



Law Society
of Scotland



International
Conference of
Legal Regulators

Workshop C2: Role of regulators in promoting access to justice

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& Labrador***

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Workshop C2: Role of Regulators in Promoting Access to Justice

Brenda B. Grimes, Q.C.
Executive Director

Our Experience: Should A2J Be a Regulatory Objective?

In 2018 the Law Society of Newfoundland and Labrador struck a Committee to consider the scope of the Law Society's existing legislative mandate, which is to regulate the practice of law and the legal profession in the public interest.

Issue Arising: Should the legislative mandate specifically outline access to justice as a regulatory objective?

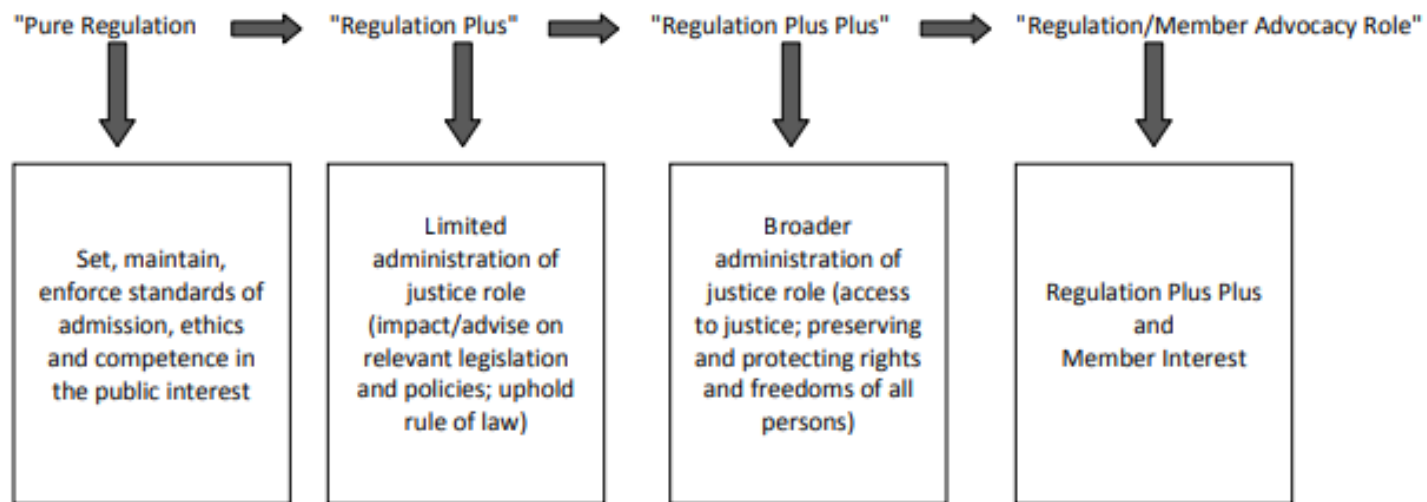
Jurisdictional Scan

As part of the Committee's review, a jurisdictional scan was undertaken which showed varying approaches to the issue across Canada. Many provinces and territories engage in access to justice initiatives, while only a couple are specifically legislated to do so.

Law Society of Yukon

The Law Society of Yukon prepared a Policy Paper which it presented to its territorial government to provide guidance on the preparation of new legislation designed to regulate the provision of legal services in the Yukon. The Law Society developed an interesting and insightful chart describing the varying ranges of purpose that exist in law societies across Canada.

Figure 1: Range of Purpose



The Law Society of Yukon's research suggests that Manitoba, Nova Scotia, Ontario, and Saskatchewan fall somewhere between the "regulation plus" model and the "regulation plus plus" model while PEI, New Brunswick, British Columbia and the Yukon (at the time) fall to the right hand side of the ranges of purpose.

Law Society of Ontario

- The LSO is legislatively mandated to “facilitate access to justice for the people of Ontario”
- The LSO has struck an Access to Justice Committee that is responsible for overseeing the Family Law Action Plan and has specific tasks relating to Legal Aid Ontario

Law Society of British Columbia

- The LSBC’s legislative mandate to “preserve and protect the rights and freedoms of all persons” has manifested itself in initiatives relating to access to justice
- Highlights from LSBC’s Strategic Plan

Yukon's Conclusions on A2J

As a result of its review, the Law Society of Yukon concluded that its regulatory mandate should not be limited to the practice of law by lawyers noting:

The ability to regulate the provision of legal services by lawyers and others, rather than regulating the practice of law by lawyers, is a responsive approach to concerns about access to justice. The definition of "legal services" must be accompanied by a provision indicating that only those individuals authorized under the Act and the Rules to engage in the provision of legal services are authorized to do so. Lawyers would be included in a category of practising members and will be permitted to participate in the provision of the full scope of legal services. Other categories of members, such as students-at-law, would be constrained through the Rules to engage only in designated aspects of the provision of legal services as set out in the Rules.

This proposed structure, where lawyers engage in the full scope of practice, and other categories are permitted under the Rules to engage in a prescribed scope of practice, creates the potential for unbundling of legal services in the future and takes into account the changing nature of the practice of law. While the need for the creation of other categories of members may not exist at present, it will be important to have the flexibility in the statute to allow for the development of Rules creating other categories of members in the future, such as paralegals, who can engage in designated aspects of the provision of legal services.

Statutory Interpretation

- Leading case law from the Supreme Court of Canada suggests that legislation governing regulatory bodies should be interpreted using a “broad and purposive” approach (*Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36).
- Legislatures have given most law societies a broad discretion to regulate the legal profession in the interests of the public and have empowered them to make rules of general application to the profession; they will likely be afforded considerable latitude in making rules based on their interpretation of what is in the public interest.

The Committee's Conclusion

The Committee decided that, notwithstanding the broad and purposive interpretation the legislation would likely receive, the Law Society should request legislative amendment to make access to justice a regulatory objective.

Why?

The Committee felt that amendments were necessary to:

- i) Remove ambiguity, both legislatively and for our Benchers (the Law Society's Board of Directors);
- ii) Provide guidance to Benchers on the issues that arise; and
- iii) Ensure that the Law Society's regulatory framework remains aspirational in light of our commitment to being a leader in regulation.

The Law Society's Role in Promoting A2J

As a regulator, and more specifically the gatekeeper to the legal profession and the practice of law, the Law Society of Newfoundland and Labrador appreciates the impact it can have on access to justice and the real need to address the issue.

The Law Society can control who provides legal services and can (and does) actively prevent the unauthorized practice of law.

The Law Society must, however, be mindful of the often prohibitive cost of legal services and the impact this can have on the public.

The Law Society is always mindful that it is mandated to act in the public's interest.

What can we do?

What we are doing?

- In 2014, the LSNL struck an Access to Justice Committee which is responsible for:
 - providing leadership for initiatives intended to improve access to the civil and family justice systems in the Province;
 - providing, as appropriate, a forum for engaging the public and public sector participants on issues related to access to justice;
 - sharing information, monitoring and co-ordinating work undertaken, and educating the public about efforts of the committee and working groups;
 - promoting innovation in all aspects of the delivery of civil and family justice services; and
 - gathering feedback from various stakeholders on initiatives being implemented in the various sectors of civil and family justice services to ensure that we are meeting the needs of the targeted audience.

- From a strategic planning perspective LSNL is particularly alert to the concept of alternative legal services, including but not limited to:
 - pop-up clinics;
 - limited scope retainers;
 - unbundling of legal services;
 - paralegal regulation; and
 - pro-bono requirements.

Questions?/Comments?

If you are interested in hearing more about our experience,
please feel free to contact me at:

bgrimes@lsnl.ca

ROLE OF REGULATORS IN
PROMOTING ACCESS TO
JUSTICE

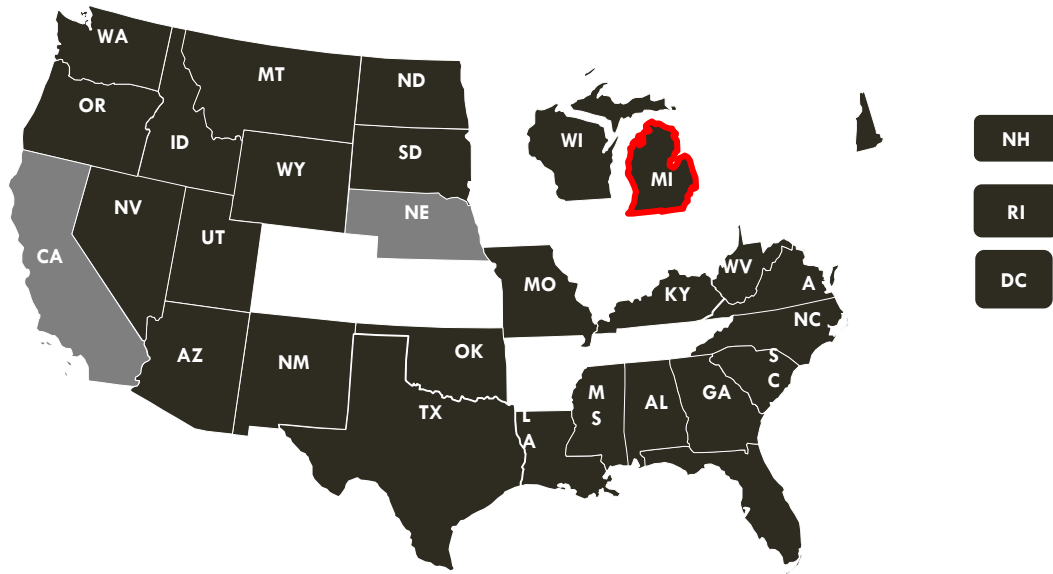
THE STATE OF MICHIGAN
EXPERIENCE



MANDATORY STATE BARS

64.7% of attorney licenses

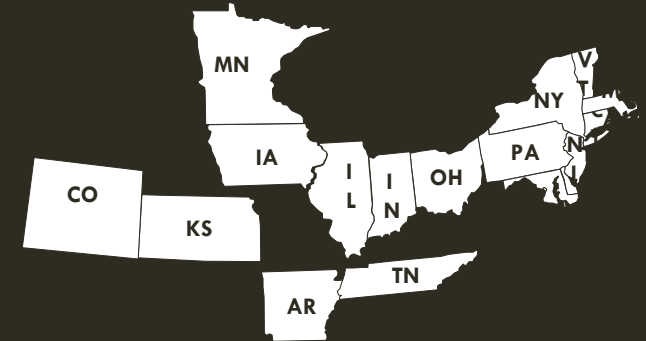
Officers of the Court Integrated into Government Regulation of Lawyers
(32 different adaptations of English Self-Regulation Model)



NO MANDATORY STATE BAR

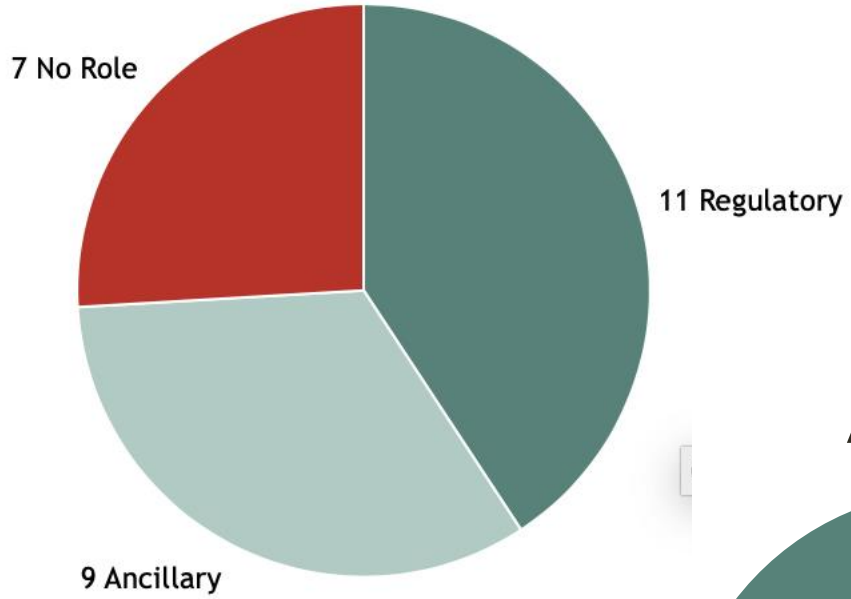
35.3% of attorney licenses

State Licenses Lawyers Through Supreme Court Licensing or Executive Branch Licensing Structure – no bar input as governmental entity

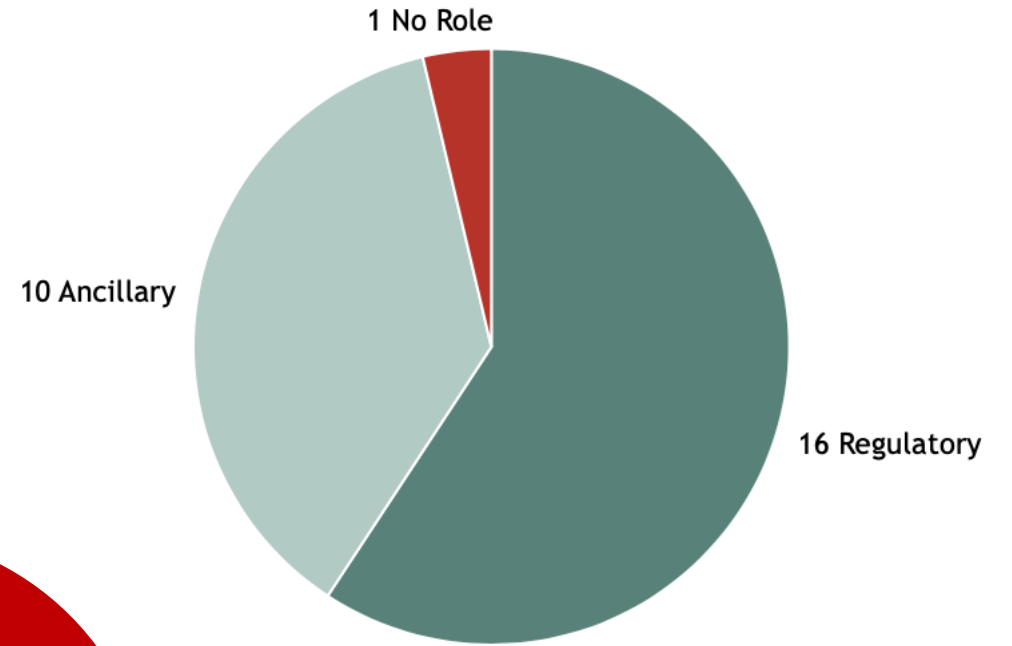


Admissions

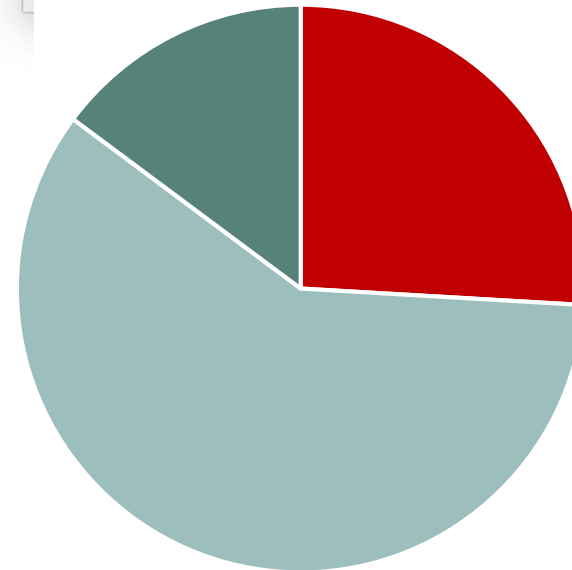
Rules, Bar Exam, Character and Fitness, Reciprocity, Pro Hac Vice



Discipline



Advocacy



■ Little or none ■ Strictly defined ■ Broad ■

The State Bar of Michigan shall, under these rules, aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.

In fulfilling our mission to promote improvements in the administration of justice and advancements in jurisprudence, the State Bar of Michigan finds it essential to our mission to advocate for an open, fair and accessible justice system for all.

Current State of Constitutional Law

A state bar may use mandatory membership payments to fund activities without violating free speech rights if those activities are necessarily or reasonably incurred to serve those governmental purposes: regulating the legal profession and improving the quality of legal services.

6.1 Pro Bono Publico Service

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving the law, the legal system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

State Bar of Michigan Policy – Aspirational Rule of 3

All active members of the State Bar of Michigan should provide at least:

- Free representation to **3** low income individuals;
- **30** hours of free representation or services to low income individuals or organizations;
- **30** hours of professional services at no fee or at a reduced fee to persons of limited means or to public service or charitable groups or organizations; OR
- **\$300** to not-for-profit programs organized for the purpose of delivering civil legal services to low income individuals or organizations. (**\$500** if you can afford more).

STAFF

15% of staff

Resources

Devoted to

Access to Justice

Work

Executive Office

Executive Director
Executive Coordinator
Director of Diversity
Director of Human Resources
Human Resources Assistant
Director of Outreach
Senior Consultant
Sections & Committees Administrator
General Counsel
Assistant General Counsel
Lawyer Referral Coordinator
Director of Governmental Relations
Public Policy Counsel
Administrative Assistant
Pro Bono Service & Justice Initiatives Counsel
Administrative Assistant
Director of Research & Development
Research Assistant

Finance & Administration Division

Division Director
Finance Specialist
Facilities & Administrative Services Manager
Operations Support Assistant
Operations Support Assistant
Accounts Payable Specialist
Fee Processing Specialist
Financial Services Manager

Member & Communication Services Division

Division Director
Assistant Division Director
Copy Editor/Writer
Legal Editor, *e-Journal*
Print Production Manager
Practice Management Advisor
Publications Development Manager/Legal Editor
Administrative Assistant II

Editor, *Michigan Bar Journal*
Communications Designer
Desktop Publications Manager
Sales Representative
Administrative Assistant
Assistant Division Director, Technology Support
Records & Information Management Specialist
Help Desk Support & PC Maintenance Technician
Public Services Counsel
Lawyer Referral Coordinator
Lawyer Referral Specialists
Assistant Division Director, Member Services
Member Services Event Coordinator
Member Services Event Coordinator
Webmaster & Digital Media Manager
Web & Digital Media Specialist
Web Content Specialist

Professional Standards Division

Division Director, Professional Standards
Assistant Division Director, Professional Standards
Character & Fitness Manager
Assistant Manager, Character & Fitness
Investigator
Applicant Licensing Services Specialist
Administrative Assistant
Applicant Licensing Services Specialist
Paralegal
Legal Secretary
LJAP Director
LJAP Program Coordinator
LJAP Clinical Case Manager
LJAP Clinical Case Manager
LJAP Clinical Case Manager
UPL Counsel
Paralegal

Volunteer Infrastructure

30 Committees, Task Forces, or Workgroups

611 Volunteers

8 A2J Focus

133 Volunteers



COMMITTEES WITH ACCESS TO JUSTICE FOCUS	Number of Volunteers
Access to Justice	18
Access to Justice Policy	26
Affordable Legal Services (Modest means, unbundling, limited scope rules, nonprofit law firms)	27
American Indian Law	12
Consistent Fee Waiver*	5
Diversity & Inclusion Advisory	23
Online Legal Resource & Referral Center	10
Regulatory Objectives*	12
TOTAL	133

A2J MAIN ONGOING PARTNERSHIPS AND COLLABORATIONS

Michigan Supreme Court task forces and committees

Michigan State Bar Foundation

State Planning Body (Legal Aid)

Michigan Legal Help (Pro Se Litigants)

Law School Clinics

Local and Affinity bars

Libraries and Schools



alawyerhelps.org

The 2019 Pro Bono Honor Roll

The 2020 Honor Roll application will be available in early January 2020.



Legal First Responders

Pro bono legal services

Legal First Responders - Quickly mobilize to help when and where the need arises

[Read More](#)



Attorneys Mobilize to Help

Pro bono legal services

Pro bono attorneys mobilize to empower survivors of human trafficking

[Read More](#)



2019 John W. Cummiskey Award Recipient

Pro bono legal services

Kimberly Scott, a litigator and principal in Miller Canfield's Ann Arbor office, was selected as the 2019 recipient of the State Bar of Michigan's John W. Cummiskey Award.

QUESTIONS?/COMMENTS?

Please feel free to contact me at:

jwelch@michbar.org

