



The Future of Legal Regulation in an Ever Expanding Universe of Legal Services



The Law Society
of Upper Canada

Barreau du
Haut-Canada

Benjamin H. Barton, *The Lawyer's Monopoly—What Goes and What Stays*, 82 Fordham L. Rev. 3067 (2014)

We live in a time of unprecedented changes for American lawyers, probably the greatest changes since the Great Depression. That period saw the creation of the lawyer's monopoly through a series of regulatory modifications. Will we see the same following the Great Recession? Formally, no. This Article predicts that formal lawyer regulation in 2023 will look remarkably similar to lawyer regulation in 2013. This is because lawyer regulators will not want to rock the boat in the profession or in law schools during a time of roil.

Informally, yes! We are already seeing a combination of computerization, outsourcing, and nonlawyer practice radically reshape the market for law from one that centers on individualized, hourly work done for clients to a market of much cheaper, commoditized legal products. This trend will accelerate over time.

The upshot? Formal lawyer regulation will continue on with little change, but will cover an ever-shrinking proportion of the market for legal services.



The existing regulatory questions

- What is the extent of the monopoly?
 - Full, limited, none
- Who is the regulated person?
 - Lawyers only, or also others such as paralegals, limited license legal technicians, legal executives
 - Regulated person only or also entities in which they practice
- Who can participate with the regulated person?
 - No one else, or also other non-legal service providers (MDP) and equity participants (MDP & ABS)



Traditional market for legal services

Large enterprises

- In-house counsel
- large firms
- expert boutiques

Small and medium enterprises

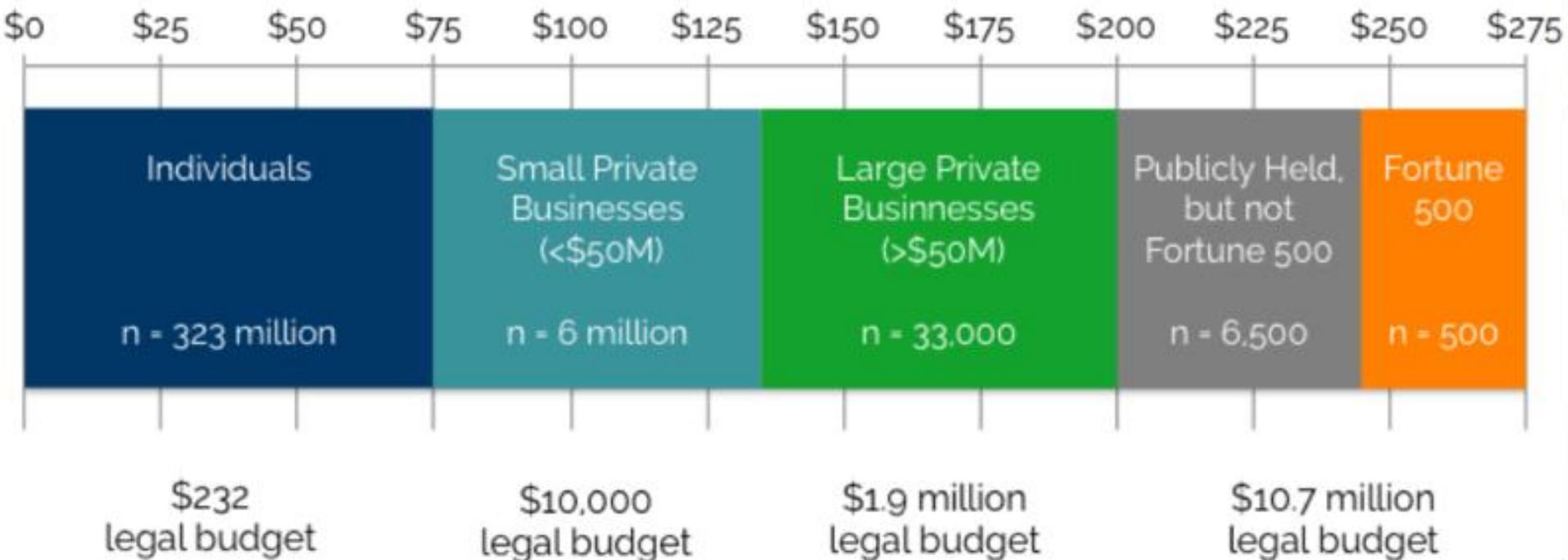
- smaller and medium size firms

Consumers

- smalls and soles



Size of U.S. Legal Market



Source: Estimated by William D. Henderson using data from the US Census



Legal Services in England & Wales

Estimated to be between 267,503 and 320,000 people employed in legal services

Unreserved

Unknown number of persons offering unreserved services in E&W. In excess of 130,000 people

Reserved

136,556 persons authorised to offer reserved services

Legal practice

In House

Legal Practice

108,648 persons authorised to offer reserved services

In House

27,908 persons authorised to offer reserved services

NFP
Eg 769
CABs,
56 Law
Centres

For Profit

NFP

For Profit

Solicitors
- 87,270

Barristers
- 11,706

Others -
9,672

Solicitors
- 23,311

Barristers
- 3,040

Others -
1,557

Legal Services Board



Existing legal services markets

- **US** estimated at nearly U\$300 billion in 2014
 - \$75 billion is consumer (27%)
 - \$60 billion is SME (22%)
- **UK** estimated at nearly £29.3 billion in 2014
 - Non-solicitor & non-barrister account for one-third or more
 - The proportion of unreserved legal businesses is unknown*

* Including the Co-op in 2011



Unmet civil legal needs – England and Wales

- One in three consumers don't get the legal help they need
- Four out of five small businesses don't get legal advice when they have a problem
- 87% of SMEs don't think lawyers offer value for money – even though 54% of those SMEs see law as very important for doing business

Chris Kenny, LSB, May 2014



Unmet civil legal needs – North America

- Recent studies by the Legal Services Corporation and the American Bar Foundation separately found that only approximately one-fifth of people with civil justice issues sought assistance from a third party such as a lawyer.
- According to Canadian research, the public only seek legal assistance in respect of 11.7% of justiciable events.



Possible approaches to unmet needs

More lawyers – we have done that but it doesn't seem to make a difference (which is interesting)

Mandatory pro-bono – supplements legal aid by requiring free professional services

New types of legal professionals - lowers costs by providing lesser quality/lower cost professionals

Lawyers working differently- add scope, scale, technology and process innovation to professional practice

New ways of providing legal services



New ways of providing legal services

United States

- New legal services providers exist but carefully avoid “practicing law”
- Two broad strategies to avoid UPL attack
 - Provide legal information, not legal advice
 - Provide services to lawyers, particularly in-house counsel, and not directly to consumers

England and Wales

- ABS
 - Professionals⁺ e.g. Quality Solicitors
 - New ways e.g. Legal Zoom
- Unreservation



Beyond regulating professionals

Laurel Terry

- The law of lawyers vs. the law of legal services

Jordan Furlong

- “The future is already here – it's just not evenly distributed”^{*} – what is happening out there?

Stephen Brooker

- What do we know about innovation in by unregulated business in the unreserved space

Steve Mark

- Thinking about appropriate regulation of new ways of providing legal services

^{*} William Gibson



You May Have Seen Me Use This Graphic:



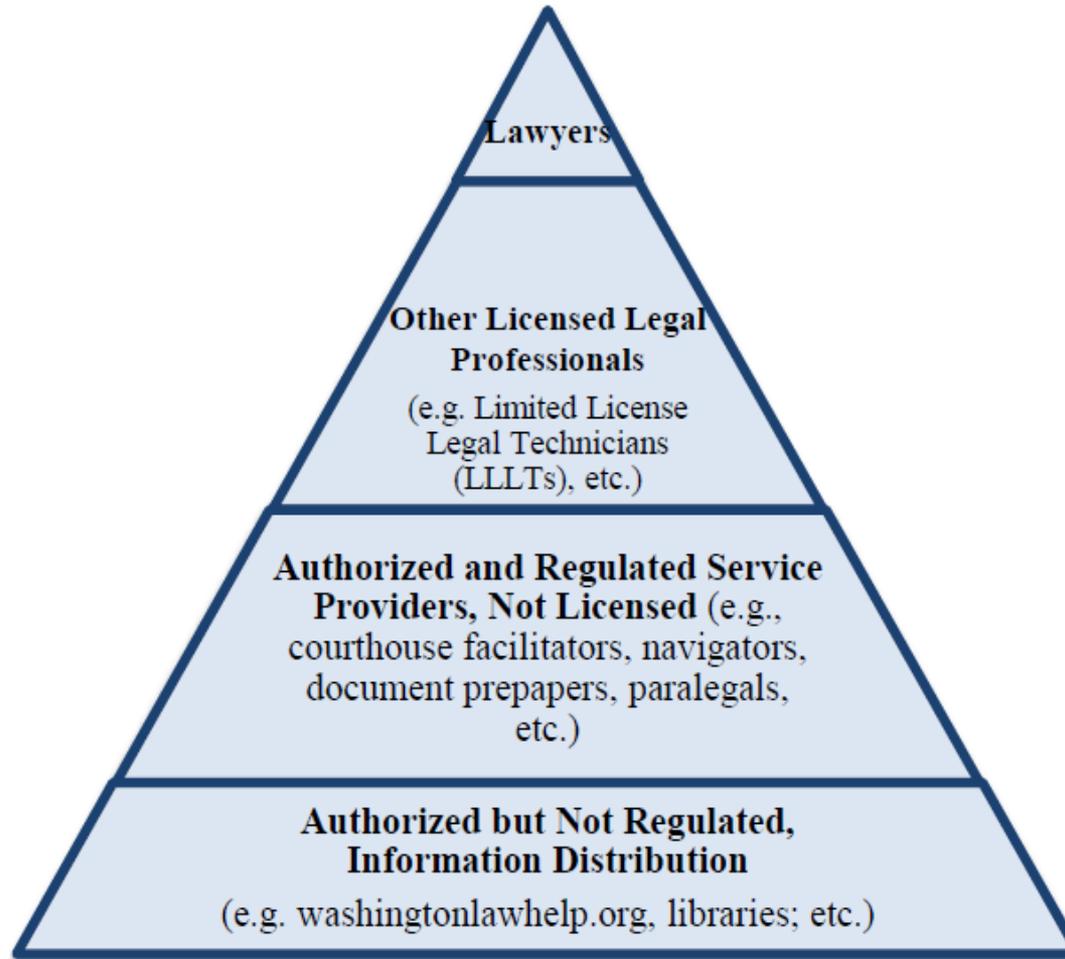
← Ways to Categorize and think about Global Lawyer Regulation Developments

Laurel S. Terry, Steve Mark, Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 Fordham L. Rev. 2661 (2012)

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



Momentum for a “Law of Legal Services”?



See Laurel Terry, ***Something's Afoot and it's Time to Pay Attention: Thinking About Lawyer Regulation in a New Way***, JOTWELL (June 23, 2015) [reviewing Andrew Perlman, *Towards the Law of Legal Services* \(2015\)](http://tinyurl.com/TerryAfoot), <http://tinyurl.com/TerryAfoot> and SSRN Abstract

Discussion

