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Access to Justice Meets Opportunity: Reverse Auction Ventures as a Possible Solution to the Unaffordability of Personal Plight Legal Services and Oversupply of Lawyers

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Access to Justice Meets Opportunity: Reverse Auction Ventures as a Possible Solution to the Unaffordability of Personal Plight Legal Services and Oversupply of Lawyers

By

Shawn Quigg

A Major Research Paper
Submitted to the Faculty of Graduate Studies
through the Odette School of Business
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the Degree of Master of Business Administration
at the University of Windsor

Windsor, Ontario, Canada

2019

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April 17, 2019

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ABSTRACT

Individuals who experience personal plight legal issues face several barriers to justice. Low- and medium-income earners are especially disadvantaged, given the high financial, temporal, and emotional costs associated with accessing justice. Simultaneously, law schools are graduating more law students than jobs available. The imbalance leaves many young lawyers, with mounting debt, no means with which to pay off the debt. The purpose of this study is to assess the viability of a legal services reverse auction platform as a solution to the access to justice and lawyer oversupply problems.

The feasibility study examines the characteristics of the business models of twenty-one Internet-based reverse auctions. Commonalities between the eight successful legal services reverse auction platforms were compared to those of the thirteen unsuccessful legal services reverse auctions to draw inferences about whether or not a future legal services reverse auction would be feasible as a new venture and, if so, how to implement the basic strategy and structure of the new venture. The study revealed that a legal services reverse auction new venture would be feasible, pending further study. The study analysis identified that supporting on-platform collaboration between lawyer and client, making various non-traditional billing methods available, maintaining lawyer profitability, and offering business or entrepreneur legal services in addition to personal plight are likely critical to the success of a future legal services reverse auction new venture.

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TABLE OF CONTENTS

DECLARATION OF ORIGINALITY	iii
ABSTRACT.....	iv
ACKNOWLEDGEMENTS	v
LIST OF TABLES.....	ix
LIST OF APPENDICES.....	x
CHAPTER 1 — INTRODUCTION.....	1
CHAPTER 2 — JUSTICE, AFFORDABILITY, AND THE BUSINESS OF LAW	3
Affording Justice, A Treacherous Journey.....	3
The Business of Law	5
<i>Revenues Minus Expenses Equals Profit</i>	<i>5</i>
<i>Traditionalism and Private Legal Sector Billing Practices</i>	<i>6</i>
<i>Comfort: The Same Ol’ Song and Dance</i>	<i>9</i>
CHAPTER 3 — THE FUTURE STATE OF THE LEGAL SERVICES INDUSTRY	11
Is Change on the Horizon?	11
Innovation Holds the Answer	14
CHAPTER 4 — RESEARCH METHODS	17
CHAPTER 5 — ENTREPRENEURSHIP, MANAGEMENT, AND E-COMMERCE.....	19
CHAPTER 6 — LEGAL SERVICES REVERSE AUCTION ENTERPRISES IN NORTH AMERICA.....	22
The Legal Services Reverse Auction Model is Not New	22
Scope of the Identified Legal Services Reverse Auction Enterprises	22
Limitations.....	23
Characteristics and Commonalities of Successful Ventures.....	23
<i>What is Success?</i>	<i>23</i>
<i>Lifespan</i>	<i>24</i>
<i>Geographic Scope</i>	<i>24</i>

<i>Legal Services & Client Scope</i>	25
<i>Revenue Model</i>	25
<i>Business Model</i>	25
Characteristics and Commonalities of Unsuccessful Ventures	26
<i>What is Failure?</i>	26
<i>eLawForum</i>	26
<i>Lifespan</i>	27
<i>Geographic Scope</i>	27
<i>Legal Services & Client Scope</i>	27
<i>Revenue & Business Model</i>	27
Comparison of Successful and Unsuccessful Ventures	28
<i>Timing</i>	28
<i>Geographical Scope</i>	28
<i>Revenue & Business Model</i>	29
<i>Legal Services and Client Scope</i>	30
Regulatory Environment & Restrictions	30
Strategic Considerations	32
<i>Market Factors</i>	32
<i>Clients</i>	33
<i>Lawyers</i>	34
<i>Business Model</i>	35
<i>Ethical Issues</i>	38
<i>Strategic Partnerships</i>	38
Lessons Learned & Assessment of Feasibility	38
CHAPTER 7 — CONCLUSION	40
WORKS CITED	43
APPENDICES	55
Appendix A — Aggregated Markers of Pre-Existing Legal Services Reverse Auction Enterprises	56

Appendix B — Arizona State Bar Extension of Legal Services Link Contract	63
Appendix C — Successful LSRAE Business Model Characteristics	64
Appendix D — Failed LSRAE Business Model Characteristics	68
Appendix E — Relevant Regulatory Constraints on the Practices of Lawyers and Law Firms.....	72
VITA AUCTORIS	74

LIST OF TABLES

Table	Page
Table 1. Legal Aid Ontario Gross Family Income Funding Thresholds	4
Table 2. The Four Quadrants of Legal Practice	5
Table 3. Description of Various Billing Techniques	7
Table 4. Reverse Auction Discovery Search Terms	17

LIST OF APPENDICES

Appendix A — Aggregated Markers of Pre-Existing Legal Services Revers Auction Enterprises

Appendix B — Arizona State Bar Extension of Legal Services Link Contract

Appendix C — Successful LSRAE Business Model Characteristics

Appendix D — Failed LSRAE Business Model Characteristics

Appendix E — Relevant Regulatory Constraints on the Practices of Lawyers and Law Firms

CHAPTER 1 — INTRODUCTION

Access to justice is not affordable to all. It may not even be affordable for most (Semple, *Accessibility, Quality, and Profitability* 21). Access to justice, the “equal right to participate in every institution where law is debated, ..., administered, ... and applied,” can be more broadly interpreted to mean the legal system’s recognition of the need to reduce “substantive injustice” for those in pursuit of justice (Law Commission of Ontario Part One). An access to justice deficit exists in Canada. One study showed that every three years, nearly 50% of Canadians encounter a personal plight legal issue, and yet only 20% of those benefitted from professional legal advice (Farrow 1, 7-8; Semple, *Accessibility, Quality, and Profitability* 21). Most middle-income earners earn too much to qualify for government-funded legal aid services, yet are unable to afford professional legal services (Farrow 9; Semple, *Accessibility, Quality, and Profitability* 21). The access to justice deficit may be even larger in the United States (Matthews and Botero 25).

Accessing justice typically requires the services of a lawyer. Lawyers, though, are on average inherently profit-motivated professionals who employ others, maintain offices, are liable for large law school debts, and are interested in earning an above-average salary. Moreover, lawyers hold the regulatory and professional requirements necessary to competently represent others in legal disputes or transactions, and thus hold a monopoly on the offering of such legal services. While lawyers are not benevolent beings, they are arguably under an ethical duty to ensure access to justice (McDowell and Sheikh 6-10). In addition, changing economic and market factors may signal that the current legal services business model employed by most law firms has or will become unsustainable. It is thus imperative that the legal services industry find innovative and profitable solutions to offer legal services to those who cannot afford them.

Can a legal services reverse auction enterprise help solve some of the access to justice crisis present in North America? If so, what are the characteristics of such an enterprise? What type of strategy is required in order for the enterprise to succeed financially? This paper is an inductive feasibility study of the legal services reverse auction business model whereby clients propose legal issues they need assistance with, qualified lawyers bid in some form on the right to offer those services, and clients select a winning bidder. The paper will:

- Explore the underlying access to justice issues facing potential legal services clients in Canada and the United States,
- Analyze the economics of the legal services industry, including the balance between new law graduates and available legal positions,

- Review the economic factors present in Canada and the United States which suggest that the current, typical legal services business model is both unsustainable and failing to meet the needs of a significant percentage of potential legal services clients,
- Review the previous or current attempts to build a legal services reverse auction enterprise,
- Parse out the various market and regulatory factors inherent in and review the strategies and outcomes of each attempt, and
- Propose lessons learned and determine whether the business model is feasible, in light of the underlying context and market factors.

The results of the feasibility study demonstrate that a gap exists in the legal services market for low- to middle-income earners who require personal plight legal services but are unable to afford them. The evidence also suggests that there are, year over year, more new law graduates than open lawyer job positions, resulting in graduates struggling to find employment and, consequently, being unable to pay down large law school debts. A review of the business models of over twenty current or past legal services reverse auction enterprises identified several key components of success in the marketplace, including on-platform collaboration and payment facilitation. The regulatory structures of North American jurisdictions were found to allow such reverse auction business models but to do so under narrow circumstances. Finally, several corporate-level strategic considerations were identified as critical to bringing a future legal services reverse auction enterprises to market, a possibility ultimately determined to be feasible.

CHAPTER 2 — JUSTICE, AFFORDABILITY, AND THE BUSINESS OF LAW

Affording Justice, A Treacherous Journey

The journey from where a legal need arises to its conclusion can be treacherous. When a transactional or dispute-based legal need arises, it is in a person's best interest to hire a lawyer. This is so because persons represented by legal counsel in legal disputes are more likely to achieve a desired outcome (Sandefur 909; Rehaag 71; Semple, *Accessibility, Quality, and Profitability* 22). It is here, though, that the cost of justice begins to tally. First, the person must decide whether, at least at the outset, to be represented by counsel or not. Lawyer-seeking persons typically rely on referrals from friends, family, and other lawyers as well as internet research to find a lawyer and are more likely to choose law firms offer a free initial consultation (Clio 16-17). The entire search results in significant temporal costs.

After choosing a lawyer, clients must then retain him or her to represent them. In 2017, 87% of Canadian lawyers charged their clients by the hour (the "billable hour") (Hendry 32), and this remained unchanged in 2018 (Bruineman 21). The average hourly rate of a lawyer in Canada in 2018 ranged from \$208.12 to \$511.47, depending on years of experience and firm size (Bruineman 21-22). The national average cost of civil litigation up to but not including a two-day civil trial ranged from \$10,000 to \$15,000 (Bruineman 22). A contested divorce likely costs a Canadian anywhere from \$7,500 to \$12,500 (Bruineman 23). The cost of a one-day criminal trial ranged from \$5000 to \$8000 (Bruineman 23). Of course, not one of these costs guarantees a desirable result.

Some lawyer-seeking persons may qualify for state-funded legal services. The province of Ontario funds the legal needs of some via its Legal Aid Ontario agency. Access to funds, however, is limited to persons in specific circumstances. There are also gross family income thresholds which, depending on family size, serve as cut-offs from access to state funding. The thresholds are noted below in Table 1. Though the thresholds typically increase in value each year, the 2019 Ontario budget has cancelled these increases, and thus the thresholds will remain at 2018 levels moving forward (Mojtehdzadeh, "Cuts to legal aid"). Persons finding themselves below a Step 1 gross family income will likely qualify for state funding, whereas those with gross family incomes between Step 1 and Step 2 may qualify but will likely be required to make monthly contribution payments ranging from \$50 to \$115 to reimburse some or all of the legal expenses incurred (Legal Aid Ontario, *Need a Lawyer*). If you own a home, you may only qualify for a contribution agreement, depending on your income.

While the merits of Legal Aid Ontario's funding regime are laudable, many lawyer-seeking persons from Ontario will simply not qualify. In 2015, the median household income in Ontario was \$74,287 (Statistics Canada, *Household Income in Canada*). Economic families of all sizes earning a gross family income of less than \$50,000 in 2015 in Ontario represented just 21.2% of the population (Statistics

Canada, *Distribution of market, total and after-tax income*). In 2016, 69.7% of Ontario residents owned a home (Statistics Canada, *Housing in Canada*). Hence, nearly 80% of Ontario residents will not qualify for state funding. Furthermore, only 26% of Canadian law firms engage in legal aid work (Bruineman 25), which further increases the temporal and emotional costs of seeking justice. The majority of Ontario

Table 1. Legal Aid Ontario Gross Family Income Funding Thresholds

Number of Family Members	Step 1 Income	Step 2 Income	For Domestic Violence, Gross Family Income
1	\$14,453	\$16,728	\$22,720
2	\$25,003	\$30,110	\$32,131
3	\$28,503	\$35,088	\$39,352
4	\$32,207	\$40,307	\$45,440
5+	\$35,749	\$45,446	\$50,803
Single boarders	\$9,501	\$10,973	N/A

(Legal Aid Ontario, “Need a Lawyer”)

residents seeking lawyers must, therefore, finance their own legal services, represent themselves, or choose not to participate at all (Semple, *Accessibility, Quality, and Profitability* 22).

Even after retaining a lawyer, be it personally or through the assistance of the state, the experience of seeking justice continues to exact a toll. Most individuals are not legally savvy and at the time of requiring legal services have likely never worked with a law firm (Semple, *Accessibility, Quality, and Profitability* 23). Most people have no real way of assessing the value or quality of the legal services provided to them (Standing Committee on Access to Justice 18). The information asymmetry and the resultant effects often lead to high emotional costs (Semple, *Accessibility, Quality, and Profitability* 23-25).

Such persons may choose to represent themselves. One study concluded that in 2011/12 in Ontario, 64% of family litigants at the time of filing were self-represented (Macfarlane 33). The same study found that up to 70% of civil litigants in various Canadian jurisdictions were self-represented (Macfarlane 34). Over 90% of respondents indicated the cost of retaining a lawyer as a factor in deciding to self-represent (Macfarlane 39). Over half of the respondents explicitly identified that they were unable to finance legal services (Macfarlane 39). Similarly, 53% of the study participants had hired a lawyer for their civil or family matter only to exhaust their resources and resort to self-representation (Macfarlane 42). Respondents to the survey chose to self-represent despite largely believing that they were less competent than a lawyer at legal representation and reporting feeling frightened and overwhelmed at the prospect of self-representation (Macfarlane 41). Clearly, the journey from the time a legal need arises to its conclusion is bumpy and burdensome, if not treacherous.

The Business of Law

The provision of legal services is a noble field. Lawyers are, at their core, professionals who help others. They are obligated to act in all matters professionally and with integrity (*Rules of Professional Conduct* 2.1-1). Lawyers are also fiduciaries in that they must set aside their personal interests in favour of those of their clients when working on a client matter. Lawyers can be classified into quadrants based on the type of work they do and the type of client they serve. In his foundational work *Accessibility, Quality, and Profitability for Personal Plight Law Firms: Hitting the Sweet Spot*, Noel Semple characterizes these positions collectively as the four quadrants of legal practice, as illustrated below in Table 2.

The Personal Plight quadrant is the space in which the access to justice crisis in Canada largely resides. The diverse legal problems occupying the quadrant transcend gross family income, geographical

Table 2. The Four Quadrants of Legal Practice

Individual Clients	<i>Personal Business</i>	<i>Personal Plight</i>
	-individual client, non-contested matters -wills, estates, real estate transactions	-individual client, contested matters -family law, civil litigation, criminal defense, estate litigation
Organizational Clients	<i>Corporate Client Non-Contested</i>	<i>Corporate Client Litigation</i>
	-transactions -regulatory compliance	-commercial litigation -alternative dispute resolution

(Semple, *Accessibility, Quality, and Profitability* 19-20)

location, and level of education and consist of contested divorces, dismissals from employment, criminal charges, and other common legal problems (Semple, *Accessibility, Quality, and Profitability* 21). Middle-income earners are largely the bearers of the access to justice crisis in that they are too affluent to qualify for state funding but are typically unable to afford the going rate of legal services (Trebilcock 4; Semple, *Accessibility, Quality, and Profitability* 21). Furthermore, the necessity of profit, the traditionalism of the legal services industry, and the resultant comfort for lawyers in that profession that has likely led to the access to justice deficit.

Revenues Minus Expenses Equals Profit

The practice of being a private lawyer, or running a private law firm, is a business and must be profitable. The duty to ensure access to justice cannot subsume a lawyer's revenue-earning opportunities; providing access to justice is often not profitable (Semple, *Accessibility, Quality, and Profitability* 28). Profitability in offering legal services is critically important, not only to the lawyer, but to the law itself.

While lawyers are paid professionals who serve the needs of others, they cannot work entirely for free. Canadian law school graduates incur on average \$71,444 in student debt (Watson, "The Debt Burden"). More than 33% of such law graduates will owe over \$90,000 upon graduation (Watson, "The Debt Burden"). Legal aid certificates, which finance a person's legal services for a given legal matter, are

not very lucrative and take away from a lawyer's opportunity to earn market value for his or her legal services. In the fiscal year 2016/17, Legal Aid Ontario issued 112,109 certificates (Legal Aid Ontario, *2016/17 Annual Report* 25) worth a total of \$254,356,000 (Legal Aid Ontario, *2016/17 Annual Report* 51-52). Including high-cost criminal trials, beneficiaries of Legal Aid Ontario certificates received an average of \$2,269 of funding. In addition, the hourly rates Legal Aid Ontario will pay for legal services in areas other than Northern Ontario range from \$109.14 to \$136.43, depending on the lawyer's certified years of experience (Legal Aid Ontario, *Tariff and Billing Handbook*). Certain legal matters funded by Legal Aid Ontario are paid at fixed rates. The most experienced lawyers can expect to earn anywhere from \$151.94 for preparing and filing a bail variation application to \$303.88 for conducting and completing a criminal bail hearing to \$1,524.24 to attend criminal court to complete a withdrawal or stay of charges motion (Legal Aid Ontario, *Tariff and Billing Handbook*). Conversely, the most experienced criminal lawyers in Canada earn an average hourly rate of \$431.01 (Bruineman 22). The average market price charged for a bail hearing in Canada is \$1,001 to \$1,500 (Bruineman 22). A one-day contested matter at criminal court will cost in Canada, on average, between \$2,500 and \$6,000 (Bruineman 22). The conclusion can be drawn, then, that lawyers who accept legal aid certificates incur opportunity costs: for every hour earning \$136.43 or less working on a matter funded by the state, a lawyer is sacrificing an opportunity to earn significantly more at market rates.

Profitability in offering legal services is also critical to the law itself. As aforementioned, lawyers are not entirely benevolent beings and cannot offer legal services for free or reduced rates in perpetuity. Lawyers must be remunerated in a fashion that continues to encourage potential lawyers to invest the time and effort to become licensed and offer personal plight services. If being a lawyer is not profitable, there will be no incentive for those potential lawyers to incur the significant debt and invest the significant amount of time into becoming a lawyer. This, in turn, would further enlarge the access to justice crisis in Canada as there would be fewer lawyers available to offer such legal services. The intersection of the unaffordability of legal services and the need for legal service profitability forms the basis of this feasibility study.

Traditionalism and Private Legal Sector Billing Practices

Lawyers most often generate revenue by charging clients by the billable hour. A retainer agreement is signed in advance which sets out the lawyer's hourly rate, and the lawyer then, all else equal, works on the matter until its completion, keeps track of each tenth of an hour worked (Semple, *Accessibility, Quality, and Profitability* 41), and bills the client for the number of hours worked at the hourly rate plus any acceptable expenses incurred (ie., application filing fees, title searches on a property, etc), and applicable taxes. Though hourly billing is not the exclusive method of billing clients, nearly 90% of Canadian lawyers use this method of revenue generation (Bruineman 21).

While there is certainly an emphasis on the billable hour, other methods are emerging. In the 2018 Legal Fees Study, Canadian Lawyer Magazine found that 71% of respondents used flat fee arrangements (Bruineman 21). Other billing methods cited as being used by respondents included blended rates, contingency fees, and alternative fee arrangements. A description traditional and alternative billing methods is contained in Table 3 below. More than 70% of respondents to the Legal Fees Study indicated

Table 3. Description of Various Billing Techniques

Type of Fee	Description
Billable Hour	Each hour of work is billed at a pre-determined rate.
Flat Fee	The client pays a single, pre-determined fee for the lawyer to perform the legal services necessary to complete the matter.
Blended Rate	The differing hourly rates of multiple lawyers working on a legal matter are averaged and this average rate is charged for each hour of work that each of the lawyers working on the file perform.
Contingency Fee	The client pays the lawyer a percentage of any award granted in a legal matter or a predetermined fee in which payment is dependant on the achieving of a certain outcome.
Alternative Fee Arrangements	
<i>Task Billing</i>	The client is charged a predetermined fee for each component of the legal service contracted.
<i>Fee Collars</i>	An hourly rate with a minimum and capped maximum total fee.
<i>Fixed Fee Plus</i>	The client is charged a pre-determined flat fee in addition to either an hourly rate on certain tasks or a success fee if the matter ends favourably.
<i>Hourly Plus Contingency</i>	The client is charged a pre-determined hourly rate, likely a reduced rate, on a portion or all of the services plus an additional fee which is contingent on the outcome of the matter.
<i>Capped Billing</i>	The client is charged an hourly rate for all hours worked, but the final bill is capped at a pre-determined value.
<i>Milestone Fee</i>	The lawyer is responsible for moving the file to a pre-determined milestone, and additional fees are required for the lawyer to continue to work after the milestone is reached.
<i>Unbundled Legal Services</i>	The lawyer completes a pre-determined portion of the total amount of work required by the client.

(LegalTrek Team, “Alternative Fee Arrangements”; Semple, *Accessibility, Quality, and Profitability* 42-70)

that they offer alternative billing arrangements in order to remain competitive (Bruineman 21). This indicates that many law firms in Canada position flat and alternative fee arrangements as components of their competitive advantages and value propositions. The fact that nearly 90% of law firms still make use of the billable hour, though, indicates that the legal profession is firmly entrenched in tradition. However, hourly billing is directly at odds with the interests of their clients and is at the forefront of the access to justice crisis. This is so because uncapped hourly billing provides no price certainty for clients, there is no current method of adequately measuring the value and quality of legal services to determine value for money, and it incentivizes lawyers to work inefficiently.

Price Uncertainty

The uncapped billable hour provides no price certainty for potential clients. Law firms shift the risk that the matter will take more hours than might be expected to the client by charging for their services

by the hour (Semple, *Accessibility, Quality, and Profitability* 34). The arrangement is especially detrimental to personal plight clients. As Noel Semple points out, few major expenses in a person's life require the acceptance of as much risk (Semple, *Accessibility, Quality, and Profitability* 34). For instance, a contested divorce could cost a client as little as \$500 or as much as \$25,000 (Semple, *Accessibility, Quality, and Profitability* 34). Even personal plight lawyers themselves acknowledge that they might not be able to afford their own services (Semple, *Accessibility, Quality, and Profitability* 33). Personal plight clients are thus faced with the prospect of mounting and uncontrollable legal bills which are also commonly paid in aggregate or in stages and in advance. This causes further emotional and financial costs to accrue and is thus not in the best interests of personal plight clients.

Measuring Value

Objectively measuring the value of legal services has remained elusive. Legal service providers have long resisted being quantified and compared (Cohen, "What's a Quality Law Firm"; Semple, "Measuring Legal Services Value" 1). This resistance is so even considering that clientele would benefit from the ability to compare legal services providers, and skilled legal services providers would benefit from being compared to their less skilled or apt counterparts (Semple, "Measuring Legal Services Value" 1). Value in this sense refers to the effectiveness in achieving results, the affordability of the service, and the client experience (Semple, "Measuring Legal Services Value" 6-11). Faced with the inability to benchmark or compare lawyers, personal plight clients can never be sure whether the price they ultimately pay for legal services will represent good value for money. The power imbalance favours the lawyer and forces the client to trust that the final bill will have some modicum of value or be reasonably representative of the amount of skill and effort put into the matter.

Inefficient Work Rewarded

The billable hour encourages lawyers to work longer and generate hours instead of client value (Woolley 871). When lawyers are paid by the hour, their best interest is to work as many hours as possible in order to generate as much revenue as possible. This arrangement is, however, problematic. A number of profit-motivated practices exist to increase the number of billable hours worked on a file. These practices include overstaffing or duplication of efforts; excessive legal research; failing to record hours worked contemporaneously; and, potentially, fraudulently recording working hours. (Woolley 871-883). What's more, personal plight clientele are highly unlikely to be able to determine whether the number of hours worked by a lawyer on a particular matter is reasonable or even necessary. Personal plight clients are largely unable to assess final billings for the presence of unethical billing practices, and they are likely to go undetected if utilized.

Comfort: The Same Ol' Song and Dance

The practice of law is comfortable for lawyers. This is so because lawyers typically enjoy being paid regularly by clients, lawyers work long hours and are rewarded for doing so by the billable hour, and they own a near monopoly over offering legal services and do not have much need to innovate

According to a recent legal trends survey, lawyers enjoy a bill collection rate, defined as “the amount of billed work that gets paid,” of 86% (Clio 10). In comparison, a study of 230,000 invoices sent by small businesses found a collection rate of 84% (Rampton, “16 Signs”). Relatively speaking, then, lawyers collect payment for their services often. Most often, lawyers require deposits called “retainers” to be paid in advance, even though in the Personal Plight quadrant, they can act as a barrier to accessing justice (Semple, *Accessibility, Quality, and Profitability* 55-56). While lawyers are relatively assured of being paid for their services, what makes the profession even more comfortable is the remuneration structure. Over 70% of lawyers work longer than 8 hours a day (Clio 10). This regimen translates, subject to client acquisition, to a license for lawyers to earn as much money as they choose; working longer hours translates to more billable hours billed and, in turn, higher earnings.

Finally, licensed lawyers own a virtual monopoly over the offering of legal services, which, somewhat reduces the need to innovate or adapt to changing market conditions. Outside of paralegals, who can offer only a limited subset of legal services, there are no other professionals who can offer competent legal services to personal plight clients. Moreover, it is exceedingly difficult for non-lawyers to adequately fulfill personal plight legal needs without the assistance of a lawyer. While some innovation has been introduced within the other legal services quadrants, little obvious innovation of service offerings or best practice updates has accrued in the Personal Plight quadrant (Semple, *Accessibility, Quality, and Profitability* 26). The inaction suggests that personal plight practitioners either do not innovate because they do not need to or they innovate inconspicuously (Semple, *Accessibility, Quality, and Profitability* 27) which, though it may lead to a greater competitive advantage for the innovative practitioner, fails to adequately address the systematic access to justice issues. Overall, the prevalent use of the billable hour, combined with rising fees and a monopoly over the service offerings, suggest that the personal plight legal services industry is largely stuck within a perpetual cycle of profitability without significant need for industry-wide innovation.

The business of law has, thus, not yet solved the affordability issue facing middle-class Canadians. According to a survey conducted by Canadian Lawyer Magazine, 43% of lawyers planned to increase their fees in 2018, while no respondent lawyers expected to reduce their fees (Bruineman 20). The Department of Justice estimates that the number of self-represented litigants has been rising since 2000 and particularly since 2010 (Department of Justice, “Self Represented Litigants in Family Law”). Hence, while billable hour rates and legal fees continue to rise, so too does the number of litigants choosing to self-represent and consciously forego representation by a lawyer. The personal plight legal

needs of middle-income Canadians will continue to mount as access diminishes to the legal services personal plight clients require. The result signals that an industry-wide innovation which finds the “sweet spot” of accessibility, quality, and profitability (Semple, *Accessibility, Quality, and Profitability* 31-32) for personal plight legal services is both necessary and possibly imminent.

CHAPTER 3 — THE FUTURE STATE OF THE LEGAL SERVICES INDUSTRY

Is Change on the Horizon?

Conventional economic theory suggests that change may be on the horizon for the legal services industry. The law of supply and demand holds that price fluctuations are a function of variations in the supply of and demand for a particular good or service. As demand remains constant, and supply increases, average price decreases. This is because service or goods providers have to compete more on price to attract clients or customers. There are several market factors which suggest that there may be an oversupply of lawyers in respect of legal services positions available. Importantly, though, the legal services industry and the economic factors underpinning it must be positioned with regard to jobs available to new law graduates and not, as some might expect, with respect to the number of self-represented litigants or the general unaffordability of legal services. Given the nature of the legal profession and its monopolistic structure, there is, and will always be, demand for legal services providers. No inherent economical need thus exists for the legal services industry *as a whole* to engage in innovation to create new customer demand. Conversely, analyzing the economics of the legal services industry with a view to meeting unmet demand, especially within the Personal Plight quadrant, shifts the focus away from the necessary component of profitability to the provider and towards altruism. The analysis must, then, be centred on the ability of new graduates to find jobs and, more specifically, employment in positions requiring licensing. In so doing, the analysis will reveal the extent to which innovation will be required to create jobs sufficient to employ all law graduates who seek legal services employment. In this sense, the "employment pie" is expanded and in turn, so too is the ability to meet unmet demand, including that found in the Personal Plight quadrant.

In 2014, the Law Society of Ontario introduced an articling program alternative called the Law Practice Program (the "LPP") which was implemented to address the shortage of articling positions available to new law graduates (Mojtehdzadeh, "Ontario Law Practice Program"). Articling is an experiential work placement learning component required to be licensed as a lawyer in most jurisdictions. At the time the LPP was introduced, it was estimated that between 10 and 15% of new law graduates were unable to find a full articling position (Mojtehdzadeh, "Ontario Law Practice Program"). Despite the program being hosted at Ryerson University, the post-secondary institution formally applied to the Province of Ontario for approval to open a new law school (Balakrishnan, "Ryerson's law school") which it plans to do by 2020 (Friesen, "Ryerson going ahead with law school"). Even though it is estimated that by 2025 in Ontario there will be 1.6 new licensed lawyers for every one practicing position, and that currently only 10% of Ontario law firms offer articling positions, Ryerson will produce potentially several hundred annual additional law graduates starting in 2023. Interestingly, the Canadian Bar Association has

tacitly recognized since 2013 that the lack of control over the number of law school graduates may result in too great of a supply of lawyers (Arshinoff 20).

Between 2009 and 2016 in Toronto, Ontario, the number of articling positions offered by the sixteen largest law firms declined every year except one with only a slight increase reported between 2016 and 2017 (Wang, “The legal job market”). In 2009, the firms collectively offered 325 articling positions to new law graduates. By 2017, the same firms only offered 259 positions, a decrease of over 20% (Wang, “The legal job market”). While hire-back rates have increased overall during that period (Wang, “The legal job market”), the fact that the number of positions available has decreased demonstrates that the law firms are attempting to accomplish more with less and that the overall prospect of being hired at these firms is now lower.

Similar oversupply of lawyers has been recognized in other jurisdictions. In the United States generally, the number of lawyers per thousand residents increased by over 50% between 1980 and 2010, resulting in a scarcity of jobs available for new law graduates (Bilbrey "Using Hourly Fees and Innovation"). The number of lawyers per thousand residents was particularly high in Florida, at 9.1 percentage points higher than the national average in 2010 — despite the underlying study finding that only 20% of individuals seeking some sort of civil justice benefited from the assistance of legal counsel or others (Bilbrey "Using Hourly Fees and Innovation"). In 2017, the Whittier Law School in California became the first accredited law school ever to shut down, a result caused in part by a 5% decrease in national new law graduate employment rates between 2007 and 2015 (Toppo “Why you might want to think twice”). Only two-thirds of law graduates were hired in positions which required passing a lawyer licensing exam in 2015, a decrease from the three-quarters of such graduates hired in 2007 (Toppo “Why you might want to think twice”). A task force assembled by the American Bar Association found that while law school admissions had dropped from 2010 to 2014, the decrease failed to reach the level necessary to match the reduction in jobs available to new law school graduates (Harper, “Too Many Law Students”). A 2011 study estimated that in thirty-four states, a surplus of at least 1.5 new law graduates existed per legal job opening, with twenty-five states experiencing a ratio of over 2:1 (Weissmann “The Absolute Worst States”).

The National Association for Law Placement (“NALP”) conducts annual hiring studies in the United States to track trends of new law graduates. In 2017, the NALP found that 88.6% of new law graduates had been hired in a position, an increase from the 87.5% of such students in 2016 (Collins 1). However, only 71.8% of graduating students had been hired in positions that required passing a state licensing exam (Collins 1). As well, the number of available jobs dropped by 1,600 positions between 2016 and 2017, and the rise in the employment rate was explained by the even sharper decline of new law graduates in 2017, down 2,200 from the year prior (Collins 1). Furthermore, the number of jobs available to new law graduates in the United States declined in 2017 for the fourth straight year (Collins 2). In

2017, the number of full-time and part-time license-requiring jobs reported as available to the NALP was 24,373 for the reported 34,922 new law graduates (National Association for Law Placement, “Class of 2017 National Summary Report”). It is thus evident that throughout Canadian and American jurisdictions, an oversupply of new law school graduates exists compared to the number of jobs available.

At the same time, demand for legal services has remained relatively constant for much of the past decade. According to Thompson Reuters’ 2018 report on the state of the legal services industry in the United States, growth in demand for all legal services has remained relatively flat since 2008 (Jones et al 4). Various sectors of the legal services market have experienced muted growth in demand for services, with the most prominent being the 1% increase in demand for corporate legal services in 2017 compared to 2016 data (Jones et al 5). The report noted that the various hiring practices alongside the lack of growth in demand for legal services, particularly in the litigation sector, had resulted in the continuing decline of productivity (Jones et al 5). Similarly, Altman Weil reported in its 2017 study that “decreasing demand for legal services is endemic in the profession,” noting that:

- Over 50% of surveyed firms noted that their equity partners weren’t sufficiently busy;
- Nearly two-thirds of surveyed firms’ non-equity partners were insufficiently busy;
- One-quarter of firms reported that their associates were not busy enough; and
- Fifty-nine percent of respondent firms blamed flat or declining market demand for the under-performance (Seegar and Clay 2).

Overall, then, the landscape of the legal services industry does not inspire confidence. The billable hour continues to reign and increase the costs to clients year-over-year, while law schools are graduating more students than law firms are prepared to begin employing. At the same time, demand for legal services has remained relatively constant, while the access to justice crisis in Canada and the United States has expanded. The situation suggests that there will continue to be an over-supply of lawyers and new law graduates saddled with nearly \$100,000 in debt, and that law firms, in the fight to remain profitable, will continue to derive more value from fewer lawyers and partners.

The basic economic theory of supply and demand suggests that, absent a significant reduction in law school admissions, lawyers will eventually have to compete on price which is, perhaps, the first step towards the commoditization of the legal services industry. Yet, innovation may ramp up in response to produce a profitable method to meet the legal services needs of potential, yet unserved clients. A suitable target for innovation is the Personal Plight client, a vast base of potential clientele with, arguably, the

most unmet legal services needs of all, who self-represent at staggering rates, and who can't afford the market value of lawyers operating under the business model used in traditional legal services.

Innovation Holds the Answer

The paradox of a growing number of persons experiencing personal plight legal problems alongside unemployed new law graduates strongly suggests that the legal services market is primed for an innovative measure to return these imbalances to equilibrium. This is so because, given the large economical and temporal investments to become a lawyer, unemployed new law graduates will be forced to find some means to earn a living while paying off school debt so as to realize at least some return on investment.

To date, there have been some attempts to innovate within the Personal Plight quadrant of the legal services industry. Many of the efforts have been helpful in creating *affordability* for personal plight clientele and have served to reduce the number of lawyer-seeking individuals who see through their legal issue without the assistance of counsel. Such innovations include: unbundled solutions, the rise of contingency fees outside of the personal injury context, *low bono* services, and alternative fee arrangements.

The innovations are readily understandable. First, the typical legal service offered by a lawyer or law firm is bundled in that the lawyer takes on the entirety of the client's matter from start to finish. A series of steps exists within each matter which the lawyer must complete either sequentially or simultaneously until it has concluded. The lawyer or law firm typically bills for each of the steps progressively throughout the duration of the legal matter. In contrast, some lawyers have chosen, in an effort to increase affordability, to unbundle the services and simply complete each of the requisite steps that the client seeks assistance with; rather than ordering the 'buffet,' the client selects items *à la carte*. Unbundling can occur by the stage of the case, an issue within the case, or simply by the task (Semple, *Accessibility, Quality, and Profitability* 71-72). Some unbundling may involve coaching the client about how to undertake the aspects of the file which the lawyer does not (Semple, *Accessibility, Quality, and Profitability* 71-72).

Second, contingency fees, the payment of a pre-determined percentage of any award of damages or settlement to the lawyer or law firm, are in Canada and the United States most prevalent in personal injury cases (Semple, *Accessibility, Quality, and Profitability* 63). This fee structure makes some inroads with respect to creating access to justice for three reasons. Typically there is no upfront fee paid by the client to the lawyer, the number of hours a lawyer works does not affect the cost of the litigation, and, while price certainty isn't guaranteed, the price paid by the client is proportionate to the award or settlement earned and is paid out of those proceeds (Semple, *Accessibility, Quality, and Profitability*

63-64). The downside to clients is that the final price paid can be disproportionately high (Semple, *Accessibility, Quality, and Profitability* 65). The Law Society of Ontario recently approved in principle a report recommending various regulatory changes to contingency fee structures (Law Society of Ontario, “Convocation approves plans”) which ought to increase the number of lawyers and law firms interested in structuring their fees in such a way, the types of matters which attract contingency fee structures, and the number of clients who request such a fee structure.

Third, lawyers can offer *low bono* services to clients unable to afford market legal services rates by significantly reducing their cost. Lawyers agree to offer legal services to clients at hourly rates that are significantly lower than what the lawyers would ordinarily charge. *Low bono* legal services permit clients to access justice, while also giving lawyers an opportunity to earn revenue that might not have existed otherwise. Finally, lawyers can also offer any of the alternative fee arrangements referenced in Table 3 above. In addition to the way in which legal services are charged, alternative fee arrangements also shift the timing and scope of legal services fees, which further increases a client's ability to access justice.

What is at issue with all four of the legal services innovations is that they don't entirely hit what Noel Semple characterizes as the “sweet spot” of accessibility, quality, and profitability (*Accessibility, Quality, and Profitability* 27-32). Any truly valuable innovation in the offering of legal services must maximize all three of the pillars to be sustainable, scalable, and be attractive to both clients and lawyers. Such an innovation will thus match the affordability of the legal services with the profitability of offering such services, deliver sufficient quality to provide clients the best value for money, employ more new law graduates, fend off lawyer commoditization, and decrease the number of self-represented litigants. Doing so may require a shift towards a freer market for offering legal services, which could reduce the power imbalance favouring the lawyer over the client, but in a manner which ultimately reduces the cost to the lawyer of offering such legal services.

This paper proposes that an enterprise which provides a platform for clients to advertise their legal services needs upon which select, targeted lawyers with the requisite expertise and competence are permitted to bid on the job (a “reverse auction”) may over time provide an answer to the number of unmet personal plight legal services needs and address the access to justice crisis in Canada and the United States, while taking into account the abundance of job-less new law graduates, the potential slide to commoditization of the legal services industry, and the stagnant growth of the legal services market. Such an enterprise would create opportunities for clients to pay for legal services at prices dictated by the free market rather than at those dictated by individual lawyers and law firms. The enterprise would generate revenue, based on the regulatory restrictions in the various jurisdictions, through referral, subscription, transaction, or other fees. This paper is an exploratory study of the viability of such a legal services reverse auction enterprise. Available data on current or past legal services reverse auction ventures in the United States and Canada, along with market and economic factors, will be analyzed to determine the

favourability of launching a new legal services reverse auction platform. This paper will not, however, explore in great detail the precise format of the enterprise, pricing, location, feasible geographic markets, or financial feasibility, as these factors are out of scope and the subject of further review should a market for the enterprise be found to exist.

CHAPTER 4 — RESEARCH METHODS

The investigative portions underpinning this project occurred in three stages. First, an extensive review of the literature was performed to uncover the contextual evidence underpinning the potential need for innovation in the legal services industry. This consisted of researching scholarly articles from the University of Windsor’s database in addition to other online sources. Other articles, books, blogs, commentaries, government resources, regulatory resources, and written pieces were reviewed to pinpoint the nature of the access to justice crisis in Canada and the United States. Additional evidence was reviewed to identify the nature of the legal services industry, the ability of personal plight clientele to navigate the system, the internal and external challenges which face lawyer-seeking individuals, the business of law, and the economic direction of the legal services market. Next, business management and entrepreneurialism literature was examined to identify findings pertinent to the feasibility of a reverse auction business model for the offering of legal services.

Second, Internet-based research was conducted to determine whether or not a reverse auction legal services enterprise had ever been launched in Canada or the United States. Search terms used in this discovery process are located in Table 4. Search terms were selected based on keywords that potential clients looking for such a service would likely use to discover it, be it directly or indirectly. The terms "tender" and "request for proposals" were eliminated early in the process due to the inundation of open government tendering processes in the results. Lawyers are largely governed at the state or provincial level, and so the author assumed that any current or previous reverse auction ventures would be jurisdictional in nature. As a result, individual state and provincial jurisdictions were such added after each search term. Data were collected on the reverse auction enterprises uncovered using news articles, blog posts, interviews, articles, and a lawyer governing body. Such data included years of operation, geographical scope, enterprise headquarters’ location, legal services scope, client scope, revenue model, business model, and external investment. The availability of data varied significantly from case to case.

Table 4. Reverse Auction Discovery Search Terms

Lawyer bid on work [jurisdiction]
Cheap lawyer [jurisdiction]
Find a cheap lawyer [jurisdiction]
Find a lawyer [jurisdiction]
Lawyer referral service [jurisdiction]
Law bid [jurisdiction]
Bid on lawyer [jurisdiction]
Bid on legal services [jurisdiction]
Lawyer reverse auction [jurisdiction]

Third, research was conducted into the regulatory agency or governing body overseeing lawyers in each relevant state or provincial jurisdiction. Specifically, each body was consulted to determine the extent to which various referral or marketing fees are permitted. The author assumed that a reverse auction legal services enterprise would likely generate revenue from the lawyer offering legal services rather than the client seeking legal services, and, thus, it was imperative that the regulations governing referral and market fees be understood.

CHAPTER 5 — ENTREPRENEURSHIP, MANAGEMENT, AND E-COMMERCE

The business, e-commerce, management, and entrepreneurial literature was briefly reviewed in order to establish the framework within which a reverse auction business model might exist, attempt to understand the experiences of other entrepreneurs who have launched similar models in other industries, and, finally, to identify complications which may arise in launching an online reverse auction business model. The topic of online marketplaces and new venture creation remains largely unexplored in entrepreneurial research. For instance, a search of the Business Source Complete database using the keywords ‘online marketplace’ and ‘entrepreneurship’ returned only six peer-reviewed results. Some discussed startups which use eBay as a market conduit, equity crowdfunding, and Internet platforms as idea marketplaces. An article by Hamid Etemad was the most relevant.

Etemad, an organizational theorist and marketing professor at the McGill University’s Desautels Faculty of Management, proposes that the Internet has created a plethora of opportunities for international entrepreneurialism to either emerge or expand (353-365). He identifies that such opportunities have emerged in stages and on a continuum in which each subsequent development disrupted its respective industries and created greater value for buyers and suppliers alike (Etemad 356). The review of the evolution of Internet-based entrepreneurialism identified two waves of expansion which directly appear applicable to the reverse auction business model.

Etemad proposes that the first wave consisted of *online information matching services* and emerged in the market in the mid-1990s (356). These entities collected customer data for travel services and matched it with supplier inventory, be it flights, hotel rooms, or otherwise (Etemad 356). Entities such as Expedia, Travelocity, and All Hotels incurred little in the way of marginal costs to operate the matching services, as each implemented software to conduct the matchings of buyer and supplier (Etemad 356). The companies did not own any traditional travel assets such as hotels, airplanes, or rental vehicles (Etemad 356). The services saved consumers time, money, and effort, while suppliers were able to sell off excess inventory (Etemad 356).

The second applicable wave Etemad identifies is the *reverse auction website* which became noteworthy with the launch of Price Line in 1997 (Etemad 358). Here, suppliers were required to bid on a consumer specification for travel. As bids dropped in value, the value to the consumer increased (Etemad 358). The wave also expanded from offering reverse bids on services to goods (Etemad 358).

The literature was otherwise relatively barren of applicable research. A search of the keywords ‘online reverse auction’ and ‘entrepreneurship’ returned no results. Broadening the search to include terms such as ‘online marketplace’ and ‘management’ returned several articles on repetitional effects and competitive behaviours, none of which were directly relevant. Finally, a search narrowed to simply

'online reverse auctions' identified that the literature is mostly focused on understanding the dynamics and workings of business-to-business applications ("B2B") of online reverse auctions, with an emphasis on supply management. See for example Jap 506-525, Emiliani and Stec, "Commentary" 167-171, and Emiliani and Stec, "Wood pallet" 278-288.

Schoenherr and Mabert identify trends and correct several myths which pertain to B2B online reverse auctions in their 2007 article (373-384). First, the authors identify that reverse auctions are not only about price, but are also about finding vendors which offer good service or about narrowing the number of potential suppliers (Schoenherr and Mabert 374-376). The study identified that many reverse auctions include privilege clauses which permit the purchaser to select a bidder other than the lowest bidder (Schoenherr and Mabert 375). While the study confirmed that most reverse auctions are used for commoditized products, it also identified that purchasers had found ways to commoditize otherwise non-commodities (Schoenherr and Mabert 377). One purchaser identified that they have used auctions for goods as complex as locomotives and as commoditized as toilet paper (Schoenherr and Mabert 377). Services were noted to be more difficult to auction than goods (Schoenherr and Mabert 377). Third, the authors identify that while reverse auctions originally had the potential to damage the purchaser-supplier relationship, suppliers are now more comfortable with the concept and this comfort increases with auction accessibility and ease of use (Schoenherr and Mabert 377-379). Fourth, the study confirmed that savings as a result of using an online reverse auction decreased over time for each purchaser, though this was typically in relation to repeat purchases of similar goods (Schoenherr and Mabert 380). Finally, the study debunked the myth that online reverse auctions will not exist for long in the B2B marketplace (Schoenherr and Mabert 381).

Again, the study concerned B2B transactions, and, thus, its application to the business-to-consumer ("B2C") marketplace is potentially limited. There are, however, some takeaways. First, the article notes that reverse auctions for legal services in the B2B context occurred for at least one of their study respondents, and, second, it demonstrates the usefulness of qualitative research (Schoenherr and Mabert 377). My study, an exploration of online legal services reverse auctions, is a direct response. While there are plenty of other studies of B2B online reverse auctions (See, for example, Kwak 18; Hur et al. 21-29), these too have limited application in the B2C context.

One other portion of the literature provided valuable insight. Mohamed Charki et al. identify that reverse auctions can present ethical issues to enterprise proprietors, buyers, and suppliers alike (17-37). The authors specify that in terms of online B2B reverse auctions, unethical behaviour is that which violates the common ideal of fair play and other widely accepted moral criteria (Mohamed Charki et al. 19). Such unethical behaviours, the authors noted, could include, among others, shifting auction rules, changing contract terms between the time the request for bids is published and the awarding of the contract, reducing unit price without intention to actually change suppliers, and falsifying information

(Mohamed Charki et al. 19). The article notes that there exists a lack of literature surrounding the ethical issues inherent in reverse auctions (Mohamed Charki et al. 20). Though this article is again focused on the B2B context, it identifies that there are likely to be ethical issues to be addressed if creating an online reverse auction. Moreover, the concerns are likely accentuated by the reverse auctioning of legal services. Ethical issues could certainly affect a start-up's growth and, in the absence of focused scholarship, further study is required before creating a legal services reverse auction.

CHAPTER 6 — LEGAL SERVICES REVERSE AUCTION ENTERPRISES IN NORTH AMERICA

The Legal Services Reverse Auction Model is Not New

A legal services reverse auction, for the purposes of this paper, is defined as a for-profit business in which:

- Clients communicate a legal need via an online platform or forum to qualified lawyers;
- The qualified lawyers review and, if interested, communicate back to the client a bid to complete the pre-defined legal work required;
- The client reviews the bids and selects a winner; and
- The lawyer and client then enter into some sort of retainer agreement.

The aforementioned constitutes a *reverse* auction because, unlike regular auctions, the purchaser auctions the opportunity to complete work at his or her behest, and, typically, a lower bid is preferred. Conversely, regular auctions feature the seller auctioning off a good or service and the highest bid is preferred.

Internet-based research into the existence of legal services reverse auction enterprises (“LSRAEs”) in North America revealed several market entries of the basic business model. In total, twenty-one currently or previously operating LSRAEs were uncovered, a surprising figure given their relative absence from traditional legal services marketing channels. The enterprises offer or offered services to business and individual clients alike for matters spanning business law and personal plight law. The majority operate or operated in the United States. The existence of a plethora of LSRAEs provides an opportunity to analyze the commonalities and differences amongst them, identify the strategic choices in bringing the service to market and in continually improving the enterprise’s value proposition, identify the extent to which each enterprise incorporated the contextual factors underpinning this paper into their business models, and to determine inductively whether or not such an enterprise could profitably — both to the lawyer and the enterprise itself — serve personal plight clientele. A chart containing key markers of each LSRAE is contained at Appendix A.

Scope of the Identified Legal Services Reverse Auction Enterprises

As stated, an exhaustive investigation uncovered twenty-one LSRAEs in North America. Some have operated for several years, while others appear to have closed down after a short period of time in the market. Most operated within the confines of the United States, while only one, MyLawBid, operated

solely in Canada. One LSRAE operated on a global scale, while still one other offered services in select Commonwealth nations.

All LSRAEs identified during the research phase conformed to the above-noted definition of a legal services reverse auction. Each typically offered an Internet-based platform on which clients could either post legal needs or create a profile with which to identify a legal need. Each required lawyers to be registered and pre-screened to some degree and lawyers were selected to view client postings based on established criteria. Each platform allowed for lawyers to somehow communicate with clients and to provide some format and quantum of cost to the client. Each LSRAE also permitted clients to select a lawyer from those who provided a bid of some sort.

As previously noted, information availability varied. Of the twenty-one LSRAEs discovered, more information and data were uncovered for those which are either still in operation or which had recently ceased operations. The extent of marketing efforts appear to have impacted the amount of data available, because better-known LSRAEs were observed to have garnered more commentary. Data could not be collected about three LSRAEs that were identified.

The LSRAEs generally offered personal plight, business, or a combination of both types of legal services. Two of the twenty-one LSRAEs offered specialized or distinct legal services. BernieSez offers traffic ticket legal services, and eLawForum offered litigation defence services on a portfolio basis to Fortune 100 and larger corporations.

Limitations

This feasibility study is based on inductive analysis of publicly available data. These data were collected from the Internet and were largely contained in articles, enterprise websites, blog posts, and other webpages. The value of this secondary data is somewhat limited in that it is not peer-reviewed. A second major limitation is that significantly less data were available for LSRAEs which are no longer in existence. While names of defunct LSRAEs were noted in articles and blog posts, little to no information was available for several of them, which is noted in Appendix A. Finally, although a substantial number of LSRAEs were identified, the twenty-one enterprises constitute a limited sample size for completing certain types of statistical analyses.

Characteristics and Commonalities of Successful Ventures

What is Success?

For the purposes of this paper, a LSRAE is considered successful if it is currently offering services to the market. Of the twenty-one LSRAEs discovered, the youngest two were both opened in 2015. This demonstrates that those actively offering services have existed for at least three years, which

would seem to demonstrate a baseline of success. One of the inactive LSRAEs, Shpoonkle, operated for a period of two to three years but closed in 2014. Despite meeting a temporal activity baseline of three years, the venture is still considered unsuccessful for having closed operations. There are currently eight known active LSRAEs offering services: Legal Services Link, BernieSez, Lawger, UpCounsel, Legalmatch, Priorilegal, Lawtrades, and Lawdingo. They share several commonalities.

Lifespan

Of the eight successful LSRAEs, seven have enjoyed an average lifespan of five years, having commenced operations as early as 2011 and as late as 2015. The single outlier, Legalmatch, appeared on the market as early as 1999 and has been in business for twenty years.

Geographic Scope

Six of the eight successful LSRAEs currently offer legal services nationwide in the United States. BernieSez, which functions as a platform to connect lawyers with individual clients who have been given a traffic ticket, operates in North Carolina and Pennsylvania only. The geographic scope of Lawtrades is unknown. Interestingly, Legal Services Link has a dual business model which offers some insight into its competitive strategy. While Legal Services Link does offer services across the United States, it has partnered with three distinct jurisdictions or groups to offer its platform in a more official capacity. The Arizona State Bar has contracted with Legal Services Link to offer personal plight clientele in the state the opportunity to post their legal needs to an Arizona State Bar website, run by Legal Services Link, in which Arizona-licensed lawyers who pay an annual premium can respond to and bid on these opportunities. Recently, the Arizona State Bar exercised its renewal rights to extend the contract with Legal Services Link through March of 2020 (as noted in Appendix B). Legal Services Link has also contracted with the Virgin Islands Bar Association and the Military Spouse JD Network to offer similar services in the United States or its territories. One other LSRAE, Legalmatch, has received favourable official opinions from several state bars and partnered with the Utah State Bar in 2005, although it is not clear whether or not this relationship continues to date (Legal Match, “State Bar Associations”). The State Bars of Utah, Alaska, California, Ohio, Colorado, the District of Columbia, Louisiana, Maryland, New Jersey, Pennsylvania, and South Carolina all currently offer a service called Licensed Lawyer which provides a guided search mechanism for potential clients to find lawyers, but which does not include a bidding function (Licensed Lawyer, “Find a Lawyer”). It is unknown if any of the other LSRAEs, successful or not, have attempted to form official partnerships with lawyer licensing bodies in any jurisdiction. Five of the successful LSRAEs are headquartered in either New York City or San Francisco, while the others are located in Raleigh, NC; Eugene, OR; and Chicago, IL.

Legal Services & Client Scope

The scope of legal services offered by the successful LSRAEs is surprising. Contrary to what was expected, most offer some form of personal plight legal services. In fact, half of the successful LSRAEs offer services which would be considered full-service in that they offer a wide range of both personal plight and business law legal services. Three others offer only business law services, while the last, BernieSez, is specialized in traffic ticket litigation. This legal focus, while technically a personal plight legal matter, does not suggest that a new LSRAE which solely offers personal plight legal services will tend to be successful. Not surprisingly, the four full-service LSRAEs offer services to both individuals and businesses. One of the three business law LSRAEs markets its services to both entrepreneurs and businesses, and the remaining two, Priorilegal and Lawtrades, specifically market to businesses alone. BernieSez markets only to individuals, which is necessary, given the nature of traffic ticket litigation.

Revenue Model

All but two of the eight successful LSRAEs generate revenue by charging some sort of fee to participating lawyers. One other, Priorilegal, charges clients, which consist solely of businesses, a management fee equivalent to 10% of the total legal fee paid to the lawyer for undertaking the services. The organization's business model, however, is slightly different from the others in that it provides potential business clients with a selection of qualified lawyers who have agreed, as a component of being featured on the Priorilegal platform, to discount their regular fees within a specified range. The lawyers thus compete on two levels — the percentage discount from the regular hourly rate and the marginal hourly rate charged. The other, UpCounsel, also charges clients a five percent management fee. The remaining six successful LSRAEs charge its lawyers a fee of some sort. Four charge lawyers on a temporal basis rather than by the legal matter. Legal Services Link, BernieSez, Legalmatch, Lawtrades charge lawyers a subscription fee on an annual or monthly basis. The subscription fee permits lawyers to either access client postings or be available to be selected by potential clients. Lawdingo generates revenue by having lawyers bid on the opportunity to be featured to clients. Here, the highest bidding lawyers on Lawdingo are shown to clients who have posted their legal needs, which then permits these lawyers to bid on the opportunity to complete the legal services. Finally, Lawger charges a referral or referral-equivalent fee equal to an unknown percentage of the legal services fee, although Lawger does permit lawyers to pay a subscription fee to effectively pre-pay its “transactional technology fee.”

Business Model

The characteristics of each of the successful LSRAEs vary and are noted in aggregate at Appendix C. The majority of the successful LSRAEs maintain the lawyer-client relationship on the platform. Of the eight LSRAEs, seven allow for collaboration between the lawyer and client on the platform itself, rather than offline or otherwise. All eight require that clients create a profile. The lawyers who are able to view and bid on client postings are selected by the LSRAEs in a variety of ways. Only

lawyers who are qualified to offer legal services for a given matter are permitted to do so on all LSRAEs and in accordance with the rules of professional conduct across jurisdictions. Lawyer selection ranges from a proprietary algorithm, to geographic constraints, to no constraints. The lawyer selection process for two of the LSRAEs is unknown. The retainer and legal services fee payment method occurs entirely on the platform of four of the successful LSRAEs, where the client contracts with the lawyer and deposits funds which are then remitted to the lawyer. One other LSRAE features an off-platform retainer but on-platform payment method. Legalmatch requires both the retainer and the fee payment to occur off-platform. Of the remaining three, two feature legal services fee payment on the platform and either off-platform or unknown retainer processes. The remaining venture, Legal Services Link, features an off-platform retainer process and an unknown payment process.

Three of the successful LSRAEs — UpCounsel, Lawtrades, and Lawdingo — were discovered to have attracted, respectively, external investment funding of \$26 million over six rounds, \$2.7 million over two rounds, and \$810,000 over four rounds. Both UpCounsel and Lawtrades exclusively offer business law services, while Lawdingo offers personal plight legal services. Of note, a variety of fee structures, including hourly rates, flat fees, capped fees, and contingency fees were available across the successful LSRAEs.

Characteristics and Commonalities of Unsuccessful Ventures

What is Failure?

A failed LSRAE, for the purposes of this paper, is any such enterprise which does not achieve sustained operations. Despite the simple definition, the data suggest that there are ranging levels of failure. While some failed LSRAEs existed for no more than a year or two, some existed for three years and one, eLawForum, appears to have operated for at least a decade. Ultimately, given the nature of an exploratory study, the failure to operate as a going concern tends to favour defining an operation as unsuccessful despite the length of operation. The failed LSRAEs are: BidsFromLawyers, EagleFee, eLawForum, ExpertBids, HireMeLegal, JammedUp, Jurbid, LawPitch, LawyerBid, LawyersforLess, LawyersQuoteFast, MyLawBid, and Shpoonkle.

eLawForum

The business model of the outlier, eLawForum, establishes the venture as largely irrelevant to the study of personal plight legal services reverse auctions. The venture's service offering consisted of a method for large corporations to aggregate litigation matters into a portfolio whereby law firms would bid on the opportunity to represent the corporations for the matters spanning their entire portfolios. The model is not helpful because of its strictly B2B application and because it generated value by creating economies of scale through the combining of similar matters into a portfolio. The factors are not akin to the experiences of an individual with personal plight legal needs.

The venture's business model appears to have been successful for a period of time. A business case was even written about the venture (Christenson, "eLawForum"). Recently, eLawForum appears to have restructured into an entity called Drystone Capital, which does not appear to offer litigation bidding services any longer (Drystone Capital, "Drystone Capital"). Despite eLawForum's longevity and its apparent success for some time, it will be deemed a failure for the purposes of this study to reflect that it no longer operates and that its business model fails to meaningfully inform this study.

Lifespan

Overwhelmingly, the lifespans of the failed LSRAEs were short. Often, the exact year a failed LSRAE ceased operations was unclear. In such a case, the year of the last online activity of the LSRAE was interpreted as the final year of operations. Excluding eLawForum, which appears to have operated for approximately twelve years, the average lifespan of the failed LSRAEs was three years.

Geographic Scope

Most failed LSRAEs operated at a national level in either the United States or Canada. Only two — Lawpitch and eLawForum — offered services in other countries. The geographic scope of five of the failed LSRAEs is unknown.

Legal Services & Client Scope

Four of the failed LSRAEs offered legal services to both individuals and businesses. Five others offered services to either individuals or businesses. Of these, only eLawForum offered services strictly to businesses. The remaining four offered legal services only to individuals. Information regarding legal services and client scope was unavailable for the remaining four failed LSRAEs.

Revenue & Business Model

Much of the way in which the failed LSRAEs structured their business models or generated revenue is unknown. The aggregated revenue and business model characteristics are noted at Appendix D. Three failed LSRAEs generated revenue by requiring lawyers to pay either a monthly subscription, winning bid, or bid fee. Two failed LSRAEs charged clients either a management fee or a fee commensurate with the cost saved (as compared to the cost of the market value of the same legal services). The method of revenue generation for the remaining six LSRAEs is unknown. Only six of the failed LSRAEs required clients to create a profile. One permitted clients to upload documents and one other permitted clients to set a pre-determined budget for lawyers to bid under. Three platforms geographically constrained the lawyers permitted to bid on client postings. One applied a proprietary algorithm to determine which lawyers would be permitted to bid on client postings. Three failed LSRAEs did not constrain lawyers, except by competence, to offer specific legal services. The ways in which the remaining three LSRAEs constrained lawyers, if at all, is unknown. Two failed LSRAEs, Lawpitch and HireMeLegal, required that retainer agreements be signed offline or off-platform and that all collaboration

for the matter requiring legal services occur offline or off-platform as well. Interestingly, both also permitted legal services fees to be paid on the platform. Various fee structures were available to clients, including most prevalently flat rates and contingency fees. No external investment was discovered.

Comparison of Successful and Unsuccessful Ventures

The differences between the successful and unsuccessful ventures are palpable and convey several hints at what might be necessary, in terms of structure, characteristics, and business model, for a future LSRAE to operate successfully.

Timing

One factor which appears to have been critical to the success of some and the failure of other LSRAEs is the period in which they were launched. On average, successful LSRAEs commenced operations in 2013, while unsuccessful LSRAEs were, on average, launched in 2010. The collapse of the North American economies in 2008 led to a surge in law school applications (Ruiz, “Recession Spurs Interest in Graduate, Law Schools”). The consequential over-supply of lawyers did not thus begin until three years later in, 2011, and did not begin to compound for a few years afterwards. Commencing a LSRAE sometime after 2011, thus, was economically more likely to be successful because there would have been more lawyers to meet relatively stagnant demand (Weissmann “The Absolute Worst States”). One other possible explanation is that lawyers have continuously become more interested in incorporating technology into their practices (Goyal, “Tech competence a must”).

Yet one other explanation is that the successful LSRAEs have not yet had a chance to fail and are simply successful because, unlike their unsuccessful counterparts, insufficient time has passed. However, this explanation is not likely to be the case. Not including the eLawForum outlier, the average lifespan of unsuccessful LSRAEs was three years, while the successful LSRAEs have enjoyed an average lifespan of 5 years to date. It thus appears that successful LSRAEs have existed long enough to have had a chance to fail, and, they overcame or avoided whatever deficiencies existed in the unsuccessful LSRAEs which caused their demise. The eLawForum platform is a curious outlier in respect to timing. The venture appears to have ceased operations in 2010, shortly after the 2008 financial collapse despite offering a method for companies to save cost on litigation. One explanation may be that such companies looked to eliminate as many costs as possible by putting off litigation as long as possible. Another explanation could be that eLawForum was simply wound down so its shareholder could pursue other opportunities.

Geographical Scope

The geographic scope components of both the successful and unsuccessful LSRAEs were largely similar, with legal services generally offered nationwide in the United States. However, the similarity is qualified in that the geographic scope of many of the unsuccessful LSRAEs remains unknown. Some of

the successful LSRAEs operated in select jurisdictions, and still some others attempted to partner or work with state bar associations or provincial law societies. Strategically, it would likely be more feasible to build a brand in a single jurisdiction and build out from there. This strategy and the regulatory environment in North American jurisdictions will be discussed later. The United States offers a plethora of densely populated jurisdictions in which the same rules of professional conduct generally apply. This would suggest that, to start, the United States would be a beneficial parent jurisdiction in which to operate. There is, however, substantial competition in the United States which is not at all present in Canada. This strongly suggests that operating in the parent jurisdiction of Canada may be advisable.

Revenue & Business Model

The successful LSRAEs generated revenue from lawyers in some fashion, be it a subscription fee or a fee tied to the legal matter completed. Those which charge clients a fee operate solely within the business law context and only count businesses as their clients. This is likely because corporations value the fees saved enough to see the benefit of paying a fee for the service, as long as the fee paid is justified by the savings. In contrast, some unsuccessful LSRAEs charged even personal plight clients a fee. Of those, one charged clients a fee proportionate to the amount saved on the market value of the legal services required. Importantly, the arrangement may be a successful revenue model in a future LSRAE, although otherwise charging personal plight clients a fee does not appear to be feasible.

The two major components of the LSRAE business model which likely create value for both clients and lawyers are the way in which lawyers are selected by the LSRAE to bid on potential projects and the extent to which clients and lawyers collaborate on the platform. Yet, there was no clear difference in the way in which lawyers were selected by successful and unsuccessful LSRAEs. Each varied in the way in which lawyers became eligible to bid on appropriate legal services requests from clients. Some restricted bids to geographical areas, others applied a proprietary algorithm to aggregate eligible bidding lawyers, and still others did not restrict who could bid. Strategically, matching the way in which lawyers become eligible to bid on projects with the nature of the specific project would likely be beneficial and will be discussed later.

The degree to which clients and lawyers collaborate on the LSRAE platform appears to be an important aspect of the LSRAE value proposition. Seven of the eight successful LSRAEs offered at least one component of platform collaboration. Examples include the retainer process, in-matter collaboration (such as communication), document signing or review, and the method in which lawyers are paid for legal services. Conversely, the extent to which the unsuccessful LSRAEs permitted on-platform collaboration is largely unknown. Only two, LawPitch and HireMeLegal, were discovered to offer a component of on-platform collaboration which, in the case of both, was lawyer payment. Half of the successful LSRAEs offered on-platform retainer processes, in-matter collaboration, and lawyer payment, while two others offered both in-matter collaboration and lawyer payment. Thus a LSRAE is more likely to be successful if

it offers on-platform collaboration, even though this observation is tempered by the unknown characteristics of many of the unsuccessful LSRAEs.

Legal Services and Client Scope

Solely offering personal plight legal services to individuals appears infeasible. With the exception of the specialized traffic ticket LSRAE BernieSez, not one of the successful LSRAEs offers only personal plight legal services. Rather, the others offer business law services to entrepreneurs and/or corporations as well. Conversely, the four general LSRAEs which solely offered personal plight legal services failed to operate on average past three years. Building a dedicated personal plight LSRAE in the future will likely not be feasible, barring strong brand recognition. Thus any future LSRAE would likely be required to offer business law services in addition to remain profitable.

Regulatory Environment & Restrictions

Each provincial and state jurisdiction in Canada and the United States has the authority to regulate lawyers in the manner they choose. Lawyers in each of Canada's fourteen provincial and territorial jurisdictions are self-regulated by way of a law society. Each law society has published a code of professional conduct which all lawyers must adhere to and which governs the way in which lawyers offer legal services. While the rules of professional conduct vary from jurisdiction to jurisdiction, the premise of each is largely the same. Lawyers in each of the United States' state jurisdictions are also self-regulated via state law or bar societies. While each of the self-governing bodies is free to create its own set of rules which dictate the way in which legal services can be offered, all states but California have adopted model rules developed by the American Bar Association (American Bar Association, "Jurisdictions Adopting Model Rules"). Appendix E identifies, by North American jurisdiction, the various pertinent regulations which may affect the way in which a future LSRAE operates and, most importantly, feasibly generates revenue (including referral fees, fee splitting, legal services marketing, and for-profit referral program restrictions). A review of the various lawyer professional codes of conduct reveals that any such future LSRAE will need to be carefully structured so as to not run afoul of the strictures.

A future LSRAE could exist in multiple organizational forms. Legal services cannot be offered by anyone other than lawyers with few, discrete exceptions (such as paralegals in Ontario). Moreover, lawyers cannot offer legal services from a regular corporation and must operate as sole practitioners, in partnerships, or, in the jurisdictions which allow them, in professional corporations. Professional corporations cannot be owned by non-lawyer persons or regular corporations. Hence, a future LSRAE, if not incorporated as a professional corporation, cannot offer legal services. This regulation is critical because, while all North American jurisdictions permit legal services fee splitting between multiple law firms, they also prohibit fee splitting with non-lawyers and non-law firms. Furthermore, fee splitting

between lawyers of different law firms must be done in a manner which proportionately compensates the lawyer based on the amount of work.

A future LSRAE could potentially be set up as a professional corporation, for instance, and offer triage legal services for a small portion of the legal services fee ultimately charged by the lawyer selected by the client. However, there are three immediate drawbacks to the structure. First, offering triage services would limit the percentage of the overall legal services fee that could be charged, limiting income opportunities. The portion of the legal services likely could not constitute more than 5% of the overall fee and would be more likely to represent 1-3% of any such services. Second, if the future LSRAE is set up as a professional corporation and offers legal services, even in a limited sense, it will be open to professional liability claims by clients under the rules of professional conduct of the jurisdictions in which it operates. For example, if the selected lawyer is accused of professional wrongdoing, the future LSRAE would very likely become a third-party defendant to that matter. In response, the future LSRAE could attempt to have the selected lawyer indemnify it via the contract between the two, though it is unknown to what extent a lawyer can contract out of professional liability. Third, existing as a professional incorporation significantly limits external investment opportunities because any investor would have to be a lawyer. While it is perhaps possible that external investments could be structured as loans with various return-on-investment schemes (such as royalty payments or high interest), they could violate professional conduct rules because the North American regulatory bodies generally prohibit lawyers from indirectly violating the rules of professional conduct.

A future LSRAE could also exist as a referral agency. With the exception of the jurisdictions of Prince Edward Island, Yukon, and California, only lawyers may be paid a referral fee. There are also stipulations which govern when referral fees can and cannot be paid, though these would likely not be relevant to a future LSRAE. A distinct referral agency would thus also be required to exist as a professional corporation which would expose it to all the previously mentioned issues. With the exception of Ontario, which specifies a specific formula for calculating maximum referral fees, all other North American jurisdictions require only that such referral fees be reasonable or proportionate. This does not meaningfully limit the revenue-generation possibilities of a future LSRAE.

There is, however, an alternate format which could still remain within the boundaries of the North American jurisdictions. All United States jurisdictions permit lawyers or law firms to pay lead generator fees (American Bar Association, “Rule 7.2: Communications Concerning a Lawyer’s Services: Specific Rules - Comment”). Within Canada, and except for Ontario and possibly Quebec, a referral or lead generator fee may be paid if the fee is not tied to a specific matter or if such fees lead to the possibility of referring clients generally (as opposed to specifically). The structure would also require that no specific lawyer is ever recommended by the future LSRAE. Hence, a future LSRAE could exist as a lead generator to which lawyers or law firms pay fees as a subscription or on a percentage of gross revenues

basis. Access to the future LSRAE platform could be permitted in exchange for monthly or annual fees which are not tied to specific clients or matters. Alternatively, lawyers or law firms could be billed on a monthly, bi-monthly, semi-annual, or annual basis a percentage of gross revenues earned over that period. Because the billing occurs after the matters have been referred and are not tied to any specific matter, revenues limited to lead generation could also remain within the rules of professional conduct for many jurisdictions.

All jurisdictions in North America permit lawyers to market their services, including the price of such services as long as certain basic requirements are met and that such marketing is not misleading and does not attempt to convey prohibited messages. A future LSRAE could also be structured as a marketing agency which charges lawyers marketing fees. In essence, a future LSRAE could exist as a virtual marketplace where consumers and lawyers meet and where lawyers are charged a fee in order to market their services and fees.

Finally, a future LSRAE, client, or both could be charged a flat management fee per matter for the use of the LSRAE's platform. This arrangement would require that the future LSRAE not offer legal services but rather, exist only as a medium on which the two conduct business. No rules of professional conduct appear to apply directly to the structure.

Strategic Considerations

Market Factors

The data are clear — there are too many new law graduates to fill the limited number of open positions year over year in North America. Law firms remain competitive by generating more business through fewer lawyers and given the stagnant growth of the legal services industry, this trend is unlikely to change. There are also significant unmet personal plight legal needs. Personal plight clients are consciously choosing to forego legal representation in favour of self-representation because of the high financial, temporal, and emotional costs which come with simply finding and retaining a lawyer. Legal aid funding serves only a small portion of the personal plight legal industry and creates an opportunity cost to lawyers every time a legal aid certificate is accepted. At the same time, new law graduates are faced with crushing debt.

The cumulative effect of these and other factors suggests that a large gap exists in the provision of legal services, a gap which has yet to be meaningfully exploited. Personal plight clients that are able to afford legal services, though not entirely at market rates, have legal needs which are not being met by lawyers. The first-to-market with a strategy to exploit the gap could potentially create a viable and profitable enterprise.

The overall regulatory environment, when considered alongside the existence of several currently operating LSRAEs in North America, suggests that such an enterprise is legally feasible. However, it may not be able to exist in the same format in every jurisdiction. The rules vary across Canadian provinces and the United States. As such, the business and revenue model must be sufficiently malleable to leverage the regulatory openings for such a future LSRAE. For instance, non-lawyers are prohibited from being paid to recommend a particular lawyer's services in the United States. Lead generator fees are not permitted under the Ontario rules of professional conduct. Therefore, the precise legal structure of the LSRAE will likely need to be adjusted to each jurisdiction.

Clients

Several strategic considerations must be made in forming a future LSRAE, each of which underpin its likelihood of success. First, careful choice of the type of client to serve is critical in matching the services offered to those clientele. For instance, to market a LSRAE's commercial litigation services to individuals is not feasible unless those individuals are entrepreneurs, small business owners, or other commercial operators. On the same note, incorporating some business law legal services into a future LSRAE appears necessary. If the future LSRAE is to operate solely as a personal plight LSRAE, such business law legal services may need to be limited to entrepreneurs. Should this be the case, the future personal plight LSRAE would also need to be backed by a significant branding campaign. This is driven by the nature of personal plight legal services and the nature of the clientele. Personal plight clients do not often expect to incur legal services costs. Moreover, the personal plight legal need usually arises out of some unfortunate circumstance, such as a divorce. Personal plight clients are also more likely to be price sensitive. Branding the future LSRAE as an answer to the high financial, temporal, and emotional costs will almost certainly be critical to the enterprise's success. Generating revenues from personal plight needs will likely be more of a challenge than generating them from business law needs. Corporations and entrepreneurs, while still price sensitive though probably to a lesser degree, incur business law needs as a result of both growth and dispute. Corporations and entrepreneurs are also more likely to see the value in investing in business law legal services and less likely than their personal plight counterparts to view legal services spending as unnecessary, uncomfortable, or even intolerable.

The client-facing data suggest that any future personal plight LSRAE will need to offer a client experience which counteracts the perceived negative aspects of hiring and retaining a lawyer. The nature of a LSRAE addresses the first of such aspects, high cost. Providing for enough lawyers to bid on each case so that competitive bids are received permits the client to pay below-market value for legal services. Next, the process has to be quick. Clients should be able to create a profile, upload documents, post their legal need, and receive bids within a short period of time. Simultaneously, the process should be intuitive and user-friendly. Another factor which ought to be hardwired into a future LSRAE would be a mandatory communication component in which clients are entitled to recurring and regular contact from their lawyer

with progress updates. Quick, easy processes with regular case updates for clients will reduce temporal and emotional costs at a time in the personal plight client's life when they are already potentially high. It may be that reverse auctions are not solely about price (Schoenherr and Mabert 374-376), and thus other components of the LSRAE's service — such as ease-of-use and regular communication between lawyer and client — may represent more of value proposition than originally anticipated.

Another important factor which must not be overlooked is that the nature of the LSRAE controls for service quality. A future LSRAE client (and the LSRAE itself for that matter) will not necessarily be able to independently and *objectively* assess the quality of a bidding lawyer. This gap does not, however, significantly differ from the more traditional ways of finding and retaining a lawyer. Similarly, the information gap will probably not be a determinative factor in clients choosing not to use the future LSRAE's service, although developing a way of objectively measuring legal service value might create a value add for clients. The development may need to include a guided, measured client-rating mechanism whereby clients are able to provide appropriate, contextual, and neutral feedback about lawyers for the use of future clients.

Lawyers

The largest risk to the success of a future LSRAE is the acceptance by lawyers of the service as a viable method of generating revenue. A LSRAE may be interpreted by lawyers as a means of commoditizing their services which they do not believe to be commodities (Schoenherr and Mabert 376-377). The literature revealed that the legal services industry generally frowns upon the LSRAE business model. One lawyer classified the model as a race to the bottom, while still another commentator noted that lawyers who sign up for such a service “should be immediately disbarred, then tarred and feathered, then publicly humiliated,” (Ambrogi, “Shpoonkle's Gone Kershplunk”). The lack of overwhelming public success by a LSRAE may signify that the negative attitudes are widely shared amongst lawyers. Hence, any future LSRAE must specifically address the concerns of the legal community, while at the same time creating realistically profitable opportunities on a platform that is easy to use. Conversely, the economic state of the legal services industry suggests that the need for a future LSRAE may be imminent, which is a factor favouring the feasibility of a future LSRAE. Lawyer rejection of the reverse auction business model may, as in the B2B context (Schoenherr and Mabert 377-399), not last forever. Additional study is required. The underlying motivation for such negative commentary by lawyers may be simply a general aversion to change. Another factor may be that lawyers perceive various drawbacks to the fixed fee or contingency based billing (where allowed) which would likely be required to make the future LSRAE feasible.

The structure, business model, and revenue model of the future LSRAE will need to be defined specifically to address the concerns of lawyers. While identifying the exact structure and models are out of scope of this paper, some potential strategies include:

- limiting the number of bidding lawyers to ensure that a realistic opportunity to be selected comes with each bid;
- geographically constraining litigation matters but not constraining transactional matters;
- offering an easy-to-use platform on which lawyers and their assistants can collaborate with clients;
- integrating the platform with various law firm billing systems to ensure seamless financial accounting;
- offering online coaching regarding how to make fixed rate billing more profitable; and
- properly screening applicant lawyers to ensure that the legal services offered on the platform are of sufficiently high quality.

The two most important and determinative factors in the success of a future LSRAE are expected to be maintaining the level of profitability for lawyers and limiting the amount of impactful change in the offering of legal services. Further research will be required to determine the validity of the conclusion and the means by which the outcomes can be achieved.

Business Model

There are several components of the business model which, strategically, will probably be important to the future LSRAE's success. Platform collaboration will be essential to feasibility. The platform must permit clients to upload documents in the easiest form possible, including by photo. Incorporating technology which recognizes pages, similar to cheque e-deposit technology used by online banking applications, would increase usefulness. The platform must be compatible with the various file management systems used by lawyers and law firms so as to minimize any disruption to current business practices. It is advisable that clients be able to sign retainer documents on the platform, although a caveat is that lawyers are required under rules of professional conduct to positively confirm their clients' identities in certain matters. Video conference technology, along with document upload capabilities, may satisfy the requirement. Communication via the platform may also provide significant value to both lawyers and clients. Providing a secure chat function which eliminates the need to communicate via other means, such as email or telephone, might also prove useful to both entities. Clients would likely appreciate the cohesiveness of the platform and could make use of the chat function to make inquiries or provide pertinent details to their lawyers. Correspondingly, lawyers would likely appreciate the reduction in email inbox clutter and telephone calls. Mandatory regular communication would probably need to be implemented to meet the needs of both sides. The logistics of such regular communication is out of scope for this paper, and further study would be required to determine how to align and maximize the

communications of both sides of a legal services transaction. File management, including document review and commentary provision, will probably be an essential function of the platform. Lawyers ought to be able to easily upload litigation or transactional documents to the platform, and clients ought to be able to provide commentary when required in such a way as to make the edited documents readable.

The preferable fee structures offered by lawyers to clients are uncertain. Lawyers will very likely be opposed to bidding on client files with flat rates. Yet, flat rates will, in most cases, be the most preferable option to clients. Further research into how to make flat rate billing attractive to lawyers is required. Offering free coaching or resources which demonstrate to lawyers how to make flat rate billing profitable might be required to make the future LSRAE viable. Other fee structures may also provide access to justice and force lawyers to compete on price. For instance, lawyers could compete on hourly billing rate or on the percentage contingency rate charged. Alternatively, lawyers could offer the various forms of alternative fee arrangements noted in Table 3 and compete for clients based on the attractiveness of each option to the client. The critical point is that the fee structures available to be offered must be profitable to lawyers; otherwise, the future LSRAE will not be viable. The bidding function of the LSRAE, when featuring the optimized number of lawyers bidding, will very likely ensure that the client pays a fair price for the legal services received.

Lawyer payment ought to occur via the platform. Secure technology which permits clients to pay legal fees by credit card or by other electronic banking means will be essential to the success of a future LSRAE. Fee payment ought to be made easy to encourage clients to make use of the future LSRAE. Service may include offering clients credit. As Noel Semple points out, many industries, such as banks and car dealers, offer deferred payment options on the purchase of major assets, such as mortgages and vehicles, respectively (*Accessibility, Quality, and Profitability* 54). Deferring client payment by offering, for instance, regular interval automatic bank withdrawals may increase the likelihood that a client would make use of a future LSRAE which would, in turn, increase revenue. In addition, offering credit to clients may also generate additional revenue in the form of interest payments. Clients are able to access justice at no or low upfront cost, while spreading out the payment of those legal services over time. At the same time, guaranteeing payment to lawyers would likely increase the value added for lawyers because it eliminates the non-payment risk (Semple, *Accessibility, Quality, and Profitability* 54). However, the non-payment risk here is transferred to the future LSRAE which may decrease viability. The arrangement creates credit risk exposure for the LSRAE and, hence, this component of the LSRAE requires further study. As a general statement, revenue generation for the future LSRAE will need to be carefully structured to maximize client interest, lawyer acceptance, and revenue generated.

Client-Generated Revenue

The literature suggests that clients prefer not to pay for initial consultations, or pre-matter fees, which may limit the success of requiring clients to pay a deposit of any sort. Further study is

recommended as to how best, or whether, to incorporate a client deposit or pre-matter fee of some sort. A deposit would offer a measure of security to ensure that a client actually selects a bidding lawyer rather than simply engage in price shopping. However, charging clients a post-matter fee is likely to be, in most cases, prohibitive. This may not be the case if the fee charged to the client is proportionate to the amount the client saves over market value (and further research would be well served to explore this avenue). Businesses and entrepreneurs may be more likely to pay a file management fee or fee proportionate to savings, given the increased rationality of such clientele.

Lawyer-Generated Revenue

Across North America, various constraints exist in the ways lawyers can pay others to generate revenue for themselves or their law firms. For instance, charging referral fees is strictly regulated by the various lawyer regulatory bodies. Referral fees, a fee exacted by the future LSRAE to lawyers commensurate with the legal services fee to be charged, are easily the most preferred method of revenue generation because the interests of the future LSRAE and the lawyer are aligned. The more revenue the lawyer generates, the more revenue the LSRAE generates. Yet, the future LSRAE is also interested in providing an avenue for clients to save money on legal fees. As well, future study as to the precise legal structure of the LSRAE, be it as a corporation or professional corporation, is required. The decision will, in part, determine the way in which clients and lawyers are charged fees. Half of the successful LSRAEs charge lawyers a subscription fee, so it may be that this is the most viable method to generate lawyer-based revenue.

There are two components to the geographical scope factor which would likely impact success. The first is that the legal services industry, an industry which is highly regulated and which regulation differs by state or provincial jurisdiction, is structured such that geographical scope must be carefully considered when forming a new LSRAE. Different jurisdictions may provide better access to both clients and lawyers, and these considerations must be taken into account. Analysis of the regulatory environment revealed variations exist in the way in which a future LSRAE must operate across North American jurisdictions. For example, it may not be advisable, depending on the legal structure of the LSRAE, to commence operations in Ontario. Operations ought to be commenced in a jurisdiction more favourable to liberal legal services marketing. The second component is that the future LSRAE ought probably to commence operations in a single city and expand outward appropriately. Strategically, this execution allows the LSRAE to build a brand at a lower initial cost than were it to do so on a jurisdictional or parent-jurisdictional basis. As the concept and brand are built, the future LSRAE can expand into other cities both within and outside the initial jurisdiction. Mid-sized cities may be the most appropriate starting points, given the saturation of the legal services markets in major cities like Toronto or New York City. The platform can be tweaked at minimal opportunity or reputation cost to maximize its efficiency on a single-city basis and then, upon reaching a base effectiveness, expand outwards.

Ethical Issues

Potential unethical practices by both clients and lawyers within the LSRAE platform warrants additional study. Even though their study was conducted on B2B reverse auctions, Charki et al. identified several possible ways in which buyers and suppliers can manipulate the reverse auction platform. Misuse of the platform could lead to significant brand degradation, and, thus, appropriate safeguards must be implemented in the new venture to guard against this possibility. Further study ought to identify the likely unethical practices which may arise in B2C reverse auctions and how to best protect against them.

Strategic Partnerships

A LSRAE could be well served to strategically partner with lawyer regulatory bodies in the jurisdictions in which it operates. The strategy is currently employed by Legal Services Link in Arizona and appears to have been used previously by Legalmatch. Strategic partnerships with regulatory bodies likely offer a future LSRAE industry credibility. Such partnerships would decrease any concern lawyers may have related to breaching rules of professional conduct by participating in reverse auctions. Simultaneously, such partnerships might also reduce the professional or legal liability the LSRAE may face in offering lead generator, referral, or matching services. Conversely, there is some risk in attempting to partner or obtain endorsements by lawyer regulatory bodies. Should a regulatory body elect not to endorse or partner with the LSRAE, this may signal to lawyers under its jurisdiction that the service is illegitimate or even illegal. Additional research to determine jurisdictions favourable to a new LSRAE venture is advisable prior to seeking regulatory partnerships or endorsements.

Lessons Learned & Assessment of Feasibility

The comparison of the successful and unsuccessful LSRAEs illustrates that the focus of a LSRAE must be, counter-intuitively, placed on the lawyer rather than the client. The timing of the venture entering the market must correspond with an industry-wide deficit of positions available for new law graduates. If new law grads and lawyers generally are sufficiently employed, any future LSRAE will almost certainly not succeed. The willingness of lawyers to aggressively compete on price is tied to the income-earning consequences which come with an oversupply of service providers. A lawyer would never aggressively compete on price (unless it were necessary to earn sufficient income to support the costs of being a lawyer, which include paying back tens of thousands of dollars in student debt).

The profitability to lawyers of participation in the future LSRAE is also critical to the LSRAE's success. Lawyer resistance to technological advancement, to change in the way in which legal services are offered, to the use of flat fees, and a general aversion to participating in a 'race to the bottom' strongly suggests that any future LSRAE must be created with lawyers first in mind. Significant consultation as to what personal plight and personal business lawyers would look for in a LSRAE will be necessary to produce an enterprise which encourages buy-in. Further study is necessary as to the types of fee structures

available, how best to incorporate client participation (while minimizing unnecessary client interaction), how to permit lawyers to bid on each client posting, how to select lawyers given the chance to bid, how to structure collaboration, how to charge lawyers to use the LSRAE platform, and how to post client matters.

A future LSRAE will probably not have significant trouble attracting clients, pending a strong marketing campaign. Future study as to how to best attract clients is advisable. However, the basic premise of the LSRAE will generally be attractive to individuals seeking personal plight or personal business legal services, those generally are unable to afford the market rates of legal services. The literature also strongly demonstrates that, from the client side, demand will be significant. On average, a large portion of the people will experience a personal plight legal need at some point in their life, and legal aid is inaccessible for many persons. Market rates are generally unaffordable to those in need of personal plight legal services, even to some lawyers. Building a brand which emphasizes price certainty, fair pricing, payment options, and quality legal service — while at the same time instilling trust — ought to sufficiently attract clientele.

Starting small and building out will probably be the most cost-effective way of accomplishing brand recognition. The legal structure of a future LSRAE may prohibit non-lawyer investment, which will mandate organic growth funded by cash flows and debt. Building a brand in a single city and leveraging success in that city to fund expansions elsewhere is likely to be the most effective way of navigating the investment regulatory challenge.

The absence of peer-reviewed B2C reverse auction entrepreneurship literature reveals that additional study is required to determine how to best structure a new LSRAE venture. Additional study will be augmented by explorations of other industries that make use of reverse auction websites, such as Price Line, but less so by explorations of industries that make use of online information matching services (Etemad 356-358). Incorporating the B2B reverse auction literature into the analyses may still be helpful, however. For instance, it would be helpful in the B2C context to test the myths debunked by Schoenherr and Mabert (373-384) in the B2B context.

Given the above, a LSRAE venture appears to be feasible both in Canada and the United States, from a contextual, economic, managerial perspective. Were the conclusion not so, no successful LSRAEs would be currently operating. Further research is required in three main areas — lawyer on-boarding, client acquisition, and business structure — to further identify how to best execute a future LSRAE to be profitable.

CHAPTER 7 — CONCLUSION

Accessing justice is difficult for many in Canada and the United States. Low- and middle-income earners have nearly a 50% chance of experiencing a personal plight legal issue every three years (Farrow 1, 7-8; Semple, *Accessibility, Quality, and Profitability* 21). Personal plight legal issues, such as divorces, home repossession, personal injury, and criminal charges, are dispute-based and are often not events for which such person can plan or budget. Moreover, even if the issues were predictable in advance, the costs associated with addressing them are extraordinary.

Most lawyers bill matters using the billable hour, a method whereby the lawyer works on a matter until its conclusion or the client stipulates otherwise, keeps track of his or her time while doing so, tallies the number of hours spent resolving the matter, multiplies the total number of hours worked by an hourly rate, then adds the applicable taxes and other costs to the bill before sending it to the client and expecting relatively prompt payment. In Canada, average hourly rates range from over \$200 to over \$500, depending on the experience level of the lawyer. In the end, a contested divorce will likely cost each side between \$7,500 and \$12,500. A one-day criminal trial averages between \$5,000 and \$8,000. However, such matters are not on average predictable, and such costs cannot be budgeted by low- and middle-income earners. As well, state funding of legal services is reserved for the lowest of low-income earners. The individual afflicted, who is already in an uncomfortable state by having experienced a personal plight legal issue, is then left with the prospect of paying thousands of dollars with no price certainty.

This situation, however, is just the beginning. Individuals must find lawyers to represent them. The costs of doing so can be enormous. The individual must dedicate time to searching for lawyers without the benefit of a way of objectively assessing whether the potential lawyers offer high-quality services. Lawyers most often do not advertise their rates, which then puts clients in a position to have to attend multiple initial consultations. At these consultations, the individual will learn of the hourly rates or alternative billing options which the lawyer may make use of but, absent a fixed rate, will be left to guess about the amount of the final legal bill. All the while, emotional costs build. Overall, the process is not enjoyable, and adds to the stresses which the personal plight legal matter has already created. The structure and economics of the legal services industry illustrates why potential personal plight clients are often forced to represent themselves.

The other side of the relationship is also fraught with pressures. Offering legal services is an inherently costly proposition. Individuals interested in becoming a lawyer invest several years and tens of thousands of dollars into the requisite legal education. Upon graduation, if the individuals are fortunate to find a job as a lawyer, they will work as many hours as they can to demonstrate to their employer that they add value to the law firm. When billing by the hour, lawyers and law firms accomplish two things. First, they eliminate labour requirement risk. It does not matter how many hours a dispute is likely to

require to be resolved when each hour worked will be remunerated. Second, the billable hour tacitly encourages inefficient work in order to maximize billings and profit on a particular file. This is especially so for young lawyers looking to remain employed in a market that favours employers. Since the late-2000's, finding a job has become increasingly difficult. Some studies show that there are too many new law graduates for available lawyer positions every year. Others suggest that demand for legal services is relatively constant. While law schools in Canada and the United States continue to produce graduates, law firms do not — and perhaps cannot — hire at rates to support such graduation levels. The situation leaves many new lawyers without the means to pay back the tens of thousands of dollars in debt and requires those who are hired to work as many hours as they can. All else being equal, the access to justice crisis which exists in Canada and the United States will not soon dissolve in the current industry structure.

Innovative enterprises which can navigate the various regulatory constraints are required to address the sparsity of access to justice for low- and middle-income earners. Such income earners, though they may not be able to afford market rates for legal services, often do have some money to spend, be it by lump sum or over time. Yet, many of these individuals choose to self-represent or to not seek justice rather than face the uncertainty of the legal services bill. A reverse auction business model which offers a platform where consumers post legal needs and certain lawyers are permitted to bid on the offering of those services may be the innovative solution to address the sizeable gap in the marketplace currently underserved by lawyers. The purpose of the paper was to determine, based on the performance of several enterprises which have gone to market with similar business models, whether or not the reverse auction model for legal services is feasible.

Extensive research uncovered twenty-one previous attempts at bringing a legal services reverse auction enterprise to market. Of these, eight were deemed to be successful by having existed for longer than three years and for continuing to offer services to date. The remaining thirteen were deemed unsuccessful for having failed to operate as a going concern. The enterprises were examined for commonalities and differences across several factors, including the fashion in which each offered services to both clients and lawyers. Similarities between successful ventures were noted and compared to the various methods in which unsuccessful brought services to market and ultimately failed. In total, four clear themes of difference emerged.

First, the timing of going to market appears to have made a difference. Unsuccessful ventures were generally launched prior to the effects of the 2008 financial downturn taking hold of the legal services industry. Conversely, most of the successful LSRAEs were launch in the wake of the North American economy's collapse and oversupply of lawyers. Second, a LSRAE should probably operate on a national basis, although its growth strategy to reach individual jurisdictions must be tailored to meet the unique conditions underlying external investment in the legal services industry. Third, the analysis

suggests that the LSRAE must generate revenue from the lawyer as opposed to the client and it must do so by creating a user-friendly, all-encompassing platform and by limiting the number of lawyers that can bid on any particular client posting. Finally, to be profitable, the LSRAE must offer a wide range of legal services on its platform, including entrepreneur and business law services.

Additional findings were made concerning business strategy. The regulatory environments in North American jurisdictions were found generally to permit a LSRAE to operate despite different structures being required in some to avoid legal liability. Client acceptance of the business model was found to be likely after a strong branding campaign as long as certain criteria, such as regular communication, are incorporated into the platform. Lawyers were identified as the most critical party to the success of a LSRAE. Lawyer acceptance of the business model will likely be difficult and thus further study is required on how to best attract lawyers to the LSRAE venture. Several possible solutions were identified, including platform integration with law firm software, coaching, and lawyer screening. Constraining the legal work and exchange of funds to the platform so as to eliminate extraneous variables was also identified as strategically advisable. Ensuring that a plethora of fee structures are available on the new LSRAE venture was indicated as important, even though further research will be required to determine how best to balance the differing needs of the clients and lawyers. Litigation funding and payment guarantees were proposed as potential value-additions for lawyers, although this shifts non-payment risk to the LSRAE and thus requires further study. Moreover, capital intensity is likely to rise significantly as a result of increased platform capabilities and payment guarantees for lawyers being built into the business model. Unethical bidding practices were identified as a significant risk that a LSRAE could encounter, and further study was recommended to determine how this may occur and the extent to which it could be prevented. Finally, partnerships with law and bar societies was proposed with caution as a beneficial strategy, given the industry credibility that a new LSRAE venture would acquire in the process.

The exploratory study into the creation of a new LSRAE venture determined that launching a new LSRAE is likely viable pending further study. Significant future research is required into how to best structure and bring to market the new venture. Despite their limitations, the results of this exploratory study suggest valuable contributions can be made to both the state of knowledge and to practice as they concern LSRAEs and access to justice.

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APPENDICES

Appendix A — Aggregated Markers of Pre-Existing Legal Services Reverse Auction Enterprises

LEGEND

N = national

I = individuals

B = businesses

E = entrepreneurs

U = unknown

A = active

FS = full service

BL = business law

PP = Personal plight

T = traffic

LF = lawyer pays recurring flat fee (monthly/annually)

RF = lawyer pays referral or proportional fee

CF = client pays a fee

* = assumed

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
BernieSez	2013	A	6	NC PA		T	I	LF	-clients post a picture of traffic ticket with additional comments -lawyers search for cases and bid on the work -clients receive an email each time a bid is made and select the winning bidder -lawyers pay for one of several monthly subscription fee for each county in NC or PA that they want outbound leads from and depending on lead volume	(BernieSez, "Pricing"; crunchbase, "BernieSez")
BidsFromLawyers	2009	2011*	2	N	NYC	PP	I	LF	-users select the area of law their need is in, select the geographical region they wish to receive bids from -users then type a short description of their legal matter and select the number of days bids are left open for -lawyers then bid on the work	(Ambrogi, "Shpoonkle's Gone Kershplunk?"; BidsFromLawyers, "Legal Help Needed?"; Derden, "Jeff Derden").
EagleFee	2011	2014*	3	N	ME	PP	I	RF	-clients post advertisements of personal injury cases -lawyers bid on contingency fees -LF pays an offer fee of \$25 for every offer sent to a client	(Ambrogi, "Shpoonkle's Gone Kershplunk?"; EagleFee, "EagleFee"; EagleFee, "FAQ"; EagleFee, "State by State List of Useful Sites for Accident Victims"; Kolle, "Tyler Kolle").

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
eLawForum	late '90s	2010*	~12	Global	VA	BL	B	RF	-client has a portfolio of litigation needs -client posts a request for proposal (“RFP”) to eLawForum website -client selects law firms to invite to bid -eLawForum facilitates a bidding process wherein law firms are invited to bid a flat fee on the entire litigation portfolio -client selects the winning bid -client pays a percentage of savings based on estimated cost of litigation as of July 2002, 1,464 law firms registered as potential bidders; 176 corporations registered as clients; 80 competitors	(American Bar Association Commission on Billable Hours, “Report”; Christenson, “eLawForum”; Drystone Capital, “Drystone Capital”; Henry, “eLawForum Litigation Portfolio”).
ExpertBids	2010	2014*	4	U	Chicago	FS -account -consult	I B	LF	-raised \$20,000 in one round -client posts a Service Request -qualified professionals review and send flat rate or hourly rate proposals -client selects winner -winning bidder pays \$14.95 fee	(accountingWEB, “ExpertBids.com”; crunchbase, “Expertbids”).
HireMeLegal	2015	2017*	2	N	U	FS	I B	CF	-clients post legal needs -lawyers review and submit proposals including pricing -clients select winning bidder -client pays a 10% service fee	(HireMeLegal, “About Us”; HireMeLegal, “HireMeLegal”; Lee, “#LegalTech Startups”; Wick, “Legal Experts”).
JammedUp	2012	2018*	6	U	NYC	PP	I	U	-clients can make postings re: their legal need and review bids from lawyers, bondsmen, and private investigators	(crunchbase, “JammedUp”; Rosenberg, “New site”).
Juribid	No available information									

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
lawdingo	2012	A	7	N	NYC	PP	I B	LF	-client communicates legal need to lawdingo -a lawyer contacts client and gives a quote -client signs engagement letter -client deposits funds -4 rounds of funding raised \$810,000 -lawyer bids to have profile shown to potential clients	(Abromowitz, "Uber for Lawyers"; crunchbase, "Lawdingo"; Ha, "Lawdingo"; Habib, "Find a Lawyer Free"; Lawdingo, "How it Works").
Lawgger	2014	A	5	N		FS	I B	RF	-clients log on, upload documents, explain their case -client then sets budget for work -case is then put out to market -qualified lawyers review and submit flat fee bids -client picks a winner -lawyers pay a "transactional technology" fee equal to a percentage of the bill -\$288,000 annual revenue -built in RAIN accelerator	(Lawgger, "How it Works")
LawPitch	2014	2016*	2	-US -Canada -UK -Australia -New Zealand	U	FS	I B	U	-users create a profile -users post legal need -lawyers review posts and bid flat fees	(LawPitch, "How it Works").
lawtrades	2014	A	5	U	NYC	BL	B	LF	-clients sign up for a profile -select BL need -get an instant pricing estimate -clients get a chance to read reviews of and chat with applicable lawyers -also offers an in-house counsel outsourcing service -charges fixed rates for legal services ranging from \$250-\$4000 -lawyers pay an annual fee of \$300 for access to clients -two rounds of funding raised \$2.7M	(Aviso, "Law Trades User Reviews"; crunchbase, "Lawtrades"; Lawtrades, "Online Legal Services"; 500 Startups, "Lawtrades").

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
LawyerBid	2010	2010*	1	U	TX	PP	I	U	-clients creates profile -clients anonymously post legal needs -lawyers bid on work	(LawyerBid, "LawyerBid"; LawyerBid, "LawyerBid.com"; Matthias Rhoads, "LawyerBid.com").
LawyersForLess	No available information									
LawyersQuoteFast	No available information									
Legal Services Link	2015	A	4	-AZ Virgin Islands, - Military Spouse JD Network with official partnerships, nationally to date	Chicago	FS	I B	LF	-clients sign up for a free account -clients then post anonymous legal needs -qualified lawyers get notifications immediately and make applications to work for the client -lawyers give price estimates -client selects winning lawyer -lawyer and client meet at lawyer's office to finalize retainer -lawyer pays \$250/year for access to listings and unlimited applications sent to clients -can complete postings online or mobile -three hundred fifty attorneys in July 2016 -seven hundred lawyers/600 clients in December 2016 -most responding lawyers are sole practitioners or from small-medium sized firms -two thousand attorneys and 1,500 live projects in January 2018 -approved by Arizona bar on October 21, 2016 for \$300,000 -pay a revenue share to AZ Bar	(Banerjee, "Attorney creates app"; crunchbase, "Legal Services Link"; Hernandez, "Folly on the loose"; Horn, "Announcing"; Horn, "How Legal Services Link"; Horn & Callagione, "Interview"; Legal Services Link, "Attorney/Client Matching App"; Legal Services Link, "How it Works"; Olson, "When Finding the Right Lawyer"; State Bar of Arizona, "Minutes"; State Bar of Arizona, "2018 Budget"; Rekdal, "This startup").

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
Legalmatch	1999	A	20	N		FS	I B	LF	-client posts legal need -lawyers are immediately matched to the case without seeing client info -interested lawyers respond with details & pricing structure -client selects lawyer -lawyers pay monthly subscription fee -over 4 million cases posted -lawyers can offer flat, hourly, or contingent fees	(crunchbase, "Legalmatch"; Legalmatch, "How it Works"; Prikash, "LegalMatch Review").
MyLawBid	2011	2015*	4	N (Can)	Toronto	PP BB	I B	U	-clients post RFPs -registered lawyers can bid on the RFPs -one hundred lawyers signed up in first few months -two hundred lawyers registered by 2012	(crunchbase, "MyLawBid"; Kroeker, "Lawyer's new business"; MyLawBid, "Find a Lawyer - Tour of MyLawBid"; MyLawBid, "MyLawBid"; Techvibes, "Save Time and Money?").
priorlegal	2011	A	8	N		BL	B		-clients submit RFPs -Priori case manager confirms legal need with client -priori creates customized match of lawyers -lawyers send details, pricing structures -can offer hourly, flat, subscription, capped, or contingent fees -client engages with lawyers and selects winning lawyer	(crunchbase, "priorlegal"; priorlegal, "How it Works").
Shpoonkle	2011	2014*	3	N (US) N (Can)	NYC	U	U	U	-clients post legal services needs -lawyers in the local area of the client are notified and invited to bid -two thousand one hundred lawyers had registered in less than a year -hourly or contingency	(Ambrogi, "Shpoonkle's Gone Kersiplunk"; McKendrick, "eBay of legal services"; O'Dell, "Stupid name"; Popper, "Meet Shpoonkle").

Iteration	Opened	Closed	Lifespan (years)	Geographic Scope	HQ	Legal Services Scope	Client Scope	Revenue Model	Business Model	Sources
UpCounsel	2012	A	7	N		BL	B	RF	<ul style="list-style-type: none"> -six funding rounds has raised \$26 Million -client posts legal need -website algorithm matches qualified lawyers who review the legal need and propose solutions including hourly or flat fee rates -clients book free phone consultations -client hires a lawyer and uses website's technology to collaborate online -website allows for clients to select lawyers again for future legal work -each lawyer has a profile on the website -also offers companies the equivalent of short-term in-house counsel staffing -UpCounsel takes a 5% fee -reduces lawyer admin costs 	(crunchbase, "UpCounsel"; UpCounsel, "Attorneys"; UpCounsel, "Enterprise"; UpCounsel, "How it Works").

Appendix B — Arizona State Bar Extension of Legal Services Link Contract

Patricia Seguin

From: Lisa Panahi
Sent: Thursday, December 27, 2018 6:29 PM
To: Patricia Seguin
Subject: Fwd: LSL Renewal

Sent from my Verizon 4G LTE Droid

----- Forwarded message -----

From: "John F. Phelps" <John.Phelps@staff.azbar.org>
Date: Dec 26, 2018 1:13 PM
Subject: LSL Renewal
To: Matthew Horn <mhorn@legalserviceslink.com>, Ryan Caltagirone <rcaltagirone@legalserviceslink.com>
Cc: Lisa Panahi <Lisa.Panahi@staff.azbar.org>, "Rick R. DeBruhl" <Rick.DeBruhl@staff.azbar.org>, Lori Maxwell <lori.maxwell@staff.azbar.org>

Matt and Ryan: This email serves as the State Bar's notice to Legal Services Link that the State Bar is exercising its first option to renew The Software License, Development and Revenue Share Agreement for an additional one year term, effective March 17, 2019 through March 16, 2020.

Wishing you and your families a wonderful holiday season and prosperous New Year!

Warm Regards,

John



John Phelps, CEO/Executive Director
State Bar of Arizona
4201 N. 24th St., Suite 100 | Phoenix, AZ 85016-6266
T : 602.340.7200 **F** : 602.416.7400
EMAIL: John.Phelps@staff.azbar.org
www.azbar.org

Serving the public and enhancing the legal profession.

Appendix C — Successful LSRAE Business Model Characteristics

LEGEND

Y = Yes

N = No

U = unknown

AQ = All Qualified

GC = Geographically Constrained

SC = Subset of Qualified

AG = Algorithm

P = Platform

OF = Off Platform

H = Hourly

F = Flat

C = Contingency

CAP = Capped

SUB = Subscription

SUCCESSFUL LSRAES BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by LSRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
BernieSez	Y	Y	U	AQ	U	U	P	U	P	Monthly subscription fees ranging from \$50-\$200	(BernieSez, "Pricing"; crunchbase, "BernieSez")
lawdingo	Y	U	U	U	P	U	P	\$810,000 over 4 rounds	P	Lawyer bids to have profile shown to clients	(Abromowitz, "Uber for Lawyers"; crunchbase, "Lawdingo"; Ha, "Lawdingo"; Habib, "Find a Lawyer Free"; Lawdingo, "How it Works").
Lawyer	Y	Y	Y	AQ	OF	U	P	U	P	Transactional technology fee	(Lawyer, "How it Works")
lawtrades	Y	U	U	U	P	F	P	\$2.7M over 2 rounds	P	Lawyers pay annual access fee of \$300 -estimated \$17.6M in annual revenue	(Aviso, "Law Reviews"; Trades User crunchedbase, "Lawtrades"; Lawtrades, "Online Legal Services"; 500 Startups, "Lawtrades").

SUCCESSFUL LSRAES BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by LSRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
Legal Services Link	Y	U	N	GC	OF	U	OF	U	U	Lawyers pay a \$250 per year subscription for access to client postings and unlimited bids	(Banetjce, "Attorney creates app"; crunchbase, "Legal Services Link"; Hernandez, "Folly on the loose"; Horn, "Announcing"; Horn, "How Legal Services Link"; Horn & Calagirone, "Interview"; Legal Services Link, "Attorney/Client Matching App"; Legal Services Link, "How it Works"; Olson, "When Finding the Right Lawyer"; Rekdal, "This startup").
legalmatch	Y	U	U	GC	OF	H, F, C	P	U	OF	Monthly subscription fee	(crunchbase, "Legalmatch"; Legalmatch, "How it Works"; Prikash, "LegalMatch Review").
priorilegal	Y	Y	U	SC	P	H, F, C, CAP, SUB	P	U	P	Client pays 10% management fee	(crunchbase, "priorilegal"; priorilegal, "How it Works").

SUCCESSFUL ISRAELI BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by ISRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
UpCounsel	Y	Y	N	AG	P or OF	H, F	P	6 rounds, \$26M	P	Client pays a 5% referral fee	(crunchbase, "UpCounsel"; UpCounsel, "Attorneys"; UpCounsel, "Enterprise"; UpCounsel, "How it Works").

Appendix D — Failed LSRAE Business Model Characteristics

LEGEND

Y = Yes

N = No

U = unknown

AQ = All Qualified

GC = Geographically Constrained

SC = Subset of Qualified

AG = Algorithm

P = Platform

OF = Off Platform

H = Hourly

F = Flat

C = Contingency

CAP = Capped

SUB = Subscription

FAILED LSRAE'S BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by LSRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
BidsFromLawyers	Y	U	U	U	U	U	U	U	U	Lawyer pays \$19.95 monthly membership fee	(Ambrogi, "Shpoonkles Gone Kershlunk"; BidsFromLawyers, "Legal Help Needed?"; Derden, "Jeff Derden").
EagleFee	Y	Y	U	GC	U	C	U	U	U	Lawyer pays an offer fee of \$25 for every offer sent to a client	(Ambrogi, "Shpoonkles Gone Kershlunk"; EagleFee, "EagleFee"; EagleFee, "FAQ"; EagleFee, "State by State List of Useful Sites for Accident Victims"; Kolle, "Tyler Kolle").
eLawForum	U	U	U	AQ	U	F	U	U	U	Client pays a percentage of savings based on estimated cost of litigation	(American Bar Association Commission on Billable Hours, "Report"; Christenson, "eLawForum"; Drystone Capital, "Drystone Capital"; Henry, "eLawForum Litigation Portfolio").
ExpertBids	Y	U	U	AQ	U	F, H	U	U	U	Lawyer pays \$14.95 fee when selected	(accountingWEB, "ExpertBids.com"; crumchase, "Expertbids").

FAILED LSRAES BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by LSRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
HireMeLegal	Y	U	U	AQ	OF	U	OF	U	P	Client pays a 10% service fee	(HireMeLegal, "About Us"; HireMeLegal, "HireMeLegal"; Lee, "#LegalTech Startups"; Wick, "Legal Experts").
JammedUp	U	U	U	U	U	U	U	U	U	U	(crunchbase, "JammedUp"; Rosenberg, "New site").
Juribid	No available information										
LawPitch	Y	U	Y	GC	OF	F	OF	U	P	U	(LawPitch, "How it Works").
LawyerBid	Y	U	U	AG	U	U	U	U	U	U	(LawyerBid, "LawyerBid"; LawyerBid, "LawyerBid.com"; Mathias Rhoads, "LawyerBid.com").
LawyersForLess	No available information										
LawyersQuoteFast	No available information										
MyLawBid	U	U	U	U	U	U	U	U	U	U	(crunchbase, "MyLawBid"; Kroeker, "Lawyer's new business"; MyLawBid, "Find a Lawyer - Tour of MyLawBid"; MyLawBid, "MyLawBid"; "MyLawBid"; Techvibes, "Save Time and Money").

FAILED LSRAEs BUSINESS MODELS

Iteration	Client Account	Upload Documents	Client Sets Budget Before Bids	Lawyer Selection by LSRAE	Retainer Process	Fee Structure Availability	Collaborate on Platform or Offline	External Investment	Lawyer Payment	Revenue Model	Sources
Shpoonkle	U	U	U	GC	U	H, C	U	U	U	U	(Ambrogi, “Shpoonkle’s Gone Kershplunk”); McKendrick, “eBay of legal services”; O’Dell, “Stupid name”; Popper, “Meet Shpoonkle”).

Appendix E — Relevant Regulatory Constraints on the Practices of Lawyers and Law Firms

Jurisdiction	Referral Fees		Lead Generator Fees	Division of Fees Permitted to Lawyers in Other Firm or Prohibited	Marketing Permitted		Rules	Sources
	<i>Lawyers Only, Referral Service Anyone, Prohibited</i>	<i>Cap</i>			<i>Legal Services</i>	<i>Legal Fees</i>		
British Columbia	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(The Law Society of British Columbia, <i>Code of Professional Conduct</i>).
Alberta	Lawyers Only	Reasonable	If not linked to specific matter	Permitted	Yes	Yes	3.6; 4.2	(Law Society of Alberta, <i>Code of Conduct</i>).
Manitoba	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(The Law Society of Manitoba, <i>Code of Professional Conduct</i>).
Newfoundland & Labrador	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(The Law Society of Newfoundland and Labrador, <i>Code of Professional Conduct</i>).
New Brunswick	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(Law Society of New Brunswick, <i>Code of Professional Conduct</i>).
Northwest Territories	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3(10); 4(13)	(Law Society of the Northwest Territories, <i>Code of Professional Conduct</i>).
Nova Scotia	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(Nova Scotia Barrister's Society, <i>Code of Professional Conduct</i>).
Nunavut	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(Law Society of Nunavut,
Ontario	Lawyers Only	15% of first \$50,000; 5% of additional fees to a maximum of \$25,000	Prohibited	Permitted	Yes	Yes	3.6; 4.2	(Law Society of Ontario, <i>Rules of Professional Conduct</i>).
Prince Edward Island	Lawyers	Reasonable	Allowed	Permitted	Yes	Yes	3.6; 4.2	(The Law Society of Prince Edward Island, <i>Code of Professional Conduct</i>).
	Referral Service							
Quebec	Lawyers Only	Reasonable	Unknown	Permitted	Yes	Yes	106; 107; 145; 146; 147	(Barreau du Québec, <i>Code of Professional Conduct of Lawyers</i>)

Jurisdiction	Referral Fees		Lead Generator Fees	Division of Fees Permitted to Lawyers in Other Firm or Prohibited	Marketing Permitted		Rules	Sources
	<i>Lawyers Only, Referral Service Anyone, Prohibited</i>	<i>Cap</i>			<i>Legal Services</i>	<i>Legal Fees</i>		
Saskatchewan	Lawyers Only	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(Law Society of Saskatchewan, <i>Code of Professional Conduct</i>).
Yukon	Anyone	Reasonable	If may refer clients generally	Permitted	Yes	Yes	3.6; 4.2	(Law Society of Yukon, <i>Code of Professional Conduct</i>).
California	Lawyers,	None	Allowed	Permitted	Yes	Yes	1-320; 1.5.1; 7.2	(State Bar of California, "Lawyer Referral Service Provider Certification"; State Bar of California, <i>Rules of Professional Conduct</i>).
	Referral Service	Prescribed referral fee						
Rest of the United States	Lawyers Only	Proportionate	Allowed	Permitted	Yes	Yes	1.5; 5.4; 7.2	(American Bar Association, <i>Model Rules of Professional Conduct</i>).

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