**Memo**

**To:** Linda Langston
OTLA

**Date:** December 1, 2014

**From:** Jasminka Kalajdzic

**Re:** ABS Research

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## Overview

You have asked me to determine whether there is any empirical evidence to support the contention that Alternative Business Structures (ABS) – specifically, non-lawyer ownership (NLO) – improve access to justice in England and in Australia. The short answer is that there is very limited empirical support for this contention.

That there is a paucity of evidence substantiating a link between ABS and access to justice is consistent with what has already been stated about the recent resurgence of access to justice initiatives: according to the Canadian Bar Association, we know very little about what works to increase access to justice.[1]

OTLA is familiar with the theoretical and policy arguments for and against NLO. Indeed, there is a vast literature in Canada and elsewhere on these perspectives, and I will not replicate it. Instead, you have asked that I identify and explore the empirical literature on the relationship between NLO and access to justice. I have not undertaken my own field studies; rather, I have surveyed secondary sources (reports, journal articles) for any empirical data in the two jurisdictions where NLO is permitted. Based on my research, and as confirmed by Nick Robinson's Harvard study[2] as well as by two leading access to justice scholars in Canada,[3] there is no empirical data to support the argument that NLO has improved access to justice in either of these two jurisdictions on any of the metrics that would be important to Ontarians.

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[1] CBA, *Reaching Equal Justice* (August 2014) at p. 32, available online: http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/CBA_equal_justice.pdf.

[2] Nick Robinson, "When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism", available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878.

[3] Email exchanges with Professors Richard Devlin (Schulich School of Law) and David Wiseman (University of Ottawa) dated October 14, 2014. Both professors confirmed that as of mid-October, and so far as they are aware, there is no empirical data on the impact of ABS in Australia and the UK in terms of improving access to justice. Emails on file with author.

## Specific Research Questions

1. How do we define access to justice in Ontario?
2. What are the access to justice needs of Ontarians?
3. In the UK and Australia, what has been the impact of ABS (specifically NLO) on access to justice?

## 1. How do we define access to justice in Ontario?

In order to assess whether ABS (or any other initiatives) lead to an improvement in access to justice, we must understand what it is we are measuring. For this reason, it is important to have some sense of how access to justice is defined.

Traditionally, access to justice was considered synonymous with access to courts or lawyers, without regard to the fairness of the process or the outcome achieved. Current understandings of access to justice are more nuanced. In the United Kingdom, the Legal Services Board defines access to justice

> as the acting out of the rule of law in particular or individual circumstances. The tools to achieve that outcome range from informing the public about their rights, routine transactional legal services and personalized advice, through to action before tribunals and courts. The agents of delivery are wide and, of course, legal professionals are at the heart of this along with many other actors in legal services and the wider justice sector.[4]

The Law Society of Upper Canada has adopted a similar definition:

> [A]ccess to justice extends beyond access to lawyers and courts; […] it requires a range of ways to prevent and resolve everyday legal problems; and […] it includes fair processes and just outcomes.[5]

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[4] Legal Services Board, *Evaluation: How can we measure access to justice for individual consumers?* (September 2012) at 5.

[5] Law Society of Upper Canada, *Access to Justice Themes: 'Quotable Quotes'* (October 29, 2013) at 4, available online: http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2014/Quotable_quotes.pdf.

The Canadian Forum of Civil Justice, a national non-profit organization devoted to civil justice reform, refers to effective access to justice as not just access to affordable lawyers and courts, but also "the efficaciousness of a justice system in meeting the dispute resolution needs of its citizens".[6]

The Canadian Bar Association offers this view: 'access' should include a coherent system offering multiple pathways to 'justice', which in turn is defined as

> fairness and equality for all, and respect for all who come before it. Being accorded respect from a justice system means being heard and provided with an effective, meaningful outcome.[7]

Increasingly, therefore, there is a recognition that access to justice can be obtained in a number of ways, including by way of legal representation in a formal adjudicative process, but also involving other actors within and outside of the justice system. The more serious the legal problem, however, the more likely a person will want – and need – the assistance of a lawyer.[8] "Improving" access to justice, therefore, may mean tackling systemic and institutional barriers to justice, as much as changing billing structures or offering new technologies for disseminating legal information.

## 2. What are the access to justice needs of Ontarians?

One of the Law Society's stated rationales for exploring the ABS model is the need to fill widely discussed gaps in the provision of legal services.[9] Among other statistics, including some cited in the Discussion Paper, the following pressing access to justice concerns are apparent:

- up to 70% of litigants with family law problems are unrepresented, mainly because they cannot afford a lawyer;[10]

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[6] Ibid.

[7] *Reaching Equal Justice*, supra note 1 at 59-60.

[8] *Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice, 2009) ["*Legal Problems*"] at 60. Respondents were most likely to receive legal assistance for family law problems.

[9] LSUC, *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* (September 16, 2014) ["Discussion Paper"] at 6.

[10] *Legal Problems*, supra note 8 at 56; Julie Macfarlane, "The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants" ["Macfarlane"] at 8, available online: http://representingyourselfcanada.files.wordpress.com/2014/02/reportm15-2.pdf.

- within the self-represented litigant population, 60% are involved in family law matters, while 18% are in civil court and 13% in Small Claims Court;[11]

- in 2009, a federal Department of Justice study showed that less than 15% of those with justiciable problems sought legal advice in order to address them;[12]

- preliminary findings in a more recent study by the Canadian Forum on Civil Justice suggest that less than 7% of Canadians experiencing a justiciable problem seek redress through formal court or tribunal proceedings;[13]

- the same recent study found, not surprisingly, that respondents ranked family issues as one of the most serious of justiciable problems.[14]

The growth in empirical data about the civil justice needs of Canadians is due in part to the recognition that demand-oriented approaches to civil justice reform should be based on the incidence of justiciable events. Scholars, government actors and the Law Society can look to such data to determine where are the gaps that need to be filled. But it should also be borne in mind that the decision not to seek legal advice does not always equate with diminished access to justice. Studies confirm that people can and do turn to non-legal avenues to solve everyday problems.[15] The modern vision of access to justice reform captures and encourages these diverse pathways to redress.

Where income proves to be a very real barrier to justice is with respect to particular types of problems. The 2010 *Listening to Ontarians* Report found that "income has relatively little impact on decisions to seek the advice of a lawyer; the type of civil justice issue or problem is a much more consistent predictor of the decision to seek legal advice."[16] Criminal and family law problems were the two most serious types of problems identified by respondents in that survey.[17] These were the areas in which respondents were most likely to need and seek legal advice.

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[11] Macfarlane, ibid. at 26.

[12] *Legal Problems*, supra note 8 at 59.

[13] As yet unpublished data from the 2014 *Everyday Legal Problems and the Cost of Justice in Canada* survey is courtesy of the Canadian Forum on Civil Justice (www.cfcj-fcjc.org).

[14] This is consistent with the 2009 federal study, supra note 8 at 60.

[15] *Legal Problems*, ibid. at 55.

[16] Jamie Baxter, Michael Trebilcock & Albert Yoon, "The Ontario Civil Legal Needs Project: A Comparative Analysis of the 2009 Survey Data" in Michael Trebilcock, Anthony Duggan and Lorne Sossin, *Middle Income Access to Justice* (U of T Press, 2012) 55 at 72.

[17] Ibid. at 83.

The LSUC Discussion Paper makes special note of personal injury problems.[18] Citing the 2009 Federal Department of Justice Study, it is pointed out that 42.2% of respondents who experienced a personal injury problem consulted an unregulated source of assistance.[19] Even assuming that resort to a non-lawyer (such as a union representative or another professional's advice) is by itself proof of a lack of access to justice (a position inconsistent with the LSUC's own multi-pronged view of access to justice and with the views of the Study's author, Ab Currie), it must be borne in mind that the same Federal Study indicates that personal injury problems represent only 3% of the justiciable problems experienced by respondents.[20] In contrast, employment, debt and consumer issues comprise the vast majority of civil justice problems,[21] and a more recent report confirms that family problems are at least four times more prevalent than personal injury issues.[22]

The prevalence of justiciable problems is only a partial barometer for access to justice needs, since some problems can be resolved without legal assistance from the private bar, and others are deemed by individuals not to be of sufficiently significant importance to warrant legal advice. In terms of the seriousness of the legal problem and the need for legal assistance, family issues rank highest.[23] Across studies, employment and personal relationship problems were most frequently reported as "severe".[24]

Thus, the most prevalent and acute access to civil justice needs of Ontarians, those for which legal advice and representation are most in demand, fall in the areas of family law, employment law, debt and consumer issues.

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[18] Discussion Paper, supra note 9 at 13.

[19] *Legal Problems*, supra note 10 at 59.

[20] Ibid. at 14.

[21] Ibid.: employment (25.7%), debt (23.3%) and consumer (19.4%). "Consumer" problems were defined as unsatisfactory repairs or renovations, or large purchases in which the seller would not honour the warranty. Family problems were experienced by 9.2% of respondents. The personal injury category included medical treatment, traffic and public places: ibid. at 15.

[22] Ontario Civil Legal Needs Project, *Listening to Ontarians: Report of the Ontario Civil Legal Needs Project* (Toronto, 2010) at 21, online: http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf.

[23] *Legal Problems*, supra note 10 at 60. Legal assistance was sought for almost half the family issues reported in the 2009 study. By comparison, respondents experiencing personal injury issues sought legal assistance in 15.5% of cases.

[24] Baxter, Trebilcock & Yoon, supra note 16 at 65.

In terms of measuring access to justice improvements, one can look to a number of metrics:

a. reduced cost of legal services

b. increased number of represented litigants

c. greater availability of legal services in smaller city centres

d. fewer unmet legal needs

e. better quality of work performed

I examined the empirical literature in the UK and Australia with a view to identifying any data that would speak to these five metrics. As will be explained in the next section, there was virtually no hard data available about any of them.

## 3. In the UK and Australia, what has been the impact of ABS (specifically NLO) on access to justice?

### *a. Origins of Reform in UK and Australia*

NLO has been permitted in Australia since 1994[25] and in the UK since 2009.[26] As with any comparative law project, attention must be paid to differences in legal regimes, culture and practice before applying the experiences of one jurisdiction to another. Of particular note here is that the impetus for regulatory change in these two countries was not to address a crisis in access to justice, as is the case in Ontario.

In Australia, multidisciplinary practices were permitted in New South Wales beginning in 1994 primarily to give clients greater choice as to how they obtain legal services and to give lawyers freedom in the manner in which they wish to practice.[27] Amendments in 2001 permitting law firms to incorporate and allowing majority ownership by non-

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[25] Steve Mark, Tahlia Gordon, Marlene Le Brun and Gary Tamsitt, *Preserving the Ethics and Integrity of the Legal Profession in an Evolving Market: A Comparative Regulatory Response* (2010) at 16 ["*Preserving the Ethics*"], available online: http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/preserving%20ethics%20integrity%20legal%20profession%20uk_paper.pdf.

[26] *The Legal Services Act, 2007*, c. 29, available online: http://www.legislation.gov.uk/ukpga/2007/29/pdfs/ukpga_20070029_en.pdf. Legal Disciplinary Practices, under which different types of legal professionals can own and manage law firms, were permitted as of 2009. Part 5 of the Act, which introduced ABS, came into force on October 6, 2011.

[27] *Preserving the Ethics,* supra note 25 at 17.

lawyers were similarly driven by a demand for greater competition in the legal services marketplace.[28] In the words of a leading Australian academic, it was "competition policy and a desire to promote commercial entrepreneurialism in the legal profession that prompted the deregulation of the structure of legal practices in Australia in the first place."[29]

In the UK, reform was similarly driven by the desire to address what was perceived as anti-competitive behaviour.[30] A government-commissioned report had found the British legal market to be "outdated, inflexible, overly complex and insufficiently accountable or transparent".[31] Concurrent with these changes came statutory reform ending self-regulation of the legal profession.[32] Although the driver for change was not access to justice but a free market ideology, consumer interests eventually entered the lexicon among those who supported the reforms.[33]

It is not just the very different policy motivations that ought to be kept in mind. ABS exists in a different legal culture and regulatory framework in the UK and in Australia. As several academics have noted, competition and consumer rights have gradually displaced professionalism and lawyer independence as core values in the UK and in Australia.[34] Regulatory changes have taken place within these normative orientations.

The introduction of NLO in these other jurisdictions must therefore be understood in their cultural context. Not surprisingly, reform was driven by goals unrelated to improving access to justice. It is for these reasons, perhaps, that access to justice data is not readily available – such outcomes are not measured because they are not intended.

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[28] Ibid. at 18.

[29] Christine Parker, Thalia Gordon and Steve Mark, "Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales" (2010) 37:3 J. Law & Soc. 466 at 475 ["Parker, Gordon & Mark"].

[30] *Preserving the Ethics*, supra note 25 at 27.

[31] Ibid. at 26, citing the 2004 *Clementi Report*.

[32] *The Legal Services Act, 2007*, supra note 26.

[33] Richard Devlin and Ora Morison, "Access to Justice and the Ethics and Politics of Alternative Business Structures" (2012) 91 Can. Bar. Rev. 483 at 519. Devlin and Morison provide an extensive account of the development of ABS in Australia and the UK.

[34] Russell G. Pearce, Noel Semple & Renee Newman Knake, "A Taxonomy of Lawyer Regulation: How Contrasting Theories of Regulation Explain the Divergent Regulatory Regimes in Australia, England/Wales, and North America" (2013) 16:2 Legal Ethics 258 at 276.

### *b. Distinction Between ABS and NLO*

Before turning to the empirical information, it is worth noting that ABS are not synonymous with NLO. There can be innovation in the law firm model, billing structures, or the delivery of legal services without changing the rules about ownership. Innovation in legal services is a laudable goal, but de-regulation or the introduction of NLO is not a necessary precondition for such change. There are many examples of the evolution of legal services delivery in the *current* regulatory environment, including several described in the CBA's *Reaching Equal Justice Report*.[35] Axiom, Gateway Legal Services and Chalmers Consulting – all providing legal services cheaper and more efficiently than their traditional counterparts – operate in the United States where ABS have been specifically rejected by the American Bar Association.[36] In Canada, such innovation is also taking place. The CBA describes several Canadian law firms offering entirely new legal service delivery models, eschewing traditional paradigms like the billable hour.[37] And even Canada's largest firms, presumably the least likely to adapt and change, are responding to clients' needs by embracing fixed fee billing and unbundled services.[38]

### *c. The Theoretical Links Between NLO and Access to Justice*

The LSUC's Discussion Paper reflects a number of assumptions concerning the link between NLO and access to justice. The argument is made that access to new sources of capital will allow lawyers to bring in technological innovations and adopt new business structures; firms using ABS will have a competitive advantage and will thus be able to achieve economies of scale; with economies of scale firms can lower prices and provide better quality of service.[39] This argument contains several premises that are not fully supported by the available data.

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[35] *Reaching Equal Justice*, supra note 1 at 98.

[36] In March 2000, the American Bar Association Commission on Multidisciplinary Practice recommended that the ABA amend its Model Rules of Professional Conduct to permit MDPs. However, in July 2000, the ABA voted to reject that proposal. For the Commission's report, the ABA's response and related information, visit AHREF="http://www.abanet.org/cpr/multicom.html">www.abanet.org/cpr/multicom.html.

[37] *Reaching Equal Justice*, supra note 1 at 99.

[38] See e.g. Daniel Fish, "The Well-Oiled Machine" *Precedent Magazine* (Fall 2014) at 31 (quoting managing partners from Torys, Gowlings and Baker & McKenzie). The article also quotes Anne Sonnen, Deputy General Counsel of BMO Financial Group, who said that there were whole teams in her organization that would "not open a file with a firm if it's on the billable hour."

[39] Discussion Paper, supra note 9 at 17.

### *d. The Evidence: NLO Promotes Technological Innovation/Use*

There is some evidence to support the contention that NLO enables acquisition of new technologies. In your interview with Andrew Grech, Managing Director of Slater & Gordon,[40] he stated that technology has enabled five property lawyers to handle 16,000 cases per year, with some clients being served exclusively online. The firm has developed document 'wizards' for purchase online by, for example, employees wishing to request accommodation from their employers due to parental leaves.[41] The Slater & Gordon business model is itself heavily reliant on the use of technology to create operational efficiencies.[42]

Whether this increase in technological innovation results from greater access to capital or from a corporate culture that is more receptive than a traditional law partnership to such expenditures is not clear. Yet two other points *are* evident: one, the ability to harness technology to improve access to justice is already very much on the radar for lawyers and regulators in Canada;[43] and two, we must be cautious about relying heavily on technology as a better way to deliver legal services to a greater number of people. The same caution has been sounded by Patricia Hughes of the Law Commission of Ontario[44] and in a number of access to justice studies. For example, in her Self-Represented Litigants Project, Dr. Julie Macfarlane observed:

> The study data also shows that no matter how complete, comprehensive and user-friendly (standards we are still far from meeting), on-line resources are insufficient to meet SRL needs for face-to-face orientation, education and other support. Enhanced on-line technologies can be an important component of SRL programming – for example the development of sites

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[40] Interview notes dated April 16, 2014 (on file with author).

[41] For £20, the letter wizard can be accessed online: http://www.boardroommum.com/slater-gordon-using-technology-to-help-employees-request-flexible-working/.

[42] Slater & Gordon, Annual Report 2013-2014 at 11, available online: http://slaterandgordon.mdminteractive.com.au/#folio=12.

[43] *Reaching Equal Justice*, supra note 1 at 74-81. The CBA report lists a number of Canadian initiatives using online and other technologies. It should also be noted that while Slater & Gordon were able to create an automation program, there is nothing that prevents law firms in Ontario from innovating in a similar way under the current non-ABS model of law firm ownership.

[44] Patricia Hughes, **"**Advancing Access To Justice Through Generic Solutions: The Risk Of Perpetuating Exclusion" (2013) 31:1 Windsor Yearbook of Access to Justice 1.

> developed specifically for SRL's making us of interactive technology – but cannot provide a complete service.[45]

While there is some evidence of an increase in technological use and innovation by Slater & Gordon, therefore, evidence of innovation exists even where NLO is not permitted, and in any event, such technology can at best be described as providing limited improvements to access to justice.

### *e. The Evidence: NLO Helps Achieve Economies of Scale but Not Where Access to Justice Needs are Great*

A key element in the argument that NLO improves access to justice is the claim that NLO helps achieve economies of scale, and thus gives firms a competitive advantage. Academics have argued that current rules impede the emergence of large consumer law firms that can "serve the civil legal needs most commonly experienced, such as conveyancing, family law, estate law and plaintiff-side personal injury matters."[46]

The growth of Slater & Gordon, almost exclusively through the acquisition of smaller firms, supports the theory that liberalization of ownership rules can lead to the rise of very large consumer law firms. The company reported a 40% increase in revenue last fiscal year, and now counts over 2,500 employees in over 80 locations in both Australia and the UK.[47] This does not necessarily translate into a greater number of clients being served, however, since the company has taken over business previously offered by smaller firms (so that work may merely have changed hands). Even assuming there is a net increase in the number of people obtaining legal services, the evidence is clear that the needs being served are predominantly in the personal injury field.

In the UK, regulatory liberalization has had only one documented access to justice benefit; motor personal injury claims more than doubled between 2005-2013.[48] The Legal Services Board has concluded that access benefits vary by types of claims because some types are more attractive to legal service providers than others:

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[45] Macfarlane, supra note 10 at 10.

[46] Noel Semple, "Access to Justice: Is Legal Services Regulation Blocking the Path?" (2013) 20:3 *International Journal of the Legal Profession* 1 at 6.

[47] Annual Report, supra note 42 at 2.

[48] *Access to Justice: Learning from the long term experiences in the personal injury legal services market* (Final Report for the Legal Services Board) (June 28, 2014) at v.

> [M]otor claims have a low likelihood of being disputed and a high likelihood of success relative to other personal injury claims, and may therefore have been more profitable for solicitors to take on through [conditional fee agreements].[49]

The Legal Services Board has confirmed that there has been a rapid growth in the number of ABS in the personal injury sector since 2012.[50] This growth has been concentrated in one very specific market (motor vehicle accidents), leading the Legal Services Board to conclude that resources are being diverted from other cases to focus on relatively low-cost cases with high probabilities of success. In effect, there is now greater access to justice for motor injury cases to the detriment of other types of claims.[51]

Available evidence confirms the same pattern in Australia. According to Slater & Gordon's 2014 Annual Report, over 80% of its total revenue (in both the UK and Australia) is derived from personal injury work.[52] With 82% of its Australian business in the personal injury field, the remaining 18% is dispersed over a broad category called "general law": family, conveyancing, wills, estate planning and probate, all of which are done predominantly on a fixed fee basis; and commercial, estate, employment, professional negligence litigation and class actions, which are predominantly funded by third party litigation funders.[53]

The most extensive empirical investigation to date on the effects of NLO on access to justice was published in late August by Nick Robinson, a research fellow at Harvard's Centre on the Legal Profession.[54] After an extensive review of the literature, field visits in the UK and Australia and interviews with lawyers and officials in both jurisdictions, Robinson concluded that NLO in Australia has made few inroads in anything but the personal injury, consumer, social welfare (disability) and mental health law

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[49] Ibid. at vi.

[50] Ibid. at vii. About half of these personal injury firms were existing solicitor firms that converted to ABS.

[51] Ibid. at 55-61. Note, however, that Robinson questions whether ABS have had a significant direct impact on access in personal injury matters. Furthermore, he has identified a potential systemic conflict of interest problem in this sector, given that insurance companies have now captured a large part of the personal injury sector: Robinson, supra note 2 at 19-23.

[52] Annual Report, supra note 42 at 2. Australian personal injury work accounted for 46% of total revenues, while UK personal injury work accounted for 34%, with Australian business comprising 56% of overall revenue (ibid. at 55).

[53] Ibid. at 9.

[54] Robinson, supra note 2.

(malpractice) fields.[55] ABS like Slater & Gordon have very little market share in matrimonial, property, landlord/tenant or criminal law work. The rate of self-represented litigants in family law matters remains high.[56] Based on all of the evidence, Robinson predicts that NLO investment is "likely to be attracted to legal sectors, like personal injury, where expected returns are high and that are relatively easy to commoditize, but where there may not be as much of an access need because of long-standing practices like conditional or contingency fees."[57]

As detailed in part 2, above, the most acute access to justice needs in Ontario presently exist in family law and other civil cases like employment and debt. There is no data to suggest a pressing legal need in the personal injury field. Yet this is precisely the market that NLO investment would be most likely to target, based on the experience in both Australia and the UK. Robinson's conclusion, therefore, is apposite to the Canadian context.

Whatever economies of scale can be generated by large consumer firms as a result of alternative sources of capital, new technology, operational design and branding, the evidence to date shows that they are far more likely to occur in areas of practice than can be easily commoditized.[58] Areas of practice that require more individualized attention from experienced practitioners (such as contentious divorce proceedings or complicated employment disputes) have not lent themselves easily to the profit-centered corporate model.

### *f. There is No Evidence that NLO Lowers the Cost of Legal Services*

Another assumption in the argument offered by proponents of NLO is that it leads to greater efficiencies and thus higher profit margins that are then passed on to consumers through lower prices.[59] Not all ABS are profitable, however; in the UK, Co-Op Legal

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[55] Ibid. at 18.

[56] Ibid. at 24. In more than half of all cases at least one party is unrepresented.

[57] Ibid. at 40.

[58] Ibid. at 41.

[59] Semple, supra note 46 at 8.

Services suffered a £3.4 million loss in the first half of 2013,[60] another £5.1 million in the first half of 2014,[61] and a total of £14 million over 18 months.[62]

Slater & Gordon, on the other hand, has been able to achieve higher profit margins than many traditional firms, including a 47% increase in the last fiscal year.[63] It has done so in part by employing significantly more paralegal employees and technology to do the work.[64] It is hard to say how much of these cost-savings are passed down to clients rather than retained by the firm. In addition, most of its work is done either on a conditional fee arrangement or pursuant to a funding relationship with a third party commercial funder, the latter of which increases the cost of services to the client.[65]

I found no report, by a third party or an ABS, documenting a decrease in the cost of legal services. Robinson confirms this lack of evidence and calls for better collection of data regarding the cost of commonly used legal services.[66]

### *g. There is Little Evidence that NLO Leads to Better Quality Service*

The final argument offered by proponents is that NLO leads to better, more consistent quality of services. Connected to this argument is the claim that lawyers operate more ethically in these environments than in traditional firms, especially in sole proprietorships.

There is evidence to support the ethical claim, but none that proves NLO of firms results in a higher quality of legal service.

An Australian study by three academics found that there was a statistically significant drop in complaints against lawyers who work in ABS.[67] However, it is not NLO per se

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[60] Kathleen Hall, "Co-Op Legal Services plunges into red with £3.4 million loss" *Law Society Gazette* (August 29, 2013), available online: http://www.lawgazette.co.uk/practice/co-op-legal-services-plunges-into-the-red/5037181.fullarticle

[61] John Hyde, "Co-op Legal's losses soar by 70%" *Law Society Gazette* (September 4, 2014), available online: http://www.lawgazette.co.uk/news/co-op-legals-losses-soar-by-70/5042808.article.

[62] John Hyde, "'We grew too quickly', new Co-op boss admits" *Law Society Gazette* (September 8, 2014), available online: http://www.lawgazette.co.uk/practice/we-grew-too-quickly-new-co-op-boss-admits/5042942.article.

[63] Annual Report, supra note 42.

[64] Andrew Grech Interview, supra note 40.

[65] See pp.10-11, above.

[66] Robinson, supra note 2 at pp. 45-46.

[67] Parker, Gordon & Mark, supra note 29.

that leads to this drop. In New South Wales, incorporated legal practices are required by law to implement 'appropriate management systems' for ensuring that the provision of legal services is in compliance with professional ethical obligations.[68] It is the requirement that firms self-assess ethics management that leads to a drop in complaints, not the ownership structure. And as the authors of the study themselves acknowledge, measuring complaints based on breaches of the professional conduct rules is only a small part of the overall ethical conduct picture, and does not address questions of commercialization and bureaucratization of legal practice.[69]

## Conclusion

There is a dearth of empirical evidence to support any of the contentions made by proponents that NLO leads, directly or indirectly, to an increase in access to justice. While it is true that some ABS like Slater & Gordon have been been successful in branding, using innovative technologies, achieving economies of scale, and increasing the number of personal injury claims, there is no data documenting a decrease in the cost of legal services or the rate of self-representation. Furthermore, there is no evidence of a significant impact on areas of civil justice needs that are currently most acute in Ontario.

[68] Ibid. at 471, 481 & 488.

[69] Ibid. at 478.