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MEMORANDUM

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

FROM: Mitchell E. Kowalski

DATE: December 31, 2014

RE: **Response to Call for Input
Alternative Business Structures in Ontario**

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Thank you for allowing me to comment on the recent proposals put forth by the Alternative Business Structures Working Group Report of September 24, 2014.

Models 1 and 3 do not permit more than 49% ownership in a law firm by outside investors. This is not dissimilar to the current MDP rules in Ontario - and MDPs have been a flop. If ABS is implemented in a way that does not allow for unlimited outside ownership, it will also flop. I recommend against making the same mistake the Law Society made with MDPs; **Models 1 and 3 should be discarded.**

Only Models 2 and 4 are worth pursuing.

My preference is for Model 4 as it provides the added benefit of multi-disciplinary entities that would, for example, allow a family law practice to be vertically integrated with psychological counselling, financial management, accounting, day-care or other



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professionals typically used in that area of practice. Real estate lawyers could be vertically integrated with real estate agents, contract management and property management services. All of which would provide seamless end-to-end solutions for clients.

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However, Model 4 may be too aggressive for a profession that is so very afraid of change. In which case, Model 2 is likely to be more palatable and still achieve the benefits of Alternative Business Structures.

There has been far too much emotional rejection of non-lawyer ownership of law firms based upon unsubstantiated fear-mongering.

Lawyers are trained to make decisions based on logic and evidence – not hyperbole and emotion. The Law Society of Upper Canada, in making its decision, must rely upon logic and evidence alone.

Legislation in Australia has permitted unlimited outside investment in law firms since 2000; it's hardly at the experimental stage. The evidence is that Australia's legal system has not fallen into disrepute or into chaos. Neither has that of the UK, which instituted ABS in 2011.

There are no evidence-based arguments against permitting unlimited non-lawyer ownership of law firms; so, there is little point dealing with unproven allegations.



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To the contrary, my research in this area has revealed sound, evidence-based arguments of the benefits of ABS.

Access to Justice Benefits

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Salvos Law (<http://www.salvoslegal.com.au/>) is owned by the Salvation Army, something that is not currently permitted in Ontario.

Since its creation in 2010, Salvos Law has conducted over **11,000 *pro bono* cases** in Australia – all at no cost to taxpayers, Legal Aid or even to the Salvation Army.

If there is a law firm in Ontario that can match that record, I have yet to see it.

The ability of one law firm, owned by a charity, to help thousands of Ontarians at no cost to the taxpayer, is a very compelling reason to allow unlimited outside investment in law firms.

What if two, three, or even four charities picked up this model? How many more thousands of Ontarians would have better access to justice?

Such a model only works if the charity is permitted to have unlimited ownership of the law firm; the charity needs to ensure that its lawyers remain true to the mission.

Salvos Law is really two firms: Salvos Legal (which is a commercial law firm) and Salvos Humanitarian (a *pro bono* law firm) – both are wholly owned by the Salvation Army. All profits from Salvos Legal fund the work of Salvos Humanitarian.



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In 2014, Salvos Law won the very prestigious Australian Law Firm of the Year Award, (<http://awards.lawyersweekly.com.au/>) beating every other law firm in the country. For an ABS firm to win such an award over non-ABS law firms, speaks volumes.

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Canada's failure at a Salvos model

As you know, in the early part of this century, Vancouver's Pivot Legal tried to create a structure similar to Salvos Law.

It was an admirable attempt, but unfortunately it failed.

Failure was due to a number of reasons, but most importantly, it was due to a lack of affordable capital, and lack of business management skills. Two things that ABS would bring to law firms.

Pivot Legal's failure versus Salvos Law's success, is compelling evidence of the benefits of ABS.

Client Benefits

Riverview Law in the UK (<http://www.riverviewlaw.com/>), and Slater & Gordon in Australia (<https://www.slatergordon.com.au/>) are miles ahead of every other law firm around the globe in terms of technology – I know, because I've actually been to their offices. Both firms have stream-lined the "process" of legal services delivery to make the client experience better and more affordable; both firms were built through access to outside capital.



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In fact, Slater and Gordon's mission statement is: *To give everyday people easier access to world class legal services.* How many law firms in Ontario can say they have a similar mission?

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Lawyer and Staff Benefits

ABS also introduces the concept of retained earnings to legal practices which encourages long-term investment; something that the partnership/sole proprietorship model discourages.

What is often forgotten is that ABS provides an exit strategy for lawyers seeking to retire in a way that keeps that practice alive in the community.

We hear so much about the so-called "greying of the bar" and that older lawyers have no one to sell their practices to; so they simply close them. Lawyers spend a lifetime building something only to watch it quietly slip away into nothing. The community then suffers.

Many UK ABS applications are from small firms who use conversion to an ABS as an exit strategy and a way to allow their staff to share in profits.

It should be remembered that Slater and Gordon has grown through acquiring practices, not destroying them - providing many "greying" Australian lawyers with an exit strategy, and even providing some struggling Australian law firms with a lifeline. Without Slater and Gordon, these practices would have closed and these communities would have even fewer lawyers in them.



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Finally, ABS gives law firms access to management/business expertise that they are now unable to tap in a meaningful way. Australia's Kain C+C Lawyers (<http://www.kaincc.com/>) is a small commercial law firm of 17 lawyers which converted to ABS in order to source management expertise that lawyers simply don't have. In accordance with good governance practice, Kain's board of directors is comprised of a majority of outside directors, and its non-lawyer CEO has full management control over the firm; he can hire and fire any employee (including lawyers), and he sets all remuneration based on directions approved by the board. As a result, better business practices are followed for the benefit of clients and lawyers.

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Conclusion

I encourage you to recommend only Models 2 and 4.

I also urge the Law Society of Upper Canada and all Benchers to reject any arguments that are not evidence-based.

Thank you again for the opportunity to present my thoughts.

Best,

Mitch