

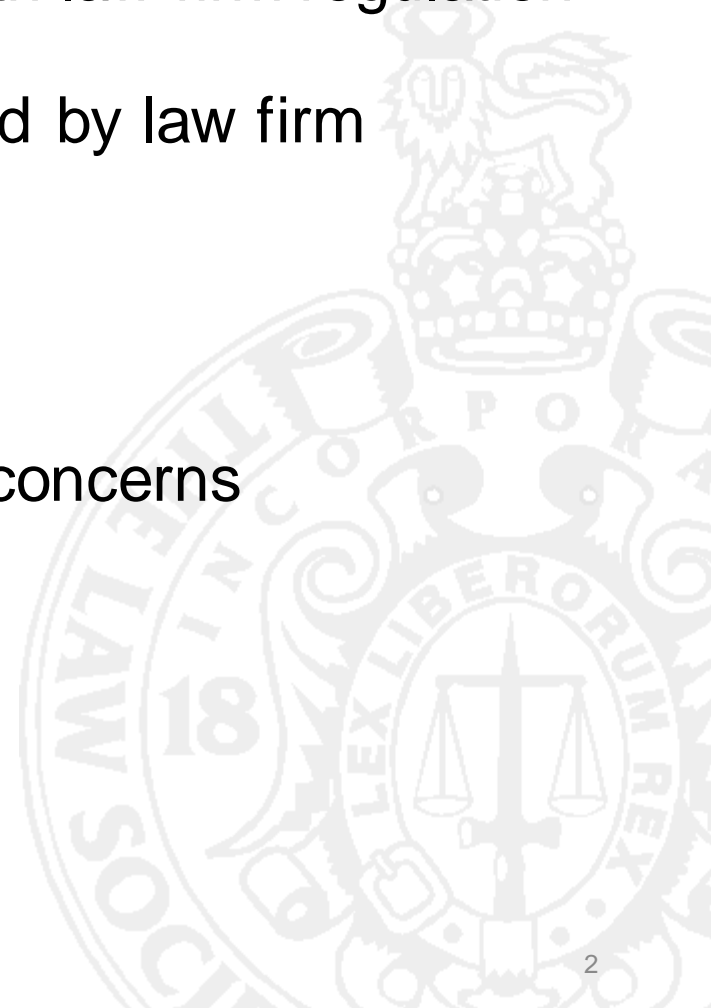


Law Firm Regulation: Consultation with the Profession

February 2016

Objectives of this session

- Explain what we hope to achieve with law firm regulation
- Discuss possible areas to be covered by law firm regulation
- Raise specific issues with you
- Get your thoughts, respond to your concerns



Law Firm Regulation Task Force

- Herman Van Ommen, Q.C. (Chair)
- Jan Christiansen
- Martin Finch, Q.C.
- Peter Lloyd, FCA
- Lori Mathison
- Sharon Matthews, Q.C.
- Angela Westmacott, Q.C.
- Henry Wood, Q.C.



Is there a problem with the current system?

Lawyer regulation in BC is largely reactive

We respond to issues after the fact

We investigate lawyers where neither lawyer nor client wants to be involved in the investigation

Irreparable harm has sometimes occurred

Investigations can be protracted and costly for all

We discipline conduct that could have been avoided in the first place



Is there a problem with the current system?

Much of lawyer regulation would be better dealt with at the law firm level.

Conflicts that result from a lack of firm policies and systems

Employees who work for a number of lawyers who have not been adequately trained or supervised

Accounting issues that arise from poor systems

Law firm culture which impacts how lawyers behave

Example one

Junior associate working on a securities deal encourages staff and lawyers to invest in the offering. Deal was fraud and all who invested lost their money. There was no supervision of the associate or policies around investments, in existence at the firm.

Example two

Firm takes an inappropriate security interest in litigation. Lack of policies to reflect BC Code requirements.

Example three

Firm policy that required withdrawal from a file at last minute where client didn't pay, leaving client in the lurch and breaching law society rules around withdrawal.

Example four

Improper policies enforced by firms around clearing trust balances





Objectives identified by the Task Force

1. Enhance regulation to include law firms
2. Enhance regulation by identifying areas of responsibility for law firms that support the delivery of legal services, such as conflicts management and accounting



Objectives continued...

3. Engage law firms in ensuring compliance with regulatory requirements to improve the professional standards and competence of lawyers within the firm
4. Establish responsibilities for communication, both within law firms and between firms and the Law Society

One size does not fit all

Framework will recognize the realities of practice in firms of various sizes, geographical locations and practice areas





Why law firm regulation?

- Some issues and concerns *are* law firm responsibilities
- Firms have an interest in reducing the incidence of problems that result in Law Society investigations of their lawyers
- Usually the lawyer/firm relationship is supportive, significant to both, and non-adversarial
- Lawyers have an interest in complying with firm policies
- Real reduction in complaints and misconduct is in the public interest



Law Firm Regulation elsewhere

- Many jurisdictions in the world regulate entities that provide legal services in addition to lawyers including England and Wales, most European countries and Australia
- Nova Scotia, Quebec, Ontario, Alberta, Saskatchewan and Manitoba are all at various stages of development of frameworks to regulate entities



How will this work?

- Make law firms responsible for conduct that law firms direct (e.g. conflicts and accounting ...)
- Enlist law firms to help prevent problems from arising by adopting policies and procedures to ensure lawyers are practising ethically and competently and that complaints are managed appropriately



What do we want to achieve?

- Proactive regulation – preventing problems from occurring in the first place
- Fewer complaints against lawyers made to the Law Society
- Avoiding preventable harm to clients, the public and the profession
- Providing tools for firms and lawyers to improve conduct and avoid problems



What do we want to achieve?

- Placing responsibility with law firms where appropriate
- Ensuring law firms have appropriate policies, systems, training and supervision
- Ensuring the profession delivers high quality, ethical legal services to clients

What does proactive regulation look like?

- Firms design and implement policies that work for them to accomplish the broad objectives the Law Society sets out
- Law Society provides support to develop model policies



Do proactive and entity regulation work?

- Legal Ombudsman of England and Wales claims that there has been a 22% reduction in complaints against law firms attributable to proactive regulation
- New South Wales study indicated complaints against legal entities reduced by 2/3s after the implementation of appropriate requirements for firms



Potential areas to be covered by law firm regulation

- **Practice management** – active supervision and training of the practice, practitioners, articling students and staff, including obligations around privilege, confidentiality and privacy, safe and respectful workplace and interpersonal relations

A photograph showing several people in business attire sitting around a table, looking at documents and talking. The image is partially obscured by a white circular vignette.

Potential areas continued....

- **Client management** – management of client relations including complaints, avoiding conflicts of interest and communications with clients to ensure effective, timely and courteous delivery of services and succession planning
- **File management** – opening of files, file documentation and file closure



Potential areas continued....

- **Financial management** – Law Society accounting and insurance requirements, billing practices and business continuity
- **Professional management** – supporting lawyers in remaining current and building competencies

A photograph showing several people in business attire sitting around a table, looking at documents and talking. The image is slightly blurred and has a soft white border.

Potential areas continued....

- **Equity and Diversity** – equality of opportunity within firms, cultural sensitivity, respect for diversity in recruitment, hiring and advancement

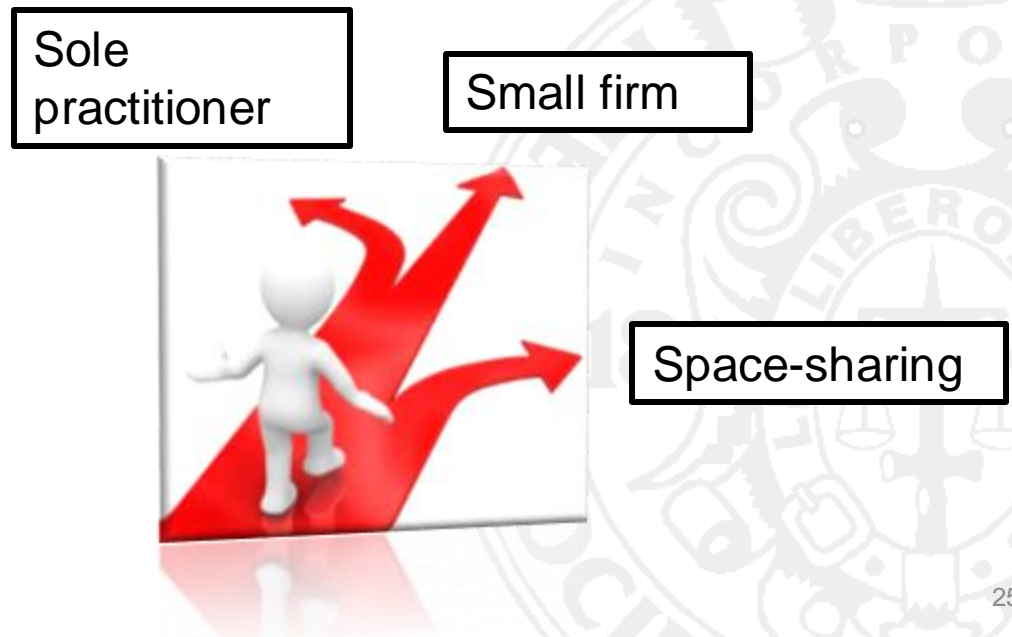
In house and government counsel

- Task Force still considering how in house and government counsel might fit in the law firm regulation regime



Sole practitioners and small firms

Firms' policies and procedures will be tailored to suit the realities of sole practitioners and small firms





Designated contact person

- Law Society proposes that firms put forward one person
- Ensures appropriate communications within firm and between firm and Law Society
- Not personally responsible for the firm's actions
- Does not have to ensure compliance with requirements

Follow up

- Email: firmregulation@lsbc.org
- Mail: Law Firm Regulation Task Force
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Questions? Comments?

