CCLA|ABCC'S INITIAL RESPONSE TO:

ALTERNATIVE BUSINESS STRUCTURES AND THE LEGAL PROFESSION IN ONTARIO: A DISCUSSION PAPER

CCLA Alternative Business Structures Working Group Members
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INTRODUCTION

Following the release of the Law Society's paper *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* (the Discussion Paper) in September 2014, the County of Carleton Law Association (CCLA) struck a working group to examine the response of its membership to the ideas and proposals set out in the Discussion Paper, and more generally with regard to Alternative Business Structures (ABS) and non-lawyer ownership of legal practices.

As the second largest law association in Ontario, with almost 1700 members, the CCLA is a leading organization committed to offering advocacy, legal education, legal resources and guidance to its members. The CCLA is governed by a board of directors comprised of lawyers from firms of all sizes and various practice areas from Ottawa and the surrounding areas.

In this initial response to the Discussion Paper, the CCLA working group has endeavoured to reflect the voice of the CCLA membership as a whole. The CCLA working group received input from the CCLA membership as well as from legal professionals outside the membership through a survey prepared by the CCLA working group ("the survey"), which gave members the opportunity to make detailed comments. In addition, a town hall was held on January 21, 2015 where a variety of perspectives were presented by a panel which included two members of the Law Society's own working group on ABS. The town hall provided a forum for CCLA members and members of the legal community generally to raise questions and concerns and receive additional information about ABS and the work of the Law Society on the issue. Finally, several of the members of the working group solicited the views of their own practice areas through meetings and discussion with fellow members of the profession.

A total of 139 lawyers, paralegals, judges and interested members of the public responded to the survey. Lawyers who responded represented a broad variety of practice areas. Given that the CCLA is comprised of a wide group of legal professionals including practising and non-practising lawyers, members of the judiciary and educational systems, and paralegals, it was deemed important by the CCLA working group to identify areas where the views expressed by the membership diverged, particularly when those views drew upon the experience of lawyers in specific practice areas. The substance of the CCLA's initial response to the Discussion Paper therefore reflects the varied backgrounds and practice areas of its membership.

EXECUTIVE SUMMARY

The views expressed by the CCLA membership were thoughtful, detailed, and on some issues divergent. Certain broad themes emerged.

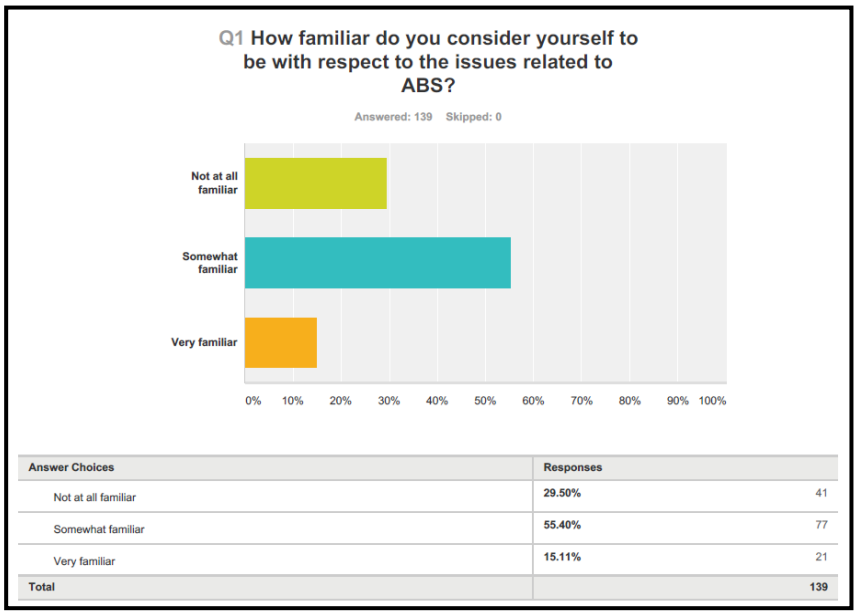
First, there was a general concern that the profit motive would play a more influential role in ABS structures than in traditional law firms. Members expected this increased emphasis on profit to produce several negative consequences, including reduced quality of legal services, reduced availability of legal services for certain types of client, and a tendency to place profit before the interests of clients.

Second, there was a concern that ABS entities would compromise the viability of small firms and solo practitioners. This in turn would impair access to legal services, particularly in smaller or rural communities.

Third, the majority of members perceived a general lack of empirical data to conclusively demonstrate that either the expected advantages or disadvantages of ABS would materialize. However, on this point, some members acknowledged that policy-makers must often operate in an uncertain environment. To require definitive empirical proof of the consequences of any policy might preclude modernization of the regulatory framework governing legal services.

Fourth, there was significant concern about certain categories of potential investors in law firms. For example, there was serious concern over the possibility of insurance companies owning a personal injury law firm, or a title insurance company owning a real estate law firm.

Finally, there was some concern on the part of the CCLA working group that, although the membership responded in a thoughtful manner to the survey, only 15.11% indicated that they were "very familiar" with ABS issues, in contrast to 29.50% of those responding who indicated that they were "not at all familiar" with the issues related to ABS. This raises the



Answer Choices	Responses	
Not at all familiar	29.50%	41
Somewhat familiar	55.40%	77
Very familiar	15.11%	21
Total		139

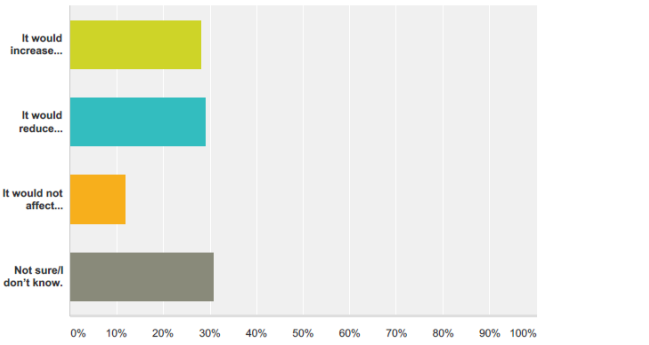
question of whether the LSUC's consideration of ABS is moving too quickly and that stakeholders do not yet have sufficient information to give informed input about its implementation.

RESPONSES TO THE DISCUSSION PAPER

ACCESS CONSIDERATIONS

While it is clear that there is an access to justice problem in Ontario in the areas of family law and criminal law, there is insufficient data and research to conclude that ABS entities will provide improved access to justice in these areas. As noted in the abstract of a paper by Nick Robinson reviewing the experience with ABS in other common-law jurisdictions, "…the benefits of such [non-lawyer] ownership have been oversold with respect to access to civil legal services for poor and moderate-income populations."[1] Non-lawyer investors will initially gravitate toward areas of the law where profitability and return on investment are likely to be high. Therefore, segments of the population with low incomes or without lucrative civil claims are unlikely to be served, in the short-term, by ABS providers.

There was skepticism amongst the membership that ABS entities would be able to reduce the cost of providing legal services, at least without compromising the quality of those legal services. Twenty-nine percent of survey respondents felt that ABS entities would reduce efficiency or profitability of law firms, while nearly 31% were unsure or didn't know. Even if innovation and economies of scale translate into greater productivity, there is no guarantee that lower legal fees



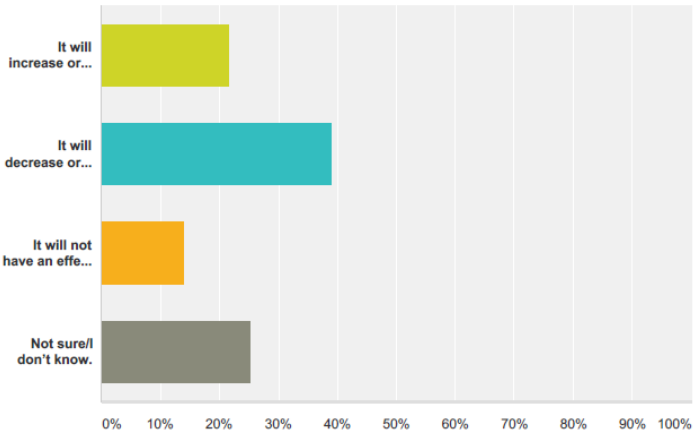
Answer Choices	Responses	
It would increase efficiency or profitability in the operations and management of firms providing legal services.	28.18%	31
It would reduce efficiency or profitability in the operations and management of firms providing legal services.	29.09%	32
It would not affect efficiency or profitability in the operations and management of firms providing legal services.	11.82%	13
Not sure/I don't know.	30.91%	34
Total		110

[1] Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", August 27, 2014 (unpublished) at page 1, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878

will follow. Members believed that ABS providers are unlikely to use price to compete with existing law firms.

Members also identified the risk that new underserviced markets will emerge with the introduction of ABS. As smaller and sole practitioner firms are bought out and taken over by larger firms with better access to capital, this might leave small towns without the local lawyer who provides real estate services, family law advice, drafting of wills and assistance to individuals and small businesses with contract disputes and corporate services. Some members also reported that, as a result of more lucrative work in other areas, they are currently able to take on some files on the basis of legal novelty or compassion. There was a concern that, with lawyers accountable to shareholders or investors, this cross-subsidization will be less likely to occur.

Overall, the plurality (39.13%) of survey respondents believed that access to justice will decrease or be impaired in the profession generally by the introduction of ABS. Interestingly, even in responses by family lawyers and criminal lawyers, the practices most affected by access to justice issues, the majority conclusion was that access to justice will decrease or be impaired in their own practice areas (family law, 54.55%; criminal law, 60.00%).



Answer Choices	Responses	
It will increase or enhance access to justice or access to legal services.	21.74%	25
It will decrease or impair access to justice or access to legal services.	39.13%	45
It will not have an effect on access to justice or access to legal services.	13.91%	16
Not sure/I don't know.	25.22%	29
Total		115

Personal Injury Law

The membership believed that there is no access to justice problem in the area of personal injury law; any plaintiff with a meritorious claim can find a qualified personal injury lawyer to represent him/her on a contingency fee basis. Moreover, personal injury lawyers also often take matters on that are not profitable, in order to advance the law on a particular issue, or for compassionate reasons.

Real Estate Law

Similarly, the membership believes there is no access to justice problem in real estate law. Real estate lawyers can be found in almost every community in Ontario and are, in fact, the gateway for clients to access other legal services. Many individuals identify "their lawyer" as the lawyer who either performed their house purchase or prepared their will (often one and the same person). When faced with a legal issue, those individuals often turn to their real estate lawyer to obtain a referral to an expert in the applicable practice area. The cost of real estate services is already quite low and in fact has remained steady since the late 1970s, with the average fee for a residential purchase being approximately $900.00.[2]

Growing downward pressures on current real estate prices, and non-lawyer ownership driving profit motivation, might cause real estate law firms to turn away complex transactions or to assign such work to less experienced junior lawyers or non-lawyers. This could deprive the public of competent real estate representation.

In the area of real estate law, instead of introducing ABS as a means of lowering legal fees, members believed the public would be better served by having regulations standardizing the method by which real estate lawyers provide quotations with respect to disbursements, land transfer tax and other taxes, in order to permit the public to fairly compare quotes from different law firms, and thereby comparing "apples to apples".

Family Law

There is indisputably an access to justice problem in the area of family law. The membership expressed skepticism that the experience in Australia offered any data to show these real and significant concerns were alleviated in any manner by the introduction of ABS.

Members who practice in family law identified a particular need for holistic, multidisciplinary and creative services which recognize the multi-faceted needs of family

[2] Canadian Lawyer Magazine, "The Going Rate: Canadian Lawyer's 2014 Legal Fees Survey" June, 2014.

law clients. Family law practitioners described their inability to develop these services under the current regulatory environment, even when working pro-actively with the staff of the Law Society. They believed that the relaxation of restraints on law firm ownership might facilitate the development of such multi-disciplinary services. However, there is also a concern that ABS may not be the best model to achieve these goals and that assistance from the Law Society in developing better guidance for multi-disciplinary practices might be another option.

Criminal Law

Criminal law is an inherently adversarial process with little mediation. The consequences of a criminal conviction are grave and often extend beyond the court or the matter and remain with a person for their entire life (criminal background checks, registries, lifetime orders and prohibitions that affect work, school, travel, volunteer, etc…). The complexity of criminal law and criminal trials arises from mandatory minimum sentences, zero tolerance policies employed by the Crown and police in laying charges and curtailing the discretion to entertain plea negotiations. This increasing rigidness in the practice of criminal law is forcing more and more people to proceed to trial rather than resolve their matters. Each of these factors feeds the others.

Members of the criminal bar identified an increasing gap in legal services, i.e. an ever increasing number of self-represented or under-represented accused. This gap was attributed to extensive cutbacks in legal aid and the increasing complexity and changing nature of criminal trials and criminal law.

There has been a trend of increasing difficulty in qualifying for legal aid. Consequently, there is an increasing number of individuals who in years past would have qualified for legal aid due to their economic situation, but who today do not qualify and cannot afford to retain counsel. The result is an increasing number of *Rowbotham* applications (applications for state-funded counsel) and unrepresented accused persons facing complex trials. There has been some reversal of this trend with the announcement by Legal Aid Ontario in October, 2014 of increases of 6% in the income eligibility threshold for each of the next three years.[3]

Members were skeptical that ABS entities would expand access to quality legal services in the area of criminal law. Although there is a significant unserved market for legal services

[3] http://www.legalaid.on.ca/en/news/newsarchive/1410-30_newfetguidelinesdetails.asp

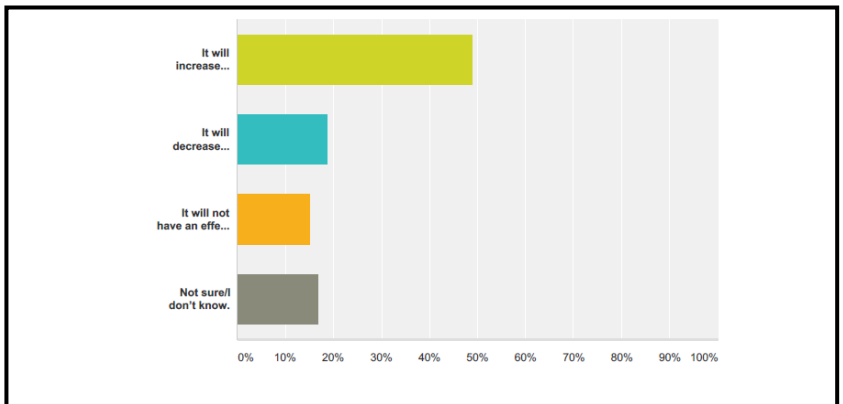
in criminal law, it is by definition comprised of low-income individuals and is less attractive for investment.

The conclusion of the membership with respect to access to justice was that ABS was not the solution. The practice areas most likely to be of interest to investors and business are those which are not in need of facilitating access to justice. It is recommended that the Law Society concentrate efforts on resolving the issues identified by the family law and criminal lawyers outside of and separate from the discussion surrounding ABS.

Innovation in the delivery of legal services has the potential to fill some identified gaps. However, as will be addressed in the following section, there was skepticism within the membership that ABS structures would be more innovative than traditional law firms, particularly in terms of technology.

TECHNOLOGICAL CONSIDERATIONS

The CCLA membership agrees that the practice of law is indeed changing rapidly. Technology, no doubt, will play a significant role in molding the way in which legal services are provided and accessed in the future.



Answer Choices	Responses	
It will increase innovation in the delivery of legal services.	49.11%	55
It will decrease innovation in the delivery of legal services.	18.75%	21
It will not have an effect on innovation in the delivery of legal services.	15.18%	17
Not sure/I don't know.	16.96%	19
Total		112

While a significant plurality of survey respondents (49.11%) believed that ABS would increase innovation in the delivery of legal services, many members also questioned whether this innovation would necessarily be positive, raising concerns about the quality of legal services delivered through increased innovation, the possibility of a corresponding increase in LawPro claims, and the distinct possibility that innovation would increase profits for owners of law firms but not necessarily improve the delivery of legal services from a client perspective.

The majority of members believed that technological innovation could take place within traditional law firms. As an example, members pointed out that ABS has not been necessary

for law firms to take advantage of existing technologies such as cloud computing, websites, social media, electronic registration in the area of real estate, and practice management software such as Clio. However, some members argued that, while some degree of innovation is possible within traditional law firms, ABS might nevertheless lead to incrementally more innovation in some practices than would otherwise occur.

Members also believed that the existence of unregulated online providers of legal services was not a justification for the adoption of ABS. Rather, the Law Society should make use of its existing regulatory mandate to address the potential for the unauthorized practice of law.

Members were also skeptical of the potential for automated, online legal services. As an example, legal will kits and online form-fill services are often prone to problems and might not properly convey the wishes of the drafter. Lawyers who administer estates for testators who used internet wills often end up having to charge more in administering the estate than had they simply helped the individual create the will in the first place. There is no indication in the Discussion Paper of how ABS would address this problem.

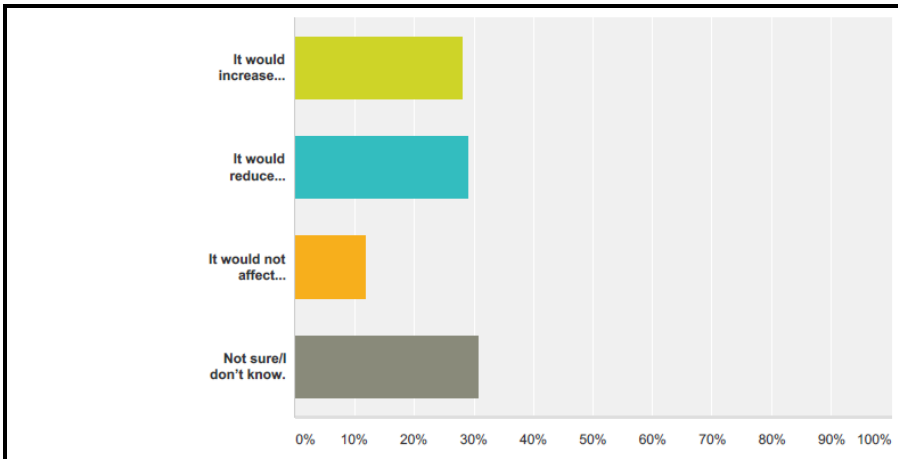
The criminal bar members noted that barriers to the increased use of technology lie not with lawyers, but in the courts. Despite technological advances, Ontario still relies on procedures designed in another era. Conversely, technology has the potential to assist criminal lawyers and their potential clients. There are many ideas that would use technology, and provide an alternate type of service, such as a fixed-fee agreement for file review, information, or coaching. This type of application raises issues of conflict and liability. Again, it remains to be demonstrated how ABS will address these issues.

Empirical evidence from England and Wales suggests that the technological benefits of ABS are being overstated. Eighty-eight percent of respondents in the Legal Services Board Report confirm they have not changed the services they offer since receiving their ABS license.[4] The types of technology cited as being adopted by ABS firms are already common practice in Ontario.

[4] "Evaluation: Changes in the competition in different legal markets," October 2013, Legal Services Board ["Legal Services Board Report"] at page 85, available at https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-REPORT.pdf.

Economic And Business Considerations

There was an absence of consensus among members regarding the potential effect of ABS on efficiency and profitability in operations and management of legal workplaces. A slight plurality, 30.91%, was unsure about the potential effect; 29.09% believed the impact would be to reduce efficiency and profitability; and 28.18% believed that efficiency and profitability would be increased by the introduction of ABS.



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It would not affect efficiency or profitability in the operations and management of firms providing legal services.	11.82%	13
Not sure/I don't know.	30.91%	34
Total		110

Advocates of ABS have argued that ABS will provide firms with an opportunity to form associations with other service providers and promote innovation that could lead to economies of scale which will result in lower fees charged to the public and consequently greater access to justice. The CCLA working group could identify no empirical evidence to support this conclusion. Moreover, if economies of scale can be achieved, there is no guarantee that lower legal fees would follow, as legal fees are dictated by many factors, not only the cost of providing the services. Non-lawyer investors will have an expectation that their investment will be maximized. If that expectation cannot be met, then law firms will not be able to attract capital. As a consequence, it is possible, if not likely, that any cost savings achieved through economies of scale will be passed on to the law firm's investors and not the public. Members thus believed that it was unlikely that ABS entities would compete with traditional law firms on the basis of price.

However, certain members disagreed with the above analysis, arguing that, in a competitive market, reductions in cost lead to shifts in what economists term the "supply curve" and a fall in the price of a particular good or service.

The introduction of ABS in Australia has led to the consolidation of the personal injury market. There is no evidence to suggest that a similar result will not occur in Ontario if ABS is adopted in practice areas that are easily commoditized. Members felt that consolidation was undesirable, leading to job losses among lawyers and related industries, as well as reduced services in remote or rural markets. Other members argued that if ABS entities did not serve such markets, the opportunity would remain for traditional law firms to do so very much as they had done before. Moreover, such members argued the economic self-interest of lawyers is not relevant to the Law Society's mandate to regulate in the public interest.

Our membership has also expressed a concern for the impact ABS will have on young lawyers who will likely find themselves as long-term employees rather than future "partners". The introduction of ABS will detrimentally inhibit their ability to own their own law firms and become "partners". The inability of young lawyers to "achieve partnership" will be a significant cultural shift in the legal profession. It is unclear to our membership what impact this will have on the profession. Although ABS has been permitted in Australia for approximately 10 years, this is too short a time to assess the economic and business consequences of such a cultural shift. However, some members again disagreed that the interest of lawyers, including young lawyers, are relevant to the mandate of the Law Society to regulate in the public interest.

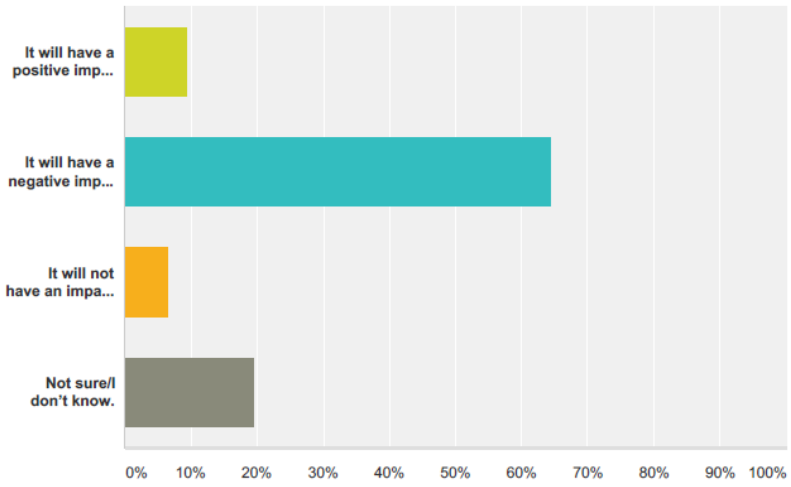
The argument is made in the Law Society's discussion paper that sole practitioners spend a great deal of time on non-legal work that could be done by others at a lower cost, and those sole practitioners that can participate in a larger entity may benefit from access to investment in technology, shared business costs, access to business and other expertise, ethical infrastructure, association with a known brand, and buying power with suppliers. The reality is that there are many practice areas, such as criminal law and family law, which will not attract investors due to low profit margins, the "unattractiveness" of the clientele and the inability to commoditize the practice area. However, it is in fact these practices areas that have the highest numbers of "smalls and soles" which could benefit from such shared infrastructure. Consequently, it is unlikely that ABS will in fact meet the needs of these firms.

Many arguments in favour of ABS imply that 49% non-lawyer ownership is a minority position and that such investors will not have control of the firm. This is not in fact the case. There are many aspects to equity ownership which must be considered when reviewing this issue, including without limitation the right to profits and the right to control (vote) management through the board of directors. Each of these elements can be split up or bundled in different ways. There are many ownership structures that could give a non-lawyer owner *de facto* control of the management of a law firm. For example: Lawyer 1 = 15% voting interest, Lawyer 2 = 15% voting interest**,** Lawyer 3 = 15% voting interest**,** Lawyer 4 = 6% voting interest and Non-Lawyer = 49% voting interest. It is clear by this structure that the non-lawyer would in fact have the controlling interest unless the lawyers always voted together, which is unlikely. The non-lawyer need only sway the minority lawyer to side with him to obtain control of the firm. This type of structure leaves the law firm vulnerable to losing its independence not only in respect of profits but also management.

Our membership has expressed an interest in non-lawyer ownership on a limited basis in order to facilitate income splitting with family members and compensation to employees. These goals could be achieved through other measures that do not require a fundamental change to the current regulatory structure. However, if ABS were pursued in order to facilitate these goals, it is advisable to keep such non-lawyer equity ownership non-voting to ensure the ongoing independence of the legal profession. This type of structure would not be amenable to outside investors, as they are unlikely to invest financially in an enterprise without any measure of control.

PROFESSIONAL & ETHICAL CONSIDERATIONS

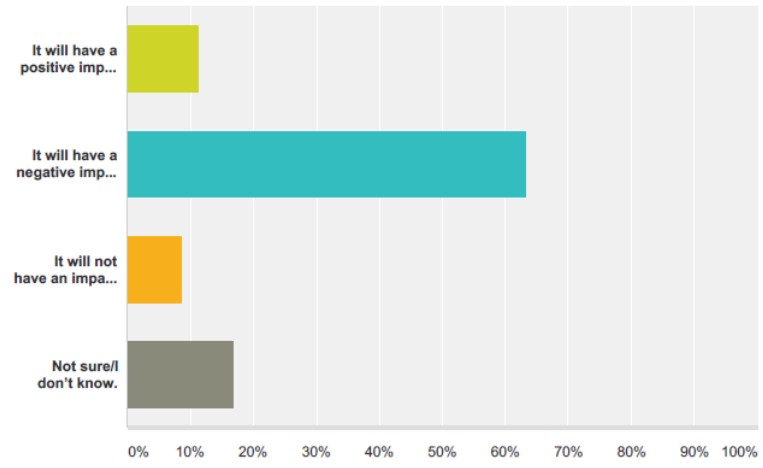
Professional and ethical concerns were forefront amongst the concerns of members in relation to ABS. Overwhelmingly and across all practice areas, our survey respondents, both CCLA and non-CCLA, believe that ABS will have a negative impact on the administration of justice and the duties of lawyers and paralegals to their clients. The primary concern centres around the significant potential for conflicts of interest. Indeed, questions of conflict of interest appear to have created some issues in Australia. According to the paper by Robinson, some of those individuals he interviewed maintained that publicly-listed law firms might pressure their lawyers to settle cases to meet fiscal targets.[5]



Answer Choices	Responses	
It will have a positive impact on the administration of justice and the duties of lawyers and paralegals to their clients.	9.35%	10
It will have a negative impact on the administration of justice and the duties of lawyers and paralegals to their clients.	64.49%	69
It will not have an impact on the administration of justice and the duties of lawyers and paralegals to their clients.	6.54%	7
Not sure/I don't know.	19.63%	21
Total		**107**

[5] Robinson, *supra*, at page 30.

There was also an overwhelming concern about the potential impact ABS would have on the reputation of the legal profession (63.21%).



Answer Choices	Responses	
It will have a positive impact on the reputation of the profession.	11.32%	12
It will have a negative impact on the reputation of the profession.	63.21%	67
It will not have an impact on the reputation of the profession.	8.49%	9
Not sure/I don't know.	16.98%	18
Total		106

Some of the specific concerns are highlighted below.

COMMODITIZATION

The commoditization of legal services, including real estate, wills, estates, simple divorces and business incorporation services is already occurring in Ontario. These types of services and their providers can undermine the core values of the legal profession and provide "cookie cutter" solutions to otherwise complex legal transactions and issues. This one-size-fits-all approach to law jeopardizes the integrity of the profession and minimizes the value of services provided, to the detriment of the end user, namely the public.

If law firms are owned by non-lawyers there will be an inherent conflict of interest, as there will be an obligation to increase the profits for shareholders, in conflict with regulatory and ethical obligations of lawyers to look after the best interests of our clients. This conflict, whether real or perceived, will be viewed negatively by the public and will disparage the profession and the public's confidence in the legal system. Further, any safeguards put in place to protect the public, from a regulatory standpoint, will be ignored in the media and lawyers will be painted as profit mongering.

The discussion paper argues that ABS should lead to greater efficiencies because there should be lower transaction costs for the provision of complementary services. Some of this could be addressed through multi-disciplinary practices without resulting in non-lawyer ownership. Further, there is a danger that "complementary services" may be recommended to a client because they are offered by the same firm whether or not they are in fact in the best interests of the client. This highlights a legitimate conflict of interest (profits vs. a client's best interest) which will impugn the reputation of lawyers to the public.

From the perspective of the CCLA, non-lawyer owners in a law firm will result in different ethical and professional pressures on the profession. An employee-owned firm will have a different perspective from a firm owned by outside investors or a firm owned by a government entity.

Client Confidentiality

Competent, independent, and confidential legal representation is the cornerstone of the lawyer-client relationship in all areas of law and notably in criminal law where liberty of the client can be at risk. Alternative forms of representation threaten these fundamentals, and might have long term consequences to those accused of serious criminal offences, particularly when a legal service provider does not have as a primary goal a comprehensive ethical obligation to act in the best interest of an individual client.

Clients need intricate advice – a criminal conviction can impact a client long into the future. If non-licensed individuals are permitted into the practice or ownership of criminal law firms, there is a high potential for conflict and jeopardy to the administration of justice. Outside ownership could affect the types of clients served, the types of charges handled and tactical considerations. That is, the practice of criminal law and the strategies employed do not always flow with the interest of a bottom line.

Liberalizing ownership therefore has great potential to affect the nature of a lawyer client relationship. What would be the relationship to the clients by non-lawyer owners? How could non-lawyers who own part of the firm govern how a case proceeds and whether to take on a client or a case? This raises ethical considerations that currently do not exist. Any type of alternative forms of ownership would require an extensive review of the existing Rules of Professional Conduct and the duties that a lawyer owes to his or her client.

Profit Motivation as an Inherent Conflict

ABS will inevitably shift the focus away from individual clients and redirect it toward maximizing profits. Investors rarely direct their minds to long-term goals or intangibles

when assessing an investment – return on investment will be the pressure that is brought to bear. Trials are costly and often risky – it is doubtful that shareholders will understand the nuances of decisions made around taking matters to trial versus settling. The ethical considerations that are taken into consideration by personal injury lawyers in advancing their clients' claims are not always, or necessarily, the most "profitable" decisions.

Under ABS, there is nothing to stop lawyers from entering into business with rehabilitation companies, doctors' offices, and even hospitals. Clients will not be choosing their lawyers based on merit or reputation but, rather, on the basis of fees paid to others within a subculture of profit-sharing. The independence of the Bar will be tainted, if not lost.

Advertising

The Law Society should question how it will practically control advertising in a world with ABS. Currently, the advertising of legal services is regulated by Rules of Professional Conduct (see chapter 5). Once ownership of a law firm is opened to non-lawyer owners, these owners will rightfully want to influence professional decision-making, particularly as it relates to advertising. Non-lawyer owners may exercise control of a firm's marketing and in doing so will advertise with a view to increasing profits, not simply informing the public of available services.

The Law Society should pay particular attention to the issue of advertising and ABS. Enormous sums of money are spent advertising online annually, and monitoring the expanse that is the internet is a task that the Law Society is not organized to undertake. Allowing non-lawyer ownership to control or influence the advertising and marketing of a law firm will be at a cost of public perception towards the legal profession, the judicial institution of the province and the administration of justice as a whole.

Concluding Comments on Professional and Ethical Considerations

Law, by its nature, is complicated and not amenable to standardization. Litigation is highly fact-driven and individualistic. Lawyers go through extensive training, theoretical, practical and ethical, in order to be able to deliver competent, professional legal services – this will not be true of all individuals offering legal services under ABS.

IMPLEMENTATION

There is consensus across all practice areas that the proposed implementation of any of the four models under consideration by the Law Society in its Discussion Paper requires further consultation and consideration.

First, as already noted, members are concerned about the potential for conflict between the interests of shareholders and the interests of clients. This conflict of interest issue must be unequivocally resolved and safeguarded against before any form of ABS can proceed.

Second, a consistent theme among all of those who have provided input to the CCLA working group on ABS is that with any form of ABS, implementation would require preventing or restricting ownership interest to certain classes of investors. For example, it is unacceptable that insurance companies might own personal injury firms, that title insurers might provide real estate legal services, that accountants and banks would have an ownership interest in wills and estates, etc. If ABS were to be adopted, it would be imperative that the structure of the ABS firm be approved by a regulatory body to ensure that the non-lawyer investor is not controlled by one of these parties, *vis a vis* various business structures including holding companies, limited partnership and trust arrangements.

Further, the non-lawyer investors would need to be reviewed on a regular (yearly) basis to ensure that business rearrangements did not result in direct or indirect control by a prohibited category of investor. This would be a costly and time-consuming undertaking and it is doubtful that the Law Society would be in a position to govern such a structure in a manner that would provide timely and effective protection to the public.

From the perspective of personal injury lawyers, concerns have been raised over insurance companies capturing the plaintiff personal injury market. There appears an obvious inherent conflict in an insurance company, who on the one hand seeks to represent plaintiffs seeking benefits versus the insurance company's motivation to limit the benefits it must pay. This scenario could or would have severe negative consequences for plaintiffs, as well as for the perception and administration of justice. Personal injury lawyers do not believe that the Law Society's proposal to ban investment by parties adverse in litigation will be a satisfactory resolution, as it is often difficult to determine true ownership interest in corporations.

Members of the real estate bar identified a variety of parties which should be prevented from investment in law firms practicing real estate law, including but not limited to Teraview, real estate brokers, title insurance companies, banks, and other lenders.

Members also noted that it can be difficult to identify a conflict of interest. By example, if a non-lawyer investor has a 49% interest in a law firm and a 5% interest in a title insurance company, he or she would not be seen to have a controlling interest in the title insurance company. Nonetheless, that investor could be motivated to direct the firm to undertake unethical business practices to promote the purchase of title insurance policies from the company in which it has an ownership interest. Consequently, the conflict of interest could arise even when the investor is only a minority shareholder in an incompatible company.

In the practice of criminal law, clients of firms can be accused of committing very dangerous or heinous offences. The defence of these clients is not always popular and the public can take a negative visceral attitude towards crime. In order to avoid conflicts of interest, the ABS models must have clear restrictions on ownership limiting the ability of non-lawyers from dictating the type of client, the nature or types of the charges defended and the strategies employed. For instance, it is not lucrative or attractive to vigorously cross-examine a child or sexual assault complainant, or pursue private therapeutic records. However, it is in the client's best interest to employ certain strategies to make full answer and defence. Investors or owners must be specifically prohibited from dictating or influencing the services or strategies developed for clients.

Most of the discussion regarding ABS has assumed that the ABS firm will only have one practice area. For many law firms this is not the reality. From a practical implementation perspective, this could have negative consequences. Each practice area of the law will have a list of parties that should be prevented from investing in such law firms, i.e. in real estate it could be title insurers, in wills and estates it could be accountants and in personal injury it could be insurance companies and medical professionals. If regulations are put in place to limit what types of investors may hold non-lawyer ownership of a firm, the pool of investors will be significantly limited in multi-practice law firms.

This issue could lead to firms splitting up by practice areas, thereby causing law firms to incur unnecessary transaction costs related to the split, increasing employee and client uncertainty as to the viability of the new firms on a go forward basis and negatively affecting the economies of scale achieved by being in a larger firm. On the other hand, some members noted that if firms did proceed to split up notwithstanding these transaction costs, it can be inferred that the financial advantages to the firm of doing so outweighed any such transaction costs.

Members were also skeptical that regulations could impose the same level of discipline in non-lawyer management as is possible with lawyers. Lawyers, unlike outside investors or managers, place their own reputation at risk if they transgress their professional obligations. The managers of large or publicly-traded corporations do not face the same reputational consequences for regulatory transgressions.

Finally, some members believe that the implementation of ABS will necessarily lead to increased regulation by government. It is argued that this increased government interference will negatively tear away at the independence of the bar, and in time we might lose our right to self-govern.

CONCLUSION AND RECOMMENDATIONS

There is no doubt that the legal profession could benefit from endeavors to increase efficiency, develop predictable billing for clients, and create management structures that can effectively service smalls and soles while modernizing the manner in which we deliver services. However, our membership has expressed great concern that ABS might not be the means to achieve these goals.

With the support of the Law Society, the profession can modernize and become more competitive for the benefit of not only lawyers and paralegals but also the public, without dramatically altering the framework of the profession. The Law Society needs to take an active role in developing current and evolving policies and guidelines: (i) outlining the profession's legal and ethical obligations regarding the use of emerging technologies so that law firms can take advantage of such technologies for the delivery of their services; (ii) mandatory guidelines for standardizing the manner in which quotes are given in a fixed fee structure so that consumers can compare "apples with apples"; (iii) increasing the scope of work paralegals can undertake to ensure skilled representation of clients with marginal means; and (iv) provide more practical guidance regarding the manner in which multi-disciplinary practices can be structured to address specific practice areas, such as family law.

There is no need to hurry to a decision on an issue which, once decided and implemented, cannot be undone. As a profession, we should look for hard evidence on the impact ABS has had, both positive and negative, in the UK and Australia. Further education of the profession on the arguments for and against ABS is required; consultation, consideration and debate should take place over whatever period of time is required by the profession and the Law Society to ensure that the benefits and drawbacks have been fully canvassed and a reasoned decision is made.

The survey demonstrated clearly that the CCLA membership is unable to identify the problem to which the Law Society perceives ABS or non-lawyer ownership to be the answer. It is recommended and requested that the Law Society define the problem it is seeking to solve. Once that has been done an answer can be appropriately sought in consultation with the profession.

If access to justice is the Law Society's primary concern, there is no dispute by the CCLA membership that this issue needs to be tackled. However, there is no indication that a link exists between access to justice and the implementation of ABS. The true issues faced by the profession and the public, such as access to justice in the areas of family and criminal law, can be improved upon within the framework of the existing regulatory scheme.

One final theme which emerged clearly from the input of CCLA members was a commitment to the core values of the legal profession. There is a significant concern that adopting non-lawyer ownership of law firms and legal practices as set out by the Law Society, and possibly at all, will serve to erode those core values in a manner which cannot be repaired.

Regardless of how the Law Society decides to proceed, the CCLA has a firm commitment to continue to participate in the consideration of this issue. It is crucial that the Law Society's process be transparent and provide stakeholders with sufficient time and opportunity to respond with well-informed input.

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