



TAB 3

Report to Convocation May 26, 2016

Compliance-Based Entity Regulation Task Force

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Purpose of Report: Decision

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EXECUTIVE SUMMARY

The legal professions in Ontario are undergoing tremendous change. Globalization, downward pressure on the cost of providing legal work, an increasingly complex environment, and the proliferation of new forms of legal service delivery are creating not only new opportunities for the public to access legal services, but also new challenges for regulators. Existing regulatory approaches do not fully reflect significant changes in practice over the decades.

The Law Society of Upper Canada's Task Force on Compliance-Based Entity Regulation was established in June 2015 by Convocation to consider how best to meet some of these challenges. After careful study, it is recommending that Convocation approve:

1. that the Law Society seek an amendment to the *Law Society Act* to permit Law Society regulation of entities through which legal services are provided; and
2. that Convocation approve development of a regulatory framework for consideration by Convocation based on the principles of compliance-based regulation set out in this report.

"Entity regulation" refers to the regulation of the business entity through which lawyers and paralegals provide services. For example, a partnership or a professional corporation would be an entity.

"Compliance-based" regulation is a proactive approach, in which the regulator identifies practice management principles and establishes goals, expectations, and tools to assist lawyers and paralegals in demonstrating compliance with these principles in their practices. This approach recognizes the increased importance of the practice environment in influencing professional conduct, and how practice systems can help to guide and direct professional standards.

With the advent of paralegal regulation and legislative change in 2007, the Law Society began regulating the provision of legal services and the individuals who provide them, as well as those who practise law. The regulation of entities is consistent with this approach.

Entity regulation has three main benefits:

1. It enhances the efficiency and effectiveness of professional regulation;
2. It harmonizes Ontario's legislation with that of other Canadian Law Societies;
3. It positions the Law Society of Upper Canada to respond more effectively to innovations in legal service delivery that may be required in the public interest.

The Task Force considers as a general principle that all lawyers and paralegals should be obliged to adopt and abide by appropriate policies and procedures in their practices to fulfil their professional obligations as reflected in seven practice management principles. These principles

were circulated to the professions as part of the Call for Input earlier this year and are as follows:

- a. Practice Management;
- b. Client Management;
- c. File Management;
- d. Financial Management and Sustainability;
- e. Professional Management;
- f. Equity, Diversity and Inclusion; and
- g. Access to Justice.

The Task Force proposes to continue its work on compliance-based regulation by developing one or more options, which would be the subject of focused consultation with the professions to obtain feedback on their potential impact.

In formulating these options, the Task Force would take into consideration the Law Society's existing competence mandate and current Quality Assurance and Quality Improvement programs. In developing and evaluating these options, the Task Force will also be aware of the need for proportionality in the regulation of the professions. To that end, the Task Force will consider the reduction or elimination of some current regulatory requirements as part of new compliance-based initiatives.

Elements of these approaches could include mechanisms for

1. providing sample policies and procedures that lawyers and paralegals may consider useful in the management of their practices;
2. periodic self-assessment of compliance with the practice management principles described in the report, based on a tool to be developed by the Law Society;
3. reporting to the Law Society that paralegals and lawyers have either i) considered the self-assessment tool and the extent to which they are in compliance with it; or ii) the result of their self-assessment;
4. an appropriate regulatory response from the Law Society in the event of a lack of compliance with one or more regulatory obligations. One possible Law Society response might be to contact the entity to discuss the reasons for non-compliance. Another might be a compliance audit to assist the entity to ensure that it has implemented the practice management principles.

FINAL REPORT OF THE TASK FORCE ON COMPLIANCE-BASED ENTITY REGULATION

MOTION

1. That Convocation approve:
 - a. that the Law Society seek an amendment to the *Law Society Act* to permit Law Society regulation of entities through which legal services are provided; and
 - b. the development of a regulatory framework for consideration by Convocation based on the principles of compliance-based regulation set out in this report.

NATURE AND PURPOSE OF THIS REPORT

2. In June, 2015 Convocation established the Task Force on Compliance-Based Entity Regulation. ¹ The Task Force's purpose is to study and make recommendations on options for proactive regulation of entities, or organizations, through which lawyers and paralegals provide legal services.²
3. Since September 2015, the Task Force has considered this subject in depth and has had a number of opportunities to engage with members of the professions. Further information regarding outreach conducted by the Treasurer and by Task Force members is attached as **Tab 3.1** to this report. The Task Force wishes to acknowledge and thank the participants in these meetings for their contributions and insights.
4. In January, 2016, the Task Force launched a Call for Input with lawyers, paralegals and others on a series of questions described in its consultation paper ("Promoting Better Legal Practices"). Responses were requested by March 31, 2016. The responses are summarized in an appendix to this document at **Tab 3.4**.

¹ The Task Force's Terms of Reference are available in the Treasurer's Report to Convocation, June 25, 2015, (Part 2), Proposed Task Force on Compliance-Based Entity Regulation, paragraph 49, online at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-june-2015-treasurer.pdf.

² The Task Force is chaired by Ross Earnshaw. The Vice-Chair is Gavin MacKenzie. The members of the Task Force are Raj Anand, Robert Burd, Teresa Donnelly, Howard Goldblatt, Joseph Groia, Carol Hartman, Malcolm Mercer, and Peter Wardle. Kathleen Waters, C.E.O of LawPRO, and Dan Pinnington, Vice-President, Claims Prevention and Stakeholder Relations, LawPRO, also attended the Task Force's meetings and participated in its deliberations.

5. The Task Force recommends that the Law Society be authorized to regulate entities through which legal services are provided. The report also describes the Task Force's proposals for continued examination of proactive compliance-based regulation, based on a recognition that lawyers and paralegals should adopt and abide by appropriate policies, procedures and practices in their legal practices to fulfil their professional obligations.
6. In developing and evaluating these initiatives, the Task Force will be aware of the need for proportionality in the regulation of the professions. To that end, the Task Force will also consider the reduction or elimination of some current regulatory requirements as part of new compliance-based initiatives.

DEFINING THE CONCEPTS

What is Entity Regulation?

7. "Entity regulation" refers to the regulation of the business entity through which lawyers and paralegals practise law or provide legal services. For example, a partnership or professional corporation would be an entity.
8. In 2016, it is not realistic to treat law or paralegal firms as mere collections of autonomous individual practitioners who happen to share a firm name. Firms owe fiduciary and other legal obligations to their clients. Clients look to firms, as well as individual practitioners within those firms, to serve their legal needs. Firms exist because individual practitioners recognize that many aspects of professional practice should be undertaken on a collective basis. Yet, Law Society authority, By-Laws and Rules of Professional Conduct are framed without acknowledging the relevance of law and paralegal firms to the manner in which clients, the administration of justice, and the public are served by the legal professions. Entity regulation recognizes that failing to acknowledge the reality of modern practice can affect the efficiency, effectiveness, and sometimes even the fairness of professional accountability.
9. Entity regulation recognizes that many professional decisions that were once made by an individual practitioner are increasingly determined by firm policies and procedures and firm decision-making processes. The organization in which a lawyer or a paralegal works plays an increasingly significant role in determining an individual's professional conduct. Entity regulation recognizes that both improvement and assurance of professional conduct are better achieved by addressing both individual practitioners and legal organizations.

What is Compliance-Based Regulation?

10. Compliance-based regulation emphasizes a proactive approach in which the regulator identifies practice management principles and establishes goals, expectations and tools to assist lawyers and paralegals in demonstrating compliance with these principles in their practices. This approach recognizes the increased importance of the practice

environment in influencing professional conduct and how practice systems can help to guide and direct professional standards.

11. Compliance-based regulation proceeds on the basis that lawyers and paralegals should have autonomy in deciding how to meet these expectations and in determining the policies and procedures they adopt to achieve effective and compliant practice management. But compliance-based regulation also contemplates assistance so that practitioners do not have to “reinvent the wheel” and can better understand what is expected.

How Do Compliance-Based Regulation and Entity Regulation Fit Together?

12. These two initiatives do not necessarily have to be implemented together. Recognizing and reflecting the importance of legal organizations to modern professional practice has obvious value whether or not compliance-based regulation is adopted. But if compliance-based regulation is adopted, it would be more effective if it applied to both entities and individual practitioners.

WORK OF THE TASK FORCE

13. The Task Force’s work is being undertaken in the context of tremendous change for the Ontario legal professions. The Law Society was one of the first regulators in the world to introduce paralegal regulation approximately ten years ago. Since that time, globalization, downward pressure on the cost of providing legal work, an increasingly complex environment and the proliferation of new ways of providing legal services are creating not only new opportunities for the public to access legal services, but also new challenges for regulators. Existing regulatory approaches do not fully reflect significant changes in practice over the decades.
14. The Task Force is also aware that, given the presence of national law firms, any new regulatory approaches, such as entity regulation, would benefit from collaboration with other Canadian Law Societies to ensure harmonized national standards. The Task Force has held a number of meetings with colleagues in other Canadian Law Societies to discuss the issues raised in this report. Details regarding these meetings are available at [Tab 3.1.1](#).

Call for Input

15. The Call for Input provided an opportunity for lawyers, paralegals and others to respond to a series of questions about proactive regulation. These included questions about proposed practice management principles, the appointment of a Designated Practitioner, or representative, and entity registration.³

³ The Call for Input paper may also be accessed online at <http://www.lsuc.on.ca/better-practices/>.

16. For the first time, respondents were offered an opportunity to respond using an online form, in addition to email and regular mail. A list of individual respondents is available at [Tab 3.2](#). A list of legal organization respondents appears at [Tab 3.3](#). A summary of the responses appears at [Tab 3.4](#).
17. The responses to the Call for Input provided a wide range of views, and occasionally disparate perspectives, on the various questions. The following themes emerged from the responses:
 - a. Respondents were in general agreement with the Practice Management Principles proposed in the Call for Input paper. Some expressed concerns about a lack of detail regarding the equity, diversity and inclusion principle, as well as the access to justice principle.
 - b. Some respondents believed that all lawyers and paralegals in private practice should be subject to identical requirements, irrespective of practice size. However, the majority of respondents emphasized while the principles would apply to all, the application of the principles would vary depending on the nature of the practice. Lawyers and paralegals in sole practice and in small firms have unique challenges and new requirements should be designed accordingly.
 - c. Each law or paralegal firm should be able to choose the practitioner most appropriate for the Designated Practitioner (DP) role. The DP should not be made responsible for any sanction that might be imposed against a firm.
 - d. Entities should be required to register with the Law Society, rather than having to go through a licensing process.
 - e. While supportive of the general concept of compliance-based entity regulation, some respondents wanted more information about the nature of any new regulatory obligations. Others questioned why entity regulation was necessary. Some respondents urged the Law Society to develop more detailed regulatory proposals as the basis for further consultation.

RECOMMENDATION FOR ENTITY REGULATION

18. For the reasons outlined below, the Task Force believes that the Law Society should seek authority under the *Law Society Act* to permit Law Society regulation of entities through which law is practised and legal services are provided. While the Act currently authorizes regulation of professional corporations, the Act does not authorize the regulation of ordinary partnerships or Limited Liability Partnerships (including multi-disciplinary partnerships).
19. The amendments may include the following:

- a. a requirement that entities register with the Law Society;
 - b. authority for the Law Society to create a register for entities;
 - c. a requirement to appoint a Designated Practitioner, or representative;
 - d. authority that would permit the Law Society to investigate, discipline, and impose a sanction on an entity.
20. Section 61.0.4(2) of the Act currently permits the audit, investigation and prosecution of a professional corporation, as well as of individuals. Proposed amendments for entity regulation would extend the Law Society's regulatory reach to other entities that provide legal services. This means that an entity could be the subject of a complaint, investigation or discipline, in addition to or instead of an individual.
21. Regulating entities will require new approaches to regulation, which will require further work and consideration including the development of By-Laws and Rules of Professional Conduct that would be specific to entities. The Task Force believes obtaining authorization to regulate entities need not await completion of this work.

Enhancing Regulatory Efficiency

22. The Task Force believes that increased regulatory efficiency and effectiveness would result from entity regulation in the following ways:
- a. The confidentiality requirements of section 49.12 of the Act do not currently permit the Law Society to notify members of a firm that a member of the firm is under investigation. Where such notification is appropriate and necessary, law firm regulation would address this issue.
 - b. Appointing a designated person in a firm to respond to the Law Society or to ensure that a response is obtained would result in more efficient and effective responses.
 - c. With respect to the production of documents, the obligation to produce documents and information could include the firm as well as any individual whose conduct is being investigated. Commencing an investigation of the firm can be an effective tool for achieving regulatory compliance.
 - d. In certain circumstances, sanction of an entity may be an appropriate regulatory response.
 - e. For book-keeping and accounting responsibilities and compliance, one person would be responsible to report to the Law Society about trust accounting matters and to ensure that the firm's record-keeping is current.
 - f. If a regulatory issue relates to responsibility to a firm's client, dealing with the partnership or the professional corporation is ordinarily appropriate. In some cases,

an investigation addresses the interaction of a number of practitioners with the client, and may most appropriately be considered a regulatory issue for the firm. Examples include a lack of competence on the part of the lawyer or paralegal to whom client work is assigned or conflicts of interest that involve a number of individuals in the firm.

- g. In cases where a lawyer or paralegal has subsequently left a firm, their former employer currently has no obligation to provide client files or information to the Law Society – and the departed lawyer or paralegal may not have any documents relevant to the allegations under investigation. Obtaining cooperation from the previous firm has been resource-intensive for the Law Society. Entity regulation would enable a more effective method to obtain necessary information.
- h. Entity regulation may also be a more effective means of response for regulation of entities that provide legal services both within and outside of Ontario (such as Internet providers) and multi-jurisdictional law firms.
- i. Entity regulation may permit the public to access information about the regulated entities through the Law Society website;
- j. Entity regulation would be valuable for the implementation of recommendations that may be made by the Challenges Faced by Racialized Licensees Working Group that relate to organizational policies or processes.⁴

Consistency

- 23. An amendment to the *Law Society Act* to enable the Law Society to regulate entities would also be consistent with Law Society regulatory authority over law firms in other provinces, described below.
- 24. The Law Society of British Columbia (LSBC) has had statutory authority to investigate a law firm, and to discipline a law firm by reprimand, fine, or other order since 2012.⁵ In 2015, the LSBC established a Task Force on Law Firm Regulation.⁶ⁱ The LSBC consultation included the publication of a discussion paper and request for comment as well as focus groups in ten cities around the province held in February, 2016.

⁴ The Challenges Faced by Racialized Licensees Working Group has been considering equity, diversity and inclusion issues for Racialized Licensees in the legal professions. It is expected that the Working Group will report to Convocation in 2016.

⁵ *Legal Profession Act*, S.B.C. 1998, c. 9, online at http://www.bclaws.ca/civix/document/id/complete/statreg/98009_01. The relevant statutory provisions are ss. 11(1) and (3), 26(2), 27(2)(e), 32, 33 and 36, cited in CBA Futures Inquiry: Ethics and Regulatory Issues Team, Final Report, April 1, 2014, p. 14.

⁶ Further information regarding the Law Society of British Columbia Task Force is available at <https://www.lawsociety.bc.ca/page.cfm?cid=3966&t=Law-Firm-Regulation-Task-Force>.

25. Initiatives are currently being undertaken by the Prairie Law Societies in this area, which have published a paper (*Innovating Regulation: A Collaboration of the Prairie Law Societies*), and have launched a consultation with the profession.⁷
26. The Law Society of Saskatchewan has legislative authority over law firms.⁸ On November 5, 2015, the *Legal Profession Amendment Act* received Third Reading in the Legislative Assembly of Manitoba. The bill provides benchers of the Law Society of Manitoba with the legislative authority to regulate law firms.⁹
27. The Barreau du Québec (Barreau) requires firms to provide a detailed undertaking to facilitate the ethical behaviour of advocates working in the firm. The signed undertaking lists the members of the firm and provides that:
 - a. The entity ensures that all members who engage in professional activities in the firm have a working environment that allows them to comply with any law applicable to the carrying on of their professional activities.
 - b. The partnership or company, as well as all persons within it, shall comply with applicable legislation and regulations.
28. The Barreau requires firms to designate a representative to deal with the regulator.¹⁰
29. The Nova Scotia Barristers' Society (NSBS) has had authority over law firms since 2005. Since 2013, NSBS has been involved in an extensive review of all aspects of its regulatory scheme which is more wide-reaching than Ontario's, and includes both entity and compliance-based regulation.¹¹
30. As noted in the Call for Input paper, the regulation of lawyers and paralegals by the Law Society is currently based on the regulation of the individual practitioner. With the commencement of paralegal regulation and the legislative change implemented in 2007, the Law Society began regulating the provision of legal services, in addition to regulating the individuals who provide them, as well as those who practise law. The regulation of entities is consistent with this approach.

⁷ See <http://www.lawsocietylistens.ca/>.

⁸ *Legal Profession Act, 1990*, S.S. 1990-91, c. L-10.1, online at <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/L10-1.pdf>.

⁹ *Legal Profession Amendment Act*, 4st Sess., 40th Leg., Manitoba, online at <http://web2.gov.mb.ca/bills/40-4/b019e.php>.

¹⁰ Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary, CQLR c. B-1, r. 9, online at <https://www.canlii.org/en/qc/laws/regu/cqlr-c-b-1-r-9/latest/cqlr-c-b-1-r-9.html> cited in Adam Dodek, "Regulating Law Firms in Canada", (2011) 90 Canadian Bar Review 383 at 410.

¹¹ *Legal Profession Act*, S.N.S. 2004, c. 28, online at <http://cdn2.nsbs.org/sites/default/files/cms/menu-pdf/legalprofessionact.pdf>. Regarding the NSBS Legal Services regulation project, see <http://nsbs.org/legal-services-regulation>.

Recognizing the Organizational Dynamic

31. There has been increasing recognition that firms, including firm culture, have an impact on individual practice. Professor Amy Salyzyn of the University of Ottawa notes with respect to client service issues in particular that “there may...be underlying workplace culture issues that contribute to client service problems but which are outside the jurisdiction of the conventional approach”.¹²
32. Despite this, until recently, law firms have not been regulated in Canada. Adam Dodek suggests that “the proper question is not, ‘why should law firms be regulated?’ but “why do they largely escape law society regulation?”¹³
33. As observed by LawPRO in their submission to the Task Force,

It cannot be ignored that in most cases it is the law firm standing behind the lawyer or paralegal that is providing the infrastructure that supports and assists the work the practitioner is doing. This infrastructure includes everything from the physical office, to staff, policies and procedures, technology support, and so on. Firm infrastructure and culture can have an impact on client service and practice management and, in turn, malpractice claims.
34. The Task Force has not yet determined whether and when an entity should include a sole practitioner. On the one hand, it is clear that some aspects of entity regulation, such as a requirement to appoint a Designated Practitioner, or representative, would ordinarily not be practical in sole practice. However, as pointed out during the Call for Input, “sole practice” may not mean a one person firm; in some instances, a firm may consist of one lawyer or paralegal supervising many employees and/or contractors. This latter type of sole practice may be more appropriately regulated as an entity through which legal services are provided, similar to a partnership or a professional corporation.
35. Call for Input respondents were generally supportive of entity regulation, although some requested more information about what might be involved.

Summary

36. In summary, the Task Force is recommending entity regulation on the basis that:
 - a. It would enhance the efficiency and effectiveness of professional regulation.
 - b. It would harmonize Ontario’s legislation with that of other Canadian Law Societies.
 - c. It would position the Law Society of Upper Canada to respond more effectively to innovations in legal service delivery that may be required in the public interest.

¹² Amy Salyzyn, “What if We Didn’t Wait? Canadian Law Societies and the Promotion of Ethical Infrastructure in Law Practices”, (2015) 92 Canadian Bar Review 507 at 522.

¹³ See, for example, Adam Dodek, “Regulating Law Firms in Canada”, (2011) 90 Canadian Bar Review 383

COMPLIANCE-BASED REGULATION: NEXT STEPS

37. As a result of the Call for Input responses and discussion among Task Force members on the various issues arising from consideration of a compliance-based regulatory model, the Task Force has concluded that more focused attention is required on options for this type of regulatory approach. It proposes to further examine proactive regulation and, once more specific frameworks are defined, seek further input from the professions.
38. As a starting point, the Task Force considers as a general principle that all lawyers and paralegals should be obliged to adopt and abide by appropriate policies and procedures in their practices to fulfil their professional obligations as reflected in the seven practice management principles that were the subject of the Call for Input.
39. The seven principles are:
 - a. Practice Management,
 - b. Client Management,
 - c. File Management,
 - d. Financial Management and Sustainability,
 - e. Professional Management,
 - f. Equity, Diversity and Inclusion; and
 - g. Access to Justice.

The principles are described in greater detail in [Tab 3.4](#) at paragraph 5.

40. A proposed approach may include the following components:
 - a. the development and provision of model policies and procedures that could be adopted or modified as considered useful by practitioners;
 - b. periodic self-assessment of compliance with management principles through a standard checklist or form;
 - c. periodic reporting requirements, whether annually or less frequently, which could simply confirm self-assessment or compliance or alternatively could provide more detail;
 - d. a review or auditing process to discuss and review compliance. This type of meeting could be held on a regular basis, or arranged on a targeted basis following a risk assessment;
 - e. a representative in each entity who would not be personally responsible for an entity's failure to comply, but would be required to monitor compliance and liaise with the Law Society on behalf of the entity;

- f. assistance from Law Society staff to lawyers and paralegals who have questions about the requirements.

41. A number of issues require further consideration, as discussed below, as the Task Force considers a framework for proactive regulation.

Proportionality

42. Submissions received from the professions supported the general proposition that a proactive approach was appropriate. There was also general agreement among respondents with the proposed practice management principles described in the Call for Input paper.
43. The Task Force believes that any new regulatory requirements should be designed to ensure that no undue burden is placed on sole practitioners or small firms. A key consideration is proportionality. The *Law Society Act* requires the Society to consider that “standards of learning, professional competence, and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized”.¹⁴
44. In order to ensure this, the Task Force is recommending a series of additional consultations, described later in this report.
45. Proportionality may mean that consideration should be given to ensuring that any new requirements are harmonized with the following existing requirements:
- a. Trust account reporting;
 - b. Completion of the Lawyer and Paralegal Annual Reports;
 - c. Reporting of status changes and changes in contact information to the Law Society;
 - d. Compliance with client identification and verification requirements;
 - e. Continuing Professional Development requirements;
 - f. Cooperation with a practice audit or practice review, if selected.
46. It may also mean the possible reduction of existing requirements. For example, the Designated Practitioner could be responsible for reporting on compliance with Continuing Professional Development (CPD) requirements on behalf of all lawyers and paralegals in the entity similar to the way that firm trust account obligations are now reported.

Building on the Law Society’s Competence Mandate in the Way Forward

47. The Law Society of Upper Canada has supported a proactive approach to practice management development and compliance since at least 2001, when Convocation adopted a competence mandate for the Law Society. The Professional Development & Competence Committee proposed the adoption of a Professional Development Model for

¹⁴ *Law Society Act*, R.S.O. 1990, c. L.8, s. 4.2, online at [http://www.lsuc.on.ca/uploadedFiles/For the Public/About the Law Society/Convocation Decisions/2015/convocation-january-2015-PDC.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2015/convocation-january-2015-PDC.pdf).

the Law Society of Upper Canada. The recommended model had the following five components:

- a. Practice Guidelines;
- b. Remedial Components Mandated by Statute (that is, focused practice review and competence hearings);
- c. Practice Enhancement;
- d. Continuing Legal Education requirements (post-call education and requalification); and
- e. A reformulated Specialist Designation.¹⁵

48. The Law Society's approach contains both Quality Assurance (QA) and Quality Improvement (QI) elements. While QA focuses on ensuring compliance with established standards, QI measures address both compliance with established standards and the development of tools designed to facilitate improved practices. Current QA and QI initiatives are described below. The Law Society of Upper Canada has already implemented the following proactive initiatives:

- a. Practice Management Review (PMR) – Lawyers in their first eight years of practice may be referred to the program because of random risk-based selection by the Law Society. The selection reflects the percentage of firms represented in Law Society conduct matters (53 percent sole practitioners; 26 percent of firms of between two and five lawyers, etc). A PMR covers all aspects of practice, including file management, time, client and financial management. In the course of conducting the review, Law Society staff may speak with firm leadership, managing partners, and firm administrators if any issues are uncovered that relate to firm-wide matters.
- b. Re-entry Review: Lawyers re-entering the private practice of law after a hiatus of five years are required to undergo a review within 12 months of their return to small firm practitioner.
- c. Focused Practice Review: Lawyers whose practices are showing significant signs of deterioration, as suggested by increases in complaints or other indicia, may be required to participate in such a review.

49. Licensed paralegals may also be selected for participation in Practice Audit by random selection. Like the PMR for lawyers, the practice audit program is described as a holistic review and covers all aspects of practice. Unlike PMR, it is not confined to the first eight years of practice. These programs may be described as QA initiatives.

¹⁵ Professional Development & Competence Committee, Implementing the Law Society's Competence Mandate: Report and Recommendations, March 22, 2001, online at http://www.lsuc.on.ca/media/competence_report.pdf

50. Lawyers and paralegals have provided very positive feedback about these proactive initiatives. A 2015 report indicated that over 96 percent of lawyers who underwent a PMR indicated that they found the process to be constructive and helpful to the management of their practice.¹⁶
51. The Law Society of Upper Canada's Professional Development & Competence Division (PDC) has also implemented a variety of QI programs. Some of these are listed below.
- a. Continuing Professional Development (CPD) – approximately 130 course are offered each year, in various practice areas and formats.
 - b. A Presenter Resource Centre has been developed, including guidelines, resources and tips for CPD chairs, presenters, and study group facilitators.
 - c. Eight Practice Management Guidelines are practical online tools that provide a general framework for conducting various aspects of legal work, and assist practitioners in assessing, maintaining, and enhancing their quality of service.¹⁷
 - d. The Law Society of Upper Canada's website also contains a variety of articles and resources about opening, operating, or closing a practice, the practitioner-client relationship, managing files, managing money, trust accounts, and a variety of other issues.
 - e. Technology practice tips have been made available in MP3 format.
 - f. The e-Bulletin resources for Lawyers is emailed to all lawyers ten times a year and provides information about practice management topics.
 - g. "How-to" Briefs have been developed to assist lawyers and paralegals to understand and apply procedures and practices applicable to various areas of law.¹⁸
 - h. The Great Library of the Law Society of Upper Canada offers numerous online and print research resources, including an App for online access.
 - i. The Practice Review Basic Management Checklist and Paralegal Practice Audit Checklist are available online and assist practitioners in identifying deficiencies in their practice. These resources are discussed in greater detail below.
 - j. The Practice Management Helpline provides lawyers and paralegals with assistance regarding the application of the Rules of Professional Conduct, Paralegal Rules of Conduct, and other Law Society By-Laws and regulations.

¹⁶ Professional Development and Competence Division Resource and Program Report to Convocation, January 2015, p. 20, online at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-january-2015-PDC.pdf.

¹⁷ The topics include client service and communication; file management, financial management, technology, professional management, time management, personal management, and closing your law practice.

¹⁸ These include administrative law, business law, civil litigation, criminal law, estates and trusts, family law, and real estate law.

- k. The Practice Mentoring Initiative connects lawyers or paralegals with experienced practitioners in relevant areas of law to help them address a complex substantive legal issue or a specific procedural issue outside of the Law Society's Practice Management Helpline mandate.

52. The 2001 Report to Convocation noted the following:

(c)ompetence is not a static status. It must be nurtured and maintained throughout a lawyer's career in order that the lawyer continues to provide quality service and meet professional obligations, in the public interest.¹⁹

- 53. The Task Force agrees. It also believes that there is particular merit to building on these successful proactive initiatives that are directed to individuals in private practice, especially those in smaller practices.
- 54. It is a fact that the majority of complaints to the Law Society concern sole practitioners and small firms. Similarly, LawPRO's data indicates that sole practitioners have a higher rate of claims by count than the Ontario lawyer population at large. For example, in 2015, 99 claims per 1000 insured lawyers were reported in LawPRO's primary professional liability program. For the subset of lawyers who are sole practitioners, the claims count is about 115 per 1000 practitioners. Further, 13.9 percent of claims against sole practitioners result in an indemnity payment, as compared to 13.2 percent of firms with 2-5 lawyers, and 9.4 percent in firms of six or more lawyers.
- 55. Further, the majority of complaints about lawyers and paralegals relate to practice management issues. Four thousand, seven hundred and eighty-one complaints were referred to the Law Society's Professional Regulation Division in 2014. More than half of these complaints involved client services (52 percent) and other issues relating to practice management infrastructure, including financial matters. LawPRO data also suggests that there is room for improvement in practice and file management standards. Only one in eight claims involve a failure to know and apply the law. Year after year, one-third of claims involve lawyer/client communication issues (miscommunication, poor communication, or lack of communication). Eighteen percent of claims involve missed deadlines and procrastination issues.
- 56. While available data regarding complaints to the Law Society of Upper Canada suggests a concentration of complaints among sole practitioners and small firms, the Task Force acknowledges that given the complexities of the current environment, these practitioners could be challenged by additional regulation if new requirements were not streamlined with existing ones and designed with a view to their unique practice circumstances. The Task Force sees this as an important concern which should inform any new proactive requirement.

¹⁹ Professional Development & Competence Committee, *Implementing the Law Society's Competence Mandate: Report and Recommendations*, March 22, 2001, *supra* note 15, paragraph 89.

Self-Assessment

57. The complaints and discipline process is primarily reactive. Practice issues, such as client service issues and questions about the lawyer's and paralegal's integrity, are commonly identified after the fact through complaints and investigations. Issues may not come to the practitioner or regulator's attention because the client chooses not to make a complaint about them.²⁰
58. Acknowledging that the regulatory process always has, and will continue to include, both proactive and reactive components, the Task Force believes that it is important to explore the feasibility of placing a positive obligation on lawyers and paralegals to ensure that they have implemented principles of practice management.
59. Effective practice management could be supported by a self-assessment tool that includes examples of possible systems against which an entity can assess its own practice management system. In considering how this might work, the Task Force has reviewed the Law Society's current practices.
60. The Practice Review (for lawyers) and Practice Audit program (for paralegals) of the Law Society of Upper Canada already use a similar approach, by requiring the lawyer or paralegal selected for this program to complete a detailed Basic Management Checklist.²¹ The checklist must be returned to the Law Society before the audit.
61. The Lawyer Basic Management Checklist covers the following topics:
 - a. "your law practice" (including elements such as practice status, the names of lawyers or paralegals with whom the licensee practices; the name of the legal entity which provides and bills the services provided by the practitioner and his or her firm);
 - b. client service and communication;
 - c. file management;
 - d. financial management;
 - e. technology;
 - f. professional management;
 - g. time management;
 - h. personal management; and
 - i. certification (i.e. the lawyer is asked to indicate that to the best of their knowledge and belief, the information given in the checklist and in any attached documents is correct and complete).
62. The Paralegal Basic Management Checklist covers the following topics:

²⁰ Amy Salyzyn, "What If We Didn't Wait", *supra* note 12, p. 524.

²¹ The Paralegal Basic Management Checklist may be accessed at <http://www.lsuc.on.ca/Practice-Review/Paralegal-Basic-Management-Checklist/>. The Lawyer Basic Management Checklist may be accessed at [http://www.lsuc.on.ca/uploadedFiles/PDC/Practice_Review/Basic%20Management%20Checklist%20\(BMC\)%20-%20LAWYER%20-%20October%202014.pdf](http://www.lsuc.on.ca/uploadedFiles/PDC/Practice_Review/Basic%20Management%20Checklist%20(BMC)%20-%20LAWYER%20-%20October%202014.pdf).

- a. “your paralegal practice” (practice status, names of paralegals or lawyers with whom the paralegal practices)
- b. client service and communication;
- c. file management;
- d. financial management;
- e. technology;
- f. professional management;
- g. time management;
- h. personal management; and
- i. certification (the lawyer or paralegal is asked to indicate that the information provided in the checklist and attached documents is correct and complete).

63. The elements in these self-assessment tools “checklists” have been taken into consideration by the Task Force in developing the proposed Practice Management principles that were published in the Call for Input paper. The Task Force notes that almost all of the individual respondents, and all of the legal organizations, agreed with the principles as drafted. The Task Force considers it appropriate to explore how self-assessment tools may be utilized in a proactive regulatory model.²²

²² One of the legal organizations participating in the Call for Input noted that real estate lawyers are already subject to a form of compliance-based regulation, as they are required to provide certain acknowledgements and statements on the Lawyer Annual Report (LAR). The 2015 LAR for example, included six questions that must be answered by lawyers who indicate that in 2015, they acted on a real estate transaction (the Real Estate Declaration).

The first question is, “I declare that I complied in 2015 with my professional obligations to not permit anyone to use my lawyer’s e-reg diskette/key and to not disclose to anyone my personalized e-reg pass phrase, as set out at Rule 6.1-5 of the Rules of Professional Conduct and at subsection 6(2) of By-Law 7.1. The other questions relate to supervision of non-lawyers to whom tasks are assigned, acknowledgement of the professional obligations in the Rules of Professional Conduct in various areas, as well as acknowledgement of certain obligations under the Electronic Land Transfer Agreement.

The Real Estate Declaration was approved by Convocation in February, 2013. The Professional Regulation Committee on this subject notes that the Law Society and LawPRO devote significant resources to complaints and claims arising mortgage fraud. In 2012, real estate practice, including mortgage fraud, generated 17% of the complaints to the Law Society (the third largest area of complaints).²² The prosecution of these matters required the expenditure of significant lawyer and paralegal resources.

The real estate declaration is an example of a proactive regulatory initiative, and may offer a model for further consideration.

The Task Force notes that the LAR contains various questions about trust accounting, including the following:

- a. In 2015, did you receive trust funds and/or trust property on behalf of your firm in connection with the practice of law in Ontario?
- b. In 2015, did you disburse (pay out), or did you have signing authority to disburse, trust funds or trust property on behalf of your firm in connection with the practice of law in

64. In addition to encouraging practitioners to reflect on issues such as practice supervision, file, client, financial, and professional management, self-assessment may also provide an opportunity for lawyers and paralegals to indicate their awareness of equity, diversity and inclusion and access to justice principles.

Development of Options for Further Consultation

65. The Task Force proposes that in the coming year, it continue to further develop one or more options for compliance-based entity regulation, based on the elements described above and others that may necessarily flow from their consideration. The Task Force would be assisted by appropriate staff in carrying out this work.
66. These options would then be the subject of focused consultations with the professions.
67. Elements likely to be included are as follows:
- a. providing sample policies and procedures that lawyers and paralegals may consider useful in the management of their practices;
 - b. periodic self-assessment of compliance with the practice management principles described in this report, based on a tool to be developed by the Law Society;
 - c. lawyers and paralegals to report to the Law Society that they have either i) considered the self-assessment tool and the extent to which they are in compliance with it; or ii) the results of their self-assessment;
 - d. appropriate regulatory response from the Law Society in the event of lack of compliance with one or more regulatory requirements. One possible response might be to contact the entity to discuss the reason for non-compliance. Another might be a compliance audit to assist the entity to ensure that it has implemented the practice management principles.

Consultation Proposal

68. The Task Force contemplates that a series of consultations be held with the professions to:
- a. explain the options once they are fully developed;
 - b. obtain practical feedback on the impact of proposed compliance-based amendments arising from the options; and
 - c. determine how the input obtained from the consultations can be best utilized in forming prospective recommendations.

-
- Ontario?
- c. In 2015, did you hold trust funds or trust property on behalf of your firm in connection with the practice of law in Ontario?

69. The consultations involving lawyers, paralegals, legal organizations and other interested parties, may be organized according to practice size (that is, sole practitioners and/or small firms, medium-sized firms, large firms, and national or international firms).
70. The Task Force also suggests that:
- a. a consultation paper be developed to include options for proactive compliance regulation to provide context for discussions, which would include sufficiently detailed explanation of the possible elements of a proactive scheme and possible methods of implementation;
 - b. regional meetings be held throughout the province. These meetings could be organized by practice size, or by type of practice;
 - c. legal organizations be offered an opportunity to participate in face-to-face meetings throughout the province;
 - d. the Law Society's existing competence mandate be taken into consideration, including current Quality Assurance and Quality Improvement initiatives. The Task Force should consider the impact of any new initiatives on these existing programs.
71. A report resulting from these consultations with recommendations for next steps would be provided to Convocation in 2017.
-

COMPLIANCE-BASED ENTITY REGULATION TASK FORCE OUTREACH ACTIVITIES

OTHER LAW SOCIETIES

1. The Task Force held the following meetings with colleagues in other provinces as part of its information-gathering phase:
 - a. On September 24, 2015, representatives of the Nova Scotia Barristers Society (NSBS) attended a Task Force meeting to discuss Nova Scotia's Transforming Regulation project.¹
 - b. On October 16, 2015, Ross Earnshaw, Chair, and Policy Counsel to the Task Force attended an NSBS Council regulatory workshop in Halifax, to discuss Nova Scotia's work in this area, described later in this report.
 - c. On October 28, 2015, the Task Force met by telephone with representatives of the Prairie Law Societies to discuss their consideration of entity and compliance-based regulation.
 - d. On November 4, 2015, the Task Force held a telephone meeting with representatives of the Law Society of British Columbia (LSBC).
 - e. On November 30, 2015, the Chair and Policy Counsel attended a meeting of benchers and staff from Canadian Law Societies organized by the Law Society of Manitoba in Winnipeg. The meeting was also attended by representatives of the LSBC and NSBS, as well as by the Canadian Bar Association (CBA).

LAW SOCIETY OF UPPER CANADA

2. The Treasurer and members of the Task Force participated in a number of events organized by the Law Society, legal organizations, and local law associations to discuss the concepts in this report with members of the profession. A list of events appears in **Tab 3.1.1** to this report and includes
 - a. a continuing development program organized by the OBA Business Law section ("Entity Regulation: What Lies Ahead for Ontario?");
 - b. the Treasurer's Liaison Group, which includes approximately 22 legal organizations;

¹ This meeting is described in an Interim Report to Convocation (October 29, 2015) which may be accessed at https://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-october-2015-compliance-regulation.pdf.

- c. the Treasurer's Early Careers Roundtable, which involves approximately thirty newly-licensed practitioners;
 - d. The Treasurer's In-House Corporate Counsel Roundtable, which involves approximately fifteen representatives from a variety of organizations including the Association of Corporate Counsel, the Canadian Corporate Counsel Association and the Ontario Bar Association.
 - e. the Equity Advisory Group, which includes both individual members and legal organizations;
 - f. meetings of various County and District Law Associations in Stratford, St. Catharines, Brantford, Cayuga, Windsor, and Simcoe;
 - g. Treasurer's Regional Dinners in Cambridge and North Bay;
 - h. the Ontario Bar Association Council meeting on April 1, 2016;
 - i. the Federation of Law Associations (FOLA) spring plenary on May 12, 2016.
3. The Task Force wishes to express its appreciation to all lawyers and paralegals who have attended these events, as well as to FOLA for the opportunity to engage in a dialogue with their membership about these issues. The Task Force hopes that this report will inspire further dialogue between the profession and the Law Society.

Informational Webcast

4. On February 8, 2016, the Task Force held a webcast. The Treasurer, Task Force Chair, Vice-Chair and Task Force member Raj Anand gave short presentations at this event, followed by a question and answer period. Eight hundred and forty-three lawyers and paralegals participated in the webcast, including members of other Canadian Law Societies. One hundred and twenty questions were asked. Due to time constraints, the Task Force was not able to respond to all of the inquiries; responses were provided to all of the questions following this event and may be reviewed at <https://www.lsuc.on.ca/better-practices/>.
5. An archived version of the webcast, as well as materials, may also be viewed on the "better practices" web page at <https://www.lsuc.on.ca/better-practices/>.

Convocation

6. Anticipating a January launch of the Call for Input paper, on December 4, 2015, the Task Force Chair provided a report to Convocation describing the consultation paper. A copy of this report may be accessed at [https://www.lsuc.on.ca/uploadedFiles/For the Public/About the Law Society/Convocation Decisions/2015/convocation%20december%202015%20compliance.pdf](https://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2015/convocation%20december%202015%20compliance.pdf).

Launch of the Call for Input

7. On January 13, 2016, the Task Force released a Call for Input paper, which was made available on the Law Society web site at the dedicated web page created for the Task Force (<https://www.lsuc.on.ca/better-practices/>). Responses were requested by March 31, 2016.

8. In addition, the Task Force Chair advised legal organizations by email, and advertisements appeared in the Ontario Reports on January 13, 2016, indicating that the Call for Input paper and materials were available for review. Additional advertisements appeared in the Ontario Reports in February and March.
9. Law Society of Upper Canada licensees received an “ebblast” on January 15, which was followed up by a reminder on March 11, to advise them of the launch of the Call for Input. A targeted email was sent to webcast participants on March 14 informing them that responses to questions asked during the webcast had been made available on the Law Society’s web site. Webcast participants were also encouraged to participate in the Call for Input.
10. Notices regarding the Call for Input appeared in Law Society e-newsletters during the comment period.

Tab 3.1.1

**COMPLIANCE-BASED ENTITY REGULATION TASK FORCE LIST OF SPEAKING
ENGAGEMENTS JANUARY- MAY 2016**

Name of Event and Speaker	Details
Treasurer's Regional Dinner – Cambridge Treasurer and Ross Earnshaw	January 14, 2016
Treasurer's Liaison Group - Toronto Treasurer and Ross Earnshaw	January 19, 2016
Early Careers Roundtable - Toronto Treasurer and Teresa Donnelly	January 25, 2016
Equity Advisory Group - Toronto Grant Wedge	February 4, 2016
Webcast Treasurer Ross Earnshaw, Raj Anand, Gavin MacKenzie Chair: Margaret Drent	February 8, 2016
County of Perth Law Association AGM - Stratford Ross Earnshaw	February 11, 2016
Lincoln County Law Association AGM – St. Catharines Treasurer	February 25, 2016
Brant Law Association - Brantford Ross Earnshaw	February 29, 2016

Name of Event and Speaker	Details
Haldimand Law Association AGM - Cayuga Ross Earnshaw	March 3, 2016
Norfolk Law Association - Simcoe Ross Earnshaw	March 10, 2016
OBA Council Meeting - Toronto Treasurer	April 1, 2016
North East Regional Dinner – North Bay Treasurer	April 4, 2016
Essex Law Association AGM - Windsor Treasurer	April 23, 2016
Brant Law Association AGM - Brantford Treasurer	April 26, 2016
Treasurer's Liaison Group – Toronto Treasurer	May 2, 2016
Federation of Law Associations Spring Plenary Teresa Donnelly	May 12, 2016

TAB 3.2

RESPONDENTS TO THE CALL FOR INPUT – INDIVIDUALS¹

Abboud, Rania
Anderson, Stephanie J.
Andriessen, Inga
Bellefeuille, Kristen
Béliveau, Louis
Benjamin, Sheldon
Buchan-Terrell, Grant
Burlew, Edward
Cannings, John
Chasse, Ken
Conod, Shirley
Dunphy, Charles
Farr, Rhonda
Flint, Ann
Gunn, Douglas G.
Guttman, Sandra
Hameed, Faisal
Han, Biao
Ha-Redeye, Omar
Hobson, Timothy O.
Holland, Julia
Hosseini, Farhan
Howard, Megan
Jain, Alok
Johnston, Donald B.
Kopala, Stanley

¹Includes all respondents who agreed that their responses may be made public.

Lesage, Michael

Little, John

Minkowski, Michal Edmund

Muto, Peter

Muttart, Daved

Ng, Johnathan

Oriuwa, Chukwuma Chuks

Osman, Muna

Ridgeway, Brooke

Salyzyn, Amy and Dodek, Adam

Scott, Barry R.

Selbie, Raymond G.

Stubbs, Maggie

Tjonasan, Jacques

Vaughan, Steven

Waseem, Abmed Sohaib

Wilson, Robert

TAB 3.3

RESPONDENTS TO THE CALL FOR INPUT - LEGAL ORGANIZATIONS

Advocates Society (TAS);
Association of Community Legal Clinics of Ontario (ACLO).
Canadian Association of Black Lawyers (CABL);
Canadian Defence Lawyers (CDL);
Canadian Hispanic Bar Association (CHBA);
County of Carleton Law Association (CCLA);
Criminal Lawyers Association (CLA);
Family Lawyers Association (FLA);
Federation of Ontario Law Associations (FOLA);
Hamilton Law Association (HLA);
Legal Aid Ontario (LAO);
Thunder Bay Law Association (TBLA);
Law Society of Upper Canada Equity Advisory Group (EAG);
Lawyers Professional Indemnity Company (LawPRO);
Northumberland County Law Association (NCLA);
Ontario Bar Association (OBA);
Ontario Paralegal Association (OPA);
Ontario Trial Lawyers Association (OTLA);
Parry Sound Law Association (PSLA);
Roundtable on Diversity Associations (RODA);
Waterloo Region Law Association (WRLA).

TAB 3.4

SUMMARY OF THE CALL FOR INPUT RESPONSES*Individuals*

1. The Law Society received 97 responses to the Call for Input paper from individuals and legal organizations. Of those responses, 61 were provided using the online form. Seventy-seven respondents were individuals. The remainder were legal organizations.
2. The Task Force is grateful to all of the respondents for their thoughtful comments. A list of individual respondents who consented to the publication of their name is available at **Tab 3.2**. The submissions of individual respondents who agreed that their responses may be made public is available on the Law Society's "Better Practices" page at <http://www.lsuc.on.ca/better-practices/>. Submissions from legal organizations are also available on the page.

Legal Organizations

3. Twenty-one legal organizations provided submissions in response to the Call for Input paper. These organizations are listed at **Tab 3.3**.
4. The responses are summarized under main headings below corresponding to the questions posed in the discussion paper and the online form.

OVERVIEW OF RESPONSES TO THE CALL FOR INPUT

5. The Call for Input paper was divided into two major components. The first part of the paper included a discussion of general concepts and developments in other jurisdictions. The paper then asked respondents to comment on a series of questions, listed below. Respondents were also invited to provide general submissions on issues not specifically raised in the paper, if they wished to do so. The first question related to a proposed set of practice management principles, listed below.

Proposed Practice Management Principles

6. The first question related to a proposed set of practice management principles, listed below.
 - a. **Practice Management**, which refers to the active supervision of
 - The practice;
 - Practitioners; and
 - Staff to ensure competent delivery of legal services.
 - b. **Client Management**, which refers to
 - Conflicts of interest;
 - Client communication; and
 - Management of client expectations at each stage of a client matter in an effective, timely and courteous way to ensure delivery of quality legal services;

- c. **File Management**, which refers to
 - Consistent opening of client files;
 - Client file documentation; and
 - Consistent policies regarding file closure to ensure the physical integrity and confidentiality of the file and to increase efficiency in the handling of client matters;

- d. **Financial Management and Sustainability**, which refers to
 - Business planning and budgeting;
 - The entity's management of its finances in accordance with Law Society By-Law 9;
 - Adoption of consistent billing practices to ensure that both firm and client needs are met;
 - Appropriate consideration of insurance needs; and
 - Adoption of business continuity and succession planning/ wind-down plans as appropriate.

- e. **Professional Management**, which refers to the entity's support of practitioners in
 - Efforts to maintain currency in their chosen practice areas;
 - Initiatives to build competence and capacity in new practice areas; and
 - Maintenance of collegial relationships within the profession.

- f. **Equity, Diversity and Inclusion**, which refers to the entity's policies regarding matters such as
 - A respectful workplace environment that appropriately accommodates equity, diversity, inclusion, and disabilities;
 - Equality of opportunity and respect for diversity and inclusion in recruitment and hiring;
 - Equality of opportunity and respect for diversity and inclusion in decision-making regarding advancement; and
 - Cultural competency in the delivery of legal services.

- g. **Access to Justice** (the entity plays a role in improving the administration of justice and enhancing access to legal services).

Comments Regarding Proposed Principles for the Effective Management of a Legal Practice

- 7. Most respondents agreed with the proposed Practice Management Principles as drafted, and thought they captured the elements of a law practice that impact how lawyers and paralegals fulfil the duties owed to their clients, the public, and the justice system.

8. A number of individuals and legal organizations were supportive of the inclusion of these principles and indicated that they looked forward to working with the Law Society in developing them.
9. Other respondents expressed concern about the proposed equity, diversity, and inclusion principle, as well as access to justice. Some thought these principles were too vague. For example, one legal organization observed that “the principles are too broadly identified for the purpose of a regulatory system which requires predictability, certainty and balance”.
10. Some respondents suggested that it did not make sense to impose an equity, diversity and inclusion principle on a sole practitioner. Further, it was also submitted that these two principles were quite different from practice management issues, and ought to be considered separately.
11. Ensuring that any new requirements are customized to the needs of particular segments of the profession was a recurring theme. Several legal organizations noted that because racialized lawyers and paralegals are overrepresented in sole practice and small firms, the Law Society should ensure that they were not overly burdened. Otherwise, compliance-based entity regulation would have a detrimental impact on these practitioners.
12. Another legal organization noted that lawyers in small communities are relied upon to accept legal aid certificates and to provide *per diem* duty counsel service, and urged the Task Force to carefully consider the costs of any new requirements for sole practitioners and small firms, since a failure to do so could make it more difficult for these practitioners to accept legal aid work.
13. Respondents were also concerned that new requirements could result in an increase in Law Society fees. The Law Society was urged to keep the cost of any regulatory changes in mind.

Comments Regarding Practice Arrangements to which Compliance-Based Entity Regulation Could Apply

14. The Call for Input paper also asked respondents whether the Law Society of Upper Canada should seek to implement compliance-based entity regulation for lawyers and paralegals in a variety of practice settings. Respondents were also asked about considerations that should be kept in mind to ensure that compliance-based entity regulation did not create an additional regulatory burden for sole practitioners and small firms.
15. As noted above, the impact of additional requirements on sole practitioners and small firms was frequently mentioned by individual respondents to the Task Force, as well as by legal organizations. Some were opposed to proactive measures, suggesting that the existing system works well. These respondents believed that the Law Society should not become involved in firm management issues, which, it was suggested, undermined the principles of a “free economy and normal market drivers”.

16. The Task Force was urged to consider harmonizing any new requirements with existing ones. Some suggestions included
 - a. amending the Annual Report to include self-assessment questions;
 - b. making additional staff resources available to lawyers and paralegals who may have questions about any new requirements, particularly those within the first five years of practice; and
 - c. developing checklists and templates, which would be available online, and could be consulted by practitioners considering how to implement a particular principle in their practice.
17. With respect to the application of proactive regulation to sole practitioners and small firms, LawPRO commented that

...it is not safe to assume all solo practitioners and firms of a few lawyers have small and simple practices. Many solo practices are more than one lawyer and one or two staff people...there is a real estate firm with 2 lawyers and 39 staff members at 7 offices across the Greater Toronto area.
18. One legal organization told the Task Force that

The membership did not express a view that the sole and small firms should be excluded from the system, and were in fact supportive of the importance of including sole and small firms, given the proportion of complaints to the Law Society in those categories. Many members felt it is critical for all lawyers to ultimately have the same professional reporting responsibilities, but they should be appropriately tailored to the specific firm size and practice.
19. Another suggested that compliance-based entity regulation should not be applied to sole practitioners and small firms, since “they are not organizations that exist beyond the lawyer, law partners, or handful of support staff”.
20. Many respondents emphasized that the Law Society should consult with particular segments of the Bar about a more detailed regulatory proposal(s). For example, one legal organization said

...we find it extremely difficult to comment and provide feedback on the concept of compliance-based entity regulation without looking at the specific draft guidelines that are being contemplated. This is where ‘the devil is in the details’.
21. Another asked whether it might be better for the Law Society to focus on ways to assist sole practitioners and small firms in avoiding or minimizing complaints, rather than on the regulation of entities.
22. The Task Force was asked to consider harmonizing any new regulatory requirements with existing reporting requirements on legal clinics.

Comments Regarding the Role and Responsibilities of a Designated Practitioner

23. Respondents were asked to consider whether a lawyer or paralegal should be designated by each entity to have particular regulatory responsibilities. The following questions were asked:
 - a. In an entity other than a sole practice, who should be the designated practitioner?
 - b. If an entity already has a managing partner, should the managing partner have these responsibilities?
 - c. Given the above list, do you have any views about what the responsibilities of the designated practitioner should be?
24. There were a number of comments on the appropriate roles and responsibilities of a Designated Practitioner (DP). Some said that it would not be appropriate to require firm below a certain size to have a DP. Others suggested that the person in the firm who already has responsibility for Law Society filing would be appropriate for this role. Their responsibilities could include receiving complaints and ensuring that practice management principles were implemented in the firm.
25. It was suggested that the DP should be a senior member of the legal team.
26. Most, if not all, respondents thought that the DP should not be made responsible for any sanction that might be imposed against a firm. An individual participant cautioned the Task Force that otherwise, the DP would be a “sacrificial lamb”.
27. LawPRO suggested that it was best to let each firm identify the lawyer and paralegal who had the time and skills to take on the role and responsibilities of a DP. In smaller firms, this might be the managing partner, but in larger firms it would make sense to have someone able to dedicate time to the required staff. As firm size grows, LawPRO suggests that it will be more likely that the DP would be assisted by other lawyers or staff.

Comments Regarding Entity Registration

28. Respondents were asked a series of questions about entity registration, including the following:
 - a. Should entities be required to be registered?
 - b. Should entity registration requirements for sole practitioners and small firms be different?
 - c. What information should an entity be required to provide, and how often?
 - d. Are there any challenges that might arise for practitioners in providing this information to the Law Society?
29. The majority of respondents agreed that entities should be required to register with the Law Society. One legal organization suggested that the Society review the Professional Engineers of Ontario directory as a model. Information about the individual licensee and

their employer appears on the same page. The information provided includes the status of past disciplinary action as well as current employment and practice status.

30. LawPRO pointed out that

Entity registration could also be helpful when an entity is providing legal services that aren't clearly from an identifiable lawyer. This could be helpful with a 'factory firm' or the growing numbers of websites providing Ontario residents with legal information and automated or intelligent online forms. Sometimes these sites have an obvious relationship with an existing law firm, in other cases there is no apparent relationship with a lawyer or law firm. Entity regulation could allow the Law Society to intervene to deal with an entity that has recurring problems with client service or practice management where there is not an obvious individual lawyer or paralegal that is directed responsible.

31. Respondents urged the Society to make it easy for practitioners to comply with this requirement (such as through the Annual Report). The majority of sole practitioners thought that entity registration requirements should be different for them.

General Comments – Regulation of Entities

32. Several respondents urged the Law Society to keep in mind that entity regulation should not be confused with a reduction in individual professional responsibility. Professor Stephen Vaughan of the University of Birmingham has interviewed 135 solicitors, compliance officers, and others from UK law firms about the impact of regulatory changes on law firms, including entity and compliance-based regulation. In a submission to the Task Force, he recommended the following:

- a. There should be clear, separate codes of conduct/professional rules, some of which apply to individuals and others that apply to firms/designated practitioners.
- b. It should be clear that the introduction of compliance-based entity regulation is not intended to lessen the importance of individual professional responsibility.
- c. Law firms should be required to undertake mandatory annual training regarding professional obligations. Topics to be emphasized include professional independence and integrity.

33. A legal organization asked whether entity regulation would apply to sole practitioners who participate in franchise or other marketing partnerships, such as www.realestatelawyers.ca.

34. LawPRO commented that

The ability of a small operation with a few people to serve many clients will be magnified in coming years as firms making greater use of automation, artificial intelligence and other emerging technologies. Their ability to make the same error for many clients will also be magnified. LawPRO suggests that entity regulation is crucial for firms such as these.

35. Several respondents commented on the relationship between entity regulation and Alternative Business Structures (ABS). The Law Society was strongly encouraged to ensure that entity regulation did not become a “back door” for ABS. Another legal organization said that the Law Society of Upper Canada should continue to consider both topics separately.

Other Comments on Compliance-Based Entity Regulation

36. Under the heading “Your Views on Compliance-Based Entity Regulation”, the Call for Input paper asked the following questions:
- a. In your view, what are the practical benefits or drawbacks of compliance-based entity regulation?
 - b. Are there other benefits that you see, beyond those listed above?
 - c. Are there aspects of compliance-based entity regulation that are particularly appealing to you, or not?
 - d. What are the key challenges or problems that you foresee with this type of regulatory approach?
37. Many of the individual respondents, as well as legal organizations, expressed support for the concept of proactive regulation. One legal organization stated that it was
- broadly supportive of the concept of compliance-based entity regulation as a potential avenue for encouraging improvements to practice management that would benefit the management and culture of the firm as a whole, and promote and improve ethical best practices of both the firm and the lawyers associated with it.
38. The Law Society was encouraged to assist practitioners with new requirements, and to be mindful of the risk of “box-ticking” exercises. This respondent, which was a legal organization, commented that “lawyers and law firms should be permitted to self-assess their compliance, reporting to the Law Society as required on their results, and on plans to address areas where they are not fully compliant”.
39. A few respondents were not convinced that it was necessary to regulate the entity in order to achieve these benefits. For example, one legal organization indicated that in its view, the Law Society already has sufficient regulatory tools with respect to entities, or firms, and amendment of the legislation is unnecessary.
40. One legal organization indicated that it was generally supportive of the concept of developing practice management principles intended to proactively identify potential issues before they come up. However, the organization urged the Society to continue its dialogue with the profession as it further develops compliance-based entity regulation.
41. The Law Society’s Practice Review Program was cited by one legal organization respondent as an example of existing regulatory authority over entities. The program involves lawyers in the first eight years of practice, who may be referred to the program on the basis of random risk-based selection. It was suggested that in some cases, the

associate lawyer subject to the Review may not have access to firm accounts or systems. In those instances, the Law Society of Upper Canada looks to the partnership for compliance. As a result, the respondent suggested that additional statutory authority was unnecessary.

42. One regional law association said

There has not been sufficient time for us to consult with our own membership or hold a thorough discussion of the issues and consider all of the practical consequences of implementing the proposed changes, and we rather suspect other local law associations will find themselves in the same position.

43. Another legal organization asked about the relationship between the compliance and disciplinary functions within the Law Society. The respondent requested clarification about whether information provided during the self-assessment process could be used in a disciplinary proceeding involving the licensee.