



Agenda

Benchers

Date: Friday, July 7, 2017

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Presentation of the 2017 Law Society Scholarship	5	President		Presentation
<p>CONSENT AGENDA:</p> <p>The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.</p>					
2	Consent Agenda <ul style="list-style-type: none"> • Minutes of June 9, 2017 meeting (regular session) • Minutes of June 9, 2017 meeting (<i>in camera</i> session) • Legal Aid Advisory Committee: Terms of Reference 	1	President	Tab 2.1 Tab 2.2 Tab 2.3	Approval Approval Approval
<p>BRIEFING/DISCUSSION/DECISION</p>					
3	Governance Committee Mid-Year Report	10	Steve McKoen	Tab 3	Discussion/ Decision
4	Financial Report – May YTD 2017	10	Miriam Kresivo, QC / Jeanette McPhee	Tab 4	Discussion



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
REPORTS					
5	Strategic Plan Review Process:				Briefing
	<ul style="list-style-type: none"> Proactive Regulation Public Confidence in the Administration of Justice and the Rule of Law 	15	Deb Armour		
		15	Michael Lucas		
6	Law Firm Regulation Task Force: Second Interim Report	15	President	Tab 6	Discussion
7	Mid-Year Advisory Committee Reports				Discussion/ Decision
	<ul style="list-style-type: none"> Access to Legal Services Advisory Committee 	5	Martin Finch, QC	Tab 7.1	
	<ul style="list-style-type: none"> Equity and Diversity Advisory Committee 	5	Nancy Merrill, QC	Tab 7.2	
	<ul style="list-style-type: none"> Lawyer Education Advisory Committee 	5	Dean Lawton, QC	Tab 7.3	
	<ul style="list-style-type: none"> Rule of Law and Lawyer Independence Advisory Committee 	5	Mark Rushton	Tab 7.4	
	<ul style="list-style-type: none"> Truth and Reconciliation Advisory Committee 	5	President	Tab 7.5	
8	National Discipline Standards: 2015/16 Implementation Report	10	Deb Armour	Tab 8	Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
EXECUTIVE REPORTS					
9	President's Report <ul style="list-style-type: none"> • Bencher Calendar 	5	President		Briefing
	<ul style="list-style-type: none"> • Briefing by the Law Society's Member of the Federation Council 	5		Tab 9	Briefing
	<ul style="list-style-type: none"> • Report on Outstanding Hearing & Review Decisions 	5		<i>(To be circulated at the meeting)</i>	Briefing
10	CEO's Report	10	CEO	<i>(To be circulated electronically before the meeting)</i>	Briefing
FOR INFORMATION					
11	Three Month Bencher Calendar – July to September			Tab 11	Information
IN CAMERA					
12	Litigation Report – July 2017	5	Deb Armour	Tab 12	Briefing
13	<i>In camera</i> <ul style="list-style-type: none"> • Bencher concerns • Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, June 09, 2017

Present: Herman Van Ommen, QC, President
Miriam Kresivo, QC, 1st Vice-President
Jasmin Ahmad
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Barbara Cromarty
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton, QC

Sharon Matthews, QC
Steven McKoen
Christopher McPherson
Lee Ongman
Greg Petrisor
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Sarah Westwood
Tony Wilson, QC

Unable to Attend: Jeevyn Dhaliwal
Lisa Hamilton
Jamie Maclaren

Nancy Merrill, QC
Claude Richmond
Michelle Stanford

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan

Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Annie Rochette
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests: John Arnesen	Volunteer, Lawyers Assistance Program
Dom Bautista	Executive Director, Law Courts Center
Mark Benton, QC	Executive Director, Legal Services Society
Chris Bungay	Volunteer, Lawyers Assistance Program
Prof. Joost Blom, QC	Chair, CLE Governance Committee
Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
Ron Friesen	CEO, Continuing Legal Education of BC
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Sylvan Lutz	Runner-up, Rule of Law Essay Contest
Linda Russell	CEO, Continuing Legal Education Society of BC
Priyan Samarakoone	Program Manager, Access Pro Bono Society of BC
Angela Tian	Winner, Rule of Law Essay Contest
Rolf Warburton	Board Chair, Continuing Legal Education Society of BC
Prof. Jeremy Webber	Dean of Law, University of Victoria
Jennifer Webber	Director, Member Services CBA BC

1. Presentation of the Winner and Runner-up of Rule of Law Essay Contest

Mr. Van Ommen presented Rule of Law Essay Contest winner Angela Tian and runner-up Sylvan Lutz with their prizes and certificates. He also thanked the Rule of Law and Lawyer Independence Advisory Committee for their good work in developing and promoting this successful contest which has expanded from 17 essay submissions last year, to an impressive 84 essay submissions this year. He also thanked Chair Craig Ferris, QC and committee members Jeff Campbell, QC and Professor Arlene Sinclair for their diligent review of all 84 submissions.

CONSENT AGENDA

2. Minutes

a. Minutes

The minutes of the meeting held on May 6, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on May 6, 2017 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to award the 2017 Law Society Scholarship to Naomi Minwalla.

GUEST PRESENTATIONS

3. LAP Presentation

Mr. Van Ommen introduced Lawyers Assistance Program Executive Director Derek LaCroix, QC. Mr. LaCroix noted the importance of a culture shift in the legal profession away from one characterized by alcohol-centric activities. He encouraged lawyers to think about making their social lexicon more inclusive, such as changing phrases like “let’s go for drinks” to a more neutral invitation. Such changes are key to changing the culture, as is the messaging around those who have problems with alcohol or other substance use. Studies show alarming statistics regarding the numbers of lawyers, as compared with the wider professional population, who have drinking problems, engage in alcohol or substance abuse or who suffer from mental health disorders. Equally alarming are the statistics indicating that the majority do not seek help because of the stigma surrounding such issues. He lauded the efforts of the over LAP 300 volunteers, and encouraged all lawyers to consider volunteering.

He also thanked the Benchers for inviting him and his colleagues to speak, as increasing openness and encouraging dialogue will help reduce the stigma. He then introduced two colleagues, John Arneson and Chris Bungay, both lawyers who have sought the assistance of LAP, noting the courage it takes to come forward and speak.

Mr. Arneson and Mr. Bungay shared with Benchers their stories of struggle and despair, and of recovery and success. Both emphasized there is no generic type of alcoholic, that recognizing and acknowledging a problem is key to help and recovery, and that the support found at LAP saved their lives. Both also stressed the importance of having a support organization specifically for lawyers, as it made it easier to seek help.

Mr. LaCroix thanked both Mr. Arneson and Mr. Bungay for their courage and their openness. He encouraged everyone in the legal community to be compassionate and honest with each other, to practice self-awareness, to listen and be engaged in the welfare of others, and to lead by example.

Mr. Van Ommen thanked all three guests for their willingness to share, and for the important work they do to support LAP.

DISCUSSION/DECISION

4. Selection of Benchers' Nominee for 2018 Second Vice-President

Mr. Van Ommen announced the nomination of Craig Ferris, QC for 2018 Second Vice-President, and called for any additional nominations. Hearing none, he declared Mr. Ferris nominated for 2018 Second Vice-President by acclamation.

5. Strategic Plan Review Process: Disclosure and Privacy

Jeff Hoskins, QC, Tribunal and Legislative Counsel and Michael Lucas, Manager, Policy and Legal Services provided the Benchers with an overview of statutory requirements, rules and policies related to disclosure and privacy, together with an overview of the strategic importance of the topic to the Law Society as an organization. They divided their presentation into two areas: what information the Law Society is permitted or required to disclose, and what information we are not prepared or not allowed to disclose.

The Law Society must always exercise its discretion concerning the collection, use or disclosure of information with a view to balancing transparency, openness and accountability with the fundamental value of protection of privacy. How that balance is struck affects public perception and confidence in us and the legal profession at large. Historically, Law Society decisions skewed heavily in favour of privacy; however, views began to change and more openness was

valued. In 1983, we became one of the first professional bodies in Canada to open the hearing process to the public, and then to publish reasons (albeit anonymized). For 10 years we voluntarily provided disclosure, doing our best to balance that with the protection of privacy. In 1995, as a public body the Law Society became subject to the requirements of the Freedom of Information and Protection of Privacy Act (FOIPPA). This legislation codified our legal obligations of disclosure and privacy protection.

In 2002, Benchers created the “Disclosure and Privacy Task Force,” which examined the public interest principles of transparency and disclosure, the interests of individuals, the interests of the profession in a fair regulatory process, and how all of these changes to disclosure and privacy affected Law Society operations. Following the Task Force’s first report, the Benchers approved the publication of citations served and full hearing decisions, and charged hearing panels with the responsibility of protecting privacy rights by way of motions closing the hearing or sealing documents.

In total, the Task Force operated for 4 years and made over 115 recommendations, most of which were adopted. Since its final report in 2006, there has been further evolution of the law of privacy and disclosure, with law being created and continuously refined through the many decisions being rendered by the Privacy Commissioner. Technology has also changed dramatically, search engines are more powerful and information is easier than ever to obtain. Public interest in disclosure has also increased; though we have become more transparent as a consequence, we must remain mindful of the privacy of sensitive personal information.

Thus, it is important to include privacy and disclosure in our strategic planning. Decisions made in this area 10 years ago must be revisited in light of the significant developments of the last decade, and our decisions must be consistent across a host of interrelated areas. In addition to being closely monitored by the Privacy Commissioner under FOIPPA, public confidence in the profession’s self-regulation requires as much transparency and openness as is permitted, while still recognizing the need for privacy.

Some specific issues to consider include:

- Anonymous publication after review of previously published decision
- Dealing with rescinded citations
- Publication of interim suspensions
- Anonymous publication of conduct reviews
- The right to be forgotten, which is not a law but an increasingly relevant privacy concept

- Considerations around hearing and credentials decisions
- Sharing information with other law societies
- Reports to law enforcement agencies that allow us to remain consistent with our obligations

In response to questions, Mr. Lucas reiterated the need to strike the right balance between transparency and privacy protection in the protection of the public interest and also in the discharge of our legal obligations. He also noted the importance of preserving information, and noted that decisions regarding archiving information should be considered through a privacy and disclosure lens moving forward.

Strategic Plan Review Process: Economics of the Legal Profession

Chief Information and Planning Officer Adam Whitcombe began his presentation by noting the limited amount of data and analysis of the legal profession in Canada. The leading work was published in 1990 and little has changed since. In 2013 the Canadian Bar Association (CBA) published a report on the future of legal services that noted its analysis was hampered by a lack of hard data in the area. The Legal Aid Task Force Report noted that advocating for changes to the system may require the collection of hard data upon which to build a business case. Following the recent survey to Benchers, the Governance Committee recommended that Benchers should be more informed about the legal market given our participation in it through our decisions.

Mr. Whitcombe noted that we have been regulating the profession with little knowledge of many aspects of a lawyer's practice, including how services are billed, how clients pay and what lawyers earn. He framed the strategic planning question as: how can we benefit from an economic analysis of the profession?

Mr. Lucas provided further information about the potential benefits:

- Making a case for increasing the legal aid tariff, based on the overhead costs of maintaining a legal practice;
- Expanding the pool of alternative legal service providers with evidence of the viability of the business model;
- Providing alternatives to the billable hour structure which can serve to increase access to legal services

- Improving access to justice generally, which requires some knowledge of the legal services market and what it actually costs to provide legal services

Mr. Lucas also suggested that thought can also be given to the cost to society for failing to resolve legal problems. Some economic analysis of the cost of our courts as compared with other mechanisms of resolution could assist in the development of more efficient and effective systems and help to focus our regulatory activities to improve justice.

Mr. Lucas noted that some initiatives are already underway, such as our partnership with the Legal Services Society (LSS) and the Law Foundation to gather information on the cost of legal services to low and middle income clients, ultimately in support of an increase to the legal aid tariff. Leading the development of other initiatives would be ground-breaking and would assist us in furthering our mandate to protect the public interest.

In response to this presentation, there was the suggestion that we should also be reviewing the cost of compliance to see whether there is a disproportionate burden on some lawyers such as sole practitioners.

Mr. McGee noted that increased information in this area can allow the Law Society to evolve as a regulator and think strategically about its capabilities and the needs of the profession in the years ahead.

Mr. Van Ommen thanked Mr. Hoskins, Mr. Lucas and Mr. Whitcombe for their informative presentations.

6. Recommendations Concerning a Reconsideration of Policy Decisions on the Publication of Credential Hearing Reports

Credentials Committee Vice-Chair Martin Finch, QC reported on this item. Providing background, he noted that it is the role of the committee to determine whether applicants should be deemed fit for entering the profession. Relevant considerations include issues regarding character, which may include allegations of past misconduct. Such reviews often involve highly personal or sensitive information. For those applicants that are subjected to a formal hearing, some are rejected; others are approved or approved on condition.

The current policy concerning publication of hearing reports purports to balance the public's right to know against the applicant's right to be able to move beyond a past transgression. Currently, if an application is rejected, the hearing report is anonymized; if the application is approved, it is published naming the applicant. If a successful applicant, who has been found to be of good character and repute, wishes to have the hearing report anonymized he or she must prove that publication without anonymization would cause grievous harm to the applicant or to a third party. The Committee considers this to be anomalous; when balancing transparency with

privacy, it questions how it makes sense to publish a successful applicant's history in a manner than names the applicant when a rejected applicant is permitted anonymity.

The Committee recognizes that it is in the public interest to maintain transparency with regard to hearing decisions. It is concerned with the current policy that anonymizes publication of a hearing decision concerning a rejected applicant. Information contained in such decisions could be relevant to other law societies or other regulators in the event the rejected applicant applies for admission elsewhere, which is made more difficult to do where the publication is made anonymously.

The Committee is also concerned that a successful applicant, who has been found to be of good character and repute, is nonetheless burdened with the public knowing about their past for an indeterminate time by virtue of the fact that the decision is published naming the applicant.

However, the Committee also recognizes that Credentials Hearings are public and transparency in Law Society processes favours ensuring that the public know the outcome of a public hearing process.

The Committee is recommending implementation of the following procedures to better balance the public's right to know with the applicant's right to privacy:

- Naming all applicants in publication of hearing decisions to maintain transparency and be consistent with the public nature of the hearings;
- Anonymizing published hearing reports, for applicants admitted without conditions, 6 months after the original publication, and continuing to permit these applicants to apply for immediate anonymization in the case of the current test relating to grievous harm;
- Anonymizing published hearing reports, for applications with conditions, 6 months after the completion of the conditions;
- Publishing the name of an applicant who is denied admission, but also permitting that applicant to apply for anonymization if the current test relating to grievous harm is established;
- Anonymizing published hearing reports, for applicants previously denied admission but later admitted, 6 months after the original publication (including the earlier rejected application), and continuing to permit these applicants to apply for immediate anonymization in the case of grievous harm ensuing;
- Consideration be given to applying these new rules retrospectively

Mr. Finch noted that Bencher Jamie Maclaren provided his input by way of email, given his anticipated absence today. He expressed some concerns with the recommendations on publication of information regarding unsuccessful applicants except in cases where that applicant can establish grievous harm. He preferred either the status quo, or the recommendation of the same procedure that will apply to successful applicants, namely the anonymization of their reports 6 months after the original publication. He is concerned that the current recommendations do not consider that an applicant may not foresee having to detail their life for the record in a proceeding they did not initiate; he is also concerned that these recommendations will have the effect of discouraging certain societal groups from applying to be lawyers. Information-sharing with other law societies can be achieved through disclosure to the Federation or law societies directly and needn't require full publication.

Many Benchers had questions or concerns. Some agreed with Mr. Maclaren's concerns, but expressed concern with general publication of successful applicant history as well, querying the relevance of past history if an applicant was found to be of good character and repute. The presumption of anonymous publication was suggested, subject to an assessment by the panel if there are arguments to the contrary.

Others agreed in principle with Mr. Maclaren's concerns, but suggested a presumption of publication with a less onerous test for anonymizing the material. A central data base of information for law societies was also suggested. It was also queried whether the choice to anonymize or not should be the applicant's, rather than have a presumption either way. Some also took issue with the 6 month period before which information was anonymized, noting that once information is online, it is difficult if not impossible to remove completely. Issues of privacy were questioned, as were issues of readmission following voluntary resignation and disbarment. Some questioned the need to publish at all.

Ms. Armour emphasized the importance to the public interest of transparency and openness in the publication of these hearing reports, and noted that the practice of other law societies is in keeping with the current Credentials Committee recommendations.

Mr. Van Ommen summarized the discussion, noting that the Committee is being asked to continue working towards recommendations that take the Benchers' discussion into account.

7. Legal Aid Advisory Committee: Legal Aid Award

Committee member Sarah Westwood spoke on behalf of the Committee. She began by correcting a reference on p. 75, which should read "Legal Aid Task Force" rather than "Advisory Committee".

She then detailed the Committee's recommendation for the establishment of a Legal Aid Award to demonstrate and celebrate the profession's commitment to the legal aid system. As a modest first step along the path toward advancing its vision for legal aid in BC, the Committee considers this a symbolic but effective message for both the profession and the public at large.

Benchers provided their thanks to the Committee for their work, and for this valuable idea that recognizes the unsung heroes who are passionate about access to justice and who do this work for little money.

Ms. Westwood moved for the creation of a Legal Aid Award as outlined in the materials (seconded by Mr. Fellhauer); it was passed unanimously.

Mr. Van Ommen noted that the Benchers have now approved 3 new awards, the Equity and Diversity Inclusion Award, the Family Law Award and the Legal Aid Award, all of which will be presented in conjunction with the Life Bencher Dinner later this year.

8. CLE Society of BC (CLEBC) Proposed Constitution and Bylaws – Input requested

Mr. Van Ommen introduced the Chair of the CLEBC Board Rolf Warburton and the new CLEBC CEO Linda Russell, and paid tribute to retiring CEO Ron Friesen. He noted that this would be Mr. Friesen's last Bencher meeting, and congratulated him on his 32 years of distinguished service and good work with CLEBC. He also introduced Joost Blom, QC, Chair of CLEBC's Governance Committee to brief the Benchers on the proposed changes to that organization's by-laws.

Professor Blom described the original model for CLEBC which contemplated Board representation for the Law Society, the CBA and the two law schools that existed in the 1970's. Since the opening of a law school at Thompson Rivers University (TRU), the Board has felt it appropriate to amend the by-laws to give TRU Board representation as well.

The decision to amend the by-laws to effect this change has resulted in a number of other attendant changes. After review, the CLEBC Governance Committee has suggested that the member voting balance between the Law Society, CBA and law schools should remain, with the Law Society and CBA retaining 2/3 of the member votes, necessitating an amendment changing the number of representatives of each organization. A new membership structure was also required to include TRU. Changes were also made to the structure of the directors, regularizing the director position of the Minister of Justice's appointee and removing the position of the CLEBC CEO to achieve consistency with good governance principles.

Currently, each law school has 2 directors, but the addition of 2 for TRU would bring the total number of law school directorships to 6. Accordingly, the number of directors for each law school has been reduced to 1 each to achieve balance and a more manageable Board size. Finally, under the new Society Act, the by-laws cannot be amended without also bringing them into compliance with that Act, with the result that the original proposed amendment review process became a much more comprehensive review and revision. These proposed amendments are being put to members for feedback.

After calling for questions and hearing none, Mr. Van Ommen thanked Professor Blom for his helpful presentation.

EXECUTIVE REPORTS

9. President's Report

Mr. Van Ommen briefed the Benchers on various Law Society matters that have occurred since last meeting. He began by noting the exemplary service of Mr. Whitcombe, who responded on a Friday night to a call reporting that the contents of a law office had been left on the street, and then personally attended to secure any confidential files and wait for the police to secure the premises.

- **TRC Advisory Committee Update**

Mr. Van Ommen reported that the TRC was actively engaged on two major issues. The first is the development of a symposium directed at the profession, members of the Indigenous Bar and members of the larger Indigenous community, to be focused on what the Law Society should be doing to implement the Calls to Action and work toward reconciliation. The aim is to host the symposium some time in November, but the date remains flexible to accommodate the scheduling of potential key note speakers.

The second area of focus is cultural competence training for Benchers. The Executive Committee has reviewed some recommendations from the TRC and continues to work with that committee to develop a long-term, stepped approach to training. The goal is to implement a program by the Fall of this year.

- **Bencher Calendar**

Mr. Van Ommen noted the upcoming Gold Medal ceremonies at each of the BC law schools, and also noted that the UVIC Gold Medal will be awarded at the September Bencher meeting as the recipient is currently travelling abroad.

He also detailed other upcoming events, including Call ceremonies in Nanaimo and Kelowna, the Welcoming Ceremony for former Bencher and now Judge Lynal Doerkson, and the Federation meetings in Iqaluit, which will also coincide with National Aboriginal Day (now known as National Indigenous Peoples Day). Following his attendance at the Federation meetings, he will attend the Law Society of Upper Canada end of term dinner, and then address Convocation the following day.

- **Briefing by the Law Society’s Member of the Federation Council**

As mentioned above, Mr. Van Ommen will attend the Council meeting in Iqaluit, at which the Council will review the draft Strategic Plan, proposed budget, National Requirement Review Committee’s proposed changes to the National Requirement, and consider the external consultant’s review of the National Committee on Accreditation (NCA) assessment process. Implementation of the recommendations will be considered at the Federation Conference in Victoria in October.

- **Report on Outstanding Hearing & Review Decisions**

Mr. Van Ommen noted that Hearing Panel members are not meeting timelines for hearing and review decisions, and stressed that timeliness should be improved.

10. CEO’s Report

Mr. McGee provided highlights of his monthly written report to the Benchers, which included the successful recruitment for key positions within the organization. He welcomed Sheila Redel, the former Director of Professional Development and Competence in Manitoba, to fill the position of Manager, Standards, Professional Development and Practice Advice. He also welcomed Tara McPhail, who will fill the position of Manager, Intake and Early Resolution. Ms. McPhail is the former Head of Employee Relations at Metro Vancouver Transit Police and was also previously a Professional Conduct lawyer at the Law Society. Andrea Langille, whose last position was that of Director of Corporate Services for the Auditor General, was also welcomed as the new Law Society Controller.

Mr. McGee noted that the position of Manager, Discipline and Unauthorized Practice, remains to be filled and the recruitment process is actively underway.

RTC
2017-06-09

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Legal Aid Advisory Committee
Date: June 8, 2017
Subject: Draft Mandate and Terms of Reference

Purpose of Memorandum

The Legal Aid Advisory Committee requests that the Benchers adopt the appended Mandate and Terms of Reference for the Committee (**Appendix**).

/DM

/Appendix

Appendix 1: Draft Mandate and Terms of Reference for the Legal Aid Advisory Committee

Terms of Reference

Updated: July 7, 2017

Mandate

The Committee monitors and advises the Benchers on key matters relating to the state of legal aid in British Columbia. This advisory function supports the Law Society's public interest mandate, and advances the Law Society's Vision for Publicly Funded Legal Aid that the Benchers adopted on March 3, 2017 (the "Vision for Legal Aid"). The Committee advances the recommendations in the report of the Legal Aid Task Force (March 3, 2017), and may explore additional concepts that are consistent with the findings of that report and the Vision for Legal Aid.

Composition

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. At least half of the Committee members should be Benchers, and the Chair of the Committee must be a Bencher.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. The Committee may invite guests to participate in discussions of topics, or engage in consultations, but the meetings are not "public".
4. Quorum consists of at least half of the members of the Committee. (Rule 1-16(1)).

Accountability

The Committee is accountable to the Benchers. If the Benchers assign specific tasks to the Committee, the Committee is responsible for discharging the work assigned. If a matter arises

that the Committee determines requires immediate attention by the Benchers, the Committee will advise the Executive Committee.

Reporting Requirements

With respect to its general monitoring and advisory function, the Committee provides status reports to the Benchers twice a year.

Duties and Responsibilities

1. The Committee must address the work assigned to the Committee in Recommendation 2 of the report of the Legal Aid Task Force (March 3, 2017):¹
 - a. Assist and advise the Benchers in helping the Law Society realize the vision set out in **Appendix 1**;
 - b. Assist and advise the Benchers concerning how best to advance mandate Items 2-4, with particular consideration of, *inter alia*, the following:
 - i. Developing and/or promoting research into the benefits of legal aid to society and the justice system;
 - ii. Developing and/or promoting the creation of proper data analytics systems within the justice system and legal aid in order to better support analysis of the importance of legal aid in society and the justice system. Such systems should help support not only a business case for properly funded legal aid, but the social justice case as well;
 - iii. Developing and/or promoting the creation of education materials and resources to help lawyers, politicians and the public better understand the importance of a strong legal aid system;
 - iv. Advocating with government and the public for improvements to legal aid in British Columbia;
 - v. Meeting with other stakeholder groups, including lawyers and law firms, to ensure that the Law Society's efforts to champion legal aid occur

¹ The report can be found at document DM1442171. Mandate items 2-4 of the Legal Aid Task Force were: 2) Identify ways the Law Society could promote and improve lawyer involvement in delivering legal services through legal aid plans; 3) Identify ways to enhance Law Society leadership concerning legal aid; and 4) Develop the best methods for engagement with other organizations to coordinate the efficient use of resources in improving publicly funded legal aid.

collaboratively. Consideration should be given to hosting future colloquia to ensure efforts to advance legal aid revitalization continue to progress;

- vi. Working with government, the courts and the profession about ways to reduce the time and cost associated with mega-trials;
 - vii. Working with the courts to determine how active case management might be used to support a more efficient and cost effective litigation system, thereby making legal aid more sustainable;
 - viii. Developing proposals for how to improve the advocacy skills of junior lawyers and facilitate their involvement in undertaking legal aid work to better ensure the current quality of advocacy as well as the future of the legal aid defense Bar;
 - ix. Liaising with the Law Society's Truth and Reconciliation Advisory Committee and the Access to Legal Services Advisory Committee to ensure the Law Society has a consistent approach to improving access to justice for Indigenous Peoples;
 - x. Working with the Law Society's Communications Department and, if necessary, external experts, to ensure social media as well as traditional methods of communication are used to maximize the reach of the Law Society's efforts to educate, inspire and lead on legal aid reform in British Columbia.
2. If the Committee is unable to advance this work, it must advise the Benchers as to the reasons why the work cannot be performed;
 3. The Committee must advise the Benchers about the progress of its work and about any new developments regarding legal aid that the Committee determines are important in order for the Law Society to act in a manner consistent with the Vision for Legal Aid;
 4. Committee members are required to discharge their work in a manner consistent with the Law Society's public interest mandate, as set out in s. 3 of the Legal Profession Act.

Staff Support

Staff Lawyer, Policy & Legal Services.



2017 Mid-Year Report

Governance Committee

Steve McKoen (Chair)
Satwinder Bains
Lisa Hamilton
Miriam Kresivo, QC
Jamie Maclaren
Elizabeth Rowbotham
Sarah Westwood

July 7, 2017

Prepared for: Benchers

Prepared by: Governance Committee

Purpose: Information and Decision

Committee Activity

1. Since the beginning of the year, the Governance Committee has met three times.
2. On January 26, the Committee met and reviewed the results of the year-end 2016 Bencher and Committee evaluation process.
3. The Committee provided its report on the 2016 Bencher and committee evaluations at the March Bencher meeting and made several recommendations which were accepted by the Benchers.
4. In particular, the Committee recommended that:
 - The Committee is of the view that the Benchers ought to be more informed about the market for legal services in British Columbia and recommends that the Benchers give some thought in the near future to obtaining this information on an ongoing basis.
 - The Committee is of the view that the Benchers should review our process for and participation in decision-making at the Bencher table with the goal of fostering good decision-making after the expression of any contrary or dissenting views on the matter at hand.
 - The Committee believes that, after five years, a review of the recommendations from the 2012 governance review is appropriate and that, as part of that review, the role of Benchers in the overall governance of the Law Society and the specific issues considered in 2012, such as the executive performance review, will be evaluated to determine if any changes should be recommended.
 - The Committee also believes that an overall review of our current governance model, which retains elements of the Carver policy governance model, is appropriate and intends to undertake such work during the course of this year
5. The recommendations were adopted by the Benchers.
6. On March 2, the Committee reviewed the recommendations from the 2012 governance review to determine whether any merited reconsideration or updating. The Committee had before it the entire list of recommendations made by the Governance Review Task Force (GRTF).
7. The first issue the Committee considered was the 2012 recommendation that the Benchers should develop a comprehensive Bencher Charter that details the Benchers' governance roles and responsibilities, including their responsibilities relating to corporate oversight.

8. The Committee had previously developed a Benchers Position description and reviewed the Benchers governance policies, including specifically policies regarding conflicts, but the Committee has not previously developed a single document that detailed the Benchers' governance roles and responsibilities, including their responsibilities relating to corporate oversight.
9. The Committee spent some time discussing the elements of such a charter. The discussion canvassed the question of fiduciary obligations, a duty of confidentiality, the role of Benchers as adjudicators, legislators, governors and trusted advisors, the tension arising from the duty to act in the public interest while being elected by the members of the Law Society and the need to ensure that all Benchers are aware of their duties.
10. The Committee resolved that at a future meeting it would look further at the nature of the duties Benchers have to the Law Society, to the members and to the public and attempt to develop a comprehensive description of those duties for consideration by the Benchers.
11. The Committee also considered the GRTF recommendations that the Law Society proactively identify the skills, experience and background desired in appointed Benchers and communicate the same to Board Resourcing and Development Office (BRDO) of the provincial government and that when an appointed Benchers is eligible for reappointment, provide meaningful feedback to BRDO on the appointed Benchers' contribution.
12. Previous consideration of this recommendation by the Committee resulted in the advice that:
 - *As and when requested, the President, on the advice of Executive Committee, should indicate to the government any skills and abilities required in appointed Benchers.*
 - *The Law Society should continue to provide feedback to government on appointed Benchers in the manner represented by our feedback in the 2011 submissions to government.*
13. Those submissions took the form of:

While the Law Society does not formally assess Benchers' individual qualities and performance, we note the value of [Appointed Benchers] unique skill set and experience, and particularly the knowledge of the Law Society's complex regulatory and policy environment that [Appointed Benchers] has gained through training and experience as an appointed Benchers ... [Appointed Benchers] demonstrates a thorough understanding of and commitment to this mandate... While respecting the independence of BRDO's judgment and of the provincial government's appointment process, the Law Society notes the value of [Appointed Benchers] service to date and would welcome re-appointment.

14. After some discussion, the Committee concluded that these two recommendations required no further action on the part of the Committee.
15. The Committee also looked at the recommendations regarding the Advisory Committees:
 - *Use the Advisory Committees to inform the Benchers on key issues within their area of study and develop recommendations consistent with the priority areas identified by the Benchers by their vision and strategic goals.*
 - *The Benchers should periodically review the current Advisory Committee structure and ensure that they are satisfied that the Committees in place are the “right” ones (i.e. that they are aligned with the Law Society’s revised statutory mandate and strategic priorities.)*
 - *The Benchers should review the Advisory Committees and consider whether they continue to be the priority Committees and/or whether any standing Committees should be replaced with ad hoc Committees.*
16. The previous advice of the Committee regarding all three recommendations was that the Benchers should periodically review the advisory Committee structure and ensure that they are aligned with the Law Society’s strategic priorities.
17. The consensus among the current Committee was much the same as the previous advice: our committee structure should reflect our statutory mandate and our strategic priorities and should be reviewed periodically to ensure it does.
18. As a final item for discussion, the Committee considered the role of the Benchers in giving ethical guidance to members. It was noted that when the matter came before the Benchers during the discussion of the GRTF recommendations, the Benchers by an overwhelming majority voted to retain this as one of the important Bencher responsibilities. The Committee did spend some time discussing the previous advice on how Benchers should fulfill this role, particularly in respect of keeping records of conversations and avoiding conflicts. The consensus was that this particular topic did not require reconsideration at this time.
19. At its June 8 meeting, the Committee considered the unwritten policy that two Benchers should not both be members of the same firm. The Committee had for review a 2012 memorandum from Jeff Hoskins, QC to the Executive Committee of the day setting out past experience with this policy in 1990 and the then current situation arising from a move by a Bencher to a new firm where there was also a member who was a Bencher.
20. In the 1990 situation, as the result of a merger of two law firms, two Benchers found themselves to be members of the same firm. After much back and forth, one of the two Benchers resigned.

21. In the 2012 situation, neither of the Benchers resigned, although it was relatively late in the two year electoral cycle and neither Bencher was eligible to run again as a result of term limits.
22. The Committee spent some time discussing the possible benefits of such a practice or the evil the practice was intended to avoid. In the end, the Committee had difficulty in finding any real harm that was avoided by the policy and resolved to recommend to the Benchers that the unwritten policy be formally abolished.
23. The Committee also began its review of the annual Bencher and committee evaluation process. The Chair noted, in particular, the experience this year with the media coverage of one issue surfaced by the Bencher evaluation.
24. The Committee considered whether there was utility in conducting a Bencher and committee evaluation in the present manner. After some discussion, the Committee concluded that it should recommend continuation of the present method of Bencher and committee evaluation. However, the Committee also conclude that the statements should be reviewed and revamped for the 2017 review.
25. The Committee also spent some time looking at the issue that gave rise to the media coverage, specifically its recommendation that the Benchers consider whether the decision-making process at the Benchers' table could be altered to provide more opportunities for any dissenting views to be considered.
26. The Committee did not necessarily agree with the concern but recognized that the evaluation process had surfaced it. The Committee did think that in some ways the current process at the Benchers' table did make it harder to have input into recommendations and decisions, given that much of the policy work is done in committee. While recognizing the difficulty of engaging 31 people in the type of discussion that occurs in committee, the Committee was inclined to recommend to the Executive Committee that when it considers matters coming forward for the Bencher agenda merit a robust discussion, such matters ought to come before the Benchers twice: once for questions and discussion and the second time for decision.

For Decision

27. The Committee recommends that the unwritten policy that two current Benchers cannot be members of the same law firm be formally abolished.
28. The Committee recommends that the current Bencher and committee evaluation process be continued for the 2017 year but that the current evaluation forms be revised before year-end.
29. The Committee recommends that the Executive Committee, when setting the Bencher agenda, consider whether any matters coming forward merit a robust discussion and if so,

provide that such matters come forward twice: once for questions and discussion and a second and subsequent time for decision.

The Law Society
of British Columbia



Financial Report

May 31, 2017

Prepared for: Finance & Audit Committee Meeting – July 6, 2017
Bencher Meeting – July 7, 2017

Prepared by: Jeanette McPhee, CFO & Director Trust Regulation

Quarterly Financial Report – to end of May 2017

Attached are the financial results and highlights to the end of May 2017.

General Fund

General Fund (excluding capital and TAF)

The General Fund operations resulted in a positive variance to budget of \$611,000 in the first five months of the 2017 year.

Revenue

Revenue for the first quarter was \$10.0 million, \$137,000 (1%) above budget, of which is due to additional revenues in membership, electronic filing and interest income.

Operating Expenses

Operating expenses for the first five months of the year were \$8.5 million, \$474,000 (5%) below budget, partially due to permanent savings in legal and consulting fees in the human resources area, and partly due to the timing of expenditures.

2017 Forecast - General Fund (excluding capital and TAF)

At this time, we are projecting a positive variance of \$490,000 by year end.

Operating Revenue

Revenues are projected to have a positive variance to budget. Practicing membership revenue is projected at 11,850 members, 90 members over budget, or \$141,000. Electronic filing revenue is projected to be ahead of budget by \$160,000 due to the real estate market activity and interest income will be ahead of budget \$100,000 due to higher cash balances held. PLTC revenue is projected to be at budget, with 500 students.

Operating Expenses

At this time, operating expenses are projected to be slightly under budget, with \$90,000 in savings for legal and consulting fees in the human resources area.

TAF-related Revenue and Expenses

The first quarter TAF revenue has only been received at this time, and is ahead of budget by \$260,000. This is partially due to timing of receipts, as \$60,000 of this

revenue relates to the 2016 year. In addition, the 2017 budget was set prior to the rapid increase in 2016 unit sales, so we expect that the 2017 TAF revenue budget will be ahead of budget in 2017.

Trust assurance program costs are close to budget.

Special Compensation Fund

The transfer of the Special Compensation Fund reserve to the Lawyers Insurance Fund is pending a review of future recoveries from Special Compensation Fund claims, and will transfer during 2017.

Lawyers Insurance Fund

LIF operating revenues were \$6.5 million in the first five months, slightly ahead of budget due to additional members.

LIF operating expenses were \$2.8 million, \$178,000 below budget, relating primarily to \$200,000 of staff vacancy savings, offset by additional insurance and investment management fees.

The market value of the LIF long term investments held by the investment managers is \$169.4.0 million, an increase of \$11.4 million in the first five months of the year. The year to date investment returns were 7.3%, ahead of the benchmark return of 4.6%.

Summary of Financial Highlights - May 2017
(\$000's)

2017 General Fund Results - YTD May 2017 (Excluding Capital Allocation & Depreciation)				
	<u>Actual*</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue (excluding Capital)				
Membership fees	8,180	8,038	142	2%
PLTC and enrolment fees	396	403	(7)	-2%
Electronic filing revenue	335	292	43	15%
Interest income	249	150	99	66%
Credentials & membership services	234	236	(2)	-1%
Fines, penalties & recoveries	93	199	(106)	-53%
Other revenue	74	106	(32)	-30%
Building revenue & tenant cost recoveries	529	528	1	0%
	<u>10,088</u>	<u>9,951</u>	<u>137</u>	<u>1%</u>
Expenses (excl. dep'n)				
	<u>8,491</u>	<u>8,965</u>	<u>474</u>	<u>5%</u>
	<u>1,598</u>	<u>987</u>	<u>611</u>	

2017 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)				
<u>Practice Fee Revenue</u>	<u>Avg # of Members</u>			
2013 Actual	10,985			
2014 Actual	11,114			
2015 Actual	11,378			
2016 Actual	11,619			
2017 Budget	11,760			
2017 Forecast	11,850			
				<u>Actual Variance</u>
Revenue				
Membership numbers are projected to be 90 over budget				140
Electronic Filing Revenue				160
Interest Income				100
				<u>400</u>
Expenses				
Savings on external fees and consultants - HR				90
				<u>90</u>
2017 General Fund Variance (excl. reserve funded items)				<u><u>490</u></u>

Trust Assurance Program Actual				
	<u>2017 Actual</u>	<u>2017 Budget</u>	<u>Variance</u>	<u>% Var</u>
TAF Revenue **	984	725	259	0.0%
Trust Assurance Department	<u>1,027</u>	<u>1,040</u>	<u>13</u>	1.3%
Net Trust Assurance Program	<u>(43)</u>	<u>(315)</u>	<u>272</u>	

** Q1 positive \$200k - small amount relating to Q4-2016, received after completion of audit \$59k

2017 Lawyers Insurance Fund Long Term Investments - YTD May 2017 - Before investment management fees	
Performance	7.3%
Benchmark Performance	4.6%

The Law Society of British Columbia
General Fund
Results for the 5 Months ended May 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	10,246	10,125		
PLTC and enrolment fees	396	403		
Electronic filing revenue	335	292		
Interest income	249	150		
Other revenue	400	543		
Building Revenue & Recoveries	529	528		
Total Revenues	12,155	12,041	114	0.9%
Expenses				
Regulation	3,199	3,501		
Education and Practice	1,321	1,377		
Corporate Services	1,099	1,209		
Bencher Governance	472	425		
Communications and Information Services	866	861		
Policy and Legal Services	829	857		
Occupancy Costs	968	987		
Depreciation	156	228		
Total Expenses	8,910	9,445	535	5.7%
General Fund Results before TAP	3,245	2,596	649	
Trust Administration Program (TAP)				
TAF revenues	984	725	259	0%
TAP expenses	1,027	1,040	13	1%
TAP Results	(43)	(315)	272	
General Fund Results including TAP	3,202	2,280	922	

(1) Membership fees include capital allocation of \$2.07m (Capital allocation budget = \$2.09m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at May 31, 2017
(\$000's)

	May 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	157	283
Unclaimed trust funds	1,830	1,813
Accounts receivable and prepaid expenses	7,683	1,982
B.C. Courthouse Library Fund	1,895	729
Due from Lawyers Insurance Fund	18,368	34,170
	<u>29,933</u>	<u>38,977</u>
Property, plant and equipment		
Cambie Street property	12,328	12,448
Other - net	1,152	1,197
	<u>43,413</u>	<u>52,622</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,554	6,282
Liability for unclaimed trust funds	1,830	1,813
Current portion of building loan payable	500	500
Deferred revenue	11,981	21,345
Deferred capital contributions	8	12
B.C. Courthouse Library Grant	1,895	729
Deposits	28	25
	<u>18,796</u>	<u>30,706</u>
Building loan payable	<u>1,600</u>	<u>2,100</u>
	<u>20,396</u>	<u>32,806</u>
Net assets		
Capital Allocation	3,839	2,647
Unrestricted Net Assets	19,179	17,169
	<u>23,018</u>	<u>19,816</u>
	<u>43,413</u>	<u>52,622</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2017
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	Unrestricted Net Assets \$	Trust Assurance \$	Capital Allocation \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	11,059	1,345	12,404	4,766	2,647	19,816	14,939
Net (deficiency) excess of revenue over expense for the period	(540)	1,718	1,178	(43)	2,066	3,202	4,877
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:						-	-
LSBC Operations	141	-	141	-	(141)	-	-
845 Cambie	233	-	233	-	(233)	-	-
Net assets - At End of Period	11,393	3,063	14,456	4,723	3,839	23,018	19,816

The Law Society of British Columbia
Special Compensation Fund
Results for the 5 Months ended May 31, 2017
(\$000's)

	<u>2017</u> <u>Actual</u>	<u>2017</u> <u>Budget</u>	<u>\$</u> <u>Variance</u>
Revenue			
Annual assessment	-	-	
Recoveries	4	-	
Interest income	-	-	
Other income	-	-	
Total Revenues	<u>4</u>	<u>-</u>	<u>4</u>
Expenses			
Claims and costs, net of recoveries	29	-	
Administrative and general costs	0	-	
Loan interest expense	(12)	-	
Total Expenses	<u>17</u>	<u>-</u>	<u>17</u>
Special Compensation Fund Results	<u>(13)</u>	<u>-</u>	<u>(13)</u>

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at May 31, 2017
(\$000's)

	May 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	1,350	1,363
	<u>1,350</u>	<u>1,364</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		
Deferred revenue		
	<u> </u>	<u> </u>
Net assets		
Unrestricted net assets	1,351	1,364
	<u>1,351</u>	<u>1,364</u>
	<u>1,351</u>	<u>1,364</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2017
(\$000's)

	Actual \$	Budget \$
Unrestricted Net assets - At Beginning of Year	1,364	1,352
Net excess of revenue over expense for the period	<u>(13)</u>	<u>12</u>
Unrestricted Net assets - At End of Period	<u><u>1,351</u></u>	<u><u>1,364</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 5 Months ended May 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	6,460	6,112		
Investment income	11,256	1,594		
Other income	48	25		
Total Revenues	17,764	7,731	10,033	129.8%
Expenses				
Insurance Expense				
Provision for settlement of claims	6,448	6,448		
Salaries and benefits	1,084	1,291		
Contribution to program and administrative costs of General Fund	529	559		
Provision for ULAE	-	-		
Insurance	224	192		
Office	351	313		
Actuaries, consultants and investment brokers' fees	245	221		
Premium taxes	-	4		
Income taxes	-	-		
	8,882	9,028		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	330	362		
Total Expenses	9,212	9,390	178	1.9%
Lawyers Insurance Fund Results	8,552	(1,659)	10,211	

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at May 31, 2017
(\$000's)

	May 31 2017	Dec 31 2016
Assets		
Cash and cash equivalents	17,419	32,863
Accounts receivable and prepaid expenses	287	122
Prepaid Taxes		
Due from members	176	164
General Fund building loan	2,100	2,600
Investments	164,930	154,268
	<u>184,913</u>	<u>190,017</u>
Liabilities		
Accounts payable and accrued liabilities	557	1,826
Deferred revenue	8,306	7,461
Due to General Fund	18,368	34,170
Due to Special Compensation Fund	1,350	1,364
Provision for claims	68,630	66,046
Provision for ULAE	8,781	8,781
	<u>105,991</u>	<u>119,648</u>
Net assets		
Unrestricted net assets	17,500	17,500
Internally restricted net assets	61,422	52,869
	<u>78,922</u>	<u>70,369</u>
	<u>184,913</u>	<u>190,017</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 5 Months ended May 31, 2017
(\$000's)

	Unrestricted \$	Internally Restricted \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	52,869	17,500	70,369	75,888
Net excess of revenue over expense for the period	8,552	-	8,552	(5,519)
Net assets - At End of Period	61,422	17,500	78,922	70,369



Second Interim Report of the Law Firm Regulation Task Force

Herman Van Ommen, QC (Chair)
Martin Finch, QC
Sharon Matthews, QC
Peter Lloyd, FCPA, FCA (Life Bencher)
Jan Christiansen
Lori Mathison
Angela Westmacott, QC
Henry Wood, QC

June 29, 2017

Prepared for: Benchers
Prepared by: Alison Luke and Michael Lucas
Policy and Legal Services Department
Purpose: Decision

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Executive Summary

1. The introduction of law firm regulation represents a significant shift in the regulatory environment within BC, and in turn, the role of the Law Society in overseeing the work of the legal profession. Rather than focusing exclusively on lawyers, this new approach to regulation addresses the conduct of firms, recognizing that organizational cultures affect the manner in which legal services are provided. The proposed regulatory model also establishes a strong role for the Law Society in encouraging and supporting firms in achieving high standards of professional, ethical practice.
2. This second Interim Report, and its associated recommendations, provides a summary of the recent work of the Law Firm Regulation Task Force and builds on the recommendations adopted by the Benchers in the October 2016 Interim Report.
3. Features of the regulatory scheme that are addressed in this report include:
 - firm registration;
 - the role of the designated representatives;
 - the self-assessment process, including both substantive content and procedural aspects of the tool;
 - the development of model policies and other resources;
 - rule development ; and
 - a schedule for the implementation of law firm regulation
4. The report concludes by outlining a series of proposed next steps which will put the Law Society in strong position to introduce law firm regulation to the profession in 2018.

Introduction

5. Over the last three years, the Law Firm Regulation Task Force has engaged in the complex task of designing a proactive, outcomes-based regulatory model that will support and govern the conduct of firms.
6. In its first Interim Report (the “2016 Interim Report”), the Task Force sketched out the basic parameters for the regulatory framework, an exercise that led to the identification of eight key areas – the Professional Infrastructure Elements – in which firms are responsible for implementing policies and processes that support and encourage high standards of professional, ethical firm conduct. A series of high-level recommendations were included in this Report, and were adopted by the Benchers in October 2016.
7. This second Interim Report (the “Report”) delves deeper into the specific features of the regulatory design, fleshing out many of the Task Force’s initial recommendations in greater detail and developing several new proposals.
8. This work has included defining a process for firm registration and the role of the designated representative; developing the content of, and procedures in relation to, the self-assessment process; examining various approaches to resource and model policy development; proposing a schedule for implementation; identifying areas where rule drafting is necessary; and estimating the budgetary implications of the program. Analysis of each of these issues is described throughout the body of the Report, and the Task Force’s suggested approaches are distilled into 17 formal recommendations.
9. If adopted by the Benchers, these recommendations will provide the necessary direction to advance the project toward the final phases of regulatory development, and in so doing, demonstrates to both to the profession and the public that the Law Society is committed to implementing an innovative, proactive model of law firm regulation in BC.

Background

10. In October 2016, the Bencher’s were presented with the 2016 Interim Report, which proposed a proactive, outcomes-based model to regulate the conduct of law firms in BC. The 2016 Report contained numerous rationale for introducing law firm regulation and included ten key recommendations that were adopted by the Benchers (**Appendix A**).
11. The proposed proactive model is premised on the theory that the public is best served by a regulatory scheme that prevents problems in the first place, rather than one that focuses on taking punitive action once problems have occurred. As such, BC’s law firm regulation will involve the Law Society setting target standards for ethical, professional firm practice

— the Professional Infrastructure Elements — that will establish *what* firms are expected to do. However, there will not be prescriptive rules that tell firms *how* to specifically satisfy these Elements and achieve compliance. This “light-touch” approach to regulation aims to encourage both accountability and innovation in firms as they work toward establishing a robust professional infrastructure.

12. A self-assessment process will be the key means of evaluating the extent to which firms have met these new standards. The self-assessment will also provide a significant education, learning and support function by providing firms with resources that will assist them in satisfying the Professional Infrastructure Elements.
13. Building on the recommendations contained in the 2016 Interim Report, the Task Force has made considerable progress in advancing its vision of law firm regulation over the last eight months, and is now positioned to make an additional 17 recommendations. These recommendations flow from intensive, issue-by-issue analysis during numerous Task Force meetings, consultations with the profession (in the form of focus group sessions) and regular engagement with other provinces advancing law firm regulation initiatives, as described below.

Task Force meetings

14. Over the course of a series of four meetings, the Task Force has undertaken a detailed analysis of a wide range of issues in an effort to create a regulatory scheme that both protects the public interest and provides maximum benefits to the Law Society and firms.
15. This work has included refining the Professional Infrastructure Elements and their associated objectives; developing a draft self-assessment tool; establishing a process for firm registration; clarifying the role of the designated representative; exploring options for the development of model policies and other resources to support firms in meeting the new standards; and reviewing those aspects of the scheme which may require additional rule development.
16. Additionally, the Task Force has given consideration to a timeline and sequencing for the implementation of the regulatory scheme. Discussion of these issues, and the Task Force’s associated recommendations, comprise the balance of this Report.

Focus group consultation

17. In February and March of 2017, the Law Society established five focus groups, namely: solo and space sharing practitioners; small firms (2 to 10 lawyers); medium firms (11 to 25 lawyers); large firms (26+ lawyers) and a group comprising members of the BC Legal

Management Association. Participants, which were selected from across the province, met with members of the Task Force and Law Society staff for the focus group sessions in Vancouver.

18. The primary goal of the focus group sessions was to obtain detailed feedback from the profession about the Task Force's draft self-assessment tool and to explore its potential role in law firm regulation. Participants were provided with a range of materials to contextualize the self-assessment process within the broader regulatory framework, and were guided through a series of questions in relation to both the substantive and procedural aspects of the self-assessment.
19. The focus groups provided thoughtful and constructive feedback, much of which was integrated into a revised draft of the self-assessment (see **Appendix B**). In general, focus group participants were positive about the clarity, comprehensiveness and utility of the self-assessment tool and supported its use as a key feature of law firm regulation in BC. Aspects of the feedback provided by the focus groups are referenced at various junctures throughout the Report.

Engagement with other jurisdictions

20. The Law Society of BC is not alone in exploring a proactive approach to law firm regulation, with similar models of entity regulation currently being developed simultaneously across Canada.
21. In March 2017, the Law Society participated in a meeting convened by the Federation of Law Societies that brought participants together to discuss the emerging regulatory schemes in BC, Nova Scotia, Ontario, Alberta, Saskatchewan and Manitoba. These exchanges revealed considerable consistency across the provinces with respect to the areas of firm practice that would be targeted for regulation, the adoption of a self-assessment process as a central part of the regulatory scheme and commitment to developing resources to assist firms in achieving compliance.
22. These regional discussions also explored the potential to develop cross-jurisdictional synergies, for example, through collaborative resource development, establishing consistent compliance responses and applying a common evaluative framework for measuring the success of law firm regulation.
23. The Law Society has also engaged in ongoing dialogue with the Nova Scotia Barristers' Society, which is at the leading edge of entity regulation in Canada.¹ In particular, Nova

¹ Nova Scotia has recently completed a 50-firm pilot project on their self-assessment tool. Following the presentation of the final pilot project report to council in May, the law society has received endorsement to move ahead with an implementation plan, aiming for a 'launch' in January 2018.

Scotia's self-assessment tool and workbook, and the associated feedback provided in the course of the self-assessment pilot project, have served as important resources for BC in developing its own self-assessment. Both regulators have observed the mutual benefits of exchanging ideas, experiences and encouragement along the road to implementation.

Purpose

24. The purpose of this Report is to provide the Benchers with an update of the Task Force's work over the last eight months and to present 17 key recommendations related to the design of the law firm regulation framework.
25. Many of these recommendations build on those made by the Task Force in the 2016 Interim Report and formulate more detailed proposals in relation to particular aspects of the regulatory design. Other recommendations explore new issues and features.
26. If adopted by the Benchers, the recommendations contained in this Report will serve as the blueprint for the next stage of the Task Force's work, in which many aspects of the design phase of law firm regulation will approach completion. Once the regulatory framework is solidly established, the Law Society will be in a position to introduce the first components of the scheme to the profession, ideally by mid-2018.²

Registration

27. As a preliminary matter, the Law Society must clearly establish who, precisely, is subject to law firm regulation.
28. The 2016 Interim Report addressed this issue in a general sense, recommending the scheme include traditional law firms of all sizes, as well as sole practitioners and lawyers in space-sharing arrangements, while initially excluding pro bono and non-profit legal organizations, government lawyers and in-house counsel.³
29. The 2016 Interim Report also reviewed the merits of two different approaches to creating a registry of regulated firms: a licensing model, involving a detailed authorization system in which a firm is essentially applying for permission to offer legal services, or a simple registration process that requires firms to submit basic contact information to the regulator.⁴ The Task Force ultimately recommended registration, citing that it could

² A final Task Force report will be presented to the Benchers in advance of formally introducing the first elements of law firm regulation to the profession.

³ See the 2016 Interim Report at pp. 9-12 at Appendix A.

⁴ See the 2016 Interim Report at pp. 18-19 at Appendix A.

provide useful information to the Law Society while consuming less organizational resources than a licensing program.

30. In its recent work, the Task Force considered the operational aspects of registration in greater detail, examining the type of information that could be collected from firms as part of the registration process. In consultation with Law Society staff, it was determined that each firm must provide the Law Society with the following: the name of the firm, the firm's business address or addresses, as appropriate, the names of all lawyers and articling students practicing at the firm, and the name and contact information for the designated representative.⁵
31. Consideration was also given to the appropriate method for obtaining and updating this information. It was observed that, with the exception of information related to the designated representative, the Law Society already collects much of this data from individual lawyers and currently maintains a basic electronic database of firms.
32. In an effort to simplify the registration process for firms, the Task Force recommends that at the commencement of the registration period, each firm in the existing database is sent a registration form that is pre-populated with the information the Law Society already has on file (e.g. name of firm, address, lawyers working in the firm). Firms are required to verify the accuracy of the information and update it, as necessary.
33. The registration form will also require the firm to provide the name and contact information of one or more designated representatives. This, and any other new or updated information in relation to the firm, will be added to the Law Society's electronic database when the registration form is submitted. All firms will also be provided with a registration identifier.⁶

Recommendation 1: The Law Society will provide each firm with a pre-populated registration form and will require firms to verify the accuracy of its contents and update or add information, including the name of the designated representative, as necessary.

34. In order to ensure the Law Society has an accurate firm registry at all times, the Task Force recommends that firms must immediately notify the Law Society if there are any changes to the information provided at the time of registration, including any changes that

⁵ The role of this individual is explored in greater detail in the next section of the Report.

⁶ Additional resources will be necessary to expand the functionality of the existing IT system to accommodate the registration process. The budgetary implications of increased IT demands are discussed in the final section of the Report.

pertain to the designated representative. Additionally, firms will be required to renew their registration on an annual basis.

Recommendation 2: Firms must immediately notify the Law Society of any changes to their registration information, including the name and contact information of the designated representatives. Firms will also be required to renew their registration on an annual basis.

35. As firms are not currently required to register with the Law Society under the *Legal Profession Act* or the Rules, new rules must be developed to this effect. A penalty will be imposed on a firm for a failure to register. Rule development is explored in more detail later in this Report.

Designated Representatives

Nomination by the firm

36. In an effort to facilitate and support strong communication between firms and the Law Society, the 2016 Interim Report recommended the inclusion of a designated contact role as part of the regulatory scheme.⁷ This individual would act as the point person for information sharing between the firm and the Law Society, including communications related to administrative matters and complaints.⁸ In the most recent phase of its work, the Task Force focused on defining the precise role of what will be referred to in BC as the “designated representative,” and has made a number of recommendations in this regard.
37. As noted above, as part of the registration process, firms will be required to identify at least one designated representative who will be readily available to receive and respond to communications from the Law Society on behalf of the firm. The Task Force suggests that firms are encouraged to nominate additional, alternate designated representatives to guard against gaps or oversights in communications between the firm and the Law

⁷ See the 2016 Interim Report at pp. 19-23 at Appendix A.

⁸ Nova Scotia, the Prairie provinces (Alberta, Saskatchewan, Manitoba) and Ontario have all recommended the inclusion of such a position as part of the regulatory scheme. Notably, both Both Alberta and Nova Scotia’s Rules already included a requirement for firms to identify a “responsible lawyer” (Alberta Rule 119.3(4)) or “designated lawyer” (Nova Scotia, Regulation 7.2.1) prior to the introduction of law firm regulation. Because this role is already integrated and understood, Nova Scotia has proposed extending this person’s responsibilities to include the new requirements under law firm regulation.

Society. Both the primary and alternate designated representatives must be BC lawyers that are practicing at the firm.⁹

38. The Task Force recommends that the scope of the designated representatives' responsibilities should be restricted to receiving official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and complaints and investigations.

Recommendation 3: Firms must identify at least one designated representative, and may identify additional, alternate designated representatives, who will be readily available for receiving and responding to official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and conduct issues. The designated representative must be a lawyer at the firm and have practicing status in BC.

Information sharing in relation to complaints

39. The Task Force has spent significant time discussing the extent to which information sharing between the Law Society and the designated representative should occur in relation to complaints against, or investigations into one of the firm's lawyers. The question of whether the Law Society should have discretion in sharing, or conversely, not sharing this information with the lawyer's firm has been controversial.
40. Both Task Force and focus group discussions on this issue have been animated by a keen awareness of the need to balance the privacy rights of the individual subject to the complaint or investigation and the public interest in informing a firm about the potential misconduct of one of its lawyers¹⁰. Law Society staff have also reminded the Task Force that outside the context of law firm regulation, the Professional Conduct department already exercises a great deal of discretion as part of their existing complaints process against lawyers.¹¹

⁹ The Task Force considered whether including two designated representatives on the registration should be required or optional. The recommendation for the latter is based on the fact that a significant percentage of "firms" in BC are sole practitioners, and as such, there would not be another lawyer at the firm who could serve as the designated representative.

¹⁰ This public interest aspect is linked to the notion that if informed, a firm may be in the best position to support the lawyer in navigating personal or professional issues related to the complaint, as to mitigate or resolve the problem, or the issues underlying it.

¹¹ In 2016, the Law Society closed 1,142 complaints. Of these, 294 complaints were closed as unsubstantiated and the subject lawyer *would not have been notified*. The unsubstantiated complaints that were closed represent 25.7% of all

41. After carefully considering the varied perspectives and experiences of focus group participants and staff in the Professional Conduct department, the Task Force recommends that the Rules provide discretion to the Law Society, to be exercised consonant with the principles of proactive regulation, to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. Such a discretion would permit the Law Society to withhold this information if its disclosure is not consonant with the principles of proactive regulation and/or there are other compelling reasons to withhold it. For example, there may be no merit in sharing a complaint against a lawyer with the lawyer's firm in instances where the complaint has been deemed to be unsubstantiated or outside the jurisdiction of the Law Society.
42. Another example illustrates the merits of this discretionary approach: a complaint is made against a lawyer, in the course of which the Law Society becomes aware of the lawyer's medical issues. These issues are relevant to the complaint, but highly personal in nature. In the absence of any discretionary power, the Law Society would inform the firm about the complaint and, in so doing, reveal this medical information in a manner that may be contrary to privacy and/or human rights legislation.

Recommendation 4: The Law Society is authorized to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. The Law Society will exercise this discretion in a manner that is consonant with the principles of proactive regulation.

43. As detailed later in the Report, the Rules must be amended to permit this type of information sharing between the Law Society and the designated representative.¹²
44. All practicing lawyers have a duty to cooperate fully with any Law Society investigation under the existing Rules. An additional rule will be developed to put a similar obligation on the firm itself, such that firms are required to respond fully and substantively to the Law Society in respect of a complaint against the firm, or a complaint against one of its lawyer, of which the firm has been made aware by the Law Society.

Recommendation 5: In addition to any similar obligation on individual lawyers under the existing rules, firms are required to respond fully and substantively to the Law

closed complaints. In 2016, 219 complaints were closed without an investigation. This represents 19.2% of all closed complaints. The subject lawyer is notified of the complaint in these circumstances.

¹² Rule 3-3 prohibits this degree of information sharing.

Society with respect to any complaints or investigations against the firm or one of the firm's lawyers.

Liability issues

45. The Task Force has also explored the particulars of its general recommendation in the 2016 Interim Report that designated representatives are not personally liable for firm non-compliance.
46. Although firms may organize themselves internally such that a designated representative is tasked with completing the registration process or completing or submitting the self-assessment, the Task Force recommends that from a regulatory perspective, these are clearly established as *firm* responsibilities.
47. As such, firms, not the designated representative,¹³ will be subject to penalties for non-compliance with registration and self-assessment requirements.¹⁴ Only in the rare instance that the Law Society becomes aware that the designated representative has knowingly or recklessly provided false information as part of the registration or self-assessment process will the Law Society consider pursuing disciplinary action against this individual.

Recommendation 6: Fulfilling the duties of the designated representative is ultimately the responsibility of the firm and the designated representative is not personally responsible or liable for the firm's failure to fulfill those duties.

¹³ If the "firm" is a sole practitioner, that individual will be responsible for completing registration and the self-assessment process, but not in their capacity as the designated representative.

¹⁴ This aligns with the approach taken by law societies in Nova Scotia and the Prairie provinces, who have indicated it is unlikely that this individual will be subject to any personal liability in their capacity as the designated contact for the firm.

Self-Assessment

48. The 2016 Interim Report recommended the development of a self-assessment tool as a key element of BC's model of law firm regulation.¹⁵ Many other law societies developing similar regulatory models have also included self-assessment as a core design feature.¹⁶
49. Accordingly, the Task Force has spent considerable time exploring the role of the self-assessment process in the regulation of firms. This issue was also the focal point of the recent consultations with the profession.
50. This section of the Report reflects the detailed work of the Task Force on this issue, including the rationale for including a self-assessment process as a central aspect of the regulatory scheme, the structure and content of the self-assessment tool and the procedural aspects of the self-assessment process. The future work that is necessary to ready the self-assessment for implementation is also briefly discussed.

Rationale for the self-assessment process

51. The primary rationale for including a self-assessment process as part of law firm regulation is to encourage firms to turn their minds to each of the Professional Infrastructure Elements in a systematic and considered way, regularly evaluating the extent to which the firm's policies and processes achieve the objectives of these Elements. As such, the self-assessment is predominantly intended to act as an educational learning tool for firms.
52. Other jurisdictions with experience regulating law firms have demonstrated that the self-assessment process can play an important role in facilitating firms' critical evaluation of the extent to which they have made progress toward, or achieved, the standards set by the regulator.
53. Studies based on the experiences of New South Wales¹⁷ and Queensland, Australia, where self-assessment has been an integral part of law firm regulation, highlight some of the benefits associated with firms engaging in a self-evaluative process, including:

¹⁵ See the 2016 Interim Report at p. 23 at Appendix A.

¹⁶ Nova Scotia has developed a comprehensive self-assessment tool, which is currently being revised following a pilot project that tested its performance "in the field." Self-assessment is also being recommended for inclusion as part of entity regulation in Alberta, Saskatchewan, Manitoba and Ontario. The Canadian Bar Association has also endorsed self-assessment through the development of its Ethical Practices Self-Evaluation Tool.

¹⁷ The *Legal Profession Act*, 2004 was replaced by the *Legal Profession Uniform Law Application Law Act*, 2014 under which there appears to be no legislated requirement to complete a self-assessment process.

- on average, the complaint rate for each incorporated legal practice (“ILP”) after self-assessment was one third the complaint rate of the same practices before self-assessment, and one third the complaint rate of firms that were not incorporated and thus never required to self-assess¹⁸
- a vast majority of ILPs (71%) reported that they revised firm policies or procedures relating to the delivery of legal services and many (47%) reported that they adopted new procedures in connection with the self-assessment¹⁹
- a majority of ILPs reported that the self-assessment process was a learning exercise that helped them improve client service²⁰
- over 60% of ILPs assessed themselves to be in compliance on all ten objectives when they completed their initial self-assessments, and of the remaining 38%, about half became compliant within three months of their initial self-assessment²¹

54. Given these compelling educational benefits, the Task Force recommends that at this stage of regulatory development, the Law Society ensures that the primary goal of instituting a self-assessment process is to provide firms with educational tools and resources that will assist firms in satisfying the Professional Infrastructure Elements, rather than serving as a mechanism for the Law Society to evaluate firms’ compliance with the new standards.²²

¹⁸ 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

¹⁹ Susan Fortney and Tahlia Gordon, "Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation". Online at: <http://ir.stthomas.edu/cgi/viewcontent.cgi?article=1298&context=ustlj>

²⁰ *Ibid.* Notably, there was no statistically significant difference related to firm size and the respondents’ opinions on 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.

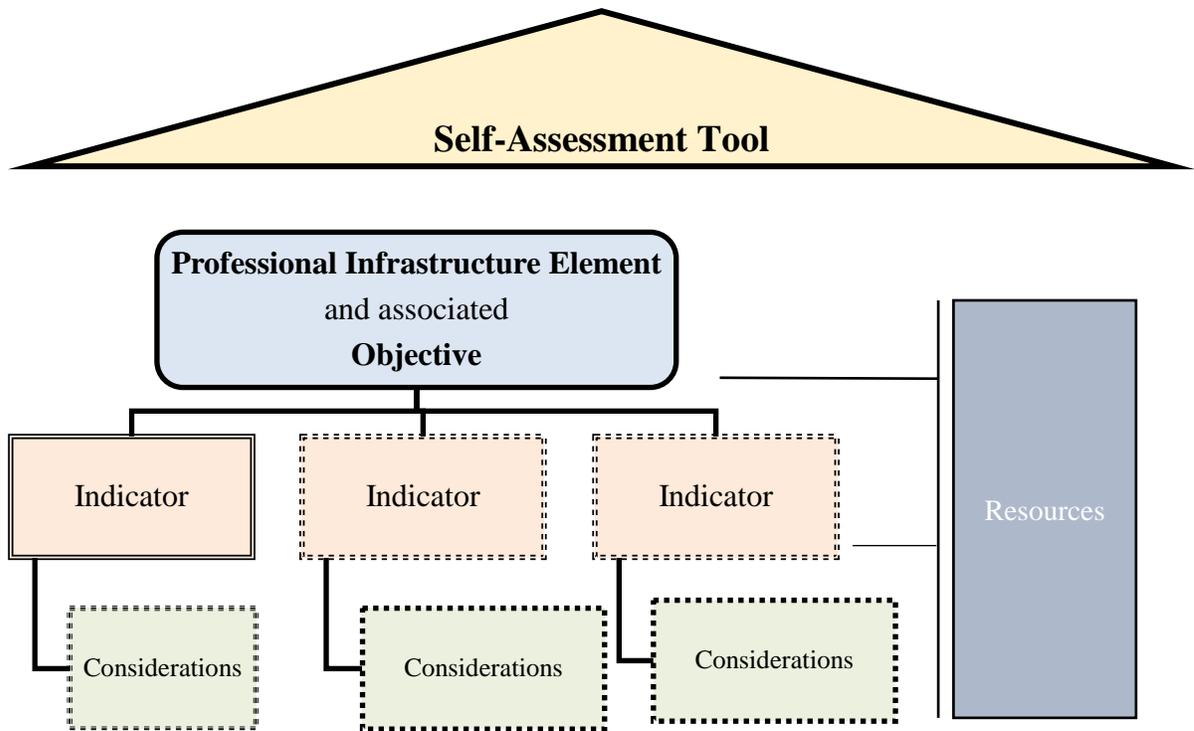
²¹ Christine Parker, Tahlia Gordon, and Steve Mark "Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales" (2010) 37(3) *Journal of Law and Society* 446 at 493. Online at: https://www.researchgate.net/publication/228192433_Regulating_Law_Firm_Ethics_Management_An_Empirical_Assessment_of_the_Regulation_of_Incorporated_Legal_Practices_in_NSW

²² 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.

The structure and content of the self-assessment tool

- 55. In early 2017, the Task Force began work on developing the self-assessment tool. A draft of its most recent iteration is included at Appendix B.
- 56. The tool is composed of four hierarchical components: Professional Infrastructure Elements, their Objectives, Indicators and Considerations. The self-assessment also includes a rating scale, an area for comments and a list of resources for firms.
- 57. Each aspect of the tool is described in more detail, below.



Professional Infrastructure Elements and Objectives

58. The *Professional Infrastructure Elements* and their associated *Objectives* lie at the core of the new regulatory model, and consequently, are foundational pieces of the draft self-assessment tool.
59. As discussed in the 2016 Interim Report, the Task Force has identified eight specific areas – the Professional Infrastructure Elements – that correlate to core professional and ethical duties of firms.²³ These areas have been selected as a regulatory focus on the basis that they are widely recognized as representing the cornerstones of firm practice.
60. It is important to underscore that firms will not be subject to prescriptive rules that dictate how these new standards must be achieved. How a firm addresses each of the Professional Infrastructure Elements is up to them. As such, the regulatory scheme provides firms significant latitude to create and implement the types of policies and processes that are best suited to the nature, size and scope of their practice.
61. The language associated with each of the Professional Elements in the draft self-assessment is largely unchanged from that found in the 2016 Interim Report,²⁴ with one notable exception, Element 8, now entitled “Equity, Diversity and Inclusion.” The rationale for reconsidering the title and content of this Element is explored in greater detail later in the Report.
62. The self-assessment pairs each Professional Infrastructure Element with an Objective, which is a clear statement of the specific result or outcome the particular Element aims to achieve.²⁵ Together, the Elements and their Objectives are the metrics against which firms should evaluate whether they have met the standards imposed by law firm regulation.

²³ These areas were developed in consultation with the Law Society membership, a review of the regulatory frameworks of other jurisdictions and a review of the *Legal Profession Act*, Law Society Rules and Code of Professional Conduct. Although nomenclature and categorization differs slightly, there is considerable consistency across the provinces engaging in law firm regulation as to which aspects of practice will be regulated.

²⁴ The wording of the Professional Infrastructure Elements may evolve if, across Canada, there are coordinated efforts to establish consistency in relation to the core aspects of firm practice subject to regulation.

²⁵ The Objectives were developed by the Task Force in consultation with both Law Society staff and focus group participants.



Professional Infrastructure Elements

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*

Element 2: Sustaining effective and respectful client relations

Objective: *Provide clear, timely and courteous communications with clients in the delivery of legal services so that clients understand the status of their matter through the duration of the retainer and are in a position to make informed choices*

Element 3: Protecting confidentiality

Objective: *Ensure client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law and that solicitor-client privilege is appropriately safeguarded*

Element 4: Avoiding and addressing conflicts of interest

Objective: *Ensure conflicts of interest are avoided from the outset, and where not avoided, they are resolved in a timely fashion*

Element 5: Maintaining appropriate file and records management systems

Objective: *Provide appropriate file and records management systems to ensure that issues and tasks on file are handled in an appropriate and timely manner and that client information and documents are safeguarded*

Element 6: Charging appropriate fees and disbursements

Objective: *Ensure clients are charged fees and disbursements that are transparent and reasonable and are disclosed in a timely fashion*

Element 7: Ensuring responsible financial management

Objective: *Establish mechanisms to minimize the risk of fraud and procedures that ensure compliance with Law Society accounting rules*

Element 8: Equity, Diversity and Inclusion

Objective: *Commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and in the delivery of legal services*

63. Over time, firms are expected to put in place policies and processes that adequately address these Objectives. Where referred to in the self-assessment, “policies” requires a written document. In contrast, “processes” are not required to be in writing. However, there should be evidence that such processes are followed as part of the normal course of the firm’s operations.
64. For example, to satisfy Professional Infrastructure Element 3, “Protecting Confidentiality,” the firm must implement policies and processes that fulfil the stated objective of ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.
65. The self-assessment tool asks firms to evaluate the degree to which they have satisfied the Objective of each of the Professional Infrastructure Elements using a numeric rating. This quantitative measure will provide both firms and the Law Society insight into the degree to which firms feel they have met the new standards, and may also serve as a reference point for improvement in subsequent self-assessment cycles.
66. Additionally, the self-assessment provides an opportunity for firms to include comments regarding their successes, challenges and any other relevant information in relation to the firm’s satisfaction of the Professional Infrastructure Elements.²⁶

Indicators and Considerations

67. To assist firms in developing and evaluating their professional infrastructure, the self-assessment includes a series of *Indicators*, which represent aspects of practice that firms may wish to examine when assessing whether the Objective of the Professional Infrastructure Element has been achieved.
68. Each Indicator is paired with a more detailed list of *Considerations*, which illustrates the types of policies, practices, procedures, processes, methods, steps and systems that a prudent law firm might employ to support the professional and ethical delivery of legal services.²⁷

²⁶ In other jurisdictions developing law firm regulation, consideration is being given to removing the numeric rating scale and requiring firms to list a minimum number of areas where they will focus on improving firm practices. Prior to implementation, the Task Force will re-visit the nature of the information sought in the comments section, particularly during the first self-assessment cycle, and whether this section should also (or alternatively) elicit information from firms about target “areas of improvement.”

²⁷ The Indicators and Considerations provided in the draft self-assessment were developed by undertaking a comprehensive review of self-assessment tools in Australia, Nova Scotia, the Prairie provinces and drafted by the

69. Neither the Indicators nor the Considerations are prescriptive, and both should be approached as suggestions or guidelines for firms rather than mandatory checklists or legal requirements. Indicators and Considerations are simply intended to prompt firms to reflect on their practices and to consider how they may improve them.
70. Further, Indicators and Considerations are designed to be relatively general, or “high level” to enable the self-assessment to be flexible and applicable across various practice contexts and sizes.
71. For example, in relation to the Professional Infrastructure Element “Protecting Confidentiality,” the following Indicators and Considerations are provided in the self-assessment tool:

Indicator 1: Are confidentiality and privacy policies in place?

Considerations:

- A written confidentiality policy or agreement is in place and is signed by all staff
- Confidentiality requirements are established for any third parties (e.g. contractors, computer service providers, interns, cleaners) who may access the firms’ physical space or technology
- A privacy policy is in place and is communicated to all lawyers and staff
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

Indicator 2: Is training provided pertaining to preserving the duties of confidentiality, solicitor-client privilege, privacy and the consequences of privacy breaches?

- Lawyers and staff are provided with up-to-date technology training relating to issues of confidentiality and privacy pertaining to electronic data, including specific training on the importance of password protection
- Lawyers and staff receive education and training regarding the principle of solicitor-client privilege, including:
 - in relation to electronic communications (email, texting, e-documents)
 - when a common interest or joint retainer extends the solicitor-client privilege to third parties
- A policy is in place to ensure that solicitor-client privilege is clearly explained to clients by lawyers
- Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply.
- Lawyers and staff are provided with training on the requirements of privacy legislation
- Internal processes are in place to deal with privacy breaches, including processes for reporting breaches to the client, the Law Society and any other appropriate authorities

CBA. Input into the Indicators and Considerations was also provided by participants of the focus group sessions and Law Society staff.

Indicator 3: Is physical data protected by appropriate security measures?

Considerations:

- Office security systems are in place to protect confidential information, including taking steps to ensure:
 - third parties cannot overhear confidential conversations lawyers and staff have both within and outside the physical office
 - client files and other confidential material are not left in publically accessible areas
 - client confidentiality is guarded when visitors enter private areas (e.g. lawyer or staff offices)
 - copiers, fax machines and mail services are located such that confidential information cannot be seen by persons not employed by or associated with the firm
- Processes are in place that ensure reasonable security measures are taken when removing physical records or technological devices from the office
- Processes are in place to ensure that closed files and other documents stored off-site are kept secure and confidential

Indicator 4: Is electronic data protected by appropriate security measures?

Considerations:

- Data security measures (e.g. encryption software and passwords) are in place to protect confidential information on all computers, laptops, tablets, smartphones, thumb drives and other technological devices
- Processes are in place to protect electronic data from being compromised by viruses, including ransomware
- Processes are in place to safeguard against the security risks arising from downloading to phones, flash drives and other portable devices
- Processes are in place to protect confidentiality when using cloud-based technologies, including email
- Processes are in place to protect confidentiality when using social media
- Electronic data is regularly backed up and stored at a secure off-site location
- Processes are in place to ensure that third parties with access to computers for maintenance and technical support protect the confidentiality of client information
- Electronic data security measures are reviewed
- Processes are in place to safeguard electronic data and maintain solicitor-client privilege as pertaining to electronic files when crossing borders (e.g. United States)

72. Finally, the self-assessment includes a selection of resources which provide firms with a “starting place” for developing their own policies and processes in relation to each of the Professional Infrastructure Elements. The existing resources found in the tool will be significantly expanded following the first self-assessment cycle. Detailed discussion of the proposed approach to model policy and resource development is explored later in the Report.

73. Although considerable work has been done on the self-assessment, the Task Force will continue to refine the tool, seeking further input from relevant Law Society departments and monitoring the evolution of self-assessment tools in other jurisdictions.

Recommendation 8: Continue to refine the substantive content of the self-assessment tool.

Equity, diversity, inclusion and cultural competency content

74. As noted above, the most significant change to the Professional Infrastructure Elements since the 2016 Interim Report is the re-drafting of Element 8: Equity, Diversity and Inclusion. This reflects the Task Force’s recommendation that equity, diversity, inclusion and cultural competency materials clearly fall under a discrete Professional Infrastructure Element within the self-assessment tool.

Recommendation 9: Include material in the self-assessment tool related to equity, diversity, inclusion and cultural competency under a discrete Professional Infrastructure Element.

75. This proposal represents a shift away from of the Task Force’s 2016 recommendation that BC’s law firm regulation should not include a Professional Infrastructure Element expressly devoted to equity, diversity and cultural competency. This recommendation was made on the basis that equity and diversity have an “aspirational” quality that differs from the more operational aspects of firm practice reflected in the other Professional Infrastructure Elements - for example, conflicts or record management ²⁸
76. As a result, the Task Force previously recommended that Element 8 impose a less direct duty on firms to “support compliance with obligations related to a safe and respectful workplace.” Essentially, this simply reinforced that firms must comply with existing legal

²⁸ Other arguments articulated for not including equity and diversity as one of the Professional Infrastructure Elements include: the view that these issues occupy a domain that is largely about personal attitudes and values, rather than firm responsibilities, such that the Law Society should not be “imposing values.” Others have noted that there may be significant challenges in measuring progress towards equity and diversity standards in a meaningful fashion.

obligations under the *Human Rights Code* and the *Workers Compensation Act*, but did not clearly direct firms to develop policies or processes specifically related to equity, diversity, inclusion and cultural competency.

77. In contrast, other Canadian law societies have included equity, diversity and inclusion as a foundational “element” (Nova Scotia) or “principle” (Prairies, Ontario) of their regulatory frameworks. These jurisdictions also address a much wider range of equity, diversity, access, inclusion and cultural competency issues throughout their draft self-assessments.
78. The Task Force recognizes that the lack of a Professional Infrastructure Element committed to equity, diversity and inclusion puts BC out of step” with other provinces developing a framework for firm regulation.
79. The Task Force also observes that in a variety of contexts, the Law Society has already suggested that equity and diversity issues are not merely aspirational matters, but rather, are an important issues in relation to the profession and the public interest more broadly.
80. For example, the Law Society’s 2012 report *Towards a more Representative Legal Profession: Better practices, better workplace, better results*, suggests that the change in the demographics of the legal profession demands a response to bias and discrimination within firms:

In the face of an aging of the legal profession, firms are recruiting from a generation of young lawyers who are more diverse and have different expectations regarding the practice of law, including equal opportunities for advancement. The demographics of the legal profession, however, do not reflect these changes. While overt discrimination based on race and gender is arguably less prevalent today than 30 years ago, it still occurs and demands an appropriate response. Women, visible minority lawyers and Aboriginal lawyers continue to face systemic barriers in the profession created by unconscious bias, resulting in insidious, albeit unintended forms of discrimination.²⁹

81. The report goes on to directly link equity and diversity principles with the public interest, and highlights the role firms can play in shifting attitudes and practices:

The Law Society of BC is committed to the principles of equity and diversity and believes the public is best served by a more inclusive and representative profession

[...]

²⁹ The Law Society of British Columbia, *Towards a More Representative Legal Profession: Better practices, better workplaces, better results* (June 2012), online at: www.lawsociety.bc.ca/docs/publications/reports/Diversity_2012.pdf

We hope our report will form the foundation to get the legal community working together to create effective solutions. As the regulator we're only one piece of the puzzle, so we can't fix this on our own. As a profession, we can do better. Not just because it's the right thing to do, but because everyone benefits from it. We all have an interest in ensuring the legal profession continues its long-held tradition of striving to serve the public the best way it can. I encourage you to read this report and consider how your firm can develop and implement solutions to advance diversity in the legal profession. [*Emphasis Added*].³⁰

82. The Law Society's commitment to advancing equity and diversity issues at the firm level is also demonstrated by the role it has played in the Justicia Project, which was created in response to the disproportionate number of women leaving the legal profession. Specifically, in recognizing that firms' attitudes and behaviours bear some responsibility for this concerning trend, the Law Society has overseen the development of model policies and best practices for firms with respect to retaining and advancing women lawyers in private practice.
83. The Task Force is in the early stages of developing the content of this Professional Infrastructure Element, including its associated Indicators and Considerations. This work will continue if the recommendation to include equity, diversity and inclusion as one of the Professional Infrastructure Elements is approved by the Benchers. Consultation with the Equity and Diversity Committee prior to finalizing the content of this Element may also be advisable.
84. The Task Force also continues to discuss how to address the Truth and Reconciliation Commissions Call to Action #27, which highlights the need for lawyers to receive skills based training in intercultural competency, conflict resolution, human rights, and anti-racism:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.³¹

85. Other Canadian jurisdictions have incorporated Call to Action #27 into their Elements and Principles addressing equity and diversity. For example, Nova Scotia includes an indicator in its self-assessment that states: “you provide staff and lawyers training in cultural

³⁰ *Ibid* at p. 2.

³¹ Truth and Reconciliation Commission Calls to Action, online at: http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf

competent legal services and delivery.” The Prairie provinces’ draft-self assessment explicitly highlights TRC Call to Action #27 in the preamble to its equity, diversity and inclusion Principle, and provides that: “All members of the firm receive education and training on...cultural competence.” Similarly, the Law Society of Upper Canada has included “cultural competency in the delivery of legal services as part of its proposed equity, diversity and inclusion principle.

86. In the next stage of its work, the Task Force will work with the Truth and Reconciliation Commission Advisory Committee to determine how law firm regulation could act as a mechanism to support firms in providing their lawyers with opportunities to receive appropriate cultural competency training.

Procedural aspects of the self-assessment tool

87. In addition to developing the content of the self-assessment tool, the Task Force has addressed a number of process-related matters, including: determining who will be responsible for completing the self-assessment; establishing whether, and by whom, the self-assessment is submitted to the Law Society; and developing options for formatting and administering the self-assessment. These issues were explored in detail during Task Force meetings, focus group sessions and in discussions with other jurisdictions developing law firm regulation.
88. Given the benefits the aforementioned Australian studies have attributed to firms engaging in a self-evaluation process, the Task Force recommends that all firms covered by law firm regulation, including sole practitioners, lawyers in space sharing arrangements and lawyers in small, medium and large firms, complete the self-assessment tool and submit it to the Law Society.³²

Recommendation 10: All firms are required to complete a self-assessment and submit it to the Law Society.

89. The Rules will not mandate who at the firm must, or may, contribute to the self-assessment. As such, firms will have considerable flexibility in developing their own

³² The focus group sessions revealed a strong preference for the Law Society creating a uniform self-assessment that would cover all firm types. This was viewed as necessary for creating a common standard for firm practice across the profession. The Task Force will continue to consider how the self-assessment tool should be developed to reflect the particular circumstances of sole practitioners, including, for example, guidance that identifies those portions of the self-assessment that may be less relevant to this practice type.

methods for working through the tool. The Law Society expects that the manner in which firms complete the self-assessment will vary; some may be completed by a single lawyer at the firm while larger firms may bring together personnel to facilitate discussion or circulate the tool electronically and encourage collaborative completion of the document.

90. Regardless of the approach adopted by the firm, ensuring the self-assessment is completed and submitted to the Law Society is ultimately a *firm* responsibility. Firms that fail to submit a self-assessment will be subject to a penalty.
91. As noted above, the primary objective of the self-assessment is to support learning and organizational change. Accordingly, the Task Force has explored different options for maximizing the utility of the self-assessment tool for its users. Discussions with the Nova Scotia Barristers' Society, which recently concluded a pilot project of its self-assessment tool, have been instrumental in assisting the Task Force work through this issue.³³
92. Nova Scotia has taken a two-pronged approach to the self-assessment tool, comprising a primary, short, "formal" self-assessment, which is submitted to the regulator, and a secondary, more detailed self-assessment "workbook" that provides firms with additional guidance, resources and support, which is *not* submitted to the regulator (see **Appendix C**). The workbook's sole purpose is to provide firms with a confidential learning tool that expands on many of the issues identified in the shorter self-assessment.³⁴
93. Feedback from Nova Scotia's pilot project indicated strong support for this two-pronged approach. Similarly, participants in BC's recent focus group sessions were also supportive of the development of both a shorter self-assessment and a longer workbook.

Recommendation 11: 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.

94. Accordingly, the Task Force recommends that BC follows Nova Scotia's approach and develop two formats for the self-assessment tool: a shorter document that is submitted to the Law Society and requires firms to undertake a high-level evaluation of the extent to which they are satisfying the Professional Infrastructure Elements, and a longer, more

³³ For further details on the NSBS pilot project, see : <http://nsbs.org/mselp-self-assessment-pilot-project>

³⁴ Anecdotally, Nova reported that during the pilot project, small firms took approximately half an hour to complete the shorter, formal self-assessment (with many reporting they planned to return to the more lengthy workbook to reflect on their practices more thoroughly), while larger firms reported taking three hours to complete the assessment.

detailed workbook that will not be viewed by the Law Society, but will enable firms to work through the self-assessment material at a more granular level.

95. The Task Force feels the proposed approach will provide firms with a relatively quick and efficient route to self-evaluation through the shorter, mandatory self-assessment, while encouraging more considered and reflective analysis through engagement with the detailed workbook.
96. The Task Force also recommends that both the shorter, formal self-assessment and the longer workbook are developed as online tools.

Role of self-assessment in compliance and enforcement

97. The Task Force has spent considerable time discussing the relationship between the self-assessment and potential compliance and enforcement action against firms.
98. Given the aim of proactive regulation is to support and encourage firms in building a robust professional infrastructure rather than penalizing them for failing to have one in place, the Task Force proposes that at this stage of regulatory development, the only legal requirements will be for firms to register with the Law Society and to complete and file a self-assessment.
99. The information provided in the initial self-assessment tool will not be utilized by the Law Society for any disciplinary purposes.

Future work on the self-assessment tool

100. Although the draft self-assessment appended to this Report has undergone significant revisions following the focus group sessions, internal consultations with Law Society staff and discussions at the Task Force level, its current iteration represents a work-in-progress.
101. Further internal review is required to ensure that all relevant Law Society departments have an opportunity to provide input.³⁵ The tool will also be subject to rigorous review by the Task Force to ensure the appropriate and consistent use of terminology. Changes to the content and format of the self-assessment are also expected to flow from regional discussions with other law societies that are currently developing self-assessment tools as part of law firm regulation. The Task Force will continue to keep abreast of developments in Nova Scotia, the Prairie province and Ontario, and adjust and adapt BC's self-

³⁵ For example, feedback has not yet been sought from the Lawyers Insurance Fund.

assessment to the extent that such modification improves the clarity and utility of the tool. The goal is to complete this work by late 2017, leaving time to create and test an electronic version of the tool.

102. Significant work is required to re-format the draft assessment into both a shorter, formal self-assessment tool and a workbook, and to put in place the necessary IT resources to ensure the self-assessment process can be completed and submitted electronically.
103. The self-assessment will also be populated by a robust set of model policies and resources that are designed to support firms in developing and maintaining policies and processes that address the Professional Infrastructure Elements. Initial work will begin on this task prior to the introduction of the tool, and may include, for example, the addition of resources developed by, or in collaboration with, other law societies. The bulk of the resource development work will occur following firms' registration and filing of their first self-assessment. The proposed approach to resource development and implementation are outlined in the next sections of the Report.
104. In the next phase of its work, the Task Force will explore mechanisms for building a feedback loop into the self-assessment process – for example, seeking input from users with respect to their experience utilizing the tool – to ensure the self-assessment remains useful and relevant to firms and the Law Society over time.

Model Policies and Resources

105. Over the course of several meetings, the Task Force has examined the Law Society's potential role in developing model policies and other practice resources designed to support firms in meeting the new standards imposed by law firm regulation. Key themes of these discussions are captured below.

Model policies

106. As a preliminary matter, the Task Force contemplated whether the Law Society should include model policies as part of the self-assessment tool. Initially, the Task Force was concerned that providing firms with model policies could erode the self-reflective nature of the self-assessment exercise in circumstances where firms indiscriminately adopt templates rather than critically evaluating and developing policies that are appropriate for their practice size and type.
107. However, input obtained during the focus groups sessions revealed that firms of all sizes were strongly in favour of the Law Society developing model policies in relation to each of the Professional Infrastructure Elements. The feedback mirrored that provided to the

Nova Scotia Barristers' Society through their self-assessment pilot project, in which there was widespread support for the regulator taking a lead role in developing practice resources.³⁶

108. Based on this feedback, the Task Force recommends that the Law Society provide firms with model policies in relation to each of the Professional Infrastructure Elements as part of the self-assessment tool. This approach is aimed at providing firms with a high level of support as they work toward establishing and maintaining a professional infrastructure.

Recommendation 12: The Law Society will develop model policies and resources in relation to each of the Professional Infrastructure Elements for inclusion in the self-assessment.

109. To mitigate the risk of firms adopting model policies in an unconsidered, haphazard manner, the Task Force recommends providing firms with a number of model policies for each Professional Infrastructure Element. As a result, at a minimum, firms will be required to choose between competing model policies, taking into account the characteristics of their practice type (e.g. a sole practitioner may only require a simple model policy, whereas a large law firm should choose a more complex model policy). Each policy will include a caveat indicating that it is not sufficient for firms to adopt a model policy without consideration of its suitability, emphasizing that modifications may be necessary.
110. The Task Force also recommends that the Law Society promote additional mechanisms that encourage firms to engage in policy development. Possible approaches could include the Law Society providing lawyers with CPD credit for designing firm policies, facilitating webinars on policy development and supporting the development of a resource portal through which firms can access and share policies.

Recommendation 13: The Law Society will provide firms with a variety of model policies in relation to each Professional Infrastructure Element and endorse the development of additional mechanisms to encourage policy development within firms.

³⁶ NSBS observed that “they [firms] will take any help the Society can give to direct them to quality resources and tools that will save them time and effort in improving their [management systems]. See Nova Scotia Barristers' Society, Legal Services Support Pilot Project Preliminary Report (February 17, 2017). Online at: http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-02-17_LSSPilotProject.pdf . As a result, Nova Scotia is undertaking intensive resource development prior to the full-scale implementation of their law firm regulation.

111. The Task Force examined three options for the operational aspects of policy development. Under the first option, model policies would be collected from external sources (e.g. firms, other law societies) and, where appropriate policies do not exist, the Law Society would task external bodies with developing these resources. Although leveraging the expertise of other organizations was seen to have numerous benefits, the Task Force also identified a number of significant concerns with this approach, including reduced opportunities for quality control and uncertainty about the capacity of other organizations to develop or contribute model policies.
112. The second option would require the Law Society to develop all model policies in-house. Although this approach would enable the Law Society to retain maximum control over the quality and format of model policies, it would also put substantial, immediate pressure on the Law Society to dedicate significant resources to drafting policies.³⁷ Concerns were also raised with respect to drafting all policies through a single perspective — that of the regulator — at the cost of diversity amongst policies and the potential to overlook many high-quality, externally produced policies.
113. Accordingly, the Task Force recommends a hybrid option, through which the Law Society will undertake a “gap analysis” to determine where high-quality, externally produced model policies already exist, where they do not, and consequently, where it is necessary to employ Law Society resources to create additional policies to fill the gap.³⁸ This approach will maximize efficiencies and encourage policy diversity while enabling the Law Society to maintain significant control over content and timing.
114. As discussed later in the Report, although a select set of initial resources will be provide to firms at the outset, the majority of model policy development will occur once the Law Society has received feedback from firms in the first self-assessment cycle as to the areas of practice in which firms feel the greatest need for model policies.

³⁷ A review of existing Law Society resources indicates that the pool of internal model policies is limited, and where they do exist, they frequently require updating.

³⁸ This is the approach endorsed by the Nova Scotia Barristers’ Society, which is currently engaged in an intensive period of collecting publically available resources and contacting educational providers and firms to encourage them to contribute policies and other resources to the regulator. Only in circumstances where there are no sufficient externally available resources will NSBS develop these in-house.

Other resources

115. The Task Force has also explored possible approaches to creating or collecting other resources, in addition to model policies. Three complimentary approaches are recommended.
116. First, the Task Force recommends the Law Society take on the role of “resource curator,” seeking out and, where necessary, developing resources for the self-assessment tool. In the next phase of its work, the Task Force expects to give additional consideration to how to source these materials.³⁹
117. Second, the Task Force recommends the Law Society develop a separate resource portal to house a larger collection of resources than is directly linked to the self-assessment tool itself. This will prevent the self-assessment document from becoming overwhelmed with practice support materials. Additionally, firms will have direct access to a complete body of resources regardless of whether they are actively engaged in completing the self-assessment.⁴⁰
118. Third, the Task Force recommends the Law Society seek ways to support resource sharing between firms. This could include endorsing or establishing a collaborative, online space for lawyers and firms to share resources and policies, encouraging mentorship arrangements and supporting educational opportunities that bring lawyers together to share best practices.⁴¹

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.

³⁹ In addition to drawing on existing Law Society resources, possible sources include: resources linked to the self-assessments being developed by other provinces; materials from the LSUC Practice Management Review program; resources provided or created by legal-education organizations (e.g. CLE-BC); resources provided to the Law Society by firms and practitioners; and other publically available resources.

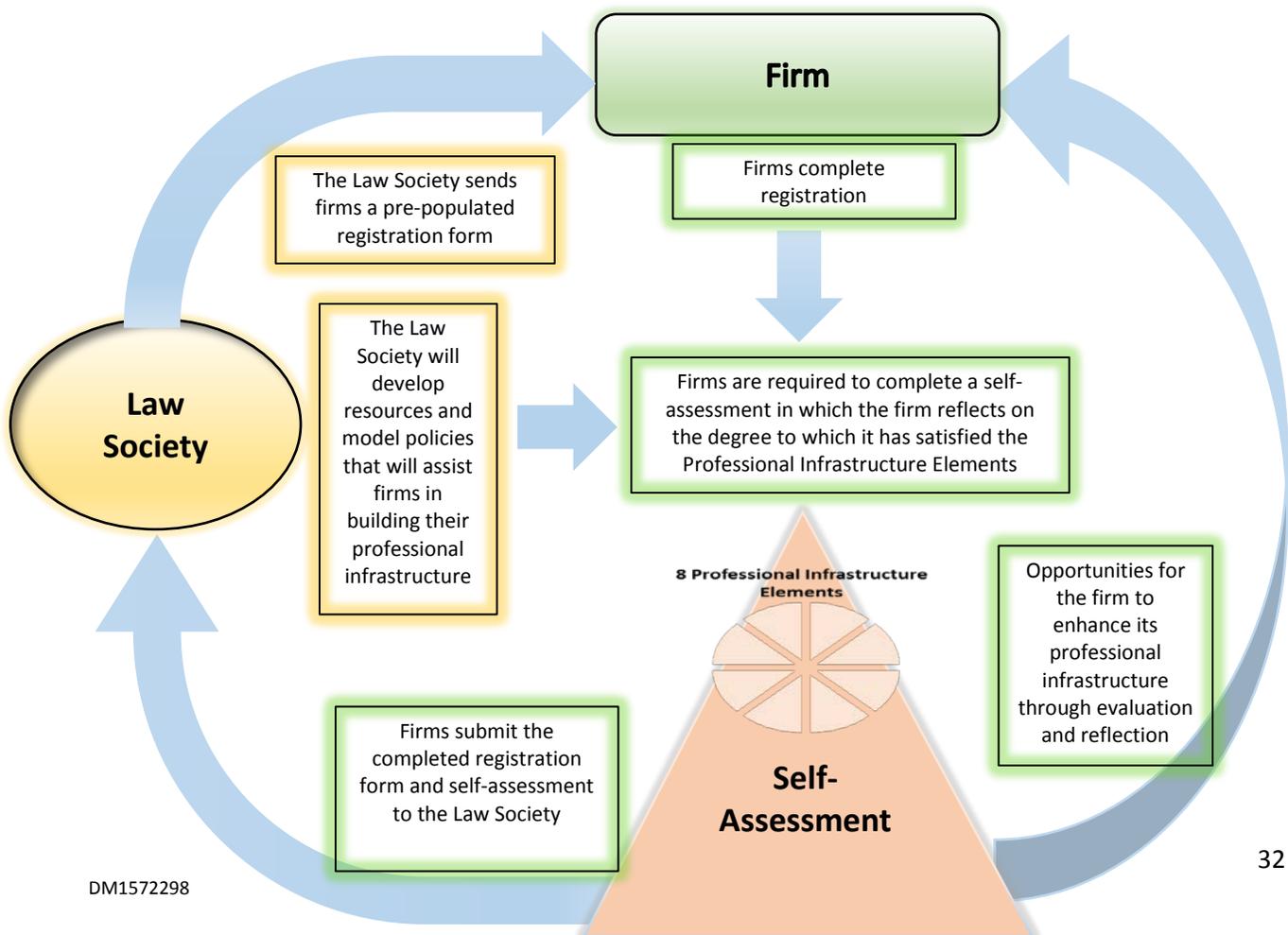
⁴⁰ Nova Scotia is currently developing an online resource portal. Early feedback from the pilot project indicated strong support for the continued development of a centralized location where resources could be accessed.

⁴¹ Another strong theme of Nova Scotia' pilot project was a desire for a platform that would enable firms to share resources amongst themselves.

Implementation of Law Firm Regulation

119. In addition to establishing the independent features of law firm regulation (e.g. the Professional Infrastructure Elements, the registration process, the designated representative and the self-evaluation tool and associated resources) the Task Force has considered how the scheme will function as a unified whole and has deliberated over the optimal schedule for implementation.
120. The overall functioning of the scheme is perhaps best communicated through an illustrative diagram, which demonstrates the linkages and feedback loops between the various “pieces” of law firm regulation. Essentially, once registered with the Law Society, firms are required to complete the self-assessment tool, which is built around the Professional Infrastructure Elements and contains a set of model policies and other resources developed by the Law Society. These tools will assist firms in putting policies and processes in place that promote professional, ethical firm conduct.

Key Elements of Law Firm Regulation



121. For the reasons described below, the Task Force recommends a particular sequencing to implementing each of these elements of the regulatory scheme.
122. The Task Force's goal is to "launch" law firm regulation by early to mid-2018, commencing with the requirement for all firms to register with the Law Society (this process includes the appointment of a designated representative). At the time of registration, firms will also be provided with an initial self-assessment, which is likely to be similar (from a content perspective) to the current draft self-assessment provided at Appendix B.
123. The first self-assessment will require firms to make a relatively quick evaluation of the extent to which they are *currently* addressing each of the Professional Infrastructure Elements in their practice. Firms will also be asked to identify areas where they feel they would benefit from the Law Society providing additional model policies and other resources to assist them in improving their ethical infrastructures.
124. This inquiry is key to implementation, as it will enable the Law Society to prioritize the development of resources in areas where firms have expressed a strong desire for assistance, and inasmuch, maximize the provision of support to firms.⁴² Ultimately, the objective of the first self-assessment is to generate a clear picture of how firms are meeting, or challenged by the standards set by the Professional Infrastructure Elements so that the Law Society can target those practice areas in which firms require additional model policies and resources.
125. Firms will have a period of no more than four months to complete this first self-assessment and submit it to the Law Society.
126. Importantly, the Law Society will *not* expect firms to immediately develop policies and processes in relation to each of the Professional Infrastructure Elements in advance of, or in response to this first self-assessment cycle. Rather, firms are expected to operate in a business-as-usual fashion and to communicate their perceived strengths and weaknesses through the self-assessment tool in a manner that will assist the Law Society in responding to firms' needs.
127. Following an analysis of the results of this first self-assessment cycle, the Law Society will engage in a period of intensive resource development, with the aim of creating a

⁴² This approach will also enable the Law Society to get a sense of the general baseline of firm practice against which improvements in professional infrastructures could later be measured, providing the Law Society with the opportunity to evaluate whether the regulatory scheme is "making a difference" to firm practice over time.

comprehensive set of model policies and other resources that correlate to those areas that firms have expressly indicated, or otherwise demonstrated, a need for additional support.

128. This resource development phase will be approximately six months in duration. At the conclusion of this period, a revised self-assessment tool will be developed, populated with the new model policies and resources.
129. No earlier than a year after the completion of the first self-assessment, a second assessment cycle will commence. Firms will be given eight months to complete the revised, resource-rich self-assessment. During this second self-assessment cycle, firms *are* expected to develop, update and implement policies and processes in relation to each of the Professional Infrastructure Elements.

Schedule for the Implementation of Law Firm Regulation⁴³

Early-Mid 2018	Mid 2018	Mid 2019	Late 2019	2020
Registration and first self-assessment cycle	Resource development	Second self-assessment cycle	Evaluation of results	Further regulatory development, as necessary

130. At the conclusion of the second assessment cycle, the Law Society will undertake further analysis to determine how frequently future self-assessments should be administered and whether any additional compliance and enforcement measures should be incorporated into the scheme moving forward.

Recommendation 15: The implementation of law firm regulation will commence with registration and the completion of a concise self-assessment tool that will enable the Law Society to identify those areas where additional resources are required. Following a period in which the Law Society will engage in intensive resource development, a second assessment cycle will commence, in which firms will complete and submit a revised, resource-rich assessment tool. During this second assessment cycle, firms are expected to

⁴³ Note that the above dates may change depending on a several factors, including the pace of rule development, the capacity of IT to put in place the required systems for registration and the self-assessment and the adoption and execution of an appropriate communications strategy.

implement policies and processes in relation to each of the Professional Infrastructure Elements.

131. The proposed implementation schedule provides a number of significant benefits to both the Law Society and the profession. Most importantly, it will enable the Law Society to engage in a focused period of resource development driven by the needs of firms (as indicated in results of the first self-assessment cycle.) Opportunities for collaborating with other law societies on resource development may also arise. The suggested timeframes will also enable the Law Society to put in place the necessary human and financial resources to support this work. Budgetary considerations in this regard are discussed at the end of this Report.

Rule Development

132. Although the Task Force has worked diligently to establish a proactive, outcomes-based, “light-touch” approach to law firm regulation, the Law Society will nevertheless be required to develop a limited set of rules in relation to key aspects of the new regulatory scheme. The first step in this regard will be to bring the relevant provisions of the *Legal Profession Act* (the “LPA”) into force.

Legal Profession Act amendments

133. In 2012, legislative amendments to the *LPA* provided the Law Society with the authority to regulate law firms of any size and organizational structure. Some of the amendments are proclaimed, such as those giving the Benchers authority to make rules governing law firms, but are, as yet, unused. Other amendments are not yet in force, and have been awaiting the Law Society’s determination of how to exercise this new authority. Many of those determinations have now been made, in the form of the recommendations found in the two recent Interim Reports.
134. Adequate time must be allowed for the proclamation of those portions of the *LPA* that are necessary for the functioning of the regulatory framework. Accordingly, the Task Force recommends the Law Society begin the process of working with the government’s legislative counsel to bring the appropriate law-firm related provisions in the *LPA* into force.

Recommendation 16: Unproclaimed amendments to the *Legal Profession Act* that are necessary for the functioning of the regulatory framework should be brought into force.

Drafting rules

135. The Task Force is committed to minimizing law firm regulation's reliance on more traditional, reactive compliance measures, including rules and sanctions.⁴⁴ However, a limited number of new rules will be required to address some of the core aspects of the regulatory scheme.⁴⁵

Recommendation 17: New rules are developed in relation to firm registration, designated representatives, information sharing and the self-assessment tool. Existing rules must be reviewed for clarity and consistency.

Registration and designated representatives

136. In order to gain a clear sense of who is being regulated, a new rule will require each firm to complete a prescribed registration form and submit this form to the Law Society on an annual basis. Firms will also be required to immediately notify the Law Society of any changes to their registration information.⁴⁶
137. As part of the registration process, firms must also provide the Law Society with the name and contact information of its designated representative. At least one designated representative at the firm must be readily available to receive and respond to communications from the Law Society. New rules will delineate the role of this individual and facilitate information sharing between the Law Society and the designated representative in relation to conduct issues and administrative matters.
138. An additional rule will be developed to ensure that firms are required to respond fully and substantively to the Law Society in respect of a complaint against the firm, or a complaint against one of its lawyers of which the firm has been made aware by the Law Society.⁴⁷

⁴⁴ For example, rather than creating a rule that requires firms to have specific policies in place in relation to the Professional Infrastructure Elements, and penalizing firms for failing to do so, the Task Force has recommended shifting the focus to proactively supporting firms in meeting the new standards through providing resources and support as part of the self-assessment process.

⁴⁵ Section 11 of the *LPA* provides the Benchers with the authority to make rules for governing law firms of any size.

⁴⁶ This requirement would be similar in nature to the current requirement under the Rules 2-10 and 2-11 for all lawyers to immediately notify the Executive Director of a change in the lawyer's place of practice or their contact information.

⁴⁷ This is similar to the duty placed on individual lawyers under Rule 3-5(6): a lawyer must cooperate fully in an

139. Although the designated representative will not be liable for firm misconduct, a new rule will establish that this individual must not knowingly or recklessly provide false information as part of the registration process. A similar rule will apply to firms.
140. The rules will also impose a penalty for a firm's failure to register with the Law Society. Given the simplicity of the recommended registration process, it is expected most firms will register. Prior to any enforcement action being taken, Law Society staff would work with firms to assist with any questions about the registration process and send reminders of the need to submit the registration form.

Self-assessment

141. A new rule will be drafted to require firms to complete the self-assessment form and submit it to the Law Society. Firms that fail to do so will be subject to a penalty.
142. Again, although the designated representative will not be liable for firm misconduct, a new rule will establish that this individual must not knowingly or recklessly provide false information in the self-assessment form. A similar rule will apply to firms.

Amendments to existing rules

143. A number of amendments to existing rules will be required. For example, drafters must standardize the use of the term "firm" and "law firm" throughout the Rules and ensure the use of language is consistent with that of the *LPA*.⁴⁸ The definition of "firm" in the Rules will have to be modified to reflect that, at this stage of regulatory development, in-house counsel, pro-bono and non-profit legal organizations and government lawyers are not included in the scheme.
144. In an effort to reduce the likelihood of "double regulation," the next phase of the Task Force's work will include efforts to identify those areas within the Rules where it may be more appropriate to move responsibility away from individual lawyers and to place it entirely on firms (e.g. trust reporting provisions).

investigation by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director (a) to the complaint, and (b) to all requests made by the Executive Director in the course of an investigation.

⁴⁸ Under the *LPA*, "law firm" is defined very broadly "a legal entity or combination of legal entities carrying on the practice of law."

Resource Implications

145. The Task Force does not propose charging firms a registration, or renewal of registration, fee and as a result, there would be no registration revenue.
146. While it is always difficult to estimate budgetary requirements before specific content for the self-assessment tools and workbook has been finalized as well as the development of model policies and resources, the following assumptions can be reasonably made relating to the implementation schedule noted in paragraph 129 and Recommendation 15:
1. Following Benchers approval, the Member Services and IS department would embark on developing an on-line form of registration. This would also include IS resources in expanding the Law Society's current database to accommodate the registration process and collection of the additional information.
 2. The IS department would also develop an on-line version of the initial self-assessment tool designed to elicit feedback from the firms to assist the Law Society in prioritizing the additional model policies and other resources to support firms in improving their ethical infrastructures.
 3. Following an analysis of the results of the first self-assessment cycle, model policies and other resources will be created and developed.
 4. The Law Society will develop an independent resource portal to house resources linked to the self-assessment tool.
 5. Following the analysis of the information gathered as a result of the first assessment cycle, the self-assessment tool will be refined and will be linked with the new model policies and resources that have been developed.
 6. At the conclusion of the second assessment cycle, a further analysis will be undertaken with a view to determine the ongoing frequency of future self-assessment and whether to incorporate any additional compliance and enforcement measures.
147. It is anticipated that the overall cost associated with the implementation is \$225,000.00, broken down as follow:
- IS Resources of approximately \$35,000 to develop the on-line registration form, expand the current database, develop an on-line version of the initial self-assessment and a reporting tool to analyze the results, and create an independent resource portal.

- A FTE position added to the Member Services Department (\$60,000) to provide ongoing assistance and support to firms regarding registration and annual renewals, completion of the initial self-assessment, work with the IS department on developing the on-line forms, and to assist with the analysis of the results.
 - \$130,000 to research, consult and develop model policies and other resources. While this figure is premised on a lawyer's salary for one year, it is not suggested that this be a permanent FTE position and would instead be contracted out.
148. It is also probable that prior to the completion of the revised second self-assessment, the Practice Advice Department will receiving an influx in calls. There will also be ongoing resources and support and, at this time, would offer the following as assumptions on an annual basis:
- IS resources for revisions and maintenance of \$5,000, assuming no major changes.
 - Updates and revisions to the model policies and resources of approximately \$10,000.
149. As noted, these are estimates only at this time and will ultimately depend on the finalization of the self-assessment tools and model policies and resources. In addition, these estimates do not include any further analysis following the conclusion of the second assessment cycle relating to the frequency of self-assessments and any additional compliance or enforcement measures, including increased investigatory and discipline resources to respond to firm conduct.

Summary of Recommendations

150. A summary of the 17 recommendations contained in the second Interim Report is as follows:

Recommendation 1: The Law Society will provide each firm with a pre-populated registration form and will require firms to verify the accuracy of its contents and update or add information, including the name of the designated representative, as necessary.

Recommendation 2: Firms must immediately notify the Law Society of any changes to their registration information, including the name and contact information of the designated representatives. Firms will also be required to renew their registration on an annual basis.

Recommendation 3: Firms must identify at least one designated representative, and may identify additional, alternate designated representatives, who will be readily available for receiving and responding to official communications from the Law Society, including but not limited to: general administrative matters, the self-assessment process, registration and conduct issues. The designated representative must be a lawyer at the firm and have practicing status in BC.

Recommendation 4: The Law Society is authorized to share information about a lawyer with the firm's designated representative when there is concern about the lawyer's conduct within the firm. The Law Society will exercise this discretion in a manner that is consonant with the principles of proactive regulation.

Recommendation 5: In addition to any similar obligation on individual lawyers under the existing rules, firms are required to respond fully and substantively to the Law Society with respect to any complaints or investigations against the firm or one of the firm's lawyers.

Recommendation 6: Fulfilling the duties of the designated representative is ultimately the responsibility of the firm and the designated representative is not personally responsible or liable for the firm's failure to fulfill those duties.

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.

Recommendation 8: Continue to refine the substantive content of the self-assessment tool.

Recommendation 9: Include material in the self-assessment tool related to equity, diversity, inclusion and cultural competency under a discrete Professional Infrastructure Element.

Recommendation 10: All firms are required to complete a self-assessment and submit it to the Law Society.

Recommendation 11: 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.

Recommendation 12: The Law Society will develop model policies and resources in relation to each of the Professional Infrastructure Elements for inclusion in the self-assessment.

Recommendation 13: The Law Society will provide firms with a variety of model policies in relation to each Professional Infrastructure Element and endorse the development of additional mechanisms to encourage policy development within firms.

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.

Recommendation 15: The implementation of law firm regulation will commence with registration and the completion of a concise self-assessment tool that will enable the Law Society to identify those areas where additional resources are required. Following a period in which the Law Society will engage in intensive resource development, a second assessment cycle will commence, in which firms will complete and submit a revised, resource-rich assessment tool. During this second assessment cycle, firms are expected to implement policies and processes in relation to each of the Professional Infrastructure Elements.

Recommendation 16: Unproclaimed amendments to the *Legal Profession Act* that are necessary for the functioning of the regulatory framework should be brought into force.

Recommendation 17: New rules are developed in relation to firm registration, designated representatives, information sharing and the self-assessment tool. Existing rules must be reviewed for clarity and consistency.

Next Steps

151. The second Interim Report represents a significant step forward in finalizing the design of law firm regulation in BC. A number of the Report's recommendations resolve key issues – for example, the responsibilities of the designated representative, the mechanisms associated with firm registration, the framework of the self-assessment and the Law Society's role in the development of model policies and other resources. Other aspects of the regulatory framework will continue to require additional work to ready the scheme for implementation, ideally in 2018.
152. Many of the “next steps” described below are operational in nature and as a result, the balance of work is likely to shift from the Task Force to Law Society staff. Once law firm regulation is implemented, the Benchers may wish to consider the Task Force's ongoing role, if any.

Registration

153. The proposed registration procedures must be discussed in detail with the Law Society's IT department to clearly establish what capabilities and resources are necessary to create a

functioning registration system, and whether this work can be done in-house. A prescribed registration form must also be developed and pre-populated with existing information for each firm in BC, including sole practitioners.

154. Additional Law Society staff may also need to be put in place to respond to inquiries from the profession about the registration and self-assessment process.⁴⁹

Self-assessment

155. The content of the self-assessment will continue to be refined in the coming months, with further consideration being given to the lists of Indicators and Considerations provided in the current draft. The Task Force endeavors to keep abreast of developments in Nova Scotia and the Prairie provinces as they roll out their self-assessments to the profession, and expects to learn from their experiences and challenges. Attention will also be given to improving the equity, diversity and cultural competency content of the self-assessment.
156. The self-assessment will also be substantially reconfigured as to create a shorter “formal” self-assessment tool that will be submitted to the Law Society, and a longer workbook that will enable firms to work through the Professional Infrastructure Elements in more detail. Both tools must be converted into an online format, and systems must be established for collecting and storing the information provided by the self-assessment. Discussions with the IT department on these issues are therefore essential.

Resource development

157. Significant work will be required to develop model policies and additional resources for the self-assessment tool. The list of existing resources will be revised later this year. However, as described in the Report, the majority of work on resource development will occur following the completion of the first self-assessment cycle. An appraisal of what this work will entail will occur once sufficient human resources are in place to support this aspect of the regulatory program.
158. Other areas of resource development that will require further consideration include the creation of an independent online resource-portal and exploring the creation of a collaborative space in which lawyers can exchange policies and best practices.
159. The matter of whether, and how, lawyers might obtain CPD credit for developing firm policies or attending workshops should be discussed by the Lawyer Education Advisory

⁴⁹ Anecdotally, when CPD was introduced to the profession, an additional full-time staff position was required to manage the surge in questions and concerns from the membership regarding the new scheme. It is anticipated the launch of law firm regulation will similarly result in an increase in member contact.

Committee as part of their current review of the CPD program. The Law Society would also benefit from liaising with CPD providers to discuss opportunities for the development of practice resources and model policies.

Rule development

160. Following the adoption of the recommendations in this Report, the Act and Rules Committee will prioritize drafting a basic set of rules, as outlined in this Report. Amendments to the existing rules are also required.
161. Importantly, the requisite sections of the *LPA* must be brought into force, and the new Rules approved by the Benchers prior to the commencement of the registration process.
162. At a later stage of regulatory development, the Task Force may wish to consider the areas of the Rules in which particular obligations and duties are shifted away from the lawyer and placed directly on the firm.

Communication and education

163. In the next phase of its work, the Task Force must address the educational and communications-related aspects of launching law firm regulation to the profession. Developing a communications strategy will be essential in this regard.
164. These communications should address not only the new obligations being placed on firms, but also, the highlight the merits of the proactive approach to regulation, the objectives of self-assessment and the support and resources that will be available for firms to assist them in meeting the new standards.
165. This messaging will be essential for the successful implementation of the regulatory scheme.
166. As a starting place, the Law Society must raise the profile of law firm regulation using a variety of media, including the Law Society website, the *Benchers' Bulletin*, the *Advocate*, other legal publications and social media. As noted above, the Law Society and external providers may wish to develop CPD courses and other educational initiatives that address various aspects of law firm regulation.
167. Within the Law Society, affected departments (e.g. Member Services, Policy) will require additional education, training and resourcing. A training session for Benchers prior to implementation, is also advisable.

Conclusion

168. Over the last three years, the Law Firm Regulation Task Force has undertaken the tremendous task of designing a proactive, outcomes-based regulatory model for governing the conduct of law firms in British Columbia.
169. The second Interim Report represents the latest and most productive stage of regulatory development, during which the Task Force has made critical decisions with respect to firm registration, the designated representative, the self-assessment process and resource and rule development. The Report also proposes an approach to, and schedule for the implementation of law firm regulation.
170. Together, these components create a regulatory scheme that will encourage and support the establishment of strong professional infrastructures within law firms of all sizes in BC, resulting in new opportunities and new responsibilities that will improve the provision of legal services to the public.
171. If adopted by the Benchers, the 17 recommendations contained in this Report also signal a turning point in the Task Force's work, shifting the focus from regulatory design toward operational implementation.
172. The Benchers will be provided with a final report in advance of the official launch of law firm regulation to the profession, which is anticipated to occur in early 2018.



Interim Report of the Law Firm Regulation Task Force

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Purpose: Decision

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Executive Summary

1. Recognizing that law firms exercise a significant amount of power in the legal profession and have considerable impact on, and influence over, professional values and conduct of lawyers practising in the firm, there has been a steady expansion of the number of legal regulators engaging in the regulation of entities providing legal services.
2. Following legislative amendments to the *Legal Profession Act* in 2012, the Law Society established a Law Firm Regulation Task Force, mandated with recommending a framework for regulating law firms in BC. This interim report provides the Benchers with a detailed review of the Task Force’s work-to-date and includes ten recommendations pertaining to various aspects of the regulatory design.
3. Elements considered in this report include:
 - defining regulatory goals and objectives;
 - the nature and scope of law firm regulation;
 - the adoption of a set of “professional infrastructure elements”;
 - the development of several ancillary aspects of the framework, including firm contacts and registration processes; and
 - a number of compliance and enforcement related issues, including self-assessment, compliance reviews and potential disciplinary action.
4. The report concludes by outlining the Task Force’s proposed next steps in developing a model of regulation that will improve the quality and effectiveness of the provision and regulation of legal services and enhance the protection of the public interest in the administration of justice.

Introduction

5. Historically, legal regulators have restricted their regulatory ambit to individual lawyers, a mode of regulation that was both desirable and practical in the context of a profession dominated by sole practitioners or small firms.
6. However, over the last several decades the landscape of the legal profession has changed dramatically. Although there are still a significant number of lawyers acting as sole practitioners, the majority of lawyers now practise in firms, some containing many hundreds of members. 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. Despite these significant changes, the regulatory approach has, until recently, remained largely the same – focused on the individual.

7. Increasingly, there is also a recognition that firms tend to develop distinct organizational cultures that affect the manner in which legal services are provided. Accordingly, firms have become relevant actors in terms of their impact on, and influence over, professional values and conduct, and exercise a significant amount of power in the legal profession.¹
8. In response, many jurisdictions are adopting new regulatory models designed to address the conduct of law firms. This interim report outlines work of the Law Society’s Law Firm Regulation Task Force, which has spearheaded the development of a law firm regulation framework for BC.

Background

9. Over the last decade, there has been a steady expansion of the number of regulatory regimes that have introduced aspects of regulation that specifically address entities that provide legal services. Regulators of the legal profession in England and Wales, and several Australian states have adopted regulatory models that address professional conduct at the firm level. Many Canadian provinces have followed suit, with numerous law societies broadening their regulatory focus, shifting from a model that exclusively focuses on individual lawyers to one that also includes the collective lawyers work in. Nova Scotia, Quebec, Ontario, Alberta, Saskatchewan and Manitoba are all at various stages of developing their own frameworks for entity regulation.²
10. In 2011, the Benchers decided there was merit in exploring the extent to which the Law Society could directly regulate law firms in BC.³ Recognizing that firms are now a dominant

¹ Adam Dodek, “Regulating Law Firms in Canada” (2012) 90:2 Canadian Bar Review. Dodek argues that law firm culture needs to be the focus of regulation. Rationale presented to support this new regulatory approach, include: the impact of firms’ cultures on the provision of legal services and associated professional conduct; public perception that members of large firms receive favourable treatment from regulators, undermining confidence in the self-regulation of the profession; and the recognition that most other professions regulate entities. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984635 . See also Amy Saltzyn “What If We Didn’t Wait?: Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Law Practices” (2014) Ottawa Faculty of Law Working Paper No. 2015-15. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2533229

² These jurisdictions are considering regulating non-legal entities as well. As such, their focus has been “entity” regulation rather than “law firm” regulation. At this stage, BC is only considering the regulation of law firms.

³ The Law Society’s last two Strategic Plans have both contained initiatives addressing law firm regulation. Most recently, initiative 2-2(b) of the 2015-2017 Strategic Plan directs the continuation of the work of the Task Force in

– but as yet, unregulated – feature of the legal environment, firm regulation was seen as a means of improving the quality and effectiveness of the provision and regulation of legal services across the province.

11. In 2012, legislative amendments to the *Legal Profession Act* (“LPA”) provided the Law Society with the authority to regulate law firms of any size and organizational structure. Some of these amendments are not yet in force, as they await the Law Society’s determination about how to exercise this new authority.⁴
12. Following these legislative changes, the Executive Committee created a staff working group to gather information about law firm regulation in other jurisdictions and possible models for regulation, including the advantages and disadvantages of various approaches. In July 2014, the Law Firm Regulation Task Force was established. The Task Force, which is composed of both Benchers and non-Bencher members of the profession and is supported by a team of Law Society staff, was given the mandate of recommending a framework for regulating law firms.
13. The Task Force is guided by four primary objectives:
 - a. to enhance the regulation of the legal profession by expanding the regulatory horizon beyond individual lawyers to include entities that provide legal services;
 - b. to enhance regulation by identifying areas of responsibility for law firms that reflect the importance of their role and by identifying opportunities for the development of standards for centralized functions that support the delivery of legal services, such as conflicts management and accounting;
 - c. to engage law firms in ensuring compliance with regulatory requirements and efforts to maintain and, if necessary, to improve the professional standards and competence of lawyers who practise in the firm; and
 - d. to establish responsibilities for communication, both within law firms and between firms and the Law Society, to ensure appropriate attention is brought to all matters involving regulatory standards and professional obligations.
14. The Task Force has met on eight occasions, during which it has considered a wide breadth of topics. These include: the value of establishing regulatory goals and outcomes; the nature and scope of law firm regulation, with a particular focus on the implications for sole

developing a framework for the regulation of law firms. Online at: www.lawsociety.bc.ca/docs/about/StrategicPlan_2015-17.pdf.

⁴ To see the Bill at 3rd reading, see www.bclaws.ca/civix/document/id/bills/billsprevious/4th39th:gov40-3. Some amendments are proclaimed, such as the giving the Benchers the authority to make rules governing law firms, but are as yet, unused.

practitioners; the creation of a set of “professional infrastructure elements” that will serve as the foundation of the regulatory framework; and the development of several ancillary aspects of the framework, including firm contact persons and registration processes. The Task Force has also discussed compliance and enforcement related issues, including self-assessment, compliance reviews and potential disciplinary action. Earlier this year, the Task Force also conducted a province-wide consultation canvassing lawyers on their views on many of these issues. Feedback from that consultation has been discussed by the Task Force and has aided in developing the recommendations below.

Purpose

15. At this juncture, the Task Force wishes to present the Benchers with an interim report. The purpose of this report is to provide a detailed summary of the Task Force’s work-to-date and reasoning, as well as to outline a series of recommendations that the Task Force has settled on.
16. The Task Force hopes that the report will elicit discussion around the recommendations presented below. As noted throughout this report, some aspects of the overall scheme are still under consideration, and feedback from the Benchers will assist the Task Force in continuing to develop some of the more detailed aspects of the regulatory framework.

Regulatory Goals

17. In the early stages of its work, the Task Force identified a number of rationales for pursuing law firm regulation. A central goal is to ensure fair and effective regulation that recognizes some issues and concerns transcend the work of any individual lawyer and are more akin to ‘firm’ responsibilities. Equally importantly, the new regulatory framework aims to aid the profession in delivering high quality legal services to clients through fostering a supportive, non-adversarial firm-regulator relationship. An additional regulatory goal of adopting a proactive approach to regulation is to reduce the types of behaviours that lead to incidents of misconduct, complaints and investigations. In so doing, the regulation should enhance the protection of the public interest in the administration of justice, as well as improving the Law Society’s effectiveness as a regulator. These broad goals have informed much of the Task Force’s work in developing the proposed regulatory model presented in this report.
18. Some jurisdictions have gone further than identifying a general set of rationale for law firm regulation and have established a set of specific “regulatory outcomes” – or the desired ends of the regulatory regime. These outcomes tend to be high-level and aspirational in nature and serve three major purposes: first, they help shape the regulatory scheme itself; second, they

can assist in clarifying the purpose of the regulation for both the profession and the public; and third, they can assist in measuring the success of the scheme, once implemented.

19. For example, the Nova Scotia Barristers' Society has developed six specific regulatory outcomes as part of its regulatory reform, which focus on lawyers and legal entities: providing competent legal services; providing ethical legal services; safeguarding client trust money and property; providing legal services in a manner that respects and promotes diversity, inclusion, substantive equality and freedom from discrimination; and providing enhanced access to legal services.⁵
20. At this stage, the Task Force is of the view that it is not essential to establish an exhaustive list of regulatory outcomes for BC. Rather, the Task Force recommends focusing on adopting a comprehensive set of "professional infrastructure elements," which represent key areas for which law firms bear some responsibility for the professional conduct of their lawyers. These elements, as further described at page 12 of this report, act as the backbone of the regulatory framework and are the *means* of achieving the goals of law firm regulation, rather than the end goals (regulatory outcomes) themselves. Many jurisdictions rely on similar types of elements or principles to define and guide the overall purpose of the regulation, rather than establishing a separate list of high-level, aspirational regulatory outcomes, as Nova Scotia has done.

Recommendation 1 - Focus on the development of professional infrastructure elements as a means of achieving the desired outcomes of law firm regulation

21. Once the regulatory framework has been established, the Task Force may reconsider whether there is merit in developing regulatory outcomes, particularly as it relates to measuring the success of law firm regulation.

Proposed Application of Law Firm Regulation

22. The nature and scope of law firm regulation are key issues for the Task Force, with the question of 'how' and 'who' to regulate being fundamental to the overall design of the new regulatory framework.

⁵Regulatory outcomes for Nova Scotia are currently in draft form. See online at: <http://nsbs.org/mselp-outcomes> Nova Scotia is also undertaking a broad exploration of changes to the entire regulatory model, for which it has identified defined regulatory "objectives" that set out the purpose and parameters of legal services regulation, more generally. See online at: <http://nsbs.org/nsbs-regulatory-objectives>

Nature of law firm regulation

23. The Task Force has engaged in considerable discussion regarding the merits of adopting a “proactive” regulatory approach. Proactive regulation refers to steps taken by the regulator, or aspects built in to the structure of the regulation, that attempt to address or eliminate potential problems before they arise, including misconduct that may or may not result in complaints to the regulator. Accordingly, the emphasis is on assisting firms to comply, rather than punishing them for non-compliance. This model is premised on the theory that the public is best served by a regulatory regime that prevents problems in the first place, rather than one that focuses on taking punitive action once they have occurred.
24. Proactive regulation is also typically “outcomes-based,” involving the setting of target standards or principles with which law firm compliance is encouraged. These principles are established and articulated by the regulator such that firms are told *what* they are expected to do, but there are no rules that tell firms *how* to specifically satisfy the principles and achieve compliance. This approach encourages both accountability and innovation in meeting professional and ethical duties.
25. In contrast, “reactive” regulation focuses on establishing specific prohibitions through prescriptive legal requirements (rules) and instituting disciplinary action when rules are violated. This is the approach law societies have traditionally taken when regulating lawyers: complaints are addressed individually in response to past misconduct.
26. A major criticism of this rules-based, complaints-driven model of regulation is that rather than taking steps to prevent the conduct from occurring in the first place, the regulator intervenes after the fact, and then only to sanction the lawyer for conduct that has already occurred. This creates little, if any, latitude for regulators to proactively manage behaviours of concern before they escalate.

Recommendation 2 – Emphasize a proactive, outcomes-based regulatory approach

27. Following a review of a substantial body of academic literature as well as existing and developing models of law firm regulation,⁶ the Task Force proposes a hybrid approach that

⁶ The Solicitors Regulation Authority in England and Wales and a number of Australian jurisdictions all take a proactive, principles-based regulatory approach. Alberta, Saskatchewan, Manitoba and Ontario are all considering adopting proactive compliance-based regulation for law firms, while Nova Scotia is currently in the process of implementing what is referred to as “proactive management based regulation.” The Canadian Bar Association also supports the proactive, compliance-based regulation of law firms.

emphasizes a proactive, principled, outcomes-based regulatory structure that is supported by a limited number of prescriptive elements designed to strengthen compliance.

28. As compared to more traditional modes of regulation, this “light touch” regulatory approach — which has informed many aspects of the regulatory design recommended by the Task Force in this report — is one in which the enforcement of rules plays a secondary and supporting role in achieving desired outcomes. The primary focus is on providing transparency about the objectives to be achieved, and placing greater accountability on both the regulator and the regulated in working together to ensure the proactive prevention of harms.
29. Under this approach, firms would implement internal policies and procedures addressing high-level principles established by the Law Society (“professional infrastructure elements”). The focus would be on outcomes, working in partnership with firms to support them in developing and implementing these policies to create a robust infrastructure that promotes the professional, ethical behaviour of their lawyers.
30. New rules would be designed to make firms’ development of, and adherence to these policies and procedures a regulatory requirement. Compliance may be monitored through self-assessment or compliance reviews, as further detailed later in this report. By creating obligations to implement policies that promote professional conduct, the Law Society and law firms become engaged in a joint effort to prevent the occurrence of the type of behaviours that result in harm to clients and the public, and which may result in complaints and subsequent regulatory intervention.

Scope of law firm regulation

31. Under the *Legal Profession Act*, the Law Society has the authority to regulate law firms, which are defined broadly as “a legal entity or combination of legal entities carrying on the practice of law.” As a result, all lawyers, including sole practitioners, *could* be recognized as practising within law firms and fall within the ambit of law firm regulation. However, whether all lawyers *should* be subject to law firm regulation, or subject to the same degree of regulation, must be considered. In this vein, the Task Force has discussed the merits of extending law firm regulation to non-standard law firms, including sole practitioners, individual lawyers in space-sharing arrangements, pro-bono and non-profit legal organizations, government lawyers and in-house counsel.

Recommendation 3 – Include traditional law firms and sole practitioners within law firm regulation, while considering the inclusion of pro bono and non-profit legal organizations, government lawyers and in-house counsel at a later stage of regulatory development.

Traditional law firms

32. In BC, over 70% of lawyers now practise in law firms comprising two or more lawyers. Of these, 35% practise in small firms (2-10 lawyers), 13.7% practise in medium-sized firms (11-20 lawyers) and 24.2 % practise in large firms of 20 lawyers or more. The remaining 27% are sole practitioners.⁷
33. In order to design a comprehensive regulatory scheme, the Task Force recommends that all law firms should be subject to some form of law firm regulation, without distinction based on size. However, the Task Force is aware that the particular sensitivities associated with firm size should be recognized throughout the regulatory development process. Care must be taken not to add burdensome layers of regulation on top of the duties and obligations that existing rules already place on individual lawyers.

Sole Practitioners

34. The prevailing view of the Task Force is that sole practitioners should not be excluded from all aspects of law firm regulation, given this type of practice structure provides a sizable portion of the legal services delivered in BC. This position is also informed by the concern that such an exclusion may encourage some lawyers to pursue sole proprietorship to avoid being subject to the new regulatory scheme. However, the Task Force recognizes that, as the only lawyer in the firm, any ‘law firm’ responsibilities to meet regulatory requirements effectively fall to this individual. Given the broad goal of improving the regulatory process, creating additional burdens or costs for sole practitioners, or worse, double-regulation (as both an individual and a firm) should be avoided. Further, there may be some aspects of law firm regulation that have limited practical application when the firm consists of only one lawyer.
35. For example, if law firm regulation introduced a requirement that each firm must have policies and procedures in place to ensure conflicts of interest are avoided, consideration must be given to how this requirement should be tailored to the circumstances of sole practitioners, who, as individual lawyers, already have an independent professional responsibility to avoid conflicts of interests.
36. The Task Force recognizes that the nature and complexity of such policies will also vary based on whether the practice comprises one lawyer or hundreds, and the regulatory framework must recognize that a one-size-fits-all approach will be insufficient.

⁷ These statistics were compiled on September 15, 2016.

37. The Canadian Bar Association (“CBA”) has also highlighted the importance of ensuring that regulations are designed with a view to the unique practice circumstances of sole practitioners, including considering exemptions, as required, to avoid undue burden.⁸
38. The Task Force recommends that sole practitioners be engaged throughout the consultation process and provided with additional support as new regulations are rolled out, including guidance on the new regulatory requirements and access to model policies, specially-tailored education, training and mentorship programs.

Lawyers in space-sharing arrangements

39. The Task Force also recommends that sole practitioners in space-sharing arrangements be considered a regulated entity for some aspects of law firm regulation. These small collectives frequently develop creative, pragmatic and mutually-beneficial ways of supporting each other in practice, a mode of cooperation that the new regulatory scheme will actively encourage. Accordingly, rather than each lawyer being individually responsible for every aspect of compliance, space-sharing lawyers will be able to find ways to exploit efficiencies by meeting particular compliance obligations together.
40. Again, it is important that the unique practice circumstances of these groups are supported, not burdened, by the overarching regulatory design. In the next phase of its work, the Task Force will continue to consider how facilitating group compliance for space-sharing lawyers may best be achieved.

Pro bono and non-profit legal organizations

41. The Task Force recognizes that organizations which exclusively provide pro bono or non-profit legal services play a unique role in the provision of legal services within BC. Accordingly, the Task Force recommends undertaking a detailed analysis of the merits of their inclusion or exclusion from law firm regulation as part of the next phase of regulatory development, once critical design elements are in place.

Government lawyers and in-house counsel

42. As a collective, lawyers working within government and as in-house counsel operate in a very different context than private law firms, particularly given that they are not providing legal advice directly to the public. Consequently, some of the principles that underpin the

⁸ See CBA Resolution 16-19-A “Entity Regulation and Unique Circumstances of Small and Sole Practitioners”. Online at: <https://www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2016/Entity-Regulation-and-Unique-Circumstances-of-Smal/16-19-A-ct.pdf>

new regulatory framework may not be as relevant or applicable as they are to those in private practice.

43. On this basis, the Task Force recommends that government lawyers and in-house counsel not be included in the scope of law firm regulation at this stage. This position aligns with that of the CBA, which also supports more study and consultation before law firm regulation is extended to these groups of lawyers.⁹ The Law Society of Upper Canada also suggests an incremental approach to the application of law firm regulation to government lawyers, corporate and other in-house counsel.¹⁰
44. Accordingly, the inclusion of these ‘firms’ into the regulatory scheme will be reconsidered at a later date.

Alternative business structures

45. The question of whether to allow non-lawyer controlling ownership of legal service providers is a distinct issue from the matter of law firm regulation. Consequently, when determining what type of regulatory framework is most suitable for law firm regulation, and establishing the associated regulatory elements, the Task Force will not address whether the Law Society should be engaged in the regulation of other kinds of entities.
46. Notwithstanding the proposed inclusions and exclusions detailed above, the Task Force envisages a multi-phased introduction of the new regulatory program such that some, if not all, of the practice structures initially identified as falling outside the ambit of law firm regulation may be subject to new regulatory requirements at a later date. Throughout the implementation process, the Task Force will continue to reflect on the appropriateness of the framework’s application to pro bono and non-profit legal organizations, as well as government and in-house counsel.

Regulatory Framework Foundation: “Professional Infrastructure Elements”

47. Much of the Task Force’s work-to-date has focused on determining where injecting aspects of regulation that specifically target firms would support or supplement the existing regulatory system. This includes areas where it may be more appropriate to entirely shift responsibility away from the individual lawyer and place it on the firm.

⁹Letter from the Canadian Bar Association to the Federation of Law Societies and the Law Society of Upper Canada (February 26, 2016).

¹⁰ Law Society of Upper Canada, “Promoting Better Legal Practices” (2016). Online at : <https://www.lsuc.on.ca/with.aspx?id=2147502111>

48. Aided by consultation with the Law Society membership, a review of regulatory frameworks of other jurisdictions implementing law firm regulation, and a review of the *Legal Profession Act*, Law Society Rules and Code of Professional Conduct, the Task Force has identified eight specific areas where it is appropriate for firms to take responsibility to implement policies and procedures that support and encourage appropriate standards of professional conduct and competence.
49. These eight elements, which the Task Force has called “professional infrastructure elements,” correlate to core professional and ethical duties of firms. They are designed to be sufficiently high level and flexible to be adapted to different forms of practice, yet concrete enough to establish clear, basic standards for firm conduct.
50. Under the new framework, firms would be required to put in place – if they have not done so already – policies and procedures in relation to each of the professional infrastructure elements. Firms would be left to determine how to most effectively create and implement these policies rather than being subject to prescriptive rules. The expectation is that firms will use these professional infrastructure elements to guide best practices and to evaluate their compliance with the overarching regulatory requirements.

<p>Recommendation 4 – Adopt a set of professional infrastructure elements</p>
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51. The Task Force recommends adopting the set of eight professional infrastructure elements set out below. These elements reflect a refinement of the Task Force’s considerable work on this issue and represent the key areas for which law firms bear some responsibility for the professional conduct of their lawyers. The proposed elements will be accompanied by associated guidance questions that will assist firms in determining how to interpret and satisfy each particular principle.
52. Firms may design their own policies and procedures addressing these elements. The Law Society will also aim to develop model policies in key areas that firms may choose to adopt or modify, which may be of particular benefit to small firms and sole practitioners who do not already have policies in place or do not have sufficient resources to develop them on their own.
53. Regardless of how policies are created or implemented, it is ultimately a firm’s responsibility to decide how to comply with the professional infrastructure elements, taking into account the nature, scope, size and characteristics of their practice.

Proposed Professional Infrastructure Elements

	Element	Description	Rationale
1.	Competence and effective management of the practice and staff	<p>Ensuring the firm provides for the delivery of quality and timely legal services by persons with appropriate skills and competence. This includes ensuring that:</p> <ul style="list-style-type: none"> • issues or concerns about competence are handled in a constructive and ethically appropriate fashion, • the delivery, review and follow up of legal services are provided in a manner that avoids delay, • the firm enables lawyers to comply with their individual professional obligations, and • the firm provides effective oversight of the practice, including succession planning. 	<p>Issues relating to competence give rise to significant risks for the public and clients, including exposing law firms and lawyers to negligence claims and complaints. These issues can result from poor oversight of work products and the practice more generally.</p>
2.	Client relations	<p>Providing for clear, timely and courteous communication with clients, client relations and delivery of legal services so that clients understand the status of their matter throughout the retainer and are in a position to make informed choices. This includes having an effective internal complaints process available to clients in the event</p>	<p>Of the complaints received by the Law Society, many stem from a lack of appropriate communication with the client or delay resulting in the client feeling neglected. Many complaints are closed at the Law Society staff level, which means they are not serious enough to be referred to a regulatory committee; however, they account for a significant proportion of complaints. Law firms are well</p>

		of a breakdown in the relationship.	positioned to influence lawyer behaviour in a positive manner and prevent these types of complaints from occurring in the first place.
3.	Confidentiality	Ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.	<p>Solicitor-client privilege and confidentiality are principles of fundamental justice and civil rights of supreme importance in Canadian law.¹¹ One of a lawyer’s most important ethical obligations is to uphold and protect these principles. Failure to do so is to violate significant professional obligations. Further, law firms in BC are subject to privacy legislation which sets out a series of obligations concerning the collection, storage and use of personal information.</p> <p>Nevertheless, the Law Society receives a number of errors and omissions claims and complaints relating to lost or missing documents.¹² Lawyers are also required to report lost or improperly accessed records, or records that have not been destroyed in accordance with instructions, to the Law Society under Rule 10-4. Given the vast amount of personal information about clients in the possession of law firms, the potential for human error in this regard is high.</p>

¹¹ *Lavallee, Rackell and Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209

¹² The Law Society of British Columbia, Practice Material: Practice Management (February 2013) at p. 24. Online at: <http://www.lawsociety.bc.ca/page.cfm?cid=300>

4.	Avoiding conflicts of interest	Ensuring conflicts of interest are avoided from the outset and, where not avoided, ensuring they are resolved in a timely fashion.	Law firms have an important role to play in educating lawyers and non-legal staff about recognizing conflicts of interest and related issues. Conflict allegations accounted for about 8% of new complaints received by the Law Society in 2015. In some cases, the conflict could have been avoided had the firm had an appropriate system for performing a conflicts check.
5.	Maintaining appropriate file and records management systems	Providing appropriate file and records management systems to ensure that issues and other tasks on a file are noted and handled appropriately and in a timely manner. This includes providing for the appropriate storage and handling of client information to minimize the likelihood of information loss, or unauthorized access, use, disclosure or destruction of client information.	Requiring firms to maintain appropriate file and records management systems will reduce the risk of negligence claims for missed dates and lost file materials and the number of client dissatisfaction complaints.
6.	Charging appropriate fees and disbursements	Clients are charged fees and disbursements that are fair and reasonable and that are disclosed in a timely fashion.	A significant number of complaints received by the Law Society stem from dissatisfaction with fees. Much of the dissatisfaction could be avoided with clear written communication about fees at the outset and ongoing updates as to costs as the matter proceeds.
7.	Financial management	Ensuring compliance with accounting requirements and	Clients must have confidence that lawyers will handle their trust

		procedures, including the provision of appropriate billing practices.	funds in strict compliance with the rules. Mishandling of trust funds poses a complaints and claims risk and undermines the confidence the public should have in lawyers.
8.	Compliance with legal obligations relating to safe and respectful workplace	The firm provides a workplace that complies with legal obligations under the <i>BC Human Rights Code</i> , <i>Workers Compensation Act</i> and regulations made under that Act relating to freedom from discrimination and protection against bullying and harassment.	It is not intended that law firm regulation duplicate existing legislative requirements in relation to maintenance of a healthy law firm culture for lawyers and staff. However, recognizing the importance of these legal obligations, law firms should be required to have policies in place to ensure compliance with these obligations. Often there are red flags in a law firm or when lawyers or staff need help, and if issues are caught and addressed early, complaints and claims could be avoided and the public would be better protected.

Recommendation 5 – Develop mechanisms to establish compliance with professional infrastructure elements as a regulatory requirement

54. In order to ensure that firms take responsibility for their role in law firm regulation, the Task Force also recommends developing new rules that *require* firms to have adequate policies and procedures in place to address each of the professional infrastructure elements.¹³ New rules should also require the policies and procedures to be in writing and kept at firm’s place of business. This will provide clarity about the nature and scope of firm policies, ensure they

¹³ Amendments to the *Legal Profession Act* (s. 11) permit the Benchers to make rules for the governing of law firms.

are readily available to staff at the firm and that they can be easily be provided to the Law Society, upon request. Further commentary on the enforcement of new regulatory requirements, including the requirement to have policies and procedures in place that satisfy the professional infrastructure elements, are detailed in the last portion of this report.

55. The Task Force recognizes that a transitional period will likely be required so that firms have sufficient time to understand the new rules and to develop and implement firm policies and procedures addressing the professional infrastructure elements. The Task Force will establish timelines for rolling out the new regulatory scheme in the next phases of its work.

Additional Aspects of the Regulatory Framework

Firm registration

56. It is essential that the Law Society is able to establish precisely who falls under the new regulatory framework. In considering how to achieve this, the Task Force has analyzed two different approaches: one requiring firms to complete a detailed authorization process (akin to licensing) administered by the regulator, the other simply requiring firms to register with the regulator.
57. The former process is requirements-based, such that the firm is essentially applying for permission to offer legal services. This is the approach taken in the England and Wales, where the Solicitors Regulation Authority looks carefully at the entity and its proposed activities as part of the process for determining whether the firm will be granted a Certificate of Authorization and thus, can provide legal services. This approach appears to be fairly onerous and requires considerable resources on the part of the regulatory body to administer.
58. In contrast, registration is largely informational in nature. This is the approach taken in some Australian jurisdictions, where law practices are required to provide the regulator with basic information, including a firm name, address and a list of lawyers, so that a register of law practices can be maintained. Firms must also notify the regulator when commencing or ceasing the practice of law, or when lawyers join or leave firms.
59. Given the administrative burden and costs associated with authorization, and the fact that there is already a licensing process at the individual lawyer level,¹⁴ the Task Force recommends that initially, firms not be required to go through a formal process in order to obtain a license to provide legal services. At this stage of regulatory development, registration will suffice.¹⁵ Information collected through the registration process would

¹⁴Requiring licensing of law firms could result in the double regulation of sole practitioners, essentially requiring them to license twice: once, as an individual lawyer and a second time, as a firm.

¹⁵ The registration approach is also being favoured by Alberta, Saskatchewan and Manitoba as part of the development

include the details of the firm address, contact person(s), names of partners and staff lawyers and areas of practice. Mechanisms should be in place to ensure this information is regularly updated.

Recommendation 6 – Establish a registration process for law firms

60. In addition to enabling the Law Society to clearly establish who is being regulated, information collected during the registration process may also be used for a variety of other purposes, including compiling statistics for the annual report, providing data to aid with future identification of risk and obtaining the details of the designated contact persons at the firm.
61. As neither the *Legal Profession Act* nor the Law Society Rules currently require firms to register with the Law Society, new rules will need to be developed outlining the registration process. Rules should detail the type of information firms should provide to the Law Society, the frequency and manner in which registration information is provided or updated and the extent to which this information can be shared.
62. During the next phase of its work, the Task Force will further refine what registration information should be collected, as well as considering the most appropriate method for obtaining, updating and sharing this information.

Designated contact individual

63. Most jurisdictions regulating law firms include a requirement to designate a person with responsibility for certain activities of the firm or its lawyers. The extent of the responsibilities of these contact persons vary widely, from substantial obligations to significantly less onerous roles.
64. At one end of the spectrum, law firms in England and Wales are required to appoint two compliance officers: one who is responsible for the oversight of legal practice, and the other for the firm's finance and administration. Persons occupying these positions have ultimate

of their law firm regulation. See “Innovating Regulation: A Collaboration of the Prairie Law Societies” Discussion Paper (November 2015) at p. 41. Online at: <https://www.lawsociety.sk.ca/media/127107/INNOVATINGREGULATION.pdf>. Nova Scotia requires all law firms to file an annual report that details names of lawyers and the nature of their role within the firm, as well as the location and particulars of the firm's trust accounts. All LLPs must register with the Executive Director. See Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28 at 7.2.1 and 7.4 Online at: <http://nsbs.org/sites/default/files/cms/menu-pdf/currentregs.pdf>

responsibility for any firm misconduct. The SRA intends to retain these roles, notwithstanding other significant anticipated changes to their regulation of law firms.¹⁶

65. Until the recent implementation of the new *Legal Profession Uniform Law*¹⁷, incorporated legal practices in some Australian jurisdictions were required to appoint a legal practitioner director who was responsible for the implementation of “appropriate management systems” (the equivalent of the professional infrastructure elements), for taking reasonable action to ensure that breaches of professional obligations do not occur and to ensure that, if breaches do occur, appropriate remedial action is taken. The legal practitioner director was liable for disciplinary action if these obligations were not met.¹⁸
66. Even in the absence of full-scale law firm regulation, Nova Scotia requires law firms to designate a contact person to receive official communications from the regulatory body, including complaints against the firm.¹⁹ Alberta requires law firms to designate a lawyer who is “accountable” for controls in relation to trust accounts as well as the accuracy of all filing and reporting requirements.²⁰ Ontario is also considering a designated contact as part of their evolving law firm regulation. It is expected that this individual will be tasked with receiving notice of complaints and taking steps to address a firm’s failure to meet its regulatory responsibilities.²¹
67. In the context of a regulatory scheme that seeks to establish a regulatory partnership between the Law Society and firms, and the resulting increase in interactions between the two bodies, the Task Force recommends that firms be required to nominate one or more of their lawyers as a designated contact person.

¹⁶ The SRA is currently undertaking a comprehensive review of its regulatory approach. See Solicitors Regulation Authority, “Consultation, Looking to the Future – Flexibility and Public Protection” (June 2016). Online at: <https://www.sra.org.uk/sra/consultations/code-conduct-consultation.page> at p. 19.

¹⁷ In July 2015 the *Legal Profession Act, 2004* was replaced by the *Legal Profession Uniform Law Application Act, 2014*, which will govern both New South Wales and Victoria.

¹⁸ Christine Parker, “Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible” (2004) 23:2 *University of Queensland Law Journal* 347 at 371 and 373. Online at: <http://www.austlii.edu.au/au/journals/UQLawJl/2004/27.pdf>

¹⁹ This individual has no personal responsibility for the activities of the firm or the conduct of lawyers associated with it. See Regulations made pursuant to the *Legal Profession Act, supra* note 15.

²⁰ The Rule of the Law Society of Alberta at 119.1. Online at: <http://www.lawsociety.ab.ca/docs/default-source/regulations/rules698a08ad53956b1d9ea9ff0000251143.pdf?sfvrsn=2>

²¹ Law Society of Upper Canada, Professional Regulation Committee Report “Convocation, Professional Regulation Committee Report” (April 2015) at para 52. Online at: [http://www.lsuc.on.ca/uploadedFiles/For the Public/About the Law Society/Convocation Decisions/2015/convocation-april-2015-professional-regulation.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2015/convocation-april-2015-professional-regulation.pdf)

Recommendation 7 – Establish a role for the designated contact person that includes responsibilities related to general communications, reporting and complaints.

68. The Task Force proposes that the designated contacts’ responsibilities should fall on the “less onerous” end of the spectrum; that is, the contact should not be held responsible for creating policies or ensuring a firm meets other regulatory obligations, nor should they be subject to personal liability for firm non-compliance. The Task Force suggests four possible areas of responsibility for the designated contacts, as detailed below:

Acting as the primary administrative liaison between the Law Society and the firm

69. The designated contacts’ responsibilities would include ensuring that firms have registered and that the Law Society is apprised of any material changes in registration information. Designated contacts would also receive official correspondence from the Law Society.

Reporting on compliance with the professional infrastructure elements

70. The designated contacts’ reporting responsibilities could include documenting whether firms have policies and procedures in place that address the professional infrastructure elements and providing evaluations as to the extent these policies and procedures have been followed.²² The Task Force does not suggest making the designated contacts personally responsible for the accuracy of the reports submitted on the firms’ behalf. Rather, the designated contacts would be expected to provide the relevant information to the Law Society in a timely fashion, if requested, with the ultimate responsibility for compliance falling to the firm.

Receiving notice of, and responding to complaints against the firm or lawyers at the firm

71. The role of the designated contacts with respect to the complaints process has generated considerable discussion. The Task Force recommends that these persons should be required to cooperate with the Law Society in the investigation of complaints about their firms and the firms’ lawyers by coordinating responses that respond fully and substantially to the complaint. However, the process surrounding the *reporting* of complaints — both by the

²² This could be done by way of the completion of self-assessment on behalf of the firm, as detailed later in this report.

designated contact to the Law Society and by the Law Society to the designated contact — is still under consideration.

72. With respect to complaints against the firm itself, the Task Force is considering the level of discretion designated contacts should have in reporting complaints of which they become aware to the Law Society. Similarly, when a complaint is made about a specific lawyer within the firm, the Task Force is also evaluating the extent of the designated contacts' discretion in reporting this to Law Society and the timing and informational content of any such reports.
73. Conversely, the Task Force also continues to discuss the degree of discretion the Law Society should exercise in reporting complaints or investigations against lawyers to firms' designated contacts (e.g. whether all complaints received by the Law Society against a particular lawyer should be reported, or only those that meet a certain threshold), as well as the amount of information provided to a firm by the Law Society in the wake of a complaint or investigation against one of its lawyers.
74. The principles by which this discretion will be exercised will be further refined in the next stage of the Task Force's work. In carefully examining these issues, the Task Force recognizes the benefits associated with information sharing, as well as the need to balance the privacy rights of the individual with the public interest in informing firms of the misconduct of one of its lawyers, such that the firms could take steps to remedy the behaviour before it escalates or recurs. The Task Force is also cognizant of the discretion already exercised by the Professional Conduct department as part of their existing complaints process involving individual lawyers.
75. The *Legal Profession Act* does not contain a general requirement for law firms to nominate a designated contact for the purposes of communicating with the Law Society on administrative or other matters. Accordingly, a new rule is needed to require law firms to nominate one or more practising lawyers as a designated contact for the firm. The rules would also need to clearly set out the responsibilities of these person(s), as recommended above.
76. Unproclaimed amendments of the *Legal Profession Act* also refer to a “representative of a law firm or respondent law firm” for the purposes of appearing in front of a hearing panel on a discipline matter.²³ The legislative amendments therefore contemplate the designation of a law firm representative for the purposes of disciplinary action. Rules regarding the designated contacts' responsibilities related to disciplinary action may therefore be advisable.

²³ Section 41(2) *Legal Profession Act* (unproclaimed).

77. Further, if a decision is made to permit the Law Society to disclose complaints against lawyers to the firm’s designated contact, new rules to this effect will also be necessary. Currently, the rules prohibit information sharing of this type.

Compliance and Enforcement

Tools for monitoring compliance

78. The purpose of the principled, outcomes-based regulatory approach is to ensure that firms implement policies and procedures such that the principles identified by the professional infrastructure elements are satisfied. While firms are given significant autonomy and flexibility in how they meet their obligations, a method for reviewing and evaluating progress towards these outcomes is necessary in order to determine whether compliance is being achieved.
79. Other jurisdictions engaged in law firm regulation have also seen value in assessing and monitoring compliance and have focused two main tools to do so: self-assessment and compliance reviews.

Self-assessment

80. Self-assessment, completed by an individual at the firm on behalf of the firm, can range from a requirement to fill out an online form rating basic compliance with established regulatory principles²⁴ (e.g. professional infrastructure elements) through to providing the regulator with a detailed informational report that includes documentation of all material breaches of regulatory principles.²⁵
81. Australian studies have suggested that the effects of self-assessment may be beneficial, with the requirement for firms to assess their own compliance with their implementation of “appropriate management systems” resulting in a statistically significant drop in complaints.²⁶ Additionally, the self-assessment process acts as an education tool by requiring

²⁴ This was the approach taken by the Office of the Legal Services Commissioner in New South Wales, in which a legal practitioner director was required to rate the firm’s compliance with each of the ten established objectives of the regulatory scheme, using a scale ranging from “non-compliant” to “fully compliant plus”. In July 2015, the *Legal Profession Act, 2004* was replaced with the *Legal Profession Uniform Law Application Act, 2014*, under which there appears to be no requirement to complete a self-assessment process. Nova Scotia’s proposed self-assessment asks regulated entities to assess themselves as: “not-applicable,” “non-compliant,” “partially compliant” or “fully compliant” with the management systems set by the regulator. Online at: <http://nsbs.org/draft-self-assessment-process-legal-entities>

²⁵ This is the responsibility of firms’ compliance officers in England and Wales, who must report to the Solicitors Regulation Authority.

²⁶ The authors of the study contributed this to the learning and changes prompted by the self-assessment process rather than to the actual (self-assessed) level of implementation of management systems. See Tahlia Gordon, Steve Mark and

firms to review and revise their policies, a learning exercise that improves client services.²⁷ Self-assessment can also be used to measure the success of law firm regulation; for example, statistics generated from responses obtained through self-reporting may help identify areas of the regulatory scheme that are functioning well or need improvement.

82. Self-assessments have been recommended for inclusion as part of developing law firm regulation in Ontario²⁸, Saskatchewan, Manitoba and Alberta²⁹. As a part of their implementation of law firm regulation, Nova Scotia is currently launching a pilot project evaluating the self-assessment tool they have developed to measure firms' compliance with their "management systems for ethical legal practice."³⁰
83. The Task Force is generally in favour of the use of self-assessment and recommends its incorporation into the law firm regulation framework.³¹ The primary goal of the assessment exercise is to ensure that firms turn their minds to the policies and procedures that address the professional infrastructure elements and to regularly evaluate the extent to which they are being followed. The effectiveness of the self-reporting scheme should be assessed after a period of time to determine whether it is meeting the goals or whether a more robust scheme is necessary.

Recommendation 8 – Adopt the use of self-assessment to monitor compliance

84. For example, the self-assessment form could set out the eight professional infrastructure elements and require firms to evaluate whether they are fully, partially compliant or non-compliant with a policy that supports these elements. If a firm indicates it is only partially or non-compliant, it must explain why this is the case as part of the assessment. The Law Society could also use self-assessment as a tool to determine which firms are at risk of

Christine Parker "Regulating Law Firms Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW" (2010) *Journal of Law and Society*. Online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315

²⁷ Canadian Bar Association, "Assessing Ethical Infrastructure in Your Law Firm: A Practical Guide" (2013). Online at: <http://www.cba.org/CBA/activities/pdf/ethicalinfrastructureguide-e.pdf>

²⁸ See Law Society of Upper Canada, Compliance Based Entity Regulation Task Force "Report to Convocation" (May 2016) at p. 4. Online at: http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/convocation_may_2016_cber.pdf

²⁹ See "Innovating Regulation: A Collaboration of the Prairie Law Societies" Discussion Paper (November 2015) at p. 40. Online at: <https://www.lawsociety.sk.ca/media/127107/INNOVATINGREGULATION.pdf>

³⁰ See Nova Scotia Barristers Society, "Draft Self-Assessment Process for Legal Entities" *supra* note 24. Two derivatives versions of this self-assessment tool are also expected to specifically address the work of sole practitioners and small firms, and in-house counsel.

³¹ This position is aligned with that of the Canadian Bar Association. See the CBA Committee's Ethical Best Practices Self Evaluation Tool. Online at: <http://www.lians.ca/sites/default/files/documents/00077358.pdf>

misconduct and to initiate dialogue with firms that are failing to meet the regulatory requirements, in an effort to help them achieve full compliance.

85. The Task Force has not decided on the precise mode or frequency of self-assessment. In the next phase of its work, the Task Force intends to explore who should be required to complete self-assessments and how frequently they should be undertaken (e.g. all firms at regular intervals, on an ad-hoc basis in response to complaints against particular firms, at reduced frequency for firms that demonstrate consistent compliance). The Task Force will also consider how self-assessments should be administered; for example, whether they should be included as part of an annual practice declaration or trust report or as a stand-alone process, and whether assessments should be filed on paper or through an on-line portal.
86. Rules may be necessary to further guide the administration of the self-assessment process.

Compliance reviews

87. The Task Force has also discussed the extent to which compliance reviews may assist in monitoring compliance with the new regulatory framework. These audit-type processes would be designed to emphasize compliance by helping firms to identify areas requiring improvement rather than serving as a mechanism for penalizing for non-compliance.
88. Compliance reviews are currently being considered for inclusion as part of law firm regulation in Ontario,³² Alberta, Saskatchewan and Manitoba,³³ and are supported by the Canadian Bar Association.³⁴ Australian jurisdictions also conduct compliance audits if there are reasonable grounds to do so based on conduct or complaints relating to either the law practice or one or more of its associates.

Recommendation 9 – Consider adopting the use of compliance reviews to monitor compliance

89. The Task Force is considering utilizing compliance reviews to assist in monitoring firms' compliance with the new regulatory framework. Components of the review could include confirming that policies and procedures relating to each of the professional infrastructure elements are in place, identifying areas where the implementation or maintenance of these policies or procedures is inadequate and providing guidance as to how these inadequacies can be remedied.

³² *Supra* note 28

³³ *Supra* note 15.

³⁴ *Supra* note 9.

90. The Task Force is also considering when a compliance review might be triggered. Possibilities include: routine reviews at defined intervals; a review resulting from a firm failing to complete the self-assessment process or providing inadequate or inaccurate information; a review following a self-assessment that indicates a firm is only partially compliant or non-compliant; a review in response to a complaint against the firm; or a review deemed necessary due to other indications that appropriate policies and procedures are not being implemented or maintained (e.g., a concern about accounting arises in the context of a trust audit).
91. The Task Force will undertake further analysis before recommending how, and by whom, compliance reviews would be conducted. Particular attention will be given to the potential financial and resource implications for the Law Society of including a compliance review component in the regulatory framework.

Enforcement

92. The Task Force has not discussed enforcement in any degree of detail. Further analysis on how the disciplinary process should unfold in relation to firm misconduct is necessary with the assistance of staff in the Professional Conduct and Discipline departments who have detailed knowledge of how disciplinary action does, and could, work. However, for the purposes of this report, it is sufficient to provide a few high-level statements with respect to the anticipated enforcement strategy.
93. As discussed throughout this report, the model of law firm regulation recommended by the Task Force will primarily be a proactive, principled and outcomes-based framework that focuses on compliance. This light-touch approach emphasizes prevention over punishment such that discipline against firms is not anticipated to be pursued frequently. However, unless the framework includes enforcement capabilities in the form of disciplinary action or sanctions, there is no ability to ensure compliance with regulatory obligations. Consequently, determining what situations might warrant disciplinary action and developing a suite of enforcement tools will also be necessary.³⁵

Recommendation 10 – Continue to develop policies and rules to address non-compliance with new regulatory requirements

³⁵ The Solicitors Regulation Authority has also emphasized the need to develop a defined enforcement strategy in addition to new rules as part of its phased review of their regulatory approach to regulating both lawyers and firms. Further consultations on that enforcement policy will occur later this year. *Supra* note 16 at pp. 10 and 13. Notably, the SRA has proposed two separate Codes of Conduct – one for solicitors and one for firms – which are intended to provide greater clarity to firms as to the systems and controls they need to provide good legal services for consumers and the public, and greater clarity to individual lawyers with respect to their personal obligations and responsibilities.

Situations that may warrant disciplinary action

94. There are two types of situations whereby firms may find themselves subject to disciplinary measures. First, a firm may be found to be non-compliant with new regulatory requirements. For example, if there is a requirement to have policies and procedures in place that address the professional infrastructure elements and a firm fails to implement such policies or procedures, the Law Society may undertake disciplinary action to address this non-compliance. Similarly, if there is a new rule requiring firms to register, a firm that fails to register could be subject to a sanction.
95. Second, the law firm may be subject to a specific complaint that may warrant some form of disciplinary action. Amendments to the *LPA* include the addition of a definition of “conduct unbecoming the profession,” which is broad enough to capture the conduct of firms as well as individual lawyers.³⁶

Focus of disciplinary action

96. The Task Force discussed the need to develop guidance around when regulatory intervention should be focused at the firm level, when the focus is more appropriately placed on individual lawyers, and when both the lawyer and the firm should be subject to some form of disciplinary action.
97. In some cases, it will be clear where regulatory efforts should be directed. For example, if the Law Society received a complaint about a conflict of interest and, upon conducting an investigation, found that a firm had failed to develop policies and procedures on conflicts, the firm could be subject to disciplinary action. Conversely, if a compliance review revealed that the firm had strong policies and procedures regarding conflicts, but a lawyer failed to disclose all relevant facts to the firm or failed to raise pertinent information with the firm’s conflicts committee, and was subsequently found to be in a conflict of interest, it may be that the lawyer, but not the firm, becomes the subject of disciplinary action. A third situation may arise in which the firm is found to have a conflicts policies and procedures in place, but upon review by the Law Society, the policies and procedures are determined to be inadequate. A lawyer has nevertheless followed the policies and procedures and is found to be in a conflict of interest. It is possible that disciplinary action would only be pursued against the firm and not the lawyer.

³⁶“Conduct unbecoming the profession” includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board a) to be contrary to the best interest of the public or of the legal profession, or b) to harm the standing of the legal profession. Section 38 of the *LPA* has also been amended to include references to “conduct unbecoming the profession”. See sections 1(b) and 27 of the *Legal Profession Amendment Act, 2012*. Neither of these amendments are in force.

98. This example highlights the need to develop some general parameters and policies around when the Law Society should pursue matters with individual lawyers, with firms, or both.
99. As previously noted, the Task Force is also continuing to evaluate the extent to which information regarding disciplinary action against a lawyer by the Law Society should be shared with the lawyer's firm. Open communication has the benefit of facilitating the involvement of firms early in the process of addressing problems with its lawyers; even if not the ultimate 'resolver' of the complaint, the firm may be able to play a role in finding a solution. Finding non-disciplinary outcomes for low level complaints is one area where law firms may be particularly well-suited. However, this approach must be balanced against the privacy interests of individual lawyers.

Type of enforcement responses

100. Although law firm regulation is primarily proactive and outcomes-based, it will be necessary to incorporate prescriptive rules and associated sanctions to address those situations where firms fail to comply with certain aspects of the regulatory framework.³⁷
101. The Task Force is considering a wide spectrum of disciplinary options in the event of a lack of compliance with one or more regulatory requirements. Early responses to non-compliance could include those that are "remedial" in nature; for example, contacting the firm to discuss the reason for non-compliance or undertaking a compliance review to assist the firm ensuring it has implemented policies and procedures that address the professional infrastructure elements.
102. However, there may be instances where misconduct is so severe or widespread that some form of disciplinary action may be more appropriate; for example, non-compliance with the professional infrastructure elements after repeated remedial intervention by the Law Society, or systemic behaviour that presents a substantial risk to the public and that cannot otherwise be mitigated may warrant sanctions.³⁸ This is consistent with the approach taken today with regulation of individual lawyers.
103. Amendments to the *Legal Profession Act* provide the Benchers with the authority to make rules that could encompass a wide range of disciplinary measures, including examinations or investigations of firms' books, records and accounts; producing records, evidence and

³⁷ Note that the Law Society Rules have provide for the discipline of law corporations since 1988.

³⁸ The SRA take a similar approach of incremental supervision and enforcement. They may engage with firms in response to particular events (e.g. a complaint); use "desk-based supervision" and "visit-based supervision" involving telephone or in-person contact with regulatory officials to firms; participate in "constructive engagement" with the aim of assisting firms in tackling risks and improving standards; and finally, if there is a serious non-compliance with SRA principles or a risk to the public exists that cannot be mitigated, enforcement action will be taken, which may include warnings, fines, revoking or suspending the authorization of the firm, or an intervention in which the SRA takes possessions of the client documents and funds.

providing explanations in the course of an investigation; requiring a firm to appear before a hearing panel or a Committee to discuss firm conduct; or issuing citations. Amendments also provide that, if a hearing panel finds a firm has engaged in conduct unbecoming the profession, as defined in the *LPA*,³⁹ a firm may be reprimanded, conditions or limitations may be placed on the firms' practice or fines of up to \$50,000 may be issued.⁴⁰

104. In the next phase of its work, the Task Force intends to explore how the particulars of the disciplinary process and its associated rules may need to be adapted to accommodate the regulation of law firms.

Resource Implications

105. At this early stage of development, a detailed analysis of the potential resource implications for the Law Society of the new regulatory scheme has not yet been undertaken. However, the Task Force is aware that in order to establish an regulatory framework that supports the Law Society, the profession and the public interest more generally, additional financial and human resources must be provided throughout both the development and implementation phases of the project. Costs associated with completing and launching the new regulation will include: the development of model policies, self-assessment tools and rules; consultation and communication with the profession; designing specially tailored education, training and mentorship programs for target groups (e.g. sole practitioners); and increasing the regulatory functions of the law society.
106. Once law firm regulation is implemented, it is expected that the Professional Conduct and Discipline departments will initially see an increase in work load, as both firms and the Law Society navigate the new regulatory scheme. For example, investigations into complaints against firms will add to the work the Law Society does with respect to regulating individual lawyers. Compliance reviews, to the extent that they become part of the final regulatory design, will also require additional resources. However, over the longer term, the regulatory program will strive to become cost-neutral, as regulatory efficiencies are enhanced and complaints decrease as a consequence of firms becoming increasingly engaged in governing the professional and ethical behaviours of their lawyers
107. Additional analysis on the resources implications of law firm regulation will be part of the next phase of the Task Force's work.

³⁹ *Supra* note 35 (not yet in force).

⁴⁰ *Legal Profession Amendment Act 2012* at s. 24 and s. 27. These provisions are not yet in force.

Summary of Recommendations

108. A summary of the recommendations contained in this interim report is provided below:

Recommendations

1. Focus on the development of professional infrastructure elements as a means of achieving the desired outcomes of law firm regulation;
2. Emphasize a proactive, outcomes-based regulatory approach;
3. Include traditional law firms and sole practitioners within law firm regulation, while considering the inclusion of pro bono and non-profit legal organizations, government lawyers and in-house counsel at a later stage of regulatory development.
4. Adopt a set of professional infrastructure elements;
5. Establishing compliance with professional infrastructure elements as a regulatory requirement;
6. Establish a registration process for law firms;
7. Establish a role for the designated contact person that includes responsibilities related to general communications, reporting and complaints;
8. Adopt the use of self-assessment to monitor compliance;
9. Consider adopting the use of compliance reviews to monitor compliance;
10. Continue to develop policies and rules to address non-compliance with new regulatory requirements.

Next Steps

109. The proposed next step is for the Task Force to conduct a second round of consultation with the legal profession on the proposed framework for regulating law firms. In addition to seeking input from across the province, consultation will also include focus groups designed to elicit feedback from specific types of practice structures, such as sole practitioners and space-sharing lawyers.

110. The Task Force will undertake internal consultations with relevant departments at the Law Society concerning the proposed changes and how to develop model policies addressing the professional infrastructure elements.
111. The Law Firm Regulation Task Force aims to present a final report to Benchers once these steps have been completed. That report will include final recommendations of the Task Force, discussion of the results of the second round of consultation with the legal profession, a timeline for implementing the proposed law firm regulation framework and discussion of resource implications for the Law Society. Time must also be allowed for the proclamation of amendments in the *Legal Profession Act* which are currently not in force and are necessary for the full functioning of the regulatory framework.
112. It is envisaged that law firm regulation will be implemented in two phases. The first phase would be a ‘soft’ implementation, which will include the requirement for law firms to register with the Law Society and appoint a designated contact person. It is not anticipated that compliance and enforcement elements would be introduced at this stage. This approach will provide law firms with sufficient time to understand the new requirements and implement the required policies and procedures prior to them being enforced.
113. The second phase will bring the compliance and enforcement elements of law firm regulation into effect. While the timeline for implementation has not yet been determined, it is expected that the second phase will be launched no earlier than a year after the beginning of the first phase to allow sufficient time for the education and transitional components of the framework to be completed.

Conclusion

114. The introduction of law firm regulation represents a significant shift to the regulatory environment within BC, and in turn, the role of the Law Society in supporting and overseeing the work of the profession. The conduct of firms of all sizes will now be regulated, resulting in both new responsibilities and new opportunities that will serve to improve the provision of legal services across the province.
115. The Law Society is dedicated to working collaboratively with firms in implementing the proposed regulatory framework and assisting them in achieving compliance. As the framework continues to evolve, the Law Society will also be engaged in monitoring and fine-tuning elements of the regulatory design to ensure that the move toward this new mode of regulation is progressive, considered and reflective in nature.
116. Law firm regulation is an important, if not essential step into a more fair and efficient regulatory landscape, one that will address the conduct of some of the most influential actors

in the profession – law firms – and in so doing, enhance both the protection of the public interest and the Law Society’s effectiveness as a regulator.

PROFESSIONAL INFRASTRUCTURE SELF-ASSESSMENT TOOL

i. Professional Infrastructure

Under the new provisions of the Law Society Rules addressing the regulation of law firms, firms of all sizes will be required to have appropriate written policies and unwritten processes in place to support a set of eight “Professional Infrastructure Elements.” The elements capture prominent concerns and risk in relation to the practice of law firms.

The eight Professional Infrastructure Elements are as follows:

Professional Infrastructure Elements

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

These areas have been selected as a regulatory focus on the basis that they are widely viewed as representing the foundation of a firm’s professional, ethical legal practice.¹ They are designed to be sufficiently high-level to be adapted to different forms of practice, yet concrete enough to establish clear, basic standards for firm conduct.

¹ These and related topics have been identified by other bodies promoting the regulation of law firms, including Queensland’s Legal Services Commission (Australia), New South Wales Office of the Legal Services Commissioner (Australia), the Nova Scotia Barristers’ Society and the Canadian Bar Association.

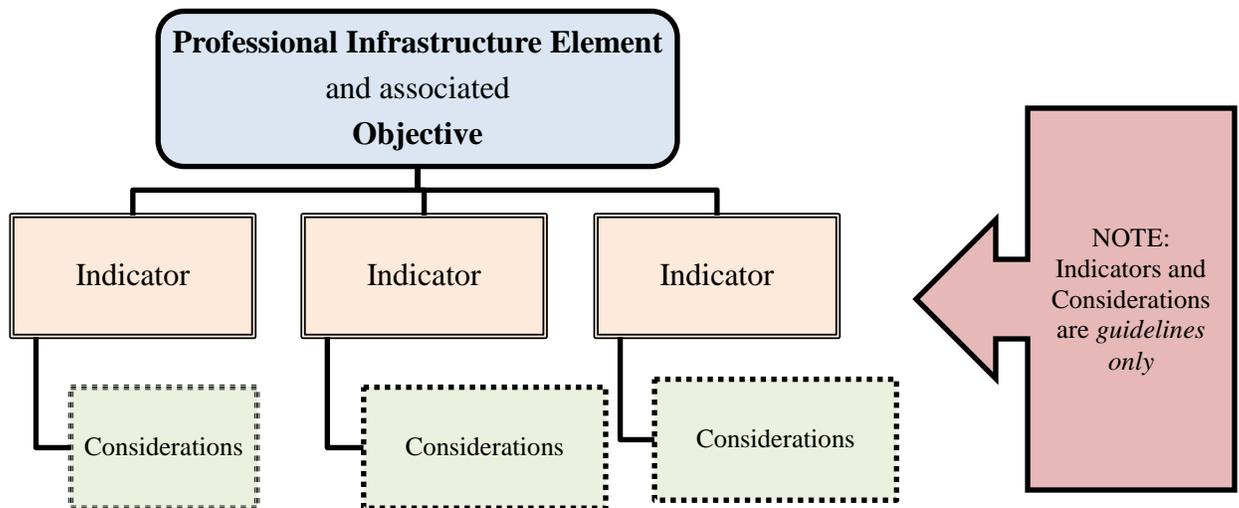
Under the new regulatory model, the expectation is that firms will develop and implement appropriate policies and processes that address each of the Professional Infrastructure Elements. Importantly, throughout the self-assessment these terms are used to specifically identify where *written* materials – in the form of policies - are required, and where *unwritten* processes that guide the firm’s conduct should be in place.

How a firm addresses the Professional Infrastructure Elements will be up to them; firms are not subject to prescriptive rules that dictate how compliance must be achieved. As such, firms have significant latitude to create and implement a variety of policies and processes that take into account the nature, scope, size and characteristics of their practice.

It should be noted that the eight Professional Infrastructure Elements establish a *minimum standard* for professional, ethical practice. Firms may choose – and are encouraged – to enhance their professional infrastructure by addressing additional areas that are not explicitly covered by the Professional Infrastructure Elements listed above.

ii. Self-assessment tool

To support law firms in successfully navigating the new regulatory framework, the Law Society has created a Self-assessment tool, which is designed to help firms measure their progress towards establishing, maintaining and enhancing their professional infrastructure. The general structure of the Self-assessment tool is as follows:



The cornerstones of the Self-Assessment tool are the **Professional Infrastructure Elements** and their associated **Objectives**. These should be viewed as compulsory aspects of the regulatory scheme.

Professional Infrastructure Elements: Firms will be expected to develop and implement policies and processes that adequately address each of the Professional Infrastructure Elements.

Objective: Each Professional Infrastructure Element is paired with an Objective, which represents a clear statement of the specific result or outcome the particular Element aims to achieve. The Objective should be viewed as the yardstick by which the satisfaction of the Professional Infrastructure Element is achieved.

For example, to satisfy Professional Infrastructure Element 3, “Protecting Confidentiality,” the firm must have appropriate policies and processes in place that will fulfil the stated objective of ensuring client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law.

How a firm addresses each of the Professional Infrastructure Elements is up to them. However, to assist firms in evaluating their level of compliance, the Self-assessment provides a series of **Indicators** and associated **Considerations** that a firm may choose to reflect on or adopt as they work toward satisfying the Professional Infrastructure Elements.

Neither the Indicators nor the Considerations are prescriptive, and should be approached as suggestions or guidelines for firms rather than a legal requirement. Ultimately, both Considerations and Indicators are designed to cause firms’ to reflect on their practices and to consider how they may improve them, as necessary.

Indicators: indicia that represent fundamental aspects of practice which law firms should examine in assessing the extent to which the objective of the Professional Infrastructure Element has been achieved. The Indicators are not exhaustive and are intended to serve as a guide only. Firms are encouraged to engage in thoughtful reflection and discussion to determine the degree to which these indicators, or other indicators, demonstrate progress toward achieving the Objective of the specific Professional Infrastructure Element.

Considerations: each indicator is paired with an illustrative list of the types of policies, procedures, processes, methods, steps, and systems that a prudent law firm might employ to support the professional and ethical delivery of legal services. These considerations are not exhaustive or mandatory, and their applicability will vary depending on the size and type of law firm being evaluated.

The Indicators and the Considerations are designed to be relatively general, or “high level” to enable the Self-Assessment to be flexible and applicable across various practice contexts and size. Individual firms will have unique circumstances to which the Law Society and the firm itself needs to be attentive.

The self-assessment also includes a selection of Resources², which represent a starting place for firms to seek additional support as they work towards satisfying each of the Professional Infrastructure Elements. This set of resources will be expanded in subsequent self-assessment cycles.

Assessment Scale

The self-assessment asks firms to assess themselves on a scale of one to four in relation to the extent that they have achieved the objective of each of the Professional Infrastructure Elements. The scale operates as follows:

1. Policies and processes addressing the Professional Infrastructure Element have **not** been developed.
2. Policies and processes addressing the Professional Infrastructure Element are under development, but are **not fully functional**.
3. Policies and processes addressing the Professional Infrastructure Element **are functional**.
4. Policies and processes addressing the Professional Infrastructure Element are **fully functional and regularly assessed and updated**.

The scale will provide firms with a quantitative measure of their progress towards implementing a robust professional infrastructure.

The **Comments** box provides an opportunity for firms to also include a qualitative assessment of their successes and challenges in relation to each Professional Infrastructure Element, and to add any further information or explanation that may assist the firm and the Law Society in understanding the assessment. If a rating of one or two is given for any of the Professional Infrastructure Elements, the firm must outline action it will take to address gaps or shortcomings in relation to achieving the particular objective.

² Due to technical problems relating to the new Law Society website, some of the hyperlinked Rule and Code provisions are temporarily inoperable. The Law Society’s Information Services Department is working to resolve this issue.

Method for Completing the Self-Assessment

The Rules do not mandate who must contribute to, or complete the self-assessment, however *submitting* the self-assessment is a firm responsibility. Further, those completing the self-assessment are not personally responsible or liable for ensuring that adequate policies and processes are in place in relation to each of the Professional Infrastructure Element; meeting the standards set by law firm regulation is, again, a *firm* responsibility.

As such, firms will have the flexibility to develop their own methods for working through the tool and should adopt techniques that best suit their practice. For example, sole practitioners or principals of small firms may undertake the self-assessment themselves. Larger firms might call a meeting to bring together key lawyers and staff to have an inclusive discussion about how the firm is working towards implementing or maintaining policies and processes that support the Professional Infrastructure Elements. Other firms may choose to circulate the assessment and collaboratively complete the document.

Regardless of the approach your firm develops, keep in mind that the overarching goal of law firm regulation is to support and promote ethical practice and professional standards within law firms. Given that self-evaluation is a key aspect of this effort, you are encouraged to adopt processes that foster thoughtful reflection on the ways in which your firm is working towards actualizing each of the Professional Infrastructure Elements.

Definitions

“Firm” means a legal entity or combination of legal entities carrying on the practice of law

“Lawyer” means a member of the Law Society and articling students employed by the firm.

“Staff” includes any non-lawyer employee at the firm who assists in or provides legal services to clients

“Policies” refers to written documentation of the approach the firm employs to address a particular practice issue or area. Policies may include written guidelines, written protocols or written procedures.

“Processes” include a wide scope of unwritten practices, systems, methods, steps, principles and other measures formulated or adopted by the firm that are intended to influence and determine decisions and actions in a manner that facilitates the achievement of the firm’s goals.

Self-Assessment Tool

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

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

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

Considerations

- Adequate due diligence is conducted on candidates before a final hiring decision is made (e.g. as permissible, review of disciplinary records and reference and credentials checks)
- Initial and ongoing training is provided for lawyers and staff, including in the following areas, as appropriate:
 - identification of conflicts
 - use of trust accounts
 - confidentiality and privacy
 - technology use and security
 - ethics
 - file management processes
 - billing practices
 - appropriate communications with clients
 - diversity and cultural competency
- Additional training is provided when major procedural and organizational changes occur
- Initial and ongoing mentorship is provided to new and junior lawyers and staff by more experienced lawyers and staff
- Firm policy and procedures manuals are comprehensive, accessible and updated and reviewed with lawyers and staff
- Continuing educational efforts are recorded and considered in the context of lawyer and staff performance reviews
- Processes are in place to ensure that lawyers have professional development plans that are relevant to their area of practice
- Processes are in place for identifying performance objectives and to evaluate progress towards those objectives
- Policies and appropriate resources are in place to ensure lawyers and staff have, or have the capacity to develop knowledge of applicable substantive and procedural law (e.g. electronic updates, lunch and learns, regular meetings)
- Processes are in place to ensure that lawyers and staff stay current on the appropriate technology
- Lawyers are supported in complying with their individual professional obligations under the Law Society Rule and the *Code*

RESOURCES:

- [Practice Resource: Guidelines for recruiting, interviewing and hiring practices](#) (December 2006)
- [The Trust Accounting Handbook](#) (August 2015)

- [Practice Resource: Retainer Agreement](#) (December 2016)
- [Practice Resource: Workplace Equality](#) (Updated July 2007)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 2.1](#): Cannons of Legal Ethics; [Chapter 3.1](#): Competence; [Chapter 3.2](#): Quality of Service; [Chapter 3.3](#): Confidentiality; [Chapter 3.4](#): Conflicts; [Chapter 3.6](#): Fees and Disbursements; [Chapter 6.1](#): Supervision; [Chapter 6.2](#) : Students]
- [Law Society Rules 2015](#) [[Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 8](#): Lawyers' Fees; [Rule 10-4](#): Security of Records]

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

Considerations

- Policies are in place to review complaints made to the firm and those made to the Law Society (e.g. establishing a complaint line or email for the firm)
- Steps are taken to ensure all communications with the Law Society pertaining to lawyer or firm competence are professional and prompt
- Opportunities are provided for lawyer and staff performance reviews
- Processes are in place to encourage and monitor lawyer and staff wellbeing, including promotion of the Lawyer Assistance Program and other mental health support relevant to the legal profession
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 2.1](#): Cannons of Legal Ethics; [Chapter 3.1](#): Competence; [Chapter 7.1](#): Responsibility to the Society and the Profession Generally]
- [Law Society Rules 2015](#) [[Part 3 - Division 1](#): Complaints]
- [Lawyers Assistance Program](#)

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

Considerations

- Retainers are only taken if the firm feels, at the time the retainer is taken, that it has the necessary skills and resources to carry out the client's instructions in a reasonable period of time

- Processes are in place to ensure lawyers and staff are informed about priorities and deadlines
- Policies are in place to ensure lawyers and staff comply with applicable deadlines and limitation periods
- Reviews are conducted with lawyers and staff to evaluate the appropriateness of their workload and issues are addressed
- Processes are in place to ensure the effective use of bring forward systems and calendars to keep track of key dates (e.g. limitation periods, court and tribunal appearances, filing deadlines, closing dates)
- Firm systems are in place to ensure there is adequate coverage for lawyers and staff during their absence for vacation or leave and that permanent vacancies are filled in a reasonable period of time
- Firm systems are in place to ensure that open files are reviewed on a scheduled basis and next steps are diarized
- Processes are in place to ensure that files of departing lawyers are promptly re-assigned
- Calendars are easily accessible, including lawyers and staff calendar access and the provision of remote calendar access
- Checklists by matter type are used, where appropriate
- Processes are in place regarding appropriate timing of interim and final reports
- Policies are in place to track undertakings and to ensure undertakings are fulfilled in a timely fashion

RESOURCES:

- [Missed Limitations and Deadlines: Beat the Clock](#)
- [Practice Resource: Loss prevention planning checklist](#) (November 2002)
- [Practice Resource: Using Microsoft Outlook to Manage Limitation \(and other important\) Dates](#) (June 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 8: Lawyers' Fees]

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

Considerations

- Specific education and training opportunities are provided on the supervision and management of lawyers and staff
- Policies are in place that ensure lawyers understand what work may be delegated to staff and what may not
- Processes are in place to ensure the appropriate delegation of the authority for developing policies, practices and systems that address the Professional Infrastructure Elements
- Processes are in place to ensure lawyers and staff know the contact information of their supervisor
- Consideration is given to experience and qualifications when assigning work
- Supervisors ensure that lawyers and staff receive clear and complete instructions regarding work assigned and the end product required
- Employee meetings are regularly scheduled for lawyers and staff
- Processes are in place to ensure lawyers and staff receive timely, and confidential feedback on work product (e.g. formal performance reviews and informal meetings)
- Processes are in place to encourage the use of mentors in training lawyers and staff for leadership positions
- Professional development plans are reviewed by senior colleagues and considered in the context of performance reviews

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals)]

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

Considerations

- The firm has a succession plan in place for its lawyers
- Processes are in place to address client, lawyer and firm-related issues arising from the departure of lawyers and from the firm.
- Lawyers and staff know who to contact and the steps to take in order to address the interests of clients in the event of an unforeseen accident, illness or death
- The firm carries adequate insurance for the practice, including excess professional liability coverage and key person insurance

RESOURCES:

- [Succession Planning: Tools, Documents and Resources:](#)
 - [Checklist – Practice and Planning Considerations](#)
 - [Law Firm Inventory Checklist](#)
 - [Law Office Contacts and Basic Information](#)
 - [Model letter to client: Termination of Employment](#)
 - [Withdrawal from the Practice of Law: sample newspaper notice and letter to clients \(June 2002\)](#)
- [Precedent letters: Lawyer leaving law firm](#)
- [Practice Resource: Winding Up a Sole Practice: A Checklist \(Updated November 2016\)](#)
- [Code of Professional Conduct for British Columbia \[Chapter 3.7: Withdrawal from Representation\]](#)
- [Lawyers Insurance Fund](#)
- [Law Society Rules 2015 \[Part 3 - Division 5: Insurance\]](#)

ELEMENT 2 – SUSTAINING EFFECTIVE AND RESPECTFUL CLIENT RELATIONS

OBJECTIVE
Provide clear, timely and courteous communications with clients in the delivery of legal services so that clients understand the status of their matter through the duration of the retainer and are in a position to make informed choices

RATING	Policies and processes have not been developed. 1 □	Policies and processes are under development but are not functional. 2 □	Policies and processes are functional. 3 □	Policies and processes are fully functional and regularly assessed and updated. 4 □
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place in relation to communication with clients?

Considerations

- Policies are established with respect to:
 - informing and updating clients about their matter
 - appropriate forms and frequency of communication with clients (email/phone/text)
 - compliance with privacy and anti-spam legislation
 - confidentiality
 - ensuring non-lawyer communications are understood as such
 - timing of reports and final accounts
- Processes are in place to monitor and reinforce adherence to communication policies
- Communication policies are reviewed and updated and are accessible to all lawyers and staff

- Lawyers and staff receive specific and ongoing education and training relating to client communications and relations
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Communication Toolkit \(Online Learning Centre\)](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property; Chapter 3.6: Fees and Disbursements; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Truth and Reconciliation Commission of Canada: Calls to Action](#) (2015)

INDICATOR 2: Does each client understand the retainer agreement?

Considerations

- When appropriate, policies are in place for the use of written retainer agreements and non-engagement letters
- The ambit of the retainer is described to the client, including:
 - a list of services covered by the retainer
 - communication policies
 - billing policies, including anticipated fees and disbursements
 - anticipated time frames
 - the termination of legal services
- Processes are in place to ensure that if the scope of services change, the retainer is amended accordingly.
- Processes are in place to ensure that appropriate clients are accepted based on factors such as the firms' areas of expertise, the ability to provide timely communication, the client's file and history, and engagements are terminated, if necessary.
- Processes are in place to ensure that when unbundled legal services are provided, the retainer explicitly indicates what will be provided and won't be provided
- **[add something joint retainers]**

RESOURCES:

- [Practice Resource: Retainer Agreement](#) (Updated December 2016)
- [Practice Resource: Joint Retainer](#) (November 2013)
- [Model Non-Engagement Letters](#) (February 2002)
- [Professionalism: Practice Management](#) (September 2016)

- [Code of Professional Conduct for British Columbia](#) [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]

INDICATOR 3: Are communications with clients conducted in a professional manner?

Considerations

- Communications with clients are conducted in a timely and efficient manner
- Communications with clients are conducted in a courteous and respectful manner
- Communications with clients are conducted in a manner that protects privacy and confidentiality
- Policies are in place to ensure the recording of communications with clients, as appropriate (e.g. archiving emails, creating notes of client meets and phone calls)
- Policies are in place to ensure that client instructions are confirmed in writing, where appropriate
- Clients are advised of the methods by which they may communicate with their lawyers and staff and the appropriate frequency of communications
- Policies are in place to ensure client information is verified and kept up-to-date
- Processes are in place to solicit and receive client feedback
- Internal processes are available to clients for resolving disputes or complaints with their lawyer or the firm and clients are informed about these processes
- Key information about the firm is accurate and publically available, including information about the range of services provided, practice areas, lawyers and contact information

RESOURCES:

- [Discipline Advisory 'Lack of civility can lead to discipline'](#) (June 2011)
- [Practice Resource: Client Survey](#) (April 2009)
- [Practice Checklist: Client Identification and Verification Procedure](#) (July 2015)
- [Communication Toolkit](#) (Online Learning Centre)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 3.3: Confidentiality]

INDICATOR 4: Are clients regularly informed about the progress of their matter?

Considerations

- Policies are in place that ensure clients are regularly informed about:

- the status of their matter, including being informed about material changes in the scope of the retainer, costs and timelines
- deadlines, limitations, hearing dates and other important dates
- potential and projected outcomes
- Processes are in place to ensure clients are copied on key correspondence and receive key communications and documents in a timely manner
- Clients are provided with an opportunity to make timely appointments with their lawyer at the times and, if necessary, locations convenient to the client
- Practices encourage informing clients of possible options for pursuing a matter once a lawyer ceases to act for the client

RESOURCES:

- [Precedent Letter: Reporting Letter to Client – Closing a File](#) (Updated January 2007)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.1: Competence](#); [Chapter 3.2: Quality of Service](#); [Chapter 3.6: Fees and Disbursements](#); [Chapter 3.7: Withdrawal from Representation](#)]

RESOURCES:

- [Practice Resource: Guidelines for Respectful Language](#) (May 2007)
- [Practice Watch: Acting for a client with dementia](#) (Spring 2015)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.2: Quality of Service \(Clients with Diminished Capacity\)](#); [Chapter 6.3: Harassment and Discrimination](#)]

ELEMENT 3 – PROTECTING CONFIDENTIALITY

OBJECTIVE
Ensure client information, documents and communications are kept confidential and free from access, use, disclosure or disposal unless the client consents or it is required or permitted by law and that solicitor-client privilege is appropriately safeguarded

RATING	Policies and processes have not been developed. 1 □	Policies and processes are under development but are not functional. 2 □	Policies and processes are functional. 3 □	Policies and processes are fully functional and regularly assessed and updated. 4 □
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are confidentiality and privacy policies and processes in place?

Considerations

- A written confidentiality policy or agreement is in place and is signed by all staff
- Confidentiality requirements are established for any third parties (e.g. contractors, computer service providers, interns, cleaners) who may access the firms’ physical space or technology
- A privacy policy is in place and is communicated to all lawyers and staff
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Practice Resource: Model Privacy Policy](#) (December 2003)
- [FAQs about solicitor-client privilege and confidentiality](#) (CBA)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 6.1: Supervision; Chapter 6.2 : Students]

INDICATOR 2: Is training provided pertaining to preserving the duties of confidentiality, solicitor-client privilege, privacy and the consequences of privacy breaches?

- Lawyers and staff are provided with up-to-date technology training relating to issues of confidentiality and privacy pertaining to electronic data, including specific training on the importance of password protection
- Lawyers and staff receive education and training regarding the principle of solicitor-client privilege, including:
 - in relation to electronic communications (email, texting, e-documents)
 - when a common interest or joint retainer extends the solicitor-client privilege to third parties
- Solicitor-client privilege is clearly explained to clients by lawyers
- Processes are in place for dealing with situations where exceptions to duties of confidentiality and solicitor-client privilege may apply.
- Lawyers and staff are provided with training on the requirements of privacy legislation
- Internal processes are in place to deal with privacy breaches, including processes for reporting breaches to the client, the Law Society and any other appropriate authorities

RESOURCES:

- [Privacy Breaches: Tools and Resources](#) (OIPC)
- [Overview of Privilege and Confidentiality](#) (CLE)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 3: Is physical data protected by appropriate security measures?

Considerations

- Office security systems are in place to protect confidential information, including processes to ensure:
 - third parties cannot overhear confidential conversations lawyers and staff have both within and outside the physical office
 - client files and other confidential material are not left in publically accessible areas
 - client confidentiality is guarded when visitors enter private areas (e.g. lawyer or staff offices)
 - copiers, fax machines and mail services are located such that confidential information cannot be seen by persons not employed by or associated with the firm
- Processes are in place that ensure reasonable security measures are taken when removing physical records or technological devices from the office
- Processes are in place to ensure that closed files and other documents stored off-site are kept secure and confidential

RESOURCES:

- [Securing Personal Information: A Self-Assessment Tool for Organizations](#) (OIPC)
- [Guidelines for Practising Ethically with New Information Technologies](#) (CBA)
- [Practice Resource: Cloud computing due diligence guidelines](#) (January 2012)
- [Practice Resource: Cloud computing checklist](#) (January 2013)
- [Privacy Breaches: Tools and Resources](#) (OIPC)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 4: Is electronic data protected by appropriate security measures?

Considerations

- Data security measures (e.g. encryption software and passwords) are in place to protect confidential information on all computers, laptops, tablets, smartphones, thumb drives and other technological devices
- Systems are in place to protect electronic data from being compromised by viruses, including ransomware
- Processes are in place to safeguard against the security risks arising from downloading to phones, flash drives and other portable devices

- Processes are in place to protect confidentiality when using cloud-based technologies, including email
- Processes are in place to protect confidentiality when using social media
- Electronic data is regularly backed up and stored at a secure off-site location
- Processes are in place to ensure that third parties with access to computers for maintenance and technical support protect the confidentiality of client information
- Electronic data security procedures are reviewed
- Processes are in place to safeguard electronic data and maintain solicitor-client privilege as pertaining to electronic files when crossing borders (e.g. United States)

RESOURCES:

- [Guidelines for Practising Ethically with New Information Technologies](#) (CBA)
- [Practice Resource: Cloud computing due diligence guidelines](#) (January 2012)
- [Practice Resource: Cloud computing checklist](#) (January 2013)
- [Securing Personal Information: A Self-Assessment Tool for Organizations](#) (OIPC)
[Code of Professional Conduct for British Columbia](#) [Chapter 3.3: Confidentiality; Chapter 3.5: Preservation of Clients' Property]
- [Law Society Rules 2015](#) [Rule 10-3: Records; Rule 10-4: Security of Records]

INDICATOR 5: Are specially tailored procedures employed to protect confidentiality and privacy in the context of space-sharing arrangements?

Considerations

- Processes are in place to clearly distinguish the other entities or professionals with whom space is shared to prevent confusion by clients (e.g. signage, letterhead)
- Trust accounts and banking arrangements are not shared
- Where staff are shared (e.g. paralegals), adequate steps have been taken to protect client confidentiality
- Where office equipment is shared, adequate steps have been taken to protect client confidentiality
- The firm has disclosed the nature of the space-sharing arrangement and any foreseeable limits of their ability to maintain confidentiality to their clients

RESOURCES:

- [Practice Resource: Lawyers Sharing Space](#) (Updated December 2016)
- [Sharing Office Space: Tips for Solo Practitioners](#) (CBA)
- [Professionalism: Practice Management](#) (September 2016)

- Code of Professional Conduct for British Columbia [Chapter 3.3: Confidentiality; Chapter 3.4; Conflicts (Space-Sharing Arrangements)]
- Law Society Rules 2015 [Part 3 - Division 7: Trust Accounts and Other Client Property]

ELEMENT 4 – AVOIDING AND ADDRESSING CONFLICTS OF INTEREST

OBJECTIVE

Ensure conflicts of interest are avoided from the outset, and where not avoided, they are resolved in a timely fashion

RATING	Policies and processes have not been developed. 1 □	Policies and processes are under development but are not functional. 2 □	Policies and processes are functional. 3 □	Policies and processes are fully functional and regularly assessed and updated. 4 □
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is a conflicts policy in place?

Considerations

- A conflicts policy is in place
- The conflicts policy is communicated to all lawyers and staff and is reviewed and updated

- Processes are in place to monitor and reinforce lawyers and staff adherence to the conflicts policy
- Lawyers and staff are provided with opportunities for education and training with respect to identifying potential conflicts, the avoidance of conflicts, the potential consequences of a conflict and how to deal with situations where conflicts arise

RESOURCES:

- [Developing a conflict checking system for your law firm](#) (CBA)
- [Conflicts of Interest – Toolkit](#) (CBA)
- [Practice Resource: Model conflicts of interest checklist](#) (July 2013)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.4; Conflicts; Chapter 6.1: Supervision; Chapter 6.2 : Students]

INDICATOR 2: Are policies in place to identify and address potential and actual conflicts of interest?

Considerations

- A master list or database of current and former clients is maintained
- Policies are in place to check for and evaluate conflicts at each of the following junctures:
 - prior to engaging in any substantive discussions with a potential new client
 - prior to accepting a new retainer
 - when a new party becomes involved in a matter
 - upon hiring a new individual at the firm
 - before receiving a confidential disclosure
 - when acting for multiple parties and there is a possibility that their interests could diverge
 - when a lawyer is considering accepting a directorship position or engaging in a business venture with a client
 - when a lawyer's interpersonal relationship creates possible conflicts
- Processes are in place requiring a lawyer to bring any potential conflicts to the attention of a senior lawyer or committee at the firm, where appropriate, for consideration and recommendation
- Lawyers and staff understand the steps to take when a potential or actual conflict is identified
- After full disclosure has been made, signed waivers are obtained from a client if representation is agreed to after a permissible conflict has been identified
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Developing a conflict checking system for your law firm \(CBA\)](#)
- [Conflicts of Interest – Toolkit \(CBA\)](#)
- [Practice Resource: Model conflicts of interest checklist \(July 2013\)](#)
- [Professionalism: Practice Management \(September 2016\)](#)
- [Code of Professional Conduct for British Columbia \[Chapter 3.4; Conflicts; Chapter 6.1: Supervision; Chapter 6.2 : Students\]](#)

ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

OBJECTIVE
Provide appropriate file and records management systems to ensure that issues and tasks on file are handled in an appropriate and timely manner and that client information and documents are safeguarded

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is there an information management policy in place?

Considerations

- An information management policy is in place which includes:
 - file opening and closing procedures
 - procedures for checking in and out physical and electronic files
 - procedures for transferring active and closed files
 - procedures for tracking files
 - record retention requirements
 - document destruction requirements
 - disaster recovery contingencies
- The information management policy is communicated to all appropriate lawyers and staff and is reviewed and updated

- Processes are in place to monitor and reinforce adherence to information management policy
- Lawyers and staff are provided ongoing training on the firms' file and record management systems
- Processes are in place to ensure that written policies addressing the Professional Infrastructure Elements are adequately maintained and stored and can be retrieved by all lawyers and staff

RESOURCES:

- [Practice Resource: Closed Files – Retention and Disposition](#) (July 2015)
- [Practice Resource: Ownership of Documents in a Client's File](#) (July 2015)
- [File Management Practice Management Guideline](#) (Law Society of Upper Canada)
- [File Opening Checklist](#) (Law Society of Upper Canada)
- [Closed Files: Retention and Disposition](#) (July 2015)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 6.1](#): Supervision; [Chapter 6.2](#) : Students]
- [Law Society Rules 2015](#) [[Part 2 - Division 1](#): Practice of Law (Supervision of Limited Number of Paralegals); [Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 3 - Division 11](#): Client Identification and Verification; [Rule 10-3](#): Records; [Rule 10-4](#): Security of Records]

INDICATOR 2: Does the storage and handling of client information minimize the likelihood of its loss or unauthorized access, use, disclosure or destruction?

Considerations

- Data security measures addressing how electronic records are maintained, secured, stored and retrieved are in place
- Processes are in place to ensure electronic documents are regularly backed up
- Paper documents are stored in a fashion that ensures they are adequately preserved and protected (e.g. the use of fireproof cabinets or storage at an appropriate offsite location)
- Processes are in place to track the physical location of a file and its associated documents at all times
- Processes are in place to ensure client identification and verification requirements are fulfilled.
- Processes are in place to ensure records are kept regarding implied and express consent provided by clients
- Processes are in place to ensure client property is appropriately identified and recorded upon receipt

- Processes are in place to obtain and document the receipt or delivery of original documents to a third person or client
- File closing processes are in place, including informing clients when their file has been closed
- Processes are in place to ensure that providers of cloud based systems maintain the required level of service and that relevant data protection legislation is complied with
- Processes are in place ensure the return of original documents to clients at the end of a retainer
- Consideration has been given to appropriate disaster recovery plans, including offsite back up.
- Clients are advised when their files are anticipated to be destroyed after closing their matter or alternate arrangements for dealing with the files are made
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- [Practice Resource: Loss prevention planning checklist](#) (November 2002)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [[Chapter 3.5](#): Preservation of Clients' Property]
- [Law Society Rules 2015](#) [[Part 3 - Division 7](#): Trust Accounts and Other Client Property; [Part 3 - Division 11](#): Client Identification and Verification; [Rule 10-3](#): Records; [Rule 10-4](#): Security of Records]

ELEMENT 6 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

OBJECTIVE
Ensure clients are charged fees and disbursements that are transparent and reasonable and are disclosed in a timely fashion

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Is a policy pertaining to appropriate billing practices in place?

Considerations

- A policy regarding billing procedures is in place
- The billing policy is communicated to all lawyers and staff and is reviewed and updated
- Educational measures are in place to ensure that lawyers and staff are aware of firm policies regarding billing practices and have a clear understanding of what constitutes unethical billing practices
- Processes are in place that ensure accurate, timely and complete time records are kept
- Processes are in place to ensure the firm supports its lawyers in complying with Law Society Rules and the *Code of Professional Conduct*

RESOURCES:

- ‘Practice Watch – Fees, Disbursements and Interest’ *Benchers’ Bulletin* (2012)
- Practice Resource: Solicitors’ Liens and Charging Orders – Your Fees and Your Clients (July 2013)
- Professionalism: Practice Management (September 2016)
- Code of Professional Conduct for British Columbia [Chapter 3.6: Fees and Disbursements; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- Law Society Rules 2015 [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals); Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers’ Fees]

INDICATOR 2: Do retainer agreements contain sufficient information about fees and billing?**Considerations**

- With respect to billing and fees, all retainers specify:
 - the billing process, cycle and timing of accounts
 - the timing on payment of accounts, the interest to be paid on unpaid bills and the consequences of non-payment
 - who will work on the file and at what rate
 - the amount of the retainer and how it will be replenished
 - limitations on the scope of service
 - the right to have the account reviewed by a taxing authority
 - the possibility of a solicitor’s lien on the file
- If a retainer is being funded by a third party, the retainer specifies the nature of the third parties relationship to the firm/lawyer

RESOURCES:

- Practice Resource: Retainer Agreement (Updated December 2016)
- Practice Resource: Joint Retainer (November 2013)
- Professionalism: Practice Management (September 2016)
- Code of Professional Conduct for British Columbia [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements; Chapter 3.7: Withdrawal from Representation]
- Law Society Rules 2015 [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers’ Fees]

INDICATOR 3: Are fees fair and reasonable?

Considerations

- Processes are in place to ensure the billing practices are clearly explained to clients at the beginning of the retainer
- All billing arrangements are confirmed in writing and any further substantive discussions with clients about fees are also documented in writing
- Where practicable, an estimate of anticipated fees and disbursements is provided to clients
- Processes are in place that ensure clients are regularly updated and provided appropriate notice of any change in fee or disbursement charges as the matter progresses
- Disbursements and other charges are regularly posted to client files
- Processes are in place to encourage the review of bills to ensure they reflect fees that are commensurate with the value of work provided
- Processes are in place to ensure clients are billed on a timely basis
- Where practicable, firm managers periodically conduct random audits of bills
- Processes are in place to address client's non-payment of fees and client complaints in relation to fees

RESOURCES:

- [Disputes involving fees and the Law Society Fee Mediation Program](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.2: Quality of Service; Chapter 3.6: Fees and Disbursements]
- [Law Society Rules 2015](#) [Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]

ELEMENT 7 – ENSURING RESPONSIBLE FINANCIAL MANAGEMENT

OBJECTIVE
Establish mechanisms to minimize the risk of fraud and procedures that ensure compliance with Law Society accounting rules

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place that ensure that client funds received in, and withdrawn from trust properly handled?

Considerations

- An appropriate accounting system is used to track trust funds
- Policies are in place to ensure all accounting records are accurate and up to date
- Appropriate internal controls are in place with respect to financial transactions, including electronic transfer of funds
- Adequate internal controls are in place to minimize risk of fraud committed by employees of the firm
- Lawyers and staff are provided with education and training in relation to the rules pertaining to trust accounts
- Lawyers and staff are provided with training to assist in spotting possible fraudulent trust account activity
- Policies are in place to ensure trust funds are not withdrawn from trust, including to pay an account, except in compliance with the Law Society Rules

RESOURCES:

- [The Trust Accounting Handbook](#) (August 2015)
- [Practice Resource: Sample Checklist of Internal Controls](#) (updated July 2012)
- [Practice Resource: Garnishment of Lawyers' Trust Accounts](#) (February 2014)
- [Practice Resource: Business plan outline](#) (December 2003)
- [Practice Resource: Trust Accounting Checklist](#)
- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 3.5: Preservation of Clients' Property; Chapter 6.1: Supervision; Chapter 6.2 : Students]
- [Law Society Rules 2015](#) [Part 2 - Division 1: Practice of Law (Supervision of Limited Number of Paralegals); Part 3 - Division 7: Trust Accounts and Other Client Property; Part 8: Lawyers' Fees]

INDICATOR 2: Does the firm have appropriate and adequate insurance?

- Adequate insurance coverage is in place, including employee theft, excess, cyber liability and social engineering insurance, as appropriate.

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 7.1: Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules 2015](#) [Part 3 - Division 5: Insurance; Part 3 - Division 6: Financial Responsibility; Part 3 - Division 7: Trust Accounts and Other Client Property]

INDICATOR 3: Are policies and processes in place to ensure the firm operates in a financially responsible fashion?**Considerations**

- Policies are in place to ensure that minimum standards of financial responsibility are met, including satisfying monetary judgements, avoiding insolvency, producing appropriate books, records and accounts, completing trust reports and payment of the trust administration fee
- Processes are in place to ensure taxation authorities and creditors of the firm are paid in a timely manner including the payment of GST, PST, payroll and payroll remittances

RESOURCES:

- [Professionalism: Practice Management](#) (September 2016)
- [Code of Professional Conduct for British Columbia](#) [Chapter 7.1: Responsibility to the Society and the Profession Generally (Meeting Financial Obligations)]
- [Law Society Rules 2015](#) [Chapter 3 - Division 6: Financial Responsibility; Part 3 - Division 7: Trust Accounts and Other Client Property]

ELEMENT 8 – EQUITY, DIVERSITY AND INCLUSION

OBJECTIVE
Commitment to improving equity, diversity and inclusion and ensuring freedom from discrimination in the workplace and in the delivery of legal services.

RATING	Policies and processes have not been developed. 1 <input type="checkbox"/>	Policies and processes are under development but are not functional. 2 <input type="checkbox"/>	Policies and processes are functional. 3 <input type="checkbox"/>	Policies and processes are fully functional and regularly assessed and updated. 4 <input type="checkbox"/>
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For a rating of 1 or 2, you must outline the action the firm will take to address challenges and shortcomings in addressing the Professional Infrastructure Element

Comments:

Note: The Indicators and Considerations listed below are not prescriptive, and the guidance provided therein should be approached as suggestions rather than mandates

INDICATOR 1: Are policies and processes in place to ensure that all lawyers and staff experience a fair and safe working environment?

Considerations

- Policies and processes are in place that encourage diversity, inclusion, substantive equality, accommodation, as well as ensuring freedom from discrimination in management and advancement of lawyers and staff
- Hiring policies and processes are free of bias and discrimination, including interview questions
- Policies are reviewed, updated and are communicated to all lawyers and staff
- Lawyers and staff are provided with education and training on issues relating to discrimination, harassment and bullying, including legal obligations under the *Human Rights Code* and the *Workers Compensation Act*
- Maternity and paternity leave policies are in place
- Flexible work schedules are an option for those who have child-care or other caregiver responsibilities
- Accommodation policies are in place for employees with disabilities

- Internal complaints mechanisms are in place to address concerns and allegations of discrimination and harassment in the workplace
- All lawyers and staff receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27

RESOURCES:

- [Practice Resource: Promoting a respectful workplace: A guide for developing effective policies](#)
- [Model Policy: Flexible Work Arrangements](#) (Updated December 2014)
- [Model Policy: Workplace Equality](#) (July 2007)
- [Model Policy: Workplace Accommodation](#) (March 2007)
- [Model Policy: Pregnancy and Parental Leave Policy for Associates](#) (Updated December 2014)
- [Model Policy: Pregnancy and Parental Leave Policy for Partners](#) (Updated December 2014)
- [Practice Resource: Workplace Equality](#) (Updated July 2007)
- [Code of Professional Conduct for British Columbia \[Chapter 6.3: Harassment and Discrimination\]](#)

INDICATOR 2: Are policies and processes in place that ensure that lawyers have adequate knowledge and training to provide legal services in a manner consonant with principles of equity, diversity, inclusion and cultural competency?

Considerations

- The firm treats all clients in a manner consistent with best practices in human rights law
- Language used in communicating with clients is appropriate to the individual receiving the communication and reflects cultural competency and freedom from discrimination
- Processes are in place to address language barriers, cultural issues, including cultural competency and issues of mental capacity
- Lawyers and staff have adequate knowledge and training to ensure that clients with disabilities and other equality seeking groups receive competent legal services
- All lawyers and staff receive skills-based training in intercultural competency, conflict resolution, human rights and anti-racism in response to Truth and Reconciliation Commission Call to Action #27
- The firm has considered legal requirements relating to accessibility and where accessibility may be an issue, lawyers meet clients in other appropriate settings



NOVA SCOTIA BARRISTERS' SOCIETY

MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP)

Self-assessment tool

This **self-assessment tool** is designed to ensure that your legal entity has an effective Management System for Ethical Legal Practice, which comprises ten elements:

- **ELEMENT 1** — DEVELOPING COMPETENT PRACTICES
- **ELEMENT 2** — COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER
- **ELEMENT 3** — ENSURING CONFIDENTIALITY
- **ELEMENT 4** — AVOIDING CONFLICTS OF INTEREST
- **ELEMENT 5** — MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS
- **ELEMENT 6** — ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF
- **ELEMENT 7** — CHARGING APPROPRIATE FEES AND DISBURSEMENTS
- **ELEMENT 8** — SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY
- **ELEMENT 9** — WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY
- **ELEMENT 10** — WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

By creating the requirement that all lawyers practise in entities that have an MSELP, the expectation is that you have in place appropriate policies, practices and systems to support all the elements that apply to your legal entity, and that you demonstrate commitment to those elements.

Throughout the self-assessment, “you” and “your” is used and is intended to refer to your specific legal entity, including sole practitioners and all sizes of law firms.

You are asked to assess yourself on a scale of 1 to 5 in relation to each element. There are no correct answers. The tool is designed to cause you to think about and reflect upon the means by which your entity demonstrates commitment to each element through its policies, procedures and systems. Each entity will actualize these elements through different systems and tools, depending on their practice areas and resources.

To assist you in completing this assessment, each element contains a list of **THINGS TO THINK ABOUT** when considering the elements. The list of things to think about under each element is not exhaustive. Though none of these are mandatory, they provide illustrations of the policies, methods, processes and systems that a prudent legal entity should have in place, dependent upon the type or area of practice.

In the **COMMENT** box under each element, you may add any additional information or explanation that you think will assist in understanding your assessment.

Please note that the **RESOURCES** links are there to assist you in both assessing the robustness of your entity’s management systems in relation to each element, and in undertaking any improvements you determine you need.

You can work on the Self Assessment Tool in stages. Please **save the email you were sent** with a link to your firm’s unique self assessment tool. Through this link, you can return to the tool multiple times, where your most recent work will be saved. You must provide a 1-5 ranking for each element before you can move to the next page. However, you can go back to edit these responses before **clicking “SUBMIT”** on the bottom right side of last page.

Once you've clicked "Submit", the tool cannot be edited, and cannot be submitted a second time by you or someone else in your firm.

MSELP Workbook

The **MSELP Workbook** – a downloadable and printable document – is a tool developed to help you work through your self assessment of each element before completing and submitting your online tool. The Workbook is relevant to all lawyers, but was designed with the services and practice systems of small firms and sole practitioners in mind. Smaller practices are strongly encouraged to use the Workbook as a resource. It is similar in its function to the CRA's Income Tax and Benefits Guide: a tool to help you work through your tax return and calculations, before you submit the return form online.

Definitions

- **"Legal entity"** refers to a lawyer – or a group that carries out work supervised by a lawyer, whether the work is done by a lawyer or a non-lawyer – including but not limited to law firms, in-house counsel and department/team, government lawyer and department/team, and Legal Aid.
- **"Guideline"** is a statement that determines a course of action by streamlining particular processes according to a set routine or sound practice, and may include your policy that governs the matter. Where referred to, guidelines are preferably in writing.
- **"Staff"** includes lawyers, in-house paralegals, legal assistants and any other employee who assists in or provides legal services to clients. 'Staff' in this self assessment refers to all or all relevant staff members.

For each element you are asked to consider the systems, methods and processes you use in relation to each element. Some of the language under **THINGS TO THINK ABOUT** is precise, to assist you in considering your own entity's particular management system:

- **"Processes"** refers to a series of actions or steps taken in order to achieve a particular end, where the 'end' is internally focused (i.e., processes relating to the business of your entity and its internal management).
- **"Means"** refers to a method, action or system by which a result is brought about, where the result is externally focused (e.g., methods for delivering client services and communications).
- **"How you"** leaves open the question of what means, methods and processes you use to achieve an outcome or result.

ELEMENT 1 – DEVELOPING COMPETENT PRACTICES

Your legal entity delivers legal services with appropriate skill and competence.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements for competence in **3.1 of the Code of Professional Conduct**
- The processes and policies you use to hire and employ competent staff
- The processes you use to supervise staff
- The processes you use to assign work to staff with the experience and qualifications to provide a competent level of service
- The nature of your office policy and procedures manual, and how it is updated and made accessible to staff
- Whether you only take a retainer for services when you have or can obtain the necessary skills and resources to carry out the client's instructions
- Your understanding of the need for performance objectives to deliver quality legal services
- The processes you use for identifying performance objectives, and staff performance reviews
- The processes you use to review complaints, both internal and those made to the Nova Scotia Barristers' Society, as well as claims reported to LIANS
- The processes you use to provide staff with ongoing education and training
- The processes you use to ensure that professional staff have professional development plans that are relevant to their areas of practice
- How you and your staff stay current on the use of appropriate technology for your practice

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 6: Relationship to Students, Employees and Others]
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #3: Lawyers' Competence**
- **CBA Ethical Practices Self-Evaluation Tool**
- American Bar Association / **10 Concrete Ways to Measure Law Performance**
- Association of Corporate Council / **Law Firm Evaluation**

ELEMENT 2 – COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER

Your entity has regular and clear communications with clients, so they understand their position throughout the life of a retainer and are in a position to make informed decisions about the services they need, how their matter will be handled, and the options available to them.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements relating to **Quality of Service in 3.2-1 of the Code of Professional Conduct** and in particular Commentary 5
- The guidelines you have in relation to communications that are disseminated to staff and regularly reviewed
- The steps taken to ensure you:
 - listen to clients
 - acknowledge clients' instructions and give them appropriate consideration
 - manage clients' expectations
 - keep current contact information for them
 - provide information and material to them in a timely manner
- The processes you use for receiving client feedback
- The means you use to make key information about your legal entity publicly available to clients and the means you use to ensure your promotional materials, including those on your website, are true, verifiable and factual
- The means you use to give clear information to potential clients about the services available and how fees will be charged
- The means you use to provide an opportunity for clients to make timely appointments with their lawyer or other staff at times and, if necessary, locations convenient for the client
- The means you use to ensure initial appointments are long enough to allow clients to receive a good quality of service
- The processes you use for written retainer agreements, confirmation of retainer, and declination letters where appropriate
- The means by which you inform clients about how disputes or complaints that may arise will be resolved, including fee disputes
- The means by which you address clients' complaints
- How, where appropriate, you provide unbundled legal services that allow the client to take the responsibility for some of the work, and you provide the client with a clear explanation of the potential consequences if that work is taken out of the scope of the retainer
- If you have to cease acting for a client, the means you use to explain the possible options for pursuing their matter
- The means you use for taking instructions when you need to address your clients' language barriers, mental capacity or other vulnerabilities
- The means you use to inform clients about how they can communicate with their lawyer and other staff, and about the manner in which you communicate with them and how often
- The means you use to ensure you are advised of a client's change of address
- The means you use to inform clients regularly and, where appropriate, in writing, about the progress of their matters including cost

THINGS TO THINK ABOUT

- The means you use to ensure courtesy and civility in all communications

COMMENT:**RESOURCES**

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination]
- Lawyers' Insurance Association of Nova Scotia / **Client service**
- Lawyers' Insurance Association of Nova Scotia / **Documenting/Effective Communication**
- Lawyers' Insurance Association of Nova Scotia / **Retainer Agreements and Engagement Letters**
- Law Society of British Columbia / **Communications Toolkit**
- Law Society of Upper Canada / **Client Service and Communication Practice Management Guideline**

ELEMENT 3 – ENSURING CONFIDENTIALITY

Your legal entity keeps information regarding the affairs of clients confidential unless disclosure is required or permitted by law, or the client consents.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of confidentiality in **3.3-2 of the Code of Professional Conduct**
- How confidentiality and privacy guidelines are disseminated to staff and regularly reviewed, and the effectiveness of employee confidentiality agreements
- How you provide education to staff on the importance of confidentiality, including the consequences of breaches
- How you explain confidentiality to clients and ensure they understand their confidentiality rights
- How you ensure:
 - client files or other confidential materials are not left in any public places
 - in your reception area, visitors cannot hear confidential conversations
 - your receptionist protects the confidentiality of client names and matters when talking with others in person or on the telephone
 - client confidentiality is guarded when visitors enter private areas
- Your data security measures
- How you ensure that third parties with access to your computers, such as for maintenance and technical support, will protect the confidentiality of any and all client information
- How you ensure that the outsourcing providers have in place security measures to maintain confidentiality
- How when using social media and/or cloud computing services, you ensure appropriate access settings to prevent inadvertent access or disclosure of confidential client information
- How you protect confidentiality and prevent unauthorized access when using mobile devices, thumb drives and laptops
- If confidential information has been lost, what processes you have for reporting that to the client and appropriate authorities, including your regulator
- If sharing office space, how you take steps to ensure confidentiality with respect to others with whom the space is shared

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.3: Confidentiality]
- Lawyers' Insurance Association of Nova Scotia / **Confidentiality Agreement – General**
- Lawyers' Insurance Association of Nova Scotia / **Confidentiality Agreement – Service Provider**

ELEMENT 4 – AVOIDING CONFLICTS OF INTEREST

Your legal entity does not act, or continue to act, where there is a conflict of interest, except as permitted by the *Code of Professional Conduct*.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements regarding conflicts of interest in **3.4 of the Code of Professional Conduct** and any applicable professional standards
- The processes you use to ensure the Rules and your own guidelines in relation to conflicts of interests are disseminated to all staff and regularly reviewed
- How lawyers are trained on the avoidance of conflicts, the consequences of a conflict and how to deal with a situation when a conflict arises
- How you:
 - identify potential conflicts, whether through a master list or database of present and former clients or otherwise and by considering the names of all adverse parties
 - obtain information on names of corporate personnel and other or former names, as part of your conflicts check
 - check for and evaluate conflicts prior to accepting a new matter and before receiving confidential disclosure
 - check for and evaluate conflicts when a new party is added
 - check for and evaluate conflicts when a new employee is hired
 - check for and evaluate conflicts that may result from prior employment, volunteer work, business interests or personal interests of staff and others associated with the entity
- How, after a conflict has been identified and continued representation is permitted, you discuss the matter with the client and obtain a signed waiver from the client if representation is to continue
- How you address and avoid practices that are common conflicts traps, such as having a financial interest in a client matter; representing adverse parties; engaging in business with a client; taking equity in lieu of fees; or holding office or board memberships that may give rise to conflicts

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3: Relationship to Client; Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness]
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #1: Conflict of Interest**
- Lawyers' Insurance Association of Nova Scotia / RPM Conference presentation / **Conflict of Interest** (December 2014)
- PracticePRO / **Managing Conflict of Interest Situations**
- Canadian Bar Association / **Task Force on Conflicts of Interest Toolkit** (2008)
- The Law Society [UK] / **Practice Notes: Conflict of interests** (March 2015)

ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

Your legal entity uses appropriate file and records management systems.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **3.5 of the Code of Professional Conduct** and any applicable professional standards
- The processes you use to ensure the Rules, Standards and your own guidelines on record retention are disseminated to staff and regularly reviewed
- The effectiveness of the calendar and tickler systems used to remind of scheduled events and deadlines such as:
 - *relevant statutes of limitations*
 - *appointments*
 - *discovery or specific filing deadlines*
 - *court appearances*
 - *review dates*
- Your file opening and closing procedures for each matter
- Your guidelines for data security and how they address:
 - *how electronic records are maintained*
 - *how electronic material is stored*
 - *how electronic material is secure*
 - *how data can be retrieved from legacy/archived systems*
- Your backup systems and how they are regularly backed up and stored in a fireproof cabinet or at an appropriate offsite location
- The means you use to obtain and document the receipt or delivery of original documents to or from a client or third person
- How you track the physical location of a file at all times
- How you track when a document is removed from a file and where it is currently located
- If you use cloud-based systems, you are confident the provider maintains the required level of service and that relevant data protection legislation is complied with
- How you review all open files (including files stored in the Cloud) on a scheduled basis, and diarize next steps or activity
- Your fire prevention, disaster recovery and business continuity policies
- Where you keep valuable documents and materials to avoid damage in the event of fire or other disaster
- Whether your insurance is adequate for all risks
- The means you use to advise clients when you anticipate destroying their file after closing their matter and obtain their agreement, or make other arrangements
- Whether any external service providers, including cloud-based services, are subject to contractual arrangements that enable the Nova Scotia Barristers' Society, or its agent, to obtain information, inspect all records or enter the premises of the third party in relation to their outsourced activities for your legal entity
- Whether you have succession plans in place to address clients' open and closed files

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.5: Preservation of Client's Property]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #1 Record Retention**
- Lawyers' Insurance Association of Nova Scotia / **Risk Management / Intake Procedures**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Time Management Missed Limitations**
- Law Society of British Columbia / **Closed Files: Retention and disposition** (June 2013)
- Law Society of Saskatchewan / **File Management for Legal Assistants** (June 2004)
- Law Society of Upper Canada / **File Management Practice Management Guideline**
- The Law Society [UK] / **Practice Notes: File Closure Management** (June 2014)

ELEMENT 6 – ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF

Your legal entity adequately supervises, supports and manages staff in their delivery of legal services.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **Chapter 6 of the Code of Professional Conduct**
- Whether your office policy and procedures manual is comprehensive, up to date, readily accessible and regularly reviewed by staff
- The nature and frequency of staff meetings, including meetings for support staff
- How you ensure that staff receives clear and complete instructions regarding work assigned and the end product required, including sufficient background information
- How senior lawyers and management personnel set good examples for staff by providing and faithfully using dependable management guidelines and systems including, but not limited to, conflicts of interest checks, work allocation, file management, non-discrimination, documentation and communication
- How you use mentors and ethical role models, and encourage and train staff for leadership
- How you identify, address and inform staff about the importance of wellness for all and especially mental health support relevant to the legal profession, including the Nova Scotia Lawyers Assistance Program
- Whether you fairly and appropriately select staff that have supervisory responsibilities and the nature of the training provided in relation to supervision and management of staff, and oversight of outsourcing providers
- The fairness and effectiveness of your performance management
- How you maintain a respectful workplace that encourages equality of opportunity, promotes diversity in recruitment and appropriately accommodates disabilities
- If you share space with other lawyers or professionals who are not members of your legal entity (including business centres), how you have documented the nature of the arrangement

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 6: Relationship to Students, Employees and Others]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #4 Maintenance and Backup Electronic Data**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #6 Cloud Computing**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Human Resources Staff Management**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Succession Planning**
- Nova Scotia Lawyers Assistance Program / www.nslap.ca
- Law Society of British Columbia / **Lawyers Sharing Space**

- Law Society of British Columbia / **Promoting a Respectful Workplace: A Guide for Developing Effective Policies** (December 2014)
- The Law Society [UK] / **Practice Notes: Supervision** (October 2011)
- LAWPRO / **Supervision of employees: The buck stops with you** (2009)
- PracticePRO / **Delegating responsibly and effectively** (Summer 2007) *LawPRO Magazine*
- PracticePRO / **A systematic approach to law firm risk management** (Spring 2010) *LawPRO Magazine*

ELEMENT 7 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

Your legal entity charges clients fair and reasonable fees, which are fully disclosed.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **3.6 of the Code of Professional Conduct**
- The processes you use to ensure guidelines in relation to billing practices are disseminated to all staff and regularly reviewed
- The requirements for written retainer agreements, especially for new clients
- Whether your entity's written retainer agreements specify
 - the billing process, cycle and timing of accounts
 - the timing for payment of accounts and interest to be paid on unpaid bills
 - who will work on the file and at what rate
 - the amount of the retainer and how it is replenished
 - the consequences of non-payment of an account
 - terms for withdrawal as counsel
 - the possibility of a solicitor's lien on the file
 - the distinction between fees and disbursements
 - consequences of not paying accounts when due
 - any limitations on scope of service
 - whether the retainer is being funded by a third party and if so, the nature of their relationship with you
 - the right to have the account reviewed by a taxing authority
- The means you use to explain the billing process to clients at the time of retainer and any changes as their matter progresses, and confirm the arrangements in writing
- How you ensure accurate and complete time records, which are recoded as tasks are completed when time recording is used as a management or billing tool
- How you ensure that disbursements are accurate and recoded in a timely manner
- How you keep track of time and effort, even if time is not the basis for billing
- How bills are approved before they are sent to a client
- How you ensure funds are not withdrawn from trust to pay an account except in compliance with the Trust Account Regulations

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.6: Fees and Disbursements]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #5 Retention and Billing**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Financial Management**
- Law Society of British Columbia / **Fees, Disbursements and Interest** (2012)
- Law Society of Upper Canada / **Bookkeeping Guide for Lawyers** / (October 2014)
- Scott, Todd C. / **Nine Rules for Billing Ethically and Getting Paid on Time** (November 2011)

ELEMENT 8 – SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY

Your legal entity's dealings with clients and other third parties are conducted in a fair, effective and respectful way.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **Chapter 7 of the Code of Professional Conduct**
- How you ensure that communications with clients, colleagues, the judiciary, the community and the Society are carried out in a timely, respectful and courteous manner
- The processes you use to ensure your guidelines in relation to client communication are disseminated to all staff and regularly reviewed
- The processes you use to ensure your guidelines in relation to communications with colleagues the judiciary, the community and the Society are disseminated to all staff and regularly reviewed

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** (current to May 2016) [Rule 2.1-1: Integrity; Rule 3.2-2: Honesty and Candour; Chapter 5: Relationship to the Administration of Justice; Chapter 7: Relationship to the Society and Other Lawyers; Rule 7.2-11: Undertakings and Trust Conditions; Rule 7.3-1: Maintaining Professional Integrity and Judgment]
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Social Media in the Workplace**
- Law Society of British Columbia / **Communications with the Law Society**
- QBE Europe Professional Indemnity Risk Management / **Solicitors: A Guide to Undertakings** (January 2013)
- Shields, Allison C. / **Managing Your Reputation in an Online World** (July/August 2014) ABA Law Practice Magazine

ELEMENT 9 – WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY

Your legal entity is committed to improving diversity, inclusion and substantive equality and ensuring freedom from discrimination in the delivery of legal services and the justice system.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **6.3 of the Code of Professional Conduct**
- The means you use to ensure that your legal entity recognizes the importance of and delivers culturally competent legal services, including but not limited to education about culturally competent legal service delivery
- The processes you use to identify skills, knowledge and attributes related to cultural competence and diversity as factors in advancement and qualities needed for leadership positions
- The opportunities you provide for staff to practise inclusion enough that they transition from conscious cultural competence to unconscious cultural competence
- How you integrate inclusive behaviours as part of hard professional skills, rather than as optional soft skills
- How you ensure language used is appropriate to the individual receiving your communications and reflects cultural competency, equity and freedom from discrimination
- The nature of your policies and practices that encourage substantive equality and respect for diversity in all areas of recruitment and in the workplace including:
 - encouragement for diversity and cultural knowledge
 - accommodation of disabilities
 - assignment and evaluation of work free of bias
- The nature of your policies that address non discrimination, cultural competency and accommodation relating to both the delivery of legal services and hiring and advancement of staff of the legal entity
- How you develop workplace teams that actively support and encourage diversity in the workplace
- The nature and effectiveness of your internal complaint mechanisms that address concerns or allegations of discrimination and harassment in the workplace
- Your commitment and ability to keep detailed statistics on diversity including information related to recruitment, retention and advancement, if required to do so by the Society

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** (current to September 2014) [**Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination**]
- Nova Scotia Barristers' Society / **The Equity Portal**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #8 Equity and Diversity**

ELEMENT 10 – WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

Your legal entity encourages public respect for and tries to improve the administration of justice and enhance access to legal services.

RATING	Almost never	Usually not	Occasionally	Frequently	Almost always
	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

THINGS TO THINK ABOUT

- The requirements of **5.6 of the Code of Professional Conduct**
- Whether you have *pro bono* guidelines and encourage staff to participate in *pro bono* services and activities
- Whether you provide:
 - legal services in a rural community
 - legal services an underserved area
 - legal services pursuant to certificates issued by Nova Scotia Legal Aid
- Whether you encourage staff to take part in volunteering activities that offer legal services
- The means by which you offer clients alternatives to litigation where appropriate
- The processes you use to enable better case management of files and other means to increase efficiencies and reduce costs of legal services
- Whether you take steps to provide lower cost legal services to clients, including offering alternative fee arrangements and unbundled legal services
- The processes you use to prepare and train your staff to engage with self-represented parties and communicate with them professionally at all times
- Whether you provide staff education and training in relation to cultural competence, client-centred thinking and the use of plain language
- The means by which you encourage innovation in legal services delivery, and whether you invite staff to suggest measures to increase the efficiency and effectiveness of your legal entity
- Whether you encourage staff to suggest measures to improve the administration of justice and have a means for communicating suggestions to those with authority to address suggestions for change

COMMENT:

RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct [Chapter 5.6: The Lawyer and the Administration of Justice]**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #5: Retention and Billing**
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #7: Unrepresented Party**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / Practice Tools / **Limited Scope Retainer Resources**

- ABA Standing Committee on Pro Bono & Public Service and the Centre for Pro Bono / **Resources for Law Firms**
- Canadian Bar Association / **The ABCs of Creating a Pro Bono Policy for Your Law Firm**
- Harvard Law School / **Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting**
- MacLaughlin, Paul / **Managing Pro Bono** (Law Society of Alberta)

MANAGEMENT SYSTEM FOR
ETHICAL LEGAL PRACTICE (MSELP)

WORKBOOK

The Workbook

The MSELP Self-Assessment Tool is an instrument designed to ensure your legal entity has an effective Management System for Ethical Legal Practice (MSELP), comprising 10 elements that need to be present for legal services to be effectively and ethically provided to clients. It is intended to help you reflect upon and improve your processes and the systems that impact the quality of your legal services delivery.

Law firms and lawyers are required to have in place each of the 10 elements that apply to their specific legal entity, and to demonstrate commitment to them.

In the self-assessment tool, there is no one right answer. Each entity will have different systems and tools to support these elements, depending on their practice areas and resources.

This workbook will assist you in self assessing each of the 10 MSELP elements. It will help you work through each element before you complete and submit your online MSELP Self-Assessment Tool to the Society.

A list of 'indicators' of each element is provided for your consideration, together with a 1-5 scale for self-identifying your relative strength in each. Taken together, your 'scoring' of these indicators may help you to self assess each MSELP element. The indicators are relevant to all lawyers in private practice. The workbook was designed with the services and practice systems of small firms and sole practitioners in mind. Throughout, "you" and "your" is used and is intended to include sole practitioners and law firms of all sizes.

There are, of course, other matters relevant to each element, which you may also wish to reflect upon as you complete your self-assessment. Other considerations are outlined in the MSELP Self-Assessment Tool. 'Resource' links are provided for each element to assist you in reflecting and improving.

Please do not submit this workbook. Keep it as a record and as a tool from which you can continue to work to enhance your MSELP.

Assessment scale

To assist you in self assessing the strength of your management systems as they relate to each element, indicators of that element are provided, together with a rating scale of 1-5. Listed under each indicator are examples of the processes, policies and other systems you might employ to support the delivery of ethical legal services.

You are asked to consider the likelihood that these systems are consistently employed in your practice. For example, under **Element 1 – Developing Competent Practices**, you are asked to consider various statements that indicate the likelihood of you and your staff having sufficient training and experience to perform your duties. The first indicator is: "You conduct background and reference checks and review resumés on hiring", to which you might respond:

- 1 – In my practice, I/we **almost always** conduct background and reference checks and review resumés on hiring.
- 2 – I/we **usually** conduct background and reference checks and review resumés on hiring.
- 3 – I/we **occasionally** conduct background and reference checks and review resumés on hiring.
- 4 – I/we **usually do not** conduct background and reference checks and review resumés on hiring.
- 5 – I/we **almost never** conduct background and reference checks and review resumés on hiring.
- N/A** – This is not relevant to my practice (e.g., I have no employees).

The '**Notes**' field at the end of each element provides space for you to record further reflection on your current systems and/or ideas for their improvements.

Again, there are no right answers. The intention is to provide you an opportunity to identify where more robust processes and systems can be developed in your practice.

ELEMENT 1: DEVELOPING COMPETENT PRACTICES

Your staff delivers the legal services your entity is engaged to provide with appropriate skill, expertise and in an ethical manner.

INDICATOR – You and your staff have sufficient training and experience to perform your duties.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You conduct background and reference checks and review resumes on hiring	1	2	3	4	5		CBA Ethical Practices Self-Evaluation Tool LIANS / Sample interview questions
You train when first hired and when major procedural changes occur	1	2	3	4	5		Nova Scotia Barristers' Society / Professional development Nova Scotia Barristers' Society / Hiring Practices for Equity in Employment: Interviewing Guide
You offer ongoing educational opportunities	1	2	3	4	5		Law Society of Alberta / Top 10 Things to Include in Your Law Office Manual
You have a policy and procedures manual for staff	1	2	3	4	5		Suffolk University Law School / Legal Tech Assessment
You review the use of technology and technology training with staff and lawyers on a regular basis	1	2	3	4	5		Nova Scotia Barristers' Library / The 2015 solo and small firm legal technology guide : critical decisions made simple

INDICATOR – You and your staff are provided with education and training in the following areas:

Identification of conflicts	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.1: Competence; Chapter 3.2: Quality of Service; Chapter 6: Relationship to Students, Employees and Others] NSBS Family Law Standards / Standard #3: Lawyers' Competence
Use of trust accounts	1	2	3	4	5		
Password confidentiality	1	2	3	4	5		
Technology security	1	2	3	4	5		
Ethics	1	2	3	4	5		
Billing practices	1	2	3	4	5		
Appropriate communications with clients	1	2	3	4	5		
Physical security	1	2	3	4	5		
Health and wellness	1	2	3	4	5		
Clients' unique cultural circumstances	1	2	3	4	5		

Notes:

ELEMENT 2: COMMUNICATING IN AN EFFECTIVE, TIMELY AND CIVIL MANNER

Communications with your clients are clear and clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

INDICATOR – You have written guidelines in relation to communication with clients and a process for ensuring the guidelines are effectively disseminated to all staff.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Confidentiality	1	2	3	4	5		Law Society of British Columbia / “Communications Toolkit” Law Society of Upper Canada / “Client Service and Communication Practice Management Guideline” Lawyers' Insurance Association of Nova Scotia / Client service LIANS / “Retainer Agreements and Engagement Letters” PracticePRO / Precedent documents and retainers
Retainers	1	2	3	4	5		
Use of email / telephone / text and other forms of communication	1	2	3	4	5		
How clients are informed/updated about their matters	1	2	3	4	5		
Compliance with privacy and anti-spam legislation	1	2	3	4	5		
Requirements in relation to non-lawyer communications to ensure clarity and that they are not holding themselves out as a lawyer	1	2	3	4	5		

INDICATOR – You have a process to ensure that the communication guidelines are regularly reviewed.

You discuss the guidelines with staff to reinforce and ensure being followed	1	2	3	4	5		LIANS / Communication Slaw / Obtaining and Acting on Client Feedback PracticePRO / Post-Matter Client Service Survey Precedent
Guidelines are regularly reviewed to ensure currency and compliance with applicable ethical standards	1	2	3	4	5		
Compliance with guidelines is part of performance reviews	1	2	3	4	5		
You have a process to regularly obtain client feedback	1	2	3	4	5		

INDICATOR – You provide clients with information and communication guidelines as appropriate.

Communications are addressed in retainer letters	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.2: Quality of Service; Chapter 5.1: The Lawyer as Advocate; Chapter 7.2: Responsibility to Lawyers and Others; Chapter 6.3: Equality, Harassment and Discrimination]
You take reasonable steps to keep client contact information up to date	1	2	3	4	5		
You explain to clients the importance of making sure you are advised of any change in their contact information	1	2	3	4	5		
Clients are advised how to find information about your entity	1	2	3	4	5		

INDICATOR – You have information about your legal entity available publicly.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Range of services	1	2	3	4	5		
Staff and lawyers working for entity	1	2	3	4	5		
Practice hours	1	2	3	4	5		
Contact information	1	2	3	4	5		
After-hours contact information	1	2	3	4	5		

INDICATOR – You communicate in a manner that is respectful of clients and their needs.

Communications are in the manner most comfortable for the client	1	2	3	4	5		NSBS Family Law Standards / Standard #2: Client Competence American Bar Association / Representing Clients with Limited English Proficiency Law Society of British Columbia / Respectful Language Guideline The Law Society (UK) / Practice notes: Meeting the Needs of Vulnerable Clients
Communications are done in a timely and efficient manner	1	2	3	4	5		
Clients are advised of the methods of in which they may communicate with their lawyers, and the expected and appropriate frequency of communications	1	2	3	4	5		
You reasonably attempt to accommodate clients on short notice and make referrals to others where appropriate	1	2	3	4	5		
Communications are conducted in a manner that is professional, and ensures privacy and confidentiality	1	2	3	4	5		
You have processes for addressing language barriers	1	2	3	4	5		
You have processes to ensure that communications with clients are reflective of cultural competence, equity and diversity	1	2	3	4	5		

INDICATOR – You have processes in place to ensure timely review of all matters and to inform clients about their matter's progress.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Clients are regularly informed of the status of their matter	1	2	3	4	5		LIANS / Financial Management Nova Scotia Barristers' Library / How to Draft Bills Clients Rush to Pay American Bar Association / Managing Client Expectations PracticePRO / Managing the Lawyer-Client Relationship
Clients are provided with projected/possible outcomes, including anticipated timelines	1	2	3	4	5		
Clients are informed of anticipated costs and any material changes to the anticipated costs	1	2	3	4	5		
Material changes in the scope of the retainer, costs or timelines are communicated to the client in a timely manner and confirmed in writing where appropriate.	1	2	3	4	5		
Copies of key documents and communications are provided to the client in a timely manner.	1	2	3	4	5		
Deadlines, limitations, hearing dates and other important dates are communicated to the client.	1	2	3	4	5		

Notes:

ELEMENT 3: ENSURING CONFIDENTIALITY

You keep the affairs of clients confidential unless disclosure is required or permitted by law, or the client consents.

INDICATOR – You have a confidentiality and privacy policy.

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You provide education on the importance of confidentiality	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.3: Confidentiality] NSBS Law Office Management Standards / Standard #4: Maintenance and Backup NSBS Law Office Management Standards / Standard #6: Cloud Computing LIANS / Sample Confidentiality Agreement LIANS / Service Provider Confidentiality Policy LIANS / Practising Remotely LIANS / Office Space/Location/Confidentiality LIANS / Data Security PracticePRO / Model Technology Usage Policy Law Society of British Columbia / Cloud Computing Checklist PracticePRO / Social Media Pitfalls to Avoid
You provide education on the potential consequences of a breach of confidentiality	1	2	3	4	5		
Employees sign a confidentiality letter or agreement	1	2	3	4	5		
You have confidentiality requirements (including agreements) for third parties (such as landlords, contractors, bookkeepers, computer service providers, cleaners, interns, volunteers, family members) who may access physical space or computers, tablets and smart phones	1	2	3	4	5		
You ensure that all third parties who may access physical space or computers, tablets and smart phones protect confidentiality of information obtained	1	2	3	4	5		
You protect confidentiality in office areas entered by persons not employed by or associated with the entity	1	2	3	4	5		
You take steps to ensure that others cannot overhear confidential conversations staff and others associated with the entity have both within and outside the physical office (i.e., on phone in reception/common area or call taken/made offsite)	1	2	3	4	5		
You take steps to ensure that client files and other confidential material are not left in any publicly accessible places	1	2	3	4	5		
You locate copiers, fax machines, mail, etc. so that confidential information cannot be seen by persons not employed by or associated with the entity	1	2	3	4	5		

You have appropriate office security for confidential information – including electronic information	1	2	3	4	5		
You take steps to protect confidential information on all computers, laptops, tablets, smart phones, thumb drives and other technological devices (i.e., passwords)	1	2	3	4	5		
You take steps to protect confidentiality when using social media or cloud-based services	1	2	3	4	5		
You are familiar with the requirements of privacy legislation	1	2	3	4	5		
You are familiar with situations where disclosure of confidential information is permissible under or required by law	1	2	3	4	5		
If sharing office space, you take steps to ensure confidentiality with respect to others with whom the space is shared	1	2	3	4	5		
Notes:							

ELEMENT 4: AVOIDING CONFLICTS OF INTEREST

You never act where there is a conflict, or a significant risk of conflict, between you and your client.

INDICATOR – You have a written conflict policy

<i>Considerations</i>	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	<i>Resources</i>
You check for and evaluate conflicts prior to accepting a new matter and before receiving confidential disclosure	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness]
You check for and evaluate conflicts when a new party is added	1	2	3	4	5		NSBS Family Law Standards / Standard #1: Conflict of Interest
You check for and evaluate conflicts when a new person is hired	1	2	3	4	5		LIANS / Conflict of Interest
You check for and evaluate conflicts that may result from prior employment, volunteer work, business interests or personal interests of staff and others associated with the entity	1	2	3	4	5		Canadian Bar Association / Task Force on Conflicts of Interest Toolkit (2008) The Law Society (UK) / Practice notes: Conflict of interests (March 2015)
You provide education on the avoidance of conflicts and the consequences of a conflict	1	2	3	4	5		PracticePRO / Managing Conflict of Interest Situations
Your policy is periodically reviewed and updated	1	2	3	4	5		LIANS / Conflict of Interest Checklist
You maintain an effective master list or database of current and former clients	1	2	3	4	5		CBA / Developing a Conflict Checking System for Your Law Firm
You request information regarding names of corporate officers and directors in the course of completing conflict checks	1	2	3	4	5		PracticePRO / Sitting on a non-profit board: A risk management checklist
You request information regarding other names (maiden names, previous names, etc.) in the course of completing conflict checks	1	2	3	4	5		PracticePRO / Managing the Practice of Investing in Clients
You request information regarding all adverse parties in the course of completing conflict checks	1	2	3	4	5		
You avoid having a financial interest in a client matter	1	2	3	4	5		
You avoid engaging in business with a client	1	2	3	4	5		
You avoid representing adverse parties	1	2	3	4	5		
You obtain a signed waiver from a client if representation is requested and agreed to after a conflict has been discussed	1	2	3	4	5		

Notes:

ELEMENT 5: MAINTAINING APROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

Your entity maintains accurate and up to date records using an appropriate file management system that safeguards clients' documents and information.

INDICATOR – You have a record retention policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have a centralized filing system (including cloud based systems)	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.5: Preservation of Client's Property] NSBS Law Office Management Standards / Standard #1: Record Retention LIANS / Disaster Planning Law Society of Upper Canada / The Contingency Planning Guide for Lawyers Law Society of Upper Canada / File Management Practice Management Guideline
You have a supervisor appointed to manage that system	1	2	3	4	5		
You have a standardized arrangement for naming of your electronic files (e.g., last name, first name, subject matter/area of law, file number)	1	2	3	4	5		
You store files in a secure area and safe from water and vermin damage	1	2	3	4	5		
You set file destruction dates	1	2	3	4	5		

INDICATOR – You have a file opening procedure for each new matter

You perform "conflict of interest" checks	1	2	3	4	5		LIANS / Intake Procedures LIANS / Engagement Letters Law Society of Upper Canada / File opening checklist
You send an engagement letter	1	2	3	4	5		
You use a retainer agreement	1	2	3	4	5		
You use checklists	1	2	3	4	5		

INDICATOR – You use a tickler system for deadlines

Statute of limitations	1	2	3	4	5		Legal Aid Ontario / Tickler Guidelines and Procedure Tennessee Bar Association / Tickler and Calendar Systems
Appointments	1	2	3	4	5		
Discovery or specific filing deadlines	1	2	3	4	5		
Court appearances	1	2	3	4	5		
Review dates	1	2	3	4	5		
Remote calendar access	1	2	3	4	5		
Staff calendar access	1	2	3	4	5		
Check out procedures for physical files	1	2	3	4	5		

INDICATOR – You have a closing procedure for each file

<i>Considerations</i>	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	<i>Resources</i>
You return original documents to clients	1	2	3	4	5		LIANS / Guidelines for File Closure, Retention and Destruction
You send closing letters at the end of the retainer / matter	1	2	3	4	5		The Law Society (UK) / Practice notes: File closure management [3: File closure policy and checklist]

Notes:

ELEMENT 6: ENSURING EFFECTIVE MANAGEMENT OF THE LEGAL ENTITY AND STAFF

Staff are adequately supervised, supported and managed in their delivery of legal services to clients.

INDICATOR – You share space with other lawyers or professionals who are not members of your legal entity (including business centres) in an appropriate manner

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have taken steps to clearly distinguish your entity to prevent confusion by clients and the general public (entryway, letterhead and other written materials)	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 6: Relationship to Students, Employees and Others] Canadian Bar Association / Sharing Space: Tips for Solo Practitioners Law Society of British Columbia / "Lawyers Sharing Space"
You do not share a trust account or any banking arrangements	1	2	3	4	5		
If you share staff, e.g., receptionists or paralegals, you have taken appropriate steps to ensure confidentiality of client materials and/or disclose to clients the limits of your ability to maintain confidentiality	1	2	3	4	5		
If you share office equipment (fax machines, servers, etc.) you have addressed confidentiality issues, made proper disclosure to clients and clarified ownership of the shared equipment	1	2	3	4	5		

INDICATOR – Your office is accessible to all members of the public

	1	2	3	4	5		
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INDICATOR – You have an information management policy

	1	2	3	4	5		Legal Files / Case Management: Why Doesn't Every Law Firm Use It? American Bar Association / Practice/Case Management Software Comparison Chart for Solo/Small Firm
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INDICATOR – You back up your electronic documents and store your paper documents appropriately (including testing of the backup)

You use cloud services, including online dictation or remote receptionists	1	2	3	4	5		NSBS Law Office Management Standards / Standard #4: Maintenance and Backup of Electronic Data
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INDICATOR – You provide training

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Staff	1	2	3	4	5		LAWPRO / Supervision of employees: The buck stops with you (2009) The Law Society (UK) / Practice notes: Supervision (October 2011) The Law Society of British Columbia / "Promoting a Respectful Workplace: A Guide for Developing Effective Policies" (December 2014) PracticePRO / "Delegating responsibly and effectively" (Summer 2007) LawPRO Magazine Nova Scotia Lawyers Assistance Program
Lawyers	1	2	3	4	5		
On how and what to delegate	1	2	3	4	5		
On effective and appropriate supervision	1	2	3	4	5		
On cultural diversity	1	2	3	4	5		
On consumers of Mental Health Services	1	2	3	4	5		
You monitor and encourage staff and lawyer well-being	1	2	3	4	5		
You promote the Nova Scotia Lawyers Assistance Program	1	2	3	4	5		

INDICATOR – You have guidelines to encourage equality of opportunity and respect for diversity in hiring

You encourage diversity and cultural knowledge	1	2	3	4	5		NSBS / Hiring Practices for Equity in Employment: Interviewing Guide NSBS / The Equity Portal Nova Scotia Human Rights Commission / A guide for drafting job application forms and interview questions
You accommodate disabilities	1	2	3	4	5		
You assign and evaluate work free of bias	1	2	3	4	5		
You have a clear mechanism for staff to raise employment issues, including discrimination and harassment	1	2	3	4	5		

INDICATOR – You provide staff with clear and complete instructions

Staff are informed of priorities and deadlines	1	2	3	4	5		The Management Center / You Probably Need to Give More Feedback! Here's How.
Staff are instructed on appropriate file management processes	1	2	3	4	5		
Staff are provided with appropriate, timely and confidential feedback	1	2	3	4	5		
Staff know the whereabouts of their direct supervisor or person in authority	1	2	3	4	5		

INDICATOR – You have a comprehensive, up-to-date office policy and procedure manual and it is regularly reviewed with staff

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You have written job descriptions	1	2	3	4	5		LIANS / Succession Planning
You have written termination procedures	1	2	3	4	5		LIANS / Human Resources/Staff Management
You have provision for overtime, sick leave and medical insurance	1	2	3	4	5		Law Society of Alberta / Top 10 Things to Include in Your Law Office Manual
Confidentiality agreements have been signed	1	2	3	4	5		
You conduct appropriate background checks before hiring key staff	1	2	3	4	5		
Non-arms length staff are also bound by the policy	1	2	3	4	5		
Clients are aware of non-arms-length staff	1	2	3	4	5		
There are clear lines of authority	1	2	3	4	5		
You have a succession plan	1	2	3	4	5		
In the event of unforeseen accident, illness or death, staff are aware of your succession plan, who to contact and the steps to take in order to address the interests of your clients	1	2	3	4	5		
You carry adequate insurance for your practice, including excess professional liability coverage and Outside Directors Liability coverage	1	2	3	4	5		

Notes:

ELEMENT 7: CHARGING APPROPRIATE FEES AND DISBURSEMENTS

Clients are charged fees appropriately and are clear about the costs, or likely costs incurred during their legal transaction.

INDICATOR – You use a written retainer agreement

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
The agreement explains the billing process	1	2	3	4	5		NSBS Law Office Management Standards / Standard #5: Retention and Billing PracticePRO / Precedent Documents and Retainers
All new and returning clients sign the retainer agreement	1	2	3	4	5		
Interest on unpaid bills is clearly laid out	1	2	3	4	5		
The agreement sets out who will work on the file and at what rate	1	2	3	4	5		
The agreement sets out terms for withdrawal as counsel	1	2	3	4	5		
The amount of a retainer and how it is replenished	1	2	3	4	5		
Fees are distinguished from disbursements	1	2	3	4	5		
Any limitations on scope of service are clearly identified	1	2	3	4	5		
Timing of bills	1	2	3	4	5		

INDICATOR – Your fees are fair and reasonable

You provide clients with notice in advance of a change of fee or disbursement charges	1	2	3	4	5		Law Society of British Columbia / Fees, Disbursements and Interest (2012) Scott, Todd C / " Nine Rules for Billing Ethically and Getting Paid on Time " (November 2011)
You keep time on all files, even those for which a fixed fee or contingency charged	1	2	3	4	5		
Disbursements and other charges posted to client files regularly	1	2	3	4	5		
Bills are reviewed and approved before they are sent to the client on a regular basis	1	2	3	4	5		

INDICATOR – You understand what constitutes unethical billing practices

	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct [Chapter 3.6: Fees and Disbursements]
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Notes:

ELEMENT 8: SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY

Your dealings with clients and other third parties will be conducted in a fair, open, effective and respectful way that respects diversity.

INDICATOR – You have a policy with respect to responding to client communications

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Turnaround times for phone calls	1	2	3	4	5		Nova Scotia Barristers' Society / Code of Professional Conduct (current to May 2016) [Rule 2.1-1 : Integrity; Rule 3.2-2 : Honesty and Candour; Chapter 5 : Relationship to the Administration of Justice; Chapter 7 : Relationship to the Society and Other Lawyers; Rule 7.2-11 : Undertakings and Trust Conditions; Rule 7.3-1 : Maintaining Professional Integrity and Judgment]
Manner of communication (phone, mail, email)	1	2	3	4	5		
Timing of interim reports	1	2	3	4	5		
Copying client on correspondence	1	2	3	4	5		
Timing of final reports and final accounts	1	2	3	4	5		

INDICATOR – You have a policy ensuring each client receives a retainer letter setting out:

Anticipated fees and disbursements	1	2	3	4	5		PracticePRO / Precedent Documents and Retainers
Billing policies	1	2	3	4	5		
Services covered by the retainer	1	2	3	4	5		
A statement that there is no guarantee of a specific outcome	1	2	3	4	5		
Termination of legal services	1	2	3	4	5		

INDICATOR – All client instructions are confirmed in writing

	1	2	3	4	5		
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INDICATOR – You maintain an active case list

	1	2	3	4	5		
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INDICATOR – Client matters are completed in a timely fashion

	1	2	3	4	5		
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INDICATOR – You respond to communications from lawyers in a timely fashion

	1	2	3	4	5		
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INDICATOR – You have a written guideline in relation to undertakings

<i>Considerations</i>	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	<i>Resources</i>
Tracking undertakings	1	2	3	4	5		Law Society of Upper Canada / Undertakings and Trust Conditions
Ensuring undertakings are fulfilled in a timely fashion	1	2	3	4	5		QBE Europe Professional Indemnity Risk Management / Solicitors: A Guide to Undertakings (January 2013)

INDICATOR – You have a written guideline in relation to communicating with the Court

	1	2	3	4	5		

INDICATOR – You have a guideline with respect to public statements

Comments regarding judicial decisions and the administration of justice	1	2	3	4	5		LIANS / Social Media in the Workplace Shields, Allison C / " Managing Your Reputation in an Online World " (July/August 2014) ABA Law Practice Magazine
Encouraging respect for the administration of justice	1	2	3	4	5		
Media inquiries	1	2	3	4	5		
Use of social media	1	2	3	4	5		
Advertising is true and accurate	1	2	3	4	5		

INDICATOR – You effectively use your calendar

You calendar court appearances	1	2	3	4	5		
You set reminders of scheduled court appearances	1	2	3	4	5		
You ensure you are not double booked	1	2	3	4	5		
You use a tickler system	1	2	3	4	5		

INDICATOR – You have a written guideline in relation to communicating with the Nova Scotia Barristers' Society

You respond to the Society in a timely fashion	1	2	3	4	5		
You act in a manner consistent with the NSBS Standards	1	2	3	4	5		

INDICATOR – You have a guideline to prevent discrimination and harassment

	1	2	3	4	5		
							NSBS / The Equity Portal

INDICATOR – You provide training to lawyers and staff on issues relating to discrimination and cultural competence

	1	2	3	4	5		
							NSBS / The Equity Portal

Notes:

ELEMENT 9: WORKING TO IMPROVE DIVERSITY, INCLUSION AND SUBSTANTIVE EQUALITY

You are committed to improving diversity, inclusion and substantive equality and ensuring freedom from discrimination in the delivery of legal services and the justice system.

INDICATOR – You have a workplace equity policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
Your entity treats all persons in a manner consistent with best practices in human rights law and the <i>Code of Professional Conduct</i>	1	2	3	4	5		Nova Scotia Barristers' Society / <i>Code of Professional Conduct</i> (current to September 2014) [Chapter 3.2 : Quality of Service; Chapter 5.1 : The Lawyer as Advocate; Chapter 7.2 : Responsibility to Lawyers and Others; Chapter 6.3 : Equality, Harassment and Discrimination] NSBS / Equity & access NSBS Law Office Management Standards / Standard #8: Equity and Diversity
Policy encourages equality and respect for diversity in all areas of recruitment, retention, and advancement	1	2	3	4	5		
It prohibits harassment	1	2	3	4	5		
It prohibits discriminatory practices	1	2	3	4	5		
It addresses accommodation for persons with disabilities	1	2	3	4	5		
It is communicated to all current and prospective staff	1	2	3	4	5		
It is published online or otherwise made available to those outside of your practice	1	2	3	4	5		

INDICATOR – You have a process to enforce your equity policy

	1	2	3	4	5		
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INDICATOR – You have a process to ensure language used is appropriate to the individual receiving your communications and reflects cultural competency, equity and freedom from discrimination

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INDICATOR – You provide staff and lawyers training in culturally competent legal service delivery

	1	2	3	4	5		
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Notes:

ELEMENT 10: WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE AND ACCESS TO LEGAL SERVICES

Your entity plays a role in improving access to legal services and the administration of justice.

INDICATOR – You have a *pro bono* guideline or policy

Considerations	Almost never	Usually not	Occasionally	Usually	Almost always	N/A	Resources
You are required to participate in <i>pro bono</i> work	1	2	3	4	5		ABA Standing Committee on Pro Bono & Public Service and the Center for Pro Bono / Resources for Law Firms
Your entity encourages <i>pro bono</i> work	1	2	3	4	5		Canadian Bar Association / The ABCs of Creating a Pro Bono Policy for Your Law Firm
<i>Pro bono</i> hours 'count' toward billable hour targets	1	2	3	4	5		Harvard Law School / Pro Bono Guide: An Introduction to Pro Bono Opportunities in the Law Firm Setting
You spend the appropriate amount of time with the client and are empathetic	1	2	3	4	5		MacLaughlin, Paul / Managing Pro Bono (Law Society of Alberta)

INDICATOR – You use limited scope retainers

	1	2	3	4	5		NSBS Law Office Management Standards / Standard #7: Limited Scope Retainers LIANS / Limited Scope Retainer Resources
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INDICATOR – You use alternative fee arrangements

	1	2	3	4	5		LegalTrek / Alternative Fee Arrangements: a Comprehensive Guide for Law Firms
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INDICATOR – Lawyers and staff receive training on how to deal with self-represented litigants

	1	2	3	4	5		NSBS Family Law Standards / Standard #7: Unrepresented Party LawPRO Magazine / Self-Represented Litigants: A survival guide Slaw / Providing Legal Services in a Coaching Model: The What, Why and How
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Notes:



Mid-Year Report 2017

Committee: Access to Legal Services Advisory Committee

Martin Finch, QC (Chair)
Claire Hunter (Vice-Chair)
Jeffrey Campbell, QC
Barbara Cromarty
Christopher McPherson
Gregory Petrisor
Mark Rushton
Dan Smith
Michelle Stanford
The Honourable Thomas Cromwell
Jean Whittow, QC

July 6, 2017

Prepared for: Benchers

Prepared by: Access to Legal Services Advisory Committee

Purpose: Information

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Introduction

1. The purpose of this report is to provide the Benchers with an update on the topics the Committee has been considering in 2017.
2. The Committee is an advisory committee. Its purpose is to monitor matters within its mandate that are relevant to the work of the Law Society. The Committee can also carry out discrete tasks the Benchers assign it. The primary focus of the Committee is to recommend to the Benchers ways the Law Society, through its strategic objectives and regulatory processes, can better facilitate access to legal services and promote access to justice.
3. In November 2016 the Committee led the Benchers through a high-level discussion of whether lawyers have a professional responsibility to promote access to justice and pro bono. That meeting led to a general consensus that there exists a responsibility that is to be encouraged, but not a “responsibility” that requires coercive regulation to enforce. In 2017 the Committee has been further developing this topic, with specific reference to exploring how to get better information about what pro bono lawyers are undertaking as well as other work that supports access to justice. This report provides a status update on that work.
4. The Committee is in the process of drafting a vision statement relating to lawyers providing access to legal services and promoting access to justice. The Committee anticipates reporting to the Benchers in the fall with recommendations on that work.
5. Also in 2016 the Committee recommended an outreach process for medium and larger firms to find out what firms are doing to foster pro bono and access to justice. The Committee will provide a more detailed update on that work in its year-end report.
6. The Committee had its annual meeting with Wayne Robertson, QC, Executive Directors of the Law Foundation to discuss the 2017 allocation of the \$60,000 Access to Justice Fund the Law Society provides the Law Foundation.
7. Lastly, the Committee continued its general monitoring function and has discussed a range of possible areas of focus. In the second half of the year, the Committee expects to refine its thinking to better assist the Benchers in developing the 2018-2020 Strategic Plan.

Getting Better Particulars about Lawyers’ Access to Justice Efforts

8. The Committee has been developing a plan for how the Law Society can get better information about lawyers’ efforts to promote access to justice, through pro bono and other means. At present, the Law Society has very little information about this and the

information it does have is not overly helpful. When lawyers fill out the Annual Practice declaration (“APD”), they are required to estimate how many hours of pro bono they provided in the past 12 months. However, the definition of pro bono is not contained in the question; it is accessible through a help icon, so we are uncertain whether lawyers share the same understanding of what constitutes “pro bono” for the purposes of the question. In addition, we do not know what types of pro bono are provided or for what areas of law. The absence of reliable data makes it more difficult to tailor programs and policy reform to support the good work lawyers are doing in pro bono, or to encourage lawyers who are not doing pro bono to step up and find a way to participate.

9. Access to justice requires more than merely focusing on pro bono, so the Committee has also been developing a series of questions designed to get a better sense of what lawyers are doing other than pro bono to promote access to justice.
10. The Committee has been discussing the best method of asking the pro bono and access to justice questions. There are advantages and disadvantages to using the APD. An advantage is that lawyers are required to fill out the APD, so we would get a more complete sample size than a voluntary survey. A disadvantage is that most of the questions on the APD ultimately relate back to regulating the practice of law, so questions about pro bono and access to justice might not be the best fit. A voluntary survey avoids these problems, but can lead to a smaller sample and perhaps a distorting one (i.e. lawyers who do pro bono or access to justice work fill out the survey and those who do not do the work do not respond).
11. The purpose of modifying the APD or engaging in a survey is twofold. First, armed with better information about what lawyers are and are not doing, the Law Society can develop more responsive, targeted initiatives and policy. Second, connecting with the profession in this way allows the Law Society to support the good work that is being done while finding ways to encourage all lawyers to support access to justice in some fashion.
12. The Committee is close to finalizing a series of questions designed to obtain this information. It anticipates recommending to the Executive Committee that the questions form an optional section of the APD. Optional questions avoid the overly harsh consequences of making the right to practice law contingent on answering questions about pro bono participation or efforts to advance justice. Inclusion in the APD centralizes the questions and the Committee is confident the response rate will be sufficient for the purposes of analysis. The Committee will finalize its work and provide it to the Executive Committee for approval.¹

¹ The Executive Committee has oversight of changes to the APD and Law Society surveys.

13. Another initiative carried over from 2016 to this year is an informal process of reaching out to larger law firms to discuss what they are doing – and might do – to promote access to justice. The Committee decided that the best approach is to liaise with managing partners. The Committee will liaise with Herman Van Ommen, QC about advancing this discussion further in 2017, and hopes to provide greater detail in its year-end report.

Developing an Access to Justice Vision Statement for Lawyers

14. As noted, at the November 2016 meeting the Benchers endorsed the concept that lawyers have a professional responsibility to provide access to legal services and promote access to justice, but did not articulate what that means, save that the “responsibility” was not one that mandated action and therefore would not attract the coercive, regulatory power of the Law Society. To provide clarity on this point, the Committee is developing a vision statement about the role for lawyers to provide access to their legal services and promote access to justice.
15. The concept behind creating a vision statement is similar to the concept behind the Law Society Vision for Legal Aid that the Benchers adopted earlier this year. The Committee hopes the vision will also operate in a manner similar to the Best Practice Guidelines for Lawyers Practising Family Law that the Law Society helped create with the CBA BC Branch, and the Benchers endorsed in July 2011. Those guidelines operate as aspirational standards for lawyers, but the hope was that if they became the norm, a cultural shift could take place. In the absence of having a vision statement about what lawyers’ professional role to promote access to legal services and access to justice means, it is difficult to marshal the profession as a whole under a common cause. The absence of a clear, principled vision also creates room for ambiguity and misunderstanding when it comes to discussing what role the profession has to promote pro bono and access to justice. The Committee has begun work on drafting such a statement and will provide it to the Benchers later in 2017.

Discussion with the Law Foundation Regarding the Access to Justice Fund

16. Each year the Law Society allocates \$340,000 to the Law Foundation of British Columbia to support organized pro bono and promote access to justice. \$60,000 of the funding goes into an access to justice fund (“The Fund”), and the remainder goes to support pro bono organizations. The Benchers delegated to the Committee the task of meeting with the Law Foundation each year to share its ideas of how to allocate The Fund.
17. The purpose of the annual meeting is to engage in good faith discussions about worthwhile access to justice initiatives. The Law Foundation then takes into consideration the

recommendations of the Committee as part of its internal process for determining where to allocate The Fund in a given year.

18. In 2016 the Committee recommended funding a children's lawyer pilot project the Law Foundation was exploring. Access to justice for children is a critically important area, and without an effective advocate looking out for the best interests of children, their needs can go unmet. Because the pilot project was a multi-year project, the Committee asked the Benchers to instruct the 2017 Committee to recommend continued funding of the project unless there were compelling reasons not to do so.
19. The Committee met with Mr. Robertson on May 3, 2017 to discuss the status of the pilot. The pilot will provide direct legal advice to children in areas of family and child protection law, and contemplates a broader range of coverage including issues relating to housing, criminal justice, employment, mental health, bullying, policing, etc. Focusing on improving outcomes for Aboriginal children, immigrants, refugees and children living on the street, and LGBTQ youth also form part of the framework. Additional funding from Ontario has allowed the Law Foundation to extend the pilot from 2 to 3 years. The Committee recommended to Mr. Robertson that the 2017 allocation go, as previously discussed, to fund the project.

Forecast of Work from July-December 2017

20. The Committee will finish its work on a lawyer survey / APD reform and continue to develop a vision for lawyers regarding access to justice. Once the vision is complete, the Committee will report to the Benchers to seek approval of the vision. The Committee will continue to explore outreach with larger firms to see what they are doing, and might to, to better promote access to legal services and access to justice. The Committee will also provide guidance to the Benchers regarding how to advance access to justice in the 2018-2020 Strategic Plan.

/DM



Mid-Year Report

Equity and Diversity Advisory Committee

Nancy Merrill, QC (Chair)
Lisa Hamilton (Vice Chair)
Jasmin Ahmad
Brook Greenberg
Jamie Maclaren
Christopher McPherson
Linda Parsons, QC
Carolynn Ryan
Dan Smith

June 21, 2017

Prepared for: Benchers

Prepared by: Equity and Diversity Advisory Committee / Andrea Hilland

Introduction

1. The Equity and Diversity Advisory Committee (“Committee”) is one of the advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.
2. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
3. The purpose of this report is to advise the Benchers about the work the Committee has undertaken since its December 2016 report.

Topics of Discussion: January to June, 2017

4. The Committee met on January 26, March 3, April 6, and June 8, 2017. The Committee has discussed the following initiatives between January and June, 2017:

Equity Ombudsperson Program

5. Following an extensive review of the Equity Ombudsperson Program, the Committee recommended bringing the Program in-house within the Practice Advice Department. The Benchers unanimously adopted the recommendation at their January 27, 2017 Bencher meeting. The hiring process for the in-house Equity Ombudsperson is near completion.

25th Anniversary of the Gender Equality Report

6. In 1992, the Law Society produced an extensive report on gender equality in the legal system. The Committee is compiling statistics and other information for a retrospective analysis to mark the 25th anniversary of the report in 2017. The retrospective analysis will include a “report card” on the Law Society’s progress on implementing recommendations from the 1992 report, as well as statistics comparing the 1992 and 2017 gender demographics of the legal profession in British Columbia. The retrospective report is currently being drafted by Law Society staff.

Maternity Leave Benefit Loan Program Review

7. In 2010, on the recommendation of the Committee, the Maternity Leave Benefit Loan Program was implemented as a pilot project to help alleviate the disproportionate number of women who leave private practice after having children. Despite the Program, women's attrition rates have increased. Following a thorough review of the Program, the Committee has agreed that the Program's current operation is ineffective and needs to be overhauled to increase its effectiveness. The Committee has instructed Law Society staff to further investigate alternate sources of parental leave benefits for self-employed lawyers. In 2017, the Committee intends to survey lawyers in British Columbia to help identify practical ideas to support the retention of women in private practice.

Mental Wellness

8. The Committee has taken a leadership role in ensuring that mental wellness is integrated into the Law Society's strategic plan. A presentation was made at the Benchers meeting on May 6, 2017. Additional research and outreach is now underway.

Diversity and Inclusion Award

9. On the recommendation of this Committee, in 2017, the Law Society of BC will honour a lawyer who has made positive contributions to diversity and inclusion in the legal profession in British Columbia. A call for nominations has been posted on the Law Society's website and will be promoted through the Benchers' Bulletin and Law Society's E-brief. A selection committee has been appointed to review nominations and select an appropriate recipient for the award. The deadline for nominations will be on September 1, 2017, and the award will be given in December, 2017.

Enhanced Demographic Question

10. On the recommendation of the Committee, the Executive Committee amended the Annual Practice Declaration to include a question on the demographic make-up of the legal profession in BC. As of January, 2013, the Annual Practice Declaration includes the enhanced demographic question.

11. The results from 2015 and 2016 enhanced demographic question are:

Please check the characteristics with which you identify:	2015	2016
I do not identify with any of these characteristics	6794	6881
I choose not to answer this question	2470	2420
Visible Minority/Racialized/Person of Colour	1450	1577
Lesbian/Gay/Bisexual/Transgender	305	323
Aboriginal/Indigenous – First Nations, Metis, Inuit	287	300
Person with a Disability	191	209

Justicia in BC

12. The Justicia Project (facilitated by the Law Society of British Columbia and undertaken by law firms) has been actively underway in British Columbia since 2012. Best practice guides for enhancing flexible work arrangements, improving parental leave policies, tracking gender demographics, fostering business development, promoting leadership skills, and developing paths to partnership for women lawyers are accessible on the Law Society's website.
13. Representatives from the Justicia working groups have collaborated with the Continuing Legal Education Society to develop brief online modules highlighting the Justicia resources. Online modules on parental leave, flexible work arrangements, and business development will be available on the Law Society and CLE websites this summer.



Lawyer Education Advisory Committee 2017 Mid-Year Report

Dean Lawton, QC, Chair
Sarah Westwood, Vice-Chair
Jasmin Ahmad
Tom Fellhauer
Brook Greenberg
Micah Rankin
Phil Riddell
Tony Wilson, QC

June 25, 2017

Prepared for: Benchers

Prepared by: The Lawyer Education Advisory Committee

Purpose: Information

Introduction

1. The Lawyer Education Advisory Committee's Mid-Year Report to the Benchers summarizes the Committee's work in the first half of 2017.
2. The Strategic Plan includes the following goals specifically relating to the work of the Committee:

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2-1

Improve the admission, education and continuing competence of students and lawyers.

Initiative 2-1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Initiative 2-1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Initiative 2-1(c)

Conduct a review of the Continuing Professional Development [CPD] program.

Initiative 2-1(e)

Examine alternatives to articling, including Ontario's new law practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in BC.

3. The primary focus of the Committee's work in 2017 has been Initiative 2-1(c), the review of the CPD program, as outlined in more detail in the remainder of this report.

Work-to-date: CPD Program Review

4. In 2016, the Lawyer Education Advisory Committee began a comprehensive review of the CPD program. The CPD program was last reviewed in 2011.
5. At the outset, the Committee developed a strategic approach to evaluating the program in an effort to determine which aspects are functioning well, which elements could be

improved and to identify areas where new perspectives or approaches might be beneficial.

6. Over the course of 2016, the Committee made considerable progress on the CPD program review. A key element of this work was to consult the profession by way of a survey to all practising lawyers, seeking input on the effectiveness of the current CPD program. The Committee also designed a new CPD purpose statement and began its review of various aspects of the CPD program.
7. In 2017, a number of new members joined the Committee, which brought fresh perspectives and ideas to the Committee table. Over the past six months, the review process has advanced considerably, benefitting from the Committee's vibrant discussions and respectful debates on the following issues:
 - developing a definition and guidance material to support the proposed inclusion of professional wellness as an eligible subject matter
 - a review of Practice Management and Lawyering Skills subject matter inclusions and exclusions
 - a review of Learning Mode inclusions and exclusions
 - a continuation of, or changes to the current 12-hour CPD requirement
 - consultation with key stakeholders
8. The Committee's consideration of these issues is discussed briefly, below.

Professional Wellness

9. In 2016, the Committee agreed, in principle, to recommend the inclusion of professional wellness as an eligible subject matter under BC's CPD Program. Currently, these types of educational activity are not recognized for credit.
10. In 2017, the Committee resumed its discussions on the issue, focusing on further defining the nature and scope of professional wellness subject matter content that would be eligible for CPD credit.
11. The proposed definition for professional wellness was refined by the Committee and associated guidance materials were developed, with a view to assisting both lawyers and Law Society staff in understanding what types of programming would potentially be eligible – and ineligible – under this new subject matter.

12. This material, and the associated recommendations, will be presented to the Benchers as part of the Committee's Final CPD Review Report later this year.

Practice Management and Lawyering Skills Topics

13. The Committee engaged in an in-depth review of the topics that are currently eligible and ineligible for credit under CPD's Practice Management subject matter. This discussion was supported by an analysis of the scope of practice management topics recognized by other Canadian law societies, particularly Alberta, Ontario and the Prairie provinces. The Committee also took into consideration the feedback provided by lawyers in the 2016 survey.
14. The Committee also reviewed the list of eligible Lawyering Skills topics, again supported by an analysis of the approaches taken by other jurisdictions and the survey results.
15. Proposed modifications to the list of Practice Management and Lawyering Skills topics will be included as part of the Committee's recommendations its Final CPD Review Report.

Learning Modes

16. The Committee recently reviewed each of the CPD learning modes, namely: in-person programs, real-time programs delivered through technology, interactive online-self-study programs, self-study, group study, mentoring, teaching, writing and pro bono and legal-aid based services.
17. In general, the Committee's recommendations in relation to these learning modes tend toward an expansion, rather than a contraction, of the types of CPD programming that would be eligible for credit. The details of the Committee's recommendations will be explored in greater detail in the Committee's Final CPD Review Report.

Total CPD Hours

18. The Committee is also contemplating whether the total number of CPD hours should remain the same going forward. A recommended approach is being considered, taking into account potential changes to the reporting cycle, the expansion of eligible

CPD programming and the responses elicited in both the 2016 and 2017 consultations.

Second Round of Consultation

19. Most recently, the Committee began its second round of consultation, aiming to elicit feedback from over 60 stakeholder groups, including law firm legal departments, legal organizations, CPD providers and law schools, in relation to two questions:
1. What suggestions do you have for expanding the scope of subject areas, topics and learning modes eligible for accreditation?
 2. Do you have other comments or suggestions as to how the CPD program could be improved?
20. The consultation questions were circulated in mid-June, and include an invitation to set up in-person meetings with Law Society staff to discuss feedback in further detail. The consultation period will conclude over the summer, and an analysis of the feedback provided will be included as part of the Committee's Final CPD Review Report.

Upcoming Work: Completing the CPD Review

21. Over the past six months, the Committee has made significant progress toward its goal of completing the CPD Review by the Fall of 2017. There are, however, a number of outstanding issues that await further review and discussion by the Committee in the coming months, as detailed below.

Compliance and Reporting Requirements

22. At its July 6 meeting, the Committee will discuss whether changes should be made to the reporting cycle, including changes to the current prohibition on carrying over CPD credits from year to year.

23. The consequences of a failure to report or complete CPD requirements, including financial penalties and suspensions, will also be reviewed.

Exemptions related to reciprocity and comity

24. The Committee will also examine whether to recommend CPD exemptions in relation to interjurisdictional reciprocity; that is, whether a lawyer's completion of another province's CPD requirements would enable that lawyer to claim an exemption from fulfilling BC's CPD requirements for that year. Such an exemption is currently not permitted.

Truth and Reconciliation Commission's Calls to Action

25. The Committee recognizes and supports of the role the Law Society in implementing the Truth and Reconciliation Commission's Call to Action #27:

We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.

26. The Committee is plans to work collaboratively with the Truth and Reconciliation Advisory Committee to address the education related issues contained in Call to Action #27 and to make appropriate changes to the CPD program.

Conclusion

27. Over the past six months, the Committee has made considerable progress in moving toward the completion of the CPD Review process, making numerous Committee decisions in relation to proposed modification to the existing CPD program. These decisions will form the basis of the Committee's Final CPD Review Report, which will be presented to the Benchers no later than the end of 2017.

The Law Society
of British Columbia



Rule of Law and Lawyer Independence Advisory Committee – Mid-Year Report

Craig Ferris, QC (Chair)
Mark Rushton (Vice-Chair)
Jeffrey Campbell, QC
Pinder Cheema, QC
Sharon Matthews, QC
Claude Richmond
Philip Riddell
Jon Festinger, QC
The Honourable Marshall Rothstein, QC

July 7, 2017

Prepared for: Benchers

Prepared by: Rule of Law and Lawyer Independence Advisory Committee/
Michael Lucas, Manager, Policy and Legal Services

Purpose: Information

Introduction

1. The Rule of Law and Lawyer Independence Advisory Committee is one of the four advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers on matters relating to those issues. From time to time, the Committee is also asked to analyze policy implications of Law Society initiatives, and may be asked to develop the recommendations or policy alternatives regarding such initiatives.
2. The lawyer's duty of commitment to his or her client's cause, and the inability of the state to impose duties that undermine that prevailing duty, has been recognized as a principle of fundamental justice.¹ The importance of lawyer independence as a principle of fundamental justice in a democratic society, and its connection to the support of the rule of law, has been explained in past reports by this Committee and need not be repeated at this time. It will suffice to say that the issues are intricately tied to the protection of the public interest in the administration of justice, and that it is important to ensure that citizens are cognizant of this fact.
3. The Committee's mandate is:
 - to advise the Benchers on matters relating to the Rule of Law and lawyer independence so that the Law Society can ensure
 - its processes and activities preserve and promote the preservation of the Rule of Law and effective self-governance of lawyers;
 - the legal profession and the public are properly informed about the meaning and importance of the Rule of Law and how a self-governing profession of independent lawyers supports and is a necessary component of the Rule of Law; and
 - to monitor issues (including current or proposed legislation) that might affect the independence of lawyers and the Rule of Law, and to develop means by which the Law Society can effectively respond to those issues. The Committee was particularly concerned about the provisions of Bill C-51 (the *Anti-Terrorism Act, 2015*) and was pleased to see the Law Society make an effort to engage in the debate on that Bill.
4. The Committee has met on January 25, March 1, April 5, June 7 and July 5, 2017.

¹ Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7, [2015] 1 S.C.R. 401 DM1575969

5. This is the mid-year report of the Committee, prepared to advise the Benchers on its work to date in 2017 and to identify issues for consideration by the Benchers in relation to the Committee's mandate.

Topics of Discussion in 2017

I. Increasing Public Awareness of the importance of the Rule of Law

6. The Committee has continued efforts to advance both the profession's and the public's understanding of the importance of the rule of law. Its primary activities to this end have been undertaken through the creation of a lecture series and a continuation of the high school essay contest.

a. Rule of Law Lecture Series

7. The Committee hosted the Law Society's inaugural Rule of Law Lecture Series on May 31 at the UBC Downtown campus. The Lecture, entitled "Brexit, Presidential Executive Orders and the Rule of Law: A discussion on the limits of executive power" was attended by approximately 170 people, who heard presentations by Anne Egeler, Deputy Solicitor General for the State of Washington, and Richard Gordon, lead counsel for Wales in *R. (On the Application of Miller and Another) v. Secretary of State for Exiting the European Union*, more commonly referred to as "the Brexit case." A video of the Lecture has been posted on the Law Society website, together with a written copy of the presentation given by Mr. Gordon.
8. The event received many favourable comments from those attending. The Committee plans to undertake a second lecture series next year, and will begin giving some attention to planning toward the end of this year.

b. High School Essay contest

9. The Committee recently completed its second essay contest for high school students. This year's topic was "How would you explain the rule of law to a fellow student who has never heard the term before?"
10. The contest was open to currently enrolled high school students in British Columbia who were taking or had taken Civic Studies 11 or Law 12. This year's contest was also expanded to students enrolled in private schools in BC.
11. A total of 84 essays were received. Judging was done of the essays by a panel comprised of Craig Ferris QC, Jeff Campbell QC and Professor Arlene Sindelar from the Department of History at UBC.
12. Presentations were made to the winner and the runner-up at the June 9 Benchers meeting.

13. The Committee is now starting the planning process for next year's contest.

II. Public Commentary on the Rule of Law

14. In mid-2015, the Benchers approved the Committee's proposal that it publicly comment on issues relating to the Rule of Law. The recommendation resulted from the Committee's conclusion that, in the course of undertaking its monitoring function, it often identifies news stories or events that bring attention to the rule of law, or lack thereof, and exemplify the dangers to society where it is either absent, diminished or, perhaps, threatened, from which the Committee could usefully select appropriate instances for comment.

15. So far this year, the Committee has commented on:

a. The Rule of Law and Events in the United States

<https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/RuleofLaw-US.pdf>

b. How uninformed criticism of the Courts can Undermine the Rule of Law

https://www.lawsociety.bc.ca/Website/media/Shared/docs/about/RuleofLaw-criticism_2017-04.pdf

16. The Committee has also made use of its Twitter account "@RuleofLawBC" to circulate its commentary, and to "retweet" commentary or articles by other groups that the Committee has thought clarifies the importance of the rule of law. The number of followers, while still modest, has more than doubled since the beginning of the year.

III. Meetings with Other Groups

17. The Committee met in March with representatives of Lawyers Rights Watch Canada (LRWC) and the British Columbia Civil Liberties Association (BCCLA).

a. Lawyers Rights Watch Canada

18. The Committee heard about the work being undertaken by LRWC, which involves providing advocacy for lawyers, judges and human rights defenders who are being unjustly detained in foreign nations. LRWC engages as well in advocacy campaigns including writing letters to public authorities in countries where a given individual is being unreasonably held, as well as the preparation of complaints (often collaboratively with local organisations) as well as oral and written statements for submission to the United Nations. Occasionally LRWC will prepare amicus briefs to various foreign courts. LRWC had some ideas as to how the Law Society could enhance its human rights advocacy efforts. As an example, reference was made to the letter writing model of the Law Society of Upper Canada's (the "LSUC") Human Rights Monitoring Group. Other potential options, such as trial monitoring or assisting lawyers who

are being unduly imprisoned, were also discussed. The Committee will consider these suggestions.

b. British Columbia Civil Liberties Association

19. The Committee also heard about two matters that the BCCLA was involved in: challenges to state surveillance and interceptions of communications subject to solicitor-client privilege, as well as a challenge to the legal framework around the segregation of inmates in federal prisons. The former issue is one that the Committee has been interested in and has publicly commented on in the past, and the latter is one that was discussed by the Committee earlier in the year as a result of an article in *Macleans* magazine on the case of Adam Capay. The Committee continues to monitor the course of these proceedings.

IV. Border Searches

20. The Committee noted news reports that border agents in both Canada and the United States had been reported to have required the production of passwords to electronic devices. The Committee noted that this raised a concern insofar as lawyers may be required to provide such passwords.
21. The Committee prepared a letter (<https://www.lawsociety.bc.ca/Website/media/Shared/docs/newsroom/Van-Ommen-Letter-to-govt-re-Search-Electronic-Devices.pdf>) for the President's signature, to the Ministers of Justice and of Public Safety outlining concerns with such requirements as they may relate to lawyers and how the requirements may adversely affect solicitor-client privilege. The letter recommended the Ministers consult with their American counterparts to co-ordinate a uniform, bi-lateral approach to safeguarding privileged electronic communications at border crossings between Canada and the United States.
22. Coincidentally, the American Bar Association wrote a similarly-themed letter to the US Department of Homeland Security at about the same time as the Law Society's letter was prepared. We have had some email discussions with the ABA on this matter and have agreed to keep in touch. The Law Society of BC's letter and the ABA letter were commented on in the English legal press as well.

V. Amendments to Controlled Drugs and Substances Act (Bill C-37)

23. The Committee prepared a letter to the Minister of Health and the Chair of the Senate Standing Committee on Legal and Constitutional Affairs (https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/2017RuleofLaw_LetterBillC-37.pdf) concerning proposed revisions to the *Customs Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* that would permit the opening of routine correspondence delivered to a law office. The Committee pointed out how this could adversely

affect solicitor-client privilege and urged reconsideration of the proposed amendments, or at least that provisions be included in the legislation, that will create a constitutionally accepted method to preserve solicitor-client privilege and ensure that it is not even accidentally violated.

VI. Criminal Trial Delays and the Rule of Law

24. In light of the Supreme Court of Canada's decision in *R. v. Jordan*, the Committee discussed whether there could be adverse consequences on the public confidence in the justice system and the rule of law. Constitutional rights are engaged, and consideration to increasing the speed at which trials proceed has raised issues such as increasing the direct indictment process in order to skip over preliminary inquiries.
25. However, the most glaring issue that the Committee identified was the number of vacancies on Superior Courts, particularly in British Columbia.
26. Coincidentally, these concerns were noted by the Chief Justice of British Columbia when he addressed the Benchers at their May meeting. This situation adversely affects the efficiency of the court and adversely affects both the rule of law and the public confidence in the justice system.
27. The Committee therefore prepared a letter for signature by the President to the Minister of Justice urging that the situation be addressed
https://www.lawsociety.bc.ca/Website/media/Shared/docs/newsroom/highlights/2017-05_appointments-to-SCBC.pdf

VII. Lawyer Independence and the Regulation of Alternate Legal Services Providers

28. The December 2014 Report for the Legal Services Regulatory Framework Task Force recommended that the Law Society seek a legislative amendment to the *Legal Profession Act* that would permit the Law Society to establish new classes of legal service providers to address areas of underserved and/or unmet legal needs. The Task Force also noted that it was important to ensure that, by so doing, the public's right to the benefit of being able to retain independent lawyers was not adversely affected and urged that the issue be considered by the Rule of Law and Lawyer independence Advisory Committee.
29. The Committee therefore spent some time in the spring of 2017 reviewing the subject and considering the issue. It will issue a short report for the benchers in the next months, but generally the Committee has concluded that lawyer independence need not be adversely affected by having the independent self-regulating body of the legal profession regulate other categories of legal service providers provided the regulatory body is properly structured to ensure that new categories of legal service providers are properly qualified and trained in the professional standards of the profession and that the new categories of legal service providers are adequately represented in the governing body.

VIII. Meaning of the Rule of Law in Connection with the Law Society Mandate

30. The Committee has previously identified that section 3 of the *Act* engages the Rule of Law. The Committee believes that a statement of principle could clarify the meaning and practical implications of Section 3, while also taking adequate account of the relationship between the Law Society's mandate and the Rule of Law. The topic was discussed at the May 2015 Benchers Retreat, particularly in the context of how the provisions of section 3 – and particularly s. 3(a) – inform the Law Society's activities, by examining developments in access to justice, exploring the scope of directives that the section presents, and discussing opportunities to advance the objectives of the section.
31. Improving the Law Society's public communication on the importance of the rule of law is one aspect of advancing the public interest in the administration of justice and thereby discharging the object and duty of section 3. There are, however, other considerations that can be given to this section and the Committee will therefore continue to work with a view toward creating a working definition of the section to inform the future work of the Law Society.

IX. Alternate Business Structures

32. The Committee continues to monitor the general development of and debate surrounding alternate business structures in England, Australia, and the debates in other parts of the world.
33. The Committee is also aware of efforts being undertaken through the Law Society of Upper Canada and by the law societies of the three prairie provinces to begin some discussion on the topic and it will continue to monitor and participate in those discussions as it is able to do. It has noted that the Law Society of Upper Canada appears to have rejected for the time being the concept of "full" ABSs.
34. While the issue appears to be less immediate than was perhaps the case when the Strategic Plan was developed, the concern about professional values and ethics being subsumed in the development of some forms of ABSs warrants the Committee continuing to monitor the subject and to be prepared to assist in its development as required.

X. Developing Issues

35. The Committee continues to review items that appear in media reports that express concerns about the rule of law domestically and internationally. There are many issues that come from the United States in the wake of the last few months of the political events there that keep the Committee focused. However, issues that arise as a result of the response of many countries to terrorist activities warrant scrutiny to ensure that the rule of law is not overrun in the need to provide safety and security to the citizens of the country.



Mid-Year Report

Truth and Reconciliation Advisory Committee

Herman Van Ommen, QC (Co-Chair)

Grand Chief Ed John (Co-Chair)

Dean Lawton, QC

Lee Ongman

Daniel Smith

John Borrows

Len Marchand, Jr

Michael McDonald

Ardith Walkem

David Crossin, QC (Federation of Law Societies Representative)

June 21, 2017

Prepared for: Benchers

Prepared by: Truth and Reconciliation Advisory Committee / Andrea Hilland

Introduction

1. Following the release of the Truth and Reconciliation Commission Report and 94 recommendations to redress the legacy of residential schools in June of 2015, the Benchers of the Law Society of British Columbia unanimously agreed that addressing the challenges arising from the TRC recommendations is one of the most important and critical issues facing the country and the legal system today. Therefore, they decided to take immediate action to demonstrate their commitment to respond meaningfully to all of the recommendations that pertain to the legal profession.
2. The TRC's recommendations were the focus of the Benchers' Retreat on June 3, 2016, where the Benchers received education from Indigenous judges, lawyers, and politicians on the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.
3. The Benchers passed a resolution to create a permanent Truth and Reconciliation Commission Advisory Committee at the July 8, 2016 Benchers meeting. On September 2016, they endorsed the terms of reference for the Committee.
4. The Truth and Reconciliation Advisory Committee (“Committee”) is one of the advisory committees appointed by the Benchers to monitor issues of importance to the Law Society and to advise the Benchers in connection with those issues.
5. The purpose of this report is to advise the Benchers about the work the Committee has undertaken between January and June of 2017.

Topics of Discussion: January to June, 2017

6. The Committee met on February 14, April 18, and May 10, 2017. A subcommittee also met on March 15, 2017 to begin planning a symposium. The Committee has discussed the following initiatives between January and June, 2017.

Symbolism

7. On the recommendation of the Committee, Law Society representatives now acknowledge Indigenous territories at the beginning of Law Society functions.
8. On April 7, 2017 the Benchers unanimously endorsed the Committee's recommendation to remove the statue of Chief Justice Matthew Begbie from the Law Society of BC's foyer and replace it with a more unifying symbol. The statue has now been removed from the foyer.

Symposium

9. A symposium is being planned for November, 2017. The theme of the symposium will be: *Transforming the Law from a Tool of Assimilation into a Tool of Reconciliation*. The Committee expects that lawyers, judges, academics, and representatives from various legal and Indigenous organizations will attend. The symposium will consist of opening and closing plenary sessions, as well as smaller break-out sessions in which attendees will be challenged to identify practical ideas and tangible actions for the legal profession in British Columbia to effectively respond to the Truth and Reconciliation Commission's Calls to Action. The Committee has invited a renowned speaker to provide a keynote presentation. The date will be set once the speaker has confirmed availability.

Outreach

10. Committee representatives have been invited to present on the Committee's work. To that end, Grand Chief Ed John and David Crossin, QC presented to the British Columbia Superior Court Law Clerks on March 28, 2017, and Grand Chief Ed John and Andrea Hilland presented at the CBA BC Aboriginal Lawyers Forum Retreat and Conference on June 16, 2017.

Cultural Competence

11. The Committee has recommended cultural competence training for Law Society Benchers and staff. Cultural competence training for Law Society staff is already underway, and their enthusiasm is apparent through their resounding response to course offerings. On March 30, 2017, a presentation regarding the Law Society's role in implementing the Truth and Reconciliation Commission's Calls to Action was made to the Law Society's Management Council. On June 1, 2017, the same presentation was offered to staff, and the initial session was oversubscribed. An additional session is being planned for August, 2017. Similarly, registration for a National Aboriginal Day "Lunch and Learn" for Law Society staff on June 21, 2017 filled up within 30 minutes, so a second session was added for the same day. Both sessions were at full capacity. The Executive Committee is devising a strategy to ensure Benchers receive cultural competence training by the end of 2017.
12. The Committee is collaborating with the Continuing Legal Education Society to develop a mini-documentary featuring a series of short vignettes of Indigenous lawyers talking about their experiences with unexamined stereotyping in the legal profession. The objective of the video is to raise awareness and build cultural competency within the legal system in British Columbia. Once complete, the video will be made available on the Law Society's website.

Education

13. Law Society staff is currently conducting a thorough review of the Professional Legal Training Course curriculum in light of the Truth and Reconciliation Commission's Recommendation 27, to ensure that lawyers receive appropriate cultural competency training. Cultural competency will be integrated throughout the curriculum as a core competency of the course. However, to avoid waiting until the curriculum review process is over before acting on the Calls to Action, immediate changes are already underway. Some of the immediate changes include the addition of a half-day module relating to child protection and a day on criminal procedure. Information regarding *Gladue* (Indigenous personal history) factors in sentencing and the criteria for *Gladue* reports has now been added to the criminal procedure course notes and Practice Material.
14. The addition of the child protection and criminal procedure modules will enable the PLTC staff to eventually deal directly with issues relating to Indigenous communities. PLTC staff is also working on improving and expanding the content of the Practice Material in different areas where Indigenous content would be relevant. Again, this means making more immediate changes to the Practice Material but having the long-term objective of integrating Indigenous legal issues into related areas of the PLTC, for example in family law, property law and criminal law. Finally, PLTC staff is creating new exam questions based on the Indigenous content that is in the existing and revised Practice Material.

Collaborations

15. Some representatives from the Committee are involved in Truth and Reconciliation working groups for the Canadian Bar Association of BC and the Continuing Legal Education Society. The Committee acknowledges that strategic collaborations are helpful for information sharing, identifying synergies, and coordinating efforts.

Federation of Law Societies

16. The Law Society of British Columbia has taken a lead role in the Federation of Law Society's response to the Truth and Reconciliation Commission's recommendations. A Committee member and a Law Society of BC staff member are involved with the Federation's Truth and Reconciliation Advisory Committee, which had its first meeting on May 29, 2017.



Memo

To: The Benchers
From: Deb Armour, Chief Legal Officer
Date: July 7, 2017
Subject: National Discipline Standards Implementation Report

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. They are aspirational. The standards that were in effect for 2015 and 2016 are found at Attachment 1.
2. The National Discipline Standards Standing Committee has produced an Implementation Report for 2015 – 2016. That report is Attachment 2.

Notables in the Implementation Report

3. None of the Canadian law societies met all of the standards in 2015 or 2016.
4. Significant progress has been made by law societies in meeting the standards since they were officially implemented on January 1, 2015. In 2015, the average for all law societies for all standards was 72%. For 2016, that average increased to 79%.
5. Our performance as against the standards exceeded the national averages. The Law Society of BC's averages were 75% for 2015 and 86% for 2016. We met 15 standards in 2015 and 18 standards in 2016.
6. Standards we did not meet in 2016:
 - a. Hearing panel decisions rendered within 90 days of last submissions of parties (Standard 8) – The standard is 90% and we achieved 70%.
 - b. Ability to share information about lawyers with other law societies *in a manner that protects solicitor/client privilege* (Standard 16) – LSBC Rule 2-24 requires us to provide information to another law society investigating one of our members,

but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. The NDS Standing Committee has created a model rule to meet that standard. Our Policy Department will be bringing forward proposed rule changes in the near future with the goal of meeting that standard for 2017.

- c. Standard 19 states that there shall be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

NATIONAL DISCIPLINE STANDARDS

(As approved by the Federation Council April 3, 2014*)

Timeliness

1. **Telephone inquiries:**
75% of telephone inquiries are acknowledged within one business day and 100% within two business days.
2. **Written complaints:**
100% of written complaints are acknowledged in writing within three business days.
3. **Timeline to resolve or refer complaint:**
80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.
90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.
4. **Contact with complainant:**
For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.
5. **Contact with lawyer or Québec notary:**
For 90% of open complaints there is contact with the lawyer or Quebec notary at least once every 90 days during the investigation stage.

Hearings

6. 75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.
95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.
7. 75% of all hearings commence within 9 months of authorization.
90% of all hearings commence within 12 months of authorization.
8. Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.
9. Each law society will report annually to its governing body on the status of standards 3, 4 and 5. For standards 6, 7 and 8, each law society will report quarterly to its governing body on the status of the standards.

* The standards were modified in May, 2014 to include the participation of the *Chambre des notaires du Québec* and to provide a more accurate title for standards 20 and 21.

NATIONAL DISCIPLINE STANDARDS
(As approved by the Federation Council April 3, 2014)

Public Participation

10. There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.
11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.

Transparency

12. Hearings are open to the public.
13. Reasons are provided for any decision to close hearings.
14. Notices of charge or citation are published promptly after a date for the hearing has been set.
15. Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.
16. There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.
17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.

Accessibility

18. A complaint help form is available to complainants.
19. There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.

Qualification of Adjudicators and Volunteers

20. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.
21. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Standing Committee on National Discipline Standards

2015 - 2016 IMPLEMENTATION REPORT

May 15, 2017

Introduction

1. The National Discipline Standards project grew out of a recognition and desire to strengthen and harmonize the ways in which complaint and discipline processes are dealt with across the country. The project was launched in 2010.
2. Twenty three standards were pilot tested between 2012 and 2014. The pilot phase resulted in refinements to the standards. In April, 2014, the Federation Council approved 21 standards relating to timeliness, public participation, transparency, accessibility, and the qualification and training of adjudicators and investigators. The standards were officially implemented across all law societies on January 1, 2015.
3. The Standing Committee on National Discipline Standards (the “Standing Committee”) monitors implementation of the Standards and recommend refinements to the Standards as required. In June, 2016, Council approved revisions to Standards 3 and 9. The standards are [here](#).
4. The National Discipline Standards are aspirational in nature. They are designed to promote uniformly high benchmarks for complaint and discipline processes for members of the legal profession. It was recognized from the outset of the project that not all law societies would be able to achieve all of the standards and there are various reasons for their inability to do so. For example, legislation may prohibit standards from being met or the law society’s discipline scheme may render certain standards inapplicable. Also, fluctuating staff resources and volume of matters may have an impact on the ability to meet certain standards. Law societies chose to set challenging standards with the goal that they would promote a culture of performance improvement, including recognition and adoption of best practices.
5. Law societies were asked to provide annual status reports to the Standing Committee for the purpose of monitoring progress on meeting the standards and to ascertain whether the standards are reasonable and achievable in practice. The annual status reports have helped to identify challenges in meeting the standards and where changes are required.

Purpose of the Implementation Report

6. This Implementation Report is prepared for information and use by law societies. It provides a snapshot of law society performance against the standards based on the 2015 and 2016 law society annual status reports. This report should be understood in the context of the aspirational nature of the standards and the obstacles to meeting the standards, many of which are outside law societies’ control.

Law Society Annual Status Reports

7. Law societies are provided with an annual report template early in the calendar year. The report requests data from January to December of the previous year. For 2016, the

reporting template was revised. The new instructions requested commentary on why a standard was not met so that the Standing Committee can gain a deeper appreciation of some of the challenges faced by law societies in attempting to meet the standards.

Analysis Methodology

8. The analysis aims to identify which standards were met or not met and why. There are 21 standards in total. However, not all law societies reported on all the standards each year. In some cases, a standard was not applicable. For example, if a law society had no hearings in the year in question, Standards 12, 13, 14, and 15, which deal with hearings, were marked “not applicable”. In both 2015 and 2016, seven law societies reporting that one or more standards were not applicable. When a standard was not applicable, it was removed from all performance calculations to avoid skewing the results.

General Findings

9. For the 2015 year, all 14 law societies provided a status report. For the 2016 year, 13 law societies provided a status report. In 2015, law societies met on average 72% of the standards overall. In 2016, law society performance increased to 79% overall. No law society met all of the standards in either 2015 or 2016. Appendix A provides a snapshot of the standards met by law societies in each year.
10. Appendix A provides the overall number of standards met by each law society in each year and the corresponding percentage calculation. This information is captured in the second row entitled ‘overall performance’.
11. Appendix A also provides a comparative snapshot of overall performance by standard. This information is captured in the last column entitled “standard totals”. For example, the chart indicates that 9 of 14 law societies (or 64%) met Standard 2 in 2015, and 10 of 13 law societies (or 77%) met Standard 2 in 2016. The chart makes it easy to compare performance on the standards at a glance from year to year and across law societies. A check mark indicates that the standard was met; an “x” indicates that it was not met, and “N/A” signifies that the standard was not applicable. For standards with two components, a check mark and an “x” indicate that only one part of the standard was met.

Standards Met by Most Law Societies

12. In 2015, 4 standards were met by all law societies: Standard 9 (annual reporting to governing body), Standard 12 (hearings open to the public), Standard 13 (reasons provided to close hearing), and Standard 15 (notice of hearing published 60 days prior to hearing). Also, all law societies but one or two met Standard 1 (timely response to telephone inquiries), Standard 3 (timeline to refer or resolve a complaint), Standard 14 (publication of notice of charge/citation) and Standard 18 (accessible complaint form).

13. In 2016, 5 standards were met by all law societies: Standard 12, 13, 14, 15 and 18. A further 5 standards were met by all but 1 or 2 law societies: Standard 1, Standard 4 (contact with complainant), Standard 9, Standard 11 (complaint review process), and Standard 21 (mandatory volunteer orientation).
14. In summary, the following 7 standards (representing 1/3 of all the standards) were easily met by most law societies in 2015 and 2016 (e.g. performance on these standards was 92% or higher each year): Standards 1, 9, 12, 13, 14, 15, and 18.
15. From 2015 to 2016 there was a marked improvement in meeting the standards overall and in meeting specific standards. In 2016, performance on 12 standards improved and performance on 6 standards dipped slightly below the 2015 level. The most notable increase in performance was in relation Standard 21 (mandatory volunteer orientation). In 2015, 39% of law societies met the standard and in 2016, 82% of law societies met the standard. The reasons for the change are explored further in the report.

Most Challenging Standards

16. The most challenging standard for law societies to meet in both years was Standard 16 (the ability to share information with other law societies). Only 5 of 13 law societies (38%) were able to meet the standard in 2015. Performance on Standard 16 improved slightly in 2016 to 46% (or 6 of 13 law societies). The law societies that failed to meet Standard 16 were the same in both years, with the exception of the Law Society of Yukon. In 2016, the Law Society of Yukon made a rule amendment that enabled it to comply with Standard 16.
17. The reasons provided by law societies for not meeting Standard 16 were similar in 2015 and 2016. Reasons included challenges with existing legislative or regulatory language, issues relating to the protection of solicitor-client privileged information and/or the confidentiality of investigations, and the need to amend existing rules to meet the standard.
18. The following standards also proved challenging for law societies to meet in both 2015 and 2016: Standard 7 (timing of commencement of hearing), Standard 8 (timing of reasons for decision), and Standard 20 (mandatory adjudicator training). Reasons cited by law societies for not meeting Standard 7 included delays due to a change in counsel retained on a case and delays in appointing a Chair due to an inordinate number of conflicts. Reasons cited for difficulty in meeting Standard 8 included difficulty getting written decisions from adjudicators in time despite new reminder systems in place, an increase in the proportion of reviews of disciplinary panel decisions, and the sheer number of adjudicators on review panels (7 adjudicators in one law society). For Standard 20, law societies pointed to a lack of resources for adjudicator training.

19. Law society performance on a number of standards decreased slightly from 2015 to 2016. This was attributed to several factors, including resource issues and increased accuracy of reporting due to the refinement of data collection processes over time (e.g. past results may have been inaccurate and unwittingly inflated).

Performance Improvements

20. In response to an inability to meet Standard 8, the Law Society of Alberta adopted a decision-writing protocol to improve the timeliness of written decisions. Performance in relation to this standard increased from 50% to 81% of reasons for decisions being rendered within 90 days between 2015 and 2016.
21. The Barreau du Quebec instituted a new computer program that enables it to verify whether it has communicated with the complainant every 90 days as required by Standard 4. This data is processed each month. As a result of this change, the Barreau met Standard 4 in 2016, whereas it did not meet Standard 4 in 2015.
22. Standard 11 requires that there is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee. The Law Society of the Northwest Territories did not meet the standard in 2015. In early 2016, they implemented a process whereby certain complaints are investigated by a non-lawyer member, thereby meeting the public participation requirement in Standard 11.
23. Standard 19 requires that each law society make available a directory with information on members' status and discipline history. The Law Society of British Columbia did not meet the standard in 2015. They created a working group to address the issue. In 2016, changes were made to the Law Society of British Columbia's Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to allow them to fully meet Standard 19. However, the changes made to date have enabled the Law Society of British Columbia to partially meet this standard.
24. In 2015, Standard 21 (mandatory volunteer orientation) was fully met by only 3 of 9 law societies to which it was deemed applicable. In comparison, 9 of 11 law societies reported meeting Standard 21 in 2016. Reasons provided for the turn-around in performance include new training programs for volunteers.
25. A number of law societies that could not meet Standard 16 in 2015 indicated that they had drafted or would draft a new rule to enable them to meet the standard (Law Society of Northwest Territories, Law Society of Yukon), or that they had initiated an investigation into required legislative or rule changes (Law Society of Alberta, Law Society of British Columbia, Law Society of New Brunswick and the Chambre des

notaires du Quebec). Many of the changes are still pending and overall performance on this standard increased from 38% to 46% overall.

26. In response to the challenges encountered by law societies in meeting Standard 16, the Standing Committee has developed a model rule. The rule is designed to assist those law societies that either do not currently have the legislative or rule-based authority to share information about a lawyer or Quebec notary with other law societies, or that require changes to their existing rules. The Standing Committee is also working on changes to the language of Standard 16 and the Implementation Guide for greater clarity about how and when information should be shared.
27. The above examples illustrate the ways in which the standards are leading to law society process and performance enhancements. These are just some of the examples provided by law societies. There are more instances of performance improvements and the creation of new systems to enable law societies to meet the standards. The National Discipline Standards were designed to drive improvements in law society performance and to lead to the adoption of best practices. The law society status reports provide evidence that the standards are achieving the purposes for which they were intended.



This summary highlights the law societies' progress in meeting the discipline standards in their first two years of implementation. It is based on the data contained in law societies' 2015 and 2016 annual reports.		LSBC	LSA	LSS	LSM	LSUC	BQ	CN	LSNB	LSPEI	NSBS	LSN&L	LSY	LSNWT	LSN	STANDARD TOTALS
Overview of Performance by Law Societies	2015	75% 15/20	67% 14/21	71% 15/21	75% 15/20	80% 16/20	60% 12/20	71% 15/21	65% 13/20	71% 15/21	95% 20/21	67% 14/21	71% 10/14	70% 14/20	N/A	Average: 72%
	2016	86% 18/21	81% 17/21	81% 17/21	80% 16/20	74% 15.5/21	73% 14.5/20	71% 15/21	50% 10/20	88% 18.5/21	98% 19.5/20	83% 16.5/20	79% 11/14	84% 16/19		Average: 79%
Standard 1	2015	✓	✓	X/✓	✓	✓	✓	✓	✓	✓	✓/X	✓	✓	✓	✓	13/14 (93%)
Telephone inquiries	2016	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓/X	✓	✓	✓		12.5/13 (96%)
Standard 2	2015	X	✓	X	X	✓	✓	✓	X	✓	✓	X	✓	✓	✓	9/14 (64%)
Written complaints	2016	✓	✓	X	✓	✓	✓	✓	X	✓	✓	✓	✓	X		10/13 (77%)
Standard 3	2015	✓	N/A	X/✓	✓	✓	✓	X	✓	✓	✓	✓	✓	✓	✓	11.5/13 (88%)
Timeline to resolve or refer complaint	2016	✓	✓	✓	✓	X	✓/X	X	✓	✓	✓	✓	✓	X		9.5/13 (73%)
Standard 4	2015	✓	✓	✓	X	X	X	✓	✓	✓	✓	✓	✓	X	X	9/14 (64%)
Contact with complainant	2016	✓	✓	✓	X	X	✓	✓	✓	✓	✓	✓	✓	✓		11/13 (85%)
Standard 5	2015	✓	✓	✓	X	X	X	X	✓	✓	✓	✓	✓	N/A	X	8/13 (62%)
Contact with lawyer or Québec notary	2016	✓	✓	✓	X	X	X	✓	✓	✓	✓	✓	✓	N/A		9/12 (75%)
Standard 6	2015	✓	✓	✓	X	✓/X	✓	✓	X	N/A	✓	X	N/A	✓	N/A	7.5/11 (68%)
Issuance of citations or notices of hearings	2016	✓	✓	✓	X	✓/X	✓	✓	X	X/✓	✓	X	N/A	✓		8/12 (67%)
Standard 7	2015	X	N/A	✓	X	X	✓	✓	X	N/A	✓	✓	N/A	✓	N/A	6/10 (60%)
Commencement of hearings	2016	✓	X	✓	✓	X	✓	✓	X	✓	N/A	X/✓	N/A	✓		7.5/11 (68%)

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Standard 8	2015	X	N/A	✓	✓	X	X	✓	X	N/A	✓	✓	N/A	✓	N/A	6/10 (60%)
Reasons for decisions	2016	X	X	✓	✓	X	X	✓	X	✓	✓	✓	N/A	✓		7/12 (58%)
Standard 9	2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	13/13 (100%)
Annual reporting to governing body	2016	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	✓		12/13 (92%)
Standard 10	2015	✓	✓	X/✓	✓	✓	X	X	✓/X	✓	✓	✓	✓	✓	X	10/14 (71%)
Public Participation	2016	✓	✓	X	✓	✓	X	X	X	✓	✓	✓	✓	✓		9/13 (69%)
Standard 11	2015	✓	✓	X/✓	✓	✓	✓	✓	X	✓	✓	✓	✓	X	X	10.5/14 (75%)
Complaints review process	2016	✓	✓	X	✓	✓	✓	✓	X	✓	✓	N/A	✓	✓		10/12 (83%)
Standard 12	2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	13/13 (100%)
Hearings open to public	2016	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓		12/12 (100%)
Standard 13	2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	N/A	12/12 (100%)
Reasons for decision to close hearings	2016	✓	✓	✓	N/A	✓	✓	✓	✓	✓	✓	✓	N/A	N/A		10/10 (100%)
Standard 14	2015	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	✓	N/A	✓	✓	12/13 (92%)
Publication of notices of charge or citation	2016	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓		12/12 (100%)
Standard 15	2015	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓	✓	13/13 (100%)
Publication of notices of hearing dates	2016	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	N/A	✓		12/12 (100%)

Appendix A - National Discipline Standards Implementation Report 2015-2016

This summary highlights the law societies' progress in meeting the discipline standards in their first two years of implementation. It is based on the data contained in law societies' 2015 and 2016 annual reports.		LSBC	LSA	LSS	LSM	LSUC	BQ	CN	LSNB	LSPEI	NSBS	LSN&L	LSY	LSNWT	LSN	STANDARD TOTALS
	Standard 16	2015	X	X	✓	✓	✓	X	X	X	N/A	✓	X	X	X	✓
Disclosure to all relevant law societies	2016	X	X	✓	✓	✓	X	X	X	✓	✓	X	✓	X		6/13 (46%)
Standard 17	2015	✓	✓	✓	✓	✓	X	✓	X	✓	✓	✓	X	X	X	9/14 (64%)
Disclosure to police about criminal activity	2016	✓	✓	✓	✓	✓	✓	X	X	✓	✓	✓	X	✓		10/13 (77%)
Standard 18	2015	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	N/A	12/13 (92%)
Accessible complaint help form	2016	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		13/13 (100%)
Standard 19	2015	X	N/A	✓	✓	✓	✓	X	✓/X	✓	✓	✓	✓	✓	X	9.5/13 (73%)
Availability of status information directory	2016	X	X	✓	✓	✓	✓	X	X	X	✓	✓	✓	✓		8/13 (62%)
Standard 20	2015	X	N/A	X/✓	✓	✓	X	✓	✓	✓/X	✓	X	✓/X	X	X	6.5/13 (50%)
Ongoing mandatory training for adjudicators	2016	✓	✓	X	✓	✓	X	✓	✓	X	✓	X	X	✓		8/13 (62%)
Standard 21	2015	✓	N/A	X/✓	N/A	N/A	✓	X	N/A	X	✓	N/A	X	X	X	3.5/9 (39%)
Mandatory volunteer orientation	2016	✓	✓	✓	✓	✓	N/A	X	N/A	✓	✓	✓	X	✓		9/11 (82%)

Index: ✓ = Standard Met - X = Standard Not Met - N/A = Standard Not Applicable (e.g. no hearings held in year)

Federation President's Council Meeting Report – June 2017

From: Maurice Piette [mailto:mpiette@flsc.ca]
Sent: Monday, June 26, 2017 1:02 PM
Subject: Federation Council Meeting Report

Dear Colleagues,

One of the Federation's strengths is that it provides opportunities for its members to learn from each other in a variety of ways. One such opportunity was for the Council to meet in Iqaluit, Nunavut last week, the first such Federation meeting since the territory came into being in 1999. I wish to thank the Law Society of Nunavut for being a generous host, and especially our Council colleague Tamara Fairchild and law society CEO Nalini Vaddapalli for helping to design an informative educational program for our group. To have gathered together on National Aboriginal Day and to have been exposed to the richness and beauty of Inuit culture, was especially meaningful.

As the 2016-2017 financial year of the Federation draws to an end this week, I am pleased to report that the Federation Council has approved all of the planning tools necessary to chart the path forward for the year to come. We have formally approved the 2017-2020 Strategic Plan, together with the 2017-2018 Activity Plan and International Engagement Plan. Underpinning all of these plans is the 2017-2018 budget which was also approved. I extend my appreciation to all law society leaders for their input in the months leading up to these decisions. In many ways these decisions are the culmination of the Federation's governance review process that took place in recent years. And so, our work continues within a new and improved framework.

The Council reviewed the Federation's key strategic priorities including those that deal with the TRC Calls to Action, the NCA Program Review and the ongoing work to strengthen the rules and enforcement regime in the fight against money laundering. Changes to the National Requirement that were recommended by the National Requirement Review Committee were approved. That Committee was also requested to work with the TRC Calls to Action Advisory Committee to explore whether the National Requirement should be amended to respond to Call to Action 28 that deals with cultural competency training for the legal profession. We also discussed recent developments in the area of national and international mobility of the legal profession. Of significant interest to law societies is the decision taken last Friday by the Law Society of New Brunswick to implement, without reciprocity, the provisions of the 2013 National Mobility Agreement in order to admit members of the Barreau du Québec who wish to practice in New Brunswick. Further information about this important decision and its repercussions for our mobility arrangements in the context of the Canadian Free Trade Agreement will be communicated shortly.

To those law society Presidents who are new to their roles in recent months (and even days in some cases), I offer my congratulations and a warm welcome to the table. The Federation's leaders gather again from October 17-20, 2017 in Victoria, B.C. when we will discuss how best

to weave together the various aspects of the work we carry out in relation to entry-level competencies required for law society admissions. I look forward to seeing all of you then.

In the meantime, I wish all of you - Presidents, Council members, law society CEOs and staff - a happy 150th Canada Day and a pleasant summer.

Maurice Piette
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