Queensland Law Firms Partner with Regulators and Researchers to Improve Firms' Ethical Culture

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John Briton & Scott McLean, *Lawyer Regulation, Consciousness Raising, and Social Science* (summary in **Geo. J. Legal Ethics**, forthcoming 2011); Christine Parker & Lyn Aitken, *The Queensland "Workplace Culture Check": Learning from Reflection on Ethics Inside Law Firms* (**Geo. J. Legal Ethics**, forthcoming 2011).

The American Bar Association Ethics 20-20 Commission should pay some serious attention to Australia. With the Legal Services Act 2007 slated to come into full effect on October 6, 2011, with the licensing of Alternative Business Structures for law practice in England and Wales, all eyes—well, some keen eyes, anyway—have been on the U.K. and its establishment of a regulatory framework for these new organizational forms. But Australia has been regulating "alternative business structures" since 2001, when New South Wales became the first state to allow incorporated law practices (ILPs). Australia's National Legal Profession Model Bill 2006 includes provisions allowing law firms to have non-lawyer directors and shareholders, and Australia, so far, has the only experience regulating publicly listed law firms. Australia,therefore, has a head start in thinking about the regulation of law practice organizations, whether they be traditional partnerships or alternative, corporate, forms.

Perhaps the most laudable feature of the emerging Australian model is its emphasis on law firm self-assessment and the collaboration this engenders between regulators, researchers, and firms. This collaboration was on full display at the 2010 International Legal Ethics Conference, in a pair of papers analyzing the data on law firm self-assessment, one from a regulatory and the other from a research perspective.

The first was a paper by John Briton, the Queensland Legal Services Commissioner and his colleague, Scott McLean, describing Australia's strategy for regulating ILPs, which currently make up about 20% of law practice organizations in Queensland and New South Wales (Briton & McLean, p. 5). The centerpiece of the strategy is the move from a reactive, complaint-driven approach to a preventive approach that focuses "not only on lawyers but also on law practices and their management systems and supervisory arrangements—their ethical infrastructure" (pp. 3-4). The primary tool in this preventive, entity-oriented approach is a system of enforced self-assessment by firms through: (1) a requirement that ILPs designate a "legal practitioner director" to be personally responsible for implementing appropriate management systemsin the firm (p. 6); and (2) a requirement that legal practitioner directors conduct self-assessment audits to measure the effectiveness of firm management systems and internal ethics controls. This system of self-assessment is backed up by external audits through web-based surveys and on-site reviews (p. 10). Briton and McLean predict that "this same or a very similar regulatory framework will soon apply to all law practices in Australia."

Not surprisingly, lawyers initially resisted the requirement of self-assessment—not to mention external audits—fearing that regulators would attempt to dictate one-size-fits-all structures for firms; and some bar groups oppose the extension of self-assessment requirements to traditional law firms (p. 8). In practice, however, enforced self-assessment has proven "hugely successful by any measure" (p. 11). Based on an analysis of data from 631 ILPs, Professor Christine Parker of Melbourne University Law School found that the complaint rate per practitioner per year in ILPs after self-assessment is one third

the complaint rate before self-assessment, and one third the complaint rate for practitioners in traditionally structured firms (p. 11). Moreover, firms report that the process of self-assessment is "very useful" and "created robust discussion around the partnership table" (p. 15). As Briton and McLean conclude, "the simple act of requiring a law practice's principals to take time out to stock-take just how well their management systems and supervisory arrangements support the practice and its people to deliver competent and ethical services—the simple act of prompting them to reflect on the adequacy of their ethical infrastructure—dramatically improves standards of conduct within their practice." For anyone who doubts this account, the feedback from firms is posted on the Commission's website.

An additional benefit of enforced self-assessment by law practice organizations is the production of rich, firm-level data for research and scholarship on the profession. The second paper, by Christine Parker and Lyn Aitken of the Queensland Legal Services Commission, shows how useful such data can be for analyzing the dynamics of law firm ethical culture (and subcultures) and testing competing theories of law firm regulation. Parker and Aitken's analysis is based on data from 15 law firms that participated in the Queensland Legal Services Commission "Workplace Culture Check," a short, on-line survey of lawyers' perceptions about the availability and effectiveness of ethics supports within firms (Parker & Aitken, pp. 9-10). Fifteen law firms were invited to participate in the survey and all accepted, yielding 336 lawyer respondents (p. 16).

The most striking finding from Parker & Aitken's analysis is the difference between junior and senior lawyers' perceptions of ethics supports within firms and perceptions of their own capacity to raise ethical issues (p. 1). Among junior lawyers, only 44% said that they are always "able to raise ethical issues in confidence," compared to 75% percent of senior lawyers (p. 25). Junior lawyers were also less likely to know where to turn for ethical advice, and to report that their ethical concerns are given consideration in the firm. Among junior lawyers, less than 40% said that their ethical concerns are always given consideration, compared to nearly 80% of senior lawyers (p. 25). Parker & Aitken consider a number of possible explanations for such differences, including the general tendency of lower-level employees to view their organizations less positively than upper-level employees and managers (p. 26). Such differences, however, are nevertheless important for law firm managers to understand. Thus, as part of the survey, the Legal Services Commission debriefed the 15 participating law firms, in an effort to "encourage critical ethical reflection and discussion" (p. 33). Such collaboration promises to significantly improve both law firm regulation and scholarship on profession.

The U.S. has been slow to regulate—or manage—law firms as entities, even as the average size of law firms has grown exponentially. Opponents fear that the centralization and delegation of specialized management authority will undermine the accountability and authority of individual partners. Currently, only New York and New Jersey provide for entity regulation in their rules of professional conduct. Mounting evidence, however, shows that the designation of in-house compliance specialists and routine self-assessment by law practice organizations has tremendous benefits for law firms and the clients they serve, as well as promoting collaboration between regulators, researchers and firms. U.S. regulators and firms should take notice. If the legal profession is to maintain a credible claim to effective self-regulation, it is time to adopt a proactive, entity-oriented approach, backed up by regulatory authority and rigorous empirical research.

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