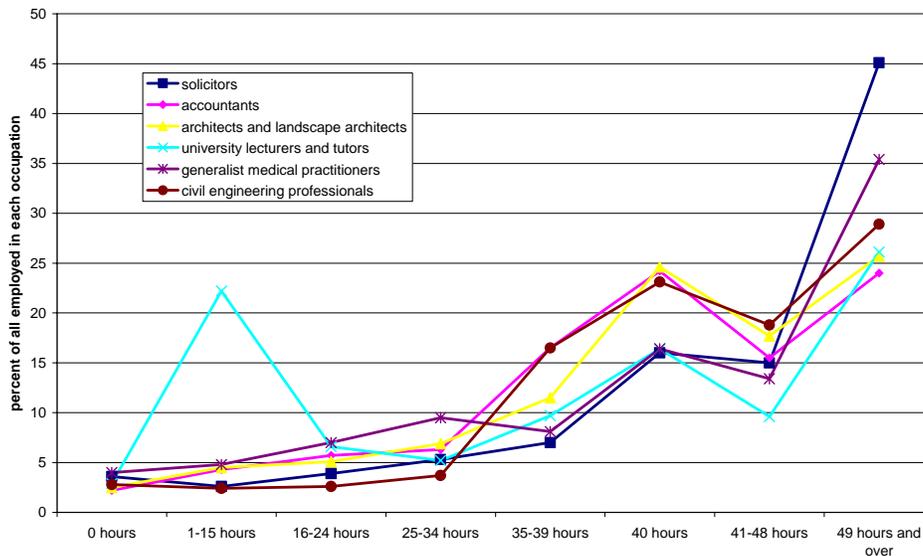
This section describes the working hours of solicitors. It looks first at what we know about the dominant pattern of long hours, both for all solicitors and for solicitors in private practice, before examining the interesting case of part-time work.

¹ For the category of ‘legal professional’ used in previous Censuses, the female proportion steadily increased from 3.9 percent in 1961 to 11.4 percent in 1981 (Roach Anleu 1992a: 394) and then to 36.3 percent in 2001 and 41.9 percent in 2006 (ABS Census, data supplied on request).

A Long Hours

Full-time work is dominant amongst solicitors, both for men and for the increasing number of women in the profession. Solicitors appear to stand out, even amongst professional and managerial groups, for the number of hours they work. According to data from the 2006 Census on actual weekly hours (data supplied on request), almost half (45.1 percent) of all solicitors reported working what can be classified as ‘very long’ actual weekly hours of 49 or more in the reference week. This proportion was much higher than for all occupations (17.7 percent). It was also higher than for other professional groups (see Figure 1), both those with a substantial female minority such as accountants (24 percent), university lecturers and tutors (26.1 percent) and generalist medical practitioners (35.4 percent), as well as those that remain heavily male-dominated such as architects and landscape architects (25.7 percent) and civil engineering professionals (28.9 percent).² Even within the Australian context, where the proportion of workers engaged in ‘long’ or ‘very long’ hours is high (Campbell 2007), the situation of solicitors seems unusual.

Figure 1: Solicitors and selected other professional occupations, all employed, distribution of actual weekly hours, 2006



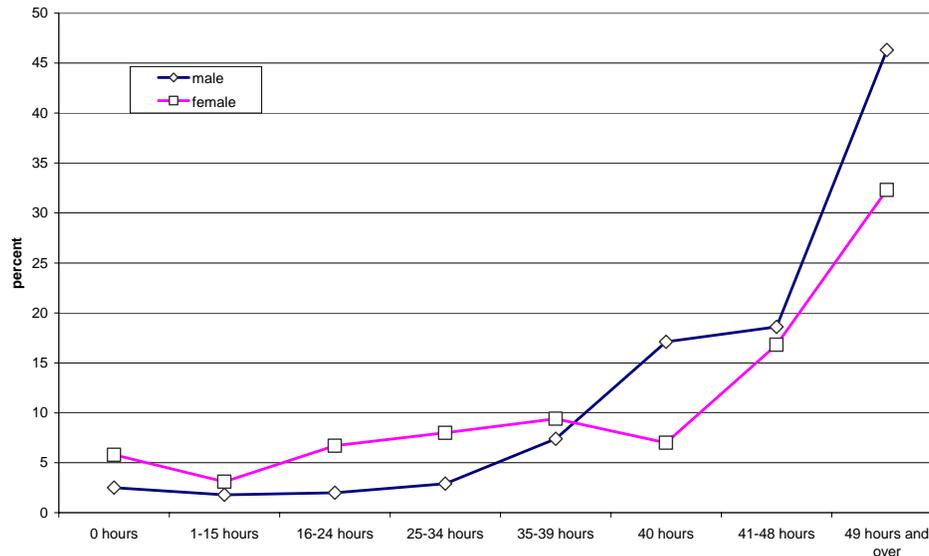
Source: ABS 2006 Census, customised data supplied on request

The pattern of long hours is influenced by the existence of a substantial minority of self-employed solicitors. However, even if we focus just on solicitors who are employees, the proportion working ‘very long’ hours is high (38.6 percent). The patterns for male and female employees are similar (Figure 2), though women are less likely to work very

² The only prominent professional groups that seemed to come close to the solicitors’ pattern of long hours were ministers of religion (44.5 percent) and mining engineers (44.6 percent). However, some smaller groups, such as internal medicine specialists (ANZSCO 2533) and surgeons (ANZSCO 2535) do have a higher proportion who state that they worked very long hours of 49 or more in the reference week.

long hours and are slightly more likely to have worked less than 35 hours in the reference week.

Figure 2: Solicitors, employees not owning business, distribution of actual weekly hours, 2006



Source: ABS 2006 Census, customised data supplied on request

The pattern of long working hours is most pronounced for solicitors in private practice, whether they are self-employed or employees. Further information from interviews and other sources suggest that the long hours for such workers are in the first place long daily hours on weekdays, generally spent at or around the workplace. Such long daily hours readily spill over into work at the weekend or work at home in the evenings. Public holidays or periods of annual leave may also offer occasions for extra work. These long hours are experienced as an expectation that is inextricably bound up with employment within most law firms.

In a recent survey of employed solicitors in Victoria the majority (64 percent) of respondents estimated the daily hours of full-time lawyers, excluding breaks, as nine to ten hours. They also pointed to a pattern of regularly working through lunch breaks, sometimes working during the weekends and sometimes taking work home (LIV & VWL 2006: 11, 31). This pattern is not impeded by formal working-time regulation,³

³ The Australian labour regulation system is notably weak in relation to protection around standard hours and overtime. Most regulation of working time is through awards or single-employer agreements, but many of the crucial elements found in other regulatory systems, such as maximum daily hours, maximum weekly limits and maximum overtime limits are absent, and the limits that do exist, such as the prescription of payment or time-off-in-lieu for overtime, are undermined by the prevalence of numerous gaps (Campbell 2007, 51–57; McCann 2005). In any case, solicitors in law firms in Melbourne are not covered by an award, with the result that most solicitors are protected only by the rudimentary provisions of common law or by statutory minima. In recent years, under the Australian Fair Pay and Conditions Standard, the statutory

and it appears to have become a sort of norm in private practice. However, the rhythm of full-time work varies somewhat according to the different areas of practice, and in some areas the hours will fluctuate sharply upwards when there is a big case or project. In all areas variations in hours can occur with little predictability and often at short notice, in response to demands from supervisors, other members of the team, courts, clients or opposing legal teams.

The flavour of the long hours' norm is captured well in one ex-solicitor's memory of her early experiences in one large law firm:

I did my first year in litigation and then I did a year in commercial and then I went back to litigation. And when I was in litigation, you know there would be periods of where my hours were long but most of the time it felt reasonably manageable. I mean I'd get in at sort of quarter to nine and leave at sort of seven as a regular thing and then there would be variations on that... But in commercial it was just really intense for the whole year... That was a very hard year, that particular year... It was common for me to leave at nine, like that was a normal day, leaving the office at nine and then I would regularly do later than nine, and always on the weekend in that particular year. (Mary)

Because of this bias towards long hours, working-time arrangements for solicitors in private practice can be not only demanding but also surprisingly inflexible. It is true that there is some flexibility at the margins, for example to influence the location of work (work at home on weekends or evenings) and the distribution over the day and week (delayed start and finishing times). Similarly, if individuals wish to engage in 'display overtime', there is flexibility to stay at the office longer than anyone else. But the basic temporal structure of solicitors' jobs is surprisingly uniform, with little variation and few signs of temporal flexibility to suit the employee. Many solicitors have little control over their working-time arrangements, and as a result they face difficulties in taking holidays, getting time off for special events, and often even predicting and planning their time of departure from the office.

Working-time arrangements for solicitors show little evidence of diversity, corresponding to the diverse needs of a modern workforce. It may be true that a pattern of long working hours suits some workers. But the available evidence indicates that many solicitors feel a sense of discomfort, often expressed in terms of 'work/life balance' or sometimes as 'work/family balance', and a sense of conflict between the dominant pattern of long hours and their own needs and interests. The conflict – or collision (Pocock 2003) – is particularly sharp for women, especially amongst those embarking on a process of having children. It could be experienced as early as the beginning stages of pregnancy, as one interviewee explained:

I couldn't get into work sometimes until 10 o'clock because I'd have to get off the tram several times and throw up. And I'd still get my work done. I'd be in there till late or bring stuff home and be working on weekends a lot. But I remember one time when I was in at work and it was probably 9 o'clock at night and I was feeling so ill and very tired and quite heavily pregnant and one of the partners walked past my office and he came back and he goes: "Hey, good to see your baby doesn't hold you back from

minima have included a so-called 'maximum 38 hour week'. But the 38 hour figure is not in any practical sense a maximum, since it can be averaged over 52 weeks and can be joined with employer demands for 'reasonable' extra hours (Campbell 2007, 55).

having a good work ethic". At which point I got up and grabbed his shirt and told him what I thought of him. (Rachel)

The gender division in the experience of work/life imbalance can be broadly understood in relation to the dominant structure of caring in Australian society. Having a family affects women more than men, since women are less likely to have a partner who is available to take up the unpaid work of caring in the household. On the contrary, female solicitors are likely to have partners who also work full-time, often in similar professional or managerial jobs. As such female solicitors are more vulnerable when faced by an emphasis on work performance measured by long hours.

Inflexible working-time arrangements mean that solicitors in private practice are deprived of the chance to exercise control over a fundamental aspect of their work. It is true that the jobs are generally rewarded by high base salaries, often further enriched with generous bonuses. The latest data for Melbourne suggest base starting salaries for junior associates of around AUD \$65,000 in top tier firms in Melbourne, reaching up to around \$120,000 for lawyers with five years' experience, and then with Senior Associates starting at around \$130,000 and reaching up to around \$185,000 (Mahlab Recruitment 2007, 8; see Thornton 2005, 141-142). It could be argued that workers who continue in such well-paid jobs have chosen to exchange control over hours for money. As Sylvie, a legal services manager, rather brusquely stated: "*People make choices. They get paid a lot of money; they don't have to do this*". High salaries undoubtedly encourage complicity between the employer and the employee (and dampen any instinct for solidarity from the rest of us). But it is hard to see this as the site of a genuine choice. Even if it could be accurately seen as a choice, it would be one that must apply more at the point of entry into the job; the choice *within* private practice has been reduced to a more impoverished version in which the worker can only decide whether to 'take it' or 'leave it'.

Instead of flexibility for workers, it is the extensive flexibility available for employers that is most apparent. If an important project has started up, work demands and work hours tend to spill over into nominally free time. In these circumstances the flexibility to work at home or to vary starting and finishing times appears useful primarily for the employer. A similar point applies to other work arrangements that are often described as 'flexible'. Novel employment benefits such as emergency childcare or subsidies if childcare is needed after 6pm, not to mention work facilities such as couches and 24-hour kitchens, may indeed ease the collision between work and the rest of life, but they clearly achieve this effect by loading the equation in favour of paid work, facilitating the ability of the employee to spend longer hours at the office. They facilitate the open-ended availability of employees.

B *Part-time Work*

The rigidity of working-time arrangements for solicitors in private practice is exemplified by the small number and narrow structure of part-time jobs. Jobs with reduced hours have become widely available in most parts of the employment structure in Australia. This reflects both employer strategy in industries such as retail and hospitality and the interest of many workers in adjusting working hours to accommodate the other activities that can arise at different stages of the life course, such

as caring responsibilities (not only children but also elderly, sick or disabled relatives), study, sport and hobbies. However, there is little evidence of such jobs in the law.

Part-time work is often touted as a 'flexible work arrangement', made available by law firms to aid work/life balance, especially for women. However, it differs from other 'flexible work arrangements' favoured by law firms, in that it facilitates the *absence* rather than the presence of the employee. As such it tends to be less well-regarded by employers.⁴ It is true that the number of part-time jobs for solicitors has increased over the past decades. But it is striking how small the number remains. Around 11.8 percent of solicitors stated that they worked between 1 and 34 hours during the reference week for the 2006 Census.⁵ The proportion is likely to be less amongst solicitors in private practice. A recent survey conducted by *The Australian* of ten of the largest law firms in late 2007 suggested that only eight percent of lawyers at these firms were employed part-time. The highest figure was recorded by Gilbert + Tobin (13 percent) and the lowest by Gadens (3 percent). The proportion was lowest at the partnership level but highest amongst Senior Associates (Berkovic 2007).

While many women seek part-time work to accommodate the powerful constraints on the household imposed by the long and irregular hours of male partners, part-time work may come at a price. It not only reinforces the gendered specialisation of work and care (Gornick and Myers 2003: 25), but is also often of poor quality (Chalmers, Campbell and Charlesworth 2005). Four aspects of poor quality can be singled out for brief discussion in relation to solicitors: limited access, the narrow range of schedules; inferior job content and stalled careers.

C *Limited Access*

Practical access to part-time work in law firms is limited. There is little chance of lateral entry into part-time jobs. Jobs tend not to be advertised as available on a part-time basis. From the point of view of the employer, part-time work is seen mainly as an issue of retention, as a concession offered to a small number of favoured employees under controlled circumstances. The usual means of access to a part-time schedule is when an existing full-time employee requests a change to part-time work. The majority of requests for part-time work come from women and are related to care-giving responsibilities. A recent Victorian Women Lawyers (VWL) report found that around two thirds (67.8 percent) of those working flexible arrangements did so to combine paid work and caring responsibilities (LIV & VWL 2006: 9, 34; cf Law Council of Australia 2001: 146-147). Family or caring responsibilities are perceived by both employees and employers to be the more 'legitimate' reason for requesting a reduced hours schedule.

⁴ The same can be said of most forms of paid leave. For example, five of the six top-tier law firms have been listed as offering their employee solicitors an entitlement to paid maternity leave. From one point of view this is generous, especially if compared with firms that offer nothing. However, in each of these five cases the advertised entitlement is below the ILO standard of 14 weeks and below the level regarded as a minimum for employees in most other advanced industrialised societies (IBISWorld 2007, 46).

⁵ Not all of these would be part-time workers. Some full-time solicitors may have worked fewer than normal hours in this week because they were sick or on leave. On the other hand, insofar as part-time workers worked longer than 35 hours in this week, they would not be included in these figures.

More precisely, it is caring responsibilities for new-born infants that is seen as *most* legitimate. One interviewee complained that her request for part-time work was viewed unfavourably because her managers felt that her children were not young enough:

They couldn't understand why I wanted to work part-time when I already had my children... They were getting older... entering secondary school, and it was like: "Why do you need to be at home?" (Sharon)

Requests for reduced hours are usually associated with return from a period of maternity leave. Responses are largely dependent on the grace and favour of the supervisor. Most firms have policies in place regarding a range of flexible work options. However, the policies generally leave extensive room for discretion. They are applied on an ad hoc basis dependent on factors such as the legitimacy of the reason for the request, the perceived performance and therefore value of the employee, the warmth of the relationship between the employee and the supervising partner, the promises made by the employee concerning their performance during the period of part-time work, and the prospects of the employee eventually returning to work full-time. According to Amanda, an HR Manager, a favourable response to a request for part-time work depends first of all on what she terms 'longevity' ("*if we believe that they're here for the long haul...*"). In this approach, a key criterion is whether the move to part-time is just temporary and the employee can be expected at some point to revert to the standard full-time pattern, stationed on a conventional career path heading towards partnership.

The process of responding to a request for part-time work varies from firm to firm. One HR Manager described the process in a way that hints at some of the obstacles, including the dependence on managerial discretion and possibility of losing one's current position. If an employee wished to reduce his or her hours:

They would immediately approach their practice group leader... and speak to them and say: "If the needs of the business are able to be met, can I please work part-time?" We have got computer equipment available for people to work from home if they need to, and then once that negotiation side of thing's taken place, then the practice group leader would say: "Okay, yes... the area of law that we do is conducive to part-time work, or maybe we'll move you into somewhere else"...And then it sort of goes up the tree and approval from the national practice group leader would then be obtained. (Amanda)

Not all requests are granted. Several interviewees testified to experiences of rejection:

I wanted to work part-time, but that was not allowed. Then I asked if I could work one day a week from home and the response I got was pretty average... I just got asked how that they could guarantee that I wouldn't be doing the cooking, washing, ironing and cleaning on that day... so I left... (Sharon)

I had the experience of working full-time and then wanting part-time, and they said that wouldn't work. Then I said: "What about job share?" And they said that wouldn't work because... there's a difference in seniority... I was wanting to come back after maternity leave... The other person had elderly parents that (she) wanted to look after... we were at two different levels... I don't think it would have been an issue, but it was an inflexible sort of industry. (Fiona)

In summary, practical access to part-time jobs in many law firms is highly constricted. A funnelling effect applies from the start of the process of obtaining part-time work. First, applicants have to start from a full-time job in a specific firm, where they have already demonstrated their high value to the business. Second, they have to uncover the policy and the process, which are often shrouded in obscurity (LIV & VWL 2006, 32-33). Third the applicant has to offer the right reasons for requesting part-time work. Fourth, the applicant has to advance an argument to convince the employer that s/he will continue to be of high value during the period of part-time work, refuting all objections that might be raised. Finally, they have to sit back and hope for a favourable response, which can often be unpredictable because it is subject to such a high degree of discretion.

D *Narrow Range of Schedules*

Once they have obtained a part-time job, solicitors in private practice are often stuck with few options concerning their schedule. Part-time jobs in private practice seem to come in just one size, tightly modelled on the standard full-time job.

Most part-time solicitors work on a schedule that is framed not in terms of weekly hours but rather in terms of a minimum number of days per week – usually four but sometimes only three or three-and-a-half days (LIV & VWL 2006: 34). As in the case of full-time solicitors, each day involves long actual hours.⁶ Such schedules are still demanding and narrow. They are unlikely to meet the needs of all workers wanting reduced hours. They clearly do not fit, for example, with those who want shorter hours per day, to, say, drop off and pick up children from school. Nor do they fit well with those who may want to fit their schedule around a part-time course and lecture and exam times. In short, in spite of being described as a ‘flexible’ work arrangement, these schedules only offer a small amount of flexibility for workers.

When examined closely, such schedules can appear even more narrow and constrained than at first sight. The schedules offer only a limited flexibility for the employees, but they are associated with high levels of flexibility for the employer. The boundary between work and non-work remains porous, with employees enjoying little control. Thus many part-time workers are expected to work or be available for work even on days that are supposedly reserved for their own needs and supposedly free of obligations to the employer. The dynamics behind these expectations are complex. Often the extent of flexibility has been negotiated as a condition of the move to part-time work. Or it can be freely offered by the employee, appreciative of the opportunity to work less, committed to the tasks and perhaps conscious of the difficulty of obtaining good quality part-time work in this field. Cathy, an HR manager, suggested that part-time workers are generally happy to offer such flexibility: *“Generally people are very committed to what they do, and they all say: “Look can we have a BlackBerry?” And they’re always happy to return phone calls to clients if it’s an emergency”*.

⁶ One paradoxical result is that this may undermine the strict status of such workers as ‘part-time’ workers. When solicitors are working four days a week and ten hours a day, the total number of hours stretch up to and beyond the normal threshold of ‘full-time’ weekly work. Such schedules appear reduced only in comparison with the very long weekly hours of other solicitors.

Certainly, the part-time solicitors that we spoke to were positive about their work. They were often aware that their position was dependent on a highly personalised process of evaluation and that they might not have secured this opportunity from another firm. They seemed to accept the need to offer a high degree of flexibility to their employer as a necessary part of the informal exchange. Often the quite extreme levels of flexibility that they offered emerged only in the interstices of the interview:

Where I work... they're quite reasonable... I rarely work outside my allotted three days. I'm working at the moment on a trademarks hearing, and I did work this weekend when I took the work home... And I do make myself available for calls on my days off. I mean, of course, sometimes I'm doing things that you can't contact me, but I'm more than happy to talk to people over the phone and look at things that they email through to me... (Sharon)

Similarly, one part-time solicitor working three days a week explained that she had asked to be employed as a 'casual', so that she could take days off if her child was sick without feeling that she was thereby short-changing her employer. At the same time, she still felt obliged to be available outside of her three official days. She explained:

Well I've got those two days that are mine. I still take calls... Yep, I still take calls and if I have to do any little job or if I do have to take some work home with me, I do. Because I have to... (Helen)

We interviewed Marian, a part-time partner, who offered the most exaggerated example of readiness to work outside the nominated schedule. Though this could be seen as a somewhat anomalous case, because of her status as a partner, it reveals the stretch in the definition of 'part-time' within law firms and it could also be viewed – precisely because of her status as a partner – as a model for other part-time workers in the firm. Marian officially worked four days a week, with Fridays off. But, as she explained, plenty of work was still undertaken from home on the Friday:

That doesn't mean that on Friday I don't... I check my emails from home, I take calls... I mean my staff are great and most of my clients are good as well... But for my own sort of staying on top of things as well, I often deal with things on a Friday... My clients are fantastic... Most of them apologise when they ring me up on Friday or email me on a Friday and say "I know it's your day off, but..." So they're fine.

The extra work that she performed would sometimes spill into the week-end, facilitated by the technologies used by many part-time lawyers:

We all have BlackBerrys, and my clients have BlackBerrys. It's not unusual to get ten emails on a Saturday or a Sunday. It's not unusual for me to have conference calls on Saturday and Sunday, and that's not just our firm, that was with two other firms of lawyers, and their clients as well, which include a government client.

She pointed to the nature of her work as 'project based', with very high peaks:

When a project is very busy, it's full on and we work very long hours... For example, I had a project that was coming to an end at the end of December, and so... basically I

just worked full time... I just changed my arrangements for that month, because we were in a busy period and that ... was just the easiest way around it.

'Full-time' in this case, as she later admitted, involved six to seven days a week at work. She didn't explain how she changed her domestic arrangements, but she admitted that she can be quite flexible because she has a nanny who can work on a Friday if needed. Flexibility or rigidity in this case has been shifted further down the 'chain of care' that is emerging in many industrialised societies (Pocock 2006).

E *Inferior Job Content*⁷

A common complaint is that employee solicitors are given less interesting and less responsible jobs when they move to a part-time schedule. For example, one interviewee complained about:

loss of responsibility and control of matters... I'm only sort of second-in-command and therefore don't have the relationship with the client... That could be frustrating and it could also affect your career development because... they say that you need to develop relationships with clients. (Fiona)

Recent surveys suggest that the move to part-time work in legal practice results in the allocation of different work compared to the previous full-time role held by the solicitors surveyed. A key finding of one 2005 survey was that 74 percent of lawyers surveyed 'perceive that the type or quality of work changed after they started working flexibly', with more than two thirds of this group viewing the change as negative and unwanted. One survey respondent described her new work as 'filling gaps' and working as a 'helper' who 'tended not to be in charge of things' (Aequus Partners 2005: 28-29).

Sometimes solicitors are shifted to entirely different areas of practice when they become part-time. While one survey found examples of lawyers in flexible work arrangements working in all areas, part-time solicitors were often vulnerable to the strong views held by the decision-makers within legal firms as to the appropriateness or otherwise of certain areas of practice (Aequus Partners 2005: 17). Such views are highlighted in the 1998 *Hickie v Hunt & Hunt* decision by the Human Rights and Equal Opportunity Commission (EOC ¶92-910). Marea Hickie, a solicitor and contract partner in a law firm, was grudgingly allowed to work part-time when she returned from maternity leave. However, the company removed her plaintiff practice while she was on maternity leave on the basis she intended to work part-time on her return and could not manage such a large practice without supporting staff, stripping her completely of the practice she had built up over several years. The Commission found that Hunt & Hunt had indirectly discriminated against Ms Hickie by requiring in effect that she work full-time to maintain her position.

⁷ Job content is a broad concept and covers a range of aspects including skill demands, task autonomy, social relations and work burdens. Job content in turn is linked to opportunities for advancement or career progression, specifically in terms of opportunities to develop new skills and progress further up an occupational ladder (Chalmers, Campbell and Charlesworth 2005: 59-60).

F *Stalled Career Progression*

The allocation of work that is less interesting and less responsible can have an effect on career progression for part-time solicitors. The problem can be compounded when part-time solicitors are viewed as having stepped off the standard career path, or, at best, to be delaying this decision (LIV and VWL 2006: 35). There is a widespread assumption that those who choose to go part-time have effectively ‘chosen’ family over work and are uninterested in progressing in their career. Findings from a 2005 survey (LIV & VWL 2006) point to the links between the type of work allocated to part-time staff and limits on career progression; for example the career consequences of not undertaking face-to-face work with clients or ‘high profile’ work or not being given any new referrals or any new substantive work. The more challenging work, crucial for learning and career progression, tended to be allocated to solicitors on a clear partnership track.

The link between being seen as committed to the career path and allocation of work is reflected in the following comment by one partner in a legal firm:

...But the more difficult case is for people to say: “Well, actually I don’t want to be a partner... but I still like working here, and there’s no reason for me to go anywhere else”... Well, what about the person sitting in the office next to you who does want to go at partnership, do I give the really good file to them or to you?... That’s not to say we give that other person the bread-and-butter work, but you know, it seems a bit unfair to hold a person back who’s wanting to do the thing that’s meant to be the sort of aspirational thing within the organisation. (Marian)

Even if part-time employees clearly express a desire to continue on the track to partnership, they may still be perceived by others as less committed, as they are less visible. This is part of the stigma of part-time work in the law (Epstein et al 1999) and indeed other professions.

G *Summary*

These four aspects help to explain the small number of part-time jobs for solicitors in private practice. The difficulty in access is itself a formidable barrier to any increase in the number of part-time employees. But the other, more substantive aspects can further discourage employees from pursuing the idea of reduced hours (or indeed encourage those who have obtained a part-time job to consider quitting). This discouragement and the price paid by those who want to work part-time have a disproportionate impact on women. As the Human Rights and Equal Opportunity Commission concluded in *Hickie v Hunt & Hunt* (EOC ¶92-910):

The imposition of a condition or requirement or practice that a partner work full-time would inevitably disadvantage women practitioners, especially those who are, or those who are aspiring to be partners. To regard this as a reasonable requirement would perpetuate and institutionalise indirect discrimination against women lawyers.

We identify these four aspects as aspects of poor quality. Of course, this is not the entire story of part-time work for solicitors. Many features of legal work are highly attractive and can be found in part-time as well as full-time jobs. One such feature

would be the challenging nature of much legal work (even if this is sometimes eroded for those who choose to go part-time). Perhaps the most obvious positive feature is the high salaries earned by solicitors, especially in the larger commercially-oriented firms. Part-time solicitors are not excluded from these high salaries (although they may lose access to bonuses and may have limited prospects of access to the higher rewards of partnership). One interviewee explicitly drew attention to the issue of pay:

(T)he good thing about being a lawyer is the money that I earn. If I wasn't a lawyer I'd probably have to work full-time to earn that sort of money... in another area. So that if I can work part-time, you know, three days a week, and have two days with my family, that means a lot to me, and it's not such a huge trade off because you know, I am paid well... Some of my girlfriends who might be in retail, they'd have to work six days a week to earn that sort of money...(Helen)

IV EMPLOYEE RESPONSES

Current working-time schedules for solicitors in private practice appear both rigid and demanding. Evidence from solicitors' blogs, together with our interviews, testifies to widespread feelings of frustration and resentment. However, there is little room for manoeuvre in terms of behaviour. In the fundamental contest of 'voice' and 'exit' (Hirschman 1970), the path of 'voice' seems closed off. As noted earlier, the basic alternatives seem to be: 'take it or leave it'.

Many solicitors respond to the collision between rigid schedules and workers' needs by exiting from law firms. It is hard to get good figures for the rate of attrition from private practices, but it seems very high. A recent report speaks of 'churn' rates in law firms of 20-40 percent per annum, which equates to a 'complete renewal of a firm's workforce around every five years or so' (LIV & VWL, 2006: 3; see also IBISWorld 2007, 45). Some of this attrition may be linked to lawyers moving to other firms, perhaps even to law firms overseas. But the largest part seems to be due to solicitors leaving private practice altogether, often to move into other professional jobs. One interviewee commented on the varied paths taken by her colleagues:

(W)hen I was at my law firm I started with a group of 27 Articled Clerks, and by the time I was a third year there were only maybe about four or five of us left... The vast majority of them didn't go to another firm, the vast majority of them went somewhere else, did other things... A few went to legal recruitment firms, like everyone just got disillusioned with practice, essentially that's what happened... A number of them went overseas, a number of them went to law firms overseas, so it was less disillusion of practice, just wanted to get other experience... A few left went to merchant banks or accounting firms... yeah, in-house type roles. Some went to sort of pursue careers at the Bar, so they went to be Associates to Judges and you know the various steps that you go to take to be a barrister. A couple went to study...One of them is now a successful author...(Mary)

Departure from law firms can occur at any stage. But it seems most frequent amongst young solicitors within the first few years of practice. Frustration with long hours seems to be a key trigger. Many solicitors complain of 'burn-out' and the inability to pursue normal social activities outside of paid work, such as spending time with

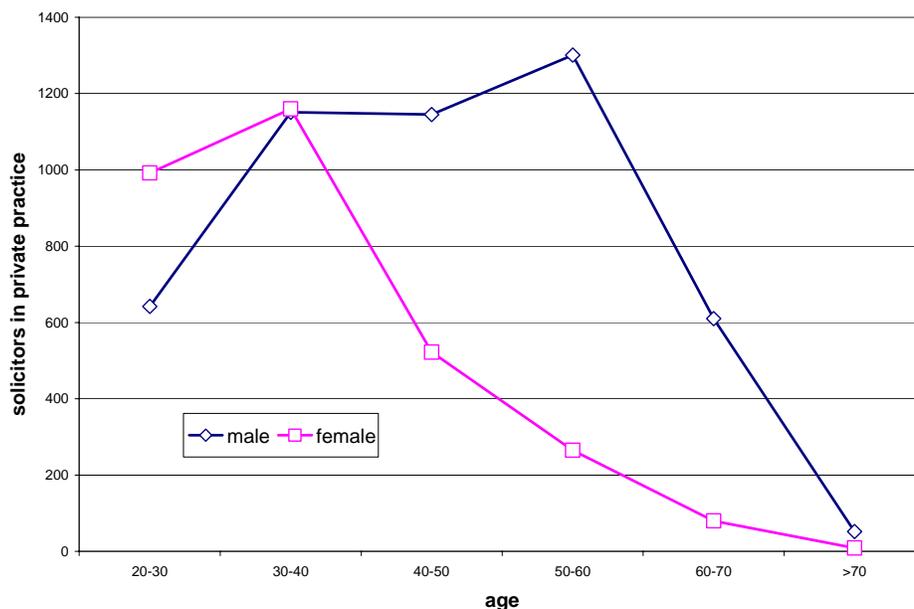
partners and children. The precise mechanisms can vary. In some cases, employees may be pushed out, perhaps as part of a performance review, in which their performance or commitment is seen as inadequate. In other cases, it may appear more as a free deliberated choice on the part of the worker – perhaps a choice to move from ‘taking it’ to ‘leaving it’. Or, as is perhaps more likely, the mechanism can appear more hazy. One ex-solicitor was surprised by her own decision to resign:

I hadn't actually decided that I was going to resign until that [exit] interview. I was thinking: "No, I'll take maternity leave and just see what happens". And they started off the discussion about what would happen during my maternity leave with saying how important it was for me to keep connected with the firm and how - effectively - I'd be doing all this work. It's like: "No ... maternity leave, I'm looking after a baby, I will not be doing any work for these six months"... They say: "Yes, but we need to make sure you're not out of the loop". And they were trying to get me to continue to run the in-house training programs and the staff training programs without pay. At which point I said: "... Thank you for all the care that you've put into planning my career ahead for the next few years, but I can see that there's no way that I will be doing that". And I felt like I'd lost ten pounds when I walked out of there, it was just like, I was so happy... I rang [my husband] and I said: "Guess what, I just resigned." And he said: "Thank God, you might sleep now". (Rachel)

The exit from private practice is by no means confined to women, but it seems to affect women disproportionately, and it is often linked to the desire to have children and to spend time with the children. When women leave private practice, they may drop out of employment altogether, take up ‘non-legal’ employment, move to academia, or move to legal work with corporations or in the public sector. A recent report (LIV & VWL 2006, 8) suggests that the move to take up in-house counsel positions is a common option. Such positions offer opportunities to exercise legal skills with more attractive working-time schedules, more options for flexible work arrangements to suit the employee, more solid career paths and equal opportunity policies, and perhaps more sophisticated management.

Figures for membership of the professional body, the Law Institute of Victoria, indicate a distinct kink, with far fewer women than men in the age groups after 40 (Figure 3). Though this may partly represent the smaller cohorts of women entering the profession in previous decades, it also hints at the disproportionate rate of exit for women.

Figure 3: Solicitors in private practice, by age and sex, Victoria, 2007



Source: Law Institute of Victoria Membership Statistics, April 2007

Although exit from law firms can cause distress for the individual solicitor, the extent of distress will vary. Some solicitors may be relatively undaunted, arguing that they joined the firm for experience and were not committed to a life-time career with the firm. Even for those whose hopes of a career have been dashed, the discomfort of the departure may be cushioned by the widespread availability of alternative jobs that draw on their legal training and experience.

Is high attrition a problem for the law firms themselves? The extent to which this is true will partly depend on the state of the labour market. Certainly the large firms compete vigorously to attract the top recruits out of law schools, as part of a strategy of market differentiation in terms of reputation and service quality. But this is compatible with tolerance of high wastage of talent. There seems to be an abundant supply of bright new recruits to take the place of those exiting from law firms. In spite of the increasing demand for legal services and legal practitioners, the labour market situation of lawyers, even of clever lawyers, would seem to be characterised by relative oversupply. The number of law schools, law school places and law school graduates has been high and getting higher, at least since the 1970s (Williams-Wynn and Nieuwenhuysen 1982), and one recent estimate suggests that there are currently around 30,000 law students in Australia compared with approximately 36,000 qualified practitioners (Thornton 2005: 157).⁸ The availability of this supply can generate a virtuous circle of benefits for law firms. It helps to alleviate pressure for change in rigid working-time patterns; it thereby helps to reproduce the pattern of long hours that, as we argue below, is often a key to the profitability of firms. At the same time, high turnover functions as a convenient

⁸ It can be argued that “about 50 percent of graduates do not enter legal practice but instead use law as a general qualification for a variety of careers” (Regan 1996: 184). However, many others do aspire to a conventional career in legal practice.

mechanism of selection for firms, whereby those workers who remain are not only amongst the brightest but are part of that smaller, and even more valuable, minority of smart solicitors willing to offer high work effort on a long-term basis.

Interpretations of the state of the labour market varied radically amongst our interviewees. Some believed that law firms in Melbourne faced a shortage of solicitors, in particular experienced solicitors with four or five years' experience. Some referred to the alleged cost, in terms of recruitment and training, of replacing experienced solicitors (see also Law Council of Australia 2001, 138-139; Strachan and Barrett 2007, 7), and they expressed bewilderment at why firms would tolerate high attrition. But others agreed that using up junior solicitors was a sustainable practice that could be continually refreshed by the reserves of new solicitors coming through:

(T)here's also just a lot of lawyers now, but there's so many law schools, and there is so many new graduates, and graduates have a lot of pressure on them to get a job, and once (they) have a job, maintaining it. And there's so many people standing behind them ready to fill their place...(Anna)

A similar view was put by a spokesperson for the 'Junior Lawyers Union', cited in *Lawyers Weekly* (Gibbs 2007):

Law firms are in the position that there are so many law graduates they can cull down to what they think are the best students... I think what law firms are doing, especially the bigger ones, is recruit a hell of a lot of articulated clerks, expect half of them to burn out, and then it's sort of like survival of the fittest really. So the people that remain are often those that are willing, I guess, to put up with those conditions for the rest of their lives.

This pattern of attrition leaves most law firms with a distinct pyramidal structure. At the base are a large number of junior solicitors, both male and female, most of whom are working very hard and many of whom are thinking of quitting.⁹ Above them are a group of Senior Associates who are used to the workload, battle-hardened and relatively uncomplaining. And then at the top of the pyramid are the partners, predominantly male, often working extremely hard but profiting from the large revenue stream generated by the many employees below (as well as by the partners themselves).

While some solicitors depart from the firm, others remain. They must accommodate themselves in some way to the rigid working-time schedules. This is hardest for women with children, who may have to depend on nannies to reproduce the effect of having a partner who can do the bulk of caring work. For those who get past the initial stages of life as a junior solicitor, money – in the form of a relatively high base salary and bonuses – may be a consolation. However, the conventional map of a steady career in the firm, with its promise of more money as the solicitor advances through the ranks, may not be as effective as in the past. Many no longer aspire to promotion. As a carrot it does not seem so enticing, since it seems to come with demands for even more work. For those already straining under the workload, such a prospect is by no means

⁹ In one recent survey of over 800 young lawyers, a majority (57.1 percent) firmly stated that they did not see themselves practising law in five years time (Hudson Human Capital Solutions 2004, 7).

attractive. One ex-solicitor recalled her sudden awareness of the double-edged nature of her own promotion:

We had this lunch after we were made Senior Associate... And I remember at the lunch they said: "Right. Good on you, great, congratulations, but now the hard work really starts". You are thinking: "This is quite good" and then all of a sudden...there is this big deflation... I remember it so clearly, because I thought: "Oh my god!"... (Caroline)

The crucial step to more money is associated with the promotion to partnership. Though partnership may once have been 'a virtually foregone conclusion' for solicitors progressing steadily along the career path in small firms (Thornton and Bagust 2007, 802-803), it is a receding prospect for most solicitors within the large law firms, which are increasingly trying to keep a cap on the number of equity partners (Merritt 2007).

The conventional career path has an element of stick in addition to the carrot. Several interviewees spoke of an 'up or out' expectation within firms, whereby solicitors are expected to follow a strict timetable of advance towards partnership (or are expected to leave the firm). But this too seems to be fraying. It does not seem integral to the operations of the firm. Moreover, it seems to be widely deplored, and many HR managers were insistent that it did not prevail in their organisation. They pointed to the fact that organisations were creating room for new senior positions ('senior counsel' or 'salaried partnerships') that could accommodate experienced solicitors outside the partnership structure.

Firms seem somewhat uncertain about the conventional career path. On the one hand, the expectation of inexorable progression to partner is clearly eroding and it seems to have less and less purchase on the minds of junior solicitors. On the other hand, the goal of partnership is still held up as a sort of totem and is rarely questioned. One of our interviewees suggested that the strongest taboo in many firms is not to do with expressing a desire to go part-time but rather with renouncing the pursuit of career within the firm. She had recently completed a job interview in which she had been open about wanting to work part-time, but she had felt obliged to hide her ambition to go to the Bar:

You don't tell them that you don't want to be a partner. It means that you're not hungry ... You won't be so interested in bringing money in...(Anne)

Although law firms are becoming less committed to their employees, they still seem to insist that employee solicitors must display a high level of commitment back to the firm.

V BILLABLE HOURS

At first glance, the demanding and inflexible pattern of working hours for solicitors in private practice seems curious. Direct pressure to engage in long daily hours is rare. Experienced solicitors are seldom confronted by demands to stay at their desk.¹⁰ The

¹⁰ Direct pressure may be uncommon, but it is not completely unknown. Workers in one Melbourne firm complained of email injunctions "telling lawyers they had to be at their desks from 8 am to 6.30 pm regardless of current work requirements and family responsibilities" (LIV

comment of one partner about her own firm could be applied to many other firms: “*This is not a ... clock-on/clock-off sort of place, where people are sort of looking over your shoulder, going: ‘oh, she was only here for this many hours’*” (Marian).

Indeed one solicitor that we interviewed was appalled when she learnt of her brother’s experience in applying for a senior accountancy position:

[R]ecently my brother got offered a job, a fairly senior job with [XYZ]. I think they are an investment bank or something, but he was told explicitly in the interview, that he was expected to be there at seven and not to be leaving any earlier than 6:30 at the other end of the day... How shocking that must be to have that clearly stated as being your normal working week! (Jenny)

This does not mean, however, that long hours for solicitors in private practice are the outcome of a free decision. Nor does it mean that the clock plays no role. Management demands are still present and are still strict, but they tend to be indirect rather than direct. This leads the discussion to the intriguing and peculiar system of ‘billable hours’. Versions of billable hours can be found in other professions (see Yakura 2001; Evans, Kunda and Barley 2004), but the way it works in legal practices is distinctive. This system is still poorly understood. Commentators freely refer to the ‘tyranny’ or the ‘treadmill’ of the billable hour, but the discussion is often occluded because it is framed in terms of the profession as a whole, as if the organisation of the profession in terms of law firms, partners and employees were of little relevance. As a result, most of the discussion is devoted to the impact on clients and it quickly slides away into an analysis of alternative billing systems (ABA 2002; Spigelman 2004; Legal Fees Review Panel 2004). In contrast, we argue here that the system of billable hours is important because of its impact on employee solicitors in law firms and their working-time patterns. It is crucial to carefully examine the way this system operates in law firms.

‘Billable hours’ can mean different things, but in its basic sense it refers to that part of a solicitor’s work or time at work that is ‘on file’ and therefore can be charged to a client. Individual solicitors keep a record (a time sheet) that details both the tasks they have undertaken, marked according to codes for certain types of work task, and the time taken for each task, usually in units of six minutes (one tenth of an hour). The worker may have photocopied a document for one minute (one six minute unit), researched a precedent for a coming case for forty minutes (seven six minute units), or spoken on the phone to the client for eighteen minutes (three six minute units). Where the tasks are related to providing legal services for the client, the record becomes the basis for generating the bill for the client and thereby generating the income for the practice. The final bill for fees is reached by taking the time units (hours) recorded on the time sheet – so long as these are ratified as truly ‘billable’ by the supervisor – and then multiplying by the hourly rate of payment that is seen as appropriate to the skills and seniority of that solicitor (the ‘charge-out rate’).

Billable hours can be understood first of all as a method for charging clients. In the United States its rise and diffusion is traced back to the 1960s, when flat fees and standard scales recommended by the professional association became more difficult to

& VWL 2006: 38). Similarly, one junior solicitor that we interviewed complained of pressure to always be at the desk and readily available for any tasks that might be set by senior solicitors.

impose, partly because they appeared to contravene anti-trust laws (ABA 2002; Kuckes 2002; Fortney 2005). Its rise is also sometimes linked to the emergence of corporate law firms, involved in complex transactional work that was hard to price in advance (Kuckes 2002). Billable hours were initially seen as just a convenient means of billing, which offered less risk to law firms and more detailed information and more transparency to clients. They became dominant by the late 1970s in the US, probably a decade or so later in Australia (Legal Fees Review Panel 2004).¹¹ Billable hours are by no means universal: some services still attract a flat or fixed fee; conditional fees and retainers can be found in some areas; sometimes billable hours are modified by upper limits, prior guarantees or discounts; and there is continuing interest in and experimentation with alternatives such as ‘value billing’. Nevertheless, billable hours – understood broadly as a method of billing based on close recording of hours devoted to work ‘on file’ – are dominant and form part of the administrative landscape in almost all legal practices in Australia (Legal Fees Review Panel 2004, 23).

In some sole proprietorships and very small firms billable hours are still used primarily as a method for charging clients. However, in larger firms other aims have come to be added on (Epstein et al. 1999). In particular, billable hours have come to be used for the purpose of personnel management – as a tool to measure and then to control the performance of employee solicitors. The emergence of this use came relatively quickly. Initially, time sheets may have been used just as technique for helping to manage inventory in large law firms. The decisive change was linked to a recognition that billable hours offered both a direct measure of the solicitor’s contribution to income (and profit) and a powerful lever to secure and expand that contribution.¹² Managers, spurred on by a business imperative, moved to introduce ‘targets’ or ‘goals’ or ‘benchmarks’ (in fact often quotas) for the number of billable hours that needed to be achieved by each solicitor over a specified period of time, such as the day/week/year. Such ‘targets’ are now a crucial feature of the organization of work in most law firms, and the vast majority of employee solicitors in such firms are working within the framework of targets for ‘billables’. Within this framework, the employer (or the supervising partner) distributes cases/tasks and then reviews the time sheet of individual solicitors in order to assess whether they have accomplished the tasks, at what speed per task, and with what outcome for billing.

¹¹ The conveyancing scale, which provided a solid base for the income of many Australian firms, disappeared in the Australian Capital Territory after 1974 (Nieuwenhuysen and Wynn-Williams 1982), and then from the other states and territories in the 1980s and 1990s. The abolition of the scales system in New South Wales has been dated to as late as 1994, when state legislation released practitioners from the ‘price fixing’ limitations of the scales, replacing these with an emphasis on disclosure and ‘costs agreements’ (Legal Fees Review Panel 2004, 4-5, 23). One solicitor with lengthy experience in law firms suggested that senior partners in the period before billable hours had become skilled at charging clients according to the bulk of the file: “*once they got to the end of the file they’d literally hold it in their hand and sort of weigh it*” (Phillip). This offers a new perspective on the idea that ‘scales’ were dominant in the old days!

¹² One common criticism of billable hours is that it provides a poor measure of the value of the work to the client or indeed to the solicitor (ABA 2002). This may be so. At the same time – assuming the billable hours count can be realised in the client’s fee – it provides an excellent measure of the value of the solicitor’s work to the financial success of the firm. This has proven to be the more important point of view.

The development of billable hours as a tool of personnel management is the key to its consolidation as a distinct *system*. The precise way in which such systems operate often varies from firm to firm. Billables may be measured in hours or in (six minute) units. In some firms, targets for 'billable hours' are joined with, or even displaced by, targets for a 'budget', where the latter is a somewhat more precise measure of the contribution of the solicitor to income and profit, couched in terms of dollars and generally measured over a longer time-scale such as a year. Similarly, in some firms targets for billable hours are coupled with targets for other activities that constitute 'non-billable time'. Another axis of variation concerns the extent to which the target for billable hours is explicit and whether the target is explicitly communicated to the solicitor. This can in turn be related to variation in the way in which and the closeness with which the performance of the solicitor is monitored and whether and how allowance is made for factors that can impede performance. Also related here is the variation in transparency, with some firms making a point of regularly posting each solicitor's results on a screen for all to see, whereas other firms reserve reviews to private discussions between the supervising partner and the solicitor. Other important sources of variation can include the size of the target assigned to each solicitor, the length of any probation period before the employee is expected to meet the full target, whether there is any differentiation according to classification level, and whether there is any discount for non-billable activities. The precise pattern of rewards and sanctions can also vary amongst firms, for example in the way in which salaries interact with bonuses and other rewards for surpassing the target.

Variation amongst firms can be complemented by variation within firms, according to the legal specialty, the traditions of the section, or the preferences of individual supervisors and partners. Such variations often attract the close attention of commentators and prospective employees. Nevertheless, though there are undoubtedly variations in workplace culture, particularly related to the size of the firm, the underlying structure of the system is surprisingly uniform, centred on billable hours' targets that place extensive pressure on employees.

It is clear enough that high targets are a problem for employees. At first glance smaller targets would always seem to be better. But this should not be assumed. Smaller targets do not necessarily mean a reduction in pressure on employees, if high effort is still extracted through measures such as lean and mean staffing policies, an emphasis on competition for promotion, deals for a generous share of earnings above the target of billable hours, or extra performance targets for non-billable hours.

Current targets for associates in law firms in the US typically range between 1700 and 2300 billable hours per annum (Yale Law School Career Development Office, nd).¹³ A national survey in 2005 suggested that around 86 percent of 'supervised attorneys' in

¹³ This report from the Law School at Yale University analyses the challenge of achieving such targets and warns graduates of twelve hour days and regular work on the weekends (Yale Law School Career Development Office, nd). Extraordinary cases of even higher annual targets are sometimes cited. A target of 2420 billable hours (though only 2200 of this was described as 'hard', while 220 hours were 'soft' billable hours – Fortney 2005, 186-188) was imposed at the New York offices of a leading law firm, Clifford Chance. In a memorandum leaked to the press in 2002, Associates at the firm complained about pressures, including pressures to 'pad' bills for clients (Clifford Chance Associates 2002). In the wake of the subsequent controversy, the firm allegedly retreated from mandatory billable hours' targets (Fortney 2005).

law firms with more than ten attorneys worked with a minimum billable hours requirement. The survey produced an estimate of 1887 mean hours required, but with higher targets in large (1919 hours) or very large firms (1930 hours) (Fortney 2005, 175-176; see also ABA 2002, Kuckes 2002). The level has been ratcheted up since the early days of the billable hours system, when the American Bar Association (ABA) spoke of a 'reasonable' workload for a full-time job of around approximately 1300 fee-earning hours per year (Kuckes 2002; Fortney 2005, 178-179). Turow (2007) suggests that in the large Chicago firms, the expectation has risen from 1750-1800 hours per annum in 1986 to 2000-2100 hours twenty years later. In contrast to its earlier claim of 1300 hours, the ABA has been forced to plead for a target of 1900 hours of billable client work, complemented by 400 hours of other non-billable work (ABA 2002, 49-51).

In law firms in the United Kingdom targets for billable hours are not so explicit, but they still seem to have an effective presence. One interviewee with experience as a solicitor in the UK suggested that the target was:

about 1800, but the bonuses, if you were entitled to one, didn't kick in unless you were ten per cent above that. So you're looking at about 2000 hours before you start to qualify for additional payments... (Phillip)

In Australia targets for billable hours may once have been framed in terms of the week (Mendelsohn and Lippman 1979), but they are now usually framed in terms of the day. It has been estimated that three quarters of private practice solicitors have a billable hour target of six to seven hours per day (IBISWorld 2007, 44). The size of the target can vary, often according to the size of the firm. According to one recent report (VWL 2005: 6-7):

For a large firm, it is expected that the lawyers will bill between 7 to 7.5 hours per day. For smaller firms, it is expected that lawyers will bill between 5 to 6.5 hours per day.

Amongst the largest firms, Freehills has been cited as the leader, with a daily target of 7.5 hours, with Allens Arthur Robinson at the rear on 5.9 hours (IBISWorld 2007, 44). These targets apply to both full-time and part-time workers, but the difference is that part-time workers are assumed to work fewer days per week. In the case of full-time workers, we can extrapolate the daily target to an annual target. If we assume six billable hours per day over a year of 230 working days, that is Monday to Friday each week with four weeks' annual leave and ten days of public holidays, then this amounts to a target of 1380 billable hours per annum. If we assume seven billable hours per day, this amounts to a minimum 1610 billable hours per annum, closer but still apparently short of the US target. As in the US, the level of billable hours targets seems to have risen over recent years (Law Council of Australia 2001, 130; Gibbs 2005).

The basis of the system is close and relentless time recording, undertaken by the worker herself, initially in a logbook but nowadays often with the aid of readily-available software systems. S/he should record each telephone call, meeting, letter, memo, draft agreement, research project and document review (Kuckes 2002). The time sheets are usually submitted daily, and can be filled in either at the completion of each set of tasks or at the end of the day. The time sheets require careful effort and additional time that is itself not billable. As one ex-solicitor comments:

The hardest part about the billable hours... is actually capturing all your time... I found the busier I got, the harder it was for me to capture all my time... Because I didn't have time to go – you know, I would have a phone call here and so a number of advices or letters, and you just get so busy that sometimes you lost time... (Julie)

Solicitors in private practice do not have to punch a Bundy clock and do not need to watch a clock-face fixed on the office wall. But timepieces still rule their working lives:

I'd never understood it until I did it, until I had to. I used to think: "Oh what's the big deal about a time sheet". But until you go, oh you know: "Remember to start the clock, turn off the clock, start it at this point, turn it off at that point"... Or [you] come to the end of the day and think: "God, what did I do today and how long did it take me?" I used to try and write things down but it didn't always work – nightmare... (Mary)

The recording system has gradually become more and more sophisticated, granting supervisors greater capacity for monitoring and controlling. Time sheets may be reviewed monthly as a basis for billing clients, but they are often reviewed ('tracked') weekly or sometimes daily as a basis for checking workloads and performance of individual solicitors. The fullest evaluation may wait for an annual or bi-annual performance review, which may include other performance targets but is frequently focused tightly just on billable hours' targets.

This use of billable hours is tied to a web of rewards and sanctions. The links are often subtle and contingent.¹⁴ Nevertheless, roughly summarised, it is safe to say that consistent failure to meet the target leads to sanctions, including dismissal, while consistent performance at or above the target not only consolidates employment security but leads to higher rewards. These include high base salaries, pay rises, bonuses and promotion. Bonuses may be annual or quarterly or may take the form of a share of all income over the target figure. In particular, billable hours are often used as the key criterion in performance reviews and assessments for promotion. As a result, billable hours can be a powerful tool not only for managing performance in a static sense but also for improving performance, that is extracting more effort and boosting profitability. This can occur in a number of ways. Most immediately, a framework of competition for bonuses and promotion, linked to high targets, represents a way of encouraging solicitors not just to reach the quota of billable hours but to reach well beyond it. This can be facilitated by an allocation of cases guided by lean staffing policies and the imposition of strict norms of effectiveness. In the longer term, more crudely, managers can extract more work by simply raising the number of billable hours required.

¹⁴ For example, falling short of a target for billable hours need not lead automatically to penalties. Several partners and managers that we interviewed insisted that such a shortfall would just signal a problem that needed to be investigated; it would simply 'raise a flag' (Nicholas). It might not indicate underperformance on the part of an individual solicitor but might be due to numerous other factors: s/he may not have been allocated enough work (for varied reasons), s/he may have been busy with other legitimate activities, s/he may not have accurately captured the billable hours in a time sheets, s/he may have been on leave during the relevant period, or s/he may have had personal problems that led to a temporary distraction.

At first glance the emphasis on timekeeping invokes the memory of scientific management (Sommerlad 2002: 218). It seems Taylorist in its function as a tool for tightening supervision and extracting greater effort. But it is important to note the differences. In the case of solicitors, the timekeeping is done by the worker and it is ostensibly done first of all for the benefit of the client. Moreover, in contrast to many of the tasks analysed by Taylor, the tasks done by legal professionals are complex; indeed they are often unique or at least contain unique elements. Consequently, timekeeping is not linked to the separation of conception and execution, and it does not lead directly to the development of tight norms for task performance that can be prescribed by the employer. On the contrary, much of the work remains wreathed in uncertainty,¹⁵ and there is still ample room for argument, often reaching out to involve the client as well as the solicitor and the employer.

The long daily hours of solicitors are moulded by the billable hours' system. Actual hours tend to be much longer than billable hours because they must also accommodate non-billable tasks. A recent report in Australia argues that the pressures of meals and other necessary breaks (non client-related meetings, professional development and work-related social engagements) requires in practice "a working day 3-4 hours longer than the billing requirement" (VWL 2005, 7). Others estimate that moving from billable hours to actual hours requires adding on 50 percent, in order to take into account the ancillary tasks such as training, client development, supervision, mentoring and administration (Fortney 2005, 179).¹⁶ The unavoidable conclusion is that a high target for billable hours implies long actual hours each day. Thus, a target for billable hours of six hours per day, common in Australian law firms, would usually entail nine or ten actual hours. Just as the targets apply equally to full-time and part-time workers, so too does this pressure towards long daily hours apply equally.

In the light of this argument, we can see that a standard working day of eight-and-a-half hours (including one hour for lunch) would only be compatible with a billable hours' target of five hours. Any target beyond this threshold can be regarded as pushing workers towards long daily hours.

The employees we interviewed readily recognised the relation between long actual hours and high billable hours' targets:

You don't just get to charge to your client in the day, you also have to do admin, always admin... At [ABC] their preferred target is 7.5 of billable. Well, that's 7.5 hours sitting on your seat at your desk, working on a file. Then you have got to go to the toilet, then you have got to have lunch and then you will have your own stuff that you are doing on email or social stuff that you are doing. Then you have got your admin load and then you have potentially got marketing responsibilities. (Jenny)

¹⁵ This is particularly so for the commercial law favoured by large firms. In his classic participant-observation study of a corporate law firm in Chicago, Flood (1991) stresses the complex interactive nature of much work by corporate lawyers, centred on advising, negotiating and drafting documents. He suggests that the fundamental uncertainty of dealmaking, anchored in the nature of the relation between lawyer and client, is in turn compounded by the structure of law firms, which adds delicate relations between superiors and subordinates into the mix (Flood 1991, 48-49, 68).

¹⁶ Some ancillary tasks, such as recruiting clients (marketing), are essential to the prosperity of the firm and may be incorporated together with billable hours into performance targets.

I had to write articles, attend seminars... Yeah, just the other components, meetings and all that kind of thing. We had marketing meetings every week and team meetings every couple of weeks, and sometimes you felt pressured by people who are sitting there joking around, and I was thinking: "Oh gosh, I don't really have the time"... (Beth)

In their interpretation of the pressure, managers tended to give more weight to individual factors. One HR manager explained how the target of seven billable hours that was used in her firm found expression in long actual hours:

It depends on the, not capabilities... but the working methodology of some of the staff. You know, there might be some who are pretty well experienced...and so they can work less hours, and they're more productive. Those who are less productive and make lots of phone calls and you know, the internet searches and chats and coffees, etc, they're going to find themselves here later because of their own productivity methods. Look, we would generally say that 8-6 or you know, 8.30-6.30 is probably the way that most of our legal staff would work. There are some who don't like to get to work until 9.15 – 9.30. In which case, they're already behind the 8-ball, and they've got their seven [billable] hours then ahead of them. So, you know, but we are pretty flexible as to the hours that people work and they do know that once those seven [billable] hours are up, they're free to go. (Amanda)

Can actual hours ever be shorter than billable hours? This leads into the vexed issue of 'questionable billing practices'. Accusations of inflating or 'padding' bills are often levelled at solicitors. Sometimes the accusation is simply one of over-servicing, which would not entail any inflation of billable hours beyond actual hours. But on other occasions the accusation may refer to more dubious practices. These can include charging for travel time and charging for time spent with clients in social situations, which tends to convert non-billable time into billable hours, but they can also include charging for recycled work at the original price, 'double billing' (charging two clients at once during the same period), and creating 'phantom time' (Curtis and Resnik, 2002, 1414-1417). Such practices involve honest recording of time, but the latter group in particular can inflate billable hours beyond actual hours. At the extreme, critics also cite dishonest time recording, whereby tasks and billable hours are more-or-less conjured out of the air.

Questionable billing practices do undoubtedly occur. One interviewee who had worked at one of the top-tier firms under a system of very high targets complained of the pressure to 'write up' the billable hours:

I was in the workplace relations unit. They were far more explicit about what you were required to do and you would get a print-out at the end of each week with your billable, what you had billed. That would be graded against other people in that department... To meet your targets meant that you had to bill for eight hours a day... And what they would often do to kind of adjust their budgets would be to increase the time that I had charged. My time was often written up by senior partners. So if I'd spent say four hours on advice and I would write down that I'd spent four hours on advice they would quite often write that up to six or whatever... Whether that was budget-driven or sometimes they'd term it ... "well you probably did that a bit more efficiently than someone expected at your level, so we'll write it up". But I would never do that myself.

Most people would actually kind of do that before the partner would do that, but I never did. (Rachel)

In our judgement it is important to distinguish the situation of supervisors and managers from the situation of employee solicitors. Both may have an incentive to inflate billable hours, but the disincentives and the opportunities are different for each group. This acts to lessen the likelihood of common action to inflate bills.

In general, the most direct incentives and biggest opportunities for padding are located with supervisors and managers, who draw up the final bill for the client. On the other hand, however, firms are restrained from padding by the pressure of competition in their product markets. In particular, these bills can encounter fierce scrutiny from clients, often with legal departments staffed by solicitors who have had experience in large law firms.

The incentives for employees are fewer (though they can escalate if the billable hours' targets rise and employees feel that they are faced with a choice between impossible overwork and cheating on their time records). Moreover, the margin for manoeuvre for employees is much less. Of course, employees may still get a chance to shave a few minutes here and there; for example, one phone call could be billed as either one or two units. But this is petty manipulation. It is more often overshadowed by anecdotes of solicitors, often junior solicitors, spending a long time on a task and then having their billable hours 'written back' to only a fraction of these hours, because they have made mistakes or they have breached an underlying norm of what is acceptable. This 'writing back' could be done by the supervising partner (IBISWorld 2007, 45) or indeed by the solicitor herself, worried about drawing attention to what she perceives as her inefficiency. In general, the time sheets of employee solicitors are subject to scrutiny from supervisors, who have a fundamental interest in ensuring that the tasks have been done with a sufficient economy of effort and to a sufficient level of quality that would allow the recorded billable hours to be successfully billed to the client.

Insofar as the employee solicitor has a margin for manoeuvre, it is most likely to be pursued outside of the structure of the billable hours' target. Some elasticity may be achieved with work that is non-billable. Thus workers may seek to eliminate mentoring or background reading or they may work through their breaks. This can have bad consequences both for the individual and for the quality of the social relations within the firm.

When you are in the law firm context, you think: "Oh shit, I'm having this chit chat but can I bill them for it?" or... "Are they going to get pissy when this phone call is a two-unit phone call rather than a one-unit phone call?" And even with your colleagues, you'd have a talk with them about stuff, but ... you'd have in your mind and you could see in theirs that they were kind of going: "Tick tock, tick tock, I'm not at my desk, I'm not billing, tick tock, tick tock; this is more time I'm going to be catching up". So psychologically I think that's really quite stressful for people. (Fran)

The billable hours thing is definitely the worst aspect of the job, that's something that is constantly on your back. Time is just constantly on your back, and it means that people don't share knowledge in the way they otherwise would do if they didn't have the time

pressures... All the pleasantries and niceties go out at law firms because everyone is so efficient... (Rebecca)

Billable hours began as a mechanism for billing clients, but it has been subsequently modified to serve the additional purpose of monitoring and controlling the work of individual solicitors. Though it still operates as a billing method, some argue that it has changed so much that the billing aspect is now more appearance than reality. A posting by 'guera' (2007) on the Legal Soapbox referred to the practices of 'writing up' and 'writing back' and argued: "*In the end the partner signing off on the bill makes a decision on a 'fair price' for the work done, which is not so different from fixed fees, so the timesheet is then just a tool for partners to crack the whip on their junior staff.*" This is perhaps an exaggeration, but it does underline the point that performance control can be identified as the *primary* dimension of the operation of billable hours in law firms.

In spite of the terminology of 'hours', the billable hours' system should not be seen as purely to do with working time. It is just as much to do with workloads. The target set for each solicitor can be viewed as a specific bundle of work tasks that, in the course of being completed, must be converted into hours before being converted into revenue and profit. This set of connections is even clearer when the target is framed in terms of a 'budget'. As a method of organising work, the system of billable hours is best seen as an example of a 'results based' system (Rubery, Ward and Grimshaw 2006). It offers an interesting example of 'management by indicators', seen by some scholars as a new mechanism for rationalising skilled customer-service work (Lehndorff and Voss-Dahm 2006). In this system, workers are put face-to-face with the market (under conditions determined by management). The market is used as a form of indirect control, and workers themselves often become agents of their own rationalisation, in a process of 'self-managed intensification and extensification'. The link to the market was always present in solicitors' work because of the nature of the relation with clients. But billable hours connect the worker and the client in ways that are more direct and more intense than other billing methods.

VI MANAGEMENT PRACTICES AND THE PURSUIT OF PROFIT

Billable hours are controversial. A major report from the American Bar Association suggests that over-reliance on billable hours in the US legal profession has produced unfortunate 'unintended consequences' (ABA 2002, 5). These criticisms are echoed in the Australian literature, where the system of billable hours is criticised for encouraging quantity rather than quality of service, rewarding inefficiency and indirectly discriminating against those working reduced hours and against those who are comparatively efficient. More broadly, it is seen to discourage activities such as community service, to diminish collegiality and to encourage 'questionable billing practices' (Spigelmann 2004; Legal Fees Review Panel; VWL 2005 7).

This paper focuses on what we see as the main impact – on the working-time patterns of employee solicitors in private practice. We argue that the use of billable hours as a tool of performance management, centred on the imposition of targets, helps to explain both the dominance of long hours and the limited presence and narrow forms of part-time work. The equation is straightforward. High targets create pressure for long daily

hours for both full-time and part-time solicitors in law firms. More broadly, high targets impede the development of good quality work, interfere with work/life balance, and push many young solicitors out of law firms.¹⁷

We do not suggest, however, that the billable hours are themselves to blame for these consequences. They are best seen as a tool, a technical administrative device, which can be modified and then applied in different ways and for different purposes. They could be used just for billing, as in some small boutique firms. Even in large firms, when they are taken up as a systematic method of managing employee solicitors, they could in principle be confined to measuring relative efficiency, checking the effectiveness of case allocation, and perhaps even limiting overwork. The fact that they have been used to control the work of employee solicitors and to encourage rather than discourage overwork is not the fault of the tool of billable hours. It is a result of its use (and abuse). Thus we argue that billable hours can be seen as the *proximate cause* for long working hours, but to analyse the more deep-seated dynamics it is necessary to dig deeper.

The pivotal event in the evolution of the billable hours' system was the introduction of targets for employee solicitors. Why were they introduced? Why are they so high? The discussion so far already hints at the answers to these questions. The crucial factor is 'management practices'. Within the framework constraints of the legal services industry, the introduction of targets proved advantageous to managers and partners in law firms. It proved useful in their drive to secure an adequate rate of profit.

There is no room to develop this argument in detail. But we can make a few points. As noted above, private practice is labour intensive, heavily dependent on the work of individual solicitors who generate fees through the provision of legal services to clients. This is highly skilled work, on complex tasks that are often surrounded by uncertainty. Within these parameters, managers face the challenge of ensuring that the work of solicitors leads to sufficient revenue (and profit) for the firm. How? What is the best business model?

The answer can be framed in terms of a review of the 'levers' of profitability defined by the development of billable hours as a technique of billing. Within a framework of strong competition amongst law firms, it is difficult to increase charge-out rates, since these are advertised to clients and often form the basis on which clients choose a particular law firm. The total claim for billable hours for a set of tasks is less transparent, but again it would be risky in a competitive situation to allow these to balloon out beyond a level acceptable to clients. The favoured business model starts first with careful attention to the 'gearing ratio', or what is sometimes called *headcount leverage*, that is the ratio of employee solicitors to partners. It is important to have an adequate number of employee solicitors who can generate billable hours and therefore revenue for the firm. Gearing ratios tend to be higher in larger firms, and in the leading Australian law firms they average about 3.5: 1 (see Table 1).

Second, it is important to ensure that each employee solicitor is working efficiently, that is working to generate billable hours and revenue that can more than cover her salary

¹⁷ According to the Law Council of Australia (2001, 151): "the single most significant factor driving many experienced practitioners to become corporate counsel is the ubiquitous law firm time sheet".

(and other costs). Keeping each employee solicitor working efficiently is dependent on several factors, including having enough work and allocating it efficiently and then providing an environment in which the willing participation of the individual solicitor can be secured.

Within this framework, the billable hours' target serves several different but complementary purposes. It is of course a target for the firm itself as well as for the individual solicitor. Once the charge-out rate and the solicitor's salary are defined, the billable hours' target functions for the firm as a convenient mechanism for setting a desirable rate of return for each solicitor and, by extension, for the workforce (and the firm) as a whole. Consequently, the target functions as a central index of performance and profitability. More profoundly, however, it also functions as a powerful lever, which can be used to control the work of the solicitor. Recorded hours are closely monitored by supervisors, and indeed the supervisors' approval is necessary for ratifying the recorded hours as truly 'billable'. In this way, supervisors and managers are able to ensure that tasks are done efficiently and to a proper level of quality. By using their power to allocate cases and to monitor the billable hours' targets, supervisors are able to define and shape the intensity and the length of solicitors' work, ensuring that each solicitor is working as close as possible to full capacity. Once these basic elements are in place, supervisors can assess whether there is still any slack in the system by adjusting (raising) the targets for each solicitor.¹⁸

For the individual solicitor, the billable hours' target represents the centrepiece of the system of rewards and sanctions offered by his or her job. It therefore plays a role in mobilising the willing participation of each solicitor, so that s/he not only seeks to fulfil the target but even to surpass the target. In this way, the intensification and extensification of work associated with the billable hours' target no longer appears as just a coercive mechanism imposed from outside but is instead internalised and given an element of self-direction. This effect is itself a potent advantage for the firm.

The economic structure of law firms is reasonably transparent. As one advice manual notes, "it's not a complicated equation" (Yale Law School Career Development Office nd). A US commentator (Stracher 2006) sums up the dominant business model provocatively:

Corporate law firms are, essentially, giant pyramid schemes. The associates at the bottom funnel money to the partners at the top. At Sullivan & Cromwell, for example, according to *The American Lawyer*, the average partner earned \$2.35 million last year. A young lawyer who bills 2,200 hours at \$250 per hour generates \$550,000 for the firm, only \$145,000 of which pays his salary. The more the associates, the richer the partners (assuming there's enough work to keep them billing – and, presumably, cooing)...

In this example, the ratio of revenue to salary for the employee is around 3.8: 1. Similarly, in Australia most employee solicitors are expected to generate income for their firm equivalent to around three times their salary. This expectation also applies to

¹⁸ This is sometimes discussed in terms of increased 'productivity', but an increase in billable hours per employee is not strictly an advance in productivity, since the increased output is being achieved at the cost of increased input (more hours). There is not much room in the legal profession for increased productivity in the strict sense.

part-time solicitors.¹⁹ Of course the remaining two thirds of revenue is not pure profit, since other costs must also be deducted. However, other costs are not a major component of total costs in law firms, and there is plenty of room for profit. Moreover, we can note that most costs are fixed and semi-fixed and that variable costs do not play a major role in a service industry such as legal services. This means that once the major costs (including salaries) are deducted, any increase in billable hours tends to feed directly into increased revenue and increased profit (IBISWorld 2007, 44-45).

In this approach, restraint of costs tends to be a subordinate issue. It is important for the firm to keep a lid on aggregate staffing costs by making staffing 'lean', carefully calibrated to the amount of commissioned work. It is also important to retain a good gearing ratio (and within this ratio to ensure a high proportion of junior solicitors on relatively lower salaries). Similarly, it is important to ensure that the ratio of revenue to salary for each employee solicitor remains high. But it would be imprudent to seek to depress the salary of each solicitor. Since working-time conditions are poor, expectations for wages are likely to be more intense. High salaries are an essential part of the incentives for solicitors, and restraint would risk lowering morale and driving too many solicitors away.²⁰

Staffing is a key element for firms. In principle, it would be possible to lower billable hours' targets and salaries, while still preserving the same level of profitability, by employing more solicitors. This could be likened to hiring a complete workforce on a 'part-time' basis. Why is there no interest in this approach? It would entail extra pressures on certain costs such as office space and equipment. But the major impediment hindering such an approach seems to lie elsewhere. If solicitors are not working at the limits of their capacity, there is a risk of a relaxation of intensity and a rise in uncertainty. Firms could face the risk of a less pliable workforce and could need to develop other techniques of personnel management, beyond the definition of high billable hours' targets and the promise of high earnings.

The overwhelming imperative of profitability and the basic configurations of this business model were well recognised by many interviewees. One HR manager argued:

The profitability of the firm is always that key driver, you know, the bottom line... Nice premises like this with good equipment and good resources, they come at a cost... We did some figure work not long ago and one of the partners... in a very open forum said it's not until about 5.30 in the afternoon that you actually start making money for the

¹⁹ For example, one interviewee, Anne, who was working seven days a fortnight earned a salary of roughly AUD \$110,000 per annum in 2006. As a Senior Associate, she was charged out at \$330 per hour and was expected to meet a target of six-and-a-half billable hours per day. Working seven days a fortnight, this equated to a target of around 1,000 billable hours or \$330,000 per annum.

²⁰ Some commentators suggest that salary rises have caused the increases in billable hours' targets (ABA, 2002, 3; Fortney 2003, 305-306). This is a curious argument that seems to depend on the rather implausible idea that labour markets for solicitors are in such shortage that firms are forced to succumb to individual demands for high salaries. The argument puts the cart before the horse. We are more convinced by the argument that high targets come first and high salaries follow. Of course salary pressures can still be important, especially where young lawyers are grappling with substantial debts as a result of their studies. But the decisive power in the labour market remains with the firms.

firm, once you've covered the rent and the wages and the IT etc, etc, and the library costs and blah, blah, blah. And you know, at 5.30 at night, that's when most people would like to start going home! (Amanda)

The specific calculation cited here is open to question, since it is hard to reconcile with the evidence that law firms are labour intensive and highly profitable. Moreover, the way in which the calculation is couched simplifies and misses certain components.²¹ Nevertheless, it contains a kernel of truth, in that long hours for solicitors, so long as they are truly productive, are indeed an important source of profitability for law firms.

Some interviewees readily identified the main levers of profitability in the dominant business model:

one of the buzz phrases is leveraging your employees, squeezing as much as you can out of the people on the salary... (John)

It's all worked on leverage. So the more lawyers you've got per equity partner, and the more billable hours those people can do, the more fees you're going to generate and more profit. (Trish)

In this interpretation responsibility for long hours is sheeted home directly to management practices. However, some interviewees suggested that it was also important to allow for the distinctiveness of management practices in law firms due to the partnership structure. On the one hand, this structure could be seen to explain a certain lack of sophistication in management techniques. On the other hand, it could be seen to explain a particularly ruthless approach to working-time patterns:

The tension is there inherently because the longer your employee works for you every night, the more money goes directly into your pocket. So just say I'm working there and it's 8 o'clock at night, the partner is very reluctant to say: "Rebecca, go home, what are you doing?" because in fact in the back of their mind they are actually making money out of you the longer you stay. Whereas in a company structure it's not the same. The managers above you, they don't actually directly benefit from you staying. They prefer to have happier people you know who go home... (Rebecca)

Other interviewees offered a more indirect and benign interpretation of the link between the drive for profit and rigid working-time arrangements. Some stressed the role of client demands, facilitated by the readily availability of new technologies such as BlackBerrys and other handheld devices. They suggested that pressure from increasingly demanding and increasingly fickle clients (within a framework of fierce competition amongst firms for corporate accounts) could be seen as a cause of long hours:

A lot of it nowadays is to do with the expectations of the client. In days gone by, you were able to say they would have an advice in two to three weeks' time, and you would work around those two to three weeks to get your advice out to the client. Now they're

²¹ It is reminiscent of the argument advanced in opposition to the campaign for a Ten Hour Day in England in the 1830s and 1840s, when some apologists for the factory owners argued that restricting daily hours to ten would eliminate the owners' profit, which was concentrated in the last hour or two of the day (Marx 1976, 333-338).

working on such different time-frames themselves, that the pressures are being put back on the lawyers to get the work churned out in a reasonable period of time. (Amanda)

I think there are difficulties finding that flexibility because of the client expectation... Particularly the large firms when they are paying. You know, they are charging big money. So the client is thinking: "I am being charged big money, so I want the service". (Caroline)

Client expectations are indeed important. They are often shaped by the law firms themselves, which may promise inflated levels of service. However, the notion of insatiable client demands for service can easily be exaggerated. Expectations of service are framed by the issue of costs, which is often a major concern of clients. Within a billable hours' system, clients are in fact likely to be reluctant to contact solicitors because of the fear of running up too many billable hours (ABA 2002, 6). Even when expectations of service are indeed high, the impact on employees will be mediated by management strategies and practices. One partner spoke of the importance of 'managing' client expectations to ensure that they were not too onerous. Similarly, good allocation of work to staff and appropriate staffing policies can help to meet client demands for fast turnaround without requiring long hours from employees. The point was made by one partner, who argued that, although management of client expectations was more difficult than in the past, it was still possible:

I think it's a bit up to us to manage as to how that manifests itself in hours, in that you might have the busiest transaction in the world, but if you staff it right, you can probably help... to some extent. (Marian)

Extra staffing would, however, involve increased costs that could subtract from profits.

Client expectations are sometimes singled out as a particular barrier to part-time work. But this view was rejected by many of the solicitors who had successfully worked part-time (see also Aequus Partners 2005). One interviewee suggested that the key was having 'proper structures' in place, such as other solicitors able to handle enquiries outside of normal hours. She dismissed the argument of client demand for availability as a furphy:

My experience is that it's never been an actual problem with a real client... It's often a problem with a hypothetical client, who's very demanding and wants you to be there all the time. But I'm yet to actually meet that client in real life... (Anna)

In our analysis, structures rather than attitudes are the decisive influence. This is not to say that attitudes, whether good or bad, are inconsequential. But they are often overridden by the dominant structures. One solicitor noted the tension for her bosses between personal and business imperatives, when she requested more time for her family:

I'd say they were understanding on a personal level, because my two main bosses had three young kids, but on a professional level their clients were number one and their management was breathing down their necks for making budget and figures and exceeding that. So I felt a bit like treated by one of my bosses as a bit of Jeckyll and

Hyde. Sometimes he'd be understanding and sometimes he'd come down really really hard without cause. (Beth)

The dominant business model is a powerful force that operates to consolidate inflexible schedules amongst solicitors in private practice. It seems to be strengthening in its influence in Australia. Are there any countervailing influences? Few signs of change are evident, and it is hard to detect any potent pressures that might produce change in the future. Some commentators allude to the prospect of bottom-up pressure from employees (Fortney 2005, 185-188; Curtis and Resnik 2002, 1422-1423). Though there is significant discontent, it has little impact on firms because of the framework of high attrition (often into attractive alternatives) and the abundant supply of replacement labour.²² Disaffection may swell as targets rise, but it could also dissipate if young professionals become ever more dependent on high salaries in order to repay debt and find a foothold in a booming housing market. Other writers point to the prospect of new labour regulation (Curtis and Resnik 2002). This may indeed be an effective vehicle of change, but it is hard to see who might initiate and guide the process, at least in Australia.

In the absence of effective labour regulation, much depends on the calculation and choices of employers. Some commentators identify a 'business case' for reducing billable hours' targets, in order to keep staff happier and healthier or to improve recruitment and retention. We suggest that the 'business case' is more of a problem than a solution, and that it tends to ratify rather than reduce exploitation. Other writers refer to the promise of market pressures, including in particular pressure on costs from increasingly sophisticated clients (Fortney 2005, 188-189; Curtis and Resnik 2002). Pressure on costs is indeed evident (IBISWorld 2007), but this is most likely to find expression in the more widespread use of discounts on quoted rates rather than in the modification of the billable hours' system. Admittedly, there are physical limits to the rise in billable hours' targets. This may be the most likely spur for rethinking, pushing firms to explore other avenues of improving profitability, but it is difficult to speculate when and how it might begin to take effect.

The replacement of billable hours by other billing systems has been discussed extensively for at least a decade, but, as many commentators note, little sign of movement can be detected. The billable hours' system seems firmly fixed in place. Why is it so well-entrenched? Several reasons have been proposed (ABA 2002, 7-11). We argue that it is well-entrenched and unlikely to disappear in the short term because it serves as a mechanism for performance management as well as a mechanism for billing, and it is too useful in this former role to be easily discarded by firms. Any new billing system would either have to fulfil a similar dual function or have to find a way of

²² Some interviewees, picking up ideas from market segmentation literature, alluded to the notion of successive generations. They suggested that change may be forced on firms because of an alleged change in attitudes as a result of the transition to 'Generation Y' (see also Thornton and Bagust 2007, 806-808). In our judgment this is fanciful. Even if we accepted that there had been a profound change in average attitudes (and behaviours) as a result of generational change, the argument misses the point that law firms are not dependent on an entire generation. They are reliant on finding just the small minority that is willing to endure long hours of paid work in exchange for challenging cases and large salaries. There is no reason to think that this minority is hard to find or that it becoming harder to find amongst younger age groups.

working in tandem with billable hours. If we are to resolve the problems associated with billable hours, the true challenge is not to find a new billing system, but rather to find a new form of work organization and a new business model.

VII CONCLUSION

This paper focuses on working-time patterns for solicitors in private practice in Melbourne. We describe the continued existence of demanding and inflexible working-time patterns and we argue that such working-time patterns are anchored in the billable hours' system, used by most law firms as a technique for monitoring and controlling solicitors' work. The consolidation of such working-time patterns, centred on long daily hours, erects a major barrier to the development of more diverse ways of working, adapted to the needs of a modern workforce, including in particular the development of good quality part-time work. Although solicitors are competent professionals, trained in advocacy and negotiation skills, the somewhat paradoxical result of the current system is that most are unable to assert control over the basic features of their own working time. Solicitors are caught up in a system that appears remarkably hostile to employee choice and employee-oriented flexibility.

Working-time patterns are fundamental to solicitors' work but are sorely neglected in the current literature. It is important to analyse them carefully. The rigidity of current patterns cannot be explained away as a lag effect linked to the survival of old patriarchal cultures. On the contrary, we argue that this rigidity is generated by new forces sweeping through the industry. The long hours of contemporary work are superficially similar to the traditional model of long hours for professional men, and it is undoubtedly true that contemporary schedules have been grafted on to aspects of the traditional model. But it is a new version of long hours, sustained by forces of modernisation that are linked to the rise of large firms and the spread of a specific business model aimed at maximising profit through increased leverage of employees.

The new version of long hours sometimes claims to be gender-blind. As one of our interviewees stated:

I think the bottom line is, there is no getting away from the fact that you have these hourly requirements and these budgets... [T]hey are neutral in the sense that so long as you meet those, it doesn't matter whether you are a man or a woman; so long as you can meet those, you will succeed in the firm... (Jenny)

But this is gender equity in a formal, strictly limited sense. The new version of long hours remains highly gendered. It differs from the traditional version, in that it incorporates women and is compatible with the increased entry of women into the profession. But women are incorporated only on narrow terms, in which they are allowed to seek to measure up to the traditional norm of the 'ideal worker', void of external ties and freely available to the employer. This is a norm that remains highly resistant to any sharing of caring responsibilities. Workers are able to 'have' a family but only in a restricted way, which generally involves outsourcing of caring responsibilities to partners or substitutes such as nannies. Although many law firms present themselves as 'lifestyle' firms, most are more accurately described as 'family-

hostile' than as 'family-friendly', insistent on long hours and resistant to demands for reduced hours that could more easily accommodate family responsibilities.

This 'ideal worker' norm inevitably disadvantages women, who – quite apart from any issue of needs and interests – have less capacity to outsource caring responsibilities, especially for small children. Moreover, it inevitably leads to discrimination, in which the failure of women to conform to the ideal worker norm is the basis for discriminatory attitudes and behaviour that reach beyond women with children to encompass all women. As a result, the difference with the prior, patriarchal organization of law firms can appear less marked at second glance than it does at first glance.

This analysis suggests that gender equality in a more expansive, substantive sense is still missing from law firms. Real change towards gender equality, in this profession, as in others, requires purposeful action in pursuit of a different societal model, guided by principles of 'shared work/valued care' (Appelbaum et al 2002; see Lewis and Giullari 2005).

The working-time patterns described in this paper are bad for employee solicitors. Although they disproportionately affect women, they are also bad for men. The case for change is strong, but these patterns won't change by themselves. There are few signs of adjustment at the moment. Our analysis suggests that many of the more eager expectations of progress, attached to factors such as new workplace cultures or new generations, are misplaced. The barriers to increased employee-oriented flexibility and more diverse working-time arrangements are formidable, going to the heart of the present organization of private practice.

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