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MEMORANDUM

To: Law Society of Upper Canada Alternative Business Structures Working Group

From: Peter Carayiannis, President & Founder, Conduit Law

Date: December 31, 2014

Re: The Future of the Practice of Law in Ontario

I would like to commend the Working Group for the calibre and quality of the ABS Discussion Paper published earlier this year, as well as the LSUC's willingness to consult broadly, and meaningfully, with its members and the public.

Introduction:

I am the President and Founder of Conduit Law Professional Corporation ("Conduit Law"). We operate a distributed law firm, focused on embedding business lawyers as in-house counsel with our clients. Our clients represent all strata of the Canadian economy, from Canadian banks and multinational technology companies, publicly-traded Canadian businesses, established privately held companies – all the way to small and mid-sized entrepreneurial enterprises. We work to support, advise and represent Canadian businesses in the best way we know how. Our firm consists of 13 lawyer licensees – they join with me in making this submission.

Conduit Law is part of the growing group of lawyers, law firms and professionals advising the legal profession generally referred to collectively as "NewLaw" and found across the Common Law countries around the world. New Law works through innovative business structures, economic arrangements and emerging technologies.

It should come as no surprise that we consistently advocate:

- for modernizing the profession;
- for increasing competition between lawyers and choice for consumers;
- to reduce the cost of legal services;
- to improve access to justice; and
- to improve the delivery of legal services.

It should also come as no surprise that we view the *status quo* as unsustainable and, in the long-term, inconsistent with advancing the five goals outlined above.

We fully recognize the primacy of the protection of the public as the main focus of professional regulation. But beyond that, we think the following three issues should form the immediate agenda for reform:

- The dramatic rise in the cost of legal services;
- The systematic dilution and degradation of the access to justice in Ontario; and
- The manner in which lawyers organize their business enterprises.

Issues:

Of the three issues outlined above, ABS reform holds out the promise to significantly change the way lawyers organize their businesses. However, the potential advantages of ABS do not stop at simply changing the corporate structure and ownership relationship of law firms, ABS also offers prospects for lowering the cost of legal services and improving the way in which the services are delivered in such a way as to significantly improve access to justice for all Ontarians.

Options:

As currently framed, there appear to be four models open for consideration, the salient features of which are summarized below:

Model #1

Business entities providing legal services only in which individuals and entities who are not licensed by the Law Society can have up to 49 per cent ownership.

Model #2

Business entities providing legal services only with no restrictions on ownership by individuals and entities who are not licensed by the Law Society.

Model #3

Business entities providing both legal and non-legal services (except those identified as posing a regulatory risk) in which individuals and entities who are not licensed by the Law Society would be permitted up to 49 per cent ownership.

Model #4

Business entities providing both legal and non-legal services (except those identified as posing a regulatory risk) in which individuals and entities who are not licensed by the Law Society would be permitted unlimited ownership.

Recommendation:

Models #1 and #3 are inappropriate, insufficient and not likely to accomplish any material advancement or improvement to the way legal services are delivered to the public at large. They would constitute real disincentives to external investors whose capital could fund innovation. Models #1 and #3 should be dismissed immediately.

Models #2 and #4 merit serious consideration as both options will move the profession forward, with the prospect of increasing competition, improving services and reducing costs. Even more importantly, they could help in tearing down the walls of isolationism that have prevented the legal profession from adopting best practices and innovations from other industries, sectors and professions.

The LSUC knows well its experience with Multi-Disciplinary Practices (MDP). In the 1990's introducing MDP in Ontario should, in theory, have improved the delivery of legal services in Ontario. For reasons too lengthy to explore in this submission, the MDP model has failed in Ontario. Models #1 and #3 effectively replicate the MDP approach and amounts to nothing more than old wine in new bottles, as doomed to fail as the last experiment.

Models #1 and #3 would have scant impact on the delivery of legal services as they would not result in changing the real ownership structure and, consequently, the mind and management of law firms. Moreover, given the fundamentally protectionist nature of Models #1 and #3, one questions whether or not there would be any investors even interested in owning a minority interest in a law firm.

The guild mentality, so closely associated with protectionism, trade barriers and restrictions, has contributed to the rising cost of legal services and the overall decline in the access to justice. To adopt Models #1 or #3 would be no different than continuing down the current, predictable, path and somehow expecting a new and different result.

The ABS Working Group, the LSUC and its members, and the public at large deserve better than such recycling of old, failed approaches.

Models #2 and #4 are worthy of consideration and, in our view, consistent with the contemporary trend in the delivery of legal advisory services. The ABS Working Group and the LSUC have the benefit of observing almostv fifteen year's experience of ABS in some Australian states and the more than 300 ABS licenses granted in the last thirty months in England and Wales. At the risk of stating the obvious, Canada, Australia and England and Wales are all Common Law jurisdictions, with similar economies, similar legal traditions, and similar societies. Consequently, their lessons can be brought to effective use in crafting a solution that meets the needs of Ontarians.

The concerns expressed by traditionalists in both countries before ABS were implemented have proven to be unfounded. The sky has not fallen. The profession has not been brought into disrepute. In fact, if anything, the profession's reputation has been burnished in the eyes of the public by these attempts to improve its services, to lower costs, to bring the benefits of enhanced technology and improved business discipline to the practice of law and to pass along the aggregate impact of these benefits to the client and the wider public.

To decline to act risks bring the profession into disrepute as ducking the crisis at hand and failing to have the vision and courage necessary to modernize the profession.

Some might urge that we look to the US, and not to UK or Australia, as providing effective guidance as to what can be accomplished. To heed those voices would be a mistake. In fact, while the US state-based regulators avoiding the challenge of modernization, a host of quasi-legal companies have proliferated in response to real market demands – RocketLawyer, LegalZoom, Axiom Law: but these are not regulated as lawyers or as entities under the jurisdiction of the various bar associations. And yet, the public is actively embracing these new players. The LSUC must embrace its role and do so by helping to move the profession forward.

Conclusion:

The LSUC in general, and the ABS Working Group, in particular, bear a significant responsibility.

In the history of the LSUC and the regulation of the profession for the benefit of the public, rarely have we been confronted with such significant problems in the business and

practice of law while having the tools, the knowledge and the real-life experience in other common law jurisdictions. We know what is wrong. We know the factors that are contributing to the problems. We know that something must be done. We know that doing nothing is not an option. And, most importantly, we know what is happening elsewhere after the winds of modernity have swept through.

All of the advantages of updating and modernizing the practice of law can be brought to bear by the LSUC, and its members, to move the Bench and Bar from the 19th century to the 21st century, and to do this in order to benefit the public and to improve the critical function of our justice system.

If, as stated above, the *status* quo is unsustainable then, as a profession, we must confront the causes of the unsustainability, namely the spiraling cost of legal services, the increasingly diminished access to justice for all Ontarians and the long-term damage to society as both of these factors work like corrosive acids to undermine the rule of law.

The era of legal exceptionalism should come to an end, but only with the best interests of the public in mind and with the goals of improving service, improving access to justice and reducing costs. Lawyers are not uniquely qualified, trained, educated or experienced to operate an effective business in the 21st century.

Lawyers are, however, exceptionally qualified to advocate on behalf of their clients, to support their clients and to enforce and enhance the rule of law. By modernizing the regulatory regime around the legal profession, we can emancipate the lawyers to do that which they are uniquely qualified to do – to represent and protect the public – and allow for diversified ownership and management of the business of law.

> *"The era of procrastination, of half-measures, of soothing and baffling expedients, of delays is coming to its close. In its place we are entering a period of consequences." (Winston S. Churchill, House of Commons, November 12, 1936)*

Respectfully submitted by
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