



Alternative fee arrangements in litigation

In recent years more focus has turned to alternative fee arrangements as a way to offer clients more predictable costs and affordable legal services. Hughes Amys LLP, based out of Hamilton and Toronto, offers alternative fee arrangements which have proven successful for them. Here is a look at how they've done it.

"We've been doing alternative fee arrangements for over 20 years," says managing partner William (Bill) S. Chalmers. "In the early days it was a blended rate, where the client would pay one hourly rate regardless of who worked on the file. Then clients wanted to pay a fixed rate until a certain stage of litigation." The problem was there was little information as to whether the rate made sense on either side. A complex file requiring work from the senior partners could mean the firm was less adequately compensated, and conversely a simpler file would potentially be overcompensated.

There had to be a "better way. One which provided both cost certainty and a price at a reasonable level," says Bill. "We started to dig down into our statistics using practice management software. We gathered data reports including the average shelf life of a certain kind of file from opening to closing. Take a lower level personal injury file – we could look at hundreds of files and tell you, on average, the defence costs, the time it took to resolve, and how much was paid out. And we can do this down to the last dollar."

With the data in tow, the firm was able to calculate the average fee that was charged per month per file based on a number of categories such as reserve limits. "We show the client the data. They know exactly how much a certain file cost over the span of hundreds of files and decades of experience. We then charge them a flat fee per month for a file of a certain type that is in line with the average data."

Clients appreciate the open approach. "We can generate these reports based on virtually any set of criteria, and clients are confident the number is accurate. And potential clients love that we can quote them a fee based on hard data. Our fee isn't just an approximation or a guess about how much a file is worth. It's based on precisely what files have cost in the past and what they're costing now."

The firm also solved a problem inherent with fixed fee per month per file. This approach incentivizes law firms to keep a file open longer to make it more profitable. "Average shelf life can creep upward. We prevent this by updating the stats on every file every quarter. We keep track of lawyers and see how they are performing. Is one lawyer keeping files for longer than expected? Are certain files more likely to stay open longer? We can take action where necessary."

The fee arrangement requires trust on both sides. "It only works if the client does not change the way it typically provides instructions. If the client says 'it's a fixed fee, so now we want the law firm to do extra motions,' then the law firm is undercompensated. At the same time the law firm cannot say 'it's a fixed fee, so now we're going to do less.' It's a reciprocal relationship. This only works when you trust each other and have an ongoing relationship. We also build loyalty by being open with our data. No one can take advantage of the other when the numbers are shared."

In recent years, some clients have hired third party billing administrators to review a lawyer's account. "So much time is spent figuring out how a lawyer docketed, reducing the account, and going through appeal processes. The whole process takes a lot of time and energy from all parties and is inefficient. It's based on a system of distrust, where nobody trusts the other is doing their job right. Everybody's unhappy. Flat fee billing arrangements like ours present a huge opportunity for both law firms and clients to move completely away from the hourly rate system and its associated problems. Flat fee billing is just a happier and more efficient way to practise."

Sharing the data and providing alternative fee arrangements have given the firm an edge, says Bill. "We now have a much better handle on what we can do to lower shelf life or be more efficient. We can learn where we can cut and where we can't. We've learned that if you don't measure it, it doesn't exist. We've become a more agile law firm." ■

Ian Hu is Counsel, Claims Prevention and practicePRO.