

## FOR DECISION

# REPORT OF THE ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP

### MOTION

27. That Convocation approve that licensees may deliver legal services through civil society organizations, such as charities, not for profit organizations and trade unions, to clients of such organizations in order to facilitate access to justice.

### SUMMARY OF ISSUE UNDER CONSIDERATION

28. In September 2015, the Alternative Business Structures Working Group (“Working Group”)<sup>1</sup> reported to Convocation that it would not continue to consider majority non-licensee ownership of traditional law firms in Ontario for the time being, but would continue to explore ABS options with the potential to foster innovation or enhance access to justice, including:
- a. minority ownership by non-licensees;
  - b. franchise models;
  - c. ownership by civil society organizations such as charities, not-for-profits and trade unions in order to facilitate access to legal services; and
  - d. new forms of legal service delivery in areas not currently well served by traditional practices.<sup>2</sup>
29. In this report, the Working Group provides its recommendations regarding direct delivery of legal services through civil society organizations such as charities, not for profit organizations and trade unions (hereinafter “CSOs”) in order to facilitate access to justice.
30. The Working Group recommends that Convocation approve the policy decision to enable the direct delivery of legal services<sup>3</sup> to CSO clients by lawyers and paralegals providing services through such organizations.

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<sup>1</sup> The Working Group is chaired by Malcolm Mercer and Susan McGrath. Current members are Fred Bickford, Marion Boyd, Suzanne Clément, Cathy Corsetti, Janis P. Criger, Carol Hartman, Brian Lawrie, Jeffrey Lem, Joanne St. Lewis and Anne Vespry.

<sup>2</sup> ABS Working Group, September 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, at paras. 56-58, online at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf).

31. The Working Group reports to Convocation through the Committee, with the concurrence of the Paralegal Standing Committee. The Access to Justice Committee has also reviewed the report and is in agreement with these recommendations.
32. If approved, it is proposed that the Law Society amend its By-Laws to permit CSOs to register with the Law Society. Lawyers and paralegals would be permitted to provide legal services directly to clients through the registered CSOs.
33. It is proposed that CSOs would register with Law Society if the circumstances under which legal services would be provided to CSO clients (by “embedded” lawyers and paralegals) meet the requirements prescribed by new by-laws to be adopted by Convocation. The requirements will focus, among other things, on ensuring that:
  - a. the licensee has control over their delivery of legal services;
  - b. solicitor-client privilege will be protected; and
  - c. the fundamentals of professionalism, including independence, competence, integrity, confidentiality, candour, avoidance of conflicts of interest, and service to the public good through client relationships and responsibilities to the administration of justice will be safeguarded.
34. A registered CSO would be de-registered if the prescribed circumstances under which legal services may be provided to CSO clients by “embedded” licensees were no longer present.
35. Lawyers and paralegals providing legal services through registered CSOs would continue to be fully regulated by the Law Society.

## **BACKGROUND**

36. The Working Group was established by Convocation in September 2012 to explore various possible options available for the delivery of legal services, including structures, financing and the related regulatory processes, and to recommend specific models and arrangements it determines are suitable for the Canadian and Ontario contexts.<sup>4</sup>

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<sup>3</sup> For the purpose of this report, the phrase “legal services” includes services provided by both lawyers and paralegals.

<sup>4</sup> For general background information related to the work of the ABS Working Group, please see “Alternative Business Structures”, Law Society of Upper Canada online at <http://lsuc.on.ca/abs/>.

37. From September 2012 to January 2014, the Working Group researched structures for the delivery of legal services, held an initial consultation session, and held a full day symposium with 70 attendees from various aspects of practice.<sup>5</sup>
38. In its February 2014 Report to Convocation, the Working Group described in detail the relationship between ABS and access. It observed that while ABSs are not a “panacea” and are not “the sole, nor likely the most important” access to justice solution, ABSs nevertheless have “real potential” to enhance access to justice.<sup>6</sup>
39. In February 2014, Convocation approved a consultation with the professions and others on the delivery of legal services through alternative business structures. In September 2014, the Working Group began a broad consultation process by releasing a Discussion Paper on potential models for ABS in Ontario.<sup>7</sup> The Working Group continued to hold meetings with legal organizations through the fall of 2014 and early 2015 to continue to hear perspectives regarding ABS.<sup>8</sup>
40. The Working Group received over 40 responses to the Discussion Paper from individuals and legal and other organizations. The Working Group provided a summary of these responses in its February 2015 Report to Convocation.<sup>9</sup>
41. In its September 2015 Report to Convocation, based in large part on the responses it received from the professions, the Working Group stated that it “did not propose to further examine any majority or controlling non-licensee ownership models for traditional law firms in Ontario at this time.”<sup>10</sup>
42. The Working Group determined that it would continue its mandate by exploring options with the potential to foster innovation or enhance access to justice, including minority ownership by non-licensees, franchise models, ownership by civil society organizations such as charities, and new forms of legal service

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<sup>5</sup> For more information about this stage, see the ABS Working Group February 2014 Report to Convocation, Convocation – Professional Regulation Committee Report, at paras. 6-89, online at <http://lsuc.on.ca/uploadedFiles/ABS-report-to-Convocation-feb-2014.pdf>.

<sup>6</sup> *Ibid.* at paras. 107, 119 and 120.

<sup>7</sup> ABS Working Group, “Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper”, September 2014, online at <http://lsuc.on.ca/uploadedFiles/abs-discussion-paper.pdf>.

<sup>8</sup> ABS Working Group, January 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, online at [http://lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-january-2015-professional-regulation.pdf](http://lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2015-professional-regulation.pdf).

<sup>9</sup> ABS Working Group, February 2015 Report to Convocation, online at <http://www.lsuc.on.ca/uploadedFiles/ABS-full-report.pdf>. The submissions are also available at [www.lsuc.on.ca/abs](http://www.lsuc.on.ca/abs).

<sup>10</sup> ABS Working Group, September 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, at para. 56, online at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf).

delivery in areas not currently well served by traditional practices.<sup>11</sup>

43. The Working Group's decision to focus on charities and other CSOs was informed by the recommendation made in the responses to the Discussion Paper that ABS regulation could be developed in a manner to facilitate access to justice. As the Working Group noted in September 2015 (at para. 137):

One submission coined the phrase "ABS+". An ABS+ regulatory approach would build on the following statement by Nick Robinson that was adopted by many responding to the ABS Discussion Paper:

For policymakers the goal should not be deregulation for its own sake, but rather increasing access to legal services that the public can trust delivered by legal service providers who are part of a larger legal community that sees furthering the public good as a fundamental commitment. Carefully regulated non-lawyer ownership may be a part of achieving this larger goal, but only a part.<sup>12</sup>

44. In September 2015, the Working Group also recognized that:
- a. Although ABS efforts in Australia and England and Wales were not designed to facilitate access to justice *per se*, there have been practices which have emerged to provide legal assistance to vulnerable persons;
  - b. There may be an opportunity to build from these experiences in a way that seeks to harness ABS as one means of addressing the significant access to justice barriers in Ontario; and
  - c. Civil society organizations might be able to provide access to legal services at the same time that their clients are provided access to other services.<sup>13</sup>
45. The Working Group posited that "External ownership by particular civil society groups may be one way of leveraging non-legal networks and expertise to

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<sup>11</sup> *Ibid.* at paras. 56-58.

<sup>12</sup> Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism", (August 27, 2014). Harvard Law School Program on the Legal Profession Research Paper No. 2014-20, at page 53.

<sup>13</sup> ABS Working Group, September 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, at paras. 139, 140 and 143, online at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf).

facilitate access to legal services provided by licensees.”<sup>14</sup>

46. Based on the above, the Working Group determined that it would “consider eligibility criteria and how an ABS+ regulatory structure could facilitate access to justice while protecting core professional values.”<sup>15</sup>

## DISCUSSION

47. The Working Group has continued to regularly meet since its last report to Convocation in September 2015. It has considered the opportunities and risks associated with permitting the delivery of legal services by or through charities, not for profit organizations and other CSOs by:
- a. Studying how charities and other civil society entities currently seek to connect their clients to legal services;
  - b. Exploring examples of innovative models whereby civil society entities directly deliver legal services;
  - c. Conducting a series of focus group meetings with charities and other civil society organizations, “embedded” lawyers, front line social service workers, social innovation leaders and supporters of social and legal services; and
  - d. Deliberating on the appropriateness of recommending potential new models based on set criteria.

48. The Working Group reports on each of these stages below.

### **a. Current Efforts to Connect Legal and Other Community Services**

49. To date, community service providers and legal organizations have worked to develop connections to serve their clients in a variety of ways, including the following:
- a. Front line workers such as social workers and settlement workers, at times described as “trusted intermediaries”, refer individuals to legal clinics and/or the private bar when their clients require legal advice.<sup>16</sup>

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<sup>14</sup> ABS Working Group, September 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, at para. 142, online at [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf).

<sup>15</sup> *Ibid.* at para. 144.

<sup>16</sup> The Law Foundation has developed The Connecting Project, an innovative initiative designed to improve access to legal information and legal services for people who do not speak English or French, and for people who live in rural or remote areas, in part by improving the capacity of such frontline workers to provide basic legal information and legal referrals, and to enhance coordination to ensure that clients receive continuous assistance. See “The Connecting Project”,

- b. Certain legal aid lawyers are able to meet clients at civil society settings such as settlement services offices, community centres, health centres and shelters.
- c. Two Legal Aid Ontario staff lawyers work as counsel “embedded” in civil society settings. A Staff Lawyer at the ARCH Disability Law Centre is the Onsite Lawyer for the Health Justice Program at St. Michael’s Hospital in Toronto.<sup>17</sup> Another legal aid lawyer works on-site at Sound Times, a mental health support services provider in Toronto.
- d. Pro Bono Ontario staff lawyers are embedded in children’s hospitals (an approach described further below).
- e. Pro Bono licensees at times volunteer to provide services to clients who have been referred by CSOs, and/or make themselves available in shelters or other settings to provide pro bono services through their firms.
- f. There are government funded programs providing legal services pursuant to s.30 of By-Law 4.

50. The Working Group believes that the above models should be encouraged, as they facilitate access to justice. However, the Working Group also recognizes that there may be new models which could be developed to facilitate access to legal services.

#### **b. Examples of Civil Society Delivery of Legal Services**

51. In its September 24, 2015 Report to Convocation, the Working Group provided examples of types of ABS innovations involving CSOs. This section provides further detail regarding certain examples noted by the Working Group at that time and new examples of structures which have emerged.

##### *(i) Law Firm Ownership by Trade Unions and Associations*

52. In its September 24, 2015 Report to Convocation, the Working Group noted that in England and Wales, a trade union and British Medical Association had set up alternative business structures in order to serve their members.<sup>18</sup>

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Law Foundation of Ontario, online at <http://www.lawfoundation.on.ca/what-we-do/the-connecting-project/>. See also Community Legal Education Ontario (“CLEO”), “Connecting Communities initiative”, online at <http://www.cleo.on.ca/en/projects/connecting-communities>.

<sup>17</sup> “Department of Family and Community Medicine and St. Michael’s Academic Family Health Team Health Justice Program”, St Michael’s Hospital, online at <http://www.stmichaelshospital.com/programs/familypractice/legal-education-and-advice.php>.

<sup>18</sup> ABS Working Group, September 2015 Report to Convocation, Convocation – Professional Regulation Committee Report, at paras. 113-114, online at: [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf).

53. The trade union ABS, Unionline,<sup>19</sup> is wholly owned by two unions to provide legal services to their members.<sup>20</sup> It has been reported that any profits would be returned to the unions.<sup>21</sup>
54. The British Medical Association created BMA Law as an in-house team of lawyers who provided legal advice to UK doctors.<sup>22</sup> In 2015, it converted into an ABS.<sup>23</sup> It now serves the medical community and other clients. It operates on a not-for-profit basis, and is reportedly owned by the British Medical Association through a trust.<sup>24</sup> Any profits appear to be reinvested in the BMA.<sup>25</sup>

*(ii) Aspire Law LLP: A Joint Venture Between a Charity and a Law Firm*

55. Aspire Law LLP is an ABS that operates as a “joint venture between Aspire, the national spinal cord injury charity and Moore Blatch” a personal injury firm.<sup>26</sup> It describes itself as: “specialist spinal cord injury lawyers”.<sup>27</sup> In addition to providing legal services, it works “with Aspire [the charity] to provide a service that tackles every issue arising from spinal cord injury including housing, education, care, and rehabilitation as well as emotional and family support”.<sup>28</sup> Half of Aspire Law LLP’s profits go back to Aspire “the charity, to provide support, funding and housing for people with spinal cord injury.”<sup>29</sup>
56. Aspire Law LLP provides services throughout England and Wales.<sup>30</sup> In addition to its spinal cord injury practice, it is licensed to undertake a range of related reserved legal activities, such as conveyancing, employment, and wills and

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<sup>19</sup> Register of licensed bodies (ABS) Trade Union Legal LLP (trading as Unionline), Solicitors Regulatory Authority, online at <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs-register/608309.page>.

<sup>20</sup> “About Us”, Unionline, online at: <http://www.unionline.co.uk/about-us/>.

<sup>21</sup> Neil Rose, “Leading trade unions make ABS play”, Legal Futures, May 23, 2014, online at: <http://www.legalfutures.co.uk/latest-news/leading-trade-unions-make-abs-play>.

<sup>22</sup> “About Us”, BMA Law, online at: <http://bmalaw.co.uk/about/>.

<sup>23</sup> *Ibid.* See also: Register of licensed bodies (ABS) BMA Law Limited (trading as BMA Law), Solicitors Regulatory Authority, online at: <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs-register/619810.page>.

<sup>24</sup> *Ibid.*; Nick Hilborne, “The solicitor will see you now: British Medical Association sets up ABS for doctors”, Legal Futures, May 6, 2015, online at: <http://www.legalfutures.co.uk/latest-news/the-solicitor-will-see-you-now-british-medical-association-sets-up-abs-for-doctors/print>.

<sup>25</sup> BMA Law states that “We are proud to operate on a not-for-profit basis, reinvesting any surpluses back into services for you and your colleagues. So, by working with us, you’re supporting the wider medical community”: About Us”, BMA Law, online at: <http://bmalaw.co.uk/about/>.

<sup>26</sup> “About Us”, Aspire Law, Solicitors for People with Spinal Cord Injury, online at: <https://www.aspirelaw.co.uk/about-us>.

<sup>27</sup> “What makes Aspire Law unique?”, Aspire Law, Solicitors for People with Spinal Cord Injury, online at: <https://www.aspirelaw.co.uk/about-us>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> “Contact Us”, Aspire Law, online at: <https://www.aspirelaw.co.uk/contact-us>.

probate services.<sup>31</sup>

*(iii) The Salvation Army Australia Model: Cross Subsidizing Pro Bono Services*

57. The Working Group's September 24, 2015 Report to Convocation provided general background information about Salvos Legal and Salvos Legal (Humanitarian) (collectively the "Salvos Entities"), two law firms owned by The Salvation Army Australia Eastern Territory. Salvos Legal is a not-for-profit firm. Salvos Legal (Humanitarian) is structured as a Public Benevolent Institution.<sup>32</sup> The profits from Salvos Legal fund the work of Salvos Legal (Humanitarian).
58. As part of its ongoing review of different potential civil society legal service delivery models, the Working Group reviewed the Salvos model on a more in-depth basis. The Working Group consulted with Luke Geary, the Managing Partner of Salvos Legal and Salvos Legal (Humanitarian).<sup>33</sup>
59. The Working Group Co-Chairs have also met with representatives of the Salvation Army Canada who have expressed interest in adopting the Salvos Legal model to Ontario if it can be done in a manner that complies with Law Society and other regulations.
60. The Working Group is grateful to Mr. Geary for the time and expertise that he provided, and to the Salvation Army Canada.
61. In order to launch the Salvos Legal initiative, the Salvation Army Australia provided seed funds to cover start-up costs.
62. The two entities are organized and operated as traditional law firms.<sup>34</sup> They are managed as two separate firms, with separate staff.<sup>35</sup> Both address issues such as avoiding conflicts, and protecting confidentiality and solicitor-client privilege in

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<sup>31</sup> "Other legal services", Aspire Law, online at: <https://www.aspirelaw.co.uk/how-we-can-help/other-legal-services>. See also: Register of licensed bodies (ABS) Aspire Law LLP, Solicitors Regulation Authority, online at: <http://www.sra.org.uk/solicitors/firm-based-authorisation/abs-register/613424.page>.

<sup>32</sup> A Public Benevolent Institution is "one of the categories or 'subtypes' of charity that can register with the Australian Charities and Not-for-profits Commission" [...] which has as its main objective "to relieve poverty or distress": Factsheet: Public benevolent institutions and the ACNC, Australian Charities and Not-for-Profits Commission, online at [http://www.acnc.gov.au/ACNC/FTS/Fact\\_PBI.aspx](http://www.acnc.gov.au/ACNC/FTS/Fact_PBI.aspx).

<sup>33</sup> At the request of the Salvation Army Canada, the Chairs of the ABS Working Group have also met with senior staff and counsel from the Salvation Army Canada regarding potential opportunities for adopting a Salvos Entities' model to provide legal services in Ontario.

<sup>34</sup> Working Group meeting with Luke Geary, Managing Partner of the Salvos Entities.

<sup>35</sup> *Ibid.*

the same ways that such issues would be addressed in traditional law firm settings.<sup>36</sup>

63. Salvos Legal offers legal advice in corporate / commercial, property, not-for-profit, intellectual property and technology law.<sup>37</sup> It is now fully self-sustaining and profitable. Its client base includes “ASX200 companies, federal & state government agencies, not-for-profit organisations, small to medium enterprises and individuals.”<sup>38</sup>
64. Salvos Legal (Humanitarian) has expanded over the years, and has provided legal services to thousands of individuals at no cost to clients or governments. It provides legal advice with respect to a range of matters including police matters, debt, family law (other than property disputes), housing matters, and immigration and refugee law.<sup>39</sup>
65. Salvos Legal (Humanitarian) operates “Advice Bureaus” at multiple Salvation Army locations in New South Wales and Queensland. For clients in rural and regional areas, or for individuals who cannot attend due these locations due to age, disability or incarceration, services can also be accessed by telephone. Salvos Legal (Humanitarian) will provide summary advice to anyone through its “Advice Bureaus”, but will only provide full-time representation to individuals requiring further assistance if the individual does not qualify for legal aid, cannot afford a private lawyer, and meets other screening requirements set out in the firm’s Means and Merits Test Assessment.<sup>40</sup>
66. The Salvos Legal (Humanitarian) firm reports the following:
  - a. It has handled over 17,000 cases since it was founded in 2010.
  - b. It provides free advice on 150-200 humanitarian cases each week;
  - c. It has 19.8 full time lawyers who provided legal advice in 2016; and
  - d. It provided over 36,000 hours of pro bono services in 2016.<sup>41</sup>
67. In addition, Salvos Legal (Humanitarian) works in close collaboration with related Salvation Army services to address clients’ other needs. It “can engage clients with other Salvation Army social and pastoral services such as drug & alcohol

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<sup>36</sup> *Ibid.*

<sup>37</sup> “Our story”, Salvos Legal, online at <https://www.salvoslegal.com.au/our-story/>.

<sup>38</sup> *Ibid.*

<sup>39</sup> “Humanitarian”, Salvos Legal, online: <https://www.salvoslegal.com.au/expertise/humanitarian-free-legal-service/>.

<sup>40</sup> “How We Work”, Salvos Legal, online <https://www.salvoslegal.com.au/expertise/humanitarian-free-legal-service/getting-advice/>; See also “Means and Merits Test”, Salvos Legal online: <https://www.salvoslegal.com.au/wp-content/uploads/2017/02/170206-Means-and-Merits-Test.pdf>

<sup>41</sup> “Humanitarian”, Salvos Legal, online: <https://www.salvoslegal.com.au/expertise/humanitarian-free-legal-service/>.

recovery, employment assistance, housing, welfare, counselling, financial management and aged care.”<sup>42</sup>

68. Salvos Legal has been named Australian Law Firm of the Year 2016 (up to 100 lawyers) in the *Australasian Law Awards*, and in both 2015 and 2016 was named Corporate Citizen Firm of the Year 2016 & 2015 in the *Australasian Law Awards*. It is also a certified B Corporation.<sup>43</sup>

*(iv) The Lawyer Owned Limited Profit Law Firm and Not for Profit Law Firms*

69. In the United States, lawyer owned limited profit law firms and not for profit law firms have recently emerged. These entities are addressing the unmet legal needs of people who cannot afford an attorney but are not eligible for free legal services.
70. As an example, Open Legal Services, described as “Utah’s first non-profit law firm for clients”, provides “low bono” legal services to low to moderate income people who are ineligible for pro bono assistance.<sup>44</sup> The firm provides a sliding “low bono” rate depending on income and family size. It offers services in family law and criminal defense, as well as public guardian services to represent the interests of children in high conflict divorce and custody cases. As an incorporated non-profit it can also accept donations to support its work.
71. While some of these non-profit law firms rely mostly on the fees received from clients in order to operate, some have received funding from additional sources. Louisiana’s SWLA Law Center, for example, was established in 1967 and provides reduced fee legal services for those who cannot afford the regular fees of a private attorney but do not qualify for legal aid. It receives funding from the United Way, the City of Lake Charles (through its Office of Community Development) and other grants and donations.<sup>45</sup>

*(v) Medical-Legal Partnership Models*

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<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* “B Corps are for-profit companies certified by the non-profit B Lab to meet rigorous standards of social and environmental performance, accountability, and transparency”: B Lab online: <https://www.bcorporation.net/what-are-b-corps>.

<sup>44</sup> Open Legal Services, online at <http://openlegalservices.org/>.

<sup>45</sup> SWLA Law Center, online at <http://www.swla-law-center.com/index-2.html>. To learn more about American not-profit law firms, see the Open Legal Services Nonprofit Law Firm Directors, which provides a non-exhaustive list of similar non-profit law firms: <http://openlegalservices.org/nonprofit-law-firm-directory/>.

72. The Medical-Legal Partnership (“MLP”) is a relatively new model that is being called “a cornerstone of access to justice.”<sup>46</sup> It has been described as follows:

MLP is a healthcare delivery model that integrates legal assistance as a vital component of healthcare. The power of the MLP model lies in its cross-disciplinary, *leveraging* nature, which aligns the legal community with a range of stakeholders and professions that are unified in seeking to improve the health conditions and systems for vulnerable populations.

MLPs are built on the understanding that social determinants of health often manifest in the form of legal needs, and that attorneys have special tools and skills to address these needs.

[...]

MLP practice has multiple impacts for patient-clients and communities, as well as for the professions and the legal and health institutions that partner together. A key outcome is the improved capacity of both legal and health professionals to screen, triage, and resolve problems that overlap legal and health domains [...]<sup>47</sup>

73. In the United States, the American Bar Association passed a resolution in 2007 encouraging lawyers, law firms and other members of the legal professions to develop MLPs with hospitals, community-based health care providers and social service organizations.<sup>48</sup> There are now hundreds of MLPs operating in the United States, with a wide range of structures.<sup>49</sup> MLPs have been established in a range of settings, including children’s hospitals, health centers, veteran health care settings and behavioural health settings.<sup>50</sup>
74. In Ontario, Pro Bono Law Ontario, now Pro Bono Ontario (“PBO”), has developed MLPs at children’s hospitals in Ontario, beginning with its program at Toronto’s SickKids Hospital. This program, initially known as the “PBLO at SickKids” program, was described in a report to Convocation in January 2011 as follows:

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<sup>46</sup> Lawton and Sandel, *Investing in Legal Prevention: Connecting Access to Civil Justice and Healthcare through Medical-Legal Partnership*, 2014 *Journal of Legal Medicine* 35:29-39 at 33.

<sup>47</sup> *Ibid.*

<sup>48</sup> American Bar Association Health Law Section Report to the House of Delegates, Recommendation and Report 120A, American Bar Association online at: [http://www.americanbar.org/content/dam/aba/images/probono\\_public\\_service/ts/medlegal/120a.pdf](http://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/medlegal/120a.pdf).

<sup>49</sup> See generally “Partnerships Across the U.S.” National Center for Medical Legal Partnership, online at <http://medical-legalpartnership.org/partnerships/>.

<sup>50</sup> For further resources, and examples, see generally “Setting-Specific Resources” National Center for Medical Legal Partnership, online at <http://medical-legalpartnership.org/resources/>.

The PBLO at SickKids program was created as a 2-year pilot project by PBLO and launched in January 1, 2009. Based on a successful program model from Boston, Medical-Legal Partnerships, the SickKids' program delivers free legal services to low-income families whose children receive treatment at The Hospital for Sick Children ("SickKids Hospital").

The program enables the integration of legal advocacy into clinical practice. It provides legal resources to families and also supports clinicians who provide services to families with children seeking treatment at the hospital. The governing principle is that legal issues affecting families during the time when a child is seeking medical treatment can have an adverse effect on the child's health as well as impact a family's capacity to manage the child's care. According to PBLO, the program served 624 families from its launch in January 2009 until December 31, 2010.

The program has one staff person, a Triage Lawyer, who works as part of a patient's care team with the SickKids Hospital medical and social work staff. The Triage Lawyer assesses the legal needs of the child-patient and the patient's family, provides brief legal services for accepted clients and refers clients to the *pro bono* legal partners where appropriate. [...]<sup>51</sup>

75. At that time, Convocation was asked to consider providing \$90,000 to support the program while PBLO worked to secure permanent financial support for the initiative. Convocation approved the funding of this "extremely important and successful access to justice program."<sup>52</sup>

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<sup>51</sup> Access to Justice Committee January 27, 2011 Report to Convocation, Law Society of Upper Canada online for download from Convocation Decisions, January 2011, "Law Society Funds Free Legal Services Program at SickKids Hospital" Release at <http://www.lsuc.on.ca/convocationdisplay.aspx?id=2147484241> at paragraphs 9-11.

<sup>52</sup> Treasurer Laurie Pawlitzka, News Release, Law Society Funds Free Legal Services Programs at SickKids Hospital, January 27, 2011, Law Society of Upper Canada online for download from Convocation Decisions, January 2011, "Law Society Funds Free Legal Services Program at SickKids Hospital" Release at <http://www.lsuc.on.ca/convocationdisplay.aspx?id=2147484241>.

76. The PBO at SickKids program has been evaluated and is considered an overwhelming success.<sup>53</sup> An independent evaluation found that “The project works extremely well in a clinical setting at the hospital and enjoys the full confidence of hospital clinicians”, that it “has steadily enlarged its service capacity” and that “The program has a good record of achieving resolution to clients’ legal problems, which in turn has created significant impacts for families.”<sup>54</sup>
77. Today PBO operates five MLPs at the following children’s hospitals: SickKids (Toronto), Children’s Hospital (London), the Children’s Hospital of Eastern Ontario (Ottawa), Holland Bloorview Kids’ Rehabilitation Hospital (Toronto) and McMaster Children’s Hospital (Hamilton). They are staffed by five Triage Lawyers. These MLPs are LawPRO approved Pro Bono Ontario projects.<sup>55</sup>
78. In addition to the PBO MLPs, a medical-legal partnership, known as the Health Justice Program, has been established as a partnership between St. Michael’s Hospital Academic Family Health Team, St. Michael’s Hospital (Toronto), and four legal clinics. An Onsite Lawyer is able to provide legal services at St. Michael’s Hospital directly to clients. As the Health Justice Program explains:

**Who do you provide service to?**

We aim to support patients who are low-income and have legal issues affecting their well-being, such as experiences of discrimination, personal safety, and problems with employment, housing, etc. Services are directed towards preventative legal information, advice and brief services. We encourage patients who are in unstable housing, identify as aboriginal, as having a disability and/or identify as having HIV/AIDS to access our services.<sup>56</sup>

*(vi) Summary of Types of New Means of Delivering Legal Services*

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<sup>53</sup> Focus Consultants, PBLO at Sick Kids: A Phase II Evaluation of the Medical-Legal Partnership between Pro Bono Law Ontario and Sick Kids Hospital, Toronto, Final Report, February 17, 2012, online at: <http://www.probono.net/va/search/download.225017>.

<sup>54</sup> *Ibid.* at page 61.

<sup>55</sup> LawPRO, LawPRO approved Pro Bono Ontario projects (Last Updated: December 2016), LawPRO online at [http://www.lawpro.ca/insurance/pdf/LawPRO\\_approved\\_ProBonoProjects.pdf](http://www.lawpro.ca/insurance/pdf/LawPRO_approved_ProBonoProjects.pdf) at page 1.

<sup>56</sup> Department of Family and Community Medicine and St. Michael’s Academic Family Health Team, Health Justice Program, St. Michael’s Hospital, online at: <http://www.stmichaelshospital.com/programs/familypractice/legal-education-and-advice.php>.

79. The above non-exhaustive examples show that innovative structures are being developed by or in partnership with a range of different types of CSOs to provide access to affordable and specialized legal services.
80. The ownership structures are varied. In some cases, legal services are delivered by a traditional firm that is fully owned by the CSO. In other instances, legal services are delivered through an “embedded” staff lawyer of a CSO.
81. There are different approaches to legal service delivery. In some of the examples described above, only legal services are made available. In other examples, a range of services are available, including but not limited to legal services.

### **c. Focus Group Meetings**

82. In late 2016 and early 2017 the Working Group held a series of by invitation focus group meetings to further consider the possibility of licensee delivery of legal services through civil society organizations to facilitate access to justice. Attendees included front line workers, “embedded lawyers” (lawyers who provide services from offices within a hospital or not for profit organization’s physical space), directors of not for profit organizations with mandates to assist vulnerable populations and public policy / funding organizations. A list of meeting participants is found at [Tab 4.4.1](#).
83. Meeting participants were overwhelmingly supportive of the idea of permitting the delivery of legal services by licensees through CSOs. As the attached summary notes, the strengths and opportunities were seen by nearly all meeting participants as greatly exceeding identified potential challenges and risks, which meeting participants strongly maintained could be overcome.
84. Meeting participants noted the following potential strengths and opportunities to permitting delivery of legal services through CSOs:
  - a. This approach could facilitate access to justice by providing legal services through trained, licensed lawyers and paralegals.
  - b. On-site delivery of legal services in locations that are trusted by vulnerable individuals will facilitate access to justice.
  - c. CSOs are often ideally suited to help clients address multiple, interconnected issues, which could include legal issues.
  - d. Licensees providing legal services within CSOs to clients would also be able to teach clients and CSO staff about legal rights; licensees embedded in CSO environments can also learn more about the client.
  - e. CSO delivery of on-site legal advice to clients would foster efficient service delivery. It would reduce hidden costs, provide opportunities for effective delivery of appropriate services, and ultimately benefit the client and the

providers of legal and other services.

85. Meeting participants raised a range of concerns and risks, but also suggested that they can be addressed, and should not be treated as “show stoppers”. Participants noted the following:
- a. With respect to conflicts of interest, there may be settings where conflicts could arise and protocols would be necessary to address this. There might be instances where an inherent conflict may need to be considered, but this would arise on a case-by-case basis.
  - b. Clients need to have the role of counsel clearly communicated to them.
  - c. The parameters of the provision of legal services within a civil society structure would need to be clearly developed.
  - d. Licensees working with vulnerable clients will need specialized expertise and a high level of cultural competency.
  - e. Licensees working in embedded environments are at risk of feeling isolated. Consideration should be given to how such licensees can be supported.
  - f. CSOs and licensees must recognize potential duty to report issues. One way of addressing this may be to develop appropriate protocols.
86. While seeing considerable advantage in allowing CSO clients to receive legal services together with other CSO services, the meeting participants noted that lifting regulatory limitations would not necessarily result in the delivery of legal services by CSOs because of the need for funding. However, meeting participants nevertheless encouraged the Law Society to address regulatory limitations to enable delivery of legal services where possible.
87. Meeting participants also encouraged the Law Society to be open to experimenting with new options in this area, and to evaluate these initiatives.

**d. Analysis: Applying the Criteria for Considering ABS Options**

88. In September 2015, the ABS Working Group confirmed that it will continue to consider potential models with regard to the following criteria:
- a. Access to justice: Any structural and related regulatory changes concerning alternative business structures should be reviewed to determine their effect on access to justice. Solutions that provide potential improvements for access to justice should be given more weight on that basis.
  - b. Responsive to the public: In promoting access, the new structures and processes should be responsive to the needs of the public for legal services including greater flexibility in cost, location and availability of

legal and other services with appropriate quality and adequate financial assurance of legal services.

- c. Professionalism: The fundamentals of professionalism, including independence, competence, integrity, confidentiality, candour, avoidance of conflicts of interest, and service to the public good through client relationships and responsibilities to the administration of justice should be safeguarded in any move to liberalize ownership and structure.
- d. Protection of Solicitor-Client Privilege: Any change proposed to implement alternative business structures must not jeopardize the protection of solicitor-client privilege.
- e. Promote Innovation: New business structures and processes should be designed to promote innovation which may include, among other things, the adoption of technology and/or other business processes that will enable them to adapt to the legal services marketplace and to better serve the public.
- f. Orderly transition: The preferred alternative business structures or related solutions options should be amenable to an orderly and thoughtful transition to new regulatory models. Any plan for new structures or service models should be inclusive, responsible, and mindful of any necessary disruptions that may be occasioned.
- g. Efficient and Proportionate Regulation: Any changes should improve the Law Society's ability to effectively protect and promote the public interest in competent and ethical practices, including appropriate responses to client complaints. Restrictions on who may provide legal services should be proportionate to the significance of the regulatory objectives.

89. The Working Group considered the above criteria and reached the unanimous view that the Law Society should use its regulatory tools in ways that may enable the delivery of legal services through charities and other CSOs. As described further below, the Working Group is satisfied that legal services could be delivered through charities and other CSOs in new ways which could bring access to justice to Ontarians, including to some of our most vulnerable segments of society, in a manner whereby professionalism and solicitor-client privilege are safeguarded.

a. Access to Justice

90. The acute unmet legal needs in Ontario are well documented. The Working Group addressed this in its February 2014 Report to Convocation, and in its

Unmet Legal Needs in Ontario background.<sup>57</sup> Justice, including access to legal services, remains a significant challenge in Ontario.

91. Against this backdrop, the direct delivery of legal services by civil society groups, properly structured, could have several access to justice benefits. Many of the benefits were highlighted in the focus group meetings, and are noted above. Potential benefits may include, for example:
  - a. Providing a new inclusive entry point for vulnerable people to find legal services (described further below);
  - b. Reducing the number of referrals a client must receive in order to access legal services;
  - c. Delivering integrated and holistic services to clients, to address “clusters of problems”, whether legal or non-legal, in recognition of the fact that client problems are often multifaceted and interconnected;
  - d. Identifying and assessing legal issues at the outset before they contribute to a “cascade” of legal and other problems; and
  - e. Providing leveraged services, with appropriate professional expertise, provided by the appropriate professional, at the appropriate times.
92. Legal service delivery models through the charity and CSO sector could be designed with the client’s needs at the core of the program design. The specific needs of different populations could lead to a range of different types of means of delivering legal services through CSOs.
93. Ultimately access to justice considerations strongly favour action.
  - b. Responsive to the public
94. As described above, CSO delivery of legal services could be highly responsive to the needs of vulnerable sectors of the population and the public in general. By embedding lawyers and paralegals where charities or other CSOs are located (such as in shelters, hospitals, community centres, drop-in centres, public libraries or other similarly accessible environments), it is expected that legal services would become more readily accessible and available to the public.
95. This is a particular advantage when seeking to deliver legal services to particularly vulnerable populations. In the course of its focus group meetings, the Working Group heard examples of situations where a person in need of legal services may be unable to visit a lawyer or paralegal’s office. Under this model, these clients would be able to receive legal services where they are comfortable

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<sup>57</sup> ABS Working Group, Unmet Legal Needs in Ontario, online at: <http://lsuc.on.ca/uploadedFiles/abs-unmet-legal-needs-oct16-2014.pdf/>

and able to receive them.

96. This approach also ensures that clients are receiving appropriate legal services from professionals licensed to provide such services. The Working Group learned that for some of our most vulnerable, there is often no access to legal help. In such instances, efforts to provide initial legal assistance may come from other service providers. While no doubt well intentioned for the most part, in some cases such efforts to assist can make legal matters worse for the client. A CSO model may enable clients to receive legal assistance from trained, regulated legal professionals. It would also free up the time of other service providers to provide their expert services without having to extend to seek to fill a legal services gap.
97. The Working Group also expects that services provided through CSOs would be delivered at no cost or at a highly subsidized cost to the client.
98. All of these factors strongly point towards permitting CSO direct delivery of legal services.

c. Professionalism

99. The Working Group has considered the key fundamentals of professionalism.
100. The Working Group notes that under this proposal the licensee would be required to have independence over the legal services being provided. The lawyer or paralegal would continue to be required to deliver services competently, with integrity, and with full candour to the client. The lawyer or paralegal would be required to maintain client confidences, and avoid conflicts of interests.
101. There may be particular risks or factors to consider when delivering legal services through a CSO, or in a multidisciplinary environment. However, many of these professionalism issues have already been successfully addressed by innovative providers of legal services. For example:
  - a. Legal clinics providing legal services through a holistic approach have been able to do so successfully. Issues related to different professionals having different duties to report are addressed by communicating the risks to the client, and having systems in place for professionals to seek independent legal advice should there ever be a situation where conflicting duties may arise.
  - b. MLPs have already developed protocols to address how the medical-legal partners will operate. Clients are advised as to the role of counsel and the MLP, and necessary consents or ethical screens are put in place as are

necessary.

102. In short, risks related to potential inherent conflicts of interest between a CSO's legal interests and that of a client served by the CSO, and potential risks related to multidisciplinary services and different professional duty to report requirements appear to have been managed in multidisciplinary environments.
103. The Working Group is unaware of any significant challenges to professionalism arising out of the operation of any of the CSO models, discussed above, including in MLP environments already in operation in Ontario.
104. The Working Group also notes that service to the public good through client relationships, which is one of the elements of professionalism that it identified as a factor to consider, may be enhanced by providing service to individuals who otherwise may not receive needed services.
105. As described further below, the Working Group's proposed model would introduce a framework within which lawyers and paralegals "embedded" within a CSO could provide legal services to CSO clients. The Law Society would continue to require licensees practicing in CSO settings to meet their full professional obligations. The Working Group is of the view that the fundamentals of professionalism can be safeguarded appropriately under this proposal.

d. Protection of Solicitor-Client Privilege

106. The Working Group views the protection of solicitor-client privilege much in the same way as it views issues related to professionalism; changes must not jeopardize the protection of solicitor-client privilege, and change can be introduced while meeting this requirement. The Working Group recognizes that multidisciplinary partnerships have operated without raising solicitor-client privilege concerns for some time. Multidisciplinary service delivery models require clear protocols and client communication, but can be developed in ways which do not significantly add risk to the protection of solicitor-client privilege.
107. The Working Group's proposed model would require steps to be taken to ensure solicitor-client privilege is protected. The individual licensee practising in the CSO setting would ultimately be responsible for ensuring that client privilege is protected to the same extent as it would be within any other practice setting.

e. Promote Innovation

108. The Working Group views the potential of delivery of legal services through CSOs as a means of promoting innovation for the purpose of facilitating access to justice. The models described above demonstrate that legal services can be

delivered efficiently to underserved populations, and that tailored solutions can be crafted to best meet the needs of vulnerable groups. Innovation might involve technology, but can in these cases include new processes to more seamlessly provide legal services where they were previously unavailable, difficult to access, or provided in a silo. It is expected that changes to permit delivery of legal services through CSOs would enhance the delivery of legal services to the public, and thus this factor strongly favours regulatory change.

f. Orderly transition

109. The proposed new approach is intended to facilitate the development of new service models to address unmet legal needs. It is focusing on a part of the market for legal services that is generally not being served by for-profit sectors. It is not expected that it would create disruptions for the regulator (as the Law Society would continue to regulate the licensees providing the legal services), for current providers of legal services (as this proposal seeks to address areas of service where they do not currently operate), for licensees (who would simply have new opportunities to provide legal services in the public interest) or for the public in general (who would have new means of accessing legal services). The Working Group has every confidence that the proposed approach can be introduced in an orderly manner, and in a manner that ultimately could directly contribute to seeing more people accessing the legal services they need. As such, this factor strongly supports regulatory action.

g. Efficient and Proportionate Regulation

110. With the above factors on balance strongly pointing towards regulatory action, the Working Group considered what options would be both efficient and proportionate to the regulatory objective of facilitating access to legal services through charities and other CSOs in a manner that effectively protects the public.
111. The Working Group therefore considered the full range of options available.
112. The Working Group considered amending the Multi-Discipline Practice requirements in order to facilitate charity and CSO delivery of legal services, but ultimately concluded that the MDP is not the appropriate vehicle to drive such change. The MDP model is premised on legal services being the core service being provided, with ancillary services also available through the MDP. However, the involvement of charities and CSOs in the delivery of legal services would represent a fundamental shift from the MDP model; in these settings legal services could be provided as a related service, as part of a holistic service, or as an ancillary service delivered to CSO clients.

113. The Working Group therefore considered options for developing a brand new approach, and developed the following model which it believes is both efficient and proportionate to the access to justice and public protection objectives it seeks to achieve.

**e. The Recommended Approach: By-Law Amendments to Enable Licensee Delivery of Legal Services Through Charities and Other CSOs**

114. As stated at the outset of this report, the Working Group recommends amending Law Society By-Laws to enable lawyers and paralegals to directly deliver legal services through CSOs.
115. Under this approach, the Law Society would specify the circumstances under which legal services could be provided to CSO clients (by “embedded” lawyers and paralegals). If those circumstances were present in a CSO, and the CSO wished its clients to have access to legal services from a lawyer or paralegal embedded in the CSO, the CSO would register with the Law Society. The prescribed circumstances will focus on ensuring that, among other things:
- a. the licensee has control over the delivery of their professional services;
  - b. solicitor-client privilege will be protected; and
  - c. the fundamentals of professionalism, including independence, competence, integrity, confidentiality, candour, avoidance of conflicts of interest, and service to the public good through client relationships and responsibilities to the administration of justice will be safeguarded.
116. A registered CSO would be de-registered if the prescribed circumstances under which legal services may be provided to CSO clients by “embedded” licensees were no longer present.
117. On registering, lawyers and paralegals would be permitted to provide legal services directly to clients through the registered CSOs. Licensees providing legal services through registered entities would continue to be fully regulated by the Law Society.
118. Complaints regarding legal services provided by licensees through registered CSOs could still be made to the Law Society.
119. The proposed model would seem to integrate easily with current insurance requirements, as the licensee would carry coverage as required by the By-Laws, in order to protect clients. With LawPRO’s new 75% discount risk-rated group for selected government agency lawyers having come into effect this year, LawPRO could be approached to consider whether the lawyers employed by CSOs could

also be evaluated for risk rating in this fashion.

120. The Working Group is of the view that this approach provides an innovative, proportionate regulatory option. It has been designed to encourage innovation and new means of delivering legal services where services are required. The registration requirement is intended to meet Law Society public protection and regulatory requirements without imposing overly bureaucratic application requirements or unnecessarily complex legal requirements on charities and CSOs.

#### **NEXT STEPS**

121. If approved, the Committee would return with recommended By-Law changes.
122. The Working Group is continuing to consider minority ownership by non-licensees and franchise models, and new forms of legal service delivery in areas not currently well served by traditional practices. It will report further with respect to these issues in due course.

Tab 4.4.1

**Civil Society Meetings, December 2016 – January 2017 Attendees**

<b>Name of Contact</b>	<b>Organization Name</b>	<b>Role/Title</b>
Jacquie Bohnhardt and Janet Wilson	Family Service Toronto	Janet Wilson, Manager, Violence Against Women Program
Graham Brown	John Howard Society of Ontario	Policy Analyst, Centre of Research, Policy & Program Development
Lynn Burns	Pro Bono Law Ontario	Executive Director
Bonnie Cole	Akwesasne Justice Department	Legal Counsel & Prosecutor
JoAnne Doyle	United Way	Chief of Operations and Strategy Officer
Mary Jane Ellis	Canadian Mental Health Association – Toronto Branch	Court Coordinator, Mental Health Court Support
Lana Frado	Sound Times	Executive Director
Allyson Hewitt	JW McConnell Family Foundation Senior Fellow, Social Innovation @MaRS	Academic / Innovation strategist
Johanna Macdonald	ARCH / Health Justice Initiative	Onsite Lawyer
Kirsti Mathers McHenry	Law Foundation of Ontario	Director, Policy & Programs
Marian MacGregor	Law Society of Upper Canada	Equity Advisor, Equity Initiatives
Elizabeth McIsaac	Maytree	President
Juliette Nicolet and Chelsea Krahn	Ontario Federation of Friendship Centres	Director of Policy / Justice Policy Analyst
Gita Schwartz	Elizabeth Fry Toronto	Interim Executive Director
Amy Slotek	Legal Aid Ontario	LAO lawyer at Sound Times 4 days per week