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ABS Discussions
Policy Secretariat
Law Society of Upper Canada
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Dear Working Group on Alternative Business Structures,

We are writing pursuant to the Law Society of Upper Canada's (Law Society) invitation for submissions to assist the Working Group on Alternative Business Structures (ABS). We are currently research fellows at the Centre for International Governance Innovation (CIGI) studying models and best practices for the provision of intellectual property (IP) legal services to start-ups and entrepreneurs. Together, we also have considerable expertise in legal education and intellectual property practice.

Professor Myra Tawfik is a member of the Law Society of Upper Canada, a Senior Fellow with CIGI, and a professor with the University of Windsor's Faculty of Law. She is the academic director of the University of Windsor's Law, Technology and Entrepreneurship Clinic (LTEC). At LTEC, law students provide legal support to local start-ups and entrepreneurs throughout the Windsor-Essex region, under the direct supervision of a licensed IP lawyer.

James (Jim) Hinton is a licenced lawyer with the Law Society of Upper Canada, a patent agent, a trademark agent, and a Research Fellow with CIGI. This past summer, he managed the Intellectual Property Law Clinic, a collaborative partnership between CIGI, Communitech - an innovation hub - and leading national law firms. With a team of Ontario law students, the IP Law Clinic provided early-stage innovators in the Kitchener Waterloo Region with legal information and services about their IP rights.

We share the Working Group's concern with promoting access to justice and we have a particular interest in clinical legal education as a vehicle for addressing this concern, especially in relation to IP legal knowledge mobilization. In this respect, we are interested in the question asked by the Working Group: "What options are

there other than ABS to help Ontario lawyers and paralegals develop innovative, more effective and competitive practices?”¹

We appreciate the Law Society’s interest in reassessing legal business models and would like the Law Society to consider opportunities that allow for the operation of student driven pro bono legal clinics as an additional alternative.

As the Law Society Working Group indicates, there is an identified demand for legal services that is not being met.² It is our belief that student driven pro bono clinics are a way to fill some of this gap in legal services. This is confirmed in a recent Canadian Bar Association report which explicitly recommended “Easing Restrictions on Law Students in Legal Clinics: Where they exist, legal and other constraints should be minimized to broaden the participation of law students in appropriate services in legal educational clinics.”³

Clinics can prevent injustice and provide access to justice – two areas of particular importance identified in the ABS discussion paper.⁴ Free clinics can also directly displace the unregulated and unlicensed grey market currently providing legal services to Canadian clients. Further, student clinics provide great practical training for law students and articling students whether within a law school setting or through a program similar to CIGI’s IP Law Clinic. Clinics can also offer independent advice free from the business constraints of private practice.

Currently, the Law Society’s rules regarding law clinics capture only clinics funded by Legal Aid Ontario (LAO) and operating out of Ontario’s law schools under the supervision of clinic staff lawyers. In these LAO Clinics, law students are able to provide legal advice and represent clients in areas such as minor crimes, landlord and tenant, immigration, among other defined subject areas.⁵ The Law Society legislation, bylaws and rules are silent with respect to non-LAO funded clinics and this lack of clarity about the appropriate structure for the development of new clinics and clinical models is a real obstacle to future clinic growth. In addition, the definition of ‘legal services’ as set out in the ABS Report⁶ is very broad and the resultant uncertainty as to whether and how non-LAO funded clinics could provide legal services is another significant impediment.

As a first step, we would urge the Law Society to consider amending its rules to expressly permit, support, and promote legal clinics in other practice areas, especially in matters relating to entrepreneurship and IP law. We also urge the Law Society to clearly define the parameters of the types of services law students can provide within the clinical model.

¹ LSUC ABS Discussion paper – pg. 3

² LSUC ABS Discussion paper – pg. 10

³ <http://www.cbafutures.org/cba/media/mediafiles/PDF/Reports/Futures-Final-eng.pdf>
<http://www.cba.org/cba/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>

⁴ LSUC ABS Discussion paper – pgs. 12-13

⁵ LAO-SLASS webpage <http://www.legalaid.on.ca/en/contact/contact.asp?type=slass>

⁶ LSUC ABS Discussion paper – pg. 8

Why entrepreneurship and IP clinics, in particular? Both provincial and federal levels of government are investing considerable sums in creating entrepreneurial eco-systems on University campuses and in communities at large. The public interest lies in shoring up our start-up and entrepreneurial capacity in order to grow our knowledge economy and to effectively compete on a global scale. From our experience and research, these entrepreneurial initiatives often do not properly embed early stage IP legal support within their menu of services. The IP Bar has difficulty meeting the demand as start-up clients are often without significant financial means and are considered high risk. In addition, IP legal expertise is located primarily in the major centres across Canada and, as a result, there is little coverage, if any, in communities outside of Toronto and Ottawa, for example.

We therefore urge the Law Society to consider a variety of different service mechanisms to address this unmet need and the public policy interests at play. We ask that the Law Society recognize and facilitate ownership of pro bono clinics by non-licensed entities. As the pro bono clinic operates on a not-for-profit basis and charges no fees, the structure of the organization may be far less important than in a traditional law firm context. For example, the Law Society should consider allowing for ownership of a clinic by a law school, an innovation hub or a philanthropic organization. The regulation of how legal services are to be provided would be addressed by changes to the rules regarding law clinics as described above and would include the obligation of ensuring appropriate supervision of clinic students. This would allow for multiple practitioners to provide legal services through the clinic and for the clinic to exist independently, without reliance on the continued presence of the same licensed practitioner. Further, the Law Society should consider how financial support for such a clinic could be provided by a third party funder who wants to remain immune from potential liability while still having ongoing ownership of the clinic.

We invite the Law Society to take a closer look at the initiatives developed under the auspices of the United States Patent and Trademark Office, especially their Pilot Law School Certification Program⁷ and Nationwide Pro Bono Program⁸. Mandating the creation of IP law clinics at US law schools and encouraging IP lawyers to provide pro bono services to innovators are integral features of the US government's economic strategy. Programs such as these advance a number of fundamental goals that we, in Canada, cannot continue to ignore. We believe that the legal profession needs to take more of a leadership role in strengthening Canada's capacity in IP law.

In sum, IP law clinics would provide on-going legal support to the underserved start-up community while also offering important law student training to sustain a robust knowledge economy well into the future. In addition, opening up the possibility of third party funding and ownership of these clinics would provide more financially sustainable clinical models. Given that our provincial and national economic strategies are dependent upon the ability of the IP legal community to respond in cost-effective and meaningful ways, we believe that it is

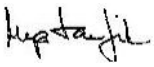
⁷ http://www.uspto.gov/ip/boards/oed/practitioner/agents/law_school_pilot.jsp

⁸ <http://www.uspto.gov/inventors/proseprobono/>

incumbent upon the Law Society to advance business structures that address this larger socio-economic imperative.

We thank you for taking our comments and recommendations into consideration in your deliberations and would welcome an opportunity to discuss our concerns with you in person at your convenience.

Sincerely yours,



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James Hinton
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