Global Trends in Lawyer Regulation

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Overview

1. Globalization and the Legal Profession
2. Global Trends in Lawyer Regulation
   - **Who** regulates lawyer?
   - **What** and whom is regulated?
   - **When** are lawyers regulated?
   - **Where** are lawyers regulated?
   - **How** are lawyers regulated?
   - **Why** are lawyers regulated?
My Background & Scholarship

• **Transparency:**
  – E.g.: Int’l Lawyer Year-in-Review articles; Paris Forum; IBA WTO Resolutions; ABA-Brussels Bar Agreement

• **Exploration & Mapping:**
  – E.g.: The WTO & the GATS, the Bologna Process, antitrust initiatives, FATF, MDPs, & regulatory objectives

• **Commentary:**
  – E.g.: The Legal World is Flat; The New Service Providers’ Paradigm; Trends in Global Lawyer Regulation

• **Reform Proposals:**
  – Rule 5.1; an umbrella organization for global regulators, etc.

I. Globalization & the Legal Profession

Source: WTO Secretariat Report on Legal Services, S/C/W/38 (June 2010), at ¶7
The Global Dimension is... Global

Chart 2: Global Legal Services Market Segmentation: 2008
Percentage share by value

Source: 2010 WTO Secretariat Report, supra, at ¶5

Globalization Affects All US States

*All states except Hawaii had 2011 exports in the billions

Source: Office of Trade and Industry Information (OTII), Manufacturing and Services, International Trade Administration, U.S. Department of Commerce. 6
States in Which NLJ 250 Firms Have Offices
(This is significant because of imputation rules)

This is More Than a Big Law Phenomenon

- In 2010, 13% of U.S. population was foreign-born
- More than 1 in 5 in the U.S. are 1^{st} or 2^{nd} generation
- Approximately 1/3 of states have ≥10% foreign-born
  - More than 1 in 4 of U.S. foreign-born live in California
  - The foreign-born population is relatively young
- Consider what this means for small business in an era of technology & globalization


BRICs: Brazil, Russia, India, China

South Africa has joined this group which is now known as “BRICS”


This Shift will affect clients & thus lawyers

Source: See previous slide
II. Trends in Global Lawyer Regulation

Who regulates lawyers?

• Self-regulation, co-regulation, or non-lawyer regulation?

The Troika: IMF, ECB, Eur. Commission

(independent regulatory arm of the Bar Council)
What (or whom) is regulated?

- What should regulators regulate…
  - Legal services or just the traditional providers [lawyers]?

When are lawyers regulated?

- Before problems or after problems?

Laurel’s Suggestion to the CCJ: Use ABA Model Rule 5.1 to do something similar to what Australia does.
Where are lawyers regulated?

• Can geography-based regulation function in a world of virtual law practice?

How are lawyers regulated?

Entity-based regulation

Outcomes-focused regulation

Investigation and enforcement

Qualified Lawyers Transfer

SRA Handbook

OFR at a glance

Delivering OFR

Alternative business structures

Risk and OFR

Supervision

Relationship management

Videos about OFR

The legal services market is changing. On 6 October 2011, we introduced outcomes-focused regulation (OFR). Soon, alternative business structures (ABSs) will enable lawyers and non-lawyers to share the management and control of businesses providing legal services.

Outcomes-focused regulation focuses on the high-level principles and outcomes that should drive the provision of legal services for consumers. It replaces a detailed and prescriptive rulebook with a targeted, risk-based approach concentrating on the standards of service to consumers. There is greater flexibility for firms in how they achieve outcomes (standards of service) for clients.

Our aim is for a unified approach with the same standards for both traditional law firms and ABSs.

To learn more about outcomes-focused regulation and ABSs, read OFR at a glance. Your quick guide to getting started with OFR and the new Handbook, choose from the other options on the left of this screen or see the SRA Handbook.
Why are lawyers regulated?

Terry Regulatory Objectives article discusses LSA §1, Legal Services (Scotland) Act 2010, Draft Irish bill, Draft Indian bill, & various Canadian provisions

1 The regulatory objectives

(1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—

(a) protecting and promoting the public interest;
(b) supporting the constitutional principle of the rule of law;
(c) improving access to justice;
(d) protecting and promoting the interests of consumers;
(e) promoting competition in the provision of services within subsection (2);
(f) encouraging an independent, strong, diverse and effective legal profession;
(g) increasing public understanding of the citizen’s legal rights and duties;
(h) promoting and maintaining adherence to the professional principles.

Conclusion

• Lawyer regulation is an active field
• Similar issues appear in multiple countries
• Recognizing patterns can help us better understand these issues
• Pattern recognition may help us find (or reject) solutions
• Global communication should be encouraged

— See, e.g., the International Conference of Legal Regulators
To Read More About It...


My Presentations Webpage:

- **Global Developments in general** (See 1:11 - 9:09 and 11:09) (See also 2006 Service Providers article “The Legal World in Flux”, and other “Global Legal Practice”

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

- **Antitrust initiatives** directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See §18. 6:62)

- **the APEC Legal Services Initiative** (See 10:62)

- **Australian Legal Profession Developments** (See 8:68 - 5:69)

- **the Bologna Process** (See 3:96 - 1:56) (see also 1:11)

- **Classification Systems for Counting Legal Services** (See 19:96 - 4:07)

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

- ABA Commission on Ethics 20/20
  - http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html

- CCBE Committees Page

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

- International Conference of Legal Regulators

- APEC Legal Services Inventory
  - http://www.legalservices.apec.org/overview.html

More Sources to Read All About It...

- International Association of Legal Ethics (and the biennial International Legal Ethics Conferences)
  - http://www.stanford.edu/group/lawlibrary/cgi-bin/iaole/wordpress/

- LawWithoutWalls Materials
  - http://www.lawwithoutwalls.org/

- Archived program materials from conferences at, *inter alia*, Harvard, Stanford, Georgetown, Fordham, McGeorge, MSU, Akron, & Hofstra