



TAB 10

**Report to Convocation
January 29, 2015**

Professional Regulation Committee

Committee Members

Malcolm Mercer (Chair)
Paul Schabas (Vice-Chair)
Susan Richer (Vice-Chair)
Robert Armstrong
John Callaghan
John Campion
Cathy Corsetti
Seymour Epstein
Robert F. Evans
Julian Falconer
Patrick Furlong
Carol Hartman
Jacqueline Horvat
Brian Lawrie
Jeffrey Lem
William C. McDowell
Ross Murray
Jan Richardson
Heather J. Ross

Purpose of Report: Information

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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on January 15, 2015. In attendance were Malcolm Mercer (Chair), Paul Schabas (Vice-Chair), Susan Richer (Vice-Chair), John Campion, Cathy Corsetti, Seymour Epstein, Robert F. Evans, Patrick Furlong, Carol Hartman (by telephone), Jacqueline Horvat, Brian Lawrie, Jeffrey Lem, William C. McDowell, Ross Murray, Jan Richardson (by telephone), and Heather Ross.
2. Staff members attending were Zeynep Onen, Grant Wedge, Elliot Spears, Jim Varro, Lesley Cameron, Naomi Bussin, and Margaret Drent.
3. Members of the Professional Development and Competence and Equity and Aboriginal Affairs Committees attended part of the meeting.

FOR INFORMATION

ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP REPORT

Introduction

4. This report describes the activities of the Alternative Business Structures (ABS) Working Group since the Working Group's report to Convocation in February 2014.
5. An alternative business structure may include:
 - a. permitting some form of investment in firms by individuals not licensed by the law society; and/or
 - b. firms offering legal services together with other services for clients through licensees and other professionals.

Meetings Held with Legal Organizations

6. Since February 2014, the Law Society of Upper Canada's ABS Working Group has held meetings which are described in greater detail in an appendix to this report at Tab 10.1.1.
7. The meetings held with legal organizations have offered the Working Group the opportunity to hear a variety of perspectives regarding the issues raised by ABS. These include the concern that ABS may accelerate consolidation in the legal services marketplace in certain sectors and questions regarding the feasibility of regulating non-lawyers and non-paralegals in an ABS given existing regulatory challenges. It has also been suggested that innovation is already taking place in the way paralegals and lawyers are delivering services, and regulatory amendment is unnecessary.
8. Other members of the profession have expressed support for the Law Society's continuing study of the issues raised by ABS and have indicated that in their view, ABS may be of assistance in their practice.

Other Meetings

9. As part of its ongoing study of ABS, the Working Group met with Andrew Grech, Managing Director of Slater & Gordon in April 2014. In a joint meeting held with the Priority Planning Committee, Mr. Grech provided some background regarding Slater & Gordon's activities in Australia as well as in England and Wales.
10. In June 2014 the Working Group met with Professor Gillian Hadfield, Kirtland Professor of Law and Professor of Economics at the University of Southern California. Professor

Hadfield presented some of her recent articles regarding the regulation of business structures and unmet legal needs.¹

11. On October 15, 2014, the Working Group held a meeting with Malcolm Heins, Chair, Business Structures and Innovation Team, CBA Legal Futures Initiative and Allan Fineblit, Steering Committee member, CBA Legal Futures Initiative, and former CEO, Law Society of Manitoba. The CBA Legal Futures Report was issued in August, 2014 and contains 22 recommendations. Mr. Heins and Mr. Fineblit described various factors that informed the work of the CBA Legal Futures Initiative, including
 - a. the influence of technology on the provision of legal services;
 - b. international trade and market liberalization worldwide;
 - c. the approach adopted by competition regulators; and
 - d. significant increases in the Canadian lawyer population since 2000.
12. On November 27, 2014, the Working Group held a teleconference meeting with Steve Brooker, Manager, Consumer Panel, Legal Services Board (LSB), Professor Stephen Mayson, Honorary Professor of Law at University College London and frequent lecturer on the Legal Services Act 2007, James Meyrick, Regulatory Project Manager, LSB, and Neil Rose, editor, Legal Futures, an independent news website tracking the legal landscape in England and Wales (legalfutures.co.uk).
13. Of the 10,571 solicitor firms in England and Wales, there are approximately 330 ABS firms in England and Wales.² In other words, ABS represents a small percentage of solicitor firms. The English guests also noted that a few ABS firms have been unsuccessful and in at least one case the firm was taken over by the regulatory authority.
14. During this meeting, the English guests expressed the view that it is difficult to provide a definitive analysis of the impact of regulatory liberalization in England and Wales because of the short time frame in which ABS has been in existence (the first ABS license was issued in March 2012). It was noted that other significant changes have taken place in the legal services marketplace during the same period, such as cuts to legal aid and a ban on referral fees in personal injury matters which came into force on April 1, 2013, and downward pressure on the cost of legal services. It is difficult to be clear about the cause and effect of the many changes experienced in the English marketplace.
15. Perhaps related to ABS, it is noteworthy that during the period 2011-2014, there has been a significant increase in the percentage of family law services offered at a fixed fee in

¹ "The Cost of Law: Promoting Access to Justice through the (Uncorporate) Practice of Law", *International Review of Law and Economics* 39 (2014): 43-63; "Innovating to Improve Access: Changing the Way Courts Regulate Legal Markets", *Daedalus* (2014).

² "ABSs 'should have to commit to pro bono work' as part of licensing process", *Legal Futures*, November 4, 2014, online at <http://www.legalfutures.co.uk/latest-news/abss-should-commit-pro-bono-work-part-licensing-process/print>. There were 10,571 solicitor firms in June, 2014. See www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page.

England and Wales (while fixed fees were available in 12% of family law matters in England and Wales in 2011, this percentage had increased to 45% in 2014).³

16. The Working Group is grateful to all of the guests who participated in meetings in 2014 for the time they have taken to respond to the Working Group's inquiries and to participate in its deliberations.

Literature Regarding the Impact of ABS in Other Jurisdictions

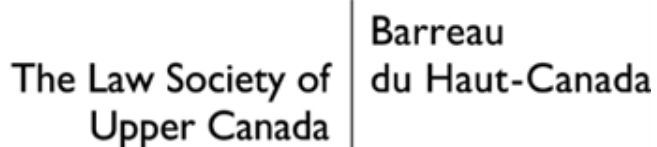
17. The Working Group continued to monitor written material on the subject of ABS and review pertinent literature. As noted above, members of the Working Group have heard concerns expressed by members of the Bar regarding the possible impact of ABS in Ontario. Concerns are also discussed in a recent article by Nick Robinson considered by the Working Group ("When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism".⁴ Mr. Robinson is a Post-Doctoral Research Fellow at the Program on the Legal Profession at the Harvard Law School.
18. In his article, Mr. Robinson suggests that
 - a. The actual impact of non-lawyer ownership is likely to be quite different than suggested by both the proponents and the opponents of non-lawyer ownership in material respects;
 - b. both proponents and opponents of non-lawyer-ownership have overlooked how the effects of non-lawyer ownership can be affected by variations in context, even though non-lawyer ownership will likely have very different impacts depending on the jurisdiction or the sector of the legal market at issue;
 - c. although non-lawyer ownership has resulted in new business models, there are some reasons to believe that these will not significantly increase access to legal services;
 - d. non-lawyer ownership leads to certain professionalism challenges which should be considered although the claims made by opponents of non-lawyer ownership are too sweeping.
19. The Working Group has included a link to Mr. Robinson's paper in the resources provided on the Law Society's dedicated ABS page.

³ Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", Harvard Law School Program on the Legal Profession Research Paper 2014-20, available for download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878, p. 25, footnote 152.

⁴ Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", Harvard Law School Program on the Legal Profession Research Paper 2014-20, available for download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878.

Next Steps

20. The Working Group wishes to express its appreciation for the invitations it received from various legal groups and organizations to discuss the issues raised by ABS to date. The feedback received to date will be taken into consideration in the context of other responses to the Discussion Paper published for input in September 2014.
21. After review and discussion of all of the feedback received in response to the Discussion Paper, as well as at the in person meetings conducted to date, the Working Group will report to Convocation. This report will include a summary of all responses and is scheduled to be provided in February 2015.



**LIST OF ABS MEETINGS
APRIL-DECEMBER 2014**

Date	Event	Law Society Representative(s)
April 17, 2014	Joint ABS Working Group and Priority Planning Meeting with Andrew Grech, Managing Director, Slater & Gordon	n/a
April 29, 2014	Treasurer's Liaison Group	Susan McGrath
May 20, 2014	CDLPA Spring Conference	Susan McGrath and Malcolm Mercer
May 30, 2014	OTLA Spring Conference	Peter Wardle James Scarfone
June 2, 2014	CBA First Annual Ethics Forum	Malcolm Mercer
June 9 and 10, 2014	Canadian Law Leadership Forum Program "Regulatory Limitations on the Practice of Law: Lessons from Key Jurisdictions"	Malcolm Mercer
June 13, 2014	OBA Council	Susan McGrath and Malcolm Mercer
June 16, 2014	ABS Working Group meeting with Professor Gillian Hadfield	n/a
June 17, 2014	Crown Summer School	Treasurer Minor Malcolm Mercer
August 26, 2014	Advocates Society Board of Directors	Susan McGrath and Malcolm Mercer
September 18, 2014	OTLA Board of Directors	Susan McGrath and Malcolm Mercer
October 3, 2014	AJEFO Congress	Robert Lapper, Carol Hartman, Margaret Drent
October 16, 2014	Toronto Lawyers Association	Susan McGrath and Malcolm Mercer

Date	Event	Law Society Representative(s)
October 16, 2014	Barrie Real Estate Lawyers Association	Alan Silverstein, Joe Sullivan, Robert Evans
October 20, 2014	Frontenac Law Association	Malcolm Mercer and Susan Elliott
October 28, 2014	Equity Advisory Group (EAG)	Susan McGrath
November 5, 2014	Hamilton Law Association (ABS information session)	Susan McGrath and Malcolm Mercer Joe Sullivan James Scarfone
November 18, 2014	County of Carleton Law Association Board of Trustees	Malcolm Mercer and Constance Backhouse
November 19, 2014	Federation of Asian Canadian Lawyers	Peter Wardle
December 5, 2014	OBA Program "ABS Abroad: Key Insights from the United Kingdom and Australia"	Malcolm Mercer Peter Wardle

FOR INFORMATION**FIRM REGULATION and COMPLIANCE-BASED REGULATION**

22. On February 27, 2014, Convocation approved further consideration of regulation of firms. Firm regulation would provide the authority to regulate firms in addition to the Law Society's current authority in the *Law Society Act*. Firm regulation can be used to support a more proactive, compliance-based regulatory approach for more effective regulation.
23. Convocation referred this proposal to the Professional Regulation Committee for consideration, in collaboration with the Professional Development and Competence and Paralegal Standing Committees. This report provides an update on the Committee's review of the issue.
24. After an initial review, the Committee determined that staff should develop a model for firm regulation for the Committee's consideration and comment. The Executive Director of Professional Regulation has begun work on developing the framework for the model, which will take into account Ontario licensee and firm demographics, best practices and outcomes in other jurisdictions that have implemented this type of regulation and the Law Society's current regulatory processes.
25. The following objectives will guide the development of the Law Society's framework:
 - a. To enhance public protection and public confidence in the Law Society and licensees through a focus on practice management principles and systems and firm management through firm policies and procedures; and
 - b. To regulate more efficiently and effectively through firm regulation, and
 - c. To permit greater autonomy of firm practise, guided by regulatory principles created by the Law Society.
26. A key part of the review will be to determine the rules that might apply to firms and other entities and how regulatory authority can most effectively be applied to firms.
27. A critical review of existing entity regulatory regimes in other jurisdictions, such as England and Wales and Australia, will help in assessing the appropriateness of these models and their components for Ontario. The review will also include consideration of available information from other Canadian jurisdictions that have the authority to regulate firms, including British Columbia, Saskatchewan and Nova Scotia.
28. This work is being done in tandem with the Committee's review of compliance-based regulation. Compliance-based regulation is an outcomes-focused approach according to

which the regulator sets out expected outcomes and provides flexibility to firms as to how the outcomes are achieved.

29. The Committee expects to receive a further progress report later this year.