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Maintaining the Dignity of the Profession: An International Perspective on Legal Advertising and Solicitation

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Maintaining the Dignity of the Profession: An International Perspective on Legal Advertising and Solicitation

I. Introduction

Recent controversy concerning the low public perception of lawyers has forced the legal profession throughout the world to confront an identity crisis. Today, lawyers are torn between two objectives — they want to advertise and maintain a healthy, profitable business, yet they have committed themselves to preserving the integrity of the profession by not sensationalizing the law in the media.

Increasingly, lawyers have turned to advertising in reaction to the increased competition among attorneys for business. The reasons for this competition include a dramatic increase in the number of lawyers throughout the world¹ and competition with other professions for business.² There are simply not enough clients, and law firms are struggling to remain profitable.

To survive in the legal profession, lawyers have launched large-scale advertising campaigns, and have, in effect, become sales people of the profession.³ In 1986, U.S. attorneys spent \$405 per capita on legal

1. *Tougher Times Force Accountants and Lawyers to Hawk Their Wares*, NAT'L BUS. REV., Feb. 14, 1992, at 28; Don Mitchell, *Much Ado About Nothing?*, BC BUS., June, 1986, at 46. The number of lawyers in Canadian British Columbia tripled in 25 years. Tony Mauro, *Lawyers' Top Topic: Public's Perception*, USA TODAY, Aug. 10, 1993, at 3A. A survey conducted in the United States found that 73% of those questioned agreed that there were too many lawyers in the country. *Id.*

2. A.H. Hermann, *Legal Profession 4; Solicitors Adapt, So Must the Bar*, FIN. TIMES, Oct. 15, 1987, at IV. It was reported as far back as 1987 that accountants were taking the place of lawyers as the advisor of the businessman. *Id.*

3. Clare Sambrook, *Marketing Reports on the Promotion of Legal Firms*, MARKETING, Apr.

advertising,⁴ and no doubt, this figure has risen in recent years. The National Law Firm Marketing Association now helps firms sell their services.⁵ This year, the American Bar Association budgeted \$1,000,000 for marketing alone.⁶

Legal advertising has had both positive and negative effects on the profession. On the positive side, legal advertising has aided the general public by making it more aware of legal issues and the availability of legal services.⁷ If done tastefully and professionally, legal advertising may provide a practical service to people in search of legal advice. The public needs information about the services that attorneys have to offer.⁸ For instance, recent statistics show that two out of three people do not get a lawyer when they need one.⁹

On the negative side, the growth of legal advertising has caused the public to lose respect for lawyers.¹⁰ Lawyers have traditionally been seen as distinguished professionals, occupying a loftier social and professional position than the average business person. In reality, however, lawyers sell a service,¹¹ and the public has become increasingly disenchanted with attorneys who advertise their services in an aggressive and misleading manner.

This Comment will explore recent changes in legal advertising in the United States and other countries. Section Two focuses on legal advertising in the United States, emphasizing Supreme Court cases on the topic. Section Three examines legal advertising in Great Britain. Section Four explores how lawyers in Australia and New Zealand solicit prospective business. Section Five addresses problems confronting the Canadian legal profession, which faces growth in advertising similar to that in the United States. The attitudes of German and Austrian lawyers concerning advertising is examined in Sections Six and Seven, and Section Eight details the approaches Chinese lawyers take towards advertising and solicitation.

11, 1991, at 23.

4. Mitchell, *supra* note 1, at 48. In comparison, in 1986 Canadian lawyers spent \$257 per capita on legal advertising. *Id.*

5. Ross H. Fishman, *Law Office Management*, NAT'L L.J., Apr. 26, 1993, at 16.

6. Mauro, *supra* note 1, at 3A.

7. Philip Rawstorne, *Marketing and Advertising: Why Advertising Could Become a Legal Requirement*, FIN. TIMES, Aug. 10, 1989, at 14.

8. Geoffrey Roberson, *There's More To a Lawyer Than His Fee*, AUSTL. FIN. REV., Aug. 7, 1990, at 17.

9. Mitchell, *supra* note 1, at 48.

10. Curtis J. Sitomer, *Courting Clients: What Limits on Ads for Lawyers?*, CHRISTIAN SCI. MONITOR, Feb. 25, 1988, at 19.

11. Rawstorne, *supra* note 7, at 14.

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II. The United States

Nowhere is legal advertising as prevalent as in the United States. The legal profession in the United States spent more than \$102 million on television ads in 1991, twenty times more than the amount spent in 1980.¹² Lawyers not only advertise on television, but ads can also be found in newspapers, magazines, phone books, billboards, and on the radio.

A. Supreme Court Cases

Legal advertising in the United States stems from the firm belief in the principles of capitalism and rights embodied in the U.S. Constitution. In regards to the Constitution, advertising is a form of speech protected under the First Amendment.¹³ In two landmark decisions, the United States Supreme Court affirmed the right of lawyers to advertise. In *Bates v. State Bar of Arizona*, the Supreme Court held that legal commercial speech is protected under the First Amendment and cannot be prohibited by state disciplinary or professional codes.¹⁴ In *Bates*, an attorney placed an advertisement in a daily newspaper publicizing the services of his clinic and the fees that the clinic charged.¹⁵ The Arizona Supreme Court determined the attorney's newspaper advertisement to be in violation of an Arizona statute that prohibited lawyers from publicizing their services through advertisements in the media.¹⁶

In reversing the decision of the Arizona Supreme Court, Justice Blackmun noted that "[a]dvertising, though entirely commercial, may often carry information of import to significant issues of the day."¹⁷ Justice Blackmun recognized that originally, the ban on legal advertising was more a rule of etiquette than a rule of ethics.¹⁸ Blackmun concluded that the absence of legal advertising would portray the

12. Philip Hager, *Movement Grows to Rein in Lawyer Ads*, L.A. TIMES, Feb. 22, 1993, at A3. The survey was performed by the Television Bureau of Advertising. *Id.*

13. U.S. CONST. amend. I. *See Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

14. *Id.*

15. *Id.* at 354.

16. *See* Disciplinary Rule 2-101 (B) incorporated in Rule 29 (a) of the Supreme Court of Arizona, ARIZ. REV. STAT. ANN. § 17A (1976). This rule reads:

A lawyer shall not publicize himself, or his partner, or associate, or any other lawyer affiliated with him or his firm, as a lawyer through newspaper or magazine advertisements in the city or telephone directories or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf.

Id. *See Bates*, 433 U.S. at 355. The Arizona Supreme Court upheld the bar committee's decision that the lawyer had violated the rule. *Id.*

17. *Bates*, 433 U.S. at 371.

18. *Id.*

profession as unwilling to reach out and serve the community, unwilling to inform people about the legal services available to them.¹⁹

Noting that abuse does occur, Justice Blackmun recognized the need to impose restraints on false, deceptive, or misleading advertising.²⁰ However, he went on to state that “[f]or every attorney who overreaches through advertising, there will be thousands of others who will be candid and honest and straightforward.”²¹

While opening to some extent the legal profession in the United States to a new area of marketing, the Supreme Court’s holding in *Bates* applied only to legal advertisements in newspapers.²² The Supreme Court had the opportunity to consider another form of legal advertising, direct mail solicitation, in *Shapero v. Kentucky Bar Association*.²³ In *Shapero*, an attorney wanted to send a letter to potential clients who were facing government foreclosure on their homes.²⁴ The letter encouraged clients to come to the attorney for free information on how they could keep their homes.²⁵ The Kentucky Attorneys Advertising Commission prohibited the mailing because it was in violation of a Kentucky statute that prohibited direct mail solicitation by attorneys.²⁶

In line with *Bates* and its progeny, the Supreme Court held that such advertising was permissible.²⁷ The Court held that a state cannot

19. *Id.* at 370. Justice Blackmun noted:

The absence of advertising may be seen to reflect the profession’s failure to reach out and serve the community: Studies reveal that many persons do not obtain counsel even when they perceive a need because of the feared prices of service or because of an inability to locate a competent attorney.

Id.

20. *Id.* at 383-84. The Court also predicted that electronic media would someday present special problems in advertising. *Id.*

21. *Bates*, 433 U.S. at 378.

22. *Id.* The Court described the scope of its holding as follows: “The constitutional issue in this case is only whether the state may prevent the publication in a newspaper of appellants’ truthful advertisement concerning the availability and terms of routine legal services.” *Id.* at 384.

23. See *Shapero v. Kentucky Bar Ass’n*, 108 S. Ct. 1916 (1988).

24. *Id.* at 1917.

25. *Id.* at 1919. The text of the letter read:

It has come to my attention that your home is being foreclosed on. If this is true, you may be about to lose your home. Federal law may allow you to keep your home by ORDERING your creditor [sic] to STOP and give you more time to pay them.

You may call my office anytime from 8:30 a.m. to 5:00 p.m. for FREE information on how you can keep your home.

Call NOW, don’t wait. It may surprise you what I may be able to do for you. Just call and tell me that you got this letter. Remember it is FREE, there is NO charge for calling.

Id.

26. *Id.*

27. *Shapero*, 108 S. Ct. at 1925.

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prohibit attorneys from sending solicitation letters that are truthful and not meant to be deceptive to people with known legal problems.²⁸ In response to the state's argument that regulating legal advertising would place a great burden on the state, the Court noted that it would be no more burdensome for state bar associations or groups to regulate targeted solicitation than it would be to monitor printed advertisements.²⁹

B. Regulations on Legal Advertising in the United States

While considered liberal by most countries' standards, legal advertising in the United States is regulated to some degree. The American Bar Association's Model Code of Professional Responsibility dictates that lawyers may advertise to educate the public concerning legal problems, but not simply to draw publicity to themselves.³⁰ Rule 7 of the ABA Model Rules of Professional Conduct governs the communication of lawyers' services and sets forth general guidelines for advertising and publicity.³¹

Rule 7.1 requires that a communication made about a lawyer be truthful and not deceptive or misleading.³² Rule 7.2 is more specific, listing the following as appropriate for a lawyer to reveal about himself in communications of any kind: the lawyer's name or firm name, address, telephone number, kinds of services, bases of fees, credit arrangements, foreign language ability, names of references, and the names of clients when prior consent is obtained.³³ The Rule also accepts specific modes of communication as proper, including the telephone directory, legal directory, newspaper, outdoor advertising, radio, television, and any other written or recorded communication.³⁴ In order to enforce this rule, every attorney who advertises must keep a record of the content and use of advertising.³⁵

28. *Id.* at 1924.

29. *Id.* at 1923.

30. MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 2-2 (1982). The relevant section reads:

Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers.

Id.

31. Fishman, *supra* note 5, at 16.

32. MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.1 (1992).

33. *Id.* Rule 7.2.

34. *Id.*

35. *Id.*

Rules on legal advertising are not limited to the manner in which lawyers market themselves, but also include how they refer to themselves.³⁶ Separate from the topic of general advertising is the issue of specialty. While lawyers may wish to publicize the fact that they have specialized knowledge in a particular field of the law, there is the danger that such information will be deceptive. For example, a lawyer could tout himself as an expert in criminal law and have no expertise in this area. Clients have little means to verify this information and deception results. Defining who is a "specialist" is often difficult. Accordingly, the American Bar Association places limitations on the practice of advertising "special knowledge."³⁷

Rule 7.4 of the ABA Model Code of Professional Conduct provides that lawyers may not state or imply that they are specialists in any particular field of the law unless they specialize in patent or Admiralty law.³⁸ This rule seems exceedingly restrictive and out of tune with the profession. Presently, the law is becoming increasingly specialized and many lawyers are building their practices around particular fields of the law. The inability to call oneself a specialist prevents an attorney from promoting his or her expertise to clients requiring specialized legal assistance.

While offering direct guidelines on advertising, these rules have proven to be problematic. The foremost problem has occurred because the legal profession has been responsible for both implementing and enforcing these rules since their inception. This has inevitably led to the lax enforcement of sometimes egregious behavior in open disregard of the standards created. For instance, in September 1993, a young Massachusetts boy was critically injured in a violent car accident.³⁹ While still in a coma, he received a letter from a law firm alerting him that he may be entitled to collect a large sum of money from the defendant.⁴⁰ The firm also offered the boy free limousine service to and from the office.⁴¹ While local attorneys were outraged, the firm was never disciplined.⁴²

Simply put, it may be impossible for lawyers to regulate and sanction the conduct of other lawyers. In some instances, the lawyer

36. *See id.* Rule 7.4.

37. MODEL RULES OF PROFESSIONAL CONDUCT Rule 7.4 (1992).

38. *Id.*

39. John H. Kennedy, *Pushing the Envelope in Search of Clients*, BOSTON GLOBE, Sept. 19, 1993, at A1.

40. *Id.*

41. *Id.*

42. Kennedy, *supra* note 39, at A1.

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passing judgment may have herself committed acts similar to the act being reviewed. In other instances, a reluctance may exist to sanction another member of the bar. The result is that outrageous conduct is often not adequately punished, encouraging individuals to engage in questionable practices and contributing to the degradation of the profession.

Another problem results because the rules only serve as a guideline for state legislatures to follow, and thus, each state has adopted its own rules governing professional conduct.⁴³ This creates a situation where the differences in the rules of each state may confuse lawyers as to which professional standards to follow. California, for example, bans legal advertisements that state or suggest that litigants will win immediate cash settlements, prohibits an advertisement discussing contingency fees unless it explains that clients are still responsible for costs, and requires attorneys to describe dramatizations or impersonations in their advertisements as such so that prospective clients will not be deceived.⁴⁴

Florida restricts legal advertising by barring attorneys from soliciting accident victims by mail.⁴⁵ Recently, however, in *McHenry v. Florida Bar*, the Federal District Court for the Middle District of Florida held this law to be invalid.⁴⁶ Florida also provides that lawyers may not cite their win-loss record or create "unjustified expectations" through advertisements.⁴⁷ In Indiana, rules of lawyer conduct specifically prohibit lawyers from directly soliciting potential clients.⁴⁸ Indiana permits legal advertising provided it is not false or misleading, does not raise unjustified expectations, does not state that a lawyer can influence the courts, does not offer testimonials, and does not appeal to greed or revenge.⁴⁹ This absence of clear, uniform standards from state to state make it that much more difficult to assess what actions are proper and leads to confusion. Again, the end result is that ethics codes are violated and clients suffer.

Recognizing that respect for lawyers is at an all-time low, the American Bar Association (ABA) budgeted \$1 million for public

43. Sitomer, *supra* note 10, at 19.

44. CAL. BUS. & PROF. CODE § 6157 (Deering 1993); Hager, *supra* note 12, at Part A, Pg. 3, Column 2; Bill Ainsworth, *Bill Limiting Legal Ads Becomes Law*, THE RECORDER, Sept. 29, 1993, at 6.

45. FLA. STAT. ch. 817.234 (1993); Hager, *supra* note 12, at A3.

46. See *McHenry v. Fla. Bar*, 808 F. Supp. 1543 (M.D. Fla. 1992).

47. Hager, *supra* note 12, at A3; see also *Florida Bar v. Weinstein*, 624 So.2d 261 (Fla. 1993).

48. William Grady et al., *Injury Lawyer's Ad Stirs Ire in Indiana*, CHI. TRIB., Jan. 26, 1993, at C3.

49. *Id.*

relations.⁵⁰ In addition, ABA head J. Michael McWilliams recently noted that lawyers could improve their image by donating more of their time to helping children and the disadvantaged rather than spending more money on advertising.⁵¹ While well-intentioned, these actions ignore the fact that unscrupulous lawyers do exist and that the problems in the legal profession go beyond the mere "appearance" of the profession. Until the ABA finds an effective way to deter unprofessional conduct, lawyers will continue to have an image problem.

With respect to advertising, the problem does not stem from allowing lawyers to openly advertise; the negative public image of attorneys is perpetuated by those individual attorneys who choose to conduct themselves in an unethical, unprofessional manner. Thus, prohibiting advertising would only eliminate some of the most visible symptoms, but not the basic cause of the problems in the legal profession today, unethical lawyers who degrade the dignity of the profession.

III. Great Britain

A. Background

The British legal system has had its own unique experience with legal advertising. Once adamantly opposed to such forms of publicity, the legal profession now permits a wide range of advertising, and many British lawyers exercise this privilege in response to increased competition in the English legal profession.

The legal system in Great Britain differs from the legal system in the United States. The profession is divided into two groups, barristers and solicitors. There are far more solicitors than there are barristers; there is one barrister for every ten practicing solicitors.⁵² Solicitors are essentially general practitioners, working primarily in the office and providing general legal services to clients, while barristers are regarded as specialists, serving primarily as trial lawyers.⁵³ Barristers and solicitors may work together on the same matter with the solicitor staying

50. Mauro, *supra* note 1, at 3A.

51. *Id.*

52. J.M.D. Hoyle, *Organization and Governance of the British Legal Profession*, 81 LAW LIBR. J. 655, 656 (1989). This number includes solicitors and barristers in England and Wales, but not Scotland, Northern Ireland, and the Republic of Ireland. *Id.*

53. Marilyn J. Berger, *A Comparative Study of British Barristers and American Legal Practice and Education*, 5 NW. J. INT'L. L. & BUS. 540, 544 (1983).

in the office to work one-on-one with the client and the barrister making the courtroom appearances.⁵⁴

These two branches of the profession operate their practices in much different manners. Solicitors practice in partnerships, while barristers operate sole practices.⁵⁵ Each branch of the legal system also has its own governing body. While the Four Inns of Court govern barristers,⁵⁶ the powerful Law Society governs solicitors.⁵⁷ Both bodies consider themselves to be professional organizations as well as governing and regulating bodies.⁵⁸ The Law Society, in particular, often promotes legislation that is entirely in the public interest, not only protecting the welfare of British solicitors, but also looking out for the good of the general public as well.⁵⁹ For instance, solicitors are required to submit their accounting records and an auditor's report to the Law Society so that the Society can account for all debts paid.⁶⁰

B. Legal Advertising in Great Britain

Traditionally, law firms in Great Britain did not advertise their services. In the past, British firms relied on personal contacts and word of mouth to maintain their client bases.⁶¹ British lawyers saw no need to advertise, instead relying upon their reputation and history of past successes to garner new business. As a result, the profession remained isolated, believing that its monopolies, privileges, and restrictive practices would always survive.⁶² It believed itself to be free from the market forces that affected other businesses and industries.

More recently, British lawyers have been forced to modify their attitudes towards legal advertising as a result of changes in the economy. One such change was the collapse of the British property market in the late 1980's.⁶³ Most suburban and provincial solicitors devoted a large portion of their practice to conveyancing. The conveyancing market was primarily the province of the upper class, which was capable of paying exorbitant legal fees.⁶⁴ With the downturn in the property market, many

54. *Id.* at 545-46.

55. Hoyle, *supra* note 52, at 656.

56. *Id.* at 661. The Inns of Court publish consolidated and uniform regulations for barristers and derive no authority from statutes. *Id.*

57. *Id.*

58. *Id.*

59. Hoyle, *supra* note 52, at 665.

60. *Id.* at 666.

61. Rawstone, *supra* note 7, at 14.

62. Hermann, *supra* note 2, at IV.

63. *Id.*

64. *Id.*

solicitors experienced a severe decrease in their caseloads, driving some out of business.⁶⁵ Attorneys could no longer look to the upper class to support their practices and needed to find a new source of clientele. It became apparent that the middle class also had a great need for legal services.⁶⁶ Such individuals, however, were ignorant of the services barristers and solicitors could provide.⁶⁷ Accordingly, the British legal profession was forced to market itself in order to educate the middle class about the services it could provide.

This new clientele had different expectations of the British legal profession. As confirmed in a 1991 survey, clients in Great Britain wanted to know what British firms had to offer them in the present and not what the firms had done in the past.⁶⁸ In the survey, potential clients stated that they placed past performance last on a list of factors affecting how they viewed a particular firm.⁶⁹ Instead, respondents were most interested in a lawyer's specialized expertise, speed of response, and personal service.⁷⁰ Thus, the age-old approach of relying on past performance and word-of-mouth had to be changed to accommodate a new class of clients, which were literally shopping for legal representation.

Another factor leading to the need to advertise was a downturn in business caused by increased competition from other professions. Specifically, the legal profession engaged in severe competition with accounting firms starting in the late 1980's, when accountants first began offering legal advice in fields like tax and corporate finance.⁷¹ Rather than consult an individual solicitor, many clients sought legal advice from accountants who were permitted to form partnerships with other professionals.⁷² As a result, the profession demanded that the rules on

65. *Id.*

66. *Id.* The author commented that "mass production and consumerism, the welfare state and urbanisation, the greater mobility of labour required by technological change, produced millions of new potential clients without giving them the means to pay for legal services on a Rolls Royce scale." Hermann, *supra* note 2, at IV.

67. *Id.*

68. Sambrook, *supra* note 3, at 23.

69. *Id.*

70. *Id.*

71. Rawstone, *supra* note 7, at 14; Nick Elliot, *Hong Kong: New Publicity Code Hamstrings Lawyers' Attempts at Promotion*, S. CHINA MORNING POST, Feb. 21, 1990, at 11.

72. John James, *Multidisciplinary Practices Represent a Unique Opportunity for Solicitors to Regain Ground Lost to Accountants. So Why Are They Against Them?*, ACCT., Sept. 1990, at 21. Multidisciplinary practices, commonly called MDP's, constitute a significant advantage to clients because people can have all their business needs met at one place; a person can see an accountant, a stock broker, and a financial advisor all within one firm. The Law Society banned attorneys from joining such partnerships, and as a result, the legal profession lost a large amount of business. *Id.*

legal advertising be relaxed so that lawyers could more aggressively compete for business in order to survive in the tight legal market. As one legal commentator noted, "Only a legal profession with a view of the future can rise to its former social importance."⁷³ In his view, to revive the prominence it once had, the British legal profession had to abandon old-fashioned notions of maintaining the purity and exclusivity of the profession.⁷⁴

Prior to 1988, the old rules forbade all types of legal advertising unless expressly permitted.⁷⁵ This left solicitors with little guidance in making decisions concerning how to advertise. In 1988, however, the Law Society published its Solicitors' Publicity Code, which permitted lawyers to take "a more aggressive marketing-oriented approach to business."⁷⁶ The Code outlines both permitted and prohibited advertising practices, imposing many ethical restrictions on the freedom to advertise and mandating that lawyers not refer to their success rates in advertisements, not refer to prior clients by name, not compare themselves with other attorneys, and not criticize other attorneys.⁷⁷ Generally, the Code demands that a solicitor refrain from actions that compromise or impair the good repute of the profession.⁷⁸ There is an understanding, both in Great Britain and the United States, that a lawyer will intuitively know how to preserve the integrity and dignity of the profession.

Not all British lawyers, however, have lived up to this ideal. For example, recently in Birmingham, England, a law firm placed an ad in the local newspaper inviting individuals who had received questionable care at the Birmingham Hospital to meet with lawyers at the Birmingham Holiday Inn.⁷⁹ The solicitors involved defended their actions by asserting that this method of solicitation was professional and noting that some hospitals were known to sell advertising space on their walls to law firms seeking malpractice work.⁸⁰ Nonetheless, the local newspaper commented: "It seems as if ambulance-chasing lawyers, so prevalent in

73. Hermann, *supra* note 2, at IV.

74. *Id.*

75. Sarah Thomas, *Law Firm Brochures: An Expensive Folly?*, EUROMONEY INT'L FIN. LAW, Sept. 8, 1987, at 9.

76. *Since the Laws Governing Promotion of Legal Services Were Relaxed Designers Have Had a Field Day*, DESIGN WK., Mar. 9, 1990, at 21.

77. *Id.*

78. William Greaves & Michael Smith, *It's One Way to Get a Client, Some Say It's Ambulance-Chasing But Others Argue It's Fair Play*, DAILY TELEGRAPH, Sept. 3, 1993, at 19.

79. *Id.*

80. *Id.*

the United States, are to become yet another plague on British Society."⁸¹

IV. Australia and New Zealand

A. Background

The Australian and New Zealand legal systems are similar to the legal system in Great Britain. Solicitors in both nations are governed by each nation's respective Law Society.⁸² Lawyers in Australia and New Zealand also face problems similar to those in the British legal profession. Lawyers remain elitist and, therefore, have difficulty dealing with modern clients who take a more active role in their own legal problems.

B. Legal Advertising in Australia

Australian lawyers have been forced to advertise because of changes in the economy and the legal market. As in Great Britain, the legal profession is experiencing a downturn in business arising from a lack of conveyancing work.⁸³ Accordingly, the legal profession has turned to advertising in an effort to attract new clientele in a fiercely competitive market.

The Australian public has also shown a need for increased advertising. A recent survey disclosed that Australians desire more empathy from their solicitors.⁸⁴ They desire solicitors who are more approachable, for instance, who can be easily contacted by phone.⁸⁵ In addition, Australians, much like Americans, have shown a reluctance to consult lawyers because of anxieties about rising legal fees.⁸⁶ Such concerns could be adequately addressed through advertising.

While previously discouraged in Australia,⁸⁷ generally legal

81. *Id.*

82. *Tougher Times Force Accountants and Lawyers to Hawk Their Wares*, *supra* note 1, at 28.

83. Roberson, *supra* note 8, at 17.

84. *Id.*

85. *Id.*

86. *Id.* David Kelly, *Australia: High Cost of Litigation a Reason for Concern for Middle-Income Earner*, AGE (MELBOURNE), Mar. 2, 1990, at 23. The author commented:

There is a growing concern in the community over the costs involved in going to court. People with very high and very low incomes are the last affected. The former can afford the costs; the latter are entitled to legal aid. People who are neither rich nor poor are less fortunate.

Id.

87. Mark Lawson, *Just out to Tout for Justice — Lawyers Come to Market*, AUSTL. FIN. REV., Oct. 8, 1993, at 20. The author notes that "[f]ive years ago, the advertising of fees was unheard of

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advertising is permitted to the extent that it is tasteful and used responsibly. In New South Wales and Victoria, for instance, lawyers are allowed to "tout," or "actively ask for business."⁸⁸ In addition, lawyers are permitted to use testimonials and the word "specialist" in their advertisements.⁸⁹ As in other countries, the notion exists that lawyers will intuitively know how to uphold the dignity of the profession. As one commentator noted, "A responsible legal profession will see that its members shun sensationalism and market legal services in a way that helps the public to understand the services that are available and how they can be accessed."⁹⁰

Despite having the freedom to advertise, lawyers in Australia have been slow to take advantage of this right.⁹¹ This seems odd given that competition within the Australian legal market has been so intense.⁹² Perhaps Australian lawyers are clinging to the notion that advertising is unprofessional, despite the fact that advertising may help some lawyers boost their businesses.

C. Legal Advertising in New Zealand

New Zealand lawyers, much like their Australian counterparts, have been forced to advertise in an effort to compete for business. The conveyancing market in New Zealand has dried up and there is simply not enough work for the nation's rising number of lawyers to survive.⁹³

Much like Australia, New Zealand has very relaxed rules on legal advertising. The New Zealand Law Society has imposed some restrictions on the practice, but they are very broad.⁹⁴ For example, it is recommended that advertising be consistent with "the maintenance of proper professional standards."⁹⁵ Advertising cannot be false, misleading, or deceptive, and people offering testimonials or endorsements cannot be paid for their services.⁹⁶ One reason for the relatively few rules on advertising is that the public views such restrictions as anti-competitive and against public policy.⁹⁷ Despite

in all the major states. Even a basic advertisement would prompt a review by the state law society."
Id.

88. *Id.*

89. *Id.*

90. Roberson, *supra* note 8, at 17.

91. LAWSON, *supra* note 87, at 20.

92. *Id.*

93. *Tougher Times Force Accountants and Lawyers to Hawk Their Wares*, *supra* note 1, at 28.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

having this broad professional freedom, lawyers in New Zealand are reluctant to advertise, believing that advertising would reduce the public's perception of lawyers.⁹⁸

V. Canada

The Canadian Law Society governs the legal profession and has instituted twenty-seven general rules regulating the professional conduct of lawyers.⁹⁹ The Law Society previously permitted little legal advertising, initially forbidding everything but an attorney's right to announce the opening of a new practice, to hand out business cards, and to have a listing in the Yellow Pages.¹⁰⁰ While restrictive, these rules still permitted a Canadian lawyer to get his or her name out into the public.

In 1979, the rules were relaxed in order to allow attorneys to refer to their specific services and fees.¹⁰¹ In addition, Canadian lawyers were permitted to name their specialized fields of practice in advertisements.¹⁰² By 1986, the only remaining restriction required legal advertising to be "factual, accurate, verifiable, and in good taste."¹⁰³ In Canada, as in other nations, the notion is that lawyers will know professional from unprofessional advertising.

In addition to these rules, certain provinces impose their own standards for legal advertising. For instance, in Alberta, lawyers were previously able to publish only their names and telephone numbers to publicize themselves.¹⁰⁴ The only constraints on legal advertising in Alberta today provide that lawyers may not call themselves experts or specialists and cannot claim to be the best or better than any other lawyer.¹⁰⁵

The rules on legal advertising in Canada have been relaxed in reaction to increased competition among Canadian lawyers for business. Similar to other countries, Canada has experienced a significant increase in the size of its legal profession. For instance, in the early 1960's there was only one lawyer for every 1,400 people in British Columbia.¹⁰⁶ By

98. *Tougher Times Force Accountants and Lawyers to Hawk Their Wares*, *supra* note 1, at 28.

99. Bruce Ward, *Over-the-Top Lawyer Rocks the Boat*, VANCOUVER SUN, Mar. 24, 1993, at B12.

100. Mitchell, *supra* note 1, at 46.

101. *Id.*

102. *Id.*

103. Ward, *supra* note 99, at B12.

104. Helen Dolik, *Lawyers Warm to Advertising*, CALGARY HERALD, Oct. 3, 1993, at A3.

105. *Id.*

106. Mitchell, *supra* note 1, at 46.

1986, the number of lawyers had risen to one lawyer for every 500 people.¹⁰⁷ Given this increase, Canadian lawyers have had to fight for business and more and more lawyers are utilizing advertising to attract new clients. As a legal commentator noted in 1986, "Where reputation, word of mouth, and serendipity were both acceptable and sufficient to build one's practice in the past, today's law firms are starting to feel the need to employ modern techniques to promote their services and beat the competition."¹⁰⁸

While Canadian lawyers have sometimes been overzealous in their quest for business, they pride themselves on having more respect for the profession than do U.S. lawyers. As one commentator stated, "Although they've been allowed to advertise for about 10 years, efforts here don't begin to touch the brazen campaigns waged by some U.S. lawyers, who often appear as television hucksters emerging from gruesome accident scenes."¹⁰⁹

VI. Germany

Unlike other nations examined thus far, Germany's legal profession is unorganized and in disarray because of the recent East-West reunification. As the government strives to integrate the former East Germany into the economy, it has had to make changes in the organization of its legal system. Undoubtedly, legal advertising will be one area that will have to be addressed.

In the former East Germany, judges and lawyers were nothing more than functionaries of the government having little input other than simply responding to government directives.¹¹⁰ As a result of reunification, Germany has an enormous legal vacuum that must be filled.¹¹¹ The country is at such a loss for lawyers that it is calling for "pioneers" from the United States and elsewhere to come to the former East Germany to help organize its legal system.¹¹²

Legal advertising is strictly prohibited in Germany.¹¹³ For example, the Munich bar reprimanded one firm after it placed its name in Martindale-Hubbel.¹¹⁴ There are indications, however, that changes

107. *Id.*

108. *Id.*

109. *Id.*

110. Thomas J. Irwin, *Bringing Justice to the Wild East*, A.B.A. J., Apr. 1993, at 58.

111. *Id.* at 28.

112. *Id.* at 59.

113. *Lawyers: What is Wrong With the Present Rules*, EUROMONEY INT'L FIN. L., Mar. 21, 1989, at 23.

114. *Id.*

are forthcoming in the German legal profession. A recent German court decision concluded that the rules on advertising were too strict and that Germany needed to revise its rules on professional conduct.¹¹⁵ Whether such changes will occur in the near future, however, remains to be seen.

VII. Austria

The Austrian legal system does not group its lawyers into separate divisions.¹¹⁶ The governing body for the legal profession is known as the Oesterreichischer Rechtsanwaltskammer, which is the Austrian equivalent of the Law Society.¹¹⁷ Austria has a relatively small population of lawyers,¹¹⁸ and as a result, the legal profession is very elitist. Foreigners are discouraged from practicing in Vienna, and the small legal population of Vienna prefers to remain tight-knit and aloof.¹¹⁹ It seems unlikely, however, that the legal profession will be able to remain small and elitist with the continuing disappearance of boundaries within the European Community.¹²⁰

As in Germany, legal advertising is strictly prohibited, and lawyers consider word-of-mouth to be the most effective form of legal advertising available.¹²¹ Signs, however, show that change is approaching. For instance, just two years ago, the Austrian bar threatened disciplinary action against a lawyer who gave a newspaper interview concerning a court case.¹²² The lawyer brought suit against the bar, alleging that the disciplinary action was unfair.¹²³ The attorney was ultimately successful in his suit, prompting Austrian lawyers to withdraw this particular prohibition.¹²⁴ Austrian firms have also recently begun publishing client brochures and newsletters.¹²⁵

115. *Id.*

116. Judy Dempsey, *Legal Profession 2; EC Opportunities Appeal*, FIN. TIMES, Oct. 15, 1987, at II.

117. *Id.*

118. *Austria: The Last Waltz for Austrian Lawyers*, REUTER TEXTLINE, June 15, 1991, available in LEXIS, Nexis Library, WORLD File.

119. *Id.*

120. *Id.* The Austrian business climate is undergoing upheaval because of the development of the European Community, changes in Eastern Europe, and global calls for freer markets. *Id.*

121. Dempsey, *supra* note 116, at II. In addition to not being able to advertise, Austrian lawyers cannot make publicly known that they specialize in a particular area of the law. *Id.* Austrian lawyers, however, can notify the Rechtskammer of their special area of interest. *Id.*

122. *Austria: The Last Waltz for Austrian Lawyers*, *supra* note 118.

123. *Id.*

124. *Id.*

125. *Id.*

VIII. China

Lawyers were banned in China after the Communist victory of 1949.¹²⁶ Lawyers reappeared in 1979, but worked primarily for government ministries and municipalities.¹²⁷ Presently, there are 50,000 lawyers whom the Ministry of Justice controls.¹²⁸ These lawyers have little autonomy and essentially serve as instruments of the government. In sharp contrast to the U.S. system, there is no attorney-client relationship in China; a Chinese lawyer may try to mitigate a criminal sentence for his or her client, but the attorney is by no means expected to help his client evade the charge.¹²⁹ Moreover, Chinese law firms have no partners and the government sets all fees charged.¹³⁰ Recently, however, some in the profession suggested allowing law firms to be separated from the government and earn profits of their own.¹³¹

Similar to legal systems in other countries, the Chinese legal system is exclusive and hostile to foreigners. While foreign firms are allowed to establish offices in China, foreign lawyers are not permitted to appear in Chinese courts¹³² or to interpret Chinese law.¹³³

For the most part, lawyers may not advertise their services.¹³⁴ For example, in Singapore lawyers are not permitted to seek publicity.¹³⁵ Lawyers may be quoted, but the name of their firm must not appear.¹³⁶ In fact, a controversy arose a few years ago when an article appeared in a legal periodical announcing the merger of two law firms.¹³⁷ The Singapore Law Society said that this amounted to advertising and should therefore be banned.¹³⁸

Even if lawyers were permitted to advertise, cultural and social norms would make such efforts worthless. To begin with, the Chinese

126. *In China, an Outbreak of Lawyers; But There Aren't Enough in Business-Mad Guangdong*, INT'L HERALD TRIB., Sept. 10, 1993, available in LEXIS, Nexis Library, WORLD File.

127. *Id.*

128. *Id.*

129. Kui-Hua Wang, *Legal Education and Practice in China*, 63 L. INST. J., 371, 372 (1989).

130. *Id.* at 372.

131. *In China, an Outbreak of Lawyers; But There Aren't Enough in Business-Mad Guangdong*, *supra* note 126.

132. *Id.*

133. *Twelve (12) Law Firms Open Offices Under Interim Regulations*, BUREAU OF NAT'L AFFAIRS, Nov. 18, 1992, available in LEXIS, Nexis Library, WORLD File.

134. *Singapore: Publicity for Professionals — Editorial*, BUS. TIMES (SINGAPORE), May 29, 1991, at 8.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

are reluctant to consult attorneys. Individuals believe that one "loses face" by appearing before a court.¹³⁹ They view courts and court proceedings with suspicion and "frown upon" the winner of a suit.¹⁴⁰ Instead, individuals facing legal problems are more likely to resort to informal mediation and conciliation centers set up by commercial organizations.¹⁴¹

In addition, an individual deciding to consult a lawyer will not go to a lawyer whom he or she does not personally know. Most people do not believe in consulting with a lawyer whose name they obtained from a newspaper advertisement.¹⁴² Instead, they prefer to consult with an attorney who is known to a friend or a family member.¹⁴³

IX. Conclusion

Legal advertising need not debase the legal profession. When done in a tasteful and honest manner, it can provide a necessary service to the public. Clients today need information about the types of services lawyers provide, the fees they charge, and the areas of their expertise.

In the same light, advertising can be beneficial to the legal profession. Throughout the world, lawyers are facing increased competition in providing legal services. Once isolated and exclusive national legal professions are being forced to compete with lawyers from other countries as commercial borders rapidly disintegrate. Within individual countries, more and more people are becoming lawyers, adding to already overcrowded legal professions. Finally, formerly lucrative markets for the provision of legal services are evaporating as a result of economic change. Through advertising, lawyers can market their services, thus reaching clients who otherwise would not take advantage of legal representation.

Clearly, abuses will occur. The experience in the United States adequately illustrates this fact. Nevertheless, advertising should not be prohibited or overly restricted, although clear, uniform standards should be created. Unscrupulous advertising is simply a manifestation of the unscrupulous lawyers within the legal profession. Thus, to solve the "image" problem that so many within the legal profession complain about, steps must be taken to eliminate unethical behavior. Doing so would go furthest to eliminate egregious advertising practices, while

139. *Singapore: Publicity for Professionals — Editorial, supra note 134.*

140. *Id.*

141. Wang, *supra note 129*, at 371.

142. *Id.* at 372.

143. *Id.*

LEGAL ADVERTISING AND SOLICITATION

preserving the benefits that advertising provides to both clients and lawyers.

Lauren Dobrowalski

