

ABS Discussion  
Policy Secretariat  
Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6

Monday, December 15, 2014

Dear Sir/Madam:

I am writing on behalf of the Barrie Real Estate Lawyers Association (BRELA), which group represents 65 solicitors throughout Simcoe County who practice primarily in the area of real estate law. I am writing to provide comments in respect of proposals relating to alternative business structures for law firms.

Our Association has been apprised of the Law Society's consideration of a variety of alternative business structures. We believe that, at least in so far as the proposals relate to real estate law, that the proposed changes are unnecessary. We understand that the primary justification for considering the changes is to ensure access to Justice and/or access to legal advice, but in real estate matters, this is readily available and at a reasonable price. It is our opinion that lawyers within the province of Ontario have done a good job in representing parties in real estate matters. Within our own bar, average legal fees charged to purchasers on real estate transactions are less than 0.5% of the purchase price. Fees for sellers are often lower still.

We understand that it has been argued that third-party investment in law firms may be necessary in order to achieve certain economies of scale (such as standardization of processes, computerization, and the development of software, to name a few). It has been our experience that third-party providers have in fact developed excellent software for use by the real estate bar including but not limited to software like Conveyancer or RealtiWeb, which have been accepted by a large portion of the bar, without the need for investment into law firms. In addition, our real estate bar has been active in working together to establish standardized documentation, as we understand has also been the case in other local bars and, more recently, across the province. This process of negotiation of changes works in favor of the public interest as a variety of interests and concerns are brought forward from the various lawyers who are involved in the process. We are concerned about the motives of parties who may be promoting the non-lawyer ownership and control of law firms, and the conflicts between their motives and the public interest. We believe that the public is well served by our educated, insured, committed, and professional membership.

As real estate legal professionals, we believe that our role – to act as advisors and advocates for our clients – is a vocation and a profession and not a mere financial relationship. Often, we are required to, and do, expend time and effort on matters for which we will not receive financial reward (such as, for example, in the case of vulnerable clients). We believe that the financial pressures of working for a for-profit corporation, or being responsible to shareholders to ensure a profitable bottom line, would create an environment wherein those vulnerable clients could not

be served within the profit parameters, and wherein they may not be served at all. This is contrary to the stated purpose of expanding access to justice and/or access to legal advice.

Already the promotion of law offices within businesses, such as the recent affiliation of a firm with Wal-Mart, suggests that the practice of real estate law is a mere commodity, a one-size-fits-all situation, and suggests that work done will be done so as to meet minimum standards rather than ensuring service to our clients. We do not wish to see this happen, as we do believe it will have a negative effect on the quality of work done by real estate lawyers.

As a group we are aware of the watch dog role that the Law Society plays and we are very concerned about the potential loss of the right to self-governance where third party owners are concerned; with that loss, the public will lose the benefit of the controls on the profession which are imposed through the Law Society.

Real estate lawyers have had a strong role to play in ensuring the integrity of the land titles registration system. The experience with private company involvement in this area of law has not been as reliable. In particular, title insurance companies and in-house lender registrations have been problematic, and in fact, we are aware of many instances where mortgages have not been discharged on a timely basis, if at all, or, more critically, where mortgage registrations have occurred long after advances under mortgages have taken place (and in some circumstances even after properties have been sold). This escalates costs to the public as it falls to the solicitor to ensure that missed discharges are made available for closing, which can be a time consuming and thus costly undertaking.

Additionally, we feel strongly that the public is served by the professional obligations on lawyers to ensure that the parties to real estate contracts are given an explanation of the documents that they are signing, including, without limitation, mortgages, and understand their rights and obligations under them, and, where applicable, such parties are made aware of alternatives to the execution of the documents presented to them. We feel that the ability to give such advice independent of other concerns and constraints (such as the conflict which would be built into the giving of advice in the event, for instance, that the law firm was owned or partially owned by a bank, real estate company, or title insurer) is essential to the protection of the public interest. For all of these reasons we strongly object to any proposal which would allow for the ownership of law firms by banks, lenders, real estate companies, title insurers, other insurers, or any class of investor who could be determined to have a potential pecuniary conflict of interest in the outcome of the transaction or the advice given in respect of it.

Non-arm's-length investment into law firms is a separate issue from the potential to allow related parties (such as spouses and children) to have an interest in a professional corporation. We understand that this is routinely available to other professionals and creates certain tax advantages (the corollary being that a lawyer's inability to allow such interests is a tax disadvantage). We would support amendments that would permit arm's-length ownership of law firms only on the basis that such ownership should be nonvoting.

We would like to be kept abreast of developments as you consider this issue and would appreciate the opportunity to meet with the task force before any decision is taken.

We trust that you will give these concerns attention as you work through your consideration of alternative business models.

Yours truly

Barrie Real Estate Lawyers Association

Per:

A handwritten signature in black ink, appearing to read 'Cesia E. Green', written in a cursive style.

Cesia E. Green, Barrie Real Estate Lawyers Association President, 2014-2015