

# LRD COLLOQUIUM 2020 RESEARCH PAPER SERIES



LEGAL RESEARCH AND DEVELOPMENT DEPARTMENT

THE LAW SOCIETY OF SINGAPORE

# About the Colloquium

The Colloquium on 'The Role of Lawyers in the Age of Disruption: Emerging Regulatory Challenges' was held as a live webinar on 19 May 2020, amidst Singapore's circuit-breaker period, and attended by over 320 members of The Law Society of Singapore. It aimed to be a platform for legal practitioners, emerging scholars, industry experts and students to contribute to developing thought leadership in topics relating to the ethical and regulatory challenges arising from technology's impact on the legal profession.

The Colloquium sought to examine two important questions. First, how should we re-examine the role of lawyers in an age of disruption, especially with increasing automation, competition and liberalisation? Second, given that professional regulation sets the parameters of lawyers' business models, practice structures and professional values, how should lawyers, law practices and potential new entrants to the legal market be regulated or re-regulated in the future of legal work?

These issues were discussed over the course of four panel sessions focusing on the following themes:

- Panel 1: **The Role of Lawyers in the Age of Disruption**
- Panel 2: **Legal Ethics & Technology**
- Panel 3: **Alternative Legal Service Providers - To Regulate or Not to Regulate?**
- Panel 4: **Law Practices and the Future of Work**

To explore these questions, 13 research papers were presented across the four panel sessions, helmed by expert moderators and commentators.

For a snapshot of the highlights of the Colloquium, please visit the [LRD Research Portal](#) for our post-event feature article [here](#).

# Disclaimer

Whilst every effort has been made to ensure that the information contained in this research paper presented at the Colloquium and published herein are accurate, The Law Society of Singapore does not accept responsibility for any errors or omissions in this research paper. Weblinks cited in this research paper are functioning as of the date of publication.

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## Panel 3

Alternative Legal Service Providers  
- To Regulate or not to Regulate?

# Alternative Legal Service Providers and the Unauthorised Practice of Law: Comparative Perspectives

Nisha Francine Rajoo

## ALTERNATIVE LEGAL SERVICE PROVIDERS AND THE UNAUTHORISED PRACTICE OF LAW: COMPARATIVE PERSPECTIVES

Nisha Francine Rajoo\*

*The emergence of alternative legal service providers in recent years has resulted in a spectrum of responses from the legal profession, ranging from general receptiveness and the subsequent liberalisation of the legal services sector, to the largely protectionist and conservative. While alternative legal service providers are viewed as welcome 'disruptors' that are encouraging innovation in the legal sector and attempting to close the access to justice gap on the one hand, a general sense of uneasiness continues to persist, with opponents deeming such providers as engaging in the 'unauthorised practice of law', amongst other ethical violations. This paper will examine the regulatory approaches that have been undertaken in jurisdictions such as Canada, the United Kingdom and the United States, to survey possible ways forward as the global legal market grapples with the opportunities and challenges presented by alternative legal service providers.*

### I. INTRODUCTION

*'The line between what is and what is not the practice of law cannot be drawn with precision. Lawyers should be the first to recognize that between the two, there is a region wherein much of what lawyers do every day in their practice may also be done by others without wrongful invasion of the lawyers' field.'*<sup>1</sup>

In his address at the Opening of the Legal Year 2020, the Honourable Chief Justice of the Supreme Court of Singapore, Sundaresh Menon, noted that alternative legal service providers ('ALSPs'), which range from small legal technology start-ups to major accounting firms that offer legal solutions, have emerged as new entrants into the legal market.<sup>2</sup> Acknowledging the complexities presented by the regulation of

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<sup>1</sup> *Cardinal v Merrill Lynch Realty/Burnet*, 433 N.W.2d 864 (1988) <<https://law.justia.com/cases/minnesota/supreme-court/1988/c3-88-57-2.html>> accessed 7 May 2020.

<sup>2</sup> Sundaresh Menon, 'Response By The Chief Justice Opening Of The Legal Year 2020' (Singapore, 2020) <[www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-\(checked-against-delivery\).pdf](http://www.supremecourt.gov.sg/docs/default-source/module-document/speech/oly-2020---speech-by-cj-(checked-against-delivery).pdf)> accessed 30 April 2020.

ALSPs and at a broader level, the regulation of legal services, he added that the emergence of ALSPs would result in a legal marketplace that was “more crowded, competitive, diverse, and commercialised”.<sup>3</sup>

Singapore’s legal profession, like that of its global counterparts, is undergoing a significant transformation – a transformation that gained traction some years before, and is now accelerating in the midst of the COVID-19 global pandemic. Being ‘future-ready’ has become the industry’s new mantra, with surveys and reports abound of how law practices and legal practitioners are taking steps, both at the organisational and personal levels, to stay ahead of the curve in light of evolving client expectations, pricing pressures, and market competition.<sup>4</sup> Disruptive technologies such as machine learning and artificial intelligence (‘AI’) have driven innovation, digitalisation and automation, and have transformed the nature of legal work. This transformation has also created attitudinal shifts in how we view the delivery of legal services, with the influx of start-ups and disruptors entering the legal marketplace and looking to challenge the traditional, long-standing model of legal service delivery offered by law firms to their clients.

In this respect, ALSPs can be regarded as ‘disruptors’ to the legal profession by offering a unique value proposition: leveraging technology to offer efficient, easier access to, and more cost-effective legal assistance and solutions to consumers. While there is a considerable amount of literature that has attempted to define an ALSP, ALSPs typically refer to niche entities that perform tasks traditionally undertaken by law firms – including document review, legal research, litigation and investigative support, and legal advice – often through the use of technology and project management processes outside of a traditional law firm structure. We are also increasingly seeing a growing number of traditional law firms that have entered into the business of delivering alternative legal services, albeit through affiliate operations.<sup>5</sup> A landmark study helmed by the Thomson Reuters Legal Executive

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<sup>3</sup> *ibid.*

<sup>4</sup> Wolters Kluwer, ‘The Future Ready Lawyer: The Global Future Of Law’ (Wolters Kluwer, 2019) <<https://rus.wolterskluwer.com/media/3002/future-ready-lawyer-white-paper.pdf>> accessed 1 May 2020.

<sup>5</sup> An example from Singapore is Rajah & Tann Technologies (RTT), the digital arm set up by law practice Rajah & Tann Asia, which offers a suite of technology-enabled legal solutions including electronic discovery (e-discovery), cyber security and data breach response. RTT utilises AI-driven technology to facilitate the delivery of legal services through digital platforms. Rajah & Tann Technologies, ‘Tech-

Institute in 2019,<sup>6</sup> in partnership with the Georgetown University Law Center for the Study of the Legal Profession and the University of Oxford Saïd Business School, found that the global ALSP market is worth approximately US\$8.4 billion annually – a sum that is anticipated to increase exponentially in the coming years. ALSPs are undoubtedly one of the most dynamic players of the legal services industry today, and are likely to continue to feature as both competitors and disruptors to the legal profession.

ALSPs have been lauded and welcomed as drivers of innovation and competition in an industry (and profession) that is notorious for being particularly resistant to change; the emergence of ALSPs has also been viewed as a solution to the law's wicked problem – lack of access to affordable legal services. At the same time, concerns have also been raised that the growth of ALSPs could jeopardise the livelihoods of legal practitioners, particularly for small firm practitioners and sole proprietors, as well as undermine public confidence if the quality of legal services offered by ALSPs proves to be sub-par. While regulating ALSPs may appear to be the panacea to these concerns, the question remains as to *how* ALSPs should be regulated. Part II will consider one such approach: the regulation of ALSPs vis-à-vis prohibitions against the unauthorised practice of law.

## **II. ALSPs AND THE UNAUTHORISED PRACTICE OF LAW**

Restrictions on the practice of law that exist in many jurisdictions – in other words, the requirement that only persons who meet certain statutorily prescribed requirements in terms of legal education and practical legal training are authorised to practice law – are a form of industry *and* professional regulation. In terms of professional regulation, these entry barriers ensure a minimum standard of quality in the legal profession and also serve a broader public policy imperative by protecting the interests of consumers of legal services. From an industry regulation perspective, however, entry barriers limit competition in the legal market and drive up the costs of legal services. Of course, one could make the argument that the market for lawyers

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Enabled Legal Solutions' (*Rajah & Tann Technologies*, 2020) <[www.rttechlaw.com/](http://www.rttechlaw.com/)> accessed 1 May 2020.

<sup>6</sup> Thomson Reuters Legal Executive Institute, 'ALTERNATIVE LEGAL SERVICE PROVIDERS 2019' (*Thomson Reuters Legal Executive Institute*, 2019) <<https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/alsp-report-final.pdf>> accessed 30 April 2020.

is fundamentally non-competitive because few people have the human capital to master the complexity of legal matters.<sup>7</sup> Yet, the ALSPs that we are seeing in the market today are not just strong competitors to the traditional brick-and-mortar law firm; they are potentially serious threats to the legal profession by forcing consumers to consider one simple question: do we need lawyers, or do we just need legal services?

A brief examination of Singapore's 'unauthorised practice of law' provision under Section 33 of the Legal Profession Act ('LPA') strongly suggests a traditionalist approach as to how the practice of law is conceived. While not exactly defining what the 'practice of law' would entail, taken as a whole with the rest of the LPA, 'authorised persons' are largely restricted to advocates and solicitors who hold a practising certificate in Singapore or who are otherwise registered under the Legal Services Regulatory Authority (e.g. a foreign-qualified lawyer), although there are a number of qualifications to the general prohibition under Section 33 LPA, for example, in-house legal counsel.

To illustrate how Section 33 LPA can operate, suppose a start-up wishes to provide basic legal services to nascent entrepreneurs and small and medium-sized enterprises, such as drawing up basic legal documents like employment letters or non-disclosure agreements from a library of free legal templates. For an affordable fee, the clauses in these templates can be customised and edited by the start-up's employees based on the consumer's requirements. The start-up (and possibly its employees), by offering such services, would, on a literal and traditionalist reading, fall foul of the prohibitions under Section 33 LPA.<sup>8</sup>

How would ALSPs that offer services similar to those provided by the hypothetical start-up, but through deploying an innovative technological platform for consumers, be considered under Section 33 LPA? Currently, there is no express statutory exemption from the operation of Section 33 LPA for such ALSPs. At the same time, the issue of whether such ALSPs are generally prohibited by Section 33 LPA has not

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<sup>7</sup> Gillian Hadfield, 'The Price Of Law: How The Market For Lawyers Distorts The Justice System' (2000) 98 Michigan Law Review 953.

<sup>8</sup> Legal Profession Act (Cap 161, 2009 Rev Ed) s 33. For example, offering legal templates could be deemed a breach of Section 33(2)(a): 'draws or prepares any document or instrument relating to any movable or immovable property or to any legal proceeding'.



been litigated in the Singapore courts to date. The applicability of Section 33 LPA to such ALSPs is therefore yet to be tested in Singapore.

The United States is, however, no stranger to bringing proceedings against ALSPs for engaging in the unauthorised practice of law. The various State Bars and State Supreme courts have raised legal challenges against ALSPs, one of the most high-profile being LegalZoom, which markets itself as a legal solution provider that offers a suite of products and services that allow consumers to set up a business, register a trademark, and even draft a will, without the help of a lawyer.<sup>9</sup> LegalZoom also offers a lawyer referral service for consumers who require legal advice. The concern with LegalZoom lay with its use of questionnaires completed by customers to help generate legal documents. Customers would be guided through a series of questions in an online questionnaire, and LegalZoom employees would then review their responses for spelling, consistency and completeness. The State Bars took issue with these elements of guidance and review, which were said to transform LegalZoom from a simple document provider to a legal adviser, and therefore engaging in the unauthorised practice of law.<sup>10</sup>

Eventually, in 2016, the state of North Carolina passed legislation to the effect that the practice of law did not include software that generates a legal document based on users' responses to legal questions.<sup>11</sup> A few years later in 2019, the New York State Bar Association and the New York County Lawyers Association proposed a resolution to the American Bar Association to create best practice guidelines for online legal document providers.<sup>12</sup> These included guidelines for such providers to notify customers that the information they provide on online document platforms are not covered by attorney-client privilege, and advise customers to consult a lawyer where

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<sup>9</sup> LegalZoom, 'Our Products And Services' (*LegalZoom*, 2020) <[www.legalzoom.com/all-products.html](http://www.legalzoom.com/all-products.html)> accessed 5 May 2020.

<sup>10</sup> Isaac Figueras, 'The Legalzoom Identity Crisis: Legal Form Provider Or Lawyer In Sheep's Clothing?' (2013) 63(4) Case W Res L Rev 1419 <<https://scholarlycommons.law.case.edu/caselrev/vol63/iss4/16>> accessed 5 May 2020.

<sup>11</sup> Debra Cassens Weiss, 'Online Interactive Legal Documents Would Be Legal In North Carolina Under Bill Passed By Legislature' (*ABA Journal*, 2016) <[www.abajournal.com/news/article/online\\_interactive\\_legal\\_documents\\_would\\_be\\_legal\\_in\\_north\\_carolina\\_under\\_b](http://www.abajournal.com/news/article/online_interactive_legal_documents_would_be_legal_in_north_carolina_under_b)> accessed 5 May 2020.

<sup>12</sup> Communications Department, 'American Bar Association Adopts NYSBA-Advanced Resolution On Best Practice Guidelines For Online Legal Document Providers' (*New York State Bar Association*, 2019) <<https://nysba.org/august-12-2019-american-bar-association-adopts-nysba-advanced-resolution-on-best-practice-guidelines-for-online-legal-document-providers/>> accessed 5 May 2020.

possible. LegalZoom's legal battles may be over for the most part these days; yet, many jurisdictions continue to grapple with the challenges of determining an appropriate framework for the regulation of ALSPs – one that carefully calibrates and balances the key policy considerations of affording protection to consumers of legal services, promoting innovation in the legal industry, and ensuring that the livelihoods of lawyers are not threatened with a more liberalised legal market.

It remains up for discussion as to how ALSPs might be regulated in a jurisdiction like Singapore, other than having recourse to Section 33 LPA. Even so, a one-size-fits-all regulatory approach may not suffice to address the different issues posed by the different types of ALSPs in the market. For example, independent start-ups (like LegalZoom) might give rise to quality control and ethical compliance issues, while online legal marketplace platforms might raise concerns about fee-sharing or fee referral arrangements, as well as anti-money laundering issues. In Part III, we will survey the approaches undertaken in comparable jurisdictions with regard to the regulation of ALSPs vis-à-vis prohibitions against the unauthorised practice of law. It will be shown that any proposed regulatory framework would entail inevitable paradigm shifts for the legal profession as it is traditionally perceived, and the implications of these shifts will be considered at the conclusion of this paper.

### III. COMPARATIVE APPROACHES

#### A. Canada

Canada's path to reform on the regulation of ALSPs began in August 2014, when the Canadian Bar Association's 'Legal Futures Initiative' issued a report<sup>13</sup> ('the Legal Futures Report') strongly endorsing changes to the practice, teaching and regulation of law in Canada. These changes would, in turn, enable the Canadian legal profession to adapt to a rapidly evolving legal eco-system driven by the transformative forces of globalisation, liberalisation, technology, and the lack of access to legal services. Recognising the increasing number of alternative service providers and even

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<sup>13</sup> CBA Legal Futures Initiative, 'Futures: Transforming The Delivery Of Legal Services In Canada' (*The Canadian Bar Association*, 2014) <[www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf)> accessed 5 May 2020.

professionals like accountants and financial planners delivering information and advice to clients in areas traditionally reserved for lawyers, with growing demand for such services from clients and the public, the report highlighted the need for Canada to loosen its existing restrictions on legal practice to experiment with new legal service delivery models to promote innovation and legal entrepreneurship.

While a number of jurisdictions had begun exploring or making changes to the regulation of ALSPs as early as the 1990s (for example, Ontario and British Columbia), concrete steps to reform existing regulatory regimes began to pick up the pace following the Legal Futures Report. This paper will consider two provinces in particular: Saskatchewan and Manitoba.

## **1. Saskatchewan**

In 2017, the Ministry of Justice and the Law Society of Saskatchewan undertook a joint project to explore the possibility of permitting non-lawyers to provide selected legal services. Noting that only members of the Law Society of Saskatchewan were authorised to perform and deliver legal services, this restriction on the supply of legal services had the effect of reducing competition and increasing the costs of legal services. A need for more effective regulation of legal services was also highlighted, in light of the broad prohibition against the unauthorised practice of law under the *Saskatchewan Legal Profession Act, 1990*, which provided little guidance to members of the public and ALSPs on the type of legal services that might be performed by non-lawyers. This led to the appointment of the Legal Services Task Team (the 'Task Team') to examine this issue and develop recommendations for proposed regulatory reform. These recommendations included:

- (i) Providing greater clarity to ALSPs on the types of legal services that would be regulated;
- (ii) Expanding the current list of exceptions to the prohibition against the unauthorised practice of law to recognise existing ALSPs in the market; and
- (iii) Providing the Law Society of Saskatchewan with the licensing authority to provide limited licensing to permit ALSPs to provide

## ALSPs and the Unauthorised Practice of Law

legal services within a specific, individualised scope of practice, on a case-by-case basis.

As of 1 January 2020, amendments were made to the *Legal Profession Act, 1990* to include a clearer definition of the practice of law.<sup>14</sup> A limited license regime is also expected to be introduced, which would be given to ALSPs operating within a specific, individualised scope of practice reflecting the knowledge, training and experience of the service provider or a group of service providers. The limited licensing regime is the first-of-its-kind regulatory approach in Canada, which gives the Law Society of Saskatchewan the autonomy to expand access to regulated ALSPs in a responsible and sustainable manner, thus addressing the access to justice gap while ensuring public protection.

The Law Society of Saskatchewan Rules were also amended in January 2020 to include an expanded list of exemptions to the unauthorised practice of law.<sup>15</sup> However, recognising that there may be other categories of ALSPs that may not fall neatly within the new list of exemptions, the Law Society of Saskatchewan has requested these groups to complete a notice form<sup>16</sup> and self-identify as non-lawyer legal service providers. This gives ALSPs the opportunity to be considered for inclusion within existing or expanded exemptions, pilot projects, or newly developed categories under the proposed limited licensing regime. Self-identification also allows for more effective management and regulation of such providers, as opposed to

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<sup>14</sup> The Legal Profession Act, Saskatchewan 1990, c L-10.1, s 29.1. The 'practice of law' is defined as: the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person that require the knowledge and skill of a person trained in the law, and includes the following:

- (a) giving advice or counsel to others with respect to their legal rights or responsibilities or the legal rights or responsibilities of others;
- (b) drafting or completing legal documents or agreements that affect the legal rights of an entity or person;
- (c) representing another entity or person in any of the following:
  - (i) a court;
  - (j) a formal administrative adjudicative proceeding;
  - (k) a formal dispute resolution process;
  - (l) any other administrative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review;
- (d) negotiating legal rights or responsibilities on behalf of another entity or person.

<sup>15</sup> Law Society of Saskatchewan, 'Rules' (*Law Society of Saskatchewan*, 1 January 2020) rule 1002 <[www.lawsociety.sk.ca/media/395871/rulesapril2020.pdf](http://www.lawsociety.sk.ca/media/395871/rulesapril2020.pdf)> accessed 6 May 2020.

<sup>16</sup> The notice form can be viewed online: Law Society of Saskatchewan, 'Notice Form for Legal Service Providers' (*Law Society of Saskatchewan*) <[http://survey.constantcontact.com/survey/a07eh0wzgzzk8tc9h2f/start?TEST\\_ONLY\\_RESPONSES\\_NOT\\_SAVED=t](http://survey.constantcontact.com/survey/a07eh0wzgzzk8tc9h2f/start?TEST_ONLY_RESPONSES_NOT_SAVED=t)> accessed 1 May 2020.

prosecution or imposing sanctions. This has been regarded as an initial period of 'notice and discovery' to enable the Law Society of Saskatchewan to assist ALSPs with the transition to the limited licenses regime once the amendments come into force.

The Law Society of Saskatchewan has emphasised that it aims to work closely with ALSPs, the public and other stakeholders in the legal system to develop a flexible regulatory structure that promotes access to justice, while minimising potential risks to the public.

## **2. Manitoba**

In a similar vein to the reforms undertaken in Saskatchewan, the Law Society of Manitoba had also approved recommendations from a President's Special Committee on Alternative Legal Services Providers, which was tasked with examining the possibility of permitting the delivery of legal services by ALSPs. Recognising that access to justice remained a significant issue in the province, particularly for individuals residing in rural areas, as well as in the area of family law, the Law Society of Manitoba was urged to amend its governing legislation to allow:<sup>17</sup>

- (i) further exceptions to provisions on the unauthorised practice of law;
- (ii) the provision of prescribed legal services by those acting under the supervision of a lawyer and others with a limited license; and
- (iii) the delivery of legal services through entities such as civil society organisations, including charities and non-profits.

In March 2020, it was announced<sup>18</sup> that amendments would be introduced to the Legal Profession Act of Manitoba to allow the Law Society of Manitoba to designate and regulate another category of regulated legal service providers – limited practitioners,

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<sup>17</sup> The proposed reforms in Manitoba were referred to in Saskatchewan's Legal Services Task Team Report. Gerald Tegart and others, *Final Report of the Legal Services Task Team (Joint Staff Working Group of the Law Society of Saskatchewan and the Saskatchewan Ministry of Justice*, August 2018) <[www.lawsociety.sk.ca/media/395320/107840-legal\\_services\\_task\\_team\\_report\\_august\\_14-2018-1.pdf](http://www.lawsociety.sk.ca/media/395320/107840-legal_services_task_team_report_august_14-2018-1.pdf)> accessed 1 May 2020.

<sup>18</sup> Government of Manitoba, 'Manitoba Introduces Legislation That Would Improve Access to Legal Services' (*Government of Manitoba*, 9 March 2020) <<https://news.gov.mb.ca/news/index.html?item=46922>> accessed 1 May 2020.

who are permitted to provide specified legal services. These amendments would also allow the Law Society of Manitoba to determine who could be designated as a 'limited practitioner', as well as their scope of work and the required training and education that these limited practitioners would need to complete before they could provide legal services. The scope of practice areas for these limited practitioners would also be limited to prescribed areas, that according to the Law Society of Manitoba, would 'pose no risk to the public'.<sup>19</sup>

### **B. United Kingdom**

One of the forerunners in liberalising its legal services market, the United Kingdom ('UK') adopted a new Legal Services Act ('LSA') in 2007, a distinctive regulatory regime for legal services in England & Wales. The LSA permits the establishment of alternative business structure ('ABS') firms, which have some form of non-lawyer involvement in the ownership and/or management of the firm. Non-lawyers are permitted to own or manage legal service providers under the LSA, which also permits multi-disciplinary practices ('MDPs'). The UK can be said to have adopted an outcomes-focused regulatory paradigm to ensure legal service providers (whether traditional or alternative) deliver positive outcomes for consumers of legal services.

The LSA aimed to provide the public with greater choice of legal services, reduced legal costs, greater convenience, and improved access to justice for consumers who resided in rural areas or who were less mobile. In its report published in July 2003,<sup>20</sup> the UK government expressed its support for the principle of enabling the provision of legal services through ABSs, noting that ABSs would provide "an opportunity for increased investment and therefore enhanced development and innovation, for improved efficiency and lower costs ...".<sup>21</sup>

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<sup>19</sup> *ibid.*

<sup>20</sup> *Competition and Regulation in the Legal Services Market* (CP(R2) 07/02 DCA, 2003). See also Sir David Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales – Final Report* (December 2004) <[www.avocatsparis.org/Presence\\_Internationale/droit\\_homme/PDF/Rapport\\_Clementi.pdf](http://www.avocatsparis.org/Presence_Internationale/droit_homme/PDF/Rapport_Clementi.pdf)> (accessed 30 April 2020).

<sup>21</sup> *ibid.*

Under the LSA, six specific activities are designated as ‘reserved activities’<sup>22</sup> that can only be performed by authorised persons granted a license through a relevant regulatory authority (e.g. the Solicitors Regulation Authority of England and Wales). All other activities, other than the six reserved activities, are unregulated; for example, the provision of ordinary legal advice, or assistance with completing legal documents and may be performed by *any* person or entity, which would presumably include ALSPs. Professor Roger Brownsword commented that the small number of reserved activities under the LSA ‘creates the opportunity for a flourishing market in the provision of unreserved legal services, with new providers exploiting new service technologies for the benefit of consumers’.<sup>23</sup>

The liberalisation of the legal services market in the UK saw LegalZoom, the ALSP that was somewhat vilified in its native jurisdiction, become the first American business to receive an ABS license. In 2012, it even entered into a partnership with QualitySolicitors, a national network of franchised firms in the UK. The partnership allowed LegalZoom to leverage its technology and automated document-creation capacities to complement QualitySolicitors’ existing legal services.<sup>24</sup> The partnership would thus allow clients to have access to LegalZoom’s range of legal products online, including company incorporation documents, wills, and divorce documents. Solicitors from the franchised firms would be available to review or assist with the completion of these documents, as well as provide face-to-face legal advice and representation where necessary.

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<sup>22</sup> The six activities are: i) exercise if a right of audience; ii) conduct of litigation; iii) reserved instrument activities i.e. transactions involving real or personal property but not including wills; iv) probate activities; v) notarial activities; and vi) administration of oaths.

<sup>23</sup> Roger Brownsword, ‘The Regulation of New Technologies in Professional Service Sectors in the United Kingdom: Key Issues and Comparative Lessons’ (*Legal Services Board United Kingdom*, 4 July 2019) <[www.legalservicesboard.org.uk/wp-content/uploads/2019/07/Professions-RB-Report-VfP-4-Jul-2019.pdf](http://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/Professions-RB-Report-VfP-4-Jul-2019.pdf)> accessed 2 May 2020.

<sup>24</sup> Catherine Baksi, ‘LegalZoom in Quality Solicitors tie-up’ (*The Law Society Gazette*, 20 September 2012) <[www.lawgazette.co.uk/news/legalzoom-in-qualitysolicitors-tie-up/67432.article](http://www.lawgazette.co.uk/news/legalzoom-in-qualitysolicitors-tie-up/67432.article)> accessed 2 May 2020; Laura Snyder, ‘Does the UK Know Something We Don’t About Alternative Business Structures?’ (*ABA Journal*, 1 January 2015) <[www.abajournal.com/magazine/article/does\\_the\\_uk\\_know\\_something\\_we\\_dont\\_about\\_alternative\\_business\\_structures](http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures)> accessed 2 May 2020.



### **C. United States**

There has been growing momentum in recent years for loosening restrictions on long-standing prohibitions against non-lawyer involvement in the provision of legal services, and even in areas such as fee-sharing and fee referrals. There have also been calls for ethical rules on the unauthorised practice of law to be reconsidered to allow non-legal entrepreneurs the opportunity to innovate and increase consumer choice in the market for legal services. Arizona, California and Utah appear to be the forerunners in pushing for regulatory reform in this regard, primarily driven by the need to address the access to justice gap which has remained a perennial problem in the United States.

#### **1. Arizona**

In November 2018, the Arizona Supreme Court issued an administrative order to establish the Task Force on Delivery of Legal Services ('Arizona Task Force'), which was charged with reviewing the regulation of the delivery of legal services in Arizona. Noting that consumers would rely on sources other than lawyers for legal information or assistance, a focus of the review was on how non-lawyers – albeit with specified qualifications – could be empowered to increase access to justice by providing limited legal services. The Arizona Task Force issued its recommendations in October 2019, including developing a tier of non-lawyer legal service providers to provide limited legal services to clients, including representation in court and at administrative proceedings, as well as reviewing current rules that prohibit the provision of legal services by non-lawyers and non-lawyer ownership of legal service entities. These recommendations were unanimously accepted by the Arizona Judicial Council. A workgroup was also formed following the adoption of the Arizona Task Force's recommendations to explore approaches to regulating alternative business structures. These would include changes to existing rules under relevant legislative provisions, as well as a new regulatory framework, code of conduct and disciplinary sanctions for these alternative business structures that would be encompassed in a new section of the Arizona Code of Judicial Administration.<sup>25</sup> Reforms were also

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<sup>25</sup> Petition to Amend Rules 31, 32, 41, 42 (ERs 1.0-5.7)) 46-51, 54-58, 60, 75 and 76, Ariz R Sup Ct, and Adopt New Rule 33.1, Ariz R Sup Ct, Supreme Court No. R-20.



proposed to the Certified Legal Document Preparer ('CLDP'), which has been established since 2003 to authorise certified individuals and business entities – also known as Legal Document Preparers ('LDPs') – to draft legal documents for self-represented litigants without the supervision of an attorney.<sup>26</sup> These reforms are aimed at improving access to and quality of the legal services provided by LDPs. Currently, Rule 31 of the Arizona Rules of Supreme Court provides an exception that defines the scope of legal practice allowed to LDPs.<sup>27</sup> The Arizona Task Force has recommended, among others, that LDPs be permitted to speak in court when addressed by a judge, and that the scope of permissible and prohibited LDPs be further defined to provide clarity.

There have been several further developments to Arizona's regulatory framework to date. For example, in February 2020, the University of Arizona announced that it would be commencing a two-year pilot for a licensed legal advocates project that permits a small group of non-lawyers to give limited legal advice on civil matters for domestic violence survivors.<sup>28</sup>

More recently, in April 2020, Arizona became the first state in the US to formally file a petition with the Arizona Supreme Court<sup>29</sup> for the introduction of Alternative Business Structures ('ABSs'), and to eliminate the current ethical rules which prohibit fee-sharing with non-lawyers and forming a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. The petition had also suggested the introduction of limited license legal practitioners to fill the gap for lower-cost legal services and help bridge the access to justice gap by doing away with an 'artificial restriction' placed on lawyers, technology companies and other players in the legal market.<sup>30</sup> Notably, the petition called for amendments to Rule 31<sup>31</sup> of the Rules of the Supreme Court of Arizona on the regulation of the practice of law. The proposed

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<sup>26</sup> Brenna Goth and Sam Skolnik, 'Arizona Weighs Role of Non-Lawyers in Boosting Access to Justice' (*Bloomberg Law*, 16 August 2019) <<https://news.bloomberglaw.com/us-law-week/arizona-weighs-role-of-non-lawyers-in-boosting-access-to-justice>> accessed 5 May 2020.

<sup>27</sup> Rules of the Supreme Court of Arizona, § 7-208, rule 31 'Regulation of the Practice of Law'.

<sup>28</sup> James E Roger College of Law, 'New "Licensed Legal Advocates" Program Aims to Close Justice Gap for Domestic Violence Survivors, Provide New Path for Legal Support' (*The University of Arizona*, 3 February 2020) <<https://law.arizona.edu/news/2020/02/new-licensed-legal-advocates-pilot-program>> accessed 5 May 2020.

<sup>29</sup> Arizona Supreme Court Petition (n 25).

<sup>30</sup> *ibid* 3.

<sup>31</sup> Rules of the Supreme Court of Arizona (n 27).

restyling of Rule 31 included redefining, in broad terms, the 'practice of law' as well as what would amount to the 'unauthorized practice of law'.<sup>32</sup> On the latter, it was proposed that persons authorised to engage in the practice of law in Arizona would include practising members in good standing of the State Bar of Arizona, as well as persons specifically authorised to engage in the practice of law, with Rule 31.3 setting out in detail the types of persons, entities or activities that are authorised and would not fall foul of prohibitions against the unauthorised practice of law.

## 2. California

Regulatory reform in the California was similarly driven by the need to address the gap in access to legal services. A state-wide study to measure the extent of the access to justice gap was conducted by the State Bar of California in 2019,<sup>33</sup> and revealed that in the past year, 55 percent of Californians at all income levels experienced at least one civil legal problem in their household, yet nearly 70 percent of them received no legal assistance.

In 2018, the California legislature split the professional and regulatory functions of the State Bar of California and clarified its statutory mission – to increase access to legal services through two key ways: i) licensing para-professionals; and ii) focusing on reaping the potential benefits of technology and modifying the existing professional regulatory scheme to allow technology to potentially deliver legal advice. Later that year, the California State Bar commissioned a study of online legal service delivery models to determine if regulatory changes were needed to support or regulate access to legal services through the use of technology. Professor William D. Henderson was contracted to conduct a landscape analysis of the current state of the legal services market, including a survey of new technologies and business models used in the delivery of legal services with a special focus on enhancing access to justice. Professor Henderson's findings were published in the landmark Legal Market

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<sup>32</sup> Scott Timmer and others, 'Task Force on the Delivery of Legal Services – Report and Recommendations' (*State of Arizona Supreme Court*, 4 October 2019) <[www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750](http://www.azcourts.gov/Portals/74/LSTF/Report/LSTFReportRecommendationsRED10042019.pdf?ver=2019-10-07-084849-750)> accessed 6 May 2020.

<sup>33</sup> Rocio Avalos and others, '2019 California Justice Gap Study: Executive Report' (*The State Bar of California*, 2019) <[www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-Executive-Summary.pdf](http://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-Executive-Summary.pdf)> accessed 5 May 2020.

Landscape Report ('the Landscape Report'),<sup>34</sup> of which the following points are especially pertinent for the purposes of this discussion.

Noting that ethics rules in the US were the primary mechanism for regulating the market for legal services, Professor Henderson opined that ethics rules pertaining to the prohibition on non-lawyer ownership and the unauthorised practice of law determined the structure of the legal market.<sup>35</sup> As a result of these rules, any business engaged in the practice of law must be owned or controlled by lawyers; a prohibition, which Professor Henderson argued, limited 'both the opportunity and incentive for non-legal entrepreneurs to enter the legal market'.<sup>36</sup> Professor Henderson concluded that modifying these ethics rules to facilitate greater collaboration between lawyers and non-lawyers would accelerate the development of legal solutions that would reach a wider group of consumers of legal services and 'drive down overall costs; improve access for the poor, working and middle class; improve the predictability and transparency of legal services; aid the growth of new businesses; and elevate the stature and reputation of the legal profession as one serving the broader needs of society'.<sup>37</sup>

Following the Landscape Report, the California State Bar subsequently established the Task Force on Access Through Innovation of Legal Services ('California Task Force') which was charged with identifying possible regulatory changes to enhance the delivery of, and access to, legal services through the use of technology based on Professor Henderson's recommendations. Notably, the California Task Force indicated that it would be reviewing the current prohibitions against the unauthorised practice of law vis-à-vis the consumer protection rationale for such prohibitions, and their impact on access to legal services. It would also assess the impact of the current definition of 'the practice of law' on the use of AI and other technology-drive legal services delivery systems, including online consumer self-help legal research and information services, lawyer-client matching services, and legal document assembly platforms.

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<sup>34</sup> Randall Difuntorum, 'State Bar Study of Online Delivery of Legal Services – Discussion of Preliminary Landscape Analysis' (*The State Bar of California*, 19 July 2018) <<http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf>> accessed 6 May 2020.

<sup>35</sup> *ibid* 21.

<sup>36</sup> *ibid*.

<sup>37</sup> *ibid* 27.

The California Task Force also recommended the development of a regulatory sandbox as a means for evaluating possible changes to the existing legal and regulatory framework.<sup>38</sup> This proposal was similar to a recommendation that had been put forward in Utah, which had also undertaken a review of its regulatory framework to assess how the regulatory structure for legal services could be optimised, for example, by harnessing legal technology and promoting innovation, to bridge the access to justice gap.<sup>39</sup> The proposed sandbox would gather data on any potential benefits to accessing legal services and evaluate any harm to consumers when existing restrictions on the unauthorised practice of law, as well as other prohibitions on fee sharing and partnerships with non-lawyers are temporarily modified or suspended for sandbox participants. Through the sandbox, participants would be given the opportunity to present a proposal for a new legal services delivery system that demonstrates that a more liberalised regulatory framework which increases access to legal services reaps more benefits and outweighs the potential risks of harm as a result of any proposed regulatory reform. To buttress their recommendations, the California Task Force even appended examples of legal-tech start-ups and ALSPs that had to close their businesses or were unable to market their services to the public due to prevailing regulatory and statutory restrictions.<sup>40</sup> The sandbox would allow these providers to innovate and test their services without the confines of professional conduct rules or concerns about breaching prohibitions against the unauthorised practice of law.

However, the recommendation to consider the development of a regulatory sandbox was met with mixed reception. For one, the California State Bar's board of trustees delayed its vote on this issue to allow it time to consult relevant stakeholders, including the judiciary and the legislature,<sup>41</sup> although it approved two proposals to amend legal ethics rules, including current prohibitions against fee-sharing with non-lawyers. The proposed regulatory reform had also raised concerns among legal practitioners in California, citing the possible negative impacts of opening up the legal market on the

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<sup>38</sup> Justice Lee Edmon and Randall Difuntorum, 'Report and Recommendations of the Task Force on Access Through Innovation of Legal Services' (The State Bar of California, 12 March 2020) <<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025644.pdf>> accessed 6 May 2020.

<sup>39</sup> Details of Utah's regulatory review and reform initiatives are discussed in the following sub-section.

<sup>40</sup> The State Bar of California (n 38).

<sup>41</sup> Lyle Moran, 'Legal Reform Supporters Will Keep Advocating for California Sandbox Proposal' (*ABA Journal*, 31 March 2020) <[www.abajournal.com/web/article/legal-reform-advocates-criticize-california-bars-delay-of-sandbox-proposal](http://www.abajournal.com/web/article/legal-reform-advocates-criticize-california-bars-delay-of-sandbox-proposal)> accessed 5 May 2020.

legal profession. Nevertheless, supporters of the proposed sandbox have been encouraged to email bar trustees and request that they vote in favour of the proposal, noting that the sandbox would be a significant step towards “real systemic change” in addressing the access to justice gap. Founders of ALSPs have even prepared a template regulatory reform email<sup>42</sup> for supporters to use when writing to the bar trustees. With the board expected to reconvene sometime in May 2020 to decide on this issue, regulatory developments in California remain closely watched, as the state with the second-highest number of legal practitioners in the US, behind New York.

### **3. Utah**

The State of Utah Bar and Utah Supreme Court established a joint task force in the latter part of 2018 to study and make recommendations about optimising the regulatory structure for legal services to promote innovation, while allowing for increased access to and affordability of legal services.<sup>43</sup> The Utah Work Group on Regulatory Reform (‘Utah Work Group’) was helmed by Utah Supreme Court Justice Deno Himonas and John Lund, past president of the Utah Bar, and comprised members of the judiciary and Bar, as well as leading academics and experts in legal design thinking and legal ethics. The Utah Work Group placed an emphasis on recommending fundamental changes to the legal profession and creating a fact-based and data-driven regulatory environment, rather than a prescriptive one, to optimise the regulatory structure for the practice of law in an age of disruption. Two key concerns were highlighted: addressing the access to justice gap, and regulating disruptive technologies to foster innovation while protecting litigants and other consumers of legal services.

The Utah Work Group issued its report in August 2019, recommending fundamental changes in areas such as lawyer advertising and solicitation, fee referral, and fee-sharing. Perhaps the most significant recommendation, however, was the implementation of a legal regulatory sandbox for non-traditional legal service

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<sup>42</sup> The templates can be found via this Google document: ‘Templates to Email CA State Bar Trustees’ <<https://docs.google.com/document/d/10X3XJZdPhwhTlhXTstJa00QUBJLCkbD9ERKdTUpfniQ/edit>> accessed 1 May 2020.

<sup>43</sup> The Utah Work Group on Regulatory Reform, ‘Narrowing the Access-to-Justice Gap by Reimagining Regulation’ (*The Utah Work Group on Regulatory Reform*, August 2019) <[www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf](http://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf)> accessed 5 May 2020.

providers (i.e. ALSPs), to serve as a platform for these providers to test their products and services without concerns about engaging in the unauthorised practice of law or breaching other existing ethical rule or restrictions. The Utah Work Group outlined three key features of the proposed regulatory sandbox:<sup>44</sup>

- (i) Testing out innovations around business models, services and technology to assess the innovation potential in the legal ecosystem and the benefits that may be realised, as well as the potential risks.
- (ii) Entities participating in the sandbox need to undertake a risk self-assessment of their proposed services. In other words, participants must propose not only what innovation is possible, but also how it can be assessed.
- (iii) Participants would gather and share data on the performance of their products/services to assist in developing standards and metrics around data-driven regulation.

The report also cited examples of possible sandbox participants, including: an accounting firm offering legal services provided by lawyers alongside its accounting services; a legal technology start-up utilising AI-enhanced software to assist consumers with completing legal documents such as wills; and a non-profit allowing its paralegal staff to offer limited legal advice to clients, independent of lawyer supervision.

The Utah Supreme Court was quick to adopt the recommendations in the report,<sup>45</sup> and at the time of writing, is currently consulting the public on the reform proposals put forward by the Utah Work Group until 23 July 2020.<sup>46</sup> However, the sandbox proposals may be considered for expedited approvals before the close of the consultation period, with a standing order to set up the regulatory sandbox by 1 July 2020.

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<sup>44</sup> *ibid* 19.

<sup>45</sup> Jayne Reardon, 'Utah Supreme Court Approves Lawyer Regulatory Reform' (2CIVILITY, 28 August 2019) <[www.2civility.org/utah-supreme-court-approves-lawyer-regulatory-reform/](http://www.2civility.org/utah-supreme-court-approves-lawyer-regulatory-reform/)> accessed 10 May 2020.

<sup>46</sup> Lyle Moran, 'Utah's High Court Proposes Nonlawyer Ownership of Law Firms and Wide-Ranging Reforms' (ABA Journal, 27 April 2020) <[www.abajournal.com/news/article/utahs-high-court-proposes-wide-ranging-legal-industry-reforms](http://www.abajournal.com/news/article/utahs-high-court-proposes-wide-ranging-legal-industry-reforms)> accessed 10 May 2020.

The Utah Work Group has also recommended that the Utah Rules of Professional Conduct be revised to include terminology clarifying that a 'legal professional' in Utah included non-lawyers who are authorised providers of legal services. This definition would also include licensed paralegal practitioners ('LPPs'), following the establishment of the Licensed Paralegal Practitioner program in 2015 to provide for more accessible legal representation primarily in community law and basic civil legal matters (e.g. family law, landlord/tenant disputes, debt collection matters). LPPs are required to comply with specially designed ethical conduct standards. Following the establishment of the LPP program, the Utah Supreme Court adopted the Licensed Paralegal Practitioner Rules of Professional Conduct in 2018,<sup>47</sup> which provide ethical obligations for LPPs and establish Rules of LPP Discipline and Disability, as well as standards for imposing discipline similar to those that govern practising attorneys.

The Utah State Bar Office of Professional Conduct will investigate and where necessary, prosecute complaints against LPPs, and the rules make LPPs subject to potential discipline. They are also required to complete continuing legal education courses, to have client trust accounts, and will be licensed and regulated by the Utah State Bar.

#### **IV. CONCLUSION**

The preceding discussion has highlighted a spectrum of regulatory approaches that currently exist, ranging from more liberal frameworks that seek to promote innovation and competition, to quasi-lawyer regulatory models, where ALSPs are regulated like legal practitioners or law practices. The UK model sees ALSPs categorised as a 'special class' of legal service providers, while the approach in Saskatchewan and Manitoba has resulted in legislative amendments to clarify the meaning of the 'practice of law', while instituting a self-identifying mechanism for ALSPs – an approach that allows the regulators to work directly with the entities being regulated and create a more flexible regulatory structure. Finally, Arizona, California and Utah lean more closely towards quasi-lawyer regulation, with a greater emphasis placed on consumer protection. The experiences of all these jurisdictions have highlighted that effecting

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<sup>47</sup> 'Limited Practice Legal Professionals: A Look at Three Models' (2018-19) 87(4) The Bar Examiner <<https://thebarexaminer.org/article/winter-2018-2019/limited-practice-legal-professionals-a-look-at-three-models/>> accessed 10 May 2020.



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regulatory reform requires paradigm shifts which the legal profession is largely not accustomed to. Backlash from the legal profession has been cited as a real concern in many of these jurisdictions, rendering the process of regulatory reform a very delicate, and sometimes political, exercise.

The legal profession's uneasiness with the rise of ALSPs is understandable, and the regulatory approaches surveyed in the comparative study above have also highlighted the various challenges involved in developing an appropriate framework that addresses the legitimate concerns of all relevant stakeholders. Yet, the new paradigm of the legal services delivery market also presents an opportunity for the legal profession to determine its own trajectory for the near future. Closer to home, commentators have observed<sup>48</sup> that Singapore's legal hub ambitions would be best served with a greater diversity of players in the market – one that presumably includes a greater starring role not just for ALSPs, but could very well extend to include the likes of limited license legal professionals (as in the case of Canada and the US, for example). Regardless of the regulatory approach that is eventually undertaken, it remains clear that the legal profession is at an inflection point, and there is a need to rethink traditional perceptions of the practice of law in this 'new age' of the legal profession. ALSPs are knocking on the doors of the legal market with increasing tenacity – is the legal profession ready?

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<sup>48</sup> Tay Peck Gek, 'Alternative Legal Practitioners: MinLaw Studying Regulatory Need' *The Business Times* (Singapore, 7 January 2020).



