

ABS Discussion

via email: abs.discussion@lsuc.on.ca

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

January 30, 2015

Dear Members,

Re: Alternative Business Structure Call For Input

The membership of the Women's Paralegal Association of Ontario (WPAO) has voiced concerns over the proposed Alternate Business Structure (ABS) models. We believe there are areas that may not fully explore the unique considerations of the Ontario legal landscape and warrant further deliberations.

THE LAW SOCIETY OF UPPER CANADA AS REGULATOR

The desire by the LSUC to keep legal service providers bound by high standards was demonstrated through the licensing of paralegals. This resulted in Ontario having a very unique framework. It has been held as an example to other provinces in Canada and indeed to other countries in the world. We understand that currently two common law countries are using alternative business structures for approximately the same length of time as Ontario introduce licensed paralegals. We submit that neither the UK nor the Australian models include all of the elements found in the Ontario one and the impact to paralegal firms needs to be included equally in this discussion.

Since paralegal licensing, it has been demonstrated that paralegals are capable of providing affordable access to justice within their current scope of practice. It was noted in the research that the five major areas of law: Criminal, Wills and Estates, Real Estate, Family and Personal Injury law are all either out of scope of practice, or as in the case of Personal Injury and Criminal, limited within the scope of practice for paralegals. Despite these restrictions, the very public who seeks affordable legal services can still

rely on a degree of protection against unscrupulous practitioners as legal services in all areas remain properly regulated.

Paralegal firms have become an important factor in offering the public protection through regulated services and have become integral in bridging the gaps between the 'working poor' and the deep-pocketed litigants.

Client satisfaction has already been noted and is on the increase since paralegals have and continue to provide flat fee services. Many lawyers have also acknowledged paralegals are in fact a creative solution to accessing the client demographic that is driving this very discussion and have either hired or collaborated with them.

CONSIDERATION FOR LICENSEE EMPLOYMENT OPPORTUNITY AS PRIORITY

Paralegals acknowledge that they are already competing on many different levels for clients. Since regulation, there are many areas of paralegal practice that provide the public with affordable alternatives and that are now closed despite the *Cory Report* recommendations.

https://drive.google.com/file/d/0B_U7m2T8cwjHazEyZ2pETEpmME0/view

There is significant concern within the paralegal community with respect to chronic unemployment or underemployment that persists even beyond the initial year or two post licensing. This problem may be significantly compounded by non licensees being allowed to enter the equation. If the LSUC moves forward with the current models of ABS as submitted, paralegals will now also be obliged to compete with anyone that has more financial resources than they do. Although we speak for paralegals in general and women paralegals in particular, it should be noted that our profession would not be the only ones affected in this sense. Paid articling positions have also become a rarity and simply put, any student of law has a well-founded concern about the lack of future employment prospects.

Once again we submit that more fulsome discussion needs to be entered into to address the full impact for unemployed or underemployed licensees before adding more competition. There has been no evidence to suggest that ABS will create employment or paid placement opportunities.

THE POTENTIAL IMPACT OF UNREGULATED INVESTORS AND SHAREHOLDERS

There is already evidence to give cause for concern over unregulated persons engaging in businesses that provide legal services and for all intents and purposes appropriate clients from legitimate firms owned by licensees. ABS entities, such as LegalZoom, are profit driven and have little or no concern for an unsuspecting public and may also

include disbarred lawyers, licensees who have had their licenses revoked or even candidates who petitioned for a license and were refused due to bad character or other issues. These ABS entities are well funded; operate outside the constraints placed on licensees and acquire clients that would otherwise hire legitimate paralegal firms while using unfair advantage. Paralegals, including those unemployed or underemployed would not be able to compete with these types of ABS entities particularly while more established law firms stand to lose market share to them as well.

Paralegals that are employed by or allow unregulated investors to invest in their firms experience a real risk of losing the control and direction of their business to arms length investors. Accountability can shift from legal partners to financial partners who only have an interest in the return on their investment or even for improper uses of the firm. Unregulated partners and investors do not understand legal ethics and are not answerable to the LSUC so the licensee risks having the entire onus for the firm's conduct fall on her shoulders. Even a licensee that owns 51% of their firm can be out voted by the board of directors, rendering the illusion of a regulated firm completely moot. The real power lies with the shareholders.

We submit that more in depth dialogue with respect to safeguards, oversight and other considerations is essential in determining how to best manage the risks involved with non licensed shareholders. Guidelines and regulations around each of the proposed ABS models should be explored along with the cost and practical application of such measures prior to any final decision being made. If there is to be an increased cost in regulation for non licensees to operate within the regulatory framework, we respectfully submit that this cost should not become the burden of the licensees.

VIEWING ABS THROUGH THE EQUITY LENS

The research is well established that there is a considerable shortage of women on virtually all boards. The LSUC has already done research on systemic barriers to women in law and racialized licensees. The LSUC has already acknowledged that there is a great need to address the systemic discrimination that still exists in law today. Our membership has a natural concern about any decisions that may impact women in law.

As such, there is an inherent risk that by introducing non licensed shareholders into the equation, women paralegals will continue to endure more systemic barriers as there is no guarantee that ABS entities will view diversity and equity on the boards as a must. We respectfully submit that future discussions should give considerable attention to the impact to equity seeking groups and should not diminish existing equity initiatives.

SUMMARY

The members of the Women's Paralegal Association of Ontario (WPAO) have a vested interest in advancing and promoting Access to Justice, whether it be through regulated innovations to the delivery of legal services, expansion of scope to provide more regulated options to the public or by working to eliminate discrimination and inequitable treatment of any persons. Our members support the LSUC's mandate to maintain the high standards of legal service providers.

We submit that there may be other regulated possibilities worth exploring. Any decision made with respect to approving the Alternate Business Structures as proposed at this juncture would be premature and should be deferred.

Thank you for your attention in this matter.