

EQUITY INITIATIVES DEPARTMENT

TO: Members of the Alternative Business Structures Working Group

FROM: Members of the Equity Advisory Group Working Group on Alternative Business Structures

DATE: January 21, 2015

RE: Submission by the Equity Advisory Group Working Group on Alternative Business Structures in response to *Alternative Business Structures and the Legal Profession: A Discussion Paper*

1. This document details feedback provided by members of the Equity Advisory Group (“the EAG Working Group”) Working Group on the information outlined in *Alternative Business Structures and the Legal Profession: A Discussion Paper* (“the paper”). The EAG Working Group reviewed the paper keeping in mind concepts of equity and diversity, access to justice and the Law Society’s mandate to protect the public interest.
2. The EAG submission is divided into the following categories:
 - Background
 - Comments
 - Impact on Racialized Licensees
 - Impact on Access to Justice
 - Protecting the Public Interest
 - Conclusion

Background

3. On October 28, 2014, Bencher Susan McGrath, co-chair of the Law Society’s ABS Working Group, met with members of EAG to outline the information contained in the paper. Bencher McGrath encouraged EAG members to

comment on the discussion paper by the December 31, 2014, deadline for submissions.

4. Following the meeting with Bencher McGrath, EAG members formed a working group comprised of the following individual and organizational members:
 - a. Sandra Nishikawa, individual member;
 - b. Tariq Remtulla, individual member;
 - c. Paul Saguil, individual member;
 - d. Lai-King Hum, on behalf of the Federation of Asian Canadian Lawyers;
and
 - e. Ayesha Laldin, on behalf of the Women's Law Association of Ontario

5. The purpose of this Working Group was to provide written comments on the information contained in the paper to the Law Society's ABS Working Group. The Working Group's submissions focus on questions and concerns related to equity and diversity, access to justice and protection of the public interest.

Comments

6. The questions and comments that follow are borne out of a general concern that there is a lack of data on the impact of alternative business structures on equity and diversity in the legal profession and on access to justice.

Impact on Racialized Licensees

7. According to the recently released *Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees* Consultation Paper, Black, South Asian and West Asian lawyers are proportionately more likely to be in sole practice. The Consultation Paper also indicates that Black and South Asian lawyers are proportionately more likely to be in small and sole practices while they are much less likely to be in medium and large firms. The EAG Working Group notes that in some cases, racialized licensees choose to be in sole or small firm practices in order to serve racialized communities. However, racialized licensees may also end up in sole or small firm practice as a result of

lack of opportunities and barriers faced in advancement in law firms, corporations or other organizations.

8. The EAG Working Group has identified the possibility that alternative business structures could enable racialized licensees who wish to go into sole or small practice to have access to capital investment and could provide a different model for the compensation of non-lawyer employees/partners. These financial benefits could increase opportunities for the success of their practices and could lead to more job opportunities for other racialized licenses.
9. The EAG Working Group notes, however, that there is no data on the impact of alternative business structures on racialized licensees or licensees from other equity-seeking groups. EAG Working Group members believe that it is important to obtain information on this topic in order to assess the advantages and disadvantages of alternative business structures. EAG Working Group members recommend that the ABS Working Group ensure that feedback on the discussion paper is sought from equity-seeking communities.

Impact on Access to Justice

10. EAG Working Group members are unclear as to what, if any, impact alternative business structures would have on access to justice. Some EAG Working Group members suggest that access to increased capital could provide firms with opportunities to offer more cultural competence training and translation services; however, beyond this suggestion, clear benefits to access to justice are not evident in the discussion paper.
11. EAG Working Group members believe that it is essential to consider the following questions when determining whether alternative business structures will provide greater access to justice:
 - a. Has the implementation of alternative business structures in other jurisdictions resulted in greater access to legal services for low-income earners?

- b. Has the implementation of alternative business structures in other jurisdictions resulted in more licensees practising in areas of law such as family law and poverty law?¹

12. EAG Working Group members would also like the ABS Working Group to consider whether alternative business structures will actually be of benefit to self-represented litigants. EAG Working Group members note that alternative business structures may provide increased opportunities for legal support to be made available to self-represented litigants (e.g. Legal Zoom); however, EAG members wonder whether legal services like Legal Zoom that are delivered online and potentially from outside of this jurisdiction will increase access to justice. EAG members note that “limited scope retainers” already provide litigants who would otherwise be completely self-represented with the option of obtaining limited legal services.

Protecting the Public Interest

13. EAG Working Group members are concerned that the innovations to the delivery of legal services contemplated may serve specific private interests instead of the public interest. If permitting alternative business structures will primarily result in benefiting firms, EAG Working Group members would suggest that the Law Society narrow its focus to firm regulation, as this may lead to greater protection of the public interest.

14. EAG members note that innovations in technology and the popularity of services such as Legal Zoom are transforming the delivery of legal services. Whether or not alternative business structures are permitted in Ontario, there remains an outstanding issue of whether, and if so, how, the Law Society will regulate the delivery of legal services where there are cross-jurisdictional challenges (e.g. the service provider is outside Ontario and the legal services are accessed online).

¹ According to *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project*, lowest income earners (earning less than \$20000 per year), are more likely to be members of equality-seeking communities – particularly persons with disabilities. Lowest income earners were most likely to report a higher incidence of legal issues in the following areas: family relationship problems, criminal problems, disability-related issues, and welfare or social assistance issues. (p. 33)

15. The EAG Working Group asks the ABS Working Group to consider the following questions:
- a. What kinds of complaints against licensees/firms have arisen in jurisdictions that have permitted alternative business structures?
 - b. Are there any specific complaints that have been raised by equity-seeking groups in jurisdictions that have permitted alternative business structures?

Conclusion

16. In light of the number of unanswered questions about the impact of ABS on equity, access to justice and the protection of the public, the EAG Working Group recommends that Law Society proceed with caution when considering permitting alternative business structures.
17. The EAG Working Group asks the ABS Working Group to obtain more data on the matters outlined in these submissions. The EAG Working Group also hopes that the ABS Working Group will consult extensively with licensees from equity-seeking communities, to assess the impact of alternative business structures on these licensees, and with legal clinics, to assess the impact of alternative business structures on access to justice.
18. Finally, the EAG Working Group asks the ABS Working Group, in its deliberations on this topic, to carefully consider how alternative business structures will be regulated to provide for the greatest protection of the public.