

Dear Members of LSUC and the Policy Secretariat,

My name is Liam Ledgerwood and I am a first year law student at the University of Western Ontario. I recently stumbled upon the ABS discussion currently taking place within LSUC, and upon reading the ABS Discussion Paper I felt compelled to submit my feedback as a future member of the legal profession in Ontario.

In short, I believe the proposed shift to allowing alternate business structures in Ontario is an excellent idea that would facilitate industry innovation, improve service quality and diversity to the public, and promote access to justice for consumers who are currently unable to afford or access the legal services they require. Specifically, Model #4 proposed in the paper would be preferable in the sense that it most effectively liberalizes the legal industry in Ontario, and would have the greatest effect in promoting competition, innovation, and diversity of legal practices. However, all proposals from the paper would be preferable to the status quo, which currently restricts competition and innovation and drives a considerable amount of legal work to unregulated "black markets" of legal services to the detriment of both consumers and legal professionals. There are 2 broad arguments in favor of allowing ABS in Ontario that will be explored below. Subsequently, I will respond to potential arguments against the proposal.

### **Argument #1: Allowing ABS would benefit consumers of legal services**

The current regulations governing acceptable business models of legal services restrict the available types of firms that consumers can access. As a result, most professional legal services in Ontario are delivered by a wide selection of semi-homogeneous firms or practitioners using largely similar organizational practices. Thus, while there is competition in the sense that consumers may choose between several firms or professionals, the professional legal services available to consumers are strictly limited in their organization, methodology, and design. This limitation inherently restricts competition among legal service providers, which has clearly limited the potential for innovative business practices that respond to a changing consumer market.

The proposition that competition benefits consumers in terms of accessibility, price, and diversity of offerings is a fundamental principle of economic theory that has been empirically proven countless times. Allowing diverse forms of legal enterprises to exist alongside existing enterprises improves consumer choice, allowing consumers to decide which practices best suit their needs. Legal practitioners will have more freedom to experiment with innovative business practices, which consumers will be free to select or reject based on their needs and preferences. Thus, consumers would be free to select between traditional practices or new, innovative practices. Ultimately, it would be consumer preferences that would dictate which methods are employed by the legal profession instead of restrictive bureaucratic rules.

Furthermore, allowing ABS could have the effect of increasing the number of people who both **can** access professional legal counsel, and the number of people who **choose** to access professional legal counsel. According to the Department of Justice, professional legal advice is sought for less than 15% of all applicable cases. Many people are unable to afford professional legal help, due in part to regulations such as those at issue which restrict competition and keep

prices for legal services high. Others elect to seek "black market" or unregulated legal counsel, such as that from lawyers in other jurisdictions over the internet. Undoubtedly, these consumers elect to do so due to lower costs or convenience. If new business practices, introduced via ABS, can manage to re-integrate those consumers into the formal market who either cannot or do not use professional legal services in Ontario, these consumers would receive better quality legal outcomes and their full rights under the law, such as protection from malpractice etc.

### **Argument #2: Allowing ABS would benefit the legal industry of Ontario**

Not only would the liberalization of the legal industry in Ontario benefit consumers, but it would also benefit the legal industry in Ontario. At present, the industry has seen an ever-growing number of potential clients forego traditional legal practices in favor of self-representation, black-market legal advice, or unprofessional and unregulated services such as Legal Zoom. The statistic referred to above, indicating that legal professionals are currently capitalizing on only 15% of all justiceable cases, sufficiently demonstrates that the industry has currently failed to respond to the needs of potential clients. The regulations at issue are one of the primary impediments to the kind of innovation and industry flexibility that would allow service providers to use the alternative practices that consumers demand. In short, there is a large market for legal services that is currently being ignored due primarily to rigid rules which prevent it from being capitalized upon.

A failure to take this issue seriously could be detrimental to the future of the legal industry in Ontario. As a future lawyer, I am concerned about my prospects for employment where my only available options appear to be large-scale corporate law in a large city, or "hanging my own shingle" as a sole-proprietor. Furthermore, with a shrinking market of consumers who elect to seek professional counsel, who will demand my services, and with what legally permissible methodology will I be allowed to assist them?

Allowing for innovative business practices and structures is a solution that would address several issues facing the legal services market in Ontario. The needs of our consumers have changed, while delivery of services is largely restricted. When I enter the workforce, I would like to be able to meet the market's needs in an innovative fashion instead of joining an industry rigidly confined in its ability to grow or adapt.

### **Responding to Critics: Ethical and Economic Concerns**

One potential argument against ABS is that the regulation of professional conduct would be at risk. Cornerstones of professional legal counsel, such as the concepts of justice, integrity, confidentiality and privilege, etc. would be threatened if legal services are ultimately directed by or managed in part by non-lawyers.

While this concern is certainly valid, it is ultimately a manageable concern that can be adequately addressed via legislation and unobtrusive industry regulation. It would be unacceptable and undesirable to dilute these basic values of the legal profession, and it is crucial to retain the trust that the public places in the legal profession. However, with the implementation of an appropriate regulatory structure, it would be possible to allow for ABS to

capture its benefits while safeguarding the fundamental values and ethical characteristics of the legal profession.

Some lawyers may be hesitant to support ABS due to the potential for economic disruptions and loss of business to new, unforeseen competitors. The fact is, a shift to ABS has the potential to cause a dynamic shift in the legal industry, and dynamic shifts can result in a decline in business for some current practitioners. However, a failure to adopt ABS due to a desire to protect vested interests or established practicing lawyers is inconsistent with the values of LSUC, which has a mandate to protect the public interest and promote access to justice. While special interests who fear new forms of competition will undoubtedly lobby LSUC to prevent this change, it would be a shortsighted decision to prevent a forward-thinking innovation in the industry in order to protect the short-term interests of existing practitioners unwilling to innovate to respond to the unmet demands of the consumer market.

### **Conclusion**

Ultimately, allowing ABS in Ontario would likely benefit both consumers and legal practitioners alike. While there are certainly elements of the transition that must be properly regulated, LSUC and the legislature are more than capable of overseeing this shift while safeguarding the ethical integrity and professionalism of the legal profession.

Thank you for your time,

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