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Professional Ethics and Multidisciplinary Practices joint committee newsletter

Newsletter of the International Bar Association Public and Professional Interest Division

IBA ANNUAL CONFERENCE, VIENNA, OCTOBER 2015



International Bar Association Conferences 2015–2016



4 NOVEMBER 2015 JAKARTA, INDONESIA

Asia Pacific Arbitration Group Training Day – Best Practices in International Arbitration

12 NOVEMBER 2015 MOSCOW, RUSSIA

7th Annual Mergers and Acquisitions in Russia and CIS Conference

12 NOVEMBER 2015 LONDON, ENGLAND

Private Equity Transactions Symposium

13 NOVEMBER 2015 SÃO PAULO, BRAZIL

Celebrating Magna Carta and the Rule of Law

14–15 NOVEMBER 2015 LONDON, ENGLAND

IBA-ELSA Law Students' Conference 2015

18–20 NOVEMBER 2015

LIVINGSTONE, ZAMBIA

Building on the Foundations for a Successful Future: Economic Development and the Rule of Law in Africa

18–20 NOVEMBER 2015 LONDON, ENGLAND

7th Biennial Global Immigration Conference

19–20 NOVEMBER 2015

SEOUL, SOUTH KOREA

Mergers & Acquisitions in the Technology Sector: Current Asian and International Trends

3 DECEMBER 2015 LONDON, ENGLAND

Third Party Funding and International Arbitration: a 360 degree perspective

3–4 DECEMBER 2015 MEXICO CITY, MEXICO

The New Era of Taxation: The keys to providing legal advice on tax law in a rapidly changing world

4 DECEMBER 2015 MOSCOW, RUSSIA

9th Annual Law Firm Management Conference

4 DECEMBER 2015 PARIS, FRANCE

The Rise of Ethics and Transparency in Mediation and ADR: Fighting Corruption and Abuses Through New Means

5 DECEMBER 2015 NEW DELHI, INDIA

Magna Carta 800th Anniversary – Foundation of Democracy and the New Trends of Dispute Resolution in India

27–29 JANUARY 2016 MEXICO CITY, MEXICO

Mexico's Energy Reform: The Bidding Has Begun

30–31 JANUARY 2016

THE PEACE PALACE, THE HAGUE

Legal Challenges of Modern Warfare

3–5 FEBRUARY 2016 TOKYO, JAPAN

IBA/ABA International Cartel Workshop

8–9 FEBRUARY 2016 LONDON, ENGLAND

5th Annual IBA Taxation Conference

11–12 FEBRUARY 2016 PARIS, FRANCE

4th IBA European Corporate and Private M&A Conference

17–19 FEBRUARY 2016

ADELAIDE, AUSTRALIA

Innovation in Legal Practice

29 FEBRUARY – 1 MARCH 2016

LONDON, ENGLAND

21st Annual International Wealth Transfer Practice Law Conference

4 MARCH 2016 SHANGHAI, CHINA

19th Annual International Arbitration Day

6–8 MARCH 2016 LONDON, ENGLAND

17th Annual International Conference on Private Investment Funds

9–11 MARCH 2016 RIO DE JANEIRO, BRAZIL

Biennial Latin American Regional Forum Conference

10–11 MARCH 2016 SINGAPORE

2nd Asia-based International Financial Law Conference

7–8 APRIL 2016 BERLIN, GERMANY

7th World Women Lawyers' Conference

14–15 APRIL 2016 COPENHAGEN, DENMARK

8th Annual Real Estate Investment Conference

14–15 APRIL 2016 MEXICO CITY, MEXICO

IBA Annual Employment and Discrimination Law Conference

17–20 APRIL 2016 NEW YORK, USA

Biennial Conference of the Section on Energy, Environment, Natural Resources and Infrastructure Law

27–29 APRIL 2016 SAN FRANCISCO, USA

IBA Annual Litigation Forum 2016

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This newsletter is intended to provide general information regarding recent developments relating to professional ethics, multidisciplinary practices and the legal profession. The views expressed are not necessarily those of the International Bar Association.

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From the Chair of the Section on Public and Professional Interest

Stephen Macliver

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Welcome to the inaugural newsletter of the Professional Ethics Committee and the Multidisciplinary Practices Committee

I am delighted to offer this brief introduction to this inaugural issue of the joint newsletter of the Professional Ethics Committee and the Multidisciplinary Practices Committee.

It is wonderful to see this sort of collaboration and for committees of the Section on Public and Professional Interest (SPPI) to be working together in this way. One of our goals is to provide IBA members

with practical, timely and current information that is both informative and relevant to their work on a day-to-day basis.

Over the years, both the committees have pursued a range of projects and initiatives that have been very significant and relevant to all of us. I would encourage all members of the IBA as a whole, and the SPPI in particular, to make use of the opportunities that exist to become actively involved in and contribute to the work of the committees.

I hope you find this inaugural newsletter of interest, enjoy reading it and I look forward to seeing everyone in Vienna.



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From the Chair of the Multidisciplinary Practices Committee and the Co-Chairs of the Professional Ethics Committee

Welcome to our ground-breaking joint committee newsletter

This newsletter, a joint effort of Multidisciplinary Practices Committee (MDPC) and Professional Ethics Committee (PEC), is exciting and ground-breaking! Steven Richman (US), the Chair of MDPC and Paul Monaghan (Australia) and Alberto Navarro (Argentina), Co-Chairs of PEC, together with the editors of this newsletter, Dalton Albrecht, MDPC and Jeffrey Merk, PEC (both of Canada) have collectively decided that these two Committees should work together to prepare and send to their respective members a joint MDPC and PEC newsletter for 2015 – and to publish this newsletter in advance of the 2015 IBA Annual Conference to be held in Vienna, Austria commencing on Sunday 4 October 2015.

Joint newsletter

As the editors have explained in their message forming part of this newsletter, there are a number of areas where the two Committees are complementary and share various members. We hope to provide the membership with more succinct, useful information and opportunities for a broader audience for the content of this newsletter. Both Committees would welcome your feedback as to this approach – please feel free to contact the editors with your thoughts and please volunteer articles. Newsletters are only as good as their contributors.

IBA 2015 Annual Conference, Vienna, Austria commencing Sunday 4 October

By now all members of the IBA should have received information about the 2015 IBA Annual Conference, which will be held in Vienna commencing Sunday 4 October 2015.

The MDPC and PEC have a number of panels which they are sponsoring or co-sponsoring. Also, please note that two of these panels are co-sponsored by our two Committees – a further example of the complementary nature of the functions of both Committees. We encourage all members of both MDPC and PEC to attend these panels. The IBA programme lists all chairs and participants in the panels. We all believe that the topics are relevant and the participants are well informed and great presenters. We believe that active audience participation and good attendance will enhance the reputation and influence of both Committees within the IBA.

The Vienna panels for our two Committees include:

- *Monday 5 October: 0930–1230: Episode VII: the accountants strike back* MDPC/Law Firm Management Committee/PEC
- *Tuesday 6 October: 1430–1730: Back to basics: fundamental ethics: revisited* PEC
- *Wednesday 7 October: 1430–15:30: PPID Showcase: blurred lines; what it means to be a lawyer in the 21st century* Bar Issues Commission/the Section on Public and Professional Interest/ Corporate Social Responsibility Committee/ Judges' Forum/ MDPC/PEC/Regulation of Lawyers' Compliance Committee
- *Thursday 8 October: 1430–1730: Martial arts ethics: the offensive and defensive use of the rules of professional conduct* PEC/Arbitration Committee/Judges' Forum/Litigation Committee
- *Friday 9 October: 0930–1230: Tritsch-Tratsch (Polka, Op 214) is heard through the Chinese Wall – new challenges for the traditional conflict of interest principle* Bar Issues Commission/ PEC/Regulation of Lawyers' Compliance Committee



MDPC status report and mission statement

Upcoming conferences

Together with the Law Firm Management and Senior Lawyers' Committees, the MDP Committee is planning a conference in Adelaide, Australia, 17–19 February 2016 on innovation in legal practice. Registration will be launched soon.

Mission statement

The MDP Committee is also exploring ways to update its mission statement and broaden its mandate. Its current mission statement explains:

'The MDP Committee was first created as a President-appointed committee, to follow the developments of multidisciplinary practices (MDPs) in different jurisdictions. It developed recommendations for IBA Resolutions as to the requirements to be met when allowing MDPs, to ensure that the core values of the legal profession are not undermined. The MDP Committee aims to bring together legal professionals and other interested individuals from many and various jurisdictions and backgrounds to monitor, discuss and shape the developments of MDPs and the rules to which they are subject around the world. The members of the MDP Committee are as varied as the backgrounds from which they come. Whereas many are MDP lawyers practicing in their country, members also include those who are, or would like to be, partners in an MDP.'

PEC status report and mission statement

Both Paul Monaghan and Alberto Navarro believe that 2015 has thus far been an active and productive year for PEC. Our recent message to PEC members sets forth many of the initiatives and actions taken by PEC. While we do not wish to repeat what has already been said, let us emphasise a few matters, namely:

Advisory board

To foster greater continuity of experience and history, PEC has formed an advisory board, the role and membership of which is still a work in process.

PEC officers

The roles of PEC officers have been reviewed and additional support has been forthcoming; again this process is ongoing.

Mission statement

PEC has commenced preparing a mission statement for itself, revised to reflect the changing times and expectations of the Committee and its members. The current draft is set forth below and we hope that you will share any written comments you may have with any or all of Paul Monaghan (paul.monaghan@lawsociety.com.au) and Alberto Navarro (anavarro@navarrolaw.com.ar) (Co-Chairs) or Martin Kovnats (Canada) (mkovnats@airdberlis.com) and Steven Stevens (Australia) (Steven.Stevens@stenaslegal.com), Vice-Chairs of PEC:

- 'Acting within and availing itself of the extensive framework of the International Bar Association (IBA), the mission of the Professional Ethics Committee (PEC) is principally twofold:
1. To serve the IBA as a resource for issues of professional conduct consistent with the IBA guidelines and to be an internationally recognised voice for IBA members in matters of ethics and professional conduct, in particular by identifying and facilitating discussion about the importance and relevance of these foundational principles to members of the legal profession, the users, and others who inter-relate with the provision, of legal services, which principles may include matters affecting the administration of justice and public protection; and
 2. To be a beacon for considered and thoughtful reflection across a broad spectrum of themes about how the legal profession, with the good reputation of the IBA, may assist in guiding attorneys and all those involved in the administration of justice, as well as those who access legal services, on the evolution of ethics and professionalism concepts as changes take place in the legal services marketplace, in moral and ethical standards, policies, laws and policy objectives.'

We would like to recognise the contribution and support of Adrian Evans, Victoria Rees and Steven Richman in assisting in the discussions that resulted in this draft mission statement. Their collective assistance and support has been invaluable. Of course, we welcome comments regarding the proposed mission statement from PEC members.

In our view, a mission statement is to be a high-level reflective strategic objective: the ‘what are we going to do’ statement. The methodology on ‘how to do it’ is the various and likely numerous tactics to be implemented to achieve the strategy.

Advisory service

There is another PEC initiative, which is just starting to gain momentum. The PEC wishes to establish a real-time internet based non-binding advisory service to professionals who seek some guidance on thorny professional and ethical questions. This service would draw upon a large network of experienced people. This proposed programme is being supported by (listed alphabetically by last name): (1) Hugo Berkemeyer (Paraguay) (hugo.berkemeyer@berke.com.py); (2) Jeffrey Merk (Canada) (jmerk@airdberlis.com); and (3) Carlos Valls (Spain) (c.valls@

fornesaabogados.com). The concept has been well received by the senior leadership of the IBA. While it is unlikely that this programme will commence operations in 2015, we are hopeful that it will start in 2016. If you wish to participate, please contact any or all of Hugo, Jeffrey or Carlos.

Open PEC officers meeting in Vienna

Lastly, there will be a PEC officers meeting held in Vienna, which shall be open to all PEC members and friends. Please join us and get to know your colleagues at our first annual Open PEC Committee Reception from 1745–1900 on Thursday 8 October 2015 at 57 Restaurant & Lounge, Donau-City-Strasse 7, 1220 Wien. An email regarding this event will follow in advance of the Vienna conference.

Conclusion

Our Committees wish to be useful and meaningful to their members. Please enjoy this newsletter and we hope that you will find the articles interesting and informative. We all welcome your comments and suggestions and encourage you to keep in touch with us.

We look forward to seeing you in Vienna.

Jeffrey Merk

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From the Co-Editors

Contributions and ideas welcome

We are pleased to introduce and launch the inaugural issue of the joint newsletter of the Professional Ethics Multidisciplinary Practice Committees. It is our hope and intention that this joint effort between related yet distinct committees will serve a broader audience and have a variety of contributions on topics of interest to both. A newsletter exists for its readers, and it will only be as good as those who contribute. We encourage all of you to contact us with ideas for articles. Given the comparative law nature of much of the substantive committees of the IBA, we want to have a forum where readers can share and analyse developments in their jurisdictions that can provide insight and relevance to those in other jurisdictions.

As described above, the PEC’s mission is to provide a forum for all international lawyers who are interested in discussing and debating issues affecting the practice of law. In today’s world a lawyer may face conflicting duties and the application of professional standards may be far from apparent. It focuses on developments of international significance and seeks active collaboration with other committees and constituents of the IBA, both for projects and in presenting topics as part of the programmes at the different IBA conferences throughout the year. The MDP Committee aims to bring together legal professionals and other interested individuals from various jurisdictions and backgrounds to monitor, discuss and shape the developments of MDPs and the rules to which they are subject to.

In this issue, our three lead articles examine certain developments in the United States and Canada regarding alternate business structures (ABS). In the US, there is movement towards permitting certain non-lawyer licensed legal technicians to perform certain legal tasks under a new regime of professional conduct. In Canada, we provide a background to the debate on ABS in Ontario, Canada and the status of ABS in selected other jurisdictions and the suggestion that the ABS debate will continue to remain a topical discussion for both lawyers and non-lawyers alike and will represent a recurring theme for discussion within the PEC of the IBA. We also have an article that explores the Nova Scotia Barristers' Society's movement towards a new model of regulation and governance of legal services in the public interest in Nova Scotia, Canada. We note a recent disciplinary decision in England that highlights the need for attentiveness in potential money laundering situations¹ and a recent Canadian decision relating to conflicts of interest.²

Please contact us if you are interested in contributing for our next issue.

Notes

- 1 *SRA v Andrew Donald Varley*, Decision No 10763-2011, decision date 24 April 2015.
 Summary: The Respondent failed to identify the indicators of property/mortgage fraud/money laundering further to the documented link between the buyer introducer and mortgage broker, and the payment of money on the introducer's instructions to unknown and unidentified third parties. The SRA argued that the Respondent showed a reckless disregard for his money laundering obligations in paying over £1m to third parties on instructions from the buyer introducer who he never met. The Respondent also accepted validations of identity from the mortgage broker without any further enquiry, despite the documents showing that there was a link between the broker and the buyer introducer.
 Sanction: The Tribunal found that the Respondent had failed to comply with the Money Laundering Regulations by ignoring clear indicators of suspicious behaviour and carrying out no due diligence investigations regarding third parties. The Tribunal agreed that this showed a reckless disregard of the money laundering obligations whether or not the Respondent was truly unaware of the classic indicators of mortgage fraud and money laundering. The Respondent was struck off the Roll of Solicitors and ordered to pay costs of £30,000. Read the full decision at: www.solicitorstribunal.org.uk/Content/documents/10763.2011.Varley.pdf.
- 2 See Martin Kovnats, 'forty-five million reasons to comply with rules of professional conduct', on page 10 of this newsletter.

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Vienna 4–9 October 2015

ANNUAL CONFERENCE OF THE INTERNATIONAL BAR ASSOCIATION



Professional Ethics and Multidisciplinary Practice joint committee sessions

Monday 0930 – 1230

Episode VII: the accountants strike back

Presented by the Multidisciplinary Practices Committee, the Law Firm Management Committee and the Professional Ethics Committee

Session Co-Chairs

Shelley Dunstone *Legal Circles, Adelaide, South Australia, Australia; Communications Officer, Senior Lawyers' Committee*

Hermann J Knott *Luther, Cologne, Germany; Co-Chair, Law Firm Management Committee*

Return of the big four accountancy firms to the legal markets. The impact of the legal profession on the strategic reorientation of the big accounting firms will be discussed. What are the key areas they want to cover and what ground remains for traditional firms? What is the impact of regulatory changes, such as the Legal Services Act in England, or proposed changes, as in the Canadian Bar Association Futures report? How do civil law and common law jurisdictions differ in their approaches and reactions? What is the impact of technology, and how could traditional firms respond? Will the US market eventually open up for non-lawyer-owned structures?

Speakers

Jacques Bouyssou *Alerion, Paris, France; Newsletter Editor, Litigation Committee*

Stephen Denyer *The Law Society of England and Wales, London, England; SPPI Secretary-Treasurer*

Justice Randy Holland *Delaware Supreme Court, Georgetown, Delaware, USA*

Colin Ives *BDO, London, England*

Steven Richman *Clark Hill, Philadelphia, Pennsylvania, USA; Chair, Multidisciplinary Practices Committee*

Michael Roch *Kerma Partners (Europe), London, England; Co-Chair, Law Firm Management Governance and Partnership Working Group*

Tuesday 1430 – 1730

Back to basics: fundamental ethics revisited

Presented by the Professional Ethics Committee and the Judges' Forum

Session Co-Chairs

Frank Astill *The University of Sydney, Sydney, New South Wales, Australia*

Paul Monaghan *Law Society of New South Wales, Sydney, New South Wales, Australia; Co-Chair, Professional Ethics Committee*

Despite the constant advancement of technology, fundamental principles of professional responsibility have not changed. While contemporary media foster ease of communication, the nature of those communications remains as it was in the days of 'hard copy'. Similarly, whether by Skype or otherwise, the rules of conduct remain the same. Older lawyers were told never to talk openly in elevators; the 'elevator' of today may be a chatroom, but basic principles of confidentiality and caution persist. This session explores application of basic principles in the 'brave new world', and features perspectives from judges and practitioners across different jurisdictions and demographics. This includes aspects of ethics for international lawyers with reference to the IBA International Principles on Conduct for the Legal Profession. Furthermore we will look at aspects of ethics for practice in the future global market, and everyone's obligations.

Speakers

Tracey Calvert *Oakalls Consultancy, Halwell, England*

Justice Anthony Gafoor *Tax Appeal Court of Trinidad and Tobago, Port of Spain, Trinidad and Tobago*

Duncan McConnel *Law Council of Australia, Canberra, Australian Capital Territory, Australia*

Jeffrey Merk *Aird & Berlis, Toronto, Ontario, Canada*

Janice Purvis *Lawcover, Sydney, New South Wales, Australia*

Honorable Myron Steele *Potter Anderson & Corroon, Dover, Delaware, USA*

Steven Stevens *Stenas Legal, Camberwell, Victoria, Australia; Vice Chair, Professional Ethics Committee*

Wednesday 1430 – 1730

PPID SHOWCASE: blurred lines – what it means to be a lawyer in the 21st century

Presented by the Bar Issues Commission, the Section on Public and Professional Interest, the Corporate Social Responsibility Committee, the Judges' Forum, the Multidisciplinary Practices Committee, the Professional Ethics Committee and the Regulation of Lawyers' Compliance Committee

Session Co-Chairs

Søren Jenstrup *The Danish Bar and Law Society, Copenhagen, Denmark; Officer, Bar Issues Commission*

Stephen Revell *Freshfields Bruckhaus Deringer, Singapore; SPPI Council Member*

This showcase session will focus on what it means – or should mean – to be a lawyer, what distinguishes our profession and how we best maintain our key attributes of providing access to

justice, independence, confidentiality and freedom from conflicts of interest. We will examine the 'blurred lines' given the many different regulatory approaches that now exist to permit the 'practice of law' by non-lawyers, accountants, listed companies, legal service providers, multidisciplinary firms and many other alternatives.

Regulation is an integral part of being a lawyer, whether in the form of internal codes of conduct, ethical standards or formal regulation/legislation or a combination. A panel representing all aspects of this debate will discuss the balance between the demands of society (and politicians) and maintaining the right professional standards that have historically been the hallmark of the legal profession.

Keynote Speaker

Professor David Wilkins *Harvard Law School, Cambridge, Massachusetts, USA*

Speakers

Thomas G Conway *Federation of Law Societies of Canada, Ottawa, Ontario, Canada*

Francisco Esparraga *School of Law The University of Notre Dame Australia, Sydney, New South Wales, Australia*

Elise Groulx-Diggs *Doughty Street Chambers, Washington, DC, USA; External Communications Officer, Corporate Social Responsibility Committee*

Judge Geoffrey Monahan *Federal Circuit Court of Australia, Sydney, New South Wales, Australia; Vice Chair, Judges' Forum*

Maria Slazak *Council of Bars and Law Societies of Europe, Warsaw, Poland*

Pieter Tubbergen *Schaap Advocaten Notarissen, Rotterdam, the Netherlands; Newsletter Editor, International Sales Committee*

Claudio Undurraga *Prieto y Cia, Santiago, Chile*

Thursday 1430 – 1730

Martial arts ethics: the offensive and defensive use of the rules of professional conduct

Presented by the Professional Ethics Committee, the Arbitration Committee, the Judges' Forum and the Litigation Committee

Session Co-Chairs

Cyrus Benson III *Gibson Dunn & Crutcher, London, England*

Martin Kovnats *Aird & Berlis, Toronto, Ontario, Canada; Vice Chair, Professional Ethics Committee*

Steven Richman *Clark Hill, Philadelphia, Pennsylvania, USA; Chair, Multidisciplinary Practices Committee*

To many lawyers, 'ethics' remains an amorphous concept. In the practice of law, it means adherence to the relevant rules of professional conduct. Those rules embody policy considerations; at its most basic, that lawyers preserve confidences and avoid conflicts of interest. In a borderless world, with increasingly complex legal and business relationships, lawyers are now using these rules in an aggressive means as part of litigation strategy. Motions to disqualify counsel or efforts to claim waiver of privilege are becoming more common. Violations of ethics rules are sometimes cited as grounds for causes of action by clients. On the other side, courts are starting to impose sanctions for improper use of the rules of professional conduct to seek improper advantage. This session will explore the offensive and defensive use of rules of professional conduct in a global context, focusing on model rules and the IBA ethical principles.

Speakers

Domitille Baizeau *Lalive, Geneva, Switzerland*

Hon Justice Michelle May *Family Court of Australia, Brisbane, Queensland, Australia*

Carlos Valls Martinez *Fornesa Abogados, Barcelona, Spain; Vice Chair, Conference Quality Officer, International Sales Committee*

Prince Ajibola Oluyede *TRLPLaw, Lagos, Nigeria*

Friday 0930 – 1230

Tritsch-Tratsch (Polka, Op 214) is heard through the Chinese Wall – new challenges for the traditional conflict of interest principle

Presented by the Bar Issues Commission, the Professional Ethics Committee and the Regulation of Lawyers' Compliance Committee

Session Chair

Peter Köves *Lakatos, Köves és Társai Ügyvédi Iroda, Budapest, Hungary; Vice Chair, Bar Issues Commission*

In his high-spirited Tritsch-Tratsch-Polka, Johann Strauss melodised the sound of 'chit-chat'. It is precisely this 'chit-chat' of lawyers that the conflict of interest rules were initially created to avoid.

This session, supported by the Austrian Bar Association, will explore how this traditional concept is applied in the 21st century as large law firms tend to interpret it somewhat differently than small firms or solo practitioners, let alone the bars and law societies.

Our distinguished panel of speakers from various sized firms and bars will discuss many pertinent questions that affect the modern use of these rules, such as:

- How do commercial conflicts interact with the traditional conflict of interest concept?
- Do the rules function to avoid a real danger of using confidential information or is this an attribute of the legal profession being part of the impartial justice system?
- Is the Chinese Wall a real solution?

Speakers

Rachel McGuckian *Miles & Stockbridge, Rockville, Maryland, USA; Secretary, Professional Ethics Committee*

Alessandra Nascimento Silva e Figueiredo Mourão *Nascimento Mourão Sociedade de Advogados, São Paulo, Brazil*

Christopher Perrin *Clifford Chance, London, England*

Stephen Revell *Freshfields Bruckhaus Deringer, Singapore; SPPI Council Member*

Rupert Wolff *Austrian Bar, Vienna, Austria*



Forty-five million reasons to comply with rules of professional conduct

Martin Kovnats

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In Ontario, Canada, after a 41-day trial, a CA45m award was made on 8 July 2015 by a trial judge against a law firm¹ for failure to comply with the rules of professional conduct. The trial judge determined that a duty to avoid conflicts was created (after lengthy consideration). The trial judge also thought that the firm had ‘acted irresponsibly and unprofessionally by failing to have an effective conflicts checking system in place – that is, one which actually leads lawyers discussing and resolving potential conflicts’. The trial judge considered many matters in his 166 page decisions. The quantum of damages was determined by the trial judge using concepts of compensation for ‘loss of

chance’, which originated in a 1911 English Court of Appeal decision. The law firm is appealing the decision.

The author does not intend to spend more time on this case or the issues that the case raises inasmuch as they are likely to be a matter of a panel during the 2016 IBA Annual Conference in Washington, DC. This could be another panel co-sponsored by MDPC and PEC.

Note

- 1 For those who may be interested, the case citation is: *Trillium Motor World Ltd v General Motors of Canada Limited*, 2015 ONSC 3824, Court File No CV-10-397096CP, 8 July 2015: www.canlii.org/en/on/onsc/doc/2015/2015onsc3824/2015onsc3824.pdf.

The International Bar Association’s Human Rights Institute



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Licensed legal technicians: the future is here

Introduction

On 15 June 2012, the Washington State Supreme Court adopted a new rule, APR 28-Limited Practice Rule for Limited Licence Legal Technicians. Washington thereby became the first state in the country to authorise such limited practice by non-lawyers.¹ The underlying purpose of the rule was to address the critical need to provide access to justice, and at the same time establish an appropriate regulatory regime to ensure competence and protection of the public. Per the Court's order, the rule 'establishes a framework for the licensing and regulation of non-attorneys to engage indiscrete activities that fall within the definition of the "practice of law" [as defined in Washington] and which are currently subject to exclusive regulation and oversight by this Court.' A Limited Licence Legal Technician (LLLT) Board was established to make recommendations to the Supreme Court for implementing the order. On 23 March 2015, the Washington Supreme Court adopted the proposed amendments to several of the state's Rules of Professional Conduct to accommodate the LLLTs.² The comment period on those proposed amendments ends on 30 November 2015. Significantly, the proposed RPC 5.9 permits business structures involving LLLTs and lawyer ownership, under certain limitations, including that LLLTs do not hold a majority interested or exercise managerial control.

The rationale

The Washington Supreme Court noted that both low and moderate income people were not always able to avail themselves of legal services, particularly in the area of family law.³ As the Court noted:

'Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an overtaxed, underfunded civil legal aid system. Many others are

moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternative in the unregulated marketplace.'

The Legal Services Corporation, in its 2009 report *Documenting the Justice Gap in America*, noted several state reports with significant numbers of pro se parties in various cases; the California study cited showed well over 50 per cent of participants in family law cases were unrepresented.⁴

This is not a concern unique to the United States. In 2014, the Canadian Bar Association issued its *Futures Report*,⁵ which stated 'despite efforts to provide justice to all Americans regardless of economic status, the poor continued to face inadequate and ineffective access to systems of civil justice and dispute resolution, the result of which was an increase in pro se representation'.

The Washington Supreme Court addressed a principal point in opposition, namely, the threat of consumer abuse, by noting that it already exists, but that the regulatory regime being established for licensed legal technicians would provide more meaningful and effective oversight.

The Rule

Washington's General Rule 24 defines the practice of law to be 'the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) which require the knowledge and skill of a person trained in the law'.⁶ Among other things, this includes giving advice or counsel on legal rights and obligations, drafting of documents affecting legal rights, representation of others in legal disputes and negotiation of legal rights and obligations. Certain exceptions, including acting as an authorised lay representative and various other specified activities, are authorised.

The Licensed Legal Technician Rule, APR 28 (Limited Practice Rule for Limited License Legal Technicians)⁷ sets forth the requirements for applying to be a LLLT,

which include age, moral character and fitness, an associate's degree or higher, 45 hours of paralegal instruction at an ABA approved institution, instruction and minimum credit in the particular practice area, agreement to furnish additional information as required, and a fee. To be licensed, the applicant must pass an examination, acquire 3,000 hours of lawyer-supervised substantive experience within three years (1) prior to licensure and (2) after passing the examination, pay an annual fee, demonstrate proof of financial responsibility as required and meet any other licensing requirements set. The scope of practice is limited to:

- obtain relevant facts, and explain the relevancy of such information to the client;
- inform the client of applicable procedures, including deadlines, documents that must be filed, and the anticipated course of the legal proceeding;
- inform the client of applicable procedures for proper service of process and filing of legal documents;
- provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;
- review documents or exhibits that the client has received from the opposing side, and explain them to the client;
- select, complete, file and effect service of forms that have been approved by the state of Washington, either through a governmental agency or by the administrative office of the courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;
- perform legal research and draft legal letters and documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;
- advise a client as to other documents that may be necessary to the client's case, and explain how such additional documents or pleadings may affect the client's case; and
- assist the client in obtaining necessary documents, such as birth, death or marriage certificates.

The LLLT cannot do certain specified acts, which among the list include make any statement or do anything that could be construed as indicating the LLLT has legal skills beyond those authorised, and the LLLT cannot appear in court or negotiate with other parties on the client's behalf, unless specifically authorised by General Rule 24. Certain other conditions for performance apply, which include maintenance of a physical place of business in Washington.

Concluding comments

Other states considering LLLTs include California, Illinois, Indiana, New York, Minnesota, Oregon, Rhode Island, South Carolina, Utah and Vermont.⁸ On 11 May 2015, seven candidates in Washington passed the examination. The programme is proceeding apace. It is anticipated that other states will follow the Washington state lead. Of perhaps equal importance is the allowance in Washington state of non-lawyer ownership in a law firm with lawyers by LLLTs. At present, only Washington, DC permits that under certain conditions.⁹ However, it remains practically limited by the prohibitive rules in other states. The New York State Bar Association, for example, issued an opinion that held that a New York lawyer with a New York-based practice could not be a partner in a Washington, DC law firm that had a non-lawyer partner, nor could their New York law firm be a 'subsidiary' of that Washington, DC firm.¹⁰ The issue of non-lawyer ownership and alternative business structures is part of the focus and study of the American Bar Association's Commission on the Future of Legal Services.¹¹ Of course, England and Australia have already moved towards alternate business structures. Washington State's LLLT programme is just one aspect of a broader movement in which the legal profession is changing to accommodate current needs, while retaining appropriate protection for both lawyers and the public.

Notes

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1 For a summary of the history and genesis of the rule, reaching back to 1998 and the formulation of a definition of the practice of law, see Stephen R Crossland, *The*

- Evolution of Washington's Limited License Legal Technician Rule*, available online at: www.ncbex.org/assets/Uploads/830214-Crossland.pdf, accessed 12 July 2015.
- 2 See: www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Court%20Rules/25700-A-1096-Lawyer%20RPC%20LLLT.ashx <accessed 12 July 2015>. The 15 June 2012 order is found online at: www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/20120615%20SCt%20Order%20Legal%20Technician%20Rule.ashx, accessed 12 July 2015.
 - 3 The 15 June 2012 order is found online at: www.wsba.org/~media/Files/Licensing_Lawyer%20Conduct/LLLT/20120615%20SCt%20Order%20Legal%20Technician%20Rule.ashx, accessed 12 July 2015.
 - 4 See: www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf at 25, accessed 12 July 2015.
 - 5 See: www.cbafutures.org/CBA/media/mediafiles/PDF/Reports/Future-of-the-profession-eng.pdf?ext=.pdf at 17, accessed 12 July 2015.
 - 6 See: www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gagr24, accessed 12 July 2015.
 - 7 See: www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr28, accessed 12 July 2015.
 - 8 See: <https://lib.law.washington.edu/content/guides/StateLimLicLegPro>, accessed 12 July 2015.
 - 9 DC Bar RPC 5.4(b): 'A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual no lawyer who performs professional services which assist the organization in providing legal services to clients, but only if:
 - (1) The partnership or organization has as its sole purpose providing legal services to clients;
 - (2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;
 - (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the no lawyer participants to the same extent as if non-lawyer participants were lawyers under Rule 5.1; and
 - (4) The foregoing conditions are set forth in writing.'
 See: www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule5-04.cfm, accessed 12 July 2015.
 - 10 NYSBA Ethics Opinion 1038 (6 December 2014): www.nysba.org/CustomTemplates/Content.aspx?id=53798, accessed 12 July 2015.
 - 11 See: www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html, accessed 12 July 2015. See also State Bar of Michigan, *Future of Legal Services Bibliography* (10 November 2014).

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Alternative business structures – primer for future discussion*

Introduction

In June 2015, Gateley LLP (Gateley) raised US\$46m in the UK's first initial public offering of securities of a law firm. Gateley is one of a select few listed law firms with publicly listed securities, joining Australian firms Slater & Gordon (the first to go public in 2007), Shine Lawyers, Rockwell Olivier and a small number of others.

These public offerings were made possible by reforms in England, Wales and Australia that allow law firms to adopt alternative business structures (ABSs).¹ Under these newly permissible structures, non-lawyers can invest in businesses that offer legal services. This is a departure from tradition: the worldwide professional norm is to allow only lawyers to own law firms.

To some, ABSs are a welcome disruption, unlocking much-needed operational flexibility for entrepreneurial legal practices. To others, the concept of non-lawyer ownership is deeply problematic, and raises serious ethical and practical concerns.

As professional regulators in countries around the world (including, but not limited to, Canada, the United States, Singapore and Hong Kong) adopt or consider adopting aspects of ABSs in their jurisdictions, and as the dynamics of the business of law firms continue to shift, this article discusses the conventional and ABSs of law firms and identifies some of the potential implications that ABSs might have for legal practice and professional ethics.

Firms' traditional ownership and financing structures

Traditionally, North American and European law firms have been owned by lawyers practicing in the firm. Providers of legal services are typically structured as sole practitioners or partnerships. The partnership is the dominant model for lawyers practising in association, although forms of partnership may vary, and many partnerships form management companies to hold the practice's

assets and hire support staff. In some regions (such as Latin America) firms tend to share expenses, but not revenue, within general partnerships. Some other jurisdictions offer a ‘limited liability partnership’, in which individual partners are not jointly and severally liable for commercial debts of other partners (although there is limited sharing of liability for professional negligence). Even the Swiss Verein model, used by some of the world’s largest multimedia and international firms, is still at its core a partnership model.

A law firm’s choice of form has ramifications for its financing structure. An unincorporated sole proprietorship can typically only draw on the personal equity of the sole proprietor and external debt financing. Similarly, while a partnership has a broader pool of potential equity investors to draw on in the form of its equity partners, its equity financing is limited by the risk tolerance and financial capacity of the equity partners. A partnership may also draw on external debt financing, which again is often limited by the risk tolerance and financial capacity of the equity partners. Accordingly, law firms often struggle to finance riskier or longer-term investments.

Forms of non-lawyer ownership

Multidisciplinary practices

Technically, a ‘multidisciplinary practice’ or (MDP) is a form of ABS that is sometimes included in regulatory reform. A multidisciplinary practice includes lawyers and non-lawyers offering services in association, such as, for example, an intellectual property law firm practicing in association with trademark and patent agents, lawyers and accountants providing their respective services under one name or a family dispute resolution firm offering mediation, counselling and traditional legal services. Some firms have economists on staff to assist with transfer pricing matters. MDPs are licensed and regulated by the applicable jurisdiction’s professional regulator. The lawyers in the practice or partnership are liable for the actions or omissions of associated non-lawyers, and are typically required to carry broader professional liability insurance. MDPs are authorised (with varying restrictions) in some Canadian jurisdictions, in the District of Columbia in the US, in Germany, the Netherlands, Australia, New Zealand and Japan.

Legal practices co-owned by non-lawyers

Under an ABS model, traditional legal practices may also be owned by non-lawyers. This typically takes one of two forms: (1) private equity ownership; or (2) since Slater & Gordon’s IPO, public ownership. Outside of licensing limits imposed by professional regulators, the options for ownership and financing of ABS firms are as flexible as they would be for any other business corporation.

In terms of private ownership, smaller or mid-sized firms organised as business corporations (including the ‘professional corporation’ model in Ontario) may be owned in part by family (for tax reasons) or other non-legal employees, such as assistants, managing directors or senior officers, such as a chief executive officer or chief financial officer. Alternatively, though perhaps less commonly, they may offer equity stakes to venture capitalists or other private investors in exchange for larger infusions of capital.

Another dimension of private ownership is franchising. Law firms operating as franchises might share centralised management, branding, marketing, accounting and other back office functions, but be separately owned by non-lawyer entrepreneurs as business corporations. An example of the franchise model is Quality Solicitors in the UK.

Publicly listed legal practices

Like any other business corporation, ABSs can issue public equity or debt to finance growth. It may be too soon to tell whether the publicly listed law firms referenced above are early adopters or outliers. Nonetheless, in jurisdictions permitting ABSs, equity ownership is a compelling possibility that can help overcome some of the challenges to financing, flexibility and management faced by law firm partnerships.

ABSs in practice

Australia

In 2001, the Australian province of New South Wales was the first jurisdiction to license ABSs. Shortly thereafter, two other Australian provinces followed suit. Currently, nearly half of Australia’s plaintiff-side personal injury work is done by ABS firms. Generally, in Australia, firms adopting an ABS structure tend to be sole proprietorships or smaller firms.

Disadvantages in Australian tax law may contribute to the lower uptake from larger firms in that these tax laws. The President of the Law Council of Australia considers the ABS experience ‘overwhelmingly positive’ and contends that ABS firms are held to higher professional standards than traditional law firms.² Over 2,000 licensed ABS practices are operating in Australia (a very small proportion of them MDPs).

United Kingdom

Regulatory reform in the UK occurred six years after the Australian shift. According to the *ABA Journal*, circa December 2014 over 384 ABS firms were licensed by the Solicitor Regulatory Authority.³ ABS firms are ‘disproportionately concentrated’ in a minority of sectors, led by personal injury, and as in Australia, tend to be smaller in size. But, as shown by Gateleys, ABS can impact larger or multinational companies. For example, LegalZoom, an unorthodox US-based provider of technology-driven legal services, is using the UK as a ‘legal laboratory’ to explore new business structures and service models.⁴

In both Australia⁵ and the UK,⁶ ongoing reforms to the ABS regulatory regimes have involved liberalisation of the regulatory requirements, rather than the reverse in that, as the history of ABSs grows longer, the regulation of ABSs has decreased and not increased. This suggests that either ABSs, in practice, did not have negative effects on professionalism, or that regulatory requirements were not helpful in reducing risk. For instance, the UK formerly instituted a ‘fitness to own’ requirement on ABS shareholders; as a result of this requirement, a six-month-old baby, who was given an equity interest by its parent, was investigated by the Solicitor Regulatory Authority. This may have contributed to the requirement’s repeal.⁷

Arguments in favour of ABSs

Some lawyers, investors and academics find traditional restrictions on law firm ownership to be limiting and outdated. They argue that ABSs would provide much-needed innovation and reform to the legal profession. Arguments in favour of ABSs typically include:

- *‘Lawyers are bad managers’*: Slater & Gordon has an eight-person board of directors, with only three lawyers represented. Some argue that non-lawyer management will make firms more profitable by improving business

practices or finding operational efficiencies, with particular emphasis on increased uptake of information technology;

- *‘It works for other industries’*: until 1970, the New York Stock Exchange prohibited member firms from going public. After liberalisation of these rules, the major investment banks organised as partnerships went public, with the last holdout, Goldman Sachs, going public in 1999;
- *Access to justice*: efficiencies of scale or changes in management approaches could result in lowered fees for services, allowing more unmet legal needs to be served by lawyers (noting, however, that so far, ABS firms have clustered in areas that normally operate on contingency fee bases and have fewer unmet legal needs);⁸
- *Bundling services*: as may exist in many MDPs today, an intellectual practice owned by a patent and/or trademark agent, or a tax practice owned by an accounting firm, could provide a package of legal and non-legal services to a client for one all-inclusive cost;
- *Financing*: equity financing from third parties, or public listings of debt or equity could finance riskier activities (such as major class action lawsuits) or long-term investments (such as investments in marketing, information technology or expansion within existing or new jurisdictions without a clear short-term payoff) that might be declined by risk-averse banks or lawyers in the partnership. Put in another way, more flexible financing options could spur innovation;
- *Acquisition opportunities*: ABS firms could acquire non-legal service businesses that provide ready-made revenue streams, and finance those acquisitions with equity. Slater & Gordon’s recent acquisition of the UK insurance services firm Quindell is one example;
- *Improving lawyers’ incentives*: law firms with alternative equity structures could adjust compensation structures to incentivise lawyers’ long-term productivity. Associates could be progressively rewarded with equity stakes or vesting options. Partners’ equity could be held through retirement, or alternately cashed out to form a ‘nest egg’ on their departure from practice;⁹
- *Attracting non-lawyer talent*: key non-legal staff, such as a chief executive, financial, marketing, information technology, human resources officers and others could be attracted or retained with equity or options as is customary in other



- business enterprises; and
- *Tax advantages*: in the context of smaller practices, allowing family members to hold shares of a law firm would likely result in tax advantages via income-splitting to the extent permitted by applicable tax laws.

Ethical and practical concerns

Many regulators, practitioners and commentators have voiced significant concerns about the practical and ethical impacts of ABSs. One major concern, of course, is the lack of rigorous empirical evidence to back up the theoretical arguments supporting either side with many regulators, practitioners and commentators therefore arguing for maintaining the status quo or some minor variation thereon. As a result, most of the below are speculative considerations.

Some of the main concerns associated with non-lawyer ownership (and particularly ‘public equity investment’) are set out below. Generally speaking, these ‘red flag’ issues can be divided into issues of perception, ethical concerns and practical impacts. While a fulsome discussion of each of these issues is beyond the scope of this introductory article, future articles in this newsletter will tackle the ethical concerns with ABSs in greater depth.

Issues of perception

Opponents of ABSs resist the notion that legal services should be ‘commoditised’. Non-lawyer ownership, particularly in a public company, quarterly results driven setting, might increase a short-term focus on the bottom line over the general well-being of clients, or otherwise might jeopardise the special relationship between legal professionals and the public. The appearance of bias or conflict of interest might be heightened when an ABS or MDP also provides ancillary professional services in the same discipline (imagine, for example, a prison also offering criminal defence services).

These issues of perception can be mitigated to some extent: for example, Shine Lawyers, one of the Australian publicly traded firms mentioned above, lists in its prospectus that its primary duty is to the client.

With the recent reinvigoration of dual-class share structures for companies completing an initial public offering, perhaps lawyers holding multiple voting shares while

subordinate or non-voting shares are being offered to the investing public would tarnish the perception of the legal profession.

Ethical concerns

Whereas lawyers receive a thorough grounding in concepts of professional ethics as they apply to day-to-day practice, non-lawyer owners, particularly investors in the public markets, do not. Consequently, as managers or directors, they may pressure lawyers within the ABS firm to make risky decisions or place the firm’s bottom line above the client’s best interests.

However, it would be naïve to say that firm profitability is not already a consideration for lawyers: the pressure for short-term profit maximisation may come from sources within the legal profession as easily as from outside investors. Legal ABS firms are not the only duty-bound professional services firms that struggle with these concerns: consider, for example, doctors in equity-backed private medical clinics.

Concerns may be greater in the area of referral fees and conflicts of interest, particularly where firms are multi-disciplinary or vertically integrated. Since privilege only attaches to legal advice, client confidentiality is a major concern for MDPs and other non-traditional business models. In the UK and Australia, such considerations have been a major focus of regulators of lawyers, who require ABS firms to comply with strict ethical standards.

Impacts on practice decisions

The influence of non-lawyer ownership on client selection is an interesting area for speculation. Some lawyers argue that their most important ethical decisions operate at the moment of client selection – but would a lawyer who answers to public investors be granted the latitude to turn away a lucrative legal matter for ethical reasons? Conversely, would ABS firms owned by non-lawyers be less likely to take on famously unpopular clients or causes¹⁰ or work on less profitable or pro bono files?

Lawyers’ risk tolerance is another area that might be affected by law firm ownership. For example, would a partner be more willing to issue a risky opinion, or take on a risky class action, if their compensation was no longer directly tied to firm performance? If lawyers’ decisions were perceived as riskier, whether

due to short-term profitability pressures brought by outside non-partner investors or managers or due to a lack of personal 'skin in the game', would their professional liability insurance premiums increase? How would insurers respond to ABS, more generally?

Conclusion

As one might imagine from the above, the ABS debate has been heated in bar associations around the globe. While few empirical truths have emerged from the discussions, one thing is certain: the ABS debate will continue to remain a topical discussion for both lawyers and non-lawyers alike and will represent a recurring theme for discussion within the Professional Ethics Committee of the International Bar Association. Moreover, ABSs represent topical and complicated subject matter for which the Professional Ethics Committee of the International Bar Association should play a leading role in framing future discussion.

Notes

* The authors would like to thank Aird & Berlis summer student Timothy Jones for his significant contribution to the preparation of this paper and the background research related thereto. Although not specifically referred throughout this article, the views contained

within this article should be viewed through the lens of partnerships typically found in Ontario, Canada.

- 1 Other jurisdictions have adopted or are considering adopting ABS to various extents – for example, Singapore permits minority non-lawyer ownership.
- 2 Available at: www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20111004LawSocietyofEnglandandWalesSpeech.pdf.
- 3 Available at: www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures.
- 4 Available at: www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures.
- 5 Available at: www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/speeches/20111004LawSocietyofEnglandandWalesSpeech.pdf.
- 6 Available at: www.legalfutures.co.uk/latest-news/unnecessary-abs-approval-rules-to-be-scraped-in-latest-regulation-bonfire.
- 7 Available at: www.legalfutures.co.uk/latest-news/sra-checked-birth-certificate-of-baby-with-material-interest-in-abs.
- 8 See Nick Robinson, 'When Lawyers Don't Get All the Profits: Non-Lawyer Ownership of Legal Services, Access, and Professionalism' *Georgetown Journal of Legal Ethics* (Forthcoming); HLS Program on the Legal Profession Research Paper No 2014-20. Available at SSRN: <http://ssrn.com/abstract=2487878>.
- 9 See Jonathan T Molot, 'What's Wrong with Law Firms: A Corporate Finance Solution to Law Firm Short-Termism' (2015) 88 S Cal L Rev 1, available at: <http://lawreview.usc.edu/index.php/article-whats-wrong-with-law-firms-a-corporate-finance-solution-to-law-firm-short-termism>, for a discussion of how alternative compensation structures might impact law firm decision-making and productivity.
- 10 See n8 above, at 22.

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Nova Scotia Barristers' Society: a journey towards a new model of regulation and governance of legal services in the public interest

'Wanderer, there is no road, the road is made by walking'

'Caminante no hay camino, se hace camino al andar'

Antonio Machado

Introduction

The increasingly dynamic and complex landscape of the legal profession in Nova Scotia, in Canada¹ and the world, and the pressing social demands for enhanced access to justice and affordable legal services, have prompted the Nova Scotia Barristers' Society



(NSBS, 'the Society') to embark on a journey towards a new model of regulation and governance of legal services in the public interest.

An ambitious agenda for regulatory reform was set up two years ago and has been the road map for this journey. Since then, the Society has been working diligently in consultation with lawyers and other stakeholders, international consultants and advisers to move forward with this initiative.² A truly 'made-in-Nova Scotia' regulatory framework is emerging, which will suit the culture and characteristics of the province's legal profession, the legal services sector and the needs of the public.³ The new regulatory framework will be the embodiment of a different approach to regulation that is intended to be more responsive to a diverse and changing environment, to enhance the quality of legal services, to encourage an ethical legal practice, to foster innovation in the legal services sector, and to increase access to justice.

This article briefly summarises the key aspects of the Society's journey and elements of its emerging regulatory framework. The first part of this article describes the Society's purpose, authority, mission and values; the second section focuses on the main features of the regulatory framework; and the final section describes some of the future tasks on the road ahead.

Nova Scotia Barristers' Society: its purpose, authority, mission and values

The Nova Scotia Barristers' Society is the regulator of the legal profession in Nova Scotia and its purpose, set out in the Legal Profession Act (LPA),⁴ is 'to uphold and protect the public interest in the practice of law'. The Society has authority to regulate lawyers, articling clerks and law firms⁵ with a mandate to establish standards for admission, professional responsibility and competence, to regulate the practice of law, and to seek improvement to the administration of justice in the province.

The institutional purpose, mission and values describe the character and culture that the Society and its members aspire to embrace and uphold. The council, the elected governing body of the Society, has expressed its vision for the Society and its values as discussed below.

The Society is an independent, trusted and

respected regulator of the legal profession. Acting in the public interest, we provide leadership, value and support to a competent, ethical, inclusive and engaged legal profession. We enable the legal profession to enhance access to justice and uphold the rule of law.

The values that shape the Society's actions are commitment to excellence, fairness, respect, integrity, visionary leadership, diversity and accountability. These values drive and sustain the Society's current regulatory reform and its day-to-day activities.

Emerging regulatory framework at NSBS

The Society's Strategic Framework for 2013–2016, approved by the council in spring 2013,⁶ is the central point of reference in the emerging regulatory framework. The twin strategic directions that have been established are excellence in regulation and governance, and improvement of the administration of justice. The council also identified two strategic priorities that each resulted in separate work plans: transforming regulation and governance in the public interest, and enhancing access to legal services and the justice system for all Nova Scotians.

The Society issued a comprehensive research paper in October 2013,⁷ which posited that the existing regulatory framework is no longer appropriate in light of changes that are taking place in the legal services market and in the legal profession. A 'fundamental and perhaps profound change in regulation' was considered not only as a desirable and viable option but a necessary one to achieve the Society's chosen future.⁸

Features of the emerging regulatory framework

The Society's work in transforming regulation and governance in the public interest is in progress,⁹ and an agreement in principle has been reached on the following defining features of a new regulatory framework.

NSBS regulatory objectives

In November 2014, the council approved the following six regulatory objectives,¹⁰ which are intended to guide the work of the Society in its efforts to fulfil its purpose, role and functions.

- Protect those who use legal services;
- Promote the rule of law and the public interest in the justice system;
- Promote access to legal services and the justice system;
- Establish required standards for professional responsibility and competence in the delivery of legal services;
- Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system; and
- Regulate in a manner that is proactive, principled and proportionate.

The six regulatory objectives are equally important, and require from the Society a consistent effort to maintain a proper balance between them and the goal of any regulation.

The 'Triple P' approach

The sixth regulatory objective, to 'regulate in a manner that is proactive, principled and proportionate', also known as the Triple P approach, will guide the whole of the Society's regulatory policy, including design, implementation, monitoring compliance and enforcement of its regulations. This approach plays a crucial role in the Society's current regulatory reform.

'Proactive' calls for anticipation of risks and prevention of potential harm to the Society's purposes or regulatory objectives. It calls for positive intervention before complaints arise or to prevent further complaints, to focus more on encouraging ethical behaviour rather than responding after the damage has been done.

'Principled' calls for general and goal oriented regulatory statements instead of prescriptive and detailed rules. This is a more flexible approach to be accompanied by a variety of tools to assist lawyers and legal entities in establishing their own processes to attain a stated regulatory goal. The Management System for Ethical Legal Practice (see below) embodies this approach.

'Proportionate' calls for a selection of efficient and effective regulatory measures to achieve regulatory objectives using, among others, risk assessment and risk management tools. It calls for a balancing of interests and a 'proportionate' response both in terms of how the Society regulates, and how it addresses matters of non-compliance.

The Triple P approach challenges the Society to engage in a continuous review, assessment and evaluation of the efficacy of the stock of regulations, and to establish goals which are both achievable and measurable.

Entity regulation and the Management System for Ethical Legal Practice (MSELP)

Entity regulation and MSELP are intertwined regulatory initiatives oriented toward engaging lawyers and legal entities in Nova Scotia to improve the quality of legal services, and to encourage and sustain an ethical legal practice.

The definition of 'legal entity' at this point refers to 'an organisation or a lawyer carrying out work that is supervised by a lawyer, whether the work is done by a lawyer or a non-lawyer'. Entity regulation aims to supplement the current legal framework for lawyers and law firms in Nova Scotia.¹¹ The Society and other regulators have come to recognise the importance and impact of law firm governance, organisational structure, management, policies, culture and day-to-day interactions and practices on lawyers' responsibilities and ethical decision-making.

Creating and sustaining an 'ethical infrastructure'¹² is considered a best practice that has met with measureable success in other jurisdictions.¹³ The importance of ethical infrastructure and its effectiveness in shaping a lawyer's day-to-day conduct has been recognised. From an institutional standpoint, having an ethical infrastructure is 'culturally symbolic'¹⁴ as the formal structures form part of the culture of the firm. It also serves as a visible signal of the firm's engagement in high ethical standards. According to E Chambliss and David B Wilkins, the 'design and implementation of effective ethical infrastructure is critical to the future integrity of private law practice.'¹⁵

The Management System for Ethical Legal Practice is constructed from the following main components:¹⁶

- ten core elements;
- a self-assessment tool; and
- a means for measuring outcomes and success, and communicating with legal entities in this regard (including the appointment by legal entities of a designated lawyer for communication purposes, and the use of audits).

The interconnections between these components are expected to create a sustainable improvement in the quality of legal services and ethical legal practice of individual lawyers and legal entities.

Entity regulation and MSELP reflect a more collaborative approach to regulation as their design involves enhanced dialogue and trust between the Society, lawyers and legal entities.¹⁷



The ten core elements

The following ten elements have been identified through careful consideration of the Legal Profession Act and Regulations, the Code of Professional Conduct, Practice Standards and regulations establishing requirements for the practice of law, as well as input received from lawyers and other stakeholders, and lessons learned from complaints and claims made against lawyers in Nova Scotia.¹⁸

Under this new framework, legal entities will be required to have in place all of the elements that apply to the specific entity for an effective MSELP, and demonstrate that the legal entities are engaged in and committed to the following:

- Developing competent practices;
- Communicating in a manner that is effective, timely and civil;
- Ensuring that confidentiality requirements are met;
- Avoiding conflict of interest;
- Maintaining appropriate file and records management systems;
- Ensuring effective management of legal entities and staff;
- Charging appropriate fees and disbursements;
- Having appropriate systems in place to safeguard client trust money and property;
- Sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community; and
- Working to improve the administration of justice and access to legal services.

Entities will be required to use the ten elements as principles for creating and maintaining an effective ethical infrastructure that fits the nature, scope and characteristics of their practice. The ten elements describe 'what' legal entities will be asked to achieve but not 'how' to get there.

A self-assessment tool

A self-assessment tool is being developed¹⁹ to assist legal entities with review of their ethical infrastructure, that is, their 'formal and informal management policies, procedures and controls, work team cultures and habits of interaction and practice',²⁰ in relation to the above-mentioned ten elements. The self-assessment tool aims to increase the entity's awareness of its performance in each of the areas covered by the ten elements, and to help to identify those areas in which an improvement would be suitable or required.²¹ The Society would provide the necessary

assistance to legal entities to complete the self-assessment and achieve their goals.

Based on the results of the self-assessment, each legal entity would be empowered to engage in its own planning, including identifying risk, prioritising actions, and developing internal policies and processes aiming at reducing risk and improving its ethical infrastructure. This, in turn, is expected to enhance the quality of service provided to clients and reduce complaints.

Measuring outcomes and success

Key to the success of entity regulation and MSELP will be the ability to identify clear and measureable outcomes for the regulator. This process has begun. The Society anticipates rolling out the new framework by way of a pilot project to test the experiences of a representative selection of legal entities, to gauge their understanding and ability to incorporate the elements and test the self-assessment tool. The Society will then assess these experiences and adjust the regulatory framework as needed.

The road ahead

The Society is currently working on a number of concurrent and related initiatives: (1) a definition of regulatory outcomes for the regulator, and tools for their measurement; (2) risk identification and management, which aims to identify the risks that different types of legal entities can pose to the achievement of the ten elements; and (3) development of tools and resources to support these entities in achieving the elements. The self-assessment questionnaire will be developed in an online format, requiring specific technology to collate and report on the results, thereby helping the Society to identify where its resources should best be focused in the public interest.

The Society is developing an online communications and engagement platform as a means of keeping lawyers and stakeholders informed, and to manage information and progress reports. This will also be a useful tool for beginning to educate and reshape the Society's organisational culture toward the Triple P and risk-focused approach.

What has been summarised above are the defining and emerging features of the new regulatory framework, which remains a work in progress. The Society is on an exciting journey, and may inspire other regulators to embark on their own quest.

Notes

- 1 The Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Ottawa: CBA, 2014). See also Victoria Rees, 'Transforming regulation and governance in the public interest - the evolution of a modern legal regulator' (2014) 1(1) IBA Regulation of Lawyers' Compliance News 7.
- 2 Ample information about research and other activities is available on the Society's website: <http://nsbs.org/transform-regulation>.
- 3 See especially Creative Consequences P/L, Law, Business and Regulation Advisory, *Transforming Regulation and Governance Project Phase 1* (26 March 2014) online: http://nsbs.org/sites/default/files/ftp/InForumPDFs/NSPhase1Rstructure_Mar2014.pdf at 12-19. (It conducted an in-depth analysis of the NSBS regulatory framework for lawyers and law firms, cultural environment, nature and quality of the relationship between regulator and regulated, and complaints and claims about lawyers in Nova Scotia, to determine the suitability of an entity-based regulation and a management system to support ethical practice.)
- 4 Legal Profession Act, SNS 2004, c 28, s4 as amended, online: <http://nsbs.org/regulation>.
- 5 The term law firm is defined as 'a partnership, a law corporation, any other joint arrangement, or any legal entity carrying on the practice of law'; see n2 above, LPA, s.2(x).
- 6 Nova Scotia Barristers' Society, Strategic Framework 2013-2016, online: <http://nsbs.org/strategic-framework>.
- 7 Victoria Rees (Director Professional Responsibility), *Transforming Regulation and Governance in the Public Interest. Prepared for Council of the Nova Scotia Barristers' Society* (Halifax: Nova Scotia Barristers' Society 2013), online: <http://nsbs.org/sites/default/files/cms/news/2013-10-30transformingregulation.pdf>.
- 8 Six key elements were suggested to support the new model regulatory framework: establish a set of clear objectives of regulation, adopt a principles-based approach to regulation, move to an organisationally embedded risk-based approach to regulation, the creation of a proactive management system based approach, broaden lawyers' ability to work in (ABSs) [alternative business structures] and MDPs [multidisciplinary practices], virtual law firms and expand capacity of paralegals and non-lawyers to provide legal information and services. *Ibid*, Rees, at 51.
- 9 Ample information is available on the Society's website: <http://nsbs.org/transform-regulation>.
- 10 NSBS, Regulatory Objectives, online: <http://nsbs.org/nsbs-regulatory-objectives>.
- 11 Nova Scotia is a pioneer in Canada in regulating law firms.
- 12 According to T Schneyer, the concept of 'ethical infrastructure' refers to 'formal and informal management policies, procedures and controls, work team cultures and habits of interaction and practice that support and encourage ethical behaviour within firms.' Ted Schneyer, Professional Discipline for Law Firms? (1991) 77(1) Cornell L Rev 10 cited in Creative Consequences P/L Law, Business and Regulation Advisory, *Transforming Regulation and Governance Project. Phase 2* (18 May 2014) online: http://nsbs.org/sites/default/files/ftp/InForumPDFs/NSPhase2Rpt_May2014.pdf at 7 [NSBS, Phase 2].
- 13 Susan Fortney and Tahlia Gordon, 'Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation' (2013) 10(1) University of St Thomas Law Journal 152.
- 14 Elizabeth Chambliss and David B Wilkins, 'Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting' (2002) 30(3) Hofstra Law Review 691 at 713.
- 15 *Ibid* at 716. '[A] substantive body of research on organizations finds that organizational structure and culture are dynamically related... [T]racking the creation and diffusion of ethical infrastructure is an essential component of any inquiry into law firms' ethical culture.' *Ibid* at 714 [footnotes omitted].
- 16 For more details, see n12 above, NSBS, Phase 2.
- 17 A collaborative relationship requires 'a very different level of trust of both the profession for the regulator and the regulator for the profession. As an example: we would work with firms to build and report on their ethical and professional infrastructure that is appropriate to their practice. They would be accountable for it. The regulator would assist them in its development.' Darrel Pink (NSBS Executive Director), 'On The Precipice: The Future of Legal Regulation' (The Law Society of Alberta Benchers' Retreat delivered at Jasper, Alberta, 5 June 2014) online: http://nsbs.org/sites/default/files/ftp/InForumPDFs/2014-06-23_TransformingReg_OnthePrecipiceDPink.pdf.
- 18 See n12 above, NSBS, Phase 2, at 17-31.
- 19 Creative Consequences P/L Law, Business and Regulation Advisory, *Transforming Regulation and Governance Project. Phase 4* (23 September 2014) online: http://nsbs.org/sites/default/files/ftp/InForumPDFs/TransformingRegulation&GovernanceProject_Phase4.pdf at 16-32.
- 20 See n12 above.
- 21 In Canada, The Canadian Bar Association has developed an Ethical Practices Self-Evaluation Tool aimed to assist Canadian law firms and lawyers to examine the ethical infrastructure that supports their legal practices. This tool is not prescriptive but its adoption is suggested as 'to encourage exploration and discussion of firm practices'. See Canadian Bar Association, *Ethical Practices Self Evaluation Tool*, online: www.cba.org/CBA/activities/pdf/ethicalsevaluation-e.pdf.

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Teaching legal ethics in a newly established law school in Japan

I am a sole practitioner and I have been practicing law for more than 30 years in Hiroshima. I am an employer and at the same time an employee. According to international standards, a sole practitioner is an endangered species. However, it is not the case in Hiroshima. The population of Hiroshima Prefecture is about 2.8 million and the number of attorneys is about five hundred. The ratio of an attorney compared to the overall population is one to 5,600; more than half of them are sole practitioners. Luckily we sole practitioners are not an endangered species.

The Japanese government introduced a law school system in 2004. Sixty-eight law schools have been established in Japan and since the establishment of the law school system, I have been a faculty member of Hiroshima University Law School. I teach legal ethics as well as civil code and civil procedure law. Before implementation of the new law school system, legal ethics had never been taught in Japanese universities as academic teachers taught only the interpretation of laws in the universities. Therefore, it is one of the epoch-making progresses that teaching of legal ethics started ten years ago in Japan.

Legal ethics is a compulsory subject in Japanese law schools. All students need to take the two-credit course for legal ethics. Two credits means that you teach one hour and forty minutes for a class, and a student has to attend a total of 15 classes. Most law schools are satisfied with that but Hiroshima University Law School is different as it emphasises the importance of legal ethics by providing the students with another optional legal ethics course. I teach a mandatory legal ethics course to second year students in their first semester, and an optional course in the second semester.

Why does our law school emphasise teaching legal ethics? The main reason is that legal ethics is important for a bar association to maintain its autonomy or self-governance. Membership in our bar associations is compulsory. Moreover, the main characteristic

of the Japanese Federation of Bar Associations (JFBA) and 52 local bar associations is their autonomy. We have enjoyed autonomy or self-governance for 70 years. No judicial court has the power to discipline or sanction an attorney and no governmental agency has the power either. Only the JFBA and/or a local bar association can discipline or sanction an attorney. This self-governance highly guarantees the independence of an attorney. If the number of wrongdoings or misconduct of attorneys was to increase, then there would be more pressure to deprive the autonomy of the bar associations.

As you might know, it is not so easy to teach students legal ethics. Practitioners very often confront the problems or dilemma of legal ethics when dealing with our clients or adversaries. But the students do not practice law and therefore it is difficult for them to understand the problems or dilemmas of legal ethics in their heart and mind. So I teach from my personal experiences and use real disciplinary cases from the monthly magazine entitled *Liberty and Justice*. Sometimes I am surprised to find a name of one of my alumni. For instance, if you did a wrongdoing or misconduct and received a one-month-suspension, then you might say jokingly: 'I will go to the Bahamas or Vienna on vacation for one month. That is no problem for me.' If you get a suspension, you must return your badge to the JFBA and you must not appear in court. You cannot postpone the hearing date, you must terminate all your retainer agreements with all your clients and you must not provide any legal advice for the suspension period. In case you are a court-appointed lawyer in a criminal case, the court will fire you. If you are a bankruptcy trustee, the bankruptcy court will fire you. So a one-month-suspension would fatally damage your practice and your reputation – it is definitely not a joke.

Needless to say, teaching legal ethics is important. However, there is a problem: most students are not keen to study it. The main reason is that legal ethics is not a

subject for the bar examination in Japan. The passing rate of the bar exam is 20 per cent. Accordingly, the students are most concerned if they can pass the bar examination after graduating from law schools. So they concentrate their energy on the subjects of the bar exam such as civil law, criminal law and company law.

As I mentioned before, the bar associations understand the importance

of legal ethics in terms of self-governance. They provide the training to newly registered attorneys and provide training to the attorneys every five years. This training is compulsory. They provide young attorneys with a mentor system. A mentor is usually a former president of a local bar association. Young attorneys can consult their mentor at any time for any problem, except 'lend me money or give me a loan!'

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Conflicts of interest: its definition, and the importance of its regulation in our profession*

There are certain professions where clients are unable to evaluate the quality achieved by the supplier of the services, such as lawyers, and where it is impossible to know if the professional has acted in the client's best interest.¹ Trust (by clients to lawyers) therefore plays a major role which distinguishes our profession from many other activities, and ethics become a nurturing factor for maintaining this trust.

A potentially disturbing factor of this trust is the conflict of interest situation (or, as Geoffrey Hazard puts it, 'the adversity of interests' situation).² Consequently, the way we regulate and deal with conflicts will ultimately affect the perception of our profession by society.

Definition of conflict of interest

A conflict of interest arises³ when a primary interest is conditioned ('unduly influenced', says Dennis Thomson) by the emergence of a secondary interest, being the primary interest the one from the client. This secondary interest may affect the decisions of the lawyer in the defence of the primary interest. It is not necessary to produce a prejudice to the client in order to speak about conflict of interest; it is sufficient that there is a zone of influence in which the decision on the primary interest may be affected, even if the conflict is finally avoided.⁴

The inherent conflict of interest in our profession is the conflict of interest between the lawyer (or the firm) and the client. This conflict of interest arises because the lawyer can offer the client different options or recommend different courses of action, but some of these courses of action will be more in favour of the client and some more in favour of the lawyer (for example, reaching or not reaching a settlement agreement, starting or not starting court proceedings).

But it also embodies the conflicts which arise by representing different clients with adverse interests.

How situations for lawyers with parties with adverse interests have to be regulated in our profession, however, it has to take into account a number of factors as the variety of situations, markets, etc may not call initially to a blank prohibition or sanction wherever the possibility of conflict arises, even if, ultimately, the interests of clients and society should be the overriding consideration. The following factors may be considered in the analysis for defining conflicts of interest regulation (which, for some, may justify a different approach between common law and civil law systems):

- How adverse are the interests, currently or in the future, of the clients (factual analysis);
- How often these situations may arise (business analysis);

- What the market is currently asking for (economic analysis);
- How specialised an area is allow for discussion for possible exceptions to the rule (professional analysis);
- How big or diverse or separated partners are within a firm to claim sufficient separation for credible Chinese walls (firm organisation analysis);
- How big are law firms in a given jurisdiction (or its need to have big firms), as well as how oligopolistic they can be, for the purposes of having a realistic approach to conflicts rulings (economic analysis based on the structure of the offer, particularly from a competition point of view; for Nicolson and Webb,⁵ ‘substantial segmentation’, as well as specialisation, are certainly factors that make rules on conflicts a complex exercise);
- What will be the impact of any given behaviour and rulings of certain players coming from different jurisdictions, in jurisdictions with different economic and business structures, and therefore the impact on the perception of the profession in their local jurisdiction (professional ethics analysis); and
- What is the impact of globalisation on the approach to this problem, whether one set of rules should be applied, or we may fall into a dualistic approach (international business versus local professional activity) (political analysis).

How can we regulate conflicts in our profession?

The way to regulate conflict of interests may vary according to what our ultimate objectives should be. It can be regulated on broad terms, appealing to lofty principles, or stating the main aims and prohibitions.⁶ Or it can be regulated in more detail, in what Nicolson and Webb define as a formalistic and liberal approach to regulation,⁷ for whom the risk is losing focus on preserving situations of conflict of interests, as abiding strictly to the rules and exceptions may result in legally departing from an ethical behaviour on a particular case.

Conflicts can be regulated by self-regulatory bodies, by the public authorities or directly by the courts. Conflicts could even be left to be assessed by the market. But, as Nanda correctly points out, clients may want or expect a different approach at the beginning, when hiring a lawyer,

such as a broad approach to judging conflict situations where their intended lawyer would be generous in taking them on board, and upon completion, once the relationship has ended, where clients would rather expect the law firm to take a narrow or strict approach in deciding whether or not to take on board mandates from future clients.⁸ This different approach by clients depending on the moment where potential conflicts have to be taken into consideration (ex-ante or ex-post) is clearly a call for regulation.

It is obvious that the bigger the provider of legal services, the more interested it will be in having a broader approach to conflicts. Hence, regulating conflicts may have a political and economic dimension: the broader the approach, the better for the creation of oligopolistic markets in legal services. On the contrary, the stricter the interpretation, the narrower the rules are which may promote a more diversified market. Therefore, the definition of the conflict norms as ‘narrow’ or ‘broad’ will influence the structure of the profession and the size of the firms practicing it.

Despite the fact that a balance should be achieved by taking into account the different factors that have been mentioned above, the legal profession is still seen as the typical example of narrow conflict norms, as loyalty should be a primordial goal for these professionals, and consequently the choice of new clients should be thought through carefully.

As mentioned at the beginning of this article, if we are to promote trust from clients as the main driver in our profession, then we will need to be very careful in regulating possible exceptions or means to avoid the infringement of the no conflicts duty.

Notes

* This note is a summary of the author’s intervention during the last IBA Annual Conference in Tokyo in the session ‘Eat, Pray, Represent Me: Are you my client and do I owe you a duty?’, which took place on 22 October 2014, organised by the IBA’s Closely Held and Growing Business Enterprises Committee, Insurance Committee, Law Firm Management Committee and the Professional Ethics Committee (Lead). The author wants to thank Maria Muro, also from Fornesa Abogados, for her help in the final elaboration of this note.

1 The main thesis of this note is based on Ashish Nanda, *The Essence of Professionalism: Managing Conflict of Interest* (Boston: Harvard Business School Publishing, Paper 9-903-120, 2003) and Ashish Nanda, *Managing Client Conflict* (Boston: Harvard Business School Publishing, Paper 9-904-059, 2005).

- 2 Geoffrey Hazard and Angelo Dondi, *Legal Ethics. A comparative Study* (Stanford (CA): Stanford University Press, 2004) 186 and following.
- 3 The definition is taken from Dennis Thomson, 'Understanding Financial Conflicts of Interest' (August 1993) 3(29) *The New England Journal of Medicine* 573–576, quoted by Ashish Nanda, in n1 above. Nanda considers this definition as 'definitive'.
- 4 The definition comes from the medical sector, which traditionally has studied this ethical issue in greater depth.
- 5 Donald Nicolson and Julian Webb, *Professional legal ethics* (Oxford: Oxford University Press, 1999) 71.
- 6 In Spain, both the state and the autonomous communities have defined what must be interpreted as a

conflict of interest. In general terms, national and regional authorities have defined it in a similar way, pointing out that in any case a lawyer cannot defend an interest when it is or it can be in conflict with another's interest (self-interest or another client's interest). Furthermore, this broad prohibition is extended to the firm where the professional works as a whole and to all the lawyers working in it ('imputation'): Article 52 of the Estatuto General de la Abogacía and Article 22 of the Normativa Catalana de l'Advocacia.

7 See n5 above, 2.

8 See n1 above, Nanda, *Managing Client Conflict*.

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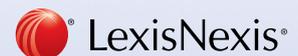
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