**TO:** Janet Minov, Treasurer TSBAC  
*Copy to Alternative Business Structure Office*

<table>
<thead>
<tr>
<th>SUBJECT: ABS Submission from TBLA</th>
<th>DATE: Feb 20, 2015</th>
</tr>
</thead>
</table>

Pages including cover page: 9

Please see attached Submission.

**RECEIVED**

FEB 23, 2015
Membership Services  
Law Society of Upper Canada
February 18, 2015

Law Society of Upper Canada
130 Queen Street West
Toronto Ontario
M5H 2N6

Attention: Janet Minor Treasurer

Dear Treasurer Minor,

Re: Thunder Bay Law Association’s Preliminary Submission to the Law Society on Alternate Business Structures

Please find enclosed the Thunder Bay Law Association’s submission to the LSUC in respect of Alternate Business Structures.

I would wish to acknowledge the significant contribution of our Vice President, Rene Larson, to this submission and further acknowledge that significant portions of the submission are taken verbatim from the report he prepared for our executive.

As I have indicated to you in previous correspondence we feel somewhat time constrained in preparation of our initial submission, and therefore we wish to reserve the right to make further submissions in the course of what will presumably be a lengthy process. We have canvassed our membership for input and continue to seek input. This submission is a distillation of our members input received to date. It is fair to say that, thus far no one in our Association has expressed support for the implementation of ABS.
We wish to formally invite the Law Society of Upper Canada’s Alternative Business Structure Working Group to attend in Thunder Bay to meet with our members to provide further information and answer our members’ questions.

Very truly yours,

[Signature]

Gordon B. Fillmore
President, Thunder Bay Law Association
Thunder Bay Law Association
Submission to the Law Society of Upper Canada
On Alternate Business Structures (ABS)

ABS Generally

Fundamentally, the Thunder Bay Law Association states that changes to regulation of the legal profession made primarily for the purpose of enhancing access to justice, should only be made on the basis of unequivocal evidence of successes from other jurisdictions, and not on theoretical arguments or assertions that ABS will enhance access to justice. While access to justice is a significant and ongoing problem, which the TBLA is ready and willing to on work with all interested parties; we do not support the implementation of any form of ABS without unequivocal empirical evidence compiled over a significant time period of substantial net benefit to the public.

At present the TBLA does not support the implementation of ABS because there is insufficient empirical evidence from other jurisdictions where ABS has been implemented to demonstrate that ABS will benefit the public and meet identified unmet legal needs in Ontario and in the District of Thunder Bay in particular.

The TBLA believes that there are a number of options other than ABS to help Ontario lawyers develop innovative, more effective and competitive practises to benefit the public and to meet unmet legal needs in Ontario, and the District of Thunder Bay.

There is a concern that ABS discussions may actually be diverting attention from effective solutions to the access to justice issues and only give the illusion that real efforts are being made to deal with those issues. It’s difficult to envision how ABS will meaningfully address the problem faced by indigent family law litigates, or impecunious individuals in need of other legal services, or significantly cut costs to legal service consumers. We note that it would appear that in at least one jurisdiction, Australia, where ABS has been implemented, the practise area of personal injury is now dominated by one large corporation, while noting that personal injury litigants are currently not, generally speaking, an under serviced group.

Members have expressed concerns that adoption of at least some forms of ABS may lead to the domination of legal services by large, possibly off shore, corporations which would monopolize sectors of the legal services market to the detriment of the public and the profession. The Law Society may have very little ability to effectively regulate these service providers.
Concerns In Respect of the Impact of ABS on Members of the Thunder Bay Law Association

The Thunder Bay Law Association has attached to this submission a Snapshot of the Composition of LSUC licensees located in Thunder Bay. It should be noted that the TBLA does not speak for, or represent paralegals practising in Thunder Bay. TBLA remarks are from the practising lawyers in Thunder Bay. Individual lawyers have differing views on the matter, but as stated earlier in this submission, no member has thus far expressed strong support for ABS and from the comments received to date, our members are opposed to implementation of ABS in any form.

From the Snapshot it is clear that the TBLA’s members are from small law practises in comparison to the rest of Ontario (100% of Thunder Bay lawyers practise in firms of less than 20 lawyers). Approximately 65% of Thunder Bay lawyers in active private practise are in firms of 1 to 10 persons; in other words, approximately two thirds of Thunder Bay’s lawyers in active private are in firms of less than 10 persons. Approximately 54% of Thunder Bay Lawyers private practise are in firms of between 1 to 5 persons; in other words one half of lawyers in private practise are in “soles and very smalls”. Sole practitioners comprise approximately 25% or almost a quarter of those engaged in active private practise.

The TBLA is concerned that large publicly owned law firms created under ABS would wipe out the practise of most Thunder Bay firms save and except those that would be bought up by the new ABS firms. There is no advantage to the public in reducing competition by eliminating soles and small firms. In fact the public becomes vulnerable to the reduced number of large firms who would control the legal market.

The TBLA believes that the strength of the legal profession’s ability to service the public in Ontario is based upon the independence of sole and small firms, and the fiercely competitive legal market existing with many sole and small firms offering services to the public and competing for the public’s legal business.

The TBLA has grave concerns that with implementation of ABS in Ontario, large international or national accounting firms, or large international firms like Slater & Gordon, will dominate the Thunder Bay legal services market after swallowing up significant local law firms. The public will be ill served by the lack of competition and will actually suffer without any improvement in access to justice, or any other significant benefit to the public. To date the ABS Working Group has, in the Association’s view, cited no compelling empirical evidence from existing ABS jurisdictions, Australia and the United Kingdom, that ABS reforms would better serve the public. In our view it remains an unsubstantiated and highly dubious proposition.
The Association notes that one of the largest common law countries in the world, the United States, has thus far not implemented ABS in any of its jurisdictions. The American Bar Association is carefully studying ABS under its Commission on the Future of Legal Services, and we encourage the Law Society of Upper Canada to have regard for the deliberations taking place in the USA before attempting to implement ABS in Ontario.

The Thunder Bay Law Association wishes to endorse in principle the 37 pages of submissions dated December 15, 2014 by the Ontario Trial Lawyers Association prepared over an 18 month study period. In particular the TBLA shared the significant concerns expressed by the OTLA about the duty of lawyers to their client, the need for independence of legal professionals, the issues of confidentiality and the lack of ability of the LSUC to regulate firms and non-lawyer owners of ABS. In addition, TBLA endorses the County and District Law Presidents’ Association’s Response to the Discussion Paper on Alternative Business Structures. TBLA supports the three Summary Recommendations of CDLPA found on pages 2 & 3 of the said response. The TBLA stands in full support of the CDLPA’s overall conclusion found on page 14 of its submission:

“... There are many other areas of our justice system requiring reform and investment—legal aid technology in the courts, regulatory modernization, etc. — that will provide greater benefit sooner than will a fundamental reform of ownership structure for law firms.”

TBLA Comments on Specific ABS models for discussion:

The TBLA does not support Model # 1: Business entities providing legal services only in which individuals and entities not licensed by the Law Society can have up to 49 per cent of ownership. Under this model the lawyer[s] would maintain majority ownership of the business entity, and the provision of legal services would remain under the control and supervision of licensed lawyers. The TBLA believes that outside investors, who are not lawyers, would not serve the public interest as they have not been educated in, have not practiced under, and have no obligations to the Law Society regarding professional ethics, independence of the profession, conflict of interest, confidentiality, and putting the client’s interests paramount to all. Even from a minority position non-lawyer ownership may exert pressures which may result in conduct not in compliance with fundamental values.

The TBLA does not support Model # 2: Business entities providing legal services with no restrictions on ownership by individuals and entities that are not licensed by the Law Society. Under this model, the business would be free to seek capital in any way it sees fit, but it would only provide legal services, in other words although the business owners need not be legal
professionals, the provision of legal services would remain under the control of licenced lawyers or paralegals.

The TBLA does not support Model #3: Business entities providing both legal and non-legal services (except those identified as posing a regulatory risk) in which individuals and entities that are not licensed by the Law Society would be permitted up to 49 per cent ownership. In an entity is permitted, where the entity provides both legal services and non-legal services. Any other type of service may be provided for by the entity, except for those identified by the Law Society as posing a risk.

The TBLA does not support Model #4: Business entities providing both legal and non-legal services (except those identified as posing a regulatory risk) in which individuals and entities that are not licenced by the Law Society would be permitted unlimited ownership. In this model, the non-legal services would not be subject to restriction, except where the Law Society has identified a sufficient regulatory risk.

All of which is respectfully submitted on behalf of the Thunder Bay Law Association.
APPENDIX A

SNAPSHOT - COMPOSITION & ANALYSIS OF THUNDER BAY LSUC LICENSEES

From Law Society Directory January 2015
(not practicing, suspended, etc. excluded from these calculations)

There are 176 lawyer licensees in private practice
There are 33 lawyer licensees employed (Crown, clinics etc.)
There are 5 paralegal licensees in private practice
There are 4 paralegal licensees employed
In total there are approximately 218 active LSUC licensees

COMPOSITION OF THE ACTIVE PRIVATE PRACTICE THUNDER BAY BAR JANUARY 2015
(total 194 persons privately practicing in 76 firms, taken from draft 2015 TBLA membership list, numbers do NOT match LSUC numbers above, and are close but not necessarily accurate, paralegals not included, percentages are rounded)

There are 47 sole practitioners
(Approximately 24% of active private practice members) [62% of firms]

There are 9 two person firms
(Approximately 9% of active private practice members) [12% of firms]

There are 7 three person firms
(Approximately 11% of active private practice members) [9% of firms]

There are 3 four person firms
(Approximately 6% of active private practice members) [4% of firms]

There is 1 six person firm
(Approximately 3% of active private practice members) [1% of firms]

There are 2 eight person firms
(Approximately 8% of active private practice members) [3% of firms]

There are 2 nine person firms
(Approximately 9% of active private practice members) [3% of firms]
There is 1 eleven person firm
(Approximately 5% of active private practice members) [1% of firms]

There are 2 twelve person firms
(Approximately 12% of active private practice members) [3% of firms]

There is 1 fifteen person firm
(Approximately 8% of active private practice members) [1% of firms]

There is one seventeen person firm
(Approximately 9% of active private practice members) [1% of firms]

Comparisons from above figures (grouping firm sizes):

<table>
<thead>
<tr>
<th>Firm Size</th>
<th>Percentage of Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>47 sole practitioners</td>
<td>approx. 62%</td>
</tr>
<tr>
<td>10 firms (3 to 5 lawyers)</td>
<td>approx. 13%</td>
</tr>
<tr>
<td>5 firms (6 to 10 lawyers)</td>
<td>approx. 7%</td>
</tr>
<tr>
<td>5 firms (11 to 17 lawyers)</td>
<td>approx. 7%</td>
</tr>
</tbody>
</table>

NOTABLE FACTS:

100% of Thunder Bay lawyers in active private practice are in firms less than 20 persons
Approximately 35% of Thunder Bay lawyers in active private practice are in firms of 10 to 20 persons; in other words, approximately one third of Thunder Bay's lawyers in active private practice are in firms of 10 to 20 persons

Approximately 65% of Thunder Bay lawyers in active private practice are in firms less than 10 persons; in other words, approximately two thirds of Thunder Bay's lawyers in active private practice are in firms of <10 persons

Approximately 54% of Thunder Bay lawyers in active private practice are in firms of 1 to 5 persons; in other words, approximately one half of Thunder Bay's lawyers in active private practice are in firms of 1-5 persons

Sole practitioners among Thunder Bay lawyers in active private practice = 24%; in other words, approximately one quarter of Thunder Bay's lawyers in active private practice are sole practitioners

NOTE: IN ADDITION there are 4 legal clinics with 14 employed lawyers (not included in private practice lawyers)