

**VIA EMAIL**

December 31, 2014

ABS Discussion  
Alternative Business Structures Working Group  
Policy Secretariat  
Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto, Ontario M5H 2N6

Attention: Malcolm Mercer and Susan McGrath, Co-Chairs

Dear Mr. Mercer and Ms. McGrath:

**Re: FACL COMMENTS TO “ALTERNATIVE BUSINESS STRUCTURES  
AND THE LEGAL PROFESSION IN ONTARIO: A DISCUSSION PAPER”**

In response to the Law Society of Upper Canada’s release of [\*Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper\*](#) on September 24, 2014 (“Discussion Paper”) and the request for comments, the Federation of Asian Canadian Lawyers provides its input regarding Alternative Business Structures (“ABS”).

FACL is a diverse coalition of Asian Canadian legal professionals with a mandate to promote equity, justice, and opportunity for Asian Canadian legal professionals and within the broader community through advocacy, community involvement, legal scholarship and professional development. These comments to the Discussion Paper reflect FACL's mandate, as well as the role of the LSUC in the regulation of the profession.

Peter Wardle, Bencher and member of the ABS Working Group, and Naomi Bussin, Counsel, Office of the Director, Law Society of Upper Canada, gave a presentation on ABS at FACL's November 19, 2014 board meeting.

**Racialized Lawyers and Opportunities**

FACL recognizes that racialized lawyers tend to be over-represented in sole or small firm practice. In some cases, this may be a matter of choice, perhaps with a view to serve racialized communities, or it may arise from a lack of opportunities or advancement in law firms,



corporations or other organizations. Anecdotal evidence suggests that ABS may enable these practitioners to have access to capital investment and/or a different model for the compensation of non-lawyer employees/partners, and thus increase opportunities for success of their practices. However, FACL is not aware of any voice from racialized lawyers calling for ABS to improve their practices or provide better access to services for racialized communities. FACL suggests that the ABS Working Group's consultation process include reaching out to communities where there is a larger number of racialized licensees, such as for example the GTA suburbs of Mississauga, Scarborough and Markham, to gauge their views on ABS.

### **Public Interest**

It would also be helpful to know who has been calling for innovations to the delivery of legal services. FACL believes it would be beneficial to know whether the innovations contemplated will truly serve the public interest, or whether they will serve certain private interests over that of other private interests. If the latter is the case, FACL queries whether there is any net benefit to the public, and whether the LSUC should be involved, beyond moving from regulation of only individual licensees to including regulation of firms which deliver legal services.

Recognizing that innovations in technology and the popularity of services such as Legal Zoom are transforming the delivery of legal services, whether or not ABS is accepted and implemented in Ontario, there remains an outstanding issue of whether, and if so how, the LSUC will regulate the delivery of legal services where there are cross-jurisdiction challenges (ie the service provider is outside Ontario, and the legal services are accessed online).

The LSUC must also be careful to ensure that any changes in the rules governing business structures not have the effect of compromising the professional obligations and fiduciary duties expected of lawyers in Ontario. We believe the onus should be placed on those advocating for ABS to make the case that there will be no such compromise.

### **Access to Justice**

In terms of access to justice, there is no real evidence that there is increased access to justice for consumers of legal services.

Technology has already transformed the delivery of legal services, and lowered the cost of delivery of legal services while still using the models currently available. An example would be



the innovative law firm, Cognition LLP. There is also an increase to "virtual" firms. Sole practitioners and small firms already benefit from technological change, and larger firms are creating greater efficiencies.

Where ABS may be of benefit is to provide services to those who wish to represent themselves in their legal matters (Legal Zoom is cited in the Discussion Paper as an example). However, as lawyers, we are skeptical about the real benefits of this type of delivery of legal services, especially if the services are delivered from outside this jurisdiction. The LSUC permitting "limited scope retainers" already provides self-represented litigants with one way to represent themselves.

## Conclusion

From an equity and access point of view, there does not seem to be much benefit for ABS. Further, more consultation is required to see if there is a need for ABS from racialized lawyers and in racialized communities. FACL would also advise the ABS Working Group to consult with legal clinics such as MTCSALC and SALCO, as well as the LAO, and others, to see if ABS will improve access to justice.

In FACL's view, ABS seems more of an issue about private interest efficiencies -- which can be a good change. As such, there may be no net gain for equity or access to justice, but different models for the delivery of legal services that shifts profits, at least partially, from lawyers to non-lawyers.

The market for delivery of legal services is transforming, and the LSUC needs to ensure that it can properly regulate who and how legal services are delivered in order to ensure that the public is protected.

However, from FACL's point of view, we do not believe that ABS will have much impact on access to justice, though it may have some efficiencies for racialized lawyers, many of whom are in sole or small firm practices.

Finally, we believe that any changes to the rules governing the business structures of law firms must only be made if they do not have the effect of compromising the professional obligations and fiduciary duties expected of lawyers in Ontario. Otherwise, the public interest will be harmed; access to *quality* legal representation will be diminished; and, to the extent that the



racialized lawyers in sole or small firm practices are more likely to rely on ABS, racialized lawyers could end up being subject to a disproportionate amount of regulation and sanction.

Yours truly,

Lai-King Hum  
President, Federation of Asian Canadian Lawyers

cc: FACL Board  
FACL Advocacy & Policy Committee