Overview of Remarks

• Introduction

• Regulatory innovation developments
  – Australia
  – England & Wales
  – United States
  – Canada
On the Rise: Lawyer Regulation Innovations


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
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

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?
“Creative Disruption” happens when:

- 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)

See also Richard Susskind’s influential book: http://tinyurl.com/qe8xy5u

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
UK Developments

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

U.S. Developments

ABA Commission on Ethics 20/20
Commission on the Future of Legal Services

Defendants.
Ongoing Conversations in Canada

ABS Working Group Reports to Convocation

- Interim Report to Convocation - June 2013
- Report to Convocation - February 2014

Additional Resources/Background Materials

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

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NOVA SCOTIA BARRISTERS' SOCIETY

Transforming Regulation and Governance in the Public Interest

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
To Read More about It

- **Resources from the 40th National ABA Ethics Conference, Session 1**