



TAB 12

Report to Convocation December 4, 2015

Compliance-Based Entity Regulation Task Force

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Purpose of Report: Information

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FOR INFORMATION

**COMPLIANCE-BASED ENTITY REGULATION TASK FORCE -
PROPOSED CONSULTATION**

Introduction

1. The Compliance-Based Entity Regulation Task Force¹ is providing this second status report on the progress of its work, further to its report to October 29, 2015 Convocation. This report includes information on a consultation phase which will begin in early 2016.

Background

2. The Task Force was established by Convocation on June 25, 2015 pursuant to terms of reference approved by Convocation.²
3. As indicated in the June 2015 Report establishing the Task Force, compliance-based regulation (which is also referred to as outcomes-based or proactive regulation) is an approach by the regulator to professional regulation that is based on the encouragement and support of improved practices. These improved practices are based on goals and expectations set by the regulator, which provides support and information as needed to law firms and legal practices.
4. Entity regulation refers to the regulation of entities that provide legal services (firms) in addition to individual licensees.
5. Among the issues which the Task Force is considering are:
 - a. the value and merits of a compliance-based entity regulation scheme;
 - b. how demographic information regarding Ontario lawyers and paralegals can be used to assist this review;
 - c. the extent to which the impact of compliance-based entity regulation would be justified by the resources which would be required to implement it;
 - d. the implementation of compliance-based entity regulation by other regulators;
 - e. the range of possible approaches to compliance-based entity regulation; and
 - f. the cost of compliance-based entity regulation.

¹ The members of the Task Force are Ross Earnshaw, (Chair), Gavin MacKenzie (Vice-Chair), Raj Anand, Robert Burd, Teresa Donnelly, Howard Goldblatt, Joseph Groia, Carol Hartman, Malcolm Mercer, and Peter Wardle.

² The report may be accessed at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-june-2015-treasurer.pdf for the terms of reference (beginning at paragraph 24).

6. Through its meetings to date, the Task Force has informed itself on developments in Canada and abroad on the subject, and met with representatives of five other Canadian law societies.

Proposed Consultation Phase

7. Based on its research to date and in keeping with its terms of reference, the Task Force is preparing for a consultation phase which will involve:
 - a. the release of a consultation paper and request for written submissions;
 - b. scheduling a webcast to create awareness of the Task Force's work and encourage responses to the call for input; and
 - c. contacting a wide range of legal organizations to advise of the consultation.
8. The following describes these initiatives in more detail.

Call for Input and the Consultation Document

9. The Task Force will seek input from lawyers, paralegals and others on a series of issues, discussed in a consultation document, and related questions. The document will provide context and background to assist those who wish to respond to the call for input. The Task Force plans to release the document as early as possible in 2016 and provide for roughly three months as the period for input, with submissions requested by March 31, 2016.
10. The Task Force will utilize media and communication vehicles to communicate the availability of the consultation document and the fact of the consultation. This will include the Law Society's website, the Gazette if timing permits, blast emails to licensees and notices in the Ontario Reports. Once the consultation paper has been finalized and made available online, staff will contact legal organizations to advise them of the call for input.
11. The consultation document currently being finalized by the Task Force³ begins with an overview of the subject of compliance based regulation and entity regulation.
12. The introduction is intended to educate readers on the "what, why and how" of this form of proactive regulation. This section includes:
 - a. background and context for the law society's initiative with reference to the June 2015 terms of reference for the Task Force;
 - b. definitions of certain terms, including compliance-based regulation and entity regulation, that the Law Society is using throughout the study;
 - c. reasons for the current study on this subject, discussing the issues from the perspective of the professions, the public, and the regulator;

³ The consultation document will be made available to benchers prior to its release.

- d. an overview of the Law Society's current regulatory structure of the Law Society, its jurisdiction to regulate lawyers, paralegals and professional corporations of licensees, and current programs, such as those that are practice management-based;
 - e. a preliminary exploration of how proactive regulation of entities might benefit both the professions and the public; and
 - f. a discussion of role of practice management principles as the key to a proactive regulatory system.
13. Following the introductory section, the consultation document will pose a series of questions. These questions cover the following themes:

a. Practice Management System

The Task Force will seek input on the key components, or principles, for compliance-based regulation and entity regulation. These would be established through a "Practice Management System" that would include a set of principles, or elements governing the professional conduct. The document asks for comments on the following proposed list of principles:

- i. Practice Management (active supervision to ensure competent delivery of legal services);
- ii. Client Management (management of client expectations to ensure delivery of quality legal services);
- iii. File Management (to ensure efficiency in the handling of client matters);
- iv. Financial Management and Sustainability (covering business plans and budget; consistent billing practices, business continuity and succession planning);
- v. Professional Management (to build competence and capacity and to maintain collegial professional relationships);
- vi. Equity and Diversity (relating to accommodation, equality principles, cultural competence);
- vii. Access to Justice (enhancing access to legal services).

b. Practice Arrangements for Practice Management Principles

Questions in this section will cover which practice arrangements should be subject to compliance-based regulation - sole practitioners, small, medium and large firms. This section will provide information on considerations around various categories and will seek input from readers on their views of the scope of this regulatory approach.

c. Reporting Responsibilities

This section will describe and focus on particular issues relating to the structure for reporting and accountability regarding the entity. One issue is whether an entity should be required to designate a licensee with specific responsibilities. These duties might include receipt of complaints regarding the entity, or an individual practitioner associated with the entity. The designated licensee might also have responsibility to ensure the currency of Law Society records regarding the entity.

Other issues discussed in this section will include the benefits of a registration system and the nature of the information that an entity could be required to provide.

d. Regulatory Response by the Law Society

This section will focus on how the Law Society would respond to compliance issues. The document will discuss whether the entity should be subject to a regulatory response and if so, what consequences might result. Appropriate responses might range from discussions with the entity about a practice management issue to sanction of the entity itself in a serious case. This section will also touch on whether specific rules or standards for entities should be developed, in addition to those for individual licensees.

e. Prospective benefits of compliance-based regulation and entity regulation

This section will canvas the views of respondents about the primary practical benefits of this approach in their practice setting, as well as about the challenges that they foresee in the event that such an approach is adopted.

14. The appendix to the document will include a summary of developments on this subject in Canada.

Informational Webcast

15. During the call for input period, the Task Force will arrange a webcast to inform the professions of its study, its work to date and encourage responses to the call for input based on the consultation document.
16. The webcast will involve a presentation by the Task Force using the consultation document as the relevant material and invite questions or comments from the viewing audience. The Task Force believes that the webcast will assist in educating the professions about the work of the Task Force and promote the value of hearing

from lawyers and paralegals on the various issues discussed in the consultation document.

17. The webcast will be scheduled early enough in the consultation period to permit licensees who may not have previously been aware of the call for input to provide a written submission by March 31, 2016.

Next Steps

18. Following the consultation period, the Task Force will review the information obtained and prepare a report for Convocation in May 2016.