International Professional Issues

BACKGROUND

- A number of CBA initiatives relate to international professional issues:
  - Globalization of Legal Practice (WTO/GATS): In August 2000, CBA submitted its views to Foreign Affairs and International Trade Canada on the extent to which the WTO rules for the accounting profession could be applied to the legal profession. (see separate note)
  - Multi-Disciplinary Practices (MDPs): In August 1999, the International Practice of Law Committee issued its final Report on MDPs, Striking a Balance, to Council. A further resolution on MDPs was debated by CBA Council in February 2001. The 2001 resolution clarifies the conditions under which MDPs should be allowed in Canada (see separate note).
  - NAFTA Temporary Business Travel: A working group on temporary business travel to NAFTA countries by professionals is considering the experience of CBA members questioned on privileged information when traveling for business purposes to NAFTA countries.
  - ABA/CBA/Barra Mexicana Working Group on Dispute Resolution been disbanded but has outstanding issues relevant to the legal profession best addressed via a reconstituted group.
  - ABA/CBA focus on cross-border practice issues: CBA and ABA have begun talks around issues of North American mobility of lawyers.
  - IBA Multijurisdictional practice: In early 2004, the IBA Section on Business Law's Task Force on International Multijurisdictional Commercial Practice circulated its Recommendations for Temporary Cross-Border Commercial Practice.
  - UK Review of Legal Services: In July 2003, the UK Secretary of State for Constitutional Affairs commissioned an independent review of the regulatory framework for the legal sector in England and Wales. Sir David Clementi chaired the review. Its terms of reference were to consider a regulatory framework for the legal sector and to make recommendations by December 2004. In March 2004, a consultation paper sought comment from the legal profession and interested persons on key areas including regulatory options for the legal profession and new business structures, such as legal disciplinary practices and multi-disciplinary practices.

CURRENT STATUS

- In 2005, CBA formed a team to address international professional issues. The International Professional Issues Team is drawn from CBA groups closely connected to international practice: International Law, Business Law, Competition Law and Immigration Law Sections; CCCA and the Ethics Committee.
- The team reports to the CBA Executive Officers. Its mandate is to provide CBA focus and response to international professional practice issues, including:
  - monitoring developments on the globalization of legal practice and the trend towards multi-disciplinary practices, through NAFTA, the World Trade Organization (WTO), American Bar Association (ABA) and the International Bar Association (IBA).

- monitoring developments on the ability of Canadian lawyers to assist their clients in particular jurisdictions.
- liaising with the Federation of Law Societies of Canada on international and domestic professional practice issues that impact on globalization of legal practice.

- In December 2004, the CBA wrote to Clementi on the UK Review of Legal Services emphasizing the importance of the preservation of the independence of the profession. In his December 2004 report, Clementi recommended splitting the regulatory and representative functions and the creation of a Legal Services Board (LSB), with the authority to delegate its responsibilities to the profession. The report also recommended that barristers, solicitors, and lawyers from different disciplines be allowed to practice together in Legal Disciplinary Practices (LDPs). These practices could include non-lawyers as managers and financial administrators. Outside ownership of LDPs should be permitted, subject to a 'fit to own' test.

- In April 2005, CBA responded to a questionnaire from the IBA's WTO Working Group in preparation for an IBA meeting in May 2005. The IBA planned to compile a status report of bar association consultations with their governments on GATS negotiations and current government offers in relation to legal services.

- In April 2005, the CBA wrote to the UK Secretary of State for Constitutional Affairs and Lord Chancellor in response to the Clementi report, emphasizing the importance of preserving the independence of the legal profession. The UK issued a White Paper on the future of legal services in October 2005. A new Legal Services Bill was introduced in November 2006.

- UK *Legal Services Act* received Royal Assent in October 2007. Many concessions were made in the final stages of the bill. The Act makes it clear that the primary responsibility for regulation rests with the approved regulators and that the LSB should only interfere when their actions are deemed unreasonable. The government also accepts that the Lord Chancellor should consult with the Lord Chief Justice in appointments to the Board. The LSB started its work in September 2008.

- In December 2009, the Department of Foreign Affairs and International Trade consulted with CBA on the upcoming WTO/GATS negotiations. CBA formed a working group to respond to the invitation. A conference call was held in January 2010, and surveys were circulated in March 2010. Feedback provided to DFAIT in May 2010 (see separate note).

- In November 2010, DFAIT informed CBA of the Asia-Pacific Economic Cooperation's (APEC) Legal Services Project. The objectives are to: (1) assist in planning and facilitating of cross-border socio-economic activities that comply with the respective economy's laws; (2) initiate relationships between attorneys and stakeholders and provide new business opportunities; and (3) support the development of attorneys in member economics by creating a network of business and commercial lawyers who share related interests and areas of practice.

- The Project created an APEC website with links to websites in other Asia-Pacific countries with contact information of lawyers who practice international trade, investment law, or business law. The website allows those wishing to do business in that country or the Asia-Pacific Region to access the appropriate lawyer for assistance.

- CBA contacted the lead on the project, to facilitate the development of a website of Canadian lawyers for posting on the APEC Website.

NEXT STEPS

- Working group and L&GA staff will consider whether to revitalize IPIT.
- L&GA staff will continue to monitor and respond to developments with input from the working group.
- L&LR staff continues to gather information on the Asia-Pacific Legal Services Project.