



TAB 9

Report to Convocation June 27, 2013

Professional Regulation Committee

Committee Members

William C. McDowell (Chair)
Malcolm Mercer (Vice-Chair)
Susan Richer (Vice-Chair)
Paul Schabas (Vice-Chair)
John Campion
Robert Evans
Julian Falconer
Janet Leiper
Kenneth Mitchell
Daniel Murphy
Ross Murray
Jan Richardson
Linda Rothstein
Peter Wardle
Roger Yachetti

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
(Margaret Drent (416-947-7613))**

TABLE OF CONTENTS

For Decision

In Camera Item..... **TAB 9.1**

For Information

Alternative Business Structures Working Group Report..... **TAB 9.2**

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on June 13, 2013. In attendance were Malcolm Mercer (Vice Chair), Susan Richer (Vice-Chair), John Champion, Robert Evans, Janet Leiper, Ross Murray, Daniel Murphy, Linda Rothstein, and Peter Wardle. Susan McGrath attended the meeting to present the first report of the Alternative Business Structures (ABS) Working Group. Staff members attending were Zeynep Onen, Jim Varro, Naomi Bussin, Hershel Gross, Lisa Osak, and Margaret Drent.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*

FOR INFORMATION

REPORT TO CONVOCATION

ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP

39. On December 9, 2011, Convocation approved its priorities for the 2011-15 Bencher term. Convocation identified an examination of Alternative Business Structures for the delivery of legal services as one of the priorities.
40. The Terms of Reference for the Alternative Business Structures (ABS) Working Group were reported to Convocation on September 27, 2012.
41. The Working Group Chairs are Susan McGrath and Malcolm Mercer. The members of the Working Group are Susan Elliott, Kenneth Mitchell, James Scarfone, Baljit Sikand, Alan Silverstein, Harvey Strosberg and Peter Wardle.
42. In accordance with the Terms of Reference, the Working Group met regularly between July 2012 and June 2013 to inform itself on developments in Canada and abroad on new and existing alternative legal service delivery models and structures, financing arrangements, and related regulatory requirements. The Working Group prepared a report which describes these deliberations in greater detail.
43. The Professional Regulation Committee and Paralegal Standing Committee reviewed this report on June 13, 2013.
44. Attached at **TAB 9.2.1** is the ABS Working Group's first report to Convocation.



Tab 9.2.1

Alternative Business Structures Working Group June 27, 2013

First Report to Convocation

Working Group Members

Susan McGrath (Co-Chair)
Malcolm Mercer (Co-Chair)
Susan Elliott
Kenneth Mitchell
James Scarfone
Baljit Sikand
Alan Silverstein
Harvey Strosberg
Peter Wardle

Purposes of Report: Information

**Prepared by the Policy Secretariat
(Juda Strawczynski – 416-947-3997)**

ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP FIRST REPORT TO CONVOCATION

Introduction

1. This is the first report to Convocation of the Alternative Business Structures Working Group (“the Working Group”).
2. Since September 2012, the Working Group has engaged in a review of emerging regulatory models in other jurisdictions with a focus on business structures and alternative means of legal services delivery. The focus of the Working Group was whether these emerging regulatory models could improve the delivery of legal services in Ontario while protecting clients and the public interest.
3. Alternative business structures (“ABSs”) is a term that can apply to any form of non-traditional business structure as well as alternative means to deliver services and may include, for example:
 - a. Alternative ownership structures, such as non-lawyer investment or ownership of law firms, including equity financing ;
 - b. Firms offering legal services together with other professionals; and
 - c. Firms offering an expanded range of products and services, such as do-it-yourself legal forms.
4. As it continues with its work, the Working Group will consult with lawyers, paralegals and other interested groups in Ontario on these emerging regulatory models and their application to legal services delivery in this context. These next steps are described in greater detail later in this report.

Background

5. On December 9, 2011, Convocation approved its priorities for the 2011-15 Benchers term, which included an examination of alternative business structures for the delivery of legal services. Convocation’s April 2012 work plan for this priority highlighted that rapid

changes in legal regulation and the development of ABSs in other jurisdictions necessitated consideration of business structures and law firm financing by the Law Society. The Work Plan called for the creation of a Working Group to study the issues.

6. The Working Group was then established and is composed of Malcolm Mercer and Susan McGrath (co-chairs), Susan Elliott, Kenneth Mitchell, James Scarfone, Baljit Sikand, Alan Silverstein, Harvey Strosberg, and Peter Wardle.

7. The Working Group's Terms of Reference were reported to Convocation for information on September 27, 2012.¹ According to the first three items of the Working Group's Terms of Reference, the Working Group will:
 - a. inform itself on developments in Canada and abroad on new and existing alternative legal service delivery models and structures, financing arrangements and the related regulatory process;
 - b. consider these developments in light of regulatory requirements and develop a set of criteria to assess and prioritize these new models and structures. Criteria may include access to the services by the public (access to justice), public protection (risk assessment of various models), and other principles that inform the Law Society's public interest mandate, including the requirement that standards of professional conduct be proportionate to the significance of the regulatory objectives sought to be realized; and
 - c. determine the range of legal service delivery service models and financing arrangements that should be explored and examine the existing regulatory constraints on delivery arrangements and financing arrangements.

8. To date, the Working Group's primary focus has been on item a. above. Pursuant to its Terms of Reference, the Working Group will work to identify regulatory issues arising from alternative forms of legal service delivery that may be considered by the Law Society.

The Working Group's Activities to Date

¹ The Terms of Reference of the Alternative Business Structures Working Group are **TAB 1.2**.

9. As indicated in its mandate, the Working Group first embarked on a series of meetings and literature reviews to inform itself of current regulatory approaches to traditional structures for the delivery of legal services, and developments in ABSs, law firm financing, and related regulatory approaches in a number of other jurisdictions. In addition, we reviewed permitted structures and the practice and legal services needs context in Ontario. The review included:
 - a. an environmental scan focusing on legal services markets in different jurisdictions, regulatory approaches taken in these jurisdictions, the approach adopted to ABSs, alternative financing structures and their impacts; and
 - b. presentations to the Working Group by regulators and commentators in the areas of ABS, law firm financing and those knowledgeable on developments in the Canadian legal services marketplace, to participate in presentations to the Working Group. Between September 2012 and February 2013, the Working Group held four meetings with experts from Australia, England & Wales, the United States, and Canada.

10. The Working Group is grateful to the following individuals for sharing their knowledge and insights:
 - a. Steve Mark, Legal Services Commissioner, New South Wales (“NSW”);
 - b. Tahlia Gordon, Research and Projects Manager, Office of the Legal Services Commissioner, NSW;
 - c. Chris Kenny, Chief Executive, Legal Services Board, England & Wales;
 - d. Samantha Barrass, Executive Director, Solicitors Regulatory Authority;
 - e. Professor Paul Paton, Vice Provost, University of the Pacific, Professor of Law, and Reporter – ABA Ethics 20/20 Commission American Bar Association;
 - f. Professor Laurel Terry, Professor of Law, Penn State University;
 - g. Mitch Kowalski, Ontario lawyer and author of *Avoiding Extinction: Reimagining Legal Services for the 21st Century* (American Bar Association, 2012); and
 - h. Jordan Furlong, member of the Law Society, consultant and author of blog *Law21 – Dispatches from a legal profession on the brink* (www.law21.ca).

11. Aside from reviewing the Law Society's current permitted business structures², a wide ranging review of developments in Ontario and other jurisdictions was undertaken. The extensive material made available to the Working Group and reviewed in this first phase of the study included
- a. recent examples of innovation in the provision of legal services here and abroad;
 - b. examples of unmet legal needs and drivers for change in the current Ontario marketplace;
 - c. reports by the Competition Bureau;
 - d. regulatory constraints imposed by business structures of other regulated professions in Ontario;
 - e. other Canadian jurisdictions' experience with business structures and alternative forms of delivering services;
 - f. country-specific developments in the regulating legal services and ABSs;
 - g. legal products and/or legal services being provided over the Internet and consideration of the regulatory implications;
 - h. articles and studies considering ABSs and access to justice;
 - i. Various publications by academics, regulators, and experts related to:
 - i. business structures, law firm ownership, professionalism and legal ethics;
 - ii. regulatory barriers to innovation;
 - iii. the impacts of globalization and technology on lawyer regulation, including the effects of disruptive technologies; and

² The Law Society has for a number of years permitted both Multi-Disciplinary Partnerships (MDPs) and affiliations between licensees and non-licensees, which in certain other jurisdictions are presently prohibited.

Law Society By-Law 7 permits lawyers and paralegals to form a Multi-Discipline Practice with professionals who practice a profession, trade or occupation that supports or supplements the practice of law, or the provision of legal services. The professionals with whom a lawyer or paralegal may form an MDP may include accountants, tax consultants, trademark and patent agents. An "affiliation" refers to an arrangement according to which a lawyer or a paralegal regularly joins with a non-legal entity (such as an accounting firm) to promote and deliver services to the public.

In addition to these business structures, by adopting paralegal regulation, Ontario also offers an additional means of delivering legal services through licensed paralegals, who provide legal services within their scope of practice through the same business structures as lawyers. As noted in the recent five year review, paralegal regulation balanced consumer protection with facilitating access to justice for Ontarians, who now may access legal services through over 4,200 licensed paralegals.

- iv. risk-based and outcomes focused regulation as a potential means of enhancing lawyer competency and reducing complaints to regulators.

Innovations in Business Structures, Financing and Regulatory Approaches from Other Jurisdictions

12. The Working Group has noted that the current regulatory approaches regarding permitted business structures and financing rules for entities delivering legal services vary greatly by jurisdiction. The continuum ranges from jurisdictions restricting the delivery of legal services to traditional practice structures, where external ownership of law firms and external capital are prohibited, to jurisdictions that have expanded the range of structures through which legal services may be delivered by permitting new forms of law firm ownership and financing. A chart summarizing regulatory approaches in other jurisdictions appears at the end of this report.

Canadian Approaches

13. In Canada, each of the fourteen Canadian law societies regulates their members in the public interest. Certain Law Societies restrict the delivery of legal services to sole practitioners and lawyers practicing in partnership or under the auspices of a professional corporation. It is beyond the scope of this report to review all regulatory practices in Canada; however, the Working Group found that developments in Quebec, British Columbia and Nova Scotia are of particular relevance to the Working Group, and some of these are highlighted below.

Quebec

14. The Barreau du Quebec, aside from traditional forms of practice, permits an advocate to practice law in a limited liability partnership, a professional corporation and a multidisciplinary practice. Regulations require law firms in these practices to provide a detailed undertaking, as follows:
 - a. The entity must ensure that members who engage in professional activities within the firm have a working environment that permits compliance with any law applicable to the carrying out of professional activities.

- b. The entity must ensure that the partnership, corporation and all persons who comprise the partnership, corporation, or are employed there are in compliance with legislation and regulations.
15. In Quebec, ownership of professional corporations practicing law, for example, is open to members of other regulated professions and to others so long as at least 50% of the voting shares of the professional corporation are owned by lawyers or other regulated professionals.³

Nova Scotia

16. Since 2005, the Nova Scotia Barristers Society has had express statutory authority to regulate law firms. In Nova Scotia:
 - a. Complaints may be made to the regulator regarding a law firm for professional misconduct.
 - b. Law firms must designate a lawyer to receive communications from the Barristers Society and assist with investigations.
 - c. A firm found guilty of professional misconduct may be fined, and if a Law Society discipline panel makes an adverse finding against a law firm, the panel may order any other condition as is appropriate; and,
 - d. An inter-jurisdictional law firm must comply with all law firm regulations, and a practicing lawyer may only practice law as a member of an inter-jurisdictional law firm if the firm complies with the Nova Scotia Barristers' Society regulations.⁴

British Columbia

17. The Law Society of British Columbia permits multi-disciplinary practices ("MDPs"). In June 2012, the Society approved rules changes to allow paralegals (supervised by lawyers) to perform additional duties. The Law Society, B.C. Supreme Court and B.C.

³ Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary, RRQ, c B-1, r 9.

⁴ Legal Profession Act, S.N.S. 2004, c. 28.

Provincial Court have also embarked upon a two-year pilot project to permit designated paralegals to appear in court.⁵

18. British Columbia has also given preliminary consideration to alternative business structures. In October 2011, its Independence and Self-Governance Advisory Committee presented *Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations*. At that time, this Committee concluded as follows:

There are many calls for significant changes in the way that legal services are offered. The current model does not seem to be working in a way that allows people who need to access legal advice to obtain it in an affordable way. There will be considerable pressure to adopt new models for the delivery of legal services, and the Law Society as the regulator of lawyers and the body charged with the responsibility of protecting the public interest in the administration of justice in British Columbia must be prepared to give them serious consideration. However, core values of the legal profession and important rights that clients who need legal advice are entitled to expect must not be lost in a rush to adopt new ideas simply because business and competition models argue in their favour. Many of the protections that the legal profession offers clients have been obtained at significant cost over the centuries and to abandon them lightly would be undesirable for all concerned. However, where benefits to the consumer can be attained with proper regulation to ensure that professional values are not lost, the Law Society must develop proper regulation to allow for changes to the profession through which improved access to legal services can be attained.⁶

19. Since the release of the above report, statutory amendments have been made that confer new powers on the Law Society of B.C. to regulate law firms, similar to those available to the regulator in Nova Scotia. The *Legal Profession Amendment Act, 2012* (“LPAA”) provides that the Law Society of B.C. may:

⁵ The term “designated paralegal” in this context refers to a paralegal who can perform additional duties under a lawyer’s supervision (see <http://www.lawsociety.bc.ca/newsroom/highlights.cfm#c2663>).

⁶ Law Society of British Columbia, *Alternative Business Structures in the Legal Profession: Preliminary Discussion and Recommendations*, October 2011, pp. 21-22.

- a. receive complaints against law firms;
- b. investigate law firms;
- c. commence a discipline hearing against a law firm; and
- d. if a Law Society discipline panel makes an adverse finding against a law firm, discipline the firm by reprimand, fine, or other order or condition as is appropriate.⁷

Australia and New South Wales

20. Australia was an early adopter of ABS regulation. Since 2000, New South Wales has permitted full incorporation as have other Australian states and territories. Legal practices may incorporate under ordinary company law without any restrictions on who may own shares or on what type of business may be carried on.⁸ In May 2007, Australia was the first jurisdiction in the world to permit the public listing of a law firm. Slater & Gordon, a national firm listed on the Australian Stock Exchange.⁹
21. The New South Wales regulatory system is based in part on entity regulation. The Office of the Legal Services Commissioner (OLSC), New South Wales may audit Incorporated Legal Practices (ILPs) for their compliance pursuant to the *Legal Profession Act 2004* and the *Legal Profession Regulations 2005*. ILPs are encouraged to complete annual voluntary self-assessments regarding the entity's ethical and management infrastructures. Each ILP must have a "Legal Practitioner Director" who is responsible for implementing "appropriate management systems". This term is not defined in the legislation, although the OLSC has developed ten objectives of a sound legal practice with which ILPs must comply.¹⁰ Failure by the Legal Practitioner to implement appropriate management systems could be the basis of a finding of professional misconduct.¹¹

⁷ *Legal Profession Act*, S.B.C. 1998, c. 9.

⁸ Susan Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation", Hofstra University School of Law Legal Studies Research Paper No. 13-02 (2013).

⁹ Integrated Legal Holdings became the second listed firm on the ASX on August 17, 2008.

¹⁰ The ten areas are negligence, communication, delay, liens/file transfers, cost disclosure/billing practices/ termination of retainer, conflict of interests, records management, undertakings, supervision of practice and staff, and trust account regulations. Susan Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation", *supra* note 8, p. 15.

¹¹ *Legal Profession Act 2004*, (NSW), s. 140(5).

22. The approach taken by New South Wales is outcomes-based – rather than requiring ILPs to adhere to proscriptive regulations and requirements, regulation is based on their systems. ILPs have the freedom to structure their practices in new and innovative ways that are suitable to them, as long as their systems comply with the ten principles of appropriate management systems.
23. In addition, the approach in New South Wales is based on an assessment of the risk posed by each ILP. The requirement to implement and maintain “appropriate management systems” is complemented by a comprehensive risk-profiling program and audit, or practice review program, that is conducted by the Office of the Legal Services Commissioner.¹²

England & Wales

24. England & Wales is experiencing rapid changes in how legal services are regulated and provided to the public. Following the Clementi Report, which recommended major reforms to the regulation of legal services in England & Wales, the *Legal Services Act 2007* (“LSA”) was enacted. Under the LSA, the objectives of the regulation of legal services have been broadened. In addition to protecting the public interest and improving access to justice, the regulation of legal services is also founded on objectives such as protecting and promoting consumer interests and competition. The LSA expressly permits the provision of legal services through ABSs in furtherance of these objectives.
25. Under the LSA, “legal activities” are regulated by eight separate “approved regulators”. ABSs may be approved by certain approved regulators. The first ABSs were approved by the Council of Licensed Conveyancers in October 2011, and by the Solicitors Regulatory Authority (“SRA”) in early 2012. Since then, the SRA has approved over 100 ABSs.
26. As in Australia, ABSs in England & Wales are regulated in part through entity regulation. For example, in order to be approved by the SRA, ABS applicants generally need to provide the SRA with the following information:
 - a. the firm’s regulatory history and the type of legal work to be conducted,

¹² Susan Fortney and Tahlia Gordon, “Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation”, *supra* note 8 at 11.

- b. business practices (including policies and procedures, the applicant's proposals to meet the regulatory objectives and proposed governance structure), details of personnel, indemnity insurance, client money (including how the applicant protects client money), and;
- c. a suitability declaration.

The SRA assesses ABS applicants and maintains the authority to deny ABS licenses.

27. ABSs approved to date have varied in size, structure and expertise. Some of the entities include:
- a. ABSs in which non-lawyer staff have become equity partners.
 - b. ABSs in which family members, including spouses, become part owners of a law firm.
 - c. Co-operative Legal Services ("CLS"), part of the Co-Op Group, the UK's largest mutual business, whose businesses include, among others, a national chain of food stores, banking, insurance, pharmacy, and funeral services. The Co-Op Group operates 4,800 retail outlets, and employs over 106,000 people. CLS currently provides fixed fee legal services in conveyancing, family, wills and probate, personal injury, and employment law.
 - d. Insurance defense firm (Keoghs LLP), which became an ABS and obtained a 22.5% private investment from LDC, a part of Lloyds Banking Group;
 - e. Russell Jones & Walker a 425 person, 10 location firm with most of its revenue earned from personal injury matters, which was acquired by Australia's Slater & Gordon, and converted into an ABS; and
 - f. Firms combining legal expertise with other expert services, such as an ABS firm providing human resources services together with related legal services.
28. It is important to note that new business structures were introduced in England and Wales as part of regulatory reform that included entity and outcomes-based regulation. The overall objective was to permit greater latitude for regulated entities to organize their delivery of legal services and their business models to permit flexibility to enhance competition. The regulatory model is based on principles and outcomes as requirements set out by the regulator. Firms are required to provide information to the SRA to enable

that office to assess the risk posed by the firm to its regulatory objectives.¹³ Firms are monitored to determine outcomes, and they are also risk rated to determine the nature of the monitoring. It is still too early to know whether this approach will reduce the number of complaints in England and Wales, and whether it will enhance competition such that access to legal services is improved.

The United States

29. In the United States, currently, only the District of Columbia permits limited non-lawyer ownership or management of law firms, similar to the Law Society's multi-disciplinary partnership model.
30. In 2009, the American Bar Association ("ABA") established the ABA Commission on Ethics 20/20 (the "Commission") to review the ABA Model Rules of Professional Conduct and American models of lawyer regulation in the context of the globalization of legal services and technological advancements. In November 2009, the Commission's Preliminary Issues Outline noted that "core principles of client and public protection [can] be satisfied while simultaneously permitting U.S. lawyers and law firms to participate on a level playing field in a global legal services marketplace that includes the increased use of one or more forms of alternative business structures."¹⁴
31. The Commission established a Working Group on Alternative Business Structures (the "ABA Working Group") to study this issue. By June 2011, the ABA decided against certain forms of ABSs, including MDPs, publicly traded law firms, and passive non-lawyer investment or ownership of law firms. Although the ABA Working Group continued to consider a proposal to permit non-lawyer employees of a firm to have a minority financial interest in the firm and share in the firm's profits, in April 2012, the Commission announced that it would not propose changes to ABA policy prohibiting non-lawyer ownership of law firms.

¹³ Jane Hunter, "Outcomes-Focussed Regulation in England & Wales: The Compliance Officer Roles", Quality Assurance Review, Winter 2012, p. 10.

¹⁴ ABA Commission on Ethics 20/20, *Issues Paper Concerning Alternative Business Structures* (April 5, 2011).

32. Despite the current regulatory restrictions in law firm ownership structures, more aggressive efforts are being taken by several U.S. based companies seeking to reshape how certain legal products and legal services are delivered to consumers in the United States and globally. Such private corporate innovators include, for example:
 - a. Rocket Lawyer and Legal Zoom, which are developing websites which combine “do-it-yourself” legal form services and traditional legal services, to serve individuals and corporate clients.
 - b. Axiom Law, which offers in-house counsel legal secondments, legal outsourcing services, and project management expertise, recently obtained a further \$28 million in funding from a growth equity firm.

33. There are also pressures by traditional law firms seeking to compete in broader legal services markets. For example, the New York firm of Jacoby & Myers commenced litigation in 2011 to challenge regulations in New York, New Jersey and Connecticut prohibiting non-lawyer ownership in law firms. In October 2012, the firm began selling online legal forms in addition to providing traditional legal services provided by an attorney.

The Working Group’s Observations

34. The Working Group has observed that jurisdictions embracing ABSs have done so for a number of reasons.

35. Some jurisdictions, such as England and Wales, instituted ABS regulations as a partial response to concerns about anti-competitive regulation of legal services. This also provided an opportunity to explore innovations in legal service delivery. Further, alternative delivery models were adopted in an effort to develop a robust legal services industry as part of a national economic liberalization strategy.

36. The jurisdictions that permit ABSs are of the view that these reforms will enhance access to justice, although this was not necessarily articulated as a reason for the change.

37. As part of a shift towards entity (or firm) regulation, the motivation in some jurisdictions was to more effectively address complaints of breaches of professional conduct. At least

in New South Wales, there appears to have been a substantial drop in the number of complaints as a result of entity-based and outcomes-focused regulation despite liberalization of ownership rules.

38. The Working Group notes that the circumstances that prompted change, and on occasion fundamental change, in legal services regulation elsewhere, may not exist in Ontario. However, the Working Group is of the view that an opportunity exists to learn from these developments, determine what value they may hold for lawyer and paralegal regulation in Ontario, and explore possible alternative models for the delivery of legal services. To the extent that innovative forms of legal service delivery can enhance access for the consumer, provide lawyers and paralegals with new opportunities and permit new forms of regulation by the Law Society that remain robust and effective in the public interest, the Working Group believes this merits careful study.
39. In this context, the Working Group noted regulatory and other issues that are currently the subject of Law Society attention. These include the following:
- a. the fact that small and sole practitioners in Ontario at times struggle financially in an environment where there are also clients who are unable to afford lawyers;
 - b. an increased awareness of the issues of access to justice faced by Ontarians;
 - c. an awareness of the problem of an increasing incidence of expanding unauthorized practice by non-licensees;
 - d. the growing trend of the provision of legal services over the Internet, and related risks to the public posed by unregulated service providers;
 - e. the emergence of websites offering legal forms which may also include legal services for a public seeking self-help information;
 - f. increasing incidence of Ontario lawyers in partnership within law firms located in foreign jurisdictions; and
 - g. addressing the regulatory challenges that arise when professional conduct issues are not confined to a single licensee, but concern the firm overall.
40. The Working Group notes that its task encompasses a very large topic that could include many components of regulation. Much of the emerging regulatory activity, particularly in England and Wales is still early in its implementation. For that reason, it is too early to

assess the merits of English regulatory change, and also how it may affect regulation in Ontario. Nevertheless, there are valuable lessons to be learned from these jurisdictions, and particular aspects of these changes that should continue to be monitored. On the other hand, there has been substantial experience with new regulatory models and business structure liberalization in Australia which may be of assistance in Ontario.

41. In the next phase of the Working Group's work, out of its review of the broad sweep of regulatory change in these jurisdictions, the Working Group will identify those value propositions that merit the Law Society's continued attention as relevant to the needs of Ontarians. For example, whether any such change will enhance access to justice, and provide new practice opportunities.
42. In addition, the Working Group has identified some potential amendments that perhaps should be considered in the near term to support the Law Society's ongoing initiatives including access to justice: entity regulation, limited non-licensee ownership in law firms and a review of existing constraints on business structures. These are described further below.

Entity (Firm) Regulation

43. Jurisdictions that permit ABSs (Australian jurisdictions and England and Wales) have also amended their legislation to permit the regulation of the business entity through which professional legal services are delivered in addition to the individual professional legal service providers. As noted earlier, British Columbia, Quebec and Nova Scotia are also either regulating firms, or have the legislated authority to do so.
44. The Working Group's preliminary thoughts on entity regulation have led it to consider some potential benefits.
45. Evidence from New South Wales suggests that entity regulation, and the use of self-assessment tools promotes professional practices and conduct, and a corresponding substantial decrease in the number of complaints.¹⁵

¹⁵ Christine Parker, Tahlia Gordon, and Steve Mark "Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW", *Journal of Law and Society* (2010); Susan

46. Entity regulation could assist in addressing certain regulatory gaps, such as issues that may arise when a lawyer departs a law firm, or complaints of professional misconduct that relate to systemic issues at the entity level.
47. The Working Group will consider whether and how entity regulation may be appropriate for consideration by the Law Society.

Law Firm Ownership

48. The Australian experience (in New South Wales) suggests that it may be possible to permit some degree of outside ownership in a law firm to permit additional financing options, particularly for small and sole practitioners.
49. The Working Group's review of other Ontario regulators shows that some health professions in Ontario have permitted individuals (such as family members, in the case of medical and dental professional corporations), or investors, in the case of architecture professional corporations, to own shares.¹⁶ In Quebec, current standards permit ownership by regulated professionals generally with minority ownership by others being permitted.
50. The Working Group will consider funding options for firms in more detail including their potential impacts on professionalism, the ethical delivery of legal services and their potential to support increased financial viability in practice.

Review of Existing Constraints on Business Structures

51. Business structure and practice requirements are generally developed to ensure that licensees provide legal services that are aligned with professional responsibilities and thereby protect the public. Over time, with the emergence of new issues and in a

Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation", *supra* note 8.

¹⁶ The regulatory body for Ontario architects permits up to forty-nine percent of the voting shares in an architecture firm (either professional corporation or partnership) to be owned by an external investor. Professional engineering firms do not have minimum requirements with respect to the ownership of an engineering firm, although there must be at least one member of the regulatory body with a minimum of five years' professional experience who will assume responsibility for, and supervise the services to be provided.

changing environment, Law Society regulation may become under-inclusive, by failing to address new or emerging circumstances requiring regulation. It can also be over-inclusive, by regulating to protect against a particular harm which may no longer be an issue.

52. The *Law Society Act* requires the Society to ensure that standards of professional conduct for licensees are proportionate to the regulatory objective sought to be realized. In keeping with this objective, the Working Group believes that a review of existing constraints on business structures would be appropriate to determine whether they still serve their intended purpose, or whether they require amendment or deletion.¹⁷
53. This review could include, for example:
 - a. The absolute prohibitions on fee-sharing and referral fees with non-licensees;
 - b. The requirements and restrictions for multi-discipline practices and affiliations;
 - c. The restrictions on licensees employed by non-licensees or corporate entities.
54. The Working Group notes that such shorter term projects, if recommended, would provide the Law Society with a graduated approach to alternative regulatory structures that would permit us to take advantage of what has been learned in other jurisdictions but with an evolutionary implementation that is aligned with ongoing legal services and justice activity.

Next Steps - Consultation

55. The Working Group believes that that in order to understand the full potential and impact of the various ABS changes the Working Group has noted, it is important to consult outside the Law Society.
56. During the balance of its mandate, the Working Group expects to:
 - a. Engage with the professions about these issues informally through a series of communications with the profession through articles, bulletins, and meetings, in order to find out their views on these issues in general.

¹⁷ A similar initiative is currently being undertaken by the SRA in England & Wales.

- b. Host a symposium in early fall 2013 to engage more deeply on the issues during a day-long meeting. The symposium would include stakeholders such as lawyer and paralegal groups, the academic community, organizations in the justice sector and consumer groups to obtain their views on ABS regulation and law firm financing.¹⁸
 - c. Prepare a series of options for consideration by the Law Society, following the symposium. This will form the basis for a report that should eventually include options on reforms for Convocation's consideration. A discussion of reforms would include criteria for assessing these reforms. Following this report, it may be appropriate to engage in a further phase of consultation prior to regulatory changes associated with the reforms being presented to Convocation for decision.
57. Accordingly, the Working Group will present its report with options to Convocation in the spring of 2014, with both short and long term recommendations for action.

¹⁸ Existing Policy Secretariat and Professional Regulation Division budgets will cover the costs associated with the first consultation phase, based on a draft budget.

ABS Working Group
Firm Regulation and Business Structures in Other Jurisdictions

Jurisdiction	Firm Regulation	Permitted Business Structures
Quebec	Entity must ensure that members who engage in professional activities within the firm have a working environment that permits compliance with any law applicable to the carrying out of professional activities.	Ownership of professional corporations practising law is open to members of other regulated professionals so long as 50% of the voting shares of the professional corporation are owned by lawyers or other regulated professionals.
Nova Scotia	<p>Since 2005, Nova Scotia Barristers Society has had express statutory authority to regulate law firms.</p> <ul style="list-style-type: none"> - Complaints may be made to the NSBS regarding a law firm. - Law firms must designate one lawyer to receive communication from the Barristers Society and assist with investigations. - A firm found guilty of professional misconduct may be fined. If a Law Society discipline panel makes an adverse finding against a law firm, the panel may order any other condition as appropriate. 	<p>Lawyers may practice in limited liability partnerships.</p> <p>Council may make regulations</p> <ul style="list-style-type: none"> a) permitting practice arrangements between lawyers and non-lawyers.; b) respecting conditions to be met in such practice arrangements; c) providing for the registration of an entity embodying such arrangements; d) specifying any requirements respecting such arrangements that are necessary to protect the public interest.
British Columbia	The Law Society of British Columbia may receive complaints against law firms, investigate law firms, commence a discipline hearing against a law firm, and, if a Law Society discipline panel makes an adverse finding against a law firm, discipline the firm by reprimand, fine or other order or condition as is appropriate. ¹⁹	Permits Multi-Disciplinary Practice.

¹⁹ Although the legislation gives the LSBC these powers, they have not yet been used. Regulations will be developed in this area.

Jurisdiction	Firm Regulation	Permitted Business Structures
England and Wales	A system of co-regulation governs the regulation of legal services. The Legal Services Board serves as the oversight regulator. Several “approved regulators” serve to regulate legal activities restricted to legal professionals. The Solicitors’ Regulatory Authority (SRA) is an approved regulator that regulates not only solicitors, but the firms in which they work.	Alternative Business Structures permitted. The SRA takes a risk-based (as opposed to rules-based) approach to considering applications for ABSs. ABS applicants generally need to provide the SRA with: organizational details (including the firm’s regulatory history and the type of legal work to be conducted), business practices (including policies and procedures, the applicant’s proposals to meet the regulatory objectives and proposed governance structure), details of personnel, indemnity insurance, mechanisms for the protection of client funds, and a suitability declaration.
New South Wales	Incorporated Legal Practices are subject to entity regulation by the Office of the Legal Services Commissioner, NSW (OLSC). The OLSC may audit ILPs for their compliance with legislation. Each ILP must have a “Legal Practitioner Director” who is responsible for implementing “appropriate management systems”. Failure to do so could be a basis for a finding of professional misconduct for the Legal Practitioner Director.	Alternative Business Structures permitted.
New York	New York disciplines law firms as well as individual lawyers.	New York Rule of Professional Conduct 5.4 prohibits non-lawyer investment in law firms. This prohibition is being challenged by law firm Jacoby & Myers.
New Jersey	New Jersey disciplines law firms as well as individual lawyers.	ABSs prohibited.
Washington DC	Entities regulated through individual members, in part by imposing requirements on lawyers with managerial authority within a firm.	D.C. Rules of Professional Conduct R. 5.4 permit non-lawyer ownership interests in law firms if the “partnership or organization has as its sole purpose providing legal services to clients”.

*THIS SECTION CONTAINS
IN CAMERA MATERIAL*