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File No.
09 December 2014

ABS Discussions
Policy Secretariat
Law Society of Upper Canada
130 Queen Street West
Toronto ON M5H 2N6

Dear Sirs,

Re: ABS Discussion

Thank you for your request for a response to the ABS system. To start with I have reviewed a study called "The Solicitors of New South Wales in 2015" prepared for the Law Society of New South Wales. Its conclusion is that for the period 1997 to present, the very largest firms have increased in numbers and that sole practitioners have greatly increased in numbers and the middle firms are disappearing. It indicates that incomes have dropped related to inflation and that incomes actually dropped when ABS was instituted and that there are fewer lawyers in the areas that ABS covers (everything I expected except maybe the very large business that very large firms do) One could also surmise from this report that the current dramatic increase in sole practitioners currently 81.5% of the profession is because those lawyers need very little staff, can do work as needed themselves and can reduce their costs to zero. As firms grow this becomes very difficult to continue. Very few employees would be needed.

ABS has fundamentally altered the practice of law in Australia and not in any way for the better.

We have had this debate as a profession periodically. When Title Insurance first came into the province we as professionals had exactly the same discussion. For the few of us who can remember that far back the Title Insurers were proposing to set up closing centres and people wouldn't need lawyers to close, you would simply attend at a closing centre, set up in the Registry Office, they would prepare the deed, give you title insurance policy and register. It was touted by the big Toronto Firms pushing it that it would provide cheaper services to the public

and give them far more access to legal services. We had that debate then, and if you remember purchase and sales were regulated by the province and require a lawyer to complete them but not refinances. So what happened, all the Banks started selling discounted refinancing packages, they did the work and one of their Title Insurers registered the documents. I don't know about anyone else but I am always dealing with undischarged mortgages, undealt with liens and so on. How many clients do I have that have told me that they signed some documents with the Bank Manager and had no idea if they were getting a mortgage. I recently had to write to First Canadian Title and tell their agent that he should report a claim to the Law Society because he did not investigate the spousal status on a mortgage and it became a serious issue in their separation. I am consistently discovering Lines of Credit registered a couple of days before closing. All of these things cost time and money to fix up and threaten closing, exposing the parties to law suits and worse. It is only because of the understanding of the other lawyers that none of this blows up, causing serious damage and aggravation to the parties.

Has anyone tried to get something quickly out of a Bank Employee lately? Also does anyone really think that I will give the same consideration to or leeway to an employee of a bank or real estate company? As a result it is clearly possible to say that such a system does not provide more or better access to or understanding of the legal system and exposes a great number of people to the serious risk of law suits and uncertainty. But you can always find someone to push it for their own interest. (Please see the discussion of the destruction of everyone but one man firms and large firms)

The best protection for the public is an independent and healthy private bar. Imagine going to your Bank, having the manager tell you to see the Bank employee – lawyer – right beside him, who will look after all your concerns. The same applies to mortgage brokers and real estate companies. Does anyone really expect any of these lawyers to give advice contrary to their employers, or Insurance companies with their own plaintiff and defence firms I understand that is happening in Australia already.

Imagine being owned by [Text Removed] or [Text Removed] and the price of a Will or Real Estate transaction advertised as their weekly special. The same applies to divorces, driving offences, criminal offence, everything all small firms do. This isn't going to permit efficiency, it is going to drive everything down to the lowest cheapest financial levels. We might as well call ourselves [Text Removed] Law Firms. I was always thought we were a profession not a corner store but if we're going to be treated like a corner store then we should get rid of the Law Society, insurance regulations, all regulations and let us fend for ourselves in a free market and the clients take their chances. We don't need a Law Society if it produces this kind of proposal. I understand that incomes have stagnated or decreased in Australia for lawyers since the introduction of ABS. It wouldn't be any different here and may be a lot worse here.

Finally imagine someone who has diverted a lot of cash from his business and is looking for a quick way to clear it up. Buy a law firm and run it through the trust account. Works like a charm, and who thinks the Law Society regulators will catch it.

I feel the whole discussion of access to justice is an insult to me. What it really means is that all

the small law firms are doing a lousy job handling all of the legal problems for people who can't afford to hire a big firm. I reject this premise absolutely. When my brother helped set up the Mental Health Courts here and elsewhere he did more to promote access to justice than the whole committee in Toronto or all of the people pushing this plan. He didn't need bureaucrats to help him or to hold his hand and get in the way. The Law Firm was paid zero for all the work done and no-one complained. He just did the work and got the results. I expect that most small law firms are the same type of lawyers. However, if one reads the discussion of small law firms in the discussion paper all we want to be or should want to be in big firms. In my case the reverse is the case. I expressly don't want to be in a big firm. I own my practice and I am responsible for the results, no-one else and there is no one to hide behind. Bigger is not always better although you would never know it from this report. In fact I find smaller a lot better and the alleged benefits of ABS will bring to my practice are alleged only. I have dealt with fixed rates and competitive rates all my professional life and done quite well, if other firms can't, too bad. That applies to large firms as well. It is however clear that the end result of ABS will be to exterminate us.

In this report there are a lot of things identified that ABS might do. The operative word here is might since there is nothing definitive in this report about anything. I have read it 3 times now and my original response has not changed which is that the proper response should be big deal, come back when you have something to say and if all the committee is going to do is surmise, do it on your own time and quit wasting mine. The idea that we would discuss fundamentally altering the way law is provided for in this province based on this report is ridiculous. I don't have any idea of the extensive work done by this committee since none was demonstrated in this report.

Finally to support the need for ABS this paper cites all the people who do not use lawyers (see page 13) I do not know how serious the legal problems cited in the studies were since this issue is not addressed. With regards to family matters the availability of legal aid is the most serious fact and governments have been cutting this again and again and restricting access. That's not going to change on an ABS model. Everyone with the internet searches out advice for legal problems. I do all the time and I fail to see why we need to change everything to try and change this when its likely won't change. A couple of firms probably the ones pushing this will benefit from legal forms or franchising but I don't nor do I wish to and I confess that I look for forms online myself. After all power of attorneys, court forms, incorporation etc. are available courtesy of the provincial government and are unlikely to be removed.


I fail to see why ABS is needed to deal with this issue. Let's not forget anyone can phone the Law Society referral system and consult a lawyer for free, I get called all the time and everyone gets advice. It's not always what they want to hear but its truth as I see it and most of them don't have legal problem that need representation. If they aren't going to call for free legal advice why would they call any firm to get advice for which they have to pay?

There are no justifications for an ABS system in this paper. There is a lot of guessing and speculation very little of which holds up to scrutiny or justifies such a massive change to the legal system. My readings of the review of small firms clearly indicate that this report has very little respect or regard for them or what they and I do. It's clear the proposal is bigger is better

and if you don't want to be bigger you won't be better, absolutely untrue.

If the plan is to get rid of us then at least say so and don't hide it behind all of this access to justice, nonsense because that's all it is, is nonsense.

Thank you
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