



CREATIVE
CONSEQUENCES P/L
LAW, BUSINESS AND REGULATION ADVISORY

**ACCESS TO JUSTICE: CAN YOU
INVEST IN IT?**

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PART 1: ACCESSING LEGAL SERVICES

Equitable access to justice is one of the cornerstones of a democratic society. The *Universal Declaration on Human Rights* (UDHR) states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” The *International Covenant on Civil and Political Rights* (ICCPR) also refers to an “effective remedy” (Article 2(3a)) for all the rights in the convention and further guarantees the right to “take proceedings before a court” (Article 9(4)), the right to a “fair and public hearing” (Article 14(1)), and the right to be tried without undue delay (Article 14(3c)).¹ Access to justice is expressed in these instruments as a fundamental and universal right. Defining “access to justice” has however been an elusive task.²

The UDHR and the ICCPR, speak of access to justice in terms of redress through the courts. Accordingly, early approaches to improving access to justice focused on ensuring equality of access to disadvantaged groups and others who increasingly were excluded from having access to the courts due to lack of funds and conveniently located legal resources. As a result, early responses to improving access to justice saw the development of legal aid and community legal centres. Today however, “access to justice” is recognised as a much broader issue than the right “to an effective remedy by a competent tribunal” or “the right to take proceedings before a court.”³

Today, access to justice encompasses the notion of not only access to a lawyer and access to courts but also access to legal information, legal education, non-court-based dispute resolution mechanisms, participation in law reform and basic problem-solving. The term “access to legal services,” rather than “access to justice,” better reflects this broader concept. Whilst the definition of “access to justice” may have changed significantly, measures to meet the legal needs of people have little evolved. In Australia, similar to many other jurisdictions around the

¹ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

² See for example, M. Cappelletti & B. Garth (eds) (1978) *Access to Justice: A World Survey* (vol 1) (Sijthoff and Noordhoff), 6-10.; F. Francioni, (ed) (2007) *Access to Justice as a Human Right*.

³ For example, the 1994 report of the Access to Justice Advisory Committee in Australia, entitled “Access to Justice”, saw “access to justice” as embracing three broad objectives: equality of access to legal services and effective dispute resolution mechanisms; national equity (that is, access to legal services regardless of place of residence); and equality before the law (that is, the removal of barriers creating or exacerbating dependency and disempowerment): Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (1994), 7-9

world, public resources devoted to legal aid programs increased, albeit modestly, during the late 1980s and early 1990s but were severely curtailed in the late 1990s. As a result, many people find themselves unable to access the law or find a solution to their legal problem. The findings of a recent report by the Law Foundation of New South Wales in Australia clearly illustrate this fact.

The Law Reform Commission's Report entitled the *Legal Australia-Wide Survey: Legal Need in Australia*, details the findings of an Australia-wide survey of legal needs.⁴ The Report set out the results of a survey, conducted between January and November 2008, which examined the nature of legal problems faced, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems in each State and Territory in Australia.⁵ The main aim of the report was to provide valuable, evidence-based data to inform debate and policy direction concerning legal service provision and access to justice across Australia,⁶ which it has.

The Report found that legal problems were widespread in Australia with 50 per cent of respondents experiencing one or more legal problems in the 12 months prior to interview.⁷ That is, an estimated 8.5 million people, aged 15 years or over, in the Australian population experienced a legal problem within the preceding 12 months. The Report found that disadvantaged or socially excluded groups were particularly vulnerable to legal problems.⁸ According to the Report, people with a disability were one of the most disadvantaged groups, while indigenous respondents, the unemployed, single parents, people living in disadvantaged housing and people whose main income was government payments, also had significant disadvantages.⁹

The Report also found that 51.1% of legal problems resulted in respondents seeking advice from legal or non-legal professionals, 30.6% were handled without any advice, and 18.3%

⁴ See C. Coumarelos, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of New South Wales, August 2012, [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

⁵ Id at xiii.

⁶ Ibid.

⁷ Id at xiv.

⁸ Id at xv.

⁹ Ibid.

resulted in no action at all.¹⁰ Across jurisdictions, a legal adviser was consulted for no more than 33% of the cases where respondents sought advice from a professional.

Respondents to the survey reported multiple reasons for ignoring their legal problems. Those that failed to take any action stated, “that it would take too long to resolve the problem (35.4%), the respondent had bigger problems (31.1%), it would be too stressful (30%), it would cost too much (27.1%), the respondent did not know what to do (21.4%) or it would damage the respondent’s relationship with the other side (12.7%)”.¹¹

When questioned as to why they did not seek legal advice, respondents stated that there were too many “barriers” to accessibility. These barriers included difficulty getting through on the telephone (17%), the adviser taking too long to respond (14%), inconvenient opening hours (8%) and difficulty getting an appointment (7%). In all jurisdictions, cost and in particular the method by which clients were charged was a main barrier to accessing legal advice. The results of studies in the United States and the United Kingdom in relation to legal needs and access to justice are not dissimilar.

According to a Report published by the American Bar Association (ABA) in 2013, 66% of a random sample of adults in a middle-sized American city reported experiencing at least one of 12 different categories of civil justice situations in the previous 18 months.¹² The most commonly reported situations involved problems with employment, money (finances, government benefits, debts), insurance, and housing.¹³ Most people handled these situations on their own.¹⁴ The Report stated that only in 22% of situations did people seek assistance from a third party outside their immediate social network.¹⁵ Cost was raised as an issue in 17% of cases but the most oft-cited reason for not going to a lawyer was the fact that many did not realise that they had a legal problem.¹⁶ This study reaffirmed the findings of an older ABA study that found, of respondents who identified a legal need, 38% of low income individuals

¹⁰ Id at 95-97.

¹¹ Id at 98.

¹² See R.L Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs and Services Study*, American Bar Foundation, 8 August 2014 at p.3, http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

and 26% of moderate income individuals took no action.¹⁷ The study also found similar concerns about legal costs.¹⁸

In the United Kingdom and in Canada the situation is much the same. The findings of a 2012 survey in the United Kingdom indicates that when confronted with a legal need 44% of respondents took some form of professional advice, 12% sought advice from friends and family, 27% handled the legal need without help and 14% did nothing about the legal need.¹⁹ Research on the legal needs of small business report similar findings. According to research commissioned by the Legal Services Board in the United Kingdom, only 29% of business seek formal advice in relation to legal problems. Of that group, 16% sought advice from “reserved providers” (a solicitor’s firm, barrister or other legal service).²⁰

Similarly in Canada, studies have reported that many people do not seek the assistance of lawyers because of their inaccessibility and their cost. According to a research study conducted in 1994 by the Department of Justice in Ottawa, 44 % of respondents attempted to resolve their problem on their own without any form of assistance.²¹ Interestingly, only 2% of those respondents when asked if, in retrospect, they thought the outcome of their problem would have been better if they had some form of assistance, indicated that assistance would not have improved the outcome for them.²² Ten years later the situation in Canada remains unchanged. According to a national legal-problems survey which assessed the frequency and multi-dimensional costs of everyday legal problems faced by Canadians aged 18 years and older, only 6.7% of people use formal court or tribunal processes to resolve their problems.²³

¹⁷ American Bar Association, *Legal Needs and Civil Justice: A Survey of Americans Major Findings Form the Comprehensive Legal Needs Study* (1994).

¹⁸ Ibid.

¹⁹BDRC Continental, *Legal Services Benchmarking Report*, June 2012, p.4, <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

²⁰ Professor Pascoe Pleasence and Dr. Nigel J. Balmer, *In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey*, April 2013, p.iv, <https://research.legalservicesboard.org.uk/wp-content/media/In-Need-of-Advice-report.pdf>

²¹ A. Currie, Department of Justice Ottawa, *Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (2009), p.57-58, http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf

²² Ibid.

²³ Canadian Forum on Civil Justice, *The Costs of Justice*, http://www.cfcj-fcjc.org/sites/default/files//CostofJustice_overivewfactsheet%20.pdf

It is quite obvious from these studies that consumers' legal services needs are clearly not being met.²⁴ It is also quite obvious from these studies that consulting a lawyer for many is an avenue of last, rather than first, resort. As longstanding ex-regulators of the legal profession this is comes as no surprise to the authors.

The concept of "access to justice" and indeed "justice" itself has a fundamentally different meaning to lawyers than it does to the general public and particularly to consumers of legal services. Lawyers tend to equate "justice" in terms of access to the courts and access to legal services. The general public, on the other hand, equate "justice" in terms of resolving disputes and getting what they believe they "deserve." That is, the general public see justice subjectively and are focused on outcomes, while the legal profession views "justice" far more objectively and is focused on process.

This divergence of views may be attributed to a lack of effective communication between lawyers and their clients. While many lawyers believe that they are articulate and have a thorough knowledge of the law, the reality is that the majority of complaints lodged against lawyers are based at least in part on a failure to effectively communicate.²⁵ This failure can be in the nature of not explaining clearly what the legal matter will entail in a manner that the client can understand; failure to explain the possible outcomes of the matter and, failure to explain costs. Much of this failure can be characterised as a failure to properly educate the client as to legal process and reasonable expectations as to outcome.

The legal profession speaks a fundamentally different language to the general public. Although many jurisdictions have implemented measures to bridge the language gap through "plain language" initiatives²⁶, many people continue to feel overwhelmed by the concept of approaching a lawyer for help. This is understandable as plain language initiatives cannot replace legal jargon in many instances. Moreover plain language initiatives are focused more

²⁴ G. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Landscape for Ordinary Americans*, University of Southern California Law, 2010,

<http://works.bepress.com/cgi/viewcontent.cgi?article=1030&context=ghadfield>

²⁵ At the Office of the Legal Services Commissioner of New South Wales, for example, 80% of complaints alleged that communication was an issue. See Office of the Legal Services Commissioner of New South Wales (OLSC), *Without Prejudice*, Issue 30, December 2003,

<http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/wp%20issue%2030.pdf>

²⁶ R. Petelin, (2010) *Considering plain language: issues and initiatives*, Corporate Communications: An International Journal, Vol. 15 Iss: 2, pp.205 - 216

on writing than on oral communication. The problem is further exacerbated by the manner in which traditional law firms operate.

Traditional law firms have generally found it difficult to provide a wide range of legal services to this untapped market largely because of their overhead costs and their pricing structure. In order for law firms to provide legal services to this market, they would have to change, among other things, their communication strategy, as well as their billing structures to allow more flexibility in service delivery and billing options. However, this can be difficult for firms who charge fees based on the billable hour, as most firms do. As Noel Semple, Assistant Professor at the University of Windsor, Faculty of Law, and 2014-15 OBA Chief Justice of Ontario Fellow in Legal Ethics and Professionalism Research, writes:

“From an access to justice point of view, the problem with hourly billing is the financial uncertainty and risk which it requires clients to bear. While it is difficult for someone to commit to paying \$10,000 for representation in a contested divorce, it is much more difficult to make that commitment if the lawyer indicates at the outset that this legal service could cost as much as \$20,000 (or, with appeals, perhaps \$100,000). Fixed fee legal services make justice more accessible because they clearly limit the clients’ financial exposure. Even if the average cost of a legal service is the same under the fixed fee more as it would be under hourly billing, removing the risk makes the service easier to afford.”²⁷

Similarly, Gillian Hadfield, Kirkland Professor of Law and Professor of Economics at the University of Southern California writes:

“...the problem of access is primarily a problem of cost – meaning the total cost of identifying, securing and implementing legal help that raises the wellbeing of an ordinary person as he or she navigates the dense legal environment in which we all live. Under the existing business model – in which legal services for ordinary individuals are provided by solo and small firm practitioners operating in traditional law firm settings – these costs are simply too high. To reduce the cost of law and increase access to legal assistance, the form in which legal services are produced and delivered to the market has to change. This will require much larger scale organizations and more creative and complex financial and management relationships between those who provide legal expertise – lawyers – and those who provide many other components that go into ultimately delivering legal assistance to people.”²⁸

²⁷ Semple, Noel, *Access to Justice: Is Legal Services Regulation Blocking the Path?* (July 30, 2013), at p.30, see SSRN: <http://ssrn.com/abstract=2303987> or <http://dx.doi.org/10.2139/ssrn.2303987>

²⁸ Hadfield, Gillian K., *The Cost of Law: Promoting Access to Justice through the (Un)Corporate Practice of Law* (October 30, 2013). International Review of Law and Economics, Forthcoming; USC CLASS Research Paper No. 13-4; USC Law Legal Studies Paper No. 13-16 at p.4, <http://ssrn.com/abstract=2333990>

In addition to billing, the traditional structure of the law firm as a partnership places limits its ability to invest in innovative services that create a long term return on investment. Partnership structures tend to focus on short-term returns; maximising partner income in each year. This structural focus on short-term returns makes long-term investments harder to achieve.

Moreover, many problems experienced by members of the public are complex and not easily pigeon-holed into a single legal ‘box’. Personal injury matters, for example, often involve more than the need to pay medical bills and compensation for future loss of employment. Injuries often effect a person psychologically and socially as well. The injured party may have heavily borrowed from family and friends and may have their identity wrapped up in an area of work which is no longer available to them. Traditional law firms are not equipped to deal with the needs of their clients on a holistic level; they are merely there to assist their clients by providing legal advice. Providing additional social services for clients comes at a cost; one that traditional law firms find it hard to absorb.

The question therefore, is this: How can law firms profitably provide a broader range of legal services at a cost that is affordable to the greatest number of consumers?

The answer, quite simply, is through external investment. As Gillian Hadfield coherently states:

“Expanded scale is necessary to accommodate branding, to support investment in the research and development of products and processes, and to increase significantly the scope for specialization in the component elements of legal service delivery and across different market segments. Innovation and specialization need to extend the many non-legal dimensions involved in ultimately producing the benefits of legal assistance for an individual facing a legal situation.”²⁹

Sadly, with the exception of Australia and England and Wales, the notion of non-lawyer investment in law firms remains anathema to the legal profession.

The next section of this paper considers the concerns raised about non-lawyer ownership of law firms and in particular the allegations that there is no link between external ownership and increased access to legal services. This section considers two recent studies that have rejected the notion that external investment in law firms can lead to the provision of greater legal

²⁹ Hadfield at p. 28.

services and have concluded that there is no link between non-lawyer ownership of law firms and access to justice.

PART 2: EXAMINING THE CRITICS

Opposition to non-lawyer ownership or external investment in law firms has become rife over the past few years. Since Australia became the first jurisdiction in the world to allow law firms to be publicly owned in 2001 a plethora of articles, submissions and papers have been published, outlining the arguments against non-lawyer investment in law firms. For many, concern about the corruption of the core values of the profession as a result of non-lawyer ownership is the penultimate risk.³⁰

This concern is interesting, particularly in light of recent developments in which the unethical standards of some of the largest traditional law firms have been exposed. Consider for example, the conduct of the lawyers in Dewey & LeBoeuf who are alleged to have orchestrated a scheme to keep the firm afloat during the financial crisis by “cooking the books” exhibiting unethical conduct driven by the business crisis.³¹ Dewey & LeBoeuf was a traditional law firm with no external investment, and hence, no non-lawyer owners. Similarly, Jenkins & Gilchrist was a traditional law firm in the United States which embarked on the lucrative, but ultimately illegal,

³⁰ The topic has been so hotly debated that a Google search of “non-lawyer ownership law firms” comes up with 4,820,000 results (as at 9 April 2015). See for example, B. MacEwen, M. Regan, L. Ribstein, *Law Firms, Ethics and Equity Capital: A Conversation* (2007) 21 *Georgetown Journal of Legal Ethics* 61; M. Regan Jr, *Commentary: Nonlawyer Ownership of Law Firms Might Not Cause the Sky to Fall* (2007) *The American Lawyer*; Paul Grout, ‘The Clementi Report: Potential Risks of External Ownership and Regulatory Responses (July 2005), <http://www.dca.gov.uk/legalsys/grout.pdf> ; S. Mark & T. Gordon, *Innovations in Regulation Responding to a Changing Legal Services Market* 22 *Geo. J. Legal Ethics* 501 (2000); N. Semple, *Access to Justice: Is Legal Services Regulation Blocking the Path?* (July 30, 2013); N. Robinson, *When Lawyers Don’t Get all the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism* (Harvard Law School, Program on the Legal Profession, Center for Policy Research, August 27, 2014) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878; ABA Commission on Ethics 20/20 Co-Chairs Statement, *ABA Commission on Ethics 20/20 Will Not Propose Changes to ABA Policy Prohibiting Nonlawyer Ownership of Law Firms*, 16 April 2012, http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120416_news_release_re_nonlawyer_ownership_law_firms.authcheckdam.pdf; New York State Bar Association, *Report of the Taskforce on Non-Lawyer Ownership*, 17 November 2012, <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26682>; CCBE Position on Non-Lawyer Owned Firms, June 2005; CCBE Response to the Solicitors Regulation Authority’s Consultation on New Forms of Practice and Regulation for Alternative Business Structures, September 4, 2009; CCBE response to the Legal Services Board’s Consultation on a Regulatory Regime for Alternative Business Structures, 4 September 2009, http://www.ccb.eu/fileadmin/user_upload/NTCdocument/EN_CCBE_response_to_1_1253701378.pdf;

³¹ M. Goldstein, *4 Accused in Law Firm Fraud Ignored a Maxim: Don’t email*, *New York Times*, March 6, 2014, http://dealbook.nytimes.com/2014/03/06/former-top-leaders-of-dewey-leboeuf-areindicted/?_php=true&_type=blogs&_r=0

practice of offering tax shelter advice to a variety of wealthy corporate and individual clients; netting the firm about \$267 million between 1998 and 2003. After being investigated by the Internal Revenue Service (“IRS”), the firm agreed to settle its liabilities with the IRS, pay a \$76 million fine, and to cease practicing law effective March 31, 2007. Interestingly, as this paper will later discuss, there have been no similar examples of unethical breaches by Alternative Business Structures (ABS) - law firms with non-lawyer investors - in either Australia or the United Kingdom.

In rationalizing their opposition to non-lawyer ownership, critics have also questioned the “need” for alternative business structures in the legal services marketplace, as a means of increasing access to legal services. Curiously, those opposing ABSs have not relied on any empirical research to demonstrate their allegations that ABSs adversely impact ethics and professionalism or reduce access to justice (at least that the authors have been able to locate). Criticism seems to stem more from assumptions, than from fact. The latest articulation of this position is outlined in research conducted by Jasminka Kalajdzic, Associate Professor at the University of Windsor, Canada, commissioned by the Ontario Trial Lawyers Association (OLTA).

Late last year (2014) the OTLA engaged Ms Kalajdzic 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.” Ms Kalajdzic was specifically asked to “identify and explore the empirical literature on the relationship between NLO and access to justice.”³² Ms Kalajdzic was not to perform any primary research in order to come to her conclusions. Ms Kalajdzic was also required to assess access to justice improvements resulting from non-lawyer ownership of law firms by seeking data related to only the following five variables: “(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 and (e) better quality of work performed.”³³ Again, Ms Kalajdzic only “examined the empirical literature in the UK and Australia with a view to identifying any data that would speak to these five metrics.”³⁴

³² Report dated 1 December 2014, on file with the authors.

³³ Ibid at p.6.

³⁴ Ibid.

Upon completing her study, and producing a very short, 14-page report, Ms Kalajdzic came to the unsurprising conclusion that there was “virtually no hard data available.” Ms Kalajdzic concludes her report by stating as follows:

“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 (sic) 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.”³⁵

The lack of data is not surprising to the authors. What *is* surprising is Ms. Kalajdzic’s conclusion that “virtually no hard data available” means that non-lawyer investment has made “no impact.” To most researchers, “no data available” only means that a proper study to obtain proper data needs to be conducted, and that until such a study is conducted, no firm conclusions can be drawn.

On another note, the metrics Ms Kalajdzic was given to examine the impact of non-lawyer ownership of law firms on access to justice are also questionable for the objectives she was asked to achieve. In the authors’ view, the metrics used are impossible to measure and so Ms. Kalajdzic’s report does not nothing more than create another unhelpful publication containing subjective assumptions. In relation to assessing the reduced costs of legal services, for example, Ms Kalajdzic wrote as follows:

“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. Not all ABS are profitable, however; in the UK, Co-Op Legal Services suffered a £3.4 million loss in the first half of 2013, another £5.1 million in the first half of 2014, and a total of £14 million over 18 months.

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. It has done so in part by employing significantly more paralegal employees and technology to do the work. 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.

³⁵ Id at p.14.

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.”³⁶

In these three paragraphs Ms Kalajdzic, and with no evidence in support, summarily rejects the notion that non-lawyer ownership of law firms (ABSs) could lead to a reduction in the cost of legal services.

Nick Robinson, a Harvard academic, referred to in Ms Kalajdzic’s Report, in his study on non-lawyer ownership and access to justice, came to the same conclusion. Mr Robinson considered available data on non-lawyer ownership and case studies of prominent instances of such ownership in three countries, England and Wales, Australia and the United States to conclude as follows:

“all provide support to those that argue non-lawyer ownership can, in some circumstances, lead to new innovation in legal services, larger economies of scale and scope, and new compensation structures. Yet, perhaps counter-intuitively, there is little evidence from the country and case studies to indicate that these changes have substantially improved access to civil legal services for poor to moderate-income populations. These findings may be partly the result of limited data and one could speculate that non-lawyer ownership in the future could bring notable access gains in some sectors, but there are also at least four reasons to believe that non-lawyer ownership may not lead to as significant or sweeping access gains as some proponents suggest.

First, persons in need of civil legal services frequently have few resources and so it is unlikely that the market will provide them these services even where non-lawyer ownership is allowed. For example, a bankrupt tenant facing an eviction is provided few new options by non-lawyer ownership. After cuts in legal aid in the UK, only in about 25% of divorces did both parties have representation in private family law disputes, indicating that the legal market, even a deregulated one, is unlikely to address the legal needs not only of many of the poor, but also of middle income persons who cannot or will not spend the money to purchase the frequently rather sophisticated legal services they require.

Second, many of the legal sectors, like personal injury and social security disability representation, that have seen the greatest investment by non-lawyers will likely not see corresponding increases in access. In these sectors clients are less sensitive to cost considerations since their lawyers are largely paid through conditional or contingency fees or by insurance companies. Instead, competition amongst personal injury or social security disability representation providers is more focused on reaching persons with credible claims in the first place.

Third, non-lawyer investment may not take place in some areas of the legal market because many legal services may not be easy to standardize or scale. Much legal work is complicated and requires the individualized attention of an experienced practitioner who often charges high rates. Even though many legal problems (although certainly not all) may have relatively uniform remedies, an experienced practitioner is needed to determine, case by case, the legal problem confronting the client before tailoring an appropriate solution. Non-lawyer ownership may not be able to overcome this challenge in a significantly more efficient way than a traditional worker owned partnership model. Indeed, where the

³⁶ Id at p.12-13.

attention of a lawyer is the primary input into a service, and other capital costs are low, a worker owned model could provide advantages over investor ownership.

Finally, some persons who could benefit from legal services may be resistant to purchasing them, even if they have ability to do so, either because they do not believe they need a legal service or there are cultural or psychological barriers to accessing the service. For example, even if the price of preparing a will decreases many persons still may not purchase one because they do not like to contemplate their own death or do not perceive a will as a need. In other words, for some civil legal services there may not be as much price elasticity in the market as proponents of deregulation as an access strategy suggest.”³⁷

Several issues arise in relation to these studies.

Ms Kalajdzic’s study used difficult variables to assess whether non-lawyer ownership has had any impact on access to justice. It is almost impossible to accurately measure whether the cost of legal services have reduced as a result of non-lawyer ownership. It is also impossible to accurately measure whether non-lawyer ownership has increased the number of represented litigants and resulted in fewer unmet legal needs, at least unless substantial and costly longitudinal empirical studies are undertaken.

Mr Robinson's research was limited to one case study for England and Wales; a case study on two personal injury firms in Australia and two online legal service providers in the United States. The firm Mr Robinson used as a case study in England & Wales was Co-Operative Legal Services, one of the first ABSs to gain a licence and, as Mr Robinson’s study noted one of the first to fail. Mr Robinson found after assessing this firm that whilst it is “one of the largest providers of family law services to the public they have not been able to halt a massive increase in the number of unrepresented litigants in UK family courts.”³⁸

Again this comes as no surprise to the authors. Given that the firm had suffered financial woes it would be incredulous to expect that firm to have made any positive impact on providing access to legal services. A case study of a firm that has not suffered any financial hardships in that jurisdiction may have produced a different result. Moreover, Mr Robinson’s case studies on Australian firms raises questions. Mr Robinson compared two personal injury law firms in Australia that have publicly listed, Slater & Gordon and Shine Lawyers with another personal injury law firm, Maurice Blackburn that has not gone public. Mr Robinson found that a

³⁷ N. Robinson, *When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism* (August 27, 2014). HLS Program on the Legal Profession Research Paper No. 2014-20, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2487878

³⁸ Id at p.25.

“comparison of these three law firms casts doubt on whether outside ownership is necessary to achieve economies of scale, although publicly listing may give a competitive advantage when acquiring other firms.”³⁹ Notwithstanding the above, Mr. Robinson does not categorically conclude that non-lawyer investment *cannot improve access to justice*. He states on the last page of his paper, “the goal of regulation of legal services should not be deregulation for its own sake, but rather increasing access to legal servicessome types of non-lawyer ownership may be part of this strategy....”⁴⁰

The authors also note that Mr. Robinson made no mention of Salvos Legal Humanitarian Limited, an ABS wholly-owned by the Salvation Army in Australia⁴¹, which was specifically created to only provide *pro bono* legal services to, in Robinson’s words, “those persons in need of civil legal services [with] few resources.”⁴²

As this paper will demonstrate, external ownership is central to achieving economies of scale. Moreover, public listing does give a “competitive advantage when acquiring other law firms” but a by-product of such competitive advantage is the ability of firms who have gained external investment to provide increased legal and non-legal services.

The authors of this paper submit that had Ms Kalajdzic and Mr Robinson focused on different variables, and used a different methodology to assess the link between external investment and increased access to legal services, they may not have so readily dismissed the ability of non-lawyer ownership to prove a positive effect on access to legal services.

The authors suggest that any study on the effect of non-lawyer ownership on access to justice should rather comprise an in-depth analysis of law firms that have received external investment and of the services they’ve been able to offer since receiving these additional funds. The authors suggest that such an in-depth analysis of law firms should evaluate the following variables:

- Law firm acquisitions and openings;
- Expansion of practice areas;
- Billing structures;

³⁹ Id at p.27.

⁴⁰ Id at p.57.

⁴¹ M. Kowalski, Anti-ABS Arguments Continue to be Based on Emotion – Not Fact, <http://www.slaw.ca/2014/12/30/anti-abs-arguments-continue-to-be-based-on-emotion-not-fact/comment-page-1/>

⁴² Id at p.40.

- The provision of online legal services; and,
- The offering of other services.

In order to truly assess whether external investment can lead to an increase in access to legal services by the general public, one has to analyze the activities of law firms that acquired external investment and measure whether their practices have changed since gaining that external investment, rather than assessing the dynamics of the entire legal market.

The following sections of this paper take a detailed look at the activities of four law firms and assess whether external investment has had any impact on the firms' ability to provide greater access to legal services for the general public.

PART 3: THE METHODOLOGY

In Australia, whilst many firms have changed their practice structure to become incorporated legal practices⁴³, only three law firms⁴⁴ have listed their practice on the Australian Stock Exchange.⁴⁵ The first law firm to seek public listing was Slater & Gordon. Slater & Gordon's decision to publicly list in May 2007 saw them move from being a traditional partnership to becoming a publicly listed law firm. Following Slater & Gordon's listing, Integrated Legal Holdings (IHL), a Western Australian based law firm, listed on the ASX on 17 August 2008 and in May 2013, Shine Lawyers became the third law firm to publicly list in Australia.

That there are only three law firms that have listed in Australia is easily explained. Firstly, listing is only a relevant and attractive option for law firms that are of a particular size. As Australia

⁴³ In New South Wales for example, there are 1788 incorporated legal practices. Information on file with the authors.

⁴⁴ In November 2014, Spruson & Ferguson an IP firm listed on the Australian Stock Exchange. The listing occurred as a result of amendments to the *Australian Patents Act 1990* permitting Australian patent and trade marks attorneys to operate in a corporate structure. Spruson & Ferguson listed and is a subsidiary of IPH Limited (IPH). Although not a law firm per se and therefore not an incorporated legal practice, Spruson & Ferguson's listing should be noted in this paper: Spruson & Ferguson IP, IPH Limited Lists on the Australian Stock Exchange, <http://www.spruson.com/iph-limited-lists-australian-stock-exchange/#.VTWw7SGqpBc>

⁴⁵ New South Wales (NSW) was the first jurisdiction in Australia and indeed the rest of the (common law) world to permit external ownership of law firms. This watershed moment occurred on 1 July 2001 with the enactment of legislation permitting legal practices to incorporate, share receipts and provide legal services either alone or alongside other legal service providers who may, or may not be legal practitioners. Since the enactment of such legislation more than 3,000 law firms in Australia have altered their practice structures through incorporation (representing 30% of the law firms). See S. Mark and T. Gordon, *Innovations in Regulation - Responding to a Changing Legal Services Market*, 22 Geo. J. Legal Ethics 501 (2009). See <https://articleworks.cadmus.com/geolaw/zs000209.html>

is a federation with eight different States and Territories each of which have different tax, stamp duty and succession law regulations, it can be too complex for many firms to comply with these regulations. Secondly, the largest law firms in Australia who might be considered “good” targets for listing tend to focus on major corporate clients and accordingly, do not have areas of legal practice that lend themselves to large volumes with quick turnover. The firms that have listed cover practice areas like personal injury, family law and other areas of consumer law, which the large traditional national firms don’t. Third, to list, law firms need to have a recognised brand in order to attract the interest of potential shareholders. Few law firms in Australia possess such a brand.

The situation is quite different in England & Wales. It has now been just over three years since the Solicitor Regulation Authority (SRA) commenced accepting applications from firms wanting to offer legal services as ABSs.⁴⁶ During this time over 372 law firms have been granted ABS licences.⁴⁷ They vary widely from large new entrants to the legal market to existing firms tying up with other service providers, or firms seeking external investment from private equity companies and firms wishing to promote non-lawyers to partnership level. ABS licences have been awarded to a number of high profile firms over the past two years including Co-operative Legal Services, Riverview Law, Direct Line, Genus Law and PwC Legal. According to a survey conducted in July 2013 a number of factors prompted ABSs to change their practice structure. These factors included, inter alia, “promotion of non-lawyer to management of the business (22%); “access to external investment” (19%) and “organisational restructure” (8%).⁴⁸

Of the firms that have been granted an ABS licence, a number have gained external investment. The eagerness to seek external investment is probably due to reports filtering through the United Kingdom that there are an abundance of external investors wanting to plough their money into law firms. According to John Llewellyn-Lloyd, head of professional service of Espirito Santo

⁴⁶ Applications for the ABS licences commenced in October 2011:
http://www.legalservicesboard.org.uk/news_publications/press_releases/2010/pdf/23022010_abs_press_release.pdf

⁴⁷ As at 15 April 2015: Solicitors Regulation Authority, *Search for an alternative business structure webpage*,
<http://www.sra.org.uk/absregister/>

⁴⁸
http://www.legalservicesboard.org.uk/news_publications/speeches_presentations/2014/20140416_SLSA_LSB_presentation_ABS.pdf

Investment Bank in the United Kingdom, there is likely to be an “enormous amount” of external investment and merger activity in the legal market over the next 24 months.⁴⁹

Interestingly, there are now law firms in the United Kingdom offering advisory and consulting services to other law firms interested in pursuing a change in business structure. One such firm, *Weightmans*, offers advice on business structuring options and applications to the SRA to operate as an ABS; how to attract third party joint ventures and/or finance; attitudes of banks and private equity funders, including an insight into their key criteria when considering joint venture targets.⁵⁰

Methodology

In order to effectively assess whether external investment leads to an increase in the provision of legal services in either Australia or England & Wales, the authors have chosen four firms as case studies. In acknowledging their limited resources, the authors have chosen two firms from Australia and two law firms from the England and Wales to conduct such an assessment as a pilot study. It is hoped that this pilot study will be considered as a basis for further research into this important and vexed question of non-lawyer ownership and access to legal services.

The two firms chosen from Australia are Slater and Gordon and Shine Lawyers. The two firms chosen from England & Wales are Irwin Mitchell and Riverview Law. The reasons as to why these firms were chosen are as follows.

In relation to Slater & Gordon and Shine Lawyers, these two law firms are the only two law firms in Australia that have listed their entire legal practice on the Australian Stock Exchange and operate as consumer law firms. Integrated Legal Holdings, the third law firm in Australia to have listed on the Australian Stock Exchange, is not a law firm per se, it is a holding company of law firms. It was rejected as a case study on this basis and because it recently announced that it had gone into voluntary administration.⁵¹

⁴⁹ N. Rose, *You ain't seen nothing yet, says top banker, with flood of investment and mergers on way*, Legal Futures, 2 May 2013, see <http://www.legalfutures.co.uk/latest-news/you-aint-seen-nothing-yetsays-top-banker-flood-investment-mergers-way>

⁵⁰ Weightmans, External Investment, *Alternative Business Structures. What does it mean for your firm?*, see <http://www.weightmans.com/pdf/ABS%20Law%20firm%20Flyer%20Final.pdf>. See also Jonathan Bray Legal Services at <http://www.jonathonbray.com/abs-applications/>

⁵¹ ILH Group Ltd, *Appointment of Voluntary Administrators*, 17 December 2014, <http://www.ilh.com.au/shareholders.html>

In relation to the law firms in England & Wales, Irwin Mitchell was chosen as it was one of the first law firms to gain an ABS licence. Five ABS licences have been granted by the Solicitors Regulation Authority (SRA) to Irwin Mitchell. These five licences include as follows: Irwin Mitchell LLP; Ascent Collections Ltd which offers field agency and debt collection services; Coris UK Ltd, which offers international assistance and insurance claims handling services; Irwin Mitchell Trustees Ltd, which accepts appointments as a trustee, executor and estate administrators; and also to Irwin Mitchell Trust Corporation Ltd, which accepts appointments to act as Deputy from the Court of Protection.

Riverview Law was chosen because of its initial focus is on providing small business with access to cost effective legal services. As has been noted, access to justice is not only about ensuring that individual consumers are able to obtain legal services, it is also about the ability of small business and in particular start-ups, to access legal services. Riverview Law's aim is to meet this gap by offering small businesses fixed fee arrangements, including fixed fees for barristers work through Riverview Chambers.⁵² Recently, Riverview Law announced that they would change their focus on SME's to larger organizations but that they would, at a later stage, again service the SME market as they once did.⁵³ Notwithstanding this announcement, Riverview Law are a sound case study for this paper as they have used their external funds to invest heavily in technology and offer fixed fees.

As stated above, the authors have, due to difficulties in measurement and lack of data, rejected the methodologies used by Ms Kalajdzic and Mr Robinson to assess whether external investment leads to the provision of increased legal services. Instead, the authors have chosen to consider this question by looking a number of variables and assessing the impact external investment on these variables. The variables used are as follows:

- Law firm acquisitions and openings;
- Billing structures;
- Expansion of practice areas;
- The provision of online legal services; and,
- The offering of other services.

⁵² Riverview Chambers, *Our Philosophy*, <http://www.riverviewchambers.com/our-philosophy/>

⁵³ Riverview stops annual contracts for small businesses to focus on major clients, Legal Futures, 19 September 2014, <http://www.legalfutures.co.uk/latest-news/riverview-stops-annual-contracts-small-businesses-focus-major-clients>

Information about these variables are obtained through the law firm's website, any media press concerning the law firm as well as correspondence via email with the firm's senior management.

Limitations of the Methodology

Reliance on a small sample, four firms, to assess whether external investment leads to the provision of increased legal services obviously compromises the validity of any findings. Resource and time constraints however prevent the authors from conducting an analysis of any additional firms. As stated above, this is a pilot study and it is hoped that the study can be replicated on a much wider scale.

The assessment is further compromised, to some extent, by the manner in which the information regarding the above variables has been obtained. Once again, limited time and resources prevented the authors from conducting 'in person' or 'virtual' interviews with management of the four law firms or more fully considering the material available concerning each variable. Again, if this pilot study is replicated it is hoped that those conducting the research are able to conduct a broader range of in person interviews with management in order to gain a better understanding about the way in which external investment is utilised by the firms.

Notwithstanding these limitations the authors submit that our research should not be rejected but be accepted and further developed.

The Law Firms

Slater & Gordon

Established in 1935, Slater & Gordon initially focused its practice on representing workers and their families - particularly those who suffered a serious injury or illness as a result of an accident or wrongful actions of a third party. In May 2007, Slater & Gordon became the first law firm in the world to list their entire practice on the Australian Stock Exchange (ASX).

Today their clients come from all backgrounds and socioeconomic circumstances and are people and businesses throughout Australia and the UK who require legal assistance and advice in personal injury claims (such as for example, asbestos claims, motor vehicle claims, medical compensation claims); conveyancing; family law; wills, estate planning and probate;

commercial litigation; business advisory; employment law; criminal law; defamation law; litigation and dispute resolution. Slater & Gordon's objective is to provide a broad range of legal services to an increasing number of "everyday people."

Slater & Gordon are Australia's leading national consumer law firm having over 1,200 staff and 70 offices in all Australian jurisdictions with the exception of the Northern Territory. The firm has also established a significant presence in the United Kingdom, and is now the second largest personal injury legal services firm in the UK.

Shine Lawyers

Established in 1976 as a small provincial general practice offering conveyancing, commercial law, family law, litigation and other legal services, Shine today is one of Australia's largest damages based plaintiff litigation firms with more than 600 staff in more than 40 offices across Queensland, New South Wales, Victoria and Western Australia.⁵⁴

In May 2013, Shine Lawyers became the third law firm in Australia to list on the ASX. During the 2013 financial year Shine Lawyers added 100 staff to reach a total of 615 employees in 40 locations across Australia. This expansion has resulted from both organic growth and acquisitions. Shine's growth has been underpinned by a commitment to three core values: always stand up for the little guy, be ahead of the pack and dare to be different.

Irwin Mitchell

Established in 1912, Irwin Mitchell is the largest 'full service' law firm in the UK, providing a wide range of private client and business legal services to private individuals, businesses, charities, institutions and organisations. The firm has over 180 partners and over 900 associates, consultants, senior advisors and other fee earners with national coverage through 10 offices (Birmingham, Bristol, Cambridge, Glasgow, Leeds, London, Manchester, Newcastle, Sheffield and Southampton).⁵⁵

⁵⁴ Shine Lawyers was established by Kerry Shine, an Australian Labor Party politician who was member of the Legislative Assembly from 2001 to 2012.

⁵⁵ Irwin Mitchell, *Key Facts*, <http://www.irwinmitchell.com/about-us/key-facts>

In 2011 Irwin Mitchell became the first major law firm to announce its intention to seek external investment. The firm appointed Espirito Santo Investment Bank as its financial adviser to review the options for raising external capital.⁵⁶

Irwin Mitchell, as stated above, was one of the first law firms to gain an ABS licence and multiple ABS licences. On seeking to become an ABS Managing Partner, John Pickering stated as follows: “Conversion to an ABS will broaden our access to capital and enhance our funding flexibility as we execute our strategic growth plan, while ensuring that we can continue to provide the very highest standards of service to our clients.”⁵⁷ Since gaining an ABS licence Irwin Mitchell has secured a £60m finance package with three major banks, with a further £30m ‘accordion’ facility if required to fund further expansion.

Riverview Law

Riverview Law launched in 2012 as a bespoke commercial law firm offering a non-traditional business structure and non-traditional services. Riverview Law, as will be discussed below, are considered a unique law firm in that they use a fixed price model and offer annual or multi-year contracts for all of their engagements; their technology platform allows their clients to access their files any time of the day of the week and access an Advice Line with extended working hours; they offer both barrister and solicitor expertise from Riverview Solicitors and Riverview Chambers; and, they provide free information and documents (including business and legal documents, policies, forms, template letters and records) to clients.⁵⁸

In April 2014 Riverview Law obtained an ABS licence. Prior to obtaining an ABS licence all legal advice contracts won by Riverview Law were handled by Riverview Solicitors, an independent law firm, and/or members of Riverview Chambers, which is also independent of Riverview Law.⁵⁹ The licence was granted to the holding company *LawVest*, which trades as

⁵⁶ *We want external capital, says Irwin Mitchell*, Legal Futures, 20 April 2011, <http://www.legalfutures.co.uk/legal-services-act/market-monitor/we-want-external-capital-says-irwin-mitchell>

⁵⁷ Ibid.

⁵⁸ Riverview Law, *Riverview Law the fixed price legal services business, vows to end lawyers’ hourly charging model*, February 20, 2012, <http://www.riverviewlaw.com/latest-news/riverview-law-the-fixed-price-legal-services-business-vows-to-end-lawyers-h/>; Riverview Law, *LawVest launches Riverview Law – the fixed price legal services business*, February 20, 2012, <http://www.riverviewlaw.com/latestnews/lawvest-launches-riverview-law-the-fixed-price-legal-services-business/> H. K. Gardner and S.H Silverstein, *Riverview Law: Applying Business Sense to the Legal Market*, Harvard Business Review, 4 June 2014.

⁵⁹ Riverview Law, *Riverview Law granted ABS licence*, 29 April 2014, <http://www.legalfutures.co.uk/latest-news/riverview-law-granted-abs-licence>

Riverview Law. *LawVest* is owned by *AdviserPlus Business Solutions*, DLA Piper and a number of individuals.⁶⁰

The next section of this paper will consider these law firms in light of the variables outlined above to assess whether external investment has had any impact on the firm's ability to provide greater access to legal services to the general public.

It is important to note that of the four firms discussed, Slater and Gordon has had access to external capital for just under eight years having listed on the Australian Stock Exchange in May 2007; Shine Lawyers has had access to external capital for just under two years having listed on the Australian Stock Exchange in May 2013; as one of the first law firms to list in England & Wales Irwin Mitchell has had access to external investment since 2012; and Riverview Law has had access to external capital for just one year having been granted an ABS licence in April 2014.⁶¹ The difference in the time of operation between the three law firms who have had access to external capital and Slater & Gordon is significant and must be borne in mind when considering the thesis of this paper.

PART 4: THE FINDINGS

Law firm acquisitions and openings

Since 2006, Slater & Gordon has acquired 29 firms in Australia.⁶² Of these firms, an internal review of the reasons for acquisition disclosed that eighteen of the firms (18) were acquired as part of either an exit strategy or succession planning within the acquired firm; six firms (6) were acquired to enable Slater & Gordon to enter regional markets where a gap existed for their brand of consumer law; four firms (4) were acquired to increase or add depth to Slater & Gordon practice areas; one firm (1) was acquired to assist with administrative processes to enable the practitioner to return to file work.⁶³

⁶⁰ Ibid.

⁶¹ Riverview Law, *LawVest awarded ABS licence*, 29 April 2014, <http://www.riverviewlaw.com/lawvest-awarded-abs-licence/>

⁶² Slater & Gordon, *Submission to the American Bar Association Commission on the Future of Legal Services*, 29 December 2014, p.3,

http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf

⁶³ Email from K. Morrison, General Counsel, Slater & Gordon, on file with the authors.

Through acquisitions Slater & Gordon have extended their reach, particularly in high population density regional and suburban areas by opening new offices and ensuring that law firms that were thinking about shutting their doors remained open.⁶⁴ The acquisition of offices and the opening of new offices have provided increased access to legal services. For example, in a number of acquisitions Slater & Gordon acquired law firms that were going to close their doors and therefore cease providing legal services to the community. Slater & Gordon's acquisitions enabled those firms to have an effective exit strategy for their partners and staff and ensure that the community was not adversely affected by their closure.⁶⁵ Slater & Gordon has also opened a number of new offices in regional and rural areas in Australia.

In acquiring firms, Slater & Gordon bring with them their well-developed experience and centralised management systems to deliver efficiency in the provision of legal services. They have been able to assist acquired firms who had previously lacked management systems. In bringing their own management systems Slater & Gordon have been able to increase the cost effectiveness of legal services offered by the acquired firms. Slater & Gordon's centralised systems and processes have also reduced the administrative burden on regional and rural firms thereby enabling these firms to focus more on the provision of legal services than on administrative tasks. The adoption of centralised practices has led to an increase and improved quality of service in regional and rural communities.

As well as law firms that have been acquired by Slater & Gordon, twenty new offices (20) have also been established since 2007.⁶⁶ These offices are all in regional or suburban areas and operate either as a stand-alone office (Office Hub or Local Contact Centre) or a centre where appointments can be made with visiting lawyers at specific times (Visiting Service). This significant increase in the number and variety of access points for those needing legal advice, assistance and support must be seen as providing increased access to justice in regional and suburban Australia.⁶⁷

⁶⁴ Slater & Gordon, *Submission to the American Bar Association Commission on the Future of Legal Services*, 29 December 2014, p.3,

http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

Slater & Gordon have also recently extended their reach overseas. In January 2012, Slater & Gordon announced its entry into the United Kingdom legal services market by acquiring the mid-sized UK personal injury firm Russell Jones & Walker.⁶⁸ Russell Jones & Walker has 10 offices, mainly in London, Manchester, Sheffield and Birmingham, with 425 staff. The acquisition also included the claims management brand *Claims Direct*.⁶⁹ Slater & Gordon have also acquired Fentons⁷⁰, Goodmans Law⁷¹, Taylor Vinters⁷², John Pickering and Partners⁷³, Pannone,⁷⁴ Leo Abse & Cohen⁷⁵ and Walker Smith Way⁷⁶. Slater & Gordon recently announced their intention to acquire Quindell's, a professional services firm.⁷⁷

Since listing in May 2013 Shine Lawyers have made a number of small file purchases, transitioned their already acquired businesses into the Shine model and acquired other firms. In June 2014 they announced the acquisition of two legal firms - Emanate Legal (a law firm in Queensland)⁷⁸ and Stephen Browne Personal Injury Lawyers (a law firm in Western Australia).⁷⁹ These acquisitions were completed in July 2014.⁸⁰ On 23 October Shine Lawyers

⁶⁸ Slater & Gordon, *Slater and Gordon and RJW join forces in the UK*, 27 April 2012, <https://www.slatergordon.com.au/media-centre/media-releases/slater-and-gordon-and-rjw-join-forces-uk>

⁶⁹ Ibid.

⁷⁰ Slater & Gordon, *Slater & Gordon UK Acquires Fentons Solicitors*, 20 August 2013, <http://www.slatergordon.co.uk/media-centre/press-releases/2013/08/slater-and-gordon-uk-acquires-fentons-solicitors/>

⁷¹ Slater & Gordon, *Slater & Gordon and Goodmans Law Join Forces*, 30 August 2013, <http://www.slatergordon.co.uk/media-centre/press-releases/2013/08/slater-and-gordon-and-goodmans-law-join-forces/>

⁷² Slater & Gordon, *Slater & Gordon UK Acquires Taylor Vinters Personal Injury Practice*, 16 August 2013, <http://www.slatergordon.co.uk/media-centre/press-releases/2013/08/slater-and-gordon-uk-acquires-taylor-vinters-personal-injury-practice/>

⁷³ Slater & Gordon, *John Pickering and Partners Joins Slater & Gordon*, 29 November 2013, <http://www.slatergordon.co.uk/media-centre/press-releases/2013/11/john-pickering-and-partners-joins-slater-and-gordon/>

⁷⁴ Slater & Gordon, *Slater & Gordon Completes Pannone Acquisition*, 14 February 2014, <http://www.slatergordon.co.uk/media-centre/press-releases/2014/02/slater-and-gordon-completes-pannone-acquisition/>

⁷⁵ Slater & Gordon, *Slater and Gordon Set to Acquire Leo Abse & Cohen and Walker Smith Way*, 10 February 2015, <http://www.slatergordon.co.uk/media-centre/press-releases/2015/02/slater-and-gordon-set-to-acquire-leo-abse-and-cohen-and-walker-smith-way/>

⁷⁶ Ibid.

⁷⁷ Slater & Gordon, *Slater and Gordon to Acquire Professional Services of Quindell*, 30 March 2015, <http://www.slatergordon.co.uk/media-centre/press-releases/2015/03/slater-and-gordon-set-to-acquire-law-firm/>

⁷⁸ Shine Corporate Ltd, *ASX Announcement*, 12 June 2014, <https://www.shine.com.au/wp-content/uploads/2014/06/01.-asx-announcement.pdf>

⁷⁹ Ibid.

⁸⁰ Shine Corporate Ltd, *2015 Half-Year Results Presentation*, p.11, <https://www.shine.com.au/wp-content/uploads/2015/02/investor-presentation-fy15-h1.pdf>

announced a third acquisition - Sciaccas Lawyers Pty Ltd and Sciaccas Family Lawyers Pty Ltd (a law firm in Queensland).⁸¹ The acquisition was completed that same month.⁸²

Shine have also opened several new offices around Australia and expanded existing offices.⁸³ Acquisitions remain a part of Shine's growth strategy and the company has, according to their 2014 Shareholder's Report, "a pipeline of potential domestic and international acquisitions."⁸⁴ Shine, like Slater & Gordon is also looking at the international legal services marketplace in terms of future expansion.⁸⁵

Since gaining an ABS licence Irwin Mitchell has acquired five businesses. Ascent, Irwin Mitchell's debt services arm has acquired four firms, PDP Management Services⁸⁶, Elliot Davies, Fraser Gowrie Johnston and HL Interactive.⁸⁷ Irwin Mitchell acquired personal injury firm MPH Solicitors in November 2013.⁸⁸ In November 2014, Irwin Mitchell announced the acquisition of Berkeley Law, a Mayfair-based private wealth specialist.⁸⁹ Berkeley Law's range of services includes international estate planning, trust advice, taxation, probate and estate administration and asset protection, amongst others.⁹⁰

⁸¹ Shine Corporate Ltd, *Shine Corporate Limited (SHJ) agrees to acquire Sciaccas Personal Injury and Family Law practice*, 23 October 2014, <https://www.shine.com.au/wp-content/uploads/2014/10/sciaccas-acquisition-23-oct-2014.pdf>

⁸² Shine Corporate Ltd, *2015 Half-Year Results Presentation*, p.11, <https://www.shine.com.au/wp-content/uploads/2015/02/investor-presentation-fy15-h1.pdf>

⁸³ Shine Corporate Ltd, *2014 Shareholder Report 2014*, p.4, <https://www.shine.com.au/wp-content/uploads/2014/10/shareholder-report-2014.pdf>

⁸⁴ Ibid.

⁸⁵ Y.Kriegler, *Australia's Shine Lawyers eyes UK acquisition*, 2 July 2013, <http://www.cb-ig.com/news-and-events/australia-s-shine-lawyers-eyes-uk-acquisition/>; C. Merritt, *Shine Lawyers looks to buy into British market*, *The Australian. News Ltd*, 17 May 2013, <http://www.theaustralian.com.au/business/legal-affairs/shine-lawyers-looks-to-buy-into-british-market/story-e6frg97x-1226644822925>

⁸⁶ Irwin Mitchell, *Irwin Mitchell Confirms Acquisition Of PDP Management Services*, 1 November 2012, <http://www.irwinmitchell.com/newsandmedia/2012/november/irwin-mitchell-confirms-acquisition-of-pdp-management-services>

⁸⁷ Irwin Mitchell, *Irwin Mitchell Announces Acquisition Of HL Interactive*, 3 March 2014, <http://www.irwinmitchell.com/newsandmedia/2014/march/irwin-mitchell-announces-acquisition-of-hl-interactive>

⁸⁸ Irwin Mitchell, *Irwin Mitchell Acquires Specialist Personal Injury Firm MPH Solicitors*, 14 November 2013, <http://www.irwinmitchell.com/newsandmedia/2013/november/irwin-mitchell-acquires-specialist-personal-injury-firm-mph-solicitors>

⁸⁹ Irwin Mitchell, *Irwin Mitchell Acquires Private Wealth Specialists Berkeley Law*, 6 November 2014, <http://www.irwinmitchell.com/newsandmedia/2014/november/irwin-mitchell-acquires-private-wealth-specialists-berkeley-law>

⁹⁰ Ibid.

In addition to these acquisitions, Irwin Mitchell has opened new offices since gaining an ABS licence. In February 2014 they announced plans to open an office in Southampton.⁹¹ In April 2014, Irwin Mitchell announced plans to open an office in Cambridge.⁹² Upon announcing the opening of the office in Cambridge Andrew Tucker, Group Chief Executive and Partner stated as follows:

“Regional growth and development is a key component of our strategy and this will be our second new office this year. It is another statement of our intent to expand our business significantly so more clients can access the range of high quality services which we offer.”⁹³

In June 2012 Riverview opened its first international office in New York, providing an alternative route into the English legal system for US clients requiring advice or representation there. Riverview Law recently opened an office in Manchester with plans to further expand.⁹⁴ Riverview Law’s main office is in Bromborough, Wirral. The firm chose to open a new Manchester office as part of their expansion strategy.⁹⁵ The office is to be staffed by up to 20 people. Riverview Law plans to double the number of staff in Manchester over the next twelve months. After applying to become an ABS, Riverview law announced it would double in size, “creating up to 100 new posts” during 2014. Karl Chapman, the CEO of Riverview explained the growth saying, “[o]ur exponential growth rates show that customers are voting with their wallets.” The growth means that more positions will open up for lawyers during 2015. The firm also stated that only “around half of the new roles will be for qualified lawyers and ‘business law executives.’”⁹⁶

⁹¹ Irwin Mitchell, *Irwin Mitchell To Open Southampton Office*, 10 February 2014,

<http://www.irwinmitchell.com/newsandmedia/2014/february/irwin-mitchell-to-open-southampton-office>

⁹² Irwin Mitchell, *Irwin Mitchell To Open Cambridge Office*, 16 April 2014,

<http://www.irwinmitchell.com/newsandmedia/2014/april/irwin-mitchell-to-open-cambridge-office>

⁹³ *Ibid.*

⁹⁴ Riverview Law, *Riverview Law opens Manchester office*, 4 March 2015,

<http://www.riverviewlaw.com/riverview-law-opens-manchester-office-3/>

⁹⁵ Riverview Law, *Riverview Law plans Manchester office opening following 100% revenue growth*, 12 January 2015, <http://www.riverviewlaw.com/riverview-law-plans-manchester-office-opening-following-100-revenue-growth/>

⁹⁶ *Riverview Plots Major Expansion, Legal Futures*. 27 Aug. 2013, <http://www.legalfutures.co.uk/latest-news/riverview-plots-major-expansion>

Expansion of practice areas

Although Slater & Gordon's core personal injury litigation services comprise 80% of the revenue of their Australian business, in recent years Slater & Gordon have been able to diversify and build capability in other non-personal injury practices. These include commercial litigation, conveyancing, business law, family law, wills, probate and estate litigation.

In November 2011, Slater & Gordon acquired the specialist Queensland conveyancing firm, *Conveyancing Works*, which has since provided a base for expansion into the conveyancing market in Queensland, New South Wales and Victoria.⁹⁷ *Conveyancing Works* developed a platform and practice management system which enables it to complete high volumes of transactions for clients efficiently, keeping the cost to the client low. The acquisition of *Conveyancing Works* was a major step forward in Slater & Gordon's strategy of developing its non-personal injury legal practices. Since the acquisition, Slater & Gordon have introduced Conveyancing as a national practice group within the firm. In July 2012 Slater & Gordon announced that they would begin a national roll-out of their Queensland-based conveyancing platform.⁹⁸ Slater & Gordon have also considerably expanded their family law practice and their property practice since listing.⁹⁹

Historically Shine also focused on personal injury litigation. Shine's strategy has been to maintain a highly specialised focus on damages based plaintiff litigation. Shine has described this strategy as "inch wide; mile deep."¹⁰⁰ In recent years however Shine has broadened its services to include other practice areas within damages based plaintiff litigation, such as professional negligence, human rights, environmental cases, land owner rights and class actions.¹⁰¹ In the 2014 Financial Year Shine Lawyers reported that these emerging practice areas grew from 12% to 15% of Total Revenue.¹⁰² According to Simon Morrison, Managing

⁹⁷ Slater & Gordon, *Slater and Gordon to acquire Conveyancing Works*, 17 November 2011, <https://www.slatergordon.com.au/media-centre/media-releases/slater-and-gordon-acquire-conveyancing-works>

⁹⁸ Slater & Gordon, *Slater and Gordon to roll-out successful conveyancing platform*, 13 July 2012, <https://www.slatergordon.com.au/media-centre/media-releases/slater-and-gordon-rollout-successful-conveyancing-platform>

⁹⁹ Slater & Gordon Limited, *Small to Mid Caps*, http://www.asx.com.au/smalltomidcaps/asia/oct2011/Company_Slater.pdf

¹⁰⁰ Shine Lawyers, *Areas of Operation and Practice*, <https://www.shine.com.au/investors/areas-operation-practice/>

¹⁰¹ Ibid.

¹⁰² Shine Corporate Ltd, *2014 Shareholders Report*, p. 5, <https://www.shine.com.au/wp-content/uploads/2014/10/shareholder-report-2014.pdf>

Director, Shine Lawyers the introduction of external capital, has assisted Shine Lawyers in broadening the level of their client offerings:

“It has enabled us to venture into new practice areas and in some cases, practice areas that other law firms were reluctant to explore for various reasons.

Examples of this in our case, include being able to offer speculative fee structures in areas of law that have been traditionally fee for service, providing better outcomes for clients.

Scale will in the future play a significant role in broadening the levels of client access to litigation on a speculative basis, thus meaning more clients who might otherwise not have had access to lawyers for redress, can now do so. There is no question that our ability to significantly scale our firm would have been greatly diminished had it not been for the listing advantages.”¹⁰³

Irwin Mitchell, like Slater & Gordon and Shine Lawyers, had prior to gaining ABS licences predominantly focused on the personal injury market. According to Andrew Tucker, Chief Executive of Irwin Mitchell, the focus today is now on growing other areas of their business such as private client wealth.¹⁰⁴ In 2013, Irwin Mitchell boosted its personal legal services division with three new family law partners, a new serious injury partner and two new associate appointments to the family and contentious probate teams this year. Since the start of 2012 the firm has also recruited 18 partners to its Business Legal Services division.¹⁰⁵

Billing Structures

Slater & Gordon was the first law firm in Australia to introduce conditional fee or “No Win No Fee” arrangements. No-Win No Fee arrangements are provided in all areas of personal injuries compensation including asbestos-related diseases, workers claims, compensation claims, motor vehicle claims and medical law claims. Slater & Gordon will only use a No Win - No Fee arrangement if they are satisfied that the claim has legal merit; without the No Win - No Fee arrangement the client could not afford to take legal action; the client is fully aware of any likely costs to prepare and run the case and the client is informed of the risk of paying the other party's costs if their claim is unsuccessful.

¹⁰³ Email from Simon Morrison dated 14 April 2014, on file with the authors.

¹⁰⁴ Irwin and Mitchell, *Irwin Mitchell Targets Private Client Growth With Experienced Wills Disputes Partner*, 12 November 2013, <http://www.irwinmitchell.com/newsandmedia/2013/november/irwin-mitchell-targets-private-client-growth-with-experienced-wills-disputes-partner>

¹⁰⁵ Legal Futures, *Irwin Mitchell targets private client growth with experienced wills disputes partner*, 11 November 2013, <http://www.legalfutures.co.uk/associate-news/irwin-mitchell-targets-private-client-growth-experienced-wills-disputes-partner>

In addition to No Win No Fee, Slater and Gordon was the first national law firm in Australia to introduce a national fixed fee service covering every stage of a family law matter up to and including court proceedings in Australia. At the time the announcement was made, Andrew Grech, Slater & Gordon's Managing Director said the introduction of a fixed fee service would mean that more people would be able to access legal services. According to Slater & Gordon the introduction of fixed fee arrangements were a result of research they had conducted regarding client needs and expectations. Slater & Gordon, in their submission to the ABA's Commission on the Future of the Legal Profession explain as follows:

“This research confirmed that uncertainty regarding legal costs substantially increases client anxiety in what is already a stressful period in their lives. The fear of legal costs escalating also inhibits individuals from seeking legal advice at all, and is no doubt partly responsible for the escalation of self-represented litigants in our Court system. The fear of uncertain and unaffordable legal costs is diminished by the ‘fixed-fee’ arrangements. It gives greater visibility of costs up front for clients.”¹⁰⁶

Slater & Gordon also provide fixed fee arrangements in other practice areas including conveyancing, veterans and military compensation and are in the process of expanding the model to other practice areas.¹⁰⁷

Shine's main form of billing, like Slater & Gordon is also “No-Win No Fee”. This billing arrangement, according to Shine's website, is offered on the belief that “no injured person should be denied access to justice because of their financial situation. The No Win No Fee guarantee Shine Lawyers has put in place is part of their promise and is available on a range of legal services.”¹⁰⁸

Shine Lawyers fund the initial costs associated with investigating a claim as well as all third party expert costs during the litigation. Under this billing arrangement clients are not required to pay any of the costs incurred in running a case. On the other hand, if the matter is settled, clients are required to pay Shine Lawyers a fee. This fee ordinarily includes costs for professional services and disbursements. Shine offers this billing arrangement for all matters including Asbestos Law, Aviation Law, Class Actions, Disability Insurance and

¹⁰⁶ Slater & Gordon, *Submission to the American Bar Association Commission on the Future of Legal Services*, 29 December 2014, p.4,

http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf

¹⁰⁷ Ibid.

¹⁰⁸ Shine Lawyers, *No Win No Fee Services*, see <http://www.shine.com.au/service/no-win-no-feelawyers/>

Superannuation Claims, Environmental Claims, Financial Advisor Claims, Medical Law, Motor Vehicle Claims, Law Product Liability Claims, Law Professional Negligence, Public Injuries Law, TPD Claims and Workplace Claims.

Irwin Mitchell, similar to Slater & Gordon and Shine Lawyers primarily offer their clients a conditional fee agreements.¹⁰⁹ This arrangements is normally offered to clients together with an insurance policy. Irwin Mitchell, like Slater & Gordon also offer fixed fee arrangements for divorce. They charge £540 if the client is filing the divorce and £264 if the client is responding to a petition from their husband or wife.¹¹⁰ These fees do not include standard court fees which must be paid separately.¹¹¹ The firm handles everything from instruction to conclusion of the divorce within this fee.

Riverview offers a range of lower cost fixed-fee legal services and fixed-fee annual contracts for businesses and a unique “no quibble” refund policy. The policy operates where a client purchases legal counsel and the service does not, in the first month, live up to the clients expectations. If this occurs, the client can cancel their contract and Riverview Law will refund their money. In addition, Riverview Law also offers a range of other fixed fee arrangements that are not necessarily designed for small business but all of which are designed to provide greater access to legal services.

Riverview Law also offers (through Riverview Chambers) a divorce service for high net - worth couples (in excess of £500,000) that combines fixed-price packages with direct access to the country’s leading divorce barristers.¹¹² In order to minimise costs as a divorce proceedings progress and to provide certainty and transparency to clients, Riverview Law offers the service in four stages, with prices depending on whether a QC or junior barrister is instructed. There is a fixed fee for the initial conference – where the merits of the case are examined and a strategy developed which starts at £1,000 for a junior barrister; the first court appointment to decide how the case will proceed starts at £5,000; the financial dispute resolution hearing starts at

¹⁰⁹ Irwin Mitchell, *How Much Will It Cost To Claim ?*, <http://www.irwinmitchell.com/faq/how-much-will-it-cost>; Irwin Mitchell, *What Is No Win No Fee?*, <http://www.irwinmitchell.com/faq>

¹¹⁰ Irwin Mitchell, *Fixed Fee Divorce*, <http://www.irwinmitchell.com/personal/divorce-family-law/divorce-relationship-breakdown/fixed-fee-quick-easy-divorce>

¹¹¹ Ibid.

¹¹² Riverview Law, *Fixed-fee packages slash the cost of divorce for wealthy couples*, 8 May 2012, <http://www.riverviewlaw.com/fixed-fee-packages-slash-the-cost-of-divorce-for-wealthy-couples/>

£17,500; and a bespoke fixed fee will then be quoted if the case goes to a full-blown trial. Pre-divorce advice is also offered, such as a pre-nuptial or mid-nuptial agreement, and starts at £2,500. It is the first time a UK legal business has published and guaranteed the cost of divorce for such couples.¹¹³ According to Riverview Law, “The approach gives much needed certainty and peace of mind for divorcing couples. It ensures that both sides can afford access to the best lawyers so that the costs of divorce do not eat up a couple’s assets.”¹¹⁴

In September 2013 Riverview Law commenced offering, together with DMH Stallard, a fixed fee arrangement for M&A transactions. The fixed-priced M&A offering starts with a free consultation to assess the customer’s exact needs. Within 48 hours, a no obligation fixed-fee proposal is presented. The agreed deal is delivered by a team selected from over 150 corporate lawyers across the two organisations, and put together according to the deal’s specific requirements. If the deal fails to complete through no fault of the client, then only half the fee is charged. A fixed fee is available regardless of the size of deal. Riverview Law and DMH Stallard guarantee no change to the fee unless the parameters of the deal, as outlined at the initial meeting, shift materially.¹¹⁵

In January 2014 Riverview Law teamed up with US legal technology leader *Legal OnRamp* to enable banks to comply cost-effectively with complex regulatory requirements such as Recovery and Resolution Plans (RRP).¹¹⁶ The Riverview Law/Legal OnRamp service enables the banks to identify all of a customer’s contracts and supporting documents, including a gap analysis and escalation process for recovering incomplete contracts/documents; upload completed contracts and documents onto the collaboration platform; review and map each contract/document against a customer-tailored checklist of up to 200 legal and related questions; quality assure the review process and organise the information into appropriate contract families and systems maps; help resolve any operational and/or regulatory issues with

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Riverview Law, *Fixed-fee M&A to cut the cost of buying and selling companies*, September 9, 2013, <http://www.riverviewlaw.com/latest-news/fixe-fee-ma-to-cut-the-cost-of-buying-and-selling-companies>

¹¹⁶ Major banks in the UK, US and Europe are now required to put in place RRP’s - called ‘living wills’ - to ensure safe re-organisation in the event of financial trouble. The living will must include a wide range of information, including contractual obligations across the entire organisation. In addition, a number of banks will face similar requirements in relation to ‘ring-fencing’ areas of their activities.

any contracts and/or documents; and if required, provide on-going tactical and strategic management of existing and new contracts.¹¹⁷

The provision of online services

In 2010 Slater & Gordon launched an online will service.¹¹⁸ The online Will service provides a fast and convenient way to draft a legal Will at an affordable cost and offers free storage of the Will once it is completed. The service does not allow clients with complex estates to complete an online Will and recommends that the client seek personal legal advice from an estate planning professional.

In 2011 and 2012, Slater & Gordon offered their online Wills service free for the duration of Law Week, representing a saving of \$150 per user.¹¹⁹ In 2011 more than 3,100 Australians took advantage of the offer and in 2012 more than 7,600 people registered online during that period to obtain a Will.¹²⁰ In 2013 Slater & Gordon further developed this service by including provisions for social media and virtual property across all succession planning services, allowing Australians to leave instructions for the future of their ‘digital self’.¹²¹ Clients can briefly describe how they want these assets handled.

In May 2014 Slater & Gordon launched a new digital legal service for unfair dismissal claims.¹²² The online service provides information, advice and assistance to workers who believe they have been unfairly dismissed. The service guides customers through a free set of questions to determine their eligibility to make an unfair dismissal claim. For a fixed fee the online site collects key information, and Slater and Gordon offers a 30 minute telephone

¹¹⁷ Riverview Law, *Riverview Law partners with tech pioneer Legal OnRamp to deliver groundbreaking legal services to banks*, January 6, 2014, <http://www.riverviewlaw.com/latest-news/riverviewlaw-partners-with-us-tech-pioneer-legal-onramp-to-deliver-ground/>

¹¹⁸ Slater & Gordon, *Online Will*, <https://www.slatergordon.com.au/wills/making-will/online-will>

¹¹⁹ Slater & Gordon, *Thousands more Australians protected by a will*, dated 25 May 2012, <https://www.slatergordon.com.au/media-centre/media-releases/thousands-more-australians-protected-will>

¹²⁰ Slater & Gordon, “More than 3,100 Australians take up free wills as part of Law Week”, 31 May 2011, available at <http://www.slatergordon.com.au/media/news-mediareleases/nsw-qld-wa/More-than-3100-Australians-take-up-free-wills-as-part-of-Law-Week002>

¹²¹ Slater & Gordon, *Lawyers urge Australians to consider their digital legacy*, 16 October 2013, <https://www.slatergordon.com.au/media-centre/media-releases/lawyers-urge-australians-consider-their-digital-legacy>

¹²² Slater & Gordon, *Slater and Gordon launches new digital legal service*, 9 May 2014, <https://www.slatergordon.com.au/media-centre/media-releases/slater-and-gordon-launches-new-digital-legal-service>

consultation with a legal professional to review a draft claim. Those customers whose claims can proceed are then offered assistance with filling out the appropriate paperwork to be lodged with the regulatory body responsible for dealing with claims.¹²³ The service is one of the firm's first attempts in Australia to offer a fixed-priced, self-serve online legal service, with a telephone consultation.¹²⁴

Irwin Mitchell also offers an online Will service.¹²⁵ The services commences with a Will questionnaire being sent to a client through a secure website.¹²⁶ Once the questionnaire has been completed and is sent to Irwin Mitchell, the firm contacts the client to make a payment and once payment is made a draft Will is produced.

Riverview Law offers clients unlimited access to an online library containing hundreds of documents, FAQs, letters and templates relating to running a business.¹²⁷

The provision of other services

In addition to above, three out of the four firms offer other services like class actions, pro bono and cultural awareness, education and social work programs for clients.

Class actions are a mechanism by which large numbers of individuals that lack the capacity to run major litigation individually can address systemic social problems. External investment can allow firms additional investment to give them the ability to provide where necessary financial backing to run important social impact cases and foster valuable relationships with litigation funders to ensure the effective running of large cases which would otherwise be outside the capacity of the vast majority of law firms. Again, this provides a credible mechanism for disadvantaged clients to achieve access to justice.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Irwin Mitchell, *Make A Will Online*, <http://www.irwinmitchell.com/personal/wills-and-estates/wills/buy-online-eligible>

¹²⁶ Irwin Mitchel, *What Happens Next?*, <https://onlinewills.irwinmitchell.com/IM/WhatHappensNext.aspx>

¹²⁷ Riverview Law, *Riverview Law launch targets businesses with fixed price access to legal advice as legal services revolution accelerates*, 20 February 2012, <http://www.riverviewlaw.com/riverview-law-launch-targets-businesses-with-fixed-price-access-to-legal-advice-as-legal-services-revolution-accelerates/>

Similarly, pro bono services offer legal assistance to people who are otherwise unable to afford it. This is particularly important for regional and rural law firms, who, if they have the capacity to do so, provide pro bono assistance to small community and sports organisations that form the backbone of community life. In Australia, the legal profession contributes a significant amount of its professional expertise through pro bono work, though more is always needed.

Slater & Gordon are prolific providers in the areas of both class actions and pro bono. Slater & Gordon have, for many years, been involved in identifying and conducting large class or group legal actions. In 2012, for example, Slater & Gordon, achieved settlement and Court approval of the Centro class action.¹²⁸ This was Australia's largest shareholder class action settlement. The clients in the Centro litigation, about 5,000 mostly mum and dad investors, agreed on a settlement figure of \$50 million. In July 2012 a court action brought by the lead plaintiff of a group affected by disabilities caused by the use of the drug thalidomide during pregnancy also settled successfully.¹²⁹ This action was conducted as a joint venture with Gordon Legal on a No Win-No Fee basis for the lead plaintiff. In early August 2012 the shareholder class action against Nufarm Ltd settled. Other class actions run by Slater & Gordon have included the Cranbourne Gas Leak; Fincorp Investor; Fuel Surcharges; ION Shareholders; Nufarm Limited; Opes Prime; OZ Minerals Limited; Sigma Pharmaceuticals Ltd; Sonray Capital and Storm Financial.¹³⁰ Although Slater & Gordon do not hold exact figures for the number of people involved in the class actions they have run, Andrew Grech, the Managing Director of Slater & Gordon advises that but for the class action occurring, the clients involved would likely have decided not to take legal action.

Slater & Gordon have had a longstanding commitment to social responsibility. Over the years Slater & Gordon have performed significant amounts of pro bono work. Slater & Gordon's criteria for taking on pro bono work is that the matter "establishes or preserves the rights of those who cannot afford professional legal advice without subsidy, the disadvantaged or marginalised, or persons otherwise deserving public support."¹³¹

¹²⁸ Slater & Gordon, *Australia's biggest class action settlement delivers closure*, 10 May 2012, available at <http://www.slatergordon.com.au/media/news-media-releases/vic-act-sa-tasnt/Australias-biggest-class-action-settlement-delivers-closure-to-thousands-of-mum-and-dadinvestors-in-Centro>

¹²⁹ Slater & Gordon, *Thalidomide Class Action Breakthrough*, 18 July 2012, available at <http://www.slatergordon.com.au/media/news-media-releases/vic-act-sa-tas-nt/thalidomideclassaction-breakthrough12001>

¹³⁰ Slater & Gordon, *Landmark Cases*, <https://www.slatergordon.com.au/class-actions/landmark-cases>

¹³¹ Email from Kara Sheehan, In-House Counsel, Slater & Gordon, 23 December 2013. Email on file with the authors.

In 2008 Slater & Gordon launched a Pro Bono and Public Interest Policy to encourage staff to perform pro bono and public interest work for which the company receives no financial benefit.¹³² In 2010 they developed a Pro Bono and Community Engagement Policy that provides positive incentives to each Practice Group as well as administrative staff managers, to encourage participation in pro bono and community engagement work.¹³³ In 2010, Slater & Gordon appointed a Pro Bono Coordinator to manage the administration and further development of a pro bono culture.¹³⁴ The coordinator is supported by the Pro Bono & Community Engagement Committee which meets regularly to discuss applications and potential projects that fit within the policy's Guidelines.

In addition to providing legal assistance in the form of class actions and pro bono, Slater and Gordon also offer non-legal services. In 2010, for example, Slater & Gordon developed a '*We Speak Your Language*' Program to improve Slater & Gordon's cultural awareness and to provide better service to people from non-English speaking and culturally diverse backgrounds.¹³⁵ The '*We Speak Your Language*' Program, comprises four main components: "a legal helpline for non-English speakers who take initial calls from clients and assist them in their own language; translator and interpreter service to assist clients in meetings or phone calls and in the preparation of documents in their own language; new website which offers translated pages, and online enquiry forms in a number of languages; and an online cross cultural awareness training program designed to assist staff to improve their own cultural awareness and build on their competencies."¹³⁶

In 2009 Slater & Gordon established a Social Work Services team with two social workers based in the Melbourne office and one based in the Sydney office providing social work services to clients experiencing acute and chronic financial difficulty.¹³⁷ The Social Work Service team has developed a Legal Education Program to provide legal education forums to

¹³² Slater & Gordon, *Submission to the American Bar Association Commission on the Future of Legal Services*, 29 December 2014, p.4,

http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Slater & Gordon, *We Speak Your Language*, <https://www.slatergordon.com.au/more-services/we-speak-your-language>

¹³⁶ Slater & Gordon, *Submission to the American Bar Association Commission on the Future of Legal Services*, 29 December 2014, p.5,

http://www.americanbar.org/content/dam/aba/images/office_president/slater_and_gordon_submission.pdf

¹³⁷ Slater & Gordon, *Social Work Services*, <https://www.slatergordon.com.au/more-services/social-work-services>

clinical social workers. The Program has received accreditation from the Australia Association of Social Workers (‘AASW’), which means that social workers attending a session can receive CPE points.

Shine Lawyers has also played a major role in class actions in Australia.¹³⁸ Shine’s class actions have included an action brought against DePuy International Ltd (DePuy) and Johnson & Johnson Medical Pty Ltd (JJM) on behalf of 2,000 Australians implanted with one or more DePuy ASR hip implants;¹³⁹ and, a class action against Royal Bank of Scotland (RBS) brought on behalf of people who were negligently advised by Navra Financial Services Pty Ltd (Navra) to buy unlisted RBS-issued rolling instalment warrants or managed fund instalment warrants (“claim warrants”), between February 2008 and March 2011.¹⁴⁰

Shine Lawyers additionally conducts pro bono work in relation to asylum seekers; vulnerable people such as children and the mentally ill; indigenous rights and civil and political rights¹⁴¹ as well as a Community Program which aims to “promote and stand up for positive social values within the communities we work in” and “provide benefit and build relationships within the local areas we work in.”¹⁴²

Shine Lawyers is also involved in the Environmental Justice Society (‘EJS’). An organization which assists Australians voice their concerns and pursue justice if their life, or the livelihood of their community, is negatively impacted by the actions of others.¹⁴³ Erin Brockovich is the patron of the EJS and Shine provides ongoing administrative support. The firm also supports a number of charitable organizations and community groups.¹⁴⁴

Irwin Mitchell’s social responsibility program includes supporting communities in which they operate through, for example, the Irwin Mitchell Charities Foundation (IMCF), an independent,

¹³⁸ Shine Lawyers, *Class Actions*, <https://www.shine.com.au/service/class-actions/>

¹³⁹ Shine Lawyers, *DePuy ASR Hip Replacement Class Action*, <https://www.shine.com.au/service/class-actions/depuy-asr-hip-replacement-class-action/>

¹⁴⁰ Shine Lawyers, *Royal Bank of Scotland (RBS) Class Action*, <https://www.shine.com.au/service/class-actions/royal-bank-scotland-rbs-class-action/>

¹⁴¹ Shine Corporate Ltd, *2014 Shareholders Report*, p.12, <https://www.shine.com.au/wp-content/uploads/2014/10/shareholder-report-2014.pdf>

¹⁴² Shine Lawyers, *In the Community*, <https://www.shine.com.au/media-centre/in-the-community/>

¹⁴³ Environmental Justice Society, *Who we are*, <http://www.environmentaljustice.com.au/who-we-are/>

¹⁴⁴ Ibid.

registered charity¹⁴⁵; supporting diversity and wellbeing¹⁴⁶; supporting the environment¹⁴⁷; and, pro bono. The majority of their pro bono work is delivered by support to Citizens Advice and Law Centres across the country.¹⁴⁸ The firm support numerous ethnic communities in the West Midlands and South Yorkshire.

Irwin Mitchell is also a member of the Pro Help scheme, facilitated by Business in the Community.¹⁴⁹ This programme enables them to provide pro bono legal support to a wide range of community groups/organisations throughout the country. Additionally the firm's Bristol, Birmingham, Glasgow, Leeds, London and Sheffield offices are all involved in local PRIME programmes, a consortium of law firms aiming to improve social mobility in the legal sector.¹⁵⁰

In 2013 Riverview Law participated in the Legal Walk as part of The Justice Gap team.¹⁵¹

As this part of the paper has attempted to demonstrate, the impact of external investment for these four law firms has translated into these firms being able to offer an array of services. But for this capital injection it is questionable whether these services would be offered.

CONCLUSION

Noted futurist and political commentator Professor Richard Susskind argues that that there are six 'building blocks' which can be used to construct an access to justice policy in the current technological age. These building blocks include empowering the public to deal with more of their legal affairs; streamlining the legal profession to embrace the possibilities of technology; the establishment of a healthy third sector for those whom Professor Susskind says 'are in need of legal assistance [and who] want a kind, empathetic ear with only a light sprinkling of legal expertise'; a new wave of imaginative, entrepreneurial providers; easily accessible primary

¹⁴⁵ Irwin Mitchell, *Community*, <http://www.irwinmitchell.com/about-us/social-responsibility/community>

¹⁴⁶ Irwin Mitchell, *Our People*, <http://www.irwinmitchell.com/about-us/social-responsibility/diversity>

¹⁴⁷ Irwin Mitchell, *Our Environment*, <http://www.irwinmitchell.com/about-us/social-responsibility/environment>

¹⁴⁸ Irwin Mitchell, *Pro Bono*, <http://www.irwinmitchell.com/about-us/social-responsibility/pro-bono>

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ Riverview Law, *Riverview Law are proud to be part of Team Justice Gap for the London Legal Walk*, 17 April 2013, <http://www.riverviewlaw.com/riverview-law-are-proud-to-be-part-of-team-justice-gap-for-the-london-legal-walk/>

sources; and an enlightened set of government policies on public sector information.¹⁵² The authors of this paper do not disagree.

In order to facilitate this policy however, two things need to happen. Firstly, law firms will have to spend money on new technology (which they are unlikely to do without an injection of external funds.) Secondly, regulators must give imaginative, entrepreneurial legal services providers the flexibility to structure themselves as they see fit. In order to do this regulators need to revisit areas of concern and understand the need for flexibility in the delivery of legal services. The time has now come for this to occur.

Lifting the regulatory barriers allowing non-lawyer ownership of law firms is a great place to start. In the authors view, opposition to external ownership is neither in the community's best interests, nor is it in the best interests of the legal profession. As this paper has attempted to demonstrate through the case studies of four law firms, additional funds as a result of external ownership can better enable law firms to acquire existing offices and open new offices in areas where the demand for legal services are being unmet; expand practice areas to offer clients assistance in a wider range of legal areas; introduce alternative billing arrangements such as fixed fees for all retainers (not just for personal injury matters); develop online services thereby facilitating greater access for clients; and, provide pro bono and other non-legal services clients often require.

Concerns about the diminution of ethics and professionalism are unfounded and arise out protectionism and excessive self-interest. As the events of Dewey & LeBoeuf illustrate, law firm structures have little to do with lawyers behaving badly. Rather than seeing the demise of professional ethics as a result on non-lawyer involvement, the legal services marketplace in both Australia and England and Wales is flourishing. Legal services are being provided to a greater number of people than before. The authors submit that lawyers and regulators of the legal profession who fail to acknowledge this fact will soon find themselves left behind.

¹⁵² R.Susskind, *The End of Lawyers?: Rethinking the nature of legal services*, OUP, paperback version, 2010, p. 18.