

THE CHANGES IN LEGAL INFRASTRUCTURE: EMPIRICAL
ANALYSIS OF THE STATUS AND DYNAMICS INFLUENCING
THE DEVELOPMENT OF COLLABORATIVE LAW AROUND THE
WORLD

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Abstract:

Around the world, the legal profession is undergoing unprecedented changes at the structural, operational, and infrastructural levels. To meet the challenges of these changes, lawyers are adopting a set of innovative practices. The growth and implementation of these practices depends for an important part on lawyers' perception of these new practices. As advisers, they play a pivotal role in guiding clients to use certain kinds of dispute resolution forms. Nonetheless, the perceptions of innovative

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practitioners have not yet been explored in much detail. This study is a step forward in filling the gap.

For the purpose of analyzing the perception of innovative practitioners and the environment in which they operate, we used collaborative law as a case study. In this study, we surveyed 226 respondents from nineteen randomly selected countries. The respondents' prime characteristics are that they officially registered themselves as collaborative practitioners and qualified collaborative law as one of their specialties (N=226). The data were analyzed through the use of multivariate regression.

This study aims to deepen our understanding of how innovative practitioners perceive their environment. The main findings are summarized as follows:

First, we found that collaborative practice has been only recently established in most of the countries that were part of this study. Second, innovative practitioners' perception of the percentage of lawyers in their country that have heard of and been introduced to collaborative law is low. Third, the data reveals that the main area of practice perceived is family law.

Also, the findings are similar to those of earlier studies with regards to the success rate and motives that drive clients to use this practice. Our findings, however, pinpoint a gender difference between female and male practitioners, especially on the main motive for clients to use collaborative law.

Furthermore, more than 90 percent of respondents reported that collaborative law is perceived negatively or is a practice unknown to other members of their legal community. The findings further explicate the motives perceived by the practitioners.

Finally, the study found that practitioners' perception of their environment evolves over time. The study indicates that the longer a collaborative professional is active in the field of collaborative law, the more positive the professional perceives the environment (the legal framework and perceptions of the legal community).

The results highlight some areas that deserve additional study to further deepen our understanding of the use of innovative practices and, more broadly, the changes happening in the legal profession.

Key words: Lawyer, Empirical Analysis, Innovative Practice, Changes In Legal Infrastructure, Collaborative Law, Alternative Dispute Resolution

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I. INTRODUCTION

Major shifts are happening in the legal profession. This study is, to our knowledge, the first of its kind giving an inside view on how innovators of the legal profession are experiencing innovative practice and the environment in which it develops. We do so by providing empirical evidence showing how innovative legal practitioners perceive their own practice and the rapidly changing legal setting. In this study, we focus on one of the more prominent innovative practices, which is collaborative law.

This research analyzes the perception of collaborative law practitioners from nineteen different countries. Their perception of different aspects of collaborative practice has been tested on a number of fronts. For example, we asked them about the area of practice in which collaborative practice is most used, as well as the success rate of this practice. We also surveyed these professionals on their perception of knowledge *others* may have about innovative legal practice, the motives underlying the users' perceptions, and the professionals' own perceptions. The study further examines the practitioners' perceptions of the presence or absence of a supportive legal framework and community for innovative practice.

In the last two decades, the legal profession around the globe has continually faced new questions, new issues, and new challenges. Changes are happening at the structural, operational, and infrastructural levels. A number of developments can be identified within the legal profession that lead to shifting roles and changing client needs that demand innovation. Considering these changes, enhancing our empirical understanding of lawyers' perceptions of using innovative lawyering tools is important and timely. Several reasons underlie the importance of investing in increasing our understanding of lawyers' views of the developments in their profession.

First, the legal profession as a whole is in a transformative phase. Globalization has increased the use of technology in legal practice, and a variety of legal developments originating in one country are rapidly spreading to others. This not only concerns the changes in how we educate lawyers, but also in how we practice law. Second, the amount of skills and tools lawyers are required to master in order to more collaboratively solve their clients' problems is growing. In fact, there is an increasing demand for legal strategies to produce more satisfactory paths to manage and resolve conflict, including approaches that may be more economical, less formal, and more private than court litigation. At the same time, clients demand more satisfactory and more durable results. Third, lawyers are playing a prime role as agents of change around the world, not only as advocates and advisors, but also as legislators and regulators.

Within the changing legal infrastructure, innovative processes emerge to meet the changing needs of clients. Empirical evidence regarding the development of such innovative processes can help policymakers nurture and understand elements in the legal environment that enhance or impede its growth. Also, we believe this study is of value, because despite growing attention in legal empirical study, limited empirical evidence regarding the perception of lawyers using innovative practice across countries is available. This lack of empirical research seems mostly due to the fact that cross-boundary studies in the legal setting are laborious. Consequently, there is little knowledge of how lawyers using innovative lawyering tools are perceived. This study is a step in the direction of closing this void.

These changes offer new opportunities but also ask legal professionals to adapt and innovate. The evolution and complexity of the legal landscape require a transformation of the skills lawyers must master to effectively respond to their clients' needs.¹

In his seminal book, "The End of Lawyers?," Richard Susskind discusses this need for adaptation by lawyers to survive as a profession.² From Susskind's work, we can derive that lawyers need skills that reach beyond their knowledge of the legal framework in order to continue to claim their role in society.³ In other words, lawyers need to adapt and innovate in order to perform their traditional tasks, as well as to open up opportunities to expand and be influential in new areas. He addresses two different aspects of innovation in lawyering: the developmental process, in which individual lawyers develop their skills and productively adapt to the contemporary realities of legal practice; and the focus on innovative lawyering processes happening in the legal profession.⁴ Susskind articulates the challenges faced by lawyers, and more broadly, the legal profession.⁵ He urges them to identify what elements of their current workload could be undertaken differently—more quickly, cheaply, efficiently, or to a higher quality—using alternative methods of working as well as alternative skills.⁶ Alternative Dispute Resolution (ADR) processes (including collaborative law) are part of the alternative methods and skills Susskind suggests to adapt to the changing legal landscape.⁷

1. See John P. Heinz et al., *The Changing Character of Lawyers' Work: Chicago in 1975 and 1995*, 32 LAW & SOC'Y REV. 751 (1998).

2. RICHARD SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* 18 (2010).

3. *Id.*

4. *Id.* at 28-29, 36.

5. *Id.* at 2-36.

6. *Id.*

7. SUSSKIND, *supra* note 2, at 185-86.

By adapting, lawyers are more than ever able to play a role at the center of many economic and social endeavors. Lawyers' roles and functions are indispensable in every modern society, as they increasingly perform a variety of legal and non-legal tasks.⁸

Although different views of lawyers' tasks or roles in society exist, some basic generalities can be drawn. Lawyers' roles can be typified as bringing the law to non-lawyers, either by advising, negotiating, drafting, or implementing contracts, or by representing clients in court.⁹ In other words, lawyers make the justice system work. They play different roles depending on their place in the legal profession (as advocates, advisors, legislators, and regulators) and the nature of their law practice or activity. Also, these non-state actors even seem to influence the creation of authoritative rules for social and business relationships.¹⁰ Lawyers, including in-house legal counsel and third party neutrals like mediators and arbitrators, are becoming key actors who influence how legislation evolves domestically and internationally.¹¹

Others have argued that lawyers should not limit themselves to the traditional legal boundaries of their work but should develop skills that take them beyond the field of law. In this view, whatever a lawyer's exact role or function is, the lawyer must be a wise counselor who thinks and solves problems differently, outside the common approach.¹² At the basis of this perspective lies a belief that lawyers must resist fulfilling a narrow role that considers only a legalistic terrain.¹³ In this view, lawyers have to be equipped with a multitude of skills to offer solutions that are more economical, more time-efficient, and less adversarial than court litigation, all while achieving more satisfactory and more durable results. As such, wise lawyers are effective lawyers armed with practical wisdom.¹⁴ This

8. Steven A. Childress, *Lawyers*, in *ENCYCLOPEDIA OF LAW AND SOCIETY: AMERICAN AND GLOBAL PERSPECTIVES* 931, 938 (David S. Clark ed., 2007).

9. See ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 130 (2000); see also ALAN S. RAU ET AL., *PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS* 56, 405 (Alan Scott Rau et al. eds., 4th ed. 2006).

10. ROBERT H. MNOOKIN ET AL., *NEGOTIATING ON BEHALF OF OTHERS: ADVICE TO LAWYERS, BUSINESS EXECUTIVES, SPORTS AGENTS, DIPLOMATS, POLITICIANS, AND EVERYBODY ELSE* 29 (Robert H. Mnookin & Lawrence E. Susskind eds., 1999).

11. RICHARD A. HIGGOTT ET AL., *NON-STATE ACTORS AND AUTHORITY IN THE GLOBAL SYSTEM* 1, 51, 155 (Andreas Bieler, Richard Higgott, Geoffrey Underhill eds., 2000).

12. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 11 (1993); see also Marc Galanter, *Lawyers in the Mist: The Golden Age of Legal Nostalgia*, 100 DICK. L. REV. 549 (1995); MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 87, 100 (1994); David B. Wilkins, *Practical Wisdom for Practicing Lawyers: Separating Ideals from Ideology in Legal Ethics*, 108 HARV. L. REV. 458 (1994).

13. Leonard L. Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29 (1982).

14. Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: A Theoretical Framework*, 26 OKLA. CITY U. L. REV. 547 (2001); see also MARK L. JONES ET AL., *TOWARD HUMAN*

practical wisdom helps them "to do the right thing in the right way at the right time" and to be engaged in good practical reasoning about the ends and means of the case.¹⁵ Professor Jones precisely notes that:

Practical wisdom enables the lawyer to do "the right thing in the right way at the right time." More specifically, it enables the lawyer to engage, almost instinctively, in good practical reasoning about ends as well as means and to translate good judgment into action. The practically wise lawyer draws upon an ensemble of deeply ingrained and seamlessly integrated professional attributes—theoretical knowledge, practical skills, and qualities of character—in a manner that is appropriately responsive to context.¹⁶

Similarly, Professor Aaronson's analogy is that a wise, problem-solving lawyer must act like a fox. He notes that:

[E]veryday lawyering activities are even less subject to formally structured deliberation. The factual situations are almost always fraught with complications, contingencies, and uncertainties. The areas of inquiry have no pre-definable limits and include small and large matters. Whether gathering information, communicating with others, planning courses of action, or contemplating client options, attorneys constantly make judgment calls. A lawyer's reliance on judgment runs the gamut from how to order and frame questions when interviewing or counseling clients, to what research leads to follow, to how to decide major issues of legal strategy, to how to identify and seek to reconcile conflicting moral obligations. What the client regards as the problem may or may not be the problem. There may be a legal solution, but it is not clear that it would be the best solution. In short, in the practice of law, how best to proceed and what exactly to say and do are almost always problematic.¹⁷

FLOURISHING: THE ROLE OF CHARACTER, PRACTICAL WISDOM, AND PROFESSIONAL FORMATION 111, 122, 171 (Mark L. Jones, Paul A. Lewis, Kelly E. Reffitt 1st ed., 2013) [hereinafter *TOWARD HUMAN FLOURISHING*].

15. Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: Perspectives on Curriculum Reform, Mercer Law School's Woodruff Curriculum, and . . . "Perspectives"*, 63 MERCER L. REV. 975, 993 (2012).

16. *Id.* at 992-93.

17. Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 32 (2002).

ADR is a particularly interesting area of legal practice, as non-legal skills are specifically called upon.¹⁸ ADR is an important legal area, because it not only forms a platform for lawyers to develop and use extra-legal skills, but it is also a breeding ground for innovative practice. Lawyers who equip themselves with ADR skills become problem solvers that not only can focus on “winning” the case, but on meeting the needs of multiple sets of parties . . . and on looking for substantive solutions.”¹⁹ Consequently, wise, problem-solving lawyers are able to take a broader view of their role and look at every set of tools available, including the use of ADR mechanisms to solve their clients’ problems.

In the last two decades, we have witnessed an extraordinary flowering of interest in and use of alternative forms of dispute settlement. These innovative processes and practices have been fostered by the need to better respond to client needs in solving conflicts more efficiently—in terms of time, effort, and costs, rather than using the formal legal system. They have become a terrain for innovative lawyering.

ADR is a term that encompasses a large number of dispute resolution processes: the ADR spectrum ranges from negotiation to arbitration, including mediation and ombudsmen processes as well as those involving third party neutrals. The main motive cited by the legal literature and supported by empirical evidence is that by using ADR, clients and lawyers are more likely to be satisfied both in terms of the process and the outcome used to solve the conflict at stake.

Clearly, the type and use of alternative forms of dispute settlement did not flourish at the same pace or depth everywhere around the globe. Among the most cited reasons for the varied landscape of ADR are the difference in the legal frameworks (civil law versus common law), the differences in the way lawyers practice, and how legislators and policymakers draft legislation legitimizing these processes.²⁰

Collaborative practice, also known as collaborative law, is an innovative ADR process that has, in the last decade, received attention from both scholars and practitioners. In the 1990s, Minneapolis family

18. Alternative Dispute Resolution processes—including mediation, arbitration, and other third party intervention strategies—are legal strategies intended to produce more satisfactory paths to managing and resolving conflict. ADR includes approaches that may be more economical, less formal, and more private than court litigation, with more satisfactory and more durable results.

19. Carrie Menkel-Meadow, *Practicing “In the Interests of Justice” in the Twenty-First Century: Pursuing Peace as Justice*, 70 FORDHAM L. REV. 1761, 1773 (2002); see also Carrie Menkel-Meadow, *Lawyer as Consensus Builder: Ethics for a New Practice*, 70 TENN. L. REV. 63 (2002).

20. Paola Cecchi-Dimeglio, *La Directive 2008/52/CE: Pourquoi? Comment Améliorer Son Champ d’Application? Le Droit Collaboratif, Une Des Solutions Possibles ?*, 1(2) JOURNAL OF ARBITRATION AND MEDIATION 53 (2013).

lawyer Stuart Webb, together with a small group of colleagues, conceptualized and developed Collaborative Law.²¹

In collaborative law, both the clients and their attorney agree upon a common goal: settlement of the case. To achieve that goal, they promise to conduct their negotiations in good faith, to voluntarily disclose all relevant information, to disclose any mistakes and not take advantage of them, and to refrain from threatening or using litigation to solve the conflict at stake.²² This client-focused process offers means in which clients and lawyers decide together how often and when they want to meet, what interests and goals they wish to achieve, and whether other collaborative professionals such as psychologists or financial analysts will be engaged to assist them in solving the conflict.²³ All statements made during the negotiations and all documents presented or generated during this process are confidential and cannot be disclosed in court if the process terminates without resolution, though the parties can specifically agree otherwise.²⁴

Given the substantial growth of the collaborative movement in the U.S. and the great enthusiasm of many of its proponents, it is useful to provide a point-in-time snapshot of the perceived phenomena of collaborative law across several countries. In fact, collaborative law has been aptly described and analyzed in both doctrinal and empirical articles written by mostly legal scholars. Many of the studies, however, took place in a common law framework and concentrated on the benefits of the collaborative process, focusing on clients’ and collaborative practitioners’ views and experiences of that process.

What is much less studied is how collaborative practitioners view the context in which they operate, particularly from an international perspective. This empirical project was designed to provide a global perspective on the perceptions of its main actors—collaborative practitioners—on the framework of this innovative practice. Even as new as this practice is in many countries outside the U.S., collaborative law is no more a uniform process than mediation or other dispute resolution forms. There is a great deal of variation in the individual evolutions of ADR, and it seems likely that, over time, collaborative law will undergo similar transformations across boundaries. Furthermore, the current legal literature focusing on this process does not provide findings on the perceptions of collaborative lawyers about their environment or on how their perceptions may influence their practice.

21. STUART G. WEBB & RON OUSKY, *THE COLLABORATIVE WAY TO DIVORCE: THE REVOLUTIONARY METHOD THAT RESULTS IN LESS STRESS, LOWER COSTS, AND HAPPIER KIDS, WITHOUT GOING TO COURT* xv (2006).

22. *Id.* at 3-10.

23. *Id.* at 67-70.

24. *Id.* at 99-113.

Our analysis takes as its normative starting point that perception shapes reality. Consequently, this article argues that by rethinking what factors are important in the growth of new lawyering forms, changes of the legal profession can happen more smoothly. This viewpoint stems from the literature on innovation, perception, stereotype, and social theory, as well as legal and ADR theory.

This study aims to provide a step forward in filling gaps and documents the perception of this innovative practice at an early stage of its international development. This study addresses the following questions: What are the professional backgrounds of collaborative practitioners? What are collaborative practitioners' perceptions of the environment surrounding collaborative law and the factors influencing or impeding its use? How do collaborative practitioners perceive the success rates of collaborative cases? What are the perceptions of collaborative practice by others, including clients, legal practitioners, and other members of the legal community?

As Professor Lande notes, collaborative law "is worth studying as a professional movement" because it can provide insight into the life cycle of new processes.²⁵ In fact, empirical research contributes in our understanding of the formation, experimentation, consolidation, maturation, and institutionalization of innovative lawyering practices. More broadly, such research provides support to further enhance innovative change in the legal profession, including in the evolution of ADR practices worldwide.

The article is organized as follows: Section II summarizes the literature review from which our analysis stems. Section III describes the methodology of the study. Section IV reports the results of our study and the findings of our multivariate regression analysis. Section V further discusses these findings. Finally, Section VI provides recommendations for the use of innovative practices, such as collaborative practice, for legal professionals, policymakers, and educators.

II. LITERATURE REVIEW

In our study into the perceptions that collaborative practitioners and other lawyers have formed regarding innovative practices, we draw from four bodies of literature. We use social science literature on innovation theory and social identity theory to better appreciate the concept and consequences of the formation of collaborative groups and perceptions

25. Professor John Lande is the Isidor Loeb Professor of Law at the University of Missouri School of Law. His scholarship focuses on various processes of ADR, including collaborative law and cooperative law. See John Lande, *An Empirical Analysis of Collaborative Practice*, 49 FAM. CT. REV. 257, 275 (2011).

among lawyers. We use it to situate and interpret the findings of this study. We also build upon and draw from theory and existing empirical findings on collaborative practice.

Theories on the spread of ideas give some insight into how new lawyering concepts evolve and are slowly integrated into legal scholarship. Thus far, innovations in legal practice and sociological accounts of diffusion theory have developed separately. In 2005, Professor Twining noted that "[m]odern sociological accounts of diffusion and modern legal discussions of reception and transplants are a rather clear example of two bodies of literature seemingly addressed to similar phenomena that largely ignore each other. Both are concerned with the spread of ideas."²⁶ For instance, in 2001, the International Encyclopedia of the Social and Behavioral Sciences presented an overview of the historical development of diffusion studies in three separate articles, yet none of them even mentioned law.²⁷ Currently, insights from diffusion theory and modern legal discussions of reception find common ground for legal scholarly analysis and discussion, but much remains to be explored in the field of innovation and lawyering practice.

Innovation theory is a useful angle to take in furthering our understanding of what influences the development and level of acceptance of new legal practices. Innovation theory, or diffusion theory, is commonly used as a lens for understanding the adoption and development of new ideas and practices.²⁸ This theory refers to the process by which an innovation is adopted and accepted by individuals or members of a community, or both.²⁹ Generally, the diffusion of an innovation process is constituted by the presence of four elements: the *innovation* itself, the *communication medium* through which the innovation is spread over *time*, and the *social system* in which it takes places.³⁰ The characteristics

26. Professor William Twining is the Emeritus Quain Professor of Jurisprudence at University College London. See William Twining, *Social Science and Diffusion of Law*, 32 J.L. SOC'Y 203, 203-04 (2005).

27. Neil J. Smelser & Paul B. Baltes, 12 THE INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES § 26 (Neil J. Smelser & Paul B. Baltes eds., 2001).

28. Diffusion theory encompasses a complex number of sub-theories that collectively study the processes of adoption. See GABRIEL DE TARDE, THE LAWS OF IMITATION 145 (Elsie Clews Parsons trans., 1903); see also N. Gross & B. Ryan, *The Diffusion of Hybrid Seed Corn in Two Iowa Communities*, 8 RURAL SOCIOLOGY 15, 24 (1943).

29. EVERETT M. ROGERS, DIFFUSION OF INNOVATIONS 5, 11-12 (4th ed. 1995).

30. *Id.* at 12, 35. Professor Rogers defined the several elements in the following ways: The innovation refers to an idea, practice, or object that is perceived as new by individuals or a group of adopters. The communication channels indicate the means by which innovations move from individual to individual or group to group. The notion of time refers to the non-spatial interval through which the diffusion events occur. These events include the following elements: (1) the innovation-decision process, (2) the relative span of time for the individual or group to adopt the innovation, and (3) the innovation's rate of adoption in a system. The social system refers to a set of interrelated units or communities that are engaged in joint problem-solving activities to accomplish a goal or goals.

generally identified as attributes are Advantage, Compatibility, Complexity, Trialability, and Observability (ACCTO).³¹ The perceived attributes of innovations determine whether the innovative practice will be adopted or rejected, depending on the communication channels used, the nature of the social system from which it stems, and the extent to which agents will promote and spread this practice. They also inform the ways in which early adopters will support and encourage newer adopters of this practice within the community. This theory, for instance, also teaches us that the easier it is for groups and individuals to see the results of an innovation or innovative practice, the more likely they are to adopt it and advocate for it.

Viewed in the context of the legal profession, innovation theory is relevant as it serves as the basis of our understanding of the factors furthering the growth or frustrating the use of innovative "lawyering" practices. It explains that the characteristics or attributes—ACCTO—of innovation processes are quintessential in forming the perception of potential users and in spreading innovative processes across borders. To embrace an innovative practice, lawyers first need to perceive the advantages and assess the compatibility of this practice with their own practice. They also need to evaluate the degree of complexity and the way in which this innovative practice may be experimented with on a limited basis. Finally, they need to perceive the degree to which the result of the innovative practice is viable to others. In other words, these characteristics form the basis for what are perceived as essential attributes to attract and retain new lawyers to use this innovative practice.

Social identity theory is a second strand of theory we utilize. This theory is relevant because it analyzes when and why people feel they belong to a group and how feeling part of a group determines how its members perceive and respond to their environment, including to innovations in that environment. This theory refers to the circumstances under which a person will perceive others (including themselves) as a group and the consequences of perceiving people in group-terms. Social identity theory has been well researched in the field of psychology.³² However, it has remained a largely unexplored concept in sparking

31. *Id.* at 36, 95. The different characteristics are defined as follows: Relative advantage constitutes the degree in which an advantage is perceived as better than the idea it supersedes. The compatibility characteristic is the degree to which an innovation is perceived as being consistent with the existing values, past experiences, and needs of potential adopters. The complexity element is the degree to which an innovation is perceived as difficult to understand and use. Trialability refers to the degree to which an innovation may be experimented with on a limited basis. Finally, observability is defined by the degree to which the results of an innovation are viable to others.

32. John C. Turner, *Social identification and psychological group formation*, in 2 *THE SOCIAL DIMENSION: EUROPEAN DEVELOPMENTS IN SOCIAL PSYCHOLOGY* 518 (Henri Tajfel ed., Cambridge Univ. Press 1984) [hereinafter *Social identification and psychological group formation*].

discussion in the legal literature and the basis of empirical work conducted in the legal setting. Social identity theory suggests that there are two general levels of identity: personal and social.³³ Social identity theory can provide a basis for how identification with a group, especially one using innovative lawyering tools, can differ depending on an individual's perception of a situation's underlying facts.³⁴

Lawyers are not absolved of defining themselves and being defined as part of a psychological group that differentiates itself from other professionals. Lawyers are, to some extent, "a collection of people who share the same social identification or define themselves in terms of the same social category membership."³⁵ Lawyers practice within "concentric rings of . . . practice" and create their own communities of practices.³⁶ In other words, as a group, lawyers are divided into subgroups of practices. Those subgroups of lawyers are the ones with whom we compare ourselves and to whom we look for common expectations and standards.³⁷ For instance, subgroups can be characterized by those working in particular substantive areas of law; focusing on particular practices, such as mergers and acquisitions, litigation, or mediation; or practicing in a specific geographic area.³⁸

Insight into the perception of a group—especially a subgroup practicing a particular area of law—may help in explaining the members' views of the environment, as well as how this perception shapes the members' responses to innovative practice in their profession. Such an

33. Personal identity is based on one's individuating attributes, and social identity is based on one's group memberships. See HENRI TAJFEL, *HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY* 254 (1981); see also Michael A. Hogg, *Social Identity*, in *HANDBOOK OF SELF AND IDENTITY* 502 (Mark R. Leary & June P. Tangney eds., 2nd ed. 2003); Henri Tajfel & John C. Turner, *An Integrative Theory of Intergroup Conflict*, in *THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS* (William G. Austin & Stephen Worchel eds., 1979) [hereinafter *SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS*].

34. ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 68 (1992).

35. *Social identification and psychological group formation*, *supra* note 32, at 530.

36. Mary Helen McNeal, *Slow Down, People Breathing: Lawyering, Culture and Place*, 18 *CLINICAL L. REV.* 181, 183 (2011).

37. *Id.* at 184.

38. See McNeal, *supra* note 36, at 185. For a discussion of the substantive area of law creating communities, see Richard Birke, *Article and Essay: Bargaining in the Shadow of the Law—The Relationship between Plea Bargaining and Criminal Code Structure: The Role of Trial in Promoting Cooperative Negotiation in Criminal Practice*, 91 *MARQ. L. REV.* 39 (2007). For a general discussion on common practices communities, see, e.g., Ronald J. Gibson & Robert H. Mnookin, *Disputing through Agents: Cooperation and Conflict between Lawyers in Litigation*, 94 *COLUM. L. REV.* 509 (1994). For a general discussion on geographic community, see, e.g., MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* (1994); Lynn Mather, *What Do Clients Want—What Do Lawyers Do*, 52 *EMORY L.J.* 1065 (2003). Geographic communities also define communities of practice based on shared institutions, procedures, rules, bar membership, repeated interactions, and common experiences in the same courts.

approach can also offer clues to better understand how and why innovative practice can be either embraced or rejected by a group or subgroup of lawyers, depending on their perception.

In addition to innovation and group dynamics, perception is another main concept in this article. Perception is a concept that aids in organizing, identifying, and interpreting information in order to make sense of situations. It is one of the foundations of our decision-making process and shapes how we perceive others' evaluations of us.³⁹ Perception is something we all have. It is not simply a marker of how we define people as "other," but is instead something that we learn in order to create pictures in our minds. Perception informs us about the world before we see it and creates beliefs about others—whether accurate or inaccurate—which influence how we behave.⁴⁰ In social psychology, this phenomenon is known as a categorization process, most often referred to as stereotyping and meta-stereotyping.

Our given perceptions of social practices define the groups to which we belong, either because we choose them or others assign them to us. Perceptions are an essential part of human beings and help us to represent and understand the environment in which we evolve.

There is considerable research in social psychology explaining how perceptions are shaped, both at the individual and group level.⁴¹ In short, perceptions are either created by observing others' verbal and nonverbal behavior to determine what they think others think, or they are created by the tendency to assume that others see in the same way that we do.⁴² One person's perception of other people's views might also be colored by that person's own self-knowledge and by his ability to view himself through the eyes of others.⁴³ At the individual level, when someone perceives and feels herself accepted or rejected by others or sees obstacles in the environment in which she evolves, this perception affects her behavior in significant

39. See Jacquie D. Vorauer & Stephanie-Danielle Claude, *Perceived Versus Actual Transparency of Goals in Negotiation*, 24 PERSONALITY AND SOCIAL PSYCHOLOGY BULLETIN 372 (1998).

40. See GORDAN W. ALLPORT, THE NATURE OF PREJUDICE 36 (4th ed. 1954); see also SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS, *supra* note 33, at 33-47.

41. PETER KAMMINGA, TOWARDS EFFECTIVE GOVERNANCE STRUCTURES FOR CONTRACTUAL RELATIONS: RECOMMENDATIONS FROM SOCIAL PSYCHOLOGY, ECONOMICS AND LAW FOR IMPROVING PROJECT PERFORMANCE IN INFRASTRUCTURE PROJECTS, 138-45 (2008).

42. Bella M. DePaulo et al., *Accuracy in Person Perception: Do People Know What Kinds of Impressions They Convey?*, 52 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 303, 315 (1987); see also David A. Kenny & Bella M. DePaulo, *Do People Know How Others View Them? An Empirical and Theoretical Account*, 114 PSYCHOLOGICAL BULLETIN 145, 161 (1993).

43. Jacquie D. Vorauer & Dale T. Miller, *Failure to Recognize the Effect of Implicit Social Influence on the Presentation of Self*, 73 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 281 (1997).

ways. At the group level, a positive evaluation provokes positive behavior and spreads innovation.⁴⁴

Lawyers are not immune to being influenced by their perception.⁴⁵ Lawyers' own perceptions, accurate or not, shape more than the settlement or non-settlement of individual cases.⁴⁶ These perceptions also play a pivotal role in how lawyers advise and guide their clients to choose between certain kinds of settlement forms. Likewise, lawyers shape their own biases in interpreting how "others," including their colleagues, clients, and the legal community, perceive their practice. This fact plays a major role in shaping people's reactions to specific situations.⁴⁷

For a number of reasons, perception is relevant when discussing the development of innovative practice. First, it shapes the obstacles and the solutions one may see. It may likewise shape how people decide to either stay or leave innovative practice. Similarly, if people do not perceive a supportive and encouraging environment, it is likely that fewer new adopters within the community will embrace innovative practice, consequently impeding its development and adoption by others. Perception can explain why and how a lawyering practice is more likely to thrive in certain legal and global settings, yet fail to develop in other areas.⁴⁸

A last field of theory we draw from is empirical research in law, and in particular, empirical findings on collaborative practice. Legal scholars recognize that empirical analysis in the legal setting is still a recent phenomenon relative to other social sciences.⁴⁹ In the last two decades, empirical analysis in the field of ADR, however, has been flourishing. The primary reason for the increased interest was the opportunity to better provide information and expand knowledge on ADR's formation, experimentation, consolidation, maturation, and institutionalization across industries, sectors, and boundaries.⁵⁰ Professor Carrie Menkel-Meadow has

44. ROBERT A. BARON & DONN BYRNE, SOCIAL PSYCHOLOGY (9th ed. 1996).

45. George Loewenstein et al., *Self-Serving Assessments of Fairness and Pretrial Bargaining*, 22 J. LEGAL STUD. 135, 136-59 (1993); see also Michael Ross & Fiore Sicoly, *Egocentric Biases in Availability and Attribution*, in JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES (Daniel Kahneman et al. eds., 14th ed. 1982).

46. Kevin M. Clermont & Theodore Eisenberg, *Trial by Jury or Judge: Transcending Empiricism*, 77 CORNELL L. REV. 1124, 1174 (1991).

47. Rebecca C. Curtis & Kim Miller, *Believing Another Likes or Dislikes You: Behavior Making the Beliefs Come True*, 51 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 284, 285-90 (1986).

48. PETER KAMMINGA, OVERCOMING BARRIERS TO USING MEDIATION IN MULTI-PARTY DISPUTES, in GEMME, *Acte du colloque -2^{me} Assises Internationales de la Médiation Judiciaire*, (Beatrice Brenneur ed., L'Harmattan Forthcoming 2014).

49. Joshua B. Fischman, *Reuniting 'Is' and 'Ought' in Empirical Legal Scholarship*, 162 U. PA. L. REV. 117 (2013).

50. KENNETH KRESSEL & DEAN G. PRUITT, MEDIATION RESEARCH: THE PROCESS AND EFFECTIVENESS OF THIRD-PARTY INTERVENTION (Kenneth Kressel & Dean G. Pruitt eds., 1989); see also Ariel C. Avgar et al., *Unions and ADR: The Relationship between Labor Unions and Workplace Dispute Resolution in U.S. Corporations*, 28 OHIO ST. J. ON DISP. RESOL. 63, 64 (2013); Lisa Bernstein,

categorized empirical work carried out in the field of ADR into two main categories.⁵¹ The first refers to empirical descriptive work, while the second discusses empirical comparative work. Professor Menkel-Mendow describes the two categories as follows:

Empirically descriptive work . . . document[s] practices (different processes and procedures used) and effects or outcomes of those practices (e.g. arbitration practices and outcomes, mediation practices and variations, consensus building or negotiated rule making, and studies of variations in negotiation assumptions, behaviors, and outcomes). . . .

Empirically comparative work . . . purport[s] to compare, through data analysis, differences in process, outcome, and other operationalized measures of efficiency or fairness, of different processes. For example, whether various forms of ADR (e.g. mediation or arbitration) are, in fact, cheaper and faster, or offer deeper and richer solutions than formal litigation or regulation . . . or how various forms of ADR compare to each other on a variety of dimensions (e.g. facilitative vs. evaluative, or caucus vs. non-caucus models of mediation).⁵²

These works have not only sparked debate within the ADR and legal communities, but have also boosted policy debate about the use of "non-litigative" and "non-adversarial" processes.⁵³ To date, some empirical studies have focused on better understanding the process of collaborative law and its development.⁵⁴ However, the study of collaborative law remains

Understanding the Limits of Court-Connected ADR: A Critique of Federal Court-Annexed Arbitration Programs, 141 U. PA. L. REV. 2169, 2187 (1993); Lisa B. Amsler et al., *Exploring the Role of Representation in Employment Mediation at the USPS*, 17 OHIO ST. J. ON DISP. RESOL. 341, 342 (2001); Thomas J. Stipanowich, *ADR and the Vanishing Trial: The Growth and Impact of Alternative Dispute Resolution*, 1 JOURNAL OF EMPIRICAL LEGAL STUDIES 843, 848-83 (2004).

51. Carrie Menkel-Mendow, *Empirical Studies of ADR: The Baseline Problem of What ADR Is and What It Is Compared To*, in OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 596, 597-98 (Peter Cane & Herbert M. Kritzer eds., 2012).

52. *Id.* at 597.

53. *Id.* at 598.

54. See Gay Cox & Syd Sharpies, *Wouldn't You Want to Know?*, 8 COLLABORATIVE REVIEW 10, 11-12 (2006); DEPT. OF JUSTICE CAN., *THE EMERGING PHENOMENON OF COLLABORATIVE FAMILY LAW (CFL): A QUALITATIVE STUDY OF CFL CASES* vii, 13-15 (2005); Michaela Keet et al., *Client Engagement Inside Collaborative Law*, 24 CAN. J. FAM. L. 145, 145-204 (2008); John Lande, *Practical Insights from an Empirical Study of Cooperative Lawyers in Wisconsin*, 2 J. DISP. RESOL. 203, 203-60 (2008); John Lande & Forrest S. Mosten, *Collaborative Lawyers' Duties to Screen the Appropriateness of Collaborative Law and Obtain Clients' Informed Consent to Use Collaborative Law*, 25 OHIO ST. J. DISP. RESOL. 347, 347-432 (2010); Julie Macfarlane, *Experiences of Collaborative Law: Preliminary Results from the Collaborative Lawyering Research Project*, 179 JOURNAL OF DISP. RESOL. 179, 179-225 (2004); William H. Schwab, *Collaborative Lawyering: A Closer Look at an Emerging Practice*, 4

scarce and lacks comparison groups to adequately interpret the data gathered.⁵⁵

Empirical findings in the field of collaborative law demonstrate that clients generally hear about collaborative law in various ways, from recommendations by their attorneys to media publicity.⁵⁶ Similar motives for the client to opt for collaborative law have been identified, but the significance and preferential order among them are quite different, particularly the prospect of cost savings. These studies indicate that clients' prime reason to use collaborative law is to avoid the stress and emotional costs of litigation.⁵⁷ Other factors mentioned include preserving the relationship with the other party, protecting the interests of third parties, such as children, and avoiding the expense and delay of litigation.⁵⁸ Different studies also found that the non-adversariality of the process and its respect for clients' most important concerns allows collaborative law to deal more efficiently with the dispute in terms of stress, time, and cost.⁵⁹ In other words, this tailor-made process seems to offer the client significant control over the quality and result of the representation.⁶⁰ Generally, clients reported satisfaction with their collaborative law experiences, though some reported frustration with various aspects of the process.⁶¹

The demographics generally identified for collaborative practitioners show that most are women who have been in practice for an extended period of time. On average, collaborative practitioners identified in these studies were sixty years old with at least twenty years of experience as legal practitioners, mainly in the field of family law.⁶² Generally, the studies found that collaborative practitioners have trained in collaborative law for an average of 24.7 hours, with a median length of time in practice of collaborative law between 11-15 years.⁶³

PEPPERDINE DISP. RESOL. L.J. 351, 354-96 (2004); Mark Sefton, *Collaborative Law in England and Wales: Early Findings*, RESOLUTION (2009), available at http://www.resolution.org.uk/news-list.asp?page_id=228&n_id=7; Richard W. Shields, *On Becoming a Collaborative Professional: From Paradigm Shifting to Transformative Learning Through Critical Reflection and Dialogue*, 2 J. DISP. RESOL. 427, 427-63 (2008); Wanda Wieggers & Michaela Keet, *Collaborative Family Law and Gender Inequalities: Balancing Risks and Opportunities*, 46 OSGOODE HALL L.J. 733, 733-71 (2008).

55. Lande, *supra* note 25, at 259; see also Schwab, *supra* note 54, at 353 (referring to Douglas C. Reynolds, Presentation at the Harvard Law School (Feb. 26, 2002)).

56. Schwab, *supra* note 54, at 378.

57. Sefton, *supra* note 54, at 10-13.

58. Macfarlane, *supra* note 54, at 186, 202-05.

59. Keet et al., *supra* note 54, at 194-95.

60. Cox & Sharpies, *supra* note 54, at 10.

61. *Id.* at 11.

62. Schwab, *supra* note 54, at 372-74 (noting that the vast majority of collaborative law cases are still divorce cases despite interest in expansion).

63. *Id.*

In some of these studies, respondents reported that collaborative cases constituted just 1% of their caseload, with only a few lawyers using a collaborative law approach for most of their cases.⁶⁴ For instance, in Sefton's study, lawyers reported that 56% had completed at least one collaborative case, 12% opened but had not completed a case, and 31% had not opened a case.⁶⁵

The main reason why collaborative practitioners turned to collaborative law was their dissatisfaction with litigation and other dispute resolution processes.⁶⁶ Respondents also noted pecuniary and psychological motives: collaborative law offers them additional practice opportunities and made them feel better about themselves and their clients.⁶⁷ Collaborative law was a medium for the respondents to change how they perceived their roles and how they approached the dichotomy between advocating for their client and considering the interests of the other party.⁶⁸ The respondents also cited as a motive the possibility to use non-lawyer professionals in collaborative practice.⁶⁹

Collaborative practitioners reported that their clients' motives to use collaborative law included protecting children's interests, maintaining good co-parenting relationships, saving time and money, providing fair outcomes, and avoiding going to court.⁷⁰

Researchers also studied the logistics of collaborative law meetings and the feelings associated with this process. Empirical findings suggest that collaborative law practices were variegated due to different factors, such as the differences in local practice culture and the sophistication of lawyers. The studies also reported that the assessment and screening processes used by lawyers to determine whether collaborative law was suitable for a particular case differed among practitioners, as did the disclosure of information relevant to the cases.

Studies have also examined lawyers' and clients' perceptions about the disqualification agreement. The results show ambivalence, with a majority of collaborative lawyers generally believing that the disqualification agreement was very important, while the parties had mixed opinions and sometimes misunderstood its purpose.

While generally favorable, these studies also revealed undercurrents of concern and mixed results regarding collaborative processes. Parties paid substantial amounts for use of this process, with variation based on

64. *Id.*

65. Sefton, *supra* note 54, at 15-19.

66. Macfarlane, *supra* note 54, at 180, 184-85, 190-92; *see also* Sefton, *supra* note 54, at 15-19.

67. Macfarlane, *supra* note 54, at 190-94.

68. *Id.* at 190-92; *see also* Schwab, *supra* note 54, at 380.

69. Macfarlane, *supra* note 54, at 190-94.

70. Sefton, *supra* note 54, at 30-31.

geography, case difficulty, presence of children, and use of professionals. Also, clients' perceptions differ as to whether they saved time and money relative to other ADR processes.

Finally, the research conveyed that parties settled a large proportion of collaborative cases and suggested that local practice groups affected practice not only in litigation, but also in collaborative cases. Practice groups created local structures and membership rules that were fairly similar to each other, serving as gatekeepers and regulators.⁷¹ Most groups found that the volume of collaborative cases was insubstantial, and many trained collaborative lawyers indicated frustration with the lack of collaborative cases.⁷²

III. METHODS

Our study focuses primarily on understanding the perception of collaborative practitioners of their environment, including their perception of factors frustrating or enhancing the growth of this innovative practice. We surveyed collaborative practitioners—lawyers and neutrals such as arbitrators and mediators—accredited and registered in their home country. This study included respondents in nineteen countries.

Our study uses a broad interpretation of the term "collaborative practice," including the pure form as defined in the U.S., as well as some variants on the process utilized in other countries. Professor, for instance, also noted that collaborative practice is not a single, uniform phenomenon.⁷³ "It varies along many dimensions and different variations are likely to contribute to very different results."⁷⁴ For instance, in the U.S., collaborative law is often contrasted with cooperative law. The prime difference is that in collaborative law, the participative agreement contains a disqualification provision, whereas in cooperative law it does not.⁷⁵ This provision disqualifies the collaborative attorneys, including their respective firms, from representing their clients in court in a contested proceeding if the collaborative process ends without a settlement.⁷⁶ In other words, the collaborative attorneys must withdraw and the clients must retain new counsel for litigation. However, some of our respondents indicated that the requirement of withdrawal of collaborative counsel if the case goes to court is not compulsory in every country we surveyed. According to some

71. Macfarlane, *supra* note 54, at 192.

72. *Id.* at 193-94.

73. Lande, *supra* note 25, at 273.

74. *Id.*

75. *See on the differences e.g.* John Lande & Gregg Herman, *Fitting the Forum to the Family Fuss*, 42 FAMILY COURT REVIEW 280, 281 (2004).

76. *Id.*

respondents in some countries we surveyed, withdrawal is simply not allowed, as it is considered to be against public policy or is viewed as a limitation of the practice of law.

For the purpose of our study, we have retained and presented the following six characteristics in order to define "collaborative practice":

- Parties negotiate a mutually acceptable settlement without having courts decide issues;
- Participants maintain open communication and information sharing;
- Participants create shared solutions acknowledging the highest priorities of all;
- Generally, each client is represented by a lawyer;
- Participants sign a participation agreement (which for example in the U.S. requires withdrawal of collaborative counsel if the case does not settle and go to court); and
- The process may involve lawyers and clients only, involve referral to professionals from disciplines other than law, or involve an interdisciplinary team of lawyers, mediators, mental health professionals, financial specialists, and/or others as agreed upon by the parties.

The primary aim of the research is to investigate collaborative practitioners' perceptions of different aspects of collaborative practice. First, it includes an investigation of their perceptions of collaborative law and its environment. Second, this study focuses on analyzing the perceptions they think others may have of collaborative law and the forces driving these public perceptions. Third, the study investigates the practitioners' perceptions of their environment over time and the elements that either frustrate or enhance the use of collaborative practice.

This study's basic premise is that studying collaborative practitioners' perception of the environment is a valuable step in our understanding of the dynamic surrounding the growth and development of innovative processes. It may provide directions in identifying obstacles, success factors, and opportunities to effectively promote innovative practices around the world. In other words, the research seeks to answer the fundamental question: "What do collaborative practitioners perceive in their environment that impedes or influences the growth of this innovative practice?"

A. Design and Presentation

The data analyzed here was gathered by the authors in their role as co-chairs of the Future of ADR Committee – International Committee of the Dispute Resolution Section (DRS) of the American Bar Association (ABA). The initial survey was submitted to members of both the International Committee and the Collaborative Law Committee of the ABA, DRS for comments. After this initial step, the authors, in collaboration with empirical experts and experimental psychologists, designed the final survey.⁷⁷ Each of our measures is based on the respondents' answers to questions in our survey. The wording of each question was based on our earlier findings and documentary research on collaborative law, innovation, and perception, as well as theoretical considerations and previous studies.

The findings of this research have been presented at the ABA, DRS annual conference in 2013 in a special session titled "Changes in Legal Infrastructure: Empirical Analysis of Collaborative Law around the World" and at the international session. The feedback from the ABA, DRS conference suggests that the findings reported in this study provide a reasonably accurate portrait of collaborative members' views, at least for the more experienced and committed members.

Self-report measures have been found particularly useful where the object of interest is a perception or attitude.⁷⁸ The collaborative practitioners' perceptions of their environment, as elicited through self-reports, provide the best evidence of how and why an innovative practice develops within a group.

While developing the surveys, we also identified the parameters of the target survey recipients. We determined that we would send out surveys to a subset of individuals, and we made substantial efforts to assure a representative and sizeable sample of collaborative law practitioners. The sample was selected through a number of steps. At the time of the design, the International Association of Collaborative Practice (IACP) boasted more than 4,200 collaborative practitioners around the globe. After accessing publicly available information identifying these collaborative practitioners, we cross-referenced the ones that actually registered themselves and qualified collaborative law as one of their specialties.⁷⁹ We then verified their specialty registration with each of their respective

77. We particularly wish to thank Constantine Boussalis, Travis Coan, and Yoel In-Bar for their advice.

78. See Nielsen L. Vibeke & Christine Parker, *Mixed Motives: Economic, Social, and Normative Motivations in Business Compliance*, 34 LAW & POLICY 428, 438 (2012).

79. Among the different countries subject to this study, the regulation regarding "specialty" is similar.

national bar associations or authoritative institutions registering or regulating mediators and arbitrators. This screening process resulted in a population of 501 collaborative practitioners officially registered in their home country. We then randomly selected a population of 300 collaborative practitioners, and we received 226 responses ($N=226$), a response rate of 75%. The sample respondents included 116 males and 110 females. Of the respondents, 78% were lawyers and 22% were neutrals, such as arbitrators and mediators. Participants reported a mean age of fifty-two years ($SD=7.73$), with a mean legal experience of twenty years ($SD=7.64$). Seven percent had more than a law degree (including Ph.D. and S.J.D., in the field of social sciences), 18% had, in addition to their national degree, a foreign diploma at a Master level, whereas 75% had only a national law degree.

The data was collected in May and July 2012. The survey was administered online with Qualtrics and included coded URLs that were distributed only to the randomly selected collaborative practitioners from nineteen countries. The countries included in the survey are Australia, Bermuda, Canada, Cambodia, England, France, India, Ireland, Italy, Israel, Germany, Mexico, Netherlands, Russia, Scotland, Slovakia, Spain, Switzerland, and Turkey.

B. Material & Methodology

Respondents spent approximately twenty-five minutes answering the questions and completing the survey. The survey consisted of twenty-five questions plus standard demographics questions. We included four types of questions: (1) questions requiring a binary response (e.g., "yes" or "no"); (2) categorical questions requiring a response from a list of viable options; (3) Likert scale questions (statements that could be answered by a range of responses, such as strongly agree, agree, neither agree nor disagree, disagree, strongly disagree, don't know); and (4) one open-ended question to study any possible variations among geographic regions. Within the Likert scale section, we varied the orientation of the statements to include both negative and positive statements. This type of contrast helped to ensure that the participants were paying attention to the statements and also maintained the neutrality of the survey.

The study used a multivariate regression analysis (logistic regression) controlling for gender, familiarity with the concept, years of practice, time dedicated to collaborative law activities, and the amount of training they received. First, we tested for gender difference in the practitioner

perception of the client's motives to use collaborative law.⁸⁰ Second, we compared the results between newer and longer-tenured practitioners of collaborative law to assess the differences in their perceptions of the regulatory framework and how this framework enhances or frustrates the use of collaborative practice. We were also interested to determine their perception of the support collaborative law receives in their legal communities.

The first part of the survey contained questions assessing the respondents' professional background. These questions related, for instance, to the amount of time they dedicated to collaborative law activities, the number of cases they have been involved in since they started practicing collaborative law, and the number of years they have spent training in and practicing collaborative law. The second part of the survey consisted of several questions to assess the respondents' perceptions on the collaborative law environment. Questions included when collaborative practice was first introduced in their country, the percentage of lawyers trained in this approach, and the areas of practice in which collaborative law is used. The third part was designed to assess the respondents' perceptions on the factors influencing the use of collaborative law and the average success rates of collaborative law cases. The fourth part assessed the perceptions of what other members of the community think about collaborative law. The final part of the survey focused on the perceptions of collaborative law by others—including practitioners and members of the legal community as well as their clients.

IV. RESULT

More than two-thirds of respondents reported an extreme familiarity with the differences between collaborative law and cooperative law (77%). Although the other 23% reported being familiar with the collaborative law and cooperative law difference, they identified the two practices as similar, in that both are client-interest based negotiations.

The practitioners were asked how many collaborative law cases they had been involved in since they started practicing collaborative law. Slightly more than one-third (35.5%) of respondents reported to having been involved in fewer than five cases, while 28.9% of respondents reported to having been involved in six to fourteen cases, and 35.5% of respondents reported to having been involved in more than fifteen cases.

A little more than half of the study sample has been practicing collaborative activities for at least three years (53%). Twenty-four percent

80. The authors would especially like to thank Dean Iris Bohnet and the Women Public Policy Program for their support and suggestions.

of the respondents reported that they have been practicing collaborative activities between one and two years, and twenty-three percent reported to have been practicing for less than one year.

Slightly less than half of the collaborative practitioners reported to having received training for at least twenty hours (48.6%), whereas the other half reported to having received more than twenty one hours of training (51.4%). Within the last category, 17.7% reported having spent more than fifty-one hours, whereas the other thirty-three percent indicated having received between thirty-one and forty hours of training.

A. The time collaborative practitioners dedicated to collaborative activities

Figure 1 shows the time collaborative practitioners dedicated to collaborative activities (including settling cases, sitting on committees, participating in collaborative conferences, advertising, and participating in training). A little more than half of the study sample spent at least between 11-20% of their time on collaborative activities (57.4%). A slight majority of this group reported to spend 11-20% of their time (41.5%), whereas 15.9% of the respondents within this group reported to spend at least 10% of their time dedicated to collaborative activities. The other collaborative practitioners responses were split as follows: 21-40% of their time (27.4% of respondents); 41-60% of their time (7.0% of respondents); 61-80% of their time (4.2% of respondents); and 81-100% of their time (3.5% of respondents).

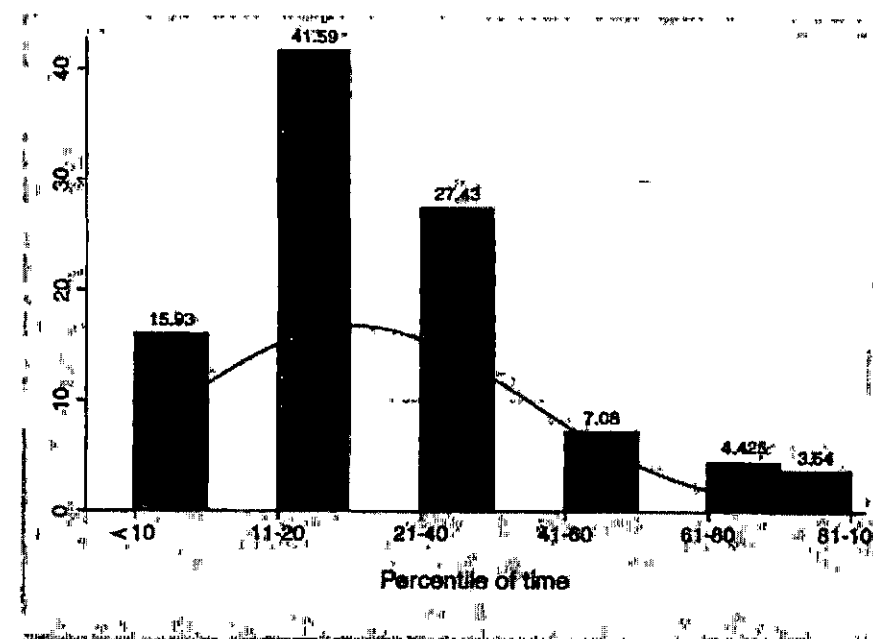


Figure 1: Time collaborative practitioners report to have dedicated to collaborative activities

B. The respondents report of the timeline for introduction of collaborative law

Figure 2 summarizes the timeline of collaborative practice's formal introduction in different countries from 2000 to 2012. The horizontal axis represents years and the vertical axis represents the percentile. Almost 70% of the respondents reported that collaborative law was introduced between 2001 and 2005. Within this time frame, 15% of the respondents reported that collaborative law was introduced between 2001 and 2002; 34.5% reported that collaborative law was introduced in 2003; and 20.3% reported it was introduced in 2004-2005. The other 30% of respondents reported that collaborative law was introduced after 2005. Fifteen percent of the respondents reported that collaborative law was introduced in the year of 2006; 3.5% in the year of 2007; 10.5% in the year of 2008; and less than 1% in the year of 2009.

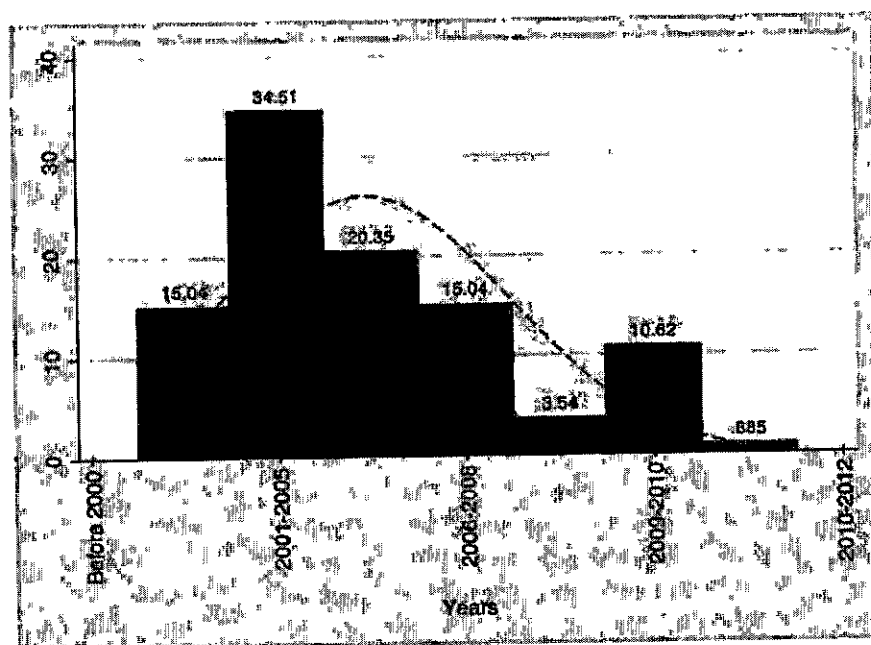


Figure 2: Reported timeline of introduction of collaborative law

C. The perception about the percentage of lawyers that have heard and been initiated within their own country

Figure 3 represents the perceptions of the respondents about the percentage of lawyers who are familiar with collaborative law within their own country. The horizontal axis represents the percentage of lawyers familiar with collaborative law, and the vertical axis represents the percentage of respondents. More than 70% of the respondents perceived that less than 5% of lawyers in their country are familiar with collaborative practice (72.5%). Nearly 20% of the respondents perceived that 6%–10% of lawyers in their country are familiar with collaborative practice, and only 7.9% of the respondents reported that at least 11%–15% of lawyers in their country are familiar with collaborative law. The last category—the 7.9%—are actually reported by Canada, England, and Netherlands.

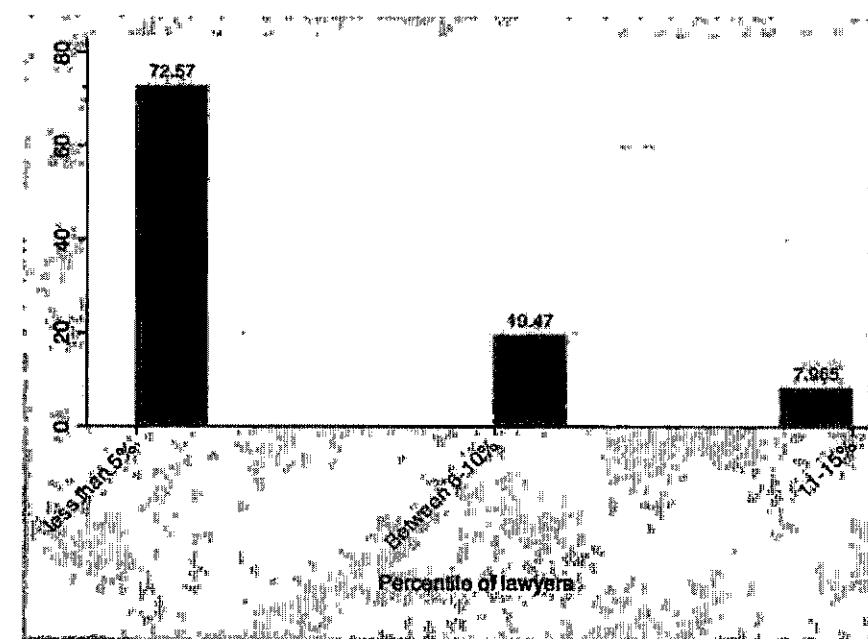


Figure 3: Collaborative practitioners' perceptions of the percentage of lawyers that are familiar with collaborative practice within their own country

Also, more than half of the respondents reported the absence of a particular regulation related to the practice of collaborative law within their country (52.2%), whereas 47.8% of the respondents perceived that collaborative practice is somehow regulated under their current legal framework but wished a more specific regulatory framework would be implemented.

D. The perception of areas of practice of collaborative law

Figure 4 summarizes the areas in which, according to the respondents, collaborative practice is mainly used in their respective countries. The horizontal axis presents the fields of practice, and the vertical axis presents the percentile. More than 80% of the respondents reported that family law is the main field of practice for collaborative law (86.7%). The other 13% of respondents reported the use of collaborative law in the following fields: labor relations (7%), real estate (2%), tort law (2%), healthcare law (0.8%), insurance law (2%), environmental law (0%), and financial disputes (3%).

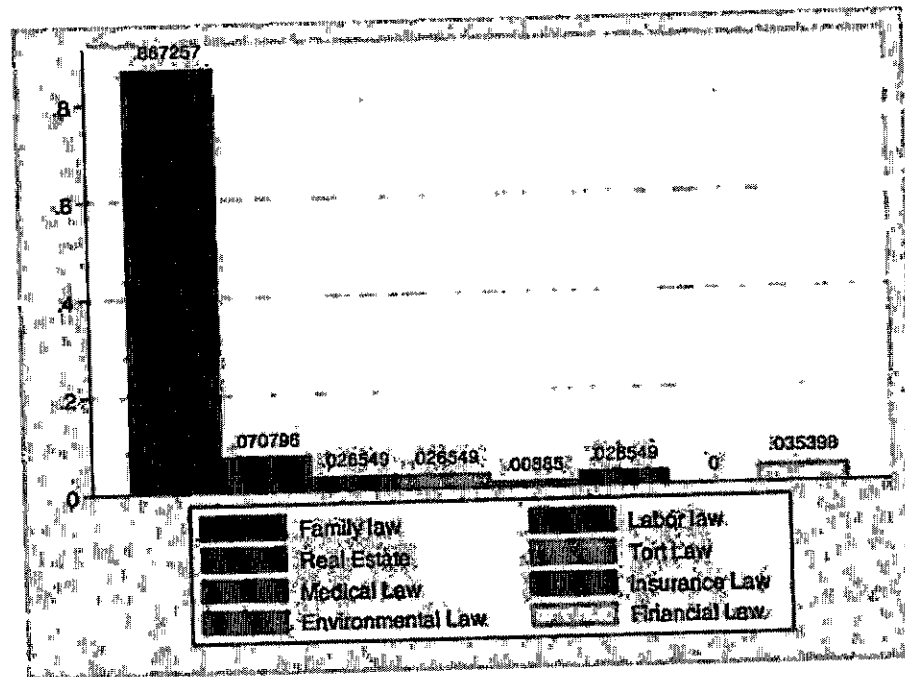


Figure 4: Perceptions of areas of practice of collaborative law

E. The perception of success rate when using collaborative law to settle cases

Figure 5 shows collaborative practitioners' perception of the success rate when using collaborative law to settle cases. The horizontal axis represents the percentile of success when collaborative law is used to settle cases, and the vertical axis represents the percentage of respondents. The graph shows that more than 80% of the respondents perceived collaborative law as successful relative to other dispute resolution forms. Of these, 41.8% of respondents perceived collaborative law to be successful 51%–80% of the time, and 41.8% of respondents perceived that collaborative law is successful more than 81% of the time. A small number of respondents reported a success rate of 10%–30% when collaborative law is used (5.4%), and a little over 10% of the respondents reported that collaborative law is successful 31%–50% of the time (10.9%).

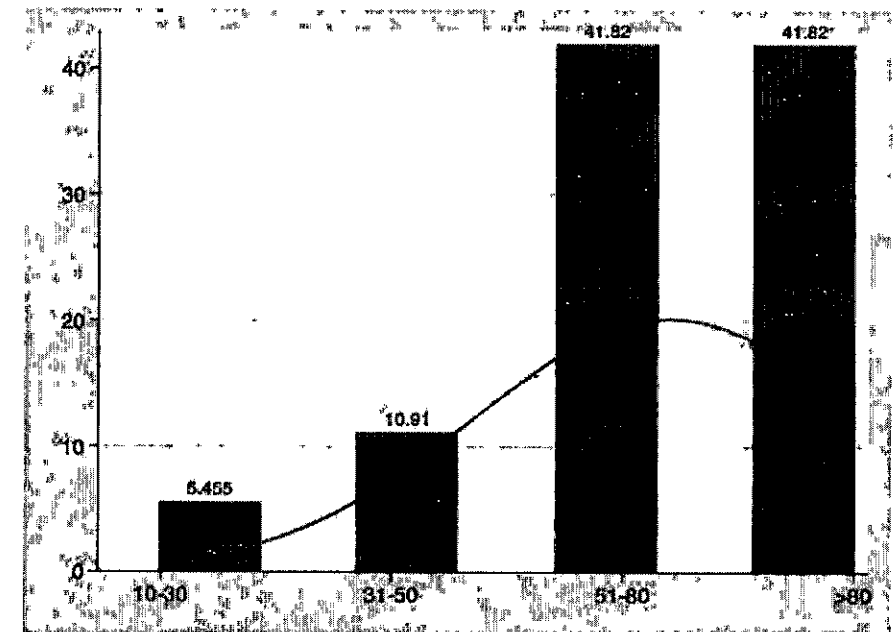


Figure 5: Perception of the success rate when using collaborative law to settle cases

F. The perception of clients' motives to use collaborative law

Collaborative practitioners were asked what, in their view, are the reasons why clients use collaborative law. The respondents cited the following reasons, in descending order of preference: the process is less costly (38.9%); collaborative law offers clear control over the outcome for the client (30.8%); and collaborative law offers clear control over the process for the client (30.2%).

We hypothesized that female collaborative practitioners were more likely to choose control over the outcome as the main motive for their clients to use innovative practice. We conducted a multivariate regression analysis (logistic regression) controlling for gender, familiarity with the concept, years of practice, time dedicated to collaborative law activities, and the amount of training they received.

The data showed that there is a gender difference in the perceived motives of clients in using collaborative law. Female collaborative practitioners were found to choose control over the outcome as the main reason their clients use collaborative law, whereas male collaborative practitioners perceived outcome control to be the least likely motive ($t=4.28$, $df=1$, $p<.01$).

G. The perception of collaborative practice by their environment

More than 90% of the respondents reported that collaborative law is perceived negatively (49.5%) or is a practice unknown to other members of their legal community (42.2%).⁸¹ Less than 10% of respondents reported that other members of their legal community perceived collaborative law positively (8.3%). The positive factors perceived by the respondents as enhancing the growth of collaborative practice were attributed to the benefits collaborative law provides both clients and lawyers (28.1%); the higher satisfaction of the client (26.5%); the match between collaborative practice and the ADR culture of the country (25%); and the efficiency of collaborative practice relative to more traditional forms of ADR (14.8%). A small percentage perceived that collaborative law was aligned with the values of their legal culture (5.3%). The negative factors perceived by the respondents as impeding the growth of collaborative practice were attributed to collaborative practice not matching well with either the legal culture (45.2%) or the ADR culture (19.8%) of the country. Some respondents noted the failure of collaborative law to provide higher client satisfaction (21.3%), while others believed that collaborative practice is no more efficient than the more traditional forms of ADR (13.6%). The reasons perceived by the respondents for the mismatch of collaborative practice with the legal and ADR cultures were that the withdrawal requirement is misaligned with the respective legal systems (91.1%), and that the discovery and exchange of information required by the collaborative law process would not otherwise occur in the jurisdiction (77.8%).

H. Shift in perception over time

To measure the change in perception over time, we hypothesized that collaborative practitioners' perception of their environment will differ over time. Based on our literature review, we formulated two hypotheses. First, collaborative practitioners newer to the practice of collaborative law are more likely to perceive a hostile environment. Second, collaborative practitioners who have been in the practice of collaborative law longer are more likely to perceive a supportive environment.

We conducted a multivariate regression analysis (logistic regression) controlling for gender, familiarity with the concept, years of practice, time dedicated to collaborative law activities, and the amount of training

received. We compared the results between newer and longer-tenured practitioners of collaborative law to assess their perceptions of the statutory and regulatory framework behind collaborative law, whether such a framework enhances or frustrates the use of collaborative law, and the degree to which their legal and lawyer communities support the use of collaborative practice.

Figure 6 shows that these perceptions changed over time. The graph demonstrates that the longer practitioners have been practicing collaborative law, the more likely they were to perceive a supportive environment towards the use of collaborative law—support from both the statutory and regulatory framework ($p < 0.01$) and from their lawyer communities ($p < 0.01$). Collaborative practitioners that have been practicing for less than one year are more likely to perceive a frustrating environment ($p < 0.05$), where neither the statutory framework ($p < 0.05$) nor the lawyer communities ($p < 0.05$) support the use of collaborative law. Collaborative practitioners that have been practicing between one and two years perceived a lack of support from both the legal profession and the lawyer community ($p < 0.01$). The perceptions of collaborative practitioners who have been practicing between three and five years were mixed; some perceived a supportive environment from their lawyer community ($p < 0.01$), while others perceived a lack of support ($p < 0.01$). Collaborative practitioners that have been practicing collaborative law between six and ten years perceived that their lawyer communities were more supportive than frustrating to the practice of collaborative law ($p < 0.05$). Finally, collaborative practitioners that have been practicing more than ten years perceived support both from the legal framework and from their lawyer communities ($p < 0.01$).

81. In this study, the "lawyers community" is defined as encompassing all practicing lawyers without distinguishing their field of practice, and the "legal community" is defined as including judges, lawyers, and legal scholars.

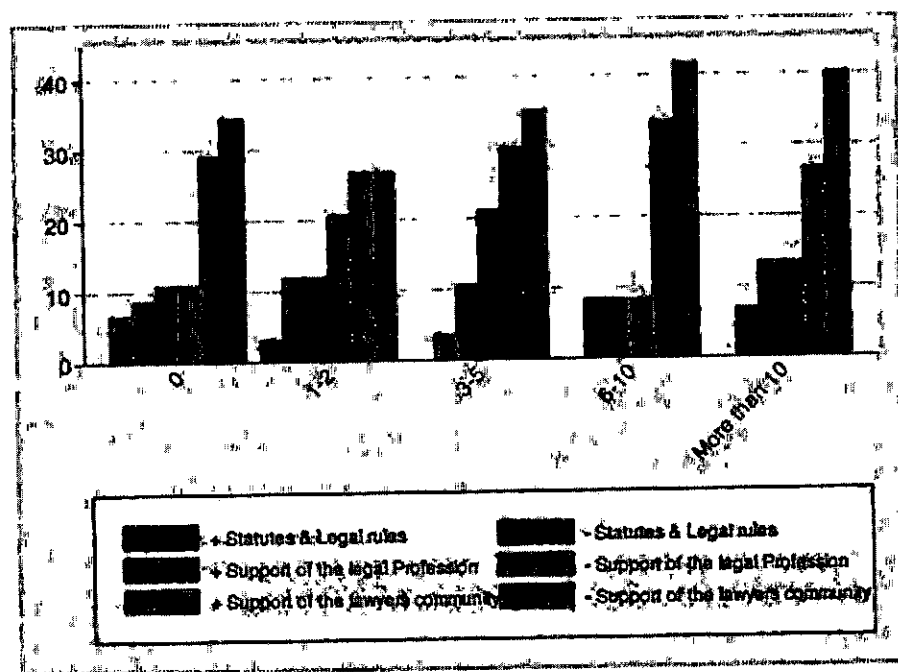


Figure 6: Perception over time of their environment

V. SUMMARY

A. Discussion

The results of this survey and accompanying findings can help us better understand the use of innovative practices and, more broadly, the changes in the legal profession, while also highlighting areas for further study. Several conclusions emerge from the data.

The first finding we can draw from the data is that most of the respondents spend proportionally little of their professional time dedicated to collaborative law. This finding, viewed in combination with the respondents' reports that collaborative law is a recent phenomenon mostly unknown by the market, raises questions about the possibility of low demand by clients and by the legal profession more broadly. Earlier studies indicate that this phenomenon is indeed attributable to a lack of demand rather than to a lack of interest in collaborative practice. Further investigation is needed to understand the reasons underlying this time attribution and its interplay with other factors that may impact the use of collaborative law.

Second, most respondents reported that collaborative law has been introduced in the last ten years in their legal culture. Innovation theory

provides that diffusion of an innovative process is constituted by the presence of four elements: the innovation itself, the communication medium through which the innovation is spread, the time it takes for the spread to occur, and the social system in which it takes place. Under innovation theory, it must be determined which type of communication medium is used to introduce the process, as well as the social system in which the introduction takes place. The innovation itself appears to be a good one, based on the reported success rate in this and in earlier studies. Both the communication medium and the social system could explain why collaborative practitioners mostly perceive that collaborative practice is either unknown—not well communicated—or negatively perceived by other members of their profession—potentially caused by the social system in which the spread of the practice takes place. Perhaps the essential characteristics of an innovative practice that arise from innovation theory—the attributes Advantage, Compatibility, Complexity, Trialability, and Observability (ACCTO)—have not been well identified and targeted. It could well be that lawyers have failed to embrace collaborative practice because they have failed to perceive the advantages and the compatibility of collaborative practice with their own practice.

For that reason, it will be instructive to further explore how, and by whom, the collaborative law process has been introduced in the sampled countries. In her study, Professor Macfarlane suggested that, while there are some regional variations in the way collaborative law emerged in the U.S. and Canada, a fairly consistent pattern could be highlighted.⁸² Regional and local collaborative law practitioners formed a group that generally developed itself around one or two highly motivated and dynamic individuals.⁸³ This tendency is in accordance with findings from social identity theory on group dynamics and circumstances under which people will perceive others, and themselves, as part of a group. This theory indicates people's tendencies to compare themselves and look for common expectations and standards. Questions arise about the existence and impact of such developments in innovative practices, including in the collaborative communities. One explanation could be that there is not yet a well-established group of collaborative practitioners in each country surveyed that could positively and significantly impact the development of collaborative law. Obtaining further insight into the perceptions of these groups helps in explaining their views of the legal environment, as well as how the environment shapes their responses to innovative practice in their profession.

82. Macfarlane, *supra* note 54, at 190.

83. *Id.*

Third, respondents reported a low percentage of lawyers being familiar with collaborative law in their countries. This again raises questions about the communication medium used to spread information about collaborative practice within the lawyer community and its role in the growth of collaborative practice. Innovation theory indicates the importance of the medium in fostering knowledge about collaborative practice and the ACCTO characteristics within a professional community.

Almost half of the respondents reported there was no framework in place in their countries. Implementing a framework may shift the perception of a certain type of practice, as such a structure legitimizes the practice and stimulates acceptance by the community. In fact, having a regulatory framework may help to promote positive aspects of an innovative practice and mitigate negative factors, thereby enhancing the growth of this innovative practice. For instance, such techniques have been used more recently by the European Union in introducing the EU Directive related to the practice of mediation. The particular framework put in place is meant to both regulate and encourage these specific areas of the law, creating awareness with both the members of the profession and the general public.⁸⁴

Also, national collaborative lawyers may want to consider investing in promoting the ACCTO characteristics of this innovative practice, which according to innovation theory, are essential for its growth. Local and regional practice groups might be developed to help practitioners refine their skills and adapt collaborative practice to their own legal framework. Moreover, establishing or strengthening such groups may trigger group effects. National leaders of collaborative law organizations could, for instance, inquire with members registered in their own bar associations about how to make such groups appealing to other members and how best to educate other members of the profession about collaborative law.

Another instructive finding in line with previous research is that collaborative practice seems to be primarily applied in the areas of family law. This suggests that in family law, innovation is making inroads. Questions arise about the potential of growth in other practice areas. At the same time, there is a need to further explore the reasons underlying the non-use of collaborative law in other practice areas and its impact on the general development of collaborative law.

Furthermore, the data indicates that collaborative practitioners themselves perceive a high success rate when using collaborative law to

84. Paola Cecchi-Dimeglio, *Recension: EU Mediation Law and Practices*, 3 JOURNAL OF ARBITRATION AND MEDIATION 105 (2013). The author discusses the Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008, addressing certain aspects of mediation in civil and commercial matters.

settle cases. This finding is important to the success of collaborative law. As innovation theory points out, the easier it is for groups and individuals to see the results of an innovative practice, the more likely they are to adopt it and advocate for it. People experience or directly perceive the benefit of collaborative practice in settling cases for their clients; in turn, they view collaborative practice in a positive light. Further investigation is needed to explore the reasons why people experience or perceive such high success rates. Further research should be conducted to determine the relationship between such a positive stereotype and the extent to which practitioners recommend and advocate for this process with their clients, legal communities, and lawyer communities. The ACCTO characteristics suggest that communication about these positive experiences may support the growth of this innovation, specifically by encouraging collaborative practitioners to gather and disseminate information about their (successful) cases, including the challenges they faced and how they overcame them.

Further, the data highlight that respondents perceived both procedural and distributive elements of collaborative law as important in convincing clients to use this innovative practice. It would be interesting to know how collaborative practitioners make the case for collaborative law to their clients. The way in which the practitioners frame and present their pitch for collaborative law may very well impact clients' perceptions. The effect of gender on clients' decisions to use collaborative practice, as perceived by female collaborative practitioners, also requires more investigation, as it could provide explanations as to the difference between female and male practitioners' evaluations of what is important and their perception of what their clients value as important.

The study also shows that collaborative practitioners believe that collaborative law is either unknown or negatively perceived by other members of their legal community. Thus, the findings imply that collaborative practitioners feel there are negative stereotypes or meta-stereotypes about the practice of collaborative law. A question related to this finding is if, and to what extent, this perception impacts the growth of collaborative law within the legal community. Future studies should point out whether these stereotypes or meta-stereotypes are real obstacles or just perceived ones. Correspondingly, it will be interesting to further investigate if there is a causal effect between perception and low growth of innovative practice.

Furthermore, the data elucidates many factors that either positively or negatively influence the perception of collaborative practice. This finding gives rise to many questions. Most striking to the authors is how this perception is created and how to address and overcome it. For instance, a future study could focus on the correlation and causation of the development, maturation, and institutionalization of innovative practice.

Such a study would complement our findings that more than half of respondents report the absence of a specific regulatory framework. In doing so, it would be interesting to determine whether the perception changes after the introduction of a specific regulatory framework and how long it takes for any changes to occur. Also, standardized forms for clients and lawyers alike could be designed to match the legal and ADR culture in the respondents' countries. Such forms could provide specific suggestions to lawyers on how to most effectively pitch collaborative practice to clients in the lawyer's home country.

Finally, findings from the multivariate regression analysis (logistic regression) provide evidence of a shift of perception of the environment over time. We found a positive correlation between the amount of time a collaborative professional practices collaborative law and the perception of the level of hostility towards collaborative practice in the environment. Thus, we have a general finding that perceptions of the environment—defined by the statutes, the legal community, and the lawyer community—change over time. This finding seems to confirm the influence that a group or community may have on one's perception. It begins to highlight important information regarding the impact of having a community, or not, on the number of newer practitioners either staying in or leaving this innovative practice.

The shift of perceptions of the environment over time that we found may have consequences for the growth of innovative practice. It may impact both the attraction of collaborative practice for new professionals and the retention of these new adopters. For instance, the perception of a more hostile "environment" is likely to discourage a lawyer to continue the use of collaborative law.⁸⁵ Such a shift may also discourage the attraction of new adopters. Both are necessary for the development and growth of the innovative practice.

Furthermore, shifts in perceptions may help to put in place systems of mentorship to provide guidance that might be especially attractive to newer collaborative practitioners. For lawyers considering whether to adopt collaborative practice, the opportunity to get mentoring from experienced practitioners who positively perceive the environment may shift these lawyers' perceptions earlier and motivate them to stay in the profession.

85. According to research in psychology and economics, humans characteristically care less about future outcomes than present ones. This phenomenon is known as temporal discounting. Viewed in the context of our study, this phenomenon may have consequences for the growth of innovative practice. If a newer adopter does not perceive at the present time "benefit" of the use of this practice, that adopter is likely not to invest further in the development of his practice and may likely leave the practice. See, e.g., Gretchen B. Chapman, *Temporal Discounting and Utility for Health and Money*, 22 JOURNAL OF EXPERIMENTAL PSYCHOLOGY 771, 773 (1996); John G. Lynch, Jr. & Gal Zauberman, *When Do You Want It? Time, Decisions, and Public Policy*, 25 JOURNAL OF PUBLIC POLICY AND MARKETING 67, 68 (2006).

Such groups and mentoring systems might also provide mechanisms for engaging other members of the profession and may save collaborative practitioners from many of the struggles their predecessors faced in embracing this innovative practice.

Overall, encouraging practitioners to exchange their own experiences in how they promote, develop, and sustain their practice is equally valuable to foster greater legitimacy with lawyers, judges, others professionals, policymakers, and the public generally.

The finding that the perceptions change over time raises many other questions. If those who perceive many obstacles abandon collaborative practice, how is the growth of the practice impacted? What if the perception were to change earlier? Would that increase the number of new adopters? What are the elements that drive this shift in perception? Is it a normal pattern in any innovative practice? Is it a normal pattern in a professional community, especially in the legal community? Can the introduction of a specific regulatory framework for innovative practices impact the shift? How can we manipulate that process to help in its development? Further investigation is needed to understand the reasons underlying this shift and its consequence on the other factors that may impact the use and growth of collaborative law.

B. Limitations of study

A fundamental problem with self-report measures is that respondents might show social desirability or other biases that make it difficult for them to answer questions truthfully.⁸⁶ Like other researchers in the social sciences, we sought to overcome this set of potential reliability problems by setting strict controls to guarantee confidentiality and anonymity in our handling of the data. This allowed respondents to confidently answer the questions honestly. Moreover, to the extent possible, we framed our questions as specifically as possible. Nevertheless, our results, as in any survey-based research, should be interpreted with the realization that they rely on self-reports only and, consequently, may reflect limited knowledge and the social pressures on respondents to think and behave in a certain way. However, in the context of the analysis in this article, this is, in a sense, a strength. While the responses may be biased judgments of the respondents' own experiences and communities, they also simultaneously may be self-serving biases providing a normative conception of thought and behavior of the respondents' specific cultural background.

86. Delroy L. Paulhus, *Measurement and Control of Response Biases*, in MEASURES OF PERSONALITY AND SOCIAL PSYCHOLOGICAL ATTITUDES 17 (John Paul Robinson et al. eds., 1991).

The data in this study consists primarily of lawyers' perceptions and opinions about the general environment of collaborative practice, as well as lawyers' perceptions of clients' choices to use it. This article focuses particularly on collaborative practice, but we discovered that registered collaborative practitioners discuss cooperative practice and collaborative practice by comparing them to the specific legal environment in which they practice. Consequently, they may be using different definitions despite our description of how we define collaborative practice for the purposes of this study. Presumably, collaborative lawyers' perceptions are oriented to be consistent with their legal framework and philosophies. Although the subjects' accounts probably provide at least somewhat accurate descriptions of the framework for collaborative practices in their countries, readers should interpret the results cautiously.⁸⁷ One should be vigilant about the responses, as they may reflect bias in self-reports due to desires to characterize situations consistently with their own philosophies. Nevertheless, the data provides a credible general portrait of collaborative practitioners in the countries we surveyed.

VI. CONCLUSION

Globalization, technology, and developments that arise in one country often migrate to other countries and force the legal world to adapt to a transformative environment. Changes in the legal profession require lawyers to be wise problem solvers and thinkers. The changes stemming from the adoption and development of new ideas and legal practices help satisfy client demands for substantive solutions that are more economical, less formal, and more private than court litigation, with more satisfactory and more durable results.

Innovative practice includes the *innovation* itself, the *communication medium* through which the innovation is spread over *time*, and the *social system* in which it takes places. This study focuses on the last element, the perceptions of innovative practitioners of their environment, or, in other words, their social system. All legal practitioners exercise their skills within "concentric rings of 'communities of practice.'"⁸⁸ Legal practitioners tend to identify themselves in specific groups practicing in certain areas, particularly when one practices an innovative skill or method.

87. This article generally identifies statements as the views of the subjects by using such introductions as "a collaborative practitioner said." Repetitious use of such language is cumbersome and is sometimes omitted for convenience. From the context, readers can nonetheless identify such statements as reflecting the subjects' views rather than the article's assertion of the accuracy of the statements.

88. McNeal, *supra* note 36, at 184 (quoting LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 6 (2001)).

The prime reason underlying this group identification is that this distinction helps to shape common expectations and standards, as well as to provide a means to compare ourselves. A variety of legal communities of practice exist, and collaborative law is one of them.

The analysis of collaborative practitioners' perceptions of their environment is informative and useful in many ways. First, perceptions contribute to shaping how we behave and react to situations. Perception may be our atlas, as all of us new to a "community" are initially "outsiders." Second, investigating perceptions may unravel obstacles, real or perceived, and offer solutions to change or foster the perception one may have about one's innovative practice and about others' perceptions. Third, research on collaborative practitioners' perceptions may help in pinpointing endeavors that can be undertaken to further the growth of an innovative practice. Fourth, collaborative practitioners are not the only people who can benefit from a better understanding of the perceived environment in which they evolve. Fifth, there is a great deal of policy and research interest in how innovative practices evolve in response to a new legal framework. National bar associations and dispute resolution organizations, as well as courts and legal educators, may consider promoting further research about innovative practice, about how new forms of ADR expand, and about the elements that determine the extent of use of these forms.

Finally, when identifying and drafting rules regarding innovative practice, policymakers may contemplate including methods to increase knowledge and diffusion of the practice within a social system, such as including specific mechanisms to foster the perception within the general and professional community.