

CONTINUING LEGAL EDUCATION

47th ABA National Conference on Professional Responsibility

Exploring New Models of Legal
Services Regulation: What Makes
Sense in Our Changing World?

Thursday, June 2, 2022
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Speakers

- Rebecca Durcan, Co-Managing Partner, Steinecke Maciura LeBlanc Barristers & Solicitors (serving, inter alia, as legal counsel to several Ontario regulators)
- Darrel I. Pink, CEO, College of Patent Agents and Trademark Agents
- Janet K. Welch, Former Executive Director, State Bar of Michigan
- Moderator: Laurel S. Terry, Professor of Law & Chair Emerita, Penn State Dickinson Law

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Objectives

- Understand varied pressure points on traditional models of lawyer regulation
- Evaluate reports from individuals involved in efforts to develop modern public interest legal regulation
- Consider, for your jurisdiction:
 - whether and how to develop regulation focused on public interest;
 - whether and how to implement light-touch approaches;
 - whether and how to use a risk lens for regulatory decision making;
 - whether and how to encourage effective public involvement; and
 - whether and how to promote a transparent regulatory system.

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1. Setting the stage:

- Our current regulatory systems face varied pressures
- To evaluate the current systems, it is helpful to consider what are (or should be) the goals of modern regulation

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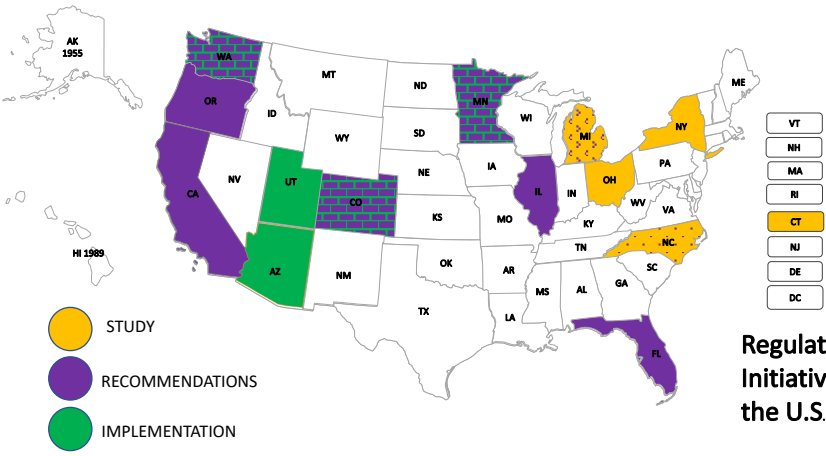
2. Introducing real world initiatives that address “What makes a modern (legal) regulator?”

- in Michigan and elsewhere in the United States
- in Canada
- initiatives by other professions

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Regulatory Initiatives in the U.S.

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REGULATORY AND PRACTICE REFORM

MICHIGAN REGULATORY REFORM INITIATIVE

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Data-driven Approach:
Do any current regulations appear to impede access to justice?
Are there rule or regulatory changes that appear likely to propel access to justice?

Advertising and Marketing	Activities by Nonlawyers	Nontraditional Business Models
<p>How do the current advertising rules for lawyers and the regulation of the unauthorized practice of law affect the market for legal services and access to justice?</p>	<p>Are there services and activities currently understood to be "the practice of law" that can be accomplished effectively and more affordably by persons who are not licensed to practice law? How should such actors be regulated, if at all?</p>	<p>Does the rule on nonlawyer ownership of law firms impair market innovations that can help access to affordable legal services? What are the potential risks and remedies of changing the rule?</p>

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A tale of two legal regulators

- **Nova Scotia Barristers' Society**

- A legacy legal regulator - + 150 years old
- Saw need for transformative change –
 - Demonstrate what difference we make
 - Looked at initiatives all over the world
- Adopted – Triple P Regulation – proactive, principled and proportionate
- Changed the nature of the conversation with the profession
 - Firm regulation
 - Management systems for Ethical Legal Practice

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- **College of Patent Agents and Trademark Agents**

- New, national regulator, legal services provided by patent and trademark agents
- **Not self-regulation**
- Independent
- Professional
- Unique governance model
- Risk- focus
- Outcomes measurement
- Public accountability

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3. Perspectives regarding modern (legal) regulation

- How to bring ***risk-thinking*** into legal regulation?
- What ***governance*** issues arise?
- Considering ***scope of regulation*** issues
 - Regulation based on the professional's ***status***? [And if so, ***which*** professionals?]
 - Regulation based on the ***activities*** involved?
 - The role of ***geographic*** boundaries?

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Risk - a regulatory imperative

- Public protection = preventing harm
- Preventing harm = focusing on activities that present the greatest likelihood of harming clients
- What's a regulator to do?
 - Build risk thinking into all regulatory decisions
 - Use risk as a means to manage limited resources
 - Identify, inventory and prioritize risks
 - Create a strategy for risk avoidance
 - Control, accept, avoid, transfer
 - Monitor 'key risk indicators'
 - Report on risks – educate the profession

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Governance

Things Lacking in U.S. Legal Services Regulation

1. A clear definition of what's being regulated
2. Common understanding of the purpose of the regulation
3. Common understanding of the mechanics of regulation
4. Transparency (data on effectiveness)
5. Coherence
6. Public input

Scope of Regulation


- Ideas are out there
 - *Reforming Legal Services* (Mayson Report)
 - *Inquiry into the performance of the CDSBC* (Cayton Report)
 - *Review of Professional Reliance in Natural Resource Decision Making* (Haddock Report)
- Examples are out there
 - Law Society of Ontario
 - Professional Standards Authority
 - *Health Profession Act* (British Columbia)

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Audience questions?

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Take-aways:

- The regulatory status quo in your jurisdiction may be challenged
- Consider what makes the current (or proposed) regulation “fit for purpose”
- Modern (legal) regulators are thinking about:
 - their goals, including how to regulate in the public interest;
 - using risk-based regulation;
 - governance models (including transparency issues); and
 - the proper scope of regulation.
- You don’t need to reinvent the wheel - help is available!
- Thank you for your attention.

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