

FOR INFORMATION

ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP REPORT

Introduction2

Background2

Overview of Responses to the ABS Working Group’s Discussion Paper2

1) ABS and Innovation in the Delivery of Legal Services3

 A) Strengths and Opportunities3

 B) Concerns and Risks6

2) ABS and Access to Justice.....7

 A) Strengths and Opportunities7

 B) Concerns and Risks8

 C) “ABS+”9

3) ABS and Regulation10

 A) Strengths and Opportunities10

 B) Concerns and Risks10

4) ABS, Ethics and Professionalism11

 A) Strengths and Opportunities11

 B) Concerns and Risks11

5) ABS and Legal Sectors in Ontario13

 A) Strengths and Opportunities13

 B) Concerns and Risks14

 C) ABS and Perspectives on Particular Practice Areas14

Criminal Law14

Family Law14

Personal Injury Law15

Real Estate Law16

Respondents’ Recommendations for Next Steps16

Next Steps in the Law Society’s Study of ABS17

Introduction

1. This report by the Alternative Business Structures (ABS) Working Group provides a summary of the responses received following the September 2014 release of *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* (Discussion Paper).

Background

2. The ABS Working Group has been considering ABS issues since 2012.
3. An alternative business structure may include:
 - a. permitting some form of investment in firms by individuals not licensed by the law society; and/or
 - b. firms offering legal services together with other services for clients through licensees and other professionals.
4. In the course of its review, the ABS Working Group has held or participated in a series of meetings with individuals with ABS expertise and legal organizations and associations across Ontario. The ABS Working Group reported on these meetings in its report to January 2015 Convocation. An updated list of meetings is at **Tab 7.1**.
5. In September 2014 the Law Society released the Discussion Paper to seek input from the public, the legal community and others interested in ABS. The ABS Working Group appreciates the feedback received through written responses to the Discussion Paper.
6. The responses are thoughtful, detailed, and clearly convey the importance of the ABS issues to the respondents. The responses will greatly assist the Working Group in its ongoing study of ABS.
7. This input will inform the ABS Working Group's next steps, discussed at the end of this report. The ABS Working Group expects that its ongoing study of ABS issues will continue through 2015 and into 2016.

Overview of Responses to the ABS Working Group's Discussion Paper

8. The Law Society received over 40 responses to the Discussion Paper from individuals and legal and other organizations.
9. The majority of responses advanced a specific view regarding whether ABSs should be permitted in Ontario in some form. Many responses passionately expressed opposition to any ABSs being introduced in Ontario. Most responses expressed major concerns with introducing certain types of ABSs in Ontario, such as publicly listed law firms and other types of law firms owned entirely by non-licensees, or such entities that may engage in certain areas of practice, such as real estate law or personal injury law. A number of

submissions, including the submissions received from law students, expressed strong support for introducing some level of ABS in Ontario, with appropriate regulatory oversight. Many respondents expressed a need for greater information about ABSs generally, and requested that the Law Society engage in further study, discussion and consultation before any final decisions are made.

10. The responses revealed a range and nuance in positions with respect to ABSs. Some prefer the *status quo* to any form of ABSs at this time. Some others oppose unrestricted non-lawyer ownership of law firms, and majority non-lawyer ownership levels, but would consider minority ownership levels that are relatively minor, such as a 25% non-lawyer ownership. Similarly, while some ABS proponents submit that full liberalization of Ontario's permitted business structures is necessary, others strongly maintain that while permitting some degree of ABS would be in the public interest, there are certain areas of law, such as real estate law and personal injury law, where the public interest would be better served by prohibiting ABS entrants.
11. This report is organized according to major themes disclosed in the responses to the Discussion Paper and identifies strengths and opportunities as well as concerns and risks arising from the responses. Certain comments from respondents are included with attribution. A list of respondents who provided submissions for public attribution appears at **Tab 7.2**. These submissions are available online at <http://lsuc.on.ca/abs/>.

1) ABS and Innovation in the Delivery of Legal Services

A) Strengths and Opportunities

12. Several responses suggested that ABSs should facilitate innovation in the delivery of legal services. According to some responses, currently permitted structures limit innovation, and ABSs are necessary to modernize the delivery of legal services. These respondents expressed the views that the current permitted models are limiting and restrict competition that innovation will happen, that the only questions are how and when such innovation will occur, and that legal services are *already* being delivered in alternative ways which will continue to develop, but that the regulatory response has fallen behind.
13. Some responses cautioned that if regulatory reforms are not undertaken to permit innovative business models to emerge, innovation will occur in the unregulated sphere, which is not in the public interest.¹ Moreover, failing to adopt ABS would leave Canadian firms at a comparative disadvantage, and would threaten its place in the global legal market (Grantor).

¹ The extent of this change is described in various different responses. For example, the Canadian Defence Lawyers note that horizontal integration is occurring already but outside of the law firm sphere, and that legal services formerly provided by insurance defence firms are being performed in-house by in-house, or completed by accounting firms that own "e-discovery entities".

14. Responses noted that current permitted business structures limit the ability of law firms to (1) increase access to capital, (2) attract non-legal expertise, (3) develop new technologies, and (4) deliver legal services through different structures.

(1) Enhancing Access to Capital

15. Some responses noted that Ontario law firm structures may only be capitalized through partner investments in the firm, and through obtaining financing based on work-in-progress. This limits the amount of capital that a firm can obtain, makes it difficult to “lock-in” capital, and exposes firms (and clients) to increased risks associated with cash-flow issues arising should many partners leave a firm quickly or should the firm experience a down-turn.
16. ABSs permitting external ownership to non-lawyers would enable firms to “lock-in” capital more easily, which would insulate firms from cash-flow difficulties, and enable them to invest in technology, innovation and people (Cognition LLP, Granton).
17. Two firms (Cognition LLP and Conduit Law) indicated that regulatory barriers prevented or currently prevent them from structuring their practices in forms they view as preferable. For example, Cognition LLP advised that its ability to expand its in-house technological innovations is constrained by its inability to obtain external capital through alternative means. Some responses indicated that they would give serious consideration to embracing some level of non-lawyer ownership, or would already have done so had it been permissible to do so.

(2) Attracting Non-Legal Expertise

18. Some responses suggested that one benefit of ABS could be the enhanced use of non-lawyer expertise. Non-legal professionals may already work with lawyers and paralegals through MDPs; some ABS proponents submitted that further liberalization would be necessary for the full benefits of MDPs to be realized. Business, marketing and technology experts could use their skill sets towards delivering legal services. At times the suggestion is that lawyers and paralegals could use non-lawyer ownership in order to attract top non-legal expertise. One submission suggested that non-legal expertise is necessary to bring new thinking to the challenge of facilitating access to justice.

(3) Developing New Technologies

19. Responses strongly in favour of adopting ABS in Ontario see ABSs as a means of facilitating technological innovation to enhance the delivery of legal services. ABS supporters suggested that business structure and/or technological innovation is not an end in itself, but rather should bring several benefits, including the following:
 - a. Lowering the cost of delivering legal services, thereby facilitating access to justice;
 - b. Streamlining business processes to deliver enhanced (faster, improved, and/or less expensive) legal services;
 - c. Innovation in the ways to deliver legal services could reach individuals and businesses which previously did not seek professional legal services;

- d. Enhanced use of technology could enable law firms to develop greater predictability of cost and outcomes for clients; and
 - e. Enhanced law firm systems which could significantly reduce the risk inherent in legal practice while increasing client satisfaction.
20. ABS proponents suggest that transformational innovations require affordable capital, and that external capital is necessary for such innovations to occur.

(4) Developing New Legal Service Delivery Structures

21. Responses raised several different legal service models which could occur through ABS, including the following:

(i) Enhanced “One-Stop Shop” Models

22. Some responses suggested that ownership restrictions limited the development of the current form of MDPs in Ontario (Conduit Law). Responses noted that “one-stop shops”, such as those in England & Wales could make it easier for individuals to access legal services, and expand the market for legal services. As described further below, some responses indicated that a “one-stop shop” could lead to more tailored, appropriate and affordable professional services, including legal services in family law.

(ii) Technology-based and Process Engineered Legal Service Models

23. Several responses noted that technology plays an increasingly important role in how legal services are and should be delivered, and that ABS offers a way to attract both technological talent and external capital to the field. Some responses suggested that greater technical expertise is required for the delivery of certain legal services than is presently available under current models (LaBuik). Moreover, non-lawyers may be able to bring new ways of thinking for delivering legal services in Ontario (LaBuik). Permitting non-lawyer / paralegal ownership could attract technology experts to the field. Access to external capital could enable ABSs to develop technology innovations.
24. Proponents of using ABS to develop technology-based and process engineered legal services suggested that technological investment is necessary to enhance the provision of legal services, and that improved technology and systems will improve efficiencies, reduce error and generally increase the quality of legal services delivered. However, transformative technologies sometimes require intense capital investment.
25. Responses suggested particular technology-based and process engineered legal services which could emerge in Ontario were ABS permitted, including:
- a. A model that uses technology and data to reduce risk and deliver fixed fee legal services to clients such as that offered by Riverview Law, an ABS in England and Wales (Kowalski);
 - b. Personal injury or other legal services delivered through more streamlined processes (Kowalski);

- c. Online legal service providers such as LegalZoom;
- d. The emergence of law firm “online boutiques”;
- e. Legal data storage businesses; and
- f. Law firms dedicated to assessment and predictive analysis to assist clients in considering risks.

(iii) Branding / Marketing Driven Models

- 26. Some responses also suggested that ABSs could facilitate new branding / marketing innovations. For example, LawPRO noted that a law firm franchise model could be “exciting”.
- 27. In sum, proponents of ABS as a catalyst for innovation see innovation as leading to new opportunities for lawyers and paralegals, enhanced lawyer and paralegal competency, improved quality of legal services delivered, and better access to legal services for Ontarians. They believe that by being a first mover in ABS, Ontario could become a hub for new, innovative law firms and legal-oriented businesses. Access to capital and technical expertise is necessary for such innovations to occur.

B) Concerns and Risks

- 28. Several responses raised questioned whether ABS is necessary to achieve innovations in the delivery of legal services. These highlighted that innovation is already taking place in Ontario’s legal systems without ABS. The Ontario Trial Lawyers Association (OTLA), the Criminal Lawyers Association (CLA), the Ontario Bar Association (OBA) and the Southwest Region Women’s Law Association, for example, noted that innovation is already occurring in law firm settings without needing to turn to external ownership through ABS. OBA noted that its membership did not report having experienced barriers (such as access to capital) as a result of the existing regulatory framework that would prevent them from practicing law in an optimal way or from addressing unmet legal needs. OTLA noted that firms such as Cognition LLP and Conduit Law already exist in Ontario, and operate within the current regulatory framework. In certain practice areas such as real estate, third party software and technologies have been embraced which have fundamentally transformed the practice. Ontario’s Courts are also starting to take innovative steps such as holding paperless trials. OTLA further notes that companies such as U.S. based LegalZoom and California-based Rocket Lawyer have emerged without any steps being taken by the regulator.
- 29. Some responses, such as the County of Carleton Law Association (CCLA) and the County & District Law Presidents’ Association (CDLPA), suggested that the Law Society could provide enhanced guidance on appropriate use of technology to stimulate greater use of technology within the professions.
- 30. Several responses questioned whether the purported innovation benefits of ABS have been overstated. In addition to already seeing innovation occurring without ABS, some responses stated that ABS innovation will not benefit the public until innovations are undertaken by our Courts and legal system.

31. The OBA, and in particular in-house counsel members of the OBA ABS Working Group, emphasized the urgency of innovation that allows lawyers to respond to corporations who require specialized legal services, flexible fee arrangements, and cost effectiveness to mitigate risk. However, the OBA Working Group questioned whether regulatory change to permit ABS is required to facilitate innovation and modernization. Increasingly, lawyers are using technology both internally and to interact with clients. There are also cloud-based collaborative efforts between lawyers alongside non-legal retail services.
32. The OBA Working Group also expressed concern about the impact of large scale service delivery in smaller communities, as this was perceived as limiting practice options. Currently, general practitioners are often able to provide service that generates little or no profit as an access to justice benefit to their communities. The OBA is concerned about the disappearance of lawyers who provide non-commoditizable services in criminal and family law as a result of the implementation of ABS.
33. OTLA, CLA and others further note that there is no evidence that any innovation reducing the cost of delivering legal services will necessarily lead to savings for consumers, rather than leading to the provider enjoying increasing profits.

2) ABS and Access to Justice

A) Strengths and Opportunities

34. Supporters of introducing ABS note that ABS may be part of multifaceted efforts to facilitate access to justice. Conduit Law's Peter Carayiannis stated that "Failure to act risks bring[ing] the profession into disrepute as failing to grasp the crisis at hand and a failure of the vision and courage necessary to modernize the profession."
35. A number of ABS proponents see clear access to justice benefits arising directly from ABS, even if they are not transformational in nature. In response to claims by some ABS opponents that there have been no demonstrable access to justice benefits through ABS, Mitch Kowalski compared and contrasted two similarly oriented social justice law firms which had mandates to provide legal services to vulnerable populations. In Australia, Salvos Law is a law firm owned by the Salvation Army comprised of a commercial law firm and a pro bono firm, with the profits of the former subsidizing the work of the latter. Its external ownership model is prohibited under Ontario's current regulatory regime. Salvos Law received the Australian Law Firm of the Year Award in 2014. Mr. Kowalski contrasted this to Pivot Legal, a British Columbia based law firm, which sought to serve both paying and non-paying clientele. Pivot Legal LLP ultimately failed, which Mr. Kowalski attributes to a lack of affordable capital and business management expertise.
36. Some responses also highlight what the authors view as access to justice being facilitated through new ABS entrants in the retail legal services sector in England & Wales. Mr. Kowalski, the Law Students' Society of Ontario (LSSO), and others note that innovative models such as the Co-Op enhance access to justice. As noted above, LawPRO suggested that an ABS model that enabled the emergence of a franchise model could be "exciting".

37. In addition, some ABS proponents suggested that innovation and ABS could increase the pool of Ontarians choosing to access legal services (Granton, Ledgerwood).
38. Some ABS proponents offered specific recommendations for new structures which could enhance access to justice, including, for example:
 - a. Multi-disciplinary family law firms which could provide counselling, legal services, and other related professional services as necessary (Audet and Picard, further described below in the discussion of Family Law generally);
 - b. Student pro bono clinics providing legal advice to entrepreneurs and innovators (Centre for International Governance Innovation);
 - c. “Storefront” law firms providing legal services to vulnerable populations by harnessing the expertise of senior counsel and junior lawyers who would benefit from mentoring while delivering access to justice (John Hollander).
39. The OBA suggests that allowing family members to obtain non-voting shares would better allow lawyers in small and medium sized firms to operate financially viable practices while providing affordable legal services, particularly in smaller practice centres.

B) Concerns and Risks

40. Several submissions explored Nick Robinson’s article *When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism* to frame comments related to ABS and its potential impacts (if any) on access to justice.²
41. Several responses suggested there is no evidence that the introduction of ABSs in other jurisdictions has facilitated access to justice. Others suggested that ABSs should only be introduced if it can be shown that they will enhance access to justice.
42. Some responses raised the concern that outside ownership would lead to direct and/or indirect pressures which would result in firms having less opportunity to take on certain types of matters such as pro bono matters and matters involving a higher risk of success due to a heightened concern for the firm bottom line, as well as matters which raise contentious issues out of fears that an ABS, and its “brand” may be tarnished by being associated with the cause of its client. Under these scenarios, ABS would harm rather than help facilitate access to justice.
43. Some responses questioned whether ABS is a proper tool to seek to enhance access to justice, or whether the regulatory burden may be disproportionate to any benefits. Among these responses, certain individuals suggested alternatives to ABS to facilitate access to justice, including, for example:

² Nick Robinson, [When Lawyers Don’t Get All the Profits: Non-Lawyer Ownership of Legal Services, Access and Professionalism](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878), (August 27, 2014). HLS Program on the Legal Profession Research Paper No. 2014-20, online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878.

- a. Focusing access to justice solutions on the better use of paralegals and existing human capital and expanding the paralegal scope of practice to provide legal services in certain areas where there are unmet legal needs (CCLA; Coté et al.; Women’s Paralegal Association of Ontario);
 - b. Levying the profession (as was done to establish CanLII) to develop technological solutions aimed at enhancing access to justice. Lawyer funded initiatives, such as the automation of certain legal steps, or development of easy to use online legal forms, would facilitate access to justice for Canadians without sacrificing lawyer law firm ownership (Chasse).
44. Finally, some responses, such as those from CDLPA and the Waterloo Region Law Association, suggest that the Law Society should not lead on access to justice initiatives, including through initiatives such as ABS, as the problems stem from other, larger systemic forces, such as declining resources and funding for Ontario’s courts and public legal aid system.

C) “ABS+”

45. Several submissions indicated that access to justice should be the central consideration before ABSs are considered for introduction in Ontario. Responses across the range of perspectives cite Mr. Robinson, who concluded that:

For policymakers the goal should not be deregulation for its own sake, but rather increasing access to legal services that the public can trust delivered by legal service providers who are part of a larger legal community that sees furthering the public good as a fundamental commitment. Carefully regulated non-lawyer ownership may be a part of achieving this larger goal, but only a part.³

46. Law professor David Wiseman suggests that ABSs risk only providing trickle down benefits to Ontarians living in poverty because when their legal needs are distinct from those of paying clients, ABS innovations will not serve them, and may even widen power imbalances between the most poor and others experiencing civil needs. However, he suggests that the Law Society has the power to focus its regulatory lens on how ABSs could be designed to benefit those living in poverty. He suggests that the Law Society explore “ABS+”, a principled approach to ABS that would consider ABS with respect to how it may be harnessed to benefit Ontarians living in poverty. He proposes that the Law Society consider ABS+ as well as other potential regulatory options, and ultimately select those reform options that show the most promise to facilitate access to justice for Ontario’s most poor.

³ Robinson, at page 53.

3) ABS and Regulation

A) Strengths and Opportunities

47. ABS proponents submitted that a responsive modern regulator should adopt ABS and that the regulator can develop practical solutions to regulatory challenges. For example, both LawPRO and the LSSO submitted that Ontario could adopt the express hierarchy of duties for publicly listed entities first adopted in Australia (should Ontario accept such levels of outside ownership). As LawPRO explained, the entity's interests "must be subordinated to the interests of the clients, the rule of law and the administration of justice."
48. As noted above, some responses, such as those from Cognition LLP and LawPRO note that the public would benefit from bringing unregulated areas into the regulated sphere.
49. Two responses noted that ABS may provide the Law Society and legal professionals in Ontario with a partial solution to the regulatory and practical difficulties raised by a graying bar. Mitch Kowalski noted that a liberalized legal services sector in Ontario may offer senior lawyers looking to retire with a viable exit strategy. The "storefront model" approach may provide a means for senior lawyers to wind down existing practices, focus on public interest law, and facilitate knowledge transfer to the next generation of lawyers (Hollander).

B) Concerns and Risks

50. Numerous responses raise several concerns about potential regulatory impacts of introducing ABS. Several responses raise the concern that non-lawyer ownership or participation in law firms beyond permitted Multi-Disciplinary Partnerships may lead to the loss of self-regulation because a co-regulatory or government regulatory regime would be necessary for effective ABS regulation. Some responses noted that ABS emerged in Australia and England & Wales, jurisdictions where lawyers had already lost the privilege of self-regulation. Some responses expressed concern that if Ontario follows the ABS route, non-lawyer ownership could lead to the loss of effective regulatory control by the Law Society, making it difficult to respond to criticisms that others (such as government or another entity) would be better placed to regulate. With non-lawyer owners, and non-lawyer participants actively involved in the market for delivering legal services, it is feared that the Law Society might lose the privilege of self-regulation.
51. Some responses also expressed the concerns that:
 - a. The costs of regulating ABS would exceed the benefits of permitting them;
 - b. A Canadian response to ABS should avoid a regulatory "patchwork" if possible ; and
 - c. Once full ABS is permitted, it becomes harder to undo the decision.

4) ABS, Ethics and Professionalism

A) Strengths and Opportunities

52. Proponents of ABSs generally submitted that while there are ethical and professionalism issues that would arise in the context of ABSs, these concerns are manageable. Responses note that the “sky has not fallen” in jurisdictions where ABS have been permitted. There are practical regulatory means of addressing professionalism concerns (LawPRO, LSSO, Granton).
53. Responses identified a various ways to safeguard legal ethics and professionalism should ABSs be introduced, such as introducing “ethical infrastructure” requirements as undertaken in England and Wales and Australia where ABSs are permitted. One response suggested that concerns about lawyers in an ABS owing duties to shareholders are overstated, as Canadian law does not establish an independent duty to shareholders, but rather has established a far broader “best interests of the corporation” requirement, which may include a range of considerations (Granton, citing *People’s Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 at para. 42). However, if a duty to shareholders exists, some responses suggested this could be met by setting out an express hierarchy of duties for publicly listed entities (described above).

B) Concerns and Risks

54. Most responses commented on the impacts that ABS might have on professionalism. Many responses expressed concerns that external ownership would lead to a shift to business and profit motives taking precedence over professional duties, such as the lawyer’s fiduciary duty to the client, to maintain client confidentiality, to safeguard solicitor-client privilege and to avoid conflicts of interest.

(i) *Profits vs. Professionalism*

55. Several responses were concerned that ABSs would amount to a “corporatization” of law, which would both threaten professionalism by shifting law firm priorities towards profits over client interests, and by reducing the quality of legal services being provided in certain sectors.
56. Several responses cautioned that external ownership could have several detrimental effects on the professions. External ownership could lead to a decrease in pro bono and low profit practices due to focus on profit maximization. Lawyers and paralegals may face increased pressure to take the most profit-maximizing courses of action even if this conflicts with the best interest of their clients. The profits pressure could therefore have real impacts on clients who depend on lawyers for independent legal advice. If legal advice is not independent, or does not appear to be so, this impacts both the quality of legal services being provided and the public perception of the justice system.
57. The CLA and OTLA both provided examples of how an ABS model may reduce the quality of legal services being offered in particular sectors. They suggested that a push to

commoditize services to increase profits could inappropriately disaggregate legal work. In personal injury, complex legal work might be pushed onto law clerks and junior counsel. In the criminal law setting, the use of technology and support staff might replace certain lawyer-client interactions, to the detriment of the trust relationship. The OBA was concerned about the challenges that would be faced by lawyers in practicing in business models premised on limited time spent with the client.

(ii) Confidentiality

58. Many responses expressed the concern that client confidentiality may be more difficult to protect in ABS environments. There might be pressure by shareholders to learn about client matters in order to make investment decisions. The provision of multiple services may make confidential client information vulnerable to disclosure to non-legal branches of the entity.

(iii) Solicitor-Client Privilege

59. The concerns with respect to confidentiality equally apply with respect to solicitor-client privilege. Several responses, such as that of The Advocates Society, stressed that the necessary infrastructure would need to be put in place to ensure that client information received in the course of providing legal services are not disclosed to the non-lawyer owners of the ABS.
60. In addition to the above, the CLA noted that commoditization could have inadvertent consequences on the professional trust relationship. Solicitor-client privilege is based on trust. This is developed between the lawyer and the client. But if technologies, staff supports and other business processes are introduced, the client may feel that the firm's interest is not aligned with his or her own, which may erode the trust relationship.

(iv) Conflicts

61. Several responses indicated that the risk of conflict lies at the core of the ABS discussion, and many expressed concerns about the increased risk of conflicts arising in ABS structures. Several responses (including CDLPA, OTLA, OBA and others) referred to Nick Robinson's article and the examples of conflicts which may emerge in ABSs, and how there may be conflicts inherent to the structure of certain ABSs. For example, as Mr. Robinson notes, there may be inherent conflict in an insurance company owning a law firm practicing in insurance related areas. There may be other indirect, difficult conflicts to address, such as a large company acquiring a law firm and then using it to shape the common law to support its interests.
62. Some authors noted the difficulty in regulating certain conflicts, and questioned whether the Law Society has sufficient knowledge, expertise, or jurisdiction to address the types of conflicts which could arise in multidisciplinary ABSs which may also be owned by outside interests.

63. Several responses, including responses favourable to ABS and responses opposed to them, recognized that not all ABS structures should necessarily be permitted in Ontario. For example, plaintiff side personal injury boutique firm McLeish Orlando suggested that "Jurisdictions adopting non-lawyer ownership should consider implementing bans or strict regulations" against non-lawyer ownership where the risks of conflict are high, such as in personal injury, title insurance and real estate law.
64. The CCLA provided concrete examples of inherent conflicts which should be prohibited, such as a title insurer owning a real estate law firm, or an insurer (which has an interest in keeping settlement values low) acquiring a plaintiff side personal injury firm.
65. LawPRO similarly cautioned that while restrictions as to who can provide legal services must be proportionate to the regulatory objective to be achieved, in certain areas of the law, such as in real estate, discussed further below, there are valid regulatory objectives which should lead to the decision to prohibit ABSs.

(v) Market Consolidation

66. CDLPA submits that market consolidation is a further lawyer professionalism issue. It frames the concern as follows:

While much has been written about the Slater & Gordon model, what has not been adequately addressed, in CDLPA's estimation, is the impact such a massive and powerful legal entity has had on the legal services market in the smaller centers in which they have set up shop, either by acquisition of a local firm or by moving into town. Consolidation of legal services, particularly in smaller centers, is a professionalism issue that is of great importance and concern to CDLPA. If a Slater and Gordon type firm came into a community such as Belleville or Owen Sound, offering a vast array of different services backed by huge advertising dollars and deep pocket capital, what would it mean to the local bar and, for the public, what would it mean for choice in legal service providers? It is difficult to envision how limiting choice in legal service providers is either good for the profession or good for the public.

67. This view was shared by some other respondents, including the CCLA.
68. Concerns related to the potential impacts of market consolidation were also raised regarding specific practice areas, as described further below.

5) ABS and Legal Sectors in Ontario

A) Strengths and Opportunities

69. ABS proponents suggest that ABSs can grow the market for legal services and provide new opportunities for lawyers and paralegals. ABS delivery of legal services may enhance

consumer confidence and consumer choice. “One-stop shop” structures can provide a more convenient, appropriate and affordable suite of services for clients.

B) Concerns and Risks

70. Responses raised several different concerns about the impacts of ABS on Ontario’s legal services markets. The Essex Law Association noted that it is difficult to consider the impact of ABS, as impacts will vary by type of firm, location, firm size and other factors, and will depend on what kind of ABSs are permitted. Some submissions suggested that ABSs would favour large law firms (see Chasse, for example). Responses from the personal injury bar cautioned that ABSs would lead to consolidation of personal injury firms in Ontario, which would be anti-competitive and against the public interest. Others (such as CDLPA) and the OBA, as noted above, cautioned that ABSs could lead to the end of sole and small firms, which would be detrimental to access to justice.
71. The Federation of Asian Canadian Lawyers noted that to the extent that there are a disproportionate number of licensees from equity seeking groups in sole or small firms, and ABS may lead to consolidation, ABS may have a disproportionate impact on these licensees.

C) ABS and Perspectives on Particular Practice Areas

Criminal Law

72. The Law Society received responses from the CLA and the CCLA that specifically addressed criminal law. These responses opposed efforts to commoditize criminal law practices.
73. The CLA maintained that the highly individualized services provided by criminal lawyers cannot be easily commoditized, that "Fighting for rights and freedoms is not profitable" and that the role of the criminal lawyer is generally inconsistent with the ABS model. It expressed concern that permitting ABS structures could have several unintended consequences. For example, as described above, a commoditized process which replaces certain lawyer-client interactions with other processes may lead to an erosion of trust that is essential for the criminal lawyer to provide services.
74. In addition, the CLA asserted that the purported benefits of ABSs, such as innovation, flexibility in delivery mechanisms and enhancing access to justice, are already being met by dedicated criminal lawyers, and the benefits of ABSs appear to be overstated. It concluded that instead of focusing on ABSs to facilitate access to justice, regulatory resources should focus on appropriate legal aid funding.

Family Law

75. The Law Society received two submissions from Ottawa area family law practitioners and comments specifically related to family law from the CCLA.

76. The individual responses suggested that ABS would enhance access to justice because offering a suite of services through a “one-stop shop” model would more effectively triage issues, provide the appropriate type(s) of professional services as required and when required. The quality of services would improve by virtue of being integrated. It was further suggested that by focusing on the emotional and other aspects of a family law dispute and other factors before engaging in an adversarial legal process, an ABS model could help shift parties towards earlier resolution of their disputes, which would greatly assist the well-being of adults and children involved in family law matters.
77. The CCLA recognized these views, and that there are clear unmet legal needs in family law, but ultimately suggested that there is a lack of evidence that ABSs would enhance access to justice in this area. It suggested that the benefits of integrating legal and other services in family law might be better achieved by the Law Society providing enhanced guidance regarding the already permitted multi-disciplinary practice structure.
78. The Ontario College of Social Workers and Social Service Workers (“OCSWSSW”) provided general comments in response to the Discussion Paper. It noted that there are generally no restrictions on the business structure in which social work and/or social service work can be performed, but that if practicing in corporate form, it must be a professional corporation.

Personal Injury Law

79. The Law Society received submissions from OTLA, McLeish Orlando LLP, and Gordon Harris from the plaintiff personal injury side and comments from several others regarding this area of practice.
80. The responses received from the personal injury bar stated that there is no access to justice issue in personal injury law; the contingency fee system ensures that all in need of counsel are able to find a lawyer or paralegal. They therefore maintain that ABS is unnecessary in Ontario, so far as personal injury claims are concerned. They further note that in Australia and England and Wales the immediate impact of ABS was the consolidation of plaintiff personal injury firms, and that such consolidation would not be in the public interest in Ontario. They express concerns about inherent conflicts that could arise, such as an insurer acquiring an insurance defence law firm, and the difficulty in regulating the full impacts of such conflicts occurring.
81. As described above, there is a further concern expressed by some responses that external ownership and a corresponding increased emphasis on profits would lead to a decrease in the quality of legal services being delivered due to inappropriate delegation, increased pressure to settle cases early to reduce risk, and a reduction in representation for high risk and pro bono matters.
82. The plaintiff personal injury bar also expresses concern that ABSs would lead to increased risks of unethical behaviours within the sector. It could lead to fee sharing in areas where there are conflicts. It could lead to increased advertising targeting injured persons, and a

risk of unethical and unseemly advertising as well. Such negative impacts, it is suggested, would be increasingly difficult for the Law Society to regulate when the ABS may be owned by a large entity and/or by non-lawyers.

Real Estate Law

83. The Law Society received responses from the Barrie Real Estate Lawyers Association, the CCLA, CDLPA, Stewart Title, and LawPRO which focused exclusively or in part on the potential impacts of ABS being introduced in real estate law. The responses all suggest that ABS should not be permitted in real estate law. There is no access to justice issue with respect to the provision of real estate legal services. The cost of retaining independent counsel as a vendor or purchaser is generally incidental compared to the cost of the real estate property being conveyed.
84. Moreover, as LawPRO notes, liberalization in this area could have unintended major consequences, such as an erosion of Ontario's titles registry system, and increased costs to consumers in the long term. As LawPRO explains, independent lawyers are vital to Ontario's real estate transfer system. There is an important public policy need to maintain Ontario's land registry system. There are also genuine issues regarding conflicts in this area. Currently, lawyers' duties currently ensure that parties receive independent legal advice with respect to the transaction and purchasers have choice of title insurance. A shift to a U.S. style real estate model would require increased regulation to address conflicts between the various professionals and service providers in real estate, and resulting "reverse competition" (such as rebates, kickbacks, and commissions) which would lead to higher costs to consumers.
85. CDLPA suggested that the Law Society could develop mandatory guidelines for real estate fee advertising so that quotes clearly distinguish between legal services and disbursements, which would enable consumers to compare rates directly (but also opposed ABS in this area).

Respondents' Recommendations for Next Steps

86. Respondents provided some guidance for the Law Society's next steps in considering ABS, including that the ABS Working Group:
 - a. Continue to communicate with the professions and the public as it continues to explore ABS. This should include further consulting with all stakeholders, and particularly in regions where there are higher levels of licensees from equity seeking groups;
 - b. Clearly articulate what issues ABS may address, and consider alternatives to ABS options which may exist to address the issues identified;
 - c. Provide further clarity on the differences between the four models presented in the Discussion Paper, and continue to assess the potential impacts of each;⁴
 - d. Further explain what access to justice benefits, if any, ABS could bring to Ontario;

⁴ Both LawPRO and CDLPA, for example, question whether a 49% outside ownership model would in fact necessarily safeguard licensee majority control over a business structure.

- e. Consider the kinds of complaints against licensees/firms in ABS permitting jurisdictions, and whether there have been specific complaints raised by equity-seeking groups;
 - f. Consider other alternatives to ABSs to modernize and enhance both regulation and the delivery of legal services;
 - g. Regardless of whether ABS are permitted, continue to consider cross-jurisdictional challenges to Law Society regulation.
87. LawPRO suggested some areas for further exploration and consideration for the implementation of ABS in Ontario. It recommends that if the Law Society introduces some form of ABS to Ontario, then it should adopt the approach taken in England and Wales by the Solicitors Regulatory Authority (SRA), which enables the regulatory to pre-approve (or deny) applications for ABS licenses. LawPRO also advises that careful consideration would need to be given to insurance or financial assurance considerations. In particular:
- a. Consideration will need to be given to whether LawPRO will be insuring lawyers or the provision of legal services by approved entities.
 - b. ABSs should be required to buy primary insurance from LawPRO. Otherwise, among other drawbacks, over time there would be a reduction of the pool of insured, which could threaten the viability of the program, and that the risk data obtained through a single insurer could be weakened.
 - c. Additional insurance or bonds may be necessary to protect innocent consumers against risks associated with “complex combinations of services with varying business risks and trends.”
 - d. Client service continuity plans should be developed as part of the regulator’s approach to ABS. Individual ABSs, like other law practices, may fail. ABS entities should be required to develop plans in case of failure to protect clients receiving legal services from the ABS.
 - e. Further consideration should be given to whether "technology-based services" will come within the Law Society's sphere, and if so, whether they are meant to be insured.

Next Steps in the Law Society’s Study of ABS

- 88. The ABS Working Group will continue to reflect on the detailed responses it has received to date as it continues to consider ABS.
- 89. Next steps will involve assessing the feedback summarized in this report, considering how to frame the issues for continuing dialogue with the professions and others on the subject, and organizing those discussions later in 2015.
- 90. No recommendations will be forthcoming from the Working Group to Convocation until those discussions have occurred and further consideration is given to what is received from this next phase of consultation.

**LIST OF ABS MEETINGS
APRIL 2014 - JANUARY 2015**

Date	Event	Law Society Representative(s)
April 17, 2014	Joint ABS Working Group and Priority Planning Meeting with Andrew Grech, Managing Director, Slater & Gordon	n/a
April 29, 2014	Treasurer's Liaison Group	Susan McGrath
May 20, 2014	CDLPA Spring Conference	Susan McGrath and Malcolm Mercer
May 30, 2014	OTLA Spring Conference	Peter Wardle James Scarfone
June 2, 2014	CBA First Annual Ethics Forum	Malcolm Mercer
June 9 and 10, 2014	Canadian Law Leadership Forum Program "Regulatory Limitations on the Practice of Law: Lessons from Key Jurisdictions"	Malcolm Mercer
June 13, 2014	OBA Council	Susan McGrath and Malcolm Mercer
June 16, 2014	ABS Working Group meeting with Professor Gillian Hadfield	n/a
June 17, 2014	Crown Summer School	Treasurer Minor Malcolm Mercer
August 26, 2014	Advocates Society Board of Directors	Susan McGrath and Malcolm Mercer
September 18, 2014	OTLA Board of Directors	Susan McGrath and Malcolm Mercer
October 3, 2014	AJEFO Congress	Robert Lapper, Carol Hartman, Margaret Drent
October 16, 2014	Toronto Lawyers Association	Susan McGrath and Malcolm Mercer

October 16, 2014	Barrie Real Estate Lawyers Association	Alan Silverstein, Joe Sullivan, Robert Evans
October 20, 2014	Frontenac Law Association	Malcolm Mercer and Susan Elliott
October 28, 2014	Equity Advisory Group (EAG)	Susan McGrath
November 5, 2014	Hamilton Law Association (ABS information session)	Susan McGrath and Malcolm Mercer Joe Sullivan James Scarfone
November 18, 2014	County of Carleton Law Association Board of Trustees	Malcolm Mercer and Constance Backhouse
November 19, 2014	Federation of Asian Canadian Lawyers	Peter Wardle
December 5, 2014	OBA Program "ABS Abroad: Key Insights from the United Kingdom and Australia"	Malcolm Mercer Peter Wardle
January 20, 2015	Waterloo Region Law Association ABS Town Hall	Susan McGrath Malcolm Mercer Ross Earnshaw
January 21, 2015	County of Carleton Law Association ABS Town Hall	Adriana Doyle James Scarfone Malcolm Mercer

LIST OF SUBMISSIONS RECEIVED

INDIVIDUALS

Akazaki, Lee

Audet, Julie

Audet, Julie and Picard, Nathalie

Ball, James

Botsford, Blair

Chasse, Ken

Joint Submission:

Brendt, Lorne

Callaghan, Paula

Cote, Christal

Castonguay, Tania

Alysia Middleton

Minor, Kayla

Schmidt, Linda

Sheffer, Cheryl

Sabourin, Denis

Criger, Janis

Gehl, Nicholas

Granton, Joseph

Harris, Gordon

Hollander, John

Kowalski, Mitch

LaBuik, Devon

Ledgerwood, Liam

Lipinski, Baruch
Teitel, Murray

Wiseman, David

LAW FIRMS

Cognition LLP

Conduit Law

McLeish Orlando

ORGANIZATIONS

Barrie Real Estate Lawyers Association

Canadian Defence Lawyers

Centre for International Governance Innovation (CIGI)

County of Carleton Law Association

Criminal Lawyers Association

Equity Advisory Group Working Group on Alternative Business Structures

Essex Law Association

Federation of Asian Canadian Lawyers (FACL)

LawPRO

Law Students' Society of Ontario (LSSO)

Ontario Bar Association

Ontario Trial Lawyers Association

Southwest Region Women's Law Association

Stewart Title

The Advocates' Society

The County District Lawyers Presidents' Association

Waterloo Region Law Association

Women's Paralegal Association of Ontario

REGULATOR

Ontario College of Social Workers and Social Service Workers