

November 29, 2018

**REQUEST FOR INFORMATION
ALBERTA LAWYERS INSURANCE ASSOCIATION
CASE RESOLUTION AND LITIGATION COUNSEL SUPPORT SERVICES**

This is not a solicitation.

Professional Liability Resolution and Litigation Services

The purposes of this Request for Information (“**RFI**”) are to (i) identify lawyers who are interested in providing, or continuing to provide, case resolution and litigation services to the Alberta Lawyers Insurance Association (“**ALIA**”) and (ii) elicit interest and comment concerning potential new litigation/resolution service models being considered to provide quality litigation and resolution representation while controlling rising costs. All Alberta lawyers and firms are invited to participate.

ALIA administers professional liability claims and manages the Alberta Lawyers Insurance Exchange (“**ALIEX**”), which is established in connection with Alberta’s statutorily mandated indemnity program (the “**Program**”) to address errors, omissions and misappropriation by Alberta’s private practice lawyers in the public interest. The Program provides coverage to participating lawyers and compensation to members of the public who have suffered insured losses due to negligence and defalcation of participating lawyers. In this capacity, ALIA evaluates, and reviews claims, assesses reasonable settlement options and hires external counsel to litigate claims when required.

ALIA is seeking to identify and evaluate improved methods to effectively manage the Program in an efficient and effective manner. As part of this work, ALIA is evaluating both its existing approach to retain outside counsel as well as two modified approaches to using the services of both in-house counsel and external counsel. The intent is that the new approaches would augment and not replace the current model. The three models ALIA is evaluating are:

1. The existing model, where outside litigation counsel is engaged when a Statement of Claim is filed against a participating lawyer. Outside litigation counsel are paid at an established hourly rate which is set at an amount, below market rate, but reflects ALIA’s ability to provide a consistent stream of similar work to qualified counsel (the “**Existing Model**”);
2. The in-house model, where some limited number of litigation counsel are hired as employees of ALIA and actively conduct all aspects of litigation of some selected claims through to trial and appeal, if appropriate (the “**In-house Model**”); and
3. A hybrid model, where in-house and external counsel work cooperatively to complete distinct parts of some or all litigation so that appropriate skills are brought to bear on an issue in order to promote cost efficiencies (the “**Hybrid Model**”).

It is possible that these models could be employed individually or in a combined manner to respond to the need to provide quality legal defence and resolution services in an efficient and effective manner.

Enhancing Efficiency

All Alberta lawyers in private practice must purchase mandatory coverage under the Program.

The cost to address claims against insured lawyers can be substantial. Legal actions against counsel are based on a number of rationales including tangible claims (e.g. failure to advance actions, missed limitation periods, failing to follow instructions, , and drafting errors), but claims are also increasingly based on less tangible foundations including actions framed in negligence but essentially claiming against a lawyer because the client is unhappy with the result of the case or its cost. Under these circumstances, even the best organized and most conscientious of lawyers can be the subject of an action either because they made a mistake or are unjustly accused of doing so.

ALIA is seeking to identify and evaluate improved methods to fulfill its role in an efficient and effective manner ALIA is expanding programs aimed at loss prevention, increasing systems and methods to identify and warn counsel of scams and frauds, and looking at methods to continue to contain the cost of its case evaluation, resolution and defence work.

Under the existing service model, when a claim is made against a participating lawyer, and the circumstances require, ALIA engages outside defence counsel from a list of interested and qualified counsel in order to defend or resolve the claim. Upon retention of external counsel, all of the litigation work on the matter is completed by the outside counsel who reports to and receives direction from ALIA's in-house examiners. ALIA's examiners manage the claim but do not currently actively undertake legal defence work. With some limited exceptions, ALIA caps fees paid by ALIA to outside counsel.

In order to evaluate methods to increase the efficiency of litigation, ALIA is considering the employment of a limited number of in-house counsel to actively undertake a portion of the defence work. The use of in-house litigation counsel to limit and control costs by undertaking active defence work has been used by Canadian companies, municipalities and law societies for several years.¹

Two of the approaches being evaluated concern the hiring of a limited number of in-house defence counsel to either defend or resolve actions completely or to work in concert with outside counsel to share the defence work. These models may be used alone or in combination with other approaches but can be simply described as follows:

- The In-house Model would use a limited number of in-house litigation counsel employed by ALIA as counsel of record to defend selected claims through all stages of litigation to final disposition.
- The Hybrid model would use a combination of in-house and external litigation counsel, where in-house counsel would prepare and defend a case up to trial and then instruct and work with outside counsel who would take the lead in conducting the trial.

The factors supporting the consideration of these two in-house counsel models include:

¹ See Canadian Lawyer, *Litigation Transformation In-house*, April 30, 2018, by Jennifer Brown, <https://www.canadianlawyermag.com/author/jennifer-brown/litigation-transformation-in-house-15631/>. See also The Municipal Insurance Association of British Columbia, <http://miabc.org/about-us/claims-legal-services>.

- Flexibility to target a matter using the most appropriate and efficient level of knowledge and skill;
- Control or reduction of litigation costs by using a limited number of economical in-house counsel for selected claims;
- The ability to use in-house resources to undertake many, and potentially all, procedural steps through to trial which promotes cost efficiency relative to the use of generally costlier external litigation counsel;
- The use of lawyers with differing experience and expertise to complete different litigation functions at in a more efficient manner;
- The opportunity to better leverage the knowledge and experience resident with ALIA's examiners to avoid duplication of research, to improve the completion of discovery, and to promote consistency in ALIA's defences; and
- The ability to better manage and promote early case resolution.

Purpose and Objective of this RFI

Through this RFI ALIA is interested in understanding and evaluating:

- The continued interest and viability of Alberta lawyers to provide ALIA with external claim resolution and litigation services within the Existing Model;
- The benefits or any potential concerns arising from the use of in-house litigation counsel to undertake a portion of ALIA's legal defence and resolution work using the In-house Model;
- The willingness of outside counsel to engage in a working arrangement where outside counsel would work in concert with ALIA's in-house counsel through a Hybrid Model in order to defend or resolve claims; and
- Any suggestions from the profession concerning methods or efficiencies that would assist in the expeditious resolution of claims including, where appropriate, providing a quality defence while controlling and limiting the costs associated with defending legal claims brought against participating lawyers.

It is the objective of this RFI to:

- Seek general information about the availability and level of experience of lawyers and law firms that are interested and qualified to provide outside case resolution and litigation counsel services to ALIA under the Existing Model regardless of prior direct experience;
- Develop a better understanding of current outside counsel demographics, capabilities, cost and willingness to work for ALIA within the existing rate scale;
- Solicit perspectives on the use of the In-house Model and the Hybrid Model to provide quality case resolution services, including where appropriate, a legal defence, while promoting enhanced efficiency throughout the resolution and litigation process;

- Determine and understand any concerns that participating lawyers may have regarding the provision of case resolution services including legal defence using the Existing Model, the In-house Model, the Hybrid Model or any potential combination of approaches;
- Gather first-hand information regarding the perspectives and experiences of participating lawyers who have worked in concert with in-house counsel on other matters and files to resolve and litigate disputes through an existing Hybrid Model or similar arrangement;
- Better understand the level of integration between in-house and outside counsel that will be required to promote efficiencies in resolving lawsuits through the Hybrid Model; and
- Assess the relative financial implications of (i) using outside litigation counsel exclusively (Existing Model), (ii) using in-house litigation counsel for some select contested matters (In-house Model) and (iii) by partitioning litigation matters between in-house and external counsel (Hybrid Model).

ALIA will use the information received from this RFI to decide how best to provide efficient and effective case resolution and litigation defence services to participating lawyers. The results of this RFI will be used to develop a formal claims resolution and litigation management plan which may include a number of outcomes, including amending the roster of outside resolution and litigation counsel, undertaking some of the resolution and litigation defence work in-house, developing a hybrid service to strategically employ the best skills of both in-house and outside counsel or other options discernible from the responses.

Lawyers and law firms interested in participating in a possible future procurement opportunity are encouraged to respond to this RFI and are also encouraged to identify their interest as a resolution and litigation service provider or as a candidate for an in-house litigation position.

Scope of Request

Existing Model

ALIA seeks information regarding the availability and interest by external litigation counsel to provide efficient and effective resolution and litigation services to ALIA for the defence of claims made against participating lawyers within the Existing Model. This would involve all litigation steps including the following:

- Receiving claim details, preparing a case evaluation and recommendation, and preparing all litigation documents that may be required (e.g. Statement of Defence, motions and briefs);
- Preparing for and attending questioning and preparing and submitting responses to discovery requests;
- Representing a participating lawyer throughout the litigation, including at trial if required;
- Providing objective third-party advice and counsel to participating lawyers and to ALIA to allow the defending parties to make well-informed decisions regarding litigation;
- Working in conjunction with ALIA's examiners, or senior management with respect to the above;

- Periodically reporting to ALIA in accordance with the ALIA Defence Counsel Guidelines including use of the ALIA Standard Claim Reporting Letter and following the ALIA Minimum Reporting Requirements;
- Preparing and submitting legal budgets to ALIA's examiner as well as regular updates in respect of such budgets, as well as following the ALIA billing procedures; and
- Undertaking the work based on the tariff rates established from time to time by ALIA, which are currently set below market rate and are capped at a set amount.

In-house Model

ALIA seeks information regarding the efficacy and advisability of employing a limited number of internal litigation counsel who have the qualifications to provide efficient and effective resolution and litigation services to ALIA for the defence of selected claims. That counsel would be able to undertake all litigation steps. ALIA is particularly interested in the experience and views of individuals who have worked as in-house litigation counsel, lawyers who have worked with in-house litigation counsel and lawyers who have worked adversely in interest to in-house litigation counsel.

Respondents to this RFI are requested to provide their observations and views on the use of this potential approach to provide efficient and effective case resolution services including defence work at a reasonable cost.

Hybrid Model

Similar to the inquiries relating to the In-house model, ALIA is also interested in obtaining comments and insight regarding the value of promoting processes where in-house and external counsel work cooperatively to complete distinct parts of litigation so that appropriate skills are used at different stages in order to enhance efficiency. It is contemplated that in-house counsel may prepare and defend a case up to trial and then instruct and work with outside counsel who would take the lead in conducting the trial.

Respondents to this RFI are requested to provide their observations and views on the use of this potential approach to provide efficient and effective case resolution services including defence work at a reasonable cost.

Content of Response

Respondents to this RFI are encouraged to respond to all questions included in this document and to describe their experience and express their informed view regarding the three service models being considered.

If a lawyer or law firm is interested in providing case resolution and litigation services to ALIA under any of the three models they are encouraged to describe ways in which they believe that their service capability is well suited or distinctive for a particular model or models. A response does not bind or obligate the responder or ALIA to any agreement of provision or procurement of services.

No contract can or will be awarded based on the submissions. This RFI is designed as a tool to collect information and will not itself result in a procurement contract for legal services. Questions

and responses may be directed in writing to the email address listed below. No phone calls will be accepted. Questions relating to the RFI should be forwarded by email to the address below, however, as this is not a bid solicitation, ALIA will not necessarily respond to enquiries in writing or by circulating answers to all potential respondents.

In order to facilitate review of the responses, please provide the information in the order as listed below. Please rename this document with the following naming convention: “**Outside Counsel Services RFI [LAWYER OR FIRM NAME].doc**” (a .docx format is also acceptable). If there is additional or supplemental documentation you wish to provide to augment your responses to the questions, please refer to such in the corresponding questions and attach the material separately. Any supplemental material should be specific and germane to these RFI enquiries. ALIA may disclose any information received to its affiliates (including the Law Society of Alberta and its directors, benchers, officers, employees and consultants).

Response Costs

This is a voluntary process and ALIA will not reimburse any respondent for expenses incurred in responding to this RFI.

Treatment of Responses

- Responses: The Responses will be used by ALIA to identify lawyers and firms interested in undertaking defence work and in its considerations relating to improving case resolution and litigation services and procurement strategies.
- Review Team: A review team composed of representatives of ALIA will review the responses. ALIA reserves the right to hire an independent consultant or use any resources that it considers necessary to review any response. Not all members of the review team will necessarily review all responses.
- Pre-Submission Information Sessions: ALIA may, in its discretion, host information sessions for the purpose of explaining its requirements and to allow lawyers and firms to ask questions and seek clarifications. These sessions may be held in person or online.
- Post-Submission Review Meetings: ALIA may, in its discretion, hold a Post-Submission Review Meeting with parties or request individual Post-Submission Review Meetings with selected respondents to provide clarity regarding the information provided, or to invite a presentation about some or all of the proposed comments. The intent of these meetings will be to provide an opportunity for a face-to-face discussion with respondents. Although respondents may request a meeting, and their request will be considered, ALIA will determine whether or not it requires additional information from any given respondent and will schedule meetings accordingly.

Please provide your response no later than 5 pm MST on January 11, 2019, to ALIA's Operations Coordinator, Wessam Awada at Wessam.Awada@lawsociety.ab.ca