

Law firm regulation survey report

Throughout 2015, the Law Firm Regulation Task Force has been working on a framework for an innovative regulatory environment where law firms work together with the Law Society to manage issues proactively as they emerge, rather than waiting until they become problems for the firm and the Law Society. As part of its consideration of the issues, in November last year the task force circulated a consultation paper to all members and provided an online survey to solicit comments and views on what the task force was considering.

The consultation paper highlighted some of the questions the task force was considering. Where does it make sense for firms to have the responsibility for establishing and maintaining systems and policies to support their lawyers' practices? Should firms play a role in at least some kinds of complaints about their lawyers' conduct? Does regulating law firms make it necessary for law firms to complete a registration process? Should there be a "designated contact" person at each firm with primary responsibility for communications between the Law Society and the firm? What about the application of law firm regulation to sole practitioners and smaller firms?

The task force received over 100 responses to the consultation paper. The lawyers who responded represented a good sample of sole practitioners and lawyers with larger firms, with a smaller number of lawyers working in government or in-house. The majority of lawyers who completed the survey practiced with firms with more than one lawyer and about 20 per cent practiced with firms of more than 10 lawyers.

While respondents generally approved of a proactive approach to regulation, a few lawyers expressed concern that offloading ethical responsibility from lawyers onto firms created a risk of more unethical behavior. As one lawyer commented:

Individual lawyers should be encouraged to take more responsibility for compliance with the rules of the profession, not less. A move to entity regulation will lead to a necessary distancing of lawyers from the rules they must follow as those rules will now be administered by "someone else". That is a negative, not positive, change. We as a society should want members to realize that the obligation for compliance falls on their own shoulders, no one else's, so the members will maintain the appropriate focus on compliance.

A wide range of views was expressed about the potential areas for law firm regulation identified in the consultation paper, and the task force will explore those views in its upcoming meetings with the profession around the province. In addition to the potential areas identified in the consultation paper, working conditions were mentioned by several lawyers. One lawyer commented that "*If the Law Society is serious about mental health, work-life balance and keeping women in the profession, [then] standards akin to employment standards must be introduced.*" Other comments suggested that articling and fees were both areas worthy of consideration.

On the other hand, when lawyers were asked to consider whether any of the potential areas identified by the task force should be excluded from law firm regulation, a number of lawyers suggested that the profession was already too regulated and expressed concern about the possibility of more. One lawyer commented:

In my view, lawyers are already well-regulated. The LSBC is rightly concerned about ongoing complaints regarding lawyers. But the LSBC seems to have bought into the cultural myth that all potential harm is preventable. Pass more rules on top of more rules, ad infinitum, but the LSBC will still receive complaints, because lawyers who do harm to their clients, by definition, are not very good at following rules.

Sole practitioners, in particular, expressed concern about the impact of any law firm regulation on their practices. As one lawyer wrote:

At the very least, if we proceed with this, regulations for sole practitioners should be covered in a separate section, specifically tailored to sole practitioners, and not lumped in the same basket with regular and larger firms.

The task force is mindful that regulation, in itself, is not a panacea. As a result, the consultation paper did note that the objective of the initiative under consideration was not to increase the overall regulation of the profession but to consider those areas where it might be appropriate to shift responsibility away from the individual lawyer and onto the firm. Some lawyers did recognize this in their comments:

I am encouraged with the statements that there will be attempts to minimize the required extra administrative burden. This should be a shift of certain burdens from individual to firm, not an imposition of a greater burden.

I am all for properly regulating the law profession as long as new regulations do not put an unfair administrative burden on lawyers, especially sole practitioners.

Continuing its consultation with the profession, in February lawyers will be invited to attend focus groups in ten cities around the province. We look forward to engaging with members about the potential for law firm regulation improving the overall delivery of legal services in British Columbia.