Good Morning

Thank you for calling for input on the discussion paper dated September 24, 2014. I have sent the email below to all Benchers. It arises from a discussion held in Hamilton, Ontario on November 5, 2014.

We had an interesting discussion that day in Hamilton concerning the potential for alternative business structures in the practice of law. I am providing a few thoughts, which any one or all of you have probably already considered, but I thought I'd get them on the record.

1. You don't need an alternative business structure to increase access to justice. Clients who are unable to pay a fee to a lawyer now will not be able to pay a fee to a mega-corporation, no matter how the fee is structured. In addition, when was the last time you got personal consideration of your financial circumstances from a large corporation? Clients of modest means are much better served by sole practitioners and small firms than they are by large firms and corporations.

2. You don't need an alternative business structure to provide legal services in an innovative way. Any lawyer can go and rent space in a Wal-Mart or other store to set up practice, so long as the place is properly secured to the Law Society's satisfaction. If Banks and Wine Stores can secure their premises (which contain much more desirable items than law firms premises do), then surely a law firm can secure their premises there satisfactorily.

3. As long as the confidentiality and security requirements are met, law can actually be practiced 'on the fly'. All you really need are a brain, ten fingers and a decent internet connectionon on an encrypted device (an iPad with a solar powered bluetooth keyboard can be had for about $1,200.00. Technology gets cheaper every day. The Regional Law Libraries have database access and printers. Ours also has a binding machine). Large corporations are unlikely to deliver legal services in any innovative way in my view.

4. If the interest of the shareholders of a law corporation conflict with the interests of that law corporations clients, whose interests will the Law Society pick to protect? This is not just a conflict for lawyers practicing inside such a business structure (protecting their shareholders versus protecting their clients properly), but could also be a fundamental conflict for the Law Society, since both clients and shareholders are members of the public. In the face of such a conflict arising, why wouldn't self-governing status be removed?

5. So far, the CRTC has proven itself unable to regulate corporations such as Bell and Rogers. Even when the regulator tries to protect the consumer, the regulated corporation simply assures that the service will cost the consumer more. There was a lot of discussion in Hamilton about how the Law Society would regulate these alternative business structures. In my respectful view, the Law Society is deluding itself if it thinks it's going to regulate a Slater & Gordon, or similar law corporation, effectively.

Perhaps I am a cynic, but I note that the people in favour of alternative business structures like to tie the 'access to justice' argument and the 'innovative delivery of legal services' argument to their support of alternative business structures. I believe the goal of this is to attract supporters with motherhood statements/arguments that will not be borne out in practice. If the structure you are talking about is a large corporation with public (or private) shareholders, the business structure and the stated goals are actually mutually exclusive.

Large corporations (think [credit card company]) do not consider the financial circumstances of the customer when offering/delivering/collecting for their services. Since access to lawyers is solely tied to the ability to pay a lawyer, a large corporation is not the way to go.

Large corporations might innovate in the delivery of goods (cell phones, etc.), but lawyers don't deliver goods, we deliver services. Large corporations do not innovate in service delivery; they are all equally impersonal and, generally, treat their customers quite badly overall.

In my respectful view, the large firms pushing this initiative are peopled with lawyers who own a percentage of equity in their large firm. Those lawyers have observed that there is now a publicly traded law firm. The end goal for those lawyers would be to go public and convert their percentage of equity ownership into shares in an IPO, thereby giving them a huge return on their investment, at the expense of the other initial investors and at the expense of other members of the firm. To avoid this scenario, the first thing that should be prohibited is the public trading of law corporation shares, if alternative business structures are eventually adopted. This should, at least, spike that gun.

I believe alternative business structures will be bad for clients, bad for the profession and bad for the Law Society.

Thank you for your consideration.

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