

**CANADIAN
DEFENCE
LAWYERS**

ABS Discussion
Policy Secretariat
Law Society of Upper Canada
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The insurance defence practice has faced many challenges and changes in the last 20 years in its market and business practices across Canada. On behalf of its Ontario membership, the Canadian Defence Lawyers (CDL) is well situated to provide feedback as these changes and challenges reflect many of the current considerations underway regarding whether ABS will lead toward innovation in how legal services are provided in Ontario.

CDL offers the following as considerations to assist in the discussion of the prospect of ABS in Ontario:

- A. Existing convergences in the corporate insurance claims business which would affect law firms serving insurance companies in the fields of liability defence, first-party coverage, subrogation and regulatory compliance.

The last decade has seen enormous changes in the business of insurance in Canada, especially in casualty, life and disability. As stated above, a handful of large multinational companies have acquired mutual insurance companies to wield market power over law firms. In order to move with these market pressures, the claims business has also seen market convergence.

The insurance adjusting business serves as a crystal ball for insurance law, should ABS be implemented to allow non-lawyer control over law firms. Insurance adjusting firms now control assessment services, expert witness firms such as forensic engineers, and information technology resources. In law or ADR-law, mediation companies are already owned by companies that were formerly verbatim reporting providers. Insurance companies already have vast in-house legal departments that provide the legal services once provided by private firms. Accounting firms also own e-discovery entities which effectively take over the work of law offices in lucrative commercial litigation.

Following this pattern, one can foresee greater vertical integration such as forensic accounting firms, medical assessment centres with referrals to personal injury lawyers, and a host of 'strange bedfellows' serving the public through different shop-fronts.

- B. Qualifying a Legal Service

In Ontario, as in the rest of Canada, most if not all insurance defence practices have had to deal with standardizing the manner in which legal services are delivered. For example, most insurers have moved

from retaining law firms primarily stemming from personal relationships to requesting formal RFP protocol submissions. In so doing, there are increasingly more agreements whereby law firms are retained exclusively for a particular speciality in insurance law. So far, these agreements are more frequently seen in large volume-based claims such as personal injury and property/subrogation. As a result, there are two new trends in the insurance industry whereby some lawyers are becoming more diverse in their insurance defence practice to respond to the expanding complex areas of insurance defence litigation while others are becoming increasingly more specialized as other areas are becoming more technical. The trends are more present in larger insurance defence law firms as they are better equipped to respond to these market needs.

Further, more insurers, as the exclusive driver of this market, are institutionalizing computer billing software programs focused on standardizing the definition and cost of a legal service instead of assessing the legal service through primarily the value of the legal service and the success of a result.

As part of this trend, insurers are increasingly moving toward alternative billing arrangements requiring the law firms to respond to this new reality to work on "flat-fee" or reduced rates, contingency fees or "block fee" arrangements. Toward that end, many law firms in Ontario are beginning to experiment with alternative billing arrangements in order to qualify and quantify a legal service to the benefit of both the client, lawyer and the law firm.

CDL's Recommendations:

CDL does not oppose innovation in the delivery of legal services. CDL does identify the following issues that the LSUC should consider in its broader discussion on ABS in Ontario:

- I. To consider the risk of loosening ownership rules so as to marginalize working lawyers into technicians within organizations whose principal aims do not include the advancement of justice and public service.
- II. To assess the qualification of a legal service within an ABS model to ensure the sustainability of law practices is an integral part of preserving the advancement of justice and public service.
- III. To evaluate the loss of independence and conflict of interest in proportion to the liberalization of the regulation of business structures within specific practices.

Respectfully,



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