


*Innovations in Conduct Regulation*

Canadian Bar Association &  
Federation of Law Societies of Canada's  
**Second Annual Canadian Ethics Conference**  
Toronto, March 6, 2015

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**Overview of Remarks** 

- **Introduction**
- **Regulatory innovation developments**
  - Australia
  - England & Wales
  - United States
  - Canada

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## On the Rise: Lawyer Regulation Innovations



See Terry, *Trends in Global and Canadian Lawyer Regulation*,  
76 Saskatchewan L. Rev. 145 (2013)

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2260560](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2260560) 3

## Ongoing Global Conversations

- **WHO** regulates lawyers?
  - Global actors (e.g. the WTO & FATF)
  - Increase in “co-regulation” by gov’ts & nonlawyers
    - UK, Australia, Canada, & elsewhere
- **WHAT** is regulated?
  - Technology & legal costs have led to new providers
  - Regulate services or providers?
  - Individuals and/or firms? (Entity-based regulation)
  - Dramatic UK & Australia developments

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## Global Conversations *Re* Regulation (2)

- **WHEN** regulation occurs
  - NSW Australia’s “effective management systems” rule has led to 2/3 decrease in client complaints
  - Regulators around the world have taken notice
- **WHERE** regulation occurs
  - Geographic regulation in a virtual world?
  - Can/should regulators monitor global firm activity?
  - Increased difficulty for firms *re* choice of law issues

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## Global Conversations *Re* Regulation (3)

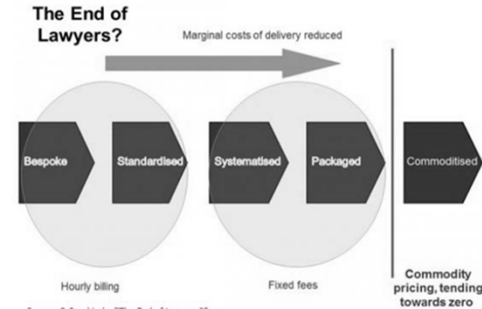
- **WHY** regulation occurs
  - §1 of UK Legal Services Act: *Regulatory objectives*
  - Other jurisdictions have these or are exploring them
    - *E.g.*, Canada, Australia, Scotland, Ireland, US (considering)
- **HOW** regulation occurs
  - UK switch to outcomes-focused regulation (OFR) has prompted many discussions
  - Does “one size fits all” regulation still work?

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## Background Info Worth Knowing

“Creative Disruption” happens when: See also Richard Susskind’s influential book: *The End of Lawyers?*

- Customers would be willing to pay less and get less (*overserved customers*)
- Some customers aren’t getting served at all because of cost (*underserved customers*)



LEGAL PROFESSION  
**JOTWELL**  
THE JOURNAL OF THINGS WE LIKE (LOTS)

“CREATIVE DESTRUCTION” AND THE  
LEGAL SERVICES & LEGAL EDUCATION  
MARKETS <http://tinyurl.com/qe8xy5u>

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

## Australian Developments

- Legislative changes created *ILPs* and required “appropriate management systems”
- NSW Office of Legal Services Commissioner developed self-assessment form for ILPs
- Similar initiatives elsewhere in Australia
- Empirical study: Client complaints in NSW were reduced by 2/3 for ILPs using the assessment



Office of the  
Legal Services Commissioner



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## UK Developments

- UK Legal Services Act 2007 created the LSB, which approved the SRA & BSB as “frontline regulators”
- Both the SRA<sub>(solicitors)</sub> & BSB<sub>(barristers)</sub> use “entity regulation”
- The SRA uses risk-based & outcomes focused regulation
- There is a lot of data coming out of the UK

Legal Services Act 2007  [legislation.gov.uk](http://legislation.gov.uk)

 Solicitors Regulation Authority

Firm-based authorisation

Risk-based regulation

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## U.S. Developments



ABA Commission on Ethics 20/20

**Commission on the Future  
of Legal Services**



National Organization of Bar Counsel

a new “education” committee

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
JACOBY & MEYERS, LLP and JACOBY & MEYERS  
USA, LLC,

-against-

ABA Center for Professional Responsibility  
40<sup>th</sup> National Conference on Professional Responsibility  
*Regulatory Innovation in Australia, Canada, and England and Wales*  
*What's in it for Us?*  
Long Beach, California, May 29, 2014

THE PRESIDING JUSTICES OF THE FIRST, SECOND,  
THIRD AND FOURTH DEPARTMENTS, APPELLATE  
DIVISION OF THE SUPREME COURT OF THE STATE  
OF NEW YORK,

Defendants.

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# Ongoing Conversations in Canada

## ABS Working Group Reports to Convocation

- Interim Report to Convocation - June 2013
- Report to Convocation - February 2014
- *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* - September 2014



The Law Society  
of Upper Canada | Barreau du  
Haut-Canada

## Additional Resources/Background Materials

- ABS: Frequently Asked Questions
- The Emergence of Alternative Business Structures in Other Jurisdictions



October 15, 2013

NOVA SCOTIA  
BARRISTERS' SOCIETY

**Transforming Regulation and  
Governance in the Public Interest**

FUTURES:

TRANSFORMING THE DELIVERY  
OF LEGAL SERVICES IN CANADA



CBA LEGAL  
**FUTURES**  
INITIATIVE

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# Conclusion

- Stakeholders around the world are examining lawyer regulation
- One can learn from examples (positive or negative)
- The *who-what-when-where-why-and-how* issues are often intertwined, but are separable
- Consider issues proactively & find a solution suitable for your jurisdiction



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## To Read More about It

- **Resources from the 40<sup>th</sup> National ABA Ethics Conference, Session 1**
- Laurel Terry, *Trends in Global and Canadian Lawyer Regulation*, 76 Saskatchewan L. Rev. 145 (2013), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2260560](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2260560) (includes links to UK, Australian, & Canadian developments)