International Conference of Legal Regulators

Where do we go from here?

Professor Laurel S. Terry (LTerry@psu.edu)
Penn State Dickinson School of Law, USA
London, September 28, 2012

Overview of Remarks

1. Recapping What We’ve Heard So Far
   – Issues in common
   – Cross-jurisdictional regulatory interactions

2. Models from Other Sectors

3. A Proposition for the Legal Sector
   – Adopting a mandate to create an int’l network
   – Defining the goals of a new int’l network

4. Moving Forward ….
Recap: We Have Issues in Common

Regulators Have Similar Tasks:

The Beginning (admissions) Stage: e.g., How to evaluate competence [THURS 2:30pm session]

The Middle (practice) Stage: e.g., rules & tools to raise standards, minimize risks, & achieve regulatory goals [e.g. CLE, proactive & firm-based regulation - THURS. 11:45 & 4:30]

The End (discipline) Stage: e.g., Procedures for weeding out “bad apple” lawyers [FRI. 9:15am session]

Recap: We Face Similar Challenges

Regulators face similar trends:

– **Doctrinal trends** (e.g., Outsourcing, global mobility, cloud computing, ABS, global money laundering policies (FATF)) [Fri. 11 & 2]

– **Thematic trends** (e.g. challenges to the Who, What, When, Where, Why & How of regulation) [Thurs. 9:15-1:15]
Recap: Regulatory Cooperation Exists

1. Examples of **domestic** regulatory cooperation
   - CORO (Australia & New Zealand) teleconferences
   - FLSC (Canada) on discipline, admissions, FATF & ethics
   - CCBE (EU) on ethics codes, discipline cooperation, policies
   - JFBA (Japan) training programs, opinion papers
   - US (NCBE, NOBC & CCJ listservs; the ABA Nat’l Lawyer Regulatory Databank & CPR’s Policy Implementation page)

2. **Inter-jurisdictional** info sharing & cooperation
   - Informal networking & conferences (other examples?)
   - Organizations: IBA, IILACE & NOBC
   - CCJ-Australia & CCJ-CCBE discipline protocols
BUT.....

- I sense a pent-up demand for opportunities for “day job” regulators to interact
- It currently can be difficult for lawyer regulators to find each other
  - There is no master list of “lawyers” or lawyer “regulators”
  - The existing organizations often include both “regulatory” & “representational” entities without indicating their role
  - These distinctions can be difficult for outsiders to master (e.g. Law Society v. SRA, ABA v. CCJ, NOBC or NCBE?)
  - In crisis situations (Dewey) & before crisis situations arise, it might be helpful for regulators to be able to find each other

Other Fields Have Models to Consider

http://www.iosco.org/about/
The ICN provides competition authorities with a specialized yet informal venue for maintaining regular contacts and addressing practical competition concerns. This allows for a dynamic dialogue that serves to build consensus and convergence towards sound competition policy principles across the global competition community.

The ICN is unique as it is the only international body devoted exclusively to competition law enforcement and its members represent national and multinational competition authorities. Members produce work products through their involvement in flexible project-oriented and results-based working groups. Working group members work together largely by internet, telephone, teleseminars and webinars.

Annual conferences and workshops provide opportunities to discuss working group projects and their implications for enforcement. The ICN does not exercise any rule-making function. Where the ICN reaches consensus on recommendations, or “best practices”, arising from the projects, individual competition authorities decide whether and how to implement the recommendations, through unilateral, bilateral or multilateral arrangements, as appropriate.

For more information about the ICN, including answers to frequently asked questions, see The ICN Factsheet and Key Messages.

http://www.internationalcompetitionnetwork.org/about.aspx

For banking regulators...

http://www.bis.org/bcbs/about.htm
Could this quote apply to our situation?

*From a 1996 article about IOSCO's mission:*

“In this time of lightening swift developments in the [legal] markets, it is essential that there be a meeting place for [legal profession] regulators to pool their power, their intellectual resources, their experiences, and their information …”
Should Law-Regulators Have an Int’l Network?

- Many jurisdictions have useful domestic networks for lawyer-regulators: Australia, Canada, EU, Japan, US
- Examples show other regulators use int’l networks
- Could an int’l network be helpful for our regulators?
  - Have you ever had questions about another system’s admissions system? (Either about an applicant or more generally?)
  - Questions about rules, tools or responses to issues? [E.g. cloud computing?]
  - Re discipline referrals [bad apples], discipline tools, or crisis responses [Dewey]?

So…Where Do We Go From Here?

- At a minimum, London conference attendees should exchange contact info & info about their regulatory structures
- My Recommendation:
  - It would be helpful to have an internat’l network that lets regulators find each other, learn, & collaborate
  - The “takeaway” from this conference should be a mandate from attendees to nurture this int’l network
Would You Want to Participate in an Int’l Network of Lawyer Regulators?

If even a small core group is willing to vote “yes,” then in my view, this London Conference has been a rousing success!

OK… Now What?

• Ask those interested in joining an int’l network to indicate their interest [soon]

• Begin collecting regulator contact info (who do I contact for various issues?)

• Have a small group volunteer to keep things moving forward

• BUT have attendees consider what you are trying to achieve (i.e. goals)
Setting the Int’l Network’s Goals

- Int’l regulator networks vary in their goals:
  1. Cooperation & info-sharing in specific cases [Dewey: bad apples]
  2. A clearinghouse for info about regulators’ practices & tools
  3. Exchanging info on substantive policy issues & projects
  4. Development of common policies or practices

- It would be helpful to identify NOW the goals you are (or are not) trying to achieve

- My research suggests starting slowly….
  - I recommend you select Goals #1 - #3 but not #4

Do you agree? 17

My Advice re Moving Forward

- After you select the goals of the new network, focus on small & achievable projects

- Find projects that add value to domestic regulators
  - Structure the network to help achieve your goals & projects (e.g. connect “day-job” regulators not presidents)
  - Keep sustainability in mind
  - Small is ok; history suggests the network will evolve
Examples of Concrete Achievable Projects

- **Aggregate existing information about lawyer regulation & systems** [helps Stages 1&3]
  - This would be a **GIANT** step forward
  - There is no master list of lawyers or their regulators
  - I have begun working on this & will seek your help

- **Start a clearinghouse to share “know-how:”**
  - Archive & link to ideas & tools mentioned at this conference
  - Let regulators know when similar projects are afoot

- **Facilitate live & virtual opportunities for regulators to discuss issues & seek info**

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Audience Participation

- If there were another meeting – what would you find it helpful to talk about?

- Is there anyone else that should be invited?

- What else could a network offer?
  - If you are an admissions regulator?
  - If you are a conduct regulator?
  - If you are a discipline regulator?
Conclusion

• It would be helpful for lawyer-regulators to be able to find & talk to each other
  – Find out who to call/email if questions
  – Learn about techniques & tools used elsewhere
  – Are other jurisdictions are working on similar issues?

• Right now, it is very difficult to do that!

• Use this conference as an opportunity to sow the seeds of an int’l network that will let regulators connect!

APPENDIX

The slides that follow contain additional information relevant to this presentation.

For more information, email Lterry@psu.edu

or see my presentations webpage:

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm
Lawyer Regulators Have Similar Tasks

Slide #3

- Most jurisdictions could agree on some common regulatory objectives:
  - Protecting clients
  - Protecting the public
  - Increasing access to justice
  - Promoting public understanding of the legal system and the rule of law
  - Promoting lawyers’ compliance with professional principles including competence
  - Acting in accordance with good regulatory principles


Regulators Face Common Doctrinal Developments:

Slide #4

1. Global trade agreements (GATS, etc.)
2. Global money laundering & anti-terrorism laws (FATF)
3. Global antitrust (competition) initiatives (EU, OECD, etc.)
4. Alternative Business Structure (ABS) Developments
5. Global lawyer movement and recognition issues
6. Global legal education initiatives (Bologna, etc.)
7. Regulatory Reform Initiatives (OECD, etc.)
8. Global lawyer accountability initiatives
9. Market forces: (e.g. outsourcing, ALF, & virtual practice)
See my Presentations Webpage:

- Global Developments in general (See 1:11, 2:02 and 11:00). See also 2008 Service Providers article, "The Legal World is Flat," and other "Global Legal Practice"

- Alternative Business Structure (ABS) developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD dev)

- Antitrust initiatives directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 1:06, 4:09)

- The APEC Legal Services Initiative (See 10:06)

- Australian Legal Profession Developments (See 5:06, 1:09)

- The Relates Process (See 3:06, 1:15; see also 1:11)

- Classification Systems for Counting Legal Services (See 10:06, 4:07)

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm

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Thematic Developments Regulators Face

- **Who** regulates lawyer? [co-regulation? govt’t reg.]
- **What** and whom is regulated? [services or people?]
- **Where** are lawyers regulated? [virtual practices?]
- **When** are lawyers regulated? [before or after probs?]
- **How** are lawyers regulated? [rules or outcomes?]
- **Why** are lawyers regulated? [regulatory objectives?]

Domestic Networks at Work! [Slide #6]

From CCBE Free Movement of Lawyers C’ee (shows ► implementation of Dir. 98/5)

Additional Examples
Domestic Network Admissions Example

[Slide #6]

• Does your jurisdiction provide copies of bar applications to other jurisdictions?
  – i. If yes, is there a cost? What is the cost? What is your retention policy?
  – ii. If no, will you provide a copy to the applicant?

• Does your jurisdiction provide any other documents to other states (examples include: C&F Report, Notice to Appear for Hearing, Notice of Board Action, Findings, etc...)?
  – i. If yes, what documents will you provide? What is the cost associated with providing the copies?

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Domestic Network Admissions Example 2

The XXXXX Bar Association has received an application from a lawyer admitted in another jurisdiction that asks the Bar Association to recognize the lawyer’s service as a patent agent in the five year law practice calculation for reciprocity admission.

• This is a first for us. Have any of you had someone request that their time admitted as a patent agent before the Patent Bar to be recognized as the practice of law for reciprocity admission purposes?
FLSC Links to Discipline Regulators
(but not direct links to admissions regulators that I could find)

Domestic Network Discipline Example

• Do you have any procedures in place to close cases that would otherwise be discipline bound? For example, can the subject of the investigation resign his or her membership or license with a description of the allegations but without admitting misconduct.

• What document(s) must each party file to frame the issues in your discipline process?

• What disclosure is required in your discipline process?
  - Do you have a standard [regulator] disclosure package?

• Is there a default process if a party fails to do something that is required?
Discipline Example (continued)

• Are there incentives for early resolution after the discipline process is initiated and what are they?

• Do you have any guidelines for your prosecutors regarding resolution and withdrawal of allegations?

• Do you have a hearing guide for your adjudicators?

• Is there any other feature of your investigation or disciplinary process not captured above that significantly improves its efficiency or fairness?

Another Domestic Network Example

[But does everyone know where to find this document?]

SUMMARY OF DISCIPLINARY PROCEEDINGS AND CONTACT POINTS IN THE EU AND EEA MEMBER STATES

AUSTRIA

Disciplinary bodies:

First Instance:
The self-regulatory disciplinary body is the Disciplinary Council of the appropriate local Bar Association, which sits in senates of five members. A ‘Kammeranwalt’ acts as prosecuting attorney.

Appeal:
An appeal against the decisions of the Disciplinary Council lies to the Supreme Commission of Appeal in Disciplinary Matters. This body consists of two lawyers of the Bar Association and two judges of the Supreme Court. No external disciplinary tribunal exists.

Launch of a complaint:
Anybody may complain – even anonymously – about a lawyer. The time limit for lodging a complaint is five years after the disciplinary offence. The complaints have to be sent to the Disciplinary Council of the local
Inter-jurisdictional Cooperation Exists:

Policy Statements & Resolutions

Resolution 13
In Support of Cooperation Among United States and Australian Bar Admission and Lawyer Disciplinary Bodies

US, Canadian, & Australian prosecutors in lawyer discipline cases

Cooperation is both formal and informal:

CONFERENCE OF CHIEF JUSTICES

Resolution 2
In Support of Cooperation Among United States and European Disciplinary Bodies

WHEREAS, the provision of legal services in Europe by lawyers admitted to practice in a United States state, territory or the District of Columbia (U.S. lawyers) and the provision of legal services in the United States by lawyers whose Bar or Law Society is a full member of the Council of Bars and Law Societies of Europe (European lawyers) have become significant elements in transatlantic trade; and

The ABA Discipline C’ee page includes contact info plus other info

2010 ABA Survey of Lawyer Disciplinary Systems

http://www.americanbar.org/groups/professional_responsibility/resources/survey_lawyer_discipline_systems_2010.html
But it’s Hard for Regulators to find Each Other

International Institute of Law Association Chief Executives

(IILACE includes “representational” as well as “regulatory” bar associations. It’s hard to know which is which.)

Bar Issues Commission

(The IBA includes “representational” as well as “regulatory” bar associations. BIC Policy C’ee members tend to be lawyers in private practice rather than full-time regulators.)

Government reps who aren’t regulators talk about legal services.

How Might One Build a Network?

Because there’s no master list of lawyers or regulators, a network of lawyer regulators would need to collect contact & other info

The slides that follow provide examples of the type of information that I believe should be collected
Request Title Information for Lawyers

(a) ‘lawyer’ means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles:

- **Belgium**: Avocat/Advocaat/Rechtsanwalt
- **Denmark**: Advokat
- **Germany**: Rechtsanwalt
- **Greece**: Δικηγόρος
- **Spain**: Abogado/Advocate/Avogado/Abokatu
- **France**: Avocat
- **Ireland**: Barrister/Solicitor


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Request Regulator Information

**Regulatory bodies which allow practice with solicitors in England and Wales**

Last updated 21 July 2011

The Solicitors Regulation Authority has received satisfactory evidence that the following regulatory bodies allow the lawyers they regulate to practise together with English solicitors in England and Wales.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Profession</th>
<th>Regulatory body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scotland</td>
<td>solicitor</td>
<td>Law Society of Scotland</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>Rechtsanwalt</td>
<td>Rechtsanwaltskammer in Wien</td>
</tr>
<tr>
<td>Belgium</td>
<td>advocaat</td>
<td>Orde van Advocaten Antwerpen</td>
</tr>
<tr>
<td>(Antwerp)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Brussels)</td>
<td>advocaat</td>
<td>Nederlandse Orde van Advocaaten bij de Barre de Brussel</td>
</tr>
<tr>
<td></td>
<td>advocat</td>
<td>Orde Francais des Avocats au Barreau de Bruxelles</td>
</tr>
</tbody>
</table>
A Caveat re: Regulator Information

– **Note**: There might be one regulator for all stages of a lawyer’s life or multiple regulators
– There might be multiple regulators because one regulator adopts rules and another implements them
– Find preexisting sources of information (umbrella groups)
– For example, in the U.S.:
  • Admissions: See the Nat’l Conf. of Bar Examiners
  • Conduct Rules: the Conference of Chief Justices (or ABA)
  • Discipline: See the Nat’l Organization of Bar Counsel

Request Info on the *Stage* Regulated

• **The Beginning Stage**
  – Admission/entry issues. Admission often involves:
    • 1) full admission (with or without recognition);
    • 2) a limited license such as a foreign legal consultant;
    • 3) temporary admission

• **The Middle Stage**
  – Conduct and ethics rules

• **The End Stage**
  – Lawyer discipline issues
Existing Sources re Regulators

- Australia and New Zealand:
  - CORO Conference lists
  - CORO & Law Council of Australia Membership pages
- Canada: Federation of Law Societies of Canada Membership
- Europe:
  - EU Directive 98/5
  - CCBE Membership Directory
  - CCBE Discipline Committee Points of Contact List
  - Admissions info? (old Training C’ee document is gone)
- U.S. (This info exists; see NCBE, NOBC & ABA)

U.S. Information Sources

- Admissions
  - LSAC
  - National Conference of Bar Examiners
- Discipline
  - NOBC
- Rulemaking
  - ABA Conference of Chief Justices
**Additional Sources of Info:**

Asia:
- APEC Legal Services Inventory

Sources with Global Information:
- UK SRA List of Foreign Lawyers Allowed to Partner with Solicitors
- UK SRA List of Regulators That Allow UK Solicitors to Partner with Their Lawyers
- SRA List of Recognized Foreign Jurisdictions (for QLTS)
- IBA Member Bars
- University of Ottawa’s Juriglobe (type of law)
- Liz Rieser-WuDan’s LawWithoutWalls Project of Worth
- Forthcoming ABA-Dombrow Admissions book

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**Do You Know of Other Info Sources?**

- If you are aware of additional sources of information listing the *titles* lawyers use & their *regulators*, including the *stage of regulation*, please send it!

- My email is: LTerry@psu.edu
The Solicitors Regulation Authority (SRA) is satisfied that the professions listed below are so regulated as to make it appropriate for members of these professions to be managers of recognised bodies, in accordance with Schedule 14 paragraph 2(2) of the Courts and Legal Services Act 1990.

The SRA will consider whether other professions should be added to this list as and when requested to do so.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Profession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>avocat</td>
</tr>
<tr>
<td>Slovakia</td>
<td>advokát/advokatka</td>
</tr>
<tr>
<td>Spain</td>
<td>abogado/advocat/abokatu/avogado notario</td>
</tr>
<tr>
<td>Sweden</td>
<td>advokat</td>
</tr>
<tr>
<td>3. European Economic Area</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>advocat</td>
</tr>
<tr>
<td>4. United States of America</td>
<td></td>
</tr>
<tr>
<td>All states</td>
<td>attorney-at-law</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>attorney-at-law</td>
</tr>
<tr>
<td>5. Commonwealth</td>
<td></td>
</tr>
<tr>
<td>Anguilla</td>
<td>solicitor barrister</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>solicitor barrister attorney-at-law</td>
</tr>
</tbody>
</table>

Screen shots of some of these sources of info:

- The UK SRA’s list of “lawyers” that may be managers of registered entities

http://www.sra.org.uk/sra/regulatory-framework/professions-approved-by-SRA-for-RFL-status.page

4. APEC Economy: Chile

Full licensing

A foreign lawyer can obtain a full licence to practice law in this jurisdiction.

The relevant legislation is the Tribunales Organico: Chile Fair YIY, Decree 110 of the Ministry of Justice Official Gazette March 20, 1979. This is available online at www.inea.cl (in Spanish).

In order to obtain a full licence to practice law in this jurisdiction, foreign lawyers must be a permanent resident and must complete the totality of their legal studies in a university in Chile. These requirements are the same as the rules applicable to a local applicant.

<table>
<thead>
<tr>
<th>Organisation(s) that controls licensing of lawyers</th>
<th>Name</th>
<th>Website or other contact details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Corte Suprema de Justicia (Supreme Court of Justice)</td>
<td><a href="http://www.poderjudicial.cl">www.poderjudicial.cl</a></td>
</tr>
<tr>
<td>Peak professional association representing the legal profession</td>
<td>Colegio de Avogados de Chile (Chilean Bar Association)</td>
<td></td>
</tr>
<tr>
<td>Other associations playing a significant role in developing policy for the legal profession</td>
<td>Ministerio de Justicia (Ministry of Justice)</td>
<td></td>
</tr>
</tbody>
</table>

Source: APEC Legal Services Initiative, Draft Inventory of requirements affecting practice of foreign law in APEC jurisdictions (Group on Services, Sept. 2010)
Sample Webpage from the April 2011 *Project of Worth* presentation by Wu Dan and Liz Rieser-Murphy:
One Example of Regulator Information: LawWithoutWalls Project

I’m Happy to Help Aggregate Info Slide #16

- I plan to create a form that asks some key questions
- *Tell me if the form doesn’t make sense*
- *Let me know additional sources of info*
To Read More About It:

* A Shameless Plug for My Publications & Other Items

**Global Legal Practice Resources Webpage:**
http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm

**Links to Publications by Topic:**
http://www.personal.psu.edu/faculty/l/s/lst3/

**Links to Publications by Function:**
http://www.personal.psu.edu/faculty/l/s/lst3/

**Presentations Page:**
http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm

**SSRN page:** http://ssrn.com/author=340745 Includes: