

March 7, 2016

VIA Email: mdrent@lsuc.on.ca

Law Society of Upper Canada
130 Queen Street West
Toronto, ON M5H 2N6

To Whom It May Concern:

RE: Call for Input on Compliance-Based Entity Regulation
Submission Deadline: March 31, 2016

On behalf of the Thunder Bay Law Association ("TBLA"), the following commentary is in response to the Call for Input on the Consultation Paper "Promoting Better Legal Practices" circulated in January, 2016 ("Consultation Paper").

Likely most will agree that the idea of establishing a proactive approach to regulation (rather than the reactive system we currently have) is enlightened and worthy of further pursuit. A regulatory system that will help lawyers and paralegals improve their practice standards and client service while staving off complaints to the Law Society is, undoubtedly, a good thing.

At the outset, the Consultation Paper suggests that there are two options for regulatory reform which **do not need to be implemented together**:

- Compliance-Based Regulation: identifies practice management principles and establishes goals, expectations and tools to assist lawyers and paralegals in demonstrating compliance with these principles in practice; and
- Entity Regulation: regulates the business entity (i.e. firm) through which lawyers and/or paralegals provide services.

While the TBLA would support a compliance-based regulatory approach for individual lawyers and paralegals, there is no basis for implementing entity regulation. How a compliance-based regulatory approach would be "more effective" if the business entity were also involved is not identified or explained whatsoever in the Consultation Paper. All of the points made in support of a compliance-based regulatory system¹ are acknowledged and agreed upon but can simply be implemented at the individual level. If each lawyer and paralegal is required to comply with a revised regulatory system, by extension, the business entity that they collectively own and operate would have to follow suit.

¹Call for Input Consultation Paper: Promoting Better Legal Practices, Compliance-Based Entity Regulation Task Force, January 2016, page 7 (bullets 1-5)

As it is now, a managing partner is identified as the individual to address issues or concerns on behalf of the entity as a whole. It would seem that compliance-based regulation at the individual level takes care of the overall goal (being proactive rather than reactive) without the added headache of regulating the firm as well. Quite frankly, it is unclear how the compliance-based regulatory system being contemplated actually differs from the current individual reporting requirements if you take this notion of "entity regulation" out of the equation.

In all the information offered about other jurisdictions that have entity regulation (or are considering it), there is no evidence as to how entity regulation improved practice management or client services within those areas. Furthermore, as it stands now, the Law Society's 2014 data on complaints does not support a need for entity regulation.² Quite the opposite: the larger the firm, the less likely individuals working within that firm are to have a complaint.

There is one, rather vague, rationale for entity regulation set out in the Consultation Paper that is of particular concern to the TBLA:

6. Compliance-based entity regulation allows the regulator to respond to new issues as they arise without having to create new rules.

Our concern here is that one "new issue" may be Alternative Business Structures (ABS). The Consultation Paper's reference to "business entity" (instead of simply saying "firm") appears to point to the ABS issue.

The recent Bencher Election demonstrated a strong, province-wide stance against ABS. The TBLA was and is strongly opposed to ABS. As outlined in our previous submission to the Law Society regarding ABS, there is no compelling evidence in support of ABS. In fact, since the Bencher Election, the ABS systems in both England and Australia have come under heavy fire from financial regulators, shareholders³ and even the judiciary⁴ while office closures loom⁵.

Entity regulation should not become a back-door for ABS.

²*Ibid*, page 6.

³ There are many recent articles regarding ABS firms' problems with shareholders and financial regulators. Here are but a few: "Slater & Gordon falls on open as more investors lose faith", The Sydney Morning Herald, June 30, 2015, "Serious Fraud Office launches investigation into Quindell", The Telegraph, August 5, 2015, "Listed law firm capital needs to create value", Australian Financial Review, February 1, 2016.

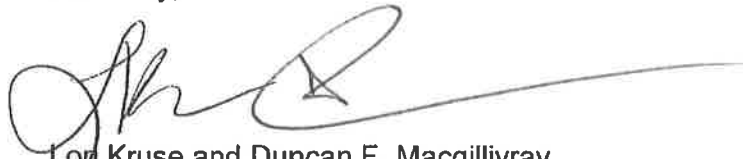
⁴ "Judge highlights pitfalls that await listed lawyers", Australian Financial Review, February 3, 2016

⁵ "Slater and Gordon are looking at closing two of its UK offices after shares plunge" news.com.au, January 28, 2016

As a final note, the TBLA would be concerned with a proposed compliance-based regulation (on an individual level), if the requirements were particularly onerous and unrealistic for sole practitioners or small firms to comply. The devil is in the details but, presumably, that is a separate issue that will be addressed in due course.

We trust that these comments are of assistance in deciding this very serious issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lori Kruse and Duncan F. Macgillivray', with a long horizontal flourish extending to the right.

Lori Kruse and Duncan F. Macgillivray
Directors, Thunder Bay Law Association