



NOVA SCOTIA  
BARRISTERS' SOCIETY

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

**Jennifer Pink, Legal Services Support Manager**

**June 6, 2017**

Introduction .....3

Pilot Project Summary and Findings ..... **Error! Bookmark not defined.**

    Pilot participation .....5

    Self-assessment tools and experience.....7

    Resources and support.....11

Proposed LSS Self-assessment Model .....13

    Self-assessment model..... **Error! Bookmark not defined.**

    Financial resources ..... **Error! Bookmark not defined.**

    Regulatory and policy framework ..... **Error! Bookmark not defined.**

    Resource collation and development..... **Error! Bookmark not defined.**

    Communication and education ..... **Error! Bookmark not defined.**

    National collaboration .....18

    Evaluation.....18

    In-house and government lawyers.....18

Implementation Plan.....19

# Introduction

---

This Final Report presents the findings from the LSS Pilot Project. It considers the conceptual and regulatory framework to develop Legal Services Support (LSS) and specifically, the components of a process for administering a mandatory legal entity self-assessment. Finally, an implementation plan (with component deadlines) for the proposed self-assessment process is presented.

This proposal represents a culmination of findings from the LSS Pilot Project and views expressed by Council and Committee members, Society staff and others. This Report should be read together with the Preliminary Report from February 2017, which presents more detailed Pilot feedback and provides the basis for the findings outlined below.

## CONTEXT

Deriving from its Regulatory Objectives, the Society is building a new model of regulating legal services 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 elements that 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 Self-Assessment Tool was approved by Council on March 24, 2016. Additional work was undertaken by the Solo and Small Firm Working Group to develop a "Workbook" 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. A Preliminary Report was presented to Council in February 2017, providing an overview of Pilot feedback and findings to date. The Pilot Project concluded in May 2017.

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

### 1. The 2016-2019 Strategic Framework

The 2016-2019 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 support the Regulatory Objectives and build on the previous Strategic Framework. They inform our ongoing commitment to build a new model for regulating legal services, in a manner that is risk-focused, proactive, principled and proportionate.

Legal Services Support (including the self-assessment process) 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

The Strategic Framework provides a broad purpose; the project plan (Appendix 1) articulates the specific goals of the Pilot Project.

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 provide clarity and scope to both the self-assessment process and the broader implementation of legal services regulation. They enshrine the Society's obligations, to be accomplished in part through legal services regulation.

They are:

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 for lawyers and legal entities
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

As Legal Services Support and the self-assessment process take shape and near implementation, the Regulatory Objectives will anchor decisions and ultimately, enable the Society to achieve the regulatory outcomes<sup>1</sup> against which the impact of this work is evaluated.

---

<sup>1</sup> 1. Lawyers and legal entities provide competent legal services. 2. Lawyers and legal entities provide ethical legal services. 3. Lawyers and legal entities safeguard client trust money and property. 4. Lawyers and legal entities provide legal services in a manner that respects and promotes diversity, inclusion, substantive equality and freedom from discrimination. 5. Lawyers and legal entities provide enhanced access to legal services.

# Pilot Project Summary and Findings

---

In addition to summarizing feedback from Pilot Project participants, the Preliminary Report presented an overview of project activities; project resources and staffing; and Pilot participation / composition. Very little ‘new’ feedback has emerged from the Pilot since February and where there has, it is noted here. Feedback proved to be consistent, overall, through the duration of the Pilot.

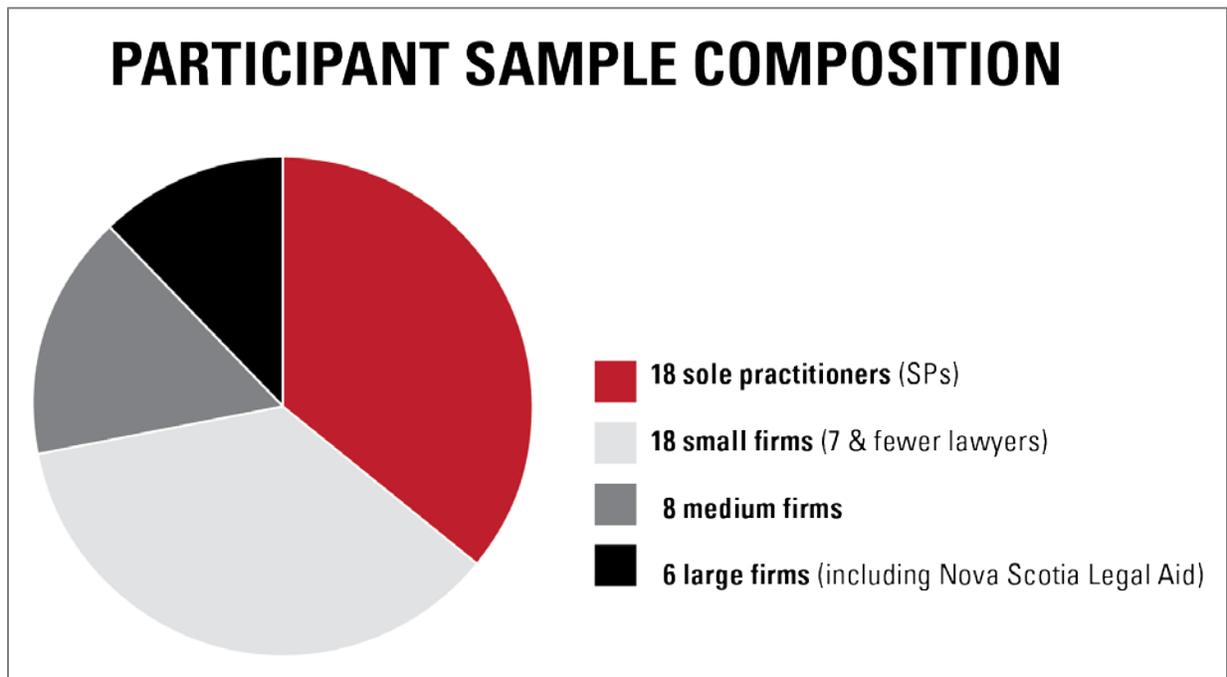
The Pilot Project concluded in May 2017. What follows is a summary of Pilot participation (and attitudes) and our findings relating to: self-assessment program design; the self-assessment tools and process; and, resources and practice support.

## PILOT PARTICIPATION

The testing and consulting phases of the project began in October 2016 and concluded in May 2017. 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 selected 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.



As of May 2017 (at the Pilot’s conclusion), 58 firms were contacted as potential participants, reflecting the addition of eight firms as ‘replacements’. A total of 44 firms agreed to participate in the project; four provided no

response (to multiple attempts at contact); and seven declined.<sup>2</sup> Further uptake in the Project since February 2017 was minimal and at its conclusion, 19% of the pilot sample firms did not agree to participate on a voluntary basis.

As time passed, the effort involved in securing participation increased. The factors reported in February as contributing to the length of time and effort required to secure participants' commitment continued to present in the feedback from 'late' participants (e.g., busy practices / time of year; failure to 'pick up' phone calls; requirement to build trust / understanding over a series of calls and emails). However, several of the later participants (i.e., those who confirmed their participation since February 2017) – including several who agreed to participate, but never submitted a completed SAT – expressed reservations about participating.

In some cases, as with the early participants, their initial wariness was overcome through phone conversations and assurances of confidentiality, brevity of time required to participate, flexible deadlines, etc. Some specific reasons given for wariness and/or for declining to participate included:

- concerns that the Society had identified their firm due to their complaints history and a desire to 'audit' their practice;
- senior lawyers' weariness from shouldering the burden of firm-wide management activities (i.e., seeking to 'pass the torch' and struggling to find successors); and
- managing partner nearing retirement and not feeling confident that anyone else in the firm could adequately complete the assessment.

The longer than anticipated time spent actively contacting and engaging with potential participants (prior to participation) afforded opportunities to engage in meaningful discussions with lawyers about practice pressures and concerns, their perceptions of the Society, and other practice insights. These discussions give a useful snapshot of the wide variance in experiences of professional regulation and private practice across the province. It is in this context that has helped us to shape the proposed model for Legal Services Support and the self-assessment process that follows in this Report.

Another trend that emerged from the later Pilot participants was a desire to use this process to engage more junior lawyers in the management or oversight of practice systems. Several firms identified the Pilot as an opportunity for this – and in one case, we used this suggestion to 'persuade' a firm to participate (i.e., senior lawyer expressed he was too busy with management responsibilities and we in turn suggested how together we might engage a more junior lawyer in thinking about how the firm is managed).

We learned that for some firms, where a senior manager / partner has carried the burden of both regulatory and other management obligations for some time, there is an element of management 'exhaustion' that has the potential to present itself as a risk factor in the context of practice systems oversight.

### **Findings:**

- A regulatory obligation will be necessary to ensure full participation in the self-assessment process, and should significantly reduce the time spent 'persuading' firms to participate.
- For a significant percentage of firms, the self-assessment process will, from the outset, be viewed as an additional and unwelcome regulatory burden. Factors that may help convert the experience into a positive one include: early and regular communications about the process / requirement and its purpose and intended outcomes; demonstration of an understanding of the burdens of law office management;

---

<sup>2</sup> In addition, three firms were identified early in the Pilot as inappropriate due to the status / nature of their practice and were replaced through random selection.

provision of easy-to-access, high quality tools and resources that will assist firms in improving their practice infrastructures.

- For a small percentage of firms, there are significant ‘trust’ issues with the Society and/or misunderstandings of its role as the professional regulator. Approaching this work, we should be mindful of the varied and complex experiences lawyers have had that led to these negative or inaccurate perceptions, and should not expect these perceptions to shift immediately. However, the Pilot Project demonstrates that through a sincere commitment to changing the nature of our interactions with lawyers and firms – including the Society making efforts to support their success in practice and health – relationships and dialogue can improve.
- Clear deadlines and eventually, if necessary, communication of a regulatory consequence for failure to self assess will be required to ensure full participation. It is hoped that in time as the value and benefits of the self-assessment process – and the supportive context for this work – are proven, reliance on regulatory powers will lessen.
- A dedicated email account / inbox to manage LSS-related communications will help to manage heavy communication flow.
- Lawyers want to understand the purpose of this work, the scope and scale of the assessment, the intended use of the information provided to the Society, etc. prior to undertaking the assessment. Clear articulation of the regulatory and policy framework that will support this work is necessary to ensure lawyers feel open to participating.
- The quality and reach of our ‘pre launch’ (and ongoing) communications should impact the time spent explaining Legal Services Support on an individual basis once the program is underway. A robust communications strategy will need to be developed and significant time should be dedicated to speaking with law firms and answering their questions, prior to self-assessment – especially during the first ‘rotation’ of the process.
- Consideration should be given to determining the best ‘point person’ at firms for the self-assessment process and whether (and how) this process might present an opportunity to support firms in the transference of management knowledge and skill.
- Overall, there is openness to and appetite for the new regulatory model and the LSS approach. Participants expressed wide acknowledgment that strengthening the robustness of their practice infrastructures would likely result in the mutual goals of improved legal services access and delivery, and lawyers’ improved wellness and success in practice.

## **SELF-ASSESSMENT TOOLS AND EXPERIENCE**

Firms that participated in ‘testing’ the self-assessment provided extensive feedback on the wording of the Self-Assessment Tool (SAT) and Workbook, the ‘interplay’ between the two and the supporting online Resource Portal, as well as their overall experience of the self-assessment process.

## **1. Self-Assessment Tool and Workbook**

The majority of Pilot participants saw value in a ‘two tool’ self-assessment model: a shorter, online self-assessment tool and a longer, interactive Workbook, which serves as a firm’s unique (personal) record of self-assessment and ongoing systems improvements, and as a resource guide.

Feedback also suggested that the ‘tested’ versions of the SAT and Workbook were inconsistent in their content and will require further work to ensure the tools ‘speak’ to each other (i.e., the Workbook expands upon the SAT in providing a more detailed review of appropriate considerations under each Element).

Since February, in response to this feedback, the Solo and Small Firm Working Group has undertaken extensive work to harmonize the two tools and identify additional resources to include in the Workbook. We are working to implement the suggestions and changes to tool wording identified by Pilot participants, Society Committees and others.

Regarding the information recorded in the SAT, many participants commented on the lack of ‘goal setting’ in the tool itself, noting that unless firms are asked to identify specific areas for improvement, there will be less follow-through on effecting improvements. In the latter debrief meetings, when this suggestion was put to participants, the majority agreed that identifying specific improvements / goals in the tool itself would make it more likely that they would follow through: it would encourage (and demand) a more thoughtful, specific analysis of practice systems, and would also provide Society staff with specific information from which they could tailor a support-based response.

In the tested version of the tool, where only an ‘optional’ Comments field allowed for recording text, the vast majority of participants failed to record any written comments and instead simply identified their self ranking on the 1-5 scale.

Most participants ‘liked’ the self-rating aspect of the SAT and Workbook. However, most acknowledged that the scale is ultimately subjective, and in the SAT it provides no concrete indication of which specific systems or processes might require attention.

Further, we observed several self-assessments where the rating given on a specific element did not accurately match our own observations of the strength of a firm’s practice systems. Firms that rated themselves highly sometimes demonstrated weak or poor systems in practice; and firms that were ‘critical’ of their systems at times demonstrated having among the most advanced and well considered processes in practice. One explanation for this is that the firms already dedicating time and resources to researching and understanding best practices have a more advanced ‘end goal’ in mind, so are more critical of their progress to date.

Taken together, feedback and observation suggests that the rating scale is limited as far as the value of information it provides – and does not determine in itself that a firm has undertaken adequate self reflection to identify system strengths and deficiencies.

Finally, it was frequently noted during the Pilot – by participants, staff and volunteers alike – that the term “Management System for Ethical Legal Practice” is unwieldy and a more concise term would be preferable.

## **2. Self-assessment process / structure**

While about half of Pilot participants confirmed they learned something ‘new’ through the self-assessment process (i.e., learned an obligation, best practice or standard they were previously unaware of), the other half identified value in being ‘reminded’ of system deficiencies of which they were aware, but had not yet taken action on.

Taken together, all Pilot participants identified value in having participated in the process – whether because they learned something new; identified areas for improvement; refreshed their thinking about their practice

infrastructure; or learned more about the Society's new approach to Legal Services Regulation and revisited their understanding of the Society and its role. For approximately half the participants, 'value' was found through the online self-assessment process itself (i.e., they self identified systems improvements or learned something new). For the other half, the followup meeting is when meaningful reflection occurred, through deeper discussion and exploration of unique practice systems and considerations.

While some participants expressed concerns about the time required to complete the self-assessment process at the outset of the process, no participants expressed that the process had been too onerous after completing it.

When asked how frequently they would see value in completing the self-assessment process, some participants suggested annually, thereby aligning their self-assessment with other annual regulatory requirements. However, when pressed on how much is likely to 'change' in their practice infrastructure over the course of a year, most of these participants suggested that a year was not a timeframe in which significant change was likely to be effected.

Other participants suggested that an annual assessment would be too frequent, but a regular (re)assessment over a longer cycle would be valuable. Most participants welcomed Society staff contacting them between assessments for the purpose of providing tools and resources (i.e., to fulfill a 'supportive' role).

Many participants expressed concern about the likelihood of meaningful reduction of practice risk resulting from the program without requiring firms to state specific goals or areas for improvement, as mentioned above. Further, a number of firms expressed concern about the enforcement structure around this work. They suggested that without a 'disciplinary' consequence following from lack of improvements, the lawyers who 'need' to make improvements to their practice infrastructures are not likely to do so. Many participants made the comment that 'some lawyers will say what they think you want to hear', rather than undertaking in adequate reflection and communication of their findings, or taking any steps to make changes.

Finally, while participants are open to being contacted by the Society for the purpose of supporting their efforts to improve systems and processes, they are generally not in favour of a model that holds them to specific levels of activity or improvement over a defined timeframe.

### **Findings:**

- LSS communications (including wording and structure of the tools) should address the 'disconnect' for some law firms in understanding the context of the self-assessment as being about the 'practice systems' that encourage adherence to their professional obligations in the course of their legal services delivery – and not, in contrast, about their understanding of their professional obligations or their values system.
- A 'two tool' (SAT and Workbook) self-assessment process is preferred, offering a compact online self-assessment tool reflecting the Elements and their Indicators (which is submitted to the Society), partnered with an 'offline' Workbook which is significantly longer and fleshes out each Indicator with specific items for consideration and an accessible resource aligned with each.
- In addition to providing an opportunity for 'private' self reflection, the Workbook should be downloadable and fully functional as an electronic tool (i.e., can be completed online / edited; ability to add and link to external documents; fully functioning hyperlinks between the Workbook / SAT / Resources; etc.). Its functionality should reflect its use as the primary working document from which firms will record infrastructure improvements and access related tools and resources.
- The online SAT should be interactive with the Workbook and through its functionality and navigation, direct users to the Workbook before they complete the online SAT/ reporting tool. This could be achieved

either on an Element by Element basis, or by directing users to the Workbook before navigating back to the online SAT.

- Optional ‘Comments’ fields in the SAT should be replaced with either mandatory comment fields or other mandatory fields for noting specific strengths / weaknesses (i.e., indicating the findings of a reflective exercise) and/or goal identification (e.g., “Three specific systems improvements”).
- The terminology “Management System for Ethical Legal Practice” should be revisited, with a view to identifying a shorter descriptor. The Law Society of British Columbia is calling their elements ‘Professional Infrastructure Elements’ (PIE), which may be a descriptor that we and other law societies can agree upon.
- The length of the self-assessment process is varied and subjective; feedback does not suggest it to be perceived as unduly onerous.
- The in-person meetings following after a firm’s online self-assessment are particularly valuable in their ability to prompt reflection on practice infrastructure and in identifying areas for possible improvements. For those firms less able or willing to undertake meaningful reflection, an in-person follow up discussion would be of particular benefit.
- It is difficult, through the data provided via the online SAT (in its Pilot version), to determine which firms undertook meaning reflection / assessment. To address this, while changes to the online tool format should assist (i.e., requiring written comments / observations), the population of firms visited in person as part of the Society’s followup response should also include a randomized component.
- In-person discussions are heavily resource intensive, requiring up to a full day (with travel) of staff time in some instances and longer when factoring in preparation and followup.
- The rating scale in the online SAT has neutral effect (i.e., it does not provide valuable / reliable information). Further work should be undertaken to see how or whether its utility can be improved, through changing the range of numbers in the scale, the anchors/descriptors, etc. We are actively collaborating with other law societies who are engaged in this work to see if a common rating system can be adopted.
- The self-assessment cycle should be frequent enough to motivate firms to continually review and make improvements to their practice infrastructures, but infrequent enough to allow sufficient time to make meaningful improvements between cycles. Our thinking is that a triennial cycle should be the norm, with an option for more frequent reporting if there is evidence of risk that would make that appropriate.
- The online self-assessment tool should require firms to identify, in writing, specific areas for practice infrastructure improvements between self-assessment cycles. It might also require firms to identify system strengths / weaknesses, thereby further encouraging a meaningful, reflective exercise.
- A regulatory and policy framework should be developed to support delivery of an impactful self-assessment process with a clearly defined purpose and scope, with clarity provided around the intended use of the information provided by firms.

- The regulatory and policy framework should support an aspirational goal-setting model that does not mandate specific outcomes from firms, but rather encourages and supports them in enhancing their practice systems.
- There will remain in place a requirement for reporting by law firms to the Society on matters where compliance is required, such as on trust accounts, Client ID rules, anti-money laundering requirements, etc.

## RESOURCES AND SUPPORT

Pilot participants confirmed there is strong enthusiasm for the Society playing an active role in identifying quality practice resources and making those readily available.

As noted in the Preliminary Report, some participants expressed strong existing relationships with various resource providers, including LIANS, CBA, RELANS and others, and endorsed the Society’s approach of developing a centralized online location where practice resources can be housed. They strongly endorse the approach of not ‘reinventing the wheel’, but rather providing links to already existing resources from external providers. Most participants indicated that the Resource Portal (via the Workbook, or otherwise) is something they would access on a regular basis.

Work is ongoing to develop the content and functionality of the LSS Resource Portal. The question of appropriate access to the Portal (i.e., public, or for Nova Scotia lawyers only) must be addressed, as well as the scope of resources it will house.

A number of participants noted, proactively, their own willingness to share tools and resources of their own, where appropriate. We heard several offers to share firms’ drafted policies or checklists with a view to creating a robust, centralized resource database. Where quality resources can’t be found, the Society can determine how best to address the resource gap.

Recent conversations with other Canadian law societies looking toward implementation of a self-assessment model suggest there is a strong appetite to collaborate on resources across provinces and in the immediate, to help identify and share the ‘best’ of locally developed tools and resources.

The Pilot Project has proven a powerful means for the Society to hear the current pressure points for lawyers in private practice, and has given staff and volunteers an opportunity to respond in a number of areas, both immediately and directly. In response to strong feedback during the early stages of the Pilot, a toolkit has been developed and made available to lawyers setting up new practices. A taskforce has been struck to address concerns around practice succession and file destruction guidelines. LIANS is hosting online communities for lawyers in specific practice areas to engage in an open, collaborative space.

These early responses are encouraging and will hopefully serve to illustrate the sincere intent to use the self-assessment process as a tool for engaging with the profession and responding to practice management needs.

### **Findings:**

- There is strong enthusiasm for the Society adopting a Legal Services Support model, particularly in fulfilling its role as a primary source for access to quality practice management tools and resources, by providing a centralized resource database and identifying and filling resource ‘gaps’.
- A Resource Portal should provide easy access to already existing practice tools and resources and should vet existing resources for quality and applicability to practice in Nova Scotia.

- Where gaps exist in resource needs, the Society should consider where or how an appropriate tool or response might be developed.
- There is potential to access a much wider resource pool through collaboration with firms and by encouraging a 'sharing' culture among Nova Scotia law firms.
- Other law societies offer significant opportunity for resource collaboration and sharing the burden of resource development.

# Proposed LSS Self-assessment Model

---

The following is an overview of the key components of a Legal Services Support self-assessment process that, through a risk-focused lens, aims to advance each of the Society's six Regulatory Objectives.

Findings from the Pilot Project strongly support the Society adopting a new proactive, support-based approach in how it engages with law firms. Legal Services Support aims to assist lawyers in meaningful reflection of their practice infrastructures, and in self identifying and effecting practice improvements. The proposed model envisions requiring firms to have a professional infrastructure in place (as defined by the ten MSLEP Elements), but letting them determine for themselves (through reflection and consideration of various factors) the policies, processes and systems they employ. The process aims to improve the quality of legal services delivery, promote access to legal services, promote diversity and inclusivity in the delivery of legal services, and regulate in a "Triple-P" manner.

Pilot participants overwhelmingly supported the concept of a support-based regulatory approach, which seeks to work together with firms toward common goals of reducing risk and improving wellness in practice. They echoed the Society's belief that all lawyers aim to deliver consistently high quality client services, and the reason why service standards slip is usually not due to lack of awareness of ethical obligations, but rather due to a misalignment between professional 'values' and 'infrastructure' and ultimately, weaknesses in the processes, policies and methods that underpin legal services delivery.

Preliminary observations and anecdotes suggest that a Legal Service Support function could potentially realize a number of benefits including: reducing the number of quality of service-related complaints filed (following from both increased competence and improvements in practice infrastructures); reducing the number of 'repeat' complaints against lawyers (i.e., by helping lawyers who are the subject of complaints identify and effect systems improvements); supporting ethical decision making; encouraging wellness and enhancing satisfaction in practice; and, advancing the Society's Regulatory Objectives. When a full self-assessment cycle is complete, a thorough program evaluation can be undertaken to determine actual impact.

An additional benefit of developing an LSS framework is that it will support other Society activities that work in a Triple-P manner. We know that many issues considered in the professional responsibility process involve quality of service issues. Once identified, it may be appropriate for the Society's approach to such complaints be one that engages an LSS approach and involves staff in proactively reaching out to lawyers and firms to address the reasons for the matter being considered rather than to address it in a process that might result in a sanction.

The proposed model and timeline assumes that the Society's proposed amendments to the *Legal Profession Act* are to be passed in the fall of 2017 and will come into effect by January 1, 2018.

## SELF-ASSESSMENT PROCESS

The requirement for all law firms<sup>3</sup> to reflect upon and self assess the quality and robustness of their professional infrastructure (through reference to ten MSELP Elements) is the cornerstone of Legal Services Support, and a key component of the new model for Legal Services Regulation.

---

<sup>3</sup> Increasingly, legal services are delivered to clients by organizations, mostly law firms but also groups of lawyers employed in organizations that provide legal services to the organization itself (e.g. in house corporate counsel), to related entities, or to clients of the organization. The proposed amendments to the *Legal Professional Act* seek to implement the policy of Council to change the Society into a regulator of the delivery of legal services by lawyers, law firms and organizations other than law firms and by a group of employed lawyers, while at the same time continuing to regulate individual lawyers as appropriate (Approved by Council in November 2016). The self assessment process would be a requirement for law firms, versus individual lawyers – with 'law firm' including in its expanded definition 'a group of lawyers, or a group of lawyers and non-lawyers who deliver legal services under the supervision of a lawyer'.

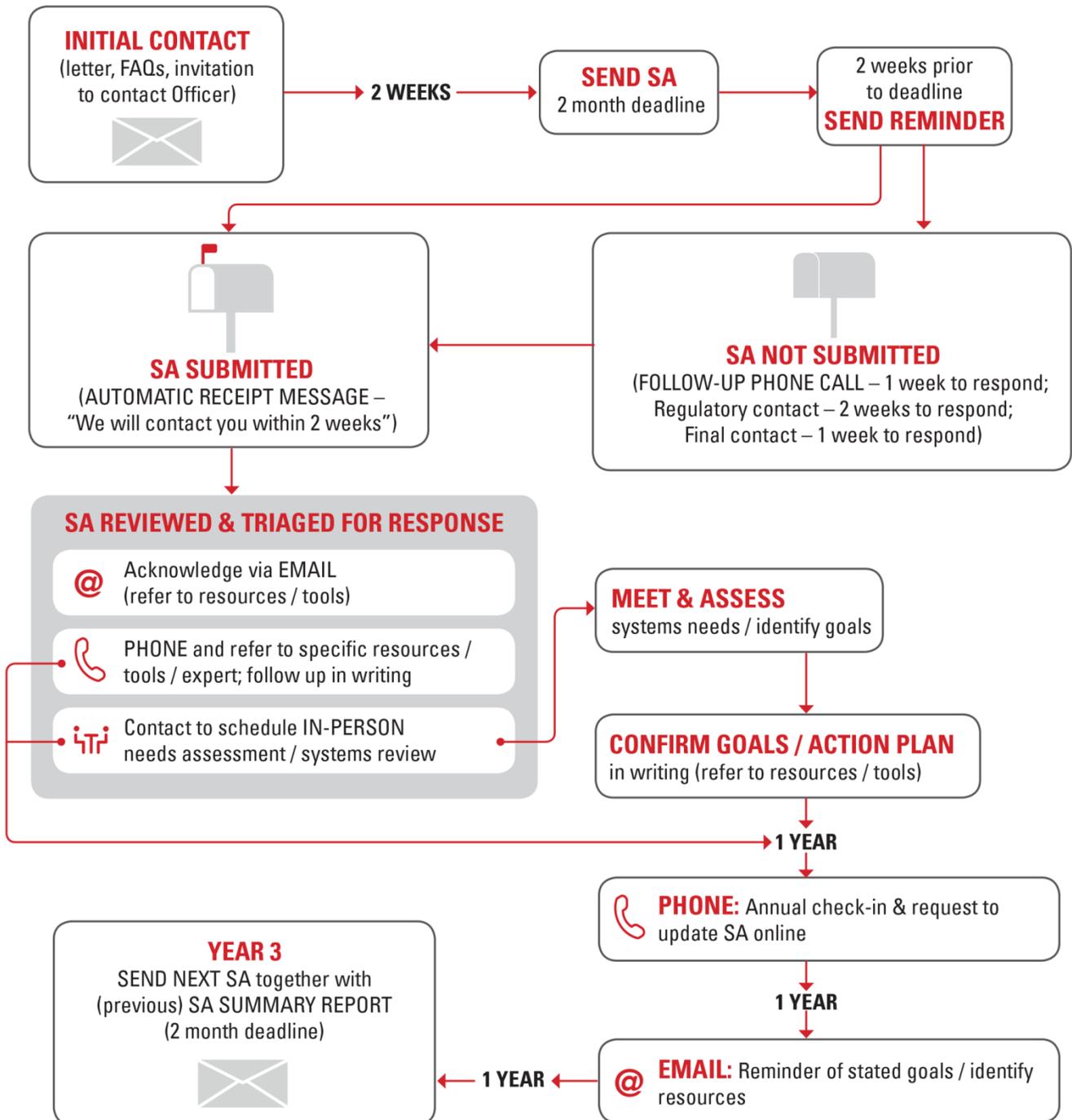
Balancing the advantages of regular practice infrastructure (re)assessment, with the demands on Society resources in responding adequately to the information learned through the self-assessment process, a triennial self-assessment model is proposed. This would mean that approximately 150 firms would self assess per year – and would require some form of support-based ‘response’ from the Society. The proposed model envisions Society staff ‘triaging’ the completed self-assessments for appropriate response, depending on the identified goal / needs and other factors.

The chart on the following page represents the proposed process / workflow of a triennial self-assessment program.



NOVA SCOTIA BARRISTERS' SOCIETY

## SELF ASSESSMENT (SA) PROCESS



Additional process components include:

- maintenance and regular review of LSS schedule and activity log (e.g., sending / receiving SAs; followup actions and communications);
- maintenance of LSS Inbox (fielding requests for support, SA questions, etc.); includes daily review of inbox and triage to appropriate staff person(s) for response;
- ongoing response to phone call queries from firms;
- biweekly meetings to review SAs and triage for appropriate response;
- biweekly meetings to review the schedule / deadlines (led by Admin with Officers); and
- monthly meetings to review program status, brainstorm solutions, identify resource needs, etc.

## FINANCIAL RESOURCES

The financial implications are not significant for undertaking this work and changing our focus to legal services support, as a core aspect of how we meet the Society's Regulatory Objectives. This work can be done with currently available resources. The budgetary impact will arise from the fact that in the current budget, this work is supported by a contribution from the Lawyers' Fund for Client Compensation, whereas on full implementation it will have to be funded by the general fee revenue. However, the costs themselves will not increase.

## REGULATORY AND POLICY FRAMEWORK

As anticipated, feedback from the Pilot Project indicates that a 'voluntary' self-assessment process will not result in sufficient engagement and response to measurably advance the Society's Regulatory Objectives. The proposed amendments to the *Legal Profession Act* address this by authorizing Council to make regulations: prescribing a requirement for law firms to complete a self-assessment in a form set by the Executive Director; and, requiring law firms to adopt and maintain a management system for ethical legal practice and prescribing the components of that system.

At policy level, our use of the information from the self-assessment tool requires considerable thought and further discussion. Robust policies about use of risk-identifying information across the organization will need to be developed and made public. A threshold must be identified for when information provided by a firm in a LSS context (e.g., through the assessment tool) could be used in a disciplinary context. On one hand, we seek to avoid this information being used by the Society as the basis for a complaint against a firm (as the first response should always be, through an LSS lens, to work with a firm to effect systems improvements). But could it ever be used as evidence in the context of a complaint investigation? We can envision scenarios where it might act as a mitigating factor. That a firm is known to be taking active steps to address deficiencies in the very systems that form the foundation for a complaint might be highly relevant in determining the appropriate outcome. We can also envision a situation where an SAT is simply a misrepresentation of the situation at the firm, i.e., the firm has not been honest with us, in which case there should be no doubt that fact can be used in addressing matters with the firm or the lawyer who submitted the SAT.

The threshold must be determined, and policy developed, to define a process for appropriately addressing serious practice deficiencies that are identified initially through a Legal Services Support interaction or process.

Another matter that will need to be clarified is that s.77A of the *Legal Profession Act* should apply to information provided to the Society through the SAT, so that it is not available in any civil matters in which the lawyer/law firm is involved.

A policy should be developed to articulate the role and responsibilities of a firm's 'designated lawyer' (per regulation 7.2.1) in the new regulatory framework. We recommend this same lawyer fulfills the function of 'responsible lawyer' in the context of ensuring the completion and filing of the firm's self-assessment. This should not mean that the lawyer must complete the self-assessment tool (or even take part in the self-assessment process) – but that they have oversight and ultimate regulatory responsibility to ensure the tool is completed

candidly and honestly (versus ‘accurately’, reflecting that aspirational and subjective nature of the self-assessment process). The consequences for failure to fulfill this obligation need to be further considered and reflected in the regulatory framework at the same time that the role of the designated lawyer in a firm is being fine-tuned.

The information we will learn about firms through Legal Services Support will not exist in isolation. We must navigate how our Legal Services Support and Professional Responsibility processes may evolve to work collaboratively where there is a common interest. These as of yet undetermined thresholds will be pivotal in creating a foundation of openness and trust on which the success of Legal Services Support relies.

At this stage, we anticipate a number of regulatory amendments will be needed to give effect to the proposed LSS self-assessment model, including:

- mandating the Executive Director to undertake a self-assessment for all law firms on a triennial basis;
- mandating Council to approve a policy framework for all aspects of implementation, including selecting the firms identified for self-assessment;
- addressing what the regulatory response will be if a firm refuses to undertake a self-assessment;
- creating authority for the Society to conduct a system review / needs assessment of a firm if the information available to the Society shows that to be an appropriate response;
- creating the ability to require a firm to undertake a self-assessment out of the triennial sequence; and
- clarifying the responsibilities of the ‘designated member’ in a law firm.

Additional regulatory and policy considerations are likely to emerge as we work through the implementation plan (p. 16). This discussion will return to Council for its more detailed consideration.

## **RESOURCE COLLATION AND DEVELOPMENT**

Pilot findings confirm we are ‘on the right track’ in developing an online, centralized resource hub that directs firms to the ‘best’ of existing resources and tools from a wide range of sources. In addition, the Workbook was identified as a key tool for identifying and accessing the best resources available to firms in making specific infrastructure improvements.

Where no appropriate resource can be identified to ‘link’ to a particular Workbook consideration / indicator, we will undertake to create one. This will mean working with our resource partners (LIANS, CBA, other law societies, etc.) to identify who is best placed to develop the necessary tool or product.

While the Workbook will be developed to present the most relevant and highest quality resources, the Portal offers unlimited scope as a resource bank. Guidelines will be developed to inform the scope and scale of the Resource Portal, and identify appropriate sources for tools and resources. As mentioned, the Pilot also presented us with the possibility of housing resources developed by law firms in the LSS Resource Portal, and consideration must be given to the implications of doing so.

A process for resource identification and inclusion will be developed, whereby one or more staff or volunteer lawyers will be required to vet all proposed new resources, to ensure their relevance to Nova Scotia lawyers and their quality. Further, an annual process for reviewing the Workbook and the Resource Portal will be developed, whereby a team of Society staff and volunteers will ‘quality check’ all published resources and identify any that are outdated or no longer appropriate.

## **COMMUNICATION AND EDUCATION**

Pilot Project findings attest to the fact that the success of the LSS self-assessment process will correlate to the Society’s efforts in communicating with and educating lawyers about its purpose and context. At an early stage, a detailed communication plan will be developed to address our activities both pre- and post-implementation. A

range of components will be addressed, including both internal communications and engagement (i.e., building staff knowledge and skills re: LSS) and external (web content, electronic communications, *Society Record*, etc.).

The value of ‘in-person’ communications in the context of this work is strongly endorsed by the Pilot – both in terms of ensuring better outcomes with the self-assessment tool and process, and in engaging the profession in meaningful dialogue. Presentations and educational sessions relating to the self-assessment process will be priority activities both pre- and post- implementation.

It falls to us to deliver sufficient education relating to the self-assessment tools and process. Outside of this, however, there is the question of education relating to the MSELP elements’ ‘content’ (e.g., client communications; file management; equity and diversity; etc.) and whether it is the Society’s role to ensure adequate educational opportunities are available for lawyers in Nova Scotia. If so, the question of our role in offering continuing professional education should be revisited.

## **NATIONAL COLLABORATION**

In the Prairie provinces and British Columbia, pilot projects and focus group consultations are well underway to test comparative self-assessment models. We maintain open and frequent dialogue with our colleagues on all aspects of our respective programs. There is an expressed interest in working collaboratively on various aspects of this work – in particular, to develop complementary self-assessment elements and tools; to use homogenous language; and to share quality practice tools and resources.

This collaborative approach seeks to minimize the regulatory burden on lawyers practising in multiple jurisdictions. In future, it might lead to opportunities to ‘share’ the cost burden around developing new practice tools and resources, for example.

## **EVALUATION**

As noted from the outset of the Pilot Project, evaluation of the program’s ‘actual’ impacts can only follow after a full self-assessment cycle is complete. We will work with evaluation experts to develop a plan for full project evaluation at that time.

In the meantime, we are able to track the activity of the firms that participated in the Pilot Project and report on their progress. They will be contacted at various points during their first three-year ‘cycle’ for this purpose, prior to undertaking their first ‘independent’ self-assessment in 2020.

This is another area where we expect there to be pan-Canadian collaboration as we recognize that developing this new approach to professional regulation will require that we use every possible opportunity to learn from others. That hopefully will involve an evaluation regime that takes all of the ongoing work into account, so we have common benchmarks against which to evaluate our work and propose changes and enhancements as we go along.

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

The model and timeline proposed in this report is specific to lawyers and firms in private practice. Throughout the duration of the Pilot Project, the In-House and Government Working Group continued its efforts to identify, in the context of a practice infrastructure reflection, the unique (and, uniform) practice obligations and circumstances are of lawyers employed in government and in-house contexts.

The Working Group is currently developing tools that reflect considerations arising from those obligations and circumstances. It is starting an external consultation process to capture the views and responses on how, through the Legal Services Support framework, the Society can best support in-house and government lawyers in building and maintaining robust practice infrastructures with a view to delivering consistently high quality legal services.

# Implementation Plan

---

The following deadlines will inform implementation of the proposed LSS self-assessment process:

- Development of LSS communications plan (June 2017)
- Development of LSS Resource Portal plan (addressing portal development and maintenance) (July 2017)
- Development of LSS education plan (addressing education to be provided to Nova Scotia lawyers re: the self-assessment process and / or MSELP content) (September 2017)
- Regulatory amendments and policies – for Council approval (September 2017)
- Development of LSS resourcing (HR) model (October 2017)
- Implementation of LSS technology / infrastructure (October 2017)
- Approval of proposed *Legal Profession Act* amendments (anticipated – November 2017)
- Formal launch of LSS Self-assessment Process (January 2018)
- Incorporation of ongoing financial requirements (Jan – March 2018)