



Agenda

Benchers

Date: Friday, January 27, 2017

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

OATH OF OFFICE:

The Honourable Chief Justice Robert J. Bauman, will administer an oath of office (in the form set out in Rule 1-3) to President Herman Van Ommen, QC, First Vice-President Miriam Kresivo, QC and Second Vice-President Nancy Merrill, QC (individually) and (Vancouver County Bencher) Jeevyn Dhaliwal and (Vancouver County Bencher) Jasmin Z. Ahmad for the term commencing January 1, 2017.

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Administer Oaths of Office	10	The Honourable Chief Justice Robert J. Bauman		Presentation
2	President's Welcome	5	President		

CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.

3	Consent Agenda <ul style="list-style-type: none"> Minutes of December 9, 2016 meeting (regular session) Minutes of December 9, 2016 meeting (<i>in camera</i> session) 	1	President	Tab 3.1	Approval Approval
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Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
	<ul style="list-style-type: none"> Member Contact Information - Rules 2-9 to 2-11 Reporting Criminal Charges - Rule 3-97 Dissolution of Task Forces 			Tab 3.3 Tab 3.4 Tab 3.5	Approval Approval
GUEST PRESENTATIONS					
4	Provincial Court Rules Reform Project – Family Law Matters	15	Nancy Carter, Executive Director, Civil Policy and Legislation Office, Justice Services Branch, Ministry of Justice		Presentation
5	LSS: Plans and Priorities for the Coming Year	15	Suzette Narbonne, Chair of LSS		Presentation
6	2016 Employee Survey Results	15	Ryan Williams, President of TWI Surveys Inc.		Presentation
EXECUTIVE REPORTS					
7	President's Report	10	President	Oral report (update on key issues)	Briefing
8	CEO's Report <ul style="list-style-type: none"> Report on 2016 Key Performance Measures 	15	CEO	Tab 8	Briefing
9	Briefing by the Law Society's Member of the Federation Council	5	President		Briefing



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
DISCUSSION/DECISION					
10	Qualifications to Act as Articling Principal	15	Lisa Hamilton	Tab 10	Discussion
REPORTS					
11	Report on Outstanding Hearing & Review Decisions	5	President	<i>(To be circulated at the meeting)</i>	Briefing
12	National Discipline Standards Report	15	Deb Armour	Tab 12	Briefing
13	TRC Advisory Committee Update	5	President		Briefing
FOR INFORMATION					
14	Three Month Benchers Calendar – January to March				Information
IN CAMERA					
15	<i>In camera</i> <ul style="list-style-type: none"> Benchers concerns Other business 		President/CEO		Discussion/Decision



Minutes

Benchers

Date: Friday, December 09, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton, QC

Jamie Maclaren
Steven McKoen
Christopher McPherson
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Daniel P. Smith
Michelle Stanford
Sarah Westwood
Tony Wilson, QC

Excused: Nancy Merrill, QC

Sharon Matthews, QC

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan

Michael Lucas
Alison Luke
Jeanette McPhee
Doug Munro
Annie Rochette
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

<p>Guests: Jasmin Ahmad Dom Bautista Johanne Blenkin Anne Chopra Jeevyn Dhaliwal Bill Veenstra Sonny Parhar Ron Friesen Richard Fyfe, QC Derek LaCroix, QC Ann Lee Hon. Len Marchand Michael McDonald Susan Munro Michele Ross Prof. Jeremy Webber Prof. Val Napoleon</p>	<p>2017 Vancouver County Bencher Executive Director, Law Courts Center CEO, Courthouse Libraries BC Equity Ombudsperson, Law Society of BC 2017 Vancouver County Bencher Vice-President, Canadian Bar Association, BC Branch 1st Vice-President, Trial Lawyers Association of BC CEO, Continuing Legal Education Society of BC Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General Executive Director, Lawyers Assistance Program Manager, Mediate BC's Roster Program Provincial Court Judge Associate Counsel , DLA Piper (Canada) LLP Director of Publications, Continuing Legal Education Society of BC Education Chair, BC Paralegal Association Dean of Law, University of Victoria Law Foundation Chair in Aboriginal Justice and Governance at UVic</p>
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CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on November 4, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on November 4, 2016 were approved as circulated

b. Resolutions

The following resolution was passed unanimously and by consent.

BE IT RESOLVED to re-appoint Ms. MacPhail to the Legal Services Society's Board of Directors for a second two-year term commencing January 1, 2017.

BE IT RESOLVED to nominate Lorena Staples, QC, Scott Smythe and Trevor Dungate for consideration by the LTSA Board of Directors, for an appointment to its Board for a three-year term commencing April 1, 2017.

BE IT RESOLVED to amend the Code of Professional Conduct for British Columbia by inserting before Chapter 1 the attached Introduction.

BE IT RESOLVED to amend the Code of Professional Conduct for British Columbia by adopting rules 3.2-2.1 and 3.2-2.2, and commentary, concerning language rights as follows:

Language Rights

3.2-2.1 A lawyer must, when appropriate, advise a client of the client's language rights, including the right to proceed in the official language of the client's choice.

3.2-2.2 Where a client wishes to retain a lawyer for representation in the official language of the client's choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.

BE IT RESOLVED to amend the Code of Professional Conduct for British Columbia by adopting new rule 5.1-2.1 and commentary, as follows:

Incriminating Physical Evidence

5.1-2.1 A lawyer must not counsel or participate in the concealment, destruction or alteration of incriminating physical evidence so as to obstruct or attempt to obstruct the course of justice.

EXECUTIVE REPORT

2. President's Report

Mr. Crossin began his report by noting that, in lieu of a Bencher holiday gift, a donation on behalf of Benchers had been made by the Law Society to the Union Gospel Mission. Additionally, he presented all Benchers with a copy of TRC Advisory Committee Co-Chair Grand Chief Ed John's recent report, commissioned by the Provincial Government, entitled "Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Resolutions: A Report on Indigenous Child Welfare in British Columbia".

Mr. Crossin acknowledged and welcomed recently elected Vancouver County Benchers Jeevyn Dhaliwal and Jasmin Ahmad, whose terms will begin January 1, 2017, and congratulated Benchers Craig Ferris, QC, Tom Fellhauer, Sarah Westwood and Satwinder Bains on their election to the Executive Committee for 2017. He also commended Lynal Doerksen, Tony Wilson, QC and Martin Finch, QC for stepping forward as Executive Committee election candidates, noting their leadership at the Bencher table.

On a somber note, he acknowledged the recent passing of young lawyer Erin Dance from leukemia, noting for Benchers that he had also done so publicly, on their behalf, at a recent court appearance.

Mr. Crossin also reported that the Law Society Award was presented to this year's recipient, 96 year old Constance Isherwood, QC, at the Bench and Bar dinner. Ms. Isherwood, who continues to maintain a thriving legal practice, is the first woman recipient of the Law Society Award.

Mr. Crossin recently attended the public presentation of Grand Chief Ed John's report on Indigenous child welfare, noting that Grand Chief John expressed to the many elders and dignitaries present his appreciation and gratitude to the Law Society for its recent work and initiatives. He emphasized his fervent hope that this important work will continue well beyond his tenure.

He also stressed the importance of the work being done by Access to Justice BC (A2JBC), noting discussion at its recent plenary session of initiatives in the areas of family law and Indigenous peoples. Indeed, at the recent Justice Summit, Chief Justice McLaughlin expressed her praise for A2JBC and its focus on both first nations' issues in the justice system, and legal aid and child welfare.

Having recently attended a Call ceremony in Victoria, Mr. Crossin also extended his gratitude and congratulations to Benchers Pinder Cheema, QC and Dean Lawton, QC who organize and conduct these ceremonies throughout the year for Victoria lawyers.

Mr. Crossin also attended the Legal Aid Task Force colloquium, about which Benchers will receive a report from Policy and Legal Services Manager Michael Lucas (in Chair Nancy Merrill, QC's absence), as well as the Kelowna Bar Association's themed dinner.

Mr. Crossin ended his report with his acknowledgment of and gratitude toward the Coast Salish peoples, on whose traditional territories the Bencher meeting is held.

GUEST PRESENTATION

3. "A Judge's Perspective on the TRC Report and Recommendations"

Mr. Crossin introduced the Honourable Judge Len Marchand to provide the Benchers with his perspective, as a Provincial Court Judge and member of the Okanagan Indian Band, on the Truth and Reconciliation (TRC) Report and Recommendations. Prior to being appointed, and as the son of a residential schools survivor, he took a special interest in historic child abuse claims in institutional settings, and represented a large number of Residential School survivors. In 2005, as a lawyer he helped negotiate and was a signatory to the Indian Residential Schools Settlement Agreement, the largest class action settlement in Canadian history. He served on the Oversight Committee for the Independent Assessment Process and also on the Selection Committee for the Truth and Reconciliation Commission.

Judge Marchand began by thanking the Coast Salish peoples on whose territories the meeting was being held, and noted it was his honour to participate on the TRC Advisory Committee and to speak to Benchers regarding their role in conceiving reconciliation.

In his work as a chemical engineer before attending law school, and in his practice following his call to the Bar, Judge Marchand saw firsthand that the attitudes towards First Nations peoples that had existed at the time of confederation persist today. At confederation, that attitude spawned policies of eliminating governments, treaty rights and rights generally so that First Nations peoples would cease to exist as an independent social and political group in Canada. Those policies also advocated the destruction of language, spiritual practice and culture, the product of which was the residential schools program designed to prevent cultural values being passed down through families. This has been described by the TRC as no less than an attempt at cultural genocide, prompted by Canada's desire to divest itself of legal or financial obligations to First Nations peoples, and to gain control over land and resources.

Prior to contact Indigenous peoples were self-sufficient, self-reliant and self-governing. Today, they experience huge gaps in every socio-economic measure; they experience higher rates of

obesity, diabetes, illness, death by accident, death by suicide, infant mortality, incarceration and lower education.

Judge Marchand related sobering details of the Residential Schools system, which was developed in the 1850's but gained momentum in the 1880's and persisted until the last schools were closed in 1996. The schools were characterized by deprivation and harsh conditions, including inadequate food, poor medical care, poor living conditions, forced labour, poor and limited education, rampant child abuse and high mortality.

The invaluable work done by the TRC revealed heinous stories of abuse of vulnerable and frightened children, the impact of which included loss of pride, loss of self-esteem, anxiety, depression, substance abuse, violence, parenting problems, problems with the law, reduced education and unemployment. The impact on families was no less, and the cycle of dysfunction continues with children of survivors who, having been raised by parents unable to cope or parent effectively, are experiencing similar hardships. In turn, this continues to have a devastating impact on communities, with Aboriginal communities experiencing disproportionate rates of violence, substance abuse, incarceration and death.

He noted that it is important to establish the truth of our shared history for true reconciliation to occur. We must come to terms with the past and atone for harm before we can move forward to establish a foundation for understanding and empathy and a plan of action to change behavior for the future.

He also noted the importance of the Law Society to lead. The 94 recommendations of the TRC Report leave ample room for smaller concrete steps for organizations, courts, law schools and governments. He was critical of lawyers and law societies historically, in failing to recognize the magnitude of problems, and in some cases, working unprofessionally or unethically in their representation of Indigenous clients. Leading on reconciliation now is, as Judge Marchand put it, the right thing to do.

He commended the Law Society for the active steps it has already taken toward reconciliation, and noted the many opportunities that remain to speak publicly and develop changes to education and legal processes. By way of example, he cited the implementation of a non-adversarial process for settlement of residential schools claims, which helped parties feel believed, respected and validated, as well as the development of First Nations Courts which hold offenders accountable to their communities and involve their communities in offenders' progress toward healing.

Further opportunities remain to expand and improve First Nations Courts, to improve other court processes, to develop better spaces for parties to meet, to reform child protection processes from adversarial to inquisitorial, to reform court rules and, importantly, to preserve the meaningful

role of lawyers in all of these processes. When done effectively, process can make a huge difference in people's lives, and provide tools to help turn lives around.

He left the Benchers with the challenging questions of whether they as individuals should, and indeed whether they will, be an impetus for change.

EXECUTIVE REPORTS

4. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix A to these minutes).

He began by wishing the Benchers, on behalf of all staff, a very happy holidays, and thanked them for their invaluable contributions in the past year.

Attached to his report was copy of the Strategic Plan for 2015-2017 which is in its final year; he noted that much had been accomplished, and some things remained for focus in 2017.

He also reported on his attendance at the recent Legal Aid Task Force Colloquium, commending Chair Nancy Merrill, QC, and policy staff, including Michael Lucas, Manager, Policy and Legal Services, for their herculean work to bring the event to fruition, and of course President Crossin for his tireless efforts to ensure this issue remains front and centre in the minds of the profession and the public.

He reported as well on his attendance at the International Institute of Law Association Chief Executives (IILACE) in New Zealand earlier in the Fall. Some highlights of developments making an impact internationally included a presentation and interactive session with the founder of Legal Zoom, an online, self-help legal services portal. He encouraged Benchers to remain aware of this growing industry.

Conference highlights also include a presentation from the managing partner of an Australian law firm whose innovative partnership with the Salvation Army to provide humanitarian work from a portion of its legal fees is proving a success. The firm is thriving, attracting both clients and capable young lawyers.

Closer to home, he reported on two operational matters: the completion of staff performance evaluations which forms the basis for performance awards; and, RREX Day, which is the annual awards celebration for non-managerial staff. Debra DeGaust, a paralegal in Practice Standards was the recipient of the Golden Lion award, the highest individual honour, and the Inspired Lion award, which is the award for outstanding team collaboration, went to all the individuals who so efficiently dealt with the aftermath and logistics of the flood earlier in the year.

5. Briefing by the Law Society's Member of the Federation Council

Herman Van Ommen, QC briefed the Benchers as the Law Society's member of the FLSC Council.

He noted that his first Council meeting as the Law Society's representative will be the following week in Ottawa. He has been asked to sit as Chair of the National Committee on Accreditation, and he continues to be a member of the National Requirement Review Committee. He reported that the National Requirement Review Committee is deferring its consultation regarding a non-discrimination clause until the Supreme Court of Canada has ruled in the TWU matter.

At its December meetings, the Federation Council will be reviewing and approving strategic objectives and identifying specific projects to be developed. It is also looking to approve Terms of Reference for the TRC Working Group.

Going forward, he will be circulating the Federation President's reports to keep Benchers apprised of developments as they occur. He invited Benchers to convey to him any particular questions or interests they may have concerning the Federation.

GUEST PRESENTATION

6. UVic's Proposed Common Law/Indigenous Legal Orders Joint Degree Program

Mr. Crossin introduced Dean Jeremy Webber, Dean of UVic Law School, who briefed Benchers on an innovative new dual degree program being developed by UVic which will combine training in common law and Indigenous legal traditions. Instrumental in this work have been Professor John Borrows, Canada's Research Chair in Indigenous Law, Professor Heather Raven, Associate Dean and a pioneer of structures for support of Indigenous students, and Professor Val Napoleon, Law Foundation Chair in Aboriginal Justice and Governance at UVic, who will provide further detail about the program to Benchers later in the presentation.

Dean Webber began by expressing his honour at speaking to Benchers on Coast Salish traditional territories, and following the esteemed Judge Marchand.

The goal of the program is to prepare lawyers who have common law skills to build an interface with Indigenous traditions, ultimately to try to understand how those traditions operate within the Canadian legal order. UVic has developed various programs through the years designed to heighten awareness of Indigenous traditions, but the dual degree program is a step beyond. It was inspired by McGill's dual common law and civil law program, and aims to be an intensive

program over 4 years that undertakes a comparative examination of Indigenous and common law traditions.

The first year of the program will be taught comparatively between traditions. Credit weight will be expanded and some typical first year courses will be moved to second year. Students will get the full JD content and training, but it will be enriched and will provide multiple points of connection with students in other programs. The new upper year courses will be open to all students, dual and single program alike. This is designed to increase collaboration and an interface wherever possible. One challenge of this program is the breadth of Indigenous legal traditions that exist. To respect this diversity and properly engage with a sampling of different structures, field schools will be an important component of the program. These will allow students to work with communities and experts to see the modern expression of Indigenous laws. All UVic students will engage in this training, regardless of program.

The creation of this program is directly responsive to the TRC Calls to Action, and reflects the growing need to provide both Indigenous and non-Indigenous lawyers with a context to build legal institutions that work across both traditions.

UVic is working with the Provincial Government and private foundations to secure the funding necessary to allow the model to proceed, as the Law School anticipates an expansion of enrollment in all programs, and recognizes the need to compensate those communities that participate in the training. It is projected that the program will cost approximately \$1.8 million per year, will require \$18.5 million in capital costs for building spaces, and approximately \$325,000 for student aid.

Professor Napoleon added to this synopsis, briefing Benchers in a bit more detail on the substance of the training. She noted that current Indigenous legal research has focused on harms and injuries, to determine how Indigenous communities dealt with such issues systematically. Research has now added study of lands and resources, for an examination of oral traditions and stories to extract precedents for different expressions of the law.

With this focus, it has become apparent that not only are academic papers necessary, but graphic narratives and teaching guides (which will differ with communities) will also be necessary resources for communities. She brought with her sample copies of a gender and Indigenous laws casebook and toolkit which will be made available to Benchers.

The recognition is that Indigenous communities have a full scope of law to manage human life and interaction and allow communities to sustain themselves. What matters are legitimacy and consent so enduring relationships with Canada and BC can be established. She noted that part of this work is to rebuild Indigenous laws to the highest standards so people can aspire to goals, while maintaining legality at every level. Their aim is to look for instances where people are

already acting within their legal orders, such as with water law, human rights, hunting rights, and mental health, to name a few. The foundations that are being built are unique in the world.

In response to a question regarding the relatively small numbers for the program, at 24 students, Dean Webber noted it is important to have some lawyers in every community who can navigate effectively between traditions. Depth of experience will take time. He also noted that this program is but one piece in a larger context, and that the program has the potential to impact other training methods, such as CPD and government and judicial training.

Appointed Bencher Dan Smith thanked Judge Marchand, Dean Webber and Professor Napoleon for their thoughtful presentations, and also presented a specific question regarding whether UVic's program had considered the Great Law of Peace of the Iroquois Confederacy, in keeping with a holistic approach.

Professor Napoleon indicated that the research has started with harms and injuries, so they have not yet been able to review work with the Six Nations. Regarding the holistic approach, she noted that societies are decentralized and their laws join various components. It will be necessary to rethink and relearn structures across all legal orders, as there are more similarities than we think.

Mr. Crossin echoed the thanks of Mr. Smith, noting the importance of the work being done to integrate legal traditions.

DISCUSSION/DECISION

7. Legal Aid Task Force: Status Report

In Chair Nancy Merrill, QC's absence, Michael Lucas, Manager, Policy and Legal Services reported to Benchers on the progress of the Legal Aid Task Force thus far. He anticipated that the Task Force would provide a final report with respect to its mandate at the March Bencher meeting.

The mandate of the Task Force, which has met 11 times over the past year, is to develop a principled position regarding the promotion of legal aid, to identify ways to take a better leadership role and to engage with other organizations to efficiently use legal resources.

It began by reviewing the Law Society's statutory mandate, which is to uphold and protect the public interest in the administration of justice by, among other things, preserving and protecting the rights and freedoms of all persons. The Task Force has determined that, where all persons do not have equal access to the law, some form of legal aid is required in a democratic society led

by the rule of law. Its work has been to articulate a vision of what a publicly funded legal aid program should look like.

At its recent colloquium, to which the Task Force invited approximately 45 participants from the legal aid community, including representatives from government, the courts and the Bar, a draft form of this vision was further developed. It includes recognition that:

- The rule of law is the foundation of our democratic society;
- Everyone needs to have an opportunity to understand how the rule of law affects their daily lives
- Legal aid is an essential service necessary to ensure that everyone has an opportunity to understand its effect and to access our justice system

The draft vision itself combines essentially two components: universal triage so everyone has access to legal aid (in other words, access to a lawyer), and enhanced services where liberty, security or safety is at risk. The vision will be refined by the Task Force to incorporate feedback and input from colloquium participants before the Task Force completes its final report.

8. Proposed Amendments to the Rules Regarding Bencher Candidate Eligibility

Chair Satwinder Bains reported to Benchers on the Equity and Diversity Committee's review of the Rules requirements that Bencher candidates must have been called to the Bar for at least seven years. This restriction, unlike any other in Canada, underscores that the experience and knowledge often necessary to the tasks of a Bencher come with time; however, it also acts as a systemic barrier to a large number of lawyers in the province. To remove this barrier, and to improve engagement with young and newly called lawyers, the Committee reviewed four options: remove the years of Call restriction; create a designated seat at the Bencher table for this group; create a "newly called lawyers" working group; and, improve the diversity of appointments to internal committees.

On balance, the Committee made the following recommendations:

1. The requirement that candidates for Bencher election be members in good standing at least 7 years [under Rule 1-22(1)(b)] should be removed; and
2. Age or length of call to the bar should be added to the list of diversity markers promoted in section 1.1.4 of the Law Society's Appointments Policy.

The first requires membership approval at an Annual General Meeting. The second is a policy issue that could be referred to Governance to review and develop.

A discussion ensued with many Benchers providing arguments for and against removal of the year of Call restriction. Some noted that many aspects of a Bencher's role necessitate a certain degree of experience. It was suggested that the participation of younger Benchers could be limited, however some took issue with creating different classes of Benchers, in effect, and engaging in tokenism. Others noted the unintended consequence of barring highly qualified transferring lawyers or judges who are newly called in this province.

However, many supported the notion that the membership should be entrusted to put forward qualified leaders, regardless of age or year of Call. It was also observed that no other jurisdiction maintains such a restriction, and that, while it appears rare that more junior lawyers are elected to Bencher tables, their views are brought forward in the course of campaigns, resulting in a greater breadth of dialogue.

Following discussion. Ms. Bains moved (seconded by Mr. Doerksen) that the Benchers recommend to members that the requirement that candidates for Bencher election be members in good standing for at least 7 years [under Rule 1-22(1)(b)] should be removed. The motion was approved by a vote of 18 for and 9 opposed.

9. A2JBC - Funding Proposal

Mr. McGee reported on the proposed funding agreement between the Law Society and the Law Foundation to help support A2JBC, chaired by Chief Justice Bauman, which is a collaborative organization bringing together key stakeholders to coordinate access to justice initiatives and help avoid duplication of resources. A2JBC has reached the point in its efforts where it needs support for its infrastructure to be able to continue. Specifically, the funds will help support a Strategic Coordinator position, which is currently ably filled by Jane Morley, QC, who will remain to shepherd the process going forward. It will also help support the development of a website or another effective communications platform, as well as administrative support for the organization of meetings and agendas.

He then described the origins of the funding source. Under the terms of the arrangement the Law Society and the Law Foundation will each contribute \$150,000 over three years to enable A2JBC to continue its innovative work in bringing together stakeholders from across the justice sector to better collaborate and coordinate in enhancing access to justice for British Columbians.

In its formative stages support for A2JBC was provided through Law Foundation grants and the assistance of Courthouse Libraries BC (CLBC). Going forward the new arrangement will see the Law Society taking on more of a leadership role and in agreement with CLBC will fund its

support through setting aside funds collected for CLBC as part of the 2017 practice fee. Conditions of the support include the development by A2JBC of specific action plans and budgets, progress reporting and joint monitoring and oversight by the Law Society and the Law Foundation.

This funding agreement is consistent with Law Society policy that we may fund external organizations if we were part of their inception; indeed, we were one of the cornerstone founding parties. The proposed resolution was moved by Mr. Van Ommen and seconded by Ms. Kresivo.

There was discussion and questioning before the vote regarding the funding mechanism and the work of A2JBC. On the vote, the motion passed, by a vote of 21 for and 3 against.

10. Submissions on National Security Consultation: Report from Rule of Law and Lawyer Independence Advisory Committee (ROLLIAC)

Mr. Crossin reported that ROLLIAC is proposing submissions to the Federal Government concerning its review of national security provisions. Those draft submissions, included on this Agenda, express fundamental concerns with Bill C-51 which currently allows the government, in the name of national security, to apply to the Court for an ex parte order authorizing a breach of the Charter. In ROLLIAC's submission, the rule of law requires protection even in life threatening situations.

Mr. Crossin moved the motion (seconded by Ms. Hamilton) approving the draft report for submission. The motion was approved unanimously.

11. Governance Committee Year-End Report

Mr. Van Ommen reported as Chair of the Governance Committee, beginning by thanking both the committee members and staff, including Adam Whitcombe, Chief Information and Planning Officer, for a productive year.

The function of the Committee is to assist Benchers on governance policy and practice. To that end, it sends out an annual survey of Benchers and committee members; Mr. Van Ommen encouraged Benchers to submit their survey responses to ensure that the information collected is as complete as possible.

With this report, the Governance Committee has made 9 recommendations for Bencher approval. He did not enumerate each recommendation, but dealt briefly with certain ones. Regarding the third recommendation, Mr. Van Ommen invited Benchers to approach him privately if they felt at all uncomfortable speaking their minds openly at Bencher meetings.

For recommendation 6, that the current process of confining access to agendas and materials to each Bencher's own committees will be maintained, he noted the Executive Committee determined that to do otherwise could fetter each committee's ability to conduct its work throughout the year. The time for Bencher engagement is when each committee's work comes to table for discussion.

After inviting discussion of the recommendations, one Bencher commented on recommendation one, noting that his interest in keeping abreast of developments in the legal services market was aimed at becoming more familiar with the provision of non-lawyer legal services and how that may connect with challenges for the legal professions, such as the procurement of articles.

Mr. Crossin noted that the recommendations did not require a motion, but after canvassing Benchers, determined that there was consensus for the Governance Committee to move forward with them.

REPORTS

12. Year-End Reports from the 2016 Advisory Committees

a. Access to Legal Services Advisory Committee

As Chair, Mr. Van Ommen reported on the Committee's work to date. He recalled that the committee facilitated a productive discussion at the last Bencher meeting concerning the legal profession's duty to provide access to legal services and promote access to justice. Next year's committee will propose an amendment to the Annual Practice Declaration to get more detailed information concerning the pro bono work being done by the profession. It will also continue looking at ways to engage with larger firms to encourage more pro bono work.

This year, the Committee also looked at the issue of unbundled legal services. After consultation, it appears that, although lawyers are permitted to provide unbundled services, some are declining to do so out of concern about the potential consequences. It is the Committee's recommendation that lawyers are advised that the Law Society will consider the context (that is, services performed on a limited retainer) if a complaint should arise. It also recommends that Benchers encourage lawyers to provide such services which will serve to improve access to legal services generally. He noted that Mediate BC, working in conjunction with the Committee, has provided an online toolkit designed to help lawyers frame these kinds of services.

b. Equity and Diversity Advisory Committee

Chair Satwinder Bains reported, noting that she stepped into the role of Chair when previous Chair Maria Morellato, QC (as she then was) was appointed to the Bench mid-year. She thanked

the Committee members for their hard work throughout the year, and gave particular thanks to staff, including Andrea Hilland, for their integral support.

She reported that review of the Equity Ombudsperson program was almost complete and would be reported on early in the new year. Also in the coming year the Committee will be reviewing the 1992 Law Society study “Gender Equality in the Justice System: A Report of The Law Society of British Columbia Gender Bias Committee” in honour of its 25th anniversary.

She also noted the recent presentation of Law Society Award to its first female recipient Constance Isherwood, QC. The Committee had encouraged and applauds this advancement in gender equality.

Finally, she noted that the Committee had provided updates to the Lawyers With Disability Resource Guide on the website, and had made several recommendations in support of the advancement of young lawyers.

c. Rule of Law and Lawyer Independence Advisory Committee

Chair Craig Ferris, QC thanked committee members, Michael Lucas and Charlotte Ensminger for their hard work throughout the year. The focus of this year’s committee was on providing public commentary on international rule of law issues through publications such as the Benchers Bulletin and platforms such as Twitter; both the conventional publications and the social media platform have helped the committee to keep the public informed on the importance of the rule of law as it pertains to current events in our world.

Additionally, the committee made submissions concerning the Supreme Court of Canada appointment to fill the vacancy created by the retirement of the Honourable Justice Cromwell, made submissions on the National Security Consultation, as well as reviewed the International Bar Association Report on Judicial Independence to assist in providing a Canadian contribution.

The committee also conducted the first high school essay contest on the importance of the rule of law, the success of which has led to an expanded contest next year which will broaden the scope of student participation. The committee has also committed to holding the first of its Lecture Series in 2017, and has been engaged in securing a location and speakers.

Finally, it has also continued to monitor progress in the lawsuit brought by the Civil Liberties Association in which it claims that Canada’s newly legislated broad powers of interception, retention and use of data is unconstitutional. Being monitored as well is the extent to which client demand is impacting lawyers’ professionalism and ability to act within the *Professional Code of Conduct*, the scope and impact of alternative business structures, and the meaning of the rule of law to the Law Society.

d. Lawyer Education Advisory Committee

Chair Tony Wilson, QC thanked committee members and staff for their hard work throughout the year. To begin his report, he recalled for Benchers the Lawyer Education Committee's final report on its review of the PLTC program in March, the recommendations with which Benchers agreed. For the balance of 2016, the committee shifted its focus to a review of the Continuing Professional Development (CPD) program; this work will continue into 2017, with the committee looking strategically into which aspects are working successfully, and which could be improved.

To help accomplish this goal, the committee conducted a survey of the profession which garnered 1270 responses. The statistically accurate results demonstrated an 83% overall satisfaction with, and support for the continuation of the CPD program. 65% of respondents felt the current 12 hour requirement was appropriate, or in some cases, not enough. Survey results also showed that most lawyers completed more than the 12 hour requirement, but stopped recording when they reached the required hours.

An issue for consideration is the extent to which courses aimed at lawyer wellness are given CPD credit; this issue will come before Benchers in 2017 for their review and deliberation.

Finally, he reported that PLTC staff are working with the Indigenous Bar to incorporate changes to the PLTC curriculum in accordance with Calls to Action 27 and 28 of the TRC Report and Recommendations.

13. Report on Outstanding Hearing & Review Decisions

Mr. Van Ommen reviewed with Benchers the outstanding decisions.

14. Tribute to outgoing President David Crossin, QC

Mr. Crossin introduced Bill Veenstra, incoming President of the CBABC who presented Mr. Crossin with a gift on behalf of the CBABC as a token of their appreciation for his meaningful and important work on behalf of the Law Society in 2016.

On behalf of all Law Society staff, Mr. McGee thanked Mr. Crossin, saying it was a great pleasure for all staff to work with him. The genuine care he demonstrated for the welfare of people whose stories came before him, and the passion with which he approached his work was recognized and appreciated. Mr. McGee then shared a quote that epitomized the President, from Mr. Crossin's own address to newly called lawyers: "if you're ever in trouble reach out your hand, someone will take it. If someone reaches out to you, take their hand".

Upon receipt of his President's pin, incoming President Mr. Van Ommen thanked Mr. Crossin personally, and on behalf of the Bencher table, lauding his many achievements, such as spearheading the creation of the TRC Advisory Committee, actively giving voice to rule of law issues, and underscoring the Law Society's relevance in the wider community. He recognized Mr. Crossin with the highest praise: he has made a difference.

In his gracious response, Mr. Crossin noted that, from the bottom of his heart, it had been his honour and privilege to serve the Bencher table.

RTC
2016-12-09

Introduction

- (1) One of the hallmarks of civilized society is the rule of law. Its importance is reflected in every legal activity in which citizens engage. As participants in a justice system that advances the rule of law, lawyers hold a unique and important role in society. Self-regulatory powers have been granted to the legal profession in Canada on the understanding that the profession will exercise those powers in the public interest. Part of that responsibility is ensuring the appropriate regulation of the professional conduct of lawyers. Members of the legal profession who draft, argue, interpret and challenge the law of the land can attest to Canada's robust legal system. They also acknowledge the public's reliance on the integrity of the people who work within the legal system and the authority exercised by the governing bodies of the profession. While lawyers are consulted for their knowledge and abilities, more than mere technical proficiency is expected of them. A special ethical responsibility comes with membership in the legal profession. This *Code of Professional Conduct for British Columbia* attempts to define and illustrate that responsibility in terms of a lawyer's professional relationships with clients, the justice system and other members of the profession.
- (2) The *Legal Profession Act* provides that it is the object and duty of the Law Society of British Columbia to uphold and protect the public interest in the administration of justice. A central feature of that duty is to ensure that lawyers can identify and maintain the highest standards of ethical conduct. This Code attempts to assist lawyers to achieve that goal. While the Code should be considered a reliable and instructive guide for lawyers, the obligations it identifies are only the minimum standards of professional conduct expected of members of the profession. Lawyers are encouraged to aspire to the highest standards of competence, integrity and honour in the practice of their profession, whether or not such standards are formally addressed in the Code.
- (3) The Code is published under the authority of the Benchers of the Law Society of British Columbia for the guidance of BC lawyers. It is significantly related to the Federation of Law Societies' *Model Code of Professional Conduct*, though there are points of variance from the Model Code that the Benchers have considered to be appropriate for guiding practice in British Columbia. Where there is a corresponding provision in the Model Code, the numbering of the *BC Code* is similar to that of the Model Code. The *BC Code* is not a formal part of the Law Society Rules but, rather, an expression of the views of the Benchers about standards that British Columbia lawyers must meet in fulfilling their professional obligations.

- (4) The Code is divided into three components: rules, commentary and appendices. Each of these components contain some statements that are mandatory, some that are advisory and others with both mandatory and advisory elements. Some issues are dealt with in more than one place in the Code, and the Code itself is not exhaustive of lawyers' professional conduct obligations. In determining lawyers' professional obligations, the Code must be consulted in its entirety and lawyers should be guided in their conduct equally by the language in the rules, commentary and appendices. Mandatory statements have equal force wherever they appear in the Code.
- (5) A breach of a provision of the Code by a lawyer may or may not be the basis of disciplinary action against that lawyer. A decision by the Law Society to take such action will include a consideration of the language of the provision itself and the nature and seriousness of the conduct in question.
- (6) The correct or best answer to ethical questions that arise in the practice or lives of lawyers may often be difficult to discern, whether or not the Code addresses the question directly. Lawyers should always be aware that discussion of such questions with Benchers, Law Society practice advisors, the Law Society's Ethics Committee or other experienced and trusted colleagues is the approach most likely to identify a reasonable course of action consistent with lawyers' ethical obligations. This Code is intended to be a valuable asset for lawyers in the analysis, discussion and resolution of such issues.



CEO's Report to the Benchers

December 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee

Best Wishes and Thanks

As this is the last Benchers meeting for 2016 I would like to take this opportunity on behalf of all staff to wish you all a very happy holiday season and to thank you for your many contributions and hard work throughout the year. I would also like to extend congratulations and a special welcome to the newly elected Benchers. We look forward to working with you in the months ahead.

As this is also the final meeting for David Crossin, QC as President I would like to take this opportunity on behalf of all staff to thank him for his outstanding leadership and support. On a personal level it has been a real pleasure to work and learn from David and to witness how deeply he cares about the welfare of people both close at hand and the public at large.

2015 – 2017 Strategic Plan Update

I am attaching a copy of our current Strategic Plan which has been updated to show the status and progress to date of our various strategic initiatives. As is our practice the Benchers will conduct an annual review of the plan at the first meeting of the year in January. The purpose of the annual review is to assess whether to make any modifications or changes to the plan and to generally assess progress against the stated objectives. The current update is to help give you the bigger picture of our activities as we head into 2017, which is the third and final year of the current plan.

Seventh Justice Summit

I attended the 7th Justice Summit at UBC Law School on Friday, November 25 together with President Crossin, QC and Michael Lucas. The summits were established under the auspices of the Ministry of Justice and Attorney General to bring together leaders from the profession, the Courts, policing, health care and social agencies, indigenous organizations, government and others to establish a collaborative framework for information sharing and strategizing on how best to address the major justice system issues of the day. The inaugural justice summit was held in 2013 and under the terms of the Justice Reform and Transparency Act one is required to be held at least annually.

The focus of this summit was on the impacts of mental health issues in the justice system and the interplay between mental health and our criminal and civil processes.

It was clear from the panel discussions and workshops that a lack of coordination and emphasis on “upstream” identification and addressing of mental health issues was causing “downstream” problems with both cost and access to justice implications. For example, data was presented which showed rehabilitation as being more cost effective and sustaining than prosecution but the choices are not always as simple. The summit planning group took away a lengthy list of ideas and suggestions from the diverse gathering of leaders on ways these problems might be overcome.

I think it is also fair to say that the highlight of the day for many was the key note address by the Right Honourable Beverley McLachlin, Chief Justice of Canada. A copy of her remarks is being prepared for distribution and we will share it with you as soon as it is available. Suffice to say at this stage that her message was a powerful one about the challenges and impacts posed by delays in our justice processes, their complexity and the overwhelming impact of mental health issues across many levels. The Chief Justice also illustrated very effectively how the access justice imperative arises not only from the needs of the indigent to proper representation but also cuts across many aspects of daily life for Canadians of all means and backgrounds. She also reiterated the unacceptable, disproportionate representation of the indigenous community in the justice system and left no doubt in the room as to the urgency of addressing that issue.

Access to Justice BC (A2JBC) Leadership Meeting

I attended the A2JBC Leadership Group Meeting at the Law Foundation on Wednesday, November 23 together with President Crossin, QC. The all-day session was chaired by Chief Justice Robert Bauman and featured panel discussions and small group work sessions focused on the challenges and opportunities of ensuring our collective efforts to address access to justice needs across the province are designed and coordinated to achieve the greatest positive impact. An important take away for the group which was well articulated by the Chief Justice is that the real opportunity before A2JBC is to create a sustaining movement in the province around access to justice which harnesses the resources and skills of the many stakeholders and also effectively engages public interest and support.

The Legal Aid Task Force Colloquium

I attended the Law Society’s Legal Aid Task Force Colloquium at the Wosk Center for Dialogue on Saturday, November 26 together with several Law Society representatives

and a diverse and talented group of participants. The Benchers will hear more about the event from President Crossin, QC and Task Force Chair Nancy Merrill QC, but I would simply say that it was a very good day for the Law Society judging by the frankness of the feedback and the appreciation expressed by so many of the participants with whom I spoke.

International Institute of Law Association Chief Executives – 2016 Annual Conference

I recently attended the 2016 IILACE Annual Conference in Wellington NZ. This was my second and final year as President of the organization and in that role I acted as Chair of the conference. The stated purpose of IILACE is to bring together chief executives of law regulatory and representative bodies from around the world to share information and to discuss issues of both strategic and operational importance. This year's conference was entitled "Preparing for the Future – Demographics, Trends and New Realities". Each day had a specific theme; "Professional Standards and Core Values", "Disruptions and Innovations" and "Management and Governance". The Chair of the program committee was Paula Littlewood the CEO of the Washington State Bar and a frequent collaborator with LSBC and the Federation of Canadian Law Societies on a wide range of topics including legal education and alternative legal service providers.

There were 3 sessions at the conference during the "Disruptions and Innovations Day" which were particularly thought provoking and which in different ways relate to our own strategic goals. I have chosen to describe the highlights of those sessions in the attached Appendix A and I would be happy to expand on these or any of the other conference sessions at your convenience.

Welcoming Ceremony for Madame Justice Maria Morellato

I was honoured to speak on behalf of the Law Society at the recent welcoming ceremony for Madame Justice Maria Morellato of the Supreme Court of British Columbia. As Benchers will know Justice Morellato was a Bencher from 2012 – 2016 and while we were thrilled with her appointment to the Bench we were sad to lose her as a colleague and strong contributor in many areas. I am attaching a copy of my remarks for your interest.

Operational Updates

Staff Performance Management Process

A key ingredient in ensuring we have an engaged and skilled work force at the Law Society is an effective performance management system. In 2015 we instituted a new performance evaluation program for all employees which moves away from filling out a form about what you did in the year towards facilitating a conversation between managers and staff about what is going well, what can be done better and what the expectations are for the coming year. At the time of writing we are right in the middle of this important process which will be complete for all staff within the coming week.

2016 Annual Employee Survey

Our eleventh annual employee engagement survey has recently concluded and in the coming weeks we will be receiving the results from TWI Surveys Inc. the survey administrator. Our participation rate this year was 75% which while lower than last year is still a strong enough response to use the results to develop action plans and initiatives for better employee engagement and job satisfaction. We will be providing a report to the Benchers on the survey at the meeting in January.

RRex Day

RRex is the name of our employee Rewards and Recognition Program which we instituted in 2012. RRex responds to the workplace reality that employees are motivated to succeed in different ways including when and how their contributions are recognized. For example, some employees feel most rewarded by a show of gratitude from a colleague for a simple favor extended at work. Others are motivated by working on complex projects or assignments with specific goals where success is dependent on teamwork and collaboration. And no matter what the task or at whatever level in the organization we aim to celebrate excellence and exceptional achievement through constructive feedback.

So far in 2016 staff have used the RRex program to thank their peers for assistance and support through our “on-the-spot” recognition card program over 200 times. What I find particularly gratifying about that is that 60% of those cards (e.g. Starbucks, Tim Horton’s cards) were given by staff in one department to a colleague in a different department. To me this shows collaboration and teamwork across departments in action. Similarly, managers used the “on-the-spot” recognition card program over 150

times so far this year to recognize staff and 55% of those cards were given by managers to staff outside their departments.

On RRex day (held on Thursday, November 10 in the Bencher room) staff come together for lunch to celebrate some special individual awards. The RRex Award is given each year to an employee nominated by their peers who has demonstrated an outstanding commitment to excellence in their work. The nominations are carefully reviewed and the winner selected by the RRex awards committee, which is made up of a diverse cross section of staff. This year's RRex Award winner was Debra DeGaust, a Paralegal in our Practice Standards department for her outstanding work ethic and positive attitude.

We also have an outstanding teamwork award, "The Inspired Lion Award", which this year was awarded to the staff team that responded to the Valentine's Day flood in the Bencher's Room and who worked tirelessly for many weeks thereafter to ensure we maintained regular operations to the maximum extent possible.

Timothy E. McGee
Chief Executive Officer



2015 – 2017 Strategic Plan

Our Mandate

Our mandate is to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

To fulfil our mandate in the next three years, we have identified three specific goals:

1. The public will have better access to legal services.

We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. The public will be well served by an innovative and effective Law Society.

We recognize that the public expects and deserves effective regulation of the legal profession. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

3. The public will have greater confidence in the rule of law and the administration of justice.

We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

Follow-up on recommendations from the December 2014 report of the Legal Services Regulatory Framework Task Force toward developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.

Status – December 2016

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. This initiative was paused for discussions with the Society of Notaries Public concerning merger as described at Initiative 2-2(c) below, but given the status of that initiative (as described below) is ready to be pursued again..

Initiative 1–1(b)

Continue work on initiatives for advancement of women and minorities, including through the Justicia Program, the Aboriginal Mentoring Program.

Status - December 2016

Gender initiatives continue through the Justicia Program. The Justicia model policies and best practice resources are now available on the Law Society's website, online modules to promote the materials are being developed, and outreach is now underway to encourage smaller and regional firms to adopt and implement them. The Law Society continues to administer the Aboriginal Lawyers Mentoring Program to support Aboriginal lawyers.

Work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance. The Truth and Reconciliation Advisory Committee has facilitated an increase of Indigenous interest and participation in Law Society governance.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1–2(a)

Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.

Status - December 2016

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. The Mediate BC proposal received \$60,000 and the project is being developed. A working group of practitioners is developing practice resources to aide lawyers who wish to provide limited scope services through the roster. A Law Society practice advisor has been assigned to review materials generated by the working group. The project is funded through the end of 2016.

Initiative 1–2(b)

Examine the Law Society's role in connection with the advancement and support of Justice Access Centres (JACs).

Status - December 2016

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs. The Access to Legal Services Advisory Committee has held two meetings with the CEO of Courthouse Libraries. Courthouse Libraries and the Ministry of the Attorney General are exploring the potential for libraries throughout BC to act as “hubs” that will connect to

the JACs via technology. This approach is consistent with the concept identified by the Committee in prior years of establishing community based “franchises” of the JAC model. The Committee remains available for input from Courthouse Libraries and the Ministry as to whether there is anything the Law Society can do to facilitate the expansion of JACs in this manner.

Initiative 1–2(c)

Examine the Law Society’s position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.

Status - December 2016

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force has met on a number of occasions to discuss the mandate items. A “draft vision” and discussion paper have been prepared by the Task Force, which formed the basis of discussion at a Colloquium on Legal Aid organized by the Task Force and held on November 26, 2016 that was attended by senior levels of government, the courts and invited members of the profession. The Task Force will be reviewing the feedback obtained at the Colloquium with a view to providing a final report early in 2017.

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2–1

Improve the admission, education and continuing competence of students and lawyers

Initiative 2–1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Status - December 2016

The Lawyer Education Advisory Committee report and recommendations were presented and approved at the March 2016 Benchers' meeting.

Initiative 2–1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Status - December 2016

The Federation's National Admission Standards Project Steering Committee recently circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response, which was approved at the Benchers' March 2016 meeting.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - December 2016

This topic is currently under consideration by the Lawyer Education Advisory Committee and a report is planned for 2017.

Initiative 2–1(d)

Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.

Status - December 2016

Evidence has been assembled that examines the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. A task force has been created to review the data gathered and to make recommendations concerning its use. It is expected to start its work in 2017.

Initiative 2–1(e)

Examine alternatives to articling, including Ontario's new legal practice program and Lakehead University's integrated co-op law degree program, and assess their potential effects in British Columbia.

Status - December 2016

The Lawyer Education Advisory Committee conclusions on this subject were presented and approved at the March 2016 Benchers' meeting. Ontario's Benchers decided in November 2016 to review the licensing processes, including articling and alternatives to articling, and plan to complete the review in 2017. The Lawyer Education Advisory Committee continues monitor developments in Ontario and assess the potential effects in BC.

Strategy 2–2**Expand the options for the regulation of legal services*****Initiative 2–2(a)***

Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.

Status - December 2016

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and

the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces and through the Rule of Law and Lawyer Independence Advisory Committee and the Law Firm Regulation Task Force, reviews the discussion of the initiative from time to time in other jurisdictions, particularly in the USA. However, no specific consideration is underway at this time and no task force has yet been created to examine the subject independently in BC.

Initiative 2–2(b)

Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.

Status - December 2016

A consultation paper and survey were prepared and undertaken by the Law Firm Regulation Task Force and consultations with the profession took place around the province in February. The Task Force presented its interim report to the Benchers in November, and will be following up on its work with further consultations early in 2017 with a view to presenting a final report by the Fall of 2017 at the latest

Initiative 2–2(c)

Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.

Status - December 2016

Working Groups were created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examine governance issues that would arise in a merged organization. Governance issues were considered by the benchers in a preliminary manner in camera at their June 2015 meeting. The Qualifications Working Group reported on their efforts to examine educational requirements at the July 2016 bencher meeting. After consideration, the Benchers elected to keep open the possibility of merging regulatory operations with the Society of Notaries Public, while re-engaging with the Ministry of Justice concerning legislative amendments to permit the Law Society to regulate new classes of legal service providers.

Strategy 2-3

Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015

Initiative 2-3(a)

The Benchers will:

1. Seek opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;
2. Embark upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encourage all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urge all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Status - December 2016

A Steering Committee was created early in 2016 to assist in determining how best to engage in appropriate consultation with Aboriginal communities and representatives and to assist in developing the agenda and substantive program for the Benchers' 2016 Retreat that took place in early June. Following the retreat, the "Truth and Reconciliation Advisory Committee" was created, and terms of reference for the Committee were established in the Fall of 2016. The Committee is now working to address its mandate.

3. The public will have greater confidence in the administration of justice and the rule of law.

Strategy 3–1

Increase public awareness of the importance of the rule of law and the proper administration of justice

Initiative 3–1(a)

Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.

Status - December 2016

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues. The Rule of Law and Lawyer Independence Advisory Committee proposed an annual evening lecture series on rule of law topics to begin in 2017, which was approved by the Benchers in July. Work on this initiative is underway.

Initiative 3–1(b)

Examine the Law Society's role in public education initiatives.

Status - December 2016

Work on this initiative has not yet formally commenced, although the Rule of Law and Lawyer Independence Advisory Committee, in connection with the 800th anniversary of Magna Carta, completed a successful essay contest for high school students in 2015 has followed up on this successful initiative by establishing an annual contest for high schools. . . .

Initiative 3–1(c)

Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.

Status - December 2016

Some work has begun by, for example, creating the high school essay competition referred to above. Work on engaging directly with the Ministry of Education has not yet begun.

Strategy 3–2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3–2(a)

Examine and settle on the scope and meaning of s. 3(a) of the *Legal Profession Act*.

Status - December 2016

This topic was introduced for discussion at the Benchers Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy.

Initiative 3–2(b)

Identify strategies to express a public voice on the justice system, including public forums.

Status - December 2016

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee prepared its first comment – a commentary for *The Advocate* – on the issues that pervasive surveillance raised for lawyers, and the Committee has written several articles that have been published on the Law Society website and in the Benchers Bulletin. The Committee has also developed a Twitter account through which it identifies rule of law issues on which it wishes to comment more publicly.

A staff working group was created by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which reported to the Management Group in January 2016.

The Honourable Madam Justice Maria Morellato

Welcoming Ceremony

Thursday November 24, 2016
Remarks by Tim McGee, QC

Chief Justice Hinkson, my Lords, my Ladies.

Good afternoon.

It is my great honour to be here today on behalf of the Law Society of British Columbia to welcome Madame Justice Morellato to the Supreme Court of British Columbia and I bring greetings on behalf of President David Crossin QC, the Benchers and all Law Society staff.

It is often said that you remember where you were when you first hear about important events or things that have great meaning to you or your colleagues.

I remember where I was when I first learned of Justice Morellato's appointment. I was in a meeting with staff at the Law Society and someone who was stealthily checking their iPhone for emails under the table trying to hide that fact suddenly burst out "Maria's been appointed to the Bench!!". There was spontaneous cheering and celebration and the meeting completely disintegrated after that point – we had something far more exciting and important to talk about!

To put it mildly, Justice Morellato's appointment was a "popular win" at the Law Society. This was because of the deep respect and abiding affection we have for her.

I would like to share with you some of the qualities of Justice Morellato which were so often on display as she discharged her role as Bencher from 2012 until her appointment earlier this year.

A measure of real success in any undertaking is not just "what" you do but "how" you do it. The "what" for Justice Morellato at the Law Society in addition to her monthly Bencher meeting responsibilities included stellar service on the Discipline, Equity and Diversity, Practice Standards, and Finance and Audit, Committees. She played a lead role on our Task Force dealing with the retention and advancement of women in the profession and she was a key member of the Law Society's newly formed Truth and Reconciliation Advisory Committee.

But while her immense capacity for work and reliability soon became obvious to us all it was "how" she went about her work including, in particular, her inclusive and respectful approach to those she engaged which stood out so prominently.

What I saw was a lawyer with impressive depth of knowledge across a wide range of topics and issues without an ego to match that expertise. Justice Morellato frequently

demonstrated in her contributions that she had mastered the invaluable skill, often all too elusive for many of us lawyers, of “Listening to understand and not simply to respond”.

Her sense of compassion and empathy was also frequently evident in coming to grips with difficult policy issues particularly in the area of equity and diversity and practice standards matters. We frequently benefited from her insights and decisions in situations where neither emotional intelligence nor legal knowledge alone, both of which, by the way, she possesses in spades, would produce the best outcome. Madame Justice Morellato’s ability to apply those two in appropriate measure, when called for, is a special trait that we will long remember.

Perhaps above all we will remember Justice Morellato for her infectious good nature and positive can do outlook on work and life. Knowing of all her many other professional achievements together with her strong commitment and love of family we feel privileged at the Law Society to have had the good fortune of sharing 4 all too short years with her as Bencher.

In closing, I would like you to know Justice Morellato how very proud we are of you at the Law Society, to thank you for all you have done for us in the public interest, and to wish you the very best in your judicial career, one which we know you will undertake with commitment, intelligence and grace.

Thank You.

International Institute of Law Association Chief Executives – 2016 Annual Conference – New Zealand

Highlights from Day 2 “Disruptions and Innovations”

LexisNexis Campaign for Advancing the Rule of Law

We heard from the global Vice President of LexisNexis regarding his firm’s campaigns for advancing the rule of law around the world. LexisNexis was a founding member in 2010 (along with the Gates Foundation the GE Foundation and other major sponsors) of The World Justice Project described as a multidisciplinary, multinational movement to advance the rule of law. That project established a Rule of Law Index which collects data on 10 dimensions of the rule of law including items such as absence of corruption, regulatory enforcement, access to civil justice and effective criminal justice, broken down into 44 key indicators. We were shown a global “heat map” of how countries around the world score based upon these indicators. Canada fared reasonably well but many were better.

What was most interesting was the analysis that demonstrated the connection between, for example, a 1% improvement in the Rule of Law Index, and crime reduction, life expectancy and attainment of other social goals including access to legal services. The analysis was far reaching and is also being used to demonstrate the benefits to businesses of supporting and investing in efforts to enhance the rule of law. For its part, LexisNexis works with legal professional, business leaders, policy makers, academics, NGOs and other stakeholders to find practical applications for advancing the rule of law. For example, LexisNexis UK has developed a free iPhone App entitled “My Legal Place” which allows users to find the nearest police station, citizens advice bureau and community legal aid office, among helpful locations, across the UK.

The main takeaway for our group was that this project and the tools it is developing are demonstrating how the rule of law when presented in practical and pragmatic terms can lead to positive engagement among citizens, businesses and governments alike.

LegalZoom – Innovation and Disruption in the Delivery of Legal Services

We heard from Eddie Hartman the co-founder and Chief Product Officer of LegalZoom the largest online provider of legal services in the world. He shared some astonishing statistics about the rapid growth of his business. Among those was the fact that LegalZoom at last count has over 4 million unique regular customers, every 3 minutes someone starts paperwork online to create a business using LegalZoom and every 4

Appendix “A”

minutes someone starts a will using LegalZoom. Hartman estimated that 1 out of every 3 businesses in the State of California were created using LegalZoom.

The original focus of the business was to provide a quick way to acquire some basic legal services through an on line Q&A process resulting in access to written information to guide you. Now LegalZoom’s fastest growing service is legal advice provided by lawyers on line in real time. This strategy was fuelled by the recent ABA report indicating that up to 85% of Americans who need legal advice are not getting it. Hartman described this as the “silent crisis” because it has such a low profile relative the potential harm it creates. LegalZoom has recently acquired a law firm in the UK and is transforming its service delivery model on the basis of the on-line platform on which the company has been built. He reported that in recent independent consumer quality satisfaction surveys in the UK their firm was rated as highly as Apple and other top tier service leaders.

As you might expect, Mr. Hartman’s presentation led to a very lively discussion period afterwards. Somewhat surprisingly, he emphasised over and over again that LegalZoom’s target market is not consumers who are dissatisfied with their lawyer or even those who are looking for a cheaper option. Rather, the target market are those people who do not even know they could benefit from legal advice or service. This untapped market opportunity based upon LegalZoom’s analysis is so prominent that the company will be making major investments in both technological and human capital to pursue the opportunity. He left no doubt, however, that an online service delivery model will never overtake the need for one on one lawyer/client relationships. The disruption of LegalZoom, however, may just accelerate how lawyers choose to offer and promote their services with a particular emphasis on their unique value add.

Salvos Legal - Humanitarian Law Funded by Commercial Practice

We heard from Luke Geary, the Managing Partner of Salvos Legal based in Sydney, Australia. Salvos Legal describes itself as a “revolutionary legal practice”. In a nutshell, Salvos Legal is comprised of two law firms each wholly owned by the Salvation Army. One firm is a commercial law firm that offers commercial and property law advice on a paid basis to the public. All of the fees (less expenses) fund its sister “legal aid” firm called “Salvos Legal Humanitarian”, which is a full service free law firm for the disadvantaged and marginalised. Salvos Law is comprised of experienced lawyers in the areas of commercial and property law who act for “blue- chip clients from the corporate, government and not for profit sectors”. The firm’s pitch to prospective clients is: “By instructing us for your legal work, you will receive top quality legal advice from experienced professionals at competitive rates. In addition, you will get the satisfaction of helping others, without costing you anything extra”. The Mission Statement is “. . . to

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provide holistic justice funded by competitively priced commercial legal service to the general public. We will strive to create systemic change in the availability of access to justice for all people so that no one is without a trusted advisor to provide comfort and counsel in their time of need”.

Mr. Geary said that Salvos is the first commercial law firm where all the profits fund its free humanitarian law sister firm. He described the mission as being a not for profit social enterprise model supported by the corporate responsibility goals of its commercial clients.

Over 20,000 cases a year are handled by the humanitarian sister firm funded by the commercial firm’s profits. Areas covered include, debt matters, family and children’s law, housing law, immigration, refugee and social security assistance. This work is further supported by a very active and well supported in-house pro-bono desk within the commercial firm. We learned that all lawyers in New South Wales have a 35 hour “aspirational” pro bono target, but apparently many find the appropriate pro bono opportunities hard to come by. Lawyers in the commercial firm have access to a “pro bono hot desk” which allows them to take on this work for the humanitarian sister firm without reduction in salary and with full professional liability indemnity coverage. We learned that most of the lawyers in the commercial firm meet or exceed the 35 hour aspirational target. We also heard that interest in career opportunities at the firm among lawyers of all levels of experience and background is very strong. By all accounts the business model is thriving.

It was hard not to be impressed by the degree of commitment and innovation which Salvos has embraced in their efforts to tap into the corporate “for profit” community as a means to fund and support a not for profit access to justice undertaking. There was a strong sense among our group that watching and learning from how Salvos succeeds in this venture would be time and attention well spent for all of us looking for ideas to enhance access to legal services for those in need.

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: January 16, 2017
Subject: **Rules 2-9 to 2-11— Member contact information**

1. In that context of the change from conducting Benchers elections by mail ballot to an on-line electronic process, it was suggested by some Benchers that the Law Society Rules could be amended to require members to provide the Law Society with email. The first full-scale election to be conducted on-line will take place in November of this year.
2. In the course of considering draft amendments, the Committee noticed that the current rules do not require members to supply the Law Society with their telephone numbers. That seemed like an oversight, and so the Committee proposes adding telephone numbers to the list of contact information that members must supply to the Law Society.
3. The Committee also attempted to improve the provisions and clarify some ambiguities and issues in the existing rules. For example, the current references to a lawyer's "place of business" is changed to "place of practice" for consistency with other references elsewhere in the Law Society Rules and clarify that it is only the place of the lawyer's legal practice that needs to be reported to the Law Society and not non-legal businesses conducted at other locations.
4. The proposed rules add two definitions: "contact information," which includes a telephone number and email address, and "place of practice," which is any location where a lawyer practises law or is held out to practise law. That includes includes the residence of a lawyer who practises law from that location.
5. The proposed rule indicates that the contact information is for the purpose of the lawyer receiving confidential communication from the Law Society. Lawyers will want to provide the Law Society with their personal email addresses, and not an address accessible to others

in the firms or practices. Individual email addresses are essential to the electronic election process.

6. The Committee considered it unnecessary to continue to collect contact information for the registered and records offices of law corporations.
7. The revised Rule 2-11 is intended to require members of the Law Society not engaged in the practice of law to provide residential contact information for membership purposes, including electronic elections. This information will, of course, continue to be kept confidential.
8. I attach draft amendments in redlined and clean versions, together with a suggested resolution for their adoption. The Act and Rules Committee recommends that the Benchers adopt the proposed changes.

Attachments: draft amendments
resolution

JGH

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Member information

Definitions

2-9 In Rules 2-10 [*Business address*] and 2-11 [*Residential address*],

“address” includes

- (a) the name under which a lawyer’s ~~firm~~ carries on business, and
- (b) ~~the~~ street address, including suite number if applicable, and mailing address, if that is different from the street address;

“contact information” includes the following for the purpose of a lawyer receiving communication from the Society, including confidential and secured communication:

- (a) a telephone number;
- (b) an email address;

“place of practice” includes

- (a) a lawyer’s chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer’s residence, and
- (b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

2-10 (1)—A lawyer must advise the Executive Director of the address and contact information of all of the lawyer’s places of ~~business~~ practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer’s places of ~~business~~ practice.

(2) [rescinded] ~~For the purpose of this rule, a lawyer’s place of business includes the place of business and registered and records office of a law corporation of which the lawyer is a voting shareholder.~~

LAW SOCIETY RULES

Residential address

2-11 A lawyer who does not carry on the practice of law ceases to have a place of business separate from the lawyer's residence must provide the following information to advise the Executive Director immediately of

- (a) the address and contact information of the lawyer's residence; and
- (b) any change in the address and contact information of the lawyer's residence;
- (c) on return to practice, employment or other business, the address of the lawyer's place of business.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Member information

Definitions

2-9 In Rules 2-10 [*Business address*] and 2-11 [*Residential address*],

“**address**” includes

- (a) the name under which a lawyer carries on business, and
- (b) street address, including suite number if applicable, and mailing address, if that is different from the street address;

“**contact information**” includes the following for the purpose of a lawyer receiving communication from the Society, including confidential and secured communication:

- (a) a telephone number;
- (b) an email address;

“**place of practice**” includes

- (a) a lawyer’s chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer’s residence, and
- (b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

2-10 A lawyer must advise the Executive Director of the address and contact information of all of the lawyer’s places of practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer’s places of practice.

(2) [rescinded]

Residential address

2-11 A lawyer who does not carry on the practice of law must advise the Executive Director of the address and contact information of the lawyer’s residence and any change in the address and contact information of the lawyer’s residence.

CONTACT INFORMATION

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules by rescinding Rules 2-9 to 2-11 and substituting the following:

Definitions

2-9 In Rules 2-10 [*Business address*] and 2-11 [*Residential address*],

“address” includes

- (a) the name under which a lawyer carries on business, and
- (b) street address, including suite number if applicable, and mailing address, if that is different from the street address;

“contact information” includes the following for the purpose of a lawyer receiving communication from the Society, including confidential and secured communication:

- (a) a telephone number;
- (b) an email address;

“place of practice” includes

- (a) a lawyer’s chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer’s residence, and
- (b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

2-10 A lawyer must advise the Executive Director of the address and contact information of all of the lawyer’s places of practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer’s places of practice.

Residential address

2-11 A lawyer who does not carry on the practice of law must advise the Executive Director of the address and contact information of the lawyer’s residence and any change in the address and contact information of the lawyer’s residence.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Act and Rules Committee
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: January 13, 2017
Subject: Proposed Amendments to Rule 3-97 [*Reporting criminal charges*]

1. The Act and Rules Committee recommends changes to this Rule to relieve lawyers of a regulatory obligation that may conflict with an implied or express undertaking to the Crown to protect the confidentiality of information disclosed in the prosecution of an alleged offence. The proposed amendment would also require disclosure to the Law Society of criminal or quasi-criminal charges laid against BC lawyers in other jurisdictions.
2. Mr. Lucas's memo to the Act and Rules Committee giving the background to this proposed change is attached. I also attach clean and redlined versions of the proposed changes, as well as a suggested resolution to give effect to the changes recommended by the Act and Rules Committee.

JGH

Memo

To: Act and Rules Committee
From: Michael Lucas
Date: September 14, 2016
Subject: Proposed Amendments to Rule 3-97 [*Reporting criminal charges*]

Introduction

1. What is now Rule 3-97 was created in 2003 and was amended in 2007. The rule introduced a requirement that lawyers, articled students and applicants, when charged with an offence under a federal or provincial statute, give written notice to the Law Society of the particulars of the charge and of the disposition of the charge. The rule now requires lawyers, students, practitioners of foreign law and applicants when charged with an offence to provide the Law Society with written notice containing all relevant information concerning the charge after various events have taken place. Rule 3-97(3) also requires the person charged to provide the Law Society “with a copy of any statement of particulars of the charge immediately upon receipt.”
2. The rule was created to ensure that the Law Society was aware of charges against lawyers and students, recognizing that the *Code of Professional Conduct* requires a lawyer to demonstrate personal integrity, and states that a lawyer owes a duty to the state to maintain its integrity and its law. An allegation of a violation of a federal or provincial statute might be thought to give cause for an enquiry into the lawyer’s conduct to determine whether such violation amounted to professional misconduct or conduct unbecoming a lawyer. Addressing such allegations or convictions may be viewed as part of the duty of the Society in upholding and protecting the public interest in the administration of justice by ensuring the integrity of lawyers.

Problem Arising – Implied Undertaking of Confidentiality

3. The current rule requires that all people to whom the rule applies give the Law Society written notice, when charged with an offence, of *all relevant information* as soon as practicable after each of the events listed in the rule and *with a copy of any statement of particulars of the charge immediately upon receipt*.

4. Developments in the law that have taken place subsequent to the creation of the rule, however, have raised concerns. In a number of cases¹, the Courts have held that there is an implied undertaking of confidentiality over information provided by the Crown to an accused relating to a charge laid against that accused. The undertaking “recognizes that disclosure documents may contain matters over which the Crown could claim public interest immunity, privilege, or that the documents would not be in the public interest to produce.”² The undertaking exists to protect individuals who are not involved other than as witnesses and to protect the integrity of the Crown’s investigative process and prosecution. Oftentimes, an express undertaking is placed on the recipient not to disclose the “disclosure material” so that the undertaking is express rather than implied.
5. As a result of these decisions, the Crown considers that it is not open to recipients of Crown disclosure materials to simply provide them to third parties (such as their professional regulator) as they see fit. Consequently, the rule as currently worded leaves a lawyer charged with an offence in an invidious Catch-22 situation. He or she can either comply with the rule and thereby risk breaching the implied (or occasionally express) undertaking, or abide by the undertaking and thereby risk non-compliance with the rule.

Discussion and Recommendation

6. While Rule 3-97 does not specifically require a lawyer charged with an offence to provide the Crown disclosure materials to the Law Society, the requirement to provide all relevant information and a copy of any statement of particulars of the charge immediately upon receipt can certainly lead one to the conclusion that the Law Society is seeking information from the Crown disclosure materials given to the accused. And, in fact, the Law Society would like to obtain that material in order to make the most informed decision about what course of action needs to be taken to protect the public interest.
7. Law Society staff and staff at the Criminal Justice Branch of the former Ministry of Attorney General have met several times over the course of the last few years to try to reach a consensus on dealing with the undertaking over disclosure materials in a way that would ensure that the Law Society could continue to receive the Crown disclosure information provided to the accused lawyer, as contemplated by the rule. In most cases over the last few years, the information provided by the Crown has sufficed for the purpose of the Law Society investigation. Recognizing the importance of the integrity of the disclosure material has been central to our discussions, but at the same time, the importance of the Law Society being able to undertake a proper investigation in order to protect the public where lawyers have allegedly transgressed the law has been equally

¹ In British Columbia, the principal cases of note are *R. v. Basi*, 2008 BCSC 1242 and *Wong v. Antunes*, 2009 BCCA 278, both of which follow an earlier Ontario case of *P. (D.) v. Wagg* (2004), 239 DLR (4th) 501 (CA)

² *R. v. Basi* at paragraph 13.

prominent. The specific powers given to the Law Society in s. 26 of the *Legal Profession Act* to order a person to produce a record or thing in the person's control was also noted as perhaps being a clear legislative direction to override a common law undertaking.³ However, we wanted to reach a consensus on an approach recognizing the public interest obligations that both organizations have, preferably short of litigation.

8. In the end, we have done just that. When learning of a charge against a lawyer, the Law Society will seek information concerning the charge from the Crown. In the cases where the Law Society determines that the materials provided by the Crown do not meet our investigative needs, we will seek them directly from the lawyer (or his or her counsel) relying on the powers given to the Law Society under s. 26 of the *Legal Profession Act* and Rule 3-5 of the Law Society Rules. Rule 3-5 provides specific powers during investigations of a complaint that require a lawyer to co-operate fully in the investigation by, *inter alia*, responding to all requests made of him or her. It also gives investigators a general power to require production of documents. Where this has been done, the Law Society will respect the confidentiality of the information obtained as required by ss. 88(2) and (3) of the *Act*.
9. Consequently, Rule 3-97 needs amending, as the requirement to provide the Executive Director with "any statement of particulars" no longer is pertinent. The requirement for a lawyer, articled student, practitioner of foreign law or applicant for membership to report when charged with an offence and to provide a written explanation can remain. This enables the Law Society, once notified of the charge,⁴ to contact the Crown to obtain materials as described above. As noted, recent past history suggests that the Law Society is usually able to obtain a considerable amount of material from the Crown that more often than not suffices for the purpose of its investigation.
10. The proposed amendments remove the difficult situation a lawyer is placed when charged with an offence. If the amendment goes ahead, lawyers will no longer have a positive obligation set out by the rule, arguably, to breach an undertaking. As stated above, the information provided to the Law Society by the Crown seems most often to provide enough information for the Law Society to investigate the charge against the lawyer in a satisfactory manner, and therefore the problem concerning the implied undertaking is largely rendered moot. It should be noted, though, that in the few circumstances where the initial information provided to us by the Crown is inadequate and the Law Society is compelled to seek it from the lawyer under Rule 3-5, the issue relating to the undertaking

³ With the suggestion that an express undertaking requiring a lawyer not to comply with the legislative direction would be unreasonable.

⁴ It should be recognized that, in most instances, when the Crown knows that it is a lawyer who has been charged, the Ministry of Attorney General itself independently notifies the Law Society of the existence of the charge.

could rise again. Rule 3-5, describing the general powers given to the Law Society during an investigation, is perhaps more clearly tied to the very directive language of s. 26.

11. Professional conduct staff indicate that Law Society staff investigating a criminal charge against a lawyer or student would have sufficient power under Rule 3-5 to obtain information about the progress of the charge. As a result, it is not necessary to retain the provisions in Rule 3-97(3) requiring the lawyer charged to report at each stage of the proceeding on the charge.
12. The current rule requires lawyers to report charges under a federal or provincial statute. As a result, it does not have application to a charge against a lawyer made in a foreign jurisdiction or, arguably, under a statute of another province. It is proposed to require report of a charge of an offence that is “an equivalent offence in another jurisdiction”

Suggested Amendments

13. I recommend that rule 3-97 be amended by
 - removing subrule (3);
 - amending subrule (2) by deleting the requirement to report to the Law Society after each stage of the prosecution; and
 - making the provision applicable to charges in a foreign jurisdiction.

MDL/al

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 10 – Criminal charges

Reporting criminal charges

3-97 (1) This rule applies to lawyers, articled students, practitioners of foreign law and applicants.

(2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute, or an equivalent offence in another jurisdiction, must immediately provide to the Executive Director written notice of the charge.

~~containing all relevant information as soon as practicable after each of the following events:~~

- ~~_____ (a) laying of the charge;~~
- ~~_____ (b) disposition of the charge;~~
- ~~_____ (c) sentencing in respect of the charge;~~
- ~~_____ (d) commencement of an appeal of the verdict or sentence;~~
- ~~_____ (e) disposition of the appeal.~~

(3) [rescinded] ~~A person charged with an offence must provide the Executive Director with a copy of any statement of the particulars of the charge immediately on receipt.~~

(4) No notification is required under subrule (2) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

LAW SOCIETY RULES

PART 3 – PROTECTION OF THE PUBLIC

Division 10 – Criminal charges

Reporting criminal charges

- 3-97** (1) This rule applies to lawyers, articled students, practitioners of foreign law and applicants.
- (2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute, or an equivalent offence in another jurisdiction, must immediately provide to the Executive Director written notice of the charge.
- (3) [rescinded]
- (4) No notification is required under subrule (2) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

REPORTING CRIMINAL CHARGES**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend Rule 3-97 by rescinding subrules (2) and (3) and substituting the following:

- (2) Subject to subrule (4), a person who is charged with an offence under a federal or provincial statute, or an equivalent offence in another jurisdiction, must immediately provide to the Executive Director written notice of the charge.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



To Benchers
From Renee Collins
Date January 19, 2017
Subject **Dissolution of Task Forces**

To formalize the completion of work of the Legal Services Regulatory Framework Task Force, the Regulation and Insurance Working Group, and the Tribunal Program Review Task Force, it is recommended to Benchers that the following resolutions be passed:

WHEREAS the Legal Services Regulatory Framework Task Force, the Regulation and Insurance Working Group, and the Tribunal Program Review Task Force have completed their work and reported to the Benchers;

BE IT RESOLVED to dissolve the Legal Services Regulatory Framework Task Force, the Regulation and Insurance Working Group, and the Tribunal Program Review Task Force effective immediately



CEO's Report to the Benchers

January 2017

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

This is my first CEO's report to the Benchers for 2017 and I would like to wish you all the very best for the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President Herman Van Ommen, QC and to both our new and returning Benchers. We look forward to working with all of you in the coming year.

In my report this month I provide a year-end perspective on 2016 as well as a preview of some of the organizational priorities for 2017.

2016 Year End Perspective

Key Performance Measures (KPMs)

Please find attached to this report a presentation on the results of our KPMs for 2016 (*Tab 1*). I will review the highlights of this report at the Benchers meeting and members of the Executive Team will be available to answer any questions.

I encourage you to review the KPMs report because it is a dashboard for the Benchers to monitor progress in each of our core regulatory areas against stated desired goals and objectives. We are unique among law regulators in Canada in that we have established these measures which we also publish on our website in the interest of institutional transparency. In addition to the governance and public interest aspect of the KPMs they are also a tool for management to continually assess what operational processes, strategies and resources are most effective in achieving our goals.

We achieved an overall success rating of 83% on our KPMs for 2016 including record strong satisfaction ratings from users of our complaints and professional conduct process. This is particularly impressive given increased demands and complexity in this area last year. On the challenges side, we are seeing pressures in our custodianship program particularly given some large and complex custodianship files in 2016. We will need to pay close attention to our resources and ability to continue to address custodianship requirements and met our KPMs in that area throughout 2017. Similarly, as our trust audit program continues through its second 6 year cycle for law firm audits we will continue to emphasize a helpful approach to assist firms with utilizing best practices to ensure full compliance.

The KPMs were first approved by the Benchers and have been tracked and reported on continuously since 2007 with some modifications and changes instituted after reviews in interim years. In accordance with good practice, the Executive Committee has requested that we undertake a “review and refresh” exercise for the KPMs in 2017 to ensure that they continue to provide the best measures of our regulatory goals. Management will be reporting back to the Executive Committee in the weeks ahead to initiate that review.

2015 – 2017 Strategic Plan

Please find attached a copy of the 2015 – 2017 Strategic Plan which has been annotated to describe the status of active initiatives in 2016 (*Tab 2*).

This report was presented to the Benchers at the meeting in December so I will not go into too much detail here. Suffice to say that while significant progress was achieved on a number of fronts in the Strategic Plan in 2016 two initiatives are worthy of special mention.

The first is Initiative 2-3(a) in the plan namely responding to the calls for action in the Report of the Truth and Reconciliation Commission. This response had three key components; the creation of a steering committee to determine how to engage with Aboriginal communities, a substantive agenda for the Benchers retreat in May based on those determinations, and the creation of a standing Truth and Reconciliation Advisory Committee in the Fall with specific terms of reference. Those three pieces came together with remarkable haste and thoroughness and position LSBC as a leader among Law Society’s in the country in this important work.

The second is Initiative 1-2(c) in the plan namely examining and articulating a Law Society position on legal aid. This also had three key components; the creation of a Task Force with a mandate and vision, a day long Colloquium with senior leaders from government, the courts, various agencies and the profession, and the presentation of a final report to the Benchers in early 2017. The first 2 components were successfully completed in the year and the final report is on track for presentation to the Benchers before mid-year.

Some of the other important initiatives in the plan such as seeking legislative amendments to establish new classes of legal service providers to enhance access to affordable legal services and the work of the Law Firm Regulation Task Force in pursuit

of the strategy to be a more effective and efficient regulator will continue as priorities throughout 2017.

As this is the final year of our current 3 year Strategic Plan, the Benchers will be deliberating in the Fall on the content of a new strategic plan to guide the Law Society out to the year 2021. The Executive Committee is considering how best to prepare the Benchers in the months ahead for those discussions and has requested senior management to present some options for further consideration.

Annual Budget

While the final accounting for our year-end position is not yet complete we expect to end the year more positive than our most recent forecasts and positive to budget overall. Both revenues and expense will contribute to this result and it is notable that we maintained good control on external counsel and other costs and had the benefit of stronger than expected results on electronic filings revenue driven by the active real estate market. The final year end audited statements will come to the Benchers at the March meeting after review and approval by the Finance and Audit Committee. I can confirm that at 2016 year end and at time of writing the Law Society continues to be in a solid financial position.

Employee Survey

The results of the 2016 annual Employee Survey will be presented at the meeting by Ryan Williams, the President of TWI Surveys Inc., our survey administrator. The Executive Team will also be on hand to answer any questions you may have.

The Law Society is a leader among Canadian regulatory bodies in offering our employees the opportunity to give online feedback on a range of topics which are important to them and to the success of the organization. Law Society staff are our single biggest and most important asset in fulfilling our regulatory mandate. Employee engagement, motivation and satisfaction are therefore key to our success. The annual employee survey gives us insight into how we are doing as a management team and where there are opportunities to make changes, big or small, which will make the Law Society an even better place to work and thrive. The 2016 results are strong but, as always, we do not take these for granted. For example, we continue to need to look at ways to address the feedback suggesting that staff are seeking better resources to do their jobs and for more opportunities for career development and training. I look forward

to receiving any feedback you have on the survey results and to answering your questions.

2016 Selected Operational Highlights

During 2016 I reported to the Benchers on our key operational projects and priorities. What follows is an update and year end status report on some of those items.

New LSBC Website

Much work was undertaken in 2016 to prepare for the design and build of a new Law Society website. We are now in the final stages of that project and the launch is in sight. The technology infrastructure components have been installed and configured, and the content transfer will be complete by the end of January. We expect to be ready to launch the website by the end of February.

In 2016, visitors to our website were up 1.5% and unique page views were up 9.5%. Interestingly, in comparison the Law Society's Twitter account had approximately 4,000 followers at the end of 2016 a 19% increase over the prior year.

Google Search Tool for LSBC

One of the initiatives of our Knowledge Management Project has been the acquisition of a "Google" like search engine for all Law Society documents, records and information. Today we have almost a million documents stored in our documents management system without the dynamic "Google" search type capability to identify and retrieve those documents. The benefits of acquiring this capability in terms of time saved and more precision in search activities will be significant over time. It is also a more reliable and user friendly experience because this is how staff are accustomed to searching for information whether at home or at work. Following an RFP process and 2017 budget approval a vendor was selected and the implementation work commenced. We are now in "beta" phase testing with different departments and we expect the new search engine to be up and running by mid-year.

Skills Enrichment Program

This project was launched at the start of 2016 and is designed to ensure that all of our

staff have the tools and training necessary to achieve a minimum high standard of computer literacy and technology skill. The steps have included a skills assessment evaluation for all staff, development of individual training curriculums, and training support seminars and one on one sessions. We have had great participation from a majority of staff with approximately 80% having recorded training hours over the course of the year. The program will continue into 2017 with some modifications and adjustments to respond to feedback from our user survey. Most notably, we will move from a mandatory annual 12 hours to a recommended 12 hours with greater choice in content offerings. We thought this was a reasonable change given the demonstrated interest in the training and the focus on flexibility (i.e. on line training is available 24/7). We will continue to look for ways to improve the uptake and value of the training for staff as part of our culture and commitment to continuous learning.

Core Values

At the start of 2016 we created a cross departmental staff working group to try and develop a consensus around what we hold as core values in the workplace. I was very impressed and grateful for how staff embraced this project and their work which included extensive research and consultation was truly outstanding. We have committed to striving to live up to these values in all that we do at the Law Society and to include them in our discussions around individual performance and goal setting. Please find attached to this report a precis of our adopted core values “Integrity and Excellence” (*Tab 3*).

Counsel Resourcing Plan

In 2015 we experienced an extraordinary demand on our counsel resources in the professional regulation area particularly in the intake and investigations functions. It became apparent during that year that our budgetary projections for external counsel expense would be significantly understated and that the levels of demand were perhaps the “new normal” and not just an aberration in the year.

We determined that we needed to build a comprehensive demand and supply and cost/benefit forecasting model to better address our needs in this critical regulatory area. We struck an internal working group representing all of the stakeholder departments co-chaired by Deb Armour our Chief Legal Officer and Jeanette McPhee our CFO. With the assistance of some external business modelling advice the working group produced a report that illuminated the key cost benefit tradeoffs of using internal versus external counsel across a range of different regulatory files. This report was ultimately reviewed

in detail with the Finance and Audit Committee and resulted in recommendations being made which were adopted into the 2017 budget for additional internal resources.

This was an impressive piece of work which was completed under considerable time pressure and in addition to the day to day requirements of all participants. The focus now shifts to implementing the resourcing recommendations and to establishing a tracking system to monitor progress against the goal of significantly reducing case file loads over the next 2-3 years.

Electronic Voting Platform

The Benchers elections in 2016 were the first to be conducted giving the option to members to vote electronically. Much work was undertaken in 2016 to prepare for this and it came off without a hitch. Based on the success of this initiative the upcoming Kootenay County by-election will likely be conducted entirely electronically.

Outlook for 2017

We have hit the ground running in 2017 with a significant list of strategic and operational projects underway. For example, the work of the Truth and Reconciliation Advisory Committee, the Law Firm Regulation Task Force and the upcoming report and recommendations of the Legal Aid Task Force.

In 2017 we are also entering an important phase with our on-going efforts with government and other stakeholders to create a legislative regime for new classes of regulated legal services providers all in the interests of enhancing the public's access to affordable legal services. We are committed to following up on the work of our Lawyer Education Task Force Report to examine and assess the prospects for articling as part of our overall goal of better preparing lawyers for practice. More recently, work has commenced to find ways to make our regulatory responses more proactive, that is, to help limit or prevent issues before they arise.

The Law Society and Law Foundation's recent collaborative decision to support the Access to Justice BC (A2JBC) cross sectoral initiative will also be a focus for us in 2017. More specifically, in addition to the 3 year funding support approved by the Benchers last December, we will be assisting A2JBC with targeted in-kind support in the areas of communications, policy and IS/IT. The strategic goals of A2JBC are currently being refined but they will likely center on A2JBC being a place or network for various

access agencies to connect and align their efforts to enhance collaboration ,eliminate redundancies and identify opportunities. We will be updating the Benchers on progress on the A2JBC initiative at mid-year.

TWU and the Supreme Court of Canada

We are awaiting word from the Supreme Court of Canada regarding leave to appeal applications filed by LSBC in respect of the BC Court of Appeal decision on the matter and similarly with regards to the leave to appeal application of TWU in respect of the Ontario Court of Appeal decision. These decisions are expected in 2017 and we will be reporting back to the Benchers as matters develop.

New Strategic Plan Process

As noted, the Benchers will be meeting in the Fall to discuss and adopt a new 3 year strategic plan. Over the course of 2017 the Benchers will be briefed and have the opportunity to reflect and consider a range of key issues and developments affecting the public and the profession in BC, Canada and globally. This will help provide a robust context and background for those discussions and for ultimately assisting the Benchers in deciding what strategies and initiatives will best serve the Law Society's mandate for the next 3 years.

Timothy E. McGee
Chief Executive Officer



Key Performance Measures

Report on 2016 Performance

Presented to Benchers - January 27, 2017

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Background

This is the tenth time that the key performances measures of the Law Society of British Columbia have been reported. The key performance measures are reviewed each year at the Benchers meeting.

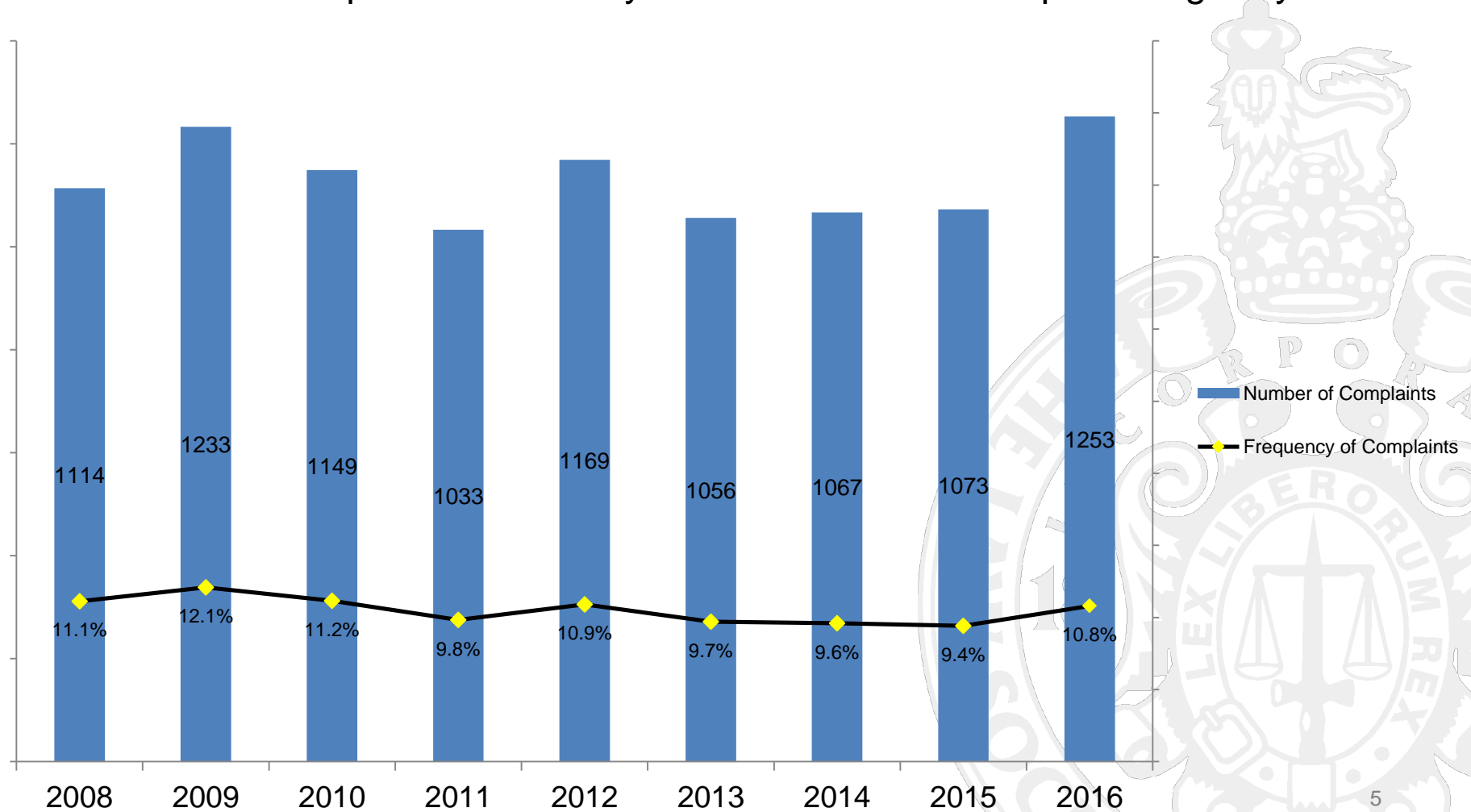
The key performance measures are intended to provide the Benchers and the public with evidence of the effectiveness of the Law Society in fulfilling its mandate to protect the public interest in the administration of justice by setting standards for its members, enforcing those standards and regulating the practice of law.



Bellwether Measures

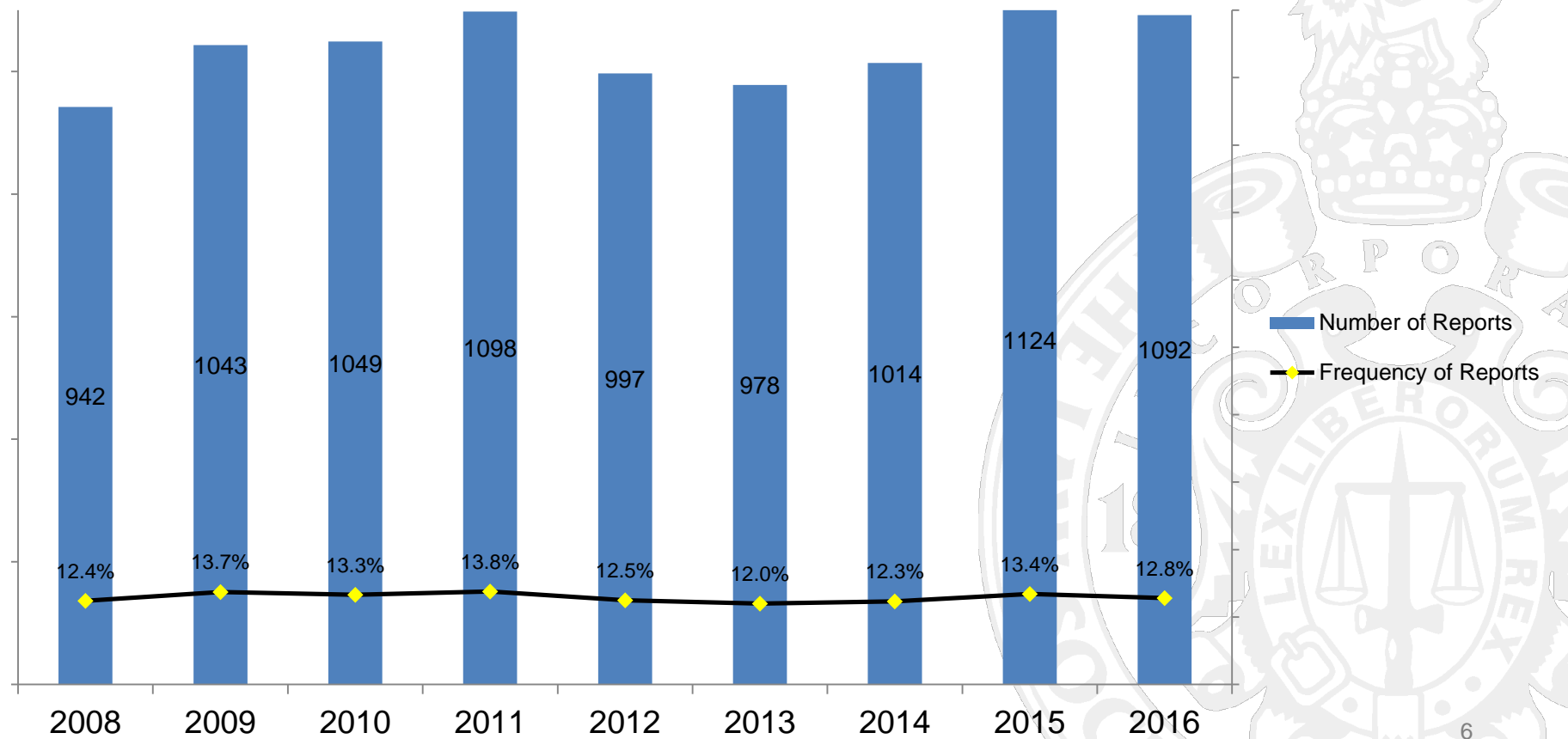
Frequency of Complaints

The number of complaints divided by the median number of practising lawyers



Frequency of Insurance Reports

The number of reports divided by the median number of insured lawyers



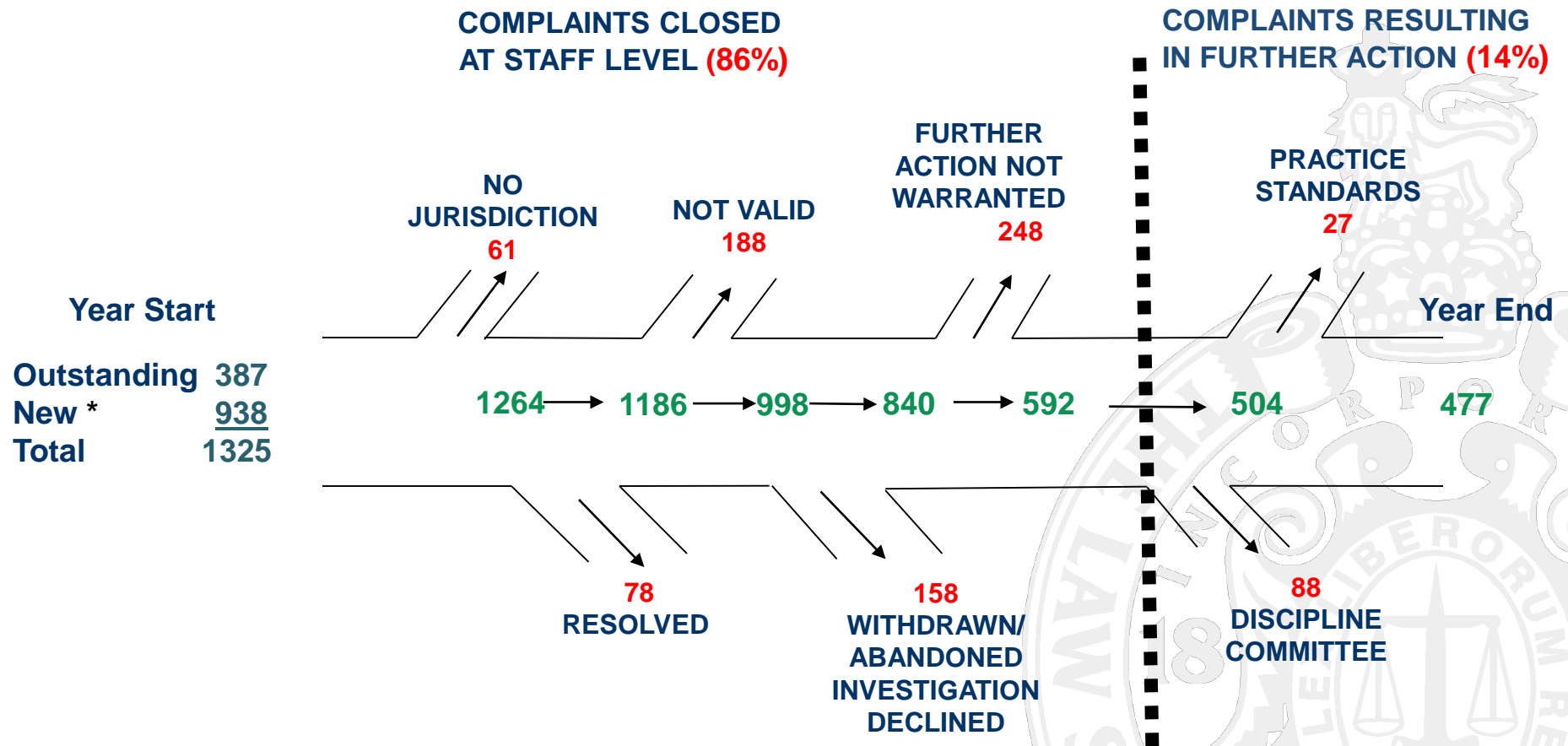


Professional Conduct and Discipline

Department Highlights

- In 2016, Professional Conduct received 938 substantiated complaints and 315 unsubstantiated complaints, for a total of 1,253 new complaints. The Department also handled 1,434 telephone inquiries and 320 general inquiry files in 2016.
- Professional Conduct and Discipline exceeded all targets for complainant satisfaction with three of the quantitative 2016 KPM results being the highest ever and one other tying for highest ever.
- The Department is meeting all Federation of Law Societies of Canada National Discipline Standards for timeliness. As an example, 91% of complaint files closed in 2016 were completed in less than one year, surpassing the NDS of 80%.
- Both the CRC and the Office of the Ombudsperson continue to be satisfied with our complaints handling processes and procedures.

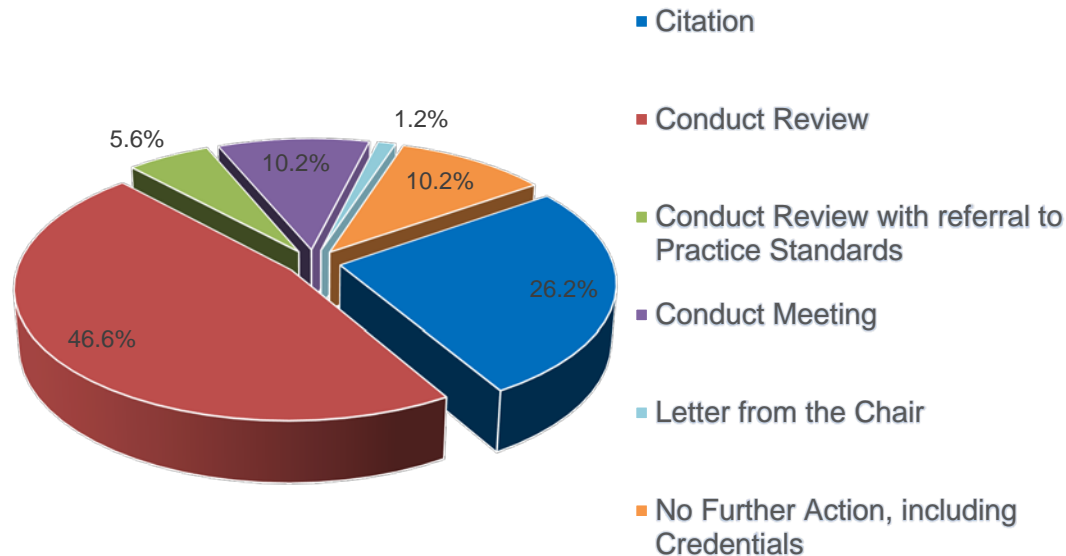
2016 Complaints Results



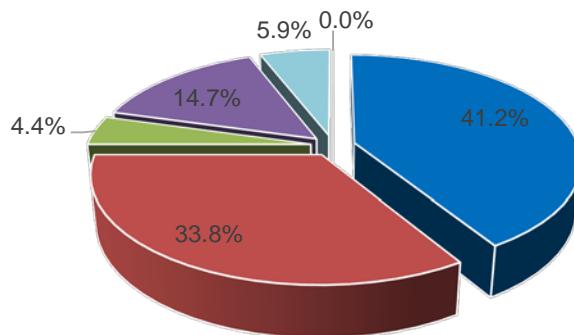
* An additional 315 unsubstantiated complaints were received in 2016.

Discipline Committee Dispositions

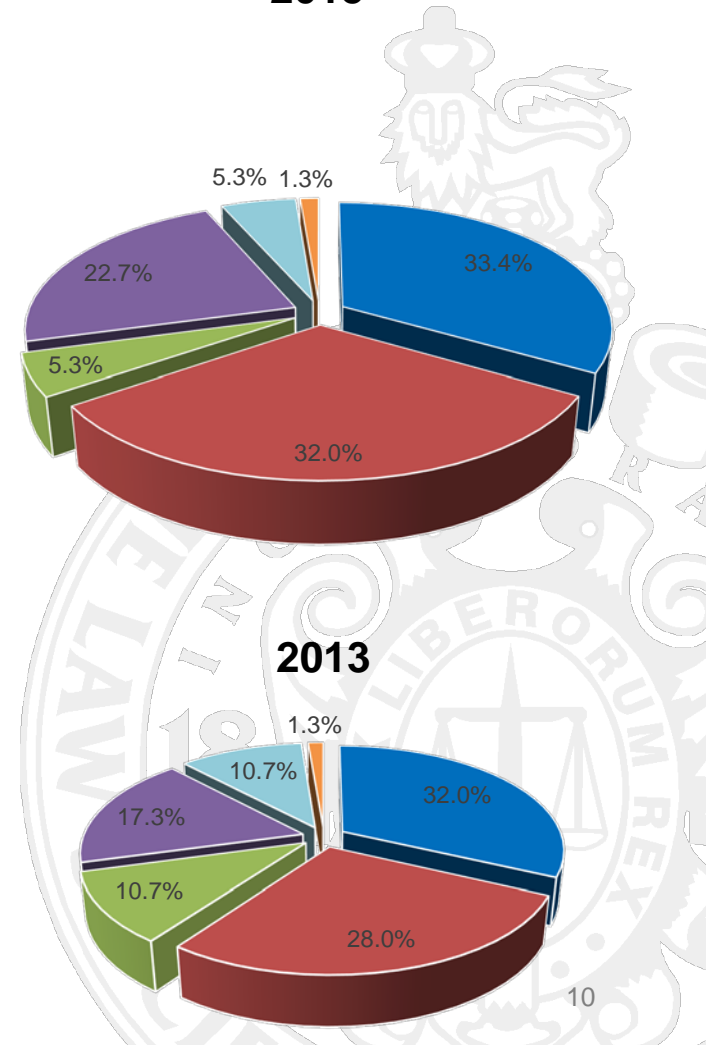
2016



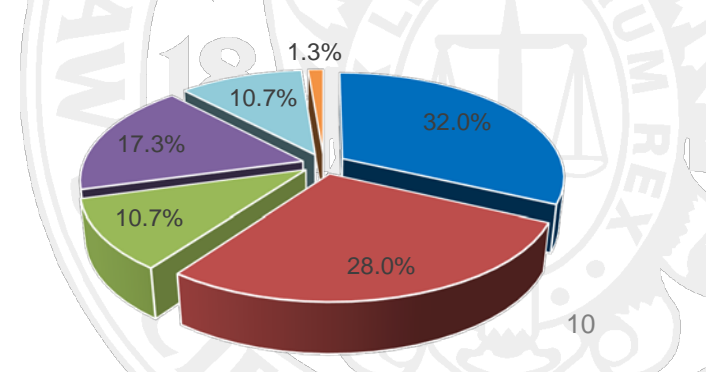
2014



2015

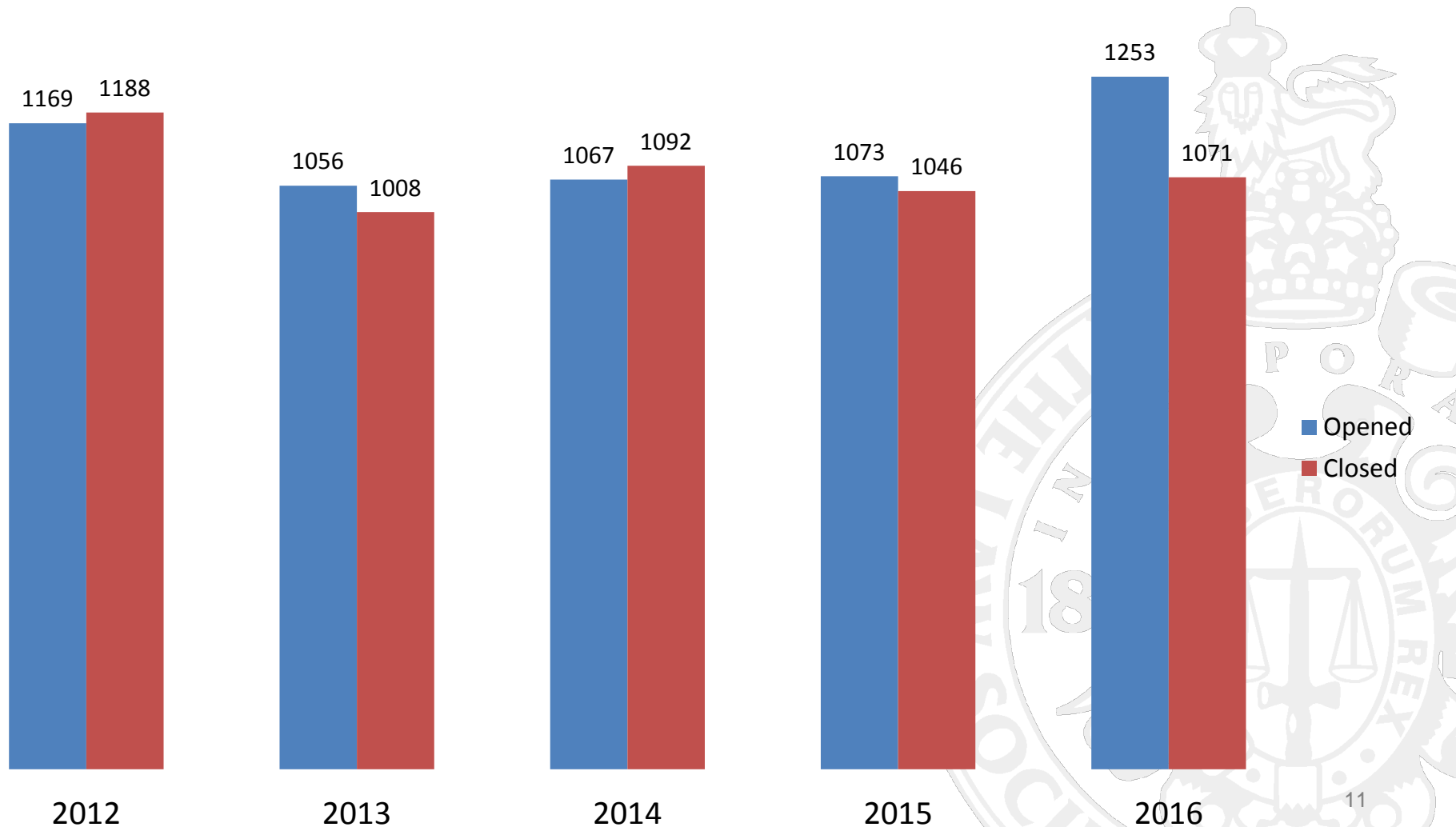


2013



Key Activities

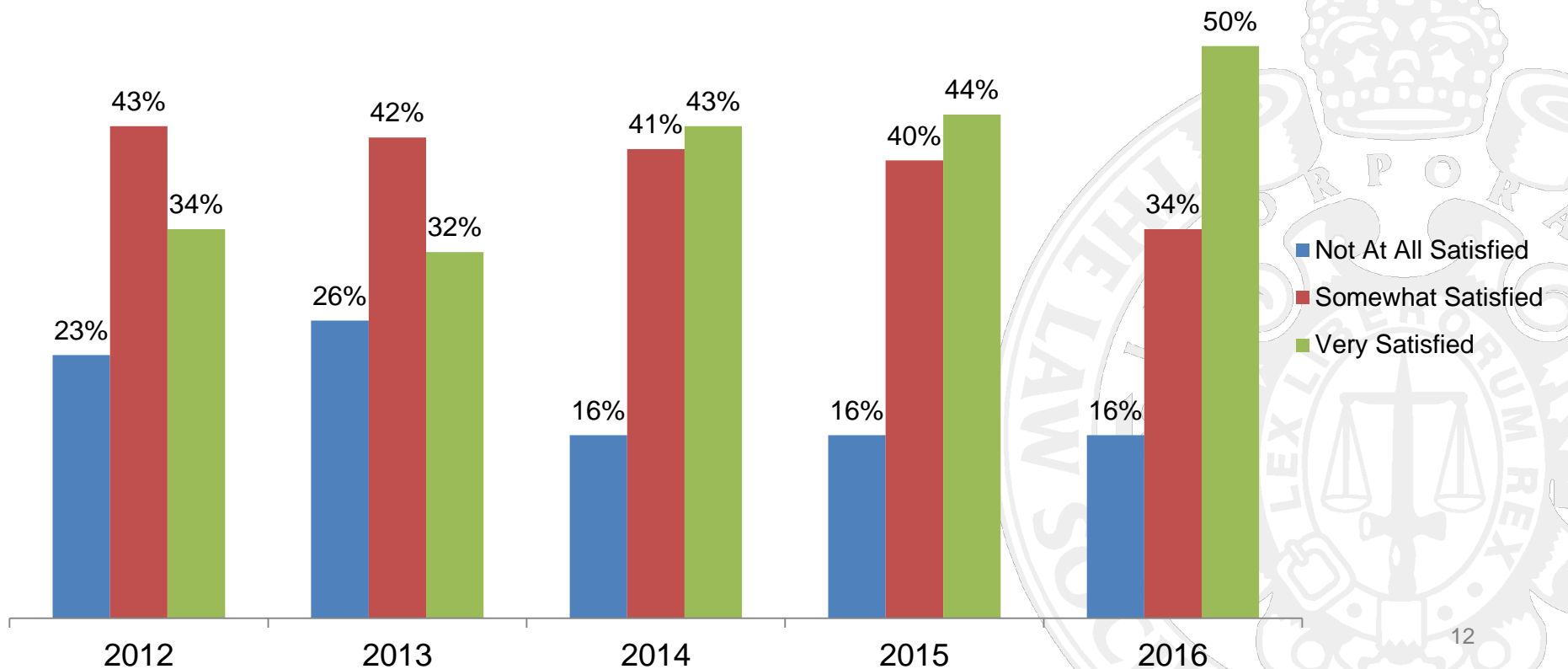
Number of Member Complaints Opened and Closed Each Year



Key Performance Measures

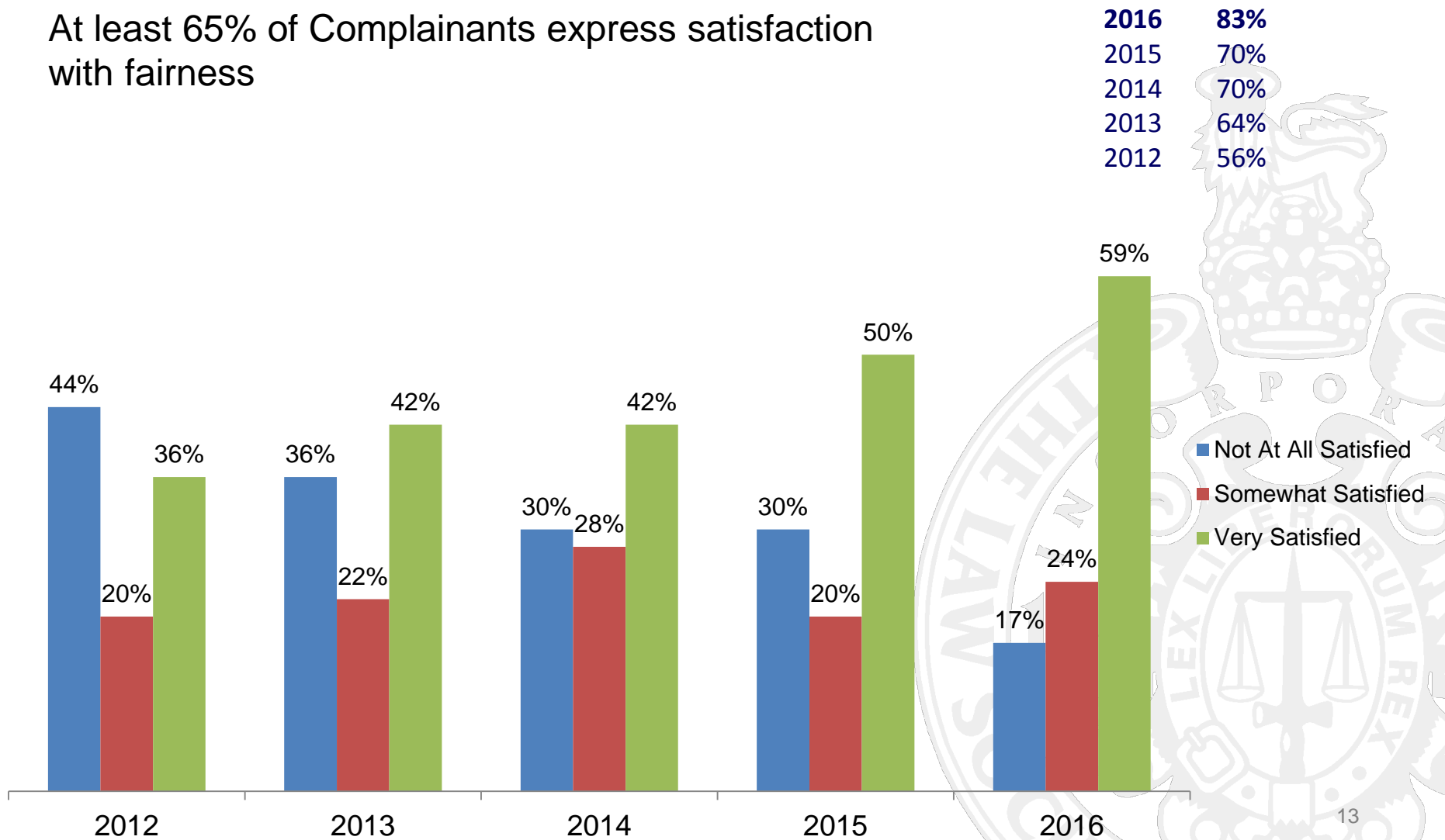
At least 75% of Complainants express satisfaction with timeliness

2016 84%
2015 84%
2014 84%
2013 74%
2012 77%



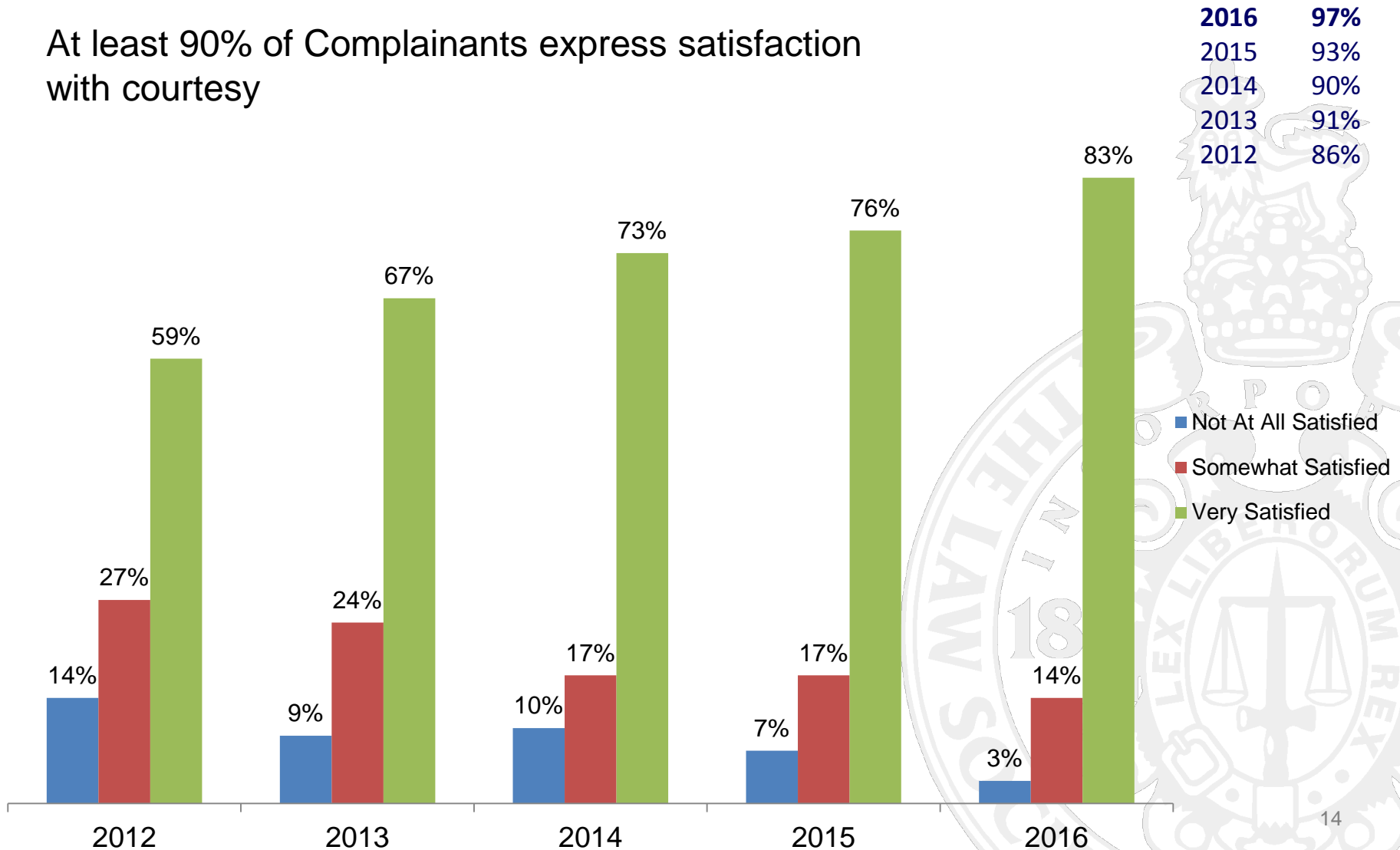
Key Performance Measures

At least 65% of Complainants express satisfaction with fairness



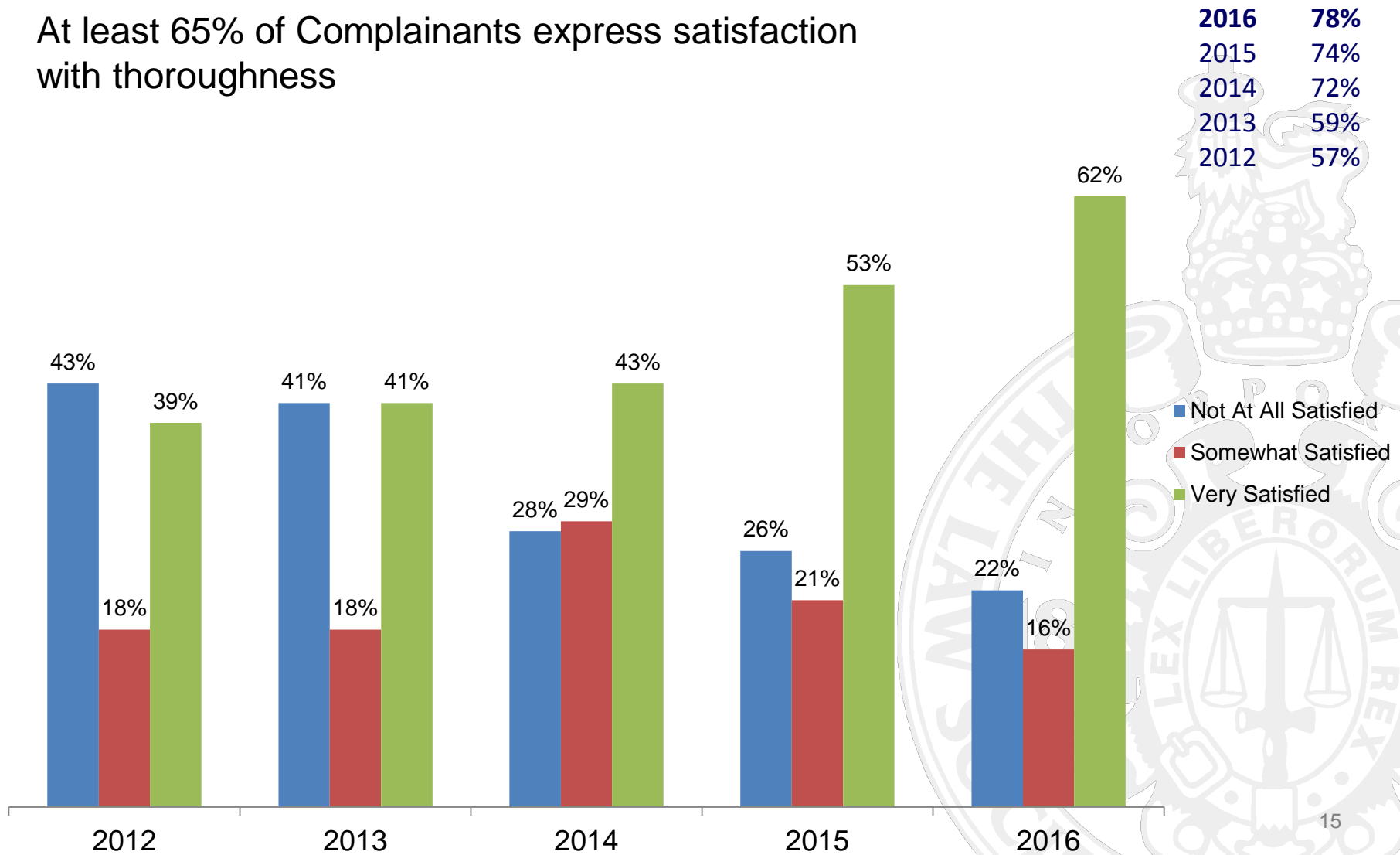
Key Performance Measures

At least 90% of Complainants express satisfaction with courtesy



Key Performance Measures

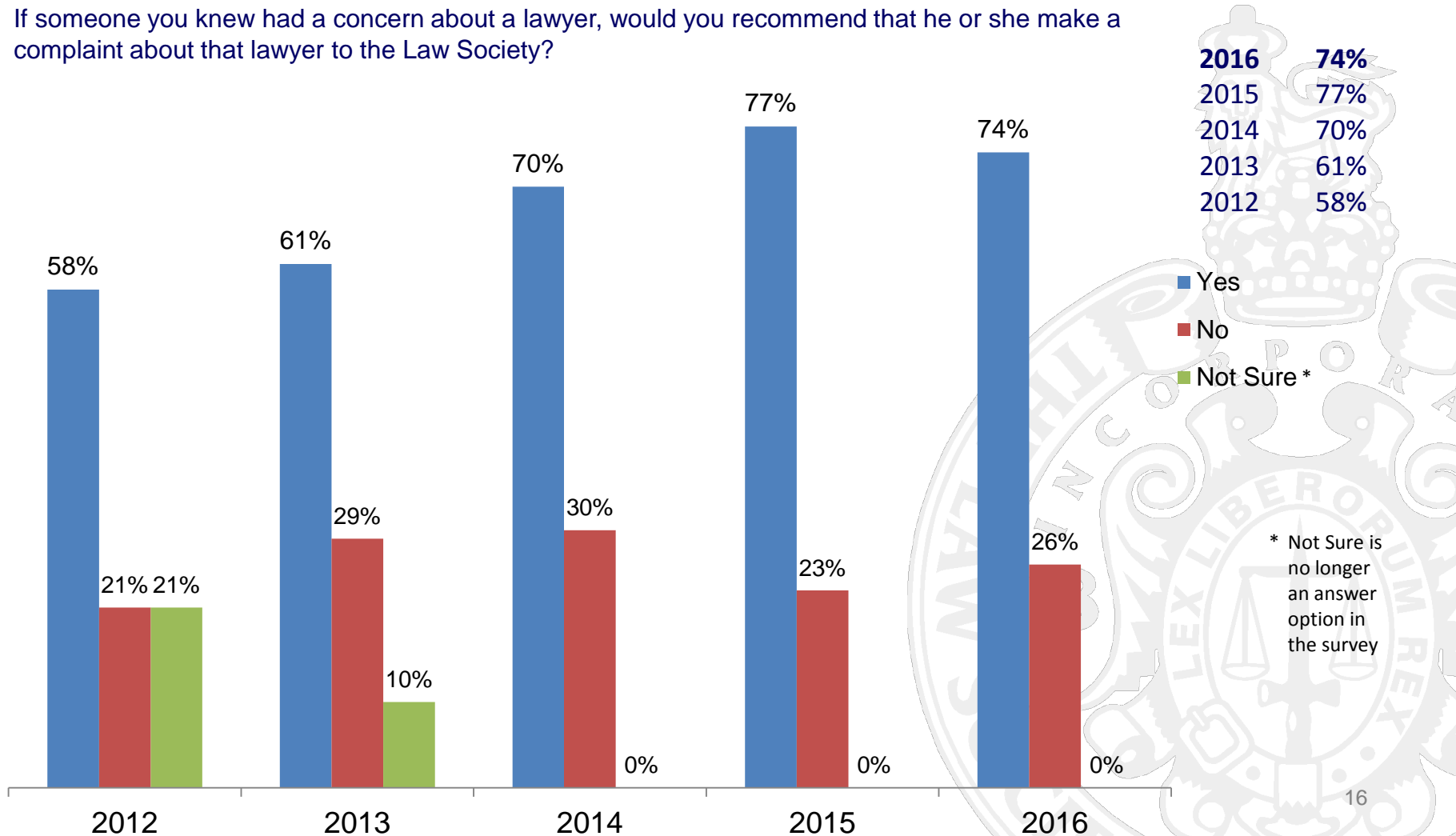
At least 65% of Complainants express satisfaction with thoroughness



Key Performance Measures

At least 60% of Complainants would recommend the complaint process

If someone you knew had a concern about a lawyer, would you recommend that he or she make a complaint about that lawyer to the Law Society?



Key Performance Measures

The Ombudsperson, the Courts and the CRC do not find our process and procedures lacking from the point of view of fairness and due process.

In 2016, eight enquiries were received from the Ombudsperson concerning our complaint investigation process, compared with three enquiries received in 2015. Seven of the 2016 enquiries have been closed satisfactorily and one remains open.

In 2016, the Complainants' Review Committee considered 38 complaints as compared to 43 in 2015. The Committee resolved to take no further action on all files on the basis that the staff assessments were appropriate in the circumstances.



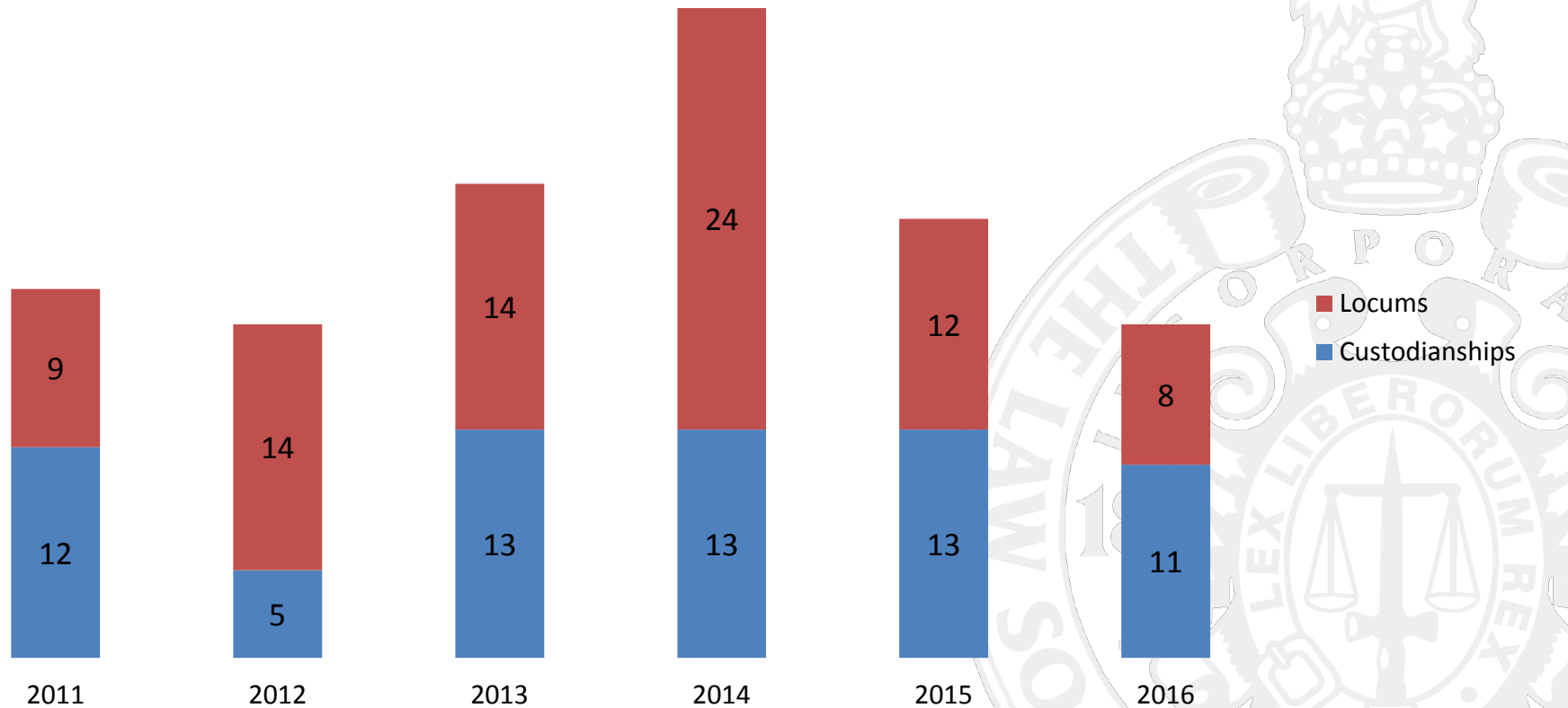
Custodianships

Department Highlights

- In 2016, the Law Society was appointed as a custodian over 11 practices (6 by court order; 5 by agreement) and staff coordinated 8 locum placements.
- Discharges were granted on 6 custodianships during the year. The number of practices requiring new custodian appointments has remained fairly constant over the last three years. However, due to an increase in the number of large and complex custodianships, the number of new appointments has exceeded the number of discharges the past three years. This has resulted in an increase in the number of custodianships remaining under our administration from a low of 25 at the end of 2013 to 40 at the end of 2016.
- In 2016, 100% of clients who responded to our survey were satisfied with the way in which we dealt with their matter.
- The KPM that the time required to complete a custodianship will decrease under the new program compared to historic averages was not met. This resulted from two custodianships which, due to complex issues (litigation and estate matters) and a necessity to wait for steps to be taken by third parties, took considerably longer than normal to complete. Though all other custodianships discharged in 2016 were under the historic average, these two custodianships pulled the 2016 average over the historic average.

Key Activities

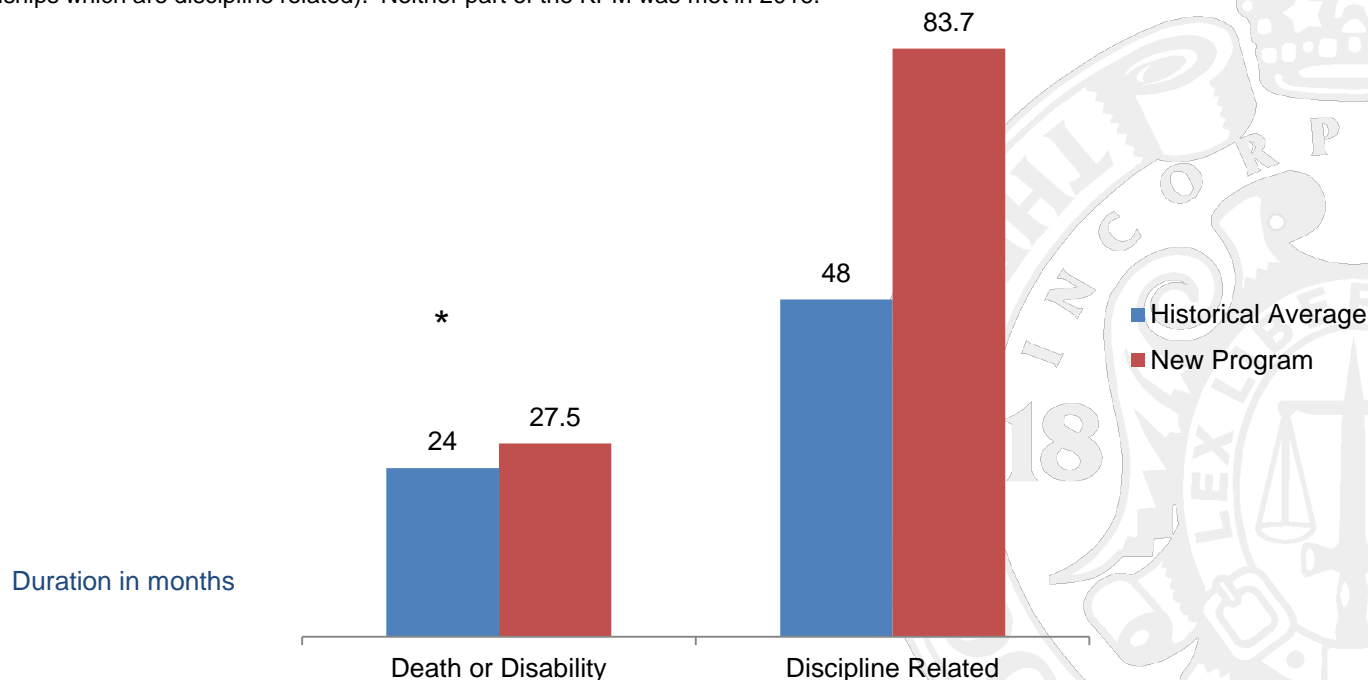
New Custodianships and Locums By Year



Key Performance Measures

The length of time required to complete a custodianship will decrease under the new program based on comparable historic averages*

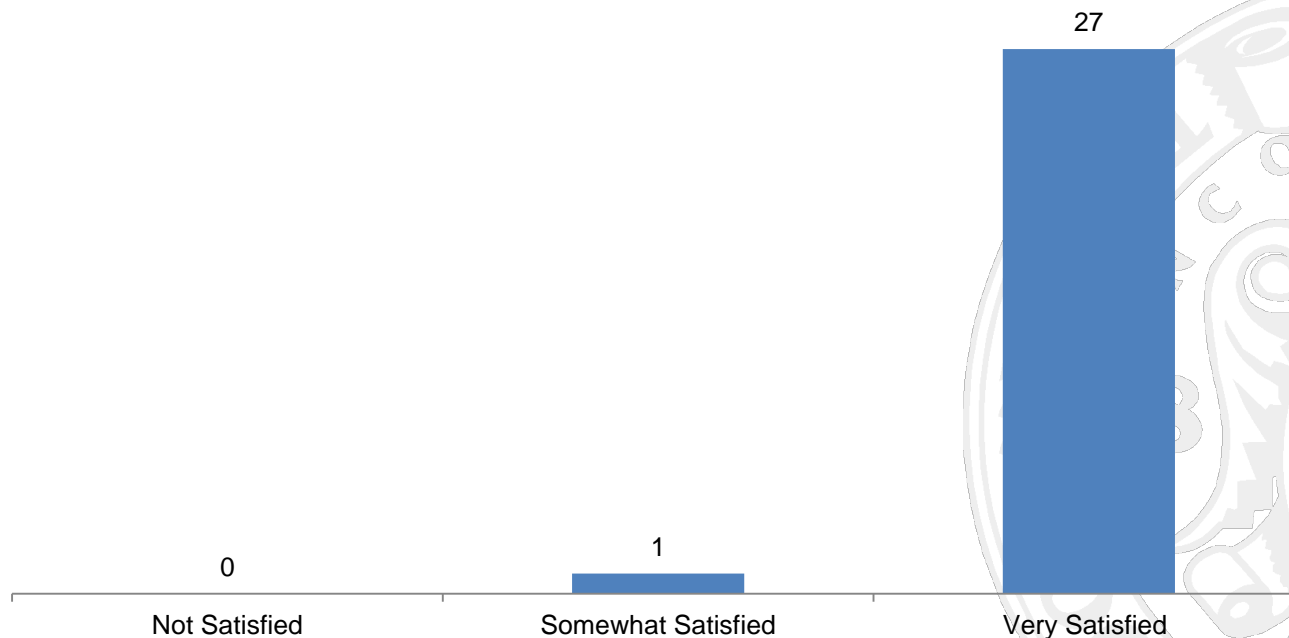
* This KPM is divided into two parts (custodianships arising from death or disability and custodianships which are discipline related). Neither part of the KPM was met in 2016.



Key Performance Measures

90% of clients surveyed are satisfied with the way in which the designated custodian dealt with their client matter.

Degree of satisfaction with the way in which the designated custodian dealt with your client matter



2016	100%
2015	88%
2014	100%
2013	83%
2012	87%



Trust Assurance

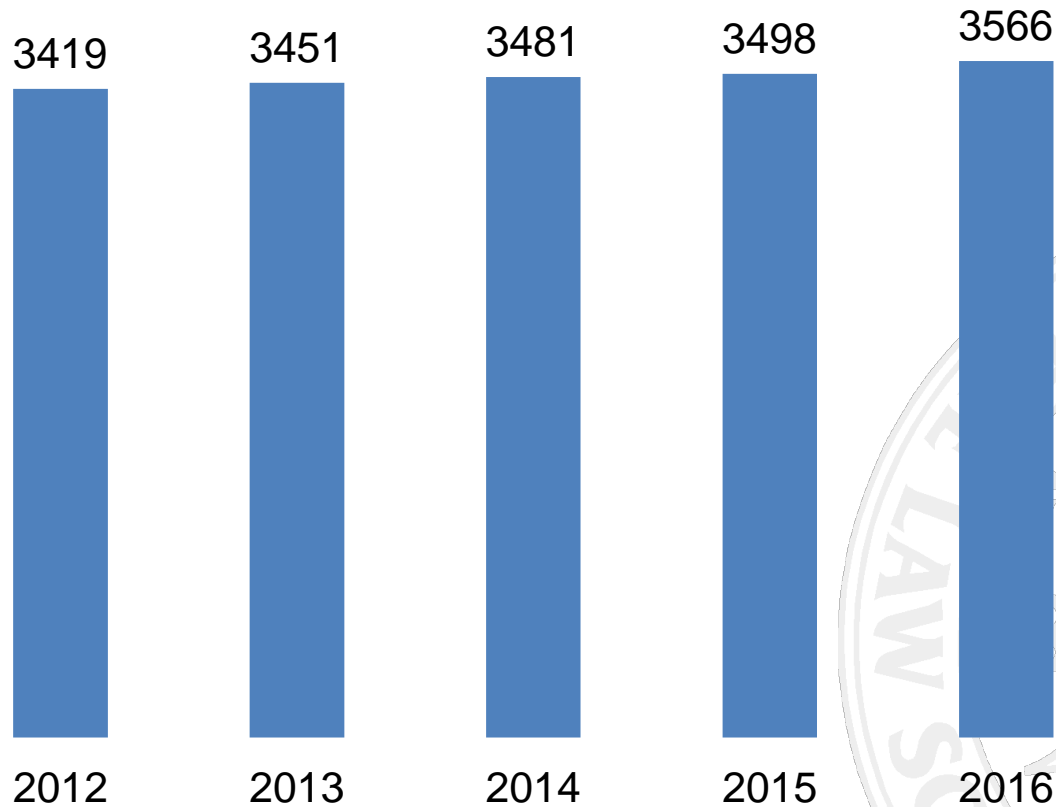
Department Highlights

- In addition to conducting trust compliance audits and reviewing annual law firm trust reports, the Trust Assurance Department also performs file monitors when necessary.
- The department provides guidance on trust related matters through direct correspondence with lawyers, formal presentations to various external groups, and through the development of information resources such as the Trust Accounting Handbook and Checklists available on the Law Society website.
- Reviewed approximately 3,500 trust reports in 2016, similar to past years.
- Performed 458 compliance audits in 2016.

Department Highlights

- There was a small decrease in the number of financial suspensions in 2016, compared to 2015.
- There was a small increase in referrals in 2016 compared to 2015, but relatively stable results.
- Performance on key compliance questions remained relatively stable in 2015 (the last complete year for trust reports) as measured by the percentage of self-reports allowed compared with those who were required to provide an accountant's report.

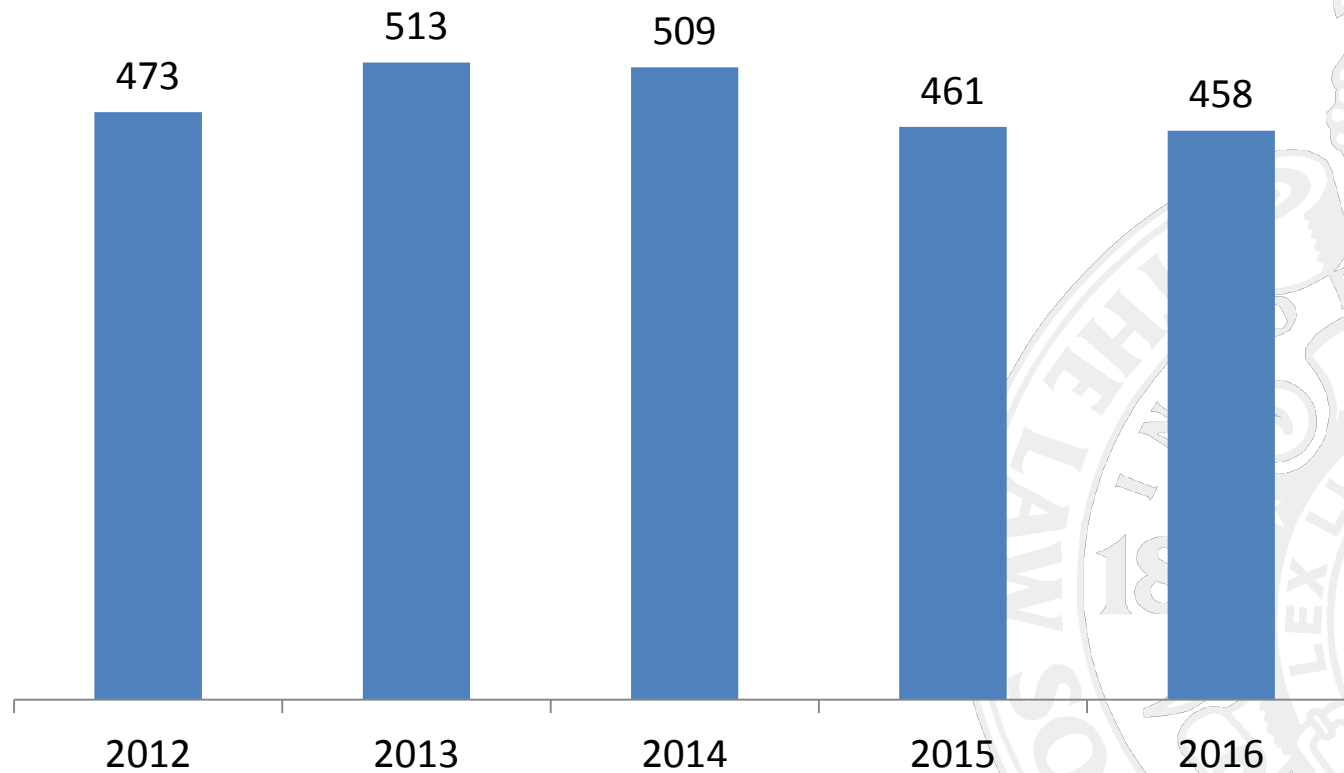
Number of Trust Reports



* Projected figure, as due dates for Trust Reports ending in the final quarter of 2016 have not yet passed

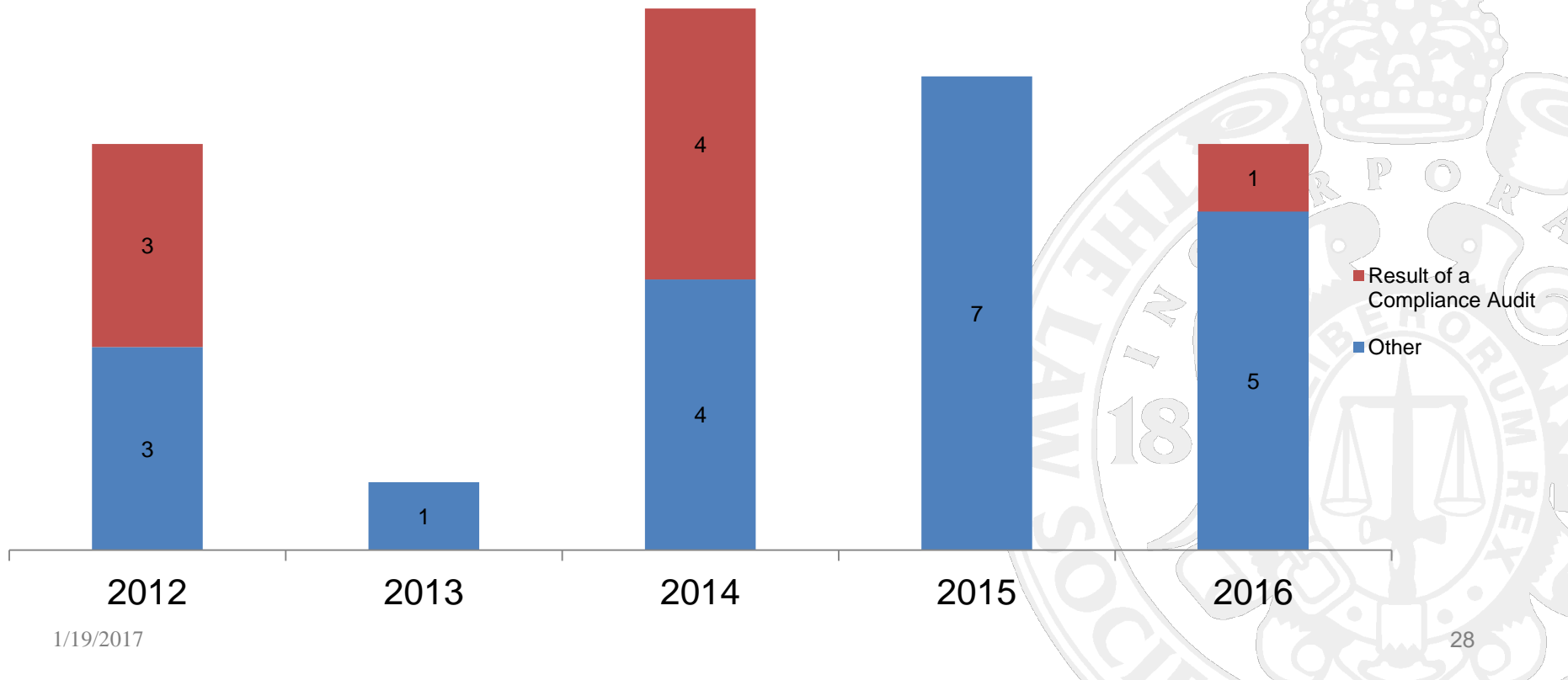
Compliance Audits

Number of compliance audits performed



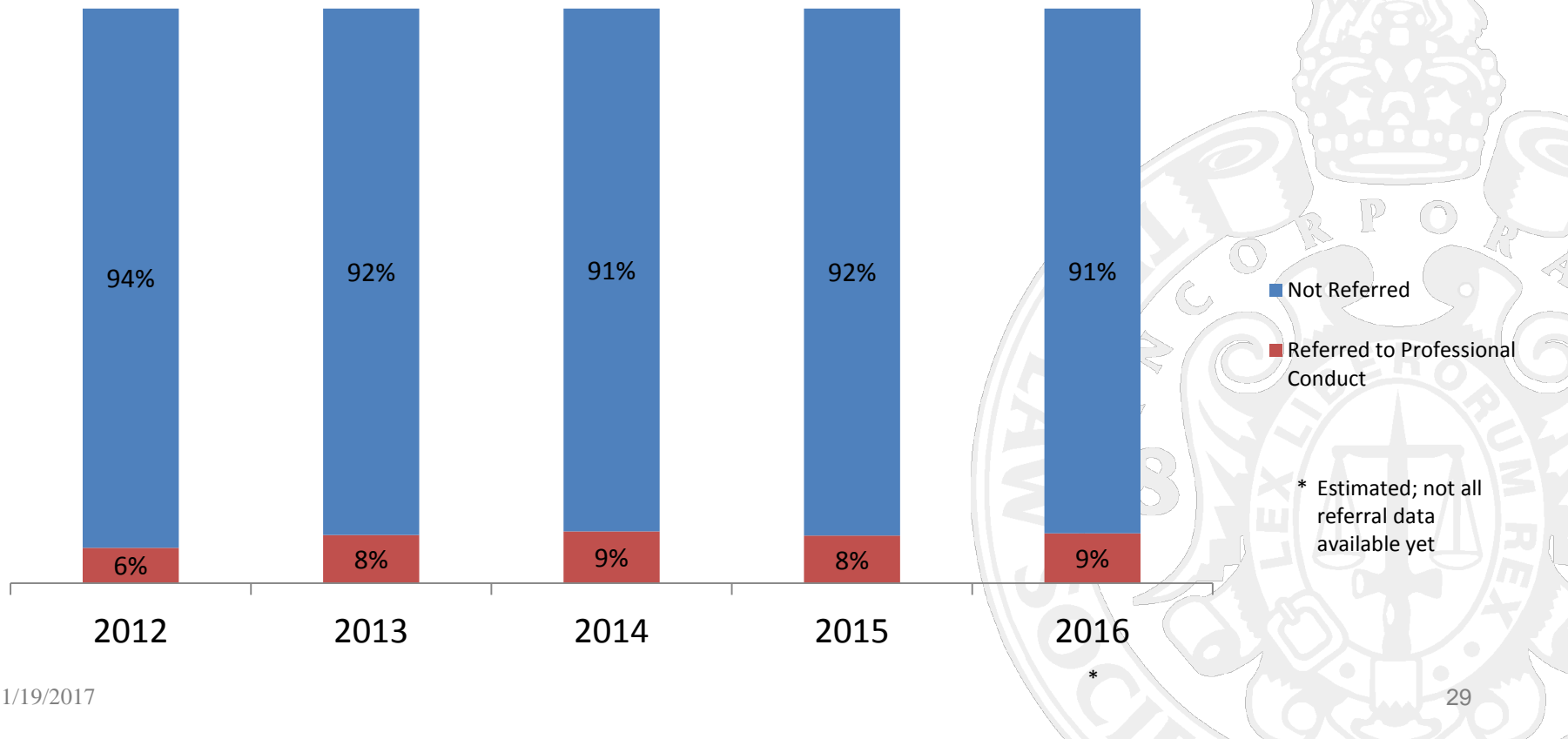
Key Performance Measure

Long term reduction in the number of financial suspensions issued by trust assurance program



Key Performance Measure

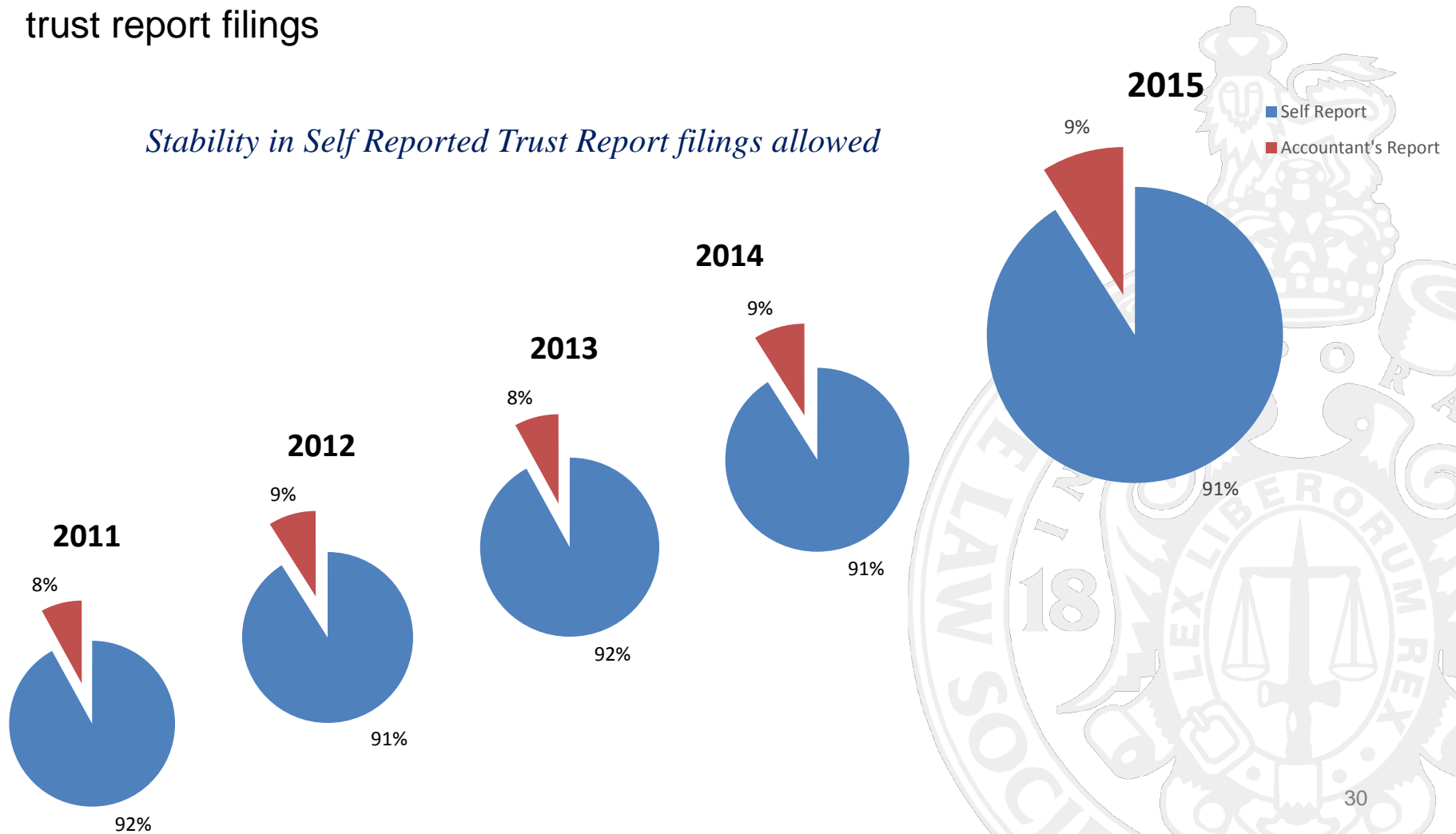
Long term reduction in the percentage of referrals to Professional Conduct department as a result of a compliance audit.



Key Performance Measure

Improved performance on key compliance questions from lawyer trust report filings

Stability in Self Reported Trust Report filings allowed





Credentials, Articling and PLTC

Department Highlights

- PLTC's live 10-week legal skills training course for articulated students saw registration slightly decrease to 476 students in 2016, down from 490 in 2015, but up from 2012 to 2014 levels.
- PLTC's new Travel & Accommodation Bursary program, generously funded 100% by the Law Foundation of BC granted 25 bursaries ranging from \$500 to \$5,000. Last year we awarded 17 bursaries.
- Since February 2016, PLTC has a new live mock criminal trial.
- In 2016, PLTC has undergone a few changes in staff. We have a new administrative assistant (Artemis Soltani), a new legal editor (Katie McConchie) and a new Deputy Director (Annie Rochette).

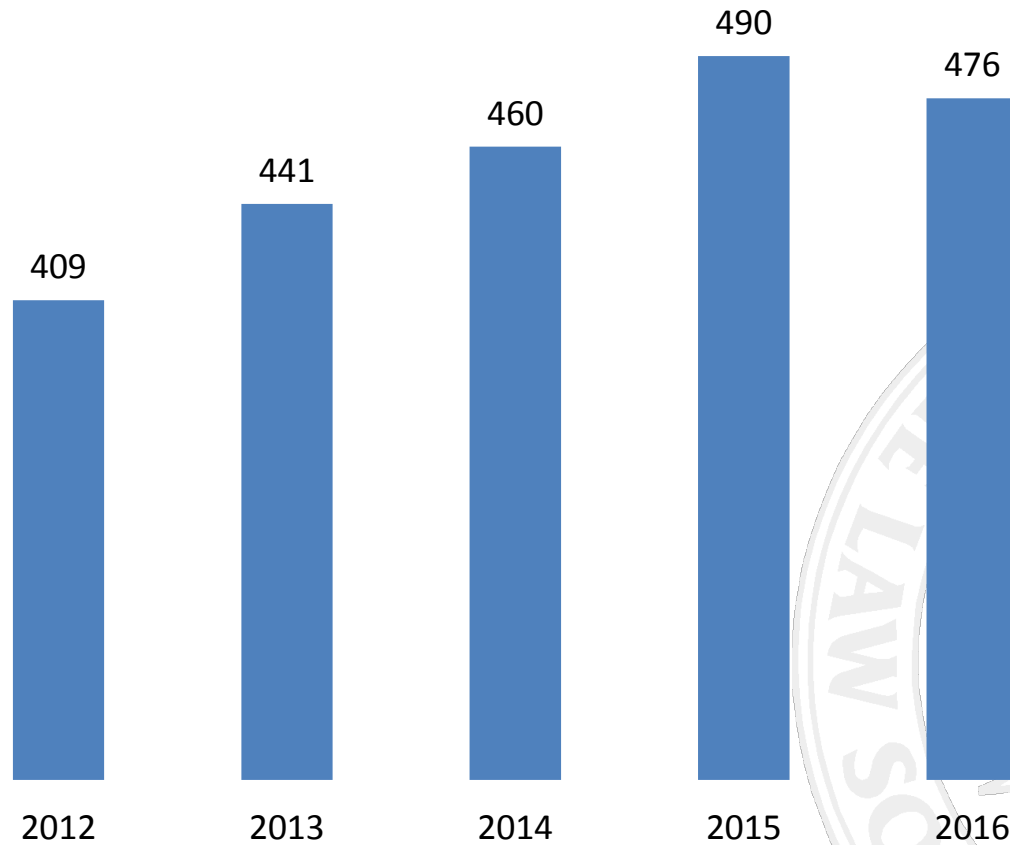
Department Highlights

The Credentials Department deals principally with

- applications for membership, student membership, return to practice, reinstatement, practitioners of foreign law, and inter-jurisdictional practice,
- administration of the articling program, including Benchers interviews, articling reports and preparation of the call to the bar ceremonies,
- the Continuing Professional Development (CPD) program,
- accreditation of family law mediators, arbitrators and parenting coordinators,
- applications for law corporations, LLPs and multi-disciplinary practices,
- management of the annual membership renewal process, including the annual fee, insurance and annual practice declaration,
- disposition of unclaimed trust funds,
- Juricert registrations and support.

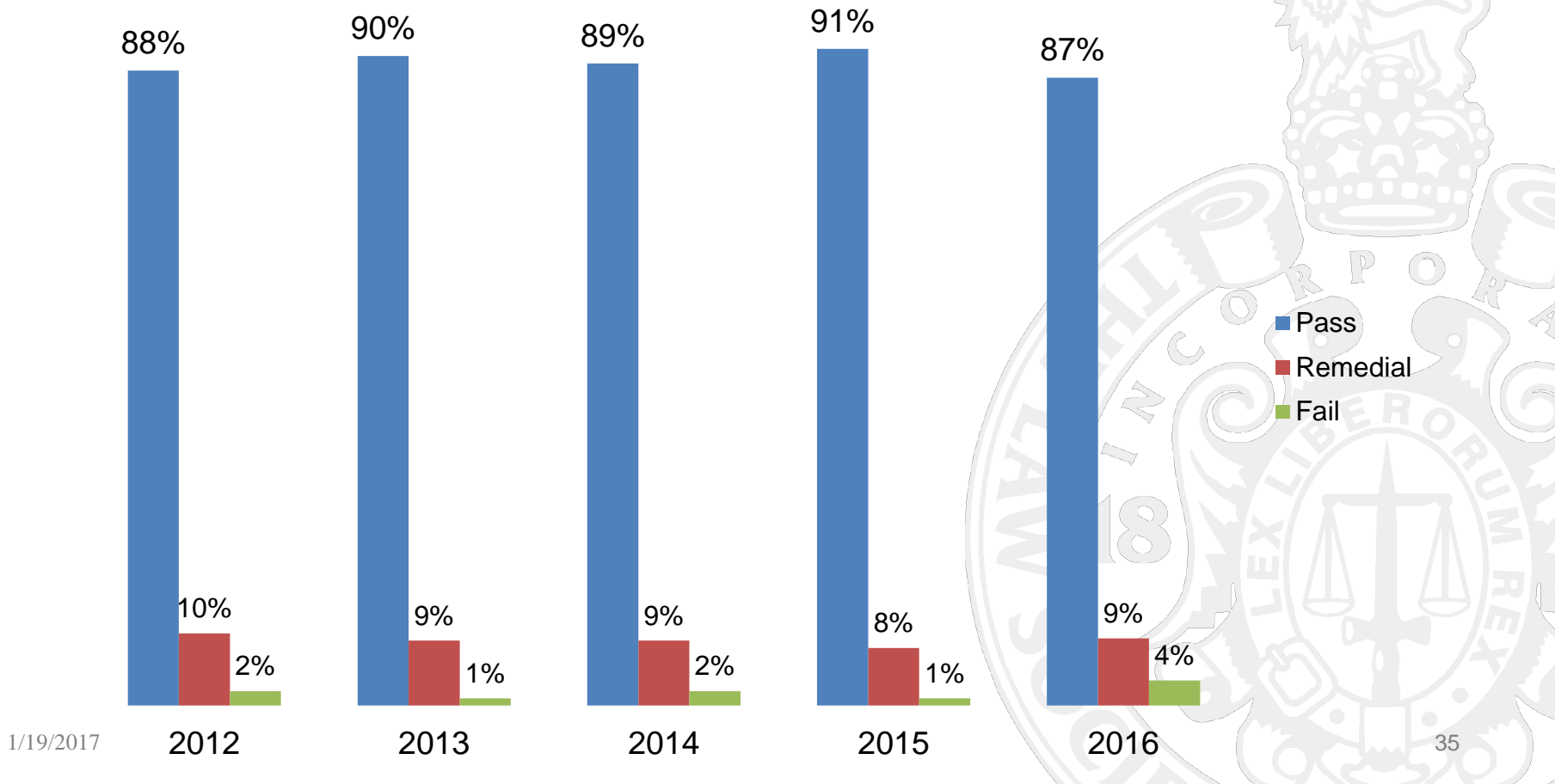
Key Activities

Number of PLTC Students



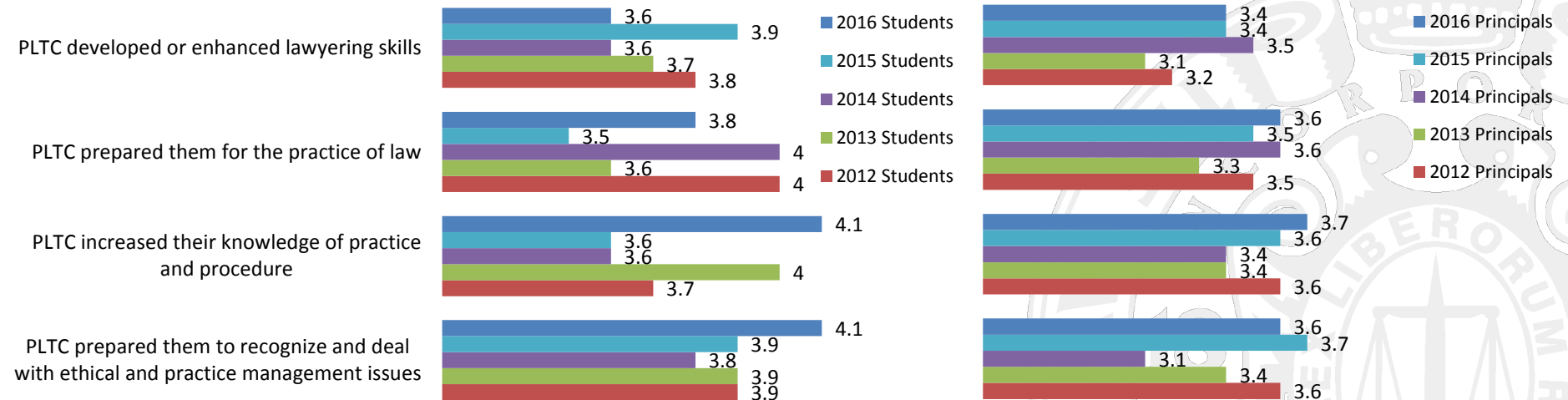
Key Performance Measures

At least 85% of the students attending PLTC achieve a pass on the PLTC results



Key Performance Measures

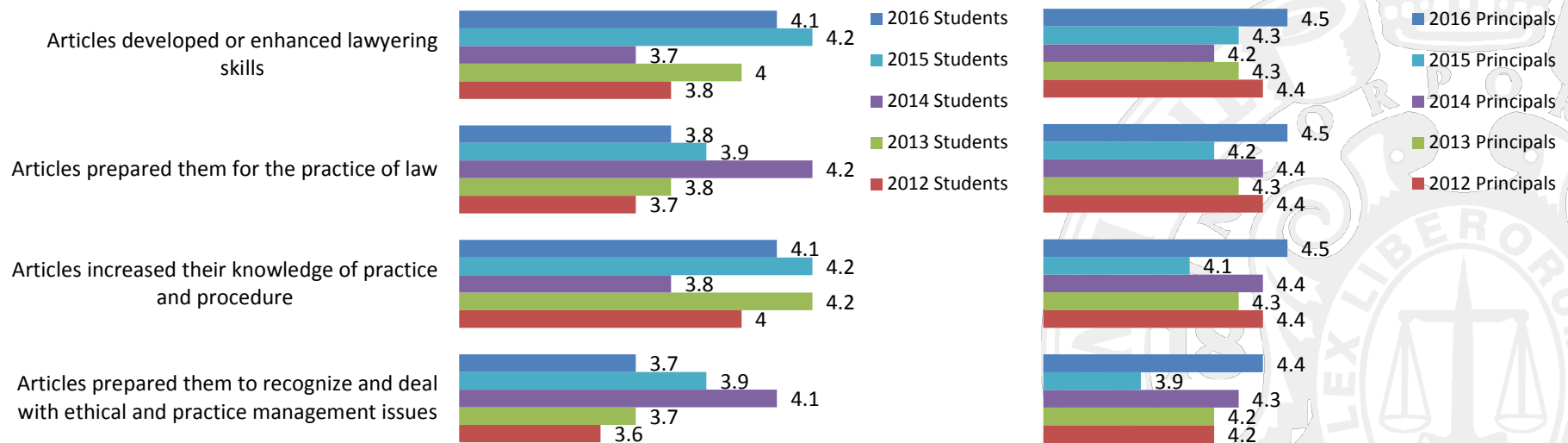
Students and Principals rate PLTC's value* at an average of 3.5 or higher on a 5 point scale (1 = lowest and 5 = highest)



* Some PLTC survey questions have been combined to provide single metrics in the above KPMs

Key Performance Measures

Students and Principals rate the value of articles at an average of 3.5 or higher on a 5 point scale
(1 = lowest and 5 = highest)





Practice Advice

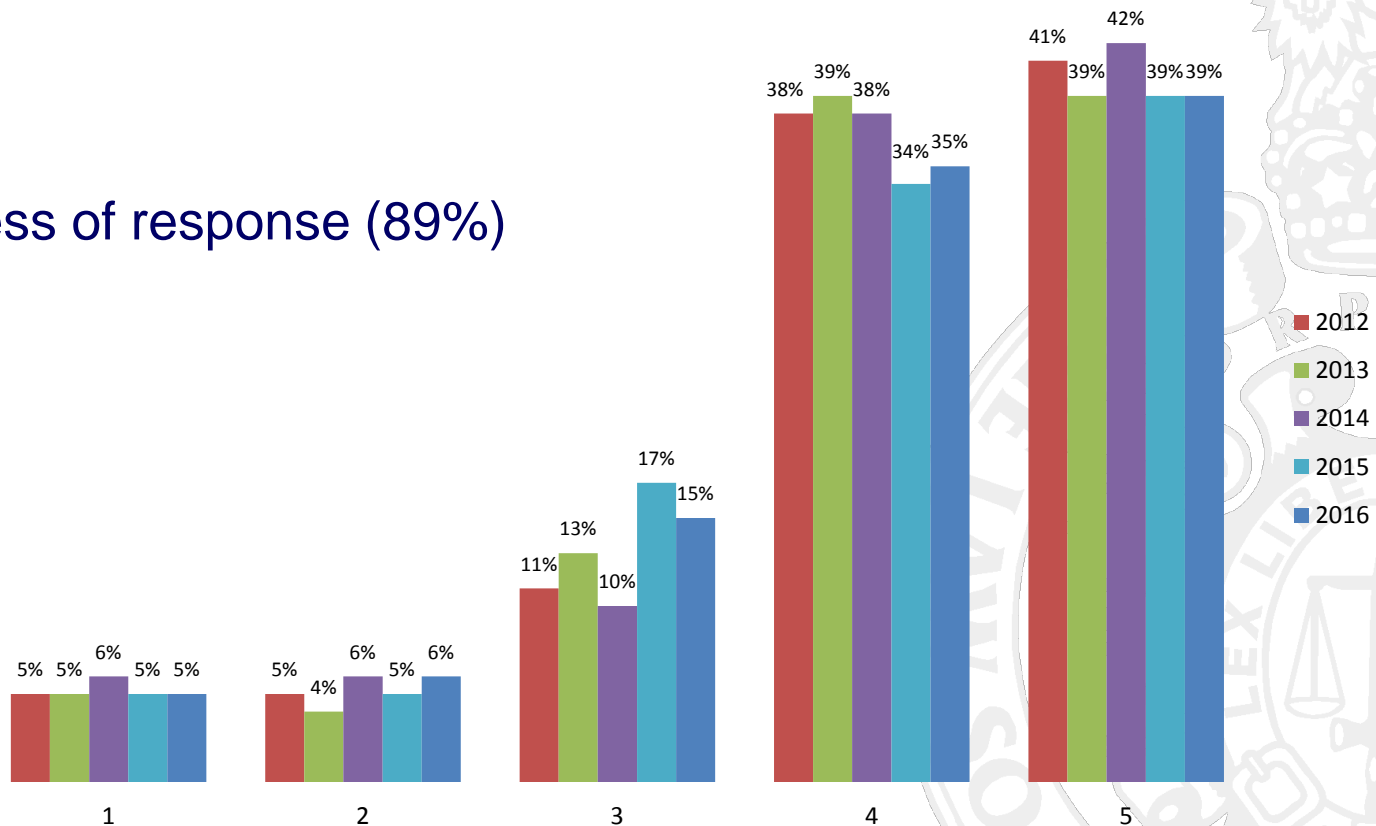
Department Highlights

- The Practice Advice department, which includes four Practice Advisors (two are half-time) and one paralegal, handled a total of 5,203 telephone and email inquiries in 2016, compared to 5,962 in 2015 reflecting a strategic plan to reduce call volume and increase use of practice advice online resources.
- 89% of the lawyers who responded to a survey rated timeliness of response at 3 or higher.
- 91% of the lawyers who responded rated quality of advice at 3 or higher.
- In rating satisfaction with the resources to which they were referred, 90% of the lawyers provided ratings of 3 or higher.
- In rating their overall satisfaction, 90% of the lawyers provided ratings of 3 or higher.

Key Performance Measures

At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale

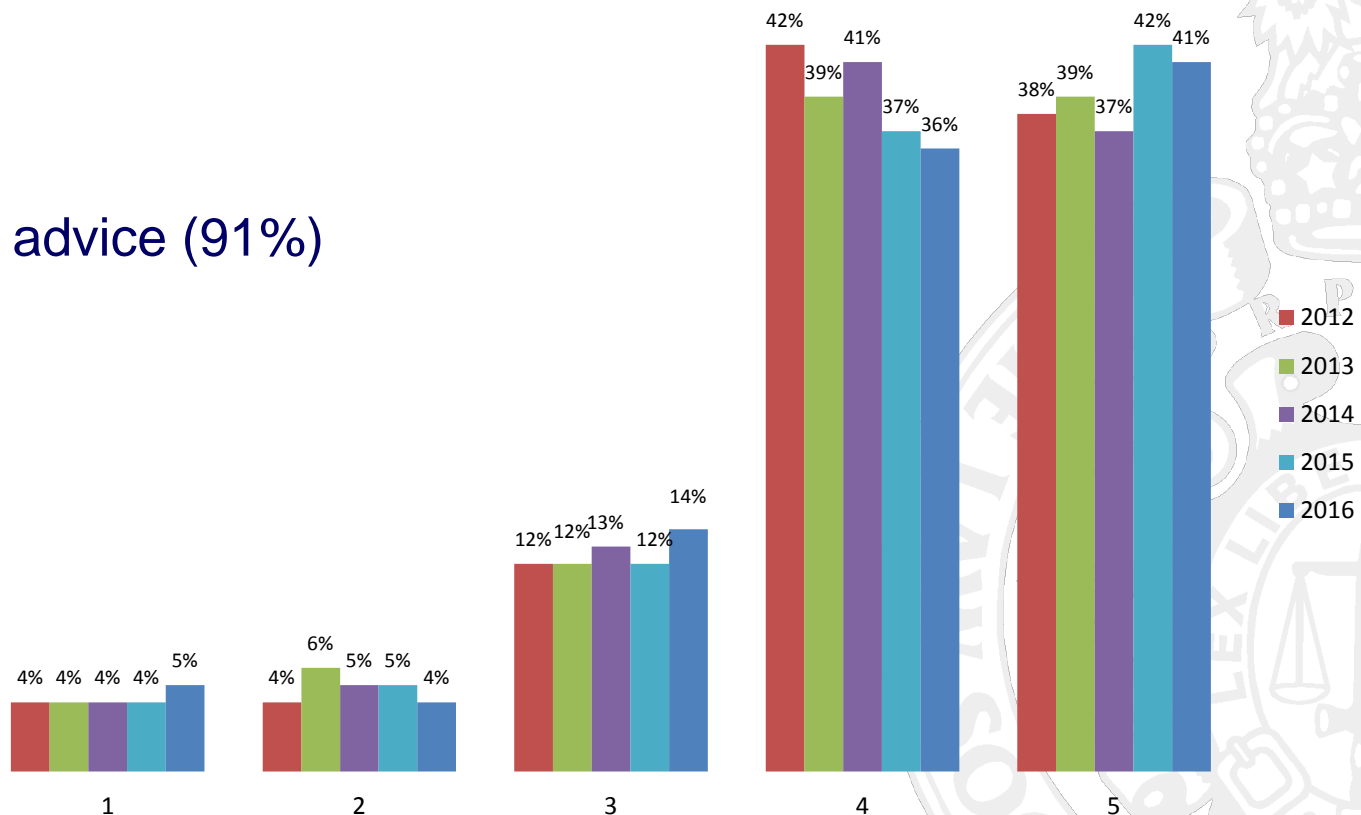
Timeliness of response (89%)



Key Performance Measures

At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale

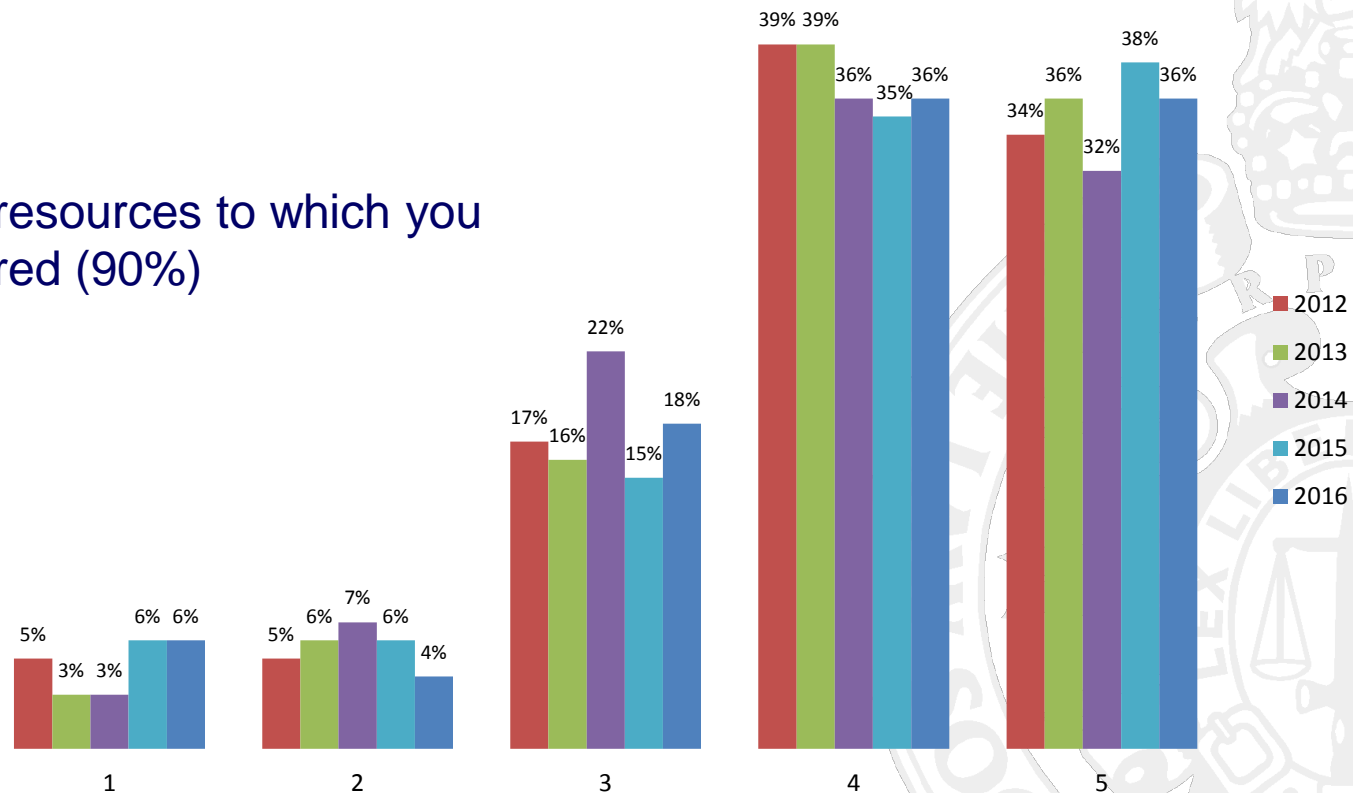
Quality of advice (91%)



Key Performance Measures

At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale

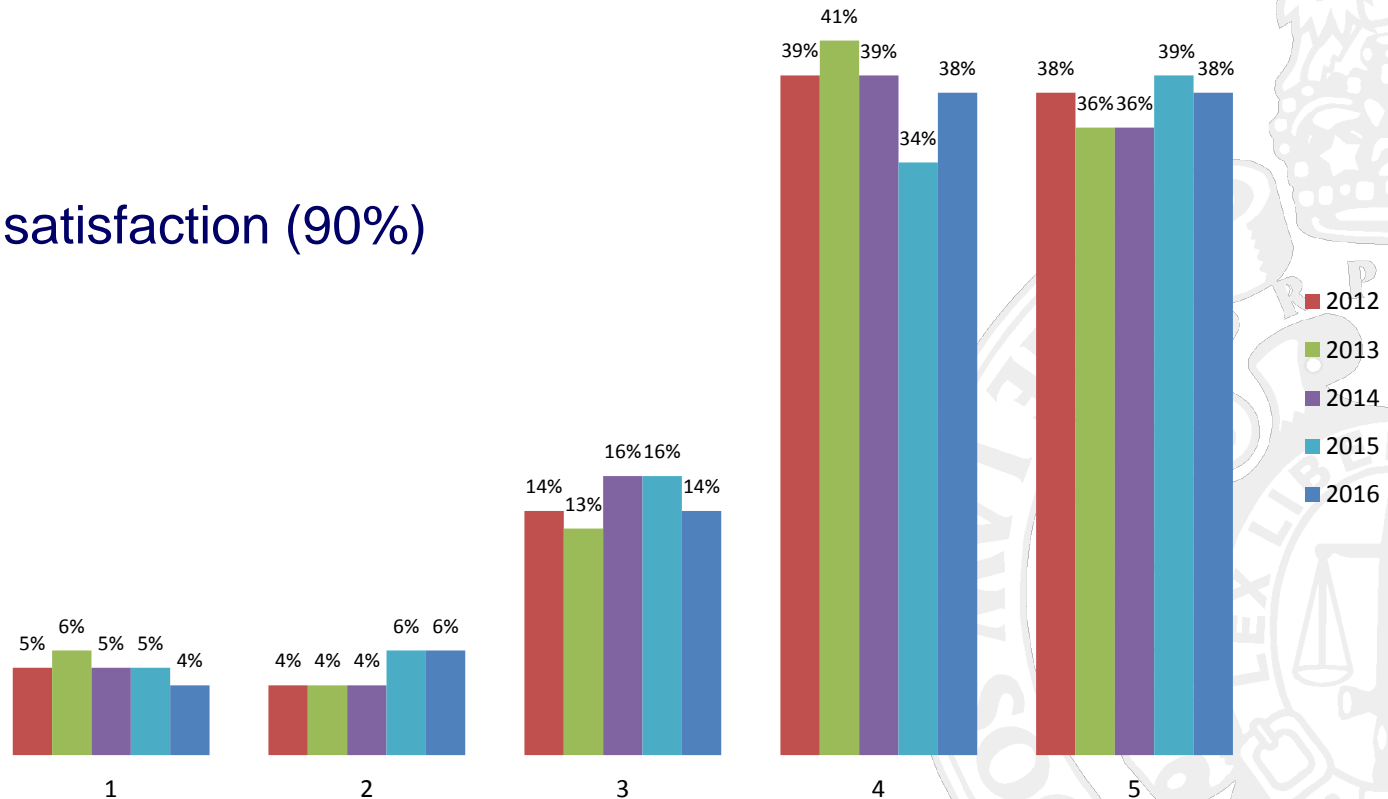
Quality of resources to which you were referred (90%)



Key Performance Measures

At least 90% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale

Overall satisfaction (90%)





Practice Standards

Department Highlights

The Practice Standards program is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards Department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

The Department also supports lawyer effectiveness by overseeing the operation and enhancement of the following Benchers-approved online lawyer support programs. All exceeded the KPM Target except for the Practice Locums Program, which historically continues to track positively but not as strongly as the other programs.

- Small Firm Practice Course
- Practice Refresher Course
- Practice Locums Program
- Bookkeeper Support Program
- Succession and Emergency Planning Program

Key Performance Measures

At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least 1 point on a 5 point scale in any one of the following categories:

1. Office management
2. Client relations and management
3. Knowledge of law and procedure
4. Personal/other

91%* of the lawyers for whom Practice Standards files were completed and closed improved by at least one point.

*The one lawyer who did not improve by at least one point is no longer in practice.

Key Performance Measures

At least two thirds of the lawyers who complete their referral do so at an efficiency rating of 3 or higher on a 5 point scale in any one of the following categories:

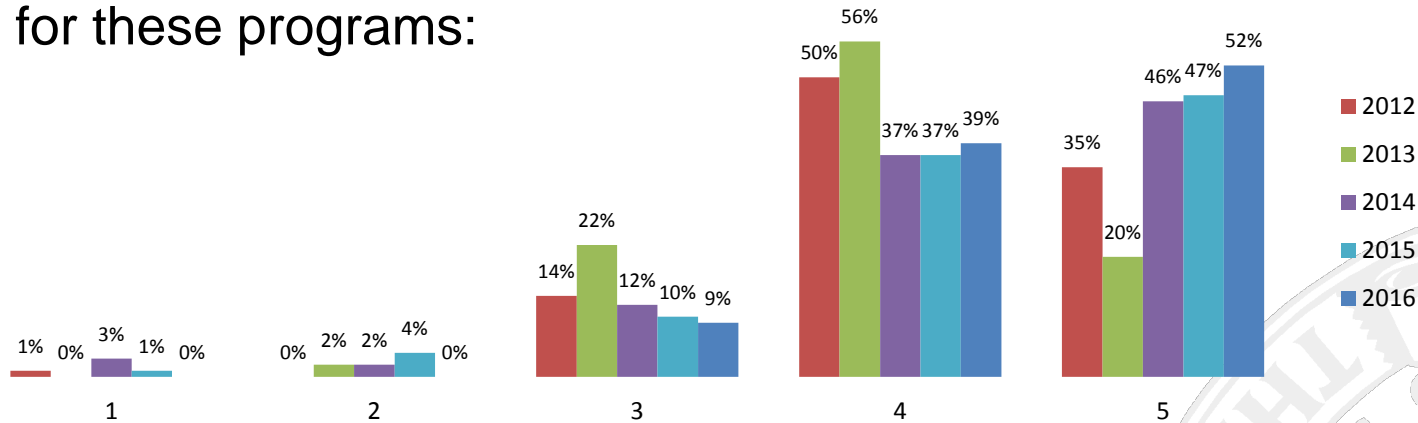
1. Office management
2. Client relations and management
3. Knowledge of law and procedure
4. Personal/other

91%* of the 11 referrals were completed at an efficiency rating of 3 or higher.

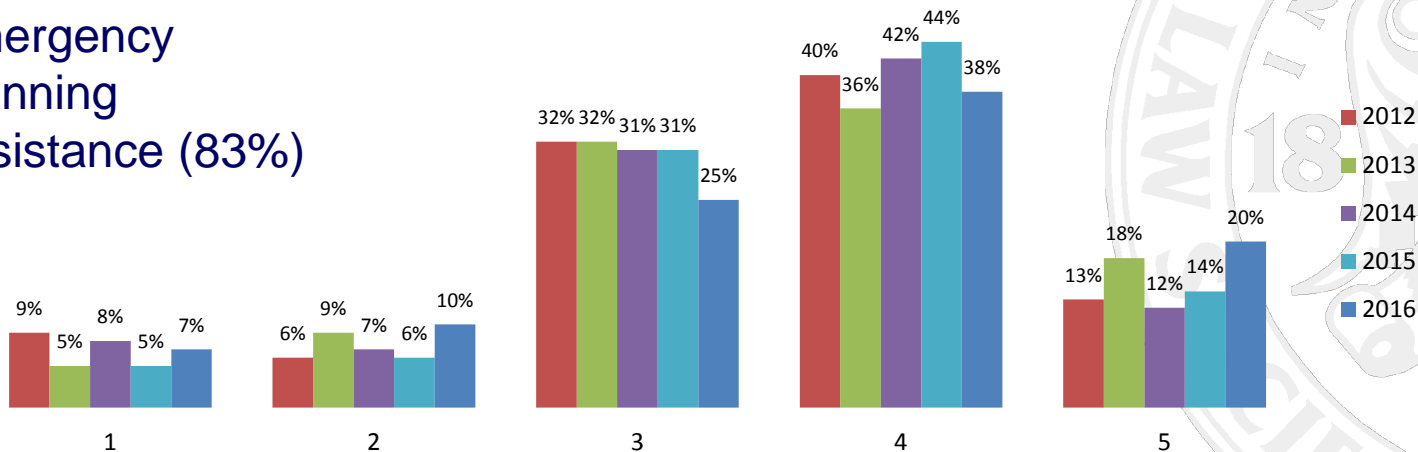
*The one lawyer who did not complete their referral at an efficiency rating of 3 or higher is no longer in practice.

Key Performance Measures

At least 85% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for these programs:

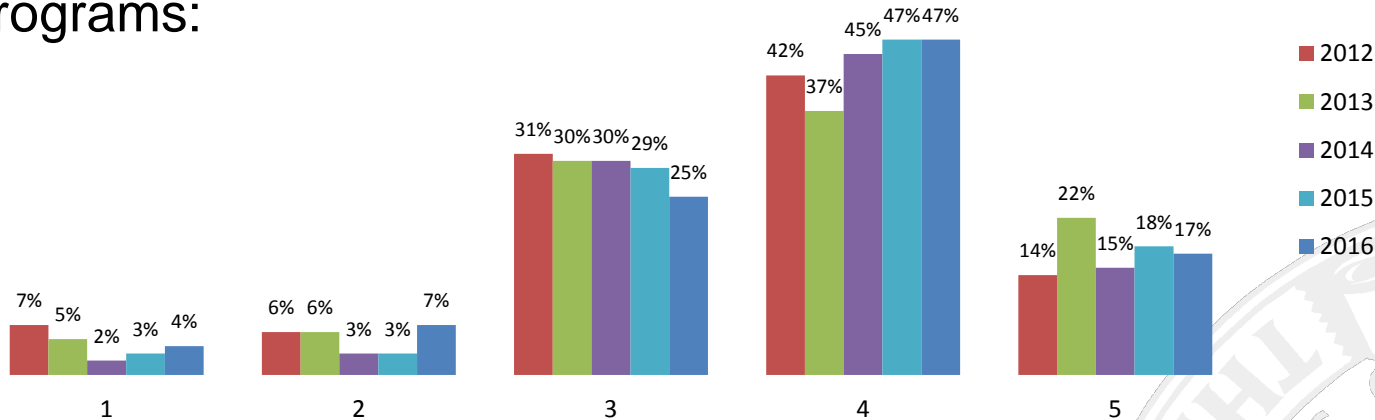


Succession and
Emergency
Planning
Assistance (83%)

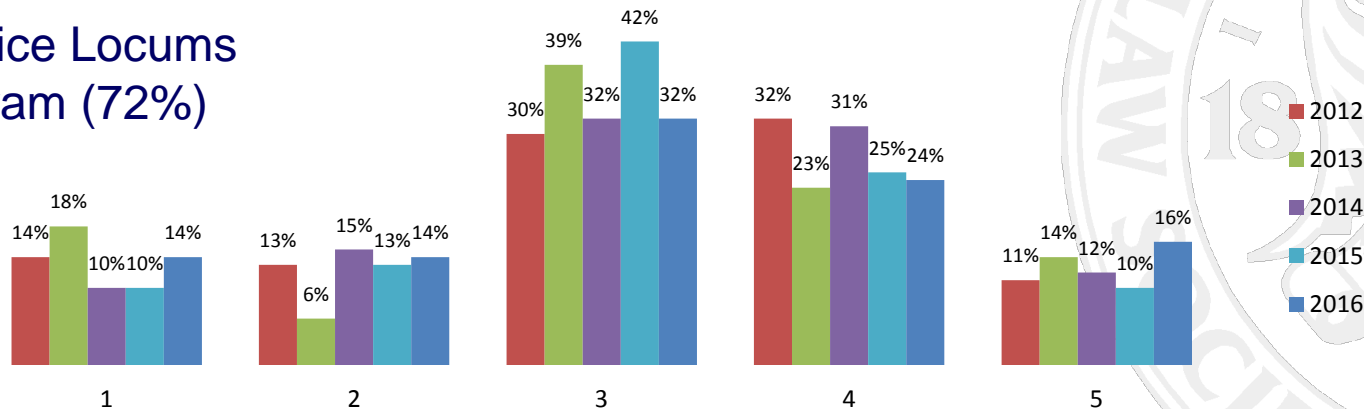


Key Performance Measures

At least 85% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for these programs:



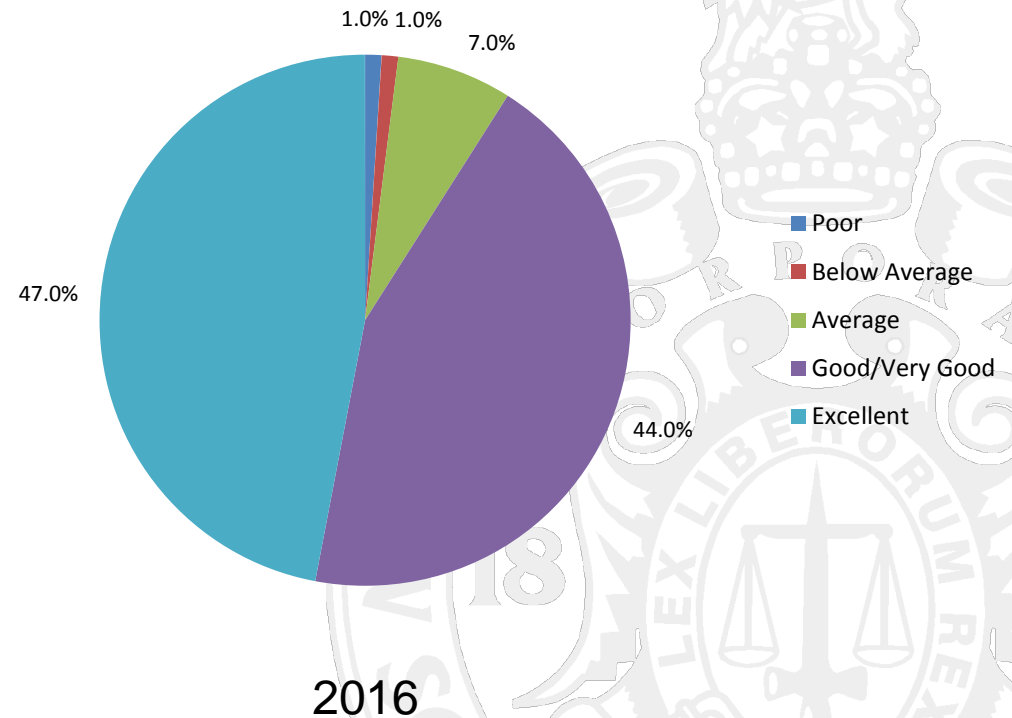
Practice Locums Program (72%)



Key Performance Measures

At least 85% of the lawyers responding to a survey rate their satisfaction level at 3 or higher on a 5 point scale for these programs:

Small Firm Practice Course
(98% at 3 or higher)





Lawyers Insurance Fund

Department Highlights

LIF's Goal

Our goal is to maintain a professional liability insurance program for BC lawyers that provides reasonable limits of coverage for the protection of both lawyers and their clients and exceptional service, at a reasonable cost to lawyers. This is within an overarching objective of maintaining a financially stable program over the long term, in the interest of the public and the profession. The Key Performance Measures indicate that we are achieving this goal.

Key Performance Measures

1. **Policy limits** for negligence and theft, the **member deductible**, and the **premium** are reasonably comparable with the 13 other Canadian jurisdictions.

Our coverage limits for negligence and theft, at \$1m and \$300,000, respectively, are comparable. Our Part B coverage contractually assures payment on transparent terms, and thus may be superior to others that are based on the exercise of discretion.

Our member deductible, at \$5,000 per claim, is also comparable.

At \$1,750, our premium compares very favourably, especially considering that ours alone includes the risk of theft claims. All others charge a separate, additional fee for this.

Department Highlights

Key Performance Measures cont.

2. Suits under the *Insurance Act* by claimants are fewer than 0.5% of files closed.

Claimants have an unfettered right to proceed to court for a decision on the merits of their claim. However, if they obtain a judgment against a lawyer for which the policy should respond but does not due to a policy breach by the lawyer, we are failing to reasonably protect them. If that occurred, the claimant would sue the Captive directly under the *Insurance Act*, for compensation. There were no suits by claimants against the Captive in 2016. All meritorious claims were settled with the consent of the claimant or paid after judgment.

3. Every five years, third party auditors provide a written report on whether LIF is meeting its goals:

In June, 2016 third party auditors declared, “It is without question that the entire insurance program is operating in a cost-effective manner, balancing extremely well both the public interest and the interest of the Law Society insured membership.”

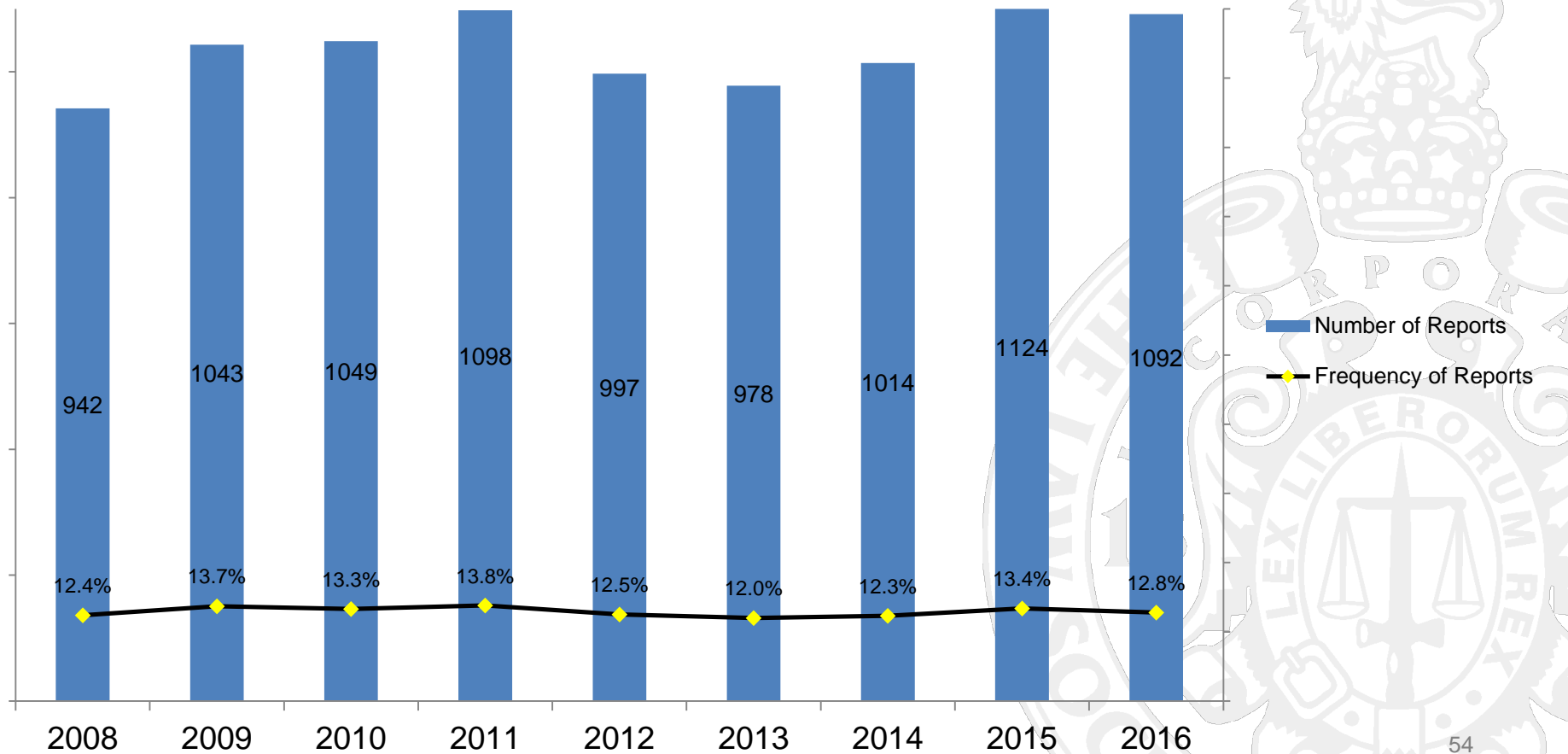
4. Insured lawyers demonstrate a high rate of satisfaction (90% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms.

In 2016, 96% of insureds selected 4 or 5.

Frequency of Insurance Reports

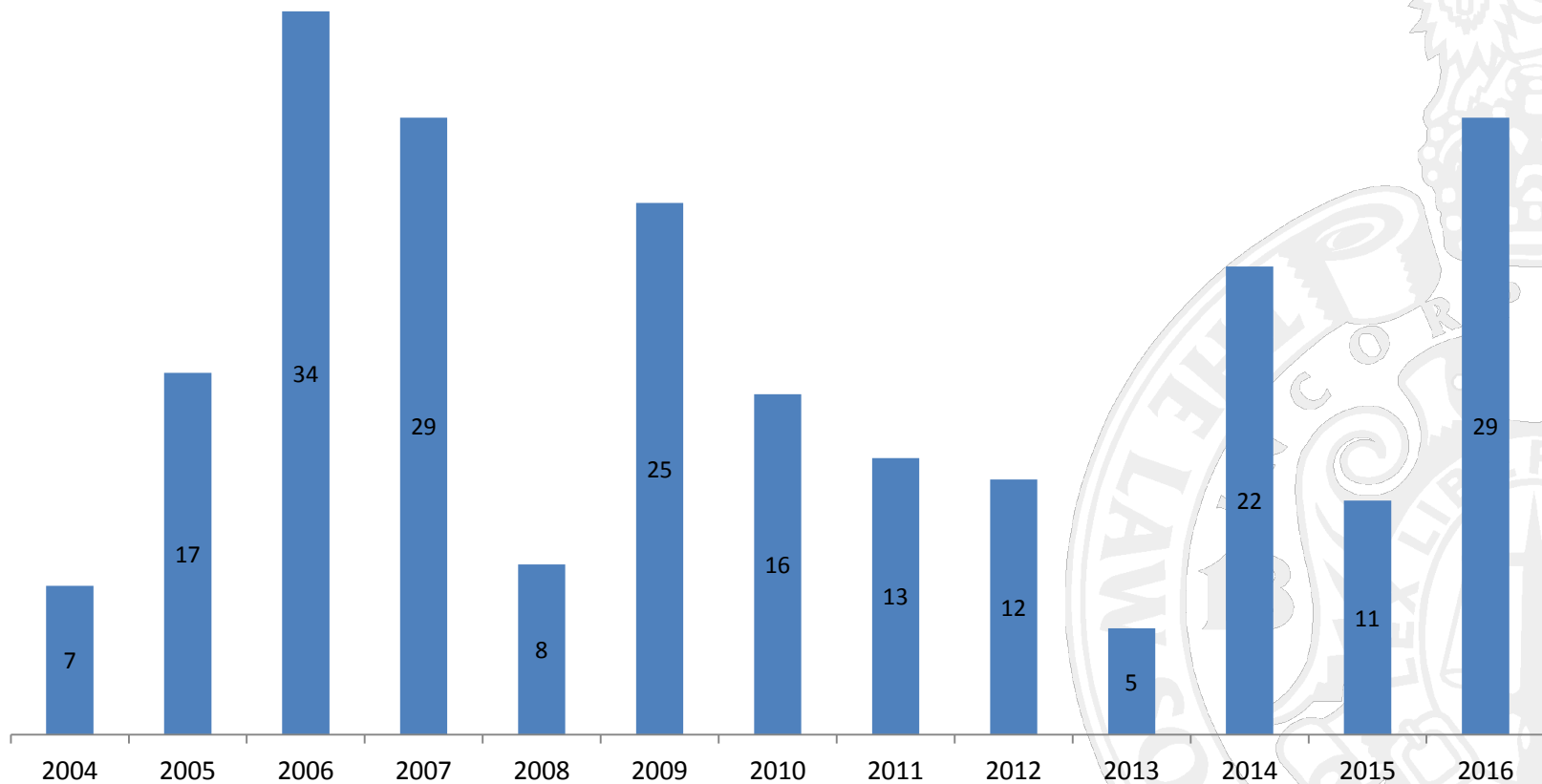
Part A - Number and Frequency of Reports

The number of reports divided by the median number of insured lawyers



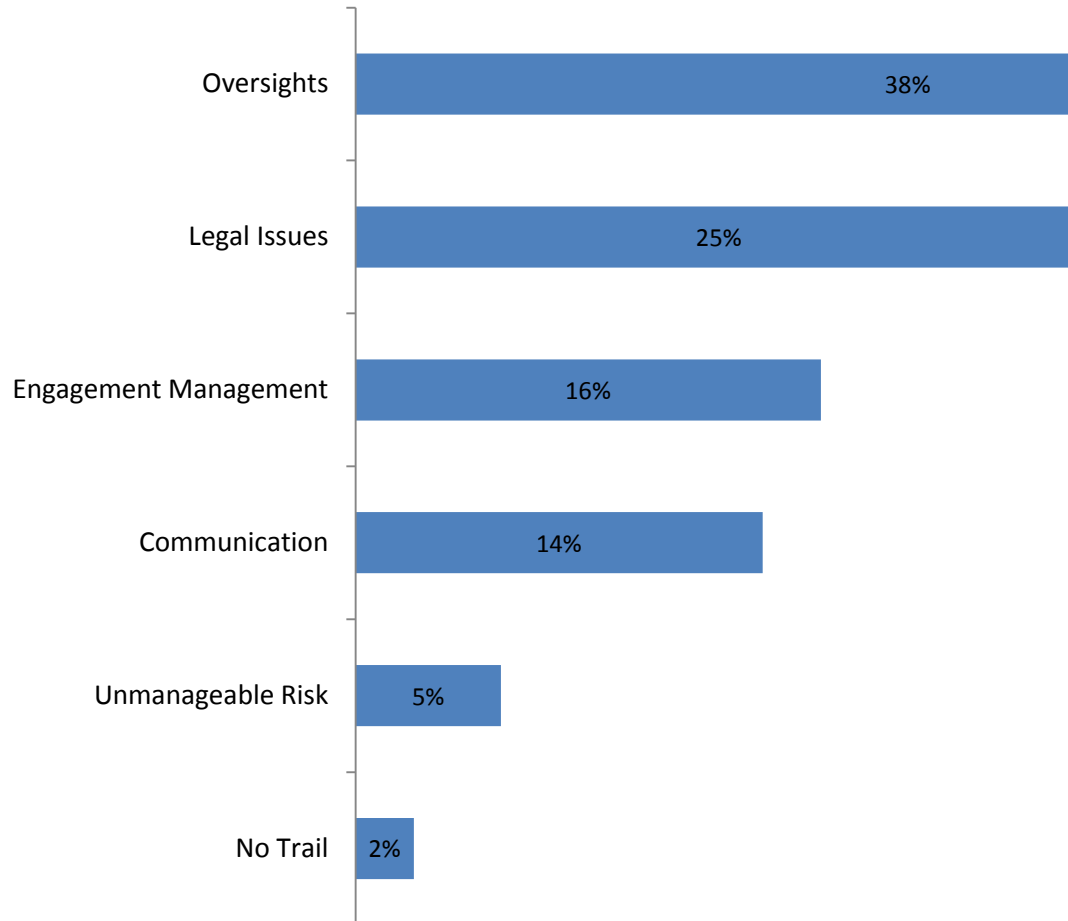
Key Activities

Part B - Number of Reports



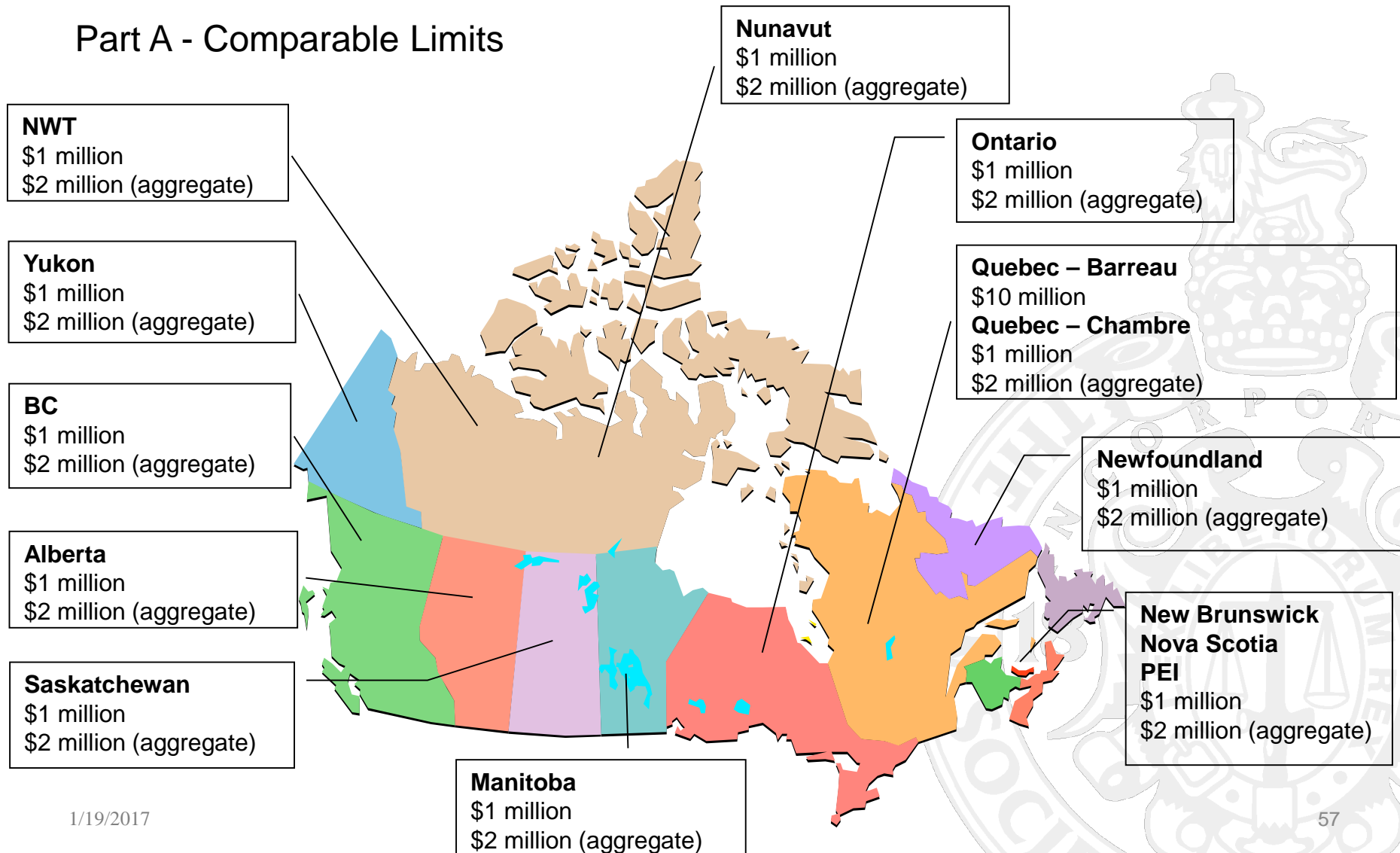
Key Activities

Part A - Causes of Reports



Key Performance Measures

Part A - Comparable Limits

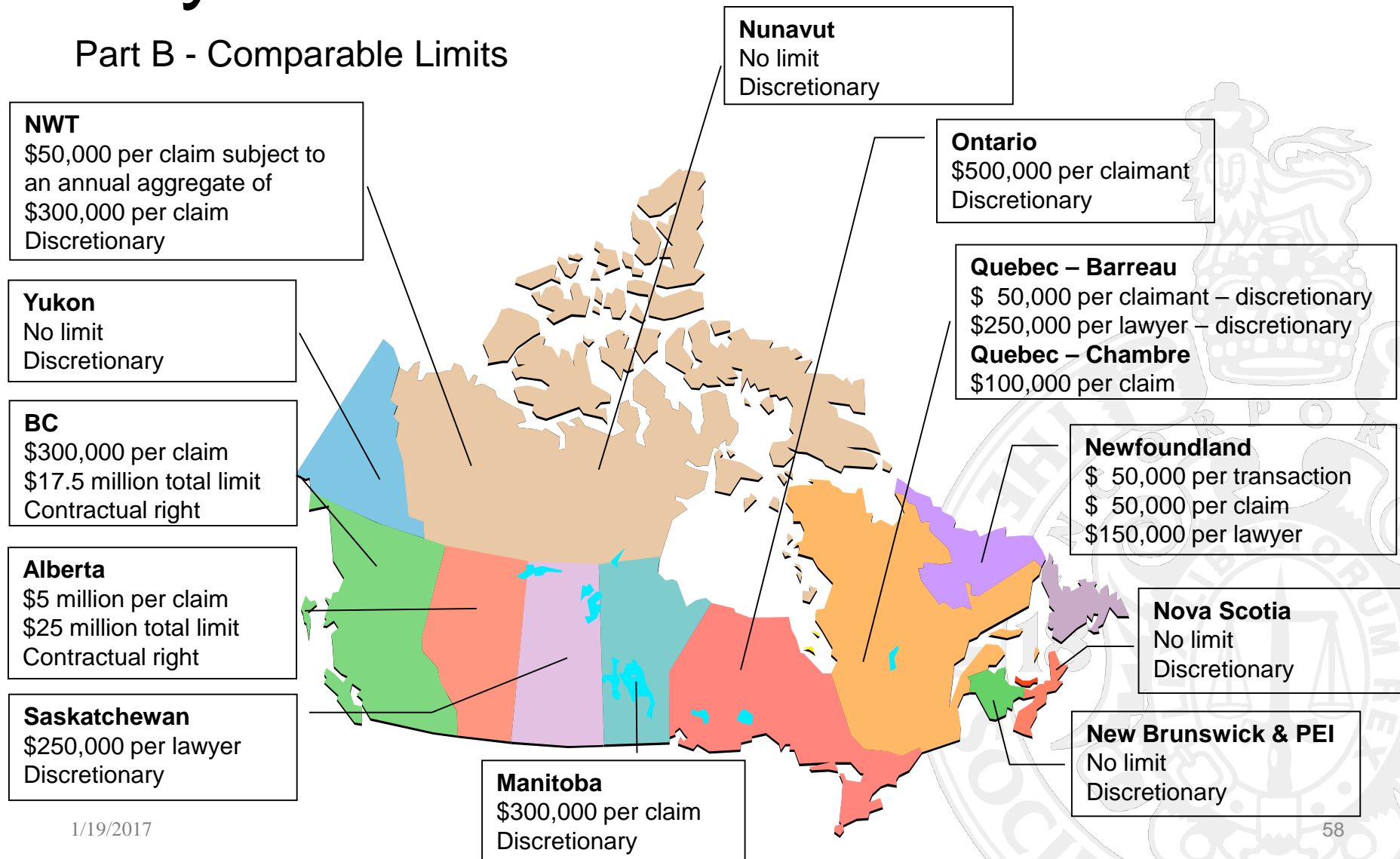


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Key Performance Measures

Part B - Comparable Limits

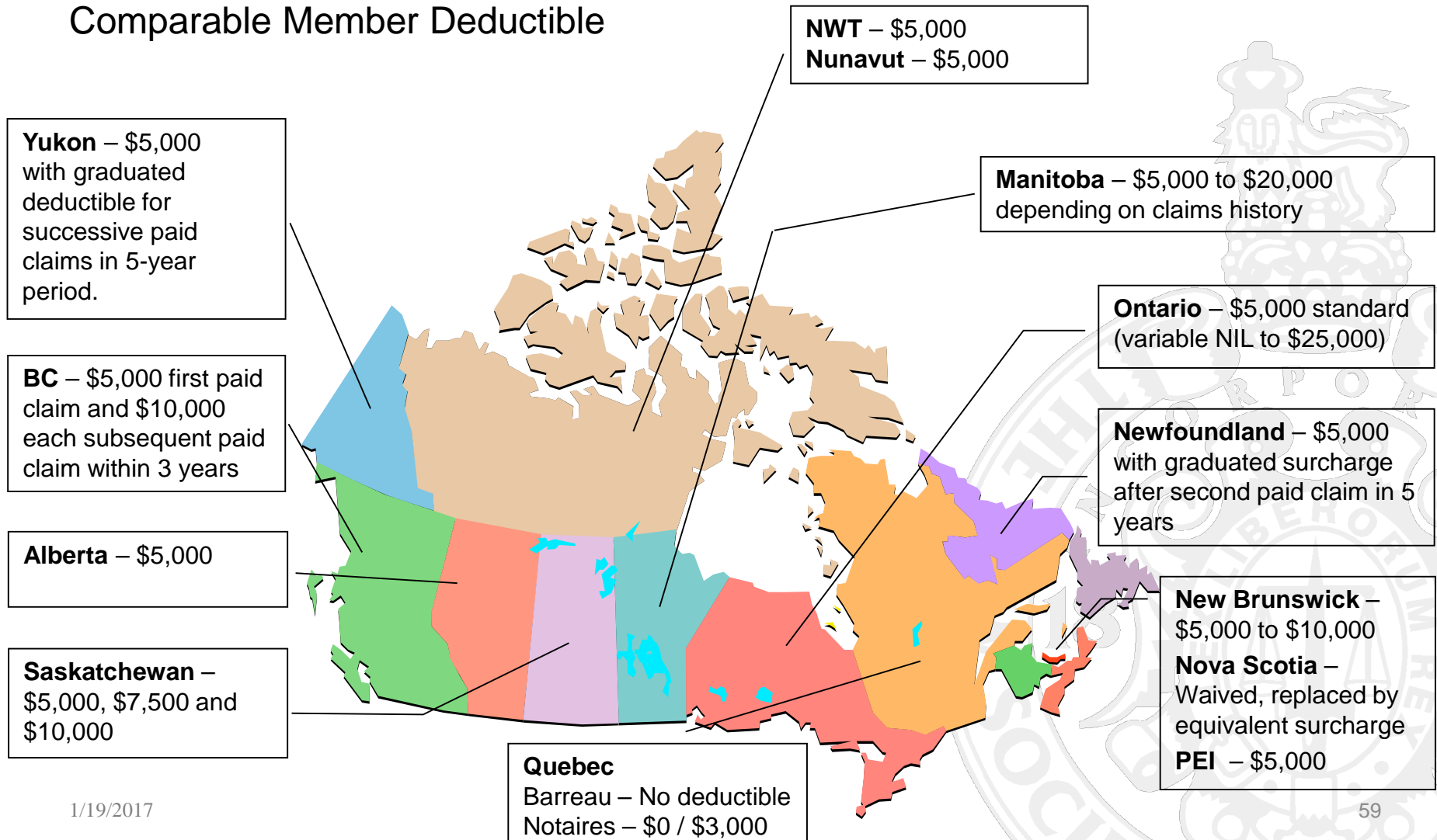


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Key Performance Measures

Comparable Member Deductible

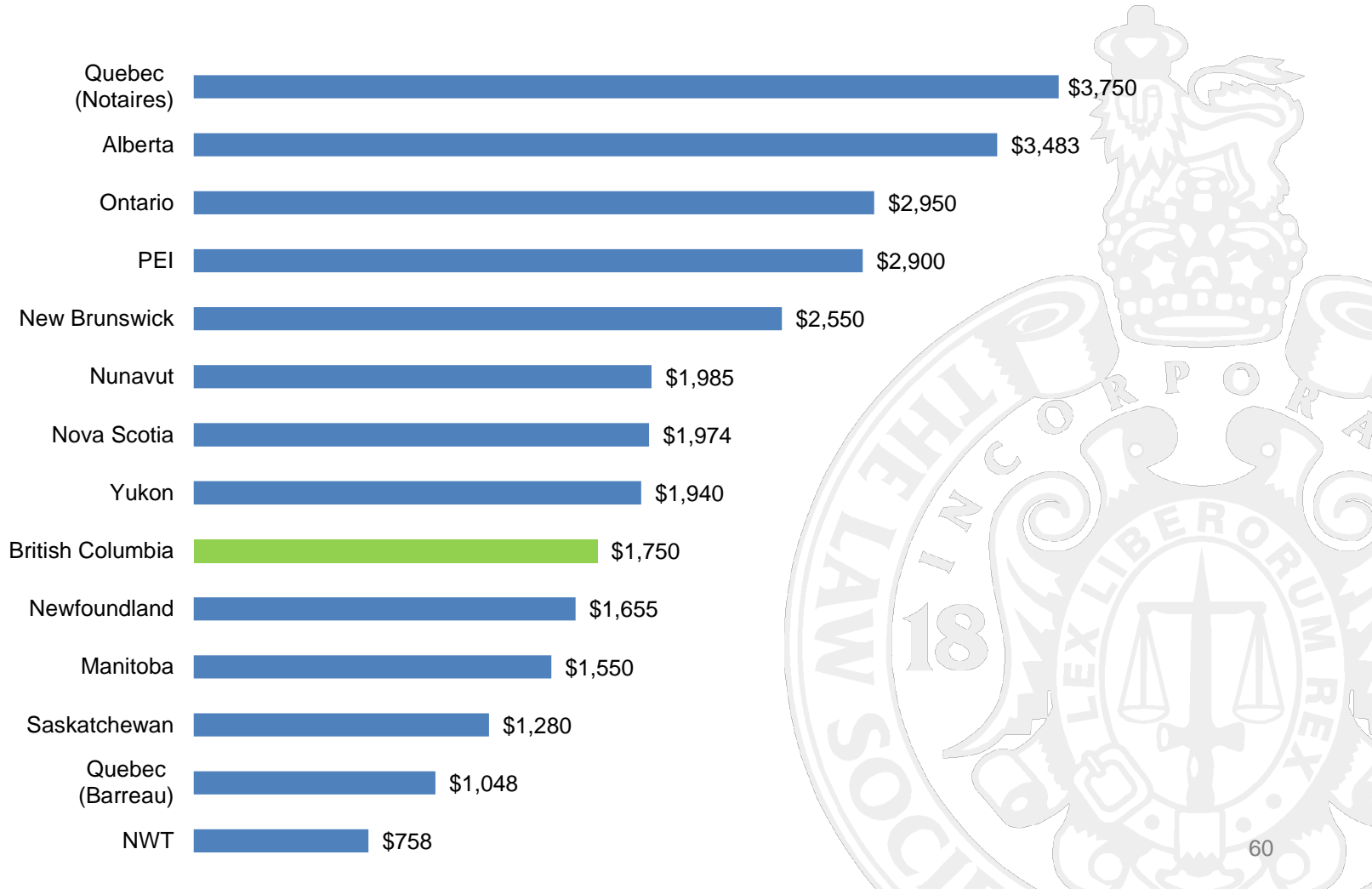


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Key Performance Measures

Comparable Current Insurance Premium



Key Performance Measures

Outside claims audit every 5 years: obtain opinion

2016 C. Hampton and L. Lee Audit Findings

“Having the perspective of a previous review I can say that the professionalism, knowledge, skill, and overall excellent work of the Lawyers Insurance Fund has continued to be maintained at the highest level.”

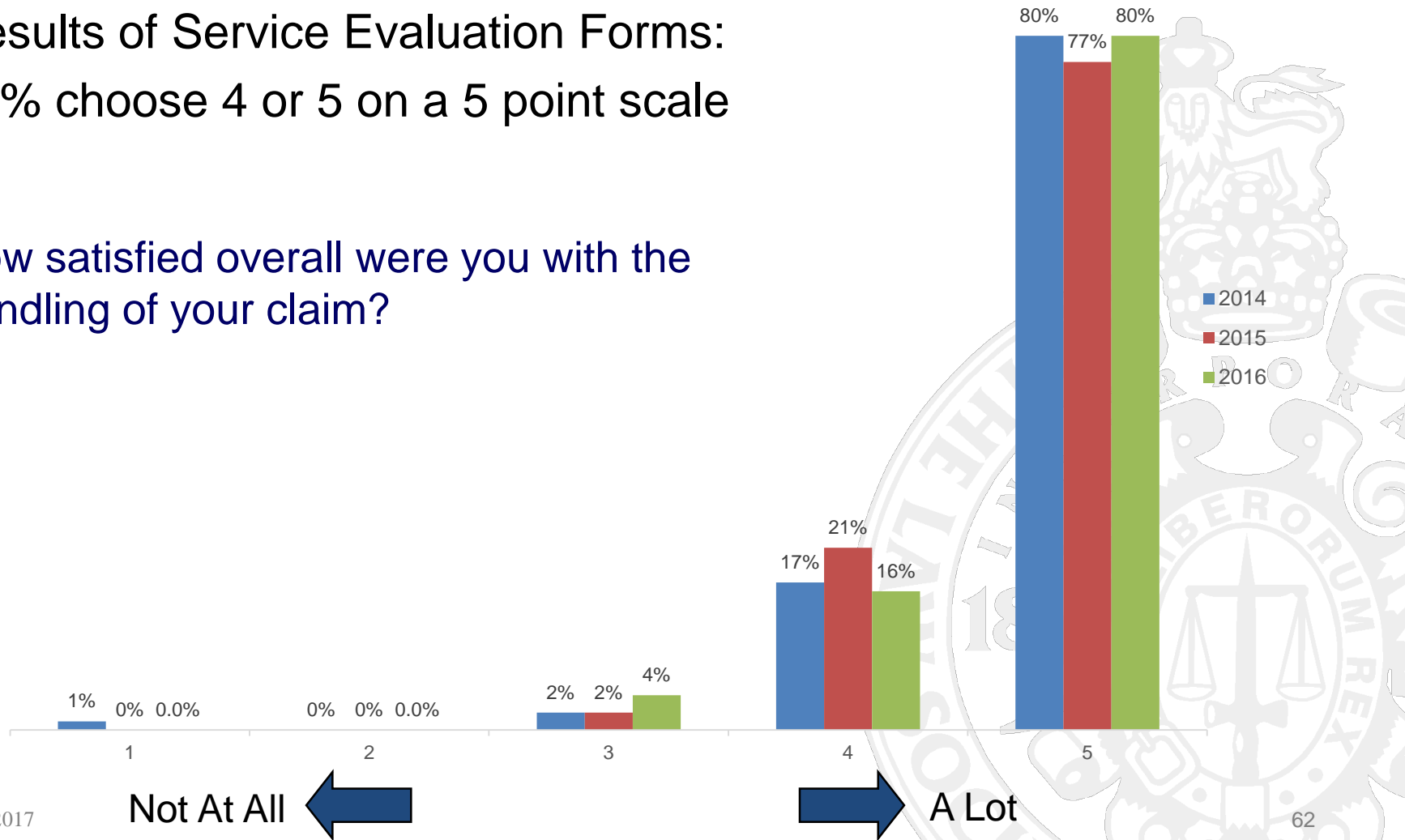
“[Lawyers Insurance Fund staff] exhibit an abiding sense of mission and purpose; the group as a whole earnestly desires to do their best and to continuously improve. We applaud them for their commitment and efforts.”

“Overall, a stellar performance by all concerned was observed. All should be proud of the high standards set and maintained. It is without question that the entire insurance program is operating in a cost-effective manner, balancing extremely well both the public interest and the interest of the Law Society insured membership....this is an outstanding group doing an outstanding job on what we consider the most complex files in the professional liability business.”

Key Performance Measures

Results of Service Evaluation Forms:
90% choose 4 or 5 on a 5 point scale

How satisfied overall were you with the
handling of your claim?





2015 – 2017 Strategic Plan

Our Mandate

Our mandate is to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

To fulfil our mandate in the next three years, we have identified three specific goals:

1. The public will have better access to legal services.

We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. The public will be well served by an innovative and effective Law Society.

We recognize that the public expects and deserves effective regulation of the legal profession. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

3. The public will have greater confidence in the rule of law and the administration of justice.

We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

Follow-up on recommendations from the December 2014 report of the Legal Services Regulatory Framework Task Force toward developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.

Status – December 2016

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. This initiative was paused for discussions with the Society of Notaries Public concerning merger as described at Initiative 2-2(c) below, but given the status of that initiative (as described below) is ready to be pursued again..

Initiative 1–1(b)

Continue work on initiatives for advancement of women and minorities, including through the Justicia Program, the Aboriginal Mentoring Program.

Status - December 2016

Gender initiatives continue through the Justicia Program. The Justicia model policies and best practice resources are now available on the Law Society's website, online modules to promote the materials are being developed, and outreach is now underway to encourage smaller and regional firms to adopt and implement them. The Law Society continues to administer the Aboriginal Lawyers Mentoring Program to support Aboriginal lawyers.

Work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance. The Truth and Reconciliation Advisory Committee has facilitated an increase of Indigenous interest and participation in Law Society governance.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1–2(a)

Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.

Status - December 2016

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. The Mediate BC proposal received \$60,000 and the project is being developed. A working group of practitioners is developing practice resources to aide lawyers who wish to provide limited scope services through the roster. A Law Society practice advisor has been assigned to review materials generated by the working group. The project is funded through the end of 2016.

Initiative 1–2(b)

Examine the Law Society's role in connection with the advancement and support of Justice Access Centres (JACs).

Status - December 2016

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs. The Access to Legal Services Advisory Committee has held two meetings with the CEO of Courthouse Libraries. Courthouse Libraries and the Ministry of the Attorney General are exploring the potential for libraries throughout BC to act as “hubs” that will connect to

the JACs via technology. This approach is consistent with the concept identified by the Committee in prior years of establishing community based “franchises” of the JAC model. The Committee remains available for input from Courthouse Libraries and the Ministry as to whether there is anything the Law Society can do to facilitate the expansion of JACs in this manner.

Initiative 1–2(c)

Examine the Law Society’s position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.

Status - December 2016

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force has met on a number of occasions to discuss the mandate items. A “draft vision” and discussion paper have been prepared by the Task Force, which formed the basis of discussion at a Colloquium on Legal Aid organized by the Task Force and held on November 26, 2016 that was attended by senior levels of government, the courts and invited members of the profession. The Task Force will be reviewing the feedback obtained at the Colloquium with a view to providing a final report early in 2017.

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2–1

Improve the admission, education and continuing competence of students and lawyers

Initiative 2–1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Status - December 2016

The Lawyer Education Advisory Committee report and recommendations were presented and approved at the March 2016 Benchers' meeting.

Initiative 2–1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Status - December 2016

The Federation's National Admission Standards Project Steering Committee recently circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response, which was approved at the Benchers' March 2016 meeting.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - December 2016

This topic is currently under consideration by the Lawyer Education Advisory Committee and a report is planned for 2017.

Initiative 2–1(d)

Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.

Status - December 2016

Evidence has been assembled that examines the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. A task force has been created to review the data gathered and to make recommendations concerning its use. It is expected to start its work in 2017.

Initiative 2–1(e)

Examine alternatives to articling, including Ontario’s new legal practice program and Lakehead University’s integrated co-op law degree program, and assess their potential effects in British Columbia.

Status - December 2016

The Lawyer Education Advisory Committee conclusions on this subject were presented and approved at the March 2016 Benchers’ meeting. Ontario’s Benchers decided in November 2016 to review the licensing processes, including articling and alternatives to articling, and plan to complete the review in 2017. The Lawyer Education Advisory Committee continues monitor developments in Ontario and assess the potential effects in BC.

Strategy 2–2**Expand the options for the regulation of legal services*****Initiative 2–2(a)***

Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.

Status - December 2016

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and

the UK and Australia, which have permitted ABSs. The Law Society is monitoring consideration of ABSs currently taking place in the Prairie provinces and through the Rule of Law and Lawyer Independence Advisory Committee and the Law Firm Regulation Task Force, reviews the discussion of the initiative from time to time in other jurisdictions, particularly in the USA. However, no specific consideration is underway at this time and no task force has yet been created to examine the subject independently in BC.

Initiative 2–2(b)

Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.

Status - December 2016

A consultation paper and survey were prepared and undertaken by the Law Firm Regulation Task Force and consultations with the profession took place around the province in February. The Task Force presented its interim report to the Benchers in November, and will be following up on its work with further consultations early in 2017 with a view to presenting a final report by the Fall of 2017 at the latest

Initiative 2–2(c)

Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.

Status - December 2016

Working Groups were created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examine governance issues that would arise in a merged organization. Governance issues were considered by the benchers in a preliminary manner in camera at their June 2015 meeting. The Qualifications Working Group reported on their efforts to examine educational requirements at the July 2016 bencher meeting. After consideration, the Benchers elected to keep open the possibility of merging regulatory operations with the Society of Notaries Public, while re-engaging with the Ministry of Justice concerning legislative amendments to permit the Law Society to regulate new classes of legal service providers.

Strategy 2-3

Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015

Initiative 2-3(a)

The Benchers will:

1. Seek opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;
2. Embark upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encourage all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urge all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Status - December 2016

A Steering Committee was created early in 2016 to assist in determining how best to engage in appropriate consultation with Aboriginal communities and representatives and to assist in developing the agenda and substantive program for the Benchers' 2016 Retreat that took place in early June. Following the retreat, the "Truth and Reconciliation Advisory Committee" was created, and terms of reference for the Committee were established in the Fall of 2016. The Committee is now working to address its mandate.

3. The public will have greater confidence in the administration of justice and the rule of law.

Strategy 3–1

Increase public awareness of the importance of the rule of law and the proper administration of justice

Initiative 3–1(a)

Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.

Status - December 2016

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues. The Rule of Law and Lawyer Independence Advisory Committee proposed an annual evening lecture series on rule of law topics to begin in 2017, which was approved by the Benchers in July. Work on this initiative is underway.

Initiative 3–1(b)

Examine the Law Society's role in public education initiatives.

Status - December 2016

Work on this initiative has not yet formally commenced, although the Rule of Law and Lawyer Independence Advisory Committee, in connection with the 800th anniversary of Magna Carta, completed a successful essay contest for high school students in 2015 has followed up on this successful initiative by establishing an annual contest for high schools. . . .

Initiative 3–1(c)

Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.

Status - December 2016

Some work has begun by, for example, creating the high school essay competition referred to above. Work on engaging directly with the Ministry of Education has not yet begun.

Strategy 3–2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3–2(a)

Examine and settle on the scope and meaning of s. 3(a) of the *Legal Profession Act*.

Status - December 2016

This topic was introduced for discussion at the Benchers Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy.

Initiative 3–2(b)

Identify strategies to express a public voice on the justice system, including public forums.

Status - December 2016

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee prepared its first comment – a commentary for *The Advocate* - on the issues that pervasive surveillance raised for lawyers, and the Committee has written several articles that have been published on the Law Society website and in the Benchers Bulletin. The Committee has also developed a Twitter account through which it identifies rule of law issues on which it wishes to comment more publicly.

A staff working group was created by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which reported to the Management Group in January 2016.

Core Values

The Values Working Group has identified two core values: integrity and excellence.

Integrity

- We are *accountable* and take personal responsibility at all levels and act in ways that exemplify what we expect of each other
- We apply *transparent* processes and constructively manage difficult situations with courage and candour
- We are *fair*, and impartially apply our policies, procedures and practices, and are compassionate in our treatment of colleagues
- We value *diversity*, inclusiveness and equality, fostering a collegial work environment
- We are *reliable* and can be counted on every day to provide the highest standard of professional behaviour

Excellence

- We are *innovative*, using our skills and knowledge to implement new or improved strategies or processes
- We commit to *quality performance* in all areas of our work
- We apply *teamwork* by supporting one another as we work towards shared goals
- We appreciate and *recognize* our successes

Memo

To: The Benchers

From: The Credentials Committee

Date: January 4, 2017

Subject: Qualifications to act as Articling Principal

Purpose

This memorandum recommends that the Benchers approve in principle amendments to Rule 2-57, which sets out the requirements necessary to qualify to be a Principal to an articulated student. In particular, the Committee recommends a reduction in the number of years of overall practice and the number of years of practice in British Columbia in order to qualify. This memorandum sets out the rationale for the recommendation.

Background

The object and duty of the Law Society of British Columbia (the “Law Society”), set out in s. 3 of the *Legal Profession Act*¹ is to uphold and protect the public interest in the administration of justice. In discharging this mandate, the Law Society must, among other things, ensure the independence, integrity, honour and competence of lawyers, and establish standards and programs for the education, professional responsibility and competence of lawyers and applicants for call and admission. Ensuring that students in the Law Society admission program are trained, during their articling period, by competent, experienced lawyers is a necessary part of discharging mandate. These requirements are intended to protect the public interest in the administration of justice by ensuring that the lawyers who supervise and guide articulated students towards competency in practice and an understanding of their professional responsibilities have sufficient knowledge and experience both to serve as role models for their students and to convey concepts of professionalism.

¹ S.B.C. 1998 c. 9

Prior to 2002, articling principals were required to have been in full time practice for not less than four years immediately preceding the articling start date, either in BC or in Canada, and not less than three of those four years must have been spent practising in BC or in the Yukon territory as a member of the Law Society of BC. There was also no limit on the number of articling students one principal could supervise.

In 2002, the Law Society's Task Force on Admission Program Reform (the "Task Force") recommended (amongst other things), that the number of years of practice experience needed to qualify as a principal be increased to seven years, of which the previous five years had to be in BC; the remaining two years could be in other provinces. The Task Force also recommended limiting each principal to a maximum of two students at one time.

The recommendation to increase the required number of practice years from four to seven years appears to have been connected to the recommendation to limit the number of students each principal could supervise. The Task Force decided that an effective way to enhance the learning and supervisory relationship between student and principal would be to limit a principal to a maximum of two students. But this enhanced relationship also raised a related concern: because supervising an articling student would now be more directly undertaken by a particular lawyer serving as principal, "...some potential principals may not be senior or experienced enough to convey concepts of professionalism and serve as role models for their students."

The Task Force noted that with no limit on the number of students a principal could supervise, a learning relationship may not develop sufficiently between a nominal principal and a student even though the student might gain some experience under the supervision of other lawyers in the firm. The Task Force concluded that someone specific to each student should have primary responsibility for guiding the student towards professionalism and fulfillment of the Law Society requirements. This would be difficult to achieve with a nominal principal who had responsibility for multiple students.

The Task Force Report also addressed the question of whether increasing the required number of years of practice might adversely impact the availability of articling positions. It referenced Law Society research from the time indicating that by increasing the requirement from four to seven years, the number of articling positions available would only be reduced by approximately 1-2% and, further, that the reduction would be lower, or nil, if less than five of those seven years of practice had to be in BC. In the result, the Task Force concluded that increasing the years of practice requirement to 7 years would have either no or, at most, minimal impact on the availability of articling positions.

Over the years, however, there have been numerous applications by principals who do not meet the current requirements to establish "exceptional circumstances" so that they can be principal to a student despite not meeting the seven-year requirement. In many, perhaps most, cases, these applications are made because the student has otherwise been unable to find articles. The result

is that there has been a number of principals over the past 15 years who have less than seven years of practice experience, at least five of which must be in BC. Consequently, the Credentials Committee, and (the Committee understands), the Lawyer Education Advisory Committee have wondered whether the restrictions are too restrictive or outdated and should be amended.

The Lawyer Education Advisory Committee weighed in on this issue in its December 2015 Report to the Benchers, approved by the Benchers in March 2016 (the “Final Report”). It recommended as follows:

#17. That the Credentials Committee consider recommending to the Benchers that Rule 2-57 be amended to change the qualifications to serve as an articling principal from having engaged in the active practice of law for 5 years instead of 7 years.

Unfortunately, the Final Report provides little substantive discussion regarding the recommendation other than to note that the Credentials Committee had previously considered the question and recommended the change. The Final Report does not address the related issues concerning years of practice in British Columbia, full time practice, and whether the term “active practice” ought to be defined. The main concern seems to have been that the rule prevented qualified lawyers from being principals, and that that could have an adverse effect on the number of available articling positions, although no empirical analysis was undertaken.

Analysis and Discussion

An analysis of whether Rule 2-57 should be amended as proposed requires identifying some of the policy reasons underpinning the recommendation.

As a starting point, one might ask:

- ☐ Is the current rule working well? If not, what are the problems associated with the current rule that need to be addressed?
- ☐ Is there a shortage of articling positions and principals that would warrant supporting a change to allow more lawyers to qualify to serve as principals?
- ☐ Are there other sound policy reasons for changing the requirements under the rule?

1. How is the current rule working?

Generally speaking, the rule seems to work quite well, most of the time. Difficulties arise where a lawyer with fewer than seven years of “active practice” asks to be a principal because discretion given to the Credentials Committee to permit principals with less than the seven year requirement to nevertheless act as a principal is vague and open to much interpretation as to what constitutes “exceptional circumstances.”

How is the Committee to exercise its discretion? The circumstances often present challenges because frequently the student has exhausted other possibilities and if the principal is not approved, the student will be unable to find articles. This results in principals with experience below the current regulatory requirement taking on students who have had difficulty finding articles. However, if the lawyer is close to seven years' experience and has run a successful practice, why should the student be denied articles? There will always be a certain arbitrariness to the qualification requirement, and if this is admitted, perhaps the number needs re-examining based simply on the experience that the Committee has gained over the years as it tries to exercise its discretion. It is worth remembering, of course, that if the number of years is lowered, there will always be requests to permit lawyers who do not meet the qualification requirements to be principals nevertheless, unless no discretion is afforded in the rule to do so.

2. “Active Practice”

From a review of the Task Force Report, it is not clear what was originally meant by “active practice.” It noted that other jurisdictions in Canada (the Committee reviewed Alberta, Ontario and Manitoba) also require principals to have engaged in “active practice” without defining the term. It could mean that a lawyer must actually be engaged in the practice of law and not just holding a practice certificate; however, the rule goes on to address being engaged full-time, as opposed to part-time. While “part-time” is referenced in the rule for professional liability insurance purposes, “full-time” is not a defined term. Where a lawyer engages “in the practice of law and associated activities for an average of 25 hours or less per week,” the lawyer may be assessed the part-time insurance fee set out in Schedule 1 of the Rules². “Associated activities” includes practice management, administration, and promotion and voluntary activities associated with the practice of law. Anything over and above this would require a lawyer to purchase the “full-time” insurance. A potential principal is not asked to declare or describe how often they engage in the practice of law and associated activities as a “full-time” practising member.

The Task Force may have intended the definition of “active practice” to be more than just the “practice of law”. An Articling Agreement and Articling Skills and Practice Checklist were developed following the Task Force Report in 2002. The Articling Agreement outlines that “the principal will ensure that the student is instructed on the practice of law and professional conduct”. The Articling Agreement also sets out the Benchers' strong recommendation that students obtain practical training and experience in a minimum of three practice areas and that the principal and student will ensure that the student obtains practical training and experience described in the Articling Skills and Practice Checklist. Despite this, a lawyer is not currently required to demonstrate a set standard or minimum experience in the skills listed in the Articling Skills and Practice Checklist in order to qualify to act as a principal.

² Rule 3-40(2)

3. Other Considerations and the Public Interest

The public interest requires the Law Society to ensure standards and program for the education, professional responsibility and competence of applicants for call and admission (see s. 3(c) of the *Legal Profession Act*). The public interest therefore requires defensible standards for the qualification of principals that will best meet these requirements.

Logically, one might assume that lawyers who have practised law for a longer period of time would be better mentors for articulated students and be better able to teach a student about professional responsibility and how to be a competent lawyer by dint of experience. This rationale appears to have underlain the recommendation from the Admission Program Task Force to increase the eligibility requirement of principals from four to seven years.

If consideration is given to decreasing the eligibility again, a re-examination of the rationale must ensue. To this end, it is worth noting that:

- (a) The articling program existed for many years when lawyers were required only to have four years of practice in order to qualify as a principal. The recommendation from the Task Force was to increase the eligibility centred on the Task Force's determination that lawyers needed to be senior enough to convey concepts of professionalism and serve as role models to their students given that the Task Force recommended an increased level of responsibility for each principal by reducing the number of students for whom a principal could be responsible. Has that role fundamentally affected the articling program? Or can it be said that principals were any less devoted to their responsibilities under the old regime than under the new?
- (b) What evidence is there that some five year calls are less capable of being a principal? As noted above, there is a discretion under "exceptional circumstances" to permit a lawyer with fewer than seven years to be a principal, and these requests are not rare. If a less-than-seven-year call can be a good principal in exceptional circumstances, why wouldn't that hold true in less than exceptional circumstances? Consequently, the lawyer's *experience*, rather than an arbitrary number of years of practice, is the more important variable in the equation.

It is perhaps stating the obvious that a less onerous "years of practice" requirement should allow more lawyers to qualify as principals. It follows then that if more lawyers become willing to sign up as principals, a larger pool of principals would be available to students. This, in theory, should increase the number of articling positions available in BC. Whether this occurs or not is, of course, dependent on whether more junior lawyers will be prepared to take on a student, but it opens possibilities that would otherwise not exist.

Other Canadian Jurisdictions

A review of other Canadian law societies reveals that BC's seven year requirement is at the high end. The minimum years of practice a lawyer must have to be eligible to serve as a principal ranges from a low of three years in Manitoba, to a high of seven years in BC and New Brunswick.

Committee Consideration

1. Years of Practice

The Committee, after considering the points above and reviewing the history of the matter together with its consideration of the applications that come before it for "exceptional circumstances, determined that the status quo was not the right option.

When the recommendation to increase eligibility from four to seven years was made, it was made in the context of a larger examination of the admission program. The articling process was viewed somewhat as the "weak link" in admissions, given its uneven application. Some principals took on a significant mentoring or training role, while others were almost "nominal" within a firm, identified more for regulatory purposes than for educational abilities. Recommendations were made in 2002 to try to level out the experience that articulated students receive whilst articling. Rules requiring three areas of practice, general reporting requirements over the term of articles and an encouragement of mentoring were at the forefront, and the Admissions Program Task Force seems to have been convinced in making its recommendations in 2002 that an increase in the years of experience of the principal would assist in achieving this outcome.

However, if there is now a sense that a barrier is created because people who could be good principals are excluded because of the seven-year requirement, then it is worth reconsidering that requirement. The abilities of the principal are, after all, the key. The number of years of eligibility to qualify will always be a somewhat arbitrary number. If experience in other jurisdictions, as well as past experience in BC, shows that lawyers with less years at the bar can still be good principals, then there is a good policy rationale to consider reducing the years of eligibility. If the Committee is satisfied that one can still create a robust program with lawyers of, for example, five years' experience, there is already rule in place³ to address circumstances where a lawyer who would qualify on the base level of years in practice may still be disqualified if other concerns (such as complaints or discipline histories) are brought into play.

The main reason against a reduction relates to concerns regarding the competence of principals to guide and supervise articulated students. The Committee has concluded that a reduction in the

³ Rule 2-57(4)

years of full time practice leave will not result in principals not having sufficient experience to develop the competency, skills and experience to supervise articulated students. The Committee recognizes that a risk arises with this determination, but believes that there will always be somewhat of an arbitrary line around where competence is presumed.

Noting that the current requirements of Rule 2-57 were more onerous than those of other jurisdictions, the Committee recognized that a reduction in years of practice was merited. While the principal/student relationship should be a mentor and teaching relationship, the Committee is willing to accept that mentoring can occur even where a principal may be relatively junior, although that will of course depend somewhat on the principal's skills as a mentor. It is also important to keep in mind, the Committee concluded, that the role of a principal is not so much to teach substantive law and procedure, but rather to pass on wisdom gained with experience about how to use substantive law and procedure in real-life situations, and to pass on wisdom concerning the application of ethical and professional considerations to those same real-life examples. However, the Committee recognized that there is an arbitrary line to draw as to when one ought to have enough practical experience to be useful as a principal, and in any event, it will always vary from lawyer to lawyer.

The Committee notes that the current rule is written in a way to recognize that requiring the current seven year requirement to be continuous may prevent experienced lawyers who have taken a recent period away from practice (often for maternity or paternity reasons) from becoming a principal. The Committee recommends retaining this aspect of the rule but recommends a reduction in the period of absence from practice to one year.

Consequently, the Committee recommends that the period of qualification in Rule 2-57 be amended from 7 of the previous 10 years to 5 of the previous 6 years.

Recommendation 1:

That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining "active practice" (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)

2. Practice in BC

The Committee has routinely approved lawyers who have many years of practice but do not necessarily have five years of practice in British Columbia. In most instances, the Committee has considered that their many years of practice in another jurisdiction amount to "exceptional circumstances". The Committee therefore questioned the need for principals to have spent at least five years of their practice in BC. The requirement seemed outdated.

The Committee recognized that practical experience could be gained from practice in another province – that is, one can gain practical experience in the application of substantive law, procedure, ethics and professionalism by drawing on examples from practice gained in another province. The Committee concluded that *some* experience in BC was necessary, however, because some law (particular family law) is very BC specific. However, the Committee recognized the current requirement that in excess of 70% of the principals practice to have been in BC (five out of seven years) was excessive, given the rational that underlies lawyer mobility in Canada.

The Committee’s recommendation was that this requirement be reduced to three years of the five years of practice that it now recommends be required to qualify as a principal.

Recommendation 2:

That the rules be amended to reduce the requirement for practice in BC to three years of the overall five years of practice necessary to qualify to be a principal.

3. Part time Practice

Does “active practice” require full-time practice? Or can the requirement be met through part-time practice? And can a part-time practising lawyer qualify to be a principal? The Committee debated these questions at some length.

The Committee first considered what “active practice” should mean. It concluded that it should mean full time practice. While the Committee noted that “full time practice” is also not defined, it is clearer in meaning than “active practice.”

The Committee next considered whether a principal engaged in something less than full-time practice should be permitted to qualify to be a principal. The Committee noted that the current rules⁴ provide a formula for dealing with part-time practice for the purpose of qualifying to be a principal. The Committee agreed that the rules should continue to do so. Many senior lawyers may be currently engaged in part-time practice but they could still be excellent principals. The Committee was also mindful that younger lawyers, particularly women, may have taken the option of part-time practice for work-life balance. The fact that they may not have been engaged in full-time practice for a five year period immediately preceding taking a student should not be a presumptive bar to their qualification.

The Committee agreed that it would have concerns over a five year call who only practised one day per week acting as a principal. It was less troubled by a more senior lawyer who had practised 25 hours per week continuously over a longer period of time being a principal. It therefore debated where the right balance could be struck. The Committee concluded that for the

⁴ Rule 2-57(2)

purposes of “part-time practice” in the context of qualifying to be a principal, the definition used for insurance purposes (less than 25 hours per week) should be adopted.

The Committee next considered how part-time practice should be addressed. After a considerable amount of discussion, the Committee settled on recommending that part-time practice should presumptively count as one-half of full time practice. Using this formula, the Committee agreed to recommend that, counting part-time practice as one-half of full time practice, any combination of the two that totaled five years would qualify an applicant to be principal. For example, a lawyer with two years of full time practice (anything over 25 hours per week) and six years of part-time practice would qualify.

The Committee also considered whether a *current* part-time practising lawyer could qualify to be principal to a full-time student.⁵ After making enquiries of the Lawyers’ Insurance Fund and debating the issue further, the Committee concluded that the rules should not permit a part-time practising lawyer to be principal to a full-time student. The principal is liable for errors caused by the student. Where the principal has part-time insurance, liability issues could arise that, the committee believes are best to be avoided when trying to protect clients’ interests and to act overall in the protection of the public interest.

Recommendation 3:

That the words “active practice” in Rule 2-57 be replaced by “full-time practice.”

That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.

Given this recommendation, the Committee recommends that Rule 2-57(2)(a)(ii) be deleted.

4. Exceptional Circumstances

The Committee debated the “Exceptional Circumstances” provision.

As stated above, this provision can be a complicating factor, as the circumstances that give rise to requests to consider exercising the discretion vary widely and there is little guidance about how to exercise it. The Committee recognizes, of course, that the discretion is that of the Committee and it would be contrary to the principles of administrative law to fetter its exercise.

⁵ The Committee’s existing policy is to allow part-time practitioners to act as principals to part-time students. The Committee’s concern has been the level of supervision afforded to a full-time student with a part-time mentor.

Consequently, the Committee considered whether the rule allowing for the exercise of discretion should itself set out minimum requirements or otherwise seek to create regulatory parameters around its exercise. The Committee was uncomfortable with this approach. In essence, the Committee was concerned that doing so would encourage applications for what would really be a lower standard of qualification and may be hard for the committee to reject.

The Committee also considered whether the ability to ask the Committee to exercise a discretion in exceptional circumstances should simply be removed altogether. Recognizing, however, that the Committee acknowledges that the line it draws on qualification requirements concerning years and location of practice will always be somewhat arbitrary, the Committee was uncomfortable recommending that it should be foreclosed from ever considering meritorious requests.

In the end, therefore, the Committee decided to recommend that the discretion to consider “exceptional circumstances” be left in the rules. The Committee will attempt to create some non-binding guidelines around its exercise for the consideration, of future Committees, but that will not be binding on them.

Recommendation 4

That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.

Summary of Recommendations

Recommendation 1:

That the rules be amended to reduce the period of qualification required to be a principal in Rule 2-57 from 7 of the previous 10 years to 5 of the previous 6 years. Given how the Committee recommends defining “active practice” (see below), the Committee recommends deleting Rule 2-57(2)(a)(ii)

Recommendation 2:

That the rules be amended to reduce the requirement for practice in BC to three years of the overall five years of practice necessary to qualify to be a principal.

Recommendation 3:

That the words “active practice” in Rule 2-57 be replaced by “full-time practice.”

That the rules be amended to permit lawyers to be a principal who have practiced part-time (less than 25 hours per week). For the purposes of qualification, part-time practice should be counted as one-half of full time practice. Any combination of part-time and full time practice that adds up to five will suffice for the purposes of qualification.

That Rule 2-57(2)(a)(ii) be deleted.

Recommendation 4:

That the rule permitting applications in exceptional circumstances to the Committee to permit a lawyer who does not meet the requirements to be a principal nevertheless remain.

Memo

To: The Benchers
From: Deb Armour, Chief Legal Officer
Date: January 18, 2017
Subject: National Discipline Standards

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards at its meeting on June, 13 2014. All law societies in Canada have adopted the standards.
2. The standards address timeliness, openness, public participation, transparency, accessibility and training of adjudicators and investigators.
3. The standards are aspirational. As of 2015 year end, only one law society in Canada had met all of the standards.
4. Standard 9 requires me to report to you annually. I provide that report below.

Report on LSBC Progress

5. LSBC progress on each of the standards is found at Attachment 1.
6. Our results year over year have improved significantly. When I reported last January, we had only met 15 of the 21 standards. As of 2016 year end, we are meeting 18 standards.
7. Most notably:
 - a. For the first time ever, we are meeting standard 7 - commencement of hearings within 9 months of authorization of a citation. The standard is 75% and we are at 82% (up from 65% last year);
 - b. One of the highest profile standards is standard 3 which requires that 80% of all complaints be closed within a year. In 2016, we closed 91% within a year – the

same result as 2015. This standard measures closed files only. We expect that once we make headway on backlogged files, the percentage of files closed within a year will decrease.

8. Standards we are not meeting:

- a. Hearing panel decisions rendered within 90 days of last submissions of parties (Standard 8) – The standard is 90% and we are at 70%. While still some ways off the standard, this is an improvement over last year when only 55% of all hearing panel decisions were rendered within 90 days. (The result was 71% in 2014.)
- b. Ability to share information about lawyers with other law societies *in a manner that protects solicitor/client privilege* (Standard 16) – Rule 2-24 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We are working on a rule amendment to make that clear.
- c. Standard 19 states that there shall be a directory available with easily accessible information on discipline history for each lawyer. In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

ANNUAL REPORT ON LSBC STATUS AS AT DECEMBER 31, 2016

STANDARD		CURRENT STATUS
Timeliness		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	<p>MET</p> <p>100% of telephone inquiries returned within 1 business day.</p>
2.	<p><i>Written complaints:</i></p> <p>100% of written complaints are acknowledged in writing within three business days.</p>	<p>MET</p> <p>99.9% of written complaints acknowledged in writing within 1 business day and remaining complaints were acknowledged within 2 business days.</p>
3.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	<p>MET</p> <p>91% of complaints closed within 12 months. This is the same result as last year.</p>
4.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 97% of open complaints, complainants were contacted every 90 days.</p>
5.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 96% of open complaints, the lawyer was contacted every 90 days.</p>

STANDARD		CURRENT STATUS
Hearings		
6.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	<p>MET 100% (21/21) of citations issued and served in this reporting period were issued and served within 60 days of authorization.</p> <p>MET</p>
7.	<p>75% of all hearings commence within 9 months of authorization.</p> <p>90% of all hearings commence within 12 months of authorization.</p>	<p>MET 82% (18/22) of hearings commenced in this reporting period were commenced within 9 months. Last year's results were 65%.</p> <p>MET 100% (22/22) of hearings commenced in this reporting period were commenced within 12 months. Last year's results were 91%.</p>
8.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	<p>NOT MET 70% of all decisions were rendered within 90 days of the last date the panel received submissions. Last year's results were 55 %.</p>
9.	Each law society will report annually to its governing body on the status of the standards.	<p>MET A report was delivered to the Benchers reporting on LSBC progress.</p>
Public Participation		
10.	There is public participation at every stage of discipline; i.e. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	<p>MET There is one public representative on every disciplinary panel, at least two public representatives on every review board and currently a public representative on our charging body (i.e., Discipline Committee).</p>
11.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	<p>MET Our Complainants' Review Committee has 2 public members. Every panel consists of one public member.</p>

STANDARD		CURRENT STATUS
Transparency		
12.	Hearings are open to the public.	MET Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.
13.	Reasons are provided for any decision to close hearings.	MET Rule 5-8 (5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.
14.	Notices of charge or citation are published promptly after a date for the hearing has been set.	MET In all cases, we publish the fact that a citation has been authorized as soon as the respondent has been informed and the content of the citation after the respondent has been served.
15.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process permits.	MET In all cases, we publish dates of hearings as soon as they are set.
16.	There is an ability to share information about a lawyer or Québec notary who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer or Québec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.	NOT MET Rule 2-24 requires us to provide information to another law society investigating one of our members, but it is not clear that solicitor/client privileged information must be protected in the hands of the recipient. We are working on a rule amendment to make that clear.
17.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material.

Accessibility		
18.	A complaint help form is available to complainants.	MET We have web based material that assists the public in making complaints as well as paper brochures describing our complaint process and jurisdiction.
19.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	NOT MET In 2016, changes were made to Lawyer Lookup to allow easy access to post-September 2003 discipline history. Changes will need to be made to put pre-September 2003 decisions online in order to fully meet this standard.
Qualification of Adjudicators and Volunteers		
20.	There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often than once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.	MET All adjudicators have taken a basic course on the principles of administrative law, Law Society procedures and decision-writing. All lawyer adjudicators have taken an advanced workshop on decision writing and, before chairing a panel or review board, an advanced workshop on hearing skills. All adjudicators attended the annual refresher training in person or by video recording.
21.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.