THE STORIES
(FULL VERSIONS)

SUPPLEMENTARY MATERIALS
For Two Books

DEMOCRATIZING LEGAL SERVICES:
OBSTACLES AND OPPORTUNITIES

And

MODERNIZING LEGAL SERVICES IN COMMON LAW COUNTRIES:
WILL THE US BE LEFT BEHIND?

by

LAURA SNYDER

Updated 23 June 2017
laurasnyder@lexentry.com
For Allen

Who told me “talk to people, get their stories”
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A. Using Business and IT Processes to Increase Efficiency and Reduce Costs

Many alternative structures have developed and implemented business and IT processes to increase efficiency and reduce costs. The alternative structures of this category have done this in order to serve a large number of individual clients, in most cases also by deepening their areas of specialization and offering the services at affordable, often fixed, prices.

Tom Curran, CEO, Kings Court Trust

UK-based Kings Court Trust is a probate service assisting families through the probate process upon the death of a loved one. It operates on a volume model supported by online platforms. KCT is owned, in part, by private equity firm Smedvig Capital and Tom Curran, KCT’s CEO, is not a lawyer.

KCT was founded in 2002 by a very farsighted lawyer and accountant who knew that the changes to the UK regulations to permit nonlawyer ownership of law firms were coming. They asked themselves, if they were going to set up a probate and estate administration business on a blank sheet of paper, how would they do it? The answer was using fixed fees and transparent service delivery, two of the foundations upon which KCT is built. KCT eventually became an ABS in 2012, when the regulatory changes finally came into effect.

KCT is a business that uses the expertise of lawyers. We are not legal experts who are trying to run a business.

This is how we work: we assign a case manager to each case. This person is not a lawyer, this person is essentially a project manager. They have two jobs — to make sure that each case is handled effectively and efficiently, and to handle communications with the client. Lawyers are our technical experts — our case managers seek the advice of the lawyers on their cases.

As a result of this model, our lawyers see a huge number of probate cases. The experience that our lawyers get here, in terms of variation, volume, breadth, and complexity sets them apart from general practitioners, who, because they do a little bit of everything, can’t necessarily develop the same level of expertise in any one kind of matter.

Our lawyers are highly regarded and well paid. The head of legal sits on the Board of the company. We support our lawyers in their professional training and professional associations —
given that they are technical experts, that becomes even more important than if they were in
private practice. Some of them have become known in the industry for their technical expertise
and often speak at conferences.

To be clear, we do not expect our lawyers to bring in business — they are not evaluated,
promoted or compensated in any way on that basis. That is not their job — we have sales and
marketing people whose job it is to bring in business. Our legal positions are easy to fill as there
is an awareness that the market is moving in this direction, and there is a lot of openness towards
businesses like ours.

There are some great legal firms that are good at business. But the average lawyer is
trained in law and not in business. They’ve come into business by necessity, as a result of a
desire to be a lawyer, but they’re not trained to be in business. So, if they came into business that
way, then why would they be good at business? Legal expertise is a technical expertise, not a
business expertise. Why does anyone think someone trained in law is going to be great at
marketing, or great at customer service, or great at IT, or great at business? Some lawyers may
be, but think of it the other way around: would you put your trained marketeers in a legal role
without any support?

The changes in the UK regulations coincided with a massive growth in desire from
consumers, principally driven by the internet, for information and transparency. As a result, it
became more difficult to disguise work that, even if it was traditionally done by lawyers, was
really just administrative work, potentially billed at the full lawyerly rate.

Another example — in order to help consumers make informed choices, businesses will
provide information to consumers for free in a way that lawyers have difficulty to understand.
This is because businesses have worked marketing and cost of sales into their pricing
methodology in a way that allows the business to charge the appropriate fixed fees.

There is a fundamental flaw in some partnership models: it can result in chronic
underinvestment. Under a partnership model, profits are not retained for reinvestment. As a
result, of course there is no investment in the firm, and so by default they can get behind in terms
of technology and customer service.

We believe that in the future, consumer law will increasingly be bought in a different
way. We believe that increasingly, legal service will be an additional service that will be
provided along with other offerings, such as with accounting or insurance, rather than being provided separately via a traditional law firm. We think that the changes will take time, but nowhere near as much time as some might think.

In the area of probate, and in dealing with consumers and families, legal expertise is a technical expertise. People genuinely do want to buy and consume probate and estate administration services in a different way than they have traditionally been provided. Consumers want to understand what they are buying, but people may have been put off by the apparent complexity and have felt pushed away from using solicitor services as it hasn’t been made easy for them. If solicitors had asked themselves how to make the process easier and more straightforward for the families they serve, they would have been prepared to take advantage of the changes brought by the Legal Services Act, rather than it happening to them.

Legal services need to be re-engineered and re-focused around consumer needs. The concept of fulfilling customer journeys is a business concept rather than a legal one. This means thinking about every element of the interaction with the customer, in a way that lawyers do not normally think about it. Everything needs to be re-thought: office hours, pricing, how you market and attract business, how you interact with customers. Many law firms are set up around making the law firm achieve its own goals, which are usually billing as many hours as possible, rather than putting the customer at the heart of everything they do.

In about five to ten years, the legal market will look completely different than it does today. It is happening — there is no stopping it. Law firms can either sit around and wait for it to happen, or they can anticipate it, and make themselves better in the process.

**Oliver Jackson, Director of Strategy and Growth, Roberts Jackson**

*Roberts Jackson is an ABS that specializes in industrial disease and other work-related claims litigation.*

Karen Jackson (my wife) and I created Roberts Jackson in 2009. At that time, Karen had been working as a partner in a large firm in the area of defendant industrial disease litigation and I had been working in corporate law.
We started out from scratch, just the two of us — in two years we grew to 50 people and today we have circa 250 people.

Karen was the expert in the subject area of industrial disease litigation — it was not an area that I understood. That freed me to focus on strategy and how to grow the business and take it forward.

What I did was work on our structure, recruitment, what types of people we needed to bring in, and what types of cases we needed to bring in.

We set up our own marketing department, which generates most of our work, and we also set up additional support structures, such as a graduate training academy, and compliance, finance and IT departments.

We were fortunate in having a good relationship with our bank and other financiers, which helped us with funding. Now that we have private equity financing, we are looking to further develop our IT and our case management systems, as well as our people, and we are also looking at the possibility of acquiring other firms.

I myself focus on strategy — I look for opportunities to improve, develop and grow the firm further.

External funding may not be right for all firms, but for our area we felt it was the right thing to do. It permits us to benefit from economies of scale — we see that there is a lot of work out there, but that we need to be at a certain scale in order to take full advantage of it.

We have circa 14,000 cases outstanding at the moment and that number is growing day by day. This makes our IT processes and our case management system very important in making sure we can handle cases as expertly and efficiently as possible.

We have consciously avoided the traditional partnership structure in favor of a corporate model. We have a COO, a CTO, an FD and a Chairman and they have all worked for major corporate multinationals; through the partnership with our private equity partner, we have been able to take advantage of the expertise of people who have been in other businesses outside of the law.

Our application process to become an ABS was very involved — there were a lot of forms, and it took a lot of work over about six months. But ultimately the SRA was collaborative and helpful every step of the way. The questioning was personal as well as professional as the
SRA needed to know all about our management team in order to be sure each person was fit and proper to run a law firm. I think the SRA now has their application process in a much better place.

While we had contemplated potential exit strategies from the inception of Roberts Jackson, it was an approach from another much larger law firm that led us to get in touch with a corporate finance specialist at Deloitte. A partner there who dealt with private equity investment spent nine months going through our model himself. We then met with a number of private equity companies and a potential trade buyer before finally deciding that NorthEdge Capital was the most appropriate partner for us. Their investment in Roberts Jackson was finalized in August 2014.

NorthEdge’s investment, expertise and contacts have proved absolutely vital in helping us to continue to grow and develop from a small company towards a mid-sized company. It’s not just physical growth but also developing our operating efficiencies, IT systems, employees and the management team. NorthEdge are advising us on this process and helping us identify the right people to bring in.

The external funding has also allowed Karen and me to de-risk our personal investment and has assisted with the development of a robust succession program — it’s a way for us to extract some of the capital we had invested in the business while enabling us to stay at the forefront of its development. We had invested a lot of time and money into the business, and this new investment has allowed us take some of that capital back. At the same time, we wanted to remain fully involved in the company’s growth as we think with NorthEdge’s support, we can develop the company even further and then we, NorthEdge, and our other new shareholders will benefit from a second exit, whenever that occurs.

Our Directors and senior management now have a wide variety of skills outside of the law: we have a marketing specialist, a finance specialist, an operational specialist, a technology specialist, and a compliance specialist. At least two representatives of the private equity investor attend our Board meetings and provide invaluable reference points from their experiences with other businesses within their portfolio of companies — none of these specialists are lawyers and so they bring with them a wealth of knowledge that would not previously have typically been part of a law firm’s structure. We’ve always wanted to bring in ideas from outside the law to
enable us to further innovate and think beyond traditional legal services — for Karen and me this was very important because we are both lawyers and so we wanted to discuss our business with those with completely different perspectives.

For example, our finance director has worked in a law firm, but also in other commercial arenas and so he comes with a very fresh approach and a new set of ideas. He is able to analyze the company from the ground up from a more commercial stance to really see what is going on, and compare that to his previous experiences. On that basis, we will be looking to adopt many of his suggested changes for improvements to our financing and our processes, notably as regards cash flow and cash collection — two things that law firms are notoriously bad at. Thanks to him, everything we do now with respect to our accounts is more analytical and rigorous.

Our COO is going to assist us to improve our case management — to automate certain parts of the processes, to quantify the time required to complete different steps, and to raise flags if problems arise. With her help we will make our service cutting edge — more slick, efficient and transparent for the client. Finally, with her considerable experience in other businesses, our COO will assist with our most important asset, our people: on training and individual career objectives, and making sure that are new systems and processes assist in our staff’s professional development and advancement.

In such a fiercely competitive market where efficiency and technology, as well as legal service and expertise are now so paramount, it is not possible for lawyers to try to do everything themselves. They need to bring in experts and leaders from other commercial environments that have ideas on how to make processes more efficient.

Having a lawyer do everything is not the way we want to work. It’s too expensive, it takes too long and the clients don’t like it. The law is way behind many other commercial businesses in terms of providing a great service at an affordable and accessible level.

A lot of lawyers live in a bubble — they expect to get paid an hourly rate for a job that might take six months, two years or even ten years and where clients don’t have any control or understanding of the process. We want to open up that process. We want to invest in systems and processes that make the client’s journey quicker, more efficient, cheaper and more informative, and we want clients to play active roles in it so they can contribute to the decision making process.
What we are doing is finding truly talented, committed and intelligent people with a variety of experiences that can come together and find better ways to serve more people that have been victims of negligence but whom otherwise may have been ignored. It is in this way that we can provide access to justice to a greater number of persons.

Each of our Board members owns shares in the business — they are not just employees. It is important for us that they have a stake in the business and that they put their heart and souls into it. We are not asking them to do a standard 9 to 5 job, we are asking them to bring about change and bring about a new and better way of doing what we do. We need them to be fully committed and they deserve to share in the success they help to bring. We are all aligned in our values, philosophy and ultimate goal.

I have heard the arguments that nonlawyer ownership of law firms will lead to unethical behavior, or to the firm taking actions that are in the shareholders’ interests rather than in the clients’ interests. That has not been my experience. My experience is that the shareholders want to create value, and the way for a firm to create value is align itself with the clients’ interests. Reputation and client service are key to the value of an investment.

I see our investors as being in it over time — they are not looking for a quick win. They are looking to improve and enhance the company’s service levels and reputation, not to cash in on it.

The changes to the regulations in the UK was for some a painful and scary process. This was because in many ways we were venturing into the unknown, and notably as regard to ethical issues which lawyers are always most concerned about. Now that we’ve gone through the process in the UK, I feel that the positives outweigh the negatives. The opportunities — allowing external capital and expertise to come in — are a great advantage if managed correctly. There is nothing per se dangerous about an ABS structure. The danger has always been the few unscrupulous individuals that create headlines, and they can be lawyers or nonlawyers alike.

The jurisdictions that do not adopt ABSs may fall behind with respect to systems, processes and IT. That will make a big difference because IT is now going to be very important for building models that save clients time and money. IT also allows scalability, enabling firms to handle high volumes of cases, at the same time that they must be taking even greater care and control over the clients’ journeys. There will be even greater pressures on cost going forward,
and firms in jurisdictions that do not adopt ABS may not be able to compete against firms coming from jurisdictions that have. This is something that people in those jurisdictions should be concerned about — the ethical issues are as genuine and real as they are for any lawyers or other professionals in a position of trust. But the answer is not to prevent ABSs — it is to introduce appropriate regulation and monitoring.

Andrew Grech, Group Managing Director, Slater and Gordon Lawyers

Slater and Gordon Lawyers is a consumer law firm with 70 locations in Australia and 25 locations in the United Kingdom. Slater and Gordon is a publicly held company with shares listed on the Australian Securities Exchange. The Slater and Gordon Group also owns Slater Gordon Solutions in the UK, which provides claims, motor and health services.

Slater and Gordon is a unique law firm. We are an international, publically listed company that prides itself on finding innovative ways to provide world class legal services to people. The emphasis on people is important to understand. Whilst the Slater and Gordon Group does act for institutions and occasionally for government agencies, our core mission is very much focused on serving the legal needs of individuals.

At first glance, the international size and scope of our operations and the consumer focus of our legal practice might appear counterintuitive, but the truth is we are growing globally so that we are better equipped to act locally.

Let me explain.

Frederick Hayek, the instigator of what became neoliberalism, once wrote that competition depended “above all on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible.”

It’s difficult to argue that the competition of the legal services marketplace is operating “as beneficially as possible.” The economic upheavals of 2008 have exacerbated social and economic inequity. According to a new report by Oxfam, the wealthiest 1 percent of the world’s population will own more than the other 99 percent by 2016. In the legal services sector this manifests itself in the growing gap between the legal needs of individuals and the affordability of
those services. In contrast, the wealthiest 1 percent have almost unlimited access to the legal system.

Prior to 2007, Slater and Gordon fought our battles as we always had — locally and ferociously. We are proud of our reputation and our heritage. Our firm was established in Melbourne in 1935 — at the height of the Great Depression — with a brief to advocate for people who had been injured at work. People who in those days did not have access to the means necessary to provide for their families and cover the loss of income that typically follows a significant injury. Over the decades that followed Slater and Gordon has built up an enviable reputation as a firm that relentlessly pursues the rights of its clients. We gained a reputation as a blue-collar law firm that fought on behalf of grievously-injured employees (in the case of the Wittenoon asbestos mine) or local communities (in the case of the Ok Tedi mine disaster in Papua New Guinea).

When it came to listing, our most recent history, the leadership group at Slater and Gordon shared a vision of building a national law firm — stretching across Australia with an expanded range of legal services whilst at the same time maintaining an intense focus on providing affordable and innovative legal services for clients.

What we learned along this journey, which led to our listing, is that we had to change to ensure legal representation remained affordable and accessible to local communities and people — as well as ensure we had the scale to offer our clients the specialist expertise required to ensure that they could have confidence that their interests were being as well represented as the most successful entrepreneur, largest listed company or government agency. Meeting this challenge as the legal needs and expectations of clients change, remains our challenge.

We wanted to be able to offer first-class service to our clients, but at a price they can afford. We found that it was impossible to do that without growing much bigger. At the same time, we realized that the scale of growth that we wanted to achieve was beyond our means without outside capital. We had to find a way to fund our growth on a permanent basis, and in a way that was not tied to the individuals involved. Ultimately, we came to the conclusion that we were unable to do what we wanted to do — that we were unable to serve the clients we wanted to serve — without growing.
For us, the answer was to make Slater and Gordon a public company in 2007, because it would use the marketplace to give us access to the capital we needed to equip our staff with the resources they needed to provide world class legal services. The decision to go public was not taken lightly. Having formed the view that we could only provide the level and quality of services needed by having dedicated specialized practice groups, able to serve clients locally, it was (at least to us) only logical that substantial scale would be required to deliver that service affordably.

We now represent people wanting to buy a family home, navigating a family or relationship breakdown, or in the midst of a commercial dispute and our lawyers are specialists in their areas of work, instead of working across a range of areas of law.

With listing, we have different cohorts of investors in the Slater and Gordon Group. One cohort is internal shareholders — this includes people like me, senior staff shareholders: some of whom are not lawyers. About 300 staff members working within Slater and Gordon — lawyers in Australia and the United Kingdom — are in that cohort of shareholders. Those staff have either been awarded shares as part of their remuneration, were foundation shareholders at the time we went public, or sold their businesses to us and took part of the purchase price in shares.

More recently we launched a share saver program open to all staff. In its first year about 900 staff (or about 40% of those eligible) participated and are now shareholders, which is a real show of faith and our business that we’re aiming to achieve.

We believe our staff equity programs are important because it gives people a common purpose and creates an ownership culture. A key difference is that, unlike most law firms, we are able to use this as one element of aligning the interests of nonlawyers and lawyers alike because any member of our staff can become a shareholder — as can any of our clients. Equity allows us to reward people for achieving long term results. That last point is important. Today, most of the rewards in law firms are focused on the short-term. Personally, I think that kind of focus is dangerous because it encourages people to focus on short-term rather than long-term results. For me this short termism is a much greater potential threat to the standing of the legal profession and the way it carries out its obligations to protect the public interest in the proper administration of justice than nonlawyer ownership.
Slater and Gordon also has more than 19,000 outside investors. Around 15 percent of those are retail investors, with the balance being institutions — such as large superannuation funds, endowments and pension funds. No external investor holds more than 10 percent equity in the firm, and no external investors are directly represented on our Board, although our Board, which includes a majority of non-executive directors, are there to represent the interests of all stakeholders — including external shareholders.

For us, the advantages of outside capital have been immense.

We’ve invested in our people too — recruiting new people and developing the competencies of our existing staff. We’ve invested in technology — developing practice and case management (work flow) systems that reduce costs. Our technology investments have also improved the client experience by making legal services more affordable and accessible — a good example of this is our online will service. We’ve dramatically expanded our geographic footprint and broadened the range of services we provide. When Slater and Gordon listed we had about 12 sites in Australia. Now, we have around 70 in Australia, in addition to our presence in the UK. Some of the growth has been organic, but it has also been driven through acquisitions. Whilst we’ve continued to grow organically throughout the post listing period, we’ve also acquired and integrated a number of firms to assist us in accelerating our geographic and practice area diversification programme.

As important as acquisitions have been in enabling us to reach the scale we need to better represent our clients, the most important changes have been in the ways in which we have embraced different ways of working and different ways of engaging with staff and clients.

Traditionally, the law has been a paper chase. Increasingly that paper chase is giving way to a war over the mastery of digital information. So long as client confidentiality is preserved and client needs remain paramount there is no reason why every step of a person’s engagement with the legal system cannot be made more affordable and accessible through the use of technology.

Technology (at least in the sense of “new ways of doing old things”) is the driving force behind many of the disruptors in the legal market — such as LegalZoom or RocketLawyer — because it offers a new way to serve the needs of ordinary people.
In other words, change is here whether the legal profession likes it or not. What matters is not what the impact of change will be on the “legal profession,” but whether those changes will make it easier, in an inequitable world, for people to find access to the legal system.

Generally, we don’t develop our own software, but instead buy proprietary software and work with the providers to customize it to our needs. Most of our intellectual property is in our case management and workflow systems. These systems allow us to provide a seamless service to people, reduce complexity and minimize unnecessary labor work. What matters most to us is how we can use technology to enhance the client experience, in all its dimensions.

That’s why our case management design teams have a mix of technologists and senior lawyers and paralegal staff working together.

At Slater and Gordon, we’ve tried to embrace, rather than fear change. We believe that the mark of true professionals is the desire to meet and exceed client expectations and not to resist change to preserve its place and status. For example, we believe one of the surest ways for a lawyer to meet a client’s needs is to be a specialist in their field. That’s why, when a lawyer joins our firm as a trainee, they rotate through different practice areas. After 12 to 18 months in the firm, they are allocated to one particular practice area. Over the next few years they’ll rotate perhaps another two to three times. After their first five years, our lawyers are expected to decide upon a specialty. In Slater and Gordon, those specialties can be a personal injury litigation discipline, a litigation and dispute resolution discipline (such as commercial and dispute resolution, class actions, family law or employment law) or a transactional discipline (such as wills, estate planning, conveyancing or commercial real estate). Our job is to help our staff match their skills and attributes with the needs of the client base.

If a lawyer chooses a career more orientated towards management and leadership, they receive additional training and work with other managers with expertise in disciplines such as finance, human resources, marketing, business development, change management or IT. For those who choose a career more orientated towards becoming a leader in their field of law through client work the focus of our professional development activity is to give them the opportunity to develop in that area. The reason for this multilayered approach is simple: you need more than good lawyers to run a successful law firm. If you want to grow and succeed you
need the skills of a very wide range of people from a wide range of disciplines — and not all of those people can be found within the confines of the legal profession.

The multifaceted approach Slater and Gordon has taken appears to be paying dividends. The firm has undergone immense growth since we listed — last year our turnover was around $68 million (Australian dollars), and total revenue was just over A$438 million.

Not everyone in the legal profession approves of the direction we have taken. That’s disappointing. After all, lawyers are supposed to be logical, evidence-based professionals. In reality, many of the objections presented regarding the liberalization of ownership of law firms have nothing to do with threats to professionalism or potential conflicts of interest. The real reasons for the objections are the entrenched protections that the legal profession enjoys.

Globally, there is a strong trend towards opening up legal markets and liberalizing ownership structures. As powerful as this trend is, it is more like a glacier than a tsunami.

Whenever those changes come, they will be welcome. After all, law firms do not exist in order to serve lawyers — our reason for being is to serve our clients. The question, then, should not be about whether or not liberalized structures should be allowed, but whether or not they may benefit clients. Our experience suggests that nonlawyer ownership (provided it is properly regulated) is more likely to benefit consumers of legal services than not — it is more likely to make justice more accessible and affordable.

Consider the facts. Internationally, the legal profession across the world is fragmented, with the top 100 firms controlling more than a quarter of global revenue from legal services. Most of the revenue today is generated by corporate and governmental clients. As a consequence, legal innovation has tended to stay where the money is — serving corporate and government clients rather than everyday citizens.

One of the great advantages of working at a scale, in a manner that rivals the top corporate law firms is that we have the resources to maximize our expertise and minimize our costs.

Our lawyers work in highly specialized groups, where large amounts of information are available digitally. We focus on providing legal work for fees that are fair, reasonable and proportionate — and, increasingly, to the extent that regulatory systems allows, charge clients a fixed fee. As a result, the focus of our staff is on achieving the client’s objective as efficiently
and effectively as possible. This is a radical shift away from the traditional approach, where a lawyer’s value is measured in units of time, and where inefficiency is rewarded. Instead, we are trying hard to get our staff and our clients to understand that the value we add is not best measured by time, but outcomes.

Our lawyers are not evaluated on how many hours they bill. They are evaluated on the outcomes they achieve for their clients and the speed with which they achieve those outcomes, how they train their staff and how they develop new businesses. The bottom line is we want legal problems resolved quickly, without compromising the outcome for the client or allowing legal costs to escalate.

This raises a fundamental difference between a typical law firm partnership and Slater and Gordon. A partnership measures success by the career trajectory of its individual partners. At Slater and Gordon, we measure success by the trajectory of the organization. We have a saying at our firm: “Everyone is important, but no one is that important.” I believe that this egalitarian approach is one of the reasons why we will continue to manage succession well.

What we are trying to do is industrialize, or commoditize, legal processes. This is offensive to some people because it is seen as being at odds with professionalism. But if you think about it, and especially if you stand in the shoes of the client, our approach is the essence of professionalism.

After all, professionalism is about finding ways to meet or exceed client needs. Often the client needs us to have a deep understanding of and investment in key touch points that are important to them. This means, for example, having local offices that are open extended hours so they can see a lawyer close to their home and conveniently.

Another example of this approach comes out of our Australian asbestos litigation group. Our clients are often families dealing with a loved one who is going to die of an asbestos-related disease in a very short period of time. We have come to understand that while we are there primarily to serve these families’ legal needs, they have a whole host of other needs that they also need help with. So we employ a number of social workers who are available and can advise those families on how to access palliative care and other ancillary services.

Our actions are designed to make the client’s experience as seamless as possible.
I’ve heard the arguments that alternative structures will lead to a consolidated market controlled by large firms, and that those firms will focus on “highly profitable” personal injury work to the neglect of “less profitable” work.

There is no evidence to demonstrate that traditional lawyer-owned or smaller law firms are more willing to provide less profitable legal services compared to nonlawyer owned firms. Nor is there evidence that pricing containment is related to the size of a firm or the fact that a firm is lawyer owned. Concerns about consolidation miss the point. The availability of external investment has enabled us and many others to provide a broader range of services than we once did and to improve the client experience in the course of doing so.

When Slater and Gordon became an ILP it was already a profitable firm with a large client base in personal injury law. Without trade-offs to our personal injury law practice, as a result of a new company structure providing a larger capital base in Australia and the UK, we are now able to offer a wider range of other consumer services including services that critics of nonlawyer ownership claim are the sort of “less profitable services;” that nonlawyer owned firms would stay away from such as: employment law, wills, conveyancing, family law and criminal law. We deliver these services at consistently high standards within affordable pricing structures.

In other words, it was adopting an alternative business structure (ABS) that has enabled us to expand our scale and become high quality providers of other consumer legal services and to do so with affordable pricing arrangements.

As an aside, the claim that personal injury is more profitable does not take into account the cost of capital and cash flow needed to run cases against defendants with deep pockets, on a conditional or No Win-No Fee™ basis. Personal injury law work is cash flow intensive and relies on the availability of working capital, which can be employed to serve the needs of clients who can’t afford to pay to fight insurers and other corporations without that support. A personal injury practice at a 30% profit margin is likely to deliver the same return on employed capital as a conveyancing practice at 15% profit margin because conveyancing work is not as cash flow intensive. Any serious objective analysis in this regard needs to be framed on the concept of comparative returns on employed capital rather than the simplistic and misleading notion of “profitability.”
Whatever the legal profession itself might think, the reality is that for many in the community, the status quo has created a cozy world where the competition that does exist does more to reinforce the current inequalities. The opportunity to open up the legal profession to external capital will provide a catalyst for change. As long as the legal profession (whatever ownership structures are permitted) is regulated, as long as the consumer is protected, as long as the same professional standards apply — as they do in Australia and the UK — then what are the real objections that should be allowed to stand in the way of making the legal system more accessible?
B. Business Outsourcing

Like the alternative structures featured in (A) above, the alternative structures of this category have also developed and implemented business and IT processes to increase efficiency and reduce costs. However, they have done so in order to offer a greater variety of services to corporate rather than to individual clients.

Alexander Hamilton, CEO, Radiant Law

Radiant Law combines legal service outsourcing with contract negotiation and dispute resolution for larger commercial contracts. It uses bespoke technology and processes to improve contracting processes and shorten sales cycles for companies with large volumes of commercial contracts.

I was partner at Latham and increasingly frustrated by the gap that I perceived between what clients needed from us and what I was actually able to do in that environment. I ended up writing a memo for the executive committee of Latham & Watkins. In the memo, I gave my analysis of the market and what changes were coming, and described the things that I thought Latham & Watkins could benefit from doing. That memo did not go anywhere, and I look back at my hopes for engagement as wonderfully naive!

I had never really thought of starting a law firm, but I ended up in a conversation with a friend of mine in New York about setting up their London branch. While that did not work out, it planted the idea in my head that you could actually set up a law firm. As I looked around the market and talked to people, I realized that the issues I raised in the memo were not Latham & Watkins issues; they were marketwide issues.

So there we were: five transactional, outsourcing tech lawyers. Our basic premise at the beginning was that clients want the judgment calls and the experience, so we would just be senior lawyers. We sent our junior work to an LPO [legal process outsourcer]. We progressively used technology, not just off-the-shelf systems, but also those we developed for ourselves.

We got rid of timesheets and billable hours, not just because clients were asking for fixed pricing, but also to allow us to completely re-engineer how we did things. It allowed us to focus on what clients need rather than our need to churn out hours.

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All this set us on a journey that we are still on. We restructured ourselves as a real company with a CEO and executive positions, moved to salaries and bonuses instead of the traditional model of pulling money out at the end of the year. And we clarified our vision and strategy, with an absolute focus on creating business value by helping companies create great relationships through their commercial contracts. That simplification and clarification — of structure, of roles, of mission — became liberating, because it became obvious what we needed to do next.

We became an ABS in May, 2014. This permitted us to bring in Greg Tufnell as our non-executive Chairman. We are very happy to have him on board.

Greg used to run retail fashion companies. He brings with him an approach that you don’t see in law. In the fashion world, you are massively exposed to reality in a way that lawyers generally try to avoid. He has brought us rigor, business acumen, financial know-how, and overall knowledge on how to run a company and the discipline to do it.

We have implemented an employee share scheme. Not only is it a pragmatic way to ensure that our employees are aligned with the firm as a whole, it is also the right thing to do. We are now introducing team-led decision making, moving away from a management structure to allow the team to fully participate in figuring out how best to operate.

Our clients are multinational companies. We have a lot of work outside the UK, including with many US-based clients. We as a firm only practice English law, but around the world, a contract is a contract. Our clients’ in-house counsel will take a view as to whether local legal advice is required. Fundamentally, what we do can be boiled down to rules, and those rules can be reviewed by local lawyers.

What makes us competitive is our combination of legal judgment calls with technology, design and better processes. We are open to external ideas, wherever they may come from, notably outside the legal profession. The fact that we are outside the traditional partnership model is an advantage — we don’t have to worry about bringing people along, slow decision making, or technology laggards. We have freedom to experiment and we don’t have management that operates in fear of big rainmakers. We have an open culture where everyone gets to improve the way of doing things, but we do have a way of doing things — the Radiant
Way. That is unusual in a law firm, where trainee lawyers have to learn to be actors, and do things differently for each partner.

Clients need help in ways that have not been available before. Law firms have left a huge space in managed legal services, so we expect to grow a lot. The growth will come by producing more products, tools and approaches, we’ll open in other countries, and we’ll grow in size. And we will at some point look for outside investment in order to really fuel growth.

I have heard the arguments that bringing a nonlawyer into the ownership or management of a law firm will erode ethics, but I see no reason why that should be the case. Such holier-than-thou arguments are out of place from an industry that has such a terrible reputation with its customers. Those arguments are guild-thinking and protectionism dressed up as ethics. The ethical system should be about protecting customers. Someone like Greg Tufnell is fundamentally customer-focused.

The current regulatory environment in the UK is very potent. It is outward-looking, from the UK to the rest of the world. Things can happen that can’t happen for US firms, like external funding, and it makes it easier to bring different experts into management. It would be a mistake for the US to wait to see the final results before it even starts its own journey. It’s not that the legal market can’t evolve in the US without the ABS structure; it can, of course. But the confluence of things happening in the UK makes it a much more dynamic and competitive market, and it will produce players that will be very potent, not just for the US but on the global stage.

**Karl Chapman, Chief Executive, Riverview Law**

*Riverview Law is a legal advisory outsourcing and managed services business that offers a range of services to global corporate clients. It specializes in recurring activities, like commercial contracts and obligation management, regulation, employment, and litigation. It also licenses its knowledge automation and case management platform to businesses.*

Riverview Law only exists because customers of AdviserPlus, which provides HR advisory outsourcing services, asked it to extend its HR model into legal services. We were led by customer demand so, with the exception of what we’re doing with technology, we don’t think there’s anything really new or disruptive about what Riverview Law does. Our business model
and approach only looks disruptive from the perspective of the legal market, which tells you a lot about the legal market and how unused to change it is.

We’re focused on the 60-70 percent of the legal work that large organizations do every day of the week, every week of the year that can be packaged into long-term contracts, such as commercial contracts and obligation management, litigation, HR, property. We set up dedicated teams for each account to be sure that each team member truly knows the customer. We enter into long-term partnerships with our clients — agreements typically have a three-plus-year term, which gives us great visibility of earnings and allows us to invest in the relationship. We use effective end-to-end technology and workflow systems to enable our legal and support teams to work flexibly and efficiently. Our technology and operating model helps us to manage information and data, and provide business insight to our customers that pre-empt risks, improves legal support and reduce costs. We use the data to go back into the business and improve how the business operates. Our technology enables us to scale, quickly and globally.

We applied for an ABS license for two reasons. Firstly, so that we could have just one operating structure, one set of reporting lines, one salary banding scheme, one career development program, one marketing scheme and website, etc. Operationally, this has allowed us to become even more effective and efficient then we were before, and we have really reaped the benefits from that since we obtained our ABS license.

The second reason we wanted to become an ABS was that it makes things easier when we speak with prospective customers and lawyers. They ask us if we are regulated, and we say “yes,” whereas before we had to enter into a lengthy discussion about our structure, which was distracting.

The application process to become an ABS was challenging for both us and the SRA. Because we were not a law firm, we were unusual and did not fit into the typical SRA model. So they asked us many questions. There were moments when it was a bit frustrating for both sides, but we expected that going into the process.

At Riverview Law, we do not distinguish between lawyers and nonlawyers when we seek to fill a role. Instead, we say “these are the services our customers want us to deliver to them,” and then we ask “what roles do we need in order to deliver those services, and what is the profile of the person needed to fill that role?”

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For example, at a senior level, I am the CEO, I am not a lawyer; our COO was a barrister but hasn’t practiced for 20 years; our HR Director has a background in HR and used to work at Tesco; our Finance Director comes from an outsourcing public company background; our business development director is a solicitor. Our Legal Services Director and COLP obviously is a solicitor and that role by law must be filled by a solicitor. We have a potent mix of skills and experience that make us a strong team.

With the exceptions of DLA Piper and AdviserPlus, all of our shareholders are individuals. At the moment, members of our Board and of our senior team, about 25 people in total, hold shares through a share growth program. We are in the process of putting in place a broader share ownership program for all employees. We want our managers and employees to own shares because it aligns all of our interests, and it gives them a long term perspective. We see this important to the sustainability of the business. We are building a long-term sustainable business which has long-term contracts with blue chip customers and high renewal rates. To deliver this it’s important we align all our people to these goals through appropriate reward models.

For example, save for a very small number of exceptions, we do not pay individual bonuses. We pay the same bonus across the board to all employees, based solely upon company performance. This bonus is not proportional to an employee’s salary — it is the same amount to each person. Think about the culture this creates. Our culture is one of our major differentiators. Over time people may be able to replicate our technology, our processes, our model … but even if they do they can’t replicate how we do things, how we use the technology ... culture is the key!

Prior to December 2014, Riverview had three principal services to companies: (i) legal advisory outsourcing, which is our long term managed services contracts with large corporations, (ii) legal counsel, which is annual contracts with fast growing businesses, and (iii) and litigation and representation, which is one-off projects for businesses of all sizes.

In late 2013 / early 2014, we noticed that every time GCs and company legal teams visited us, they asked if they could license our technology. They saw how we manage our business, from the management of instructions, through triage, case management, to analytics and the underlying data, and they said that they would like to replicate and tailor our model to their own in-house counsel functions.
And we thought, why not? So we set up Riverview Law In-house Solutions. This allows us to serve even more our primary customer, which is the in-house counsel function of large corporations.

This now gives a general counsel the choice of either outsourcing to us and/or or implementing and licensing our technology in-house.

We have also realized is that our technology platform can be applied in functions outside legal – HR and finance, for example. So, we are setting up a separate technology company to hold and license the intellectual property to third parties.

We recently entered into a Knowledge Transfer Partnership (KTP) with the University of Liverpool. We want to leverage the University’s artificial intelligence expertise in the legal market. We are expecting this partnership to enable us to apply a range of computer science expertise in the areas of artificial intelligence, text processing, network analysis, computational argumentation and data mining. Our objective is to automate some of the cognitive abilities of knowledge workers to provide our clients with intelligent decision support tools.

Let me give you a practical example of its deployment: imagine you are a lawyer working for one of our clients, and you have all the contracts relating to a particular area of their business. Imagine that all those contracts need to be re-negotiated to be sure they are in compliance with new regulations and a new company risk profile. And we also have to consolidate the number of suppliers that we have. How on earth do you start such a task? You have to find the contracts, you have to analyze them, you have to decide the strategy. It is amazing what technology can do — we can put all of the contracts in front of you on your screen, showing you how they connect, and suggesting which ones needs to be re-negotiated first. The lawyer then needs to review it and decide if that is, in fact, the right way to do it. What we are doing is short circuiting the decision making process, and making it better. You don’t take out the human interaction — quite the opposite — what we do take out is the foundation work that comes before, in order to present it to the lawyer in a way that they can interpret it and make the analytical decisions. It is really powerful stuff.

This is a very exciting time, a phenomenal time, to be in the legal market. This is a moment when you can create something very special. The direction of the market is very clear, and there will be big winners as well as big losers. The biggest winners are the customers.
decades they have been paying far too much for legal services because they have not had a choice. Now they have a choice.

Ironically, the things that have protected lawyers in the past and allowed them to earn big unsustainable margins — regulation, myth, a cozy monopoly — are the same things that will prove their undoing because it’s created complacency. The longer the U.S. and other jurisdictions take to change their rules, the better it will be for U.K. companies like ours because it provides us with a window to build a competitive advantage.

Long may the US resist ABSs. Long may it carry on protecting the status quo. The US defenders of the status quo are giving the global market to the countries who have accepted ABSs. If you look at the amount of legal work on a global basis that does not need to be done by lawyers, all the US is doing is giving that market to the countries that have adopted ABSs. I’m delighted. Let it continue.

The US is the greatest economy in the world, the greatest center for entrepreneurialism and what do we have? Self-preservation and protectionism. This is the best market I’ve ever been involved in.

_Ursula Hogben, Practice Leader and General Counsel, LegalVision_

*LegalVision is an Australia-based ILP that provides specialized legal assistance, advice and documentation to businesses. LegalVision offers its services on a fixed-price basis and its lawyers work primarily online.*

LegalVision is a legal services provider that is modeled on the principles of business and of tech start-ups. We are organized in a manner that is quite different from a traditional law firm. The way we acquire our clients and we do legal work has a strong foundation in technology.

Lachlan McKnight (our CEO) and Evan Tait-Styles (our CTO) founded LegalVision as a document automation business (high-quality documents that could be generated online). In offering this service, they learned that while their clients appreciated the documents, many also wanted to deal with lawyers, so they created a marketplace to connect clients and lawyers. This was well received and it was apparent that offering legal services directly would provide a more systematized and scalable solution. At the same time I had founded a small business law firm to
provide high quality services for a fixed fee in a systemized manner, and in early 2014 brought these legal systems to LegalVision. LegalVision is now a full service law firm that is highly systematized and technology-based.

In traditional firms, the team is divided among fee-earners and non-fee-earners, and there is often a strong hierarchy among the lawyers, from junior associates up to senior partners. On the whole, in a traditional law firm, the lawyers do a number of different things, ranging from marketing and lead generation through the actual legal work, and potentially even other activities.

In contrast, at LegalVision, using business principles we have four main quadrants: (1) marketing, (2) client care and sales, (3) legal and (4) technology/operations. This enables team members to focus on what they are good at and enjoy.

Team members have different skill sets, but shared goals, of using innovative business and technology principles to transform how business law is being performed and delivered.

For clients, their first point of contact with us is usually our website, because it provides a vast amount of information. Their next point of contact is usually with our client care team. This is a dedicated, legally trained team who assist potential clients. Once the client engages the firm, the legal work is done by members of our legal team. In this technology-oriented and highly systematized manner, we are quite different from a traditional law firm.

We work in a transparent manner with our clients. This is especially the case with respect to fees. We do not charge for initial consultations or for preparing quotes and we offer fixed fees where possible. Our quotes include consultations and rounds of amendments to help us take the time to explain the advice or documents to our client. For us, that is crucial. For the client, it’s about honesty and certainty.

We have four key teams. Some of our lawyers work on the sales and client care team, but most of them work on the legal team. The legal team is focused on doing high quality legal work in an efficient manner. The lawyers on our legal team are generally not responsible for marketing or business development or for administrative work such as invoicing. Further, the lawyers on our legal team are specialized. We attract lawyers who are the happiest working in their area of specialization, knowing that they are doing high quality work.
We do have people with law degrees in other teams. In this manner, we offer different paths to people with law degrees, if they would like to do something other than legal work on a day-to-day basis. With all our teams, it is important for us that we staff our roles with the people who are best suited and most interested. This allows us to benefit from each team member’s individual strengths, and it has proven important for team retention.

We currently have about 50 employees, of which about half are lawyers. Our team is diverse, we have similar numbers of males and females, we range in age from early 20s to late 50s and we have a wide variety of nationalities, … What I think explains this diversity is that we hire for the best people. We are genuinely open towards finding the best people, and we have a recruitment process that is aimed at attracting great talent.

Our lawyers are evaluated and compensated in a manner that is aligned to our business goals, including, for example the client’s experience. Because we operate on a fixed fee, our lawyers need to be focused and efficient.

We do not have a culture of face time. What is relevant is whether the client had a great experience and our team members’ productivity.

Each of our teams has systems including regarding our response times and quality.

Let’s use shareholders agreements as an example. These are bespoke documents as a client’s needs vary widely depending upon the number of founders, goals and whether there is external investment. We have a system of questions and guidance that we apply in preparing shareholders agreements. With this system, our junior lawyers can benefit from the expertise of our senior lawyers. We work to systematize our knowledge so that everyone in the firm who needs it can benefit from it.

In building our systems we have tailored systems specifically for us. We have a strong focus on retaining and sharing knowledge. This means that as people engage in unique work or look at unique problems, we follow up in order to incorporate and retain that know-how in our systems so it is available to all our team going forward.

A key development is our customer relationship management database and our project management database. It enables us to access a considerable amount of information about a client and about a matter.
We see our principles and our systems as our way to deliver legal services to businesses across Australia in a manner that addresses deficiencies that we have perceived in the marketplace.

We started with a focus on start-ups and smaller businesses, but we quickly realized that our principles and our systems work for the high-volume work of large clients as well. The ILP structure is beneficial for us in a number of ways. It offers us the ease of a company structure. It enables us to issue shares to new investors. It enables us to have investors who are not lawyers and who do not need to participate in the business day-to-day. LegalVision is a growing, scalable company. The ILP structure enables us to retain profits to use to grow the business rather than pay profits to partners. The partnership structure would have been limiting for us. It would make it difficult for us to do things in a new way.

In addition to the co-founders, our core shareholders include angel investors (high net worth individuals), private equity investors, and the law firm Gilbert + Tobin. We also have an employee share pool. This is relatively new for us. In July, 2015, Australian tax law changed to introduce tax exemptions for startups to offer employee share plans. With our pool, both lawyer and nonlawyer team members can become shareholders. We consider the ability to offer shares to all team members — not just lawyers — to be crucial for our business. It allows us to bring high-quality people into the company and it motivates them to work for the company’s success because they benefit also.

We have a Board that includes executive as well as non-executive Directors. The non-executive Directors include representatives of our shareholders. Our core management team, led by our CEO, includes lawyers and non-lawyers.

We see our competition at three levels:

1) To the extent that the small businesses that are spread across Australia have sought legal services, it has tended to be from the lawyers and law firms who are based in their locality. The benefit of those lawyers is that they are local, and they are part of the same local business community. However, those lawyers are under pressure because of the increasing complexities of business law, notably in our increasingly high-tech world. It can be difficult for a generalist lawyer to be on top of many different areas of law including specific areas of business law. LegalVision offers a key advantage of expertise in our business law areas.
2) There are a number of legal marketplaces serving Australia, aimed at bringing in legal work and distributing it to third party lawyers. However, at LegalVision we have found that by having our lawyers in-house we are better able to maintain quality and the client experience. It also allows us to better leverage our systems.

3) The city firms have more specialized business lawyers. At LegalVision we also have more specialized business lawyers. Our differences include our use of systems and of technology to deliver the work efficiently and using technology to attract and retain clients.

I see LegalVision playing a significant role with respect to access to legal services. Many of our clients have never used a lawyer before. It’s not because there was no lawyer in their locality, or because they couldn’t have gone into a city to use a lawyer. It’s because for some reason they did not engage those lawyers, whereas they did engage us. So, even if those clients theoretically had access to business law services before, they had not accessed those services. In deciding whether or not to engage LegalVision, our clients take into consideration different factors including that we offer a fixed fee, that it’s very easy to access us (online including online chat, by phone, by email, by videoconference), and that our lawyers are experts in our areas. It is for these reasons that we see LegalVision as increasing access to business law services in Australia.

Anecdotally, our clients confirm this on a regular basis. We receive testimonials with comments like “you made it so easy,” “you are the nicest lawyers we’ve met,”… Our clients’ high level of satisfaction is also reflected in our client retention rate. Our team members say that one of the reasons that they enjoy working here is the positive relationship with our clients.

I understand that in countries like the US and Canada there is opposition to ILP-type structures in part because of a belief that as owners of a law firm, nonlawyers would cause the firm to act unethically. It seems to me that this kind of observation can be made about any kind of regulated industry, not just the legal industry.

Further, there are many ways to address this. For example, firms can make sure that they have dedicated roles around their legal systems — legal knowledge and compliance roles. They can make sure that those roles are staffed with lawyers, and that those lawyers have the management authority that they need to ensure compliance.
Legal regulatory bodies can help address this kind of concern. To me, the bigger concern is that given law firms are businesses, and many are very large businesses, is there sufficient business knowledge to make sure the business is being run in the best possible way, if management are all lawyers?

At LegalVision, we have worked closely with both the Law Society and the Legal Services Commissioner. We proactively contacted them in order to explain to them how we work and how our processes fit in with the rules that were drafted with traditional firms in mind. We aim to have an open and strong relationship with our regulators.
C. Adopting a Corporate Structure to Foster Growth

Some law firms have adopted a corporate structure and became an ABS (England and Wales) or ILP (Australia) in order to foster the growth of the firm, notably by introducing professional management and raising and retaining capital for investment.

John Kain, Managing Director, Kain Corporate + Commercial Lawyers (Kain C+C)

Based in Adelaide, Australia, Kain C+C is a legal consulting company that specialises in complex transactions, disputes and advice. Kain C+C has adopted a corporate structure; two of its three Board members are not lawyers.

I started Kain C+C in 2004. The firm is an incorporated legal practice. From the beginning it has been run under a corporate, rather than a partnership, model. The company has four shareholders, each holding different shareholding proportions. We are currently exploring a broader employee share plan.

We have a clear distinction between the shareholders, the Board and the management, and their respective roles. Our shareholders’ agreement mandates that our Board must have an independent Chair and at least half of our Board as independent Directors. Independent means no financial interest in the business and not an employee of the business.

We have a Board of three, plus me as MD. The Chair used to be the CEO of another law firm; today he is the Executive Director of an accounting and commercial advisory practice. The second Board member is the Executive Director of a large advertising firm, and the third Board member is an internal appointment.

Our commitment to a corporate model allows us to ensure (i) that decisions are made in the best interests of the business, and not the interests of the individual owners, and (ii) that the right people are appointed into the right positions. Both of these outcomes are difficult to achieve in the partnership model, where too often decisions are weighted toward the interests of the individual partners rather than the interests of the business, and where standards gravitate to the lowest common denominator.

In my view, a true legal services company (as distinct from a firm) has three key elements: (i) it is an incorporated company, (ii) it has a corporate governance structure, and (iii)
it has a corporate management structure. There are countless incorporated legal practices in Australia – but they are not true legal services companies because the governance and management structures are still partnerships in nature. Some have an external Chair, but the decision making still fundamentally resides with the partners. That is not the case with Kain C+C. Outside of the few powers reserved for the shareholders, all decision making rests with an independent Board appointed on merit, not because they are owners – that is a corporate governance model. Our Board has the power to hire and fire and set remuneration, even for shareholders — and has exercised that power — that is a corporate management model. You will see these three elements in the listed legal companies in Australia, but to our knowledge, our structure is unique among unlisted Australian law firms.

I think this has placed us in good stead. We can objectively look at business and the world around us. On the whole, we have got the big decisions right and we have executed them reasonably well. I put much of that down to the objectivity that comes from having an independent Board, and to the ability to appoint the right people with the rights skills, to every position in the business. All appointments are made on merit which helps us, indirectly, to better serve our clients.

All of our shareholders are lawyers employed in the business. Some are in management roles, some are not — its horses for courses. Conversely, not all management roles are filled by shareholders. Some of our executive positions are held by non-shareholders.

Our structure allows our lawyers to do what they are good at, without requiring them to do things they are not good at. A common weakness of legal businesses is that responsibility for key management decisions is divvied up amongst the lawyers. For example a lawyer is put in charge of IT because they are interested in IT, even though they might be shockingly bad at implementing it. Because we have disassociated management from the technical legal services, lawyers can focus on providing legal services and not need to worry about the other things.

We believe that our structure offers us a competitive advantage. For example, a number of our team were equity partners in traditional law firms who were motivated to join us because of the failings they saw in the partnership structure, and we were one of the very few places that offered them a different structure. Being clear on how we operate and what we stand for is vital.
This becomes self-selecting — people with a similar view of the world are attracted to us; those who don’t select themselves out.

In my opinion, many lawyers have not adopted a true corporate structure because they are reluctant to give up control, particularly to nonlawyers, even if it is ultimately to their financial detriment. Another reason, in my opinion, is that many lawyers do not understand business well, and they think their partnerships are doing well. Partnerships can make reasonable money, and many people probably think, in that case, “Why change?”

The liberalization of the capital structure of law firms brings with it the opportunity for external capital to invest. That external capital brings with it, not only an expectation of returns, but also the management skills to bring that return. This leads to the development of disruptive ways to provide legal services. From my observations of the Australian and UK legal markets, since the UK liberalized its markets, it has seen a much greater investment of private capital than we have seen in Australia, where the external investment seems to have been most notably through the public markets. I am not sure why that is, but it has led to the development of a greater number of disruptive service providers in the UK than you see in Australia. That is probably also a function of the relative sizes of the UK and Australian markets. I think it will come eventually in Australia, and it will come partly because of the liberalization of the capital structures, but also because of a general increase in competition fostered by globalization, technology and the realization of ‘outsiders’ that the legal industry has been running a cozy and inefficient quasi monopoly for too long.

The legal industry is one of the few industries in the world that has been protected from any real competition. A lack of competition is unhealthy. It makes you lazy and removes the incentive to innovate. To be brutally honest, this has led some lawyers to develop a conceited view of themselves and of what they do: everything must be a Rolls Royce job, “leave it to us and it will cost whatever it costs — just keep writing the checks.” But that should not be the decision of the lawyer. It should be the decision of the consumer – the consumer should get to decide if they want Rolls Royce or a Chevrolet. It shouldn’t be the lawyer’s decision whether or not to add all the bells and whistles. The lawyer’s job is to give them options, importantly to make a recommendation, and make sure that the client makes an informed decision — and that can be done before every rabbit is chased to the far end of every burrow.
I think what will happen over time, and it is evident in areas already, is that whilst the price of legal services will fall, the value of the market won’t necessarily shrink. By being more efficient, accessible and innovative, you open up entirely new markets. People who thought that legal services were too daunting, too expensive, too hard to get to, too whatever — they have a whole range of new platforms in order to access legal services. This says to me that there was something wrong with the old system because of all these needs that were not being met. In time they will be met — the challenge for lawyers is whether they change to meet the market, or try to cling to the old quasi-monopoly and let new entrants win it from them.

At the end of the day, it does not matter who owns a legal business. A legal business does not need to be owned by a specific kind of person in order for the ethical behavior of that firm to be regulated. It is entirely possible to regulate ethics and standards without regulating ownership.

In Australia, the process to change our regulations was slow. It took 20 years to get all six states on the same page. I can imagine that in the US, with 50 states, it will take longer.

**Rod Cunich, National Practice Group Leader, Slater and Gordon Lawyers**

*Slater and Gordon Lawyers is a consumer law firm with 70 locations in Australia and 25 locations in the United Kingdom. Slater and Gordon is a publicly held company with shares listed on the Australian Securities Exchange. The Slater and Gordon Group also owns Slater Gordon Solutions in the UK, which provides claims, motor and health services.*

I’ve been practicing law for nearly 40 years. I started in a small two-man firm that we built up over the course of a decade. I then left that partnership and joined one of the large firms in Sydney. I was with them for about five years, when I went out on my own for about a decade, first as a sole practitioner and then later hiring three lawyers. In 2002, I merged that business with four other small law firms.

In putting together the merger, we embraced the fact that we could use a corporate structure. We set up a company with the shares held through family trusts.

In sum, I’ve been in all sorts of structures, large, medium-sized and small. The opinion I formed over that time is that partnership is a very poor structure in which to operate a business or a profession. The roles of an individual in management, as a fee earner/employee and as an equity participate are blurred and decisions often made whilst wearing the wrong hat — or all at
once. It’s difficult to impose the discipline of separating management, fee generation and equity. At its most basic, there is little distinction between reward for work done (salary) and return on investment (profit distributions). This is a topic on its own as the impact on decision making is overwhelming. The management of a partnership is often nothing more than a question of who can speak loudest and dominate the others. At its worst partnership encourages unhealthy competition between egos.

Of course there are exceptions, but my experience is that most law firm partnerships are poorly run. So, when we merged our firms in 2002, we chose the corporate model in order to very clearly distinguish the different hats that people would wear. One hat was that of employee — lawyer or not — who has duties to perform work for the employer, be it billable work or other functions. The second hat was that of a director, who oversees the strategy of the business and to who the management (employees) of the company report, and the third hat was that of an equity owner, who has an interest in the profits of the business, after paying expenses and a fair remuneration to the employees. For me, these distinctions were very important.

In contrast, what I saw in partnerships were internal fights as a result of the blurring of these three roles, where the partners sought to take home the fees they brought in — the more they brought in, the more they took home. The result was that they had little accountability to the whole of the firm, and the firm as a whole suffered because of self-interest.

For me, a corporate model facilitated better decision making and more professional behavior. It also enabled us to be more disciplined in our client service as it became a ‘whole of business’ task, not left to individual lawyers. It helped build a brand recognised by clients so that client relationships were less dependent on individual lawyers and their personal relationship with clients.

An important factor in my decision to join Slater and Gordon was the fact that it has a corporate structure.

In addition to its corporate model, going public has also greatly benefited Slater and Gordon. By going public, Slater and Gordon acquired the large amount of capital that it needed to be able to fund growth. The firm used the capital it raised to fund organic growth and growth through acquisitions. The funds also enabled the firm to take on some very large cases on a no win no fee basis. Taking on these cases requires the firm to assume a large financial burden over

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a lengthy period of time. It is because the firm has resources it can now assume the risks and the financial burden that comes with the larger cases.

Australia permitted nonlawyer ownership of law firms well before the UK did. One of the reasons we have been so successful in acquiring businesses in the UK is because firms who are in a similar business see that we’ve had a head start — they see that we have learned how to manage a public legal business — they see that we are able to achieve things that they cannot achieve, or that it would take them a very long lead time to achieve. When they see that, a number have decided that it is better to join us than do in on their own.

As a public company, you can go online and see how much our senior staff is paid. You will see there that our top people are paid quite modestly compared to lawyers at a comparable level in a traditional law firm. This is balanced by the fact that our lawyers have the opportunity to take shares in the company. They are making an investment and backing themselves: they accept a reasonable salary and work toward receiving dividends and capital gains from their shares.

This arrangement drives different behaviors. It means that the entire business must function as a unit. Contrast this to a partnership where lawyers are rewarded based upon the performance of their practice area, or even based upon individual performance, rather than the overall practice and success of the organization. We also reward individual performance of employees but again the rewards are modest compared to other organisations.

Also, because in a corporation everyone is an employee, there is little opportunity for egos to dominate. This is especially true for Slater and Gordon, as the Board is dominated by nonlawyers. Management teams, at all levels, operate to achieve agreed business goals, not for the individual benefit of the team members.

Because we largely service the needs of individual consumers and not businesses, the only way for us to be profitable is to service a large number of clients and do it well. Many parts of our business are high-volume, low margin. We have to keep clients coming in the door. This means that we must treat each client as if they are our only client. If we don’t, the clients will stop coming. Our mantra is ‘client at center’ — it has to be, and all management, systems and processes revolve round this message.
We use many junior lawyers and non-lawyer clerks, as well as IT, systems, and processes to get work through quickly and efficiently. The junior lawyers and non-lawyer clerks work under the supervision of senior lawyers, but even so they get significant client contact, and they take a lot of pride in that. At the same time, seniors lawyers are freed up to spend more time on issues requiring their expertise and on building the relationship with the client, without being tied down by work than can be undertaken by others.

We have many ‘shared services’, divisions within the firm that support our legal teams. These include: learning and development, HR, finance, accountants, media for external communication, marketing and a team for internal communication. The internal communication team is key — they make a big difference — having all the troops being aware of what is happening across the firm on a daily basis is one of our greatest challenges, especially with all of the changes we are undergoing.

The duties and responsibilities of management at team, practice group, local, State and National levels are well defined and the reporting lines are very clear.

All of these things can flourish within a corporate model, and all of these elements, taken together, enable us to offer a high-volume, professional service to our clients.

Technology is essential, but it is only an enabler. There are elements of legal services that can be commoditized, that can be done by a computer and processes, that can facilitate very efficient and inexpensive work flows. But technology does not, not yet anyway, replace interaction with a lawyer. We find that most people still want to know the person behind the work. I think that technology is going to change the role of the professional — there will be less processing paperwork, and more of client relationship building and supervision of teams by lawyers.

At the time I came on board in 2008, Slater and Gordon more or less had only two practice areas, which were personal injury and specialized class action law suits. However, as Slater and Gordon began acquiring other PI firms, they acquired with them the smaller practice areas of those firms. For example, Slater and Gordon would acquire a firm that did mostly personal injury work, but that also had one person who did wills and conveyancing and some commercial work. After making many of these acquisitions, we accumulated on our staff many lawyers whose practices areas were outside Slater and Gordon’s main practice area of PI.
As a result, we found ourselves with multiple practices areas — family law, conveyancing, probate — that had multiple processes, multiple precedents, and multiple ways of doing things, each in its own silo. We had to create from those silos unified processes and procedures and national teams, for each of those practices. And they couldn’t be just any processes and procedures; they had to be ones that enabled high volume, profitable work. It was a challenge.

Part of the challenge was that many of the lawyers that we brought in were senior lawyers who were not open to changing how they worked. When we encountered those lawyers, we had hard discussions with them, and if they continued to resist change, we parted ways. On the other hand, if they could see that the interests of the client came first, they would come on board. Most learnt to love change and adopt new ways of doing things.

Now that we have finished this work, I’ve gone back to my original function that I was hired for, which is to grow the estate planning business — we believe this area of law has great potential for us.

Most of the lawyers and law firms in Australia are sole practitioners. They have very little opportunity for succession — they do not have equity that they can sell. No capital for retirement. During their career they have done no more than create a job for themselves, and as soon as they stop peddling, their bikes fall over. Slater and Gordon has created a market for legal practices — a market that did not exist before. A lot of the practices we have acquired are ones that would have closed if we had not come along to buy them. With our processes and systems, we can turn these barely profitable businesses into profitable ones.

Away from the glamour of large firms and city based commercial firms, many small practitioners work very long hours for very small return. Once they’ve paid their expenses, they barely have enough to live on. They represent the greatest number of lawyers in Australia. When we acquire a practice and the lawyers come to work for us, they suddenly find that they are working an eight hour day instead of a 12 to 15 hour day. This is because they no longer have to worry about marketing, or administration or accounting — all they have to do is be lawyers and take care of the clients. Some lawyers, who had planned to retire, and we are expecting to do so, don’t because for the first time in a long time they are enjoying practicing law — they are doing what they were trained to do instead of being an untrained practice manager.

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At Slater and Gordon we insist that everyone become a specialist. Some people question the wisdom of this, but we find it is liberating because our lawyers don’t have to accept everything that comes in the door — they only do the work they are best at and most enjoy doing.

Before I joined Slater and Gordon at the age of 54, I was looking forward to giving up the practice of law because I was bored to tears and had to take on work I preferred not to. I had to worry about the overdraft and managing people. Now that I am at Slater and Gordon, I enjoy being a lawyer so much, they will have trouble getting rid of me.

I wonder what law will look like in 10 to 20 years’ time. I don’t know, but I am sure it will be different from what it is today. Many of the things that lawyers have done as their bread and butter legal work is now becoming the domain of non-lawyers and technology. And this evolution is just beginning.

There will always be a role for firms, large and small boutique, that look after large corporate clients. As for firms servicing consumers, small law firms will be a thing of the past. Their work will be done by large corporate structures that are able to provide affordable high quality services to consumers.

David Beech, CEO, Knights Solicitors LLP

Knights Solicitors, a firm that dates back to 1759, combines commercial and corporate legal services for companies with wealth management services for individuals. Upon converting to ABS status in early 2013, it became an MDP by adding a town planning practice to its real estate offering. In addition, it received a “7-figure” investment from Hamilton Bradshaw (James Caan’s private equity firm), using the investment for a new IT system and employee training.

We became an ABS because the old model doesn’t work — it stunts growth and it stops decisions from being made — and I didn’t see why I had to accept it. An equity partner in a law firm is expected to be an owner, a manager and a lawyer. It is impossible to do all three well: Not only are there inherent conflicts, but few lawyers have been trained to be managers. It is far better for a firm to have professional management with a CEO. This gives the right people the autonomy they need to make decisions without the need to wait for a consensus, and it eliminates mistakes because decisions are not made in silos. Everyone at Knights feels the benefit of this,
from our employees who are empowered to move ahead with their work, to our clients who get quicker, better results.

The decision for Knights’ partners to apply for ABS status was an easy one: We saw a time bomb — who will pay the equity partners their capital accounts? Many lawyers have lost their appetite to become equity partners, and the pool to replace them is diminishing. The partners were concerned with who would pay their capital. Law firm failure will continue, and partners will not be able to get their capital out. Knights’ partners saw an opportunity and were happy to take it.

The next decade will bring massive opportunities, but only for those who are prepared. In adopting a corporate structure that leaves money in to create value instead of stripping it out every year, and by changing how we deliver our services and price our work, we will be in a position to adapt to the changing world and take advantage of those opportunities.
D. Holistic Services

Legal issues rarely exist in a vacuum, separate from other, nonlegal issues. For this reason, a number of alternative structures seek to assist clients with the totality of a given situation, not just its legal aspects.

Christopher Mills, Partner and COO, Schillings

Before acquiring ABS status in 2013, Schillings operated as a traditional law firm, specializing in privacy and defamation and family law. Upon acquiring ABS status, Schillings integrated a cyber-security business and recruited risk management professionals from the management consulting world, transforming itself into a reputation and privacy MDP combining legal services with intelligence gathering, risk consulting and cyber security. Schilling’s Chief Operating Officer and partner Christopher Mills is not a lawyer.

2007 was a great year for Schillings. But by 2008, everything had changed. Before, there were a small number of players, everything was in print, and issues rarely expanded outside the borders of the UK. Today, the market is diluted with many new entrants, everything moves very quickly and nothing stays within borders.

We could have stayed a traditional law firm, but opportunities for growth were limited. We could have diversified into other legal sectors, but we did not see a future with that either, because the market is saturated. In the end, the best option we saw was to stick with our core competency of reputation, privacy and family law, but to add non-legal, or what we call ‘extra-legal’ services. So, knowing that the new rules would soon come into effect, we bought a cyber-security business, and, as soon as we could, we combined it with our legal practice into one entity.

As an ABS, we have transformed our business. Today we are international consultants specialising in defending reputation and protecting privacy, as well as international family law. Our professional staff includes lawyers as well as intelligence analysts, risk consultants and cyber security specialists. We are the only business in the world to complement a reputation, privacy and family legal offering with intelligence gathering, risk consulting and cyber security. No other single provider groups these legal and non-legal services together the way we do —
typically clients need to work with three or four other organizations to get the same services. Compared to that, we are able to provide both a higher quality as well as seamless service to our clients.

I would say also that previously, as a traditional law firm, we were very much evidence-led. Today we are also intelligence-led. All of this has been made possible through the diversity our ABS status affords us.

Our status as an ABS allows us to do much more than we could if we were not an ABS. It allows us to help our clients in the ways that they really need help. Although we are more than law, law is still important to who we are, in fact it’s our USP because we bring legal rigour and legal privilege that other non-legal providers can’t.

Because of the wide range of services we offer, our competitive field is large. That being said, we are the only ones that combine those services into a single MDP service offering. We have lawyers working with risk consultants working with intelligence analysts working with cyber security specialists — all on a single team. If we are compared to law firms, we offer a breadth of extra, non-legal services. If we are compared to an intelligence or a risk consulting firm, we can offer legal privilege while they cannot. In sum, no other firm is what we are or does what we do.

Further, because of our heritage as a law firm, our clients are reassured that our work is rigorous and disciplined as well as ethical. This is difficult for firms that do not have their heritage in law to replicate.

Our clients are international businesses and high net-worth individuals. What defines them is that they are global citizens. They have activities and assets in a number of countries, which may or may not include the UK. Our non-legal services are not bound by jurisdiction.

More specifically regarding our individual clients — their main country of residence could be anywhere in the world, and at any given moment, they could be anywhere else in the world: Americas, Far East, Middle East. They are some of the world’s most successful individuals, and our work is geared around their private lives.

Currently, I am one of two nonlawyer partners in the firm. The second person is Major General Tim Robinson, who served in the British Army. He brings a highly strategic approach to crisis management and prevention. We are planning that by the end of 2016, we will have a total
of seven partners who are lawyers and four partners who are not lawyers (their backgrounds will be in intelligence, risk consulting and/or cyber security). This reflects the diversity of our business. It also reflects where our business is going — the revenue generated by our non-legal staff is growing very quickly, and we expect that soon it will equally match the revenue generated by our legal staff. Our partners are our principal client-facing people. They do not all need to be lawyers. They do all need to be problem-solvers.

In the old days, the partners did client work, business development, supervision, and firm management. Today, many firms have woken up to the fact that you need to bring in experienced, qualified professionals to run areas like finance, marketing, operations — if you want to run a professional organization, those are not just things that you do after-hours or on the weekend. In a corporation, the question would not even be asked — you would naturally have qualified persons with business skills and experience who know how to run a business. The ability to offer partnership to nonlawyers is important in recruiting and retaining the best people. You have to be able to motivate them and reward them. If you want to grow the business, it is important to give them skin in the game.

What we are doing is ground breaking. We are moving very fast, and I find it exhilarating — and fun. We are able to stretch ourselves individually and stretch ourselves as a firm.

Law firms are slow at change. For that reason, even in England and Wales where the regulations permit alternative structures, it is not a surprise that there are still many law firms that do not appear prepared to embrace change — they don’t understand innovation is about evolution and survival. In my opinion, in the long term those firms will suffer.

There are, of course, a number of innovative firms who are taking advantage of the regulations in England and Wales to create multidisciplinary structures. Not just in law but in other professional services, in particular the big accounting firms. They have applied for and received ABS licenses, and they are beginning to offer legal services, which will take away work from some law firms. They have existing relationships with their clients that make it easy to cross sell their new legal services.

As a partner at Schillings, even though I am not a lawyer, I am approved and authorised by the SRA (Solicitors Regulation Authority) to be a nonlawyer manager.
I think that those who continue to hold onto their opposition to alternative business structures are missing the point. The point is the need to evolve with your clients to better serve their needs and respond to what they want.

Since we became an ABS, our revenue has doubled, and we project that over the next few years our revenue will double again. Our explanation for this is that our ABS allows us to think differently and to offer more services. Our ABS also allows us to be what our clients want us to be — able to provide intelligence, cyber, advisory and legal services seamlessly and without being limited by jurisdiction.

That being said, as happy as we are being an ABS and as much as we enjoy the freedom to innovate beyond legal services, to be truthful, in many ways we’ve moved on from it. That is, it already feels old news. It’s just the way we do business.

Here in the UK, you see less and less the reference to “ABS” and more and more the reference to “new law.” All that means is the desire to do something different. And it especially means the desire to stay up to date in this digital, global, interconnected, 24/7 world. What it brings to mind for me is the Charles Darwin quote that goes something along the lines of it not being the strongest of the species, nor the most intelligent, that survive — it is those who are most prepared to adapt and evolve.

Our vision for 2020 is to be an international consulting firm that helps successful individuals and leading companies all over the world to enjoy what they have achieved, free from intrusions into their private lives or assaults on their character by defending their rights and freedoms in an age of instant communication and relentless change.

Julia Hulme, Managing Director, Omnia Strategy LLP

ABS Omnia Strategy LLP is a multidisciplinary practice that advises governments, multinational companies and high-profile individuals in a wide variety of areas including international public law, negotiation and dispute resolution, market entry and strategic communications including reputation management. Its management team includes lawyers along with experts in business, diplomacy, and communications.
Omnia is not a conventional law firm and we do not fit within the traditional law firm model. Instead, we are a hybrid organization, combining multi-disciplinary skills beyond pure legal expertise, such as commercial understanding, government relations and diplomacy, policy, strategy, and communications.

The firm has four pillars or core areas of practice: (i) international dispute resolution, which means finding strategic solutions and, where possible, preferring negotiation to litigation, although we are always prepared to represent clients in court or at arbitration if it is in their best interests, (ii) international public law, effectively an umbrella for our focus on business and human rights, legislative reform and capacity building, (iii) outsourced general counsel, this generally involves helping companies as they expand with the challenges they face including market entry, and (iv) international strategic communications and reputation management.

Because we do not conform to the standard expectations of a UK legal practice, it is difficult for us to pinpoint our competitors — we need to point to a large variety of firms and companies, because we mix different qualities that typically are not mixed.

The firm was born from a recognition of the gap between what law firms can provide and what clients want. Clients often just want help solving a problem by their trusted advisor. Their problems are not just legal — they concern the company or the individual as a whole. This is why we wanted to become an ABS — to permit us to deliver to our clients a holistic approach with our advice. The flexibility to offer clients comprehensive advice and not just legal advice — that is what the ABS structure permits us to do.

The ABS structure definitely gives us an advantage as compared to a typical law firm because we can assemble the entire team that the client needs. Take high-profile litigation for example: Normally, a client needs to hire a law firm for the litigation itself, a government relations firm for government advocacy, a communications firm for reputational and communications issues, and a strategy firm to help with how to move forward. With us, it’s a one-stop shop. The client can pick up the phone and speak to just one person, who understands all of the different work streams, and from who they can be confident they will receive a consistent message.

Clients are expecting a lot more from their lawyers today — they want better solutions to their issues at more reasonable rates. This requires more agile structures. The ABS structure
offers flexibility and the ability to have a modern approach to providing legal services. I don’t think that anyone should be afraid of it.

Jeff Winn, Managing Director, Winn Solicitors

Winn Solicitors (WS) offers a one-stop-shop accident management service for customers, including compensation, provision of replacement vehicle, medical services and professional advice.

WS started as a very specialist service in relation to road traffic accident work. We have evolved to become a one-stop service for someone who has suffered from an accident and it was not their fault. Insurance works differently in the UK than it does in the US — UK insurers have a lot of discretion in how they settle traffic accidents. Sometimes the insurance companies of the two parties will apportion blame for an accident to both drivers, even if only one was actually at fault. This results in each insurance company covering the damages only for its own insured, and the premiums for both drivers going up. This arrangement works in your favor if you cause a lot of accidents, but it is not in your favor if you are an innocent victim.

When a potential client comes to us, we first verify that they were not at fault. Once we’ve made that assessment, we then:
- Notify the client’s insurance company that there was an accident, but without making a claim on the insurance,
- Pursue for payment the insurer of the other vehicle directly (including compensation for injuries and damages),
- Organize the repair of the client’s vehicle, making sure that it is repaired with high quality materials and workmanship, and
- Arrange for the client to be provided with a replacement vehicle.

While this service offers many benefits to the client, the biggest benefit is that it keeps their insurance premiums down.

When we started this service, it was targeted to wealthy customers who could afford to pay upfront for their repairs and to rent a replacement vehicle and wait for compensation from the insurers. Now we are in a position to offer this service to a wider range of clients. We can do
that by having a sister company of the holding group offer interest free credit to the client. This pays the bills for the repairs and replacement vehicle until we recover from the other driver’s insurer. Of course, this means that we have to make sure that we get right our initial assessment of who was at fault, because if we don’t get it right, we lose out.

This service has proven to be very popular — since we started it about 12 years ago, we have grown from a staff of 8 to a staff of 300. It’s been a very rapid growth rate for a very specialist service.

Our route to market is in part directly to clients, and in part indirectly through insurance brokers, who outsource their claims services to us. Because of our expertise in reviewing the evidence, we are able to have many cases judged as no-fault, which saves the brokers’ customers money.

What clients like about us, and why they come to us, is that we do offer this one-stop-shop. If we were competing on just one element, such as just compensation for damages, we would not be able to attract the clientele that we attract. Our clients know us as the place to go if the accident was not your fault — as the place that will take care of everything.

When we applied to the SRA to become an ABS, in some ways the application process was easy and in some ways it was difficult. We expected the part about our operations and business plan to be tough, but it wasn’t. But as regards our investors, the process was not so smooth. The process probably works well if the investors are a few private persons who live in the UK, but in our case we had international capital coming in. This created complications when we needed to complete full criminal record checks on every investor in every place where they had lived. The criminal record check process in the UK is quick and easy and can be done online. But in some countries it is not quick or easy at all, and some of our international investors have lived in many different places in the world. One of them is a woman in her 60s who was born in a no-go zone in Mexico. She ended up having to travel across Mexico in bullet-proof car and with an armed guard in order to return to the town where she lived as a child, as there the criminal record check could only be completed with her personal presence.

As soon as we could in 2006, we changed from a partnership to a corporate structure. We did it partly because it offered certain tax and investment benefits, but also because we understood the regulatory changes that were coming and we wanted to be ready for them. In

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particular, we wanted to be ready for capital investment as soon as the rules permitted it. The changes to the rules did not happen as soon as we thought they would so we turned our attention to other things. But later our financial advisor mentioned to us that he had recently met an investor, JZ International (JZI), who was interested in regulated sectors and in the legal sector in particular, and asked if we would be interested in meeting them. Of course we were interested. At that time, we were growing so fast we were at the top end of their investment criteria, so JZI brought in Souter Investments as a co-investor. They did a pretty thorough due diligence on us, and then in August 2013 the investment was finalized.

We wanted outside investment because we saw it as the only way to be able both to grow the business as well as to take some cash out. Funding from banks is not an option for us because banks struggle to understand our model, and notably to understand the time involved in recovering payments. Banks are used to lending on invoices of 30, 60, 90 days payment. They are not used to lending on the outcome of litigation. So, the only way for us to grow as rapidly as we did over a ten-year period was to fund ourselves by taking as little cash out of the business as possible. When we received the investment from JZI and Souter, there was finally some cash for me and the other directors to take out.

As for the money that remained with the business, some of that money has been earmarked for future acquisitions.

JZI explained to me that they invest in regulated sectors, such as finance and banking, because they see regulations as barriers to entry, thus the businesses they invest in will not face fierce competition. They became interested in law, they told me, because they foresaw that the new regulations would force smaller players out of the field, in favor of larger ones who can streamline their processes and handle work more efficiently. They saw that as the smaller players leave the market, they will leave open opportunities for the larger players to acquire their assets and grow further. JZI told me that they spoke with approximately 100 other legal businesses before choosing to invest in us, so they learned the legal sector thoroughly and got a good idea of what it looks like.

In our governance structure, we have two boards — an operational board and, above that, a strategic one. The operational board is made up mostly of lawyers – that is the board that oversees the company’s work on a day-to-day basis. There are lawyers on the strategic board, but
they are not in the majority. The strategic board takes a big picture view of finance, potential acquisitions and growth.

This structure has required us to change our decision making processes — some decisions are discussed more thoroughly and take a bit more time to be made. We appreciate the business approach that our investors bring to law — they bring a level of strategic thinking that we didn’t have before. They are always on the lookout for new opportunities for WS and they have contacts that have proven beneficial for the business.

WS is in the process of implementing a share option scheme for its employees. We want to do this as we think everyone works harder if they have a piece of the action. We think that our employees will have more drive to see business succeed if they know they will share in that success.

I don’t understand arguments that having nonlawyers as shareholders will cause us to act unethically. I don’t think it works like that. There are business interests and there are client interests — those interests are tied as our business interest is to serve the client’s interest. I can say that WS’s investors are very very conscious of the existence of ethical rules and in no way do they want WS to breach them. And it is not in their interest that the rules be breached — if they are, WS could be fined and will lose its authorization. Our investors put a lot of money into our business — they don’t want to lose their investment.

Allowing outside investment into law firms has increased competition in the legal market. Banks are not keen to lend money in the legal sector — at least not large amounts — because it is a sector that banks do not understand. Investors, on the other hand, are coming in and are learning about the sector. And when they decide to invest, they drive competition harder and faster. What you see in the UK is that some of the best companies have attracted investment, and they are using that investment to push aside some of the less competitive players. It’s like investing in any other business — it permits the good ones to grow quickly and destroys the weaker ones. It has brought capitalism into the legal world. Whether you like it or not depends on where you sit. If you are one of the successful businesses, then obviously it is good for you. But if you still sit with your little quill pen and you are still writing things by hand on a note pad somewhere — you probably will not think that it is good for you.
I believe that over the coming years the changes in the UK market will accelerate. I think that we will see more businesses with good ideas to reach a greater number of customers — they will develop a good business model and a good delivery model, they will be able to raise funds more quickly and easily. These new models will be seen as delivering greater value to the customer, and the older models will be pushed out of the market. Overall, legal services will become both better and less expensive.

It’s not clear to me why the US rules haven’t changed yet. What is the argument for keeping out competition? For keeping out investment? The longer the US takes to change its rules, the greater the advantages that UK and Australian firms will have over US firms once the US does finally change its rules. If I were a lawyer in the US, I would be preparing myself now for these changes.

**Adrian Powell, Partner, Proelium Law**

*UK-based ABS Proelium Law is a multidisciplinary practice that offers legal and business advice to companies, individuals and governmental agencies that seek to operate in complex, high-risk and hostile environments (Syria, Afghanistan, Iraq,...). The firm has two partners, Adrian Powell, who is a lawyer, and Richard Stephens, who is not.*

Proelium is a Latin term for conflict, battle or combat. At Proelium Law, we combine legal expertise together with business and other non-legal expertise. My partner Richard and I have extensive experience in complex environments, and our multidisciplinary ABS structure allows us to combine that expertise with my legal expertise. It is an ideal platform for us.

We target clients, UK-based or not, who seek to operate in complex environments, or notably in the areas of security and defense and international development. We offer highly specialized legal as well as business expertise in the areas in which our clients seek to operate: police, intelligence, security, international development, defense industry,…

I was with the Royal Military Police from age 17 to 28. I was deployed extensively during that time: Bosnia three times, the first Gulf War, and Northern Ireland. When I left the army, I went to law school and became a solicitor. I worked as a partner in a criminal defense law firm and later for the Crown Prosecution Service. But my time in Bosnia had whetted my appetite for international work, so then I shifted to an in-house legal advisory role with a defense
services company. In that role, I spent a lot of time in Iraq and then, later, in a different role, in Afghanistan. During those times, I learned the commercial aspects of the defense industry — private security companies, logistics companies — I learned how they work and the issues they struggle with. I also learned about the sharper end of counterterrorism and obtained an in-depth understanding of how the law affects overseas operations. That’s when I realized there is a real market for helping companies, individuals and governmental agencies in these areas. There is a lot of extraterritorial law today that affects people who are working overseas and that they need to understand — bribery acts, counterterrorist financing, sanctions … the pitfalls that people can fall into if they are not aware and thinking about them.

But I don’t have all the answers, which is what makes Richard so valuable. He has significant technical expertise in the areas of surveillance, reconnaissance, and problem solving in complex environments. He has a large and strong network — he served in the Royal Marines for 23 years and he has held senior management positions in companies that work in complex environments.

Let’s say, for example, that a client is seeking increased financial backing for its operations, and comes to us to understand how they can make themselves more attractive to potential investors. I can rattle out a list of legal requirements for the client to comply with. But that is not all that needs to be done — someone needs to look at the client’s management structures, how the client works in the given environment, and how it will be able to continue to work in the future. That is where Richard comes in. Richard also brings a range of technical skills, like how to track and trace someone who has absconded with a large amount of money.

Richard is not a lawyer and he cannot give legal advice. But, given his huge breadth and depth of experience, it would be naïve to think that he cannot give a legal perspective.

For clients that operate in complex environments, it is easier for them to come to us rather than to a law firm that does not have any particular knowledge or understanding of complex environments or the client’s particular industry. A traditional law firm would struggle to provide our unique combined and specialized expertise and services — their solution would probably be to throw people at a problem in order to come up with a solution. In contrast, we understand what the client is trying to achieve, and we understand the realities of the environment they operate in. From the client’s perspective, we “get it.”
Here is an example — private security companies have a lot of challenges: who they recruit, how they recruit, how they procure their equipment, how they move their equipment overseas, how they account for their equipment, how their companies are set up, what their management structures are, how they grow and merge with other companies,... Other law firms can deal with these things, but we have a better perception than most other firms do of how to deal with them in the specific context of a complex environment.

While for the moment most of our clients are based in the UK, we position ourselves internationally. We anticipate that we will develop clientele in the UAE and, eventually, in the United States, which is of course a big and attractive market.

Theoretically it would be possible for us to work without an ABS license, but that is not the way we wanted to go. We want to be able to offer a full package to our clients, and our ABS license permits us to that. That is, it allows us to work in the reserved areas, and notably in both civil and criminal litigation. So, for example, if a client runs afoul of counterterrorism laws or is subject to sanctions, we can represent them.

There are very few firms in the world that do what we do, the way that we do it and with the range of expertise that we have. The fact that we can offer clients a one-stop-shop is comforting for them. Much more so than clients needing to go to two, three or four places for the same mix of work. At the same time, defense, security and international development are in an enormous industry — that is, we are in an enormous industry.

We found the application process for our ABS license to be beneficial for us. It provided us with a structure to clearly identify and delineate what our objectives as a firm are, what our risks as a firm are, and how we will manage them. It helped us to clearly focus on what we are as a business.

More than that, our ABS structure brings us a great advantage and competitive edge in that it allows us to rely on much more than legal work to earn a living. So, for example, I can provide a 3-month training course on legal aspects of counterterrorism, without needing to get a special dispensation from the SRA or to set up my own consultancy with its own separate accounting, etc.
Further, our ABS structure allows us to work in a way that makes us happy. We can do a variety of different forms of work, and we can work outside the context of a traditional law firm. We enjoy working this way, and we don’t discount the importance of that.

A lot of other professions and skills are built on many years of studying and practical experience, not just the legal profession. Embracing those skills can only benefit the professions and make it more attractive to clients. Whilst hiring non lawyers as employees is an option, I believe you get better buy in and commitment if someone has a say in the management and leadership processes and feels like they own the process. I acknowledge that my perspective is probably different from a lawyer who has solely worked for law firms, but there is a great utility in taking on different thinking and approaches to business. I asked Rich to partner with me for a few reasons. I enjoyed working with him in the other environments we did. He isn’t the same type of personality that I am and we worked well managing staff and getting the best from them. There were strong synergies in our thinking about global business and he brought ideas that I hadn’t had, but also I showed him approaches he hadn’t thought of; somewhere in the middle we had new ideas and that can only be a good thing. Our combined networks together were strong when we looked at them and it made sense to bring them together. We know we can run large organizations, but both of us enjoy, and wanted, the challenge of creating our own, new organization where we had the final say on its direction — and it combined our years of experience. I believe that partnering with Rich rather than paying him for work as an employee, I will get the best from him. He owns the issues and the success and I think that’s a hugely important motivator. That’s not to say I am better than him at leadership or management, just that I felt he was better being an owner rather than employee. Remember, the firm isn’t offering legal advice on divorces or buying houses, its defense, security and development markets. They aren’t brand new legal areas, but having Rich as part of the ownerships means we can offer not just legal advice, but real structured help to companies, individuals and organizations that need context-specific non-legal advice.

Creating a multidisciplinary practice is not a straightforward matter. It took Richard and me some time to make the decision to create Proelium Law and then more time to complete the application process. Creating a multidisciplinary practice requires big picture thinking — thinking from the client’s perspective rather than the lawyer’s. I have spent many years not just
in the legal industry — I believe that has made it easier for me to see the big picture and to understand issues from a client’s perspective. I suspect that many lawyers who have spent most of their careers in the legal industry alone struggle with that more than I do.

I understand that in the US there is resistance to ABS-type structures — to multidisciplinary practices and to allowing nonlawyers to own shares of law firms. I think that if lawyers had the experience of ABSs, they would understand their benefits and stop being so afraid of them. Putting it very simply, I think ABSs are a nicer way of doing business than traditional law firms. In the US, I wonder if there is ego involved — does that explain the resistance to ABS? Myself, I don’t have the type of ego where I am so protective of being a lawyer that I can’t allow myself to partner with a nonlawyer. We all still have to obey the ethical rules, regardless.

In my opinion, the legal profession that needs to think more expansively, and more internationally. It needs to think more about integrating with other professions and skills, lest the profession whither on the vine.

From my perspective, the world today is a very small place. Getting on a plane to the US or to Dubai is nothing for me. Proelium Law is industry facing, but our industry is worldwide.

**Richard Stephens, Partner, Proelium Law**

I have a background in the military and, since retiring from the services, in security consultancy. Adrian and I met in 2010 on a UK Foreign & Commonwealth Office hostile environment course. We stayed in touch afterwards and increasingly had the occasion to work together. The two of us came to realize that with our combined rolodexes, we had a reasonably big network. We also realized that we could put our combined experience together in a unique fashion, seeing that we could serve a niche audience that works in — or services — complex environments and who otherwise would not have access to the specialist expertise and legal knowledge that we can provide.

Indeed, our market research tells us that our offering is unique. We offer specialist knowledge in a highly particular industry, and we underwrite our services with huge experience from around the world.

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My area of expertise is in security and counterterrorism. In the course of my career I have helped to develop counterterrorism institutions, I’ve given advice to governments with respect to counterterrorism, and I’ve written national counterterrorism strategies for countries in South Asia. I also have expertise in the area of tracing and tracking of individuals. In sum, I have a pedigree in surveillance and reconnaissance around the world. Through Proelium Law, I am continuing to offer these unique services and expertise.

The most significant difference is that because Proelium is a law firm, my business card carries more weight. The fact that we operate as a law firm offers a degree of comfort to our clients. In itself, the security industry is not truly regulated. Anyone can offer their services, and, indeed, anyone does — the industry seems to attract a lot of crazies — people who read guns and ammo magazines and decide they are experts. In contrast, the legal industry is highly regulated. The fact that Proelium is a regulated law firm offers assurances to our clients of our reliability and, to put it bluntly, our basic sanity.

My contribution to Proelium Law is, of course, not on the legal side. We are careful to explain to clients that I am not a lawyer. Adrian and I are careful that we each address the matters that fall under our respective areas of expertise.

A big part of my role is business development. This means that even though I do not perform any legal analysis myself, I nevertheless need to be able to describe the legal aspects of our offering in a clear and credible manner. At the beginning, I felt ill-equipped — I needed time to get my head around it. Adrian worked with me extensively, and I did a lot of reading, and now I feel confident that I understand how to represent what we do — both the legal and non-legal aspects — in a credible manner.

Adrian and I could have set ourselves up as consultants under two separate structures, but we strongly preferred a singular structure. It allows us economies of scale, it gives us leverage, and it permits us to have unitary conversations with clients and potential clients.

We position ourselves internationally. Our industry, our subject matter expertise and our experience are all international. We anticipate that we will open an office in Dubai, as that is a fulcrum for our industry.

A suggestion that I, as a nonlawyer, would cause Adrian or Proelium Law to act unethically, does not make sense. I am perfectly capable of understanding the ethical constraints
in which we need to operate, and I have no motivation to not respect them or to cause Adrian or
the firm to not respect them. At any rate, the fact of being a lawyer offers no ironclad guarantee
that the ethical rules will be respected — lawyers themselves breach the rules. To accept an
assertion that nonlawyers are less ethical than lawyers I’d want evidence; I have a history of
effective and ethical senior leadership and find the assumption that my standards would fall
below those of a lawyer to be hubristic by those in the legal profession who think that way.

I am aware also of the assertion that nonlawyers need not be offered partnerships in a law
firm, that it would be wholly appropriate for them to be salaried employees only. This seems to
be me to be conflating two separate issues, those of lawyers and business leaders. Is there a
guarantee that the former is also the latter? We set up a partnership because we know that we
work well together, we’re happy to share the risk, we provide different yet hugely
complementary skills, we each bring strong reputations and therefore the firm enjoys balance. As
a partner you share ownership and so feel a greater motivation and commitment to the
organisation. In sum, the reasons for partnership in an ABS are (presumably) identical to those
supporting partnership in a standard law firm.

Keith Arrowsmith, Partner, Counterculture Partnership LLP

UK-based ABS Counterculture Partnership is a multidisciplinary practice that offers to cultural
and creative not-for-profit organizations services in the areas of strategic planning, funding,
financial and project management, legal and governance advice, capital projects, training and
advocacy. Counterculture has 10 partners of which one, Keith Arrowsmith, is a lawyer.

What the partners of Counterculture have in common is that we all serve not-for-profit
clients in the arts sector. The firm was formed in 2009 by two people who had extensive
experience providing professional support to London art galleries, notably in the areas of
fundraising and accounting. Over the years they joined forces with a number of other persons
who provided complementary services (strategic planning, governance, marketing, tech
support,…) for the arts sector. A mutual contact asked me to provide workshops, and I started
working alongside them, as a qualified solicitor working with a traditional law firm. They would
bring me in on a project basis, to help with governance structure and charity and commercial
legal questions — essentially to provide a suite of legal services to run alongside their offering to their clients.

When I was working with Counterculture on a project basis, our clients told us that they love working with us because we have a shared ethos and a shared way of working. But, they complained, it could be simpler, since you make us do the administration and the invoicing twice instead of once. This is why we became interested in the ABS mechanism — we saw it as a way for us to work more closely together. We spent some time thinking about it and discussing it — about a year — and we finally decided that ABS was the best way forward. While we saw a number of benefits, a large one was that I could go on providing my services under the qualification of solicitor and under the regulation of the SRA.

When we started the application process with the SRA, it became quickly clear that their concept of a multidisciplinary practice was quite different from ours. It seemed difficult for them to get their heads around what we were, in part because of our small size, but especially because the percentage of our legal services is so small compared to the percentage of the other types of services that we offer. We ended up having a number of meetings with the SRA in order to explain how we work.

Further, there was a mismatch between the SRA’s concept of regulated activities and what we needed from a regulator. Their system of checks was more geared up for a typical high street law firm doing wills and conveyancing work, which is not our risk profile at all. Notably, the SRA is quite focused on the security of client accounts, but we hold very little client money. We didn’t fit into any of the SRA’s standard risk profiles, and they appeared to have trouble developing one that was right for us.

As if that were not enough, the SRA also had to get a handle on the fact that, because of our accounting, public funding and other work, we were already regulated by about four or five other regulators. Those regulators had all gone through our processes already and were happy with them. We had to review our processes again to be sure that the SRA was satisfied with them, too. And for every change we made in response to a request from the SRA, we had to make sure that our other regulators were happy with it as well. We have taken the approach that when the various regulations overlap (such as with respect to confidentiality, money laundering,
disclosure...), we conform our processes to the most stringent. We’ve not experienced any direct conflict among the different regulations.

One thing that I find odd with the SRA’s rules is that as an ABS, I have to have higher levels of professional indemnity insurance then I would have to have as a sole practitioner. The risk profile is completely out of kilter. I chose not to be a sole practitioner because, in my view, having people sitting around my partnership table who are experienced and skilled in accountancy, cash flow, finance — all those extra things that help run a business — is less risk for everyone, including myself, and certainly less risk than if I tried to do everything on my own. Yet, the SRA considers it more risky.

In summary, I don’t think that the regulations in place today in England and Wales are as adapted to structures like ours as they should be. I don’t think that they focus on the real risks of my practice. Some parts of the SRA’s Code of Conduct is not particularly applicable to my activities.

I have to be careful with how I establish my files and document my work. For example, with respect to governance, I provide training as well as legal services. When I provide training, the applicable engagement letter, invoice, file structure and insurance policy are all different from the ones applicable when I provide legal services.

Our competitors are, for the most part, large, traditional law, accounting, and management consulting firms. I believe there are three reasons why clients come to us instead of them. The first is because our overheads are lower, we are able to charge lower fees. The second reason is because we are able to work in a seamless manner that other firms don’t do. Our clients will come to us from those other firms complaining that they met with one person to explain their problem, and were then passed from department to department or individual to individual. The other firms aren’t “joined up” like we are. The third reason is because we are specialized in the art sector — this gives us an insight into our clients and their needs that large law, accounting and management consulting firms are not able to offer.

When we applied to the SRA to become an ABS, we were asked how Counterculture would improve access to justice. This is my response to that question: there are clients who talk to me now because I am sitting with them wearing a Counterculture badge that wouldn’t dream of walking through the door of what they see as a law firm. There is something about the
perception of being in this more comprehensive structure that allows them to be more comfortable in engaging with me. Some of it might be related to concerns about cost, but I think that the real reason is that because I am wearing a Counterculture badge, I can begin conversations that otherwise I never would have been able to have. Many people in the arts start with the premise that their world and the legal world are so far apart, a lawyer could never understand them. With Counterculture, I am able to communicate with clients in a much more open way because they don’t see us as a traditional law firm. We’ve had real success in that way, and it has been helpful for the arts sector.

To be honest, many of our clients don’t care about whether or not we are an ABS. They just want us to crack on with the work, and they are happy that they do not have to worry about whether a question is for an accountant, or a lawyer, or a fundraiser, or whoever. They just throw us the question and we sort it.

Beyond that ability to work seamlessly, our status as an ABS brings additional advantages to our clients, even if they do not make the connection with our status. For example, when we assist with a dispute, I can accompany the client all the way into the court room — something that I could not do if we were not an ABS. Further, when we are dealing with third parties (for example, a client’s landlord to negotiate a lease), there is value in being able to say we are a law firm. If we couldn’t, we would be treated as if we didn’t know what we were talking about. Another example – the fact that I am a solicitor greatly facilitates our negotiations on behalf of clients with companies like Google and Facebook, whose procedures are much simpler for solicitors than for lay persons.

All that being said, there is a certain amount of regulatory hassle and fees involved with being an ABS. So, we will periodically review whether or not it is worthwhile for us to maintain the status.

It is easy for us to organize our work internally. We work in a t-shaped way, in that each of us has a huge depth of knowledge in his or her particular area, and does not dabble in other areas. At the same time, we communicate extensively. We use the cloud-based CRM system Clio, which is designed for law firms and we find it works well for us, too. Each client has a client relation partner, and that person is responsible for making sure that things get done as they should.
We have ten partners — four senior and five junior, and an independent Chair. Of those, I am the only lawyer. The backgrounds of the other partners are in accounting, public funding, business and strategic planning, project management, and as practitioners in the arts. All but the independent Chair provide services to our clients. Our independent Chair has the skills to provide services to our clients, but we purposely keep him at arm’s length in order that he can maintain an independent perspective, as a check on our own, internal perspectives. He brings us a wealth of experience from his management positions with a number of major arts organizations.

Before I came to Counterculture, I worked in a traditional law firm of about 200 people. At that firm, almost all fee earners were competent lawyers, but most did not have any real training in management, in communications, in planning or processes, or in finance or accounting. Yet, everyone was a manager. As a result, there was a risk of lack of rigor in the work and I felt more exposed there than I do at Counterculture. Further, I had little in common with my colleagues around the table who worked in insolvency, in personal injury, … Their clients were completely different from my clients and the crossover was low.

In comparison, at Counterculture, we all have something in common, which is that we all want to work in the arts. This provides a framework for our work that simply isn’t there among lawyers in a traditional law practice. At Counterculture, we all provide a different kind of service, but to the same kind of client — we have a commonality that I never had before. Also, when I sit around a Board table, the people I am with, with their different backgrounds and training, see problems very differently than I do. Sometimes it takes us a while to understand each other, but eventually we do, and we are much better for it. In sum, I find Counterculture to be an easier — a better — place to work, because each of us recognizes the strengths of the others. We each bring something to the table that the others value, we share clients, and we share a way of working. This was not the case at my traditional law firm, where, even at client events, you could tell there was little in common in the room. Having our focus being the sector rather than having the focus be “you’re a lawyer” is fantastic for us and for the clients.

I think there are two different kinds of multidisciplinary practices — there is the kind where the legal arm is operated as a business separate from other arms, and there is the kind where the legal arm is part and parcel of a singular business. I think that as regards the first kind,
there is a danger that clients can be pushed from one arm to the other, without a feeling of having a real choice in the matter. This raises questions of free choice of lawyer, of independence and of credibility. That being said, these issues are not unique to legal services — we accept these kinds of conflicts in other industries, such as in journalism and the ownership of media outlets. Nevertheless, in the case of Counterculture that type of issue does not arise because, while my colleagues and I are from different disciplines, we are one business.

In my opinion, the real challenges to our industry today are less with regulation and more with technology. I think that someday in the near future, there will be a company that will have the resources to develop the technology needed to reach a highly disparate global market. As a result, I wonder if, in the future, we will be looking at just one or two legal services providers in the world, with everyone else just getting their information from Google.

I’ve heard the criticism that law firms should not be owned or managed by nonlawyers because law is a profession and not a business, or because nonlawyers will cause the lawyers to violate the ethical rules. I find that criticism ludicrous as well as highly conceited, insular, and disrespectful of other skills and experience. I personally find there is much more value to have colleagues sitting around my board table who have a set of skills and experience that I don’t have. The suggestion that those colleagues are less as persons or less as professionals because they do not have a law qualification is just wrong. I have friends who are brilliant, switched-on, client-focused lawyers. But they have no idea how to run a law firm. Any training they’ve received was tick-the-box training, not real training. The only time I’ve felt really exposed was working in traditional law firms. Because the partners did not have the skills to know if the person they were employing, for the accounting function, for example, had the right skills, and they had no way of interpreting the information they were given by their employees. In contrast, at Counterculture, I have someone sitting next to me bearing the same risk that I am bearing, and who is able to reassure me regarding the risk.

ABS is a tool to enable lawyers to consider how they deliver legal services. It allows individuals to challenge the profession and challenge how it works. It means that lawyers can no longer take their relationship with the market for granted. Without ABS, there was a real danger that lawyers would become so stuck in their ways that they would deliver a Dickensian service that hadn’t moved on for a hundred years. ABS is a way of enabling the marketplace to move on.
Not everyone has wanted to or felt the need to, but many of us have, and this experience has been positive as well as valuable. Today traditional law firms co-exist with ABSs – there is a plurality of services that did not exist before.

For lawyers, it’s easy to be afraid of having a discussion about ABS — to be afraid of the changes they may create. But, as lawyers, it’s our duty to have the discussions. As lawyers, it’s a mistake for any one or group of us to lock ourselves into one way of doing or seeing things, because if we do the world will move on without us.
E. Dispersed Law Firms

In England and Wales and Australia, alternative structures have been used to create “dispersed” law firms to serve corporate clients. For lawyers, these models offer flexibility with respect to workload, type of work, type of client and place of work. For corporate clients, these models offer flexibility with respect to headcount, access to specific areas of subject matter expertise, and pricing.

Ken Jagger, Chief Executive Officer, AdventBalance

AdventBalance provides “insourced” lawyers to corporate clients on a fixed fee basis. In February, 2016 (subsequent to this interview), AdventBalance announced it would merge with UK-based Lawyers On Demand.

My background is as a partner with one of the larger firms in Australia, Freehills, which is now Herbert Smith Freehills. When I was with Freehills, it occurred to me that there are many lawyers who enjoyed working more flexibly. Also, we sent a lot of lawyers on secondment — where our lawyers went to work in the premises of our clients’ business. Our lawyers learned a lot and the clients loved it as they got switched on people who really understood their business. The only people who didn’t enjoy it were us, the partners of the law firm. We felt we were losing money as we couldn’t charge as much for the seconded lawyers and there was a significant risk that the lawyers that we had trained, would take up permanent employment with our clients.

I realized that there was a business opportunity with this type of arrangement, but that it needed to be done from a different structure. It couldn’t be done from a traditional partnership structure where it was all about the hourly rates. This could succeed only if it were done in a totally different way.

This is what makes our regulations in Australia important. It allows us to set up a corporate structure and not a partnership, and to run it on corporate principles.

What is great about what we do is that it allows the new generation of lawyers to work differently. They no longer are obliged to go to a law firm, where they work for many years 10, 12, 14 hours a day, seven days a week, with the holy grail of partnership at the end of it. We allow lawyers to work in a different way, and also give clients what they want.
There are a variety of reasons why our clients can need a lawyer on a temporary basis — to fill a gap when a member of the legal department needs to focus on a specific project or is on leave of absence, to meet an increase in workload due to specific projects, to provide special expertise for a specific project, or when a company simply needs a more flexible labor force and isn’t ready to hire a lawyer for a permanent position.

The reason it works is because we keep our overheads very low. In our offices, we have just a small number of management and administrative staff. Our lawyers work at our clients’ premises. By keeping our overheads low, we are able to pay our lawyers what they would have earned if they had stayed with a traditional law firm.

We have a Board of six people, including the Chair. We run Advent Balance as a company, not as a partnership.

We have 13 shareholders — just five are involved in the operation of the business. All of our shareholders are individuals. Some of them are lawyers, but many of them are not. Those that are not have some connection to law, for example they studied law but now work in other fields. The fact that they have a connection of some kind to law has helped them to understand the business, and to be comfortable as an investor in it. They have also been encouraged by the success of other legal companies, like Slater and Gordon, and Axiom in the US, and they’ve seen a lot of potential for investment in the legal sector.

Technology is of course very important to us. This business could not exist without it. Because our lawyers are spread out across different locations, we need technology to stay in touch, to keep them as part of the family. That being said, we do not use any special or proprietary technology — just the same things that everyone else uses.

We serve clients in Australia, as well as in Singapore and Hong Kong. It is logical for us to be there, as well as in other places in Asia, as that is where our clients are.

We have about 140 lawyers. Being an AdventBalance lawyer isn’t for everyone though—our lawyers are put into new situations every three, six, nine months — it’s like starting a new job each time, and there is uncertainty. Some people like moving around and having new challenges like that, but some do not.

What our lawyers like is the flexibility. They can work on a project for those three, six, nine months, and then take time off without being afraid of losing their jobs or being set back in
their careers. They also like the variety — for example, on one project they will work in a bank and then on the next one they will work in an oil and gas company.

While we have lawyers of all ages and lengths of experience, our typical lawyer is in their 30s and early 40s, with about 12 to 15 years’ experience. They will have worked at top tier law firms. They are at that stage of life where they want or need to work flexibly, and they do not want to work all hours of the day and night.

We give our clients a fixed price per day. But the day is not from 7 am to 10 pm – it is a sensible length — that is the deal we make with the client. Our lawyers can maintain a work life balance. That is what attracts lawyers in their 30s and 40s to us.

A fixed fee is very important to making sure that it is a sensible working day.

Our client list is a list that any law firm in town would be happy with. So not only can we offer our lawyers flexibility and variety, but also we can offer them top-end, interesting work.

Companies today are so conscious of their law firms’ costs that they give them very small pieces of information, and ask them to work on very discreet tasks. In contrast, our lawyers are able to get to know the client and understand its objectives in a way that an external lawyer never could.

To get the lawyers we want, we have to pay market salary. Lawyers want the flexibility, but they are not willing to sacrifice salary for it. By stripping out the overhead, we are able to charge the client less than what they would have paid to a traditional firm. But even more important for the client is the price certainty. Clients like that we charge them a fixed price, and that, unlike with hourly billing, there are no surprises when they receive our invoices.

Since we do not bill by the hour, we do not evaluate our lawyers based on the number of hours they bill. We evaluate our lawyers entirely based on the feedback we get from the client, and how happy the client was with the lawyer’s service. Our lawyers like this a lot — no timesheets, no worries about billing 2000 hours a year.

In Australia, the take-up of alternative structures is taking time. Yes, we have the first publicly listed law firms, but there has been a faster take-up in the UK. I suspect that is a function of larger markets and more economic opportunities there.

I think that alternative structures are good for the profession. They have given lawyers different opportunities. Until recently, as a lawyer your choices were working for a traditional
law firm, working in-house, working in government, or leaving the law altogether. So many lawyers have been driven out of the profession, especially women. What a waste of a good education, and good experience. And it’s such a shame, given that most of the lawyers I know enjoy practicing law. They just don’t want to do it 20 hours a day, seven days a week, year after year.

Today, firms like ours offer lawyers other ways of practicing. This is good as we are losing far too many people from the profession, and notably far too many women. 70% of our lawyers at AdventBalance are women, and that is because our model suits them.

I think that lawyers in the US and Canada should be pressing for changes to the rules. It used to be the case that if you worked hard and were a decent lawyer, that you would make partner. You had to work hard for it, and after you got it, you had to continue to work hard. But it was an attainable goal.

This is no longer the case. It is a saturated market, where firms squabble over diminishing market share. Partners are holding tightly onto partnership, so access to partnership is all but closed to other lawyers — you have to be both brilliant as well as lucky to make partner.

Without the regulatory change, lawyers don’t have options. With corporate structures, a lawyer does not need to be a partner anymore — they can be employed shareholders, just like any other company. With share incentive programs, they can become owners of the business without having to go through the partnership process. You can set up a remuneration structure that allows people to go away for a while and come back, that allows for women to go on maternity leave without setting their careers back, and yet still lets the go-getters flourish.

Without alternative structures, I see the profession failing. Partnership is a failed business model — it just hasn’t completely failed yet.

Law is a business, and it has been for quite some time.

The argument that alternative structures will result in unethical behavior makes no sense. We all have to conform to the ethical rules whether we are in a corporate or partnership structure — if we didn’t, we would be out of business very quickly. The argument that alternative structures will result in unethical behavior is the argument of a guild that is looking to protect its monopoly.
William Robins, Operations Director, Keystone Law

UK-based ABS Keystone Law and Australia-based ILP Keypoint Law are “dispersed” full service law firms, with senior solicitors working from satellite offices, supported by a central office. Private equity firm Root Capital holds a 35% share of Keystone; Keypoint Law’s shareholders include Keystone Law.

Keystone Law was established in 2002. One of Keystone’s founders had been working in Hong Kong at that time, and from there realized the opportunities that technology offered to replace overhead, to improve client service and to improve quality of life of lawyers. Keystone was born from the idea that it is possible to offer clients everything they expect from their traditional law firm, but without the problems that plague traditional law firms.

Those problems include not just high overheads, but also the problems of work being pushed down to the least qualified and the duplication that involves. In a traditional partnership, senior lawyers instruct midlevel lawyers who in turn instruct junior lawyers. While the rates of the junior lawyers are lower, this reduces quality and increases the room for error — any cost savings are taken up by supervision and rendered wholly irrelevant if the senior lawyers can themselves offer rates comparable to junior lawyers at the bigger firms. We say that this work can be done differently; that just one senior lawyer can be involved, and that the repetitive tasks of the junior lawyers can be replaced in whole or in part by technology and by the work of nonlawyers. And we say that the result of this process will be higher-quality work done by the senior lawyer that the client trusts, and a better relationship with the client.

We have designed our process so they do not rely upon physical office space. We’ve designed our processes around technology and our IT infrastructure. At first only our central administrative team was in an office and all the lawyers worked on a dispersed basis and our use of premises for lawyers was confined to the hire of flexible, but high end, meeting rooms. As we have grown, we have moved to having office space for our lawyers as well as well as to house further administrative staff and our own dedicated meetings rooms.

Our lawyers are currently geographically dispersed around England, with a few being overseas. This will change as the firm expands internationally.

We have a marketing team that works with our lawyers by helping them to grow their client base, and we also help our lawyers refer work to each other.
Our business model is that we invoice our clients for the work, and the amount collected is apportioned between the lawyers and the firm, with the lawyer keeping a high percentage of the fees.

We are profitable because we keep our overhead low and flexible. We have the scale required to afford the sorts of tools lawyers need such as document management systems, IT support, logistics, accounts, client on boarding, bespoke intranet etc. It has taken a great deal of time, money and expertise to build and acquire these resources and systems. There are many firms which can and do copy the model, but to do so with sophistication is quite a challenge.

Our lawyers are not employees, they are independent contractors. They do not receive a salary therefore it would be wrong if they were subject to billing targets and generally beholden to the firm. For many senior lawyers this is an ideal arrangement — they can work as they choose; when they work a lot, they are paid a lot. When they are not working, our overhead stays low because we are not paying them, but of course we choose to work with lawyers with busy practices in order to avoid fallow periods.

We have a different way of thinking and of approaching the work. We don’t impose minimum hourly or billing targets. We don’t use statistics to decide if our lawyers are working hard enough and to argue that some need to work harder. Instead, we work with our lawyers to recognize opportunities and help them secure them. We use our management and administrative staff to support our lawyers, in many ways the lawyers can be seen as the clients of our central office.

There is a strong culture of cross referral. Teams of lawyers are formed to work on projects, and then disbanded and re-formed as projects are completed and new ones begin.

While we turn away many applicants every week if they can’t demonstrate that they meet our strict admissions criteria, our growth remains strong. This is driven by push and pull factors. The push factors from other law firms are wide spread; a great many are unhappy in traditional partnerships. They may not like how their particular partnership functions, they may have more management duties than they want to have, they may have too little control over their work, they may have to put their house on the line to respond to a capital call, they may be obliged to spend all their time doing training. These are all manifestations of the same issue: their current firm does not support them and their clients properly. At the same time, these lawyers are coming to
understand the possibility that technology offers for better, more flexible and more enjoyable working. As a result of those factors, we are able to attract entrepreneurial, free-thinking lawyers who would like to work in a structure like ours.

We decided to become an ABS because of the flexibility and the opportunities it offered to us: to bring in nonlawyer expertise, to bring in outside capital, to launch a new business line. We wanted to have the best platform for pursuing and growing our business.

Our senior management is made up of three lawyers — a managing director, an operations director (myself) and a business development director — and two nonlawyers — an IT director and a finance director. Because we could offer them senior management positions together with equity, we were able to recruit very good people who are now helping us to shape our business.

In 2011, at the time the regulatory changes in the UK were taking effect, many potential investors contacted us. They saw the legal services industry as virgin territory, akin to a land grab, with opportunities to invest that until then had been closed to them. And they saw our business model in particular as an attractive one. The traditional partnership model is not an investable model: the value of a traditional business is in the partners who can leave and there are high overheads (mainly salaries and offices). The value in Keystone rests with the infrastructure of the firm and its collaborative culture. In essence lawyers are coming together and using what Keystone offers to do more with less. Our model deliberately is based upon variable expenses.

We met Root Capital right about the time when we were beginning to understand how we could use external funding, and their investment with us was finalized in October 2014.

We have or will use the investment in a number of ways: to cash out one of our retiring founders, to make key hires, notably for IT and finance roles, to invest in new technology, and to search for and recruit more lawyers.

We are actively searching and recruiting now. Many lawyers find us on their own, but many lawyers don’t yet know that they are looking for us, so we have to find them. We have launched a significant marketing campaign we call “Set Law Free” (www.lawsetfree.com), for lawyers located not only in the UK but also in other countries. We are already operating in
Australia, under the name Keypoint Law. It was easy for us to set up their because of the similar regulatory regime that permits nonlawyer ownership.

Keypoint is a joint venture with Keystone and investors and the template for our international expansion. We are actively looking for more joint venture partners in other jurisdictions keen to start, run and part own a cutting edge law firm within the Keystone Law Group. Such lawyers will be highly entrepreneurial, share our vision and recognize the value or our IP and access to capital.

In my experience, it is only lawyers who criticize nonlawyer ownership and management of law firms. In my opinion, the only people who are threatened by this are conservative, inward looking lawyers. They are not able to see nonlawyer ownership and management as the fantastic advantage that it is. Outward and forward looking lawyers welcome this with open arms. They understand that there is a massive unmet need for legal services, and that ABSs together with technology, offer a way to address that need. Traditional private practice law firms just don’t do very well in addressing the unmet need.

The monopoly that lawyers had in the UK and that they continue to have in other countries, such as the US, is holding back the legal services industry. It is limiting the clients that can be served, it is limiting the way that lawyers can work to serve those clients, and it is limiting income and profits.

_Warren Kalinko, CEO, Keypoint Law_

Keypoint is a law firm for talented senior lawyers who are expert in their respective practice areas and love the practice of law, but they do not want to do it within the constraints of the traditional law firm model. Our lawyers earn 70% of the fees that they bill, in a structure that is very low overhead and allows them the freedom to tailor their pricing in a way that appeals to their clients. Our firm gives lawyers a style of legal practice which combines the best features of sole practice with all the benefits of a firm.

Our lawyers have the freedom to decide what type of practice they want to design for themselves, which matters they want to work on, what clients they want to work with, how they want to work with those clients, and how to price our services. Those are decisions that lawyers want to be in control of. They do not want those decisions to be dictated to them by a
management board or a partnership or a bureaucracy. They don’t want the firm dictating to them how many hours to work, who to work for or how to bill. Lawyers want to own and control the business decisions that affect their practice.

At the same time, lawyers want to be able to benefit from the resources of a large firm — IT systems, secretarial assistance, professional indemnity insurance, colleagues in complementary practice areas, legal research tools, access to interns, continuing legal education, collegial events.

We have only senior lawyers (average 20+ years’ experience), and they have all the autonomy they want to make business decisions about their practices and not be answerable to anyone on those decisions.

Keypoint is an incorporated legal practice. We provide a range of services to our lawyers — secretarial support, meetings rooms, teleconferencing facilities, professional indemnity insurance, IT systems, invoicing and accounting, file archiving, collegial activities. This is funded from the 30% of the client fees that we retain (the remaining 70% is paid to the lawyer).

Keypoint was launched in May 2014. Today we have about fifteen senior lawyers.

There are four distinct profiles of lawyers who are attracted to the Keypoint model. One of those profiles is women with children, who are looking to enjoy legal practice, but without the need to bill 60 or 70 hours a week and with complete flexibility with respect to where they work. In this regard, they are free to work from their own satellite office or from the firm’s offices if they prefer.

A second profile is people who have been partners in firms, but are no longer enjoying the experience. They want to have more autonomy, but do not want to go into sole practice because it is isolating and does not offer the infrastructure or support (IT, billing) of a firm.

A third profile is sole practitioners. They can find it difficult to win business as a sole practitioner, notably if they are pitching to large businesses who are seeking a holistic service across disciplines. With us, they can offer a holistic service.

The fourth profile is lawyers who are increasingly concerned with the large overhead of law firms. We had one lawyer come to us and say that all they need is a computer, a cell phone and a subscription for research tools. They no longer wanted to be saddled with things they see
as unnecessary and as reducing their earnings. Our model offers them the opportunity to earn more money.

Our lawyers do need to come to us with a strong client following. That being said, someone with the capability to build a client following could do that with us.

One of the ways that we support our lawyers is with marketing. We run marketing events, we produce marketing material, we work on tenders. We recently successfully applied for registration on the Australian government’s list of eligible law firms — with that registration, our lawyers can provide services to Commonwealth government agencies.

Keystone Law (UK) has a major shareholding in Keypoint Law. James Knight, the Managing Partner of Keystone Law, is on the Board of Keypoint Law. Keystone provides us with a lot of support — know-how, guidance, systems, documents, marketing materials. We benefit enormously from their proven success with our model over many years in the UK.

In addition to Keystone Law, Keypoint Law has four additional shareholders. Two of those shareholders are companies which have directors or nominees who provide services to Keypoint, and two are purely financial investors.

We are structured in a manner very similar to Keystone. We have a central office that provides a wide range of services and support to our lawyers. In that central office, we currently have four FTE (full time equivalent) employees: me, another of our directors, a practice manager, a graduate lawyer, and some part-time resources. We also utilize a host of third-party consultants to provide services to the firm where they can be delivered by those parties more cost-effectively (like IT). We expect our Central Office team to grow as Keypoint grows (Keystone has about 25 people in its Central Office now). Like Keystone, our lawyers are self-employed.

I am the Legal Practitioner Director. It is my responsibility to ensure that we have appropriate management systems in place. It is my job to provide supervision and oversight of the practice, to ensure that our Principals are happy and getting the support that they need, and to attract new lawyers to the firm.

We have regular meetings with representatives of our investors to inform them on how the firm is progressing, as you would with any group of shareholders. The people we meet with
are successful business people who have experience in a number of different fields; and they are well placed to advise us on how to grow and improve the firm.

For example, it was through discussions with our investors that we decided to change our model to offer office space to lawyers who would like to license it, at cost from the firm. Our investors provided valuable input into that process.

In Australia, if anyone in an incorporated legal practice engages in professional misconduct, the firm’s Legal Practice Director can be considered responsible for that misconduct unless it can be shown that all reasonable steps have been taken to prevent it. That places a significant responsibility on legal practitioner directors. In order to meet the requirements of the legislation, legal practitioner directors need to ensure that the firm has appropriate management systems in place which are operating properly. In Australia, if lawyers do not conform to the legislative requirements and solicitor conduct rules, they could lose their right to practice. There is a very strong regulatory context in which law firms operate. For that reason, the view in Australia is that there should be no obstacle to nonlawyer shareholders because there is a sound regulatory framework in place to ensure the correct behaviors.

At any rate, there are many companies that provide services that have profound implications on our lives — child care services, nursing services — their shareholding is open to people from all walks of life, and no one thinks that the shareholdings of those organizations should be restricted to child care professionals, nurses etc. We have laws that establish duties on Directors of companies, and this provides a good level of protection against undesirable conduct on the part of directors.

If you do not have business people involved in law firms, then this limits how legal services can innovate and evolve. Outside investment and business expertise, together with regulation, is a very good combination. You don’t need to ‘throw the baby out with the bathwater’ by precluding nonlawyer investors from becoming shareholders; you simply structure the regulations so that they set the standards of conduct you wish to achieve.

Like every industry, the legal industry is evolving. It is evolving in two ways — both how clients want to receive legal services, and how lawyers want to provide them. Our regulations in Australia support a diversity of shareholdings and this in turn supports innovation in the way legal services are delivered.

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F. Turning Employees into Owners

Certain ABSs in England and Wales have made a point of either creating an employee share scheme or offering partnership to nonlawyers, with the expectation that such schemes and partnership will work to inspire and motivate their employees in ways that the mere payment of salary cannot.

David Simon, Chair, Triton Global

*Triton Global integrates insurance claims administration, legal defense and representation, and claim investigation and adjusting for professional indemnity insurers and policyholders. As an ABS, Triton Global was the first legal services provider to offer employee share ownership, and to become a member of the UK Employee Ownership Association.*

We have a very specialized client base. We provide insurance-based claims services for the policy holders of insurers, predominantly in the area of professional liability insurance.

In the UK, we offer to our insurer clients a “one-stop-shop” for handling their claims work: legal, claims management and loss adjustment. We have also been able to create a team to provide world-wide audit and inspection services for our insurance client base. Before the Legal Services Act, those services had to be offered separately, through different entities. Now we have lawyers, loss adjusters and insurance professionals all working together to produce a single integrated product.

We thought that it’s nonsense for insurers to buy three lots of services. Why can’t they, if they want to, get all their claims management services from one place? Our clients love it — they like the fact that they can come to the same place for their claims defense work, and that they can negotiate to have it all handled for one, predictable fixed price over a long term basis. With us, insurers no longer feel like they are writing blank checks to have their claims management work done. Insurers no longer have to hope that the cost of defending claims will not exceed the amount of the premiums they collect.

When the Clementi Report came out, we were very excited, as we immediately saw the possibilities. We waited patiently until it was possible to make an application to become an ABS.
In creating the ABS, we have become something very different than we were before. We pooled the three existing businesses, including the law firm, into one company, and eliminated the partnership structure in favor of a corporate structure, with a Chief Executive. I was nervous about it — I’d been self-employed for over 40 years and then I became an employee. For our lawyers, we decided to keep the title of Partner because that is what the market, and notably the law firms we service as policyholders, recognizes as what the most important lawyers are called.

What we are most excited about with the ABS structure is the possibility to offer to our staff a stake in the business. Before ABSs, only lawyers could have ownership of a law firm. With an ABS, we can offer share ownership to all of our staff, not just the lawyers. We believe that this is a very important way to inspire and motivate our employees, and research shows that it results in significant improvement in employee productivity and retention. We’ve even become a member of the Employee Ownership Association. Another reason to be happy about this is — what do you do when you retire? Law firm partners don’t have anything to sell when they retire — with an ABS, you have something you can sell.

One of our shareholders is the Trust Company (it holds shares for the employees before they vest in them individually). In this, we have a ready-made vehicle for purchasing shares of those who want to downsize their holdings. One of the things that we have done this year is to encourage some of the senior shareholders to offer some of their shares for sale, so that they gradually reduce their holding. These shares are promptly bought by the Trust on behalf of newer employees. In this way we are ensuring a ready (and active) market in our shares whilst keeping the ownership still within the business.

Another benefit of becoming an ABS is that it permits us to demonstrate to clients that we are a well-managed, stable business, that we can make decisions faster than a traditional law firm, and that we are not held hostage to a handful of prima donnas. Our clients have responded very favorably to this — some have asked us why we did not do it sooner.

Our clients are major, global players. We have deployed on a global basis a claims management system that permits the viewing of claims in real time. We’d like to be able combine our businesses in other countries the way we’ve done in the UK, and notably we’d like to do it in the US, but so far we’ve not been able to. Australia seems more likely at the moment,
as their rules are similar to the UK’s and we are also looking at what might be possible in Canada, Singapore and the Republic of Ireland.

For the future, we see the form of ABS as a growth mechanism for us. It will permit us to bring in external investors (if we wish to), to expand our overseas operations, and to attract like-minded, progressive thinking lawyers and insurance professionals.

The legal profession, not just in the UK but everywhere, is facing problems that are two faces of the same coin: declining profitability and a large number of law graduates who cannot find jobs. The ABS model offers a way to address those problems. And the days of amateur management are over.

Jenny Beck, Partner, Stephensons Solicitors LLP

UK-based full service law firm Stephensons Solicitors LLP delivers services for individuals and businesses. The firm has over 470 staff based in ten offices across England and became an ABS in early 2013.

Stephensons became an ABS in order to bring a wider range of people and skills to the decision-making table. This ability has been key for the firm. Lawyers tend to see things in a certain way — by having different kinds of people around the partnership table we’ve been able to come up with some great ideas. Nothing says a traditional practice cannot employ innovative people. But there is something about ownership that makes people focus their minds in a different way. By appointing non-solicitor partners, the firm has been able to take the firm to a new level: it is the business ownership aspect of an ABS structure which keeps people engaged with the firm and working towards shared goals.

The types of people I am talking about are the ones who are needed in any successful business: people who understand finance, have the ability to market and can foresee future trends. If they are merely employees and not partners, they lack the ability to make critical decision at the core of the business.

Regardless of whether or not any specific individual actually becomes a partner, it is important that we have in place a structure which permits non-solicitors to become partners. The ABS structure empowers talent and gives individuals the opportunity to grow with the business and serve their entire careers with the firm — there is no need for someone to leave for career
progression. We attract people who are innovators and out-of-the-box thinkers. But we also retain them because there is no glass ceiling.

It is this critical mix of different people who came up with the idea for Constant, the firm’s exclusive client loyalty reward scheme. The Constant hub provides free access to legal support and many client loyalty benefits. Constant is unique in its offering to clients who can access a helpline open 24-hours a day / 365 days a year for 30 minutes of free legal help. Constant includes additional extras relevant to a client’s legal needs, such as access to a network of counsellors and advice on managing the media. Finally, the Constant hub also offers access to a range of guides, DIY legal advice videos and additional benefits and one-time offers.

Our clients go on a lifelong journey with us. We can help them buy their first home, arrange a will, set up a trust or resolve a dispute with a neighbor. Constant provides a person with the assurance that their lawyer is ready to work with them at all times, delivering this message in a client-friendly way.

My personal area of interest is access to justice, and notably issues relating to children and domestic abuse. In 2012, Britain made changes to legal aid which resulted in a very large number of people losing their eligibility for free legal counsel for family law services. In light of these changes, finding affordable solutions became more critical than ever.

Our services at Stephensons are tailored to suit our customers’ needs and financial means. We are customer-up rather than law firm-down, which means:

- Some of our services remain eligible for legal aid; those that are not are provided at a fixed price, so people need not fear the uncertainty of not knowing what the service will cost them (we do offer hourly rates if needed),
- We offer modular services. The client can have us as much or as little involved as they would like, and involved at only at those points in the process when they want us to be involved. In this way our services can suit everyone’s pocket,
- We offer extended services by phone, Skype, email, so that people who do not want to come into an office don’t need to. Whether it’s because they are simply busy or because they’ve been subjected to violence and prefer to remain in a place where they know they are safe,
- We offer flexible hours, including evenings and weekends, and
- We demystify the law by talking to clients in plain English.

In other words, we don’t just take over and tell the client to write a big cheque. Instead, we ask the client how they would like to see us (face-to-face, phone, or skype), how they would like to communicate with us, and what elements of legal service they want from us (everything or just parts).

Technology is an important aspect of our services. Our clients have access to our Constant client portal, they can pay for our services online, and meet with us without leaving their homes.

We are also currently in the process of developing an online hub of free and Do-It-Yourself (DIY) guides and videos. Consumers can use this literature to decide whether they would like to buy one of our in-depth legal advice packages.

If so, they can do that online, without the need to speak with anyone if they do not want to. As they go through that pack, there may be instances when they decide that they would like help. In that case, they can click through to request a call. We’ll charge a fixed price for this counsel. As they work through the pack, they will be able to do many things for themselves and save money as a result. The client may eventually reach a part they consider particularly important or complex, and prefer for it to be dealt with a lawyer. In that case, they can upload all their materials, and we’ll take it from there, in most cases for a fixed price.

In the UK, law is still a cottage industry with many small firms around the country. Stephensons is large enough to remove the random element that you normally get with a cottage industry, and instead offer a reliable, specialized service on a national scale. At the same time, the service is not standardized or commoditized if the client does not want it to be. When you’ve had an accident, or you’ve lost your job, or your marriage has broken down — those are personal things, and in those situations many clients still want to deal with people. Stephensons has developed a process that both keeps costs down and gives people options, yet also includes a personal and personalized service.

It’s certainly possible to do all these things outside the structure of an ABS, but it is much more difficult. At the same time, ABS is just a structural tool. How successful it is depends on the business and its leaders.
Robert Camp, Managing Partner, Stephens Scown LLP

Based in South West England, Stephens Scown provides legal services to companies and high net worth individuals. The firm specializes in areas important to the South West region, such as mining & minerals, renewable energy and tourism. The firm obtained an ABS license in 2016 in order to be able to implement a limited employee share ownership scheme.

Stephens Scown was founded in 1935 on the back of the China Clay industry, which was and remains a key industry for the region. This led us to develop an expertise in mining & mineral work, and we remain one of the top mining & mineral firms in the country. Our service sectors have grown to also include, most notably, renewable energy and tourism, and international divorce. We serve mainly small and medium-sized companies as well as high net worth individuals, predominately based in the South West but we also act nationally and internationally. In the past five years we’ve nearly doubled in size, from just under £10 million to nearly £18 million annual revenue. In the past three years we doubled headcount — we now have 250 employees and about 50 partners.

We are not a classic ABS in that we have not brought in external capital, nor have we made an individual non-lawyer (such as a finance director) partner. In addition, we have retained our structure as a limited liability partnership (LLP) — we have not converted to a corporation.

What we have done is this: we have created a limited company which has become a partner in the LLP, holding one share. The limited company has no voting rights, but it does have a right to share in the profits. One share of the limited company is owned by an employee benefit trust, with all eligible members of staff being entitled to become a member of the employee benefit trust. This structure allows the members of our staff to become very small — and I appreciate that it is very small — owners in the business.

Our model operates this way: the management board sets an annual profit target for the business. The target is set at an amount that the board considers to reflect a fair and proper reward (based on a number of factors including return on capital invested in the business, the local market, the growth plans for the firm, etc) for the partners of the business, whilst at the same time providing the opportunity for a sizeable bonus pot going back to the staff based on the success of the firm as a whole. The profit target is published to the staff. Once that profit target is
achieved, 50% of the firm’s profits above that amount are paid to the newly created limited company, which then distributes it to the employees via the employee benefit trust.

Most of our employees — over 90% — are eligible to participate in our scheme. Essentially, all employees who have passed their probation period and are not being performance-managed are eligible.

We would have liked to have put in place a true staff ownership scheme, but it wasn’t possible in our case. This is because we are a partnership and not a corporation. With a partnership, a true share ownership scheme would mean having 250 additional partners — under the SRA’s rules, this would be unmanageable because the SRA would need to understand who each of those 250 people are and, especially, be able to ascertain where control of the firm lies. We were strongly advised not to go down that route, as under the current rules it would be an administrative nightmare and the SRA would look unfavorably on it.

If we had converted to a corporation, we would not have had this issue as it would be easier to determine control, regardless of the number of shareholders. Yes, we could have chosen to convert to a corporation but we decided not to because we are more comfortable with a partnership. In addition, while there are certain tax advantages with a corporation, there are also tax disadvantages that we would like to avoid.

For the past five years, we’ve been focused on client service, and we’ve won several awards for client service. We’ve recognized that client service is dependent upon staff engagement, and we want our staff to feel part of our firm, and not just a cog in a bigger wheel. This is the context in which we decided to become an ABS — in order to increase staff engagement. Research shows that if you can engage your entire staff so that they are all working for the same common goal and not just for rewards for those at the top, then the quality of service will go up. So you get happy clients who recommend you to others, and you get a virtuous circle.

Providing excellent client service is about exceeding expectations and creating magic moments for clients. It can be as simple as returning a phone call quickly, giving the client reassurance or personally delivering a contract. I wanted Stephens Scown to be unlike any other law firm, so for inspiration I looked outside the sector and drew on the experience of Nordstrom, the US department store. Nordstrom has created one of the most powerful word of mouth
marketing successes through its ‘Nordie stories’ — examples of excellent client service, which are celebrated and shared. Having client service at the heart of our strategy was something that everyone in the firm could get behind and be passionate about. So we have our own ‘Scownie stories’ of staff who have gone the extra mile, as well as other initiatives which look to improve service and therefore ensure our clients are happy to recommend us to others.

Our employee ownership model is inspired by the John Lewis model, even if we were not able to put in place John Lewis’s exact model for the reasons I’ve just explained (we can’t add 250 partners to the firm). John Lewis is a UK-based department store that, in a manner comparable to Nordstrom in the US, has built its brand on exceptional customer service. Their ability to do this has been attributed to (i) its partnership form; and (ii) its employee ownership scheme. John Lewis sets a profit target and pays its employees a substantial bonus based the company’s profits over that target.

The reaction of our employees to our scheme has been very positive. We see this reflected in a number of ways, large and small. For example, when we opened our search for trustees for the employee trust, we had 20 volunteers step forward when we only needed three. As a result, we’ve decided to increase the number of trustees and hold elections for their selection. Another example: I saw a post-it on the computer of a member of support staff reminding her to post mail second class because it could “help the bonus.” It’s a small thing, but multiplied across the business, it has an impact. People are aware that if they can save money, if they can get money in quicker, if they can bill quicker, if they can do a little bit more, then a reasonable percentage of that savings or earnings will go into the bonus pot. What the employees appreciate is that they can see how helping the company succeed will help them individually.

It’s important that the staff all know from day one how the bonus will be calculated. Traditionally, bonuses are entirely discretionary and no one knows if they are going to get one or not at the end of the year. With our scheme, there is certainty that if we hit the number, everyone will get a bonus.

Our scheme has also made a big impact on recruitment. It is one of the things candidates mention when they apply for a job with us.
We’ve also had a positive reaction from clients. Several have complimented us, and a few have asked us in detail about how we’ve done it, as we got them thinking about doing it themselves.

The ones we’ve really impressed are our professional indemnity insurers. They see it this way: having employees more engaged in the business and having a stake in the outcome means that they will take risk more seriously.

In the UK, there is a strong movement towards granting employees shares in businesses. It’s a way to give employees more control over their future. To support this movement there are a number of tax advantages in place, such as dividends paid to employees are tax-free up to a certain threshold. Unfortunately, those advantages apply to corporations rather than partnerships, so Stephens Scown isn’t able to benefit from them (and it made it more difficult for us to put our scheme into place).

At Stephens Scown we put people at the heart of everything we do. This means we are very focused on our staff. You see this reflected in our Sunday Times ranking as the 12th best medium-sized company to work for in Britain – the highest ranking law firm. We see our scheme as a further demonstration of our focus on our staff, and it sets us apart from our competitors.

**Martin Powell, Director, OmniaLegal Limited**

*Based in Bath, OmniaLegal Limited offers a range of bundled and unbundled legal services and products to both individuals and businesses, many on a fixed price basis. Director Martin Powell was formerly the Managing Partner of Withy King, a large regional (South West) law firm.*

OmniaLegal Limited is owned and run by three persons. Two of us are solicitors: myself and Robert Derry-Evans, who was formerly the Managing Partner of the City firm CMS Cameron McKenna. The third person, Nikki Smith, is not a solicitor. Her background is in marketing, IT and finance and she led a large conveyancing team at Withy King.

We have described the firm as a “legal services cooperative” because prior to obtaining our ABS Licence we formed alliances with other businesses to provide a full range of legal services and products.

Two examples of “products” include wills and powers of attorney, for which we offer fixed pricing. As regards our products, clients can purchase them online and in doing so they can
opt for an additional “managed service” with a friendly voice to guide them. It has been our experience that most clients are not quite ready to go online completely — they would prefer to pay a bit more in order to have some guidance, even if the rates they pay are lower than those which a traditional law firm might charge.

In contrast to our products, our services are provided in a highly personalized manner. What I mean is that one person or a small team handle a matter from cradle to grave; the client is not bounced around from department to department. Our clients like that we offer a continuity of approach, focused on them; not the way the law firm is structured internally.

Before we obtained an ABS Licence we were not regulated and for that reason we had to form alliances with regulated providers in order to offer a full range of services. Now that we have obtained our ABS Licence, we will bring in-house many of the products and services that before we could only offer through those outsourced providers.

You might wonder why we offer both highly personalized services as well as less personalized products. The reason for this is as follows: sometimes clients behave as clients, and sometimes they behave as customers. Let me put it another way: not everyone who is in the market for a watch wants the same kind of watch. Some want a Rolex and others want a Swatch, for example. It depends on their perception of what they want, both tell the time but are different brands with different mechanics. It is the same for legal services. Some clients want full service, and are prepared to pay for it. Others want quick and simple solutions. Their perceived value of the solution is low, and they are not prepared to pay high fees for it.

With respect to our products, we see our principal competitors as some of the internet providers like Cooperative Legal Services, RocketLawyer, and other sites where you can download documents. That being said, there are very few firms that combine products and services in the manner that we do. We offer our clients a holistic approach with a strong reputation, choice and high value for money. Traditional law firms struggle to provide all these.

We sought an ABS Licence for two reasons. The first is because it offers us the best framework for us to serve our clients. It allows us to combine under one roof the large range of services that our clients seek. This allows us to better control the services, something that has been difficult to do under our old outsourcing model.
The second reason we sought an ABS Licence was to be able to involve Nikki as an owner and director in the business. She brings to OmniaLegal extensive skills and expertise in marketing, IT and finance that solicitors cannot offer. In our opinion, she greatly strengthens our business. Notably, she has been indispensable in the creation and implementation of our software. Further, she understands law firms very well, has experience in managing firm-wide financial accounting and reporting and a large conveyancing team. With her, I know that the firm is in good hands.

The fact that Nikki is not qualified as a solicitor does not mean that she is not highly skilled, and does not mean that she acts unethically. It’s quite arrogant to suggest that only lawyers should own and run legal businesses, because only lawyers understand how to do so. Not only lawyers can be trusted to act with integrity.

In England, the ABS structure allows us to embrace the talents and skills of persons who may not be lawyers, but who can help us to grow our businesses. Certainly in some instances it makes sense to merely employ such persons, without offering them ownership. In other instances, and notably when the person in question is as valuable as any solicitor partner, then it makes sense to make that person an owner of the business. It’s churlish to claim that there is something wrong with that. It’s indefensible to deny those businesses such opportunities for growth. People are a business's greatest asset.

For 11 years I was the managing partner of a traditional law firm. I believe that traditional law firms have many strengths. I believe that law firms can benefit greatly from the fresh approach and attitude that non-lawyers can bring and notably from people who have experience with providing high quality customer care. You can’t get the best out of those people without offering them management authority as well as the rewards of ownership.
G. Opposites Attract? Law, Charity and Free Legal Services

For many, free legal services is an oxymoron and law and charity are not an obvious pairing. Looking deeper, it becomes evident that they can be, in a variety of contexts, and not only in the present-day, but also in the past.

Luke Geary, Managing Partner, Salvos Legal and Salvos Legal Humanitarian

Salvos Legal is a not-for-profit law firm that provides commercial and property services to corporations, government agencies and not-for-profits. The fees collected by Salvos Legal, less expenses, are used to fund Salvos Legal Humanitarian.

Salvos Legal Humanitarian is a full-service law firm that provides services to the “disadvantaged and marginalized” in family law, housing, social security, migration and refugee matters, debt, criminal law and other areas. The services of Salvos Legal Humanitarian are offered free of charge; the firm has a staff of lawyers whose salaries are paid from the funding of Salvos Legal.

Both Salvos Legal and Salvos Legal Humanitarian are wholly owned by The Salvation Army and the two companies have the same Board of Directors. I am one of the six Directors on each Board, and the only lawyer — four Directors are trustees of The Salvation Army, and the sixth is a retired Salvation Army Officer.

Both Salvos Legal and Salvos Legal Humanitarian are not-for-profit law firms. The reason for their existence is to serve people in need. They are an expression of the social work of The Salvation Army, in a justice sense.

Our senior lawyers are called partners, but they are salaried — they do not own any shares in the companies.

Our non-lawyer Directors have fiduciary obligations to the companies and to The Salvation Army itself. They have no motivation to cause either company to act in an unethical manner. At any rate, the non-lawyer Directors defer to me on legal issues.

That being said, there are many aspects of running a law firm that lawyers are not necessarily gifted in, or are not exclusively gifted in. The Directors of the two companies are senior executives running a major public organization, and Salvos Legal and Salvos Legal
Humanitarian are businesses. In addition, The Salvation Army requires them to conform to a code of conduct.

Salvos Legal Humanitarian, to date, has provided free legal assistance on 16,000 matters, at no cost either to the government or to The Salvation Army. That’s 16,000 cases of access to justice that otherwise would not exist. And that number goes up with each passing day.¹

I think that there are lawyers in other countries who would like to do what we are doing at Salvos Legal, and there will probably also be those who would see Salvos lawyers as second class lawyers. They might think that if you are worth a million dollars, then you go and get a million dollars — you do not sell yourself short for a community service.

When Salvos Legal first pitched for commercial work, we faced questions about whether or not we were serious. And our lawyers faced similar questions — whether they had what it takes to work in a “real” law firm environment.

We overcame the preconceptions against us by attracting “one big fish,” which was one of the largest banks in Australia. Once we had one big client who recognized that this was something they wanted to do with their legal work that meant that the next big client would not be so nervous. Since they knew that the Commonwealth Bank of Australia had taken that leap, they felt that they could as well. And the third client was even easier, and so on. And now that conception of us no longer exists.

At Salvos Legal, we are showing that it is possible to create opportunities to provide community service, but still maintain your professionalism and the quality of your work. We are not a $2 law firm out in the suburbs. We are high-performing lawyers in the Central Business District of Sydney, and we act for some of the biggest companies in Australia. Our partners have joined us from major national law firms and have strong professional credentials. In 2014 we were recognized as Australia’s Law Firm of the Year at the Australian Law Awards, and in 2015 we were named “Corporate Citizen Firm of the Year” and “Boutique Firm of the Year” by Australasian Lawyer.

Alternative business models definitely provide opportunities for innovation in the delivery of legal services. They permit legal services to be offered cheaper and quicker and to be

¹ Salvos Legal maintains an online counter of the number of matters for which it has provided free legal assistance since 2010: https://slh.salvoslegal.com.au/counter.
made more broadly available to a cross section of society. Salvos Legal Humanitarian specifically targets the disadvantaged and marginalized, but alternative structures can also serve the ordinary person who otherwise could not afford a lawyer.

You don’t have to do what everyone has done in the past. If you want a better outcome, then you have to do things differently.

There is a significant problem with access to justice. An important reason for this is that the legal profession has typically not been open to doing things differently, has not been open to creativity. If you want change, then you have to be creative. Or, at a minimum, don’t stop those who are.

Chris Byron, Managing Director, Aspire Law

Aspire Law is a joint venture between Aspire, a spinal cord injury charity, and Moore Blatch, a personal injury law firm. Aspire Law specializes in persons with spinal cord injuries. Aspire Law does not deduct fees from a client’s compensation award, and 50% of the profits earned by Aspire Law are paid to the charity Aspire, which it uses to provide support, funding and housing for people with spinal cord injury.

Aspire Law was created in 2014 as a joint venture between Aspire, a national spinal cord injury charity, and Moore Blatch, a mid-tier personal injury law firm. It was formed to provide legal advice to persons with a spinal cord injury, with the purpose of forming an independent and reliable income stream for Aspire, the spinal cord injury charity. Aspire Law’s profits are shared equally between Moore Blatch and Aspire, and Aspire uses its share to help persons with spinal cord injury who do not have a claim for compensation (most people who have spinal cord injury do not have a claim for compensation).

The types of help that Aspire the charity provides to people are things like adapted housing, peer-to-peer support and counselling, access to technology and internet.

Aspire Law obtained an ABS license from the SRA in November, 2014. Filling out the forms was long and detailed. Notably, we had to provide a lot of information about the two organizational owners of Aspire Law, as well as personal information about the managers of the two organizational owners. But once we had completed and filed the forms with the SRA, the application process went very quickly.
Moore Blatch’s motivation to do this is to build their track record and market share in the personal injury market. In addition, the firm has a tradition of working with charitable causes in the UK.

It is difficult for spinal cord charities to raise funds, as compared, for example, to charities for children or for cancer research. It became particularly difficult after the recession of 2008-2009 when many corporate donors cancelled their funding. Aspire Law is a good opportunity for Aspire the charity to build a long-term, robust income stream.

In a typical spinal cord injury claim, the claimant’s fees are paid by the insurer of the entity that recorded the accident. Aspire Law is paid with those fees. These fees can be significant because these are long complex cases that can take two to three years to conclude.

Unlike our competitors, we do not take a percentage of the compensation awarded to the claimant as an additional success fee. That is important as the claimant needs that money (25% or more of the damages award) to pay for their loss of income and their care regime.

What also resonates with our clients is the fact that half of the income goes back to a charity to help others with spinal cord injury.

We are a social enterprise law firm. Our priority is to put the needs of the client first. Our priority is not to maximize partner profits.

When we reach our peak, we are expecting to handle 40 to 50 cases per year.

Aspire Law has just two shareholders — Aspire the charity and Moore Blatch. There are no other shareholders. The managing board consists of three partners from Moore Blatch and three persons from Aspire. The three persons from Aspire are not lawyers.

I am not a lawyer either. I am an operations manager. I have run a range of businesses in retail, in consulting and in outsourcing.

When the rules were changed in the UK to permit ABSs, people thought that it would lead to the dumbing down of law. But I don’t think that that has happened. What they have done is changed the way people access law.

Aspire Law provides to clients a better choice when they seek representation for spinal cord injury. They can go with firms like Irwin Mitchell or Slater and Gordon, or they can go with Aspire Law. If they go with Aspire Law, they know that a large contribution will be made to a
charity the supports others who are in their circumstances. They also know that they can retain all of their compensation, rather than just 75% or less.

Aspire the charity had a huge amount of input into designing the Aspire Law, to be sure it meets the needs of the Aspire’s service users. When we created Aspire Law, we conducted two focus groups with people who had spinal cord injury claims and had worked with other law firms. We asked them if they could create a law firm for the specific purpose of serving persons with spinal cord injury, what would that firm look like: what kind of service would it need to provide, what kind of people would need to run it? The result is Aspire Law. Aspire Law blends the best of both worlds — the legal expertise of Moore Blatch, with the charitable expertise of Aspire.

As a result of this combination, Moore Blatch’s lawyers understand that serving these customers is not just about taking a claim and making it successful in court. They also understand the other issues that persons with spinal cord injury face, such as skin conditions and the bowel dysfunction — this understanding allows them to take a more empathetic and holistic approach. No one else can match that.

ABSs bring choice and transparency to the legal market. There are a massive amount of people who don’t qualify for legal aid but cannot afford most legal services. ABSs offer huge potential to this market — to persons who can pay something, just not what law firms demand today.

Glenda Terry, Practice Manager, Castle Park Solicitors

Castle Park Solicitors was created as a community interest company\(^2\) in 2012 and received an ABS license in 2013. The firm offers legal services in the areas of family law and immigration. Qualified low-income clients can access the firm’s services at half its standard rate, and pay in monthly installments. Castle Park Solicitors is wholly owned by the Community Advice and Law Service (CALS), a Leicester-based not-for-profit organization and registered charity. The profits of Castle Park Solicitors are used to support the activities of CALS, which provides support and

\(^2\) In the UK, this is a type of company that is designed for social enterprises and that seeks to use its profits and assets for the public good.
advice free of charge in the areas of housing, welfare benefits and debt. Castle Park Solicitors’ Practice Manager Glenda Terry is not a lawyer.

The principal driver behind the creation of Castle Park Solicitors was the huge reduction in scope of legal aid that took effect in the UK in 2013. The firm has two principal purposes. The first purpose is to provide low cost, good quality legal services in the areas of family law and immigration, notably to persons who otherwise would have been eligible for legal aid. The second purpose is to provide an alternative source of income for CALS, in order to compensate for its loss of legal aid funding and to otherwise reduce its reliance upon government subsidies and grants.

Not long after we filed our application for an ABS license, the restrictions preventing in-house lawyers employed by not-for-profit organizations from charging for work were lifted. In that light, arguably CALS no longer needed an ABS license. Nevertheless, we’ve found it useful to have one because it allows us to operate a legal practice separately from the other activities of CALS.

We offer some drop-in services free of charge. Most notably, however, to qualified low income clients, we offer what we call our “access to justice” package, which means that we charge half of our standard hourly rates. Of course, this is not profitable for us, so we need to balance it against services we provide to other clients at the full rate.

Our standard rates are considerably lower than most high street firms. We keep our overheads low, and the salaries we pay our small staff are lower than what they could obtain in the private sector.

We have a Board of Directors composed of four persons. Two are also Directors of CALS — neither is a lawyer. The other two Directors are our COLP (Compliance Officer for Legal Practice) and one other person who is a solicitor but is not practicing at the moment.

It has taken us some time to establish ourselves. We compete with other small law firms, and we compete on the same grounds that they do. That is, our experience has shown us that our ethos — our status as a community interest company and our connection to CALS — does not mean a great deal to most clients. They are simply looking for good quality and prompt legal advice at an affordable price.
Today I have two roles — I am Practice Manager at Castle Park Solicitors, and I am Development Manager at CALS. I am not a lawyer. My prior experience is with law centers, which in the UK are centers that have provided free legal work largely funded by the (now significantly reduced) legal aid system.

For me, the key issue with respect to access to justice is whether people can afford it. The real tragedy, in my opinion, is the recent legislation in the UK that significantly reduced the scope of legal aid — that has had a huge effect on access to justice. No structure, ABS or not, can fully remedy that.

That being said, Castle Park Solicitors has improved access to justice in that we charge less than most high street firms do, especially for persons who are on a low income. That is part of our ethos. Not all firms, including not all ABSs, have that ethos.

The 2007 Legal Services Act opened up all sorts of possibilities for creating new kinds of structures to provide legal services. That includes the one that we have created — what was important for us was that the firm no longer needed to be owned in whole or in part by a lawyer. I don’t think that the Act was adopted for the express purpose that it be used by charities to create law firms, but it did create the only mechanism available to CALS to do that. At the end of the day, of course, ABS or not, we are all businesses and we all need to make a profit.

During the first year or so of our operations, I got the impression that we were regulated much more closely than we would have been if we were a traditional law firm. For example, we had an audit during our first six months, when we needed to demonstrate to the SRA that we have in place the appropriate procedures to ensure regulatory compliance. Additionally, with outcomes based regulation, the COLP, and I as the COFA (Compliance Officer for Finance and Administration) are obliged to report material breaches of the Practice Rules to the SRA.

Theoretically speaking, of course it is true that when a law firm is owned by nonlawyers, the nonlawyers may exert pressures that could result in ethical or other violations of the rules, or impede the COLP and COFA in their duty to report serious risks or regulatory breaches to the SRA. That being said, I cannot say that has been our experience (of course I cannot speak for other firms). Our Directors, including the nonlawyers, have a good understanding of and appreciation for the rules under which law firms are required to operate and they have accepted on both a formal and a real basis to comply with them. Further, as a small organization, it has
been easy to put in place procedures that enable us to identify and report risks in a timely manner.

**Martin Langan, Founder, Road Traffic Representation**

*Road Traffic Representation (RTR) is an online legal advice service for road traffic offenses. The website offers an online assessment of a case free of charge that can be supplemented by optional paid for one-to-one telephone advice and representation in court.*

Back in the late 1990s I was a practicing solicitor leading a personal injury department. I was a “technological virgin,” but I nevertheless started to get interested in how technology could improve our work. No win no fee agreements together with certain regulatory changes had resulted in a huge increase in volume, and it was foolish for us to think we could continue to do it in a handcrafted way. We purchased a case management system, but just as we were beginning to use it, the rules changed again making the system obsolete unless I learned how to customize it. I took four months out and did just that.

That experience taught me what the possibilities were, not just for our department but also for others. My partners did not share that vision, however, so I left partnership in order to join another firm as a case management consultant. After four years, I decided to go freelance, with my company Legal Workflow Limited.

I created RTR to stand in its own right, but also as a proving ground. I saw road traffic offenses as a sufficiently self-contained subject — good for the development of a prototype showing how to bring automation directly to clients. In order to develop it, I teamed up with a specialist in legal technology, who brought some of the deep coding skills that I didn’t have. The development took a long time — about two years — because I was funding the work myself, and I was working on it on weekends and some evenings when I could take time out from my day job. We finally launched in October, 2011 — close to the date when the alternative business structures first became capable of being licensed under the Legal Services Act, which I found quite symbolic — and which is why I set up RTR under the practice name ‘The LSA Partnership’.
My thinking behind RTR is that clients should not have to pay for process, or, at least, that they should not have to pay standard hourly rates for process. And much of the work lawyers do is process.

I won’t say that I haven’t asked myself questions along the journey — things haven’t changed as much as I thought they would, or at least not as fast as I thought they would. That being said, I think that there is a huge potential in the automation that is behind RTR, and as soon as someone with greater resources than I have (notably the budget to further develop the technology and to market the service) takes the idea and runs with it, then I think the rest of the market will follow.

The difference between RTR and other sites is that RTR offers much more than just generic information — it offers a diagnosis of the user’s case and information specifically tailored for that user, and it offers that for free.

This is how RTR works: someone who has been accused of a motoring offense is asked a series of questions about the offense, the process that the authorities have followed to date, the client’s prior driving record, and the client’s financial circumstances. With that information, the site assesses whether the authorities have followed the proper procedure (and thus whether any procedural or technical objections can be raised) and makes a diagnosis of the likely penalties the client will face if convicted, with a starting point and a range for the likely fines. The site then invites the user to answer questions about offense itself. These questions replicate the questions that a lawyer is likely to ask. Each question is determined based upon the responses to the previous questions — so there is a decision tree mechanism (conditional logic) being used in the background. In that way, the client is only asked questions that are relevant. With the responses to these questions, the system is able to diagnose where there are potential areas of defense.

(At the moment, the system does not understand free text. It can understand responses like yes, no, don’t know and can’t remember, but beyond that it cannot read free text. This is a part of the system that we are planning to further develop, so that it can read free text through use of algorithms).

That is the extent of the free service. At this stage, if the client wants it, he/she can obtain advice over the telephone for a fixed fee of £35 including VAT, with no time limit on the conversation. After the call, the details of the advice are entered into the system, and an email
and text is sent automatically to the client to supply a record of the call and a receipt for the money paid online.

If the client wants to be represented in court, either to defend the charge or to enter a plea of mitigation on a guilty plea, he/she can then pay a fixed fee for that representation — there is a menu of mixed fees that depend upon the type and the place of the hearing. As soon as the client indicates they would like this, a number of things happen: the client receives an acknowledgement with a description of what’s going to happen and when, the system sends an automated email to a barristers’ chambers in London that acts either as the primary source of the advocacy, or, if it’s in another area, then they procure a suitable barrister. The barrister is chosen from a pool of barristers that specialize in this area of law. Our system provides them with its own administrative system and calendar for that purpose. As soon as a barrister is allocated, the system sends another automatic email to the client, to provide them with a link to information about the barrister and his/her photo, and to let them know about what will happen next. The system also sends an automatic email to the allocated barrister, with a link to the brief.

The brief is compiled entirely automatically, with no human intervention at all. It has gathered all of the information and documentation that the client provided to the site as well as the record of the telephone call with the solicitor. After the barrister has gone to court with the client and concluded the case, the barrister logs the outcome into the system, which again generates an automatic communication to the client to confirm what has happened and supply a receipt for amounts paid.

The entire process happens, or can happen, without human intervention until the moment when the barrister stands up in court on behalf of the client. In my opinion, soon even that part of the process will go online, especially for less complex cases like traffic offenses, so part of our challenge today is to extend our system to encompass online advocacy as well.

For a great many people, the free advice is all they want or need. It provides them with reassurance as to where they stand and what might happen to them. It is just a percentage of those users that go on to pay either for telephone advice and/or for advocacy. Interestingly, as regards our paying services, we have had more paid events in the past six months than we had in the entire three years before. Something is happening, for sure.
We offer so much for free for three reasons: (i) it is the nature of the internet — it is inevitable that this type of advice will become free, (ii) we believe that much of the free advice we provide most people would not be willing to pay for, anyway (not without human interaction), and (iii) it increases traffic to the website. People will pay for what they value — they won’t pay for reading material online, but as soon as they need human intervention, either as advice or legal representation in court — that they value and are willing to pay for.

At the time we developed the system, we were careful to test it with barristers, not only as regards content but also usability from their perspective. The barristers who have worked with our system react positively to it. They say, for example, that it is great to have everything presented to them in such a complete yet organized and focused manner (one document of about 6 pages). They don’t need to wade through files to glean for themselves the pertinent information — this permits them to focus quickly on the real issues.

The technology behind RTR can be adapted to support a variety of other types of legal services. More specifically, it can be used to create an online questionnaire with conditional logic behind it to capture data online from clients, in order to use it in a case or practice management system. With this insight, we created NextLegal, which offers the development of this kind of technology for law firms.

In addition to my work with NextLegal, I also provide technology services for the ABS Legalmatters Limited. This company specializes in private client services: wills and estates, tax planning, trusts, powers of attorney, … The company works mainly through intermediaries. The company takes instructions automatically — using the technology that is behind RTR to, for example, take instructions for a will or a power of attorney. These instructions come in through the intermediaries at a high volume, and Legalmatters Limited needs to be able to handle them at a high volume, also. Given the high cost of operating RTR as a solicitors’ practice, my association with Legalmatters gave me an opportunity to assign ownership of the RTR product to Legalmatters so that it could benefit from their ABS status and, in time, external investment that could not otherwise be achieved.

There are a number of areas that I think could benefit greatly from RTR’s technology. They include: wills, trusts and probate, small claims civil litigation, employment law and
personal injury cases, conveyancing, debt recovery, landlord/tenant — any kind of case where representation in a traditional manner is not cost effective.

The area that I am most focused on at the moment is family law. The recent and drastic cuts in legal aid make this area very ripe for a service like RTR. Because of the cuts it practically impossible to get legal aid for matters like divorce, but, at the same time, private legal services are very expensive. The result is a lot of unmet need. The government itself should be looking to fund services of this kind, as is done in the Netherlands, for example. But that is not happening. The system right now is a mess, with the courts overflowing with unrepresented litigants — a service like RTR’s could greatly alleviate that.

I envision it would work differently from RTR, though, in that the human interaction would come at the beginning rather than at the end. More specifically, the client would have a conversation with a real person at the very beginning (that conversation could occur in person or over the phone or in a video conference). It would be a chat about what has happened and what can be done to move forward. The discussion can cover in a general manner questions like finances, assets, child custody, etc. This conversation can reassure the client that someone is interested in what is happening, and a relationship of trust can be built.

Up until this point, the process resembles a traditional one. However, it is usually after a conversation like this that things get scary for the client. The client has to make a decision about whether or not to move forward. If so, then the client is asked to commit to paying a usually high hourly fee (such as £200 per hour) without any real confidence in just how much it will all end up costing.

The service I envision would place more control in the hands of the client. The client would be introduced to a software system that would be along the lines of RTR. The system would guide the client to input pertinent information, such as the information needed to prepare a divorce petition, or the information needed to prepare an application regarding the children (names, ages, schools, specials needs, etc.). The system would be more complex than RTRs in that it would not cover a single process, but multiple ones. As the client proceeds through the system, the program will automatically provide suggestions and guidance to the client based upon the information that the client inputs. At any point in the process, the client can indicate that they would like to speak with someone, either for guidance or because something specific
has happened. The client is in control, and can decide how much they will do for themselves (usually for cost reasons) and how much they would like help with, subject to a menu of fixed prices. In this manner, it is not all or nothing. It is not a stark choice between either “I have someone represent me” or “I do it myself.” In sum, the system uses the software of RTR, but turns it on its head to provide a very different kind of support.

This kind of system can be developed for other law firms to use, on a white label basis, for example.

Further, the state has a huge interest in developing this kind of service. So many people go to court unrepresented and without understanding what is expected of them. A lot of court time and cost is wasted. The courts have a real interest in having before them, represented or not, people who are fully informed and advised and understanding what is happening. A system like RTR’s offers the way for that to happen. In that manner, rather than being developed by private industry, as I am doing now, a system like RTR’s could also be developed or sponsored by the state.

More generally speaking, the ABS structure offers a huge potential for increasing access to justice. But if you look at the UK, this isn’t happening like it should. I think this is because there are too many vested interests in preserving the status quo, and notably in preserving the ability to charge £200 and £300 per hour for handcrafted services. I do think that at some point things will happen to really shake up the legal services market that will lead to big shift to technology, and then finally everyone else will be obliged to follow suit. For the moment, it’s a process of evolution that is happening slowly.

The Legal Services Act has opened opportunities for legal services. It enables innovation, it facilitates new delivery models that simply were not possible before, just because there was no opportunity for investment. Certainly new delivery models can be developed without investment, but investment allows for it to be done on a much larger and more effective scale.

What this is all about though, or at least it should be all about, is that many people do not have access to justice, in large part because they do not have access to the legal services they need. The debate over legal aid in the UK has been an all or nothing basis — either legal aid will get money, or it won’t, and so people either will have access to justice or they won’t. There is a big gap in this approach. There are other ways to approach the problem, and RTR shows what
one approach can be. What we need is a wider debate amongst not just lawyers but amongst the public on how legal services can be provided differently, so that it is not all or nothing.

Felice Batlan, Professor of Law, IIT Chicago-Kent College of Law

Felice Batlan is Professor of Law at IIT Chicago-Kent College of Law as well as Associate Dean for Faculty, Director of the Institute for Compliance, and Co-Director of the Institute for Law and the Humanities. Batlan is the author of the 2015 book Women and Justice for the Poor: A History of Legal Aid, 1863–1945, which explores in detail the role played by women’s social service and charitable organizations in creating and providing legal assistance. Serving as “lay lawyers” such women created a robust model of legal aid which would later be dismantled as the bar demanded the full professionalization of legal aid.

The book shows us that during the time period that I studied, legal aid was not connected to the professional bar. That connection did not occur until much later. During the Post Civil War period in the U.S., legal aid developed from a variety of reform organizations, often women’s organizations. Some of these organizations specifically saw themselves as providing legal assistance, whereas others understood that what they did was part of a larger movement of what I would call “charitable community building.” Legal aid was viewed not only as philanthropy, but also as a method of reform of the abuses of the late 19th century, which included unregulated capitalism, especially in relation to women’s labor.

One of the interesting things about my research is that some of these larger organizations were very much spurred on by, and were part of, first wave feminism. They were interested in a wide variety of reforms — suffrage, divorce, opening employment opportunities to women, and certainly domestic violence. In their vision, legal aid was part of and interspersed with larger reform and political movements.

I see a particular elegance and beauty in the work that they did. These organizations often spoke of “sisterhood.” They imagined that through hands-on ministering to the poor, class inequality would break down. At the beginning, women lay lawyers were primarily Christian and
their organizations often had an undertone of the social gospel. They interpreted Christianity as offering to individuals the opportunity to build a society that was Christ-like — one of love, care and nurture.

The most important of these organizations were closely connected to what would become the Women’s Club Movement. In Chicago, the leading legal aid organization was the Protective Agency for Women and Children. It provided legal assistance to women, and it was often women who were not lawyers who provided these services. Similarly, in Boston there were women’s organizations, such as the Women’s Educational and Industrial Union, that had come out of the abolitionist movement and that performed a wide range of reform work as well as providing services to poor women. So, the concept of legal assistance was integrated with other types of assistance: help to find employment, housing or clothing, culture, and spiritual life. Those were on a continuum with legal assistance.

Almost all of these early organizations were engaged in advocating for women’s rights. At the same time, they functioned as spaces for the intellectual development of women. They had talks and lectures and speeches, and they had rooms where women could gather. They held classes to teach a number of different subjects, and legal assistance was a part of that.

To generalize how it often worked: a group of women would organize, sometimes hire a supervisor for the office, and then put out a call to women and children in need of legal assistance. These middle class women would train themselves regarding how to provide legal assistance and their knowledge would grow through hands-on experience. In other words, the development of legal aid was grassroots, experimental, and experiential. It started on the ground within these women’s clubs, which would themselves gain in importance at the turn of the 20th century. As these organizations soon learned, there was always greater need for legal aid than what could be provided.

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3 Social gospel was a protestant Christian intellectual and reform movement of the late 19th and early 20th century United States that sought the betterment of society by the application of Christian ethics to social problems such as poverty, alcoholism, and crime.

4 What would become known as the “Women’s Club Movement” was a mid- and late 19th-century American social movement founded to provide women an independent avenue for education and active community service. Examples include Sorosis, founded in New York City, and the New England Woman's Club, founded in Boston and whose founders included Julia Ward Howe.

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During the period when these organizations were active, the two largest legal claims across organizations invariably related to the failure to pay wages and to domestic relations problems, including child custody, domestic abuse, and sexual violence. Social service organizations provided a wide range of legal assistance in the area of family law: divorce, domestic abuse, child custody and support. These cases are similar to the ones that you see today. In contrast, what you don’t see today is the material relief that these social service organizations provided, in addition to legal assistance. That is, they would assist a woman escaping from an abusive situation by helping her to find lodging and paying for transportation. Sometimes they would provide small loans, what today we would call microloans. They also handled child custody cases. These organizations tended to be sympathetic to mothers seeking custody, and especially in the face of what they perceived as often violent and alcoholic working class husbands. That being said, most men did not want custody, and cases of desertion were more common than custody disputes.

Women lay lawyers prided themselves on having one-on-one contact with clients, and on following cases through to the end. Most of the organizations were small. Many of the women who worked — in them were not paid — they saw their work as a labor of love. The women who were paid – typically the managers or supervisors — stayed with an organization for decades. This meant that they had tremendous experience. In contrast, male lawyers at professional legal aid societies turned over quickly. Many male lawyers saw their positions in legal aid as a stepping stone to something else, whereas for the women, that was it — that was their career. In part, this goes to the lack of employment opportunities for women.

Most cases involved very small sums of money, and such cases ended up settling. What would typically occur is that a poor woman would bring her claim (for unpaid wages, a dispute with a landlord, for child support) to one of these organizations. The woman would be interviewed in order determine if there was in fact a colorable claim, and if it was accepted, there would be an attempt to settle. If there was no settlement, then a case would be brought in court. If that occurred, then most — but not all — of the time, it would be a lawyer working for the organization who would bring the claim before the court. But that was a very small percentage of the claims that were brought to the organization, because 95% to 98% of them settled before going to court.
In terms of the number of cases that social service organizations handled in any given year, it varied greatly from a couple of hundred to a couple of thousand or even more. It is also not possible to estimate how many of these social service organizations existed. The archives are not organized in a manner that makes this information easily accessible. Notably, these organizations were not archived under the category “legal aid organizations” — instead, they were archived under “women’s organizations.” So, in my research, I first had to find the archives for women’s organizations, and, in going through these archives, I had to look for references, large and small, to anything pertaining to legal aid. Sometimes it was by following up on just a tiny hint in one document that would prompt me to search and uncover more. Finally, in order to understand the legal services that were being provided, I had to comb through the contents of files to separate out the legal services in ways that the organizations themselves did not do. The organizations did not see the legal services as separate from the other services they provided, and accordingly their documentation does not separate them, either.

My research was principally focused on organizations that were created in the Midwest and Northeast, and notably in Chicago, Boston and New York City. There is still much research left to do, especially in regard to African-American organizations and immigrant organizations. The relevant documentation is extremely hard to obtain but these organizations existed and two examples are the White Rose Mission and the YMCA, both in Harlem.

While some of these women’s social service organizations continued well into the 1930s, today they no longer exist. Some of them merged with male-led professional legal aid societies which were created in the 1890s. In some cases the merger was voluntary, and in other cases the social service organization lost its funding, and did not have a choice. Further, as more women went to law school, there was a belief that there was less need for women’s social service organizations providing legal aid as women lawyers could be hired by professional legal aid societies, and they would deal with the types of cases that the social service organizations previously handled. Finally, some of the work done by social service organizations ended up
going into settlement houses,\(^5\) as well as into the building of our specialized court system, notably family and juvenile courts.

In addition, as the book discusses, in the early 1900s a process of professionalization began on two fronts. Male lawyers created legal aid societies and slowly tried to take over the provision of legal assistance. The men in these organizations truly believed that only lawyers could provide this kind of assistance.

This explains how men like Reginald Heber Smith, a recent law school graduate with little experience in legal aid, could come in and run the Boston Legal Aid Society. At the same time, women who had been working in legal aid for decades were fired. This was justified by an ideology of professionalization, which was seen to trump experience.

One of my favorite parts of the book concerns Reginald Heber Smith. By his third year of working in legal aid, he was considered the guru of legal aid, and was in the process of re-writing its entire history. He was young, aggressive, obviously very smart and clearly cared about legal aid. He travelled to Chicago on a study tour, and there he met a woman named Minnie Low. She was a small, Jewish woman who was the Director of the Bureau of Personal Service. This was an organization of women that provided legal services to the Jewish community of Chicago. Smith did not seem to have any idea who Low was, even though she was well-known in Chicago as the “Jewish Jane Addams.” In his notes of his meeting with her, you can see his shock to discover these women who even he had to admit really knew the law. He wrote that they followed the law, that they followed cases through, and that they engaged in what was a radically different model of legal aid.

Despite his surprise at discovering the Bureau of Personal Service and other organizations like it, any mention of them is intentionally omitted from the book that he wrote on the topic of legal aid: *Justice and the Poor*.

Let me explain how women’s organizations were written out of history. Like any historian writing a book, Smith had to decide what he put into his book and what he did not put in. Smith truly believed that legal aid organizations needed to look like any other law firm, and

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\(^5\) In the late 19\(^{th}\) and early 20\(^{th}\) centuries, the “settlement movement” inspired the creation of “settlement houses,” in poor urban areas as places in which middle-class volunteers would live, with the purpose of sharing knowledge with and alleviating the poverty of their neighbors. A prototypical example is Hull House, founded by Jane Addams and Ellen Gates Starr.
that in order for that to happen, it needed to be made up of male lawyers. He saw women social workers who were providing legal aid as part of a realm that did not belong in law, that could never have the prestige of law, and could not attract other lawyers to it. From his point of view, legal aid would not be prestigious until these women lay lawyers and social workers were removed from the equation. Smith and others saw women lay lawyers and social workers as “monstrosities,” and Smith simply could not get his head around the idea that women could actually provide quality legal services.

While the provision of legal aid was undergoing professionalization, social work itself was undergoing a similar process. That is, social workers were creating a profession in which one would attend school, and learn the new discipline of social work.

So, the space for women “lay lawyers” to provide legal assistance constricted. It became sandwiched between the professionalization of law and the professionalization of social work. I try to explore, and historically ground, the question of who is recognized as an expert and why are they recognized as such? By the late 1920s, the division of legal aid work became extremely gendered, with men providing legal services and women providing social work.

You could ask whether Smith’s primary objection was to women providing legal services, or social workers. But in fact, given how difficult it was at that time for women to become lawyers, these were one and the same thing. One of Smith’s protégés, John Bradway, was opposed to having a woman trained in law act even as a law firm’s secretary, because this gave the impression that it was not a real law firm. From the perspective of both Smith and Bradway, women themselves destroyed prestige.

Today we are taught that one cannot practice law without a license, and we are under the impression that there has been long and strict enforcement of the rules of unauthorized practice. My research shows that this is a more modern phenomenon. The legal profession was not policed until the 1920s and 1930s, and even after that it was extremely rare for anyone, and especially for women, to be charged with practicing law without a license. And of the few cases one sees from that time, it is cases of fraud, where someone has taken fees for providing a legal service without actually providing the corresponding service (in other words, a stealing of fees). What you don’t see are claims of unauthorized practice being brought against charitable organizations for providing legal assistance.
None of this activity was hidden. It was out there. Often women lay lawyers and social workers were praised by judges and lawyers. So, the issue of unauthorized practice of law simply did not arise.

As a historian, I am dependent upon my archival documents. In my research, I did not discover any evidence of ethical complaints being made against these social service organizations or against professional legal aid societies until the 1930s. During the Depression, the bar became very worried about the unauthorized practice of law. It was at that point that they focused on the work not so much of the social service organizations but on the legal aid societies. Notably, they focused on their work in the area of personal injury, and complained that legal aid societies were taking business away from members of the bar. Again, however, these complaints were not made until the 1930s: by that time professional legal aid societies had developed (whose lawyers were mostly but not exclusively men), and they were the principal targets of this criticism rather than the social service organizations (who, again, were made up mostly if not exclusively of women).

The book describes a period of tremendous fighting between legal aid societies (professional male lawyers) and social service organizations (women lay lawyers or social workers). The legal aid societies made three types of allegations against social service organizations:

First, they alleged that women social workers and lay lawyers at social service organizations represented their clients too zealously: that they did not understand that their clients had bad cases and that in pursuing their cases, lay lawyers badgered and annoyed professional lawyers.

They also alleged that the social service organizations did not represent their clients zealously enough, because so many of their cases settled. But when I compared the settlement rates of the matters handled by social service organizations as compared to professional legal aid societies, there was no difference in settlement rates.

Finally, they asserted that social service organizations prioritized social justice and the community over the individual client and his rights.

As regards this last allegation, they had a point. Social workers providing legal aid were often very sympathetic to women’s claims and notably their claims for child custody and for
financial support from husbands. With respect to some of these organizations, when they brought a claim on behalf of a man — a personal injury matter, for example, where there was actually money that was changing hands — the organizations were sympathetic to the wife in such contexts. Even though the husband suffered the injury, the organization saw the family as a unit. So, if there was money coming in as a result of a settlement or a judgment, social workers often made sure that the money was being used for household expenses (demonstrating a significant distrust of working class men). This conformed to the ethics of social service organizations at that time, because they saw the family as a unit. Of course, under our modern ethics rules, this prioritization of the family over the individual client would be troubling to us. (Of course, ethics is a social construct that changes over time).

On the other hand, social service organizations argued that professional legal aid societies acted unethically when they turned away cases involving divorce (which many legal aid societies refused on principal to handle) or because they estimated that the client had too many assets to qualify for legal aid or that the client otherwise did not meet certain guidelines.

One dispute that went on for decades is that social service organizations did not respect attorney-client confidentiality. In making this allegation, the legal aid societies did not suggest that the social service organizations did not protect confidential information as a general matter or that they disclosed it indiscriminately. Instead, the accusation was directed towards the practice of social service organizations sharing information amongst themselves. They did this under a formalized central registry, where a social worker from one organization could see a client’s history with other social organizations. Professional lawyers argued that the use of this registry was unethical. Social service organizations responded that this claim was ridiculous, because the information in the registries was already in the public realm, and secondly because the exchange of this information was necessary to prevent the same client or family from seeking duplicate relief from a variety of organizations.

Some of lawyers’ attacks on social workers were shocking to those social workers, who asserted that they worked under their own code of ethics, and that the fact that these suggestions were even made demonstrated a failure to recognize that social workers themselves were professionals. In fact, and especially for the women of the earlier organizations, their belief in their own ethics went even deeper: they believed that their mission as privileged women was to
carry with them an ethics, a morality, and a lack of conflict of interest that many men did not possess. Many of these women looked upon the legal profession itself as soiled. One social service organization that I studied talked about lawyers as vampires, and another talked about lawyers as “the dark side” and a profession that has no morality.

These women understood lawyers to be immersed in a world involving money, and that they were soiled by this money, whereas women’s organizations had no conflict of interest because they were not being paid. In other words, the women’s organizations flipped the argument of lack of ethics back onto lawyers.

In my opinion, the organizations that I studied for my book were highly successful in fulfilling their missions. When you think about what poor people need and what poor people want, and what women in abusive situations desire — they want relief, and they need that relief quickly. These organizations were able to reach a lot of people, and help them to meet their immediate necessities: women who were going to be evicted, women who were having their clothing repossessed, women who needed their wages, women who had to leave abusive husbands. These organizations were able to work quickly, they truly cared about the people they were helping, and there was very little bureaucracy. Such organizations existed for decades, and people kept coming to them. Further, the people that ran these organizations understood that professional legal aid societies staffed by men would not provide services like these to women. For that reason, the women who ran these organizations were not willing to merge with legal aid societies or otherwise relinquish their control until they received promises from male-led organizations that women lawyers would be hired and that women’s cases would be taken seriously. The documents I reviewed demonstrated to me that the women in these organizations understood the value of their work and they took tremendous pride in it, incorporating it into their very identities.

Unfortunately, I was unable to find many documents that contain the impressions of clients in their own words. Further, I was not able to find any documents that reflected client complaints against the women’s organizations that I studied. I don’t know what can be concluded from that fact — whether it means that little or no complaints were made, or if it means that complaints were made, but records of them either were not kept, or that I have not found them yet.
What I did find was that beginning in the 1910s and 1920s, complaints were made against professional legal aid societies. For example, I found letters from concerning the New York Legal Aid Society. In those letters, people who either were clients of the Society or whose cases the Society did not accept, complained of being treated badly, of being insulted, of having to wait in long lines, of having attorneys speak down to them, of attorneys not recognizing that there was a legal claim or refusing to take a case because a private lawyer might take it. The fact that I found these letters with respect to these male-led societies and not the women’s organizations fits within my overall understanding of both types of organizations and how they operated at the turn of the century.

The late 19th and early 20th century social service organizations that I studied offer perhaps some lessons for us today. These organizations took cases that no one else wanted because they were so small. The services were provided with a broader understanding of social justice, and that legal aid was not entirely separated from other material assistance. My research with respect to legal aid as well as to settlement houses demonstrates that legal aid for the poor needs to be provided in a holistic manner. If someone comes in and they have a problem, such as being evicted from their home, that person also needs help finding shelter and a variety of other services. They need that help, but it is not necessarily lawyers that need to provide it.

My research intentionally begs the question: what is legal advice? For me, what is fascinating is the everydayness of legal advice. I link this to my research on how legal assistance is provided today, and notably my research on modern-day legal secretaries. That research shows that many legal secretaries are the first people in their families who have attended university. They typically work in law firms for decades, and they may be connected to immigrant communities. So, often they are the person that others come to: “I’ve got this legal claim but I don’t understand it” or “can you help me to understand this legal document?” So the secretary reads the document for that person, and provides advice. Other examples of everyday advice are when people apply for food stamps, or veterans’ benefits or social security benefits and they receive help from friends — we could call this “community legal knowledge. Further, what about travel agents who have learned a lot about immigration law and help others to fill out immigration paperwork? In all these examples, people are seeking advice that often becomes legal advice, and these questions are asked on an everyday and on an unorganized, basis. How do
we think about this? How do we categorize it? This of course raises the issue of lawyers’ monopoly over legal services. Let me give you an example. Some of students at the Chicago-Kent College of Law staff information desks at the Daley Center in Chicago, where the courts are located. The students can provide people with forms, and can tell them what division they should go to, but they cannot provide any help in telling people how to best answer questions on forms. Why do we create the boundary there? I think that boundaries can be created, but I don’t think it’s been given enough thought.

Legal aid lawyers do incredible and valuable work. But, legal aid needs to reach so many more people and the site of legal aid needs to move from offices and be embedded within the community. We need, for example, a legal aid provider in every library, in churches, and in hospitals. This person does not need to be a lawyer, but they need to have a level of knowledge sufficient to enable them to respond to questions like “how do I fill out this form?” and “how do I request a restraining order?”

Legal aid organizations need greater funding from the government — that is for sure. But greater funding, alone, will not enable the huge need to be met. Lawyers, even legal aid lawyers, are expensive and they do not necessarily come out of the communities that need to be served.

I think that the provision of legal aid needs to include the desire to love and to create community. This requires people who understand what it means to be poor. We are starting to see this in worker centers, here in Chicago, for example. These are community-based self-help organizations for workers, often immigrants. Rather than lawyers providing advice, workers with different kinds of experiences help each other. Similar to the late 19th and early 20th century social service organizations that I study in my book, a very common issue for today’s worker centers is wage claims, for example restaurants and other employers not paying overtime or are otherwise not paying full wages. A typical scenario is that someone from the center writes a letter to that employer, explaining that it is a serious matter that needs to be resolved and stating that they will visit the employer in order to sit down with them and come to a solution. Lawyers are not used in this process. Ultimately, by the sharing of knowledge and resources, these centers serve as a means of worker empowerment.

At what point do the activities of these centers cross the line into the practice of law? It is nebulous. At the same time, the types of matters that organizations like the worker centers help
with are the types of matters that most lawyers simply would not handle. From a financial perspective, it does not make sense for lawyers to take many if not most of these cases.

I have tried to situate legal aid historically, so let me situate myself in terms of time and space. In the early 2000’s, I decided to go back to graduate school in order to study women’s legal history. I had begun working on topics relating to women’s organizations, such as how they were involved in legislative reform, and how different settlement houses provided legal advice. I was living in New Orleans and teaching at Tulane University at the time Hurricane Katrina hit the city in 2005. Immediately after Katrina, FEMA (the Federal Emergency Management Agency) established a series of disaster recovery centers in and around the city, where residents could seek aid. I set up a legal assistance booth in one of these centers. The “booth” was a table, a cell phone and few attorney friends.

Before I went to graduate school, I had practiced law for a decade in a highly prestigious environment. When I set up the booth, I was struck by how unable I was to deal with the emotional side of what the people around me were experiencing. I wished that I was a both a social worker and a lawyer. That made me think about who was really providing all these grassroots, on the ground services in legal aid, and what was the role of social workers and lawyers. I wondered if I was practicing law. I didn’t think I was — I was providing education and enabling people to engage in self-help. I was helping thousands of people — how could I have been practicing law? How could I have had a confidential relationship with all those people in a massive hall?

In asking myself about what were the origins of legal aid and where it came from, I discovered that there was no history of it, other than Reginald Heber Smith’s. As a historian, I just started digging in women’s history archives. I dug and dug, literally going through boxes, and found one organization after another. As the book explains, my work was heavily archival. The entire process of researching and writing the book took about eight years. I know that I did not find everything, and that much work remains to be done. For example, I did not touch organizations on the West Coast or in the Southwest.

Further, I don’t believe that this is just a US story. This is a story that replicates itself all over Europe. For example, as I was reviewing the US documents, I came across references to women’s social service organizations in Germany that provided legal assistance. Through them,
women offered legal services to the poor at a time when women could not be members of the bar in Germany. For those who have the language skills and access to funding, this is important research that needs to be done. Hopefully others can build on my work and shed even greater light on what the past has to teach us about how we can construct “new” kinds of organizations to meet the legal needs of the poor.
H. Law School: Alternative Structure as an Educational Program and Center for Research and Experimentation

Like the structures profiled immediately above, the structure profiled below also combines legal services with a charitable mission. But it does so in the different environment: a law school.

Jenny Holloway, Associate Dean, Nottingham Law School
Nick Johnson, Principal Lecturer and Pro Bono Director,
Nottingham Law School Legal Advice Centre

Nottingham Law School Legal Advice Centre is a program of the Nottingham Law School. It offers free legal advice and assistance in the areas of: employment, business law, housing, property and environmental law, debt and welfare rights and tribunal and court representation. The services are offered through students of the Law School, who work under the supervision of qualified solicitors. The Centre received an ABS license in October, 2015.

The Legal Advice Centre was founded in 2006. Our new status as an ABS has permitted us to establish a legal status separate from the university.

The Centre serves both individuals and businesses. About 50% of the work we do is in employment. We also do a lot of work in housing, as well as property and environmental law. The other areas we cover are welfare, debt, contracts, and some intellectual property. All of these services are provided pro bono (free of charge).

Our principal purpose is to provide experience for our students. Of course an additional purpose is to help the community.

Before we obtained ABS status, we could not perform or charge for any of the six reserved activities, which meant that our services with respect to litigation were limited to employment and social security tribunals. With our newly acquired ABS status, we can do more types of litigation.

We are funded through the university, as a university program and as a service to the students. We are a popular program — about 200 students, or 10% of the student population,
worked with us this school year. Increasingly we are incorporated into the academic program so they can gain academic credit.

In the past year, we’ve handled about 170 cases. Most of those are cases that can be resolved relatively quickly — on a student schedule — but some, such as miscarriage of justice cases, take a few years to resolve.

Our clients come from a variety of sources — from our website, from referrals from local volunteer agencies. Some of our clients are students and members of the university staff. Most of our clients are local to Nottinghamshire County, but some come from other places in the country. We find that the unmet need for legal services is so high we do not have to do much for clients to find us.

There are certain areas of the law we don’t cover. For example, outside of our miscarriage of justice cases, we do not do criminal law work. This is for two reasons: criminal law is still eligible for legal aid, and the timelines on criminal cases make it difficult to get students involved.

We don’t do immigration either because a special qualification is required for that work. It’s an area we would like to get into if we are able to get the funding and the expertise.

We don’t offer a walk-in service because logistically, with student schedules and on university property, it would be difficult to manage. We do offer an outreach service at community centres, where people can come in to talk to us about their cases. We try to provide some preliminary advice on the spot and then follow up with them later by phone or in-person appointments.

We’ve set up a charitable subsidiary of the university, and that is the body that has received the ABS license.

Our initial reason for looking at applying for an ABS license was because there had been an imminent possibility of changes to the law that would have significantly restricted the permitted activities of charitable operations like ours, unless we established ourselves as either a law firm or an ABS. That possibility is no longer imminent, but the possibility does remain. We want to be prepared.

But that was only our preliminary reason. As we thought about it, we realized that the ABS structure offered us a number of additional advantages:
To begin, we realized that it would permit us to offer a wider range of services, and be able to charge for some of them.

The Centre is an expensive facility for the law school to run. Much of the work that we do now will continue to be pro bono. But, as an ABS, we can also offer additional services, such as to entrepreneurs, start-ups and small businesses, for a fee but at below market rates. These types of clients don’t have the funds to pay full market rates for legal services, but they are able to pay something. We see a huge unmet need in this area — we want to fill the gap. In addition, many of our students are studying and intend to practice commercial law — this will give them practical experience in that area, and with that an advantage over other students.

In this manner, the fee-paying work subsidizes the pro bono work. Of course, as a charitable body, we could not distribute profits anyway, not even to the university. A number of volunteer sector organizations outside of law schools are doing the same thing — offering some services for below market rates in order to subsidize other, free services.

A second advantage that the ABS structure offers is to improve our relationship with the university: The relationship will be more defined, we will have more control and independence in how we operate, and we will have a board that will have direct access to the upper management of the university.

A third advantage is that, as an ABS, we believe we’ll have more flexibility in how we work with third parties, and notably with external legal providers. It will be easier for work to be referred to us and that will lead to an expansion in the services we offer. Also, universities are large organizations and negotiating deals can be a slow process — as a smaller organization we’ll be more nimble — we’ll be able to act more quickly.

We can understand the general concern regarding the ethical issues that are raised by ABSs. In a different situation, we ourselves might be more cautious of them. In our specific case, we think that the ABS structure defines us better. It gives us clarity and focus in our role. We don’t think that the ethical issues raised in relation to ABSs apply in our case because our funder understands the business.

As a university, we have had subsidiaries before, for example a cancer research center, and a conference center, each of which are separate entities. When a university wants to do something that is different from the usual activities of a university, it is better to set up a separate
structure rather than trying to muddle through with the university’s larger structure, trying to do
things that a university doesn’t do. It delineates the activities and gives them commercial
freedom — both are very useful. In this context, the ABS structure fits us very well.

The Centre is all about access to justice. The legal profession resists changes that offer
the possibility to improve access to justice. It resists the unbundling of legal services. It resists
outside investment that might reduce the cost of providing legal services. We need more
entrepreneurial models in legal services — entrepreneurial models that take advantage of the
huge opportunities that technology offers.

The Centre is small. As we mentioned, last year we handled about 170 cases. Some legal
aid centers handle several thousand cases in a year — it will take us a long time to get up to that
number. We can’t be a substitute for a comprehensive publicly funded legal service — which we
no longer have in this country anyway. The Centre cannot singlehandedly make a significant
improvement in the access to justice problem in the UK — we cannot plug the hole. On the other
hand, we can reduce the flow — that is, we can reduce the problem.

Another thing that we do is give our students an education in access to justice – we help
them to understand the difficulties in providing access to justice, and how lawyers fit into that
picture. The Centre provides access to justice through student training, through looking at the
culture of legal services and how doing good fits into it.

There is one way in which, with an ABS structure, we may be able to significantly alter
the legal landscape: We can become a research establishment, experimenting with different ways
of providing legal services. Like other university departments that research developments in
science, we can research and develop new methods of delivering legal services and access to
justice that could be exploited commercially later on. Universities do that — they develop things,
and the good ideas are used by the rest of society, and help people in that way. For example,
what about a short module on how to conduct your own litigation, that is available to people for
a fee, like car mechanics classes? Why not experiment with ideas like that?

At the time the UK Legal Services Act was adopted in 2007, we knew that we couldn’t
go on as we were. It is clear that the traditional model was not doing a good job of providing
access to justice.
The ABS structure offers a way of addressing the deficiencies in the legal services market — a way to fill the gap in the unmet need for legal services. ABSs present dangers, we understand that. But today we have a population that has a high standard of literacy and ability to understand complex concepts — compared, for example, to 1949 when the UK’s legal aid system was first put in place.

Further, our regulations in the UK offer a means to address the risks that ABSs present. For example, the role of the COLP (Compliance Officer for Legal Practice) is crucial. It needs to be someone sufficiently senior to be able to point out and rectify problems. It is also important that the regulator have the expertise and resources to be able to react quickly and appropriately. In the UK, the SRA does a job that is very different from the job it inherited from the Law Society. It has taken the SRA some time to learn and grow into its new role.

We are in early stages, and we are learning.
I. In-House Legal as Source of Revenue

In-house legal departments in both the private and the public sector can develop knowledge and expertise that are difficult for external law firms to match. Some of those in-house legal departments are capitalizing on that knowledge and expertise by creating alternative structures and using those structures to expand their client base. In doing so, they are able to serve clients that, in some cases, are poorly served by traditional law firms. In all cases, the in-house legal department is no longer perceived merely as a source of expenditure, but as a source of revenue.

Archana Makol, Director, BT Law Ltd

BT Law Ltd. is a wholly owned BT group company. Acquiring ABS status in March, 2013, BT Law draws upon the expertise and resources of its in-house legal department to provide legal and claims handling services to external corporate clients, in the areas of motor claims, public liability, employers’ liability and employment law. Archana Makol is both Director of BT Law and Chief Counsel at BT.

BT has a large in-house legal department — about 450 people worldwide — a number that includes lawyers and nonlawyers. BT is unusual in how it has chosen to manage its casualty property and employment law risks. Most companies outsource some or all of these — BT does not.

Just under 20 years ago BT began collecting all its volume claims handling work into one location. There was no need for that location to be in a high-cost hub like London, so Sheffield, a town in northern England was chosen. Initially the focus was on handling BT’s own property damage claim work: how can we develop a process and technology for it? How can we be sure that we claim the monies owed to us rather than let it leak through poor processes? Over a period of 10 years, we enlarged the scope of that work to include third party claims to the business, employee injury claims, and eventually motor vehicle claims. BT was not completely happy with the service it was receiving from external service providers, and so it brought all of that work in-house. At the same time, our employment law team was developing its practice based in the Midlands and London.
When an in-house department builds this kind of service, it does not do it with profit in mind. It builds it on the basis that everyone wants more for less, so you must be efficient, you must have well-managed work flows and you must understand the data and trends.

The brand of our business is critical. Regardless of whether a claim is big or small, the people handling the claim are the face of the business, and they need to take care. This does not mean an open checkbook — to the contrary. It means handling each claim with the bigger picture in mind. It means being firm, but also decent and polite, it means taking a customer service approach, it means keeping a lookout for fraudulent claims. Those are not things that our external service providers — including some external lawyers — necessarily did, or did well.

By about 2010 we had it all pretty much in place. Our internal clients were extremely happy with our service having decided to bring some outsourced elements back in.

Even though the Legal Services Act was not adopted until 2007, we had known for some time that changes were afoot. Indeed, we, as an in-house team, had been approached a few times and asked to act for other companies. At the end of a case, some opponents had come to us and asked, “Would you do that for us next time?” I believe they saw that we handled claims in a clean and fair manner, and that we did what we said we would do, when we said we would do it.

It was flattering to be asked but of course we couldn’t represent them. As in-house counsel, we could only act on behalf of our employer.

But it got us thinking. We started to improve our processes even further, with the possibility of one day offering it to external clients. There are ways you can work in-house that need to be refined for external clients. For example, we reviewed how we managed money, our business continuity plans, and our IT. It was quite a wait from 2007 when the Legal Services Act was passed until 2012 when the first ABSs were authorized. That gave us time to get our act together.

What has been key for us has been the ability to offer a genuine cradle to grave service to all of our clients, in-house and external. We aim to have the same person handle a claim from the time the incident occurs right up to the Court of Appeal if necessary. This is more efficient than having a claim change hands at several points as it progresses, and it gives our team the ability to track trends. In order to be able to offer this to others as a legal service including litigation, we needed an ABS license.
BT Law is operated under a secondment model. BT Law does not have any of its own employees — all its work is carried out by BT Legal (BT plc) employees and using the resources of BT Legal. It is a complex model, but it provides us with a lot of flexibility. It allows us to take a more credible and cautious approach.

We want to work for businesses who share our values. Notably, we want to work for businesses who understand the importance of brand and the wider ramifications of their claims handling practice, and who also need to bring their costs down. When a client comes to us, they get the benefits of an in-house team without having to build an in-house team. We have a real understanding of brand and of business process. Because of that understanding, we handle cases differently than many other practices would.

BT Law has a number of clients, especially with respect to motor claims and employment. Most of our clients are large companies that generate many claims. Our clients include companies like Network Rail and EDF Energy. We are open to working with smaller companies, and our employment law team does. Typically they do not generate enough volume to need a specialized, full service like ours, but they can benefit from our existing scale.

Our technology and our work flow system enable us to address claims quickly. We collect information from a variety of different sources. Speed is of the essence, and our process helps us to collect and filter information quickly, which enables us to analyze and react to cases quickly. We are able to allocate and act within hours if not minutes of an incident occurring. This can save the business a lot of money, and also protect its reputation.

The quickest we’ve been able to react and offer help to someone who was the victim of an accident is 23 minutes. This can be done only with a good work flow system. Our system is IT based. Imagine a series of flow charts: If A happens, do B, if C happens, do D. In this way, our IT flags what needs to be done, and diarizes it.

We enable our case holders, who are typically not lawyers, to handle as much as they can. In our volume case handling team of 60 people, only eight of us are qualified lawyers. For issues that come up frequently, you do not need to have lawyers; you just need to have the right processes and good lawyer supervision.

We ring fence the work we do for non-BT clients, to ensure we comply with our regulation and keep their information confidential. Client money is handled separately in

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accordance with the rules. At times a lawyer wears the hat of a BT Legal lawyer and at other
times the hat of a BT Law lawyer. At first I thought it would be a nightmare to organize, but in
fact it has been quite easy and seamless. We think it has worked so well because BT has always
been highly regulated, so adding an additional level of regulation was not a big leap.

We have a conflict of interest process in place, and of course our IT system helps us to
identify conflicts. It’s not any different for BT Law than it is for any other business.

Potential clients often ask us how we handle workflows when demands are high: Do we
prioritize the work of BT or the work of our clients? We prioritize as needed, in the same way as
any professional service provider would, and our business understands that we need to do that.

A problematic conflict for us is when our vehicle has an accident with a client’s vehicle.
For occurrences like those we have a system in place where we refer claims elsewhere — we
would never for two sides in a conflict and that may mean referring a BT Claim. We have the
support of the business on this — they understand.

We are still quite small in the big picture of BT. Our key sponsor is BT’s General
Counsel. He is highly supportive of BT Law — he is proud of what we do and how we have
done it. Other key supporters within BT are the head of insurance and risk and the head of health
and safety.

It is still early days for us. We are no longer seen as just a cost center for BT. At the
moment, we seek to offer cost neutrality, and we are moving towards becoming a profit center.

The shift that BT Law took is not a big shift. We went from offering certain services to
our internal client to offering the same services to other, external clients. It is not the same thing
as a brand new structure offering a brand new service.

Predictions of doom to the legal profession because of the adoption of alternative
structures are too simplistic. What is the real fear? What is the real concern? Other business
propositions in the market, not just traditional law firms, are no bad thing. We are still part of the
legal profession and proud to be so.

The law is a great profession, but it is not great at all things. I work for a company that is
very good at diversity and corporate responsibility. In my experience these are not the kind of
things that traditional law firms always do well. The idea that these alternative businesses will
come in and ruin the world is not looking at the bigger picture. And it makes a lot of assumptions

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that traditional legal practices are the best kind of businesses for all legal services. Actually, if you have a structure where a large number of people need to agree on everything, it can be a very slow business to evolve.

In many legal practices, there are many elements of the work that can be done differently, and do not need to be done by lawyers. Because legal businesses have been owned only by lawyers for so long, innovation has not always been what it could be. Lawyers are great at being lawyers, but are we great at managing businesses and at customer service? Are there other skills that could be brought in that can improve the service we provide to our clients? This does not detract from the professionalism of law. There is room to grow and change. There isn’t any end to where it can go, but you need to have vision.

Anne Copley, Head of Legal, BPIF Legal

The British Printing Industries Federation (BPIF) is a trade association representing members of the UK’s print, printed packaging and graphic communications industry. The BPIF offers support and advice to its members in the areas of human resources, health, safety and environment, quality, marketing, sales and finance, and legal. BPIF’s in-house legal team is able to draw upon its experience in the industry sector to provide advice and support to the association’s members principally in employment and contract and commercial law. In liaising with the association’s other support services, BPIF Legal is able to provide this support in a holistic manner.

The BPIF is the principal trade association for the printing industry in England, Wales and Northern Ireland.

When I started working for the association in 2001, the association did not have a legal advice function. The association’s specific purpose in employing me was to be able to offer a more attractive membership package by including legal support in the services offered to its members. The people who made the decision to employ me thought that they could charge for my services, and were disappointed to find that it was not that simple.
At that time, the regulations in place permitted trade associations to provide legal services to its members — not to anyone else — and on the condition that they were provided free of charge. So, as a legal function, I was a cost base rather than an income producing one.

But there was already discussion at that time to change the regulations in the UK to allow for alternative structures, which would allow us to charge for our legal services. The next 13 years of my time at BPIF included time spent preparing for those regulatory changes.

With the 2007 Legal Services Act, it finally became clear to us that in time we could form an alternative structure, and in that way the restrictions on charging a fee for our services would be lifted.

That was the only reason why we were interested in becoming an ABS — because we wanted to be able to charge our members fees for providing certain legal services to them.

The reason we wanted to be able to charge them fees was to be able to have the resources to expand the legal services that we could offer. We had about 1500 members, but only 2.5 lawyers. We can’t serve that number of companies with just that number of people, but in order to increase our resources we need to have an income.

It took us a long time to obtain our ABS license, but we finally got it: we first filed our application in February 2012, but we did not receive our license until August 2014. There are several reasons why it took so long — a principal reason was because of our structure. We are an “unincorporated body.” It was difficult for the SRA to understand our structure, and especially difficult for them to understand where the influence and control resides. For an incorporated body, that is easy — there is a Board of Directors and executive managers and shareholders. But for us, as a trade association you could argue that every single one of the 1500 members has influence and control. After a very long process with the SRA, we finally agreed with them that influence and control resided with our National Council, because it has the power to veto anything that the Executive Board decides. On that basis, I had to spend a lot of time trying to get the Managing Directors of the companies that were on the National Council to fill out long, tedious forms and have background checks. You can imagine how much time that took and how many emails I had to send begging for responses. And that work is never ending because every time a member of the National Council changes, I have to go through the whole process again with the new member.

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The members of the BPIF are all small and medium size companies (SMEs). Most have from 20 to 40 employees; very few have more than 150 employees. We were very interested in a recent survey done by the UK’s Legal Services Board that showed that SMEs in particular have a huge unmet legal need. It estimated that one event of an SME not using a lawyer when it needed to costs the SME an average of £14,000. This is what we are trying to address in our own small way, with our members — this huge unmet need.

We are currently surveying our members to understand their current arrangements with lawyers. I suspect the responses will be the ones that are typically given for avoiding lawyers: they are too expensive, we don’t know what they will charge, they never come off the fence, we ask a simple question and we get a long memo back.

My message to our members is: you need to use lawyers, the lawyers of BPIF Legal are not just approachable, industry-specific lawyers, we are your own law firm, so use us.

We offer our members services in the areas most relevant to their day-to-day operations, and namely in commercial and employment law. Employment is especially important for SMEs since few of them have their own in-house HR functions. Our legal services are one of the core services that we offer to our members, together with services in HR, quality, health and safety, finance, and business development.

Our members come to us because of our expertise in the industry. They do not have to explain to us how the industry works, they do not have to explain the terminology, the production methods, the processes. We know what our members are and we can ask questions that other lawyers might not know to ask because we know frontwards and backwards what goes on in a printing company. In addition, the relationship we have with our members is different than the one a traditional law firm would have with them. For lack of a better word, the relationship is more intimate. Since they are members, they consider that they have some ownership of us, rather than coming to us cap in hand. And since we liaise with the other services in our organization, we have a much more rounded view of their businesses.

Our members get some legal assistance us for free, as part of their membership package, and other legal assistance from us for additional fees. The services they receive without additional cost depends upon their level of membership. The paid services are provided either on a retainer basis (X amount per month) or on a fixed fee basis. We don’t record our time.
Today we have 2.5 lawyers — one full time and one part-time employment law specialists and one full-time commercial law specialist. We all work from home, so technology is very important for us, and notably our case management system, which permits us to understand what is happening with each file and to cover for each other in case of absences. (In fact, all of our specialists — in HR, health and safety, and business development work, etc. from home as a cost-saving measure).

BPIF Legal is a limited company that is 100% owned by the association. The management board has just two members — myself and the CEO of the association.

I qualified as a lawyer at the age of 40, and I’ve seen life outside the law. I’ve heard of the concerns that ABSs will erode professionalism and ethics. In my opinion, those concerns are a reaction to a new way of doing things. That is the problem with lawyers — they are risk averse. Any change means risk, so they don’t like it. Of course you need robust regulation. But if you have that, what is the real threat to professionalism? In addition, companies are very keen to maintain the value of their brand — it is typically their biggest selling point and they will do everything they can to make sure their brand is not sullied by unethical behavior.

As regards conflicts of interest and other ethical matters, I think it is disingenuous of lawyers to argue that they don’t already have these same pressures on them. If they can handle them, then why can’t an alternative structure?

We are just a little minnow in all this. We have a very narrow focus — we just want to be able to charge our members for the legal services that we provide to them and in doing so be able to expand the services that we are able to provide. Our members are SMEs. There is very little difference between them and your average consumer. BPIF Legal offers a way for these SMEs to have their legal needs addressed in a way that was not available to them before. With us, they can get a lawyer involved much earlier than they otherwise would, and this is very beneficial for them.

We are glad that we have obtained an ABS license. The licensing process was long and difficult, but now, within the bounds of the regulatory framework we are free to work in the manner we choose, with the clients we choose.
Viv Du-Feu, Director of Legal Services, BMA Law

The British Medical Association is a trade association representing doctors and student doctors in the UK. ABS BMA Law offers support and advice to members of the BMA and their families in the areas of corporate and commercial, contracts (such as partnership agreements and doctor network and federation agreements), competition, regulatory, estate planning and probate, conveyancing, mediation, personal injury and immigration.

The BMA was created in 1832, becoming known as the BMA in 1855. In 1974 it was recognized as a trade union. That was when it began to vigorously campaign for doctors’ pay and improved working conditions, becoming at that time the recognized body responsible for the terms and conditions of doctors working in the UK. To be a member, you have to be a doctor or a student doctor — that is the only requirement. For the past couple of years membership has been relatively static at about 155,000, but very recently our membership has gone up to about 160,000+ due to an industrial dispute involving junior doctors in England.

In addition to being the Director of Legal Services for BMA Legal, I am also a partner in a commercial law firm (Capital Law based in Cardiff). I arrived at BMA Law in January 2014, initially as an interim. When I arrived, there were just three other lawyers working in what was then called BMA Law. This was a very limited service to members and operated under a dispensation granted by the SRA which permitted them to work for members on the condition that they did not engage in any of the six reserved activities. The work they did was on a small scale, without any specific plan or strategy.

Very quickly upon my arrival, I had a discussion with the CEO of the BMA, and asked him why he wasn’t using the legal department more effectively. I told him that if the organization acquired an ABS license, it would result in a massive benefit for the membership as well as for the organization. The CEO was immediately interested, and, after some discussions about just how it would work, I received approval to proceed with an application to the SRA for an ABS license.

Our application procedure went very quickly — just seven months from the time of our initial conversations with the SRA to the receipt of our license.

The textbook motivation for creating an ABS is to be able to bring in external investment. That was not our motivation. BMA Law Ltd. is wholly owned by the BMA. Our motivation for
creating an ABS was to expand the types of work that we could offer to our members — to go from a small list of unreserved activities to the full range of legal services that our members need. We saw that we had a captive audience: 155,000 members — if each has one family member, that’s 310,000 people. That is a lot of people and a lot of requirement for legal services. Why wouldn’t they want to come to their own professional body’s law firm, where they can get good quality advice at discounted rates? And, if the ABS makes any money (which it will), it will all come back into the coffers of the BMA, for the benefit of the organization generally.

We were fortunate to have both a CEO and a CFO who are commercially savvy and who have been hugely supportive.

Our model is that we have a core in-house team of three lawyers, plus a panel of external law firms. Our in-house team does the work that I consider to be core, notably competition and regulatory matters and partnership agreements. Our panel of external lawyers provides everything else: conveyancing, wills, probate, personal injury, litigation and mediation,...

A reason why we were able to launch so quickly is because prior to 2007, I was a partner at the international law firm Eversheds, and in that role I had developed a massive role of contacts. What I essentially did was call up my friends and former colleagues from around the country and say “I’m setting up an ABS, I need lawyers for X, Y and Z: do you want to play?” I got a great response as well as great support from them, and notably I got everyone to agree to uniform rates and menu prices (but I won’t say that part was easy).

The reason why we set up our dual in-house and external lawyer model is this:

On the one hand, we wanted to be sure that our “core” activities are done in-house and that our “core” expertise is located in-house. This is because the work they do is on the matters that keep our members awake at night. By having the lawyers that do that work in-house, I can keep my finger on the political pulse — I can feed into the association’s committees and management the types of things that the members are worried about. It’s a conduit for information and a virtuous circle.

On the other hand, it would require huge resources for us to bring in-house all the lawyers we would need to offer the full range of services to our members. It would be too expensive and not make commercial sense.
To look at it from the perspective of our external lawyers: everyone would like to have the BMA on their client roster — it’s a well-known and powerful brand and a top-class professional association. Further, law firms constantly have to spend time and money on marketing and business development. What we offer is to pipe work to them, with no marketing or business development costs. That is how, in exchange, we can obtain discounted rates — in fact, we can obtain quite large discounts. So, why wouldn’t we use the resources of these external firms, and reserve our in-house lawyers for the core work? The key to it working, however, is that you must have people that you know and trust — like-minded people that you know you can work with.

It can take enormous time and effort to vet the lawyers you want to work with. Our approach was very clear: “Here are our terms and conditions, we are not negotiating them. This is want we want from you, we are not negotiating it. This is how we work, and we’re not negotiating it.” We have a rigid model that everyone must sign up to. But, because I know these lawyers and have had past relationships with them, I gave them comfort by telling them that if at any time they have a problem, they must table it and we will all discuss how to resolve it to everyone’s mutual benefit, and we’ll amend our terms and conditions accordingly. So far, it’s working well.

The way our pricing works is this: we have a menu of fixed fees for various services, such as a partnership agreement, company formation, lease, deed of retirement,... Each has a fixed price. What usually happens is that the member needs a particular service, but with a few bells and whistles in addition. That additional work is priced at discounted hourly rates — normally 20 to 25% less than the firm’s standard rate.

I think that our members choose us over other law firms in part because we offer effective, quality work at a very fair rate. We are not always the cheapest, but our lawyers have a highly specialized knowledge of and experience with the specific legal needs of doctors — it is difficult if not impossible for other lawyers to match that knowledge and experience.

When I was a partner in a big commercial law firm and I first learned about the changes to the laws in England and Wales to permit ABSs, I was not in all together in favor of them. My initial reaction was that it could not work — that allowing non lawyers to own or manage law firms would create many problems, not the least of which were ethical ones. Over time, however,
I recalibrated my thinking. It realized it was old-fashioned and that I was deluding myself. The profession, together with technology, has moved on. There are younger generations involved in the delivery of legal services. Today lawyers need to work in a way that is different, more accessible and savvy.

We got a lot of criticism when we created BMA Law — people wrote to the Law Society Gazette complaining, for example, that we were cannibalizing the profession and dumbing it down. My reaction to that was that I have a raft of members, and my responsibility is to look after them. I will do that by providing them with legal services. And if I do my job right, it should produce more work for the other lawyers out there because there is always someone on the other side.

Yuliya Andresyuk, Founding Partner, Oracle Family Office

*UK-based Oracle Family Office is a boutique legal practice that serves CIS clients in the areas of corporate law, immigration, private debt financing and IP protection. Oracle Family Office originated as the in-house legal practice of Oracle Capital Group, but spun out as an ABS in order to serve additional clients.*

I first joined Oracle Capital Group as in-house counsel. As in-house counsel, I encountered repeated requests from clients to help them with a variety of their legal matters. Of course, as in-house counsel, I was not allowed to do that — I could only provide legal services to Oracle Capital Group.

We are a firm of three lawyers. In addition to Oracle Capital Group, our clientele consists of companies and individuals whose origins are in Eastern Europe / CIS countries and who are coming to the UK to live or do business.

About 60% of the work we do is for Oracle Capital Group and about 40% is for other clients.

We became an ABS in 2014. We spent a lot of time and resources to prepare our application to the SRA. I suspect that is the reason why, once we filed our application, the process with the SRA went smoothly and quickly.

Our status as an ABS enables us to have a nonlawyer shareholder, and we recently finalized Oracle Capital Group’s investment in our firm.

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Before I decided to move out of Oracle Capital Group in order to create Oracle Family Office, I shared the view that having nonlawyer ownership of a law firm would create ethical issues. But now that I’ve been working so closely with Oracle Capital Group, I don’t see that happening. Oracle Capital does not get involved in the legal work we do for our clients. They’ve not questioned my opinions on how matters should be handled.

The fact that we have a capital investor provides me with financial security. I don’t carry the entire financial risk of the firm on my shoulders alone. I find that this makes me a better lawyer — it makes me less worried about generating as much work as possible in the form of billable hours, and more focused on getting the work done efficiently and effectively. We have been able to move from hourly billing to fixed pricing, which our clients appreciate.

I am aware that other countries, such as the United States, do not allow nonlawyer ownership of law firms. Having experienced it here in the UK, I think that they should see how other countries, like the UK, work because nonlawyer ownership has worked for my firm.

The ABS structure has been a great thing for us. It has allowed us to think about how we work in a different way, to provide better service to our clients, and simply to serve more clients.

Geoff Wild, Director, Kent Legal Services

Kent Legal Services (KLS) is the in-house legal department of Kent County, one of the largest municipal authorities in England.

In 2000, I decided to completely transform how public sector legal services in Kent Council were designed and delivered. I felt that public sector lawyers had it too easy: The fact that they were supplied with both guaranteed work and money without having to search for them bred complacency and poor client service. I wanted to make my in-house lawyers as keen, as hungry, as customer-savvy and as value-aware as their private sector counterparts. That meant turning the whole basis upon which the in-house legal team was funded and structured on its head, by introducing private sector principles and practices whilst still operating from within the heart of the public sector.

I changed this by saying ‘take our budget away, take our funding away, take your guaranteed work away. In the future, we have to earn our income, we have to pay our own
expenses (including our own rent) and we have to earn the right to do your work.’ So our clients can go elsewhere if they want to, and they can choose to use us if they want to. If they do choose to use us, then they have to pay for that. And they pay for it at a price that reflects the true cost. In return, the lawyers have to give a first-class service. If they don’t, the work will go elsewhere, and the lawyers will be out of a job.

Today, our lawyers are set income targets, and they have to earn that by whatever means possible. Some pricing is still by the hour, but increasingly we are using fixed, capped and value pricing because that is what our clients are demanding and what our private sector competitors are offering.

We haven’t been able to compete with private law firms as regards around the clock service — we have had to abide by public sector contracts and pay public sector wages, and so most of our lawyers work 9 to 5. But we compensate for that by offering additional value in other areas — for example, by our political and cultural awareness. Also, because our overhead is so much lower than a law firm’s, we are able to offer much lower prices, usually a third of the private sector. Our overhead is so much lower because we don’t have fancy offices, and we don’t have highly-paid partners who take all the profits out each year. Finally, we have automated certain tasks and we push work down to the lowest possible level.

Using this in-house trading model, we now offer services not only to Kent County, but to over 600 other public sector bodies nationwide. We’ve grown from 25 lawyers in 2000 to 125 lawyers today. Against an annual turnover of about £11 million, we have generated a profit of £2.5 million — real income, real profit, not just recycling inside Kent County.

I’m not aware of any other public sector bodies that operate the way we do. This has given us a first-mover advantage: we’ve been able to make a lot of progress without much competition from other public sector legal services. But that is changing as clients evolve, the economy changes and new players enter the legal market.

Today we are looking to go even further. We are going to set up a wholly-owned ABS, in the form of a limited company. The sole shareholder will be Kent County Council.

In creating our ABS, we will invest heavily. The investment will be in the form of a loan from the Council on a commercial basis, which the ABS will be expected to repay over the course of time. The investment will be used primarily in IT, in new premises and in acquiring
specialist skills and expertise in business finance and business development. Those are two areas where today we do not have in-house skills or expertise, but that we know will significantly enhance our offering.

Our services will be structured around very sophisticated IT, with the goal of making the client experience very easy. They will have full digital service, so that wherever they are in the world, at any time of the day or night, they can have access to their lawyers, case files and accounts (for bill payment, for example), in a manner comparable to First Direct Bank (which revolutionized the banking world).

Our IT system will also make our lawyers’ experience better. This will mean stripping out from what the lawyers do everything other than legal work, and notably stripping out their administrative work. We will do this via rigorous process mapping with our IT partner, in order to mold the system to the lawyer rather than having the lawyer mold her or himself to the system. Through a combination of having lawyers do only legal work, and having an IT system to support other work, we can reduce our base costs. Lowering our costs obviously will make us more competitive. It also will allow us to make a bigger impact in our market, and to offer our shareholder a bigger return at the end of the day.

The creation of this ABS will require an additional cultural change on the part of our staff. They will have to transition away from working in a public sector to working in a private sector, highly competitive environment.

The new business will provide services primarily for the public sector, which is where our strengths lie (that being said, if any commercial organization seeks our services, we will not turn them away). Today in the UK, the public sector market is valued at about £3.2 billion. This comprises central governments and their ancillary (non-departmental) bodies, local governments and all its tiers (large city councils, metropolitans, counties, districts, parish councils), the blue light services (fire, ambulance, police), the health sector and the education sector (schools, academies, colleges and universities).

The range of the public sector is very large. At the same time, it is a sector that is not particularly well-served by the private sector, which tends to concentrate on commercial clients. For that reason, we see our ABS as an opportunity to make a big impact in a sector that suits our specific skills sets.
The services that we will provide will be the full range that a private sector firm would provide, plus. That is, we will provide services in the mainstream areas of property, commercial and contracts, planning, and employment. We’ll also offer services areas that are niche to the public sector, such as adult social welfare, child protection, highways, asylum, mental health, public sector housing, specialist police and fire, etc.

Our biggest competitors will be the in-house lawyers that our targeted public sector clients currently employ. Many of the public sector bodies I’ve mentioned have in-house lawyers. But they provide services to their employers today at varying levels of quality and cost efficiency. Our competitors will also include the handful of private sector law firms in the UK that specialize in public sector work, as well as the wider range of private sector law firms that offer mainstream services.

In creating our ABS, we will look to preserve the best of what we have developed over the past 15 years, namely a high-quality skill set, established market reputation, a public sector ethos and a low cost base. What we believe will sell is high quality at a low cost. In our opinion, in the public sector there is a large amount of unmet legal need (as yet unquantified). At the same time, the public sector is under huge financial constraints — it has to make cuts and savings in every department. Soon, the public sector will not be able to afford private sector legal advice, or even sustain its in-house teams. We want to step into that gap, and fill that legal need at a lower cost. At the same time, we want to be able to assure our clients that the quality of our services as well as its speed and reliability will not only be high, but in all likelihood better than what they are used to from private sector law firms.

As regards the IT that we plan to develop: there exists today many systems – case management, legal finance,… These systems provide a certain level of automation and standardization, but they don’t go far enough. As result, you still get lawyers doing work that could instead be done by a paralegal or indeed not by a human at all. The system that we will develop will avoid human intervention wherever possible. In addition, it will push back down to the client a lot of responsibility for the process that would otherwise be done by the lawyer.

Indeed, if you look at other sectors, such as online shopping, accounting and banking, we the customer are responsible for filling out all the forms (names, contact details, payment information, etc.). Generally speaking, we have developed a comfort with this way of working,
and even a preference for it. Yet, in the legal world, we have not yet woken up to this way of working. We can develop a system that enables the client to do a lot of work themselves, such as using their own devices to input data through a client portal. This system can then do a number of things automatically, such as collate the data the client has input, acknowledge communications from the client, generate responses, forms, letters, reminders, process payments, etc.

Our process mapping exercise will look in detail at what each one of us on our legal team does every day. We’ll work out how much time is spent on each activity, and how much could be saved if that activity was no longer done by a lawyer or by a human or at all. In this way, we will strip out the waste in our processes. The end result is that lawyers will be involved only when they need to be involved.

This does sound somewhat mechanical and robotic and we will need to preserve the human relationship that is so crucial to a lawyer’s work. So, we will maintain personal contact. For example, named people will always be on hand to answer the phone and emails and to be available for face-to-face communication, whether by skype or in-person. We’ll have the right blend of human interaction with speed and efficiency of automation.

This is a tall order, we know. Today no such system, in the totality that I have described, exists. So, we will work with an IT provider to develop this system. Without such a system, I don’t see how our ABS can succeed as we’ll be lost in a sea of otherwise similar organizations.

The reason that we need to acquire an ABS license is that it will be the only way that we will be able to serve the wider market that we need to target in order to generate the income and the profits that will make this company successful. The current SRA rules are becoming more and more restrictive on the ability of in-house lawyers to be able to serve clients other than their direct employer, and these restrictions are applied in a particularly stringent manner to local government in-house lawyers. Further, a number of public sector bodies are outsourcing a significant amount of non-legal services which were previously undertaken in-house. Once that outsourcing occurs, that body’s in-house lawyers can no longer provide legal support to those services, for the reason that they are no longer performed internally. This means that for in-house legal teams, their range of clients and available work is narrowing. In order to reach a wider market, an ABS license is necessary.
We are constantly challenged, and we constantly challenge ourselves, on why we are doing all this. Why can’t we remain a traditional in-house team doing the Council’s in-house legal work? This is the model for most public sector in-house legal departments — why are we looking to be different?

The principal response to this question is cost. Lawyers are expensive. If all we were was an in-house legal team, we would be a cost burden. We would cost the Council something in the region of £5 million per year. At the moment, as mentioned earlier, we are not a cost burden, we are an income generator — a profit center — not only covering our costs but generating a healthy surplus each year.

Given the regulatory and other changes that I have just described, if we do not continue to evolve, we may very well cease to be an income generator, and go back to being a cost burden. On the other hand, by evolving, we can become an income maximizer. That is, we can multiply the income that we are currently generating, and in that way evolve from not only being an income generator but also becoming an appreciating capital asset. That is (and assuming we are successful), by establishing our ABS, not only will we continue to generate an income, but also at the end of — say, ten years — we will have a capital value. Depending upon our performance, we estimate that this will be between £40-£60 million. This is an asset that the Council will have and will be able to do with as it pleases — it can sell it in part or in whole, it can raise money against it. It is something of value that the Council would have never had if we had remained an in-house legal team operating as a cost burden.

There are a few other local council in-house departments in England that have also set up ABSs. Their structures differ from the one that we envisage in certain fundamental ways, and in particular they assume much less risk. Notably, they have bolted their ABSs onto their in-house legal teams, to serve merely as delivery vehicles. The ABS is not an entirely free-standing operation in its own right, and notably it does not have its own assets or employees. Instead, all the employees remain employees of the local council. The existence of the ABS structure on the side simply allows the in-house department to use its employees as and when required in order to take on work for others outside that council. It is a way for these in-house departments to preserve their current positions in the face of a changing regulatory environment. Unlike us, they are not looking to survive as a trading entity in the wider market. As a result, the range and

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capacity of their work is more limited than ours will be, as is the non-legal expertise (such as IT, finance and business development) that they are able to bring on board.

As I mentioned earlier, until now, we have required our lawyers to turn their hands at marketing, at sales, at business development, as an add-on to their day job. They have not been trained in those areas, although some have done remarkably well regardless. While this has been successful for us until now, it is no basis for entering a competitive, cut throat market. We can’t ask our lawyers to craft the ideal pitch, to draft the ideal tender submission, to scour the market on a daily basis for opportunities, to go out and cultivate connections and contacts, to prepare the business for growth. We need people who are trained professionals in these areas in order to assure those endeavors are successful. At the same time, in employing trained professionals for those purposes, our lawyers will be freed up to focus on the work they have been trained to do.

The culture shift involved in transferring our lawyers from an in-house public sector environment to a private sector environment will be one of our greatest challenges. We’ll need to help them to develop the skills they need to survive and flourish. Even for me — I’ve worked in the public sector all my working life — this will be new and different. We can’t expect to take our old skill sets and apply them in the new world. We’ll need to address some of our habits and ways of working that have developed over the years and that are well-suited to an in-house environment, but will no longer be practical or relevant in our new world. It will be a huge challenge, and we have to get that part right.

I’ve spoken with my counterparts with local government authorities all around the world who face the same dilemma as us: how to afford to provide quality legal services to their public sector bodies. They are all struggling with the same issues — how to do more with less and how to demonstrate added value. For example, in the US and Canada, the in-house legal departments in the public sector are generally quite small, with a lot work being done by external private sector firms. Those firms do that work to greater and lesser degrees of efficiency, effectiveness and quality. In those two countries, my counterparts are still waking up to the idea that it is possible to provide high quality legal services to the public sector without paying top dollar for it. The ABS structure that is available to us in England is not a panacea. It is not going to solve all of our problems. But we can make it work to solve some of our problems and — importantly — it allows us to be in control of our own destiny.
The delivery of legal services in the public sector is a universal concept. I am not talking about the application of laws specific to a given jurisdiction — I can only speak about the laws of England. What I am talking about is the principles of how we can deliver legal services to the public sector in the most efficient and effective manner. The concepts are the same regardless of the jurisdiction.

Looking beyond the public sector to the practice of law more generally: how we serve our clients is universal, and there are more commonalities than there are differences. Many things are happening in England in both the public and private sectors that could easily transfer to the US and Canada. There are universal principles at play in both sectors that transcend jurisdictions and regimes. So many people are put off of seeking legal services because they see them as inaccessible and incomprehensible to the average person. As a result, many people (and this includes many in the public sector) would rather solve their own legal problems by using Google in a haphazard and dangerous way. Why as lawyers do we allow that to happen? Why aren’t we putting ourselves in a position to be able to deliver legal services in the way that these people need them to be delivered?

This is a very exciting time. While I don’t yet know what the outcome will be, I see the potential of what can be. You have to open your mind to the art of the possible. Sometimes the only restrictions are in your head.
J. Is It or Isn’t It an Alternative Structure?

One Australian ILP combines elements of a partnership with elements of a company, with the result that it is not clear which one it actually is.

Greg Tucker, CEO, Maurice Blackburn

Maurice Blackburn is a plaintiff law firm with 30 permanent locations in Australia. It has approximately 1000 employees, of which 300 are lawyers. The firm’s shares are privately held by approximately 25 of the firm’s lawyers, called Principals.

Our firm was founded almost 100 years ago by a man named Maurice Blackburn. He helped people who were underprivileged in a number of ways, such as by assisting labor unions and advising unmarried pregnant women. He would accept payment in different forms, such as crayfish, whatever his clients were able to give to him, if anything. He held seats in both the Victorian and Federal Parliaments throughout his life, and was a pacifist and campaigned actively against conscription.

Today, we have about 1000 people across 30 offices in Australia. We still act in ways that Maurice Blackburn would be proud of. For example, we recently represented 110 babies born in Australia to asylum seekers. Our legislation regarded the babies not as human beings but as “unlawful maritime arrivals.” We lost our court case contesting the legislation, but the pressure we brought against the government, together with others, was so intense, the babies were granted visas. That was a massive win for us. We funded that work ourselves — that is, we were not paid.

Another example that Maurice Blackburn would be proud of is our continued pro bono work to challenge the validity of patents relating to isolation of the BRCA1 gene for breast cancer screening, a case that has had substantial publicity. It is before a High Court awaiting judgement.

We have a Social Justice Committee which draws in people from across the firm. For us, social justice work is in our DNA. It is a primary motivator for our staff. Our criteria for picking these cases are that they have a high profile and that they will have an impact beyond the case...
itself. We have strong ties with the media and we are able to use the press to bring strong pressure for social justice purposes.

We also take on cases on a paid basis that are aligned with the pro bono cases. For example, we are currently suing Australian banks for overcharging on customer-related fees. For the public, it is natural that we, Maurice Blackburn, have taken this case as it has a social justice element as well.

We take on a number of cases “on spec” which means that if we lose, we get nothing, usually not even our expenses reimbursed.

These examples demonstrate why we are Australia’s leading social justice law firm. With this reputation, we are able to attract the best and brightest socially-aware lawyers and staff. We have a low staff turnover, and we get a huge amount of discretionary effort from them because we take on all sorts of cases without fear of failure. Obviously we balance that against the costs and risks of the case, but taking on high profile social justice cases is what we are renowned for.

When you do that, your brand becomes extraordinary. Our research has highlighted to us that we are not seen as ambulance chasers, we are seen as social justice lawyers — “fighting for fair”.

We are a very large firm. We have over 15,000 cases open at any time, most of them personal injury matters, run on a “no win no fee” basis. These cases mean that we have a strong and steady cash flow. In addition, unlike commercial law firms, we retain a portion of our earnings in order to invest in our future.

Some of our clients come to us because of referrals from other lawyers who don’t do the cases we do. Those recommendations are gold, especially when you consider that research shows that only 30% of clients compare law firms.

Maurice Blackburn became an Incorporated Legal Practice in 2003, before I joined the firm. The reasons why the firm decided to become an ILP are difficult to understand, but I believe it was for a combination of these reasons:

- There was a question of succession planning — with partners coming and going, an ILP was seen as a means to assure an enduring structure,
- The firm contemplated providing multidisciplinary services (but it ultimately decided not to do so),

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For a variety of reasons, at that moment in time, the value of the firm was estimated to be quite low. This meant that the tax consequences to make the change were low, meaning that if the change was to be made, that was the right time to do it.

On one level I do not think it was a good idea for the firm to become an ILP. I think that if a firm will in fact be run like a company, then becoming an ILP makes sense. But if the firm will psychologically and culturally continue to be a partnership instead of a company, and if it will continue to be run like a partnership, then becoming an ILP does not make sense. If you will continue to act like partners and not shareholders, then trying to run the structure as a company is at odds with that. The shift from one to the other is difficult and painstaking.

For example, Maurice Blackburn has a Board — it has taken years to establish the pre-eminence of the Board. This is because everyone still regarded themselves as a partner with the right to have a hand in the decision making. This is no longer the case today, but it took the firm over five years to adjust to that change. Again, this was painstaking requiring a significant cultural shift.

To be clear, while I think that the ILP structure is awkward for Maurice Blackburn, I think that the ILP structure itself offers benefits, and it can be the right structure for firms that truly do operate as companies. It’s too bad that there is no hybrid structure between a company and a partnership, as it could have served Maurice Blackburn well during the psychological transition. A clear advantage of this structure has been the ability to compare ourselves with the two listed companies.

We have considered bringing in a passive investor, but we’ve decided not to. This is because we see the key ingredient of Maurice Blackburn is discretionary effort. Usually a passive investor will want their pound of flesh. That is, they will want to drive ongoing exceptional returns / dividends as well as having an exit strategy for their shareholding, which usually takes the form of a significant payment or public listing. We don’t believe that we need the capital or having someone outside of the firm having some influence over it. This focus is prone to damage our culture.

As mentioned previously two of our competitors are publically listed. So their employees cannot become shareholders of a private company. All things being equal, we believe that
partnership in a private firm is far more attractive for an employee as a career option than just getting shares or options in a public company.

We have approximately 25 shareholders, all of whom work in the firm. We opened up the shareholding significantly over the last few years, bringing in eight new shareholders. We will continue to bring our talent into equity.

Normally in a professional services environment, profits, in full, are distributed quarterly or at least half-yearly. That is not our model. As a plaintiff law firm, we have to retain earnings. Under our “no win, no fee” arrangements, we pay the client’s expenses along the way. At any moment we have tens of millions of dollars which we’ve paid for clients. In addition, many of our class actions we fund ourselves — that requires a reservoir of capital. Finally, we get involved in litigation funding — funding other law firm’s litigation – to do this we use partly our share capital and partly debt. So, in sum, we need to retain earnings as part of our business model.

Another thing that we do differently from some other law firms is that we have many offices — 30 at the moment. We have to go where injured people are — they don’t come to capital cities just because you are a good law firm. Having so many offices requires us to have effective internal communications as well as external. So we spend a lot on IT, to be sure that our communication networks work, to communicate with each other and with our clients. That being said, many of our clients prefer personal contact to contact over the phone, SMS and Skype — at least at this stage.

We are also investing in IT to review processes to become more efficient and automated where appropriate: standardization of documentation and online processing of documents, for example.

We have three pricing models depending on the area of practice. Around one third is hourly rates, one third is court scale and another third is by agreed fixed costs with the client. We seek regular client feedback for input on our pricing levels and models.

At Maurice Blackburn, three things matter, in this order: staff relationships, their career path, and remuneration.

As regards relationships: If you do not get on with other staff, you might not be here very long. This is typical of any workplace; money/ salary does not substitute for happiness.
As regards career paths: for lawyers, the career path is associate, senior associate, salaried principal and then equity principal. The six people we brought in last year as equity principals were in their 30s or early 40s. This is a different career path than the one our publicly listed competitors offer.

One of our major competitors has followed an aggregation strategy, and in doing so they’ve become one of the largest firms in the UK. We have chosen a different path. We fund litigation overseas — we fund law firms to take on litigation that we think has merit. We think that we have an advantage over other funders because of our deep understanding of complex litigation and the attendant risk. We have about ten of those cases and we intend to increase this portfolio.

In personal injuries litigation, we have one of the largest market shares in Australia. That being said, we do not see ourselves as a consolidator of the market because we think it is best to grow organically. We have acquired some firms, but nowhere near the number our competitors have. Organic growth permits us to protect and enhance our culture.

Even if we are not a consolidator, we are in a consolidating market, and because our brand is so strong, we do attract a large share of the market.

I have heard the fear expressed that in a consolidating market, the consolidating firms will cherry pick the most profitable work and neglect the least profitable. I don’t think that this would be a wise strategy to adopt, for two reasons. The first is that there is a legislative risk — if you pick a narrow range of services, you could lose your entire livelihood because of a legislative change (for example if a no-fault scheme is adopted). A second reason is that some work is part of our DNA. It’s work that clients expect us to do, and if we didn’t do it, it’s unlikely we would get the referrals we need for the more profitable work.

I’ve been asked a hundred times if Maurice Blackburn will go public. I won’t say that the firm will never go public because I don’t know what direction future generations of the firm will take. But for now, we don’t need external capital. Moreover a public listing would require that we grow aggressively by acquiring other firms — that is at odds with maintaining our strong organically-grown culture. We think it could harm to our culture if we brought in other firms that we were not able to integrate successfully.
Our number one achievement is the discretionary effort we get from our staff. We think this is harder to do inside a publicly listed company environment because people don’t have the career path they had before, and aggressive growth leaves the original culture changed or, at least diluted.

We care very much about relationships and developing people’s careers. Our lawyers have the chance to become partner/owner in the traditional sense. We pay our staff competitive commercial rates. We think this is better offering than other firms that prioritize financial outcomes, that don’t care so much about culture and relationships. It is a clear choice, of course both models can be successful.

We don’t lose many people to other law firms. We have about 60 senior lawyers — about one third of them have shares. Some people have declined the opportunity to become and owner, because of the added responsibilities that come with that. In some cases those people remain as Salaried Principal, or as Special Counsel or General Counsel.
K. What Is It Like for a Lawyer To Be Employed By An Alternative Structure?

The stories above are all with persons who have founded and/or are managing alternative structures (ABSs or ILPs). In contrast, the stories of this category are with persons — lawyers — who are employed by alternative structures. These stories demonstrate that while the experiences of these employees are all different, they share an essential commonality: in each case, the alternative structure provides an environment for lawyers to flourish.

Dina Tutungi, General Manager — Personal Injury Victoria
Slater and Gordon Lawyers

Slater and Gordon Lawyers is a consumer law firm with 70 locations in Australia and 25 locations in the United Kingdom. Slater and Gordon is a publicly held company with shares listed on the Australian Securities Exchange. The Slater and Gordon Group also owns Slater Gordon Solutions in the UK, which provides claims, motor and health services.

My title is General Manager — Personal Injury Victoria, Australia. The personal injury group comprises the Work Cover, Motor Vehicle Accident, Medical Negligence, Public Liability, Asbestos and Superannuation and Disability Insurance teams. I report to the Head Personal Injury Australia.

I commenced this role on return from parental leave with my second child. I had previously held the role of State Practice Group Leader of the Civil Liability team in Victoria and also lead the Superannuation & Disability Insurance national practice.

I joined Slater and Gordon in January 2001, as my first legal job straight out of law school.

Slater and Gordon is a very dynamic and flexible place to work. Much of what we do is different and innovative. We are always busy. In general, this is a very positive place to work.

Slater and Gordon is structured in a way that it can recognize people’s strengths and skills, and provide opportunities that suit those strengths and skills. Slater and Gordon is also a place that can provide a lot of different and empowering opportunities for lawyers at all levels.

Let me tell you two personal examples:
When I first joined Slater and Gordon, I worked in class actions, and I had the opportunity to work on a large scale projects. That was a great opportunity for me, especially since I got to work directly with three senior partners. But after a while I wanted to have a different experience, I wanted to get the experience of working for individuals in a traditional setting, with a traditional file load. An opportunity arose in motor vehicle accidents in Head Office, and I did that for a year or two.

When I was a fifth year lawyer, I put a proposal to our Managing Director (Andrew Grech) and the executive team, to open a new suburban office in Ringwood. They supported this proposal. The sentiment was to “go for it.” I was well supported but also provided ample autonomy such that the lease on the premises was executed based on my recommendation and review of premises. I ran that office, as a junior to mid-level lawyer, for five years.

Part way through that, I was asked if I wanted to run the national superannuation [national disability and disability insurance scheme] practice. I saw that practice as having great potential, so I accepted that request while continuing to run the Ringwood office. Later the opportunities of further career progression have come and I have accepted those roles, including my current position as General Manager for Personal Injury in Victoria.

I am up for a challenge and I like change. I have enjoyed taking something that has potential and turning it around so it meets its potential — in understanding what systems and processes need to be improved, and then developing those systems and processes. Slater and Gordon has given me the opportunity to do that. I think I would be quite bored if I were working in a well-established practice that simply needed to be maintained.

The people I work with are focused on the future and finding innovative and progressive ways to deliver exceptional customer service and business growth. The people I work with seem happy to be here. It is not uncommon to come across lawyers who have been here 15 years, 18 years… That being said, it can be gruelling — lots of projects happening at once, growing, acquisitions, consolidating acquisitions, many balls to keep in the air all at once.

I had my first child a couple of years ago. At that time, I was appreciative that when you have a child and you come back to work, you can select a flexible working arrangement that suits you. Flexible work arrangements are part and parcel of being a working parent at Slater and Gordon. Many staff members are on flexible working arrangements involving a mish-mash of...
hours and days including my own supervisor who is the head of our Australian personal injuries practice. That has certainly been my experience. When I returned from parental leave to my usual role, my request to work 3 days a week, leaving at 4:30 pm was accepted. I naively thought that was how most businesses operate — offering flexibility to working parents and enabling them to even progress their career on reduced hours. It wasn't until I started talking to the parents at my Mother's Group that I realised that what Slater and Gordon offers is exceptional. Most of the other parents in the group were required to return to work full time after 12 months of parental leave. That was a real eye-opener for me. Not only does flexibility enable working parents to remain in meaningful employment, it makes good business sense to offer such flexibility.

I have attended a couple leadership forums for women, and in each the messaging has been that this is a time for your career to take a back seat, that you cannot have both, that women in the law will generally go back to roles that are not the same as before and that their jobs will change. That's not been my experience or those of the talented woman I work with. That's not to say that juggling both a progressing career and family with small children is easy. But with the right support and workplace attitudes, it is achievable.

This says a lot about being at Slater and Gordon, where many women have continued to progress their careers during the time they have small children and are working part-time. The flexibility that Slater and Gordon shows for working parents is important. There are many part-time working parents — if I am not mistaken, about 25% of Slater and Gordon’s work force is on a flexible working arrangement, including part-time work, compressed working weeks, job share arrangements and working from home. When someone wants to come back part-time after they have a baby, we always attempt to accommodate their request. For example, we have a senior legal assistant who wants to come back part-time — that is fine — we will change the structure of the file load, or team her up with someone who can support her. It is something that we take seriously. Recently, one of the Associate's in my team returned to work three days per week and we supported her with the addition of a junior lawyer in her team.

Our work flow system is a very important part of our processes. It does not teach you how to be a lawyer, but it is very good for practice management and makes it easier for certain tasks to be done by experienced legal support staff who are supervised by lawyers. It also frees
our lawyers up to focus on good case management — those high end analytical and forensic tasks.

Getting a work flow system up and running is a long term project requiring significant resource and expenditure. It requires a group of lawyers to sit in a room with a team from IT, and to think through every step that a lawyer can take in the litigation process; everything that they do to prepare a case to make sure that the case is compliant with court orders; to make sure that the customer service is exceptional, that clients are updated and that the case is moving on schedule.

This system is a big part of what we do. It is amazing to think that personal injury litigation of all types follows a flow. When you first think about it, you think that it’s not possible to do it, that it is not possible to put it in a flow. But in fact you can. There is a process of thought, even for the most complicated areas of litigation, and it can be channeled into the work flow.

We have created a “flow” for every type of matter that we handle in personal injury. It anticipates different combinations and permutations for how that matter can progress. It is like a “choose your own adventure” because it can go off in so many different ways by using prompts and checklists.

For example, it will prompt questions such as: Are you pursing a common law or statutory claims for damages, or both? Do you have a medical report? Will you make a claim for lost wages? Did you want to get a police report? Do you want to speak with witnesses? Do you need updated medicals?

And it goes into further detail. If you check “obtain police report,” it will automatically diarize for you to chase it after the freedom of information period. When you check off that the police report has arrived, it will tell you to cross reference that you’ve got the time limits right and it will ask you if you need to speak to the witnesses named on the police report. And it goes on.

There are thousands of these interactions in each “flow.” It is such a powerful tool. No, it will not teach you how to take a witness statement, or how to provide great customer service or how to manage your client’s expectations or undertake high level legal analysis. But it does minimize risk and improve efficiency, expertise and client service in a busy practice. And it is
really empowering for the legal assistants because they can see exactly where the matter is at, keep the clients well informed and plan and manage their workload.

Our legal assistants do not sit there with dictaphones or simply answer the phone to put calls through. They are an integral part of the team that services each client. The lawyers are there to do the high-level forensic, legal and analytical work and update the client with major developments. Our legal assistants aid the claims through for the client and make sure that everything is progressing. Our legal assistants are very engaged, they are passionate about the work and they are empowered. I see them as closer to projects managers than administrative assistants or secretaries.

The “flows” are maintained and kept up to date by a team of people. Many of the people on that team have training and experience in both IT and law, because you need someone who can speak both “languages.”

When I am interviewing a lawyer new to Slater and Gordon, I tell them that the opportunities here are varied. I advise them that their first priority needs to become an excellent lawyer and specialist. It takes about five years for a junior lawyer to really nail that, but once it becomes second nature, the opportunities at Slater and Gordon are endless. We have 70 offices across the country and also offices in the UK, there are opportunities to be involved in localities, in a region, to become a practice group leader, a subject-matter expert and train junior lawyers. There are also purely operational jobs in management services and business development. There are lawyers (like myself) who are very focused on business development and client service. And there are lawyers who do research, who publish articles and books. Slater and Gordon probably isn’t for everyone, but I think that it offers many more opportunities to lawyers than a traditional law firm, where your options are usually limited to either becoming partner or not.

I have been with Slater and Gordon both before and after it went public. I don’t feel that the fact that we are public has changed the effort and thinking we put in to the legal advice we provide — whether we take on a case, whether we recommend to a client to settle a case, but it has meant that we can service more clients and that we’ve expanded a lot outside personal injury law. Despite the listing, we are all very conscious of the fact that our primary duties are to the court and client. In my experience no one from our finance department and certainly no shareholder has ever tried to influence what cases we take on or how my team handles a case. If

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anything, I feel that in the past few years, we’ve been even more focused on improving client
service and servicing a broader client group because of the benefits that have come with listing
and investing in the more operational areas of our business.

Certainly because we are a public company, things are more transparent. Financial results
are published for example. That has certainly changed since we went public. Before, when Slater
and Gordon was still a partnership — I remember wondering what partners actually got paid, I
remember wondering just what you had to do to become a partner. There wasn’t a lot of
information available. Now that Slater and Gordon is public, we don’t have partners anymore,
and the financial information is all out there — you can see what the senior executives earn —
there are no secrets. Also, Slater and Gordon’s structure gives a broader group of staff an
opportunity to become owners of the business, and many have taken advantage of that.

Scale allows you to have highly specialised practice areas. For example, we have lawyers
dedicated to motor vehicle accident claims — day in and out, that's all they do. In a similar
fashion, we have lawyers that specialise in work place injury claims, public liability or medical
negligence claims. The lawyers in those practice areas are experts in their area of law. I think this
translates to a higher quality of legal service with less of the delay and additional fees associated
with asking for a barrister's opinion at every turn or researching matters that are well known to
our specialists.

Scale also allows you to segment the work leaving the forensic and highly analytical
work to our lawyers. This all leads to more satisfied staff and creates career opportunity for both
lawyers and nonlawyers.

Scale enables us to deliver a more affordable legal service to our clients. We don't want
our clients to pay lawyer rates for work that can be performed by a nonlawyer, such as the
myriad of phone calls and correspondence associated with getting all the relevant parties and
materials in one location for a mediation.

Our job is to achieve the best possible outcome for client in an optimal time.

I used to tell my clients — I can speak to you as much or as little as you want to but that
comes at a cost. I will focus my energies on the high end analytical and forensic legal work and
my legal assistant will be responsible for the other specific duties. My clients then knew what to
expect from the beginning and had some confidence that we had their interests at heart.
We are all motivated to get the best possible outcome for every client. This is what motivates everyone at Slater and Gordon.

Sue Bence, Head of M&A Operations and Integration — UK
Slater and Gordon Lawyers
My role at Slater and Gordon has changed a lot over the past few years. I am no longer a practicing lawyer — I work in management. And I am in a particular area of management that is quite specific to our business, which has encompassed mergers and acquisitions (M&A) and now operations and integration. Slater and Gordon is publicly listed, is well-capitalized and is leading market consolidation in the United Kingdom in consumer legal services.

My role, until recently when the focus shifted to integration work, was to run the M&A program from an operational perspective, over the lifecycle of the acquisitions that we work on. This means from the commencement of negotiations with a potential vendor through to integration planning and the handover to operations.

My career has developed as a result of the fact that I have been involved in law firm operations, at all levels. I finished high school and started working in law at age 16 at an international law firm – Clyde & Co. At 18, I started a vocational legal course called Chartered Institute of Legal Executives Course (CILEx) enabling me to complete my law degree in a modular form, whilst continuing to work.

I worked for a couple of different firms, in the area of personal and sports injury, becoming a partner in a leading personal injury, human rights and environmental law firm in London — Leigh Day — leading a team delivering legal services to members of sports governing bodies.

I had always wanted to work abroad, and decided that Australia made the most sense, given the ease with which I could qualify there, the fact that I did not speak another language, and my longstanding affection for the country. Also, a former colleague had moved to Australia and joined Slater and Gordon. Ultimately, through a combination of routes I joined Slater and Gordon in Australia at the beginning of 2008.

When I joined in January 2008, Slater and Gordon had just publicly listed, and was already thinking about opportunities for growth and overseas expansion. I was keen to be part of
those strategic discussions especially with my background in the consumer legal space in the UK.

My first role at Slater and Gordon was 50% legal and 50% technical. This was the first time in my career that my role had been formally split between technical and managerial/development work, with KPIs built around two distinct areas of work — one as a lawyer in Catastrophic Injury Litigation and Group Actions and the other as a Relationship and Business Development Manager, with a particular focus on medical and allied health relationships.

This was a very different structure from how work was organized and recognised at the law firms I had worked for in the UK. Previously, I was expected to do it all — deliver the budget, run a team, deliver the business development initiatives required to keep my team going, and sit on a large number of partnership committees that would arguably have been better run by area specialists (such as marketing) than lawyers.

At Slater and Gordon, the first thing I noticed was the time and attention that was given to scoping out roles for appropriate people with the appropriate skill sets. It was appropriate to give me a business development and relationship management role because as a partner at Leigh Day I had spent a lot of time investing in successfully building up my own practice. I think that Slater and Gordon recognized that capability and wanted to develop and capitalise upon it. So, they set very specific objectives and accountabilities for me around key business development initiatives for specified practice groups. This role was clearly scoped, with measured KPI’s against which I could be rewarded and it defined part of my role at Slater and Gordon.

I held this role until 2011 when I moved from an employee to a consultant (self-employed) role, in part because I wanted to move back to the UK for personal reasons, and in part because at that time Slater and Gordon was not sure whether and how we would be developing a business in the UK. Since 2011, I have worked with Slater and Gordon to develop their UK strategy and I have undertaken due diligence work on the UK firms that we have acquired during that time, as well as acquisition opportunities.

In October, 2014, I moved back into an employee role, as Head of M&A Operations and Integration – UK.
At Slater and Gordon we have a significant in-house capability that supports our M&A activity. Our team includes my role, as well as in-house corporate finance, in-house legal, project coordinators and integration managers. We work as a team on M&A and integration related activity.

My role is a unique one, and in some ways I am uniquely qualified for it — because I have a long history as a UK practitioner working with the types of law firms that we have acquired. Having had the benefit of working for Slater and Gordon in Australia I have a deep understanding of their business and people culture, and how their mission and values translate into strategy. In particular I understand the benefits that a corporate environment can bring to the practice of law and how access to capital and related investment in people and process can ultimately benefit the services we deliver to our clients, who are our primary concern.

I recently completed an Executive MBA at Henley Business School — I did that because of the importance of having a good level of business acumen within this environment. This is something that I did not purely pursue because of my role at Slater and Gordon, but because for a long time I have considered it important for managers and leaders in legal business to develop a high level of financial and people management skills. Having said that, these skills are particularly helpful to me working in a publically listed and corporate environment.

Acquired growth was a key part of our strategy since entering the UK market in 2012, and we have been fortunate enough to have had a number of opportunities to consider since that time.

This has been due to a number of factors, not least that the personal legal services market in the UK is changing so rapidly. A number of firms have found themselves to be in difficulty, through an acknowledgment that the market is becoming more competitive. Perhaps they have failed to invest in their people or systems sufficiently to stay ahead, or who have found that they cannot compete or invest heavily in industry changes or innovative ways of communicating with and servicing clients. Some firms have been motivated to approach us with a view to realising their capital investment or because they have not engaged in succession planning sufficiently to ensure the sustainability of their practices without further support.

There are a whole range of reasons why the market is what it is. The last few years have been an extraordinarily good time to be in the position that Slater and Gordon has been in. There
has been no other consumer law firm positioned as we have been in order to capitalize upon the opportunities that have been available, and we have sought to take up those opportunities as constructively as possible.

I view my MBA as a tool to assist me in developing as an operational leader in legal services. The experience that I, and others, are getting at Slater and Gordon at the moment I think is unique in this industry. This is a very exciting and rewarding place to work, and I expect this will continue into the foreseeable future.

There are not many other organizations in the world that are like Slater and Gordon, certainly not in the legal industry, and I think that there are many organizations in the world, and not just law firms, which could learn a lot from Slater and Gordon’s approach and what we have done.

For any business, including law firms, there are core central services that are integral to the business. Those central services need to be well run in order for the business to run efficiently and profitably. In my experience, in a traditional law firm, those central services are very often led by the wrong people — routinely they are led by the partners, rather than by specialists in their fields, such as marketing. Also, in a traditional law firm, there is often a limit in capital investment in both people and process, both of which limits growth.

At Slater and Gordon both our structure and our approach are different. We employ a large number of people who are not lawyers to undertake nonlawyer specialist roles. As an example, we have marketing, IT, finance and HR teams and the heads of those teams are members of our UK Executive Group.

Our lawyers are trained to be great lawyers and are provided with the best support and systems we can deliver to provide outstanding levels of service to our clients. Our lawyers are not trained to run HR departments and they are not trained to run marketing departments. At least, dabbling in these areas would not be a good use of their time. But if they wanted to develop into these areas we have opportunities that would enable them to do so, meaning that it is possible that a lawyer within our firm might transfer into a non-legal specialist area of the business.
It is my experience that because traditional law firms lack capital investment as well as nonlawyer expertise, they often struggle to innovate and are only able to take a short-term outlook.

I find it very liberating and inspiring to work in a non-traditional structure. In a traditional structure, many things are not said and are not written. In contrast, at Slater and Gordon, not only are things said and written, a great deal of it is public. For example, there is transparency around how people are rewarded. Our commitment to diversity is clear, public and measurable. Also in our structure, ideas are encouraged from any place and they can reach the right outlet for discussion. In contrast, in a traditional partnership, you may have a great idea about marketing — you take it to the marketing partner, who may not have any real training or experience in marketing, and who is not able to recognize the value of a great idea. That can be very frustrating.

I have trouble understanding the vague accusations that are made about the problems with nonlawyer ownership, and especially the vague accusations that it will have a negative impact on professional standards. These accusations seem to fail to take into account the fact that if a firm like Slater and Gordon breaches its professional obligations, it will be held to account in a more public way than what could be faced by a non-public law firm in some respects. So, I think that our shareholder interests are absolutely aligned with the need to maintain the highest professional standards. Serving our clients to the best of our ability, making sure they get the best possible outcomes and at all times upholding the highest professional standards are what maximize shareholder value in the long term.

Law firms should exist to benefit their clients. In my opinion, liberalized structures enable the maximization of the benefits to the client. The ability to recruit and reward at the same level nonlawyers to assist in the delivery of legal services I see as a huge benefit to our clients as appropriate and appropriately supported specialist support staff benefit process and reduction and supports the best possible outcomes to be achieved for clients.

Lawyers cannot be all things to all clients. And clients today need more than pure legal advice. The legal advice needs it to be delivered in a way that is appropriate, in the way that is requested and required by them.
In the environment that is encouraged at Slater and Gordon, we can do more. We can get to more clients through our marketing. We can deliver great services in a way that clients want.

My advice to lawyers today is: learn about the business of law. And then think about the environment that you would like to be in. The partnership model is in many ways outdated and in my view can be limiting both professionally and personally. And it can certainly produce limitations in service capability that should ultimately benefit clients. A liberalized structure allows for people who want to be pure legal technicians to be pure legal technicians, without needing to be rainmakers or to be business managers, and still enjoy share ownership.

If it is your goal to be a partner in a traditional law firm, you should ask yourself why. Most people who study law set partnership as their goal, simply because that is considered the pinnacle of a legal career. But you should think about what it really means, from both a personal and a business perspective. Think about how sustainable an environment it is, both personally and professionally. What does being a partner mean, and what will it deliver? It may deliver high earnings, but will you be willing to invest your capital in the future — to ensure the growth and in the sustainably of your firm?

Andrea Pierce, Legal Services Director, Kings Court Trust

UK-based ABS Kings Court Trust is a probate service assisting families through the probate process upon the death of a loved one. It operates on a volume model supported by online platforms. KCT is owned, in part, by private equity firm Smedvig Capital and KCT’s CEO, Tom Curran, is not a lawyer.

I was in private practice as a solicitor before I joined KCT, having worked in several different small to medium sized law firms prior to that, specializing in the area of Private Client. I always had a desire to become a specialist in one area of law but was unsure how to achieve that, given that the area of Private Client is quite wide ranging and encompasses a lot of areas within it.

I left the last law firm to go travelling, and when I returned home I was unsure as to the career path I would take, bearing in mind my desire to become a specialist. But quite fortuitously just one week after my return in 2006, I was contacted about an opening at KCT, and I thought that it sounded like a great opportunity, so I went for it.
I joined KCT as Head of the Legal and Tax Department. In that role, I was responsible for all of the legal and tax components that need to be undertaken within probate and estate administration. In 2010, I was promoted to Head of Legal Services. In this expanded operational role, I have reporting into me the new Head of Legal and Tax (made up of four lawyers and tax specialists, plus one outsourced lawyer, who works from New Zealand), as well as the Head of Customer Service (who the Case Managers report into — Case Managers are the principal point of contact for clients) and the Head of Support Solutions (they cover niche, specialized roles, like dealing with stocks and shares, again looking after components of probate work).

While the client has one point of contact, there are at least five, if not six, pairs of eyes that work on a file until it is completed. From a risk perspective, this offers a great advantage. In private practice, typically only one person oversees a file from start to finish — and potentially something could be overlooked.

Another advantage we offer clients is a shorter life cycle for a file. This happens in part because of our project management software which has allowed us to build in efficiencies into our processes, and in part because of the way we structure our work — each person who works on a file is highly specialized and is able to provide solutions very quickly.

For example — at any given moment, we have in excess of 500 open files. In contrast, in a traditional structure, typically a lawyer would deal 10, 20 maximum, probate files a year. It could be argued, can you ever become expert when handling such low volumes?

Because of the volumes of cases that we handle, and because no file is ever the same, we are exposed to many different compositions of estates, and such exposure it would be difficult to get in private practice.

I cannot recall that we have ever had any issue with our ethical rules — that is, I cannot recall any time when the fact of having nonlawyer owners and managers has created any ethical issues for us. Our nonlawyer management has never pressured us, or even wanted us, to make a recommendation or a decision in breach of the ethical rules or against our professional judgment.

We have a very open culture where everyone can talk. We have systems in place that monitor everything we do and how we do it, and the sign-off of the Legal and Tax Department is required before any monies are distributed from an estate to beneficiaries, in order to ensure that all legal and tax matters have been completed on a file.
There is a lot of administrative work that needs to be done in relation to an estate. That work does not need to be done by a lawyer — things like simply liaising with financial institutions and gathering in or arranging the transfer of assets. Our lawyers are not used for that. Instead, we reserve them for the legal components that need to be undertaken on the cases.

As a new lawyer at KCT, you have a steep learning curve. You are exposed to so many different types of estates.

Our lawyers here do have client contact, but less, and less regularly, than they would have in a traditional structure. That is something that I missed when I first came to KCT.

Our lawyers are a very important part of the team and of how a case is handled. That being said, they are not put on a pedestal — they are part of the wider team and they, like everyone else, have a role to play. It is very much a team environment. You don’t usually see that kind of teamwork in a traditional structure, where you tend to work on your own and endeavor to record as many hours as possible.

Our lawyers are not evaluated on how many hours they record (we do not record time or use hourly billing) nor on the business they bring (our Marketing and Sales Department does that). Our lawyers are evaluated on defined KPIs (key performance indicators), such as meeting service level requirements and deadlines.

Our structure offers different career paths to our lawyers. They can remain in a strictly legal role, or they can branch into business and management roles.

Technology is a very important part of driving our cases forward. In treating a file, we’ve broken the process into ten stages, and each stage has certain required components. With our technology, everyone knows what stage a file is in, and everyone knows what work they need to be doing. And the best part is that everything that we see in-house, our clients see too — it is fully transparent — they can track their files as we do.

Having nonlawyer investment and nonlawyer management is very exciting. They bring great benefits — they bring a fresh pair of eyes. They come from a business background, and they can bring a lot to a company to drive it forward and help it grow. It is necessary to continually innovate, create efficiencies and develop new product lines. It would be impossible to do those, and impossible to grow, without external investment and professional management.
There is still very much a place within the market for the traditional providers of legal services, and at KCT we are just providing legal services in a different way. It does not mean that the integrity of what we do is threatened — it’s just a different way of doing it.

Most importantly, having companies such as KCT alongside traditional providers in the marketplace benefits consumers — it provides them with greater choice and competition to allow them access to justice.

**Nadia Haque, Associate, Radiant Law**

*Radiant Law combines legal service outsourcing with contract negotiation and dispute resolution for larger commercial contracts. It uses bespoke technology and processes to improve contracting processes and shorten sales cycles for companies with large volumes of commercial contracts.*

My career has not followed a traditional route, which probably explains why I am working for a non-traditional firm. After finishing law school, I worked as a paralegal, I travelled, worked abroad and did a Masters. Finally I joined a traditional firm and completed my training contract. Whilst in private practice, I did a lot of secondments in-house, in a national and international bank, for example.

It was from this experience that I realized traditional private practice was not for me. I did not aspire to become a partner, and I was not comfortable in the environment of a traditional firm. It is not that I am not ambitious or that I do not want to be successful — I do. But I do not think that partnership is the answer to that.

I had the opportunity to go in-house, but I was hesitant to do that because I think that once you go in-house, you become so commercially focused on “getting it done, getting it done” that you don’t necessarily get to build on your technical skills, which as a junior lawyer I wanted to continue to develop.

So when I came across Radiant and met with Alex and the others, I thought “wait, something’s going on here.” The people I met all had the same problems with a traditional practice as I did. At the same time, I was interviewing with traditional firms, and they were asking me questions about my billable hours, and I thought to myself “I do not want to be you, I
do not want to be in this environment, I just want to do the job.” Because that is what the client wants — that you do the job as quickly and efficiently as possible.

I also wanted to be around people who were happy to be doing what they were doing. A lot of people I see in private practice are all miserable. Even the people who are utterly driven to make partner — once they get there, they are utterly miserable. I was driven by being in an environment where people are happy.

Don’t get me wrong — as a lawyer I am instinctively risk adverse, and I had my hesitations in joining Radiant — I wasn’t sure if I should get on board with intelligent mavericks who themselves had taken a huge risk.

What I like about working here is that I am trusted to get on with the job. I am given a lot of responsibility, with the expectation that when I need help, I will say so. Face time is not important — if I stay late, it is because I need to get the job done, but not just for show.

I also like the flexibility — if I need to work from home or from a train, it is no problem. I’m trusted to get the job done, and not let the client or the team down.

We all share the same ideal. We are driven not by making partner, but by wanting to see the business succeed. This is true of everyone, including the administrative staff. They are just as dedicated as everyone else.

My role is called a “Switch.” Part of the work Radiant offers, involves outsourcing day-to-day contracts to the Cape Town office. As part of my job involves being based at a client’s office, I act as the interface between the Cape Town office and the client, so that for client the interaction is seamless whilst having the comfort that it has a legal team that understands its business. Radiant’s model is to use technology and resources to be efficient, while making sure the quality stays high. In that context, my role involves a degree of quality assurance. I am the person at Radiant who understands the client’s business the best, and can communicate that information. Because I am in the client’s office two days a week, we are able to be very proactive, very fast, in meeting the client’s needs.

Our clients are large international companies; many of them are household names. They are attracted to Radiant because of Radiant’s ability to handle a very large number of standard contracts. These companies don’t have time or resources to handle them correctly, but if they make a mistake with even just one of the contracts, it could create a lot of liability for the
company. Our clients see that Radiant has developed a model that enables these companies to handle a large volume of contracts safely.

Examples of contracts are technology (like new software) agreements, marketing agreements, and general services agreements — the many types of agreements that a business needs to operate. Often these contracts are negotiated and signed on a weekly if not daily basis.

Because Radiant is such a new company and is still evolving, I feel that I have many opportunities here.

The traditional law firm that I worked for merged with another national firm. But they were all lawyers — there were no business heads in the merger. All they were focused on was becoming bigger, bigger, bigger. But they did so at the expense of quality and the expense of staff. I think in their minds bigger equated with being the best.

I don’t know how you can’t see that a law firm is a business. We are providing a service. How can this not be a business? And how can you not see the value in having a business person manage the business of a law firm? Lawyers are not trained in business. Managing a business requires a large number of skills that most lawyers haven’t worked on developing. And why would they — they are lawyers — they are primarily advising on managing risk.

I don’t understand the assumption that a business person will cause a firm to act unethically. That has certainly not been my experience.

My advice to anyone wondering about alternative structures: try it. Don’t be scared. Yes, it challenges your norm and it is normal to be afraid of things that challenge your norm. But you can choose to embrace it, and my advice is to embrace it. In an alternative structure, a person’s happiness and creativity can actually matter.

Tamyn Hearne, Associate, Radiant Law

When I first qualified as a lawyer, I worked for an e-marketing company as an in-house legal advisor. After 2.5 years, I felt that my time with the company had run its course, following which I decided to do a Master’s degree in Commercial Law at on a full time basis at the University of Cape Town. Once I completed my degree, I joined a legal outsourcing company. This was when I first came to know of Radiant Law. Before moving to Radiant Law I was
working at a traditional law firm specializing in commercial law and labor law. When I heard Radiant Law had opened in Cape Town, it felt instinctively right to join the team. I have never looked back.

While I enjoyed my time in a traditional law firm it did not ignite the drive in me. I felt excluded from the “meat” of a deal. Clients provided instructions of the specifics they wanted, and we created the end document. There was a gap in engaging with the business and having insight into the ground level needs and long term objectives driving a variety of deals with a business. In the end, I felt I was just creating documents based on a checklist, with only a snapshot of a deal and the business. I didn’t feel that I was adding enough value.

The Radiant Law model spoke directly to my frustrations with a traditional firm — a Radiant lawyer becomes a part of the client’s business, understanding the client’s processes, objectives and appetite for risk. So, at the end of the day, a Radiant lawyer does not just produce a contract but becomes an integral part of the client’s business — adding value through its interaction and relationship development with legal and the business. It is this insight that allows one to become a great attorney and add real value to the client.

At Radiant, a typical client relationship begins with a pilot. That is a time when we get to know the client and the client gets to “test” Radiant. We meaningfully engage with the client and continuously ask questions (preferred positions, internal structures, processes and procedures, understanding client contracts, long term objectives, needs, wants etc.). The type of information that is gathered allows us to tailor a solution for each client and produce client-specific work materials. The work material we produce is invaluable in delivering on high volume and repeat work, and promotes knowledge sharing across the wider team. We create what we call a “Playbook.” This is a live document which captures client-specific information and evolves as we develop a deeper and more practical understanding of the client and its operations.

There are arrangements with certain clients where a Radiant Lawyer is on site for a day or two a week. The majority of us are either based from our London office or our Cape Town office. I am based in the Cape Town office. My day-to-day tasks involve managing pilots and existing clients. I work across a variety of clients and I am exposed to deals of varying complexity.
Depending on the work stream (client’s needs, type and complexity of an instruction), we refer to the information and/or processes within the client’s Playbook.

As some of the Playbooks contain a substantial amount of information, and we avoid client information sitting specifically within the knowledge realm of one person. We are always looking at ways to see how technology can assist in capturing an employee’s real time knowledge and ensure the quick and easy dissemination of Playbook information.

Compare this to how a traditional law firm typically serves its clients: One or more lawyers in the firm may or may not invest time to get to know the client. If they do, it would be exceptional that they would make the investment to get to know a client in the depth that we do, and unheard of to record their knowledge in a systematic and easily transferable way like we do. What’s more, traditional firms often shift responsibility for a client from one lawyer to another, especially from one junior lawyer to another, but without the necessary transfer of knowledge about the client and its specific needs. This is very frustrating for the client, and it limits the value that the firm may add to the client.

We are a new company, and these processes are always under development. Management supports collaborative decision making and any member of the team is heard. We are always looking for smarter ways to work, and especially looking for ways that technology can help us to work smarter.

At a traditional firm, you have your senior partners, partners, senior associates and associates. At Radiant, there is no hierarchy, there are no labels. Certainly there is deep respect for seniors. But our culture is collaborative, with a lot of transfer of knowledge from the senior lawyers to the junior lawyers. Not having those titles makes it much easier to seek information from someone senior to you. And there is no attitude that because you know less, you are worth less.

This is very important because the more and faster that knowledge transfer occurs, the more value we can add value to our clients and increase efficiency.

We do not bill by the hour. We charge on a fixed rate. I do not record my time. We are judged based on quality not quantity. We all work very hard, with an even distribution of work among the team. What never fails to amaze me is that the senior lawyers will never just leave you “high and dry.” If they know you are working long hours, they will make sure you are
supported, even helping out themselves. The leaders of Radiant Law lead by example. They create an environment where you want to work hard, you want to add value and grow the business. They support an environment where your job is not a means to an end, but an activity with a purpose. This is done through joint decision making, transparency, exposure across a variety of deals, feeling valued as an employee and leadership.

I know that many people criticize law firms having a corporate structure and involving nonlawyers in ownership and management. I support the involvement of non-lawyers. As with any field of expertise they bring a different skill set to the relationship. The assumption that introducing fields outside of law will erode or corrupt the effective management of a law firm seems in my opinion an unfounded generalization. Rather, like any business relationship, there must be a careful pairing of skills, vision and personality. The top management of Radiant Law has a strong vision for the company and seeks out like-minded individuals to move the company forward.

The lawyers at Radiant are encouraged to be more than lawyers. We actively participate in generating ideas to better and grow Radiant, in addition to delivering a service that has a ground level benefit to the client. I can say that for me, working in a structure like Radiant Law has been beneficial for my personal experience and my growth. I have learned more here than I have anywhere else.
L. Perspective of an Investor

External investors in alternative structures have a unique perspective on the legal services market, as evidenced in the interview below.

Jordan Mayo, Managing Director, Smedvig Capital

*Smedvig Capital is a private equity firm that invests in fast growing businesses.*

We have invested in two legal service providers: Kings Court Trust (KCT) and myhomemove (MHM). We got involved in legal investing back in 2005, so well before the UK Legal Services Act came into effect. This happened because the Council for Licensed Conveyancers permitted ABS-type structures for conveyancing that far back. At that time, we were not specifically looking to enter legal services — we simply liked MHM — the dynamics of its market, the management team, their use of technology in a disruptive way to take out cost and increase customer service, and they were doing that in a very scaleable way. Those are the same things we look for in all our investments, regardless of the sector.

MHM has been a success in the ten plus years we’ve been an investor. We plan to remain an investor for some time yet — it’s very profitable, it’s the market leader in the UK, it’s much larger than the number two, and it is growing very quickly. But its market share is still relatively low, since it remains a very fragmented market, spread among High Street law firms who have no technology and who have high prices.

Since we had a good experience with MHM, when ABSs for other types of legal services finally happened, we started to proactively think about in what other segments in legal services you could apply the same sort of business model and have the same sort of value creation: by bringing in external capital, by using technology to automate, by increasing the speed of the processes, and by offering legal services over the internet in a way that people can help themselves. We also looked for segments that would benefit from greater expertise with sales and marketing, in order to promote rapid growth by approaching different distribution channels. It was with this sector by sector analysis that we identified probate.

Probate is a very large but also very fragmented market. Generally the service is very poor, the prices are very high, and those in the market are not technology specialists at all. That
is exactly what we like as it gives us the opportunity to become the service leader and the market
leader.

We have been able to help MHM and KCT in two ways. Of course, our capital has
allowed them to do things they otherwise could not have done, and notably further develop their
technology and offshore support, their sales and marketing infrastructure and their people. We’ve
also provided guidance and expertise, to fill in the non-legal gaps in the management team, and
to share our experiences and learning from our other investments in fast-growing business
sectors.

In investing in these businesses, it is important to take a long-term approach, as these
things take time. If a law firm has a partnership structure, it can’t do this — all the money is
taken out at the end of each year, and any investments are seen as coming out of today’s salaries.
That is a real barrier.

Between 2010 to 2013, we met with at least 150 law firms seeking investment, but in the
end, we invested in only one more, KCT, bringing our total investment in the legal sector to just
two. The reason we did not invest in those other businesses is because they could not explain
what they would do with the money. They said they were seeking investment because it sounded
like something they should do, or because they liked the idea of having some capital. But any
business we get involved with needs to have a clear plan for how they will use the money, and
their plans need to be distinctive and scaleable. In contrast to those other firms, MHM and KCT
had clear plans, they were distinctive and they were scaleable.

Today we see in some sectors of legal services dynamics that you don’t see anywhere
else. Take MHM move, for example. Today it has about 3% market share, and that’s three times
the size of the number two. It is the cost and quality leader, and it has the ability to grow into a
15 or 20% market share position over the next few years. This is a fantastic opportunity. Probate
offers the same opportunities. The opportunities lie especially in the sectors like these that are
fragmented — where there are thousands of firms in the space, but most of them are small and
practically none of them are specialists — they do a little bit of everything. It is because those
firms are not differentiated that it will be so hard for them to continue to compete with specialists
who are investing properly in the technology and the service delivery.
The current regulations strike a good balance. They are especially good for the consumer — the consumer gets genuine competition for the first time, and the prices are being driven down while the quality is being driven up. We think there remain many opportunities in legal services. We feel we are just getting started in what we can do and the sort of businesses we can invest in and help grow. Our challenge is to find the right team, the right approach and the right strategy for the business.

When the US market opens up, it will create massive opportunities. And I am sure it will open up — at some point, the consumer argument will win, and capital will be allowed in. When that happens, the competitive landscape will change dramatically. If I were a lawyer in the US, I would already be thinking about how my business would change if my competitor had a huge amount of capital. What would they do that I couldn’t – invest in products, in technology, in faster processes?

We were surprised by how poorly the competition was prepared for someone like MHM to enter the market. There seemed to be an attitude of “this will never happen, or, if it does, it will be ok” rather than proactively thinking it through. Because of MHM, conveyancing customers now expect to be able to follow their case and manage all their documents online if they want to, and they expect to have things turned around overnight. This type of change in the market can happen very quickly, and if you are law firm who never really thought about technology or customer service, there is a risk the market will pass you by very quickly. As soon as experienced managers with the right skill sets are able to come in and create efficient, customer service businesses, the entire market will change. It’s a huge opportunity. We are only at the beginning of a very long period of investment, of innovation and of change.
M. Alternative voices: for consumers, for citizens, an industry observer

In England and Wales, the Legal Services Act created a Legal Services Consumer Panel and in doing so assured a voice for consumers in the regulation of legal services. While neither the US nor Australia has a direct counterpart, they do have persons like John Ray and Paddy Oliver.

Elisabeth Davies, Chair, Legal Services Consumer Panel

_The Legal Services Consumer Panel was created by the Legal Services Act 2007 and began operating in late 2009. The Panel is an independent arm of the Legal Services Board and is made up of eight lay (nonlawyer) members whose appointments are approved by the Lord Chancellor. The Panel provides advice to the LSB, in order to help it make decisions that are shaped around the needs of users. The Panel has a remit to represent the interests of the many different consumers of legal services, including small businesses and charities, and with a priority for vulnerable groups of consumers. The Panel has legal powers to publish its advice and the LSB has a legal duty to explain its reasons when it disagrees with the advice that the Panel publishes._

The main focus of the Panel is to ensure that the reforms in the legal services market are producing better outcomes for consumers and to ensure that regulators are taking into account the use of legal services from the perspective of the consumers. We are trying to put the needs of consumers of legal services into the heart of the regulations.

The fact that the Panel was created by the Legal Services Act itself is significant. It gives the Panel status as a permanent and discrete champion for consumers.

We have authority at two levels. The first is statutory. For example, we are a mandatory consultee on license applications. Now that we have been in existence for a number of years, we have also earned a second level of authority because of the quality of the evidence that we bring to the table.

We feel that we have a responsibility to replace anecdote with evidence. There is no shortage of anecdote in discussions about legal services, but there is a remarkable shortage of data and evidence. We bring a complete range of research and evidence to the table, and this
enables us to speak with authority. It is what gives strength to our arguments when we want regulators to change their behavior or their priorities.

We started by looking at the Act, and asking what would constitute success from a consumer’s perspective — what were the consumer outcomes that the Act needed to deliver? It was by asking this question that we determined what we needed to do as a Panel.

Two of the most important things that we do are a Tracker Survey and a Consumer Impact Report. The Tracker Survey we commission ourselves. This is our annual survey of 3000 members of the general public and consumers of legal services. Each year, we ask the same questions, in order to determine what is and is not changing for them.

The Consumer Impact Report we issue every other year. This combines evidence from our Tracker Survey with information from other parts of the sector, in order to shed even more light on what is and is not changing for consumers, where there have been improvements and where more improvement is needed.

The Tracker Survey and the Consumer Impact Report are available on our website, as is the data in its raw form. In this manner, it is accessible to all, and notably to other regulators who can also use it.

Our members are selected in the same way that members of comparable public bodies are selected. We have an open recruitment process, we seek a variety of skills and expertise, and we are very clear about the skills and expertise we are seeking. Our members cannot be practicing lawyers but they can have had legal training or background (that is the case for one of our current members). They are required to act in accordance with the Nolan principles, which govern everyone in the UK who holds a public office. (These seven principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership). Members are appointed for a term of three years. Based upon performance, reappointment for a second term is possible — the maximum is two terms.

Our budget comes exclusively from the LSB. Our budget is very small — about £200,000 per year, to cover the costs of our research, the salaries of our small staff, and remuneration of the Panel.

Our accountability is both upwards and downwards: While we are a part of the LSB, we are separate from it. We are the LSB’s Consumer Panel — in that way we are accountable to
LSB. At the same time, we are independent of the LSB, and at times have been critical of the LSB. We have a direct accountability to the Ministry of Justice by virtue of a triennial review of both the LSB and the Panel. Finally, we are accountable to those who use legal services.

Every year we publish our work program and in 2015 we published a new three year strategy. Our principle activity is our research. In addition to across-the-board spectrum work like the Tracker Survey and the Consumer Impact Report, we also research specific areas of the law that we think, in most cases based upon the Tracker Report, require further consideration. Examples of this are our recent research on on-line divorce tools and on unbundling. In addition to our research, we respond to a myriad of consultations, and we act as an ambassador for our work by giving speeches and participating in conferences, to persuade others in the sector to take account of the consumer. Further, we bring others together: We previously established a regulators’ forum, where we assemble the various legal regulators in order to talk through our research, encourage sharing of information and to discuss how they can change their behavior and practice. This is now supported by the regulators themselves.

Finally, we produce usable resources and tools for regulators. In this way, rather than just tell regulators that they need to do something differently, we produce resources for them to use to do this, and we train their staff in this regard. In this way, we become part of the solution.

An example of this is our consumer vulnerability toolkit, in which we help regulators to understand how they can do more to take into account the needs of vulnerable consumers (Recognizing and Responding to Consumer Vulnerability: A Guide for Legal Services Regulators). In this toolkit, we move away from thinking about vulnerability on the basis of specific demographic groups. In the legal services market, there are people who may not be vulnerable in any other aspect of their life, but in a legal or court setting, they are, and this has all sorts of consequences.

From the time we were established we have been pushing the regulators for open data. At the moment, the regulators make available to the public very little data about the communities that they regulate. We think that this data is key for third party intermediaries such as comparison websites, and key for consumers to enable them to make choices and shop around. This year we’ve succeeded to get each regulator to agree to put in the public domain a minimum of information in a usable format. This is a significant step forward and it will happen because of...
our perseverance. But it’s just a first step because the data will be basic – the name and address of providers, but not complaint information, for example.

The Panel is on a long journey — some of the things that we want to do will take time. Also, we are a lone voice — other consumer panels do not focus on legal issues. So, if we are not doing something, it does not get done. If we do not highlight something, it does not get highlighted. This is a challenge for us.

The reforms of the 2007 Legal Services Act were necessary. There is no question about that. There is no question that we needed to move away from the centuries of self-regulation that we had before. And the reforms have resulted in positive changes for consumers. But the reforms were only a first step — more change is needed.

As regards ABSs, it is still too early to judge the full impact of the reforms. They’ve only been in existence for a few years, and we are still in early days. The question of ABSs reminds me of the Bill Gates quote — that people tend to overestimate the change that will occur in two years but underestimate the change that will occur in ten. I think that some people overestimated the pace of change that would occur as regards ABSs. On the other hand, our most recent Consumer Impact Report demonstrates that there has been a large amount of activity as regards new business models and investment in the market. But it will take time to feed through to what ordinary people experience on the ground.

That being said, the Tracker Survey demonstrates that consumers are becoming more empowered: people are shopping around more, and there is an increased use of fixed fees, which is something that people have been asking for. Take family law for example – you can see some real changes there, and notably as regards fixed fees, as in 2012 these were used only 10% of the time, whereas in 2014 they were used nearly half the time. The entry of a very high profile competitor, The Cooperative Legal Services, made a considerable impact on the family law market.

Showing cause and effect is tricky, but if you look at the Tracker Survey, you can map out the tangible changes that have taken place in the market as regards consumer satisfaction, use of quality marks, use of comparison websites, use of unbundling,…

There are those in the UK who still think that access to justice just means access to a lawyer. At the Panel, we think that access to justice means something much larger — putting the
consumer at the heart, access to justice means access to legal services, access to the support that a consumer needs. That support may be provided by a lawyer, by it may also be provided by an unregulated provider or by the voluntary sector. People are going to a myriad of providers, and it is important that they have that choice. We look carefully at changes that increase the number of entrants into the legal services ecosystem in its entirety, and we think that the regulatory reforms in the UK were needed in order to create choice and diversity that did not exist before.

In this context, unbundling is particularly interesting. We know that there is a significant amount of unmet need for legal services, and we know that a large number of people are representing themselves in court. Today we have more providers who have stepped away from the “all or nothing” approach in order to break support down into bundles. In this way, a person can get the support they need from a variety of sources, paying for some of it but not for all of it. For example, some support a person can get online, some they can get from the voluntary sector (charities), and some they can pay for with a lawyer.

A particular benefit that ABSs offer is access to capital and, in turn, investment in technology. That can be what transforms service delivery. In our 2020 Report, in which we predict what the legal market will look like in 2020 and recommend what the regulatory response should be (2020 Legal Services: How Regulators Should Prepare for the Future http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2020consumerchallenge.pdf), we look at which activities are capable of automation. The activities we look at in particular are conveyancing, divorce, dispute resolution, and documents such as contracts and wills. Consumers are not all the same — they have a large variety of needs, and we see the investment in technology that ABSs facilitate as being an important factor in meeting so many different needs.

When ABSs were first introduced in the UK, there were fears that they would “cherry pick” the most profitable work and squeeze out law firms that subsidize less profitable work with more profitable work. But the data today does not support those fears. If you look at the SRA’s data in particular, you’ll see that ABSs have captured a significant portion of the market in the areas of mental health and social welfare. ABSs have gone for the areas of law where there is significant unmet need. They have provided access to services that previously people didn’t have access to at all.

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The regulatory reforms in the UK raised a myriad of political and cultural issues. In the midst of these issues, it has been easy to lose sight of what the reforms are about, of what they are supposed to deliver. In this context, the existence of the Panel has been very important. Because we exist, we have been able to ground the regulatory reforms in consumer outcomes. We have been able to reframe the debate in terms of improving consumer outcomes.

The legal services market is no longer limited to regulated providers (that is, to lawyers). The legal services market is a much larger ecosystem. In order for a regulator to do its job in this ecosystem, it must be aware of what is happening outside of the regulated sector. Access to justice is no longer provided solely through regulated providers. Access to justice is a nuanced and complicated problem that requires nuanced responses and solutions.

I have worked in many areas, with a particular experience in the area of healthcare. In healthcare, there is an expectation that a person is a consumer of healthcare services, yes, but also a key part of planning better healthcare systems. A person’s input as a consumer is key towards improving healthcare services.

The same is true for all other kinds of services, including legal services. As a user of any service, you are absolutely critical to the quality of those services, to planning those services, to ensuring those services are improving. You are absolutely critical to ensuring that the market actually works. Most markets come down to the choices that people make, and if you are not an informed consumer, then you will not make the right choice.

I am not a lawyer. I am passionate about the belief that you can improve services only by listening to people who use those services. Like most of the people who join the Panel, during my first few months I thought “goodness, I am not a lawyer — how can I possibly ever understand these issues?” But then, again like the other Panel members, I reached the point where I had the confidence to transfer my knowledge and understanding from other areas to the legal sector. I was able to take legal services off its pedestal — to move away from what is unique about legal services to relate it to services that I am more familiar with. That was a significant tipping point. It enabled me to understand that the basic issues that we raise as lay people are fundamental — that they are issues that need to be raised, even (if not especially) if lawyers don’t welcome us raising them, or do not understand why we are raising them.
Here is an example — when the Panel first raised the issue of open data, we were criticized for raising such a “vanilla” issue. But I disagreed. I recognized that it is a fundamental issue that is very much worth not only raising but also pursuing with persistence.

John Ray, Senior Consultant, Law Firm Consulting Group

The Law Firm Consulting Group advises personal injury and plaintiff mass tort law firms in the areas of financing, marketing, use of technology to increase efficiency, and the mitigation of risks.

Some argue that permitting nonlawyers to own and manage law firms will adversely affect the professional judgment of the lawyers. I argue the contrary: the fact the lawyers do not have access to adequate capital — both financial and human — adversely affects their professional judgment.

The fact that a law firm cannot access financial and human capital the same way that every other business is able to do creates a scarcity of resources. That scarcity of resources adversely affects the cases that the law firm is willing to take on, and adversely affects the extent to which the law firm is willing to prosecute the cases that it does take on.

It is important that a client’s case be prosecuted to its fullest extent, and that the client’s lawyer has the resources to do that. This far outweighs any risk there may be in a nonlawyer shareholder adversely affecting a lawyer’s judgment.

If you do not agree, then consider a country like Russia, where contingency fees are not permitted. In Russia, there are open pits in the streets. If you get hurt – and people get hurt in Russia all the time — if you don’t have money to hire a lawyer then you can’t access the legal system. There is no incentive to protect human health and safety in large part because people can’t access the legal system to obtain redress. The system we have created in the United States also disenfranchises a large number of people. They cannot get adequate redress for their injuries — they cannot access the legal system because they cannot find a law firm that has the resources needed to help them.

DC’s Rule 5.4 does not address the problem. It does not permit passive investment, and it does not sufficiently clarify just how nonlawyer ownership is supposed to work. Most lawyers who are members of the DC bar are also members of the bar of another state, and that state does
not permit nonlawyer ownership in any form. For these reasons, few DC firms feel comfortable enough that they can bring in a nonlawyer partner without breaching an ethical rule of some kind, somewhere.

In a personal injury or tort context, there are a number of different types of people that a law firm could benefit from bringing on board — people that have medical or pharmaceutical backgrounds, people with scientific backgrounds who can assist with evaluating evidence, and who can identify what types of injuries are linked to what types of substances. Lawyers don’t have that kind of knowledge.

Outside the personal injury or tort context, there are of course many types of people that a law firm could benefit from bringing on board — a forensic accountant, a tax specialist, a finance specialist, a marketing specialist, a lobbyist, a social worker — the list is limited only by imagination.

Here is why I think the ABA has resisted nonlawyer ownership and management for so long: many of the decision makers at the ABA either work for large firms that represent large corporate clients, or they are in-house lawyers with large corporations — pharmaceutical companies, chemical companies, insurance companies, car companies, etc. Large corporations would not benefit from a change to Model Rule 5.4. Large corporations have every incentive to stop plaintiff personal injury and tort law firms from gaining access to greater resources. The defense firms for those large companies are Goliaths to the Davids of the plaintiff firms. Large companies have every interest in keeping extra stones out of David’s sling.

From the purely business perspective of those corporations, it makes sense. But is it good public policy? Is it in the interest of American citizens? If plaintiff firms had greater resources, they would be able to take on a greater number of cases, and would be able to handle those cases more effectively. It would not result in increased frivolous litigation as there are rules to protect against that.

The General Counsel of nine large corporations submitted a letter to the ABA Commission on Ethics 20/20 in strong opposition to nonlawyer ownership of law firms. It is not a coincidence that each of those corporations has defended multiple class action lawsuits.

Defense law firms already have access to capital. Those firms bill by the hour, and banks are willing to lend on that basis. But plaintiff firms only get paid if they win, and banks are not
comfortable lending on that basis. There is a secondary market for this kind of financing, but it is very expensive. For plaintiff firms, external capital would provide the resources they need to work during the time they are not getting paid, and enable the firms to mitigate the risk by sharing it with investors, rather than obliging the partners to take it all on.

Generally speaking, people and companies are free to raise capital in the United States. If we are going to restrict the ability of anyone, law firms included, to raise capital, then we need a really good reason to do so. There is no good reason.

Limiting the ability of plaintiffs to have access to the use of contingency fees is, in essence, limiting the ability of citizens to file lawsuits against large corporations. It’s about access to justice, and it’s about power and money.

**Paddy Oliver, Managing Director and Founder, Lexcel Consulting**

*Australia-based Lexcel Consulting advises law practices in the areas of strategy, governance, pricing, practice management, project management, risk management and risk auditing.*

I worked as a solicitor in private practice in Ireland for a number of years. I worked in law firms that had fundamentally sound client bases, but some of the firm leaders had little or no management skills and did not know how to price their work to any sophisticated degree. This lead me to develop an interest in management and then to do an MBA. At that time, given the changes in the UK in the insurance market for lawyers (a move from a mutual policy to individual, risk-based ones), I saw opportunities in risk management, and ended up working in that area. In these ways I developed an interest in the business of law, over and above simply being a lawyer.

In 2005, I moved to Melbourne. I had no job here, and I made the decision to start my own business. This was a tricky thing to do, since at that time here lawyers did not need to go to the open market to obtain insurance, with the result that risk management was handled more reactively than proactively. This led me to focus on the requirements for incorporated legal practices (ILPs) to develop and implement appropriate management systems (AMS). My thinking was, since they have to have them, then they must have the need for a consultant. What I didn’t realize was that, in contrast to New South Wales and Queensland, in Victoria the
regulator (the Victorian Legal Services Board) had little interest the AMS rules, and took no action to educate lawyers about them, let alone enforce them or conduct audits.

In my opinion, the reason for this lack of interest at that time was because the Legal Services Board was inundated with complaints about lawyer conduct, and chose to focus its resources on handling the complaints. This is ironic given Christine Parker’s research demonstrating that self-assessments and AMS lead to fewer complaints. As a result of the regulator’s lack of interest, those who served in the legal practitioner director (LPD) role had little motivation to take their role seriously.

In fact, regulators have very little proactive power over law firms — most of the regulator’s power is reactive and after the fact. The only people who have any kind of proactive power over law firms — that can put manners in a law firm — are banks and insurers. I saw this in particular when the UK ended its mutual coverage, and law firms had to start proving they were a good risk. Insurers began to require firms to demonstrate their systems. I think this drove more change in England and Wales in particular, than any direct legal regulation did. As for banks — they can simply refuse to offer you a loan or an overdraft if they don’t think you are a good risk.

In my experience, only a minority of lawyers in Victoria are interested in the ILP structure for the possibilities it offers to run a legal practice as a business rather than a partnership. Most of the legal practices in Victoria that have adopted the ILP structure have done so for the tax and asset security advantages that it allows, notably in complex structures of partnerships of ILPs. In these cases, the legal practices themselves are, for the most part, run as partnerships, in spite of the use of the ILP structure.

Law is a fundamentally profitable business. But, for the most part, lawyers are not very good business people. I realize that this is a sweeping generalization. I make it having worked with lawyers in a number of places: England, Ireland, Scotland, Wales, and a number of Australian states. If you take the regulations away, the basic personalities are the same, and the way the firms are run is the same: generally badly. Lawyers don’t get any training in how to run a business. Training to be a lawyer is not training to run a business.

An interesting question to ask: is there a difference between legal ethics as compared to business ethics? I think that many lawyers will struggle to see a difference but, in my opinion,
they are not the same things at all. There are many things that are ethical from a legal perspective, but not from a business one. Business ethics is doing the right thing. Legal ethics is entirely unrelated to that. Here are some examples: overcharging, poor client service, mistreatment of employees. Our legal ethical rules do not address any of those, which is why you see them occur so often in law firms. But from a business perspective, they are all unethical and should not occur.

Slater and Gordon is an interesting case. One of its core business strengths is buying law firms in order to integrate them. Its business model depends upon the acquisition of businesses in order to maintain revenue growth — revenue growth is prioritized over profitability. It’s reached the point where there are few firms left to acquire in Australia. The lawyers at Slater and Gordon as well as at Shine are perfectly good lawyers. They have developed some very interesting processes for handling high-volume work at fixed prices. From that perspective, they know what they are doing. But, like most other lawyers regardless of the structure they are in, they are not necessarily good business people.

Across countries (Ireland, England, Australia, Canada, United States…), many law firms have difficulties, and many law firms go out of business as a result of those difficulties. However, in nearly all cases, because those firms are owned exclusively by lawyers and are regulated exclusively by legal regulators, very little information is ever available about those firms and their problems. Outside of their clients who are inconvenienced (or worse), few people are aware of what is happening. The difference with Slater and Gordon as well as with Shine is that they are subject to much greater public scrutiny. In the first place, they are regulated not only by legal regulators, but also company regulators. Further, they are observed closely by investors, by analysts, by industry commentators and even by the general public. In this manner, their problems are brought out into the open, where regulators as well as investors and clients can react to them.

Take the valuation of work in progress, for example. Most companies are valued on the basis of revenue or profits. In contrast, Slater and Gordon as well as Shine in large part have based their value on work in progress.

Valuing work in progress is a very difficult thing to do. When a law firm does it, a legal regulator is unlikely to question it, on the grounds that it is not related to legal ethics. A tax
A regulator might simply suggest that it’s not done correctly. On the other hand, analysts and the market will take a hard look at how a listed firm values work in progress, and declare it to be either right or wrong. Analysts and the market are not satisfied with vague, unsupported estimates of the value of work in progress — they demand financial accuracy and proof of the value. Lawyers have never had to produce that before.

Further, it is difficult for law firms, including Slater and Gordon and Shine, to attract the finance and accounting professionals that they need. Typically the best ones are able to obtain higher salaries working with other types of businesses. In addition, the culture of most law firms is so different from the culture of other businesses that it is difficult for someone from outside the legal profession to integrate, let alone change the culture in the ways it needs to be changed to make it a better run business.

That being said, in my opinion, opening up the ownership of law firms to persons outside the legal profession, and, in particular, opening up law firms to the scrutiny of people like analysts and public investors, will lead to those firms to being better run. We are only beginning to see this in Australia — until now, the share prices of Slater and Gordon and of Shine have been high, and so no one asked too many hard questions. Now that the prices have gone down, hard questions are being asked. This can only lead to better management of these firms. It might not happen overnight, but it will happen.
N. Experience from Washington DC

Washington DC is the only jurisdiction in the US that allows for alternative structures, albeit in a limited manner. There are no statistics revealing the number of Washington DC firms that have nonlawyer owners. They are believed to be small in number, but there are a few.

Michael McDevitt, Co-Founder & Chief Executive Officer, Tandem Legal Group

Washington DC-based Tandem Legal Group is a corporate and commercial law firm serving young and fast growing companies. Tandem’s co-founder and CEO, Michael McDevitt, is not a lawyer.

Randy Price and I founded Tandem Legal Group in 2012. Our objective was to create a law firm that had a better understanding of and alignment with its client base than most other firms have today.

I am not a lawyer. My career has been in business. My two most recent positions were as a financial analyst at a private equity fund, and then, for about 10 years, CEO and CFO of a large publicly traded company.

In those positions I worked extensively with lawyers. But I struggled to communicate with them — they never seemed to understand the core purpose for which I was hiring them and this lead to a lot of frustration for me. I tried many attorneys at many firms, trying to find the right person. My experience was that the good attorneys who also understood my business were no longer practicing law — they felt that they had to choose between law and business, and they chose business.

At Tandem Legal, my role as CEO is not to get involved in the legal matters of the clients. My role is to represent the clients to the lawyers — to help the lawyers at Tandem understand the clients and their perspective — to be a communications bridge between our lawyers and the clients. My entire reason for being at Tandem is because I have this kind of business capability and understanding.

Our clients come to us seeking legal advice, yes, but also more than that. We are a trusted resource — we offer a place where they are comfortable seeking more general advice and we don’t hesitate to open our Rolodex to make helpful introductions.
More specifically, I take on an advisory role with the CEOs of the companies we service. We don’t charge our clients extra for this. These are individuals that we want to invest in because their success leads to our success.

Our clients are fast growing companies, and when they need something, they need it fast. We offer clients access to a trusted circle of the different resources and expertise that they need (operations, marketing, finance and fund raising,…)—a circle of people that can communicate very quickly and very effectively. This helps companies get through challenging times much better than a bunch of one-off, isolated relationships with no communication amongst them.

I like to tell the story of how Randy Price proposed that I join him to co-found Tandem Legal. When he learned that the DC rules permit a limited form of nonlawyer ownership of law firms, he called me and said “Hey Mike, you know how you can’t stand working with attorneys?” and I responded “yes I am very much aware of how much I can’t stand working with attorneys.”

He told me that he had found a way for me to fix it—I could stop complaining about attorneys and instead do something to make a difference. “With your experience as a CEO, you can help us to understand what the CEOs of our clients want from us.”

I was intrigued by what Randy was proposing. Legal services certainly were not my sweet spot. But I liked the idea of getting into something completely different, and I liked the idea of getting involved with a services business, something that until then I had not had a lot of experience with. I wanted to see if I could apply the best practices of a non-services business to improve a services business.

Our management structure is evolving. We started with a flat management structure, with everyone reporting to me, just to see how things went and what our pain points were. This has led us to create three roles: head of marketing, head of operations, head of finance. These individuals are attorneys. They spend 90% of their time with their lawyer hats on, servicing clients. The other 10% they have executive-in-training hats on, while I strive to teach them what their respective executive roles should be.

When we are working together, we clarify if we are in Mode A or Mode B. If we are in Mode A, then the heads of marketing, operations and finance are reporting into me, as executives
report into their CEO. On the other hand, if we are in Mode B, then we go back to a flat legal organization.

With this structure, our lawyers are learning business not just through their clients, but through the operation of their firm. They have found this to be a valuable experience.

There are two owners of the firm — myself and Randy Price. The other attorneys in the firm share in profits but they do not own shares in the firm.

Tandem seeks to succeed via the success of its clients. As a part of this, our lawyers sometimes take equity ownership in the clients we are serving. In this way, much of Tandem’s resources is invested back into its client base, with the result that the value of Tandem is in those shares and not in the shares of Tandem itself. Our financial success is coming from the financial success of our clients.

It is extremely challenging to be the only nonlawyer in the room. Luckily, with my experience, I can offer Tandem lawyers something that they want to learn. My challenge with the Tandem lawyers is to break down the mindset that they gained after so many years in a big law firm. Their instinct is to see how risky something is and to see all the reasons why something won’t work. I help them to see past that, to see opportunities and why something can work.

We have heard critiques on our model. People say that law should not be run as a business, as it can cloud the judgment of the attorneys. In my opinion, it is preposterous to claim that the law industry is not a business. Law is being run as a business today, a very profitable business for those at the top — it’s just being run as a business that has no understanding of its clientele.

Again, I am not a lawyer. I do not get involved in how our lawyers make ethical decisions with respect to our clients. They are the lawyers, and they understand the legal and ethical rules better than I do. It is crazy to think that I would try to influence our lawyers to act unethically. It’s the reputation of our firm that is on the line.

On the other hand, how Tandem as an entity is run — what our strategy is, what our goals are, what types of clients we serve — that is business not law, and of course I get involved in that.

For full disclosure, to date I have not received any payment from Tandem for my role. Tandem’s money is going back into our business and into our clients. Someday down the road I
might take a salary or a share of the profits, but that is not for today. I did not get into this for the money, I got into this for the challenge — how to take a business mind-set into a law firm, and help change the mind-set of lawyers so they can run their firms in a more client friendly manner.

It is a popular thing nowadays for law firms to bring a nonlawyer into a law firm on a salaried basis to take on a role of CEO, or COO. This is very different than what we are at Tandem. In fact, what they are doing is a very tricky thing. I think that such a person would struggle to gain the authority and respect they would need to be effective in their roles amongst the attorneys. They would probably be little more than figureheads trying to bring best practices into the firm, with little or no accountability. Also, in essence, they cannot be paid based on their success, as they would have to be on a salary, and not rewarded for profitability or revenue growth. That is only for attorneys to gain from. In my case, coming in both with my level of experience and as an owner instead of as a salaried employee makes a big difference.

Randy Price, Co-Founder & Managing Partner, Tandem Legal Group

I was an associate at Howrey for two years and at Latham for six years. I was completely burned out. For a while I wanted to do just about anything except be a lawyer.

I tend to gravitate towards entrepreneurs, and many of my friends had started and were running their own companies. They were not enamored with the lawyers that they worked with. So I helped them out on a few matters, and in doing that I realized that there is a huge market for top lawyers to help companies small enough where the work of a lawyer can make a difference.

When I was at Howrey and then at Latham, I did work for very large companies, like auto manufacturers and airlines. What I found is that even the best lawyer in the world working on a very important case, and being successful on the case, makes little difference for those very large companies. But in helping out my friends’ companies, I found that I could really make an impact.

At Tandem, our clients are emerging companies, not start-ups. It is emerging companies that start to encounter legal issues where having a good lawyer — not just any lawyer but a good lawyer — can make a difference.
One day I was reading an article about Rule 5.4, and it discussed the fact that nonlawyer ownership is prohibited everywhere in the US, except for the District of Columbia. That was the moment when I connected the dots.

Mike McDevitt and I had been friends for a long time, and we had often spoken of starting a business together. He and I burned out of our jobs at about the same time. We wanted to create something together — we just didn’t know what it would be.

We had complementary skills sets: business on his side, and law on mine. Those are two of the most valuable assets to have when you are starting a business. Law has become such an integral part of business, and in many cases it is a determining factor in the success or failure of a business. There are so many laws and regulations that a business needs to make sure it is not violating, putting the company at unnecessary risk.

Growing a business as he did, Mike had gone through a lot of lawyers. We talked about his experiences with lawyers at length, and let’s just say that he was not a fan of the legal industry. I had my own opinion on how law firms worked, and notably on their inefficiencies.

In sum, Mike and I were both extremely unhappy with the legal market, from opposite sides. The provider was miserable and the client was miserable. It didn’t make sense. It can’t have to be this bad. It was clear to me that there was a huge unmet need, for clients as well as for lawyers.

When I read about DC’s Rule 5.4, I called Mike and I said “You know how much you hate lawyers? I am not 100% sure yet, but I think we can start a law firm where you are co-owner, and we can fix the problems. At least, we can fix them for our clients.”

His dislike of the legal world was the first hook for Mike. The second hook was the opportunity to work with a variety of emerging companies, instead of just one company.

Emerging companies — companies that are in the process of scaling — face so many legal issues. For example, they are looking to raise capital, and investors take a careful look at the legal risks — do you really own your IP? What is your corporate structure? What is your equity structure? Are you sure there are no phantom owners?

It is because of Mike that Tandem has been able to grow so quickly. He brings a combination of assets to the firm. Firstly, he knows an incredible number of people, and is able to use his network to put our clients in touch with the right people. This enables our clients to get
the help they need much more quickly and without a painful trial and error process to find the right people. Secondly, he is able to reassure our young CEO clients. Young CEOs are much more inclined to not trust lawyers than they are to trust them; with Mike sitting at the table, there is an immediate trust factor. Mike helps new clients to become comfortable with us much faster than with another law firm.

Mike and I are aware of the arguments made in opposition to nonlawyer ownership of a law firm, and notably the argument that it will inhibit lawyers from exercising their independent judgment.

Now that we’ve been in business for a while, we think these arguments border on comical. Law is so impenetrable. We deal in grey areas, and with a lot of information. Anytime we are examining a nuanced legal issue, Mike’s eyes glaze over. He doesn’t know enough about law to get into the weeds. So the idea that he would try to influence our legal judgment — we’ve never even come close to that happening, and it is difficult for us to imagine how it could. It’s as if you told your surgeon how to do their job.

DC’s Rule 5.4 has been in effect for many years. No one is aware of any complaint having been made against a firm for reasons that relate to the firm having a nonlawyer owner. That says a lot.

Mike is not yet taking a salary. He sees his involvement in Tandem as a long-term project. His motivation is the opportunity to help young CEOs succeed in growing their businesses. Tandem is a platform for him to be involved in a variety of businesses.

When we first learned about DC’s Rule 5.4, we were surprised that more firms do not take advantage of it. But after thinking about it, we realized that in fact it makes sense. DC is very small — if you are a firm of any significant size, then you will want to have an office outside DC. A law firm’s clients do not contain themselves to DC, so how can a law firm? But if you have an office outside DC, then you cannot take advantage of DC’s Rule 5.4. That alone eliminates many firms. In addition, it takes a special kind of person to join a law firm as a nonlawyer, under the constraints of DC’s Rule. I get the impression that the Rule was designed expressly for lobbying firms, and that those are the firms that primarily take advantage of it.
DC’s Rule 5.4 does not allow for passive investors. This seems odd to me. You would think that a passive investor would be even less likely and less able than an active one to try to influence the lawyer’s judgment.

If there were two changes to our ethical rules that I would like to see changed, it is firstly the restrictions on unauthorized practice of law as it relates to multi-state practices, and secondly the restrictions on nonlawyer ownership of law firms, including the restrictions on passive investment in law firms. I think that lawyers could do a lot more for their clients if those restrictions did not exist.
O. Canada’s Almost Alternative Structures

Some companies have shown that it is possible to develop new models for the delivery of legal services while remaining within the limitations of the existing, restrictive, rules. US-based examples include LegalZoom, Axiom, RocketLawyer, Shake and Modria. In Canada, the same has occurred: that is, there are a certain number of companies that have also developed new models within the confines of comparably restrictive rules. Even so, because of the restrictive rules, their ability to further develop their models and to grow is limited.

Monica Goyal, Founder and Principal, Aluvion Law

Canada-based Aluvion is a law firm that uses automated processes to reduce the cost of legal services for small businesses.

I have a background in technology and electrical engineering. I worked in Silicon Valley, and completed a master’s degree in electrical engineering at Stanford. I did those things before I went to law school, at the University of Toronto.

After I finished law school, I worked for a large firm in Toronto. When I was there, I was struck by the access to justice problems in the law. Having worked in technology, I understood what was possible; I understood the innovations in processes that technology offered. But there seemed to be such a big gap between that and how I saw things get done at the law firm.

It was 2008, and I saw companies like LegalZoom and Rocket Lawyer in the US taking off, which told me that there are people who are happy to obtain legal services online.

So, I created My Legal Briefcase, which offers a streamlined solution to the legal process for small businesses. The site automatically generates documents, based upon the responses that the user provides to certain questions.

But my experience with My Legal Briefcase has shown me that in Canada people are not ready to access legal services online. They are willing to go online to look for general information to self-diagnose their legal issue, but they remain reluctant to access a legal service online.

What I realized was that the people who were visiting the My Legal Briefcase site had specific questions that they needed a lawyer for, and they were looking for help in getting connected to a lawyer.

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So I started referring these people to other lawyers. But when I followed up after these referrals, I discovered that the conversion rate was very low. That is, very few people actually engaged the lawyer that I referred them to.

I wanted to understand why that was. After all, I am a lawyer, why can’t I help these people? I thought to turn the model around — instead of the client using the tools, I will use the tools in order to service the clients.

I was influenced by the book The Lean Start-Up, and especially the concept of the minimum viable product. Everything I build is an experiment — I build not just to build, but in reaction to the market and what the market is telling me it wants, and I shift and refocus on that basis.

This is how Aluvion was created. Alluvial is a maritime term — it refers to new land that is created from the build-up of river deposits on a shore line. This symbolizes for us what we are doing with Aluvion — creating new land, new ground.

People seemed to like what we were offering, and we had a lot of customers. What I realized is that most of the people who were using the service were small business owners. So, focusing on small businesses, we took a good look at everything we did and asked what could be automated even further — to bring the costs down and to bring the time to do the work down.

This is going well and we are looking at expanding the product line. In essence, it is legal services with a lot of automation.

For our clients, we are a law firm. We serve corporate commercial needs. But we do it at a very cost effective rate. The reason we can do that is because of our internal use of automatic processes. As a result, certain services, like incorporation, we can do at approximately half the price of a traditional law or accountancy firm.

Taking incorporation as one example, the process works like this:
- We do a client intake as any firm would do,
- We enter the client’s information into a web form,
- Our system takes that information and generates the needed documents, like Articles of Incorporation and other organizing documents,
- The documents are uploaded into an electronic portal, and
In the electronic portal, the client can review the documents and can sign them electronically.

We can use different types of people at different touch points in the process. For example, the person who does the intake can be a junior lawyer or a paralegal. At the other touch points, the person does not need to be a lawyer, it only needs to be someone who is trained on the system.

We manage each project in a collaborative way, and we are trying to move towards a system where the client can contact us and speak not to a specific lawyer but to anyone, in order to get their questions answered and understand how their work is progressing. It doesn’t always make sense for it to be a lawyer who is in contact with the client, especially if it’s about simple stuff. But it is tough to move to this as people generally think of a lawyer when they seek legal services, not of a team of people. In the end, we try to meet the client’s needs and expectations.

I incorporated My Legal Briefcase with the intention of receiving outside investment. But it turned out that that model was not the right one for the Canadian market at that time. Of course, now with Aluvion’s model we cannot, under the current rules in Canada, obtain outside funding. This limits us in significant ways. It means that we have to be entirely self-funding. We could grow much faster if we had access to external funding.

To me, innovation is technology. Of course you can have innovation without technology — Conduit and Cognition are examples of that. But for me, who has a background in technology, innovation is technology, and technology is capital intensive. The common model for technology innovation companies is equity financing. There are people, in the US and in other places, who are creating innovations in legal services using equity financing — they are thumbing their noses at the regulators — they are claiming a grey space between what is and is not allowed. But they have to — they do not have choice because of the regulations. So, yes, the rules today do inhibit the development of technology for use in legal services.

Here is the problem — today when many people talk about increasing access to justice, very frequently they talk about technology solutions.

In the legal community, we have a dialog about the access to justice problem. We also have a dialog about how technology offers at least a partial solution. But we don’t take the dialog
further to ask just how a particular solution can actually be put in place, and especially how it can be put in place without external financing.

I think that Canada can learn a lot from the Australian and UK experiences. The UK is a hotbed of innovation, and I look there to get some of my own ideas.

In the UK, changes were imposed upon the legal profession from the public. I am hopeful, notably with the CBA Futures Report (for which I sat on the Business Structures and Innovation committee), that the legal profession in Canada can get ahead of the game and have some control over the process rather than it being imposed upon us.

There has been pushback in Canada to the CBA Futures Report. Perhaps the most significant pushback has been from the Ontario Trial Lawyers Association. They have clearly announced their opposition to nonlawyer ownership.

But I don’t think it is possible to stop it. Even if the rules do not allow for it, as in the United States, people will look for ways around it — just look at LegalZoom.

I think that we, as a profession, could be doing much more in terms of innovating and improving the accessibility and affordability of legal services.

Mark Morris and Lena Koke, Founders, Axess Law

Axess Law provides legal services in retail spaces across Ontario including within the Walmart network of stores. Operating on a walk-in basis, Axess offers services with respect to real estate sales and financings, wills and estate planning, probate, family, simple business and notary services.

We saw an imbalance that perplexed us. On the one hand, we saw so many people who both needed and wanted affordable legal services but were unable to access them, and, on the other hand, we saw so many lawyers who couldn’t find work.

So we did some thinking, and decided to combine our respective skills and experiences to create a legal services business that operated in an efficient manner. Instead of focusing on high paying clients, we had to figure out a way to provide legal services in a manner that everyday people could afford them. We were confident that if we thought it through carefully, if we were
careful with the numbers, if we used best business practices and maintained a high level of professionalism, that we’d actually be able to do it.

In some ways it was a shot in the dark, but, lo and behold the model has worked.

When you are first starting a new business, you cannot be totally sure what the best business practices will be, but through trial and error you quickly learn what works and what doesn’t.

But we were guided by something else — by our 10-year experience in retail, both in a legal and a business context. We felt that there are basic retail concepts which would lend themselves well to areas of the law that were being increasing commoditized.

Here’s an example: In retail, there is the notion that customer service is king. This means that you have to meet people where they live, not where you operate — you have to be in their communities. You have to operate at hours that work for customers rather than at hours that work for you. So, retail best practice says you should not shy away from opening on Saturdays and Sundays, or from opening on weekdays from 5pm to 9 pm.

Retail best practice also says that you should use “what you see is what you get” pricing. You have to have predicable pricing models because this is what people want and expect.

These concepts are new to law, but they are tried, tested and true in retail. And it is the retail mindset that has guided us.

Axess Law is a unique entity in Canada, if not all of North America.

We are set up to accommodate areas of the law that are increasingly commoditized. Commoditized is a word that can have negative or positive connotations — we see it as having positive ones.

There are many legal operations that are not completely unique. That is to say many times a lawyer, including a lawyer in a large firm, will pull up documents from that last time a similar operation was done, and make only minor tweaks to the document to reflect different names, etc. It is these cases — cases where the process is effectively the same each time, that are becoming commoditized and where we see a business opportunity. We presently operate in the areas of real estate, wills, probate, family and notarization services. It is in these areas that we see functional repetitiveness — commoditization — having the most efficacy.
For us, commoditized services means a higher level of legal quality. We realized that commoditization means that best practices can be applied to each transaction and that we develop a system — a method — that can assure quality service each and every time. We can do this through such things as check-box lists that assure every element of a transaction is addressed. Thanks to this realization, we now have a structured workflow process that we follow religiously.

In a nutshell, Axess says to most people “your needs are similar to your neighbors and given that functional similarity we can save you time and money by utilizing a routinized process designed around those common components.”

To our knowledge, we are the only lawyers in the world that are based in “big-box stores,” like Walmart or Target. More specifically, we are based in Walmarts and certainly we are the only lawyers located in Walmarts in Canada and probably North America.

Walmart’s goal is to become a one-stop-shop for the average consumer. That is, a place where consumers can get their haircut, book their travel, do their taxes, and handle their real estate and mortgages transactions, all in one convenient place.

Walmart has identified that its customer base has legal needs — legal needs that are similar to each other. As a result, Walmart has decided that in order to achieve its goal to become a one-stop-shop, it needs to have a law firm offer legal services that meet the basic legal needs of ordinary people. That’s what we do. We currently operate in ten Walmart locations, with plans for additional expansion. It’s our plan to be national in two to three years.

It’s not necessary to have an appointment to see one of our lawyers. All you have to do is stop by. This addresses a major access to justice issue — Axess has destroyed the traditional gates that keep people from accessing lawyers and legal knowledge. We have fully accredited lawyers on-site — not paralegals and not law clerks, but lawyers who are fully qualified to provide advice and discuss legal situations knowledgeably. They undergo extensive training and are instructed as to which situations we can handle and which ones we cannot. In this way, both we and the lawyers are confident that every piece of advice we offer is within our capacities and competencies.

You would think that we would have had trouble finding lawyers to work at our Walmart — our front office — locations. But in fact the opposite has been true. For every opening we
have for a Walmart location, we get about 100 applicants. The type of work and the hours that we offer are appealing to many lawyers. Many lawyers want to work 40 and not the traditional 80 hours per week, and they want to be in jobs where they see that the work they do actually helps people. Our lawyers see how what they do provides access to justice — that is rare among traditional legal positions.

Something that we had to learn was how to staff each site — how to make sure we had the right people on hand to handle what comes in the door. We did this by both of us, at the very beginning, being there seven days a week for many months, just to see who came, when they came in, what types of questions they asked and what kind of needs they had.

In doing this, we learned that there was very little variety — many more similarities than differences. For example, the majority of Canadian adults do not have wills. And the questions they ask are almost always the same — how can I create will, what do I need to do, is it really this easy? So, it’s not necessary that our lawyers have expertise in every field, and it’s not necessary that they know how to handle complex matters. Just as H&R Block will refer you to someone else for a complex tax structure, we will also refer to others those who need specialized or complex advice.

We train our lawyers extensively in order to be sure that they only take in what they are competent to handle, and that they take the correct path.

At a traditional law firm, when you have a problem, the typical approach is to throw heads together to try to figure out a way around it. In contrast, at Axess, if you don’t fit neatly into the parameters of our boxes, we will refer you to someone who can handle non-commoditized work. That being said, 95 to 97% of the people who walk in our doors do fit within our boxes. Our boxes are very broad — we almost never turn away real estate work and we turn away wills and estates work perhaps only once or twice per week, across all our locations.

We currently specialize in five areas: real estate, wills, probate, family and notarization.

Notarization in Canada is quite different from the US. In the US, anyone can be a notary — you just need to apply for a stamp. In Ontario, only lawyers can notarize documents. We undercut our competition by charging $25 per stamp, whereas in the US anything over $5 per
stamp would be considered a rip-off. So, the economics of notarization are much different in Canada than they are in the US.

With respect to real estate, Ontario is at the forefront of electronic transmission. Beginning in 1995, a whole series of massive innovations have taken place — firstly in Ontario but later in other provinces, such that today it is no longer necessary to central registry — everything can be done online and with low risk for error.

Ontario also offers certain advantages with respect to wills — most notably there is no requirement to file our wills with any court or other official body. Because the process is so simple, we can do it very quickly and at a low cost.

Our practice areas are those that we see are the best in Ontario for commoditization. As regards other provinces, we see that perhaps other areas might work better — each jurisdiction offers its own possibilities. As a general matter, we see that each jurisdiction is moving towards commoditization of certain areas, and it is our plan to bring best retail practice to bear in those areas as we expand nationally — to see where we can add value at an affordable price and in an accessible manner.

We have a long-term, formal agreement with Walmart. At each of our sites, we have invested $80,000 to $100,000 to create permanent structures, with the intention that we remain at that site for the long-term.

In our opinion, the current regulatory system for legal services in Canada today does not allow for the provision of legal services to the average Canadian. A recent study concluded that 85% of Canadians think that legal services are not affordable. This is shocking and totally unacceptable. And affordability is not the only issue — there are also issues of working hours and locations. As a country, as a province, we are not there — we are not even close to being there.

With respect to the adoption in Canada of an ABS structure comparable to that in the UK — as a general manner, we support it. We think that has the potential to shake things up, to create greater competition and inspire alternative forms for legal services.

That being said, we do not think that the adoption of a UK-like ABS structure is crucial for Axess. That is because it is possible for us to create organizational structures that separate into different structures the legal and the business elements of our services. In that manner,
nonlawyers can own and invest in the business elements while only lawyers own and control the legal elements. In this way, we are able organize ourselves in a manner that works for us, in the absence of an ABS structure.

We see other ways that legal services can be made more affordable and more accessible to the average Canadian. For example, notarization services could be much cheaper if it were not only lawyers that could provide them. And we think that certain real estate matters could be handled just as well by a paralegal as by a lawyer.

We have financed ourselves through self-capitalization and loans. Those have been the only avenues that have been available to us.

We thrive in a competitive environment. As regards the future of Axess Law, we think that the sky’s the limit. We plan to be national in the next two to three years, and we’ve not ruled out expanding south of the border. We see a lot of commonalities between what we do here in Canada and what we think is needed in the US market. In a sense we already have a foot in the US market, because by operating in Walmarts, we are operating in America’s backyard.

In a macro sense, we think that the recession of 2008 forced the legal profession to change. In that financial crisis law became a line item, and a cost center to be controlled and with that realization, law became susceptible to same markets pressure in a way that it had previously not experienced. Axess is a product of this environment. We have structured a business that is able to meet people’s needs by unveiling the mystique of law and by refusing to be conduct ourselves in the normal legal manner. We are able to meet the needs of many people via retail business model that is easy for most people to understand implicitly.

We are often asked if we think that what we do devalues the profession. We’ve now had a few years to reflect on that question, we strongly believe the opposite — that we are enhancing the profession significantly. We’re bringing high quality legal practice to retail settings. We are adopting best practices across the board and we are introducing people to what a lawyer should be — not someone who’s there to rob you and take everything you’ve got which is really the way professionals in our industry are perceived, but rather friendly lawyers who are open and embracing of the communities of which they are part. In places where we operate, we’ve actually managed to change the reputation of our profession by bringing proper legal services to people who otherwise could not get it. This is something of which we are very proud.
Peter Carayiannis, Founder and President, Conduit Law

Conduit Law provides in-house counsel services to companies. Conduit keeps its overhead low by embedding its senior lawyers at its clients’ locations. In March, 2016 (subsequent to this interview) Conduit Law was acquired by Deloitte, forming Deloitte Conduit Law LLP.

Conduit Law is part of the “alternative” or “new law” movement. We are a B2B law firm, and not B2C, in that our clients are businesses — companies — and not individuals. Finally, Conduit Law is a “dispersed” or “distributed” firm in that our lawyers are embedded with our clients, either physically in that they work at the client’s premises one or more days a week or they are embedded virtually. Each lawyer is assigned to a specific client or group of clients and has primary responsibility for that group of clients.

Different clients have different needs, which is why we offer three different service models: the Embedded Lawyer, the Gap Lawyer and the Targeted Lawyer.

The Gap Lawyer and the Embedded Lawyer are flip sides of the same coin. I use the language of the Embedded Lawyer when I am speaking to small to middle size enterprises — companies that are beyond the pure entrepreneurial phase. These companies have achieved a level of sophistication such that they need and consume legal services. But they understand that doing it on a traditional basis and by the hour does not work for them, and they are not ready to employ a full-time in-house counsel. What Conduit Law offers them is the services of a lawyer for, say, one or two days a week, and, if the work ramps up for a specific project, then more days a week for the length of time required. We can tailor this service, too, for the type of work the client requires. For example, growing companies typically need help in the areas of employment and intellectual property. Since there are very few lawyers who are specialized in both of these areas, we can offer the client the services of an employment lawyer for one day a week and the services of an IP lawyer for one day week. In effect, Conduit Law can offer a type of hybrid service, with the services tailored to the client’s needs.

In contrast, the Gap Lawyer is for larger organizations that have an in-house legal department. These tend to be mature organizations. They can have temporary gaps in their capacity because, for example, a project ramped up very quickly or someone has taken a leave of
absence, or because of experience in a particular area— the company needs help in an area of law that the in-house team is not tooled up to handle.

The third model we offer is the Targeted Lawyer — this is for a company who needs a specialized lawyer working at a high level, for a specific short term project.

The secret of Conduit Law is our ability to combine the advantages of in-house counsel (such as knowledge of the business) with the advantages of external counsel (such as a flexible and adaptable team). In-house counsel understand their client — the business and the business’s objectives, its appetite for risk, how to get things done internally. External counsel are able to master facts and the law, and master the application of the law to the facts. Our lawyers are able to combine these — they have the knowledge and expertise of external counsel, and then, by virtue of being embedded with a client over a long term period, they also learn the client’s business and business objectives. This permits our lawyers to provide a unique, tailored service to our clients that a traditional law firm cannot match.

What also helps our lawyers to better understand our clients and improves the advice we give to our clients is the way we price our work. We do not bill by the hour. Instead, we agree with the client upfront on a monthly retainer. This reverses the incentives: when you deal with external counsel on an hourly basis, there is a negative incentive built into the system to not call them because every time the client does, the client gets a bill. In contrast, with our lawyers, the client has already agreed to pay a specific monthly fee. So the client has every incentive to call, in order to get the value out of that retainer. And since our lawyers are embedded at the client’s premises, this makes the contact that much easier — it allows for “water cooler conversations,” and for our lawyers to participate in management and planning meetings. In this way, our lawyers can help our clients proactively. In contrast, most external lawyers do not learn of a problem until the house is already on fire.

In other words, at Conduit Law we try to get in front of legal problems — to be proactive and not reactive. If your business really does have an emergency that requires the fire brigade of a traditional law firm, you should call the traditional law firm as they will have the resources to address it. Conduit Law will not — we do not have groups of lawyers sitting at their computers waiting for something to do. All of our lawyers are actively engaged in ongoing work with our clients.

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I used to work for a big, national law firm. I left that firm in 2004, and started contracting myself out to different companies, in the model of the Embedded Lawyer. When I first started, I was not sure if I would get clients or if there would be a demand for this service. I soon learned there was an eager market. I did not realize it at the time, but what I was doing was test marketing what would grow up to be Conduit Law.

Over the years, not only did I find that attracting clients was not difficult, but also that there seemed to be more lawyers interested in what I was doing and interested in working on this kind of flexible basis. When I first started out in 2004, many of my friends who were lawyers slipped me the cards of headhunters, suggesting I call them to get my career back on track. I threw the cards in the garbage. A few years later, those same lawyers were asking to meet at local coffee shops — not in their office buildings — in order to ask me in detail about how I was set up — how I handled insurance, how I priced my work, questions like that. What had happened is that in the years after the Global Financial Crisis, more lawyers realized that they were ready to leave the traditional law firm.

At the same time, I was watching the regulatory changes in the UK, and also watching the growth in the US of firms like Axiom Law — the success they enjoyed and their leadership in innovating around the business of legal services.

Finally, in 2011, I started to think that I had stumbled onto a growing market — a growing number of clients that would like to work on this basis, a growing number of lawyers seeking to work on this basis, and Canadian clients were ready to embrace a new kind of service.

I took a step back and asked myself — if I were going to create a law firm from scratch, without the preconceived ideas of a typical pyramid sale hierarchy, a firm to serve businesses, what would it be? The way I envisioned it is the way Conduit Law grew.

Many many people have helped me create Conduit Law, but I am the sole shareholder.

We have about 16 lawyers today. They are all independent contractors. All of our lawyers have a minimum of five years’ experience — most of them have experience both in law firms and as in-house counsel.

We are not a lifestyle firm by any means. But we are a firm that offers flexibility. We recognize that people can have competing priorities in their lives, that they have children, elderly parents, which creates friction if they need to work in a 2000 hour a year environment. It is
possible for a person to have those competing priorities and still want to be constructively and positively engaged in a professional workforce. Nowhere is it written that in order to be a good lawyer, you must work 50, 60, 70 hours a week. Why can’t you find a client who wants 15 hours a week, and be that great, high-performing, on the ball lawyer for those 15 hours? Why not?

We learned to invoice by fixed fees mostly by trial and error. We are better at it now than we used to be. At the beginning I was probably underpricing but we feel the current pricing model continues to improve.

We try to be as lean as possible. We have not invested a lot in technology — but we do use best in class “software as a service” (SAAS) solutions. We are big supporters of Cloud solutions.

We feel limited by the way legal services are regulated in Canada today. We were very excited to see the CBA Futures report — Jordan Furlong called its release a “watershed moment” — I do not think that that is an exaggeration. The CBA clearly organized a very strong panel, and they took their time — two years — to issue the report. It is an excellent report. They canvassed the entirety of the profession and they came up with some serious recommendations. They have now made most, if not all, lawyers in Canada aware of the conversation about alternative structures, and now the law societies in Canada must grab the bull by the horns and do something.

It is ultimately about access to justice — and that is what it has to be about. In Ontario, we have record numbers of unrepresented litigants — they are clogging up the courts and slowing the litigation process. If you are very poor you can qualify for legal aid and if you are very rich you can get any lawyer you want, but if you are in the middle class you are entirely shut out of reasonably and effectively accessing a lawyer. The law societies have to deal with this issue.

The rules have a limiting effect on how Conduit Law can operate. Our lawyers get paid on a fee-splitting arrangement. Conduit Law contracts with the client and is paid by the client, and those fees are then shared with the lawyers who are contracted to provide the service. We can split those fees because it is between lawyers. We cannot fee-split with a nonlawyer. So on a business development basis, if we wanted to offer the client a more diverse group of people, such as accountants and other professionals, we cannot do that, unless they are other lawyers.
I would also like to be able to bring other professionals into Conduit Law and have them be part of the equity structure — people who can make the company better. I am the CEO of a business, but I can’t do all the different jobs needed to — from sales, to marketing, to finance, to IT, to service and support and practicing law. I can’t solve the problem of my limitations in a way that is scalable, because I cannot bring in a CFO and offer them a fee sharing arrangement or equity in the business. This limits how quickly we can grow and also limits our access to top talent.

Also, I’d like to create an organization where everyone can share in the equity — not just the other lawyers, but everyone.

I think that Canada has a lot to learn from the UK. What the UK has done with ABSs is an evolutionary explosion in the way law firms and lawyers organize themselves and I think that we should be looking at the UK for a lot of lessons.

Somewhere in every ethical code, there is a requirement that lawyers deliver their services in the best way possible — in essence, to provide services in an effective and efficient manner. What is effective? That is subjective. What is efficient? That is about dollars and cents. It is about the amount of your overhead, it is about how you use technology. If you are not thinking about these things, then I would make the argument that there is a part of the ethical code that you are not observing.

The billable hour is a conflict of interest with the client. It is an incentive for inefficiency and it misaligns the lawyer’s interest with the client’s interest. The billable hour needs to be addressed under all ethical codes. It is the eight hundred pound gorilla in the corner many would prefer to ignore.

There are ways to address a conflict of interest, like informing your client and having your client consent to it. But no lawyer does this, they just turn on the timer.

The pressures on legal services that are present in Australia, the UK and Canada are present in the US as well. What is happening in Liverpool is probably also happening in Charlotte. What is happening in the countryside of the UK is probably also happening in rural areas in the US. The pressures are the same.
Canada and the US are in wonderful positions to observe how ABSs have worked in Australia and in the UK, and to cherry pick from those systems what they think have worked the best — they do not have to adopt the UK’s or Australia’s systems in their entirety.

But nor can Canada or the US ignore what is happening in the UK and Australia. They cannot put their heads in the sand and pretend what is happening there is not important here.

**Rubsun Ho & Joe Milstone, Founding Partners, Cognition LLP**

Canada-based Cognition provides in-house counsel services to companies. Cognition keeps its overhead low by relying on cloud technology and a team of senior lawyers who work either from the clients’ locations or from their own home offices. In January, 2016 (subsequent to this interview), Cognition announced that it would split its business into two, one serving large companies that have in-house legal departments, and the other serving small and medium-sized companies. This split was in order to enable US-based Axiom to acquire Cognition’s large company business. Cognition’s small and medium sized company business would be renamed Caravel Law.

Cognition was founded by two people who formerly held senior in-house counsel positions, and many of our lawyers also formerly held in-house counsel positions. On that basis, we like to boast that in our firm we host significantly more in-house experience than any law firm in the country. This experience enables us to provide unique service to companies in two ways: (i) to provide in-house counsel like service to companies that otherwise don’t have in-house counsel, and (ii) to supplement a company’s existing in-house counsel team during those times when it needs greater resources, or for discrete projects/buckets of work historically sent to a traditional outside firm.

We use technology in a way that makes our work more efficient and smarter. We price far less expensively than most other law firms as we spend very little on bricks & mortar offices and we otherwise keep our fixed costs and overall owner profit expectations in reasonable check.

We both worked at big law firms, and then in-house, Joe in the telecom industry and Rubsun in technology. We both arrived at a point in our careers where we were trying to figure out what to do next. While we were trying to figure that out, people that we knew were often asking us to assist them with consulting of some sort — people in starts-ups and small businesses.
who needed legal help. In helping them, we came to the realization that it made no sense for these companies to be paying “Bay Street” (big law firm) rates, that it was possible to provide them with the same quality of service but at much lower rates.

We got many referrals doing this, we became very busy. Finally we decided to formally organize ourselves to bring in other people. We did this with the mindset that we would not carry the large overhead of a big firm. Neither of us have subscribed to the trappings of big law. We understood that clients want to pay us for our legal expertise, but not for large overheads.

Another thing that makes us unique is the flexibility that we offer to our lawyers. We also understood that there are many unhappy lawyers out there who would like to work differently. We allow our lawyers to dictate their workloads — they have no billing targets or comparable expectations. They tell us how much they want to work, and they are paid on that basis. Often our lawyers work from our clients’ offices — if they are not there, they can work from home — that gives them a lot of flexibility in organizing their work and their working day.

When we started, we were not sure what kind of supply we would have, but it turns out we have been able to attract very good, highly trained experienced lawyers who like to work in the model. It sounds cliché, but it’s a win-win for everyone.

We price our work in a combination of ways, depending upon the client. Often it is fixed fees, but it may be hourly if that is what works for the client. We also work on fixed retainers for regular, recurring tasks or what we call “bulk” work.

We have about 50 lawyers now. The majority of them are independent contractors, whereas the handful of junior lawyers that we have are employees.

In some ways our model is similar to Clearspire’s, but with one difference — they invested heavily — upwards of $6 million on proprietary technology, if we are not mistaken. In contrast, at Cognition we recognize that we are not technologists. We understand technology, but it is not our area of expertise to go out and build our own. So, what we have done is take available technology and adopt it for our needs. That means that we do everything on the cloud. We service our clients and we service our lawyers on the cloud. This has enabled us to avoid many upfront fixed costs, and to make many of our expenses variable ones. The other great thing is that technology evolves over time, without our having to spend our own time and resources. We provide feedback to our providers about our needs and priorities, and they take that into
account, together with the feedback they get from their other customers. In our experience, cloud infrastructure and applications just keep getting better and better.

It has been extremely busy for the past few years. We brought on 14 or 15 lawyers in the past 8 months or so. This is the fastest period of growth we’ve had. We are constantly on the lookout for new people. Also, a lot of lawyers come to us. They see the writing on the wall. They are attracted by the fact they can work differently.

Many things have been written about how jobs in the 21st century will change. That people with good skills and experience will move to some form of consulting without the need (or desire) for employment in the traditional dependent sense. We believe that we have been able to do it in a nice way, that we have been able to find the right balance of autonomy and group cohesion. We are trying to establish a culture that is not focused on making as much money as possible for our partners but instead is focused on providing value to our clients as well as an attractive working environment for our lawyers. Big business law firms have a lot of miserable lawyers — many partners in those “machines” make a lot of money, but quite frankly it comes at the expense of paying clients and the associates and other partners on whom the leverage is based.

Our lawyers are not obliged to take on endless quantities of work — they are not squeezed like sponges like fixed-price associates, and they can choose to say yes or no to the type of work that we bring them. Our lawyers can have better balance, but also – and this was a surprise for them — many lawyers find that on a time-worked basis, if not on an overall basis, that they are doing better financially than they were before. At the same time, the clients are saving a half to sometimes two-thirds to what they would pay to a traditional firm.

Here is why our lawyers can find themselves better off: Say you have a very senior associate at a big law firm who is billed at $500 per hour. Say that person’s salary is $180,000 a year and that they are expected to bill 1800 hours or more per year. That means they are getting paid essentially $100 per hour. That means there is $400 per hour left over for overhead and partner draws. Let’s say we take that person, we cut their hourly rate to $250 per hour, and we pay that person $150 per hour. If they can work 1500 or 1600 hours, they are going to make more money than they did as an associate. We also get a lot of people from in-house positions, and we can usually match or beat in-house salaries.
The firm’s profits are certainly respectable compared to the average income in Canada, but the profits are very low compared to what large law firm partners expect to make. On the other hand, there are just two owners, the two of us — we don’t have hundreds of partners expecting to make $1 million plus each. Our profit expectations are much more in line with economic reality.

Our firm does not offer a traditional partnership track, where you pay your dues and then you make partner. That’s just not what we are. We would not expect to bring in another lawyer as partner unless that person was business oriented and was able to make a strategic contribution.

The fact that we only have two decision makers means that it is easy for us to make decisions. We don’t have to assemble a big group of people or manage by committee. We’re very interested in the recent CBA Futures report recommending that firms be open for outside investment — we see taking on a strategic investor who could help us to expand quicker as a very real possibility, if the rules in Canada change and permit us to do that.

Under the current regulations in Canada, we have felt limited. We have had to bootstrap our operations for ten years. Our ability to grow is limited by available capital, and it is never easy to borrow from a bank when you have limited hard assets. If we had had the opportunity to have outside investment from the beginning, we could have grown more quickly. We have had people approach us and say they are interested in investing in us, but we had to turn them away because of current regulations.

If we had access to outside investment right now, we would use it in a number of ways. First, to bring in more lawyers and accelerate our technology deployment, to enable us to serve a greater number of customers in the most efficient, value-accrative manner. Second, we would develop our marketing and sales functions more aggressively, notably to develop into new markets, including new countries. Third, we would grow our senior management team, in order to bring more specialized people, with our most immediate needs being in finance and product development.

What we see right now is attitudes changing. The legal market is by nature very conservative. But we see that the UK is able to develop low-cost centers. We look at companies like Riverview Law and we see how things can be done in an innovative, more cost effective way. We also see that clients are more open to doing things differently. We are not supportive of
everything in the CBA Futures report, but we are supportive of changes that would give us more flexibility to be more than a traditional law firm. We see the proposed regulatory changes as offering us an opportunity — we could act on them faster than our largest competitors could.

Something that is definitely changing is where your competition is. It used to be that your competition was next door or across the street. Now in the legal market competition can come from anywhere, including another country. And the competition isn’t just other lawyers — it can also be two people in a garage who have come up with a new technology that will completely disrupt how lawyers work and deliver their services.
P. Voices of Modern Regulation

The regulatory changes in England and Wales and in Australia to allow for ABSs and ILPs did not occur in isolation. To the contrary, they occurred in a larger context of the modernization of their rules governing legal services. Today comparable processes are occurring in a number of Canadian provinces, and perhaps also in Colorado and Illinois. The stories of this category provide insight into the approaches of some of these modern regulators.

Sir David Clementi, Author, The Clementi Report


In 2003, Lord Chancellor Falconer had on his desk a paper prepared by his staff which concluded that the regulatory system for lawyers was confusing, that the complaint system needed overhaul, and that the legal profession was full of restrictive practices that worked against the consumer and in favor of the profession.

He asked me to prepare a report. I believe he selected me for two reasons:

The first reason was that I had experience of regulatory practices in other professions. I had been a regulator of the accountancy profession, I had sat on the board of the financial regulator for five years, and I had worked with the Bank of England on regulatory systems for many years.

The second reason was that I was not a lawyer. Falconer told me that the profession had little objectivity: There was a tendency to think that the profession is “very well run, because it is run by people like ourselves.”

If you review the history of English and Welsh law, about every 20 to 30 years there has been a major review of the regulatory system. But almost all of these reviews in the past had been done by lawyers; and these reviews tended to conclude that everything was basically fine, but we’ll have this little tweak and that little tweak.

In approaching the task, the first thing I did was to ask what questions needed to be answered. I concluded that the three questions were:
1) What would be a better regulatory system than the confusion we have now?
2) How can we improve the complaints system?
3) How can we remove barriers to competition, and notably what are the arguments for and against more liberalized legal practices?

In a consultation paper published in March 2004, I developed two or three possible answers for each question. It was important to do it this way. If you just throw questions out without suggesting answers, you will get a number of unrelated responses that are hard to analyze.

I thought it was important to provide sensible suggestions. And there were a limited number of models that could be adopted. This is why in my consultation paper, I talked about “Model A,” “Model B” and “Model B+”. I made sure that the debate occurred on concrete terms. Not because I wanted to dictate, but because I wanted to stop suggestions coming from left field — suggestions that might be intellectually very interesting but in reality completely impractical. It was important to be practical — to think about things that were possible and could actually work and that ministers might accept, because at the end of my report ministers might have said “great report” but done nothing about it.

I set out my questions and proposed answers in a consultation paper and asked a variety of people to respond. The consultation paper went to the professional bodies themselves — the Law Society, the Bar Council, the Institute of Trademark Attorneys etc. But that was a minimum. I also asked the key consumer groups and other consumer advocates to submit their opinions. In particular I worked closely with the Citizens Advice Bureau since they had a lot of experience with individuals coming into their offices seeking legal advice.

Prior to the Clementi Report, the Law Society and the Bar Council carried out both representative and regulatory functions. But in other industries in the UK it was felt that, whilst providers could represent themselves, they were not good at regulating themselves: that banks couldn’t regulate banks, that brokers couldn’t represent brokers — that self-regulation, in financial services as well as other services, did not work well and that the days of self-regulation were over. Lawyers seemed to agree with that, for all areas except their own.

I argued that regulation is a public service. It should be carried out in the interest of the public, and be independent of representation of the profession. When lawyers are self-regulating,
their focus is rarely on access to justice or other consumer outcomes. Their focus is on whether services are being provided at a high enough standard. Lawyers did not like it when I recommended the end to self-regulation, but today they have more or less accepted it.

In my opinion, a good regulator needs to start with a clear set of regulatory objectives, and needs to design a regulatory system that meets those objectives; objectives such as maintaining rule of law, access to justice, assuring consumer outcomes, promotion of competition.

I came from a system in which the regulator had regulatory objectives, and was held accountable against them.

For example, I considered a regulatory objective regarding access to justice was important. In the absence of this, the fear was that legal services, particularly in the area of litigation, would be available only to the very rich and the very poor. Many of the lawyers I spoke with thought that was normal — that that was simply the way it was. But it does not have to be that way, and it is important for a regulator to have an objective to make legal services easily accessible.

For this reason, the 2007 Legal Services Act, based on my report, contains regulatory objectives. They didn’t exist for the legal profession in England and Wales before that.

In preparing the report, I spent some time in Australia, as did members of my staff, so that we could observe how it worked there. What we took away from New South Wales in Australia was that my proposals were not completely on their own; and that I was not proposing something that simply didn’t work.

Many lawyers objected to my proposals about outside ownership, arguing that the profit motive ran contrary to the proper objectives of running a legal practice. But I argued that in running a business, you need to make a proper rate of return. Lawyers like to think that making money is a happy by-product of providing good legal service. It’s nonsense. My experience is that lawyers are as keen as anyone else to make money. And, in any event, if you don’t make money, you are going to go out of business.

When I looked at the complaints made by the man in the street, they were almost always about service level issues. For example: "He didn’t return my phone call.” “He didn’t file a paper on time.” Complaints by the man on the street were rarely about legal issues.
I argued that if someone was good at business, then why should that person be precluded from owning a legal business? Of course legal advice needs to come from lawyers. But why does the firm itself have to be owned by lawyers?

I’ve never said that legal advice should be given by a nonlawyer. I’ve simply asked: Who should employ them? Who should provide them with an office? Who should be sure the invoicing is done properly? Who determines what lease the office should have? Who determines business process? Does all of that have to be done by lawyers? The people who do these things are important people and there is no reason why they should not be in partnership with the lawyers providing the legal advice itself, and no reason why they should not share in the equity alongside lawyers.

I stressed in my report that I had no problem with lawyers who would like to practice in traditional structures. I never said that you must practice in the form of an alternative structure; I merely said that you may. I never said that you must make your finance director a partner; I merely said that you may. I believe there is an important place for traditional structures such as partnerships. What I object to is the suggestion that it cannot be done in any other way. It is a restrictive practice, and a profession should have to justify restrictive practices. I simply couldn’t find a justification for it.

Hospitals are rarely owned and run by doctors — that doesn’t mean that medical services at the hospital are provided by unqualified people. It is a professional conceit to believe that only lawyers can own and operate law firms. It is as basic as that.

Robert Cross, Project Manager — Research
Legal Services Board

The Legal Services Board is an independent body responsible for overseeing the regulation of lawyers in England and Wales. It oversees, among other regulatory bodies, the Solicitors Regulatory Authority (which regulates solicitors) and the Bar Standards Board (which regulates barristers).
Some argue that there is no evidence that regulatory reform in general, and that ABSs in particular, increase access to justice. In my opinion, this argument misses the point and is not the right place to start.

All the evidence — and there is quite a lot of it — shows that there is a continuing high level of unmet need for legal services. This is true in the UK and I strongly suspect it is also true in the United States, if not in most Western countries.

In the UK, even when legal aid funding was available for a wider range of problems and for a bigger group of people on different levels of income, the research showed evidence of U shaped distribution with those eligible for legal aid and those on high incomes more likely to seek legal advice when faced with a substantial legal problem. Recently the scope of legal aid funding has shrunk substantially in line with reductions in public sector spending. Funding for legal aid is unlikely to increase anytime soon, and it is clear that legal aid was not addressing all unmet legal needs.

The point is that we have a large unmet need for legal services and it is in the public interest to do something about it. It’s a complex problem to resolve. Regulatory reform and ABSs are one part of a mixed economy — just one of part of the solution to address it. I think this has to be the starting point — not an assertion that there is no evidence.

In the UK, the implementation of regulatory reform and notably the implementation of ABSs have been quite slow. Remember that while that Legal Services Act was adopted in 2007, applications for the first ABSs were not accepted until late 2011.

There have been issues in the past with the application process. Our research suggests that in considering ABS applications, the SRA risked a cognitive bias in its decision making process: anything that was different was “not normal,” was highlighted as high risk and was less likely to make it successfully through the application process. So, to the extent someone was seeking to provide legal services in a truly different way, the chances of it getting an ABS license were significantly reduced. I am using past tense here — this is because we have called the problems out to the SRA and it recently changed its application process and took steps to reduce its cognitive bias. Now applications are taking less time to be approved, and a greater number of different business models are receiving approval. We are expecting to see the impact of these changes in the future, as a greater variety of firms receive authorization.
Because ABSs have not been in existence all that long and because for much of that time it has been difficult to get approval to operate them, there is today little empirical evidence regarding changes to access to justice. We highlighted this in our 2013 evaluation report.

The LSB is planning to conduct a large scale legal needs survey of individuals, to see how things have changed since 2012, which is the last time we did such a survey. I am not expecting to see that all problems relating to access to justice have been resolved, but I am expecting to see some changes a difference. If ABSs have made an impact, then the results of the survey should show that in some areas but not others. The reason for that difference is that the adoption of ABSs is not the only regulatory change that has taken place in England and Wales. We have also experienced large changes to the scope and availability of legal aid as well as to litigation funding. For that reason, it will always be very difficult to say beyond a doubt that ABSs have improved access to justice.

By way of context, the approach in legal needs surveys is to start by looking at individuals who have had a problem that could be resolved through legal means — be it a court process or a transactional process. The researcher examines what the individual did in response to the problem — did they go to a lawyer, did they go to a not-for-profit advice agency, did they go to a friend, did they ignore the problem — and why they selected that course of action (or inaction). It is an objective and quantitative approach. If there is a positive impact of regulatory reform, with ABSs being a part of that, then in performing this survey at different points in time (over 3 to 6 years, for example), we should see changes in the way that people respond to their problems.

It is easy to forget that for ordinary people there is a real information asymmetry. Many people don’t understand either that they have a problem that can be resolved through legal means, or how to go about resolving it through legal means. It’s not as simple as just walking into a solicitor’s office — there is a whole lot that goes on before that. That is why a survey like this is so powerful in helping to understand what really goes on — or as some call it the rest of iceberg not just the tip. These surveys point to the courts as being on the periphery of everyday justice.

ABSs allow you to bring in the capital to invest in things like advertising and branding — big, expensive things that other service businesses invest in. These are things that have the
potential to allow people to access legal services in different ways. For example, it is through advertising that individuals can better understand what legal services are on offer that can help them to resolve their problem.

The legal sector in the UK has done very well over the past 20 years or so — it has nearly doubled in value over that time. But there is still a problem of unmet need among individuals and small businesses. And there is still a problem of people not even understanding that a problem they have can be resolved through legal means.

Changes are definitely happening in England and Wales. ABSs and other regulatory changes are a reason for that, but not the only reason. Notably, technology is also a big factor in the changes occurring in the legal sector.

From our vantage point in the UK, it is very interesting for us to look at the US. We understand that the US market remains very restrictive as regards the business models that are permitted, and we understand that the US still regulates lawyers rather than legal activities. Yet, at the same time, there is still innovation occurring in the US. That shows that there is a lot going on — and that it is not only about regulation.

That being said, ABSs are important in that they allow firms to acquire the capital they need to develop or buy the technology they need, and to develop the branding they need.

**Alex Roy, Head of Development and Research, Legal Services Board**

*This interview was conducted in March, 2014, when Roy was serving as Head of Development and Research of the LSB.*

Many of the innovations occurring in the UK market are happening in the US, with or without the regulatory changes. This reveals something very interesting about the global legal services market: that it is all being driven by consumer demand. Whether regulations allow for ABSs or not, changes will occur. The advantage of the UK regulations is that it allows for more capital and more innovations.

Law has been globalized for large corporations for quite some time now, of course. What you see now is that law is also becoming globalized for small businesses and even individuals.
And what is driving this change is IT. Firms now have the ability to harness IT in order to deliver legal services over the Internet to anyone in the world.

Massive evidence shows that there is a huge unmet need for legal services. The unmet need is by no means limited to individuals and small businesses, but for them the situation is particularly acute. The UK reforms are about putting the customer at the heart of the relationship, and about prioritizing the needs of the customer. The reforms allow for people who have different skills and expertise to be brought together, people that typically aren't brought together, in order to meet customer needs, and in order to improve access to justice and to legal services.

But the adoption of the ABS structure is not always necessary. While much of the discussion of the UK regulations is often focused on non-lawyer ownership, MDPs, and the creation of the ABS structure, the changes in our regulations are much more profound. Essentially, we've taken away the restrictions on competition in the legal services market, and, in doing so, we've fostered a general climate of innovation and creativity in the provision of legal services. As a result, whether they do it as an ABS or not, all lawyers need to re-engineer what they do and how they do it, in order to compete in a very different environment.

The UK benefits economically from being more open. Competition drives competitiveness drives performance of the firms. While the law itself across jurisdictions may be different, the model you use to deliver and the types of issues you have are the same. So, you can take a platform and a way of dealing with law, and apply it by modifying the underlying legal framework behind it. And while this might work more easily where you have similar jurisdictions, like common law, we increasingly see firms coming from Europe — from civil law jurisdictions — and competing in the UK.

The UK government senses in law and legal services a real opportunity for export. The UK already has a strong financial center and a large number of large international law firms. Feeding on that already competitive environment, the UK government sees the possibility to drive higher legal exports from the country, and to develop law and legal services as an area for competitive advantage.

The UK government sees that it can promote law firms that can operate both here and overseas, delivering high-quality legal services using the brand of England, where lawyers are
seen as well-trained and highly skilled, and operating in flexible firms that can deliver advice to
businesses and people on a global basis.

If you consider the UK regulatory environment as a whole — our greater openness, the
ability firms have to access capital as well as a greater variety of people and skill sets, and
especially IT expertise, you see that in the UK, firms are able to experiment with and deliver the
types of legal services that customers are looking for. This is the essence of the big competitive
advantage that the regulatory environment of the UK offers.

Paul Clauson, Commissioner
Scott McLean, Principal Legal Officer
Queensland Legal Services Commission

The Queensland Legal Services Commission is an independent statutory body. It is the sole body
authorized under the Legal Profession Act 2007 to receive and deal with complaints about
lawyers, law firms or their employees. It has the right to audit Incorporate Legal Practices
(ILPs) to verify it compliance with applicable laws and ethical rules. This interview was
conducted in December, 2014, when McLean was serving as Principal Legal Officer.

In the early 2000’s there was a push for a nationalization of many of the rules pertaining
to lawyers and the practice of law. This occurred in order to make it easier for legal service
providers to work on a national rather than on a regional level. As a result, the rules governing
legal services in Queensland were harmonized with those of New South Wales.

In Queensland, there are a total of 1828 law practices. Of those, 690 are ILPs. So in
Queensland just over 37% of all law practices are ILPs. This is consistent with New South
Wales’ numbers.

The economies of scale don’t exist in Queensland like they do in the UK and the US.
This probably explains why you don’t see the development of many large legal businesses based
in Queensland.

The argument that nonlawyer shareholders will unduly influence the judgment of the
lawyers does not hold any water here. In the first place, many of the nonlawyer shareholders of
ILPs in Queensland are the spouses of solicitors — they have nothing to do with the work of the
ILP and they are shareholders mostly if not only for the tax benefits it offers. As for the
nonlawyer shareholders who do play a role of some kind in the operation of the ILP — if at any point there is a problem, the Legal Practitioner Director of the ILP must answer to us (the legal regulators) and all the Directors of the ILP, including the ones who are not lawyers, must answer to ASIC (the corporations’ regulator). In our experience, the risks presented by the ILP structure have been overblown.

It is up to those who own and manage a legal practice to decide upon its ownership and management structure. That is a decision that we see no reason to be involved in. That is because regardless of whether a legal practice is an ILP or not, it must conform to the ethical rules. If it does not, it will face disciplinary action.

John Briton, Legal Services Commissioner
Queensland, 2004 - 2014

John Briton was the first Legal Services Commissioner for Queensland. He is the author of the paper “Between the Idea and the Reality Falls the Shadow.”

I am not a lawyer. Before my appointment as the first Legal Services Commissioner for Queensland, I served as Queensland’s Anti-Discrimination Commissioner and the State Director of the Human Rights and Equal Opportunity Commission. Prior to that I served in Victoria as the Deputy Public Advocate and Senior Advocate in the Office of the Public Advocate, where I investigated and reconciled alleged abuse, exploitation and neglect of older people and people with disabilities.

In those roles, I acquired significant experience with regulatory matters, complaints and investigations of conduct, and notably experience with respect to human rights. And that’s the experience I took into my role of Legal Services Commissioner. To my knowledge, I was the first and, to date, the only, non-lawyer appointed in Australia to a Legal Services Commissioner position.

I was appointed on the heels of a scandal, which I think explains my appointment. The Law Society had been pilloried in the media over a period of several years for the way that it

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handled complaints. A common headline was “Caesar Judging Caesar,” in reference to the fact that the Law Society, the membership body which represents lawyers and is essentially their trade union, had the responsibility for handling complaints against lawyers.

When I assumed my position, I knew that the Commission would comprise lawyers in the main so I knew I would get the legal advice I would need. That being said, many lawyers are incredibly risk adverse, and they see lawyering as a way not to manage risk but to avoid it altogether. In my opinion, effective regulation requires some risk taking and a willingness to push boundaries and test principles and practices. For that reason, I think it was helpful — an advantage — that I was not a lawyer. It made it easier for me to push boundaries. I could challenge assumptions by playing dumb and asking naïve questions. I think it was particularly helpful to not be a lawyer in the context of setting up an organization from the beginning, which enabled me to establish a certain culture.

It was by pushing boundaries that I got interested in the topic of billing practices. As I discuss in my paper, most lawyers don’t think much about their billing practices – it’s just what they do — it’s just standard operating procedure and they don’t see anything problematic or dubious about them. But I looked at some of those practices and thought that they were outrageous, especially from the perspective of fair treatment and consumer protection. Some examples of the practices are: (i) billing undisclosed mark ups or “secret profits” on outlays, (ii) billing in 6- or 10-minute increments of time, and invoicing clients for a full 6 or 10 minutes even if the work took considerably less time (perhaps just one minute, for example), with the result of significantly inflating the stated hourly rate and (iii) “double dipping” with the same time by charging a client a “cancellation fee” for time that was set aside to work on a matter but which turned out not to be needed, and using that time to do paid work for other clients. And these practices often occur in a cultural context in which firms place unreasonable pressure on their lawyers to meet unrealistic hourly billing requirements and in which meeting billing targets is an “all purpose” performance measure for promotion and career advancement purposes.

One of the first challenges of my job was the legislation that established our office. It said the job of the Legal Services Commissioner is to make sure the consumers have a means of redress for their complaints. That was fine, except that we had no powers to provide an effective a means of redress, other than to involve disciplinary bodies, who could order compensation. All
we could do was see if we could mediate a solution. This was frustrating for us because not all matters needed to be treated as disciplinary matters — many were simply careless and honest mistakes that just needed to be made right. One example is a lawyer whose secretary deposited the proceeds from the sale of a house into the client’s Australian bank account when the client had specifically instructed that it be deposited into his UK bank account, with the result that the client lost hundreds of pounds due to fluctuations in the exchange rate.

We thought for a long time about how to handle this. We finally decided that the way the legislation was set up, every matter which warranted compensation must be a disciplinary matter. Otherwise the legislation did not make sense. So, our solution was to treat every matter, even just plain muck-ups, as a disciplinary matter.

Yes, that was really harsh. But at the same time, we were not obliged to prosecute every matter. For any given matter, we could ask if there was a public interest in prosecuting, and if we decided there was not one, we wouldn’t — and where is the public interest in prosecuting a lawyer for an honest and minor mistake that they have voluntarily put right? We had to do it subtly, to not encourage bargaining. At the time we made this decision, it seemed to others to be quite brave if not crazy, but, in hindsight, it was seen as simply being sensible. And the fact is that it turns out that most complaints concern simple mistakes or errors of judgement and just need to be fixed — by doing the work again, apologizing, compensating for financial loss.

About ten years ago, judges and others were writing articles and giving speeches on the question of whether law is a business or a profession. My reaction to that was “what a bizarre question.” Obviously it’s a profession and obviously it’s a business. Can you really argue that law firms with acres of marble in high rise buildings and paying million-dollar salaries are not turning a profit? That’s crazy. Lawyers sell legal services for profit. That’s what private legal practice is — it’s a business. So, let’s have a sensible discussion about what sort of business it is and what are the requirements of this business as opposed to some other business, and what are the professional obligations. But the idea that lawyers somehow aren’t in it to make money — it’s simply nonsense.

So, the question is: how can it be regulated in a way that while people make money, at the same time they have professional standards, they meet their obligations to the court, and they treat consumers appropriately? That is the question.
The competency and character requirements that are placed upon lawyers as individuals — that is fine. There is not much to say about that. But that does not mean the discussion is finished. Because anyone who has read any organizational studies literature knows — and it is pretty obvious, anyway — that organizational cultures influence behavior.

When I first saw the regulatory framework for ILPs, I thought it was fantastic. I saw a regulatory framework that looks at management systems and what legal ethicists call “ethical infrastructures,” and I saw that it really gives you a way to get to the cultural influences that have an impact on the behavior of lawyers in law firms. The regulation of lawyers that only looks at the conduct of individual lawyers is, in my view, a hangover from when everyone was a sole practitioner or operating in very small firms. Today most lawyers work in large and medium-size firms, and the cultural influences of those firms are just as much if not more important in determining how an individual performs than that individual’s knowledge and character.

The most obvious example relates to money. It is not uncommon for law firms to put their lawyers under unreasonable pressure to meet unreasonable billing targets. It is obvious that will influence someone’s behavior, and create ethical challenges for the people that have to operate in that environment. It’s common sense.

At work people are motivated by many things, such as the desire to please their boss, the desire to get a pay increase, as well as the desire to do the right thing. Regulators of legal services need to be able to address all of these motivations, and not just some of them.

Lawyers can be influenced by a number of different people, and, yes, that includes shareholders. That is not a reason to exclude shareholders. It is a reason to manage the risk.

Australia’s response to this has made sense — yes, allow non-lawyers to own shares of a law firm, but require the firm to appoint at least one Legal Practitioner Director. There needs to be a lawyer who is ultimately responsible for the legal services provided by that firm and that person needs to have specific obligations over and above their obligations as a lawyer. Those obligations need to be that the firm is run in accordance with lawyers’ professional obligations and making sure that the firm has an ethical infrastructure (governance arrangements, supervisory systems, training…) in place. And that lawyer needs to be personally responsible to the disciplinary regime for that. It’s a really good framework, and it works.
Christine Parker’s research regarding the effect of self-assessment audits is significant. If you recall, this is the requirement that an ILP review its systems and structures on the basis of a self-assessment questionnaire. It’s a pretty modest thing. The 39-page questionnaire addresses a certain number of objectives, such as the timely identification and resolution of conflicts, the establishment and disclosure of appropriate billing practices, and effective, timely, and courteous communication. What the self-assessment does is say to firms “here’s the framework — you review it and then tell us if you have in place systems for dealing with conflicts, for dealing with liens, etc. — just review your systems, and come back to us with some evidence that you’ve actually thought about this stuff and you have some systems in place.” Christine Parker’s research shows that simply performing a self-assessment reduces complaints by two-thirds.

Susan Fortney’s follow-up research is also significant. She interviewed a large sample of legal practitioner directors to understand their attitudes towards the self-assessment audits. The clear majority of them told her that they “thought at first it would be a real pain — that it would be just more red tape — but that actually it really got us thinking, and we think we’ve improved our client service as a result.”

During my time as Commissioner, we did not stop with the self-assessments. We had a variety of other programs in place. One example is what we called “ethics checks.” Done on an anonymous basis, these provided a framework for a firm to involve everyone (or nearly everyone) in their offices to engage with respect to ethical issues. The purpose of the checks was to foster reflection together with spontaneous and organized discussions. We approached this by explaining to firms that it would only take 30 minutes to respond to an online survey intended to get people thinking on topics like complaints management, billing systems, supervision arrangements, etc. We explained that the surveys enabled a firm to test whether perceptions across that firm were consistent, such as if the partners’ perceptions were the same as the other

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lawyers’ perceptions and whether the perceptions in one office were the same as the perceptions in another office. It provided a wealth of information that permitted the partners to understand what was happening and to change things if needed.

When we asked partners in law firms that participated in these programs what they thought of them, they thought they were fantastic. They almost invariably said that the surveys forced them to think, and more than a few of them that because of the surveys they realized there were problems that needed to be fixed, and they fixed them.

There are some questions you can ask of an organization that are key indicators of the ethical health of that organization. An example is “are you willing to share bad news with management?” If the response to that question is “no,” that is likely to be a poor performing organization from an ethical perspective.

We used an off-the-shelf program like Survey Monkey to conduct the surveys. The responses were anonymous. We did not ask for any identifying information. We did not even ask the firms to identify themselves. They could use a secret code to link the responses from the same firm.

We did ask for demographic information, such as are you a partner, associate, or paralegal, how long have you been practicing, are you a man or a woman, and the like. In addition to questions about reporting bad news to management (questions like would you report it, what do you think would happen if you did, would your career be advanced…), the survey also asked questions like:

Does your firm have a policy for dealing with complaints? Do you think it works?

Do you have a billable hour policy? Do you think it works?

Do you have supervisory responsibilities? If so, are your billable hour expectations reduced?

Here is scenario X — what would you do in this scenario?

The responses we obtained from these surveys were incredibly interesting and useful. For example, it was common for the partners to think it was safe to report bad news to management but for the junior lawyers to disagree, especially the junior women in the firm. That was very
good information for the firm’s management, and it gave them a lot to think about. This was proactive ethical reflection, and it worked.

With ILPs, we used these surveys as mandatory when we could. We presented them to ILPs by explaining that we expected everyone in their firm to respond. We said that it would not take long, and that we expected to get useful information that we would share with the firm’s management. Christine Parker has published several papers based upon the results of these checks.10

What we did needed a lot of selling. Some people saw it as an unjustified intrusion into their affairs, or believed we would share confidential information about a firm with the firm’s competitors. But for me, if these checks were conducted properly, they could be sold, because when you asked people who had done them what they thought, they almost invariably responded that they thought it was going to be a waste of time, but that in fact it was incredibly helpful — just like the self-assessment audits of ILPs.

Because of our very general right to perform audits with ILPs, we could oblige ILPs to participate in the ethics checks. That being said, we sought to present them as something helpful and useful rather than an unreasonable burden. With respect to firms that were not ILPs — we could not oblige them. So, instead, I sought out friendly and progressive partners. I would have a cup of coffee with them and encourage them to participate. Quite a few did participate as a result.

Some firms, and notably small firms, have become ILPs for the principal reason that it presents certain tax advantages. Other firms, especially mid-size firms, have become ILPs because it gives them a more sensible management structure. It gives them more interesting options for remunerating their people. It allows people to be shareholders without the burdens of being a partner, and notably without the management or supervisory responsibilities. From my perspective, these firms tend to be better run. Their management understands that they are running a business, and that they need to think like business people. This means thinking about things like customer service and loyalty and providing effective and efficient services — all the

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things that smart businesses do. This is not inconsistent with being a lawyer. It’s just smart business.

Let’s take Slater and Gordon as an example. It’s often derided as a personal injury factory. In reality, Slater and Gordon is a slick operation, as are many of the other large personal injury firms in Australia. We used to get complaint after complaint about personal injury firms, but once they started to think through the issues of how to construct an effective customer service and how to design and implement in-house complaints management systems and the like, the complaints to the Commissioner’s office went right down. Generally speaking, they, together with other ILPs, are well-managed firms.

When Slater first decided to go public, the Legal Commissioners for New South Wales, Queensland and Victoria, met on a number of occasions with Andrew Grech, Slater’s Managing Director. The net effect of these meetings was that the company’s prospectus states very prominently that the company’s first and overriding obligation is to the court, and that its second obligation is to clients. The company’s obligations to its shareholders only come in third. Shine’s prospectus states the same thing.

I understand that outside Australia strong fears of ILP-type structures have been expressed, in part with the argument that they will lead to a consolidated market, as evidenced in the personal injury market in Australia. I am suspicious of this argument. In Australia, many small firms are struggling. They have been taken over by other firms, but typically for reasons that have nothing to do with incorporation. It is because being a small generalist law firm in an increasingly specialized world of legal services is just too hard. This has resulted in all sorts of problems among the partners of small firms, and notably problems of depression, breakdowns, and alcoholism. Many of those partners just want to be lawyers. You used to be able to run a law firm where you could be a generalist — family law, wills and estate planning, personal injury,… But now these areas are so complicated, you have to be an expert to do it effectively. As a result, many firms are really struggling. Firms like Slater and Gordon and Shine are probably better positioned to buy up firms than others are, because they have access to capital. But I do not see the consolidation of the market as detrimental — it is merely a reflection of what is happening in the market — and from a consumer perspective it has advantages. The consolidated firms tend to
be better managed. And most complaints come about not because lawyers are poor at doing law, but poor at doing the business of law.

In Australia, the form of ILP is the preferred business model for start-up law firms. Law firms were first allowed to incorporate in Queensland in 2007, and only five years later one-third of all Queensland law firms were ILPS. It is just a sensible way of structuring a business. The regulatory framework has not stopped people from using the ILP structure. The objections to the regulatory framework that are expressed are based upon ideology (in favor of deregulation notably) and not on evidence.

I’ve also heard the argument that in Australia ILPs have not brought a change to the legal services market — that they have not fostered any significant creation of new or different kinds of legal services to better serve consumers. This argument is a double-edged sword. How can you on the one hand argue that allowing ILPs will result in the end of the world as we know it, but on the other hand argue that they’ve not changed anything?

In any event Christine Parker’s research is evidence that the ILP structure has made a difference for consumers in that it has led to better quality customer service with far fewer complaints. The evidence is that our regulatory regime for ILPs results in better quality customer service. It may or may not have resulted in better quality legal advice — there is no research on that question — but there is evidence that customers have better experiences and are happier.

And if you really believe that nothing has changed, then what legitimate justification is there for being opposed to ILPs?

I have often argued that all law firms should be subject to the same regulatory regime as ILPs. More specifically, I have argued that the single most effective reform we could make to better promote, monitor and enforce high standards of service in the delivery of legal services and to better protect consumers would be to make all law firms subject to the same regulatory arrangements as ILPs. I argue this because the regime offers the best means to engage with law firms about their ethical infrastructures — their management systems, their governance arrangements, their workplace cultures… We do this with the knowledge that a firm’s ethical

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11 See footnote 6.
12 To clarify, here I am referring to the regime under the Legal Profession Model Laws that is today still in place in Queensland. I am not referring to the modified regime for ILPs recently adopted in New South Wales and Victoria, under the Legal Profession Uniform Law.
infrastructure is just as if not more important than a lawyer’s character in shaping their conduct. All of a lawyer’s obligations are affected by culture. Putting lawyers under unreasonable pressure to meet an unreasonable billing target is hardly ethically neutral, for example.

The ILP regulatory structure\textsuperscript{13} gives regulators the capacity to engage with law firms about a whole range of influences that shape their performance as a law firm that you can’t do under a regulatory framework that is based solely on reacting to complaints. It permits regulators to be helpful and to be seen as being helpful, rather than be seen as an “enemy” to be feared because they are out to get you.

There is a common law tradition in Australia which is at odds with the vicarious responsibility placed upon the Legal Practitioner Director. It holds that a lawyer should not be held to account for something unless that person was personally responsible for it. In my opinion this is regressive and myopic thinking. It creates room for smart operators to look the other way in order to avoid responsibility. And there can be an inherent contradiction in this argument. Does a law firm partner really want to argue that they could not have influenced a particular action or behavior? That might be true sometimes but equally it will sometimes be akin to an argument that “I’m not guilty because I’m an incompetent supervisor.”

Directors cannot get away with that argument in other areas of law. Take our rules as regards sexual harassment, for example. Employers are vicariously responsible for sexual harassment by their employees unless they can demonstrate that they took all reasonable steps to prevent it from happening. In my opinion, this is the kind of obligation that principals of law firms should have with respect to the ethical conduct of everyone in the firm. That is, principals should be vicariously liable unless they can show — under a reversed burden of proof — that it was so far out of their sphere of influence that it is unreasonable to hold them accountable. Without this reversed burden of proof, then no one ends up being responsible for the workplace culture, and that makes no sense.

It is with a heavy heart that I think Queensland should sign up to the Legal Profession Uniform Law (LPUL). In some ways the LPUL is a great advance, but in other ways it is a big step backwards and already out of date. It is a great disappointment.

\textsuperscript{13} Again, here I refer to the regime under the Legal Profession Model Laws and not the regime under the Legal Profession Uniform Law.
The system for dealing with complaints under the LPUL is much better than the one in Queensland and elsewhere in Australia but the limitations that the LPUL places on the Commissioner’s right to conduct compliance audits is a big step backwards. Before the LPUL, the Commissioner could conduct a compliance audit of an ILP at any time and for any reason, and even for no reason at all. Under the LPUL, the Commissioner’s ability to audit not just an ILP but any firm is curtailed: a compliance audit may be conducted only in the event of a complaint or some other conduct that causes the regulator concern. In my opinion, this destroys one of the very best parts of the prior regime. In particular, under the prior regime, the regulator could focus its resources where it perceived there to be the greatest risks. In doing so, the regulator did not need to wait for something to go wrong to go and talk to a firm, and did not need to wait for something to go wrong to require a firm to conduct a self-assessment. That is, under the prior regime, the regulator could be proactive.

Reactive regulation is waiting for things to go wrong, and then using the regulator’s powers to figure out why they went wrong. Proactive regulation is engaging with firms in order to prevent bad things from happening.

Sometimes clients understand that something has gone wrong — they understand that they have grounds for complaint and they do, in fact, make a complaint. But I think that is the exception rather than the rule. More often than not clients simply do not know that something has gone wrong. There are many more consumers, and I say many tens if not hundreds of times more consumers who have cause to complain as compared to the number that actually make complaints.  

That is why the ability for the regulator to act proactively is so important. Very unfortunately, under the LPUL, that power is gone.

The explanation for this big step backwards is politics. The professional bodies and the large law firms ran what I believe was an entirely misconceived and over the top campaign which assured that the regulatory regime which applied to ILPs would not be expanded to all firms — which assured that in harmonizing the regimes for ILPs and non-ILPs, the regime for ILPs was scaled back to be principally reactive rather than proactive. What I found very ironic in

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14 For more detail on this subject, see my paper, pages 6-10.

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this is that the people responsible for this political campaign had never themselves experienced the ILP regime, and did not understand what it was.

The argument played out for example in the Consultative Group to the National Legal Profession Reform Taskforce (the group responsible for designing the Legal Profession Uniform Law). I was a member of that Group and argued that the regulatory framework for ILPs should apply to all law firms, ILP or otherwise. The only person in the room who agreed with me was a legal practitioner director of a prominent ILP which had been through the process. He was only lawyer in the room whose firm actually had the experience of the regulatory framework for ILPs and he supported it. None of the others or their firms had been through the self-assessment process, and when I asked them to describe it, they couldn’t. Their lack of knowledge of the ILP regime did not stop the from arguing against it, however, and its expansion to all firms.

They argued for example that regulators could not be trusted not to abuse their powers, and that empowering regulators to conduct compliance audits of all law firms would be “unnecessarily intrusive” and impose an “unjustified regulatory burden” on law firms — so much so it would put small law firms in rural areas out of business, for example, with the result that ordinary people would not be able to access a lawyer. Their arguments were way over the top and frankly nonsense. They favored a deregulatory ideology over evidence and were not going to the facts to get in the way of their story — and the fact is that the so-called regulatory “burden” on ILPs hasn’t stopped law firms queueing up to become ILPs, so much so as I have said already that ILPs made up one-third of all Queensland law firms only 5 years after incorporation was permitted.

So the LPUL takes a step backwards in this respect. I mentioned earlier that is it is already out of date in another. It makes costs disclosure the centerpiece of its consumer protection framework in relation to costs. It assumes that costs agreements that consumers enter into with lawyers are fair — and can be enforced like any other contract — provided only that their lawyers have disclosed their costs or the basis on which their costs will be calculated. It seeks to protect consumers from being treated unfairly in relation to their costs by requiring lawyers to ensure that the process by which they enter into a costs agreement is fair.

But contemporary consumer protection best practice has moved on. The Australian Consumer Law (the ACL) for example recognizes that disclosure by itself doesn’t and can’t
protect consumers from signing up to unfair contracts. It recognizes that ordinary consumers all too often lack the legal or technical expertise to fully understand contracts they are given to sign or to negotiate the terms of the contract and can only too easily be sold short. So the ACL tests the fairness of a costs agreement not by reference not to the process by which it was entered into but to its substance. It prohibits unfair terms. This is a more stringent test and more sympathetic to consumers.

It is not a good look, is it, when the generic consumer protection legislation which applies in the marketplace more generally imposes higher standards on business people in entering into contracts with consumers than the LPUL imposes on lawyers. That really ought to embarrass and trouble a profession so given to celebrating its high ethical standards vis-a-vis other “mere run of the mill” commercial enterprises.15

At this time the regulatory system for legal services in Australia is mixed, in that it is partially self-regulated and partially independently regulated. In my opinion, the legal profession in Australia would be much better off if its representative bodies were freed from their regulatory obligations. That would free them up to fully advocate in favor of their members instead to clinging to the assertion that they are motivated purely by the public interest. Nobody believes that, so why do the professional bodies continue to believe it? Why not fully embrace their status as membership and representative bodies, effectively trade unions? At the same time, a fully independent regulatory regime would remove the inherent conflict of interest. It would promote greater confidence in the regulatory regime — it would promote public confidence that legal services are regulated in the public interest rather than the interests of the profession and mitigate the negative image so many members of the public have about lawyers.

I also believe that the public needs to have a much greater voice in the regulation of legal services. Take the handling of complaints, for example. When you do not involve the public, regulators invariably reflect the profession’s view of the purposes of the regulatory regime — of the system for dealing with complaints, for example. It becomes heavily weighted to professional discipline — to “weeding out the bad apples.” It grants the regulator extensive powers with respect to discipline but few if any powers to order redress for ordinary mistakes that fall short of

15 For more detail on the topic of costs agreements, see my paper, pages 12-16.
disciplinary violations. Those regulations were designed without anyone’s head in the consumer space. If you look at the other regulatory bodies in Australia, you’ll see that they all have consumer sub-committees, or structured arrangements where they consult with consumers or with consumer advocacy organizations, like the Australian Communications Consumer Action Network. You don’t see this with respect to legal services. I think this is an important reason why firms can get away with abusive billing practices. Unfortunately, during my time as Commissioner, I could not get the professional bodies to take these issues seriously.

A body that is essentially a membership body will always find it difficult if not impossible to take regulatory action which its members perceive to be a threat to their livelihoods, no matter how great the benefit to the public may be. This is why we need independent regulators, as they are able to regulate in the interest of the public without any conflict of interest with a duty to represent members. And with independent regulation, I am not saying that the perspective of the public or of the consumer must or even should prevail — I am simply saying that it needs to be in the mix. It’s essential for instilling public confidence in lawyers as well as in the regulation of legal services, and for that matter in our system of justice and the rule of law.

Steve Mark and Tahlia Gordon, Directors
Creative Consequences P/L

Steve Mark was the Commissioner for the Office of the Legal Services Commissioner for New South Wales, from 1994 to 2013. Tahlia Gordon was the Research & Projects Manager for the Office of the Legal Services Commissioner for New South Wales, from 2004 to 2013. Today both are Directors of Creative Consequences, an advisory and consultancy firm providing high level policy assistance, advice and implementation to professions and industry groups in the areas of regulatory design and assessment, ethical advisory and infrastructure, and complaints handling.

A number of critical issues emerge when we look back over our time at the Office of the Legal Services Commissioner.

Firstly, we have learnt much about the role of regulation and indeed, the role of a regulator.
A good regulator must have a stated “purpose.” Most regulators generally have “compliance” as their stated purpose. We do not believe that is a good purpose — at least, it is not good enough. The Office of the Legal Services Commissioner’s stated purpose is “to reduce complaints against lawyers, within a context of consumer protection and protection of the rule of law.” This purpose was developed by Steve when he established the Office in 1994. We chose the reduction of complaints as our indicator because that is easy to measure and research.

A good regulator is “proactive,” rather than “reactive” alone. Most legal regulators simply react to complaints rather than instituting measures to reduce them. At the Office of the Legal Services Commissioner educating lawyers was the central regulatory approach. The Office implemented a range of measures to educate lawyers, particularly for those lawyers against whom a complaint was lodged. The result of this approach is that lawyers are not just disciplined for their misconduct and forgotten.

A good regulator bases regulation upon “principles” and not just “proscription.” Lawyers understand proscription well. It is their bailiwick, and they will work out how to get around any rules or regulations imposed upon them. Principles, on the other hand, are harder to evade. Requiring a lawyer to explain why they have not acted with integrity is much more difficult than asking them to address a breach of a specific detailed conduct rule.

A good regulator provides “benefits” to the regulated. Without that, the relationship is only adversarial, it is only based upon discipline, and the regulator will always be looked upon with fear and loathing and inspire only push-back and avoidance. A good regulator creates a partnership with the regulated, in order to achieve the best thing for the client. For example, what are the benefits of a reduction in complaints? Reduction in professional liability insurance premiums, reduced staff stress, better relationships with clients, higher profits, ...

Secondly, we have watched the regulatory framework change remarkably since 1994 and learned that regulation is not static — that there will always be change.

The enactment of legislation in 2001 permitting law firms to incorporate and list on the Australian Stock Exchange was a watershed moment for the legal profession. Non-lawyer ownership of law firms had always been an anathema to the legal profession until now, at least in Australia. A large number of firms have incorporated as a result. Today in Australia 30% of law firms are incorporated legal practices.
Law firms that have incorporated have coped remarkably well with the obligations imposed on them as a result of their incorporation. They have successfully developed their own management systems either on their own or with the assistance of the Office of the Legal Services Commissioner.

The 2001 legislation permitting law firms to incorporate not only changed law firm structure. It also changed the method of regulation. As a result of the 2001 legislation entity regulation has emerged as an additional regulatory model and sits alongside individual-based regulation. Entity regulation today allows Australia to focus on the conduct of law firms as entities in addition to individual lawyers. This means that everyone in a law firm must comply with the professional conduct rules and regulation, irrespective of whether that person is a lawyer or nonlawyer. The introduction of entity regulation today means that we have shifted from regulating “lawyers” to regulating “legal work.”

At the beginning, we faced a lot of criticism. But we didn’t let that stop us. There always will be resistance to change. What matters is how you handle it, and if you have the courage to turn it into something positive. It was the resistance that taught us that we needed to more strongly emphasize the benefits to the profession.

Thirdly, we have followed and learnt from regulatory change in other jurisdictions around the world. In 2001 Australia was the only jurisdiction in the world to allow firms to incorporate and publicly list. That situation changed in 2007 when the English amended their Legal Services Act to allow law firms greater flexibility in their ownership structure.

Fourth, we have studied the effect of legislation liberalizing law firm structures on access to justice and have been enlightened with what we found. In a recent research project we looked at two Australian firms and two English firms, and we found evidence that suggests that nonlawyer ownership and the provision of external capital do increase access to justice. We have published the results of our research,16 and we can explain some of it here:

A perfect example is Slater & Gordon. Slater & Gordon are a large national predominantly personal injury law firm. In 2007 they listed on the Australian Stock Exchange and as a result of listing they have been able to assist small regional and rural firms who are

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struggling and that otherwise would have closed. Keeping those firms open increases access to justice particularly for Australia’s rural and regional communities. Slater & Gordon, in acquiring these firms implement their own case management systems and administrative resources, allowing the lawyers within those firms to work more efficiently, and handle a larger number of cases.

Some say that those large firms will lower their prices at first in order to drive other firms out of town, and then raise their prices again. Others say that these firms will produce shoddy work. But the reality is that the most important thing for these large firms is their brand, their reputation. So those are the last things that they will do. They have to keep low not only their costs but also the number of complaints made against them. That is access to justice.

Finally, these firms understand that legal issues are usually just one element of a multifaceted problem. So, they hire social workers to help their clients in a holistic manner. For clients, this is what access to justice really is.

Access to justice is also about offering clients a wider variety of services and choices. That is what many ABSs in the UK are doing. Think of the companies that offer legal products and services online, where all you need to do is read and click to buy something at a fixed price. The consumer can do this at times and in places that are convenient to for them, rather than take time off work in order to travel to an intimidating lawyer’s office, without any idea how much it will cost. That is access to justice.

Our experience in regulating law firms in Australia over the last 20 years has been invaluable. It has allowed us to work with other jurisdictions around the world to assist them in developing entity regulation.

**Darrel Pink, Executive Director, Nova Scotia Barristers’ Society**

The Nova Scotia Barristers’ Society is the governing body for the legal profession in Nova Scotia.

The Law Societies in Canada watched events unfold in England and Wales with great interest. Initially, we saw the establishment of the Legal Services Board and the Solicitors Regulatory Authority as a significant threat to the independence of lawyers, and that was the reason for our early interest. But as we watched what was happening there, and as we, regulators
in Canada, established personal relationships with regulators in England, we realized that the sky hasn’t fallen, and that it likely won’t fall. We also realized that what they were doing made a lot of sense.

We also followed what was happening in Australia. Australia is more similar to Canada than England is. Like Canada, Australia is a federation of states, and geographically of a similar size. As we watched the evolution in Australia, from self-regulation to the creation of Legal Services Commissions and the establishment of co-regulation, we realized again that the sky hadn’t fallen.

And we realized that the practice of law has changed substantially. We realized that the premise upon which most lawyer regulation is based — the sole practitioner or small partnership practicing locally — does not reflect the way that many lawyers work — it’s a 19th century model and it’s an archaic way to regulate. Today we have many in-house corporate and government counsel, many very large law firms with hundreds if not thousands of lawyers, and many lawyers who practice regionally, nationally and internationally. Technology has had a profound impact on how lawyers work and communicate with clients.

All this led us, the Council of the Society, to ask the question: What is the right regulatory model for the 21st century?

Nova Scotia is a very small jurisdiction. We have about 2500 lawyers for a total population of just under one million people. Our size is an advantage — it enables us to know the members of the Bar and to work closely with them.

We have developed the concept of “Triple P” regulation: We think that regulation needs to be proactive, principled and proportionate.

The first change we are making is to move from reactive to proactive regulation. With the exception of the process of admission to the Bar, everything we do is reactive. To make this change, we have looked carefully at Australia. Its “appropriate management systems,” in particular, has had a strong influence on us.

We recognize that law firms dictate in many ways how law is practiced, as do government and corporate legal departments. These organizations prescribe the ethos and the mindset in which legal services are delivered. For that reason, we are also looking at how to better regulate entities.

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By proportionate, we mean that we don’t need the same rules for every situation. For example, we have very detailed rules about how trust accounts are operated. We apply the same rules to every firm, regardless of its size. But the reality is that a 200-person firm presents much less risk than a 3-person firm. A 200-person firm does not need detailed rules from a regulator because they manage risk quite differently.

By principled, we mean that we need to have fewer directives regarding exactly how something should be done. We are good at creating rules, exceptions to rules, sub-rules, etc. Instead, we should be focused on principles about how to practice and behave rather than dictating specifics.

We need to be more focused on risks to the public as regards what lawyers do, and less focused on areas where there is little risk. For example, what is the risk to the public if a lawyer uses a non-traditional name? There is no risk, so this is not something we should focus on.

We are focused on what is in the public interest. We do not think about what we are doing in terms of what is good for the legal profession — we do not want to harm the legal profession because it plays a key role in our society, but our focus is on change for the benefit of the public.

We do not think that it is possible to discuss alternative structures without first addressing the regulation of entities in addition to the regulation of individuals. In addition, a system like the SRA’s — that requires a potential owner to go to the regulator and answer a bunch of the regulator’s questions and meet the regulator’s requirements before they can open the doors — is a system that is difficult to put in place.

We think that a more natural approach is simply to enable law firms and lawyers to expand the ways that they provide services. For a regulator, this is a much easier task because it can be done incrementally.

So, in Nova Scotia, we are changing the way that law firms are regulated and we are expanding the kinds, the nature and the means with which law firms may deliver legal services and with whom lawyers may share fees. We are doing it by prescribing that they must address certain standards in their practices, but they are free to determine how they do so — we will not dictate to them how they should do it.
Studies show that in Canada, only 17% of people who have a justiciable issue seek the assistance of a lawyer to resolve it. This means that 83% of justiciable issues are addressed either by others, or by no one. We know that people get legal advice from online legal providers every day. We know that accountants give legal advice every day. We know that human resource management firms, engineering firms, and consulting firms give legal advice every day. These firms do not harm the public and for the most part the public is quite happy with it. For example, if I am constructing a building and it has huge environmental law issues, I am probably better off getting my environmental law advice from the engineer rather than from a lawyer because the engineer pulls all the information together in order to help make the decision.

Of the fourteen provincial jurisdictions in Canada, seven are actively engaged in exercises that are at various stages of maturity, looking at significant regulatory reform. They all have two elements in common: (i) to move to a more proactive form of regulation, and (ii) to ensure law societies are able to regulate both individuals as well as legal entities. These processes involve every law society from British Columbia to Quebec, and include Nova Scotia. The seven provinces engaged in this work cover 90% of the lawyers in Canada.

Nova Scotia is among the most advanced in its work and its thinking, but the province is not alone by any means. Manitoba’s work is advancing quickly, as is the work of the other Prairie States (Alberta and Saskatchewan). In addition, we are in contact with regulators in a certain number of US states, such as Colorado, Illinois and the District of Columbia, all of whom are seriously studying proactive management and legal entity regulation. You can see a reflection of the work, for example, on the website of the National Organization of Bar Counsel, which has posted a set of FAQs on the topics.17

In Nova Scotia, our project was initially called “Transforming Regulation.” As we’ve worked, we’ve realized that the result of the project will be moving to a system that regulates not just lawyers, but legal services more generally, and accordingly we’ve changed the name of the project to “Legal Services Regulation.” Of course, this means that even the name of the Society is, and must be, up for grabs.

17 See this link: http://www.nobc.org/docs/Global%20Resources/Entity%2020Regulation/Entity_Regulation_Committee_FAQs_FINAL_07142015.(00000003).pdf.

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Ultimately, as a result of our project, the regulator’s job will be to have responsibility for the regulation of legal services in general. The regulator will exercise that responsibility in several ways:

1) By clearly regulating lawyers as well as legal entities,

2) By authorizing the delivery of legal services by others who will be exempt from our specific regulation. By “others,” I am referring to people like accountants, real estate brokers, insurance adjustors and a variety of others who offer legal services in the course of their regular work,

3) By creating a model that allows legal services to be delivered by not-for-profit organizations, with or without lawyers, in areas where there are significant access to justice or legal service needs,

4) By allowing lawyers to offer legal services in conjunction with other services (what are typically referred to as multidisciplinary practices, or MDPs), where the structure and all its professionals (psychologists, financial advisors, …) are subject to the ethical standards that apply to all law firms,

5) By seeking authority to create regulation for paralegals.

Our approach is this: all the work that lawyers do will be subject to a set of standards that we refer to as “Management Systems for Ethical Legal Practice” (MSELP). All lawyers and legal entities that offer legal services will be required to go through a self-assessment process which will require them to reflect on their adherence to the requirements of MSELP. They will be required to report to the Society on a periodic basis with respect to their compliance. The Society will then work with lawyers and legal entities towards compliance. That is, firms that don’t have the needed systems in place will be assisted in moving towards those systems that will make their practice better. This is a key element of the “proactive” approach to regulation.

Our process includes consultation with the profession and with other stakeholders with respect to MSELP. We will hold in-person consultation sessions where feedback can be provided, and additional feedback can be provided at later times after a detailed review of the document.  


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We have published on our website a “Policy Framework,” approved by our Council, over several months, which consists of 19 distinct policies that drive our work.\(^\text{19}\)

We are working to be in a position to go to government and say to them “here is the nature of the framework that we want to put in place, and here is the nature of the legislation that will be required in order to accomplish that.”

Our current legislation already allows us to do much of what we are planning to do, but we are working on the assumption that at least some new legislation will be required (for example, with respect to regulating paralegals). Our consultation process includes consultation with the government. Of course, when it comes time for a vote on the new legislation, we will not have control over what the government will do.

You may have noted that the 5-item list above does not include a reference to anything akin to an ILP or an ABS-type structure. This is not an oversight. To begin, it is nothing that a small province like Nova Scotia could ever influence because any framework for alternative business structures would need to be a national framework that comes from a federal approach. This is because so many of our companies as well as law firms operate across provinces and territories, and they need a single model of regulation. For example, banks are federally chartered in Canada — they could offer legal services under an ABS-type structure only under a national framework.

Further, we’ve known from the beginning of our project that the language of ABS is highly provocative and controversial. The topic is almost incendiary. When people hear the term, they often respond emotionally rather than rationally. So we took it off the table from the beginning. We are not talking about ABS.

I expect that the discussions that do occur on ABS will be driven by Ontario. More specifically, the Law Society of Upper Canada has recently stated that that they do not favor moving to that model that allows a law firm to be owned by anything more than 49%. This has set the tone and the basis for discussion in Canada. Whether we agree or not, we in Nova Scotia would never try to take it on as an issue because we are too small. We do not want to throw the

\(^{19}\) [http://nsbs.org/legal-services-regulation-policy-framework](http://nsbs.org/legal-services-regulation-policy-framework)
baby out with the bathwater. We have come too far to allow the issue of law firm ownership to jeopardize the rest of our work.

Further, the issue of law firm ownership requires a federal approach. This is because we have so many multi-jurisdictional law firms in Canada. We could not abide by structures which in Nova Scotia, for example, could be owned by non lawyers but that in other provinces they could only be owned by lawyers. The result could be that lawyers of such a Nova Scotia firm could not practice in the other provinces. That result is unacceptable because much of our work is premised on the need to maintain and enhance the mobility of lawyers and law firms in order that they may offer legal services in multiple jurisdictions. We have a national mobility agreement in Canada, under the Constitution we have mandates that people can work in every place in the country, and there are now inter-provincial and federal agreements in place that support that constitutional protection. It’s now a given in discussions among law societies that mobility must be preserved at all costs. On the question of ABS, Ontario has set the benchmark.

All that being said, for Nova Scotia a debate around law firm ownership would be a false debate. This is because, for example, our new framework will allow accounting firms to provide legal services. Once an accounting firm decides to do this, and notably once they do this using lawyers, they will subject themselves to the regulatory jurisdiction of the Society. We will set the regulatory infrastructure for them, and they will comply. If not, they will fall under our sanctioning powers.

Another example: imagine an organization like the YWCA offering a range of assistance (housing, financial, welfare, legal) to victims of violence. I don’t believe anyone can seriously argue that any harm to the public will arise from a not-for-profit organization offering legal services, even if they are not owned by lawyers, and even if the services themselves are not provided by lawyers.

You could ask the question how/why has Nova Scotia been able to make the progress it has, in contrast to some other Canadian provinces? In my opinion, this is because in Nova Scotia we’ve done a significant amount of background work, beginning as far back as 2000. That work had the unintended consequence of allowing us to do the work we are doing today. That background work was not designed for that specific purpose, but now, in retrospect, we see that
is has had that effect. The work encompassed two areas: (i) bringing clarity to the regulatory role, and (ii) improving the quality and the nature of our governance.

More specifically as regards bringing clarity to the regulatory role: the Society got out of the business of doing things that ostensibly are for the benefit of lawyers. In becoming a more rigorous regulator, we no longer do anything which is lawyer-centric. We used to have conferences and formal dinners and a variety of things like that — things that had as their motivation the desire to build collegiality and make lawyers feel good. We stopped doing all that, not because they are not important, but became we determined that as a public interest regulator we must focus on our purpose, which is to regulate in the public interest.

As regards governance, we spent a lot of time and energy creating a solid set of governance policies. In doing so, we created a framework where our Council understands its role to be exclusively that of policy maker, and, further, that as part of good governance, it will use only evidence-based decision making.

So, when the Council decided to undertake our current work (a decision that it made on the basis of what was happening in England and Wales and Australia), the Council looked only at the facts. They looked at our research papers, they decided that the papers made sense, and they decided to use the evidence contained in those papers as the basis for moving in the direction that we are going.

In contrast, many of the other law societies in Canada are not as single-minded. While they say they are public interest regulators, they nevertheless hang on to a variety of activities that are designed to make lawyers feel good: receptions and black-tie dinners, awards… things that are about lawyers rather than about protection of the public.

Which begs the question: how did we do that? How did we bring about this background work? How did we make it happen? I think the answer to that is that over the 25 years that I have been the staff leader of the Society, I have worked with a tremendous group of people, both officers and staff. They have worked very hard to bring clarity to the work that we do. In addition, we have a very clear set of Council governance policies which make very clear the basis upon which we make decisions. While we did not swallow principles of corporate

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20 These can be accessed at this link: http://nsbs.org/reports-resources.
governance wholesale, we certainly learned from them, and merged it with the work of the regulator.

For example, we were the first law society in Canada to completely separate adjudication from policy making. We have an independent Hearing Committee that fulfills the adjudicative role in discipline cases. Before that we were like every other law society at that time, in that we had members of our Council sitting in both policy-making roles and playing roles in the disciplinary system, either with respect to investigation or adjudication. We went through a process which concluded that we should have a professional and independent adjudicative body, and that the sole purpose of that body should be to play a judicial role with respect to lawyer discipline. It took us some time to put this system into place, but we did put it into place, with no controversy. It’s a system that has now been adopted elsewhere in Canada, most notably in Ontario and Alberta. In Alberta, a survey of the Benchers revealed that they thought their most important role was to serve as adjudicators with respect to discipline matters, rather than act as policy makers. So meeting the challenge to change the nature of the work of bar governors in Alberta, as just one example, will represent a very large shift in culture.

Another significant change that we made in Nova Scotia was to move to skills-based committees across the organization. Today we’re not alone in that, of course. For example, the SRA has a skills-based board and the Australian Legal Services Commissioners are made up of skills-based decision makers. New Zealand has an interesting model: it has an elected council whose job is to appoint the professional regulatory bodies, so their key regulators are skills-based.

In sum, in Nova Scotia we had some really good leaders who understood what was needed and who knew how to use their time in office to make good progress.

When I reflect upon this, I worry about other jurisdictions. I wonder if they are able to do the work we are doing now in Nova Scotia, given that many other jurisdictions haven’t done the background work that we have done. In essence, we started 15 years ago, and we are now entering a “second generation” of our work.

I also wonder about what will happen when I finish my time here. How much of what we are doing in Nova Scotia is associated with Darrel Pink? Have our changes been sufficiently institutionalized such that when I leave, the Society will continue to follow the course it is on?
Or, instead, will the ship change direction? I see in England’s SRA an example of insufficient institutionalization, such that when one leader leaves and another comes in, dramatic changes are the result. And I ask if the same thing is happening in Australia — are we seeing that the changes there will not survive the terms in office of the Legal Services Commissioners? The Legal Services Commissioners in New South Wales and Queensland spent years building something, yet it began to crumble as soon as they left their offices. This is a tremendous risk for us, too, and, indeed, for anyone trying to do what we are trying to do.

All that being said, and as transformative as much of what we are doing in Nova Scotia is, in many aspects it is merely iterative, and for that reason I am optimistic about the longevity of our work. For example, we have been asking lawyers survey questions in a mandatory way for several years. Notably, for the past ten years, every lawyer in Nova Scotia has filed an annual lawyer report with us. Law firms also file reports with us on a number of issues, including but not limited to trust accounts. Our new self-assessment tool is rigorous for sure, but it’s not at all the first time we’ve asked lawyers to answer questions. These foundations we’ve had in place for some time now, whereas they were not in place in Australia.

We do not want to fall into the traps we’ve seen in England and Wales or in Australia. For example, we want what we do to apply to all lawyers, not just a segment of the profession. All lawyers, regardless of the structure in which they practice (sole practitioner, law firm, in-house, governmental agency,…) will fall under the same regime.

We have several committees and working groups focused on the Legal Services Regulation project in Nova Scotia. The most important of these committees is the Steering Committee. It’s chaired by our President, who is joined by other members of Council. In order to assure national as well as international perspectives, a member of another Canadian law society (Alberta) is also on the Steering Committee, together with a former Director for Risk with the SRA. Finally, the Committee also includes two people who have been involved in transformative change. One, a lawyer, worked under Margaret Thatcher to privatize the British ship building industry, and later privatizing the British auto industry. The other is not a lawyer — his experience is with the evolution of securities regulation. In other words, we picked people with a strategic focus on skill sets and on the power to persuade at the Council level.
Here is something more we can learn from the experiences of England and Australia: It’s not about self-regulation or about self-governance, which are two words we have used as our mantra for generations. Instead, it is about independent and professional regulation. The SRA is nowhere close to a perfect regulator, but it shows us that when you professionalize regulation and you assure that that regulator acts independently, the quality of regulation improves. The Legal Services Commissioners of New South Wales, Queensland and Victoria have also shown this to be true.

Another key learning from England and Australia is the value of research. Regulators often act based upon their experience, but with little historic or prospective analysis of what the information we have means. We don’t do research. We don’t do much analysis of our experience. We know very little about what is happening in the legal profession. England and Australia show us that a small investment in terms of our overall budgets — an investment to better analyze and study — makes a huge difference. We cannot make the kind of changes that I am talking about based upon an analysis done on the back of a match box. It’s got to be done based upon valid research.

We are very conscious of making sure that what we are doing is complementary to the broad political philosophy of government. We are not beyond asking if this will be good for business, if it will support the province’s desire for economic development, if it will address issues of equity and diversity.

It’s easy to think that members of the public don’t care at all about how lawyers are regulated. But they do care about the impact of the regulation of legal services, and about the availability of legal services.

Kristin Dangerfield, CEO, The Law Society of Manitoba

The Law Society of Manitoba regulates, licenses and disciplines the lawyers of Manitoba.

The Benchers of the Law Society of Manitoba have been attuned to the changing marketplace. They have recognized problems with access to justice, and they have seen the need to find new ways to provide legal services.
Regulators are under pressure as a result of globalization, technology, and market demands for services that are more efficient and affordable. How it will play out, and what it will look like — that remains to be seen. But the concept that the marketplace is changing and that alternative ways to provide legal services are needed — the Benchers of Manitoba have accepted that and do not see it as controversial.

The Benchers have seen entity regulation, in particular, as a way to permit lawyers to be more innovative and allow them to compete with what is actually happening in the market place. The Benchers have concluded that permitting ABS would improve access and affordability of legal services to the public. With entity regulation, we can move toward permitting lawyers to partner with nonlawyers, and allowing law firms to accept capitalization from other sources.

We have been working with our counterparts in Saskatchewan and Alberta in order to explore how law societies can appropriately and effectively implement entity regulation and allow for alternative business structures in a coordinated way. We expect we will soon be coordinating more closely with Nova Scotia and British Columbia as well. We would like to see uniform regulation across Canada to the extent this is possible — we do not think we are alone in this regard because differing legislation across the provinces could prove problematic given that many lawyers and law firms have multi-jurisdictional practices.

The mandate of the Law Society of Manitoba is to regulate lawyers (and, now, law firms) in the public interest. This means assuring that the public has the legal services they need to meet their issues and challenges.

We’ve certainly heard the concerns about alternative structures, and namely the concerns that they will undermine legal professionalism and ethics. We take those concerns very seriously. We think that the response to those concerns is entity regulation. In regulating law firms as well as lawyers, we have the ability to ensure that the services a firm provides meet ethical and professional obligations and that the firm puts the client’s needs first.

We’ve also heard the arguments that there is no evidence that alternative business structures increase access to justice. We are not convinced that that is a reason to prohibit them. There is also no evidence that alternative business structures won’t increase access to justice. We see alternative structures as offering opportunities to deliver services in new and innovative ways. They can open doors to providing services to clients who otherwise might not be able to
afford them or otherwise access them. We don’t see how whether there exists proof that this necessarily will or will not occur is a compelling enough argument to hold us back.

If we look at what is happening internationally, and the market pressures that we are all facing, the reality is that the practice of law has changed. It has changed dramatically. It has changed in the last five years in ways it did not change during the 25 years before that. The pace of change is not going to slow down. We need to be able to adapt and respond to change. We need to be able to allow lawyers to be innovative in the way they provide services, as long as the public interest is protected.

The Legal Profession Amendment Act was introduced to the Manitoba Legislature in May 2015 and adopted in November, 2015. Its adoption is very exciting for us.

There are probably a number of factors to explain the breakneck speed for its adoption. To begin, our Government was prepared to look at the regulation of legal services in a progressive way. In addition to that, our new Minister of Justice and Attorney General is very keen on addressing our access to justice problems in Manitoba. It was in that context that the Government accepted the conclusions of the Benchers that there are mechanisms by which we can improve the way we regulate the profession, and that would in turn improve the delivery of legal services, and address the access justice issue. Of course, the fact that our Benchers have embraced the regulation of law firms (that is, law firms in a broader sense so perhaps involving lawyers and nonlawyers) in addition to individuals made the decisions of the Government and the Manitoba Legislature that much easier.

Here in Manitoba the question of alternative structures has not been the hot button that it has been in Ontario. Certainly here we have kept the profession advised of where we are going, but there simply hasn’t been in Manitoba any kind of organized opposition to what we are doing, or indeed any pushback at all. I think that our lawyers do not see what we are doing as a threat. I think they do see the possibility to provide new services to the public that today the public cannot access. I think that they see the possibilities that the internet offers, and they see that companies like LegalZoom and RocketLawyer have not been detrimental to their own practices. I think the profession in Manitoba is willing to recognize a new reality, and to accept a shift in how lawyers work.
Legal services is a business, yes. But it is also a public service. What we’ve done in the past is “one size fits all.” Today the needs of the public are changing and flexibility is required to meet those needs. Alternative business structures offer that flexibility — they can be many different things. It seems almost counterintuitive to not allow for them if your objective is to protect the public interest. And again, as regulators, that is our mandate — to protect the public interest.

Lawyers, by their very nature, are conservative, prudent and risk adverse. From a lawyer’s perspective, alternative business structures represent a monumental change. But change is not necessarily bad.

I am not sure how to explain the difference between Manitoba and Ontario. It’s no question that the personal injury bar in Ontario took a very strong position in opposition to alternative structures. Perhaps at least a partial explanation is that across the Prairies we often take a very practical and pragmatic approach. I think that in this particular case, we’ve seen that we have an opportunity to make some changes and get some things done. We don’t think that these changes are necessarily going to change the world. We simply see them as a way for lawyers to be innovative and to get things done in different ways. We see that nonlawyers may have a role to play. Having said that, Ontario does have a regulated paralegal structure that we do not have in Manitoba, and that’s a progression we’ve not had in Manitoba.

With the recent adoption of the Legal Profession Amendment Act, we now have to discuss and decide how we move forward from here. I would not be surprised if we move forward incrementally. For example, we can begin by requiring registration of law firms, and with that begin to collect data. We can also go through a process to determine how to assess risk, and focus our resources on those elements of regulation that will really make a difference and address risk. As regards entity regulation, as we consult with our partners in Saskatchewan and Alberta and move forward from there.

These are not easy issues. As we move forward, we want to be sure that we do it for the right reasons. It will probably take us some time to get where we want to be, but now in Manitoba we have a legislative framework that will permit us to move forward, and we are very excited about that.
Ross Earnshaw, Chair, Task Force on Compliance-Based Entity Regulation\(^{21}\)

Margaret Drent, Policy Counsel

The Law Society of Upper Canada

The Law Society of Upper Canada regulates, licenses and disciplines the lawyers and paralegals of Ontario.

The Law Society has had compliance-based entity regulation on its radar for several years now. We followed with great interest the changes in Australia and the UK, and also in other Canadian provinces. At first, we debated only internally, through our Professional Regulation Committee — you can find the Committee’s two interim reports on the topic on our website. Then, in June 2015, Convocation voted to establish our Task Force. We report directly to Convocation, rather than to the Professional Regulation Committee.

The Task Force has a two-part mandate:

The first part of our mandate is to study other jurisdictions, and primarily Australia and the UK, where compliance-based entity regulation has been adopted, and to enter into a dialogue with our fellow law societies across Canada (there are 14 of them) in order to determine their activities in this regard. To this end, we have read a great deal of material and we have held a number of meetings and telephone interviews with our counterparts in other Canadian law societies as well as with regulators in the UK and Australia.

Based upon the Task Force’s review of other Canadian jurisdictions, we know this: setting aside Quebec, whose regulations are quite distinct, the other five large law societies in Canada (those of Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia) are all at some stage of studying the possible implementation of compliance-based entity regulation, and, in some cases, ABSs as well. Nova Scotia, having started in 2013, is slightly ahead. The rest of us are more or less at the same point. As Task Forces, we’ve agreed amongst ourselves that we ought to try to proceed in some form of harmonious way. Canada has a number of firms that have offices in a number of provinces (Ross is partner with one of them, Gowling WLG), and for those firms, the need to comply with different compliance-based entity regulation regime would pose an unnecessary regulatory burden.

\(^{21}\) Earnshaw is also a partner in the Waterloo Region and Hamilton offices of Gowling WLG.

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Again setting aside Quebec, it is our expectation that our six law societies will set the direction for the remaining law societies. This is because the remaining law societies are smaller in size and do not have same resources that we do.

In December 2015 we finalized our discussion paper, and in January 2016 we posted it on our website. In doing so, we moved to the second part of our mandate, a consultancy phase.

The discussion paper summarizes the issues in a manner that we hope is easily accessible for the reader. The paper poses five general questions — what principles might be included in a practice management system, to what sort of entities the principles of compliance-based entity regulation should be applied (for example, should size make a difference), who should hold the role of “designated practitioner,” what entity registration might look like (how much information about the entity should be publicly available), and any other comments or suggestions.

As part of the consultation process, we held a webcast. It had just under 1000 active viewers, and during its live broadcast about 120 questions were submitted. We also posted the webcast online, where a number of people have viewed it.

In addition, we held a preliminary outreach, where we met with the leaders of 20+ bar associations and other organizations in the province (as examples, the Federation of Asian Canadian Lawyers, the Canadian Association of Black Lawyers, the Ontario Trial Lawyers Association, Women’s Law Association of Ontario, the Criminal Lawyers’ Association of Ontario, the Ontario Bar Association, and the Advocates Society). They were all present at a meeting held in January, 2016 and they were invited to submit considered, comprehensive comments in response to the consultation paper.

The Law Society’s Alternative Business Structures Working Group was established in 2012. Its original mandate was quite broad, and it blurred the topic of ABS with the topic of compliance-based entity regulation. It is no secret that the ABS Working Group encountered resistance. In that process, we realized that compliance-based entity regulation is an entirely separate topic from that of ABS. Compliance-based entity regulation has a great number of potential benefits that have nothing to do with ABS. With the appointment of our Task Force, compliance-based entity regulation has been moved to be front and center. It is a mature concept that needs to be moved forward. You could say that after 135 years of a reactive, disciplinary approach, it is time to look at a different system.
There have been efforts by commentators in the press and social media to link the work of our Task Force to the work of the ABS Working Group. But the reality is that the groups are completely distinct. What we did learn from the ABS Working Group’s study is that compliance-based entity regulation offers a great many benefits that have nothing to do with ABS. This is how we, the Task Force, are proceeding.

For the moment, we are focused on private law firms. At this time, we are not looking at other practice environments, such as in-house counsel, legal clinics or government lawyers. By the same token, we are reserving the possibility that the term entity might be broadly enough defined to include other practice environments in some future iteration of a compliance-based regime. In contrast to Ontario, Nova Scotia has already defined its ambit for reform to include those other practice environments. Also in contrast to Ontario, but in the opposite manner from Nova Scotia, British Columbia has expressly limited its work to the regulation of law firms, to the exclusion of any other kind of practice environment.

The present system, which, again, has been in place for over 100 years, is a reactive system. In contrast, the compliance-based system is a proactive system. The carrot and stick analogy is simplistic, but appropriate. The present, reactive system is like a stick. It is a set of proscriptive rules. We hope and trust that professionals will adhere to the rules. If they don’t, someone complains (or not), there is an investigation, and in appropriate cases a disciplinary sanction is imposed. All of this takes place reactively and after the fact. Some might say after the damage has been done, even if corrective discipline does take place. The proactive system is the carrot. The regulator establishes general principles, but does not describe the manner in which they are to be complied with by the practitioners. Practitioners are allowed a great deal of autonomy and discretion in how they meet those objectives. A self-assessment tool is used to measure the compliance by the entity with the principles established by the regulator.

All of this leads to a paradigm shift, or a sea change. In the present system, when a practitioner receives correspondence from the Law Society, the reaction can be one of apprehension, because of the possibility of discipline, which is one component of the Law Society’s function. (It is important to note, however, that currently, if lawyers and paralegals do not comply with regulatory requirements, there may be a regulatory response from the Law Society, which may include discipline but which could also include other measures).
In the same way, with a proactive system, the Law Society would instead provide assistance, guidance, and education. It would engage in disciplinary proceedings only in the most egregious of circumstances, and would consider remedial measures whenever possible. Instead of functioning solely as a disciplinarian, it would also function as a wise teacher and friend. This is a very difficult shift in thinking, by both the regulator as well as by the regulated. It might be one of the most difficult shifts in thinking that a move from the present system to a compliance-based system would entail.

If you placed on a continuum the regulatory frameworks of England and Wales, on the one hand, and of Australia, on the other, the framework of England and Wales would tend towards being relatively more proscriptive and heavy-handed, whereas the framework of Australia would tend towards being more aspirational and light-touch. The English position of COLP carries with it responsibilities that we perceive to be quite onerous as compared to the comparable position under the Australian framework. In our consultation, we use the term “designated professional” and we are seeking to determine where this person’s responsibilities should fall on that continuum.

Our discussion paper contains statistical information about the sources and frequency of complaints as well as of negligence claims under our present proscriptive and reactive system. Both sets of statistics suggest that practice management skills are a greater problem for practitioners than knowledge and application of the law. Examples include failure to communicate with clients and failure to follow instructions. These types of problems lie at the root of many of the issues that the Law Society and our professional indemnity insurer address. The experiences of both the UK and Australia demonstrate that the implementation of a compliance-based system results in a substantial and in the case of Australia, arguably overwhelming, reduction in the number of complaints. These statistics had a powerful effect on our Convocation and played an important role in its decision to appoint our Task Force.

At the Law Society, we are concerned with the question of competency beginning at the time a professional is admitted to practice and continuing as they carry on through their career. It is our expectation that moving to compliance-based entity regulation will address this concern at least in part. In 2014, of 4781 complaints which were referred to the Law Society’s Professional Regulation Division, half involved client service and other issues relating to practice.
management, including financial matters. The malpractice claims handled by the Lawyers Professional Indemnity Company in Ontario suggest a similar pattern. We expect that if compliance-based regulation were to be implemented in some form, encouraging all practitioners to reflect on and improve the systems they have in place could improve practice management overall and may have the effect of increasing client satisfaction and reducing the incidence of complaints and claims.

Herman Van Ommen, Chair, Law Firm Regulation Task Force²²

Law Society of British Columbia

The Law Society of British Columbia regulates, licenses and disciplines the lawyers of British Columbia.

In 2012 our Legal Profession Act was amended to grant to the Law Society the authority to regulate law firms. Before that, the Law Society only had the power to regulate individuals. Now we are in the process of developing the rules we need to exercise that authority.

My Task Force was created in 2014. Our mandate is to consult with each other and with the members of the Law Society, and on that basis to propose a framework for the regulation of law firms. To date, my Task Force has issued a brief consultation report, we’ve conducted a written consultation process, and we are now traveling through the province in order to meet in person with local bar associations to obtain their input and views.

Our mandate is to develop a framework for rules to regulate law firms, as opposed to entities more generally. The Task Force is not looking at alternative business structures (ABS). We are not opposed to ABS, but nonlawyer ownership of law firms implies policy issues that my Task Force is not being asked to consider at this time. Of course, whatever we do with respect to law firm regulation will likely have application should we ever decide to permit ABS.

We see the regulation of law firms as housekeeping. That is, it’s time for it. Law firms have been part of the legal services landscape for the past 40 years, albeit larger and more dominant in the past 20. As of now, we don’t directly regulate them, even though firms are responsible for much of the behavior of lawyers. For example, when a lawyer engages in a

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²² Van Ommen is also a partner in the Vancouver office of McCarthy Tétrault.
conflict of interest, often it is with the permission of the governing committee of the law firm. Yet, we don’t discipline a firm when its makes inappropriate decisions of that kind. Law firm regulation is a way to make sure that all the actors in the legal services market are directly subject to regulation.

By regulating law firms, we will not change our Code of Professional Conduct as it applies to individual lawyers. That is, by regulating law firms, we will continue to regulate lawyers on an individual basis as well.

In our consultation process, some have expressed the concern that law firm regulation will add an extra level of regulation, and, in that manner, increase the regulatory burden placed upon lawyers. Our response to that is this: in some ways, we are removing some of the regulatory burden from individual lawyers and placing it on firms. This is because if the firm makes a decision that controls behavior in areas such as conflict of interest, advertising, trust accounting (as examples), it is the firm that should be responsible.

In our consultation process we often hear the opposite concern as well, which is that if we remove certain responsibilities from individual lawyers, it will lead to more unethical behavior, not less — that law firm regulation will free up individual lawyers to be less ethical. I personally don’t understand this. Firms have a strong influence on lawyers and their activities. Firms influence the professional standards and ethical behaviors of individual lawyers. That is part of a firm’s culture. Law firm regulation will require firms to be more thoughtful about their culture and take steps to ensure they have a good culture. It is wrong to think that because a firm is responsible, an individual lawyer can do whatever he or she wants. Individuals will have to answer to their firms — firms are much closer to their individual lawyers than is the Law Society.

What I have discovered in the consultation process is that the concept of proactive regulation is not well understood. We explain it this way: “We well set out a series of objectives. We are not going to tell you how to meet these objectives, we are not going to tell you what policies and procedures to have in place. We’re only going to tell you to figure out a way to ensure that your lawyers do not, for example, engage in conflicts of interest. That’s all we’re asking you to do.” This is quite a different concept for lawyers because to date our regulation has been very prescriptive.

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Currently, we act only on complaints. Law firms have a much better idea than the Law Society does of what its lawyers are doing. In this respect, law firm regulation should result in a greater number of issues being noticed and addressed before they reach the stage of a complaint. In this sense, with law firm regulation, individual lawyers will be subject to greater scrutiny.

With respect to the written consultation process, we received responses that were all over the board. Some people expressed opposition to law firm regulation, while others expressed support. A notable recurring comment relating to sole practitioners and small firms, was that because they don’t have the resources that larger firms do, they should not be subject to the same requirements. It is clear we will need to address this concern.

Interestingly, as we travel around the province to meet with lawyers in person, we are not encountering much pushback on the concept of firm regulation. Some people have said “we thought you already did that.”

In our presentations, we give this example: when a complaint is filed with respect to an individual lawyer, currently we can only deal with that lawyer because all investigations are confidential. We cannot even go to the lawyer’s managing partner and say “Did you know Joe is having a problem? We’ve had two complaints, it appears he is not paying attention to his files. What is going on? Can you help him?” We can’t do that. It’s when we tell this story that we don’t get pushback on the concept of firm regulation.

In our consultations, concern has been raised with respect to the prospect of firms having to develop their own policies. So, the consultation procedure has taught us that the Law Society will need to be involved in helping to develop model policies, and in setting up groups to help firms to work together. Certainly there will need to be a transition time for firms to develop policies to meet the regulatory objectives.

Concern has also been raised around policies relating to equity and diversity in law firms. We’ve received a lot of questions about just what this means, and what the precise objectives will be. We don’t have responses to those questions yet, but we are working on it.

Outside of those specific concerns, most of the people we are consulting with see firm regulation as a relative no-brainer. This is especially true with respect to the core areas like conflicts, file management, client management… They say that of course we should be regulating firms with respect to these issues.
We have watched with interest the debate in Ontario with respect to ABS. In watching that debate, it became even more clear to us the importance of not polluting our project of law firm regulation with the politics of ABS.

Of course, the other law societies of Canada are also working on law firm regulation, and we are in touch with their task forces. We keep close tabs on each other, to keep each other informed as to what we are doing and the directions we are heading. What I have found interesting is that even working separately, we’ve developed quite similar approaches. I anticipate that across the Canadian provinces we will end up in substantively similar places. There will be differences, for sure, but I don’t think they will be fundamental differences.

We get so many complaints that are relatively minor — he didn’t return my calls, he was rude to me, that kind of thing. If every firm was required to have a customer complaint number on their website and on their retainer letters — that would be the first place for clients to call. And any managing partner worth their salt would solve those problems before they reach the Law Society.

Utilizing the law firm in a regulatory model should be a very effective way to impact a lawyer’s behavior, because the firm is more likely to have a cooperative relationship with its members. From a regulatory perspective, the Law Society’s relationship with lawyers is often more adversarial, and adversarial relationships are often less effective in modeling behavior.

Protection of the public is one of the Law Society’s statutory mandates, as is ensuring that lawyers conduct themselves in an appropriate and ethical manner. If we can prevent complaints, or at least reduce them, that fits squarely within our mandate. As compared to a law society, law firms are a much more effective way to impact a lawyer’s behavior. With law firm regulation, there is a real chance that we can reduce the number of complaints that the public make about lawyers.
Fred Headon  
Past President of the Canadian Bar Association  
Chair of the CBA Legal Futures Initiative  
Assistant General Counsel - Labor and Employment Law, Air Canada

The Canadian Bar Association is a national, voluntary and representative organization for members of the Canadian bar. Approximately 37,000 practicing lawyers, law students, notaries, and judges in Canada belong to the CBA. The CBA Legal Futures Initiative is a commission appointed by the CBA to study how and why the Canadian legal marketplace is changing — and what the Canadian legal profession can do to successfully adapt to those changes.

The CBA Futures Report (issued in August 2014) is an attempt to help our members understand why client expectations are changing and how they can get ahead of them.

Lawyers are losing their relevance to the people they are supposed to serve. Lawyers have not embraced technology the way other industries have. Lawyers have not updated their processes the way that other industries have.

We are concerned that we will find ourselves becoming less and less relevant, and we see many ramifications of this:

- That the people we are here to serve are not getting the service that they need,
- That if those people are getting services from someone not trained in the law, they might be getting a sub-optimal outcome,
- That lawyers are missing opportunities in the marketplace.

But most importantly, the legal profession has an essential role to play: in democracy, in the economy, in civil society. If we are not present in people’s lives and not connecting with them, are we really playing that role? And if we are not playing that role, then should we continue to benefit from the privileges that we have, such as self-regulation?

We realized that many of our members are not very well equipped to deal with this kind of change. When we were in law school, no one taught us the things we need to know to handle these issues today.

So we embarked on an inquiry into what is going on in the lives of clients to change their expectations, specifically with a focus on the Canadian market. We had had the idea of the study
for several years, but it was only in 2012 that we were able to get both the people and the funding together to make it happen.

Now we are going out on the road in order to speak about the research. We explain the results, we help lawyers understand better how and why client expectations are changing, and we show lawyers in concrete ways how to flourish in the new environment. We explain why the regulatory changes we propose are helpful, and what safeguards can be put in place as the changes are made. We hope that if we can help lawyers to understand all of that, then concerns about the regulatory changes will lessen over time. Ultimately, we hope that the Report will help ease the way to the broader regulatory change that we advocate for Canada.

For many lawyers, the business model still “works.” It is hard to tell people who are making a decent living that their business model is broken. When I get that kind of reaction from people, I remind them that the most profitable year for the buggy industry was the year before the car was invented. Are we perhaps living in that time right now?

Surveys show that in Canada, a very small number of legal problems — as little as 1 in 7 — are addressed by a lawyer. That is a very small slice of the market that lawyers are serving. There is so much opportunity out there for lawyers to gain a greater share of that market and to better play our role as a profession.

Clients want us to use processes, they want lawyers to work with them in a more transparent manner, they want to be more engaged in the process, they want a lower price, and, especially, a more predictable price.

Law firms can benefit from the expertise of different types of people to help us to change how we work in order to meet those expectations. When we spoke to these different types of people — people with business or engineering backgrounds, for example — they told us that while they might be willing to act as consultants, what they would strongly prefer is to become a real part of the business, and enjoy the upside that comes with that.

It could be very interesting for a law firm to have that kind of permanent presence in the law firm, with a continuing engagement for process improvement. A lawyer could go back to school to learn what these experts have learned, but bringing these experts in as full partners is an alternative that many lawyers might understandably prefer.
Another client expectation is that we provide them with a solution to their problem — not just the legal aspect but the problem as a whole. This is the value of a multidisciplinary practice — a business that can provide a holistic service to the client.

In sum, our message to lawyers is this: Look at the opportunity. Your clients are asking more from you, but they don’t need it to be delivered the way you’ve always delivered to them. You are tired of answering emails day and night and on weekends and holidays. What if you had systems and technology in place that simplified your day rather than burdening you? There is a whole world of opportunity out there for lawyers to do more. But it has to be done differently. What we do is important, but there is little sacred about how we do it. So let’s get closer to those who can help us change our practices and seize these opportunities.

We also address the ethical objections that are raised — the objections that nonlawyer ownership will undermine the relationship between the professional and the client, that undue pressure will be brought to bear on the lawyer, causing them to act unethically, etc.

We have a few responses to those objections. To begin, lawyers are not the only ethical people out there. In addition, a reasonable investor hoping for a return will not want a business to act in a way that would bring down the value of the business.

I like to draw upon my own experience as in-house counsel at Air Canada. Safety is as important to the aviation industry as ethics is to the legal industry. I’ve never heard an Air Canada shareholder suggest that we skimp on maintenance to drive a better return. They know that if the airline is not safe, then neither is their investment.

I also like to point out that, in anticipation of a worst-case scenario, we can put in place safety nets. This raises the importance of entity-based regulation and establishing direct reporting lines to authorities, in a manner similar to the way pilots have a direct relationship with aviation regulators to report anomalies that they observe. There is no reason why we can’t learn from that for the legal profession.

In sum, while we are calling for certain rules to be loosened, we are also calling for a certain number of new rules to keep it all in balance. We believe that our message is beginning to resonate.

The changes in the UK and Australia have obviously had a strong influence on us — they have formed a background for all of our work. We’ve looked at the regulatory frameworks in
both countries, to see what we think could be used in Canada, and also to see where there were problems that we could learn from and avoid.

We saw in the UK and Australia that it was politicians who took the initiative to make changes. In Canada we hope to get ahead of the curve — it will take some time to get there, but we hope to make the changes ourselves. We want to invent our future rather than have it thrust upon us.

Hope C. Todd
Assistant Director for Legal Ethics, Regulation Counsel
District of Columbia Bar

The D.C. Bar serves both a representative and a regulatory function for the District of Columbia. Its core functions are the registration of lawyers, operation of a lawyer disciplinary system, maintenance of a Clients’ Security Fund, and other administrative operations. The D.C. Bar’s Legal Ethics Program provides informal guidance to lawyers on questions that arise under the D.C. Rules of Professional Conduct.

I cannot speak officially for the D.C. Bar, but I will give my personal opinion.

In my personal opinion, the District’s experience with Rule 5.4 has been disappointing in its ability to serve as a “model” or “pilot” because it appears very few law firms have nonlawyers partners or managers. There has been little movement on the Rule although the ability to partner with a nonlawyer has existed in the District of Columbia since 1991.

I think that the movement towards allowing nonlawyer ownership and management and investment in law firms is one that at least holds a promise for more affordable legal services for the general population, and for that reason I believe that the changes in Australia and in England and Wales may well result in better and less costly provision of legal services to the average legal consumer.

In the District we do not have empirical data on this subject. I know that there are firms that have nonlawyer owners, but I know that primarily based upon the telephone calls we get on the Legal Ethics Helpline. Of the approximately 2400 annual Helpline calls, a handful will be from someone wanting to set up a law firm with a nonlawyer partner and one or two from
someone purporting to already be in such a firm, and asking some sort of ethical question in relation to that.

I can’t provide any names or specific information about those firms because all Ethics Helpline calls are strictly confidential. The most I can say is that we do field a few of these calls each year, so we know that there are some lawyers out there who have nonlawyer partners or individuals in supervisory positions.

The rule in the District allowing nonlawyer partners has been in effect since 1991. This raises the question — why haven’t more firms taken advantage of it? I think there is more than one reason for that.

The most obvious and the most mentioned reason is that the majority of lawyers who are licensed in the District are also licensed by and many practice in one or more other jurisdictions. As a practical matter this means that D.C. lawyers with multi-jurisdictional practices are subject to the rules of more than one state bar. Under the rules of all other U.S. bars, lawyers are not allowed to split legal fees with non-lawyers. For this reason, many are hesitant to take advantage of D.C. Rule 5.4, when they may be disciplined under the rules of other jurisdictions when providing legal services in those states.

The second reason is that the Rule is so limiting. It allows for a nonlawyer professional to provide services, but the entity itself can only provide legal services. So, you can have an economist, or an accountant or a social worker as a partner in a law firm, but they cannot offer their economic, accounting or social work services separately or maintain their own client base within the firm. Their services must be tied to the provision of legal services. That is, D.C. Rule 5.4(b) does not truly permit multidisciplinary practice. But that is the structure that would most likely benefit both clients and nonlawyer professionals, as clients often have both legal and non-legal professional needs. For that reason D.C. Rule 5.4 is not a very good deal for many nonlawyer professionals. They would probably do better in a different kind of structure, and notably simply as a contractor to the law firm. On the other hand, if the nonlawyer is happy to provide services to the firm only, such as in the role of a Technology Officer or Executive Director, it is easier to see how Rule 5.4 can work.

Again, this is my personal opinion. There are no surveys or statistics available in the District on this information.
The calls that we receive in relation to Rule 5.4 come from all over the country. The caller is usually quite excited — they’ve just heard that the District of Columbia permits nonlawyer ownership. Sometimes the caller is a lawyer who is in contact with potential nonlawyer investors in their firm, and sometimes the caller is a potential nonlawyer investor, excited at the idea that they could own and run a law firm. But that is not what Rule 5.4 is about. The Rule does not permit a nonlawyer to start a law firm by hiring a couple of associates. That is still the unauthorized practice of law.

What we often have to clarify for those callers is that the Rule also does not allow for passive investment. That is off the table and always has been. D.C. Rule 5.4 is not a way for a law firm to raise capital. The nonlawyer owner must be an individual professional who is providing services within the firm.

Nothing in the Rule specifically says that the nonlawyer owner must own less than 50%. On the other hand, Rule 5.4(c) requires lawyers to be free to exercise their professional judgment. Practically, this means that lawyers must have more than a 50% say in the legal decisions. The lawyers still have to call all the shots on the legal representation in consultation with their clients. This is something that could trip you up if you are not careful.

One of the protections built into the D.C. Rule, and why the Rule may be attractive to other U.S. jurisdictions, is first that the nonlawyers must agree to respect and adhere to the ethical rules, and second that the managing lawyers are “vicariously liable” for the ethical actions of the nonlawyers. This helps to address the problem that, at least as of today, the D.C. Bar does not have the power to regulate nonlawyers.

You can contrast this to Australia, which also makes the managing lawyer vicariously liable. But Australia adds another layer — Australia additionally regulates the entity itself, which means that if there is a problem, the regulator can shut the whole thing down. The D.C. Bar does not have the power to do that.

I am not aware of any complaints made, and there are no reported disciplinary actions that were connected to the activities of a nonlawyer owner or to the fact that a firm had a nonlawyer owner. But since the number of firms concerned may be so small (again, we have no idea just how many of these firms exit), this absence of complaints and disciplinary actions may or may not be significant, Nevertheless, it is a fact.
There are jurisdictions that are interested in the District of Columbia’s experiences with Rule 5.4. Several have working groups in place at the moment that are considering the permissibility of alternative business structures, and those groups contact us from time to time. Our response to them is fairly consistent:

- Yes, D.C. Rule 5.4(b) has been in place in the District since 1991,
- We know there are a few law firms in the District that take advantage of it,
- We have not seen any problems with those law firms who are taking advantage of it, but that may just be because there are not that many of them, and
- That is unfortunately all the information that we have to share.

**Saul Singer, Senior Legal Ethics Counsel, District of Columbia Bar**

My job with the D.C. Bar is to provide informal guidance to D.C. lawyers regarding their ethical duties and responsibilities under the rules of the professional conduct for the District of Columbia.

The District is an outlier jurisdiction. We are not a wholesale ABA Model Rule jurisdiction — our rules are very different from the ABA Model Rules in many areas. In some instances we are stricter than the ABA (as regards confidentiality, for example). But in other areas the D.C. Rules are more lenient.

Save for one exception, the District of Columbia is the only jurisdiction in the U.S. that under very limited circumstances actually permits ownership or management of a law firm by nonlawyers. (The exception is Washington State, which allows lawyers to share fees with Limited License Legal Technicians).

Because we are the only jurisdiction that allows this (again, save for Washington State), this is something that must be done very carefully. Anyone seeking to do this must be sure to dot their i’s and cross their t’s.

The Rule is 5.4(b). It has four elements, all of which must be strictly met.

Where the rubber meets the road is with respect to the first element, which requires that the firm have as its sole purpose providing legal services to clients.

Here is a situation contemplated by this: let’s say I am a personal injury lawyer. A case comes in the door, and I gather all the pertinent information, including the medical records. I
send the medical records to “Doc,” who is my consultant. Doc reviews the file, telling me if this is a good or a bad case, and where the holes might be. If I decide to take the case, Doc continues to act as my consultation, helps me to prepare expert witnesses, etc.

One day we get the great idea that instead of simply acting as my consultant, Doc should come in-house and be my partner. He’ll continue to do what he’s always been doing, but with an ownership interest in the firm. We’ll be a team — I will be the law guy and he will be the medicine guy.

This is ok, as long as these very strict conditions are met:
1) Doc cannot be involved in any way in making any legal decision. He cannot have any say in whether the firm should take on a case or not. He can make a recommendation, but he cannot decide.
2) The firm must be managed by lawyers. Doc’s decision making authority may not be greater than 50%. The Rule does not actually contain this cap, but this limit must reasonably apply in order to assure that the nonlawyer does not have control of the firm and cannot vote down the lawyers.
3) Doc must actively participate in the operation of the law firm. That is, he must actually help the firm to represent its clients. Passive investment by a nonlawyer is not permitted.
4) I, as the firm’s supervisory lawyer, will bear responsibility for Doc’s conduct. So, if Doc violates an ethics rule, I can be on the line for it and it could cost me my law license.

There is no requirement that D.C. firms that have nonlawyer partners declare this fact to the D.C. Bar, and the D.C. Bar does not keep a registry or record of any kind of the firms that do have nonlawyer partners. For that reason, we do not know how many D.C. firms have nonlawyer partners.

That being said, a firm cannot keep secret the fact that it has a nonlawyer partner. For example, if a firm lists its partners on its letterhead or on its website, then the nonlawyer’s name must be included, or that would be considered a misrepresentation or omission in violation of Rules 7.1 and 7.5. Of course, in listing the nonlawyer’s name, there must also be a clear indication that the person is not a lawyer, much in the same way you would indicate that a lawyer is not admitted in the District of Columbia but in a different state.
D.C. Rule 5.4(b) is a client-centric rule — it is all about the client. The Rule was adopted to help lawyers better serve their clients. We recognize that in a complex environment, a nonlawyer can provide significant help and assistance to a lawyer, especially if they are in-house. This is why passive investment is not allowed — because a passive investor will not do anything the help the client. But someone like a doctor definitely will.

At the same time, lawyers cannot abdicate their responsibility to make legal decisions, all the way through. Nonlawyers can provide input, but they cannot call the shots.

I can understand that in some states, simply hiring Doc as a contractor or simply paying him a salary would be considered sufficient compensation, and that may be one reason why those states do not permit nonlawyer ownership. My personal opinion — it is not the official position of the D.C. Bar — is that there is an advantage to bringing a nonlawyer in as a partner rather than an employee. There is a big difference between the motivation of a contractor or an employee and the motivation of an owner. An ownership interest, as opposed to just a salary, is a great motivator for anyone. Again, that is not the D.C. Bar’s official position, it’s my personal opinion.

Wallace E. “Gene” Shipp, Jr. - Bar Counsel
Lawrence Bloom - Senior Staff Attorney
DC Office of Bar Counsel

The Office of Bar Counsel serves as the chief prosecutor for attorney disciplinary matters involving attorneys who are members of the District of Columbia Bar.

It is difficult for a firm to know how to work under DC’s Rule 5.4. Here is an example:

Imagine a small law firm in North-East DC with two partners. Imagine that the firm has a family law practice, and it sees that its clients are experiencing certain problems and questions regarding their fitness as parents, for example, and decides to bring a social worker on board. The firm wants to help its clients improve their skills as they go through a child custody or child support proceeding. It’s a great idea — this two-person firm providing access to justice.

So they approach a social worker, but the social worker will only come on board if they are made partner and get a cut of the action.

So, there they are — a three person firm — two lawyers and one social worker.
But the social worker is bound by its own ethical rules to report any abuse or other illegal activity. Therefore, they cannot be bound under the rules of confidentiality that apply to the firm. But the heart and core of a law firm is confidentiality.

On the other hand, if that social worker had been hired as a consultant, it would have been bound by the same obligation to report.

This presents a dilemma for the firm. Rule 5.4 presents an opportunity for new kinds of legal services to be delivered, but it requires the firm to tread carefully.

In addition, a firm like this could work only if the lawyers were admitted just in DC and not in any other state. Because if they were admitted in another state, an arrangement of this kind would violate that other state’s rules. But there are very few DC lawyers who are not also admitted in another state.

You could make a case that the principle purpose of Rule 5.4 is to permit retiring Congress people to remain in DC and work as lobbyists.

But regardless of the reasons why Rule 5.4 was adopted and regardless of its potential uses, the reality is that very few people are taking advantage of it because no one is quite sure how to make it work. Instead, they set up work-arounds, such as an ancillary firm down the hall, or taking on the person as an employee and offer them a salary, a cut of the profits and a retirement program.

In this context, it is not a surprise that DC’s Office of Bar Counsel has never been presented with any complaint, and the Office has never investigated any firm, in connection with nonlawyer ownership of a law firm.

It appears that multidisciplinary practices and nonlawyer ownership of law firms is the future. It is not the end of the natural world as we know it. Places like England and Australia have figured out how to make it work. DC could be an incubator to see how this could work in the United States. But it can’t be because it’s just too tricky for a firm to make things work under the Rule.
Operating under the authority of the Colorado Supreme Court, the Office of Attorney Regulation Counsel educates, regulates, licenses and disciplines the lawyers of the state of Colorado.

Our state has 39,229 registered lawyers, of which 26,500 are active. Of those active attorneys, approximately 16,500 are in private practice, either as sole practitioners or with a small, medium or large firm (the remaining active lawyers work either as in-house counsel or in government positions).

When I look at the work of the Solicitors Regulation Authority (SRA) in England and Wales, I see that they spend a lot of time assessing risks and identifying ways to reduce those risks and to improve client services. Here in Colorado we do not have the resources of the SRA, but I think there is still a lot we can do. This is especially the case if we use the English and Australian models to guide us.

When the ABA House of Delegates met in February, 2016 to discuss the proposed Regulatory Objectives, they ended up adopting them with two significant changes. The first change related to lawyer wellness programs: this is a change that I strongly encouraged because I think that such programs pay great dividends. The second change clarified that the ABA has not changed its position with respect to nonlawyer ownership of law firms. This change reflects an undercurrent of fear in the US that nonlawyer ownership will cause our institutions to change too much, such that we lose client confidentiality and the ethos of the lawyer-client relationship.

In Colorado, our focus is on how we can improve the provision of legal services in our state. In particular, we want to understand how we as regulators can help attorneys, and especially sole practitioners and those in small firms, to have the tools they need to build an ethical infrastructure. In our opinion, the best way to do that right now is to develop a self-assessment form for attorneys who are in private practice.

Not only do we want to develop a powerful tool, but also we want to develop incentives for practitioners to use it. For example, we can offer CLE credit for training programs on how to use the tool. We can develop a kind of certification program akin to the one offered by the Better Business Bureau, to indicate that a firm has completed the self-assessment process and verified compliance. We may be able to negotiate insurance premium reductions for participants.
At first, we’ll run the program as a pilot project. After a couple of years or so, once Colorado lawyers have become familiar and comfortable with the process and recognize its benefits, we may consider developing a mandatory program. That program could include, for example, entity registration and the requirement that each firm appoint a compliance officer.

It’s baby steps. We understand that there are some who are fearful of change, and we are sensitive to that. We also want to collaborate with the general public and Colorado lawyers on how to regulate in the most effective manner.

The reason that England and Wales as well as Australia adopted PMBR is because their systems were changed to allow for nonlawyer ownership. While their systems are not perfect, they also offer a lot of advantages. In Colorado, we are probably not ready to go as far as England and Wales and Australia, but I think we are ready for more proactive approaches that improve lawyer competence, diligence and client service. And when we are ready for more, we’ll do more.

Lawyers today struggle with the concepts of self-governance and the public interest. Since the 19th century, lawyers have taken for granted that self-governance is in the public interest. I think we need to challenge that. We need to make sure that regulation is done through the lens of the public interest. In Colorado we are trying to do this, for example, by increasing consumer choice through lawyer mobility and by revising our continuing legal education (CLE) program. More specifically as regards CLE, we would like both to make it more meaningful and useful for lawyers, and to make information about individual lawyers’ compliance available to the public. In this way we believe we can increase lawyer commitment to professional development. We are also studying alternative regulated legal service provider programs.

Colorado has an advantage over other states with respect to the regulation of legal services. The Office of Attorney Regulation Counsel is a cradle to grave shop: we handle attorney admission and registration as well as CLE, discipline and unauthorized practice of law. This has enabled us approach the regulatory function in a holistic manner. Further, this means that we are not compartmentalized in silos of confidentiality, like most other states are. That is, our office has access to all attorney admission and registration information, to all CLE information, and to all discipline information. We can analyze all of this information together in order to understand patterns and where risks lie. We can understand to what extent our
admissions policies are successful. We can connect discipline issues to firm structures and other aspects of lawyer practice, such as practice areas. This allows us to anticipate discipline issues and take actions to reduce their occurrence. Very few states have this ability.

Colorado has a history of regulatory innovation as compared to other states. For example, in the 1990s, we were one of the first states to put in place a central intake system for complaints, and we were the first to make it telephone-based. When my predecessor and then employer told regulators in other states that we were planning such a system, we were laughed out of the room. We were told that we were crazy, because it would result in triple if not quadruple the number of complaints, and most of those would be unfounded. It is much better, we were told, to require the complainant to make their complaint in writing. In that way, they will spend time tailoring their complaint to the rules of professional conduct. We went ahead with our system anyway. And the other regulators were right, it did quadruple the number of complaints we received. But this had great value. It allowed us to speak with these people. It gave us the opportunity to explain why the attorney was doing what they were doing, and why it was exactly what the attorney was supposed to be doing. We could also help to re-connect the client and the attorney, on the basis of better communication channels. In that way, we could help improve the attorney-client relationship. Further, if something really was wrong with an attorney — for example, if six different clients called in complaining that the same attorney is not responding to calls — our system gave us a means to know that and take action quickly. This reduced further client harm and allowed us to help steer the attorney back on track.

Today in Colorado we have established two subcommittees, one to study PMBR and the other to study an alternative legal service provider programs, such as Limited License Legal Technicians (LLLT) or Navigators.

The topic of a LLLT program is a controversial one, and the voluntary bar in Colorado is currently opposed to this. This is something we will continue to work on, and I remain hopeful that eventually we will adopt a program of some kind here in Colorado. I believe that there are many functions that people who are not fully trained as lawyers can fulfill more than adequately. An LLLT program increases consumer choice, availability of legal services and competition. Further, in my opinion and as any economist would argue, an LLLT program should also result
in increased business for lawyers, because it increases the opportunities for issues that do require
the involvement of a lawyer to be identified and, indeed, referred to a lawyer.

In contrast to LLLT, proactive risk and management based programs are not as
controversial.

Our subcommittee for PMBR is comprised of a broad range of lawyers (sole
practitioners, small, medium and large firms) and of the voluntary bar associations, including
some who are opposed to LLLT. The committee also includes experts in professional liability as
well as ethics. Finally, the subcommittee includes a representative of the Better Business Bureau,
to learn from its Standards for Trust and other programs.

The self-assessment form that we are developing in Colorado is based upon ten principles
for law firm ethical infrastructure. In identifying the ten principles, we were greatly inspired by
Nova Scotia’s Management Systems for Ethical Legal Practice. Perhaps the most significant
difference between Nova Scotia’s and ours is that we have added a principle relating to attorney
wellness and inclusivity. I think we are the first in the world to elevate attorney wellness to this
level of importance.

Our ten principles include “working to improve the administration of justice and access
to legal services.” As regulators, I think that we need to do a better job of helping attorneys to
understand how they can have an economically viable law practice while representing clients of
modest means. A part of this is considering what other business models attorneys can use:
unbundled legal services, modest means programs, legal needs inventories (or check-ups).
Lawyers only serve about 15% of the legal services market; how can we as regulators help
lawyers to reach a greater share of the market?

I think that there are many improvements we could make to how we provide legal
services, in order to make them more accessible. We could be inspired by how urgent care
facilities have made medical services more accessible. For example, why couldn’t we establish
legal clinics in shopping centers: A place where, on a Saturday morning lawyers could meet with
clients and, for example, prepare wills on the spot? This is possible, but not by lawyers working
on their own: they would need to work with business experts, process experts, IT experts. These
are levels of resources that law firms today don’t have. I think it is possible to get these resources
to law firms in ways that would preserve the rules of professional conduct and at the same time
make legal services more consumer-friendly and responsive to consumer needs. Australia as well as England and Wales demonstrate that this is the case. But making the changes to allow for this in the U.S. will require time.

Very little of what we are doing in Colorado is unique or original. To better understand it, all you need to do is sit down and read what is going on in the rest of the world: England, Australia, Nova Scotia, British Columbia,... We’re just taking what we like from their systems and adapting it to Colorado. And we believe that both lawyers and clients will benefit from it. It’s a win-win for everyone involved, and it just makes sense.

James J. Grogan, Deputy Administrator & Chief Counsel
Illinois Attorney Registration & Disciplinary Commission

Operating under the authority of the Illinois Supreme Court, the Illinois Attorney Registration & Disciplinary Commission (ARDC) regulates, licenses and disciplines the lawyers of the state of Illinois.

The young attorneys entering the profession today have professional and economic challenges that attorneys a generation ago did not have. Today law students graduate with a high level of debt and enter a world of significantly fewer professional opportunities. Further, nothing in their legal training equips them to deal with the business aspects of a law practice, and, once they graduate, mentoring no longer occurs on the scale it used to.

Most lawyer regulators will say that our business is to discipline. They will say that there are bad apples, and that it is the regulator’s job to remove them from the profession. Of course, we need to keep doing that. But not only do that — to only do that is the old model. We need to do more.

There are also lawyers who are not bad apples, they simply are not equipped to handle the rigors of practice. This is particularly true of sole practitioners, who operate without effective oversight. This might be less true in a large firm, where there are checks on a lawyer’s practice, such as insurance.

We have a very large attorney population in Illinois — nearly 96,000 lawyers, with over 45,000 of those based in Cook County (Chicago). In 2015, the Supreme Court allowed us to collect certain information from our lawyers during the annual registration process. That
information includes, most notably, the types of structures they work in, whether they have malpractice insurance, and the succession planning they have in place. (By succession planning, I mean what happens if a lawyer is disabled, dies, or is otherwise unable to practice).

Of our 96,000 registered lawyers, 68,000 are registered as active (the others are either inactive or retired). Of those 68,000, about 20% (13,555) are sole practitioners. Those are the people in the trenches. Of those attorneys, 7,967 say they have malpractice insurance, and 5,588 say they do not.

What does it mean when a sole practitioner does not have malpractice insurance? It means, most likely, that they have not analyzed their systems. That is, when you seek malpractice insurance, the insurer requires you to analyze your systems: do you maintain certain books and records, do you have a system for screening conflicts, do you have a succession plan, etc.

The question that I find most interesting is the one regarding succession planning. If you work in-house, or for the government, and even if you work in a small firm, succession planning is not such a big issue. If something happens to you, it is likely someone else will be available to step in. But if you are a sole practitioner, this is a big deal. The information we have collected reveals that of the 13,555 sole practitioners in Illinois, 10,463 say that they do not have succession plans. 2,167 say that they do, and 925 say they are not sure. (In fact, when we asked this question, we received hundreds of calls from lawyers asking us what a succession plan was).

It’s a terrible problem when a sole practitioner becomes incapacitated without a succession plan. What it usually means is that the regulator has to step in as the receiver, and the clients end up lost, unable to understand what is happening with their matters.

All of this leads to proactive management based regulation (PMBR). No one wants lawyers to fail. No one wants lawyers to not be in a position to render the most competent legal services. PMBR helps a sole practitioner to know where he/she needs help.

What we are doing is looking at what lawyers who are obliged to conduct self-assessments do, whether it’s a self-assessment done for the purposes of insurance or under the requirements of another jurisdiction, such as Australia or Nova Scotia. We are studying the mechanisms that will help sole practitioners to study their systems.
We are not doing this with the idea that big brother is watching and will come to get you if you don’t do it right. To the contrary, our goal is for sole practitioners to have successful careers so that we don’t have to deal with them. Most lawyers are perfectly competent when it comes to their one-on-one work with clients. But their offices are a mess.

Our Commission, the ARDC’s governing body, is so interested in this that each and every one of its seven members has joined the subcommittee that is studying PMBR.

There has been an evolution in how lawyers are regulated. In the 1960s and 1970s, the regulatory system for lawyers was broken. Today, regulators are gaining more experience as well as professionalism. As we do so, it is natural that we ask how we can do it better. It is natural that we seek to be less reactive and more proactive. Are we doing a good job in serving licensed lawyers? A part of this is to look outside the US, to see what is happening in England, in Australia, in Canada.

In Illinois we, as regulators, do not have the authority to regulate entities — we only have the authority to regulate individual licensees. That being said, given how often lawyers move among firms, entity regulation would be a moving target. In fact, there are only a few states in which entity regulation has caught on in any form. In Illinois, I expect that our approach will be limited to the individual lawyer. In our opinion, we can get to an entity via its individuals, on the grounds that a partner was not properly managing his or her office. In sum, not only do we not have the formal authority to regulate entities, but we also do not see the need to do so.

In 2010, the ARDC, with the approval of the Supreme Court, adopted a mission statement, which you can consult on our website. When you look at it, you will see that we perceive our role to be larger than just discipline — it also includes registration and education, and PMBR is also a natural outgrowth. We view this mission statement as being akin to Colorado’s regulatory objectives.

In our opinion, once big states like Illinois and Colorado make progress on this topic, other states will follow fairly quickly. This begs the question: why are Illinois and Colorado at the forefront of PMBR in the US? There are a number of reasons for this. To begin, more generally speaking, our two states have often been leaders in lawyer regulation. Secondly, without criticizing the unified (or integrated) bar structure, I think that the fact that in Colorado and Illinois we do not have unified bars makes developing regulatory initiatives easier. Another
reason is that in each of Illinois and Colorado we have a singular regulatory system, as compared to a state like New York. In that state, regulatory authority is spread among the various judicial departments, resulting in a Balkanized system that makes the development of regulatory initiatives more difficult. Finally, in both Illinois and Colorado, the regulatory agency has a positive and healthy relationship with the Supreme Court, with regular and positive dialog. You don’t see that in many other states, where the relationship might even be adversarial.

Of course, this cannot work unless there is lawyer buy-in. So far, the reaction to PMBR we’ve received from the state and local bar associations (such as the Illinois State Bar Association, the Chicago Bar Association,…) has been quite positive. Remember, many of the officers of the bar associations are sole practitioners themselves. They understand the challenges of being a sole practitioner, and they want sole practitioners to survive. We are focusing our discussions on the young lawyer sections and well as the solo and small firm sections. In my opinion, they understand the benefits of PMBR.

While everything is on the table, it is possible that our first steps with respect to PMBR will concern sole practitioners only. Or, stated more generally, it will be directed to those who don’t have the safety net offered by a firm structure or by professional liability insurance. The reason for this focus is that our experience at the ARDC is that it is typically sole proprietors that get into trouble. For example, in 2015, 75% of the lawyers sanctioned were either sole practitioners or in small firms. What our first steps might consist of, for example, is a rule that requires those who do not otherwise have a safety net of some kind to perform a self-assessment. We might accompany this with, for example CLE (continuing legal education) credit for practitioners to learn about the self-assessment. Of course, whatever we do must be approved by the supreme court.

We don’t see that PMBR is connected to alternative business structures. Or, at least, we don’t see that it needs to be. For us, we see PMBR as our way to help lawyers, and sole practitioners in particular, to avoid us, the regulators. And as our way to help lawyers provide optimum service to their clients. That being said, again, everything is on the table for review, even if our focus at the moment is on PMBR.
The Story Behind the Stories

The 65 stories above are the work-product of oral interviews I conducted between March 2014 and June 2016.

The principal way that I identified candidates to tell their stories was to scour the website Legal Futures.23 This website is a treasure trove of information especially (but by no means only) with respect to alternative structures in England and Wales. In particular, this is the go-to website for information about newly licensed ABSs — in searching the archives as well as the current pages of this site, it was possible for me to identify not only the ABSs that merited attention, but also the best person with those ABSs for me to contact for an interview. Once I identified a candidate, my next step was to search for that person’s contact information. In most cases a simple and quick Google search sufficed to produce an email address, but in a few cases lengthier and more in-depth Google sleuthing was required.

The other way I was able to identify as well as access candidates was through personal introductions. In this context, I am indebted to a number of persons for making those introductions, and most notably to Neil Rose (the Editor of Legal Futures), John Chisholm, Mitch Kowalski, Colin Lachance, Lisa Webley, and Paddy Oliver.

I wasn’t sure what kind of reaction I would get when I reached out to request an interview. Would they agree to speak with me? Would they even respond to me? How long would it take to receive a response? At the beginning, some (but not many) of the people I contacted did not respond to me. In retrospect, I think this was because they were not the people I needed, and they recognized that faster than I did. In time I got better at identifying the people I

23 http://www.legalfutures.co.uk/.

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needed, and as I did, nearly everyone I contacted not only responded to me, but also responded relatively quickly, and expressed little hesitation in agreeing to speak with me.

I conducted the interviews either by phone or skype, with one exception (Sir David Clementi, with whom I met in person). Most interviews lasted about one hour. A small number were shorter — about 30 minutes — and some were much longer — up to two hours, with some of those taking place over more than one call. When I conducted the first interviews in early 2014, I had no idea what I was doing: I wasn’t sure what questions to ask, I wasn’t sure in what order to ask them, and I wasn’t adept at formulating follow-up questions. After the first few interviews, I got the hang of it. The interviews became semi-structured, with the support of a topic guide.

More specifically, I developed a core set of questions. Before each interview, I studied the publicly available information about the organization and the interviewee, and tailored the core set of questions to reflect the specificities of both. As I listened to each interviewee, I got into the habit of noting follow-up questions and I got better at identifying the right moments to ask them. Because I was never sure that I asked all the right questions, my last question became “What should I have asked, but didn’t?” Often it was this question that elicited the most interesting comments.

In most instances, the interviews were recorded with the permission of the interviewee, and I also took handwritten notes as needed. After each interview, I prepared a write-up. I quickly recognized that a simple transcript of the interview wouldn’t work: hearing the spoken word is one thing — reading the spoken word is something entirely different. Run-on sentences, sentence fragments and the repetition of words and ideas are tolerated and even expected in
speech, but not in writing. So, what I did was take the words and ideas that the interviewee expressed orally, and organized them on paper (or, more precisely, on a screen) in way that they could be easily accessed by a reader rather than a listener. Because I wanted the focus of the reader to be on the interviewee and not on the interviewer (me), I excluded from the write-up the questions that I posed and any other limited commentary I occasionally made during the interviews. An unfortunate by-product of this is that sometimes in reading the stories, the transitions can be abrupt.

I sent each write-up back to the interviewee. In doing so, I invited him/her to make comments and corrections. At first, I wasn’t sure how “warmly” I should extend this invitation. Naturally I wanted any factual errors to be corrected. More than that, I wanted the interviewee to be comfortable with the write-up. At the same time, however, I didn’t want the write-up to be transformed into something that no longer reflected the interview, and I especially didn’t want changes that would transform the write-up from an interview to advertising. In progressing with the first few write-ups, I discovered that those fears were mostly unfounded — most interviewees made very few if any substantive changes. And when substantive changes were made, in most cases I felt that they improved the write-up. So, after those first few write-ups, I became comfortable extending what I intended to be a warm invitation to make comments and corrections, saying “please don’t feel wedded to what I have typed” and “it is important that you are comfortable.” And when I received a write-up back, usually in the form of a mark-up, I did not question or quibble with the changes — instead, in nearly all cases I accepted all of them, and then went back through the revised document simply to correct any spelling or grammatical errors.
As noted above, the interviews were conducted between March 2014 and June 2016. In August 2015 I contacted everyone I had interviewed up to that time, and I invited them to work with me to update their write-ups — most of them did so, if not immediately, then over the course of the following months.