Entity Regulation

Frequently Asked Questions

What is Entity Regulation?

"Entity regulation," "entity-based regulation," and "law firm regulation" are terms used to describe programs that regulate law firms as well as the lawyers and perhaps the non-lawyers who work at a law firm.

Are there various forms of Entity Regulation?

No. You either regulate entities or you don't. If you only regulate part of an entity then it is not entity regulation. However, entity regulation can be applied to a sub-set of entities. For example, in every State and Territory in Australia, entity regulation historically only applied to incorporated legal practices. Today in some jurisdictions (in New South Wales and Victoria, which are the two most populous jurisdictions in Australia) entity regulation applies to all legal practices.

Are there variations in the manner in which jurisdictions use Entity Regulation?

There are, however, various ways in which entities may be regulated. Some jurisdictions that regulate law-practice entities may choose to use "proactive management based regulation" (defined below), as Australia has done; others may use frameworks that are neither particularly proactive nor focused on management. Some may require firms to evidence their compliance with entity regulation (discussed below); others may not. Others, such as New York and New Jersey, are simply authorized to discipline law firms as well as individual lawyers.

What is "proactive management based regulation" or "proactive management based programs?

The term "proactive management based regulation" (PMBR), coined by Professor Ted Schneyer, refers to programs designed to promote ethical law practice by assisting lawyers with proactive management. Colorado uses the acronym "PMBP" to refer to "proactive management based programs," to clarify its development of a voluntary, incentives based program. Regardless of whether they are called PMBR – PMBP, these programs generally have three features. First, they emphasize proactive initiatives as a complement to traditional, professional discipline. Second, they tend to focus on the responsibility of law firm management to implement policies, programs, and systems – in short, an "ethical infrastructure" -- that is designed to prevent misconduct and unsatisfactory service. Third, they strive to improve legal services and reduce problems by establishing information-sharing and collaborative relationships between regulators and service providers.

According to Professor Schneyer, the framework pioneered in NSW, Australia, is a prototype for PMBR because it gives content to the term "ethical infrastructure." It does so by "identifying ten types of recurring problems that infrastructure should be designed to prevent and mitigate."[1]

PMBR departs from the traditional regulatory approach, which is chiefly reactive, and in which conduct rules and standards are prescribed and lawyers are subject to discipline if their conduct fails to meet those prescribed norms. PMBR, in contrast, emphasizes proactive efforts, such as continuing legal education, bridge-the-gap tutorials for new lawyers, and self-assessments. PMBR emphasizes a greater dialogue between the regulator and the regulated, including the identification of risks, and programs to reduce such risks. (It is also consistent with the approach taken by malpractice carriers who have found it cost effective to focus on preventative efforts, rather than simply paying for mistakes after they happen.)

A law firm's ethical infrastructure can include a variety of measures. As Dr. Christine Parker explains, ethical infrastructure:

> might include the appointment of an ethics partner and/or ethics committee; written policies on ethical conduct in general and conduct in specific areas such as conflicts of interest, billing, trust accounting, opinion letters, litigation tactics and so on; specified procedures for ensuring [that] ethical policies are not breached; [as well as] encourag[ing] the raising of ethical problems with colleagues and management; . . . monitoring . . . lawyer compliance with policies and procedures; and [providing] ethics education, training and discussion within the firm.

Many law firms *have some* elements of the ethical infrastructure Parker describes. For example, research indicates that most U.S. law firms have formal procedures for identifying conflicts of interest and periodically monitoring for compliance with those procedures.

In England and Wales, the Solicitors Regulation Authority (SRA) is also focused on building dialogue with those it regulates. It provides information to entities through the Risk Outlook, which is updated with specific topic papers throughout the year. The focus is on ensuring firms understand their obligations and can manage the risks that matter. Also by providing tailored support for innovative firms, small firms and individuals through help lines and web-based chat-bots, the SRA is able to deal with queries about its framework and rules. The SRA is currently (November 2016) going through a significant period of regulatory reform, with proposals for new, shorter codes of conduct for both individuals and entities. Please see its website for more information.

Rather than reacting only after a complaint is filed, regulators in a PMBR regime would likely encourage and help firm leaders to detect and avoid problems in advance by focusing on management systems and processes designed to ensure ethical conduct. Importantly, however, PMBR encourages firms to develop *their own* processes and management systems and engage in internal planning to achieve regulatory goals.

[1] Ted Schneyer, On Further Reflection: How "Professional Self-Regulation" Should Promote Compliance with Broad Ethical Duties of Law Firm Management, 53 Ariz. L. Rev. 577, 585 (2011).

The regulatory goals of PMBR are typically drafted at a broad level of generality so they can be applied flexibly, in a manner appropriate to each firm's size and practice. Goals are stated in qualitative rather than quantitative terms.

Which jurisdictions presently use some form of Entity Regulation?

Australia, Canada, England, Wales, and Singapore presently use some form of entity regulation. For example, British Columbia, Saskatchewan and Nova Scotia are now authorized to regulate law firms as well as individual lawyers. Other provinces are aware of these developments.[2]

. In 2012, the Canadian Bar Association (CBA) began a project to develop a tool that encourages law firms to implement more effective ethical infrastructure." After considerable research and evaluation of existing regulatory programs, the CBA developed "The Ethical Practices Self-evaluation Tool."[3] The Tool is not mandatory and is therefore unenforceable, but it is suggested for adoption as best practice.

Although PMBR is currently optional in Canada, it might soon become mandatory in at least one province[4]. In October 2013, Nova Scotia's regulatory body approved an initiative to develop within 2.5 years, the requirement that all legal entities have a 'management system for ethical legal practice' (MSELP), a proactive, risk-focused, and principles-based regulatory regime. Nova Scotia is now in the midst of implementing that regime. Its work has lead it to propose that entity regulation should occur within a broader framework of legal services regulation[5].

In November 2015, the Nova Scotia Barristers' Society distributed for comment a draft self-assessment tool to advance the MSELP requirement. It would, in various forms, be used by all legal entities to review and improve their management systems.[6] Consultations have been

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[2] See Nova Scotia Legal Profession Act SNS 2004, c 28, s 45(5). (authorizes findings of professional misconduct against law firms); The Legal Profession Act of British Columbia was amended in many sections to reference law firms in addition to lawyers pursuant to the Legal Profession Act, 2012 SBC 2012, c.16. [See also Allan Fineblit, QC, "Regulating Firms" Communique (August 2012) at 3, online: The Law Society of Manitoba <http://www.lawsociety.mb.ca/publications/communique 2012/LSM%20-%20August%202012.pdf/view>, stating "You likely have never given it much thought, but those of us who do regulation for a living sometimes wonder why we regulate lawyers and not law firms."; Adam M Dodek, "Regulating Law Firms in Canada" (2012) 90:2 Canadian Bar Rev 383. PMBR developments in Canada were discussed at length in Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 Lewis & Clark L. Rev. 717 (2016). For a short blog post addressing the same topic, see Laurel S. Terry, *When it Comes to Lawyers… Is an Ounce of Prevention Worth a Pound of Cure?*, JOTWELL (July 13, 2016) available at http://tinyurl.com/Terry-proactive.

[3] The Canadian Bar Association, The Ethical Practices Self-evaluation Tool, http://www.cba.org/CBA/activities/code/ethical.aspx

[4] Nova Scotia's model of proactive regulation extends to both its oversight of legal entities (their management practices) and how it carries out all regulatory activities in accordance with the approved Regulatory Objectives. See http://nsbs.org/nsbs-regulatory-objectives

[5] See http://nsbs.org/legal-services-regulation-policy-framework.

[6] See Nova Scotia Barristers' Society, A Management System for Ethical Legal Practice (Nov. 10, 2015), http://nsbs.org/draft-self-assessment-process-legal-entities (includes links to the draft self-assessment tools) f; see generally NSBS, Legal Services Regulation Page, http://nsbs.org/legal-services-(main portal for the Nova Scotia reforms); Nova Scotia Barristers' Society, Framework for legal services regulation Webpage,

completed. Recommendations were adopted by the Society's Council in the spring of 2016, to undertake a six-month pilot project to test both the self-assessment process and the elements in the Management System for Ethical Legal Practice. That project is underway.[7] The Society has now requested amendments to its legislation that will incorporate these changes and confirm the regulator's authority.

In England and Wales, the *Legal Services Act of 2007* requires all "alternative business structures" (ABSs) to be regulated as entities. (ABSs are law-practice entities that may be owned in whole or in part by non-lawyers). In 2011, in response to calls for a level playing field, the SRA extended entity regulation to encompass traditional law firms as well. Under these rules, all solicitors holding practice certificates and offering services to the public must work in regulated entities (i.e., either traditional law firms, referred to as "recognized bodies"[8], or ABSs, referred to as "licensed bodies"). Practice entities are subject to initial approval, which includes approval of all of the owner/managers and the appointment of compliance officers for both legal practice and finance and administration. Entity approval is one-off but entities are required to report on rule breaches; maintain appropriate systems; provide indemnity insurance cover appropriate for the work they do; and, act as a mechanism of communication with individual solicitors. Entities can be subject to fines and other disciplinary measures, interventions and winding up orders. Individual solicitors remain subject to the traditional requirements of initial approval, ongoing regulation and disciplinary sanctions.[9]

Entity regulation was also introduced in England and Wales for barristers from March 2015.[10] Previously the Bar Standards Board (BSB) only regulated individual barristers, whether self-employed or in-house. As at 30 June 2015, around 20 BSB regulated entities had been approved. At this stage entity regulation for barristers in England & Wales is optional.[11] For the moment the BSB will limit itself to regulating entities owned and managed by barristers and other legal professionals. It will also focus primarily on entities specializing in advocacy, litigation, and specialist legal advice.

In Singapore, the Legal Profession Act was amended in 2014[12] to modernize and streamline the regulatory framework for the legal profession in Singapore. The reforms were undertaken largely in response to recommendations by a high-level committee of stakeholders in the legal industry in Singapore, including both local and foreign legal practitioners based in Singapore.[13] The reforms

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http://nsbs.org/framework-legal-services-regulation (main portal for changes designed to accomplish Triple P regulation); and ..

[7] http://nsbs.org/news/2016/04/transforming-regulation-will-you-volunteer-pilot-project.

[8] Forms of recognized body include 'recognised sole practitioners'.

[9] See Solicitors Regulation Authority, Firm Based Authorization http://www.sra.org.uk/solicitors/firm-based-authorisation.page.

[10] See Bar Standards Board, For prospective entities, https://www.barstandardsboard.org.uk/regulatory-requirements/for-prospective-entities/.

[11] Ibid.

[12] The Legal Profession Act and its accompanying subsidiary legislation can be accessed at: https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/relevant-legislation-and-notices.html.

[13] The Committee to Review the Regulatory Framework of the Singapore Legal Services issued its Final Report in January 2014. The Final Report can be accessed at: https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Final%20Report%20of%20the%20Committee%20to%20Review%20the%20Reg%20Framework%20of%20the%20Spore%20Legal%20Sector.pdf.

have resulted in an integrated licensing framework for all law practices in Singapore that draws together previously disparate functions (including the registration of foreign lawyers in Singapore) performed by separate bodies.

How do these jurisdictions use Entity Regulation?

(a) Who oversees entity regulation?

In the Australian states of New South Wales and Victoria, entities are co-regulated by the professional association (e.g., The Law Society of New South Wales) and the legal services regulator (e.g., The Office of the Legal Services Commissioner (OLSC)). The Law Society is responsible for "registering law firms as entities" and the OLSC is responsible for regulating their conduct. The legal services regulator was created by the legislature. The Legal Services Commissioner reports to the State Attorney General.

Unlike the U.S., England and Wales have long had several legal professions. This complicates the allocation of authority to regulate law-practice entities. The oversight regulator for legal services in England and Wales, which is the Legal Services Board (LSB), approves regulatory regimes for alternative business structures proposed by the 'front line regulators' for different legal professions. The LSB has now authorized a number of regulators to regulate licensed bodies (ABS) operating in various legal areas, including the SRA and the Council for Licensed Conveyancers. It is important to note that there is an explicit difference between the entity authorization granted to a law firm by the SRA – which covers any area in which a solicitor may practice, and the authorization of an alternative business structure which is based on identified areas of practice set down in the license application and dictated by the practice rights of the lawyer mangers who manage the ABS regulated by the SRA with only Barrister managers may only conduct the reserved legal activities[14] that Barristers are entitled to carry out and any other non-reserved legal activities. Although there is therefore a choice of regulatory regime open to different types of entities operating in the legal sector, this choice will be dictated by their area of practice. A traditional law firm, wanting to practice all areas of law will remain under the regulatory oversight of the SRA.

The Bar Standards Board (BSB) regulates entities owned and managed by barristers and other lawyers. For the time being, the BSB will not be licensing bodies that have non-lawyer owners or managers (ABSs). But the BSB hopes to regulate ABSs in the future, after filing a separate application to the LSB.

The Singapore Legal Profession Act creates the statutory office of the Director of Legal Services. The Director of Legal Services is supported by a new department in the Ministry of Law, known as the Legal Services Regulatory Authority (LSRA)[15]. Through the LSRA, the Director of Legal

[14] The reserved legal activities are set out in Section 12 of the Legal Services Act 2007 http://www.legislation.gov.uk/ukpga/2007/29/section/12. Not all lawyers can conduct all reserved legal activities, but solicitors can conduct the all apart from notarial activities under SRA regulation whether in a law firm of ABS.
[15] The Legal Services Regulatory Authority's (LSRA) website can be accessed at: http://www.minlaw.gov.sg/content/minlaw/en/our-work/legal-services-regulatory-authority.html.

Services oversees and regulates local and foreign law practice entities that operate in Singapore, including the licensing of law businesses and the regulation of business criteria.

(b) What specifically is regulated?

In Australia the conduct of law-practice entities has been regulated for over a decade. Entities are required, inter alia, to implement and maintain "appropriate management systems" to meet ten management objectives.[16] The ten management objectives concern:

1. Negligence (providing for competent work practices).

2. Communication (providing for effective, timely and courteous communication).

3. Delay (providing for timely review, delivery, and follow up of legal services).

4. Liens/file transfers (providing for timely resolution of document/file transfers).

5. Cost disclosure/billing practices/termination of retainer (ensuring a shared understanding of retainer terms, appropriate documentation of the commencement and termination of retainers, and appropriate billing practices).

6. Conflict of interests (providing for timely identification and resolution of conflicts, including when acting for multiple parties in a matter or proceeding against previous clients; anticipating potential conflicts arising from relationships with third parties).

7. Records management (maintaining appropriate filing, archiving and document-retention policies to minimize the risk of loss or destruction of correspondence and documents; ensuring that legal requirements for protecting client files, property, and financial interests are met).

8. Undertakings (monitoring for timely compliance with notices, orders, rulings, directions, or other requirements of regulatory authorities such as the OLSC, courts, and cost assessors).

9. Supervision of practice and staff (providing for compliance with statutory conditions concerning licensing, practice certification, employment of persons; providing proper quality standards for work outputs and the job performance of legal, paralegal, and non-legal staff involved in the delivery of legal services).

10. Trust account requirements (providing for compliance with statutory trust account procedures and using proper accounting principles).[17]

The OLSC requires compliance with these objectives.

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[16] Office of the Legal Services Commissioner, Incorporated Legal Practices, http://www.olsc.nsw.gov.au/olsc/lsc_incorp.html,c=y

[17] Summary of the ten objectives. Office of the Legal Services Commissioner, Appropriate Management Systems to Achieve Compliance, http://www.olsc.nsw.gov.au/olsc/lsc_incorp/olsc_appropriate_management_systems.html. For charts that compare the items that are the focus of PMBR in various jurisdictions, *see* Terry, Adopting *a Proactive Regulation System*, supra note 2.

In England and Wales, law firms are required to comply with a range of duties set out in the SRA's Handbook. The Handbook identifies duties that apply to firms as well as solicitors and other individuals regulated by the SRA. It establishes a comprehensive ethical framework for law practice, including rules governing authorization, practice, management of accounts, indemnity insurance, training, etc. It also contains SRA Principles and the SRA Code of Conduct.[18] Although the Code applies to all authorized individuals and entities, some chapters are more clearly relevant to entities. Chapters 7-9, for example, govern issues relating to management of the legal business, publicity, and referrals. Each chapter of the Code identifies "outcomes" that are mandatory, as well as "indicative behaviors," which are intended as guidance on how outcomes might be achieved, but are not mandatory.

Among the key required 'outcomes' for entities are the following:

> **O(7.1):** you have a clear and effective governance structure and reporting lines;
> **O(7.2)** you have effective systems and controls in place to achieve and comply with all the ***Principles***, rules and outcomes and other requirements of the Handbook, where applicable;
> **O(7.3)** you identify, monitor and manage risks to compliance with all the ***Principles***, rules, outcomes, and other Handbook requirements (if applicable to you) and you take steps to address issues identified;
> **O(7.4)** you maintain systems and controls for monitoring the financial stability of your ***firm*** and risks to money and ***assets*** entrusted to you by ***clients*** and others, and you take steps to address issues identified;
> **O(7.5)** you comply with legislation applicable to your business, including anti-money-laundering and data protection legislation;
> **O(7.6)** you train individuals working in the ***firm*** to maintain a level of competence appropriate to their work and level of responsibility;
> **O(7.7)** you comply with the statutory requirements for the direction and supervision of ***reserved legal activities*** and ***immigration work***;
> **O(7.8)** you have a system for supervising ***clients'*** matters, to include regular checking the quality of work by suitably competent and experienced people;
> **O(7.9)** you do not outsource ***reserved legal activities*** to a ***person*** who is not authorised to conduct such activities.[19]

Entities are expected to have a risk management system in place but the rules do not prescribe what this should be. They are also required to report material breaches of any mandatory outcomes.

In Nova Scotia, the framework for entity regulation will require all law firms to implement and maintain an ethical infrastructure called a "Management System for Ethical Legal Practice". That infrastructure includes the following "elements":

1. Developing competent practices;
2. Communicating in an effective, timely and civil manner;
3. Ensuring confidentiality;

[18] Solicitors Regulation Authority, SRA Handbook Welcome, http://www.sra.org.uk/solicitors/handbook/welcome.page
[19] Summary of the outcomes. Solicitors Regulation Authority, SRA Code of Conduct 2011, http://www.sra.org.uk/solicitors/handbook/code/content.page

4. Avoiding conflicts of interest;
5. Maintaining appropriate file and records management systems;
6. Ensuring effective management of the legal entity and staff;
7. Charging appropriate fees and disbursements;
8. Sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community;
9. Working to improve diversity, inclusion and substantive equality; and
10. Working to improve the administration of justice and access to legal services.[20]

Like the NSW and England & Wales' entity regulation models, Nova Scotia's model envisages firms and entities appointing a designated lawyer to be responsible for reporting on with the elements their management systems.

In respect of entity regulation in Singapore, the Director of Legal Services through the LSRA:

1. Licenses law practices in Singapore (including Singapore law practices, foreign law practices, Qualifying Foreign Law Practices, Joint Law Ventures and Formal Alliances[21]); and

2. Regulates the business criteria applicable to law practices. This includes approvals for the naming of law practices, foreign ownership of Singapore law practices, non-lawyer ownership of law practices and other criteria applicable to business collaborations between local and foreign law practices in Singapore.

Under LSRA's integrated licensing regime, law practices in Singapore submit applications to the LSRA through a newly developed IT portal, the LSRA e-Services portal[22].

Who is responsible for implementing entity regulation?

In New South Wales (and Victoria) the responsibility for establishing and implementing "appropriate management systems" rests with a person nominated by each firm to serve as a "principal". Each principal of a law practice is responsible for ensuring that reasonable steps are taken to ensure that (a) all legal practitioner associates of the law practice comply with their obligations under the legislation and rules and their other professional obligations; and that the legal services provided by the law practice are provided in accordance with the legislation A failure to uphold that responsibility can constitute unsatisfactory professional misconduct.[23]

In England & Wales, the *Legal Services Act of 2007* requires that a Head of Legal Practice (HOLP) and Head of Finance and Administration (HOFA) be appointed in each ABS. The SRA decided that all practices, including those that are not ABSs, must appoint someone to these positions. The

[20] http://nsbs.org/management-systems-ethical-legal-practice-mselp
[21] Further information on each type of license or registration can be found at the Ministry of Law's website: https://www.mlaw.gov.sg/content/minlaw/en/legal-industry/licensing-or-registration-of-law-practice-entities0/types-of-license-or-registration.html.
[22] The LSRA e-Services portal can be accessed at: https://www.mlaw.gov.sg/eservices/lsra/lsra-home/.
[23] *Section 34 Legal Profession Uniform Law 2015 (NSW).*

SRA calls these appointees Compliance Officers for Legal Practice (COLP) and Compliance Officers for Finance and Administration (COFA), respectively. The SRA's Authorization Rules for Legal Services Bodies and Licensable Bodies identifies the eligibility requirements for these roles.[24] A designated COLP or COFA must be an individual and a firm manager (e.g., a partner) or employee and must consent to their designation; they must have sufficient seniority and responsibility to fulfil their role; and must not be disqualified from being a Head of Legal Practice or Head of Finance and Administration.

COLPs are responsible for identifying and limiting ethical risks and fostering compliance at their firm. More specifically, a COLP is responsible for ensuring that the firm complies with duties set out in the SRA's Handbook, for recording any failure(s) to comply, and for informing the SRA of such noncompliance. A COLP must also report material failures to the SRA as soon as reasonably practical.[25]

COFAs are responsible for their firm's overall financial management. They must take steps to ensure that the firm, including its employees and managers, complies with duties imposed under the SRA Accounts Rules. They must keep a record of any failure to comply and make the record available to the SRA.[26] Like COLPs they must report material failures to the SRA as soon as reasonably practical.

COLPs and COFAs must be "fit and proper" to undertake their role/s.[27] Fitness is assessed by criteria identified in the SRA Suitability Test (2011) and in light of any relevant information. The assessment is made upon initial SRA approval. If a COLP or COFA is assessed as unfit, the SRA may withdraw the initial approval. The COLP is not intended to have *sole* responsibility for firm compliance. The entire management, and to some extent all regulated individuals, may be held responsible for a firm's misconduct.

This regime is supplemented by a risk framework to help identify firms that would cause significant harm to the public if they were to fail to meet their professional obligations. These firms are subject to "regulatory management" which involves the designation of an SRA staff member to monitor them, provide advice, supervise, and if necessary oversee interventions and closure of law firms. The SRA also undertakes 'thematic supervision', which allows the regulator to focus on specific work areas or type of misconduct and monitor firm compliance closely. They also risk assess any information provided to them about alleged firm misconduct and investigate matters and take action in the public interest when appropriate.

The forthcoming regime for entity regulation of barristers in England & Wales will be similar to the regime for solicitors. That is, every entity regulated by the BSB must also have a Head of Legal Practice (HOLP) and Head of Finance & Administration (HOFA). In a single-person practice, of course, the same individual can fill both roles.

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[24] See Solicitors Regulation Authority, COLPs and COFAs, http://www.sra.org.uk/solicitors/colp-cofa.page

[25] See Solicitors Regulation Authority, Responsibilities of COLPs and COFAs, http://www.sra.org.uk/solicitors/colp-cofa/responsibilities-record-report.page

[26] Ibid.

[27] See Solicitors Regulation Authority, What is a COLP and a COFA, http://www.sra.org.uk/solicitors/colp-cofa/ethos-roles.page

In Singapore, the Director of Legal Services is responsible for implementing entity regulation. The Legal Services Regulatory Authority is the vehicle established for implementation.

Exclusive? Or parallel to individual license regulation?

Entity regulation supplements but does not replace the traditional model of individual lawyer regulation. Both lawyers and entities must adhere to the code of conduct and are subject to discipline.

Entity discipline in Nova Scotia and as envisioned in British Columbia, also runs parallel to lawyer discipline – both law firms and lawyers can be disciplined. In Canada, the CBA's Self-Assessment Tool, which as stated above is not mandatory or enforceable, is designed to parallel individual lawyer regulation.

The registration and regulation of Singapore lawyers on an individual basis is administered by the Supreme Court of Singapore, with the Law Society of Singapore. Foreign lawyers are registered by the Director of Legal Services, however, matters pertaining to their professional conduct and discipline fall under the same regime as Singapore lawyers.

Is there annual registration?

There is no annual registration in Australia.

In England and Wales, lawyers must renew their practicing certificates or licenses annually. Entities are only required to have initial authorization but they must nonetheless submit certain details on an annual or more frequent basis (e.g. insurance details, diversity statistics etc.). New entities established under the SRA's regulation must become either recognized bodies (traditional law firms) or licensed bodies (ABSs) through an "authorization" process. Authorization is necessary before commencing a practice and any changes in the composition of a recognized body's or ABS' management is subject to prior approval, although solicitors with an unconditional practicing certificate will be deemed approved to move management roles from one firm to another and the process is relatively instantaneous.[28]

In Singapore, all law practices offering legal services and joint ventures or alliances between a Singapore law practice and a foreign law practice must be licensed. Obtaining a license is generally a one-off application process, except for foreign law practices awarded licenses under the Qualifying Foreign Law Practices ("QFLP") scheme[29], which are issued term licenses, renewable every five years. For lawyers, the validity period of registration of a foreign lawyer could range from 12 to 36 months depending on the registration category, and such foreign lawyers are required to renew their certificates of registration with the LSRA. For Singapore lawyers

[28] The Law Society of England and Wales, Setting up a Practice: Regulatory Requirements, https://www.lawsociety.org.uk/support-services/advice/practice-notes/setting-up-a-practice-regulatory-requirements/

[29] The QFLP license allows a foreign law practice to practice in permitted areas of Singapore law, in addition to offering foreign law services.

practicing Singapore law, their practicing certificates are renewable with the Singapore Supreme Court on an annual basis.

In Nova Scotia, new law firms will have to be 'designated' as such by the Society**,** while existing firms will be recognized as such. The destination process will involve a process that requires the new firm to demonstrate its ability to comply with the Management System for Ethical legal practice as well as other mandated compliance matters, such as trust accounts rules.

Funding sources, fiscal impact?

Information about funding sources and the fiscal impact of entity regulation can be obtained by contacting individual regulators.

Which jurisdictions are in the process of establishing entity regulation (i.e. more than just considering it as a regulatory option)?

British Columbia: When the Legal Profession Act was amended in 2012, the Law Society was authorized to regulate "law firms" in addition to its authority to regulate lawyers. Once British Columbia's entity regulation regime is implemented, it will run in parallel to lawyer regulation. "Law firm" is defined as "a legal entity or combination of legal entities carrying on the practice of law." The Law Firm Regulation Task Force has been created and ordered to recommend a framework for the regulation of law firms.

The Task Force has issued a consultation paper along with a survey and FAQs and held in person consultation sessions in eleven centres in the province in order to gain input from the legal profession on the framework for regulating law firms. An interim report has been presented to the board of the Law Society of BC with 10 recommendations covering:

- the nature and scope of law firm regulation;
- the adoption of a set of "professional infrastructure elements";
- the development of several ancillary aspects of the framework, including contacts and registration processes; and
- a number of compliance and enforcement related issues, including self-assessment, compliance reviews and potential disciplinary action.

A second round of consultation will be conducted with the legal profession which is expected to include focus groups designed to elicit feedback from specific types of practice structures such as sole practitioners and space-sharing lawyers.[30]

Further information on the BC work may be found at:
https://www.lawsociety.bc.ca/page.cfm?cid=4195&t=Law-firm-regulation.

[30] A summary of the steps taken to date with the various documents issued, can be found at a link on the front page of the Law Society of BC website. https://www.lawsociety.bc.ca/page.cfm?cid=4195&t=Law-firm-regulation.

Ontario: The Law Society of Upper Canada (Ontario) has some authority to regulate firms but has not exercised this authority and does not actively regulate firms. Additional legislative authority would be required to implement entity regulation more broadly. A Task Force on Compliance-Based Entity Regulation was established in June 2015 to study and make recommendations on options for professional regulation that focus on objectives for entities, or organizations, through which lawyers and paralegals provide legal services. In January 2016, the Law Society published a Consultation Paper which sets out a series of issues and related questions about both compliance based regulation and entity regulation for consideration and comment. Respondents were asked to provide their comments by March 31, 2016. Issues discussed include the principles for a practice management system, the practice arrangements to which compliance based entity regulation may apply, the roles and responsibilities of a designated practitioner and registration of the entity. As part of the consultation process, in February 2016, the Law Society held a webcast in which 843 lawyers and paralegals participated. An archived version of the webcast may be viewed at https://www.lsuc.on.ca/better-practices/. In May 2016, Convocation (the Law Society Board of Directors) voted to recommend:

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

The Task Force is currently considering a regulatory framework, and anticipates that it will conduct additional consultations in 2017. Further information on the Ontario work may be found at: http://www.lsuc.on.ca/better-practices/.

Nova Scotia: The Nova Scotia Barristers' Society's Strategic Direction to Transform Regulation in the Public Interest continues to evolve and has now been recast as a legal services regulation initiative, with a broader scope than the original focus on entity regulation[31]. The Society's Council made a number of policy decisions to advance this direction in November 2015.[32] Regular updates are posted on the Legal Services Regulation webpage, in the free emailed newsletter, and in blog posts.[33]

Its work on entity regulation is focusing on the proactive pieces that will support this new approach. Key is the development of the various elements that will be part of the new 'Management System for Ethical Legal Practice' that will be administered through a self-assessment questionnaire that will be answered by all law firms. The Society has moved away from the language of 'legal entity' in favour of defining all legal practices as 'law firms' with the following definition:

[31] See http://nsbs.org/framework-legal-services-regulation

[32] See Nova Scotia Barristers' Society, Society news, http://nsbs.org/news (includes links to stories about adoption of the Legal Services Regulation Policy Framework and the Draft Self-Assessment tool).

[33] Nova Scotia Barristers' Society, Legal Services Regulation, http://nsbs.org/legal-services-regulation; Nova Scotia Barristers' Society, Nova Scotia Barristers' Society, Legal Services Regulation Update, http://nsbs.org/legal-services-regulation-update; Nova Scotia Barristers' Society, LSR Steering Committee BLOG: Proportionate regulation according to risk, http://nsbs.org/lsr-steering-committee-blog-proportionate-regulation-according-risk.

law firm" means

(i) a partnership,

(ii) a law corporation,

(iii) any joint arrangement of lawyers or lawyers and licensed paralegals,

(iv) any group of licensed paralegals or

(v) any legal entity carrying on the practice of law.

[34]

Alberta, Saskatchewan and Manitoba. The Prairie Law Societies (Alberta, Saskatchewan and Manitoba) have issued a collaborative report for their membership that educates the membership on the concept of entity regulation.[35] These provinces have also issued a report containing the results of a member consultation issued in September 2016. These provinces are also developing a self-assessment tool and some new rules to address their approach.
Further information on the PLS may be found at: http://www.lawsocietylistens.ca/

Which U.S. jurisdictions could at present implement entity regulation?

Two states have already laid the groundwork for entity regulation by requiring law firms to make "reasonable efforts" to ensure that their lawyers conform to the disciplinary rules.

New Jersey. New Jersey's authorization to regulate law firms is found in N.J. Ct. R. 1:20-1(a). This rule states: "Every attorney and business entity authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction of the Supreme Court as set forth in the Constitution of 1947, Article 6, Section 2, Paragraph 3." In addition to this provision, New Jersey's version of Rule of Professional Conduct 5.1 applies to law firms as well as lawyer. N.J. Rules of Prof'l Conduct r. 5.1(a) states: "Every law firm . . . and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct."). The New Jersey Supreme Court has asserted its authority to discipline law firms. For example, in In re Jacoby & Meyers, 147 *N.J.* 374 (1997), the Supreme Court reprimanded a law firm for failing to use an approved New Jersey trust account for settlements received in connection with New Jersey legal matters. In 1998, the court reprimanded another law firm for improperly soliciting clients by parking a rented recreational vehicle, covered

[34] The Society's authority to regulate law firms in found in Part III of the Act. Section 27 of the Legal Profession Act 2004 ("the Act") provides that in Part III and Part IV unless otherwise indicated, "member of the Society" includes a law firm. Pursuant to section 28 of the Act, Council has broad powers to make Regulations that include, inter alia, establishing or adopting ethical standards for members of the Society and establishing or adopting professional standards for the practice of an area of law.

[35] "Innovating Regulation, A Collaboration of the Prairie Law Societies" found at http://www.lawsociety.sk.ca/media/127107/INNOVATING REGULATION.pdf.

with law firm ads, at the site of an apartment building gas line explosion. See In re Ravich, Koster, Tobin, Gleckna, Reitman & Greenstein, 155 *N.J.* 357, 715 *A.2d* 216 (1998). See also In re Bolden & Coker, P.C., 178 *N.J.* 324 (2004), reprimanding a Pennsylvania law firm for unauthorized practice of law in New Jersey. More recently, the Supreme Court reprimanded a law firm for violating Rule 5.1(a) by not ensuring that an attorney employed by the firm, but not admitted in New Jersey, took the bar exam before practicing there. In re Sills Cummis Zuckerman Radin Tischman Epstein & Gross, 192 *N.J.* 222, 927 *A.2d* 1249 (2007).

New York. New York has also extended to law firms the duty to ensure their lawyers' compliance with the disciplinary rules. In 1996, in response to a recommendation by the Association of the Bar of the City of New York, the state courts widened their disciplinary jurisdiction to include law firms. The four Appellate Divisions of the New York Supreme Court, which regulate law practice in the state, amended their disciplinary rules to provide that "[a] law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules."[36]

Two New York law firms have been publicly disciplined since amendments to the state's disciplinary rules took effect. In 2004, a law firm was publicly censured for engaging in "conduct that adversely reflected on the fitness of the firm's lawyers to practice" as well as "conduct prejudicial to the administration of justice." The conduct in question was pressuring immigration clients and their family members who came to the firm's office to pay additional fees on the spot and yelling at those who could not or would not pay. See In re Law Firm of Wilens & Baker, 9 *AD3d* 213 (N.Y. App. Div. 2004). And in 2014, another firm was publicly censured for repeatedly pursuing collection matters without verifying the identity of the debtor and the validity of the debts. See In re Cohen & Slamowitcz, LLP, 116 *AD3d* 13 (2014).

Which U.S. jurisdictions are implementing forms of PMBR?

Colorado. Colorado has developed a PMBR Roadmap which it is using to help guide its process. See Colorado PMBR Roadmap, https://perma.cc/D86J-K2Q5. As this Roadmap shows, n Colorado, like Nova Scotia, decided to begin its work by developing regulatory objectives for its Court. A committee proposed Colorado regulatory objectives in November 2015 and the Colorado Supreme Court adopted them in April 2016.[37] These regulatory objectives emphasize proactive programs that reduce risk and increase consumer confidence. In December 2015, after it had completed its work on regulatory objectives, the Colorado committee started working on PMBR..

[36] In 2009, the New York courts changed their ethics code to a Model Rules format. New York's Rule 5.1(a) now provides that "A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these rules." More broadly, New York Rule of Professional Conduct 8.4 provides, inter alia, "RULE 8.4 that "A lawyer or law firm shall not: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.…"

[37] In April 2016, the Colorado Supreme Court added a Preamble to Chapters 18 to 20, which are its rules governing the practice of law. State of Colo. Judicial Dep't, Rule Change: Rules Governing the Practice of Law (Apr. 6, 2016), https://www. courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/20 16/2016(06)%20clean.pdf. Among other things, this Preamble explains that in "regulating the proactive of law in Colorado in the public interest, the Court's objectives include:" and continues by identifying nine objectives. Colorado's regulatory objectives differ from the objectives found in ABA Resolution, which was an outcome contemplated by the ABA's February 2016 Resolution 105 ("As with any ABA model, a supreme court may choose which, if any, provisions to be guided by, and which, if any, to adopt.").

The committee has drafted principles and self-assessment forms for Colorado. The committee has decided the PMBR process will be a volunteer pilot project that has incentives for compliance, including continuing legal education credit, potential certification for creating an ethical infrastructure through self-assessment and verification, and potential financial incentives including a premium reduction on malpractice insurance. In the interim, Colorado Attorney Regulation Counsel has finalized a new website that will allow a portal and dashboard for self-assessments and recordkeeping; has hired a staff attorney to further this program; and intends to refine a training program for practice monitors to help small entities or solos establish and verify their ethical infrastructure. Further information on the CO work may be found at: http://www.coloradosupremecourt.us/AboutUs/PMBRMinutes.asp, which is archived at https://perma.cc/N4P3-LG56.

The Illinois ARDC is studying the concept of entity regulation and PMBR along the same lines in Nova Scotia. The ARDC is looking particularly at aspects of entity regulation concerning the designation of an attorney (or attorneys) in each law firm or practice entity who would be administratively responsible for its ethical infrastructure. Under the proposed program, any Illinois lawyer may participate in the online self-assessment being developed. An Illinois lawyer who is engaged in the private practice of law and who discloses that he or she does not maintain malpractice insurance in 2018 annual registration would be required to obtain malpractice insurance or complete the self-assessment prior to registering for 2019, and every second year thereafter during which the lawyer discloses the absence of malpractice insurance. The IARDC would enforce this requirement administratively every other year through its registration process, not as a matter of discipline. To inform their study the ARDC is also analyzing data on Illinois lawyers and firms. Apparently, the experience in New South Wales has met with interest among Illinois bar leaders.

U.S. Organizations: In addition to the individual U.S. jurisdictions that are examining PMBR, they are several organizations that have also focused on PMBR developments, including entity regulation. These organizations include the ABA Center for Professional Responsibility, the ABA Commission on the Future of Legal Services, the Conference of Chief Justices, and the International Legal Regulators Conference. A number of these organizations are in communication with, or gathering information about, the entities mentioned in this FAQ. In addition, there have now been two PMBR Workshops that have included attendees from the U.S., Canada, and Australia. The minutes from these PMBR Workshops area available online. See 1st PMBR Workshop Minutes (May 2015 Denver), https://perma.cc/UGA2-DFLX; 2nd PMBR Workshop Minutes (June 2016 Philadelphia) https://perma.cc/KF3J-7VTB; PMBR Terminology Meeting Minutes (Sept. 2016 Washington D.C.), https://perma.cc/3LBR-C6MP.

Most U.S. jurisdictions have adopted ABA Model Rule 5.1 with little change.[38] As a result, most U.S. regulators have the power to achieve a measure of PMBR-like regulation without changing existing rules. For example, a regulator might inquire on a lawyer's annual bar dues statement whether the lawyer has responsibilities under Rule 5.1. If the answer is yes, the regulator could

[38] See ABA CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct: Rule 5.1: Responsibilities Of Partners, Managers, And Supervisory Lawyers* (Updated Oct. 21, 2014), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_5_1.authcheckdam.pdf

ask whether the lawyer is in compliance with the rule. The regulator could also provide a link to online resources that would include educational materials and a self-assessment tool.[39] For a law review article discussing how this could be achieved, see Terry, supra note 2.

What are the advantages of entity regulation?

First, entity regulation encourages regulators to devote resources to (1) improving the management and culture of the firm as a whole and (2) preventing client and public harm, rather than focusing on individual conduct and discipline after-the-fact. Putting more emphasis on entity regulation, might well encourage those who control a legal practice to develop management training, supervision, and quality control systems.

Second, entity regulation, especially when combined with PMBR, can improve the relationship between the regulator and the regulated because the regulator focuses on helping to improve the practice as a whole and reduce complaints, while shifting the regulatory focus away from discipline alone.

Third, entity regulation could remove the potential unfairness of holding one lawyer in a firm responsible for system failures where others in the firm, or the firm itself could just as well be made accountable.

Fourth, entity regulation overcomes a common problem in processing complaints, namely, identifying the lawyer(s) to whom the alleged misconduct is (and is not) attributable. Entity regulation will allow a complaint to be made against the firm as a whole and clients would be relieved of the obligation to name specific individual(s).

Fifth, entity regulation means that everyone in the law firm (whether they are lawyers or non-lawyers) have a stake in whether the firm is in compliance since law firm discipline directly or indirectly affects all firm lawyers.

Finally, entity regulation reduces the number of complaints made against law-practice entities and improves practice management. In 2008, a research study by Dr. Christine Parker of the University of Melbourne Law School in conjunction with the NSW regulator assessed the impact of ethical infrastructure and the self-assessment process in NSW in order to determine whether the process is effective and whether the process is leading to "better conduct" by firms required to self-assess.[40] The Parker/OLSC study found that client complaints decreased by two-thirds after implementation of the mandatory "appropriate management systems" requirement for New South Wales' ILPs and that after self-assessment, ILPs had one-third the rate of complaints of non-ILPs.[41]

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[39] Colorado is considering adding these questions to its bar dues statement.

[40] C.E. Parker, T. Gordon, S. Mark, 2010, Regulating law firms ethics management: an empirical assessment of an innovation in regulation of the legal profession in New South Wales, Journal of Law and Society [P], vol. 37, issue 3, Blackwell Publishing, UK, pp. 466-500.

[41] Laurel S. Terry, Transnational Legal Practice (International) [2010-2012], 47 Int'l L. 485 (2013 at 496; http://www.personal.psu.edu/faculty/1/s/1st3/Transnational_Legal_Practice_2020-2012_International.pdf. Appendix 1 on p. 783, supra note 2, summarizes the results of the ABA's Rule 5.1 implementation chart.

Moreover, in another recent research study conducted on incorporated legal practices in NSW, by Professor Susan Saab Fortney, who at the time worked at Hofstra University, New York, in conjunction with the NSW regulator, revealed that a majority of law firms (71%) who completed the self-assessment process had revised their firm systems, policies, and procedures and 47% had actually adopted new systems, policies, and procedures.[42] Forty-two percent (42%) of firms indicated that they "strengthened firm management" following the completion of the first self-assessment.

What are the disadvantages of entity regulation?

Some may argue that the greatest challenge for entity regulation is that the concept is not well understood within the bar, and that a change in mindset from the lawyer's traditional view of professional self-regulation is probably needed. Judging by the experience in Australia, the traditional view can be overcome with an effective education program that explains the purpose, and benefits of entity regulation.

Entity regulation requires firms to focus on ethical issues at the entity level, not just the individual lawyer level. Changing the focus is not easy, but it can benefit firms with multiple practice groups by enabling them to streamline their educational programs and ensure uniformity across practice groups.

Entity regulation requires planning and takes time from busy regulators and firms alike. Effective planning for entity regulation requires regulators to consult with the profession. But this may produce surprising benefits as discussions between regulators and the firms they regulate can create closer relationships and mutual understanding.

[42] Susan Fortney & Tahlia Gordon, Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation, 10 ST. THOMAS L. J. 152 (2012).

PART 2

How have jurisdictions actively studying Entity Regulation gone about it? By creating a task force or other body?

In considering entity regulation, jurisdictions have chiefly relied on consultation with the profession. For example, the Costs Lawyers Standards Board[43] (CLSB) in Manchester, England, last year sought the views of costs lawyers about how it might regulate costs-lawyer-led entities, in addition to its current system of regulating individual practitioners. After consultation, CLSB is seeking to confine itself to the regulation of costs law *entities*, with sole practitioners and in-house Costs Lawyers continuing to be regulated through their individual practicing certificates.[44]

The Law Society of Scotland has also been considering entity regulation. In 2014 the Society released two consultation papers – one on entity regulation and the other on principles and outcomes-focused regulation. In 2016, the Society released a second consultation paper on entity regulation in order to further explore what entity regulation might mean for the profession, the issues it may raise, and what charging models should be considered.[45]

What U.S. organizations are studying/considering Entity Regulation?

The U.S. organizations studying entity regulation include the ABA Center for Professional Responsibility, the ABA Commission on the Future of Legal Services, the Conference of Chief Justices, the International Legal Regulators Conference, Illinois ARDC and Colorado Attorney Regulation Counsel. A number of these organizations are in communication with, or gathering information about, the entities mentioned in this FAQ.

[43] The Costs Lawyers Standards Board is the Approved Regulator of Costs Lawyers. Costs Lawyers are legal costs experts who, inter alia, advises on the charging and recovery of legal fees and disbursements and undertakes costs budgeting.
[44] CLSB, Entity Regulation & Revised Principle 3.6, http://clsb.info/policy-outcomes/consultations/entity-regulation/
[45] The Law Society of Scotland, Regulation in the 21st Century, http://www.lawscot.org.uk/members/regulation-and-standards/regulation-consultations/

PART 3

Resources

ABA Center for Professional Responsibility resources:

Law review articles:

Susan Saab Fortney, *The Role of Ethics Audits in Improving Management Systems and Practices: An Empirical examination of Management-Based Regulation of Law*, 4 St. Mary's J. Legal Mal. & Ethics 112 (2014).

Ted Schneyer, *The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers*, 42 Hofstra L. REV. 233 (2013).

Ted Schneyer, *On Further Reflection: How "Professional Self-Regulation" Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 ARIZ. L. REV. 577, 585 (2011).

Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 Lewis & Clark L. Rev. 717 (2016)

Laurel S. Terry, *When it Comes to Lawyers… Is an Ounce of Prevention Worth a Pound of Cure?*, JOTWELL (July 13, 2016) (3 page blog post available at tinyurl.com/Terry-proactive

Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43 Hofstra L. Rev. 95, 128, n. 142 (2014) (suggesting the idea of using Rule 5.1 to achieve PMBR even in the absence of entity regulation).

Laurel S. Terry, Steve Mark, Tahlia Gordon, *Adopting Regulatory Objectives for the Legal Profession*, 80 Fordham L. Rev. 2685 (2012). This article provides a thorough treatment of regulatory objectives in a number of jurisdictions. It includes a discussion of the different methods by which lawyers are regulated (e.g., legislation, court rules, law society bylaws); legislative history, and an analysis and comparison of the regulatory objectives in a number of jurisdictions. The regulatory objectives from a number of jurisdictions are included as appendices.

Laurel S. Terry, *Why Your Jurisdiction Should Consider Jumping On The Regulatory Objectives Bandwagon*, 22(1) Prof. L. 28 (Dec. 2013). This article is a 15 page version of the Terry/Mark/Gordon 2012 regulatory objectives article. It is targeted to state supreme courts and lawyer regulators in the United States.

Laurel S. Terry, Steve Mark, Tahlia Gordon, *Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology*, 80 Fordham L. Rev. 2661 (2012). This "Trends" article

uses a "who-what-when-where-why-and-how" structure as a means to discuss global lawyer regulation developments around the world. Although many jurisdictions combine these developments, it offers a means to analyze the issues separately and compare regulatory approaches in different countries.

Laurel S. Terry, *Trends in Global and Canadian Lawyer Regulation,* 76 Saskatchewan L. Rev. 145 (2013). This article uses the structure developed in the 2012 Terry/Mark/Gordon "Trends" article to analyze Canadian lawyer regulation developments.

See also http://tinyurl.com/laurelterryslides (includes links to presentation slides, organized by topic) and http://works.bepress.com/laurel_terry/ (contains links to articles on a number of issues related to globalization and the legal profession, including foreign lawyer mobility provisions, a comparative analysis of UPL/lawyer monoply provisions in countries , interest in the legal profession by antitrust authorities, EU regulation of lawyers (the most recent analysis is found in the Bologna Process articles), trade agreements' application to legal services, FATF and "gatekeeper" issues, and transnational legal practice year-in-review articles, among other topics).

(1) Adam Dodek, "Regulating Law Firms in Canada" (2011) 90 Can Bar Rev 383

In Canada, the regulatory focus of law societies has always focused on the people who provide legal services rather than on the vehicles through which legal services may be provided. The traditional model of the delivery of legal services then was the sole lawyer in private practice. This model has survived for over two centuries. However, law firms of all sizes are now omnipresent in the Canadian legal profession. While law firms are ever present in the practice of law, they are peripheral in the regulation of lawyers in Canada. At the very least, this discrepancy presents a question that should be addressed: should law firms be regulated?

Law Societies should regulate law firms. They should do so primarily on the basis of ensuring public confidence in self-regulation and respect for the Rule of Law and only secondarily out of concerns regarding public protection. The proper question is not why should law firms be regulated but why do they largely escape Law Society regulation? It is widely recognized that law firms have their own culture. It is contested whether this culture strengthens or weakens ethical conduct of the firm's constituent lawyers. Resolution of this issue is not necessary for the purposes of my argument. Once it is acknowledged that the law firm is an independent actor exerting significant influence on the practice of law, the burden of justifying why it should be regulated necessarily shifts.

The absence of law firm regulation creates a problem of legitimacy for Law Societies mandated to regulate the practice of law in the public interest. This regulatory gap also raises Rule of Law concerns and may threaten public confidence if the public believes that the most powerful groups of lawyers escape regulation. Bar leaders in Canada have ratcheted up the expectations of self-regulation through the strength of their rhetoric and their actions against perceived incursions of self-regulation. As a result, lawyers in Canada have set the bar for what self-regulation is supposed to accomplish at a very high level. Consequently, the failure to regulate law firms may threaten self-regulation of the legal profession in Canada.

This paper presents an argument and a blueprint for law firm regulation. It has five parts in addition to this introduction. In Part I, the author details why Canadian law societies should regulate law firms. Part II undertakes a "regulatory audit" of how Law Societies in Canada currently regulate law firms. He then turns to comparative experience in Part III by examining how law firms are regulated in three comparable jurisdictions: The United States, Australia and the United Kingdom. Then in Part IV, the author presents a suggested template for law firm regulation. Finally, Part V provides a brief conclusion.

(2) Amy Salyzyn, "What if We Didn't Wait? Canadian Law Societies and the Promotion of Effective Ethical Infrastructure in Canadian Legal Practices" (2015) 92 Can Bar Rev 507

Canadian law societies primarily regulate lawyer behaviour by responding to complaints made against individual lawyers. Although this complaints-based regime is necessary, in particular to address cases of lawyer misfeasance or extreme incompetence, it is limited in its ability to target a significant determinant of ethical lawyer conduct: the presence of institutional policies, procedures, structures and workplace culture within a law practice that help lawyers fulfill their ethical duties. Given the importance of these formal and informal measures — referred to collectively as "ethical infrastructure" — this article explores whether and how law societies might become more active in promoting effective ethical infrastructures within Canadian law practices.

Ensuring effective ethical infrastructures within law practices seems self-evidentially good: we want lawyers to work in environments that facilitate compliance with their ethical duties. It is less obvious, however, that it would be a good thing for law societies to regulate the ethical infrastructures of Canadian legal practices. Decisions about a practice's ethical infrastructure, like what policies and procedures to put in place, are typically thought to fall to private ordering and the decisions of law firm managers (influenced by insurer and client demands) rather than to the domain of public regulators like law societies. Indeed, many Canadian lawyers are likely to be suspicious of proposals to add an additional layer of regulator involvement in their practices.

What justifies regulatory intervention in this area? The case presented in this article for expanded law society involvement in the ethical infrastructures of Canadian law practices is three-fold: (1) there are reasons to believe that these infrastructures could, as a general matter, be improved; (2) this improvement would, in turn, lead to improved outcomes in relation to lawyers' ethical duties; and (3) current law society regulatory efforts are not optimally situated to assist with this improvement. Stated otherwise, law societies should become more involved in the ethical infrastructures of Canadian law practices because neither the market nor current regulatory efforts are effectively addressing this important aspect of law practice.