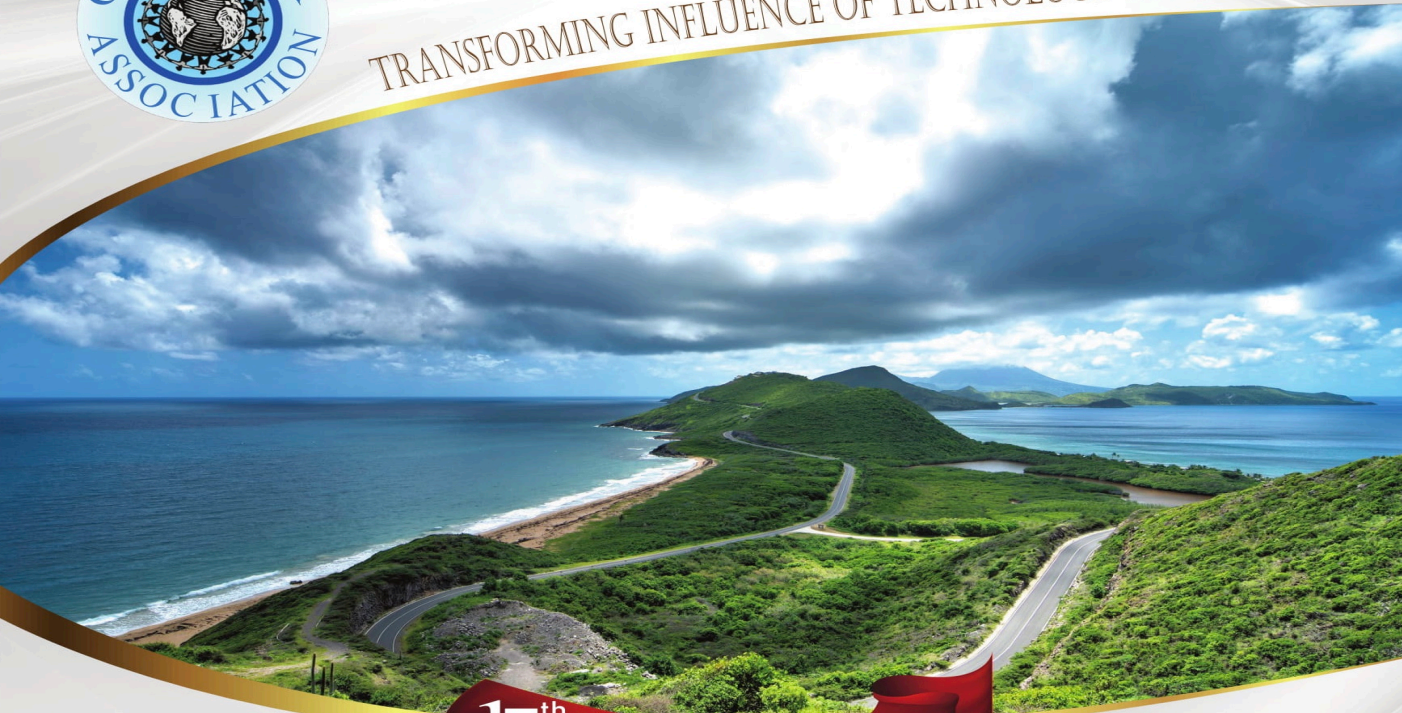




TRANSFORMING INFLUENCE OF TECHNOLOGY ON THE LAW



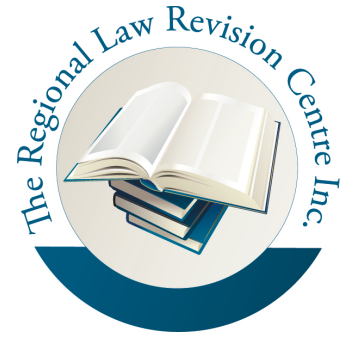
15th ANNIVERSARY

REGIONAL LAW CONFERENCE

SEPTEMBER 14TH - 16TH, 2018

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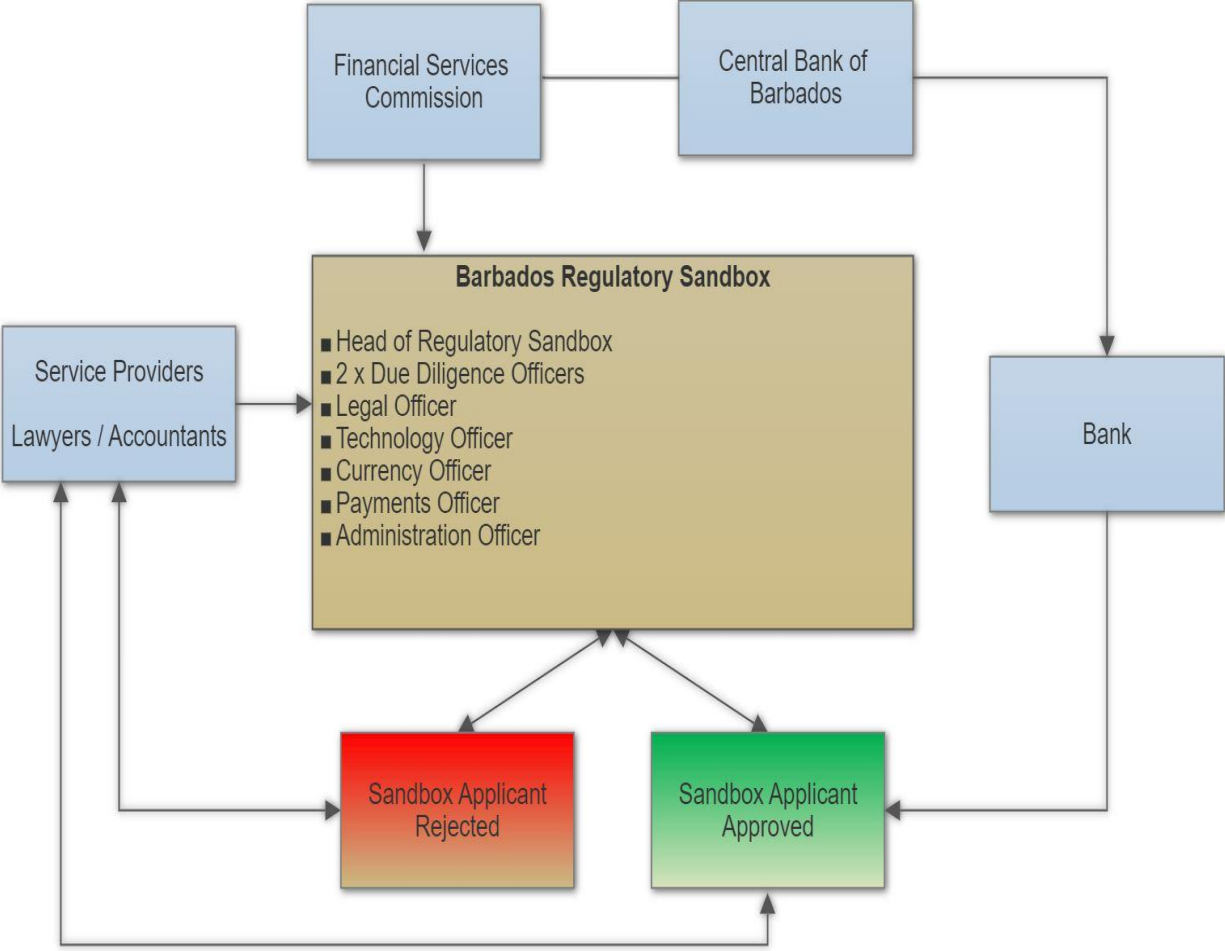
15TH REGIONAL LAW CONFERENCE

Cha-ching! BLOCKCHAIN AND THE LAW – An uncharted landscape – Is it Safe and Legal to Trade Cryptocurrencies?

Ms. Sharmyn Powell
(Eastern Caribbean Central Bank)

Mr. Roland Haggins
(Aion.network, Barbados)

Draft Example Regulatory Sandbox





15TH REGIONAL LAW CONFERENCE

PAPER COMMITTALS- Striking a Balance? Is the 'Constitutional right' of accused persons to cross examine prosecution witnesses at preliminary inquiries now dead and buried in the Commonwealth Caribbean?

Mr. Justin Simon QC
(Chancellor Chambers, Antigua & Barbuda)

Mr. Bert Samuels
(Knight, Junor & Samuels, Jamaica)

Chaired by: Mr. Emile Ferdinand QC
(Kelsick Wilkin & Ferdinand, St. Kitts)



15TH REGIONAL LAW CONFERENCE

***WHOSE FAULT IS IT THAT I DIDN'T KNOW
IT WASN'T YOU? How to represent your
client in a cyber authentication case?***

**Mr. Frank Walwyn
(WeirFoulds, Canada)**

A word cloud centered around the phrase "digital identity". The words are in various sizes and orientations, representing related concepts in digital security and law. The most prominent words are "digital identity", "verification", "authentication", "identification", "transaction", and "mistaken identity". Other visible words include "liability", "negligence", "e-commerce", "virtual", "password", "fraud", "online", and "biometrics".

biometrics
verification
negligence
liability
identification
transaction identity
e-commerce
virtual
password
digital identity
fraud
online
mistaken identity
authentication



(Mis)authentication: allocating loss in the digital age

Frank Walwyn
WeirFoulds LLP
Toronto, Canada

OECS 15th Regional Law Conference
Park Hyatt, St Kitts
14-16 September 2018



Introduction

Introduction

- We exist in a society where commercial transactions are increasingly being conducted online
- Consumers and businesses need to have trust in e-commerce for it to continue to develop
- Trust is fostered by certainty in the use of e-commerce and its technologies

Introduction

- Certainty comes from adequate and comprehensive rules and legal frameworks
- There is a growing need to develop and enhance procedures for authenticating online identities, in order to foster certainty and trust in e-commerce



The Legislative Regime

- Rules governing e-commerce – and the process of authenticating within e-commerce transactions – can be provided for in a number of texts:
 - International legal instruments, such as treaties
 - Model laws
 - National legislation
 - Self-regulatory legislation
 - Contractual agreements



United Nations
UNCITRAL

The Legislative Regime

- What does an e-commerce legislative framework look like?
 - Electronic transaction law
 - Consumer protection law
 - Data protection laws
 - Cybercriminal laws
 - Online content laws



The Legislative Regime

- Each of these categories of laws can be important in fostering an improvement in authentication mechanisms
- These laws provide for:
 - How to attribute electronic messages to certain transacting parties
 - When an electronic signature – which is a means by which to authenticate – is valid
 - What the gold-standard for authentication is



Identification vs. Authentication

Identification

- Identity = sum of all characteristics or qualities that comprise an individual
 - Real name
 - Username, "handle"
 - Account number
- Identification = claim or statement of identity
 - "I am John Doe"

Authentication

- Authentication = verification of the claim or statement
- Different ways to authenticate:
 - By something **known** to the individual (i.e., password, PIN, account number, mother's maiden name)
 - By something the individual **has** (i.e., a bank card, identity card with an embedded chip/barcode)
 - By something the individual **is/does** (i.e., biometric, retina scan, voice print)

Authentication



Authentication

- Types of authentication:
 - Single-factor: relies on something the individual **knows**
 - i.e., access to e-mail using a password
 - Two-factor: relies on something the individual **has** and **is**
 - i.e., access to a secure part of a building using an identity card and a hand-scan biometric
 - Three-factor: relies on something the individual **has**, **knows**, and **is**
 - i.e., access to a secure part of a building using an identity card, a hand-scan biometric, and a password

Authentication

- Multi-*layer* authentication:
 - Authentication using two or more elements from the same category (knows/has/is)
 - i.e., by asking an individual to provide their mother's maiden name in addition to providing a password

Authentication

- Multi-*factor* authentication:
 - Authentication involving one or more elements from two or more categories
 - **Single-factor**: relies on something the individual knows, has or is
 - **Two-factor**: relies on something the individuals knows and has, knows and is, or has and is
 - **Three factor**: relies on something the individual has, is and knows
 - i.e., the presentation of an identity hard, a hand-scan biometric and a PIN in order to access a secure part of a building

Authentication

- How well (or poorly) a transacting party authenticates can be determinative of their liability in the event that something goes wrong
- Is there a "gold standard" when it comes to multi-layer or multi-factor authentication?
 - Guidance in certain jurisdictions suggests that single-factor authentication is inadequate for high-risk commercial transactions



Authentication gone wrong

Authentication gone wrong

- How can authentication go wrong?
 - Fraudster uses a photo to mimic the shape of an iPhone user's face to unlock their phone
 - A fraudster steals an individual's credit card information and uses it to make fraudulent and unauthorized purchases online



er hacks into an individual's e-mail and authorized wiring instructions to the l's bank

Authentication gone wrong

- Unilateral mistake and mistaken identity
 - A enters into a contract with B
 - A failed to authenticate B's identity
 - B turns out to be C
 - A did not intend to contract with C

What happens?

Authentication gone wrong

- Unilateral mistake and mistaken identity
 - To vitiate the contract on the basis of mistaken identity, A bears the burden of establishing that:
 - (1) A intended to deal with someone other than C – that is, there was a confusion between two distinct and existing individuals;
 - (2) C was aware of A's intention;
 - (3) The identity of the other contracting party – B – was regarded by A as being of fundamental importance; and
 - (4) A took reasonable steps to verify or authenticate the identity of the other party.

Authentication gone wrong

- Misattribution of data messages
 - Unauthorized person C impersonates A by hacking into A's e-mail
 - C sends data message to B using a means of authentication such as an electronic signature
 - Two innocent parties: A + B

Who

bears the loss?

Authentication gone wrong

- Misattribution of data messages
 - Consider that A and B regularly transact, and they do so using a mutually accepted and secure means of authentication (i.e., an electronic signature)
 - If the means of authentication is used without authority by C in the transmission of a data message, B can rely on the message
 - Exception: if B has notice of the dishonesty or fraud, or has been wilfully blind, cannot rely on the message

Authentication gone wrong

- Misattribution of data messages
 - *Standard Bank London Ltd v The Bank of Tokyo Ltd*
 - Three letters of credit appeared to have been issued and authorized by the Bank of Tokyo (BOT)
 - Standard were the named beneficiaries of each letter of credit
 - Signatures on the letters of credit were forged
 - Standard received "tested telexes" apparently sent by BOT to authenticate the letters of credit
 - Fraudsters sent the tested telexes

Authentication gone wrong

- Misattribution of data messages
 - *Standard Bank London Ltd v The Bank of Tokyo Ltd*
 - BOT made general representation to Standard that if a telex came as a "tested telex", it would be duly authorized by BOT
 - Based on this representation, the court held that Standard could rely on the tested telexes, even though they were sent by fraudsters in respect of forged letters of credit
 - If Standard had notice that the signatures were forged or fraudster sent tested telexes, it could not rely on the tested telex

Authentication gone wrong

- Misattribution of data messages
 - *Standard Bank London Ltd v The Bank of Tokyo Ltd*
 - Against whom does BOT seek damages or other recourse? The fraudsters, if they can be found...
 - Evidently, the impact of having weak security procedures or authentication mechanisms that can be hacked can lead to negative (and costly) consequences

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce
 - s.17 of St Kitts and Nevis' *Electronic Transactions Act, 2011*
 - s.17 of Antigua and Barbuda's *Electronic Transactions Act, 2006*
 - s. 11 of Saint Lucia's *Electronic Transactions Act, 2007*
- The purpose of these provisions is not to assign liability, but to deal with attribution of data messages
- But... what is the implication?

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce
 - (1) A data message is that of the originator if it was sent by the originator itself.
 - (2) As between the originator and the addressee, a data message is deemed to be that of the originator if it was sent:
 - (a) by a person who had the authority to act on behalf of the originator in respect of that data message; or
 - (b) by an information system programmed by, or on behalf of, the originator to operate automatically.

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce

(3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

(a) in order to ascertain whether the data message was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(b) the data message as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce

(4) Paragraph (3) does not apply:

(a) as of the time when the addressee has both received notice from the originator that the data message is not that of the originator, and had reasonable time to act accordingly; or

(b) in a case within paragraph (3)(b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was not that of the originator.(3) As between the originator and the addressee, an addressee is entitled to regard a data message as being that of the originator, and to act on that assumption, if:

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce

(5) Where a data message is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the data message as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the data message as received.

Authentication gone wrong

- Misattribution of data messages
 - Article 13 of UNCITRAL Model Law on Electronic Commerce

(6) The addressee is entitled to regard each data message received as a separate data message and to act on that assumption, except to the extent that it duplicates another data message and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the data message was a duplicate.



Banking Breach Lawsuits

Banking breach suits and authentication

- Banking breach law suits are often brought by small business customers seeking to recover from a bank
- The main allegation by the customer is that the bank's authentication procedures and other security measures were deficient, not "commercially reasonable", and failed to prevent fraudulent transfers
- The position of the banks in these cases is that they had commercially reasonable security procedures in place, and that it is the conduct of the customer that led to the breach in security

Banking breach suits and authentication

- "Commercially reasonable security" → Case law in the United States, and an interpretation of the Uniform Commercial Code (UCC)
- §4A-202: Authorized and verified payment orders
- If a bank has a "commercially reasonable" security procedure in place, the customer will be liable for fraudulently transferred funds, even if they were not authorized by the customer
- The reverse is true if the bank fails to have a "commercially reasonable" security procedure in place

Banking breach suits and authentication

- This standard can be applied in other jurisdictions, particularly when negligence is the cause of action
- What is "commercially reasonable" will depend on a number of factors, including what is reasonable for the particular customer and the particular bank
- What is "commercially reasonable" will require expert evidence
- What is "commercially reasonable" will evolve as e-commerce, technology, and cybercrime evolve



Breach of Privacy

Breach of privacy

- In many jurisdictions, there are specific laws about privacy
- Examples:
 - Canada: Personal Information Protection and Electronic Documents Act (PIPEDA)
 - Antigua: Data Protection Act

Intrusion upon seclusion: a new tort

- *Jones v Tsiges*, 2012 ONCA 32
- Jones was a bank employee, where she had a personal bank account
- Tsiges worked for a different branch of the same bank
- The two women did not know each other, but Tsiges was in a common law relationship with Jones' ex-husband
- Over 4 years, Tsiges used her work computer to view Jones' personal banking activity on more than 174 occasions, without authorization and purely for personal reasons

Intrusion upon seclusion: a new tort

- *Jones v Tsige*, 2012 ONCA 32

One who intentionally [or recklessly] intrudes, physically or otherwise, upon the seclusion of another or his [or her] private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be highly offensive to a reasonable person (para. 70)



Protecting Consumer Customers

Consumers and credit card protection

- Consumer banking customers often have protection under consumer protection legislation, or agreements entered into with their financial institutions and/or credit card companies
- Mastercard and Visa → "zero liability policies"



Consumers and credit card protection

- As a general proposition, to have zero liability for unauthorized transactions, a consumer must:
 - use reasonable care in safeguarding his or her card, including safeguarding any password or PIN; and
 - report loss or theft of the card immediately after becoming aware



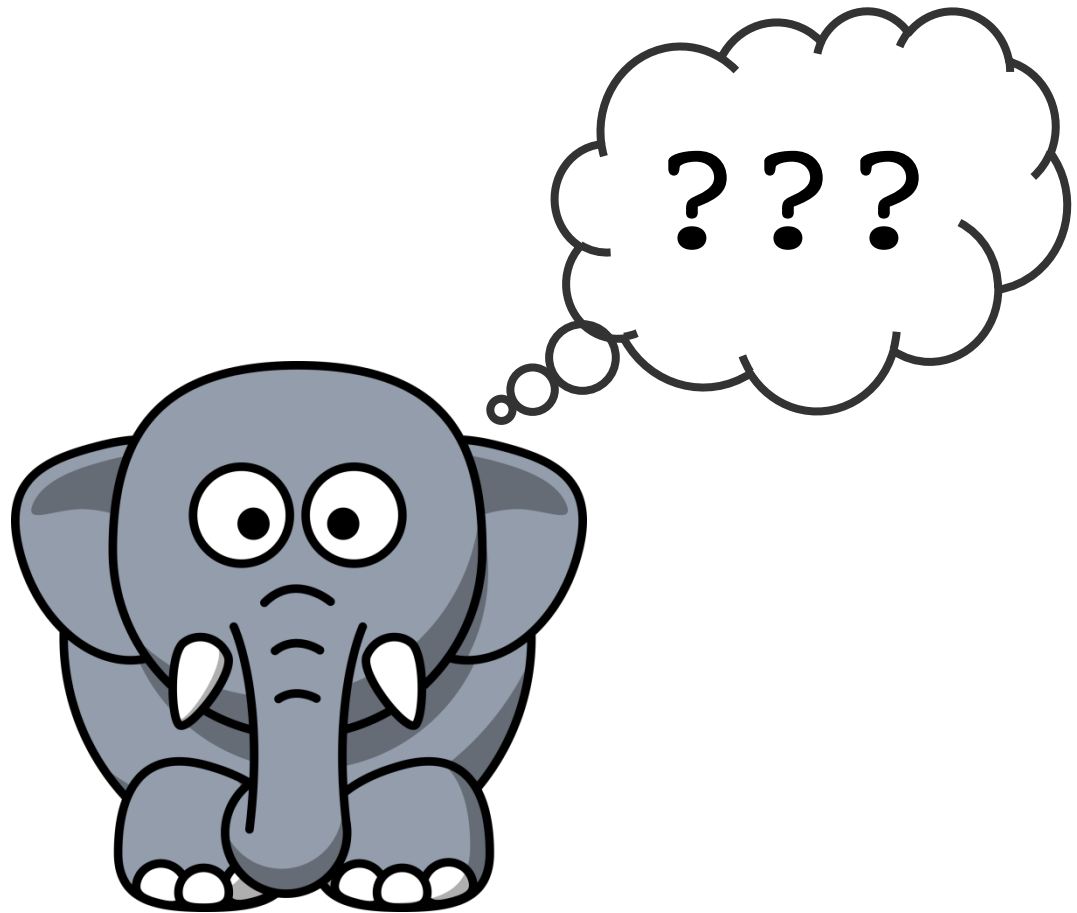
Protecting against misauthentication

Protecting against misauthentication

- Implementing adequate authentication and security measures
 - Single-factor v. three-factor
- Exclusion or limitation of liability in contractual relationships
 - *Du v Jameson*
- Cybercrime insurance

Protecting against misauthentication

- A move towards digital identities –
 - Some suggest a coordinated front between governments, businesses and industries
 - Estonia has had a digital society for nearly 20 years
- Implementation of legislation where it is lacking –
 - Caribbean region in particular still lags behind much of the world



Questions? Comments?



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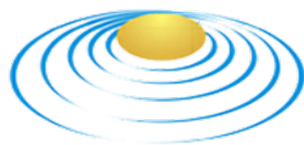
***DRIVERS OF CHANGE: trade agreements,
technology and the future of trading
legal services across borders.***

Dr. Jan Yves Remy

(International Trade Consultant, Saint Lucia)

Drivers of Change:
Trade agreements, **technology** and the future
of trading legal services across borders

Jan Yves Remy



Shridath Ramphal

C E N T R E

International Trade Law, Policy and Services

Overview

- Drivers of change: The future of legal services is here
- What the trade agreements have to say
- The future agenda for agreements trade in legal services

Some drivers of change

- Globalization
- Technology
- Changing buyers and buyer behavior

Globalization

- Top US and UK law firms benefit most from globalization

– Es
fo



Globalization

- But business relationships are changing ...
 - Growing importance of emerging markets: China, India, Indonesia, Mexico
 - More collaboration with local law firms

Zhong Lun Law Firm



Zhong Lun was founded in 1993 as one of the first private partnership firms in China. Since then, Zhong Lun has emerged as one of China's leading law firms with approximately 800 lawyers in offices in Beijing, Shanghai, Shenzhen, Guangzhou, Wuhan, Chengdu, Hong Kong and Tokyo.

Zhong Lun was named by Chambers Asia as National Law Firm of the Year for China for 2011

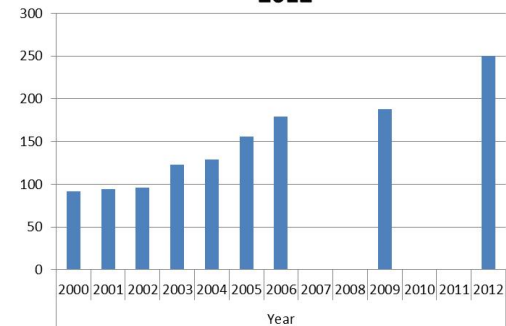
Major Practices Areas include:

- Banking and Finance
- Competition/Antitrust
- Dispute Resolution
- Foreign Direct Investment
- Intellectual Property
- Mergers and Acquisitions
- Real Estate and Construction
- Structured Finance and Securitization
- Bankruptcy and Corporate Reorganization
- Corporate Finance and Capital Markets
- Employment
- International Trade and WTO
- Private Equity and Venture Capital
- Technology, Media and Telecommunications
- Securities
- Tax
- Private Client

54



Number of Foreign Law Firms In China, 2000-2012



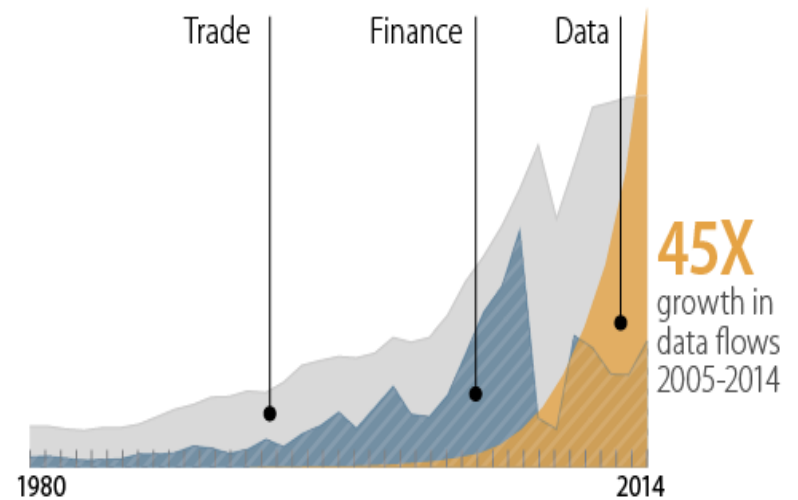
Journal of Political Risk

Technology

- Free flow of data underpinning digital economy:
 - Digital trade
- Different types of data
 - Personal data (birth dates, passport numbers)
 - (Confidential) Business data (payrolls etc)
 - Social data
 - Public data (census and scientific data)
 - Machine to machine communication
 - Meta data

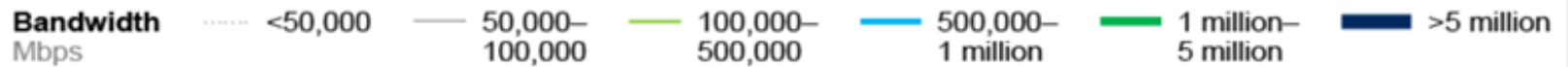
Value of digital trade

- Value of digital trade and new technologies
 - Mckinsey: \$26 tn (2012); \$85 tn (2025)
- Cross-border data flows increased 2008-2013

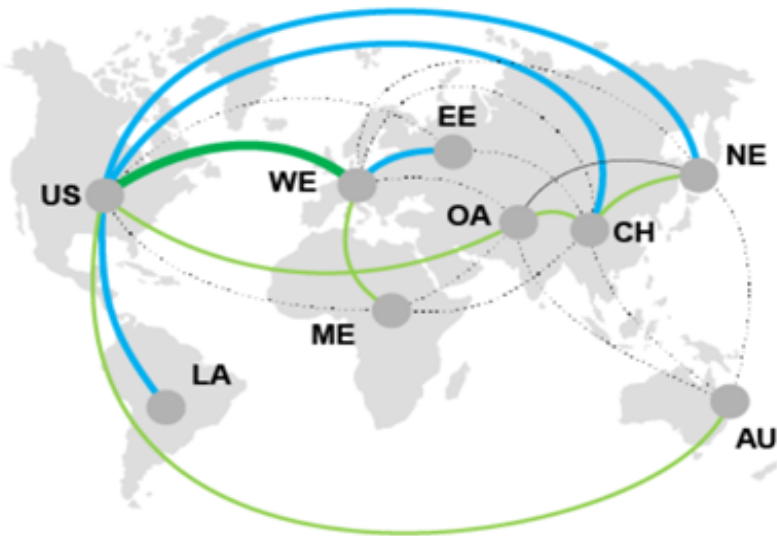


Regions	US	LA	ME	WE	EE	CH	NE	AU	OA
	United States and Canada	Latin America	Africa and Middle East	Western Europe	Eastern Europe and Central Asia	China region	Northeast Asia	Australasia	Other Asia

Data and communication flows (total cross-border bandwidth)



2008
100% = 29 million Mbps



2013
100% = 201 million Mbps

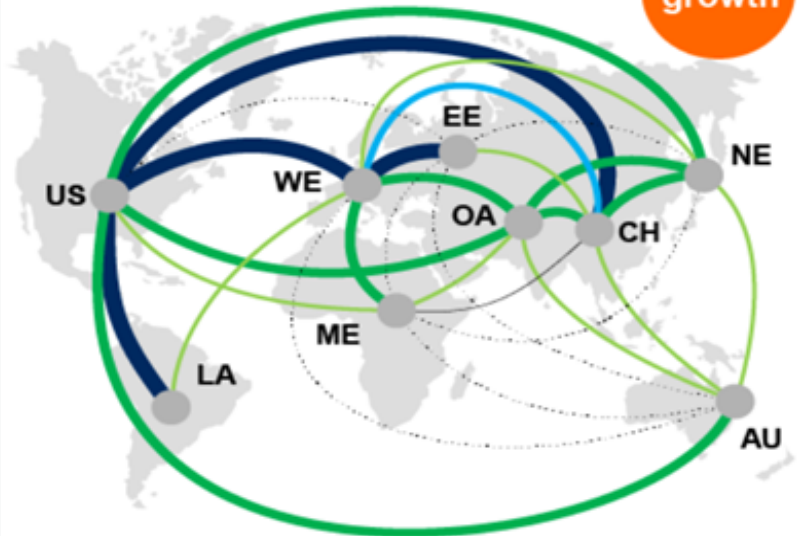
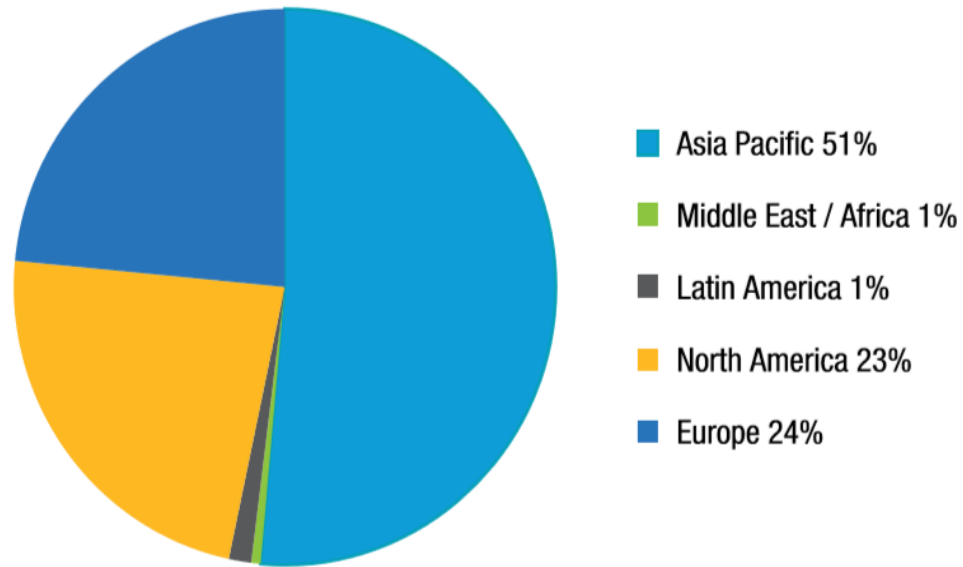


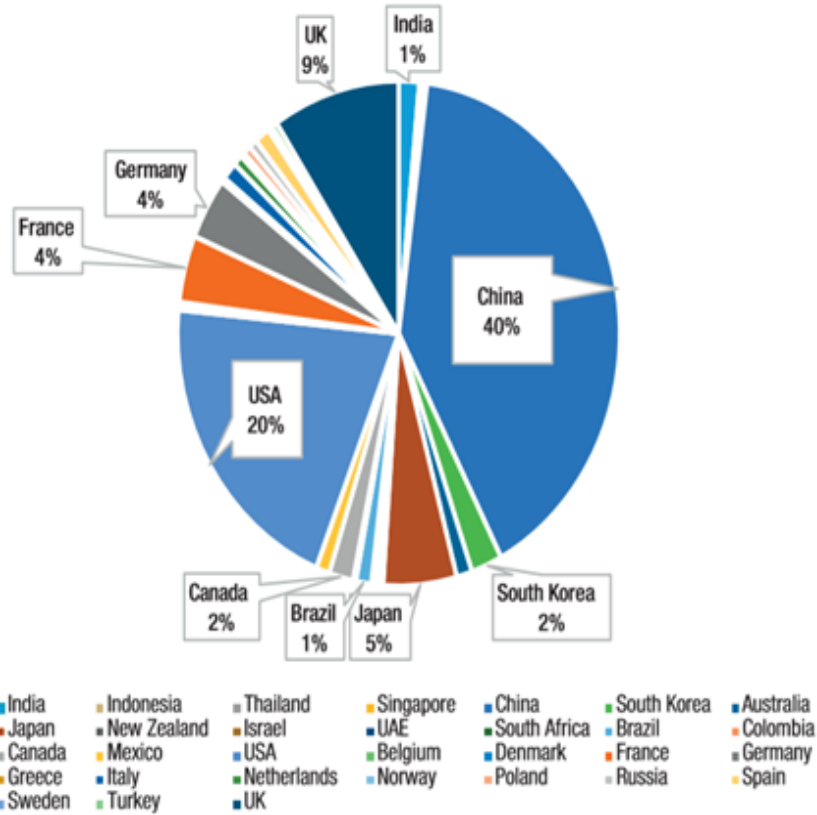
Figure 3: Regional Shares in Cross Border E-Commerce Sales in 2015



Source: E-Marketers; Paypers; ACAPTURE (2015)-various country reports

Figure 4: Country Shares in CBEC Sales in 2015

Share in Cross Border E-Commerce Sales in 2015



Key technologies

- High speed internet
- Digital/Data-related:
 - Advanced data storage and processing technology
 - Automation and Artificial Intelligence

New trends in legal sector

- Legal industry slow to utilize technology



"It's just that I've changed! I've grown! And you're still stuck in the past!"

New trends in legal sector

- Technology provides opportunities and is changing all aspects of the legal profession:
 - enabling suppliers to become more efficient at procedural and commodity work
 - reducing costs by replacing salaried humans with machine-read or artificial intelligence (AI) systems
 - creating ideas for new models of firm and process innovation (contracting/outsourcing)
 - generating work around cybersecurity, data protection and new technology laws (including use, crime, corruption, online purchase rights, copyright, blockchain)
 - supporting changes to consumer decision-making and purchasing behaviours

New trends in legal sector

- Schools/training:
 - University courses:
 - <https://hls.harvard.edu/dept/academics/programs-of-study/law-science-and-technology/>
 - National Bar Associations Training:
 - American Bar Association's Legal Technology Resource Center
 - All new law society reports on future technology
- Courts:
 - e-filing/e-docs
 - on-line dispute settlement
 - case management

New trends in legal sector

- Lawyers must follow the new economy

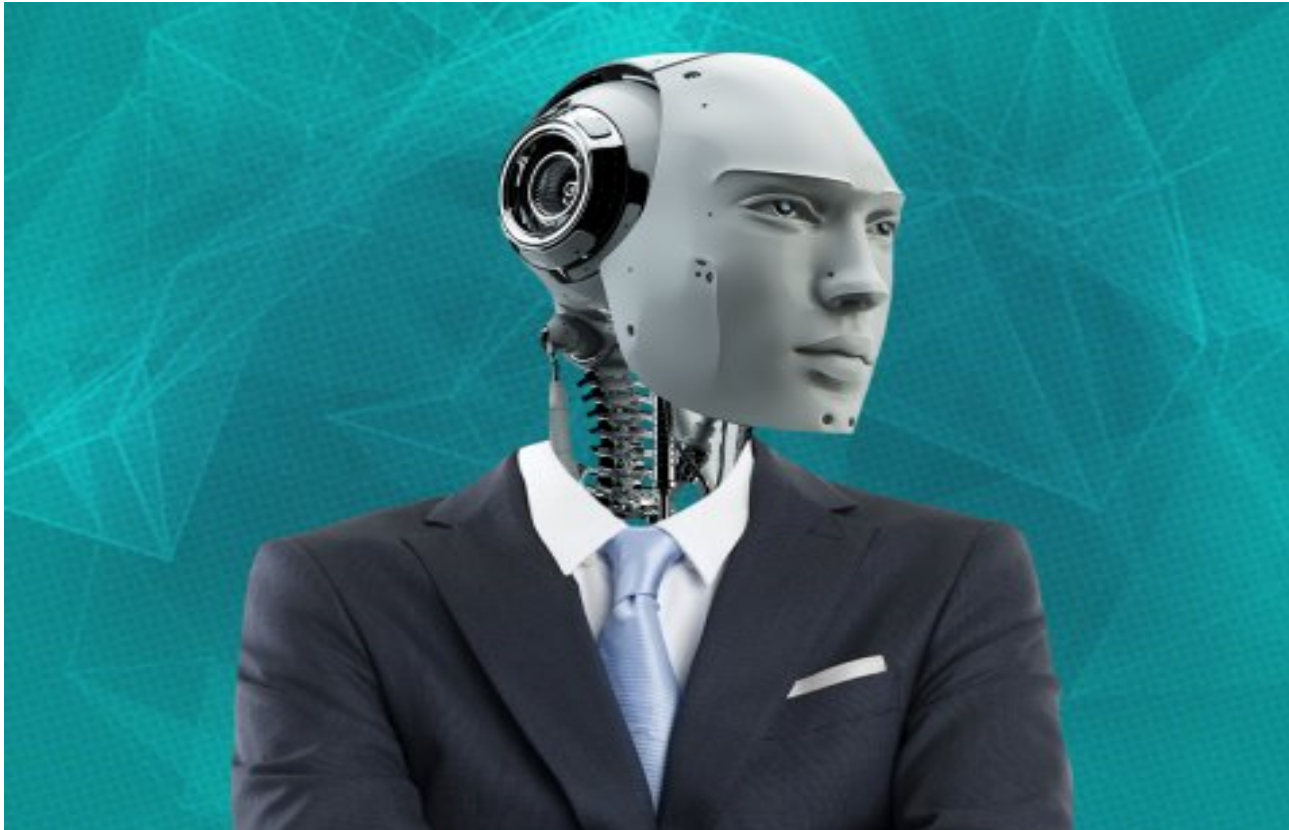
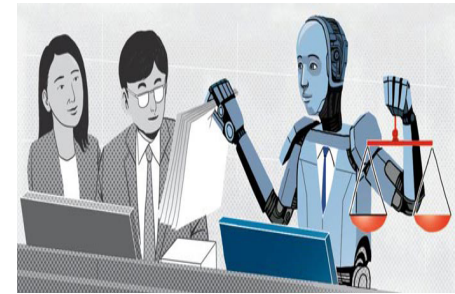


The Evolution of Lawyers

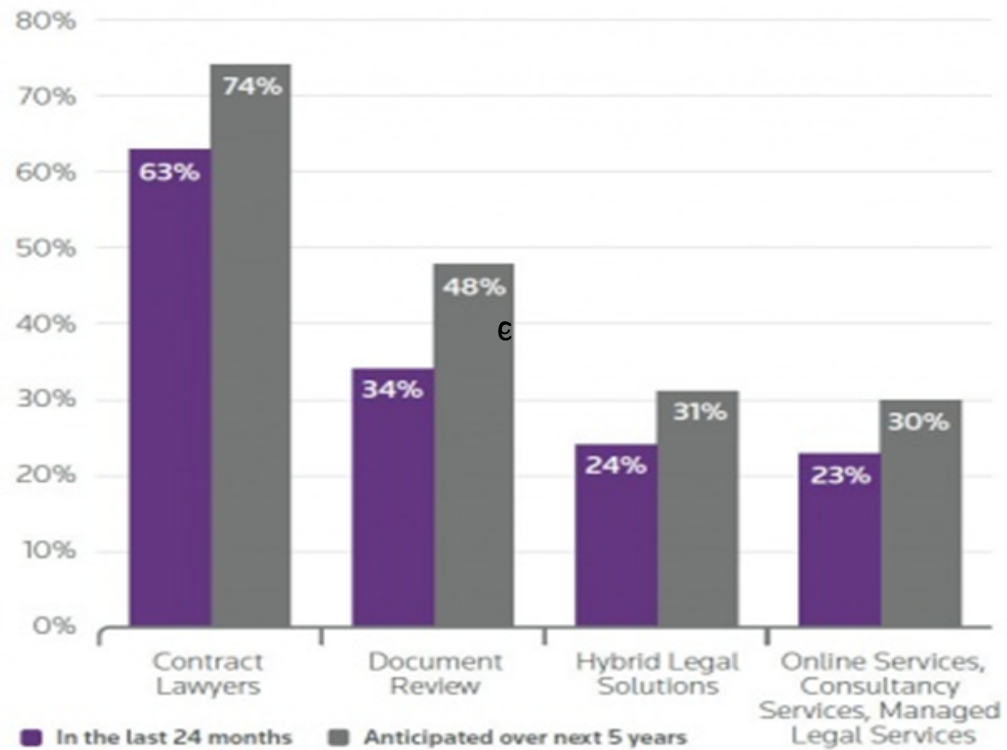
New trends in legal sector

- New services:
 - Contract lawyers
 - Online legal services
 - AI related services*: review and search of documents; due diligence; contract review and management; predicting legal outcomes; automating divorce
 - Social media
 - Cross border alliances/outsourcing
 - Supporting services: blockchain/digital payments

ASK ROSS: <https://rossintelligence.com/ross/>



USE OF DIFFERENT LEGAL SERVICES BY CLIENTS SURVEYED

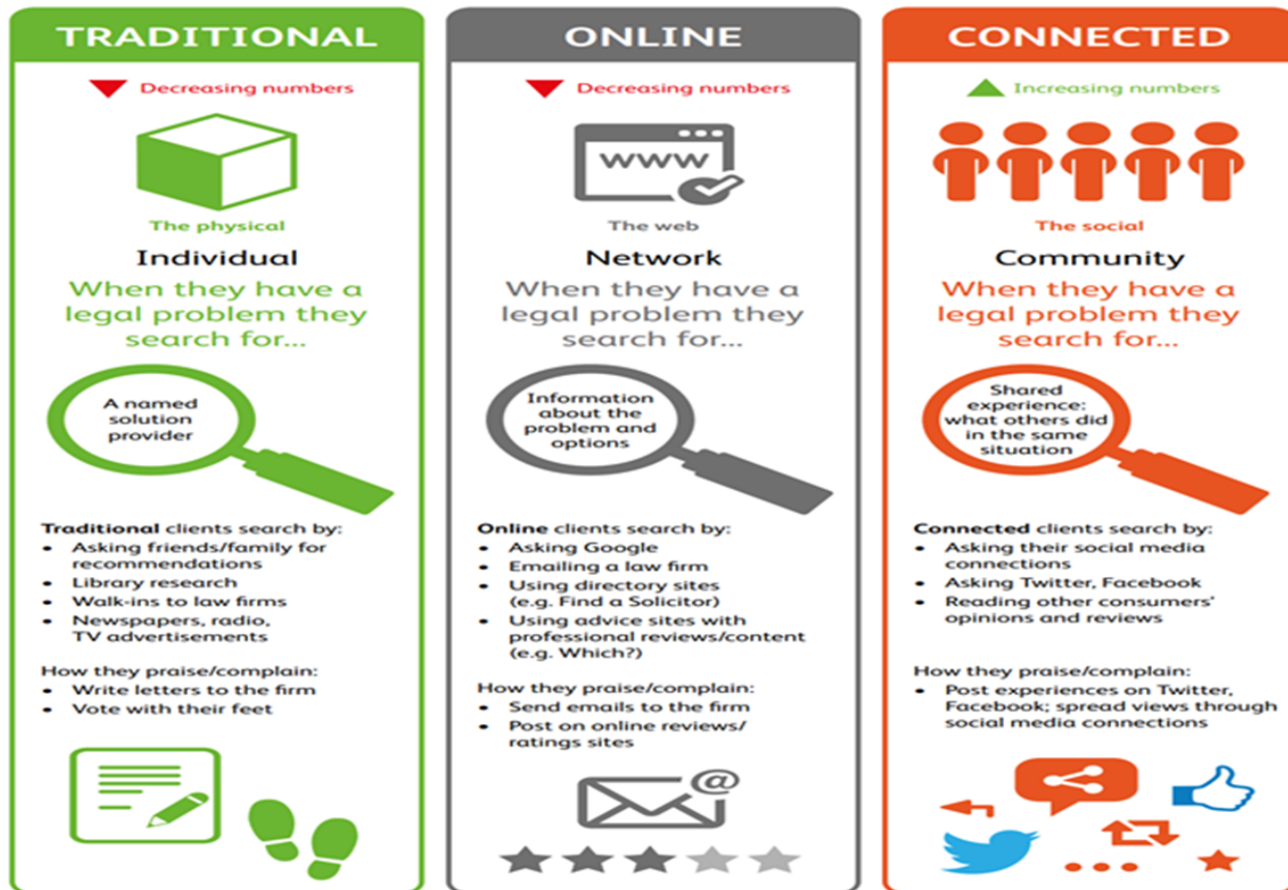


Source: A Revolution in Legal Services, <https://blogs.thomsonreuters.com/answeron/revolution-legal-services/>

Changing Buyers

- Must be more responsive, personalized and transparent:
 - more choice: especially for in-house counsel
 - beyond traditional expertise
- Greater digital divide:
 - more people with less access and less means
 - better pro bono/technology-supported opportunities
- Understanding Generations Y and C (75% of workforce and increasingly connected)

Figure 8: How clients are changing



CARICOM (Technology) Profile

- Low internet penetration
 - ICT broader framework
- Attitude of lawyers to technology
- New opportunities and new legal offerings online (regulated?)
- Role of bar associations
- Courts leading the way

CCJ: Embracing technology





Services

Our software is tailored to the specific requirements of Caribbean courts and meet and exceed international best practice for digitally enhanced courts. APEX is supported by a region-wide network of technical services providers to ensure that local resources are readily available for national courts that adopt the

"The availability of software tailored for Caribbean; the development of a region wide network of support; and the availability for training for all levels of users, together represents a significant opportunity and major step forward for courts in the Caribbean to better leverage information and communications technology."



IMPROVED ACCESS
TO JUSTICE IN THE
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PROJECT PARTNERS

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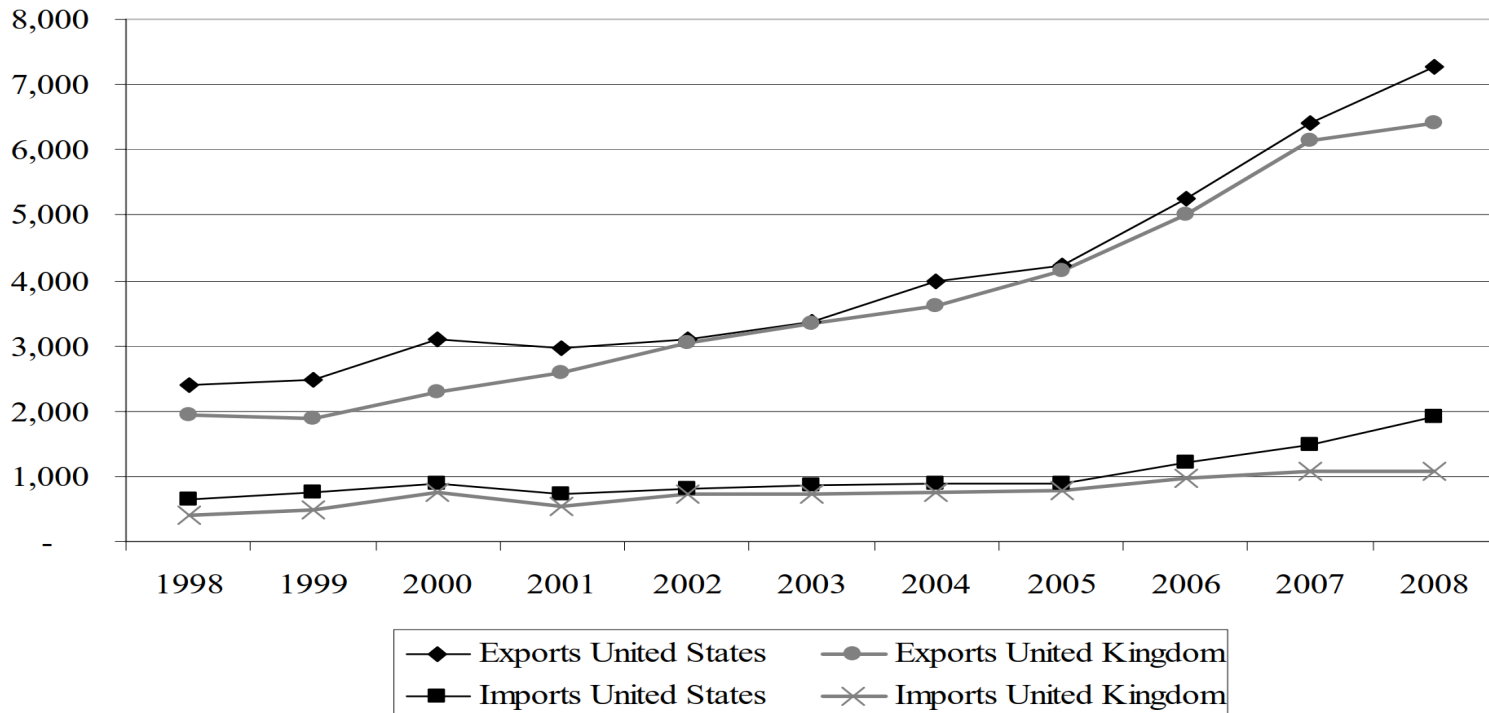
A 5-YEAR REGIONAL JUSTICE SECTOR REFORM
PROJECT FUNDED BY THE GOVERNMENT OF
CANADA

Cross border Trade in legal services

- Incidence
- World Trade Organization and the General Agreement on Trade in Services (GATS)
- The new agreements
- CARICOM Regime

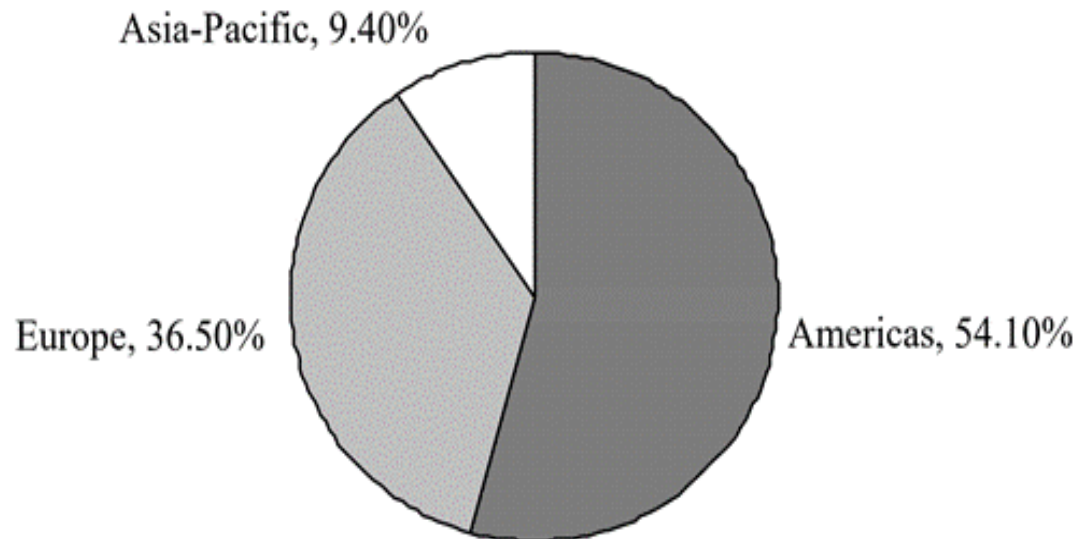
Difficult to track, but steady growth

Chart 3: United States and United Kingdom - Exports and Imports of Legal Services (BOP basis), 1998-2008
US\$ million



Market share

Chart 2: Global Legal Services Market Segmentation: 2008
Percentage share by value



WTO: GATS



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WTO: GATS: The Floor

- Multilateral (all 164 WTO Members)
- Progressive liberalization of services (not deregulation)
- Basic (unconditional) obligations:
 - MFN (Most Favoured Nation) Treatment
 - Transparency
 - Recognition
 - Domestic regulations
- Conditional obligations
 - Market access and national treatment

Common barriers to services trade

- Discriminatory
 - nationality requirements
 - residency and local presence requirements
 - quotas, ENTs
 - government procurement restrictions
 - FDI requirements
 - temporary entry subject to labour market tests
 - partnerships, hiring of locals
- Non-discriminatory
 - licensing/qualification requirements
 - restrictions on fee-setting and advertising
 - restrictions on incorporation

Modes of supplying services

- 1) Cross-border: send legal opinion by email online to foreign client
- 2) Consumption abroad: Jamaican client moves for arbitration
- 3) Commercial presence: US law firm sets up local branch
- 4) Temporary movement of persons: lawyer travels to advise

Definition

- Definition: advisory and representation services as well as all the ~~activities relating to the administration of justice (judges, court clerks, public prosecutors, state advocates, etc.)~~. (GATS: Article I:3(c))
- Classification: UN CPC (W/120)
 - 1. Business Services**
 - Professional services: **Legal**, accounting & auditing, computer & related, R&D; advertising, management consulting, etc
- Issues:
 - current classification does not capture how services are traded but no agreement on how should be replaced

CPC Classification

- Legal advisory and representation services concerning criminal law
- Legal advisory and representation services in judicial procedures concerning other fields of law
- Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc
- Legal documentation and certification services
- Arbitration and conciliation services
- Other legal advisory and information services

Alternative classifications

- host country law (advisory/representation)
- home country law and/or third country law (advisory/representation)
- international law (advisory/representation)
- legal documentation and certification services
- other advisory and information services

Specific Commitments

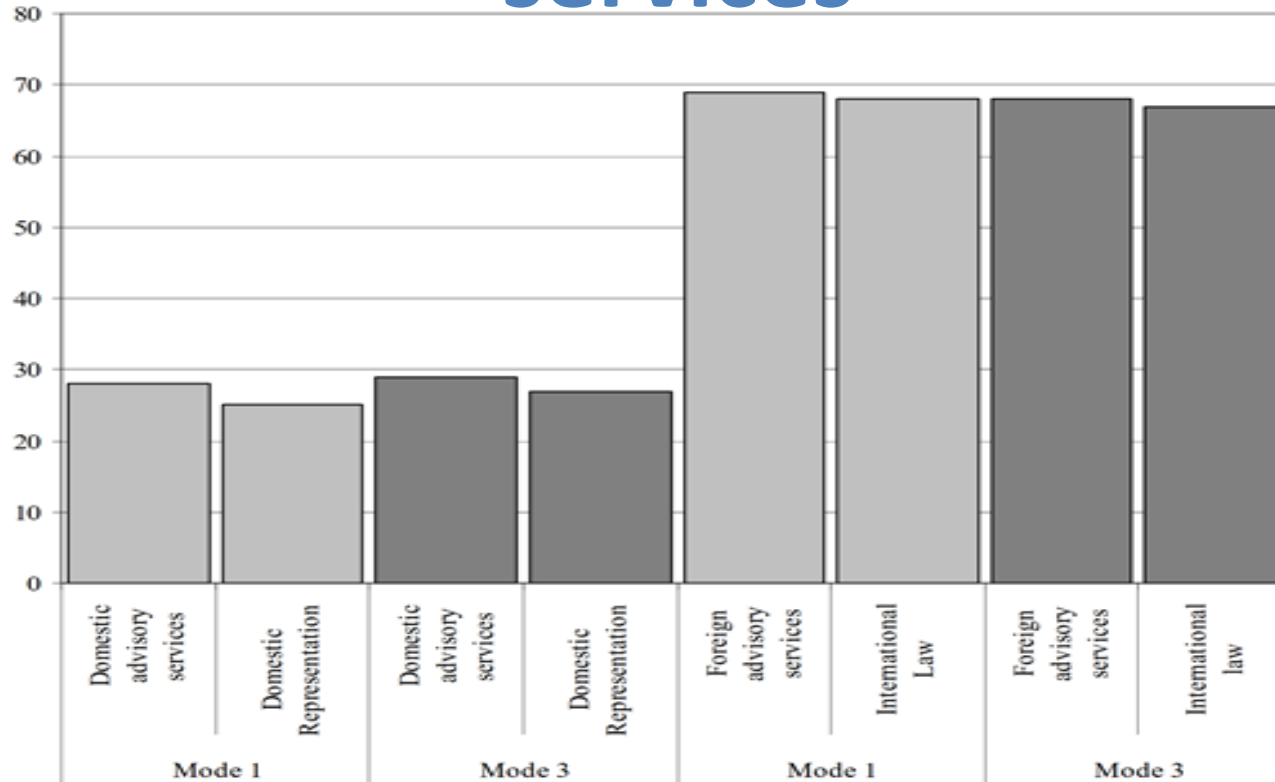
- Schedule of Specific Commitments
- Organized around modes of supply and specific sectors
- Positive/opt-in approach to market access and national treatment obligations
- Additional MFN exemptions

GATS Legal Services Commitments

- 76 countries made commitments
- Modest level of restrictions:
 - Exclusion of host country law: most in international and home country advisory
 - Low commitments in Mode 4: fly-in-fly-out and independent professionals
 - High domestic regulatory barriers

Broad commitments in legal services

Chart 5: Overview of GATS commitments



Source: WTO Secretariat

Main trade barriers

- **Market Access:**
 - Restrictions on type of legal entity (to sole proprietorship or partnerships and excluding limited companies)
 - Nationality and citizenship requirements
 - Limitation to geographic areas
 - Equity limitations
- **National treatment:**
 - Residency requirements
 - Local education requirements
 - Limited recognition of foreign degrees to locals studying abroad
 - Requirement to take active part in business
- **Domestic regulations***
 - Licensing and qualification requirements

CARICOMitments

Country	Host country law	International law	Home country law	Modes (other)
Antigua and Barbuda		X (advisory)	X (advisory)	All
Barbados				3 and 4 (documentation /certification services)
Guyana	X (representative and advisory)	X (representative and advisory)	X (representative and advisory)	All
Jamaica		X (advisory)	X (advisory)	All
Trinidad and Tobago		X (advisory)		



Example: Jamaica



II. SECTOR-SPECIFIC COMMITMENTS			
1. BUSINESS SERVICES			
A. <u>Professional Services</u>			
a) Legal services: consultancy in home law of the service provider are international law. (CPC 861)	1) None 2) None 3) None Local certification required: Attorneys from other jurisdictions cannot practice in Jamaica without acceptance by Jamaica Bar Association. 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section.	

Bilateral and Plurilateral Agreements

TPP: Trans-Pacific Partnership (12)



TiSA (WTO): Trade in Services Agreement (23)



EPA: EU and CARIFORUM



CARIFORUM/EU EPA

- GATS basic obligations
- Special rules on movement of natural persons for business:
 - Key personnel and graduate trainees
 - Contractual service suppliers and independent professionals
- Encouragement of exchanges on mutual recognition
- Status of implementation/results?

New frontier arrangements: WTO- plus

- More liberalization: no local presence requirements
- New services/classification
- Deeper sectoral commitments:
 - Negative lists (MA/NT)
 - Ratchet and standstill clauses
- More regulatory cooperation/harmonization of standards/qualifications
- Specific rules on temporary entry of persons and Professional/Legal Services

CPTPP Legal Annex

- Mutual Recognition of professional qualification
- Best practice regulations for **foreign lawyers**
- Movement of natural persons
- Transparency

Regional Agenda

- CSME Services regime
- Specific provisions on: Articles 46/80 of RTC
 - Removal of restrictions on skilled community nationals
 - Mutual recognition
- Ongoing agenda
 - Regional policy on Professional Services (2013)
 - Draft Professionals Bill

Future agenda for Trade Agreements in Legal Services

- Cybersecurity and cybercrime
- Online consumer protection
- Protection of personal information/Privacy:
 - EU General Data Protection Regulation
- Protection of source code
- Intermediary liability
- Authentication and e-signatures
- E-commerce and infrastructure development
- Digital divide

Thank you





15TH REGIONAL LAW CONFERENCE



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IMPACT Justice Model Legal Profession Bill

IMPACT JUSTICE Model Bill for a Legal Profession Act

15th Regional Law Conference

IMPACT JUSTICE

- Improved Access to Justice in the Caribbean (IMPACT Justice) is a five-year regional civil society justice reform project funded by the Government of Canada.



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Canada 

Objectives

What are the broad objectives of the bill?

Objectives

- To facilitate harmonization of the regulation of legal professional practice across the Caribbean Community (CARICOM).

Objectives

- To boost user confidence and protect consumers of legal professional services and the general public by:
 - 1. Providing a scheme for continuing legal professional development (CLPD);
 - 2. providing improved accounting rules; and
 - 3. more transparent disciplinary procedures which include the inclusion of lay persons as members of the legal professional disciplinary committee.

Existing Framework

- Anguilla Legal Profession Act, 2016
- Antigua and Barbuda Legal Profession Act, 2008
- British Virgin Islands Legal Profession Act 2015
- Dominica Legal Profession Bill
- Grenada Legal Profession Act, 2011
- Montserrat Legal Profession Act, 2014
- Saint Kitts and Nevis Legal Profession Act, 2008
- Saint Lucia Legal Profession Act, 2008

Core Elements of Bill of Note

1. Professional Legal Companies
2. Accounting Rules
3. Powers of Bar Council
4. Disciplinary Procedures
5. Continuing Legal Education
6. Advertising
7. Insurance and Compensation Fund

PROFESSIONAL LEGAL COMPANIES

Professional Legal Companies

- Can be established by one or more attorneys-at-law each of whom holds a valid Practising Certificate.
- Established for the purpose of providing legal services.
- Must have a valid Certificate of Recognition issued by the Bar Council.
- Liability for acts or omissions shall be attributed to the professional legal company or its attorneys-at-law individually or jointly as the case may be, as provided by law.

Professional Legal Companies: Conditions

1. The company shall be incorporated as a company limited by shares within the meaning of the Companies Act and be in good standing with the Registrar of Companies.
2. The Articles of Incorporation shall provide that the principal object of the company is the provision of professional services of the sort provided by an attorney-at-law
3. All Shareholders and directors must have an attorney-at-law who holds a valid Practising Certificate.
4. letterhead and promotional material for the company shall clearly indicate it is a company.

Professional Legal Companies: Conditions

5. Must obtain and maintain professional indemnity insurance against professional liability
6. Articles of Incorporation must provide for the manner in which shares of the shareholder who dies or no longer holds a Valid Practising Certificate are to be disposed of.
7. Bar Council may require further conditions on a particular case.
8. The Council may provide further rules after consulting with the Chief Justice.

Professional Legal Companies: Certificate of Recognition

- Issued by Bar Council on an annual basis
- May be revoked or suspended for failure to comply with the Act and other legislation such as the Companies Act, Social Security Legislation and Income tax act.
- Holding out or representing that a company is Failure to have a Certificate of Recognition is a offence:
 - Company may be fined \$50,000.00 on summary conviction
 - Directors and officers fined \$25,000.00 or imprisonment for one year or both on summary conviction.

ACCOUNTING

Accountant's Report

- Accountant's Report due each June for the year immediately preceding.
- The Accountant's Report must be prepared by a chartered accountant.
- The Accountant's Report certifies that the Attorney-at-law is complying with the Accounting Rules.
- The Accountant may report that the attorney-at-law is in compliance with the Rules or he may qualify the rules.

Accounting Rules: What should be placed in the Client Account.

1. Trust money
2. Money that is part trust money and part money belonging to the attorney; and
3. Money belonging to the attorney for the opening and maintaining of the account.

Accounting Rules: Trust Account Records

- Attorneys must:
 1. compare the total of the balances shown by the clients' trust ledger accounts of the liabilities to the clients, including those for whom trust money is held in the trust account, with the cash account balance;
 2. prepare a reconciliation statement showing the cause of the difference, if any, in the accounts
 3. reconcile that cash account balance in relation to the comparison with the balances shown on trust account bank pass books or statements and money held elsewhere;

Accounting Rules: Books required to be kept

1. book of original entry showing date of receipt and the source of the money in trust for every client and identifying the client concerned.
2. A book of original entry showing every disbursement out of money held in trust.
3. A Client trusts ledger
4. Records of transfers between client trust accounts
5. Book of original entry identifying money other than trust money showing date of receipt and source.
6. A fees book or chronological file of copies of all bills for fees charged by the attorney
7. Register of all certificates of title, wills valuable securities held by the attorney on behalf of the client.

Accounting Rules: Books to be kept

- Books must be kept for a period of 9 years
- The Attorney must keep a copy of all paid cheque from trust account for a period of 2 years and shall arrange for the bank to hold such copies.
- Books may be held in electronic format

Accounting Rules: Interest

- Attorney must account for interest where he or she holds more than \$200,000 on the Client Trust Account on behalf of a client for more than 30 days.
- Less than \$200,000 where fair and reasonable.
- Interest is payable whether or not client account is in fact an interest bearing account.
- Client may dispute interest payable by applying to the Bar Council and the Bar Council shall issue a certificate as to the interest payable.

POWERS OF THE BAR COUNCIL

Intervention by Bar Council

1. Attorney at law found guilty for an offence involving dishonesty or improper conduct in relation to money or other property of any client
2. The attorney-at-law is of unsound mind or by reason of his or her ill health client accounts are not being managed properly.
3. The employee or agent of the attorney-at-law has stolen client property or records are at risk of being destroyed
4. The attorney-at-law has ceased to practice, or has ceased to reside in the jurisdiction and has failed to wind up his or her practice.
5. Attorney-at-law adjudged a bankrupt and no provision been made with respect to client property..

Powers of the Bar Council

- Powers include:
 1. Receiving money held by the attorney-at-law
 2. Obtaining client documents upon execution of search warrant
 3. Obtaining a court order that mail be redirected to the Bar Council.

DISCIPLINE

Disciplinary Committee

Consists of:

1. 12 attorneys attorneys 10 of whom shall have a minimum of 10 years standing and
2. 2 lay persons appointed by the Chief Justice after consultation with recognized non-governmental organisations.

Disciplinary Committee

- Sits in two Panels:
 1. Preliminary Assessment Panel (1 lay person and 2 attorneys)
 2. Hearing Panel (1 lay person and 4 attorneys)

Complaint

- Application supported by affidavit
- Limitation Period is 6 years

Who can Make a Complaint

1. Client
2. Any other person with leave of the disciplinary committee
3. Registrar or any member of the Bar Council
4. The Court may direct the Registrar to make a complaint

Assessment

1. Preliminary Assessment Panel: hears complaint to determine if prima facie case.
1. Hearing Panel hears the substantive matter

Powers of the Committee

1. Verbal and written warnings;
2. Private or public reprimand to the attorney-at-law
3. Participation of the attorney-at-law in a CLPD programme
4. Delivery of documents
5. Fine an attorney-at-law an amount not exceeding \$5,000.00
6. Apology
7. Completion of a remedial programme
8. Restitution or compensation
9. Costs

Failure to Comply with Disciplinary Committee Order?

1. Commits an act of professional misconduct.
2. Disciplinary may make further penalties or refer to Chief Justice a report of its findings.
3. Court of Appeal shall hear the report and may order suspension or removal from the Roll.

Appeals

- The Bill makes no provision as to appeal.
- Attorney-at-law may apply to the Court of Appeal to be admitted to the Roll.

CONTINUING LEGAL EDUCATION

Accreditation Committee

Consists of:

1. Member of the Bar Council
2. 7 Others Persons (attorneys-at-law of more than 7 years standing, magistrates or judges, persons experienced in accreditation)

CLPD Programme

1. participating in courses, conferences, lectures, seminars, workshops or discussion groups physically or through electronic methods;
2. distance-learning courses where there is provision for the answering of enquiries or for discussion;
3. watching or listening to any multimedia, Internet-based, audio-visual, audio or video programme or material;
4. writing legal books or articles

CLPD Programme

5. preparing, teaching in, or acting as a subject-coordinator or an examiner for, any course or programme that the Accreditation Committee may approve on a case by case basis;
6. participation in the work of committees which are engaged in the promotion or regulation of the legal profession, the maintenance of professional standards and ethics of the legal profession and client welfare;
7. participation in the development of specialist areas of law and practice by attending meetings of specialist committees or working parties of relevant professional or other competent bodies;
8. participation in researching legal articles or speeches;

CLPD Programme

9. teaching legal courses;
10. delivering addresses on legal topics;
11. obtaining other professional qualification;
12. participation in pro bono legal services including legal aid and voluntary work for charitable organisations.

Procedure

- Each year attorney-at-law must submit by December 31 details of the CLPD Courses taken
- The Committee shall report on its assessment of each attorney-at-law's credits
- Committee may order further courses be taken
- Attorney-at-law may apply for extensions to comply
- Bar Council may review decisions of the Committee not to allot credits
- Attorney-at-law may appeal to Court of Appeal any decision of Bar Council
- Registrar may withhold the issue of a practicing Certificate for attorney-at-law deemed not in compliance

Credits Required

- Attorneys under 3 years call require 16 credits
- All other attorneys require 6 credits
- Credits may be carried forward
- Attorney-at-law may apply to the Committee in advance for credit with respect to courses or activities held outside of the jurisdiction.

It's allowed!

ADVERTISING

1. Not false in any material particular;
2. Not misleading or deceptive or likely to mislead or deceive or create an unjustified expectation
3. Is not vulgar sensational or of a frequency likely to adversely affect the attorney-at-law
4. Does not claim superiority of the attorney-at-law over any other attorneys-at-law

Conditio
law
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Conditions

5. Does not make reference to any judicial appointments held by the attorney-at-law
6. Does not name a member of staff who is not an attorney-at-law
7. Does not claim that attorney-at-is a specialist
8. Does not make any comparison or criticism in relation to fees charged by other attorneys-at-law or the quality of services provided

INSURANCE AND COMPENSATION FUND

Insurance

- Mandatory Insurance
- Prescribed minimum level of insurance
- Must provide coverage for indemnity for errors, omissions and negligent acts.

Compensation Fund

- Extra Gratia Basis
- Loss of client property as a result of an act or omission of an attorney-at-law (and employees) or loss as a result of the exercise of the Bar Council's Powers of Intervention
- Administered by Bar Association

Compensation Fund

- May compensate due to loss as a consequence of dishonesty of an attorney-at-law
- Hardship grant may be made to a person who complains that an attorney-at-law has failed to account for trust money and that person will likely suffer hardship as a consequence.



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