Towards Proactive Regulation: Aspects, Issues and Challenges

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Overview

1. The Law Society of Upper Canada
2. Regulatory mandate
3. Competence mandate
4. New proactive initiative – compliance-based, entity regulation
The Law Society of Upper Canada

Over 47,000 lawyers and 7,000 paralegals in Ontario

Mandate under the *Law Society Act* includes

- Duty to protect the public interest
- Duty to act in a timely, open and efficient manner
- Proportionality of standards and regulatory objectives
Regulatory mandate
The regulatory process

Complaints

Investigations

Discipline
Risk factors

- Poor client service
- Sole practitioners and small firms (2-5 licensees)
- Civil litigation, real estate and family law
Transparency & accountability

Complaints and investigations are confidential

Discipline is presumptively public

*Law Society of Upper Canada v. Xynnis, 2014 ONLSAP 9*

- “Openness is particularly important for the Law Society Tribunal as part of a self-governing profession. Proceedings must be transparent so that members of the public and of the profession are aware of and can have confidence in the impartial and fair resolution of issues that come before us.”
Competence mandate and initiatives
Background information

Law Society’s competence mandate

Lawyers’ responsibility to maintain and enhance their own competence
Formal Competence Mandate – 2001

Objectives

• establish a robust series of activities, programs and systems to proactively assist members to maintain and enhance their practice competence
Some Key Components of LSUC’s Competence Model

• Recognition of the lawyer’s role and the Law Society’s role

• Quality assurance and quality improvement measures

• Flexibility, accessibility and relevance

• Need for expanded use of technological tools
Professional Development and Competence Mandate

Policy development and operational implementation of the competence mandate:

• Licensing and Accreditation
• Continuing Professional Development
• Practice Audits
• Legal Information
• Practice Supports and Resources
Initiatives

• Spot Audits

• Practice Management Reviews

• Annual Member Reporting

• Annual CPD Reporting
Initiatives

• Practice Management Helpline
• Coach and Advisor Program
• Practice Management Guidelines
• Practice Resources
Initiatives

• E-Bulletins

• Presentations

• Communication and collaboration with our membership
New proactive initiative: Compliance-based entity regulation
Compliance-based entity regulation

Compliance-based regulation
• a proactive approach, in which the regulator identifies practice management principles and establishes goals, expectations, and tools to assist lawyers and paralegals in demonstrating compliance with these principles in their practices

Entity regulation
• regulation of the business entity through which lawyers and paralegals provide services
CBER

Not a new idea -

• Used by professional regulators in Ontario

• In place or under consideration by legal regulators outside of Ontario
Why consider it?

- Improve practice?
- Reduce complaints?
- Fences at the top of a cliff rather than ambulances at the bottom
CBER

January 2016 Consultation paper link, plus other resources - http://www.lsuc.on.ca/better-practices/

New report expected in May 2016
Questions?