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BUSINESS STRUCTURES

The Future of Legal Services

The Impact of Alternative Business Structures on Sole Practitioners and Small Firms

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THE FUTURE OF LEGAL SERVICES

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ABS and Firm Size

How have sole practitioners and small firms been affected by the introduction of ABS? In what ways has ABS changed the nature of the work that lawyers[1] do for individuals and small businesses?

In Australia, incorporated legal practices (ILPs) have been permitted for more than a decade. Non-lawyers are permitted to be ILP shareholders without restriction. In England and Wales, the first ABS licensed was issued in March 2012. Non-lawyer ownership is also permitted in England and Wales.

In Australia, approximately 30% of solicitor firms are now ILPs although few are non-traditional practices. [2] The number of firms and the number of practising solicitors have increased.

According to a 2011 study, the number of ILPs in Victoria and Queensland, Australia, rose from 437 in 2006/7 to 977 in 2009/2010. This represented an increase of 123%. [3] Further,

> During the time of relaxation of ownership requirements and reductions in other barriers the overall volume of firms in the Australian market rose. This represented a rise of around 19%. Total growth in the market was accompanied by growth in mid-size ILP firms, typically with less than five employees, suggesting an expansion in small to medium size firms taking advantage of alternative ownership structures and capital sourcing.[4]

According to the Office of the Legal Services Commissioner of New South Wales, there has been a steady increase in the number of ILPs in that jurisdiction during the period 2006-2010

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[1] The discussion in this paper is confined to lawyers, although the Law Society of Upper Canada regulates both lawyers and paralegals.

[2] There were 27 MDPs in New South Wales as of June 3, 2014. Email communication from Senior Mediation and Investigation Officer, Office of the Legal Services Commissioner, New South Wales, June 3, 2014. There were over 1350 Incorporated Legal Practices as of 2010.

[3] Legal Services Board, *Research Note: The Legal Services Market*, August 2011, paragraph 68, online at www.legalservicesboard.org.uk/news_publications/latest_news/pdf/research_note_on_the_legal_services_market.pdf.

[4] Ibid., paragraphs 75 and 76.

with the substantial majority of ILPs being traditional practices taking advantage of the ILP form as in Queensland.[5]

In England and Wales, there has been relatively less experience with ABSs. ABSs started to be licensed in March 2012. Since then, the number of non-ABS solicitor firms has decreased slightly as has the number of practising solicitors. Other factors that may have some bearing on these changes include legal aid cuts, a ban on referral fees for personal injury matters, and lack of access to affordable professional indemnity insurance for the 2009/2010 and 2010/2011 insurance years.[6] Most ABSs are traditional firms taking advantage of the ABS structure.

Since March 2012, 308 ABSs have been licensed by the Solicitors Regulation Authority (SRA)[7]in the context of 10,571 solicitor firms as of June 2014.[8] The total number of solicitor firms has decreased by 601 to 10,571 firms in June 2014 from 11,172 firms in June 2012.[9] The number of practising solicitors has increased from 127,884, when the first ABS license was issued, to 129,552 in June 2014.

While most ABSs are small, some ABSs are large; 13.3% of ABSs have revenues of at least 10 million pounds.[10]

Some of the other studies regarding the impact of ABS in England and Wales suggest that

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[5] Email communication from Compliance Project Officer, Office of the Legal Services Commissioner, Department of Justice, Sydney, July 23, 2014.

[6] "UK law firm mergers soar", August 4, 2014, *Global Legal Post*, online at http://www.globallegalpost.com/management-speak/uk-law-firm-mergers-soar-8642214/; "Malpractice insurance in foreign jurisdictions: n update", LAWPRO Magazine, Volume 13, Issue 1, p. 28, online at http://www.practicepro.ca/LawPROmag/Malpractice_Foreign_Jurisdictions.pdf.

[7] Dan Bindman, "ABSs top 300 mark with latest licensees demonstrating variety of new legal breed", Legal Futures, April 16, 2014, online at http://www.legalfutures.co.uk/latest-news/abs-top-300-mark-latest-licencees-demonstrating-variety-new-legal-breed. Also see "Profile of ABSs" in Solicitors Regulation Authority, *Research on Alternative Business Structure*s, May 2014, online at http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report, pp. 9-12.

[8] www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page.

[9] www.sra.org.uk/sra/how-we-work/reports/data/solicitor_firms.page. The majority of ABSs (52.1%) have fewer than 9 fee earners compared to 78% for all solicitor firms. The majority of ABSs (85.4%) have 9 or fewer partners compared to 83.7% of all solicitor firms. Source: Solicitors Regulation Authority, *Research on alternative business structures*, May 2014, *supra* note 6, pp. 9 and 11.

[10] Solicitors Regulation Authority, *Research on alternative business structures*, *supra* note 6, p. 11.

- Seventy percent of ABSs in England and Wales have a non-lawyer in their management team, according to a study conducted by Baker Tilley, an accounting and business advisory firm;
- However, one-third of ABSs surveyed indicated that they would not consider external investment.[11]

These findings are consistent with an SRA survey of all firms which had applied to become an ABS since 2012 which suggested that the most common adaptations of new ABSs are

- promotion of non-lawyers to managerial positions (27 percent);
- recruitment of non-lawyers into managerial positions (16 percent); and
- entry into the legal services market (14 percent).[12]

Seventy-seven percent of ABS firms surveyed had made significant changes to the way they firms are structured. Seventy percent had changed the way their business is managed. [13]

ABS and Technology

It is thought that opening up legal services firms to outside investors enables access to proprietary business technologies which will enhance the level of service received by clients. For example, practitioners may be able to invest in software permitting them to screen their cases to determine their suitability for fixed fee billing arrangements.[14]

In England and Wales, another LSB study conducted in 2013 suggested that ABS firms appear to use technology to deliver services to a greater extent than do other firms. Ninety-one per cent of survey respondents indicated that they had a website which they used to deliver information and other services to their customers. In contrast, 52 per cent of other solicitor firms had a website which they used to advertising. The business affairs, personal injury, employment and family

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[11] Baker Tilley, *Legal Innovation 2013: New Developments in an Old Profession*, June 2013, online at http://www.bakertilly.co.uk/publications/Pages/Legal-innovation-2013.aspx.

[12] Solicitors Regulatory Authority, *Research on Alternative Business Structures: Findings from surveys with ABSs and applicants that withdrew from the licensing process*, May 2014, online at http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page, p. 18.

[13] Ibid., p. 16.

[14] Frank H. Stephen, Lawyers, Markets and Regulation (Cheltenham, UK/Northhampton, MA, Edward Elgar), p. 131.

market segments were associated with the highest levels of publicized innovations, according to the LSB.[15]

ABS and Fixed Fees

In jurisdictions in which ABS has been introduced there has been increased use of fixed fees for legal services. Slater & Gordon, an Australian law firm which was the first ABS to be listed on a stock exchange, introduced a fixed fee service covering every stage of a family law matter, up to and including court proceedings in 2011.[16]

Slater & Gordon launched an online will service in 2010 which offers free storage of the will once it is completed. The service does not allow clients with complex estates to complete an online will, however, and recommends that the client seek legal advice in such cases. In May 2011, during a one-week period, 3,100 Australians took advantage of an offer to obtain a free will.[17]

The 2013 LSB study also revealed that one quarter of firms regulated by the Solicitors Regulatory Authority which were surveyed (including ABS) were offering their clients a fixed fee upfront. The survey showed that there had been an increase in the use of fixed fees in certain areas of the law, mainly family (6% to 26%), probate (12% to 30%), and housing (19% to 26%).[18]

The Co-operative is a grocery store chain offering banking, insurance, travel, funeral, and pharmacy services. Co-operative Legal Services, which operates over 300 stores and pharmacies in 1,000 bank branches in the United Kingdom, which was licensed as an ABS in March 2012,

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[15] Legal Services Board, (*Evaluation: Changes in Competition in Different Legal Markets*), online at https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf, paragraph 3.14 and Part IV (Overview).

[16] Slater & Gordon News Release, September 8, 2011, "Slater & Gordon launches fixed fee for family law", online at http://www.slatergordon.com.au/files/blog_docs/213_0_doc1.pdf, In 2013, Slater & Gordon purchased the U.K. personal injury firm Russell Jones & Walker.

[17] Slater & Gordon, "More than 3,100 Australians take up free wills as part of Law Week", News Release, 31 May 2011, online at http://www.slatergordon.com.au/media/news-media-releases/vic-act-sa-tas-nt/more-than-3100-australians-take-up-free-wills-as-part-of-law-week002.

[18] Legal Services Board, *Evaluation: Changes in Competition in Different Legal Markets: An Empirical Analysis* (October 2013), supra note 17, paragraphs 1.51 and 4.11.

launched a family law service directed at individuals who are not eligible for legal aid offering them a fixed pricing structure.[19]

ABS and Areas of Practice

The Solicitors Regulatory Authority reports that ABS firms have achieved a significant share of the overall market in certain areas of legal work:

- ABS accounted for one-third of all activity in the personal injury market.
- ABS have captured a significant percentage of activity in mental health, non-litigation other (such as mergers and acquisitions and probate), consumer and social welfare.
- Other than these areas, ABSs are spread evenly across a range of different legal work types.[20]

According to the Legal Services Board, half of the ABS firms who undertake work in personal injury were existing solicitor firms which changed their practice structure.[21]

The study also suggested that

> The work areas that ABSs appear to be most active in may point to increased interaction between ABSs and lower income client groups. This could suggest possible increased competition in areas of law where there may be barriers to access for lower income groups.[22]

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[19] Co-op to launch family law service in London before nationwide roll-out", *Legal Futures*, April 30, 2012, online at http://www.legalfutures.co.uk/latest-news/co-op-to-launch-family-law-service-in-london-before-nationwide-roll-out. The web site may be accessed at http://www.co-operativelegalservices.co.uk/.

[20] Solicitors Regulatory Authority*, Research on Alternative Business Structures (ABS): Findings from surveys with ABSs and applicants that withdrew from the licensing process*, May 2014, online at http://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page, p. 3.

[21] Access to Justice: *Learning from long term experiences in the personal injury legal services market: Final report for the Legal Services Board*, online at https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf, p. vii.

[22] *Research on Alternative Business Structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process*, *supra* note 21, p. 12.