

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

via email: abs.discussion@lsuc.on.ca

December 20, 2014

Dear Sirs and Mesdames,

Re: Alternative Business Structure Call For Input

As paralegal members, we wish speak in opposition of the proposed Alternate Business Structure (ABS) models by way of this joint submission. We respectfully submit that the following areas are of most concern and we believe warrant further deliberations.

REGULATORY STABILITY IS MORE THAN JUST A TREND

The legal profession has a remarkable history of high standards and ethical conduct. We understand that the Internet Age has presented a level of accessibility to fortunes and goods at an unprecedented rate. The current legal market place is clearly a force to contend with. If there is a lesson that the profession has learned, however, it is that consumer trends are not without complications.

The LSUC has, when regulating paralegals, determined that it was better to license than to allow non-licensees to remain outside the regulatory framework. It seems counter intuitive to change a regulatory framework now to allow for non-licensees the ability to become shareholders in any capacity.

We submit that the existing framework and the high standards in structure and practice that originally drove the modernization of the licensing process for paralegals, are what continues to ground the LSUC's duty to Access to Justice. It cannot be forgotten that a real duty is never a trend. To waiver on this for the sake of increased profitability for a few is to concede that trending is more important than accountability and stability of the profession.

THE ONTARIO FRAMEWORK IS UNIQUE

The desire by the LSUC to keep legal service providers bound by high standards through the licensing of paralegals has resulted in Ontario having a very unique framework. We submit that neither the UK nor Australian models include all of the elements found in the Ontario one. We wish to specifically highlight that none of the examined jurisdictions, including other Canadian provincial frameworks, have the option of licensed paralegals.

Since paralegal licensing, our regulatory framework has provided the public with an additional option for receiving legal services under the umbrella of Access to Justice. Both members of the

public and existing law firms can benefit by using licensed paralegals. Licensed paralegals have since been the regulated means of attaining a competitive-edge in the growing DIY legal culture.

The current research does not highlight this uniqueness of the Ontario model and understandably so, since the research is not based out of Ontario. However, a comparison between the needs of a firm that has incorporated licensed paralegals, and the needs of one that has not, must be made before the assessment process can be completed. We submit that any decision made now on the topic of ABS models will not be proper until there is an analysis on whether ABS would still be needed if the existing framework was adopted in practice and not just in theory.

OPPORTUNITIES FOR LICENSEES SHOULD REMAIN THE PRIORITY

We acknowledge that in society's existing professional landscape, there is an "expert for everything" and that these experts may provide an unregulated solution to address current practice issues. However, we submit that utilizing licensees still remains the best available option to bridge the gaps generating the desire for ABS.

With a significant number of new licensees remaining unemployed, or underemployed, we have a natural concern that by allowing non-licensees into the equation, those unemployed licensees will now be forced to compete with the "other talent" that may have more investing power. We submit that more discussion is needed about the true impact for the unemployed licensee before preference is given to non-licensees.

THE UNWANTED EFFECT OF UNREGULATED SHAREHOLDERS

Beyond the potential job market implications for new licensees competing with non-licensees, opening the door for unregulated and arms' length investors creates a significant potential for licensees to lose power over the direction and operation of the firm. Firms will no longer be accountable to partners who are involved in the legal field and understand professional legal ethics, but rather will be answering to and protecting savvy investors and corporations who are only investing for the purpose of a financial return or for other improper purposes.

We submit that no informed decision can be made without also considering the necessary oversight adjustments, and methods of safeguarding against monopolistic or anti-competitive behaviours that could arise as a result of having arms' length investors. Each of the proposed ABS models will require specific regulation around who may be an investor, and who is not desired as a result of their relationship to the firm or the negative implications their investment could have on the image of the firm and legal profession. The costs and practicability of that regulation must also be factored into the discussion of the ABS models themselves.

BIG LAW VERSUS LITTLE LAW

Investors do not invest in companies for philanthropic purposes. The investment is made because they expect the company will grow in size and provide them with a substantial financial return on their money. We are concerned that pressure from outside investors will push firms to pursue competitive or smaller firms in an attempt to effectively eliminate them instead of pursuing the businesses providing non-regulated legal services. Since these larger firms will be the first to gain financial backing, they are more likely to succeed over the long term. "Big Law" already

has the money to expand, invest in technology, and hire sophisticated non-licensed managers if they want. It was acknowledged in the discussion paper that this has happened in Australia, where nearly half of the plaintiff's side personal injury work is performed by only five (5) firms. This creates a foreseeable Access to Justice problem; not a solution.

It is our position that these ABS models are not the solution that sole practitioners and small firms are ultimately looking for when they say they would like a structure that facilitates access to business expertise and infrastructure. While yes, we would like access to knowledge or more experienced practitioners at a more convenient cost, this could be achieved through legal associations who include all licensees; through proper employment of licensees; and through an infrastructure that includes shared marketing campaigns. This may be accomplished with the guidance and encouragement of the LSUC under the existing regulatory framework. Similarly, the other potential benefits identified for small firms and sole practitioners can already be done through space sharing offices or multi-disciplinary practices. Implementing ABS systems will not facilitate this process more easily, it will just change who is in control of the direction of the organization and who financially benefits from its success.

It is our position that the proposed ABS models are focused only on the benefits it would provide to "Big Law." The potential benefits for small firms and sole practitioners identified in the discussion paper serve as a good reminder of what is already available but still in need of fine-tuning. We submit that the deliberations need to remain focused on who will stand to lose the most as opposed to who will gain from ABS.

Notwithstanding the above areas of concern, we believe that after a more in-depth discussion another ABS model could be developed that will provide real improvements in Access to Justice as well as business solutions appropriate for all firm sizes. However, as presented, we remain in opposition.

We wish to express our gratitude to the Alternative Business Structure Working Group members for their diligent efforts in preparing the materials, championing this important initiative and providing us with the opportunity to present our concerns about the proposed ABS models.

Sincerely,

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