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VIA EMAIL

ABS Discussion
Policy Secretariat
The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
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Dear Sir or Madam,

Enclosed is my comment on what you people euphemistically refer to as “Alternative Business Structures”. I would call it something else. This is the version of an article that appeared in the September 26, 2014 issue of The Lawyers Weekly, before it was reduced in size by The Lawyers Weekly’s editor.

I note that you are also interested in requests for information and requests for meetings with members of the Working Group. If someone from the Working Group wants to meet with me in person, I will endeavour to make the time.

I also have a request for information: What is the history of this matter? Who decided to make it an issue? Why? What problem does anybody think it will address? With all the problems facing the administration of justice in this province, how, historically, did this proposal gain so much traction, to the point where it is consuming this level of the Law Society’s resources?

Yours truly,



Murray Teitel
MT/kja
encl

Non Lawyers Owning Law Firms

On August 14, 2014 The Canadian Bar Association (CBA) recommended that non lawyers be allowed to own law firms.

If this proposal is accepted by the provincial law societies shares in law firms could be traded on stock exchanges (read casinos without junkets or Las Vegas style acts) and controlling interests could end up in the hands of hedge funds gambling on derivatives of collateralized debt instruments (don't ask them to explain what these are-they themselves don't know) or, in the case of underperformers, in the talons of vulture funds.

While the CBA has 37,000 members (in and of itself a rather sobering number) it's like the [Text Removed] or the [Text Removed] where a tiny number of activists, who are the only ones driven enough to put in the time, take over the leadership. No one should assume that such a scheme has or would gain traction among individual lawyers any more than it would be correct to assume that [Text Removed] or [Text Removed] support boycotting of and divestment from Israel.

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It is a dumb idea. The practice of law is not just a business; it is primarily a profession, the essence of which is that the lawyer puts the client's interest above his or her own. A corporation, on the other hand, has only one duty and that is the maximization of value to the shareholders. To that end corporations will go to extraordinary lengths. Those in the resource extraction business will destroy habitats, poison those living in the vicinity of their activities, wipe out indigenous cultures. Those selling consumer goods will sell people garbage they don't need and spend tens of millions on advertising to convince them they not only need this junk but that their lives will be meaningless or they will be doomed to perpetual celibacy without it. Some are even happy to sell cigarettes to people, knowing it will kill them, concerned only that killing your customer base isn't exactly the smartest business plan. Such entities are unlikely to be moved by quaint protestations about professional obligations.

And herein lies the irreconcilable tension between the duties of lawyers to their clients and the duties of lawyers as employees of a publicly traded corporation. The lawyer in him or her wants to put the interest of the client above that of the shareholder whereas his or her company's shareholders want only to maximize earnings and increase the price of their shares.

It is not difficult to imagine how this could play out. For example, large firms all have large estates and trusts departments whose clients include children of rich parents fighting over their parents' estates. When properly funded these suits can go on for years and generate millions in fees. Lawyers being lawyers have a duty to point out to their clients that what they are really fighting about is what this one did to that one when they were six and four respectively and whom Dad liked more. They should be encouraged to go to counsellors, not lawyers and make up. And lawyers routinely do this, risking being perceived as weak and not up to the task and foregoing enormous billings when the clients listen to them or don't listen but go elsewhere to someone with a reputation for beligerence .

The Ontario family law rules actually *require* lawyers to attempt to settle cases. (You need to read three rules in conjunction to get to this conclusion- but please trust me on this, I'm a lawyer.) And a fourth rule can require one party to pay the other's legal fees in advance. Now lawyers working for publicly traded corporations will be complying with their settlement obligation by taking all the warring spouses' money so that with nothing left to fight about the parties will be required to, if not exactly settle, then at least walk away equally destitute. Worse scenarios are not difficult to imagine.

The bottom line is that lawyers already experience enough pressure putting the interests of their clients above their own. Adding a further force working to undermine legal ethics will turn a once honourable profession into a business no different from ones pushing great for your sex life mascara or appliances engineered to break down two days after the warranty expires.

Beyond that there is the issue of who in their right mind would want to invest in a law firm. As the Heenan Blaikie saga demonstrates, a law firm is no more than its lawyers, any one of whom is free to at a moment's notice pack up his or her clients who will follow and move elsewhere. Shares of a law firm have no inherent value beyond excess cash on hand and the surplus of receivables over liabilities which are usually in the negative. They own no patents, no equipment, no buildings, no railway tracks, no pipelines, no licenses to exploit natural resources. It is difficult to find anyone who will benefit from turning law firms into publicly traded companies other than stock brokers and investment funds. They will see an opportunity to earn commissions trading the shares and earn profits by correctly betting on the shares' future upward or downward movement. They don't care if they are buying shares in a chimera. They will come out winners. The losers will be the clients of those practitioners who think of law not only as a means to make a living but as a way of doing something meaningful.