ABS Developments in a Global Context

ABS Symposium
Law Society of Upper Canada
Toronto, October 4, 2013

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Summary of Remarks

1. Intro: Changes in the legal services market

2. The Broader Context & Global Trends
   – Who regulates lawyer?
   – What and whom is regulated?
   – When are lawyers regulated?
   – Where are lawyers regulated?
   – How are lawyers regulated?
   – Why are lawyers regulated?

3. Concluding observations
Changes in the Legal Services Market

The End of Lawyers?
Marginal costs of delivery reduced

Bespoke Standardised Systematised Packaged
Hourly billing Fixed fees
Commodity pricing, tending towards zero

Source: R Susskind — “The End of Lawyers?”

Failure to Engage Can Prove Deadly

“CREATIVE DESTRUCTION” AND THE LEGAL SERVICES & LEGAL EDUCATION MARKETS

June 5th, 2013 | Laurel Terry | UNCATEGORIZED

Campbell on Clayton Christensen

The Theory:

- **Sustaining v. “disruptive” technologies**

- Established firms tend not to pursue disruptive technologies because of their **RPV**
  - **RPV** = resources, processes & values

- The value chain innovation theory means that innovators tend to migrate upmarket

Disruptive innovation + value configurations

*Businesses tend not to move from one value configuration to another:*

- **Value chain businesses** [e.g. a factory]
  - Inputs become products or services

- **Solution shop:** [e.g., the typical lawyer]
  - Solves consumer problems with expertise

- **Value network:**
  - Links customers (EBay or an insurance company)
Campbell’s Observations:

• “In a world where incumbents cannot implement disruptive change, regulation that excludes entrants from different value configurations excludes not just the potential entrants but the possibility of disruptive change itself.”

• Campbell: US lawyer regulation limits lawyers to a “solution shop” configuration
  – I’m not 100% sure I agree, but it’s worth considering
  – Would his comments also apply to Canada?

Possible Drivers of Disruptive Innovation

From the 2012 LSUC Annual Report (p.2):

– “The number of unrepresented litigants appearing in some courtrooms has reached 80 per cent.”

– “Individuals are choosing to obtain legal advice on family law and estate matters from the Internet…”

– “We know from the Ontario Civil Legal Needs Project that the complexity, the time required, and the costs of resolving legal needs can be barriers to access to justice.”
Additional Indicators

- **The courts:**
  - “Chief justice warns of ‘epidemic’ of self-representation in courts” CanWest News Service (13 August 2006)

- **Other regulators:**
  - Concerns about the shortage of lawyers in rural areas

- **The bar:**
  - CBA 2012 Initiative on access to justice

- **Academics:** “Access to justice will be the ethical issue for our generation” Adam Dodek, *Canadian Legal Ethics: Ready for the Twenty-First Century at Last*, (2008) 46 Osgoode Hall LJ 1, 40

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The *ABS* Conversation is Global

[Map image of the world]
Your Economy ▶ Global Participation

2012 Canadian Exports: $546 billion
2012 Canadian Imports: $583 billion


Canada, the US, and Mexico dominate legal services trade →

Global Legal Services & Canada

The BRICS and Canada

Figure 2
Distribution of the foreign-born population by continent of birth, Canada, 1981 to 2031

This is More Than a Big Law Phenomenon

• According to a 2010 StatsCanada study:

  – By 2031, between 25% and 28% of the population could be foreign-born

  – By 2031, 46% of Canadians who are ≥15 years old will be foreign-born (or have one foreign-born parent)

• This has consequences for global engagement & needs. It’s not just “BigLaw”
Many Issues Are Interconnected

Global Lawyer Regulation Trends
**Who regulates & Canada**

- Government entities (e.g., AG, Competition Bureau)
- Provincial legislatures (e.g., Ontario, Manitoba & Nova Scotia acts on fair registration practices)
- National standards
- Canadian academic commentators
- International entities:
  - Federation of Law Societies of Canada v. Canada (Attorney General), 2011 BCSC 1270

**What (or whom) is regulated & Canada**

- Regulators are asking this question
- Academics are asking this question
- Commentators are asking this question
  - Jordan Furlong speaking to the FLSC in 2010

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[Entity-based regulation]

Should paralegals appear in Family Court? (2012)
When lawyers are regulated & Canada

- Canadian regulators have been asked to think about this issue:

  International Conference of Legal Regulators
  This Sept. 2012 London conference included Zeynep Olsen, LSUC, on the Proactive Regulation Panel

- Leading academics have called for changes:
  - “Law societies should emphasize standard-setting and other proactive oversight activities, rather than simply responding to specific instances of serious professional misconduct.” (Woolley & Rhode 2012)

Where lawyers are regulated & Canada

  - It is an exciting time to be a lawyer, but watch out. Over the next ten years we may see more changes in the delivery of legal services than we have seen in the last 100 years.
How are lawyers regulated & Canada

• “British Columbia is an ambitious champion of principles-based securities regulation & outcome-oriented regulatory practice” (2008 BC prof)

• Calls to retain principles-based regulation after the economic crash (2010 BC prof in McGill journal)

• Questions about unitary lawyer regulation systems (Hutchinson & government lawyers)

• Canadian legal academics discuss the paradigm shift to outcomes-focused lawyer regulation and questions about how to regulate (Dodek & Woolley)


Why are lawyers regulated & Canada

2012 changes

ADOPTING REGULATORY OBJECTIVES FOR THE LEGAL PROFESSION
Laurel S. Terry,* Steve Mark,** & Tobia Gordon***
80 Fordham L. Rev. 2685 (2012)

Toward a New Legal Profession Act
A Discussion Paper

2010 changes
What Does this all Mean for ABS?

• I don’t have a magic bullet answer….

• I’m still an agnostic regarding ABS
  – Potential “access to justice” benefits
  – BUT does it put the “rule of law” at risk?

• Thus I’m looking forward to the Symposium

• It’s helpful to be cognizant of the broader context

To Read More About It …


Ray Worthy Campbell, Rethinking Regulation And Innovation in The U.S. Legal Services Market, 9 N.Y.U. J.L. & Bus. 1 (Fall 2012)

To Read More About It...

- World Trade Organization, Secretariat Background Report on Legal Services, S/C/W/38 (June 2010),
  http://www.americanbar.org/content/dam/aba/migrated/cpr/gats/wto_legal_services.authcheckdam.pdf

- Statistics Canada, Canada's Balance of International Payments – Current,
  http://www.statcan.gc.ca/tables-tableaux/sum-som/01/cst01/econ01a-eng.htm


- Goldman Sachs, Dreaming With BRICs: The Path to 2050, Global Economics Paper #99 (2003),

Additional Resources...

- ABA Commission on Ethics 20/20 (including links to its ABS pages)
  - http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html

- UK Legal Services Board, SRA & BSB Consultations
  - http://www.sra.org.uk/consultations/

- New South Wales OLC, Incorporated Legal Practices,

- CCBE Committees Page

- International Conference of Legal Regulators
To Read More About It... by Laurel Terry


- **NOTE**: All articles (and presentations) available online here:
  - [http://www.personal.psu.edu/faculty/l/s/lst3/](http://www.personal.psu.edu/faculty/l/s/lst3/)