

The Essex Law Association

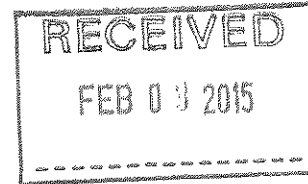
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VIA EMAIL: abs.discussion@lsuc.on.ca

ABS Discussion
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6



Dear Sir or Madam:

Re: Essex Law Association Response to Alternative Business Structure Discussion Paper

I am writing on behalf of the members of the Essex Law Association to provide feedback on behalf of our membership in response to the Alternative Business Structure discussion paper. We have canvassed all of our membership in an attempt to provide the most complete response on behalf the lawyers in Windsor and Essex County.

Our membership has the obvious concerns with respect to how Alternative Business Structures ("ABS") may impact their own individual practice. However, this letter will not focus on those concerns as it is our understanding that the Law Society of Upper Canada wishes to focus our response on the impact of ABS on the following three issues:

1. The LSUC duty to maintain and advance the cause of justice and rule of law
2. The LSUC duty to act to facilitate access to justice for the people of Ontario
3. The LSUC duty to protect the public interest

The ABS discussion paper focuses on theoretical examples to justify and explain the impact of ABS on the above three LSUC duties. At this point, there does not appear to be any tangible evidence to support how ABS will positively or negatively impact the duties the LSUC owes to the public. Much of the paper discusses how ABS "may" impact the practice of law but there does not appear to be enough information available at this time to know how ABS "will" impact the practice of law.

Based on the theoretical examples set out in the discussion paper, it appears that ABS could have positive or negative impacts on each lawyers practice depending on the type of law and the size of the firm where they practice. A sole practitioner is going to be impacted very differently than a large firm. A real estate lawyer will be impacted very differently compared to a personal injury lawyer.

The same can be said of how ABS will impact the three duties specifically listed in the discussion paper. Each specific area of practice will be impacted differently.

In addition, each specific law society duty will be impacted differently depending on which of the four proposed models is adopted by the LSUC.

The LSUC duty to maintain and advance the cause of justice and rule of law

There is simply not enough evidence in the paper to be able to comment on how ABS will impact on this specific LSUC duty.

In addition, some of our members believe that ABS will likely neither advance nor restrain the cause of justice and rule of law.

The LSUC duty to act to facilitate access to justice for the people of Ontario

ABS may allow greater access to litigation lawyers based on alternative ways in which those lawyers could finance the litigation. However, there is also concern that outside investment to finance litigation files could make it harder for litigants who have difficult or marginal cases to find representation who would take on that file in light of the lawyer's competing obligation to its investors.

Moreover, there is no empirical evidence to show how ABS will allow individuals greater access to family, commercial, real estate, or estate lawyers.

Some of our members have raised concerns that ABS firms will unlikely be interested in providing advocacy, advice, or significant content (litigation, complicated agreements, etc.), but rather focus on providing "process law" (real estate transactions, wills, incorporations, etc.). As such, there is concern that ABS will not facilitate access to justice, but rather only provide another vehicle to deliver legal services that can be provided on process basis.

In addition, some of our members have pointed out that certain franchise models referenced in the discussion paper may have the unintended effect of increasing the risks and challenges of managing conflicts of interest if lawyers operating out of two distinct offices under the same franchise banner have to declare conflicts merely by reason of their participation in the franchise.

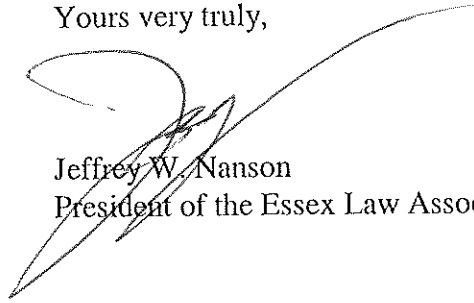
The LSUC duty to protect the public interest

There is concern amongst our membership that ABS could put the interests of lawyers and their investors ahead of the public interest. If a lawyer or law firm has to answer to outside investors it could put the client's interest secondary to that of the investor.

In addition, some of our members have raised concerns that outside investors would be in a position to influence the conduct of lawyers working inside the ABS.

In addition, some of the proposed models appear to make the protection of solicitor-client information very difficult.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Jeffrey W. Nanson', with a long, sweeping flourish extending to the right.

Jeffrey W. Nanson
President of the Essex Law Association