



Agenda

Benchers

Date: Friday, March 2, 2018

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.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
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.					
1	Consent Agenda: <ul style="list-style-type: none"> • Minutes of January 26, 2018 meeting (regular session) • Minutes of January 26, 2018 meeting (<i>in camera</i> session) • Proposed Rule on Executive Director Designations • External Appointments: Vancouver Building Board of Appeal & The Hamber Foundation • Proposed Amendments: Rule 2-24 and the Sharing of Information with Other Law Societies • Proposed Amendments to Rule 3-80(4): Waiver of Late Trust Report / Accountants Report Filing Fees 		President	Tab 1.1 Tab 1.2 Tab 1.3 Tab 1.4 Tab 1.5 Tab 1.6	Approval Approval Approval Approval Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
GUEST PRESENTATIONS					
2	Civil Resolution Tribunal Update		Shannon Salter, Chair of Civil Resolution Tribunal		Presentation
3	2017 Employee Survey Results		Ryan Williams, President of TWI Surveys Inc.		Presentation
EXECUTIVE REPORTS					
4	President's Report		President		Briefing
5	CEO's Report		CEO	Tab 5	Briefing
6	Briefing by the Law Society's Member of the Federation Council · Federation 101		Herman Van Ommen, QC		Briefing
DISCUSSION/DECISION					
7	Governance Committee Report: Year-End Survey Results		Steve McKoen	Tab 7	Discussion
8	Composition of Review Boards		Craig Ferris, QC	Tab 8	Discussion/ Decision
9	2017 Audited Financial Statements		Craig Ferris, QC, CEO & Jeanette McPhee	Tab 9	Discussion/ Decision



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
REPORTS					
10	Lawyers Insurance Fund: 2017 Year-End Report		Su Forbes, QC	Tab 10	Briefing
FOR INFORMATION					
11	For Information: <ul style="list-style-type: none"> Lawyers' Referral Fee: Developments in Ontario Six Month Bencher Calendar – March to August 			Tab 11.1 Tab 11.2	Information Information
IN CAMERA					
12	<i>In camera:</i> <ul style="list-style-type: none"> Bencher concerns Other business 		President/CEO		Discussion/ Decision



Minutes

Benchers

Date: Friday, January 26, 2018

Present:

Miriam Kresivo, QC, President	Geoffrey McDonald
Nancy Merrill, QC, 1 st Vice-President	Steven McKoen
Craig Ferris, QC, 2 nd Vice-President	Christopher McPherson, QC
Jasmin Ahmad	Claude Richmond
Jeff Campbell, QC	Phil Riddell
Jennifer Chow, QC	Elizabeth Rowbotham
Barbara Cromarty	Mark Rushton
Jeevyn Dhaliwal	Carolynn Ryan
Martin Finch, QC	Daniel P. Smith
Brook Greenberg	Michelle Stanford
Lisa Hamilton, QC	Sarah Westwood
Dean P.J. Lawton, QC	Michael Welsh, QC
Jamie Maclaren, QC	Tony Wilson, QC
Sharon Matthews, QC	Heidi Zetzsche

Unable to Attend: Pinder Cheema, QC

Staff Present:

Don Avison	Michael Lucas
Deborah Armour, QC	Jeanette McPhee
Renee Collins	Doug Munro
Lance Cooke	Lesley Small
Su Forbes, QC	Alan Treleven
Jeffrey Hoskins, QC	Adam Whitcombe
David Jordan	Vinnie Yuen

Guests:	Chief Justice Robert J. Bauman	Chief Justice of British Columbia and Chief Justice of the Court of Appeal for the Yukon
	Michelle Casavant	Member, Aboriginal Lawyers Forum
	Priyan Samarakoone	Program Manager, Access Pro Bono Society of BC
	Margaret Mereigh	Vice President, Canadian Bar Association, BC Branch
	Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
	Jay Fogel	Board Chair, Continuing Legal Education Society of BC
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kensi Gounden	CEO, Courthouse Libraries BC
	Herman Van Ommen, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
	Dom Bautista	Executive Director, Law Courts Center
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
	Prof. Bradford Morse	Dean of Law, Thompson Rivers University
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Administer Oaths of Office

Chief Justice Bauman administered oaths of office to President Miriam Kresivo, QC, First Vice-President Nancy Merrill, QC and Second Vice-President Craig Ferris, QC, and the additional Benchers, whose terms began January 1, 2018 with their recent election or appointment.

The Chief Justice thanked Benchers for the invitation to attend, noting the importance of nurturing and continuing to build upon the strong, respectful relationship between the Bar and the Judiciary. He also thanked the Law Society for its continuing leadership on truth and reconciliation with Indigenous peoples, noting that this leadership has helped highlight the need for further awareness and education amongst the Bench. He had the pleasure of meeting with new CEO Don Avison on this and other issues, and looks forward to continuing to work together.

He thanked the profession and the Benchers for supporting and defending the judiciary where appropriate, given that the judiciary's own ability to defend itself is constrained. He also thanked Benchers for their countless hours of service to the profession, stressing the value of their voices at the table during these often difficult times.

2. President's Welcome

Ms. Kresivo began by acknowledging and thanking our First Nations hosts, the Squamish, Musqueam and Tsleil-Waututh Nations, on whose traditional territories the meeting was being held.

She thanked the Chief Justice for administering their oaths, and for his continuing work to nurture and strengthen the relationship between the judiciary and the Law Society.

Ms. Kresivo noted that Appointed Bencher Claude Richmond would continue to sit as a Bencher, pursuant to our Rules, until such time as his successor is appointed, and thanked him for his continued service.

She welcomed all Benchers to the table for this first meeting of the year, noting its significance to her as her first meeting as President. She also welcomed Mr. Avison, who brings a wealth of knowledge and experience to the organization, to his first meeting as CEO of the Law Society.

Noting the many organizations who have an interest in the Benchers' proceedings and who regularly attend Bencher meetings, she welcomed representatives in attendance, stressing the importance of continued collaboration amongst organizations on issues of shared interest.

She also congratulated newly appointed Queen’s Counsel, Benchers Lisa Hamilton, QC, Jamie Maclaren, QC, Chris McPherson, QC and Michael Welsh, QC and Chief Legal Officer Deb Armour, QC. The ceremony to celebrate these appointments will be held March 2 at Government House.

Framing the work of the Benchers and the Law Society as a whole, Ms. Kresivo underscored the importance of section 3 of the Legal Profession Act. Its broad and inspiring mandate and vision to protect the public interest in the administration of justice acts as a guide to all that we do. She stated that the broad goal of her presidency is to make a difference; specifically, her hope is to carry out the work of this year’s strategic plan priorities in concert with the mandate and vision, continuing to be guided by how the work protects and serves the public interest.

3. Minutes & Resolutions

a. Minutes

The minutes of the meeting held on December 8, 2017 were approved as circulated.

The *in camera* minutes of the meeting held on December 8, 2017 were approved as circulated.

b. Resolutions

The following resolution was passed unanimously and by consent.

Law Society Representation on the 2018 QC Appointments Advisory Committee

BE IT RESOLVED to appoint President Miriam Kresivo, QC and First Vice-President Nancy Merrill, QC as the Law Society’s representatives on the 2018 QC Appointments Advisory Committee.

Proposed Amendment to Terms of Reference of Truth and Reconciliation Advisory Committee

BE IT RESOLVED the terms of reference should be amended to state that:

The Committee will have two co-chairs: a member of the Executive Ladder (i.e. the President, First Vice-President or Second Vice-President) of the Law Society of British Columbia and an Indigenous representative.

Alternate Legal Service Provider Working Group

BE IT RESOLVED that the Benchers create an Alternate Legal Service Provider Working Group, the members of which are to be appointed by the President. The Working Group will:

1. consider and identify the qualifications necessary for family law legal service providers other than lawyers to be able to provide family law legal services directly to the public;
2. make recommendations to the Benchers for a regulatory framework to: (i) qualify other legal service providers to provide family law legal services; (ii) set standards for the legal service providers to provide family law legal services; (ii) set standards for the provision of such services; and
3. ensure that the framework developed is consistent with a unified regulatory regime for legal services.

The Working Group is to provide a report to the Benchers by the end of the year on its progress and any recommendations on the specific mandate items or other recommendations the Working Group may consider necessary.

Annual Fee Review Working Group

BE IT RESOLVED that the Benchers create an Annual Fee Review Working Group, the members of which are to be appointed by the President. The Working Group will investigate and duly consider providing public interest practitioners with reduced rates of practice fees and insurance fees and will report back to the Benchers before the 2018 annual general meeting.

Mental Health Task Force

BE IT RESOLVED that the Benchers create the Mental Health Task Force, the members of which are to be appointed by the President. The Task Force will, at its first meeting, develop draft terms of reference consistent with the two goals in the 2018 – 2020 Strategic Plan for consideration and approval by the Benchers. The Task Force will present the draft terms of reference at the Benchers meeting next following the first meeting of the Task Force and provide the Benchers with a mid-year report and a year-end report on the Task Force's progress.

EXECUTIVE REPORTS

4. President's Report

Ms. Kresivo outlined her intentions for her President's Report this year, indicating that she will report on how the Law Society is moving forward with its vision and mandate. She will also note the activities she is undertaking to represent Benchers in the community, and any new developments in the work being undertaken at the Law Society.

In her first three weeks as President she has been involved in the coordination of the Executive Meeting, Bencher meeting, and the Welcome Farewell Dinner. She has also begun to organize speaking engagements and bar association visits for the months to come, including the Kootenay Bar Association meeting in February. She recently attended the New West Bar Association dinner to welcome new judges, and provided an introduction to newly appointed Mr. Justice David Crossin, recent Past President.

Ms. Kresivo noted that she is looking forward to speaking on January 27, 2018 at the CBA Provincial Council Meeting, and intended to focus on Law Society initiatives. She noted that two new judges will be welcomed in Kamloops in February and thanked Bencher Michelle Stanford who will be introducing and welcoming them on her behalf. On that note, she invited Benchers with personal connections to new judges in their area to provide remarks on her behalf, acknowledging that the welcome is that much more meaningful when a friend or close colleague provides it.

She is also looking forward to participating in the CBA Ethics seminar with CBA(BC) President Bill Veenstra in February, and to meeting with law firm managers to discuss upcoming Law Society regulatory initiatives.

Noting that she will discuss specifics of strategic planning priorities later in the meeting, Ms. Kresivo emphasized her own focus on the alternate legal service providers initiative. The 2014 task force struck to review the issue recommended regulation of alternate legal services providers as a means of increasing access to justice. Since then, the Law Society has worked closely with government to obtain legislative amendments. In anticipation of those amendments, Ms. Kresivo has created a working group, approved by Benchers on the Consent Agenda for this meeting, to review implementation issues. She will chair the working group, with Jeff Campbell, QC as vice-chair.

She also noted the importance of the strategic initiative to destigmatize mental health and consider proactive ways to improve mental health and wellness in our profession. To that end, she has struck a task force, also approved by Benchers on this Consent Agenda, to focus on

practical, achievable and timely goals. The task force will be chaired by Bencher Brook Greenberg, with Michelle Stanford as vice-chair.

The calls to action of the Truth and Reconciliation Commission (TRC) always remain a priority; work must continue towards increased awareness, education and reconciliation with Indigenous peoples.

Ms. Kresivo noted that the Ladder and the Executive Committee have also discussed the Law Society's approach to communications. She indicated that Director of Communications and Public Affairs Jason Kuzminski will speak to Benchers later in the meeting regarding the development of a communications plan designed to support Law Society initiatives.

Ms. Kresivo said she was excited about the year ahead, and grateful for the support of the leadership team and Benchers.

5. CEO's Report

Mr. Avison noted that, while he had the opportunity to attend the Bencher meeting in December, this meeting represented his first opportunity to express how pleased he is to be taking on the role of CEO of the Law Society. He pledged to undertake it diligently and to be guided by the public interest. He expressed his appreciation for the time and effort spent by Past President Herman Van Ommen, QC to brief him extensively on Law Society matters, and to current President Miriam Kresivo, QC for the already successful working relationship they have established since the start of the year. He also thanked the staff of the Law Society, with particular thanks to the Executive Team, for the welcome and exceptional support he has received since his start.

He referred to his first report in the Agenda package, noting that many of the areas of priority have also been identified by Ms. Kresivo in her report. He also noted that presentations on Key Performance Measures (KPM's) and the annual Employee Survey, which would ordinarily happen at this first meeting of the year, will be included on a future meeting agenda. This year the employee survey was conducted in January, rather than the very busy late Fall as in the past, with the result that participation has increased by 10%. Additional work is also being done on the KPM's to ensure the right measures are in place.

Briefly, he also reported on the budget, noting that we appear to be on track to finish positively for 2017. A more detailed report will also be provided to Benchers at an upcoming meeting.

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

Herman Van Ommen, QC reported as the Law Society's member of the Federation Council. He briefed Benchers on the focus of the December meeting, which included consideration of the

Federation’s proposed amendments to the Model Code. He conveyed to Council the concerns of our own Ethics Committee on the proposal; consideration of the proposed amendments has been postponed to allow the Federation to consult further on the amendments in light of the concerns expressed.

He also reported that Bencher Dean Lawton, QC has been nominated to replace Past President and newly appointed Justice Crossin as a member on the Federation’s Truth and Reconciliation Calls to Action Advisory Committee.

The next Federation meeting will be in March, at which there will also be a Presidents’ meeting and a CEOs’ meeting. A focus of the Council meeting will be discussion of the NCA program review, to provide greater definition to the planned review process.

Finally, he proposed for his March report a “Federation 101” presentation to Benchers to provide new Benchers with some background information on the Federation, and returning Benchers with a refresher on Federation structure and operations.

GUEST PRESENTATIONS

7. Presentation by Continuing Legal Education Society of BC (CLE) – Upcoming Initiatives

Ms. Kresivo welcomed and introduced CLE CEO Linda Russell and Board Chair Jay Fogel. Speaking on behalf of both, Ms. Russell thanked Ms. Kresivo and the Benchers for the invitation to speak today. She provided some background information on her experience leading the Continuing Education of the Bar (CEB) for the California Bar, and briefed Benchers on trends in continuing legal education, legal technology and the future direction of CLE.

CLE is a not for profit, self-sustaining legal education organization that is financially sound with a carefully balanced budget. Its board is comprised of members appointed from stakeholder organizations, including the Law Society, from across the province. Its mission is to provide high quality, relevant, and practical content that is readily accessible. CLE conducts over 80 in person courses and over 50 online courses, and produces over 50 practice guides both in print and online. All of its content is available through the courthouse library for free, and CLE conducts a number of free courses throughout the year, all in an effort to ensure all lawyers have access to continuing legal education. She noted that there were approximately 1100 contributors last year, without whom CLE could not offer the same breadth and quality of product. She also noted that over 60% of Benchers were contributors, and thanked them for providing their time and expertise.

Ms. Russell also noted the importance of ongoing collaborations, such as with the Lawyers Insurance Fund (LIF) on the production of the LIF resource “Under the Covers”, and the Law

Society on the TRC Symposium last Fall. Significantly, the CLE website has received more ‘hits’ on the “But I Was Wearing a Suit” video than any other material. She looks forward to working with Mr. Avison and others with a goal of learning from Indigenous partners and integrating that learning into the CLE catalogue, as well as towards the support of new initiatives focused on mental health and wellness.

Looking at the trends in legal learning, she noted that the statistics indicate an increase in online attendance and a slight drop in face to face attendance. There is also a shift away from print towards more online content. These shifts represent increasing opportunities for learning using new interactive technological platforms. However, the corresponding need to help facilitate increased technological competence amongst lawyers has also emerged, with assessment being a key piece. Increased competition has also emerged, with the addition of accounting firms, AI and predictive analytics. CLE’s response will include the redevelopment of the large practice guides to provide “quick content” for specific searches, in keeping with trends toward “Google search” type trends.

Looking ahead, the future direction of CLE will include increased online technology and tech infrastructure. Using “design thinking”, CLE will engage in dialogue with its customers to try to understand their needs and challenges and develop products in response. She has begun that process, and has talked with new lawyers and solo practitioners, hearing that newer lawyers still feel lacking in skills despite their recent PLTC completion and solo lawyers feel burdened by the management of the business of law. Moving forward, this design strategy will require investment in adequate research and development.

She will also lead outreach to law schools, to raise awareness of CLE’s services amongst law students. Many remain unaware of CLE, or that they are able to attend some CLE courses for free.

When asked by a Bencher how the California Bar reacted to the imposition of mandatory continuing professional development (CPD), Ms. Russell confirmed that mandatory CPD was implemented some time ago. Currently there is little to no resistance, which she attributes to the cultural shift that has occurred; lawyers simply accept that ongoing CPD is part of being a lawyer.

In response to another question, she confirmed that CLE is currently developing course offerings associated with wellness, dealing with topics like mindfulness and work life balance. Such courses have been well received in other jurisdictions.

Ms. Kresivo thanked Ms. Russell for her presentation, which underscored the importance of continued collaboration between our two organizations.

DISCUSSION/DECISION

8. Finance & Audit Committee: Updated Enterprise Risk Management Plan (ERM)

Chair Craig Ferris, QC introduced this item, noting that, as a governance tool, the ERM aimed to identify enterprise risks that may impact the achievement of strategic goals, prioritize the likelihood of their occurrence and provide management tools to reduce, avoid or transfer those risks. The framework for monitoring and managing risk is reviewed by Management, the Finance and Audit Committee and then presented to Benchers.

Mr. Avison noted his familiarity with risk assessment work in other organizations, and has been impressed with the quality of work being done by the Law Society which surpasses most.

Chief Financial Officer Jeanette McPhee provided an overview of the updated plan for Benchers, reiterating that the goal of the process is to identify risks impacting strategic planning goals, assess them to determine priority, identify and implement mitigation strategies, monitor regularly and reassess. The first plan was developed in 2011. Reviews are done annually, with a comprehensive review which includes ranking and prioritization, done every 3 years. The most recent comprehensive review was in 2017, during which 4 new risks emerged, and 11 risks were eliminated or combined with other risks, bringing the total number to a more manageable 24 risks.

The plan identifies 5 categories: regulatory risks, which contains 11 risks; financial risks, containing 2 risks; operational, containing 3; staff and working environment containing 3; and, insurance, containing 5. The likelihood of the risk occurring is ranked on a scale of 1-4, with 4 being the highest. Potential consequences of the risk occurring are ranked on a scale of 1-5.

Ms. McPhee identified for Benchers the top 8 risks, beginning with the misuse of trust funds or other facilitation of financial misconduct by members. This is a top risk given its likelihood and consequences. The area of anti-money laundering falls within this risk. A number of strategies exist to manage this risk, including strong conduct and trust rules, our trust assurance program, strong investigation and prosecution procedures, which include a significant amount of education, and Part B coverage for defalcation. Other strategies being explored include a policy review regarding reporting of potential criminal conduct to law enforcement, and a potential review of employee theft insurance for lawyers with trust accounts. The Federation of Law Societies has also created an anti-money laundering working group which are reviewing current rules and developing education and guidance materials for lawyers, as well as a working group to facilitate information sharing amongst law societies' trust safety groups.

The next risk listed in the top 8 is natural disaster, which includes fire, flood and earthquake. She noted we have comprehensive safety plans in place, offsite servers and storage to help minimize operational disruption and applicable insurance coverage.

Following that is an emerging risk of emerging technologies and their impact which may challenge our ability to regulate legal services. This risk includes such innovations as block chain technology and bit coin which could impact general practice and may also impact trust accounts and the transfer of money. Paperless offices and cloud storage also present challenges that require awareness and development of applicable policies.

Next on the list is another emerging risk, the perceived failure to enable, or the hindrance of, access to legal service providers. Access to legal services is a key element of our strategic plan; in addition to our 3 internal committees, we support and fund pro bono and access to justice initiatives in the larger legal community.

The next risk is the loss of key personnel, or the inability to recruit qualified candidates. Perpetually, key employees will move on; to mitigate this risk we need to focus on ongoing professional development, cross training, market driven compensation and succession planning.

Next is a failure to appropriately sanction or deal with a lawyer in timely way. This is one of our core responsibilities, and as such, demands our continued time, money and focus. We are continually reviewing our investigation and prosecution procedures, our hearing panel constitution is balanced and we measure ourselves against national standards.

Conflict of interest is the next on the list. This is highly rated given the reputational risk involved. Strategies in place to mitigate this risk include our Bencher Governance policies, which require any investigation of perceived conflict, as well as our balanced hearing panel membership.

Last on this list of top risks is a significant breach of confidential or private information. This has been a major focus in the last few years, with many procedures being implemented to protect privacy and confidentiality. Our comprehensive privacy policies and procedures include encryption and password protection of agendas and agenda materials, and privacy training for staff. We conduct an annual security review of our IT systems for external threats and we have obtained cyber insurance in the event of a cyber breach.

Ms. McPhee welcomed feedback and invited Benchers to provide suggestions on any risks that may have been missed, or mitigation strategies to consider.

The issue of misleading or unprofessional ads promoting lawyers on social media was raised. Ms. Armour offered that such concerns should be directed to her; in turn, she will ensure they are referred to the appropriate department. Mr. Ferris noted that the Ethics Committee had

considered this issue last year, and marked it as one to review more in depth in the future. Mr. Avison noted that this issue is under active discussion, particularly given recent activity in Ontario.

Another issue raised was that of self-assessment of potential conflict, particularly with regard to hearing panels or the credentials committee. Queried was whether the Law Society has considered the development of a conflicts advisor position. Mr. Whitcombe advised that the Governance Committee had reviewed the possibility earlier, and recommended against it as the most effective option. He confirmed that the issue could be brought back to the Governance Committee for consideration of the best course of action. Mr. Hoskins added that if there were any conflict concerns with hearing panelists, they should discuss this with him as Tribunal Counsel.

Ms. Kresivo thanked Mr. Ferris and Ms. McPhee for the effective presentation and commended the important work that continues to be done to avoid, reduce and mitigate risks.

9. Law Firm Regulation Task Force – Update

New Task Force Chair Steve McKoen reported to Benchers on the newly reconstituted task force, comprised of himself, Jasmin Ahmad as vice-chair, Martin Finch, QC, William Maclagan, QC, Sharon Matthews, QC, Angela Westmacott, QC and Henry Wood, QC. He noted that Benchers at their last meeting had approved the registration process and the pilot project. Moving forward, he anticipated shortly the completion of materials and the self-assessment tool. Both the Equity and Diversity Advisory Committee and the Act and Rules Committee will continue their associated work and the Task Force will meet for the first time in March to discuss implementation of the self-assessment and the pilot.

The remaining portions of the legislation associated with the law firm regulatory regime have been proclaimed, effective April 2, 2018. Draft rules are being prepared with a view to being ready in the spring after the remaining legislation comes into effect. Once Rules are approved by the Benchers, registration can begin. Once registration is complete, firms can be identified to participate in the self-assessment pilot project, which will likely start in July and extend until September, after which the information obtained from the self-assessments will be reviewed by the Task Force. Benchers can expect a report in November or December.

In response to a question, Mr. McKoen confirmed that decisions around pilot participation remain uncertain, however it is acknowledged that it makes sense to have wide participation amongst a variety of firm sizes and types from a variety of geographical areas.

Ms. Kresivo confirmed the importance of Bencher participation in the pilot, but noted that those in government service or corporate employ would be exempt.

REPORTS

10. Strategic Plan Priorities for 2018

Ms. Kresivo recalled for Benchers the new approach taken to strategic planning last year, beginning with a review of strategic goals as they applied to our mandate. The new plan was developed following a series of presentations to and consultations with Benchers, culminating in a strategic plan framework built on our section 3 mandate. She noted it is an ambitious plan, but also observed that we aim to complete it over 3 years, prioritizing some aspects each year. Recognizing the significant contributions of staff, she provided her thanks in anticipation of the hard work Law Society staff will do to help achieve the strategic plan goals.

Mr. Avison confirmed that, after discussion, this year's strategic planning work will focus on access to justice, which will include work on development of a regulatory regime for alternate legal service providers and will require close interaction with the government and the profession. Work will also focus on mental health and wellness, and will continue on law firm regulatory innovations.

Work around the TRC calls to action remain an ongoing priority as well, as does work in follow up to the Law Society's successful symposium. TRC Committee member Michael Macdonald has stressed the importance of continuing to engage in consultation as we continue in our work. On a personal note, he shared with Benchers the importance of this work to him, having had the great fortune to work with First Nations in this province and other parts of Canada throughout his career. He looks forward to identifying goals on the path forward, and to making real progress and achieving real results, both in this and all areas of the strategic plan.

11. Communications Approach

Ms. Kresivo introduced Director of Communications and Public Affairs Jason Kuzminski, noting that Mr. Kuzminski had attended the Executive Committee meeting earlier in the month to brief the Committee on his proposed approach to communications planning and the opportunities a new approach may provide.

Mr. Kuzminski provided for Benchers his "SWOT" analysis (strengths, weaknesses, opportunities and threats) of Law Society communications issues. Noting the complexity of the strategic plan, the multiplicity of driving forces and the variety of audience, he remarked on the challenge of moving forward with a unified voice and message.

As a strength, the Law Society speaks with authority as the regulator and a respected partner in the justice sector. That authority helps provide a mandate to successfully drive change. As regulator, the Law Society fulfills the important role of protecting the public against lawyers who need help to become compliant, which gives it an important voice on public protection issues.

Additional strengths include the ability of the organization to be a thought leader, recognizing that each Bencher has achieved a leadership position in their communities, as well as the valuable asset of a highly dedicated and hard-working staff.

The status of regulator of a profession that enjoys a monopoly also presents a potential weakness. Additional weaknesses include the multiple constituencies of focus for the Law Society; some messages are more appropriately directed at the public, rather than the profession or the judiciary. It is important to evaluate the message we want to deliver, and consider the impact on the audience we want to reach. Conservative and process-focused organizational policy decision-making could also be perceived as a weakness. The sheer complexity of the organization and its mandated responsibilities also presents a potential weakness; there are multiple departments and branches engaged in at least five or six major components whose breadth of scope includes regulation, teaching, accreditation, and policy work. This requires a collaborative awareness of how and when we are communicating and to which audience.

It also important for the Law Society to be aware of the challenge presented by the public perception of a “bad apple” lawyer colouring the perception of the legal profession as a whole. A related challenge is the Law Society’s lack of credibility by association; it is important to recognize that we may not have the same credibility with the public as we do in the justice sector. We must continue to ask the question of how we build credibility with the public to pursue change.

In this complex organization, the necessary time and capacity to build initiatives also presents a challenge. Prioritization of initiatives must be a reflection of both capacity and time constraints; communication of how and when decisions are implemented should be a coordinated effort that is also mindful of these constraints.

Recognition of strengths and awareness of challenges presents and creates opportunities. Shifting our approach from a transactional, reactive one to a coordinated, longer term one will enable us to set priorities, plan for opportunities to work with partners to help advocate for initiatives and engage in related community events to create awareness and keep the conversation going. Examples of the latter include participation in mental health awareness events such as Bell’s Let’s Talk Day, or May’s designation as Mental Health Month to advance our own mental health initiatives.

Our clear commitment to a vision on debates of public interest has shifted our messaging focus outward, and necessitates a change in tone on what we do. This presents an opportunity to speak more to the public and adopt new modes of communication; strategic use of social media platforms such as Twitter, for example, can be used to drive our audience to staged content such as Law Society sponsored short documentaries or videos. In certain areas, this may also

necessitate a shift in perspective away from traditional written narrative forms of media towards vehicles more frequently used by a 21st century public to generate discussion.

With this shifted focus comes increased opportunities to build relationships and networks with government and others. Our communications strategies will be strengthened by creating a continuum between ourselves and law schools, bar associations, advocacy organizations and other interested groups.

In response to a question regarding who our main audience is, Mr. Kuzminski observed that we are currently oriented to the legal profession as our main audience, but that our shift in mandated focus appears to be toward the wider audience of government and the public. He recognized, however, that we must always remain aware of our justice sector audiences.

When asked how we conclude that our credibility with the public does not match our credibility with the justice sector, Mr. Kuzminski noted a recent study of the legal profession in 2017 indicating only a 14% favourability rating of lawyers. As their regulator, the Law Society will be associated with lawyers. He acknowledged that the 2011 Law Society study yielded positive results regarding trust in the regulator, but suggested that it was appropriate to consider an updated, refined review.

Suggestion was made that Benchers can use their student interviews as an opportunity to present to the profession a view of a more approachable, accessible organization, in contrast to the stereotypical view of the regulator. Mr. Kuzminski agreed that many view the regulator with trepidation, focusing solely on its disciplinary function, and are not used to thinking of this as an organization that educates lawyers and cares about their wellbeing. Advancement of initiatives like that focused on mental health and wellness should help raise awareness of this view of the Law Society. He was mindful of the work of advocacy organizations and the need to work in concert with them, but also noted that our efforts will differ, as organizations like the CBA and the Trial Lawyers Association are focused on the profession, while the Law Society's mandated focus is the public interest.

In response to the question of whether other regulatory bodies have successfully changed a negative public perception, Mr. Kuzminski noted that his review to date has been predominantly inward focused, but also observed that the Barreau de Quebec is successfully using more contemporary modes of communications to reach wider audiences. He also noted the importance of setting reasonable targets to begin to facilitate change; we are unlikely to change public opinion of lawyers completely, but we may be able to shift perspective somewhat. He also observed the challenge of trying to do so in a difficult cultural climate. Unlike other professionals, lawyers have continued to use the same tools and methods from a century ago; if we hope to overcome these challenges, we need to modernize and communicate in ways that are responsive to the current audience.

Some also observed that lawyers are perceived as elites. While people tend to be positive about their own lawyers, many simply do not have access to lawyers. Others observed that our primary goal is protection of the public interest; we should not be spending time improving the image of lawyers, we should focus on initiatives that lead to improvements, which in turn will improve our image.

Ms. Kresivo noted the importance of the Law Society coordinating its communications efforts amongst Bencher and committees and speaking with one voice. She thanked Mr. Kuzminski for his thought-provoking and insightful presentation.

12. National Discipline Standards Report

Chief Legal Office Deb Armour, QC recalled for Benchers that the National Discipline Standards were an initiative of the Federation, begun in 2010 as coordinated standards relating to investigations, discipline and adjudication with transparency, fairness and timeliness. The standards set are aspirational, and only one law society has succeeded, only once, in meeting them all. Last year the Law Society of BC had its best year and met 18 of 21 standards, and was in the upper level of all law societies across Canada. She noted that one of the standards is to report annually on the measurement of our processes against the standards set which was the purpose of her report at this meeting. Last July she provided Benchers with the annual report for 2015 and 2016 for all law societies in Canada.

She reported that we have fallen from meeting 18 to 17 of the standards; last year we met the standard of commencing hearings within 9 months of authorization 75% of the time, whereas this year we achieved only 62%. She attributed this to staff vacancies within the discipline group.

We have never met the standard of rendering hearing panel decisions within 90 days of the hearing, 90% of time. We are currently at 65%, and were at 70% last year. This requires ongoing work and focus. Neither have we met the standard associated with the ability to share information about lawyers with other law societies in a manner that protects solicitor client privilege. This is currently the subject of policy review and on completion will be brought back before Benchers for discussion.

Lastly, we have not met the standard aimed at transparency which requires easily accessible information on lawyer discipline in our lawyer directory. We have met this standard with respect to information after 2003 when that information was digitized, but given resource limitations, have been unable to collect and post earlier decisions.

She noted that the issue of the length of time needed to complete investigations is also one for further consideration. We are currently meeting the standard for closed files, which cannot be

said for all law societies, but she acknowledged that as older files are closed it is expected that the percentage of files closed within a year will decrease.

In response to a question, Ms. Armour confirmed that the standards were set by a committee of the Federation of Law Societies, of which she is a member. Ms. Armour was also asked if any consideration had been given to revising the standard for issuing hearing decisions, given that complexity of files is greater now than at the time the standard was set. She noted that this standard is actually being met by most Law Societies; in an effort to increase our own efficiencies, a proposed change from 7 panel members to 5 will be coming to the Benchers for consideration. Legislative and Tribunal Counsel Jeff Hoskins, QC confirmed that the proposed change would likely be before Benchers at the next meeting.

13. Report on Outstanding Hearing & Review Decisions

Mr. Ferris reported as the President's designated Tribunal Chair. He noted the importance of not just meeting but where possible exceeding the applicable standards set for providing hearing decisions, but acknowledging increasing complexities, also queried whether the standards in place remain realistic.

FOR INFORMATION

14. Three Month Bencher Calendar – January to March

Ms. Kresivo noted that moving forward a six month calendar view will be available on the Bencher package for reference.

RTC
2018-01-26

REDACTED MATERIALS

REDACTED MATERIALS

REDACTED MATERIALS



Memo

To: **Benchers**
From: Jeffrey G. Hoskins, QC on behalf of Act and Rules Committee
Date: February 2, 2018
Subject: **Proposed rule on Executive Director designations**

1. This memorandum deals with an issue on which past Act and Rules Committees have spent considerable time without agreeing on a suitable solution. The Committee set the matter aside in order to complete the general Rule Revision project in a timely fashion.
2. Having now come back to the issue after some time, the problem does not look as complicated as it did. The Committee recommends a relatively simple solution that will address the problem to the greatest extent possible.

Background

3. The scheme of the *Legal Profession Act* and Law Society Rules includes many references to the Executive Director, only a few of which are intended to require the Executive Director himself to do certain things. Most references to the Executive Director are intended to allow staff to perform certain functions in the operation of the Law Society.
4. However, that scheme does not appear to be supported by the definition of “executive director” in the *Legal Profession Act*, and the definitions in the Act and the Rules differ significantly, which is undesirable drafting form. It also could call into question the enforceability of delegations, should they be formally challenged.
5. The scheme is also somewhat lacking in transparency in that it is not apparent to the casual or occasional user of the Act and Rules that the Law Society operates through a staff of about 200, rather than by the individual identified in the Rules. As a result, staff have, over the years, fielded inquiries, complaints and outright challenges from individuals who felt that

they were entitled to deal with the Executive Director rather than more subordinate staff. Fortunately, no one has thus far commenced litigation on the point.

6. In addition, there may be an evidentiary problem should the Law Society ever need to demonstrate that a function has been properly delegated by the Executive Director. While some designations by the Executive Director are carefully documented, most have not been specifically recorded. As there are a large number of functions nominally assigned to the Executive Director in the Act and Rules, there may be a great deal of staff time involved in recording and updating assigned functions.

Definitions

7. This is the definition of “executive director” in the *Legal Profession Act*, section 1 (1):

“executive director” means the executive director or acting executive director of the society;
8. This is supplemented by section 8(a), which permits the Executive Director to delegate some or all of his functions, apparently where that has been provided for in the rules:

Officers and employees

- 8 The benchers may make rules to do either or both of the following:
 - (a) delegate to the executive director, or the executive director’s delegate, any power or authority of the benchers under this Act except rule-making authority;
9. However, the definition in Rule 1 of the Law Society Rules is significantly different from that:

“Executive Director” includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;
10. Defining the same term in different ways in the enabling statute and the regulations adopted under the statute is not good drafting practice and could lead to difficulty and disputes as to the interpretation of the Rules. The Law Society Rules are “regulations” authorized by the *Legal Profession Act*.
11. Section 13 of the *Interpretation Act* is as follows:

Application of expressions in enactments to regulations

- 13 An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.
12. The differing definitions of “Executive Director” in the Act and the Rules appear to be in breach of this provision, or at least not in line enough to make the two easily interpreted. The two definitions ought to be brought into conformity. Either the Benchers should ask the provincial government for an amendment to the *Legal Profession Act* definition, or the differing definition in the Law Society Rules should be rescinded and the scheme of the Rules for delegation of Executive Director functions adjusted accordingly. Given the time and expense involved in legislation, the latter is recommended.

Functions assigned to the Executive Director

13. There are well over 500 references to the Executive Director in the Law Society Rules. Not all assign a function to the Executive Director, but most do. Clearly, in an organization the size of the Law Society and with the responsibilities of the Law Society, one person could not be expected to perform all of the functions assigned to the Executive Director in the Law Society Rules. Assigning most of the functions to various staff is the only practical way to operate an institution of this size.
14. The number of functions, together with the size and diversity of the Law Society staff, would make it impractical to formally record and update each delegation of an Executive Director to a staff member in order to have documentary evidence in the event that a delegation is formally challenged.

Recommendation

15. Since the definition of “Executive Director” in the Law Society Rules is not sustainable in the face of an inconsistent definition in the *Legal Profession Act*, it should be rescinded.
16. The Act and Rules Committee recommends that the Benchers adopt a new rule tracking the language of section 8(1) of the *Legal Profession Act* indicating that any Executive Director “power or authority” under the rules may be exercised by the Executive Director’s delegate and deeming that employees and others retained by the Law Society are the Executive Director’s delegate when acting within the scope of their employment or retainer:

Executive Director’s delegate

- 1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.

- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.
17. This change would have the effect of resolving the conflict of definitions of Executive Director between the Law Society Rules and the *Legal Profession Act*. It would also go some distance to providing some assurance of the enforceability of delegation of Executive Director powers and authority by deeming employees and others to be delegates while acting within the scope of employment or retainer. It would only require documentary evidence in other cases, which is probably as it should be. Currently, in relatively few cases, functions are delegated by means of a memorandum personally signed by the Executive Director.
18. The Committee considers that this change is a repair of the rules to conform to the *Legal Profession Act* and not a change in Benchers policy. It is open to the Committee to recommend the change to the Benchers without an advance policy decision.
19. The Act and Rules Committee recommends that the Benchers adopt the attached suggested resolution.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“Executive Director” ~~[rescinded]~~ includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these rules;

PART 1 – ORGANIZATION

Division 1 – Law Society

General

Executive Director’s delegate

1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.

(2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director’s delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

LAW SOCIETY RULES

RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“Executive Director” [rescinded]

PART 1 – ORGANIZATION

Division 1 – Law Society

General

Executive Director’s delegate

- 1-44.1 (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.
- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director’s delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

EXECUTIVE DIRECTOR DELEGATIONS**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend the Law Society Rules as follows:

1. *In Rule 1, by rescinding the definition of “Executive Director”;*
2. *By adopting the following rule:*

Executive Director’s delegate

- 1-44.1** (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director’s delegate.
- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director’s delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Recruitment and Nominating Advisory Committee
Date: March 2, 2018
Subject: **External Appointments: Vancouver Building Board of Appeal, City of Vancouver & Hamber Foundation**

This memo provides background and advice on two matters for consideration:

- Vancouver Building Board of Appeal, City of Vancouver: requires one new appointment by Vancouver City Council on recommendation of the Benchers; and
- Hamber Foundation: requires one new appointment and one re-appointment by the Benchers.

1. Vancouver Building Board of Appeal, City of Vancouver

Law Society member, nominated by: Benchers

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Edna Cheung	3 years, maximum of 2 terms	3	2/1/2009	1/31/2018

Background

The Building Board of Appeal hears appeals of any decision of the City Building Inspector (Director of Permits and Licenses) regarding interpretation of the by-law, use of new methods of construction or materials, determination of the extent of upgrading existing buildings, determination of unsafe condition, determination of extent of building upgrading affected by Change of Occupancy and reasons for revoking a permit.

The Board consists of 8 members nominated by a variety of societies and approved by Vancouver City Council.

Though our policy dictates a maximum of 2 terms for appointees, Edna Cheung was appointed for a third term in 2015 in light of the fact that she had minimal opportunities for involvement in her first two terms, and the Board requested her extension to help facilitate continuity.

As Ms. Cheung's third term is set to expire, we posted a call for volunteers on our website and on Twitter. We have received two applications, and a review of our volunteer page reveals two more candidates who have applied within the last year.

We have not received a letter from the Board outlining their preferred competencies or providing any suggested candidates, but Deputy Chief Building Official Kevin Lau has advised by phone that the City is requesting a new appointment and has asked if we can consider a lawyer with construction law experience and a familiarity with building by-laws.

Candidates

Michael Morgan: Mr. Morgan is a commercial litigator who was called to the BC Bar in 1999 and describes extensive experience specializing in real estate, builders' liens and construction disputes. His application form and resume are at Appendix 1.

Mona Muker: Ms. Muker was called to the Bar in California in December 2012 and in BC in June 2014. She has practiced predominantly in the area of real estate, describing experience in conveyancing, land development, subdivisions, strata, business and property transactions. Her application form, resume and letter of interest are at Appendix 2.

Kuldip Johal: Mr. Johal is a personal injury lawyer who has indicated an interest in each one of our committees and external organization opportunities. His resume does not list the preferred competencies for this position. His application form and resume are at Appendix 3.

Stacy Kuiack: Mr. Kuiack has a 10 year history of service with the Law Society and has indicated an interest in continuing to serve. However, Mr. Kuiack is not a lawyer or member of the Law Society, which the appointee must be. Accordingly, he was not considered for the appointment.

Process and Recommendation

This appointment is made by Vancouver City Council, on nomination of the Benchers. We recommend that the Benchers nominate Michael Morgan for Vancouver City Council's appointment of the Law Society representative on the Building Board of Appeal. Mr. Morgan is a commercial litigator who was called to the BC Bar in 1999 and describes extensive experience specializing in real estate, builders' liens and construction disputes.

2. Hamber Foundation

Law Society member, appointed by: Benchers

Current Appointments	Term Allowance	Number of Terms Already Served	Date First Appointed	Expiry Date
Todd L. Kerr	3 years, maximum of 2 terms	1	3/1/2015	2/28/2018
Mark Killas	3 years, maximum of 2 terms	2	3/1/2012	2/28/2018

Background

The Hamber Foundation constitution states that the society's purposes include:

- Receiving, holding, distributing and investing contributions to charitable institutions from donors;
- Maintaining and supporting charitable organizations within BC;
- Making grants to establish, maintain or support scholarships, bursaries, professorships, lectureships, loan funds or other forms of assistance to degree-granting universities or colleges in BC or charitable organizations; and
- Establishing, maintaining or supporting scholarships that are open to students of BC universities or colleges.

Mark Killas is coming to the end of his second and final term necessitating a new appointment. Todd Kerr is coming to the end of his first term, and may be re-appointed to the position.

In Secretary/Treasurer David Yau's January 4, 2018 email to Ms. Renee Collins (Appendix 4), he notes Mark's upcoming expiry and requests a new appointment. Although he does not explicitly request the reappointment of Todd Kerr, it does appear from his email that he assumes Mr. Kerr, as eligible for reappointment, will indeed be reappointed.

Candidates

We posted this opportunity on our website and through Twitter but the posting has not resulted in any candidates. Mr. Yau has passed along to us a suggested candidate from current appointee Mark Killas, a Mr. Paul Barbeau.

Mr. Barbeau describes himself as having “wide experience in both commercial and residential real estate matters, generally arising as a component of related business law and estate planning matters”. His application form and resume are attached at Appendix 5.

Recommendations

We recommend that the Benchers appoint Mr. Paul Barbeau as the Law Society’s new representative on the Hamber Foundation Board of Governors, and that Mr. Todd Kerr be re-appointed to the Board for a second term, each for a three year term effective March 1, 2018.

REDACTED MATERIALS



Memo

To: Benchers
From: Executive Committee
Date: February 21, 2018
Subject: Proposed Amendments: Rule 2-24 and the Sharing of Information with Other Law Societies

Introduction

1. The Law Society's Discipline and Professional Conduct departments have raised issues concerning their ability to share information with other law societies, specifically in light of the Law Society's commitments pursuant to the Federation of Law Societies' National Discipline Standards, which were approved by the Benchers and came into effect in January, 2015. Standard 16, which is most directly relevant to this memorandum is discussed below. This memorandum addresses the sharing of information with other law societies only insofar as to recommend an amendment to Rule 2-24 with respect to the Law Society's commitments under the National Discipline Standards.
2. As there is no committee that is specifically tasked with undertaking a review of regulatory policy issues prior to consideration by the Benchers as a whole, the Executive Committee was asked to give preliminary consideration to the request at issue and to consider the policy issues that the request entails. The Committee recommends that the Benchers approve the request in principal and that the matter be forwarded to the Act and Rules Committee to draft the required rule amendments.
3. The Executive Committee, for the reasons described below, makes recommendations at the end of this memorandum that the rules be amended to address the issues raised by the Discipline and Professional Conduct departments.

Background

4. The Federation's National Discipline Standards project was established to develop and implement high standards for the processing of complaints and discipline matters at all Canadian law societies.

5. The Federation first approved the National Discipline Standards initiative as a pilot project with a view to making appropriate changes to the standards before adoption by all the Canadian law societies. A Steering Committee was struck, and it developed what now consist of 21 standards that address timeliness, hearings, public participation, transparency, accessibility, and the qualifications of adjudicators and volunteers. The pilot itself was launched in April 2012 and the National Discipline Standards were referred to the law societies for adoption and implementation, effective January 1, 2015.
6. Standard 16 is of particular relevance for the purposes of this memorandum. Standard 16 falls under the section dealing with transparency. It requires that:

There is an ability to share information about a lawyer or Quebec 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 Quebec notary to disclose to all law societies of which he/she is a member that there is an investigation underway.* (emphasis added).

7. Given challenges some law societies were having in meeting this standard, , signatory law societies were asked in early 2015 to provide the rule or authority they would be relying on to meet Standard 16. This Law Society replied stating that it relies on what is now Rule 2-24(1) as authority for sharing information. It also noted that, because the rule as drafted does not on its face provide for protection of solicitor-client privilege and confidentiality when “relevant information” is provided, it may need to be amended to meet that particular requirement under Standard 16.
8. More recently, the National Discipline Standards group has proposed to revise Standard 16 as follows:

A law society can share information about a lawyer or Quebec notary, either upon request or at its own initiative, with any other law society.

All information must be shared in a manner that protects solicitor-client privilege.

9. The group proposed a Model Rule in this regard:

Model Rule for Standard 16

Sharing of Information

(1) The law society may, either upon request or at its own initiative, disclose to any law society any information about a lawyer or Quebec notary that the law society considers appropriate in the public interest.

Exception

(2) Notwithstanding (1), information shall not be shared if to do so would contravene solicitor-client privilege.

10. Ideally, law societies will adopt rules that incorporate the elements included in the model rule having regard to local considerations and requirements.

Rule 2-24(1)

11. The provisions from the model rule would logically fit into Rule 2-24. The relevant portions of Rule 2-24 currently provide as follows:

2-24 (1) At the request of a governing body that is investigating the conduct of a lawyer, former lawyer or visiting lawyer or has initiated disciplinary proceedings against a lawyer, former lawyer or visiting lawyer, the Executive Director must provide all relevant information.

(2) When the Executive Director provides information to a governing body under subrule (1), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

Discussion

12. The Law Society's adoption of the National Discipline Standards presumes a commitment to implementation that in itself is a sound policy rationale for amending rules in order to allow the Law Society to meet those commitments. In addition, a number of lawyers are members of more than one law society. It is sound regulatory policy to ensure regulators of such lawyers can share information when in the public interest to do so.

13. This memorandum addresses three issues for consideration in light of the National Discipline Standards, the proposed model rule and the general interpretation of the current Law Society rule. They are

- (a) consideration of expanding the circumstances under which information can be provided;
- (b) the fact that the current Rule is vague on what "all relevant information" means in the context of what information must be provided and the advisability for the model rule to be more specific on this point, and

- (c) the requirement to address privilege and to ensure that privileged information is protected when information is shared.

14. Generally speaking, Rules 3-3 and 4-8 of the Law Society Rules prohibit anyone from disclosing any information or records that form part of the investigation of, or consideration of, a complaint, or the result of a consideration by the Discipline Committee. However, disclosure is permitted for the purposes of complying with the objectives of the Act or the Rules. Specific regulatory permission to disclose the information with other Canadian law societies (which under the Law Society rules are defined as “governing bodies”) meets with this exception.

15. The *Freedom of Information and Protection of Privacy Act* also sets out limitations on the use and disclosure of information that the Law Society has collected. This Act will be discussed further below.

a. Expanding the circumstances under which information can be provided

16. Rule 2-24 currently contemplates that the Law Society must, in some circumstances, provide complaints and investigation information to other governing bodies. Subrule (1) sets out certain criteria that must be met before the Law Society can, or is required to, share this type of information with another governing body.

17. As the rule currently states, before the Law Society can share anything related to a complaint or investigation, the other governing body must:

be investigating the conduct of a lawyer, former lawyer or visiting lawyer, or initiated disciplinary proceedings against him or her;

make a request to the Law Society for information; and

be investigating a lawyer who has a connection to BC as a current or former member, or as a visiting lawyer.

18. Staff in the Law Society’s regulatory departments has raised a concern that the rule as drafted does not adequately allow for sharing information in a manner that supports a more effective regulatory regime. This concern is echoed through the National Discipline Standards group. Although information must now be shared if the criteria set out in Rule 2-24(1) are met, the Law Society cannot currently do so in other circumstances where it might be in the public interest to provide the information.

19. Sharing information between law societies on discipline or investigation matters ensures that law societies have information related to those practising within their jurisdictions. It also better ensures consistency in the way law societies deal with related issues. It

ensures, for example, that a lawyer's complete history relating to his or her practice can be considered when making recommendations to a "charging" committee. An inability to share information can adversely affect the credibility of law society processes and impact the public interest.

20. The following are two examples of situations where information could not be shared under Rule 2-24 as currently drafted.
 - When the Law Society receives a request from another law society that has not commenced an investigation but is considering doing so, the Law Society is unable to disclose whether an investigation with respect to the lawyer in question has even been commenced in BC;
21. When the Law Society becomes aware of information in the course of an investigation that it believes another law society should have given that the subject lawyer practices in that jurisdiction. To meet the revised standard, Rule 2-24 therefore requires, at the least, language to permit the Law Society to disclose information on its own initiative (a provision contemplated by the proposed Model Rule).
 - b. Clarification as to what information is to be provided and limitations**
22. Rule 2-24(1) currently provides no guidance for determining what would be deemed to be "relevant information" that the Executive Director may be required to disclose. It is also silent about how any of this information can be used once it has left the Law Society.
23. The Model Rule suggests using the language "any information about a lawyer...that the law society considers appropriate in the public interest," but is also silent on how the information can be used.
24. To comply with the National Discipline Standards, and to better protect the public interest, the rule should be broad enough to include, for example, information beyond the complaint and investigation stage, such as information relating to any disciplinary stages. While we understand that there are guidelines concerning the provision of information, thought could be given to whether those guidelines should be included in the rule itself.
25. Before adopting the language of the model rule, consideration also needs to be given to ensure that the resulting rule is consistent with the requirements on use and disclosure of information set out in the *Freedom of Information and Protection of Privacy Act* (FOIPPA). Section 32 of that Act allows the use of information only for the purpose for which it was obtained or compiled, or for a consistent purpose. A "consistent purpose" includes where it is "necessary for the performing of the statutory duties of the public body using or disclosing the information." Moreover, s. 33.1(1) provides that disclosure

is permitted by a public body “for the purposes of licensing, registration, insurance, investigation or discipline of persons ... regulated by governing bodies of professions ...”

26. The permissions under FOIPPA are quite broad. However, given the particular requirements on the use and disclosure of information placed on the Law Society by that Act, it would be prudent to provide in the rule that the law society to whom the information is provided can only use it for “consistent purposes” for which it was provided to ensure so much as we are able, that another regulator does not consider itself at liberty to use the information for a non-regulatory purpose.

(c) Privilege

27. The law is generally quite clear that, unless an enactment specifically authorizes the production of information subject to solicitor-client privilege, a general requirement or permission to provide information will not include privileged information. “Open-textured language governing the production of documents will be read *not* to include solicitor-client documents.” See *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, [2008] 2 SCR 574.
28. Law Society Rules are enactments and therefore will be interpreted on the standard described above. While Rule 2-24(1) requires the Executive Director to provide “all relevant information,” it does not specifically say that includes privileged information.
29. Rule 2-24(2), on the other hand, specifically contemplates that the Executive Director may have provided privileged information, because it gives him or her the discretion to notify the person whose information it is of that fact and the reasons for it.
30. Nevertheless, elsewhere in the Law Society Rules, there are rules containing express language where privilege is at issue. For example, Rule 3-3(6) (concerning the disclosure and confidentiality of complaints and discipline processes) includes express language that Division 1 of the rules must not be interpreted to permit the disclosure of information subject to privilege or confidentiality (see, also, for example, Rule 4-8(6)). Rule 2-24, however, contains no equivalent language, which might be construed to mean that a different standard was meant to apply.
31. The Law Society is permitted to access privileged information during the course of its investigations. Section 88(1.1) of the *Legal Profession Act* requires such information to be provided, despite the privilege or confidentiality. The rationale for this almost unique

ability to access privileged information is set out in case law.¹ However, the Law Society then stands in shoes similar to that of the person from whom the information has been collected. Section 88(3) provides that anyone who comes into possession of such information must not disclose it except for a purpose contemplated by the Act or the Law Society Rules.

32. Other law societies fall into similar circumstances. Therefore, if a rule permitted this Law Society to share information with other law societies that had similar responsibilities over the information provided, the “envelope of privilege” would not be violated.
33. If the intention of Proposed Model Rule is to permit privileged information that the Law Society has collected to be provided to another law society provided that other law society will use it for consistent purposes and be obligated to protect the information to a standard similar to this Law Society, Rule 2-24 arguably already allows it. However, because it is not as explicit as it likely ought to be to that end, given the interpretation of enactments insofar as they deal with privilege, the rule should be amended to specifically authorize the sharing of privileged information, provided that that privilege is protected to a standard similar to that required of the Law Society.

Recommendations

34. In order to clarify what information can be disclosed and to comply with National Discipline Standard 16, the Executive Committee recommends that Rule 2-24 be amended to include express language permitting disclosure of privileged or confidential information to another “governing body” provided that the other body is required to protect the privilege to a standard similar to that required of the Law Society.
35. In addition, the Committee recommends that Rule 2-24 should be drafted to give guidance on what information must be shared under the Rule. To comply with the National Discipline Standards, and to better protect the public interest, it should contain language that is broad enough to include information beyond the complaint and investigation stage, which would then permit the disclosure of information relating to any disciplinary stages.
36. The Committee further recommends that the Rule be reworded to remove limitations on when another law society can request the information, although some limitations consistent with requirements under *Freedom of Information and Protection of Privacy*

¹ See, for example, *Skogstad v. The Law Society of British Columbia* 2007 BCCA 310, *Greene v. Law Society of British Columbia et al* 2005 BCSC 390, *Stewart McKelvey Stirling Scales v. Nova Scotia Barristers' Society*, 2005 NSSC 258

Act should be included in connection with the use that other law societies can make of the information provided.

37. Finally, the Committee recommends that the Rule be amended to give the Law Society a discretion to share information proactively with other Canadian law societies in appropriate circumstances without having to first receive a request for information.
38. The Committee recommends that the Benchers approve the recommendations identified above in principle and that the Benchers refer the matter to the Act and Rules Committee to draft rule amendments to address the recommendations.



Memo

To: Benchers
From: Executive Committee
Date: February 21, 2018
Subject: Waiver of Late Trust Report / Accountants Report Filing Fees

Issue and Recommendation

1. The Professional Regulation Department seeks a rule change to Law Society Rules, Rule 3-80(4) to give the Executive Director, rather than the Discipline Committee as the rule currently contemplates, the discretion to waive a late fee under Rule 3-80(3) when special circumstances exist, particularly in connection with applications for reinstatement. The Professional Regulation Department asked the Policy and Legal Services Department to analyze the issue and help develop a recommendation for the Benchers.
2. As there is no committee that is specifically tasked with undertaking a review of regulatory policy issues prior to consideration by the Benchers as a whole, the Executive Committee was asked to give preliminary consideration to the request at issue and to consider the policy issues that the request entails. The Committee recommends that the Benchers approve the request in principal and that the matter be forwarded to the Act and Rules Committee to draft the required rule amendments.

Background

3. Former lawyers who seek reinstatement of their membership to the Law Society must make an application to the Executive Director. Staff consider these applications. Rule 2-85, however, provides that the application cannot be considered unless the former lawyer applicant has submitted all outstanding trust reports and paid all the assessments that have accrued unless the Discipline Committee has waived them.
4. A referral to the Discipline Committee has to fit within a limited window of meetings and engages additional regulatory process than does a request to the Executive Director. The proposed rule amendment therefore seeks to find a way to streamline the regulatory process.

5. Rule 3-80 was one of the rules brought into force in the early-mid 2000s on the recommendations of the Trust Account Review Task Force. It provides an administratively efficient way to provide consequences for the failure of a lawyer to deliver a trust report on time. The rule includes a discretion to waive the assessment of \$400 per month for each month or part of a month that the report is outstanding until it is delivered. Given the importance of trust accounts in a lawyer's practice and the responsibility that the Law Society has to ensure the proper use of trust accounts, the rule has been an effective way to draw to the attention to the profession the seriousness with which the Law Society approaches the requirements to deliver a trust report.
6. Some lawyers who have not filed a trust report end up not being able to renew their membership and consequently cease being members of the Law Society and cease being able to practise law. From time to time, of course, some of those individuals look to reinstate their membership, but the application cannot be considered until all outstanding assessments have been paid or waived. Currently, Rule 2-85(7)(b) requires such applications for waiver by an applicant seeking to reinstate membership have to go to the Discipline Committee even though the applicant may have not been a member for some years.

Proposal

7. The proposal is to remove the requirement that the matter application for waiver or reduction of assessment for late filing of a trust report be heard initially by the Discipline Committee in each instance, and instead be given to the Executive Director., .

Analysis

8. The *Legal Profession Act* gives the Benchers broad, rule-making power:
 - 11(1) The benchers may make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act.
 - (2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.
 - (3) The rules are binding on the society, lawyer, law firms, the benchers, articulated students, applicants and persons referred to in section 16(2)(a) or 17(1)(a).

9. Furthermore:

4(2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest and the welfare of the society.

(3) The benchers may take any action consistent with this Act by resolution

(4) Subsection (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.

10. Moreover, s. 32 of the *Act* gives the Benchers power to establish standards of fiscal responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.

11. The general requirements of Rules 2-85 and 3-80 therefore fit within the scope of the Law Society's statutory authority, leaving the question as to whether it is reasonably within the authority granted by the *Act* to change the entity that can consider an application as to waive or reduce an assessment from the Discipline Committee to the Executive Director.

12. In *Green v. Law Society of Manitoba*, 2017 SCC 20 the court found:

[20] ... the standard applicable to review of the law society rule is reasonableness. A law society rule will be set aside only if the rule “is one no reasonable body informed by [the relevant] factors could have [enacted]”: *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 24. This means “that the substance of [law society rules] must conform to the rationale of the statutory regime set up by the legislature”: *Catalyst paper*, at para. 25; see also *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 S.C.R. 810, at para. 25.

13. The Court went on to state at para. 24:

The Law Society must therefore be afforded considerable latitude in making rules based on its interpretation of the “public interest” in the context of its enabling statute: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 50 and 87.

14. And added, at para. 25, that:

This Court has previously recognized that self-governing professional bodies have particular expertise when it comes to deciding on the policies

and procedures that govern the practice of their professions: *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at p. 887.

15. Some rules vest discretion in the Executive Director to make a decision (for example: 2-8(3)(a), 2-14(3), 2-34(2)(b), etc.). Some rules vest discretion in committees to make a decision (for example: 2-29(4), 3-80(4), etc.). Some rules are a hybrid, vesting discretion in the Executive Director with a right for review of the Executive Director's Decision by a committee (e.g. 2-16(4) and (5)).
16. For matters relating to administrative penalties that do not require an analysis of whether professional misconduct has taken place, or do not require a hearing or other quasi-judicial process, it can be argued quite rationally that it is reasonable to vest in the Executive Director the discretion to extend time for compliance or to waive a late fee in cases where special circumstances exist. It is a decision to review the consequences of the imposition of an administrative function, not to review a decision of a committee. Having in effect created a process that automatically imposes a consequence on a lawyer's failure to do something, it is not, the argument would go, unreasonable to permit the Executive Director to determine whether to waive or reduce the consequence. It would also be more administratively expedient to do so, as the Executive Director can consider a request at any time, whereas requests to a committee would generally require a meeting.
17. Because the Law Society has systems in place that vest a broad discretion with the Executive Director, it would be presumptively reasonable to vest with the Executive Director the authority to waive the late fee where special circumstances exist. To the extent the Discipline Committee currently relies on guidance from staff regarding whether it is appropriate to waive the late fee, it suggests the factors for determining when special circumstances exist are well understood by the Executive Director. If a lawyer was of the opinion the Executive Director did not exercise his or her authority properly under the rule, judicial review of the decision would be possible.
18. The Committee gave some consideration to whether a review of the Executive Director's decision by the Discipline Committee should be available, and decided against making such a recommendation. While setting up the opportunity for review by a committee of a decision by staff happens elsewhere in the rules, most if not all of those decisions are more substantive¹ than a decision to waive a fee imposed by the rules. Administrative fairness may not require what would essentially be two requests for an exercise of discretion to waive a fee imposed by the rules. While a sub-rule that allows the lawyer to seek a review of a decision by the Executive Director to the Discipline Committee (at

¹ For example, the Credentials Committee can, if asked, review many exercises of discretion by staff in relation to matters under Part 2 of the Rules such as refusing to issue an interjurisdictional practice permit or for a review of a failed standing in PLTC.

which point the Discipline Committee would be able to either confirm the decision of the Executive Director, or replace/modify it) could be considered, it would likely work against the intent of the amendment as it may reasonably be expected to be used in cases where the Executive Director declines to waive or reduce the fee as requested.

Recommendation

19. After consideration, the Executive Committee agreed an amendment is warranted and recommends that the Benchers amend Rule 3-80(4) to vest discretion in the Executive Director to waive the fee for late filing of trust account where special circumstances exist, and leave a review of such decisions to a judicial review.
20. The Committee concluded that the recommendation best addresses the policy issue raised as it cures the problem of delay and operational inefficiency caused by the existing rule.



CEO's Report to the Benchers

March 2018

Prepared for: Benchers

Prepared by: Donald J. Avison

Provincial Government Budget

On February 20, 2018, I attended the pre-budget “lock up” held at the Victoria Conference Centre. That process provides an opportunity to review the budget speech and associated materials. It also provides an opportunity to hear the Minister of Finance questioned by the media regarding content of the Budget prior to the formal tabling of the Budget in the Legislative Assembly.

This year’s budget focused on affordability – particularly with respect to child care and housing – on service improvements and on maintaining a sustainable economy.

For the first time in many years, the Budget contained commitments specific to the administration of justice including the following:

- An expansion of legal aid funding by \$26 million over the 3 year fiscal plan (approximately \$8.5 million per year)
- \$10 million over 3 years to fund new family dispute resolution services
- \$15 million over 3 years to increase the number of sheriffs and staffing levels within the court services branch

It should also be mentioned that, through the Budget, the Government of BC has also made multiple commitments focused on addressing reconciliation with Indigenous Peoples. This includes a \$1 million per year allocation from the Advanced Education Ministry to support the creation of a new Indigenous Law Program at the University of Victoria.

A more detailed analysis of the implications of these funding lifts will be provided at the March 2nd Benchers meeting.

Benchers will also be provided with details regarding the elimination of M.S.P. premiums and the substitution of an Employer Health Tax which will result in a significant new budget pressure for the Law Society.

Employee Survey and Staff Forums

The Law Society employee survey was conducted in January, 2018 with results communicated to staff through two forums held on February 19th by Ryan Williams, TWI Surveys. President Miriam Kresivo QC and I both participated in those forums.

Benchers will be briefed on survey outcomes and implications at the March 2nd meeting.

Leadership Council Retreat

A Leadership Council retreat took place on February 1st and 2nd of this year. The Leadership Council is comprised of the Executive Director, the five members of the senior management team: Adam Whitcombe, Deb Armour QC, Su Forbes QC, Jeanette McPhee, and Alan Treleaven, plus three members at large: Tara McPhail, Annie Rochette, and Eva Milz.

The retreat provided an opportunity to consider how best to support Benchers with the implementation of the Strategic Plan. It also resulted in a detailed discussion regarding how to elevate the overall effectiveness of Law Society operations.

I look forward to discussing these matters with you at the meeting next week.

Donald J. Avison
Executive Director/Chief Executive Officer



Memo

To: Benchers
From: Governance Committee
Date: March 2, 2018
Subject: 2017 Bencher and Committee Evaluations

Background

1. The 2012 governance review recommended that the Benchers ensure there is a process in place for an annual evaluation of the Benchers, committees, task forces and working groups. In 2013, the Governance Committee recommended forms of evaluations to be conducted annually in December and that evaluations should be delivered and completed online.
2. The Committee has responsibility for reviewing and compiling an annual report for the Benchers.
3. At its January 2018 meeting, the Committee reviewed the responses and analysis and considered what recommendations, if any, to make to the Benchers.

Responses

4. In early December 2017, all of the Benchers and all the members of the 2017 committees and task forces were provided with links to online evaluation forms and asked to complete the forms by December 15, 2017.
5. Overall, 20 Bencher and 78 members of our committee and task force members responded to the 2017 surveys.

Results

Benchers

6. Looking at the Bencher evaluations, there was considerable agreement from most respondents on the 25 statements included in the evaluation form. Overall, 84% of the statements elicited agreement and strong agreement, while 12% were ranked as neutral. Just over 4% resulted in disagreement and only 0.4% of the responses indicated strong disagreement.

7. Of the 25 Benchers evaluation statements, the five with the most agreement in 2017 were:

Statement	2017	2016	2015
<i>The Benchers obtain sufficient input from committees and staff to support effective decision-making.</i>	100%	89%	82%
<i>The Benchers receive sufficient information on financial performance.</i>	100%	96%	92%
<i>Bencher discussions are open, meaningful and respectful.</i>	95%	85%	88%
<i>The Benchers know what is expected of them.</i>	95%	92%	92%
<i>Benchers come to meetings prepared.</i>	95%	N/A	92%

8. Of the top five statements, the most significant change over 2016 was the increase in the proportion of Benchers who agreed with the statement “*The Benchers obtain sufficient input from committees and staff to support effective decision-making.*” with 100% agreement this year compared with 89% last year.
9. It is also worth noting the continuing increase in the number of Benchers who agreed or strongly agreed with the statement “*The Benchers receive sufficient information on financial performance.*” In 2015, the statement garnered 92% agreement and in 2016, 96% of the Benchers agreed with this statement. This year, 100% of the respondents agreed with the statement. Oversight of the financial affairs of the Law Society is one of the important governance obligations of the Benchers. The fact that all of the respondents agreed with this statement reflects the ongoing efforts of the Finance and Audit Committee and the CEO and CFO to engage the Benchers in the Law Society finances.
10. At the other end of the range of agreement, the five statements that elicited the lowest level of agreement were:

Statements	2017	2016	2015
<i>The Benchers are up to date with the latest developments in the supply and demand for legal services.¹</i>	45%	46%	29%
<i>Benchers have no hesitation raising issues in Bencher meetings.</i>	60%	52%	74%

¹ The 2016 and 2015 results reflect the previous wording of this statement “The Benchers are up to date with latest developments in the market for legal services.”

Benchers have sufficient information regarding the performance evaluation of the CEO and senior management.

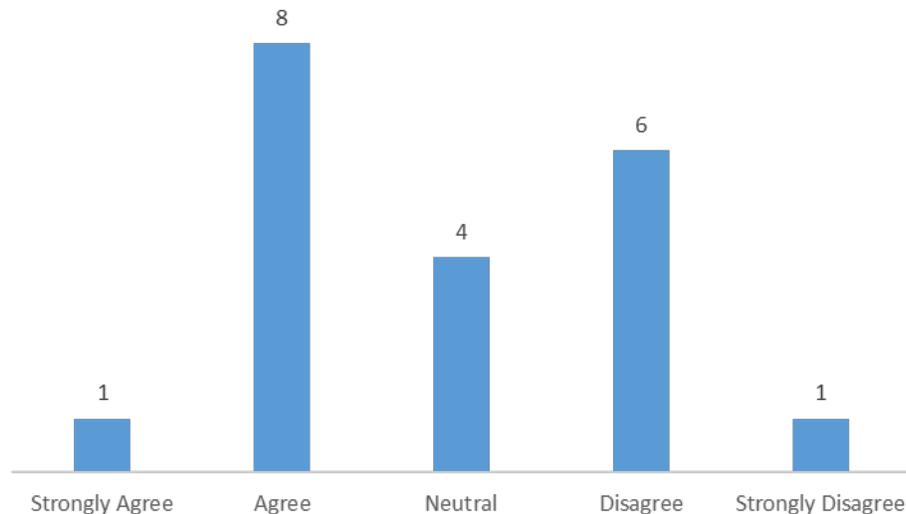
Benchers have sufficient educational opportunities respecting their role as Benchers.

The right things are placed on the agenda.

60%	65%	54%
70%	65%	71%
70%	81%	63%

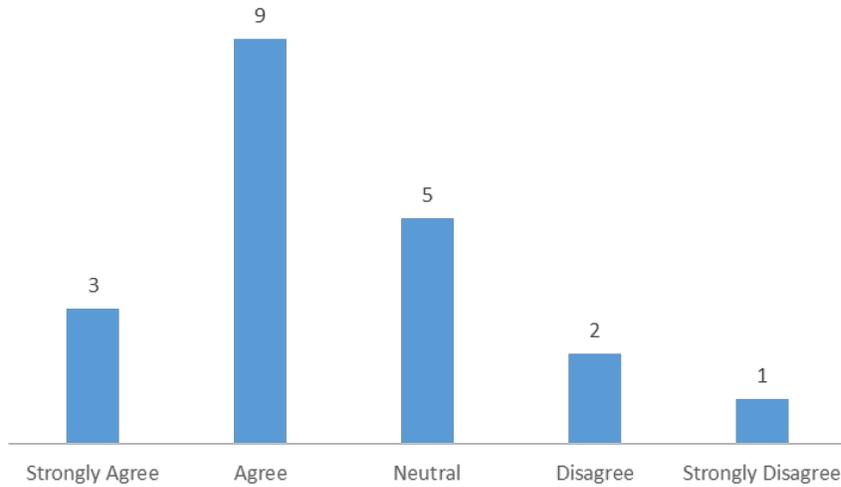
11. The statement, “*The Benchers are up to date with the latest developments in the supply and demand for legal services.*” continued this year to elicit the lowest level of agreement among respondents. However, as the following chart illustrates, the distribution of responses suggests a lack of consensus about this statement, with nearly equal numbers of Benchers agreeing and disagreeing with the statement and high neutral response.

Chart: Responses to “The Benchers are up to date with the latest developments in the supply and demand for legal services.”



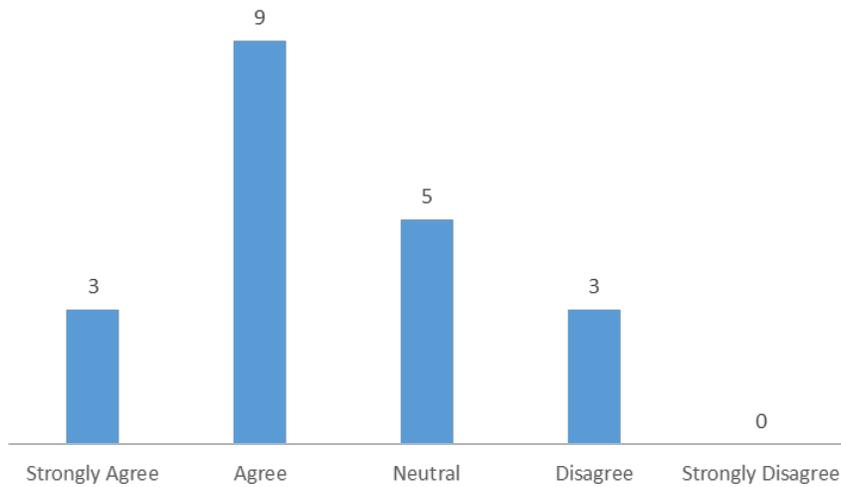
12. In the review of the evaluation survey statements the Committee conducted last year, the Committee discussed the utility of the “*supply and demand*” statement at some length and concluded that the Benchers should be knowledgeable about the supply and demand for legal services if they are to regulate the legal profession in the public interest. As a result, the statement was left in the survey. The results suggest that there is not a consensus on this subject.
13. The statement “*Benchers have no hesitation raising issues in Bencher meetings.*” saw an increase in agreement over last year, although still below the level of agreement in 2015. As the following chart illustrates, the absence of agreement is not necessarily indicative of disagreement so much as a high neutral response (25%).

Chart: Responses to “Benchers have no hesitation raising issues in Bencher meetings.”



14. The level of agreement with the statement “*Benchers have sufficient information regarding the performance evaluation of the CEO and senior management.*” continues to place this statement in the 4th quartile. Once again, the low level of agreement is not necessarily indicative of disagreement so much as it is a reflection of a high neutral response (25%).

Chart: “Benchers have sufficient information regarding the performance evaluation of the CEO and senior management.”



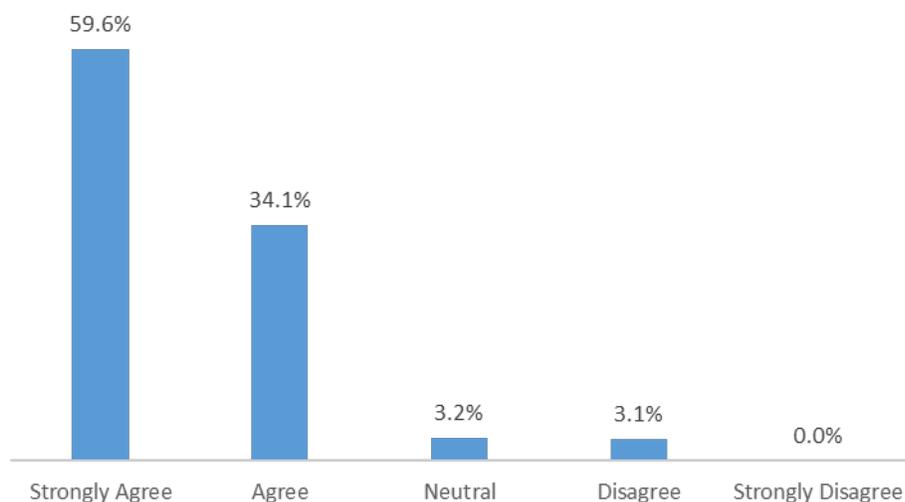
15. As in previous years, the relatively high neutral response suggests that the evaluation of the CEO’s performance is not well understood by a number of Benchers and the Committee may wish to consider whether the Benchers need more information about the evaluation of the CEO’s performance.

Committees/Task Forces

16. As noted above, in total there were 78 individual responses to the committee and task force evaluations.

17. Of the overall responses to the evaluation statements, there were only 19 instances (or just over 3%) where respondents disagreed with the statements and no instance where anyone strongly disagreed with any of the statements.

Chart: Overall Committee/Task Force Responses



18. The statement with the highest level of agreement across all committees was “*Meetings allow for constructive discussion and critical questioning.*” followed by “*Discussion is open, meaningful and respectful.*”

19. Overall, the most common disagreement was with the statements “*Meeting time is used effectively and efficiently.*” and “*The Committee works constructively towards arriving at decisions and achieving consensus.*” both with four disagrees in total across all the committees and task forces.

Commentary

20. The Committee noted the continuing low level of agreement with the statement “*The Benchers are up to date with the latest developments in the supply and demand for legal services.*” Benchers may recall that the Committee last year commented that the Benchers should have information about the supply and demand for legal services, about the cost of delivering legal services and about how the Law Society’s role can impact that market. The Committee noted that the current strategic plan provides for the examination of the

underlying economic costs of the provision of legal services and the cost of accessing justice and concluded that the Law Society should make an effort to generate the relevant information.

21. The Committee considered the overall responses to the statement “*Benchers have no hesitation raising issues in Bencher meetings.*” and noted the increase in agreement over last year but that it was still below the level of agreement in 2015. There was considerable discussion about the response to this statement. It was noted that Bencher meetings involve a large number of people: Benchers, staff and guests, and that the environment does not necessarily lend itself to frank discussion or raising new issues. While the benefit of separate group discussions, such as occurred with the Begbie statute issue, were seen as a good option for certain issues, others noted that in effect, the discussions were *in camera* meetings of the Benchers and did not reflect transparency of Bencher decision-making.
22. The statement “*Benchers have sufficient information regarding the performance evaluation of the CEO and senior management.*” generated considerable discussion. The Committee discussed whether the Law Society should have a human resources committee. It was noted that the 2012 governance review that a human resources committee is typically responsible for leading the CEO evaluation process and overseeing the organization’s major human resources policies and practices. At the Law Society, the Rules provided that the Executive Committee has responsibility for “*approving the remuneration and benefits paid to the Executive Director*” and that the Executive Committee has been responsible for hiring the ED/CEO and for conducting the ED/CEO performance review. The governance review recommended that the Executive Committee continue to be responsible for the ED/CEO evaluation process and be given the specific responsibility to ensure that ED/CEO succession plans are in place. The Committee thought the benefit of a human resources committee remained an open issue.
23. The Committee looked at the responses from the committees, task forces and working groups and noted, as it did last year, that there is a high level of agreement with the statements and little disagreement. The Committee questioned the value of continuing to request committee, task force and working group members to evaluate their experience after the fact but noted that the comments were probably the most useful aspect of the evaluation. It was agreed that committee, task force and working group participants should be given the opportunity to provide comments but that the individual statements could be eliminated.

Recommendations

24. The Committee recommends that the committee, task force and working group evaluation be revised to provide that respondents have the opportunity to comment on their respective

committee, task force or working group but that the 12 specific statements be removed from future annual evaluations.

25. The Committee commends the practice of a two-stage consideration of important policy matters instituted in 2017 at the Bencher table and reiterates its recommendation from last year's report, that the Benchers continue to consider our process for and participation in decision making at the Bencher table with the goal of fostering good decision-making after the expression of any contrary or dissenting views on the matter at hand.
26. Recognizing the necessity of *in camera* consideration of certain matters to be decided by the Benchers, the Committee recommends the judicious use of *in camera* sessions and meetings outside the normal Bencher meetings so that decision-making by the Benchers is as transparent and open as reasonably possible.



Memo

To: Benchers
From: Executive Committee
Date: February 20, 2018
Subject: Composition of Review Boards

1. It has been suggested that the current policy of having review boards consist of seven members requires reconsideration.

Background

2. Reviews of hearing panel decisions were originally heard by the Benchers as a whole, often in the course of a regular Bencher meeting. The result was simply recorded in the minutes of the meeting. When it became apparent that reviews were becoming more complex and decisions would require written reasons, reviews were set down separate from regular Bencher meetings before a quorum of Benchers – seven, a majority of whom must be members of the Law Society.
3. The Legal Profession Act was amended effective 2013 to provide for non-Bencher participation in reviews and a new body was created, called a review board. The Rules provide that a review board must consist of an odd number of members and the number of members must be greater than the hearing panel whose decision it is reviewing;
4. In 2013, the Benchers discussed the composition of review boards and adopted a policy that review boards should consist of seven members: one Bencher-lawyer chair, two other Benchers, two non-Bencher lawyers and two members of the public;

Issue

5. A number of adjudicators, including some Benchers, feel that seven is too many members. The concern is that it is more difficult to come to consensus on a decision and produce written reasons in a timely fashion with seven members. It can also be more difficult to fill seven positions, particularly at the time of transition following Bencher elections and hearing panel pool replacements.

Considerations

6. The Committee had before it a memorandum from Mr. Hoskins reviewing the history of this issue and suggesting that if the present membership of review boards was to be reduced, the composition should be:
 - Two Benchers, at least one of which must be a practising lawyer;
 - If the two Benchers are both lawyers, one more lawyer and two public representatives;
 - If the two Benchers are one lawyer and one appointed Bencher, two more lawyers and one public representative.
7. Mr. Hoskin's explained that this composition would ensure that the majority of members would be lawyers but Benchers would not be in the majority and there would continue to be at least two members of the public on the review boards, factors which he noted had been considered to be important by the Benchers in the past.
8. Mr. Hoskins also noted that there was an increased risk of losing a review if two or more review board members are not able to continue. Under the Rules, a review board of five that loses one member could continue to hear the review. However, if two members of the review board are unable to continue and the review board is reduced to three, in most cases it would be offside the Rule that it be larger than the hearing panel.

Discussion

9. The Committee had a considered discussion regarding the issue of smaller review boards and their composition.
10. For the reasons stated in Mr. Hoskin's memorandum, the Committee resolved to recommend to the Benchers the present policy of seven member review boards be revised to provide for five member review boards.
11. The Committee considered Mr. Hoskin's recommendation regarding the composition of smaller review boards. Various combinations of Benchers, lawyers and members of the public were discussed. In particular, the provision for two members of the public in the present policy was considered in light of the reduced number of members overall.
12. After considerable discussion, the Committee agreed to recommend to the Benchers that the present composition policy be revised to provide that:
 - The Chair must be a lawyer Bencher

- Two members must be Benchers
- Three members must be lawyers
- One non-Bencher member of the public.

Resolution

13. The Committee recommends the following resolution:

BE IT RESOLVED to set the number of members of a review board at five: one lawyer Bencher Chair, two Benchers, at least three lawyers and one non-Bencher member of the public.



Financial Report

December 31, 2017

Prepared for: Finance and Audit Committee Meeting – February 15, 2018
Bencher Meeting - March 2, 2018

Presented by: Jeanette McPhee, CFO & Director, Trust Regulation

Financial Report – To December 31, 2017

Attached are the draft 2017 financial results to budget for the year ended December 31, 2017.

The final 2017 audited financial statements will be reviewed at the February 15, 2018 Finance and Audit Committee meeting and presented for approval by the Benchers at the March 2, 2018 Bencher meeting.

General Fund

General Fund (excluding capital and TAF)

The 2017 General Fund financial results were \$1.6 million favorable to the 2017 budget, with higher than expected revenue being earned in member fees, recoveries and electronic filing revenues and lower than expected expenses in several areas.

Revenue

Total revenue was \$24.7 million, \$880,000 (4%) more than projected in the 2017 budget. The principal areas where revenue exceeded budget were:

1. Membership revenue was over budget \$177,000, with 11,849 members, 89 members more than the budget of 11,760.
2. Electronic filing fees were \$920,000, compared to a budget of \$700,000, due to higher than projected real estate unit sales.
3. Discipline fines/recoveries exceeded the budget projection by \$137,000. Revenue from fines and recoveries is difficult to predict due to significant variability year-over-year.
4. Interest income was \$189,000 over budget with higher cash balances held during the year.
5. There were 510 PLTC students, 10 more than the budget projection of 500 students, as well as increased enrollment fees and other revenue resulting in \$64,000 more revenue from enrollment fees than budgeted.

Operating Expenses

Operating expenses were \$23.1 million, \$696,000 (3%) less than projected in our 2017 budget arising from a number of areas:

1. Compensation costs during the year were \$300,000 less than budgeted due unanticipated vacancies and variances between budgeted and actual salary costs.
2. There was a net savings in external counsel fees and investigations costs in Regulation, Credentials and Forensic Accounting of \$281,000, due to the variability of files over the year, and fewer forensic files sent out to external firms.
3. There was \$150,000 of legal ordered costs paid in 2017, which were not budgeted.
4. Human Resources costs were \$180,000 less than expected primarily due to a reduction in professional fees resulting from lower recruiting, legal and consulting fees.

5. Bencher related costs were \$150,000 more than budgeted with an increase in travel, meetings, retreat and Federation meeting costs.
6. There were additional cost savings of \$235,000 arising from efficiencies and other reductions, including \$30,000 in PLTC travel and administration, \$50,000 related to fewer hearing days, \$40,000 in publications costs, operations costs of \$60,000 and other miscellaneous savings of \$55,000.

Net Assets

The General Fund net asset balance, without capital funding and TAF reserve, is \$15.0 million, consisting of \$11.7 million invested in capital assets (mainly the 845 building), and \$3.3 million in working capital.

The net assets also include \$2.7 million in capital funding for scheduled capital projects related to the 845 Cambie building and workspace improvements for Law Society operations. These include balcony and parkade maintenance and office renovations.

TAF Related Revenue and Expenses

The 2017 TAF revenue was \$4.4 million, which was over the 2017 budget of \$3.5 million, but 2% below 2016 TAF revenue. The higher performance to budget for 2017 is due to the 2017 budget being set prior to the large increase in the real estate unit sales during 2016. BC real estate unit sales decreased 7.5% from 2016 levels. The TAF revenue levels will continue to be monitored closely as the BC real estate market is expected to decrease an additional 10% in 2018.

Trust assurance expenses were \$2.7 million, \$116,000 over budget due to additional travel and salary costs.

Pursuant to reserve policies, excess trust assurance reserves of \$3.2 million was transferred to the Lawyers Insurance Fund for Part B insurance coverage. The Trust Assurance net assets balance was \$3.3 million at December 2017.

Special Compensation Fund

In 2017, \$1 million of the Special Compensation Fund net assets balance was transferred to the Lawyers Insurance Fund as required by the Legal Profession Amendment Act, 2012. The remaining net assets of \$277,000 will remain in the fund to offset additional costs related to ongoing matters.

Lawyers Insurance Fund (LIF)

LIF assessment revenues were \$14.9 million, \$319,000 (2.0%) over budget, with more insured members than projected. Operating expenses (excluding the claims provision) were \$6.9 million, \$427,000 (5.8%) below budget. The expense savings are a result of staff vacancies and lower insurance and administrative expenses, offset by higher investment management fees.

The actuarially determined claims provision liability is \$69.1 million, an increase of \$1.9 million from 2016. The claims provision on the income statement is \$13.6 million, a decrease of \$9.3 million over 2016. The 2016 claims provision was higher than normal due to an increase in reserves for prior years' claims.

At the end of 2016, the LIF long term investment portfolio was \$174 million, an increase of \$16.2 million from 2016. The LIF investment portfolio earned a 10.3% return in 2017, higher than the benchmark of 7.1%, and higher than the investment manager's targeted return of 8.4%.

Pursuant to reserve policies, \$3,200,000 of the net assets related to trust assurance was transferred to the Lawyers Insurance Fund for Part B coverage. Additionally, pursuant to Section 50 of the Legal Profession Amendment Act, 2012, \$1,000,000 of unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund.

At December 2017, LIF net assets were \$84.2 million, including \$17.5 million internally restricted for Part B claims.



Summary of Financial Highlights - December 2017
(\$000's)

2017 General Fund Results - YTD December 2017 (Excluding Capital Allocation & Depreciation)				
	<u>Actual*</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue (excluding Capital)				
Membership fees	19,162	18,985	177	1%
PLTC and enrolment fees	1,425	1,375	50	4%
Electronic filing revenue	920	700	220	31%
Interest income	539	350	189	54%
Other revenue	1,416	1,181	235	20%
Building revenue & tenant cost recoveries	1,177	1,168	9	1%
	<u>24,639</u>	<u>23,759</u>	<u>880</u>	<u>4%</u>
Expenses (excl. dep'n)				
	<u>23,063</u>	<u>23,759</u>	<u>696</u>	<u>3%</u>
	<u>1,576</u>	<u>-</u>	<u>1,576</u>	

2017 General Fund Year End Forecast (Excluding Capital Allocation & Depreciation)		
	<u>Avg # of Members</u>	
Practice Fee Revenue		
2013 Actual	10,985	
2014 Actual	11,114	
2015 Actual	11,378	
2016 Actual	11,619	
2017 Budget	11,760	
2017 Actual	11,849	
		Actual Variance
Revenue		
Number of members - 89 over budget		177
PLTC students - 510 vs 500 plus increased enrollment fees and other revenue		50
Electronic filing revenue		220
Fines Recoveries and penalties		64
Application fees		34
Interest Income - higher cash balances held		189
Building Revenues and Recoveries		9
Other- including. \$35,000 Western Law Societies Conveyancing - refund of prior costs		137
		<u>880</u>
Expenses		
Compensation savings		300
Savings related to external counsel, other investigations, credentials and forensic fees		281
Legal ordered costs paid		(150)
Savings in HR external fees, consultants & skills development		180
PLTC travel and program admin savings		30
Fewer hearing days in 2017		50
Communications publications savings		40
General operation savings, janitorial, stationary, postage		60
Other		55
Additional costs related to benchers retreat, meetings, travel and federation meetings		(150)
		<u>696</u>
2017 General Fund Variance		<u><u>1,576</u></u>

Trust Assurance Program Actual- YTD December 2017				
	<u>2017 Actual</u>	<u>2017 Budget</u>	<u>Variance</u>	<u>% Var</u>
TAF Revenue **	4,455	3,500	955	27.3%
Trust Assurance Department	2,708	2,592	(116)	-4.5%
Net Trust Assurance Program	<u>1,747</u>	<u>908</u>	<u>839</u>	

** \$60,000 relating to Q4-2016, received after completion of 2016 audit.

2017 Lawyers Insurance Fund Long Term Investments - YTD December 2017 - Before investment management fees	
Performance	10.3%
Benchmark Performance	7.1%

The Law Society of British Columbia
General Fund
Results for the 12 Months ended December 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Membership fees (1)	21,250	21,053		
PLTC and enrolment fees	1,425	1,375		
Electronic filing revenue	920	700		
Fines, penalties and recoveries	433	369		
Application fees	519	485		
Interest income	539	350		
Other revenue	463	327		
Building Revenue & Recoveries	1,177	1,168		
Total Revenues	26,726	25,827	899	3.5%
Expenses				
Regulation	9,027	9,311		
Education and Practice	3,798	3,817		
Corporate Services	2,797	3,144		
Bencher Governance	879	731		
Communications and Information Services	2,274	2,223		
Policy and Legal Services	2,398	2,649		
Occupancy Costs	1,890	1,883		
Depreciation	1,031	1,080		
Total Expenses	24,094	24,838	744	3.0%
General Fund Results before Trust Assurance Program	2,632	989	1,643	
Trust Assurance Program (TAP)				
TAF revenues	4,455	3,500	955	27.3%
TAP expenses	2,708	2,592	(116)	-4.5%
TAP Results	1,747	908	839	92.4%
General Fund Results including Trust Assurance Program	4,380	1,896	2,484	
Contribution from Trust Assurance Program to Lawyers Insurance Fund	(3,200)			
General Fund Results	1,180			

(1) Membership fees include capital allocation of \$2.09m (Capital allocation budget = \$2.08m)

The Law Society of British Columbia
General Fund - Balance Sheet
As at December 31, 2017
(\$000's)

	Dec 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	18,633	283
Unclaimed trust funds	2,016	1,813
Accounts receivable and prepaid expenses	1,678	1,982
B.C. Courthouse Library Fund	787	729
Due from Lawyers Insurance Fund	17,385	34,170
	<u>40,499</u>	<u>38,977</u>
Property, plant and equipment		
Cambie Street property	12,370	12,448
Other - net	1,433	1,197
	<u>54,303</u>	<u>52,622</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	6,290	6,252
Liability for unclaimed trust funds	2,016	1,813
Current portion of building loan payable	500	500
Deferred revenue	22,054	21,345
Deferred capital contributions	1	12
B.C. Courthouse Library Grant	787	729
Deposits	58	56
	<u>31,706</u>	<u>30,706</u>
Building loan payable	1,600	2,100
	<u>33,306</u>	<u>32,806</u>
Net assets		
Capital Allocation	2,666	2,647
Unrestricted Net Assets	18,331	17,169
	<u>20,997</u>	<u>19,816</u>
	<u>54,303</u>	<u>52,622</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 12 Months ended December 31, 2017
(\$000's)

	<i>Invested in Capital</i>	<i>Working Capital</i>	Unrestricted Net Assets	Trust Assurance	Capital Allocation	2017 Total	2016 Total
	\$	\$	\$	\$	\$	\$	\$
Net assets - At Beginning of Year	11,045	1,358	12,403	4,766	2,647	19,816	14,939
Net (deficiency) excess of revenue over expense for the period	(1,408)	1,956	548	1,747	2,085	4,380	4,877
Contribution to LIF				(3,200)		(3,200)	
Repayment of building loan	500	-	500	-	(500)	-	-
Purchase of capital assets:							
LSBC Operations	770	-	770	-	(770)	-	-
845 Cambie	796	-	796	-	(796)	-	-
Net assets - At End of Period	11,703	3,314	15,017	3,313	2,666	20,996	19,816

The Law Society of British Columbia
Special Compensation Fund
Results for the 12 Months ended December 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance
Revenue			
Annual assessment	-	-	
Recoveries	4	-	
Interest income	28	-	
Loan interest expense			
Other income	-	-	
Total Revenues	31	-	31
Expenses			
Claims and costs, net of recoveries	119	-	
Administrative and general costs	0	-	
Total Expenses	119	-	119
Special Compensation Fund Results before Contribution Lawyers Insurance Fund	(88)	-	(88)
Special Fund Contribution to Lawyers Insurance Fund	(1,000)		
Special Compensation Fund Results	(1,088)		

The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at December 31, 2017
(\$000's)

	Dec 31 2017	Dec 31 2016
Assets		
Current assets		
Cash and cash equivalents	1	1
Accounts receivable		
Due from General Fund		
Due from Lawyers Insurance Fund	276	1,364
	<u>277</u>	<u>1,364</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities		-
Deferred revenue		
	<u>-</u>	<u>-</u>
Net assets		
Unrestricted net assets	277	1,364
	<u>277</u>	<u>1,364</u>

The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
Results for the 12 Months ended December 31, 2017
(\$000's)

	2017	2016
	\$	\$
Unrestricted Net assets - At Beginning of Year	1,364	1,352
Net excess of revenue over expense for the period	<u>(1,088)</u>	<u>12</u>
Unrestricted Net assets - At End of Period	<u><u>277</u></u>	<u><u>1,364</u></u>

The Law Society of British Columbia
Lawyers Insurance Fund
Results for the 12 Months ended December 31, 2017
(\$000's)

	2017 Actual	2017 Budget	\$ Variance	% Variance
Revenue				
Annual assessment	14,933	14,614		
Investment income	15,978	6,521		
Other income	61	60		
Total Revenues	30,972	21,195	9,777	46.1%
Expenses				
Insurance Expense				
Provision for settlement of claims	13,568	15,476		
Salaries and benefits	2,762	3,099		
Contribution to program and administrative costs of General Fund	1,335	1,341		
Provision for ULAE	820	-		
Insurance	411	461		
Office	741	763		
Actuaries, consultants and investment brokers' fees	795	745		
Premium taxes	10	9		
Income taxes	6	6		
	20,448	21,900		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	845	908		
Total Expenses	21,293	22,808	1,515	6.6%
Lawyers Insurance Fund Results before Contributions	9,679	(1,613)	8,262	
Contribution from Trust Assurance Program and Special Compensation Fund				
Contribution from Special Compensation Fund	1,000			
Contribution from Trust Assurance Program	3,200			
	4,200			
Lawyers Insurance Fund Results	13,879			

The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at December 31, 2017
(\$000's)

	Dec 31 2017	Dec 31 2016
Assets		
Cash and cash equivalents	18,538	32,863
Accounts receivable and prepaid expenses	573	286
General Fund building loan	2,100	2,600
Investments	167,448	154,268
	<u>188,658</u>	<u>190,017</u>
Liabilities		
Accounts payable and accrued liabilities	1,643	1,826
Deferred revenue	7,786	7,461
Due to General Fund	17,385	34,170
Due to Special Compensation Fund	276	1,364
Provision for claims	67,719	66,046
Provision for ULAE	9,601	8,781
	<u>104,410</u>	<u>119,648</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	66,748	52,869
	<u>84,248</u>	<u>70,369</u>
	<u>188,658</u>	<u>190,017</u>

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
Results for the 12 Months ended December 31, 2017
(\$000's)

	Unrestricted \$	Internally Restricted \$	2017 Total \$	2016 Total \$
Net assets - At Beginning of Year	52,869	17,500	70,369	75,888
Net excess of revenue over expense for the period	13,879	-	13,879	(5,519)
Net assets - At End of Period	66,748	17,500	84,248	70,369



To Benchers
From Finance and Audit Committee
Date February 15, 2018
Subject **Bencher Approval of the 2017 Audited Financial Statements**

The annual audited financial statements are to be reviewed and recommended for approval by the Finance and Audit Committee, and approved by the Benchers.

Attached are the 2017 audited financial statements for the General and Special Compensation Funds, and the consolidated Lawyers Insurance Fund. These statements were reviewed by the Finance and Audit Committee at their February 15, 2018 meeting.

The Finance and Audit Committee recommends the following resolution for approval by the Benchers:

BE IT RESOLVED to approve the Law Society's 2017 Combined Financial Statements for the General & Special Compensation Funds, and the 2017 Consolidated Financial Statements for the Lawyers Insurance Fund.

**The Law Society of British
Columbia - General and
Special Compensation
Funds**

Fund Financial Statements
December 31, 2017

DRAFT

DM1804667

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

_____, 2017

Independent Auditor's Report

**To the Members of
The Law Society of British Columbia**

Chartered Professional Accountants

DRAFT

The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Financial Position

As at December 31, 2017

	2017		2016	
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
Assets				
Current assets				
Cash (note 2)	18,632,930	500	18,633,430	283,810
Unclaimed trust funds (note 2)	2,015,649	-	2,015,649	1,813,319
Accounts receivable and prepaid expenses (note 3)	1,678,396	-	1,678,396	1,981,603
Courthouse Libraries BC Fund (note 2)	787,498	-	787,498	728,535
Due from Lawyers Insurance Fund (note 8)	17,384,813	276,234	17,661,047	35,534,095
	40,499,286	276,734	40,776,020	40,341,362
Non-current assets				
Cambie Street property - net (note 4(a))	12,370,219	-	12,370,219	12,447,990
Other property and equipment - net (note 4(b))	1,088,950	-	1,088,950	784,659
Intangible assets - net (note 4(c))	344,539	-	344,539	412,701
	54,302,994	276,734	54,579,728	53,986,712
Liabilities				
Current liabilities				
Accounts payable and accrued liabilities (note 5)	6,289,795	-	6,289,795	6,251,515
Liability for unclaimed trust funds (note 2)	2,015,649	-	2,015,649	1,813,319
Current portion of building loan payable (note 7)	500,000	-	500,000	500,000
Deferred revenue (note 2)	22,053,657	-	22,053,657	21,344,505
Deferred capital contributions	1,482	-	1,482	12,452
Courthouse Libraries BC Fund (note 2)	787,498	-	787,498	728,535
Deposits	58,105	-	58,105	55,605
	31,706,186	-	31,706,186	30,705,931
Building loan payable (notes 7 and 8)	1,600,000	-	1,600,000	2,100,000
	33,306,186	-	33,306,186	32,805,931
Net assets				
Unrestricted (note 6)	20,996,808	276,734	21,273,542	21,180,781
	54,302,994	276,734	54,579,728	53,986,712

Commitments (note 13)

Approved by

_____ President _____ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Changes in Net Assets

For the year ended December 31, 2017

	2017		2016	
	General Fund - Unrestricted \$	Special Compensation Fund - Unrestricted \$	Total \$	Total \$
Net assets - Beginning of year	19,816,437	1,364,344	21,180,781	16,291,483
Net excess of revenue (deficiency) over expenses for the year	1,180,371	(1,087,610)	92,761	4,889,298
Net assets - End of year (note 6)	20,996,808	276,734	21,273,542	21,180,781

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Revenue and Expenses

For the year ended December 31, 2017

	2017		2016	
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
Revenue				
Practice fees	21,249,693	-	21,249,693	19,894,479
Trust administration fees	4,454,664	-	4,454,664	4,548,052
Enrolment fees	1,425,250	-	1,425,250	1,297,850
E-filing revenue	920,399	-	920,399	975,923
Fines, penalties and recoveries	433,122	3,749	436,871	570,076
Application fees	518,830	-	518,830	491,930
Investment income (note 8)	539,346	27,710	567,056	463,292
Other income	463,375	-	463,375	410,482
Rental revenue	891,273	-	891,273	885,328
	30,895,952	31,459	30,927,411	29,537,412
Expenses				
Bencher governance				
Bencher, AGM and other committees	1,178,812	-	1,178,812	1,095,105
Executive and Bencher support	372,269	-	372,269	313,176
Communications, publications and information services				
Communications and publications	811,599	-	811,599	779,090
Information services	1,492,381	-	1,492,381	1,384,297
Education and practice				
Credentials	811,367	-	811,367	507,112
Member services	766,730	-	766,730	780,135
Membership assistance programs	187,193	-	187,193	238,750
Practice advice	664,902	-	664,902	621,051
Practice standards	573,477	-	573,477	647,772
Professional legal training course and education	1,761,412	-	1,761,412	1,737,835
General and administrative				
Finance	1,067,586	-	1,067,586	1,002,955
Amortization of other property and equipment	522,866	-	522,866	447,316
General administration	1,142,733	-	1,142,733	1,396,463
Human resources	738,989	-	738,989	522,479
Records management and library	291,134	-	291,134	280,237
Policy and legal services				
Policy, ethics and tribunal counsel	1,772,496	-	1,772,496	1,714,282
External litigation and interventions	493,825	-	493,825	477,435
Unauthorized practice	322,278	-	322,278	300,506
Regulation				
Custodianship costs	1,492,007	-	1,492,007	1,466,532
Discipline	1,741,949	-	1,741,949	1,519,116
Professional conduct - intake and investigations	5,082,621	-	5,082,621	4,477,166
Forensic accounting	710,507	-	710,507	648,993
Trust assurance	2,406,433	-	2,406,433	2,130,578
Occupancy costs, net of tenant recoveries	2,288,726	-	2,288,726	2,220,927
Carried forward	28,694,292	-	28,694,292	26,709,308

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Fund Statement of Revenue and Expenses ...continued

For the year ended December 31, 2017

			2017	2016
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
Brought forward	28,694,292	-	28,694,292	26,709,308
Special Compensation Fund General and administrative costs	-	119,069	119,069	91,459
	28,694,292	119,069	28,813,361	26,800,767
Costs recovered Lawyers Insurance Funds				
Co-sponsored program costs	(844,580)	-	(844,580)	(862,284)
Program and administrative costs	(1,334,131)	-	(1,334,131)	(1,290,369)
	(2,178,711)	-	(2,178,711)	(2,152,654)
	26,515,581	119,069	26,634,650	24,648,114
Net excess (deficiency) of revenue over expenses for the year before contribution to Lawyers Insurance Fund	4,380,371	(87,610)	4,292,761	4,889,298
Contribution from Trust Assurance Net Assets to Lawyers Insurance Fund – (Note 6)	3,200,000	-	3,200,000	-
Contribution from Special Compensation Fund to Lawyers Insurance Fund – (Note 6 & 9)	-	1,000,000	1,000,000	-
Net excess (deficiency) of revenue over expenses for the year	1,180,371	(1,087,610)	92,761	4,889,298

The accompanying notes are an integral part of these fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

			2017	2016
	General Fund \$	Special Compensation Fund \$	Total \$	Total \$
Cash flows from operating activities				
Net excess (deficiency) of revenue over expenses for the year	1,180,371	(1,087,610)	92,761	4,889,298
Items not affecting cash				
Amortization of Cambie Street building and tenant improvements	873,176	-	873,176	833,522
Amortization of other property and equipment	303,841	-	303,841	243,220
Amortization of intangible assets	219,025	-	219,025	204,096
Amortization of deferred capital contributions	(10,970)	-	(10,970)	(10,970)
Loss on disposal of other property and equipment	11,845	-	11,845	13,363
Contributions to Lawyers Insurance Fund	3,200,000	1,000,000	4,200,000	-
	5,777,288	(87,610)	5,689,678	6,172,529
(Increase) decrease in current assets				
Unclaimed trust funds	(202,330)	-	(202,330)	(104,658)
Accounts receivable and prepaid expenses	303,206	-	303,206	(270,856)
Courthouse Libraries BC Fund	(58,963)	-	(58,963)	(52,120)
Increase (decrease) in current liabilities				
Accounts payable and accrued liabilities	38,280	-	38,280	625,402
Liability for unclaimed trust funds	202,330	-	202,330	104,658
Deferred revenue	709,152	-	709,152	1,202,617
Courthouse Libraries BC Fund	58,963	-	58,963	52,120
Deposits	2,500	-	2,500	(2,000)
	6,830,426	(87,610)	6,742,816	7,727,692
Cash flows from financing activities				
Decrease in building loan payable	(500,000)	-	(500,000)	(500,000)
Interfund transfers	13,585,439	87,610	13,673,049	-
	13,085,439	87,610	13,173,049	(500,000)
Cash flows from investing activities				
Purchase of property and equipment	(1,404,928)	-	(1,404,928)	(698,087)
Purchase of intangible assets	(161,317)	-	(161,317)	(211,052)
	(1,566,245)	-	(1,566,245)	(909,139)
Increase in cash	18,349,620	-	18,349,620	200,956
Cash - Beginning of year	283,310	500	283,810	82,854
Cash - End of year	18,632,930	500	18,633,430	283,810
Supplementary cash flow information				
Interest paid	48,594	-	48,594	54,902
Interest income received	539,346	27,710	567,056	463,288

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

1 Nature of operations

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers. The Society is a not-for-profit organization.

The funds covered in these fund financial statements are for the Society's General Fund and Special Compensation Fund with the following activities:

The General Fund comprises the assets, liabilities, net assets, revenue and expenses of the operations of the Society other than those designated to the statutory Special Compensation Fund and the Lawyers Insurance Fund (including its wholly owned subsidiary, LSBC Captive Insurance Company Ltd.). This includes collecting revenues associated with practice fees, trust administration fees, enrollment fees, and various other administrative fees and penalties used to cover the costs of the Society to regulate the legal profession and educate and enforce adherence of its members to act within the rules of professional conduct for lawyers.

The Special Compensation Fund was maintained by the Society pursuant to Section 31 of the Legal Profession Act (the LPA). The Special Compensation Fund claims were recorded net of recoveries from the Special Compensation Fund's insurers when they were approved for payment by the Special Compensation Fund Committee as delegated by the Benchers and the settlement has been accepted by the claimant. The LPA provides that the assets of the Special Compensation Fund are not subject to process of seizure or attachment by creditors of the Society.

Effective January 1, 2013, the Legal Profession Amendment Act, 2012 repealed Section 31 of the LPA. The legislation was changed pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SBC 2012, C16), to initiate the transfer of unused reserves that remain within the Special Compensation Fund, after all recoveries are received and expenses and claims are paid, to be used in the Lawyers Insurance Fund. Additionally, Section 23 of the LPA was amended to remove the requirement that practising lawyers pay the Special Compensation Fund assessment. Accordingly, for 2017, the per member Special Compensation Fund assessment remained at \$nil (2016 - \$nil).

Effective May 1, 2004, Part B to the B.C. Lawyers' Compulsory Professional Liability Insurance Policy provides defined insurance coverage for dishonest appropriation of money or other property entrusted to and received by insured lawyers in their capacity as barrister and solicitor and in relation to the provision of professional services. Part B (Trust Protection Coverage) is recorded in the Lawyers Insurance Fund.

The Society's Lawyers Insurance Fund is presented separately in consolidated fund financial statements, including the Society's wholly owned LSBC Captive Insurance Company Ltd. (the Captive). The Lawyers Insurance Fund underwrites the program by which errors and omissions insurance is provided to members of the Society. The Lawyers Insurance Fund's consolidated fund financial statements provide further detail on the various insurance coverages provided.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

2 Significant accounting policies

These fund financial statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

Allocated administrative expenses

Administrative expenses are recovered by the General Fund from both the Lawyers Insurance and Special Compensation Funds. Recoveries are based on amounts derived either on percentage of use, the proportion of the Lawyers Insurance Fund's staff compared to the Society's total staff costs, or a set amount.

Courthouse Libraries BC Fund

The Society administers funds held on behalf of the Courthouse Libraries BC. Such funds are held in trust and the use of the funds is not recorded in the fund statement of revenue and expenses of the General Fund. The Society collects fees for the Courthouse Libraries BC through its fees per lawyer assessments.

Cash

Cash comprises cash on hand and held with a Canadian chartered bank.

Claims liabilities

In accordance with the absolute discretionary nature of the Special Compensation Fund arrangements, the claims become a liability only when approved by the Special Compensation Fund Committee and accepted by the claimant.

Deferred capital contributions

Contributions restricted for the purchase of capital assets are deferred and recognized as revenue on the same basis as the capital assets are amortized.

Fair value of financial instruments

The fair values of cash, accounts receivable and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

Intangible assets

Intangible assets comprise computer software. Software is recorded at cost and amortized on a straight-line basis at 10% - 20% per annum.

Property and equipment

Property and equipment, including leasehold improvements, are recorded at cost less accumulated amortization.

The Society provides for amortization on a straight-line basis as follows:

Buildings	40 years from purchase date
Computer hardware	10% - 20% per annum
Furniture and fixtures	10% per annum
Leasehold improvements	10% per annum
Building improvements and equipment	10% per annum
Tenant improvements	over lease period

The Society recognizes a full year's amortization expense in the year of acquisition, with the exception of building improvements and equipment and leasehold improvements which are amortized from their date of completion.

Revenue recognition

The Society follows the deferral method of accounting for practice fees and assessments. Fees and assessments are billed and received in advance on a calendar-year basis. Accordingly, fees and assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year. Revenue will be recognized on a monthly basis as earned. Surplus funds are invested in the Lawyers Insurance Fund's investment portfolio.

All other revenues are recognized when earned if the amount to be received can be reasonably estimated and collection is reasonably assured.

Unclaimed trust funds

The General Fund recognizes unclaimed trust funds as an asset as well as a corresponding liability on the fund statement of financial position. If these funds are claimed, the owner of the trust fund balance is entitled to the principal balance plus interest at prime rate minus 2%. Due to the historically low collection rates on these balances, the General Fund does not accrue for any interest owing on the trust fund amounts held and recognizes income earned from the unclaimed trust fund investments in the fund statement of revenue and expenses. Unclaimed funds outstanding for more than five years are transferred to the Law Foundation of British Columbia.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

Use of estimates

The preparation of fund financial statements in accordance with ASNPO requires management to make estimates and assumptions that affect the reported amounts of certain assets and liabilities and disclosure of contingent assets and liabilities at the date of the fund financial statements and the reported amounts of certain revenues and expenses during the year. Actual results could differ from these estimates.

3 Accounts receivable and prepaid expenses

Accounts receivable are presented net of the allowance for doubtful accounts of \$993,116 (2016 - \$904,036).

4 Property, equipment and intangible assets

- a) 845 Cambie Street property

	2017		
	Cost \$	Accumulated amortization \$	Net \$
Land	4,189,450	-	4,189,450
Buildings and equipment	15,331,039	8,706,201	6,624,838
Leasehold improvements	7,200,176	5,834,726	1,365,450
Tenant improvements	826,619	636,138	190,481
	27,547,284	15,177,065	12,370,219
	2016		
	Cost \$	Accumulated amortization \$	Net \$
Land	4,189,450	-	4,189,450
Buildings and equipment	15,005,200	8,092,997	6,912,203
Leasehold improvements	6,729,908	5,641,706	1,088,202
Tenant improvements	826,619	568,484	258,135
	26,751,177	14,303,187	12,447,990

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

b) Other property and equipment

	2017		
	Cost	Accumulated	Net
	\$	amortization	\$
		\$	\$
Furniture and fixtures	3,041,592	2,259,174	782,418
Computer hardware	1,349,587	1,046,811	302,776
Artwork and collectibles	49,160	45,405	3,755
Law libraries - at nominal value	1	-	1
	4,440,340	3,351,390	1,088,950
	2016		
	Cost	Accumulated	Net
	\$	amortization	\$
		\$	\$
Furniture and fixtures	2,639,295	2,120,809	518,486
Computer hardware	1,180,036	917,619	262,417
Artwork and collectibles	49,160	45,405	3,755
Law libraries - at nominal value	1	-	1
	3,868,492	3,083,833	784,659

c) Intangible assets

	2017		
	Cost	Accumulated	Net
	\$	amortization	\$
		\$	\$
Computer software	1,678,529	1,422,576	255,953
Website development	110,733	22,147	88,586
	1,789,262	1,444,723	344,539
	2016		
	Cost	Accumulated	Net
	\$	amortization	\$
		\$	\$
Computer software	1,636,970	1,304,847	332,123
Website development	80,578	-	80,578
	1,717,548	1,304,847	412,701

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

5 Accounts payable and accrued liabilities

Accounts payable and accrued liabilities include the following amounts collected on behalf of external organizations, but not yet paid:

	2017 \$	2016 \$
Advocate	396,606	399,077
Courthouse Libraries BC	2,298,606	2,139,174
Lawyers Assistance Program	773,569	788,829
Pro bono	334,559	339,795
CanLII	476,000	578,197
Federation of Law Societies	292,425	502,745
Rural Education and Access to Lawyers	25,263	69,663

6 Unrestricted net assets

The General Fund unrestricted net assets include \$2,666,232 (2016 - \$2,647,035) which has been allocated to capital expenditures in accordance with the capital plan.

The General Fund unrestricted net assets also include \$3,313,111 (2016 - \$4,766,120) which has been appropriated for future trust assurance expenses. During the year, \$4,454,664 (2016 - \$4,548,052) in trust administration fee revenue was collected, and \$2,707,673 (2016 - \$2,431,956) in trust assurance expenses were incurred.

Pursuant to reserve policy, \$3,200,000 of the net assets related to trust assurance was transferred to the Lawyers Insurance Fund for Part B coverage during 2017.

Pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SCB 2012, C16), \$1,000,000 of unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund during 2017.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

The remaining General Fund net assets represent \$11,703,709 (2016 - \$11,045,351) invested in capital assets, and working capital of \$3,313,758 (2016 - \$1,357,933), combining for a total unrestricted net asset amount of \$15,017,467 (2016 - \$12,403,284).

	(in 000s)					2017	2016
	Invested in capital \$	Working capital \$	Unrestricted \$	Trust assurance \$	Capital plan \$	Total \$	Total \$
Net assets - Beginning of year	11,045	1,358	12,403	4,766	2,647	19,816	14,939
Net (deficiency) excess of revenue over expenses	(1,408)	1,956	548	1,747	2,085	4,380	4,877
Contribution to Lawyers Insurance Fund	-	-	-	(3,200)	-	(3,200)	-
Repayment of building loan payable (note 7)	500	-	500	-	(500)	-	-
Purchase of capital assets (note 4)	1,566	-	1,566	-	(1,566)	-	-
Net assets - End of year	11,703	3,314	15,017	3,313	2,666	20,996	19,816

7 Building loan payable

In 1992, the Benchers authorized the borrowing of monies from the Lawyers Insurance Fund to fund the capital development of the Society's buildings at 845 Cambie Street, Vancouver, B.C. The loan is secured by the buildings, has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Lawyers Insurance Fund investment portfolio. Interest paid on the building loan is disclosed in note 8. The outstanding building loan balance at year-end is \$2.1 million (2016 - \$2.6 million). It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2017, principal of \$500,000 (2016 - \$500,000) was repaid. The loan will be paid off in total by 2022.

	2017 %	2016 %
Weighted average rate of interest	2.27	2.09

8 Interfund transactions

The operations of the General, Lawyers Insurance and Special Compensation Funds are controlled by the management of the Society. Balances between the funds generally arise from transactions of an operating nature and are recorded at the exchange amount at the dates of the transactions. Surplus funds are kept in the General Fund bank accounts or invested in money market funds through the Lawyers Insurance Fund.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

Amounts due to and from the Lawyers Insurance Fund are due on demand and have no fixed terms of repayment. The Lawyers Insurance Fund has authorized a loan facility of up to \$1 million, of which \$nil has been drawn down at December 31, 2017 (2016 - \$nil), to the General Fund to fund capital expenditures in accordance with the capital plan. The Lawyers Insurance Fund has also authorized a loan facility of up to \$8 million, of which \$nil has been drawn down at December 31, 2017 (2016 - \$nil), to the Special Compensation Fund.

Monthly interest on the Lawyers Insurance Fund's net loan position with the General and Special Compensation Funds is earned at the rate equal to the stated monthly bond yield to maturity earned on the Lawyers Insurance Fund investment portfolio. The average bond yield for 2017 was 2.27% (2016 - 2.09%). The General Fund's net loan position includes the General Fund's building loan and other operating balances with the Lawyers Insurance Fund. The net loan position fluctuates during the year as amounts are transferred between the General Fund, the Special Compensation Fund and the Lawyers Insurance Fund to finance ongoing operations.

During 2017, interest of \$48,594 was paid on the building loan and interest revenue of \$528,219 was received from General Fund cash balances held by the Lawyers Insurance Fund and \$27,705 was received from Special Compensation Fund cash balances held by the Lawyers Insurance Fund for a net interest income of \$507,330.

During 2016, interest of \$54,902 was paid on the building loan and interest revenue of \$427,221 was received from General Fund cash balances held by the Lawyers Insurance Fund and \$28,512 was received from Special Compensation Fund cash balances held by the Lawyers Insurance Fund for a net interest income of \$400,831.

Other interfund transactions are disclosed elsewhere in these fund financial statements.

9 Special Compensation Fund claims and program changes

a) Outstanding claims

Pursuant to section 31(6) of the Legal Profession Act, the payment of Special Compensation Fund claims is at the discretion of the Special Compensation Fund Committee as delegated by the Benchers. As at December 31, 2017, there were no remaining claims for which statutory declarations had been received. All claims for which statutory declarations were received have been reviewed by the Special Compensation Fund Committee.

For claims reported prior to May 1, 2004, the insurance bond provided that total claims attributable to the period in excess of \$2,500,000 were 100% reimbursed by a commercial insurer up to a maximum of \$15,000,000 for claims against one lawyer and in total, other than as noted in note 9(b). As set out in note 1, claims reported after May 1, 2004 are subject to Part B coverage by the Lawyers Insurance Fund.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

b) Wirick case

In May 2002, the Discipline Committee ordered an audit investigation, pursuant to Rule 4-43, of Martin Keith Wirick's practice.

At December 31, 2017, there were no remaining claims still under consideration.

Until May 1, 2004, the Special Compensation Fund carried insurance of \$15,000,000 for each bond period (\$17,500,000 total coverage with a deductible of \$2,500,000). The bond period is defined as the year in which the Society becomes aware of evidence indicating a member may have been guilty of an act or acts of misappropriation or wrongful conversion. All claims concerning Mr. Wirick fell into the 2002 bond period and, as such, the Special Compensation Fund had claims greater than its level of insurance. In early 2005, the final proof of loss that reached this limit was filed. In 2002, the Benchers agreed to allow the Special Compensation Fund Committee to exceed the \$17,500,000 cap they had imposed in the Society rules.

In 2006, the Benchers approved a payment of \$7,543,528 to be paid to claimants over four years commencing in fiscal 2007 at \$1,885,882 per year. The final payment was made in 2010.

In December 2012, the Benchers approved a further payment of \$162,399 that was paid to claimants in 2013.

In 2017, the Special Compensation Fund recovered \$nil (2016 - \$nil) related to the Wirick case.

Pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SCB 2012, C16), \$1,000,000 of unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund during 2017.

10 Related parties

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2017, expenses of \$481,187 (2016 - \$223,616) recorded at carrying amount were incurred by the General Fund during the normal course of business with these law firms.

11 Capital management

The Society defines its capital as the amounts included in its unrestricted net assets. Its objective when managing capital is to safeguard its ability to continue as a going concern so that it can continue to fulfill its objectives and meet its requirements.

The Law Society of British Columbia - General and Special Compensation Funds

Notes to Fund Financial Statements

December 31, 2017

12 Financial instruments

The General and Special Compensation Funds' financial instruments consist of cash, accounts receivable and accounts payable and accrued liabilities.

The significant financial risks to which the Society is exposed are credit risk and liquidity risk.

a) Credit risk

Cash and accounts receivable expose the Funds to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$20,093,903 (2016 - \$2,063,503). Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

b) Liquidity risk

Liquidity risk is the risk that the Funds will not be able to meet all cash outflow requirements. Financial instruments held by the Society are limited to cash, accounts receivable and accounts payable and accrued liabilities and, therefore, bear no significant liquidity risk.

13 Obligations and commitments under operating leases

The Society has committed to payments under certain operating leases relating to vehicle costs. Future minimum lease payments required in each of the next four fiscal years and thereafter are:

	\$
For the year ending December 31	
2018	6,804
2019	3,402
2020	-
2021	-
	<hr/>
Total future minimum lease payments	<u>10,206</u>

For the year ended December 31, 2017, an amount of \$15,880 representing payments under operating leases was expensed (2016 - \$24,236).

**The Law Society of British Columbia - General and Special
Compensation Funds**

Notes to Fund Financial Statements

December 31, 2017

14 Subsequent Event

In 2018, the Society agreed to participate with other Canadian law societies in a collective loan of \$2 million to the Canadian Legal Information Institute (CanLII), a wholly-owned subsidiary of the Federation of Law Societies of Canada (FLSC). The loan is part of the financing for the purchase by CanLII of LexUM, a corporation providing support services to CanLII for the implementation of CanLII's legal information website. The Law Society's participation is \$276,390. The loan has a five-year term with an annual interest rate of 4.74% payable annually.

**The Law Society of British
Columbia - Lawyers
Insurance Fund**

Consolidated Fund Financial Statements
December 31, 2017

DRAFT

_____, 2018

Independent Auditor's Report

**To the Members of
The Law Society of British Columbia**

Chartered Professional Accountants

DRAFT

The Law Society of British Columbia - Lawyers Insurance Fund

Consolidated Fund Statement of Financial Position

As at December 31, 2017

	2017 \$	2016 \$
Assets		
Cash	11,270,780	28,661,761
Accounts receivable - net of allowance (note 3)	447,008	254,914
Prepaid expenses	125,738	30,937
Short-term investments (note 5)	7,267,022	4,201,359
Members' share of provision for claims	1,354,050	1,147,131
General Fund building loan (note 7)	2,100,000	2,600,000
Investments (note 6)	167,447,629	154,267,887
	<u>190,012,227</u>	<u>191,163,989</u>
Liabilities		
Accounts payable and accrued liabilities (notes 4 and 8)	1,642,786	1,825,625
Deferred revenue	7,786,123	7,461,217
Due to General Fund (note 10)	17,384,813	34,170,251
Due to Special Compensation Fund (note 10)	276,237	1,363,844
Provision for claims (note 9)	69,073,165	67,192,720
Provision for ULAE (note 9)	9,601,000	8,781,000
	<u>105,764,124</u>	<u>120,794,657</u>
Net assets		
Unrestricted net assets	66,748,103	52,869,332
Internally restricted net assets (note 11)	17,500,000	17,500,000
	<u>84,248,103</u>	<u>70,369,332</u>
	<u>190,012,227</u>	<u>191,163,989</u>
Commitments (note 10)		

Approved by

_____ President _____ Chair of Finance and Audit Committee

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - Lawyers Insurance Fund

Consolidated Fund Statement of Changes in Net Assets

For the year ended December 31, 2017

	2017			2016
	Unrestricted \$	Internally restricted \$	Total \$	Total \$
Net assets - Beginning of year	52,869,332	17,500,000	70,369,332	75,888,323
Excess (deficiency) of revenue over expenses for the year	13,878,771	-	13,878,771	(5,518,991)
Net assets - End of year	66,748,103	17,500,000	84,248,103	70,369,332

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - Lawyers Insurance Fund

Consolidated Fund Statement of Revenue and Expenses

For the year ended December 31, 2017

	2017 \$	2016 \$
Revenue		
Annual assessments	14,932,599	14,681,333
Investment income (note 6)	7,237,688	5,375,891
Other income	60,812	77,500
	<u>22,231,099</u>	<u>20,134,724</u>
Insurance expenses		
Actuary, consultant and investment manager fees	794,764	801,592
Allocated office rent from General Fund	212,750	291,417
Contribution to program and administrative costs of General Fund	1,335,465	1,292,210
Insurance	411,466	407,330
Office	528,733	533,629
Premium taxes	10,124	8,572
Provision for settlement of claims (note 9)	13,567,516	22,941,291
Provision for ULAE (note 9)	820,000	770,000
Salaries, wages and benefits	2,761,569	2,544,395
	<u>20,442,387</u>	<u>29,590,436</u>
Loss prevention expenses		
Contribution to co-sponsored program costs of General Fund	844,580	862,284
	<u>21,286,967</u>	<u>30,452,720</u>
Excess (deficiency) of revenue over expenses before the following	944,132	(10,317,996)
Fair value changes in investments (note 6)	8,740,646	4,804,907
	9,684,778	(5,513,089)
Provision for income taxes	6,007	5,902
	9,678,771	(5,518,991)
Contribution from Special Compensation Fund (note 10)	1,000,000	-
Contribution from Trust Assurance Net Assets in General Fund (note 10)	3,200,000	-
Excess (deficiency) of revenue over expenses for the year	<u>13,878,771</u>	<u>(5,518,991)</u>

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - Lawyers Insurance Fund

Consolidated Fund Statement of Cash Flows

For the year ended December 31, 2017

	2017 \$	2016 \$
Cash flows from operating activities		
Excess (deficiency) of revenue over expenses for the year	13,878,771	(5,518,991)
Items not affecting cash		
Unrealized gain on investments	(4,613,386)	(2,619,395)
Realized gain on disposal of investments	(4,127,259)	(2,185,462)
Pooled distributions from investments	(7,558,850)	(5,612,436)
Contribution from General and Special Funds	4,200,000	-
	<u>1,779,276</u>	<u>(31,872,568)</u>
Decrease (increase) in assets		
Accounts receivable	(192,094)	4,167,056
Prepaid expenses	(94,801)	16,504
Short-term investments	(3,065,663)	(264,835)
Members' share of provision for claims	(206,919)	101,424
Increase (decrease) in liabilities		
Accounts payable and accrued liabilities	(182,839)	661,885
Deferred revenue	324,906	130,507
Provision for claims	1,880,445	7,704,646
Provision for ULAE	820,000	861,000
	<u>1,062,311</u>	<u>(2,558,097)</u>
Cash flows from investing activities		
Decrease in General Fund building loan	500,000	500,000
Purchase of investments	(7,056,356)	(7,823,130)
Proceeds from disposal of investments	10,176,110	8,146,104
	<u>3,619,754</u>	<u>822,974</u>
Cash flows from financing activities		
Interfund transfers (note 10)	(22,073,046)	6,117,597
(Decrease) Increase in cash	(17,390,981)	4,382,474
Cash - Beginning of year	<u>28,661,761</u>	<u>24,279,287</u>
Cash - End of year	<u>11,270,780</u>	<u>28,661,761</u>
Supplementary cash flow information		
Interest paid	<u>555,924</u>	<u>455,737</u>
Interest income received	<u>188,455</u>	<u>156,592</u>

The accompanying notes are an integral part of these consolidated fund financial statements.

**FOR DISCUSSION WITH MANAGEMENT ONLY – SUBJECT TO AMENDMENT
NOT TO BE FURTHER COMMUNICATED**

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

1 Nature of operations

The Law Society of British Columbia (the Society) regulates the legal profession in British Columbia, protecting public interest in the administration of justice by setting and enforcing standards of professional conduct for lawyers.

The Society's fund covered in these consolidated fund financial statements is for the Lawyers Insurance Fund (the Fund) and the Society's only subsidiary, LSBC Captive Insurance Company (the Captive), that together comprise the Society's insurance program.

The Society's General Fund and Special Compensation Fund are presented in separate fund financial statements.

The Fund is maintained by the Society pursuant to Section 30 of the Legal Profession Act. The Captive is considered assessable for income tax under current legislation. The Captive is subject to regulation by the Financial Institutions Commission (FICOM). Effective January 1, 1990, the Fund underwrites the program by which errors and omissions insurance is provided to members of the Society.

Part A

The Society's members have limits of coverage for claims and potential claims arising from negligent acts, errors or omissions under Part A of the B.C. Lawyers' Compulsory Professional Liability Insurance Policy (the Policy) as follows:

	\$	\$
The Fund	995,000	990,000
Deductible - applicable to indemnity payments only	5,000 or	10,000
	<hr/>	<hr/>
Limit per error or related errors		1,000,000
		<hr/>
Annual aggregate limit for all errors per member		2,000,000
		<hr/>

The amount of the member deductible is \$5,000 for each initial claim resulting in the payment of damages and \$10,000 for each additional claim within a three-year period resulting in the payment of damages.

For claims reported between 1990 and 1996, the Captive entered into reinsurance contracts under which all claim payments above a per claim limit and in excess of inner aggregate retentions were ceded to reinsurers. Reinsurance does not relieve the Captive of primary liability as the originating insurer. All losses on claims since 1997 are fully reimbursed by the Fund on behalf of the Society under agreement.

For the 2017 and 2016 policy years, the Society and the Captive have obtained stop-loss reinsurance in the amount of \$12,000,000 to cover aggregate payments over \$25,000,000 for Parts A and C of the Policy. This limit is co-insured 80/20 with the reinsurer paying 80% of losses over \$25,000,000 to a maximum of \$12,000,000 and the Fund paying 20%.

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Part B

Effective May 1, 2004, Part B of the Policy provides defined insurance coverage for dishonest appropriation of money or other property entrusted to and received by insured lawyers in their capacity as barristers and solicitors and in relation to the provision of professional services.

For the 2017 and 2016 policy years, there is a \$300,000 per claim limit and a \$17,500,000 profession-wide annual aggregate limit. The Society and the Captive have obtained insurance in the amount of \$5,000,000 to cover a portion of the annual aggregate limit. There is no deductible payable by the member. This insurance is subject to a \$3,000,000 group deductible and is co-insured 80/20 with the insurer paying 80% of losses over \$3,000,000, to a maximum of \$5,000,000, and the Fund paying 20%.

Part C

Effective January 1, 2012, Part C of the Policy provides defined insurance coverage for trust shortages suffered by insured lawyers as a result of relying on fraudulent certified cheques. Effective January 1, 2017, Part C coverage was expanded to include coverage for certain social engineering frauds.

For the 2017 and 2016 policy years, there is a limit of \$500,000 per claim, and per lawyer and firm annually, a profession-wide annual aggregate of \$2 million, and a deductible of 35% of the client trust fund shortage (reduced by the amount of any overdraft paid). Coverage, for relying on fraudulent certified cheques, is contingent upon compliance with the Society's client identification and verification rules.

2 Significant accounting policies

These Consolidated Fund Financial Statements are prepared in accordance with Canadian accounting standards for not-for-profit organizations (ASNPO) as issued by the Canadian Accounting Standards Board.

Basis of consolidation

These Consolidated Fund Financial Statements include the accounts of the Fund and the Captive, a wholly owned subsidiary.

Allocated administrative expenses

Administrative expenses are recovered by the General Fund of the Society from the Fund. Recoveries are based on amounts derived either on percentage of use or the proportion of the Fund's staff compared to the Society's total staff cost, or a set amount.

Cash

Cash comprises cash on hand and held with a Canadian chartered bank.

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Fair value of financial instruments

The fair values of cash, accounts receivable, short-term investments and accounts payable and accrued liabilities correspond to their carrying values due to their short-term nature.

The fair values of the provision for claims correspond to their carrying values because they are discounted.

The interfund balances including the building loan receivable and other interfund transactions are recorded at their carrying amounts which approximate their exchange amounts.

Short-term investments

Short-term investments consist of pooled money market funds, whose investments have original maturities of less than 90 days, and the carrying amount approximates the fair value at the reporting date due to their short-term maturities.

Investments

The Fund's investments consist of units in pooled equity, bond, real estate and mortgage funds and are initially and subsequently measured at fair value. Changes in fair value are recognized in the consolidated fund statement of revenue and expenses in the year incurred. Transaction costs that are directly attributable to the acquisition of these investments are recognized in the consolidated fund statement of revenue and expenses in the year incurred.

Investment income

Investment income and pooled fund distributions are recorded on an accrual basis. Dividends are recorded on the date of record. Gains and losses realized on the disposal of investments are taken into income on the date of disposal.

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Provision for claims

The provision for claims and unallocated loss adjustment expenses (ULAE) represent an estimate for all external costs of investigating and settling claims and potential claims reported prior to the date of the consolidated fund statement of financial position. The provision is adjusted as additional information on the estimated amounts becomes known during the course of claims settlement. All changes in estimates are expensed in the current period. The Fund presents its claims on a discounted basis.

Revenue recognition

The Fund follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been recorded as deferred revenue for financial reporting purposes and will be recognized as revenue in the next calendar year.

All other revenues are recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Use of estimates

The preparation of financial statements in conformity with ASNPO requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the the consolidated fund financial statements and revenues and expenses for the period reported. The determination of the provision for claims and ULAE and the reinsurers' share of the provision for claims involves significant estimation. Actual results could differ from those estimates and the differences could be material.

Financial instruments

The Fund's financial instruments consist of cash, accounts receivable, short-term investments, investments and accounts payable and accrued liabilities.

The significant financial risks to which the Fund is exposed are credit risk, market risk, price risk, and liquidity risk.

Credit risk

Cash, accounts receivable, members' share of provision for claims, bond pooled funds and the investment in real estate mortgage indirectly expose the Fund to credit risk.

The maximum exposure to credit risk arising from the above-noted items is \$90,467,179 (2016 - \$101,136,795).

Credit risk arises from the possibility that a counterparty to an instrument fails to meet its obligations.

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

The cash deposits are held only with Schedule I banks. The accounts receivable balances are spread across the broad membership base with no significant exposure to any one individual. The investment guidelines mitigate credit risk by ensuring the investments in the bond pooled funds have an adequate minimum credit rating and well-diversified portfolios.

Market risk

Market risk is the potential for loss to the Fund from changes in the value of its financial instruments due to changes in interest rates, foreign exchange rates or equity prices.

The Fund manages market risk by diversifying investments within the various asset classes and investing in pooled funds as set out in the guidelines of the Society's statement of investment policies and procedures (SIPP).

Price risk

Price risk is the risk that the fair value of the Society's investments will fluctuate due to changes in the market prices whether these changes are caused by factors specific to the individual financial instrument, its issuer, or factors affecting all similar financial instruments traded in the market. It arises primarily on pooled equity, bond, real estate and mortgage fund investments.

To manage price risk, the Society has guidelines on the diversification and weighting of investments within pooled funds which are set and monitored against the Society's SIPP.

As at December 31, 2017, if pooled fund prices increased or decreased by 10% with all other factors remaining constant, net assets would have increased or decreased by approximately \$16.7 million (2016 - \$15.4 million).

Liquidity risk

Liquidity risk is the risk that the Fund will not be able to meet all cash outflow requirements. At December 31, 2017, the sum of the Fund's cash, short-term investments and pooled fund investments, at fair value, which are available to settle the liabilities of the Society as they come due, exceeded the sum of the liabilities by \$80.2 million, or 76% (2016 - \$66.3 million, or 55%).

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

3 Accounts receivable

	2017 \$	2016 \$
Member deductibles	582,382	459,109
Allowance for doubtful accounts	(341,825)	(295,134)
Receivable for premium taxes under appeal	-	12
GST/HST receivable	168,610	79,349
Taxes receivable	-	94
Other receivables	37,841	11,484
	<u>447,008</u>	<u>254,914</u>

4 Government remittances

The following government remittances are included in accounts payable:

	2017 \$	2016 \$
Ministry of Finance - PST	4,482	452
Receiver General - corporate income tax	844	-
Ministry of Finance - premium tax	10,145	8,572
	<u>15,471</u>	<u>9,024</u>

5 Short-term investments

Short-term investments comprise pooled money market funds with the following balances:

	2017 \$	2016 \$
Money market funds	<u>7,267,022</u>	<u>4,201,359</u>

6 Investments

	2017 \$	2016 \$
Investments - at fair value	<u>167,447,629</u>	<u>154,267,887</u>

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

	2017			
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	46,357,149	-	(797,619)	45,559,530
Equities				
Canadian Pooled Funds	21,084,947	15,994,047	-	37,078,994
International Pooled Funds	36,525,196	16,448,098	-	52,973,294
	57,610,143	32,442,145	-	90,052,288
Real Estate & Mortgage				
Real Estate Fund	14,521,175	1,824,287	-	16,345,462
Mortgage Fund	15,761,508	-	(271,159)	15,490,349
	30,282,683	1,824,287	(271,159)	31,835,811
	134,249,975	34,266,432	(1,068,778)	167,447,629
				2016
	Carrying cost \$	Gross unrealized gains \$	Gross unrealized losses \$	Estimated fair value \$
Bonds				
Pooled Funds	41,216,639	-	(594,967)	40,621,672
Equities				
Canadian Pooled Funds	21,233,972	14,256,017	-	35,489,989
International Pooled Funds	33,490,648	14,214,265	-	47,704,913
	54,724,620	28,470,282	-	83,194,902
Real Estate & Mortgage				
Real Estate Fund	14,521,175	860,268	-	15,381,443
Mortgage Fund	15,221,185	-	(151,315)	15,069,870
	29,742,360	860,268	(151,315)	30,451,313
	125,683,619	29,330,550	(746,282)	154,267,887

The effective yield on the Bond, Mortgages and Equities portion of the investment portfolio was 5.78 % (2016 - 2.29%).

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Investment risk management

The Society has adopted policies which establish the guidelines for all investment activities. These guidelines apply to the investment funds controlled by the Fund.

The Society's overall investment philosophy is to maximize the long-term real rate of return subject to an acceptable degree of risk.

The Society's long-term funding requirements and relatively low level of liquidity dictate a portfolio with a mix of fixed income, equities, as well as real estate and mortgages. The Society invests in bonds, equities, real estate and mortgages through pooled funds.

Investment income

	2017 \$	2016 \$
Interest on cash	144,840	143,498
Pooled distributions	7,600,178	5,638,747
Net interfund loan interest expense (note 10)	(507,330)	(400,835)
Building income - 750 Cambie Street (revenue of \$nil (2016 - \$nil); net of expenses of \$nil (2016 - \$5,519))	-	(5,519)
Investment income	<u>7,237,688</u>	<u>5,375,891</u>

Fair value changes in investments

	2017 \$	2016 \$
Realized gain on disposal of investments	4,127,259	2,185,512
Unrealized gain on investments measured at fair value	<u>4,613,387</u>	<u>2,619,395</u>
Fair value changes in investments	<u>8,740,646</u>	<u>4,804,907</u>

7 General Fund building loan

In 1992, the Benchers authorized the lending of monies from the Fund to support the capital development of the Society's buildings at 845 Cambie Street, Vancouver, B.C. The loan has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. It is the intention of the Benchers to require the General Fund to repay a minimum of \$500,000 of the principal each year. During 2017, principal of \$500,000 (2016 - \$500,000) was repaid.

	2017 %	2016 %
Weighted average rate of return	<u>2.27</u>	<u>2.09</u>

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

8 Accounts payable and accrued liabilities

	2017 \$	2016 \$
Trade payables	1,371,159	1,590,314
Accrued trade expenses	256,970	226,287
Taxes payable	4,482	452
Premium taxes payable	10,112	8,572
Income taxes payable	63	-
	1,642,786	1,825,625

9 Provision for claims and unallocated loss adjustment expenses (ULAE)

The changes in unpaid claims recorded in the consolidated fund statement of financial position are as follows:

	2017 \$	2016 \$
Part A Insurance Coverage		
Provision for claims - Beginning of year	66,493,720	59,062,074
Provision for losses and expenses for claims occurring in the current year	16,824,000	17,944,208
(Decrease) increase in estimated losses and expenses for losses occurring in prior years	(5,159,000)	4,530,000
Provision for claims liability	78,158,720	81,536,282
(Subtract) Add:		
Payments on claims incurred in the current year	(929,822)	(1,013,274)
Payments on claims incurred in prior years	(11,087,786)	(14,401,094)
Recoveries on claims	200,134	473,230
Change in due from members	31,264	(101,424)
Claim payments - net of recoveries	(11,786,210)	(15,042,562)
Part A Provision for claims - End of year	66,372,510	66,493,720
Part B Insurance Coverage		
Unpaid claims – Beginning of year	699,000	426,000
Provision for losses and expenses for claims	1,456,517	376,081
	2,155,517	802,081
(Subtract) Add:		
Payments on claims	(82,017)	(107,481)
Recoveries on claims	5,500	4,400
Claim payments - net of recoveries	(76,517)	(103,081)
Part B Provision for claims - End of year	2,079,000	699,000

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

	2017	2016
	\$	\$
Part C Insurance Coverage		
Provision for claims – Beginning of year	-	-
Provision for losses and expenses for claims occurring in the current year	446,000	-
Add:		
Change in due from members	175,655	-
Part C Provision for claims – End of Year	<u>621,655</u>	<u>-</u>
Total provision for Parts A, B and C Insurance Coverage	<u>69,073,165</u>	<u>67,192,720</u>

The determination of the provision for unpaid claims and adjustment expenses requires the estimation of two major variables or quanta, being development of claims and the effects of discounting, to establish a best estimate of the value of the respective liability or asset.

The provision for unpaid claims and adjustment expenses is an estimate subject to variability, and the variability, as with any insurance company, could be material in the near term. The variability arises because all events affecting the ultimate settlement of claims have not taken place and may not take place for some time. Variability can be caused by receipt of additional claim information, changes in judicial interpretation of contracts, significant changes in severity of claims from historical trends, the timing of claims payments and future rates of investment return. The estimates are principally based on the Fund's historical experience. Methods of estimation have been used that the Society believes produce reasonable results given current information.

The provision for ULAE is an actuarially determined estimate of the Fund's future costs relating to the administration of claims and potential claims reported up to the consolidated fund statement of financial position date.

The Fund discounts its best estimate of claims provisions at a rate of interest of 2.66% (2016 - 2.65%). The Fund determines the discount rate based upon the expected return on its investment portfolio of assets with appropriate assumptions for interest rates relating to reinvestment of maturing investments.

A 1% increase in the discount rate will have a favourable impact on the discounted claims liability of \$2.367 million (2016 - \$2.272 million) and a 1% decrease in the discount rate will have an unfavourable impact on the discounted claims liability of \$2.539 million (2016 - \$2.434 million).

To recognize the uncertainty in establishing these best estimates, to allow for possible deterioration in experience, and to provide greater comfort that the actuarial liabilities are adequate to pay future benefits, the Fund includes a Provision for Adverse Deviations (PFAD) in some assumptions relating to claims development and future investment income. The PFAD is selected based on guidance from the Canadian Institute of Actuaries.

The effects of discounting and the application of PFAD, net of members' share of provision for claims, are as follows (in thousands of dollars):

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

	2017 \$	2016 \$
Undiscounted	71,677	69,081
Effect of present value	(5,933)	(5,678)
PFADs	11,576	11,423
	<hr/>	<hr/>
Discounted	77,320	74,826
	<hr/>	<hr/>

Claims development tables (net of members' share of provision for claims)

A review of the historical development of the Fund's insurance estimates provides a measure of the Fund's ability to estimate the ultimate value of claims. The top half of the following tables illustrates how the Fund's estimate of total undiscounted claims costs for each year has changed at successive year-ends. The bottom half of the tables reconciles the cumulative claims to the amount appearing in the consolidated fund statement of financial position.

Part A insurance claims (in thousands of dollars)

Claims year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	13,670	11,520	13,650	14,560	13,390	15,230	12,690	15,090	16,720	15,720	
One year later	13,230	11,310	12,990	13,550	13,080	15,100	12,390	16,590	15,440		
Two years later	13,470	11,500	12,610	11,570	11,970	17,780	12,240	15,210			
Three years later	13,360	13,470	13,210	10,920	10,690	20,300	11,760				
Four years later	13,170	13,960	13,920	11,100	10,490	20,460					
Five years later	13,060	14,540	15,190	11,810	10,100						
Six years later	12,780	14,240	14,900	12,300							
Seven years later	13,070	14,340	14,420								
Eight years later	13,270	14,340									
Nine years later	13,080										
Current estimate of cumulative claims	13,080	14,340	14,420	12,300	10,100	20,460	11,760	15,210	15,440	15,720	142,830
Cumulative payments to date	(12,383)	(13,466)	(12,191)	(9,610)	(7,087)	(14,851)	(5,501)	(5,765)	(3,371)	(906)	(85,132)
Undiscounted unpaid liability	<u>697</u>	<u>874</u>	<u>2,229</u>	<u>2,690</u>	<u>3,013</u>	<u>5,609</u>	<u>6,259</u>	<u>9,445</u>	<u>12,069</u>	<u>14,814</u>	57,699
Undiscounted unpaid liability in respect of 2007 and prior years											2,701
Undiscounted unallocated loss adjustment expense reserve											<u>8,548</u>
Total undiscounted unpaid claims liability											68,948
Discounting adjustment (includes Claim PFAD)											<u>5,472</u>
Total discounted unpaid claims liability											<u>74,420</u>

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Part B insurance claims (in thousands of dollars)

Claims year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	8	107	23	28	18	53	562	41	274	1,588	
One year later	7	196	19	24	13	82	500	184	134		
Two years later	9	197	22	23	12	100	421	180			
Three years later	9	197	26	23	13	115	372				
Four years later	9	197	26	23	8	108					
Five years later	9	197	26	25	8						
Six years later	9	197	27	25							
Seven years later	9	203	26								
Eight years later	10	201									
Nine years later	10										
Current estimate of cumulative claims	10	201	26	25	8	108	372	180	134	1,588	2,652
Cumulative payments to date	(10)	(197)	(26)	(24)	-	(100)	(166)	(86)	(52)	(45)	(706)
Undiscounted unpaid liability	-	4	-	1	8	8	206	94	82	1,543	1,946
Undiscounted unpaid liability in respect of 2007 and prior years											8
Undiscounted unallocated loss adjustment expense reserve											272
Total undiscounted unpaid claims liability											2,226
Discounting adjustment (includes Claim PFAD)											142
Total discounted unpaid claims liability											2,368

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Part C insurance claims (in thousands of dollars)

Claims year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Estimate of undiscounted ultimate claims costs											
At end of claims year	-	-	-	-	-	-	-	-	-	423	
One year later	-	-	-	-	-	-	-	-	-		
Two years later	-	-	-	-	-	-	-	-	-		
Three years later	-	-	-	-	-	-	-	-	-		
Four years later	-	-	-	-	-	-	-	-	-		
Five years later	-	-	-	-	-	-	-	-	-		
Six years later	-	-	-	-	-	-	-	-	-		
Seven years later	-	-	-	-	-	-	-	-	-		
Eight years later	-	-	-	-	-	-	-	-	-		
Nine years later	-	-	-	-	-	-	-	-	-		
Current estimate of cumulative claims	-	-	-	-	-	-	-	-	-	423	423
Cumulative payments to date	-	-	-	-	-	-	-	-	-	-	-
Undiscounted unpaid liability	-	-	-	-	-	-	-	-	-	423	423
Undiscounted unpaid liability in respect of 2007 and prior years											-
Undiscounted unallocated loss adjustment expense reserve											81
Total undiscounted unpaid claims liability											504
Discounting adjustment (includes Claim PFAD)											28
Total discounted unpaid claims liability											532

The expected maturity of the unpaid claims provision is analyzed below (undiscounted and gross of reinsurance):

(in thousands of dollars)	Less than one year	One to two years	Two to three years	Three to four years	Four to five years	Over five years	Total
	\$	\$	\$	\$	\$	\$	\$
December 31, 2017	17,230	13,620	10,966	8,359	5,912	15,590	71,677
December 31, 2016	16,751	13,038	10,840	7,294	5,833	15,325	69,081

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

Role of the actuary

The actuary is appointed to fulfill reporting requirements pursuant to the Insurance (Captive Company) Act of B.C. With respect to preparation of these Consolidated Fund Financial Statements, the actuary is required to carry out a valuation of the Fund's policy liabilities and to provide an opinion regarding their appropriateness at the date of the consolidated fund statement of financial position. The factors and techniques used in the valuation are in accordance with accepted actuarial practice, applicable legislation and associated regulations. The scope of the valuation encompasses the policy liabilities as well as any other matter specified in any direction that may be made by the regulatory authorities. The policy liabilities consist of a provision for unpaid claims and adjustment expenses. In performing the valuation of the liabilities for these contingent future events, which are by their very nature inherently variable, the actuary makes assumptions as to future loss ratios, trends, expenses and other contingencies, taking into consideration the circumstances of the Fund and the nature of the insurance policies.

The valuation is based on projections for settlement of reported claims and claim adjustment expenses. It is certain that actual claims and claim adjustment expenses will not develop exactly as projected and may, in fact, vary significantly from the projections.

The actuary relies on data and related information prepared by the Fund. The actuary also analyzes the Fund's assets for its ability to support the amount of policy liabilities.

10 Interfund transactions

The operations of the Fund, the General Fund and the Special Compensation Fund are administered by the management of the Society. Balances between the funds arise from transactions of an operating nature and are recorded at exchange amounts at the dates of the transactions. Surplus funds are invested in the Fund's investment portfolio.

Amounts due to and from the General Fund and the Special Compensation Fund are due on demand and have no fixed terms of repayment. The Fund has authorized a loan facility of up to \$1 million to the General Fund to fund capital expenditures in accordance with the 10-year capital plan. The Fund has also authorized a loan facility of up to \$8 million to the Special Compensation Fund. As of December 31, 2017, no amounts have been drawn on the facilities (2016 - \$nil).

Pursuant to reserve policy, \$3,200,000 of the net assets related to trust assurance was transferred to the Lawyers Insurance Fund for Part B coverage during 2017.

Pursuant to Section 50 of the Legal Profession Amendment Act, 2012 (SCB 2012, C16), \$1,000,000 of unused reserves of the Special Compensation Fund was transferred to the Lawyers Insurance Fund during 2017.

Monthly interest on the Fund's net loan position with the General Fund and Special Compensation Fund is paid to the Fund at a rate equal to the stated monthly bond yield to maturity earned on the Fund's investment portfolio. The average bond yield for 2017 was 2.27% (2016 - 2.09%). The Fund's net loan position at December 31, 2017 was \$15.6m (2016 - \$32.9m) which includes the General Fund building loan, other operating balances with the General Fund and the Special Compensation Fund. This net loan position fluctuates during the year as

The Law Society of British Columbia - Lawyers Insurance Fund

Notes to Consolidated Fund Financial Statements

For the year ended December 31, 2017

amounts are transferred between the General Fund, the Special Compensation Fund and the Fund to finance ongoing operations.

During the year ended December 31, 2017, interest revenue of \$48,594 (2016 - \$54,902) was received on the General Fund building loan and interest of \$528,219 (2016 - \$427,221) was paid on General Fund cash balances held by the Fund and \$27,705 (2016 - \$28,512) was paid on the Special Compensation Fund cash balances held by the Fund for a net interest expense of \$507,330 (2016 - \$400,835).

Other interfund transactions are disclosed elsewhere in these Consolidated Fund Financial Statements.

11 Internally restricted net assets

The Benchers have allocated \$17.5m (2016 - \$17.5m) of the net assets to the Part B coverage for dishonest appropriation of trust funds or property.

12 Regulatory requirements and capital management

The Captive is required to maintain a minimum of \$200,000 in shareholder's equity and \$100,000 in reserves under the regulations of the Insurance (Captive Company) Act of B.C. The Captive was in compliance with these regulations throughout the year and as at December 31, 2017.

13 Related parties

The elected Benchers include members drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business. During the year ended December 31, 2017, expenses of \$99,037 (2016 - \$74,923) were incurred by the Fund with these law firms.

Management Discussion and Analysis

The Law Society of British Columbia accounts for its financial activities through three separate funds: the General Fund, the Special Compensation Fund and the Lawyers Insurance Fund (LIF). Society management has the responsibility for assisting the Benchers in fulfilling the Society's mandate, while ensuring that operating expenditures are closely controlled and that appropriate accounting and internal controls are maintained. The 2017 audited financial statements for the three funds are set out in this report. The statements are presented in accordance with the presentation and disclosure standards of the Chartered Professional Accountants of Canada.

During 2017, in addition to the general oversight by the Benchers, the Finance and Audit Committee assisted the Benchers in ensuring that management and staff properly managed and reported on the financial affairs of the Society. The oversight by the Benchers and the Finance and Audit Committee included:

- Reviewing periodic financial statements of the General, Special Compensation and Consolidated Lawyers Insurance Fund
- Reviewing investment performance as managed by the appointed investment managers
- Reviewing with the Law Society's auditors their approach, scope and audit results
- Reviewing the annual Audit Report prepared by the Law Society auditors
- Recommending the 2018 practice fees and insurance assessments, and reviewing corresponding budgets
- Reviewing the enterprise risk management plan

General Fund

Overview

Overall, the 2017 results for the General Fund resulted in an operating surplus of \$1.2 million. Revenues were higher than expected, particularly in the areas of trust administration, electronic filing revenues, and practice fees. Operating expenses were similar to the prior year, but lower than expected due to savings in the areas of salaries, external professional fees.

Revenues

General Fund revenue was \$30.9 million, \$1.5 million higher than 2016 with growth in the number of lawyers and an increase in the 2017 practice fee. During 2017, net growth in the number of full-time equivalent practicing lawyers was 2.0% resulting in a total of 11,849 full fee paying equivalent lawyers for the year, compared to 11,619 in 2016. The trust administration fee revenue decreased 2% due to a decrease in the number of TAF-related transactions arising from a reduction in activity in the real estate market. Electronic filing revenues also decreased with a reduction in the real estate market. Investment income increased due to higher cash balances held during the year. Discipline and custodianship recoveries decreased over last year. Other income increased over 2016 as the result of

insurance recoveries. Professional Legal Training Course (PLTC) enrolment revenue was higher in 2017, with 510 PLTC students attending during the year, compared with 470 in the prior year. Application fees and rental revenue were slightly higher than their 2016 levels.

The Lawyers Insurance Fund contributed \$2.2 million to the General Fund for co-sponsored programs and for general program and administrative expenses attributable to operations.

Expenses

The 2017 General Fund expenses increased by \$2.0 million (7.5%) to \$28.7 million, compared to \$26.7 million in 2016.

Bencher Governance expenses increased by \$143,000 compared to 2016 due to increased travel and meeting costs.

Communication, Publications and Information Services costs were higher from 2016 by \$141,000, with increased telephone costs related to the transition to new technology, increased software maintenance costs and market based salary adjustments.

Education and Practice expenses were higher than 2016 by \$232,000, with increases primarily related to credentials external counsel fees, the addition of one staff member and market based salary adjustments.

General and administration costs increased by \$114,000 from 2016 with increases in human resource costs for recruiting and consultant costs, offset by staff salary savings.

Policy and Legal Services expenses increased by \$96,000 over 2016, due to the addition of one staff member and market based staff salary adjustments.

Regulation operating expenses increased \$1.3 million over 2016, due to higher external counsel fees and staffing costs in the areas of discipline, professional conduct, and custodianships with higher file loads. Additionally, there were increases for market based staff salary adjustments.

Net Assets

Overall, the General Fund remains financially sound. As of December 31, 2017, net assets in the General Fund were \$21 million. The net assets include \$2.7 million in capital funding for planned capital projects related to the 845 Cambie Street building and workspace improvements for Law Society operations. Pursuant to reserve policy, during the year \$3.2 million of net assets related to trust assurance was transferred to the Lawyers Insurance Fund for Part B coverage. After this transfer, at December 31, 2017, the net assets include \$3.3 million of trust assurance reserves. The remaining General Fund net assets are \$15 million, of which \$11.7 million is invested in capital assets, mainly the 845 Cambie Street building, and \$3.3 million of working capital.

Special Compensation Fund

Overview

Previously, the Special Compensation Fund was maintained pursuant to Section 31 of the *Legal Profession Act*, was financed by members' annual assessments, and claims were recorded net of recoveries when they had been approved for payment. In 2012, the *Legal Profession Amendment Act, 2012* repealed section 31 of the *Legal Profession Act*. In addition, Section 23 of the *Legal Profession Act* was amended to remove the requirement that practising lawyers pay the Special Compensation Fund assessment. Section 50 of the *Legal Profession Amendment Act, 2012* provides for the transfer of unused reserves that remain within the Special Compensation Fund to the Lawyers Insurance Fund for the purposes of the insurance program, which has provided insurance coverage since 2004 for dishonest appropriation of money or other property entrusted to and received by insured lawyers. During the year, pursuant to Section 50 of the *Legal Profession Amendment Act*, \$1 million of unused reserves were transferred to the Lawyers Insurance Fund and the remainder will be held in the Special Compensation fund to offset expected external counsel fees.

Revenues/Expenses

There were no claims costs in 2016 since the Lawyers Insurance Fund has been providing coverage for dishonest appropriation of funds by lawyers since 2004. During the year, \$3,800 was recovered along with \$28,000 of interest income. In addition, external counsel costs of \$119,000 were incurred for specific file activity.

Net Assets

At the end of 2017, after the transfer of \$1 million of unused reserves to the Lawyers Insurance Fund, the Special Compensation Fund net assets were \$277,000.

Lawyers Insurance Fund

Overview

The Lawyers Insurance Fund (LIF) remains in a strong financial position at the end of 2017. Revenue from annual assessments was slightly higher due to additional insured members, and overall investment returns were above the benchmark.

Revenues

The 2017 insurance assessment remained at \$1,750 per insured member, resulting in total revenue of \$14.9 million, compared to \$14.7 million in 2016.

During 2017, the long term investment portfolio performed well, earning a return of 10.3%, compared to a benchmark return of 7.1%. All increases in the market value of the investment portfolio have been recognized through the statement of revenue and expenses in accordance with Canadian accounting standards for not-for-profit organizations.

Expenses

In 2017, LIF general operating costs, including the \$2.2 million contribution to the General Fund, but excluding claims payments and unallocated loss adjustment expenses (ULAE), were \$6.9 million, compared to \$6.7 million in 2016. The increase is primarily due to market based staff salary adjustments and the addition of one staff member.

The net actuarial provision for settlement of claims for the year was \$13.6 million, a decrease of \$9.4 million from 2016. The 2016 claims provision was higher than normal due to an increase in reserves of prior years' claims. The provision for claims liabilities on the balance sheet at the end of 2017 was \$69.0 million, compared to \$67.2 million in 2016.

Net Assets

As of December 31, 2017, the LIF net assets were \$84.2 million, which includes \$17.5 million internally restricted for Part B claims, leaving \$66.7 million in unrestricted net assets.

Other Matters

In 2014, the Law Society heard from the Financial Institutions Commission ("FICOM") about their concerns with the Law Society's captive insurance company and the Law Society's insurance program. Following discussions with FICOM, the Ministry of Finance and the Ministry of Justice, it was agreed that the Law Society would pursue an exemption from certain statutory requirements and discussions are continuing regarding structure options.



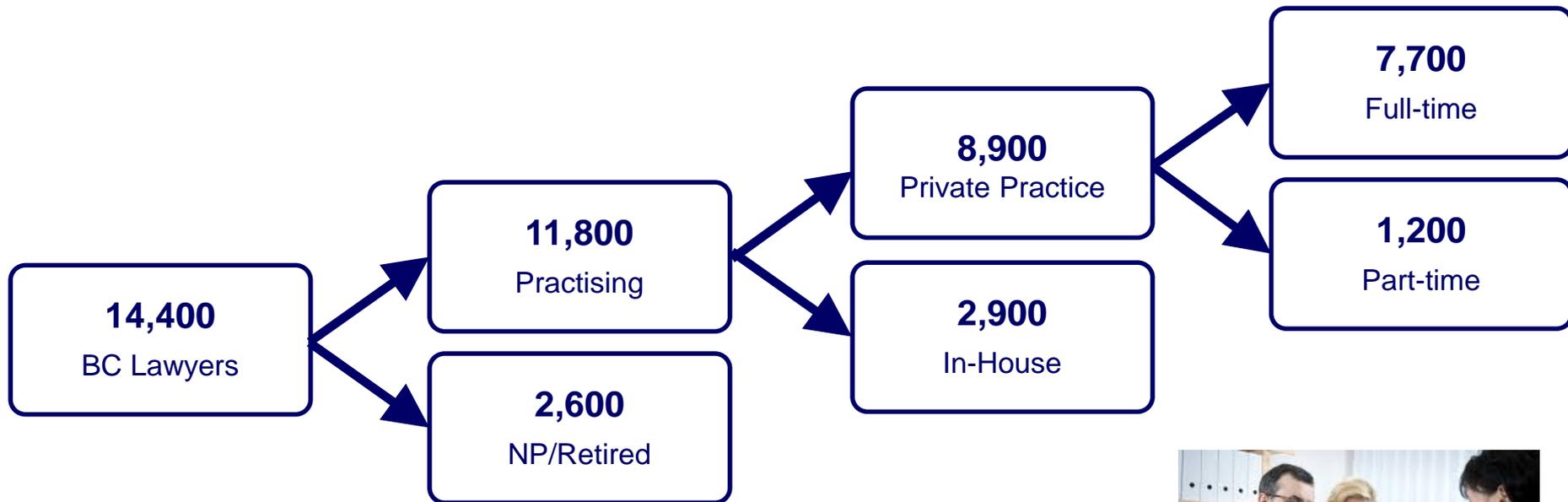
Lawyers Insurance Fund

2017 Year End Report

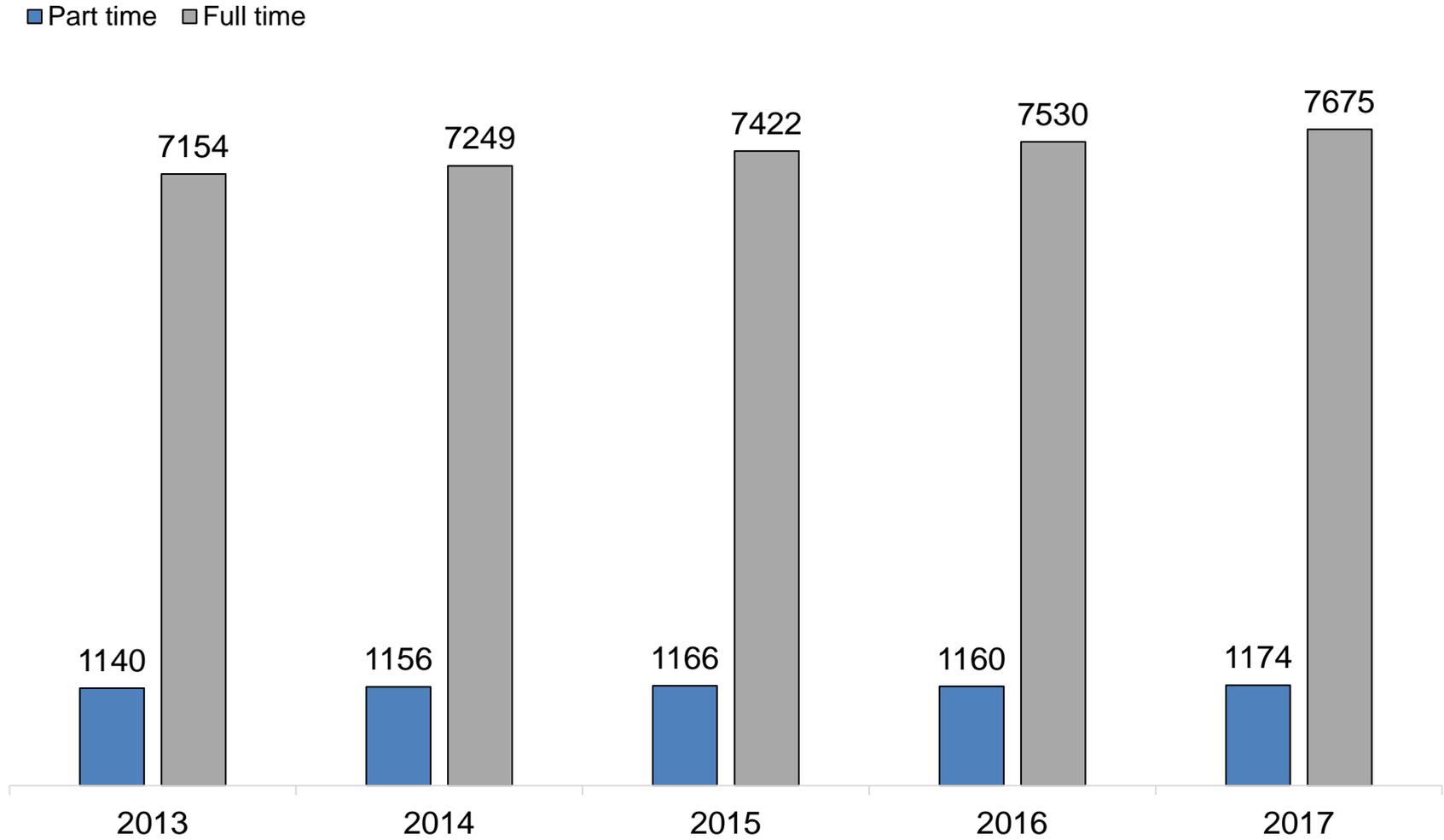
Overview

1. BC lawyers
2. Part A (negligence)
3. Part B (theft)
4. Service evaluation

BC Lawyers

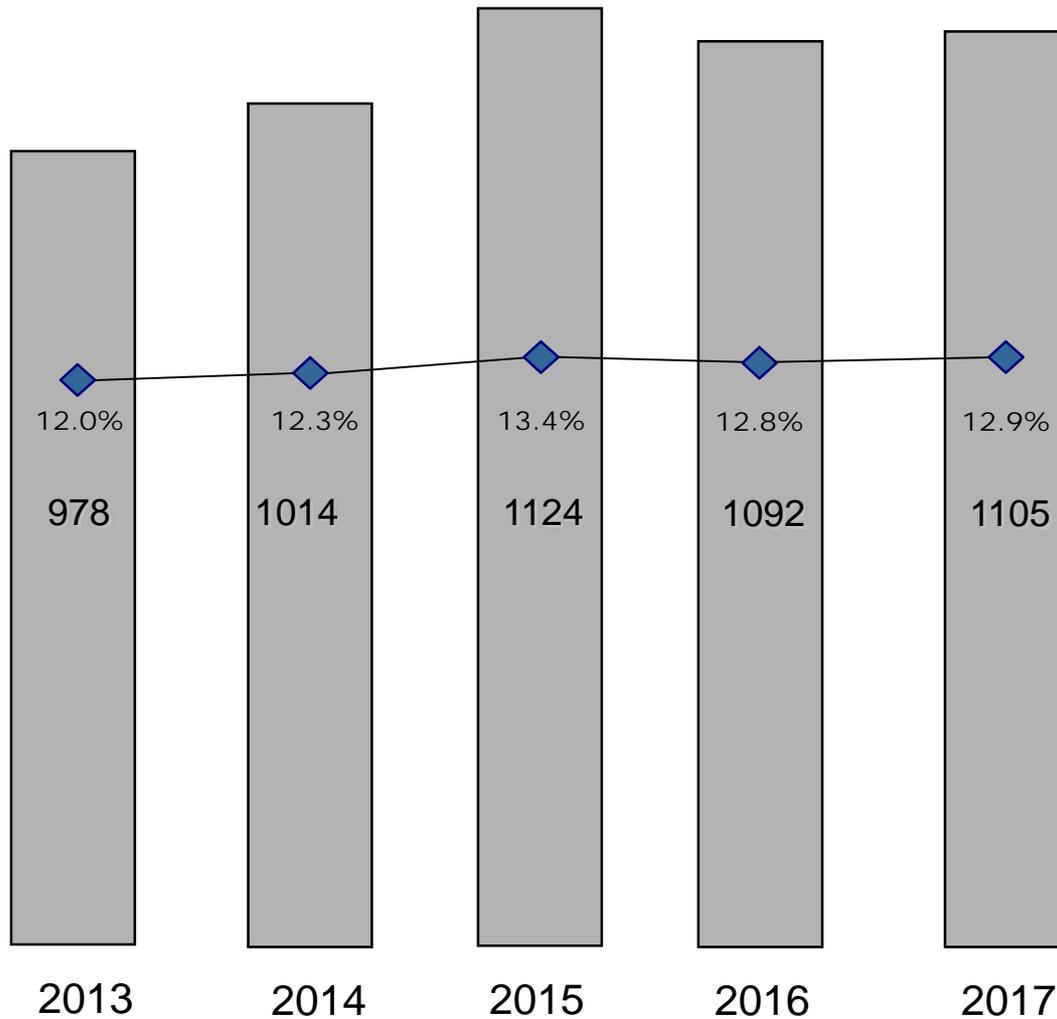


Full and Part Time Insureds

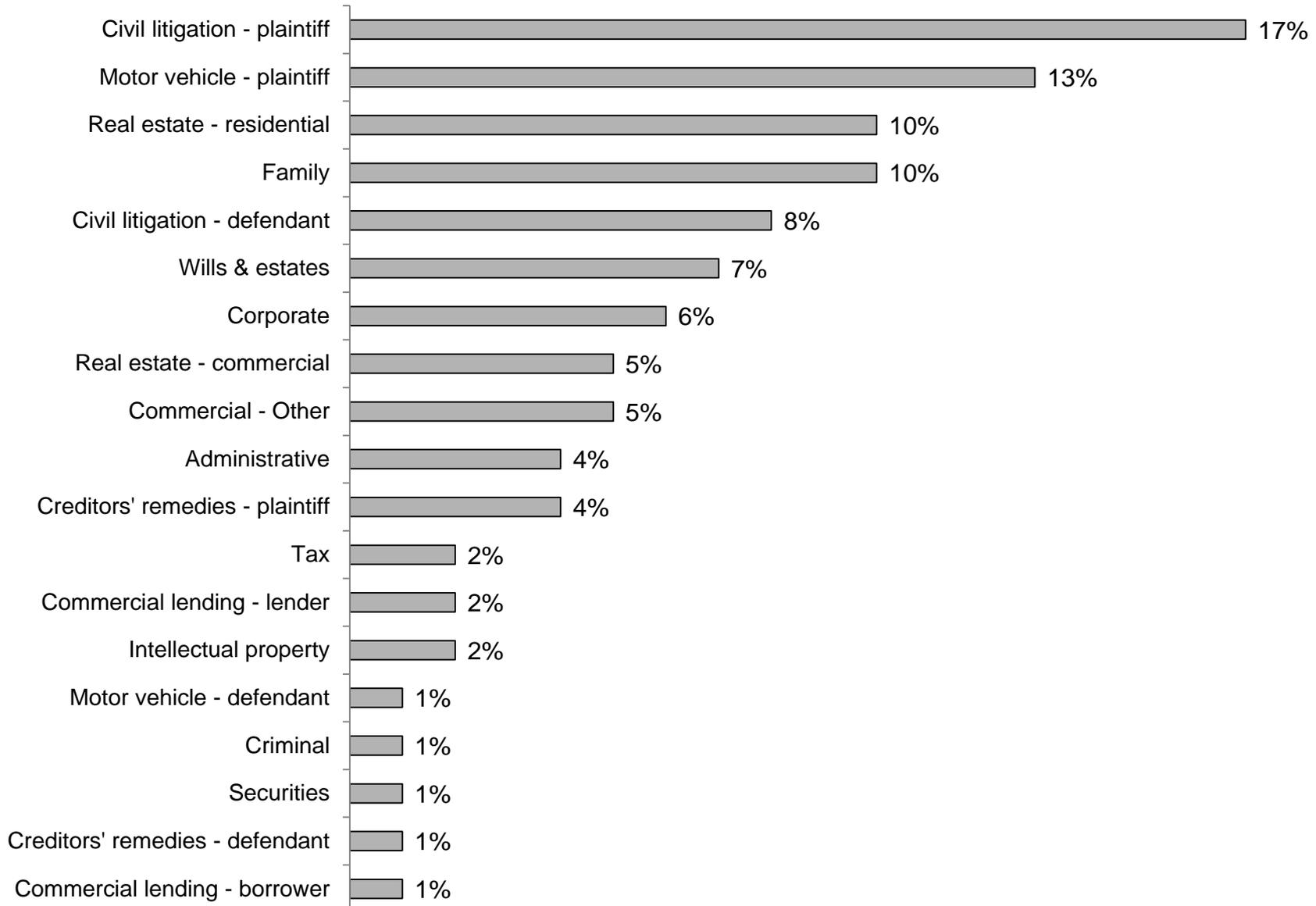


Number and Frequency of Reports

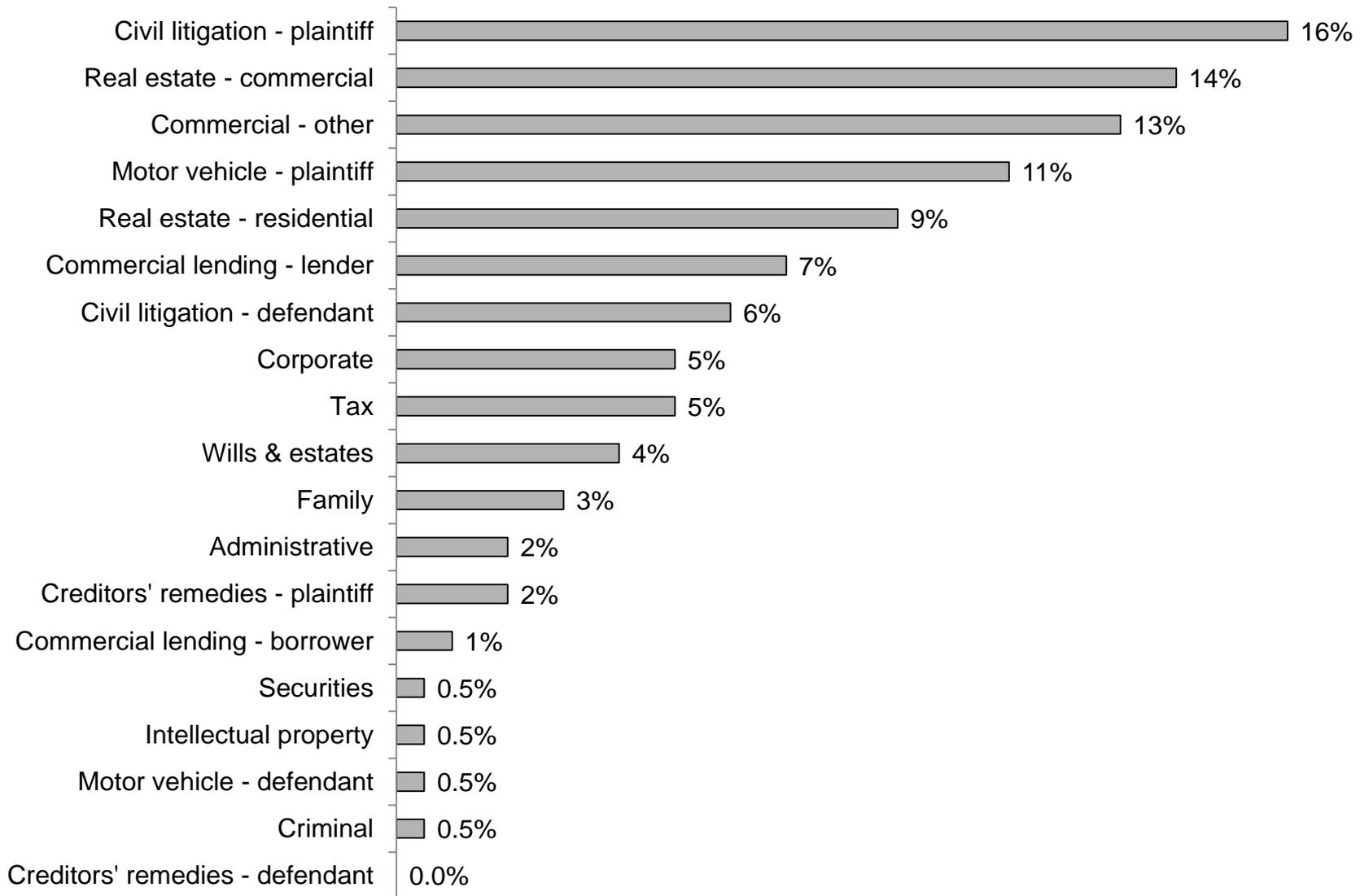
■ Number of Reports
◆ Frequency of Reports



Frequency by Area of Law

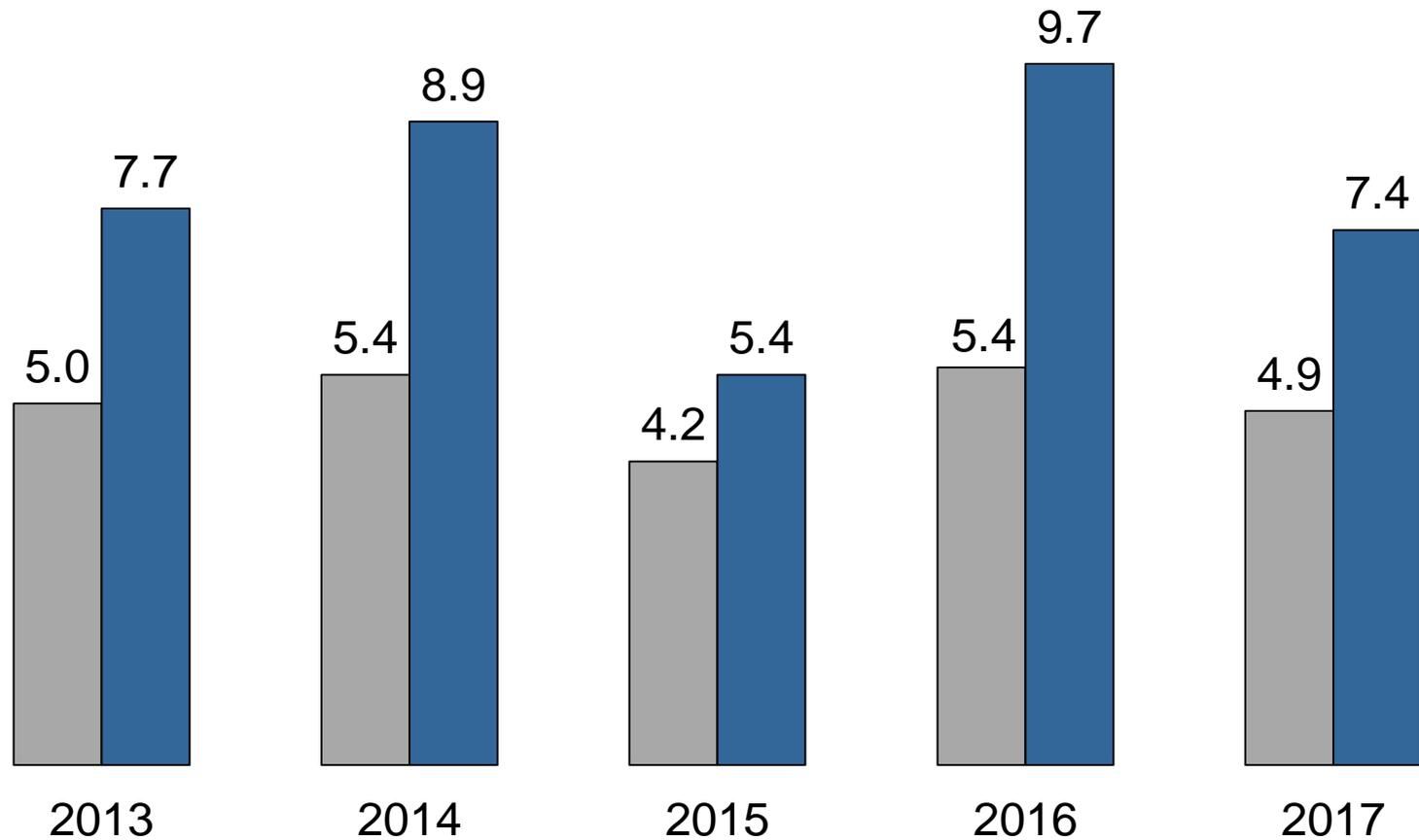


Severity by Area of Law



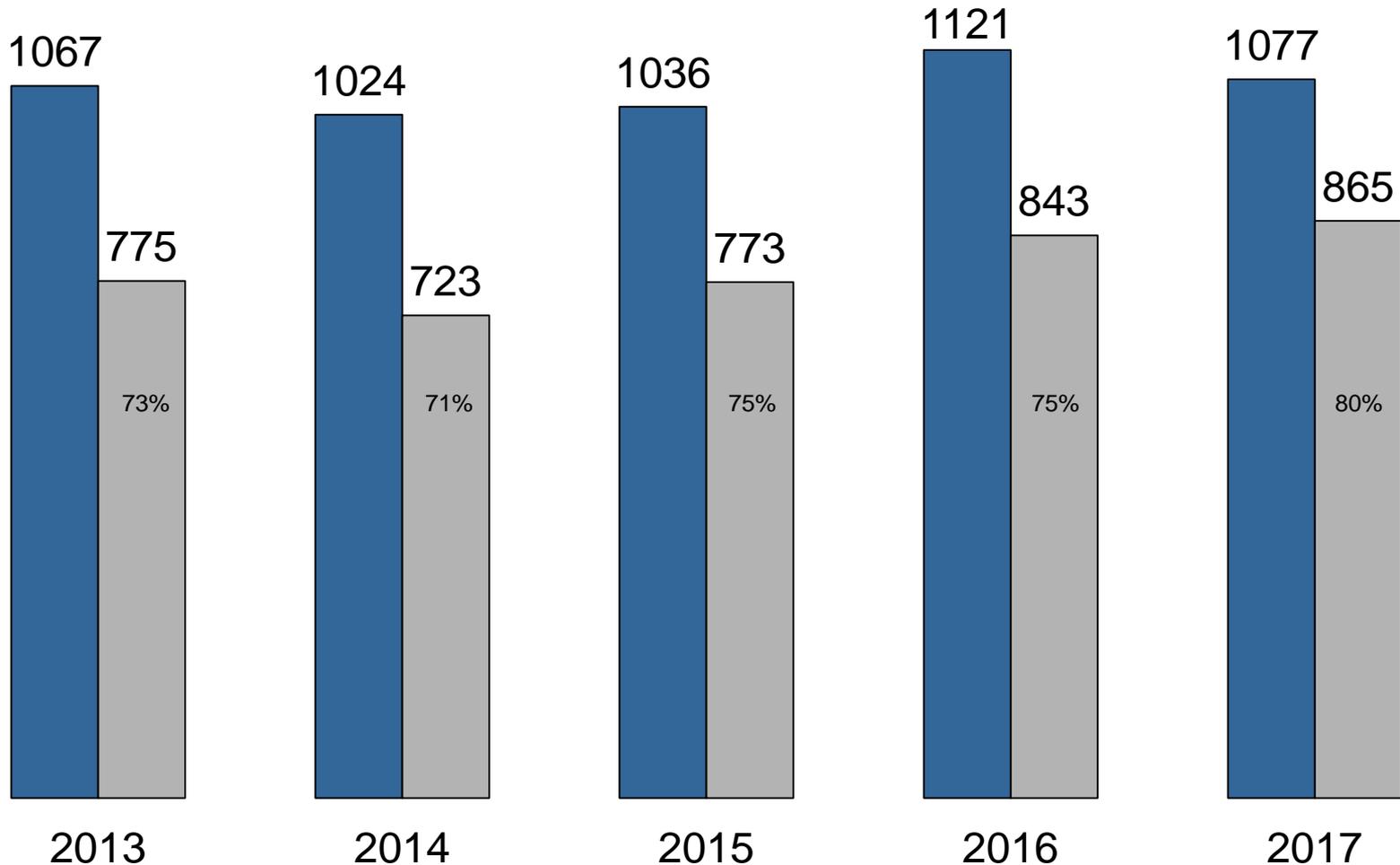
Expense
Indemnity

Claim Payments

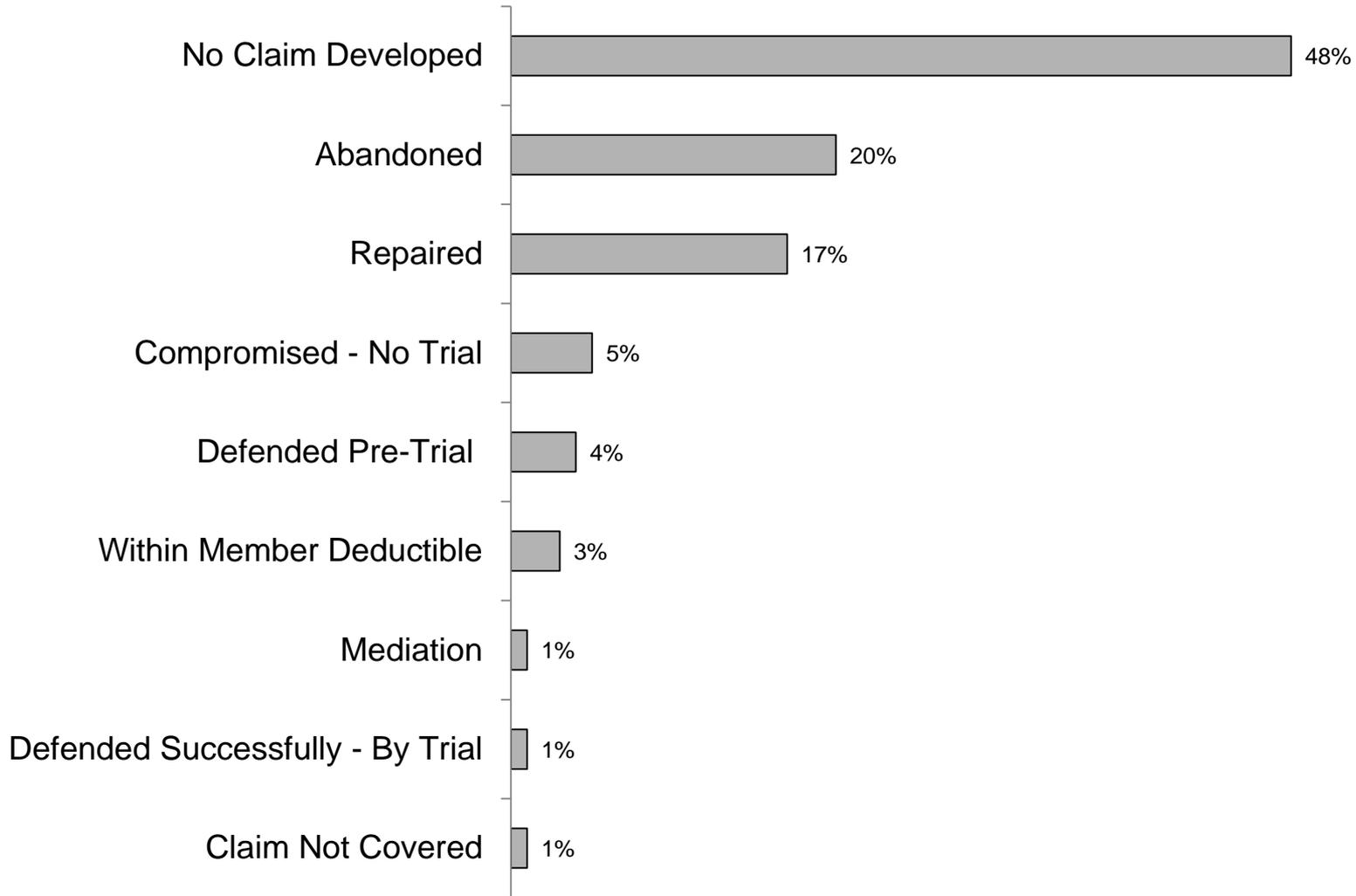


Closed Reports with No Payment

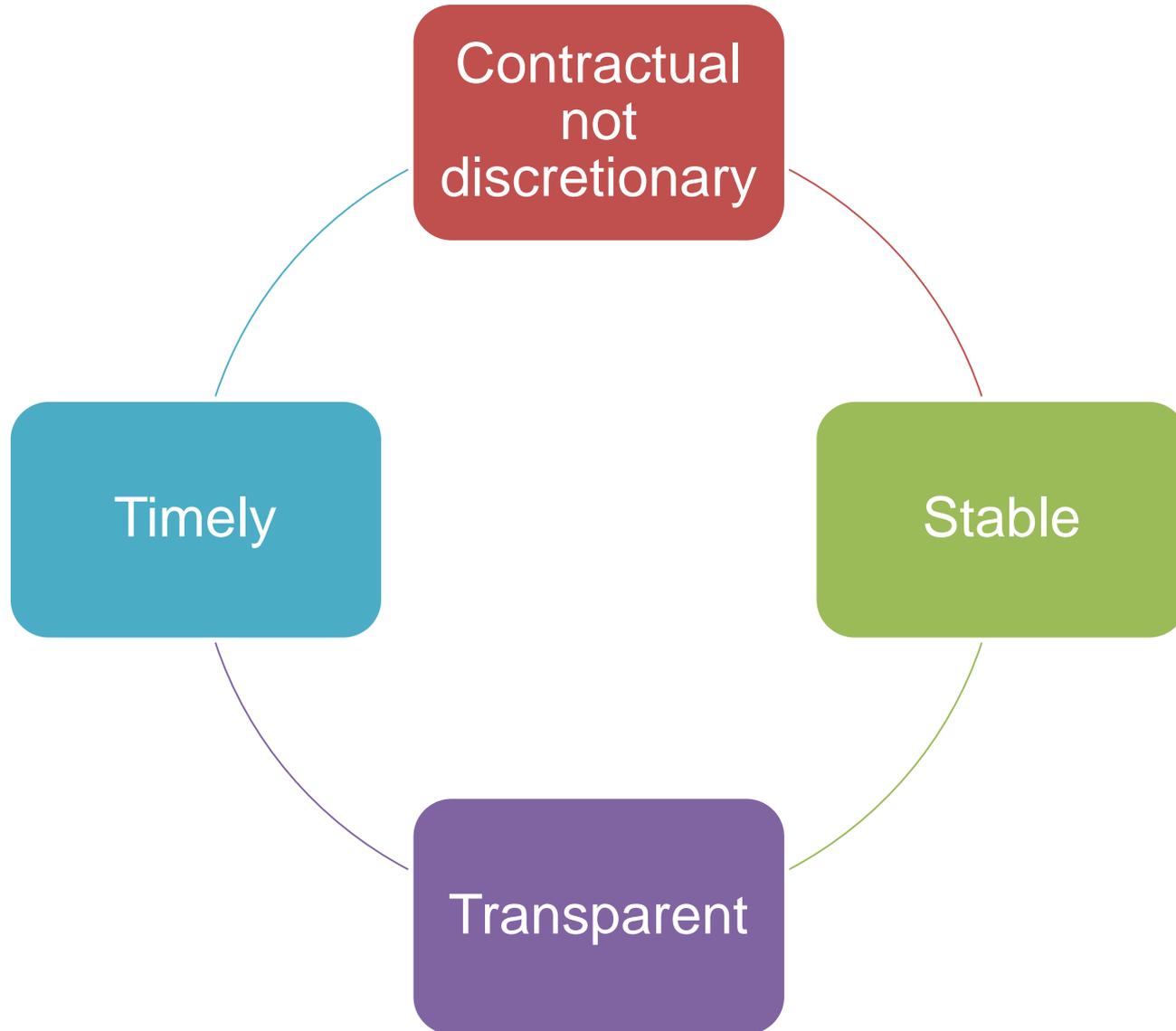
- Total Reports Closed
- Reports Closed with No Payment



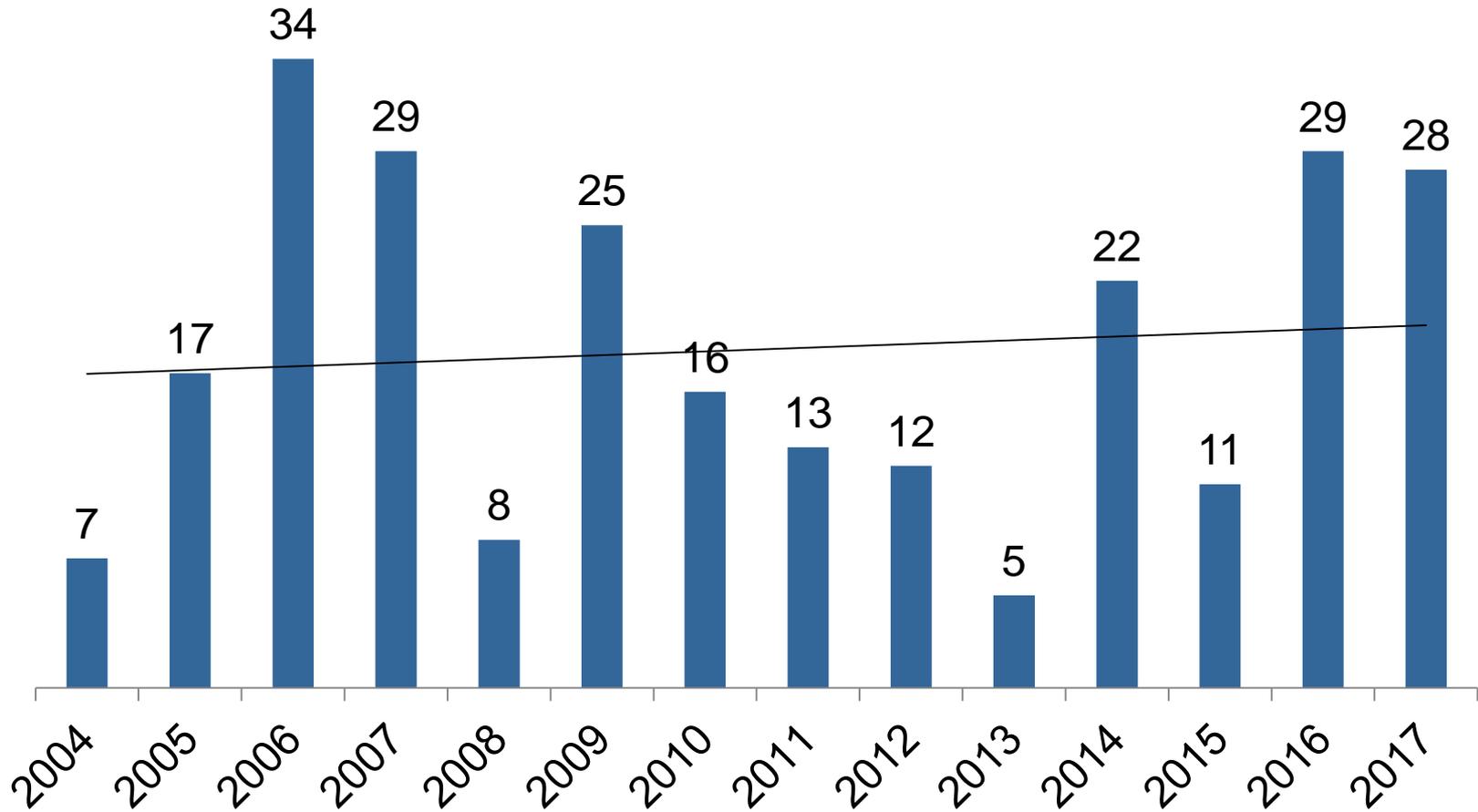
Results of Reports



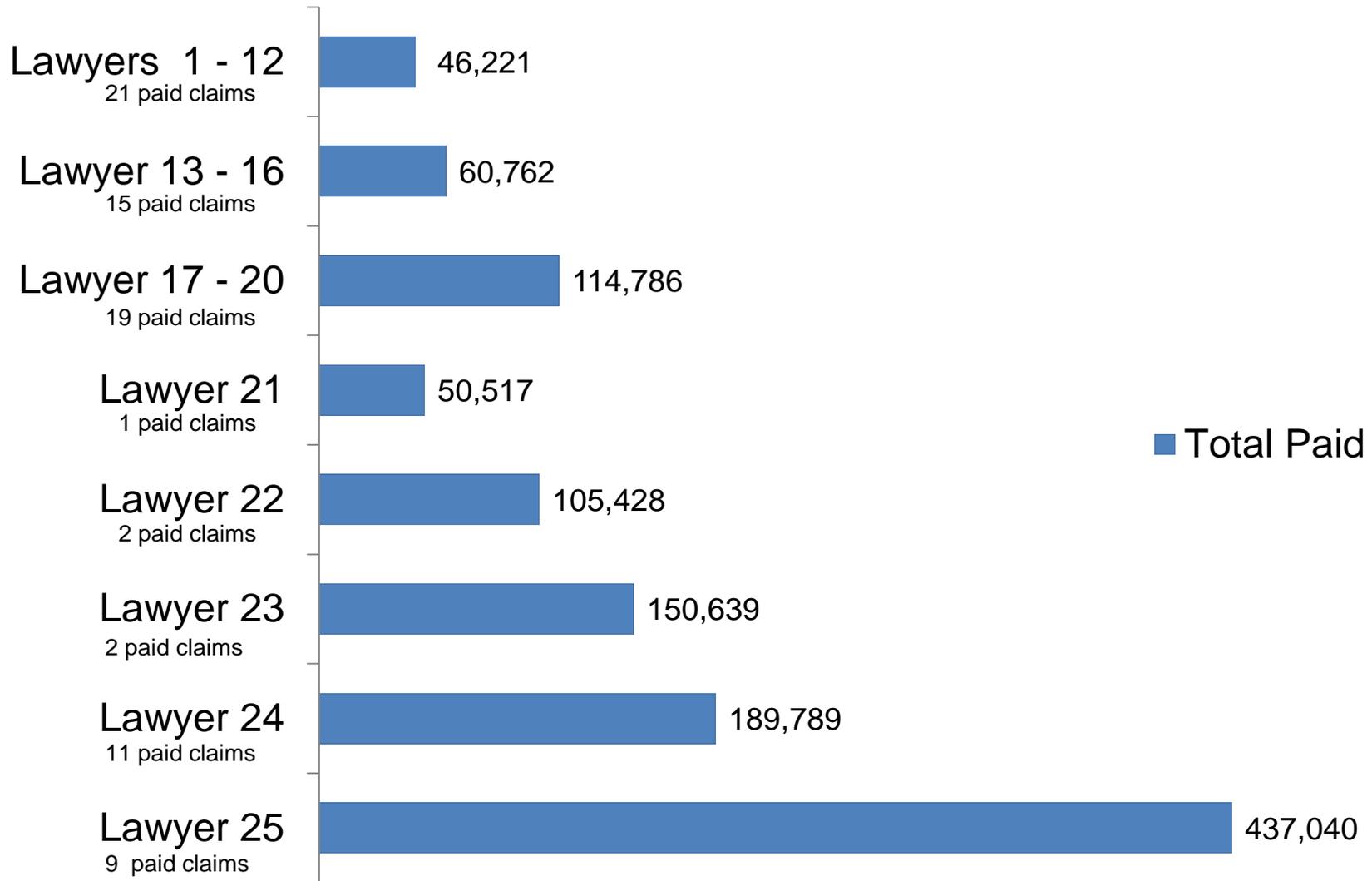
Trust Protection Coverage: Critical Components



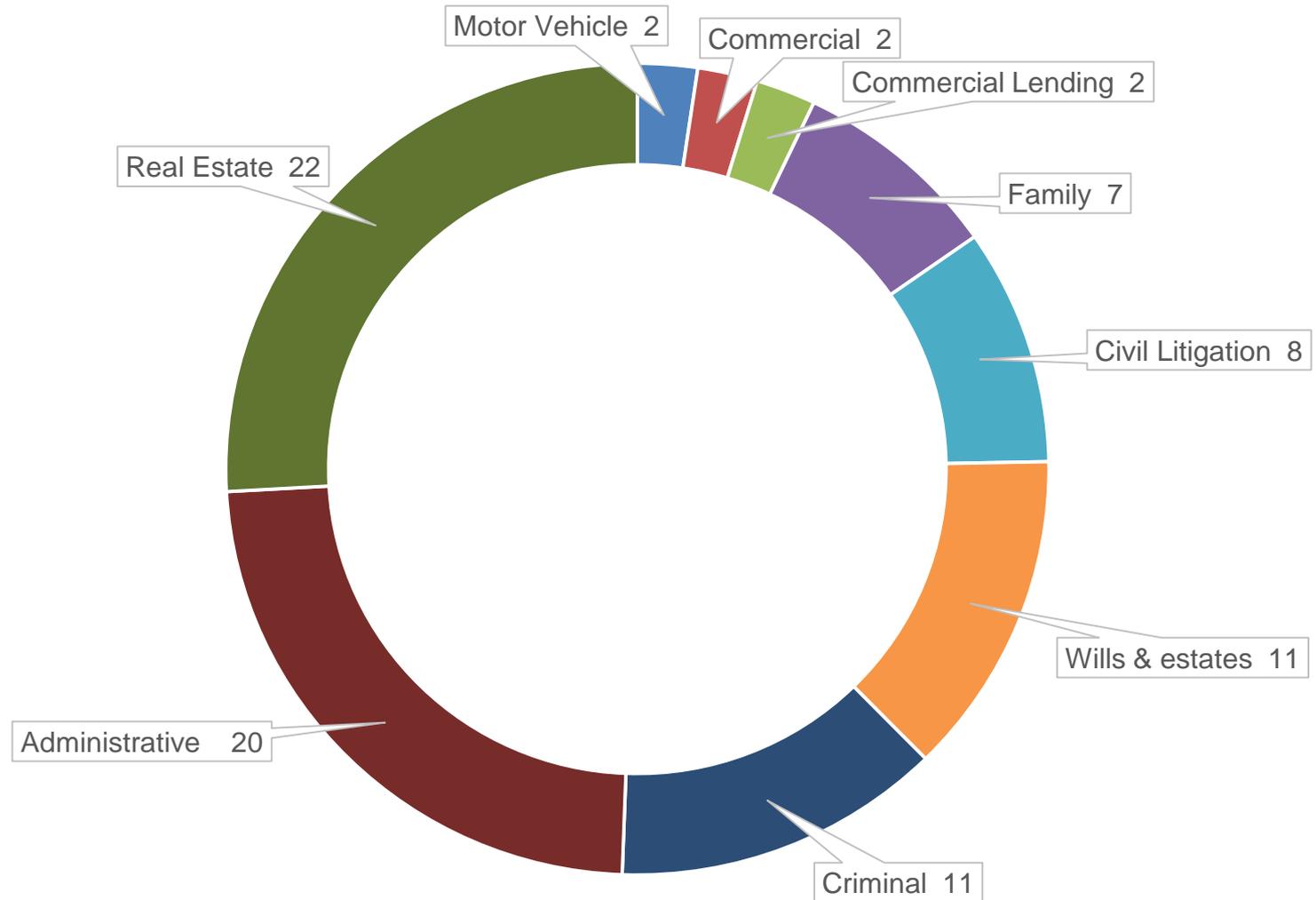
Part B Claims: 2004 – 2017



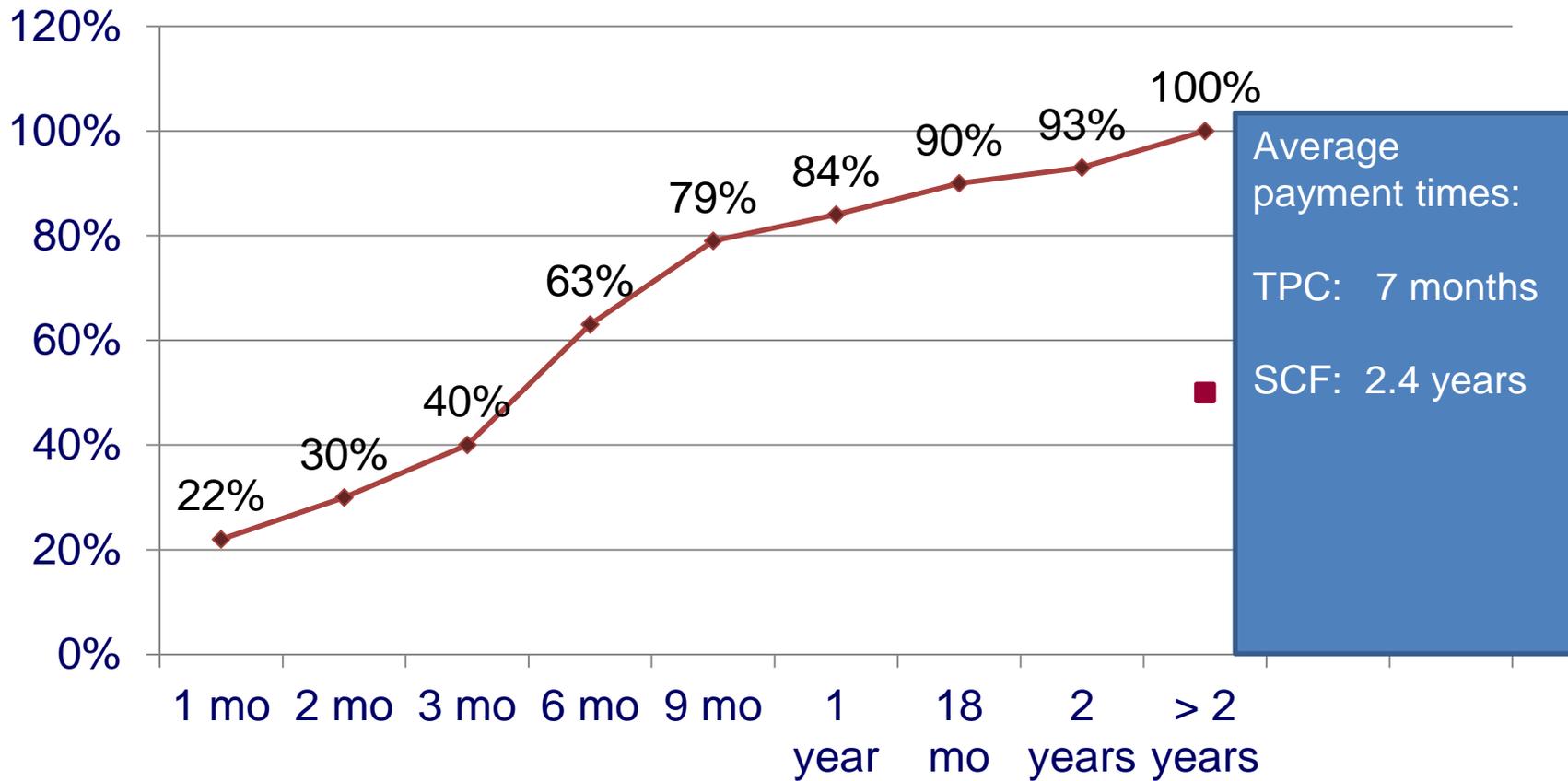
Lawyers with Paid Claims



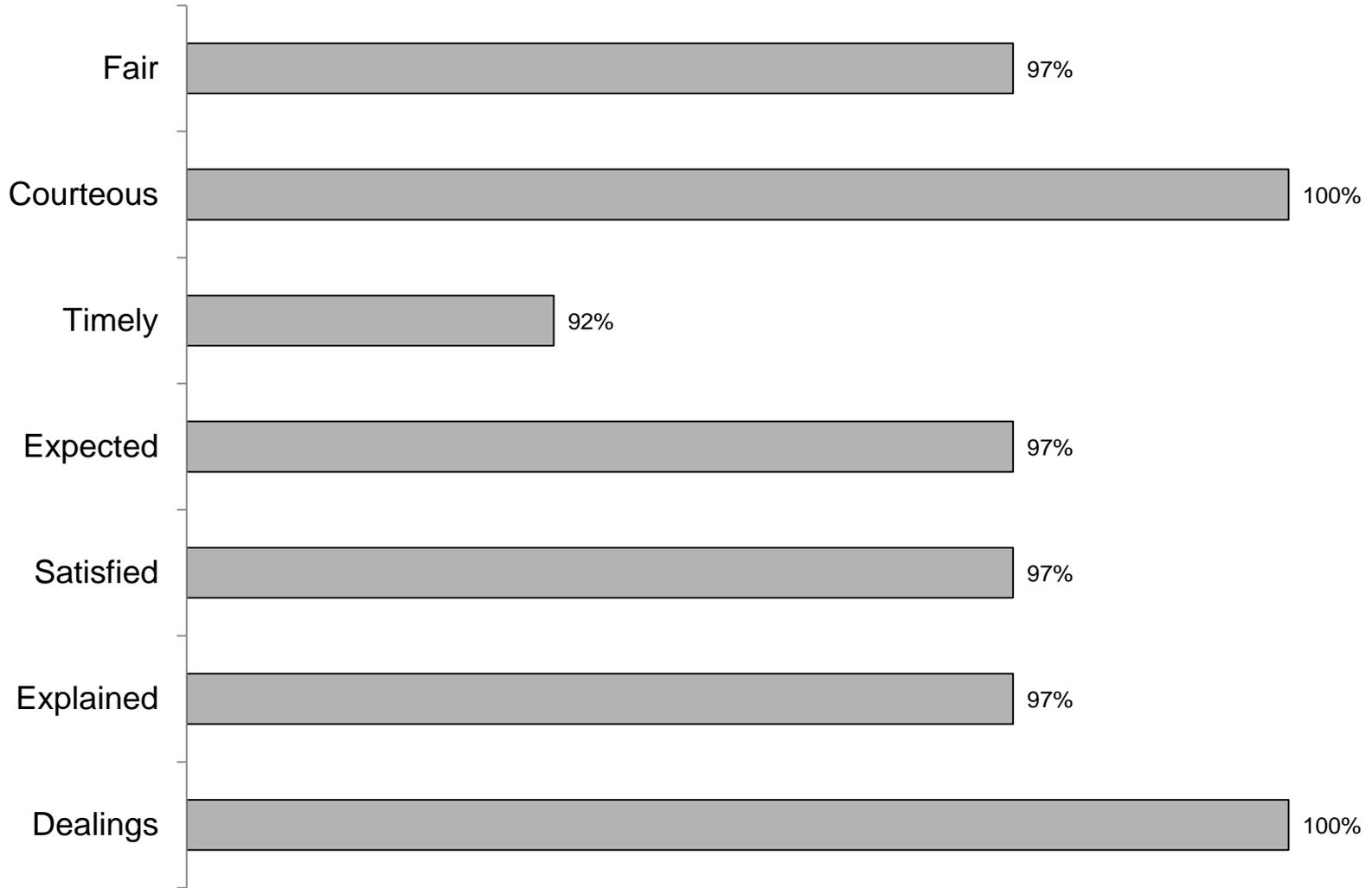
Paid Claims: by Area of Law



Payment Time Lines

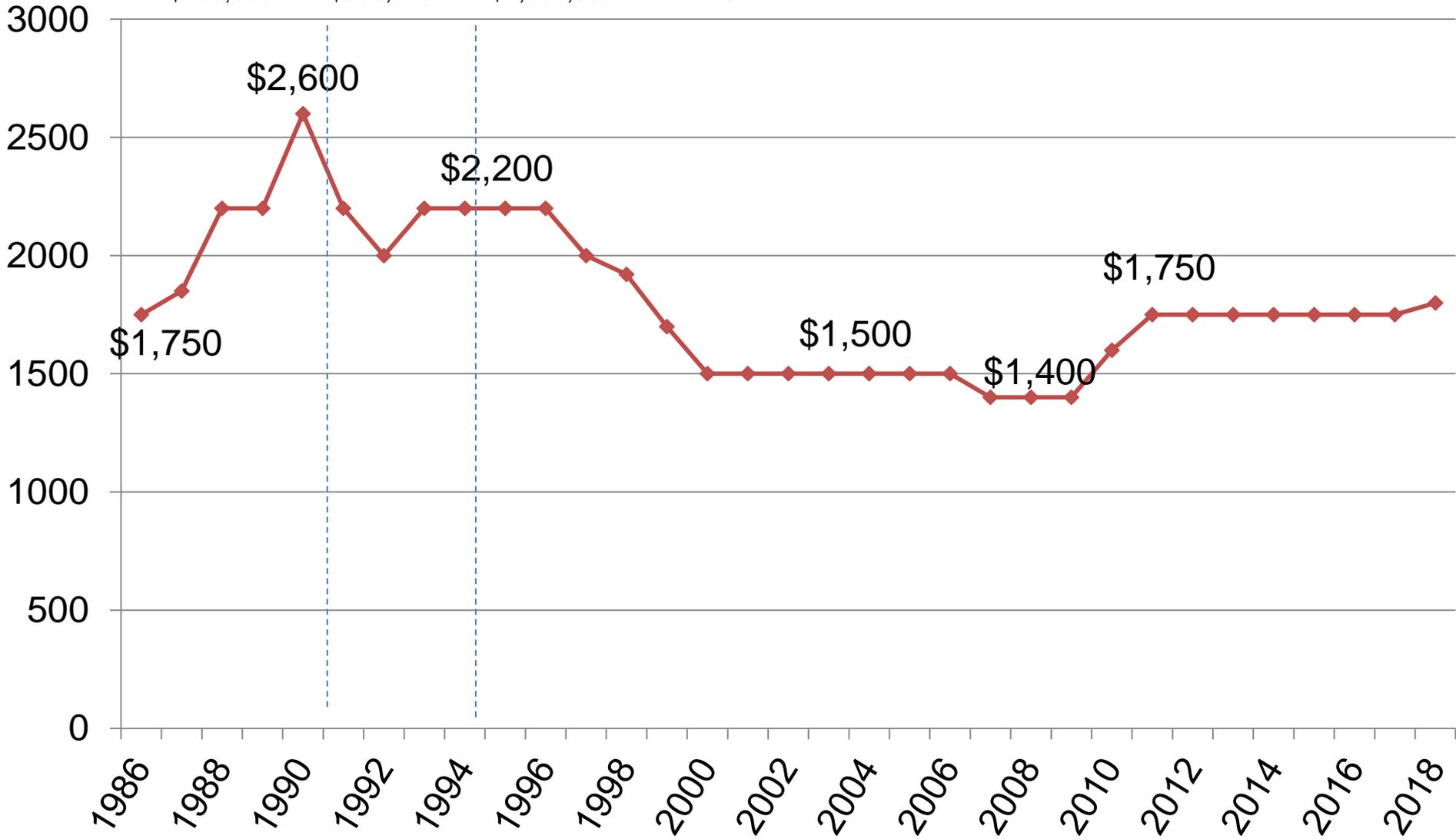


Service Evaluation Forms: Part B

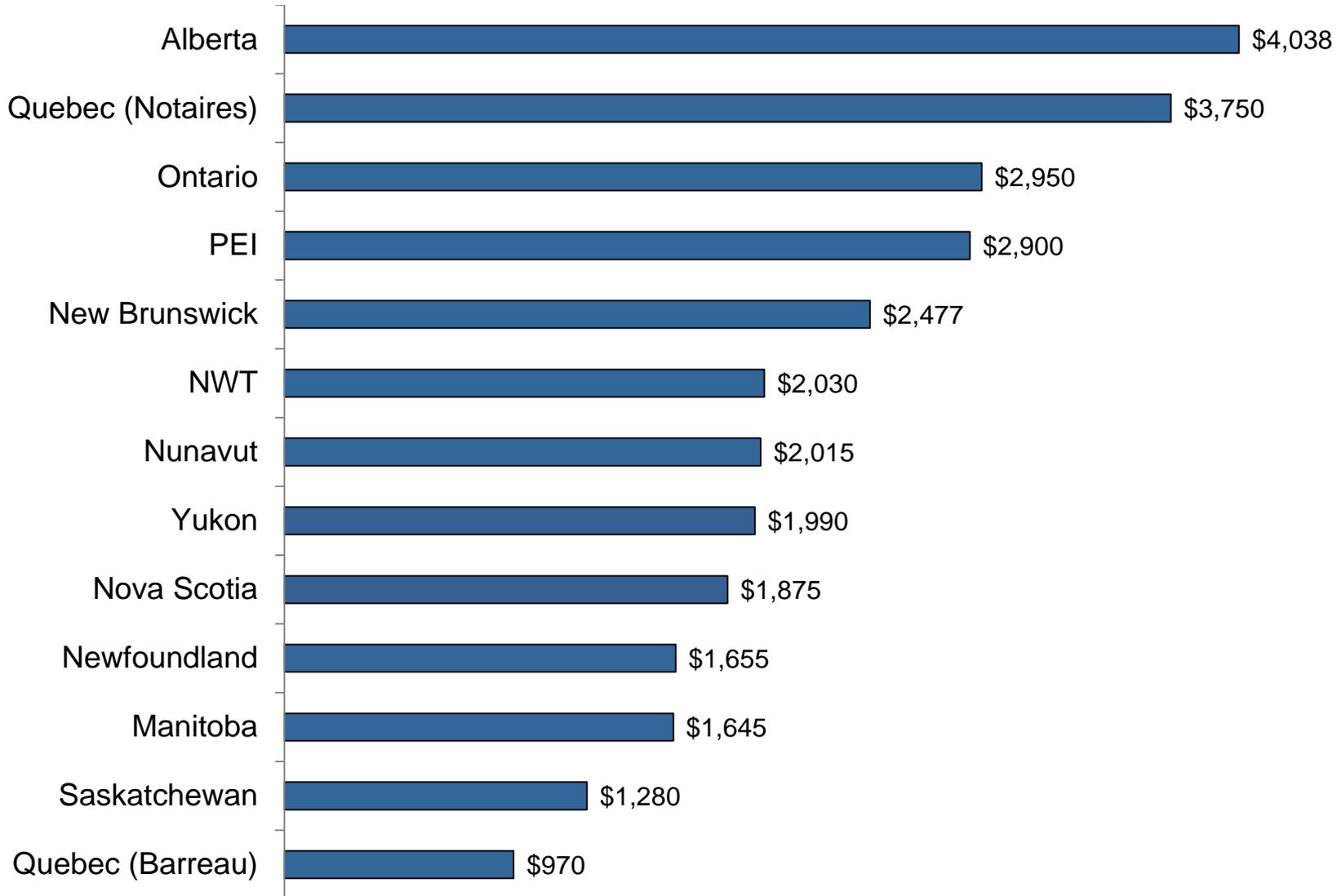


Insurance Fee History

\$200,000 \$500,000 \$1,000,000 →



Insurance Fee Comparison – 2018



Service Evaluation Forms



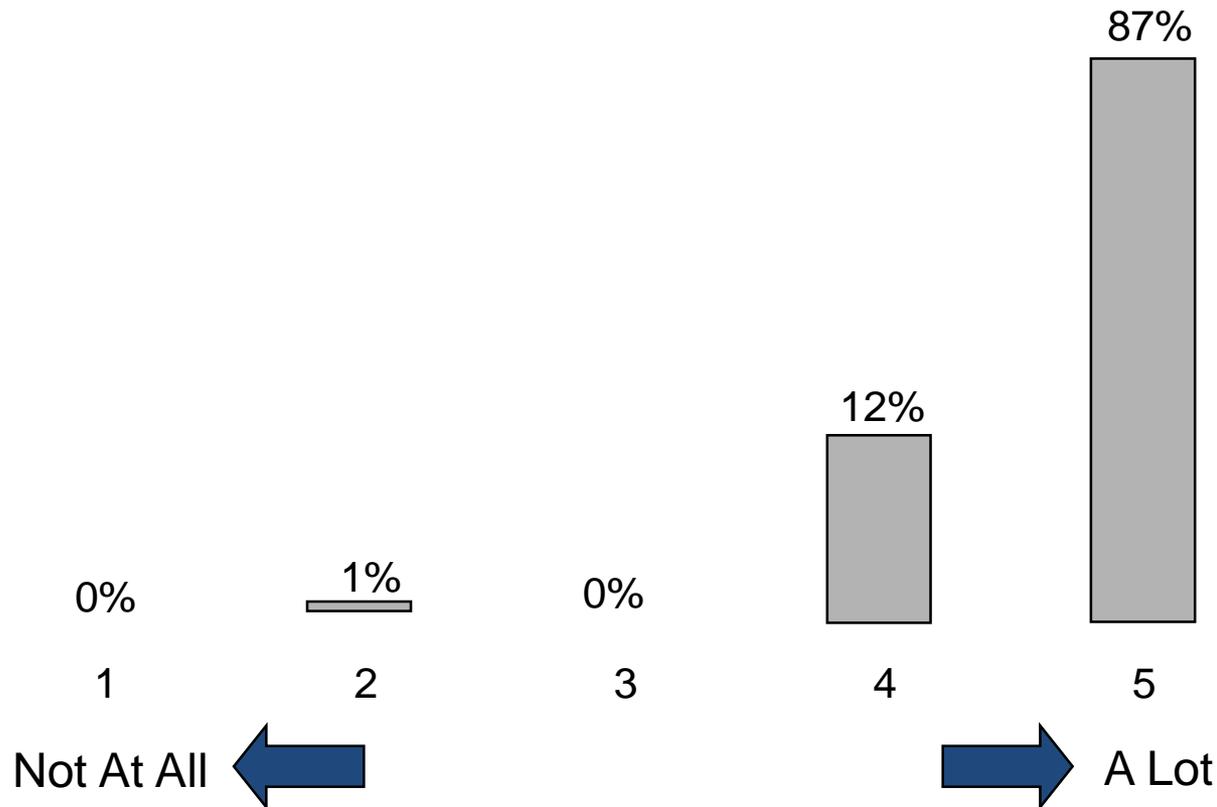
Kudos – 172



Grumbles – 6

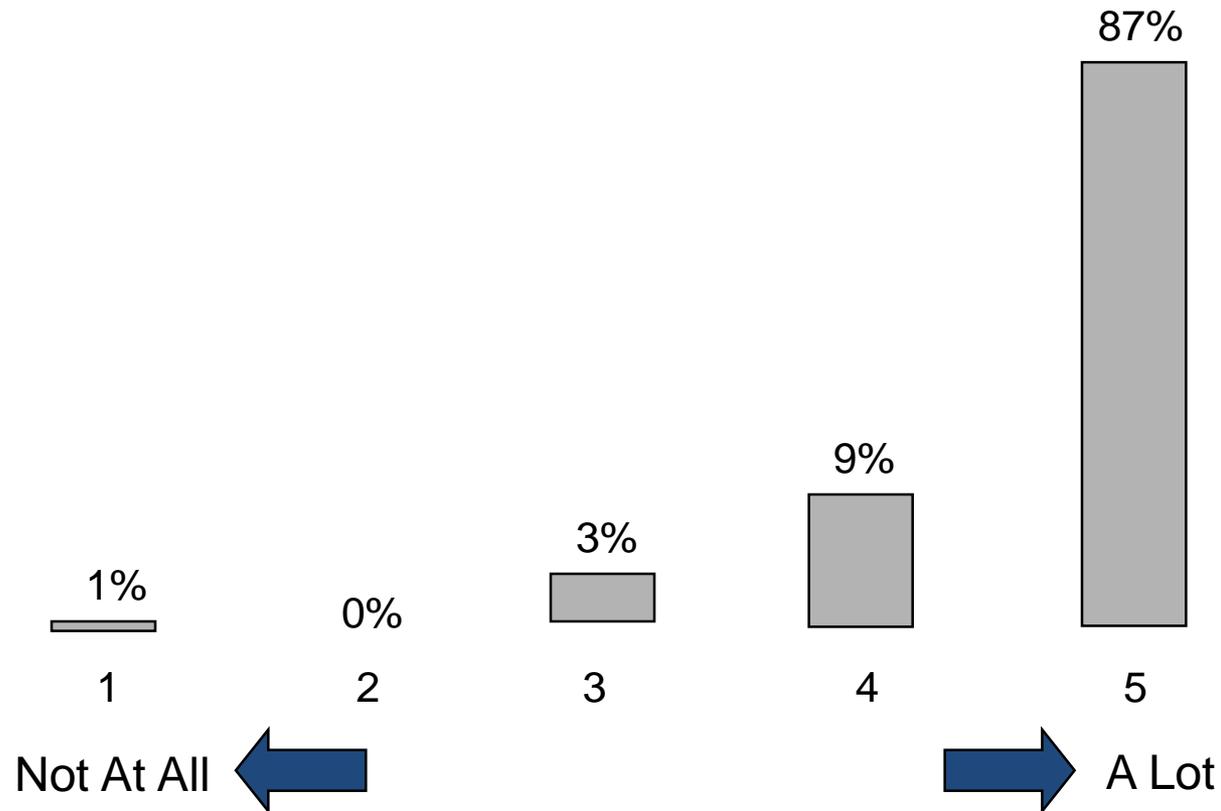
Service Evaluation Form Results

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



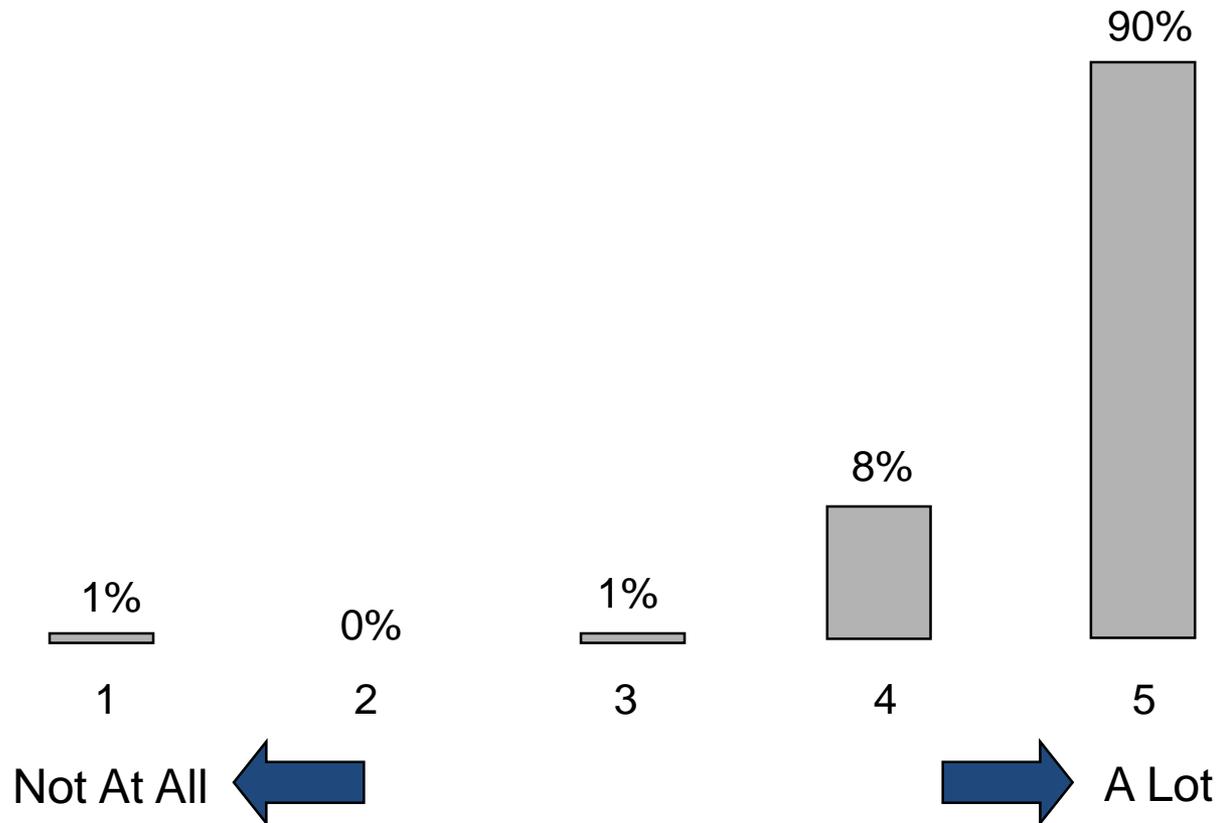
Service Evaluation Form Results

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



Service Evaluation Form Results

How satisfied overall were you with the services provided by LIF claims counsel?





*Lawyers
Insurance
Fund*

Thank you



Memo

To: Executive Committee
From: Ethics Committee
Date: February 2, 2018
Subject: Lawyers' referral fees and developments in Ontario

This memorandum is provided for information and update in regard to referral fee issues featured recently in popular media coverage, particularly in Ontario, and following amendments to applicable code of conduct provisions by the Law Society of Ontario (LSO).

The LSO has conducted an extensive review of issues related to lawyers' referral fees, following serious concerns that some specific fee arrangement practices were misleading or detrimental to clients. There has been a perceived increase in referral fee activity in Ontario and the United States, including by entities primarily in the business of generating and collecting referral fees. The LSO's Advertising and Fee Arrangements Issues Working Group has attended to the referral fee issues, among others, over the past couple of years, for the purpose of developing amendments to the professional conduct rules governing lawyers' collection and payment of referral fees in Ontario. In the Spring of 2017, the LSO adopted amendments recommended by the Working Group, putting into place a structure for capping the dollar amounts of referral fees that may be paid within the rules. The adopted amendments also introduced provisions to require disclosure/transparency and client consent to any referral fees paid in connection with clients' files.

The Ethics Committee was asked to consider the LSO's referral fee rule amendments and consider their relevance to the practice of law in British Columbia. The Ethics Committee has reviewed the relevant materials, including extensive excerpts from an interim report generated by the Working Group in Ontario while it was developing the amendment recommendations for the LSO, a number of popular media articles, and the announcements of the amendments that were ultimately adopted.

The Ethics Committee's observations are as follows:

1. **Very different rule structures:** Both before and after the adoption of the LSO's referral fee amendments, the applicable rule structures in British Columbia and Ontario are quite different. In Ontario, before the amendments were adopted, there was an absence of any upper limit on referral fees that may be paid and there were no requirements relating to

client knowledge and consent. The referral fee cap adopted in Ontario is set at 15% on the first \$50,000 in legal fees and 5% on subsequent amounts, up to an absolute limit of a \$25,000 referral fee.

The rules in BC do not quantify a cap in specific dollar figures but appear to be significantly more restrictive than the LSO's adopted amendments. Aspects of the applicable BC Code rules include:

- (a) That referral fees may only be paid to other lawyers;
 - (b) That the sharing of fees by lawyers who are not at the same firm must be in proportion to the amount of work done on the file by each lawyer;
 - (c) That such division of fees may be allowable "if there is consent from the client;" and
 - (d) That a referral fee may be paid between lawyers only if (i) the fee is reasonable and does not increase the total amount of fees paid by the client and (ii) the client is informed and consents.
2. **Better client protection in BC:** On the whole the structure of the rules in BC appears to offer the public better protection from abusive referral fees than the LSO rules, as the fee capping formula in Ontario may still allow the referral of client files to be a profitable enterprise on a commercial scale. The selection of any allowable upper limit on the dollar value of a referral fee is by nature arbitrary. In contrast the combination of client knowledge and consent, together with the stipulation that any referral fee must be reasonable and not increase the fees charged to the client, appears to be a more principled and effective route to preventing the commoditization of client files for the purpose of trade.
 3. **The LSO is just catching up with some of the protections in BC:** A key component of the announced amendments to the referral fee rules in Ontario is the requirement of a standardized referral form, which, if used, should ensure that the client is aware of the referral arrangement and willing to consent to it. To the extent that the referral fee amendments in Ontario have only recently imposed requirements for client awareness and consent, the LSO's rules are just catching up to some of the protections that were already in place in BC.
 4. **BC's approach is more aligned with protecting access to legal services:** From the perspective of concern over escalating legal services costs and the issue of lawyers' services being unaffordable for many of those who might benefit from legal assistance, the prospect of allowing an unnecessary additional element to profit from a client's legal woes is extremely problematic. If referral fees were to become an element of nearly

every file, it would be difficult to argue that the cost of the referrals is not adjusted into the cost of doing business and ultimately borne by the client, even if a habit of disguising that fact were maintained in billing practices. From an access perspective it is important that any unnecessary referring of files from one lawyer to another is not allowed to become a viable stand-alone business.

5. **Further attention may be warranted:** While the Ethics Committee does not view the issue of referral fees to be an immediate and pressing concern in the BC context, it has observed that there may be some justification for returning to a more substantial review of the issue in the foreseeable future. In particular, it has observed that some additional security may be achieved by revisiting the specific language of some of the applicable BC Code provisions. In addition, a potentially interesting aspect of the LSO amendments is a record-keeping and annual reporting requirement in relation to referral fee activity. An increase in reporting requirements may not be a desired result in BC. However, it may be worth considering whether there would be a sufficient public interest benefit associated with a better window on referral fee activity to warrant incorporating it in accounting audits or including it in required reports under the law firm regulation initiative.

Accordingly, the Ethics Committee's general conclusion is that a more 'in-depth' review of the BC Code's referral fee provisions should be conducted by the Committee at an appropriate future date, such date to be determined by the Chair of the Ethics Committee at that time.

The issue of referral fees between lawyers is distinct from the issue of lawyers' 'fee sharing' with non-lawyers (the latter being prohibited in British Columbia, except in accordance with the multi-disciplinary partnership rules). However, there is a potential for these issues to become intertwined, if regulatory developments were to erode the existing restrictions on fee sharing. For example, the rule described above that requires proportional fees to work done, by fee sharing lawyers at different firms, may also effectively restrict the payment of significant referral fees. If the rule were eliminated in order to open up the potential for fee sharing between lawyers and non-lawyers, that ancillary application to referral fees might be lost. The Ethics Committee has had recent occasion to consider the importance of the restrictions on fee sharing in relation to the Federation's Standing Committee's *Fee Sharing Discussion Paper*, which raised the prospect of reducing or eliminating the fee sharing restrictions, potentially in order to facilitate non-lawyer ownership of law firms. In responding to the Discussion Paper, the Ethics Committee stressed that while real and significant access to legal services benefits may justify changes to some of the professional conduct rules that protect the public, the mechanisms giving rise to such benefits must be well understood and the benefits reasonably certain to emerge, in order to warrant any risk reflected in the relaxing of restrictions created to protect the public interest.

The applicable BC Code rules 3.6-5 to 3.6-7 and Commentary, in relation to referral fees, are provided for reference below:

Division of fees and referral fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

- (a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (b) the client is informed and consents.

3.6-6.1 In rule 3.6-7, “**another lawyer**” includes a person who is:

- (a) a member of a recognized legal profession in any other jurisdiction; and
- (b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction.

3.6-7 A lawyer must not:

- (a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or
- (b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

- (a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;
- (b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;
- (c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or
- (d) occasionally entertaining potential referral sources by purchasing meals, providing tickets to, or attending at, sporting or other activities or sponsoring client functions.