

Innovating Regulation

A Collaboration of the Prairie Law Societies



Consultation Report | September 2016
Appendix - Paper Responses



ALBERTA CIVIL TRIAL LAWYERS ASSOCIATION

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June 28, 2016

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Attention: Kent Teskey Q.C.

Dear Sir:

Re: Entity Regulation and Compliance-Based Regulation

On behalf of the Alberta Civil Trial Lawyers Association (ACTLA®), representing approximately 500 lawyers in Alberta, we thank you for seeking the input of the Alberta Bar on the issues of entity regulation and compliance-based regulation.

Alternative Business Structures and Non-Lawyer Ownership

ACTLA remains very concerned about the Alternative Business Structures (ABS) and Non-Lawyer Ownership (NLO) initiative of the Law Society of Alberta (LSA). It is our understanding from the discussions at the Town Hall meetings and from the LSA's statement on the www.lawsocietylistens.ca ("the website") website that both ABS and NLO are in fact not being considered by the LSA at this time and that prior to consideration of any ABS and NLO initiatives by the LSA there would be a separate full and complete consultation with the practicing Bar. The concerns of ACTLA regarding ABS and NLO are summarized in an executive summary attached to this letter. If and when the LSA conducts its consultation process with the Alberta Bar on ABS and NLO, ACTLA will submit its full submissions and position to the LSA. Accordingly, our submissions in this letter will not address the very significant concerns that ACTLA has in relation to ABS and NLO, but rather will focus on the issues of entity regulation and compliance-based regulation.

Sufficiency of Information

It is recognized that the first step in entity regulation and compliance based regulation is a legislative change extending the jurisdiction of the LSA within the *Legal Professions Act*, Chpt. L-8 R.S.A. 2000. However, without having specific information on plans and programs being considered by the LSA if entity regulation is allowed it is impossible to fully appreciate the possible effect this may have on the practicing Bar.

The Proactive Approach

The LSA has recommended a more proactive approach towards best practices in practice management with a view to increasing client and lawyer satisfaction with a corresponding decrease in complaints and claims against lawyers. ACTLA agrees with the concept of the LSA taking a more proactive approach however ACTLA does not agree that the ability of the LSA to



identify management principles designed to address ethical, financial responsibility, professionalism and public interest issues is conditional on entity regulation over law firms.

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Current Programs

ACTLA embraces the current proactive steps being undertaken by the LSA. A number of these current initiatives were reviewed at the Town Hall meetings. In addition, it is understood that there are or will be changes made to how complaints against lawyers are handled and adjudicated. ACTLA supports those changes.

Other Proposals

a) Voluntary Programs

ACTLA endorses the implementation of voluntary or mandatory programs available to the Alberta Bar. These might include:

- i. educational seminars from the LSA and other providers focused on the implementation of best practices for those areas where most complaints arise;
- ii. more emphasis in CPLED courses encouraging best practices in problem areas;
- iii. the publication of practice bulletins or guidelines, a practice followed by many professional organizations including the College of Physicians and Surgeons of Alberta. ACTLA acknowledges the excellent book "Safe and Effective Practice" by the Honourable Justice Côté and others however, that text does not appear to be consulted as often as would be a regularly published practice bulletin or guidelines updated regularly;
- iv. free database of various best practices resources easily accessible and available from the LSA to lawyers;
- v. better audit and monitoring tools to ensure individual lawyers are adhering to the best practices.

ACTLA supports the concept of the LSA developing best practice guidelines that address some of the bona fide complaints and claims against lawyers. One example that arose at a Town Hall meeting is that some lawyers do not routinely send out a retainer letter. It would presumably be easy to prepare a best practices guideline on that with appropriate precedents and to publish that guideline on the LSA website.

b) Compulsory Programs Under the Current LSA Jurisdiction Over Lawyers

It is the position of ACTLA that extending the Law Society's jurisdiction over law firms is unnecessary as the Law Society currently has sufficient jurisdiction over lawyers to allow the implementation of all anticipated proactive steps. The current regulatory framework allows the Law Society to impose upon a lawyer, or group of lawyers within a firm, the obligation to appoint a responsible lawyer for trust account matters. There is no reason why a similar program could not be instituted in relation to practice management if in fact it was determined that such regulatory compliance was required due to the failure of a voluntary program.



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The LSA also has the jurisdiction to mandate annual compulsory continuing education. This is done in many provinces and territories with a number of provinces/territories requiring a minimum number of hours dedicated to ethics.

c) Other Options

ACTLA is confident that properly implemented proactive voluntary and mandatory programs will have a positive result. Further, requiring a lawyer's compliance with best practices, if required, will be effective. A third means by which best practices can be implemented is to tie best practices programs to the lawyer's insurance premiums. Each lawyer in Alberta is required to have insurance. It would seem to be a relatively simple process to provide economic incentives by way of reduced premiums to those lawyers who can verify compliance with best practices guidelines established by the LSA.

Extending Regulation Over Firms

ACTLA strongly disagrees with the proposal to extend the LSA's jurisdiction over law firms:

a) The LSA's Current Jurisdiction is Sufficient

Setting aside strict legal principles, in the absence of ABS/NLO, a law firm is not an entity separate and distinct from the lawyers in the firm. The lawyers are the firm. The wages paid to office staff are ultimately paid by the lawyers. The rent is ultimately paid by the lawyers. Programs instituted in the firm are often prepared by and are always approved by the lawyers. A "law firm" does not make decisions, the lawyers do. In the context of sole practitioners and small firms the concept that the lawyer(s) are the firm is self-evident.

The evidence presented at the Edmonton Town Hall meeting indicated that in Alberta there are close to 9,700 practicing lawyers, with approximately 6,500 in private practice. 1,200 of those lawyers are sole practitioners and approximately 1,800 are in small firms of 2-10 lawyers. Those 3,000 lawyers provide the most legal services to the public, possibly as high as 80%.

The experience in other jurisdictions, notably Ontario, is that up to 79% of complaints are made against firms comprised of 1-5 lawyers. It is presumed that in Alberta the statistics are similar. It is difficult to understand why the LSA, with jurisdiction over the individual sole practitioner, would also need jurisdiction over the sole practitioner firm as an entity to implement proactive initiatives. The jurisdiction effectively already exists. It is also difficult to understand why the LSA would require jurisdiction over the small firm of 2-10 lawyers, recognizing that the LSA has jurisdiction over those individual lawyers. The small law firm is not an organization that exists beyond the lawyers of the firm. The question remains as to why can there not be proactive programs put in place through the existing framework of jurisdiction over individual lawyers for sole practitioners and small firms, the lawyers with the most interaction with the public and the lawyers generating the most complaints.

The practical reality is that most larger firms would already have implemented appropriate best practices. Furthermore, the LSA's responsible lawyer for trust account matters is an excellent example of how compliance can be enforced on the lawyers of even large firms efficiently and effectively.



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If the present regime of trust accounting best practice management is working effectively over individual lawyers, then one would expect best practice management should similarly work effectively with individual lawyers without need for an extension of the LSA's jurisdiction to cover law firms. Indeed, the website information suggests a designated "compliance officer" could be required to monitor compliance which of course is really no different than how the LSA currently regulates a firm's trust account practices (referred to in a video on the website as a "compliance based regulatory approach"). It is also noted that the LSA jurisdiction over lawyers was sufficiently wide enough to consider the imposition of new fees on trust accounts.

ACTLA believes these proactive steps should first be attempted and implemented within the existing jurisdictional framework before even considering extending the LSA's jurisdiction over law firms.

There is no convincing empirical evidence that the LSA's extension of jurisdiction over law firms would actually improve or reduce complaints against lawyers. The current monitoring, enforcement and remediation mechanism against individual lawyers can be improved. ACTLA is of the view that unless and until voluntary and mandatory steps are taken within the existing jurisdiction to promote best practices, the jump cannot be made to discussing the LSA advancing its jurisdiction over law firms. The Bar has to be convinced that the current mechanism is functioning optimally and along best practice lines and still failing before it could even consider whether to allow the LSA jurisdiction over law firms.

Further, the LSA has not provided the Bar with sufficient hard data to understand the underlying problem it claims exists that underpins its assertion that its jurisdiction must extend to law firms. The Bar knows the number and composition of law firms but data about the number of overall complaints, the ratio of complaints to lawyers, the type of law firms from where the complaints originate and the statistical variations in complaints by type of firms and the actions/steps the LSA take to address these complaints are not available. The consultation paper "Innovating Regulation: A Collaboration of the Prairie Law Societies" that kick-started this consultation fails to provide this data to support its conclusions.

b) Additional Burdens on Lawyers

The suggested change to entity regulation and compliance-based regulation comes with a cost. In addition, the LSA will no doubt have additional costs in operating a new regulatory system. The administrative reporting requirements and programs will be placing additional burdens on lawyers. These burdens may drive up costs to both lawyers and clients as well as possibly shrink the pool of lawyers available to the public. Further, the burden and cost of such reporting requirements and programs are not distributed equally. The theoretical framework that each "firm" would need to report means that this burden is shouldered entirely by the sole practitioner but spread out amongst the partners of a large partnership that has a managing partner perform these functions.



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c) Loss of Independence

A key attraction to working as a sole practitioner or in a small firm is the independence in how to run a legal practice and what effect the administrative and financial burden of additional LSA regulation would have on that independence is a concern. Larger firms have more resources to be able to support any additional regulatory layer than sole practitioners or small firms. The more time devoted to LSA administrative tasks, the less time available to running a practice.

d) Effect on Limited Liability

Most firms in Alberta are limited liability partnerships. The imposition of compulsory programs on firms (as opposed to individual lawyers) may well create a positive duty of care on the firm which would, in essence, defeat the limited liability protection and possibly expose lawyers to larger and multiple claims, which could lead to dramatic increases in insurance premiums paid by lawyers. This in turn, would drive up the cost of legal services to the public.

e) Firm Culture

An underlying issue that must be considered is how far should the LSA reach extend into a lawyer's practice. Throughout the presentations at the Town Hall meetings there was reference made to the need to have Law Society jurisdiction extend to firms so as to be able to somehow address firm culture. However, what was meant by firm culture was never clarified, nor was there any explanation as to why firm culture could only be addressed if there is jurisdiction over the firm as an entity rather than jurisdiction over each and every lawyer that makes up the firm, nor the question of whether it in fact is something that is within the mandate of the Law Society to regulate a nebulous concept like firm culture. Does the LSA intend to regulate hiring practices, work hours and pay equity and if it intends to do so, wouldn't that escalate the cost of legal services to the public? Is there empirical evidence that firm culture has played a role in the complaints received by the LSA?

f) Other Jurisdictions

There was no information provided by the LSA on whether entity regulation in Saskatchewan and Manitoba has resulted in fewer claims. On occasion reference has been made to the decrease in complaints in Australia with the introduction of entity regulation and ABS/NLO. It is important to remember that an association between entity regulation with ABS/NLO and a decrease in complaints does not equate to cause and effect. The use of matches is associated with people developing lung cancer but is not the cause of people developing lung cancer. To establish cause and effect there would need to be a comprehensive study to determine why there was a decrease in complaints.

One Final Point

One further issue needs to be addressed. There is a perception currently held and expressed by many lawyers, including ACTLA's membership, that the motivating reason why the LSA is seeking jurisdiction over law firms is to open the door to ABS/NLO. Whether the perception is accurate or not, "perception is reality".

The issue of entity regulation and compliance based regulation is coming at a time when many members are upset with the closure of the Edmonton office of the LSA without meaningful



consultation with the Bar and with the issue of the levy on money going into trust accounts, again without meaningful consultation with the Bar. On that background:

- a) The LSA, in collaboration with the Law Society of Saskatchewan and Manitoba, started a process of ABS review without first advising or seeking input from the Bar.
- b) The LSA published a discussion paper "Innovating Regulation" in November, 2015 authored by Law Society staff representing the Law Societies of the three Prairie Provinces.
- c) The authors determined it was "impractical to look into ABS alone. How would we regulate an ABS? What are the appropriate tools? In order to create opportunities for ABS, we could regulate not only individual lawyers but also their organizations as a whole. In other words, we would have to regulate entities."

(*Innovating Regulation*, page 2)

- d) The authors also indicate at page 2, "this took us back to the beginning and the recognitions that three components – entity regulation, compliance-based regulation and ABS – are all intimately connected".
- e) Also at page 2, "ABS would be a type of entity regulated through a compliance-based regime."
- f) Shortly following publication of *Innovating Regulation* the current consultation process commenced. The website indicates:
 - i. "The ability to regulate entities is an important precursor to compliance-based regulation and/or alternative approaches to delivering legal services."
 - ii. "Proactive entity regulation can encourage and accommodate new business models, which may enhance access to justice and provide further opportunities for affordable legal services".
 - iii. "As well, compliance-based entity regulation could encourage the development of new organizations to deliver legal services, with more options and lower prices."
 - iv. "While this is not the focus of our current consultation, the ability to regulate entities through compliance-based regulation is an important precursor to exploring new types of business models".

The temporal relationship raises a suspicion that the primary motivation to extend jurisdiction over firms is not because of conduct issues (which after all have been around since the LSA was formed) but because regulation of entities is required for ABS.

- g) A fair and objective reading of *Innovating Regulation* leads to the conclusion that the authors were in favor of ABS/NLO and discounted the views of those opposed. For example, submissions of the Ontario Trial Lawyers Association (OTLA) when the ABS issue was before the Law Society of Upper Canada (LSUC) were described as being "motivated by self-interest" and their arguments were to be interpreted as "protectionist". OTLA is, of course, the sister organization of ACTLA.
- h) Despite OTLA citing the work of Harvard Professor Nick Robinson and despite OTLA providing a memorandum on access to justice in the UK and Australian ABS Structure by Jasminka Kalajdzic of the University of Windsor Law School, the OTLA submissions were



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described as primarily relying on "hypotheticals and anecdotal evidence". It is noted that neither of these authoritative works are cited on the website and are only briefly touched upon in *Innovating Regulation*.

- i) Although the authors singled out OTLA for criticism, OTLA was not standing alone in opposition to ABS/NLO. The position taken by OTLA before the LSUC was essentially the same position taken by the Canadian Defence Lawyers, the Advocate Society and individual firms. The Criminal Trial Lawyers written submission indicated:

"The Ontario Trial Lawyers' Association has prepared extensive and well-researched submissions on why ABS models ought to be opposed in Ontario. We, as an organization, adopt and agree with the OTLA submissions in their entirety."

This factual scenario might well lead right thinking lawyers to ask:

- a) As conduct issues have been around since the creation of the LSA is it purely a coincidence that entity regulation is being promoted at this time following a study noting that to have ABS/NLO the LSA would need entity regulation?
- b) As there is no apparent reason why proactive best practices initiatives could not be implemented voluntarily or by imposition under the current jurisdiction of the LSA over lawyers, is there a different motivator for entity regulation?
- c) If ABS/NLO is not relevant to the discussion on entity regulation why does the website reference the arguments in favor of ABS/NLO in the "what are the advantages of entity regulation to the public" section which states that "compliance-based regulation could encourage the development of new organizations to deliver legal services with more options and lower prices." It is interesting that the website has sections entitled "what are the advantages of entity regulation for lawyers" and "what are the advantages of entity regulation to the public" but no sections addressing the disadvantages of entity regulation to lawyers and to the public.

ACTLA believes it is important to address this issue on two different levels. The first narrow issue is in relation to the specific issue of entity regulation. At page 8 of *Innovating Regulation* the authors note that buy in from the profession will be needed as the concept represents a departure from the traditional approach to lawyer regulation. There is no apparent buy in from the profession. On behalf of our 500 lawyer members, ACTLA has not bought in.

The second broader issue is the fact that so many lawyers, rightly or wrongly, perceive that the LSA has an undisclosed ulterior motive in pursuing entity regulation. This is unhealthy for any regulating professional body and it comes on the heel of two major recent decisions being implemented without full consultation with the profession; the closure of the Edmonton LSA office and the imposition of trust account fees.

The executive summary attached highlights some of the concerns of ABS/NLO. In relation to entity regulation within an ABS/NLO model even if the LSA has jurisdiction over the law firm, it still cannot professionally reprimand the non-lawyer partner/owner who commits a wrongdoing or acts inappropriately. The website refers to sanctions such as issuing a fine, placing limitations on a firm's trust account or more onerous requirements on the firm. These sanctions are



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directed at the firm, not the non-lawyer owner. Would the LSA punish the lawyer-partner/owner in an ABS/NLO model while the non-lawyer partner/owner who actually committed the wrongdoing is free from discipline or sanctions? As the Slater and Gordon dramatic stock collapse has proven, extending the LSA's jurisdiction to the law firm can become meaningless and ineffective if the non-lawyer owners/partners simply dump their stock and walk away from hundreds of thousands of clients, who may potentially be left facing a catastrophic access to justice problem.

Yours truly,

ALBERTA CIVIL TRIAL LAWYERS ASSOCIATION

Per:

Maureen McCartney-Cameron
President

Michael Hoosein
First Vice President, ABS/NLO Committee Chair

cc: Anne L. Kirker QC
Don Thompson QC

ACTLA ABS/NLO Committee

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ACTLA Submission to the Law Society of Alberta on Alternative Business Structures

EXECUTIVE SUMMARY

In 2014–2015 the issue of Alternative Business Structures (ABS) and Non-Lawyer Ownership (NLO) was considered by the Law Society of Upper Canada (LSUC). The Ontario Trial Lawyers Association (OTLA) studied the issue, reviewed a vast array of documents, commissioned their own study and conducted their own research. The LSUC chose not to proceed with changes to allow ABS or NLO at that time. The submissions of the Alberta Civil Trial Lawyers Association (ACTLA®) borrow very heavily from the OTLA submissions, some of which are recited verbatim with the consent of OTLA.

Since the LSUC decision and the publication of the discussion paper "Innovating Regulation" by the Prairie Law Societies in November 2015 there have been some significant developments. The "poster firm" for ABS/NLO is Slater and Gordon, a publically traded law firm that originated in Australia. In early 2016 the shares of Slater and Gordon fell 95%. Layoffs and closures are in the works. The fate of their clients is unknown. Another publicly traded Australian firm, Shine Corporate Ltd., fared only slightly better when its shares fell by 75% in one day in early 2016.

The other significant event was the decision by the American Bar Association to not implement changes to allow for ABS/NLO in May, 2016 in face of overwhelming objection from lawyers, firms and professional organizations.

It is our position that there is **not** enough empirical evidence, available from the jurisdictions in which ABS is permitted (namely Australia and UK), to endorse permitting ABS in the Alberta legal profession.

Although ACTLA recognizes that there are segments in the legal system that have particular access concerns, especially in the family law context, no evidence has been brought forward to show how these access concerns will be effectively addressed and reduced through ABS. In fact, ACTLA is concerned that the introduction of a non-lawyer ownership will have unintended consequences that will not serve the public interest and hurt access to justice.

OTLA commissioned a study by Jasminka Kalajdzic of the University of Windsor Law School on the issue of whether access to justice has improved with ABS/NLO in the UK or Australia. She concluded "there is a dearth of empirical evidence to support any of the contentions made by proponents that NLO leads, directly or indirectly, to an increase in access to justice."

ACTLA believes that ABS advances in technology are overstated. Technological change is already occurring at various rates throughout the legal profession. It is not clear that ABS can provide innovation in delivery of legal services that lawyers practicing in traditional firms cannot. There is scant evidence from other jurisdictions that ABS leads to significant technological innovation.

There is an absence of empirical data showing savings to consumers of legal services. The consolidation and monopolization of legal services in the industry, where only a few players

ACTLA MISSION STATEMENT: To advocate for a strong civil justice system that protects the rights of all Albertans.

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dominate the market, could leave consumers with less competitive choice and less competitive prices to deal with legal issues.

There are significant concerns about the duty of lawyers to their clients, the need for independence of legal professionals, the issues of confidentiality and the lack of ability for the LSA to effectively regulate firms and non-lawyer owners in ABS.

In particular, the matters of conflict of interest when an ABS is owned by a firm, like an insurance company that provides a multi-platform of services from insurance to legal to rehab and tow trucks, has the potential for significant conflicts of interest, as is occurring in the UK.

It would not be adequate for the Law Society to simply create new rules in the hope of protecting the public against the types of conflicts of interest that are inevitable in an ABS environment. This will require significantly increased resources and infrastructure for the LSA to regulate such matters.

Overall, ACTLA is unequivocally opposed to unrestricted non-lawyer ownership and particularly to any change that would allow publicly-traded law firms in Alberta. We believe that it is lawyers who must ensure that the core values concerning conflicts of interest, client confidentiality and independence of lawyers are maintained and protected.

ACTLA believes that the profession's core values, and the public interest, can only be protected by ensuring that lawyers deliver legal services.

Until more empirical evidence is available for all ABS jurisdictions and has been fully and critically reviewed by the LSA and members of the profession, ACTLA submits that the introduction of ABS on any level would be premature and, therefore, ill-advised in Alberta. A more measured and considered approach would be the most reasonable one going forward.

ACTLA ABS/NLO Committee

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June 28, 2016

June 27, 2016

Law Society of Alberta
The Law Society of Manitoba
Law Society of Saskatchewan

Re: Innovating Regulation consultation

Dear Sirs/Mesdames,

The Justice Sector Constellation of the Calgary Poverty Reduction Initiative seeks to intervene at the intersection of the legal system and poverty by implementing recommendations it developed for a poverty-reduction strategy in the context of the legal system.

We are not writing to comment on or endorse any particular form of entity regulation, compliance-based regulation or regulation of alternative business structures. Rather, we are writing to encourage you to consider the legal needs of those with low income when coming to conclusions regarding such regulation.

One of the issues identified by the Constellation is the need for more affordable legal services. This need applies generally, but is especially relevant for those with low income. As lawyers who have a monopoly on the provision of legal services, we have a professional responsibility to ensure that legal services are available to those in need, not just to those with significant financial capacity.

In light of this, as you consider various forms of regulation, we encourage you to keep in mind the need for more affordable legal services, and use that as a key factor against which to decide on the appropriate approach to and nature of regulation.

Please contact the undersigned if you have any questions or would like any additional information in this regard. A synopsis regarding the Constellation and its work is also attached, for your information.

Sincerely,

Calgary Poverty Reduction Initiative Justice Sector Constellation

Janice L. Pasay

per Janice L. Pasay, Co-Chair
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Attachment

CALGARY POVERTY REDUCTION INITIATIVE
JUSTICE SECTOR CONSTELLATION
SYNOPSIS UPDATE
APRIL 21, 2016

The original mandate of the Justice Sector Constellation was to make recommendations to the Calgary Poverty Reduction Initiative Secretariat on a poverty-reduction strategy in the context of the legal system. These recommendations are set out in the Constellation's report dated March 19, 2013, which is entitled "Intervening at the Intersection of Poverty and the Legal System" (see at http://enoughforall.ca/wp-content/uploads/2016/05/JSC_FinalReport_2013.pdf).

Over 90 percent of the recommendations developed by the Constellation had previously been made, directly or indirectly, in other reports regarding the legal system and the justice sector. In light of that, the members of the Constellation agreed to continue to work together on implementing the Constellation's recommendations, despite having completed their original mandate. Since April 2013, the Constellation has been actively working on implementing a number of its recommendations. The Constellation's main focus is currently on the following projects:

1. **By-laws Project:** One of the issues identified by the Constellation is that the impact of receiving a fine for by-law and other infractions is more significant for those living in poverty. In light of this, the Constellation recommends that the policy underlying infractions that have a disproportionate impact on those with low income be reconsidered. Legal analysis will be conducted and quantitative and qualitative data will be gathered, to provide an evidentiary and analytical basis for such a reconsideration. The Alberta Civil Liberties Research Centre is conducting the legal analysis for the project. The Alberta Human Rights Commission has provided funding for the social science aspect of the project. Key stakeholders in by-law enforcement have expressed their interest in and offered support for the project.
2. **Form Literacy Project:** Forms required by and used in the justice sector may not be readily understood by members of the public who must complete these forms in addressing their legal issues. The Constellation has recommended that justice sector forms be made easier for the public to understand and complete, including by ensuring these forms are written at a level that makes them accessible to the public. The Constellation has compiled a list of forms that have been reviewed. The results of the review will inform what measures might be taken, which may include courses on completing forms as well as information documents for the public addressing what forms are required, how to complete forms, the order of filing, the process (including deadlines), and other relevant information.
3. **Service Provider Capacity Building Project:** Service providers and intermediaries (e.g., community and faith community workers and volunteers) outside of the justice sector may not recognize that their clients have legal issues or may not know where to refer clients who have such issues. This project seeks to establish linkages with and facilitate cross-referrals between these service providers and intermediaries on the one hand, and justice sector resources and services on the other hand. Funding was obtained to develop and pilot training to increase awareness of potential legal issues as part of client needs and increase awareness of and referral to appropriate justice sector services and resources. Training pilots were conducted in fall 2015, and the training was well-received. The training has been evaluated, and the Constellation has conducted a survey to provide baseline data to evaluate the effects of the training over time. The survey results have also been analyzed to identify areas in which the training is most needed, as well as sectors in which cross-referrals are lacking.

4. **Database Project:** Appropriate and timely access to justice sector services requires knowledge of what services are available. The goal of this project is to develop a current, comprehensive database of justice sector service providers and justice sector services, available to both the public and other service providers. After reviewing three existing databases and consulting with relevant stakeholders, the Constellation recommended integrating two of the databases into the InformAlberta database. Stakeholder agreement for the integration has been obtained, and resources for the integration are being sought. In addition, the Constellation plans to develop a directory of justice sector services for the websites using the InformAlberta database, to make it easier for the public, service providers and intermediaries to find relevant justice sector services.
5. **Legal Advice versus Legal Information Project:** Those in the justice sector authorized to provide legal information may err on the side of not providing such information for fear of providing legal advice, which they are not authorized to give. This project seeks to educate these justice sector service providers on the difference between legal advice and legal information, so as to encourage them to provide as much legal information as possible. Resource materials have been developed, and the first presentation was made in October 2015.
6. **Collaboration with Educators Project:** The goal of this project is greater understanding within the justice sector regarding vulnerability to legal issues, the interaction between poverty and the legal system, and the need for lawyers and other legal professionals in poverty law. To that end, presentations have been made to educational institutions which provide training for justice sector service providers (e.g., lawyers, police officers, and corrections and probation workers). Specifically, the Constellation has advocated to have issues regarding the legal system and poverty included in materials for existing courses, and for the development of a credit and/or continuing education course on poverty and the law. As a result of these presentations, a new poverty and the law course is being developed at one Calgary university.
7. **Courthouse Greeters and Mapping Project:** The Constellation has conducted a needs assessment at the Calgary Courts Centre regarding how best to assist people coming into the courthouse to get them to their court or service and respond to their questions. Recommendations regarding signage, mapping and training of service personnel have been made. Some of the recommendations have been implemented, and implementation of the other recommendations is being considered.

As the result of a recent Visioning Session, the Constellation has identified potential projects, which are being examined to determine the role the Constellation could play to advance them. These include reducing barriers to getting to court by addressing child-minding issues; support for the development of community courts; educating lawyers regarding poverty law; addressing issues that arise for those released from custody; and a research project regarding coordination of justice-sector services.

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MARK McCOURT PROFESSIONAL CORPORATION

MARILYN A. BURNS, Independent Contractor

JUSTIN M. MORTON J. DANIEL BROMLEY

May 3, 2016

I gather that the Law Society of Alberta is launching a consultation with Alberta lawyers to gather our input to shape the future of regulation and delivery of legal services in the future. Here's my input: you should make your best efforts to regulate lawyers as little as possible, and to let us deliver legal services with the least possible regulatory interference as possible. Instead of asking, "How can we make the LSA an even larger bureaucracy and expand the administrative demands we make of lawyers and law firms?" I respectfully submit that you should ask "How can we get out of the way as much as possible so as to provide lawyers with greater leeway to run their practices as they see fit?"

Just one example: lawyers in Alberta have been running firms using manual accounting systems for over a century, just fine. Should a firm wish to switch to a computer accounting system, that's dandy, but should they choose not to do so, that should be OK as well.

Thanks very much for consulting with lawyers such as myself.

Regards,
Mark McCourt



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February 18, 2016

Law Society of Saskatchewan
1100-2002 Victoria Avenue
Regina, SK S4P 0R7

Attention: Mr. Tom Schonhoffer, Q.C.

Delivered via email: tom@lawsociety.sk.ca

Dear Mr. Schonhoffer,

It has come to the attention of the Saskatoon Trial Lawyers Association (STLA) that the Benchers of The Law Society of Saskatchewan are scheduled to meet this week. One of the topics slated for the Benchers' discussion is the licensing of non-lawyer practitioners and Alternative Business Structures (ABS), whereby non-lawyers may become owners of law firms.

We have discussed ABS with the other trial lawyers associations across Canada. The STLA echoes their concerns, which are outlined in detail in the Ontario Trial Lawyers Association's report to The Law Society of Upper Canada. A copy of their reports have been attached to this letter for your ease of reference.

The STLA would appreciate an opportunity to appear before, or make written submissions to, the Benchers at a future meeting on this very important topic. We look forward to hearing from you at your earliest convenience.

Yours sincerely,

SASKATCHEWAN TRIAL LAWYERS ASSOCIATION

Ashley M. Smith
STLA President



Saskatchewan Trial Lawyers Association

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June 28, 2016

Law Society of Saskatchewan
1100 – 2002 Victoria Avenue
Regina, SK S4P 0R7

Attention: Mr. Tom Schonhoffer, Q.C., Executive Director

Delivered via facsimile: 306.352.2989

Pages: 2

Dear Mr. Schonhoffer,

This letter is the Saskatchewan Trial Lawyers Association's (STLA) submissions in response to the request for consultation in relation to entity regulation and the discussion paper: "Innovating Regulation: A Collaboration of the Prairie Law Societies."

The STLA recognizes the importance of insuring the profession assists the public in legal matters and issues. Being Law Society members we understand and support the need to be more proactive with regulating legal entities who delivery of legal services. However, we do have some concerns, namely, the appointment of a compliance officer especially for sole or smaller law firms and how it will impact them. We encourage the Law Society to provide the support necessary to allow sole practitioners and smaller firms to continue to operate.

As you are aware, the STLA has expressed its concern over Alternative Business Structures (ABS) in our profession and in particular how this is defined.

We have heard during your webinar, *Exploring a New Regulatory Approach: A Conversation About Entity Regulation* on May 18, 2016; and, at the Annual General Meeting held on June 16, 2016 that the Law Society of Saskatchewan is not focusing on ABS at this time and considers entity regulation a separate issue. However, according to the Prairie Law Societies website the two are not defined separately; as noted in the following excerpt:

The Prairie law societies believe that entity regulation, compliance-based regulation and regulation of alternative business structures (ABS) are valid options worth exploring in all three of our jurisdictions. We are seeking your feedback to help us shape the future of regulation and delivery of legal services.

and

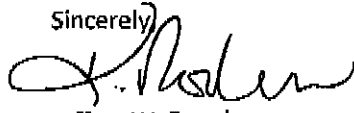
"Entity regulation" simply means regulating the business unit through which legal services are delivered, in addition to regulating the lawyers operating within the entity. This can mean regulating traditional law firms or, possibly, other organizations that provide legal services, such as corporate legal departments.

While the Law Society for Saskatchewan has advised that ABS and entity regulation will be considered separately the STLA acknowledge that ABS cannot occur without entity regulation. The STLA is concerned with the definition of "entity" and in particular its failure to include other legal providers such as legal aid departments and the government. STLA supports the inclusion of these legal entities in order to ensure a standard, high quality and more uniform delivery of legal services to the public. Other provinces in Canada, such as Ontario appear to include legal aid and government departments in their definition however Saskatchewan appears to exclude such entities. STLA is also concerned with the ability to expand "entity" into non lawyer owned legal businesses and the STLA advocates for thorough discussion and consultation before it expands the concept of "entity" to include non-lawyer operated or owned legal businesses.

In conclusion, the STLA supports the regulation of legal entities however we strongly oppose the delivery of legal services and practice of law by non-lawyers and oppose the ownership of law firms by non-lawyers.

The STLA is cautious and would request open, well informed and transparent discussions with the profession as a whole prior to any further expansion of regulation in other types of entities, including but not limited to ABS.

Sincerely,



for Jeffrey W. Deagle
STLA President

Christine Hansen-Chad
Chair, STLA ABS Sub-Committee



June 28, 2016

Law Society of Alberta
800 Bell Tower
10104 – 103 Avenue
Edmonton, AB T5J 0H8

Dear Sirs:

Re: Innovating Regulation – Feedback

This brief submission is intended to provide feedback on compliance based entity regulation as described on the website www.lawsocietylistens.ca.

Shores Jardine LLP is a firm of 10 lawyers located in downtown Edmonton. We are fortunate enough to enjoy particular areas of practice, being administrative law and municipal law. Our perspective is also informed by our considerable experience in the area of professional regulation.

With this context in mind, we are concerned about the idea of entity regulation and how it may unfold. Being a lawyer is a privilege and not a right. As lawyers, we play a significant role in the rule of law in a constitutional democracy. That is a privileged role, but one that comes with a significant duty to society. It must be recognized that there are considerable business interests for those who want to commoditize law and have publically traded law corporations, with share valuation being based on multiples of annual billings. For the lawyer holding shares or the right to receive shares in the conversion of a firm to a publically traded law corporation is put in a conflict of interest with his client. To move towards limited liability publically traded law corporations incorporates principles which run contrary to the Code of Conduct and professional ethics.

Corporate directors and officers are focused on the best interests of the corporation and not the public. Publically traded corporations are required to make significant disclosure of business information to shareholders (potential and actual). On the contrary, lawyers are bound by duties of confidentiality and fidelity to their clients.

We are concerned that the consultation being conducted may justify the introduction of new models of legal service delivery -- including legal services being provided by large accounting firms -- without this being made explicit in the consultation process. The Discussion Paper Innovating

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B A R R I S T E R S & S O L I C I T O R S



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Regulation (November 2015) defines 'entity regulation' and 'legal services' generically; and the accompanying Abstract (November 2015) concedes that the consultation "can mean regulating traditional law firms or, possibly, other organizations that provide legal services." In our view, if the intent is to amend regulation by the Law Society to address a business model in which an accounting firm will deliver legal services in Alberta, then this should be made explicit so that comments on this form of legal service delivery (and its implications) can be received.

Our concerns about entity regulation come with the recognition that we have insufficient information in order to formulate a more detailed or principles-based response. While we feel it is important to have a voice in proposed entity regulation, it is difficult to support a scheme of which we do not know its shape or its practical impact on our business operations or, more particularly, on our obligations as lawyers to our clients, to the public interest many of our public sector clients serve, and to society.

Yours truly,

SHORES JARDINE LLP

Per:

A handwritten signature in black ink, appearing to read 'Craig D. Boyer', written over the 'Per:' text.

**Craig D. Boyer,
Managing Partner**