

Regulatory Developments Related to Innovation, Technology, and the Practice of Law



Law Society of Ontario Special Lectures 2019
Toronto, Canada, Nov. 22, 2019

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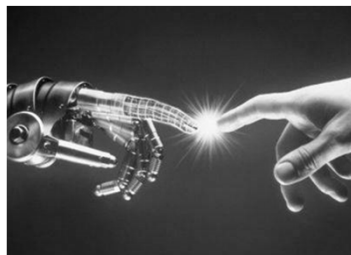
The Goal of My Remarks



- US resources
- IBA resources

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Intro: Lots of Tech & Lots of Regulatory Challenges

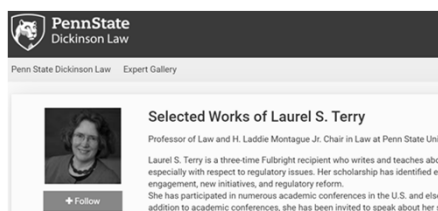


↑ Appendix A in Henderson's *Legal Market Landscape Report* was this Thompson Reuters chart

For Additional Details ... check the footnotes!

- My paper is in the conference materials
- It will also be on my webpage:
https://works.bepress.com/laurel_terry/

(And hopefully in a journal...)



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Regulatory Challenges Related to Innovation, Technology, and the Practice of Law

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ABA Sources *re* Tech, Innovation & Regulation

ABA Commission on Ethics 20/20

ABA Center for Innovation

1. Inbound Foreign Lawyers
2. Technology
3. Outsourcing
4. Uniformity/Choice of Law
5. Alternative Law Practice Structures



Work Product

<https://perma.cc/FH3U-EGW5>



REPORT ON THE FUTURE OF
LEGAL SERVICES
IN THE UNITED STATES

COMMISSION ON
THE FUTURE OF LEGAL SERVICES
AMERICAN BAR ASSOCIATION

2016

<https://perma.cc/GQH6-V396>

<https://perma.cc/9JT7-JURD>

ABA Resolution 10A: ABA Best Practice Guidelines for Online Legal Document Providers

dated August 2019,

<https://perma.cc/5GMY-WG7L>

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Utah Regulatory Reform (*re* Access & Innovation)



***Narrowing the Access-to-Justice Gap by
Reimagining Regulation***

Report and Recommendations from

THE UTAH WORK GROUP ON REGULATORY REFORM

August 2019

<https://perma.cc/VR55-3UXE>

<https://perma.cc/9WFR-THYZ>

Project launch announced:
March 4, 2019

Utah Supreme Court
approved this report: 8/29/19

Track A: Freeing up lawyers to compete by easing the rules of professional conduct

[i.e., similar to Arizona by eliminating or substantially changing Rule 5.4 re fee-sharing]

Track B: The creation of a new regulatory body

Implementation Phase 1: establish a pilot project – **a regulatory “sandbox”**

Implementation Phase 2: there would be an independent, non-profit regulator with delegated regulatory authority over some or all legal services.

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Arizona Proposals (*re Access & Innovation*)



Task Force on the Delivery of Legal Services

October 4, 2019

Report and Recommendations

<https://perma.cc/KP8B-9UUA>

Azcourts.gov
Arizona Judicial Branch

Home | AZ Courts | AZ Supreme Court | Court Admin/AOC | Self-Service

Pages

Arizona Commission on

Access to Justice

Capital Case Oversight

Home / Court Admin/AOC / Court Services / Committee
Force

Legal Services Task Force

Recommendation #1 of 10:

Eliminate Arizona's [Rules] 5.4 and 5.7 and amend [Rules] 1.0 through 5.3 to remove the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public

California Consultation (*re Access & Innovation*)



The State Bar of California
Task Force on Access Through
Innovation of Legal Services

Legal
Market
Landscape
Report

Commissioned by the State
Bar of California
July 2018
William D. Henderson

The UPL- Artificial Intelligence Subc'ee Recommended:

Recommendation 2.4: The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate **BOTH** the provider **AND** the technology itself.

<https://perma.cc/D82L-VVTA>

Participants in US Regulatory Conversations



MAKING HISTORY: UNLOCKING LEGAL REGULATION

April 16-17, 2019 | History Colorado Center | Denver, Colorado

University of Denver

IAALS Unlocking Legal Regulation Knowledge Center

As part of IAALS' Unlocking Legal Regulation project, we have launched this Knowledge Center to capture the ongoing work and conversations in the realm of legal regulation happening around the country. The Knowledge Center is designed to be an up-to-date resource with current state recommendations, ongoing scholarship, and additional resources for those exploring how unlocking legal regulation can be achieved. IAALS is partnering with Utah to develop and evaluate a risk-based legal regulation structure, based on IAALS' model, and hopes to provide a direct path for additional states to pursue it in the near future.

Right Now in Utah

- Work Group on the Regulatory Structure for Legal Services
- Utah Survey Reports
 - General Public Legal Services
 - Business Legal Services
 - Business
- Current Recommendations
- FAQs Coming Soon
- Website Coming Soon

Other State Action

California

Organizations

IAALS

- Unlocking Legal Regulation
- US Justice Needs
- Cases Without Counsel

APRL

- The Future of Lawyering
- Referral Fee/Services Subcommittee
- Resources
- Legal Ethics Links

NCSC

- 2019 Trends in State Courts
- Landscape of Civil Litigation in State

Other Resources

ABA Center for Innovation Legal Innovation Regulatory Survey

National Center for Access to Justice's Justice Index

All About Unlocking Legal Regulation

Click here to learn everything you need to

APRL ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS

The Future of Lawyering

<https://perma.cc/JH8K-A4PD>
<https://perma.cc/5W86-EJPK>

A useful resource

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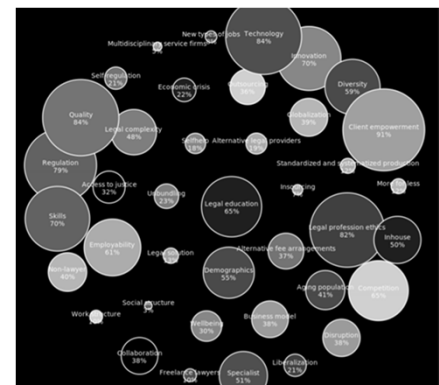
Internationally... Two Useful IBA Resources

INTERNATIONAL BAR ASSOCIATION
PRESIDENT'S TASK FORCE ON THE FUTURE OF LEGAL SERVICES
PHASE I - EXECUTIVE SUMMARY

María J. Esteban, PhD, ESADE Law School – Researcher
 James M. Klotz, IBA Secretary-General – Task Force Chair

Sydney
 October 9, 2017

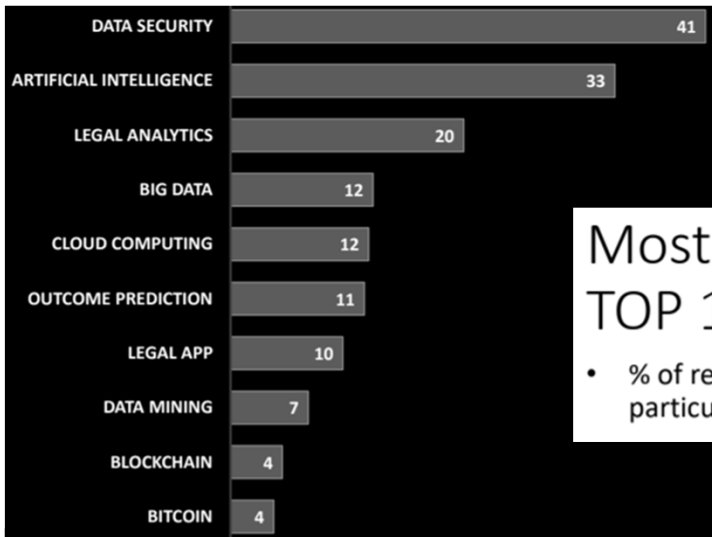
<https://perma.cc/4VWQ-5BPH>



Most cited drivers of change

10

IBA Task Force Report Cites Tech & Innovation



Most cited legal tech: TOP 10

- % of references in database citing a particular legal technology

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IBA BIC *Unregulated Providers* Consultation

Do not reply to this email. Please use divisions@int-bar.org to contact us.



INTERNATIONAL BAR ASSOCIATION*
the global voice of the legal profession

Comments due 1/31/2020
from IBA Member Bars

Unregulated providers of legal services

Dear Member Organisation Representatives,

1. Introduction

The Bar Issues Commission (BIC) has been working in the area of legal services as delivered by unregulated providers. A working group was set up a couple of years ago, and it has now come up with some proposals. The BIC would like your views on the work achieved to date around a number of questions, including whether the IBA should promote principles governing the provision of legal services, regardless of whether those legal services are provided by regulated or unregulated providers.

The questions raised in the consultation can be found at the end of the consultation document. Of course comments are welcome on any aspect of the document, including on the proposed 'IBA principles on the provision of legal services'.

To access the proposed version of the document please follow this link:

<https://www.ibanet.org/Document/Default.aspx?DocumentUid=5f3b202c-85e6-4eee-a5fe-ac5f776debba>

Bar Issues Commission [BIC]

Current projects

- Guidelines for Bar Associations on professional indemnity insurance
- Guidelines on unregulated legal services

<https://perma.cc/AN7D-E6MP>
<https://perma.cc/Y4DZ-6VH3>

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Principles in the IBA Consultation (tech part)

Where legal technology is used in the delivery of legal services, the following additional aims are included in the list:

- L. Accountability and appropriate levels of supervision in the form of a named legal person to be responsible for the product, with contact details given*
- M. Human agency and oversight in the form of one or more suitably qualified people (not necessarily legally qualified, but qualified to understand and handle the technology and its consequences) to be identified to manage the technology*
- N. Respect for human rights, including non-discrimination, diversity, fairness, environmental rights, and the right to privacy and data protection*
- O. Transparency in the way the technology is built and operates so that it can be meaningfully explained, including both which data were used to create an algorithm, and also the legal basis for the use of the technology, to facilitate access to remedies where an outcome is challenged*
- P. Agreed minimum standards on the quality of data to be used in the delivery of legal services*

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Principles for IBA Consultation (providers #1)

The IBA urges governments to ensure that the provision of legal services meets the following aims:

- A. Protection of the public |*
- B. Advancement of the administration of justice and the rule of law*
- C. Meaningful access to justice for all, regardless of economic situation, and information about the law, legal issues, and the civil and criminal justice systems*
- D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections*
- E. Delivery of affordable and accessible legal services, with the means suiting the needs*
- F. Efficient, competent, and ethical delivery of legal services*

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Principles for IBA Consultation (providers #2)

- G. Protection of confidential information and, where applicable to the provider-client relationship, privileged information*
- H. Independence of professional judgment*
- I. Accessible civil remedies for negligence and breach of other duties owed by providers of legal services, and sanctions for misconduct*
- J. Appropriate controls for money held on behalf of customers*
- K. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system*

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Resources Cited in the IBA Consultation



**Guidelines on
the protection of individuals
with regard to the processing
of personal data in a world of Big Data**

**Algorithms in the
Criminal Justice System**



The Law
Society

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

European ethical Charter
on the use of Artificial Intelligence in
judicial systems and their environment

Adopted at the 31st plenary meeting
of the CEPEJ (Strasbourg, 3-4 December 2018)



See also:

Principles on Artificial Intelligence

<https://perma.cc/MFU4-L78W>

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Ontario's *Law Society Act* Provides a Roadmap

4.1 It is a function of the Society to ensure that,

- (a) all persons who practise law in Ontario or **provide legal services in Ontario** meet standards of learning, professional *competence and professional conduct that are appropriate for the legal services they provide*; and
- (b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law *apply equally* to persons who practise law in Ontario and persons who provide legal services in Ontario

4.2. Principles to be applied by the Society

In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and *the rule of law*.
2. The Society has a duty to act *so as to facilitate access to justice* for the people of Ontario.
3. The Society has a duty to *protect the public interest*.
4. The Society has a duty to act in *a timely, open and efficient manner*.
5. Standards of learning, professional competence and professional conduct or licensees and restrictions on who may provide particular legal services *should be proportionate* to the significance of the regulatory objectives sought to be realized

Conclusion

- **There are regulatory challenges**
- **These are difficult issues**
- **But...you are not alone!**



Law Society
of Ontario

Barreau
de l'Ontario

Technology Task Force

Update Report

November 2019