

Is Time Running Out on the Billable Hour?

We interviewed 500 randomly selected solo/small firm Toronto lawyers and found that:

- Their average* hourly rate was **\$338**.
- Hourly rates ranged from **\$78 to \$750**.
- Their average initial consultation fee was **\$338**.
- **64%** offered some form of free initial consultation.
- Excluding contingency fees, only **5%** offered alternatives to hourly billing such as fixed fees, day rates, barter arrangements, quotes, pay-as-you go, per project, etc.

Overall, the predominance of the billable hour may be challenged as solo/small firm Toronto lawyers begin to leverage technology to provide legal services in a cost-effective and convenient manner to the masses.

* the word "average" means "weighted average" throughout this report

Prepared by:
Michael Carabash

I am a lawyer. It wasn't easy getting here. I spent 7 years and \$100,000 going to university to get 3 degrees. I passed the Bar exams, articulated for 10 months, and then started my own law practice. But now that I've finally become a member of an esteemed profession, I find myself dealing daily with a negative stigma left by lawyers gone and perpetuated by lawyers present. That stigma, as I'm sure you've guessed, is legal fees (as characterized by the billable hour) and it's left a bad taste in the public's mouth.

The billable hour, perhaps the defining and most contentious issue surrounding legal services, is relied on so heavily because lawyers don't really know what their services are worth and have little experience in estimating the total cost of such services. There are many unknown variables which can complicate matters and cause initial time estimates to become meaningless.

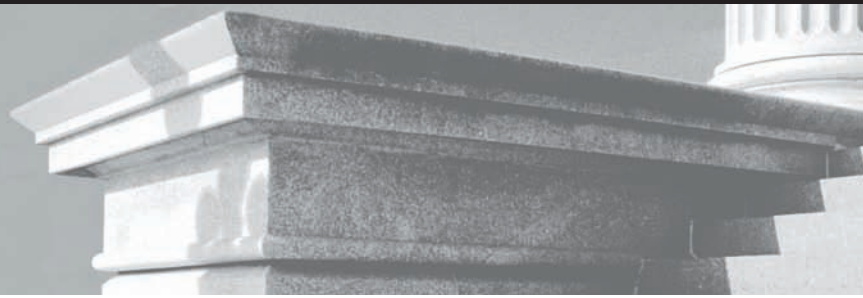
Yet the billable hour is an antiquated and unsatisfactory valuation method. It deprives clients of predictability over the costs of legal services. At the same time, it provides the wrong financial incentive for lawyers to continue working on files (e.g. litigation lawyers who settle disputes early on become poor, while those who drag their feet become rich). The billable hour can also create other ethical and professional problems within the lawyer-client relationship (e.g. lawyers pad their dockets or fail to keep clients informed of the running bill). It is also to blame for lawyers' work-life imbalance (i.e. working 14 hours a day to bill 8 hours). Finally, valuing legal services according to the time a lawyer spends working on a file stifles innovative billing methods which would otherwise allow more people to (perhaps simultaneously) access legal services from that same lawyer.

With the emergence of new technologies (e.g. request for quote processes through www.DynamicLawyers.com) beginning to penetrate the mainstream legal services industry, trends towards commoditization and unbundling will expand. Consumers of legal services will rely more and more on technological mediums such as e-mail, internet, smart phones, social networking websites, etc., to shop around for the best deals. They will look for value-added services from reputable, accessible, and affordable legal service providers; they will also expect to be able to compare the total costs of such services.

In doing so, this new breed of client will create opportunities and competitive advantages for those lawyers who leverage technology to promote themselves and deliver cost-effective legal services to the masses. It is in this new paradigm that the billable hour in its current form may evolve to have a much lesser role to play in valuing legal services or cease to exist entirely.

With these things said, I wanted to know the current state of legal fees in general – and the billable hour in particular – in Toronto, Ontario, Canada. As such, the purpose of this report was to survey 500 solo/small firm Toronto lawyers to help answer the following 7 questions:

- ❶ How prevalent is the billable hour?
- ❷ What was the average hourly rate?
- ❸ How does that rate change based on experience and primary legal area practiced?
- ❹ What was their average initial consultation fee?
- ❺ How many provided a free initial consultation in some form?
- ❻ What was the average legal fee for certain basic services?
- ❼ What alternatives to hourly billing do they offer?



Conclusions

Overall, our research revealed that the vast majority of lawyers surveyed still relied on the billable hour to value their legal services. Their average hourly rate was \$338 – a daunting figure for the average Torontonian in need of legal services. Furthermore, while 64% of the lawyers surveyed offered some form of free initial consultation, just over 25% of them only did so on a case by case basis. Of those lawyers who charged for initial consultations, their average hourly rate was also \$338. Unfortunately, the vast majority of lawyers offered little or no alternatives to the billable hour: excluding contingency fees, only 5% of the lawyers surveyed offered alternatives such as fixed fees, day rates, task or project-based billing, barter arrangements, quotes, and corporate share in lieu of the billable hour. This shows that a lot remains to be done by solo/small-sized Toronto lawyers and firms to better embrace technology to promote their law practices and provide innovative legal services in a cost-effective and convenient manner to the masses. This is particularly important given that the growing trend will be for prospective and sophisticated clients to shop online for lawyers and legal services.

Method

The data in this report was obtained by telephone interviewing 500 randomly selected lawyers in private practice located throughout Toronto during the months of February, March, and April 2009. These lawyers operated either on their own (i.e. sole practitioners) or in a firm with up to 15 other lawyers total.

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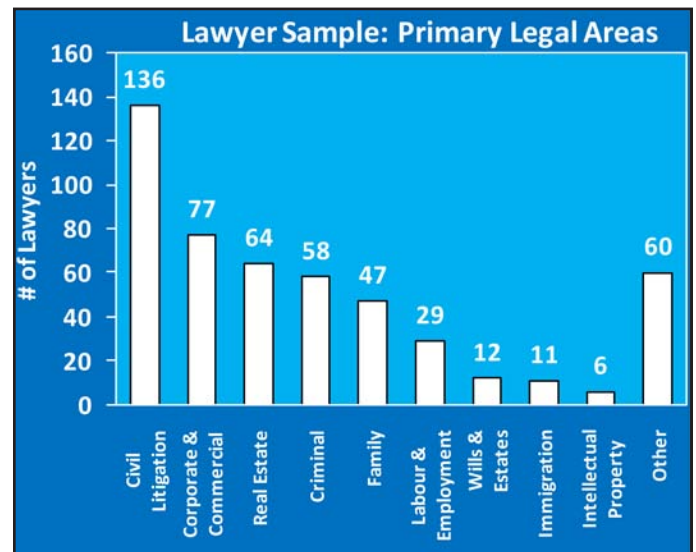
Some words of caution are in order. The survey sample and the findings contained in this report may not accurately reflect the true state of affairs respecting legal fees and the billable hour in Toronto. Indeed, the “true state of affairs” may be too difficult – if not impossible – to simplify through a survey such as this one for various reasons. For starters, it is typical for a lawyer to practice in more than one legal area and offer a wide range of legal fees for his or her services. This can greatly skew the results. One lawyer in our survey sample, for example, had 25 years of experience, practiced family law, class actions, and civil litigation and charged between \$0-\$750/hour and between \$1-\$500 for an initial consultation! Also worth mentioning is that there were also a number of outliers whose data tended to skew the results one way or another. For example, a criminal defence lawyer with 48 years of experience only charged \$100/hour while a corporate lawyer with only 2 years of experiencing charged \$450/hour. While extreme cases, they demonstrate the difficulty in trying to generalize legal fees as a whole from a very diversified and inconsistent industry group.

About the Survey Sample

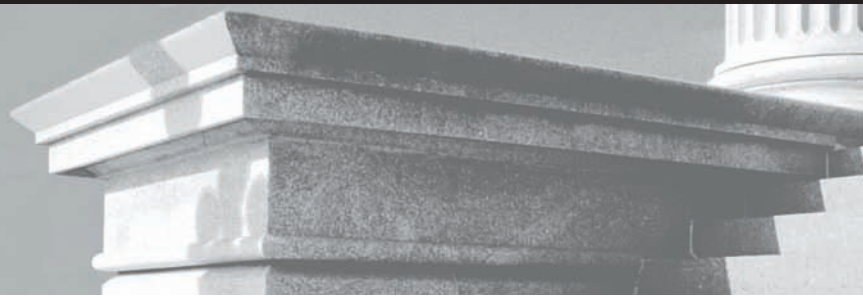
To provide some context to the results obtained from the survey, it is worth discussing some of the characteristics of the sample group of lawyers who responded. The following chart shows a breakdown of their years of experience:



Overall, the lawyers surveyed had a wide range of experience practicing law; the average lawyer had 19 years of experience. The lawyers surveyed also practiced in a variety of legal areas:



Here, “Other” included legal areas such as aboriginal, administrative, bankruptcy, constitutional and human rights, environment, government, health, international, and tax law.



Analysis

1 Prevalence of the Billable Hour

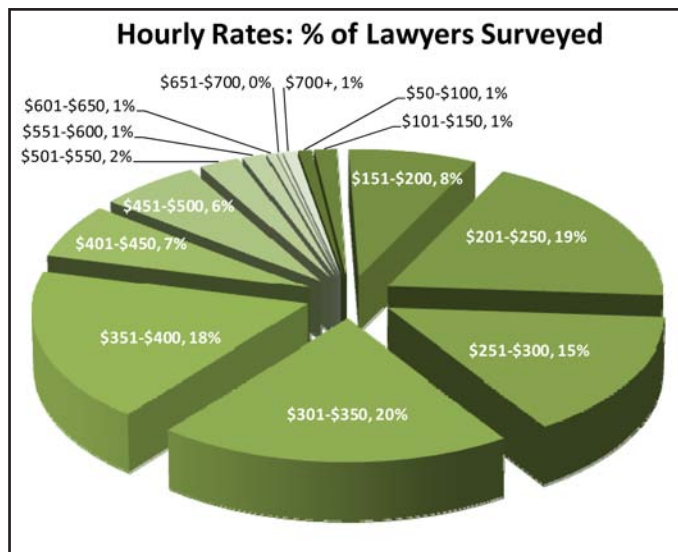
As noted in the table below, of the 500 lawyers surveyed, the vast majority of them (88%) relied on the billable hour to value their legal services:

Do You Use an Hourly Rate?		
Yes	442	88%
No	58	12%
Total	500	100%

In certain legal areas – most notably, real estate transactions, wills and estates work, and criminal defence and personal injury litigation – lawyers responded that they used other billing methods, such as fixed fees or contingency fees instead of the billable hour.

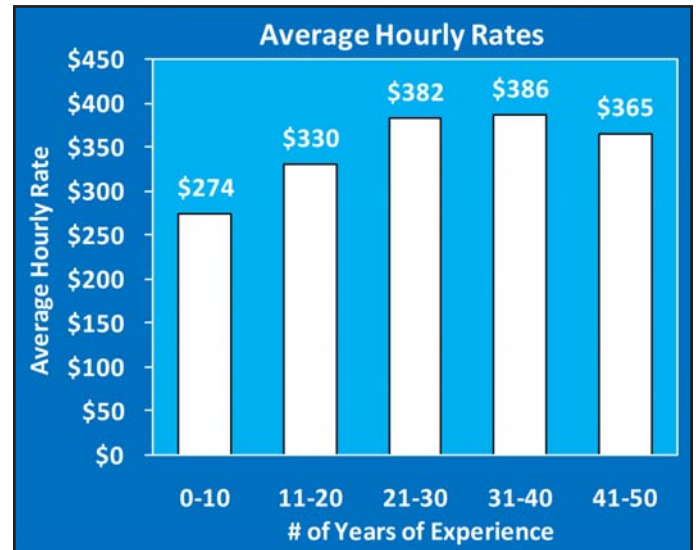
2 Average Hourly Rate

Our research revealed that the average hourly rate of the lawyers surveyed was \$338. The following pie chart shows that 72% of the lawyers surveyed had an average hourly rate ranging between \$200 and \$400:

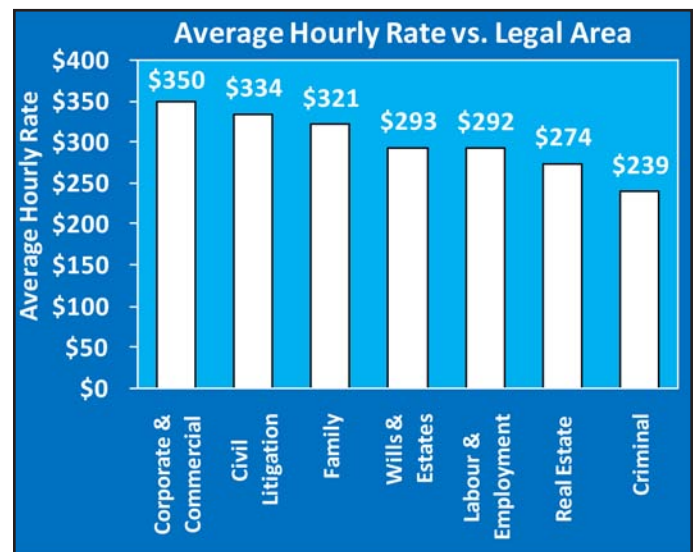


3 Hourly Rate Variations

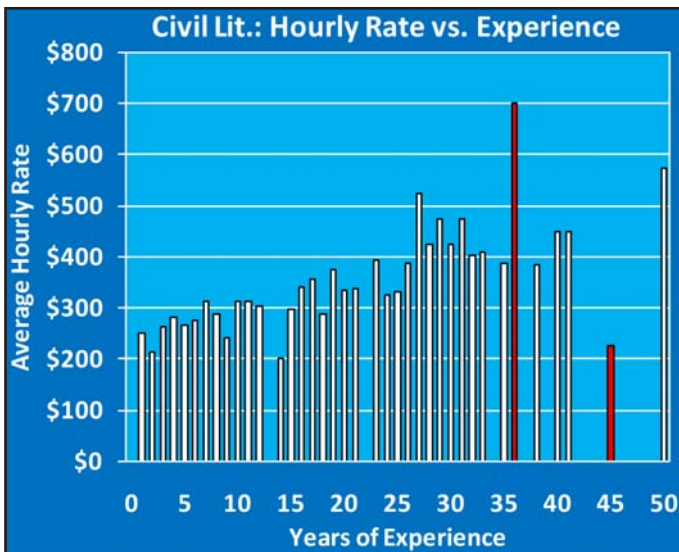
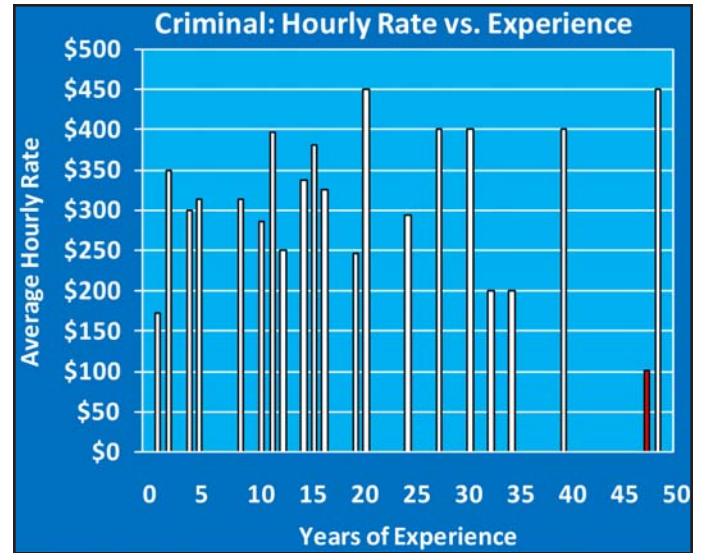
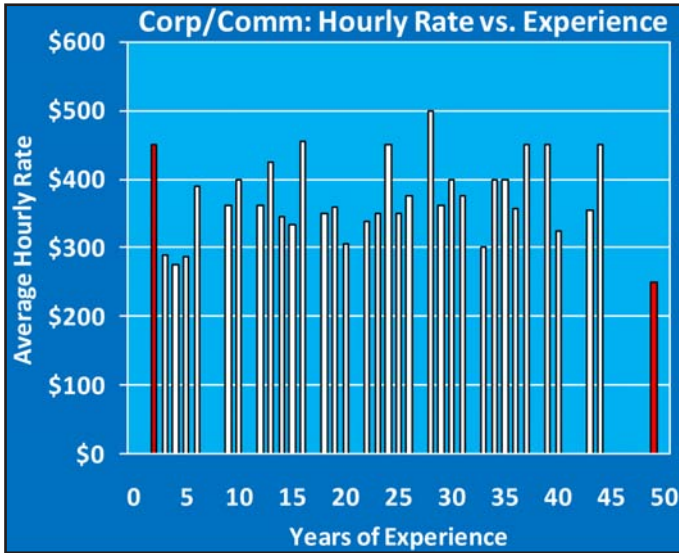
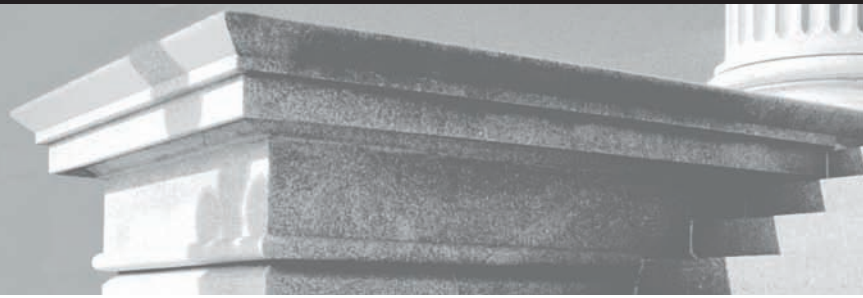
The following graph shows that, as could be expected, those lawyers with more experience generally charged more than those with less experience. Worth mentioning is that 1 of the 14 lawyers in the 41-50 years of experience range reduced that group's average hourly rate considerably because they only charged \$100/hour. Removing that outlier from the survey sample would have increased that group's average hourly rate to \$386 (a \$21 difference).



Interestingly, our research revealed that those practicing corporate and commercial law as their primary legal area had the highest average hourly rates, while those practicing criminal law had relatively lower hourly rates. The latter is due, in part, to the prevalence of legal aid hourly rates.

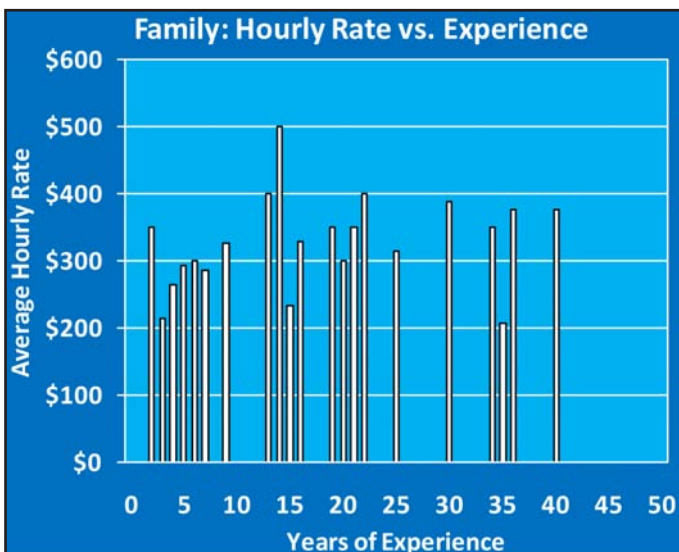
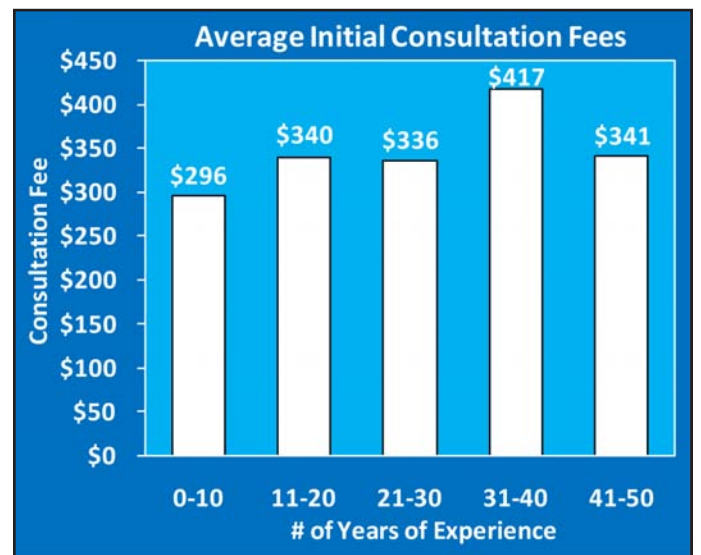


For benchmarking purposes, the following graphs break down the average hourly rates for various legal areas based on lawyers' years of experience. This information should help average Torontonians get a better sense of the going rate for these types of lawyers. Please note that the red bars indicate outliers which tend to skew the data one way or another.



4 Consultation Fees

The average initial consultation fee was \$338. The following graph shows how this figure changes based on lawyers' experience:

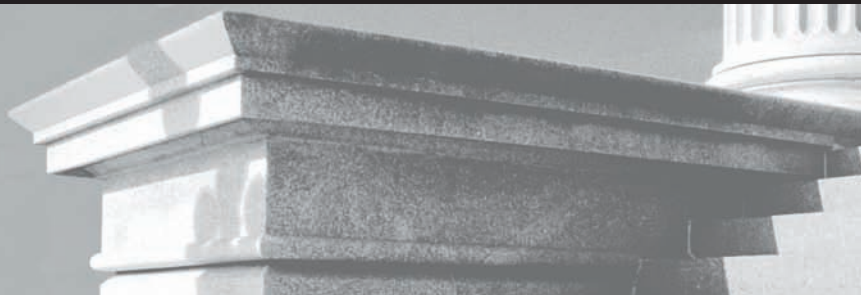


5 Free Initial Consultations

Our research revealed that 64% of the lawyers surveyed offered free initial consultations in some form such as:

- Free.
- Free for the first 15, 30, or 60 minutes.
- Free if the lawyer was ultimately retained.
- Free for individuals, but not for businesses.
- Free for walk-ins.
- Free so long as it is done through e-mails and phone calls.

Worth noting, however, is that just over 25% of those lawyers said that, whether or not they offer a free initial consultation depends on things such as the client or the case.



6 Average Fees For Certain Legal Services

Where applicable, we asked lawyers what they typically charged as fixed legal fees (i.e. excluding government fees and disbursements) for certain basic corporate, family, real estate, and wills and estates services. Here's a breakdown of our findings:

Average Fees for Certain Legal Services	
Incorporation	\$1,035
Uncontested Divorce	\$973
Residential Home Purchase	\$780
Residential Home Sale	\$751
Simple Will with Power of Attorney	\$547

Other examples of fixed-fee arrangements for legal services provided by some of the lawyers surveyed included:

Legal Fees for Certain Legal Services	
Criminal Defence	\$4,000 - \$10,000
Deportation Prevention	\$5,000
Immigration Appeal	\$4,000
Shareholder Agreement	\$2,500
Trademark Registration	\$1,500

7 Alternatives to Hourly Billing

Perhaps most telling from the survey is that, apart from certain basic legal transaction (where flat/fixed fees are used) and personal injury litigation (where contingency fees are used), very few lawyers offered alternatives to the billable hour. Roughly 58% of the lawyers surveyed offered no alternative to the billable hour whatsoever. Moreover, only 5% provided concrete examples of alternative billing methods, the most notable of which are as follows:

- Real estate lawyer entertains barter arrangements.
- Criminal lawyer charges \$2,000 per day.
- Civil litigator/mediator charges \$2,700 per day.
- Employment lawyer charges per day to prepare for court and per day in court.
- Employment lawyers charges a set fee to review a document.
- Corporate lawyer provides quotes in advance.
- Civil litigator negotiates general retainers for a set period of time (e.g. 1 year).
- Civil litigator offers pay as you go services.
- Corporate lawyer takes corporate shares in lieu of legal fees.

Apart from these limited instances, many lawyers simply replied that they negotiated alternatives to the billable hour based on the specific client, their budget, and the case. Unfortunately, the problem with this approach is that it depends on factors which are evaluated subjectively by a lawyer on a case by case basis. This requires the lawyer and prospective client's time to be spent on telephone calls, e-mails, meetings, and information sharing to get to a final billing arrangement. This process is inconvenient for all parties and could be very costly to the prospective client (particularly if they're spending \$338 on initial consultation fees). Fortunately, new technologies like www.DynamicLawyers.com make it cost-effective and convenient for users to gauge the costs of legal services.

About Us

www.DynamicLawyers.com is a website that allows users to freely and anonymously post their legal issue(s) online and get free information and quotes from Toronto and Ottawa lawyers focusing on the legal area required. Multiple lawyers respond to user posts via e-mail and users can follow up with the lawyers of their choosing. This marketplace encourages bidding lawyers to be upfront about their services and fees. Since launching in November 2008, www.DynamicLawyers.com has been featured in various media (e.g. newspapers, legal trade publications, and radio).



Michael Carabash is a Toronto Lawyer and Founder/President of www.DynamicLawyers.com

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