

PROCESS, POLICY AND POLITICS: REGULATORY RESPONSES AND THE
MULTIDISCIPLINARY PRACTICE DEBATE IN CANADA

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Abstract

The debate over multidisciplinary practices in Canada raised both substantive issues of how to accommodate ethical concerns in permitting new forms of legal services delivery, and process concerns arising from the manner in which legal regulators alone have made decisions on issues of fundamental public importance when their own self-interest is in issue.

While the American MDP literature has considered both substantive decisions and the process by which the American Bar reached them, the key Canadian contributions have focused on substantive questions: whether MDPs are appropriate for consumers, whether restrictions on them are constitutional, and what options are available for regulators to implement them. The paper attempts to fill this gap by focusing on the regulatory process in Canada through which MDP regimes were considered. A detailed historical review of the MDP debate in Canada's two most commercially significant common law provinces, Ontario and British Columbia, and at the Canadian Bar Association, reveals a process deeply flawed and open to political manipulation by dominant interests within the profession without public input. The rhetoric of "core values" excluded meaningful public participation, and decisionmakers appropriated the "public interest" and equated it with the interests of the legal profession. The processes leading to the adoption of MDP by-laws in Ontario in 1998 and 2001, the rejection of MDP rules in British Columbia in December 2001, and the policy reversals at the Canadian Bar Association reveal a profession deeply divided internally, considering in splendid isolation issues which transcend professions and borders.

Situating the Canadian experience in the context of parallel American and English considerations of MDP regimes, and assessing external influences from the World Trade Organization and the US Securities Exchange Commission, the paper concludes that process reform is essential if government, the public and the profession are to overcome information asymmetries and be satisfied that the grant of delegated self-regulatory authority to the legal profession in Canada is sustainable and responsive to the new challenges deep integration poses.

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