Ethics Across the Professions Initiative

Building a Global Network for Lawyer Regulators (and why it matters)

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Overview of Talk

• Introduction
• Nascent efforts to build a global network of lawyer regulators
• Challenges that must be overcome
• Why this matters
Research Shows the Power of Networks

Networks have existed for many years and exist in many forms.

Some Regulators Have Global Networks
There are Some Global Legal Networks…

International Association of Prosecutors
International Institute of Law Association Chief Executives
(Includes many “representational” rather than “regulatory” bar associations)

European Law Faculties Association

US, Canadian, & Australian prosecutors in lawyer discipline cases

Legal Regulators Don’t Have Such A Network*

*This statement must be qualified, as I will explain later

↑ This is a missing piece↓
This May Have Changed in Sept. 2012

International Conference of Legal Regulators

September 27-28, 2012 London Conference

More About the Sept. Conference...

- It was sponsored by the UK Solicitors Regulation Authority (a regulator)
- Many attendees were “day-job” regulators
- There were 100+ attendees who came from Australia, Africa, Asia, Canada, the U.S. & U.K.
- There were representatives from all three regulatory stages of a lawyer’s life
  - The beginning stage (admissions)
  - The middle stage (conduct or ethics rules)
  - The end stage (discipline)
U.S. Conference Attendees

Representing Admissions Regulators:
– Franklin Harrison, chair of the National Conference of Bar Examiners

Representing Conduct (& overall) Regulators:
– Nebraska Chief Justice Michael G. Heavican, vice president of the Conference of Chief Justices & a high-level CCJ staff rep

Representing Discipline Regulators:
– Gene Shipp, Chief Regulatory Counsel in D.C. and a past president of the National Organization of Bar Counsel
– Robert Hawley, Deputy Executive Director of the State Bar of California

• And our “Shadow” Regulator (ABA CPR staff lawyer)

During the Final Conference Session

• Attendees overwhelming answered yes to a question about whether they would support the creation of a new network

• Attendees agreed to meet in August 2013 in San Francisco (near NOBC meeting)

• Attendees approved 3 goals for the new network
The Goals of the New Network

• Conference attendees agreed they would like the network goals to include:
  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
• Conference attendees agreed NOT to include as a goal development of common policies or practices

Why Create this New Network?

• Regulators have similar tasks
• Regulators face similar trends
• These trends & developments cross borders
• Domestic and regional regulatory cooperation exists and has been effective
• Network research and experiences in other fields suggests the benefit of such a network
Recap: 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: There are 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]
These Questions Cross Borders…

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
   - Organizations: IBA, IILACE & NOBC
   - CCJ-Australia & CCJ-CCBE discipline protocols
   - Informal networking & conferences (other examples?)
Challenges for the New Network

• Resources….time and money
• Establishing achievable projects
• Competition with other entities (e.g. IBA BIC)
• Process matters but these decisions can derail the substantive decisions
• Closing the information gap
  – Who is a regulator?
  – Who is a lawyer?

My Role in Supporting this Network

• My original article focused on threshold issues, logistics & sustainability issues
• The London conference convinced me to defer any discussion of many of these issues
• My primary focus is now:
  – Information aggregation
  – Information creation
  – Ensuring robust but APPROPRIATE regulation
Why Should You Care?

• It’s easy to think of lawyer jokes...
• Lawyers play a key role in maintaining the rule of law (See UN Basic Principles)
• The are global challenges to lawyer-client relationships (FATF, Troika)
• Balance is necessary, but lawyer regulators can play a critical role in protecting this key role of lawyers

Conclusion

• Networks – in general – are valuable
• The time is ripe (& there is a need) for a global network of lawyer regulators
• Smaller lawyer regulator networks have been successful
• Global networks in other fields have been successful
• We should encourage this network
To Read More About It…


• News items linked on the London Conference webpage:
  o Legal Futures Blog; Law Gazette; SRA Press Release; Solicitor’s Journal; see also PSU news item

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

3 sets of slides on my “Presentations” webpage:
(MSU Sept. 2011; Banff July 2012; London Sept. 2012)

Global Developments in general (See 1:11, 9:09 and 11:08) 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 1:08; 4:09)

the APEC Legal Services Initiative (See 10:09)

Australian Legal Profession Developments (See 5:09; 1:09)

the Bolzano Process (See 3:09, 1:09; see also 3:11)

Classification Systems for Counting Legal Services (See 10:09; 4:07)

Global Umbrella Organizations for Lawyer Regulators (See 9:11, 7:12 & 9:12) See also 2012 Global Umbrella Organizations article
URLs to News Stories About the Conference

http://solicitorsjournal.com/comment/legal-regulation-not-uniform-concept
http://www.lawgazette.co.uk/features/policing-professionals-international-regulators
http://www.legalfutures.co.uk/latest-news/sra-throws-weight-behind-global-legal-regulators-network
http://law.psu.edu/news/professor_terry_international_regulatory
http://www.lawgazette.co.uk/opinion/state-union/networking-order

APPENDIX

The slides that follow contain additional information about the previous slides.
Lawyer Regulators Face Similar Developments

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)
These Developments Create Common Issues

- **Who** regulates lawyer?
- **What** and whom is regulated?
- **Where** are lawyers regulated?
- **When** are lawyers regulated?
- **How** are lawyers regulated?
- **Why** are lawyers regulated?


Lawyer Regulators Have Similar Tasks

- **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

EXISTING SOURCES OF INFORMATION

- **Canada:** Federation of Law Societies of Canada Membership
- **Europe:**
  - EU Directive 98/5
  - CCBE Membership Directory
  - CCBE Discipline Committee Point of Contact List
- **Australia and New Zealand:**
  - 2011 CORO Conference Attendee list
  - CORO & Law Council of Australia Membership pages
- **Asia:**
  - APEC Legal Services Inventory
EU Lawyer Directives List \textit{Titles}

(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:

<table>
<thead>
<tr>
<th>Country</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Avocat/Advocaat/Rechtsanwalt</td>
</tr>
<tr>
<td>Denmark</td>
<td>Advokat</td>
</tr>
<tr>
<td>Germany</td>
<td>Rechtsanwalt</td>
</tr>
<tr>
<td>Greece</td>
<td>Δικηγόρος</td>
</tr>
<tr>
<td>Spain</td>
<td>Abogado/Advocat/Avogado/Abokatu</td>
</tr>
<tr>
<td>France</td>
<td>Avocat</td>
</tr>
<tr>
<td>Ireland</td>
<td>Barrister/Solicitor</td>
</tr>
</tbody>
</table>


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**Additional Sources of Information**

\textbf{Global Coverage:}

- UK SRA List of:
  - Foreign Lawyers Allowed to Partner with Solicitors & Regulators That Allow UK Solicitors to Partner with Their Lawyers
  - Recognized Foreign Jurisdictions (for QLTS)
- IBA Member Bars
- University of Ottawa’s Juriglobe
- Liz Rieser-WuDan’s LawWithoutWalls Project of Worth
- Dombrow & Matos, A Guide to International Admissions (ABA 2012)
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 Tribunals Organic: Chile Law 1971 Decree 110 of the Ministry of Justice of the Public Security March 20, 1979. This is available online at www.scm.cl/ in Spanish.

In order to obtain a full licence to practice law in this jurisdiction, foreign lawyers must have a permanent resident of the country’s 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>Corte Suprema de Justicia (Supreme Court of Justice)</td>
<td><a href="http://www.poderjudicial.cl">www.poderjudicial.cl</a></td>
<td></td>
</tr>
<tr>
<td>Colegio de Avogados de Chile (Chilean Bar Association)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ministerio de Justicia (Ministry of Justice)</td>
<td></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)
### One Example of Regulator Information: LawWithoutWall POW

**Certification Information**

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal System</th>
<th>Legal Service Provider</th>
<th>Regulator</th>
<th>Certification Information</th>
<th>Online source (URL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Civil law</td>
<td>Avocat(French-speaking part),Advocaat (Dutch-speaking part),Rechtsanwalt(German-speaking part)</td>
<td>Two federal bars in Belgium: the Ordre des barreaux francophones, germanophones (O.B.F.G-French and German speaking Federal Bar) and the Orde van Vlaamse</td>
<td>Online certification system</td>
<td></td>
</tr>
<tr>
<td>Belize</td>
<td>Common law</td>
<td>Attorney-at-law or attorney</td>
<td>General Legal Counsel</td>
<td>The Registrar has a list (&quot;Roll&quot;) &quot;Practicion Certificate.&quot;</td>
<td></td>
</tr>
</tbody>
</table>

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### Sample Webpage from the April 2011 *Project of Worth* presentation by Wu Dan and Liz Rieser-Murphy:

**LAW WITHOUT WALLS**

The International Association of Legal Services Regulators (IALSR) is an organization of legal services regulators from around the world who communicate continually and convene in a conference every two years.
How Academics Could Be Useful

- Identify lawyer regulators throughout the world
- This list might be useful when the global organization expands, if not at the outset
  - For each country (WTO Member?), determine the professional title of regulated lawyers
  - Identify the regulator or regulators for that type of lawyer
  - Collect contact information for these regulators

Regulating the Lawyer’s Life Cycle

- 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

Right now, the new global umbrella organization includes regulators from all 3 regulatory stages
Depending on the jurisdiction:

– There might be one regulator for all 3 regulatory stages of a lawyer’s life or multiple regulators
– There might be multiple regulators because one regulator adopts rules and another implements them
– There might be existing sources of information
– 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

Another Method of Presentation

Select: “About Lawyer Regulation”
Then Select: General Info
See: Basic information for multiple countries, with links
My MSU “Global Umbrella” Article

Important Caveat:

If I could start over today, I would focus on collecting the necessary information and skip the logistical issues addressed in my article because they could prove divisive and derail the fledgling network.

My Forthcoming Article Posed Questions

1. What are the goals of the organization?

2. Shall the new organization be attached to an existing, already successfully organization or should it be grown from scratch?
   - Who are the candidates for existing organizations?

3. Who should be invited to be a member of the new umbrella organization?
<table>
<thead>
<tr>
<th>Questions #2: Logistics</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Should the organization have a Secretariat?</td>
</tr>
<tr>
<td>5. Should the organization have a legal identity? If so, where?</td>
</tr>
<tr>
<td>6. How will virtual communications operate?</td>
</tr>
<tr>
<td>7. How will the organization try to accomplish its goals? <em>e.g.</em> What work product is desired?</td>
</tr>
<tr>
<td>8. How will the organization’s policies, if any, be adopted? <em>e.g.</em> <em>by consensus</em>?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Questions #3: Sustainability</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. What funds will the organization require and who will provide those funds?</td>
</tr>
<tr>
<td>10. Should members have face-to-face meetings as well as virtual communications?</td>
</tr>
<tr>
<td>11. What can be done to help ensure that the organization is self-sustaining?</td>
</tr>
</tbody>
</table>