



NOVA SCOTIA  
BARRISTERS' SOCIETY

## MEMORANDUM TO COUNCIL

**From:** Jennifer Pink

**Date:** February 17, 2017

**Subject:** Legal Services Support Pilot Project – Preliminary Report

Date –	Executive Committee	February 10, 2017
Date –	Council	

### Recommendation/Motion:

Be it resolved that Council:

- endorses the Report on the Legal Services Support Pilot Project;
- directs that a final report be presented in April;
- directs that the Executive Director continue to plan for the implementation of Legal Services Support; and
- directs that a timetable for full implementation be presented to Council either in April or at a subsequent date identified in April.

### Executive Summary:

As part of the regulatory framework to enable Legal Services Regulation, Council approved ten core elements which comprise an entity's Management System for Ethical Legal Practice (MSELP). Responding to this requirement, a draft MSELP Self-Assessment Tool was approved by Council on March 24, 2016, and work was undertaken to develop a "Workbook" to assist lawyers in their assessments.

Since Fall 2016, the Legal Services Support Pilot Project has been underway to identify, test, and evaluate the proposed self-assessment tools, related resources, and process for administering the tools. Fifty law firms (of representative sizes / geographical location) were randomly selected to participate and to date, 80% have confirmed their participation and 66% have completed their self assessment.

While feedback is preliminary, some clear trends and findings are emerging:

- Lawyers recognize and embrace the MSELP Elements as the 'foundations' of an ethical and competent practice

- Early indicators suggest that the MSELP tools and process can work effectively in helping firms engage in a reflective and potentially impactful self assessment in which they identify specific areas for improvement
- Work must continue to help lawyers move along with the Society as it changes the nature of Legal Services Regulation and adopts a risk-based Triple P regulatory model. Specifically, education and communication strategies will support building understanding of the ‘systems’ context of the MSELP self assessment process
- The Society can further influence behavioral change by requiring that specific goals and targets be identified through the MSELP process, and by providing a robust and support-based response that draws from a range of quality practice tools and resources.

Overall, the response Pilot Project is positive and productive and at present, points to the Legal Services Support model as being an effective way of working with the profession. The Pilot demonstrates how we can work differently with lawyers and how they can be assisted in taking the personal responsibility for improving their professional practices. The full preliminary report (with Appendices) is enclosed.

### **Legal Services Support - Regulatory and Policy Framework:**

Council is asked to consider, in the context of Legal Services Regulation, the regulatory and policy framework that will give shape the Society’s Legal Services Support work.

Two approaches are emerging within the Legal Services Regulation framework:

- Compliance Reporting - obligations on law firms that necessitate mandatory compliance (e.g. client ID rules; trust account rules) and their corresponding compliance-based tools (e.g. TAR, AFR);<sup>1</sup>
- Self- assessment - reflecting on aspirational or ‘best practice’ objectives, and their corresponding support-based tools (e.g. MSELP self assessment tools, MSLEP resource portal).

Legal Services Support (and the MSELP self assessment process) is conceptually housed in the latter approach, offering a range of support-based tools and responses to assist legal entities as they strive for excellence in legal services delivery. Consideration needs to be given to how, and the extent to which, there will be a mandatory requirement that firms complete a self assessment and that they identify specific goals or improvements resulting from their assessment. Further, how these mandatory aspects fit within the compliance-support dichotomy, and how information gathered through a support-based approach will inform an appropriate regulatory response, should be given further consideration.

### **Questions for Discussion:**

In considering the above and the report which follows, please consider and prepare to discuss the following:

1. In supporting firms’ actual ‘improvement’ of their management systems, what is the Society’s role in connecting lawyers to practice tools and resources? Should the Society actively curate and present ‘quality’ resources, or simply point lawyers to any existing resources, without scrutiny? What if any risk results from the Society ‘endorsing’ particular products or resources?

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<sup>1</sup> Council has previously been advised how the Society is moving to reduce, as much as possible, the times when it requires reporting or information by lawyers and law firms. The concept is that the Annual Firm Report, which accompanies the Trust Account Report, and the Annual lawyer Report will be the vehicles through which all lawyer information is gathered and analysed.

2. By extension, how active should the Society be in identifying and/or developing MSELP-related professional development opportunities? Should it aim to fill professional development ‘gaps’ through collaboration with other CPD providers and / or delivering its own learning tools and programs?
3. How can the Society most effectively encourage (or, require) the systems-based improvements that firms identify through the self assessment process? What is the appropriate spectrum of Society’s ‘follow up’ response, and to what extent should a more complete ‘risk picture’ determine an appropriate response?
4. In consideration of similar initiatives emerging from other provinces, to what extent should we be prepared to adapt our own program to achieve national consistency?
5. How can we frame our overall approach to self assessment – and the Society’s follow up– as a ‘support-based’ versus a ‘compliance-based’ process? What does a ‘mandatory’ self-assessment process mean and what is the framework supporting this process? Thinking about the Regulatory Objectives<sup>2</sup>, are we satisfied that the former allows us to meet the ROs?

**Exhibits/Appendices:**

Appendix A – Legal Services Support Pilot Project – Preliminary Report (February 17, 2017)

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<sup>2</sup> 1. Protect those who use legal services.; 2. Promote the rule of law and the public interest in the justice system.; 3. Promote access to legal services and the justice system; 4. Establish required standards for professional responsibility and competence in the delivery of legal services; 5. Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system.6. Regulate in a manner that is proactive, principled and proportionate.



NOVA SCOTIA  
BARRISTERS' SOCIETY

# **Legal Services Support Pilot Project Preliminary Report**

**Jennifer Pink, Legal Services Support Officer  
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**February 17, 2017**

Introduction .....3

    Context .....3

Progress .....5

    Preliminary Project Activities .....5

    Society Resources / Staffing .....5

    Pilot Participation and status .....6

Feedback and Preliminary Findings .....9

Emerging Themes.....17

    Promoting and Maintaining Effective Relationships.....17

    The impact of isolation on practitioners .....18

Next Steps.....19

    Project completion and evaluation .....19

    MSELP tools and technology .....19

    Building on ‘collaborative’ momentum .....20

    In-House and Government Lawyers.....20

Conclusion.....21

# Introduction

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This preliminary report updates the status of the LSS Pilot Project and presents preliminary feedback relating to:

- the MSELP elements;
- the MSELP self assessment process; and
- current and developing tools and resources.

Several key themes emerging from data and discussions with project participants to date are explored. They speak directly to the potential impact of the self assessment process in improving the quality and scope of legal services delivery in Nova Scotia.

## CONTEXT

The Society is building a new model of regulating legal services, in a manner that is risk-focused and Triple P (proactive, principled and proportionate). As part of the regulatory framework to enable Legal Services Regulation, Council approved ten core elements which comprise an entity's Management System for Ethical Legal Practice (MSELP). Lawyers and legal entities are required to have in place all elements that apply to their specific legal entity.

Responding to this requirement, a Draft MSELP Self-Assessment Tool (Appendix 1) was approved by Council on March 24, 2016. Additional work was undertaken by the Solo and Small Firm Working Group to develop an "MSELP Workbook" (Appendix 2) to assist lawyers in assessing their MSELPs. Since Fall 2016, a Pilot Project has been underway to identify, test, and evaluate the proposed self-assessment tools, related resources, and process for administering the tools.

The work of the Pilot Project is guided by the following policy documents:

### 1. The 2017-2020 Strategic Framework

The 2017-2020 Strategic Framework articulates three priorities: to transform regulation in the public interest, to enhance access to legal services and the justice system and to promote equity, diversity and inclusion in the legal profession. These priorities build on the previous Strategic Framework and inform our ongoing commitment to build a new model for regulating legal services, in a manner that is risk-focused, proactive, principled and proportionate.

The MSELP is a core component of the new regulatory approach, designed to be more responsive to a diverse and profoundly changing environment, to enhance the quality of legal services, to encourage ethical legal practice, to foster innovation in legal services and to increase access to justice.

### 2. The Pilot Project Plan

Where the Strategic Framework provides a broad purpose, the project plan (Appendix 3) articulates the specific goals of this year-long pilot.

The Pilot Project is designed to provide a preliminary evaluation on whether the MSELP has the potential to achieve its broad goal of assisting lawyers and legal entities in delivering highly competent and ethical legal services. Specifically, it seeks to assess whether the MSELP self evaluation process has the capability to change behaviors, improve competence and quality of legal services, support ethical decision making, and enhance job and client satisfaction. It also aims to enable the Society to assess the staff and financial resources required to implement an impactful self assessment process.

### 3. The Regulatory Objectives

The Regulatory Objectives<sup>1</sup> provide clarity and scope to both the Pilot Project and the broader implementation of legal services regulation. They enshrine the Society's goals, to be accomplished in part through legal services regulation.

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<sup>1</sup><http://nsbs.org/nsbs-regulatory-objectives>: 1. Protect those who use legal services. 2. Promote the rule of law and the public interest in the justice system. 3. Promote access to legal services and the justice system. 4. Establish required standards for professional responsibility and competence in the delivery of legal services. 5. Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system. 6. Regulate in a manner that is proactive, principled and proportionate.

# Progress

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## PRELIMINARY PROJECT ACTIVITIES

Between August-October 2016, a project activity plan was developed and foundational activities were completed, namely:

- Developing an evaluation strategy (including consulting with external evaluation experts)
- Identifying staff resources and roles (see below)
- Refining the MSELP Self Assessment Tool and Workbook, including researching and identifying MSELP resources
- Developing a process for administering the Self Assessment Tool (SAT)
- Identifying a platform for delivering the SAT online and designing the online SAT format
- Developing a communications plan to support the Pilot Project (and wider Legal Services Regulation developments)
- Designing an online ‘User Response Survey’ to capture ‘immediate’ reactions to the Self Assessment tool and process
- Developing a process for documenting feedback and observations from ‘debrief’ meetings
- “Testing” SAT functionality
- Building an online MSELP resource ‘portal’ (accessed through the Society’s website)
- Drafting project FAQs and participant ‘invitations’
- Identifying project participants
- Attending and presenting at County Bar meetings on MSELP and the ‘Triple P’ regulatory model

## SOCIETY RESOURCES / STAFFING

In addition to a full time role managing the Project (and related Legal Services Regulation and Committee work), a number of Society staff provide part time support. Roles include:

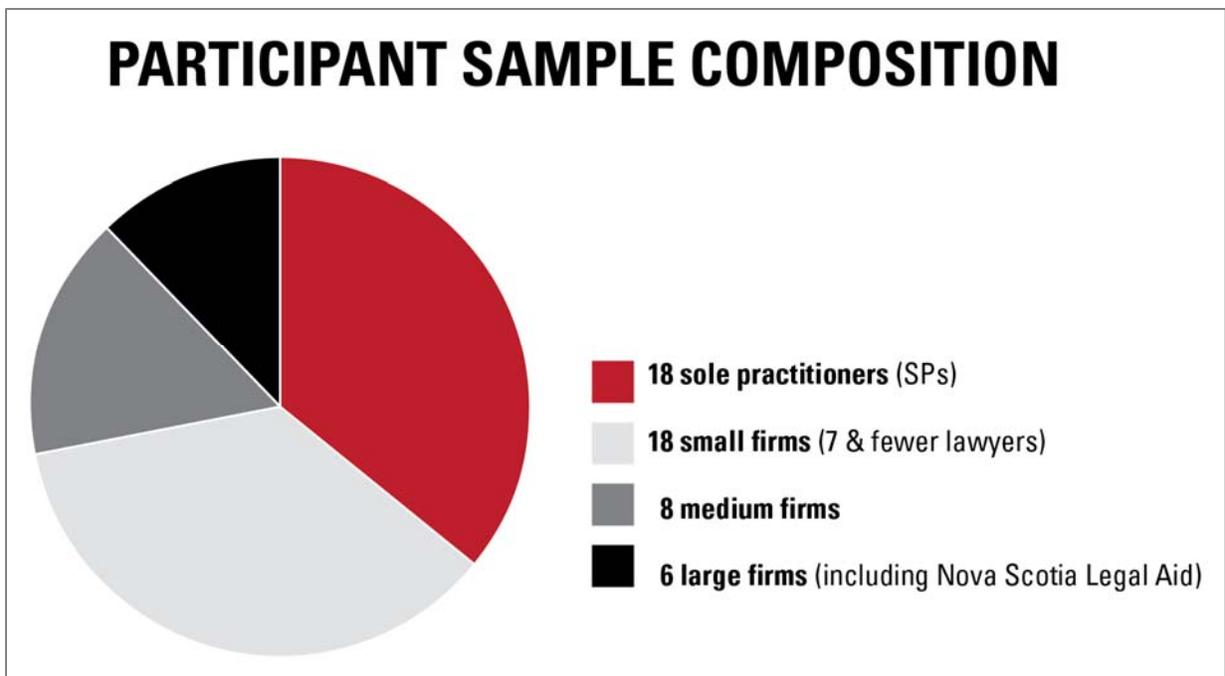
- Leading debrief meetings (two staff per meeting), and recording feedback and observations post-meeting (Officer and Director, Education & Credentials)
- Project plan development, oversight and guidance (Director, Education & Credentials; Director, Professional Responsibility)
- Strategic advice, and research / design support around MSELP resources, tools etc. (Officer, Strategy & Engagement)
- Resource collation and development of online MSELP Portal (Library and Information Services staff)
- Online and offline communications development and design (Officer, Communications and Administrator, Web & Publications)
- SAT administration and data collation / reporting, and technology testing and advice (Officer, Database Administration and Director, Administration)
- General project administration (Administrator, Education & Credentials)

## PILOT PARTICIPATION AND STATUS

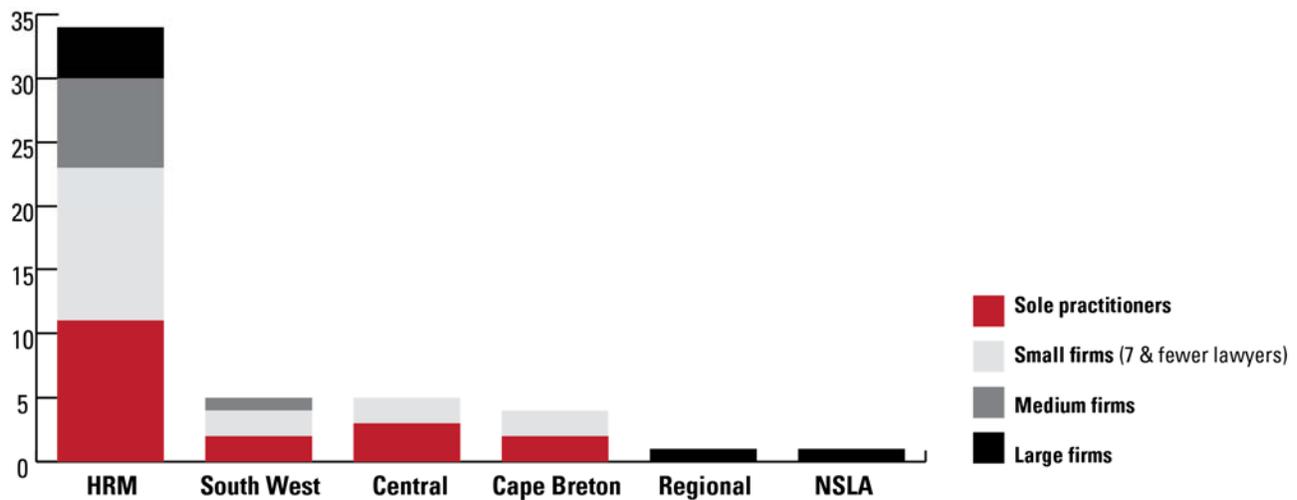
The testing and consulting phases of the project began in October 2016. Participants were asked to commit to three evaluative steps:

1. completing the online MSELP Self Assessment Tool (SAT);
2. responding to an online user response survey (addressing questions around tool functionality, clarity, etc);
3. meeting with the Project Manager and other staff from the Education & Credentials Department to discuss user experience and feedback in more detail (and, to explain and discuss the wider Legal Services Regulation context).

Fifty (50) firms were initially identified as potential participants in the Pilot Project. Consideration was given to representation across geographic regions, with the number of ‘entities’ from each county being proportionate to the number in operation across the province. Beyond this, the entities were randomly selected.



## GEOGRAPHICAL COMPOSITION



Initial contact was via email. Sole practitioners and small firms received an ‘invitation’ from the Solo and Small Firm Working Group. Medium and large firms were sent a personalized letter to the designated lawyer, outlining basic information about the participation in the project. Follow up calls and emails continued over the course of many weeks and are ongoing.

To date: 40/50 participants have confirmed willingness to participate; 33/50 participants have completed the online SAT; and, and 31/50 meetings have occurred. We anticipate the remainder being completed over the coming weeks.

Four (4) firms and two (2) SPs declined participation; 3 SPs were determined in appropriate for the purpose of the pilot project. Eight (8) ‘replacement’ participants have since been contacted.

The original project timeline included testing and debriefing 50 participants by the end of January (i.e. approximately 3 months). It became clear early on that we had underestimated the efforts required in securing commitment from 50 participants. An average of 5-6 unique communications were required to secure commitment from those who have agreed to participate to date (i.e. emails, phone calls and follow up calls, conversations with multiple people within the same firm). In some cases, the ‘courting’ process continued over more than two months. Five invitees declined to take part and were replaced with newly randomized firms / lawyers.

Feedback and observations suggest a number of factors are contributing to the length of time and effort required to secure participants’ commitment:

- Participants are busy, practicing lawyers. Most of them are sole practitioners or in small practices where they struggle to keep up with client and business obligations. Asking for a ‘little’ of their time was asking for ‘a lot’.
- November and December, in particular, were especially busy months for participants. Many meetings were rescheduled, calls were not returned until January, etc.
- Before committing, most required a clear, and sometimes lengthy, explanation in order to understand the purpose of the project, the context, the time commitment, etc. This required one or more detailed phone conversations, which were often ‘scheduled’ for a future date.

- Lawyers rarely answer direct calls. Only two participants answered a direct phone call on the first attempt.
- Many participants, upon agreeing to take part, wanted to test the SAT tool online before agreeing to set a date for a debrief meeting, thereby ‘stretching out’ the testing phase.
- Coordinating multiple schedules (among multiple firm participants and Society staff) meant meetings often occurred weeks after tool ‘testing’.
- Many meetings were (and continue to be) rescheduled due to inclement weather and arising client obligations.
- Replacement participants (for those who declined) meant ‘starting’ the process anew, as late as mid-January.
- Some participants exhibited or expressed wariness of the project and / or needed reassurance that participation would not result in any disciplinary response or practice audit. Some participants required talking through these concerns and then consulting internally before committing (or declining).

In short, the administrative workload in securing firms’ commitment and setting up meetings was underestimated. However, some benefits resulted from the longer lead time in this phase. We had an opportunity to refine resources, make some ‘quick fixes’ to the tools and processes which improved participants’ experiences with them. The longer times also afforded an opportunity to engage in meaningful discussions with lawyers about practice pressures and concerns, their perceptions of the Society, and other insights into the worlds in which they practice. These discussions have paved the way for more engaged project participation and robust feedback.

Looking ahead, we can safely assume that some of the ‘work’ in securing participation in the pilot would be eliminated by the implementation of a regulatory obligation. However, a significant administrative component will continue to shape any ongoing MSELP self assessment program, as time spent managing the ‘flow’ of the self assessment process for (approximately) 450 entities (e.g. contacting firms to advise of the process; administering the self assessment tools online; collecting / collating data) will be substantial.

As noted, testing and debrief meetings are ongoing and will likely continue until early/mid April. Additional feedback will be incorporated into a Final Report to be presented in April.

# Feedback and Preliminary Findings

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While the pilot project is still underway, the feedback and observations to date give shape to some clear, consistent responses to the self assessment tools and process, and to wider emerging themes.

The face-to-face debrief meetings are a valuable opportunity to ‘dig deeper’ into lawyers responses to the concept of a firm-level self assessment of management systems, and the broader Legal Services Regulation framework. The concept of a mandatory (but not compliance-focused) self assessment process – aimed at identifying and enabling management system improvements, proactively – marks a notable departure from the historic reactive regulatory model. Multiple participants noted that it will take time to adjust perceptions of the Society’s role to including a proactive, legal services support function.

Feedback to date suggests there is openness to and appetite for the new regulatory model, and that through a targeted communications plan we can effectively work toward the necessary shift by lawyers and law firms to thinking about and understanding risk in the ‘MSELP context’. Participants expressed wide acknowledgment that strengthening the robustness of their ethical practice infrastructure would likely result in the mutual goals of improved legal services delivery, and health, wellness and success in practice.

Feedback supports a preliminary conclusion, and one of our hypotheses, that lawyers want to do well for their clients and strive for excellence in service delivery. They express a strong ‘value based’ connection to all the MSELP elements, and a wish to realize or achieve the elements in practice.

What we are hearing:

*“This is beneficial for everyone in practice and a positive step if it helps us to improve the reputation of the profession.”*

*“It serves as a good reminder to look at all these items (elements), as we get busy and rarely have time.”*

*The exercise helped us identify opportunities for improvements in areas where we might have had some informal practices in place, but not policies or formalized procedures.*

*This came at a great time for us, as we are in the process of considering improvements in many of these areas.*

*This is a significant cultural shift for the profession. The Society will need to be careful to not be perceived as on a fishing expedition.*

**“My first impressions of the tool were that it was regulatory in focus, but as I worked through it and the big picture issues emerged, it became less about towing the line and actually about ‘how can we improve the practice of law?’.”**

In short, as many participants expressed, they will take ‘any help the Society can give’ to direct them to quality resources and tools that will save them time and effort in improving their MSELP.

## **MSELP CONTEXT: SYSTEMS VS VALUES**

As noted, feedback to date suggests an almost universal acceptance of the MSELP Elements and their place as core ethical ‘values’ underpinning a healthy legal practice.

Where difficulty arises, for about half of participants to date, is making the connection between the implicit MSELP ‘values’ and ‘systems’ and their practice or how they use methods, means, processes, and technologies to delivery legal services to their clients. Many participants (in particular, sole practitioners) approached the self assessment as just that – a ‘self’ assessment, and interpreted their rating of each element as the extent to which they personally ‘value’ that element in practice and/or understand its ethical significance. This resulted in a number of ‘high’ self scorings on elements which, when probed further in conversation, in fact left significant room for improvements in a practice systems context.

For example, in Element 3 (Confidentiality) a firm might say “My staff and I value the importance of maintaining client confidentiality”, but fail to consider the systems in place to ensure that confidentiality is protected consistently.

In cases where this disconnect was apparent, we were usually able to address it during the debrief meetings. These meetings enabled a fuller discussion of the context for MSELP through examples and probing questions, and exploration of specific elements in the context of a participant’s MSELP.

A few ‘quick fixes’ (i.e. revising the introduction / instructions; enhancing Element descriptors; tweaking the rating scale) and the implementation of a wider communications effort leading up to ‘roll out’ of the MSELP process will also help users understand its ‘management systems’ context. We can anticipate that over time, as lawyers gain experience participating in the self assessment process, they will better assess the Elements in a systems context.

## **MSELP ELEMENTS AND DESCRIPTORS**

The overwhelming response to the ten MSELP Elements is positive. Most participants noted that the Elements capture the foundations of an ethical practice structure and reflect their core professional values.

Overall, a limited amount of specific feedback has been directed at Elements 1-8. However, Element 1 – “Developing Competent Practices”, has proven a ‘stumbling block’ for a select number of participants, who find the wording and upfront placement of the Element sets a defensive tone for the self assessment exercise. Specifically, it caused a few participants to ask: ‘Why would the Society think I / my staff are not competent?’ Others asked: ‘Who is going to give themselves anything less than a ‘5’ on competence?’

After probing this further, it became clear that the wording of the Element (namely, the word ‘Competence’) struck a sensitive cord for lawyers, and was a particular challenge to interpret in the context of systems. For several lawyers, the Element does not read as ‘What systems do you have in place to ensure the development and maintenance of competent practices?’ – it instead reads as ‘How competent are you and your staff?’

As a related aside, lawyers sometimes struggle to interpret the ethical obligation of ‘competent practice’, as they see an ‘ethical lawyer’ and a ‘competent lawyer’ as being two distinct concepts. This specific conversation arose during two debrief meetings.

One participant made the suggestion that a ‘less threatening’ element (i.e. more easily understood in the context of systems) could come first in the SAT (e.g. File Management). This might assist lawyers in framing the SAT in a systems context, before moving to the more ‘challenging’ elements. We will reflect this recommendation in revised versions of the self assessment tools, to be presented with the Final Report in April.

Elements 9 and 10 featured in the majority of debrief discussions. A number of participants gave themselves a lower rating on Element 9 (3 and lower) in the SAT – sometimes because it fulfilled its intended purpose (i.e. raised awareness of improvements to be made / caused deeper reflection); other times the element was simply not clearly understood in its intended context. Overall, both Elements 9 and 10 posed the greatest challenge to participants in interpreting them in the context of ‘management systems’. Debrief discussions helped identify how, in the context of their own practices, they might apply.

Some representative responses to Element 9 included:

*“Element 9 doesn’t apply to me, because it’s just me.”*

*“This doesn’t apply in our community.”*

*“It’s not the Society’s business who we hire.”*

*“This is challenging because lawyers are trained to not treat people differently or talk about difference, and now you are asking us to do just that. There is fear we will say the wrong thing.”*

*“We rated ourselves a ‘5’ because we value diversity.” (i.e. without giving consideration to whether any policies, practices, etc are in place)*

**“I would like to see a definition here of cultural competence – the language is not easy for people who have been in practice a long time.”**

Undoubtedly, there are complex reasons why Element 9 is proving a challenge for lawyers to interpret and understand in a systems (versus ‘values’) context (and arguable, these justify its inclusion in MSLEP). But once given an opportunity to have a fuller discussion about the rationale for its inclusion – and the many ways in which the element might be ‘realized’ in a systems and practice context, this element resulted in some of the most meaningful and ‘penny dropping’ moments during the debriefs.

Anecdotally, one small practice rated itself fairly high (4) on Element 9. During debrief, the senior partner noted that they were situated in a largely homogenous area where considerations of diversity and equity are less pronounced. When asked to describe their client base, it emerged they had a long standing relationship servicing a local First Nation community. Probing further, it became clear they did not ‘think’ about their client as being ‘different’; they had a long a personal relationship which included attending family celebrations over many years. We talked further about how they might ‘demonstrate’ their respect and value for their clients’ unique culture, and determined that featuring some of the client’s gifted artwork in the law firm reception area would be a meaningful ‘improvement’.

Lawyers are better able to connect with the intention and practice systems context of Element 10, though this also required discussion and probing. On first reading, many lawyers interpreted the element to be the Society’s telling them they should “do more pro bono activity”. This element was particularly challenging for lawyers in small rural practices, where the very nature of their practice demands working at flexible rates and providing free legal services, regularly. For these lawyers, conversations about the many ways they serve to enhance access to legal services (e.g. practicing in a rural / underserviced location; driving clients to ‘local’ courthouses; meeting with clients at hospitals, homes, etc.), were reassuring and helped facilitate a broader interpretation.

Some further work can be done to the language and indicators supporting these elements to support the Pilot Project goal of ensuring the MSEL P Elements and descriptors as ‘well-articulated and easily understood’. As described below, this work is already underway.

## SELF ASSESSMENT TOOL(S)

Participant feedback regarding the Self Assessment Tool (and supporting MSELP Workbook) falls into two broad categories:

- a. Specific feedback, identifying ‘quick fixes’ that will improve functionality and comprehension of the tools (including: wording, organization of information, resources, etc.) (Some of this feedback is addressed above, under ‘Elements and Descriptors’)
- b. Feedback relating to the ‘relationship’ and interplay between the SAT and Workbook and the respective function of each tool.

Specific feedback will be implemented by staff and reflected in ‘final’ versions of the tool(s). Participants have been useful to date in identifying specific ways to improve the SAT and supporting Workbook.

The second category of feedback relates to the question of how, through self assessment tools, to best achieve the project goal of “engaging lawyers and entities in self assessment” in a way that “is effective and potentially impactful”.

The Workbook is described as “*a tool designed to help you work through your self assessment of each element before completing and submitting your online tool. The Workbook is relevant to all lawyers, but was designed with the services and practice systems of small firms and sole practitioners in mind.*” Feedback to date suggests, in fact, that firms of all sizes do find value in the tool and about half of all participants (with no correlation to firm size) preferred using the Workbook in advance of rating the Elements in the SAT.

In contrast, a number of sole practitioners and small firms found the SAT prompted a more reflective consideration of their MSELPs and it was their ‘preferred’ assessment tool. However, most of those participants still found significant value in the Workbook as an offline (and ongoing) resource (as it provides links to many online tools and resources).

In response to the feedback to date, the Solo and Small Firm Working Group is working to revise and enhance the content of the Workbook to better align its indicators and descriptions with the SAT, so that the two tools work more effectively in ‘partnership’. Further consideration will also be given to how we can best present and describe the two tools and their respective features / functions in the self assessment process.

## SELF ASSESSMENT PROCESS

Creating an effective self assessment tool falls within a broader project goal of designing a self assessment process that is effective and potentially impactful in its ability to change behaviors (i.e. improve quality of service; support ethical decision-making, enhance job and client satisfaction).

In determining what process, moving forward, might best support this goal, several specific areas of feedback might be considered:

### 1. Effectiveness of MSELP process

About half of pilot participants to date noted that the SAT tools helped them to identify specific systems improvements which they intend to take forward, either now or in future. A number more identified improvements through the course of the debrief meetings, as conversations helped to clarify thinking and draw out specific areas where MSELP improvements could follow.

A significant number of participants noted that the SAT process did not ‘teach’ them something they did not already know – or help them to identify an issue not already on their radar. However, for all of those participants, there was unanimous support for the value of the process as a nudge or reminder to take active steps toward improvements they had already identified a need for. It was for these participants, in particular, that the linked resources were most often accessed and found to be useful. All of those participants noted that the MSELP process means they will take action sooner toward enhancing those systems.

What we are hearing:

*“The tool itself didn’t help me to reflect on areas to improve in, but our follow up discussion did.”*

*“Having completed this will likely prompt me to take the next steps to implement retainer letters in my practice – which was on my radar before, but this has made it a priority.”*

*“This made me aware of my need for a succession plan, which wasn’t front of mind previously as I was focused on setting up my practice.”*

**“It prompted reflection and a served as a reminder of some file management issues I was already aware of.”**

The length and scope of the Pilot Project precludes measurement of the tool’s effectiveness in effecting change, but the data collected will serve as a benchmark upon which future measurement and evaluation can build. Early indications, however, suggest that the overall self assessment process is helping most lawyers to identify improvements they can make to their practice systems.

### 2. Time investment

Concerns over the MSELP self assessment time investment were largely allayed by those who took part, once they completed the exercise. Participants reported a range of time spent completing the tool – with many sole practitioners completing it within 20-30 minutes, and others taking two hours or more. Larger firms generally spent 3 hours or more, noting that they circulated the SAT among various managers, departments, etc.

Not one participant expressed that the SAT was ‘too long’ or onerous, but of course, there is likely a correlation between the time put in and the value extracted from the exercise. It remains to be seen whether there is a correlation between time spent on the self assessment process and implementation of MSELP improvements.

Many expressed surprise that the SAT was so ‘straightforward’ after what they perceived (from the introduction / instructions) would be a complex and detailed process.

### 3. Identifying and reporting specific MSELP goals

Many participants indicated that if the MSELP is not framed as a mandatory requirement with regulatory consequence for non-compliance, they would be far less likely to complete the self-assessment. This comment was made in each case in the context of competing priorities / client demands, and the ‘reality’ that if it doesn’t have to get done, it won’t.

Further to the point above, many participants stated willingness – and in some cases, preference – to identify specific areas of MSELP improvement they commit to undertake, and to report these goals in their SAT. It was noted by several participants that this extra step would build in the accountability they might need to see through effecting noted improvements. Generally, these same participants indicated that they would only be comfortable identifying ‘aspirational’ goals, from which no immediate regulatory consequence would follow. Non-invasive follow up from Society staff (i.e. ‘checking in’) and offering resources and other support would, however, be welcome.

Finally, a commitment to specific goals was identified as a way to address the ‘transparency’ concerns expressed by some participants. In other words, there are concerns that some lawyers will say what they think we want to hear, as opposed to the results of thoughtful reflection.

What we are hearing:

*“I’m worried people will put down what they want others to hear.”*

*“I’m comfortable with a deadline being imposed for follow up steps.”*

*“I think that within the tool itself you need to require firms to identify the areas they will address.”*

*“Maybe the ‘Comments’ field should be mandatory, so you have to explain your assessment and areas you will work on.”*

*“I would welcome the Society ‘checking in’ on my progress between assessments, in a non invasive way.”*

*“Maybe people should be forced to leave a comment and explain what they will work on where they’ve given a rating before a certain level, e.g. ‘3 or under’”?*

**“I like the idea to committing to goals at the end of the assessment, but they shouldn’t have to be on a large scale – small changes are important too.”**

### 4. Educational support and communications

Intentionally, Pilot Project staff did not ‘help’ lawyers and firms complete their SAT online, with the view that we would elicit pure feedback on tool comprehension and usability. The pilot findings and feedback to date supports the observation that for most participants, where work is put in to explain the context for MSELP (and the broader regulatory context), and to discuss the Elements, the process has greater impact.

Further, many participants expressed the view that MSELP process ‘success’ will correlate to the Society’s education and communication efforts. In addition to using our standard communications tools, participants suggest Society representatives visit lawyers (through County Bars, at firms, etc.) to talk about the MSELP before rolling out a program. Others suggested inviting lawyers to ‘work through’ their self assessment in group / collaborative settings where best practices can be shared, and perhaps facilitating those sessions.

Two participants who attended County Bar sessions (last Fall) where we presented on MSELP / Legal Services Regulation expressed that the session provided them a clear understanding of the ‘systems’ context for when they undertook their Pilot assessments.

## MSELP SUPPORT AND RESOURCES

Participants and in particular, sole practitioners and small firms, are welcoming the opportunity to both identify the tools and resources they currently rely on in practice, and to discuss those that would most assist them in enhancing their MSELP.

The overwhelming majority of participants welcome the concept of the Society playing an active role in identifying quality practice resources and making those available. The time and effort involved in researching and developing practice technologies, templates, policies, etc. is identified repeatedly as the single greatest barrier to their implementation. Lawyers are making clear that they want strong and effective MSELPs, and any help the Society (and its resource partners) can offer is welcome.

Some participants expressed strong existing relationships with various resource providers, including LIANS, CBA, RELANS and others. In response to the concept of an ‘MSELP portal’, the vast majority strongly support the Society developing a centralized location where MSELP resources can be housed. They agree with the approach of not ‘reinventing the wheel’, but rather providing links to already existing resources from external providers. Most participants noted this would be a tool they would utilize on a regular basis.

The value of the SAT (and Workbook) as a resource tool to revisit was also noted by many. Some indicated a wish for specific resources, which align with specific elements within the tools themselves. This feedback is being addressed in revisions to the draft MSELP Workbook.

Four specific areas where participants identified a gap in practice support emerged early on:

- Tools/resources for lawyers setting up a practice
- Tools/resources for planning practice succession
- Tools/resources re: file management / destruction
- Online communities where lawyers can share best practices and ideas

The Society and LIANS are working to deepen the resources being offered in these areas.

A further recurring request was for a tool or mechanism to share practice templates, draft policies, etc. Many participants noted that they share such tools regularly among lawyers in their social and practice circles, but that they would prefer to draw from a ‘broader pool’ with a view to accessing and learning best practices.

Outside of these key themes, some of the resource ‘wish list’ items identified include:

- ‘Best of’ lists for various technology solutions (e.g. cloud based server options) – perhaps linking to external product reviews
- Streamlined mentorship programs for specific needs, which might also operate ‘both ways’ (i.e. younger lawyers supporting older lawyers adapt to practice technology / standards)
- More published stories / resources from ‘practice innovators’
- Resources to help develop language skills (in particular, French)
- Resources re: flat fee billing and how to implement it in practice
- Resources for dealing with high demand / ‘noisy’ clients
- A system for easing transfer of payments to SNS
- Sessions that facilitate ‘best practices’ discussions between firms

- Workshops on how to self assess (with the MSELP tools)
- More practice-related checklists and guidelines

# Emerging Themes

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In addition to the specific feedback we sought out as part of our defined project plan and evaluation strategy, notable observations and themes are emerging.

## PROMOTING AND MAINTAINING EFFECTIVE RELATIONSHIPS

The Pilot Project is demonstrating lawyers' openness and willingness to share and discuss not only project feedback, but their wider questions, concerns, and observations about legal practice today, and legal services regulation. Relating to the potential effectiveness of the project, some lawyers expressed concerns about the ability of the project to illicit 'honest' responses from lawyers, noting there may be a 'trust barrier'.

We heard significant 'no holds barred' feedback relating to lawyers negative experiences with and perceptions of the Society and its staff. Some feedback related to misconceptions about the Society's mandate (i.e. wanting us to be their professional association), which we were able to address and discuss during debrief meetings. Other feedback identified concerns around consistency of knowledge / awareness among Society and LIANS staff (i.e. getting 'different answers to questions from different people'), concerns around the tone of Society communications, and general service concerns. We were grateful for these honest expressions of concerns to which further consideration will be given.

What we are hearing:

*"I have concerns about the Society's connectivity to the practical realities of practice for lawyers in sole or small practices."*

*"It's the Society's fault that I've not been able to leave practice (as I don't know what to do with my files)."*

*"Your website is not easy to navigate and does not convey information in a way that is accessible for the public."*

*"Your limited fee structure is forcing me to consider leaving practice earlier than I would otherwise. Wouldn't the Society be better off keeping people on board in a limited capacity in fulfilling its access to justice objectives?"*

*"I can't get a straight answer from the Society or LIANS – when you call you get bounced around and get inconsistent answers."*

*"The Society is not there in any way shape or form to help us."*

**"The Society's position on conflicts is outdated – waivers should be recognized; it's not the Society's business if people consent within reason."** (family / collaborative law context)

Despite the multiple communications which preempt most debrief meetings – including detailed descriptions of MSELP, its purpose, and the wider regulatory context – and then, the instructions and explanations within the SAT itself – it is apparent that many participants do not engage fully with the concept of MSELP (and its wider regulatory context) until the in-person debrief discussion.

Also notable is the change in the tone and quality of conversations during the debrief meetings. Many started somewhat stilted, with lawyers offering safe, sound bite answers to specific questions. But as conversations progressed – especially, once we had an opportunity to express the 'Triple P' approach underpinning this work, and the Society's aim to change the nature of its conversation with the profession – discussions transformed.

Some ended on a note of ‘healthy skepticism’, while more ended with a tangible rapport and the sense of a foundation of trust and cooperation having been built.

Multiple participants commented how ‘refreshing’ it was to have Society staff come to them and listen and work to build a relationship. Equally, many suggested, in the context of asking how we can best support the MSELP process and make it ‘work’, that there is no substitute for meeting lawyers (i.e. County Bar meetings; organized education sessions; individual meetings) and educating them about MSELP, the Elements, and the wider regulatory context.

These constructive conversations align with one of the Foundation Activities in the Society’s Strategic Framework: “Promoting and maintaining effective relationships through sincere, substantive and sustained engagement and adopting restorative approaches”.

## **THE IMPACT OF ISOLATION ON PRACTITIONERS**

A theme which emerged from discussions with lawyers is the negative impacts of practicing law in isolation. This discussion arose with lawyers in sole practice and also with lawyers who previously practiced alone. In some cases, the topic was not explicitly raised, but rather emerged as the root of practice-related anxieties.

One participant spoke openly about their enthusiasm for Legal Services Regulation and the opportunities it creates for lawyers like herself, in sole practice, to work collaboratively and in shared space arrangements. She spoke of the benefits of having someone to ‘bounce ideas off of’ on a daily basis, and to help managed the (overwhelming) administrative and business costs of sole practice.

Many lawyers in sole practice spoke about the desire to stay connected with peers, and the challenges in doing so. A clear wish was expressed to build a sense of ‘community’ and ‘collaboration’ among lawyers – most notably, but not exclusively, in rural areas.

Specific suggestions which emerged from these discussions included: creation of online collaborative spaces for lawyers to share ideas / best practices; mentorship arrangements that ‘connect’ lawyers working in isolation; and, educational opportunities that target sole (and small firm) practitioners. Discussions with several participants led to consideration of how the self assessment process might present opportunities, looking ahead, for ‘themed’ educational opportunities that would bring lawyers (in isolation) together – e.g. sharing ‘best practices’, drafting policies collaboratively, ‘self evaluating’ in a collaborative format, etc.

# Next Steps

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## PROJECT COMPLETION AND EVALUATION

Upon completion of the outstanding participant surveys and debrief meetings, we will conduct further analysis of feedback relating to MSELP tools and resources. Feedback relating to the SAT process will help shape a Final Report to Council in April 2017, in which statistics will be presented to support conclusions around:

- Time spent by entities (by size) on the self assessment process
- Internal (firm) processes for undergoing self assessment
- Staff resourcing to support a mandatory MSELP self assessment process and corresponding Legal Services Support ‘response’

Further consideration will be given to how the Society can make use of the SAT data to identify and measure risk, and how it might respond to that information. Findings will also be presented as to the overall effectiveness of the MSELP in providing early indications of its potential to effect behavioral change. The Final Report will make recommendations around the use of data collected during the project for the purpose of benchmarking, and supporting a future evaluation of MSELP ‘progress’ among pilot participants.

Finally, enhanced versions of the self assessment tools will be presented, reflecting the feedback of pilot participants.

## MSELP TOOLS AND TECHNOLOGY

Further work is needed to identify the best and most cost effective platform for potential implementation of a MSELP self assessment process. Feedback from the Pilot indicates the need for a platform that will enable a review (or summary) of SAT scores prior to submission, as well as the ability to save and work from the tool independently, so that it can maximize its effectiveness as a resource tool.

Whichever platform is identified will need to be adapted to ‘speak’ to our Member Database so the SAT scoring can be recorded at entity level, and referred to for the purpose of benchmarking and future evaluation / progress reports.

Further work will continue on the MSELP Portal, which is in its infancy. The resource ‘wish list’ feedback we’re receiving will inform research and where necessary, resource and product development.

Throughout the Pilot Project we have maintained open communication with the other law societies that are embarking upon entity regulation. We have shared forms and templates; we have discussed what we have learned and what lies behind some of their thinking; and, at least at my level, we see the value of enhanced collaboration. The Executive Director is organizing a discussion among all the law societies embarking on entity regulation to be held during the Federation of Law Societies meeting in March. The goal of that is to encourage further cooperation and ultimately standardization. A further update on our national collaborative efforts will be included in the Final Report.

## **BUILDING ON ‘COLLABORATIVE’ MOMENTUM**

The Pilot Project has already resulted in increased collaboration among Society staff and teams, as broad expertise and support is required to respond to questions and issues arising from the SAT debrief meetings; to develop resources and tools to support MSELP; and, to educate lawyers and communicate about MSELP, the self assessment process, and the new ‘Triple P’ regulatory model.

Task Forces and work groups have formed in direct response to key themes emerging from the Project’s findings, and enhanced tools and practice resources are being developed.

Greater internal ‘awareness’ of existing resources (LIANS, CBA, etc) has resulted for Society staff, and steps are being taken to better organize and house MSELP resources.

In short, the collaborative approach being fostered by the MSELP Project means that we are more efficiently and effectively responding to the risk-related needs of lawyers in practice. This momentum will continue to be nurtured beyond the scope of the Pilot Project.

## **IN-HOUSE AND GOVERNMENT LAWYERS**

Alongside the Pilot Project, the In-House and Government Lawyers Working Group is advancing its work. Its mandate is to make recommendations on all aspects of the implementation of the MSELP for practising lawyers employed in companies and government.

In addition to giving consideration to the unique ethical challenges faced by its lawyers in an MSELP context, the Group has ‘redrafted’ and made recommendations for the content of a draft self-assessment tool (SAT) for in-house and government lawyers. Next steps include investigation of the extent to which MSELP’s of in-house and government legal departments / entities might already be monitored and evaluated on an ongoing basis within highly structured environments, as well as developing a program for initial consultations.

# Conclusion

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While feedback from Pilot Project is preliminary, some clear trends and findings are already emerging:

- Lawyers recognize and embrace the MSELP Elements as the ‘foundations’ of an ethical and competent practice
- Early indicators suggest that the MSELP tools and process can work effectively in helping firms engage in a reflective and potentially impactful self assessment in which they identify specific areas for improvement
- Work must continue to help lawyers move along with the Society as it changes the nature of Legal Services Regulation and adopts a pro-active, risk-based regulatory model. Specifically, education and communication strategies will support building understanding of the ‘systems’ context of the MSELP self assessment process
- The Society can further influence behavioral change by requiring that specific goals and targets be identified through the MSELP process, and by providing a robust, resource and support-based response.

Because this is only a preliminary report, we have yet to complete an analysis of whether this should be a permanent part of the Society’s approach to regulation of legal services in a risk-based and Triple P way. However, Council should know that the overall positive and productive response to the Pilot Project allows us to say that everything at present points to this being a very effective way of working with the profession. It puts real flesh on the bones of the Regulatory Objectives. It shows how we can work differently with lawyers and how they can be assisted in taking the personal responsibility for improving their professional practices. This is raised here because there are implications for the 2017-19 budget that will be presented to Council in March.

Overall the Pilot project is showing that there is a better way of working between the regulator and the profession. As with anything that is new, there is a substantial learning curve and not everything goes as expected. Here there have been far more positive results than negative ones. We have seen how lawyers do want to engage in how legal services can be expanded. The profession wants to be part of the change that is happening around them and certainly do not want to be left behind. The value of the face-to-face contact we are having with lawyers is apparent, and as we move ahead toward a new model for legal services regulation, the Pilot Project is facilitating meaningful conversations beyond the scope of its defined objectives.



## **MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP)**

### **Self-assessment tool**

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

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

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

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

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

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

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

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

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

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

## **MSELP Workbook**

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

## **Definitions**

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

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

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

## ELEMENT 1 – DEVELOPING COMPETENT PRACTICES

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

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

### THINGS TO THINK ABOUT

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

COMMENT:

### RESOURCES

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

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

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

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

### THINGS TO THINK ABOUT

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

## THINGS TO THINK ABOUT

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

## COMMENT:

## RESOURCES

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

## ELEMENT 3 – ENSURING CONFIDENTIALITY

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

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

### THINGS TO THINK ABOUT

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

COMMENT:

### RESOURCES

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

## ELEMENT 4 – AVOIDING CONFLICTS OF INTEREST

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

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

### THINGS TO THINK ABOUT

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

### COMMENT:

### RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3: Relationship to Client; Chapter 3.4: Conflicts; Chapter 5.2: Lawyer as Witness]
- Nova Scotia Barristers' Society / Family Law Standards / **Standard #1: Conflict of Interest**
- Lawyers' Insurance Association of Nova Scotia / RPM Conference presentation / **Conflict of Interest** (December 2014)
- PracticePRO / **Managing Conflict of Interest Situations**

- Canadian Bar Association / **Task Force on Conflicts of Interest Toolkit** (2008)
- The Law Society [UK] / **Practice Notes: Conflict of interests** (March 2015)

## ELEMENT 5 – MAINTAINING APPROPRIATE FILE AND RECORDS MANAGEMENT SYSTEMS

Your legal entity uses appropriate file and records management systems.

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

### THINGS TO THINK ABOUT

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

COMMENT:

## RESOURCES

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

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

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

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

### THINGS TO THINK ABOUT

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

COMMENT:

### RESOURCES

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

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

## ELEMENT 7 – CHARGING APPROPRIATE FEES AND DISBURSEMENTS

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

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

### THINGS TO THINK ABOUT

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

### COMMENT:

### RESOURCES

- Nova Scotia Barristers' Society / **Code of Professional Conduct** [Chapter 3.6: Fees and Disbursements]
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #5 Retention and Billing**
- Lawyers' Insurance Association of Nova Scotia / Practice Management / **Financial Management**
- Law Society of British Columbia / **Fees, Disbursements and Interest** (2012)
- Law Society of Upper Canada / **Bookkeeping Guide for Lawyers** / (October 2014)

- Scott, Todd C. / **Nine Rules for Billing Ethically and Getting Paid on Time** (November 2011)

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

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

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

### THINGS TO THINK ABOUT

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

### COMMENT:

### RESOURCES

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

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

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

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

### THINGS TO THINK ABOUT

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

### COMMENT:

### RESOURCES

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

- Nova Scotia Barristers' Society / **The Equity Portal**
- Nova Scotia Barristers' Society / Law Office Management Standards / **Standard #8 Equity and Diversity**

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

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

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

### THINGS TO THINK ABOUT

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

### COMMENT:

### RESOURCES

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

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

# APPENDIX 2



## MANAGEMENT SYSTEM FOR ETHICAL LEGAL PRACTICE (MSELP)

# WORKBOOK

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## The Workbook

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

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

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

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

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

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

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

## Assessment scale

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

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

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

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

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

ELEMENT 1: DEVELOPING COMPETENT PRACTICES

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

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

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

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

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



**Notes:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Notes:**

ELEMENT 3: ENSURING CONFIDENTIALITY

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

**INDICATOR – You have a confidentiality and privacy policy.**

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

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

ELEMENT 4: AVOIDING CONFLICTS OF INTEREST

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

**INDICATOR – You have a written conflict policy**

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

**Notes:**

ELEMENT 5: MAINTAINING APROPRIATE FILE AND RECORDS  
MANAGEMENT SYSTEMS

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

**INDICATOR – You have a record retention policy**

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

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

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

**INDICATOR – You use a tickler system for deadlines**

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

**INDICATOR – You have a closing procedure for each file**

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

**Notes:**

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

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

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

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

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

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

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

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

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

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

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

### INDICATOR – You provide staff with clear and complete instructions

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

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

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

**Notes:**

ELEMENT 7: CHARGING APPROPRIATE FEES AND DISBURSEMENTS

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

**INDICATOR – You use a written retainer agreement**

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

**INDICATOR – Your fees are fair and reasonable**

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

**INDICATOR – You understand what constitutes unethical billing practices**

	1	2	3	4	5		Nova Scotia Barristers' Society / <a href="#">Code of Professional Conduct</a> [ <a href="#">Chapter 3.6: Fees and Disbursements</a> ]
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**ELEMENT 8: SUSTAINING EFFECTIVE AND RESPECTFUL RELATIONSHIPS WITH CLIENTS, COLLEAGUES, COURTS, REGULATORS AND THE COMMUNITY**

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

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

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

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

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

**INDICATOR – All client instructions are confirmed in writing**

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

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

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

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

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

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

	1	2	3	4	5		

**INDICATOR – You have a guideline with respect to public statements**

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

**INDICATOR – You effectively use your calendar**

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

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

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

**INDICATOR – You have a guideline to prevent discrimination and harassment**

	1	2	3	4	5		
							NSBS / <a href="#">The Equity Portal</a>

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

	1	2	3	4	5		
							NSBS / <a href="#">The Equity Portal</a>

**Notes:**

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

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

**INDICATOR – You have a workplace equity policy**

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

**INDICATOR – You have a process to enforce your equity policy**

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

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

	1	2	3	4	5		
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Notes:

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

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

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

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

**INDICATOR – You use limited scope retainers**

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

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

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

## **Legal Services Support Pilot Project Plan**

**v. 4 2016-04-22**

### **1. Summary**

This plan outlines the purpose, scope, goals, anticipated outcomes and high level tasks relating to design and delivery of the pilot project for the Management System for Ethical Legal Practice (MSELP). Council has approved the Society's Regulatory Objectives, and the ten elements with descriptors which comprise the MSELP. Legislative amendments to support Legal Services Regulation are under development and are the subject of a separate project plan. In order to finalize the design of the MSELP, it is important to test the Society's proposed approach (i.e. use of the self-assessment tool), and to begin to design the means for future evaluation of the effectiveness of it in achieving Council's stated objectives.

### **2. Purpose**

The goal of the MSELP is to assist lawyers and legal entities in being highly competent and ethical legal service providers. The MSELP Pilot Project is designed to identify, test and evaluate the proposed self-assessment tool(SAT), its related resources, and the process for administering the tool with a volunteer group of fifty lawyers and legal entities. It will present an opportunity to assist and educate lawyers and legal entities about how to begin to achieve the ten elements, to learn from those who are already achieving these goals, and to share this learning with others.

Through this process, we will be able, in a preliminary way, to design a process to help us assess whether the MSELP has the capability to change behaviours, improve competence and quality of service, support ethical decision-making, and enhance job and client satisfaction for lawyers (this will require further research and study over a period of time). In addition, the pilot project will enable the Society to assess the staff and financial resources, as well as lawyer and firm time and resources to complete the SAT, and our ability to eventually meet the goal of this process having a 'net neutral' effect; i.e. no more time and resources needed than currently.

### **3. Scope**

The pilot project covers the period from July 1, 2016 to April 30, 2017. The Society will seek fifty volunteer lawyers and entities to participate, ensuring representation from all geographic areas, practice areas and entity types, seniority levels, technological skill ranges, rural and urban communities, and other demographic representations.

### **4. Pilot Project Goals**

The pilot project will be designed to achieve the following goals:

- ✓ Determine if the MSELP elements and descriptors are well-articulated and easily understood;
- ✓ Determine if the self-assessment tool (SAT) and our process for engaging lawyers and entities in self-assessment is effective and potentially impactful;
- ✓ Set a benchmark for the volunteers in the project in order to track their progress as they move forward with the MSELP;
- ✓ Determine what resources within the Society will be needed to implement this process for all lawyers and entities;
- ✓ Determine what the resource and time impact on lawyers and firms participating in the pilot project initially is; Determine how the Society can make use of SAT data to measure the overall effectiveness of the profession; and
- ✓ Determine what additional tools and resources are needed to assist lawyers and entities in achieving the ten elements, and where the Society should focus our resources in this regard.

## 5. Approach

The proposed approach for the pilot project is to divide it into three simple stages (with details in part 7 below):

- i) What is needed before we start the conversations with lawyers and legal entities about MSELP?
- ii) What is needed in order to have these conversations?
- iii) What will happen at the end of these conversations?

We believe it is essential to the success of this pilot project that each conversation with the participating lawyers and firms follows a certain structure for objective evaluation purposes, but is also subjectively tailored to firms' needs and interests. In addition to asking lawyers and firms to complete the SAT, with or without our direct assistance, and to evaluate the process of doing so, the staff who meet with and assist lawyers and firms with the SAT process will evaluate the volunteers' responsiveness and engagement through recording of their observations, as well as obtaining feedback from the volunteers about their own feedback about the tools, resources and process. This will allow staff to continually evaluate and improve the process as well as provide information for future improvements and recommendations.

In terms of the organizational support for this pilot project, the 2016-17 budget includes employment of a fulltime manager/coordinator by early July, and this position will be filled through internal reorganization. The Legal Services Support manager/coordinator will for the term of the pilot, have additional support from staff in the Education & Credentials Department, including the Director of Education & Credentials (approx. 20% of each of three current staff positions). The pilot project will allow us to assess the permanent staffing resources in due course.

## 6. Communications

Communication about the pilot project with members will begin following the March Council meeting, with our first call for volunteer participants in the early April LSR Newsletter, and

InForum. Targeted requests for volunteers will be coordinated by the Executive Director and the LSR Communications and Engagement Working Group/Executive.

It is important that feedback and ideas from lawyers and law firms participating in this process be documented and responded to, and that we commit to ongoing communications with the participants in this regard.

## **7. Plan Components**

### 7.1 What do we need before we start the MSELP conversation? (July – August 2016)

- i) identification and placement of initial staff resources to coordinate and prepare
- ii) finalization of SAT versions (main, soles and smalls, organizational?)
- iii) continued enhancement of tools and resources to accompany SAT (L&IS)
- iv) identification and recruitment of volunteer participants
- v) development of technology to support on-line SAT process (Admin)
- vi) development of a communications plan

### 7.2 What is needed in order to have these conversations? (September 2016 to January 2017)

- i) a process for administration of SAT
- ii) a process for lawyer/entity evaluation at time of completion of SAT and possibly 3-4 months after
- iii) a schedule of meetings to assist lawyers/entities with completion of SAT
- iv) identification of additional SAT tools and resources to be developed
- v) a process for documenting staff observations/learning de-briefings
- vi) a process for documenting and evaluating what is learned from the SAT process from lawyers/entities to further develop MSELP
- vii) refinement of Legal Services Support resources, and identification of other areas of support from within organization; e.g. communications, L&IS, RPM, Ethics Counsel, etc.
- viii) creation of outcomes measurements (likely with external expertise)
- ix) begin mapping 'to be' processes internally

- x) beta testing and initial use of on-line SAT technology, and testing of program for capturing and reporting on SAT results

7.3 What will happen at the end of these conversations? (February to April 2017)

- i) Preliminary report to Council in February 2017 covering:
  - evaluation of project goals and whether achieved
  - results of evaluation of SAT process by lawyers and entities
  - evaluation of staff resources
  - effectiveness of technology tools to support SAT
  - identification of new tools and resources to be developed
  - initial evaluation of MSELP elements and potential impact
  - evaluation of effectiveness of SAT process as a tool to support MSELP
  - recommendations (at this point, Council will be asked to consider the future feasibility of the MSELP as a means for accomplishing our Regulatory Objectives)
- ii) Preparation of budget and resource model for full implementation (March 2017)
- iii) Development of plan for full implementation of MSELP as of July 2017 (April 2017)
- iv) Presentation of final evaluation and report with recommendations to Council (April 2017)

## 8. Milestones

Key milestones for this project plan will be:

- i) Approval of Pilot Project plan by Council – May 2016
- ii) Launch of Legal Services Support work – July 2016
- iii) Development of technology to support SAT – September 2016
- iv) Completion of SAT by all volunteer participants – January 2017
- v) Preliminary report to Council and approval of refined MSELP – February 2017
- vi) Final report to Council with plan and recommendations for full implementation – April 2017

## 9. Outcomes Measurement

The means by which the success of the pilot project itself will be measured will tie back to the project goals articulated in Part 4 of this plan. The tools will include:

1. evaluation surveys by lawyers and entities upon completion of the SAT, as well as within a reasonable period following completion, to track any early results of the SAT process, and reflection on development of MSELP;

2. Recorded observations by staff who conduct SAT interviews and debriefings;
3. Benchmarking the results about where legal entities are in the MSELP process and recommendations that are made;
4. Review of time keeping regarding the pilot project to ascertain staff resources needed; and
5. Staff review of issues that exist with technology, process, the tools and resources used for the pilot project.

## **10. Risks and Assumptions**

The following assumptions have been made:

- That we will be able to create the technology to support an efficient on-line SAT process, including the effective harvesting of the information recorded and obtained for learning purposes
- That the staff resources identified will be sufficient to carry out this pilot project while continuing to fulfill regular responsibilities
- That fifty lawyers and legal entities will be prepared to volunteer to meaningfully engage in the pilot project, and that this is the correct number for this purpose

Potential risks to the completion or success of this project plan include:

- Loss of skilled and experienced staff to carry out the plan
- Insufficient volunteer participants
- Lack of support by participants for SAT process and engagement
- Technology failure
- Inability to complete project in projected time frame with resources allocated
- Loss of confidence by Council and Officers with ability to achieve outcomes

## **11. Budget**

In the 2016/17 budget introduced to Council at the March 24, 2016 meeting, elements of a Legal Services Support budget were included: a full time manager/coordinator; a budget for external expertise/consultants as needed; ongoing education and training for relevant staff; and capital investment in technology. The total budget is estimated to be \$173, 753.

Council was also presented with a recommendation to apply some of the excess capital in the Lawyers' Fund for Client Compensation (based on the actuarial analysis of the amount required for the Fund) toward the costs for development of the Legal Services Regulation initiative, including the pilot project. The proposal was that \$173,000 from the Fund be used for this purpose.