

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, April, 15, 2011

PRESENT:

Gavin Hume, QC, President	Peter Lloyd, FCA
Bruce LeRose, QC, 1 st Vice-President	David Loukidelis, QC, Deputy Attorney General of BC
Art Vertlieb, QC, 2 nd Vice-President	Benjimen Meisner
Haydn Acheson	Nancy Merrill
Rita Andreone	David Mossop, QC
Kathryn Berge, QC	Suzette Narbonne
Joost Blom, QC	Thelma O'Grady
Patricia Bond	Lee Ongman
Robert Brun, QC	David Renwick, QC
E. David Crossin, QC	Claude Richmond
Tom Fellhauer	Alan Ross
Leon Getz, QC	Catherine Sas, QC
Carol Hickman, QC	Richard Stewart, QC
Stacy Kuiack	Herman Van Ommen
Jan Lindsay, QC	Kenneth Walker

ABSENT:

Satwinder Bains	Gregory Petrisor
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STAFF PRESENT:

Tim McGee	Bill McIntosh
Deborah Armour	Jeanette McPhee
Robyn Crisanti	Doug Munro
Charlotte Ensminger	Jack Olsen
Su Forbes, QC	Lesley Pritchard
Jeffrey Hoskins, QC	Alan Treleaven
Michael Lucas	Adam Whitcombe

GUESTS:

The Honourable Barry Penner, QC, Attorney General of BC
Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, BCCLS
Ron Friesen, CEO, CLEBC
Jeremy Hainsworth, Reporter, Lawyers Weekly
Azool Jaffer-Jeraj, President, Trial Lawyers Association of BC
Jamie Maclaren, Executive Director, Access Pro Bono
Joel McLaughlin, Ministerial Assistant to the Attorney General of BC
Sharon Matthews, Vice-President, CBABC
Caroline Nevin, Executive Director, CBABC
Heather Raven, Associate Dean, Academic and Student Relations, UVIC
Wayne Robertson, QC, Executive Director, Law Foundation of BC

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on March 4, 2011 were approved as circulated.

Consent Resolutions

The following resolutions were passed unanimously and by consent.

2. 2010 Law Society Scholarship: Credentials Committee Recommendation

BE IT RESOLVED to adopt the recommendation of the Credentials Committee that the 2011 Law Scholarship of \$12,000 be awarded to Jennifer Lee-Ann Smith, with Karen Lisa Whonnock as runner-up, subject to the conditions set out in Ms. Small's memorandum at page 2001 of the *in camera* meeting materials.

3. Act and Rules Subcommittee: Amendment to Rule 3-57 (Payment of Fees from Trust)

BE IT RESOLVED to rescind Rule 3-57(3) and substitute the following:

- (3) A bill or letter is delivered within the meaning of this Rule if it is
- (a) mailed to the client at the client's last known address,
 - (b) delivered personally to the client,
 - (c) transmitted by electronic facsimile to the client at the client's last known electronic facsimile number,
 - (d) transmitted by electronic mail to the client at the client's last known electronic mail address, or
 - (e) made available to the client
 - (i) by means that allow the client to review the content of the document and save or print a copy, or
 - (ii) by other means agreed to by the client.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REGULAR AGENDA – for Discussion and Decision

4. Attorney General's Greeting

Mr. Hume welcomed the Honourable Barry Penner, QC, Attorney General of BC and his Ministerial Assistant, Joel McLaughlin and invited the Attorney General to address the meeting. Minister Penner thanked Mr. Hume and spoke briefly on a number of topics, including:

- the pending HST referendum process
- the upcoming Spring Session of the Legislature

Mr. Hume noted that Minister Penner has a standing invitation to attend Benchers meetings as an *ex officio* Bencher of the Law Society.

5. President's Report

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President since his last report, and elaborated on the following matters.

a. Meeting with BC Chief Justices

Mr. Hume and Mr. McGee met recently with Chief Justices Finch and Bauman. They had a positive discussion of the Law Society's current initiatives to enhance access to legal services.

b. Meeting with the Deputy Attorney General David Loukidelis, QC

Mr. Hume met recently with Deputy Attorney General David Loukidelis, QC for discussion of a number of topics, including:

- the Report of the Public Commission on Legal Aid in BC and the prospect of a conference on next steps for improving the delivery of legal aid in BC
- the Law Society's pending package of proposed legislative amendments

c. Federation of Law Societies of Canada Council Meeting & Semi-annual Conference in Banff (March 17-19, 2011)

Mr. Hume briefed the Benchers as the Law Society's member of the Federation Council regarding the Federation's March Council meeting and Semi-annual Conference of the Federation of Law Societies in Banff.

d. Recent External Appointments

Mr. Hume reported on two recent President's board appointments to the Board of Directors of the Continuing Legal Education Society of BC, made in accordance with CLEBC's by-laws and with the advice of the Appointments Subcommittee:

- Thelma O'Grady (Vancouver Benchers) – re-appointed for a second three-year term commencing September 1, 2011
- Ronald Lamperson (County of Nanaimo lawyer) – jointly re-appointed by the CBABC and Law Society Presidents for a second three-year term commencing September 1, 2011

e. Access to Legal Services Advisory Committee Update

Committee Chair Art Vertlieb, QC updated the Benchers on a number of current initiatives, including:

- Proposed expansion of permitted activities and services by articled students
- Progress of the Courts Subcommittee and the Solicitors Subcommittee
 - Regarding proposed expansion of permitted activities and services by paralegals

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 1 to these minutes), including the following matters:

1. Implementation of Core Process Review Recommendations – Enterprise Content Management
2. Communications Plan Initiatives
3. 2012 Budgeting and Fee Recommendations – Process Update
4. Buildings and Premises – Space Usage Assessment
5. Bencher Retreat - Update re: Planning
6. Continuing Professional Development (CPD) Program – 2010 Results

Mr. McGee updated the reporting statistics provided in his written report as of April 15, 2011:

- nine lawyers are currently non compliant and therefore have been suspended
 - of those, five lawyers had already been suspended for non completion of 2009 CPD or for other reasons
- one other lawyer has been granted an extension to April 30

Mr. LeRose provided an update on planning of the workshop program for the 2011 Benchers' Retreat: *The Future of Legal Regulation in British Columbia*.

7. Report on Outstanding Hearing and Review Reports

The Benchers received and reviewed a report on outstanding hearing decisions.

OTHER MATTERS – For Discussion and/or Decision

8. Review of the Non-Conflicts Portion of the Model Code of Professional Conduct

Ethics Committee Chair Joost Blom, QC briefed the Benchers, providing highlights of the Committee's work over the past seven years, following Federation of Law Societies of Canada's decision to take on as strategic initiative the harmonizing of professional conduct rules across the country. Mr. Blom noted the key roles performed by then-Bencher (now Life Bencher) David Zacks, QC and Law Society Ethics Advisor Jack Olsen in supporting the work of the Federation in developing its model code of conduct (the "Model Code").

Mr. Blom noted that the Model Code has been adopted by the Law Society of Alberta and the Law Society of Manitoba. He reminded the Benchers that in October 2010 they reviewed the non-conflicts provisions of the Model Code, which were then posted to the Law Society website for comment by the profession, while the Federation continued to work on the conflicts provisions. Mr. Blom referred the Benchers to the Ethics Committee memorandum at page 8000 of the meeting materials for discussion of changes made in the course of developing the current draft of the BC version of the Model Code (the "BC Model Code" at page 8106 of the meeting materials). Mr. Blom confirmed that the Ethics Committee is seeking the Benchers' adoption of the BC Model Code (without conflicts provisions) and with deferral of implementation to an undetermined future date, pending completion of the Federation's review of the

Model Code's conflicts provisions and the Ethics Committee's further advice to the Benchers in that regard.

Mr. Blom advised that the Ethics Committee expects to brief the Benchers on the conflicts portion of the Code in detail over the next several months, and to recommend a consultation process with the profession similar to that conducted with the non-conflicts portion of the BC Code. The Committee expects that consultation process and its subsequent review of submissions from the profession on the conflicts portion of the Code to be completed later in the year.

Mr. Blom moved (seconded by Mr. Getz) that the BC Model Code (without conflicts provisions) be adopted to replace the current Professional Conduct Handbook, deferring implementation to an undetermined future date.

The key points raised in the ensuing discussion were:

- the Model Code is logically structured and clearly drafted, and provides a helpful Commentary
- wherever possible the BC Model Code follows the structure and language of the Model Code, with changes made only where substantive or technical improvement is intended and considered necessary
- national harmonization of conduct rules is important and remains the long-term goal
- both the Model Code and the BC Model Code are and will continue to be "living documents"

The motion was carried.

Mr. Brun confirmed that his law partner will provide the Ethics Committee with suggestions on the issue of whether discovery should be closed or open.

9. Bencher Governance Considerations

Mr. Hume introduced this matter, outlining the process followed by the Executive Committee in reaching the recommendations set out in the Committee's memorandum at page 9000 of the meeting materials (Appendix 2 to these minutes). Mr. Hoskins provided additional background, noting that:

- the memorandum classifies the Executive Committee's recommendations on a number of Bencher governance issues into two categories (each in turn divided into "HIGH PRIORITY" and "LOW PRIORITY")
 - matters that can be addressed by simple rule changes
 - matters that require a referendum vote by the membership to endorse proposed rule changes

Mr. Getz moved (seconded by Mr. Richmond) that:

- all matters classified in the Executive Committee's memorandum as "HIGH PRIORITY" (except matters 6, 7 and 8) be referred to the Executive Committee for review and development of recommendations to be brought back to the Benchers in due course

- matters 6, 7 and 8 be referred to an independent committee for review and development of recommendations to be brought back to the Benchers in due course

The key points raised in the ensuing discussion were:

- Bencher governance issues are likely to receive significant attention in the 2012-2014 Strategic Plan
- review of Bencher election and term of office issues by an independent committee of non-Benchers will enhance public and profession confidence
- a stand-alone Bencher governance committee and a subcommittee of the Executive Committee on governance issues might each present benefits and drawbacks in the areas of background, focus and objectivity

The motion was carried.

10. Continuing Legal Education Society of BC (CLE) Update

Mr. Stewart and Ms. O'Grady provided a CLE update in their capacity as Benchers appointed to the CLE board of directors. Both confirmed their confidence in CLE's board of directors, management, staff and operations.

Mr. Stewart focused on administration and management issues, under four topics:

- Leadership
- Board composition and structure
- Board meetings
- Finances

Ms. O'Grady outlined CLE's products, services and strategic priorities. Mr. Stewart noted CLE's commitment to fiscal responsibility and the inherent tension between that commitment and CLE's non-profit identity, and confirmed that the CLE board is attuned to the need for balance in that regard.

11. Lawyers Insurance Fund (LIF) 2010 Year End Report

LIF Director Su Forbes, QC provided the Benchers with an overview of LIF's 2010 performance. Ms. Forbes's remarks were supplemented by a PowerPoint presentation (attached as Appendix 3 to these minutes).

12. Federation of Law Societies of Canada Update: Report on the Banff Council Meeting & Semi-annual Conference (March 17-19, 2011)

Mr. Hume reported to the Benchers as the Law Society's member of the Federation Council regarding the March Council meeting and Semi-annual Conference in Banff. Mr. Hume identified strategic planning and governance as key topics discussed at the Council meeting. Mr. Hume referred to progress reports on several of the Federation's strategic initiatives, including the development of national standards for admission to and discipline by member law societies, common law degree standards, and a model code of conduct.

Mr. Hume noted that the Conflicts section of the Model Code of Conduct was approved, except the issues of current client conflicts and the financial harm exception to the duty of confidentiality, which were referred to the Model Code Standing Committee, which he chairs. Mr. Hume also noted that the Council approved the formation of a Federation Standing Committee on Access to Legal Services, and that Vancouver Bencher David Mossop, QC has been appointed to that committee.

Mr. Hume then reported on the Federation's Semi-annual Conference, advising that public oversight was the conference theme, and that the Law Society's research paper and plans for a BC-based oversight model were received positively. Mr. Hume identified coordination of national initiatives as a key topic of discussion, and as illustration of the importance of the various strategic initiatives discussed at the Council meeting, particularly in the context of protecting professional independence.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

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The Law Society
of British Columbia



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

April 15, 2011

Introduction

My report this month includes updates on a number of projects including our internal working group tasked with defining our needs for a new organization wide system for information and document management and an update on initiatives under our new Law Society Communications Plan. Our financial results for the first quarter ending March 31 will be presented at the next Benchers meeting on May 13, 2011.

1. Implementation of Core Process Review Recommendations – Enterprise Content Management

A major finding of the Core Process Review completed in 2010 was that we are an organization that relies heavily on the creation, storage and retrieval of data and on the exchange of relevant, accurate information across our various departments. However, the report also found that we do not have a modern system or information management tool to support that need.

In response, we created an internal working group co-chaired by Adam Whitcombe, Chief Information and Planning Officer, and Jeanette McPhee, Chief Financial Officer, with a mandate to define our user needs in detail, consult on what would constitute the best solution, and create the necessary business case for consideration. The working group has accordingly broken the project into three phases. The first phase will be the detailed needs analysis, the second phase will involve system and vendor selection based on the first phase results and the third phase will involve working with the selected vendors and staff to implement the solutions.

The working group has concluded a competitive search and assessment for a consultant to assist in the critical first phase of the project. Based upon a number of criteria including experience, track record and cost, KPMG Canada Advisory Services has been selected. Work has already started, led by Dominic Jaar, an associate partner with KPMG Canada's Information Management Services Group. Dominic is a lawyer and has been involved in the development of international standards and leading practices regarding information management solutions for a variety of organizations. The KPMG engagement is expected to take about 12 weeks and will produce a comprehensive report covering recommended solutions, a roadmap for implementation, budget estimates and a proposed timeline. The cost of the engagement is within the 2011 capital budget provision for the Law Society's electronic document and information management solutions.

I will be updating the Benchers throughout the year on this important project and the other major projects implementing the Core Process Review report recommendations.

2. Communications Plan Initiatives

Communications re: Ombudsperson

A central part of Law Society's Communications Plan is to support our strategic objective of enhancing public confidence in our ability to effectively regulate the profession. In March the Benchers approved two initiatives with this in mind, the development of a proposal for independent oversight and enhanced communications regarding the role the BC Ombudsperson plays in reviewing the Law Society's handling of complaints against lawyers.

Work on an independent oversight model is underway and will be brought forward for consideration by the Benchers as part of the new strategic plan discussions in the fall. To address the direction given regarding the Ombudsperson, the Communications department is implementing a four-step plan as follows:

- a. All information being sent to complainants is being reviewed for form and substance to ensure that the complainant review options are clear and easy to follow, including instructions on recourse to the Ombudsperson;
- b. Information regarding the Ombudsperson on the Law Society's website is being expanded and located alongside other information about our complaints process and elsewhere as appropriate;
- c. Statistical information regarding the number of Ombudsperson reviews, the outcomes and any explanatory information will be included in an annual media release as well as part of the Law Society's annual review; and
- d. The Office of the Ombudsperson will be apprised of these initiatives.

New Law Society External Website

As reported at the last Benchers meeting, the Law Society's external website has recently been completely overhauled to make it more user-friendly, relevant and informative. Since the launch a month ago, the site has been visited 89,000 times by 37,600 unique visitors who viewed a total of 551,000 pages. For purposes of comparison, consider that in March of last year our site had 29,800 unique visitors, so the new site is generating much broader interest in an even shorter period of time. The launch was also picked up by several legal organizations who posted news of it through their own news media and our tweets have been re-tweeted by many. The most popular page is the Lawyer Lookup (41,000 page views) followed by Lawyer Login

(16,000). Anecdotally, we have had a number of positive comments about the site, with ease of use and better overall look and feel being the most common. The Communications and IS/IT teams deserve recognition for their hard work and ingenuity in the redesign and relaunch of this key Law Society communications tool.

3. 2012 Budgeting and Fee Recommendations – Process Update

The budgeting process for all Law Society operations for 2012 is now underway under the leadership of Jeanette McPhee, our Chief Financial Officer. All departmental managers are working on their budgetary projections for 2012 using a “zero based” approach to ensure that departmental needs are assessed afresh in each budget cycle. This is detailed, time-consuming work but it is necessary to support a robust budget assessment and fee recommendation process which the Finance Committee will undertake later in May. Four meetings of the Finance Committee have now been scheduled commencing on May 25, 2011. The timeline provides that formal recommendations to the Benchers on all mandatory fees (including all third party agencies and organizations we support) for 2012 will be made at the Bencher meeting in July.

As an aside, I believe we are unique among organizations in most of the free world in that we (staff and Benchers alike) are required to estimate and commit to budgets almost seven months in advance of the effective date and with only a fraction of the current year results available to guide that process. This is because we are (together with New Brunswick) one of only two Law Societies in Canada that must submit their regulatory fees for approval by the members. This necessitates long lead times for mailings and coordination with the AGM. The Benchers have authorized a change to this requirement as part of our package of legislative change requests. We are hopeful this package will be brought forward in the next full legislative session, which is most likely in 2012.

4. Buildings and Premises – Space Usage Assessment

It is a “best practice” for businesses to review and assess how they are utilizing their available office space at least every five years. The Law Society last undertook a comprehensive space analysis for 845 Cambie in 2005. This was done primarily to support the development of the then empty fourth Floor to establish working premises for our new Trust Assurance Department.

Since then we have had a number of moves, adds and changes on all floors and it is time to once again ensure that we are effectively utilizing the building space and properly meeting our operational needs. We have engaged SSDG Design Group (SSDG did the last review in 2005) to conduct this review and

we expect their report by the end of June 2011.

Although coincidental, the timing of the SSDG review is now fortuitous because of the departure of the CLE Society from the third floor by the end of August 2011 and the recent notice from the Vancouver Opera that they are vacating their premises at 839 Cambie and 750 Cambie by the end of September 2011. The space usage assessment will assist us in making recommendations regarding the re-leasing of the pending vacant premises which also accord with Law Society's own space usage requirements. Jeanette will be available at the meeting to discuss this process in greater detail

5. Bencher Retreat - Update re: Planning

Planning for the upcoming Bencher retreat at Whistler on June 16, 2011 – June 19, 2011 is proceeding well. The theme for the Friday conference portion of the retreat is “The Future of Legal Regulation in British Columbia”. We are hoping to have the agenda finalized by the Bencher meeting on Friday and Gavin and Bruce can provide further details at that time.

6. Continuing Professional Development (CPD) Program – 2010 Results

I would like to provide a brief update on the statistics for our CPD program as at March 31, 2011. Out of approximately 10,300 practicing lawyers, 45 lawyers have not yet completed the 2010 CPD requirement compared to 170 at the same time last year. Of the 45 lawyers:

- 4 must complete only the ethics requirement
- 27 have not reported any hours
- 14 have reported some hours

Alan Treleven will be available at the meeting to update these results and to answer any questions.

Timothy E. McGee
Chief Executive Officer



To Benchers
From Jeffrey G. Hoskins, QC for Executive Committee
Date April 5, 2011
Subject **Some governance issues**

Following a recent meeting with the President and the CEO, I was asked to prepare a memorandum on a number of governance issues for the consideration of the Executive Committee and for them to refer to the Benchers topics they considered worthy. The Executive Committee discussed the topics that I prepared and resolved to refer those matters that appear below to the Benchers for further consideration.

The Committee classified some matters as high priority or importance and others as lower priority or importance. I have further divided the issues into matters that can be done by a simple Rule change and those that require the authority of the members voting in a referendum under section 12 of the *Legal Profession Act*.

Of the matters that the Benchers consider should be pursued further, there may be some that can be referred to Act and Rules Subcommittee for implementation and others that require further study and can be considered as part of the new Strategic Planning process later this year.

Things that can be done by simple rule change: HIGH PRIORITY

1. Appointment of non-lawyer non-Bencher members of public to regulatory committees

Under the current Rules, membership in the Discipline Committee, Credentials Committee, Practice Standards Committee and Special Compensation Fund Committee are limited to current Benchers and lawyers. All other Committees are open to the membership of anyone appointed by the President.

This excludes from the key regulatory functions of the Law Society all members of the general public, including Life Appointed Benchers and many retired judges. Given that the Benchers are now prepared to have non-lawyer non-Benchers sitting on hearing panels, they may be willing to consider such persons as members of the regulatory committees.

The Benchers can change this restriction by amending the Rules that govern the composition of those Committees.

2. *Election of Executive Committee*

The current Rule 1-39(11)(b) provides as follows:

- (11) If a vote is required for an election under this Rule,
 - (b) a ballot must be rejected unless it contains votes for the same number of candidates as there are positions to be filled, and

As a result, Benchers are compelled to vote for three candidates, even if they have a preference for only one or two. This is unlike the rules in any other Law Society election or in public elections such as local government elections in British Columbia. Aside from the restriction on civil liberties, since all votes count the same in the final result, the result of the election can be affected.

There is no requirement for a referendum of members for the Benchers to change the rules governing the election of the Executive Committee.

3. *Bencher elections by electronic means*

The Law Society conducts Bencher elections at least annually. The process is labour-intensive and completely paper-based. Some years ago, we investigated the cost of changing to an electronic web-based system, such as that used by a great many organizations today. While the cost for a relatively small membership base such as the Law Society's was thought to be prohibitive at one time, is it time to investigate again to see if technological advances and/or increased membership make a difference?

Things that can be done by simple rule change: - LOWER PRIORITY

4. *Webcasting general meetings -*

In 2003, the membership voted 87.7 per cent in favour of the following referendum question:

Question 1: Webcasting of general meetings

Are you in favour of the Benchers amending the Rules respecting general meetings to

- (a) allow members to attend and vote by way of the Internet, and

- (b) ensure that the meeting would not be invalidated by reason alone of a technical failure that prevented some members from attending and voting by way of the Internet?

Despite that endorsement, the Benchers have never implemented the rule change that was mandated. At the time, the cost involved was considered too great and the issue of the Law Society collecting mandatory fees on behalf of the CBA-BC Branch complicated the question of instituting a change that potentially could affect the outcome of that debate.

Is it time to investigate the current cost of making the transition or to ask the Benchers if they are interested in such an investigation?

5. *Appointment of lawyer Bencher to fill vacancy in last 6 months of a term*

Rule 1-38 permits the Benchers to appoint a lawyer to fill a vacancy for Bencher that occurs in the last quarter of the term of office. (In the first three-quarters of the term, the Rules require that a Bencher by-election be held promptly). However, the Benchers have made no such appointment in well over 20 years.

One reason that the Benchers have decided not to make an appointment in the past is that the tag-end term used to be counted as if it were a full term for the purpose of Bencher term limits. That rule was amended in early 2010 so that a half term or less does not count against the Bencher term limit.

I suspect that some Benchers considered it unseemly for the Benchers as a whole to apparently endorse one possible candidate for Bencher in the general election that inevitably follows quickly in November of the same year.

The Benchers may want to consider a policy guideline as to when they will consider appointing a lawyer to ensure more continuous representation, especially for districts with only one or two Benchers. Alternatively, if the Benchers are not inclined ever to use the power to appoint, they may consider rescinding the Rule.

Things that require a referendum vote to amend the Rules

The issues that follow are all subject to section 12 of the *Legal Profession Act*, which requires that the membership endorse rule changes in a referendum ballot before the Benchers can give them effect by amending the Law Society Rules. This requirement was included in the *Legal Profession Act* because the nature of these provisions gives the appearance that the self-interest of the Benchers is involved.

In order to dispel that appearance and give any proposals for reform more credibility with the membership voting in a subsequent referendum, I suggest that the Benchers refer

some or all of the following issues to a committee of knowledgeable and trusted people who are not current Benchers, such as senior members of the Bar, former Appointed Benchers and members of the general public. That would also have the effect of taking the issues off the Bencher agenda leaving it free for broader issues. It would be helpful if the Benchers would commit in advance to putting the recommendations of the independent Committee to the members in a referendum and to implementing changes that are duly approved by the members.

HIGH PRIORITY

6. *Bencher turnover*

Every two years, there is a general election of Benchers and the terms of Appointed Benchers come to an end, and several are replaced at the same time. In alternate years, an election is required to replace the out-going President and sometimes others who have left for one reason or another. The result is a very large number of inexperienced Benchers in alternate years and a very low number in other years.

These are the figures for the past decade:

YEAR	NEW BENCHERS
2001	2
2002	13
2003	2
2004	8
2005	1
2006	11
2007	1
2008	5
2009	2
2010	10
2011	1

The inefficiency of this system came to me once again in the orientation of a single new Bencher that took place recently. The Law Society was required to dedicate a large number of staff hours per Bencher to the education of one individual. Other years, the logistics of orienting and training a large number of people has become a problem.

I think that there is also a risk factor and a quality control issue of sorts in having up to 42 per cent of the Board completely without experience at the same time. With annual partial elections and an eight-year term limit, the annual turnover should be somewhat over one-eighth, allowing for other vacancies. In other words, we should expect four or five new Benchers annually.

One common way of mitigating the effects of high turnover of elected officials is “staggered elections” - electing only a partial slate of candidates at intervals, so there is always substantial carry-over when new members arrive.

In the case of Benchers elections, I would suggest electing as close as possible to half of the Benchers each year. The provincial government could also be asked to appoint half of the Appointed Benchers each year. I suspect that they would find that easier to handle than the current six-at-a-time approach. In Vancouver especially, I think there would be a benefit for the voters who now have to select up to 13 candidates in a field that often exceeds 30.

The transition from full elections to partial staggered elections would have some manageable complexities. In the long run, though, this would have little effect on the Law Society administration of elections, in that the current Rules require at least one election on November 15 every year, to replace the outgoing President in off years.

7. *Bencher term of office*

The current term of office for Benchers in British Columbia is two years. The Bencher term of office is three years in Alberta and four years in Ontario. Frequency of election has its rewards in terms of involvement of the electorate, but it is also a distraction and an expense. It may be worth considering what the optimum term of office for Benchers would be.

If the term of office were increased to three years, this would require an amendment to the term limit, which is currently eight years for most Benchers. Presumably that would have to be increased to nine.

8. *Bencher electoral districts*

Since 1955 Benchers have been elected in the districts established under the *County Boundaries Act*. Originally there were 20 elected Benchers. Five have been added over the years, but all to existing districts. There have been no revisions to the boundaries in 56 years, with the exception of the division of the County of Yale into Okanagan and Kamloops Districts. In the meantime, the County Courts were abolished 20 years ago, and the County Boundaries now have little legal significance outside of Bencher elections.

Most problematic is that the uneven distribution of lawyer population in the province has left the districts with a wide variation in the number of lawyers represented by Benchers.

The table on the next page shows the numbers of members in each District as of March 1, 2011, along with the number of members per Benchers who represent the District. While

the average Bencher represents 453 lawyers, the actual figures vary from a low of 70 to a high of 575.

Bencher representation by district

DISTRICT (Benchers)	MEMBERS	MEMS/BENCHER	VARIATION (%)
Cariboo (2)	212	106	-76.6
Kamloops (1)	243	243	-46.4
Kootenay (1)	123	123	-72.9
Nanaimo (1)	435	435	- 4.0
Okanagan (1)	459	459	+ 1.3
Prince Rupert (1)	70	70	-84.6
Vancouver (13)	7,090	545	+20.2
Victoria (2)	1,151	575	+26.9
Westminster (3)	1,548	516	+13.8
TOTALS (25)	11,331	453	

The Supreme Court of Canada has found that, in the context of federal and provincial elections, Canadians have a right under section 3 of the *Charter* to relative parity of voting power (*Reference re Provincial Electoral Boundaries (Saskatchewan)*, [1991] 2 SCR 158). Other factors apply, of course, and the *Charter* does not govern Bencher elections, but the principle is one that could be better served with some adjustments.

This issue has been looked at in the past, without resolution (except the Yale County division). Here are some suggestions that may bear further examination:

- divide Cariboo County into Prince George (109 lawyers) and the rest (103 lawyers)
- increase Vancouver Island (1,586 lawyers) by one Bencher (397 per Bencher)
- make Richmond (268 lawyers) part of Westminster County (increases to 1,816 lawyers or 454 per Bencher)

- divide the enhanced (by Richmond) Westminster County into two districts: one east of Pitt River and Surrey Langley boundary with one Bencher (485 lawyers) and one west with three Benchers (1,331 lawyers, 444 per Bencher)
- make the North Shore and Sunshine Coast a separate district with one Bencher (411 lawyers)
- leave the districts as they are (or adjust slightly) but apply a formula to determine the number of Benchers (e.g., one Bencher for every 450 members or part thereof on July 1 before each election)

9. *Election of Second Vice-President by Benchers*

The current Rules indicate that the members elect the Second Vice-President at the Annual General Meeting. In reality, the Benchers make that decision when they decide who the Bencher nominee will be. The Rules do not even give the AGM the option to reject the Bencher nominee. “If only one candidate is nominated, the President must declare that candidate the Second Vice President elect.” Rule 1-18(5).

In over 30 years since this system was instituted, there has been no candidate nominated to challenge the Benchers’ nominee. It has been suggested that the resulting process is a sham and the Benchers ought to come clean and amend the Rules to indicate the true state of affairs, which is that the Benchers elect the Second Vice-President.

10. *Term of office of a President or Vice-President who takes office mid-year*

Rule 1-3(5) governs the situation when a President or Vice-President resigns mid-term, which in recent years has happened twice - in 2003 and in 2004. When a President or Vice-President resigns on or after July 1, i.e., in the second half of the calendar year, those on the “Ladder” below the officer who resigned move up one rung for the remainder of the year and stay there for the next year, when they would have been at that level. That is what happened in 2003-04.

However, when a President or Vice-President resigns in the first half of the year, those below move up and a new Second Vice-President is chosen. At the end of the year, the President is finished and everyone else on the ladder moves up. That is what happened in 2004. As a result, some or all of the Benchers on the Ladder serve less time as President or Vice-President than they may have expected. A President, through no doing of his or her own, may serve as little as slightly more than six months in that position.

The Benchers may want to consider a rule amendment to move the watershed date from July 1 (half-way through the year) to another date, such as April 1 (one-quarter way through the year). Alternatively, the amended Rule could allow the Benchers to decide

when the situation arises. Either way, the amendment would require membership approval in a referendum.

LOWER PRIORITY

11. Eligibility of President to be re-elected for second one-year term

The Executive Committee also considered a related issue, which they found to be a lower priority.

The automatic replacement of the President on an annual basis has a negative effect on the continuity of the leadership of the Law Society. This is partly dispelled by the Ladder, which gives a long apprenticeship to each incoming President. However, it is also subject to the inclination of each incumbent as to how much the Vice-Presidents are involved in decision-making.

Before 1998, the Act allowed for the Benchers to resolve to continue a Treasurer (as he or she then was) for a second one-year term of office. That was removed from the current Act and not included in the Rules.

The Benchers, or an independent committee, might want to consider giving the Benchers the flexibility to extend a president (and the vice-presidents) in appropriate circumstances.



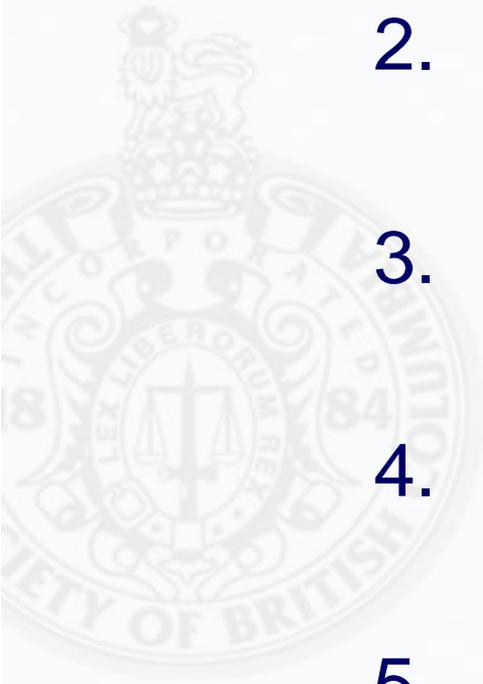
*Lawyers
Insurance
Fund*

Lawyers Insurance Fund

2010 Year End Report

Overview

1. BC lawyers
2. Part A (negligence) stats
3. Part B (theft) stats
4. Insurance fee
5. Service Evaluation Forms

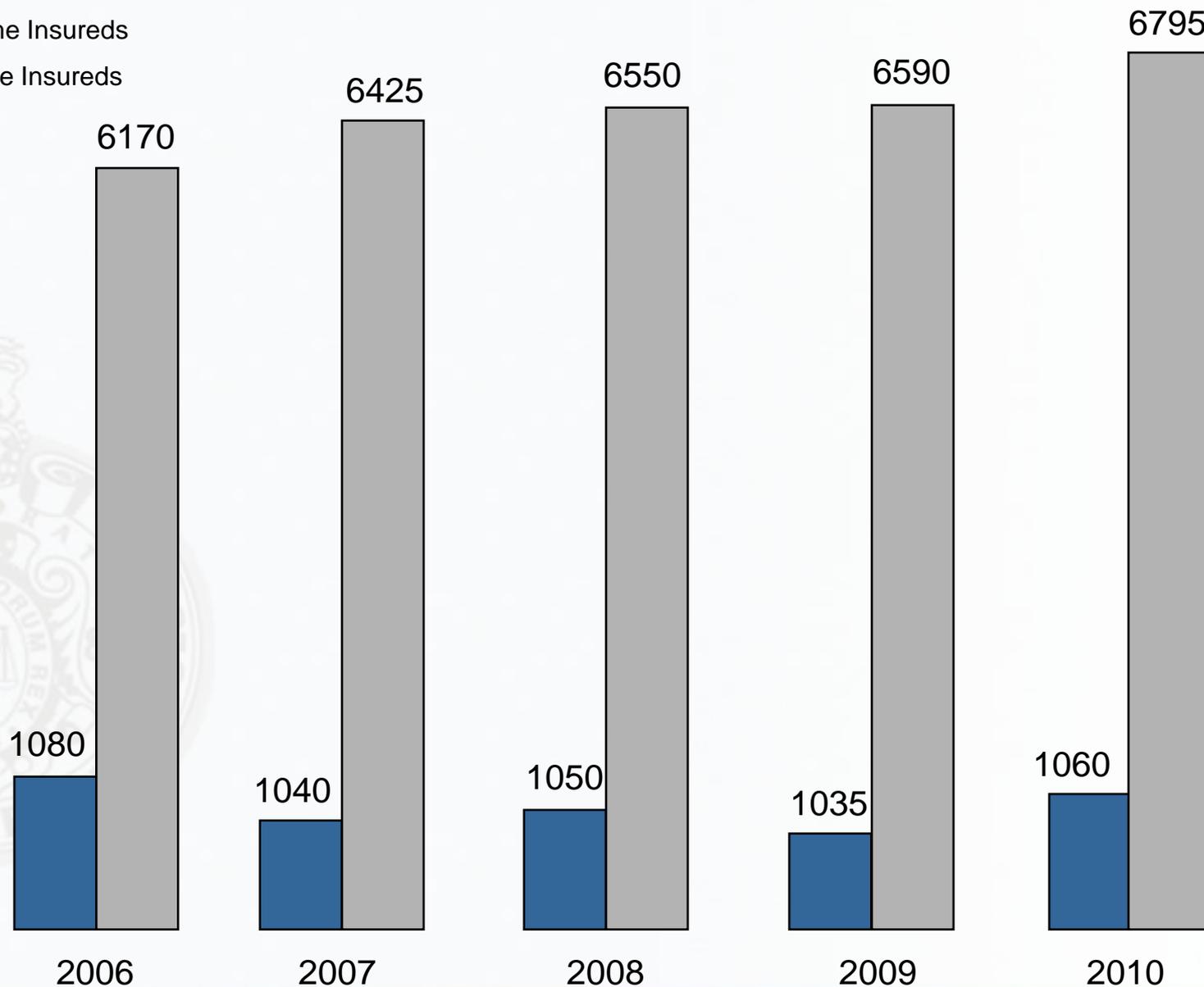


Lawyers in BC

Total number of lawyers	12,000
Non-practising or retired	2,000
Practising	10,000
<i>Practising – in-house</i>	2,000
<i>Practising – private practice</i>	8,000

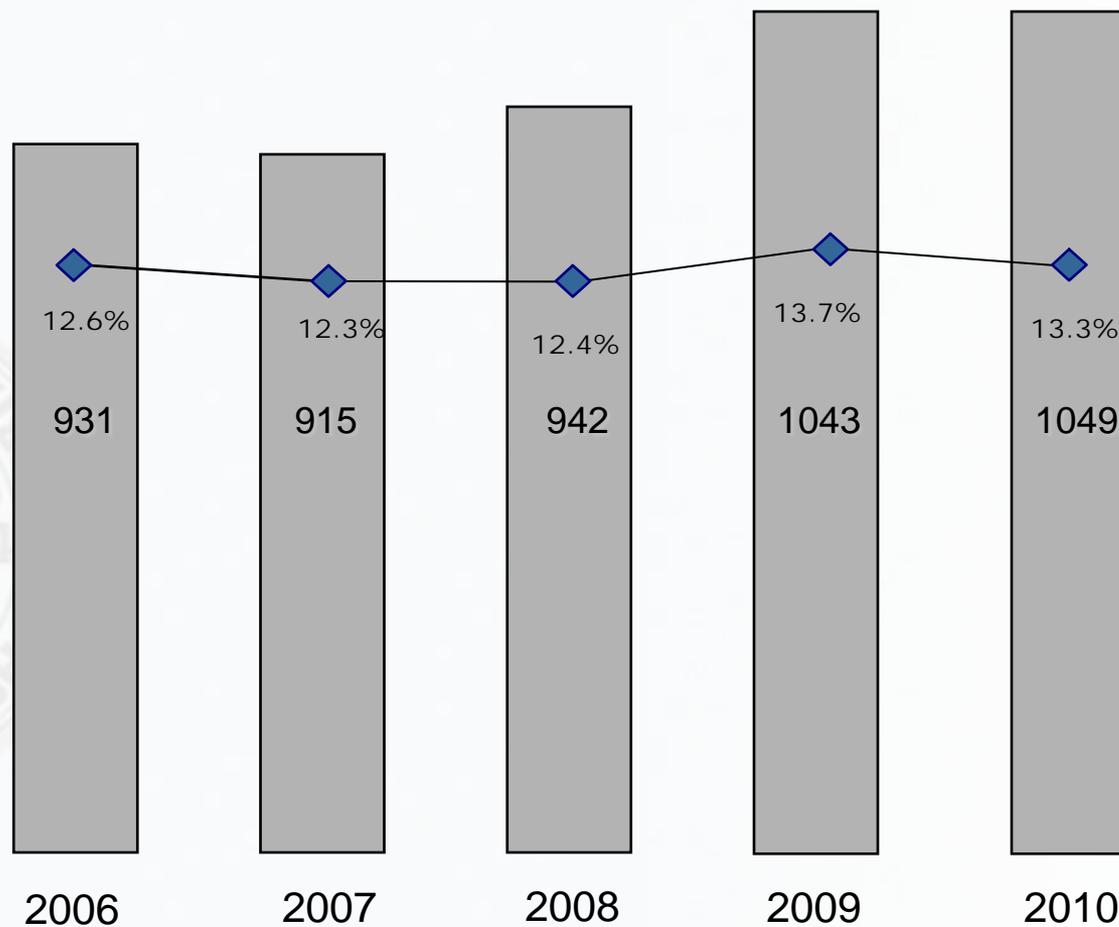
Full and Part Time Insureds

- Part Time Insureds
- Full Time Insureds

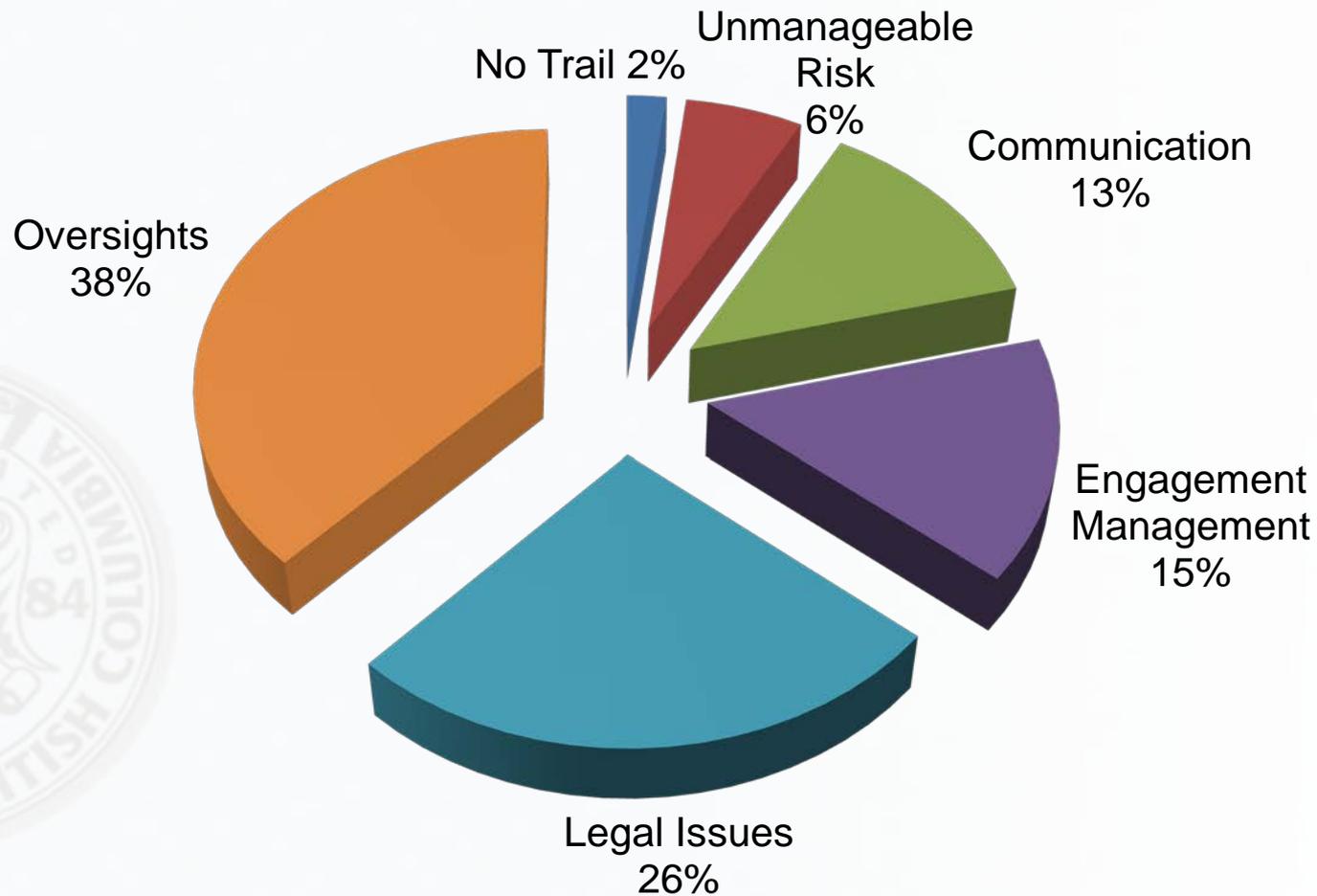


Number and Frequency of Reports

■ Number of Reports
◆ Frequency of Reports

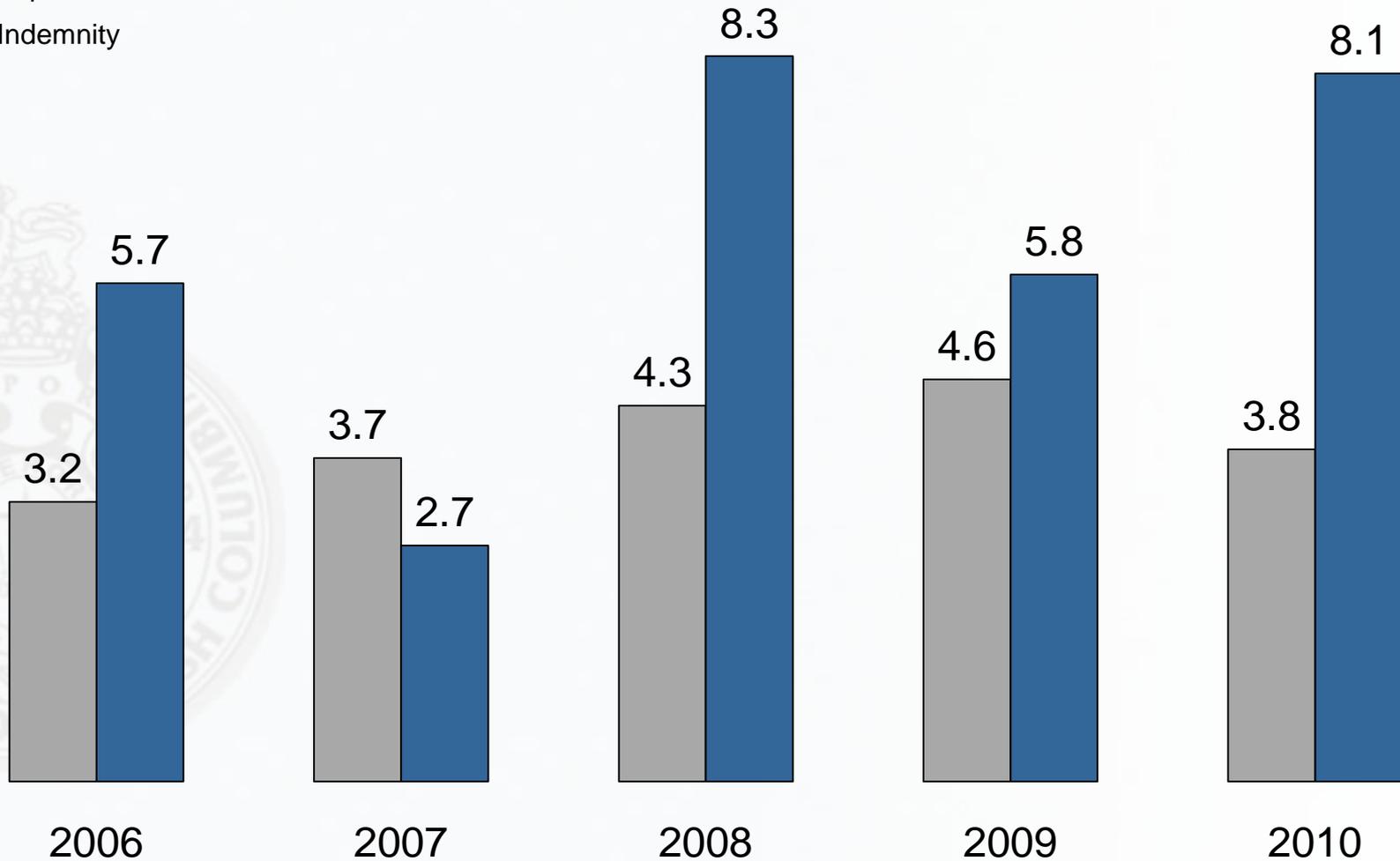


Causes of Reports

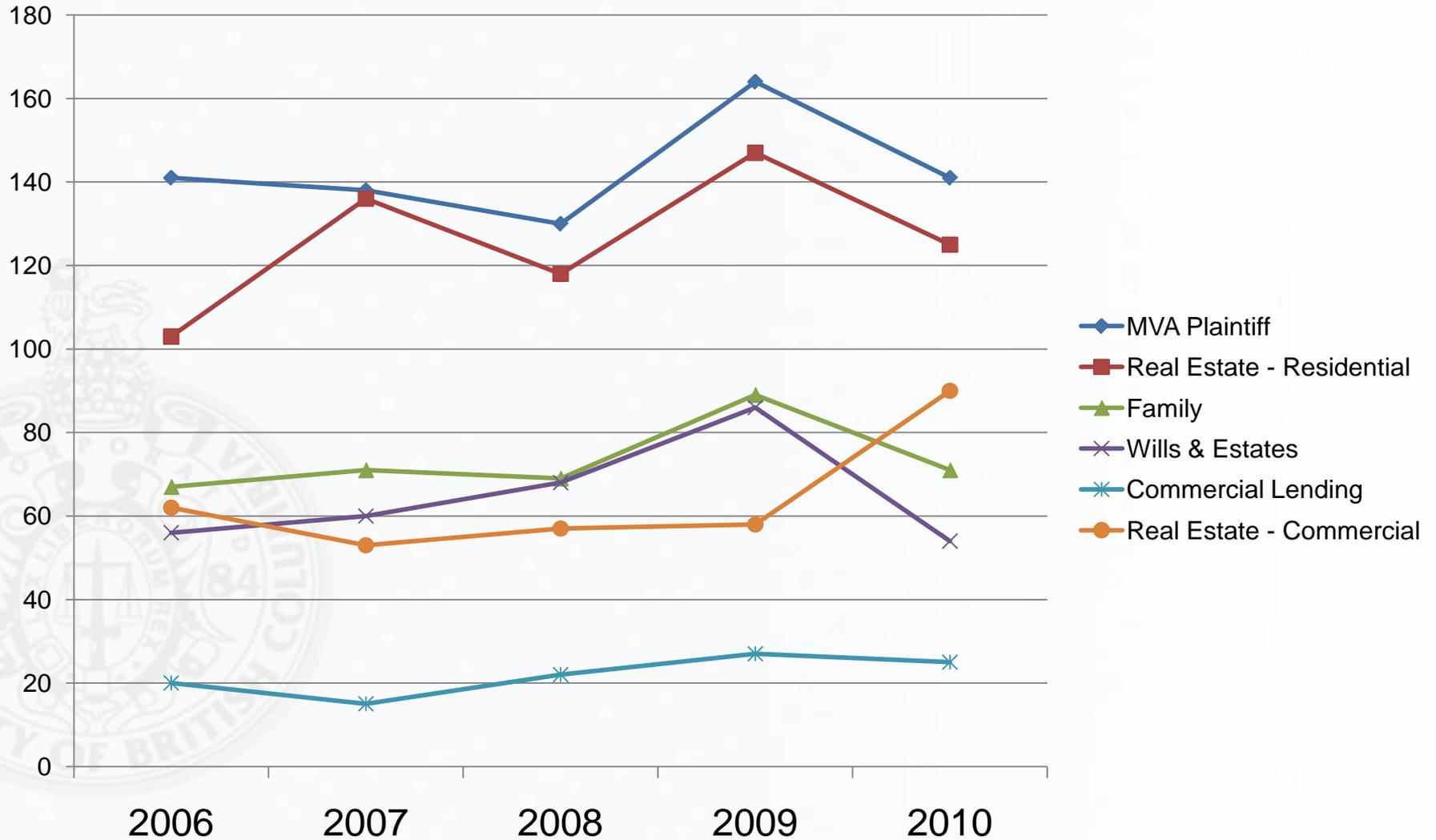


Claim Payments

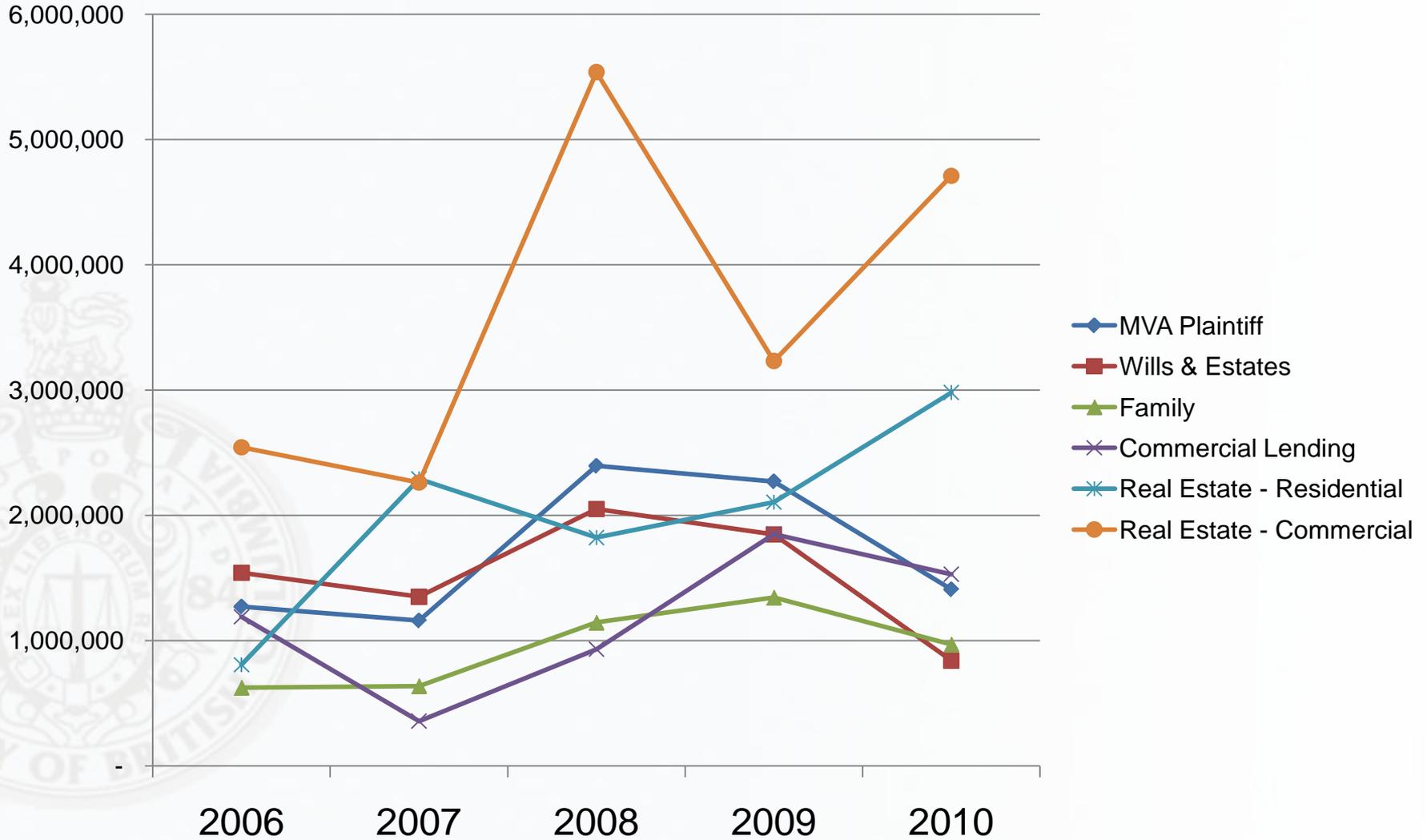
Expense
Indemnity



Frequency Trends - 6 Practice Areas

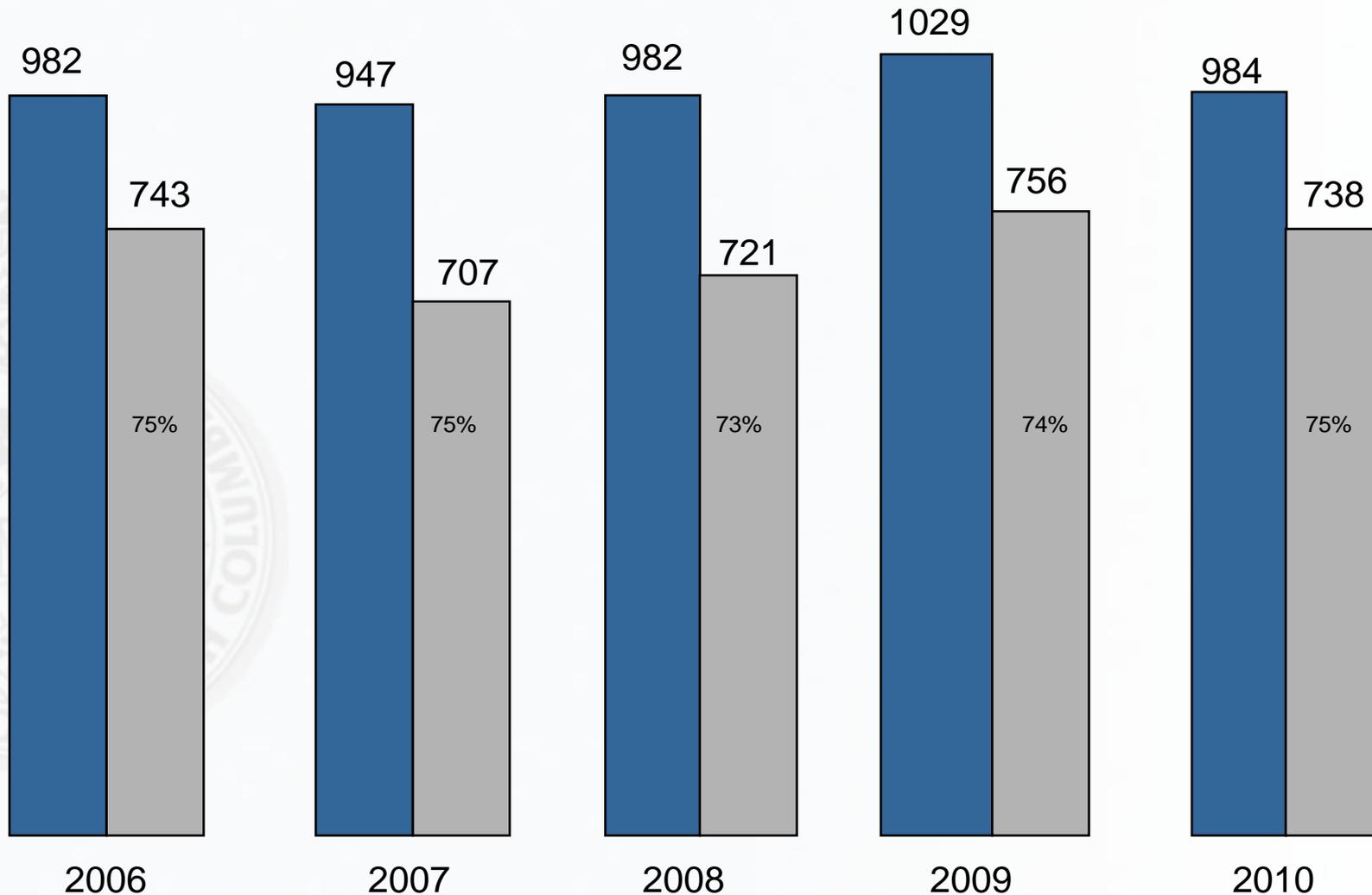


Severity Trends - 6 Practice Areas

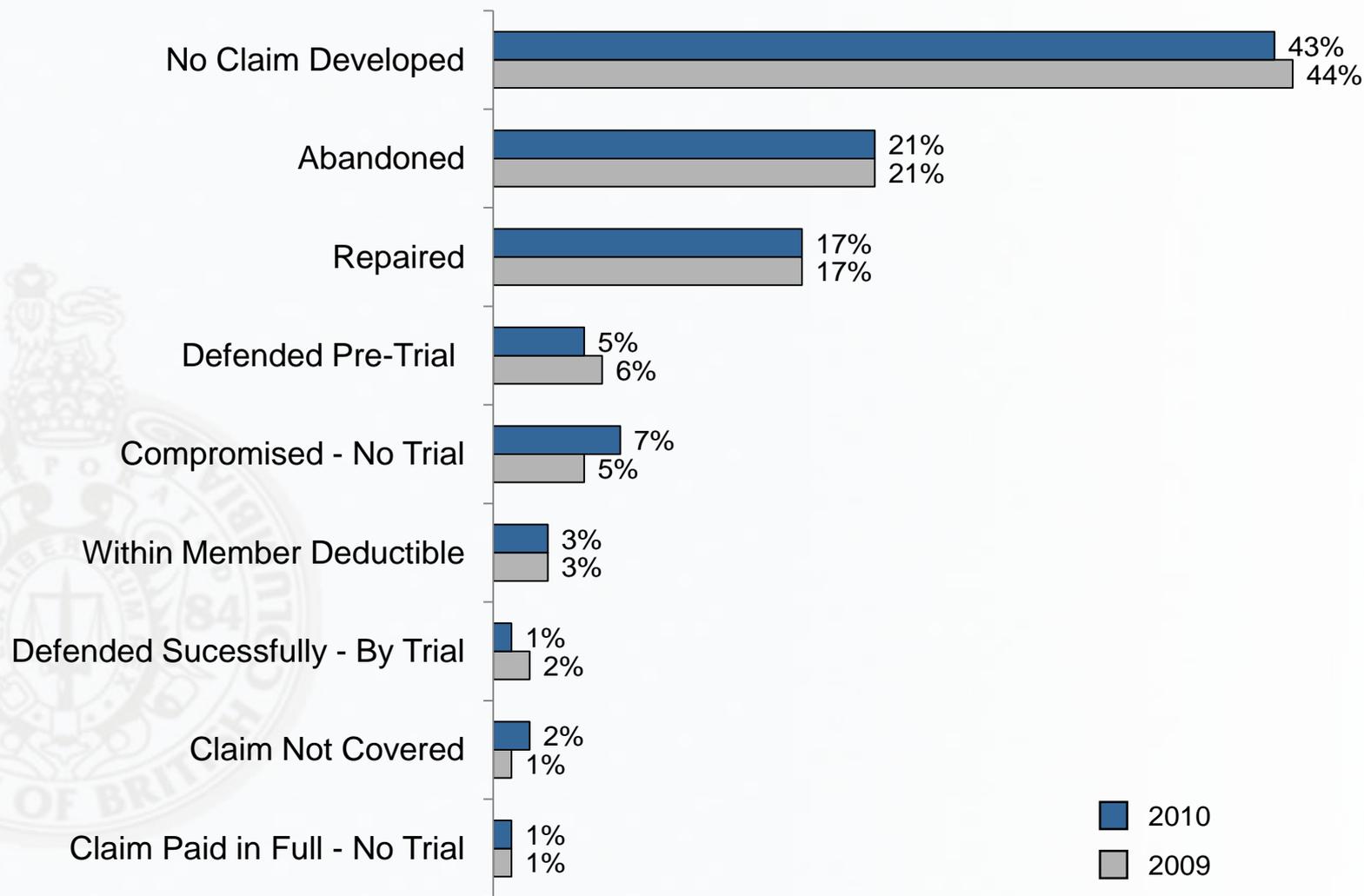


Closed Reports with No Payment

- Total Reports Closed
- Reports Closed with No Payment



Results of Reports



Other Results in 2010

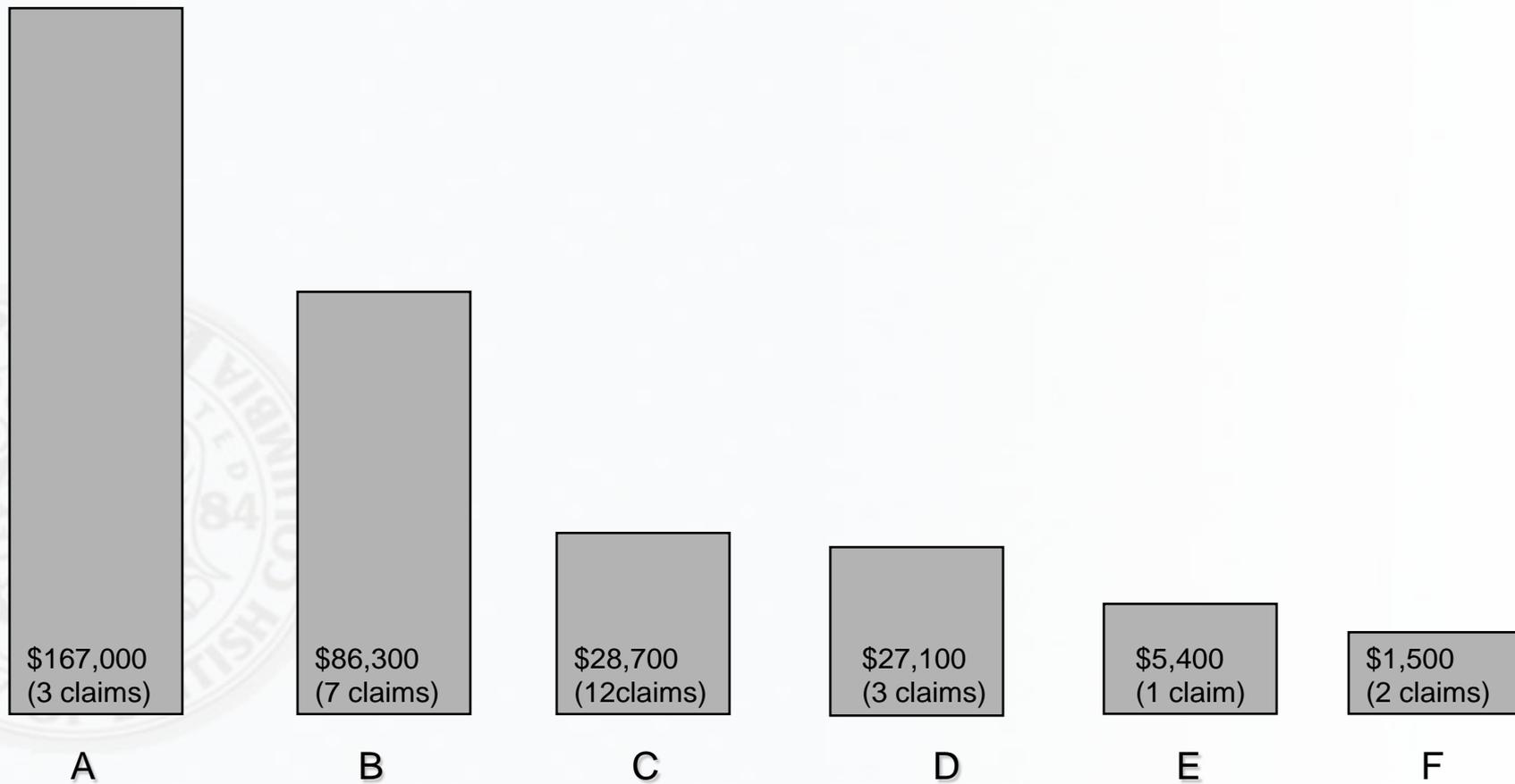
Indemnity payments	106
Excess payments (settlements over \$1 million)	1
Percentage of claims defended in-house	20%
Number of risk management presentations	16
Matters tried	15
• Trials won	13
• Trials lost	2
• Appeals won	1
• Appeals lost	0

Part B

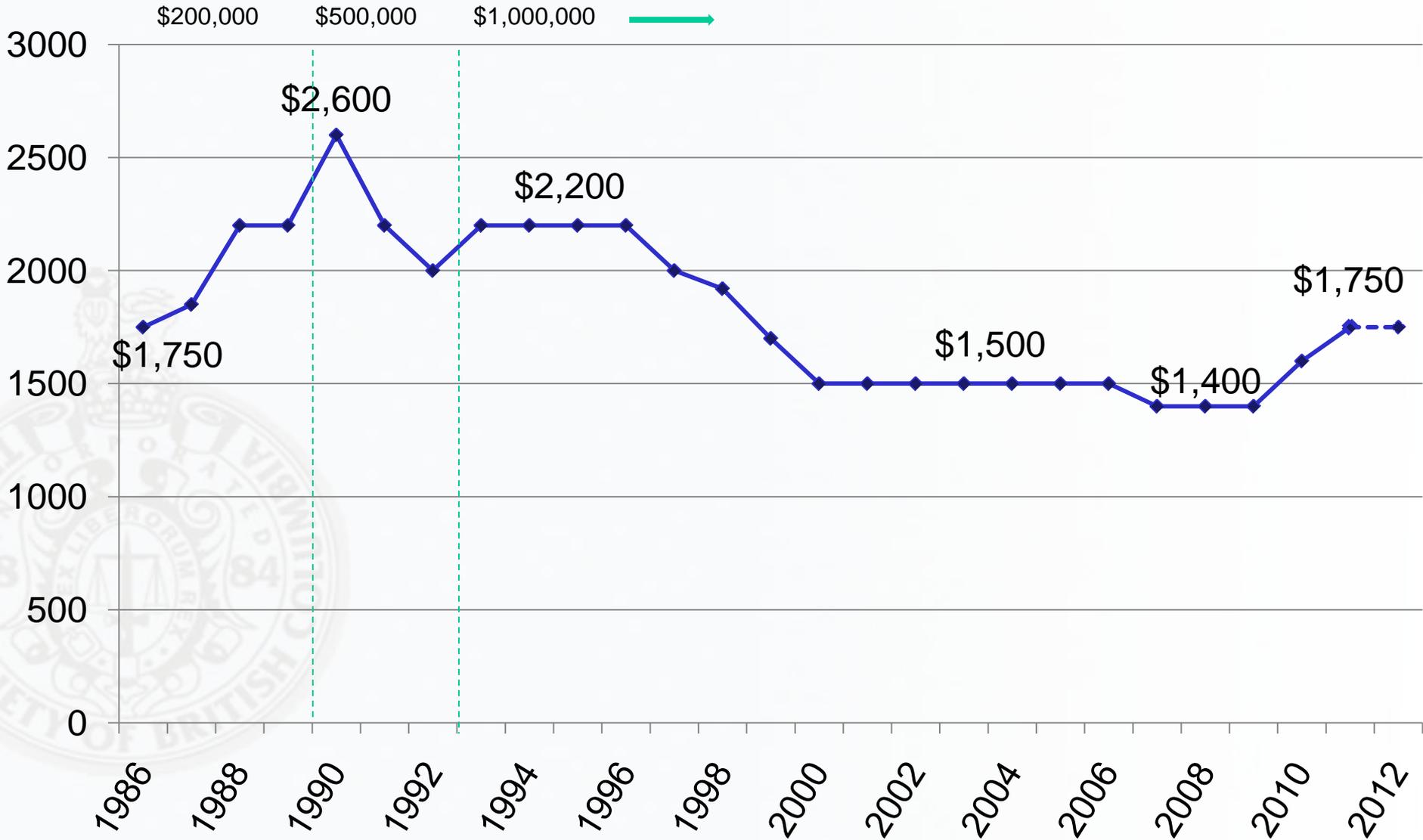
In 2010:

- 18 claims were paid on behalf of 6 different lawyers, totaling approximately \$270,000.
- 1 claim did not fall within coverage for Part B, as it did not involve a misappropriation by the lawyer.
- 1 claim was resolved without payment under Part B as the client was paid by the lawyer's custodian.
- \$786.21 was recovered from lawyers (or their custodians) on whose behalf we had made Part B payments.

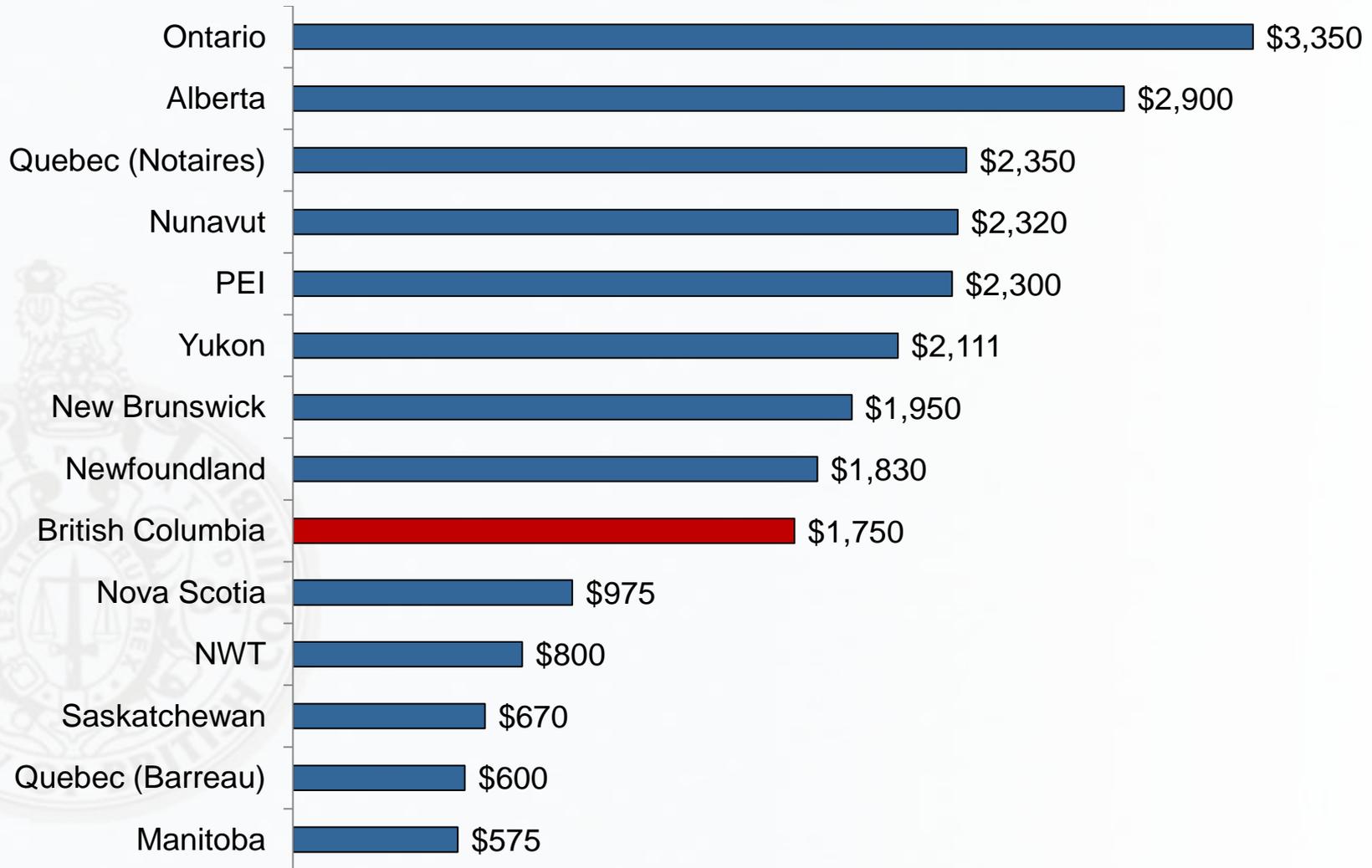
Part B – Lawyers with Paid Claims



Insurance Fee History



Insurance Fee Comparison



Part B - Claimants

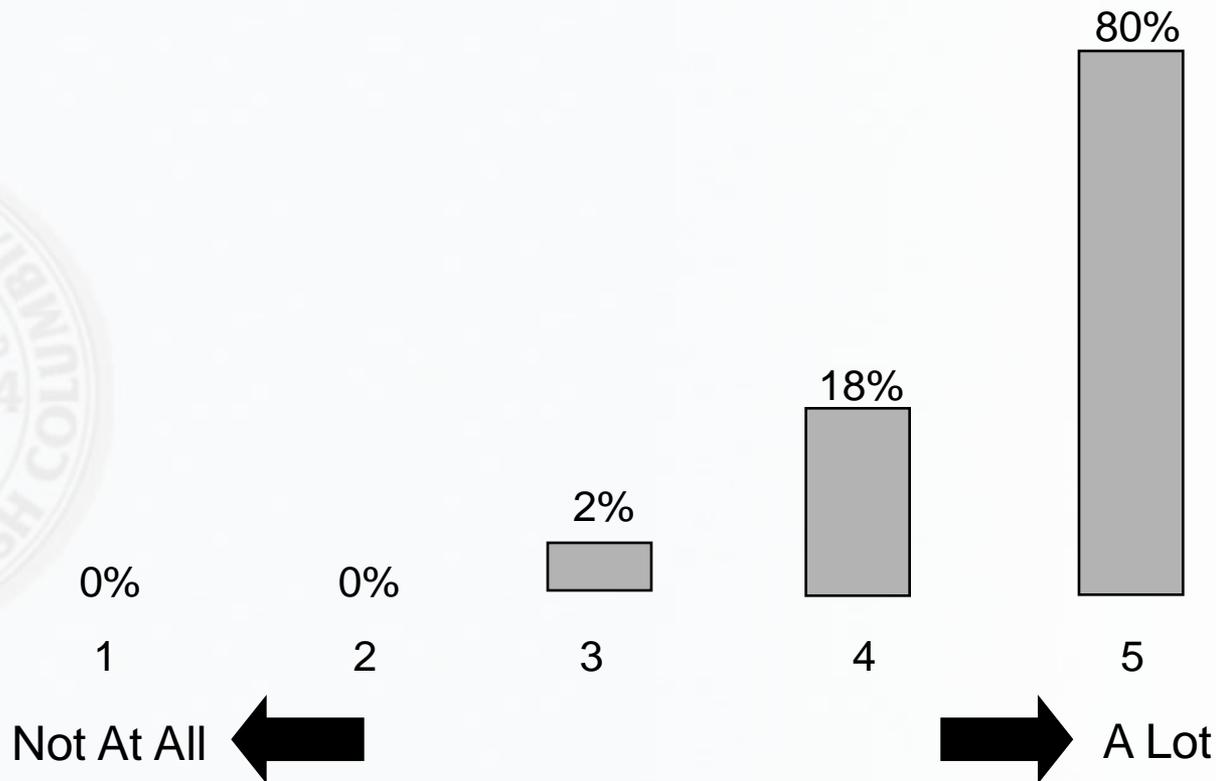
- “I most appreciated the kindness, compassion and clarity with which I was treated.”
- “Fair. Easy to deal with.”
- “I liked the fact that you were very courteous and prompt, and there to help people, like me who are deceived by people, like my former lawyer.”

Service Evaluation Forms - Responses

- SEF's completed – 435 (out of 984)
- Kudos (good) – 287
- Grumbles (bad) – 5
- Risk Management comments – 280

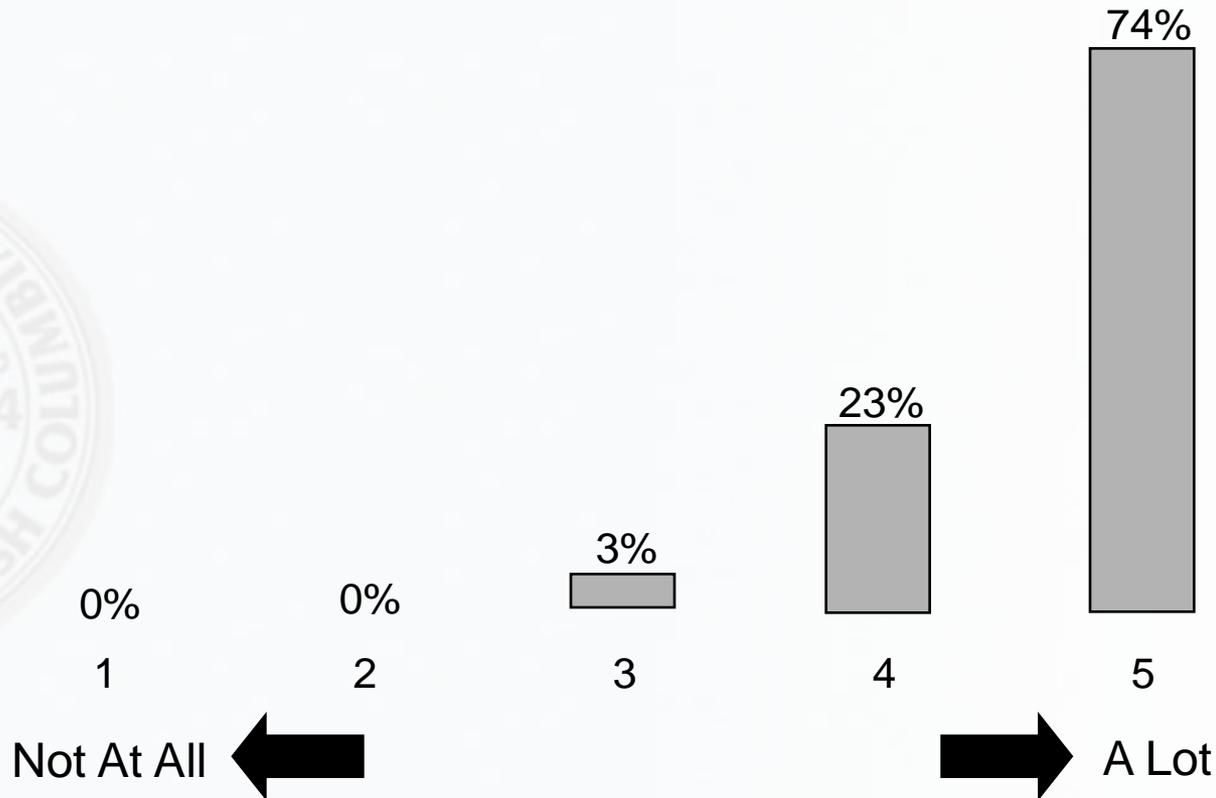
Part A Service Evaluation Form Results

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



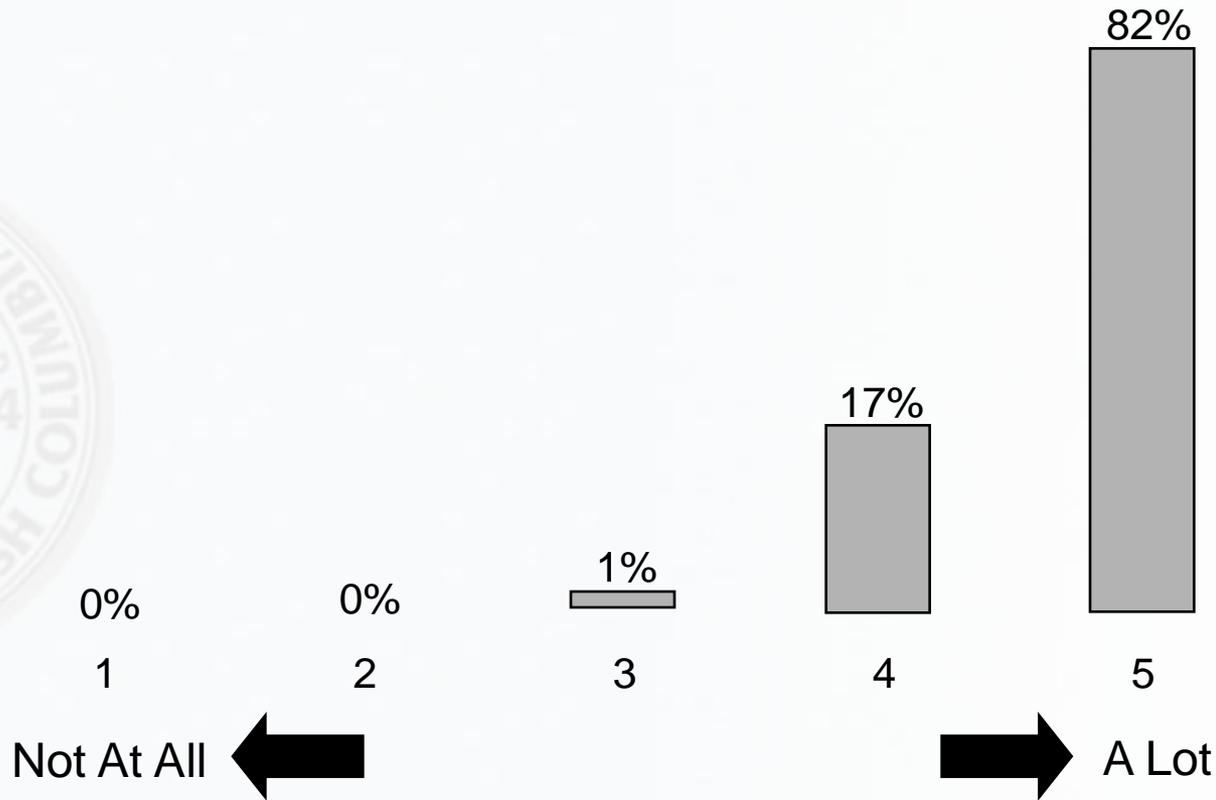
Part A Service Evaluation Form Results

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



Part A Service Evaluation Form Results

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



Thank you

