

Insurance defence boutiques have flexibility in approach

BY MICHAEL MCKIERNAN
For Law Times

Flexibility is the watchword for insurance defence boutiques navigating the lively waters of Canada's insurance market.

During nearly three decades at the bar, Bill Chalmers has witnessed wave after wave of consolidation among the country's insurance companies, each one bringing with it a fresh batch of direct competitors, either from the combined panel of preferred law firms, or from a strengthened and well-resourced in-house legal department with the capability to take on files itself.

"There are challenges, and not all are necessarily bad things, but you just have to adapt to them. A firm like ours can do that because we have a lot of flexibility," says Chalmers, the managing partner at Toronto and Hamilton, Ont.-based boutique Hughes Amys LLP.

"We can offer alternative fee arrangements that make us look more attractive without the tension you might get at a larger firm because work is being charged at a much lower hourly rate than a lawyer in M&A would, for example. We're also able to adapt because we have the depth of experience and knowledge of the major players, trends, and judges in the field that comes with having 46 lawyers doing nothing but insurance defence," Chalmers adds.

Peter Yaniszewski, a senior partner at 60-lawyer boutique McCague Borlack LLP, says his firm is working hard to meet client expectations that are higher than ever since he joined the firm at its inception in 1994.

"Our clients are way more focused on metrics; collecting and analyzing data to identify and eliminate inefficiencies in the litigation process," he says. "They're pressuring us to be creative in the use of things like summary judgment and settlement negotiations; anything that results in cost effectiveness and greater efficiency."

At Schultz Frost LLP, the



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firm's response to increasing client demands has resulted in a focus on risk management, with lawyers and insurers partnering in the design of file management systems and protocols to reduce the client's reliance on counsel further down the line.

"It's more of a consulting role; we're sharing our unique perspective and skillset to educate clients so that they don't even need to involve counsel. It sounds counter-intuitive, because it seems as though it will mean less work for us, but it isn't," says founding partner Kadey Schultz. "It's better for them because it makes them stronger and more efficient, and it's better for us, because we're getting a higher quality of work. In the end, they will still need us, but it will only be in those cases that are truly worth litigating."

According to Schultz, the plan may not have flown at a larger, full-service firm.

"The great thing about being a boutique is that you have the flexibility to respond to organizational and industry changes creatively. You don't need a whole lot of steps to create a game plan. There's no national budgeting committee to go through, just a small group of decision-makers moving resources where they're needed to act on behalf of clients really quickly," she says.

Schultz's legal partner, Jason

Frost, says another firm project exemplifies the insurance defence boutique's flexibility. Over the next few months, Frost and other members of the firm's accident benefits practice group will tour Ontario, educating clients about the transfer of matters from the Financial Services Commission of Ontario to the Licence Appeals Tribunal, which begins April 1.

"Clients have been asking us to come and teach them about the new scheme. We're calling it our road show, and we'll be speaking with mostly independent adjusters in order to position them for success in relation to the recent changes," Frost says.

Eric Grossman, a partner at Zarek Taylor Grossman Hanrahan LLP, says a large chunk of

his time in the last few weeks has been devoted to talking his clients through the LAT transfer, as well as sweeping changes to the benefits available to injured people under the system, which come into effect just two months later on June 1. Together, he says the two events represent the "greatest challenge to those practising in the personal injury field since 1990," when Ontario first legislated a no-fault insurance system.

From April 1, all accident benefit matters must go to the LAT for arbitration, without the requirement for mediation prescribed under the old FSCO process. Injured parties also lost their right to sue in court for accident benefits.

The June 1 changes finally en-

act controversial cuts to accident benefits that limit combined attendant care and medical and rehabilitation services for catastrophically injured victims at \$1 million, down from the previous cap of \$2 million.

Non-catastrophically injured victims will also see their maximum combined benefits cut to \$65,000 from \$86,000.

"The government has not done a good job of easing the transition, so it's going to be like going cold turkey."

There will be steep learning curves for all involved," Grossman says.

According to Grossman, the government's desire for an expedited process is among the chief aims of the switch from FSCO to the LAT. **LT**