



# Law Firm Regulation Pilot Project and Recommendations Report

## Final Report of Law Firm Regulation Task Force

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### Law Firm Regulation Task Force

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Purpose: Discussion

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# Executive Summary

Following consideration by the Benchers of the Law Firm Regulation Task Force's Second Interim Report in December 2017, the Benchers approved a pilot project involving approximately 360 law firms relating to a new program of proactive regulation of law firms.

The pilot project, which utilized a self-assessment exercise to elicit information about firms' practice management systems, commenced in July 2018. Each firm in the pilot project was given three months to self-assess, through an online report provided by the Law Society, the extent to which the firm's operating policies and processes measured against eight Professional Infrastructure Elements that the Law Society had identified as key elements of effective practice management. The firms were also surveyed to seek their feedback on the self-assessment process in order to allow the Task Force to draw conclusions, and make recommendations about whether to roll-out the assessment exercise to all law firms that are required to self-assess, pursuant to the Law Society Rules.

The pilot project was overseen by the Task Force, which was tasked with reviewing the feedback provided by participating firms, and reporting this information to the Benchers, along with recommendations, with respect to the next stages of law firm regulation in BC. This report reviews the pilot project, considers the feedback received and makes recommendations.

Approximately 75% of the firms involved in the pilot, two-thirds of which were sole practitioners, submitted their self-assessment forms to the Law Society, which provided a sufficient qualitative and quantitative data set from which to analyse the project.

The vast majority of firms of all sizes (86% of sole practitioners and 91% of firms of two lawyers or more) reported having functional policies and processes in place in relation to all eight Professional Infrastructure Elements. Fewer than 5% of sole practitioners and less than 2% of firms of two lawyers or more reported, for most Elements, that they had no policies or processes in place. The highest rates reported for policies and processes being in place were for Element 7 (Ensuring responsible financial management) and Element 6 (Charging appropriate fees and disbursements), with the lowest rates reported for Element 8 (Equity, diversion and inclusion) and Element 3 (Protecting confidentiality).

A total of 68% of firms reported they took less than two hours to complete the self-assessment exercise, with 90% reporting the task took less than five hours. Approximately 85% of participating firms reported they did not find the self-assessment process onerous to complete.

The majority of firms reported that the self-assessment was a useful exercise for improving education and awareness about best practices covered by the Professional Infrastructure Elements. A majority of firms also agreed or strongly agreed that completing the self-assessment would promote action around improving policies and processes in their firm.

Approximately two-thirds of participating firms agreed or strongly agreed that the content of

the self-assessment was relevant to the firm's practice, and a large majority indicated that the content of the Self-Assessment Report was clear. Nevertheless, many firms had suggestions as to how the process could be improved, as discussed in this report.

After review and consideration of the results of the pilot project, the Task Force has identified seven recommendations, the rationales for which are detailed in the Report. The Task Force seeks a resolution that these recommendations be adopted.

**Recommendation 1:** The Law Society commits to the profession-wide implementation of the self-assessment process.

**Recommendation 2:** The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

**Recommendation 3:** Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

**Recommendation 4:** The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

**Recommendation 5:** The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the self-assessment over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

**Recommendation 6:** The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

**Recommendation 7:** The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be made available to all firms.

# Background

1. Legal regulators have historically focused on individual lawyers, an approach that was both desirable and practical in the context of a profession dominated by sole practitioners or small firms. Although there are still a significant number of sole practitioners in British Columbia, the landscape of the legal profession has begun to shift in recent years. An increasing number of lawyers now practise in firms of two or more lawyers, and in some instances, firms can contain hundreds of members.
2. In larger firms, it is not uncommon for legal services to be provided by teams of lawyers under the management or direction of a lead lawyer, and many aspects of the provision of legal services, including conflicts, accounting, training and supervision are carried out at the firm level. Even in small and middle sized firms, billing and other administrative aspects of practice are often handled by the firm itself. Regulating legal entities as well as the individuals who practice in them reflects these changes within the profession, in which many regulatory requirements are now fulfilled by firms.
3. Many Canadian lawyers, ranging from sole practitioners to those employed in large national firms, are influenced by the professional and ethical infrastructure in which they work. Relatedly, there is increased awareness that law firms tend to develop distinct organizational cultures that affect the manner in which legal services are provided. Accordingly, firms can have considerable impact on, and influence over, professional values and conduct, and exercise a significant amount of power in the legal profession. In response, regulators in many jurisdictions, including the Law Society of BC, are adopting new regulatory models that both address the conduct of law firms and support firms of all sizes develop a robust professional infrastructure, including sole practitioners and small firms that may otherwise have limited practice management resources available to them.
4. Following legislative amendments to the *Legal Profession Act* in 2012, the Law Society established a Law Firm Regulation Task Force, which was mandated to recommend a framework for regulating law firms in BC. Over the last five years, the Task Force has engaged in the complex task of considering policy changes to regulation and designing a regulatory model that will support and govern the conduct of firms. Specifically, the Task Force has endeavoured to develop a program that sets target standards for ethical, professional firm practice without establishing a series of prescriptive, rule-based requirements. The result of this significant undertaking has been the creation of a regulatory framework to encourage firms to develop strong practice management systems supported by a robust set of policies and processes that address core areas of firm practice.

5. This approach, which has been variously described as “proactive”, “outcomes based” and “light touch” regulation, is premised on the theory that the public is best served by a regulatory program that prevents problems from occurring in the first place, rather than one that focuses on taking punitive action once problems have occurred. As compared to more traditional modes of regulation, the enforcement of rules plays a secondary and supporting role in achieving desired outcomes. The primary focus is on the regulator providing transparency and guidance with respect to the standards to be achieved, and placing greater responsibility and accountability on firms to ensure that the standards are being met.
6. The Task Force’s first report, which was presented to the Benchers in October 2016 (the “First Interim Report”),<sup>1</sup> outlined key rationales for adopting a proactive approach to law firm regulation and identified the basic parameters of the proposed regulatory framework. The result was the identification of eight key elements of practice management – now called the Professional Infrastructure Elements – in which firms would be responsible for implementing policies and processes that support high standards of professional, ethical firm conduct:<sup>2</sup>

- Element 1: Developing competent practices and effective management
- Element 2: Sustaining effective and respectful client relations
- Element 3: Protecting confidentiality
- Element 4: Avoiding and addressing conflicts of interest
- Element 5: Maintaining appropriate file and records management systems
- Element 6: Charging appropriate fees and disbursements
- Element 7: Ensuring responsible financial management
- Element 8: Equity, diversity and inclusion

7. In designing this new regulatory approach, the Task Force endorsed the development of a self-assessment process that would serve two functions. First, it would enable the Law Society to evaluate the extent to which firms were already meeting the identified standards. Second, the self-assessment would play a central role in educating firms about best practices by providing them with guidance and resources to assist them in satisfying the eight Professional Infrastructure Elements.
8. In December 2017, the Task Force released its second report (the “Second Interim Report”), which provided the Benchers with additional details on the features of the

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<sup>1</sup> A series of ten high-level recommendations were included in the Law Firm Regulation Task Force’s Interim Report, and were adopted by the Benchers in October 2016 (“First Interim Report”), online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawFirmRegulation-2016.pdf>

<sup>2</sup> The Professional Infrastructure Elements were designed to identify *what* firms are expected to do with respect to establishing effective practice management systems, without creating a set of prescriptive rules that tell firms *how* to specifically satisfy these Elements and achieve compliance.

regulatory framework.<sup>3</sup> This included defining a process for firm registration and the role of the designated firm representative, developing content and procedures in relation to the self-assessment, examining various approaches to resource development and identifying areas where new rules were necessary.

9. Although the majority of the Second Interim Report's recommendations were adopted as presented, the Benchers directed that rather than introducing the self-assessment process to the entire profession, the assessment should first be tested in a pilot project. The decision to undertake a pilot project did not represent a fundamental shift in the approach the Task Force initially envisaged for law firm regulation. Rather, it reflected a change in scale: from creating a requirement for all firms to complete the self-assessment to the initial introduction of the self-assessment to a smaller sub-set of the profession.
10. In the first half of 2018, the Law Firm Regulation Task Force therefore worked with staff to design and implement a pilot project to test the self-assessment process. As described in Part 1 of this report, in July 2018, approximately 360 firms were selected for the pilot, provided with the self-assessment materials, and given three months to complete and submit an online Self-Assessment Report to the Law Society.
11. At the conclusion of the assessment period, the results of the pilot project were analysed and summarized, as reflected in Part 2 of this report. Following the Task Force's review of this data and a series of detailed discussions of various policy issues, a final set of recommendations has been developed for the Benchers. These recommendations are outlined in Part 3 of this report.

## Part 1: Pilot Project Design

### Objectives and design features

12. The Task Force's first step in designing the pilot project was to clearly identify the key objectives of the initiative. The following four objectives were communicated to the Benchers during an update on law firm regulation in May 2018:<sup>4</sup>
  - To evaluate the extent to which firms have policies and processes in place in relation to the eight Professional Infrastructure Elements;

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<sup>3</sup> Law Firm Regulation Task Force, Second Interim Report (December 2017) ("Second Interim Report"), online at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf>

<sup>4</sup> See Bencher Meeting Agenda, May 4, 2018, online at: [www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2018-05-04\\_agenda.pdf](http://www.lawsociety.bc.ca/Website/media/Shared/docs/about/agendas/2018-05-04_agenda.pdf)



- To provide the Law Society with information as to where firms have the greatest need for additional educational resources;
  - To test and evaluate the content of the self-assessment tool and the process by which it was administered by asking users to report on its utility, functionality and clarity; and
  - To assess the staff and financial resources required to implement an impactful self-assessment process.
13. The Task Force also committed to reporting back to the Benchers on how these objectives had been met at the conclusion of the pilot project and making recommendations regarding future phases of law firm regulation.
14. Guided by these objectives, the Task Force developed a pilot project that included the following features:

*Size:* In order to obtain meaningful, representative and statistically significant results, approximately 10% of all BC firms, in addition to all of the Benchers' firms, were included in the pilot project. This resulted in approximately 360 firms initially being selected to complete the self-assessment process.

*Selection of participants:* Participants were randomly selected by applying an algorithm to the list of firms generated by the registration process that took into account firm size and location, to ensure representation across various sizes of firms and regions of the province. Firms were only removed from the cohort of selected participants under exceptional circumstances; for example, if inclusion would compromise the fairness of an existing Law Society process or where a sole practitioner was on the cusp of retirement.

*Requirements of participation:* Participation was mandatory for firms that were selected, as prescribed by Law Society Rules 2-12.3 and 2-12.4. Firms were given three months to submit their completed self-assessment to the Law Society (July to October 2018).

*Incentives to participate:* Each lawyer contributing to their firm's Self-Assessment Report was eligible to claim up to two hours of CPD for time they personally spent on the self-assessment exercise. The Benchers agreed they would not claim CPD credit for completing their firm's self-assessment.

*Use of information in the self-assessment:* In its Second Interim Report, the Task Force recommended that the self-assessment tool should not be used for

disciplinary purposes.<sup>5</sup> Accordingly, new rules were enacted in April 2018 to ensure that the information provided to the Law Society by firms in their Self-Assessment Report was confidential and would only be used for statistical and analytical purposes.<sup>6</sup>

## Pilot project materials and process

15. In June 2018, 337 firms were randomly selected for the self-assessment pilot project. In addition, 20 Benchers' firms were included in the pilot cohort, resulting in a total of 357 participants.
16. The designated representatives of each chosen firm were contacted and provided with the self-assessment material, which they were instructed to forward to the individual(s) tasked with completing the assessment. This material included an electronic link to the mandatory Self-Assessment Report, which firms were required to submit to the Law Society within three months, and an optional Workbook designed to assist firms complete the self-assessment process. The Workbook was intended for firm use only and was not to be submitted to the Law Society.
17. Both tools were designed to encourage firms to reflect on the extent to which they have policies and processes in place in relation to the eight Professional Infrastructure Elements and to identify those aspects of their practice management systems that were functioning well and those requiring improvement.
18. Given that one of the primary objectives of the pilot project was to test and evaluate the content of the self-assessment tools and the process by which they were administered, the Self-Assessment Report and the Workbook are discussed in more detail below.

## Self-Assessment Report

19. The Self-Assessment Report<sup>7</sup> is an online tool that contains two parts. Part 1 is the Self-Assessment Report itself. At the outset, participants are directed to one of two versions of the Self-Assessment Report – one for sole practitioners and the other for firms of two or more lawyers.<sup>8</sup> In order to complete Part 1 of the Self-Assessment Report, firms were

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<sup>5</sup> Second Interim Report *supra* note 3 at paras. 97-99.

<sup>6</sup> Law Society Rule 2-12.3 (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report [...] (3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person. (4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

<sup>7</sup> The Self-Assessment Report for both firms of two or more lawyers, and for sole practitioners, can be accessed at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppA.pdf>

<sup>8</sup> This two-stream approach was adopted to respond to Benchers' concerns that some aspects of the original, singular self-assessment were not well suited to sole practitioners. The two versions of the self-assessment contain similar

required to review each of the Professional Infrastructure Elements and the associated list of Indicators.<sup>9</sup>

20. For example, in relation to Element 1, firms were required to view the following materials :

**Element 1: DEVELOPING COMPETENT PRACTICES AND EFFECTIVE MANAGEMENT**

**Objective:** *Ensure the delivery of quality and timely legal services by persons with appropriate skills and competence*

**Indicator 1:** Do lawyers and staff have sufficient training, experience and knowledge to perform their duties?

**Indicator 2:** Are concerns about competence dealt with in an efficient, constructive and ethically appropriate fashion?

**Indicator 3:** Are the delivery, review and follow up of legal services provided in a manner that avoids delay?

**Indicator 4:** Are lawyers and staff adequately supervised and managed in their delivery of legal services?

**Indicator 5:** Has consideration been given to putting in place plans for the departure of lawyers from the firm?

21. Following a review of this mandatory content, firms had the option to view a list of more detailed Considerations, which contained a comprehensive set of guidance and suggestions for best practices relating to each Indicator, as well as a set of hyperlinked resources. During the pilot, firms could choose to skip over this material.
22. Once the mandatory and, if desired, the optional materials were reviewed, the firm was required to evaluate the extent to which it had policies and processes in place in relation to the Professional Infrastructure Element on a four point scale. This exercise was repeated for each of the eight Elements.
23. Once participants completed this assessment, they were directed to Part 2 of the report, which contained a series of survey-type questions seeking feedback on “user experience”

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material and follow the same structure. However, the version for sole practitioners has been modified to better reflect the practice realities of working alone and is slightly shorter in length.

<sup>9</sup> The complete list of the Elements, Objectives and Indicators can be viewed at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppB.pdf>

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with the self-assessment tool. This included questions regarding whether the self-assessment process improved firms' education and awareness of best practices; how long the assessment took and whether the exercise was perceived as onerous; and views on the clarity, functionality and content of the self-assessment tools and the sufficiency of the resources.

## Workbook

24. The Workbook is a supplemental resource that combines all the material found in the online Self-Assessment Report into a single PDF document that can be downloaded, saved and printed. Mirroring the format of the Self-Assessment Report, there are two versions of the Workbook: one for sole practitioners and one for all other firms.<sup>10</sup>
25. The Workbook also contains an additional section that invites firms to record their strengths and challenges in relation to each Professional Infrastructure Element.<sup>11</sup> Notably, this section is not included in the online Self-Assessment Report.
26. The goal of the Workbook is to provide firms with an additional, optional resource designed to support and promote meaningful reflection on their practice management systems and, in doing so, assist firms in completing the mandatory Self-Assessment Report. Firms participating in the pilot were given examples of how the Workbook could be used, including: reviewing the Workbook in advance of completing the Self-Assessment Report to get a sense of the nature and scope of the assessment exercise; using the Workbook to create a “working copy” of the assessment before completing the online exercise or to document a baseline from which progress could be measured; and/or building on the Workbook's guidance and resources to create a set of practice management materials for the firm.

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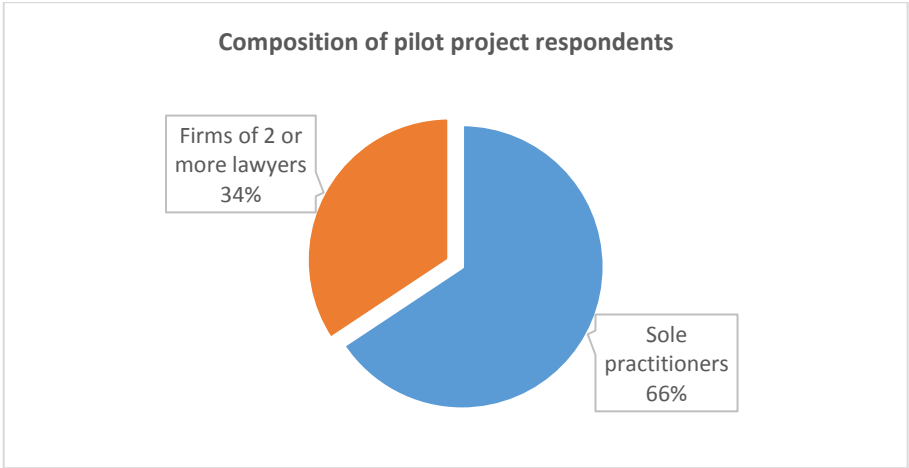
<sup>10</sup> The Workbook can be accessed at:

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirm/PilotProjectReport-AppC.pdf>. To avoid duplication, only the version of the Workbook for firms for two or more lawyers is included.

<sup>11</sup> This approach flows from Recommendation 11 of the Second Interim Report *supra* note 3 at 26: “Adopt a two-pronged approach to the self-assessment entailing the development of a short, formal self-assessment tool that firms must submit to the Law Society, and a longer, more detailed confidential workbook that will enable firms to work through the self-assessment material in more detail. Both of these tools will be available online.”

## Part 2: Pilot Project Results

27. At the conclusion of the pilot project, 267 firms had submitted their Self-Assessment Report to the Law Society, resulting in a completion rate of 75%. Approximately two-thirds of completed self-assessments were from sole practitioners and one-third were from firms comprising two or more lawyers.



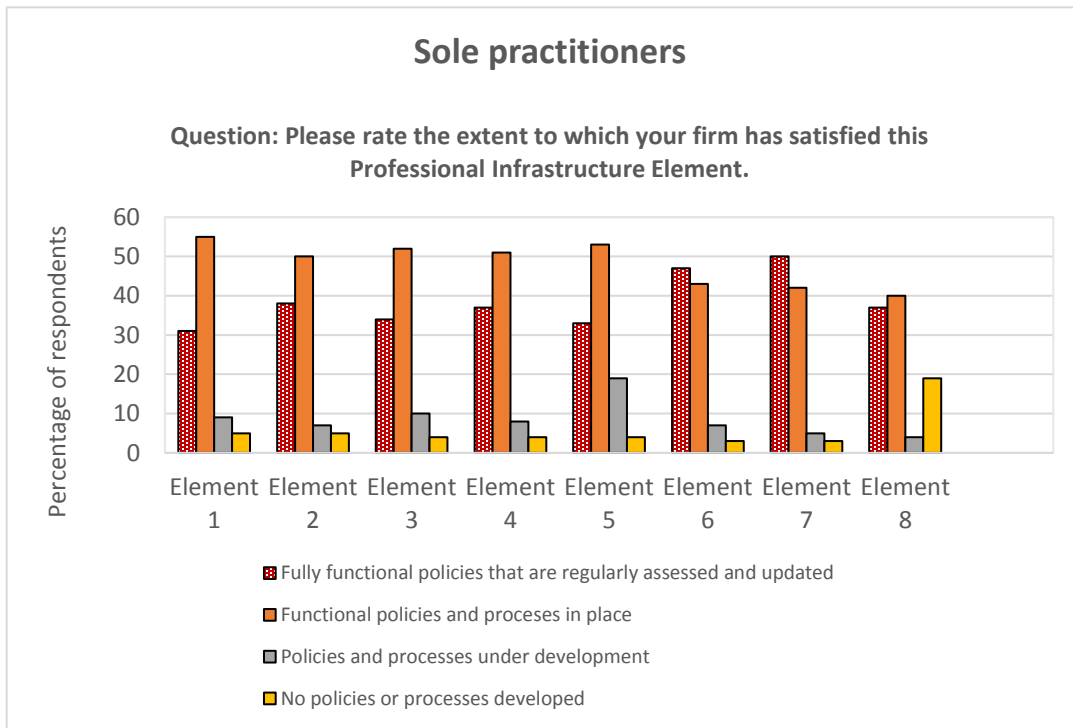
28. Importantly, for the purposes of understanding the analysis to follow, all statistics and graphics cited in this report are based on the responses of firms that completed a self-assessment and do not account for those firms that were chosen for the pilot but did not submit their Self-Assessment Report to the Law Society.

29. Although not all firms submitted their self-assessment by the required deadline, staff proceeded with the analysis on the basis that compliant firms had provided sufficient qualitative and quantitative data from which trends and themes emerged. There was also concern that the time required to bring the remaining firms into compliance would significantly delay the Task Force’s recommendations on future phases of law firm regulation.

30. The results of the pilot project have been grouped in manner that corresponds to its four objectives, as detailed below.

## **Objective 1: Evaluate firms' existing policies and processes in relation to the Professional Infrastructure Elements.**

31. Following a review of the material linked to each Professional Infrastructure Element in the Self-Assessment Report, firms were required to evaluate their performance in relation to each Element on a four point scale.
  - 1 - Policies and processes have not yet been developed
  - 2 - Policies and processes are under development but not all are functional
  - 3 - Policies and processes are in place and are functional
  - 4 - Policies and processes are fully functional and regularly assessed and updated
32. The goal of this evaluative exercise was two-fold: 1) to promote education and awareness within firms by encouraging reflection on existing firm policies and processes, and 2) to enable the Law Society to evaluate the extent to which firms are currently addressing the eight Professional Infrastructure Elements.
33. The vast majority of firms of all sizes reported having functional policies and processes in place in relation to each of the Professional Infrastructure Elements. Specifically, averaged across all eight Professional Infrastructure Elements, 86% of sole practitioners and 91% of firms of two or more lawyers reported having functional policies and processes in place, while 8% of firms of all sizes reported having policies and processes under development, but not yet in place.
34. Again, averaged across all of the Elements, less than 5% of sole practitioners and less than 2% of larger firms reported that they had not developed any policies or processes, with the exception of Element 8 (Equity, diversity and inclusion). For this Element, a total of 19% of sole practitioners and 4% of firms of two or more lawyers reported an absence of policies or processes.



35. However, despite most respondent firms having functional policies and processes in place, when averaged across the eight Professional Infrastructure Elements, less than half (40%)

reported that their policies and processes were “fully functional and regularly assessed and updated.” This suggests that even when firm policies are in place, they may not be fully operational or subject to regular review.

36. Respondent firms of all sizes reported the highest rates of functional policies and processes in relation to the financial aspects of practice, namely: Element 7 (Ensuring responsible financial management) and Element 6 (Charging appropriate fees and disbursements).
37. Both sole practitioners and larger firms reported the lowest levels of functional policies and processes in relation to Element 8 (Equity, diversity and inclusion) and Element 3 (Protecting confidentiality).

### **Objective 2: Provide the Law Society with information as to where firms have the greatest need for additional educational resources.**

38. The Self-Assessment Report asked firms to identify those practice areas in which the availability of additional resources would be beneficial. The feedback received indicates firms have a strong interest in the Law Society developing practice resources across all eight Professional Infrastructure Elements. Topics that generated the most interest from firms include:

- Succession planning
- Protection of electronic data
- Confidentiality related-materials including, confidentiality in the context of space sharing agreements, developing confidentiality and privacy policies and addressing privacy breaches
- Developing an information management policy
- Retainer agreements
- Identifying conflicts of interest
- Data security measures
- Insurance coverage
- Electronic transfers from trust
- Intercultural competency

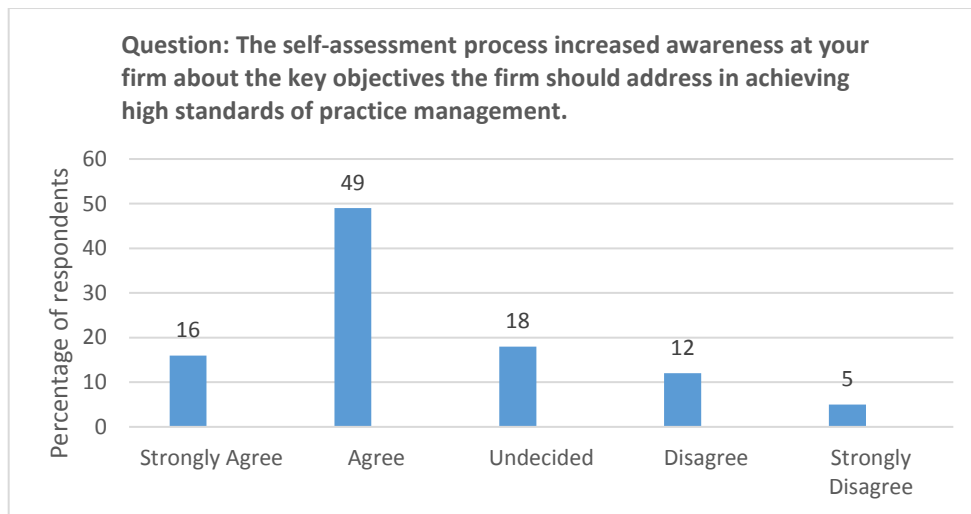
### **Objective 3: Test and evaluate the self-assessment tool and the process by which it is administered.**

39. In the second part of the Self-Assessment Report, firms were asked a series of questions about the content and functionality of the self-assessment tool and about the time and effort required to complete the self-assessment exercise.

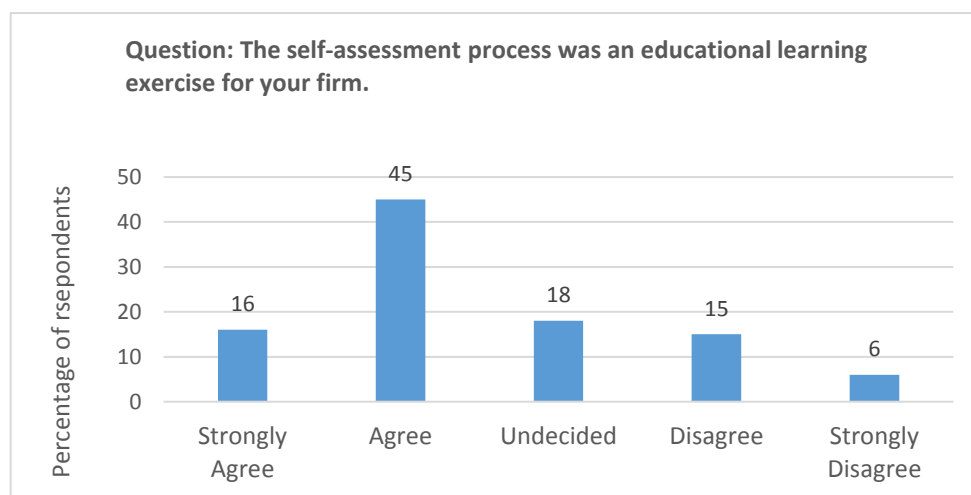


**(a) Overall impressions of the self-assessment process**

- 40. The majority of firms reported that the self-assessment was a useful exercise for improving their education and awareness about best practices in the areas covered by the Professional Infrastructure Elements.<sup>12</sup>
- 41. Approximately two-thirds of respondent firms either agreed (49%) or strongly agreed (16%) that the self-assessment process increased awareness at the firm regarding the practice management objectives the firm should strive to achieve.

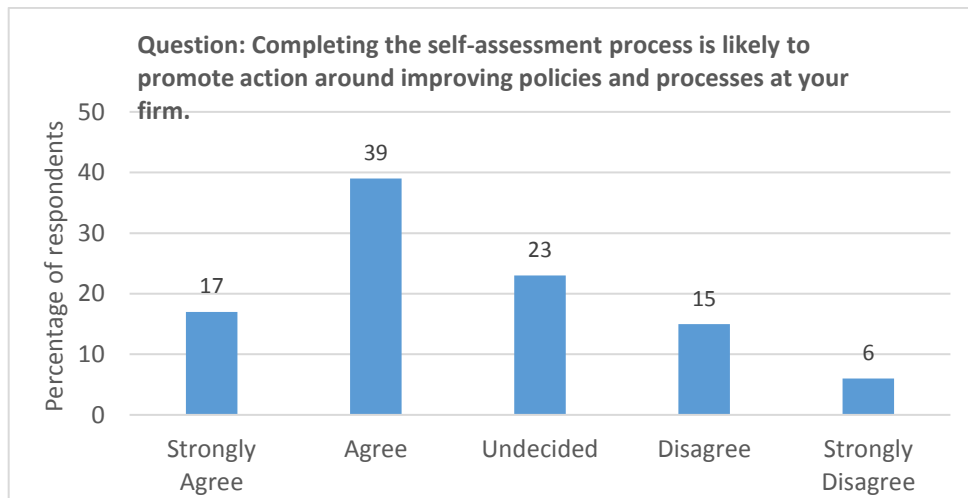


- 42. Slightly more than 60% of respondents either agreed (45%) or strongly agreed (16%) that the self-assessment process was an educational learning exercise.



<sup>12</sup> The pilot was designed to solicit firms' *opinions* on the effectiveness of the self-assessment process in improving education and awareness and changing firm behaviour. Evaluating the self-assessment tool's ability to effect actual attitudinal or behavioural change was not an objective of the pilot project, given the lengthy timeframes required to complete such a study.

43. Approximately 56% of respondents either agreed (39%) or strongly agreed (17%) that completing the self-assessment would promote action around improving policies and processes at their firm.



44. Most of the written comments from firms regarding the educational impact of the self-assessment were positive. The following remarks are illustrative:

*“I found this to be a very useful exercise, and far less time consuming than I was anticipating. It has been helpful in drawing my attention to areas that can be looked at and improved, and directing me to resources that can assist in developing and improving these areas”*

*“The key element is awareness of best practices, and that is the foundation of improving education. This exercise is very helpful.”*

*“I appreciate the Law Society expending the time and effort to complete an exercise like this. I think it is useful to have reason to slow down and think about how our practices are run....”*

*“The survey was an opportunity for me to think about other ways I would want to improve my business and law practice. The work book was very useful in providing an overall review of the matters. The sources listed in the survey were very helpful. I reviewed them just to allow myself to become more aware of the issues. This was a worthwhile exercise. Thank you.”*

*“The Self-Assessment reflected on some of the areas of practice in a way that brought more in-depth understanding of those areas.”*

*“For what it’s worth, when faced with this exercise, I felt like it was likely a useless pain in the ass, but have found it a very useful/illuminating one. I feel that we enter the practice of law well alerted and prepared for these various elements and as a practice is developed over the years (decades!) those aspects are shared with staff only on a piecemeal basis absent clearly set out policies and effective, comprehensive training that would certainly be of value.”*

*“The self-assessment was a somewhat humbling exercise. I am grateful for the increase in my awareness of the issues raised and how to sort them out.”*

*“...I found it to be a very helpful exercise...I also found it to be motivational in the sense that it reinforces the adage that there’s always room for improvement and it forces you to sit back and review things that otherwise might have fallen through the cracks.”*

*“It is a respectful way to ensure that law firms are addressing practice management in a way that will support clients and those who work in law firms. This is very good initiative I am grateful for the additional support and resources”*

*“This exercise was a positive experience because being reminded of best practices in various areas of our operations is always helpful. It was also useful in that considering the various subjects raised in this process, reassured that we are focusing on all of these important areas and constantly trying to ensure we improve our practices”*

*“The Self-Assessment Report provides not only an opportunity but a guideline to the firm to review its current practice management systems from various aspects, which is definitely helpful to the firm’s practice management”*

45. A small number of respondents commented that the self-assessment did not result in learning or improve awareness about best practices. Generally, the feedback from these firms — most of whom were sole practitioners or two person firms without staff — was that the self-assessment lacked applicability to their specialized practice or practice structure (e.g. no employees):

*“My firm is very focused on a small area of law and as such, the survey was not as meaningful as it might be with a firm practising in a large array of legal topics.”*

*“I am a sole practitioner with no employees and a small handful of clients. This exercise was not particularly applicable to my practice.”*

*“...this firm has been practising for 36 years exclusively in the area of family law...while the process may have some value to sole practitioners it has no value in my case.”*

46. However, a similar number of firms with small and/or specialized practices commented that the self-assessment was a useful exercise:

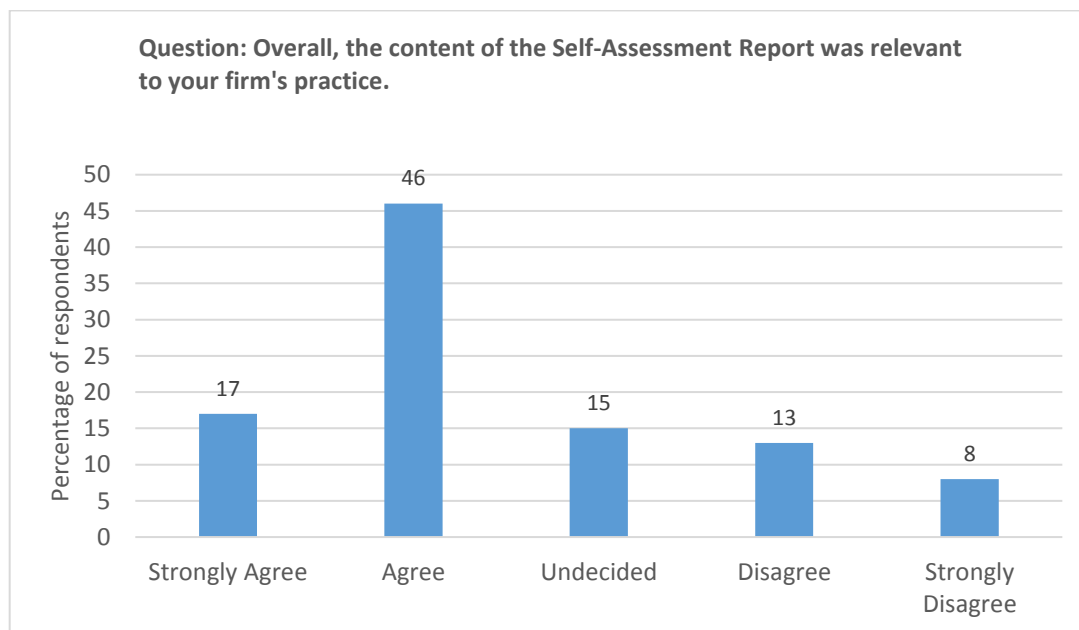
*“I practice alone out of my home without a secretary. I don’t really have firm policies, I have standards of practice that I attempt to adhere to. The self-assessment report was useful in reminding me that I can do better.”*

*“The self-assessment survey was very effective as a refresher exercise to maintain the high standard of practice management. I carry on a limited practice [...] I find these resources provide excellent policies and processes...”*

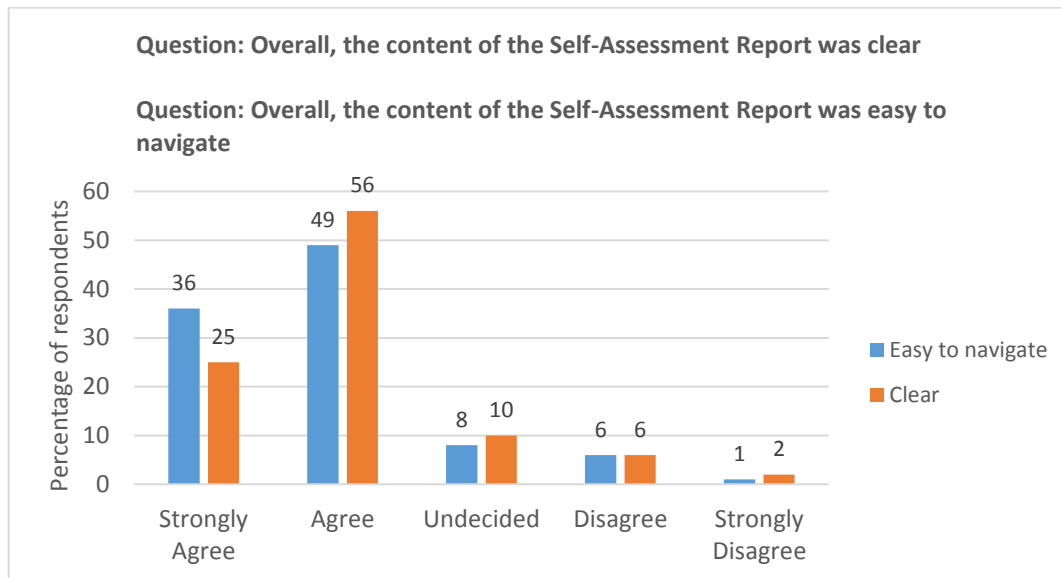
*“I am a sole practitioner and have been for most of my [42 year] law career. Parts of the assessment would have helped me from the start.”*

## **(b) Feedback on the mandatory Self-Assessment Report**

47. Sixty-three percent of respondents either agreed (46%) or strongly agreed (17%) that the content of the Self-Assessment Report was relevant to their firm’s practice.



48. The majority of respondents (81%) also indicated that the content of the Self-Assessment Report was clear. Similarly, a total of 85% of respondents agreed (36%) or strongly agreed (49%) that the self-assessment was easy to navigate.



49. Many firms provided suggestions as to how the Self-Assessment Report could be improved. Several themes emerged from these written comments, as detailed below:

- Additional clarification is necessary with respect to whether to policies and processes need to be in written form, particularly for sole practitioners with no staff or co-workers (8 comments)
- The descriptors/categories used in the rating scale were difficult to understand and/or should be more nuanced (e.g. more points on the scale, provide a rating scale for each Indicator or each Consideration) (6 comments)
- The self-assessment would benefit from more questions, goal setting and/or less optional content (4 comments)
- The inability to download, print and review the Self-Assessment Report before submitting it to the Law Society was limiting (3 comments)

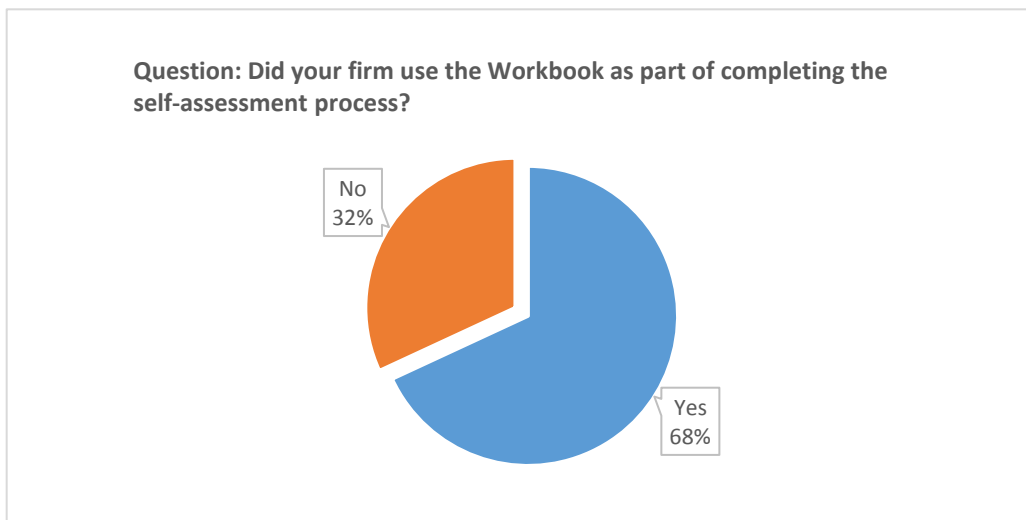
50. Notably, less than 1% of respondents (2 firms in total) expressed opposition to the inclusion of Element 8 (Equity, diversity and inclusion). This lack of concern is notable given that Element 8 was the subject of considerable discussion by both the Task Force and Benchers during the development of the self-assessment.<sup>13</sup>

<sup>13</sup> The inclusion of Element 8 in the self-assessment was debated by the Law Firm Regulation Task Force over a two year period (2016 and 2017), with the Task Force ultimately recommending that, as was the case in other jurisdictions

51. A small minority of respondents (7%) characterized the self-assessment as a poor use of firm time and/or resources. Only two firms specifically stated that the Law Society should not be regulating firms. It is notable, however, that 25% of firms have not submitted their self-assessment.

**(c) Feedback on the optional Workbook**

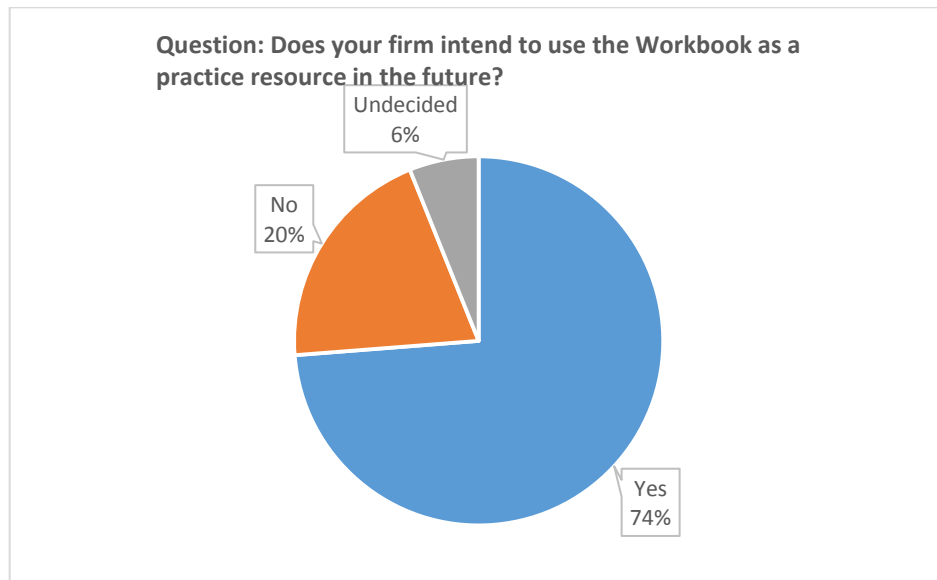
52. Firms were also specifically asked about the utility of the optional Workbook, separate and apart from the questions about the mandatory online Self-Assessment Report. The results reveal that over two-thirds of respondents reported using the Workbook in the course of completing the self-assessment process.



53. Of those that used the Workbook, 90% reported that it assisted their firm in completing the self-assessment exercise. Additionally, approximately 74% of respondents indicated that they planned to use the Workbook as a practice resource in the future.

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implementing law firm regulation, a discrete Element should be devoted to equity, diversity and inclusion. In December 2017, the Benchers approved this recommendation and Element 8 was added to the self-assessment. The current wording of Element 8 is the product of the collaborative efforts of the Task Force and the Equity and Diversity Advisory Committee. See Second Interim Report *supra* note 3 at 22-25.



54. The written comments reflect that most firms found the Workbook to be a valuable resource. For example:

*“The Workbook is essentially the perfect template for improving the firm’s policy manual.”*

*“The Workbook is a great guide to assist users reviewing policies and procedures.”*

*“Overall, the resources and Workbook are very detailed and instructive to the firm’s practice.”*

*“Highly recommend ensuring that the Workbook be considered an integral part of the self-assessment process.”*

*“Our office finds the Workbook to be a terrific resource and will be using it now as a guide to build on the procedure we already have in place. Thank you.”*

*“The resources and Workbook are a very comprehensive source of information. In the future they will serve to simplify finding and accessing an area of concern as well as educating one to be aware of potential areas of concern.”*

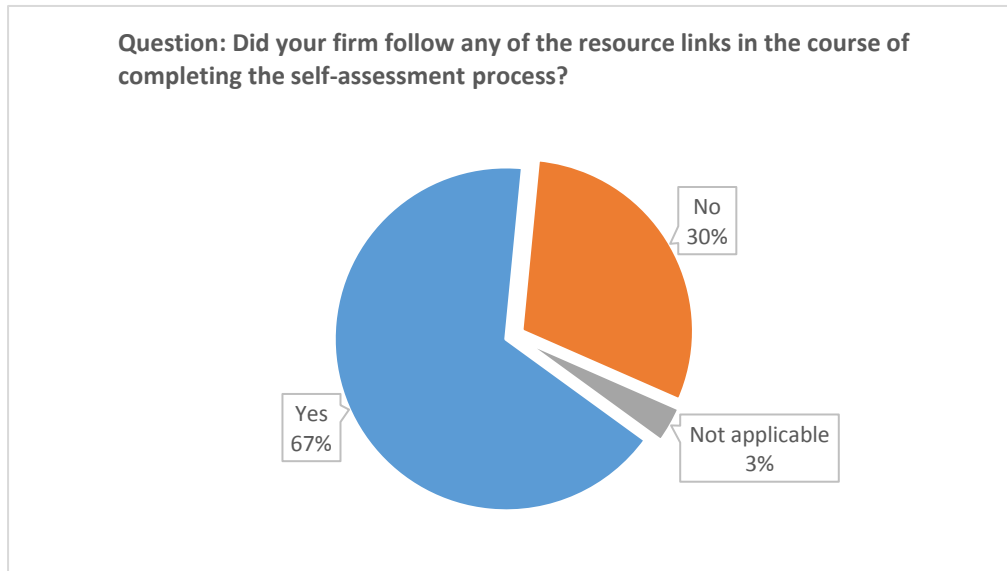
*“I found the Workbook to be very helpful and will be highlighting portions of it to educate/remind our team of what consideration should be made on each file, etc.”*

55. Very few firms (less than 5% of written comments) expressed specific concerns with the Workbook. Of those firms that raised concerns, most remarked that the material was not relevant to their practice.

**(d) Feedback on resources**

56. In both the Self-Assessment Report and the Workbook, each Indicator is supported by a set of hyperlinked resources designed to assist firms to reflect on, and to work to improve their policies and processes in relation to the Professional Infrastructure Elements.

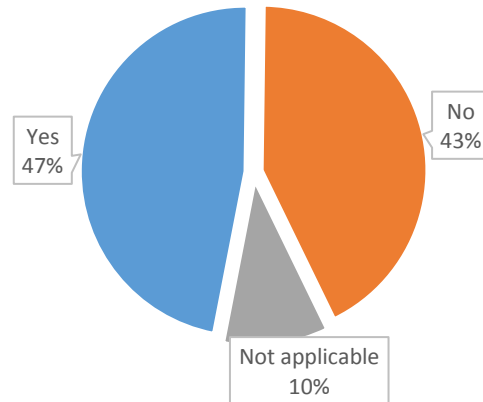
57. The pilot revealed that approximately two-thirds of firms reported that they utilized at least some of these resources, either in the Workbook or in the online Self-Assessment Report, when completing their self-assessment. As noted earlier, 74 % of respondents also indicated they intended to use the Workbook as a practice resource in the future.



58. With respect to additional resource development, although 64% of respondents felt that the resources provided in the self-assessment were sufficient, nearly half of firms indicated that additional resources would be useful.



Question: Would additional resources, either embedded in the Workbook or Self-Assessment Report or housed in an external resource portal, be a useful addition to the self-assessment process?



59. Firms' written comments regarding the resources were generally positive:

*“While I have always taken great steps to utilize resources available with the Law Society of BC to assist my firm in improving our practice processes, I found the self-assessment process to be particularly valuable in refreshing myself of the significant supports that are available online [...] During the self-assessment I made note of a number of resources and checklists that I will go back to on a regular basis to refresh and improve the processes I currently have in place or where there may be inadequacies or areas for improvement within my firm. A very valuable resource indeed.”*

*“The resources were a useful one-stop-shop of available material with respect to each of the 8 Elements. I expect to refer to them again when relevant practice questions arise.”*

*“Detailed lists of resources in connection with each process and ready access to them is very useful.”*

*“I found this self-assessment process to be particularly valuable in refreshing myself of the significant supports that are available online. There were materials that I was not aware of that I found particularly helpful[...] During the self-assessment, I made note of a number of resources and checklists that I will go back to on a regular basis to refresh and improve the process I currently have in place or where there may be inadequacies or areas for improvement within my firm. A very valuable resource indeed.”*

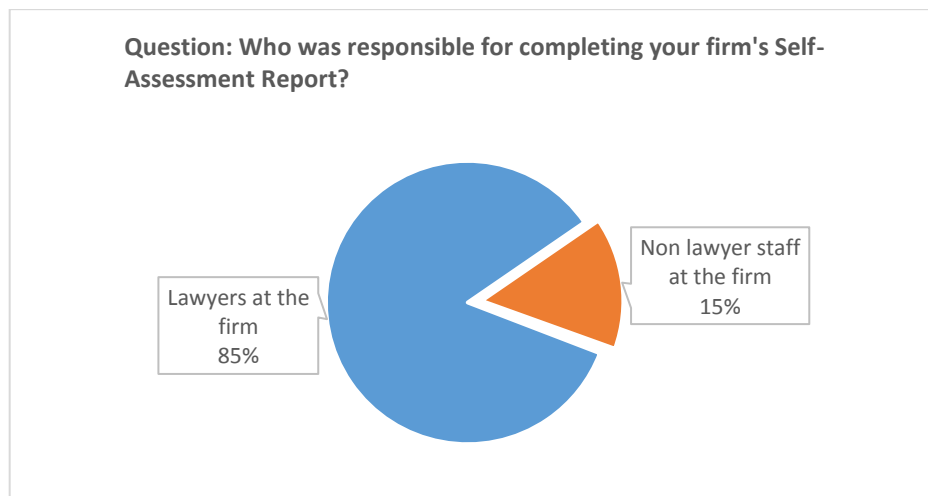
60. Many firms provided feedback on how the self-assessment’s resource and support functions could be improved. Several themes emerged in this regard:

- A desire for the Law Society to create standardized written policies and best practices (10 comments)
- The ability for firms to continually access resources, including through an online portal (7 comments)
- An appetite for Law Society or CLE-BC training on each of the 8 Professional Infrastructure Elements (e.g. yearly seminar, regular e-reminders, online training courses, mandatory course for firms) (5 comments)
- The provision of examples or recommendations from the Law Society on how to implement an overall “improvement plan” for the firm (2 comments)
- Establishing a mentorship program for new firms (2 comments)

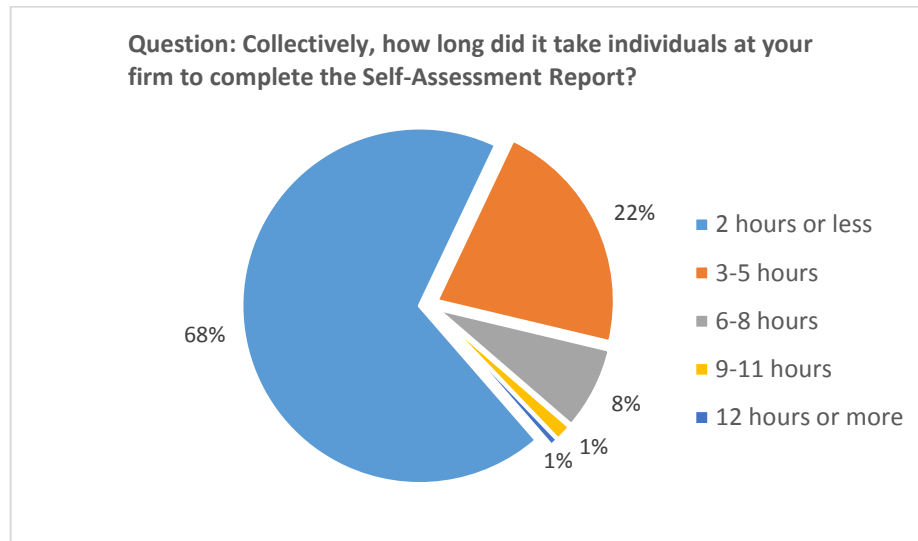
61. Many firms also identified specific areas in which additional practice resources would assist the firm.

**(e) Time spent self-assessing**

62. The majority of firms (85%) indicated that the self-assessment exercise was completed by a lawyer at the firm. Approximately 15% of respondents indicated a non-lawyer staff (eg. administrator, office manager, human resources) completed their firm’s self-assessment.



63. A total of 68% of respondent firms took two hours or less to complete the self-assessment, with approximately 90% of firms taking five hours or less to complete the exercise.



64. Approximately 85% of respondent firms reported that they did not find the self-assessment processes onerous. Notably, a number of respondents remarked on how quickly they completed the self-assessment:

*“This process took way less time than anticipated. Please let me know if I missed something.”*

*“I thought it would be far worse so I put off doing it.”*

*“...overall the process was not onerous and we found it beneficial to review our existing practices, policies and procedures under the lens of this assessment.”*

*“We are a very small firm (2 lawyers, 2 staff) and the questions were actually quite easy to answer without reference to additional materials.”*

65. Related to the time it took firms to complete their evaluation, the pilot revealed that the majority of firms did not view the optional material contained in the online Self-Assessment Report. When averaged across all eight Professional Infrastructure Elements, less than half of sole practitioners reviewed the optional Considerations and Resources linked to each Element in the online tool, and less than a third of firms of two or more lawyers viewed this online content.
66. These results are notable, given that this material — which makes up the bulk of the online Self-Assessment Report — was designed to provide firms with a robust body of guidance and suggestions to aid them in their evaluation of firm policies and processes when working through the mandatory portion of the self-assessment exercise. The results

indicate, however, that the majority of firms skipped over this guidance and the associated resources in the online self-assessment tool.

#### **Objective 4: Assess the staff and financial resources required to implement an impactful self-assessment process.**

67. Collectively, the data collected during the pilot project provides the Law Society with some early indications about the staffing and financial resources that would be necessary to support a profession-wide implementation of the self-assessment that would extend the exercise to approximately 3,500 firms.
68. After assessing the data, staff have been able to prepare an outline of how the various Law Society departments would work together to support a profession-wide initiative:

##### **Resource curation and development**

- updating existing resources in the self-assessment and monitoring for continued relevance
- developing additional resources for the self-assessment
- identifying areas where new resources are required
- ensuring consistency between resources in the Workbook and the online Self-Assessment Report

##### **Operational support for the delivery of the self-assessment**

- establishing dedicated staff to:
  - maintain a schedule of firms completing the self-assessment each year
  - monitor a dedicated email account to manage law firm regulation-related communications
  - respond to firms' inquiries about the self-assessment process and provide support, as required
  - monitor and follow-up with firms that miss reporting deadlines
  - record and analyse data from completed self-assessments
  - liaise with IT, policy and communications departments

##### **Technology and content management support**

- migrating the Self-Assessment Report from a survey-based platform to an internally hosted web-based platform with improved functionality
- converting the Workbook into a fully-functional electronic tool

- maintaining the technical aspects of the self-assessment tools and associated resources (e.g. ensuring all links remain active, uploading new resources, making changes to online content)
- developing an online resource portal

### **Communications and education**

- developing a comprehensive communications plan to support profession-wide implementation, including:
  - developing educational materials to support the self-assessment process (e.g. videos, modules, FAQs)
  - ensuring that the profession continues to receive information about the purpose, content and requirements of the self-assessment process
  - promoting the Law Society of BC's work on the self-assessment to other bodies and jurisdictions

### **Policy support**

- providing ongoing research and policy analysis on law firm regulation-related issues
- overseeing the development of new rules or amendments existing rules
- participating in ongoing pan-Canadian collaboration on law firm regulation
- assisting with an evaluation of the impact of the self-assessment process on firm practice and the public interest, more generally

## **Part 3: Recommendations**

69. The completion of the pilot project has been a critically important step in the evolution of law firm regulation in BC, providing the Law Society with a robust body of data with which to evaluate the impact of the self-assessment process, and to consider recommendations.

70. The Task Force has met on three occasions over the course of 2019 to discuss the results of the pilot project and to develop a series of recommendations on the next phase of law firm regulation for BC.

71. In assessing the various options or approaches, the Task Force has considered and applied a number of evaluation criteria, including the public interest, member perceptions and relations, public perceptions and relations, legal authority and program impacts and costs, which are discussed in the course of the recommendations described below.

72. After completing its assessment of the evaluation criteria, the Task Force identified seven recommendations, which are presented to the Benchers for discussion and decision.

## **1. Should there be a profession-wide implementation of the self-assessment process?**

73. With the conclusion of the pilot project, the Benchers are now in a position to re-evaluate the Task Force's earlier recommendation (previously presented in the Second Interim Report), that the requirement for firms to self-assess be introduced to the entire profession.

74. As discussed in Part 2 of this report, the results of the pilot project suggest that firms have some policies and processes in place in relation to the eight Professional Infrastructure Elements. The data also suggests, however, that there is room for improvement, in terms of encouraging firms to both develop and regularly update policies and processes in these areas.

75. The results also confirm that the majority of pilot project participants found the self-assessment to be a useful learning activity. Most firms reported that both the mandatory Self-Assessment Report and the optional Workbook were relevant, clear and easy to navigate, and that the self-assessment exercise was valuable in terms of improving education and awareness at the firm about best practices and motivating firms to review their policies and processes. Very few firms reported that the self-assessment process was onerous, with the majority of participants taking less than two hours to complete the exercise.

76. Following a comprehensive review of the pilot project results and other materials previously considered by the Task Force, the Task Force recommends that the self-assessment process be rolled out across the profession for the reasons discussed below.

### **(a) The educational value of self-assessment**

77. The majority of pilot project respondents reported that the self-assessment exercise had educational value (61%) and raised awareness at the firm about best practices (65%). These results suggest that if the self-assessment were implemented on profession-wide basis in BC, the majority of firms would experience direct educational benefits from completing the exercise.

78. The correlation between self-assessing and firm learning has been observed in other jurisdictions. Australian researchers found, for example, that the majority of law firms that completed a self-assessment process reported that it was a learning exercise.<sup>14</sup> Similarly, in

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<sup>14</sup> Susan Fortney and Tahlia Gordon, "Adopting law firm management systems to survive and thrive: A study of the Australian approach to management-based regulation" (2012) 10 U. St. Thomas L.J. 152 ("Fortney and Gordon"), online at: <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1298&context=ustlj>. Notably, there was no statistically

Nova Scotia’s self-assessment pilot project, approximately half of participants reported they learned something new as a result of self-assessing, while the other half of participants identified value in being reminded of system deficiencies of which they were aware, but had not yet taken action on.<sup>15</sup>

## **(b) Behavioural change**

79. The majority of pilot project participants also reported that completing the self-assessment exercise was likely to motivate behavioural change within the firm, with only 20% of the firms indicating that the exercise would not result in changes to internal policies or processes.<sup>16</sup>
80. The pilot project results also suggest that many firms would benefit from additional attention to, or focus on, their practice management systems. Although the majority of firms reported having functional policies and processes in place in relation to the eight Professional Infrastructure Elements, averaged across the Elements, only 40% of firms reported their policies were fully functional and regularly assessed and updated. A percentage of firms indicated that some of their policies were still under development, while others reported they had not developed any policies or processes in relation to some of the Professional Infrastructure Elements. This is concerning given that the Elements represent core areas of professional, ethical firm practice.
81. The pilot project demonstrates that the act of completing the self-assessment may catalyze the development of, or improvements to, firms’ policies and processes in the areas covered by the Professional Infrastructure Elements. Alternatively, firms that are not required to self-assess may be less likely to be aware of, or motivated to address gaps in, their practice management structures.
82. Notably, Australian researchers have observed *actual* changes in law firm behaviour following the completion of a self-assessment exercise. In New South Wales, where some firms were subject to a regulatory requirement to demonstrate they had implemented “appropriate management systems,” firms completed an assessment form based on ten key objectives that are similar to BC’s eight Professional Infrastructure Elements.<sup>17</sup> In studying

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significant difference related to firm size and the respondents’ opinions of the learning value of the self-assessment, suggesting that regardless of firm size, the majority of the respondents recognized the educational value of completing the self-assessment process.

<sup>15</sup>Nova Scotia Barristers’ Society, “[Legal Services Support Pilot Project Final Report](#)” (June 6, 2017) (“NSBS Final Pilot Project Report”).

<sup>16</sup> Approximately 60% of respondents felt it was likely that the self-assessment would promote action around improving firm policies and processes and a further 20% were undecided.

<sup>17</sup> Incorporated legal practices (ILPs) were required to positively demonstrate that they had implemented appropriate management systems (AMS). Although the legislation was silent on what constituted AMS and how ILPs should demonstrate they had them in place, the NSW Legal Services Commissioner, working with various stakeholders, developed the concept of ten key objectives that were considered to constitute AMS and from those key objectives,

the effects of the self-assessment process, researchers found that of those firms that indicated they were not in compliance with the ten objectives at the time of their initial self-assessment, about half became compliant within three months of self-assessing.<sup>18</sup>

83. The Australian studies also showed that the complaint rate for each firm after completing the self-assessment was one third the complaint rate of the same practice before self-assessing, and one third the complaint rate of firms that were not required to self-assess.<sup>19</sup>

84. A follow-up empirical study was conducted to explore *why* there had been such a dramatic reduction in client complaints for firms that self-assessed.<sup>20</sup> The study found that almost three-quarters of firms revised their firm systems, policies or procedures as a result of going through the self-assessment process. Other steps taken by firms in connection with the completion of the first self-assessment process included adopting new systems, policies or procedures, strengthening firm management, implementing more training, seeking guidance from the regulator or another person or organization and hiring a consultant to assist in policy development.<sup>21</sup> This data sheds some light on why, perhaps, the self-assessment process seemed to make a difference.<sup>22</sup>

85. The Task Force was not, however, able to ascertain whether this behavioural change was sustained over time. Due to changes in New South Wales' legislative scheme in 2015,<sup>23</sup> firms are no longer required to demonstrate they have implemented and maintained appropriate management systems. As such, firms are no longer self-assessing, and there have been no further academic studies on the self-assessment process.<sup>24</sup>

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devised a self-assessment form (Communications with Louise Baber, Practice Compliance Officer of the Legal Services Commissioner in New South Wales, June 2019).

<sup>18</sup> Christine Parker, Tahlia Gordon, and Steve Mark "Regulating law firm ethics management: An empirical assessment of an innovation in regulation of the legal profession in New South Wales" (2010) 37(3) *Journal of Law and Society* 446 at 493, online at:

[https://www.researchgate.net/publication/228192433\\_Regulating\\_Law\\_Firm\\_Ethics\\_Management\\_An\\_Empirical\\_Assessment\\_of\\_the\\_Regulation\\_of\\_Incorporated\\_Legal\\_Practices\\_in\\_NSW](https://www.researchgate.net/publication/228192433_Regulating_Law_Firm_Ethics_Management_An_Empirical_Assessment_of_the_Regulation_of_Incorporated_Legal_Practices_in_NSW) ("Parker, Gordon and Mark").

<sup>19</sup> *Ibid.*

<sup>20</sup> Fortney and Gordon *supra* note 14.

<sup>21</sup> *Ibid.* at 173.

<sup>22</sup> For a review of the Australian studies, see Laurel S. Terry, "The power of lawyer regulators to increase client and public protection through adoption of a proactive regulation system" (2016) *Lewis & Clark L. Rev* 717 at 728, online at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2865337](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2865337).

<sup>23</sup> Email communications with Tahlia Gordon, May 2019. Ms. Gordon indicated that the legislative changes were political in nature and not the result of concerns about the effectiveness of the requirement.

<sup>24</sup> Email communications with Louise Baber *supra* note 17. Since the legislative change, only firms that have been given a management systems direction following an audit or investigation are subject to a positive obligation to demonstrate they have put appropriate management systems in place. In the reporting year from July 2018 to June 2019, out of the ten law practices audited, management systems directions have only been issued to three practices. No management system directions have been issued following an investigation.



### **(c) Alignment with strategic priorities in BC and beyond**

86. The profession-wide implementation of the self-assessment process addresses two of the Law Society’s current strategic priorities, as articulated in the 2018-2020 Strategic Plan, namely: i) mitigating risk, preventing misconduct and improving regulatory outcomes by examining “proactive” or “outcomes focused” methods of regulation to complement the disciplinary process, and ii) enhancing the regulatory oversight of firms.<sup>25</sup>
87. In this regard, the self-assessment has the potential to leverage the benefits that strong, positive, ethical and professional firm cultures can have on the practice of law, and to simultaneously reduce instances of unprofessional behaviour. Additionally, encouraging firms to engage in the self-assessment process demonstrates, to all stakeholders, the Law Society’s commitment to enhancing firms’ accountability in meeting high practice standards, to the benefit of the public interest. The positive feedback from the pilot project also reflects buy-in from many lawyers, which brings additional strength and momentum to the initiative.
88. The Task Force observes that other Canadian law societies have continued to move forward with the development of their self-assessment tools as part of a number of evolving entity regulation initiatives. This work includes ongoing consultations on Ontario’s Practice Assessment tool, the completion of self-assessment pilot projects in Alberta, Saskatchewan and Manitoba, and the profession-wide implementation of Nova Scotia’s self-assessment tool.<sup>26</sup> Advancing with law firm regulation would put the Law Society of BC at the forefront of this national shift toward proactive entity regulation.

### **(d) Not onerous**

89. At various junctures, some Benchers have expressed concern that the self-assessment process could create a significant burden for firms in terms of the time and financial resources required to complete the exercise.
90. The results of the pilot confirm, however, that completing the self-assessment in its current form was not difficult for the large majority of firms. Approximately 85% of respondents reported that it was not an onerous process. Numerous written comments reflect that although some firms perceived the self-assessment process to be burdensome at the outset,

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<sup>25</sup> Law Society of BC 2018-2020 Strategic Plan, online at: [https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan\\_2018-2020.pdf](https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/StrategicPlan_2018-2020.pdf)

<sup>26</sup> See the Law Society of Ontario’s Practice Assessment, online at: <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/c/cber-practice-assessment.pdf>; Nova Scotia Barristers’ Society, Framework for Legal Services Regulation, online at: <https://www.nsbs.org/management-systems-ethical-legal-practice-mselp>; Prairie Law Societies Law Firm Practice Management Assessment Tool, <https://www.lawsocietylistens.ca/4074/documents/7970> .

once they began working through the Self-Assessment Report, they found this was not the case.

91. This observation is reinforced by the finding that most respondents took less than two hours to complete the self-assessment, with the majority of firms reporting that they found the time spent on the exercise to be useful.

**(e) Concerns with profession-wide implementation**

92. Given the positive feedback of the pilot project participants, the results of Australian studies, the pan-Canadian movement toward the regulation of firms and the Task Force's general observations – informed by the pilot project results – regarding the potential for the self-assessment tool to effect positive change within firms, the Task Force has limited concerns with respect to initiating a profession-wide self-assessment process.
93. The Task Force does, however, highlight the following issues, which may warrant further consideration by the Benchers as part of their discussion and decision-making process.
94. First, it is notable that 25% of firms selected for the pilot project did not complete the self-assessment. The Task Force is of the view that even when this non-response rate is accounted for, the pilot project's positive and neutral results reflect that overall, the profession did not have a negative experience with, or reaction to, the self-assessment. However, this level of non-compliance signals that introducing a requirement to self-assess may result in some resistance from a portion of the membership. As a result, the Law Society will likely have to devote time and resources to communication efforts in advance of implementation, as well as following-up with firms that do not submit their Self-Assessment Report in a timely fashion.
95. Second, the results of the pilot project demonstrate that the profession-wide implementation of the self-assessment process will require the commitment of significant financial and human resources by the Law Society over the short to medium term. This includes investments in resource curation and development, operational support for the delivery of the self-assessment, technology and content management support, communication and education outreach and ongoing policy support. These costs, which are estimated to be in excess of \$600,000 over the next seven years, are discussed in detail in the last section of this report.<sup>27</sup>
96. Although the pilot project results suggest that the self-assessment process has the potential to assist thousands of firms improve their practice management systems, the outcomes, in terms of improved client service and a reduction in complaints, are not guaranteed.

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<sup>27</sup> For a discussion of the budgetary implications of introducing the self-assessment process to the entire profession, see page 45 of this report.

97. As noted above, the Australian research does not confirm whether the educational benefits of the self-assessment, and the resulting behavioural change within firms, is sustained over time. Additionally, although researchers established a correlation between the reduction in complaint rates and the act of completing the self-assessment process, they also found the extent to which the self-assessing firms reported they had policies in place did not impact on the complaint rate.<sup>28</sup> Researchers also observed that complaints are an imperfect indicator of professional, ethical firm behaviour.<sup>29</sup>
98. Finally, although the Australian studies show that a number of firms revised their policies or processes following the completion of the self-assessment, the research did not include a qualitative evaluation of policy implementation; for example, whether the firm followed the policy or process once it was developed or how robust the policy was.
99. Given the paucity of empirical data and the limited experience of other regulators with the regulation of law firms, the Task Force recognizes that the self-assessment process is somewhat experimental. However, notwithstanding these uncertainties, the self-assessment provides the Law Society with a unique opportunity to test the effectiveness of proactive regulation by providing thousands of firms with an educational tool that has the potential to improve their practice management systems, to the benefit of not only the firms and their lawyers, but also, to clients and the public interest, more generally. As such, the Task Force is of the view that committing to the profession-wide implementation of the self-assessment process is a worthwhile expenditure of Law Society resources.

**Recommendation 1:** The Law Society commits to the profession-wide implementation of the self-assessment process.

100. If this recommendation is approved, the Task Force also presents a number of ancillary recommendations related to the purpose of the self-assessment, the frequency of the assessment cycle, the structure and content of the self-assessment tool and the use of model policies. Each of these issues are canvassed below.

## 2. Purpose of the self-assessment

101. As outlined in the Second Interim Report, the self-assessment process has, to date, been envisaged as a mechanism for helping firms identify practice management systems that require improvement and supporting firms' proactive efforts to address these deficiencies

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<sup>28</sup> "Overall, we have not been able to identify any effect of the actual level of self-assessment rating on rate of complaints. Rather, our results strongly indicate that the mere fact of going through the self-assessment process makes a difference to ILP's performance on complaints, regardless of the actual rating they give themselves" (Parker, Gordon and Mark *supra* note 18 at 29).

<sup>29</sup> Parker, Gordon and Mark *supra* note 18 at 16.

or weaknesses, not to measure compliance with new standards or discipline those that fall short.<sup>30</sup>

102. In 2018, new rules were enacted to reassure firms that the information they provided to the Law Society in the Self-Assessment Report would not lead to disciplinary action.<sup>31</sup> The Nova Scotia Barristers' Society adopted a similar approach as part of their self-assessment process.<sup>32</sup> Both jurisdictions recognize the tension between the self-assessment's potential regulatory and educational functions, such that the possibility of disciplinary action may deter firms from being fully transparent when self-assessing and erode some of the educational benefits of the exercise.
103. The pilot project confirmed that the self-assessment tool is, in fact, fulfilling its intended purpose and served a valuable educational function for many firms. In addition to over 60% of respondents agreeing that the self-assessment process was an educational exercise, a similar number of firms indicated that completing the self-assessment would promote action around improving policies and processes at the firm, and nearly three-quarters of respondents reported that they would use the self-assessment tool as a resource in the future.
104. The educational benefits of the self-assessment tool also extend to the regulator, by enhancing the Law Society's understanding of how it can support firms in improving their practice management systems. For example, if the self-assessment exercise reveals that a significant number of firms lack policies and processes in relation to one of the Professional Infrastructure Elements, the Law Society can respond by developing additional resources to support firms in this area.
105. Accordingly, the purpose of the self-assessment should remain educational in nature. Although it is mandatory to complete the Self-Assessment Report, the information contained therein is not to be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

**Recommendation 2:** The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report

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<sup>30</sup> Second Interim Report *supra* note 3 at 14: "The 2016 Interim Report recommended the adoption of the self-assessment process to monitor compliance. The Task Force's views have evolved since this recommendation was made, and the focus has shifted to ensuring that the tool is developed in manner that reflects its primary purpose as a learning tool in relation to the development and maintenance of a firm's professional infrastructure. Recommendation 7: The primary objective of the self-assessment tool is to provide firms with educational tools and resources that will assist firms in meeting the standards set by the Professional Infrastructure Elements."

<sup>31</sup> Law Society Rule 2-12.3.

<sup>32</sup> Nova Scotia Barristers' Society Regulations at 4.9.6, online at : <https://www.nsbs.org/sites/default/files/cms/menu-pdf/CurrentRegs.PDF> "If a self-assessment indicates that a law firm or sole practitioner does not have in place appropriate policies, practices, and systems to support the elements for a management system for ethical legal practice, such reporting will not result in an investigation pursuant to subregulation 9.2.1."

will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

106. The Task Force also notes that should there be a shift toward a more “regulatory” approach – which it does not support – the Law Society would need to undertake significant policy work to determine how the self-assessment could be integrated into the Law Society’s investigatory and disciplinary processes. It would also require amendments to the Law Society Rules and intensive communications efforts to articulate the rationale for, and impact of, this change in approach.

### 3. Frequency of the assessment cycle

107. The frequency with which firms will be required to submit a Self-Assessment Report to the Law Society is a critical design feature of the self-assessment process. The Law Society Rules currently provide a great deal of flexibility in this regard, granting the Executive Director with the authority to require a law firm to complete a self-assessment at any time, provided that the firm receives three months’ notice.<sup>33</sup> Going forward, both firms and the Law Society will require greater certainty with respect to how often firms are required to self-assess.

108. The Task Force has observed that the assessment cycle must be frequent enough to motivate firms to continually reflect on, and modify their policies and processes in relation to the Professional Infrastructure Elements, while allowing sufficient time to make meaningful improvements between cycles. The reporting interval must also be frequent enough to enable the Law Society to regularly update the self-assessment tools and to monitor whether the self-assessment exercise results in a reduction of complaints against firms over time — a key metric for evaluating the success of the tool in changing firms’ behaviour.

109. Conversely, the reporting interval must not be so short as to create unrealistic expectations regarding firms’ ability and willingness to undertake a rigorous review of their policies and processes, or to negatively impact the Law Society’s responsiveness with respect to firms’ requests for guidance and support.

110. Various reporting intervals were considered by the Task Force. A five year assessment cycle was determined to be too lengthy, making it difficult for the Law Society to make substantive changes to the self-assessment process or measure a reduction in complaints for at least five years, following the completion of the first self-assessment cycle. Given that the self-assessment process is a new undertaking requiring significant resources, an

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<sup>33</sup> Law Society Rule 2-12.3.  
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evaluation of its impact should occur sooner rather than later. On the other hand, the Task Force considers a two year assessment cycle to be too frequent, creating unnecessary administrative burdens for both firms and the Law Society.

111. The Task Force is of the view that a three year assessment cycle strikes an appropriate balance: it is frequent enough to ensure regular reflection on practice management structures, while providing firms adequate time to make improvements between cycles.<sup>34</sup> Additionally, the Task Force recommends that at the outset, the Law Society commit to completing two assessment cycles, as to establish both a “baseline” and a subsequent set of reporting data from which any changes in complaint rates, or other positive or negative impacts of the self-assessment process, can be evaluated.
112. The Task Force also supports an approach in which new firms are required to complete and submit a self-assessment to the Law Society within a year of registration. Additionally, the Task Force recommends that the Executive Director have the discretion to require firms to complete a self-assessment outside of the regular reporting period, when it is in the public interest to do so. A new rule, and supporting policy outlining factors to consider in making such an assessment, will be required.

**Recommendation 3:** Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

#### 4. Timing of the assessment cycle

113. The Task Force has also considered two different options for a three year assessment cycle: a “rolling” and a “non-rolling” reporting scheme.
114. Under a non-rolling reporting scheme, all of the approximately 3,500 firms that are required to self-assess under the Law Society Rules<sup>35</sup> would be required to complete the self-assessment in the first year of the assessment cycle. In the following two years of the

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<sup>34</sup> The Nova Scotia Barristers’ Society has also adopted a three year assessment cycle for its self-assessment process, and provides the Executive Director with the discretion to order firms to report more frequently in some circumstances. See Regulation 4.9.3 and 4.9.4, online at: <https://nsbs.org/sites/default/files/cms/menu-pdf/CurrentRegs.PDF>

<sup>35</sup> Law Society Rule 2-12.1(2) exempts certain types of firms from the requirement to self-assess, namely: a public body such as government or a Crown corporation, a corporation that is not a law corporation, or a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

first assessment cycle, only new firms would self-assess. In year four, which marks the commencement of the second assessment cycle, all of the original 3,500 firms would again be required to self-assess.

115. In contrast, under a rolling reporting scheme only one third of firms (approximately 1,160 firms) would be required to complete the self-assessment each year. As such, at the end of the first three year assessment cycle, all 3,500 firms will have completed the self-assessment. One third of firms would once again be required to complete the self-assessment in each of the three years of the second assessment cycle.
116. The Task Force recommends the latter “rolling” approach to reporting for a number of reasons. First, the more staggered the reporting, the fewer the number of self-assessments that must be distributed, collected and analysed at a single point in time, reducing administrative and operational pressures on the Law Society. Additionally, requiring only a portion of firms to complete the self-assessment increases the Law Society’s capacity to support individual firms through the assessment process, as compared to a cycle in which all firms in the province are completing their self-assessments simultaneously.

**Recommendation 4:** The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

117. The Task Force notes that if there were disciplinary implications for failing to have policies and processes in place in relation to the Professional Infrastructure Elements, it might be necessary to require all firms to complete the assessment at once. However, as the Task Force recommends that the self-assessment be used only as an educational tool, there is no imperative to require all firms to complete the exercise at precisely the same time.
118. Further, given the somewhat experimental nature of the self-assessment, the staggered approach to reporting provides the Law Society with more flexibility to make modifications to the tool with each successive cohort of firms that complete the exercise, creating greater opportunities for continuous improvement.
119. In this vein, the Task Force recommends that mechanisms are employed that enable all Law Society Committees to bring forward issues or topics that might be beneficial for inclusion in revised, future versions of the Self-Assessment Report, and that the Benchers receive regular reports on the self-assessment process, including at the conclusion of each reporting cycle. The membership should also have opportunities to provide feedback to the Law Society on the self-assessment process, including in relation to the impact of modifications to the self-assessment tools and the process by which the assessment is administered.

120. Importantly, the Task Force recommends that the Law Society commit to two consecutive three year assessment cycles on the basis that at a minimum, this amount of time will be required for themes and trends to emerge from the self-assessment process.
121. In the first assessment cycle, both firms and the Law Society will create a “baseline” data set from which future improvements to practice management systems or, perhaps, a reduction in complaints or other metrics, could be measured. Without the comparative data that will be collected in the second assessment cycle, it will be difficult for the Law Society to evaluate the extent to which the self-assessment has a lasting impact on firm learning or conduct.

**Recommendation 5:** The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the program over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

## 5. Modifications to the self-assessment

122. As previously discussed, the results of the pilot project indicate that the majority of firms found completing the Self-Assessment Report and utilizing the Workbook to be a useful exercise, and that the materials were, and will continue to be, a helpful resource. Over 80% of respondents also indicated that the content of the Self-Assessment Report was clear and easy to navigate.
123. The pilot project also highlighted a number of possible changes to the format, functionality and content of the Self-Assessment Report and Workbook that could improve the utility of both tools. This feedback has informed the Task Force’s recommendation, described below, that a series of modifications are made to the tools prior to the profession-wide implementation of the self-assessment process.

### (a) Rating scale

124. Currently, the Self-Assessment Report requires firms to evaluate the extent to which they have satisfied each Professional Infrastructure Element on a four point scale.<sup>36</sup> Some pilot project participants expressed, however, that the rating scale is not descriptive enough, nor is it applied at a sufficiently detailed level within the assessment to enable firms to provide

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<sup>36</sup> The four point scale is currently described as: (1) Policies and processes have not been developed (2) Policies and processes are under development but are not functional (3) Policies and processes are functional (4) Policies and processes are fully functional and regularly assessed and updated.



an accurate evaluation of the extent to which they have developed and implemented policies and processes in relation to key areas of professional, ethical firm practice.

125. For example, under Professional Infrastructure Element 3: Protecting confidentiality, firms may have excellent security measures in place to protect physical data (Indicator 3), but may have weak systems in relation to electronic data (Indicator 4). This important distinction is lost when a firm is only required to rate their performance in relation to the Element more globally.
126. To address this concern, the Task Force recommends that the rating scale be refined to include additional or more nuanced descriptors that will improve firms' ability to evaluate the strength of their policies and processes. Additionally, the Task Force recommends that firms are required to evaluate their performance in relation to each Indicator, rather than at the higher level of the Professional Infrastructure Element, as is currently the case. This approach is expected to improve the extent to which firms can document more specific areas within an Element where there are deficiencies in firm policies or processes.<sup>37</sup>

#### **(b) Goal setting**

127. A number of pilot project participants suggested it would be beneficial to add a section to the Self-Assessment Report asking firms to identify areas of strength as well as those areas in which the firm could improve their practice management systems. The Task Force had previously discussed this approach, noting in the Second Interim Report that prior to the profession-wide implementation of the self-assessment process, additional consideration would be given to whether the Self-Assessment Report should require firms to identify areas that would benefit from more robust policies and processes.<sup>38</sup>
128. In addition to focusing firms on prioritizing work on a specific sets of policies and procedures, goal setting enhances both the reflective and forward looking nature of the self-assessment exercise by requiring firms to document weaknesses or limitations in their practice management systems and to proactively set targets for making improvements in these areas.
129. Other regulators have also recognized the benefits of this approach. For example, Nova Scotia's final report on its self-assessment pilot project highlighted concerns about the absence of a goal setting component in an early version of their self-assessment, observing that unless firms are asked to identify specific areas needing attention, there will be less follow-through on effecting improvements.<sup>39</sup> A goal-setting component has since been

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<sup>37</sup> Notably, some portions of Ontario's Practice Assessment ask firms to evaluate their performance in relation to each Indicator (moderate detail) on a five point scale. Nova Scotia's Workbook asks firms to rate their performance in relation to each Consideration (very detailed) on a four point scale.

<sup>38</sup> Second Interim Report *supra* note 3 at para. 66.

<sup>39</sup> NSBS Final Pilot Project Report *supra* note 15 at 8, 10.

incorporated into Nova Scotia’s self-assessment tool. Alberta and Manitoba’s draft self-assessment tools go further, asking firms to outline a plan for improvement, including target dates, for each of its seven “Management Principles.”<sup>40</sup>

130. As with other aspects of the self-assessment exercise, ongoing opportunities for feedback from the membership on the value of the goal setting component of the Self-Assessment Report should be provided.

**(c) Increased functionality**

131. Given the evolving complexity of the self-assessment and the number of firms that will be required to complete the exercise, the current Self-Assessment Report must make the transition from an externally hosted survey platform to an internally hosted web-based application that is well integrated into the Law Society’s information systems.
132. This shift will create two opportunities. First, it will enable the Law Society to make a number of improvements to the functionality of the self-assessment tools. This includes enabling users to move easily between sections of the Self-Assessment Report and to review, save and download their assessment before submitting it to the Law Society; to provide better linkages between the Self-Assessment Report and the Workbook, and between the Elements, Indicators, Considerations and Resources within each of these documents; and to re-create the Workbook as a fully functional electronic tool.
133. Second, it will enable the virtually seamless integration of data from the Self-Assessment Report into the Law Society’s Information System (LSIS), which will greatly improve the ability to run reports, analyse data and track completion. The Task Force recommends that these changes are introduced prior to the profession-wide implementation of the self-assessment process.

**(d) Mandatory review of Considerations and Resources**

134. As the Self-Assessment Report is currently designed, firms are required to review the eight Professional Infrastructure Elements and their associated Indicators as they advance through the online tool, while viewing other content, including the detailed list of Considerations and Resources related to each Element and Indicator, is optional. The results of the pilot project reveal that when given the choice, most firms do not review these optional materials in the online tool.
135. Although the Professional Infrastructure Elements and Indicators identify high-level aspects of professional, ethical firm practice, it is, in fact, the set of optional Considerations

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<sup>40</sup> Prairie Law Societies Law Firm Practice Management Assessment Tool *supra* note 26. The Law Society Saskatchewan conducted telephone interviews with participants rather than including a section in their self-assessment tool for firms to identify strengths, weaknesses and goals.

and Resources that provide the detailed guidance regarding the types of policies, practices, processes, methods, steps and systems that a prudent law firm should have in place to support a robust set of practice management systems. Indeed, the pilot project indicated that if viewed, participants regarded the material contained in the Considerations and Resources sections of the tool as being valuable, with 90% of respondents reporting that this guidance assisted their firm in completing the self-assessment.

136. As such, the Task Force observes that the current format of the Self-Assessment Report, in which the majority of the guidance material is optional, does not optimize the tool's potential for facilitating reflection on the full breadth of firms' practice management systems.
137. Given the valuable nature of this guidance material, paired with the observation that the self-assessment process is less onerous than many expected, the Task Force recommends shifting the Considerations and Resources from optional to mandatory reading in the online tool.
138. Importantly, requiring firms to view this material in the course of completing their Self-Assessment Report does not require firms to address each Consideration or use each Resource; it would simply ensure that firms are exposed to this information. Firms will have the ability to determine how extensively to engage with this material, which may vary as users move through the various sections of the Self-Assessment Report.
139. The Task Force is of the view that any increase in the time it takes firms to complete the self-assessment as the result of this new, mandatory material is justified by the potential benefits to firms of reviewing additional information. Notwithstanding these benefits, future reviews of the self-assessment process should include an evaluation of whether the increase in mandatory content significantly impacts on the amount of time it takes firms to complete the self-assessment exercise and how onerous firms perceive the self-assessment process to be.

**Recommendation 6:** The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

## 6. Developing additional resources

140. One of the key goals of introducing the self-assessment to the entire profession is to ensure all firms have access to educational tools and resources that facilitate reflection on their

practice management systems and encourage proactive efforts to address practice concerns. Maintaining high-quality resources that support the self-assessment process is therefore key to law firm regulation's success.

141. The pilot project results indicate strong support for the Law Society playing an active role in developing and curating practice resources for the profession as part of law firm regulation. Although many participants reported that the resources contained in the self-assessment were sufficient, a similar number of firms indicated that more resources would be useful.<sup>41</sup>
142. The pilot project also provided the Law Society with an opportunity to hear directly from firms about the specific areas in which more resources would be of assistance. The Task Force recommends the Law Society prioritize the development of additional practice resources in these areas over a one year period prior to the initiation of the first assessment cycle, and continue to develop additional resources over the course of future assessment cycles.
143. The pilot project also indicated support for the development of a web-based resource portal, hosted by the Law Society, where firms could access resources outside of their designated period of self-assessment.<sup>42</sup> This approach was previously approved by the Benchers as one of the recommendations contained in the Second Interim Report.<sup>43</sup>
144. The Task Force has given detailed consideration to the issue of whether the Law Society should create model policies for firms as part of its resource development efforts. As part of this work, the Task Force revisited the Benchers' previous decision not to accept the 2017 recommendation that model policies be included in the piloted version of the self-assessment, and the direction that instead, the Law Society would develop "educational resources," which were understood not to include model policies.<sup>44</sup>

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<sup>41</sup> To date, the vast majority of the resources contained in the self-assessment have been developed in-house to ensure that the Law Society retains control over the quality, content and accessibility of the resources. Limiting the resource set in this manner was also thought to safeguard against the self-assessment being overloaded with resources. Externally sourced resources were only included where there were no appropriate existing Law Society resources.

<sup>42</sup> The proposal to develop a resources portal has previously been considered and supported by the Task Force. See the Second Interim Report *supra* note 3 at 31. Nova Scotia has recently created a portal on their website with links to all the resources that support the self-assessment tool.

<sup>43</sup> Second Interim Report *supra* note 3: Recommendation 14: The Law Society will act as a curator of a variety of resources for the self-assessment tool, develop an independent resource portal and encourage the sharing of resources and best practices.

<sup>44</sup> The December 2017 Benchers minutes read "[...] Ms. Merrill then moved (seconded by Mr. Ferris) the approval of a resolution that Benchers adopt recommendations 1 – 9, 11, 14, 16 and 17, and adopt recommendations 12 and 13 of the said Report, but replace the phrase "model policies" in each recommendation with the phrase "educational resources"[...]"

145. The Task Force notes that a number of pilot project participants expressed a desire for model policies, as to ensure that all firms have access to high quality guidance on best practices. Auguring against the development of model policies, however, are concerns about firms defaulting to sample policies, or adopting them in an unconsidered manner, rather than carefully considering the appropriate approach for their specific practice context.
146. Given the great variability in firm size, structure and areas of specialization, a one-size-fits-all approach to policies would not suffice, nor is it feasible for the Law Society to develop a suite of policies that could satisfy the diverse needs of over 3,500 firms. A commitment to developing multiple model policies on each of the dozens of topics contained in the self-assessment would necessitate a period of intensive resource development that would greatly delay the implementation of the self-assessment process and significantly increase costs.
147. Concerns have also been raised that model policies could create the perception that the Law Society is utilizing the self-assessment process as a means of regulating to the standard of the model policy. As discussed previously, the self-assessment has been specifically designed as an educational tool that encourages firms to reflect on and improve their practice management systems, not as a mechanism for establishing a set of standard policies that firms are required to implement. As such, the Task Force recommends that the Law Society does not develop model policies for firms as part of law firm regulation.
148. Accordingly, the Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to firms through the self-assessment process.

**Recommendation 7:** The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to all firms.

## 7. Budgetary implications

149. Implementing the self-assessment process in accordance with the recommendations contained in this report will engage five Law Society departments:
  - the Practice Standards and Practice Advice Departments will be responsible for undertaking resource curation and development for the self-assessment tool;
  - the Member Services Department will be responsible for providing operational support for the delivery of the self-assessment process;

- the Information Services Department will be responsible for technology and content management support for the self-assessment tool;
  - the Communications Department will be responsible for law firm regulation related communications; and
  - the Policy Department will be responsible for providing policy analysis and rule amendments, as required.
150. Given the scope and scale of this initiative, the self-assessment process will require a significant commitment of financial and human resources, particularly in relation to resource curation, development and maintenance; technology support for building and maintaining an online self-assessment; and the operational support required for the successful delivery of the self-assessment.
151. The Task Force has relied on estimates provided by senior staff in each of the affected program areas with respect to the costs associated with preparing the self-assessment tools for profession-wide implementation and overseeing the process through the first two assessment cycles. These budgetary estimates are based on the following assumptions:
- Following the Benchers' approval of the recommendations contained in this report, the Information Services Department will migrate the Self-Assessment Report to an internally hosted, web-based application with improved functionality and develop an online resource portal.
  - The Practice Standards and Practice Advice Departments will create a set of additional practice resources for the self-assessment and update existing resources
  - The Communications Department will develop a comprehensive communications plan to support profession-wide implementation, as to ensure that the profession receives information about the purpose and requirements of the self-assessment process.
  - The Policy Department will support the transition to implementation, oversee the development of new rules and participate in on-going pan-Canadian collaboration on law firm regulation.
  - In addition to maintaining the law firm registration system, the Member Services Department will establish dedicated staff to oversee the operational aspects of the delivery of the self-assessment, including: administering the self-assessment in accordance with the reporting cycle; responding to firms inquiries about, and provide support for, the assessment process; monitoring and following-up with firms that have missed reporting deadlines; recording data from completed self-

assessments and assisting with the analysis of results; and liaising with other departments with respect to potential updates or modifications to the self-assessment tools or processes.

- Ongoing work will be required to identify and develop additional resources for the self-assessment and maintain the technical aspects of the online tools.
  - At the conclusion of the each assessment cycle, further analysis will be undertaken with a view to determining the impact of the self-assessment process on firm learning and conduct, as well as the Law Society's ability to enhance the protection of the public interest.
152. It is anticipated that the overall cost associated with readying the self-assessment for profession-wide implementation and completing two consecutive three year assessment cycles, as recommended by the Task Force, will be approximately \$645,000.
153. Many of these costs (\$165,000) are associated with the resource development and technology support that will occur in advance of the commencement of the first assessment cycle. Once the self-assessment is ready for implementation, the costs will be approximately \$80,000 per year, for each year of the assessment cycle (\$480,000 total for two consecutive three year assessment cycles).
154. These costs are further broken down as follows:
- An additional FTE lawyer position (\$130,000) will be required for a one year period of intensive resource development in advance of the profession-wide implementation of the self-assessment.<sup>45</sup> Given the short duration of this phase of resource development, it is expected that this work would be completed through a contract, rather than hiring an additional, permanent Law Society employee.
  - The delivery and operational oversight of the self-assessment will require a dedicated permanent FTE position at a cost of \$60,000 per year (\$360,000 total over the course of two consecutive three year assessment cycles).
  - Approximately \$35,000 will be required to make the recommended technology-related modifications to the self-assessment and to create an online resource portal prior to the commencement of the first assessment cycle.
  - Approximately \$5,000 will be required for technology and content management support during each year of the assessment cycle (\$30,000 total over the course of two consecutive three year assessment cycles).

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<sup>45</sup> Notably, if only one new resource is developed per Indicator (a 10% increase in the number of resources) 26 new resources must be developed over the next year.

- No additional costs are expected in relation to communications initiatives in advance of, or following the implementation of the self-assessment process.
  - Approximately \$5,000 per year will be required to provide the requisite policy support (\$30,000 total over the course of two consecutive three year assessment cycles)
155. Although Australian studies suggest that a reduction in complaints can be expected following the implementation of the self-assessment process, it is not possible to predict, with any accuracy, the extent of this reduction and any costs savings that may result.

## Resolution and Summary of Recommendations

156. The following resolution is presented to the Benchers for discussion and decision:

The Benchers adopt the following seven recommendations of the Law Firm Regulation Task Force, as contained in this report, namely:

**Recommendation 1:** The Law Society commits to the profession-wide implementation of the self-assessment process.

**Recommendation 2:** The purpose of the self-assessment process will remain educational in nature, and information provided to the Law Society as part of the Self-Assessment Report will not be used as evidence in, or to inform the outcome of, a disciplinary action or proceeding.

**Recommendation 3:** Unless exempted from the requirement to self-assess under Rule 2-12.1 (2), all firms will be required to complete and submit a Self-Assessment Report to the Law Society once every three years. New firms will be required to submit their self-assessment within one year of their registration date. Firms may also be required to complete a self-assessment outside of the regular reporting period if the Executive Director considers it is in the public interest to do so.

**Recommendation 4:** The assessment cycle will operate on a rolling basis, in which one third of all firms that are required to self-assess under the Law Society Rules submit a Self-Assessment Report to the Law Society in each year of the three year assessment period.

**Recommendation 5:** The Law Society will commit to the completion of two assessment cycles of three years each in order to collect sufficient data to evaluate the impacts of the



self-assessment over time. Mechanisms will be developed to ensure the continuous improvement of the self-assessment process throughout this period, including reports to the Benchers at the conclusion of each assessment cycle and ongoing opportunities for feedback from the membership.

**Recommendation 6:** The Self-Assessment Report will undergo several modifications to improve its format, functionality and content, including revising the rating scale, adding a goal setting component, rebuilding the Self-Assessment Report as an internally hosted web-based application and requiring firms to review the material contained in the Considerations and Resources sections of the Self-Assessment Report.

**Recommendation 7:** The Law Society will not develop prescribed policies and procedures, but may develop sample policies and procedures as part of the expanded set of practice resources that will be available to all firms.

## Subsequent Steps

157. If the Benchers approve Recommendation 1, in which the Law Society commits to the profession-wide implementation of the self-assessment process, the Law Society must ready itself for the introduction of the self-assessment process to approximately 3,500 firms in BC. This will involve a year of intensive resource development and the modification of the self-assessment tools as described in Recommendations 6 and 7. This work is expected to begin in 2020.
158. Once the proposed changes to the self-assessment tools are complete, the first assessment cycle will commence, pursuant to Recommendations 2 and 3, and one third of all eligible law firms will be required to complete and submit a Self-Assessment Report to the Law Society each year, for a three year period.
159. An interim report will be issued to the Benchers at the conclusion of the first three year assessment cycle, following which, the second three year assessment cycle will commence. At the conclusion of the second assessment cycle, the Law Society will have sufficient data to evaluate the impact of the self-assessment process on firm learning, conduct and the protection of the public interest.
160. A schematic of this implementation schedule is provided below.

	1/3 <sup>rd</sup> of firms assess	1/3 <sup>rd</sup> of firms assess	1/3 <sup>rd</sup> of firms assess	Report to Benchers	1/3 <sup>rd</sup> of firms assess	1/3 <sup>rd</sup> of firms assess	1/3 <sup>rd</sup> of firms assess	
<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>		<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
Resource development & finalizing the self- assessment	First Assessment period				Second Assessment period			Evaluation of self- assessment process and report to Benchers

161. At the conclusion of this seven year process, the Law Society will be well situated to make evidence-based recommendations to the Benchers about future phases of law firm regulation.
162. Finally, the profession-wide implementation of the self-assessment process signifies the completion of the Task Force’s mandate to “recommend a framework for the regulation of law firms.” As the Task Force has now concluded its work, a decision should be made to ensure that a group is tasked with reporting to the Benchers, likely annually, on the impacts of the self-assessment process specifically, and the regulation of law firms more broadly.