The Law Society of British Columbia

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

October 3, 2016

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

Table of Contents

© Law Society of British Columbia. See lawsociety.bc.ca>Terms of use

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.

[5]Regulatory 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.

[9]Letter 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.

> **Recommendation 4 –** Adopt a set of professional infrastructure elements

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**	Ensuring the firm provides for the delivery of quality and timely legal services by persons with appropriate skills and competence. This includes ensuring that: • 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.	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.
2.	**Client relations**	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	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

		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.	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. 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.

[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 *BC Human Rights Code*, *Workers Compensation Act* 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

[14]Requiring 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

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 principles[24] (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 Ontario[28], Saskatchewan, Manitoba and Alberta[29]. 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 a 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 or 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.