

VALL Review

Vancouver Association of Law Libraries

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The President's Desk

Welcome to the second edition of the 2019/2020 VALL Review. This is a time unlike any I've experienced, and I hope that everyone is doing well and feeling well. It is times like this (although I hope we don't have any more of them!) that I am reminded of what a helpful, caring, generous profession we are, and how we are always willing to assist if at all possible. Thank you to all of you who have been working above and beyond these past few weeks. I look forward to a time when we return to 'normal', whatever that ends up looking like.

As most of the VALL Executive are working remotely, please note that mail sent through Canada Post is not being received. If you have time-sensitive correspondence, please email any of the Executive.

This issue focuses on billing back, which got me to thinking about how our work is valued. Are we more valued as law library professionals if we bill for our time? Should we bill for our time, as other professionals, like paralegals, do? Should we charge our clients for some products (mostly online) but not others (using a print book)? I had a look in Hein Online (who do I charge for this research? J) and found a number of articles discussing the pros and cons of both points of view. I don't claim to have an answer, but it is interesting to see the results of our local survey, and how many firms bill back, or not.

I hope all of you had a wonderful time at our "Networking" Winter Social. It was nice to be able to chat with everyone in a more relaxed setting, and congratulations to those of you who won the "name that VALL member" contest! I really enjoyed our Dine Around in January, as did the attendees, and hopefully as we grow this idea we'll be able to host more of them next Dine Out Vancouver. The coffee morning at Lawson Lundell was a hit, and I am sorry to have missed it.

I look forward to seeing everyone at our next session, whenever and however that occurs. With the Provincial Health Officer orders in place, Programs is reviewing some alternatives to face to face sessions. I hope that all of you are able to get outside and enjoy the sunshine and de-stress.



Marnie Bailey
VALL President
2019 - 2020

VALL Review

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The *VALL Review* is the official newsletter of the Vancouver Association of Law Libraries. VALL is composed of members of the law library community interested in discussing issues and sharing ideas. Opinions expressed in the newsletter are those of the authors and do not necessarily represent VALL policy or position. Unsolicited submissions are welcome. VALL reserves the right to edit submissions.

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From the Editors

Jen Brubacher | DLA Piper (Canada) LLP
Katherine Melville | Farris LLP

This issue of the VALL Review began to take shape during discussions centred on the value of library services to our various institutions and firms, and specifically, discussing the practice of disbursing costs for printing or copying, transactional database use, and library staff research time.

The idea of costs disbursement is one that easily sparks debate, so we decided to survey our VALL members on some of these questions. We very much appreciate our members taking the time to respond! We received an excellent feature article on this topic from our colleague in Calgary, Judie Harvie, as well as a thoughtful and detailed submission from Sarah Richmond, outlining the courts perspective on costs recovery for research and database charges.

We reached out to our two major publishers for comments specific to costs recovery; many of us commit significant portions of our budgets to “recoverable” products, and we hoped the publisher’s perspectives would help round out the discussion. We also received updates from our local publishers and community partners including the Courthouse Library, CanLII, CLEBC, InfoAction, and Quickscribe.

We need to acknowledge that for most of us, these last weeks have seen adjustments to the new normal, remote working, and increased reliance on our online services and products to keep us connected to our work and our users’ needs. While none of us can predict how our work lives and focus may evolve over the months to come, we find ourselves looking more closely than ever at how we use, and consequently, how we cost recover, our online resources. We hope this issue proves helpful to our membership in navigating discussions with our users, finance committees, and funders.

Jen and Katherine

Feature article: The Hidden Costs of Billing Back Research

Judy Harvie, Director, Library Services | Norton Rose Fulbright

For years, many Canadian law firms have billed back the cost of online research to their clients. Librarians, however, know that cost recovery of annual contract costs for online services have been declining. The majority of clients are refusing to pay these costs and clients maintain firms shouldn’t charge for the cost of doing business.

Recently, our firm is revisiting this practice. Although we are a global firm, it is only in North America where we are still endeavouring to charge for online services, with mixed results. Because of how online services costs are structured, billing for our transactional charges for various resources is becoming more complex. For example, we’ve never charged for print, so the move to digital for most of our print resources has muddied the water with the array of resources now online with complicated cost structures.

Administratively, we review searches performed by the users to see if additional training might be in order and it is a useful exercise. However, the behind the scenes administrative billing procedures by the library and finance departments may have lost that same honour of being useful. Although we use ONELOG, incorrect file numbers must still be hunted down, billing lawyers' questions must be answered and search backup details must be provided only to have the searches written off. Costs then have to be amalgamated into bill back software for billings to occur. All of this creates additional administrative time for dwindling recoveries.

A recent review of our practices revealed that in 2017 our UK office quit charging clients for online search because other big firms had quit and they wanted to remain competitive within the marketplace. In addition, feedback from our Australian and South African office librarians indicated that if online billing administrative work was increased, the "villagers would gather torches and pitchforks and hunt them down" or they would be "throttled".

One benefit of charging back remains that our students and researchers need to be more cognizant of their research strategies. In a time of "easy answers" from Google, new researchers tend to use multiple searches until they receive an answer rather than think through search strategies and hone their research skills. This issue can be solved with good in house training sessions and this remaining benefit doesn't reduce the amount of time we spend scanning online administrative tools for identifying training problems.

In summary, alternative methods of "assigning value" to law firm and library research generally can and should be explored to leverage optimal client relationships and reduce the hidden costs of administrative time to bill online services.

Feature article: BC Courts on Legal Research Database Costs: A Review of the Past Decade

Sarah Richmond, Manager, Research Services | Alexander Holburn Beaudin & Lang LLP

This article aims to provide an overview of the development of the courts' view on the recovery of costs for legal research databases such as WestlawNext and Lexis Advance Quicklaw. The overall observation is that, over the past ten years, courts have increasingly had a tendency to see electronic research as law firm overhead (i.e. the cost of doing business), but there is room for argument in order to successfully recover some or all of these costs. All of this depends on certain factors such as the complexity of the issues of the case itself, the scope and limitations of free alternatives, and the firm's contractual arrangement with the database provider.

Ten years ago, the allowance of costs associated with electronic legal research in British Columbia was very case by case. In 2009, the Court in *Encorp Pacific (Canada) v. B.C. Bottle Depot Assn.*, 2009 BCSC 1657 succinctly explained: "Charges for online legal research have a history of judicial ambivalence. Many cases have allowed them while many have not." But, a review of cases from the past ten years does show a trend-- one of allowing costs for legal research databases only where it is shown to be necessary and relevant to the issue being argued. If this cannot be shown, then it is deemed firm overhead. The latter seems to be the more common conclusion, thus making it more difficult for firms to justify the expense of multiple legal research databases.

Around the same time, in *Stapleton v. Charambidis*, 2010 BCSC 1632, the Court disallowed the costs for electronic legal research. The Court held that “we have reached the stage that computer-assisted legal research is so commonplace that it has probably supplanted conventional law library research, and that its cost is one more line item in a typical law firm’s budget” (para 13). This view is often repeated, but it is not as simple as that; BC judgments have shown that courts will also look at other factors in order to make the final determination.

A few years later in *Wadden v. 470139 B.C. Ltd.*, 2014 BCSC 747, the Court allowed the costs for legal research where it determined that it was necessary for the research at issue. In particular, the research involved looking to Ontario case law. Additionally, the researcher successfully argued that noting up is more reliable on Westlaw versus CanLII for older case law:

[33] [The articling student] advised me that much of the legal research involved cases prior to 1986 and that although CanLII can be a useful free resource, it is less reliable for noting up older cases. I accept that explanation. I find that the computer-assisted research is reasonable in the certain sense of this case. Although this is not determinative of the issue, I note that Mr. James conducted research using CanLII and did miss the fact that one of his cases had been overturned.

In 2013, the Federal Court in *Cameco Corporation v. “MCP Altona” (The Ship)*, 2013 FC 1263 (which was B.C.-based litigation), considered whether Quicklaw and Westlaw charges could be recovered. In refusing to allow for the recovery of this disbursement, the Court stated:

[54] (...) I generally have no issue allowing claims for on-line legal searches. However, their necessity and relevance to the issue need to be clearly justified. (...) a minimum amount of information should be provided as to why these searches were proper and relevant to the matter at hand and I would add, why they could not have been done using free on-line services. (...) I agree with [counsel’s] representations that performing legal research using tools like Quicklaw has now replaced the use of the law firm legal library. As stated in *Truehope Nutritional Support Ltd v Canada* 2013 FC 1153 [*Truehope*], there might still be circumstances when on-line legal research could be a justifiable claim but the requirement to prove relevancy and necessity will continue to exist. (...) In consideration of the fact that no clear justification has been provided to substantiate the amount claimed and the fact that I regard legal computerized research, unless otherwise proven, as office overhead expense as it compares to the subscription services law firms library had to maintain in the past and which were also considered office overhead, the disbursements claimed for electronic legal research are not allowed.

In brief, the Federal Court in *Cameco* viewed charges for electronic research databases as firm overhead, equivalent to the traditional law firm library. In order to justify recovering these costs, the party would need to show that it was necessary to use these paid databases over free sources, and that the research performed was directly related to the issue being disputed.

Another key factor weighed by the court in deciding whether it will allow the costs associated with legal research databases, is how the law firm pays for its access. In the past, law firms used to pay for legal research databases on a pay-per-use model. Billing was even based on length of time logged into the database itself. Today, however, most firms are on a flat-rate subscription plan that provides cost certainty. Some charges may be outside of the law firm’s subscription plan, and are thus charged on a per-per-view basis. Where a law firm pays a flat-rate subscription, the

tendency is for the courts to disallow the costs. The B.C. Court of Appeal said this about claims for electronic research in the assessment of costs decision of *Westsea Construction v. Veale*, 2015 BCCA 425:

[13] As with any other disbursement, the Court may inquire as to how the disbursement was calculated. Where there is a bulk subscription or similar arrangement, I agree with several Supreme Court authorities that electronic research charges are more likely overhead than a recoverable disbursement: see e.g., *Semenoff Estate v. Bridgeman*, 2014 BCSC 1845 at para. 83 (Registrar); *Stapleton v. Charambidis*, 2010 BCSC 1642 at para. 13 (Master Baker, sitting as Registrar).

A similar conclusion was reached that same year in *McEwan v. McEwan*, 2015 BCSC 96. In that case, the Court disallowed the Westlaw charges because the law firm had a Westlaw contract, and the Westlaw charges were therefore deemed as part of the firm's overhead. Importantly, however, the Court did say that "[w]hether on-line legal research is a necessary and proper disbursement might depend on the facts of a particular case" (para 39).

This reasoning is also apparent in the recent case of *Tabah v. Bress*, 2018 BCSC 185: "With respect to Quicklaw, there was no evidence that a free service such as CanLII was insufficient, or that the Quicklaw costs were case specific, and were not billed to the law firm on a monthly basis. In the latter case, this is considered firm overhead" (para 98).

Recently, in *Murray Purcha & Son Ltd. v. Barriere (District)*, 2018 BCSC 1445, the Court took the middle ground approach taken in *Encorp Pacific (Canada) v. B.C. Bottle Depot Assn.*, 2009 BCSC 1657 (discussed above). In *Murray Purcha*, the issues were, if not unique, certainly uncommon. So, research in other jurisdictions was justified and made more efficient by using online databases. In *Encorp*, Master Baker allowed half of the online research costs. So, in *Murray Purcha*, Master McDiarmid took the same approach:

[61] (...) The circumstances in this case are similar. The research costs are just under \$700.00; I allow \$350.00 for the LexisNexis and Westlaw searches.

The above case law from the past ten years demonstrates that it may be possible to recover costs associated with electronic legal research databases, but that the researcher must show that using a paid database was necessary and relevant to the issue. Therefore, this trend underscores the importance of keeping a proper research trail. WestlawNext, for examples, can generate a session summary upon sign off. It is good practice for researchers to keep track of the issues being researched on legal research databases, in order to increase chances of recovering these fees at a costs assessment. As courts continue to view these costs as firm overhead, it becomes increasingly difficult for law firms to justify the big budget expenses of more than one legal research database. As a law librarian/ law library staff at a private law firm, it is important to explain to users the benefits and potential drawbacks of different databases, how the resource is billed back to clients (if at all), and how the firm is likely to recover these fees on a costs assessments (i.e. maintaining a proper research trail). Additionally, if a resource is acquired "out of plan" and incurs actual charges for the firm outside of the flat-rate subscription plan, it seems that courts would be more likely to allow this cost; but evidence of the cost needs to be preserved. In the end, access to multiple sources is always preferable (though not budget-friendly) because it allows users to cross-check their research to ensure they have the most accurate information to support the client's case. So, wherever possible, it is important to attempt to recover the costs associated with legal research databases so that this particular firm expense continues to be justified going forward.

Column: From the Webmaster's screen

Joni Sherman, Library Technician | Department of Justice

The most used pages on the VALL website are our Member Only Resources with an average of 75 visits per month. So thank you, members, for the visits and your patience as it is a bit "clunky" to get to these website pages.

Here are a few helpful steps to get you where you want to go:

1. Go to vall.vancouver.bc.ca.
2. Then go way down to the lower right hand corner of the page and click on "Login" under Member Login.
3. Once you are logged in, go back up to the top of the screen to where you see "Member Only Resources".

This is a drop down menu where you will be able to access the following:

In the Members Area Index you can find:

- *Membership Directory*
- *Peter Bark Bursary*
- *VALL Education Fund*
- *VALL Social Media Policy*
- *Biographies of VALL's Honoured Members, Lifetime Members and a list of VALL's Honorary Member*

There are also pages to:

- *VALL Archives*
 - *Photo Collections*
 - *VALL Review*
4. If you do not see these links, please refresh your web page.

Again, thank you for visiting the VALL website and if you have any issues or questions, please send me an [email](#) and I will assist you.

News from Courthouse Libraries BC

Lesley Dobin, Website and ILS Librarian | Courthouse Libraries BC

In light of public health directives, and in keeping with our commitment to the health and wellbeing of our clients and staff, all Courthouse Library locations closed to the public as of March 18th. Librarians across the province are now working remotely to assist clients, fill document delivery requests and answer reference questions by phone or email. Please check in with the Courthouse Library website for future library service updates.

Document Delivery

Fees

During this extraordinary time, we're waiving our document delivery fees for legal information resources. You can continue to ask us to find cases, precedents, legislation, articles, expert commentary and the like that are available through our digital collections.

Digital Collection

Courthouse Library staff continue to have access to all of our digital subscription database products:

- **Quicklaw Advance** – Access to Canadian and international legal decisions, Mclachlin & Taylor BC Court Forms and BC Practice, Canadian Forms & Precedents, Halsbury's Laws of Canada, current and historical legislation, Conflict of Laws, as well as other select digital titles.
- **Westlaw Next** – Canadian and international judgments and other legal research materials including CriminalSource, legal journal articles, the Canadian Encyclopedic Digest, Canadian Abridgment Digests, and Words & Phrases.
- **ICLR** – Extensive digital collection of UK case law with downloadable PDFs that display decisions as they were originally published.
- **CLE Online** – This resource provides practice-oriented content, including precedents, on a variety of legal subjects including strata, family, and wills & estates.
- **CHRR** – publishes Canadian Human Rights legislation and decisions of tribunals, boards of inquiry and courts from all jurisdictions, as well as the appeals which flow from them. Many of the decisions published by CHRR are not available from any other source.
- **HeinOnline** – We can access legal journal articles and historical legislation! HeinOnline also includes access to The Advocate as well as the comprehensive English Reports series.
- **Irwin Law** – We have digital access to a suite of legal books by Irwin law. While these can be a little theoretical at times, they also provide in-depth overviews of many different legal topics.
- **LLMC Digital** – Provides access to copies of worldwide legal titles, legislation and government documents.
- **Rangefindr** – A tool to find criminal sentencing ranges quickly and efficiently by Criminal Code offence!
- **Canadian Newsstream** – Access to full text articles from over 190 Canadian newspapers, current and historical.

As we do not have access to our print collection at this time, we have had to suspend our Book in a Box and document delivery services for copies of print materials.

Turnaround Time

Without access to our print resources, requests may require a longer response time than usual. There is no priority service at this time and we will respond to your requests as we're able.

Resources on our website

The Courthouse Libraries website has many useful resources that can be accessed by anyone with an internet connection:

- [Our Legal Knowledge Base](#)

A collection of handy references and hard to find answers to a diverse assortment of legal research questions

- [Guides to Legislation](#)

Created by Courthouse Libraries BC staff to help you get started researching selected acts, provincial and federal legislation and court rules. Our most recent guide is available online COVID 19 Emergency Legislation Guide: <https://www.courthouselibrary.ca/how-we-can-help/legislation-case-law/guides/legislation/covid-19-emergency-legislation>

News from CanLII

Alisa Lazear | CanLII

Since our last CanLII update, a great number of updates and resources have been added to CanLII. To make sure you're up to date on recent developments, here's more about what's new on CanLII.

Primary Law

Beginning with the addition of the decisions from DLRs in 2016, CanLII continues to do historical scanning projects to increase the scope of our caselaw collection. Here are the results of some of those projects over the past year:

- Thanks to the Law Foundation of New Brunswick, we now have [primary law covering 50 years for the province of New Brunswick](#). The annual statutes database now goes back to the *Revised Statutes of New Brunswick* of 1973. We also added 7,000 decisions published in the *New Brunswick Reports* between 1969 and 2016 that were missing from CanLII and that have been cited in the CanLII database.
- [Over 8,000 cases from the Western Weekly Reports](#) (WWR) were added to CanLII last spring, bringing in a collection of significant cases from courts in the western provinces.
- We also added [over 9,500 decisions from the Manitoba Reports](#) as part of a project funded by the Manitoba Law Foundation.

- Last fall, we also announced that we had added the [annual statutes for Alberta](#), from 1906 to present as part of a project funded by the Alberta Law Foundation.

We are grateful for all the support we have received to continue to improve the availability of primary law!

Commentary

Many developments have been happening in this area for CanLII. CanLII's commentary section continues to grow with resources written by authors from various backgrounds. Since the launch of the CanLII Author's Program, we have received submissions from lawyers, legal scholars, and graduate students in law, who see the value in open legal commentary. Have a look at the new layout of our [CanLII Authors Program](#) page to learn more, or you can explore what's already on CanLII [here](#). To help you find the commentary you need, an additional filter feature was added to CanLII to [search commentary by subject area](#).

Thanks to the County of Carleton Law Association (CCLA), we have started offering [access to conference proceedings](#) in addition to law reviews, books, articles, newsletters, and reports. Read on to learn more about recent updates to commentary that have been added to CanLII.

Journals

Below is a list of journals added since our last VALL update. You can see the full list of journals on our website [here](#).

- *Asper Review of International Business and Trade Law*
- *Canadian Arbitration and Mediation Journal*
- *Canadian Labour and Employment Law Journal*
- *Dalhousie Law Journal*
- *Journal of Commonwealth Law*
- *Journal of Law & Equality*
- *Lakehead Law Journal*
- *Laws | An Open Access Journal from MDPI*
- *Les Cahiers de droit*
- *Osgoode Hall Law Journal*
- *Revue de Droit de l'Université de Montréal*
- *Revue québécoise de droit international*
- *Saskatchewan Law Review*

- *Windsor Review of Legal and Social Issues*

The *Windsor Review of Legal and Social Issues*, run by law students at the University of Windsor Faculty of Law, recently decided to [shift to an Open Access publishing model](#). We were very pleased to be invited to their Open Access launch event to celebrate this milestone and are happy that they chose to include their work on the CanLII platform.

We are also grateful to the number of [university presses that have published legal scholarship under Creative Commons](#) (CC) licenses, allowing platforms like CanLII to share this content with a wide audience. We encourage content creators to follow the lead of these university presses and consider whether making public legal scholarship openly accessible through avenues like Creative Commons licensing is right for them.

Books

Last November, we announced a new collaboration with Slaw.ca. Based on CanLII search queries, Slaw.ca stood out as a centre of writing covering legal topics of interest to CanLII users. We then published [a collection of ebooks](#) of selected content from Slaw.ca in CanLII's commentary section.

You can search through CanLII's entire book collection [here](#), which includes new additions such as [JP Boyd on Family Law](#) and the latest update of the [eText on Wrongful Dismissal](#) by Lancaster House.

Reports and papers from several other organizations

Since our last update, a number of additional organizations have shared their reports and papers with us:

- Alberta Law Reform Institute
- Canadian Centre for Elder Law (a division of BC Law Institute)
- Canadian Conference on Personal Property Security Law
- Canadian Forum on Civil Justice
- Canadian Human Rights Commission
- Environmental Law Centre of Alberta
- Government of the Northwest Territories – Department of Justice
- Justice & Law Reform Institute of Nova Scotia
- Law Reform Commission of British Columbia
- Vanier Institute of the Family

CanLII Connects

Last spring, we were pleased to announce the completion of the [integration of CanLII Connects entries into search results on CanLII.org](#). When you conduct a search on CanLII, you are able to get results of content from CanLII Connects. Now, this important source of case commentary is more findable and better integrated through tools like CanLII's note up feature than before.

We are grateful to the writers on CanLII Connects who make it faster and easier for legal professionals and the public to access high-quality legal commentary on Canadian court decisions. If you have professional competence in legal analysis and would like to join CanLII Connects to share your insights, we encourage you to register [here](#).

Other News

If you have been spending time on CanLII since last spring, you will probably have noticed that [CanLII underwent a website refresh](#). Thanks to the feedback from our users and the help of the Lexum team, we got a new look to help improve your CanLII experience.

More recently, we've come up with some [new features for conducting efficient legal research](#) that include decision highlights, paragraph-level note-ups, and "decision intensity" indicators represented by blue jalapenos.

Thanks to a motivated working group formed through the Canadian Association of Law Libraries, we have received instructional materials in the form of videos and handouts to assist users on how to use CanLII. You can find these helpful resources in the footer menu on the CanLII site under "[CanLII Guides](#)."

Earlier this month, CanLII was thrilled to announce [the winner for the inaugural Martin Felsky Award](#), a contest celebrating excellence in Canadian open legal commentary on the subjects of legal research and legal technology. This year's award went to Lee-Ann Conrod for her article titled "Smart Devices in Criminal Investigations: How Section 8 of the Canadian Charter of Rights and Freedoms Can Better Protect Privacy in the Search of Technology and Seizure of Information", originally published in the University of Victoria Faculty of Law student-run and open access journal *APPEAL: Review Of Current Law And Law Reform*.

We are also happy to [welcome Anqi Shen, CanLII's Community Manager](#). Anqi has been helping us build engagement through CanLII's social media and blog since last fall. Her skill and experience have proven to be a great asset to CanLII and we're excited to continue working with her this year.

The updates don't end here! Make sure to follow our [newly redesigned blog](#) for the latest CanLII news.

News from CLEBC

Adam Simpkins, Marketing Manager | CLEBC

CLEBC Sponsors British Columbia Law Schools Competitive Moot

CLEBC is delighted to have recently sponsored the British Columbia Law Schools Competitive Moot, a competition among teams from UVic Law, UBC Allard Law, and TRU Law. This is the first year of a three-year sponsorship for each school which will provide \$3,000 per year to support the travel for the moot teams.

CLEBC's CEO, Linda Russell, attended the competition at the Kamloops Courthouse on February 8, 2020, and was extremely impressed with the caliber of the presentations. She commented that "Each of the mooters did an extraordinary job in presenting their arguments before nine currently sitting Supreme Court and Court of Appeal justices and fielding and responding to difficult questions in a very polished and professional manner. CLEBC is excited about furthering our support of the law schools and the law students through our sponsorship of the BC Law Schools Competitive Moot, which teaches the students critical advocacy skills that they will use in practice."

At the reception, Linda congratulated the students, shared information about CLEBC's sponsorship, and told the students that CLEBC would be honoured to have them speak at future CLEBC courses. The scores for the three teams were very close, but ultimately UVic Law's moot team was declared the winner.

Congratulations to all the students who competed, the coaches and administrators who supported them, and the judges who volunteered their time to give the students this invaluable experience.

To read CLEBC's response to the COVID-19 pandemic, please visit: <https://www.cle.bc.ca/clebc-statement-regarding-covid-updated/>

News from InfoAction

Jade Reed, Manager | InfoAction

InfoAction is still working to help the business and legal community as much as possible. We have a reduced staff, but are still able to complete research, due diligence searches, and city directory look ups. We cannot provide document delivery (ILL) at this time. VPL is also working to support patrons digitally as much as possible. They provide eresources through ebooks and databases, and email and phone support for any reference questions people may have.

News from Quickscribe

Mike Pasta, CEO | Quickscribe Services Ltd

Accessing Quickscribe From Home During COVID-19

As the COVID-19 crisis continues to unfold, our most immediate priorities are the safety of colleagues and supporting our clients in any way we can.

With an increasing number of people working from home, we would like to remind those who have created a personal username and password that you can continue to make use of Quickscribe from any location. If you are unsure how to [access Quickscribe](#) off site, [contact us](#) and we will be happy to help.

Our staff remain committed to keeping you informed of the latest legislative amendments – including new COVID-19-related Orders and amendments.

Please know that our thoughts are with you and your families.

Stay safe and healthy.

News from LexisNexis

Eric Wai | LexisNexis

Recovery of Online Legal Research Costs – Trends and Key Numbers

The billing and recovery of online research costs from law firm clients is generally perceived as a practice in decline. However, the 2019 American Bar Association technology survey found that a majority of law firms still look to recover these costs from clients, either directly or indirectly. Some of the key ABA findings:

- 33.6% of firms don't bill clients for online legal research
- 32.2% incorporate these costs into the hourly rate or negotiated client rate
- 25.3% bill clients at cost
- 4.3% bill clients at a discounted cost
- 1.6% bill clients at cost plus premium

For those firms continuing to recover costs, the rate of recovery has been in steep decline for over a decade. Despite this trend, these recoveries nevertheless remain a sizable asset in the struggle to offset and manage costs. From Feit Consulting's 2019 Legal Information Market Survey:

- 2008 average recovery rate (all firms) = 82%
- 2019 average recovery rate (all firms) = 28%
- 2019 average recovery rate (only for those firms recovering) = 38%
- Feit Consulting concluded: "This made us re-think the idea that recovery should be a dying trend. We now see an important upside in maintaining and enhancing recovery."

Against this changing and complex background, a growing number of Canadian firms have asked for greater flexibility in the options available for cost recovery and billing. A common customization requested by large firm Lexis Advance Quicklaw customers is a "hybrid" price list that attributes a billable value to their search activity while removing the per document charge on certain types of primary law content:

- 15% of our Canadian large law firm (50+ lawyers) customers have adopted a hybrid price list (search and document pricing) on Lexis Advance Quicklaw
- the remaining 85% of our Canadian large law firm customers, and all other Canadian small firm, corporate, government and academic customers, use our standard Lexis Advance Quicklaw price list (based on a per-document charge)

The PowerInvoice service behind Lexis Advance Quicklaw lets you customize the level and method of cost recovery from your clients - before sending any data to your office billing system and without altering any of the actual LexisNexis charges that are billed to your firm. In addition to the hybrid pricing model, PowerInvoice allows you to:

- Specify a dollar amount to be recovered for each type of billed LexisNexis Activity Description
- Specify a percentage rate to be recovered for each type of billed LexisNexis Activity Description
- Rename any LexisNexis Activity Description to a name more meaningful to your clients

- Specify whether the recovery amounts or rates should be applied to Contract or Transactional, Gross or Net amounts

To learn more about PowerInvoice and your cost recovery options, please contact your LexisNexis representative or customer service at 1-800-387-0899 or service@lexisnexis.ca

News from Thomson Reuters

Zena Applebaum, Director, Customer Insights & Proposition Strategy | Thomson Reuters

WestlawNext Canada is designed to reflect a research environment and provide an online library containing the resources a researcher needs to fully investigate a matter with the added benefit of having relevant material automatically linked.

The calculation of usage tracks what users do online in terms of “finding” a specific document, “searching” document collections (or across the service), and KeyCiting cases or statutes. As such, the user can focus on complete and efficient research, rather than time spent online. Some firms will choose not to charge back research time to their clients, others are barred from charging back time based on Outside Counsel Guidelines and some will charge the time but then write it off as a value added service to their clients. However, should your firm wish to charge back for research, WestlawNext Canada provides several options for how to do so.

Suggested Chargeback Values are applied to usage within a customer’s subscription plan and are suggested amounts that customers may choose to discount should they wish to charge their research back to clients. These values are assigned to content types which are included in a subscription and are never billed or invoiced.

Excluded charges (aka Pay Per View) are applied to out-of-subscription-plan usage. A PPV price is the amount customers are charged and invoiced for accessing content/functionality outside of their subscription.

The Suggested Chargeback Values are equal to the Excluded Charges. For different customers, the value of the content may vary.

On WestlawNext, there are three broad categories of chargeable events:

- Searching for documents
- Viewing documents
- Offline delivery of documents

The monthly fee customers pay for a WestlawNext subscription covers searching for documents on WestlawNext, including searching content not included in the customer’s plan. A search of all core legal content, therefore, is included in the customer’s monthly fee, even though it may retrieve results from content not included in the customer plan.

The monthly fee also covers viewing documents and offline delivery of documents from content that is included in a customer's plan. It does not cover viewing documents and offline delivery of documents from content that is not included in the plan. When customers view or deliver documents offline from content not included in their plan, ancillary charges apply and they will be billed at the applicable rate for that content (see the ancillary charges chart).

WestlawNext Canada offers simplified chargeback values that are based on broad content categories. There are various business factors that will support how Thomson Reuters determines the value of that content such as author contribution, business costs of maintenance of content and the features as an example.

The transactional pricing for WestlawNext Canada can be found here:

<https://www.westlawnextcanada.com/dynamicdata/attacheddocs/pricing.pdf>

Reporting System v.2 is the cost-recovery and reporting system designed for WestlawNext Canada customers. It allows customers to easily track WestlawNext Canada usage and charges to better manage the firm's online research costs.

Customers can download usage data from this tool and can adjust the rates of the content to charge back to their clients:

- 1) By percentage discount
- 2) By entering a monthly fixed amount to recover costs. This typically would represent the total costs for chargeback. This amount will be system-allocated to all matters selected.
- 3) Alternatively, Thomson Reuters can also work with customers to create an offline template, if the above does not meeting their needs.

Thomson Reuters also offers customized training in person or via webinar. The available training options can be found here: <https://www.westlawnextcanada.com/training-and-support/>. As well, self-paced learning on Cost Effective Research can be found at: <https://store1.thomsonreuters.ca/learning/westlawnextcanada/cost-effective-research>

Programming Review

December

Our Winter Networking Luncheon—Great fun at the Sutton Place Hotel! We collectively marked the end of a decade.



January

VALL members took advantage of the Dine Out Vancouver Festival and met at Hook Sea Bar and Frankie's Italian Kitchen. Both evenings were very well attended and provided much laughter, the chance to share stories, and make new friendships. The VALL Executive is looking forward to making this event an annual tradition.

March

Our morning social at Lawson Lundell was well attended, with members touring the library and catching up with each other. Thank-you again to Debbie Millward for hosting and for graciously providing tours of both the library space and the firm.

Upcoming VALL Events

In adherence to the call for social distancing, planning and hosting of VALL events has been [suspended for April and May](#). The June keynote event will proceed as scheduled, subject to change as the situation evolves.

Upcoming Conferences

CALL

The [CALL/ACBD 2020 Conference](#) in Hamilton, Ontario, has been postponed to a later date in the year.

The [CALL/ACBD 2020 New Law Librarians Institute](#) in Fredericton, New Brunswick has been postponed to 2021, dates to be announced.

SLA

The [2020 Annual Conference](#) will be held October 15-18 in Cleveland, Ohio.

AALL

The [AALL annual meeting and conference](#) will be held July 11-14, in New Orleans, LA.

If you are going to any of these conferences, please consider writing a review for the *VALL Review*!

VALL Review Newsletter Article Content Submission Guidelines

Please take a look at the guidelines below and contact the *VALL Review* Editors if you have any further questions. You do not have to be a VALL member to write for us. Anyone is welcome to contribute to the *VALL Review* as long as you meet the guidelines below. Thanks for your support and interest!

Purpose of VALL Review

- To provide short news and articles on library information and knowledge management developments of interest to VALL members with a priority focus on legal information and related issues concerning the legal sector.
- To highlight resources of interest to VALL which would be useful to the legal community and for professional library staff development.

Authors are advised to submit their draft articles that meet the minimal criteria:

- 1) In Microsoft Word, plain text or RTF.
- 2) Maximum of up to 800 words for full articles.
- 3) Single spaced with paragraphs.
- 4) Functional URLs and corresponding footnote bibliographic information for further reading.
- 5) Identification of author, their official position title and parent organization.

Publishers and vendors should only highlight for submission any new product developments that the vendor has not yet publicly released or that the vendor would like feedback from its customers. (Note: If a vendor has already released public marketing information to all customers on its corporate web site, *VALL Review* editors will exercise rights to determine if there is sufficient space to include the submitted information, in light of other VALL content publishing priorities.)

VALL Review survey results, Spring 2020: Billing back

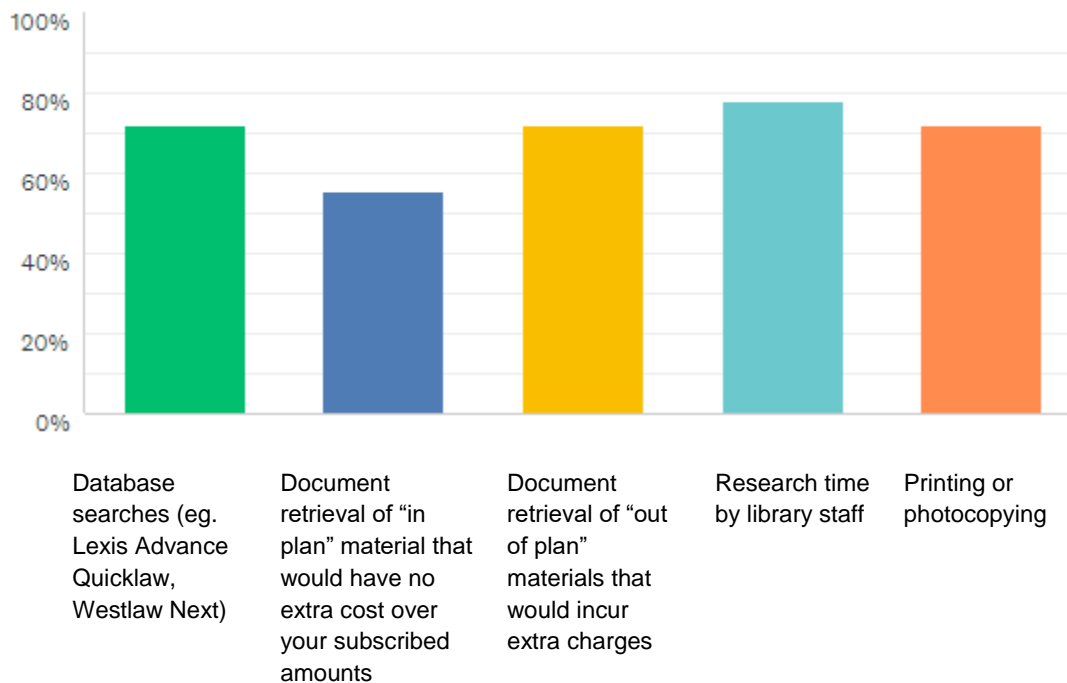
We were interested to hear from all our members about how billing back works in your libraries. With this in mind, we constructed an anonymous survey. You can see the results below, including the extra questions or comments you were invited to write in. Notably, more than one person mentioned that regardless of what a library chooses to charge for, it's only a suggestion: The amount may be written off before it's ever requested of the client.

One of the more interesting results was that one third of us don't charge back any out of plan material at all. For more than half of us, billing back charges have not changed in the past 5 years and there are no current plans to change them. Also, just over a third of us use the recommended or notional charges.

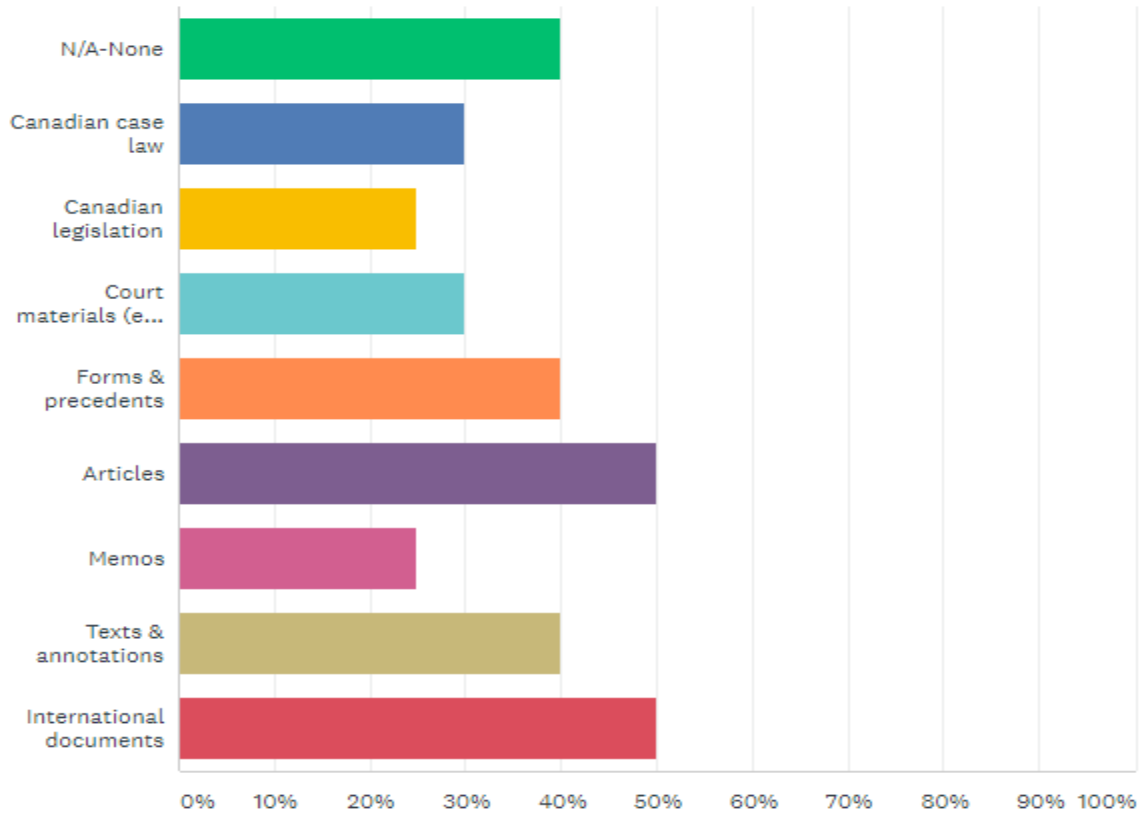
One person noted they weren't sure what we were trying to find out with the survey. We were hoping to provide context to open this discussion with each other. Each library service is unique, but we're often accessing the same resources and we definitely exist in the same legal landscape, so seeing where we overlap and where we stand apart is an interesting experiment.

We had 21 respondents between February 26th and March 15th.

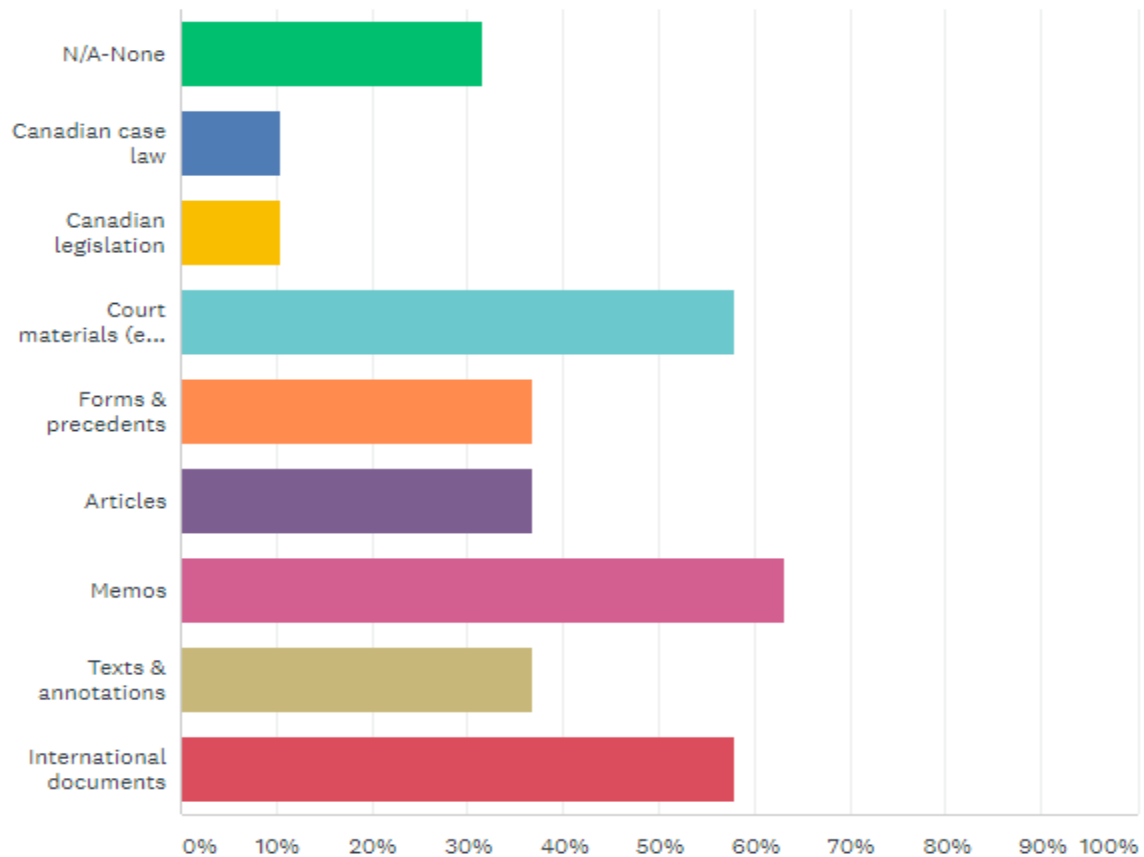
1. Does your library bill back to clients for any of the following?



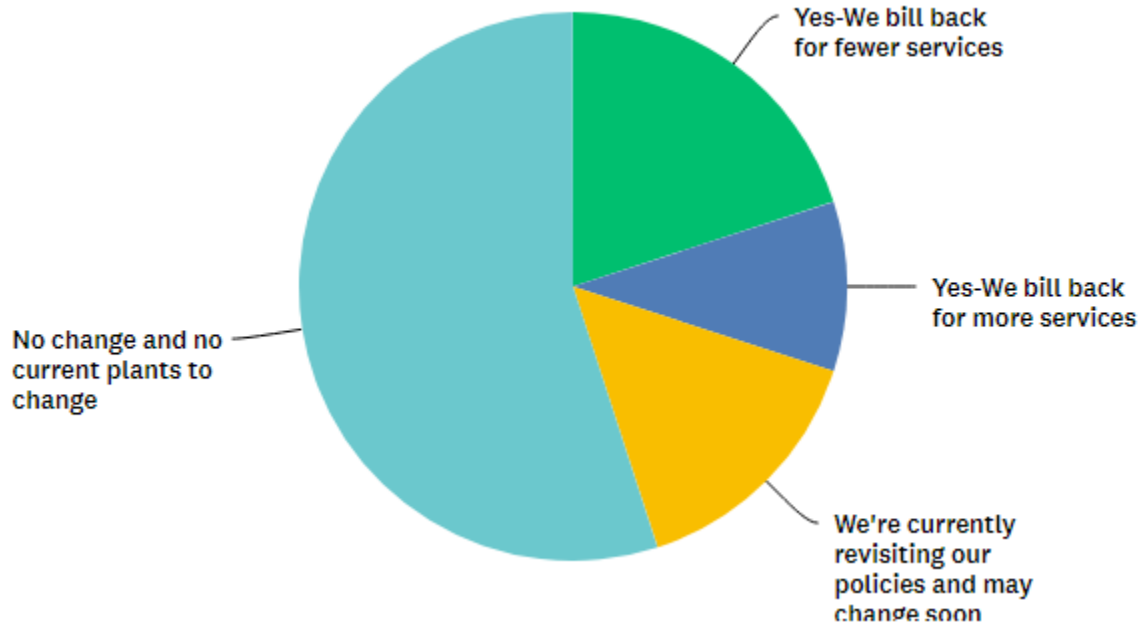
2. Which type of “in plan” material do you bill back to clients?



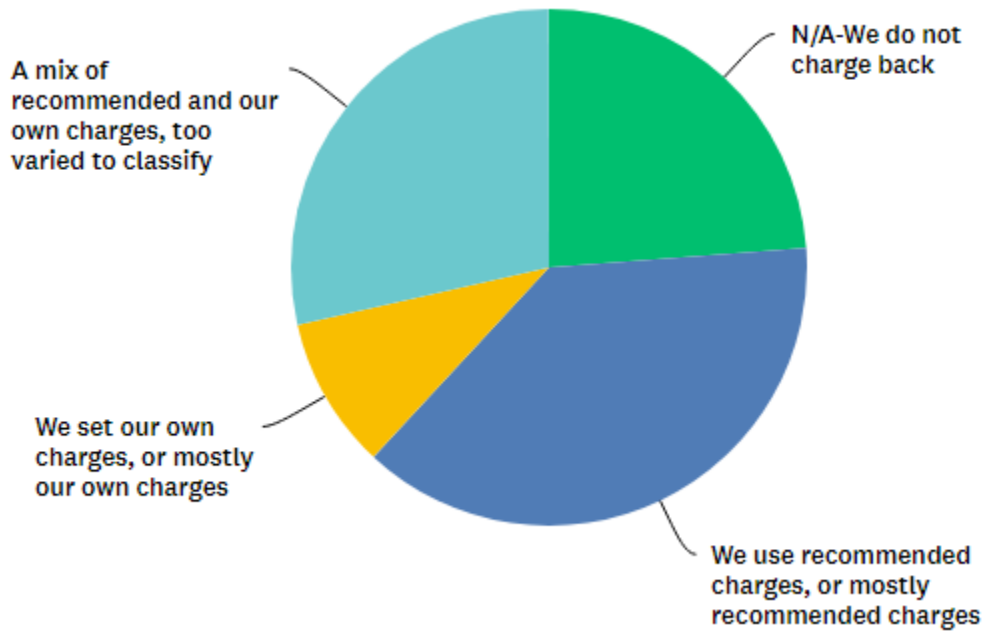
3. Which type of “out of plan” material do you bill back to clients?



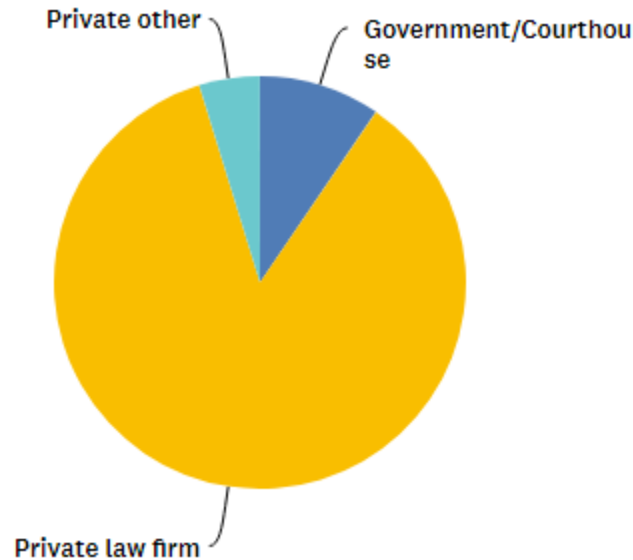
4. Have your policies on billing back changed in the last few years?



5. If you bill back, do you use recommended/notional charges, or have you set your own?



6. What kind of library do you work in?



7. Do you have any other questions or comments about billing back in law libraries and how this may be changing?

- More direction from the courts regarding billing in general / charging back would be helpful
- Many of our clients (e.g. insurance companies) do not pay for these types of disbursements. But, where we can recover, we do (or try to).
- Please note that just because a library "bills", does not mean a client pays. Most charges get wiped by the managing lawyer, before the invoices are sent. "Billing" is one way some firms track ROI on investments in research products and/or library value.
- We provide the billing amounts to Accounting, and it is up to the billing lawyer whether to put through the charges to a client. For the most part, I believe the amounts are written off, except for research time by library staff. Even so, it's useful to have the internal data, reflecting use of our resources on behalf of specific clients.
- Hi there. I found some of your questions to be difficult to accurately answer - they were too broad and so my answers are not able to reflect the true picture of our library. For one, because of how WL and QL charge, questions #2 & #3 were challenging - if we didn't check something in #2, you're not going to know if that was because it was not in our plan or if we don't charge back for it... Same for #3 but the other way around. For question #4 (and generally) there was no mention of AFAs (Alternative Fee Arrangements) with clients, where research costs are not charged back to clients. We have an increasing number of these arrangements, which means that we're billing back less than we used to. But in other ways, we're probably charging more, since we're billing back our time too, which we didn't used to. Because "services" is so broad (is that database costs or librarian time?) it was impossible to answer. There was also only one question about librarians billing their time, which I would have been interested to know more about - do people track only billable time, or also unbillable, do you have a billable target, do you meet it, etc. And what about library billing back vs. what libraries are actually realising? Are the realisation rates going up or down? Are they for librarians' time or for database charges? Sorry if this seems nitpicky and/or negative - I just wasn't really clear what question the survey was trying to answer and what information you were trying to glean.
- What percent of all notional charges are actually recovered? How are law firms encouraging/enforcing chargeback?